

1 A bill to be entitled
2 An act relating to the possession of real property;
3 amending s. 66.021, F.S.; authorizing a person with a
4 superior right to possession of real property to
5 recover possession by ejectment; declaring that
6 circuit courts have exclusive jurisdiction; providing
7 that a plaintiff is not required to provide any
8 presuit notice or demand to a defendant; requiring
9 that copies of instruments be attached to a complaint
10 or answer under certain circumstances; requiring a
11 statement to list certain details; providing for
12 construction; amending s. 82.01, F.S.; redefining the
13 terms "unlawful entry" and "forcible entry"; defining
14 the terms "real property," "record titleholder," and
15 "unlawful detention"; amending s. 82.02, F.S.;
16 exempting possession of real property under part II of
17 ch. 83, F.S., and under chs. 513 and 723, F.S.;
18 amending s. 82.03, F.S.; providing that a person
19 entitled to possession of real property has a cause of
20 action to regain possession from another person who
21 obtained possession of real property by forcible
22 entry, unlawful entry, or unlawful detainer; providing
23 that a person entitled to possession is not required
24 to give a defendant presuit notice; requiring the
25 court to award the plaintiff extra damages if a

26 | defendant acted in a willful and knowingly wrongful
27 | manner; authorizing bifurcation of actions for
28 | possession and damages; requiring that an action be
29 | brought by summary procedure; requiring the court to
30 | advance the cause on the calendar; renumbering and
31 | amending s. 82.045, F.S.; conforming provisions to
32 | changes made by the act; amending s. 82.04, F.S.;
33 | requiring that the court determine the right of
34 | possession and damages; prohibiting the court from
35 | determining question of title unless necessary;
36 | amending s. 82.05, F.S.; requiring that the summons
37 | and complaint be attached to the real property after
38 | two unsuccessful attempts to serve a defendant;
39 | requiring a plaintiff to provide the clerk of the
40 | court with prestamped envelopes and additional copies
41 | of the summons and complaint if the defendant is
42 | served by attaching the summons and complaint to the
43 | real property; requiring the clerk to immediately mail
44 | copies of the summons and complaint and note the fact
45 | of mailing in the docket; specifying that service is
46 | effective on the date of posting or mailing; requiring
47 | that 5 days elapse after the date of service before
48 | the entry of a judgment; amending s. 82.091, F.S.;
49 | providing requirements after a judgment is entered for
50 | the plaintiff or the defendant; amending s. 82.101,

51 F.S.; adding quiet title to the types of future
 52 actions for which a judgment is not conclusive as to
 53 certain facts; providing that the judgment may be
 54 superseded by a subsequent judgment; creating s.
 55 704.09, F.S.; requiring that a claim of customary use
 56 for the public use of private property be determined
 57 by a court on a parcel-by-parcel basis; specifying a
 58 standard of proof for such determinations; repealing
 59 s. 82.061, F.S., relating to service of process;
 60 repealing s. 82.071, F.S., relating to evidence at
 61 trial as to damages; repealing s. 82.081, F.S.,
 62 relating to trial verdict forms; providing an
 63 effective date.

64
 65 Be It Enacted by the Legislature of the State of Florida:

66
 67 Section 1. Section 66.021, Florida Statutes, is amended to
 68 read:

69 66.021 Ejectment Procedure.—

70 (1) RIGHT OF ACTION.—A person with a superior right to
 71 possession of real property may maintain an action of ejectment
 72 to recover possession of the property.

73 (2) JURISDICTION.—Circuit courts have exclusive
 74 jurisdiction in an action of ejectment.

75 (3) NOTICE.—A plaintiff may not be required to provide any

76 presuit notice or presuit demand to a defendant as a condition
77 to maintaining an action under this section.

78 (4)-(1) LANDLORD NOT A DEFENDANT.—When it appears before
79 trial that a defendant in an action of ejectment is in
80 possession as a tenant and that his or her landlord is not a
81 party, the landlord must ~~shall~~ be made a party before further
82 proceeding unless otherwise ordered by the court.

83 (5)-(2) DEFENSE MAY BE LIMITED.—A defendant in an action of
84 ejectment may limit his or her defense to a part of the property
85 mentioned in the complaint, describing such part with reasonable
86 certainty.

87 (6)-(3) WRIT OF POSSESSION; EXECUTION TO BE JOINT OR
88 SEVERAL.—When plaintiff recovers in an action of ejectment, he
89 or she may have one writ for possession and for, damages and
90 costs or, at his or her election ~~if the plaintiff elects~~, may
91 have separate writs for possession and for damages and costs.

