When does a landlord know something, and when has a landlord been notified about an issue? The answer to this question is fundamental to exercising your rights and remedies under the Arizona Residential Landlord & Tenant Act.

First and foremost, enforcement of remedies by landlords and tenants must usually, but not always, be in writing. Options that are not statutorily required to be in writing are referenced in A.R.S. §§ 33-1313, 33-1321, 33-1343, 33-1362(A)(2), 33-1364, 33-1366(A)(2), and 33-1381. While you can make an argument that your verbal notice was given and received, in all practicality that won't fly, given the court system's bias in favor of landlords. For this reason, we recommend that you always make a written record of your notices, along with proof of delivery. The same applies to general communications that may not be notices, e.g. your response to a landlord's notice or letter.

On the other hand, while A.R.S. § 33-1313(A) provides that a person has notice of a fact if he has actual knowledge of it, most landlords are not going to admit such knowledge if that admission works against them. What's worse, if a landlord avers to having communicated something, most often a court will ascribe it as truthful. Is this fair? Of course not. Can you argue against that? Yes. Will you succeed? Sometimes. It just depends on whom the court finds most believable, which may fall back on factors such as the quantity and quality of witnesses.

But really, you don't even want to get to that point. Instead, be proactive by giving notices and responses in an unassailable manner, and always keep a copy record of your notices. I remember a Tucson case we had several years ago. The tenant mailed out the letters we had prepared for her but failed to make photocopies, so she had no evidence of what she had sent, and neither did we. Her notices may as well not have been sent, and I instructed her to start over, this time using a process server due to time constraints. When she refused, her case went down the toilet. So, as President Obama said, don't do stupid shit.
There are several ways you can assure notices are given to a landlord or agent. In order of reliability and practicality these include certified (or registered) mail, process server, express mail, facsimile, hand-delivery with witnesses, email and text. Following this paragraph is a break-down of when to use which options. Arizona Tenants Advocates primarily relies upon certified mail or process server, with occasional use of express mail.

CERTIFIED MAIL: Relatively inexpensive. Very reliable because under A.R.S. § 33-1313(B) although it is received when it is actually delivered, even if it's not physically delivered it is nevertheless deemed received at most five days after being mailed. . . despite that the post office may have lost it, or that it is returned to you as refused or unclaimed, or, for that matter, its delivery ends up being delayed beyond the five days. The slogan is, "Five Days or Bust." Can be tracked online. Combine with a return receipt postcard for signature verification. Certified can be dependably used for payment of rent, so long as you send it five or more days before rent is due.

REGISTERED MAIL: Is essentially redundant to Certified, except adds more delivery restrictions. Is more expensive than Certified. Don't use Registered. Except that you will have no other choice for Canadian destinations, because Certified is unavailable. Damn those Canadians.

PROCESS SERVER: Can be quite expensive, but is the most reliable and prompt delivery method because a process server is an accredited officer of the Superior Court. Therefore, the courts will invariably find a process server certification of delivery to be credible. These guys are paid to be trustworthy, and so they are trusted. We list some process server companies in the Links and Resources section of our website, http://www.arizonatenants.com/links.htm. If a landlord is refusing your rent, you can effectively compel its receipt by using a process server

to deliver it. One caveat: essentially you are using a process server as a glorified messenger, and when this is the case there is no documentation filed with a court. Let the process server know this.

EXPRESS MAIL: About twice the cost of certified/return receipt, but in some circumstances will not effectuate proper delivery of notice due to statutory limitations, e.g. cannot be used to give notice under A.R.S. § 33-1902. Also, because I have seen express deliveries not proceed as promised by the post office, if you need unquestionable delivery using a process server is the way to go. However, the benefit of express mail is that it is usually a 1-day turnaround, it can be dropped off without a recipient signature required, and yet there will be a post office website record to prove the date and time of delivery. This can be very beneficial if nobody is available to sign, or when you anticipate that signature might be refused. That way, for example, if you must pay rent the next day and you have no other delivery alternatives (i.e. process server is too expensive), overnight mail with signature requirement waived may suffice.

FACSIMILE: Can be valuable for emergencies, so long as you have proof of the delivery. A professional fax should be sent so there is a record of the send and receipt. In general, faxing is an unreliable technology, and may be cut off midstream without all the pages delivered, and also the recipient print quality may be inadequate. Inappropriate for letters containing many pages, as the likelihood of delivery failure increases.

HAND-DELIVERY: If you are dropping off paperwork the landlord/agent may deny receiving it. So, either have a witness come along with you, and/or prepare an extra copy of the documents for the landlord/agent to sign in acknowledgment of receipt. The problem with a witness is that the landlord may have his own witnesses to counter yours, so ultimately it could be a matter of dueling witnesses and whom the court finds more credible. Plus, if the matter went to court your witness would have to show up and testify. How reliable are your friends and associates? Would they risk losing their jobs or ignore personal matters in order to help you?
EMAIL: This becomes an issue of delivery proof. Without an electronic email return receipt (which you probably won't secure), either the email thread must substantiate your communications, or the landlord/agent must reference or quote what you communicated. This evidence is needed to substantiate your contention of having given notice. For these reasons, as a general rule avoid reliance upon email except as to communications you receive from the landlord/agent.

TEXT: Similar to email, except that having a text thread is pretty much a negligible factor because text messages do not have the communication trail integrated into each message. For these reasons, as a general rule avoid reliance upon text communication except as to messages you receive from the landlord/agent. Even then, a court may find a text message not credible.

Sometimes you can use a landlord's delivery methods to your benefit. For example, you can withhold response to an email or text message, and assert it never arrived. Or, if you are behind in paying rent, you can delay your receipt of the landlord's certified letter until five days after it was originally mailed (which is when you are deemed to have received the letter pursuant to A.R.S. § 33-1313, subsection B), and that way commence tolling of the five-day notice of nonpayment (or other noncompliance) five days after it was mailed. Effectively, this buys you extra time; the landlord's five-day notice of nonpayment or some other breach essentially becomes a ten-day notice, while a ten-day notice essentially becomes a fifteen-day notice. Cool.

Timing is of the essence; when notice is delivered can be extremely significant. If you were not properly served a five- or ten-day notice, or if the notice was back-dated, and if you can prove the landlord jumped the gun by filing prematurely, you may well be able to get the case

dismissed. If your paper trail is conclusive, you may possible prevail despite the courts routinely believing landlords. Similarly, a landlord's tardy notice to terminate a month-to-month tenancy could buy you an entire extra month of tenancy. See our website blog entitled, LEASE

RENEWAL AND RENT INCREASES.
Plus, you can play the game the other way. The landlord-tenant act is designed to be self-enforcing, meaning that you can invoke remedies without going to court. If the landlord has a lease clause which states that notice is deemed properly served (or received, or delivered, or other similar language) when it is certified postal mailed, you could mail it Friday night of a holiday weekend despite the fact that it will not be physically delivered until Tuesday. That's four days to your benefit, and in all likelihood the landlord won't have a clue. So, under A.R.S. § 33-1361, for example, your ten-day noncompliance notice would actually provide the landlord only six days to cure. It is so lovely because under this scenario you are using the landlord's own language against him, hoist with his own petard.

Further, if the landlord then refuses the letter, you can conclude termination before he knows what hit him. As I write this, we have a current case proceeding in this manner. For the landlord to later cry foul will only boomerang, because he acted in bad faith by refusing the notices.