

EVICCTIONS - *Explained* and Why you want a “solo-practitioner”

Personal service is what sets me apart from other law firms. I am a “solo-practitioner,” which means that **I will handle all aspects of your case**. You will **always** speak directly to me about your case. Unlike other law firms, you will NEVER speak to a paralegal, junior associate, or another attorney who is unfamiliar with your case.

I do not work with apartment complexes. **I work exclusively with individual landlords** (i.e., business entities or persons) who own 1 to 100 rental properties.

In addition to helping you with your eviction, I may also let you know (at no extra charge):

1. If your forms (including lease form) are adequate (or inadequate),
2. Whether your policies and procedures do (or don't) comply with Arizona law, and
3. Provide you with information to make being an Arizona landlord **easier, more profitable, and less time consuming**.

Many of my repeat clients tell me that they come back to me because of the **education** they received during the eviction process. And many of my first-time clients tell me that they were referred to me by one of my past or current clients, **or by another attorney**, for the same reason (i.e., education about the eviction process), but also about landlord/tenant law and how to avoid problem tenants in the first place.

I hope the following information about the eviction process in Arizona is useful to you. When you decide to hire me as your attorney for an eviction action, you can relax. I will take care of that problem for you. I may need your help with some of the steps, but I will do all the "hard" work. I look forward to working with you. Thank you for taking the time to review this information.

For the Firm,



Carlton C. Casler

EVICTION - Explained

This document will give you an overview of the steps in a "typical" Arizona **residential** rental property eviction action. The steps for a commercial eviction are similar, so the following will be informative for **commercial** landlords, but not all steps will apply.

Summary of Important Steps:

1. The **correct** "notice" must be prepared and **properly** sent
2. I prepare the "Complaint"
3. You review the "Complaint" for accuracy
4. You sign the "Verification" page of the Complaint
5. I finalize the "Complaint" and file it with the court
6. The court schedules a hearing date
7. The tenant is served with the Summons and Complaint
8. You (or someone on your behalf) and I appear **telephonically** in court
9. Judgment and termination of the eviction action
10. The landlord retakes possession of the rental property

You do Steps 3 and 4. **I take care of the rest.** In some cases, I may need assistance from you (or someone on your behalf) for Steps 8 and/or 10.



VERY IMPORTANT

DO NOT do any of these things without talking to me first:

- **Do not accept a full or partial payment**
- **Do not send your own notice now (to "save" money)**
- **Do not lock the tenant out of the rental unit**
- **Do not remove the front door** (or similar action)
- **Do not turn off any utilities**
- **Do not enter the rental unit**
- **Do not enter into any type of agreement with the tenant**

Detailed Description of each "Step" in a "typical" Eviction Action:

STEP 1: The correct "notice" must be prepared and properly sent

The tenant must be served with a "notice." It must be the "correct" notice. The notice must be "properly" served and the tenant must be given the "correct" amount of time to cure the default. If the tenant cures the default or vacates, the eviction action stops. If the tenant does not cure the default and does not vacate, then we proceed to the next step – drafting the "Complaint" (Step 2).

If you have already served the tenant with a notice, then I will review the notice to make sure it: was the correct notice; included all the required information; gave the tenant the correct amount of time to cure the default; and was properly served. If it was defective in any way, then I may need to repeat the notice. If it was satisfactory, then we proceed to the next step – drafting of the "Complaint" (Step 2).

If you have not served the tenant with a notice, then I will determine which notice (or notices) must be served, draft the notice, and have it served upon the tenant.

STEP 2: I prepare the "Complaint"

The "Complaint" is the document that actually starts the eviction action in court. It is also one of two documents (i.e., Summons and Complaint) that are ultimately served upon the tenant by a "process server." The Complaint sets forth the facts and law upon which you are seeking to evict the tenant. I draft the Complaint based on information you provide to me (e.g., Questionnaire, email, over the phone, or some other means).

STEP 3: YOU review the Complaint for accuracy

After I draft the Complaint, I send it to you to review and approve. If changes or corrections are needed, let me know and I will make them. We cannot ask the court for relief or amounts that are not stated in the Complaint. Consequently, you must take care to ensure the facts stated in the Complaint are true and complete, all amounts due are listed, and all amounts listed are accurate.

STEP 4: YOU sign the Verification Page of the Complaint

One of the pages in the Complaint is the "**Verification**" page. You must sign the Verification page. I will send it to you via DocuSign and you can sign it on your phone or computer. Alternatively, you can print out the Verification, sign it, fax or email me a copy, and then mail me the original. I cannot file the Complaint until I receive the original or a copy of the signed Verification.

STEP 5: I finalize the Complaint

I finalize the Complaint, sign it, and add your signed Verification page. I draft the Summons and then send the finalized Complaint and Summons to my court runner, who then files the Complaint with the court. "Filing" of the Complaint with the court initiates the "eviction action" (an "eviction action" may also be referred to as: a special detainer action, a forcible detainer action, or an unlawful detainer action).

STEP 6: The court schedules a hearing date

The court schedules a hearing date (referred to as the "initial appearance" or "return date"). The hearing date is entered on the "Summons" by the clerk of the court. I will notify you of this date as soon as I receive a copy of the Summons from my court runner.

