

UNLAWFUL DETAINER AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael G. Waddoups

House Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to provisions concerning the unlawful detainer of real property.

Highlighted Provisions:

This bill:

- ▶ changes and clarifies time limits related to unlawful detainer actions;
 - ▶ provides that a person is guilty of unlawful detainer for committing a criminal act on the property;
 - ▶ addresses notice provisions related to a violation of a lease that cannot be made compliant;
 - ▶ requires a lease signer to be made a party defendant to an unlawful detainer action;
 - ▶ addresses the time allowed by a summons for a defendant's appearance in an unlawful detainer action;
 - ▶ addresses requirements for the payment of a bond ordered in an unlawful detainer action;
 - ▶ outlines judicial conduct of certain unlawful detainer actions;
 - ▶ provides that a lessee is obligated for lease payments after forfeiture of the lease;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **78-36-3**, as last amended by Chapter 141, Laws of Utah 1992

33 **78-36-7**, as last amended by Chapter 141, Laws of Utah 1992

34 **78-36-8**, as last amended by Chapter 123, Laws of Utah 1987

35 **78-36-8.5**, as last amended by Chapter 123, Laws of Utah 1987

36 **78-36-10**, as last amended by Chapter 225, Laws of Utah 1994

37 **78-36-10.5**, as last amended by Chapters 131 and 204, Laws of Utah 2003

38 ENACTS:

39 **78-36-9.5**, Utah Code Annotated 1953



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **78-36-3** is amended to read:

43 **78-36-3. Unlawful detainer by tenant for term less than life.**

44 (1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

45 (a) when he continues in possession, in person or by subtenant, of the property or any
46 part of it, after the expiration of the specified term or period for which it is let to him, which
47 specified term or period, whether established by express or implied contract, or whether written
48 or parol, shall be terminated without notice at the expiration of the specified term or period;

49 (b) when, having leased real property for an indefinite time with monthly or other
50 periodic rent reserved:

51 (i) he continues in possession of it in person or by subtenant after the end of any month
52 or period, in cases where the owner, his designated agent, or any successor in estate of the
53 owner, 15 calendar days or more prior to the end of that month or period, has served notice
54 requiring him to quit the premises at the expiration of that month or period; or

55 (ii) in cases of tenancies at will, where he remains in possession of the premises after
56 the expiration of a notice of not less than five calendar days;

57 (c) when he continues in possession, in person or by subtenant, after default in the
58 payment of any rent or other amounts due and after a notice in writing requiring in the

59 alternative the payment of the rent and other amounts due or the surrender of the detained
60 premises, has remained uncomplished with for a period of three calendar days after service,
61 which notice may be served at any time after the rent becomes due;

62 (d) when he assigns or sublets the leased premises contrary to the covenants of the
63 lease, or commits or permits waste on the premises, or when he sets up or carries on any
64 unlawful business on or in the premises, or when he suffers, permits, or maintains on or about
65 the premises any nuisance, including nuisance as defined in Section 78-38-9, or when the
66 tenant commits a criminal act on the premises and remains in possession after service upon him
67 of a three calendar days' notice to quit; or

68 (e) when he continues in possession, in person or by subtenant, after a neglect or failure
69 to perform any condition or covenant of the lease or agreement under which the property is
70 held, other than those previously mentioned, and after notice in writing requiring in the
71 alternative the performance of the conditions or covenant or the surrender of the property,
72 served upon him and upon any subtenant in actual occupation of the premises remains
73 uncomplished with for three calendar days after service. Within three calendar days after the
74 service of the notice, the tenant, any subtenant in actual occupation of the premises, any
75 mortgagee of the term, or other person interested in its continuance may perform the condition
76 or covenant and thereby save the lease from forfeiture, except that if the covenants and
77 conditions of the lease violated by the lessee cannot afterwards be performed, [~~then no notice~~
78 ~~need be given~~] or the violation cannot be brought into compliance, the notice provided for in
79 Subsection (1)(d) may be given.

80 (2) Unlawful detainer by an owner resident of a mobile home is determined under Title
81 57, Chapter 16, Mobile Home Park Residency Act.

