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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

Supreme Court No. R-25-0019

11 **PETITION TO AMEND RULE 15,**
12 **RULES OF PROCEDURE FOR**
13 **EVICITION ACTIONS**

STATE BAR OF ARIZONA
COMMENT

14 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby submits the following as its comment to the
16 above-captioned Petition.
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18 First, the Petition proposes to add to Rule 15, Rules of Procedure for Eviction
19 Actions (“RPEA”), the last three grounds listed in Rule 60(b), Rules of Civil
20 Procedure, for seeking relief from judgments, orders, and proceedings. Those three
21 grounds, which are a familiar and traditional part of Rule 60(b), are:
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- 23 (11) The judgment is void;
- 24 (12) The judgment has been satisfied, released, or
- 25 discharged; it is based on an earlier judgment that has been
reversed or vacated; or applying it prospectively is no

1 longer equitable; or

2 (13) Any other reason justifying relief.

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4 These grounds were omitted from Rule 15 when the RPEA was originally
5 promulgated in 2008. Now, sixteen years later, based upon petitioner's showing of
6 need, the State Bar concluded that the existing Rule 15 provisions are not sufficient
7 to cover all instances where a party may deserve relief, such as cases of incorrect
8 venue or where the tenant is in a rent-to-own relationship with the plaintiff. If a party
9 files a frivolous motion under the additional grounds, the court can exercise its
10 discretion to summarily deny the motion.
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12 The State Bar agrees that it is appropriate to harmonize the safeguards
13 afforded to eviction parties under Rule 15, RPEA with those provided to other civil
14 litigants under Rule 60(b), Rules of Civil Procedure. The proposed amendments will
15 secure fundamentally fair procedures for parties who seek relief from eviction
16 judgments, orders, and proceedings affecting their property, family, and vital
17 interests.
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20 Second, the Petition proposes to add to Rule 15(c) a mandatory stay of
21 judgments, orders, and proceedings during the existing three-day consideration
22 period for motions constituting emergency matters. This is a negligible delay which
23 the State Bar believes will minimize irreparable harm and maximize judicial
24 efficiency.
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1 A prefatory note is in order in light of the Comment submitted in this rule
2 matter by the Justice of the Peace Bench in Maricopa County. First, the State Bar
3 wholeheartedly agrees, and there can be no dispute, that eviction actions in Arizona
4 are “statutory summary proceedings and the statutes establishing them govern their
5 scope and procedure.” Rule 2, RPEA (Construction of Rules). The purpose of
6 forcible entry and detainer actions is to provide a summary, speedy, and adequate
7 remedy for obtaining possession of premises. *Olds Bros. Lumber Co. v. Rushing*, 64
8 Ariz. 199, 204-05 (1946). This objective would be “entirely frustrated if the
9 defendant were permitted to deny his landlord’s title, or to interpose customary and
10 usual defenses permissible in the ordinary action at law” such as counterclaims,
11 offsets and cross complaints. *Id.* at 205.

12 Evictions actions are designed to resolve the right to possession quickly and
13 do not include the full procedural safeguards of general civil action. *Colonial Tr-*
14 *City Ltd. Partnership v. Ben Franklin Stores, Inc.*, stated:

15 The policy behind our holding is obvious; the summary proceedings
16 authorized by section 33-361 and the forcible entry and detainer statutes
17 do not furnish all of the procedural safeguards provided in a general civil
18 action. “In order to provide an expeditious means of recovering
19 possession, the [forcible entry and detainer] statutes provide for
20 streamlined procedures.” 2 Richard R. Powell, *Powell on Real Property* §
21 246(3) (1993). “Notice periods are short, pleadings are restricted, triable
22 issues are limited, discovery is general unavailable, and the judgment is
23 promptly operative.” *Id.*

1 179 Ariz. 428 433 (1993).

