

Vacancy by Monthly Rent

Adding to the apartment inventory breakdown by rents, the vacancy rates of the apartment units were also tracked. While there are wide ranges of vacancy rates through some communities, the countywide average vacancy rate is relatively uniform across monthly rent ranges, especially when excluding the highest and lowest ranges of monthly rents.

Previous Quarter Vacancy by Monthly Rent Maricopa County Cities								
	Rent Range							Total ^{1/}
	less than \$500	\$500- \$600	\$600- \$700	\$700- \$800	\$800- \$900	\$900- \$1,000	>\$1,000	
Anthem	-	-	-	-	-	-	94%	94%
Apache Junction	1%	2%	19%	19%	-	-	-	5%
Avondale	3%	8%	5%	13%	16%	15%	19%	13%
Buckeye	18%	-	13%	9%	-	5%	-	12%
Carefree	-	2%	-	2%	2%	-	-	2%
Cave Creek	-	-	-	-	5%	-	5%	5%
Chandler	-	15%	7%	9%	9%	8%	8%	8%
El Mirage	0%	10%	10%	10%	-	-	-	4%
Fountain Hills	-	-	-	22%	-	14%	22%	18%
Gilbert	0%	4%	6%	11%	24%	20%	43%	25%
Glendale	8%	9%	10%	11%	11%	14%	29%	12%
Goodyear	-	-	17%	9%	29%	23%	42%	28%
Guadalupe	-	-	-	10%	10%	-	-	10%
Higley	-	7%	7%	-	29%	-	29%	18%
Litchfield Park	-	-	-	-	22%	22%	22%	22%
Mesa	7%	10%	11%	11%	10%	8%	9%	10%
Peoria	5%	6%	6%	5%	7%	9%	15%	8%
Phoenix	9%	11%	11%	10%	11%	10%	10%	10%
Scottsdale	-	4%	7%	8%	7%	9%	9%	8%
Sun City	-	-	-	-	5%	5%	-	5%
Sun City West	-	0%	0%	-	-	-	-	0%
Surprise	3%	6%	3%	21%	8%	13%	15%	10%
Tempe	3%	9%	9%	9%	9%	10%	13%	10%
Tolleson	-	2%	2%	35%	68%	-	-	19%
Youngtown	3%	3%	-	6%	-	-	-	3%
Total (County)	8%	10%	10%	10%	11%	10%	14%	11%

^{1/} Data as of 4th quarter 2007.
Source: Elliott D. Pollack & Co., RealData Inc.

Extremely high vacancy rates, such as those in Anthem, are likely newer developments experiencing an absorption period before reaching stabilized levels. However, it does appear that rents toward the higher range experience higher vacancy rates than the lower ranges.

Additionally, cities located on the outskirts of the Phoenix area appear to experience higher vacancy rates than those communities that are more centralized. Examples of this include Gilbert, Litchfield Park, Goodyear, and Buckeye. These higher than average vacancy rates could



be affected by new growth in the area, as well as the distribution of apartment sizes and the quality of housing offered.

2.3.2 Rental Data Conclusions

The available rental unit information indicates that rent varies considerably between locations in Maricopa County. Communities that post lower rent figures will be impacted most not only because these proposed rules may result in higher rent levels for these tenants, but also because these communities (where rents are lower and more affordable) already experience a disproportionate number of evictions (over 3 to 1).

For perspective, a \$50 increase in rents in a lower cost region such as Youngtown would result in a 10% increase in average rents if the full cost burden is ultimately passed on to tenants. While there is no way of knowing for sure exactly how much rent will increase as a result of these proposed rule changes since it will vary depending on the extent of the realized evictions, even minimal cost increases in these low cost regions could have a profound impact on affordability placing a greater burden on tenants who already experience disproportionate number of evictions.

Since these rules could impact affordability and also impact the current economic equilibrium experienced in the multi-family industry, the economic and fiscal impact that is captured by this industry is provided in detail in Section 3.0.



