

STATE OF COLORADO
OFFICE OF THE ATTORNEY GENERAL

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF BARON PROPERTY SERVICES LLC

This Assurance of Discontinuance (“Assurance”) is entered into between the Attorney General of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the Attorney General”), and Baron Property Services LLC (“Baron”) pursuant to the Attorney General’s powers under Colo. Rev. Stat. Sections 6-1-110(2), 24-31-101(1)(i)(XVII) and 24-31-115(8)(b) and constitutes a complete settlement between the Attorney General and Baron (collectively the “Parties”) regarding the Attorney General’s allegations that Baron’s business practices violated the Colorado Consumer Protection Act, §§ 6-1-101 to 6-1-116, C.R.S. (“CCPA”) and Colorado Rental Application Fairness Act, §§ 38-12-901 to 38-12-905, C.R.S. (“RAFA”).

I. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has authority to investigate and prosecute violations of the CCPA, §§ 6-1-101 *et seq.*, C.R.S., and the RAFA, § 38-12-901 *et seq.*, C.R.S.

2. Baron Property Services LLC is a domestic limited liability company with a registered principal office street address of 2401 E. 2nd Avenue, Denver, CO 80206 and whose registered agent is J. Jeffrey Riggs at that same address.

II. DEFINITIONS

3. The “Belcaro” means the residential property located at 3475 American Drive, Colorado Springs, CO 80917.

4. The term “Clear and Conspicuous” means that a disclosure or term is easily noticeable and understandable. A visual disclosure must be distinguishable by its size, contrast, and allocation; the length of time of which it appears; and other characteristics from accompanying text or other visual elements so that it is easily noticeable, readable, and understandable to ordinary persons.

5. The term “Effective Date” means the first date upon which both Parties have executed and delivered this Assurance.

6. The term “Renters Insurance” means an insurance policy offered to residential tenants that includes personal liability insurance coverage with a coverage limit that complies with Baron’s requirements (to the extent any such requirements are lawful and clearly and conspicuously represented to tenants).

7. The term “Senior Living Property” means a residential property at which residency is restricted to, or for which preference in admissions is given to, adults aged fifty-five (55) years or older.

8. The term “Tenant” means an individual entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. “Tenant” also includes any member of a tenant's household, including any individual who has a right to occupy the dwelling unit with the tenant under any local, state, or federal law; the rental agreement; or any separate agreement with the landlord or any individual who otherwise has explicit or implicit permission from the landlord to occupy the dwelling unit.

9. Unless otherwise specified, all definitions found in §§ 6-1-102, -105(1), and 38-12-502, -902, C.R.S. are incorporated herein, and any term defined in those Sections shall have the same meaning when used in this Assurance.

III. ATTORNEY GENERAL'S ALLEGATIONS

A. Background

10. Baron is a real estate company and landlord that leases and manages more than a dozen multifamily properties across Idaho, Arizona, and Colorado, including two properties in Denver and one in Colorado Springs. Until August 2022, Baron also leased and managed a third multifamily property located in Denver.

11. As part of its landlord duties, Baron, through its employees and agents, advertises apartments for rent, makes representations to tenants during the leasing process, and communicates and interacts with tenants regarding tenants' obligations throughout their tenancies.

B. Renters Insurance

12. Baron uses a third-party property management software ("PMS") system to assist Baron in performing varying essential property management functions, such as guiding tenants through the leasing process, managing important tenancy documents (including renters' insurance documents), billing tenants and tracking tenant payments, and automating communications with tenants.

13. Baron also requires its tenants to maintain and provide Baron with proof of Renters Insurance with personal liability coverage of least \$100,000, or else to pay \$15 per month to Baron, of which Baron then uses \$11 per month to cover the tenant's unit under Baron's force-placed "master" insurance policy.

