



ARIZONA ASSOCIATION OF REALTORS®

Lease Owner's ADVISORY



The Lease Owner's Advisory is a resource provided by the Arizona Association of REALTORS®

Residential Rentals are required to comply with the Arizona Residential Landlord/Tenant Act:

<http://azhousing.gov/azcms/uploads/PUBLICATIONS/Landlord%20Tenant%20Act.pdf>

OWNER'S RESPONSIBILITIES AND STATUTORY REQUIREMENTS

AFFIDAVIT OF LEGAL CLASS CORRECTION

1 If a parcel of property is used as a rental unit and identified by the county assessor as a class three property pursuant to A.R.S. § 42-12003, the owner **must** notify the assessor of the rental use of the property or be subject to a civil penalty prescribed by A.R.S. § 42-12052. The lease owner **must** also register with the assessor in the county where the property is located in the manner set forth in A.R.S. § 33-1902 (A). <http://mcassessor.maricopa.gov/category/frequently-asked-questions/rental-registration/>

2 NOTIFICATION OF ARIZONA RESIDENTIAL RENTAL PROPERTY

Pursuant to A.R.S. § 33-1902(B), an out-of-state owner of residential rental property **must** designate and record with the county assessor a statutory agent who lives in this state and who will accept legal service on behalf of the owner. A person who fails to comply with any provision of this section shall be assessed a civil penalty of \$1,000, plus an additional \$100 for each month after the date of the original violation until compliance occurs.

NOTE: If the owner is required to register the rental property with the county assessor and fails to do so, the city or town may impose a civil penalty payable to the city or town in the amount of \$150 per day for each day of violation, and the city or town may impose enhanced inspections and enforcement measures on the property. <http://mcassessor.maricopa.gov/wp-content/uploads/Rental-Registration-Form.pdf>

3 BUSINESS LICENSE

Some cities require the owner to have a separate business license prior to engaging in any type of business activity. It is the owner's responsibility to apply for and pay any fees associated with obtaining this license. If the property is being professionally managed, the lease owner should discuss this topic with their property manager.

www.azdor.gov/Business/LicensingGuide.aspx

4 FOREIGN LEASE OWNERS RESIDING OUTSIDE OF THE UNITED STATES

Foreign lease owners **must** secure an Individual Taxpayer Identification Number (ITIN). Unless the foreign lease owner files a Form W-8ECI with their property management company, the property manager **must** withhold 30% of the gross rental proceeds for the property owned by the foreign lease owner. It is strongly recommended that foreign lease owners retain the services of a CPA and/or IRS Certified Acceptance Agent to ensure compliance with applicable IRS rules and regulations. www.irs.gov/pub/irs-pdf/fw8eci.pdf

5 TRANSACTION PRIVILEGE TAX

Transaction Privilege Tax (TPT) is charged by some cities on the owner's rental income. This TPT, or rental tax, is the responsibility of the lease owner but may be collected from the tenant with the rent if permitted by the lease agreement. The tax is filed by the lease owner or the property management company on either a monthly or quarterly basis. The filing period is determined by the applicable city and the tax rate is anywhere from 1.5% - 3% of the monthly rent. In addition, some cities collect their own privilege taxes; others choose the Arizona Department of Revenue to collect the taxes for them. In some cases, it is the owner's responsibility to apply for this license if the property management company does not have a master license for that city. After the city or state receives the owner's application, a license will be issued and mailed to the owner. Failure to pay the applicable sales tax could result in a penalty or fine by the city or town. For more information on the Transaction Privilege Tax go to: www.azdor.gov/Business/TransactionPrivilegeTax.aspx.

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COMMON DOCUMENTS AND DISCLOSURES

1 RESIDENTIAL LEASE AGREEMENT

Owners should protect themselves by taking the time to read the residential lease agreement and understand their legal rights and obligations before they enter into a lease agreement. A sample Arizona Association of REALTORS® (AAR) lease agreement can be found at www.aaronline.com/wp-content/uploads/2014/01/NEW-FORMS-SAMPLE_Residential-Lease-Agreement_1-28-2014.pdf. Upon move in, a lease owner **must** furnish the tenant with a signed copy of the lease. A.R.S. §33-1321(C).

