



Real Estate Leasing: Arizona

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This Article is published by Practical Law Company on
its ^{PLC}Real Estate web service at
<http://us.practicallaw.com/1-500-5704>.

A Q&A guide to real estate leasing
law in Arizona.

EXECUTION AND ENFORCEABILITY

1. Describe any formal requirements for the execution of a lease. In particular specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Countersignatures are enforceable.
- There are any homestead law requirements.
- There are any other important requirements in your state.

Arizona has four landlord/tenant acts that relate to four different types of tenancies, including:

- Non-residential tenancies (*Ariz. Rev. Stat. §§ 33-301 to 33-381 (2012)*).
- Residential tenancies (*Ariz. Rev. Stat. §§ 33-1301 to 33-1381 (2012)*).
- Mobile home-park tenancies (*Ariz. Rev. Stat. §§ 33-1401 to 33-1501 (2012)*).
- Recreational vehicle long-term rental space tenancies (*Ariz. Rev. Stat. §§ 33-2101 to 33-2148 (2012)*).

The responses in this State Q&A apply to non-residential landlord tenant matters unless otherwise specified.

WITNESSES

Witnesses are not required to execute a lease (non-residential, residential or mobile home-park) in Arizona.

ACKNOWLEDGMENTS

Acknowledgements are not required to execute a lease (non-residential, residential or mobile home-park) in Arizona.

COUNTERSIGNATURES

Countersignatures are recognized and enforceable in Arizona, if provided for in the document.

HOMESTEAD LAWS

In Arizona, the homestead of a family cannot be conveyed or encumbered without the consent of both spouses (*Ariz. Rev. Statutes § 33-453 (2012)*).

OTHER REQUIREMENTS

There are no other relevant requirements.

2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

A memorandum of lease may, but need not, be recorded to be enforceable against third parties if those parties have constructive notice of the lease.

It is common practice in Arizona for a memorandum of lease to be recorded in a commercial transaction. A memorandum of lease usually provides:

- Notice of the existence of the lease.
- The identity of the parties.
- Contact information for the parties.

Ordinarily, it does not set out specific lease terms, except the term of the lease.

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

3. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

These forms are the minimum requirements for a document to be recorded in Arizona. If the document is signed or is to be recorded in another state, the notary may have to provide additional information as required by the other state.

Section 33-506 of the Arizona Revised Statutes provides short forms of acknowledgement. The forms provided below slightly differ from the statutory short forms, but are equally sufficient.

INDIVIDUAL

STATE OF [STATE])
)SS.
COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/

she] claims to be, and acknowledged that [he/she] signed the [above/attached] document.

[SEAL] [NOTARY SIGNATURE]_____
Notary Public

CORPORATION

STATE OF [STATE])
)SS.
COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], the duly authorized [SIGNATORY TITLE] of [CORPORATION NAME], [Inc./Co./ Corp.], a [STATE OF INCORPORATION] corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/she] claims to be, and acknowledged that [he/she] signed the [above/attached] document.

[SEAL] [NOTARY SIGNATURE]_____
Notary Public

LIMITED LIABILITY COMPANY

STATE OF [STATE])
)SS.
COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], the [Manager/Managing Member] of [LIMITED LIABILITY COMPANY NAME], L.L.C., a [STATE OF FORMATION] limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/she] claims to be, and acknowledged that [he/she] signed the [above/attached] document for the purposes therein stated.

[SEAL] [NOTARY SIGNATURE]_____
Notary Public

LIMITED PARTNERSHIP

STATE OF [STATE])
)SS.
COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], as General Partner of the [NAME OF LIMITED PARTNERSHIP] Limited Partnership, a [STATE OF FORMATION] limited partnership, whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/she] claims to be, and acknowledged that [he/she] signed the [above/attached] document for the purposes therein stated.

[SEAL] [NOTARY SIGNATURE]_____
Notary Public

TRUSTEE

STATE OF [STATE])
)SS.
COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], as Trustee of the [NAME OF TRUST] Trust dated [MONTH] [DAY], [YEAR], whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/she] claims to be, and acknowledged that [he/she] signed the [above/attached] document for the purposes therein stated.

[SEAL] _____ [NOTARY SIGNATURE]
Notary Public

DISCLOSURES, CERTIFICATIONS AND IMPLIED USES

4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

Neither the landlord nor tenant is required to make any statutory disclosures in a non-residential lease in Arizona.

Unless provided for in the lease agreement between the parties, there are no compliance certificates required of the landlord in a non-residential lease. However, tenant estoppel certificates may be provided or required if set out in the lease.

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

5. Is a lease deemed to include an implied warranty of fitness for intended use?

There is no implied warranty of fitness for a particular purpose in a non-residential lease in Arizona.

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

TERM, RENEWAL AND EARLY TERMINATION

6. Are there any legal restrictions which:
- Limit the maximum term of a lease (including any renewals)?
 - Require the landlord to allow the tenant to renew its lease?
 - Allow the tenant to terminate its lease before the express expiration date?

