

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
DISPOSITION OF RESIDENTIAL	)	Administrative Order
EVICITION CASES RELATED TO THE	)	No. 2020 - <u>159</u>
PUBLIC HEALTH EMERGENCY	)	(Replacing Administrative
	)	Order No. 2020-151)
	)	

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide public health emergency on March 11, 2020. Governor Ducey also signed Executive Order 2020-14, titled “Postponement of Eviction Actions,” which permitted a tenant to delay eviction enforcement by the constable or a law enforcement officer, beginning March 24, 2020, by providing the landlord written notice of a qualifying circumstance. Executive Order 2020-49 extends the effect of all provisions of Executive Order 2020-14 through August 21, 2020 and then requires a tenant to provide additional written notice and documents to qualify for additional delay of eviction enforcement through the October 31, 2020 expiration date of that order.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law. The CARES Act required a temporary moratorium on evictions from public housing, federally subsidized rental housing, and rental housing with federally-backed mortgages, as well as a ban on accrual during the moratorium of fees, penalties, and interest related to nonpayment of rent. The CARES Act eviction moratorium expired on July 25, 2020.

The Centers for Disease Control and Prevention (CDC) issued an order entitled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” effective September 4, 2020 through December 31, 2020 (CDC No. 2020-19654, 85 Fed. Reg. 55292 (Sept. 4, 2020)) (CDC order). This order prohibits a landlord from taking any action to evict for nonpayment of rent a residential tenant who provides the landlord a declaration under the order. The CDC order also provides: “Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized . . . to accept State and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.”

Arizona courts remain open to serve the public. Nevertheless, given the ongoing threat to public safety, certain limitations and changes in court operations remain necessary including the effective management of residential eviction filings for nonpayment of rent. This administrative order provides direction to facilitate the orderly and safe disposition of eviction cases in Arizona courts in the context of the COVID-19 pandemic.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that the following are applicable to eviction actions filed into justice courts:

I. PLEADINGS

1. The plaintiff in a residential eviction action for non-payment of rent shall attest in the initial pleading or by other writing provided to the court and the defendant with the initial pleading whether:
 - a. Rent is claimed for any part of the period of time from March 27, 2020 through July 24, 2020 and, if so, whether the property in which the defendant resided was covered under the CARES Act; and
 - b. From September 4, 2020 through December 31, 2020, the plaintiff received from a tenant, lessee, or resident of the residential property a declaration under the CDC order entitled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19.”
2. The plaintiff in a civil or small claims action that requests a judgment for rent for a residential property shall attest in the initial pleading or by other writing provided to the court and the defendant with the initial pleading whether, rent is claimed for any part of the period of time from March 27, 2020 through July 24, 2020 and, if so, whether the property in which the defendant resided was covered under the CARES Act.
3. The Residential Eviction Procedures Information Sheet required to be served with the summons and complaint under Rule 5(a)(5) of the Rules of Procedure for Eviction Actions is supplemented by the addition of a one page notice entitled “Information On Temporary Halt In Residential Eviction For Nonpayment Of Rent” with substantially the form and content included as Attachment A of this order. Plaintiffs in eviction actions who claim nonpayment of any rent, penalty, or interest must serve this supplemental notice with the summons and complaint as soon as practicable but not later than October 24, 2020 until the CDC order expires on December 31, 2020.

II. CASE CALENDARING

1. A court should not schedule more than 25 eviction cases in an hour on the court’s calendar and shall allocate sufficient time for all parties appearing telephonically or in person to present their evidence.
2. Each case shall be scheduled to be heard during a specific one-hour time slot, e.g., 9:00 A.M. - 10:00 AM.
3. When feasible, courts should schedule residential eviction actions within the timeframes established by the Rules of Procedure for Eviction Actions and by applicable Arizona statutes.