2 However, the State Bar concludes that the proposed amendments may be
3 adopted without trenching on these principles. The proposed amendments do not
4 seek to lengthen notice provisions, to expand triable issues, to authorize
5 counterclaims, cross-claims, or offsets, to open discovery where there was none, or
6 to protract a proceeding beyond the three days already permitted for a continuance.
7 Instead, in place of the truncated version of Civil Rule 60(b) now applicable in
8 eviction actions, they add the entirety of the grounds available for a 60(b) motion,
9 grounds which have traditionally been utilized to redress a wide variety of defects
10 potentially invalidating a judgment.
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12 The Petition appears to meet the required showing of need in light of the
13 important property interests implicated when three of the Rule 60(b) grounds are
14 foreclosed to eviction litigants as under the current rule. Eviction proceedings have
15 grave consequences to both parties, each of whom have property interests subject to
16 constitutional due process safeguards. Motions for relief from judgments, orders,
17 and proceedings in eviction actions should include the available bases for relief, and
18 the associated case law, for similar motions in other civil litigation. The following
19 are concrete examples of the need for the additional grounds proposed as Rule 15
20 (11), (12), and (13):
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1 **Examples of need for proposed Rule 15(11) [Source: Civil Rule 60(b)(4)]**

2 A judgment or order is “void” if the court entering it lacked jurisdiction: (1)
3 over the subject matter, (2) over the person involved, or (3) to render the particular
4 judgment or order entered. *Martin v. Martin*, 182 Ariz. 11 (Ariz. Ct. App. 1994)
5 (citing *Matter of Adoption of Hadtrath*, 121 Ariz. 606, 608, (1979)). Plaintiffs in
6 summary forcible entry and detainer actions governed by statute ***must comply***
7 ***strictly with the statutory procedures outlined***. *Tweed v. Guild*, 2 Ariz. 207 (Ariz.
8 1886). In *Tweed v. Guild*, the Arizona Supreme Court ruled that state eviction courts
9 may not render judgments unless there has been strict compliance with statutory
10 procedures. *Tweed*, 2 Ariz. 207. Arguably, any scenario in which an eviction
11 plaintiff did not comply strictly with statutory procedures renders a resulting
12 judgment void.
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16 For example, assume an eviction plaintiff files a special detainer complaint
17 alleging nonpayment of rent under a rental agreement. In fact, the plaintiff has a
18 contract for deed with the defendant, who is purchasing the real estate with
19 installment payments and a balloon payment due at the end of the contract’s
20 term. The defendant knows about the proceeding but does not attend the hearing,
21 believing they have no legal defense for nonpayment under the contract. The court
22 enters judgment in the special detainer action. The defendant later gets legal advice
23 and learns that they have an equity interest in the real estate that the contract seller
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1 did not legally terminate. In this scenario, the defendant could move for relief from
2 the eviction judgment as void and unenforceable because the court did not have
3 authority to render the particular judgment.
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5 Or assume an eviction plaintiff secures an eviction judgment in a special
6 detainer action for nonpayment of rent. The court enters the eviction judgment,
7 establishing an enforceable monetary judgment and legally delivering possession to
8 the plaintiff and ending the parties' lease and tenancy. Then assume that, after entry
9 of judgment, the defendant makes rent payments to the plaintiff. The plaintiff
10 accepts payments and allows the defendant to reside at the premises. The defendant
11 then pays rent for the next month, which the plaintiff accepts, legally creating a new
12 tenancy and right to possession for the defendant.
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15 Assume, further, that the parties disregard the legal eviction judgment and the
16 legally terminated landlord-tenant relationship and reaffirm commitments under the
17 terminated rental agreement. In this scenario, the defendant could move for relief
18 from the judgment as void and unenforceable. The parties created a new landlord-
19 tenant relationship, and the plaintiff could no longer lawfully enforce the judgment
20 for possession against the tenant. The judgment is a nullity and void by operation
21 of law.
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1 **Examples of need for proposed Rule 15(12) [Source: Rule 60(b)(5)]**

