



MEMORANDUM

Date: February 25, 2021

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry,
County Administrator *[Signature]*

Re: **Overview Report on the Eviction Process and County Assistance**

I. History of Eviction Process in Pima County Pre-COVID

The eviction process in Arizona, established by statute, is relatively swift. In the case of non-payment of rent, the tenant has five days from the date the landlord provides notice to pay the landlord the full balance of rent owed. On day six, the landlord can file a complaint with the Court, and the eviction hearing can be calendared three to six days later. The defendant must be served with the eviction complaint and summons just two days before the hearing. Many defendants do not receive notice in sufficient time and/or cannot take time off work to participate in the hearing. Failure to attend the hearing often results in a default judgment against the defendant. (See Eviction Flowchart, Attachment 1).

Eviction happens for three primary reasons: non-payment of rent, noncompliance with the lease/rental agreement (material breach), or an irreparable breach related to criminal activity conducted on the premises. There are those situations, such as crimes committed on properties known as an irreparable breach, where eviction is the appropriate course of action. The issuance must be swift for the community's protection and safety.

According to statistics provided by the Consolidated Justice Court, 96 percent of the evictions filings in 2019 were for nonpayment of rent and just 1.9 percent for noncompliance with the rental agreement. In 2020 the number of filings nonpayment decreased to 87 percent of total filings and noncompliance filings increased to 8.7 percent. This a concern which will be addressed in more detail later in this report.

Before the pandemic, all eviction cases in the Consolidated Justice Court were assigned to pro tem judges. The Table below reflects eviction filings for calendar years 2018, 2019, and 2020.

Eviction Filings 2018-2020 (Source: Consolidated Justice Court)

	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
2018	1,182	954	893	884	1,097	1,120	1,086	1,223	1,069	1,179	1,039	966	12,692
2019	1,271	929	754	916	1,027	940	1,158	1,079	1,066	1,228	1,006	1,055	12,429
2020	1,092	984	631	244	338	392	378	468	447	485	488	622	6,569

FEB 25 21 PM 04:08 PC CLK/DF/BJ

As the Table illustrates, filings for calendar years 2018 and 2019 remained relatively equal. There is a notable decline in filings beginning in March 2020 compared to previous years and then a significant decrease in April 2020 due to the CARES Act being signed into law on March 27, 2020. The Act placed a moratorium on evictions for non-payment of rent.

County and City leadership expressed concern before the COVID-19 pandemic about the number of evictions in Pima County and the destabilizing impact on the community. As cited in the Task Force Report, the Eviction Lab ranked Tucson as number 25 in the top evicting cities in the U.S. in 2016. In 2019, two constables, who regularly witnessed the disruption and trauma experienced by those individuals displaced by eviction, initiated a pilot project whereby they began obtaining a copy of the eviction summons issued by the Court and provided early notification of the eviction process to the households being evicted. This process of giving prior notice increased the likelihood those individuals would resolve the issue prior to the court hearing, and when necessary, connected them with housing and supportive services.

In September 2019, the County Administrator directed the Housing and Rapid Rehousing staff to observe eviction proceedings in the Consolidated Justice Court over a period of two weeks. Their observations revealed the following:

- Arizona's eviction process is too swift and does not afford the defendant enough time to obtain housing or find suitable alternate housing;
- Of the 134 eviction cases observed, 112 defendants did not appear in Court. In 90 percent of the cases, judgment was for the plaintiff;
- Of the 22 defendants that appeared in Court, none had legal representation;
- Defendants did not understand the proceedings or their rights and responsibilities as defined by the Landlord-Tenant Act. The pro tem judges concurred that most individuals could not interpret the Landlord-Tenant Act. For example, many tenants incorrectly believe they can withhold rent for habitability issues.

II. Eviction Moratoriums

Beginning March 24, 2020, a series of short-term State and Federal eviction moratoriums were put in place in response to the COVID-19 pandemic. (See Attachment 2 for a list of moratoriums). Each had variations in eligibility criteria and deadlines, but only one prohibited the filing of an eviction complaint. That was the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) mandated by Congress to take effect from March 27, 2020, to July 25, 2020 (plus 30-day notice, which technically extended it to August 25). It provided special protections to tenants living in properties with federally backed/insured mortgages, estimated to be about 20 to 25 percent of all rental units, and to tenants/landlords

participating in a federal subsidy/voucher program. It also prohibited landlords from charging late fees and interest.

All the other moratoriums including the Executive Order issued by Governor Ducey prohibited the enforcement of the eviction. The Justice Courts across the state were confused by the various Federal and State moratoriums. Initially, some courts stopped accepting eviction filings, the Consolidated Justice Court included. The Arizona Supreme Court later clarified that the eviction process should not have been paused; instead, judgments could not be enforced, and writs of restitution could not be executed. Therefore, on June 1, 2020, the Consolidated Justice Court resumed accepting eviction filings. On June 15, the Justices of the Peace, rather than pro tems, started to hear all of the eviction cases on a weekly rotation basis, with one Justice of the Peace handling all of the cases for the entire week.

Federal Intervention: On September 4, 2020, the Centers for Disease Control (CDC) placed a temporary halt on residential evictions for nonpayment of rent to prevent the further spread of COVID-19. The moratorium was set to expire on December 31, 2020, but was extended first to January 31, 2021, and later to March 31, 2021. To qualify, the tenant has to sign a declaration and provide it to the landlord, which stipulates the following:

1. The individual has used their best efforts to obtain all available government assistance for rent or housing;
2. The individual either (1) expects to earn no more than \$99,000 in annual income for the calendar year 2020-2021 (or no more than \$198,000 if filing a joint tax return), (2) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (3) received an Economic Impact Payment (stimulus check) according to Section 2201 of the CARES Act;
3. The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
4. The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and
5. The eviction would likely render the individual homeless or force the individual to move into and live in close quarters in a new congregate or shared living setting because there are no other available housing options.

The expectations described above mean tenants need to take action to 1) give their landlord the declaration form, 2) apply for rental assistance, and 3) talk to their landlord about a

payment plan. The CDC order does not require landlords to make their tenants aware of the order, and very little has been done to educate both tenants and landlords about the effect of the moratorium. As a result, few tenants know about submitting a declaration form to halt the eviction process. Landlords capitalize on this and have been successful in compelling the Court to enforce an eviction because the tenant did not comply with the CDC order.

Some of the Pima County Constables are proactive and do all they can to help prevent the tenant from becoming evicted, including educating both tenants and landlords about the CDC order and providing them with the declaration form. Likewise, some Justices of the Peace have continued the Court hearing to provide an opportunity for the defendant to complete the declaration. However, these are not uniform practices in the constable's office or the court.

III. Task Force on the Prevention of Evictions and Homelessness

In the Fall of 2020, out of concern for what was being reported as an "approaching tsunami of evictions," the Pima County Administrator convened a 23-member community-based Eviction and Homelessness Prevention Task Force to develop recommendations that the County could implement to reduce evictions and promote the economic stability of individual and/or family households subject to eviction. The Task Force focused on four key areas: Affordable Housing, Direct Service Providers, Legislation, and the Courts.

Concerning issues related to the courts, the Task Force found:

- The eviction process is too quick and does not provide sufficient time for a tenant to obtain rental assistance or find alternative housing;
- The eviction process is complex and confusing;
- There is no uniformity in the way evictions are handled between precincts;
- Court hearings via "Zoom" are difficult for tenants to navigate, and many lack computers;
- Tenants had difficulty providing evidence to the Court electronically;
- Tenants represented by attorneys have better outcomes; and
- Judges' rulings vary between a full explanation of the ruling as merely "in the interest of justice."

The Task Force made the following recommendations related to improving the delivery of judicial services:

- Improve court services by distributing pamphlets, enhanced websites, court forms, data sharing, and consistent judicial orders.

