

§ 12-1173.01. Additional definition of forcible detainer

A. In addition to other persons enumerated in this article, UNLESS OTHERWISE AGREED IN WRITING, a person in any of the following cases who retains possession of any land, tenements or other real property, after he receives written demand of possession may be removed through an action for forcible detainer filed with the clerk of the superior court in accordance with this article:

1. If the property has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of real property pursuant to title 33, chapter 6, article 2.
2. If the property has been sold through a trustee's sale under a deed of trust pursuant to title 33, chapter 6.1.
3. If the property has been forfeited through a contract for conveyance of real property pursuant to title 33, chapter 6, article 3.
4. If the property has been sold by virtue of an execution and the title has been duly transferred.
5. If the property has been sold by the owner and the title has been duly transferred.

B.

1. The remedies provided by this section do not affect the rights of persons in possession under a lease or other possessory right which is superior to the interest sold, forfeited or executed upon.
2. AN OCCUPYING TENANT RESIDING PURSUANT TO A RENTAL AGREEMENT OF FIXED TERM MAY CONTINUE TO RESIDE IN RENTAL PREMISES THAT ARE SUBJECT TO FORECLOSURE ACTION OR TRUSTEE SALE FOR A PERIOD OF SIXTY DAYS FOLLOWING RECEIPT OF NOTICES PROVIDED PURSUANT TO A.R.S. §§ 33-721 OR 33-809, AS APPLICABLE.
3. THE REMEDIES PROVIDED BY THIS SECTION AFFECT THE RIGHTS OF A TENANT WHO OCCUPIES, SUBJECT TO A RENTAL AGREEMENT OF FIXED TERM, A RENTAL PROPERTY THAT HAS BEEN FORECLOSED, AS FOLLOWS: SUCH TENANT, WHO IN ACCORDANCE WITH A.R.S. § 33-1326 CONTINUES TO PAY PERIODIC RENT AND WHO TENDERS A \$1,000.00 GOOD FAITH DOWN PAYMENT OFFER TO PURCHASE THE FORECLOSED RENTAL PROPERTY, MAY CONTINUE TO RESIDE IN THE RENTAL PROPERTY UNTIL THE TRUSTEE SALE OF THE PROPERTY. THE DOWN PAYMENT SHALL BE HELD IN THE SAME ESCROW ACCOUNT, OR WITH THE LENDER'S ATTORNEY, AS WITH RENTAL PAYMENTS IN ACCORDANCE WITH A.R.S. § 33-1326, SUBSECTION F. UPON SALE OF THE PROPERTY TO ANOTHER PARTY, THE DOWN PAYMENT SHALL BE RETURNED TO THE OCCUPYING TENANT, WHO MAY THEREUPON BE REMOVED FROM THE PROPERTY IN ACCORDANCE WITH SUBSECTION A OF THIS SECTION. UPON SALE OF THE PROPERTY TO THE OCCUPYING TENANT, THE DOWN PAYMENT SHALL BE APPLIED TOWARD THE PURCHASE PRICE, AND THE TENANT SHALL ACQUIRE

TITLE TO THE PROPERTY.

C. The remedies provided by this section are in addition to and do not preclude any other remedy granted by law.

§ 33-721. Foreclosure of mortgage by court action

A. Mortgages of real property and deeds of trust of a type not included in the definition of deed of trust provided in section 33-801, notwithstanding any other provision in the mortgage or deed, shall be foreclosed by action in a court.

B. NO LATER THAN THIRTY DAYS AFTER FILING OF THE SUMMONS AND COMPLAINT, THE COURT CLERK SHALL DELIVER A COPY OF THE SUMMONS AND COMPLAINT TO AN OCCUPANT OR OCCUPANTS IN POSSESSION OF IMPROVED PROPERTIES. THE COPY SENT PURSUANT TO THIS PARAGRAPH SHALL BE ADDRESSED TO THE PERSON OR PERSONS BY NAME, IF KNOWN, AT THE PROPERTY ADDRESS, OR OTHERWISE SERVED UPON ANY RENTAL OCCUPANT(S).

