

The Eviction Crisis in Colorado

CLS Plays a Crucial Role in Eviction Defense for Low-Income Renters

BY HARRIET MCCONNELL RETFORD

On March 1, 2019, the Legal Aid Foundation of Colorado kicks off its 15th annual Associates Campaign for Justice. This campaign provides an opportunity for young attorneys to learn about the needs of indigent persons in Colorado who are struggling with a civil legal issue, and to help meet the legal needs of those individuals. In 2018, the Associates Campaign raised a record-breaking \$192,382 to support Colorado Legal Services (CLS), the only agency in Colorado that offers free civil legal services to indigent clients and underserved populations in every Colorado county. The Associates Campaign is organized and run entirely by law firm associates, with associate representatives at each participating firm working to spread the word and educate their colleagues about the many legal needs in our communities. Last year, 37 firms achieved 100% participation by their associates. In addition, many other firms had associates who contributed generously to CLS.

This article highlights CLS's efforts to assist low-income residents with an issue that is near to the hearts of many young attorneys in Colorado: skyrocketing rents throughout the state. Rising rents and house prices have led to an eviction crisis, with four municipalities in Colorado—Aurora, Colorado Springs, Westminster, and Lakewood—earning the dubious distinction of being among the top 100 cities nationwide in evictions, as a percentage of renters.¹

The Eviction Crisis

America has an affordable housing problem, and Colorado is not immune. Between 2014 and

2017, rent in Denver increased by 22.4%, and surrounding cities and suburbs also experienced steep rent increases.² The median rent for a one-bedroom apartment in Denver is \$1,050.³

These rising rents are being driven by rapid population growth—not wage growth—and are particularly burdensome for people with low incomes. A 2017 study by the National Low Income Housing Coalition shows that the full-time hourly wage needed to afford a two-bedroom home in Colorado is \$21.97, and in the Denver-Aurora-Lakewood area, it is \$25.10.⁴ This is significantly more than the average wage earned by Colorado renters, \$17.13, and much higher than the current minimum wage of \$11.10/hour.⁵

These high prices have spawned an eviction crisis. At least 45,000 eviction actions were filed in Colorado in 2017 (about 865 per week), according to a study conducted by the Colorado Center on Law and Policy.⁶ The problem is particularly serious in Adams County, where the eviction rate is 4.4%.⁷

When the Colorado Center on Law and Policy reviewed 93,000 eviction cases in Denver County, it found that fewer than 3% of tenants were represented by counsel, while virtually all landlords went to court with an attorney.⁸ CLS is working to change this statistic, although the volume of cases is overwhelming and the legal process is challenging.

Defending Evictions

Evictions in Colorado move quickly. In private, nonsubsidized housing cases, a landlord is required to provide three days' notice to the tenant

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and an opportunity to cure the nonpayment of rent or the violation of a lease condition. If the rent is not paid within those three days, the landlord may file suit to evict the tenant. The court will provide a “return date” of between seven and 14 days after the eviction paperwork is served on the tenant. If the tenant contests the eviction, a trial is set in as few as five days. Once the court approves the eviction, the tenant usually has 48 hours to move.

Unrepresented tenants find it very difficult to challenge an eviction action. The Colorado Center on Law and Policy found that only 7% percent of pro se tenants in evictions were able to successfully file an answer to the complaint, much less mount an effective defense at trial.⁹ The presence of an attorney can have a profound impact on the outcome for low-income individuals.

Reenie Terjak, CLS director of advocacy, estimates that in the Denver counties served by specialized eviction defense funding, CLS advocates are now assisting about 20% of the tenants who have been sued for eviction. Most clients seek assistance from CLS once they have been served with eviction papers, so the clock ticks rapidly.

Usually CLS is able to negotiate with landlords to obtain a more favorable outcome, but there is a limit to what can be accomplished legally. It is particularly difficult to defend an eviction for nonpayment of rent, especially in private housing, and victories are often measured in days for the tenant to move, not months or years. Even when it is only possible for a CLS attorney to negotiate a few extra days for the client to find a new residence, these days are often the difference for the client between safely moving to new housing and spending

many nights in a homeless shelter or on the streets. Most people would find it difficult to find a new home, pack, and move within 48 hours, and these difficulties are compounded when tenants need to secure housing at far below average market rents, have children, or have other issues common to low-income individuals such as poor credit or a criminal history.