82 (3) The notice provisions for nuisance in Subsection [~~78-36-3~~] (1)(d) are not applicable
83 to nuisance actions provided in Sections 78-38-9 through 78-38-16 only.

84 Section 2. Section **78-36-7** is amended to read:

85 **78-36-7. Necessary parties defendant.**

86 (1) No person other than the tenant of the premises, a lease signer, and subtenant if
87 there is one in the actual occupation of the premises when the action is commenced, shall be
88 made a party defendant in the proceeding, except as provided in Section 78-38-13, nor shall
89 any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who

90 might have been made a party defendant; but when it appears that any of the parties served with
 91 process or appearing in the proceedings are guilty, judgment shall be rendered against those
 92 parties.

93 (2) If a person has become subtenant of the premises in controversy after the service of
 94 any notice as provided in this chapter, the fact that such notice was not served on the subtenant
 95 is not a defense to the action. All persons who enter under the tenant after the commencement
 96 of the action shall be bound by the judgment the same as if they had been made parties to the
 97 action.

98 (3) A landlord, owner, or designated agent is a necessary party defendant only in an
 99 abatement by eviction action for an unlawful drug house as provided in Section 78-38-13.

100 Section 3. Section **78-36-8** is amended to read:

101 **78-36-8. Allegations permitted in complaint -- Time for appearance -- Service of**
 102 **summons.**

103 The plaintiff in his complaint, in addition to setting forth the facts on which he seeks to
 104 recover, may set forth any circumstances of fraud, force, or violence which may have
 105 accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages
 106 therefor or compensation for the occupation of the premises, or both. If the unlawful detainer
 107 charged is after default in the payment of rent, the complaint shall state the amount of rent due.
 108 [The] ~~§~~ → [Any officer of the court] A judge, court clerk, or plaintiff's counsel ← ~~§~~ shall indorse
 108a on the summons the number of days within which
 109 the defendant is required to appear and defend the action, which shall ~~[not]~~ be ~~[less than]~~ three
 110 ~~[or more than 20]~~ ~~§~~ → [calendar] ← ~~§~~ days from the date of service ~~§~~ → [, unless the court
 110a determines that the
 111 facts of the case should allow more time] ← ~~§~~ . The court may authorize service by publication or
 112 mail for cause shown. Service by publication is complete one week after publication. Service
 113 by mail is complete three days after mailing. The summons shall be changed in form to
 114 conform to the time of service as ordered, and shall be served as in other cases.

115 Section 4. Section **78-36-8.5** is amended to read:

116 **78-36-8.5. Possession bond of plaintiff -- Alternative remedies.**

117 (1) At any time between the filing of his complaint and the entry of final judgment, the
 118 plaintiff may execute and file a possession bond. The bond may be in the form of a corporate
 119 bond, a cash bond, certified funds, or a property bond executed by two persons who own real
 120 property in the state and who are not parties to the action. The court shall approve the bond in

121 an amount that is the probable amount of costs of suit and damages which may result to the
 122 defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of
 123 the court for the benefit of the defendant for all costs and damages actually adjudged against
 124 the plaintiff. The plaintiff shall notify the defendant that he has filed a possession bond. This
 125 notice shall be served in the same manner as service of summons and shall inform the
 126 defendant of all of the alternative remedies and procedures under Subsection (2).

127 (2) The following are alternative remedies and procedures applicable to an action if the
 128 plaintiff files a possession bond under Subsection (1):

129 (a) With respect to an unlawful detainer action based solely upon nonpayment of rent
 130 or ~~[utilities]~~ other amounts due, the existing contract shall remain in force and the complaint
 131 shall be dismissed if the defendant, within three calendar days of the service of the notice of the
 132 possession bond, pays accrued rent, ~~[utility charges, any late fee]~~ all other amounts due, and
 133 other costs, including ~~[attorney's]~~ attorney fees, as provided in the rental agreement.

134 (b) ~~§~~ **→ (i) ←** ~~§~~ The defendant may remain in possession if he executes and files a counter
 134a bond in

135 the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two
 136 persons who own real property in the state and who are not parties to the action.

136a ~~§~~ **→ (ii) ←** ~~§~~ The form of

137 the bond is at the defendant's option.