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

LIMIT ON MAXIMUM TERM

There are no restrictions on the maximum term of a lease in Arizona outside of the rule against perpetuities found in *Section 33-261* of the Arizona Revised Statutes.

TENANT RENEWAL

The tenant has no statutory right of renewal in Arizona in a non-residential or residential landlord tenant relationship.

EARLY TERMINATION

In Arizona, a non-residential tenant may not terminate its lease before the expiration date unless early termination is permitted in the written lease agreement.

7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

Unless otherwise specified in the written lease agreement, the non-residential landlord is not required by statute to notify the tenant before the automatic renewal of any lease term.

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

RENT AND SECURITY DEPOSITS

8. Are there any legal restrictions on:
- How much rent the landlord may charge?
 - Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

MAXIMUM RENT

In Arizona, there are no legal restrictions on the amount of rent a landlord may charge.

OPERATING EXPENSES

In connection with a non-residential lease, operating expenses may be shared or passed through to the tenant if the amount of the operating expenses or the method by which the operating expenses are to be computed is stated in either:

- The lease.
- An exhibit or attachment that is part of the lease.
- An amendment to the lease.

9. For security deposits:
- Must the landlord maintain security deposits in a separate bank account for each tenant?
 - Must a security deposit be in an interest bearing account?
 - Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

COMINGLING PERMITTED

In Arizona there are no statutory regulations or requirements for security deposits for non-residential leases.

INTEREST BEARING ACCOUNT

Security deposits for non-residential properties are not required to be in an interest bearing account, and landlords do not normally hold them in interest bearing accounts.

ADMINISTRATIVE FEES

In Arizona, administrative fees charged on a non-residential lease are not required to be in an interest bearing account, and landlords do not normally hold them in interest bearing accounts.

Non-residential landlords are not required to pay tenants any interest earned on the security deposit.

TRANSFER TAXES AND OTHER TAXES

10. Are any state or local transfer taxes triggered when a lease is signed or on the later assignment of a lease? If so, please specify the:
- Rate for the tax and how is it calculated.
 - Returns required.
 - Timing for filing the returns and paying the taxes.

There are no transfer taxes in Arizona. However, landlords and tenants are cautioned that many local governments charge a transaction privilege tax on any or all rentals, including the rental of non-residential real property.

The requirements, exemptions and tax rates vary widely among the municipalities.

The transaction privilege tax is charged to the landlord and, absent a provision to the contrary in the lease, the tenant is not required to pay the tax (*Tower Plaza Invs., Ltd., v. DeWitt*, 508 P.2d 324 (Ariz. 1973)).

Where there is a sublease, there is no tax payable on rents under the principal lease. Instead, the tax is payable by the sublessor (Ariz. Rev. Stat. § 42-5069(C)(3), (D) (2012)).

The responses in this State Q&A apply only to non-residential tenancies (see *Question 1*).

11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:
- Percentage of ownership interest that triggers the taxes.
 - Rate for the taxes and how they are calculated.
 - Returns required.
 - Timing for filing the returns and paying the taxes.

There are no transfer taxes in Arizona.

However, landlords and tenants are cautioned that many local governments charge a transaction privilege tax on any or all rentals, including the rental of non-residential real property (see *Question 10*). This tax, if applicable, will continue since it



is a rental tax regardless of a direct or indirect transfer of the beneficial ownership interest of the original tenant. However, if the “transfer” of the tenant’s interest is to the landlord, there would be a merger of the ownership and possessory interests and the transaction privilege tax would no longer apply because there is no longer a “rental transaction” taking place.

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant?

Landlords are not required to collect state or local taxes from the tenant. However, a non-residential lease may require the tenant to pay the transaction privilege taxes which accrue as a result of the lease. If the non-residential lease is silent, the transaction privilege taxes remain the landlord’s responsibility (see *Question 10*).

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

ASSIGNMENT, FINANCING AND TRANSFERS

13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord’s consent. Is a reasonableness standard implied when the lease is silent on whether the landlord’s consent to an assignment or sublease may be reasonably or unreasonably withheld?

There is no statutory requirement that leases must be assignable in Arizona. However, the general rule is that in the absence of an express restriction by contract or statute, each tenant has the unrestricted right to assign or sublet. A freely negotiated provision limiting assignment in a lease will be upheld if the landlord’s objection is reasonable. (*Tucson Med. Cent. v. Zoslow*, 712 P.2d 459 (Ariz. App. 1985).)

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

14. If the lease does not expressly define the term “assignment” and there is no other express restriction in the lease to the contrary can the:

- Tenant’s corporate ownership interests be freely transferred without the landlord’s consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord’s consent?

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

TRANSFER OF OWNERSHIP INTERESTS

In a non-residential setting, it is customary for the lease to include a prohibition against assignment, either directly or indirectly, by change in ownership (transfer of a certain percentage of stock) in the tenant. The tenant’s right to assign or sublease is a main negotiation point in the lease. However, after negotiating, the landlord usually agrees to not unreasonably withhold its consent if the new tenant:

- Is a related entity.
- Meets certain net worth requirements.

