

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 Committee on Rules

BILL: CS/CS/SB 888

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Perry

SUBJECT: Property Rights

DATE: February 27, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Stokes</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
3.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 888 creates a new procedure for a property owner to request that a sheriff's officer remove an unauthorized person from residential real property. It provides that an owner of residential property may request that the sheriff immediately remove an unauthorized person from the owner's property. An unauthorized person is someone not authorized to occupy the property who is not a tenant nor an immediate family member.

An owner must contact the sheriff and file a complaint under penalty of perjury listing the relevant facts that show eligibility for relief. The complaint form is in the bill. If the complaint shows that the owner is eligible for relief and the sheriff can verify ownership of the property, the sheriff must remove the unauthorized person. The property owner must pay the sheriff the civil eviction fee plus an hourly rate if a deputy must stand by and keep the peace while the unauthorized person is removed.

A person wrongfully removed pursuant to this procedure has a cause of action against the owner for three times the fair market rent, damages, costs, and attorney fees.

Additionally, the bill creates three new crimes relating to unlawfully occupying a dwelling or fraudulently advertising property for sale or lease.

The bill is effective July 1, 2024.

II. Present Situation:

The Founders of this country recognized that the protection of private property is indispensable to the promotion of individual freedom.¹ John Adams said that “[p]roperty must be secured, or liberty cannot exist.”² The right to exclude others is “one of the most treasured” rights of property ownership.³ The right to exclude is “universally held to be a fundamental element of the property right,” and is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”⁴

A squatter is a person who unlawfully occupies real property and refuses to leave when asked. By refusing to leave, the squatter violates the landowner’s right to exclude and the landowner’s freedom to enjoy the property as he or she wants.

Legal Remedies to Remove a Squatter

The existing legal remedies to remove a squatter are:

Criminal Trespass

Section 810.08, F.S., provides that a person commits the criminal offense of trespass in a structure or conveyance if the person:

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.⁵

Where a criminal trespass is occurring, a law enforcement officer arrests the trespasser and immediately restores the real property owner to possession of the real property, without cost.

However, where the criminal trespass offense is not readily observable because the trespasser claims ownership or lease rights, a law enforcement officer may decline to arrest or remove the person from the property and view the dispute as a “civil matter.” In that situation, the law enforcement officer will not force the unwanted person to surrender possession of the property without a court order.

Unlawful Detainer

“Unlawful detention” means possessing real property, even if the possession is temporary or applies only to a portion of the real property, without the consent of a person entitled to possession of the real property or after the withdrawal of consent by such person.⁶

¹ *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071, 210 L. Ed. 2d 369 (2021).

² *Id.*, citing *Discourses on Davila*, in 6 Works of John Adams 280 (C. Adams ed. 1851).

³ *Cedar Point Nursery*, citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).

⁴ *Cedar Point Nursery* at 2072; citing *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179–180 (1979).

⁵ Section 810.08(1), F.S.

⁶ Section 82.01(4), F.S.

Where an unlawful detention occurs, the person entitled to possession may bring a civil action for unlawful detainer. An unlawful detainer action is filed in county court⁷ and is entitled to the summary procedure of s. 51.011, F.S., for expedited review by the court.⁸ If the person to be served is not found at the usual place of residence, the process server may serve a summons by posting a copy in a conspicuous place on the property.⁹

If the owner or rightful resident prevails in the action, the clerk of court will issue a writ of possession to the sheriff describing the premises and commanding the Sheriff to put him or her in possession of the property.¹⁰ In addition to the delay caused by the time it takes to obtain and serve a writ of possession, the property owner or rightful resident must pay a number of fees and costs.

Landlord-Tenant Eviction

Some landowners looking to remove a squatter treat the person like a tenant and use the landlord-tenant eviction process. Eviction of a tenant can be for violation of lease terms, expiration of the lease, or nonpayment of rent. First, the landlord must deliver or post a notice to vacate by a date certain (3 days for non-payment of rent, 7 days for any other cause). If the tenant does not vacate (or cure the problem), the landlord may file a civil action for eviction.

An eviction action is filed in county court¹¹ and is entitled to the summary procedure of s. 51.011, F.S., for expedited review by the court. At this point forward, the court procedure for eviction is the same as an action for unlawful detainer (see previous section).

Transient Occupant Law

In 2015, the Legislature addressed squatters by creating a nonjudicial civil remedy for removal by law enforcement officers of a transient occupant to address squatters.¹² It was amended in 2018.¹³ A transient occupant is “a person whose residency in real property intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.” The statute lists the following factors for consideration of whether an occupancy was intended as transient:

- The person does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy of the property.
- The person does not have any property utility subscriptions.
- The person cannot produce documentation, correspondence, or identification cards sent or issued by a government agency, including, but not limited to, the Department of Highway

⁷ Section 34.011(2), F.S.

⁸ Section 82.03(4), F.S. Under the summary procedure of s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant’s answer which must be filed within five days after service of process of the plaintiff’s complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

⁹ Section 82.05, F.S.

¹⁰ Section 82.091, F.S.

