

evidence that the material and irreparable breach did occur, the court shall order restitution in favor of the plaintiff not less than twelve nor more than twenty-four hours later.

F. If the defendant is found guilty, the court shall give judgment for the plaintiff for restitution of the premises, for late charges stated in the rental agreement, for costs and, at the plaintiff's option, for all rent found to be due and unpaid through the periodic rental period provided for in the rental agreement as described in section 33-1314, subsection C and shall grant a writ of restitution.

G. If the defendant is found not guilty, judgment shall be given for the defendant against the plaintiff for costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a writ of restitution shall issue in favor of the defendant.

## **ARTICLE 5. RETALIATORY ACTION**

### **§ 33-1381. Retaliatory conduct prohibited**

A. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after any of the following:

1. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
2. The tenant has complained to the landlord of a violation under section 33-1324.

3. The tenant has organized or become a member of a tenants' union or similar organization.

4. The tenant has complained to a governmental agency charged with the responsibility for enforcement of the wage-price stabilization act.

B. If the landlord acts in violation of subsection A of this section, the tenant is entitled to the remedies provided in section 33-1367 and has a defense in action against him for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. "Presumption", in this subsection, means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

C. Notwithstanding subsections A and B of this section, a landlord may bring an action for possession if either of the following occurs:

1. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent.
2. The tenant is in default in rent. The maintenance of the action does not release the landlord from liability under section 33-1361, subsection B.

## **ARIZONA REVISED STATUTES**

### **TITLE 33. PROPERTY**

#### **CHAPTER 17. RESIDENTIAL RENTAL PROPERTY**

##### **ARTICLE 1. GENERAL PROVISIONS**

§ 33-1901.	Definitions
§ 33-1902.	Residential rental property; recording with the assessor; agent designation; civil penalty; fee
§ 33-1903.	Appointment of temporary receiver; term; duties, accounting
§ 33-1904.	Inspections
§ 33-1905.	Slum property; appeal
§ 33-1906.	Licensed property management company; training program
§ 33-1907.	Registration with one-call notification center

##### **ARTICLE 1. GENERAL PROVISIONS**

### **§ 33-1901. Definitions**

In this article, unless the context otherwise requires:

1. "Managing agent" means a person, corporation, partnership or limited liability company that is authorized by the owner to operate and manage the property.
2. "Residential rental property" means property that is used solely as leased or rented property for residential purposes. If the property is a space rental mobile home park, residential rental property includes the rental space that is leased or rented by the owner of that rental space but does not include the mobile home or



recreational vehicle that serves as the actual dwelling if the dwelling is owned and occupied by the tenant of the rental space and not by the owner of the rental space.

3. "Slum property" means residential rental property that has deteriorated or is in a state of disrepair and that manifests one or more of the following conditions that are a danger to the health or safety of the public:

- (a) Structurally unsound exterior surfaces, roof, walls, doors, floors, stairwells, porches or railings.
- (b) Lack of potable water, adequate sanitation facilities, adequate water or waste pipe connections.
- (c) Hazardous electrical systems or gas connections.
- (d) Lack of safe, rapid egress.
- (e) Accumulation of human or animal waste, medical or biological waste, gaseous or combustible materials, dangerous or corrosive liquids, flammable or explosive materials or drug paraphernalia.

**§ 33-1902. Residential rental property; recording with the assessor; agent designation; civil penalty; fee**

A. An owner of residential rental property shall maintain with the assessor in the county where the property is located information required by this section in a manner to be determined by the assessor. The owner shall update any information required by this section within ten days after a change in the information occurs. The following information shall be maintained:

1. The name, address and telephone number of the property owner.
2. If the property is owned by a corporation, limited liability company, partnership, limited partnership, trust or real estate investment trust, the name, address and telephone number of any of the following:
  - (a) For a corporation, a corporate officer.
  - (b) For a partnership, a general partner.
  - (c) For a limited liability company, the managing or administrative member.
  - (d) For a limited partnership, a general partner.
  - (e) For a trust, a trustee.
  - (f) For a real estate investment trust, a general partner or an officer.
3. The street address and parcel number of the property.
4. The year the building was built.

B. An owner of residential rental property who lives outside this state shall designate and record with the assessor a statutory agent who lives in this state and who will accept legal service on behalf of the owner. The owner shall designate the agent in a manner to be determined by the assessor. The information shall include the name, address and telephone number of the agent.

