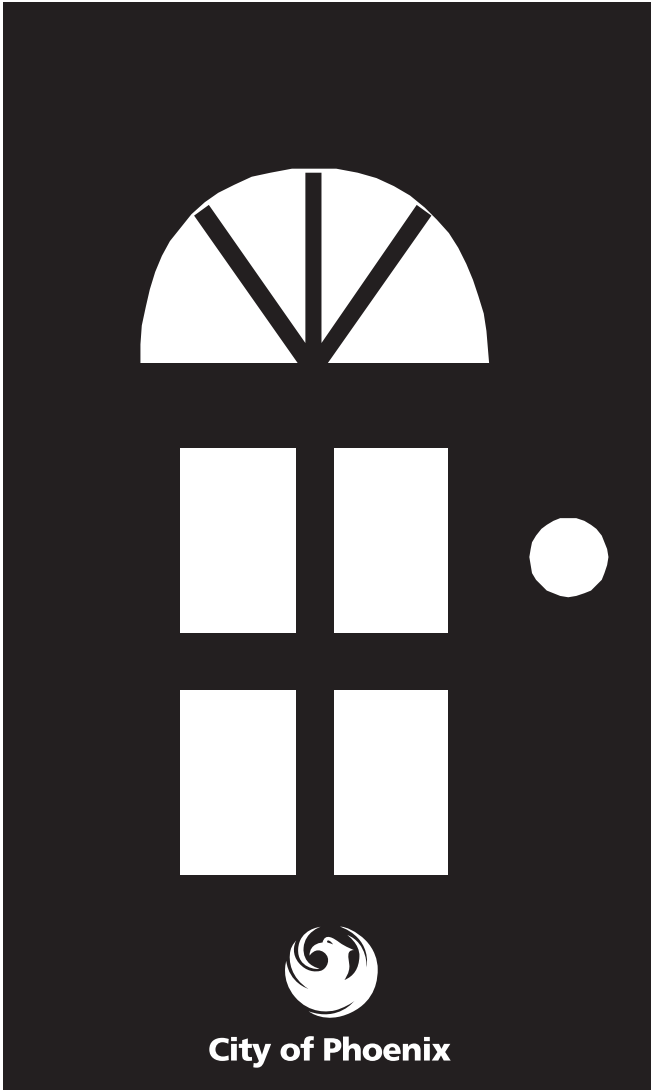


Guide to the Arizona Residential Landlord and Tenant Act



City of Phoenix

Neighborhood Services Department

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Phoenix, AZ 85003
www.phoenix.gov/NSD



**24-hour Landlord/Tenant information line
602-534-4444, option 3**

Fax: 602-534-4445

**Landlord/Tenant Counseling e-mail:
landlord.tenant.nsd@phoenix.gov**

For a copy of this publication in an alternate format contact the
Neighborhood Services Department ADA Liaison,
200 W. Washington St., Phoenix, AZ 85003
Voice number 602-262-4723 | TTY 602-495-0685

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This booklet contains typical landlord and tenant questions and answers, along with relevant statute sections. The answers offer guidance on provisions of the Arizona Residential Landlord and Tenant Act but do not constitute legal advice. For legal advice you must consult an attorney.

What should be done before moving into a rental unit?

Both the landlord and tenant should conduct a walk-through inspection of the unit to find existing problems. The landlord should give a copy of the inspection report to the tenant. The tenant should also get a signed copy of the lease or rental agreement with all blanks filled in. ARS §33-1321, ARS §33-1322.

How much can the landlord charge for a security deposit?

The landlord cannot collect more than one and one-half month's rent. ARS §33-1321.

How long can the landlord keep the security deposit?

The landlord is required to return the security deposit within 14 days, excluding Saturdays, Sundays or other legal holidays, after termination of the tenancy and must include an itemized list of deductions from the deposit. ARS §33-1321.

Do landlords have the right to keep cleaning and redecorating deposits?

In order for cleaning and redecorating deposits to be non-refundable, they must be so designated in writing by the landlord. ARS §33-1321.

What can the landlord do if the tenant does not pay rent when it's due?

The landlord must give the tenant a five-day notice to pay all rent due or vacate the dwelling. The notice may be hand-delivered to the tenant or sent by certified or registered mail. If the tenant fails to pay rent the landlord can file a forcible detainer complaint in the Justice of the Peace



Court on the sixth day. The court will issue a summons ordering the tenant to appear in court to show cause why they should not pay rent or vacate the rental unit. If the tenant fails to show cause, the court will issue a writ of restitution. ARS §33-1368.

Can the landlord discontinue utility services provided by the landlord?

