

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
DISPOSITION OF RESIDENTIAL	)	Administrative Order
EVICITION CASES RELATED TO THE	)	No. 2021 -129 (corrected)
PUBLIC HEALTH EMERGENCY AS	)	(Replacing Administrative
DEFINED IN THE AUGUST 3, 2021	)	Order No. 2021-120)
CDC ORDER TEMPORARILY HALTING	)	
RESIDENTIAL EVICTIONS IN CERTAIN	)	
COUNTIES	)	
<hr/>	)	

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.

Since March 2020, several federal executive and Congressional actions have impacted tenant and landlord rights under Arizona laws and the processing of eviction cases in Arizona’s courts. Among these official actions taken are:

1. 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. While the CARES Act eviction moratorium expired on July 24, 2020, certain tenant protections related to the accrual of fees, penalties, and interest on unpaid rent remain in effect. Additionally, multi-family rental properties for which mortgage forbearance agreements were entered are subject to eviction and fees, penalties and interest restrictions during the period of forbearance, now scheduled to end September 30, 2021. Finally, on July 28, 2021, the Federal Housing Finance Agency (FHFA) announced that tenants of multifamily properties with mortgages backed by Fannie Mae or Freddie Mac, regardless of whether the loan is in forbearance, cannot be removed for nonpayment of rent without being given 30 days’ notice.
2. 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). The Congress passed and the President signed into law the “Coronavirus Response and Relief Supplemental Appropriations Act, 2021.” The Act extended the CDC moratorium through January 31, 2021. The CDC further extended the moratorium through March 31, 2021, through June 30, 2021 and again through the current July 31, 2021 expiration date. On July 31, 2021, this CDC order was allowed to expire.

3. On December 21, 2020, Congress enacted the Consolidated Appropriations Act which the President signed on December 27, 2020. This Act appropriated funding for states to establish rental assistance programs for tenants meeting program requirements. Additional federal funding for rental assistance was included in the American Rescue Plan Act signed into law by the President on March 11, 2021. Disbursement of these funds is ongoing.
4. On August 3, 2021, the CDC issued a new order temporarily halting evictions in counties with heightened levels of community transmission in order to respond to recent, unexpected developments in the trajectory of the COVID-19 pandemic, including the rise of the Delta variant. The order applies in U.S. counties experiencing substantial and high levels of community transmission of SARS-CoV-2 as defined by CDC. If a county is not covered by the order as of August 3, 2021 but later experiences substantial or high levels of community transmission while the order is in effect, that county will become subject to the order. If a U.S. county that is covered by the order no longer experiences substantial or high levels of community transmission for 14 consecutive days, the order will no longer apply in that county, unless and until the county again experiences substantial or high levels of community transmission while the order is in effect.
5. As of August 3, 2021, all 15 Arizona counties were experiencing substantial or high levels of community transmission. This Administrative Order provides direction to facilitate the orderly and safe disposition of eviction cases in Arizona courts consistent with this Court's constitutional, administrative and supervisory authority over the courts, authority to adopt emergency temporary court procedures, and authority to regulate the practice of law in the context of the COVID-19 pandemic health emergency.
6. According to the August 3, 2021 CDC order: 1) any eviction actions for nonpayment of rent initiated prior to issuance of the CDC order but not yet completed are subject to the order; 2) any eviction that was completed before issuance of the CDC order including from August 1 through August 3, 2021 is not subject to the order as it does not apply retroactively; 3) any tenant, lessee, or resident of a residential property who previously submitted a Declaration still qualifies as a "Covered Person" and is still present in a rental unit is entitled to protections under the CDC order as long as the information in a previously signed declaration submitted under a previous order remains truthful and accurate; 4) a landlord may challenge the truthfulness of a tenant's, lessee's, or resident's declaration in court as permitted by law.

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

IT IS ORDERED that the following procedures are applicable to eviction actions governed by Arizona Revised Statutes, Title 33, filed in the superior court or a justice court, and delayed by any eviction moratorium or seeking judgment for unpaid rent accrued during an eviction moratorium.

## **I. STATUS OF CDC MORATORIUM IN EACH COUNTY**

Under the CDC order, currently the CDC eviction moratorium is in effect in all Arizona counties due to the “substantial” or “high” COVID-19 transmission rate in each county. Beginning on the effective date of this order the presiding superior court judge of each county or designee shall monitor the COVID-19 transmission rate in that county. The presiding judge shall use the CDC’s transmission rate data which is a weekly moving average and applies the CDC categories (low, moderate, substantial, high). If a presiding judge determines that the transmission rate risk in the county has decreased to the “moderate” or “low” category for 14 consecutive days, the presiding judge shall notify the Administrative Director. If the Administrative Director concurs, the presiding judge or designee shall enter an order that permits issuance of writs of restitution to resume in that county. If evictions resume, the presiding judge shall continue to monitor the county’s transmission rate data and again suspend evictions if the transmission rate returns to the “substantial” or “high” range.