C. Residential rental property shall not be occupied if

the information required by this section is not on file with the county assessor. If the owner has not filed the information required by this section with the county assessor and the residential rental property is occupied by a tenant and the tenant chooses to terminate the tenancy, the tenant shall deliver to the landlord, owner or managing agent of the property a written ten day notice to comply with this section. The notice shall be delivered by certified mail, return receipt requested, or by hand delivery. If the owner does not comply with this section within ten days after receipt of the notice, the tenant may terminate the rental agreement and the landlord shall return all prepaid rent to the tenant. Security deposits shall be returned in accordance with section 33-1321, subsection D. The landlord shall return those monies by certified mail, return receipt requested, or by hand delivery to the tenant within ten days after the termination of the rental agreement. This subsection applies to any existing lease and to any new lease after August 25, 2004. Notwithstanding this subsection, an owner is in compliance with this subsection only if the owner had filed the information required by subsection A of this section with the county assessor.

D. All records, files and documents that are required by this section are public records.

E. For residential rental property that is acquired by an owner after the date of the notice of assessed valuation and the notice prescribed by section 42-15103 and until the issuance of the next notice of assessed valuation, a city or town shall assess a civil penalty of one thousand dollars against a person who fails to comply with this section, plus an additional one hundred dollars for each month after the date of the original violation until compliance occurs. The court shall not suspend any portion of the civil penalty provided by this subsection.

F. Notwithstanding subsection E of this section, if a person complies within ten days after receiving the complaint that notices the violation, the court shall dismiss the complaint and shall not impose a civil penalty.

G. Except for newly acquired residential rental property as prescribed by subsection E of this section, if a residential rental property owner fails to register with the county assessor as prescribed by this section, the city or town may impose a civil penalty in the amount of one hundred fifty dollars per day for each day of violation after the date of the most recent notice of assessed valuation and the notice prescribed by section 42-15103. If a person complies within ten days after receiving the notice from the county assessor, the court shall dismiss the complaint and shall not impose a civil penalty.

H. In carrying out this section, the county assessor shall have immunity as provided in section 12-820.01.



I. The county assessor may assess a fee of not more than ten dollars for each initial registration and each change of information in the registry.

J. On request from a city or town the county assessor shall provide the most current list of all registered rental property owners within the city's or town's boundaries.

**§ 33-1903. Appointment of temporary receiver; term; duties, accounting**

A. This state or a city, town or county of this state may apply to the superior court for the appointment of a temporary receiver to manage a property that is designated as a slum property by a city, town or county or the state.

B. If the court determines that the appointment of a temporary receiver is necessary, the court may order the appointment of a temporary receiver to manage or operate the premises for as long as the court deems necessary. The court shall not appoint a temporary receiver for a term of more than one year.

C. A temporary receiver who is appointed pursuant to subsection B of this section either shall be a real estate licensee specializing in property management or an attorney specializing in real estate law and shall swear or affirm to faithfully and fairly discharge the receiver's duties. The court may require the temporary receiver to post a bond in an amount fixed by the court.

D. The court shall determine the following:

1. The management duties of the receiver.
2. The amount of compensation to be paid to the receiver.

3. The method of payment.

4. The payment periods.

E. The temporary receiver shall continue to manage the property during the pendency of any appeal or until relieved by the court. The court may remove a temporary receiver on its own motion or on the motion of any party or the temporary receiver.

F. The temporary receiver may do any of the following:

1. Take control of the property.
2. Pay the mortgage on the property if there are sufficient monies derived from the income of the property to do so.

3. Collect rents due on the property.

4. Make or have made any repairs that are necessary to bring the property into compliance with any statute or ordinance.

5. Make payments that are necessary for the maintenance or restoration of utilities to the property.

6. Purchase materials that are necessary to make repairs.

7. Renew, terminate or modify existing rental contracts and leases as provided by law.

8. Enter into new rental contracts and leases.

9. Affirm, renew or terminate an existing insurance

contract that covers the property as provided by law.

10. Enter into a new contract that provides for insurance coverage on the property.

11. Hire security or other personnel that are necessary for the safe and proper operation and maintenance of the property.

12. Prosecute or defend suits that flow from the management of the property and retain counsel.

13. Exercise all other authority that an owner of the property would have except the authority to sell the property.

G. Before the receiver spends monies in excess of ten thousand dollars the court and the party who is responsible for the payment of the temporary receiver's expenditures shall approve the expenditure of those monies.

H. The costs of compensation to and expenditures by the temporary receiver shall be paid in the following order of priority:

1. From the income that is derived from the property and that is available after all taxes and mortgages are satisfied.

2. By the party who requested the appointment of the temporary receiver.

I. On filing with the county recorder of the county in which the property is located, a lien is created in favor of the party who pays the temporary receiver's costs of compensation and expenditures other than the defendant. The lien is prior to all other liens, obligations or encumbrances except for prior recorded mortgages, restitution liens, child support liens and general tax liens.

J. On the completion of the receivership, the temporary receiver shall file with the court a full accounting of all costs and expenses incurred and all income received during course of the receivership.

