

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

**BILL:** CS/CS/SB 490

**INTRODUCER:** Regulated Industries Committee, Judiciary Committee, and Senator Stargel

**SUBJECT:** Landlords and Tenants

**DATE:** April 9, 2013

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	Oxamendi	Imhof	RI	Fav/CS
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |                                         |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 490 makes numerous changes to the Florida Residential Landlord and Tenant Act. Specifically, the bill makes the following changes:

- Authorizes the eviction procedures under the Act, instead of foreclosure procedures, to apply to a person who occupies a dwelling pursuant to a lease-purchase agreement in some circumstances.
- Provides that the right of a prevailing party to attorney fees for enforcing a rental agreement may not be waived in the rental agreement.
- Provides that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease.
- Provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty to maintain the rental premises.
- Revises the notice that a landlord must provide a tenant which describes how advance rent and security deposits will be held and used by the landlord or returned to the tenant.
- Allows landlords to withdraw advance rents without notice to tenants.
- Creates a rebuttable presumption that a new owner of a rental property receives the security deposits paid by a tenant to the previous owner, but limit's the presumption to 1-months rent.

- Lessens the duty of landlords of single-family homes and duplexes to maintain screens on windows. A landlord must ensure that screens are installed in reasonable condition at the beginning of the tenancy and repaired once annually thereafter.
- Provides that a right or duty enforced by civil action under the Florida Landlord and Tenant Act does not preclude prosecution for a criminal offense related to a lease or leased property.
- Eliminates a landlord's obligation to make certain disclosures regarding fire safety to tenants.
- Provides that upon the re-occurrence within 12 months after the initial notice of tenant actions constituting noncompliance under a lease, the landlord is not required to provide an additional notice before initiating an eviction action.
- Provides that a lease must require a landlord to give advance notice of the intent to nonrenew the lease if the lease requires a tenant to give advance notice to a landlord of the intent to vacate the premises at the end of the lease.
- Revises procedures for restoration of possession of a rental property to a landlord to provide that Saturdays, Sundays, and holidays do not stay the applicable notice period.
- Specifies additional grounds for which a landlord may not retaliate against a tenant.

The bill conforms statutory cross-references and makes other editorial changes.

This bill creates one undesignated section of Florida law.

This bill substantially amends the following sections of the Florida Statutes: 83.42, 83.48, 83.49, 83.50, 83.51, 83.54, 83.56, 83.575, 83.58, 83.59, 83.60, 83.62, 83.63, and 83.64.

## II. Present Situation:

### **Applicability of the Florida Residential Landlord and Tenant Act**

Part II, ch. 83, F.S., known as the "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential rental agreement.<sup>1</sup>

The Act does not apply to:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.<sup>2</sup>
- Occupancy under a contract of sale of a dwelling unit or property of which it is a part.<sup>3</sup>
- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.<sup>4</sup>
- Occupancy by a holder of a proprietary lease in a cooperative apartment.<sup>5</sup>
- Occupancy by an owner of a condominium unit.<sup>6</sup>

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<sup>1</sup> Section 83.41, F.S., provides that part II, chapter 83, F.S., applies to the rental of a dwelling unit.

<sup>2</sup> Section 83.42(1), F.S.

<sup>3</sup> Section 83.42(2), F.S.

<sup>4</sup> Section 83.42(3), F.S.

<sup>5</sup> Section 83.42(4), F.S.

<sup>6</sup> Section 83.42(5), F.S.

**Attorney Fees**

Under s. 83.48, F.S., in any civil action brought to enforce the provisions of a rental agreement or the Florida Residential Landlord and Tenant Act, the party in whose favor a judgment or decree has been rendered may recover reasonable costs, including attorney fees from the prevailing party. In an interpretation of s. 83.48, F.S., by the Third District Court of Appeal, the court held that the statute did not allow for the award of attorney fees in an action for damages for personal injuries resulting from a landlord's failure to maintain the rental premises.<sup>7</sup>

**Advance Rent Payments**

Section 83.49, F.S., specifies requirements for the landlord's duty to a tenant for deposit money or advance rent. "[T]he purpose of [s. 83.49(3)(a), F.S.,] is to assure tenants that their security deposits will be returned expeditiously or they will be promptly notified otherwise."<sup>8</sup>

Section 83.49(3)(a), F.S., states:

[u]pon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of \_\_\_\_ upon your security deposit, due to \_\_\_\_\_. It is sent to you as required by s. 83.49 (3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

Section 83.49(3)(b), F.S., provides that:

[u]nless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

**Disclosure of Fire Protection**

The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, must disclose to the

<sup>7</sup> *Gilbert v. Jabour*, 527 So. 2d 951 (Fla. 3d DCA 1988).

