

## INTRODUCTION

This text/handbook, originally conceptualized as a handbook on creditor's rights, blossomed into a comprehensive resource tool on Arizona civil remedies. The cornerstone was Russell Piccoli's thorough review of the law on injunctions. Then the other chapters resulted from [the now retired Honorable] Robert L. Gottsfield's unflagging and contagious enthusiasm and his energetic powers of persuasion. After his recruitment of authors, chapter editors, and community editors, and their sweat and forgone weekends, evenings, and vacations, State Bar funding, personnel, and resources took *Arizona Civil Remedies* the rest of the distance.

The term "text/handbook" evolved naturally, to convey the concept that the book is both a *text*, with substantive information and analysis, and a *handbook*, with tips for the practitioner and examples of pleadings. Arizona practitioners have consistently shown appreciation for the work effort involved in the original book and its supplements by making them State Bar "best sellers."

The book covers nine general areas. Chapter 1 is "Injunctions." Russell Piccoli authored the chapter. First, the chapter distinguishes between the types of injunctions. It then explains the bases for injunctions and gives a practically oriented review of statutes, procedures, and case law that govern when an injunction will actually issue. A discussion of applicable equitable defenses buttresses that review. Chapter 1 also covers: the proper content of an injunctive order; special considerations for temporary injunctions; modifications of injunctions; security; and contempt.

Chapter 2 is "Prejudgment Seizure of Property," originally co-authored by [the now Honorable] Redfield T. Baum and [the now retired Honorable] Robert L. Gottsfield, and now updated by Christopher L. Hering. The text and forms correspond to A.R.S. §§ 12-2401 to -2412 (the Provisional Remedies Act), the replevin statutes, the attachment statutes, and the garnishment statutes. The chapter begins by explaining the historical development of provisional remedies in Arizona. It then outlines the requirements for obtaining prejudgment relief in the forms of replevin, attachment, and garnishment. The chapter differentiates between provisional remedies "with notice" and "without notice," which, for practical purposes, have different prerequisites, different pleadings, and different time periods. Other topics covered are: the three types of provisional remedy notices; the probable cause hearing and its possible results; default in a provisional remedy action with notice; use of a temporary restraining order in conjunction with a provisional remedy without notice; analysis of the use of a blanket request for a provisional remedy; and the required bonds.

Chapter 3, "Getting Your Money," emphasizes the collection process and post-judgment remedies. Richard N. Goldsmith authored the original chapter. David A. Clarke expanded the original chapter to encompass numerous statutory changes and an ever-increasing body of case law. For example, the chapter now addresses: obtaining a money judgment after service by publication; the procedures required to comply with the Soldiers' and Sailors' Civil Relief Act of 1940; what to do about bad checks; the Fair Debt Collection Practices Act as it applies to attorneys; and recently enacted Arizona statutes regarding homesteads, the liability of the community after a petition for dissolution, legal separation,

or annulment has been filed and served; and the unlawful failure to return a motor vehicle. The chapter has been updated by Christopher L. Hering in 2024. The chapter's practical advice is explicit at the very outset: the need to join spouses, even subsequent spouses, in the lawsuit, and what, if anything, can be collected from the subsequent spouse. Similar practical information appears in the discussion of joining parties who are secondarily liable, suits against partnerships (and the ability of one spouse to bind the community when signing partnership documents), suits against corporations, and obtaining attorneys' fees in a contract action. Other topics touch on: confession of judgment; foreign judgments; arbitration awards; renewal of judgments; supplemental proceedings; asset searches; attachment; general and special execution; garnishment; replevin; self-help remedies under the UCC; consumer protection laws; fraudulent transfers; judgment liens; garageman's liens; and personal property exemptions. Forms for wage garnishment accompany the chapter.

Chapter 4 covers remedies in the area of "Bankruptcy." Donald L. Gaffney and John J. Dawson co-authored the original chapter. However, the law changed so much since the original chapter was written, that the present version of the chapter shows more changes than any other. Rob Charles has been the author of this chapter in the last three editions. Chapter 4 provides the basics of bankruptcy law, such as the types of proceedings, and the controlling statutes, rules, and case law. More specifically, the chapter addresses Federal District of Arizona Bankruptcy Court administration, and tips on how a practitioner should represent a secured or an unsecured creditor. Topics discussed include: the proof of claim; valuation; the security interest; relief from the automatic stay; abandonment; redemption; lien avoidance; "cram down"; preference; and fraudulent conveyances.