K. On finding that the appointment of a temporary receiver is no longer warranted, the court on its own motion or the motion of any party may terminate the temporary receivership.

L. After all violations have been cured, the temporary receivership shall be terminated.

**§ 33-1904. Inspections**

A. In addition to any other statute or ordinance providing for the inspection of property, a city, town or county or the state may inspect the residential rental property if either of the following occurs:

1. A property owner fails to comply with the provisions of section 33-1902. The property is subject to immediate inspection until there is compliance. If the property is occupied, the inspecting authority shall request consent of the tenant before entering the interior of the structure. Except as otherwise provided by law, the right of inspection does not extend to the interior of a dwelling unit in a space rental mobile home



park or recreational vehicle park that is not owned by a landlord unless the tenant is in possession of the dwelling unit or, if the dwelling unit is vacant or abandoned, the owner consents to the inspection. If the tenant refuses to consent to the entry, the inspecting authority has recourse to any remedy provided by law to secure entry.

2. A property has been designated as a slum property by a city, town or county or the state. The city, town, county or state may annually inspect a property designated as a slum property for three consecutive years. A city, town or county or the state shall establish the process by which a property is designated as a slum property.

B. The property owner is responsible for the costs of an inspection that is conducted pursuant to this section. If the property that is inspected is a dwelling unit in a space rental mobile home park or recreational vehicle park that is not owned by a landlord, the owner of the dwelling unit is responsible for the costs of the inspection.

C. On recording a penalty or inspection cost with the recorder's office in the county in which the property is located, the penalty or inspection cost is deemed to be an assessment and is prior to all other liens, obligations or encumbrances except for liens under title 12, chapter 7, article 12, prior recorded mortgages, restitution liens, child support liens and general tax liens. If the property that was inspected was a dwelling unit in a space rental mobile home park or recreational vehicle park that is not owned by a landlord, a lien shall not be recorded against the owner of the property other than the dwelling. The lien may be filed with the department of transportation and, if filed, has the same effect as otherwise provided for in this section.

D. This section shall not affect any other statute or ordinance pertaining to inspection of property.

#### **§ 33-1905. Slum property; appeal**

A. A governmental agency that may designate a residential rental property as a slum property shall establish procedures by which the owner of the property may file an administrative appeal contesting the designation of the property.

B. The decision at the hearing on the administrative appeal is the final administrative decision.

C. A party may appeal the administrative decision pursuant to title 12, chapter 7, article 6.

#### **§ 33-1906. Licensed property management company; training program**

A city or town may require a residential rental property owner whose property has been designated as a slum or exhibits the criteria prescribed in section 9-1303, relating to violations that materially affect the health and safety of the occupants of the property, to hire a property management firm that is regulated pursuant to title 32, chapter 20, article 3.1 to manage the property, participate in the city or town's crime free multihousing program, if applicable, and attend city or town approved landlord tenant training classes if available from the city or town. The city or town may also require the property owner to participate in comparable training provided by a nonprofit corporation that is designated as a section 501(c)(3), 501(c)(4), 501(c)(5) or 501(c)(6) corporation and that is certified by the city or town to provide that training. This shall not apply to mobile home parks which are in compliance with section 33-1437.

#### **§ 33-1907. Registration with one-call notification center**

This article does not relieve a landlord of an apartment community as defined in section 40-360.21 or a landlord of a mobile home park from the obligation to register with a one-call notification center as prescribed by section 40-360.32.



**ARIZONA REVISED STATUTES**  
**TITLE 9. CITIES AND TOWNS**  
**CHAPTER 12. RESIDENTIAL RENTAL**  
**INSPECTION PROGRAMS**

**ARTICLE 1.**  
**GENERAL PROVISIONS**

Section  
 § 9-1303. Material affect on health and safety of occupants

**ARTICLE 1.**  
**GENERAL PROVISIONS**

**§ 9-1303. Material affect on health and safety of occupants**

For the purposes of this chapter, a condition that materially affects the health and safety of the occupants of a residential rental dwelling unit includes any of the following conditions:

1. Inadequate sanitation, ventilation or space requirements, including the following:
  - (a) Lack of or inadequate water closets, lavatories, bathtubs or showers.
  - (b) Lack of a required kitchen sink or a kitchen sink that does not comply with the building code of the city or town in which the property is located.
  - (c) Lack of hot and cold running water to plumbing fixtures.
  - (d) Lack of adequate heating and cooling.
  - (e) Lack of or improper operation of required ventilating equipment or broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers.
  - (f) Lack of minimum amounts of natural light and ventilation as required by the building code.
  - (g) Inadequate room and space dimensions as required by the building code.
  - (h) Lack of required adequate electricity and lighting as required by the building code.
  - (i) Infestation of insects, vermin or rodents.
  - (j) Lack of connection to a sewage disposal system as required by the building code.
  - (k) Lack of adequate garbage and rubbish storage and removal facilities.
2. Structural hazards, including the following:
  - (a) Significantly deteriorated or inadequate foundations or foundation areas that are not provided with adequate drainage.
  - (b) Flooring or floor supports of insufficient size to carry imposed loads with safety.
  - (c) Members of walls, partitions or other vertical

supports that split, lean, list or buckle due to defective material or deterioration.

