

By the Committee on Rules; and Senator Passidomo

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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 plaintiff extra damages if a defendant  
26          acted in a willful and knowingly wrongful manner;  
27          authorizing bifurcation of actions for possession and  
28          damages; requiring that an action be brought by  
29          summary procedure; requiring the court to advance the

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30 cause on the calendar; transferring, 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 from the date of service before the  
48 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.; defining the term "governmental  
56 entity"; prohibiting a governmental entity from  
57 adopting or keeping in effect certain ordinances and  
58 rules based upon customary use; providing an

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59 exception; requiring a governmental entity seeking to  
60 affirm the existence of a recreational customary use  
61 on private property to follow certain procedures;  
62 providing notice requirements for a governmental  
63 entity seeking to affirm such recreational customary  
64 use; requiring the governmental entity to file a  
65 specified complaint with a certain circuit court  
66 within a certain time; providing notice requirements  
67 for the filing of such complaint; specifying that  
68 proceedings resulting from such complaint are de novo;  
69 requiring the court to consider specific factors when  
70 determining whether a recreational customary use  
71 exists; specifying that the governmental entity has  
72 the burden of proof; specifying that an owner of a  
73 parcel of property subject to the complaint has the  
74 right to intervene in the proceeding; providing  
75 applicability; repealing s. 82.061, F.S., relating to  
76 service of process; repealing s. 82.071, F.S.,  
77 relating to evidence at trial as to damages; repealing  
78 s. 82.081, F.S., relating to trial verdict forms;  
79 providing an effective date.

80  
81 Be It Enacted by the Legislature of the State of Florida:

82  
83 Section 1. Section 66.021, Florida Statutes, is amended to  
84 read:

85 66.021 Ejectment Procedure.—

86 (1) RIGHT OF ACTION.—A person with a superior right to  
87 possession of real property may maintain an action of ejectment

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88 to recover possession of the property.

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

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

94 (4)~~(1)~~ LANDLORD NOT A DEFENDANT.—When it appears before  
95 trial that a defendant in an action of ejectment is in  
96 possession as a tenant and that his or her landlord is not a  
97 party, the landlord must ~~shall~~ be made a party before further  
98 proceeding unless otherwise ordered by the court.

99 (5)~~(2)~~ DEFENSE MAY BE LIMITED.—A defendant in an action of  
100 ejectment may limit his or her defense to a part of the property  
101 mentioned in the complaint, describing such part with reasonable  
102 certainty.

103 (6)~~(3)~~ WRIT OF POSSESSION; EXECUTION TO BE JOINT OR  
104 SEVERAL.—When plaintiff recovers in an action of ejectment, he  
105 or she may have one writ for possession and for~~for~~ damages and  
106 costs or, at his or her election ~~if the plaintiff elects, may~~  
107 have separate writs for possession and for damages and costs.

108 (7)~~(4)~~ CHAIN OF TITLE.—~~The Plaintiff with his or her~~  
109 complaint and the defendant with his or her answer must include  
110 ~~shall serve~~ a statement setting forth, chronologically, the  
111 chain of title upon which the party ~~on which he or she~~ will rely  
112 at trial. Copies of each instrument identified in the statement  
113 must be attached to the complaint or answer. ~~If any part of the~~  
114 ~~chain of title is recorded,~~ The statement must include ~~shall set~~  
115 ~~forth~~ the names of the grantors and the grantees, the date that  
116 each instrument was recorded, and the book and page or the

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117 instrument number for each recorded instrument ~~of the record~~  
118 ~~thereof; if an unrecorded instrument is relied on, a copy shall~~  
119 ~~be attached. The court may require the original to be submitted~~  
120 ~~to the opposite party for inspection.~~ If a the party relies on a  
121 claim or right without color of title, the statement must ~~shall~~  
122 specify how and when the claim originated and the facts on which  
123 the claim is based. If defendant and plaintiff claim under a  
124 common source, the statement need not deraign title before the  
125 common source.

