

Eviction Initial Appearance Checklist

I. Review the File for Jurisdiction and Service

A. Jurisdiction

- Is title or ownership a subject of inquiry in the action? If yes, stop and transfer to Superior Court. (22-201(D).)
- Is this eviction following a trustee's sale? If yes, stop and transfer to Superior Court. (*Secure Ventures, LLC. v. Gerlach*), 249 Ariz. 97 (App. 2020).) (Most likely true for other forcible detainers in 12-1173.01.)
- Was the tenant in possession at the time of the filing of the eviction action (not returned the keys)? 33-1310(3)

B. Service

- Determine whether the service of the summons and complaint was proper and timely. (13a1).
- A special detainer (ARLTA) may be served by personal or post and mail service. A forcible detainer (not ARLTA) must be served personally. (5e).
- If not timely served, but tenant does not assert improper service, improper service is waived. If not timely served, may continue the initial or dismiss. (5f). Timely service: at least 2 days before IA. Post and mail deemed received after 3 days. (33-1377(B), 12-1175(C).)
- Does the proof of service indicate that a copy of the relevant portions of the lease and addenda were served? (5d3). If not, dismiss. (Best Practice.)
- If nonpayment of rent, does the proof of service indicate that a copy of the accounting of charges and payments for the preceding six months was served? (5d4). If not, dismiss. (Best Practice.)

II. Ensure the Complaint Complies with Rule 5

- Determine whether the summons and complaint included all the information and notice(s) required under Rule 5. (13a1).

A. The Notice

- Does the complaint state the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. A copy of the notice shall be attached as an exhibit to the complaint. (5b7). If not, dismiss. (Best Practice.)
- Action not filed too soon?
 - Notice=actual notice (brought to tenant's attention)
 - In hand: Day of delivery not counted. Case may be filed on the day after the notice period.
 - Certified mail, return receipt requested: Deemed received when signed or after 5 days if not signed. 33-1313

ARLTA/MHP Notices

Nonpayment of rent: 5 days (MHP=7) (must specify amount so tenant can cure)

Material breach: 10 days to cure or vacate 33-1368(A) (MHP=14/30)

Second similar material breach: 10 days to vacate (no cure) 33-1368(A) (MHP=30)

Health and safety: 5 days to cure or vacate 33-1368(A) (MHP=10/20)

Immediate: Can be same day as complaint 33-1368(A)

Month-month termination: 30 days (at least) 33-1375(B)

Lease expiration: None (unless required by lease) 33-1375(C)

Non ARLTA:

Month-month: 10 days 33-341(B)

Nonpayment, others: None, unless required by lease 33-361(A), 12-1175(D)

B. Subsidized Housing

- Does the complaint indicate if it is subsidized housing. (5b8). If it is subsidized and does not say so, dismiss. (Best Practice.)
- If subsidized, does the complaint state the total amount of the rent per month, the tenant's portion of the monthly rent, and the total amount of the tenant's portion of the rent that the tenant owes. (5c8). If not, dismiss. (Best Practice.)

III. Initial Appearance/Trial

A. Initial Proceedings

- Parties must be allowed to appear at the first appearance virtually. (11a; 22-206).
- Automatic Change of judge is timely if made prior to or at the time of the first court appearance or upon reassignment of the matter to a new judge for trial. (9c).
- Call the case, identify the parties and any attorneys (or Certified Legal Paraprofessionals) or representatives present and ascertain that they are properly authorized to represent the parties to the action (property managers may not represent unless an owner, sub-lessor or attorney). (11b1, Supreme Court Rule 31.3(c)(3)).
- Swear the parties in. (Best Practice.)
- State or summarize the material allegations contained in the complaint. (11b2).
- Ask the defendant whether the defendant contests the allegations contained in the complaint. (11b3).
- Question the defendant to determine whether there is a basis for a legal defense to the complaint. (11c1).
- If defendant pleads guilty, and Rule 13 below has been complied with, enter judgment. (13b1).
- If defendant FTA, and Rule 13 below has been complied with, enter judgment. (13b3A).
- If there may be a valid defense or counterclaim, set the matter to a trial on the merits. (11c1).
- Retaliation may be available as a defense if a proper complaint was made pursuant to 33-1381 within 6 months. Not available as a defense for nonpayment (unless rent was raised within the last 6 months). 33-1381.
- If setting the trial on another day, you may require a written answer and there is no longer a fee. (11c1).
- If to conduct trial at initial, move the parties to the tables and explain how the trial will proceed. (Best Practice.) Swear the witnesses in.
- If trial set to future date, must be within 3 days unless both parties agree. (11d).