92 (7)-(4) CHAIN OF TITLE.—~~The Plaintiff with his or her~~
93 ~~complaint and the defendant with his or her answer~~ must include
94 ~~shall serve~~ a statement setting forth, chronologically, the
95 chain of title upon which the party ~~on which he or she will rely~~
96 at trial. Copies of each instrument identified in the statement
97 must be attached to the complaint or answer. ~~If any part of the~~
98 ~~chain of title is recorded,~~ The statement must include ~~shall set~~
99 ~~forth~~ the names of the grantors and the grantees, the date that
100 each instrument was recorded, and the book and page or the

101 instrument number for each recorded instrument ~~of the record~~
102 ~~thereof; if an unrecorded instrument is relied on, a copy shall~~
103 ~~be attached. The court may require the original to be submitted~~
104 ~~to the opposite party for inspection.~~ If a ~~the~~ party relies on a
105 claim or right without color of title, the statement must ~~shall~~
106 specify how and when the claim originated and the facts on which
107 the claim is based. If defendant and plaintiff claim under a
108 common source, the statement need not deraign title before the
109 common source.

110 (8) ~~(5)~~ TESTING SUFFICIENCY.—If either party seeks ~~wants~~ to
111 test the legal sufficiency of any instrument or court proceeding
112 in the chain of title of the opposite party, the party must
113 ~~shall~~ do so before trial by motion setting up his or her
114 objections with a copy of the instrument or court proceedings
115 attached. The motion must ~~shall~~ be disposed of before trial. If
116 either party determines that he or she will be unable to
117 maintain his or her claim by reason of the order, that party may
118 so state in the record and final judgment shall be entered for
119 the opposing ~~opposite~~ party.

120 (9) OPERATION.—This section is cumulative to other
121 existing remedies and may not be construed to limit other
122 remedies that are available under the laws of this state.

123 Section 2. Section 82.01, Florida Statutes, is amended to
124 read:

125 82.01 Definitions ~~"Unlawful entry and forcible entry"~~

126 ~~defined.~~—As used in this chapter, the term:

127 (1) "Forcible entry" means entering into and taking
128 possession of real property with force, in a manner that is not
129 peaceable, easy, or open, even if such entry is authorized by a
130 person entitled to possession of the real property and the
131 possession is only temporary or applies only to a portion of the
132 real property.

133 (2) "Real property" means land or any existing permanent
134 or temporary building or structure thereon, and any attachments
135 generally held out for the use of persons in possession of the
136 real property.

137 (3) "Record titleholder" means a person who holds title to
138 real property as evidenced by an instrument recorded in the
139 public records of the county in which the real property is
140 located.

141 (4) "Unlawful detention" means possessing real property,
142 even if the possession is temporary or applies only to a portion
143 of the real property, without the consent of a person entitled
144 to possession of the real property or after the withdrawal of
145 consent by such person.

146 (5) "Unlawful entry" means the entry into and possessing
147 of real property, even if the possession is temporary or for a
148 portion of the real property, when such entry is not authorized
149 by law or consented to by a person entitled to possession of the
150 real property ~~No person shall enter into any lands or tenements~~

151 ~~except when entry is given by law, nor shall any person, when~~
152 ~~entry is given by law, enter with strong hand or with multitude~~
153 ~~of people, but only in a peaceable, easy and open manner.~~

154 Section 3. Section 82.02, Florida Statutes, is amended to
155 read:

156 82.02 Applicability ~~"Unlawful entry and unlawful~~
157 ~~detention" defined.-~~

158 (1) This chapter does not apply to residential tenancies
159 under part II of chapter 83 ~~No person who enters without consent~~
160 ~~in a peaceable, easy and open manner into any lands or tenements~~
161 ~~shall hold them afterwards against the consent of the party~~
162 ~~entitled to possession.~~

163 (2) This chapter does not apply to the possession of real
164 property under chapter 513 or chapter 723 ~~This section shall not~~
165 ~~apply with regard to residential tenancies.~~

166 Section 4. Section 82.03, Florida Statutes, is amended to
167 read:

168 82.03 Remedies ~~Remedy for unlawful entry and forcible~~
169 ~~entry.-~~

170 (1) A person entitled to possession of real property,
171 including constructive possession by a record titleholder, has a
172 cause of action against a person who obtained possession of that
173 real property by forcible entry, unlawful entry, or unlawful
174 detention and may recover possession and damages. The person
175 entitled to possession is not required to notify the prospective

176 defendant before filing the action.

