

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: CIVIL PROCESS 2.6

SUBJECT:	Civil Process
AZ POST DESIGNATION:	2.6
HOURS:	2
COURSE CONTENT:	An overview of common terminology related to civil cases and the general rules pertaining to repossessions.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:
2.6.1	Identify the definition of “civil litigation.”
2.6.2	Identify the general rules pertaining to the legal repossession of property.
	A. Identify what property may be repossessed without a court order.
	1. Self-help remedies.
	2. Commercial tenancies.
	3. Innkeepers.
	B. Identify the court paperwork which permits the seizure of property before (pre-judgment) and after (post-judgment).
	1. Post-judgment seizures (Writ of Restitution, Writ of Garnishment and Writ(s) of Execution).
	2. Pre-judgment seizures (Writ of Attachment and Writ of Replevin).
	C. Identify who may repossess property.
	D. Identify the limitations on repossessions of property.
	E. Identify statutory liens allowing a person to legally retain property belonging to another.

DATE FIRST PREPARED: June 2002

PREPARED BY: SME Committee

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REVIEWED – REVISSED: Lt. Harold Brady – SME Co-Chair DATE: July 2002
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AZ POST – APPROVAL: Steve Enteman DATE: August 2019
AZ POST – APPROVAL: Mandy Faust DATE: February 2021
AZ POST – APPROVAL: Lori Wait DATE: January 2022

INSTRUCTOR REFERENCES:

CLASS LEVEL: Student

TRAINING AIDS:

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.6 Civil Process

DATE RELEASED TO THE SHARE FILE: May 27, 2022

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

II. CIVIL PROCESS**P. O. 2.6.1**

- A. Types of court actions: Criminal and civil.
 - 1. Criminal actions are prosecutions of individuals by the state or federal government for public offenses.
 - 2. Civil litigation involves disputes between individuals or individuals and the state.
- B. Civil litigation.
 - 1. Definition: An action brought to enforce, redress or protect private rights. Civil litigation remedies private wrongs.
 - 2. Allows the court to become involved in resolving a civil dispute.
- C. It is important to recognize that under Arizona law, court orders relating to the possession or repossession of property may be served and enforced only by constables or county sheriffs and their deputies. (Municipal police officers do not have the statutory authority to execute writs of attachment, execution, replevin or restitution.)

III. GENERAL CONCEPTS PERTAINING TO THE LEGAL REPOSSESSION OF PROPERTY**P. O. 2.6.2**

- A. Property that may be repossessed without a court order:

P. O. 2.6.2A

- 1. Self-help remedies.

P. O. 2.6.2A1

- a. Auto repossessions. (ARS 47-9503)

- i. A creditor (the person or bank who loans money to buy the car) conditions the loan on a lien (security interest) in the property.
INSTRUCTOR NOTE: *The instructor should ensure the students understand the concept of a lien. Generally, there are two (2) types of liens. A “Possessory lien”, which is only created by statute, entitles the lien holder to keep the property until the lien is satisfied. A “recorded lien” on the other hand merely gives the lien holder a legal right over the property.*
- ii. If the appropriate paperwork is completed and filed, the creditor becomes a secured party.
- iii. A secured party can retake possession of collateral for a loan when the

contract for sale is breached (e.g., payments are not made) without a court order so long as it can be accomplished without a breach of the peace.

- b. A breach of the peace in this context includes such things as forcible entry (e.g., cutting a lock on a gate) onto a person's private property without consent and resistance (e.g., yelling and shouting) by the owner to the repossession.
 - i. The self-help repossession statute does not authorize the reposessor to violate the criminal code. Criminal violations that occur at the scene may be addressed as appropriate.

1. Commercial tenancies. (ARS 33-361)

P. O. 2.6.2A2

- a. The rules relating to commercial property are very different from those relating to residential property.
- b. Essentially, the written agreement between the parties establishes the entire relationship, including any remedies the parties may have. ***INSTRUCTOR NOTE: Need to emphasize the huge difference between commercial and residential lockouts and they cannot/ should not get involved in commercial lease disputes.***
- c. Unless altered by the lease, a commercial landlord may lock a commercial tenant out of the property five (5) days after rent is due and unpaid.
- d. In addition, the commercial landlord will have a lien on the tenant's personal property at the site pending payment of the rent and other amounts due.

