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

9 In the Matter of:

Supreme Court No. R-18-

10 **PETITION TO AMEND THE**
11 **RULES OF PROCEDURE FOR**
12 **EVICITION ACTIONS**

PETITION

13 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona respectfully
14 petitions this Court to amend the Rules of Procedure for Eviction Actions, Rules 5(a)
15 and (b), to add pleading requirements to the complaint if the rental unit is subsidized
16 housing. The proposed amendments include a disclosure in the pleading regarding
17 rent apportionment between the tenant and the public housing entity. This Petition
18 also seeks to amend Rule 13(a) to require that the court ensure proper disclosure in
19 this respect.
20

21 **I. Background and Purpose of the Proposed Rule Amendment**

22 **A. Current Rules**

23 In 2008, the Arizona Supreme Court approved the Rules of Procedure for
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1 Eviction Actions. The rules have limited information on subsidized housing. The
2 only current specific reference is in Rule 4(f):

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4 **f. Compliance with Laws and Regulations Governing**
5 **Subsidized Rent.** The parties shall comply with all
6 federal and state laws and regulations governing
7 subsidized rent. (emphasis in original).

8 The pleading requirements do not refer to subsidized housing. Rule 5(b) sets
9 forth the pleading requirements for an eviction complaint, yet the rule is silent on a
10 landlord’s duty to disclose whether or not the tenant receives a housing subsidy.

11 Rule 5(c) applies to cases in which complainant seeks monetary relief,
12 including unpaid rent. Although the rule requires the landlord to state how rent is
13 calculated, this rule is also silent on disclosure of information regarding subsidized
14 rent.
15

16 Rule 13(a) sets forth the criteria reviewed by the court prior to entering a
17 judgment, and is also silent on consideration of subsidized housing.
18

19 **B. The Importance of Subsidized Housing Units in Arizona**

20 The purpose of subsidized housing is to provide safe, habitable, and affordable
21 housing for low-income individuals and families. While there are several types of
22 subsidized housing programs, the federal government’s largest subsidized housing
23 program is the “Housing Choice Voucher” program – or what is commonly referred
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1 to as “Section 8” housing. U.S. DEP’T OF HOUSING & URBAN DEVELOPMENT,
2 HOUSING CHOICE VOUCHERS FACT SHEET (n.d.),
3 www.hud.gov/topics/housing_choice_voucher_program_section_8.
4

5 Under the Section 8 program, a public housing agency (PHA) issues a family
6 or individual a housing voucher to assist in the payment of rent for a habitable
7 residence. *Id.* Additionally, the PHA sets payment standards based on the cost of a
8 moderately-priced rental unit in the locality. *Id.* For tenants receiving such housing
9 assistance, the amount of rent and utilities paid by the tenant is generally limited to
10 30% of the tenant’s adjusted monthly income. *Id.* If the unit rent is greater than the
11 payment standard, then the tenant pays the additional amount. *Id.* The PHA
12 subsidizes the difference. *Id.* As an example, a disabled tenant whose income is
13 \$800 per month will typically be responsible to pay approximately \$240 per month
14 for rent (30% of \$800). In turn, the PHA will be responsible for the payment
15 standard minus \$240, or the gross rent minus \$240, whichever is less. *See id.*
16
17
18

19 In Arizona, over 45,000 households are federally subsidized tenants, not
20 counting public housing units operated by state and local governments. CENTER ON
21 BUDGET & POLICY PRIORITIES, ARIZONA FACT SHEET: FEDERAL RENTAL
22 ASSISTANCE (Mar. 30, 2017), [https://www.cbpp.org/sites/default/files/atoms/files/4-](https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-AZ.pdf)
23 [13-11hous-AZ.pdf](https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-AZ.pdf).
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1 **C. Tenant is not Responsible for the Subsidized Portion of Rent.**

2 Under the housing voucher program, tenant is not obliged to pay the public
3 entity's portion of the rent and should not be sued for the subsidized portion of
4 unpaid rent. *See, e.g., HOUSING CHOICE VOUCHERS FACT SHEET, supra.* Nor should
5 the landlord obtain possession of the unit if tenant has met his or her obligations to
6 pay tenant's portion of the rent. The tenant should not be adversely affected by the
7 housing program's failure to pay its apportionment of the subsidized rent.
8
9