B. Counterclaims

- Only available in **ARLTA nonpayment** cases (not MHP or forcibles) and must be based in statute (no torts). 33-1365.
- Counterclaim must be in writing and if one or more aspects are defective or impermissible, court may permit the defendant to restate properly, or order the counterclaim dismissed without prejudice. (8a, 8b).

C. Immediate Evictions

- Immediate evictions: court shall hear evidence establishing such a breach. Such evidence must comply with the Rules of Evidence (e.g., a live witness). (13b3B, Best Practice).

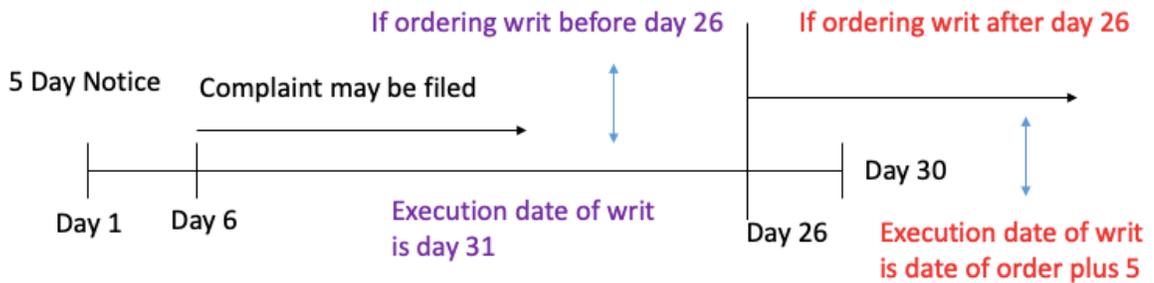
D. Stipulations

- Must find defendant signed warning language and must find either:
 - both parties present
 - attorney affirms defendant was informed of right to appear
 - good cause exists to proceed because of distance or other circumstances. (13b4).

E. Remnants of the Pandemic

- Certified mail, return receipt requested:
The notice is deemed received after 5 days even if tenant did not sign for it. (Supreme Court Administrative Order 2020-160)
- CARES Act: If requesting rent for period between March 27-July 24, 2020:
 - Non-payment of rent requires **5 day** notice and **no eviction prior to 30 days** (15 USC 9058(c)(1))
 - No late fees or other penalties** relating to nonpayment of rent for period between March 27-July 24, 2020
- Forbearance Mortgage Forbearance Relief:
 - Cannot charge late fees or other penalties for paying rent late while in forbearance
- Rental Assistance Compliance:

- If LL accepted rental assistance, ensure not evicting in violation of the terms of that assistance
- 30 days for Writ?
 - Tenants of multifamily properties (more than 5 units) with mortgages backed by Fannie Mae or Freddie Mac who are subject to eviction for nonpayment of rent must be given 30 days' notice to vacate before the tenant can be required to leave the unit
 - Supreme Court AO 2022-14 (writ cannot be executed sooner than 30 days from notice of breach)
 - Or an actual 5/30 day notice? Argument can be made that the notice must say 30 days (but rent must still be paid within 5)



<https://www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-Announces-Multifamily-Tenant-Protections.aspx>

https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/COVID_19_Tenant-Fact-Sheet_842021-FINAL.pdf

<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/renter-protections/federally-subsidized/>

IV. Entry of Judgment (Rule 13)

A. Evaluate Evidence and Determine Damages

- Determine whether the tenant or occupant received proper termination notice if one was necessary, and was afforded any applicable opportunity to cure. If the notice does not comply with the statute or is not properly served, dismiss the action. (13a2).
- Determine whether the facts alleged, if proven, would be sufficient to determine that plaintiff has a right of superior possession due to a material breach of the lease agreement or for any other basis in law. (13a3).