137a ~~§~~ **→ (iii) ←** ~~§~~ The bond shall be payable to the clerk of the court.

137b ~~§~~ **→ (iv) ←** ~~§~~ The

138 defendant shall file the bond prior to the later of the expiration of three business days from the
 139 date he is served with notice of the filing of plaintiff's possession bond or within 24 hours after
 140 the court sets the bond amount.

140a ~~§~~ **→ (v) ←** ~~§~~ **Notwithstanding Subsection (2)(b)(iv), the court may allow a period of up to 72**
 140b **hours for the posting of the counterbond.**

140c ~~(vi)~~ ~~←~~ ~~§~~ The court shall approve the bond in an amount that is the

141 probable amount of costs of suit, including attorney fees and actual damages that may result to
 142 the plaintiff if the defendant has improperly withheld possession.

142a ~~§~~ **→ (vii) ←** ~~§~~ The court shall consider

143 prepaid rent to the owner as a portion of the defendant's total bond.

144 (c) The defendant, upon demand, shall be granted a hearing to be held ~~[prior to the~~
 145 ~~expiration of three days]~~ as soon as possible, but not later than seven calendar days, from the
 146 date the defendant is served with notice of the filing of plaintiff's possession bond.

147 (3) If the defendant does not elect and comply with a remedy under Subsection (2)
148 within the required time, the plaintiff, upon ex parte motion, shall be granted an order of
149 restitution. ~~[The]~~ A constable ~~[of the precinct]~~ or the sheriff of the county where the property
150 is situated shall return possession of the property to the plaintiff promptly.

151 (4) If the defendant demands a hearing under Subsection (2) (c), and if the court rules

152 after the hearing that the plaintiff is entitled to possession of the property, the constable or
 153 sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the
 154 court allows the defendant to remain in possession and further issues remain to be adjudicated
 155 between the parties, the court shall require the defendant to post a bond as required in
 156 Subsection (2) (b) and shall expedite all further proceedings, including beginning the trial no
 157 later than 30 days from the posting of the plaintiff's bond, unless the parties otherwise agree. If
 158 at the hearing the court rules that all issues between the parties can be adjudicated without
 159 further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the
 160 merits.

161 Section 5. Section **78-36-9.5** is enacted to read:

162 **78-36-9.5. Court procedures.**

163 (1) In an action under this chapter in which the tenant remains in possession of the
 164 property:

165 (a) the court shall expedite the proceedings, including the resolution of motions and
 166 trial; and

167 (b) the court shall begin the trial within 60 days after the day on which the complaint is
 168 **Ŝ→ [fited] served ←Ŝ** , unless the parties agree otherwise.

168a **Ŝ→ (c) If this chapter requires a hearing to be held within a specified time, the time may be**
 168b **extended to the first date thereafter on which a judge is available to hear the case in a**
 168c **jurisdiction in which a judge is not always available. ←Ŝ**

169 (2) (a) In an action for unlawful detainer where the claim is for nonpayment of rent, the
 170 court shall hold an evidentiary hearing **Ŝ→** , **upon request of either party,** **←Ŝ** within ten days
 170a after the day on which the defendant
 171 files the defendant's answer.

172 (b) At the evidentiary hearing held in accordance with Subsection (2)(a):

173 (i) the court shall determine who has the right of occupancy during the litigation's
 174 pendency; and

175 (ii) if the court determines that all issues between the parties can be adjudicated
 176 without further proceedings, the court shall adjudicate those issues and enter judgment on the
 177 merits.

178 (3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges
 179 **Ŝ→ [criminal activity] an act that would be considered criminal under the laws of this state ←Ŝ** ,
 179a the court shall hold an evidentiary hearing within ten days after the day on
 180 which the complaint is filed to determine whether the alleged **Ŝ→ [criminal activity] act ←Ŝ**

occurred.

181 (b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is
182 filed and ~~§~~→ **notice of the hearing** ←~~§~~ shall be served upon the defendant with the summons at
least three calendar days

183 before the scheduled time of the hearing.

184 (c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a),
 185 determines that it is more likely than not that the alleged criminal act occurred, the court shall
 186 issue an order of restitution.

187 (d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable
 188 or the sheriff of the county where the property is situated shall return possession of the property
 189 to the plaintiff immediately.

