

# Notice for Failure to Pay Rent

## (5 Day Notice to Move | A.R.S 33-1368B)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) -  
Tenant(s) Name / Address / Phone

( ) -  
Landlord(s) or Agent Name / Address / Phone

Notice Date: \_\_\_\_\_

**You have not paid your rent. If you do not pay the total owed within 5 calendar days of receiving this Notice your landlord may file an eviction action requiring you to move.**

Total owed \$ \_\_\_\_\_ as of this date: \_\_\_\_\_. If late fees are allowed in the rental agreement, this amount will increase by \$ \_\_\_\_\_ each day the rent is not paid. The total includes:

**A. Rent \$ \_\_\_\_\_**

1. Current month/week \$ \_\_\_\_\_
2. Prior month \$ \_\_\_\_\_
3. Other \$ \_\_\_\_\_ why \_\_\_\_\_
4. Other \$ \_\_\_\_\_ why \_\_\_\_\_
5. Other \$ \_\_\_\_\_ why \_\_\_\_\_

(Other means: Items listed as rent in your rental agreement paid monthly to your landlord.)

**B. Late Fees (if allowed in rental agreement) are \$ \_\_\_\_\_ per day for \_\_\_\_\_ days, which is a total of \$ \_\_\_\_\_ as of the date of this notice.**

**You may settle this matter before any eviction is filed.** Your options are:

- A. Pay the total owed within 5 calendar days of receiving this notice.
- B. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving this notice.
- C. Contact the landlord and settle this matter, in writing signed by both you and the landlord.

*Receiving means: If hand-delivered – you have 5 calendar days to act from the date you or members of your household received the notice. If sent by certified mail – you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

**Failure to pay the amount owed, move out of the rental and return the keys, or settle this matter in writing may result in the landlord filing an Eviction Action. You have the right to appear in Court and dispute the Eviction Action. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Landlord  Agent

This notice is served by:

- Hand delivery to (name): \_\_\_\_\_ who is the  tenant  occupant  
 By certified mail (mail receipt #): \_\_\_\_\_

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://Housing.AZ.Gov>, the Maricopa County Justice Courts website at [www.JusticeCourts.Maricopa.Gov](http://www.JusticeCourts.Maricopa.Gov) or [www.AZLawhelp.org](http://www.AZLawhelp.org)



**Notice of Health and Safety Violation(s)  
(5 Day Notice to Move | A.R.S. 33-1368A)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(       ) - \_\_\_\_\_  
Tenant(s) Name / Address / Phone

(       ) - \_\_\_\_\_  
Landlord(s) or Agent Name / Address / Phone

Notice Date: \_\_\_\_\_

You have violated your rental agreement. The following is what happened, where it happened and when. Attach additional sheet(s) if needed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**If you do not fix the violation(s) within 5 calendar days of receiving this Notice your landlord may file an Eviction Action requiring you to move.**

**You may settle this matter before an eviction action is filed.** Your options are:

- A. Fix the violation(s) within 5 calendar days of receiving of this notice.
- B. Move out of the rental and **return the keys** to the landlord within 5 calendar days of receiving his notice.
- C. Contact the landlord and settle this matter in writing signed by both you and the landlord.

*Receiving means: If hand-delivered – you have 5 calendar days to act from the date you or members of your household received the notice. If sent by certified mail – you have 5 calendar days to act from the date you signed the postal service green card or 10 calendar days from the date the envelope was post-marked, whichever comes first.*

**Failure to fix the violation(s), move out or settle this matter may result in an Eviction Action. You have the right to appear in court to dispute the Eviction Action. After a Hearing, the Judge may order you to move. A Writ of Restitution (a court order to have you removed from the rental) may be issued. If a judgment is entered against you, you may remain in the rental property only if the landlord agrees in writing to let you stay.**

**WARNING:** If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a Notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an Eviction Action.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Landlord  Agent

This notice is served by

- Hand delivery to (name): \_\_\_\_\_ who is the  tenant  occupant
- By certified mail (mail receipt #): \_\_\_\_\_

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://housing.az.gov>, the Maricopa County Justice Courts website at [www.justicecourts.maricopa.gov](http://www.justicecourts.maricopa.gov) or [AZLawhelp.org](http://AZLawhelp.org)

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://housing.az.gov>, the Maricopa County Justice Courts website at [www.justicecourts.maricopa.gov](http://www.justicecourts.maricopa.gov) or AZLawhelp.org

**Notice of Material Breach  
(10 Day Notice to Move | A.R.S. 33-1368A)**

---

---

---

---

(        ) -  
Tenant(s) Name / Address / Phone

(        ) -  
Landlord(s) or Agent Name / Address / Phone

Notice Date: \_\_\_\_\_

You have violated your rental agreement. The following is what happened, where it happened and when. Attach additional sheet(s) if needed.

---

---

---

---

**If you do not fix the violation(s) within 10 calendar days of receiving this Notice your landlord may file an Eviction Action requiring you to move.**

**You may settle this matter before any legal action.** Your options are:

- A. Fix the violation(s) within 10 calendar days of receiving this notice.
- B. Move out of the rental and **return the keys** to the landlord within 10 calendar days of receiving this notice.
- C. Contact the landlord and settle this matter in writing signed by both you and the landlord.

*Receiving means: If hand-delivered – you have 10 calendar days to act from the date you or members of your household received the notice. If sent by certified mail – you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

**Failure to fix the violation(s), move out or settle this matter may result in an Eviction Action. You have the right to appear in court to dispute the Eviction Action. After a Hearing, the Judge may order you to move. A Writ of Restitution (a court order to have you removed from the rental) may be issued. You may remain in the rental property but only if the landlord agrees in writing to let you stay.**

**WARNING:** If there is **another or similar violation** during the rest of the rental agreement, your landlord may give you a Notice requiring you to move within 10 calendar days. If you do not move, the landlord may file an Eviction Action.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Landlord     Agent

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://housing.az.gov>, the Maricopa County Justice Courts website at [www.justicecourts.maricopa.gov](http://www.justicecourts.maricopa.gov) or [AZLawhelp.org](http://AZLawhelp.org)

This notice is served by:

- Hand delivery to *(name)*: \_\_\_\_\_ who is the  tenant  occupant
- By certified mail *(mail receipt #)*: \_\_\_\_\_

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://housing.az.gov>, the Maricopa County Justice Courts website at [www.justicecourts.maricopa.gov](http://www.justicecourts.maricopa.gov) or AZLawhelp.org

**Notice of Material and Irreparable Breach  
(Immediate Notice to Move | A.R.S. 33-1368A)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(        ) - \_\_\_\_\_  
Tenant(s) Name / Address / Phone

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(        ) - \_\_\_\_\_  
Landlord(s) or Agent Name / Address / Phone

Notice Date: \_\_\_\_\_

You have violated your rental agreement. **The violation(s) cannot be fixed. You must move out now.** The following is what happened, where it happened and when. Attach additional sheet if needed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please move out of the rental and return the keys to the landlord immediately.** An Eviction Action may be or has been filed against you. You have the right to appear in court to dispute the Eviction Action. After a Hearing, the Judge may order you to move. A Writ of Restitution (a court order to have you removed from the rental) may be issued between 12-24 hours from the date a judgment is signed.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Landlord  Agent

This notice is served by

Hand delivery to (name): \_\_\_\_\_ who is the  tenant  occupant

By certified mail (mail receipt #): \_\_\_\_\_

**Notice of Repeat Material or Health and Safety Breach  
(10 Day Notice to Move | A.R.S. 33-13868A)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(        ) - \_\_\_\_\_  
Tenant(s) Name / Address / Phone

(        ) - \_\_\_\_\_  
Landlord(s) or Agent Name / Address / Phone

Notice Date: \_\_\_\_\_

You have violated your rental agreement again. **This violation cannot be fixed. You need to move.**

The first violation was on this date \_\_\_\_\_. Attached is a copy of the 1st notice.

You committed the same or similar violation again. This is what happened, when it happened and where it happened (Attached are additional sheet(s) if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This is a second material violation during the term of your rental agreement. Your landlord is ending your rental agreement and your right to live in the property. Because the repeat violation cannot be fixed, **you must move out of the rental and return the keys within 10 calendar days of receiving this Notice.**

If you do not move out within 10 calendar days of receiving this Notice your landlord may file an eviction action against you. You have the right to appear in court to dispute the Eviction Action. After a Hearing, the Judge may order you to move. A Writ of Restitution (a court order to have your removed from the rental) may be issued. You may remain in the rental property only if the landlord agrees in writing to let you stay.