- Provide educational programs and resources for judges and staff.
- Best practices in the handling of cases should be shared at the statewide level. (Maricopa County prepared a best practices document for its judicial bench.)
- Explore the creation of an Eviction Specialty Court.
- Increase access to the courts for the public.
- Utilize navigators to disseminate information to parties about the eviction process.
- Extend the five-day eviction notice to 15 days.
- Provide legal representation to tenants.
- Require the Justices of the Peace to attend 15 hours of eviction training annually.
- Increase the time to appeal an eviction judgment.

IV. Current Trends in the Consolidated Justice Court

Judge Pro Tem Ron Newman, the most experienced in evictions, provided comprehensive training for the bench on the eviction process, evidence, and the moratoriums' impact in June 2020. Only three of the eight invited Justices of the Peace attended. As a result of numerous complaints about the handling of these cases in the Consolidated Justice Court, Justices of the Peace were mandated by the Arizona Supreme Court to attend a second eviction training. Despite training, the Justices of the Peace inconsistencies continue, as is the amount of time they spend on these cases. Some are utilizing checklists to make sure they cover all elements of the moratorium elements and take a full day to hear the cases on their calendars. Others complete their calendars by early afternoon, and their court rulings are brief.

Hearings on motions to compel or motions for reconsideration often occur before the defendant has received notice of the hearing. And many of the rulings state the motion is "granted" or "denied," lacking any explanation of the Justice of the Peace's decision. Many of these inconsistencies were highlighted in a memorandum directed to the Board of Supervisors earlier today.

Landlords and their attorneys have learned to circumvent the CDC order by filing eviction complaints alleging material breach or noncompliance with the rental/lease agreement. The allegations, however, do not appear to rise to the level of "materially affecting health and safety," as defined by ARS 33-1341. Landlords have cited:

- Trash on the front porch
- Too many vehicles
- Parking in the wrong parking spot
- Inoperable vehicle in the yard

- Incorrectly installing a smoke detector
- Clogging the toilet too many times

The Court's statistics demonstrate that filings for noncompliance have increased from approximately 2 percent in 2019 to 7 percent in 2020.

V. Best Practices and Policy Options

It is only a matter of time when the eviction moratoriums are lifted. Once lifted, expect that a large number of evictions will be filed, and those landlords/plaintiffs who have already received judgments will obtain their writ of restitution and have their tenant/families evicted. There is also significant concern that "mom and pop" landlords will begin to sell their properties over concerns of future moratoriums. What was once considered an excellent financial investment is no more. We know that out-of-state investors are already buying properties in Pima County, and many more properties are likely to become available. This, in turn, will have a negative impact on affordable housing in Pima County, which has been an issue well before the pandemic began.

Recommendations:

The recommendations below are the culmination of the concerns and suggestions discussed at or raised since the Task Force examined the Consolidated Justice Court practices to reduce evictions to limit negative community impact.

1. Judicial Education and Conformity to Processes

The Justices of the Peace need additional training on the evictions process and particularly the moratoriums' effects. The issuance of an Administrative Order by Judge Bryson directing how these cases are to be handled in Court and implementing best practices adopted by the Maricopa County courts would lend to more consistent hearings and rulings. Court rulings should document evidence and testimony considered by the Court in making its decisions. Some of the judges are using a checklist to ensure that all elements of the case are covered in Court. Standard procedures among all Justices of the Peace should significantly decrease instances of wrongful evictions. Further recommendations are as follows:

- Only those breaches of contract that meet the standard that an action by the tenant jeopardizes the health, safety, and welfare of the landlord, the landlord's agent, or another tenant, or involving imminent or actual serious property damage should result in an eviction.

- Judges should substantiate that any material breach evictions meet the standard of "irreparable harm" or criminal activity. This evidence should be noted in the minutes and included in relevant documents.
- Judges should comply with Administrative Order 2021-19, and compliance should be monitored. Administrative Order 2021-19 states, "Effective February 6, 2021, to bring consistency to adjudication of eviction cases, unless a writ is issued under III.6, if the defendant agrees to apply and the Court believes the defendant may qualify for federal rental assistance, the Court shall continue the action for 30 days unless there is otherwise good cause to proceed. An additional continuance shall be granted if the Court determines the application process is underway."
- Hearings on motions to compel the eviction should not be set earlier than five days from filing to ensure that defendants receive notice of the hearing

2. Provide Representation for Defendants Who Cannot Afford Counsel

Studies demonstrate that tenants fare better in an eviction proceeding when represented by an attorney. It hardly seems just or equitable that the plaintiff is often represented, but the tenant is not. The County should consider contracting with Southern Arizona Legal Aid or pursue other representation alternative such as law students or pro bono representation. The upfront investment would go a long way to not only ensuring equitable access to representation but would also decrease the number of evictions, which are costly to our community.

3. Obtain Contact Information for the Plaintiff and Defendant at the Time of Filing

Because the eviction process moves rapidly, it is imperative that the Court collect contact information so the tenant/defendant can be contacted immediately about representation and rental assistance.

Community Workforce Development (CWD) staff can contact the landlord and tenant to initiate rental assistance, potentially averting the hearing and a judgment being placed on the tenant's record, as well as additional attorney, court, and related fees.

We note and appreciate that the Consolidated Justice Court is in the process of sending out a memorandum to the law offices to strongly encourage them to include the defendant's phone number.

4. Explain the CDC Moratorium to the Plaintiff and Defendant at the Time of Filing

Include necessary information on the CDC moratorium and how this process works, including the requisite steps to be taken by renters to comply. Essential information to include:

- The CDC declaration form;
- Rent assistance and how to apply;
- Mortgage assistance resources;
- Payment plan form(s) to aid the discussion between tenants and landlords;
- Clear instructions that the judgment must be vacated on receipt of rent assistance.

5. Explore the Creation of an Eviction Specialty Court

The Task Force recommended that the Consolidated Justice Court explore the feasibility of creating an Eviction Specialty Court for evictions. This would bring consistency to the eviction process by having one judge, an eviction law expert, preside over these cases. Components of this type of Court also include representation for the tenants and/or mediation to help resolve the case rather than end in a judgment.

6. Implement Consistent Practices in the Constables' Office

The role of the Constables has been significantly elevated during the pandemic. They are often the arbiter of whether a tenant is evicted or not because both the eviction hearings and judgments have been allowed to proceed to the point of the enforcement of the writ, facilitated by the Constables. Similar to Justices of the Peace, there are only a few Constables who are taking the time to reach out to tenants/defendants. Amid a historic pandemic, where an eviction's negative consequences can result in exponential social and economic impacts, fair and consistent applied procedures are critical for our community.

VI. Pima County Response to Eviction Crisis

Pima County Community Workforce Development (CWD) serves as the Pima County Community Action Agency (CAA), with a mission is to assist low-income individuals and families with reaching higher levels of economic and social self-sufficiency through the delivery of basic needs services and to advocate for low-income individuals. CAA and its partner agencies form the Emergency Solutions Network to provide rental and utility assistance to low-income households in Pima County.

During the pandemic, CAA and its partner network have served more than 8,777 Pima County residents to resolve more than \$13,700,000 in back rent and utility payments. CAA

has used a variety of fund sources, including the Pima County Coronavirus Relief Fund and appropriations from the Arizona Department of Housing (ADOH). Because of CAA's ability to quickly spend funds, ADOH has reallocated \$724,339 to Pima County.

The recent COVID-19 relief package passed and signed into law at the end of 2020 provides \$25 billion in Emergency Rental Assistance through the Coronavirus Relief Fund (CRF) administered by the U.S. Treasury. Pima County received \$15,188,622, and the City of Tucson received \$16,675,428 to spend toward eviction prevention by December 31, 2021. More than 65 percent of the funds must be spent by September to avoid a sweep from the Department of the Treasury.

The new round of funds sets eligibility requirements and allows for payment of up to 15 months of rent. Households are eligible for services if they qualified for unemployment benefits or experienced a reduction in household income directly or indirectly due to the pandemic, can demonstrate a risk of homelessness, and household income is below 80 percent of their area median income (AMI). Jurisdictions must give priority to applicants with household incomes below 50 percent of AMI.