C. NO LATER THAN THIRTY DAYS AFTER RECORDING OF THE NOTICE OF SALE, THE COURT CLERK SHALL DELIVER A COPY OF THE NOTICE OF SALE TO AN OCCUPANT OR OCCUPANTS IN POSSESSION OF IMPROVED PROPERTIES. THE COPY SENT PURSUANT TO THIS PARAGRAPH SHALL BE ADDRESSED TO THE PERSON OR PERSONS BY NAME, IF KNOWN, AT THE PROPERTY ADDRESS, OR OTHERWISE SERVED UPON ANY RENTAL OCCUPANT(S).

§ 33-809. Request for copies of notice of sale; mailing by trustee; disclosure of information regarding trustee sale

A. A person desiring a copy of a notice of sale under a trust deed, at any time subsequent to the recording of the trust deed and prior to the recording of a notice of sale pursuant thereto, shall record in the office of the county recorder in any county in which part of the trust property is situated a duly acknowledged request for a copy of any such notice of sale. The request shall set forth the name and address of the person or persons requesting a copy of such notice and shall identify the trust deed by setting forth the county, docket or book and page of the recording data thereof and by stating the names of the original parties to such deed, the date the deed was recorded and the legal description of the entire trust property and shall be in substantially the following form:

Request for Notice

Request is hereby made that a copy of any notice of sale under the trust deed recorded in docket or book _____ at page _____, records of _____ county, Arizona, _____, _____,

(legal description of trust property)

Executed by _____ as trustor, in which _____ is named as beneficiary and _____ as trustee, be mailed to _____ at _____.

Dated this _____ day of _____, _____.

Signature

(Acknowledgement)

B. Not later than thirty days after recording the notice of sale, the trustee shall mail by certified or registered mail, with postage prepaid, a copy of the notice of sale that reflects the recording date together with any notice required to be given by subsection C of this section, addressed as follows:

1. To each person whose name and address are set forth in a request for notice, which has been recorded prior to the recording of the notice of sale, directed to the address designated in such request.
2. To each person who, at the time of recording of the notice of sale, appears on the records of the county recorder in the county in which any part of the trust property is situated to have an interest in any of the trust property. The copy of the notice sent pursuant to this paragraph shall

be addressed to the person whose interest appears of record at the address set forth in the document. If no address for the person is set forth in the document, the copy of the notice may be addressed in care of the person to whom the recorded document evidencing such interest was directed to be mailed at the time of its recording or to any other address of the person known or ascertained by the trustee. If the interest that appears on the records of the county recorder is a deed of trust, a copy of the notice only needs to be mailed to the beneficiary under the deed of trust. If any person having an interest of record or the trustor, or any person who has recorded a request for notice, desires to change the address to which notice shall be mailed, the change shall be accomplished by a request as provided under this section.

3. TO EACH OCCUPANT IN POSSESSION OF IMPROVED PROPERTIES AT THE TIME OF RECORDING OF THE NOTICE OF SALE. THE COPY OF THE NOTICE SENT PURSUANT TO THIS PARAGRAPH SHALL BE ADDRESSED TO THE PERSON OR PERSONS BY NAME, IF KNOWN, AT THE PROPERTY ADDRESS, OR OTHERWISE SERVED UPON ANY RENTAL OCCUPANT(S).

C. The trustee, within five business days after the recordation of a notice of sale, shall mail by certified or registered mail, with postage prepaid, a copy of the notice of sale to each of the persons who were parties to the trust deed except the trustee. The copy of the notice mailed to the parties need not show the recording date of the notice. The notice sent pursuant to this subsection shall be addressed to the mailing address specified in the trust deed. In addition, notice to each party shall contain a statement that a breach or nonperformance of the trust deed or the contract or contracts secured by the trust deed, or both, has occurred, and setting forth the nature of such breach or nonperformance and of the beneficiary's election to sell or cause to be sold the trust property under the trust deed and the additional notice shall be signed by the beneficiary or the beneficiary's agent. A copy of the additional notice shall also be sent with the notice provided for in subsection B, paragraph 2 of this section to all persons whose interest in the trust property is subordinate in priority to that of the deed of trust along with a written statement that the interest may be subject to being terminated by the trustee's sale. The written statement may be contained in the statement of breach or nonperformance.

