

**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 Criminal Justice Committee

BILL: CS/CS/SB 786

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senators Diaz de la Portilla and Lynn

SUBJECT: Landlord and Tenant

DATE: April 12, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	<b>Fav/CS</b>
2.	Cellon	Cannon	CJ	<b>Fav/CS</b>
3.			RC	
4.				
5.				
6.				

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

- A. COMMITTEE SUBSTITUTE..... ☒ Statement of Substantial Changes  
B. AMENDMENTS..... ☐ Technical amendments were recommended  
☐ Amendments were recommended  
☐ Significant amendments were recommended

**I. Summary:**

The bill provides that a law enforcement officer may remove a person from property, a structure or a conveyance, if the person is trespassing and the officer has an affidavit from an owner or mortgagee that presumably confirms that the trespass is in fact occurring.

This bill amends sections 810.08 and 810.09 of the Florida Statutes.

**II. Present Situation:**

**Mortgage Foreclosure Crisis**

The mortgage foreclosure crisis has left many homes vacant and abandoned. According to data released by the Mortgage Bankers Association, Florida has the nation's highest inventory of homes in distress.<sup>1</sup> Cities and other communities are taking steps to manage vacant and abandoned residential properties as a result of the mortgage foreclosure crisis. In a recent report prepared by the U.S. Conference of Mayors, 71 percent of survey cities reported that the

<sup>1</sup> Toluse Olorunnipa, *Florida's Foreclosure Rate is Nation's Highest*, The Miami Herald (Feb. 17, 2011).

mortgage foreclosure crisis has affected their approach to managing and disposing of vacant and abandoned properties, prompting the cities to modify protocols and procedures, ordinances, and policies.<sup>2</sup> Fifty-five local governments in Florida have adopted ordinances to address the management of vacant and abandoned properties.<sup>3</sup> In October 2008, the City of Miami, Florida, enacted an ordinance that requires the owner or deed holder of vacant or abandoned property to register the property and provide a phone number and address where the owner or agent can be reached within 24 hours.<sup>4</sup> If the property is blighted, unsecured, or abandoned, the owner must pay an annual registration fee of between \$250 and \$500 and provide the names, addresses, and contact numbers of anyone with a lien on or interest in the property. The Miami ordinance includes an authorization for police to enforce trespassing laws for properties considered vacant or abandoned and a requirement for owners of abandoned properties to submit a plan for correcting all code violations within no more than 90 days.

Squatters have started moving into foreclosed property without any legal right to occupy the premises.<sup>5</sup> In order to evict squatters, law enforcement officers need authorization from the property's owner, usually a bank or other financial institution, and certainty that the squatter's right of possession has been settled under the Florida Residential Landlord and Tenant Act.<sup>6</sup> Law enforcement officials may be liable for wrongful ejectment or eviction if the owner has not settled his or her right of possession to the property in an action for possession in the county court of the county where the property is located pursuant to the Florida Residential Landlord and Tenant Act, which is discussed below.

### **Florida Residential Landlord and Tenant Act**

The Florida Residential Landlord and Tenant Act (Act) governs residential landlord tenant law. The Act provides remedies to a tenant and landlord and applies to the rental of a dwelling unit.<sup>7</sup> If a tenant holds over and continues in possession of the dwelling unit after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit by seeking a right of action for possession in the county court of the county where the premises are situated stating the facts that authorize its recovery.<sup>8</sup> The landlord may not recover possession of the dwelling unit except: in an action for possession or other civil action in which the issue of the right of possession is determined; when the tenant has surrendered possession of the dwelling unit to the landlord; or when the tenant has abandoned the dwelling unit.<sup>9</sup> It is presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payment.

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<sup>2</sup> The United States Conference of Mayors, *Impact of the Mortgage Foreclosure Crisis on Vacant and Abandoned Properties in Cities, A 77-City Survey* (June 2010), <http://www.usmayors.org/publications/2010%20VAP%20Report.pdf> (last visited Mar. 17, 2011).

<sup>3</sup> American Financial Services Association, *Vacant and Abandoned Property Municipal Ordinances*, [http://www.afsaonline.org/library/files/sga\\_resources/AFSA%20Vacant%20and%20Abandoned%20Property%20Ordinances%20Dec%202010%20FINAL.pdf](http://www.afsaonline.org/library/files/sga_resources/AFSA%20Vacant%20and%20Abandoned%20Property%20Ordinances%20Dec%202010%20FINAL.pdf) (last visited Mar. 17, 2011).

<sup>4</sup> MIAMI, FL, CHAPTER 10, ARTICLE IV (10-16-2008).