3.0 Impact of Multi-Family Development in Arizona

This section addresses the economic and fiscal impact of the multi-family industry on the State of Arizona. The analysis focused on the economic and fiscal impacts of the construction of apartment units and the ongoing operations of apartment complexes.

3.1 Economic Impact of Construction and Operations

The economic impact of every 1,000 rental units is outlined in the following table along with job creation and wages. From the construction of every 1,000 rental units, a total of 1,364 direct, indirect, and induced jobs are created with \$68.4 million in wages and \$160.6 million in economic activity. Based on Arizona State University Construction Reports, an average of 10,200 multi-family units have been built each year in Maricopa County since 1978. That translates into approximately 13,913 construction jobs each year, \$697.7 million in wages and over \$1.6 billion in economic output annually for Maricopa County alone.

It has been estimated that there are approximately 50 employees for every 1,000 rental units, and that there are over half a million rental units within the State of Arizona. Fifty direct, full-time employees yield an estimated \$2.2 million in annual wages and produce \$7.2 million in economic activity. The ripple effect of these direct jobs generates an additional 40 indirect and induced jobs with \$1.6 million in wages and \$4.7 million economic activity. Overall, 90 jobs are found in the economy created by the initial 50 jobs, with \$3.8 million in wages and \$11.9 million in economic activity. Taking all of the units within the State into consideration, over 45,000 direct, indirect and induced jobs, over \$1.9 billion in wages, and nearly \$6.0 billion in economic output on an annual basis (in 2008 dollars) is generated.

Economic Impact Summary Arizona Multi-Family Industry (2008 Dollars)			
Construction			
Impact Type	Jobs	Wages	Economic Output
Direct	801	44,302,000	91,545,680
Indirect	207	10,223,000	25,810,000
Induced	356	13,870,000	43,231,000
Total per 1,000 Units	1,364	\$68,395,000	\$160,586,680
Aggregated Annual Impact	13,912	\$697,629,000	\$1,637,984,136
Operations			
Impact Type	Jobs	Wages	Economic Output
Direct	50	2,216,000	7,216,260
Indirect	20	849,000	2,323,000
Induced	20	773,000	2,408,000
Total per 1,000 Units	90	\$3,838,000	\$11,947,260
Aggregated Annual Impact	45,000	\$1,919,000,000	\$5,973,630,000

Sources: Elliott D. Pollack & Company; IMPLAN; ASU Construction Reports; U.S. Census; AZ DOR



3.2 Fiscal Impact of Construction and Operations

Primary revenues from construction that would accrue to the State total approximately \$2.9 million. The remainder of the revenues that would be generated during construction is classified as secondary revenues and relate to the spending of construction employees. The State would collect about \$2.5 million in secondary revenue. During construction, county revenues, aggregated for all of the counties within the State, would total over \$2.0 million and Arizona city and town revenues would total nearly \$2.4 million when aggregated. Using the historical annual average of units built (10,200), the total annual fiscal impact to the State, counties, and cities would be nearly \$100.2 million.

The effects of multi-family housing operations have been divided into primary impacts such as lease taxes (at the county and city level), sales taxes, utility taxes, and property taxes (at the county and city level). Secondary effects of the project relate to the employees supported by the rental units including employee spending (which generates sales taxes) and various other tax payments such as income taxes and property taxes, among others. The 1,000 rental units generate \$74,149 in primary revenues to the State of Arizona. Secondary revenues from employment total \$143,800 for a total fiscal impact on the State of \$217,949 annually. The units generate \$337,700 annually in tax collections for Arizona counties. This includes \$238,800 in primary revenues and \$98,900 in secondary revenue. One thousand rental units generate \$304,600 annually in tax collections for the cities and towns within Arizona. For the over 500,000 units within the State, the total tax revenues for all governing entities exceeds \$430.1 million (2008 dollars). The following table provides the ongoing annual fiscal impact of the rental units on all of the tax collecting entities.