III. HEARINGS

1. Parties, attorneys, and witnesses in an eviction proceeding shall be permitted to participate remotely by telephone or video conference, at their discretion.
2. Judges shall liberally grant continuances and make accommodations, if necessary and possible, for attorneys, parties, victims, witnesses, jurors, and others with business before the courts who are unable to participate in a proceeding due to the COVID-19 pandemic.
3. At the initial hearing, the plaintiff or the plaintiff's attorney shall attest on the record to their compliance with all requirements of applicable state and federal statutes and executive orders, including whether a declaration under the CDC order has been received.
4. With the agreement of the parties, the judge may continue a proceeding to afford the parties the opportunity to reach a consent agreement to resolve the case. Upon presentation of a consent agreement, the judge may enter a consent order for conditional dismissal of the case. A sample consent order is included with this administrative order as Attachment B. The Administrative Director is authorized to approve amendments to this form.
5. On notice to the court that the defendant provided the plaintiff a declaration under the CDC order in an eviction action to terminate a tenancy for nonpayment of rent, the court must continue the action or dismiss the action without prejudice unless:
 - a. The plaintiff files a motion with a copy to the defendant contesting the declaration that provides the court with reason to believe based on evidence described in the motion for each statement that one or more specific statements in the declaration is materially inaccurate,
 - b. The judge determines based on that evidence that a hearing is warranted to determine the accuracy of any statement identified in the motion.
 - c. The judge finds that the plaintiff proved at the hearing by a preponderance of the evidence that any statement identified in the motion is materially inaccurate, and
 - d. The judge states on the record the reason for each finding and orders that the eviction action may proceed.
6. As provided in the CDC order, it is not applicable to an eviction action based on a tenant, lessee, or resident: "(1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest)." The CDC order is applicable unless an asserted violation of an "other

contractual obligation” is proven to be material noncompliance with the rental agreement or, for a forcible detainer action, a material and irreparable breach of the rental agreement under Arizona law. A judge shall provide written findings establishing noncompliance or breach in any judgment or order of eviction.

7. Termination of a month-to-month tenancy is presumed to be due to nonpayment of rent, if unpaid rent, a penalty or interest is owed. The CDC order is applicable unless the plaintiff proves the termination was for a reason other than nonpayment of rent, penalties, or interest.

IV. AMENDMENT OF JUDGMENTS AND ENFORCEMENT OF WRITS OF RESTITUTION

1. On motion of the plaintiff, for good cause, the court may order amendment of an eviction judgment in a case in which enforcement of the writ of restitution was delayed due to Executive Order 2020-14 or Executive Order 2020-49 and the tenant remained in possession of the residence. If the judgment is amended, the existing writ shall be quashed, and a new writ of restitution shall not be issued until five calendar days after the amended judgment is signed.
2. Enforcement of a writ of restitution that has been delayed by Executive Order 2020-14 or Executive Order 2020-49 shall not proceed until the court grants a motion to compel enforcement of the writ filed by the plaintiff. The court shall determine whether to grant the motion using the procedure provided in Rule 14(b)(2) of the Rules of Procedure for Eviction Actions. An order granting the motion shall not permit enforcement of the writ until five days after the order is issued.
3. After December 31, 2020 or any extension of the CDC order, on motion of the plaintiff in a case halted by the CDC order, for good cause, the court may order amendment of an eviction judgment or issue a writ of restitution using the procedure provided in Rule 14(b)(2) of the Rules of Procedure for Eviction Actions. An order granting the motion shall not permit enforcement of a writ until five days after the order is issued.

V. EXCLUDED TIME CALCULATION

The period of March 18, 2020 through February 15, 2021 is excluded from calculation of time under rule provisions and statutory procedures that require court proceedings to be held within a specific period of time, including the Rules of Procedure for Eviction Actions. This exclusion of time does not apply to issuance of the writ of restitution.

VI. JUDICIAL OFFICER TRAINING

The Administrative Office of the Courts (AOC) shall provide judicial officer training on scheduling, diversion, adjudication and disposition of eviction cases in the context of the COVID-19 public health emergency, addressing Executive Order 2020-49, the CARES

Act, the CDC order, and best practices. All judicial officers, including judges pro tempore, who hear eviction cases shall complete such training offered to them by the AOC.

IT IS FURTHER ORDERED that the provisions of Administrative Order No. 2020-143 and any successor orders concerning matters not addressed in this order also apply to the processing of eviction cases.

Dated this 7th day of October, 2020.

ROBERT BRUTINEL
Chief Justice

ATTENTION TENANTS ATTENTION TENANTS

**INFORMATION ON TEMPORARY HALT IN RESIDENTIAL EVICTION
FOR NONPAYMENT OF RENT**

You may have a **right to stay in your home** through December 31, 2020 even though you are unable to pay all of your rent during this time; but only if you can **accurately** and **truthfully** make **all five** of the following statements and you give your landlord a paper called a **declaration** that contains them:

- 1) You are using your best efforts to obtain all available government assistance for rent or housing;
- 2) You either (i) expect to earn no more than \$99,000 during the 2020 Calendar Year (or no more than \$198,000 when you file a joint tax return), (ii) were not required to report any income in 2019 to the IRS, or (iii) received an Economic Impact Payment (stimulus check) under the CARES Act;
- 3) You are unable to pay the full rent or make a full housing payment due to a large loss of household income, loss of normally paid hours or wages, a lay-off, or out-of-pocket medical expenses more than 7.5% of your total income;
- 4) You are using your best efforts to make timely partial payments that are as close to the full payment as your circumstances may permit, taking into account other bills you have to pay; and
- 5) If evicted, you would likely be homeless or be forced to move into a crowded living space such as a shelter or a residence with other people because you have no other available place to live for the same or lower cost.