2. Innkeepers.

P. O. 2.6.2A3

- a. Innkeepers' liens are established by state law and provide hotels and motels renting to transient occupants. Innkeepers may place a lien on the property of a guest who does not pay for services rendered. (ARS 33-951 and 33-952)
- b. A guest who has not paid and who refuses to leave the premises may be arrested for trespass (after a reasonable request by the management to leave).

B. Property that may only be repossessed with a court order.

P. O. 2.6.2B

1. Residential landlord/tenant situations (Writ of Restitution).

P. O. 2.6.2B2

- a. A Writ of Restitution is employed to enforce a judgment to recover the possession of land.
- b. It commands the sheriff or constable to enter the land and give possession of it to the person entitled to it under the judgment. (Emphasize sheriff or constable and distinguish police)

- c. Force may be used by the sheriff or constable to enter a house or apartment to evict the residents.
 - d. Only used where the right of possession has been fully determined by a court judgment or decree and when the defendant refuses to give up possession.
- 2. Pre-judgment seizures (Writ of Attachment and Replevin). (ARS 12-1521 through 12-1538) **P. O. 2.6.2B1**
 - a. An order that may include taking or seizing property to bring it under control of the court prior to final judgment in the case.
 - b. The purpose of attachment, including garnishment, is to hold the property of the defendant as security for the satisfaction of any judgment the plaintiff may recover against the defendant in a suit pending on a contract, express or implied, for the direct payment of money.
 - c. Levied in the same manner as Writ of Execution (see 3.b.). (ARS 12-1530)
- 3. Post-judgment seizures. **P. O. 2.6.2B1**
 - a. Writ of Garnishment. (ARS 12-1570 through 12-1603)
 - i. A proceeding in which a creditor (the party allegedly owed money by the defendant) seeks to control the property or money of a third party, owed by the third party to the defendant.
 - ii. A Writ of Garnishment seeks to satisfy a debt out of property in possession of a third party.
 - iii. Usually used by a creditor to seize wages, the contents of bank accounts and stocks and bonds.
 - b. Writ of General and Special Execution. (ARS 12-1551 through 12-1556)
 - i. A Writ of General Execution is an order to enforce the judgment of a court.
 - ii. This court order directs a sheriff, or other appropriate official, to enforce a judgment through the process of execution.
 - iii. Judgment is executed by the official taking custody of a sufficient amount of the defendant's property to be sold at auction to satisfy the judgment.
 - iv. The order may be used to seize non-exempt items such as real property, personal property, livestock, shares of stock or partnership interests.

v. A Writ of Special Execution will be to seize a specific item and return it to the entitled party or sell it per the order.

c. Writ of Replevin - An action whereby the owner, or person entitled to repossession of goods, may recover those goods from one who has wrongfully taken or detained them. (ARS 12-1301 through 12-1314)

C. Identify who may repossess property. **P. O. 2.6.2C**

1. Self-help or repossessions – see the previous discussion of auto repossessions, commercial tenancies and innkeepers.
2. Court-ordered repossessions – the court order directs the sheriff or constable to repossess the property using Writs of Attachment (pre-judgment), Execution (post-judgment), Restitution or Garnishment.

D. Identify the limitations on repossessions of property. **P. O. 2.6.2D**

1. Self-help repossessions – see the previous discussion of auto repossessions, commercial tenancies and innkeepers.
2. Court-ordered repossessions.
 - a. No use of force permitted unless it is a Writ of Restitution (e.g., a deputy cannot force entry to execute a Writ of General or Special Execution).
 - b. The officer is only allowed, when completing a Writ of Execution, to seize an amount of property sufficient to satisfy the judgment. Reasonable care must be taken to seize enough to satisfy the judgment and no more.
 - i. It is unclear as to how an officer can determine value. Unless the order specifically articulates the property to be taken, officers should not engage in making this determination.
 - c. Deputies need to take reasonable steps to protect the property that is seized.

E. Identify statutory liens allowing a person to legally retain property belonging to another.

P. O. 2.6.3E

1. Towed vehicles – in Arizona, a tow company that has towed a vehicle from public or private property has no right to keep the vehicle until paid, except in two (2) situations: (ARS 28-872)
 - a. If the tow was directed by a law enforcement officer.
 - b. If the tow was done by an express agreement between the owner and a garage, repair station or service station.