Sometimes the best resolution of an eviction action is for a CLS attorney to help a client avoid the entry of a judgment for possession, given that a judgment of any kind is added to the defendant's credit history, which makes it very difficult for that individual to find housing in the future. But an attorney can often persuade the landlord to voluntarily dismiss the judgment once the tenant moves out and pays past due rent. This greatly helps the tenant find future housing.

In cases where past due rent is available, CLS attorneys may be able to negotiate with the landlord for payment of that back rent, and sometimes for waiver of late fees and court costs, so the tenant can stay in the home. For example, a few landlords will accept a smaller security deposit upfront in lieu of the full requested security deposit, but then will apply the first month's rent to the security deposit, leaving the tenant a month behind on rent from day one and subject to paying late fees. If this "security deposit offset" was not properly explained to the tenant and put in writing, an attorney may be able to help the tenant get the late fees canceled and the payments properly allocated to rent.

CLS can also assist with rent timing issues. One former CLS client, Mr. B., was a conscientious tenant but chronically late on his rent payments because the rent was due the same day that his disability payment was deposited

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into his bank account. A CLS attorney spoke with the landlord and was able to get the rent due date changed by a few days so that the disability payment could clear, after which the tenant was able to make timely rental payments.

Outcomes tend to be better in situations where tenants have greater legal rights. For example, tenants who own mobile homes often rent lot space in the mobile home park. A mobile home park must give a tenant 30 days' notice of a right to cure a minor deficiency (such as an unauthorized guest), and if not cured within that time, must give the tenant another 30 days to move the mobile home. A park cannot force a tenant to move without cause. In one recent case, the owner of a mobile home park in Fort Collins sold the park to new owners, who immediately (and improperly) raised residents' rent during the lease term, and then attempted to evict the residents. The new owners withdrew their actions, however, after CLS attorneys contacted them and explained the law.

Another important area of eviction defense is the protection of disabled people in subsidized or public housing. Most people who seek assistance from CLS to defend an eviction from subsidized housing suffer from serious mental or physical impairment. Stable, low-cost housing is critical for these individuals, who may already struggle to find and keep employment or to maintain necessary treatment plans. Landlords are required to provide accommodations to people with disabilities, and cannot evict a tenant for being disabled, but some tenants may not understand or have the ability to effectively assert their legal rights.

Finally, some landlords fail to follow even the perfunctory legal process. Instead they attempt an illegal "do-it-yourself" eviction by shutting off heat or water or by changing the locks on the doors without legal process. One client, Ms. S., came to CLS after finding her single-room occupancy padlocked because of late rent. She was only able to return to her unit after CLS contacted the landlord and threatened to seek an injunction allowing her to return to her home. It is never permissible for a landlord to lock out a tenant; only the sheriff can do that, and only after a court order has been entered.

A landlord must complete the requirements for an eviction, which include a three-day cure period in which the tenant can pay back rent. In this case, Ms. S. was able to pay the back rent and stay in her home.

Finding the Resources for Eviction Defense

With tens of thousands of eviction actions filed in Colorado every year, coupled with far fewer legal aid lawyers than are needed to handle these cases, CLS has struggled to find the resources necessary to provide eviction defense for low-income tenants. However, in the last year, CLS has received several sources of specialized funding to focus additional legal resources on the housing needs of low-income individuals.

For a three-year grant cycle, which began in 2018, the Colorado Lawyer Trust Account Foundation (COLTAF) has funded CLS to hire three additional attorneys and one additional paralegal. Two of the attorneys—one located in Colorado Springs and serving the El Paso court and one in Denver focusing on the entire Denver metro area—provide direct representation in court to individuals facing eviction. A third attorney, also based in Denver, provides legal advice and brief services to tenants throughout the state through CLS's statewide, phone-based intake system. These attorneys, with assistance from a paralegal who focuses on housing work, collectively have provided enhanced legal services to more than 500 CLS clients in 2018.