*Receiving means: If hand-delivered – you have 10 calendar days to act from the date you or members of your household received the notice. If sent by certified mail – you have 10 calendar days to act from the date you signed the postal service green card or 15 calendar days from the date the envelope was post-marked, whichever comes first.*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Landlord  Agent

This notice is served by

- Hand delivery to (name): \_\_\_\_\_ who is the  tenant  occupant  
 By certified mail (mail receipt #): \_\_\_\_\_

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://housing.az.gov>, the Maricopa County Justice Courts website at [www.justicecourts.maricopa.gov](http://www.justicecourts.maricopa.gov) or [AZLawhelp.org](http://AZLawhelp.org)

**NOTICE OF NON-RENEWAL OF RENTAL AGREEMENT  
(THIRTY DAY NOTICE TO MOVE | A.R.S. § 33-1375)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(        ) - \_\_\_\_\_  
Tenant(s) Name / Address / Phone

(        ) - \_\_\_\_\_  
Landlord(s) or Agent Name / Address / Phone

Notice Date: \_\_\_\_\_

Your rental agreement will not be renewed by your Landlord. In addition (check one box below),

Your rental agreement is month-to-month. This notice will end your rental agreement on \_\_\_\_\_ (end date). The end date is the last day of that month-to-month period. You must have received this notice at least 30 days before the end date.

Your rental agreement is  oral  written. It has an end date of \_\_\_\_\_. Your possession of the rental will end on this date. You must have received this notice at least 30 days before the end date.

You must move out of the rental by the end date. **Under Arizona law, your landlord does not have to provide a reason for not renewing the rental agreement.**

*Received means: If hand-delivered to you by the landlord, the date it was given to you. If by certified mail, it is the date the post office gave it to you or five days after the post mark date, whichever comes first.*

**The failure to move out of the rental by the end date may result in an Eviction Action being filed against you. You may remain in the rental only if the landlord agrees in writing to let you stay.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Landlord  Agent

This notice is served by

Hand delivery to (name): \_\_\_\_\_ who is the  tenant  occupant

By certified mail (mail receipt #): \_\_\_\_\_

The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://housing.az.gov>, the Maricopa County Justice Courts website at [www.justicecourts.maricopa.gov](http://www.justicecourts.maricopa.gov) or [AZLawhelp.org](http://AZLawhelp.org)



## Maricopa County Justice Courts

# GENERAL INFORMATION ABOUT LANDLORD AND TENANT RIGHTS AND OPTIONS BEFORE YOU COME TO COURT

– Draft 8.03.15 –

### Introduction

This is general information about the rights, obligations and options landlords and tenants have before an eviction case is filed. This information is not a substitute for an attorney and does not cover every situation.

A landlord cannot lock a tenant out of the rental or force the tenant out.

The information refers to sections of the Arizona Residential Landlord and Tenant Act. The Act may be found at [www.housing.az.gov](http://www.housing.az.gov).

The topics covered are:

[Fill in all major headings – with links]

### Tenant Obligations (what is expected of tenants)

A tenant must do the following: A.R.S. §§ 33-1341 & 33-1344.

- Pay rent on time
- Keep the residence clean and safe
- Remove and dispose of trash
- Keep all plumbing fixtures clean
- Use electrical appliances, heating and air-conditioning systems and plumbing in a reasonable manner
- Not deliberately or negligently damage the property or allow someone else to do so
- Use the property only as a residence, unless there is a different agreement
- Allow reasonable access to the landlord to inspect the rental or make needed repairs with at least 2 days' notice, unless there is an emergency or entry is in response to a tenant request for repairs – A.R.S. § 33-1343

- Follow the rules of the property and the rental agreement
- Require all guests to follow the rules of the property and the rental agreement
- Promptly notify the landlord in writing of needed maintenance or repairs
- Do not knowingly move property into the rental that has bedbugs. A.R.S. § 33-1319
- Give written or electronic notice to the landlord of any bedbugs in the rental

### **Landlord Obligations (what is expected of landlords)**

A landlord must do the following: A.R.S. §§ 33-1322 – 1324.

- Make necessary repairs so that the rental is fit and habitable
- Keep common areas clean and safe
- Give the tenant the name and address of the rental's manager and owner (or another person who can receive notices, requests or court papers on behalf of the owner)
- Explain where the tenant may get a free copy of the Arizona Residential Landlord and Tenant Act
- Give the tenant a signed copy of the rental agreement, if there is a written agreement
- Give the tenant keys to and possession of the rental
- Give the tenant a form to list any damage to the rental at time of move-in
- Keep the rental up to the building codes
- Keep all electrical, plumbing, heating, and air-conditioning equipment in good working condition
- Provide trash removal
- Supply running water and reasonable amounts of hot water
- Give the tenant at least 2 days' notice before entering the rental in order to inspect or make needed repairs, unless there is an emergency or there is a request by the tenant for repairs – A.R.S. § 33-1343
- Give the tenant educational materials about bedbugs – A.R.S. § 33-1319
- Not lease a rental that is known to have bedbugs

## Tenant's Options for a Landlord's Violations

- **Tenant Options if Landlord Fails to Make Needed Repairs – Self-Help for Minor Repairs (when not caused by tenant or tenant's guest) – A.R.S. § 33-1363**
  - This option applies to repairs that cost less than \$300 or half of a month's rent
  - If the tenant wants the landlord to make any repairs, the tenant must put the request in writing
  - If the landlord does not make the repairs quickly if it is an emergency or within 10 days of the notice for other repairs, the tenant may:
    - Hire a licensed contractor to make the repairs  
The licensed contractor must give a waiver of lien. This is a signed statement that the contractor will not put a lien on the property for the work done. [link]
    - Give the repair bill and the lien waiver to the landlord, and
    - Deduct the cost of the repair from the rent
  - Sample notices are available at [www.AZLawHelp.org](http://www.AZLawHelp.org).
  
- **Tenant Options for Landlord's Failure to Provide Essential Services (when not caused by tenant or tenant's guest) – A.R.S. § 33-1364**
  - If a landlord fails to provide running water, hot water, gas, electrical services, heat, air conditioning or cooling or other essential services, required by the rental agreement or statute, the tenant may give a reasonable written notice to the landlord about the failure to provide the service and do one of the following:
    - Get the service, such as bottled water or a space heater and deduct the cost from the rent
    - Put the utilities in the tenant's name and deduct the cost from the rent
    - Pay the past due utility bill and deduct it from the rent
    - Get other housing and not pay rent while the utilities or services are not provided
    - Sue for damages either in a separate lawsuit or as a counterclaim to an eviction for the reduced value of the rental
    - Get an injunction for the landlord to provide the services or utilities

- Sample notices are available at [www.AzLawHelp.org](http://www.AzLawHelp.org).
- **Tenant Options for Other Violations by the Landlord (not covered above) – A.R.S. § 33-1361**
  - If a landlord violates the rental agreement, a tenant may give the landlord one of the following written notices:
    - A notice for health and safety violations. The notice shall give the landlord 5 days to fix the problem.[link]
    - A notice for other violations. The notice shall give the landlord 10 days to fix the problem. [link]
    - In each of the above situations, if the landlord does not fix the problem, the tenant can end the lease and sue for damages and injunctive relief.
  - Unlawful Access: If the landlord enters the rental without 2 days’ notice, unless it is an emergency, or in response to a repair request, or enters in an unreasonable manner or makes requests that unreasonably harass the tenant, the tenant may
    - Sue for an injunction to keep the landlord out or
    - End the lease
    - In either situation, the tenant may sue for actual damages of not less than 1 month’s rent. A.R.S. § 33-1376(B).
  - Unlawful Removal for Rental: (needs to be developed)
  - Reduction in Essential Services: (needs to be developed)
  - Sample Notices also are available at [www.AzLawHelp.org](http://www.AzLawHelp.org)

### **Landlord’s Options for Tenant Violations**

- Tenant Does Not Pay All Rent Owed:
  - The landlord may give the tenant a written notice asking for payment of the rent owed within 5 days and telling the tenant that the lease will end if all rent and reasonable late fees (if in the rental agreement) are not paid. [Sample 5 day notice with link].
- Health and Safety Violations:
  - If a tenant’s actions affect health and safety, the landlord may give a written notice asking the tenant to fix the violation within 5 days and telling the tenant that the lease will end if the tenant does not fix the violation. [link]

