

DATE 2-16-21ITEM NO. Add 4

VIA EMAIL

February 3, 2021

Board of Supervisors  
130 W Congress St  
Tucson, AZ 85701

**RE: Discussion/action regarding codifying, extending, and/or expanding a moratorium on evictions in Pima County.**

Dear Chair Bronson and Supervisors,

On behalf of the Arizona Multihousing Association (AMA) and the 2,300 member companies statewide, we are deeply disturbed with the verbal Motion and Order that was approved at yesterday's Board meeting to codify, extend, and expand a moratorium on evictions in Pima County. While the Motion was, at best, unclear, it is our understanding that the action yesterday was intended to expand upon the federal eviction moratorium created under the Centers for Disease Control and Prevention.

In listening to the Motion and without the benefit of seeing the Motion in written form, it is our understanding that the Order prohibits all evictions in Pima County except those for material falsification or for material and irreparable breaches as provided in A.R.S. 33-1368(A). The Motion also directed the Pima County Health Department to develop a form or declaration for eligible renters who wish to utilize these new provisions. It is unclear if there is any other information or guidance, including simply the effective date, for this new Order.

To our knowledge, there was no stakeholder input solicited, including from those statutorily and contractually obligated to provide safe, healthy and peaceful living conditions for all residents within a residential rental community. In addition to our concerns about the Board depriving property owners any opportunity for input, we are concerned with the legal and constitutional issues presented under the Order.

We are unaware of any statutory authority that allows the County to prohibit or otherwise regulate lawful eviction actions for any reason, let alone reasons related to violations of private lease contracts. We are also unaware of any exemption authorizing counties to enact local regulations or furthering public health measures beyond Governor Ducey's Executive Order 2020-36 *Stay Healthy, Return Smarter, Return Stronger*.

Additionally, we are concerned that this Motion presents an obstruction to the access to court. As you should be aware the Constitution promises individuals the right to seek legal redress for wrongs reasonably based in law and fact. *Harer v. Casey*, 962 F.3d 299, 306 (7th Cir. 2020); *see also Christopher v. Harbury*, 536 U.S. 403, 415 (2002). We are unsure if this Motion prohibited the filing of cases

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altogether or gives the courts or constables directive on how to resolve judicial matters. Given the vague language of the Order and lack of clarifying material, the Order is confusing at best, and unconstitutional at worst.

Finally, and this would have been raised had the County contacted any rental property owner, manager or trade association, this new Order will likely place rental property owners (including any political subdivision that manages or owns public housing), in legal jeopardy for not fulfilling their statutory and contractual obligations or enforcing the terms of a rental agreement. While some may view a “barking dog” as a trivial violation of a lease contract, the neighboring family (renter or homeowner) who loses sleep, has their remote work environment disturbed or no longer has the quiet enjoyment of their home, may have a very different perspective.

We are unsure if the Board contemplated all, or any, of these types of behaviors or nuisances that rental property owners must contemplate and remedy on a daily basis. More examples include:

- Property owners and managers will no longer be able to enforce mask requirements on their properties such as requirements for renters to wear masks within the community gymnasiums, community rooms, clubhouses, pool areas and leasing offices. This alone seems to directly conflict with the County’s other public health responses to the COVID-19 pandemic.
- Property owners and managers will no longer be able to enforce occupancy restrictions in gyms, pools and common areas to reduce the COVID infection rate by social distancing. This may also lead to pool parties as the weather continues to get warmer.
- Property owners and managers will no longer be able to enforce smoking prohibitions on the property. For example, if a neighbor in the adjoining unit complains to management about marijuana or tobacco smoke, management can no longer remedy or enforce the property’s smoke-free policies.
- Renters will have the ability to refuse entry to the rental owner or manager to conduct routine inspections to check for health and safety issues or to simply perform routine maintenance.
- Property owners and managers will be unable to remove persons who present a health and safety hazard to the community, such as bed bugs, cockroach and other infestations in their rental unit.
- Property owner and managers will no longer be able to maintain the tranquility of the community and enforce the terms of the lease and the covenants set forth in law concerning the property and its operation. Many residents are now working from home and the quiet and peaceful enjoyment of their rental home is more critical now than ever before. Under this Order property managers will not have the ability to remove residents that play loud music at all hours of the night, who leave barking dogs in their homes or patios or residents that choose to host loud parties.
- Rental property owners and managers face potential fines in communities with nuisance party ordinances such as the city of Tucson “red tag” ordinance as owners will no longer have any recourse to ensure compliance.
- Renters will have the ability to move in additional residents into their rental home directly contradicting CDC recommendations for social and physical distancing.
- Property owners and managers will be unable to remove persons from the community that pose a danger who are not listed in the lease but have moved in to the property without authorization.
- Property owners and managers will not be able to enforce the terms of the lease and could be subjected to either lawsuits by other renters within the rental community for the failure to enforce the lease or be issued a 5-day or 10-day notice to address a nuisance at the community.
- Residents that live in single-family homes next to a rental home will be subjected to the same nuisances as listed above if the owner of a single-family rental has no recourse for renters that blatantly violate the lease or community rules.

Based upon the discussions of the Board, it appears that the Board believes that property owners are filing non-compliance evictions as a pretext to evict residents that are delinquent in rent. Instead of allowing judges who hear these cases to review such allegations on a case-by-case basis, the Board's decision constituted a sweeping rule affecting all residents throughout the county, that deprived property owners one of their statutory and contractual rights to ensure that the community standards are maintained for the benefit of all residents. In other words, to address a finite problem that it believes exist in evictions, the Board just removed every single manager's ability to ensure the quiet enjoyment of all residents in Pima apartment communities and homes. To be clear, it is a taking of the judicial discretion given to a sitting judge and a statement that you believe judges of this County are incapable of making these decisions.

It is also noteworthy that the alleged statistics relied upon are inaccurate and do not properly portray the eviction numbers.

It is for these reasons that we object to yesterday's Board action and request that the Board reconsider this action immediately.

Sincerely,



Courtney Gilstrap LeVinus

President/CEO

Arizona Multihousing Association

Cc: Pima County Administrator

Pima County Attorney

Office of the Governor

Arizona House and Senate Leadership