A significant lesson learned from the last round of Stimulus Eviction prevention is the need to coordinate one single access point for Pima County residents to apply and receive funding. During the first round, Pima County and the City of Tucson maintained two separate systems with dissimilar eligibility requirements. Moving forward, Pima County and the City of Tucson plan to use the infrastructure built by Pima County and align systems to ease access for tenants and landlords.

Still, the Arizona Department of Economic Security plans to administer its own system and has offered to administer funds for all Counties and Cities. Pima and COT have opted not to participate in the State-sponsored system.

VII. Next Steps by County Administration

It is far costlier to the County to have someone evicted than to take proactive measures to prevent eviction. To that end, we are exploring the feasibility of contracting with Southern Arizona Legal Aid and others to represent defendants facing eviction. Anecdotally we have heard that there is a significant imbalance between the number of plaintiffs represented by an attorney compared to representation for defendants and that 90 percent of eviction judgments are in favor of the plaintiff. The Consolidated Justice Court does collect these statistics to enable us to verify this information.

We also have had a dialog with the University of Arizona Law School to employ interns to observe court hearings, report inconsistencies, and help collect data.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Overview Report on the Eviction Process and County Assistance**
February 25, 2021
Page 10

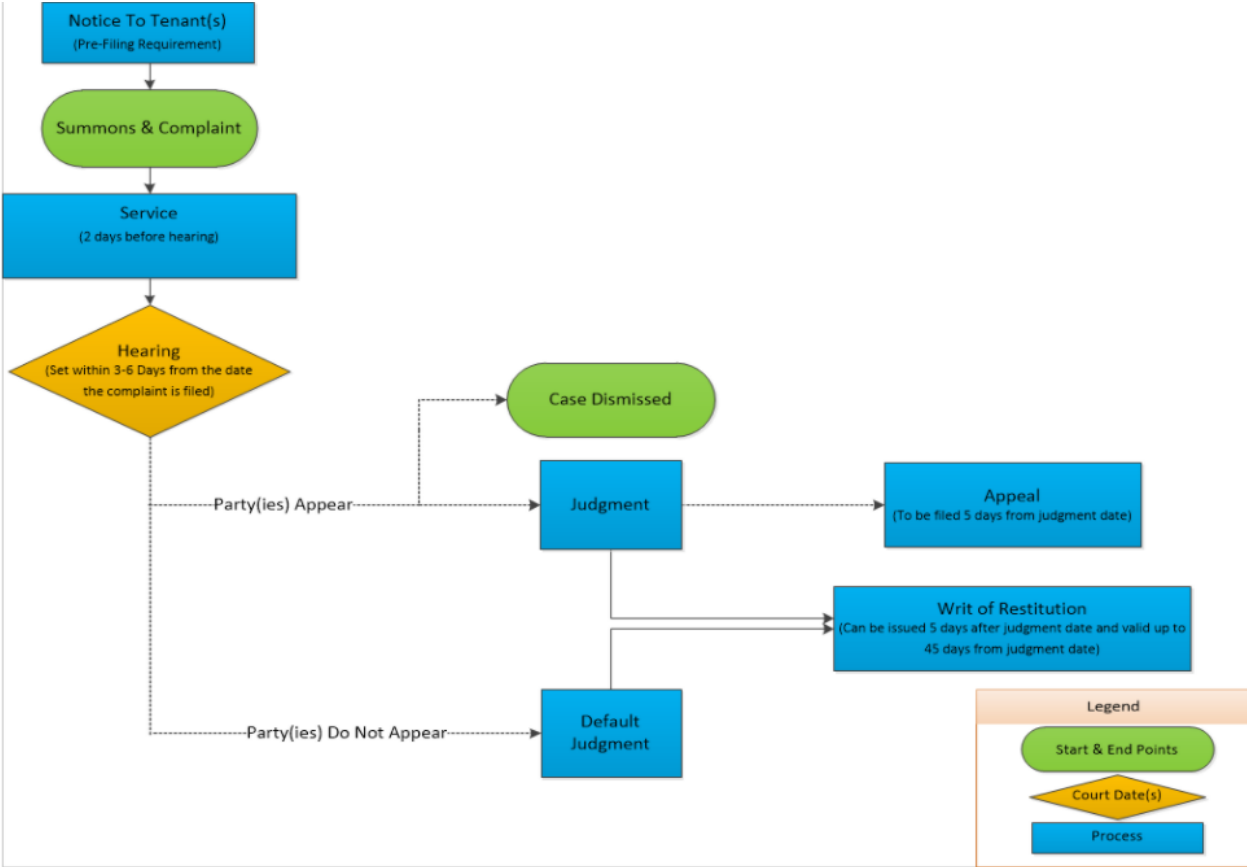
Finally, we are following up the Consolidated Justice Court to determine the status of implementing the Task Force recommendations. In addition, we have obtained a copy of Maricopa County's Best Practices (Attachment 3), a Supplemental Pandemic Script and Pandemic Minute Entry prepared by the Administrative Office of the Courts (Attachment 4) and will inquire if they are being used by the Court as well. It seems implementing these practices and utilizing the Pandemic Script and Checklist would bring much needed consistency in how evictions are processed in Pima County.

Attachments

c: Jan Leshar, Chief Deputy County Administrator
Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Court
Dan Sullivan, Director, Pima County Community & Workforce
Lisa Royal, Program Manager, Pima County Administration

ATTACHMENT 1

EVICTION FLOWCHART



ATTACHMENT 2

Overview of State and Federal Pandemic Eviction Moratoriums



Eviction Rules & Statutes

AZ Executive Orders

Executive Order 2020-14

- March 24th to July 31st, 2020
- Allowed eviction, delayed enforcement
- Required signed notice to landlord, covid impact

Executive Order 2020-49

- Extended E.O. 2020-14 to October 31st, 2020
- Allowed eviction, delayed enforcement
- Required signed notice to landlord, demonstration of covid + financial impact



Eviction Rules & Statutes

Federal Law

Coronavirus Aid, Relief, and Economic Security (CARES) Act

- March 27th to July 25th (plus 30-day notice)
- Prohibited filing of eviction for non-payment on properties with federally backed/insured mortgage or participating in federal subsidy/voucher program, did not require COVID impact
- Prohibited fees or penalties for non-payment of rent during effective period
- Allocated funds for rental and utility assistance

Continuing Resolution – Spending Bill

- Extended CDC Order to January 31st, 2021
- Allocated funds for rental and utility assistance



Eviction Rules & Statutes

CDC Order

Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

- September 4th, 2020 – currently extended to March 31st, 2021
- Requires signed “declaration” to be provided to property owner
- Only non-payment of rent and requires covid + financial impact
- Eligibility requirements – income, employment, rent assistance application
- FAQ allowed eviction to go forward, delay enforcement
- Evictions for other lease violations not covered by CDC Order

ATTACHMENT 3



MARICOPA COUNTY JUSTICE COURTS
BEST PRACTICES

SUBJECT: NINTH AMENDED BEST PRACTICE ON
DISPOSITION OF EVICTION MATTERS DURING THE PANDEMIC

EFFECTIVE: February 24, 2021

1. RATIONALE: During the COVID-19 pandemic of 2020 and 2021, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act; Governor Ducey issued two Executive Orders regarding the delaying of residential eviction actions; the Arizona Supreme Court issued seven Administrative Orders specifically addressing the disposition of residential eviction matters; the CDC issued an Order Temporarily Halting Evictions; then Congress and the CDC again extended the CDC moratorium. This rapidly changing environment has created many novel issues for courts to resolve.
2. PURPOSE: The purpose of any “best practice” is to foster excellence regarding case processing, form development and control, and other operating procedure throughout the Maricopa County Justice Court system (“MCJC”). Implementation of a “best practice” is strongly recommended to promote consistency and efficiency throughout the MCJC but is voluntary by any individual Justice of the Peace (“JP”) Court.
3. ISSUE: As most of the items identified in paragraphs 1 and 4 did not go through the legislative or Supreme Court’s rule-making process, they require courts to substantively resolve certain issues. This Best Practice is offered to provide judicial officers points to consider in fulfilling their obligations under the two Executive Orders; seven Administrative Orders; the CARES Act; and the CDC Order and its extensions.
4. LEGAL AUTHORITY: Arizona Governor’s Executive Orders 2020-14 entitled “Postponement of Eviction Actions,” issued on March 24, 2020; and 2020-49 entitled “Continued Postponement of Eviction Actions,” issued on

July 16, 2020; the following Arizona Supreme Court Administrative Orders: 2020-105, issued on July 7, 2020; 2020-119, issued on July 22, 2020; 2020-147, issued on September 16, 2020; 2020-151, issued on September 23, 2020; 2020-159, issued on October 7, 2020; 2020-163, issued on October 14, 2020; 2020-229, issued on December 30, 2020; and 2021-19, issued on February 1, 2021; 15 U.S.C. § 9058 (the CARES Act); and U.S. Centers for Disease Control and Prevention Document Number 2020-19654, 85 FR 55292 (“CDC Order”); the non-binding guidance of the Frequently Asked Questions issued by the CDC in October 2020; Congress’s extension of the CDC Order in Sec. 502 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021, adopted December 27, 2020; and the CDC’s extension of the CDC Order, issued on January 29, 2021.