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11 **II. Tenants' Property Interests and Due Process Considerations.**

12 Tenants have a property interest in their residences. *Greene v. Lindsey*, 456
13 U. S. 444, 451-52 (1982); *see also Foundation Development Corporation v.*
14 *Loehmann's*, 163 Ariz. 438, 442, 788 P.2d 1189, 1193 (Ariz. 1990) (recognizing
15 common law right of tenant's property interest in rental). Eviction proceedings that
16 deprive tenants of that property must comply with the due process requirements of
17 the Fourteenth Amendment to the United States Constitution. *Greene*, 456 U.S. at
18 455. Moreover, tenants also have a property interest in their subsidized housing
19 benefits because they are in the class of persons the program is intended to benefit.
20
21 *Ressler v. Pierce*, 692 F.2d 1212, 1215, (9th Cir. 1982).
22
23

24 It is well recognized that for low-income persons, an eviction action may
25 threaten their only means of shelter. *See, e.g., Chester Hartman & David Robinson,*

1 *Evictions: The Hidden Housing Problem*, 14 HOUSING POLICY DEBATE 461 (2003),
2 <https://www.innovations.harvard.edu/sites/default/files/10950.pdf>. The inability to
3 find other housing on short notice can lead to the disruption of children's education,
4 interruption of employment, dislocation from health care providers, loss of personal
5 belongings, and homelessness. In addition, the eviction process may lead to
6 monetary judgments. These monetary judgments make it difficult for tenants to
7 secure new rental housing. Thus, eviction cases are highly consequential to tenants
8 and especially low-income tenants, who often lack back-up resources. The result of
9 an eviction may be homelessness.

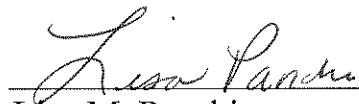
12
13 If a landlord requests and obtains a judgment for a public entity's portion of
14 the rent when the tenant is not responsible for that portion of the rent, the tenant is
15 adversely affected. The tenant may lose not only their housing, but their Section 8
16 certification as well, thereby affecting their ability to secure housing in the future.

18 **CONCLUSION**

19
20 Because of the severe consequences that a tenant receiving a housing subsidy
21 could face if held responsible for a default on payment of the subsidized portion of
22 tenant's rent, the rule changes proposed in this Petition are necessary to streamline
23 the pleading requirements for landlords bringing an eviction action against a tenant
24 whose housing is subsidized. This effort is made to ensure protection of these tenants
25

1 from the loss of home and their government subsidy through no fault of their own.
2 The Petition also seeks to create proper court oversight in eviction proceedings to
3 ensure that landlords are only seeking possession of rental units and monetary
4 judgments from the portion of the rent that tenant is obliged to pay. Therefore, the
5 State Bar respectfully requests the Court approve this Petition.
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8 RESPECTFULLY SUBMITTED this 10th day of January, 2018.
9

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11 
12 _____
13 Lisa M. Panahi
14 General Counsel

15 Electronic copy filed with the
16 Clerk of the Arizona Supreme Court
17 this 10th day of January, 2018.

18 by: 
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Appendix

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rules of Procedure for Eviction Actions

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

a. [No change in text.]

b. **Complaint.** The complaint shall:

(1)-(7) [No change in text.]

(8) State whether or not the rental is a subsidized housing unit and, if it is, state the total rent per month and specify the amount of rent per month that is the tenant's responsibility.

(9) Current Rule 5(b)(8) would be renumbered 5(b)(9).

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)-(7) [No change in text.]

(8) If the rental is a subsidized housing unit, the landlord must state the total amount of the rent per month, the tenant's portion of the monthly rent and the total amount of the tenant's portion of the rent that the tenant owes.

Rule 13. Entry of Judgment and Relief Granted

a. **Items to Review.** Except for stipulated judgments entered pursuant to Rule 13(b)(4), in each eviction action the court shall:

(1)-(4) [No change in text.]

(5) Determine whether the rental is subsidized. If the court determines the rental is subsidized, determine whether there is unpaid rent that the tenant is obligated to pay as the tenant's portion of the rent.