

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 28

HOUSE BILL 2223

AN ACT

AMENDING SECTION 12-1179, ARIZONA REVISED STATUTES; 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 12-1179, Arizona Revised Statutes, is amended to
3 read:

4 12-1179. Appeal to superior court; notice; bond

5 A. Either party may appeal from a justice court to the superior court
6 in the county in which the judgment is given by giving notice as in other
7 civil actions within five calendar days after rendition of the judgment
8 pursuant to this section. The appeal shall be filed in accordance with this
9 section, and the time to appeal shall not be extended or otherwise affected
10 by the filing of a motion to set aside or vacate the judgment or similar
11 motion.

12 B. A party seeking to appeal a judgment shall file with the notice of
13 appeal a bond for costs on appeal, ~~which.~~ THE JUSTICE OF THE PEACE shall be
14 SET THE BOND in an amount ~~set by the justice of the peace~~ sufficient to cover
15 the costs on appeal. The bond shall be payable to the clerk of the superior
16 JUSTICE court. If a party is unable to file a bond for costs on appeal, the
17 party shall file with the justice court a notice of appeal along with an
18 affidavit stating that ~~he~~ THE PARTY is unable to give bond for costs on
19 appeal and the reasons therefor. Within five court days after the filing of
20 the affidavit, any other party may file, in the justice court, objections to
21 the affidavit. The justice of the peace shall hold a hearing on the
22 affidavit and objections within five court days thereafter. If the justice
23 court sustains the objections, the appellant shall file, within five court
24 days thereafter, a bond for costs on appeal as provided for in this section
25 or in such lesser amount as ordered by the justice court.

26 C. A party seeking to appeal a judgment may stay the execution of
27 either the judgment for possession or any judgment for money damages by
28 filing a supersedeas bond. The justice court shall hold a hearing on the
29 motion within five court days after the parties advise the justice court of
30 their failure to stipulate on the amount of the bond. The stay is effective
31 when the supersedeas bond or bonds are filed.

32 D. The party seeking to stay the execution of the judgment for
33 possession shall file a supersedeas bond in the amount of rent accruing from
34 the date of the judgment until the next periodic rental date, together with
35 costs and ~~attorney's~~ ATTORNEY fees, if any. The tenant shall pay to the
36 clerk of the superior JUSTICE court, on or before each periodic rental due
37 date during the pendency of the appeal, the amount of rent due under the
38 terms of the lease or rental agreement. Such amounts shall be made payable
39 by the superior JUSTICE court to the owner, landlord or agent as they accrue
40 to satisfy the amount of periodic rent due under the lease or rental
41 agreement. In all cases where the rent due under the terms of the lease or
42 rental agreement is paid through the ~~office of the clerk of the superior~~
43 JUSTICE court as set forth in this subsection, the order of the court may
44 include a one-time handling fee in the amount of ten dollars to be paid by
45 the party seeking to stay the execution of the judgment for possession. In

1 no event shall the amounts paid per month exceed the amount of monthly rent
2 charged by the owner for the premises. Where IF THE TENANT RAISES
3 habitability as provided for in sections 33-1324 and 33-1364 ~~has been raised~~
4 as an affirmative defense ~~by the tenant~~ to the nonpayment of rent or when the
5 tenant has filed a counterclaim asserting a habitability issue, the superior
6 JUSTICE court ~~will~~ SHALL retain all money paid under this subsection pending
7 a final judgment.

8 E. If during the pendency of the appeal the party seeking to stay the
9 execution of the judgment for possession fails to pay the rent on the
10 periodic rental due date, the party in whose favor a judgment for possession
11 was issued may move the superior JUSTICE court to lift the stay of the
12 execution of the judgment for possession. The superior JUSTICE court shall
13 hear the motion to lift the stay of the execution of the judgment for
14 possession and release accrued monies, if any, within five court days from
15 the failure of the party to pay the periodic rent due under the terms of the
16 lease or rental agreement. If the judgment appealed from involves a finding
17 of a material and irreparable breach pursuant to section 33-1368 or section
18 33-1476, subsection D, paragraph 3 the superior JUSTICE court shall treat it
19 as an emergency matter and conduct a hearing on a motion to lift the stay of
20 execution of the writ of restitution within three days. If the third day is
21 a Saturday, Sunday or other legal holiday, the hearing shall be heard HELD
22 on the next day thereafter.

23 F. The party seeking to stay the execution of the judgment for money
24 damages shall file a supersedeas bond in the amount of the judgment, together
25 with costs and ~~attorney's~~ ATTORNEY fees, if any. The amount of the bond
26 shall be fixed by the court and payable to the clerk of the superior JUSTICE
27 court.

APPROVED BY THE GOVERNOR APRIL 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2004.

Passed the House February 03, 2004,

Passed the Senate March 29, 2004,

by the following vote: 57 Ayes,

by the following vote: 30 Ayes,

0 Nays, 3 Not Voting

0 Nays, 0 Not Voting

Jake Flake
Speaker of the House

Klu Bennett
President of the Senate

Sherman L. Joyce
Chief Clerk of the House

Charmaine Ballinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

29th day of March, 2004.

at 3:26 o'clock P. M.

Vennidee Ybarrta
Secretary to the Governor

Approved this 1 day of

April, 2004,

at 11⁰⁵ o'clock A. M.

J. R. Nagel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of April, 2004,

at 12:36 o'clock P. M.

Janice K. Brewer
Secretary of State