5. BEST PRACTICES:

Initial Considerations

Executive Orders 2020-14 and 2020-49 did not make substantive changes to Arizona eviction law. The EOs directed constables and law enforcement officers (collectively “LEOs”) to temporarily delay writs of restitution in certain circumstances and for certain individuals and then allowed for an aggrieved party to file a motion to enforce a writ if the party did not agree with a LEO’s decision not to enforce the writ. Under the EOs, the initial eviction proceeding and writ issuance process was unchanged as the Executive Order process was not triggered until after the writ was issued.

The CDC Order is less clear in that it provides no direction to courts or law enforcement. It simply says that landlords shall not take any action to remove or cause the removal of tenants for non-payment of rent. The Arizona Supreme Court in AO 2021-19, after consideration of the non-binding guidance of the CDC’s Frequently Asked Questions document, determined that courts may continue an eviction matter with a valid CDC declaration or proceed to a judgment with a stayed writ. It also allowed landlords to challenge the CDC declaration.

If the LEO has arrived to enforce a writ and the tenant believes they are qualified for relief under the CDC Order but have not yet provided documentation to the landlord, the Committee has been informed that many LEOs will allow the tenant five business days to provide documentation to the landlord before enforcing the writ. The Committee recognizes that this implements the intent of the CDC Order.

The Committee recognizes that the CARES Act expired on July 25, 2020; Executive Order 2020-49 expired on October 31, 2020; and that the CDC

Order continues through at least March 31, 2021. Any additional Executive Orders, Administrative Orders, new federal protections, or court rulings affecting the protections, may require this Best Practice to be amended or vacated.

Legal Status of the Parties

The Best Practices Committee recognizes that the moratoriums are unprecedented in Arizona law and history. Traditionally, and unquestionably, an eviction judgment terminated a lease (see A.R.S. § 33-1368(B)). However, that interpretation was based upon an expectation that a writ of restitution would be executed shortly after a judgment was issued or that the parties would voluntarily enter into a new agreement. If enforcement of a writ is delayed because of a Governor's Executive Order or the CDC Order, that is no longer the case and the tenant is remaining on the premises without a legal agreement to do so.

The Committee recognizes that the Executive Orders specifically required the tenant to "acknowledge that the terms of the lease remain in effect" in order to invoke the protections of the Executive Order. It further required all individuals to "pay rent or comply with any other obligation that an individual may have under a tenancy." While less clear, the CDC Order "does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract."

Accordingly, the Committee believes that it is a best practice to interpret the Executive and CDC Orders as a temporary exception to Arizona law to allow that a lease is not terminated and remains in effect until a writ is actually executed or the tenant vacates the premises. Under this interpretation, the terms and obligations of the lease remain in effect and there is no need of a second judgment or to consider the tenant a holdover tenant, trespasser or squatter.

Administrative Order 2021-19 also provides legal authority for the theory that a resident who remained in the residence while the writ was postponed was still a tenant because the Order specifically authorizes landlords to file motions to amend residential eviction judgments. The legal and case management theories behind the AO is that justice courts may conduct a single hearing to resolve issues concerning any unpaid accrued rent and, when necessary, provide the tenant with the standard five days of additional time to vacate prior to any writ being issued.

Through AO 2021-19, the Supreme Court has interpreted the CDC Order to provide protection following the non-renewal of a lease if the reason for

non-renewal is for nonpayment of rent. This creates a similar problem regarding status. Accordingly, the Committee similarly concludes that the terms of a tenancy continue if an eviction is halted by the CDC Order after a non-renewal of a lease for non-payment of rent.

Tenants who remain in possession and have paid all amounts alleged to be owed may seek to quash the writ of restitution in accordance with Rule 14(c) of the Rules of Procedure for Eviction Actions.

Partial Payments

Both the Executive and CDC Orders require the tenant to continue to pay rent or make their best efforts to pay their rent. Pursuant to A.R.S. § 33-1371(A), a landlord cannot proceed with an eviction action after accepting a partial payment unless the tenant “agrees in a contemporaneous writing to the terms and conditions of the partial payment with regard to continuation of the tenancy.”

The Committee had recognized that landlords were rejecting partial payments because they did not want to lose their right to continue with an eviction action and previously concluded landlords could accept partial payments without losing their right to proceed with the eviction. Accordingly, we had recommended treating the CDC Declaration as the functional equivalent of a partial payment agreement. However, both tenants’ rights attorneys and landlord attorneys objected to this practice.

Accordingly, the Committee now recommends that courts require landlords to comply with A.R.S. § 33-1371 and obtain a contemporaneous writing from the tenant if accepting a partial payment.

Processing Eviction Cases Under the CDC Order and AOs

Processing eviction cases during the eviction moratoriums is now more complex. The Committee has provided a frequently-updated Pandemic Checklist to assist a judge in working through the current process. (If the Checklist has been updated after the date of this Best Practice, the most recent Checklist should be relied upon.)

1. Every Eviction Proceeding

The Committee encourages that courts set eviction actions for an initial appearance between three and six days from the issuance of the summons, and note that there is no automatic change of judge until further order of the

Supreme Court. (AO 2020-197.)

Courts **MUST** inquire as to whether Plaintiff has complied with state and federal statutes and executive and administrative orders and whether plaintiff received CDC declaration. (AO 2021-19.)

The judge should inquire whether the landlord has accepted rental assistance from any agency and whether it has complied with all restrictions attached to that assistance (for example, an assistance agency may require the dismissal of the eviction action, vacation of a judgment, and/or forbearance on removing a tenant).

2. Initial Appearances

A judge should read a general announcement (or play a recording) at the start of an eviction calendar:

If you are being evicted for non-payment of rent, you may have a **right to stay in your home** through at least March 31, 2021 even though you are unable to pay all of your rent during this time; but only if you can **accurately** and **truthfully** make **all five** of the following statements and you give your landlord a paper called a **declaration** that contains them:

- 1) You are using your best efforts to obtain all available government assistance for rent;
- 2) Your income is beneath the qualification threshold or you received a stimulus check;
- 3) You are unable to pay the full rent due to a large loss of household income;
- 4) You are using your best efforts to make timely partial payments that are as close to the full payment as your circumstances may permit, taking into account other bills you have to pay; and
- 5) If evicted, you would be homeless or be forced to move into a crowded living space such as a shelter or a residence with other people because you have no other available place to live.

You can get a declaration form on the web at azcourthelp.org; the supreme court website; the Maricopa County Justice Court website; at a rent assistance office; or at the justice court. Please read it carefully. If you sign the declaration when you know any statement

is false, you may be charged and convicted with a felony and be required to pay a large fine or even be sent to jail.

If you have not signed a CDC Declaration yet and you believe that you qualify for protection, you may sign one even after a judgment for non-payment of rent is awarded against you. Provide a copy of the declaration to your landlord and the court, and keep a copy if the Constable comes to remove you.

