

# RV SPACE RENTALS

The law treats long term (over 180 days) RV space rentals differently than short term space rentals.

## I. LONG TERM RV SPACE RENTALS (MORE THAN 180 DAYS)

### A. Applicable Law

The Arizona RV Long-Term Rental Space Act beginning at Section 2101 of Title 33, Arizona Revised Statutes, applies to the rental of a space to a tenant who provides his own RV and rents an RV space for more than 180 consecutive days provided there are more than two RV spaces in the park. Rentals for less than 180 consecutive days, and rentals in communities with only one or two RV spaces are covered by the General landlord tenant laws. This law was originally enacted in 2000. It was extensively revised and renumbered in 2001.

### B. Creating the Landlord-Tenant Relationship

#### 1. Rental Agreements

(a) At the request of either the landlord or the tenant, the rental agreement must be in writing and must be signed by both parties.

(b) Upon expiration of a written rental agreement, the tenancy renews for similar durations as the initial duration on the same terms and conditions. Either party may demand a new written rental agreement at any time after the expiration of a prior written agreement.

(c) The duration of the written rental agreement can be any length on which the parties agree. If the parties cannot agree on one, the law is silent unless it is a renewal agreement. In that case, it renews for the same period as the prior agreement but not to exceed one year.

(d) A problem could develop if a person demands an initial agreement of more than 180 days, thus subject to the RVRSA, and the landlord, not wanting to be covered by that law, insists on a term of 180 days or less. The landlord is not obligated to enter into a long term rental and should be able to merely decline rental. In 2001, ARS §33-2132(C)(1) was amended to declare that a landlord is not required to enter into a rental agreement for more than 179 days if it does not want to.

(e) The rental agreement must, at a minimum, cover the following :

(i) Term (duration).

(ii) Rent.

(iii) Security deposit arrangements.

(f) Rental Agreements may contain any other provisions not prohibited by law. ARS §33-2105(C).

2. Approving Prospective Tenants (Remember, this applies only to RV space rentals in excess of 180 consecutive days.)

(a) If the prospective tenant is buying an RV on-site from an existing tenant, the landlord must approve the prospective tenant unless it has good reasons to reject him.

(b) The same rule applies to a prospective tenant who wants to move his own RV onto a vacant space.

(c) In either case, of course, the prospective tenant must apply to the park for approval prior to moving into the park.

3. Improvements

(a) When an RV is sold on-site, the park can require that it be upgraded to the then current park standards as a condition to approving the buyer as a tenant.

(b) RV's coming into the park should be required to meet all current standards.

(c) The ability of a park to require a prospective tenant to make permanent improvements was called into question with the original enactment of the RVRSA. In 2001, the RVRSA was amended at ARS §33-2132(C)(4) which now only prohibits landlords from requiring existing tenants to make permanent improvements. Clearly, the purpose of this change was to allow parks to require new or prospective tenants to make them.

4. Other Documentation Required for New Tenants

(a) Rules and Regulations must be provided to all prospective new tenants prior to signing a rental agreement.

(b) At the time of entering a new or renewal rental agreement, certain disclosures must be made. The following must be disclosed:

(i) The manager's identity.

(ii) The statutory agent and the owner of the park.

#### 5. Rules and Regulations.

(a) All long term rental RV parks are required to have rules and regulations. The rules must be reasonable, must be fairly and evenly enforced, must be clear, and must be reasonably related to the tenancy.

(b) The rules can be amended at any time by the park on 30 days advance notice.

(c) Changes made to the rules can be enforced against existing tenants only if they do not work a "substantial modification" of the tenant's rental agreement.

(d) Bear in mind that fair housing laws require parks to make exceptions to the rules when it is reasonable to do so and is necessary to accommodate an occupant's handicap. It would be a good idea to state this in the rules.

C. Financial Terms. Generally, there are no restrictions on what a long term rental RV park may charge a tenant for rent. There are limits on certain fees, and park supplied utility charges are not controlled.

##### 1. Basic Rent. A park can charge whatever it wishes as basic rent.

(a) Basic rents can be increased effective with the expiration of a rental agreement, upon 60 days notice.