- Damages: If a written rental agreement exists, the party seeking money damages shall have a copy of the written rental agreement available for the court to review. (13c2).
- If it appears that a landlord has accepted a payment or partial payment, inquire whether the landlord accepted the partial payment, and if so, can produce a partial payment agreement and waiver signed by the defendant. If not, dismiss the action. (13a4, 33-1371). (Govt subsidy is not partial payment, 33-1371(B).)
- If the court determines that the rental property is subsidized, determine whether there is unpaid rent that the tenant is obligated to pay as the tenant's portion of the rent. (13a5).
- Damages must be specifically stated in complaint except for additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint. (13c2A).
- Rent includes all rent found to be due and unpaid through the periodic rental period. (12-1178(A)).
- May award reasonable late charges with evidence they are specified in lease. (13c2C).
- Damages to property may be awarded only if specifically pleaded and when such damages resulted from the breach giving rise to the eviction. Otherwise, dismiss those claims without prejudice. (13c2E).
- Damages and/or offsets shall be awarded if a defendant prevails on a counterclaim or defense. In such event, the court shall determine the prevailing party for purposes of awarding costs and reasonable attorney fees. (13c2F).

B. Attorney Fees

- Reasonable attorney fees shall be awarded where provided by lease or statute (12-341.01 for contested matters) and may not exceed the amount the client has agreed to pay. (13f).
- Also awardable pursuant to 12-1178(A) for forcibles.

C. Dismissing/Judgment for the Defendant/Sealing/Satisfying/Vacating

- If the defendant is found not guilty, judgment shall be entered in favor of the defendant. (13c1C).

- After 9-24-22, the Court must enter an order sealing all records to the case if
 - the case is dismissed prior to entry of judgment;
 - the court enters judgment in favor of the tenant, or
 - the parties file a stipulation to seal. (20a).

- Satisfying and Vacating Judgments? In December, Supreme Court will rule on **R22-0004**.

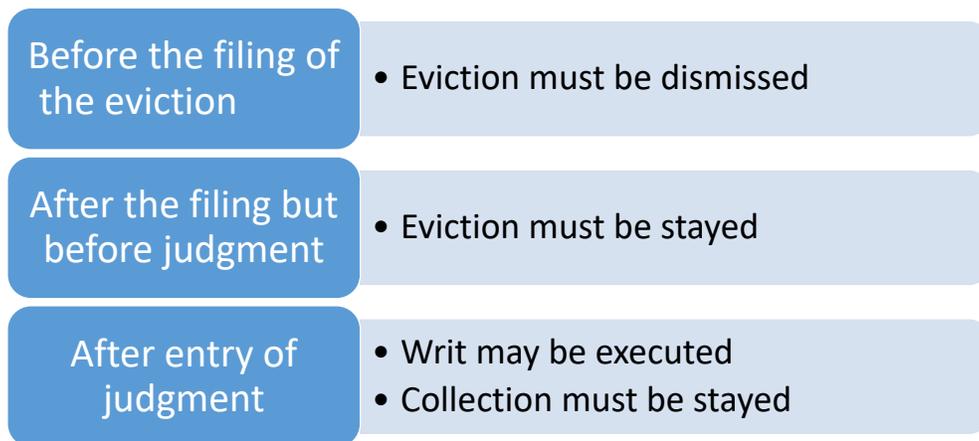
V. Concluding the Proceeding

- If there was not a guilty plea or stipulation, inform the parties that an appeal may be filed within 5 days.

- If there is an eviction, explain the writ date and what that means. Explain to SRL landlords how to obtain the writ. Explain to tenants that the lease is terminated and the impact of a judgment. (Best practice.)

- If a party arrives after a case has been called and judgment has been entered, advise the party they may proceed to the front window and file a Motion to Set Aside the Judgment. (Best practice).

