

REFERENCE TITLE: landlord tenant; forcible detainer actions

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## **HB 2361**

Introduced by  
Representatives Reagan, Meza

AN ACT

AMENDING SECTIONS 12-1173.01, 12-1175, 12-1176, 12-1177, 12-1178 AND 12-1179, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 8, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 12-1173.02 AND 12-1175.01; RELATING TO FORCIBLE ENTRY AND DETAINER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1173.01, Arizona Revised Statutes, is amended to  
3 read:

4 12-1173.01. Additional definition of forcible detainer

5 A. In addition to other persons enumerated in this article, a person  
6 in any of the following cases who retains possession of any land, tenements  
7 or other real property after ~~he receives~~ RECEIVING written demand of  
8 possession may be removed through an action for forcible detainer ~~THAT IS~~  
9 filed with the clerk of the superior court ~~in accordance with~~ OR A JUSTICE OF  
10 THE PEACE PURSUANT TO this article:

11 1. If the property has been sold through the foreclosure of a  
12 mortgage, deed of trust or contract for conveyance of real property pursuant  
13 to title 33, chapter 6, article 2.

14 2. If the property has been sold through a trustee's sale under a deed  
15 of trust pursuant to title 33, chapter 6.1.

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

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

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

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

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

27 D. A PERSON WHO IS SUBJECT TO REMOVAL PURSUANT TO SUBSECTION A IS A  
28 TENANT AT SUFFERANCE.

29 Sec. 2. Title 12, chapter 8, article 4, Arizona Revised Statutes, is  
30 amended by adding section 12-1173.02, to read:

31 12-1173.02. Rent; notice; disposition of personal property

32 A. A PERSON WHO WRONGFULLY RETAINS POSSESSION OF REAL PROPERTY OF  
33 ANOTHER IS LIABLE FOR RENT FOR THE USE AND OCCUPANCY OF THE PREMISES. THE  
34 RENT IS RECOVERABLE IN A FORCIBLE OR SPECIAL DETAINER ACTION. IF NO  
35 AGREEMENT EXISTS AS TO THE AMOUNT OF RENT, THE RENT SHALL BE THE FAIR RENTAL  
36 VALUE FOR THE USE AND OCCUPANCY OF THE PREMISES.

37 B. THE NOTICE PROVISIONS OF SECTION 33-1313 APPLY TO THIS SECTION.

38 C. THE LANDLORD MAY DISPOSE OF ANY PERSONAL PROPERTY THAT IS ON THE  
39 PREMISES OF A PERSON WHO IS SUBJECT TO THIS SECTION EXCEPT A MOBILE HOME OR  
40 RECREATIONAL VEHICLE USED AS A DWELLING PURSUANT TO SECTION 33-1368,  
41 SUBSECTIONS E AND F AND SECTION 33-170.

42 Sec. 3. Section 12-1175, Arizona Revised Statutes, is amended to read:

43 12-1175. Complaint and answer; service and return

44 A. When a party aggrieved files a complaint of forcible entry or  
45 forcible detainer, in writing and under oath, with the clerk of the superior

1 court or a justice of the peace, summons shall issue no later than the next  
2 judicial day.

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

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

9 C. SERVICE OF THE SUMMONS AND COMPLAINT IN A SPECIAL DETAINER ACTION  
10 SHALL BE MADE PURSUANT TO SECTIONS 33-1377 AND 33-1485.

11 D. SERVICE OF THE SUMMONS AND COMPLAINT IN A FORCIBLE DETAINER ACTION  
12 SHALL BE IN THE FOLLOWING MANNER:

13 1. THE SUMMONS SHALL COMMAND THE PERSON AGAINST WHOM THE COMPLAINT IS  
14 MADE TO APPEAR AND ANSWER THE COMPLAINT AT THE TIME AND PLACE NAMED, WHICH  
15 SHALL BE NOT MORE THAN SIX NOR LESS THAN THREE DAYS AFTER THE DATE OF THE  
16 SUMMONS.

17 2. THE SUMMONS AND COMPLAINT SHALL BE SERVED AT LEAST TWO DAYS BEFORE  
18 THE RETURN DAY AND THE RETURN MADE ON THE DAY AND TIME ASSIGNED FOR TRIAL.  
19 SERVICE OF PROCESS IN THIS MANNER SHALL BE DEEMED THE EQUIVALENT OF HAVING  
20 SERVED THE DEFENDANT IN PERSON FOR THE PURPOSE OF AWARDING A MONEY JUDGMENT  
21 FOR ALL RENT, DAMAGES, COSTS AND ATTORNEY FEES DUE.

22 3. THE DEFENDANT IS DEEMED TO HAVE RECEIVED THE SUMMONS AND COMPLAINT  
23 THREE DAYS AFTER IT IS MAILED IF PERSONAL SERVICE IS ATTEMPTED AND WITHIN ONE  
24 DAY OF ISSUANCE OF THE SUMMONS IF A COPY OF THE SUMMONS AND COMPLAINT IS  
25 CONSPICUOUSLY POSTED ON THE MAIN ENTRANCE TO THE STRUCTURE ON THE PREMISES  
26 AND ON THE SAME DAY A COPY OF THE SUMMONS AND COMPLAINT IS SENT BY CERTIFIED  
27 MAIL, RETURN RECEIPT REQUESTED, TO THE DEFENDANT'S LAST KNOWN ADDRESS. THERE  
28 IS NO DUTY TO POST IF THERE IS NO STRUCTURE ON THE PREMISES.

29 E. THE DEFENDANT SHALL APPEAR AND ANSWER THE COMPLAINT ON THE DAY AND  
30 TIME ASSIGNED FOR TRIAL EVEN IF THE DEFENDANT FILES AND SERVES ON THE  
31 PLAINTIFF A WRITTEN ANSWER BEFORE THE DAY AND TIME ASSIGNED FOR TRIAL.

32 F. IF A SPECIAL DETAINER OR FORCIBLE DETAINER ACTION IS BROUGHT  
33 FOLLOWING EXPIRATION OR TERMINATION OF A TENANCY PURSUANT TO TITLE 33,  
34 CHAPTER 10, 11 OR 19 FOR POSSESSION OF PROPERTY USED FOR RESIDENTIAL  
35 PURPOSES, THE FOLLOWING APPLY:

36 1. THE SUMMONS SHALL CONTAIN THE FOLLOWING INFORMATION:

37 (a) THE COURT'S NAME, STREET ADDRESS, CITY AND TELEPHONE NUMBER.

