

ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT

A. Application of Law

The Arizona Residential Landlord and Tenant Act beginning at Section 1301 of Title 33, Arizona Revised Statutes, applies to the rental of a dwelling unit to a tenant. It does not apply to mobile home spaces or RV spaces that are covered by separate Acts. It does not apply to transient rentals, units supplied to landlord employees, public housing or occupancy of a home by a buyer prior to closing. ARS §33-1308. Park owned mobile homes are dwellings as defined in the Act, and the rental of park owned homes is specifically covered by the Act. *See*, ARS §33-1310(4).

B. Creating the Landlord-Tenant Relationship

1. Rental Agreements

- (a) There is no requirement in the Act that rental agreements be in writing. It is strongly recommended, however, that all rental agreements be written. If there is a written rental agreement, executed copies must be given the tenant who in turn must execute them and return one to the landlord. ARS §33-1322 (E). It is best to sign them simultaneously in the rental office.
- (b) If the agreement is not written, tenancy is month-to-month unless rent is paid weekly in which case it is week-to-week. ARS §33-1314 (D).
- (c) Upon expiration of a written rental agreement, the tenancy renews month-to-month on the same terms and conditions, unless a new written rental agreement is executed.
- (d) The duration of the written rental agreement can be any length on which the parties agree. ARS §33-1314 (D).
- (e) There are no statutory requirements setting forth terms the rental agreement must contain. The statute (ARS §33-1314 (A)) suggests it address rent and term, as well as any other terms the parties agree on that are not otherwise prohibited by the Act. It would also be wise to identify requirements concerning deposits.
- (f) In the absence of a rental agreement (written or verbal), rent shall be the fair rental value of the dwelling unit. ARS §33-1314 (B).
- (g) Rental Agreements may contain any other provisions not prohibited by law. ARS §33-1314 (A).

(h) ARS §33-1314 (F) permits landlords to request and/or tenants to identify a person authorized to enter the dwelling and dispose of the contents when the tenant dies. It also sets forth procedures for contacting that person and disposing of the possessions when the contact person fails to do so. Those procedures come into play only if rent becomes five or more days delinquent.

2. Approving Prospective Tenants

(a) Nothing requires landlords to approve a prospective tenant. This is different from the mobile home parks act that requires approval unless there is good reason not to approve the applicant. A variety of laws, however, prohibit discrimination against prospective tenants on account of protected status (*i.e.*, race, color, religion, national origin, sex, handicap, family status).

(b) A prospective tenant must apply to the landlord for approval prior to moving into the dwelling. He must also complete reasonable application forms and must honestly provide the landlord such information as it reasonably requires. ARS §33-1368 (A). If someone simply moves into the unit before being approved, he is a trespasser as far as the landlord is concerned and can be evicted without any preliminary notices although a five-day demand for possession must be advisable depending on the circumstances under which he moved in (*e.g.*, being allowed in by a lawful resident who then vacated). Of course, if he just broke in without consent of a lawful resident he is subject to arrest.

(c) The landlord needs to be aware that there are fair housing law implications in considering applications.

(i) The landlord cannot discriminate in approving tenancy applications on account of race, color, sex, religion, national origin, handicap and (except in age 55 communities) familial status.

(ii) If a landlord does not treat all applications in exactly the same manner, it runs the risk that it will be found to have engaged in discriminatory housing practices (*e.g.*, a white applicant being approved despite not having completed the application form, while a minority applicant was rejected).

(iii) With respect to handicap, if the prospective tenant requests a waiver of the rules to allow him to move in and the waiver is reasonable, it must be granted; he cannot be rejected for an inability to comply with rules. Examples, are allowing assistive animals in no-pet communities; allowing an oversized van be kept in the community by a tenant who needs it for transportation; and allowing a ramp to be built from the driveway to the front door to accommodate an occupant's wheelchair. The range of exceptions which might be needed is almost endless; these are just examples. The waiver must be reasonable, and must be reasonably necessary to accommodate the needs of the handicapped occupant.

(iv) Another area of handicapped resident accommodations involves residential caregivers. If a proposed caregiver does not meet age restrictions in an age 55 community, or would exceed occupancy limits, those restrictions usually must be waived if there is a legitimate need for the caregiver.