You can get a declaration form on the web at <https://www.azcourts.gov/eviction> or <https://www.azcourthelp.org>., at a rent assistance office, or at your local justice court. Please read it carefully. If you sign the declaration when you know any statement is false, you may be charged and convicted with a felony and be required to pay a large fine or even be sent to jail.

If your landlord provides the judge a reason to believe based on evidence that any of the five statements in the declaration are not accurate, the court may schedule a hearing. At this hearing, before you can be evicted for nonpayment of rent, your landlord must prove at least one of the statements is not accurate. You may explain why you believe it is accurate and provide any documents you have that support your belief. Then the judge will decide whether to let you stay in your home or order you to move out because you have not kept up with your rent payments.

 () _____

 Attorney for Plaintiff / Address / Phone /
 Email / Fax / Bar Number

For Clerk's Use Only

JUSTICE COURTS, ARIZONA

Case Number: _____

 () _____

 Plaintiff(s) Name / Address / Phone

 () _____

 Defendant(s) Name / Address / Phone

CONSENT ORDER FOR CONDITIONAL DISMISSAL (*Eviction Action*)

THE COURT FINDS:

1. The parties agree to the conditional dismissal of the case under the terms below.
2. Defendant must pay the following to Plaintiff on or before _____.

a.1.	\$ _____	Unpaid rent (non-subsidized rent)	due through the time period ending _____
	- OR -		
a.2.	\$ _____	Unpaid rent (subsidized rent- tenant's portion only)	
b.	\$ _____	Late fees	
c.	\$ _____	Utilities	
d.	\$ _____	Other fees or charges (Add more lines for specific fees and charges)	
e.	\$ _____	Rental concessions	
f.	\$ _____	Court cost	
g.	\$ _____	Other damages	
h.	\$ _____	Attorney fees	

i. \$ _____ **TOTAL**

3. If Defendant fails to pay the rent and other costs as set forth above, this action will be reinstated upon the Plaintiff's submission of an Affidavit of Default, a Judgment for money (if eligible and requested in the complaint), and a Writ of Restitution, which will enter simultaneously without notice or further process.*

** For a defendant on active military duty, default judgment will not be entered except as provided by the Servicemembers Civil Relief Act.*

4. Defendant remains responsible for paying the entire amount as stated in the order below that is not paid by any other third party within the time period provided by this order.
5. The Defendant may be liable for money damages if additional rent is owed or if there is damage to the property.
6. ☐ Partial payment by Defendant of the amount due in item 2i above will not prevent issuance of a Writ of Restitution should a Judgment enter after default on this conditional dismissal.
7. A Writ of Restitution may not be submitted for entry more than _____ days after the last payment is due under this conditional dismissal.
8. ☐ Further conditions: _____

IT IS ORDERED:

1. The case is dismissed without prejudice subject to the conditions below.
2. Defendant must pay the following to Plaintiff on or before _____.

a.1.	\$ _____	Unpaid rent (non-subsidized rent)	due through the time period ending _____
	- OR -		
a.2.	\$ _____	Unpaid rent (subsidized rent- tenant's portion only)	_____
b.	\$ _____	Late fees	
c.	\$ _____	Utilities	
d.	\$ _____	Other fees or charges (Add more lines for specific fees and charges)	
e.	\$ _____	Rental concessions	
f.	\$ _____	Court cost	
g.	\$ _____	Other damages	
h.	\$ _____	Attorney fees	

i. \$ _____ **TOTAL**

3. In the event Defendant fails to pay the rent and other costs as set forth above, then Plaintiff will submit an affidavit of default, a Judgment for money (if eligible and requested in the complaint), and a Writ of Restitution, which will enter simultaneously without notice or further process.
4. Defendant remains responsible for paying the entire amount as stated in the order below that is not paid by any other third party within the time period provided by this order.
5. The Defendant may be liable for money damages if additional rent is owed or if there is damage to the property.
6. ☐ Partial payment by Defendant of the amount due in item 2i above will not prevent issuance of a Writ of Restitution should a Judgment enter after default on this conditional dismissal.
7. A Writ of Restitution may not be submitted for entry more than _____ days after the last payment is due under this order.
8. ☐ Further conditions: _____

Date

Judge's Signature

Approved as to form and content.

Plaintiff Signature and Date

Defendant Signature and Date

Plaintiff's Attorney Signature and Date

Defendant's Attorney Signature and Date