38 (b) THE DATE AND TIME SET FOR THE TRIAL OF THE MATTER.

39 (c) A NOTICE THAT STATES IF THE TENANT FAILS TO APPEAR, A DEFAULT  
40 JUDGMENT MAY BE ENTERED GRANTING THE RELIEF REQUESTED, INCLUDING EVICTION  
41 FROM THE PROPERTY.

42 2. THE COMPLAINT SHALL:

43 (a) BE BROUGHT IN THE NAME OF THE PARTY CLAIMING ENTITLEMENT TO  
44 POSSESSION OF THE PROPERTY.

1 (b) STATE WHETHER THE PROPERTY IS LOCATED IN THE JUDICIAL PRECINCT  
2 WHERE THE COMPLAINT IS FILED.

3 (c) INCLUDE A NOTICE PLACED IN BOLD, UNDERLINED PRINT AT THE TOP  
4 CENTER OF THE FIRST PAGE STATING: "YOUR LANDLORD IS SUING TO HAVE YOU  
5 EVICTED, PLEASE READ CAREFULLY".

6 (d) INCLUDE THE SPECIFIC REASON FOR THE EVICTION. A COPY OF THE  
7 NOTICE TERMINATING THE DEFENDANT'S RIGHT TO POSSESSION, IF ANY, SHALL BE  
8 ATTACHED AS AN EXHIBIT.

9 (e) IF THE ACTION INVOLVES A RESIDENTIAL PROPERTY OR MOBILE HOME SPACE  
10 AND THE TENANCY IS SUBJECT TO REINSTATEMENT PURSUANT TO STATUTE BEFORE  
11 JUDGMENT, STATE THAT THE DEFENDANT MAY CONTACT THE PLAINTIFF AND MAY  
12 REINSTATE THE TENANCY AND CAUSE THE ACTION TO BE DISMISSED.

13 (f) IF THE COMPLAINT SEEKS A JUDGMENT FOR REASONS OTHER THAN THE  
14 NONPAYMENT OF RENT, STATE THE REASON FOR TERMINATION OF THE TENANCY WITH  
15 SPECIFIC FACTS, INCLUDING THE DATE, PLACE AND CIRCUMSTANCES OF THE REASON FOR  
16 TERMINATION.

17 3. IF THE COMPLAINT SEEKS A MONEY JUDGMENT FOR RENT, LATE CHARGES OR  
18 OTHER DAMAGES PERMITTED BY LAW, IT SHALL INCLUDE THE FOLLOWING INFORMATION  
19 CALCULATED AS OF THE DATE OF THE COMPLAINT:

20 (a) THE FREQUENCY IN WHICH THE RENT IS TO BE PAID.

21 (b) THE PERIODIC RENTAL AMOUNT AND DUE DATE.

22 (c) THE ACCRUED LATE FEES.

23 (d) THE TOTAL AMOUNT OF ALL SUMS CLAIMED DUE.

24 (e) THE AMOUNT OF ANY RENT CONCESSION CLAIMED.

25 (f) THE AMOUNT OF ATTORNEY FEES CLAIMED IN THE EVENT OF A DEFAULT AND  
26 WHETHER THE FEES ARE PROVIDED FOR BY CONTRACT.

27 4. A COMPLAINT THAT IS NOT SERVED WITHIN THE TIME REQUIRED SHALL BE  
28 DISMISSED ON THE DAY ASSIGNED FOR TRIAL UNLESS THE DEFENDANT WAIVES SERVICE  
29 IN WRITING OR APPEARS AT THAT TIME. IF THE DEFENDANT APPEARS, THE APPEARANCE  
30 SHALL CONSTITUTE A WAIVER OF ANY OBJECTIONS TO THE FORM OR MANNER OF SERVICE  
31 UNLESS THE DEFENDANT ASSERTS THOSE GROUNDS. IF A DEFENDANT APPEARS AND  
32 CONTESTS THE FORM OR MANNER OF SERVICE, THE COURT SHALL CONDUCT AN INQUIRY AS  
33 TO WHETHER THE SERVICE AFFORDED THE DEFENDANT A REASONABLE OPPORTUNITY TO  
34 PRESENT A DEFENSE. IF THE COURT FINDS THE FORM OR MANNER OF SERVICE WAS  
35 INSUFFICIENT, IT SHALL GRANT ANY REQUEST BY THE DEFENDANT FOR A POSTPONEMENT  
36 OF THE TRIAL DATE FOR AT LEAST TWO BUSINESS DAYS.

37 5. IF THE DEFENDANT CONTESTS THE ALLEGATIONS IN THE COMPLAINT, THE  
38 DEFENDANT SHALL APPEAR ON THE DAY AND TIME ASSIGNED FOR TRIAL AND VERBALLY  
39 ANSWER THE COMPLAINT BY PLEADING NOT GUILTY OR NOT RESPONSIBLE OR THE  
40 DEFENDANT MAY FILE A WRITTEN ANSWER AND SERVE IT ON THE PLAINTIFF ON OR  
41 BEFORE THE DAY ASSIGNED FOR TRIAL, IN WHICH CASE THE DEFENDANT SHALL APPEAR  
42 ON THE DAY AND TIME ASSIGNED FOR TRIAL. THE ANSWER SHALL INCLUDE THE REASONS  
43 THE COMPLAINT IS CONTESTED. THE DEFENDANT SHALL PAY OR APPLY FOR A WAIVER OF  
44 THE COURT ANSWER FEE AT THAT TIME.

1           Sec. 4. Title 12, chapter 8, article 4, Arizona Revised Statutes, is  
2 amended by adding section 12-1175.01, to read:

3           12-1175.01. Counterclaims; cross-claims; consolidation

4           A. THE DEFENDANT MAY FILE A COUNTERCLAIM PURSUANT TO SECTION 33-1365  
5 IN A SPECIAL DETAINER ACTION BROUGHT PURSUANT TO SECTION 33-1377 FOR  
6 NONPAYMENT OF RENT WHERE THE DEFENDANT CLAIMS A LEGAL RIGHT TO WITHHOLD RENT.  
7 THE COURT SHALL ORDER THE PAYMENT OF THE RENT TO THE COURT BY ACCEPTABLE FORM  
8 OF PAYMENT. IF RENT IS NOT DEPOSITED AS ORDERED THE COUNTERCLAIM SHALL BE  
9 DISMISSED WITHOUT PREJUDICE. ANY RENT THAT IS DEPOSITED WITH THE COURT SHALL  
10 BE DISTRIBUTED IN ACCORDANCE WITH THE JUDGMENT OF THE COURT.