189a **§→ (e) The court may allow a period of up to 72 hours before restitution may be made under**
 189b **Subsection (3)(d) if the court determines the time is appropriate under the circumstances.**

190 ~~[(e)]~~ **(f) ←§** At the evidentiary hearing held in accordance with Subsection (3)(a), if the court
 191 determines that all issues between the parties can be adjudicated without further proceedings,
 192 the court shall adjudicate those issues and enter judgment on the merits.

192a **§→ (g) "An act that would be considered criminal under the laws of this state" under**
 192b **Subsection (3)(a) includes only the following:**

192c **(i) an act that would be considered a felony under the laws of this state;**

192d **(ii) an act that would be considered criminal affecting the health or safety of a tenant,**
 192e **the landlord, the landlord's agent, or other person on the landlord's property;**

192f **(iii) an act that would be considered criminal that causes damage or loss to any tenant's**
 192g **property or the landlord's property;**

192h **(iv) a drug- or gang-related act that would be considered criminal;**

192i **(v) an act or threat of violence against any tenant or other person on the premises, or**
 192j **against the landlord or the landlord's agent; and**

192k **(vi) any other act that would be considered criminal that the court determines directly**
 192l **impacts the peaceful enjoyment of the premises by any tenant. ←§**

193 (4) (a) At any hearing held in accordance with this chapter in which the tenant after
 194 receiving notice fails to appear, the court shall issue an order of restitution.

195 (b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable
 196 or the sheriff of the county where the property is situated shall return possession of the property
 197 to the plaintiff immediately.

198 (5) A court adjudicating matters under this chapter may make other orders as are
 199 appropriate and proper.

200 Section 6. Section **78-36-10** is amended to read:

201 **78-36-10. Judgment for restitution, damages, and rent -- Immediate enforcement**
 202 **-- Treble damages.**

203 (1) (a) A judgment may be entered upon the merits or upon default.

204 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution
205 of the premises as provided in Section 78-36-10.5.

206 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any
207 condition or covenant of the lease or agreement under which the property is held, or after
208 default in the payment of rent, the judgment shall also declare the forfeiture of the lease or
209 agreement.

210 ~~§~~ → [(d)] (i) ← ~~§~~ A forfeiture under Subsection (1)(c) does not release a defendant from any
211 obligation for payments on a lease for the remainder of the lease's term.

211a ~~§~~ → (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages. ← ~~§~~

212 (2) The jury or the court, if the proceeding is tried without a jury or upon the
213 defendant's default, shall also assess the damages resulting to the plaintiff from any of the

214 following:

215 (a) forcible entry;

216 (b) forcible or unlawful detainer;

217 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the
218 complaint and proved at trial;

219 (d) the ~~[amount of rent]~~ amounts due under the contract, if the alleged unlawful
220 detainer is after default in the ~~[payment of rent]~~ payment of amounts due under the contract;
221 and

222 (e) the abatement of the nuisance by eviction as provided in Sections 78-38-9 through
223 78-38-16.

224 (3) The judgment shall be entered against the defendant for the rent, for three times the
225 amount of the damages assessed under Subsections (2)(a) through (2)~~(c)~~ (e), and for
226 reasonable ~~[attorneys']~~ attorney fees~~[-, if they are provided for in the lease or agreement]~~.

227 (4) (a) If the proceeding is for unlawful detainer ~~[after default in the payment of the~~
228 rent], execution upon the judgment shall be issued immediately after the entry of the judgment.

229 (b) In all cases, the judgment may be issued and enforced immediately.

230 Section 7. Section **78-36-10.5** is amended to read:

231 **78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of**
232 **personal property -- Hearing.**

233 (1) Each order of restitution shall:

234 (a) direct the defendant to vacate the premises, remove his personal property, and
235 restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or
236 constable;

237 (b) advise the defendant of the time limit set by the court for the defendant to vacate
238 the premises, which shall be three ~~[business]~~ calendar days following service of the order,
239 unless the court determines that a longer or shorter period is appropriate under the
240 circumstances; and

241 (c) advise the defendant of the defendant's right to a hearing to contest the manner of
242 its enforcement.