2 LEAD-BASED PAINT DISCLOSURE FORM

If the home was built prior to 1978, the lease owner **must** provide the tenant with a lead-based paint disclosure form. Information about lead-based paint may be obtained at www.azre.gov/PublicInfo/RealEstateResearchTopics.aspx#LINK11 or www.epa.gov/lead/.

3 PROPERTY MANAGEMENT AGREEMENT

Lease owners electing to retain the services of a property manager should secure the retention by way of a written property management agreement that complies with the requirements set forth in A.R.S. §32-2173. A sample copy of AAR's Property Management Agreement can be found at: <http://www.aaronline.com/wp-content/uploads/2013/07/sample-property-management-agreement-form.pdf>

4 DISCLOSURES

The owner **must** disclose in writing all material (important) facts regarding the property, including all physical, environmental, and other conditions that affect the property and any violations of applicable building, zoning, fire, health, and safety codes. Failure to make legally required disclosures may result in civil liability. Changes in any disclosures previously made **must** be promptly conveyed.

Although no specific form is required, the Residential Lease Owner's Property Disclosure Statement (RLOPDS) can assist a lease owner in complying with their disclosure obligations. By way of this form, the lease owner answers a variety of questions about the property and its condition. Once completed, a copy of the disclosure form is given to prospective tenants. The property manager/broker is not responsible for verifying the accuracy of the items on the RLOPDS so it is important for the lease owner to accurately complete this form to the best of their knowledge. A sample RLOPDS can be found at: www.aaronline.com/wp-content/uploads/2012/12/sample-residential-lease-owner.pdf.

5 HOMEOWNERS ASSOCIATION (HOA) GOVERNING DOCUMENTS

If CC&Rs are recorded against the property, it is essential that the owner review and agree to any restrictions prior to leasing a property. The Arizona Department of Real Estate (ADRE) advises: "Read the deed restrictions, also called CC&Rs (covenants, conditions and restrictions). You might find some of the CC&Rs are very strict." www.azre.gov/PublicInfo/RealEstateResearchTopics.aspx#LINK11.

In addition to CC&Rs, HOAs may be governed by Articles of Incorporation, Bylaws, Rules and Regulations, and often architectural control standards. Read and understand these documents. Also, be aware that some HOAs may impose fees and require the lease owner to register the tenant. If a lease owner has questions about their rights and remedies regarding homeowners associations or community associations, additional information can be found at: www.azre.gov/PublicInfo/RealEstateResearchTopics.aspx#LINK11 or Chapters 16 and 18 of the Arizona Revised Statutes – Title 33 www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=33.

6 MOVE-IN/MOVE-OUT INSPECTION

Upon move in, a lease owner **must** furnish the tenant with a move-in form upon which the tenant can specify any existing damage to the property, along with a written notification to the tenant that the tenant may be present at the move-out inspection. Upon request by the tenant, the lease owner shall notify the tenant when the move-out inspection will occur. A.R.S. §33-1321(C). Lease owners should keep a copy of the completed move-in form for their records and may also want to take photographs of the property at the time of move-in to document its condition. A sample of AAR's Move-in/Move-out Condition Checklist can be viewed at www.aaronline.com/wp-content/uploads/2012/12/sample-movein-moveout-checklist.pdf.

7 SWIMMING POOLS & SPAS

Each city and county has its own swimming pool barrier ordinance and a lease owner should investigate and comply with all applicable state, county and municipal pool regulations. Pool barrier contact information for Arizona cities and counties may be found at: www.aaronline.com/documents/pool_contacts.aspx. The Arizona Department of Health Services Private Pool Safety notice may be found at: http://azdhs.gov/phs/oe/pool_rules.htm The state law on swimming pools is located at: www.azleg.state.az.us/ars/36/01681.htm.

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LEASE OWNER'S RIGHTS AND OBLIGATIONS

1 NOTICE

Unless otherwise agreed, all notices shall be sent registered or certified mail, or personally delivered. A.R.S. §33-1313.

2 FAIR HOUSING & DISABILITY LAWS

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and handicap (disability). Visit HUD's Fair Housing/Equal Opportunity website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp. For information on the Americans with Disabilities Act, visit http://www.ada.gov/ada_intro.htm and www.azag.gov/complaints#civilrights.