11           B. UNLESS SPECIFICALLY PROVIDED FOR BY STATUTE, A COUNTERCLAIM MAY NOT  
12 BE FILED IN A SPECIAL DETAINER ACTION. A COUNTERCLAIM MAY NOT BE FILED IN A  
13 FORCIBLE DETAINER ACTION. A COUNTERCLAIM THAT IS FILED WITHOUT A STATUTORY  
14 BASIS SHALL BE STRICKEN AND DISMISSED WITHOUT PREJUDICE. ALL COUNTERCLAIMS  
15 SHALL BE FILED IN WRITING AND SERVED ON THE OPPOSING PARTY IN TIME TO ALLOW  
16 THE PARTY TO PREPARE A DEFENSE BEFORE TRIAL.

17           C. A COUNTERCLAIM SHALL NOT DEFEAT THE JURISDICTION OF A JUSTICE COURT  
18 IN A SPECIAL DETAINER ACTION AND AN ACTION SHALL NOT BE TRANSFERRED TO THE  
19 SUPERIOR COURT SOLELY BECAUSE A COUNTERCLAIM WAS FILED UNLESS IT IS  
20 SPECIFICALLY PERMITTED BY STATUTE AND IS NOT WITHIN THE STATUTORY  
21 JURISDICTION OF THE JUSTICE COURT. THE JUSTICE COURT SHALL REVIEW THE CLAIM  
22 TO DETERMINE WHETHER THERE IS A LEGITIMATE STATUTORY BASIS AND WHETHER THE  
23 REQUEST FOR RELIEF IS WITHIN OR EXCEEDS THE JURISDICTION OF THE JUSTICE  
24 COURT. IF A COUNTERCLAIM HAS A LEGITIMATE STATUTORY BASIS AND THE REQUEST  
25 FOR RELIEF IS NOT WITHIN THE JURISDICTION OF THE JUSTICE COURT, THE COURT  
26 SHALL TRANSFER THE MATTER TO THE SUPERIOR COURT. THE COURT MAY PERMIT THE  
27 DEFENDANT TO AMEND A COUNTERCLAIM THAT INCLUDES ONE OR MORE CLAIMS THAT ARE  
28 DEFECTIVE OR IMPERMISSIBLE.

29           D. A FORCIBLE OR SPECIAL DETAINER ACTION MAY BE CONSOLIDATED ONLY WITH  
30 ONE OR MORE FORCIBLE OR SPECIAL DETAINER ACTIONS AND SHALL NOT BE  
31 CONSOLIDATED WITH ANY OTHER TYPE OF ACTION.

32           E. A CROSS-CLAIM OR THIRD PARTY COMPLAINT MAY NOT BE FILED IN A  
33 FORCIBLE OR SPECIAL DETAINER ACTION.

34           Sec. 5. Section 12-1176, Arizona Revised Statutes, is amended to read:

35           12-1176. Demand for jury; trial procedure

36           A. The clerk or justice of the peace shall at the time of issuing the  
37 summons, if requested by the plaintiff, issue a venire to the sheriff or  
38 constable of the county commanding him to summon a jury of eight persons, if  
39 the proceeding is in the superior court, and six persons, if **THE PROCEEDING**  
40 **IS** in the justice court, **WHO ARE** qualified jurors of the county, to appear on  
41 the day set for trial to serve as jurors in the action. The venire shall be  
42 served and returned on the day assigned for trial. The trial date shall be  
43 no more than five judicial days after the aggrieved party files the  
44 complaint.

1 B. If the plaintiff does not request a jury, the defendant may do so  
2 when he appears, and the jury shall be summoned in the manner set forth in  
3 subsection A.

4 C. A CONTESTED MATTER SHALL BE TRIED BY THE COURT UNLESS A JURY TRIAL  
5 IS DEMANDED BY THE PLAINTIFF IN THE COMPLAINT OR BY THE DEFENDANT AT OR  
6 BEFORE THE INITIAL APPEARANCE. A PARTY'S FAILURE TO REQUEST A JURY TRIAL AT  
7 OR BEFORE THE INITIAL APPEARANCE IS A WAIVER OF THAT PARTY'S RIGHT TO A JURY  
8 TRIAL. AT THE INITIAL APPEARANCE, IF A JURY TRIAL IS DEMANDED, THE COURT  
9 SHALL INQUIRE AND DETERMINE IF A FACTUAL ISSUE EXISTS. IF A FACTUAL ISSUE  
10 DOES NOT EXIST THE MATTER SHALL PROCEED TO A TRIAL BY THE COURT ON ANY LEGAL  
11 ISSUE OR MAY BE DISPOSED OF BY MOTION OR PURSUANT TO COURT RULES.

12 D. IF A JURY TRIAL IS DEMANDED AND THE COURT FINDS THAT THE PARTY  
13 MAKING THE DEMAND HAS PREVIOUSLY WAIVED THE RIGHT TO A JURY TRIAL IN A COURT  
14 PLEADING OR BY CONTRACT, THE JURY TRIAL DEMAND SHALL BE DENIED AND THE MATTER  
15 SHALL PROCEED TO A TRIAL BY THE COURT.

16 ~~E.~~ E. If any jurors fail to attend, or are excused after being  
17 challenged, the jury shall be completed by causing other qualified jurors to  
18 be summoned immediately.

19 ~~D.~~ F. The action shall be docketed and tried as other civil actions.

20 Sec. 6. Section 12-1177, Arizona Revised Statutes, is amended to read:  
21 12-1177. Trial and issue; postponement of trial

22 A. On the trial of an action of forcible entry, SPECIAL DETAINER or  
23 forcible detainer, the only issue shall be the right of actual possession and  
24 the merits of title shall not be inquired into. IF A PERMISSIBLE  
25 COUNTERCLAIM HAS BEEN FILED, THE COURT SHALL DECIDE THE COUNTERCLAIM BY  
26 DETERMINING THE AMOUNT OF DAMAGES IF THE COURT FINDS IN FAVOR OF THE  
27 DEFENDANT OR BY DISMISSING THE COUNTERCLAIM IF THE COURT FINDS IN FAVOR OF  
28 THE PLAINTIFF.