Fiscal Impact Summary Arizona Multi-Family Industry (2008 Dollars)			
Construction			
Impact Type	Primary	Secondary	Total
Arizona	\$2,942,400	\$2,478,000	\$5,420,400
Counties	\$360,900	\$1,679,600	\$2,040,500
Local	\$1,225,800	\$1,133,526	\$2,359,326
Total per 1,000 Units	\$4,529,100	\$5,291,126	\$9,820,226
Aggregated Annual Impact	\$46,196,820	\$53,969,488	\$100,166,308
Operations			
Impact Type	Primary	Secondary	Total
Arizona	\$74,149	\$143,800	\$217,949
Counties	\$238,847	\$98,870	\$337,717
Local	\$250,568	\$54,034	\$304,602
Total per 1,000 Units	\$563,564	\$296,704	\$860,268
Aggregated Annual Impact	\$281,782,000	\$148,352,000	\$430,134,000

Sources: Elliott D. Pollack & Company, IMPLAN, Arizona Department of Revenue, Arizona Tax Research Association, ASU Construction Reports.



4.0 Summary and Conclusions

There are several important issues that arose during this analysis. Of critical note is the fact that the audit results do not confirm that notice posting or delivery procedures impact a tenant's willingness to appear at a hearing. Furthermore, the appearance itself is not necessarily an indicator of judgment. This implies that not all of the proposed rules, despite the best of intentions, will result in favorable change, and will still come at a cost.

This cost will eventually be entirely borne by renters. The cost will also be disproportionately targeted to lower income renters in lower income rental units. It is these renters, ironically, that are the targets of the proposed rules. This suggests that if rules are ultimately implemented, the costs must be carefully weighed against the benefits. It is apparent that the benefits are not as clearly realized as some may have hoped.

Finally, the impact of the multi-family market is quite large in terms of both economic and fiscal impacts. Caution should be made in implementing policies that could cause economic distortions in this important industry.



Appendix A

RULES OF PROCEDURE FOR EVICTION ACTIONS May 9, 2007 Draft

Proposed by the Rules Committee of the Landlord Tenant Task Force
State Bar of Arizona

Table of Rules

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Rule 1. Title and Scope of Rules

These rules shall be known and cited as the Rules of Procedure for Eviction Actions (“RPEA”). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to in these rules as “eviction actions.” For purposes of these rules, there shall be only one form of action known as the “eviction action.” The Arizona Rules of Civil Procedure shall not apply in eviction actions except as specifically incorporated by reference by these rules.

Rule 2. Construction of Rules

These rules shall be construed in accordance with statutory provisions related to forcible entry and detainer actions and special detainer actions. All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure.



Rule 3. Computation: Shortening or Extension of Time

- a. **Computation of Time.** Unless otherwise stated in these Rules, or unless an applicable statute provides otherwise, the time limitations prescribed in these rules shall mean calendar days.
- b. **Shortening or Extension of Time.** Except as specifically provided for by statute or these rules, the time for doing any of the acts provided for in these rules or by order of the court may be shortened or extended by the court upon stipulation, or upon motion for good cause shown.

Rule 4. Duties of Parties and Attorneys

- a. **Due Diligence.** Each party and attorney filing or appearing in an eviction action or defense shall be responsible for exercising due diligence to ensure that the action has a good faith basis; that the relief sought is consistent with the applicable rental agreement, or applicable law; and that all required notices have been properly served. Attorneys are not expected to be guarantors that their clients have complied with the law in all respects, but they are expected to exercise reasonable caution to ensure that their pleadings are accurate and well-grounded in fact and law.
- b. **Good Faith.** Every action taken in an eviction proceeding and every motion or other pleading filed shall be taken or filed in good faith by the party or attorney responsible for filing it.
- c. **Sanctions.** The court may impose sanctions against a party or attorney found to have violated these duties after notice and opportunity for hearing.
- d. **Satisfaction of Judgments.** Once a judgment has been satisfied by the payment of the monetary award, or if possession of the premises has been delivered to the prevailing party, or the parties have entered into a new rental agreement or created a novation of the prior rental agreement, the party in whose favor the judgment was entered shall file a Satisfaction of Judgment with the court that entered it and serve a copy on the judgment debtor. The duty to file the satisfaction of judgment is on the prevailing party and not on the attorney who represented the party. In the event that a prevailing party fails to satisfy a judgment rendered and cannot be located with a showing of reasonable diligence, the judgment debtor may file a motion to compel satisfaction of judgment and the court may, after an opportunity for a hearing, order that the judgment shall be deemed satisfied.
- e. **Entry of Appearance.** No attorney shall appear in any eviction action or file a pleading or any other document in any eviction action without first appearing as counsel of record and filing a notice of appearance, substitution or association as counsel. A notice of appearance, substitution or association of counsel may be



written and filed with the court, or may be made orally on the record.

