

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.
 55 163.035, F.S.; prohibiting a local government from
 56 enacting or enforcing an ordinance or rule based on
 57 the customary use of property; providing an exception;
 58 creating s. 704.09, F.S.; establishing a standard of
 59 proof applicable to a civil action in which a party
 60 seeks to impose a customary use of real property;
 61 repealing s. 82.061, F.S., relating to service of
 62 process; repealing s. 82.071, F.S., relating to
 63 evidence at trial as to damages; repealing s. 82.081,
 64 F.S., relating to trial verdict forms; providing an
 65 effective date.

66

67 Be It Enacted by the Legislature of the State of Florida:

68

69 Section 1. Section 66.021, Florida Statutes, is amended to
 70 read:

71 66.021 Ejectment Procedure.—

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

75 (2) JURISDICTION.—Circuit courts have exclusive

76 | jurisdiction in an action of ejectment.

77 | (3) NOTICE.—A plaintiff may not be required to provide any
 78 | presuit notice or presuit demand to a defendant as a condition
 79 | to maintaining an action under this section.

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

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

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

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

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

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

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

125 Section 2. Section 82.01, Florida Statutes, is amended to

126 read:

127 82.01 Definitions ~~"Unlawful entry and forcible entry"~~
 128 ~~defined.~~ As used in this chapter, the term:

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

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

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

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

148 (5) "Unlawful entry" means the entry into and possessing
 149 of real property, even if the possession is temporary or for a
 150 portion of the real property, when such entry is not authorized

151 by law or consented to by a person entitled to possession of the
152 real property ~~No person shall enter into any lands or tenements~~
153 ~~except when entry is given by law, nor shall any person, when~~
154 ~~entry is given by law, enter with strong hand or with multitude~~
155 ~~of people, but only in a peaceable, easy and open manner.~~

156 Section 3. Section 82.02, Florida Statutes, is amended to
157 read:

158 82.02 Applicability ~~"Unlawful entry and unlawful~~
159 ~~detention" defined.-~~

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

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

168 Section 4. Section 82.03, Florida Statutes, is amended to
169 read:

170 82.03 Remedies ~~Remedy for unlawful entry and forcible~~
171 ~~entry.-~~

172 (1) A person entitled to possession of real property,
173 including constructive possession by a record titleholder, has a
174 cause of action against a person who obtained possession of that
175 real property by forcible entry, unlawful entry, or unlawful

176 detention and may recover possession and damages. The person
177 entitled to possession is not required to notify the prospective
178 defendant before filing the action.

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

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

188 (4) All actions under this chapter must be brought by
189 summary procedure as provided in s. 51.011, and the court shall
190 advance the cause on the calendar ~~If any person enters or has~~
191 ~~entered into lands or tenements when entry is not given by law,~~
192 ~~or if any person enters or has entered into any lands or~~
193 ~~tenements with strong hand or with multitude of people, even~~
194 ~~when entry is given by law, the party turned out or deprived of~~
195 ~~possession by the unlawful or forcible entry, by whatever right~~
196 ~~or title the party held possession, or whatever estate the party~~
197 ~~held or claimed in the lands or tenements of which he or she was~~
198 ~~so dispossessed, is entitled to the summary procedure under s.~~
199 ~~51.011 within 3 years thereafter.~~

200 Section 5. Section 82.045, Florida Statutes, is

201 transferred, renumbered as section 82.035, Florida Statutes, and
 202 amended to read:

203 82.035 ~~82.045~~ Remedy for unlawful detention by a transient
 204 occupant of residential property.—

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

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

212 1. The person does not have an ownership interest,
 213 financial interest, or leasehold interest in the property
 214 entitling him or her to occupancy of the property.

215 2. The person does not have any property utility
 216 subscriptions.

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

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

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

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

226 7. The person has minimal, if any, personal belongings at
227 the property.

228 8. The person has an apparent permanent residence
229 elsewhere.

230 (b) Minor contributions made for the purchase of household
231 goods, or minor contributions towards other household expenses,
232 do not establish residency.