- In each of the above situations, if the tenant does what is asked, the lease continues and the tenant can stay in the rental. If the tenant does not do what is asked, the landlord may file an eviction action.
- Serious Criminal Activity or Major Violations:
  - For some serious tenant actions, the landlord may give a written notice for the immediate end of the lease. [link]. The tenant does not have the option to fix the problem and the landlord may file an eviction.
- Other Violations with Option to Fix the Problem:
  - If the tenant violates the rental agreement and it is not covered by the above situations, the landlord may give a written notice to the tenant to fix the problem within 10 days. [link to sample 10 day notice]. If the tenant does not fix the problem, the landlord may file an eviction action. If the tenant fixes the problem, the landlord should not file an eviction. The tenant will get to stay in the rental.
- Denial of Access: If the tenant denies the landlord reasonable access to the rental or access after 2 days' notice the landlord may
  - Sue for an injunction to allow access, or
  - End the rental agreement, and
  - In either case, sue for actual damages. A.R.S. § 33-1376(A).
- Sample Notices also are available at: [www.AzLawHelp.org](http://www.AzLawHelp.org)

### **Notice to Tenant to End Rental Agreement – A.R.S. § 33-1375**

- For a week to week tenant, the landlord may end the rental agreement by giving the tenant a written notice to move at least 10 days prior to the last day of the week to week period. [link].
- For a month to month tenant, the landlord may end the rental agreement by giving the tenant a written notice to move at least 30 days prior to the last day in the month to month period. [link].
- In both situations, if the tenant remains in the rental after the notice, the landlord may sue for possession of the rental.
  - If the tenant's action is willful and not in good faith, the landlord may sue for 2 months' rent or actual damages, whichever is greater.
- **Landlord must give the tenant the notice**
  - For the above notices, the time to serve is added to the front of notice, not the end as with other notices
  - The landlord may give the notice by hand delivery or by certified mail.

- The days in the notice start to count
  - The day there is hand delivery or
  - If certified mail, once you sign the green card or 5 days after the envelope was postmarked, whichever comes first.

Sample Notices are available at: \_\_\_\_\_

### **Rights of the Military to End the Rental Agreement**

- A military member or military member’s family may break or end early his or her rental agreement if military service is to begin or there is a Permanent Change of Station or deployment of at least 90 days. 50 App. U.S.C.A. § 535(a).
- To end a rental agreement, the military member must give the landlord a written notice and a copy of the military orders. 50 App. U.S.C.A. § 535(c)(1)(A). [link]
- The notice may be served on the landlord in person or by certified mail, return receipt requested.
- Rent is owed during the notice period.

### **Other Protections for Tenants**

- **Protection from Discrimination**
  - A landlord cannot discriminate against a family with a minor child, or because of the tenant’s race, color, sex, religion, ethnicity or disability. A.R.S. § 41-1491 - 1491.37 (state fair housing law link); Federal Fair Housing Law (42 U.S.C. § 3604).
  - Complaints of discrimination may be filed with the Arizona Civil Rights Division of the Arizona Attorney General’s Office. Information may be found at [www.azag.gov](http://www.azag.gov) or by calling the Phoenix office (602-542-5263/1-877-491-5742) or the Tucson office (520-628-6500/1-877-491-5740).
  - The Southwest Fair Housing Council provides various housing services including investigating complaints of discrimination, mediations and training. [Swfhc.com](http://Swfhc.com) or 602-252-3423.
  - The Arizona Department of Housing provides training for landlords and tenants on housing discrimination. [www.housing.az.gov](http://www.housing.az.gov).
- **Protection for Victims of Domestic Violence – A.R.S. § 33-1318**
  - A victim of domestic violence may end the rental agreement early and move out if the tenant gives the landlord

- A written notice that she or he is a victim of domestic violence and wants to end the lease within 30 days, (link to sample notice) and
- A copy of an order of protection issued to the tenant or a copy of a police report that shows the tenant told the police she or he was a victim of domestic violence
- The notice and order of protection or police report must be given to the landlord within the 30 days of the domestic violence (landlord may waive this requirement)
- If proper notice is given
  - The tenant must pay any current rent owed before moving out of the rental
  - The tenant does not owe any future rent for the time after the end of the notice
- A victim of domestic violence may ask the landlord to install a new lock at the tenant's expense
- A landlord must not let a tenant who has an order of protection against them have access to the rental unless the tenant is with the police
- More information can be obtained from the Arizona Coalition to End Sexual and Domestic Violence. [www.acesdv.org](http://www.acesdv.org); (602) 279-2900.
- **Protection from Retaliation – A.R.S. §33-1381**
  - A landlord may not retaliate against a tenant by increasing rent, decreasing services or threatening an eviction because the tenant did any of the following:
    - Complained to a government agency that enforces building or housing codes about violations that significantly affects health and safety
    - Complained to the landlord about the landlord's failure to keep the rental fit and habitable as required by A.R.S. 33-1324 [link].
    - Organized or became a member of a tenants' union or similar organization.
    - If any of the above occurred, the tenant may claim retaliation as a defense to the eviction.

- There is a presumption that the eviction is in retaliation if any of the above actions occurred within the 6 months before the eviction was filed.
- A landlord can file an eviction for rent owed or health and safety violations.

**Security Deposits – A.R.S. § 33-1321**

- A security deposit may be no more than 1½ months’ rent
- Upon tenant request, a landlord must give a tenant written notice of the move-out inspection date and the right to be present [link to notice]
- Upon tenant request, a landlord must return the security deposit to the tenant and give the tenant an itemized list of damages within 14 business days (not counting weekends and holidays) [link to notice]
- If the landlord does not return the security deposit or give the itemized list, the tenant may file a lawsuit to get the security deposit returned and up to 2 times the amount wrongfully withheld [link here to sample complaint for return of security deposit]
- A lawsuit to get a security deposit returned is not part of an eviction case

**Public Housing or Section 8 Housing:**

If you live in public housing, subsidized housing or have a Section 8 voucher, you may have other protections in federal law. [link]. You should tell the judge that you live is this type of housing.

- **More Information:**

The above information is general information for landlords and tenants. More information may be found at the following websites:

AzLawHelp. [www.AzLawHelp.org](http://www.AzLawHelp.org).

Community Legal Services. [clsaz.org](http://clsaz.org)

Southern Arizona Legal Aid. [sazlegalaid.org](http://sazlegalaid.org)

DNA People’s Legal Services. [dnalegalservices.org](http://dnalegalservices.org).



## Maricopa County Justice Courts

### GENERAL INFORMATION FOR TENANTS WHO HAVE BEEN SERVED WITH EVICTION COURT PLEADINGS

– Draft 8.04.15 –

This is general information to help you understand the eviction court process. This information is not a substitute for an attorney and does not cover every situation in court.

The topics covered are:

[Fill in all major headings with links]

#### **An Eviction Case is Filed When the Landlord Wants You to Move Out of the Rental**

- A landlord cannot lock a tenant out or force a tenant out of the rental. Only a judge can order a tenant to move out.
- An eviction case is filed when the landlord claims you violated the rental agreement or for some other reason the landlord wants to end the rental agreement.
- The landlord should have served you with a copy of the notice to move out.
- If you did not move out, the landlord can file an eviction case.
- To start the eviction, the landlord must serve you with a summons and complaint and a copy of the Residential Eviction Information Sheet.
- The summons will tell you when and where to come to court.
- At court, the judge will decide if you can stay in the rental or if you must move.
- Most landlords are represented by an attorney. You may want to get legal advice. In Maricopa County, you may want to contact Community Legal Services at (602) 258-3434 or [www.clsaz.org](http://www.clsaz.org) or the Modest Means Program at (866) 637-5341. Information also is provided at [www.AzLawHelp.org](http://www.AzLawHelp.org).

- **Note:** An eviction should not be filed if you already moved out of the rental. If you moved out of the rental and owed rent, the landlord must file a lawsuit for the rent owed.

**If you do not come to court, the Judge will only have the landlord's documents to review and a Judgment will likely be entered against you.**

### **If You Represent Yourself**

- You may want to review the information in the Arizona Residential Landlord and Tenant Act and the Arizona Rules of Procedure for Eviction Actions. [Links]. The Act may be found online at [www.housing.az.gov](http://www.housing.az.gov).
- During the eviction case, there are certain steps you should follow. This information is provided to assist you in general to present your case.
- The clerks are not attorneys and cannot give legal advice. The clerks' responsibility is to take your court filings, provide forms and explain court procedures.
- If you need an interpreter or reasonable accommodation, please let the court know as soon as possible.