14. Baron relies on the PMS system to track tenants' compliance with the Renters' Insurance requirements. Tenants who independently obtain Renters Insurance must provide proof to Baron, either by uploading the documents into Baron's PMS system or giving the documents to a Baron employee who, in turn, would upload the documents into the PMS system. After the

documents are in the PMS system, a Baron employee manually reviews the tenant's Renters' Insurance policy for compliance with Baron's requirements and then clicks a "verify" button on the PMS system. Only then, after the Baron employee manually verifies, does the PMS system recognize the tenant as maintaining a valid Renters' Insurance policy. If any of the above steps do not occur, or if a Baron employee delays completing any of the above steps, then Baron's PMS system treats the tenant as being out of compliance and automatically charges the tenant \$15 per month for coverage under Baron's master policy, even though the tenant maintained and provided proof of the required Renters' Insurance coverage.

15. Baron also relies on its PMS system to track when a tenant's Renters' Insurance policy currently on file is set to expire and to communicate with tenants about the same.

16. Baron uses the PMS system to send form emails to tenants when Baron believes a tenant's Renters Insurance policy will imminently expire or has expired. These emails remind tenants they are "required to carry" Renters Insurance in the amount of \$100,000 or more. The emails also state, permissively, that tenants "can provide" an updated copy of their Renters Insurance policy to the leasing office or via upload to the resident portal. But the emails do not inform tenants that Baron will charge them \$15/month for force-placed master insurance coverage unless tenants affirmatively provide Baron with updated proof of their Renters Insurance policy.

17. The Attorney General alleges that Baron engaged in unfair acts and practices by improperly charging some tenants the \$15 monthly charge for force-placed insurance when Baron knew that, or was reckless to whether, tenants had, in fact, independently obtained and provided to Baron compliant Renters Insurance policies.

18. The Attorney General also alleges that Baron engaged in unfair and deceptive acts and practices by sending, or causing to be sent, form emails about tenants' expiring Renters

Insurance, as referenced in paragraph 16, which Baron knew or was reckless to, had the capacity or tendency to deceive tenants about tenants' obligations to maintain and provide proof to Baron of tenants' Renters Insurance.

C. Criminal Records

19. Among other conditions of tenancy, Baron requires its tenants to pass a criminal background check.

20. Baron maintained a rental criteria policy which stated that if rental applicants have pending, unresolved criminal charges, those charges will be considered convictions for purposes of Baron's policy.

21. The Attorney General alleges that Baron violated RAFA by considering applicants' justice system records not resulting in conviction, including "pending, unresolved" criminal charges, and treating those non-conviction records as convictions for the purposes of deciding whether to approve a prospective tenant. The Attorney General further alleges that, by communicating its unlawful policy in writing to prospective applicants, Baron engaged in unfair and deceptive conduct in violation of the CCPA.

D. The Attorney General's claims

22. The CCPA, § 6-1-105(1)(rrr), C.R.S., prohibits a person in the course of the person's business, vocation, or occupation from "knowingly or recklessly engag[ing] in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice."

23. RAFA, § 38-12-904(1)(b), C.R.S., makes it unlawful for a landlord who uses criminal history as a criterion in consideration of an application to "consider an arrest record of a prospective tenant from any time or any conviction of a prospective tenant that occurred more

than five years before the date of the application;” except for a specifically enumerated subset of crimes where the landlord can consider “any criminal conviction record or deferred judgment.”

24. The Attorney General alleges that Baron violated these respective subsections of the CCPA and RAFA.

E. Baron denies any wrongdoing

25. Baron acknowledges that in a very small number of cases, due to an inadequate software system and unintentional human error, it mistakenly and unknowingly charged tenants under its master insurance policy when the tenant otherwise had insurance coverage. Baron has already made changes both to its software system and to its personnel that should eliminate any such future mistakes.

26. Baron states that it has never declined to rent to a prospective tenant because the person had a pending or unresolved criminal case, and has agreed to remove language indicating that it may do so from its form agreement.

IV. LEGAL AUTHORITY

27. Section 6-1-110(2), C.R.S. authorizes the Attorney General to accept an assurance of discontinuance for any deceptive trade practice listed in § 6-1-105(1), C.R.S. Section 6-1-110(2), C.R.S. also allows the Attorney General to accept voluntary payment for the costs of investigation in any action or proceeding by the Attorney General.

28. Section 24-31-115(8)(b), C.R.S. authorizes the Attorney General to accept “an assurance of discontinuance of any practice that constitutes a violation of any of the provisions that are listed in section 24-31-101.” One of the provisions listed in section 24-31-101 is the Rental Application Fairness Act. *See* § 24-31-101(1)(i)(XVII), C.R.S.

