

# Analysis of the Arizona Eviction Process



Prepared for:

Arizona's Rental Housing Industry

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Prepared by:



Elliott D. Pollack & Company  
7505 East 6<sup>th</sup> Avenue, Suite 100  
Scottsdale, Arizona 85251

In cooperation with:  
Behavior Research Center, Inc.

And with technical support from:  
The Arizona Multihousing Association

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## Executive Summary

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The purpose of this effort was to analyze Forcible Detainer cases filed in Maricopa County, Arizona; and to examine how proposed procedural changes might impact the evictions process. The full listing of the proposed rules is included as Appendix A to this report.

### *Background*

This report is comprised of three separate analyses. First, court records related to tenant evictions in Maricopa County were reviewed. In order to elaborate on the issue, a number of attorneys were also contacted. This analysis provides quantifiable perspective into how certain eviction cases are handled. Second, the proposed rules were reviewed in terms of how they might impact current practices. Again, attorneys were contacted for their feedback on the matter.

Lastly, the multi-family market as a whole was analyzed to provide insight into how the industry impacts the local economy. Additional information is also provided related to the current state of the local rental market in terms of levels of rent and vacancy rates by individual community.

### *Findings*

This analysis identifies that most tenants, regardless of the circumstances or type of notice provided, are unlikely to appear at eviction hearings. This implies that posting a notice on the front door of an apartment unit does not yield significantly different results than handing the tenant the eviction notice in person. Furthermore, appearing at a hearing does not improve the likelihood of judgments in favor of the defendant to a statistically significant degree. As a result, it is important to consider the fact that some changes to court procedures may not ultimately change behavior or hearing outcomes.

There are also economic issues to consider. There will be additional costs associated with each eviction case if the full list of proposed rules is implemented. The additional requirements will also add to the duration of each case. This, however, was difficult to quantify. Regardless, the cost of new provisions must be weighed against the benefits.

A final concern relates to the fact that the additional costs related to the proposed rules will eventually be absorbed by renters in the form of higher rent payments as costs are passed down from attorneys to landlords to tenants. Additionally, a disproportionate amount of the impact will be absorbed by the lower income renters that rent lower income housing and realize higher rates of evictions. This is the very group that the proposed rules committee is attempting to assist.



## 1.0 Forcible Detainer Survey

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This study was commissioned by the Arizona Association of Realtors, the Arizona Multihousing Association (AMA), the Manufactured Housing Communities of Arizona, and the National Apartment Association. The purpose of this effort was to determine the occurrences and outcomes of Forcible Detainer cases filed in Maricopa County, Arizona.

In order to form an opinion, court records related to tenant evictions in Maricopa County were reviewed. In order to elaborate on the issue, a number of attorneys were also contacted. Supporting research on select items was also provided by the AMA.

*Synopsis: The primary finding of this study is that most tenants, regardless of the circumstances or type of notice provided, are unlikely to appear at eviction hearings. The study also shows that appearing at a hearing does not improve the likelihood of judgments in favor of the defendant to a statistically significant degree. Accordingly, one must be careful in assuming that the proposed changes to the current procedures (detailed in Appendix A and examined in Section 2.0 of this report) will increase tenant attendance or impact hearing outcomes.*

### 1.1 Sample Distribution

The information contained in this report is based on a strict random sample of 500 of the 64,994 Forcible Detainer cases filed in Maricopa County Justice Courts during 2006. For the purpose of this study only residential cases were included (forcible detainer residential, forcible detainer possession property, forcible detainer rent) and forcible detainer cases for commercial properties and mobile homes were excluded<sup>1</sup>. Of the 500 cases randomly selected for inclusion in this study, a total of 413 were audited. The remaining 87 cases could not be included because they had been destroyed or contained incomplete files. The table below reveals the distribution of cases by each Justice Court. Each court represents a particular geographical area. The tables that appear on subsequent pages display the results of the individual audit items and provide additional insight into Arizona's eviction process.

Note: All of the case audits conducted for this study were performed by a senior member of Behavior Research Center's staff. The margin of error for this study is estimated at +/-4.9% based on a 95% confidence level.

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<sup>1</sup> Inasmuch as 99% of the cases addressed in the JP Courts are for more traditional multifamily or single-family rental units, forcible detainer actions for Mobile Home communities have been excluded from this study.



<b>Sample Distribution</b>		
<b>Justice Court Number/Name</b>	<b>Distribution of 2006 Forcible Detained</b>	<b>Cases Selected</b>
01 - Downtown	2.8%	14
02 - Arcadia Biltmore	5.8%	29
03 - Estrella Mountain	3.0%	15
04 - San Marcos	4.6%	23
05 - East Mesa	5.4%	27
06 - Ironwood (this court not yet in operation)	0.0%	0
07 - Manistee	6.2%	31
08 - Dreamy Draw	5.2%	26
09 - Moon Valley	7.6%	38
10 - Lake Pleasant	2.6%	13
11 - McDowell Mountain	2.6%	13
12 - South Mountain	3.4%	17
13 - University Lakes	3.8%	19
14 - Agua Fria	4.6%	23
15 - West Mesa	5.8%	29
16 - West McDowell	3.8%	19
17 - Hassayampa	2.2%	11
18 - Encanto	7.2%	36
19 - Maryvale	5.0%	25
20 - San Tan	3.4%	17
21 - North Mesa	3.2%	16
23 - Kyrene	6.8%	34
24 - North Valley	5.0%	25
<b>Total</b>	<b>100.0%</b>	<b>500</b>

Source: Behavior Research Center



## 1.2 Appearance at Judgment Hearing

In 99% of all cases the landlord was represented (19% in person, 80% by counsel), while in 21% the tenant was represented – all in person.

<b>Appearance at Judgment Hearing</b>		
	<b>Plaintiff</b>	<b>Defendant</b>
Appeared in person	19%	21%
Appeared by counsel	80%	0%
Failed to appear	1%	79%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Behavior Research Center

Further separating cases of representation versus non-representation, in 22% of cases where the landlord was represented the tenant was also represented. The tenant was not represented 78% of the time that the landlord was.

<b>Tenant Representation when Landlord is Represented</b>	
Representation	22%
No Representation	78%

Source: Behavior Research Center

This data appears to be consistent with previous reports that tenants attend hearings at a far lower rate than landlords. Attorneys that were contacted by study participants also indicated that access to court facilities is an additional variable that potentially impacts a tenant’s ability to appear. This was not evaluated in the study. In Maricopa County, the justice courts have been or are being moved into co-located facilities, many of which are well outside the communities they are designed to serve. For example, it was reported that tenants in Glendale, in parts of Phoenix, or even in Anthem, must travel to the Northwest Regional Center in Surprise to appear for an eviction case. Access to the four courtrooms in Surprise is also complicated by the lack of any public transportation to and from that facility.

However, this research does not directly identify whether or not this is consistent or inconsistent with the experiences of other states. For a single point of perspective, an attorney in Florida who represents the legal interests of a national management company indicated that Florida has a bifurcated (two count complaint) system for landlord/tenant cases. Count one is for possession. It is an accelerated proceeding (summary proceeding statute) and it has a "deposit for hearing"



requirement. Tenants in nonpayment of rent cases are required to deposit the rent into court to avoid a default judgment for possession. Since many tenants do not have the money for the deposit (or they would have paid the rent), hearings are rare (approximately 2% go to hearing). Hearings are held in most rent breach cases (tenant behavior cases), because the tenants have the rent and deposit it, but these are only a small percent of the overall cases (2% to 3% of all evictions are for non-rent breaches).

Most Florida landlord/tenant attorneys further reduce the number of court appearances by the use of stipulations. These are agreements between landlord and tenant in which a tenant pays the outstanding rent and agrees to pay “on time” for the next 6 months. Stipulations in effect put the case on hold. If the tenant complies, the case is dismissed in 6 months. If the tenant pays late again or does not pay, the case goes forward with the stipulation providing for an immediate judgment of possession for the landlord. It was noted that stipulations are used in non-rent breach cases also, but these stipulations include a provision requiring the tenant to vacate quickly and then the case is dismissed.

### 1.3 Type of Forcible Detainer Case

Ninety-six (96%) percent of all forcible detainer cases were for non-payment of rent, while 4% were for immediate termination, and 3% were for breach of lease agreement. This total exceeds 100% due to the fact that some cases were filed for multiple reasons. Among cases where the tenant was represented, 16% were for immediate termination.

Given that the dominant category is non-payment of rent, it is difficult to argue that the current system is failing to notify tenants to a large degree as to why they are being evicted. If a tenant does not pay his or her rent they should be fully aware of the problem. Even in rare cases when rent checks are lost, a landlord will first notify a tenant of the late payment.

Following are distributions of forcible detainer cases for varied scenarios. In cases when the tenant was represented, 88% were for non-payment of rent, 16% were for immediate termination, and 7% were for breach of lease agreement. Again, the aggregate of these cases will exceed 100% due to cases listing multiple reasons. In the instances that the tenant was not represented, 96% were non-payment of rent, 1% was for immediate termination, and 4% dealt with breach of lease agreement.

<b>Type of Forcible Detainer Case</b>			
<b>Type</b>	<i>Tenant Represented</i>		<b>Total</b>
	<b>Yes</b>	<b>No</b>	
Non-payment of rent	88%	96%	96%
Irreparable breach, immediate termination	16%	1%	4%
Breach of lease agreement non-compliance	7%	4%	3%
<b>Total<sup>1/</sup></b>	<b>111%</b>	<b>101%</b>	<b>103%</b>

<sup>1/</sup> Totals exceed 100% due to multiple responses  
 Source: Behavior Research Center



## 1.4 Final Judgment

Eighty-two (82%) percent of all cases resulted in a judgment to the plaintiff while 18% were dismissed. No cases studied resulted in a judgment to the defendant. In those cases where a hearing was held, 98% resulted in a judgment to the plaintiff if the landlord was represented and 93% resulted in a judgment to the plaintiff if the tenant was present.

<b>Final Judgment</b>	
<b>Type</b>	<b>Percent of Total Cases<sup>1/</sup></b>
Dismissed without prejudice	16%
Dismissed with prejudice	*
Dismissed unknown	2%
Judgment to plaintiff	82%
Judgment to defendant	0%
<b>Total</b>	<b>100%</b>

<sup>1/</sup> Results displaying a symbol (\*) indicate a percentage less than 0.5%.  
Source: Behavior Research Center

<b>Judgement In Cases Where Hearing Was Held</b>				
<b>Outcome</b>	<i>Tenant Represented</i>		<i>Landlord Represented</i>	
	<b>Yes</b>	<b>No<sup>1/</sup></b>	<b>Yes</b>	<b>No</b>
Dismissed without prejudice	4%	*	1%	0%
Dismissed unknown	3%	1%	1%	100%
Judgment to plaintiff	93%	99%	98%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>1/</sup> Results displaying a symbol (\*) indicate a percentage less than 0.5%.  
Source: Behavior Research Center

While a judgment to the plaintiff does decrease in percentage (93% versus 99%) if a tenant is represented, the difference is not statistically significant. This means that one cannot conclude that attending a hearing produces different results than not attending a hearing. Furthermore, those tenants that attend a hearing may simply have more reasonable arguments to dispute the eviction. If this is the case, one could argue that it is expected that the percentage of judgments to the plaintiff would fall in terms or percentage. Despite this logic, the statistical discrepancy is not significant.

One attorney that was contacted further elaborated that although the evidence is anecdotal, one of the reasons tenants lose nonpayment of rent cases is that they mistakenly believe they can “rent strike”, or fail to pay their rent because they have some type of disagreement with their landlord. Under Arizona law, there are provisions for tenants to seek self-help by deducting the



costs of minor repairs from their rent or for breach of the lease if the landlord fails to supply an essential service; but, the requirements of A.R.S. §§ 33-1363 and 33-1364 are almost never followed by tenants in cases that make it to court.

Furthermore, another reason tenants fail to appear in court is that they pay their rent at the last minute. The case files reviewed showed that 16% percent of the cases contained a notice from the landlord’s attorney of a voluntary dismissal. In addition, if the property manager fails to notify their attorney in a timely manner that rent has been paid and the case proceeds to a judgment, then counsel for the landlord must file a motion to set aside the judgment. This situation occurred in 2% of the cases. In short, in 18% of the cases, the likely reason for a tenant’s failure to appear is that the tenant paid their rent on or immediately before their court date.

### 1.5 Amount of Rent Requested & Received in Judgment

The median amount of rent requested in complaints was \$790 and the median amount received in judgment was \$875. In 58% of the cases, the amount received was the same as the amount requested, while in 24% it was higher and in 18% it was lower. Judgment values tend to exceed the requested rents because additional fees are often sought in such cases.

<b>Rent Requested/Received from "Non-Payment" Rent Cases with Defined Rent Judgments</b>		
<b>Amount</b>	<b>Requested</b>	<b>Received</b>
Under \$500	9%	9%
\$500 to \$599	10%	8%
\$600 to \$699	18%	15%
\$700 to \$799	15%	11%
\$800 to \$899	10%	10%
\$900 to \$999	6%	6%
\$1,000 to \$1,499	20%	22%
\$1,500 to \$1,999	7%	10%
\$2,000 or over	5%	9%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>Median</b>	<b>\$790</b>	<b>\$875</b>
<b>Amount received in judgment</b>		
Same as amount in complaint		58%
Higher than amount in complaint		24%
Lower than amount in complaint		18%
<b>Total</b>		<b>100%</b>
Source: Behavior Research Center		



### 1.6 Method of Process Service

More than four out of ten tenants (41%) were served by hand (31% to the defendant, 9% to another person, 1% unknown), while 59% were served via a posting at their place of residence. Forty-six (46%) percent of tenants who appeared were served by hand, and 39% of tenants who did not appear were served by hand.

Interestingly, the method of serving notice, whether by hand or by posting the document, does not increase the likelihood of a tenant attending a hearing to a significant degree. Minimal variance does exist though. It is important to note that, based on this audit, it is unclear if changing procedural rules related to eviction notice postings will have any impact on tenant appearance rates.

<b>Method of Process Service</b>			
<b>Type</b>	<i>Tenant Represented</i>		<b>Total</b>
	<b>Yes</b>	<b>No<sup>1/</sup></b>	
By Hand	46%	39%	41%
To defendant	32%	30%	31%
To other	12%	9%	9%
To unknown	2%	*	1%
Posted	54%	61%	59%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<sup>1/</sup> Results displaying a symbol (*) indicate a percentage less than 0.5%.			
Source: Behavior Research Center			

### 1.7 Records Contained in Case File

Ninety-two (92%) percent of all cases were served using a combined Summons and Complaint. Eighty-three (83%) percent of all cases contained a Judgment, 79% contained a Termination Notice from the landlord and 31% contained a Writ of Restitution. Ninety-one (91%) percent of all cases with a Judgment also contained a Termination Notice.