- (1) An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution of counsel in the case.
- (2) An attorney of record shall be deemed responsible for the acceptance of post judgment pleadings and motions until the expiration of thirty days after the time for appeal has expired.

Drafters' Comment

This rule is intended to ensure that attorneys appearing in court in eviction cases on behalf of other attorneys, where there is no professional relationship between them, formally enter their appearance in the case before being heard. When an attorney in a law firm is the attorney of record, it is not necessary for a partner or associate of the firm to file a notice of appearance. When there is an "of counsel" relationship between the attorney seeking to participate and the firm of the attorney of record, no formal notice of appearance is necessary.

Rule 5. Summons and Complaint: Issuance, Content and Service of Process

- a. Summons. The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The Court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also inform the defendant(s) of the following:
 - (1) Name of the court and its street address, city, and telephone number;
 - (2) Date and time set for the trial of the matter;
 - (3) That if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and
 - (4) Contain a disclosure in substantially the following form: "Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible."
 - (5) On the back of the summons, contain the information contained in the Residential Eviction Procedures Information Sheet substantially in the



form included as Appendix A to these Rules. In the alternative, the plaintiff may serve the defendant in the same manner as the summons is served with a separate page containing this information. Service of the information sheet shall be required in residential property eviction actions only.

- b. Complaint. The complaint shall:
- (1) Be brought in the legal name of the party claiming entitlement to possession of the property.
 - (2) Include the business name, if any, and address of the property;
 - (3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;
 - (4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;
 - (5) State that the property in question is located within the judicial precinct where the complaint is filed;
 - (6) State in bold print, capitalized, and underlined at the top center of the first page, "**YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY**";
 - (7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate; 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.
 - (8) If rent for the premises is subsidized by a federal or state program or agency, state that notice has been provided to that program or agency as required by the program or agency's applicable regulations, and that the notice to the tenant complies with the requirements of those regulations.
 - (9) Be verified.
- c. Complaint for Monetary Damages. If the complaint seeks a money judgment for rent, late charges, or other fees, charges or damages permitted by law, the complaint shall also state:
- (1) The frequency with which the rent is to be paid;
 - (2) The due date for each payment;



- (3) The amount of rent due on each date;
 - (4) The method of calculating late fees;
 - (5) The total amount of rents, late fees, and other fees, charges or damages permitted by law that are due on the date of filing;
 - (6) The nature and amount of any rent concessions that the plaintiff contends must be reimbursed; and
 - (7) The amount of attorney fees, if permitted by law or contract, that would be due to plaintiff in the event of a default by the defendant.
- d. Additional Requirements for Complaint.
- (1) If the action is based solely on non-payment of rent, contains a request for monetary damages and involves a residential property or mobile home space, the complaint must also state that the defendant may contact the plaintiff or plaintiff's attorney and may reinstate the lease agreement and cause the eviction action to be dismissed if, prior to the entry of judgment, the defendant pays all rents due, any reasonable late fees due that are provided for under a written lease agreement, and any court costs and attorney fees the plaintiff has incurred as of the date the payment is made.
 - (2) If the complaint seeks a judgment for reasons permitted by law other than the non-payment of rent, the complaint shall state the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to prepare a defense.
- e. Computation of Time. The date of service shall not be counted when computing time for service of the summons and complaint. The date of the initial appearance shall be counted for that purpose.
- f. Service of Process. Service of the summons and complaint shall be accomplished by either personal service or post and mail service for a special detainer action, and for a forcible detainer action, as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure. Service of process shall only be performed by a person authorized to do so under Rule 4(D) of the Arizona Rules of Civil Procedure. Return of service and proof thereof shall be made by affidavit.
- g. Failure to Obtain Service. A complaint that is not served within the time required by applicable statute shall be dismissed at the initial appearance date unless the defendant waives service in writing. If the defendant appears at the initial appearance, the appearance shall constitute a waiver of any objections to the form



or manner of service unless the defendant asserts those grounds at the initial appearance or in a previously filed written answer.