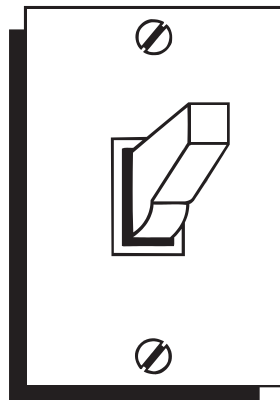
The landlord may discontinue utility services provided by the landlord on the day following the day that the writ of restitution is issued. ARS §33-1368.

What type of notice is the landlord required to give to increase rent?

The landlord must give a 30-day written notice prior to the periodic rental due date if the tenant is a month-to-month tenant. The landlord must give a 10-day written notice if the tenant is a week-to-week tenant.

ARS §33-1375.

When a tenant has a signed lease the landlord cannot raise the rent until the term of the lease is expired. An escalated clause allows the landlord to increase the rent under certain conditions.



Can the landlord accept part of the rent and later evict the tenant?

The landlord cannot accept a partial rent payment and later evict the tenant. The landlord may pursue court action to evict the tenant providing there is a rent waiver and the tenant agrees in writing to the terms and conditions of the partial payment regarding the continuation of the tenancy. ARS §33-1371.

What are some activities of the tenant that can result in an immediate eviction?

Here are some of the conditions under which a tenant may be declared to have committed an irreparable breach: illegal discharge of a weapon; prostitution; criminal street gang activity; unlawful manufacturing, selling, using, storing, keeping or giving of a controlled substance; or infliction of serious bodily harm. Threatening or intimidating behavior or falsification of a document may also be grounds for immediate eviction. ARS §33-1368.

Can a tenant terminate their rental agreement if he/she is a Victim of Domestic Violence?

The individual must indicate in writing to the landlord that the action, events, or circumstances that resulted in him/her becoming a victim of domestic violence occurred within a 30-day period immediately preceding the written notice to the landlord.

The resident must provide evidence to the landlord by one of the several methods:

- A copy of a protective order issued in the victim's favor and against the person allegedly engaging in the domestic violence.
- Proof that the victim provided a copy of the order to an authorized officer of the court to serve the perpetrator.
- A copy of a written departmental report from a law enforcement agency that states the resident notified the agency that he or she is a victim of domestic violence. ARS §33-1318.



Does the tenant have the right to change the locks on the rental unit?

The tenant cannot deny entrance to the landlord; changing the locks prevents the landlord from entering the dwelling in case of emergencies. The tenant may be held liable for any damages that result from denying the landlord access to the dwelling.

What can the tenant do if the landlord fails to make repairs?

The tenant has several options if the landlord fails to maintain the dwelling.

1. Minor defects. The tenant has a right to have repairs made by a licensed contractor, after proper notice to the landlord. If the landlord fails to comply, the tenant can have the repairs done and deduct up to \$300 dollars or one-half month's rent, whichever is greater. The tenant must submit an itemized statement to the landlord and a lien waiver provided by the contractor. ARS §33-1363.

2. Wrongful failure to supply essential services such as heat, air conditioning, cooling, water or hot water. If the landlord deliberately or negligently fails to provide essential services contrary to the rental agreement or the Arizona Residential Landlord and Tenant Act, the tenant may give written notice to the landlord specifying the breach and may do one of the following.

- a) Obtain services and deduct the actual reasonable cost from the rent;
- b) Seek damages based on the decrease in the fair rental value of the dwelling;
- c) Procure reasonable substitute housing during the period of the landlord's non-compliance. If the cost of the substitute housing is higher than the regular rent, the tenant may recover the additional cost from the landlord in an amount not to exceed 25 percent of the unpaid regular rent. ARS § 33-1364.

A landlord who is aware of a problem and is slow to correct or repair it could be considered to have acted deliberately or negligently. The tenant cannot invoke the above remedies if the condition was caused by members of the tenant's family through damage or misuse or was caused by any other person on the premises with the tenant's consent.

The landlord has the right to disconnect the utilities in order to make repairs.

Can the tenant withhold rent?

Arizona Revised Statute 33-1368(B) states that a tenant **may not** withhold rent for any reason.

Does the tenant have the right to terminate a rental agreement if the landlord failed to make repairs affecting health and safety?

If the tenant gave a written five-day notice requesting repairs, and the landlord failed to make them, the tenant may move out after the end of the fifth day. ARS §33-1361.

Can the landlord or manager withhold the name of the owners of an apartment complex?

Any person authorized to enter into a rental agreement shall give the tenant in writing the name and address of the person authorized to manage the premises and the owner or a person authorized to act for and on behalf of the owner for the purpose of service of process, and for the purpose of receiving and receipting for notices and demands. ARS §33-1322.

Can the landlord hold the tenant's personal property for delinquent rent?

The landlord cannot hold the tenant's personal property for back rent. ARS §33-1372.