<b>Records Contained in Case File</b>	
<b>Type</b>	<b>Percent<sup>1/</sup></b>
Summons and Complaint Forcible/Special Detainer	92%
Complaint Forcible/Special Detainer	8%
Summons Forcible/Special Detainer	6%
Judgment Forcible/Special Detainer	83%
Termination Notice	79%
Writ of Restitution	31%
Notice of Voluntary Dismissal	16%
Satisfaction of Judgment	10%
Disclosure Statement	7%
Ex Parte Motion to Vacate Judgment and Dismiss Order	2%
Motion to Vacate Judgment (or) Motion to Modify	2%
Rental Agreement	2%
Acceptance of Partial Payment & Non-Waive Agreement	2%
Answer – Forcible/Special Detainer	1%
FDCPA Disclosure Notice	1%
Notice of Court Date	1%
Write of Garnishment	1%
Promise to Pay	1%
Notice of Returned Check	1%
Notice of Right of Appeal	1%
Ruling on Motion	1%
Civil Subpoena	1%
Notice of Appearance	1%
Notice to Cancel Writ	1%
Response to Motion	1%
Petition and Order Discharging Garnishee	1%
Notice of Hearing	1%
Notice of Trial Date	1%
Counter Claim – Forcible/Special Detainer	*
Notice of Employee Termination	*
Motion to Reopen Case	*
Handwritten Dispute of Litigation	*
Stipulated Agreement	*
Notice to Vacate After Foreclosure and Trustee Sale	*
Motion to Continue	*
Minute Entry	*
Application for Deferral or Waiver of Court Fees	*
Request for Oral Argument	*
<sup>1/</sup> Results displaying a symbol (*) indicate a percentage less than 0.5%. Source: Behavior Research Center	



## 1.8 Other Miscellaneous Outcomes

A variety of other outcomes were also revealed in this research:

- No case was found where a tenant paid a judgment at the hearing;
- Only in one case was a judgment appealed. It was unsuccessful;
- Only in once case was a counter claim made. It was unsuccessful;
- Only in one case did a tenant submit a written response disputing the facts of the case;
- In no case was a continuance requested in writing;
- In no case was there a trial by jury.

These results are presented in the following table.



<b>Other Outcomes</b>	
<b>Judgment Paid at Hearing</b>	
	<b>Percent<sup>1/</sup></b>
Yes	0%
No	79%
Unknown	21%
<b>Total</b>	<b>100%</b>
<b>Judgment Appealed</b>	
	<b>Percent</b>
Yes	*
Successful	0%
Unsuccessful	*
No	100%
<b>Total</b>	<b>100%</b>
<b>Counter Claim</b>	
	<b>Percent</b>
Yes	*
Successful	0%
Unsuccessful	*
No	100%
<b>Total</b>	<b>100%</b>
<b>Written Response from Tenant Disputing Facts</b>	
	<b>Percent</b>
Yes	*
No	100%
<b>Total</b>	<b>100%</b>
<b>Continuance Requested in Writing</b>	
	<b>Percent</b>
Yes	0%
No	100%
<b>Total</b>	<b>100%</b>
<b>Trial by Jury</b>	
	<b>Percent</b>
Yes	0%
No	100%
<b>Total</b>	<b>100%</b>
<p><sup>1/</sup> Results displaying a symbol (*) indicate a percentage less than 0.5%.                      Source: Behavior Research Center</p>	



## 2.0 Proposed Rules and Related Economic Considerations

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The following outlines the study participants' understanding of the primary changes that are being recommended related to tenant evictions in the State of Arizona. At the present time, there is no list of formal procedures, although some of the following items are partially addressed in statute. Therefore, one cannot directly compare current and proposed procedures simply by comparing two documents. Instead, the study team conducted interviews with multiple attorneys to gain a better understanding of how each rule will or will not change current practices.

The proposed rules were reportedly designed to make the process more consistent and equitable. However, it appears that the requirements could also add legal fees, processing time and confusion. This will come at some economic and financial cost. This is discussed in Section 2.1 and 2.2 of this report.

*Synopsis: The primary "economic" issues related to the list of proposed rules is that there will be additional costs associated with each eviction case, and that the additional requirements will add to the duration of each case. Since the results of the audit provided in the previous section indicate that there is no clear relationship between some forms of policy and tenant appearance at a hearing, policymakers must also acknowledge that some of the proposed rules may not ultimately result in a desired change.*

*A final concern relates to the fact that the additional costs related to the proposed rules will eventually be absorbed by renters in the form of higher rent payments as costs are passed down. Additionally, a disproportionate amount of the impact will be absorbed by the lower income renters that rent lower income housing and realize higher rates of evictions. This is the very group (those more prone to eviction problems) that the proposed rules committee is attempting to assist.*

### 2.1 Proposed Procedural Changes

The following lists the primary procedural changes as the study team understands them to be applicable to this assignment. Those proposed rules that were initially deemed to have minimal influence on current practices were not reviewed in this section.

1. **Rule 4.e. – Duties of Parties and Attorneys - Entry of Appearance:** Currently, one can contract with another attorney (for example coverage for a court in another county). These attorneys act as "subcontractors." This practice not only expedites the process, it keeps legal fees down and adds to courts efficiency. However, it is proposed that all attorneys appear as counsel of record and enter a notice of appearance, substitution, or association as counsel.

It was conveyed that this would make the subcontracting attorneys personally responsible for the case. Currently, the attorney that is retained by the landlord is personally and professionally liable for the case and the actions of their subcontractor. This proposal could slow the process and add to costs if the use of attorney assistance is not fully utilized.

All five attorneys that provided an opinion indicated that costs could increase by as much as 25% should the provision be implemented. More importantly, this rule would limit the



attorneys' ability to represent apartment communities in the rural areas where landlord tenant attorneys in some municipalities outside of major metropolitan areas do not exist.

Finally, the attorneys opined that since they are listed as the attorney of record with complete contact information listed on the summons and complaint, requiring the attorneys who are handling the call to appear as attorney of record would create confusion for the tenants who indeed appear.

2. **Rule 5.a. – Summons and Complaint: Issuance, Content and Service of Process:**

The current practice is to allow the summons and complaint to be combined into one document. The proposed rule suggests that separating the documents may eliminate the impression, in some tenants, that the court is somehow endorsing the action by the landlord. There is no evidence, from the attorneys that were interviewed, to suggest that separating these two documents would achieve the goals as outlined by the task force. Because the current practice has worked well over the years, without significant issue, an automated system for creating these forms has developed. This proposed change will require that the entire process be revamped, thus requiring added cost.

This provision also requires that on the back of the summons or on a separate sheet of paper, basic information related to each eviction be listed (Appendix A of the proposed rules). Currently, no such requirement exists.

Each of the attorneys that were contacted indicated that an information sheet would be valuable to help guide people who were involved in this process. However, they also indicated that requiring attorneys to include this information sheet to be served with the summons and complaint would add to both document server costs and attorney costs. Currently, in Maricopa County, much of the information detailed in the proposed rules summary document is already available to landlords and residents in an efficient and accessible on-line manner.<sup>2</sup>

Instead, it was suggested that a task force of tenant advocates, landlord tenant attorneys, small property owners, and property managers, be convened to create a usable document or enhance what is already available in Maricopa County on-line that would be given to each tenant and landlord who appears at the JP Courts. This would eliminate the need to incur significant costs in document preparation, printing, and delivery, and at the same time make this relevant and useful guidance available to people at the time and place when it is needed most.

3. **Rule 5.b.(1) – Summons and Complaint: Issuance, Content and Service of Process:**

The proposed rule requires the complaint to be brought in the legal name of the party claiming entitlement to possession of the property. While this does not appear on the surface to be a difficult task it does create a significant problem for both the attorney and tenant. The legal name of the entity is not typically known by the attorney as most rental properties are owned by an LLC but do business under another name.

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<sup>2</sup> See: <http://www.superiorcourt.maricopa.gov/JusticeCourts/CourtsAndSections/Evictions.asp>



For Example, Phoenix Apartments LLC may actually be the Phoenix Garden Apartment Community. This means that the legal name of the holding LLC must be researched and listed. Currently, a less formal identification is required, and it is a familiar name to the defendant. In addition, if needed by the defendant, it is already available in the public domain with the County Assessor, as all Arizona rental units must register their property.<sup>3</sup> This change would add to the attorney fees and create confusion for the defendant.

4. **Rule 5.b.(7) – Summons and Complaint: Issuance, Content and Service of Process - State the specific reason for the eviction:** It is currently not required that a tenant be notified of the specific reason for an eviction. Currently, a general reason for eviction is provided to the defendant. For example, an attorney may use a summons and complaint form. Other forms may include a check box that is filled in to let the defendant know why they are being evicted such as non-payment of rent, material non-compliance with the lease, material non-compliance affecting health and safety, and material and irreparable breach. Requiring more specific information than this may not be reasonable. In addition, the proposed rule further requires that a copy of the notice shall be attached as an exhibit to the complaint. This would represent additional paperwork and additional costs.
5. **Rule 5.b. (8) – Summons and Complaint: Issuance, Content and Service of Process - Government subsidy:** If rent is subsidized by a state or federal entity, the eviction notice will need to comply with the standards as identified by the government entity. Currently, this additional research is not required and, instead, the information is simply provided by the landlords. However, many property managers do not know if their property operates under a government program. This will require additional attorney research time.

One attorney indicated that there are federal laws related to this item and that all attorneys should be consistently following those laws regardless of cost and time.

6. **Rule 5.c. (4) – Summons and Complaint: Issuance, Content and Service of Process - The method of calculating late fees:** This information is already provided to the defendant and included in their rental agreement which they are given a copy of upon execution of the contract. The rule would require that additional due diligence be performed at the beginning of the eviction process to verify how any additional fees were calculated.

It is not possible to calculate all late fees at this point in the process. At present, the due diligence is performed if the case is processed and the listing of fees is required. One attorney noted it could be a costly provision. Another attorney indicated this would not be a hardship as it is already being done and that many judges reduce the late fee amounts if they feel the charges are too high.

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<sup>3</sup> See: [http://www.maricopa.gov/Assessor/Residential\\_Property\\_links.aspx](http://www.maricopa.gov/Assessor/Residential_Property_links.aspx)



7. **Rule 5.g. Summons and Complaint: Issuance, Content and Service of Process - Failure to Obtain Service:** A complaint that is not served in time shall be dismissed and re-filed. At present, a continuance may be requested. This could add to the cost of the process and extend the duration of the case. One attorney indicated that the related expenses would be negligible while others indicated that continuances should always be allowed and ultimately reduce costs.
8. **Rule 9. – Motions:** This will require a formal procedure for making motions. Currently, this does not exist. One attorney indicated that the number of cases that this would impact is minimal and is in favor of the provision. However, others indicated that this is unnecessary and will add to the cost of the hearings. Letter ‘g’ of this proposed change is open-ended and unnecessary as the basis for all necessary motions is already codified in this section.
9. **Rule 10. – Disclosure:** Currently, there is no practiced disclosure in an eviction case. This new requirement will add both cost and time to each case if pursued. One attorney indicated that this is not an issue in the vast majority of all cases. Others expressed additional concern in that when relevant, the cost would escalate dramatically.
10. **Rule 11. – Initial Appearance and Trial Procedures:** Currently, the process is less formal and expedited. This recommendation would make for very formal hearings. Again, additional procedural requirements will add both time and cost to each case. All of the attorneys expressed that it would add unnecessary bureaucracy to the hearings.
11. **Rule 11.e. – Change of Judge:** Currently, such a request is already honored by most courts. The additional procedural requirements could make it more likely that some tenants make the request to delay the process. The attorneys indicated that this could be abused, would add to court backlog, and would add to hearing costs.

While the overall costs associated with each of these provisions cannot be easily quantified, it does appear that a number of the provisions will add to the overall cost associated with each case. For additional perspective, select attorneys were asked to provide specific cost figures as they relate to eviction cases. The consensus was that the typical eviction case currently costs approximately \$400. However, this figure is based on current streamlined practices and does not reflect the additional costs that would be realized if all of the proposed rules were actually implemented.

Possibly of greater concern is the fact that any additional bureaucracy could result in a burden for the relevant courts by extending the duration of each case. The benefits associated with imposing these provisions must be weighed against the costs.

Following is a list of proposed Supreme Court Rules that the study participants do not believe to have an economic or administrative impact to the courts, residents, landlord tenant attorneys, or landlords. The full set of proposed rules is included as Appendix A to this report.



- Rule 3 – Computation: Shortening or Extension of Time
- Rule 4 – Duties of Parties and Attorneys (Except 4 e as listed above)
- Rule 6 – Service of Pleadings, Other Papers and Orders of Complaint
- Rule 7 – Answers
- Rule 8 – Counterclaims and Consolidation
- Rule 11 – Initial Appearance and Trial Procedures
- Rule 12 – Trial by Jury
- Rule 13 – Entry of Judgment and Relief Granted (Except 13 b. (3) C as listed above)
- Rule 14 – Writs of Restitution
- Rule 15 – Relief from Judgment or Order
- Rule 16 – Transfer of Cases from Justice to Superior Court
- Rule 17 – Appeals
- Rule 18 – Definitions
- Rule 19 – Miscellaneous

## **2.2 Costs and Economic Impacts**

As previously presented, implementing the proposed rules will come at an economic cost. This cost will come in the form of either direct costs (i.e. those associated with higher attorney fees) or indirect costs (i.e. those associated with any inefficiency imposed on the process).

This cost must be weighed against any benefits that might be realized. The largest concern is that the results of the survey that are provided in Section 1.0 indicate that, at least in two examples, the imposition of particular rules may not impact tenant behavior or hearing outcomes. The method of notice does not appear to impact the rate at which tenants appear at hearings and the rate of appearance does not appear to impact the rulings. This is a notable concern since at least two examples are provided that indicate the related rule modification may not result in different outcomes.

In addition, while nearly 65,000 Forcible Detainer cases were filed in Maricopa County in 2006, there were more than 260,000 apartment units in Maricopa County. We do not have data pertaining to the number of tenant/landlord contracts that are written each year, though a property manager of high end apartments stated that their average lease contract term is 14 months. However, it is expected that lease terms would decrease as required monthly rent decreases. For one point of perspective, even if we assume that each unit is rented an average of two times per year (in other words, if we assume that there were approximately 520,000 apartment contracts each year), we would calculate that over 12% of all contracts end in some form of an eviction filing. This is consistent with the findings provided on the following page related to high and low cost rental units and their respective eviction rates.