2 As a first example: assume an eviction defendant pays the amounts included
3 in a judgment. RPEA 4 (d) requires the plaintiff to file a Satisfaction of Judgment
4 with the court within 30 days. This does not happen. Meanwhile, the judgment
5 shows up on a defendant’s credit history and serves as a barrier to credit, housing,
6 work, and other life opportunities. In addition to moving for satisfaction of the
7 judgment, a defendant should be able to seek all available relief to ensure accuracy
8 in reporting information about the judgment and to clarify that it would be
9 inequitable for the judgment to have prospective application.
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11 As a second example: Community Legal Services (“CLS”) reports frequently
12 seeing landlords re-file eviction actions alleging the same amounts/periods of rent
13 for repeated/successive months. For example, a landlord may file an eviction action
14 in January, and the initial appearance may not occur until early February. Later in
15 February, the landlord may file a second case and include the same incident or same
16 amount as alleged in the January complaint. Meanwhile the January case is
17 dismissed, or the claimed debt is paid off. However, the judgment is not satisfied
18 formally, and a judge may issue a judgment in the February case (perhaps unaware
19 the judgment includes the same claim or amount as the resolved January case). CLS
20 specifically reports seeing this scenario when the first case had a lawyer represent
21 the tenant, but the tenant is unrepresented in the second case.
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1 **Due process need for proposed Rule 15(13) [Source: Rule 60(b)(6)]**

2 In eviction cases, both parties have property interests. The plaintiff-landlord has
3 an equity/ownership interest. The defendant-tenant has a possessory interest,
4 acquired by a conveyance of an interest in real estate and a contract rental
5 agreement. Tenants' property interests in rental agreements are protected by the Due
6 Process Clause of the Fourteenth Amendment. *See Greene v. Lindsey*, 456 U.S. 444
7 (1982). State law and procedure must ensure due process of law, effective notice
8 and an opportunity to be heard in proceedings affecting property interests. Ensuring
9 that relief from judgments for reasons not specifically enumerated in RPEA 15
10 ensures due process of law and prevents the erroneous deprivation of property
11 interests to eviction litigants. *Skydive Arizona, Inc. v. Hogue*, 238 Ariz. 357 (App.
12 2015) (holding that, under Rule 60(c)(6), a court may relieve a party from a final
13 judgment for any reason justifying relief, provided that the movant can show
14 "extraordinary circumstances of hardship or injustice justifying relief" and "a reason
15 for setting aside the judgment other than one of the reasons set forth in the preceding
16 five clauses of rule 60(c)") (quoting *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz.
17 215, 220 (App. 2000)). Courts must consider the totality of facts and circumstances
18 to determine whether Rule 60(c)(6) relief is appropriate. *Amanti Elec., Inc. v.*
19 *Engineered Structures, Inc.*, 229 Ariz. 430, 432 (App. 2012).

1 The State Bar believes that there must be pathways to relief from eviction
2 judgments, orders, and proceedings months or years later. Eviction case records
3 have severe collateral consequences for tenants. A tenant's immediate displacement
4 from their home in an eviction proceeding is followed by years of negative credit
5 reporting and harm from publicly available information about the eviction case,
6 cutting the tenant off from future rental opportunities or limiting the market where
7 they can rent.
8

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10 Even when the tenant prevails or does not face judgment, the records of eviction
11 cases harm tenants for months and years in future housing searches. For this reason,
12 tenants should have all the available pathways to relief from judgments, orders, and
13 proceedings, to ensure they accurately reflect current data about the status of
14 monetary payment, whether the judgment is necessary or further enforceable, and
15 whether the court file data is complete and accurate in relation to the amount or
16 viability of an eviction judgment.
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19 Once again, if a party files a frivolous motion under the additional grounds,
20 the court can readily exercise its discretion to summarily deny the motion.
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22 **The Eviction/Homelessness Crisis**

23 In supporting these amendments, the State Bar is especially mindful of today's
24 housing and eviction crisis. After a brief lull due to the COVID-19 pandemic and
25 federal assistance programs, evictions in Arizona over the past few years have

1 returned to, and then exceeded, pre-pandemic rates.¹ In 2024, landlords in metro
2 Phoenix filed for 87,197 evictions, which set a new record for evictions in a year.²

3
4 Across the entire state, the number of evictions was most likely over 100,000,
5 as the Arizona Eviction and Foreclosure Dashboard was able to map almost 97,000
6 statewide evictions in 2023 and evictions have only increased since then.³ High rents
7 have left many more people at risk for eviction, as 55% of Phoenix tenants are paying
8 more than 30% of their income towards rent and 26% of tenants are spending more
9 than half their income on keeping their home or apartment.⁴ The rapid pace of
10 Arizona eviction proceedings – renters can be locked out as quickly as three weeks
11 after missing a payment – also contributes to these risks.⁵ Without major changes in
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16 ¹ Kunle Falayi and Catherine Reagor, *Three evictions, three stories. Why the Phoenix*
17 *area eviction crisis is only getting worse*, azcentral (Nov. 25, 2023, 12:04 p.m.),
18 [https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-](https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/)
19 [filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/](https://www.azcentral.com/in-depth/news/local/arizona/2023/04/17/eviction-filings-are-on-the-rise-in-metro-phoenix-what-can-be-done/69907643007/).

