

CHAPTER 2018-94

Committee Substitute for House Bill No. 631

An act relating to the possession of real property; amending s. 66.021, F.S.; authorizing a person with a superior right to possession of real property to recover possession by ejectment; declaring that circuit courts have exclusive jurisdiction; providing that a plaintiff is not required to provide any presuit notice or demand to a defendant; requiring that copies of instruments be attached to a complaint or answer under certain circumstances; requiring a statement to list certain details; providing for construction; amending s. 82.01, F.S.; redefining the terms “unlawful entry” and “forcible entry”; defining the terms “real property,” “record titleholder,” and “unlawful detention”; amending s. 82.02, F.S.; exempting possession of real property under part II of ch. 83, F.S., and under chs. 513 and 723, F.S.; amending s. 82.03, F.S.; providing that a person entitled to possession of real property has a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; providing that a person entitled to possession is not required to give a defendant presuit notice; requiring the court to award the plaintiff extra damages if a defendant acted in a willful and knowingly wrongful manner; authorizing bifurcation of actions for possession and damages; requiring that an action be brought by summary procedure; requiring the court to advance the cause on the calendar; transferring, renumbering, and amending s. 82.045, F.S.; conforming provisions to changes made by the act; amending s. 82.04, F.S.; requiring that the court determine the right of possession and damages; prohibiting the court from determining question of title unless necessary; amending s. 82.05, F.S.; requiring that the summons and complaint be attached to the real property after two unsuccessful attempts to serve a defendant; requiring a plaintiff to provide the clerk of the court with prestamped envelopes and additional copies of the summons and complaint if the defendant is served by attaching the summons and complaint to the real property; requiring the clerk to immediately mail copies of the summons and complaint and note the fact of mailing in the docket; specifying that service is effective on the date of posting or mailing; requiring that 5 days elapse after the date of service before the entry of a judgment; amending s. 82.091, F.S.; providing requirements after a judgment is entered for the plaintiff or the defendant; amending s. 82.101, F.S.; adding quiet title to the types of future actions for which a judgment is not conclusive as to certain facts; providing that the judgment may be superseded by a subsequent judgment; creating s. 163.035, F.S.; defining the term “governmental entity”; prohibiting a governmental entity from adopting or keeping in effect certain ordinances and rules based upon customary use; providing an exception; requiring a governmental entity seeking to affirm the existence of a recreational customary use on private property to follow certain procedures; providing notice requirements for a governmental entity seeking to affirm such recreational customary use;

requiring the governmental entity to file a specified complaint with a certain circuit court within a certain time; providing notice requirements for the filing of such complaint; specifying that proceedings resulting from such complaint are de novo; requiring the court to consider specific factors when determining whether a recreational customary use exists; specifying that the governmental entity has the burden of proof; specifying that an owner of a parcel of property subject to the complaint has the right to intervene in the proceeding; providing applicability; repealing s. 82.061, F.S., relating to service of process; repealing s. 82.071, F.S., relating to evidence at trial as to damages; repealing s. 82.081, F.S., relating to trial verdict forms; providing an effective date.

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

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

66.021 Ejectment Procedure.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) “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.

(5) “Unlawful entry” means the entry into and possessing of real property, even if the possession is temporary or for a portion of the real property, when such entry is not authorized by law or consented to by a person entitled to possession of the real property ~~No person shall enter into~~

~~any lands or tenements except when entry is given by law, nor shall any person, when entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner.~~

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

82.02 Applicability ~~“Unlawful entry and unlawful detention” defined.~~

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

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

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

82.03 Remedies ~~Remedy for unlawful entry and forcible entry.~~—

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

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

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

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

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

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

(1) As used in this section, the term “transient occupant” means a person whose residency in real property ~~a dwelling~~ 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.

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

1. 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.
2. The person does not have any property utility subscriptions.
3. The person does not use the property address as an address of record with any governmental agency, including, but not limited to, the Department of Highway Safety and Motor Vehicles or the supervisor of elections.
4. The person does not receive mail at the property.
5. The person pays minimal or no rent for his or her stay at the property.
6. The person does not have a designated space of his or her own, such as a room, at the property.
7. The person has minimal, if any, personal belongings at the property.
8. The person has an apparent permanent residence elsewhere.

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

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

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

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

whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense.

(b) A person wrongfully removed pursuant to this subsection 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.

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

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

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

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

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

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

82.05 Service of process Questions involved in this proceeding.—

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

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

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

82.091 Judgment and execution.—

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

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

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

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

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

163.035 Establishment of recreational customary use.—

(1) DEFINITION.—The term “governmental entity” includes an agency of the state, a regional or a local government created by the State

Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority.

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

(3) NOTICE OF INTENT TO AFFIRM RECREATION PUBLIC USE ON PRIVATE PROPERTY; JUDICIAL DETERMINATION.—A governmental entity that seeks to affirm the existence of a recreational customary use on private property must follow the procedures set forth in this subsection.

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

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

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

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

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

(b) Judicial determination.—

1. Within 60 days after the adoption of the notice of intent at the public hearing, the governmental entity must file a Complaint for Declaration of Recreational Customary Use with the circuit court in the county in which the properties subject to the notice of intent are located. The governmental entity must provide notice of the filing of the complaint to the owner of each parcel of property subject to the complaint in the same manner as is required for the notice of intent in paragraph (a). The notice must allow the owner receiving the notice to intervene in the proceeding within 45 days after receiving the notice. The governmental entity must provide verification of the service of the notice to the property owners required in this paragraph to

the court so that the court may establish a schedule for the judicial proceedings.

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

(4) APPLICABILITY.—This section does not apply to a governmental entity with an ordinance or rule that was adopted and in effect on or before January 1, 2016, and does not deprive a governmental entity from raising customary use as an affirmative defense in any proceeding challenging an ordinance or rule adopted before July 1, 2018.

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

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

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

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

Approved by the Governor March 23, 2018.

Filed in Office Secretary of State March 23, 2018.