

How to avoid being penny wise and pound foolish in the collection of rental income...

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Landlords and the Partial Rental Payment Problem

Recently, the Arizona real estate market has been anything but static. As a result of this volatility, homeowners, investors, and tenants have found themselves in a state of fluctuating financial circumstances. Specifically, these changed circumstances have resulted in homeowners being turned into renters and the owners of second homes (or investors) being turned into impromptu landlords.

If you find yourself in a circumstance that involves playing the unexpected role of a landlord, it is important that you familiarize yourself with the Arizona "Partial Payments" Statute. (A.R.S. §33-1371). This is important because a landlord's failure to comply with this Statute can result in the waiving of their rights to collect the full balance of their tenant's monthly rent.

The Partial Payments Statute asserts two major principles. First, it asserts that a landlord is not required to accept a tenant's partial payment of rent or other charges. However, the second principal asserts that if a landlord does accept a partial payment of rent or other charges from their tenant, then that landlord cannot later collect the balance of rent owed, unless the tenant agrees in a contemporaneous writing to the

terms and conditions of the partial payment with regard to continuation of the tenancy.

Simply put, if you are a landlord desirous of accepting a partial payment of rent to keep your cash flow coming from the tenant, but you do not want to waive your right to receive the full balance for the unpaid rent, you, as landlord, will need to satisfy certain administrative requirements.

The administrative requirements that need to be met include:

- 1) The landlord and tenant must enter into a written agreement;
- 2) The agreement must set forth that the landlord's acceptance of a partial payment of rent does not waive any of the landlord's future rights;
- 3) The agreement must be signed by the tenant and landlord at the time the partial payment is received; and
- 4) The agreement must include a deadline when the remaining rent balance is due.

The failure of the landlord to meet all of these requirements when accepting a partial payment of rent from their tenant will prevent the landlord from later being able to collect the tenant's remaining rental balance. To ensure your rights are

protected as a landlord, consider using a Partial Payments Rental Form.

Having practiced real estate law in Arizona for years, I am constantly amazed by the unproductive methods that landlord's will utilize in an attempt to recover lost rent; however, such attempts are oftentimes to their detriment. Specifically, many landlords attempt to protect themselves from forfeiting rental balances following the collection of a partial payment of rent by simply using a lease that contains partial rent payment language. Too often these landlords either do not understand the limitations they impose on their future recovery of delinquent rent or they simply choose to avoid the nominal fee and expenditure of time associated with preparing a Partial Payments Rental Form.

As any experienced real estate attorney will tell you, a partial payment rent clause contained in a lease will not satisfy the requirements of A.R.S. §33-1371 and therefore fails to provide adequate protections to the landlord.

In summary, if as a landlord you are desirous of protecting your financial rights, you must comply with the provisions of the Arizona "Partial Payments" Statute.

For more information on how to protect your rights as landlord, please contact BURNS AND BURNS P.C.

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Scott F. Burns, Esq. is an Arizona attorney and licensed real estate broker whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning, real estate law, and business consulting.

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