(v) A common mistake made by landlords is approving applicants with criminal backgrounds in the belief that they are somehow protected by fair housing laws. Being a criminal does not confer protected status on a person, and a record of conviction of serious crimes that bears on the suitability of a person to reside in the community may be grounds to reject the application. Conviction of drug use or possession by one who is now recovered or in a recovery program probably cannot be used to reject an application, but most other criminal convictions can be.

(d) **Important Notice.** A series of Federal consumer protection laws and regulations require landlords to protect sensitive applicant/tenant information to prevent identity theft. All records containing such things as Social Security Numbers, driver's license numbers, and any credit related information must be protected. That includes application forms, credit reports, copies of identification cards and the like.

3. Other Documentation Required for New Tenants

(a) Rules and Regulations must be provided to all prospective new tenants prior to signing a rental agreement. (ARS §33-1342 (A)(6)).

(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. ARS §33-1322 (A)(1).

(ii) The statutory agent and the owner of the landlord. ARS §33-1322 (A)(2).

(iii) The availability of the landlord tenant act from the Arizona Department of Housing website. ARS §33-1322 (B).

(iv) Move in form. ARS §33-1321 (C). This means a form must be completed at the beginning of the tenancy showing the condition of the home. The form is further completed at the end of the tenancy at move out and is used for calculating security deposit refunds. See the Forms section of this publication for a sample "Move-in/Move-Out Form". This is a vitally important form and the law requires it be used at the inception of the tenancy.

4. Rules and Regulations

(a) Landlords are allowed 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. ARS §33-1342 (A).

(b) The rules can be amended at any time by the landlord on 30 days advance notice. ARS §33-1342 (B).

(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. ARS §33-1342 (B).

(d) Bear in mind that fair housing laws require landlords to make exceptions to the rules when it is reasonable to do so and are 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 landlord may charge a tenant for rent. There are limits on certain fees and landlord supplied utility charges.

1. Basic Rent. A landlord can charge whatever it wishes as basic rent, and has no obligation to explain any reasons for a rent increase. There are no limits as to amount. Moreover, there is no specific requirement that the same rent be charged different tenants for comparable dwellings.

(a) One danger of charging different rates for comparable units, however, is the potential for a housing discrimination complaint. If a minority or family winds up paying more than other tenants do for similar spaces, a landlord may have a difficult time proving that the difference was not the result of unlawful discrimination.

(b) Basic rents can be increased effective with the expiration of a rental agreement. No particular advance notice is required. But unless a notice is given at least 30 days in advance that an expiring rental agreement will not be renewed, it will renew at the old rent for another month. So a minimum 30-day rent increase notice should be given.

(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 are not prohibited or restricted in the Act. Thus they can be provided for in the rental agreement. ARS §33-1314 (A). Note that late charges *are* regulated in landlord tenant laws applicable to mobile home and RV parks.

3. Guest Fees. There are no restrictions on guest fees though, of course, they must be reasonable.

4. Pet Fees. These are not mentioned in the Act. Since they are neither prohibited nor limited, a landlord 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. Technically speaking, assistive animals are not pets.

(b) In order to charge pet fees they must be specifically provided for in the rental agreement.

(c) Any landlord publicizing its "no pets" policy must make it clear that assistive animals are welcome (e.g., "no pets; assistive animals only") under present interpretations of fair housing laws.

5. Extra Person Fees. These are not mentioned in the Act. Since they are neither prohibited nor limited, a landlord can charge what it wishes for occupants in excess of a set number (e.g., two).
- (a) In all-age communities, however, extra person fees should not be charged for children under 18. They can be charged for extra adults. Imposing them on children could constitute a technical violation of fair housing laws in all-age communities.
 - (b) In order to charge 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 landlords and tenants. ARS §33-1311. 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. ARS §33-1314.01 limits how a landlord may separately charge for water, gas and electricity. Separate meters must be installed and the method of charging for them must be identified. A disclosure must be made in the rental agreement. The Residential Act also allows water, gas and electricity to be allocated by dividing their cost among the tenants.
9. Sewer and Trash. These are charged in the same manner except no meters are required.
10. Security Deposits. The landlord can require a new tenant to post a security deposit. These are subject to the following under ARS §33-1321:
- (a) The deposit cannot exceed one and one-half month's rent unless the tenant voluntarily agrees.
 - (b) All deposits are refundable unless designated "non-refundable" in writing by the landlord. The purpose of these must also be stated in writing by the landlord. ARS §33-1321 (B).
 - (c) There must be a Move in/Move out form completed at the beginning and end of the tenancy showing the unit's condition. This is completed at the time of a walk through at the beginning of the tenancy, and again at the end when the tenant vacates. Normally the tenant has the right to be notified of the move out inspection and to be there. This forms the basis for determining damage to the unit. ARS §33-1321 (C).
 - (d) Deposits do not accrue interest.
 - (e) 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 landlord gives the tenant an itemized statement within 14 working days after the tenant vacates. A landlord failing to do so within 14 working days after the tenant vacates *and makes written demand* becomes liable for three times the amount wrongfully withheld. ARS §33-1321 (E).