177 (2) If the court finds that the entry or detention by the
 178 defendant is willful and knowingly wrongful, the court must
 179 award the plaintiff damages equal to double the reasonable
 180 rental value of the real property from the beginning of the
 181 forcible entry, unlawful entry, or unlawful detention until
 182 possession is delivered to the plaintiff. The plaintiff may also
 183 recover other damages, including, but not limited to, damages
 184 for waste.

185 (3) Actions for possession and damages may be bifurcated.

186 (4) All actions under this chapter must be brought by
 187 summary procedure as provided in s. 51.011, and the court shall
 188 advance the cause on the calendar ~~If any person enters or has~~
 189 ~~entered into lands or tenements when entry is not given by law,~~
 190 ~~or if any person enters or has entered into any lands or~~
 191 ~~tenements with strong hand or with multitude of people, even~~
 192 ~~when entry is given by law, the party turned out or deprived of~~
 193 ~~possession by the unlawful or forcible entry, by whatever right~~
 194 ~~or title the party held possession, or whatever estate the party~~
 195 ~~held or claimed in the lands or tenements of which he or she was~~
 196 ~~so dispossessed, is entitled to the summary procedure under s.~~
 197 ~~51.011 within 3 years thereafter.~~

198 Section 5. Section 82.045, Florida Statutes, is renumbered
 199 as section 82.035, Florida Statutes, and amended to read:

200 82.035 ~~82.045~~ Remedy for unlawful detention by a transient

201 occupant of residential property.—

202 (1) As used in this section, the term "transient occupant"
 203 means a person whose residency in real property ~~a dwelling~~
 204 intended for residential use has occurred for a brief length of
 205 time, is not pursuant to a lease, and whose occupancy was
 206 intended as transient in nature.

207 (a) Factors that establish that a person is a transient
 208 occupant include, but are not limited to:

209 1. The person does not have an ownership interest,
 210 financial interest, or leasehold interest in the property
 211 entitling him or her to occupancy of the property.

212 2. The person does not have any property utility
 213 subscriptions.

214 3. The person does not use the property address as an
 215 address of record with any governmental agency, including, but
 216 not limited to, the Department of Highway Safety and Motor
 217 Vehicles or the supervisor of elections.

218 4. The person does not receive mail at the property.

219 5. The person pays minimal or no rent for his or her stay
 220 at the property.

221 6. The person does not have a designated space of his or
 222 her own, such as a room, at the property.

223 7. The person has minimal, if any, personal belongings at
 224 the property.

225 8. The person has an apparent permanent residence

226 elsewhere.

227 (b) Minor contributions made for the purchase of household
228 goods, or minor contributions towards other household expenses,
229 do not establish residency.

230 (2) A transient occupant unlawfully detains a residential
231 property if the transient occupant remains in occupancy of the
232 residential property after the party entitled to possession of
233 the property has directed the transient occupant to leave.

234 (3) Any law enforcement officer may, upon receipt of a
235 sworn affidavit of the party entitled to possession that a
236 person who is a transient occupant is unlawfully detaining
237 residential property, direct a transient occupant to surrender
238 possession of residential property. The sworn affidavit must set
239 forth the facts, including the applicable factors listed in
240 paragraph (1)(a), which establish that a transient occupant is
241 unlawfully detaining residential property.

242 (a) A person who fails to comply with the direction of the
243 law enforcement officer to surrender possession or occupancy
244 violates s. 810.08. In any prosecution of a violation of s.
245 810.08 related to this section, whether the defendant was
246 properly classified as a transient occupant is not an element of
247 the offense, the state is not required to prove that the
248 defendant was in fact a transient occupant, and the defendant's
249 status as a permanent resident is not an affirmative defense.

250 (b) A person wrongfully removed pursuant to this

251 subsection has a cause of action for wrongful removal against
252 the person who requested the removal, and may recover injunctive
253 relief and compensatory damages. However, a wrongfully removed
254 person does not have a cause of action against the law
255 enforcement officer or the agency employing the law enforcement
256 officer absent a showing of bad faith by the law enforcement
257 officer.

258 (4) A party entitled to possession of real property ~~a~~
259 ~~dwelling~~ has a cause of action for unlawful detainer against a
260 transient occupant pursuant to s. 82.03 ~~s. 82.04~~. The party
261 entitled to possession is not required to notify the transient
262 occupant before filing the action. If the court finds that the
263 defendant is not a transient occupant but is instead a tenant of
264 residential property governed by part II of chapter 83, the
265 court may not dismiss the action without first allowing the
266 plaintiff to give the transient occupant the notice required by
267 that part and to thereafter amend the complaint to pursue
268 eviction under that part.