243 (2) (a) A copy of the order of restitution and a form for the defendant to request a
244 hearing as listed on the form shall be served in accordance with Section 78-36-6 by a person

245 authorized to serve process pursuant to Subsection 78-12a-2(1). If personal service is
246 impossible or impracticable, service may be made by:

247 (i) mailing a copy of the order and the form to the defendant's last-known address and
248 posting a copy of the order and the form at a conspicuous place on the premises; or

249 (ii) mailing a copy of the order and the form to the commercial tenant defendant's
250 last-known place of business and posting a copy of the order and the form at a conspicuous
251 place on the business premises.

252 (b) A request for hearing by the defendant may not stay enforcement of the restitution
253 order unless:

254 (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property
255 bond to the clerk of the court in an amount approved by the court according to the formula set
256 forth in Subsection 78-36-8.5(2)(b); and

257 (ii) the court orders that the restitution order be stayed.

258 (c) The date of service, the name, title, signature, and telephone number of the person
259 serving the order and the form shall be legibly endorsed on the copy of the order and the form
260 served on the defendant.

261 (d) ~~[Within ten days of service, the]~~ The person serving the order and the form shall
262 file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.

263 (3) (a) If the defendant fails to comply with the order within the time prescribed by the
264 court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the
265 least destructive means possible to remove the defendant.

266 (b) Any personal property of the defendant may be removed from the premises by the
267 sheriff or constable and transported to a suitable location for safe storage. The sheriff or
268 constable may delegate responsibility for storage to the plaintiff, who shall store the personal
269 property in a suitable place and in a reasonable manner.

270 (c) The personal property removed and stored shall be inventoried by the sheriff or
271 constable or the plaintiff who shall keep the original inventory and personally deliver or mail
272 the defendant a copy of the inventory immediately after the personal property is removed.

273 (4) (a) After demand made by the defendant within 30 days of removal of personal
274 property from the premises, the sheriff or constable or the plaintiff shall promptly return all of
275 the defendant's personal property upon payment of the reasonable costs incurred for its removal

276 and storage.

277 (b) The person storing the personal property may sell the property remaining in storage
278 at a public sale if:

279 (i) the defendant does not request a hearing or demand return of the personal property
280 within 30 days of its removal from the premises; or

281 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage
282 of the personal property.

283 (c) In advance of the sale, the person storing the personal property shall mail to the
284 defendant's last-known address a written notice of the time and place of the sale.

285 (d) If the defendant is present at the sale, he may specify the order in which the
286 personal property shall be sold, and only so much personal property shall be sold as to satisfy
287 the costs of removal, storage, advertising, and conducting the sale. The remainder of the
288 personal property, if any, shall be released to the defendant. If the defendant is not present at
289 the sale, the proceeds, after deduction of the costs of removal, storage, advertising, and
290 conducting the sale shall be paid to the plaintiff up to the amount of any judgment the plaintiff
291 obtained against the defendant. Any surplus shall be paid to the defendant, if the defendant's
292 whereabouts are known. If the defendant's whereabouts are not known, any surplus shall be
293 disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

294 (e) The plaintiff may donate the property to charity if:

295 (i) the defendant does not request a hearing or demand return of the personal property
296 within 30 days of its removal from the premises; or

297 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage
298 of the personal property; and

299 (iii) donation is a commercially reasonable alternative.

300 (f) If the property belonging to a person who is not a defendant is removed and stored
301 in accordance with this section, that person may claim the property by delivering a written
302 demand for its release to the sheriff or constable or the plaintiff. If the claimant provides
303 proper identification and evidence of ownership, the sheriff or constable or the plaintiff shall
304 promptly release the property at no cost to the claimant.

305 (5) In the event of a dispute concerning the manner of enforcement of the restitution
306 order, the defendant or any person claiming to own stored personal property may file a request

307 for a hearing. The court shall set the matter for hearing within ten calendar days from the filing
308 of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the
309 parties.

310 (6) The Judicial Council shall draft the forms necessary to implement this section.

Legislative Review Note
as of 1-16-07 1:13 PM

Office of Legislative Research and General Counsel

S.B. 136 - Unlawful Detainer Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill may result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/19/2007, 11:23:25 AM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst