

Guidance for Processing Eviction Matters During the COVID-19 Pandemic

Introduction

The global pandemic has impacted all aspects of everyday life and threatened the health and safety of the public. In Arizona, executive and judicial leadership has responded to this emergency by issuing orders providing direction to the public, judicial officers, and employees of the Judiciary. These orders have raised issues regarding the processing of eviction actions in Arizona's Courts. This guidance is provided to assist tenants, landlords, attorneys, judges, and court personnel in understanding how the COVID-19 orders and the federal CARES Act affect eviction case processing under the Arizona Residential Landlord and Tenant Act and the Arizona Mobile Home Parks Residential Landlord and Tenant Act.

Governor's Executive Order 2020-14

[Executive Order 2020-14](#), titled "Postponement of Eviction Actions," permitted tenants to delay removal from their residence by the constable or a law enforcement officer beginning March 24, 2020 if the tenant provides the landlord with written notice of a qualifying circumstance that exists at the time of the notice. [Executive Order 2020-49](#) revises the qualifying circumstances and effective dates of Executive Order 2020-14. Qualifying circumstances under Executive Order 2020-14 are in effect only until August 21, 2020; they include:

1. The individual is required to be quarantined based on their diagnosis of COVID-19.
2. The individual is ordered by a licensed medical professional to self-quarantine based on their demonstration of symptoms as defined by the CDC.
3. The individual is required to be quarantined based on someone in the home being diagnosed with COVID-19.
4. The individual demonstrates that they have a health condition, as defined by the CDC, that makes them more at risk for COVID-19 than the average person.
5. The individual suffered a substantial loss of income resulting from COVID-19 including:
 - Job loss;
 - Reduction in pay;
 - Closure of place of employment;
 - Required to be absent from work to care for a home-bound school-aged child;
 - Other pertinent circumstances.

Guidance: *Tenants who notify their landlord of a qualifying COVID-19-related circumstance under Executive Order 2020-14 may remain in the residence after the landlord has received an eviction judgment until a court orders enforcement of the eviction or August 21, 2020. Through August 21, 2020, a tenant's grounds for eviction enforcement delay may be based on COVID-19 circumstances without consideration of income.*

Under Executive Order 2020-14, through August 21, 2020, tenants may delay removal from their residence by the constable or a law enforcement officer by:

1. *Notifying the landlord or property owner of their temporary financial hardship or other qualifying COVID-19 circumstance in writing;*
2. *Providing any available supporting documentation; and*
3. *Acknowledging that contract terms of the lease or rental agreement remain in effect.*

Governor's Executive Order 2020-49

Executive Order 2020-49, titled "Continued Postponement of Eviction Enforcement Actions," extends all provisions of Executive Order 2020-14 through August 21, 2020 and also requires a tenant to provide additional written notice and documents to qualify for a continuing or new delay of eviction enforcement through the October 31, 2020 expiration date of that order.

The Executive Order directs, in part, that after August 21, 2020, a tenant, lessee or resident is entitled to the delay in removal from their residence provided they demonstrate the following:

1. They have notified the landlord or property owner in writing with supporting documentation of their ongoing financial hardship as a result of COVID-19 and request for a payment plan; and
2. They have provided the landlord or property owner a copy, with any available supporting documentation, of proof of submission of their completed pending application for rental assistance through a state, city, county or non-profit program.

Any information required of the tenant by this order must also be provided to the constable, law enforcement officer or court upon request.

Guidance: Tenants whose removal from their residence by the constable or a law enforcement officer was delayed under Executive Order 2020-14 or who want to prevent removal from their residence in the future must now notify their landlord and meet the above requirements of Executive Order 2020-49 to continue or start a delay in removal from their residence after August 21, 2020. Information on applying for rental assistance is available at the [Arizona Department of Housing](#).

As soon as a qualifying circumstance occurs, the tenant should send notice of the circumstance to the landlord by email, regular mail, or other electronic written means and ask for confirmation of receipt. Also, the tenant should provide the notice to the court as early as possible in the eviction proceeding. This notification will not prevent an eviction action from proceeding to judgment except upon agreement of the parties. The tenant should keep a copy/photo of the dated notice to provide to the constable or law enforcement officer and for a court hearing, if needed.

By August 21, 2020 the tenant must provide the landlord a different notice in writing under Executive Order 2020-49 to continue the delay in enforcement of the eviction judgment after August 21. Sample notice to landlord forms are available here: [Notice to Landlord](#) (for delays through August 21, 2020) and [Notice to Landlord](#) (for delays through October 31, 2020) For more information on evictions, visit the [Judicial Branch Website](#). Also, a [Tenant Checklist](#) is provided describing steps tenants must take to comply with Executive Order 2020-49.

Delay in Removal from Residence

Under the Executive Orders, the constable or a law enforcement officer may not remove from the residence a tenant who has provided to the landlord the required notice of a qualifying circumstance until either it is ordered by the court following a motion and hearing or August 21, 2020 for notice provided under Executive Order 2020-14 and October 31, 2020 for notice provided under Executive Order 2020-49.

***Guidance:** A constable or law enforcement officer who learns of a circumstance that may qualify a tenant for delay of eviction may alert the tenant and allow time for the tenant to provide written notice to the landlord. The tenant should provide the constable or law enforcement officer a copy of the notice and any documents provided to the landlord. The constable or law enforcement officer should delay removal of the tenant from the residence based on the tenant providing the notice required by the Executive Order rather than the content of the notice. On the filing of a motion by the landlord, the court determines whether the notice qualifies the tenant for delay of removal from the residence.*

Motion to Court to Compel Removal

The Executive Orders permit the landlord to file a motion to request a court order that compels removal of the tenant in the interests of justice or when an eviction judgment is based on [A.R.S. § 33-1368\(A\)](#). Generally, A.R.S. § 33-1368(A) involves:

- Violation of health and safety requirements not related to COVID-19;
- Property damage;
- Criminal activity; or
- False statements made in the application process.