Bankruptcy Filed By Tenant





MARICOPA COUNTY JUSTICE COURTS BEST PRACTICES

SUBJECT: EVICTION COMPLAINTS THAT DO NOT SUBSTANTIALLY
COMPLY WITH EVICTION RULES (AMENDED)

EFFECTIVE: 12/10/2019

- 1.0 **PURPOSE:** The purpose of any “best practice” is to foster excellence regarding case processing, form development and control, and other operating procedure throughout the Maricopa County Justice Court system (“MCJC”). Implementation of a “best practice” is strongly recommended to promote consistency and efficiency throughout the MCJC but is voluntary by any individual Justice of the Peace (“JP”) Court.
- 2.0 **ISSUE:** Rule 5 of the Rules of Procedure for Eviction Actions requires that numerous matters be contained in an eviction complaint, including a statement of whether the unit involved is subsidized housing. The Rule is silent, however, as to what remedy the court should employ for a deficient complaint.
- 3.0 **BEST PRACTICE:** While dismissal is usually an extreme remedy, given the concerns regarding amendments and service, a judge should consider dismissing a complaint without prejudice if it seriously deficient, such as failing to identify the unit as subsidized housing. (Please note that Rule 5(d) of the Rules of Procedure Actions is unclear as to whether the relevant portions of the lease and the ledger must be served with the complaint and filed with the court. The Administrative Office of the Courts and the Committee has concluded that the Rule does NOT require the filing of those documents with the Court.)
- 4.0 **RATIONALE:** There are serious ramification in eviction actions, particularly for subsidized housing, where an evicted subsidized tenant may lose their ability to qualify for subsidized housing again. This is why Rule 5(b)(8) requires that a complaint identify when it is a subsidized unit, and 5(c)(8) requires the landlord to break down the tenant’s portion of the rent. In addition, Rule 11(e) specifically states that a landlord shall not be permitted to advance allegations at the initial appearance or any

subsequent trial unless those allegations were properly stated in the complaint.

Rule 9(d) does allow motions to amend for good cause, and 9(a) does allow motions to be made orally. But allowing parties to amend to comply with 5(b) by moving to amend in court essentially renders Rules 5(b) and 11(e) meaningless, particularly since Rule 6(b) says that no service need be made on parties who have defaulted, and most of our eviction proceedings proceed as default matters. In addition, Rule 10(c) does allow a court to dismiss complaints for failure to comply with disclosure requirements. In addition, any hardship experienced by the landlord due to a dismissal is minimized because a case that is refiled will be promptly placed on another eviction action docket.

Accordingly, the best practice is for a court to dismiss without prejudice a complaint that does not substantially comply with Rule 5.

- 5.0 IMPLEMENTATION: The above best practice was recommended on April 24, 2019 and amended on December 10, 2019. The practice may be implemented immediately and remain effective until superseded or abolished.



MARICOPA COUNTY JUSTICE COURTS BEST PRACTICES

SUBJECT: CONDUCTING EVICTION INITIAL APPEARANCES AND TRIALS

EFFECTIVE: 3/06/2017

- 1.0 RATIONALE: All participants should understand when an eviction initial appearance has moved beyond the pleading stage to the trial stage. Once in the trial stage, the judge should comply with all trial procedures.
- 2.0 PURPOSE: The purpose of any “best practice” is to foster excellence regarding case processing, form development and control, and other operating procedure throughout the Maricopa County Justice Court system (“MCJC”). Implementation of a “best practice” is strongly recommended to promote consistency and efficiency throughout the MCJC but is voluntary by any individual Justice of the Peace (“JP”) Court.
- 3.0 ISSUE: Some courts have blurred the line between the eviction initial appearance and the trial. This has resulted in confusion to the parties, especially self-represented litigants, and it has resulted in some trials ignoring standard trial practice and procedure, including the right to cross-examination.
- 4.0 LEGAL AUTHORITY: Rule 11, Arizona Rules of Procedure for Eviction Actions.
- 5.0 BEST PRACTICE: When conducting an eviction initial appearance, a judge should adhere closely to Rule 11, Arizona Rules of Eviction Procedure.

Taking the Plea

The judge should call the case and ensure that the Plaintiff is the property owner and that the participants are authorized to appear in accordance

with Rule 11(a)(1), Arizona Rules of Procedure for Eviction Actions, and Rule 31(d), Arizona Supreme Court Rules.

The judge should state or summarize the material allegations contained in the complaint and ask the defendant whether the defendant contests the allegations of the complaint.

