

§ 13-40-122. Writ of restitution after judgment

(1) A court shall not issue a writ of restitution upon any judgment entered in any action pursuant to this article 40 until forty-eight hours after the time of the entry of the judgment. A writ of restitution shall be executed by the officer having the same only in the daytime and between sunrise and sunset and the officer shall not execute a writ of restitution concerning a residential tenancy until at least ten days after entry of the judgment. Any writ of restitution governed by this section may be executed by the county sheriff's office in which the property is located by a sheriff, undersheriff, or deputy sheriff, as described in section 16-2.5-103(1) or (2), while off duty or on duty at rates charged by the employing sheriff's office in accordance with section 30-1-104(1)(gg).

(2) The officer that executes a writ of restitution under subsection (1) of this section and the law enforcement agency that employs such officer shall be immune from civil liability for any damage to a tenant's personal property that was removed from the premises during the execution of the writ. A landlord who complies with the lawful directions of the officer executing a writ of restitution shall be immune from civil and criminal liability for any act or omission related to a tenant's personal property that was removed from the premises during or after the execution of a writ of restitution.

(3) A landlord has no duty to store or maintain a tenant's personal property that is removed from the premises during or after the execution of a writ of restitution. Regardless of whether a landlord elects to store or maintain the personal property so removed, the landlord shall have no duty to inventory the personal property or to determine ownership of or the condition of the personal property. Such storage shall not create either an implied or express bailment of the personal property, and the landlord shall be immune from liability for any loss or damage to the personal property.

(4) A landlord who elects to store a tenant's personal property that was removed from the premises during or after the execution of a writ of restitution may charge the tenant the reasonable costs of storing the personal property. To recover such costs, the landlord may either dispose of the personal property under any lien rights the landlord has under part 1 of article 20 of title 38, C.R.S., or the landlord may allow the tenant to recover the personal property after paying the reasonable storage charges incurred by the landlord.

(Amended by 2021 Ch. 348, §2, eff. 6/25/2021. L. 1885: p. 231, § 24. R.S. 08: § 2624. C.L. § 6390. CSA: C. 70, § 25. CRS 53: § 58-1-25. C.R.S. 1963: § 58-1-24. L. 64: p. 472, § 7. L. 98: Entire section amended, p. 630, § 1, effective August 5. L. 2004: (1) amended, p. 510, § 1, effective August 4.)

ANNOTATION

Section limits time of enforcement of judgment, not judgment itself. The provision of this section that upon judgment for the plaintiff in wrongful detainer no writ of restitution shall issue until the expiration of 48 hours from its entry does not import that judgment may not be given for immediate possession. Its only effect is to stay the enforcement of the judgment for the period specified. *Dulmaine v. Reed Bldg. Co.*, 46 Colo. 469, 104 P. 1038 (1909).

Sheriff subject to minimum standard of care. In carrying out his statutory duties, an officer or sheriff is subject to a minimum standard of care. *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).

Duty to remove tenant and property. It is the officer's duty not only to remove the tenant, but also to remove the tenant's personal property and effects from the premises. *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).

No duty to safeguard property following eviction. The sheriff has no duty to safeguard the tenant's possessions after a lawful eviction has occurred, even though he knows the tenant's belongings might be taken if they are left unattended. *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).

For landlord's liability for damage to tenant's property during removal from premises, see *Christensen v. Hoover*, 643 P.2d 525 (Colo. 1982).