2. Garage liens (Mechanic's Lien). (ARS 33-1022)
 - a. This lien is not the right to record the amount owed on the title as you would with a car loan; it is the right to retain possession of the motor vehicle until the charges are paid.
 - b. The charges must be agreed to by both parties in order for the lien (right to possession) to exist; however, there does not have to be a written agreement.
3. Material and labor liens on personal property. (ARS 33-1021)
 - a. This lien is the right to retain possession of the property until the charges are paid.
 - b. There is no statutory requirement that the charges be agreed to by both parties or even that the amount of the charges be reasonable.

IV. OTHER CIVIL PROCESS

- A. Order of Protection. (ARS 13-3602)
 1. A court order restraining a person from committing an act of domestic violence.
 2. The court may issue if there is reason to believe that the defendant may commit an act of domestic violence or has committed an act of domestic violence (usually within one (1) year).
 3. The court may grant one (1) party use and exclusive possession of residence upon showing that there is reasonable cause to believe that physical harm may otherwise result.
 4. The party who does not have use and possession of the residence may return on one (1) occasion with a peace officer to retrieve belongings.
 5. The court may restrain the defendant from contacting the plaintiff, or designated persons, and from coming near the residence or designated locations where the victim, or another protected party, might frequent.
 6. The court may prohibit the defendant from possessing or purchasing firearms during the pendency of the court order.
 7. The court may require the defendant to complete a domestic violence treatment program.
- B. Injunctions. (Arizona Rules of Civil Procedure, Rule 65)

1. A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury.
 2. Must give the reasons for its issuance and must be specific. (ARS 12-1801)
 3. Injunction against harassment: Used in situations where an order of protection cannot be issued because parties were not previously married, did not reside together, etc.
 4. Injunctions against workplace harassment.
- C. Disobedience may be punished by an arrest warrant for contempt of court. (ARS 13-2810)
- D. Interference with judicial proceedings (Class 2 misdemeanor).

V. LANDLORD-TENANT ACT

- A. There are three (3) separate statutory enactments that govern landlord-tenant relationships. Each of these acts defines both the rights and obligations of the landlord and the tenant.
1. Residential Landlord and Tenant Act (A.R.S. §§33-1301 through 1377).
 2. Mobile Home Parks Residential Landlord and Tenant Act (A.R.S. §§33-1401 through 33-1417).
 3. Recreational Vehicle Space Rental Act (A.R.S. §§33-2100 through 33-2117).
- B. These acts do not cover transient occupancy in hotels or motels. Transient occupants staying at a hotel or motel is covered by the laws related to innkeepers.
- C. The Residential Landlord and Tenant Act also does not apply to:
1. Residence at an educational or medical institution.
 2. Occupancy under a contract for sale.
 3. An apartment manager or custodian being “paid” with the rental of an apartment.
 4. Fraternities and sororities.
 5. Federally regulated public housing.
 6. Owners of condos or cooperatives.
- D. Evictions can be accomplished only after the landlord has received a Writ of Restitution. Writs of Restitution are directed to the sheriff or a constable.
- E. A landlord cannot lock out a tenant for non-payment of rent unless the landlord possesses a

Writ of Restitution or other court order authorizing the lock out.

- F. There are only three (3) ways that a landlord can recover possession of a rented apartment or home from a tenant:
 - 1. Surrender – the tenant voluntarily gives up the residence.
 - 2. Abandonment – the tenant abandons the residence.
 - 3. Eviction – can only be done by court order (Writ of Restitution), served by the sheriff or a constable.

- G. A residential landlord cannot keep a tenant’s possessions until rent is paid.
 - 1. Under the Act, a landlord must hold a tenant’s possessions for up to 21 days after the service of a writ of restitution or of execution and must return the possessions within five (5) days of being notified in writing by the tenant of an offer to pay the costs of moving (if any) and storage of the property.
 - 2. The tenant is required to pay any costs of storage of the property prior to receiving it back from the landlord.

- H. The landlord of a mobile home park is entitled to prevent the removal of a mobile home until the lot rental is paid. A.R.S. 13-1451(B).

VI. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).