The AMA received some anecdotal information on eviction rates. This information indicated that a well run complex with adequate tenant screening would likely realize eviction rates of 10% or less. However, lower quality apartment complexes with weaker management could realize upwards of 20% in terms of rates of eviction. Ultimately, the exact percentage is dependent on a number of factors, and can vary from complex to complex as previously presented. Following is data tracked by RealData Inc. as well as Peter E. TeKampe, P.C.



regarding the weighted average rents throughout regions of Maricopa County and the eviction rates realized in those areas in 2006.

<b>Maricopa County Eviction Analysis 2006</b>		
<b>Higher Rent Areas</b>	<b>Weighted Avg. Rent</b>	<b>Eviction Rate</b>
North Scottsdale/Fountain Hills	\$1,013	5.17%
Ahwatukee	\$921	7.97%
North Paradise Valley	\$920	8.72%
South Scottsdale	\$894	5.09%
Chandler	\$890	6.67%
<b>Lower Rent Areas</b>	<b>Weighted Avg. Rent</b>	<b>Eviction Rate</b>
Central Black Canyon	\$582	27.70%
West Central Phoenix	\$587	22.20%
Glendale	\$614	27.96%
West Phoenix	\$631	29.37%
Metrocenter	\$666	24.28%

Sources: Maricopa County, RealData Inc., Peter E. TeKampe, P.C.

This is a much higher percentage range than was originally anticipated. The data provided illustrates that it is very likely that lower income tenants that rent lower cost housing are responsible for a disproportionate number of evictions.

In terms of economic theory, any additional costs related to the proposed rules will initially be absorbed by the landlord. However, eventually this cost will be passed on to the renters. If a lower cost complex is disproportionately affected by the proposed rules, a larger cost burden will be passed on to the lower income renters. These are the very people that the proposed rules committee is attempting to assist. The supporting data regarding unit counts, as well as regional rent levels, is provided in the next section.



## 2.3 Maricopa County Current Multi-Family Outlook

### 2.3.1 Current Inventory

Following is an inventory of apartment units within complexes of 50 units or more by number of bedrooms within cities throughout Maricopa County. There are an additional 25,000 rental units within complexes of 10 to 40 units. It is expected that trends occurring in Maricopa County will likely be similar to other parts of the State.

The apartment inventory appears to reflect each community in terms of population, maturity, geographic location and demographics. Phoenix has far more apartment units than any other city, followed by Mesa, a mature city with the second largest population in the County. Other cities with a noticeable inventory of apartment units include Glendale, Tempe, Scottsdale, and Chandler, all of which are located on the periphery of Phoenix. Newly growing cities such as Anthem and Buckeye have relatively few units, as do cities known as retirement communities such as Sun City, Youngtown, and Surprise.



<b>Apartment Unit Inventory by Number of Bedrooms Maricopa County Cities</b>							
	Studio	1	2	3	4	5	Total
Anthem	-	108	152	94	-	-	<b>354</b>
Apache Junction	-	41	176	168	-	-	<b>385</b>
Avondale	26	1,185	1,689	444	15	5	<b>3,364</b>
Buckeye	-	40	229	179	8	-	<b>456</b>
Carefree	8	36	22	-	-	-	<b>66</b>
Cave Creek	-	96	64	-	-	-	<b>160</b>
Chandler	182	5,625	7,798	1,338	51	-	<b>14,994</b>
El Mirage	-	48	56	72	32	-	<b>208</b>
Fountain Hills	-	72	272	18	-	-	<b>362</b>
Gilbert	30	2,008	3,594	472	-	-	<b>6,104</b>
Glendale	1,100	9,757	9,769	1,191	35	-	<b>21,852</b>
Goodyear	-	474	761	165	-	-	<b>1,400</b>
Guadalupe	-	-	16	30	14	-	<b>60</b>
Higley	-	196	152	36	-	-	<b>384</b>
Litchfield Park	-	132	152	20	-	-	<b>304</b>
Mesa	1,761	13,236	16,709	1,440	76	-	<b>33,222</b>
Peoria	-	1,781	2,450	446	45	-	<b>4,722</b>
Phoenix	9,681	46,017	47,020	5,581	233	-	<b>108,532</b>
Scottsdale	313	6,985	9,040	1,514	1	-	<b>17,853</b>
Sun City	-	12	170	-	-	-	<b>182</b>
Sun City West	-	88	76	-	-	-	<b>164</b>
Surprise	-	404	770	263	79	-	<b>1,516</b>
Tempe	1,280	8,333	10,872	1,174	180	-	<b>21,839</b>
Tolleson	-	50	400	118	-	-	<b>568</b>
Youngtown	24	207	21	1	-	-	<b>253</b>
<b>Total (County)</b>	<b>14,405</b>	<b>96,931</b>	<b>112,430</b>	<b>14,764</b>	<b>769</b>	<b>5</b>	<b>239,304</b>

1/ Data as of 4th quarter 2007.  
Source: Elliott D. Pollack & Co., RealData Inc.

### 2.3.2 Analysis By Monthly Rent

#### Current Average Rents

An analysis of rents was also performed for cities within Maricopa County to gain perspective on the apartment market as a whole. The countywide average monthly rent was \$786 as of fourth quarter 2007. Cities with average rents much higher than the county average included Scottsdale, with an average monthly rent of \$1,043 and Anthem, with an average monthly rent of \$1,316. The rents in these communities likely reflect the demographics and, thus, preferences of residents for more upscale development. This is true of other communities with demographics reflecting higher income individuals such as Chandler, Fountain Hills, and Gilbert. The reverse is true for communities known for residents with lower household incomes such as Apache Junction and El Mirage with average monthly rents in the mid \$400 range.

It is important to note the limitations of this computation. First, the size of apartments is not taken into account. Larger apartments likely yield higher monthly rents. However, the



distribution of apartment units by bedroom size is fairly equal throughout most cities. Also, communities with only a few hundred apartment units could be affected by one or two larger apartment complexes with higher or lower rents than what is typical for the area. Additionally, because the countywide average is weighted to the number of units within a community, it is not surprising that the City of Phoenix, with over 45% of the entire apartment inventory in the County, closely matches the average monthly rent of the County.

<b>Average Rent by City Maricopa County Cities</b>	
Anthem	\$1,316
Apache Junction	\$444
Avondale	\$846
Buckeye	\$615
Carefree	\$723
Cave Creek	\$988
Chandler	\$922
El Mirage	\$465
Fountain Hills	\$988
Gilbert	\$917
Glendale	\$711
Goodyear	\$950
Guadalupe	\$884
Higley	\$842
Litchfield Park	\$1,003
Mesa	\$719
Peoria	\$874
Phoenix	\$731
Scottsdale	\$1,043
Sun City	\$864
Sun City West	\$612
Surprise	\$789
Tempe	\$825
Tolleson	\$660
Youngtown	\$534
<b>County Average</b>	<b>\$786</b>
<small>1/ Data as of 4th quarter 2007. Source: Elliott D. Pollack &amp; Co., RealData Inc.</small>	

### *Inventory by Monthly Rent*

The inventory within each community was further separated into categories reflecting a range of monthly rents. Only unfurnished rent was used in the analysis to keep the comparison as similar as possible. Again, the rents by bedroom size were not analyzed. The inventory takes on an approximate bell-shaped distribution, though the lower range of rents drops off much more dramatically than the upper range of rents. Units with average monthly rents of less than \$500 comprise just over 4% of the inventory, with an additional 13% found within the \$500 to \$600



range. Over 43% of the entire apartment inventory in Maricopa County has average monthly rents between \$600 and \$800 dollars. The inventory then tapers off slowly as rents are increased by \$100 increments. At the high end, monthly rents yielding \$1,000 or more make up nearly 12% of the inventory.

Apartment Unit Inventory by Monthly Rent Maricopa County Cities								
	Rent Range							Total <sup>1/</sup>
	less than \$500	\$500- \$600	\$600- \$700	\$700- \$800	\$800- \$900	\$900- \$1,000	>\$1,000	
Anthem	-	-	-	-	-	-	354	354
Apache Junction	152	56	88	88	-	-	-	384
Avondale	102	84	493	556	768	824	537	3,364
Buckeye	316	-	40	84	-	16	-	456
Carefree	-	8	-	48	10	-	-	66
Cave Creek	-	-	-	-	96	-	64	160
Chandler	-	176	1,293	3,635	3,771	2,837	3,280	14,992
El Mirage	80	32	64	32	-	-	-	208
Fountain Hills	-	-	-	72	-	218	72	362
Gilbert	88	376	934	1,241	1,059	1,122	1,284	6,104
Glendale	1,215	5,264	4,724	4,560	2,711	1,841	1,325	21,640
Goodyear	-	-	86	367	382	247	318	1,400
Guadalupe	-	-	-	16	30	-	14	60
Higley	-	40	32	-	156	-	156	384
Litchfield Park	-	-	-	-	132	20	152	304
Mesa	323	4,603	10,447	8,667	5,567	1,390	1,336	32,333
Peoria	156	207	777	1,062	1,054	916	550	4,722
Phoenix	7,054	18,446	26,809	22,162	14,524	9,323	7,834	106,152
Scottsdale	-	191	757	2,560	3,211	4,105	7,028	17,852
Sun City	-	-	-	-	174	8	-	182
Sun City West	-	88	76	-	-	-	-	164
Surprise	120	56	238	172	236	566	128	1,516
Tempe	45	718	3,907	5,721	4,688	3,007	3,115	21,201
Tolleson	-	270	118	128	52	-	-	568
Youngtown	191	60	-	2	-	-	-	253
<b>Total (County)</b>	<b>9,842</b>	<b>30,675</b>	<b>50,883</b>	<b>51,173</b>	<b>38,621</b>	<b>26,440</b>	<b>27,547</b>	<b>235,181</b>

<sup>1/</sup> Data as of 4th quarter 2007.  
Source: Elliott D. Pollack & Co., RealData Inc.



Vacancy by Monthly Rent

Adding to the apartment inventory breakdown by rents, the vacancy rates of the apartment units were also tracked. While there are wide ranges of vacancy rates through some communities, the countywide average vacancy rate is relatively uniform across monthly rent ranges, especially when excluding the highest and lowest ranges of monthly rents.

Previous Quarter Vacancy by Monthly Rent Maricopa County Cities								
	Rent Range							Total <sup>1/</sup>
	less than \$500	\$500- \$600	\$600- \$700	\$700- \$800	\$800- \$900	\$900- \$1,000	>\$1,000	
Anthem	-	-	-	-	-	-	94%	94%
Apache Junction	1%	2%	19%	19%	-	-	-	5%
Avondale	3%	8%	5%	13%	16%	15%	19%	13%
Buckeye	18%	-	13%	9%	-	5%	-	12%
Carefree	-	2%	-	2%	2%	-	-	2%
Cave Creek	-	-	-	-	5%	-	5%	5%
Chandler	-	15%	7%	9%	9%	8%	8%	8%
El Mirage	0%	10%	10%	10%	-	-	-	4%
Fountain Hills	-	-	-	22%	-	14%	22%	18%
Gilbert	0%	4%	6%	11%	24%	20%	43%	25%
Glendale	8%	9%	10%	11%	11%	14%	29%	12%
Goodyear	-	-	17%	9%	29%	23%	42%	28%
Guadalupe	-	-	-	10%	10%	-	10%	10%
Higley	-	7%	7%	-	29%	-	29%	18%
Litchfield Park	-	-	-	-	22%	22%	22%	22%
Mesa	7%	10%	11%	11%	10%	8%	9%	10%
Peoria	5%	6%	6%	5%	7%	9%	15%	8%
Phoenix	9%	11%	11%	10%	11%	10%	10%	10%
Scottsdale	-	4%	7%	8%	7%	9%	9%	8%
Sun City	-	-	-	-	5%	5%	-	5%
Sun City West	-	0%	0%	-	-	-	-	0%
Surprise	3%	6%	3%	21%	8%	13%	15%	10%
Tempe	3%	9%	9%	9%	9%	10%	13%	10%
Tolleson	-	2%	2%	35%	68%	-	-	19%
Youngtown	3%	3%	-	6%	-	-	-	3%
<b>Total (County)</b>	<b>8%</b>	<b>10%</b>	<b>10%</b>	<b>10%</b>	<b>11%</b>	<b>10%</b>	<b>14%</b>	<b>11%</b>

<sup>1/</sup> Data as of 4th quarter 2007.  
Source: Elliott D. Pollack & Co., RealData Inc.

Extremely high vacancy rates, such as those in Anthem, are likely newer developments experiencing an absorption period before reaching stabilized levels. However, it does appear that rents toward the higher range experience higher vacancy rates than the lower ranges.

Additionally, cities located on the outskirts of the Phoenix area appear to experience higher vacancy rates than those communities that are more centralized. Examples of this include Gilbert, Litchfield Park, Goodyear, and Buckeye. These higher than average vacancy rates could



be affected by new growth in the area, as well as the distribution of apartment sizes and the quality of housing offered.

### ***2.3.2 Rental Data Conclusions***

The available rental unit information indicates that rent varies considerably between locations in Maricopa County. Communities that post lower rent figures will be impacted most not only because these proposed rules may result in higher rent levels for these tenants, but also because these communities (where rents are lower and more affordable) already experience a disproportionate number of evictions (over 3 to 1).

For perspective, a \$50 increase in rents in a lower cost region such as Youngtown would result in a 10% increase in average rents if the full cost burden is ultimately passed on to tenants. While there is no way of knowing for sure exactly how much rent will increase as a result of these proposed rule changes since it will vary depending on the extent of the realized evictions, even minimal cost increases in these low cost regions could have a profound impact on affordability placing a greater burden on tenants who already experience disproportionate number of evictions.

Since these rules could impact affordability and also impact the current economic equilibrium experienced in the multi-family industry, the economic and fiscal impact that is captured by this industry is provided in detail in Section 3.0.



### 3.0 Impact of Multi-Family Development in Arizona

This section addresses the economic and fiscal impact of the multi-family industry on the State of Arizona. The analysis focused on the economic and fiscal impacts of the construction of apartment units and the ongoing operations of apartment complexes.

#### 3.1 Economic Impact of Construction and Operations

The economic impact of every 1,000 rental units is outlined in the following table along with job creation and wages. From the construction of every 1,000 rental units, a total of 1,364 direct, indirect, and induced jobs are created with \$68.4 million in wages and \$160.6 million in economic activity. Based on Arizona State University Construction Reports, an average of 10,200 multi-family units have been built each year in Maricopa County since 1978. That translates into approximately 13,913 construction jobs each year, \$697.7 million in wages and over \$1.6 billion in economic output annually for Maricopa County alone.