(d) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that significantly sag, split or buckle due to defective material or deterioration.

(e) Fireplaces or chimneys that list, bulge or settle due to defective material or deterioration or that are of insufficient size or strength to carry imposed loads with safety.

3. Hazardous wiring that does not conform with the building code or that has not been maintained in good condition, or both, and that is not being used in a safe manner.

4. Hazardous plumbing that does not conform with the building code or that has not been maintained in good condition, or both, and that is not free of cross-connections and siphonage between fixtures.

5. Hazardous mechanical equipment including vents that do not conform with the building code or that have not been maintained in good and safe condition and that are not working properly.

6. Faulty weather protection that may include:

(a) Significantly deteriorated, crumbling or loose plaster.

(b) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors.

(c) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.

(d) Broken, rotted, split or buckled exterior wall coverings or roof coverings.

7. Fire hazards or inadequate fire protection, including:

(a) Any building or portion of a building or any device, apparatus, equipment, combustible waste or vegetation that is not in compliance with the building code and that is in such a condition as to cause a fire or explosion or to provide a ready fuel to augment the spread and intensity of a fire or explosion arising from any cause.

(b) Any building or portion of a building that is not provided with fire-resistive construction or fire extinguishing systems or equipment required by the building code, except those buildings or portions of buildings that conformed with all applicable building code laws and that have fire-resistive integrity and fire



extinguishing systems or equipment that has been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

(c) Lack of adequate fire detection systems as required by law.

8. Faulty materials or construction that is not specifically allowed or approved by the building code or that has not been adequately maintained in good and safe condition.

9. Hazardous or unsanitary premises, including those premises on which an accumulation of weeds, vegetation, refuse, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials and similar materials or conditions constitute fire, health or safety hazards.

10. Inadequate maintenance, including any building or portion of a building that is determined to be an unsafe building in accordance with the building code.

11. Unhealthy conditions, including any condition as defined in the building code that results in the failure to maintain minimum standards of sanitation, health or safety or that renders air, food or drink unwholesome or detrimental to health.

12. Inadequate exits, including all buildings or portions of a building that are not provided with adequate exit facilities as required by the building code and that have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

13. Improper occupancy, including all buildings or portions of a building that are occupied for living, sleeping, cooking or dining purposes and that were not designed and permitted to be used for such occupancies, or that are occupied in excess of the maximum occupancy load allowed by any applicable provision of the building code or state law.

## ARIZONA REVISED STATUTES

### TITLE 33. PROPERTY

#### CHAPTER 3. LANDLORD AND TENANT

##### ARTICLE 1. OBLIGATIONS AND LIABILITIES OF LANDLORD

###### Section

- § 33-301. Posting of lien law and rates by innkeepers
- § 33-302. Maintenance of fireproof safe by innkeeper for deposit of valuables by guests; limitations on liability of innkeeper for loss of property of guests
- § 33-303. Discrimination by landlord or lessor against tenant with children prohibited; classification; exceptions

##### ARTICLE 2. OBLIGATIONS AND LIABILITIES OF TENANT

###### Section

- § 33-321. Maintenance of premises
- § 33-322. Damage to premises; classification
- § 33-323. Liability of person in possession of land for rent due thereon
- § 33-324. Denial of landlord's title by lessee in possession prohibited

##### ARTICLE 3.

##### TERMINATION OF TENANCIES

###### Section

- § 33-341. Termination of tenancies

###### § 33-342.

Effect of lessee holding over

###### § 33-343.

Premises rendered untenable without fault of lessee; nonliability of tenant for rent; right to quit premises

##### ARTICLE 4.

##### REMEDIES OF LANDLORD

###### Section

- § 33-361. Violation of lease by tenant; right of landlord to reenter; summary action for recovery of premises; appeal; lien for unpaid rent; enforcement
- § 33-362. Landlord's lien for rent

##### ARTICLE 5.

##### APPLICABILITY OF CHAPTER

###### Section

- § 33-381. Limitation

##### ARTICLE 1. OBLIGATIONS AND LIABILITIES OF LANDLORD

###### § 33-301. Posting of lien law and rates by innkeepers

Every keeper of a hotel, inn, boarding, lodging or apartment house, or auto camp, shall post in a conspicuous place in the office or public room, and in every bedroom of the establishment, a printed copy of sections 33-951 and 33-952, with a printed statement



of charges by the day, week or month for meals, lodging or other items furnished.