### **Continuing the Court Date**

- Before the court date:
  - Any request to continue the court date must be in writing.
  - A continuance will only be granted for good cause and will not be for more than 3 court days unless the parties agree to a longer continuance.
- In court:
  - The case may be continued because of the judge's schedule, or at the request of either party for good cause for no more than 3 court days. The parties can agree to a longer continuance.

### **What Will Happen on the Scheduled Court Date**

- **Prior to the hearing:**
  - Your summons will tell you the address and telephone number of the court that will hear the case and the date and time of the hearing.
  - Be sure to let the court know as soon as you can if you need an interpreter or a reasonable accommodation.
  - You should plan to arrive in court at least 30 minutes before your hearing. **Do not be late.**

- In many courts you will need to check in with the clerk and then go to the courtroom.
- Once in the courtroom, please pay attention and listen for your case to be called.
- Answer: In Justice Court a written answer is not required. You do not have to file a written answer unless the court orders you to file one. [link to answer]. If you do not file a written answer, you will tell the judge what happened.
  - If you want to file an answer, there is a filing fee. If you cannot afford the filing fee, you have a right to ask for a waiver or deferral of the filing fee. To find out the amount of the filing fee, [link] or go to the \_\_\_\_\_.
  - Ask the clerk for an application for a fee waiver or deferral. [link to pleading].
  - If you have any affirmative defenses to the eviction, those should be stated with the answer. [link].
- Counterclaim:
  - A tenant may claim that the landlord owes the tenant money. This is called a counterclaim.
  - In eviction cases, the counterclaim must be because the landlord violated the rental agreement or the Arizona Residential Landlord and Tenant Act.
  - A counterclaim is filed at the same time the answer is due. The fee to file an answer covers the counterclaim. If you cannot afford the filing fee, ask the clerk for an application for a fee waiver or deferral. [link].
  - If a counterclaim is filed, it will be considered and decided at the time of trial. [link to counterclaim].
  - If a counterclaim is filed, the judge may require you to pay the rent you agree you owe to the justice court. The court will hold the rent paid until the judge decides who gets the rent at the end of the hearing or trial.
  - The court has prepared an answer and counterclaim packet. [link].
- Please bring any documents and any witnesses to court.
- Rule 10 of the Rules of Procedure for Eviction Actions allows for certain disclosures and more formal discovery. [link].

- **The hearing on your case:**
  - The judge will call each case by the name of the landlord and the tenant.
  - The judge will ask you and your landlord questions to decide if you will have to move and if you owe any rent.
  - Be sure to let the judge know if you have any witnesses or documents.
  - Listen to the questions the judge asks. If you do not understand a question, let the judge know. Answer the questions the best you can.
  - Be polite and courteous to the judge and the landlord.
  - The judge will decide:
    - If you were properly served with the summons and complaint.
    - If the summons and complaint included the required information and notice.
    - If you received a proper notice and the opportunity to fix the problem.
    - If the eviction is for rent owed, whether the landlord followed the required procedures. If the landlord did, whether you paid the rent owed.
      - If the landlord accepted a partial payment, whether a waiver was signed by the tenant.
    - If the eviction is for violation of the rental agreement, whether the landlord followed the proper procedures. If the landlord did, whether you violated the rental agreement, and if you did, whether you fixed the problem as requested.
    - If the tenant filed any affirmative defenses, whether these defenses defeat the landlord's case.
    - If the tenant filed a counterclaim, whether the landlord owes the tenant any money.
- The landlord will go first and may call witnesses and offer documents as evidence to support the landlord's claims.
- The tenant may question any witnesses or object to the admission of any documents.
- After the landlord finishes, the tenant will then present his or her case. The tenant may call witnesses and offer documents to support the tenant's claims.

- The landlord may question any witnesses and object to the admission of any documents.
- The judge will hear testimony from both sides, review the documents and make a decision.
- The hearing will be tape recorded.
- **The Judge's Decision:**
  - **If the judge finds for the landlord**, the judge will look at the rental agreement, what the landlord asked for in the complaint and what was proven in court. The judgment may include an order for:
    - Unpaid rent through the end of the month.
    - Reasonable late fees (only if provided for in a written agreement)
    - Damages to the property (only if requested in the complaint and proven)
    - Any unpaid utilities and rental concessions (only if provided for in a written agreement and requested in the complaint and proven)
    - Attorney fees (only if provided for in a written agreement).
    - Court costs paid
    - Annual interest rate on the unpaid judgment
    - The tenant to leave the rental and return the keys to the landlord
    - If a counterclaim was filed, the judge will decide if the landlord owes the tenant any money.
    - If you are ordered to move out of the rental, but do not move, the landlord can ask the judge for a Writ of Restitution. A writ is an order that tells the constable to remove you from the rental. Writs are explained below.
  - **If the judge finds for the tenant:**
    - The tenant will get to stay (remain) in the rental.
    - The judge may enter judgment for the tenant or the eviction may be dismissed.
    - If the tenant was unlawfully removed from the rental by the landlord, the tenant may get possession of the rental back or end the rental agreement. [needs to be developed].

- If the landlord intentionally reduced essential services such as electric, gas or water, the tenant may get possession of the rental or end the rental agreement. [needs to be developed].
  - If either of the above things happened, the tenant may get 2 months' rent or 2 times the actual damages, whichever is greater.
  - If the landlord locked out the tenant from the rental and the tenant wants back in, the judge may give a judgment of possession of the rental to the tenant and order the landlord to immediately let the tenant back into the rental. The tenant may obtain a Writ of Restitution [more information can be found at the end of these materials in the "Special Issue" section.] The court has prepared a \_\_\_\_\_. [link].(needs to be developed)
- If a counterclaim was filed, the judge will decide if the landlord owes the tenant any money.
- Attorney fees (only if provided for in a written agreement).
- Court costs (if any paid).
- Annual interest rate on the unpaid judgment.
- When you are in court.
  - Be sure to get a copy of the judgment.

### **Right to Stay in Rental After Eviction Case Filed**

- If the eviction was filed because of rent owed and the judge has **not** entered a judgment, the tenant can stay if all rent, late charges, attorney fees and court fees are paid.
- **After** a judgment is entered for the landlord, even if you pay the entire judgment amount, the landlord may still go ahead with the eviction and have the constable remove you from the rental. If you want to stay in the rental and pay the amount owed, you should get the agreement in writing or get a new written rental agreement with your landlord.
- **Caution:** After judgment, if you pay the judgment amount and the landlord is not willing to give you a written agreement or a new lease, you may still be evicted and will need to find other housing.

### **Offers to Settle the Case**

- The parties may decide to settle the case.

- Be sure to get any settlement in writing so you understand what you and your landlord agreed to.

### **A Jury Trial**

- A landlord or a tenant can ask for a jury trial. A jury trial is where citizens from the community decide who should win the case.
- If a jury trial is requested, the parties will be asked to submit prepared jury instructions to the court before trial. [link to form eviction jury instructions].
- If a jury trial is not requested, the judge will hear and decide the case.
- The parties may be asked to exchange the names of witnesses expected to be called at trial and list of exhibits expected to be used at trial. [link to disclosure statement].
- If the party who requests a jury loses, the party will be required to pay jury fees.

### **If the Judge Orders the Tenant to Move Out**

- The judge may order the tenant to move by a certain date.
- If the tenant does not move out, the landlord may ask the judge for a Writ of Restitution. This is an order that tells the constable to remove the tenant from the rental.
- A landlord cannot change the locks or force a tenant out of the rental. The landlord must ask for a writ.
- **The Writ:** The landlord can get the writ when the time for the tenant to move has ended.
  - Usually the judge will give the tenant 5 calendar days to move. In the case of an immediate eviction for serious violations, the judge will order the tenant to move out immediately. The landlord will get the writ between 12 and 24 hours after the judgment is signed or soon thereafter.
  - The writ will tell the constable to tell the tenant to immediately leave the rental. You will be able to take some property with you such as clothes, tools, professional books, identification, medication and financial documents. For other property you will need to make arrangements to come back to the rental within 21 days and get your property. In most cases, the landlord will change the locks.
  - If after the constable tells you to leave, you try to go back to the rental without permission, you may be charged with a criminal offense. A.R.S. § 12-1178(D).

- If you can, it is better if you move out before the constable comes out.