Does the landlord have the right to evict the tenant if the dwelling is not kept in a habitable condition?

The landlord can evict the tenant if the dwelling is not maintained or the tenant causes damage to the dwelling. The landlord may make repairs at the tenant's expense.

Examples of damages for which the landlord can hold the tenant responsible include: (1) damaged plumbing, (2) broken light fixtures, (3) damaged or soiled carpet, (4) broken windows, (5) marred or damaged walls and ceilings and (6) broken appliances caused by the tenant's abuse and neglect. ARS §33-1369.



Does the landlord have the right to collect rent after evicting the tenant for a breach of the lease?

The landlord may attempt to collect the balance of the lease, including the actual cost of damages caused by the tenant. The right exists even though the landlord evicted the tenant. ARS §33-1373.

Can a tenant refuse the landlord access to the dwelling?

The tenant cannot refuse lawful access to the landlord. However the landlord must give the tenant two days notice of his intent to enter and may enter only at reasonable times, except in case of an emergency. ARS §33-1343.

If a tenant notifies the landlord of a maintenance service request as prescribed in ARS §33-1341, paragraph 8. The notice from the tenant constitutes permission from the tenant for the landlord to enter the dwelling unit for the sole purpose of acting on the maintenance request.

When can the landlord enter the tenant's dwelling without giving notification?

The landlord may enter the tenant's dwelling without consent of the tenant in case of emergency. Examples are fire, smoke, or noxious odors. ARS §33-1343.

Can the landlord refuse to rent to tenants who have children?

Discrimination by a landlord against a tenant with children is not allowed unless the dwelling meets the definition of housing for older persons in §41-1491.04. ARS §33-1317.



What type of notice is the landlord required to give to terminate the rental agreement?

The landlord must give a 30-day written notice prior to the periodic rental due date if the tenant is a month-to-month tenant. The landlord must give a 10-day written notice if the tenant is a week-to-week tenant. ARS §33-1375.

How many people may occupy a dwelling?

State law has a standard occupancy limit of two persons per bedroom. However, the landlord has the right to refuse to rent to more persons per bedroom if he chooses. ARS §33-1317.

If the property I am renting has been foreclosed on, can the new owner or immediate successor evict me?

A new federal law was enacted on May 20, 2009, the Protecting Tenants in Foreclosure Act (Public Law No. 111-22; Senate Bill 896).* This new law requires that tenants in foreclosed properties receive a 90-day notice prior to being evicted. Specifically, the new law requires that, in the event of a foreclosure, the new owner or immediate successor in interest at foreclosure must allow tenants with leases to occupy the property until the end of the lease term. There are three exceptions to the law:

- 1). The lease can be terminated on 90-days notice if the unit is sold to a purchaser who will occupy the property.
- 2). The lease has fewer than 90-days.

* This federal law expires on December 31, 2014.

- 3). The tenancy is month-to-month or a tenancy at-will, in which case the new owners must provide the tenant with a 90-days notice prior to eviction.

What can a tenant do if the new owner requested you to leave the property in less than 90-days?

The new owners or immediate successor in interest at foreclosure may not be aware of the new law. If they attempt to evict you without honoring your lease or providing the required 90-day notice, inform the new owner of the Protecting Tenants in Foreclosure Act by certified mail with return receipt requested of the Protecting Tenants in Foreclosure Act. Save the copy of the letter and return receipt requested. You must also offer to pay the new owner your rent.

What happens if a tenant does not pay the new owner or immediate successor in interest rent?

The new owner or immediate successor in interest can serve a notice giving the tenant five (5) days to pay or the rental agreement will be terminated. The new owner or immediate successor may terminate the rental agreement by filing a special detainer action pursuant to section 33-1377.

Is the landlord required to include in a written lease agreement that the property is currently undergoing foreclosure at the commencement of tenancy?

Yes, pursuant to ARS 33-1331 a landlord is required to include in a rental agreement that the property is scheduled for a trustee sale auction including the name, address and court location where the action is filed or the trustee, attorney or other responsible party. The landlord is also required to include the time, date, and place of the trustee sale or write no sale has been established for this property.

Is the landlord required to notify the tenant in writing that the property is undergoing foreclosure if the landlord receives a Notice of Trustee Sale during tenancy?

Yes, pursuant to ARS 33-1331 a landlord is required to notify the tenant within five (5) days from the date that he receives a notice of trustee sale, that the property is scheduled for a trustee auction sale along with the name, address and court where the action is filed, or the trustee, attorney or other responsible party. The landlord is also required to include time, date, and place of the trustee sale in the written notice to the tenant.

What remedy does a tenant have if the landlord does not comply with proper notification of a foreclosure process after a lease has been entered?