**§ 33-302. Maintenance of fireproof safe by innkeeper for deposit of valuables by guests; limitations on liability of innkeeper for loss of property of guests**

A. An innkeeper who maintains a fireproof safe and gives notice by posting in a conspicuous place in the office or in the room of each guest that money, jewelry, documents and other articles of small size and unusual value may be deposited in the safe, is not liable for loss of or injury to any such article not deposited in the safe, which is not the result of his own act.

B. An innkeeper may refuse to receive for deposit from a guest articles exceeding a total value of five hundred dollars, and unless otherwise agreed to in writing shall not be liable in an amount in excess of five hundred dollars for loss of or damage to property deposited by a guest in such safe unless the loss or damage is the result of the fault or negligence of the innkeeper.

C. The innkeeper shall not be liable for loss of or damage to merchandise samples or merchandise for sale displayed by a guest unless the guest gives prior written notice to the innkeeper of having and displaying the merchandise or merchandise samples, and the innkeeper acknowledges receipt of such notice, but in no event shall liability for such loss or damage exceed five hundred dollars unless it results from the fault or negligence of the innkeeper.

D. The liability of an innkeeper to a guest shall be limited to one hundred dollars for property delivered to the innkeeper to be kept in a storeroom or baggage room and to seventy-five dollars for property deposited in a parcel or checkroom.

E. For the purpose of this section the term "inn" includes hotel, boarding house, lodging house, apartment house, motel and auto camp.

**§ 33-303. Discrimination by landlord or lessor against tenant with children prohibited; classification; exceptions**

A. A person who knowingly refuses to rent to any other person a place to be used for a dwelling for the reason that the other person has a child or children, or who advertises in connection with the rental a restriction against children, either by the display of a sign, placard, written or printed notice, or by publication thereof in a newspaper of general circulation, is guilty of a petty offense.

B. No person shall rent or lease his property to another in violation of a valid restrictive covenant against the sale of such property to persons who have a child or children living with them nor shall a person rent or lease his property to persons who have a child or children living with them when his property lies within a subdivision which subdivision is presently designed,

advertised and used as an exclusive adult subdivision. A person who knowingly rents or leases his property in violation of the provisions of this subsection is guilty of a petty offense.

**ARTICLE 2. OBLIGATIONS AND LIABILITIES OF TENANT**

**§ 33-321. Maintenance of premises**

A tenant shall exercise diligence to maintain the premises in as good condition as when he took possession, ordinary wear and tear excepted.

**§ 33-322. Damage to premises; classification**

Removal or intentional and material alteration or damage of any part of a building, the furnishings thereof, or any permanent fixture, by or at the instance of the tenant, without written permission of the landlord or his agent, is a class 2 misdemeanor.

**§ 33-323. Liability of person in possession of land for rent due thereon**

Every person in possession of land out of which rent is due is liable for the amount or proportion of rent due from the lands in his possession, although it is only a part of the land originally demised, without depriving the landlord of other legal remedies for recovery of rent.

**§ 33-324. Denial of landlord's title by lessee in possession prohibited**

When a person enters into possession of real property under a lease, he may not, while in possession, deny the title of his landlord in an action brought upon the lease by the landlord or a person claiming under him.

**ARTICLE 3. TERMINATION OF TENANCIES**

**§ 33-341. Termination of tenancies**

A. A tenancy from year to year terminates at the end of each year unless written permission is given to remain for a longer period. The permission shall specify the time the tenant may remain, and upon termination of such time the tenancy expires.

B. A lease from month to month may be terminated by the landlord giving at least ten days notice thereof. In case of nonpayment of rent notice is not required.

C. A tenant from month to month shall give ten days notice, and a tenant on a semimonthly basis shall give five days notice, of his intention to terminate possession of the premises. Failure to give the notice renders the tenant liable for the rent for the ensuing ten days.

D. When a tenancy is for a certain period under verbal or written agreement, and the time expires, the tenant shall surrender possession. Notice to quit or demand



of possession is not then necessary.

E. A tenant who holds possession of property against the will of the landlord, except as provided in this section, shall not be considered a tenant at sufferance or at will.

#### **§ 33-342. Effect of lessee holding over**

When a lessee holds over and retains possession after expiration of the term of the lease without express contract with the owner, the holding over shall not operate to renew the lease for the term of the former lease, but thereafter the tenancy is from month to month.

#### **§ 33-343. Premises rendered untenable without fault of lessee; nonliability of tenant for rent; right to quit premises**

The lessee of a building which, without fault or neglect on the part of the lessee, is destroyed or so injured by the elements or any other cause as to be untenable or unfit for occupancy, is not liable thereafter to pay rent to the lessor or owner unless expressly provided by written agreement, and the lessee may thereupon quit and surrender possession of the premises.