D. Maintenance of the Premises.

ARS §33-1324 requires landlords to maintain the premises.

1. General. The statute imposes several specific obligations on landlords:

- (a) Comply with all applicable codes materially affecting health and safety.
- (b) Keep the premises in a fit and habitable condition.
- (c) Keep common areas clean and safe.
- (d) Keep utility systems safe and operational.
- (e) Supply waste removal service and receptacles.
- (f) Supply hot and tap water, reasonable heating and cooling.

2. Liability. There is a growing tendency to hold landlords liable for damage or injury caused tenants by third parties. A landlord may be exposed to this liability if a criminal harms a tenant or his property if it can be shown that the community was not kept in a "safe" condition. What is "safe" depends largely on where the community is.

3. Old Facilities. Occasionally, a landlord may want to close a facility. Perhaps an old, second pool needing expensive repairs would be closed, or a back entrance closed for safety reasons.

- (a) Literally read, the law requires all facilities to be maintained in good working order.
- (b) Prudence dictates that the landlord be sure that it's tenants will not object to the old or unused facility being taken out of service. If there is a significant objection to closure of a facility you want to close, check with your attorney.

4. Self Help Remedies. A tenant may give the landlord a ten-day notice of deficiencies. If the landlord does not correct them, then after the ten days have expired, the tenant may have the work done *by a licensed contractor*, and then provide an itemized statement and a lien waiver from the contractor to the landlord. *Only then may he withhold the cost from rent.* ARS §33-1363 (A).

5. Termination By Tenant. In the alternative, the tenant may give the landlord a ten-day notice advising that if repairs are not made promptly, the rental agreement will terminate. ARS §33-1361 (A).

6. Damages. In addition to this remedy, the tenant may sue the landlord and recover damages that could include the tenant's moving expenses. ARS §33-1361 (B).

(a) In California, a crisis developed several years ago with tenants grouping together and suing their landlords for major damages for failure to maintain.

(b) The courts at that time were liberal in awarding significant sums of money for such damages as emotional distress for what appear to be very minor maintenance deficiencies.

(c) It is unlikely that such large amounts could be recovered in Arizona. Such suits have been sanctioned in Arizona, however. *Thomas v. Goudreault*, 163 Ariz.159, 786 P.2d 1010 (App. 1989).

7. Wrongful Failure to Supply Utility Service. A landlord can be liable for deliberately or negligently failing to supply utility services to tenants. ARS §33-1364.

8. 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. See, ARS §33-1901 *et seq.*

(a) Crime Abatement. A landlord has a statutory duty to eliminate criminal activity from a residential community that 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. The action may be brought against the owner and its property management agent.

(i) If the Court finds the landlord has not acted reasonably to abate crime, it will enter an injunction requiring action to abate the criminal activity.

(ii) In addition, a government agency may take direct action to abate the activity. The Court can assess the property owner the costs of this and the assessment will become a priority lien against the property.

(iii) In a proper case the Court can order the appointment of a receiver to take over the property to manage and clean it up at the expense of the landlord.

(iv) In an extreme case the Court can enter a "closing order" shutting the property down, again at the expense of the landlord.

(v) If a landlord in good faith attempts to evict the tenants engaged in the criminal conduct but fails, the Court is then required to terminate any injunctions and dismiss the action.

(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. Failure to register will result in substantial fines unless within ten days after receipt of a complaint the landlord registers. You can see if you are registered by checking the County Assessor website in most counties.

(c) **Elimination of Slum Conditions.** Landlords are responsible for the condition of tenant occupied landlord-owned dwellings and for the rest of the community. 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.