(b) A 1984 Court of Appeals case dealing with similar rules in the mobile home parks act held, in effect, that a park can charge what it wants for basic rent, and has no duty to negotiate rents when signing a rental agreement with a tenant. One Hundred Eighteen Members v. Murdock, 140 Ariz. 417, 682 P.2d 422 (App., 1984).

(c) Remember that a rent increase notice cannot be effective before the expiration of a rental agreement in existence when the notice is given.

2. Late Charges. Late charges may be imposed for late payment of rents. A park may impose a late charge of up to \$5 per day retroactive to the second day of the month if rent is not paid by the sixth. To be enforced in court, they should also be provided for in the rental agreement.

3. Guest Fees. The rental agreement may provide for guest fees.
4. Pet Fees. These are not mentioned in the RVRSA. Since they are neither prohibited nor limited, a park can charge what it wishes for pets (or prohibit pets altogether if it wishes).
  - (a) If an occupant reasonably requires an assistive animal to accommodate a handicap, the rules must be waived to allow the animal (e.g., a seeing eye dog). Also, pet fees should not be assessed against such assistive animals under fair housing laws.
  - (b) In order to charge pet fees they must be specifically provided for in the rental agreement.
  - (c) Any park publicizing its "no pets" policy must make it clear that assistive animals are welcome (e.g., "no pets; assistive animals only").
5. Extra Person Fees. These are not mentioned in the RVRSA. Since they are neither prohibited nor limited, a park can charge what it wishes for occupants in excess of a set number (e.g., two).
  - (a) In family parks, however, extra person fees should not be charged for children under 18. They can be charged for extra adults. In calculating how many occupants live on the space for purposes of determining extra person charges, pretend the children are not there.
  - (b) In order to impose extra person charges they must be specifically provided for in the rental agreement.
6. Miscellaneous Fees. Other fees such as storage fees, washer fees, etc., are acceptable so long as provided for in rental agreements and so long as assessed in a non-discriminatory manner.
7. Duty of Good Faith. The law imposes a duty of good faith on parks. That means that basic rents and other fees must be imposed in good faith and not in an abusive or retaliatory manner.
8. Metered Utilities. The RVRSA limits utility charges. For metered utilities they may either be charged for at no more than the utility provider's single family residential rate in which case spaces must be separately metered and charges based on periodic meter readings; or they may be charged by pro-rating the park's actual expense for providing them (after deducting the portion attributable to common areas)

9. Sewer and Trash. These may only be separately charged at no more than the single family residential rate of the local provider.

10. Security Deposits. The landlord can require a new tenant to post a security deposit. These are subject to the following:

- (a) There is no limit on the amount of deposit which the park can require.
- (b) There is no distinction in the law between security deposits, prepaid rents, cleaning and redecorating deposits, pet deposits, etc. The aggregate of all of these must be accounted for as part of the "security deposit".
- (c) Deposits do not accrue interest.
- (d) The deposit must be refunded at the end of the tenancy after netting out any rent and utility charges due and the cost of repairing any tenant caused damage, provided, the park gives the tenant an itemized statement within 14 days after the tenant vacates. The deposit can, presumably, be assigned by a tenant to the purchaser of his RV if he wishes, but the park should substantiate this in writing before signing a new rental agreement with the buyer.
- (e) The amount of the deposit cannot be changed after the tenancy begins.
- (f) The purchaser of the RV park takes it subject to existing deposits. These should be accounted for at close of escrow.

D. Maintenance of Parks. ARS §33-2123 requires landlords to maintain parks.

1. The statute imposes two specific obligations on park landlords:

- (a) Comply with all applicable codes materially affecting health and safety.
- (b) Keep the premises in a fit and habitable condition.

2. Self Help Remedies. There is no provision in the RVRSA for the tenant to give the park notice of his intent to correct the problem at the park's expense.

3. Termination By Tenant. The tenant may give the park a notice advising that if repairs are not made promptly, the rental agreement will terminate.

4. Damages. In addition to this remedy, the tenant may sue the park and recover damages which could include the tenant's moving expenses.

5. Notice of Interruption of Utility Service. There is no requirement for parks to notify tenants a reasonable time in advance of interrupting utility service by individual delivery and/or public posting of notices.