At the conclusion of the initial appearance, the judge should issue one of three minute entries: For non-payment of rent, either the “Pandemic Minute Entry: Non-payment of Rent Eviction Case Status” OR if a Motion to Contest has been Granted, “Ruling on Motion to Contest CDC Declaration”; or for cases other than non-payment of rent, “Findings on Forcible Detainers, Material Non-Compliance or Immediate Evictions.”

a. Review the Complaint and Attestations

When considering an eviction matter, a judge must first determine whether an eviction is halted by the CDC Order. This requires a review of the complaint and the attestations. AO 2021-19 requires landlords to attest in the complaint or in a writing served with the complaint whether:

- (1) the tenant submitted a CDC Declaration;
- (2) whether landlord received rental assistance, how much, and show how it was credited; and
- (3) whether the plaintiff obtained a prior judgment against the defendant during an eviction moratorium that has not been vacated and, if so, that the current damages claimed are exclusive of the damages awarded in the prior judgment

If the landlord claims rent between March 27 and July 24, 2020, must attest (4) whether the property in which the defendant resided was covered under the CARES Act.

(AO 2021-19.) In accordance with the MCJC Best Practice “Eviction Complaints that Do Not Substantially Comply with Eviction Rules (Amended),” issued December 10, 2019, courts should consider dismissing without prejudice complaints that do not comply with the attestation requirement.

A judge must carefully review the complaint. Evictions may be brought under only one notice and the reason for the eviction cannot be changed. (Requesting rent when evicting for a forcible detainer, material non-compliance, or immediate eviction does not make an eviction for non-

payment of rent.)

The following cases do NOT qualify for CDC protection:

a claimed forcible detainer or an eviction action based on a tenant, lessee, or resident: "(1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest)."

(AO 2021-19.) Non-payment of rent cases qualify for protection. Evictions for non-renewal of leases MAY qualify for protection (see below).

b. Is tenant protected by a CDC Declaration?

If the eviction for non-payment of rent, the next question is whether the tenant has completed a CDC Declaration and provided it to the landlord. While the CDC Order does state that all adults must sign a Declaration, the later FAQ issued by the CDC does state that, when filing a joint tax return, one member of the residence may provide an executed declaration on behalf of other adult residents. The definition of "residential property" in the CDC Order includes mobile homes, mobile home parks and similar dwellings. The Committee concludes that any person listed on the lease may submit a declaration for the household, and that judges should err on the side of providing protection under the CDC Order.

There is no requirement that the tenant provide the CDC Declaration to the court. If either side agrees that one has been provided, the court must conclude that one has been provided. If the tenant says they have completed one and the landlord disagrees, and there is no signed declaration at the initial appearance/hearing, the case should be continued to the next available court date for the tenant to produce the copy of the signed declaration.

i. There has NOT been a CDC Declaration

If it is clear there has NOT been a CDC Declaration, the judge SHALL proceed with the initial appearance unless there is good cause for a continuance to allow the tenant to file a CDC Declaration. (AO 2021-19.) This raises two questions: What is good cause, and how long of a

continuance?

The Committee concludes the showing of good cause was added recognizing that notices about the CDC declaration and forms and instructions are widely available so the tenant should have had an opportunity to provide it to the landlord before the hearing. However, the tenant may provide a reasonable explanation to the judge as to why it was not done, such as a language barrier, socio-economic barriers to information, or lack of internet access, or need for assistance. A judge may find that a tenant has not provided good cause and is not required to state a reason on the record. A defaulted defendant may not show good cause.

If there is not good cause, the judge should proceed to judgment. If a requested continuance is not granted, the court SHALL inform the parties that the defendant may still provide a CDC declaration to the plaintiff that will stop the eviction. (AO 2021-19.) The Committee recommends the following language:

If you have not signed a CDC Declaration yet and you believe that you qualify for protection, you may sign one even after a judgment for non-payment of rent is awarded against you. Provide a copy of the declaration to your landlord and the court and keep a copy if the Constable comes to remove you.

If there is good cause, the judge shall grant a continuance of the initial appearance for the tenant to provide a CDC Declaration. The Committee concludes that the best practice for the length of this continuance be for not more than one week.

ii. There HAS been a CDC Declaration

If this is a non-payment of rent case and the tenant HAS provided a CDC Declaration, the court SHALL proceed to judgment and stay the issuance of a writ of restitution until further order (write “stayed” or “TBD” on writ issue date, not a date certain) OR continue the matter as follows:

If the defendant agrees to apply and the court believes the defendant may qualify for federal rental assistance, the court shall continue the action for 30 days unless there is otherwise good cause to proceed.

(AO 2021-19.)

The intent of this provision is that the continuance be granted unless there is a good cause exception, which would require proceeding to judgment (such as any tenants who the court can determine clearly do NOT qualify

for rental assistance). If the court does not have information that indicates the tenant is not qualified, the continuance should be granted. Of course, it follows that the tenant is not required to prove qualification for rental assistance before the continuance is granted. The Supreme Court has provided a chart to assist in making presumptive qualification determinations:

Chart of Maximum Household Income Allowed

DES Rental Assistance Program - Maximum Household Income Allowed								
County	Household Size (persons)							
	1	2	3	4	5	6	7	8 or more
Apache	27,733	31,667	35,633	39,600	42,767	45,933	49,100	52,267
Cochise	31,067	35,533	39,967	44,400	47,967	51,500	55,067	58,600
Coconino	42,800	48,900	55,000	61,133	66,000	70,900	75,800	80,667
Gila	29,000	33,167	37,300	41,433	44,767	48,067	51,400	54,700
Graham	34,333	39,233	44,133	49,033	52,967	56,900	60,800	64,733
Greenlee	34,333	39,233	44,133	49,033	52,967	56,900	60,800	64,733
La Paz	27,733	31,667	35,633	39,600	42,767	45,933	49,100	52,267
Maricopa	40,833	46,667	52,500	58,333	63,000	67,667	72,333	76,967
Mohave	30,533	34,867	39,233	43,600	47,100	50,567	54,067	57,567
Navajo	27,833	31,800	35,800	39,767	42,933	46,133	49,300	52,467
Pima	35,800	40,900	46,000	56,247	55,200	59,300	63,400	67,467
Pinal	40,833	46,667	52,500	58,333	63,000	67,667	72,333	76,967
Santa Cruz	27,833	31,800	35,800	39,767	42,933	46,133	49,300	52,467
Yavapai	37,000	42,300	47,600	52,867	57,100	61,333	65,567	69,800
Yuma	28,500	32,567	36,633	40,733	43,967	47,233	50,500	53,767

Thus, if it is a non-payment of rent case and the tenant is present and agrees to apply for rental assistance and is not clearly ineligible, the court SHALL continue the matter for 30 days without entering judgment.

An additional continuance shall be granted if the court determines the application process is underway. If the court determines that the defendant is not likely to qualify or has not made reasonable efforts to obtain rental assistance, the court shall permit the case to proceed to judgment. (AO 2021-19.) After the continuance(s), the court may proceed to a judgment with a stayed writ. If the landlord believes that the tenant has not made reasonable efforts to obtain assistance, the landlord may file a motion to contest the CDC declaration (the motion must be supported by a factual basis, not based upon information and belief).

iii. Non-Renewal of Lease Cases

If the tenant qualifies for protection under CDC Order for non-payment of rent cases as discussed above, the tenant may qualify for CDC protection

for the non-renewal of the lease eviction.

Termination of a month-to-month tenancy is presumed to be due to nonpayment of rent if unpaid rent, a penalty or interest is owed. The CDC order is applicable unless the landlord proves that the termination was for a reason other than nonpayment of rent, penalties, or interest.

(AO 2021-19.) Note that the burden of proof is on the Landlord to prove that the non-renewal is not for non-payment of rent, not for the tenant to prove that it is for non-payment of rent. While the AO does not state the level of burden, the Committee concludes that it is by a preponderance of the evidence.

If tenant does not qualify for protection, the court shall proceed to judgment and writ as per pre-pandemic rules. The judge should state the basis for this ruling on the record.

iv. Forcible Detainers, Material Non-Compliance and Immediate Evictions

As discussed above, these cases do not qualify for CDC protection. AO 2021-19 requires WRITTEN FINDINGS as part of the judge's ruling when evicting for these reasons. The Committee has promulgated several forms to assist in this process.