It has been estimated that there are approximately 50 employees for every 1,000 rental units, and that there are over half a million rental units within the State of Arizona. Fifty direct, full-time employees yield an estimated \$2.2 million in annual wages and produce \$7.2 million in economic activity. The ripple effect of these direct jobs generates an additional 40 indirect and induced jobs with \$1.6 million in wages and \$4.7 million economic activity. Overall, 90 jobs are found in the economy created by the initial 50 jobs, with \$3.8 million in wages and \$11.9 million in economic activity. Taking all of the units within the State into consideration, over 45,000 direct, indirect and induced jobs, over \$1.9 billion in wages, and nearly \$6.0 billion in economic output on an annual basis (in 2008 dollars) is generated.

<b>Economic Impact Summary Arizona Multi-Family Industry (2008 Dollars)</b>			
<b>Construction</b>			
Impact Type	Jobs	Wages	Economic Output
Direct	801	44,302,000	91,545,680
Indirect	207	10,223,000	25,810,000
Induced	356	13,870,000	43,231,000
<b>Total per 1,000 Units</b>	<b>1,364</b>	<b>\$68,395,000</b>	<b>\$160,586,680</b>
<b>Aggregated Annual Impact</b>	<b>13,912</b>	<b>\$697,629,000</b>	<b>\$1,637,984,136</b>
<b>Operations</b>			
Impact Type	Jobs	Wages	Economic Output
Direct	50	2,216,000	7,216,260
Indirect	20	849,000	2,323,000
Induced	20	773,000	2,408,000
<b>Total per 1,000 Units</b>	<b>90</b>	<b>\$3,838,000</b>	<b>\$11,947,260</b>
<b>Aggregated Annual Impact</b>	<b>45,000</b>	<b>\$1,919,000,000</b>	<b>\$5,973,630,000</b>

Sources: Elliott D. Pollack & Company; IMPLAN; ASU Construction Reports; U.S. Census; AZ DOR



### 3.2 Fiscal Impact of Construction and Operations

Primary revenues from construction that would accrue to the State total approximately \$2.9 million. The remainder of the revenues that would be generated during construction is classified as secondary revenues and relate to the spending of construction employees. The State would collect about \$2.5 million in secondary revenue. During construction, county revenues, aggregated for all of the counties within the State, would total over \$2.0 million and Arizona city and town revenues would total nearly \$2.4 million when aggregated. Using the historical annual average of units built (10,200), the total annual fiscal impact to the State, counties, and cities would be nearly \$100.2 million.

The effects of multi-family housing operations have been divided into primary impacts such as lease taxes (at the county and city level), sales taxes, utility taxes, and property taxes (at the county and city level). Secondary effects of the project relate to the employees supported by the rental units including employee spending (which generates sales taxes) and various other tax payments such as income taxes and property taxes, among others. The 1,000 rental units generate \$74,149 in primary revenues to the State of Arizona. Secondary revenues from employment total \$143,800 for a total fiscal impact on the State of \$217,949 annually. The units generate \$337,700 annually in tax collections for Arizona counties. This includes \$238,800 in primary revenues and \$98,900 in secondary revenue. One thousand rental units generate \$304,600 annually in tax collections for the cities and towns within Arizona. For the over 500,000 units within the State, the total tax revenues for all governing entities exceeds \$430.1 million (2008 dollars). The following table provides the ongoing annual fiscal impact of the rental units on all of the tax collecting entities.

<b>Fiscal Impact Summary Arizona Multi-Family Industry (2008 Dollars)</b>			
<b>Construction</b>			
Impact Type	Primary	Secondary	Total
Arizona	\$2,942,400	\$2,478,000	<b>\$5,420,400</b>
Counties	\$360,900	\$1,679,600	<b>\$2,040,500</b>
Local	\$1,225,800	\$1,133,526	<b>\$2,359,326</b>
<b>Total per 1,000 Units</b>	<b>\$4,529,100</b>	<b>\$5,291,126</b>	<b>\$9,820,226</b>
<b>Aggregated Annual Impact</b>	<b>\$46,196,820</b>	<b>\$53,969,488</b>	<b>\$100,166,308</b>
<b>Operations</b>			
Impact Type	Primary	Secondary	Total
Arizona	\$74,149	\$143,800	<b>\$217,949</b>
Counties	\$238,847	\$98,870	<b>\$337,717</b>
Local	\$250,568	\$54,034	<b>\$304,602</b>
<b>Total per 1,000 Units</b>	<b>\$563,564</b>	<b>\$296,704</b>	<b>\$860,268</b>
<b>Aggregated Annual Impact</b>	<b>\$281,782,000</b>	<b>\$148,352,000</b>	<b>\$430,134,000</b>
Sources: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association; ASU Construction Reports			



## **4.0 Summary and Conclusions**

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There are several important issues that arose during this analysis. Of critical note is the fact that the audit results do not confirm that notice posting or delivery procedures impact a tenant's willingness to appear at a hearing. Furthermore, the appearance itself is not necessarily an indicator of judgment. This implies that not all of the proposed rules, despite the best of intentions, will result in favorable change, and will still come at a cost.

This cost will eventually be entirely borne by renters. The cost will also be disproportionately targeted to lower income renters in lower income rental units. It is these renters, ironically, that are the targets of the proposed rules. This suggests that if rules are ultimately implemented, the costs must be carefully weighed against the benefits. It is apparent that the benefits are not as clearly realized as some may have hoped.

Finally, the impact of the multi-family market is quite large in terms of both economic and fiscal impacts. Caution should be made in implementing policies that could cause economic distortions in this important industry.



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## Appendix A

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### **RULES OF PROCEDURE FOR EVICTION ACTIONS May 9, 2007 Draft**

Proposed by the Rules Committee of the Landlord Tenant Task Force  
State Bar of Arizona

#### **Table of Rules**

1. Title and Scope of Rules
2. Construction of Rules
3. Computation: Shortening or Extension of Time
4. Duties of Parties and Attorneys
5. Summons and Complaint: Issuance, Contents and Service of Process
6. Service of Pleadings, Other Papers and Orders After Complaint
7. Answers
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11. Initial Appearance and Trial Procedures
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13. Entry of Judgment and Relief Granted
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19. Miscellaneous

#### **Rule 1. Title and Scope of Rules**

These rules shall be known and cited as the Rules of Procedure for Eviction Actions (“RPEA”). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to in these rules as “eviction actions.” For purposes of these rules, there shall be only one form of action known as the “eviction action.” The Arizona Rules of Civil Procedure shall not apply in eviction actions except as specifically incorporated by reference by these rules.

#### **Rule 2. Construction of Rules**

These rules shall be construed in accordance with statutory provisions related to forcible entry and detainer actions and special detainer actions. All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure.



**Rule 3. Computation: Shortening or Extension of Time**

- a. Computation of Time. Unless otherwise stated in these Rules, or unless an applicable statute provides otherwise, the time limitations prescribed in these rules shall mean calendar days.
- b. Shortening or Extension of Time. Except as specifically provided for by statute or these rules, the time for doing any of the acts provided for in these rules or by order of the court may be shortened or extended by the court upon stipulation, or upon motion for good cause shown.

**Rule 4. Duties of Parties and Attorneys**

- a. Due Diligence. Each party and attorney filing or appearing in an eviction action or defense shall be responsible for exercising due diligence to ensure that the action has a good faith basis; that the relief sought is consistent with the applicable rental agreement, or applicable law; and that all required notices have been properly served. Attorneys are not expected to be guarantors that their clients have complied with the law in all respects, but they are expected to exercise reasonable caution to ensure that their pleadings are accurate and well-grounded in fact and law.
- b. Good Faith. Every action taken in an eviction proceeding and every motion or other pleading filed shall be taken or filed in good faith by the party or attorney responsible for filing it.
- c. Sanctions. The court may impose sanctions against a party or attorney found to have violated these duties after notice and opportunity for hearing.
- d. Satisfaction of Judgments. Once a judgment has been satisfied by the payment of the monetary award, or if possession of the premises has been delivered to the prevailing party, or the parties have entered into a new rental agreement or created a novation of the prior rental agreement, the party in whose favor the judgment was entered shall file a Satisfaction of Judgment with the court that entered it and serve a copy on the judgment debtor. The duty to file the satisfaction of judgment is on the prevailing party and not on the attorney who represented the party. In the event that a prevailing party fails to satisfy a judgment rendered and cannot be located with a showing of reasonable diligence, the judgment debtor may file a motion to compel satisfaction of judgment and the court may, after an opportunity for a hearing, order that the judgment shall be deemed satisfied.
- e. Entry of Appearance. No attorney shall appear in any eviction action or file a pleading or any other document in any eviction action without first appearing as counsel of record and filing a notice of appearance, substitution or association as counsel. A notice of appearance, substitution or association of counsel may be



written and filed with the court, or may be made orally on the record.

- (1) An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution of counsel in the case.
- (2) An attorney of record shall be deemed responsible for the acceptance of post judgment pleadings and motions until the expiration of thirty days after the time for appeal has expired.

### **Drafters' Comment**

*This rule is intended to ensure that attorneys appearing in court in eviction cases on behalf of other attorneys, where there is no professional relationship between them, formally enter their appearance in the case before being heard. When an attorney in a law firm is the attorney of record, it is not necessary for a partner or associate of the firm to file a notice of appearance. When there is an "of counsel" relationship between the attorney seeking to participate and the firm of the attorney of record, no formal notice of appearance is necessary.*

### **Rule 5. Summons and Complaint: Issuance, Content and Service of Process**

- a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The Court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also inform the defendant(s) of the following:
  - (1) Name of the court and its street address, city, and telephone number;
  - (2) Date and time set for the trial of the matter;
  - (3) That if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
  - (4) Contain a disclosure in substantially the following form: "Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible."
  - (5) On the back of the summons, contain the information contained in the Residential Eviction Procedures Information Sheet substantially in the



form included as Appendix A to these Rules. In the alternative, the plaintiff may serve the defendant in the same manner as the summons is served with a separate page containing this information. Service of the information sheet shall be required in residential property eviction actions only.

- b. Complaint. The complaint shall:
- (1) Be brought in the legal name of the party claiming entitlement to possession of the property.
  - (2) Include the business name, if any, and address of the property;
  - (3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;
  - (4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;
  - (5) State that the property in question is located within the judicial precinct where the complaint is filed;
  - (6) State in bold print, capitalized, and underlined at the top center of the first page, "**YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY**";
  - (7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate; the date the notice was served; and what manner of service was used. A copy of the notice shall be attached as an exhibit to the complaint.
  - (8) If rent for the premises is subsidized by a federal or state program or agency, state that notice has been provided to that program or agency as required by the program or agency's applicable regulations, and that the notice to the tenant complies with the requirements of those regulations.
  - (9) Be verified.
- c. Complaint for Monetary Damages. If the complaint seeks a money judgment for rent, late charges, or other fees, charges or damages permitted by law, the complaint shall also state:
- (1) The frequency with which the rent is to be paid;
  - (2) The due date for each payment;



- (3) The amount of rent due on each date;
  - (4) The method of calculating late fees;
  - (5) The total amount of rents, late fees, and other fees, charges or damages permitted by law that are due on the date of filing;
  - (6) The nature and amount of any rent concessions that the plaintiff contends must be reimbursed; and
  - (7) The amount of attorney fees, if permitted by law or contract, that would be due to plaintiff in the event of a default by the defendant.
- d. Additional Requirements for Complaint.
- (1) If the action is based solely on non-payment of rent, contains a request for monetary damages and involves a residential property or mobile home space, the complaint must also state that the defendant may contact the plaintiff or plaintiff's attorney and may reinstate the lease agreement and cause the eviction action to be dismissed if, prior to the entry of judgment, the defendant pays all rents due, any reasonable late fees due that are provided for under a written lease agreement, and any court costs and attorney fees the plaintiff has incurred as of the date the payment is made.
  - (2) If the complaint seeks a judgment for reasons permitted by law other than the non-payment of rent, the complaint shall state the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to prepare a defense.
- e. Computation of Time. The date of service shall not be counted when computing time for service of the summons and complaint. The date of the initial appearance shall be counted for that purpose.
- f. Service of Process. Service of the summons and complaint shall be accomplished by either personal service or post and mail service for a special detainer action, and for a forcible detainer action, as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure. Service of process shall only be performed by a person authorized to do so under Rule 4(D) of the Arizona Rules of Civil Procedure. Return of service and proof thereof shall be made by affidavit.
- g. Failure to Obtain Service. A complaint that is not served within the time required by applicable statute shall be dismissed at the initial appearance date unless the defendant waives service in writing. If the defendant appears at the initial appearance, the appearance shall constitute a waiver of any objections to the form



or manner of service unless the defendant asserts those grounds at the initial appearance or in a previously filed written answer.

**Rule 6. Service of Pleadings, Other Papers and Orders After Complaint**

- a. General Requirement of Service. Except as otherwise provided in these Rules or ordered by the court, every pleading subsequent to the original complaint, every written motion, every written notice, appearance, demand and similar paper and any attachments, and every order shall be served upon each of the parties to the action. A written motion or request that is filed with the court, but not served as required by this rule, shall be considered an impermissible *ex parte* communication.
  - (1) Filing of documents may be made by delivering the documents to the court clerk, or, in the case of a Justice Court, to the clerk's counter for date stamping.
  - (2) The Court may permit a party to file documents directly with the judge in open court.
  - (3) Filing may also be accomplished by prepaid, first class mail to the court, and the date of receipt by the court shall be considered the date of filing.
- b. Service on Parties in Default. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in Rule 5(f) of these Rules.
- c. How Service Made. Service required by this rule may be accomplished by personal service as defined in Rule 18(f) of these Rules or after a party has appeared by mailing the document to be served to the last known address of the person to be served. Service by facsimile transmission or other method may be used where agreed to by the parties. The date and manner of service shall be noted on the original of the document served or in a separate certificate filed with the court.
- d. Service Upon Attorney. When an attorney has entered an appearance in an action for a party, service upon that party shall be accomplished by service upon that attorney, unless the court directs that service be made upon the party. Service upon the attorney may be accomplished by any of the methods authorized by subpart (c) of this rule.
- e. Service After Judgment. Thirty days after the time for appeal from a judgment has expired, or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting



modification, vacation or enforcement of that judgment, shall be served as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

*Comment*

*“Service” or “serving” documents is a term used to describe the process of providing notice to parties both of the beginning of an eviction action, and also the process by which parties to the action are advised of matters that have been submitted to, or issued by, the court. When a person is not already a party to an eviction action, “service” requires an action by a constable, sheriff or registered private process server, with an affidavit of service later being filed. When a person is already a party and the case is pending, the service of papers and other documents may be accomplished in a less formal manner. If a party has appeared in the action through an attorney, service must be made upon that attorney unless the court directs otherwise. Service by facsimile transmission may be used where the parties have agreed to that method of service, or the court has ordered it. However service is accomplished, all written motions or requests filed with the court must be served upon all other parties to the action.*

**Rule 7.       Answers**

On or before the initial return date, the defendant shall answer, indicating whether the defendant admits or denies the allegations of the complaint. If the defendant does not have sufficient information to determine whether or not an allegation of the complaint is true, the defendant shall so state. The defendant’s answer shall also state in short and plain terms any defenses the defendant wishes to assert to the plaintiff’s claims.