## **II. PLEADINGS**

1. The plaintiff in a residential eviction action for non-payment of rent while an eviction moratorium was or is in effect shall attest in the initial pleading or by other writing filed with the court and served on the defendant along with the initial pleading whether:
  - a. The claim is for any time between March 27, 2020 and July 24, 2020 and, if so, whether the property in which the defendant resided was covered under the CARES Act, during which time fees, penalties, or interest on unpaid rent may not be included in the amount claimed.
  - b. 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.” Plaintiff should note that tenants, lessees, or residents of a residential property may use any written document in place of the CDC Declaration Form if it includes the required information as in the form, is signed, and includes a perjury statement (such written document shall hereinafter be referred to as a “tenant declaration”).
  - c. The rental is in a building with five or more units that had or has a mortgage backed by Fannie Mae or Freddie Mac (FHFA), the Federal Housing Administration (FHA), the U.S. Department of Agriculture (USDA), or the Veterans Administration (VA) for which the borrower was or is receiving mortgage forbearance relief.
  - d. The plaintiff has applied for or has received rental assistance from any source based on defendant’s rental obligation. If so, plaintiff shall state in the pleading and the accounting of payments the amount received and how it has been applied toward the obligation and whether the plaintiff entered into any agreement releasing plaintiff’s claims against the defendant. The plaintiff shall further attest to compliance with any agreement concerning the receipt of rental assistance to pay the defendant’s rental obligation, and that plaintiff is not seeking a judgment for a claim that was waived.

- e. During an eviction moratorium, the plaintiff obtained a prior judgment against the defendant that has not been vacated. If so, the plaintiff shall attest that the current amounts claimed exclude amounts awarded in the prior judgment.
  - f. Beginning August 13, 2021, whether defendant is protected by the FHFA Multifamily Protection (Fannie Mae or Freddie Mac mortgage).
2. The Residential Eviction Information Sheet required to be served with the summons and complaint under Rule 5(a)(5) of the Rules of Procedure for Eviction Actions (RPEA) 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 same form and content as included in Attachment A of this order. Plaintiffs in eviction actions who claim nonpayment of rent, penalty, or interest must serve this supplemental notice with the summons and complaint until the CDC order expires.

### **III. CALENDARING FOR ALL CASES**

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 remotely 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 A.M.
3. Courts should schedule residential eviction actions within the timeframes established by the Rules of Procedure for Eviction Actions and by applicable Arizona statutes except a court should follow the procedures established in Administrative Order 2021-109 to manage court congestion. Any continuance granted shall be honored and time shall be excluded.

### **IV. HEARINGS**

1. Parties, attorneys, and witnesses in an eviction proceeding shall be permitted to participate remotely or in person.
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 each hearing, the judge shall inquire as to whether the plaintiff received a tenant declaration under the CDC moratorium or entered into any agreement concerning the receipt of rental assistance to pay the defendant’s rental obligation or concerning forbearance relief described in section II, paragraph 1c of this order. If all amounts awarded in a judgment have been paid in full by receipt of rental assistance and the plaintiff agreed to release defendant from all claims and causes of action, including judgments, writs, and other judicial relief for nonpayment of rent, the court shall vacate

the judgment and deny an application for a writ of restitution. If the plaintiff received rental assistance payment and asserts that the rental agreement did not require waiver of all claims, the plaintiff shall provide the court with a copy of the rental assistance agreement. If the plaintiff agreed to delay eviction as a condition of a rental assistance or mortgage forbearance agreement, the court shall stay the action during the period of the delay.

4. With the agreement of the parties, the judge shall continue a proceeding to afford the parties the opportunity to apply for and receive rental assistance or to reach an agreement to resolve the case.
5. When the limited availability of courthouse facilities, judicial officers, or court employees requires prioritization, court proceedings shall be scheduled in the following order of priority: 1) eviction cases delayed by a moratorium; 2) newly filed eviction cases.