29 B. If a jury is demanded PURSUANT TO SECTION 12-1176, ~~IT~~ THE JURY  
30 shall return a verdict of guilty or not guilty of the charge as stated in the  
31 complaint AND SHALL DECIDE ANY PERMISSIBLE COUNTERCLAIM. If a jury is not  
32 demanded OR HAS BEEN WAIVED, the action shall be tried by the court.

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

36 D. IN ANY SPECIAL DETAINER OR FORCIBLE DETAINER ACTION THAT IS BROUGHT  
37 FOLLOWING EXPIRATION OR TERMINATION OF A TENANCY UNDER TITLE 33, CHAPTER 10,  
38 11 OR 19 FOR POSSESSION OF A PROPERTY USED FOR RESIDENTIAL PURPOSES, THE  
39 COURT SHALL:

40 1. ANNOUNCE THE NAMES OF THE PARTIES AT THE TIME ASSIGNED FOR TRIAL  
41 AND SHALL:

42 (a) IDENTIFY ANY ATTORNEYS OR REPRESENTATIVES WHO ARE PRESENT AND  
43 ASCERTAIN THAT THEY ARE PROPERLY AUTHORIZED TO REPRESENT THE PARTIES TO THE  
44 ACTION.

1 (b) STATE OR SUMMARIZE THE MATERIAL ALLEGATIONS THAT ARE CONTAINED IN  
2 THE COMPLAINT AND ASK WHETHER THE DEFENDANT CONTESTS THE ALLEGATIONS.

3 2. DETERMINE IF THE DEFENDANT'S POSITION PROVIDES EITHER A FACTUAL OR  
4 LEGAL BASIS FOR A DEFENSE TO THE COMPLAINT AND, IF SO, SHALL ORDER A TRIAL ON  
5 THE MERITS.

6 3. DETERMINE WHETHER SERVICE OF THE SUMMONS AND COMPLAINT WAS PROPER.

7 4. DETERMINE WHETHER THE DEFENDANT RECEIVED A PROPER TERMINATION  
8 NOTICE IF REQUIRED BY LAW AND WAS AFFORDED ANY APPLICABLE OPPORTUNITY TO  
9 CURE.

10 5. DETERMINE WHETHER THE FACTS AS ALLEGED, IF PROVEN, WOULD BE  
11 SUFFICIENT TO DETERMINE THAT THE PLAINTIFF HAS A RIGHT TO POSSESSION.

12 6. DETERMINE IF THE LANDLORD HAS ACCEPTED A PARTIAL PAYMENT IN A CASE  
13 CLAIMING NONPAYMENT OF RENT PURSUANT TO TITLE 33, CHAPTER 10 AND CAN PRODUCE  
14 A PARTIAL PAYMENT AGREEMENT AND WAIVER SIGNED BY THE DEFENDANT. IF THE  
15 PLAINTIFF HAS ACCEPTED A PARTIAL PAYMENT AND IS UNABLE TO PROVE THAT THE  
16 WAIVER WAS SIGNED, THE COURT SHALL DISMISS THE ACTION.

17 7. DETERMINE WHETHER THE PARTY WHO IS ENTITLED TO POSSESSION IS ALSO  
18 ENTITLED TO RENT OR OTHER DAMAGES BY CONFIRMING SUCH AMOUNTS ARE NOT  
19 PROHIBITED BY STATUTE AND ARE PROVIDED FOR BY THE PARTIES' RENTAL AGREEMENT.

20 8. DETERMINE WHEN A WRIT OF RESTITUTION SHALL BE ISSUED IF THE  
21 JUDGMENT IS FOR THE PLAINTIFF OR, IF THE DEFENDANT IS FOUND NOT GUILTY, ENTER  
22 A JUDGMENT IN FAVOR OF THE DEFENDANT.

23 E. THE PLAINTIFF SHALL NOT BE PERMITTED TO ASSERT A CLAIM UNLESS IT IS  
24 CONTAINED IN THE COMPLAINT. THIS SUBSECTION SHALL NOT BE CONSTRUED TO  
25 RESTRICT DAMAGES THAT ARE AUTHORIZED BY STATUTE AND THAT ACCRUE AFTER THE  
26 FILING OF THE COMPLAINT.

27 F. IF A DEFENDANT WHO HAS WITHHELD RENT REQUESTS A POSTPONEMENT THE  
28 COURT MAY CONDITION THE GRANTING OF THE MOTION ON THE DEFENDANT DEPOSITING  
29 WITH THE COURT THE AMOUNT OF RENT WITHHELD. THE REQUEST FOR THE POSTPONEMENT  
30 SHALL BE DENIED IF RENT IS NOT DEPOSITED UNLESS THE PLAINTIFF CONSENTS OR THE  
31 COURT IS UNABLE TO CONDUCT THE TRIAL AT THAT TIME. RENT THAT IS DEPOSITED  
32 PURSUANT TO THIS SUBSECTION SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE  
33 JUDGMENT OF THE COURT.

34 Sec. 7. Section 12-1178, Arizona Revised Statutes, is amended to read:

35 12-1178. Judgment; writ of restitution; limitation on issuance

36 A. If the defendant is found guilty, the court shall give judgment for  
37 the plaintiff for restitution of the premises, for all charges stated in the  
38 rental agreement and for damages, attorney fees, court and other costs and,  
39 at the plaintiff's option, ~~for~~ all rent found to be due and unpaid through  
40 the periodic rental period, as described in section 33-1314, subsection C, as  
41 provided for in the rental agreement, and shall grant a writ of  
42 restitution. ~~If the defendant's social security number is contained on the~~  
43 ~~complaint at the time of judgment, the person designated by the judge to~~  
44 ~~prepare the judgment shall ensure that the defendant's social security number~~  
45 ~~is contained on the judgment.~~ AFTER THE WRIT OF RESTITUTION HAS BEEN

1 ENFORCED, A DEFENDANT OR A PERSON IN PRIVITY WITH A DEFENDANT WHO REMAINS ON  
2 OR RETURNS TO THE PROPERTY WITHOUT THE EXPRESS PERMISSION OF THE OWNER OF THE  
3 PROPERTY OR THE PERSON WITH LAWFUL CONTROL OF THE PROPERTY COMMITS CRIMINAL  
4 TRESPASS IN THE THIRD DEGREE PURSUANT TO SECTION 13-1502.