A tenant may potentially give the landlord a ten (10) day breach of lease notice alleging that the act of allowing the home to go into foreclosure is a breach that, if not resolved within ten (10) days, may allow the tenant to terminate the tenancy and/or may pursue legal action against the landlord to recover damages for the breach.

Do tenants have the right to withhold rent if the property is subject to a trustee sale?

When a mortgage goes into default, the landlord still has the right to collect rent. The landlord remains in charge of the rental unit until the property is sold at the trustee sale.

Can the tenant refuse to allow the landlord to show the rental unit to prospective buyers, tenants, contractors, or mortgagees?

The tenant cannot withhold consent to the landlord to show the premises to a prospective buyer, tenant, contractor, or mortgagee, providing the landlord gives the tenant at least two days notice. The landlord can enter only at reasonable times. ARS §33-1343.

RENTAL TERMS

Abandonment: Abandonment occurs when the tenant is absent for seven days without notice to the landlord and rent is delinquent for 10 days.

Actual damages: Damages or financial losses incurred by the tenant or landlord because of a breach of the rental agreement.

Breach: When the tenant or landlord fails to comply with terms of the rental agreement.

Business day: Business days are Monday, Tuesday, Wednesday, Thursday, and Friday. Business days do not include Saturday, Sunday or legal holidays.

Calendar day: The date on which something occurs. For example, June 10-12 is three calendar days (June 10, June 11 and June 12).

Defendant: A person against whom court action is brought.

Diminution of services: When the landlord shuts off utilities to force the tenant to pay delinquent rent.

Distraint for rent: A situation in which a landlord retains the tenant's personal property for the delinquent rent.

Injunctive relief: A court order that restrains the defendant from conducting specific actions against the plaintiff.

Lease: A contract that cannot be broken without incurring liability unless both parties agree or one party has committed a significant breach.

Physical possession: Actually occupying a dwelling.

Plaintiff: A person who files a court action against the defendant.

Prohibited: An action that is not permitted under the Arizona Residential Landlord and Tenant Act.

Restrictive covenant: A condition put into a deed which restricts the use of property. An example is prohibiting families and persons below a specific age from renting.

Retaliatory action: An action intended to harass or punish the tenant or landlord for complaining about a breach of terms and conditions of the rental agreement.

Security deposit: Money paid to the landlord to hold in order to guarantee that the tenant will take care of the property and pay rent.

Subsequent breach: A breach that occurs after the first breach. An example is a tenant who fails to pay rent in December and then fails to pay rent in January.

Substitute housing: Housing the tenant moves into because the landlord failed to maintain the rental unit in a habitable condition.

Tenant or lessor: A person who rents.

Writ of restitution: A court order issued to evict the tenant.

Other Services and Community Contact Information:

RENTAL ASSISTANCE/FINANCIAL ASSISTANCE

City of Phoenix Human Services:

John F. Long Family Services Center	602-262-6510
Sunnyslope Family Services Center	602-495-5229
Travis L. Williams Family Services Center	602-534-4732

Outside of the city of Phoenix:

24/7 Community Information and Referral Services helpline 2-1-1/1-877-211-8661
(Provide information on medical services, shelter information, emergency food boxes, rental assistance programs, faith based organizations and much more).

Salvation Army	602-997-5034
Saint Vincent de Paul	602-263-8856

SHELTER

CONTACTS Shelter Hotline (Community Network for Accessing Shelter)	602-263-8900/1-800-799-7739
Central Arizona Shelter Services	602-870-1705

LEGAL ASSISTANCE

Community Legal Service	602-258-3434
Maricopa County Bar Association Lawyer Referral Service	602-257-4434
Maricopa County Justice Court	602-506-8530

**HOUSING COUNSELING (FORECLOSURE PREVENTION/
HOMEBUYER PROGRAMS)**

Neighborhood Housing Services of Phoenix	602-258-1659
Greater Phoenix Urban League	602-254-5611
Chicanos Por La Causa	602-253-0838
Community Housing Resources of Arizona	602-631-9780
Arizona ACORN	602-253-1111

OTHER RESOURCES

Arizona Attorney General’s Office - Consumer Complaint	602-542-5763
Arizona Department of Real Estate	602-771-7730
City of Phoenix Equal Opportunity Department	602-262-7486
Arizona Mortgage Foreclosure Helpline	1-877-448-1211
Family Advocacy Center	602-222-9444
Fresh Start Women’s Center	602-252-8494
24-hour Crisis Response Network Helpline	602-222-9444
Maricopa County Assessor’s Office (Residential Rental Property Registration)	602-506-3406
Maricopa County Environmental Health	602-506-6616
Arizona Association of Manufactured Homes & R.V. Owners (Provide information to tenants on the Arizona Mobile Home Parks Residential Landlord and Tenant Act)	480-966-9566