STEP 7: The tenant is served with the Summons and Complaint

A "process server" (who is an officer of the court) serves each tenant with a copy of the Summons and Complaint. I will hire the process server and send him/her the necessary documents and instructions.

STEP 8: You and I appear in court on the hearing/trial date

You (**or someone on your behalf**) and I will appear **telephonically** in court on the hearing date. On the hearing date, one of four possible outcomes will occur:

- (1) The tenant does not appear and you get a default judgment;
- (2) The tenant appears, admits the allegations in the Complaint, and you get judgment;
- (3) The tenant appears and asks for a trial, which is scheduled for later that same day or a couple days later; or
- (4) The eviction action is dismissed, which could happen for many different reasons (e.g., settlement).

STEP 9: Judgment and termination of the eviction action

If the landlord gets a "Judgment" (outcomes 1 and 2, in Step 8, above) or if the landlord prevails at trial (outcome 3, in Step 8, above), then the landlord receives a Judgment and the eviction action is terminated, but the landlord must still get "possession" of the rental unit (see Step 10, below).

If the eviction action is dismissed (outcome 4, in Step 8, above), then the judge will dismiss the case and the eviction action is terminated. "Dismissal" is not necessarily "bad." The tenant could pay the rent, you could enter into a settlement agreement with the tenant, or some other reason could lead to dismissal of the eviction action, many of which are "good," so don't assume that a dismissal is bad.

If the eviction action goes to trial (outcome 3, in Step 8, above) and the landlord loses (which **is** "bad"), then the tenant remains in the rental unit and the eviction action is terminated. The landlord can lose at trial if the facts are different than those stated in the Complaint, the tenant has a legitimate defense, or some other reason. If the tenant has an attorney, you may have to pay for the tenant's attorney's fees. **If I believe you will lose at trial, I will let you know before the Complaint is filed**, but that opinion will be based on the facts you give me. Be sure to give me all the facts. A judgment entered against the landlord can be appealed (additional fees and costs apply).

In addition to the foregoing, there are two other possibilities: (1) if the landlord gets a "Judgment" (outcomes 1, 2 or 3, in Step 8, above), it is possible that the tenant may appeal or (2) the tenant may file a Motion to Set Aside Judgment or a Motion for New Trial. These rarely occur, but each is possible in every eviction action. If one of these occur, I will provide you with more information at that time. Time I spend responding to post-judgment motions is billed at an hourly rate.

STEP 10: The landlord retakes possession of the rental unit

If the landlord gets a "Judgment" (outcomes 1 and 2, in Step 8, above) or if the landlord prevails at trial (outcome 3, in Step 8, above), then the Judgment will include a "judgment of possession," which means the tenant must surrender possession of rental unit to the landlord within five **calendar days** after the Judgment is signed; that date will be specified on the Judgment. **That DOES NOT mean that the landlord can lock the tenant out or turn off the utilities on that date.**

The tenant must either: (1) voluntarily give the landlord the keys and possession of the rental unit or (2) a constable must serve a Writ of Restitution on the tenant, thereby giving the landlord possession of the rental unit.

- If the tenant voluntarily vacates **and** delivers the keys to the landlord (or similar conduct that **clearly indicates** the tenant's intent to give possession of the rental unit to the landlord), then the eviction process is over. Some additional steps are necessary (discussed below), but the eviction action itself ends here.
- If the tenant does not voluntarily vacate the rental property within five calendar days after the Judgment is signed, then we must ask the court (by filing some additional papers with the court) to send the constable or sheriff to the rental property to physically remove the tenant from the rental unit. The constable (in justice court) or a deputy sheriff (in superior court) will go to the rental property and order the tenant out of the rental property. You (or someone on your behalf) must be at the rental property at that time, along with a locksmith (or someone who is able/qualified), so that the locks can be changed. If the tenant refuses to vacate or if the tenant vacates and later returns to the rental property, the constable or sheriff can arrest the tenant for trespassing. If any personal property remains in or on the rental property, the landlord may leave it in the rental property or may move and store the personal property, **but the landlord must take reasonable steps to safeguard the tenant's personal property. You cannot move it outside or dispose of it.** After waiting the statutory amount of time and following some required procedures, the landlord may donate it, dispose of it, or sell the personal property and apply it to amounts owed by the tenant.

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After the tenant vacates the rental property

Although not technically part of the eviction action, after the tenant vacates the rental property, the landlord must do several things:

1. You must do a move-out inspection; if you don't have a **move-out inspection form**, I will give you a form;
2. You may or may not need to give the tenant notice of the move-out inspection date; if you do, I will provide you with the appropriate **notice form**; and
3. After you get possession of the rental property (by any method), you **must** account for the tenant's refundable deposits **within business 14 days**. I will provide you with a **form** specifically for that purpose and will review your first draft (**before** you send it to the tenant) **without charge**. This step is extremely important; you **must not** miss this deadline.

The foregoing is a summary of the "typical" steps in an Arizona residential rental property eviction action. Some cases involve counterclaims, pre-trial motions, pretrial discovery, post-trial motions, and other steps, but those cases are not common. If any of those arise in your case, I will explain them to you at that time.

As you and I go through the process in **your eviction action**, I will keep you informed about the status of your case. If you ever have a question about your case, call me. Remember, I am the only one who will be handling your case, so I will be able to answer all your questions.