### **Appeal of a Judge’s Decision When You Did Not Come to Court**

- If you did not come to court and a judgment was entered against you, it is called a Default Judgment.
- A tenant cannot appeal a default judgment. Instead, the tenant must first ask the judge to vacate the judgment. If the judge vacates the judgment, the judgment is gone.
- The court has prepared a motion to vacate packet with instructions and a motion to vacate. [link].
- If the judgment is gone, then the judge will make a new decision. The tenant and the landlord can appeal that decision.
- If the judge does not vacate the judgment, you can appeal that decision.

### **Appeal of Judge’s Decision When You Came to Court**

The court has prepared an “Appeal an Eviction Action Judgment” package that has information on appeals and forms. [link]. There also is General Information About Appeals in Rule 17 of the Rules of Procedure for Eviction Actions [link] and A.R.S. §12-1179. [link].

As you read the information, remember that everything related to the appeal will be filed in the justice court that entered the judgment in your eviction.

- **The Steps to File an Appeal:**
  - A tenant may appeal a justice court judgment (except a default judgment) to the Superior Court. To appeal, the tenant must do the following within 5 days of the date of the judgment:
    - File a **Notice of Appeal** with the Justice Court. [link] There is a fee to file an appeal and if you cannot afford the fee, you can ask for a fee waiver or deferral. [link]
    - Pay money to the court called a **Cost Bond**. This amount is set by the judge. The Cost Bond is paid to the Justice Court that entered the judgment. If you cannot afford a Cost Bond, you can file a statement with the court giving the reasons you cannot pay the Cost Bond. The statement is called An Affidavit of Inability to Post Cost Bond. [link to affidavit].
    - **File a designation of record**. This lists the parts of the record you want the Superior Court to consider on the appeal. [link to form designation of record].

- The clerks can give you information about bonds, court costs, and applications for fee waivers and deferrals.
- **Time to File the Notice of Appeal:**
  - Either party may appeal an eviction judgment by filing a Notice of Appeal within 5 calendar days from the date of judgment.
    - When the 5<sup>th</sup> day falls on a holiday or a weekend, you will have until the day after the holiday or the weekend to file the appeal.
  - If a judgment for the landlord is for a material and irreparable violation, the Writ of Restitution will be carried out immediately (usually within 12 - 24 hours). The Notice of Appeal in this situation should be filed before the writ is issued if you want to remain in the rental.
  - The judge cannot extend the time for the appeal.

**Please Note: The filing of a notice of appeal does not stop the landlord from:**

- **Having the constable remove the tenant from the rental or**
- **Collecting the money owed in the judgment from the tenant.**
- **To stop these things from happening during the appeal, a tenant will have to post the following bonds.**

**To Stay in Rental During the Appeal**

- **If The Tenant Wants to Stay in the Rental During the Appeal, the Tenant Must Pay A “Supersedeas Bond” to the Court:**
- Filing a Notice of Appeal does not by itself stop the Writ of Restitution. If you want to stay (remain) in the rental during the appeal, you must file a supersedeas bond.
  - This bond amount is set by the judge. It is the only way to stop the Writ of Restitution. The stop is effective **when** the bond is posted.
  - You are not required to post a supersedeas bond to file an appeal. The appeal will continue with or without a supersedeas bond. However, a supersedeas bond is the **only** way to stop your removal from the rental.
  - If you want to remain in the rental, the judge cannot waive a supersedeas bond.
  - A supersedeas bond is paid to the court that entered the judgment.
  - How the supersedeas bond is determined:

- You will have to pay to the court any prorated rent due from the date of the judgment to the next rent due date. This amount of rent is not listed in the judgment.
- You will also have to pay to the court any costs and attorney fees listed on the judgment.
- During the appeal, you must continue to pay to the court the rent as it becomes due. If the tenant fails to make a rent payment, the landlord may ask the judge for an order that the tenant must leave the rental.
- You should try to file the supersedeas bond before the constable comes out to remove you. [Rule 6 of Superior Court Rules of Appellate Procedure link].

### **To Stop the Landlord from Collecting the Money Judgment During the Appeal**

- **If the Tenant Wants to Stop the Landlord from Collecting the Money Part of the Judgment During the Appeal, the Tenant Must Pay the Amount Appealed to the Court:**
- Filing a Notice of Appeal does not stop the landlord from collecting the money judgment such as by garnishment of wages. To stop a collection, a bond must be filed.
- The tenant will have to pay to the court that entered the judgment the amount of the judgment that the tenant is appealing. This also is called a “supersedeas bond” or “rent pending appeal.”
- If the tenant is appealing the entire judgment, the tenant should pay the full judgment, attorney fees and costs listed on the judgment to the court.

**Important:** The tenant should not pay any rent directly to the landlord during the appeal.

### **Other Steps in the Appeal**

- Get copy of court CD (record of court hearing) from the Justice Court. If there is a cost for the CD and you cannot afford the cost, you can file a request for waiver or deferral of the fee. [link]. The CD will be part of the evidence in the appeal but it also will help you prepare an appeal memo.
- After the Justice Court receives the record and the Notice of Appeal, it will tell the tenant when the first memo is due. The due date is 60 days from the deadline to file the notice of appeal. This memo must be in writing. [link to sample memorandum]. The tenant should review the Superior Court Rules of Civil Appellate Procedure, Rule 8 that explains the requirements for a memo. [link] In the memo, you should tell the court the reasons you think the judge’s decision is wrong. [link to memo].

- You must file an original and one copy of your memo with the justice court that heard the case.
- There is a fee to file the appeal with the Superior Court. If you cannot afford the fee, you can request a fee waiver or deferral of the fee. [link]
- The landlord has 30 days to file a memo giving the landlord’s reasons why the tenant should lose.
- The tenant must get permission from the Superior Court to file a reply memo.
- The Superior Court will review the documents submitted and make a decision. The decision will be in writing.
- Either party can file an appeal of the Superior Court’s decision to the Arizona Supreme Court.
- Be sure to tell the court if you move. The court has “change of address” forms you can use. [link].

**Special Issue: When the Landlord has Locked Out the Tenant. (needs more development)**

This can happen either before or after the landlord has filed an eviction.

- **When an eviction action is filed.**
  - If a landlord has changed the locks or forced the tenant out of the rental, the tenant may appear in court and explain the situation. The judge may give possession of the rental to the tenant and order the landlord to immediately let the tenant back in the rental. (this is disputed and needs more development).
  - If the landlord refuses, the tenant may ask the judge for a Writ of Restitution. This is an order that tells the constable to allow the tenant in the rental.[link to information on writs]
- **When there is no eviction action filed by the landlord**
  - The tenant will need to file an eviction case against the landlord. This is referred to as a “reverse” eviction. The complaint is found at [link]. The tenant can follow the informational materials for a landlord filing an eviction action. [link].

**More Information**

If you want more information or legal advice, you may contact: In Maricopa County, you may want to contact Community Legal Services at (602) 258-3434 or [www.clsaz.org](http://www.clsaz.org) or the Modest Means Program at (866) 637-5341.

Information also is provided at:

[www.AzLawHelp.org](http://www.AzLawHelp.org).

Southern Arizona Legal Aid – [sazlegalaid.org](http://sazlegalaid.org)

DNA People’s Legal Services – [dnalegalservices.org](http://dnalegalservices.org)



## Maricopa County Justice Courts

### GENERAL INFORMATION FOR A LANDLORD FILING AN EVICTON ACTION IN JUSTICE COURT

– Draft 8.04.15 –

If the tenant has not paid rent or has violated the rental agreement or you ended the rental agreement, there are steps a landlord can take to ask the judge to remove the tenant from the rental.

This is a general outline of those steps. This information is not a substitute for an attorney and does not cover every situation.

A landlord cannot change the locks or force the tenant out of a rental. Only a judge can order a tenant to move.

#### **The First Step in the Eviction Process: Notice to Tenant, as Required**

##### **Notice to Tenant of Tenant Violations**

The first step is to give the tenant a notice. In some cases, the tenant will have the option to fix the problem.

- The kinds of notices include:
  - Tenant Does Not Pay All Rent Owed:
    - The landlord may give the tenant a written notice asking for payment of the rent owed within 5 days and telling the tenant that the lease will end if all rent and reasonable late fees (if in the rental agreement) are not paid. [Sample 5 day notice with link].
  - Health and Safety Violations:
    - If a tenant's actions affect health and safety, the landlord may give a written notice asking the tenant to fix the violation within 5 days and telling the tenant that the lease will end if the tenant does not fix the violation. [link].
  - In each of the above situations, if the tenant does what is asked, the rental agreement continues. If the tenant does not do what is asked, the landlord may file an eviction action.

