



September 20, 2016

Arizona Supreme Court
1501 West Washington
Phoenix, Arizona 85007

Re: R-16-0040 Petition to Amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20 of the Rules of Procedure for Eviction Actions

Dear Justices:

The Arizona Association of REALTORS® (“AAR”) is deeply concerned with the pending Petition to Amend Rules 5(a), 5(b)(6), 5(b)(7) and add Rules 13(h) and 20 of the Rules of Procedure for Eviction Actions (the “Petition”), which would require Arizona litigants to use court-approved eviction action forms. These amendments, if adopted, would: (1) deprive Arizona REALTORS® and their clients of the right to use established and proven forms that have stood the test of time; and (2) require the use of forms that are deficient in many ways.

AAR is the largest professional trade association in the state and represents approximately 45,000 real estate brokers, agents, and other individuals involved in the real estate industry. As a member benefit, AAR has created and standardized over 70 forms, including several eviction action forms that would be eliminated under the Petition advanced by the Arizona Commission on Access to Justice (“ACAJ”).

AAR’s standardized property management forms have been successfully used by thousands of REALTORS® in thousands of transactions over the span of many years. In crafting these carefully designed forms, REALTORS®, along with legal counsel, spent countless hours ensuring that the forms are easy to understand, yet comply with eviction laws and Arizona’s Residential Landlord and Tenant Act. Based on the proven effectiveness of these forms, there is no good reason to prohibit their use as a matter of law.

The goals of ACAJ are commendable, including its desire to assist self-represented litigants navigate what can prove to be a challenging process. However, it is unclear why this goal must be achieved at the expense of REALTORS®, their clients, and Arizona attorneys. Why does assisting self-represented litigants necessitate preventing others from using established forms on which they have come to know and rely?

According to the Petition, mandating ACAJ’s proposed forms will “promote improved readability.” However, AAR is of the opinion that its forms are clearer, more effective, and ensure a greater level of compliance than those forms prepared by ACAJ. Arizona REALTORS® receive training on how to use AAR’s landlord-tenant and eviction action forms. This training ensures that they have an in-depth understanding of the forms; knowledge that they are able to share with their clients. Since ACAJ will not be training Arizona’s approximately 45,000 REALTORS® on how to use and understand the forms they have created, it will necessarily result in a level of service to the public lower than what is currently being provided.

Arizona Association of REALTORS®

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As is the case with other respondents who are opposed to the mandatory use of ACAJ's eviction action forms, AAR believes that many of the forms ACAJ has prepared are deficient. So as not to inundate the Court with arguments that have already been advanced by other respondents, I will simply note that AAR is of the position that: (1) the forms are deficient in legal requirements; (2) the "easier to read" language is often misleading; and (3) mandatory forms will discourage the use of third-party professionals.

At first glance, it would appear that many of the notice forms prepared by ACAJ are modeled after the forms utilized by Arizona REALTORS®. But upon closer examination, it is evident that in an effort to make the forms more "readable," ACAJ has removed critical language or simplified the language to the point where its effectiveness is compromised. For example, in reviewing ACAJ's Notice for Failure to Pay Rent 5 Day Notice to Move, several issues quickly become evident.

AAR's concerns with the form begin with its title, which is misleading in nature. The title of the form contains two phrases. They are "Notice for Failure to Pay Rent," and "5 Day Notice to Move," neither of which is appropriate. The intent of the form is not to notify the tenant of their "failure to pay rent." It can safely be assumed that tenants in default are already aware of this fact. The purpose of the form is to notify the tenant of the landlord's intentions in the event that rent is not paid within the stated timeframe. More specifically, the form should act as a notice of the landlord's intention to terminate the lease if payment is not made. It is therefore unclear why the term "Notice for Failure to Pay Rent" appears in the form's title.

As for the second portion of the title, it includes the verbiage "5 Day Notice to Move." This clearly implies that the Landlord is instructing the tenant to vacate the property within five days. However, that is not the intention of the notice, nor does it reflect the wishes of the landlord. In delivering this form, the landlord's desire is to obtain the rent that is due, not instruct the tenant to vacate the property. Unfortunately, the title of the form suggests otherwise.

The Notice for Failure to Pay Rent 5 Day Notice to Move also fails to notify the tenant that after a special detainer action is filed, in order to reinstate the lease they may be required to pay damages, attorney fees and court costs. In an effort to "promote improved readability," ACAJ has failed to include this critical language. As a result, tenants are not advised of the important fact that they may be responsible for more than unpaid rent and late fees. While simplicity can prove beneficial in certain circumstances, it is not advantageous when it results in the elimination of material information.

The aforementioned form is just one of several problematic forms ACAJ seeks to make mandatory. While I will not point out the deficiencies in each and every form, AAR echoes the concerns raised by several of the other respondents.

Finally, all Arizona REALTORS® subscribe to and are bound by the National Association of REALTORS® Code of Ethics. Under Article 11 of the Code of Ethics, REALTORS® are prohibited from providing professional services outside their field of competence. Similarly,

Article 13 prohibits the unauthorized practice of law and requires REALTORS® to recommend the retention of legal counsel when the interest of any party to the transaction requires it.

Based in part on these Articles, Arizona REALTORS® routinely advise landlords to retain legal counsel should they wish to pursue an eviction action, and believe that doing so is in the landlord's best interest. AAR is concerned that the formation and required use of a standard eviction action complaint and summons will decrease the use of attorneys. After all, why would a landlord retain counsel if that attorney were required to use the very same complaint and summons that is already available to them? However, if attorneys are permitted to continue to craft their own complaints specific to the individual landlord's case, the use of an attorney would be more likely, resulting in landlords who better understand their legal rights and obligations.

Given the foregoing reasons, AAR respectfully requests that the Supreme Court decline to amend Rules 5(a), 5(b)(6), and 5(b)(7), and decline to add new Rules 13(h) and 20 to the Rules of Procedure for Eviction Actions. Thank you for giving this letter your attention.

Sincerely,

Scott M. Drucker, Esq.

A handwritten signature in blue ink, appearing to read "Scott M. Drucker", is written over the printed name and title.

General Counsel
Arizona Association of REALTORS®

cc: K. Michelle Lind, CEO, Arizona Association of REALTORS®