- 6.0 If the defendant admits the allegations of the complaint, the judge should check the “defendant appears and pleads guilty” box and proceed to determine the value of the judgment. If the defendant does not admit the allegations of the complaint but the judge does not identify a valid defense to the allegations, the judge should check the “defendant appears and pleads guilty” box and proceed to determine the value of the judgment. In either case, if there is a material issue as to the value of the judgment, the judge should follow the procedure below to conduct a trial as to damages. The judge may also enter judgment on the pleadings in accordance with Rule 9e, Arizona Rules of Procedure for Eviction Actions.

If the defendant contests the allegations of the complaint and the judge identifies a valid defense or a valid counterclaim, the judge should check the “defendant appears and pleads not guilty” box and shall order a trial on the merits.

Conducting the Trial

The judge should clearly delineate that the initial appearance has moved beyond the pleading stage to the trial stage. At the very least, if the judge has taken the pleadings at the bench, the parties should be moved to the litigant tables, and the judge must swear in the parties and any witnesses.

The judge may also move the trial to the end of the calendar or continue the trial for up to three days (or longer if both parties agree). The judge may require the defendant to file a written answer if the trial is continued but must also advise the defendants that they may apply for a deferral or waiver of the fees.

The trial should comply with full procedure and practice, including the right to cross-examine witnesses. The judge should ensure that the Rules of Evidence are adhered to. Trials, including immediate and irreparable evictions, must be based upon admissible evidence.

Concluding the Trial

The judge should explain the reasoning behind the holding and how the total was computed. In the event of an eviction, the judge should inform the defendant of the writ date. The judge should ensure a self-

represented plaintiff understands how the writ process works. The judge should inform the parties of the right to appeal.

- 7.0 IMPLEMENTATION: The above best practice was recommended on March 6, 2017. The practice may be implemented immediately and remain effective until superseded or abolished.

Eviction Advisement

Good morning, this is the day set for eviction-related cases in our court. Please listen to some overall information which will help you prepare for the proceedings.

A landlord may file an eviction case for many reasons- but most evictions are for non-payment of rent, so that is what we will talk about today.

If you are being evicted for a reason that is **not** failure to pay rent, a lot of this information still applies to you.

Once the case has been filed, the landlord is entitled to add court costs, attorney's fees and late fees that are owed to date. You can avoid a judgment against you if you pay the full amount owed **before** the judgment is signed. If you agree that you owe the rent and have the money in full today, I will not sign the judgment and your lease will be reinstated.

Everyone understands that tenants fall upon hard times for all sorts of reasons and it is no reflection on you that you have not been able to pay your rent. But the judge must follow the law. And the law does not consider **hardship** as a legal defense to the non-payment of rent.

After a judgment is signed it is up to the landlord if they allow you to stay even if you do pay the rent. But we find that many times, once they have a judgment, landlords are willing to work with tenants. So if you want to stay, talk to your landlord as soon as possible to see if you can work something out. Be sure to get any agreement that you make in writing.

If you are ordered evicted, the judgment will say that you must move out in 5 days. We know that does not give you much time but that is what the law says and the judge cannot change that without agreement from the landlord. The judgment may also include past due rent, late fees, other fees that may be in the lease, unpaid utilities, court costs and attorney's fees. The landlord may be entitled to some other damages but only if they are proved and were included in the complaint.

Once a judgment is signed it will be on your record and rental history. If you pay the full amount of the judgment, the landlord must file a document called a satisfaction of judgment with the court indicating the debt was paid. But it will remain on your record. The only way to get a judgment removed from your record is to have the landlord **vacate** the judgment. That is something you would have to work out with him or her and then file the appropriate court paperwork.

Most landlords in court will be represented by an attorney. Many of them might offer to negotiate with you and you may talk to the attorney if you want. As officers of the court, they have an obligation to be truthful with you and not mislead you, but remember that they are defending their **clients**, not you. If you reach an agreement with them, they can turn it in to the judge and you do not have to stay- or you can stay and talk to the judge as well.

We will begin in just a moment.

TIMELINE FOR NEWLY FILED EVICTION CASES (NONPAYMENT)

