

EVICTION MORATORIUM SPECIAL ACTION LAWSUIT FAQ

Why has a special action that seeks to overturn the eviction moratorium been filed with the state Supreme Court?

This is one of the most significant private property rights questions of our state's history. Rental property owners – both large and small – have had their constitutional rights infringed upon. What's at risk if rental owners do not receive income for seven months and counting? A housing collapse more severe than even the Great Recession and a dire outlook for future private housing investment in the state.

Across Arizona, retirees, families, individuals, couples and small businesses who own and rent property have been decimated by the economic downturn created by the pandemic. These rental property owners have invested substantial portions of their life savings in real estate. They rely heavily on rental income to pay their own bills or to fund their retirement. Rental owners are not all large companies turning a profit; they are real people struggling in the same ways renters are struggling to stay afloat financially.

The Governor's eviction moratorium has potentially deprived rental property owners of up to seven months of income.

Enacted in March and currently expiring at the end of October, the Governor's eviction moratorium has put all rental property owners at enormous risk – by potentially forcing them to earn \$0 in income for 221 days. Keep in mind, even while they're earning nothing, these owners remain legally obligated to make repairs to their rental units, pay the mortgage, and make payments for insurance and property taxes.

What are the main legal arguments included in the special action?

There are two main legal arguments the plaintiffs' attorneys have asked the Arizona Supreme Court to consider in this expedited special action. The Governor's eviction moratorium executive order:

Oversteps the Governor's authority and violates the separation of powers mandated by the state's Constitution. By law, the Governor only has the executive authority to enforce existing laws. By nullifying landlords' ability to enforce binding and valid contracts, the Governor's Executive Order effectively amended state law – and impinged on the constitutional purview of the Legislature. Such major changes in Arizona law cannot be made unilaterally by an executive without legislative input. Neither chamber of the State Legislature has approved these changes, and neither chamber likely would have approved these changes without major revisions, if at all.

Violates the state Constitution's contracts clause by infringing upon 920,000 private rental contracts statewide. Article II, Section 25 of the Arizona Constitution states that "no . . . law impairing the obligation of a contract shall ever be enacted."

How damaging is the eviction moratorium on Arizona property owners?

The cumulative financial damage is difficult to calculate right this minute – but it will be in the hundreds of millions of dollars. Arizona has about 920,000 renter households, according to the latest U.S. Census surveys. Median rent for these households is \$1,036 a month. All told then, renters pay about \$1 billion a month in rent to Arizona property owners. According to a recent [Elliot Pollack economic impact study](#):

- If only one percent of renters do not pay their rent for the seven-month eviction moratorium, that would create about \$67 million in lost income. Working through the eviction process and the turning over involved in finding a new tenant drives that total to about \$87 million in lost income.
- If 15 percent of renters do not pay their rent for the seven-month eviction moratorium, that would create about \$1.3 billion in lost income including working through the eviction process and finding new tenants.
- If 30 percent of renters do not pay their rent for the seven-month eviction moratorium, that would create about \$2.6 billion in lost income including working through the eviction process and finding new tenants.

Isn't this really just about greed and getting paid? Isn't it putting profits before people?

Since the beginning of the pandemic, property owners small and large have worked to support Arizona's more than 920,000 rental households. Rental property owners have made payment arrangements to prevent evictions. We've lobbied for additional eviction relief funds. We've directed renters to relief agencies and guided tenants through the applications process by which they can seek relief money that has trickled to those in need. We've educated both property owners and renters about public health guidelines, and we've deep cleaned and disinfected our properties to protect residents' health.

No other area of the economy – grocery stores, restaurants, gas stations – has been expected to provide a product or a service free of charge during the pandemic.

No other entity has seen 920,000 private contracts suddenly made null and void.

It's unprecedented – and against the law – to force a business to go seven months with no income.

Are rental property owners protected under the Arizona Constitution?

Rental property owners should not be stripped of their constitutional rights because we are living in a pandemic. In other areas of life even in the pandemic, citizens have rightfully retained the ability to exercise their freedoms without government interference and an abuse of authority.

For example even during the height of the pandemic, Arizonans' constitutional right to peacefully gather and protest social justice issues remained fully protected.

If government wants to convert private property into free public housing for thousands of families, it cannot do so at the expense of people who have poured their life savings into these properties and who continue to pay the bills, despite getting not a penny in compensation.

In fact, under the eviction moratorium as written, rental property owners cannot evict tenants for non-payment of rent so long as the renter has been impacted by the pandemic. Because this order trumps property rights – effectively giving tenants a superior claim to property than the property's owner. Even worse, an owner is limited on their ability to sell their property since the Governor's order allows renters to remain in the home even after the expiration of the lease without paying rent. This means an owner would have to find a buyer willing to purchase a home, take on a lease that is not producing income with an indefinite term thus likely resulting in a lower sales price.

After all, who would buy a property that produces no revenue – and from which the tenant cannot be evicted, despite non-payment of rent for months to come?

Haven't property owners been relieved of the need to pay their mortgages during the pandemic?

A limited number of property owners have qualified for a mortgage forbearance – which is not mortgage forgiveness. A forbearance is simply a delay in payment. Rental property owners will still be forced to pay at the end of the forbearance period or risk foreclosure – regardless of whether or not the renter has paid their balance in full. Mortgage forbearance also only covers the mortgage; rental owners are still obligated to make timely payments on their insurance, property taxes, payroll, repairs, et cetera.

Most importantly, mortgage payments represent only about 40 percent of the typical costs faced by rental property owners. For every dollar of rent received, the average property owner pays:

- 39 cents for the mortgage.
- 28 cents to payroll, like property managers and maintenance workers.
- 14 cents to property taxes
- 10 cents to capital costs like HVAC or roof repairs

The owner earns about nine cents out of every dollar. Unlike other businesses that have been impacted by the Governor's orders, "rental housing" has been designated an essential service, meaning that while other businesses have been ordered to close, rental owners have been ordered to remain open – Meaning expenses have remained the same or grown higher. The only thing that has changed is income.

How might the eviction moratorium impact affordable housing in Arizona?

Prior to the COVID-19 pandemic, the state of Arizona was on the brink of a housing affordability crisis. This is due in large part to three decades of local land use and zoning policies have artificially restricted the supply of new homes built in Arizona. When you couple that with Arizona's explosive population growth, rents have continued to climb.

The eviction moratorium may well push Arizona over the edge, into a full-scale California-style housing crisis. Already, the moratorium on evictions has slowed new housing production with major builders indicating their exit from the market. Across the country, the housing market is facing great uncertainty and a housing collapse that looks similar – and may even exceed – the Great Recession of 2008.