When considering these cases, please keep in mind that the complaint must specify the acts and omissions constituting the breach (ARS 33-1368); if a tenant contests allegations, the plaintiff must have a witness testify to provide admissible evidence (attorney avowals cannot overcome testimony) (RPEA 11d); and a trial is required for immediate evictions (e.g., witnesses and admissible evidence, not attorney avowals) (ARS 33-1377E).

v. Motions to Contest the CDC Declaration

Administrative Order 2021-19 provides the conditions under which judges may proceed with an eviction case where a landlord has contested a tenant's CDC declaration:

- a. The plaintiff files a motion contesting the declaration. The motion must provide a factual basis, not on information and belief, that supports the allegation that one or more specific statements in the declaration is materially inaccurate.

b. The judge determines based on the motion that a hearing is warranted to determine the accuracy of allegations in the motion.

c. The judge finds that the plaintiff proved at the hearing by a preponderance of the evidence that any statement identified in the motion is materially inaccurate, and

d. The judge states on the record the reason for each finding and orders that the eviction action may proceed.

The Motion to Contest may be served with the complaint and summons. In situations where the motion was not served with the complaint, the court should set the hearing no sooner than five days after the filing and attempt to contact the tenant to ensure the tenant has notice.

These matters must NOT automatically be set to hearing. The landlord must provide evidence sufficient to establish that a hearing must be set. If the landlord fails to establish that a hearing should be set, the court should deny the request for hearing and deny the motion.

If a judge determines that a landlord has established a hearing should be set, at the hearing both parties may present admissible evidence. The burden of proof is on the landlord to prove that the CDC Declaration is false, not on the tenant to prove that the CDC Declaration is true.

If the tenant or landlord has applied and qualified for rental assistance and the landlord has declined acceptance of that assistance the court may consider this fact in determining if the tenant has made their best effort to receive rental assistance and/or make best efforts to make timely partial payments.

3. Proceeding to Judgment

As discussed above, the judge must review the pleadings to ensure that the plaintiff has made the proper attestations.

If there is there a claim for Non-Payment of Rent for Period Between March 27 and July 24, 2020, plaintiff must attest in the complaint or separate writing served with Complaint whether property HAD BEEN protected by CARES Act (AO 2021-19). If it had been protected, the tenant cannot be evicted prior to 30 days after the notice AND plaintiff CANNOT seek late fees or penalties (CARES Act).

Of course, tenants may contest a plaintiff's attestation that the CARES Act

did not apply and the court should conduct a hearing on the issue.

Plaintiff must attest in Complaint or separate writing served with the Complaint whether plaintiff obtained a prior judgment against the defendant during the pandemic which has not been vacated and, if so, whether the current damages claimed are exclusive of the damages awarded in the prior judgment (AO 2021-19).

Plaintiff must attest and show how it credited any rental assistance received. If the judgment seeks more than \$10,000k exclusive of interest, costs and attorney fees, proceed only if the landlord waives the amount over \$10,000 in principal, or transfer the case to superior court. (Note that multiple judgments may exceed \$10,000, as long as the damages in each judgment are exclusive.)

The judge should inquire whether the landlord has accepted rental assistance from any agency and whether it has complied with all restrictions attached to that assistance (for example, an assistance agency may require the dismissal of the eviction action, vacation of a judgment, and/or forbearance on removing a tenant).

If entering a judgment for non-payment of rent with a CDC declaration, the judge SHOULD read the following to each tenant:

The Court has entered a judgment against you. However, you do NOT need to leave the property at this time. The landlord may ask the court to have the constable remove you after the CDC protection expires (currently through at least March 31) OR the landlord may file a motion to remove you sooner if the landlord believes it can prove that your CDC Declaration is false. Please ensure that your address, email and phone numbers are up-to-date with the court; monitor and read your mail and email closely; and participate in your court dates.

If entering a judgment for non-payment of rent without a CDC declaration, the court SHOULD read the following to each tenant:

If you have not signed a CDC Declaration yet and you believe that you qualify for protection, you may sign one even after a judgment for non-payment of rent is awarded against you. Provide a copy of the declaration to your landlord and the court and keep a copy if the Constable comes to remove you.

4. Writs and Amended Judgments

Do not issue a Writ if the tenant is protected by a CDC Order UNLESS Motion to Contest the CDC Declaration is granted or the CDC Order expires.

When the plaintiff is not seeking to amend the judgment and it is clear in the application for writ that the tenancy has not been reinstated, the court may issue the writ in accordance with Rule 14(b)(2) without scheduling a hearing, and without regard to the age of the judgment, five days after the court rules on the application. Service of the application should be pursuant to Rule 6(c) of the RPEA or post and mail service; service of the notice of hearing (if any) should be pursuant to Rule 14(b)(2).

When seeking to amend a judgment, the plaintiff must file and serve a motion to amend. The court should allow an opportunity to respond by the defendant, and for good cause, the court shall amend the eviction judgment to reflect:

1. Any unpaid rent, late fees, or interest that would have been due under the terms of the lease that was the subject of the eviction for the period since the judgment was entered.
2. Any rental assistance received from any source based on the defendant's rental obligation.

(AO 2021-19.) Again, the principal balance may not exceed \$10,000 and the writ may issue after five days (unless the tenant is protected by the CDC Order). Service of this motion should be pursuant to Rule 6(c) of the RPEA, without regard to the age of the judgment.

Expiration of the Moratoriums

Judges will have numerous challenges to face upon the expiration of the eviction moratoriums. In addition, there are many outstanding cases and writs to resolve.

AO 2021-19 suspends eviction timelines through May 15, 2021. Nevertheless, the AO requires that the matters should be resolved timely if feasible and so courts should consider extraordinary measures to timely resolve these matters, including continuing most matters other than eviction, protective order, and criminal matters and double-booking calendars with pro tems working in hearing rooms or virtually.

Because of current Supreme and Superior Court administrative orders and social distancing requirements, courts must continue to carefully plan for

the presence of people in the court buildings, so, to the greatest extent possible, courts should continue to conduct initial appearances and trials virtually. When scheduling, courts should also keep in mind that more tenants “appear” at virtual hearings and that they take longer.

AO 2021-19 suggests that a court should not schedule more than 25 eviction cases in an hour on the court’s calendar and shall allocate sufficient time for all parties appearing telephonically or in person to present their evidence, and it requires that each case be scheduled to be heard during a specific one-hour time slot. The Committee also suggests that courts limit eviction matters to three hours per day. It is also a better practice to separate the calendars by law firm so that parties do not have to wait as long for their hearing. Additional calendars can be created by double-calendaring with pro tems working in hearing rooms or virtually. When scheduling a pro tem for this purpose, the court should keep the pro tem’s experience with evictions in mind; pro tems with less experience may be better suited to handle lighter eviction trial calendars rather than initial calendars.

6. **IMPLEMENTATION:** The above best practice was recommended on March 26, 2020, amended on April 29, 2020, June 24, 2020, July 29, 2020, September 4, 2020, September 30, 2020, October 12, 2020, November 9, 2020, January 28, 2021, February 24, 2021. The practice may be implemented immediately and remain effective until superseded or abolished.

ATTACHMENT 4

Supplemental Pandemic Script and Checklist While CDC Order is in Effect) (2/24/21)

No automatic change of judge until further order (AO 2020-197)

Brief Outline

Every Proceeding

Inquire into compliance with federal and state laws and executive and administrative orders and whether plaintiff received CDC declaration

The judge should inquire whether the landlord has accepted rental assistance from any agency and whether it has complied with all restrictions attached to that assistance (for example, an assistance agency may require the dismissal of the eviction action, vacation of a judgment, and/or forbearance on removing a tenant).

Initial Appearance

Read Intro to everyone as general announcement (or play recording)

Non-Payment of Rent

Is there a Plaintiff Attestation (regarding 1: CDC Declaration; 2: rental assistance; 3: prior judgments; and 4: CARES Act (if rent between March 27-July 24)?