- Serious Criminal Activity or Major Violations:
  - For some serious tenant actions, the landlord may give a written notice for the immediate end of the rental agreement. The tenant does not have the option to fix the problem. [link].
- Other Violations with Option to Fix the Problem:
  - If the tenant violates the rental agreement and it is not covered by the above situations, the landlord may give a written notice to the tenant to fix the problem within 10 days. If the tenant does not fix the problem, the landlord may file an eviction action. (link to sample 10 day notice)
  - If the tenant is given the option to fix the problem and does, then the landlord should not file an eviction. The tenant will get to stay in the rental.
- Denial of Access: If the tenant denies the landlord reasonable access or access after 2 days' notice to the rental, the landlord may
  - Sue for an injunction to allow access, or
  - End the rental agreement, and
  - In either case, sue for actual damages. A.R.S. § 33-1376(A).
- Tenant does not move out at end of lease
  - The lease will explain how this is handled and what steps the landlord will have to take.

Sample Notices are available at: \_\_\_\_\_

### **Landlord Must Give the Tenant the Notice**

- For the above notices, the landlord may give the tenant the notice by hand delivery or by certified mail. The days in the notice start to count:
  - When there is hand delivery, or
  - 5 days after the notice is mailed by certified mail
  - Before a landlord may file court papers to evict a tenant, the landlord must give the tenant a notice. After the time in the notice has ended, the landlord may file an eviction. Here is an example:
 

Landlord hands tenant a notice that the tenant owes rent and has 5 days to pay the rent. 5 days goes by and the tenant does not pay the rent. On the 6<sup>th</sup> day, the landlord can file an eviction.

If the notice is served by certified mail, the landlord must add 5 days to the 5 day notice period for a total of 10 days. After 10 days, the landlord can file an eviction.

If the tenant pays the rent within the time periods above, no eviction should be filed.

### **Notice to Tenant to End Rental Agreement – A.R.S. § 33-1375**

- For a week to week tenant, the landlord may end the rental agreement by giving the tenant a written notice to move at least 10 days prior to the last day of the week to week period. [link].
- For a month to month tenant, the landlord may end the rental agreement by giving the tenant a written notice to move at least 30 days prior to the last day in the month to month period. [link].
- In the above situations, if the tenant remains in the rental after the notice, the landlord may sue for possession of the rental.
  - If the tenant’s action is willful and not in good faith, the landlord may sue for 2 months’ rent or actual damages, whichever is greater.
- **Landlord must give the tenant the notice**
  - For the above notices, the time to serve is added to the front of notice, not the end as with other notices
  - The landlord may give the notice by hand delivery or by certified mail.
  - The days in the notice start to count:
    - The day there is hand delivery or
    - If certified mail, once the tenant signs the green card or 5 days after the envelope was postmarked, whichever comes first.

Sample Notices are available at: \_\_\_\_\_

### **The Second Step in the Eviction Process: Filing the Eviction in Court**

#### **Filing the Eviction:**

After you have given the tenant a proper notice and the time period in the notice is over, you may file an eviction.

## **If You Represent Yourself**

- You may want to review the information in the Arizona Residential Landlord and Tenant Act that may be found online at [www.housing.az.gov](http://www.housing.az.gov). and the Arizona Rules of Procedure for Eviction Actions. [Links].
- During the eviction case, there are certain steps you should follow. This information is provided to assist you in general to present your case.
- The clerks are not attorneys and cannot give legal advice. The clerks' responsibility is to take your court filings, provide forms and explain court procedures.
- If you need an interpreter or reasonable accommodation, please let the court know as soon as possible.

## **Where to File the Eviction:**

- Maricopa County has 26 justice courts. You must file in the justice court that covers the address of the rental. You can find out by \_\_\_\_\_.

## **What Pleadings to File:**

- Summons [link].
  - You must attach the Eviction Information Sheet
- Complaint [link].
  - A copy of the original notice must be attached to the complaint.

## **Getting the Summons Issued:**

- You will bring the summons and complaint to the clerk.
- The clerk will “issue” the summons and stamp your pleadings with a court case number.
- The clerk will give you a trial date.
- The court date will be no less than 3 days and no more than 6 days.

## **Court Fees:**

- The costs to file the eviction case can be found at [link]. If you cannot afford the filing fee, you can ask for a fee waiver or deferral. [link].

## **Serving the Court Papers:**

- The landlord must make arrangements to have the Summons and Complaint served on the tenant.
- The landlord cannot serve the court papers. The landlord must have a licensed process server or a Constable serve the court papers.

- The Summons and Complaint must be served 2 days before the court date.
- If you claim there is an immediate and irreparable violation, you may serve the notice of the violation with the summons and complaint.
  - The trial date will be set no later than 3 days after the date the complaint was filed.
- Service must be by:
  - Personal service or
  - “Post and Mail.” Before you can use post and mail, one unsuccessful attempt at service must be made. Then the pleadings can be posted on the main door to the rental and mailed by certified mail, return receipt requested. Tenant is considered to have received the summons 3 days after mailing.
- Proof the summons and complaint were served is shown by an affidavit prepared by the licensed process server or Constable. The proof of service is filed with the court.

### **The Third Step in the Eviction Process: Going to Court:**

#### **Continuing the Court Date**

- Before the court date:
  - Any request to continue the court date must be in writing.
  - A continuance will only be granted for good cause and will not be for more than 3 court days unless the parties agree to a longer continuance.
- In court:
  - The case may be continued because of the judge’s schedule, or at the request of either party for good cause for no more than 3 court days. The parties can agree to a longer continuance.

#### **What Will Happen on the Scheduled Court Date**

- **Prior to the hearing:**
  - Be sure to let the court know as soon as you can if you need an interpreter or a reasonable accommodation.
  - You should plan to arrive in court at least 30 minutes before your hearing. **Do not be late.**
  - In many courts you will need to check in with the clerk and then go to the courtroom.

- Answer: In Justice Court a tenant is not required to file a written answer.
- Counterclaim:
  - A tenant may claim that the landlord owes the tenant money. This is called a counterclaim.
  - In eviction cases, the counterclaim must be because the landlord violated the rental agreement or the Arizona Residential Landlord and Tenant Act.
  - A counterclaim is filed at the same time the answer is due.
  - If a counterclaim is filed, it will be considered and decided at the time of trial. [link to counterclaim].
- Please bring any documents and any witnesses to court.
- Rule 10 of the Rules of Procedure for Eviction Actions allows for certain disclosures and more formal discovery. [link].
- **The hearing on your case:**
  - The judge will call each case by the name of the landlord and the tenant.
  - The judge will ask you and the tenant questions to decide if the tenant will have to move and if the tenant owes any rent.
  - Be sure to let the judge know if you have any witnesses or documents.
  - Listen to the questions the judge asks. If you do not understand a question, let the judge know. Answer the questions the best you can.
  - Be polite and courteous to the judge and the tenant.
  - The judge will decide:
    - If you properly served the summons and complaint.
    - If the summons and complaint included the required information and notice.
    - If you served a proper notice and an opportunity to fix the problem, if required.
    - If the eviction is for rent owed, whether you followed the required procedures. If you did, whether the tenant paid you the rent owed.
      - If the landlord accepted a partial payment of rent, whether a waiver signed by the tenant.

- If the eviction is for violation of the rental agreement, whether you followed the proper procedures. If you did, whether the tenant violated the rental agreement, and if they did, whether they fixed the problem as requested.
- If the tenant filed any affirmative defenses, whether these defenses defeat your case.
- If the tenant filed a counterclaim, whether you owe the tenant any money.
- You will go first and may call witnesses and offer documents as evidence to support your claims.
- The tenant may question any witnesses or object to the admission of any documents.
- After you finish, the tenant will then present his or her case. The tenant may call witnesses and offer documents to support the tenant's claims.
- You may question any witnesses and object to the admission of any documents.
- The judge will hear testimony from both sides, review the documents and make a decision.
  - A hearing is required for evictions for serious and major violations. Rule 13(b)(3)(B).
- The hearing will be tape recorded.