*Comment*

*An answer admits or denies the factual allegations of the complaint, and admits or denies the plaintiff’s entitlement to the relief requested in the complaint. In Justice Courts an answer can be made orally, although the best practice would be to put it in writing, and Superior Courts may require it to be in writing. An answer should identify specifically what parts of the complaint are contested or denied, and state the facts that support the denial. An answer that creates a factual dispute with the complaint will require the court to hold a trial to determine which facts are more likely true than not.*

**Rule 8.       Counterclaims and Consolidation**

- a. Basis. Unless specifically provided for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. All counterclaims must be filed in writing and served upon the opposing party. A counterclaim shall:
  - (1) State specific facts claiming that the landlord has violated the rental agreement or an applicable statute so that the landlord has an opportunity to prepare a defense; and



- (2) If any notices were required, state the approximate date and manner those notices were sent to the plaintiff and summarize the content of those notices.
- b. **Impact on Justice Court Jurisdiction.** The filing of a counterclaim shall not defeat jurisdiction of a justice court in an eviction action, and no eviction action shall be transferred to the superior court solely because a counterclaim was filed unless it is permitted by statute and is not within the statutory jurisdiction of the justice court. The justice court shall review such claims to determine whether they have a statutory basis and whether the prayer for relief is within or exceeds the jurisdiction of the justice court. If a counterclaim has a statutory basis and the prayer for relief is not within the jurisdiction of the justice court, the court shall transfer the matter to the superior court. Where the counterclaim filed includes one or more aspects that are defective or impermissible, the court may permit the defendant to restate it in a proper fashion, or order the counterclaim dismissed without prejudice.
- c. **Consolidation.** An eviction action may be consolidated only with one or more eviction actions but shall not be consolidated with any other type of action.
- d. If a residential landlord is not in compliance with the rental agreement or statute, the tenant may counterclaim for any amount the tenant may recover under the rental agreement or statute.
- e. In a case involving alleged nonpayment of rent where the tenant remains in possession, after notice and hearing the court may order the tenant to pay into the court all or part of the undisputed rent accrued and all periodic rent thereafter accruing. The court may dismiss the tenant's counterclaim without prejudice if the tenant fails to deposit the undisputed rent into the court as ordered

*Comment*

*A Counterclaim goes beyond an Answer and alleges facts that entitle the tenant to relief from the landlord. A Counterclaim could be maintained and decided even if the Complaint were withdrawn or dismissed, although in those instances the court has discretion to dismiss the counterclaim without prejudice and require it to be brought as a civil action.*

**Rule 9. Motions**

- a. Motions may be made orally in open court or by filing and serving the opposing party with a copy of a written motion. Pretrial motions shall be ruled on before trial. A court shall not rule on any motion until the opposing party has had a reasonable opportunity to respond.



- b. Responses and Replies. Responses and replies to any motion may be made orally in open court or by filing and serving the opposing party with a copy of the written response or reply. The filing of motions, responses and replies shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.
- c. Motions to Amend. The Court may grant motions to amend pleadings for good cause shown.
- d. Motions for Judgment on the Pleadings. At any time after an answer to either a complaint or to a counterclaim has been filed, a party may move for a judgment on the pleadings. The court shall not consider matters outside of the pleadings when ruling on a motion for judgment on the pleadings.
- e. Motions to Dismiss. In response either to a complaint or to a counterclaim, a party may make a motion to dismiss some or all of the claims.
- f. Motions for Reconsideration. A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. All motions for reconsideration, however denominated, shall be submitted without oral argument and without response or reply unless the court otherwise directs. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response.
- g. Other motions. Other motions may be made by either party.
- h. Failure to timely respond to a written motion filed by an opposing party, or failure to appear at the time and date set for an oral argument on a filed motion may be deemed to be consent to the denial or granting of the motion, and the court may dispose of the motion summarily.
- i. All written motions shall be considered without oral argument unless specifically requested by either party and ordered by the court. The court may order oral argument on its own motion. All motions requesting an order for relief filed with the Superior Court shall be copied to the assigned judge, accompanied by a proposed order.

## **10. Disclosure**

- a. Upon request, a party shall provide to the other party: 1) a copy of the lease agreement, if any; 2) a list of witnesses and exhibits; 3) if non payment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents the party intends to introduce as an exhibit at trial.



- b. The court may order the taking of depositions, inspection of the premises, or the production of other pertinent documents in a manner that will not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.
- c. If a party fails to comply with this rule without good cause, the court may take appropriate action, including granting a continuance, excluding evidence not disclosed, and sanctioning the offending party or parties, up to and including dismissing the complaint or counterclaim.
- d. Any party may request the issuance of a subpoena by the Court to compel testimony and/or the production of documents. The person subpoenaed may object to the subpoena. The court may quash a subpoena upon good cause shown. Failure to comply with a subpoena may constitute contempt of court. Subpoenas shall be served upon the subject person pursuant to Rule 4.1 and 4.2 of the Arizona Rules of Civil Procedure.

**Rule 11. Initial Appearance and Trial Procedures**

- a. In General. All proceedings in eviction actions shall be recorded, either through the use of a suitable recording device or by a court reporter. On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant in eviction actions the court shall:
  - (1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action. As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub-lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.
  - (2) State or summarize the material allegations contained in the complaint.
  - (3) Ask the defendant whether the defendant contests the allegations contained in the complaint.
- b. Defendant's Plea
  - (1) If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer filed pursuant to Rule 7 or by questioning the defendant in open court. If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits. If the trial is to be continued to a later date, the court may



require the defendant to file a written answer. If the court orders a written answer to be filed, the court should advise the defendant of both the requirement of an answer fee and the defendant's right to apply for a waiver of the fee.

- (2) The defendant shall not be required to answer until the initial appearance. At the initial appearance, if the trial is not continued, the defendant may file an oral answer on the record. No answer fee shall be required for an oral answer.
- c. **Continuances.** Whenever possible, the trial should be held on the initial return date. The court may order the continuance of a trial date by up to three court days in justice courts or ten days in superior courts on the request of a party for good cause shown or to accommodate the demands of the court's calendar, but the court nevertheless will give priority to hearing and resolving alleged "immediate and irreparable" evictions. No continuance of more than three days in justice courts or ten days in superior courts will be ordered unless both parties are in agreement.
- d. **Trial Settings.** Contested detainer matters shall be set for a trial by a judge alone unless a jury trial is demanded by the plaintiff in the complaint, or by the defendant at or before the initial appearance. Failure to request a jury trial at or before the initial appearance shall be deemed a waiver of that party's right to a jury trial. At the initial appearance, if a jury trial has been demanded, the court shall inquire and determine the factual issues to be determined by the jury. If no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues, or may be disposed of by motion or in accordance with these rules, as appropriate.
- (1) Witnesses at trial shall testify under oath or affirmation. Witness testimony may be oral, or may be provided by transcript of a deposition if the witness is unavailable.
  - (2) All evidence taken at trial, or which is attached as an exhibit to a motion, shall be subject to the Arizona Rules of Evidence.
- e. **Change of Judge**
- (1) **Change as a Matter of Right**
    - A. Each side is entitled to one change of judge as a matter of right. A party may exercise this right by filing a written notice that contains the name of the judge to be challenged and an avowal that contains the following:
      - (i) That the request is not being made for the purpose of delay;



- (ii) That the request is not being made for the purpose of interfering with the reasonable case management practices of a judge;
  - (iii) That the request is not being made to remove a judge for reasons of race, gender or religious affiliation; and
  - (iv) That the request is not being made for the purpose of using this rule against a particular judge in a blanket fashion by either a law firm, legal organization or landlord.
- B. The notice for change of judge as a matter of right must be filed on or before the date of the first court appearance with the judge in question; otherwise, it may be denied as being untimely.
- C. If a timely notice for change of judge as a matter of right is filed against a justice of the peace, the case will immediately be transferred to another justice of the peace located in the same building or in an adjoining justice court precinct. If the justice court receiving the transfer is located in the same building or is sufficiently close to the transferring court to enable a prompt transfer, then every effort will be made by the receiving justice court to hear the case on the same date it was originally scheduled.

**(2) Change for Cause**

- A. Either side may challenge a judge for cause. A party may challenge a judge for cause. A party may challenge the judge for cause orally or in writing by either making a written motion verified by affidavit of the moving party, or by oral avowal, that specifically alleges the grounds for challenge. A party who makes an oral challenge for cause must, not later than the close of business the following day, file a written motion with the court that is verified by affidavit that specifically alleges the grounds for challenge for cause.
- B. If a challenge for cause is filed against a justice of the peace, then a copy of all relevant documents will be immediately transmitted to the presiding justice of the peace for the county. The presiding justice of the peace shall make a decision on the challenge by the close of business of the next business day and will either transfer the case to an adjoining justice court precinct or return it to the original judge.



- f. Pleading Requirement. Except for those additional damage items contemplated by Rule 13(c)(2), the plaintiff shall not be permitted to advance allegations at the initial appearance or any subsequent trial unless those allegations were properly stated in the complaint. The defendant shall not be permitted to advance allegations at a continued trial that were not included in a written answer or counterclaim, or in an oral answer made at the initial appearance.

## **12. Trial by Jury**

- a. When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court. Failure to submit written voir dire questions a day before the panel waives the right to submit questions. When, after challenges for cause, a panel of thirteen in justice court or fifteen in superior court is available, the Court will permit three peremptory challenges per side to reduce the jury to seven in justice court or nine in superior court. One of the jurors will be selected as the alternate after the evidence is presented and before deliberations.
- b. Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, and the elementary legal principles that will govern the proceeding. At least one day prior to the commencement of a jury trial any party may file written requests that the court instruct the jury on the law as set forth in the requests. A party shall be deemed to have waived request for other instructions except those that could not reasonably have been anticipated prior to trial.
- c. The order of trial shall be as follows: The plaintiff or the plaintiff's counsel may read the complaint to the jury and make a statement of the case; the defendant or the defendant's counsel may read the answer and may make a statement of the case to the jury, but may defer making such statement until after the close of the evidence on behalf of the plaintiff; the plaintiff shall then introduce evidence; the defendant shall then introduce evidence; the plaintiff may then introduce rebutting evidence; the defendant may then introduce rebutting evidence in support of the defendant's counterclaim(s) if any; and then the parties may make closing arguments in the same order.
- d. If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial. When the jurors retire to deliberate, they shall be kept together in some convenient place in charge of a proper officer who shall not allow any communication to be made to them, or make any, except to ask them if they have agreed upon their verdict.



### 13. Entry of Judgment and Relief Granted

- a. Items to Review. Except in stipulated judgments entered pursuant to Rule 13(b)(4), in each eviction action, the court shall:
- (1) Determine whether the service of the summons and complaint was proper and timely, and whether the summons and complaint included all the information and notice(s) required under Rule 5.
  - (2) Determine whether the tenant or occupant of the premises received proper termination notice if one was necessary, and was afforded any applicable opportunity to cure. If the notice does not comply with the statute or is not properly served, the court shall dismiss the action.
  - (3) Determine whether the facts alleged, if proven, would be sufficient to determine that plaintiff has a right of superior possession due to a material breach of the lease agreement or for any other basis in law.
  - (4) If it appears that a landlord has accepted a partial payment in a case claiming non-payment of rent under the Arizona Residential Landlord and Tenant Act, the court shall inquire whether the landlord accepted the partial payment, and if so, can produce a partial payment agreement and waiver signed by the defendant as required by the statute. If the landlord is unable to prove that the waiver was signed, the court shall dismiss the action.
- b. **Forms of Judgment.**
- (1) Guilty Plea. If the defendant appears at the initial appearance and enters a plea of “guilty” or “responsible,” the court shall, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, enter judgment in favor of the plaintiff.
  - (2) Verdict. At the conclusion of a trial, and after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, the court shall either announce its decision or take the matter under advisement. If the court takes the matter under advisement, it shall issue a decision promptly.
  - (3) Default Judgment.
    - A. If the defendant fails to appear in person or through counsel on the initial return date, and no continuance is granted, the court, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, shall enter a default judgment against the defendant
    - B. In an action alleging an immediate and irreparable breach, the



court shall hear evidence establishing such a breach before ordering a writ of restitution in not less than 12 nor more than 24 hours.

- C. Mailing Default Judgments. The plaintiff shall promptly mail or deliver a copy of the default judgment to the defendant.
- (4) Stipulated Judgments. The court may accept a stipulated judgment, but only if the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

**Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.**

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 13(c)(2), if all parties or their attorneys personally appear before the court and the addition is reasonable, the court may award an amount for damages or categories of relief not specifically stated in the complaint. The court shall not enter a stipulated judgment that contains a waiver of post judgment motions or appeals.

c. **Relief Granted.**

- (1) Possession of the premises.
  - A. Except as provided in subsection (2) of this section, if the judgment is for the plaintiff, possession of the premises shall be awarded to the plaintiff. No writ of restitution shall be issued until five calendar days after the judgment is signed.
  - B. When an immediate termination has been obtained due to a breach of a residential lease agreement that qualifies as “material and irreparable” under the applicable statute, the judgment shall provide for the writ of restitution to issue between 12 and 24 hours after entry of judgment, or longer if the plaintiff so requests.
  - C. If the defendant is found not guilty, judgment shall be entered in favor of the defendant. If the judgment is for the defendant and the



plaintiff has possession of the premises, possession of the premises shall, at the request of the defendant, be awarded to the defendant with a writ of restitution to issue after five calendar days.

- D. The date for the issuance for a writ of restitution shall not be delayed or extended beyond the date provided by statute, unless the parties stipulate otherwise.
- (2) Damages. In addition to determining the right to actual possession, and if either party seeks a money judgment, the court may award damages to the party entitled to possession if the party seeking money damages provided proof to the court of a factual and legal basis for an award of rent or any reasonable late fees, attorney fees or other requested fees, charges or damages. If a written rental agreement exists, the party seeking money damages shall have a copy of the written rental agreement available for the court to review at the initial appearance or subsequent hearing at which the judgment is rendered.

The court shall not award any amount for damages or categories of relief not specifically stated in the complaint or counterclaim. The amounts awarded in the judgment must be consistent with the amounts sought in the complaint or counterclaim, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate.

