

Scott M. Clark
admitted in AZ
Judy Drickey-Prohow
admitted in AZ
Christopher R. Walker
admitted in AZ, NV
Colin L. Clark
admitted in AZ
Christopher T. Hoynicki
admitted in AZ
David Astur
admitted in NV
Brett Meyer
admitted in AZ



CHRISTOPHER R. WALKER
christopher@scottclarklaw.com
PHOENIX OFFICE

4222 E. THOMAS RD., STE. 230, PHOENIX, ARIZONA 85018
P.O. BOX 36285, TUCSON, ARIZONA 85740
(602) 957-7877 (INSIDE ARIZONA) • (877) 957-7877 (OUTSIDE ARIZONA)
(602) 957-7876 (FAX) • WWW.SCOTTCLARKLAW.COM

Arizona Multihousing Operations Frequently Asked Questions for Coronavirus Disease 2019 (COVID-19)

Date: March 18, 2020

On March 13, 2020, President Trump declared a national emergency in response to the COVID-19 pandemic in the United States. In the days that followed several jurisdictions have sought to limit the ability of people to congregate and some have sought to have residents shelter in place. The cities of Phoenix and Flagstaff have issued similar orders limiting the ability to patron restaurants and bars, with Phoenix mandating the closure of all dining rooms and bars, effective 8:00 P.M. on March 17, 2020.

In this climate there are an ever growing number of questions. The Firm has prepared the following frequently asked questions to assist clients in this difficult and uncertain time:

1. *What are the symptoms and complications of COVID-19?*

Current symptoms reported for patients with COVID-19 have included mild to severe respiratory illness with fever, cough, and difficulty breathing. Complications include secondary bacterial pneumonia, respiratory failure and death.

2. *How is COVID-19 Spread?*

The virus is thought to spread person-to-person via respiratory droplets that are produced when someone infected with the virus coughs or sneezes. This can occur from direct contact with the droplets or from fomite transmission.

For more information please visit www.cdc.gov/coronavirus/2019-nCoV/index.html

3. *Can a community close the leasing office?*

Many businesses are being faced with this difficult decision. The CDC and local and state governments have recommended that in-person contact be avoided to the greatest extent possible. With the goal being less in-person communication, properties can limit the hours of their leasing/business center or close the center entirely to the public and its residents. If your company decides to close the office you must make sure that there are alternate means of communication available to your residents in the event of a maintenance emergency. Further, you must ensure that the closure of the office does not impede the payment of monthly rent. Drop boxes should be utilized as well as online payment methods to accommodate tenants while the office is closed.

Please be advised that cities of Phoenix, Flagstaff, and Tucson have issued orders closing down all restaurants, bars, and theaters. The mayors of each of the above-mentioned cities have recommended places of gathering be closed until further notice. Landlords should heed to the warnings of these cities during this pandemic.

4. *Should I close the fitness center and pool area?*

Health clubs across the country have decided to close down operations amidst this pandemic. As the spread of the virus can occur upon direct contact with cough particulates, areas of exercise are likely to be a place of contagion. As such, it is recommended that you close your fitness facility or, at the very least, regularly sanitize the area and make sure that there are sanitizing products available in the fitness center for the use of residents while they use the facility.

5. *Are the courts open?*

The Maricopa County Justice Courts remain open during the COVID-19 pandemic. The courts are proceeding as normal, albeit the courts are trying to reduce the number of people present on a daily basis. The Arizona Supreme Court issued an administrative order on March 16, 2020 (Admin. Order 2020-47) wherein the Supreme Court emphasized the need for social distancing and recommended that all trial courts in Arizona take action to reduce the number of people in court. The Supreme Court also ordered a temporary suspension of the Rules of Procedure for Eviction actions pertaining to the mandatory timelines for the hearing of eviction actions and the date trials must be set.

This week several courts have either postponed evictions or requested that we send in Complaints and Summons without court dates. With 26 different justice courts in the county, we are seeing several different approaches to this issue. We are working directly with the court administrator's office to coordinate a teleconference system for eviction hearings to ensure that the process remains stable and that the court can properly and timely adjudicate eviction actions. Once a solution is put in place we will provide further guidance to our clients.

With regards to Pima County courts, there has been no restriction on the court's operation at this time. We are being advised that the hearings will be conducted as usual. Please note, to encourage social distancing the Pima County courts are staggering evictions more than normal to ensure a limited number of litigants are present in the courtroom.

6. *Should I release a tenant from his or her lease due to COVID-19?*

Several inquiries have been made about tenants seeking to terminate their lease to return home during this pandemic. Several requests relate to students that are in the United States for education and are being called back to their country of origin due to the COVID-19 pandemic, while other requests are related to persons seeking to relocate home to be with family. Neither case presents a legal justification for the termination of the lease without penalty. If a tenant has a disability related need to relocate then the fair housing act would require the release of that tenant from the lease without penalty. Absent a disability related need to relocate a landlord may continue to enforce the terms of the lease. If there is an immediate need to relocate, the Firm recommends a waiver of the notice of intent to vacate, but an enforcement of the applicable buy-out fee set forth in the lease.

