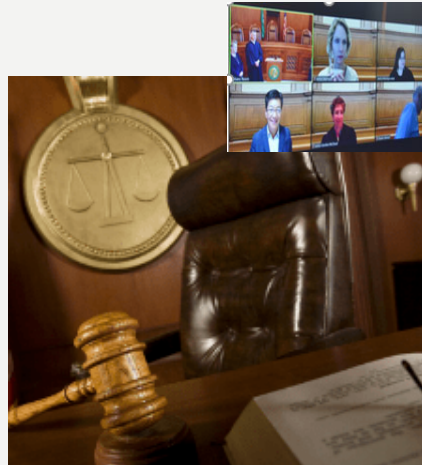


EVICTIONS: UPDATES AND TRENDS

HON. ANNA HUBERMAN
HON. RON NEWMAN

1



*Moving
past the
pandemic*

2

2

THE RESIDUAL CARES ACT PROVISION STILL IN EFFECT

- For all federally-backed mortgages, property owners must provide a 30-day written notice prior to the date on which a tenant is required to vacate because of unpaid rent.
 - If the property is subject to FHFA Multifamily Protections (Fannie Mae, Freddie Mac, FHA, USDA or VA). Writ cannot be authorized upon sooner than 30 days from the notice to the tenant.
 - Can still be a 5 day notice...but writ cannot be authorized until 30 days after notice.

3

INITIAL HEARING/VIRTUAL APPEARANCES

ARS § 22-206: Virtual appearance; detainer actions

Notwithstanding any other law, in a special detainer or forcible detainer proceeding before the court, any party, including an attorney or witness upon written notice to the court*, shall be permitted to **participate at the initial appearance remotely** by using a telephone or video conference connection. If the court continues a **contested matter to a later date, at the discretion of the court**, the court may require all parties, attorneys and witnesses to participate in person.

*2 hours before the hearing

4

4

RULE CHANGES (2021)

RULE 5: SUMMONS

- The summons shall identify the defendants and shall also include the following:
- (1) Court information including fax, email and website
- (2) Date and time for the trial and that any party may appear virtually notifying court two hours before

RULE 6: SUBMITTING NOTICE

- Can use any means -phone or electronic- to submit notice
- Failure to submit notice not a basis to deny remote if it can be provided

RULE 11: PROCEDURES

- Each court shall provide the option for landlords, tenants, attorneys, and witnesses to participate at an initial appearance by telephone or video conference
- If one participant appears remotely, all other participants must also be permitted to appear remotely.
- Each court may provide this option routinely to all participants in all initial appearances.

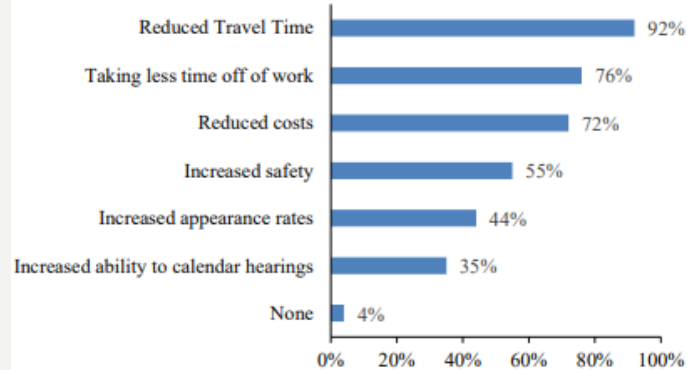
In the Matter of:)
)
 ADOPTION AND IMPLEMENTATION)
 OF PLAN B WORKGROUP)
 RECOMMENDATIONS AS)
 PRESUMPTIVE STANDARDS FOR)
 REMOTE AND IN-PERSON HEARINGS)

Administrative Order
 No. 2022 - 46

	Order	Λ	
<i>Proceedings Under the Arizona Rules of Procedure for Eviction Actions</i>			
	Initial Appearance	X ²	
	Jury Selection		X
	Jury Trial		X
	Bench Trial	X	
	Writ of Restitution	X	
	Post-Judgment	X	