A landlord may not consider a COVID-19-related circumstance to be a health and safety violation; nor may the landlord terminate a lease or rental agreement based solely on information provided by the tenant claiming a qualifying circumstance.

***Guidance:** Eviction complaints and judgments involving breach for a reason provided in [A.R.S. § 33-1368\(A\)](#) and motions to compel removal of the tenant in these cases will be considered by the court as timely as possible. The rules require the landlord who makes the motion to provide the tenant a copy of the motion. The court must notify the parties of a hearing on the motion. Litigants and others who are required to appear in court will be permitted to participate telephonically or through use of internet technology, whenever possible. Litigants who are ill and unable to participate may request a continuance of any scheduled hearing. Court staff will provide litigants information on how to request a continuance.*

A tenant may provide the court with documents and other evidence in response to a landlord's motion that raises an issue about the tenant's qualification for delay in removal from the residence under the Executive Orders. Also, if a landlord claims in the motion that a tenant who qualifies for delay should be removed from the residence in the interest of justice, the tenant will have the opportunity to respond to this claim.

Additional information on eviction case processing may be found on the [Judicial Branch Website](#).

Federal CARES Act

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law. The CARES Act imposed a temporary moratorium on evictions, as well as a moratorium on fees and penalties related to nonpayment of rent.

The eviction moratorium on a landlord sending a notice of eviction was in effect for a 120-day period that ended on July 24, 2020. The Act included a 30-day notice requirement thus prohibiting landlords from filing eviction actions until after August 24, 2020.

The temporary eviction moratorium and 30-day notice requirement applies to the Public Housing Program, the Section 8 HCV and PBV Programs, and the Section 8 Moderate Rehabilitation (Mod Rehab) Programs administered by the Office of Public and Indian Housing. The Act also prohibits landlords from charging penalties or late fees for unpaid rent during the March 27 to July 24, 2020, period the Act was in effect.

Guidance: *Any landlord who is a plaintiff in an eviction action concerning nonpayment of rent during the March 27 to August 24 period for a residence covered by the CARES Act must immediately notify the tenant and request that the court dismiss the case. Tenants who believe their residence is covered by this Act should immediately inform the landlord or property manager or their representative and the court.*

If a judgment is obtained in violation of the CARES Act and prior to eviction from the residence, the tenant may file a motion for reconsideration, a motion to set aside the eviction judgment, an appeal, or a special action. A tenant evicted based on a judgment obtained in violation of the CARES Act may file an action as provided by A.R.S. § 33-1367 to both restore possession (move back into the residence) and money damages. (See sample [Eviction Action by Tenant](#) form). When this form is used, the court will schedule and decide the case like any other eviction action. If the tenant is seeking only money damages and not possession, then this form should not be used. In that case, the tenant should file a civil lawsuit in a justice or superior court. Parties may verify a residence is eligible for CARES Act protections using this website link: [Fannie May and Freddie Mac](#). As indicated on these websites the information available may not be up-to-date so confirmation through the office of the county recorder may be required.

President's August 8, 2020 Executive Order

On August 8, 2020, the President signed an executive order titled "Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners." The President's executive order gives general direction to agencies of the federal government to identify ways and resources available to keep tenants in their residences. The order does not extend the CARES Act moratorium, nor does it prevent property owners from filing eviction cases in Arizona's courts.

Supreme Court Administrative Order No. 2020-119

Arizona Supreme Court [Administrative Order No. 2020-119](#), issued on July 22, 2020, provides direction to facilitate the orderly and safe disposition of eviction cases in Arizona courts.

This order:

- Requires that plaintiffs shall attest in the complaint or by other written means in an eviction, civil or small claims action for non-payment of rent, or for a judgment for rent for any part of the period of time from March 27, 2020 through July 25, 2020 whether the property in which the tenant resides is or was covered under the CARES Act.
- Permits parties, attorneys, and witnesses in an eviction proceeding to participate remotely by telephone or video conference, at their discretion.
- Requires judges to liberally grant continuances and make accommodations, if necessary and possible, for attorneys, parties, victims, witnesses, jurors, and others with business before the courts who are unable to participate in a proceeding due to the COVID-19 pandemic.
- Provides for continuance for the parties to enter a consent agreement and for the court to issue a consent order with conditional dismissal of the case.
- Permits the landlord to file a motion with the court to amend an eviction judgment in a case in which enforcement of the judgment was delayed and the tenant remained in possession of the residence. This avoids the need for a second eviction action or other action to obtain a judgment for the rent that was unpaid during the eviction enforcement delay.
- Requires the landlord to file a motion to compel to obtain a new writ of restitution in cases in which enforcement of the original writ was delayed due to an Executive Order. This allows the court to consider any changes that occurred during the delay in enforcement of the writ.
- Requires that a writ of restitution not be issued until five days after an eviction is ordered to proceed.

Guidance: Administrative Order 2020-119 requires courts to permit remote participation either by phone or video, at the discretion of the parties in the case and requires judges to liberally grant continuances for COVID-19 related reasons.

This Administrative Order also authorizes landlords to file a motion to amend the eviction judgment. If a motion is filed, a hearing will be scheduled, and the landlord and the court will provide the tenant with a notice of the hearing date and time.

Landlords who obtained an eviction judgment in which removal of the tenant from the residence was delayed, are required to file a motion with the court to proceed with eviction enforcement if a writ of restitution was previously issued but was not enforced due to the delay required by the Governor's Executive Order. If a new writ is issued, it may not be issued until 5 days after an order granting the motion. This 5-day delay allows time for the tenant to move out of the premises.