- A. Rent. If appropriate, rent shall be awarded to a prevailing plaintiff together with any additional rent that has accrued since the complaint was filed. If the plaintiff is entitled to rent incurred after the judgment has been entered, then the plaintiff may seek that amount in a separate civil action.
- B. Utilities. If the landlord charged utilities to the tenant under a written or oral rental agreement, unpaid amounts may be awarded to the prevailing plaintiff.
- C. Late Charges. If the written rental agreement provided for periodic late charges in the event of a rent default, the court shall award the prevailing plaintiff reasonable late charges. No late charges shall be awarded unless the court is presented with evidence that they are specified in a written rental agreement.
- D. Additional fees. Other fees such as extra person fees, pet fees, storage fees, signage fees, common area assessments, and other charges that were specified in a written rental agreement and were to be collected periodically together with other rental charges may be awarded to the prevailing plaintiff in accordance with the terms



of the agreements. Charges sought that were not contained in a written rental agreement shall not be awarded in an eviction action, but may be separately sought in a civil action.

- E. **Plaintiff's Damages.** If the plaintiff prevails, in addition to rent and late fees, when appropriate, the court may award to the plaintiff other damages for breach of the rental agreement, including property damages, when properly pled in the complaint and when such damages resulted from the breach giving rise to the eviction. When such claims for other damages are substantial and disputed such that a fair trial of the claims would likely delay the prompt determination of the eviction action, the court may sever those claims and dismiss them without prejudice, permitting the plaintiff to reassert the claims in a separate civil proceeding.
  - F. **Defendant's Damages.** Damages and/or offsets shall be awarded by the court if a defendant prevails on a counterclaim or defense. In such event, the court shall determine the prevailing party for purposes of awarding costs and reasonable attorney fees.
  - G. If undisputed rent has been deposited with the court in connection with a defendant's counterclaim, it shall be distributed in accordance with the judgment without undue delay after the time for appeal has expired. If no rent remains due after such proceedings or the tenant is found to have acted in good faith and satisfies a judgment for rent entered for the landlord, judgment shall be entered for the tenant in the action for possession.
  - H. Court costs shall be awarded as required by A.R.S. § 12-341.
- d. **Rent Concessions.** If the court finds that a rental agreement or lease provided a rent concession such as "free rent" for a period, a budget for tenant improvements, or a cash move-in allowance, and the rental agreement provides that in the event of a default the concession becomes due and payable, the amount of the concession may be included as additional damages in the judgment to a prevailing plaintiff if pleaded in the complaint. Alternatively, at the plaintiff's option, such amounts may be sought in a separate civil action.
  - e. **Late Fees in Mobile Home Park and Recreational Vehicle Park Evictions.** In cases involving mobile home parks and recreational vehicle parks, the court shall limit the award of periodic late charges in an eviction action arising out of such a tenancy to the statutory amount, and the court shall not reduce late charges calculated in accord with that limitation unless the plaintiff fails to establish the existence of a written agreement regarding such late charges.
  - f. **Attorney Fees.** Reasonable attorney fees shall be awarded to the prevailing party



if the court determines that such fees are provided for by statute or in a written contract. The award, however, may not exceed the amount the client has paid or agreed to pay.

- g. Where permitted by law, in addition to the remedies set forth above, the court may provide injunctive relief.

**Rule 13(c)(1)(B).** The term "material and irreparable" as used in this rule refers only to an act of violence, threatened violence, criminal conduct and other conduct meeting the definition of "material and irreparable" breach or noncompliance appearing in the Arizona Residential Landlord and Tenant Act at A.R.S. § 33-1368(A)(2), the Arizona Mobile Home Parks Residential Landlord and Tenant Act at A.R.S. § 33-1476(D)(3), and the Arizona Recreational Vehicle Long-Term Rental Space Act at A.R.S. § 33-2143(D)(3).

**Rule 13(d).** There are some unique issues concerning rental concessions and tenants who serve in the military. Rental concessions are often claimed if a lease ends prematurely. However, under the Servicemembers' Civil Relief Act ("SCRA"), military members generally can terminate a residential lease agreement without penalty if they enter military service on active duty or are deployed or transferred. In the context of residential lease agreements, the SCRA also protects dependant family members of military personnel. See generally, 50 U.S.C. App. §§ 531–538.

**Rule 14. Writs of Restitution.** The court shall promptly issue a writ of restitution upon timely application of a party entitled to it if the application is accompanied by the appropriate fee and deposits. The writ of restitution shall direct the constable or the sheriff, as appropriate, to return possession of the premises to the party entitled to possession under the judgment. A judge, justice of the peace, or the clerk of the superior court may issue the writ of restitution if it appears that a judgment granting possession has been entered in favor of the party filing the writ and the action has not been stayed.

- a. Delays in Issuance. Neither the issuance nor the enforcement of a writ of restitution will be suspended, delayed, or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion unless the court finds good cause.
- b. Time Standards for Writs of Restitution.
  - (1) Application for Writ. A party who obtains a judgment for possession in an eviction action shall have up to 45 days to apply for a writ of restitution.
  - (2) Writ Applications after 45 Days. If a party applies for a writ of restitution more than 45 days after the judgment, the party must also explain the reasons for the delay in making the application and shall certify that the tenancy has not been reinstated since the date of the judgment. If it is clear that the tenancy has not been reinstated, the court shall issue the writ.



If it appears to the court that the tenancy has or may have been reinstated, the court shall schedule a hearing before granting the application. This hearing shall be scheduled no more than three business days after the application. The court shall attempt to contact the party in possession by telephone to provide notice of the hearing, and the applicant for the writ shall cause a notice of the date, time, place and purpose of the hearing to be delivered to the party in possession either personally or by posting the notice on the main entrance to the premises.

- c. Quashing a Writ of Restitution. After a judgment for possession has been issued, a party may file a motion to stay the issuance of a writ or quash a writ already issued. The court shall promptly review the motion. If the court finds good cause to believe that the writ was improperly or prematurely issued, it may stay the issuance or enforcement and schedule a hearing on the motion. Any such hearing shall be conducted as soon as possible but in no event later than three business days after the filing of the motion.

**Rule 15. Relief from Judgment or Order**

- a. Motions to Set Aside Judgments, Orders, or Proceedings. Either party can file a motion to set aside a judgment, order or proceeding on any of the following grounds:
  - b.
    - (1) The court did not have jurisdiction to hear the case;
    - (2) The defendant tendered all amounts due the landlord under the lease agreement prior to a judgment being entered, or had made a partial payment under the Arizona Residential Landlord Tenant Act, A.R.S. §§ 33-1301 to -1381, which was accepted by the landlord;
    - (3) A party did not receive proper notice or was not properly served;
    - (4) Mistake, inadvertence, surprise, or excusable neglect;
    - (5) Newly discovered material facts exist that could establish a defense to an allegation;
    - (6) A party filed for bankruptcy protection;
    - (7) A party is requesting relief under the Servicemembers' Civil Relief Act;
    - (8) The parties have stipulated to set aside the judgment; or
    - (9) The judgment is contrary to the law.
    - (10) Fraud, misrepresentation, or other misconduct of an adverse party.



The motion shall be filed within a reasonable time, and, for reasons (2), (4), and (5), not more than 60 days after the judgment or order was entered.

- b. Clerical errors may be corrected by the Court with or without notice to the parties.
- c. A post judgment motion affecting possession of the property shall be treated as an emergency matter and decided within three court days.
- d. Where a post judgment motion does not affect possession of property, the other party may file a response within 10 court days of service of the motion. The moving party may then file a reply within 5 court days of service of the response.

#### **Rule 16. Transfer of Cases from Justice to Superior Court**

A justice court must transfer an eviction action to the superior court whenever the amount in controversy in the complaint or in a valid counterclaim exceeds the statutory ceiling for justice courts, and whenever title or ownership of the premises becomes an issue. If a justice court transfers an eviction action to the superior court as provided by statute or rule, the procedures set forth in A.R.S. § 22-201 shall be followed. Transfers shall not delay the eviction action, and both the transferring and receiving court shall take reasonable steps to assure that no delays result from the transfer.

#### *Comment*

*Most residential eviction actions will fall within the jurisdiction of the justice courts, and in most cases the parties will not dispute the existence of a landlord-tenant relationship. As a result of the documented problem of subprime mortgage lending and other equity theft schemes, however, see, e.g. In re First Alliance Mortgage Company, 280 B.R. 246 (C.D. Cal. 2002) (denying dismissal of multistate petition in bankruptcy by attorneys general from Arizona and elsewhere), a defendant in an eviction action who has a prior legal ownership interest in the premises may be justified in raising a claim of equitable title. Among other limitations on jurisdiction, a justice court cannot try an eviction action in which the title or ownership of the premises “becomes an issue.” A.R.S. § 22-201(E)-(F); see also United Effort Plan v. Holm, 209 Ariz. 347, 351, 101 P. 3d 641, 645 (App. 2004) (contrasting a summary proceeding to determine possession with a conventional civil action to determine the legal relationship between the parties). If a defendant both denies the existence of a landlord-tenant relationship and produces some evidence of a superior claim of title to or ownership of the premises, a justice court must stop the proceedings and transfer the action to the superior court.*

*A factual dispute over title or ownership may also be the basis for a motion to dismiss an eviction action. Holm, 209 Ariz. at 351, 101 P. 3d at 645. “A real dispute regarding a landlord-tenant relationship must be tried in an ordinary civil action, in which time periods are not accelerated, counter- and cross claims are allowed, and there is an opportunity for discovery.” Id.*



**Rule 17. Appeals**

- a. General. Appeals from lower court to the superior court shall be taken in the manner prescribed by A.R.S. § 12-1179 and by the Superior Court Rules of Appellate Procedure. Appeals from superior court shall be governed by A.R.S. § 12-1182 and the Rules of Civil Appellate Procedure.
- b. Justice Court Appeals. A.R.S. § 12-1179 requires several different types of bonds. The statute explains the details as to amounts and procedures.
  - (1) Cost bond. The court will set a cost bond at the time the notice of appeal is filed. The court may waive the cost bond if the appellant files a satisfactory affidavit of his or her inability to pay. The purpose of this bond is to reimburse the appellee’s taxable costs if the appellant does not win. Failure to post a cost bond, unless waived based on an affidavit of inability to pay the judgment, is cause to dismiss the appeal.
  - (2) Rent bond. If the appellant wants to remain in possession of the premises while the appeal is pending, he or she must post a rent bond. The initial rent bond must include all rent due, except for rent included in the judgment. The appellant must continue to pay rent as it becomes due to the justice court while the appeal is pending. Failure of the appellant to pay any rent due as it accrues is cause for the appellee to seek an order allowing it to enforce a writ of restitution. Failure to post a rent bond or remain current in the payment of accruing rents is cause to allow enforcement of a writ of restitution, but is not cause for the dismissal of the appeal. In this event, the appeal will proceed despite the appellant’s loss of possession of the premises while it is pending.
  - (3) Supersedeas bond. If the appellant wants to stop the enforcement of the monetary portion of the judgment while the appeal is pending, he or she must post a supersedeas bond. The amount of the bond is the same as the dollar amount of the judgment being appealed. Failure to post a supersedeas bond allows enforcement of the monetary portion of the judgment but is not cause for dismissal of the appeal.
- c. Superior Court Appeals. A.R.S. § 12-1182 provides that an appeal shall not stay execution of the judgment unless the superior court so orders. It also provides that the appellant shall file a bond in an amount fixed and approved by the court, conditioned on the appellant prosecuting the appeal to its conclusion. The bond provides security for the rental value of the premises pending the appeal and all damages, costs and rent that has been or may be ordered by the superior court or the Supreme Court.
- d. Cases Involving Findings of “Material and Irreparable Breach.” After a hearing in which the court finds a material and irreparable breach occurred on the



premises that resulted from violent conduct, crimes against children, criminal activity involving serious property damage or drug-related criminal activity, the court may permit the execution of the writ of restitution notwithstanding the payment of a rent bond. If a defendant appeals from a judgment as set forth in the previous sentence and desires to remain in possession of the premises pending appeal, he or she shall promptly advise the court that issued the judgment by filing a notice in writing. Based on the evidence already in the record, that court shall then balance the interests of the breaching tenant, any other residents lawfully residing in the same rental unit or complex, the landlord and the public at large, and consider whether the writ of restitution can and should be stayed or superseded. The court may consider promised actions of the breaching tenant or remaining residents in the same rental unit that will protect the safety of others and otherwise prevent the deterioration of the status quo during the pendency of the appeal when making an appropriate order. An appropriate order may include conditions that exclude one or more residents from the rental unit but permit other residents in the same rental unit to remain pending appeal.

In the event that a defendant remaining in possession pending appeal subsequently breaches an appeal condition imposed by the court, the plaintiff may file an emergency motion to lift a stay, and the court shall conduct a hearing within three days. If the third day is a Saturday, Sunday or other legal holiday the hearing shall be held on the next court day.

The court's decision denying a stay, conditioning the stay, or subsequently lifting the stay after a breach of an imposed condition may be reviewed by special action to an appropriate court.

**Rule 18. Definitions**

- a. "Eviction" or "eviction action" as used herein shall mean forcible detainer actions and special detainer actions as defined in this rule.
- b. "Ex parte communications" are communications between a litigant or its attorney and a judge, without including the opposing party. Ex parte communications are generally prohibited. However, a communication with a judge in open court on a date and at a time when all litigants have been notified that the issue will be addressed is not an ex parte communication.
- c. "Forcible detainer" shall have the same meaning as set forth at A.R.S. §§ 12-1173 and 12-1173.01.
- d. "Good cause" shall mean a stated, substantial reason, the accommodation of which will serve the interests of fairness and justice, without also causing a significant delay or harm to another party. Good cause may include relieving a person from the consequences of a mistake or inadvertence, but not from simple neglect.



- e. “Initial return date” is the date scheduled for the first appearance by the defendant following service of the summons and complaint. This shall also be known as the “initial appearance date,” or the “trial date.”
- f. “Personal service” shall mean person-to-person delivery of any pleading or notice to the intended recipient. If service is made at the residence, delivery of the papers to another person of suitable age and discretion who lives at the residence shall also qualify as “personal service.”
- g. “Pertinent” shall mean anything that relates directly and significantly to the matter in issue.
- h. “Post and mail service” shall have the same meaning as set forth in A.R.S. § 33-1377(B) and 33-1485(B).
- i. “Rental agreement” shall include, but not be limited to, oral and written rental agreements and leases.
- j. “Special detainer” refers to the procedures set forth at A.R.S. §§ 33-1377 and 33-1485.