D. No request for a copy of a notice recorded pursuant to this section, nor any statement or allegation in any request, nor any record of request, shall affect the title to the trust property or be deemed notice to any person that a person requesting a copy of notice of sale has or claims any interest in, or claim upon, the trust property.

E. At any time that the trust deed is subject to reinstatement pursuant to section 33-813, but not sooner than thirty days after recordation of the notice of trustee's sale, the trustee shall upon receipt of a written request, provide, if actually known to the trustee, the following information relating to the trustee's sale and the trust property:

1. The unpaid principal balance of the note or other obligation which is secured by the deed of trust.
2. The name and address of record of the owner of the trust property as of the date of recordation

of the notice of trustee's sale.

3. A list of the liens and encumbrances upon the trust property as of the date of recordation of the notice of trustee's sale, excluding those matters set forth in section 33-438, subsection A.

If the trustee elects to charge a fee for providing the information requested, the fee shall not exceed five per cent of the amount the trustee may charge pursuant to section 33-813, subsection B, paragraph 4, except that the trustee shall not charge a fee that is more than one hundred dollars or be required to accept a fee that is less than thirty dollars but may accept a lesser fee at the trustee's discretion. The trustee, or any other person furnishing information pursuant to this subsection to the trustee, shall not be subject to liability for any error or omission in providing the information requested, except for the wilful and intentional failure to provide information in the trustee's actual possession.

F. Beginning at 9:00 a.m. and continuing until 5:00 p.m. mountain standard time on the last business day preceding the day of sale and beginning at 9:00 a.m. mountain standard time and continuing until the time of sale on the day of the sale, the trustee shall make available the actual bid or a good faith estimate of the credit bid the beneficiary is entitled to make at the sale. If the actual bid or good faith estimate is not available during the prescribed time period, the trustee shall postpone the sale until the trustee is able to comply with this subsection.

G. In providing information pursuant to subsections E and F of this section, the trustee, without obligation or liability for the accuracy or completeness of the information, may respond to oral requests, respond orally or in writing or provide additional information not required by such subsections. With respect to property that is the subject of a trustee's sale, the beneficiary of such deed of trust or the holder of any prior lien may, but shall not be required to, provide information concerning such deed of trust or any prior lien that is not required by subsection E or F of this section and may charge a reasonable fee for providing the information. The providing of such information by any beneficiary or holder of a prior lien shall be without obligation or liability for the accuracy or completeness of the information.

§ 33-1314. Terms and conditions of rental agreement

A. The landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or any other rule of law including rent, term of the agreement and other provisions governing the rights and obligations of the parties.

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

D. THE LANDLORD MUST PROVIDE TO THE TENANT A CONTEMPORANEOUS RECEIPT FOR EACH PAYMENT TENDERED BY THE TENANT. THE RECEIPT SHALL CLEARLY IDENTIFY THE TENANT'S NAME, THE NAME OF THE LANDLORD OR PROPERTY, THE DATE OF THE PAYMENT, THE AMOUNT OF THE PAYMENT, THE METHOD OF PAYMENT, WHAT THE PAYMENT IS FOR, THE BALANCE DUE, IF ANY, AND MUST BE SIGNED BY THE LANDLORD OR AGENT. FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING APPLIES:

1. IF THE PAYMENT IS HAND-DELIVERED AND HAND-RECEIVED, CONTEMPORANEOUS SHALL BE DEEMED TO BE IMMEDIATE.

2. IF THE PAYMENT IS PLACED IN A DROP-SLOT OR SIMILAR FACILITY, CONTEMPORANEOUS SHALL BE DEEMED TO BE THE NEXT BUSINESS DAY.

