

JUSTICE COURT #2

GRAHAM COUNTY STATE OF ARIZONA

P.O. BOX 1159, 136 W CENTER STREET, PIMA AZ 85543 PH (928) 485-2771 FX (928) 485-9961

EVICTION ACTIONS INSTRUCTIONS FOR FILING

An **EVICTION ACTION** is filed for alleged violations of the lease or rental agreement or of the **Arizona Residential Landlord and Tenant Act**.

IF YOU CHOOSE TO REPRESENT YOURSELF

You have a responsibility to yourself and to the court to acquire a sufficient knowledge to complete the forms properly and to follow your action through to conclusion. The clerk's responsibility is to take your court filing and explain court procedures. **Clerks are not attorneys and cannot give legal advice.**

THIS IS YOUR CASE. YOU ARE SOLELY RESPONSIBLE FOR PROSECUTING OR DEFENDING THE CLAIM. THERE ARE CERTAIN STEPS YOU MUST FOLLOW TO PURSUE IT PROPERLY. THIS INFORMATION IS PROVIDED TO ASSIST YOU IN GENERAL PROCEDURE IN PROCESSING YOUR CASE THROUGH THE COURT. FOR YOUR CONVENIENCE, THE COURT PROVIDES CERTAIN BASIC FORMS FOR YOUR USE. YOU SHOULD FAMILIARIZE YOURSELF WITH THE ARIZONA RESIDENTIAL LANDLORD TENANT ACT which is provided online by the Arizona Department of Housing (www.azhousing.gov) under publications. You may also want to refer to the Arizona Rules of Procedure for Eviction Action (ARPEA) for additional information.

CLERK DUTY (ARS 22-507)

Clerks are not attorneys and cannot give legal advice. They are charged with the duty of providing forms and requested assistance to all parties regarding jurisdiction, venue or procedures. It is not the court clerk's responsibility to advise you if you have a legal claim. The clerk is not responsible for any errors you may make in asserting or defending the claim. The court does not take sides or render an opinion regarding the merits of a claim.

COURT FEES (ARS 22-281) **FORCIBLE DETAINER FILING FEE** \$35.00

FORCIBLE DETAINER ANSWER FEE \$18.00

Fees are due at the time of filing.

PARTIES

PLAINTIFF is generally the property owner.

DEFENDANT is generally the tenant(s)

JURISDICTION (ARS 22-503A)

A plaintiff may file an Eviction Action in the Justice Court if the amount does not exceed \$10,000.00. **Cases involving amounts greater than \$10,000 must be filed in Superior Court.** The plaintiff may ask for reimbursement of court costs in addition to the \$10,000 maximum. Court costs include but are not limited to filing and service fees.

VENUE (ARS 12-401)

Venue means the proper geographical area (precinct) in which a lawsuit may be filed. You must file the lawsuit in the precinct where the defendant resides or does business or where the cause of the lawsuit occurred.

TERMINATION OF TENANCIES (ARS 33-1375)

The Landlord or tenant may terminate a week-to-week tenancy by a written notice at least (10) days prior to termination. Landlord or tenant may terminate a month-to-month tenancy by a written notice of at least (30) days prior to termination. If a tenant fails to pay rent, a five-day notice to pay shall be given to tenant by landlord.

RETIALIATORY ACTION PROHIBITED (ARS 33-1381)

A landlord may not retaliate by increasing rent, locking tenant out of premises, seize tenant(s) personal property or attempt to put a lien on the tenant's personal property, shut off power or water to the premises, if a tenant fails to pay rent, complained to a governmental agency for enforcement of building or housing code affecting health and safety, if tenant has complained to landlord of a violation under section 33-1324 (maintain fit premises), tenant has organized or become a member of a tenant's union or similar organization. Generally, the landlord's only remedy if a tenant fails to pay rent, other than negotiation, is to file a eviction action in court.

NOTICE (ARS 12-401) (ARS 33-1370)

Proper notice must be served on the tenant. Notice of failure to pay is the most common notice. A 5-day notice shall be given to tenant(s) who fail to pay rent. **Notices taped to the tenant's door are not considered proper notice.** A complaint may then be filed to the court on the (6)th day after the tenant receives notice to pay. If personal service cannot be completed, then the notice will have to be mailed certified or registered. If the notice was served by certified mail, five days must be added to the notice period (the date of service shall be counted when computing time for service). If a dwelling unit is abandoned the landlord shall send the tenant a "Notice of Abandonment" by certified mail, return receipt requested to the tenant's last known address and any other known addresses and shall post a "Notice of Abandonment" on the door to the dwelling unit or any other conspicuous place on the property for five days.