5 B. If the defendant is found not guilty, judgment shall be given for  
6 the defendant against the plaintiff for damages, attorney fees, ~~AND~~ court  
7 and other costs, and if it appears that the plaintiff has acquired possession  
8 of the premises since commencement of the action, IF REQUESTED, a writ of  
9 restitution shall issue in favor of the defendant UNLESS POSSESSION HAS  
10 THEREAFTER BEEN TRANSFERRED TO A NONPARTY TO THE ACTION. IF JUDGMENT IS  
11 GIVEN FOR A DEFENDANT ON A COUNTERCLAIM, THE JUDGMENT SHALL INCLUDE DAMAGES  
12 IN AN AMOUNT DETERMINED BY THE COURT.

13 C. EXCEPT AS PROVIDED IN SECTION 33-1368, SUBSECTION A, PARAGRAPH 2,  
14 SECTION 33-1476, SUBSECTION D, PARAGRAPH 3 AND SECTION 33-2143, SUBSECTION D,  
15 PARAGRAPH 3, no writ of restitution shall issue until the expiration of five  
16 calendar days after the rendition of judgment. THE COURT MAY ORDER THAT A  
17 WRIT OF RESTITUTION ISSUE AT ANY TIME AFTER TWENTY-FOUR HOURS IF THE COURT  
18 MAKES AN EXPRESS FINDING THAT CONTINUED OCCUPANCY WILL LIKELY PRESENT A  
19 DANGER TO PERSONS OR PROPERTY. The writ of restitution shall be enforced as  
20 promptly and expeditiously as possible. The issuance or enforcement of a  
21 writ of restitution shall not be suspended, delayed, ~~or~~ otherwise affected  
22 by the filing of a motion to set aside or vacate the judgment or similar  
23 motion unless a judge finds good cause.

24 D. IN ANY SPECIAL DETAINER OR FORCIBLE DETAINER ACTION THAT IS BROUGHT  
25 FOLLOWING EXPIRATION OR TERMINATION OF A TENANCY PURSUANT TO TITLE 33,  
26 CHAPTER 10, 11 OR 19 FOR POSSESSION OF A PROPERTY USED FOR RESIDENTIAL  
27 PURPOSES, THE FOLLOWING APPLY:

28 1. IF THE DEFENDANT FAILS TO APPEAR AND A POSTPONEMENT IS NOT GRANTED,  
29 THE COURT SHALL ENTER A DEFAULT JUDGMENT AGAINST THE DEFENDANT PROVIDED THE  
30 COURT FIRST DETERMINES THAT:

31 (a) THE SUMMONS AND COMPLAINT WERE TIMELY AND PROPERLY SERVED.

32 (b) THE SUMMONS AND COMPLAINT SUBSTANTIALLY SATISFY THE REQUIREMENTS  
33 OF SECTION 12-1175, SUBSECTION F.

34 (c) THE PLAINTIFF HAS PROVIDED THE COURT WITH A COPY OF ANY WRITTEN  
35 NOTICE THAT IS REQUIRED BY STATUTE AND THAT WAS SERVED ON THE DEFENDANT.

36 (d) IN AN ACTION FOR NONPAYMENT OF RENT, THE PLAINTIFF PROVIDED PROOF  
37 TO THE COURT OF A FACTUAL AND LEGAL BASIS FOR THE AWARD OF RENT AND ANY  
38 REASONABLE LATE FEES, ATTORNEY FEES OR OTHER REQUESTED DAMAGES. IF A WRITTEN  
39 RENTAL AGREEMENT EXISTS THE PLAINTIFF SHALL HAVE A COPY OF THE WRITTEN RENTAL  
40 AGREEMENT AVAILABLE FOR THE COURT TO REVIEW AT THE INITIAL APPEARANCE OR  
41 SUBSEQUENT HEARING AT WHICH THE DEFAULT JUDGMENT IS RENDERED.

42 (e) THE AMOUNTS AWARDED IN THE JUDGMENT ARE CONSISTENT WITH THE  
43 AMOUNTS SOUGHT IN THE COMPLAINT EXCEPT FOR ANY ADDITIONAL RENT, LATE CHARGES,  
44 FEES OR OTHER AMOUNTS THAT HAVE ACCRUED SINCE THE FILING OF THE COMPLAINT.

1           2. IF THE DEFENDANT APPEARS FOR TRIAL AND ADMITS THE ALLEGATIONS THE  
2 COURT SHALL ENTER JUDGMENT IN FAVOR OF THE PLAINTIFF.

3           3. THE COURT MAY ACCEPT A STIPULATED JUDGMENT SIGNED BY THE DEFENDANT  
4 WITHOUT REQUIRING THAT THE DEFENDANT PHYSICALLY APPEAR BEFORE THE COURT IF  
5 THE JUDGMENT FORM THE DEFENDANT STIPULATED TO CONTAINS SUBSTANTIALLY THE  
6 FOLLOWING WARNING:

7                   READ CAREFULLY. BY SIGNING BELOW YOU ARE CONSENTING  
8                   TO THE TERMS OF A JUDGMENT AGAINST YOU. YOU MAY BE  
9                   EVICTED AS A RESULT OF THIS JUDGMENT, THE JUDGMENT  
10                  MAY APPEAR ON YOUR CREDIT REPORT AND YOU MAY NOT  
11                  STAY AT THE RENTAL PROPERTY EVEN IF THE AMOUNT OF  
12                  THE JUDGMENT IS PAID IN FULL WITHOUT YOUR LANDLORD'S  
13                  EXPRESS CONSENT.

14           4. IF THE DEFENDANT APPEARS FOR TRIAL IN A CONTESTED MATTER AND  
15 CONTESTS THE ALLEGATIONS, THE FOLLOWING APPLY:

16           (a) THE COURT SHALL DETERMINE IF THERE IS A FACTUAL OR LEGAL BASIS FOR  
17 A DEFENSE TO THE COMPLAINT. IF THE COURT DETERMINES THAT EITHER A VALID  
18 DEFENSE OR PROPER COUNTERCLAIM EXISTS, THE COURT SHALL ORDER A TRIAL ON THE  
19 MERITS. IF THE TRIAL IS POSTPONED, THE COURT MAY REQUIRE THE DEFENDANT TO  
20 FILE A WRITTEN ANSWER. IF THE COURT ORDERS THE DEFENDANT TO FILE A WRITTEN  
21 ANSWER, THE COURT SHALL ADVISE THE DEFENDANT OF THE REQUIREMENT OF AN ANSWER  
22 FEE AND THE DEFENDANT'S RIGHT TO APPLY FOR A WAIVER OF THE FEE.