3. IF THE PAYMENT IS MAILED TO THE LANDLORD, CONTEMPORANEOUS SHALL BE DEEMED TO BE THE NEXT BUSINESS DAY AFTER THE LANDLORD HAS RECEIVED THE PAYMENT IN ACCORDANCE WITH SECTION 33-1313(B), IN WHICH CASE THE LANDLORD'S MAILING OF THE RECEIPT TO THE TENANT BY FIRST CLASS UNITED STATES MAIL SHALL SATISFY THE LANDLORD HAVING PROVIDED THE RECEIPT TO THE TENANT.

FAILURE OF THE LANDLORD TO COMPLY WITH THIS SUBSECTION SHALL BE A MATERIAL NONCOMPLIANCE. IF THE LANDLORD'S FAILURE TO COMPLY WITH THIS SUBSECTION IS WILLFUL AND NOT IN GOOD FAITH THE TENANT SHALL BE ENTITLED TO RECOVER FROM THE LANDLORD DAMAGES OF TWO MONTHS' PERIODIC RENT.

DE. Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

EF. If a municipality that levies a transaction privilege tax on residential rent changes the percentage of that tax, the landlord on thirty ~~day~~ DAYS' written notice to the tenant may adjust the amount of rent due to equal the difference caused by new percentage amount of tax. The adjustment to rent shall not occur before the date upon which the new tax is effective. In order for a landlord to adjust rent pursuant to this subsection, the landlord's right to adjust rent pursuant to this subsection shall be disclosed in the rental agreement.

§ 33-1315.01. PROHIBITED ACTIONS BY LANDLORDS

1. THE LANDLORD, INCLUDING ANY AGENTS OF THE LANDLORD, MAY ONLY PLACE A NEGATIVE RECORD AGAINST THE TENANT'S CREDIT REPORT IF A JUDGMENT IS FIRST OBTAINED, AND ONLY FOR THE AMOUNT OF THE JUDGMENT. A VIOLATION OF THIS PROHIBITION SHALL RESULT IN THE LANDLORD'S WAIVER OF THE RIGHT TO PURSUE THE CLAIM AGAINST THE TENANT IN ANY LEGAL FORUM, AND SHALL BE CONSTRUED AS DEFAMATION OF CREDIT.

2. SUCCESSOR PARTIES TO WHOM THE LANDLORD'S INTEREST HAS BEEN ASSIGNED SHALL ALSO BE BOUND BY THIS SECTION.

§ 33-1326 NOTIFICATION OF FORECLOSURE; REFUNDS; PURCHASE

A. THE LANDLORD SHALL PROVIDE TO A TENANT RESIDING IN THE PREMISES SUBJECT TO A RENTAL AGREEMENT OF FIXED TERM NOTICE THAT THE RENTAL PROPERTY MAY, IS LIKELY TO, OR SHALL, BE FORECLOSED UPON BY THE EARLIER OF THE FOLLOWING:

1. NO MORE THAN 30 DAYS AFTER THE LANDLORD IS NOTIFIED OF AN IMPENDING FORECLOSURE.
2. AT LEAST SIXTY DAYS IN ADVANCE OF A PROSPECTIVE FORECLOSURE AUCTION.