7. *Should I continue with my evictions?*

The court has not ordered landlords to halt eviction proceedings. In conversation with administrators today they recognized the business need to perform evictions. Several clients have indicated an intent to increase usage of the partial payment non waiver agreement as a mechanism to limit the number of evictions filed. However, you should consider an approach that meets the business needs of your particular community. Landlords should not feel hesitant to file an eviction for non-payment of rent or on any other violation of the terms and conditions of the lease, especially those breaches related to the health and safety of the community or conduct that is criminal in nature.

Please note that the Arizona Multihousing Association (hereinafter “AMA”) did issue guidance on March 17, 2020 from its executive leadership board advising all members to do what they can to work with tenants through this pandemic. The AMA recommended the use of partial payment non-waiver agreements to curtail the number of evictions being filed. Each community has unique needs and the use of a partial payment non-waiver agreement should be evaluated on a case-by-case basis.

8. *Did POTUS suspend eviction actions and foreclosures?*

On March 18, 2020, POTUS held a press conference in which he announced he would use the Defense Production Act to increase the federal response to the COVID-19 pandemic. In the press conference POTUS announced a temporary moratorium on evictions and foreclosures. This has been interpreted as a moratorium across the board. This interpretation is inaccurate. The moratorium is limited to HUD owned properties. We have contacted Senator Sinema’s office and have confirmed that this relates only to HUD properties and that the federal government does not have any authority to suspend evictions outside of HUD owned properties.

9. *Can I ask a Tenant about their health when they place a work order?*

Ordinarily under the fair housing act we should steer clear of these kind of inquiries. However, to promote the safety and welfare of the community and the landlord’s employees and/or vendors, inquiries specific to the COVID-19 pandemic are likely going to be permissible. Accordingly, you may inquire as to whether or not anyone in the household is experiencing any symptoms associated with COVID-19. Regardless of the response, no further inquiry should be made. If the tenant responds in the affirmative to the inquiry, appropriate precautionary measures indicated in response to Question 10 should be taken.

10. *Should I send maintenance into a tenant’s home during this pandemic?*

The Arizona Department of Health and Human Services has not opined on this topic. Individuals who have been ordered quarantined by the Department are to be isolated. However, the Department has indicate there are some exceptions to that quarantine which include entries needed to “care” for the person being quarantined. Official guidance has not been provided at this time. We expect to learn more in the coming days and will provide additional information when available.

In the meantime, the obligations to maintain the apartment remain in place under the Arizona Residential Landlord and Tenant Act (hereinafter “Act”). Landlords will remain responsible for

compliance with the maintenance duties under the Act. No tolling of these duties has been announced. As such, landlords should still respond to maintenance requests and complete repairs within the time period required by the Act. Landlords should also ensure that their maintenance team is adequately protected while entering an apartment by providing gloves and face masks where available. Employees accessing tenant homes should be encouraged to avoid any direct contact with tenants and should also thoroughly wash their hands after the completion of any work order request in any tenant unit.

11. *Are there certain work order requests that take priority over others?*

As indicated above, the COVID-19 pandemic has not resulting in the suspension of any of the duties outlined in the Act. Landlords are still required to maintain the premises in accordance with applicable housing and health codes as well as the provisions set forth in the Act. With that in mind, certain work order requests do not require immediate attention and may be performed at a later date. Work order requests related to the plumbing, heating, cooling, and pest control should take priority. Similarly, work orders related to inoperable door locks or broken windows or doors take priority and should be completed within five days of the landlord's receipt of the request for repairs. All other work order request, specifically those related to non-essential items, should be noted and scheduled, however, the landlord should exercise caution in going in to perform these repairs and should consider delaying the non-essential repairs for the next two weeks. Landlord should communicate with all tenants and schedule repairs at a time that is suitable to both the landlord and the tenant.

12. *Am I excused from sending maintenance into a tenant's home who is confirmed to have COVID-19?*

At this time office guidance has not been provided. The response to question 8 above remains applicable. We recommend that precautions be taken to safeguard the technician responding to the work order but, nonetheless, maintain that repairs are required under the Act and should timely be completed.

13. *Should we continue with joint move-out inspections?*

Pursuant to A.R.S. § 33-1321(C) the landlord is required to advise a tenant that he or she may be present at the time of a move-out inspection. The law provides an exception to this rule if the tenant was recently evicted for a material and irreparable breach and the landlord has reasonable cause to fear violence or intimidation on the part of the tenant, the landlord has no obligation to conduct a joint move-out inspection with the tenant. For tenants that were not evicted for a material and irreparable breach of the lease there is no statutory authority for not conducting a joint move out inspection. As the disposition of the security deposit must be done within 14 business days of the termination of the tenancy and return of delivery of possession, a landlord has limited time to conduct the inspection to ensure compliance with the security deposit disposition report timeline set forth in A.R.S. § 33-1321(D). Accordingly, move-out inspections should continue. If you believe a tenant to be infected with COVID-19 please avoid direct contact with the tenant and use appropriate social distancing when performing the inspection.