Rule 6. Service of Pleadings, Other Papers and Orders After Complaint

- a. **General Requirement of Service.** Except as otherwise provided in these Rules or ordered by the court, every pleading subsequent to the original complaint, every written motion, every written notice, appearance, demand and similar paper and any attachments, and every order shall be served upon each of the parties to the action. A written motion or request that is filed with the court, but not served as required by this rule, shall be considered an impermissible *ex parte* communication.
 - (1) Filing of documents may be made by delivering the documents to the court clerk, or, in the case of a Justice Court, to the clerk's counter for date stamping.
 - (2) The Court may permit a party to file documents directly with the judge in open court.
 - (3) Filing may also be accomplished by prepaid, first class mail to the court, and the date of receipt by the court shall be considered the date of filing.
- b. **Service on Parties in Default.** No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in Rule 5(f) of these Rules.
- c. **How Service Made.** Service required by this rule may be accomplished by personal service as defined in Rule 18(f) of these Rules or after a party has appeared by mailing the document to be served to the last known address of the person to be served. Service by facsimile transmission or other method may be used where agreed to by the parties. The date and manner of service shall be noted on the original of the document served or in a separate certificate filed with the court.
- d. **Service Upon Attorney.** When an attorney has entered an appearance in an action for a party, service upon that party shall be accomplished by service upon that attorney, unless the court directs that service be made upon the party. Service upon the attorney may be accomplished by any of the methods authorized by subpart (c) of this rule.
- e. **Service After Judgment.** Thirty days after the time for appeal from a judgment has expired, or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting



modification, vacation or enforcement of that judgment, shall be served as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

Comment

“Service” or “serving” documents is a term used to describe the process of providing notice to parties both of the beginning of an eviction action, and also the process by which parties to the action are advised of matters that have been submitted to, or issued by, the court. When a person is not already a party to an eviction action, “service” requires an action by a constable, sheriff or registered private process server, with an affidavit of service later being filed. When a person is already a party and the case is pending, the service of papers and other documents may be accomplished in a less formal manner. If a party has appeared in the action through an attorney, service must be made upon that attorney unless the court directs otherwise. Service by facsimile transmission may be used where the parties have agreed to that method of service, or the court has ordered it. However service is accomplished, all written motions or requests filed with the court must be served upon all other parties to the action.

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.

Comment

An answer admits or denies the factual allegations of the complaint, and admits or denies the plaintiff’s entitlement to the relief requested in the complaint. In Justice Courts an answer can be made orally, although the best practice would be to put it in writing, and Superior Courts may require it to be in writing. An answer should identify specifically what parts of the complaint are contested or denied, and state the facts that support the denial. An answer that creates a factual dispute with the complaint will require the court to hold a trial to determine which facts are more likely true than not.

Rule 8. Counterclaims and Consolidation

- a. Basis. Unless specifically provided for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. All counterclaims must be filed in writing and served upon the opposing party. A counterclaim shall:
 - (1) State specific facts claiming that the landlord has violated the rental agreement or an applicable statute so that the landlord has an opportunity to prepare a defense; and