<sup>5</sup> See Natalie O'Neill, *Squatters Don't Cry. Just Move Into One of Those Empty Homes Around the Corner*, Miami New Times (Nov. 20, 2008); John Leland, *With Advocates' Help, Squatters Call Foreclosures Home*, N.Y. Times (Apr. 10, 2009).

<sup>6</sup> Telephone interview with City of Miami, Florida attorneys.

<sup>7</sup> Section 83.41, F.S.

<sup>8</sup> Section 83.59, F.S.

<sup>9</sup> *Id.*

The Act also provides for the restoration of possession of the premises to the landlord.<sup>10</sup> In an action for possession, after entry of judgment in favor of the landlord, the clerk must issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice is conspicuously posted on the premises. The landlord or the landlord's agent may remove any personal property found on the premises to or near the property line.

The Act does not apply to:

- Residency or detention in a public or private facility (when detention is incidental to medical, geriatric, educational, counseling, religious, or similar services);
- Occupancy under a contract of sale;
- Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park;
- Occupancy by a holder of a proprietary lease in a cooperative apartment; or
- Occupancy by an owner of a condominium unit.<sup>11</sup>

### **Criminal Trespass**

Section 810.08, F.S., specifies the elements for trespass in a structure or conveyance. Whoever, 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, commits the offense of trespass in a structure or conveyance. Trespass in a structure or conveyance is a second-degree misdemeanor punishable by jail time up to 60 days and the imposition of a fine up to \$500.<sup>12</sup> The section provides for enhanced penalties if there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance or if the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance.<sup>13</sup> As used in s. 810.08, F.S., the term "person authorized" means any owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in the case of a threat to public safety or welfare.

Section 810.09, F.S., outlines the elements for trespass on property other than a structure or conveyance which is punishable as a first-degree misdemeanor. A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance as defined in the law and:

- has been given notice against entering or remaining as required by law; or
- enters or remains with the intent to commit an offense on the unenclosed land surrounding a house or dwelling

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<sup>10</sup> Section 83.62, F.S.

<sup>11</sup> Section 83.42, F.S.

<sup>12</sup> Section 810.08, F.S.

<sup>13</sup> *Id.*

commits trespass on property other than a structure or conveyance. A first-degree misdemeanor is punishable by jail time up to 1 year and the imposition of a fine of up to \$1,000.

If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits the offense of trespass on property other than a structure or conveyance. If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of third-degree felony. A third-degree felony is punishable by imprisonment of up to 5 years and imposition of a fine of up to \$5,000.

If the offender trespasses on a construction site that is greater than 1 acre or as otherwise described in the section or trespasses on commercial horticulture property with the required notice, the offender is liable for a third-degree felony. The section describes additional elements of the offense of trespass on property other than a structure or conveyance that are punishable as a third-degree felony.

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

The bill amends ss. 810.08 and 810.09, F.S., which prohibit trespass in a structure or conveyance, or on property other than a structure or conveyance, as described above in the Present Situation section.

The bill provides for a law enforcement officer who has an affidavit from an owner or mortgagee of the property to remove a person who is trespassing.

In essence, the affidavit provides one element of the offense of trespass, that the person is not authorized to be on or in the property. The affidavit should also provide the law enforcement officer a means by which he or she can lawfully convey notice to someone that they are trespassing and therefore, direct them to leave.

The bill provides an effective date of July 1, 2011.

### **Other Potential Implications:**

It is suggested that law enforcement agencies require specific and verifiable information in affidavits they use as a basis for ejecting a suspected trespasser from another's property. The content of the affidavit is not specified in the bill.

### **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.

B. Private Sector Impact:

To the extent that law enforcement officials may eject persons unlawfully occupying a dwelling without requiring the owner to quiet his, her, or its (individual or bank) right of possession of the property, the owner may save associated costs associated with recovering possession of a dwelling.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**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 by Criminal Justice on April 12, 2011:**

Removed the provisions of the bill from Chapter 83, relating to Landlord-Tenant Law, and created the statutory authority for law enforcement to remove persons from the property of another under ss. 810.08 and 810.09, F.S., which prohibit trespass.

In order to remove trespassers under the provisions of the bill, a law enforcement officer must be in possession of an affidavit from an owner or mortgagee of the property.

**CS by Judiciary on March 22, 2011:**

The committee substitute revises the exemption to the Florida Residential Landlord and Tenant Act so that it applies to an occupancy for less than 30 days by a person not legally entitled to occupy the premises, rather than an occupancy for less than 60 days under the original bill.

The committee substitute adds s. 810.08, F.S., criminal trespass in a structure or conveyance, to the criminal trespass provisions that law enforcement may enforce in the case of a person unlawfully occupying the premises who refuses to depart the premises.

**B. Amendments:**

None.