No CDC Declaration at the Initial

Proceed with the initial appearance, unless there is good cause for a continuance to allow the defendant to file a CDC declaration. If a requested continuance is not granted, the court shall inform the parties that the defendant may still provide a CDC declaration to the plaintiff that will stop the eviction

CDC Declaration has been provided to the Landlord

If qualifies for CDC protection: Court must either permit the action to proceed to judgment and stay the issuance of a writ of restitution until further order (write “stayed” or “TBD” on writ issue date, **not a date certain**) OR continue the matter as follows:

If the defendant agrees to apply and the court believes the defendant may qualify for federal rental assistance, the court **shall** continue the action for 30 days unless there is otherwise good cause to proceed. An additional continuance shall be granted if the court determines the application process is underway. If the court determines that the defendant is not likely to qualify or has not made reasonable efforts to obtain rental assistance, the court shall permit the case to proceed to judgment. **(If the court does not have information that indicates the tenant is not qualified, the continuance should be granted.) (No continuance if default.)**

Motion to Contest the CDC Declaration

Is there enough in motion (not on information and belief) to set to hearing?
Use form “Ruling on Motion to Contest the CDC Declaration”
At hearing, **make findings on the record**

Non-Renewal of Lease

Did plaintiff prove not for non-payment of rent?

Forcible Detainer, Material Non-Compliance or Immediate Eviction:

Must **make written findings** as part of ruling: use form “Findings on Forcible Detainers, Material Non-Compliance or Immediate Evictions”
Plaintiff must have a witness for immediate evictions
If tenant contests others, plaintiff must have a witness

Proceeding to Judgment

Is there a Rent Claim Between March 27 and July 24?
Is there a Plaintiff Attestation?
No late fees or penalties and at least 30 days before eviction?

Is there a prior judgment?
Is there a Plaintiff Attestation?

Does complaint seek more than \$10k exclusive of interest, costs, and AF?

Read the information on delay of writs

Conclusion of Initial:

Complete 1 of 3:

For non-payment of rent: Either

Pandemic Minute Entry: Non-Payment of Rent Eviction Case Status OR
if a Motion to Contest has been Granted, “Ruling on Motion to Contest”

For other cases:

“Findings on Forcible Detainers, Material Non-Compliance or Immediate Evictions”

Post-Judgment

Do not issue Writ if protected by CDC Order

Application to Issue Writ (w/o Amended Judgment)

Must hold hearing unless it is clear tenancy has not been reinstated
If set to hearing, notice must be served per RPEA 14b2

Service of the application should be pursuant to Rule 6(c) of the RPEA or post and mail service; service of the notice of hearing (if any) should be pursuant to Rule 14(b)(2)

Motion to Amend Judgment

Do not issue Writ if protected by CDC Order
Service of this motion should be pursuant to Rule 6(c) of the RPEA, without regard to the age of the judgment

Supplemental Pandemic Script and Checklist While CDC Order is in Effect) (2/24/21)

No automatic change of judge until further order (AO 2020-197)

Every Proceeding

COURT **MUST** INQUIRE AS TO PLAINTIFF COMPLIANCE with state and federal statutes and executive and administrative orders and whether plaintiff received CDC declaration

The judge should inquire whether the landlord has accepted rental assistance from any agency and whether it has complied with all restrictions attached to that assistance (for example, an assistance agency may require the dismissal of the eviction action, vacation of a judgment, and/or forbearance on removing a tenant).

Initial Appearance

Read Intro (or play recording) to participants as general announcement:

If you are being evicted for non-payment of rent, you may have a **right to stay in your home** through at least March 31, 2021 even though you are unable to pay all of your rent during this time; but only if you can **accurately** and **truthfully** make **all five** of the following statements and you give your landlord a paper called a **declaration** that contains them:

- 1) You are using your best efforts to obtain all available government assistance for rent;
- 2) Your income is beneath the qualification threshold or you received a stimulus check;
- 3) You are unable to pay the full rent due to a large loss of household income;
- 4) You are using your best efforts to make timely partial payments that are as close to the full payment as your circumstances may permit, taking into account other bills you have to pay; and
- 5) If evicted, you would be homeless or be forced to move into a crowded living space such as a shelter or a residence with other people because you have no other available place to live.

You can get a declaration form on the web at azcourthelp.org; the supreme court website; the Maricopa County Justice Court website; at a rent assistance office; or at the justice court. Please read it carefully. If you sign the declaration when you know any statement is false, you may be charged and convicted with a felony and be required to pay a large fine or even be sent to jail.

If you have not signed a CDC Declaration yet and you believe that you qualify for protection, you may sign one even after a judgment for non-payment of rent is awarded against you. Provide a copy of the declaration to your landlord and the court, and keep a copy if the Constable comes to remove you.

Non-Payment of Rent:

Is there a Plaintiff Attestation?

Plaintiff must attest in Complaint or by other writing filed with the court and served with Complaint whether (1) tenant submitted CDC Declaration; (2) whether landlord received rental assistance, how much, and show how it was credited; and (3) whether the plaintiff obtained a prior judgment against the defendant during an eviction moratorium that has not been vacated and, if so, that the current damages claimed are exclusive of the damages awarded in the prior judgment (AO 2020-229)

If includes claim for rent between March 27 and July 24, 2020, must attest (4) whether the property in which the defendant resided was covered under the CARES Act

If no attestation: dismiss without prejudice (Best Practice)

No CDC Declaration at the Initial

Proceed with the initial appearance, unless there is good cause for a continuance to allow the defendant to file a CDC declaration. If a requested continuance is not granted, the court **shall** inform the parties that the defendant may still provide a CDC declaration to the plaintiff that will stop the eviction

CDC Declaration has been provided to the Landlord

When filing a joint tax return, one resident may provide an executed declaration on behalf of other adult residents. (CDC FAQs)

Does NOT qualify for CDC protection:

a claimed forcible detainer or an eviction action based on a tenant, lessee, or resident: “(1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).”

If qualifies for CDC protection: Court must either permit the action to proceed to judgment and stay the issuance of a writ of restitution until further order (write “stayed” or “TBD” on writ issue date, **not a date certain**) OR continue the matter as follows:

If the defendant agrees to apply and the court believes the defendant may qualify for federal rental assistance, the court **shall** continue the action for **30 days** unless there is otherwise good cause to proceed. An **additional continuance shall** be granted if the court determines the application process is underway. If the court determines that the defendant is not likely to qualify

or has not made reasonable efforts to obtain rental assistance, the court shall permit the case to proceed to judgment.

The intent is that the court screen out from the 30 day continuance any tenants who the court can determine clearly do not qualify for rental assistance. (No continuance if default.)

Chart of Maximum Household Income Allowed

DES Rental Assistance Program - Maximum Household Income Allowed								
County	Household Size (persons)							
	1	2	3	4	5	6	7	8 or more
Apache	27,733	31,667	35,633	39,600	42,767	45,933	49,100	52,267
Cochise	31,067	35,533	39,967	44,400	47,967	51,500	55,067	58,600
Cocorino	42,800	48,900	55,000	61,133	66,000	70,900	75,800	80,667
Gila	29,000	33,167	37,300	41,433	44,767	48,067	51,400	54,700
Graham	34,333	39,233	44,133	49,033	52,967	56,900	60,800	64,733
Greenlee	34,333	39,233	44,133	49,033	52,967	56,900	60,800	64,733
La Paz	27,733	31,667	35,633	39,600	42,767	45,933	49,100	52,267
Maricopa	40,833	46,667	52,500	58,333	63,000	67,667	72,333	76,967
Mohave	30,533	34,867	39,233	43,600	47,100	50,567	54,067	57,567
Navajo	27,833	31,800	35,800	39,767	42,933	46,133	49,300	52,467
Pima	35,800	40,900	46,000	56,247	55,200	59,300	63,400	67,467
Pinal	40,833	46,667	52,500	58,333	63,000	67,667	72,333	76,967
Santa Cruz	27,833	31,800	35,800	39,767	42,933	46,133	49,300	52,467
Yavapai	37,000	42,300	47,600	52,867	57,100	61,333	65,567	69,800
Yuma	28,500	32,567	36,633	40,733	43,967	47,233	50,500	53,767

Motion to Contest the CDC Declaration (AO 2021-19)

Use form “Ruling on Motion to Contest the CDC Declaration”

1. landlord must provide a **factual basis, not on information and belief**, that supports the allegation that one or more specific statements in the declaration is materially inaccurate
2. judge must initially determine whether, **based on the motion**, a HEARING is warranted.