ABANDONMENT (ARS 33-1370)

Abandonment means either the absence of the tenant from the dwelling unit, without notice to the landlord for a least (7) seven days, if rent is unpaid for (10) days and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the residence, if the rent is unpaid for (5) days and none of the tenant's personal property is in the dwelling unit.

IMMEDIATE NOTICE FOR IRREPARABLE BREACH (ARS 33-1368A2)

In extreme situations where the alleged breach is material and irreparable (cannot remedy) you may serve a Notice for Immediate Termination. The immediate notice may be served with the service of the forcible detainer complaint on the following:

- Illegal discharge of a weapon
- Criminal street gang activity as prescribed in 13-105
- Activity as prohibited in 13-2308 (organized crime)
- Threatening or intimidating as prohibited in 13-1202
- Nuisance as prohibited in 12-991
- Prostitution as defined in 13-3211
- Infliction of bodily harm
- Assault as prohibited in 13-1203
- Homicide as defined in 13-1102 to 13-1105
- Unlawful manufacturing, selling, transferring, possessing, using or storing of a controlled substance 13-3451
- A breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, the landlord's agent or another tenant or involving imminent or actual serious property damage.

RESOLVING NON-COMPLIANCE ISSUED (ARS 33-1368B)

Most tenant non-compliance issues can be resolved during the notice period before an Eviction Action Complaint is filed with the court. If the tenant offers you full payment of the unpaid rent (including any fees listed in the lease agreement) during the notice period you must accept it.

APPEARING IN COURT (Rule 11, ARPEA)

If the property is owned by:

- **AN INDIVIDUAL** may appear personally or by a attorney
- **A CORPORATION** may be represented by an officer of the corporation who has been specifically authorized to represent the corporation in Justice court and has primary duties to the corporation other than representing the corporation in court, or by an attorney.
- **A PARTNERSHIP** may be represented by an attorney, or each partner may appear and represent his own partnership interest.

No property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sublessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona. Be prepared to provide documentation on request of your interest in the claim.

THE SUMMONS

The summons will be issued on the same day the complaint is filed.

SETTING A COURT DATE (ARS 33-1485B)

The court will set the court date not more than six (6) business days and no less than three (3) business days from the date the summons is issued. If the complaint alleges threats, acts of violence or criminal activity, the court date shall be set not more than three (3) business days away.

CONTINUING THE COURT DATE (ARS 33-1485B)

Either party may request to continue the court date which must be in writing and must be supported by an affidavit. A continuance will only be granted for good cause and will not be granted for a period greater than three (3) business days (longer if stipulated by both parties and if judge grants a longer continuance). There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

SERVICE OF PROCESS (Rule 5(f) & (g), ARPEA)

Service of process shall only be performed by a Constable or Private Process Server. Since Graham County does not have a Constable, a list of process servers may be provided to you by the court or you may contact the Graham County Sheriff's Office for service.

IMPORTANT: THE SUMMONS AND COMPLAINT **MUST BE SERVED TWO (2) DAYS BEFORE** THE COURT DATE (THE DATE OF SERVICE SHALL NOT BE COUNTED WHEN COMPUTING TIME FOR SERVICE OF THE SUMMONS AND COMPLAINT.) IF THE COURT DATE IS SHORTENED AT YOUR REQUEST, TIME MAY NOT ALLOW FOR SERVICE BY "POST AND MAIL" IN WHICH CASE PERSONAL SERVICE MUST BE MADE.

An Affidavit of Service must be filed with the court. A complaint that is not served within the time required may be dismissed at the initial appearance date unless the defendant waives service in writing, or the initial appearance may be continued upon a showing of good cause to allow additional time for service.

FILING A COUNTERCLAIM

A counterclaim is filed at the same time the Answer is filed. The court can provide a Counterclaim form. There is no fee for filing a reply to a counterclaim.

THE COURT DATE

The Judge will ask you to briefly state the allegations of the complaint. The Judge will review the allegations of the complaint and determine if proper notice was given. The tenant will be asked to enter a plea.

GUILTY / NO CONTEST: If the plea is guilty or no contest, the Judge will proceed to determine how much if any, rent is due and owing through the end of the rental period, the amount of any alleged damages, costs of court and attorney fees, if allowed, and interest on the unpaid judgment. The Judge will also order the tenant to vacate the property and that possession be returned to the property owner.

NOT GUILTY: If the tenant pleads not guilty, the defendant will be required to file a formal answer to the Plaintiff's complaint. If the defendant files a counterclaim, it will also be considered and decided at the time of Trial. Generally, the trial is held that same day. The court may reset the trial for a date not more than (3) business days away (longer if stipulated by both parties and the judge grants a longer continuance).