(i) "Slum property" is residential rental property in disrepair, representing a danger to public health or safety, which is structurally unsound, lacks water or sanitation facilities, has hazardous utility connections, lacks safe, rapid egress, or has an accumulation of dangerous waste or other materials.

(ii) If a property is designated a "slum property", the government may inspect it annually for the next three years.

(iii) In addition, if a landlord fails to register with the County Assessor, his property may be inspected.

(iv) Costs of inspections and costs of receiverships become assessment liens against the property.

(v) If a receivership is created, it will not be terminated until the slum conditions have been eliminated and the owner has registered with the County Assessor.

9. **Bedbugs.** Bedbugs have become a big problem in other areas of the country where the climatic conditions are more friendly to them (*e.g.*, more humid; not as hot). In 2011 a statute was added to the residential landlord tenant act dealing with bedbugs. In addition to imposing limited obligations on landlords concerning bedbugs, the Bill amended Titles 9 and 11 of the ARS to prohibit counties and cities from imposing more onerous requirements on them.

(a) ARS §33-1319 (A) requires landlords to provide "educational materials" on bedbugs to tenants.

(b) It also prohibits landlords from knowingly renting a dwelling unit infested with bedbugs.

(c) ARS §33-1319 (B) prohibits tenants from bringing bedbugs onto the premises and requires them to notify the landlord immediately when they are found.

(d) The law specifically states that it is not intended to create any new liability on landlords when bedbugs are found.

(e) Most importantly, ARS §33-1319 (D) says: "The landlord and tenant of a single family residence are excluded from the provisions of this section".

E. Access; Inspection of Dwelling Units.

ARS §33-1343 gives the landlord the right to enter the dwelling unit in case of emergency. In non-emergency situations the landlord must give a minimum two-day advance notice of intent to

enter. He can only enter at reasonable times and cannot use this as a device to harass the tenant. Recent changes to this law now permit landlords to enter without additional notice if the tenant makes a maintenance request, provided the landlord enters only at reasonable times.

F. Termination of Tenancies by Tenants.

A tenant can terminate for cause by either giving a five or a ten-day notice under ARS §33-1361(A). He may vacate without cause without notice at the expiration of the rental agreement.

1. Vacating Without Notice. ARS §33-1375 (B) requires a tenant to give the landlord at least 30 days' notice of his intent not to renew a month-to-month tenancy and vacate. In the case of an expiring written rental agreement, the tenant is expected to vacate at expiration, unless a renewal term or month-to-month tenancy is agreed to.
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 home. ARS §33-1305 (A).
 - (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.
3. Return of Keys. A tenant is deemed to retain possession of the dwelling until he returns the keys and actually physically vacates. ARS §33-1310 (3).

G. Termination of Tenancies by Landlords.

The law provides a number of mechanisms by which a landlord may terminate or refuse to renew a rental agreement. The reason for this action should have nothing to do with the tenant's race, ethnicity, handicap, family status (except in age 55 communities), religion or sex under Fair Housing Laws. This even extends to 30-day no-cause non-renewals. Terminations and non-renewals must usually be preceded by notices.

1. General Rule. A landlord may *terminate* a rental agreement only for cause (though he can *non-renew* without cause). ARS §33-1368 (A). This is limited to:
 - (a) Material non-compliance with the rental agreement or rules and regulations.
 - (b) Non-payment of rent.
 - (c) Material falsification of a rental application.

2. 30 Day No-Cause Non-Renewals. Landlords may refuse to renew tenancies without good cause by serving a written notice of non-renewal on the tenant at least 30 days prior to the expiration date of the current rental agreement. ARS §33-1375 (B).
3. Material Requirement. If there is a non-compliance with the rental agreement or the rules, it must be material to support a termination.
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 this section.
5. Non-Payment of Rent (ARS §33-1368 (B)).
 - (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.
 - (c) Most landlords impose late charges. They may not be imposed if not provided for in a written rental agreement.
 - (d) After the five-day notice is given, the landlord 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.
 - (e) Part payments should ordinarily not be accepted. If a partial payment is accepted, an agreement preserving the landlord's rights to evict if the balance is not paid should be signed. Acceptance of rent without such an agreement waives the right to terminate that month. ARS §33-1371.
 - (f) If rent and all other charges due are not paid by the fifth day, 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 attorney's fees incurred by the landlord at any time up to the instant the judge signs the judgment evicting him. After that, if the tenant offers to pay in full, reinstatement of the tenancy is solely at the discretion of the landlord. ARS §33-1368 (B).
 - (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. Of course, the landlord and tenant are still free to agree to let the tenant pay and stay if they wish, but the law does not compel the landlord to agree to this once the judgment has been entered.
 - (i) "Rent" is defined in ARS §33-1310 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 or the community rules and regulations, 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 (ARS §33-1368 (A)(2)).