Chapter 5 is "Declaratory Judgments." David B. Goldstein authored the chapter. After presenting general background information and characteristics of using a declaratory judgment action as a remedy, the chapter describes the possible objectives of a declaratory judgment action: judicial construction of a legal document; resolving issues about the parties' respective rights and liabilities; judicial determination of insurance coverage; judicial interpretation of the nature, priority, and extent of a security interest; judicial affirmation of the method used in debt enforcement; and judicial determination of almost any actual justiciable controversy. The third topic of the chapter outlines the prerequisites for use of a declaratory judgment action. The fourth topic covers pretrial practice and pleading, the fifth topic continues into a discussion of trial practice in declaratory judgment actions, and the last topic follows with guidance on allowable relief, supplemental relief, and appellate review.

Chapter 6 covers two remedies: "Rescission and Specific Performance." Marilee Miller Clarke wrote the chapter. The chapter first reviews Arizona case law, putting the cases into the context of the seven typical bases for the right of rescission: fraud, mistake, misrepresentation, duress, undue influence, breach of contract, and defective capacity. The chapter next addresses how to effect rescission. The rescission portion of the chapter touches upon possible defenses, damages, restitution, punitive damages, Arizona statutes, and federal statutes. The specific performance portion of the chapter outlines the prerequisites of the remedy. The discussion includes information on related Arizona statutes and six possible defenses to specific performance. The chapter ends with analysis of Arizona cases in the area.

Chapter 7 is “Landlord-Tenant Relationships.” James R. Nearhood was the original author. The fifth edition author is Marilee Miller Clarke. The chapter first provides the conceptual framework and an explanation of common law remedies. Landlord obligations and tenant remedies are discussed; then tenant obligations and landlord remedies are discussed. The topics included are fundamental: paramount title; possession; suitability; maintenance, damage, or destruction; quiet enjoyment; eminent domain and frustration; abandonment; and forcible entry and detainer. Next the chapter goes over the specific statutory provisions for both residential and mobile home rental situations—the Arizona Residential Landlord and Tenant Act (Arizona’s version of the Uniform Act) and the Mobile Home Park Act. Model forms accompany the chapter.

Chapter 8 is “Foreclosures.” F. William Sheppard authored the original chapter. The fifth edition author is Christopher M. McNichol. Chris has been the author since the publication of the second edition in 2003. The chapter goes through the foreclosure process on a step-by-step basis. The preliminary matters include reinstating a “time is of the essence” clause and obtaining a litigation guarantee. The complaint stage entails ascertaining the correct defendants, including fictitious defendants. An example of the chapter’s practical tips is its review of necessary allegations for the complaint, accompanied by discussion of the prayer and the verification. Another practical aspect is the chapter’s list of points that a process server should use when serving a party as a fictitious defendant. Other topics covered are: the *lis pendens*; how to effect service; entry of default; how to obtain a summary judgment; subordinate lien claimants; defenses; default hearings; the judgment; sheriff’s sale; receivership; redemption; deeds of trust; contracts to convey; and deeds in lieu of foreclosure. The chapter now covers judicial and nonjudicial foreclosure, in a reorganized format.

The State Bar of Arizona is the sponsor and publisher. Ilona Kukan, Publications Coordinator, supervised personnel and allocated other resources for the second, third, fourth, and fifth editions. She also handled the correspondence, communications with the authors, additional editing, cite-checking, and publishing.

A word about legal technical form. This book abides by the rules in *A Uniform System of Citation*, except for three cite forms. One exception is that cites to the Arizona Revised Statutes Annotated are denoted as A.R.S., and the year is omitted when the reference is to the current statute. The second exception is that the case names are not abbreviated. The third exception is that some spacing is based upon an earlier edition of *A Uniform System of Citation* to maintain consistency within the book.

Finally, I dedicate my work over the past 45 years on *Arizona Civil Remedies* to my younger son, Kevin James Clarke, a civil engineer. He inherited my spelling gene, could spot a punctuation error a mile away, and was an equal match in Scrabble.

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Marilee Miller Clarke  
Editor-in-Chief