THE LANDLORD'S NOTICE SHALL CONTAIN THE NAME AND ADDRESS OF THE PROPERTY OWNER, THE NAME AND ADDRESS OF THE LENDING INSTITUTION THAT HOLDS THE MORTGAGE, AND IDENTIFICATION OF THE COURT AND COURT CASE NUMBER, IF ANY, BY WHICH THE FORECLOSURE OR AUCTION IS TO BE TRANSACTED. FAILURE OF A LANDLORD TO PROVIDE SUCH NOTICE TO THE TENANT SHALL CONSTITUTE A WAIVER BY THE LANDLORD TO WITHHOLD PURSUANT TO A.R.S. § 33-1321, AND MANDATE THAT THE LANDLORD MUST, UPON WRITTEN DEMAND FROM THE TENANT, PROMPTLY RETURN TO THE TENANT ALL PREPAID DEPOSITS, PREPAID FEES, PREPAID RENT, OPTION FEES, DOWN PAYMENTS AND CLOSING COSTS WITHIN THE TIME FRAMES SET FORTH IN A.R.S. § 33-1321(D), NOTWITHSTANDING THAT THE TENANCY CONTINUES AND POSSESSION IS RETAINED BY THE TENANT. RETURN OF PREPAID AMOUNTS SHALL INCLUDE THOSE OTHERWISE DESIGNATED NONREFUNDABLE IN A RENTAL AGREEMENT, HEREBY CONSTRUED REFUNDABLE DUE TO THE VIOLATION.

B. UPON TITLE OF A FORECLOSED PROPERTY REVERTING FROM THE LANDLORD TO A LENDER, THE LANDLORD MUST, UPON WRITTEN DEMAND FROM THE TENANT, PROMPTLY RETURN TO THE TENANT ALL PREPAID DEPOSITS, FEES, PREPAID RENT, DOWN PAYMENTS, OPTION FEES AND CLOSING COSTS WITHIN THE TIME FRAMES SET FORTH IN A.R.S. § 33-1321(D), NOTWITHSTANDING THAT THE TENANCY CONTINUES AND POSSESSION IS RETAINED BY THE TENANT.

C. FAILURE OF A LANDLORD TO COMPLY WITH RETURN OF FUNDS REQUIRED UNDER SUBSECTIONS A OR B OF THIS SECTION SHALL SUBJECT THE LANDLORD TO DAMAGES DUE TO THE TENANT FOR WRONGFUL WITHHOLDING OF THE ENTIRE AMOUNT, AS SET FORTH IN A.R.S. § 33-1321(E). THE TENANT SHALL BE ENTITLED TO COSTS AND ATTORNEY'S FEES FOR AN ACTION IN WHICH HE PREVAILS IN RECOVERING THE AMOUNT WRONGFULLY WITHHELD, INCLUDING ANY DAMAGES DUE THE TENANT.

D. A LANDLORD MUST APPLY RENT PAID BY HIS TENANT TO THE MORTGAGE PAYMENT DUE, IF ANY. THE LANDLORD OVER THE DURATION OF HIS TENANT'S

OCCUPANCY MUST AT A MINIMUM PAY THE LESSER AMOUNT OF ONE OF THE FOLLOWING:

1. IN A SINGLE FAMILY RESIDENCE, THE FULL MORTGAGE PAYMENTS DUE.
2. IN A MULTI-FAMILY RESIDENCE, THE FULL MORTGAGE PAYMENTS DUE DIVIDED BY THE NUMBER OF UNITS COMPRISING THE RENTAL COMMUNITY OWNED BY THE LANDLORD.
3. THE PORTION OF THE LANDLORD'S MORTGAGE PAYMENTS THAT IS EQUAL TO THE TENANT'S PERIODIC RENTAL PAYMENTS FOR THE RESPECTIVE TIME FRAMES. FOR THE PURPOSES OF THIS CALCULATION, RENTAL PAYMENTS SHALL BE CUMULATIVE AND APPORTIONED SO AS TO TEMPORALLY EQUATE TO THE MORTGAGE REMUNERATION PERIOD.

THE LANDLORD'S FAILURE TO FULFILL THIS OBLIGATION SHALL, IN AN ACTION COMMENCED BY THE TENANT PURSUANT TO SUBSECTION C OF THIS SECTION, ENTITLE THE TENANT TO RECOVER FROM THE LANDLORD AN AMOUNT EQUAL TO THE TENANT'S AGGREGATE PERIODIC RENTAL PAYMENTS FOR THE PERIODS DURING WHICH THE LANDLORD HAS NOT PAID THE MORTGAGE PAYMENTS IN ACCORDANCE WITH THIS SUBSECTION.

