

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 621 Property Rights

SPONSOR(S): Judiciary Committee and Civil Justice Subcommittee, Steele and others

TIED BILLS: IDEN./SIM. BILLS: CS/CS/SB 888

FINAL HOUSE FLOOR ACTION: 108 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 621 passed the House on March 1, 2024, and subsequently passed the Senate on March 6, 2024.

The "right to exclude others" is a fundamental right of property ownership. In recent news reports, there has been an increasing prevalence of "squatters" unlawfully entering residential property and refusing to leave when asked. By refusing to leave, a squatter violates the property owner's right to exclude and his or her freedom to enjoy the property as he or she desires.

The bill creates s. 82.036, F.S., to create a limited process for the removal of unauthorized persons from residential real property. Under this new process, a property owner or his or her authorized agent may file a verified complaint with the sheriff in the county in which the property is located for the immediate removal of such unauthorized persons. Upon verification of the identity of the person filing the complaint and verification of the person's right to possess the real property, the sheriff must serve notice to the unlawful occupants to immediately vacate the property. The bill allows the sheriff to charge a fee for this service as well as a reasonable hourly rate if the property owner requests the sheriff's assistance in keeping the peace while changing the locks and removing the unlawful occupant's personal property from the residence.

The bill provides immunity from liability to the sheriff for any loss, destruction, or damage to property. Further, the bill provides the lawful property owner immunity from liability for any loss, destruction, or damage to personal property, unless the removal was wrongful. The bill creates a civil cause of action for wrongful removal and authorizes a wrongfully removed party to collect damages, court costs, and attorney fees, where appropriate.

The bill also creates the following crimes:

- Unlawfully detaining or trespassing upon a residential dwelling and intentionally causing at least \$1,000 in damage to such dwelling is a second-degree felony.
- Using a false document purporting to be a valid lease or deed is a first-degree misdemeanor.
- Fraudulently listing for sale or renting or leasing residential property without possessing an ownership right to or leasehold interest in the property is a first-degree felony.

The bill may have an insignificant fiscal impact on local governments due to the increase in workload for law enforcement. However, the costs will likely be covered by the fee the sheriff is authorized to collect for such services. The bill's new criminal penalties may also have an impact on jail or prison beds.

The bill was approved by the Governor on March 27, 2024, ch. 2024-44, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

A property owner seeking a civil court order for removal of an unlawful occupant from the owner's property may file an action for possession in county or civil court. If the owner prevails in his or her case, the clerk of court will issue a writ of possession to the Sheriff commanding the Sheriff to return possession of the property to the owner. Without an order from the court, law enforcement is not necessarily required to remove unwanted persons from an owner's property.

Further, it is well-established that the "right to exclude others" is a universally held fundamental right of property ownership.¹ In recent news reports, there has been an increasing prevalence of "squatters" unlawfully entering residential property and refusing to leave when asked. By refusing to leave, a squatter violates the property owner's right to exclude and his or her freedom to enjoy the property as he or she desires.²

Actions for Possession

Property owners possess three separate, yet somewhat overlapping, judicial remedies for removing an unwanted guest from their homes, depending on the applicable circumstances.

Eviction

Part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act" (FRLATA), governs the relationship between landlords and tenants under a residential lease agreement. A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.³ Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party. The amount of notice required may range from 7 to 60 days.⁴ A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated by filing an action for possession.⁵ The FRLATA may apply to situations in which an invited guest made some minor contributions for the purchase of household goods or the payment of household expenses while residing in the property with the consent of the owner if a court decides that such an arrangement is a residential tenancy based on an agreement to pay "rent" in exchange for occupancy. However, if the court determines that possession is not based on residential tenancy (a landlord-tenant relationship), eviction is not the proper remedy and procedures under FRLATA are not available.⁶

Unlawful Detainer

An unlawful detainer action can be filed to remove an unwanted guest who occupied residential property with the consent of the owner but who has refused to surrender possession of the property upon the expiration or revocation of the property owner's consent.⁷ In such situation, the person unlawfully detaining the property ordinarily is not a tenant and claims no other right or interest in the property.

¹ Cf. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021).