STATE OF ARIZONA PUBLIC OPINION SURVEY – MAY 2021

Based on your experience, what benefits have litigants, attorneys, and other court participants experienced through the use of technology-based platforms? (353 responses)



7

In your experience, what are the drawbacks of using online video conferencing? (276 responses)

Diminished human element/loss of nonverbal cues/unprofessional conduct	62.3%
Connectivity/interface issues	26.1%
Poor handling of exhibits	15.6%
Audio Problems	10.1%
Unethical manipulation of the interface	6.5%
Training Shortcomings	4.7%

8

CHANGE OF JUDGE AS MATTER OF RIGHT

- Rule Change in 2016 allowed either side to request a different judge hear their residential eviction case without stating a reason.
- This Rule was suspended from 5/20/2020* through 4/1/22 (AO-2022-34 reinstated changes of judge as matter of right)
- The challenge must be used before any ruling is made on the case.
- MCJC eviction transfers are done by a matrix adopted in policy. Have staff notify the court manager to facilitate change of judge.

*the original AO from 5/8/2020 forgot to include EAs

9

9

JURISDICTIONAL LIMIT

22-201. Jurisdiction of civil actions

- A. Justices of the peace have jurisdiction only as affirmatively conferred on them by law.
- B. Justices of the peace have exclusive original jurisdiction of all civil actions when the amount involved, **exclusive of interest, costs and awarded attorney fees*** when authorized by law, is ten thousand dollars or less.
- C. Justices of the peace have jurisdiction concurrent with the superior court in cases of forcible entry and detainer when the amount involved, **exclusive of interest, costs and awarded attorney fees** when authorized by law, is ten thousand dollars or less.

* Late fees, utilities or other damages are not excluded.

10

10

COMPLAINTS OVER \$10K

- Must be transferred to Superior Court
- Plaintiff may chose to waive any claim over \$10K
- What happens to the waived amount?
- Can Plaintiff ask to only include rent through prior month?

11

11

ISSUES RELATED TO RENTAL ASSISTANCE

- In Pima County, a representative from the Pima County Emergency Rental Assistance Program routinely attends the Initial Appearance hearing via ZOOM) and is aware prior to the hearing that the defendant rental assistance applicant is scheduled to appear in court.
- In most cases the rental assistance process is expedited accordingly.
- Landlords are made aware of this, and, in some cases agree to not to seek the writ on the authorized date.

12

12

ISSUES RELATED TO RENTAL ASSISTANCE (cont.)

- Tenant appears in court and says she has been approved for rental assistance and LL knows rent will be paid.*
- *Many tenants believe that because they have filed for rental assistance, they can dispute that rent is owed and that a writ should not be issued.
- Tenant was approved for rental assistance in February. All back rent was to be paid, plus three months going forward. Tenant expected March, April and May rent to be paid. When she tendered June's rent there was a balance due from May. Three month's rent did not cover all because landlord included additional fees.

13

13

ANSWER FEES



HB 2484 : Prohibits the court from imposing or collecting a fee for filing an answer to an eviction action.

RULE PETITION :

Amending Rule 7 to state there are no answer fees.

Amending Rule 11 deleting provision that judge must inform tenant of waiver of fees

Amending the REIS deleting information on waivers

14

SEALING OF EVICTION FILES



15

LEGISLATION

- HB2485 – adding ARS 33-1379
- When court enters an order that dismisses an action for eviction **prior to entry of a judgment** or that enters **judgment in favor of a tenant**, or upon **stipulation of the parties** it is required to **issue an order** sealing all records related to the case.
- Applies to all evictions: forcible entry and detainer action and special detainer action.
- Applies to a tenant whose case is dismissed or in which judgment is entered in the tenant's favor on or after **9-24-22**.
- Rule 20 is added

16

16

LEGISLATION (CONT.)