126 (8)-(5) TESTING SUFFICIENCY.—If either party seeks ~~wants~~ to  
127 test the legal sufficiency of any instrument or court proceeding  
128 in the chain of title of the opposite party, the party must  
129 ~~shall~~ do so before trial by motion setting up his or her  
130 objections with a copy of the instrument or court proceedings  
131 attached. The motion must ~~shall~~ be disposed of before trial. If  
132 either party determines that he or she will be unable to  
133 maintain his or her claim by reason of the order, that party may  
134 so state in the record and final judgment shall be entered for  
135 the opposing ~~opposite~~ party.

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

139 Section 2. Section 82.01, Florida Statutes, is amended to  
140 read:

141 82.01 Definitions ~~“Unlawful entry and forcible entry”~~  
142 ~~defined.—As used in this chapter, the term:~~

143 (1) “Forcible entry” means entering into and taking  
144 possession of real property with force, in a manner that is not  
145 peaceable, easy, or open, even if such entry is authorized by a

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146 person entitled to possession of the real property and the  
147 possession is only temporary or applies only to a portion of the  
148 real property.

149 (2) "Real property" means land or any existing permanent or  
150 temporary building or structure thereon, and any attachments  
151 generally held out for the use of persons in possession of the  
152 real property.

153 (3) "Record titleholder" means a person who holds title to  
154 real property as evidenced by an instrument recorded in the  
155 public records of the county in which the real property is  
156 located.

157 (4) "Unlawful detention" means possessing real property,  
158 even if the possession is temporary or applies only to a portion  
159 of the real property, without the consent of a person entitled  
160 to possession of the real property or after the withdrawal of  
161 consent by such person.

162 (5) "Unlawful entry" means the entry into and possessing of  
163 real property, even if the possession is temporary or for a  
164 portion of the real property, when such entry is not authorized  
165 by law or consented to by a person entitled to possession of the  
166 real property ~~No person shall enter into any lands or tenements~~  
167 ~~except when entry is given by law, nor shall any person, when~~  
168 ~~entry is given by law, enter with strong hand or with multitude~~  
169 ~~of people, but only in a peaceable, easy and open manner.~~

170 Section 3. Section 82.02, Florida Statutes, is amended to  
171 read:

172 82.02 Applicability ~~"Unlawful entry and unlawful detention"~~  
173 ~~defined.-~~

174 (1) This chapter does not apply to residential tenancies

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175 under part II of chapter 83 ~~No person who enters without consent~~  
176 ~~in a peaceable, easy and open manner into any lands or tenements~~  
177 ~~shall hold them afterwards against the consent of the party~~  
178 ~~entitled to possession.~~

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

182 Section 4. Section 82.03, Florida Statutes, is amended to  
183 read:

184 82.03 Remedies ~~Remedy for unlawful entry and forcible~~  
185 ~~entry.-~~

186 (1) A person entitled to possession of real property,  
187 including constructive possession by a record titleholder, has a  
188 cause of action against a person who obtained possession of that  
189 real property by forcible entry, unlawful entry, or unlawful  
190 detention and may recover possession and damages. The person  
191 entitled to possession is not required to notify the prospective  
192 defendant before filing the action.

193 (2) If the court finds that the entry or detention by the  
194 defendant is willful and knowingly wrongful, the court must  
195 award the plaintiff damages equal to double the reasonable  
196 rental value of the real property from the beginning of the  
197 forcible entry, unlawful entry, or unlawful detention until  
198 possession is delivered to the plaintiff. The plaintiff may also  
199 recover other damages, including, but not limited to, damages  
200 for waste.