20 ² Catherine Reagor, *Metro Phoenix eviction filings set record in 2024, despite lower*
21 *rents, more apartments*, azcentral (Jan. 8, 2024, 6:00 a.m.),
22 [https://www.azcentral.com/story/money/real-estate/2025/01/08/metro-phoenix-](https://www.azcentral.com/story/money/real-estate/2025/01/08/metro-phoenix-eviction-filings-set-record-in-2024-despite-lower-rents/77504989007/)
23 [eviction-filings-set-record-in-2024-despite-lower-rents/77504989007/](https://www.azcentral.com/story/money/real-estate/2025/01/08/metro-phoenix-eviction-filings-set-record-in-2024-despite-lower-rents/77504989007/).

24 ³ Shea Lemar, et al., *Arizona Eviction and Foreclosure Dashboard*, Arizona State
25 University,
<https://storymaps.arcgis.com/collections/89946f2d8ad74812a5fa10da4ae5ba58?itm=1>
(last visited Feb. 10, 2025). The dashboard notes that their number for 2023 is
an undercount, as they only included evictions that were mappable, so the number
may have been over 100,000 even in 2023.

⁴ *Id.*

⁵ Kunle Falayi and Catherine Reagor, *supra* note 1.

1 the rental market or housing availability, there is every reason to expect that eviction
2 numbers will continue to climb.

3 Studies have demonstrated a clear connection between evictions and
4 homelessness. A Yale study found that evicted individuals were more than 300%
5 more likely to visit a homeless shelter in the year after their eviction than non-evicted
6 individuals, and that this risk of homelessness also remained increased for the second
7 year after eviction.⁶ This homelessness risk is not limited to losing an eviction
8 judgment, as other researchers have found a correlation between the eviction filing
9 rate and the rate of sheltered homelessness.⁷ As previously noted, even if the
10 proceeding does not end in an eviction, merely being subject to an eviction
11 proceeding increases the chance of becoming homeless. These effects were also
12 shown to be felt more strongly among minority populations, with Black tenants and
13 female tenants having increased chances of homelessness compared to the overall
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21 ⁶ Henri Cornec, *New Research Sheds Light on the Economic Consequences of*
22 *Evictions*, Yale Department of Economics (Sept. 26, 2023),
23 [https://economics.yale.edu/news/230926/new-research-sheds-light-economic-](https://economics.yale.edu/news/230926/new-research-sheds-light-economic-consequences-evictions)
[consequences-evictions](https://economics.yale.edu/news/230926/new-research-sheds-light-economic-consequences-evictions).

24 ⁷ *Eviction Filings Associated with Increases in Homelessness*, National Low Income
25 Housing Coalition (Apr. 10, 2023), [https://nlihc.org/resource/eviction-filings-](https://nlihc.org/resource/eviction-filings-associated-increases-homelessness)
[associated-increases-homelessness](https://nlihc.org/resource/eviction-filings-associated-increases-homelessness).

1 population.⁸ This analysis does not even include the impacts, most likely long-
2 lasting, of eviction and homelessness on parties' children.

3
4 Added to these far-reaching impacts is the fact that, according to the Petition,
5 99% of eviction defendants are unrepresented, while about 99% of plaintiffs are
6 represented, giving rise to an inherently uneven playing field.

7
8 In sum, the full protections rather than a truncated form of Rule 60(b) appear
9 owed to parties seeking relief from eviction judgments, orders, and proceedings. The
10 leading Supreme Court case for establishing the requirements of due process in this
11 context is *Mathews v. Eldridge*, which established a three-factor test for determining
12 what process is due prior to the deprivation of some property interest.⁹ One of these
13 factors is the private interest that will be affected by the official action, with a more
14 important private interest weighing in favor of stronger due process protections.¹⁰
15 *Goldberg v. Kelly* lays out this principle explicitly, holding that “[t]he extent to
16 which procedural due process must be afforded the recipient is influenced by the
17 extent to which he may be ‘condemned to suffer grievous loss.’”¹¹ The Supreme
18 Court has also held that in proceedings where the defendant would face harsher
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23 ⁸ Henri Cornec, *supra* note 6.

