

REFERENCE TITLE: residential property; transient occupant; remedies

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1638

Introduced by
Senator Carroll: Representative Carbone

AN ACT

AMENDING TITLE 12, CHAPTER 8, ARTICLE 4, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-1173.02; RELATING TO FORCIBLE ENTRY AND DETAINER
ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 12, chapter 8, article 4, Arizona Revised
3 Statutes, is amended by adding section 12-1173.02, to read:

4 12-1173.02. Unlawful possession by transient occupant;
5 affidavit; remedies; trespass; factors;
6 definition

7 A. A TRANSIENT OCCUPANT UNLAWFULLY DETAINS A RESIDENTIAL PROPERTY
8 IF THE TRANSIENT OCCUPANT REMAINS IN OCCUPANCY OF THE RESIDENTIAL PROPERTY
9 AFTER THE PARTY ENTITLED TO POSSESSION OF THE PROPERTY HAS DIRECTED THE
10 TRANSIENT OCCUPANT TO LEAVE. A TRANSIENT OCCUPANCY TERMINATES WHEN A
11 TRANSIENT OCCUPANT BEGINS TO RESIDE ELSEWHERE, SURRENDERS THE KEY TO THE
12 DWELLING OR LEAVES THE DWELLING WHEN DIRECTED BY A LAW ENFORCEMENT OFFICER
13 WHO HAS AN AFFIDAVIT UNDER SUBSECTION B OF THIS SECTION, THE PARTY WHO IS
14 ENTITLED TO POSSESSION OR A COURT. A TRANSIENT OCCUPANCY IS NOT EXTENDED
15 BY THE PRESENCE OF PERSONAL BELONGINGS OF A FORMER TRANSIENT OCCUPANT.

16 B. ANY LAW ENFORCEMENT OFFICER, ON RECEIPT OF A SWORN AFFIDAVIT OF
17 THE PARTY WHO IS ENTITLED TO POSSESSION THAT STATES THAT A PERSON WHO IS A
18 TRANSIENT OCCUPANT IS UNLAWFULLY DETAINING RESIDENTIAL PROPERTY, MAY
19 DIRECT A TRANSIENT OCCUPANT TO SURRENDER POSSESSION OF RESIDENTIAL
20 PROPERTY. THE SWORN AFFIDAVIT MUST SET FORTH THE FACTS, INCLUDING THE
21 APPLICABLE FACTORS LISTED IN SUBSECTIONS J AND K OF THIS SECTION, THAT
22 ESTABLISH THAT A TRANSIENT OCCUPANT IS UNLAWFULLY DETAINING RESIDENTIAL
23 PROPERTY.

24 C. A PERSON WHO FAILS TO COMPLY WITH THE DIRECTION OF THE LAW
25 ENFORCEMENT OFFICER TO SURRENDER POSSESSION OR OCCUPANCY VIOLATES SECTION
26 13-1504. IN ANY PROSECUTION OF A VIOLATION OF SECTION 13-1504 RELATED TO
27 THIS SECTION, WHETHER THE DEFENDANT WAS PROPERLY CLASSIFIED AS A TRANSIENT
28 OCCUPANT IS NOT AN ELEMENT OF THE OFFENSE, THE STATE IS NOT REQUIRED TO
29 PROVE THAT THE DEFENDANT WAS IN FACT A TRANSIENT OCCUPANT AND THE
30 DEFENDANT'S STATUS AS A PERMANENT RESIDENT IS NOT AN AFFIRMATIVE DEFENSE.

31 D. A PERSON WHO IS WRONGFULLY REMOVED PURSUANT TO THIS SECTION HAS
32 A CAUSE OF ACTION FOR WRONGFUL REMOVAL AGAINST THE PERSON WHO REQUESTED
33 THE REMOVAL AND MAY RECOVER INJUNCTIVE RELIEF AND COMPENSATORY DAMAGES,
34 EXCEPT THAT A WRONGFULLY REMOVED PERSON DOES NOT HAVE A CAUSE OF ACTION
35 AGAINST THE LAW ENFORCEMENT OFFICER OR THE AGENCY EMPLOYING THE LAW
36 ENFORCEMENT OFFICER ABSENT A SHOWING OF BAD FAITH BY THE LAW ENFORCEMENT
37 OFFICER.

