

EVICTION ACTIONS IN JUSTICE COURT

Applies to eviction from an apartment, house or mobile home. Does not apply to eviction from a mobile home space; or eviction of a tenant or borrower after a house is foreclosed.



Community Legal Services is committed to eliminating poverty-based inequities in the civil justice system by providing high-quality legal advice, advocacy and assistance to low-income Arizonans.

EVICCTIONS

An eviction action is a lawsuit by the landlord asking the court to:

1. find that the tenant has broken the lease agreement;
2. order that the tenant be removed from the property; and
3. order that the tenant pay money to the landlord for rent, late fees, attorney fees and costs.

It is important for tenants to appear in court in an eviction action because it is possible to defend yourself in these lawsuits. **It is especially important for Section 8 tenants because an eviction can lead to loss of a housing subsidy.**

TYPES OF LEASE VIOLATIONS

Not Paying the Rent

Landlord must give written notice to tenant that he has five (5) day to pay the rent (and any late fees if provided for in the lease) in full. The tenant can still avoid the eviction by paying all of the rent and late fees before the lawsuit is filed. If payment is not made, the eviction lawsuit can be filed on or after the sixth calendar day.

After the eviction action is filed, the tenant can pay all past due rent, late fees, attorney fees and court costs **before** a judgment is entered to avoid eviction. The landlord only has the right to late fees if provided for in a written lease. **The tenant should tell the court if there is no written lease, or the lease does not provide for the landlord to collect late fees.**

The landlord does **not** have to accept rent or let the tenant stay at the property after a judgment is entered. If the tenant has not left the property within five (5) days after the judgment is entered, the court will issue an order called a “Writ of Restitution” directing a law enforcement officer to remove the tenant from the property.

As a general rule, the only defense to an eviction for not paying the rent is that the rent was actually paid in the manner and in the amount provided in the lease.

If the landlord accepts part of the rent money without having the tenant sign a payment plan (also called a “non-waiver agreement”), the landlord may not then evict the tenant for not paying the rent. The tenant should let the Judge know about the part payment at the court hearing.

Material Non-Compliance

If the landlord claims that the tenant has broken the lease (such as by not following the rules of the apartment complex or having too many pets), then the landlord must give written notice to the tenant that he has ten (10) days to show that he is now following the terms of the lease (such as by removing the pets). The eviction lawsuit can be filed on or after the eleventh day.

The tenant will have to leave the property if the court enters judgment for the landlord. If the tenant has not left the property within five (5) days after the eviction judgment is entered, the court will issue an order for a law enforcement officer to remove the tenant from the property.

Material Non-Compliance Affecting Health and Safety

If the landlord claims that the tenant has broken the lease in a way that affects health and safety (such as not keeping the premises in clean and safe condition), then the landlord must give written notice to the tenant that he has five (5) days to show he is now following the terms of the lease (such as cleaning the premises). The eviction lawsuit can be filed on or after the sixth day.

The tenant will have to leave the property if the court enters judgment for the landlord. If the tenant has not left the property within five (5) days after the eviction judgment is entered, the court will issue an order for a law enforcement officer to remove the tenant from the property.

Material and Irreparable Breach

If the landlord claims that the tenant has done something so bad that it cannot be fixed (such as participating in gang activity, firing a weapon on the premises or punching someone), then the landlord must give the tenant written notice of **immediate termination** of the lease. The landlord does **not** have to allow the tenant to show he is now following the lease. The eviction lawsuit can be filed on the same day.

The tenant will have to leave the property if the court enters judgment for the landlord. If the tenant has not left the property within **twelve (12) hours** after the eviction is entered, the court will issue an order for a law enforcement officer to remove the tenant from the property.

If the acts alleged in the eviction lawsuit concern criminal activity, anything the tenant says or presents at the eviction hearing may be used against him in a criminal case.