Non-payment of rent because you do not have the money (for whatever reason) is not a legal defense.

THE TRIAL

If a jury trial is not requested, the Judge will hear the case. If a jury trial is demanded by the plaintiff in the complaint or by the defendant at or before the initial appearance, both parties will be required to exchange names of witnesses and a list of exhibits expected to be called or presented. The parties will also be required to submit prepared jury instructions to the court before trial. The party requesting the jury trial will be required to post a bond to cover the jury expenses. The requesting party will be assessed jury fees and costs if the jury does not find in their favor. The judge will determine the amount of the bond. No court appointed attorney will be provided. If you are representing yourself, you will be held to the same standard as an attorney.

DEFAULT JUDGMENT

If the defendant fails to appear in person or through counsel on the initial appearance date, and no continuance has been granted, the court will enter a default judgment against the defendant.

IF YOU ARE AWARDED JUDGMENT

If a Landlord receives judgment, the court shall give judgment for restitution of the premises, for all charges stated in the rental agreement and for damages, attorney fees, court and other costs and all rent found to be due and unpaid and shall grant a Writ of Restitution. Tenant(s) will have (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease by the tenant, in which case, the tenant has only twelve (12) to twenty-four (24) hours to vacate. If tenant receives judgment the case is dismissed.

WRIT OF RESTITUTION

If the tenant(s) fail to vacate residence within the (5) days after judgment or 12-24 hours, A Writ of Restitution may be filed with the court by the Landlord on the (6)th day. The Writ will have to be taken to the Graham County Sheriff's Office in order to have the residents removed from the residence. Unless the tenant has an appeal pending and has paid a bond and is continuing to make monthly rental payments, no Writ may be issued. A fee will be assessed when filing for the Writ.

A tenant who is lawfully served with a Writ of Restitution and remains in or returns to the dwelling unit without permission of the owner of the property commits criminal trespass in the third degree pursuant to ARS 13-1502.

COLLECTING THE JUDGMENT

The court **does not** collect the judgment for you and the court **cannot** recommend a method of collection for you as the court does not provide legal service. The court can provide Information for Collecting a Money Judgment. Determine which action you want to take and ask the clerk for the appropriate packet for garnishment, lien, writ or judgment debtor's examination.

SATISFACTION OF JUDGMENT

Once a judgment has been satisfied by the payment of the monetary award, the party in whose favor the judgment was entered shall file a **Satisfaction of Judgment** with the court.

APPEAL

To appeal a judgment, you must file a NOTICE OF APPEAL with the trial court within **five (5) calendar days** from the date of the judgment. If you do not file a NOTICE OF APPEAL within the time allowed by law, you lose the right to appeal. The time to file **cannot be extended** by the court. The court will provide you with the Notice of Appeal form and procedures.

DEPOSIT (ARS 33-1321D)

Within (14) days, excluding Saturdays, Sundays or other legal holidays, property or money held by the landlord after termination of the tenancy, the landlord shall provide the tenant an itemized list of all deductions together with the amount due and payable to the tenant, if any. The landlord shall mail the itemized list and any amount due by first class mail to the tenants last known place of residence. If the landlord fails to comply the tenant may recover the property and money due equal to twice the amount wrongfully withheld.

PERSONAL PROPERTY (ARS 33-1368) (ARS 33-1370E)

A landlord shall hold the tenant's personal property for a period of (21) days beginning on the first day after a Writ of Restitution or Writ of Execution is executed. The landlord shall use reasonable care in moving and holding tenant's property, prepare inventory and promptly notify tenant of the location and cost of storage by sending a notice by certified mail, return receipt requested, addressed to the tenant's last known address and any other known addresses. To reclaim the personal property tenant shall pay the landlord the cost of removal and storage for the time property was held. Within (5) days after a written offer by the tenant to pay the landlord must surrender possession of the personal property upon tenant's payment.

If a dwelling is abandoned the landlord shall hold the tenant's personal property for (10) days after the landlord's declaration of abandonment. If the tenant makes no reasonable effort to recover the property, the landlord may sell the property and retain the proceeds and apply them toward the tenant's outstanding rent or other costs which are covered in the lease agreement. Any excess proceeds shall be mailed to the tenant at the tenant's last known address.

A tenant does not have any right of access to property **EXCEPT** may obtain clothing and tools, apparatus and books of a trade or profession and any identification or financial documents including all those related to the tenant's immigration status, employment status, public assistance or medical care.