V. MONETARY CONSIDERATION

29. The Parties enter into this Assurance for the purpose of compromising and resolving all disputed claims and to avoid the expense of protracted litigation.

30. Baron agrees to pay \$75,000 in settlement of any and all of the Attorney General's claims to date, allocated as follows.

31. Of that \$75,000, Baron agrees to pay redress in a total amount of \$7,364.72 to 368 Tenants for the purpose of providing redress to Tenants who were charged improperly for force-placed insurance when they had individual Renters Insurance. The remaining \$67,635.28 will be paid to the Attorney General's office pursuant to paragraph 34 below.

32. Within 30 days of the Effective Date, Baron agrees to submit to the Attorney General for review and non-objection a comprehensive written plan for providing redress. The redress plan must include: (1) a final list of all Tenants that will receive redress; (2) the amount of the redress that Baron will provide or has provided to each Tenant; (3) whether the Tenant is a current resident of a Baron property; (4) the actions Baron will take to locate Tenants and ensure they receive their respective redress payments; (5) the form or medium of the redress payments and (6) the form of redress notice (including the envelope, as applicable) Baron will send notifying Tenants who are entitled to redress of their right to redress.

33. Baron agrees to make redress payments within 30 days after the Attorney General has approved Baron's redress plan. To the extent that Baron is unable to locate any Tenants entitled to redress or otherwise pay redress to a Tenant within 30 days after the Attorney General has approved Baron's redress plan, Baron shall pay such unpaid redress amounts to the Attorney General in the manner set forth in paragraph 34.

34. Within 30 days of the Effective Date, Baron shall send payment of \$67,635.28 by check or by electronic funds transfer pursuant to written instructions provided by the Colorado

Department of Law. Any check shall be made payable to “The Colorado Department of Law” with reference to “Baron.” The payment check shall be delivered via either FedEx, UPS, or USPS, so long as the delivery may be tracked. The mailer containing the payment check shall be addressed to Colorado Department of Law, 1300 Broadway, 9th Floor, Denver, CO 80203, ATTN: Adam Rice, Housing Protection

35. Any payment Baron makes pursuant to this Assurance to the Colorado Department of Law is to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General’s sole discretion for reimbursement of the State’s actual costs and attorney’s fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

VI. FURTHER CONSIDERATION: ASSURANCES OF BARON

36. The duties, responsibilities, burdens, and obligations undertaken in connection with this Assurance shall apply to Baron and any of their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assignees.

A. Compliance with the Law

37. Baron shall comply with the CCPA and RAFA with respect to any future business operations, of any kind or character whatsoever, being conducted in the State of Colorado.

38. Baron shall not misrepresent a Tenant’s obligation to maintain Renters Insurance and how to provide proof of compliant coverage to Baron.

39. Baron shall not misrepresent the criminal history information that it can consider in making rental application decisions.

40. Baron and its subsidiaries and affiliates shall comply with all applicable provisions of any local, state, or federal law applicable to their business operations that are within the scope of this Assurance.

B. Drafting of and Adherence to Policies

41. Baron agrees that in any written communications with consumers that contain material terms regarding Tenants' obligations, Baron will Clearly and Conspicuously state that Tenants must both maintain Renters Insurance coverage and provide proof of active Renters Insurance to Baron.

42. Baron agrees that when Baron believes that a Tenant's Renters Insurance coverage may be expiring soon, Baron shall provide written notice to Tenants not fewer than fourteen (14) days prior to the expected date of expiration. Such notice shall provide simple directions to Tenants about how to provide the required proof of Renters Insurance to Baron. For the Belcaro and any other Senior Living Property, Baron shall provide any written communications to tenants about expiring proof of Renters Insurance in both electronic and paper form.

43. Baron agrees that upon receiving a Tenant's proof of Renters Insurance, Baron shall make diligent efforts to verify the documents on Baron's PMS system or any other system the same day as received (unless Baron receives the documents after 5:00 p.m. on a weekday or on a Saturday, Sunday, or federal holiday, in which case Baron shall make diligent efforts to verify the documents the next business day), and, in all cases, Baron shall verify the documents within two (2) business days.