8. Administrative Law Judge Complaints. The mobile home parks ALJ function does not have authority over RV space tenant complaints.

9. Slumlords. The 1999 legislature enacted a "slumlord bill" which imposes severe sanctions against landlords who do not comply with it, up to and including the State seizing the landlord's property. The bill is broken into three sections: crime abatement; registration of landlords; and elimination of slum conditions.

(a) Crime Abatement. A landlord now has a statutory duty to eliminate criminal activity from a residential community which he knows or should know of. If the landlord fails to do so, a government agency or private citizen may file suit in Superior Court seeking an injunction requiring this, and also seeking fines and damages.

(b) Registration of Landlords. All owners of residential real property in Arizona must register with the County Assessor and provide a variety of information concerning themselves and their properties in that County. An out of state owner must designate an Arizona statutory agent.

(c) Elimination of Slum Conditions. RV park landlords are not responsible for the condition of tenant owned dwellings but are responsible for the rest of the park and for park owned units. If a landlord allows his residential property to become a "slum property", a government agency may file an action in Superior Court to appoint a receiver to take over operation of the property.

E. Termination of Tenancies by Tenants. A tenant can terminate for cause by either giving a 10/20 or a 14/30 notice. He may vacate without cause at the expiration of the rental agreement, though he must give the landlord a 30-day notice that he will be vacating.

1. Vacating Without Notice. If a tenant vacates at the expiration of the rental agreement without giving notice, he is still liable for 30 days rent or, if the space is re-rented within 30 days, he is liable for rent for the number of days it took to re-rent the space. A 30 day notice is required of a tenant intending to move his RV out of the park.

2. Vacating Before The Rental Agreement Expires. If a tenant vacates before the end of the rental agreement term, with or without notice, he is still responsible for rent through the end of the lease term.

(a) To impose liability, the park must mitigate its damages by making reasonable, good faith efforts to re-rent the space.

(b) If it does, the tenant is liable for rent until the end of the term of the rental agreement or until the space is re-rented.

F. Termination of Tenancies by Landlords. The law provides a number of mechanisms by which a park may terminate or refuse to renew a rental agreement.

1. General Rule. With one exception, a park may terminate or refuse to renew a rental agreement only for good cause. "Good cause" is limited to:

(a) Non-compliance with the rental agreement or park rules.

(b) Non-payment of rent.

(c) Change in land use.

(d) Repeated violations of the RVRSA establishing a pattern of non-compliance.

2. Exception: 90 day No-Cause Non-Renewals. Except for tenants in park models, the park may refuse to renew a rental agreement without good cause by serving a written notice of non-renewal on the tenant at least 90 days prior to the expiration date of the current rental agreement. If a long term tenant resides in a park model, there must be good cause for a non renewal of the rental agreement; the 90 day no cause non renewal provision of the RVRSA does not apply in the case of tenants with park models.

3. Material Requirement. If there is a non-compliance with the rental agreement, the rules or the RV parks rental space act, it must be material.

4. Notices. In order for the tenancy to be effectively terminated, the proper notice must be properly delivered. Follow the rules for serving notices set forth later in these materials.

5. Non-Payment of Rent.

(a) Rent is usually due on the first of the month. If not paid on the date due, it is delinquent.

(b) When rent becomes delinquent a five day notice can be served on the tenant. In the typical park, that means that if rent is not paid on the first, the five day notice can be served on the second.

(c) Most parks impose late charges. They may not be imposed if rent is paid within five days after it is due. That means that late charges cannot be imposed in a typical park if rent is paid on or before the sixth of the month.

(d) This has nothing to do with five day notices. The rent is still delinquent if not paid on the date due, and a five day notice can be given the next day.

(e) After the five day notice is given, the park must wait five days not counting the date the tenant received the notice. If the tenant pays everything due before the five day period expires, no further action is needed.

(f) If rent and all other charges due are not paid by the fifth day after the termination notice is given, the eviction can be filed.

(g) The tenant has a right to force the landlord to drop the eviction by paying everything he owes, including any court costs and attorneys fees incurred by the park at any time up to the instant the judge signs the judgment evicting him.