3 QUALIFYING THE TENANT

The lease owner is encouraged to screen prospective tenants in a variety of different ways, including credit, criminal history, employment and rental history. A sample of AAR's Application for Occupancy can be found at: www.aaronline.com/wp-content/uploads/2014/07/SAMPLE_ApplicantForOccupancy.pdf.

4 DEPOSITS & FEES

The lease agreement should specify which deposits/fees are refundable and which are not. A lease owner is not permitted to demand or receive security, including prepaid rent, in an amount in excess of one and one-half month's rent. However, a tenant is not prohibited from voluntarily paying more than one and one-half month's rent in advance.

During the term of the lease the lease owner or lease owner's agent should hold the security deposit for the tenant. At the end of the lease all refundable deposits shall be refunded to the tenant pursuant to A.R.S §33-1321(G). The lease owner can subtract unpaid rent or repair costs from the security deposit. Within 14 business days after termination of the tenancy, delivery of possession and demand by the tenant, the tenant is entitled to receive an itemized list of any/all security deposit deductions together with the amount due and payable to the tenant. A.R.S §33-1321(D).

5 REPAIRS & PROPERTY CONDITION

Pursuant to Arizona law, the lease owner is generally responsible for ensuring that all "electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required supplied by him" be in good and safe working order and condition. A.R.S. §33-1324. It is the lease owner's

responsibility to make sure that necessary repairs are made to keep the property in a fit and livable condition. Following notice, the lease owner has five days to make any repairs that materially affect the health and safety of the tenant(s) and 10 days to make any other requested repairs. **NOTE:** Pursuant to A.R.S. §33-1324(C), the lease owner and tenant may agree in writing, supported by adequate consideration, that the tenant will perform the lease owner's duties to maintain a fit premises and perform specified repairs.

6 ACCESS TO THE PROPERTY BY LEASE OWNER OR LEASE OWNER'S REPRESENTATIVE

Unless the tenant requests repairs in writing, the lease owner **must** give the tenant at least two days notice to enter the property during reasonable hours to make repairs, conduct inspections, have services completed or exhibit the property to prospective purchasers and tenants. The lease owner has the right to immediately enter the property in the event of an emergency or by court order. A.R.S. §33-1343.

7 TERMINATION OF THE LEASE

Unless the parties desire for the lease agreement to continue, written notice of intent not to renew the lease agreement shall be issued pursuant to the terms of the lease. If the lease continues on a month-to-month basis, absent prior written agreement, either the lease owner or the tenant may terminate by providing 30-days written notice prior to the periodic rental date (i.e. the date on which rent is due) per A.R.S. §33-1375(B). A holdover tenant is someone who stays in the leased property after the express term of the lease has expired. The lease owner can choose to evict a holdover tenant or allow the tenant to continue living in the property on a month-to-month basis under the terms and conditions of the lease agreement.

8 FORECLOSURE

The lease owner shall not allow the property to become the subject of a trustee's sale and doing so may place the lease owner in breach of the lease agreement and subject them to civil liability. Within five (5) business days after receipt of a notice of trustee's sale, the lease owner shall provide the tenant with written notice. A.R.S. 33-1331(B). A failure by the lease owner to pay the mortgage does not eliminate the tenant's obligation to pay rent.

9 INSURANCE

Lease owners are encouraged to contact their property insurance carrier prior to leasing to discuss appropriate coverage. www.id.state.az.us/

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ADDITIONAL RESOURCES

INFORMATION ABOUT ARIZONA GOVERNMENT

Links to state agencies, city and county websites:

www.az.gov

ARIZONA DEPARTMENT OF REAL ESTATE

Consumer Information: www.azre.gov/InfoFor/Consumers.aspx

ARIZONA ASSOCIATION OF REALTORS®

Find a REALTOR®: www.aaronline.com/

ENVIRONMENTAL CONCERNS

For information on **indoor environmental concerns**, the EPA has a host of resource materials and pamphlets available at www.epa.gov/iaq/pubs/index.html.

SECTION 8 HOUSING

Information regarding **Section 8** programs available through the Arizona Public Housing Authority can be found at: www.azhousing.gov/ShowPage.aspx?ID=187&CID=11 or www.findsection8housing.org/.