### **ARTICLE 4. REMEDIES OF LANDLORD**

#### **§ 33-361. Violation of lease by tenant; right of landlord to reenter; summary action for recovery of premises; appeal; lien for unpaid rent; enforcement**

A. When a tenant neglects or refuses to pay rent when due and in arrears for five days, or when a tenant violates any provision of the lease, the landlord or person to whom the rent is due, or the agent of the landlord or person to whom the rent is due, may reenter and take possession, or, without formal demand or reentry, commence an action for recovery of possession of the premises.

B. The action shall be commenced, conducted and governed as provided for actions for forcible entry or detainer and shall be tried not less than five nor more than thirty days after its commencement. In addition to determining the right to actual possession, the court may assess damages, attorney fees and costs pursuant to section 12-1178.

C. If judgment is given for the plaintiff, the defendant, in order to perfect an appeal, shall file a bond with the court in an amount fixed and approved by the court and payable to the clerk of the superior court, conditioned that the appellant will prosecute the appeal to effect and will pay the rental value of the premises

pending the appeal and all damages, attorney fees, costs and rent adjudged against the appellant.

D. If the tenant refuses or fails to pay rent owing and due, the landlord shall have a lien upon and may seize as much personal property of the tenant located on the premises and not exempted by law as is necessary to secure payment of the rent. If the rent is not paid and satisfied within sixty days after seizure as provided for in this section, the landlord may sell the seized personal property in the manner provided by section 33-1023.

E. When premises are sublet or the lease is assigned, the landlord shall have a like lien against the sublessee or assignee as the landlord has against the tenant and may enforce it in the same manner.

#### **§ 33-362. Landlord's lien for rent**

A. The landlord shall have a lien on all property of his tenant not exempt by law, placed upon or used on the leased premises, until the rent is paid. The lien shall not secure the payment of rent accruing after the death or bankruptcy of the lessee, or after an assignment for the benefit of the lessee's creditors.

B. The landlord may seize for rent any personal property of his tenant found on the premises, but the property of any other person, although found on the premises, shall not be liable therefor. If the tenant fails to allow the landlord to take possession of such property, the landlord may reduce the property to possession by an action to recover possession, and may hold or sell the property for the payment of the rent.

C. The landlord shall have a lien for rent upon crops grown or growing upon the leased premises, whether the rent is payable in money, articles of property or products of the premises, and also for the faithful performance of the terms of the lease, and the lien shall continue for a period of six months after expiration of the term of the lease.

D. When premises are sublet, or when the lease is assigned, the landlord shall have the same lien against the sublessee or assignee as he has against the tenant and may enforce the lien in like manner.

### **ARTICLE 5. APPLICABILITY OF CHAPTER**

#### **§ 33-381. Limitation**

This chapter shall apply to all landlord-tenant relationships except for landlord-tenant relationships arising out of the rental of dwelling units which shall be governed by chapter 10 or 11 of this title.



## ARIZONA REVISED STATUTES

## TITLE 12. COURTS AND CIVIL PROCEEDINGS

CHAPTER 8. SPECIAL ACTIONS AND  
PROCEEDINGS RELATING TO PROPERTY

## ARTICLE 4.

## FORCIBLE ENTRY AND DETAINER

## Section

- § 12-1171. Acts which constitute forcible entry or detainer
- § 12-1172. Definition of forcible entry
- § 12-1173. Definition of forcible detainer; substitution of parties
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- § 12-1174. Immateriality of time possession obtained by tenant
- § 12-1175. Complaint and answer; service and return
- § 12-1176. Demand for jury; trial procedure
- § 12-1177. Trial and issue; postponement of trial
- § 12-1178. Judgment; writ of restitution; limitation on issuance; criminal violation; notice
- § 12-1179. Appeal to superior court; notice; bond
- § 12-1180. Stay of proceedings on judgment; record on appeal
- § 12-1181. Trial and judgment on appeal; writ of restitution
- § 12-1182. Appeal to supreme court; stay and bond
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## ARTICLE 4.

## FORCIBLE ENTRY AND DETAINER

## § 12-1171. Acts which constitute forcible entry or detainer

A person is guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he:

1. Makes an entry into any lands, tenements or other real property, except in cases where entry is given by law.
2. Makes such an entry by force.
3. Wilfully and without force holds over any lands, tenements or other real property after termination of the time for which such lands, tenements or other real property were let to him or to the person under whom he claims, after demand made in writing for the possession thereof by the person entitled to such possession.

## § 12-1172. Definition of forcible entry

A "forcible entry," or an entry where entry is not given by law within the meaning of this article, is:

1. An entry without the consent of the person having the actual possession.
2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent.