44. Baron agrees that upon receiving and verifying a Tenant's proof of Renters Insurance coverage, Baron shall, within thirty (30) days, remit to the tenant any amounts Baron charged the tenant for force-placed insurance (including any amounts styled as a fee or penalty for

failure to timely provide proof of Renters Insurance), backdated to the date of inception of the Renters Insurance coverage policy obtained by the Tenant.

45. Baron agrees that it will not consider any non-conviction records of a prospective tenant, including records of pending criminal charges or criminal proceedings not resulting in conviction. Baron further agrees that it shall not consider deferred adjudications except for deferred adjudications as expressly allowed by RAFA Section 38-12-904(1)(b)(1)-(b)(IV), C.R.S.

46. Baron agrees that all policy documents, rental application forms, and consumer-facing communications will be updated to remove any statements indicating or suggesting that Baron may consider pending, unresolved criminal charges as if they were convictions or to otherwise consider pending, unresolved criminal charges or criminal proceedings of rental applicants; and any statements indicating or suggesting that Baron may treat “deferred adjudications” as if they were convictions or to otherwise consider “deferred adjudications” of rental applicants except for those expressly allowed by RAFA in Section 38-12-904(1)(b)(1)-(b)(IV), C.R.S.

47. Baron agrees that these updated policies will be disseminated to all employees or other agents who engage with the public, including regarding leasing inquiries and requirements, at all of Baron’s managed properties in Colorado. Baron shall require each employee or other agent to sign a written acknowledgement of having received and reviewed the policies.

48. Baron agrees to review its policies on an annual basis to ensure that they remain accurate statements of the law.

C. Compliance Reporting

49. One year after the Effective Date of this Assurance, Baron shall submit to the Attorney General via the email addresses listed below a compliance report detailing the following:

- a. Any changes to its policies and procedures regarding Tenant Renters Insurance and consideration of criminal history in rental applications;
- b. The number of tenants, if any, charged for force-placed insurance (including any amounts styled as a fee or penalty for failure to timely provide proof of Renters Insurance);
- c. The number of tenants, if any, to which Baron remitted amounts pursuant to paragraph 41 of this Assurance; and
- d. The number of tenants, if any, that Baron denied rental applications based on criminal history.

D. Notice of change of address.

50. Baron shall notify the Attorney General via the email addresses listed below of any change of Baron's residence within 30 days of that change.

VI. RELEASE

51. The Attorney General acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims under the CCPA and RAFA on behalf of the Attorney General against Baron with respect to all claims, causes of action, damages, fines, costs, and penalties that were asserted or could have been asserted under the CCPA or RAFA for the conduct described in this Assurance, that arose prior to the Effective Date and that relates to or is based upon the acts or practices that are subject to this Assurance. The Attorney General agrees that, except as provided in the following paragraph, it shall not proceed with or institute any civil

action or proceeding under the CCPA or RAFA against Baron for any conduct or practice prior to the Effective Date that relates to the subject matter of this Assurance.

52. Nothing herein precludes the Attorney General from enforcing this Assurance, or from pursuing any law enforcement action under the CCPA or RAFA with respect to the acts or practices of Baron not covered by this Assurance or any of Baron's acts or practices after the Effective Date. Nothing herein shall be construed to be a waiver or limitation of Baron's legal rights, remedies, or defenses in connection with any claim, matter, or suit related to the subject matter of this Assurance other than an action by the Attorney General to enforce the provisions of this Assurance.

VII. ENFORCEMENT

53. The obligations set forth in this Assurance are continuing.

54. The Parties consent to venue and jurisdiction for any proceeding necessary to enforce the terms of this Assurance within the District Court of Denver County, Colorado.

55. A violation of any terms of this Assurance shall constitute a prima facie violation of the CCPA and/or RAFA under § 24-31-115(8)(b). If the Attorney General believes that Baron has violated any term of this Assurance, the Attorney General shall be entitled to file a civil action under the CCPA and/or RAFA and seek an injunction or other appropriate relief from such court to enforce provisions of this Assurance.

