



**AMA**  
Arizona Multihousing Association

AGENDA MATERIAL  
DATE 3/2/21 ITEM NO. RA8

**VIA EMAIL**

March 1, 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 once again object to the County's consideration of a local eviction moratorium and we strongly urge the Board to reject any Motion related to a local eviction moratorium. Given the Board repealed the Order just two weeks ago and within days of the state's Attorney General opening a formal investigation related to Board's initial adoption of what seems to be an identical Order, we are perplexed as to why the Board would reconsider any action that would almost certainly invite litigation.

Further, we urge the Board to instead focus its time and resources on deploying the \$15.1 million in federal Emergency Rental Assistance that has been allocated to the County (\$31 million when combined with the city of Tucson allocation) by the U.S. Department of the Treasury as part of the Consolidated Appropriations Act, 2021. It is our understanding that as the Board considers this proposal, approximately three thousand rental assistance applications remain backlogged within the County with a plan to process only 200 applications per week going forward. If the Board is concerned with eviction actions proceeding during the COVID-19 pandemic, then deploying these financial resources to renters and owners in distress seems like the most expedient way to prevent housing displacements and loss of rental properties by mom-and-pop owners. Keep in mind that the County is likely to soon be receiving additional funds as Congress is considering an additional \$19 billion in Emergency Rental Assistance as part of the next federal stimulus package.

It should be stated the proposed county wide eviction moratorium divests rental owners of their constitutional rights under the pretext that renters have undergone severe financial hardship during the pandemic, we urge the Board to also consider the hardship felt by the thousands of rental owners across the County, many of whom are your constituents as well. Many of these owners who rely on rental income as their primary source of income, including retirees, have not received income or have received a significant reduction of income for going on eleven months. These same owners have not received relief from their mortgage obligations, County property tax obligations, and all other expenses incurred.

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While we empathize with the financial distress that the pandemic has placed on renters across the County, the burden of providing a social safety net to these renters should not be borne on one small segment of the community, in this case rental property owners. If the County desires financial relief for renters, then the County should bear the burden and not shift it to individuals and private companies.

As an example, the County has not asked grocery stores or restaurants to provide free food or groceries during the pandemic, gas stations to provide fuel or doctors and hospitals to provide free healthcare. Those sorts of examples would generally be viewed as unsustainable and unfair. Yet, that is exactly what has been asked of private citizens who happen to own rental property.

That being said, if the Board wishes to still consider a local Eviction Moratorium to prohibit any and all lease violations, we are compelled to express our deep concern on multiple fronts.

### **Local Eviction Moratoriums are unconstitutional**

We do not believe the County has the authority to adopt a local eviction moratorium to begin with. It has long been established that counties are appendages of the state and must be given explicit authorization to enact regulations. Nowhere in state law is the County authorized to enact sweeping edicts to deprive rental owners of their rights established by the Constitution or by statute.

Even if the County does not believe this to be true, the County is still bound the Governor's Executive Action during this current state of emergency that very clearly denies jurisdictions from enacting local emergency orders above and beyond what the state has prescribed. *See* Executive Order 2020-36 Stay Healthy, Return Smarter, Return Stronger.

Additionally, the proposed Eviction Moratorium is an unconstitutional regulatory taking and a violation of individuals' right to freely enter private contracts. The proposed Order also deprives rental property owners with their constitutional right to bring a private action to the Court. In addition to the penalties that may be sought by representatives, if such a moratorium is passed, it would potentially open the county to lawsuits for damages from individual investors under the takings clause of the Arizona and U.S. Constitution.

If the Board were to (re)adopt a local eviction moratorium on noncompliance matters, the Board will effectively erase the contractual obligations of one party (the tenant) while keeping in place the obligations of the other party (the landlord).

### **Noncompliance evictions are not "loopholes"**

We understand that the Board is examining this Order as a way to prevent, as has been discussed in previous Board meetings, "loophole" evictions or evictions that have been filed due to a renter's noncompliance of their lease contract, and allegedly, as a way to circumvent the eviction moratorium imposed by the Centers for Disease Control and Prevention ("CDC"). We believe this is a gross mischaracterization, perhaps largely due to a lack of understanding of the challenges of rental property management.

First, it appears the County is unaware of how state law prescribes the remedies for lease violations. A landlord cannot file an eviction for any lease violation until a 10-day Notice is provided to the renter. *See* A.R.S. 33-1368(A). The Notice provides the tenant with 10-days to cure the alleged breach. Only after the 10-day period, and only if the tenant fails to remedy the breach, can an eviction be filed. So, using what has been a common example of overgrown vegetation as a pretext, an eviction could have only been filed if the landlord provided the tenant with 10-days to trim the hedge and the tenant failed to do so.