### **The Judge's Decision**

- The judge will look at the rental agreement, what you asked for in the complaint and what was proven in court.
- **If the judge finds for you**, the judgment may include an order for:
  - Unpaid rent through the end of the month.
  - Reasonable late fees (only if provided for in a written agreement)
  - Damages to the property (only if requested in the complaint and proven)
  - Any unpaid utilities and rental concessions (only if provided for in a written agreement and requested in the complaint and proven)
  - Attorney fees (only if provided for in a written agreement).
  - Court costs paid
  - Annual interest rate on the unpaid judgment

- If a counterclaim was filed, the judge will decide if you owe the tenant any money.
- The tenant to leave the rental and return the keys to the landlord
  - The judgment will explain that if a tenant does not move out as ordered, the landlord can ask the judge for a Writ of Restitution. A writ is an order that tells the constable to remove the tenant from the rental. Writs are only used when the tenant does not move out. Writs are explained below.
- **If the judge finds for the tenant:**
  - The tenant will get to stay (remain) in the rental.
  - The judge may enter judgment for the tenant or the eviction may be dismissed.
  - If the tenant was unlawfully removed from the rental by the landlord, the tenant may obtain a judgment for [possession of the rental and a Writ of Restitution [more information can be found at \_\_\_\_\_]](needs to be developed)
  - If a counterclaim was filed, the judge will decide if the landlord owes the tenant any money.
  - Attorney fees (only if provided for in a written agreement).
  - Court costs (if any paid).
  - Annual interest rate on the unpaid judgment.
- **Judgment:**
  - A landlord should have a copy of the judgment for the judge to sign. [link].
  - Be sure the tenant gets a copy of the judgment.

### **Right to Stay in Rental After Eviction Case Filed**

- If the eviction was filed because of rent owed and the judge has **not** entered a judgment, the tenant can stay if all rent, late charges, attorney fees and court fees are paid.

### **Offers to Settle the Case**

- The parties may decide to settle the case.
- Be sure to get any settlement in writing so you understand what you and the tenant agreed to.

## A Jury Trial

- A landlord or a tenant can ask for a jury trial. A jury trial is where citizens from the community decide who should win the case.
- If a jury trial is requested, the parties will be asked to submit prepared jury instructions to the court before trial. [link to form eviction jury instructions].
- If a jury trial is not requested, the judge will hear and decide the case.
- The parties may be asked to exchange the names of witnesses expected to be called at trial and list of exhibits expected to be used at trial. [link to disclosure statement].
- If the party who requests a jury loses, the party will be required to pay jury fees.

## When the Judge Orders the Tenant to Move Out

- The judge may order the tenant to move by a certain date.
- If the tenant does not move out, the landlord may ask the judge for a Writ of Restitution. This is an order that tells the constable to remove the tenant from the rental.
- A landlord cannot change the locks or force a tenant out of the rental. The landlord must ask for a writ.
- **The Writ:** The landlord can get the writ when the time for the tenant to move has ended.
  - Usually the judge will give the tenant 5 calendar days to move.
  - If the tenant does not move out, the landlord can ask for a writ on the 6<sup>th</sup> day.
  - In the case of an immediate eviction for serious violations, the judge will order the tenant to move out immediately. The landlord can get the writ between 12 and 24 hours after the judgment is signed or soon thereafter.
  - The writ will tell the constable to tell the tenant to immediately leave the rental. The tenant will be able to take some property with them such as clothes, tools, professional books, identification, medication and financial documents. For other property, the tenant will need to make arrangements to come back to the rental within 21 days and get the property. Once the constable has removed the tenant, you can change the locks.

- The landlord is required to store the tenant’s property for 21 days. Storage fees may be charged. The requirement on storage can be found at A.R.S. § 33-1368(E).
- If after the constable tells the tenant to leave and the tenant tries to go back to the rental without permission, the tenant may be charged with a criminal offense. A.R.S. § 12-1178(D).
- The court has prepared a Writ of Restitution Packet. [link].

### **Appeal of a Judge’s Decision When You Did Not Come to Court**

- If you did not come to court and a judgment was entered against you, it is called a Default Judgment.
- A landlord cannot appeal a default judgment. Instead, the landlord must first ask the judge to vacate the judgment. If the judge vacates the judgment, the judgment is gone. The court has prepared a motion to vacate packet with instructions. [link].
- If the judgment is gone, then the judge will make a new decision. The tenant and the landlord can appeal that decision.
- If the judge does not vacate the judgment, you may appeal that decision.

### **Appeal of Judge’s Decision When You Came to Court:**

The court has prepared an “Appeal an Eviction Action Judgment” packet that has information on appeals and forms. [link]. Also, there also is General Information About Appeals in Rule 17 of the Rules of Procedure for Eviction Actions [link] and A.R.S. §12-1179. [link].

As you read the information, remember that everything related to the appeal will be filed in the justice court that entered the judgment in your eviction.

- **The Steps to File an Appeal:**
  - A landlord may appeal a justice court judgment (except a default judgment) to the Superior Court. To appeal, the landlord must do the following within 5 days of the date of the judgment:
    - File a **Notice of Appeal** with the Justice Court. [link] There is a fee to file an appeal and if you cannot afford the fee, you can ask for a fee waiver or deferral. [link]
    - Pay money to the court called a **Cost Bond**. This amount is set by the judge. The Cost Bond is paid to the Justice Court that entered the judgment. If you cannot afford a Cost Bond, you can file a statement with the court giving the reasons you cannot pay the Cost Bond. The statement is called An Affidavit of Inability to Post Cost Bond. [link to affidavit].

- **File a designation of record.** This lists the parts of the record you want the Superior Court to consider on the appeal. [link to form designation of record].
- The clerks can give you information about bonds, court costs, and applications for fee waivers and deferrals.
- **Time to File the Notice of Appeal**
  - Either party may appeal an eviction judgment by filing a Notice of Appeal within 5 calendar days from the date of judgment.
    - When the 5<sup>th</sup> day falls on a holiday or a weekend, you will have until the day after the holiday or the weekend to file the appeal.
  - The judge cannot extend the time for the appeal.

### **To Stop the Tenant from Collecting the Money Judgment During the Appeal**

- **If the Landlord Wants to Stop the Tenant from Collecting the Money Part of the Judgment During the Appeal, the Landlord Must Pay the Amount Appealed to the Court:**
- Filing a Notice of Appeal does not stop the tenant from collecting the money judgment such as by garnishment of wages. To stop a collection, a bond must be filed.
- The landlord will have to pay to the court that entered the judgment the amount of the judgment that the landlord is appealing. This is called a “supersedeas bond.”
- If the landlord is appealing the entire judgment, the landlord should pay the full judgment, attorney fees and costs listed on the judgment to the court.

### **Other Steps in the Appeal**

- Get copy of court CD (record of court hearing) from the Justice Court. If there is a cost for the CD and you cannot afford the cost, you can file a request for waiver or deferral of the fee. [link]. The CD will be part of the evidence in the appeal but it also will help you prepare an appeal memo.
- After the Justice Court receives the record and the Notice of Appeal, it will tell the landlord when the first memo is due. The due date is 60 days from the deadline to file the notice of appeal. This memo must be in writing. [link to sample memorandum]. The landlord should review the Superior Court Rules of Civil Appellate Procedure, Rule 8 that explains the requirements for a memo. [link] In the memo, you should tell the court the reasons you think the judge’s decision is wrong. [link to memo].

- You must file an original and one copy of your memo with the justice court that heard the case.
- There is a fee to file the appeal with the Superior Court. If you cannot afford the fee, you can request a fee waiver or deferral of the fee. [link]
- The tenant has 30 days to file a memo giving the tenant's reasons why the landlord should lose.
- The landlord must get permission from the Superior Court to file a reply memo.
- The Superior Court will review the documents submitted and make a decision. The decision will be in writing.

**If you Move:**

- Be sure to tell the court if you move. The court has “change of address” forms you can use. [link].

**More Information**

If you want more information, information is provided on these websites:

[www.AzLawHelp.org](http://www.AzLawHelp.org).