SECURITY LIEN OR PLEDGE OF OWNERSHIP INTERESTS

In Arizona, a tenant may pledge or lien its own property as security. However, the tenant may not record a lien against the leased property without consent of the owner. If a lien is recorded against the real property without the consent of the owner, the tenant, the lienholder, or both, may be subject to liability and penalties for false recording of documents (*Ariz. Rev. Stat. § 33-420 (2012)*).

15. When a lease requires a landlord’s consent for an assignment and defines the term “assignment” to include a transfer of the tenant’s corporate ownership interests, would an indirect transfer of the tenant’s interests trigger the landlord’s consent requirement?

It is common practice in non-residential leases in Arizona to provide that a transfer of the tenant’s ownership expressly constitutes an assignment of the lease.

If a lease contains express language requiring the landlord’s consent to any assignment, an assignment of the ownership of the tenant would constitute an assignment of the lease.

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?

The tenant, assignor or any subsequent assignor tenant is not released from future liability under a non-residential lease in the event of an assignment, absent a provision stating otherwise.

Landlords generally do not release a non-residential tenant from future liability in the event of an assignment.

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

17. Describe any restrictions on the landlord's ability to transfer the real property subject to the lease. Does this transfer affect the tenant's rights or obligations?

There are no statutory restrictions on the transfer of real property subject to a lease.

The landlord does not need to obtain the tenant's consent to transfer its property, unless there is an express requirement in the lease. The tenant's obligations, rights and remedies remain the same despite a transfer of the landlord's interest unless there is an express provision in the lease to the contrary.

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

AUTOMATIC TERMINATION OF A LEASE IN A FORECLOSURE ACTION

18. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?

In Arizona non-residential leases, the right of a lender to terminate a lease that is subordinated to the lender's lien is extensively negotiated between the landlord, its lender and the tenant. If the lease predates the loan, then it is negotiated between the tenant, landlord and lender at the time of subordination.

If the lease exists before the landlord's lender's lien, and is not by its terms automatically subordinated to any future landlord lender's lien, then the tenant's leasehold interest is not subordinate to the lender's lien and will not be terminated in a foreclosure of the landlord's interest in the property.

However, the lease may be terminated in a foreclosure if:

- The landlord's lender elects not to recognize the lease.
- The lender's lien exists before the lease.
- The lender's lien has priority over a pre-existing lease that is subordinated to the landlord lender's future lien (either automatically by its terms or by negotiation).

The lease may not be terminated if the landlord, tenant and lender have executed a subordination, non-disturbance and attornment agreement. In Arizona, by negotiation, the lender's termination rights are often limited to specific types of breaches by the tenant after providing generous opportunities for notice and cure of the breach.

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

REMEDIES

19. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

The responses in this State Q&A apply only to non-residential tenancies (see Question 1).

IMPLIED REMEDIES

Arizona law provides three types of landlord remedies in the event of a tenant's breach. The landlord may:

- Re-enter and take possession of the premise (self-help).
- Bring an action for recovery of possession (forcible entry and detainer action).
- Bring an action for termination of the lease, unpaid rent and damages.

(*Ariz. Rev. Statutes § 33-361 (2012).*)



SELF-HELP

Unless the lease provides a notice requirement, the landlord may re-enter a non-residential premise and take possession with formal demand or re-entry when either:

- A tenant neglects or refuses to pay rent when due and is in arrears for five days.
- There is any violation of the lease.

The only limitation to the “lock-out” is that it must not involve a breach of the peace (*Miller v. Condon*, 182 P.2d 105 (Ariz. 1947)).

The landlord has a lien against the tenant’s personal property located on the premises. The tenant’s personal property must be held for 60 days to give the tenant an opportunity to make payment of the rent due (*Ariz. Rev. Stat. § 33-361(D)* (2012)).

After the 60 days expires, the personal property may be sold at public auction in accordance with *Section 33-1023* of the Arizona Revised Statutes.

EVICTION PROCEEDING

Forcible entry and detainer is a statutory proceeding that provides summary, relatively speedy possession of the premises (*Andreola v. Ariz. Bank*, 550 P.2d 110 (Ariz. App. 1976)).

The only issue in the forcible entry and detainer proceeding is the right to present and obtain actual possession of the premises. As a result, in Arizona the forcible entry and detainer proceedings are not an appropriate forum for sophisticated lease disputes. Written notice and demand for rent must be made five days before a forcible entry and detainer action accrues (*Ariz. Rev. Stat. § 33-361(A)* (2012)).

EXPEDITED REMEDIES

A forcible entry and detainer action prosecuted under *Sections 12-1171 through 12-1183* of the Arizona Revised Statutes is an expedited remedy (see *Eviction Proceeding*). It can be completed as quickly as 30 days from the issuance of the written notice.

MITIGATION OF DAMAGES

In Arizona, the landlord is under no absolute duty to mitigate its damages. The landlord must only make a reasonable effort to re-rent the premises at a fair rental price (*Stewart Title & Trust of Tucson v. Pribbeno*, 628 P.2d 52 (Ariz. App. 1981)).

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