38 E. A PARTY WHO IS ENTITLED TO POSSESSION OF REAL PROPERTY HAS A
39 CAUSE OF ACTION FOR UNLAWFUL DETAINER AGAINST A TRANSIENT OCCUPANT
40 PURSUANT TO THIS ARTICLE. THE PARTY WHO IS ENTITLED TO POSSESSION IS NOT
41 REQUIRED TO NOTIFY THE TRANSIENT OCCUPANT BEFORE FILING THE ACTION. IF
42 THE COURT FINDS THAT THE DEFENDANT IS NOT A TRANSIENT OCCUPANT BUT IS
43 INSTEAD A TENANT OF RESIDENTIAL PROPERTY GOVERNED BY TITLE 33, CHAPTER 10,
44 THE COURT MAY NOT DISMISS THE ACTION WITHOUT FIRST ALLOWING THE PLAINTIFF

1 TO GIVE THE TRANSIENT OCCUPANT THE NOTICE REQUIRED BY THAT CHAPTER AND TO
2 THEREAFTER AMEND THE COMPLAINT TO PURSUE EVICTION UNDER THAT CHAPTER.

3 F. THE PARTY WHO IS ENTITLED TO POSSESSION OF A DWELLING SHALL
4 ALLOW A FORMER TRANSIENT OCCUPANT TO RECOVER THE TRANSIENT OCCUPANT'S
5 PERSONAL BELONGINGS AT REASONABLE TIMES AND UNDER REASONABLE CONDITIONS.
6 UNLESS OTHERWISE AGREED TO, A REASONABLE TIME FOR THE RECOVERY OF THE
7 FORMER TRANSIENT OCCUPANT'S PERSONAL BELONGINGS IS PRESUMED TO BE TEN DAYS
8 AFTER TERMINATION OF THE TRANSIENT OCCUPANCY, WHEN THE PARTY WHO IS
9 ENTITLED TO POSSESSION OF THE DWELLING OR A TRUSTED THIRD PARTY CAN BE
10 PRESENT AT THE DWELLING TO SUPERVISE THE RECOVERY OF THE BELONGINGS.

11 G. IF THE PARTY WHO IS ENTITLED TO POSSESSION OF THE DWELLING
12 REASONABLY BELIEVES THAT THE FORMER TRANSIENT OCCUPANT HAS ENGAGED IN
13 MISCONDUCT OR HAS A HISTORY OF VIOLENCE OR DRUG OR ALCOHOL ABUSE, THE
14 PARTY WHO IS ENTITLED TO POSSESSION OF THE DWELLING MAY IMPOSE ADDITIONAL
15 CONDITIONS ON ACCESS TO THE DWELLING OR THE PERSONAL BELONGINGS. THESE
16 CONDITIONS MAY INCLUDE THE PRESENCE OF A LAW ENFORCEMENT OFFICER, THE USE
17 OF A MOVER OR THE USE OF A TRUSTED THIRD PARTY TO RECOVER THE PERSONAL
18 BELONGINGS. FOR THE PURPOSES OF THIS SUBSECTION, "MISCONDUCT" INCLUDES
19 ALL OF THE FOLLOWING:

20 1. INTENTIONAL DAMAGE TO THE DWELLING, TO PROPERTY OWNED BY THE
21 PARTY WHO IS ENTITLED TO POSSESSION OF THE DWELLING OR TO PROPERTY OWNED
22 BY ANOTHER OCCUPANT OF THE DWELLING.

23 2. PHYSICAL OR VERBAL ABUSE DIRECTED AT THE PARTY WHO IS ENTITLED
24 TO POSSESSION OF THE DWELLING OR ANOTHER OCCUPANT OF THE DWELLING.

25 3. THEFT OF PROPERTY BELONGING TO THE PARTY WHO IS ENTITLED TO
26 POSSESSION OF THE DWELLING OR PROPERTY OF ANOTHER OCCUPANT OF THE
27 DWELLING.

28 H. THE PERSON WHO IS ENTITLED TO POSSESSION OF A DWELLING MAY
29 PRESUME THAT THE FORMER TRANSIENT OCCUPANT HAS ABANDONED PERSONAL
30 BELONGINGS AT THE DWELLING IF THE FORMER TRANSIENT OCCUPANT DOES NOT SEEK
31 TO RECOVER THE PERSONAL BELONGINGS WITHIN A REASONABLE TIME AFTER THE
32 TRANSIENT OCCUPANT SURRENDERS OCCUPANCY OF THE DWELLING. THE TIME PERIOD
33 TO RECOVER PERSONAL BELONGINGS MAY BE EXTENDED DUE TO THE UNAVAILABILITY
34 OF THE PARTY WHO IS ENTITLED TO POSSESSION OF THE DWELLING TO SUPERVISE
35 THE RECOVERY OF THE PERSONAL BELONGINGS, OR IT MAY REASONABLY BE SHORTENED
36 DUE TO THE POOR CONDITION OR THE PERISHABLE OR HAZARDOUS NATURE OF THE
37 PERSONAL BELONGINGS, THE INTENT OF THE FORMER TRANSIENT OCCUPANT TO
38 ABANDON OR DISCARD THE BELONGINGS OR THE SIGNIFICANT IMPAIRMENT OF THE USE
39 OF THE DWELLING BY THE STORAGE OF THE FORMER TRANSIENT OCCUPANT'S PERSONAL
40 BELONGINGS.