23           (b) THE DEFENDANT IS NOT REQUIRED TO ANSWER UNTIL THE DAY ASSIGNED FOR  
24 TRIAL. AT THE TIME OF TRIAL, THE DEFENDANT MAY FILE AN ORAL ANSWER ON THE  
25 RECORD. THE COURT SHALL NOT REQUIRE AN ANSWER FEE FOR AN ORAL ANSWER.

26           (c) AT THE CONCLUSION OF THE TRIAL, IF THE COURT TAKES THE MATTER  
27 UNDER ADVISEMENT IT SHALL ISSUE A DECISION BY THE END OF THE NEXT BUSINESS  
28 DAY. THE DECISION SHALL STATE THAT THE DEFENDANT IS GUILTY OR NOT GUILTY.  
29 IF THE DEFENDANT IS FOUND GUILTY, THE COURT SHALL ENTER JUDGMENT FOR THE  
30 PLAINTIFF AND AWARD RENTS, LATE FEES, COURT COSTS, ATTORNEY FEES AND OTHER  
31 DAMAGES, AS APPROPRIATE, BASED ON THE EVIDENCE PRESENTED AND IF PERMITTED BY  
32 STATUTE, AND SHALL DISPOSE OF ANY RENTS OR OTHER MONIES DEPOSITED WITH THE  
33 COURT. IF THE DEFENDANT IS FOUND NOT GUILTY THE COURT SHALL ENTER JUDGMENT  
34 FOR THE DEFENDANT DISMISSING THE ACTION AND AWARDING COSTS AND, IF  
35 APPROPRIATE, ATTORNEY FEES. IF THE COURT FINDS FOR THE DEFENDANT ON A  
36 COUNTERCLAIM IT SHALL AWARD DAMAGES, AS APPROPRIATE.

37           5. THE COURT SHALL GRANT THE FOLLOWING RELIEF ON THE ENTRY OF A  
38 JUDGMENT:

39           (a) EXCEPT AS PROVIDED BY SUBDIVISION (b) OF THIS PARAGRAPH, IF THE  
40 JUDGMENT IS FOR THE PLAINTIFF, THE COURT SHALL AWARD POSSESSION OF THE  
41 PREMISES TO THE PLAINTIFF. A WRIT OF RESTITUTION SHALL NOT BE ISSUED UNTIL  
42 THE EXPIRATION OF FIVE CALENDAR DAYS AFTER RENDITION OF THE JUDGMENT.

43           (b) IF AN IMMEDIATE TERMINATION HAS BEEN REQUESTED AND ORDERED DUE TO  
44 A BREACH THAT IS BOTH MATERIAL AND IRREPARABLE PURSUANT TO SECTION 33-1368  
45 OR SECTION 33-1485, THE JUDGMENT SHALL PROVIDE FOR THE WRIT OF RESTITUTION TO

1 ISSUE BETWEEN TWELVE AND TWENTY-FOUR HOURS AFTER THE ENTRY OF JUDGMENT OR  
2 LONGER IF THE PLAINTIFF REQUESTS.

3 (c) IF THE JUDGMENT IS FOR THE DEFENDANT AND THE PLAINTIFF HAS  
4 POSSESSION OF THE PREMISES, THE DEFENDANT MAY REQUEST POSSESSION OF THE  
5 PREMISES WITH A WRIT OF RESTITUTION TO ISSUE AFTER FIVE CALENDAR DAYS UNLESS  
6 POSSESSION HAS BEEN OBTAINED BY A NONPARTY TO THE ACTION.

7 (d) A WRIT OF RESTITUTION DATE SHALL NOT BE DELAYED OR EXTENDED BEYOND  
8 THE DATE ORDERED UNLESS THE PARTIES STIPULATE OTHERWISE.

9 (e) IN ADDITION TO DETERMINING THE RIGHT TO POSSESSION, THE COURT MAY  
10 ASSESS DAMAGES AS FOLLOWS:

11 (i) THE COURT SHALL AWARD RENT TO A PREVAILING PLAINTIFF TOGETHER WITH  
12 ANY ADDITIONAL PERIODIC RENT THAT HAS ACCRUED SINCE THE COMPLAINT WAS FILED,  
13 IF REQUESTED IN THE COMPLAINT. IN THE CASE OF AN UNEXPIRED LEASE, RENT  
14 THROUGH THE BALANCE OF THE LEASE TERM SHALL NOT BE AWARDED BUT MAY BE SOUGHT  
15 IN A SEPARATE CIVIL ACTION.

16 (ii) IF THE LANDLORD CHARGED UTILITIES TO THE DEFENDANT UNDER A RENTAL  
17 AGREEMENT, THE COURT SHALL AWARD ANY UNPAID AMOUNT TO A PREVAILING PLAINTIFF.

18 (iii) IF A WRITTEN RENTAL AGREEMENT PROVIDES FOR PERIODIC LATE CHARGES  
19 IN THE EVENT OF A RENT DEFAULT, THE COURT SHALL AWARD THE PREVAILING  
20 PLAINTIFF REASONABLE LATE CHARGES. IN AN ACTION INVOLVING A MOBILE HOME PARK  
21 OR A RECREATIONAL VEHICLE PARK, THE COURT SHALL LIMIT THE AWARD OF PERIODIC  
22 LATE CHARGES TO THE STATUTORY AMOUNT AND THE COURT SHALL NOT REDUCE A LATE  
23 CHARGE CALCULATED IN ACCORD WITH THAT LIMITATION UNLESS THE PLAINTIFF FAILS  
24 TO ESTABLISH THE EXISTENCE OF A WRITTEN AGREEMENT REGARDING THE LATE CHARGES.

25 (iv) THE COURT MAY AWARD TO THE PREVAILING PLAINTIFF ANY FEES THAT ARE  
26 SPECIFIED IN A WRITTEN RENTAL AGREEMENT AND THAT ARE COLLECTED PERIODICALLY  
27 TOGETHER WITH OTHER RENTAL CHARGES.