(h) If the tenant does not reinstate his rental agreement by paying everything due before the judgment is signed, he loses this right. After entry of the judgment, the tenant is required to pay everything due as provided in the judgment and to vacate the premises.

(i) "Rent" is defined in ARS §33-2102(20) as all payments "in full consideration for the rented premises". That means it includes base rent, utility charges, miscellaneous fees (e.g. pet fees, extra person fees, etc.), and late charges.

6. Non-Compliance Violations. In order to constitute cause for termination of a rental agreement, the violation must be of the rental agreement, park rules, or the RVRSA, and it must be material. There are three types of these: material and irreparable; material violation affecting health and safety; and other material violations.

(a) Material and Irreparable Violation.

(i) This arises when a tenant fires a weapon in the park; attacks someone; or causes serious property damage in the park. It also arises under the Crime Free Addendum to Rental Agreement when a resident engages in serious criminal conduct in the park. It also includes a number of specific examples, including assault, prostitution, and a variety of drug related criminal offenses.

(ii) Sometimes, if it is really serious or threatening, abusive conduct or threats will constitute a material and irreparable violation.

(iii) Since a tenant is responsible for what all occupants of his space do, if a co-resident, child or pet commits a material and irreparable breach, action should be taken against the tenant.

(iv) Once the immediate and irreparable breach has been documented, a notice of material and irreparable breach should be served on the tenant.

(v) The eviction action can be immediately filed.

(vi) ARS §33-2143(D)(3) says once the notice is served, the eviction shall be filed under the procedures in ARS §33-1485. This is a section of the Mobile Home Parks Act covering these situations.

(vii) One of those provisions is that a tenant must vacate within 24 hours after the eviction judgment is entered.

(b) Material Violation Affecting Health and Safety,

(i) This arises when a tenant commits a violation which materially affects health and safety. Normally, in order to establish this, the park will need to prove that an applicable health and safety code has been violated.

(ii) Then, a 10/20 notice of termination of rental agreement - health and safety violation should be served on the tenant.

(iii) This notice gives the tenant ten days (excluding the date of service) to cure the violation. If he does so, no further action is necessary.

(iv) If the violation is not cured within ten days, the tenant has another ten days (or 20 days after service) to move out. If he does not, the eviction action can be filed.

(v) If the violation is timely cured, the rental agreement does not terminate.

(c) Material Violation – Other.

(i) This arises when a tenant commits a material violation not affecting health and safety.

(ii) Then a 14/30 notice of termination of rental agreement should be served on the tenant.

(iii) This notice gives the tenant 14 days (excluding the date of service) to cure the violation. If he does so, no further action is necessary.

(iv) If the violation is not cured within 14 days, the tenant has another 16 days (or 30 days after service) to move out. If he does not, the eviction action can be filed.

(v) If the violation is timely cured, the rental agreement does not terminate.

(d) Once the eviction action has been filed, unlike non-payment of rent situations, the tenant no longer has the right to cure the violation, reinstate his rental agreement, and remain in the park.

8. Trespassers. If someone moves into the park without the landlord's permission, he can proceed directly with the eviction. He should serve a written demand that the trespasser immediately vacate (called a "demand for possession") on him. He should wait at least five (5) days after serving the notice before filing the eviction.

(a) No notice of termination is necessary since there is no rental agreement in existence to terminate.

(b) The most common example of this is when a tenant sells an RV on-site to someone who simply moves in without the park's permission.

#### G. Landlord Liens

1. General Rule. It is unclear whether RV park landlords have a lien on the possessions of a tenant for payment of rent. This is in sharp contrast with the residential and mobile home parks landlord tenant acts which specifically prohibit such liens. This is probably an oversight by the Legislature. Moreover, the RVRSA says a park does not have access to a tenant's RV without his permission. The best policy is to not try to assert a lien against the contents of the RV. Arizona personal property exemption statutes can also be construed to ban a lien on a tenant's possessions. It is an open question whether there is a landlord lien against the RV itself. RV's are not included in the items exempted in the personal property exemption statutes.