(i) This arises when a tenant fires a weapon; attacks someone; causes serious property damage in the community; or engages in a variety of criminal conduct. It also arises under the Crime Free Addendum to Rental Agreement when a resident engages in this sort of activity. The statute includes a number of specific examples, including assault, prostitution, and a variety of drug related criminal offenses. This is still not an all-inclusive listing since the statute says such violations "include" these.

(ii) Since a tenant is responsible for what all occupants of his unit do, if a co-resident, child or pet commits a material and irreparable breach, action should be taken against the tenant. ARS §33-1368 (G). There must be some evidence the landlord was in a position to control the activity of a guest or visitor, in order for the landlord to be held responsible for the guest's or visitor's conduct.

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

(iv) An eviction action can be filed immediately after service of the notice on the tenant. See the Eviction section of these materials.

(v) If the landlord prevails, the tenant must vacate within 12 to 24 hours after the eviction judgment is entered.

(b) Material Violation Affecting Health and Safety (ARS §33-1368 (A)).

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

(ii) A five-day notice of termination of rental agreement for health and safety violation should be served on the tenant.

(iii) This notice gives the tenant five 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 five days, the tenant must vacate. If he does not, the eviction action can be filed.

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

(vi) If the violation is not cured in the five-day period, rent should not be accepted after that. If rent is accepted, the judge may find that the landlord reinstated the rental agreement and make him start over again.

(c) Material Violation - Other (ARS §33-1368 (A)).

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

(ii) A ten-day notice of termination of rental agreement 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 must vacate. If he does not, the eviction action can be filed.

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

(vi) If the violation is not cured in the ten-day period, rent should not be accepted after that. If rent is accepted, the judge may find that the landlord reinstated the rental agreement and make him start over again.

(d) No Reinstatement. Unlike non-payment situations, once the termination notice has matured and the eviction action has been filed, the tenant no longer has the right to cure the violation, reinstate his rental agreement, and remain in the community. Of course the landlord can agree to this if he wishes.

H. Domestic Violence

1. Tenant Remedies

(a) In 2007, ARS §33-1318 was added to the Residential Act.

(b) The statute authorizes a tenant to terminate a tenancy by providing a written notice that the tenant is the victim of domestic violence. The notice terminates the tenant's obligations under her rental agreement providing the tenant vacates the premises and provides another notice requesting release from the rental agreement to be effective on a mutually agreed date within 30 days, and also provided it is accompanied by one of the following:

(i) A copy of a Court Order of Protection; or

(ii) A copy of a written police report showing the tenant notified the police she was a victim of domestic violence.

- (c) Security deposits shall be accounted for as though the lease had simply expired. No lease break or similar fees can be charged because of the early termination. However prepaid rent can be retained through the end of the month in which the termination becomes effective.
- (d) Alternatively, if the victim wants to remain, the landlord must change the locks provided the tenant covers the costs, and refuse to provide a key to the abuser if he is named in an Order of Protection or police report.
- (e) If the abuser is named in an Order of Protection or police report, the landlord may not let him into the home to get his belongings without a police escort.
- (f) If the tenancy is terminated but the abuser is a party to the rental agreement, he is liable for any damages resulting from the early termination. The law also allows the landlord to enter into a replacement lease with any co-tenants that eliminates the abuser.

2. Landlord Remedies

- (a) ARS §33-1368 (A) (2) permits a landlord to serve an immediate notice of termination of tenancy on a tenant for a material and irreparable breach, including threatening, intimidating and assault. Domestic violence qualifies.
- (b) If one co-tenant commits domestic violence on the other, and if the victim does not take advantage of one of the above remedies, the landlord may serve an immediate termination notice on all tenants. The eviction process should be stopped if and when the victim invokes one of those remedies.
- (c) If the victim doesn't act and the abuser remains, then the eviction action can be pursued.