24 ⁹ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

25 ¹⁰ *Id.*

¹¹ *Goldberg v. Kelly*, 397 U.S. 254, 262-63 (1970) (quoting *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951)).

1 consequences than the plaintiff in a civil action, due process may require heightened
2 procedural protection for that defendant.¹²

3
4 The Arizona Constitution has a similar due process provision to the federal
5 Constitution¹³ and Arizona law likewise emphasizes the increased importance of due
6 process protections in proceedings with serious risk of erroneous deprivation. In
7 cases of government deprivations, the Arizona Supreme Court has adopted and
8 applied the *Mathews* test to determine what process is due.¹⁴ Arizona therefore also
9 follows the principle that a more important private interest will weigh in favor of
10 stronger due process protections.¹⁵

11
12 Despite the weighty consequences of a judgment against—and the
13 corresponding heightened importance of due process for—a defendant in an eviction
14 case, the proposed amendments to RPEA 15 do not create special or extra grounds
15 for relief from a judgment. They simply allow these defendants to rely on the same
16 grounds for relief already available to civil litigants. They are consistent not only
17 with longstanding Arizona civil practice and due process but also with Arizona’s
18 public policy for expeditiously processing evictions.
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23 ¹² *Santosky v. Kramer*, 455 U.S. 745, 761 (1982).

24 ¹³ U.S. Const. amend XIV, § 1; Ariz. Const. art. 2, § 4

25 ¹⁴ *See, e.g., In re MH-2008-000867*, 225 Ariz. 178 (2010).

¹⁵ *Id.*

1 The State Bar believes permitting the same grounds for relief from a judgment
2 for eviction as for any civil judgment will increase the public’s faith in the fairness
3 of our courts whereas precluding some of those grounds could appear arbitrary and
4 undermine faith in the Courts.
5

6 The State Bar takes the following positions on the Petition’s individual
7 proposals:
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- 9 1. Adding the Three Grounds: The State Bar supports adding the three
10 traditional grounds from paragraphs (4), (5), and (6) of Rule 60(b), Rules
11 of Civil Procedure, thereby incorporating the body of law associated with
12 Rule 60(b) for the benefit and guidance of bench, bar, and litigants.
13 However, the Bar proposes to merge paragraph (4) of Rule 60(b) (“the
14 judgment is void”) into Rule 15(a)(3), to provide as follows: “The
15 judgment is void, including where the court did not have jurisdiction to
16 hear the case or where a party did not receive proper notice or was not
17 properly served.”
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- 19 2. Mandatory Stay: In view of the minimal delay involved (three court
20 days), the State Bar supports the proposed mandatory stay of an eviction
21 judgment, order, or proceeding “upon the filing of a post judgment
22 motion affecting possession, pending the court’s decision on the motion
23 within three court days.” The State Bar believes the word “and” should
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1 be changed to “or” in “an eviction judgment, order, and proceeding.”

2 The Bar recommends that the phrase “shall stay” be changed to “must
3 stay” under current restyling conventions.
4

- 5 3. State Bar’s alternative proposal for an experimental pilot program: If the
6 Arizona Supreme Court has concerns about implementation of the above
7 rule amendments, the State Bar recommends that the Court adopt the
8 amendments for a three-year trial period after which the amendments
9 would be assessed for their impact, positive or negative, on the
10 administration of justice in eviction cases.
11

12 CONCLUSION

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14 The State Bar of Arizona respectfully requests that the Court approve this
15 Petition with the revisions set forth above.

16 RESPECTFULLY SUBMITTED this 1st day of May 2025.
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19 _____
20 Lisa M. Panahi
21 FOR THE STATE BAR OF ARIZONA

22 Electronic copy filed with the
23 Clerk of the Supreme Court of Arizona
24 this 1st day of May 2025.

25 by: PSequin