<sup>8</sup> *See Durene v. Alcime*, 448 So. 2d 1208, 1210 (Fla. 3d DCA 1984).

tenants initially moving into the building the availability or lack of availability of fire protection.<sup>9</sup>

### **Landlord's Obligation to Maintain Premises**

At all times during a tenancy, the landlord must comply with the requirements of applicable building, housing, and health codes.<sup>10</sup> Where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.<sup>11</sup>

Unless otherwise agreed in writing, in addition to the requirements described above, the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
2. Locks and keys.
3. The clean and safe condition of common areas.
4. Garbage removal and outside receptacles therefor.
5. Functioning facilities for heat during winter, running water, and hot water.<sup>12</sup>

Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices.<sup>13</sup>

### **Enforcement of Rights and Duties under the Landlord and Tenant Act**

Any right or duty declared in the Florida Residential Landlord and Tenant Act is enforceable by civil action.<sup>14</sup>

### **Termination of Rental Agreement - Noncompliance**

Section 83.56, F.S., establishes the circumstances under which the tenant or landlord may terminate a rental agreement. A tenant may be subject to eviction for monetary default or non-monetary default. Section 83.56, F.S., recognizes two different categories of non-monetary default: noncurable default and curable default.

Regarding noncurable defaults, s. 83.56(2)(a), F.S., provides:

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<sup>9</sup> Section 83.50(2), F.S.

<sup>10</sup> Section 83.51(1)(a), F.S.

<sup>11</sup> Section 83.51(1)(b), F.S.

<sup>12</sup> Section 83.51(2)(a), F.S.

<sup>13</sup> Section 83.51(2)(b), F.S.

<sup>14</sup> Section 83.54, F.S.

If such noncompliance is of a nature that the *tenant should not be given an opportunity to cure* it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. (Emphasis supplied)<sup>15</sup>

Regarding curable default, s. 83.56(2)(b), F.S., provides:

If such noncompliance is of a nature that the *tenant should be given an opportunity to cure* it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.<sup>16</sup>

#### **Termination of Rental Agreement - Waiver of Rent**

If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of rent or possession of the premises, the landlord may terminate the rental agreement.<sup>17</sup>

If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, the landlord waives his or her right to terminate the rental agreement or to bring a civil action for a specific noncompliance.<sup>18</sup> The landlord does not waive his or her right to terminate the rental agreement or to bring a civil action for any subsequent or continuing noncompliance. If a landlord accepts a partial payment of rent from a tenant with full knowledge that the payment is not for the full amount, the landlord waives the right to terminate the rental agreement or to bring a civil action.<sup>19</sup>

#### **Termination of a Tenancy with a Specific Duration**

A rental agreement with a specific duration may contain a provision requiring the tenant to notify

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<sup>15</sup> Section 83.56(2)(a), F.S.

<sup>16</sup> Section 83.56(2)(b), F.S.

<sup>17</sup> Section 83.56(3), F.S.

<sup>18</sup> Section 83.56(5), F.S.

<sup>19</sup> See *In re Sorrento's I, Inc.*, 195 B.R. 502, 504 (Bankruptcy. M.D. Fla. 1996).

the landlord before vacating the premises at the end of the rental agreement.<sup>20</sup> Such a provision may not require more than 60 days' notice before vacating the premises.<sup>21</sup> A rental agreement having a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement. To do so, the landlord must provide written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide the written notice within 15 days before the start of the notification period contained in the lease and the written notice must list all fees, penalties, and other charges applicable to the tenant.

### **Restoration of Possession to Landlord Upon Eviction**

In an action for possession, if the judgment is entered in the landlord's favor, the clerk must issue a writ to the sheriff commanding him or her to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises.<sup>22</sup>

### **Retaliatory Conduct**

Section 83.64, F.S., prohibits a landlord from discriminatorily increasing a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. The tenant may raise the defense of retaliatory conduct if the tenant acts in good faith.

### **Rental Units or Parcels in Condominiums, Cooperatives, and Homeowners' Associations**

If a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association.<sup>23</sup> The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues the tenancy in the unit or parcel.