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

202 (4) All actions under this chapter must be brought by  
203 summary procedure as provided in s. 51.011, and the court shall

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204 ~~advance the cause on the calendar~~ If any person enters or has  
205 ~~entered into lands or tenements when entry is not given by law,~~  
206 ~~or if any person enters or has entered into any lands or~~  
207 ~~tenements with strong hand or with multitude of people, even~~  
208 ~~when entry is given by law, the party turned out or deprived of~~  
209 ~~possession by the unlawful or forcible entry, by whatever right~~  
210 ~~or title the party held possession, or whatever estate the party~~  
211 ~~held or claimed in the lands or tenements of which he or she was~~  
212 ~~so dispossessed, is entitled to the summary procedure under s.~~  
213 ~~51.011 within 3 years thereafter.~~

214 Section 5. Section 82.045, Florida Statutes, is  
215 transferred, renumbered as section 82.035, Florida Statutes, and  
216 amended to read:

217 82.035 ~~82.045~~ Remedy for unlawful detention by a transient  
218 occupant of residential property.-

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

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

226 1. The person does not have an ownership interest,  
227 financial interest, or leasehold interest in the property  
228 entitling him or her to occupancy of the property.

229 2. The person does not have any property utility  
230 subscriptions.

231 3. The person does not use the property address as an  
232 address of record with any governmental agency, including, but



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233 not limited to, the Department of Highway Safety and Motor  
234 Vehicles or the supervisor of elections.

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

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

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

240 7. The person has minimal, if any, personal belongings at  
241 the property.

242 8. The person has an apparent permanent residence  
243 elsewhere.

244 (b) Minor contributions made for the purchase of household  
245 goods, or minor contributions towards other household expenses,  
246 do not establish residency.

247 (2) A transient occupant unlawfully detains a residential  
248 property if the transient occupant remains in occupancy of the  
249 residential property after the party entitled to possession of  
250 the property has directed the transient occupant to leave.

251 (3) Any law enforcement officer may, upon receipt of a  
252 sworn affidavit of the party entitled to possession that a  
253 person who is a transient occupant is unlawfully detaining  
254 residential property, direct a transient occupant to surrender  
255 possession of residential property. The sworn affidavit must set  
256 forth the facts, including the applicable factors listed in  
257 paragraph (1)(a), which establish that a transient occupant is  
258 unlawfully detaining residential property.

259 (a) A person who fails to comply with the direction of the  
260 law enforcement officer to surrender possession or occupancy  
261 violates s. 810.08. In any prosecution of a violation of s.

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262 810.08 related to this section, whether the defendant was  
263 properly classified as a transient occupant is not an element of  
264 the offense, the state is not required to prove that the  
265 defendant was in fact a transient occupant, and the defendant's  
266 status as a permanent resident is not an affirmative defense.

267 (b) A person wrongfully removed pursuant to this subsection  
268 has a cause of action for wrongful removal against the person  
269 who requested the removal, and may recover injunctive relief and  
270 compensatory damages. However, a wrongfully removed person does  
271 not have a cause of action against the law enforcement officer  
272 or the agency employing the law enforcement officer absent a  
273 showing of bad faith by the law enforcement officer.

274 (4) A party entitled to possession of real property a  
275 ~~dwelling~~ has a cause of action for unlawful detainer against a  
276 transient occupant pursuant to s. 82.03 ~~s. 82.04~~. The party  
277 entitled to possession is not required to notify the transient  
278 occupant before filing the action. If the court finds that the  
279 defendant is not a transient occupant but is instead a tenant of  
280 residential property governed by part II of chapter 83, the  
281 court may not dismiss the action without first allowing the  
282 plaintiff to give the transient occupant the notice required by  
283 that part and to thereafter amend the complaint to pursue  
284 eviction under that part.

285 Section 6. Section 82.04, Florida Statutes, is amended to  
286 read:

287 82.04 Questions involved in this proceeding ~~Remedy for~~  
288 ~~unlawful detention.~~ The court shall determine only the right of  
289 possession and any damages. Unless it is necessary to determine  
290 the right of possession or the record titleholder, the court may

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291 not determine the question of title.