28 (v) IF THE PLAINTIFF PREVAILS, THE COURT MAY AWARD DAMAGES FOR BREACH  
29 OF THE RENTAL AGREEMENT, INCLUDING PROPERTY DAMAGES, IF THE DAMAGES WERE  
30 PROPERLY PLED IN THE COMPLAINT AND RESULTED FROM THE BREACH GIVING RISE TO  
31 THE EVICTION. IF A CLAIM FOR OTHER DAMAGES IS SUBSTANTIAL AND DISPUTED AND A  
32 FAIR TRIAL OF THE CLAIMS WOULD LIKELY DELAY A PROMPT DETERMINATION OF THE  
33 ACTION, THE COURT MAY SEVER THOSE CLAIMS AND DISMISS THEM WITHOUT PREJUDICE,  
34 AND PERMIT THE PLAINTIFF TO REASSERT THE CLAIMS IN A SEPARATE CIVIL  
35 PROCEEDING.

36 (vi) IF A DEFENDANT PREVAILS ON A COUNTERCLAIM, THE COURT SHALL AWARD  
37 DAMAGES AND SHALL DETERMINE THE PREVAILING PARTY FOR PURPOSES OF AWARDED  
38 COSTS AND REASONABLE ATTORNEY FEES.

39 (vii) THE COURT SHALL AWARD COURT COSTS PURSUANT TO SECTION 12-341.

40 6. IF THE COURT FINDS THAT A RENTAL AGREEMENT OR LEASE PROVIDES A RENT  
41 CONCESSION THAT IN THE EVENT OF A DEFAULT BECOMES DUE AND PAYABLE, THE COURT  
42 SHALL INCLUDE THE AMOUNT OF THE CONCESSION AS ADDITIONAL DAMAGES IN THE  
43 JUDGMENT TO A PREVAILING PLAINTIFF, IF PLED IN THE COMPLAINT, UNLESS THE  
44 COURT FINDS GOOD CAUSE NOT TO AWARD THEM.

1           7. THE COURT SHALL AWARD REASONABLE ATTORNEY FEES TO THE PREVAILING  
2 PARTY IF THE COURT DETERMINES THAT THE FEES ARE PROVIDED FOR BY STATUTE OR IN  
3 A WRITTEN CONTRACT. THE AWARD MAY NOT EXCEED THE AMOUNT THE CLIENT HAS PAID  
4 OR AGREED TO PAY.

5           E. THE COURT SHALL PROMPTLY ISSUE A WRIT OF RESTITUTION ON TIMELY  
6 APPLICATION. A JUDGE, A JUSTICE OF THE PEACE OR THE CLERK OF THE SUPERIOR  
7 COURT MAY ISSUE THE WRIT OF RESTITUTION IF IT APPEARS THAT A JUDGMENT  
8 GRANTING POSSESSION HAS BEEN ENTERED IN FAVOR OF THE PARTY FILING THE WRIT  
9 AND THE ACTION HAS NOT BEEN STAYED SUBJECT TO THE FOLLOWING CONDITIONS:

10           1. NEITHER THE ISSUANCE NOR THE ENFORCEMENT OF A WRIT OF RESTITUTION  
11 WILL BE SUSPENDED, DELAYED OR OTHERWISE AFFECTED BY THE FILING OF A MOTION TO  
12 SET ASIDE OR VACATE THE JUDGMENT OR SIMILAR MOTION UNLESS THE COURT FINDS  
13 GOOD CAUSE.

14           2. THE WRIT OF RESTITUTION SHALL BE ENFORCED AS PROMPTLY AND  
15 EXPEDITIOUSLY AS POSSIBLE. THE CONSTABLE OR SHERIFF EXECUTING THE WRIT SHALL  
16 NOT DELAY EXECUTION OF THE WRIT UNLESS THE COURT ORDERS A DELAY OR SUSPENSION  
17 OF ENFORCEMENT OF THE WRIT PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION OR THE  
18 PARTY ATTEMPTING TO ENFORCE THE WRIT AGREES TO OR REQUESTS A DELAY IN  
19 WRITING.

20           3. A PARTY WHO OBTAINS A JUDGMENT FOR POSSESSION HAS UP TO FORTY-FIVE  
21 DAYS TO APPLY FOR A WRIT OF RESTITUTION.

22           4. IF A PARTY APPLIES FOR A WRIT OF RESTITUTION MORE THAN FORTY-FIVE  
23 DAYS AFTER THE DATE OF JUDGMENT, THE PARTY SHALL EXPLAIN THE REASONS FOR THE  
24 DELAY IN MAKING THE APPLICATION AND SHALL CERTIFY THAT THE TENANCY HAS NOT  
25 BEEN REINSTATED SINCE THE DATE OF THE JUDGMENT. IF IT IS CLEAR THAT THE  
26 TENANCY HAS NOT BEEN REINSTATED, THE COURT SHALL ISSUE THE WRIT. IF IT  
27 APPEARS THAT THE TENANCY HAS BEEN REINSTATED THE COURT BEFORE GRANTING THE  
28 APPLICATION SHALL SCHEDULE A HEARING NOT MORE THAN THREE BUSINESS DAYS AFTER  
29 THE APPLICATION. THE COURT SHALL ATTEMPT TO CONTACT THE PARTY IN POSSESSION  
30 BY TELEPHONE TO PROVIDE NOTICE OF THE HEARING AND THE APPLICANT FOR THE WRIT  
31 SHALL NOTIFY THE PARTY IN POSSESSION OF THE DATE, TIME, PLACE AND PURPOSE OF  
32 THE HEARING EITHER PERSONALLY OR BY POSTING THE NOTICE ON THE MAIN ENTRANCE  
33 TO THE PREMISES.

34           5. AFTER A WRIT OF RESTITUTION HAS BEEN ISSUED, A PARTY MAY FILE A  
35 MOTION TO QUASH THE WRIT. IF THE COURT ON REVIEWING THE MOTION FINDS GOOD  
36 CAUSE TO BELIEVE THAT THE WRIT WAS IMPROPERLY APPLIED FOR OR ISSUED, THE  
37 COURT MAY STAY ENFORCEMENT AND SCHEDULE A HEARING ON THE MOTION. THE HEARING  
38 SHALL BE CONDUCTED WITHIN THREE BUSINESS DAYS AFTER THE FILING OF THE MOTION.

39           Sec. 8. Section 12-1179, Arizona Revised Statutes, is amended to read:  
40           12-1179. Appeal to superior court; notice; bond

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

1 by the filing of a motion to set aside or vacate the judgment or similar  
2 motion.