- (2) If any notices were required, state the approximate date and manner those notices were sent to the plaintiff and summarize the content of those notices.
- b. Impact on Justice Court Jurisdiction. The filing of a counterclaim shall not defeat jurisdiction of a justice court in an eviction action, and no eviction action shall be transferred to the superior court solely because a counterclaim was filed unless it is permitted by statute and is not within the statutory jurisdiction of the justice court. The justice court shall review such claims to determine whether they have a statutory basis and whether the prayer for relief is within or exceeds the jurisdiction of the justice court. If a counterclaim has a statutory basis and the prayer for relief is not within the jurisdiction of the justice court, the court shall transfer the matter to the superior court. Where the counterclaim filed includes one or more aspects that are defective or impermissible, the court may permit the defendant to restate it in a proper fashion, or order the counterclaim dismissed without prejudice.
- c. Consolidation. An eviction action may be consolidated only with one or more eviction actions but shall not be consolidated with any other type of action.
- d. If a residential landlord is not in compliance with the rental agreement or statute, the tenant may counterclaim for any amount the tenant may recover under the rental agreement or statute.
- e. In a case involving alleged nonpayment of rent where the tenant remains in possession, after notice and hearing the court may order the tenant to pay into the court all or part of the undisputed rent accrued and all periodic rent thereafter accruing. The court may dismiss the tenant's counterclaim without prejudice if the tenant fails to deposit the undisputed rent into the court as ordered

Comment

A Counterclaim goes beyond an Answer and alleges facts that entitle the tenant to relief from the landlord. A Counterclaim could be maintained and decided even if the Complaint were withdrawn or dismissed, although in those instances the court has discretion to dismiss the counterclaim without prejudice and require it to be brought as a civil action.

Rule 9. Motions

- a. Motions may be made orally in open court or by filing and serving the opposing party with a copy of a written motion. Pretrial motions shall be ruled on before trial. A court shall not rule on any motion until the opposing party has had a reasonable opportunity to respond.



- b. Responses and Replies. Responses and replies to any motion may be made orally in open court or by filing and serving the opposing party with a copy of the written response or reply. The filing of motions, responses and replies shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.
- c. Motions to Amend. The Court may grant motions to amend pleadings for good cause shown.
- d. Motions for Judgment on the Pleadings. At any time after an answer to either a complaint or to a counterclaim has been filed, a party may move for a judgment on the pleadings. The court shall not consider matters outside of the pleadings when ruling on a motion for judgment on the pleadings.
- e. Motions to Dismiss. In response either to a complaint or to a counterclaim, a party may make a motion to dismiss some or all of the claims.
- f. Motions for Reconsideration. A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. All motions for reconsideration, however denominated, shall be submitted without oral argument and without response or reply unless the court otherwise directs. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response.
- g. Other motions. Other motions may be made by either party.
- h. Failure to timely respond to a written motion filed by an opposing party, or failure to appear at the time and date set for an oral argument on a filed motion may be deemed to be consent to the denial or granting of the motion, and the court may dispose of the motion summarily.
- i. All written motions shall be considered without oral argument unless specifically requested by either party and ordered by the court. The court may order oral argument on its own motion. All motions requesting an order for relief filed with the Superior Court shall be copied to the assigned judge, accompanied by a proposed order.

10. Disclosure

- a. Upon request, a party shall provide to the other party: 1) a copy of the lease agreement, if any; 2) a list of witnesses and exhibits; 3) if non payment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents the party intends to introduce as an exhibit at trial.



- b. The court may order the taking of depositions, inspection of the premises, or the production of other pertinent documents in a manner that will not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.
- c. If a party fails to comply with this rule without good cause, the court may take appropriate action, including granting a continuance, excluding evidence not disclosed, and sanctioning the offending party or parties, up to and including dismissing the complaint or counterclaim.
- d. Any party may request the issuance of a subpoena by the Court to compel testimony and/or the production of documents. The person subpoenaed may object to the subpoena. The court may quash a subpoena upon good cause shown. Failure to comply with a subpoena may constitute contempt of court. Subpoenas shall be served upon the subject person pursuant to Rule 4.1 and 4.2 of the Arizona Rules of Civil Procedure.

Rule 11. Initial Appearance and Trial Procedures

- a. In General. All proceedings in eviction actions shall be recorded, either through the use of a suitable recording device or by a court reporter. On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant in eviction actions the court shall:
 - (1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action. 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.
 - (2) State or summarize the material allegations contained in the complaint.
 - (3) Ask the defendant whether the defendant contests the allegations contained in the complaint.
- b. 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 of the fee.