292 ~~(1) If any person enters or has entered in a peaceable~~  
293 ~~manner into any lands or tenements when the entry is lawful and~~  
294 ~~after the expiration of the person's right continues to hold~~  
295 ~~them against the consent of the party entitled to possession,~~  
296 ~~the party so entitled to possession is entitled to the summary~~  
297 ~~procedure under s. 51.011, at any time within 3 years after the~~  
298 ~~possession has been withheld from the party against his or her~~  
299 ~~consent.~~

300 ~~(2) This section shall not apply with regard to residential~~  
301 ~~tenancies.~~

302 Section 7. Section 82.05, Florida Statutes, is amended to  
303 read:

304 82.05 Service of process ~~Questions involved in this~~  
305 ~~proceeding.~~

306 (1) After at least two attempts to obtain service as  
307 provided by law, if the defendant cannot be found in the county  
308 in which the action is pending and either the defendant does not  
309 have a usual place of abode in the county or there is no person  
310 15 years of age or older residing at the defendant's usual place  
311 of abode in the county, the sheriff must serve the summons and  
312 complaint by attaching it to some conspicuous part of the real  
313 property involved in the proceeding. The minimum amount of time  
314 allowed between the two attempts to obtain service is 6 hours.

315 (2) If a plaintiff causes, or anticipates causing, a  
316 defendant to be served with a summons and complaint solely by  
317 attaching them to some conspicuous part of real property  
318 involved in the proceeding, the plaintiff must provide the clerk  
319 of the court with two additional copies of the summons and the

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320 complaint and two prestamped envelopes addressed to the  
321 defendant. One envelope must be addressed to the defendant's  
322 residence, if known. The second envelope must be addressed to  
323 the defendant's last known business address, if known. The clerk  
324 of the court shall immediately mail the copies of the summons  
325 and complaint by first-class mail, note the fact of mailing in  
326 the docket, and file a certificate in the court file of the fact  
327 and date of mailing. Service is effective on the date of posting  
328 or mailing, whichever occurs later, and at least 5 days must  
329 have elapsed after the date of service before a final judgment  
330 for removal of the defendant may be entered ~~No question of~~  
331 ~~title, but only right of possession and damages, is involved in~~  
332 ~~the action.~~

333 Section 8. Section 82.091, Florida Statutes, is amended to  
334 read:

335 82.091 Judgment and execution.—

336 (1) If the court enters a judgment for the plaintiff, the  
337 ~~verdict is in favor of plaintiff, the court shall enter judgment~~  
338 ~~that~~ plaintiff shall recover possession of the real property  
339 that he or she is entitled to and described in the complaint  
340 ~~with his or her damages and costs. The court, and~~ shall award a  
341 writ of possession to be executed without delay and execution  
342 for the plaintiff's damages and costs.

343 (2) If the court enters a judgment for the defendant, the  
344 court shall ~~verdict is for defendant, the court shall enter~~  
345 ~~judgment against plaintiff dismissing the complaint and order~~  
346 ~~that~~ the defendant recover costs.

347 Section 9. Section 82.101, Florida Statutes, is amended to  
348 read:

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349           82.101 Effect of judgment.—No judgment rendered either for  
350 the plaintiff or the defendant bars any action of trespass for  
351 injury to the real property or ejectment between the same  
352 parties respecting the same real property. A judgment is not  
353 conclusive as to ~~No verdict is conclusive of~~ the facts therein  
354 ~~found~~ in any future action for of trespass, ejectment, or quiet  
355 title. A judgment rendered either for the plaintiff or the  
356 defendant pursuant to this chapter may be superseded, in whole  
357 or in part, by a subsequent judgment in an action for trespass  
358 for injury to the real property, ejectment, or quiet title  
359 involving the same parties with respect to the same real  
360 property or ejectment.

