

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – the bill appears to increase the options of certain individuals and businesses regarding the conduct of their own affairs.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida's Landlord – Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs residential landlord-tenant law.¹ A lease is an agreement to use real property for a certain length of time. The Act governs the relationship between landlords and tenants in a residential lease agreement, including payment of rent,² duration of leases,³ security deposits,⁴ maintenance of the dwelling and premises,⁵ and termination of rental agreements.⁶

Section 83.59, F.S., provides circumstances under which a landlord may recover possession of a dwelling unit. Conversely, s. 83.59(3), F.S., sets forth instances when the landlord is not allowed to recover possession of the unit. The statute states that the landlord may not recover possession unless:

- the right of possession has been determined in a civil action; or
- the tenant has surrendered possession of the unit to the landlord; or
- the tenant has abandoned the unit. The landlord may have actual knowledge of the abandonment or there may be a presumption of the abandonment if the tenant is absent for a specified period of time and the rent is unpaid.

Section 83.67, F.S., prohibits certain acts by a landlord in a residential lease. Specifically, the following acts are prohibited:

- Terminating or interrupting any utility service furnished to the tenant;
- Denying tenant reasonable access to the dwelling, e.g., changing the locks;
- Discriminating against a servicemember in offering the dwelling for rent or in any of the terms in the rental agreement;
- Forbidding a tenant from displaying a portable, removable United States flag; and
- Removing outside doors, locks, roof, walls, windows, or removing the tenants' personal property unless taken pursuant to surrender, abandonment or a lawful eviction.

A landlord who violates any of these provisions is liable for actual and consequential damages or three months' rent, whichever is greater. The landlord is also liable for costs and attorney's fees.⁷

¹ Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit" which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

² See 83.46, F.S.

³ *Id.*

⁴ See s. 83.49, F.S.

⁵ See ss. 83.51 and 83.52, F.S.

⁶ See s. 83.56, F.S.

⁷ See s. 83.67(6), F.S.

Section 83.67(5), F.S., generally prohibits landlords from removing the personal property of tenants from the rental property. However, if the tenant leaves property behind after surrendering or abandoning the premises, or after a lawful eviction, the landlord is not liable or responsible for storage or disposition of the tenant's personal property provided written notification of this provision had been given to the tenant.

While the Disposition of Personal Property Landlord and Tenant Act⁸ provides a procedure for the disposition of personal property left by a tenant, it does not appear that these provisions authorize a landlord to take possession of the dwelling unit after the death of the last remaining tenant. Similarly, it does not appear that the procedures for the right of action for possession by a landlord under s. 83.59, F.S., or for the restoration of possession to a landlord under s. 83.62, F.S., are available. Florida courts have held that a residential lease agreement is purely personal in nature and does not survive the death of the tenant.⁹ Therefore, the landlord loses its ability to act under the agreement. It appears that possession of the dwelling unit by the landlord must be accomplished through the probate court.

Effect of Bill

The bill amends s. 83.59(3), F.S., to provide that, under certain circumstances, a landlord may recover possession of a dwelling unit 60 days after the death of a tenant. The landlord may only do so if:

- the last remaining tenant is deceased,
- personal property remains on the premises,
- rent is unpaid,
- at least 60 days have elapsed since the death of the tenant, and
- the landlord has not been notified in writing of the existence of a probate estate or of the name and address of a personal representative of the estate.

The bill amends s. 83.67, F.S., to provide that it is not a prohibited practice for a landlord to remove the outside doors, locks, roof, walls, or windows of a dwelling unit for purposes other than maintenance, repair, or replacement; and the landlord may remove the tenant's personal property from the dwelling unit, if such action is taken under the new provisions created by this bill in s. 83.57, F.S., upon the death of a tenant and inclusion. The landlord is not liable or responsible for storage or disposition of the tenant's personal property if notice is provided in a prescribed form in the rental agreement or in a separate written agreement.

C. SECTION DIRECTORY:

Section 1 amends s. 83.59, F.S., relating to the right of action for possession of a dwelling unit.

Section 2 amends s. 83.67, F.S., relating to prohibited practices.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate – see Fiscal Comments below.

⁸ Sections 715.10 - 715.111, F.S.

⁹ *Goodman v. Jardine*, 353 So.2d 896 (Fla. 3rd DCA 1978).

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There should be some cost saving to landlords by avoiding legal costs and filing fees that would have otherwise been expended to recover possession of a dwelling unit. Further, this bill should enable landlords to reduce lost rental income by gaining possession of a dwelling unit sooner than under current law.

D. FISCAL COMMENTS:

The bill creates a mechanism for landlords to gain possession of a dwelling unit without the necessity of filing a civil action and paying associated court filing fees. There is no way to project how many landlords will avail themselves of the provisions of the bill. However, it is anticipated that the bill will result in some reduction in court filings and in the receipt of court filing fees by the clerks of the courts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 21, 2007, this bill was considered by the Committee on Constitution and Civil Law. An amendment was adopted that provides that the provisions of the bill do not apply to tenancies funded through federal housing programs.