¹¹ Section 34.011(2), F.S.

¹² Chapter 2015-89, Laws of Fla.; codified as s. 82.035, F.S.

¹³ Chapters 2018-83 and 2018-94, Laws of Fla.

Safety and Motor Vehicles or the supervisor of elections, which show that the person used the property address as an address of record with the agency within the previous 12 months.

- The person pays minimal or no rent for his or her stay at the property.
- The person does not have a designated space of his or her own, such as a room, at the property.
- The person has minimal, if any, personal belongings at the property.
- The person has an apparent permanent residence elsewhere.¹⁴

If the property owner is able to convince the law enforcement officer that an occupant of the property qualifies as a transient occupant, and if the owner has asked the transient occupant to leave, the law enforcement officer may direct the transient occupant to immediately leave.¹⁵

The property owner initiates the process by contacting a law enforcement agency. The property owner must file an affidavit that sets forth the facts and addresses each of the factors listed above.¹⁶ No fees are required.

A person wrongfully removed pursuant to this statute has a cause of action for wrongful removal against the person who requested the removal, and may recover injunctive relief and compensatory damages. However, a wrongfully removed person does not have a cause of action against the law enforcement officer or the agency employing the law enforcement officer absent a showing of bad faith by the law enforcement officer.¹⁷ The statute includes process and procedure regarding the personal property of the transient occupant.¹⁸

Ineffectiveness of Existing Remedies to Address Unauthorized Persons

Existing legal remedies to remove a squatter are considered ineffective by some members of the public.¹⁹ Squatters go so far as to publish how to avoid law enforcement officers and how to destroy a home while squatting.²⁰ Some landowners have resorted to dangerous self-help eviction.²¹ Squatters have caused significant damage to properties.²²

¹⁴ Section 82.035(1)(a), F.S.

¹⁵ Section 82.035(3), F.S.

¹⁶ *Id.*

¹⁷ Section 82.035(3)(b), F.S.

¹⁸ Section 82.035(5), F.S.

¹⁹ Andrew Mark Miller, *Squatters torment homeowners across US with no resolution in sight: 'It's a problem,'* FOX NEWS (Mar. 21, 2023), <https://www.foxnews.com/us/squatters-torment-homeowners-across-u-s-with-no-resolution-sight-problem>.

²⁰ Your Homeless Friend Kai, *How to squat. How to live rent free,* YOUTUBE, <https://www.youtube.com/watch?v=6qZxirdaBFs> [warning - foul language] (last visited Jan. 31, 2024).

²¹ Outside the Box with Flash, *How I removed squatters in less than a day* YOUTUBE <https://www.youtube.com/watch?v=uhz5r1JKwjs> (last visited Jan. 31, 2024); Emma Colton, *Armed Florida man confronts squatter who took over house while he was overseas: police,* FOX NEWS (Jan 15, 2023), <https://www.foxnews.com/us/armed-florida-man-confronts-squatter-who-took-over-house-while-he-was-overseas-police>.

²² Kassy Dillon, *Army reservist battles squatter living in home after she was called up for active duty,* FOX NEWS (Sept. 17, 2023), <https://www.foxnews.com/media/army-reservist-battles-squatter-renting-home-called-active-duty>; Andrew Mark Miller, *Squatters torment homeowners across US with no resolution in sight: 'It's a problem,'* FOX NEWS (Mar. 21, 2023), <https://www.foxnews.com/us/squatters-torment-homeowners-across-u-s-with-no-resolution-sight-problem>.

Property Crimes

Florida criminalizes various behavior related to fraudulently obtaining or damaging property that a person does not own.

Section 817.03, F.S., provides that any person who makes or causes to be made any false statement, in writing, relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and by such false statement obtain credit, goods, money or other property, is guilty of a first degree misdemeanor.²³

Section 806.13, F.S., provides criminal penalties for acts of criminal mischief. A person commits criminal mischief if he or she willfully and maliciously injures or damages by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti thereon or other acts of vandalism thereto.

If the damage to the property is:

- Two-hundred dollars or less, it is a second degree misdemeanor.²⁴
- Greater than \$200 but less than \$1,000, it is a first degree misdemeanor.
- One thousand dollars or greater, or if there is interruption or impairment of a business operation or public communications, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore, it is a third degree felony.²⁵

III. Effect of Proposed Changes:

Civil Remedy to Remove Unauthorized Persons

The bill creates s. 82.036, F.S., to provide a limited alternative remedy to remove unauthorized persons from residential real property. The remedy is a nonjudicial process. The bill makes the finding that the right to exclude others from entering, and the right to direct others to immediately vacate, residential real property are the most important real property rights. The bill further finds that existing remedies regarding unauthorized persons who unlawfully remain on residential real property fail to adequately protect the rights of the property owner and fail to adequately discourage theft and vandalism. The intent of the bill is to quickly restore possession of residential real property to the lawful owner of the property when the property is being unlawfully occupied, and to thereby preserve property rights while limiting the opportunity for criminal activity.