3 B. A party seeking to appeal a judgment shall file with the notice of  
4 appeal a bond **IN THE AMOUNT OF THREE HUNDRED DOLLARS** for costs on appeal.  
5 ~~The justice of the peace shall set the bond in an amount sufficient to cover~~  
6 ~~the costs on appeal.~~ The bond shall be payable to the clerk of the justice  
7 court. If a party is unable to file a bond for costs on appeal, the party  
8 shall file with the justice court a notice of appeal along with an affidavit  
9 stating that the party is unable to give bond for costs on appeal and the  
10 reasons therefor. Within five court days after the filing of the affidavit,  
11 any other party may file, in the justice court, objections to the  
12 affidavit. The justice of the peace shall hold a hearing on the affidavit  
13 and objections within five court days thereafter. If the justice court  
14 sustains the objections, the appellant shall file, within five court days  
15 thereafter, a bond for costs on appeal as provided for in this section or in  
16 ~~such~~ A lesser amount as ordered by the justice court.

17 C. A party seeking to appeal a judgment may stay the execution of  
18 ~~either the judgment for possession or any~~ **THE** judgment for money damages by  
19 filing a supersedeas bond **IN THE AMOUNT OF THE MONETARY PORTION OF THE**  
20 **JUDGMENT**. ~~The justice court shall hold a hearing on the motion within five~~  
21 ~~court days after the parties advise the justice court of their failure to~~  
22 ~~stipulate on the amount of the bond.~~ The stay is effective when the  
23 supersedeas bond or bonds are filed.

24 D. The party seeking to stay the execution of the judgment for  
25 possession shall file a supersedeas bond in the amount **SPECIFIED IN**  
26 **SUBSECTION C OF THIS SECTION AND IN ADDITION SHALL DEPOSIT** of rent accruing  
27 from the date of the judgment ~~until the next periodic rental date, together~~  
28 ~~with costs and attorney fees, if any.~~ The tenant shall pay to the clerk of  
29 the justice court, on or before each periodic rental due date during the  
30 pendency of the appeal, the amount of rent, **UTILITIES AND OTHER RELATED**  
31 **CHARGES** due under the terms of the lease or rental agreement. Such amounts  
32 shall be made payable by the justice court to the owner, landlord or agent as  
33 they accrue to satisfy the amount of periodic rent due under the lease or  
34 rental agreement. In all cases where the rent due under the terms of the  
35 lease or rental agreement is paid through the justice court as set forth in  
36 this subsection, the order of the court may include a one-time handling fee  
37 in the amount of ten dollars to be paid by the party seeking to stay the  
38 execution of the judgment for possession. ~~In no event shall the amounts paid~~  
39 ~~per month exceed the amount of monthly rent charged by the owner for the~~  
40 ~~premises.~~ If the tenant **IN A SPECIAL DETAINER ACTION** raises habitability as  
41 provided for in sections 33-1324 and 33-1364 as an affirmative defense to the  
42 nonpayment of rent or the tenant has filed a counterclaim asserting a  
43 habitability issue, the justice court shall retain all money paid under this  
44 subsection pending a final judgment.

1 E. If during the pendency of the appeal the party seeking to stay the  
2 execution of the judgment for possession fails to pay the rent AND OTHER  
3 CHARGES on OR BEFORE the periodic rental due date, the party in whose favor a  
4 judgment for possession was issued MAY APPLY FOR A WRIT OF RESTITUTION. THE  
5 APPLICATION FOR WRIT OF RESTITUTION SHALL CERTIFY THAT RENT AND OTHER CHARGES  
6 HAVE NOT BEEN ACCEPTED BY THE PLAINTIFF AND HAVE NOT BEEN PAID TO THE COURT.  
7 THE COURT SHALL IMMEDIATELY ISSUE THE WRIT OF RESTITUTION IF IT HAS NOT  
8 RECEIVED PAYMENT. ~~may move the justice court to lift the stay of the~~  
9 ~~execution of the judgment for possession. The justice court shall hear the~~  
10 ~~motion to lift the stay of the execution of the judgment for possession and~~  
11 ~~release accrued monies, if any, within five court days from the failure of~~  
12 ~~the party to pay the periodic rent due under the terms of the lease or rental~~  
13 ~~agreement. If the judgment appealed from involves a finding of a material~~  
14 ~~and irreparable breach pursuant to section 33-1368 or section 33-1476,~~  
15 ~~subsection D, paragraph 3 the justice court shall treat it as an emergency~~  
16 ~~matter and conduct a hearing on a motion to lift the stay of execution of the~~  
17 ~~writ of restitution within three days. If the third day is a Saturday,~~  
18 ~~Sunday or other legal holiday, the hearing shall be held on the next day~~  
19 ~~thereafter.~~

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

24 F. IF THE JUDGMENT APPEALED FROM HAS A FINDING OF A MATERIAL AND  
25 IRREPARABLE BREACH BY THE TENANT OF A DWELLING UNIT OR A TENANT IN A MOBILE  
26 HOME PARK OR RECREATIONAL VEHICLE PARK, THE COURT MAY DECIDE NOT TO PERMIT  
27 RENTS TO BE DEPOSITED AND MAY ALLOW A WRIT OF RESTITUTION TO BE ENFORCED  
28 NOTWITHSTANDING THE APPEAL OR THE COURT MAY IMPOSE SUCH CONDITIONS IN  
29 ADDITION TO THE DEPOSIT OF RENTS AS IT DEEMS APPROPRIATE IN THE INTERESTS OF  
30 SAFETY. IF THE COURT DETERMINES THAT PERSONAL INJURY OR SERIOUS PROPERTY  
31 DAMAGE IS UNLIKELY TO OCCUR WHILE THE APPEAL IS PENDING OR THAT SERIOUS  
32 CRIMINAL CONDUCT IS UNLIKELY TO TAKE PLACE ON THE PREMISES, THE COURT SHALL  
33 PERMIT RENTS TO BE DEPOSITED. IF RENT PAYMENTS ARE NOT KEPT CURRENT PURSUANT  
34 TO SUBSECTION D OF THIS SECTION OR IF ADDITIONAL PROHIBITED ACTS OF CONDUCT  
35 BY THE APPELLANT OCCUR, A MOTION TO LIFT THE STAY MAY BE FILED. THE COURT  
36 SHALL TREAT A MOTION TO LIFT THE STAY OF EXECUTION OF THE WRIT OF RESTITUTION  
37 AS AN EMERGENCY MATTER AND CONDUCT A HEARING WITHIN THREE DAYS. IF THE THIRD  
38 DAY IS A SATURDAY, SUNDAY OR OTHER LEGAL HOLIDAY THE HEARING SHALL BE HELD ON  
39 THE NEXT COURT DAY.