

By Senator Passidomo

28-00413A-18

2018804__

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

28-00413A-18

2018804__

30 cause on the calendar; renumbering and amending s.
31 82.045, F.S.; conforming provisions to changes made by
32 the act; amending s. 82.04, F.S.; requiring that the
33 court determine the right of possession and damages;
34 prohibiting the court from determining question of
35 title unless necessary; amending s. 82.05, F.S.;
36 requiring that the summons and complaint be attached
37 to the real property after two unsuccessful attempts
38 to serve a defendant; requiring a plaintiff to provide
39 the clerk of the court with prestamped envelopes and
40 additional copies of the summons and complaint if the
41 defendant is served by attaching the summons and
42 complaint to the real property; requiring the clerk to
43 immediately mail copies of the summons and complaint
44 and note the fact of mailing in the docket; specifying
45 that service is effective on the date of posting or
46 mailing; requiring that 5 days elapse from the date of
47 service before the entry of a judgment; amending s.
48 82.091, F.S.; providing requirements after a judgment
49 is entered for the plaintiff or the defendant;
50 amending s. 82.101, F.S.; adding quiet title to the
51 types of future actions for which a judgment is not
52 conclusive as to certain facts; providing that the
53 judgment may be superseded by a subsequent judgment;
54 creating s. 704.09, F.S.; requiring that a claim of
55 customary use for the public use of private property
56 be applied to a particular parcel; providing for
57 judicial determination of claims; repealing s. 82.061,
58 F.S., relating to service of process; repealing s.

28-00413A-18

2018804__

59 82.071, F.S., relating to evidence at trial as to
 60 damages; repealing s. 82.081, F.S., relating to trial
 61 verdict forms; providing an effective date.

62
 63 Be It Enacted by the Legislature of the State of Florida:

64
 65 Section 1. Section 66.021, Florida Statutes, is amended to
 66 read:

67 66.021 Ejectment Procedure.—

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

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

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

76 (4)~~(1)~~ LANDLORD NOT A DEFENDANT.—When it appears before
 77 trial that a defendant in an action of ejectment is in
 78 possession as a tenant and that his or her landlord is not a
 79 party, the landlord must ~~shall~~ be made a party before further
 80 proceeding unless otherwise ordered by the court.

81 (5)~~(2)~~ DEFENSE MAY BE LIMITED.—A defendant in an action of
 82 ejectment may limit his or her defense to a part of the property
 83 mentioned in the complaint, describing such part with reasonable
 84 certainty.

85 (6)~~(3)~~ WRIT OF POSSESSION; EXECUTION TO BE JOINT OR
 86 SEVERAL.—When plaintiff recovers in an action of ejectment, he
 87 or she may have one writ for possession and for~~7~~ damages and

28-00413A-18

2018804__

88 costs or, at his or her election ~~if the plaintiff elects,~~ may
89 have separate writs for possession and for damages and costs.

90 (7)(4) CHAIN OF TITLE.~~The Plaintiff with his or her~~
91 complaint and the defendant with his or her answer must include
92 ~~shall serve~~ a statement setting forth, chronologically, the
93 chain of title upon which the party ~~on which he or she~~ will rely
94 at trial. Copies of each instrument identified in the statement
95 must be attached to the complaint or answer. ~~If any part of the~~
96 ~~chain of title is recorded,~~ The statement must include ~~shall set~~
97 ~~forth~~ the names of the grantors and the grantees, the date that
98 each instrument was recorded, and the book and page or the
99 instrument number for each recorded instrument ~~of the record~~
100 ~~thereof; if an unrecorded instrument is relied on, a copy shall~~
101 ~~be attached. The court may require the original to be submitted~~
102 ~~to the opposite party for inspection.~~ If a ~~the~~ party relies on a
103 claim or right without color of title, the statement must ~~shall~~
104 specify how and when the claim originated and the facts on which
105 the claim is based. If defendant and plaintiff claim under a
106 common source, the statement need not deraign title before the
107 common source.

108 (8)(5) TESTING SUFFICIENCY.~~If either party~~ seeks ~~wants~~ to
109 test the legal sufficiency of any instrument or court proceeding
110 in the chain of title of the opposite party, the party must
111 ~~shall~~ do so before trial by motion setting up his or her
112 objections with a copy of the instrument or court proceedings
113 attached. The motion must ~~shall~~ be disposed of before trial. If
114 either party determines that he or she will be unable to
115 maintain his or her claim by reason of the order, that party may
116 so state in the record and final judgment shall be entered for

28-00413A-18

2018804__

117 the opposing ~~opposite~~ party.