- What about cases that are vacated after judgment?
- Best practice: Have a standing AO in your court ORDERING the sealing of cases in those scenarios.

17

17

PENDING RULE PETITION

- **To amend Rule 9 by adding:**
 - Motions to Vacate Judgment**
 - Any party can file a motion with the court asking to be relieved from judgment. The motion does not affect the finality of the judgment or suspend operation of the judgment. The court may vacate the judgment for the following reasons:
 - The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - Any other reason justifying relief.

18



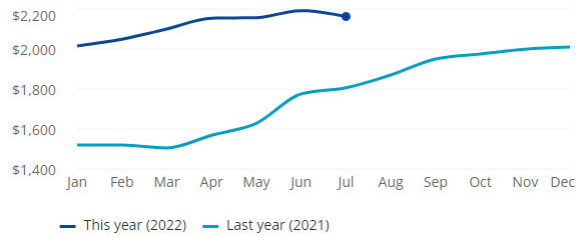
EVICTIION TRENDS

- Rising prices
- Lack of affordable housing
- Higher EA filings

19

Median Rental Price over Time

In the last year, rent has increased by **\$276** compared to the previous year.



20

ARIZONA
#18*

In **Arizona**, the Fair Market Rent (FMR) for a two-bedroom apartment is **\$1,219**. In order to afford this level of rent and utilities — without paying more than 30% of income on housing — a household must earn **\$4,062** monthly or **\$48,747** annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into an hourly Housing Wage of:

\$23.44

PER HOUR
STATE HOUSING
WAGE

* National Low Income Housing Coalition

21

MINIMUM WAGE NEEDED TO AFFORD AN AVERAGE TWO-BEDROOM UNIT

Counties	
Apache County	\$16.42
Cochise County	\$17.44
Coconino County	\$28.35
Gila County	\$19.87
Graham County	\$18.40
Greenlee County	\$16.48
La Paz County	\$20.44
Maricopa County	\$25.21
Mohave County	\$18.63
Navajo County	\$18.10
Pima County	\$19.25
Pinal County	\$25.21
Santa Cruz County	\$16.27
Yavapai County	\$21.21
Yuma County	\$18.62


22

MO Rank	Court Name	JAN	FEB	MAR	APRIL	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Filings YTD	Mo Avg
1	Manistee	402	424	369	343	395	511							2,444	407
2	Country Meadows	361	325	333	318	351	449							2,137	356
3	Moon Valley	323	306	313	230	364	381							1,917	320
4	Maryvale	359	262	266	271	277	368							1,803	301
5	Kyrene	278	217	294	237	227	339							1,592	265
6	Encanto	300	205	252	187	257	317							1,518	253
7	San Marcos	312	269	259	219	300	294							1,653	276
8	Arcadia Biltmore	284	215	236	198	250	285							1,468	245
9	Dreamy Draw	262	184	225	202	220	267							1,360	227
10	University Lakes	152	170	178	196	173	258							1,127	188
11	Downtown	154	124	183	174	181	231							1,047	175
12	West Mesa	314	222	226	199	219	221							1,401	234
13	West McDowell	216	151	134	109	130	213							953	159
14	South Mountain	204	148	168	149	195	204							1,068	178
15	North Mesa	155	166	162	123	169	186							961	160
16	Desert Ridge	140	146	179	132	160	167							924	154
17	North Valley	156	152	150	162	152	163							935	156
18	Highland	98	104	105	78	123	155							663	111
19	McDowell Mountain	124	114	120	96	119	152							725	121
20	White Tank	116	148	123	105	121	136							749	125
21	East Mesa	184	150	118	141	147	122							862	144
22	Agua Fria	86	99	92	104	68	104							553	92
23	San Tan	96	81	69	92	101	100							539	90
24	Hassayampa	74	73	75	85	77	94							478	80
25	Arrowhead	59	52	68	52	68	73							372	62
26	Ironwood	4	2	3	4	1	2							16	3
TOTAL FILINGS		5,213	4,509	4,700	4,206	4,845	5,792	0	0	0	0	0	0	29,265	4,878