Second, a loophole cannot exist when state law is explicit in its intent in this area. As the Board knows, state law very clearly allows for rental property owners to seek an eviction action if a renter fails to comply with the lease contract. This has historically been viewed as a very fundamental tenet (aside from the ability to collect rent) of the landlord-tenant relationship.

Third, and perhaps the most important point, all of the eviction moratoriums to this point, including both the federal and state moratoriums imposed by Congress and through executive action, specifically allow the type of evictions that this Board is seeking to prohibit. In other words, this Board is stating that the explicit decision by the federal legislature, the executive branch and our Governor, were all accidental loopholes, despite the clear language allowing such actions.

This is not a case where the statutes and orders were silent, but rather the explicit language of each and every moratorium has allowed noncompliance evictions to proceed. This has been a very deliberate action at all levels of government that have imposed these moratoriums to ensure rental owners retain their ability to control and maintain the tranquility of their rental property, not just for their own interest, but for the interest of the surrounding residents and neighbors. These evictions protect the safety of all residents.

Finally, the reported data related to noncompliance cases is, at best, misleading. The County has claimed that noncompliance cases have increased to 24% of total eviction cases filed (up from 4%) in 2020. The County unfortunately fails to properly compare the data to pre-pandemic filings. If 96% of all evictions are for non-payment of rent (*see* Pima County Eviction Task Force Report), then the annualized non-payment of rent judgements in 2020, when compared to 2018 data, have dropped by 69% of the pre-pandemic level. Using the annualized 2020 data and actually comparing it to the pre-pandemic data, the percentage of judgements for cases other than non-payment of rent only amounts to 7% of all judgements entered, a slight increase from 4%.

### **The proposed Order endangers many while protecting a few**

We are concerned with the feasibility of the proposed Order, as well as, all of the unintended consequences that will likely occur as a result of the Order. While the Board seems fixated on the singular tenant who may be at risk of eviction due to their noncompliance of the lease contract, we urge the Board to consider the rights of the neighboring residents (renters and owners) who may be negatively impacted by these noncompliance cases.

While a barking dog may sound trivial to some, it is, in most cases, the neighbor who complains to the rental owner or manager and demands that the situation be remedied. Same can be said for vermin infestations, smoking complaints, incessant loud music, parties and social gatherings and many of the other nuisance behaviors that a rental owner is statutory bound to remedy. It is critical to note that it is rarely a manager that witnesses the incident or problem, and it is other residents complaining to management which precipitates the filing of an eviction action. By pursuing this proposed moratorium, the Board is simply ignoring the concerns and health and safety issues of all such residents.

We are unsure if the Board has 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 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 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 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 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.

### Solutions

1. **Deploy rental assistance resources.** According to the County, even before the COVID-19 pandemic, 96% of evictions were due to the non-payment of rent. *See Overview Report on Eviction Process and County Assistance*, page 1. This data alone suggests that renters in Pima County were facing financial hardship even before the pandemic. This is not a legal issue per se for renters, but rather a financial one. Should the County be desirous of preventing an eviction due to unpaid rent, then the County can simply provide financial resources to renters. At least in the near-term, the federal government has stepped in (to a certain extent) to provide short term assistance to renters. Pima County alone has received \$15.1 million (\$31 when combined with the city of Tucson allocation) to use towards rental assistance programs. In order to prevent evictions during the pandemic, the County must find ways to distribute the aid in the most efficient manner. This not only ensures renters are not displaced, but it also ensures that the rental property owners do not lose their property through bankruptcy, foreclosure or forced sale.
2. **Increase judicial education.** It has been reported that the Pima County Consolidated Justice Court System does not adjudicate cases in a consistent manner. *See Overview Report on Eviction Process and County Assistance*, page 5. This is an issue that must be addressed. Litigants must be guaranteed that the courts will provide a fair and impartial trial that follows the laws created

by the legislative branch. In order to ensure such objectivity, the County should provide annual training to the courts including to judges and constables.

3. **Improve communication.** The Courts should provide information to litigants when accessing the courts including current and/or temporary orders, information on the litigants' rights and information on the court processes.

It is for these reasons that we urge the Board to reject any proposed eviction moratorium and instead focus its attention on legally permissive solutions including the deployment of rental assistance.

Sincerely,



Courtney Gilstrap LeVinus

President/CEO

Arizona Multihousing Association

Cc: Pima County Administrator

Pima County Attorney

Clerk of the Board

Office of the Governor

Arizona House and Senate Leadership