56. In any such action, upon a showing by the Attorney General of a material violation of this Assurance by Baron, Baron stipulates to an order converting this Assurance into a permanent injunction against Baron. The Attorney General may seek, and the Court may enter, any additional remedies, including but not limited to additional monetary remedies, that are deemed proper.

57. Baron agrees to waive any counterclaims that it may have had with respect to the subject matter of this Assurance and agrees to limit any defenses to (1) whether a violation has occurred; and (2) the remedies for the violation. Provided, however, that the Attorney General shall notify Baron at least thirty (30) days in advance of any such filing and the Parties agree to meet and confer and engage in good faith negotiations to attempt to address the Attorney General's concerns.

VIII. MISCELLANEOUS PROVISIONS

58. This Assurance is the final, complete, and exclusive statement of the Parties' agreement on the matters contained herein, and it supersedes, terminates, and replaces any and all previous negotiations, agreements, and instruments as may exist between the parties. Other than any representation expressly stated in this Assurance, the Parties have not made any representations or warranties to each other, and no Party's decision to enter into this Assurance is based upon any statements by any other Party outside of those in this Assurance. No change or modification of this Assurance shall be valid unless in writing and signed by all Parties. If any provision(s) of this Assurance is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

59. This Assurance shall neither create nor waive or otherwise affect any private rights or remedies in any third parties nor waive any rights, remedies, or defenses of the Parties with respect to any third parties. Under no circumstances shall this Assurance or the name of the Attorney General or any of the Attorney General's employees or representatives be used by Baron or any person under their direction or control to suggest the Attorney General's endorsement of Baron's past, present, or future conduct.

60. Nothing herein relieves Baron of its duty to comply with all applicable laws, regulations, or rules of the State of Colorado nor constitutes authorization by the Attorney General for Baron to engage in acts and practices prohibited by such laws.

61. Baron acknowledges that it is the Attorney General's position that an agreement restraining certain conduct by a party does not prevent the Attorney General from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the Attorney General's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the Attorney General from taking enforcement action to address conduct occurring after the Effective Date that the Attorney General believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Assurance shall not be defense to any such enforcement action.

62. The terms and provisions of this Assurance may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors-in-interest, and by any of his successors-in-interest's agents or representatives.

63. Pursuant to §§ 6-1-110(2) and 24-31-115(8)(b), C.R.S., this Assurance shall be a matter of public record.

64. Baron acknowledges that it had a full opportunity to review this Assurance and consult with legal counsel regarding it. The undersigned individuals and representatives of Baron agree and represent that they have each read and understood this Assurance, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the Attorney General and Baron that are not stated in writing herein.

65. This Assurance may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Assurance. Electronic copies of this Assurance and the signatures hereto may be used with the same force and effect as an original.

IX. NOTICE

66. All notices regarding this Assurance shall be sent by certified mail, return receipt requested or reputable overnight delivery service (e.g. FedEx, UPS) at the addresses set forth below unless any Party notifies the other Parties in writing of another address to which notices should be provided:

Baron Property Services LLC
2401 E 2nd Avenue, Ste 300
Denver, CO 80206

With copies to legal counsel by Regular U.S. Mail and email:

Jason Dunn
Brownstein Hyatt Farber Schreck LLP
675 15th Street, #2900
Denver, Colorado 80202

If to the Attorney General:

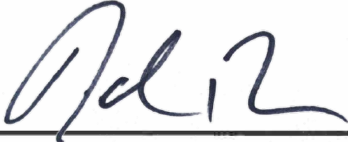
Colorado Department of Law
Consumer Protection Section
1300 Broadway, 9th Floor
Denver, Colorado 80203
Attn: Julie Cramer, First Assistant Attorney General, Julie.Cramer@coag.gov
Attn: Adam Rice, Assistant Attorney General, Adam.Rice@coag.gov

[Signatures appear on the following page(s)]

**ATTORNEY GENERAL OF
COLORADO:**

**PHILIP J. WEISER,
ATTORNEY GENERAL**

By:



Adam T. Rice
Assistant Attorney General
Attorney Reg. No. 53963

BARON PROPERTY SERVICES LLC

By:



J. Jeffrey Weiss
Manager