E. AMOUNTS DUE TO THE TENANT UNDER SUBSECTIONS A, B AND D SHALL BE NON-DISCHARGEABLE IN BANKRUPTCY.

F. WITHIN TEN DAYS AFTER FORECLOSURE OF A TRUST DEED, RECORDING OF THE NOTICE OF TRUSTEE SALE, OR THE FILING OF A SUMMONS AND COMPLAINT PURSUANT TO A.R.S. § 33-721 ET SEQ, WHICHEVER EVENT OCCURS FIRST, A LENDER OR ATTORNEY REPRESENTING THE LENDER MUST PROVIDE A TENANT RESIDING IN THE PREMISES SUBJECT TO A RENTAL AGREEMENT OF FIXED TERM NOTICE INSTRUCTING THE TENANT AS TO WHICH ESCROW ACCOUNT PERIODIC RENTAL MONIES SHALL BE PAID, OR THE NAME AND ADDRESS OF THE LENDER'S ATTORNEY TO WHOM PERIODIC RENTAL MONIES SHALL BE PAID. THE NOTICE SENT PURSUANT TO THIS PARAGRAPH SHALL BE MAILED BY CERTIFIED OR REGISTERED MAIL, WITH POSTAGE PREPAID, ADDRESSED TO THE PERSON OR PERSONS BY NAME, IF KNOWN, AT THE PROPERTY ADDRESS, OR OTHERWISE SERVED UPON ANY RENTAL OCCUPANT(S). UPON THE TENANT RECEIVING SUCH NOTIFICATION, THEREAFTER THE TENANT SHALL MAKE THE RENTAL PAYMENTS IN ACCORDANCE WITH THE AFOREMENTIONED INSTRUCTIONS.

G. A TENANT OR TENANTS OCCUPYING A RENTAL PROPERTY SUBJECT TO A RENTAL AGREEMENT OF FIXED TERM SHALL HAVE THE OPTION TO PURCHASE THE FORECLOSED RENTAL PROPERTY FROM THE HOLDER OF TITLE OF THE PROPERTY, ACCORDING TO THE FOLLOWING:

1. FOR A SINGLE FAMILY RESIDENCE, AT A TRUSTEE'S SALE OF THE PROPERTY A TENANT'S OFFER OF AN AMOUNT EQUAL TO THE MORTGAGE

BALANCE DUE ON THE PROPERTY SHALL BE ACCEPTED.

2. FOR A MULTI-UNIT COMMUNITY, AT A TRUSTEE'S SALE OF THE PROPERTY AN OFFER FROM TENANTS OCCUPYING TWO OR MORE UNITS, IN AN AMOUNT EQUAL TO THE MORTGAGE BALANCE DUE ON THE MULTI-UNIT PROPERTY, SHALL BE ACCEPTED.

THIS IS NOT TO PRECLUDE THE TENANT OR TENANTS AND THE LENDER, OR OTHER HOLDER OF TITLE OF THE PROPERTY, FROM AGREEING TO A LESSER PAYMENT AMOUNT FOR THE TENANT OR TENANTS TO ACQUIRE TITLE. UPON THE TENANT OR TENANTS TENDERING SUCH FUNDS TO THE LENDER OR TITLE HOLDER, TITLE MUST BE SURRENDERED TO THE TENANT OR TENANTS.

H. CLAIMS BY A TENANT AGAINST A LANDLORD PURSUANT TO THIS SECTION SHALL NOT BE EXTENDED AS CLAIMS BY THE TENANT AGAINST THE LENDER. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PERMIT A TENANT TO HAVE CLAIM AGAINST A LENDER, EXCEPT AS TO A LENDER'S LIABILITY AS FOLLOWS:

1. UNDER A.R.S. § 33-1321 AS TO ANY REFUNDABLE DEPOSITS OR REFUNDABLE FEES ORIGINALLY TENDERED BY THE TENANT TO THE LANDLORD AND WHICH HAVE BEEN THEREUPON TRANSMITTED BY THE LANDLORD TO THE LENDER.