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

121 Section 2. Section 82.01, Florida Statutes, is amended to
122 read:

123 82.01 Definitions ~~“Unlawful entry and forcible entry”~~
124 ~~defined.—As used in this chapter, the term:~~

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

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

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

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

144 (5) “Unlawful entry” means the entry into and possessing of
145 real property, even if the possession is temporary or for a

28-00413A-18

2018804__

146 portion of the real property, when such entry is not authorized
147 by law or consented to by a person entitled to possession of the
148 real property ~~No person shall enter into any lands or tenements~~
149 ~~except when entry is given by law, nor shall any person, when~~
150 ~~entry is given by law, enter with strong hand or with multitude~~
151 ~~of people, but only in a peaceable, easy and open manner.~~

152 Section 3. Section 82.02, Florida Statutes, is amended to
153 read:

154 82.02 Applicability ~~"Unlawful entry and unlawful detention"~~
155 ~~defined.-~~

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

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

164 Section 4. Section 82.03, Florida Statutes, is amended to
165 read:

166 82.03 Remedies ~~Remedy for unlawful entry and forcible~~
167 ~~entry.-~~

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

28-00413A-18

2018804__

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

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

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

196 Section 5. Section 82.045, Florida Statutes, is
197 redesignated as section 82.035, Florida Statutes, and amended to
198 read:

199 82.035 ~~82.045~~ Remedy for unlawful detention by a transient
200 occupant of residential property.—

201 (1) As used in this section, the term "transient occupant"
202 means a person whose residency in real property ~~a dwelling~~
203 intended for residential use has occurred for a brief length of

28-00413A-18

2018804__

204 time, is not pursuant to a lease, and whose occupancy was
205 intended as transient in nature.

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

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

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

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

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

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

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

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

224 8. The person has an apparent permanent residence
225 elsewhere.

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

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

28-00413A-18

2018804__

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

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

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

256 (4) A party entitled to possession of real property ~~a~~
257 ~~dwelling~~ has a cause of action for unlawful detainer against a
258 transient occupant pursuant to s. 82.03 ~~s. 82.04~~. The party
259 entitled to possession is not required to notify the transient
260 occupant before filing the action. If the court finds that the
261 defendant is not a transient occupant but is instead a tenant of

28-00413A-18

2018804__

262 residential property governed by part II of chapter 83, the
263 court may not dismiss the action without first allowing the
264 plaintiff to give the transient occupant the notice required by
265 that part and to thereafter amend the complaint to pursue
266 eviction under that part.

267 Section 6. Section 82.04, Florida Statutes, is amended to
268 read:

269 82.04 Questions involved in this proceeding ~~Remedy for~~
270 ~~unlawful detention.~~ The court shall determine only the right of
271 possession and any damages. Unless it is necessary to determine
272 the right of possession or the record titleholder, the court may
273 not determine the question of title.

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

282 ~~(2) This section shall not apply with regard to residential~~
283 ~~tenancies.~~

284 Section 7. Section 82.05, Florida Statutes, is amended to
285 read:

286 82.05 Service of process ~~Questions involved in this~~
287 ~~proceeding.~~

288 (1) After at least two attempts to obtain service as
289 provided by law, if the defendant cannot be found in the county
290 in which the action is pending and either the defendant does not

28-00413A-18

2018804__

291 have a usual place of abode in the county or there is no person
292 15 years of age or older residing at the defendant's usual place
293 of abode in the county, the sheriff must serve the summons and
294 complaint by attaching it to some conspicuous part of the real
295 property involved in the proceeding. The minimum amount of time
296 allowed between the two attempts to obtain service is 6 hours.

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

315 Section 8. Section 82.091, Florida Statutes, is amended to
316 read:

317 82.091 Judgment and execution.—

318 (1) If the court enters a judgment for the plaintiff, the
319 ~~verdict is in favor of plaintiff, the court shall enter judgment~~

28-00413A-18

2018804__

320 ~~that~~ plaintiff shall recover possession of the real property
321 that he or she is entitled to and described in the complaint
322 ~~with his or her~~ damages and costs. The court, ~~and~~ shall award a
323 writ of possession to be executed without delay and execution
324 for the plaintiff's damages and costs.

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

329 Section 9. Section 82.101, Florida Statutes, is amended to
330 read:

331 82.101 Effect of judgment.—No judgment rendered either for
332 the plaintiff or the defendant bars any action of trespass for
333 injury to the real property or ejectment between the same
334 parties respecting the same real property. A judgment is not
335 conclusive as to ~~No verdict is conclusive of~~ the facts therein
336 ~~found~~ in any future action for ~~of~~ trespass, ejectment, or quiet
337 title. A judgment rendered either for the plaintiff or the
338 defendant pursuant to this chapter may be superseded, in whole
339 or in part, by a subsequent judgment in an action for trespass
340 for injury to the real property, ejectment, or quiet title
341 involving the same parties with respect to the same real
342 property or ejectment.

343 Section 10. Section 704.09, Florida Statutes, is created to
344 read:

345 704.09 Judicial determination; customary use.—A common law
346 claim of customary use for the public use of private property
347 must apply to a particular parcel and must be determined by the
348 court.

28-00413A-18

2018804__

- 349 Section 11. Section 82.061, Florida Statutes, is repealed.
- 350 Section 12. Section 82.071, Florida Statutes, is repealed.
- 351 Section 13. Section 82.081, Florida Statutes, is repealed.
- 352 Section 14. This act shall take effect July 1, 2018.