361           Section 10. Section 163.035, Florida Statutes, is created  
362 to read:

363           163.035 Establishment of recreational customary use.—

364           (1) DEFINITION.—The term “governmental entity” includes an  
365 agency of the state, a regional or a local government created by  
366 the State Constitution or by general or special act, any county  
367 or municipality, or any other entity that independently  
368 exercises governmental authority.

369           (2) ORDINANCES AND RULES RELATING TO CUSTOMARY USE.—A  
370 governmental entity may not adopt or keep in effect an ordinance  
371 or rule that finds, determines, relies on, or is based upon  
372 customary use of any portion of a beach above the mean high-  
373 water line, as defined in s. 177.27, unless such ordinance or  
374 rule is based on a judicial declaration affirming recreational  
375 customary use on such beach.

376           (3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON  
377 PRIVATE PROPERTY; JUDICIAL DETERMINATION.—A governmental entity

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378 that seeks to affirm the existence of a recreational customary  
379 use on private property must follow the procedures set forth in  
380 this subsection.

381 (a) Notice.—The governing board of a governmental entity  
382 must, at a public hearing, adopt a formal notice of intent to  
383 affirm the existence of a recreational customary use on private  
384 property. The notice of intent must specifically identify the  
385 following:

386 1. The specific parcels of property, or the specific  
387 portions thereof, upon which a customary use affirmation is  
388 sought;

389 2. The detailed, specific, and individual use or uses of  
390 the parcels of property to which a customary use affirmation is  
391 sought; and

392 3. Each source of evidence that the governmental entity  
393 would rely upon to prove a recreational customary use has been  
394 ancient, reasonable, without interruption, and free from  
395 dispute.

396  
397 The governmental entity must provide notice of the public  
398 hearing to the owner of each parcel of property subject to the  
399 notice of intent at the address reflected in the county property  
400 appraiser's records no later than 30 days before the public  
401 meeting. Such notice must be provided by certified mail with  
402 return receipt requested, publication in a newspaper of general  
403 circulation in the area where the parcels of property are  
404 located, and posting on the governmental entity's website.

405 (b) Judicial determination.—

406 1. Within 60 days after the adoption of the notice of

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407 intent at the public hearing, the governmental entity must file  
408 a Complaint for Declaration of Recreational Customary Use with  
409 the circuit court in the county in which the properties subject  
410 to the notice of intent are located. The governmental entity  
411 must provide notice of the filing of the complaint to the owner  
412 of each parcel of property subject to the complaint in the same  
413 manner as is required for the notice of intent in paragraph (a).  
414 The notice must allow the owner receiving the notice to  
415 intervene in the proceeding within 45 days after receiving the  
416 notice. The governmental entity must provide verification of the  
417 service of the notice to the property owners required in this  
418 paragraph to the court so that the court may establish a  
419 schedule for the judicial proceedings.

420 2. All proceedings under this paragraph shall be de novo.  
421 The court must determine whether the evidence presented  
422 demonstrates that the recreational customary use for the use or  
423 uses identified in the notice of intent have been ancient,  
424 reasonable, without interruption, and free from dispute. There  
425 is no presumption regarding the existence of a recreational  
426 customary use with respect to any parcel of property, and the  
427 governmental entity has the burden of proof to show that a  
428 recreational customary use exists. An owner of a parcel of  
429 property that is subject to the complaint has the right to  
430 intervene as a party defendant in such proceeding.

431 (4) APPLICABILITY.—This section does not apply to a  
432 governmental entity with an ordinance or rule that was adopted  
433 and in effect on or before January 1, 2016, and does not deprive  
434 a governmental entity from raising customary use as an  
435 affirmative defense in any proceeding challenging an ordinance

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436 or rule adopted before July 1, 2018.

437 Section 11. Section 82.061, Florida Statutes, is repealed.

438 Section 12. Section 82.071, Florida Statutes, is repealed.

439 Section 13. Section 82.081, Florida Statutes, is repealed.

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