I. Notices

1. Effectiveness

- (a) To be effective, a notice must be received or, alternatively, the recipient must have actual knowledge of the contents. ARS §33-1313 (A). Court eviction rules have an ironclad requirement that the notice be personally delivered or sent by certified mail.
- (b) If a party cannot prove actual knowledge or receipt by the other party, the notice is not effective.
- (c) But the law creates a conclusive presumption that the notice was received five days after mailing if mailed by certified mail. ARS §33-1313 (B).

2. Rule of Thumb. A prudent party will always serve important notices such as termination notices by personal delivery or by certified mail in order to be able to prove receipt by the recipient. This is mandated by Court eviction rules.

J. Evictions

1. Notice of Action. All evictions under the Act are called "eviction" and are covered by ARS §33-1377. The statute, however, continues to refer to them as "special detainers".

(a) The scope of an eviction action is limited to the right to possession of the premises, the amount of rent owed if relevant, late charges due, and costs and legal fees.

(b) These are summary remedies that move quickly through the courts. No other issues such as title or other claims between the parties can be issues in these cases. Those would require separate action.

(c) The remedy is covered by specific Court rules. The rules of civil procedure are not applicable. They are covered by the Arizona Rules of Procedure for Eviction Actions that went into effect January 1, 2009.

(d) The general rule is that counterclaims are not permitted. By statute, however, the Act makes an exception in a non-payment of rent eviction when the counterclaim is by a tenant and seeks damages specifically recoverable under the rental agreement or the Act itself. But this is a very narrow scope. If the counterclaim seeks relief beyond this it cannot be asserted in an eviction action. ARS §33-1365.

2. Enforcement of Judgments

(a) Possession. The landlord is entitled to possession five days after entry of judgment. If the premises are not vacated by then, the landlord can obtain issuance of a writ of restitution directing the constable to remove the tenant.

(b) Money Judgment. If the prevailing party is awarded money damages, this may be enforced through normal post judgment remedies (e.g., garnishment).

3. Appeals

(a) Time Limit. The losing party has five days to file a notice of appeal after entry of judgment or his appeal rights are lost in a Justice Court case. ARS §12-1179(A).

(b) A cost bond must be filed. A supersedeas bond must be filed in order to stay enforcement of the judgment. Rent accruing during the appeal must be paid to the court. ARS §12-1179(B) (D) and (E).

(c) Appeals are on the record. There is no trial *de novo* on appeal of a Justice Court eviction unless the record is fatally defective.

K. Abandoned Property

1. Generally. Except after evictions, ARS §33-1370 creates general procedures for dealing with property abandoned in the dwelling by a tenant. Forms for use in these situations and detailed instructions appear in the Forms section of this publication.

(a) A dwelling is deemed abandoned when it appears so, when rent is ten days delinquent, and the tenant has been absent at least seven days. ARS §33-1370 (H).

(b) Once a landlord determines a dwelling with property in it has been abandoned, a notice of abandonment should be sent by certified mail to the tenant's last known address, with a copy posted on the door for at least five days. ARS §33-1370 (A).

(c) Five days thereafter the landlord may retake possession of the premises. ARS §33-1370 (B).

(d) The tenant remains liable for rent for the remainder of the lease until the dwelling is re-rented provided the landlord makes reasonable efforts to re-rent it. ARS §33-1370 (C).

(e) After the landlord retakes possession he must store any tenant property found. A notice that the property is being held must be sent to the tenant by certified mail and posted on the door for at least five days. ARS §33-1370 (D).

(f) No sooner than ten days thereafter, the landlord may sell the property and apply the proceeds to what the tenant owes. ARS §33-1370 (E).

2. After Eviction

(a) ARS §33-1368 (E) and (F) contain special rules for dealing with tenant property left behind when possession is recovered by way of enforcing an eviction judgment.

(b) The landlord must hold and safeguard the tenant's property for 21 days beginning after execution of a writ of restitution. An inventory and notice must be sent the tenant by certified mail. ARS §33-1368 (E).

(c) To get his property back, the tenant only needs to pay the landlord his storage expenses. He does not need to pay the monetary portion of the eviction judgment. ARS §33-1368 (E).

(d) If the tenant does not contact the landlord within 21 days after the notice is sent, the landlord may dispose of the property as provided in ARS §33-1370. ARS §33-1368 (E).