If **no**, CONTINUE **30 days if applying for assistance** or proceed to JUDGMENT with STAYED WRIT (write “stayed” or “TBD” on writ issue date, not a date certain)

If **yes**, set to HEARING:

3. At hearing, both parties may present admissible evidence. If landlord proves by a preponderance of the evidence that any statement identified in the motion is materially inaccurate, judge **states on the record** the reason for each finding and **orders** that the eviction action may PROCEED.

If landlord **fails** to prove this, then CONTINUE 30 days if applying for assistance or proceed to JUDGMENT with STAYED WRIT (write “stayed” or “TBD” on writ issue date, **not a date certain**)

Non-Renewal of Lease:

Does tenant qualify for protection under CDC Order?

Termination of a month-to-month tenancy is **presumed** to be due to nonpayment of rent, if unpaid rent, a penalty or interest is owed. The CDC order is applicable **unless the landlord proves** (by a preponderance of the evidence) that the termination was for a reason other than nonpayment of rent, penalties, or interest. (AO 2021-19)

If tenant does not qualify for protection, proceed to judgment and writ as per pre-pandemic rules.

Forcible Detainer, a Material Non-Compliance or Immediate Eviction:

Complaint must specify the acts and omissions constituting the breach (ARS 33-1368)

If tenant contests allegations, plaintiff must have a witness (RPEA 11d)

Plaintiff must have a hearing (e.g., witness) for immediate evictions (ARS 33-1377E)

Judge must provide **written findings as part of ruling** (AO 2021-19)

Use form “Findings on Forcible Detainers, Material Non-Compliance or Immediate Evictions”

Conclusion of Initial:

Complete 1 of 3:

For non-payment of rent: Either

Pandemic Minute Entry: Non-Payment of Rent Eviction Case Status **OR**
if a Motion to Contest has been Granted, “Ruling on Motion to Contest”

For other cases:

“Findings on Forcible Detainers, Material Non-Compliance or Immediate Evictions”

Proceeding to Judgment:

Is there a claim for Non-Payment of Rent for Period Between March 27 and July 24, 2020:

Is there a Plaintiff Attestation?

Plaintiff must attest in Complaint or separate writing served with Complaint whether property HAD BEEN protected by CARES Act (AO 2021-19)

If protected, the tenant cannot be evicted prior to 30 days after the notice AND plaintiff CANNOT seek late fees or penalties (CARES Act)

If no attestation or not 30 days before eviction where required, DISMISS without prejudice (Best Practice)

Is there a prior judgment against the tenants?

Is there a Plaintiff Attestation?

Plaintiff must attest in Complaint or separate writing served with Complaint whether plaintiff obtained a prior judgment against the defendant and, if so, whether the current damages claimed are exclusive of the damages awarded in the prior judgment. (AO 2021-19)

Has plaintiff attested to and credited any rental assistance received?

Does complaint seek more than \$10k exclusive of interest, costs and attorney fees?
(ARS 22-201) If yes:

Proceed if landlord waives amount over \$10k in principal OR
Transfer to superior court

If entering a judgment for non-payment of rent with a CDC declaration, read the following to each tenant:

The Court has entered a judgment against you. However, you do NOT need to leave the property at this time. The landlord may ask the court to have the constable remove you after the CDC protection expires (currently through at least March 31) OR the landlord may file a motion to remove you sooner if the landlord believes it can prove that your CDC Declaration is false. Please ensure that your address, email and phone numbers are up-to-date with the court; monitor and read your mail and email closely; and participate in your court dates.

If entering a judgment for non-payment of rent without a CDC declaration, read the following to each tenant:

If you have not signed a CDC Declaration yet and you believe that you qualify for protection, you may sign one even after a judgment for non-payment of rent is

awarded against you. Provide a copy of the declaration to your landlord and the court and keep a copy if the Constable comes to remove you.

Post-judgment:

Do not issue Writ if protected by CDC Order

UNLESS Motion to Contest the CDC Declaration is granted

Application to Issue Writ Stayed by CDC Order (w/o Amending Judgment) (AO 2021-19)

If judgment was granted but writ was stayed by CDC Order, following expiration of CDC Order or granting of Motion to Contest the CDC Order, plaintiff may apply for writ

Must hold hearing unless it is clear tenancy has not been reinstated
If set to hearing, notice must be served per RPEA 14b2
Issue writ after 5 days

Service of the application should be pursuant to Rule 6(c) of the RPEA or post and mail service; service of the notice of hearing (if any) should be pursuant to Rule 14(b)(2).

Motion to Amend Judgment (AO 2021-19)

On motion of the plaintiff and an opportunity for response by the defendant, for good cause, the court shall amend the eviction judgment to reflect:

1. Any unpaid rent, late fees, or interest that would have been due under the terms of the lease that was the subject of the eviction for the period since the judgment was entered.
2. Any rental assistance received from any source based on the defendant's rental obligation.

May amend (not over 10k principal) with writ date after 5 days

Service of this motion should be pursuant to Rule 6(c) of the RPEA, without regard to the age of the judgment

Do not issue writ if protected by CDC Order

Bankruptcy:

Before filing of eviction:	Dismiss
After filing, before judgment:	Action is stayed
After judgment:	Writ may be executed; collection is stayed

County Justice Courts, Arizona

COURT NAME: _____

CASE NUMBER: _____

Plaintiff(s) Name / Address / Email / Phone

Defendant(s) Name / Address / Email / Phone

Attorney for Plaintiff(s) Name / Address / Email / Phone

Attorney for Defendant(s) Name / Address / Email / Phone

PANDEMIC MINUTE ENTRY NON-PAYMENT OF RENT EVICTION CASE STATUS

This eviction matter came before the Court on _____, 2021.

Plaintiff received rental assistance on _____, 2021.

IT IS ORDERED

- Defendant has signed a CDC Declaration and this matter is therefore continued to _____, 2021 at _____.
Tenants should ensure that their address, email and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.
- Judgment has been entered but there has been a CDC Declaration, so a writ will not be issued (tenants will not be removed) until after the CDC Order expires. **Tenants do NOT need to leave the property at this time.** The landlord may ask the court to have the constable remove tenants after the CDC protection expires (currently March 31, 2021) OR the landlord may file a motion to remove tenants sooner if the landlord believes it can prove that the CDC Declaration is false. Tenants should ensure that their address, email and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.
- There was no evidence of a signed CDC Declaration, so judgment has been entered this day. However, tenants may be able to prevent the constable from enforcing a writ (removing the tenants) if a CDC Declaration is completed and provided to the landlord and the constable prior to removal from the property. Tenants should ensure that their address, email and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

Tenants can obtain a copy of the CDC Declaration at the justice court or online here:

www.azcourts.gov/eviction www.azcourthelp.org <https://clsaz.org/covid-19/>
<http://justicecourts.maricopa.gov/Notices/covid-19.aspx>

Tenants can find information on rental assistance here:

<https://des.az.gov/ERAP>

Tenants can ask for free legal help here (these programs are not part of the court):

Maricopa, Mohave, La Paz, Yavapai and Yuma Counties: 800-852-9075 www.clsaz.org

Apache, Cochise, Gila, Graham, Greenlee, Navajo, Pima, Pinal and Santa Cruz Counties:
800-248-6789 www.sazlegalaid.org

Coconino County: 800-789-5781 www.dnalegalservices.org

I CERTIFY that I delivered a copy of this document to:

Plaintiff at the above address Plaintiff's attorney Defendant at the above address Defendant's attorney

Date: _____ By _____
Clerk