## **V. PROCEDURES APPLICABLE WHEN THE CDC MORATORIUM IS IN EFFECT IN A COUNTY**

1. To implement the CDC order in a consistent manner throughout the state, judges shall proceed with the initial appearance, unless there is good cause for a continuance of no more than ten days to allow the defendant to provide the landlord with a tenant declaration. If the case proceeds, the court shall inform the parties that the defendant may temporarily stop an eviction for nonpayment of rent by providing a tenant declaration to the plaintiff any time before the defendant is removed from the residence.
2. When the court has notice that the defendant has provided the plaintiff a tenant declaration under the CDC order, the court shall either continue an eviction action to terminate a tenancy for nonpayment of rent or permit the action to proceed to judgment as provided in paragraph 3 of this section and, if the plaintiff prevails, stay the issuance of a writ of restitution until further order unless:
  - a. The plaintiff files a motion contesting the tenant declaration. The motion shall provide a factual basis, not based on information and belief, that supports the allegation that one or more specific statements in the tenant declaration is materially inaccurate. If the motion is not supported by a proper factual basis, the motion shall be denied without a hearing;
  - b. The motion provides a proper factual basis and an evidentiary hearing is set to determine the accuracy of the allegations in the motion;
  - c. The judge finds that the plaintiff proved at the evidentiary hearing by a preponderance of the evidence that any statement identified in the motion is materially inaccurate; and
  - d. The judge states at the hearing the reason for each finding and orders that the eviction may proceed.

3. To effectuate the intent of Congress to distribute rental assistance to individuals, unless a writ is issued under paragraph 2 of this section, the court shall continue the action for 30 days if the court determines an application for rental assistance is underway. If the court determines that the defendant is not likely to qualify or has not made reasonable efforts to obtain rental assistance, the court shall permit the case to proceed.
  
4. As the CDC order provides, 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 provides that covered persons may not be evicted on the sole basis that they are alleged to have committed a crime of trespass by not paying the rent. Individuals who are confirmed to have, who have been exposed to, or who might have COVID-19 and take reasonable precautions to not spread the disease may not be evicted on the grounds that they may pose a health or safety threat to other residents. The CDC order applies unless the landlord proves by a preponderance of the evidence that an asserted violation of an “other contractual obligation” is 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 for one of those reasons.
  
5. Termination of a periodic tenancy is presumed to be due to nonpayment of rent, if unpaid rent, a penalty or interest is owed. The CDC order applies unless the plaintiff proves by a preponderance of the evidence the termination was for a reason other than nonpayment of rent, penalties, or interest.
  
6. To clearly describe what the court has decided at the initial appearance and where and how parties may obtain further assistance and relief, after the initial appearance, the judge shall complete a Pandemic Minute Entry for a nonpayment of rent eviction with the appropriate option selected using language substantially equivalent to the following:

This eviction matter came before the Court on \_\_\_\_\_, 2021.

**IT IS ORDERED**

Defendant has signed a tenant declaration and this matter is therefore continued to \_\_\_\_\_, 2021. The parties should ensure that their mailing addresses, emails and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

Judgment has been entered but there has been a tenant declaration, so a writ shall not issue (defendants will not be removed) until the CDC order expires. Tenants do

NOT need to leave the property at this time. The landlord may ask the court to have the defendants removed after the CDC protection expires OR the landlord may file a motion to remove defendants sooner if the landlord believes it can prove that the tenant declaration is false. The parties should ensure that their mailing addresses, emails and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

There was no evidence of a signed tenant declaration, and judgment has been entered this day. However, tenants may be able to prevent the constable from enforcing a writ (removing the tenants) if a tenant declaration is completed and provided to the landlord and the constable prior to removal from the property. The parties should ensure that their mailing addresses, emails and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

**VI. PROCEDURES APPLICABLE WHEN THE CDC MORATORIUM IS NOT IN EFFECT IN A COUNTY, OR AFTER EXPIRATION OR TERMINATION OF THE CDC ORDER, OR AFTER A TENANT VACATES THE PREMISES**

1. In all cases where a plaintiff filed a complaint but was unable to obtain a judgment due to an eviction moratorium, the Court shall schedule a hearing after the expiration or termination of the CDC order. The plaintiff shall file a written motion to amend the complaint, as needed, to update the information required by section II paragraph 1 of this order.
2. When a county is not subject to the CDC moratorium, a plaintiff who received a judgment where the writ of restitution date was delayed may file a motion to amend the judgment to collect any additional rental obligations accrued since the judgment was obtained. When a county is not subject to the CDC moratorium, a plaintiff may file a new application for a writ of restitution to regain possession in which the plaintiff shall attest that a new tenancy has not been established. Motions to amend the judgment and applications for writs shall include or update any information required by section II paragraph 1 of this order that was not provided in the original complaint. If a plaintiff received rental assistance, the plaintiff shall file a motion to amend the judgment and an accounting of any payments received since the judgment was entered. The plaintiff shall serve the motion or application on the defendant either personally or by posting the notice on the main entrance to the premises.
3. The court shall set a hearing on all motions for amended judgment. The court shall set a hearing on an application for a writ if it appears to the court that a new tenancy may have been established, that the judgment should be amended, or if the court finds that a hearing is appropriate based upon the court's own motion or a motion of a party. The court shall issue a notice of hearing for the parties to appear not more than six nor less than three days from the date of the notice. At least three days before the hearing, the court shall mail a copy of the notice to the defendant and attempt to contact the

defendant by telephone, text, or email to provide notice of the hearing, and the plaintiff shall serve a notice of the date, time, place and purpose of the hearing on the defendant either personally or by posting the notice on the main entrance to the premises. A defendant may respond in writing before the hearing and orally at the hearing.

