

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
POST-MORATORIA DISPOSITION)
OF RESIDENTIAL EVICTION CASES) Administrative Order
IN TRANSITION FROM PUBLIC) No. 2021 - 120
HEALTH EMERGENCY PROCEDURES) (Replacing Administrative
) Order No. 2021-53)
)
_____)

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide public health emergency on March 11, 2020.

Since March 2020, several federal executive and Congressional actions have impacted tenant and landlord rights under Arizona laws and the processing of eviction cases in Arizona’s courts. Among these official actions taken are:

1. On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law. The CARES Act required a temporary moratorium on evictions from public housing, federally subsidized rental housing, and rental housing with federally backed mortgages, as well as a ban on accrual during the moratorium of fees, penalties, and interest related to nonpayment of rent. While the CARES Act eviction moratorium expired on July 24, 2020, certain tenant protections related to the accrual of fees, penalties, and interest on unpaid rent remain in effect. Additionally, rental properties for which mortgage forbearance agreements were entered are subject to eviction and fees, penalties and interest restrictions during the period of forbearance, now scheduled to end September 30, 2021.
2. The Centers for Disease Control and Prevention (CDC) issued an order entitled “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” effective September 4, 2020 through December 31, 2020 (CDC No. 2020-19654, 85 Fed. Reg. 55292 (Sept. 4, 2020)) (CDC order). The Congress passed and the President signed into law the “Coronavirus Response and Relief Supplemental Appropriations Act, 2021.” The Act extended the CDC moratorium through January 31, 2021. The CDC further extended the moratorium through March 31, 2021, through June 30, 2021 and again through the current July 31, 2021 expiration date.
3. On December 21, 2020, Congress enacted the Consolidated Appropriations Act which the President signed on December 27, 2020. This Act appropriated funding for states to establish rental assistance programs for tenants meeting program requirements. Additional federal funding for rental assistance was included in the American Rescue

Plan Act signed into law by the President on March 11, 2021. Disbursement of these funds is ongoing.

4. On July 31, 2021, the CDC order is scheduled to expire.

Previous Administrative orders provided direction on processing eviction cases as required by the various federal laws along with CDC and Gubernatorial orders that imposed eviction moratoria which are now no longer in effect. This Order provides interim procedures required for the courts and parties to resolve eviction actions that arose during those moratoria or were delayed by them. These procedures take into account the unique circumstances created by the moratoria to provide a process to allow landlords to regain possession of rental properties in a lawful manner and to help ensure that a tenant is neither wrongfully evicted nor subject to a judgment that fails to credit payments made by them or on their behalf. For a limited time, this Order creates an alternative process to allow parties to amend judgments to reflect additional amounts owed and credit rental assistance monies received. This serves a dual purpose of reducing the number of new complaints filed and ensuring that court judgments are accurate.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that the following procedures are applicable to eviction actions governed by Arizona Revised Statutes, Title 33, filed in the superior court or a justice court, and delayed by the moratoria, including the mortgage forbearance eviction moratorium currently in effect, or seeking judgment for unpaid rent accrued during an eviction moratorium.

IT IS FURTHER ORDERED beginning on the effective date of this Order, all other eviction cases shall be processed solely under Arizona statutes and rules, except as provided herein.

I. PLEADINGS

1. The plaintiff in a residential eviction action for non-payment of rent while an eviction moratorium was or is in effect must attest in the initial pleading or by other writing filed with the court and served on the defendant along with the initial pleading whether:
 - a. The claim is for any time between March 27, 2020 and July 24, 2020 and, if so, whether the property in which the defendant resided was covered under the CARES Act, during which time fees, penalties, or interest on unpaid rent may not be included in the amount claimed.
 - b. The rental is in a building with five or more units that had or has a mortgage backed by Fannie Mae or Freddie Mac (FHFA), the Federal Housing Administration (FHA), the U.S. Department of Agriculture (USDA), or the Veterans Administration (VA) for which the borrower was or is receiving mortgage forbearance relief.
 - c. The plaintiff has applied for or has received rental assistance from any source based on defendant's rental obligation. If so, plaintiff must state in the pleading and the accounting of payments the amount received and how it has been applied toward

the obligation and whether the plaintiff entered into any agreement releasing plaintiff's claims against the defendant. The plaintiff must further attest to compliance with any agreement concerning the receipt of rental assistance to pay the defendant's rental obligation, and that plaintiff is not seeking a judgment for a claim that was waived.

- d. During an eviction moratorium, the plaintiff obtained a prior judgment against the defendant that has not been vacated. If so, the plaintiff must attest that the current amounts claimed exclude amounts awarded in the prior judgment.

II. CALENDARING FOR ALL CASES

1. 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 remotely or in person to present their evidence.
2. Each case shall be scheduled to be heard during a specific one-hour time slot, e.g., 9:00 A.M. - 10:00 A.M.
3. Courts should schedule any residential eviction action filed after the expiration of the CDC order within the timeframes established by the Rules of Procedure for Eviction Actions and by applicable Arizona statutes, except, if necessary to manage court congestion, a court should follow the procedures established in Administrative Order No. 2021-109. Any continuance granted while the CDC order was in effect shall be honored and time shall be excluded.
4. When the limited availability of courthouse facilities, judicial officers, or court employees require prioritization, court proceedings shall be scheduled in the following order of priority: 1) eviction cases delayed by a moratorium; 2) newly filed eviction cases.