² See generally Jonathan Turley, *Fairly Big Problem: Squatters Invade Homes and Refuse to Leave. How is This Legal?*, USA Today (July 3, 2023), <https://www.usatoday.com/story/opinion/2023/07/03/squatters-rights-leave-homeowners-forgotten/70364321007/> (last visited Feb. 17, 2024).

³ S. 83.43(12), F.S. ("A rental agreement" means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

⁴ S. 83.57, F.S.

⁵ S. 83.59, F.S.

⁶ *Grimm v. Huckabee*, 891 So. 2d 608 (Fla. 1st DCA 2005).

⁷ S. 82.01(4), F.S.

Ejectment

An ejectment action can be filed to eject an unwanted guest who once may have had permission to live upon the property, but subsequently claimed that he or she had a legal right to be there and refused to leave when asked to do so by the property owner. To prevail in an ejectment action, the plaintiff must prove that he or she has good title to the property and has been deprived of its possession by the unwanted guest.⁸

The actions for eviction, unlawful detainer, and ejectment are similar, but a number of the respective pleading requirements differ, as may the forum in which the property owner is required to file the appropriate complaint. An eviction or unlawful detainer action must be filed in county court⁹ and is entitled to the summary procedure of s. 51.011, F.S., which provides that a defendant must answer the action within 5 days.¹⁰ Thus, an action for possession based upon eviction or unlawful detainer may only take a few weeks before entry of a judgment. Ejectment actions, however, are subject to the exclusive original jurisdiction of the circuit court¹¹ and are governed by the Florida Rules of Civil Procedure, which may result in a longer court process before a property owner may obtain a judgment for possession.

Statutory Remedy for Removal of a Transient Occupant

The term “transient” describes something that is temporary, impermanent, or passing; accordingly, a transient is understood to mean a person whose presence is temporary or fleeting.¹² Pursuant to s. 82.035(1), F.S., a “transient occupant” is a person whose residency in real property intended for residential use has occurred for a brief length of time and is not pursuant to a lease, and whose occupancy was intended as transient in nature.¹³

Pursuant to s. 82.035(4), F.S., an owner or person who is otherwise entitled to possession of real property has a cause of action for unlawful detainer against a transient occupant. However, if the court determines that the defendant is not a transient occupant, but rather is a tenant of the property, the petitioner must seek eviction to remove the defendant.¹⁴

Chapter 82, F.S., identifies several factors that may establish a person’s occupancy of residential property as transient, including a person who:

- Does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy;
- Does not have any property utility subscriptions;
- Cannot produce documentation, correspondence, or identification cards sent or issued by a government agency which show that the person used the property address of record with the agency within the previous 12 months;
- Pays minimal or no rent for his or her stay at the property;
- Does not have a designated space of his or her own, such as a personal bedroom, at the property;
- Has minimal, if any belongings, at the property; and

⁸ S. 66.021, F.S.

⁹ S. 34.011(2), F.S.

¹⁰ Under the summary procedure of s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

¹¹ S. 26.012(2)(f), F.S.

¹² *Black's Law Dictionary* 1637 (9th ed. 2009).

¹³ S. 82.035(1), F.S.

¹⁴ S. 82.035(4), F.S.

- Has an apparent permanent residence elsewhere.¹⁵

Although a transient occupant may have once been on the residential property legally, with permission by the property owner, the transient occupant may unlawfully detain residential property if he or she remains in occupancy after the owner has asked or directed the transient occupant to leave.¹⁶ In the case of a transient occupant who unlawfully remains on residential property, current law authorizes law enforcement to direct the transient occupant to leave.¹⁷ An owner of a residential property may present a sworn affidavit detailing the transient occupant's unlawful detainer of the property to a law enforcement officer.¹⁸ The sworn affidavit must set forth facts to establish that the transient occupant remains unlawfully on the property.