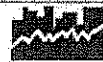
- (2) The defendant shall not be required to answer until the initial appearance. At the initial appearance, if the trial is not continued, the defendant may file an oral answer on the record. No answer fee shall be required for an oral answer.
- c. Continuances. Whenever possible, the trial should be held on the initial return date. The court may order the continuance of a trial date by up to three court days in justice courts or ten days in superior courts on the request of a party for good cause shown or to accommodate the demands of the court's calendar, but the court nevertheless will give priority to hearing and resolving alleged "immediate and irreparable" evictions. No continuance of more than three days in justice courts or ten days in superior courts will be ordered unless both parties are in agreement.
- d. Trial Settings. Contested detainer matters shall be set for a trial by a judge alone unless a jury trial is demanded by the plaintiff in the complaint, or by the defendant at or before the initial appearance. Failure to request a jury trial at or before the initial appearance shall be deemed a waiver of that party's right to a jury trial. At the initial appearance, if a jury trial has been demanded, the court shall inquire and determine the factual issues to be determined by the jury. If no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues, or may be disposed of by motion or in accordance with these rules, as appropriate.
- (1) Witnesses at trial shall testify under oath or affirmation. Witness testimony may be oral, or may be provided by transcript of a deposition if the witness is unavailable.
 - (2) All evidence taken at trial, or which is attached as an exhibit to a motion, shall be subject to the Arizona Rules of Evidence.
- e. Change of Judge
- (1) Change as a Matter of Right
 - A. Each side is entitled to one change of judge as a matter of right. A party may exercise this right by filing a written notice that contains the name of the judge to be challenged and an avowal that contains the following:
 - (i) That the request is not being made for the purpose of delay;



- (ii) That the request is not being made for the purpose of interfering with the reasonable case management practices of a judge;
 - (iii) That the request is not being made to remove a judge for reasons of race, gender or religious affiliation; and
 - (iv) That the request is not being made for the purpose of using this rule against a particular judge in a blanket fashion by either a law firm, legal organization or landlord.
- B. The notice for change of judge as a matter of right must be filed on or before the date of the first court appearance with the judge in question; otherwise, it may be denied as being untimely.
- C. If a timely notice for change of judge as a matter of right is filed against a justice of the peace, the case will immediately be transferred to another justice of the peace located in the same building or in an adjoining justice court precinct. If the justice court receiving the transfer is located in the same building or is sufficiently close to the transferring court to enable a prompt transfer, then every effort will be made by the receiving justice court to hear the case on the same date it was originally scheduled.

(2) Change for Cause

- A. Either side may challenge a judge for cause. A party may challenge a judge for cause. A party may challenge the judge for cause orally or in writing by either making a written motion verified by affidavit of the moving party, or by oral avowal, that specifically alleges the grounds for challenge. A party who makes an oral challenge for cause must, not later than the close of business the following day, file a written motion with the court that is verified by affidavit that specifically alleges the grounds for challenge for cause.
- B. If a challenge for cause is filed against a justice of the peace, then a copy of all relevant documents will be immediately transmitted to the presiding justice of the peace for the county. The presiding justice of the peace shall make a decision on the challenge by the close of business of the next business day and will either transfer the case to an adjoining justice court precinct or return it to the original judge.



- f. **Pleading Requirement.** Except for those additional damage items contemplated by Rule 13(c)(2), the plaintiff shall not be permitted to advance allegations at the initial appearance or any subsequent trial unless those allegations were properly stated in the complaint. The defendant shall not be permitted to advance allegations at a continued trial that were not included in a written answer or counterclaim, or in an oral answer made at the initial appearance.