III. HEARINGS

1. Parties, attorneys, and witnesses in an eviction proceeding shall be permitted to participate remotely or in person.
2. At each hearing, the judge shall inquire as to whether the plaintiff entered into any agreement concerning the receipt of rental assistance to pay the defendant's rental obligation or concerning forbearance relief described in section I, paragraph 1b of this Order. If all amounts awarded in a judgment have been paid in full by receipt of rental assistance or the plaintiff agreed to release defendant from all claims and causes of action, including judgments, writs, and other judicial relief for nonpayment of rent, the court shall vacate the judgment and deny an application for a writ of restitution. If the plaintiff received rental assistance payment and asserts that the rental agreement did not require waiver of all claims, the plaintiff shall provide the court with a copy of the rental assistance agreement. If the plaintiff agreed to delay eviction as a condition of a

rental assistance or mortgage forbearance agreement, the court shall stay the action during the period of the delay.

3. With the agreement of the parties, the judge shall continue a proceeding to afford the parties the opportunity to apply for and receive rental assistance or to reach an agreement to resolve the case.

IV. PROCEDURES FOR RESTARTING EVICTION CASES DELAYED DUE TO FEDERAL AND STATE MORATORIA

1. In all cases where a plaintiff filed a complaint but was unable to obtain a judgment due to an eviction moratorium, the Court shall schedule a hearing. The plaintiff shall file a written motion to amend the complaint, as needed, to update the information required by section I paragraph 1 of this Order.
2. No later than 90 days after the entry of this Order, a plaintiff who received a judgment where the writ of restitution date was delayed may file a motion to amend the judgment to collect any additional rental obligations accrued since the judgment was obtained. Also within this time, a plaintiff may file a new application for a writ of restitution to regain possession in which the plaintiff must attest that a new tenancy has not been established.
3. Motions to amend the judgment and applications for writs shall include or update any information required by section I paragraph 1 of this Order that was not provided in the original complaint. If a plaintiff received rental assistance, the plaintiff must file a motion to amend the judgment and an accounting of any payments received since the judgment was entered. The plaintiff shall serve the motion or application on the defendant either personally or by posting the notice on the main entrance to the premises.
4. The court shall set a hearing on all motions for amended judgment. The court shall set a hearing on an application for a writ if it appears to the court that a new tenancy may have been established, that the judgment should be amended, or if the court finds that a hearing is appropriate based upon the court's own motion or a motion of a party. The court shall issue a notice of hearing for the parties to appear not more than six nor less than three days from the date of the notice. At least three days before the hearing, the court shall mail a copy of the notice to the defendant and attempt to contact the defendant by telephone, text, or email to provide notice of the hearing, and the plaintiff shall serve a notice of the date, time, place and purpose of the hearing on the defendant either personally or by posting the notice on the main entrance to the premises. A defendant may respond in writing before the hearing and orally at the hearing.
5. No later than 90 days after the entry of this Order, for cases where a judgment was entered for rent owed during a moratorium, the amount owed was fully paid through a rental assistance agreement, and that judgment has not already been amended or vacated as permitted by this Order, a defendant may file a motion to compel satisfaction

of judgment. The defendant may file the motion to compel without showing the plaintiff cannot be located, as described in Rule 4(d), Rules of Procedure for Eviction Procedures. The motion shall be served on the plaintiff. The court may, after an opportunity for a hearing, order that the judgment shall be deemed satisfied.

6. If an eviction judgment includes claims for rent due between March 27, 2020 and July 24, 2020 or if fees, penalties, or interest for unpaid rent during that period were awarded, the plaintiff shall provide proof that the property is not subject to a mortgage, or provide the written response from a Qualified Written Request (QWR) submitted to the property's mortgage holder that confirms the financing in place was not covered by the CARES Act.
7. At the hearing on the motion to amend the judgment, for good cause, the court shall amend the eviction judgment to reflect:
 - a) 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 if requested by the plaintiff and not to exceed the jurisdiction of the court.
 - b) Any rental assistance received from any source based on the defendant's rental obligation.
 - c) Any fees, penalties or interest for unpaid rent from March 27, 2020 through July 24, 2020 not permitted to be collected under the CARES Act.
 - d) Any fees, penalties or interest for unpaid rent for any period of time the plaintiff was in a federal mortgage forbearance relief program which prohibited those assessments.

Nothing in this provision precludes a landlord from pursuing a claim not barred by a rental assistance agreement in a small claim or civil lawsuit.

8. The order issuing a writ may be executed by the constable or sheriff no earlier than five calendar days after the date of the order. The order shall state the earliest date on which execution may occur.

V. JUDICIAL OFFICER TRAINING

The Administrative Office of the Courts (AOC) shall provide judicial officer training on scheduling, adjudication and disposition of eviction cases in the context of the COVID-19 public health emergency, addressing this Administrative Order. All judicial officers, including judges pro tempore, who hear eviction cases must complete the most recently updated version of such training.

IT IS FURTHER ORDERED that the provisions of Administrative Order No. 2021-109 and any successor orders concerning matters not addressed in this Order also apply to the processing of eviction cases.

IT IS FURTHER ORDERED that, effective August 1, 2021, this Order replaces Administrative Order No. 2021-53.

Dated this 15th day of July, 2021.

ROBERT BRUTINEL
Chief Justice