

# ARIZONA REVISED STATUTES

## TITLE 33. PROPERTY

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

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

Every keeper of a hotel, inn, boarding, lodging or apartment house, or auto camp, shall post in a conspicuous place in the office or public room, and in every bedroom of the establishment, a printed copy of sections 33-951 and 33-952, with a printed statement of charges by the day, week or month for meals, lodging or other items furnished.

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

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

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

C. The innkeeper shall not be liable for loss of or damage to merchandise samples or merchandise for sale displayed by a guest unless the guest gives prior written notice to the innkeeper of having and displaying the merchandise or merchandise samples, and the innkeeper acknowledges receipt of such notice, but in

no event shall liability for such loss or damage exceed five hundred dollars unless it results from the fault or negligence of the innkeeper.

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

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

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

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

B. No person shall rent or lease his property to another in violation of a valid restrictive covenant against the sale of such property to persons who have a child or children living with them nor shall a person rent or lease his property to persons who have a child or children living with them when his property lies within a subdivision which subdivision is presently designed, advertised and used as an exclusive adult subdivision. A person who knowingly rents or leases his property in violation of the provisions of this subsection is guilty of a petty offense.

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

**§ 33-321. Maintenance of premises**

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

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

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

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

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

the landlord of other legal remedies for recovery of rent.

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

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

**ARTICLE 3. TERMINATION OF TENANCIES**

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

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

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

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

D. When a tenancy is for a certain period under verbal or written agreement, and the time expires, the tenant shall surrender possession. Notice to quit or demand of possession is not then necessary.

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

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

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

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

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

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

**ARTICLE 4.  
REMEDIES OF LANDLORD**

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 5.  
APPLICABILITY OF CHAPTER**

**§ 33-381. Limitation**

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

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## ARIZONA REVISED STATUTES

### TITLE 12. COURTS AND CIVIL PROCEEDINGS

#### CHAPTER 8. SPECIAL ACTIONS AND PROCEEDINGS RELATING TO PROPERTY

##### ARTICLE 4. FORCIBLE ENTRY AND DETAINER

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##### ARTICLE 4. FORCIBLE ENTRY AND DETAINER

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

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

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

###### § 12-1172. Definition of forcible entry

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

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

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

There is a forcible detainer if:

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

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

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

1. If the property has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of real property pursuant to title 33, chapter 6, article 2.
2. If the property has been sold through a trustee's sale under a deed of trust pursuant to title 33, chapter 6.1.

3. If the property has been forfeited through a contract for conveyance of real property pursuant to title 33, chapter 6, article 3.

4. If the property has been sold by virtue of an execution and the title has been duly transferred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

into.

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

C. For good cause shown, supported by affidavit, the trial may be postponed for a time not to exceed three calendar days in a justice court or ten calendar days in the superior court.

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

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

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

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

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

E. If the defendant is found guilty of forcible entry and detainer or forcible detainer, the court shall give the defendant notice that a defendant who is lawfully served with a writ of restitution and who remains in or returns to the dwelling unit or remains on or returns to the mobile home space or the recreational vehicle

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space without the express permission of the owner of the property or the person with lawful control of the property commits criminal trespass in the third degree pursuant to section 13-1502.

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

A. Either party may appeal from a justice court to the superior court in the county in which the judgment is given by giving notice as in other civil actions within five calendar days after rendition of the judgment pursuant to this section. The appeal shall be filed in accordance with this section, and the time to appeal shall not be extended or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion.

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

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

D. The party seeking to stay the execution of the judgment for possession shall file a supersedeas bond in the amount of rent accruing from the date of the judgment until the next periodic rental date, together with costs and attorney fees, if any. The tenant shall pay to the clerk of the justice court, on or before each periodic rental due date during the pendency of the appeal, the amount of rent due under the terms of the lease or rental agreement. Such amounts shall be made payable by the justice court to the owner, landlord or agent as they accrue to satisfy the amount of periodic rent due under the lease or rental agreement. In all cases where the rent due under the terms of the lease or rental agreement is paid through

the justice court as set forth in this subsection, the order of the court may include a one-time handling fee in the amount of ten dollars to be paid by the party seeking to stay the execution of the judgment for possession. In no event shall the amounts paid per month exceed the amount of monthly rent charged by the owner for the premises. If the tenant raises habitability as provided for in sections 33-1324 and 33-1364 as an affirmative defense to the nonpayment of rent or the tenant has filed a counterclaim asserting a habitability issue, the justice court shall retain all money paid under this subsection pending a final judgment.

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

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

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

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

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

A. On trial of the action in the superior court, appellee, if out of possession and the right of possession is adjudged to him, shall be entitled to damages for withholding possession of the premises during

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pendency of the appeal and the court shall also render judgment in favor of appellee and against appellant and the sureties on his bond for damages proved and costs.

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

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

A. In a forcible entry or forcible detainer action originally commenced in the superior court, an appeal may be taken to the supreme court as in other civil actions.

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

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

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