## **III. Effect of Proposed Changes:**

### **Applicability of the Florida Residential Landlord and Tenant Act**

The bill amends s. 83.42(2), F.S., to make the Florida Residential Landlord Tenant Act applicable to lease purchase agreements for residential properties if the buyer has not paid at least one month's rent and paid a deposit of at least 5 percent of the purchase price of the property or at least 12 month's rent.

### **Attorney Fees**

The bill amends s. 83.48, F.S., to provide that a right to attorney fees may not be waived in a lease agreement. In addition, the bill provides that attorney fees may not be awarded in a claim for personal injury damages based on a breach of the landlord's duty to maintain the premises. The limitation on the award of attorney fees in a personal injury action that is based on the

<sup>20</sup> Section 83.575(1), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 83.62, F.S.

<sup>23</sup> Sections 718.116(11)(a) and (b), 719.108(10)(a) and (b), and 720.3085(8)(a) and (b), F.S.

failure of a landlord to maintain the leased premises appears to codify the interpretation of s. 83.56, F.S., by the Third District Court of Appeal in *Gilbert v. Jabour*.<sup>24</sup>

#### **Advance Rent Payments/Nonrefundable Deposits**

The bill amends s. 83.49(2), F.S., to eliminate the requirement for a landlord to give tenants a copy of the law relating to security deposits and replaces it with another disclosure which, in part, states:

Your lease requires payment of certain deposits. The landlord may transfer advance rents to the landlord's account as they are due and without notice. When you move out, you must give the landlord your new address so that the landlord can send you notices regarding your deposit. The landlord must mail you notice, within 30 days after you move out, of the landlord's intent to impose a claim against the deposit. If you do not reply to the landlord stating your objection to the claim within 15 days after receipt of the landlord's notice, the landlord will collect the claim and must mail you the remaining deposit, if any.

The notice also provides, in part:

If you timely object, the landlord must hold the deposit, and either you or the landlord will have to file a lawsuit so that the court can resolve the dispute.

The bill allows the landlord or the landlord's agent to withdraw advance rents from the deposit account without notice and as the rents become due to the landlord.

The bill creates an unnumbered section of the Florida Statutes to provide that changes to the required disclosure regarding security deposits in this bill are conditional for leases entered into on or before December 31, 2013. The landlord may elect to give the notice required under the current disclosure or the disclosure required under the bill. On or after January 1, 2014, the notice of the disclosure regarding security deposits as required by this bill will be required for all leases.

#### **Transfer of Deposits to New Owner or Manager (Owner's Agent)**

The bill amends s. 83.49(7), F.S., to provide a rebuttable presumption that the previous owner or manager of the property has transferred any deposit to the new owner. However, this presumption is limited to 1 month's rent.<sup>25</sup>

#### **Disclosure of Fire Protection**

The bill eliminates a disclosure requirement in s. 83.50(2), F.S., for landlords regarding the availability or lack of availability of fire protection in certain new construction. Current law requires the landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, to disclose to the

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<sup>24</sup> *Gilbert v. Jabour*, *supra* note 7.

<sup>25</sup> The amount could be at variance with the amount actually received from the previous owner or agent.

tenants initially moving into the building the availability or lack of availability of fire protection.<sup>26</sup>

#### **Maintenance of Screens on Windows**

The bill amends s. 83.51(1)(b), F.S., to require that landlords, at the commencement of the tenancy, must ensure that screens are installed in a reasonable condition. The landlord must repair damage to the screens at least once annually, when necessary, until the termination of the rental agreement.

#### **Enforcement of Rights and Duties under the Landlord and Tenant Act**

Under current law, any right or duty declared in the Florida Residential Landlord and Tenant Act is enforceable by civil action.<sup>27</sup> The bill amends s. 53.54, F.S., to provide that a right or duty enforced by civil action under the Florida Residential Landlord and Tenant Act does not preclude prosecution for a criminal offense related to the lease or leased property.

#### **Termination of Rental Agreement- Noncompliance**

In the event a notice of noncompliance has been previously delivered to a tenant giving the tenant an opportunity to cure a curable lease violation, the bill amends s. 83.56(2)(b), F.S., to provide that upon re-occurrence of a violation within 12 months after the initial notice of the noncompliance, the landlord is not required to provide an additional notice before instituting an eviction action.