41 I. IF THE PERSON WHO IS ENTITLED TO POSSESSION OF THE DWELLING
42 UNREASONABLY WITHHOLDS ACCESS TO A FORMER TRANSIENT OCCUPANT'S PERSONAL
43 BELONGINGS, THE FORMER TRANSIENT OCCUPANT MAY BRING A CIVIL ACTION FOR
44 DAMAGES OR THE RECOVERY OF THE PROPERTY. THE COURT SHALL AWARD THE
45 PREVAILING PARTY REASONABLE ATTORNEY FEES AND COSTS.

1 J. FACTORS THAT ESTABLISH THAT A PERSON IS A TRANSIENT OCCUPANT
2 INCLUDE THE FOLLOWING, EXCEPT THAT MINOR CONTRIBUTIONS MADE FOR THE
3 PURCHASE OF HOUSEHOLD GOODS OR MINOR CONTRIBUTIONS TOWARDS OTHER HOUSEHOLD
4 EXPENSES DO NOT ESTABLISH RESIDENCY:

5 1. THE PERSON DOES NOT HAVE AN OWNERSHIP INTEREST, FINANCIAL
6 INTEREST OR LEASEHOLD INTEREST IN THE PROPERTY ENTITLING THE PERSON TO
7 OCCUPANCY OF THE PROPERTY.

8 2. THE PERSON DOES NOT HAVE ANY PROPERTY UTILITY SUBSCRIPTIONS.

9 3. THE PERSON CANNOT PRODUCE DOCUMENTATION, CORRESPONDENCE OR
10 IDENTIFICATION CARDS SENT OR ISSUED BY A GOVERNMENT AGENCY, INCLUDING THE
11 DEPARTMENT OF MOTOR VEHICLES OR THE COUNTY RECORDER THAT SHOW THAT THE
12 PERSON USED THE PROPERTY ADDRESS AS AN ADDRESS OF RECORD WITH THE AGENCY
13 WITHIN THE PREVIOUS TWELVE MONTHS.

14 4. THE PERSON PAYS MINIMAL OR NO RENT FOR THE STAY AT THE PROPERTY.

15 5. THE PERSON DOES NOT HAVE A DESIGNATED SPACE FOR THE PERSON'S
16 EXCLUSIVE USE, SUCH AS A ROOM, AT THE PROPERTY.

17 6. THE PERSON HAS MINIMAL, IF ANY, PERSONAL BELONGINGS AT THE
18 PROPERTY.

19 7. THE PERSON HAS AN APPARENT PERMANENT RESIDENCE ELSEWHERE.

20 K. THE PERSON IS PRESUMED TO BE A TRANSIENT OCCUPANT IF THE PERSON
21 IS UNABLE TO PRODUCE AT LEAST ONE OF THE FOLLOWING:

22 1. A NOTARIZED LEASE THAT INCLUDES THE NAME AND SIGNATURE OF THE
23 OWNER OF THE PROPERTY.

24 2. A RECEIPT OR OTHER RELIABLE EVIDENCE DEMONSTRATING THAT THE
25 PERSON HAS PAID TO THE OWNER OR THE OWNER'S REPRESENTATIVE RENT FOR THE
26 LAST RENT PAYMENT PERIOD. FOR MONTHLY RENTAL TENANCIES AND RENTAL
27 TENANCIES FOR ANY LESSER PERIOD OF TIME, A RECEIPT OR OTHER RELIABLE
28 EVIDENCE MUST BE DATED WITHIN THE LAST SIXTY DAYS.

29 L. FOR THE PURPOSES OF THIS SECTION, "TRANSIENT OCCUPANT":

30 1. MEANS A PERSON WHOSE RESIDENCY IN REAL PROPERTY INTENDED FOR
31 RESIDENTIAL USE HAS OCCURRED FOR A BRIEF LENGTH OF TIME AND IS NOT
32 PURSUANT TO A LEASE AND WHOSE OCCUPANCY WAS INTENDED AS TRANSIENT IN
33 NATURE.

34 2. DOES NOT INCLUDE A TENANT UNDER TITLE 33, CHAPTER 10.