**Rule 19. Miscellaneous**

- a. If a plaintiff is entitled to rent, late charges, court costs or attorney fees in a detainer judgment, the court shall not deny the request or delay entry of judgment solely because of a claim that Fair Debt Collection Practices Act notification requirements have not yet been satisfied.
- b. If, after entry of a detainer judgment a plaintiff or attorney concludes, either unilaterally or in response to a dispute by the defendant, that the basis for the detainer action or judgment was not valid, then the plaintiff shall promptly file a motion to set aside the judgment.
- c. Agreements between parties. No agreement between parties or their attorneys is binding if later disputed unless it is in writing and signed by the parties or their attorneys or made orally in open court on the record. This rule shall not prohibit a party who disputes the content of the agreement to move the court to refuse to enforce the agreement if good cause is shown for doing so.



## Appendix A

### RESIDENTIAL EVICTION INFORMATION SHEET (PUBLISHED AND DISTRIBUTION REQUIRED BY THE ARIZONA SUPREME COURT)

**Notice.** A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed.

**Rent cases.** If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

**Before Court.** Eviction cases move through the court system very fast. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The court provided answer form allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver. If the tenant of a dwelling unit believes that the landlord owes him money, he or she may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed but due to the high volume of cases, a trial may not occur then. However, if the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can appear or arrange for lawyers to represent them. The court will not provide a lawyer.

**At Court.** At the time listed on the summons, the judge will start calling cases. If both parties are there, the judge will ask the tenant whether the complaint is true. If the tenant says "no", he or she will need to briefly tell the judge why. If the reason appears to be a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation". This is an agreement under which the parties resolve the dispute on the basis of what the agreement says, and nothing that is not in the written agreement can be enforced against either party. These agreements should be clear and understandable by both parties. Most stipulations include judgments against tenants. See below.

**Continuances.** Either party can ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

**After a Judgment.** If a landlord receives a judgment, it may apply for a writ of restitution to remove the residents. These are served by constables, who will direct the residents to leave. A tenant can avoid the difficulties associated with a writ of restitution by turning in the keys of a rental dwelling into the landlord. This ends his or her possession of the residence. If the tenant wants to continue to live in the residence after a judgment has been entered, the tenant will need to obtain the landlord's approval and sign a new lease. A tenant will have five (5) days to vacate the premises unless evicted for criminal activity. Then the tenant has only twelve (12) to twenty-four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay a "supersedeas bond" to suspend the judgment while the case is being reviewed. If the tenant prevails the court will dismiss the case.

**Sources of Additional Information.** You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from the Secretary of State's office or web page: [www.azsos.gov](http://www.azsos.gov). In Maricopa County if you wish to consult an attorney, you may want to contact the Arizona State Bar Attorney Referrals Line at (602) 257-4434 or Community Legal Services at (602) 258-3434. Contact the court in other counties for similar referrals. You can obtain a summary of the obligations of landlords and tenants on the web page for justice courts in Maricopa County: [www.superiorcourt.maricopa.gov/justicecourts/info](http://www.superiorcourt.maricopa.gov/justicecourts/info)



## Appendix B

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Economic impact analysis examines the regional implications of an activity in terms of three basic measures: output, earnings, and job creation. Fiscal impact analysis, on the other hand, evaluates the public revenues and costs created by a particular activity. In fiscal impact analysis, the primary revenue sources of a city, county, or state government are analyzed to determine how the activity may financially affect them. For this report, the fiscal impact on the State of Arizona, all counties within the State, and all cities and towns within the State have been estimated. The impacts on both the county and city level have been aggregated using weighted averages of tax rates.

### 1.1 Methodology & Assumptions

#### 1.1.1 Project Assumptions

Assumptions for evaluation of the economic and fiscal impacts of the multi-housing industry within Arizona were developed from a variety of sources including Real Data, Saylor publications, the Arizona Department of Revenue, the U.S. Census, and information provided by the Arizona Multi-Housing Association. The data was reviewed and verified to determine its reasonableness and applicability to the proposed project.

The analysis utilizes an incremental impact approach. Thus, the impacts expressed for both the construction and operations reflect the impact of each 1,000 apartment units. In terms of construction, the estimated or projected number of apartment units to be built in any given year can be divided by 1,000 and multiplied by the results of this analysis to determine a reasonable impact in that year. Similarly for operations, the estimated inventory of apartment units can be divided by 1,000 and multiplied by the resulting operational impact to derive an estimated total impact. All of the following results are valued in 2008 dollars.

In terms of assumptions for construction, an industry average of just under \$92,000 per unit was used, based on the average size of an apartment unit at 811 square feet. It is assumed that this estimate reflects the hard costs of construction and a state approved portion of this amount will be applied to each governing entity's construction sales tax rate.

In terms of assumptions for operations, all taxable purchases, estimated rent and utility revenues are valued in 2008 dollars. Annual rent per square foot has been estimated at just over \$11 dollars per square foot, with an additional \$1,200 dollars spent per unit annually in taxable utilities.

Employment impacts at the resort were based on an employee per unit ratio of 0.05, or 1 employee for every 20 units.

Current property taxes for apartment units were estimated based on a per unit valuation of \$55,000. It is expected that newer complexes would yield higher per unit values, but that the existing stock of older units lowers the total average.



The following table displays the assumptions of the economic and fiscal impact analysis.

<b>Assumptions of Analysis</b>	
<b>Arizona Multi-Family Housing Industry</b>	
Units	1,000
Average sf per unit	811
<i>Construction</i>	
Construction cost per unit	\$91,546
<i>Operations</i>	
Employment increment	50
Taxable purchases	\$500,000
Annual rent per square foot	\$11
Average vacancy	11.2%
Value per unit	\$55,000
Estimated annual utilities per unit (taxable)	\$1,200
Sources: Elliott D. Pollack & Co., U.S. Census Bureau, REAL Data, Saylor Publications, AZ Tax Book, City of Phoenix, Maricopa County, Pima County	



### 1.1.2 Economic Impact Methodology

Economic impact analysis examines the economic implications of an activity in terms of output, earnings, and employment. For this study, the analysis focused on two separate impacts:

- 1) Construction of new apartment units.
- 2) Operations impact of apartment complexes.

The different types of economic impacts are known as direct, indirect, and induced, according to the manner in which the impacts are generated. For instance, direct employment consists of permanent jobs held by the construction workers or apartment employees. Indirect employment is those jobs created by businesses that provide goods and services essential to the operation or construction of the apartments. These businesses range from manufacturers (who make goods) to wholesalers (who deliver goods). Finally, the spending of the wages and salaries of the direct and indirect employees on items such as food, housing, transportation and medical services creates induced employment in all sectors of the economy, throughout the metropolitan area. These secondary effects are captured in the analysis conducted in this study.

Multipliers have been developed to estimate the indirect and induced impacts of various direct economic activities. The Minnesota IMPLAN Group developed the multipliers used in this study. The economic impact is categorized into three types of impacts:

- (1) **Employment Impact** – the total wage and salary and self employed jobs in a region. Jobs include both part time and full time workers.
- (2) **Earnings Impact** – the personal income, earnings or wages, of the direct, indirect and induced employees. Earnings include total wage and salary payments as well as benefits of health and life insurance, retirement payments and any other non-cash compensation.
- (3) **Economic Output** – the economic output, also referred to economic activity, relates to the gross receipts for goods or services generated by the company's operations.

Economic impacts are by their nature regional in character. Such impacts are best illustrated when not assigned to a specific city or locality, although clearly the primary impact of job creation would be on the area where the project is located. However, many other communities in region and state would also benefit from the construction and operation of the project. People working at the apartment complexes would commute to work from their homes in all parts of the region. Therefore, the economic impact of the development project is expressed in this report as a statewide benefit. All dollar figures, unless otherwise stated, are expressed in 2008 dollars.



### 1.1.3 Fiscal Impact Methodology

Fiscal impact analysis studies the public revenues associated with a particular economic activity. The main revenue sources of local, county, and state governments (i.e., taxes) are analyzed to determine how an activity may affect the various jurisdictions. This section will evaluate the impact of the multi-housing industry on the State of Arizona, Arizona counties and Arizona cities and towns. The analysis excludes special districts or other taxing entities.

The fiscal impact figures cited in this report have been generated from information provided by a variety of sources including the U.S. Bureau of the Census; the U.S. Department of Labor; the Internal Revenue Service; the Arizona Tax Research Association; the Arizona Department of Revenue; and the U.S. Consumer Expenditure Survey.

This fiscal impact analysis also relies upon the estimates of construction cost and operating revenues outlined in the assumptions table displayed previously. Unless otherwise stated, all dollar values are expressed in 2008 dollars.

Fiscal impacts are categorized by type in this study, similar to economic impact analysis. The main sources of revenue generation for governmental entities are related to construction of the units and ongoing operations of new and existing apartment units.

Construction impacts relate to the revenues generated from constructing new apartment units and include the state, county and local sales taxes levied on construction materials. These are the primary revenues generated from the project. In addition, the direct, indirect and induced employees supported by the construction activity also generate revenues to local governments. For instance, employees would spend part of their salaries on retail goods (thereby paying sales taxes), pay property taxes and contribute to the other revenue sources that are shared by the State with local counties and cities. Part of the State's collection of sales taxes on construction materials is also shared with local governments. These revenues are referred to in this report as secondary impacts.

The ongoing operations of a real estate project also create beneficial fiscal effects for a community. In addition to lease tax and utility tax collections from apartment residents, sales taxes would be collected on taxable operating purchases at the complexes. Additionally, each apartment complex would be liable for property taxes that are assessed by respective counties and cities. These are primary revenues to governmental entities that can be calculated from the assumptions of the study.

In addition to the above revenues, employees who work at the apartment complexes would spend part of their salaries on local goods and services and pay taxes on the homes they occupy. The employees would contribute to revenues collected by the State that are ultimately shared with local counties and cities. These revenues are similarly referred to in this report as secondary impacts.

Following is a description of the applicable tax revenue sources of the various jurisdictions that will be considered for this analysis.



- Construction Sales Tax

The State, counties, and cities levy a sales tax on materials used in the construction of buildings or development of land improvements. That tax is calculated by State law under the assumption that 65% of the construction cost of the facility and its land improvements are related to construction materials with the remaining 35% devoted to labor. The sales tax rate is then applied to the 65% materials figure. The sales tax on construction materials is a one-time collection by the governmental entity. The State currently levies a 5.6% sales tax on construction activity (a portion of which is shared with local governments). The weighted tax rate of all Arizona counties is 0.61% and the weighted construction sales tax for Arizona cities and towns is approximately 2.06%.

- Sales Tax

The State, counties, and local cities in Arizona charge sales tax on retail goods and services. The sales tax rate for the State is 5.6%. Portions of this tax are redistributed through revenue sharing to counties and cities throughout Arizona based on population.

Among Arizona counties, the weighted sales tax rate is 0.60%. The weighted sales tax rate is 1.96% for cities and towns throughout Arizona. These tax rates are applied to taxable revenues from operational purchases at apartment complexes as well as to the spending of direct, indirect and induced employees. Most of the employees supported by the project reside within a city or, at the very least, purchase goods from retailers located within a municipality. Based on data from the U.S. Consumer Expenditure Survey, the projected extent of retail spending and resulting sales tax receipts was calculated.

- Lease Tax

Counties and local cities in Arizona charge lease tax on rents of home dwellings. Among Arizona counties, the weighted lease tax rate is 0.60%. The weighted sales tax rate is 1.96% for cities and towns throughout Arizona. These tax rates are applied to taxable revenues from leases of apartment unit residents.

- Utility Sales Tax

The State, counties, and local cities in Arizona charge utility sales tax utilities such as electricity, natural or artificial gas, and water. The sales tax rate for the State is 5.6%. Portions of this tax are redistributed through revenue sharing to counties and cities throughout Arizona based on population.

Among Arizona counties, the weighted sales tax rate is 0.61%. The weighted sales tax rate is 2.28% for cities and towns throughout Arizona. These tax rates are applied to taxable revenues from utility sales within the apartment units.

- State Shared Revenues

Each city and town in Arizona receives a portion of State revenues from four different sources - State sales tax, State income tax, vehicle license tax and highway user tax. The formulas for allocating these revenues are primarily based on population. Counties also share in the revenue sources of the State, with the exception of income



tax. In the case of this analysis, the aggregated counties and towns will receive 100% of revenues that are distributed by the State.

- State Income Tax

The State of Arizona collects taxes on personal income. The tax rate used in the analysis averages about 1.6% for earnings. These percentages are based on the most recently available income tax data from the State and the projected wage levels of jobs created by the construction and operations impact. This tax is applied to the wages and earnings of direct indirect and induced employment. Portions of this tax are redistributed through revenue sharing to cities and towns throughout Arizona based on population.

- State Unemployment Tax

Unemployment insurance tax for employees is 2.7% on the first \$7,000 of earned income. This factor is applied to the projected wages and earnings of direct, indirect, and induced employees.

- HURF Taxes

The State of Arizona collects specific taxes for the Highway User Revenue Fund (HURF). Both the registration fees and the motor vehicle fuel tax (gas tax) are considered in this analysis. The motor vehicle fuel tax is \$0.18 per gallon and is calculated based on a vehicle traveling 12,000 miles per year at 15 miles per gallon. Registration fees average \$66 per employee in the State of Arizona. These factors are applied to the projected direct, indirect and induced employee count. Portions of these taxes are distributed to cities and counties throughout Arizona based on a formula that includes population and the origin of gasoline sales.

- Vehicle License Tax

The vehicle license tax is a personal property tax placed on vehicles at the time of annual registration. This factor is applied to the projected direct, indirect and induced employee count. The average tax used in this analysis is \$325 and portions of the total collections are distributed to the Highway User Revenue Fund. The remaining funds are shared between cities and counties in accordance with population-based formulas.

- Property Taxes

Taxes on real property would be levied on the apartment complexes. In addition, direct, indirect and induced employees supported by the project would pay county and city property taxes on homes they occupy. A weighted property tax rate of 1.1822 per \$100 of assessed value was used for city level estimation of property tax liability while at the county level, a weighted rate of 3.7553 per \$100 of assessed value was used. In order to estimate property taxes, the value of a typical housing unit in the state of Arizona has been estimated at approximately \$236,500. This value assumes that employees would occupy units in a pattern similar to the current inventory of housing in the State.

The above tax categories represent the largest sources of revenues that would be generated to city, county, and state governments. This analysis considers gross tax collections and does not differentiate among dedicated purposes or uses of such gross tax collections.



## 1.2 Impact of Construction

Construction phase impacts are generally short-term effects related to onsite and offsite construction employment and other industries that support the construction. The long-term consequences of a project are the operational phase impacts (Section 4.0). These include employment, earnings and expenditures that recur over the long-term. However, in this case, apartment construction is expected to continue to occur year after year throughout the state to satisfy the growing population. Thus, construction phase impacts can also be considered long term effects in conjunction with the operations phase impacts of the existing inventory of apartment units.