#### **Termination of Rental Agreement- Rent Waiver**

The bill amends s. 83.56(4), F.S., to provide that the right to the statutorily required notices before a landlord or tenant may terminate a lease may not be waived in the lease. The bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent.

The bill amends s. 83.56(5)(c), F.S., to revise the calculation of the time period within which a landlord with a tenant who receives rent subsidies waives the right to enforce a rental agreement if action is not timely instituted within 45 days of a noncompliance. Under the bill, a landlord must enforce the rental agreement within 45 days after obtaining actual knowledge of a noncompliance.

#### **Termination of a Tenancy with a Specific Duration**

The bill amends s. 83.575(1), F.S., to provide that, if a rental agreement has a requirement for a tenant to provide notice within a specified period to the landlord regarding nonrenewal, the rental agreement must also provide a reciprocal requirement for the landlord to notify the tenant within the same specified period of an intent not to renew. However, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord.

#### **Landlord's Action for Rent or Possession**

The bill amends s. 83.60(1), F.S., to provide that, before an action for possession based on

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<sup>26</sup> Section 83.50(2), F.S.

<sup>27</sup> Section 83.54, F.S.



nonpayment of rent or seeking recovery of unpaid rent may be dismissed by a court, the court may allow the landlord<sup>28</sup> an opportunity to cure a deficiency in a notice or pleadings.

The bill amends s. 83.60(2), F.S., to require a tenant in any action for possession of a dwelling unit by the landlord, if the tenant interposes any defense other than payment, including the defense of a defective 3-day notice, to pay the accrued rent under dispute into a court registry during the pendency of the proceeding.

#### **Restoration of Possession to Landlord**

The bill amends the requirement in s. 83.62(1), F.S., for the posting of an eviction notice on rental property at least 24 hours before a sheriff may restore possession of the property to the landlord. The bill revises procedures for the restoration of possession of a rental unit to a landlord to provide that weekends and legal holidays do not stay the 24-hour notice period.

#### **Retaliatory Conduct**

The bill amends s. 83.64, F.S., to specify the following two additional grounds for which a landlord may not retaliate against a tenant:

- The tenant has paid the rent to a condominium, cooperative, or homeowners' association after demand from the association.
- The tenant has exercised his or her rights under local, state, or federal fair housing laws.

#### **Effective Date**

The bill provides an effective date of July 1, 2013.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>28</sup> Under ss. 83.60, F.S., a tenant may raise various defenses in opposition to a landlord's action for possession or nonpayment of rent.

**B. Private Sector Impact:**

The bill may make evictions or actions for possession of a residential dwelling unit faster and less costly in some circumstances.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The amendment to s. 83.54, F.S., provides that “[a] right or duty enforced by civil action under *this section* does not preclude prosecution for a criminal offense relating to a lease or leased property.” (emphasis added). The reference to “this section” should be changed to “this part.”

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Regulated Industries Committee on April 9, 2013:**

The Committee Substitute (CS) deletes the requirement in s. 83.56(2)(b), F.S., that the complaint in the eviction action must specify the date, time, place, and specific facts of the alleged subsequent non-compliance so as to allow the tenant to be aware of the allegations and to prepare a defense.

The CS does not amend s. 83.60(1), F.S., to provide the landlord an opportunity to correct a minor procedural deficiency in a notice or in the pleadings before the dismissal of an action based on nonpayment of rent. Instead, the CS amends this provision to provide that the court may allow the landlord an opportunity to cure a deficiency in a notice or pleadings before the dismissal of the action.

**CS by Judiciary on April 1, 2013:**

The committee substitute (CS) makes the following changes:

- Requires the landlord, at the beginning of the tenancy, to ensure that window screens are installed in a reasonable condition. The landlord must repair damage once annually until the termination of the rental agreement.
- Provides that the Landlord Tenant Act does not preclude prosecution for a criminal offense related to the lease or leased property.
- Requires an eviction complaint which is based on a reoccurring noncompliance with a lease to contain specific information so that the tenant is aware of the allegations and may prepare a defense.

- Authorizes a court to allow a landlord to correct a minor procedural deficiency in a notice or pleading in an action by the landlord for possession of a dwelling.

The CS deletes the provision in original bill that requires a court to give a mobile home owner the opportunity to cure deficiencies in a notice or pleading in an action by the mobile home owner for possession of a dwelling.

**B. Amendments:**

None.