269 Section 6. Section 82.04, Florida Statutes, is amended to
270 read:

271 82.04 Questions involved in this proceeding ~~Remedy for~~
272 ~~unlawful detention.~~ The court shall determine only the right of
273 possession and any damages. Unless it is necessary to determine
274 the right of possession or the record titleholder, the court may
275 not determine the question of title.

276 ~~(1) If any person enters or has entered in a peaceable~~
277 ~~manner into any lands or tenements when the entry is lawful and~~
278 ~~after the expiration of the person's right continues to hold~~
279 ~~them against the consent of the party entitled to possession,~~
280 ~~the party so entitled to possession is entitled to the summary~~
281 ~~procedure under s. 51.011, at any time within 3 years after the~~
282 ~~possession has been withheld from the party against his or her~~
283 ~~consent.~~

284 ~~(2) This section shall not apply with regard to~~
285 ~~residential tenancies.~~

286 Section 7. Section 82.05, Florida Statutes, is amended to
287 read:

288 82.05 Service of process ~~Questions involved in this~~
289 ~~proceeding.~~

290 (1) After at least two attempts to obtain service as
291 provided by law, if the defendant cannot be found in the county
292 in which the action is pending and either the defendant does not
293 have a usual place of abode in the county or there is no person
294 15 years of age or older residing at the defendant's usual place
295 of abode in the county, the sheriff must serve the summons and
296 complaint by attaching it to some conspicuous part of the real
297 property involved in the proceeding. The minimum amount of time
298 allowed between the two attempts to obtain service is 6 hours.

299 (2) If a plaintiff causes, or anticipates causing, a
300 defendant to be served with a summons and complaint solely by

301 attaching them to some conspicuous part of real property
302 involved in the proceeding, the plaintiff must provide the clerk
303 of the court with two additional copies of the summons and the
304 complaint and two prestamped envelopes addressed to the
305 defendant. One envelope must be addressed to the defendant's
306 residence, if known. The second envelope must be addressed to
307 the defendant's last known business address, if known. The clerk
308 of the court shall immediately mail the copies of the summons
309 and complaint by first-class mail, note the fact of mailing in
310 the docket, and file a certificate in the court file of the fact
311 and date of mailing. Service is effective on the date of posting
312 or mailing, whichever occurs later, and at least 5 days must
313 have elapsed after the date of service before a final judgment
314 for removal of the defendant may be entered ~~No question of~~
315 ~~title, but only right of possession and damages, is involved in~~
316 ~~the action.~~

317 Section 8. Section 82.091, Florida Statutes, is amended to
318 read:

319 82.091 Judgment and execution.—

320 (1) If the court enters a judgment for the plaintiff, the
321 ~~verdict is in favor of plaintiff, the court shall enter judgment~~
322 ~~that~~ plaintiff shall recover possession of the real property
323 that he or she is entitled to and described in the complaint
324 ~~with his or her damages and costs.~~ The court, and shall award a
325 writ of possession to be executed without delay and execution

326 | for the plaintiff's damages and costs.

327 | (2) If the court enters a judgment for the defendant, the
328 | court shall ~~verdict is for defendant, the court shall enter~~
329 | ~~judgment against plaintiff dismissing the complaint and order~~
330 | that the defendant recover costs.

331 | Section 9. Section 82.101, Florida Statutes, is amended to
332 | read:

333 | 82.101 Effect of judgment.—No judgment rendered either for
334 | the plaintiff or the defendant bars any action of trespass for
335 | injury to the real property or ejectment between the same
336 | parties respecting the same real property. A judgment is not
337 | conclusive as to ~~No verdict is conclusive of~~ the facts therein
338 | ~~found~~ in any future action for ~~of~~ trespass, ejectment, or quiet
339 | title. A judgment rendered either for the plaintiff or the
340 | defendant pursuant to this chapter may be superseded, in whole
341 | or in part, by a subsequent judgment in an action for trespass
342 | for injury to the real property, ejectment, or quiet title
343 | involving the same parties with respect to the same real
344 | property or ejectment.

345 | Section 10. Section 704.09, Florida Statutes, is created
346 | to read:

347 | 704.09 Judicial determination; customary use.—A common law
348 | claim of customary use for the public use of private property
349 | shall only be determined by a court of competent jurisdiction,
350 | on a parcel-by-parcel basis, and by clear and convincing

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351 | evidence.

352 | Section 11. Section 82.061, Florida Statutes, is repealed.

353 | Section 12. Section 82.071, Florida Statutes, is repealed.

354 | Section 13. Section 82.081, Florida Statutes, is repealed.

355 | Section 14. This act shall take effect July 1, 2018.