DRUG LABS

Until remediation has been completed in the manner set forth in A.R.S. § 12-1000(E), **meth labs** and other dangerous **drug labs** are prohibited from being rented or leased. A list of unremediated properties can be found at: <https://btr.az.gov/drug-lab-site-clean>.

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TOP 10 QUESTIONS YOU SHOULD ASK WHEN CONSIDERING HAVING YOUR PROPERTY PROFESSIONALLY MANAGED

1. Does the property manager possess an Arizona real estate license as required by Arizona law? <http://services.azre.gov/publicdatabase/SearchIndividuals.aspx>.

Generally speaking, individuals acting as residential leasing agents or on-site managers of residential rental property, who are performing residential leasing activities on residential income property at more than one location during the period of the agents' or on-site managers' regular workday, are required to maintain an Arizona real estate license. A.R.S. § 32-2121.

2. Does the brokerage with whom the property manager is affiliated permit its agents to engage in property management services?

Not all brokerages permit agents to engage in property management services and an agent should not perform property management activity without their broker's knowledge and consent.

3. Does the brokerage with whom the property manager is affiliated maintain a property management trust account, and if so, is the account held with an FDIC insured institution?

Arizona statute requires that all property management accounts be designated as trust accounts and that a broker's trust account is required for all of the owner's monies, except if the owner directs the broker to deposit the monies into the owner's account. A.R.S. § 32-2174.

4. Does the brokerage with whom the property manager is affiliated utilize a written property management agreement that complies with the requirements set forth in A.R.S. § 32-2173? <http://www.azleg.state.az.us/ars/32/02173.htm?printformat=yes>.

Arizona statute mandates the material terms and conditions that are to be set forth in all property management agreements. A.R.S. § 32-2173.

5. Does the property manager maintain written tenant screening criteria that meet with your approval? http://www.aaronline.com/wp-content/uploads/2014/07/SAMPLE_ApplicantForOccupancy.pdf.

Property managers screen prospective tenants in a variety of different ways, including credit, criminal history, employment and rental history. You will want to ensure that your property manager screens applicants in a manner you deem sufficient.

6. How often and by what method does the property manager pay you and what account reconciliation methods are utilized by the property manager?

Terms of this nature should be set forth in detail in your written property management agreement and should meet with your approval.

7. Does the property manager maintain a written plan to market the property to potential tenants, and if so, does that plan meet with your approval?

Property managers market rental properties to prospective tenants in a variety of different ways. You will therefore want to ensure that your property manager has a plan in place to secure tenants and that the plan meets with your approval.

8. Does the property manager maintain a written plan for addressing repairs and what level of approval/supervision, if any, do you maintain over the manner in which repairs are made?

You and the property manager should agree in writing to what degree the property manager will assist you in the employment and supervision of contractors. The parties should further agree in writing whether you have the right to pre-approve expenditures in excess of an agreed upon sum of money.

9. How does the property manager handle repairs in excess of \$1,000, and if the property manager hires contractors to address those repairs, are the contractors licensed by the Arizona Registrar of Contractors?

Generally speaking, Arizona statute requires that any person engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials and all other items (but excluding any electrical fixture or appliance that was designed by the manufacturer, that is unaltered) is \$1,000 or more, hold an Arizona contractor's license. A.R.S. § 32-1121.

10. Under what circumstances are you permitted to terminate the property management agreement?

Property management agreements must specify a beginning and ending date and contain cancellation provisions that are agreeable to both parties. If the property management agreement contains an automatic renewal provision, the property management firm must send the lease owner a reminder notice at least 30-days before the renewal date. A.R.S. § 32-2173.



LEASE OWNER'S ACKNOWLEDGMENT

Lease owner acknowledges receipt of all six pages of this advisory. Lease owner further acknowledges that there may be other disclosure issues of concern not listed in this advisory. Lease owner is responsible for making all necessary inquiries and consulting the appropriate persons or entities prior to the leasing of any property.

The information in this advisory is provided with the understanding that it is not intended as legal or other professional services or advice. These materials have been prepared for general informational purposes only. The information and links contained herein may not be updated or revised for accuracy. If you have any additional questions or need advice, please contact your own lawyer or other professional representative.

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