

By 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; 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.

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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

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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

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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

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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.

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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

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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.



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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

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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

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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~~

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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.

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- 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.