Upon receipt of a sworn affidavit, a law enforcement officer may, but is not required to, direct the transient occupant to leave the property. A transient occupant who fails to comply with such direction from a law enforcement officer is considered to be trespassing on the property pursuant to s. 810.08, F.S.¹⁹ Current law provides redress against the person who requested the removal for a party who is wrongfully removed from a property under the transient occupancy provisions of ch. 82, F.S.²⁰

Criminal Trespass

Section 810.08, F.S., provides that a person commits the criminal offense of trespass in a structure or conveyance if the person, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.²¹ Generally, trespass is a second-degree misdemeanor; however, the severity of the offense increases in certain situations such as when a person is present in the structure at the time of the trespass. A trespass with a person present in the structure is a first degree misdemeanor.²² Similarly, a trespass committed while the trespasser is armed with a firearm or a dangerous weapon constitutes a third-degree felony.²³

Where a criminal trespass is occurring, a law enforcement officer arrests the trespasser and immediately restores the real property owner to possession of the real property, without cost. However, where the criminal trespass offense is not readily observable because the trespasser claims ownership or lease rights, a law enforcement officer may decline to arrest or remove the person from the property and view the dispute as a "civil matter." In that situation, the law enforcement officer may decide not to force the unwanted person to surrender possession of the property without a court order.

Property Crimes

Florida criminalizes various behavior related to fraudulently obtaining or damaging property that a person does not own. Section 817.03, F.S., provides that any person who makes or causes to be made any false written statement relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or

¹⁵ S. 82.035(1)(a), F.S.

¹⁶ S. 82.035(2), F.S.

¹⁷ S. 82.035(3), F.S.

¹⁸ *Id.*

¹⁹ S. 82.035(3)(a), F.S.

²⁰ S. 82.035(3)(b), F.S.

²¹ S. 810.08(1), F.S.

²² S. 82.08(2), F.S.

²³ S. 82.08(2)(c), F.S.

other property, and by such false statement obtains credit, goods, money or other property, commits a first-degree misdemeanor.²⁴

Further, section 806.13, F.S., provides criminal penalties for acts of criminal mischief. A person commits criminal mischief if he or she willfully and maliciously injures or damages real or personal property belonging to another, and includes placing graffiti or doing other acts of vandalism. The severity of the crime and the penalties associated with criminal mischief vary depending on the amount of damage caused.

Effect of the Bill

The bill creates s. 82.036, F.S., to provide a limited remedy to remove an unauthorized person from residential real property. The bill provides a statement of Legislative findings which emphasizes that the right to exclude another person from entering a person's residential property, as well as the right to direct a person to leave one's own residential property, are two of the most important real property rights afforded to property owners. Further, the statement provides that current remedies available to an owner of residential real property to remove an unauthorized person are insufficient and fail to adequately protect the rights of the owner. The statement explains that the intent of the newly-created section is to quickly restore possession of residential real property to the lawful owner without delay, while limiting the opportunity for criminal activity.

Immediate Removal of Unlawful Occupants of Residential Real Property

The bill creates a mechanism by which a lawful property owner or his or her authorized agent may request the sheriff of the county in which the property is located to immediately remove an unauthorized person or persons from the residential real property. In order to utilize this limited alternative process, all of the following conditions must be met:

- The person requesting the removal of an unauthorized person is the property owner or the authorized agent of the property owner;
- The real property being occupied includes a residential dwelling;
- An unauthorized person or persons have unlawfully entered and continue to remain or reside on the property;
- The real property was not open to the public at the time the unauthorized person entered;
- The property owner has already directed the unauthorized person to leave the property;
- The unauthorized person is not a current or former tenant pursuant to a written or oral rental agreement authorized by the property owner;
- The unauthorized person is not an immediate family member of the property owner; and
- There is no pending litigation related to the real property between the owner and any known unauthorized person.

Verified Complaint to Remove Persons Unlawfully Occupying Real Property

If all of the above-mentioned conditions are met, the property owner or his or her agent must submit a verified Complaint to Remove Persons Unlawfully Occupying Residential Real Property to the sheriff of the county in which the property is located. The bill provides the form for such verified complaint.

The complaint requires the owner or his or her authorized agent to attest to several statements under penalty of perjury, including that the required provisions for the immediate removal of the unauthorized person are satisfied. Further, the complaint requires the signor to acknowledge that such removal of an unauthorized person may result in a cause of action against the owner for any false statements made in the complaint or for wrongfully using this specific procedure to remove a person. As such, the owner agrees to risk liability for actual damages, statutory damages, penalties, costs, and reasonable attorney fees associated with a subsequent cause of action. The owner must also include a copy of his or her

²⁴ A first-degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

valid government-issued identification, or, if the signor is the authorized agent of the owner, must include documents evidencing his or her authority to act on the owner's behalf.