23

PIMA COUNTY FILINGS			
(Green Valley and AJO not included)			
FY 22 Pima County filing through June 30, 2022:			
July 21 -	433	Jan 22 -	1077
Aug 21 -	530	Feb 22 -	828
Sept 21 -	777	Mar 22 -	945
Oct 21 -	803	Apr 22 -	853
Nov 21 -	737	May 22 -	961
Dec 21 -	831	Jun 22 -	1126
TOTAL 9901			

24



Who can come to court?

25

25

WHO CAN REPRESENT THE LANDLORD

The Rules of Procedure in Eviction Actions

11(a)(1) states:

As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.

26

26

ARIZONA SUPREME COURT RULE 31

(a) 2. Definitions.

A. “Practice of law” means providing legal advice or services to or for another by:

- (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation

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27

RULE 31.3

Exceptions

(c)(1) Defines legal entity:

“Legal entity” means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, a trust, or a governmental or tribal entity.

(c)(3) *Justice and Municipal Courts.* A person may represent a legal entity in a proceeding before a justice court or municipal court if:

- (A) the person is an officer, partner, member, manager, or employee of the entity;
- (B) the entity has specifically authorized the person to represent it in the proceeding;
- (C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and
- (D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(e)(4) Legal paraprofessional (Code of Judicial Administration)

28

28

CODE OF JUDICIAL ADMINISTRATION PART 7, CHAPTER 2, SECTION 7-210

- F 1. (Authorized services) d. Appear before a court or tribunal on behalf of a party, including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum;
- F 2. (Areas of practice) b. Limited Jurisdiction Civil. Legal paraprofessionals may engage in authorized services in any civil matter that may be or is before a municipal or justice court of this state.

29

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WHO CAN APPEAR IN COURT?

- 1) What if the owner of the house is a trust?
- 2) What if an LLC is the owner of the LLC that owns the home?

30

30

MORE EVICTION CONSIDERATIONS



31

31

REMEMBER TRUSTEE SALES?

- Secure Ventures, LLC v. Gerlach in & for Cty. of Maricopa, No. 1 CA-SA 19-0293, 2020 WL 2123293, at *2 (Ariz. Ct.App. May 5, 2020)

“Rather, § 12-1173.01(A) makes clear, as to *procedure*, that an occupant in those scenarios specifically listed may only “be removed through an action for forcible detainer filed with *the clerk of the superior court*.” (Emphasis added.) ... We acknowledge that our holding may well conflict with the common practice in Arizona. However, we cannot disregard the statute’s plain language in deference to common practice.”

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BUT § 12-1173.01(A) INCLUDES MORE CASE TYPES:

- 1. If the property has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of real property pursuant to title 33, chapter 6, article 2.
- 2. If the property has been sold through a trustee's sale under a deed of trust pursuant to title 33, chapter 6.1.
- 3. If the property has been forfeited through a contract for conveyance of real property pursuant to title 33, chapter 6, article 3.
- 4. If the property has been sold by virtue of an execution and the title has been duly transferred. **(May include tax lien foreclosure or sale)**
- 5. If the property has been sold by the owner and the title has been duly transferred.

33

33

Landlords must also register with the county assessor. A.R.S. § 33-1902. There is no private right of action under this statute. It allows the tenant to give a 10-day notice for the landlord to comply with the statute and if the landlord does not do so, then the tenant can break the lease.

34

34

COUNTER CLAIMS

- Unless specifically provided by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Ny counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. **(RPEA 8A)**
- In an action based on the nonpayment of rent, a tenant may counterclaim for any amount recoverable under the rental agreement if the landlord did not comply with its obligations. **(A.R.S § 33-1365 (A))**
- ***Iverson v. Nava, 248 Ariz. 443, 461 P.3d 463 (Ariz. App. Div. I 2020)***