Community Legal Services – [www.clsaz.org](http://www.clsaz.org)

Southern Arizona Legal Aid – [www.sazlegalaid.org](http://www.sazlegalaid.org)

DNA People's Legal Services – [www.dnalegalservices.org](http://www.dnalegalservices.org)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( ) - \_\_\_\_\_  
Attorney for Plaintiff / Address / Phone / Bar Number



# Maricopa County Justice Courts, Arizona

CASE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( ) - \_\_\_\_\_  
Plaintiff(s) Name / Address / Phone

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( ) - \_\_\_\_\_  
Defendant(s) Name / Address / Phone

## COMPLAINT (Eviction Action)

- Immediate  
 Residential  Mobile Home  Commercial

### **YOUR LANDLORD IS SUING TO HAVE YOU EVICTED, PLEASE READ CAREFULLY THE ALLEGATIONS AGAINST YOU ARE LISTED BELOW.**

1. This court has jurisdiction to hear this case. The rental is within this court's judicial precinct and is located at: \_\_\_\_\_ . The business name of the property, if any, is \_\_\_\_\_ .
2. The Plaintiff wants you evicted and wants possession of the rental because of the reasons in section 5.
3. Any required written notice was served on the Defendant on \_\_\_\_\_ and was served  by hand, or  certified mail. A copy of the notice that was served is attached.
4. The Plaintiff is the owner or is authorized to file this case on behalf of the owner by law.
5. The Plaintiff claims:  
 Subsidized Housing. Total rent per month is \$ \_\_\_\_\_. Tenant's portion of rent per month is \$ \_\_\_\_\_.  
 **RENT OWED:** The Defendant has failed to pay the rent owed. The rent is unpaid since \_\_\_\_\_. There is a prior unpaid balance of \$ \_\_\_\_\_. The rental agreement requires rent of \$ \_\_\_\_\_ to be paid on the \_\_\_\_\_ day of each  month  week. The rental agreement provides for late fees calculated in the following manner: \_\_\_\_\_

**Notice:** If you are a residential tenant and the only claim your landlord makes is that you have not paid your rent, you may contact your landlord or your landlord's attorney and offer to pay all of the rent due, plus any reasonable late fees, court costs and attorney's fees. If you pay these amounts before a judgment is entered, then this case will be dismissed and your rental agreement will be reinstated and will continue.

- NON-COMPLIANCE:** After getting a notice, the Defendant failed to do the following: \_\_\_\_\_  
on this date: \_\_\_\_\_, at the following location \_\_\_\_\_
- IRREPARABLE BREACH:** The Defendant has committed a material and irreparable breach. Specifically, on this date \_\_\_\_\_, at the following location \_\_\_\_\_ the Defendant did the following: \_\_\_\_\_
- OTHER:** State the date, place and reason for eviction: \_\_\_\_\_

6. As of the filing date the Defendant owes the following:
- |                                                  |                 |
|--------------------------------------------------|-----------------|
| Rent (Current and Prior Months) Totaling . . . . | \$ _____        |
| Late Fees: (if any in written agreement) . .     | \$ _____        |
| Concessions (if any in written agreement).       | \$ _____        |
| Reimbursable Court Costs: . . . . .              | \$ _____        |
| Attorney's Fees(if allowed) . . . . .            | \$ _____        |
| Other (as authorized by law): . . . . .          | \$ _____        |
| <b>Total Amount Requested: . . . . .</b>         | <b>\$ _____</b> |

7. The Plaintiff requests a Judgment for the amounts owed above and for possession of the rental.
8. WRIT OF RESTITUTION: The Plaintiff requests the court issue a Writ of Restitution returning the rental to the Plaintiff's possession 5 days from the date of the Judgment. If the eviction is for the material and irreparable breach explained above, return of possession 12 to 24 hours from the time of the Judgment.
9. By signing this complaint, I am agreeing that the allegations written are true and correct to the best of my knowledge.

Date: \_\_\_\_\_  
\_\_\_\_\_ Plaintiff

EA 8150-212  
R: 07/27/15

DRAFT



# Maricopa County Justice Courts, Arizona

CASE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) -  
Plaintiff(s) Name / Address / Phone

( ) -  
Defendant(s) Name / Address / Phone

## SUMMONS (Eviction Action)

Amended

**THE STATE OF ARIZONA TO THE DEFENDANT(S) NAMED ABOVE. YOU ARE HEREBY SUMMONED TO APPEAR.**  
An **Eviction Case** has been filed against you. A court hearing has been scheduled.

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
At the: (court address above note: have Kim have this auto-populate)  
Courtroom: \_\_\_\_\_ Floor: \_\_\_\_\_

Please arrive early.

REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES SHOULD BE MADE TO THE COURT AS SOON AS POSSIBLE.

If an interpreter is needed, please contact the court listed above as soon as possible.

1. You have a right to come to court.
2. If you do not agree with the claims against you on the attached complaint, you must come to court at the date, time, and location listed above and explain your reasons to the judge.
3. If you do not agree with the claims in the complaint, you also may file a written answer admitting or denying some or all the claims and pay the answer fee. (see number 5)
4. If you want to file a counterclaim, it must be in writing.
5. If you cannot afford the filing fee, you may apply for a deferral or waiver of the filing fee at the court.
6. **IF YOU FAIL TO APPEAR**, a judgment will likely be entered against you, granting the relief specifically requested in the complaint, including removing you from the rental.
7. To learn more see the attached Residential Eviction Information Sheet or contact the court.

(Note: this will be amended) The laws about this Notice are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, Eviction Actions, and your rights, please visit the Arizona Department of Housing website at <https://Housing.AZ.Gov> or the Maricopa County Justice Courts website at [www.JusticeCourts.Maricopa.Gov](http://www.JusticeCourts.Maricopa.Gov).

Date: \_\_\_\_\_  
Justice of the Peace



# Maricopa County Justice Courts, Arizona

CASE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) -  
Plaintiff(s) Name / Address / Phone

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) -  
Defendant(s) Name / Address / Phone

## JUDGMENT (Eviction Action)

Amended

This matter was heard by the Court on this date: \_\_\_\_\_

Plaintiff appeared  in person  by counsel  failed to appear

Defendant appeared  in person  by counsel  failed to appear

If required by law, Defendant  was  was not given proper notice and the opportunity to cure.

Defendant  was  was not properly served with the Summons and a copy of the complaint at least two (2) days prior to Court date.

If a partial rent payment was accepted,  a non-waiver was produced  a non-waiver was NOT produced

Defendant pleads  NOT GUILTY/NOT RESPONSIBLE  Defendant has filed a counterclaim.  
 GUILTY/RESPONSIBLE

Defendant was found  GUILTY/RESPONSIBLE  NOT GUILTY/NOT RESPONSIBLE of

RENT OWED  NON-COMPLIANCE  IRREPARABLE BREACH  OTHER

IT IS HEREBY ORDERED granting judgment on the complaint to  Plaintiff  Defendant

IT IS FURTHER ORDERED granting judgment on the counterclaim to  Plaintiff  Defendant

IT IS FURTHER ORDERED granting possession of the rental to  Plaintiff  Defendant

IT IS FURTHER ORDERED granting monetary judgment to:

Plaintiff(s)

1. \$ \_\_\_\_\_ Rent
  2. \$ \_\_\_\_\_ Late charges
  3. \$ \_\_\_\_\_ Court cost
  4. \$ \_\_\_\_\_ Rental concessions
  5. \$ \_\_\_\_\_ Damages
  6. \$ \_\_\_\_\_ Attorney fees
  7. \$ \_\_\_\_\_ Other: \_\_\_\_\_
- \$ \_\_\_\_\_ TOTAL

Plaintiff awarded nothing

Defendant(s)

1. \$ \_\_\_\_\_ Court cost
  2. \$ \_\_\_\_\_ Damages
  3. \$ \_\_\_\_\_ Attorney fees
  4. \$ \_\_\_\_\_ Other: \_\_\_\_\_
- \$ \_\_\_\_\_ TOTAL

Defendant awarded nothing.

With interest at the rate of \_\_\_\_\_ % per annum from the date of judgment until paid in full.

A Writ of Restitution (order to vacate rental) shall be granted upon request of the Plaintiff on:

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
(No sooner than five (5) calendar days after date of judgment)

The court finds that the defendant has committed a material and irreparable breach, in violation of ARS 33-1368A, and a Writ of Restitution (order to vacate rental) shall be granted on:

Date: \_\_\_\_\_ Time: \_\_\_\_\_  
(No sooner than 12 - 24 hours from the time of judgment)

**WARNING:** After service of the Writ of Restitution (order to vacate rental), if you remain on or return unlawfully to the rental, you will have committed criminal trespass in the third degree.

**IT IS ORDERED** dismissing this case  with prejudice  without prejudice

Date: \_\_\_\_\_  
Justice of the Peace

I CERTIFY that I delivered / mailed a copy of this document to:

Plaintiff at the above address  Plaintiff's attorney  Defendant at the above address  Defendant's attorney

Date: \_\_\_\_\_ By \_\_\_\_\_  
Clerk