WHAT MUST BE IN THE EVICTION LAWSUIT

The lawsuit papers must include: (1) Summons; (2) Residential Eviction Information Sheet; (3) Complaint; and (4) any notice the landlord gave to the tenant. **The tenant should ask the court to dismiss the case if he did not receive the required notice (discussed above) from the landlord; or, if the landlord filed the lawsuit before the time in the notice expired** (for example, the landlord gave a 5-day notice for nonpayment of rent but filed the lawsuit three days after the notice date).

The lawsuit papers must be served by: (1) a process server handing them to the tenant; (2) a process server handing them to someone of suitable age residing at the tenant's home; or (3) posting them on the tenant's door **and** sending them to the tenant by both regular and certified mail. **The tenant should ask the court to dismiss the case if the lawsuit papers were not properly served.**

After the tenant receives these documents, he should file an Answer. The Answer form (included in this pamphlet) gives the tenant boxes to check and blank lines to fill in to explain his position to the court. There is a fee for the tenant to file the Answer. If the tenant cannot afford the fee, he can ask that no fee be charged (called a "waiver") or that the fee be paid at a later time (called a "deferral"). If the tenant believes the landlord owes him money, the tenant may file a counterclaim.

WHAT WILL HAPPEN IN COURT

The tenant must appear at court on the date and time listed in the Summons (**failure to appear will result in the court immediately entering a judgment** directing the tenant to vacate the property and pay money to the landlord). Dress appropriately for court. The tenant should arrive at the court at least 15 minutes early and check in (either at the Court Clerk's window or with the Court Clerk inside the courtroom). The tenant should then go into the courtroom and wait for his case to be called.

(It is common for the landlord or his attorney to talk with the tenant about settlement before the Judge calls the case. **Remember, the landlord or his attorney does not represent the tenant; and the tenant should not rely on the**

landlord or his attorney. The tenant should **read and fully understand** any settlement paperwork prepared by the landlord or his attorney before signing. If the tenant signs a Stipulated Judgment to settle the case, he likely has waived any right to appeal the judgment.)

The judge will call the case and ask that the landlord and tenant come forward. Only the owner of the property or his attorney (not the property manager) can appear at court for the landlord. **The tenant should ask the court to dismiss the case if the property owner or his attorney is not present at court.**

The court will ask the tenant whether the information in the Complaint is true. If the tenant says the Complaint is true, the Judge will enter a judgment against the tenant. If the tenant says the Complaint is not true, he will need to briefly explain why and show proof to the Judge (such as copies of rent checks, notices, receipts for repairs and photographs). If the explanation shows that the tenant may have a proper defense, the Judge will set the case for trial.

The trial may happen on that same day or the court may set the case for trial within the next three (3) days. The tenant will need to **have any witnesses and documents with him to present at trial**. At trial, the Judge will listen to and review the evidence presented and then make a decision.

If the court decides in favor of the landlord, a judgment will be entered directing that the tenant leave the property and/or pay money to the landlord for rent, late fees, attorney fees and costs. If the tenant does not timely leave (see above), the court will issue an order for a law enforcement officer to remove the tenant from the property. The tenant can avoid having a law enforcement officer come to the property by timely leaving and turning over the keys to the landlord.

The following forms are attached to assist you in responding to an eviction action:

- Application for Deferral or Waiver of Court Fees and Costs and Consent to Entry of Judgment (request for the court to waive the tenant's filing fee)
- Answer
- Counterclaim
- Motion to Vacate or Modify Judgment

The tenant can go to <http://justicecourts.maricopa.gov/HowTo/index.aspx> for "how to" information on:

- How to file a Motion to Vacate judgment

APPEAL FROM A JUDGMENT

The tenant may appeal a justice court judgment to the Superior Court. Appeal of an eviction judgment for nonpayment of rent, material noncompliance or material noncompliance affecting health and safety must be filed within five (5) days of the date of the judgment. Appeal of an eviction judgment for material and irreparable breach must be filed within twelve (12) hours after the judgment is entered.