4. For cases where a judgment was entered for rent owed during a moratorium, the amount owed was fully paid through a rental assistance agreement, and that judgment has not already been amended or vacated as permitted by this order, a defendant may file a motion to compel satisfaction of judgment. The defendant may file the motion to compel without showing the plaintiff cannot be located, as described in Rule 4(d), Rules of Procedure for Eviction Procedures. The motion shall be served on the plaintiff. The court may, after an opportunity for a hearing, order that the judgment shall be deemed satisfied.
5. If an eviction judgment includes claims for rent due between March 27, 2020 and July 24, 2020 or if fees, penalties, or interest for unpaid rent during that period were awarded, the plaintiff shall provide proof that the property is not subject to a mortgage, or provide the written response from a Qualified Written Request (QWR) submitted to the property's mortgage holder that confirms the financing in place was not covered by the CARES Act.
6. At the hearing on the motion to amend the judgment, for good cause, the court shall amend the eviction judgment to reflect:
  - a. Any unpaid rent, late fees, or interest that would have been due under the terms of the lease that was the subject of the eviction for the period since the judgment was entered if requested by the plaintiff and not to exceed the jurisdiction of the court.
  - b. Any rental assistance received from any source based on the defendant's rental obligation.
  - c. Any fees, penalties or interest for unpaid rent from March 27, 2020 through July 24, 2020 not permitted to be collected under the CARES Act.
  - d. Any fees, penalties or interest for unpaid rent for any period of time the plaintiff was in a federal mortgage forbearance relief program which prohibited those assessments.

Nothing in this provision precludes a landlord from pursuing a claim not barred by a rental assistance agreement in a small claim or civil lawsuit.

7. The order issuing a writ may be executed by the constable or sheriff no earlier than five calendar days after the date of the order or 30 days from the notice of breach if required by federal law. The order shall state the earliest date on which execution may occur.
8. If the tenant vacated the premises after the entry of judgment, on written motion of a party, and after a reasonable opportunity for response, for good cause, the court shall

vacate the judgment if plaintiff has waived all claims due to receipt of rental assistance, or amend the eviction judgment to reflect the items listed in paragraph 6 above.

## **VII. JUDICIAL OFFICER TRAINING**

The Administrative Office of the Courts (AOC) shall provide judicial officer training on scheduling, adjudication and disposition of eviction cases in the context of the COVID-19 public health emergency, addressing this Administrative Order. All judicial officers, including judges pro tempore, who hear eviction cases shall complete the most recently updated version of such training.

IT IS FURTHER ORDERED that the provisions of Administrative Order No. 2021-109 and any successor orders concerning matters not addressed in this order also apply to the processing of eviction cases.

IT IS FURTHER ORDERED that this order replaces Administrative Order No. 2021-120.

Dated this 11th day of August, 2021.

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ROBERT BRUTINEL  
Chief Justice

## ATTENTION TENANTS

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### *YOU CAN ASK FOR FREE LEGAL HELP BY CONTACTING:*

(These legal help programs are not part of the court.)

COUNTY OR TOWN			CONTACT INFORMATION
Maricopa County Mohave County La Paz County	Yavapai County Yuma County	Town of San Luis Apache Junction Queen Creek	<b>Community Legal Services</b> <b>1-800-852-9075</b> <a href="http://www.clsaz.org">www.clsaz.org</a>
Apache County Cochise County Gila County	Graham County Greenlee County Navajo County	Pima County Pinal County Santa Cruz County	<b>Southern Arizona Legal Aid</b> <b>1-800-248-6789 or</b> <a href="http://www.sazlegalaid.org">www.sazlegalaid.org</a>
Coconino County	Navajo Nation	Hopi Nation	<b>DNA People's Legal Services</b> <b>1-800-789-5781</b> <a href="http://www.dnalegalservices.org">www.dnalegalservices.org</a>

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

You may have a **right to stay in your home** through October 3, 2021 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 have used your best efforts to obtain all available government assistance for rent or housing;
- 2) You either (i) earned no more than \$99,000 (or \$198,000 if filing jointly) in Calendar Year 2020 or expect to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), (ii) were not required to report any income in 2020 to the IRS, or (iii) received an Economic Impact Payment (stimulus check);
- 3) You are unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses that exceed 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, considering 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.