Notice to Immediately Vacate

Once the complaint has been received by the sheriff for the county in which the subject property is located, the sheriff must verify that the person who submitted the complaint is either the record owner of the real property or is the authorized agent of the owner, and that he or she appears entitled to the relief of immediate removal and restoration of possession. If the sheriff verifies the identity of the owner or agent and it appears that such person is entitled to relief, the sheriff must, without delay, serve a notice to immediately vacate upon each unlawful occupant and put the owner in possession of the real property.

Under the bill, service of such notice to immediately vacate may be accomplished via hand delivery or posting of the notice on the front door or entrance to the dwelling. The bill also directs the sheriff to attempt to verify the identities of all persons occupying the dwelling and to document the same on the return of service. Further, the bill authorizes the sheriff to arrest any person found in the dwelling for trespass, outstanding warrants, or any other legal cause.

Fees for Services by Sheriff

The bill authorizes the sheriff to receive the same fee for the service of the notice to immediately vacate as he or she would be entitled to for serving a writ of possession under s. 30.231, F.S., which is currently \$90.

Under the bill, the property owner or his or her authorized agent may also request the sheriff to stand by to "keep the peace" while the owner changes the locks and removes any personal property left behind by the unlawful occupants to or near the property line. If the owner or agent requests the sheriff to stand by as permitted, the sheriff is authorized to charge a reasonable hourly rate for his or her services.

Further, the sheriff is shielded from liability to the unlawful occupant or any other party for any loss, destruction, or damage of property. The bill also provides for immunity from liability for the property owner or agent for any loss, destruction, or damage to the personal property of the unlawful occupant or other party, unless the removal was wrongful.

Cause of Action for Wrongful Removal

The bill creates a civil cause of action for the wrongful removal of a party under the provisions of the bill. If a person was wrongfully removed, he or she may be restored to possession of the real property and is eligible to recover:

- Actual costs and damages incurred;
- Statutory damages equal to three times the fair market rent of the dwelling;
- Court costs; and
- Reasonable attorney fees.

In such an action, the court must advance the cause on the calendar.

Arrest for Other Crimes

The provisions of the bill do not limit the rights of a property owner or limit the authority of law enforcement to arrest an unlawful occupant for trespassing, vandalism, theft, or other criminal acts.

Criminal Penalties

Intentional Destruction of Residential Real Property

The bill creates a specific crime of criminal mischief under s. 806.13, F.S., for a person who unlawfully detains or occupies, or trespasses upon, a residential dwelling and intentionally causes damage of \$1,000 in value or more. This crime is a second-degree felony, which is punishable by imprisonment of up to 15 years and a fine of up to \$10,000.

Providing False Documents to Detain Real Property

Additionally, the bill amends s. 817.03, F.S., to create a first-degree misdemeanor for the use of a false document with the intent to detain or remain upon the property. Under the bill, a person who, with the intent to detain or remain on the property, knowingly and willfully presents to another person a false document purporting to be a valid lease, deed, or other document conveying rights to the property, commits a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine.

Fraudulent Sale or Lease of Residential Real Property

The bill creates s. 817.0311, F.S., to provide for criminal penalties for the fraudulent sale or lease of residential real property. Specifically, a person who lists or advertises residential real property for sale with the knowledge that the purported seller lacks legal title or authority to sell the property, commits a first-degree felony. Additionally, a person who rents or leases a property to another person with the knowledge that he or she has no ownership of or leasehold interest in the property, commits a first-degree felony. A first-degree felony is punishable by up to 30 years in prison and a \$10,000 fine.

Effective Date

The bill was approved by the Governor on March 27, 2024, ch. 2024-44, L.O.F., and will become effective on July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate fiscal impact to local governments based on the ability of the sheriff to collect a fee for service of notice and for services provided to stand by and keep the peace.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local government expenditures due to an increase in workload for law enforcement related to the requirement to verify complaints and restore possession of real property to a lawful owner. However, this increase in expenditures will likely be covered by the fee the sheriff is authorized to charge under the bill for such services.

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may make the removal of an unlawful occupant easier for a property owner. As such, the bill may have a positive economic impact on the private sector based upon the quicker and more efficient removal of such unlawful occupants.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on jail and prison beds due to the creation of new criminal offenses.