To file the appeal, the tenant must:

1. file a Notice of Appeal;
2. file a Designation of Record;
3. pay an appeal fee or request a waiver of that fee; and
4. post a cost bond in the amount of \$250 or file an affidavit of inability to pay bond.

The filing of an appeal does not stop the landlord from attempting to collect from the tenant the money awarded in the judgment or having the sheriff remove the tenant from the property. The tenant must file separate bonds (in addition to the cost bond referenced above) to stop each of these actions, as follows:

Stop collection: A supersedeas bond to stop collection of the money awarded in the judgment must be in an amount equal to the judgment and costs.

Stop the eviction process: A supersedeas bond to stop a law enforcement officer from making the tenant leave the property must be in the amount of the rent from the date of the judgment to the next rent due date, together with costs and attorney fees.

The tenant must also continue to pay rent on time to the court to stay in the property during the appeal.

The above information is for starting the appeal process and stopping the landlord from immediately collecting from or evicting the tenant. There are additional steps for the appeal process, such as filing the appeal memorandum. Go to <http://justicecourts.maricopa.gov/HowTo/index.aspx> for additional "how to" information on the eviction appeal process.

This pamphlet is provided by Community Legal Services as a service to our community. The purpose of this pamphlet is to provide general information to tenants about their legal rights and responsibilities. Please realize that no pamphlet can ever be a substitute for a lawyer because every situation is different. Therefore, we encourage the reader to consult a lawyer before undertaking any legal action. If you cannot afford a lawyer, call to see if you are eligible for a Community Legal Services lawyer at no cost to you. For information on the Community Legal Services office nearest to you, call 602-258-3434 or 1-800-852-9075.

**COMMUNITY LEGAL SERVICES
HOUSING UNIT
305 South 2nd Avenue
Phoenix, Arizona 85003
Office: (602) 258-3434
Fax: (602) 254-3957
Toll-Free: 1-800-852-9075**



DRAFT Rev. 01/08/2015

Attorney for Defendant

Address



Maricopa County Justice Courts, Arizona

CASE NUMBER: _____

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

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

ANSWER (Eviction Action)

I am answering on behalf of: Myself Partnership
 Marital Community Other: _____
(Requires signature of both husband and wife)

I ADMIT the following portion(s) of plaintiff's complaint.

I ask the court to dismiss plaintiff's complaint for the following reason(s):

This court does not have jurisdiction, because:

Plaintiff is not the proper party to file the complaint against me, because:

I am not the person or party against whom this claim should be made because:

Proper notice was not given to me as required by law.

Other Defenses: _____

I DENY that I have:

Failed to pay rent as agreed. All rent has been paid as required by the rental agreement.

Committed any material non-compliance of the rental agreement.

Committed damage to the property.

Rent has not been paid because the plaintiff has violated the rental agreement or the Residential Landlord and Tenant Act. I gave the plaintiff written notice as required by the rental agreement and the Act. Attached is a copy of the notice that I gave. The plaintiff committed the following violations:

I am asking the court to deny Plaintiff's complaint. I am also asking for reimbursement of my court costs. I state under penalty of perjury that the foregoing is true and correct.

Date: _____ Defendant _____ Defendant

I CERTIFY that I have / will mail a copy of this ANSWER on the same day to:

Plaintiff at the above address

Plaintiff's attorney

Date: _____ By _____
Defendant

Attorney for Counterclaimant

Address



Maricopa County Justice Courts, Arizona

CASE NUMBER: _____

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

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

COUNTERCLAIM (Eviction Action)

Defendant, having filed an answer to plaintiff's complaint, now counterclaims as follows:

Identify the breach of the Residential Landlord and Tenant Act or the breach of the rental contract that has resulted in the alleged damages that is the basis of this counterclaim:

I gave the plaintiff written notice of the alleged breach. Attached is a copy of the notice that I gave. It was given to the plaintiff (or to their representative) on _____, in the following manner (e.g. mailed, hand delivered, etc.):

I am asking for judgment against the counter-defendant(s) herein named in the sum of \$ _____. I am also asking for costs of court incurred herein and interest at the legal rate of 10% per annum from the date of judgment. I am entitled to this relief because:

I state under penalty of perjury that the foregoing is true and correct.