2. Abandoned RV's. The Arizona Court of Appeals has interpreted the mobile home parks act as giving rise to a limited possessory landlord lien when a mobile home is abandoned and timely notice of abandonment in accord with that statute is given to the lienholder of record. This means that under these circumstances, the park can prevent a lienholder from removing a home from the park without first paying what is due under the statute. Gulf Homes, Inc. v. Bear, 123 Ariz. 378, 599 P.2d 831 (App., 1979). In 2001, ARS §33-2144 was added creating a similar right but

limiting it strictly to park models (one of the many types of RV's that look like small mobile homes and are smaller than 400 square feet).

3. In 2001, ARS §33-2105(H) was added to the RVRSA preventing move-outs until rent is brought current. There is now a clear statutory right for the landlord to prevent the RV from being removed because rent is owed.

4. What To Do With Abandoned RV's. Given the fact that the RVRSA contains no provisions for dealing with abandoned RV's, the following actions are suggested:

(a) First, obtain an MVD record showing ownership and lien status on the RV.

(b) If there is a lienholder, immediately contact it. Tell it that if they want to keep the RV there, they must agree to keep the rent current. If they refuse, tell them they must remove the home from the park.

(c) If the RV is free and clear, follow the procedures published by the MVD relating to landlord liens or bonded titles, as appropriate.

5. What To Do About Moveouts Without Payment. RV parks now have a clear right to require rent be current before the RV can be removed. The Gulf Homes Inc. v. Bear case makes it clear that a landlord can be liable for damages for conversion if it interferes without a clear right to be paid

## II. SHORT TERM RV SPACE RENTALS (180 DAYS AND LESS)

### A. Applicable Law

The general Arizona landlord-tenant laws beginning at Section 301 of Title 33, Arizona Revised Statutes, apply to the rental of a space to a tenant who places his own RV on it for 180 days or less.

### B. Creating the Landlord-Tenant Relationship

1. Rental Agreements. There is no requirement for a written rental agreement though it is a good idea to have one.

2. Prospective Tenants. The Fair Housing Laws apply to the consideration of tenancy applicants.

3. Other Documentation. No other documentation is required. It

C. Rent and Fees. There are no limits in the landlord tenant laws as to what a short term RV park can charge for rent or fees, and no rules as to utility charges. Fair Housing Laws

could have an effect on extra person fees in family communities, and on pet fees being waived for handicapped tenants requiring assistive animals.

1. There are no restrictions on security deposits. It may be convenient to treat them the same as for long term RV space rentals.
2. A common practice is to require RV and travel trailer space tenants to pay several months rent in advance. There is no restriction on this. Be aware, however, that by so doing, the park is creating a long term lease which cannot be terminated until the rent is used up except for cause. If the park gets more than five months' rent in advance, it has created a tenancy more than 180 days that is subject to the RVRSA.

D. Maintenance of Parks. There are no maintenance obligations imposed by statute with respect to short term RV space tenants.

E. Termination of Tenancies by Tenants. A month-to-month tenant can terminate his rental agreement by giving a 10 day notice to be effective at the end of the month in which given. ARS §33-341 (C). A longer tenancy simply ends at the expiration and the tenant is required to vacate at that time without further notice unless a new tenancy is agreed to. ARS §33-341 (A) and (D).

F. Termination of Tenancies by Landlords. In order for a tenancy to be effectively terminated, the appropriate notice must be properly delivered. Follow the rules for serving notices set forth later in these materials.

1. Non-payment of Rent. No notice of termination is required. Many parks voluntarily give five day notices. A park not wishing to do this should at least give a demand of possession of the space to the tenant before filing for eviction.
2. All other terminations require a ten day notice.
3. The tenant, in the case of non-payment of rent, has no statutory right to pay after receiving the notice and to remain in the park.
4. In all other cases, the tenant has no right to cure any violations or to otherwise remain as a tenant.

### III. NOTICES

#### A. Applicable Law

1. The RVRSA covers notices in ARS §33-2102(12).
2. There are no statutory notice requirements for short term RV space tenants.

B. Termination Notices

In order for the tenancy to be effectively terminated, the proper notice must be properly delivered. Normally they must be hand delivered or sent Certified Mail in which case they are presumed received five days after mailing. If a notice is served in another manner but is actually received by the tenant, it is still effective.

