

E-Filing Policy Issue - # 4
(Eviction - Notice to Vacate)

Issue: (State the issue and whether it is specific to a certain level of court or case type.)

How should a Notice to Vacate be filed when an eviction complaint is e-filed?

Discussion: (Provide the factual setting or context for the issue.)

A.R.S. § 33-1368 requires a landlord to provide a tenant written notice of noncompliance with the rental agreement. Rule 5, Rules of Procedure for Eviction Actions requires that a copy of the notice be attached as an exhibit to the eviction complaint.

Authorities: (Provide references to specific statutes, rules, codes or administrative orders you believe are pertinent to the issue.)

A.R.S. § 33-1368. Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability for guests; definition

- A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, including material falsification of the information provided on the rental application, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten days after receipt of the notice if the breach is not remedied in ten days.

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- B. A tenant may not withhold rent for any reason not authorized by this chapter. If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement by filing a special detainer action pursuant to section 33-1377.

Rules of Procedure for Eviction Actions

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

b. Complaint. The complaint shall:

(7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. *A copy of the notice shall be attached as an exhibit to the complaint.*

Alternative Solutions: (List all identified alternative solutions for the issue.)

- Allow the filer to scan the copy of the notice to vacate and submit it as an attachment to the e-filed eviction complaint.
- Require eviction complaints to be filed on paper; not e-filed.
- Modify Rule 5 to eliminate the requirement that a copy of the notice be attached to the complaint, and instead require the filer to bring the notice to the eviction hearing. The filer might also be required to affirm in the complaint that the notice to vacate has been served upon the tenant.

Position/Recommendation: (Does the AOC E-filing team have a recommendation on this issue?)

The AOC E-filing team would like to encourage an e-filer to scan a copy of the notice to vacate and submit it as an attachment to the e-filed eviction complaint. This position will not require a rule change.

Decision:

The Notice to Vacate must be filed with the complaint, but there is no reason to require the notice to be filed in paper format. The system should allow an electronic attachment of the notice, whether by a scanned image or an electronic version of the word processing document that was actually posted.

In certain circumstances, statutes allow for termination of tenancy under emergency conditions. TurboCourt should not enforce the minimum notice period prior to acceptance of an eviction filing. Rather, review by a judicial officer is required to determine whether the requisite time periods for non-emergency evictions have been met.

Note: TurboCourt will treat residential FEDs on a separate form path from commercial ones, different rules and validation can therefore be applied to each path individually.