12. Trial by Jury

- a. When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court. Failure to submit written voir dire questions a day before the panel waives the right to submit questions. When, after challenges for cause, a panel of thirteen in justice court or fifteen in superior court is available, the Court will permit three peremptory challenges per side to reduce the jury to seven in justice court or nine in superior court. One of the jurors will be selected as the alternate after the evidence is presented and before deliberations.
- b. Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, and the elementary legal principles that will govern the proceeding. At least one day prior to the commencement of a jury trial any party may file written requests that the court instruct the jury on the law as set forth in the requests. A party shall be deemed to have waived request for other instructions except those that could not reasonably have been anticipated prior to trial.
- c. The order of trial shall be as follows: The plaintiff or the plaintiff's counsel may read the complaint to the jury and make a statement of the case; the defendant or the defendant's counsel may read the answer and may make a statement of the case to the jury, but may defer making such statement until after the close of the evidence on behalf of the plaintiff; the plaintiff shall then introduce evidence; the defendant shall then introduce evidence; the plaintiff may then introduce rebutting evidence; the defendant may then introduce rebutting evidence in support of the defendant's counterclaim(s) if any; and then the parties may make closing arguments in the same order.
- d. If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial. When the jurors retire to deliberate, they shall be kept together in some convenient place in charge of a proper officer who shall not allow any communication to be made to them, or make any, except to ask them if they have agreed upon their verdict.



13. Entry of Judgment and Relief Granted

- a. **Items to Review.** Except in stipulated judgments entered pursuant to Rule 13(b)(4), in each eviction action, the court shall:
- (1) Determine whether the service of the summons and complaint was proper and timely, and whether the summons and complaint included all the information and notice(s) required under Rule 5.
 - (2) Determine whether the tenant or occupant of the premises 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, the court shall dismiss the action.
 - (3) 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.
 - (4) If it appears that a landlord has accepted a partial payment in a case claiming non-payment of rent under the Arizona Residential Landlord and Tenant Act, the court shall inquire whether the landlord accepted the partial payment, and if so, can produce a partial payment agreement and waiver signed by the defendant as required by the statute. If the landlord is unable to prove that the waiver was signed, the court shall dismiss the action.
- b. **Forms of Judgment.**
- (1) **Guilty Plea.** If the defendant appears at the initial appearance and enters a plea of “guilty” or “responsible,” the court shall, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, enter judgment in favor of the plaintiff.
 - (2) **Verdict.** At the conclusion of a trial, and after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, the court shall either announce its decision or take the matter under advisement. If the court takes the matter under advisement, it shall issue a decision promptly.
 - (3) **Default Judgment.**
 - A. If the defendant fails to appear in person or through counsel on the initial return date, and no continuance is granted, the court, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, shall enter a default judgment against the defendant
 - B. In an action alleging an immediate and irreparable breach, the



court shall hear evidence establishing such a breach before ordering a writ of restitution in not less than 12 nor more than 24 hours.

- C. Mailing Default Judgments. The plaintiff shall promptly mail or deliver a copy of the default judgment to the defendant.
- (4) Stipulated Judgments. The court may accept a stipulated judgment, but only if the court determines that the conditions of Rule 13(a)(1)-(2) have been satisfied and the form to which the defendant stipulated contains the following warning:

Read carefully! By signing below, you are consenting to the terms of a judgment against you. You may be evicted as a result of this judgment, the judgment may appear on your credit report, and you may NOT stay at the rental property, even if the amount of the judgment is paid in full, without your landlord's express consent.

The amounts awarded in the judgment must be consistent with the amounts sought in the complaint, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate. Notwithstanding Rule 13(c)(2), if all parties or their attorneys personally appear before the court and the addition is reasonable, the court may award an amount for damages or categories of relief not specifically stated in the complaint. The court shall not enter a stipulated judgment that contains a waiver of post judgment motions or appeals.

c. **Relief Granted.**

- (1) Possession of the premises.
 - A. Except as provided in subsection (2) of this section, if the judgment is for the plaintiff, possession of the premises shall be awarded to the plaintiff. No writ of restitution shall be issued until five calendar days after the judgment is signed.
 - B. When an immediate termination has been obtained due to a breach of a residential lease agreement that qualifies as "material and irreparable" under the applicable statute, the judgment shall provide for the writ of restitution to issue between 12 and 24 hours after entry of judgment, or longer if the plaintiff so requests.
 - C. If the defendant is found not guilty, judgment shall be entered in favor of the defendant. If the judgment is for the defendant and the