## § 12-1173. Definition of forcible detainer; substitution of parties

There is a forcible detainer if:

1. A tenant at will or by sufferance or a tenant from month to month or a lesser period whose tenancy has been terminated retains possession after his tenancy has been terminated or after he receives written demand of possession by the landlord.
2. The tenant of a person who has made a forcible entry refuses for five days after written demand to give possession to the person upon whose possession the forcible entry was made.
3. A person who has made a forcible entry upon the possession of one who acquired such possession by forcible entry refuses for five days after written demand to give possession to the person upon whose possession the first forcible entry was made.
4. A person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord for five days after written demand, after the term expires. If the term expires while a writ of forcible entry applied for by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant.

## § 12-1173.01. Additional definition of forcible detainer

A. In addition to other persons enumerated in this article, a person in any of the following cases who retains possession of any land, tenements or other real property after he receives written demand of possession may be removed through an action for forcible detainer filed with the clerk of the superior court in accordance with this article:

1. If the property has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of real property pursuant to title 33, chapter 6, article 2.
2. If the property has been sold through a trustee's sale under a deed of trust pursuant to title 33, chapter 6.1.
3. If the property has been forfeited through a contract for conveyance of real property pursuant to title 33, chapter 6, article 3.
4. If the property has been sold by virtue of an execution and the title has been duly transferred.



5. If the property has been sold by the owner and the title has been duly transferred.

B. The remedies provided by this section do not affect the rights of persons in possession under a lease or other possessory right which is superior to the interest sold, forfeited or executed upon.

C. The remedies provided by this section are in addition to and do not preclude any other remedy granted by law.

**§ 12-1174. Immateriality of time possession obtained by tenant**

It is not material whether a tenant received possession from his landlord or became his tenant after obtaining possession.

**§ 12-1175. Complaint and answer; service and return**

A. When a party aggrieved files a complaint of forcible entry or forcible detainer, in writing and under oath, with the clerk of the superior court or a justice of the peace, summons shall issue no later than the next judicial day.

B. The complaint shall contain a description of the premises of which possession is claimed in sufficient detail to identify them and shall also state the facts which entitle the plaintiff to possession and authorize the action.

C. The summons shall be served at least two days before the return day, and return made thereof on the day assigned for trial.

**§ 12-1176. Demand for jury; trial procedure**

A. If a jury trial is requested by the plaintiff, the court shall grant the request. If the proceeding is in the superior court, the jury shall consist of eight persons, and if the proceeding is in the justice court, the jury shall consist of six persons. The trial date shall be no more than five judicial days after the aggrieved party files the complaint.

B. If the plaintiff does not request a jury, the defendant may do so on appearing and the request shall be granted.

C. The action shall be docketed and tried as other civil actions.

**§ 12-1177. Trial and issue; postponement of trial**

A. On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into.

B. If a jury is demanded, it shall return a verdict of guilty or not guilty of the charge as stated in the complaint. If a jury is not demanded the action shall be tried by the court.

C. For good cause shown, supported by affidavit, the trial may be postponed for a time not to exceed three

calendar days in a justice court or ten calendar days in the superior court.

**§ 12-1178. Judgment; writ of restitution; limitation on issuance; criminal violation; notice**

A. If the defendant is found guilty of forcible entry and detainer or forcible detainer, the court shall give judgment for the plaintiff for restitution of the premises, for all charges stated in the rental agreement and for damages, attorney fees, court and other costs and, at the plaintiff's option, all rent found to be due and unpaid through the periodic rental period, as described in section 33-1314, subsection C, as provided for in the rental agreement, and shall grant a writ of restitution. The person designated by the judge to prepare the judgment shall ensure that the defendant's social security number is not contained on the judgment.

B. If the defendant is found not guilty of forcible entry and detainer or forcible detainer, judgment shall be given for the defendant against the plaintiff for damages, attorney fees and court and other costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a writ of restitution shall issue in favor of the defendant.

C. No writ of restitution shall issue until the expiration of five calendar days after the rendition of judgment. The writ of restitution shall be enforced as promptly and expeditiously as possible. The issuance or enforcement of a writ of restitution shall not be suspended, delayed or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion unless a judge finds good cause.

D. A defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit, as defined in section 33-1310, or remains on or returns to the mobile home space, as defined in section 33-1409, or the recreational vehicle space, as defined in section 33-2102, without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section 13-1502.

E. If the defendant is found guilty of forcible entry and detainer or forcible detainer, the court shall give the defendant notice that a defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remains on or returns to the mobile home space or the recreational vehicle space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section 13-1502.

**§ 12-1179. Appeal to superior court; notice; bond**

A. Either party may appeal from a justice court to the superior court in the county in which the judgment is given by giving notice as in other civil actions within



five calendar days after rendition of the judgment pursuant to this section. The appeal shall be filed in accordance with this section, and the time to appeal shall not be extended or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion.