²³ A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁴ *Id.* A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

²⁵ A third degree felony is punishable by up to 5 years' incarceration and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

A property owner or his or her authorized agent may request the sheriff of the county in which the property is located to immediately remove a person or persons unlawfully occupying a residential dwelling if all of the following are met:

- The person requesting relief is the property owner or authorized agent of the property owner;
- The real property that is being occupied includes a residential dwelling;
- An unauthorized person or persons have unlawfully entered and remain or continue to reside on the property owner's property;
- The real property was not open to members of the public at the time the unauthorized person or persons entered;
- The owner has become aware that an unauthorized person or persons have been occupying the real property;
- An unauthorized person cannot produce documentation sent or produced by a government agency showing that the person used the property as an address of record within the past 12 months;
- An unauthorized person cannot produce a notarized lease signed by the property owner;
- The unauthorized person or persons are not current or former tenants pursuant to a written or oral rental agreement authorized by the property owner;
- The unauthorized person or persons are not immediate family members of the property owner; and
- There is no pending litigation related to the real property between the property owner and any known unauthorized person.

The bill creates a complaint form for use in requesting relief. Upon receipt of the complaint, the bill requires the sheriff to verify that the person submitting the complaint is the record owner of the real property or the authorized agent of the owner and appears otherwise entitled to relief under this section.

If verified, the sheriff must serve a notice to immediately vacate on the unlawful occupants and must put the owner in possession of the real property. Service may be accomplished by hand delivery of the notice to an occupant or by posting the notice on the front door or entrance of the dwelling. The sheriff shall also attempt to verify the identities of all persons occupying the dwelling and note the identities on the return of service. If appropriate, the sheriff may arrest any person found in the dwelling for trespass, outstanding warrants, or any other legal cause.

The sheriff is entitled to the same fee for service of the notice to immediately vacate as if the sheriff were serving a writ of possession under s. 30.231, F.S. Currently, that fee is \$90. After the sheriff serves the notice to immediately vacate, the property owner or authorized agent may request that the sheriff stand by to keep the peace while the property owner or agent of the owner changes the locks and removes the personal property of the unlawful occupants from the premises to or near the property line. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace is responsible for paying the reasonable hourly rate set by the sheriff. This rate varies by county. The sheriff is not liable to the unlawful occupant or any other party for loss, destruction, or damage. The property owner or his or her authorized agent is not liable to an unlawful occupant or any other party for the loss, destruction, or damage to the personal property unless the removal was wrongful.

A person may bring a civil cause of action for wrongful removal under this section. A person harmed by a wrongful removal under this bill may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees. The court must advance the cause on the calendar.

The bill provides that it does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for trespassing, vandalism, theft, or other crimes.

Criminal Offenses Related to Unlawful Entry into Property

Additionally, the bill creates three new crimes relating to unlawfully occupying a dwelling or fraudulently advertising property for sale or lease.

The bill amends s. 806.13, F.S., to provide that a person who unlawfully detains or occupies or trespasses upon a residential dwelling and who intentionally damages the dwelling causing \$1,000 or more in damages commits a second degree felony.²⁶

The bill amends s. 817.03, F.S., to provide that any person who, with the intent to detain or remain upon real property, knowingly and willfully presents to another person a false document purporting to be a valid lease agreement, deed, or other instrument conveying real property rights commits a first degree misdemeanor.

The bill creates s. 817.0311, F.S., to provide that a person who lists or advertises residential real property for sale knowing that the purported seller has no legal title or authority to sell the property, or rents or leases the property to another person knowing that he or she has no lawful ownership in the property or leasehold interest in the property, commits a first degree felony.²⁷

Effective Date

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁶ A second degree felony is generally punishable by no more than 15 years in state prison and a fine not exceeding \$10,000, as provided in s. 775.082 and s. 775.083, F.S.

²⁷ A first degree felony is generally punishable by no more than 30 years in state prison and a fine not exceeding \$10,000, as provided in s. 775.082 and s. 775.083, F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expedited removal of unlawful occupants of residential property will be far less costly to property owners in terms of time and legal fees than other potentially applicable judicial procedures. Additionally, the expedited procedures may reduce the opportunity for unlawful occupants to damage the property.

C. Government Sector Impact:

The bill will likely result in a small increase in sheriff workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 82.036 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 26, 2024:

The committee substitute:

- Removed the section of the bill that would have amended the transient occupant law at s. 82.035, F.S.

- Changed the criteria for removal to take out the requirement that an owner demand the unauthorized person to leave before initiating the process, add the requirement that the unauthorized person cannot show documentation showing residency, and add that the unauthorized person cannot show a lease.

CS by Criminal Justice on February 6, 2024:

The committee substitute:

- Provides that a person is presumed to be transient if he or she is unable to produce specified documents.
- Creates a second degree felony crime of criminal mischief for persons who cause \$1,000 damage to a residential dwelling that he or she is unlawfully occupying.
- Creates a first degree misdemeanor crime of making a false statement to obtain or detain real property.
- Creates a first degree felony for the fraudulent sale or lease of residential real property.

B. Amendments:

None.