2. FOR A LENDER'S FAILURE TO COMPLY WITH ITS OBLIGATIONS TO THE TENANT.

§ 33-1368. Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability for guests; definition

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, including material falsification of the information provided on the rental application, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten days after receipt of the notice if the breach is not remedied in ten days. For the purposes of this section, material falsification shall include the following untrue or misleading information about the:

1. Number of occupants in the dwelling unit, pets, income of prospective tenant, social security number and current employment listed on the application or lease agreement.

2. Tenant's criminal records, prior eviction record and current criminal activity. Material falsification of information in this paragraph is not curable under this section. If there is a noncompliance by the tenant with section 33-1341 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than five days after receipt of the notice if the breach is not remedied in five days. However, if the breach is remediable by repair or the payment of damages or otherwise, and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate. If there is an additional act of these types of noncompliance of the same or a similar nature during the term of the lease after the previous remedy of noncompliance, the landlord may institute a special detainer action pursuant to section 33-1377 ten days after delivery of a written notice advising the tenant that a second noncompliance of the same or a similar nature has occurred. If there is a breach that is both material and irreparable and that occurs on the premises, including but not limited to an illegal discharge of a weapon, homicide as defined in sections 13-1102 through 13-1105, prostitution as defined in section 13-3211, criminal street gang activity as prescribed in section 13-105, activity as prohibited in section 13-2308, the unlawful manufacturing, selling, transferring, possessing, using or storing of a controlled substance as defined in section 13-3451, threatening or intimidating as prohibited in section 13-1202, assault as prohibited in section 13-1203, acts that have been found to constitute a nuisance pursuant to section 12-991 or a breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, the landlord's agent or another tenant or involving imminent or actual serious property damage, the landlord may deliver a written notice for immediate termination of the rental agreement and shall proceed under section 33-1377.

B. A tenant may not withhold rent for any reason not authorized by this chapter.

1. If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement by filing a special detainer action pursuant to section 33-1377. Before the filing of a special detainer action, the rental agreement shall be reinstated if the tenant tenders all past due and unpaid

periodic rent and a reasonable late fee set forth in a written rental agreement. After a special detainer action is filed the rental agreement is reinstated only if the tenant pays all past due rent, reasonable late fees set forth in a written rental agreement, attorney fees and court costs. After a judgment has been entered in a special detainer action in favor of the landlord, any reinstatement of the rental agreement is solely in the discretion of the landlord. AFTER A JUDGMENT HAS BEEN ENTERED IN A SPECIAL DETAINER ACTION IN FAVOR OF THE LANDLORD, THE LANDLORD'S ACCEPTANCE OF A RENTAL PAYMENT SHALL CONSTITUTE A PARTIAL PAYMENT IN ACCORDANCE WITH SECTION 33-1371(B), AND SHALL VACATE THE JUDGMENT.

2. IN AN ACTION FOR POSSESSION BASED UPON NONPAYMENT OF THE RENT OR IN AN ACTION FOR RENT WHERE THE TENANT IS IN POSSESSION, A COPY OF A MONEY ORDER OR OTHER FORM OF CERTIFIED FUNDS FROM THE TENANT PAYABLE TO THE LANDLORD THAT IS DATED PRIOR TO OR ON THE DATE THE PERIODIC RENT WAS DUE SHALL BE CONSIDERED BY THE COURT SUFFICIENT EVIDENCE OF THE PAYMENT HAVING BEEN TENDERED, CREATING THE PRESUMPTION THAT THE TENANT MADE EFFORT TO TIMELY PAY RENT. "PRESUMPTION", IN THIS SUBSECTION, MEANS THAT THE TRIER OF FACT MUST FIND THE EXISTENCE OF THE FACT PRESUMED UNLESS AND UNTIL EVIDENCE IS INTRODUCED WHICH WOULD SUPPORT A FINDING OF ITS NONEXISTENCE.