B. A party seeking to appeal a judgment shall file with the notice of appeal a bond for costs on appeal. The justice of the peace shall set the bond in an amount sufficient to cover the costs on appeal. The bond shall be payable to the clerk of the justice court. If a party is unable to file a bond for costs on appeal, the party shall file with the justice court a notice of appeal along with an affidavit stating that the party is unable to give bond for costs on appeal and the reasons therefor. Within five court days after the filing of the affidavit, any other party may file, in the justice court, objections to the affidavit. The justice of the peace shall hold a hearing on the affidavit and objections within five court days thereafter. If the justice court sustains the objections, the appellant shall file, within five court days thereafter, a bond for costs on appeal as provided for in this section or in such lesser amount as ordered by the justice court.

C. A party seeking to appeal a judgment may stay the execution of either the judgment for possession or any judgment for money damages by filing a supersedeas bond. The justice court shall hold a hearing on the motion within five court days after the parties advise the justice court of their failure to stipulate on the amount of the bond. The stay is effective when the supersedeas bond or bonds are filed.

D. The party seeking to stay the execution of the judgment for possession shall file a supersedeas bond in the amount of rent accruing from the date of the judgment until the next periodic rental date, together with costs and attorney fees, if any. The tenant shall pay to the clerk of the justice court, on or before each periodic rental due date during the pendency of the appeal, the amount of rent due under the terms of the lease or rental agreement. Such amounts shall be made payable by the justice court to the owner, landlord or agent as they accrue to satisfy the amount of periodic rent due under the lease or rental agreement. In all cases where the rent due under the terms of the lease or rental agreement is paid through the justice court as set forth in this subsection, the order of the court may include a one-time handling fee in the amount of ten dollars to be paid by the party seeking to stay the execution of the judgment for possession. In no event shall the amounts paid per month exceed the amount of monthly rent charged by the owner for the premises. If the tenant raises habitability as provided for in sections 33-1324 and 33-1364 as an affirmative defense to the nonpayment of rent or the tenant has filed a counterclaim asserting a

habitability issue, the justice court shall retain all money paid under this subsection pending a final judgment.

E. If during the pendency of the appeal the party seeking to stay the execution of the judgment for possession fails to pay the rent on the periodic rental due date, the party in whose favor a judgment for possession was issued may move the justice court to lift the stay of the execution of the judgment for possession. The justice court shall hear the motion to lift the stay of the execution of the judgment for possession and release accrued monies, if any, within five court days from the failure of the party to pay the periodic rent due under the terms of the lease or rental agreement. If the judgment appealed from involves a finding of a material and irreparable breach pursuant to section 33-1368 or section 33-1476, subsection D, paragraph 3 the justice court shall treat it as an emergency matter and conduct a hearing on a motion to lift the stay of execution of the writ of restitution within three days. If the third day is a Saturday, Sunday or other legal holiday, the hearing shall be held on the next day thereafter.

F. The party seeking to stay the execution of the judgment for money damages shall file a supersedeas bond in the amount of the judgment, together with costs and attorney fees, if any. The amount of the bond shall be fixed by the court and payable to the clerk of the justice court.

#### **§ 12-1180. Stay of proceedings on judgment; record on appeal**

When the appeal bond is filed and approved, the justice of the peace shall stay further proceedings on the judgment and immediately prepare a list of all entries on the justice's docket in the action and transmit it, together with all the original papers, to the clerk of the superior court of the county in which the trial was had.

#### **§ 12-1181. Trial and judgment on appeal; writ of restitution**

A. On trial of the action in the superior court, appellee, if out of possession and the right of possession is adjudged to him, shall be entitled to damages for withholding possession of the premises during pendency of the appeal and the court shall also render judgment in favor of appellee and against appellant and the sureties on his bond for damages proved and costs.

B. The writ of restitution or execution shall be issued by the clerk of the superior court and shall be executed by the sheriff or constable as in other actions.

#### **§ 12-1182. Appeal to supreme court; stay and bond**

A. In a forcible entry or forcible detainer action originally commenced in the superior court, an appeal



may be taken to the supreme court as in other civil actions.

B. The appeal, if taken by the party in possession of the premises, shall not stay execution of the judgment unless the superior court so orders, and appellant shall file a bond in an amount fixed and approved by the court, conditioned that appellant will prosecute the appeal to effect and will pay the rental value of the premises pending the appeal and all damages, costs,

and rent adjudged against him by the superior court or the supreme court.

**§ 12-1183. Proceedings no bar to certain actions**

The proceedings under a forcible entry or forcible detainer shall not bar an action for trespass, damages, waste, rent or mesne profits.