

TO:

Rule 28 Distribution List
David K Byers

ATTACHMENT¹

RULES OF PROCEDURE FOR EVICTION ACTIONS

Rule 7. Answers

On or before the initial return date, the defendant shall answer, indicating whether the defendant admits or denies the allegations of the complaint. If the defendant does not have sufficient information to determine whether or not an allegation of the complaint is true, the defendant shall so state. The defendant's answer shall also state in short and plain terms any defenses the defendant wishes to assert to the plaintiff's claims. No fee may be imposed for filing an answer.

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Rule 11. Initial Appearance and Trial Procedures

a.-b. [No change]

c. Defendant's Plea.

(1) If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer filed pursuant to Rule 7 or by questioning the defendant in open court. If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits. If the trial is to be continued to a later date, the court may require the defendant to file a written answer. ~~If the court orders a written answer to be filed, the court should advise the defendant of both the requirement of an answer fee and the defendant's right to apply for a waiver or deferral of the fee.~~ No fee may be imposed for filing an answer.

(2) [No change]

d.-f. [No change]

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Rule 20. Sealing Records

a. When Required. The court must enter an order sealing all records related to the case if:

(1) the court enters an order that dismisses the case prior to the entry of judgment;

(2) the court enters judgment in favor of the defendant; or

(3) the parties file a stipulation to set aside the order of eviction and seal the eviction case.

¹ Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike through~~.

b. Access to Sealed Records. Records sealed under this rule may be made available only as permitted by A.R.S. § 33-1379.

APPENDIX A
RESIDENTIAL EVICTION INFORMATION SHEET
(PUBLICATION AND DISTRIBUTION REQUIRED
BY THE ARIZONA SUPREME COURT)

Notice. A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed or with the summons.

Rent cases. If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

Before Court. Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the justice court allows the tenant to admit or deny the allegations and explain his or her position. ~~If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver or deferral of that fee.~~ There is no fee to file an answer. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. A landlord, tenant, attorney, or witness will be permitted to participate at the initial hearing by telephone or video conference and should contact the court at least two (2) hours before the hearing to obtain information about how to connect to the hearing. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

At Court. At the time and date listed on the summons, the judge will start calling cases. If both parties are present, the judge will ask the tenant whether the complaint is true. If the tenant says "no," he or she will need to briefly tell the judge why. If the reason is a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation." A stipulation is an agreement under which the parties resolve the dispute on the basis of what the agreement says. Only matters contained in the written stipulation agreement can be enforced. These stipulation agreements should be clear and understandable by both parties. Most stipulations include judgments tenants.

Continuances. Either party may ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

After a Judgment. If a landlord receives a judgment, it may apply for a writ of restitution to remove the tenant(s) and all occupants. Writs of Restitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and returning the keys to the landlord. This ends the tenants' possession of the residence. A tenant will have five (5) days to vacate the premises unless the court has found a material and irreparable breach of the lease by the tenant, in which case the tenant has only twelve (12) to twenty-four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five (5) days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay an appropriate bond and continue to pay rent into court as it becomes due. If the tenant prevails the court will dismiss the case. Absent an appeal, the tenant will need to obtain the landlord's approval and enter a new lease to continue living in the residence.

Sources of Additional Information. You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from links on the Arizona Judicial Branch Eviction Actions web page, <https://www.azcourts.gov/eviction>. For information on the Residential Eviction Action process, please visit: <https://www.azcourthelp.org>. If you wish to consult an attorney, you may want to contact the Arizona State Bar Attorney Referrals Line or, in Maricopa County, Community Legal Services. Contact the court in other counties for similar referrals.