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

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

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

251 defendant was in fact a transient occupant, and the defendant's
252 status as a permanent resident is not an affirmative defense.

253 (b) A person wrongfully removed pursuant to this
254 subsection has a cause of action for wrongful removal against
255 the person who requested the removal, and may recover injunctive
256 relief and compensatory damages. However, a wrongfully removed
257 person does not have a cause of action against the law
258 enforcement officer or the agency employing the law enforcement
259 officer absent a showing of bad faith by the law enforcement
260 officer.

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

272 Section 6. Section 82.04, Florida Statutes, is amended to
273 read:

274 82.04 Questions involved in this proceeding ~~Remedy for~~
275 ~~unlawful detention.~~ The court shall determine only the right of

276 possession and any damages. Unless it is necessary to determine
277 the right of possession or the record titleholder, the court may
278 not determine the question of title.

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

287 ~~(2) This section shall not apply with regard to~~
288 ~~residential tenancies.~~

289 Section 7. Section 82.05, Florida Statutes, is amended to
290 read:

291 82.05 Service of process ~~Questions involved in this~~
292 ~~proceeding.~~

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

301 allowed between the two attempts to obtain service is 6 hours.
 302 (2) If a plaintiff causes, or anticipates causing, a
 303 defendant to be served with a summons and complaint solely by
 304 attaching them to some conspicuous part of real property
 305 involved in the proceeding, the plaintiff must provide the clerk
 306 of the court with two additional copies of the summons and the
 307 complaint and two prestamped envelopes addressed to the
 308 defendant. One envelope must be addressed to the defendant's
 309 residence, if known. The second envelope must be addressed to
 310 the defendant's last known business address, if known. The clerk
 311 of the court shall immediately mail the copies of the summons
 312 and complaint by first-class mail, note the fact of mailing in
 313 the docket, and file a certificate in the court file of the fact
 314 and date of mailing. Service is effective on the date of posting
 315 or mailing, whichever occurs later, and at least 5 days must
 316 have elapsed after the date of service before a final judgment
 317 for removal of the defendant may be entered ~~No question of~~
 318 ~~title, but only right of possession and damages, is involved in~~
 319 ~~the action.~~

320 Section 8. Section 82.091, Florida Statutes, is amended to
 321 read:

322 82.091 Judgment and execution.—

323 (1) If the court enters a judgment for the plaintiff, the
 324 ~~verdict is in favor of plaintiff, the court shall enter judgment~~
 325 ~~that~~ plaintiff shall recover possession of the real property

326 that he or she is entitled to and ~~described in the complaint~~
327 ~~with his or her damages and costs.~~ The court, ~~and~~ shall award a
328 writ of possession to be executed without delay and execution
329 for the plaintiff's damages and costs.

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

334 Section 9. Section 82.101, Florida Statutes, is amended to
335 read:

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

348 Section 10. Section 163.035, Florida Statutes, is created
349 to read:

350 163.035 Ordinances relating to customary use.—A

351 municipality, county, district, or other local governmental
352 entity may not adopt or keep in effect an ordinance or rule that
353 finds, determines, relies on, or is based upon customary use of
354 any portion of a beach above the mean high-water line as defined
355 in s. 177.27, unless such ordinance or rule is expressly
356 authorized by general law, or unless a specific portion of a
357 beach above the mean high-water line has been determined by a
358 court, before the adoption of the ordinance or rule, to be
359 accessible to the public under the doctrine of customary use.
360 This section does not apply to an ordinance adopted and in
361 effect before January 1, 2016.

362 Section 11. Section 704.09, Florida Statutes, is created
363 to read:

364 704.09 Judicial determination; customary use.—A party
365 seeking to impose a common law customary use of real property in
366 a civil action must prove such customary use by a preponderance
367 of the evidence.

368 Section 12. Section 82.061, Florida Statutes, is repealed.

369 Section 13. Section 82.071, Florida Statutes, is repealed.

370 Section 14. Section 82.081, Florida Statutes, is repealed.

371 Section 15. This act shall take effect July 1, 2018.