3. IN AN ACTION FOR POSSESSION BASED UPON NONPAYMENT OF THE RENT OR IN AN ACTION FOR RENT WHERE THE TENANT IS IN POSSESSION, A LANDLORD'S REFUSAL OF TIMELY TENDERED RENT, ESTABLISHED THROUGH EVIDENCE OR TESTIMONY, SHALL CONSTITUTE A WAIVER OF THE LANDLORD'S RIGHT TO DEFEND HIS CLAIM, AND SHALL ALSO CONSTITUTE A WAIVER OF THE LANDLORD'S CLAIM FOR RENT FOR THE DISPUTED PERIOD.

C. The landlord may recover all reasonable damages, resulting from noncompliance by the tenant with the rental agreement or section 33-1341 or occupancy of the dwelling unit, court costs, reasonable attorney fees and all quantifiable damage caused by the tenant to the premises.

D. The landlord may discontinue utility services provided by the landlord on the day following the day that a writ of restitution or execution is executed pursuant to section 12-1181. Disconnections shall be performed only by a person authorized by the utility whose service is being discontinued. Nothing in this section shall supersede standard tariff and operational procedures that apply to any public service corporation, municipal corporation or special districts providing utility services in this state.

E. The landlord shall hold the tenant's personal property for a period of twenty-one days beginning on the first day after a writ of restitution or writ of execution is executed as prescribed in section 12-1181. The landlord shall use reasonable care in moving and holding the tenant's property and may store the tenant's property in an unoccupied dwelling unit owned by the landlord, the unoccupied dwelling unit formerly occupied by the tenant or off the premises if an unoccupied dwelling unit is not available. If the tenant's former dwelling unit is used to store the

property, the landlord may change the locks on that unit at the landlord's discretion. The landlord shall prepare an inventory and promptly notify the tenant of the location and cost of storage of the personal property by sending a notice by certified mail, return receipt requested, addressed to the tenant's last known address and to any of the tenant's alternative addresses known to the landlord. To reclaim the personal property, the tenant shall pay the landlord only for the cost of removal and storage for the time the property is held by the landlord. Within five days after a written offer by the tenant to pay these charges the landlord must surrender possession of the personal property in the landlord's possession to the tenant upon the tenant's tender of payment. If the landlord fails to surrender possession of the personal property to the tenant, the tenant may recover the possessions or an amount equal to the damages determined by the court if the landlord has destroyed or disposed of the possessions before the twenty-one days specified in this section or after the tenant's offer to pay. The tenant shall pay all removal and storage costs accrued through the fifth day after the tenant's offer to pay is received by the landlord or the date of delivery or surrender of the property, whichever is sooner. Payment by the tenant relieves the landlord of any further responsibility for the tenant's possessions.

F. A tenant does not have any right of access to that property until all payments specified in subsection E of this section have been made in full, except that the tenant may obtain clothing and the tools, apparatus and books of a trade or profession and identification or financial documents including all those related to the tenant's immigration status, employment status, public assistance or medical care. If the landlord holds the property for the twenty-one day period and the tenant does not make a reasonable effort to recover it, the landlord, upon the expiration of twenty-one days as provided in this subsection, may administer the personal property as provided in section 33-1370, subsection E. The landlord shall hold personal property after a writ of restitution or writ of execution is executed for not more than twenty-one days after such an execution. Nothing in this subsection shall preclude the landlord and tenant from making an agreement providing that the landlord will hold the personal property for a period longer than twenty-one days.

G. For the purposes of this chapter, the tenant shall be held responsible for the actions of the tenant's guests that violate the lease agreement or rules or regulations of the landlord if the tenant could reasonably be expected to be aware that such actions might occur and did not attempt to prevent those actions to the best of the tenant's ability.

H. For purposes of this section, "days" means calendar days.