### 1.2.1 Economic Impact of Construction

This portion of the analysis will outline the economic impact on the State of Arizona of the construction of every 1,000 apartment units. The economic impact is outlined in the following table along with job creation and wages. From the construction of every 1,000 apartment units, 801 direct jobs with \$44.3 million in wages and \$91.5 million in direct economic output would be generated. An additional 563 indirect and induced jobs would be created from ripple effects throughout the economy, for a total of 1,364 direct, indirect, and induced jobs created during each increment of 1,000 units constructed with \$68.4 million in wages and \$160.6 million in economic activity. The figures are summarized below in the following table.

<b>Total Economic Impact from Construction - Per 1,000 Units</b>			
<b>State of Arizona</b>			
Impact Type	Jobs	Wages	Economic Output
Direct	801	\$44,302,000	\$91,545,680
Indirect	207	\$10,223,000	\$25,810,000
Induced	356	\$13,870,000	\$43,231,000
<b>Total</b>	<b>1,364</b>	<b>\$68,395,000</b>	<b>\$160,586,680</b>

Source: Elliott D. Pollack & Company; IMPLAN

### 1.2.2 Fiscal Impact of Construction

The tables included in this section summarize the revenues that would ultimately flow to the State of Arizona, all of the counties within the State and the cities and towns within the State as well. Some revenues are more direct and definable than others. Revenues have been defined in this analysis as either primary or secondary, depending on their source and how the dollars flow through the economy into governing entities' tax accounts. For instance, some revenues, such as construction sales taxes, are definable, straightforward calculations based on the cost of construction. These revenues are described in this study as primary revenues.



Secondary revenues, on the other hand, flow from the wages of those direct, indirect and induced employees who are supported by the construction projects. Revenue projections are based on typical wages of the employees working in a project, their spending patterns, projections of where they might live, and other assumptions outlined earlier in this report.

The following tables show the total fiscal impact of the construction of 1,000 apartment units irrespective of how many years each of the individual complexes take to construct. Even if construction of certain portions of the 1,000 units were delayed or the development were to take more than their allotted time to complete, the sum of the individual impacts from each component or phase would be equal to the total projection provided below (in 2008 dollars, excluding any impact of inflation), but extended over a longer time frame.

#### *State of Arizona Fiscal Impact of Construction*

Primary revenues (construction sales tax) that would accrue to the State total approximately \$2.9 million. The remainder of the revenues that would be generated during construction are classified as secondary revenues and, as previously described, relate to the spending of construction employees on retail goods, vehicle registration, gasoline taxes and similar items. The State would collect about \$2.5 million in secondary revenue during the construction of 1,000 units. Overall, the State would collect over \$5.4 million in construction related revenues. The following table outlines the fiscal impact of construction of the development of 1,000 apartment units on the State of Arizona.



**Total Fiscal Impact from New Construction (per 1,000 Units)  
Arizona Multi-Housing Industry  
State of Arizona  
(2008 Dollars)**

Impact Type	Primary Revenues	Secondary Revenues from Employment					Total Revenues
	Construction Sales Tax	Employees Spending Sales Tax	Income Tax	Vehicle License Tax	Unemp. Tax	HURF Tax	
Direct	\$2,942,400	\$550,900	\$756,900	\$51,700	\$151,300	\$74,200	<b>\$4,527,400</b>
Indirect	N/A	\$133,200	\$160,800	\$13,400	\$39,100	\$19,200	<b>\$365,700</b>
Induced	N/A	\$201,200	\$202,800	\$23,000	\$67,300	\$33,000	<b>\$527,300</b>
<b>Total Revenues<sup>1/</sup></b>	<b>\$2,942,400</b>	<b>\$885,300</b>	<b>\$1,120,500</b>	<b>\$88,100</b>	<b>\$257,700</b>	<b>\$126,400</b>	<b>\$5,420,000</b>

<sup>1/</sup> The figures for the state of Arizona do not include revenues distributed to counties, cities, and towns. The figures are intended only as a general guideline as to how the State could be impacted by the project. The above figures are based on the current economic structure and tax rates of the state of Arizona.

Source: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association



*Arizona Counties Fiscal Impact of Construction*

The table below provides the county fiscal impact that would be generated by the construction of 1,000 apartment units, aggregated for all of the counties within the State. During construction, county revenues would total over \$2.0 million. This includes primary tax revenues of \$361,000 and additional secondary revenues of nearly \$1.7 million.



**Total Fiscal Impact on from New Construction (per 1,000 Units)  
Arizona Counties  
(2008 Dollars)**

Type	Primary Revenues	Secondary Revenues from Employment			Total Revenues
	Construction Sales Tax	Employees Sales Tax	Residents Property Tax	State Shared Revenues	
Direct	\$360,900	\$86,400	\$494,800	\$515,300	<b>\$1,457,400</b>
Indirect	N/A	\$21,000	\$127,900	\$69,000	<b>\$217,900</b>
Induced	N/A	\$32,100	\$220,100	\$113,000	<b>\$365,200</b>
<b>Total Revenues<sup>1/</sup></b>	<b>\$360,900</b>	<b>\$139,500</b>	<b>\$842,800</b>	<b>\$697,300</b>	<b>\$2,040,500</b>

<sup>1/</sup> The figures include revenues collected by the state and shared with counties. The figures are intended only as a general guideline as to how the counties could be impacted by the project. The above figures are based on the current economic structure and tax rates of the counties.

Source: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association



*Arizona Cities and Towns Fiscal Impact of Construction*

Fiscal impacts related to the construction of 1,000 apartment units on Arizona cities and towns are provided in the table below. During construction, city and town revenues would total nearly \$2.4 million when aggregated. This includes primary tax revenues of over \$1.2 million and additional secondary revenues of over \$1.1 million.



**Total Fiscal Impact on from New Construction (per 1,000 Units)  
Arizona Cities and Towns  
(2008 Dollars)**

Impact Type	Primary Revenues	Secondary Revenues from Employment			Total Revenues
	Construction Sales Tax	Employees Spending Sales Tax	Residents Property Tax	State Shared Revenues	
Direct	\$1,225,800	\$155,800	\$86,326	\$509,300	<b>\$1,977,226</b>
Indirect	N/A	\$37,900	\$22,322	\$88,340	<b>\$148,562</b>
Induced	N/A	\$57,900	\$38,398	\$137,240	<b>\$233,538</b>
<b>Total Revenues<sup>1/</sup></b>	<b>\$1,225,800</b>	<b>\$251,600</b>	<b>\$147,046</b>	<b>\$734,880</b>	<b>\$2,359,300</b>

<sup>1/</sup> The figures include revenues collected by the state and shared with cities. The figures are intended only as a general guideline as to how the city could be impacted by the project. The above figures are based on the current economic structure and tax rates of the city.

Source: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association



### 1.3 Impact of Operations

Operations impacts are the long-term (ongoing) benefits of a project once construction of the project is completed. There are thousands of apartment complexes throughout the State that are currently operating and generating an economic and fiscal impact. This section of the analysis provides economic and fiscal estimates for the operations for every 1,000 apartment units. The results of the analysis can be multiplied by a factor that resembles the current apartment stock to generate the total operational impacts, as well as the impact of an increase in that inventory. Employment impacts are represented in increments of 50 direct employees, which is an average estimate of industry experts for every 1,000 units.

#### 1.3.1 Economic Impact of Operations

Fifty direct, full-time employees yield an estimated \$2.2 million in annual wages and produce \$7.2 million in economic activity. The ripple effect of these direct jobs generates an additional 40 indirect and induced jobs with \$1.6 million in wages and \$4.7 million economic activity. Overall, 90 jobs are found in the economy created by the initial 50 jobs, with \$3.8 million in wages and \$11.9 million in economic activity. Although the primary impact of any given apartment complex would focus upon the municipality in which it was located, the entire state as a whole is being considered. Therefore, the economic impact is expressed as a statewide benefit.

<b>Annual Economic Impact from Operations per 50 Full-Time Employees Arizona Multi-Housing Industry State of Arizona (2008 Dollars)</b>			
<b>Impact Type</b>	<b>Jobs</b>	<b>Wages</b>	<b>Economic Output</b>
Direct	50	\$2,216,000	\$7,216,260
Indirect	20	\$849,000	\$2,323,000
Induced	20	\$773,000	\$2,408,000
<b>Total</b>	<b>90</b>	<b>\$3,838,000</b>	<b>\$11,947,260</b>

<sup>1/</sup>The total may not equal the sum of the impacts due to rounding. All dollar figures are in constant dollars. Inflation has not been included in these figures.  
Source: Elliott D. Pollack & Company; IMPLAN

#### 1.3.2 Fiscal Impact of Operations

Similar to the fiscal impact of construction, the effects of multi-family housing operations have been divided into primary and secondary impacts. Primary impacts of the project are generated from lease taxes (at the county and city level), sales taxes, utility taxes, and property taxes (at the county and city level). Secondary effects of the project relate to the employees who would work in the project including employee spending (which generates sales taxes) and various other tax payments such as income taxes, property taxes, vehicle license taxes, unemployment taxes, and



gasoline taxes. For purposes of this analysis, the employment increment of 50 was applied to derive the fiscal impacts of employment on 1,000 units.

*State of Arizona Fiscal Impact of Operations*

The following table provides the fiscal impact of the operations of 1,000 apartment units on the State of Arizona. The 1,000 apartment units generate \$21,449 in direct sales tax and an additional \$52,700 in direct utility tax. Secondary revenues from employment total \$143,800 for a total fiscal impact on the State of \$196,500 annually.



**Annual Fiscal Impact from Operations per 1,000 Units at Stabilized Occupancy  
Arizona Multi-Housing Industry  
State of Arizona  
(2008 Dollars)**

Impact Type	Primary Revenues		Secondary Revenues					Total Annual Revenues
	Direct Sales Tax	Direct Utility Tax	Employees Sales Tax	Income Tax	Vehicle License Tax	Unemp. Tax	HURF Tax	
<b>Direct</b>	\$21,449	\$52,700	\$30,300	\$34,800	\$3,200	\$9,500	\$4,600	<b>\$135,100</b>
<b>Indirect</b>	N/A	N/A	\$11,800	\$13,400	\$1,300	\$3,800	\$1,800	<b>\$32,100</b>
<b>Induced</b>	N/A	N/A	\$11,200	\$11,300	\$1,300	\$3,700	\$1,800	<b>\$29,300</b>
<b>Total<sup>2/</sup></b>	<b>\$21,449</b>	<b>\$52,700</b>	<b>\$53,300</b>	<b>\$59,500</b>	<b>\$5,800</b>	<b>\$17,000</b>	<b>\$8,200</b>	<b>\$196,500</b>

<sup>2/</sup> Total may not equal sum of impacts due to rounding. All dollar figures are in constant dollars. Inflation has not been included in these figures. All of the above figures do not include revenues distributed to counties, cities, and towns. All of the above figures are representative of major revenue sources for the state of Arizona. Figures are intended only as a general guideline as to how the state could be impacted by the project. The above figures are based on current economic structure and tax rates of the state of Arizona.

Source: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association



*Arizona Counties Fiscal Impact of Operations*

The table below provides the ongoing annual fiscal impact of 1,000 apartment units on all of the counties within Arizona. The units generate \$337,700 annually in tax collections for the counties. This includes \$238,800 in direct sales, lease, utility, and property taxes. The additional \$98,900 would be generated from employee spending and State shared revenues.



**Annual Fiscal Impact from Operations per 1,000 Units at Stabilized Occupancy  
Arizona Multi-Housing Industry  
Arizona Counties  
(2008 Dollars)**

	Primary Revenues				Secondary Revenues			Total Revenues
	Direct Sales Tax	Direct Lease Tax	Direct Utility Tax	Direct Property Tax	Employees Sales Tax	Residential Property Tax	State Shared Revenues	
<b>Direct</b>	\$3,011	\$49,061	\$6,465	\$180,310	\$4,800	\$30,900	\$23,250	<b>\$297,800</b>
<b>Indirect</b>	N/A	N/A	N/A	N/A	\$1,900	\$12,300	\$5,870	<b>\$20,100</b>
<b>Induced</b>	N/A	N/A	N/A	N/A	\$1,800	\$12,300	\$5,750	<b>\$19,900</b>
<b>Total<sup>1/</sup></b>	<b>\$3,011</b>	<b>\$49,061</b>	<b>\$6,465</b>	<b>\$180,310</b>	<b>\$8,500</b>	<b>\$55,500</b>	<b>\$34,870</b>	<b>\$337,700</b>

<sup>1/</sup> The total may not equal the sum of the impacts due to rounding. All dollar figures are in constant dollars. Inflation has not been included in these figures. All of the above figures are representative of the major revenue sources for the counties. The figures are intended only as a general guideline as to how the counties could be impacted by the project. The above figures are based on the current economic structure and weighted tax rates of Arizona counties.

Source: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association



*Arizona Cities and Towns Fiscal Impact of Operations*

The 1,000 apartment units generate \$304,600 annually in tax collections for the cities and towns within Arizona. This includes \$250,600 in direct sales, lease, utility and property taxes. The additional \$54,000 would be generated from the employee spending and State shared revenues. The following table provides the ongoing annual fiscal impact of the apartment units on all of the cities and towns within Arizona.



**Annual Fiscal Impact from Operations per 1,000 Units at Stabilized Occupancy  
Arizona Multi-Housing Industry  
Arizona Cities and Towns  
(2008 Dollars)**

	Primary Revenues				Secondary Revenues			<b>Total Annual Revenues</b>
	Direct Sales Tax	Direct Lease Tax	Direct Utility Tax	Direct Property Tax	Employees Sales Tax	Residential Property Tax	State Shared Revenues	
<b>Direct</b>	\$9,798	\$159,655	\$24,350	\$56,765	\$8,700	\$5,391	\$18,760	<b>\$283,400</b>
<b>Indirect</b>	N/A	N/A	N/A	N/A	\$3,400	\$2,144	\$5,290	<b>\$10,800</b>
<b>Induced</b>	N/A	N/A	N/A	N/A	\$3,200	\$2,139	\$5,010	<b>\$10,300</b>
<b>Total<sup>1/</sup></b>	<b>\$9,798</b>	<b>\$159,655</b>	<b>\$24,350</b>	<b>\$56,765</b>	<b>\$15,300</b>	<b>\$9,674</b>	<b>\$29,060</b>	<b>\$304,600</b>

<sup>1/</sup> The total may not equal the sum of the impacts due to rounding. All dollar figures are in constant dollars. Inflation has not been included in these figures. All of the above figures are representative of the major revenue sources for the cities and towns. The figures are intended only as a general guideline as to how cities and towns could be impacted by the project. The above figures are based on the current economic structure and weighted tax rates of Arizona cities and towns.

Source: Elliott D. Pollack & Company; IMPLAN; Arizona Department of Revenue; Arizona Tax Research Association