In addition to the COLTAF funds, CLS has received funding from three sources to place attorneys in court on a daily basis to meet with tenants who appear to answer a summons in a forcible entry and detainer action. First, donations from the Denver City Council fund the Denver Eviction Pilot Project, which currently enables one grant attorney and one paralegal to assist with eviction cases in Denver County Court.¹⁰ When a tenant arrives at the courthouse to file an answer, he is given the option of meeting with a CLS attorney for assistance with the case. Since June 2018, the attorney and paralegal have assisted clients in almost 300 cases, or about 12 cases per week. Grant attorney Jana Happel says of the effort, "The

pilot has been exhausting, and much like a hospital emergency room in its urgency, but it is rewarding to help so many people understand their rights and help them achieve a better result in their case." In late 2018, CLS successfully obtained funding from the City of Denver Office of Economic Development to continue this project through 2019.

While the Denver pilot was launching, a parallel eviction defense project launched in Adams and Broomfield Counties. CLS was able to hire one full-time attorney, one part-time attorney, and a paralegal to work on behalf of Adams and Broomfield County residents facing eviction. The attorneys are based in the Adams County Courthouse and in a Westminster public library location, to better meet the needs of the large geographic area they serve. This exciting collaboration started in December 2018.

Finally, CLS is the recipient of a 2018 American Bar Endowment Opportunity Grant, which funds the efforts of a part-time paralegal in Durango, who is coordinating a pro bono attorney panel through the Housing Legal Aid Project. The panel assists individuals facing eviction in LaPlata County, where rents have risen at rates similar to the increases seen along the Front Range.

Conclusion

As the population of Colorado grows and its cost of living escalates, there is an ever-growing need for legal services for the indigent. With few exceptions, CLS clients are living at or below 125% of the federal poverty guideline. But for every client served by CLS, at least one income-eligible client is turned away. CLS is forced to prioritize those in the greatest economic and social need and on assisting them with their most basic needs, such as their need for shelter.

The funds raised through the Associates Campaign and by the Legal Aid Foundation throughout the year are critical to helping CLS continue its work of assisting low-income Coloradans by providing them with greater access to attorneys who can help them address their legal needs.

Associates are encouraged to make a difference by participating in their firm's Associates

Campaign or establishing a 2019 Associates Campaign in their firm or office. To sign up, please contact Kelly Bossley, associate director of the Legal Aid Foundation, at (303) 863-9544 or kelly@legalaidfoundation.org. Donations can also be made to the Legal Aid Foundation by visiting legalaidfoundation.org and selecting "Donate Now." 



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NOTES

1. Princeton University Eviction Lab, Top Evicting Large Cities in the United States, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en>.
2. DePillis, "How Colorado became one of the least affordable places to live in the U.S.," CNN Business (Nov. 1, 2017), <https://money.cnn.com/2017/11/01/news/economy/colorado-housing-prices/index.html>.
3. Williams, "We need to protect at-risk renters from an eviction crisis," *The Denver Post* (Sept. 2, 2018).
4. National Low Income Housing Coalition, "Out of Reach 2017: The High Cost of Housing," <https://nlihc.org/oor/2017>.
5. Colorado's minimum wage last increased on January 1, 2019. See www.colorado.gov/pacific/cdle/minimumwage.
6. Colorado Center on Law and Policy, "Facing Eviction Alone: A Study of Evictions—Denver,

Colorado 2014-2016," https://cclponline.org/wp-content/uploads/2018/04/Facing-Eviction-Alone-2017-Report_Final-1.pdf.

7. *Id.*

8. *Id.*

9. *Id.* at 7.

10. The Denver Eviction Pilot Project is a collaboration among the City of Denver Office of Economic Opportunity, which provides vital Temporary Rental and Utility Assistance (TRUA) funds; the Colorado Poverty Law Project, which provides pro bono attorneys in landlord-tenant cases where CLS has a conflict of interest; Colorado Affordable Legal Services, which represents tenants who are ineligible for CLS services because they do not meet federal poverty guidelines; Court Mediation Services; and the Denver County courts. The Denver City Council has generously donated office space for project attorneys on the fourth floor of the City and County building.

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