Date: _____
Counterclaimant

I CERTIFY that I have / will mail a copy of this COUNTERCLAIM on the same day to:

Plaintiff at the above address

Plaintiff's attorney

Date: _____ By _____
Defendant



Maricopa County Justice Courts, Arizona

CASE NUMBER: _____

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

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

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

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

MOTION to SET ASIDE / VACATE JUDGMENT

JCRCP Rule 141

ORAL ARGUMENT REQUESTED BY AGREEMENT

You have the right to file a written response to this Motion within ten (10) judicial days from the date this Motion is served. Your response must be filed with the court. A copy of your response must be served on the other parties as provided by Rule 120, of the Justice Courts Rules of Civil Procedure. The court may treat your failure to respond to a Motion as your consent that the Motion be granted.

I am the Plaintiff Defendant in this case.
I would like the court to:

Statement of Facts:

Legal Support:

On penalty of perjury I state that the foregoing is true and correct.

Date: _____
 Plaintiff Defendant

Date: _____
 Plaintiff Defendant

NOTICE TO MOVING PARTY: *If the time to appeal the Judgment has expired, service by process server or service by any other methods of service provided for service of Summons in JCRCP Rule 113 is required. Proof of service must be filed with the court, without proof of service or a response from the opposing party, the Court may deny your Motion.*

NOTICE TO RESPONDENT: *You have ten (10) judicial days after service of this Motion to file a written response, if you wish to do so. If no response is given, the Court will consider the relief requested and will enter an order without hearing any objection(s) you may have.*



Maricopa County Justice Courts

INSTRUCTIONS for FILING and SERVING a MOTION to SET ASIDE / VACATE JUDGMENT

CIVIL

EVICTION ACTION / SPECIAL DETAINER

SMALL CLAIMS

Filing with the Court:

- Complete the Motion form. Explain why you failed to appear and the legal reason why the Judgment should be set aside / vacated.
- Sign the motion form.
- Return the completed form along with any supporting documentation to the court clerk and pay the appropriate filing fee (if applicable).
- If you need additional space to write please use a second page, do not write on the back of the Motion form.

Serving the other party:

- The other party must be served with a copy of the motion and any supporting documentation you submitted to the court.
 - **By first class mail:** (does not apply to Small Claims) If the time to appeal the judgment has not expired (fourteen (14) days for a Civil Case, and five (5) days for an Eviction Action) the other party may be served by first class mail.
 - **By process service:** If the time to appeal the judgment has expired, (more than fourteen (14) days for a Civil Case, and more than five (5) days for an Eviction Action) the other party must be served in the manner provided for Service of Summons in JCRCP, Rule 120. Most generally a licensed process server is used to serve court papers.
- Proof of service must be filed with the court. Your process server is required to file an affidavit with the court stating the date, the time, where and upon who service was made and to provide you with a copy of the certificate / affidavit of service.

What the other party may do:

- The opposing party has ten (10) judicial days after service of the motion (or within the time fixed by the Judge) to file a written response. Any response filed must also be served upon you by first class mail. If the opposing party does not file a written response the court will consider the relief requested and enter an appropriate order.

You may Reply to the opposing parties Response:

- You will have five (5) judicial days to file a Reply but it is not mandatory to do so. The court will still consider you Motion without a Reply.
- You must file the original with the Court and mail a copy to the other party.

What the court may do:

- The court will consider your request and any supporting documentation offered and the opposing party's response, if any.
- The court will rule on the motion without a hearing or will set the matter for hearing and oral argument. If a hearing is set the court will notice all parties of the hearing date and you must appear and be prepared to present your argument to the court as to why the judgment should (or should not) be vacated or modified as requested.
- The court will mail a copy of its ruling to all parties.