



# Does a Landlord Waive the Right to Evict by Accepting Section 8 Payments?



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Arizona Revised Statutes Section 33-1371(B) provides that "acceptance of rent with knowledge of default by tenant... constitutes a waiver of the right to terminate the rental agreement for that breach." Therefore, if a landlord accepts a partial payment of rent without having the resident sign a contemporaneous written agreement regarding the terms and conditions of the partial payment, he or she cannot

evict the individual for non-payment of rent within the same month in which she or she accepted the partial payment.

Arizona courts have not addressed the issue of whether acceptance of monthly renter assistant payments made by the U.S. Department of Housing and Urban Development (HUD) under the Section 8 rental subsidy program constitute acceptance

of rent that would waive a landlord's right to terminate the lease. However, multiple state cases from other jurisdictions with statutes similar to Arizona have held that HUD payments are not considered rent for waiver purposes. For several reasons, one could conclude that management receives a renter-assistant payment from HUD, but refuses to accept the resident's contract rent, it may still move to evict the person within that same month.

HUD typically does not define or refer to rental assistant payments as "rent;" rather, they are simply "housing assistant payments" made to assist the resident. Furthermore, "rent" is what an individual pays in consideration of a lease, which gives rise to the landlord-tenant relationship and possession of the property by the renter.

There is no such relationship between HUD and the landlord. HUD is not a party to the lease and does not acquire

any rights to possess the property. Payments made by HUD are not characterized as rent. Therefore, the acceptance of rental assistant payments—typically made in lump sums—will not waive management's right to proceed to seek possession of the property. Additionally, the landlord may be able to continue to receive HUD payments after an eviction upon showing that he or she is actively seeking to rent the property to another Section 8 eligible resident

When these types of questions arise, discuss with your attorney the best way to approach the issue to ensure you are not waiving any of your rights and to ensure compliance with HUD requirements. **AMA**

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## AMA LEGAL ADVICE CENTER

Members seeking legal advice on landlord-tenant issues can contact AMA member attorneys through the AMA Web site at [www.azama.org](http://www.azama.org). The attorneys will provide advice free of charge. To contact them, log-on to the AMA Web site and sign into the member area. Once inside, click on the member menu and select the Legal Advice link. The page will explain the process for contacting the attorneys. Members without Internet access can contact the AMA office for a list of participating attorneys. The phone number is 602-296-6205 or 800-326-6403.

Landlords and residents not in membership can contact the following organizations for information on landlord-tenant issues:

### VALLEY

Community Information and Referral Service,  
602-263-8856, Neighborhood Services Housing Hotline,  
602-262-7210 (Phoenix residents only) Community Legal Services,  
602-258-3434 (ability to pay basis)

### TUCSON

Community Information and Referral, 520-881-1794,  
Lawyer's Referral Service of the Pima County Bar Association,  
520-623-4625, Southern Arizona Legal Aid, 520-623-9461

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**SOS RESTORATION**  
4001 S. Contractors Way, #131  
Tucson, AZ 85714  
Phone: 520-747-4767  
Fax: 520-790-4767  
Contact: Dana Krohn  
Business Code: 24 HR  
Restoration (Fire, Flood Etc.)

**STARKWEATHER ROOFING**  
28248 N. Tatum Blvd., # B-1 PMB 61  
Cave Creek, AZ 85331  
Phone: 602-997-0529  
Fax: 602-395-0369  
Contact: Chris Walker  
Business Code: Roofing Services

**WESTSCAPE ENVIRONMENTAL**  
6603 W. Northview Ave.  
Glendale, AZ 85311  
Phone: 623-931-4902  
Fax: 623-435-1848  
Contact: Tom Flessor  
Business codes: Landscape  
Maintenance & Services; Landscape  
Sprinkler Services

**WILSONART INTERNATIONAL**  
5333 S. Kyrene Rd., #103  
Tempe, AZ 85283  
Phone: 480-921-9906  
Fax: 480-921-0628  
Contact: Chuck Welch  
Business codes: Countertop Materials;  
Cabinet Sales & Installation

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go a day without a frivolous work order from the Paynes. The Paynes' lease has months to run, so Betty Watchout gives them a non-renewal notice for the end of their lease term. The Paynes claim retaliation, but Judge I. M.

Wright rules in favor of Serenity Apartments because the complaints were groundless. **AMA**

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[www.azama.org](http://www.azama.org)

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