

**Senator Michael G. Waddoups** proposes the following substitute bill:

**UNLAWFUL DETAINER AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael G. Waddoups**

House Sponsor: Gage Froerer

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**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.



26 **Monies Appropriated in this Bill:**

27 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 uncomplied 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 uncomplied 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 court]~~ A judge, court clerk, or plaintiff's counsel shall indorse on the summons the  
109 number of days within which the defendant is required to appear and defend the action, which  
110 shall ~~[not]~~ be ~~[less than]~~ three ~~[or more than 20]~~ business days from the date of service, unless  
111 the court determines that the facts of the case should allow more time. The court may authorize  
112 service by publication or mail for cause shown. Service by publication is complete one week  
113 after publication. Service by mail is complete three days after mailing. The summons shall be  
114 changed in form to conform to the time of service as ordered, and shall be served as in other  
115 cases.

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

117 **78-36-8.5. Possession bond of plaintiff -- Alternative remedies.**

118 (1) At any time between the filing of his complaint and the entry of final judgment, the

119 plaintiff may execute and file a possession bond. The bond may be in the form of a corporate  
120 bond, a cash bond, certified funds, or a property bond executed by two persons who own real  
121 property in the state and who are not parties to the action. The court shall approve the bond in  
122 an amount that is the probable amount of costs of suit and damages which may result to the  
123 defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of  
124 the court for the benefit of the defendant for all costs and damages actually adjudged against  
125 the plaintiff. The plaintiff shall notify the defendant that he has filed a possession bond. This  
126 notice shall be served in the same manner as service of summons and shall inform the  
127 defendant of all of the alternative remedies and procedures under Subsection (2).

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

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

135 (b) (i) The defendant may remain in possession if he executes and files a counter bond  
136 in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by  
137 two persons who own real property in the state and who are not parties to the action.

138 (ii) The form of the bond is at the defendant's option.

139 (iii) The bond shall be payable to the clerk of the court.

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

143 (v) Notwithstanding Subsection (2)(b)(iv), the court may allow a period of up to 72  
144 hours for the posting of the counter bond.

145 (vi) The court shall approve the bond in an amount that is the probable amount of costs  
146 of suit, including attorney fees and actual damages that may result to the plaintiff if the  
147 defendant has improperly withheld possession.

148 (vii) The court shall consider prepaid rent to the owner as a portion of the defendant's  
149 total bond.

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

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

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

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

168 **78-36-9.5. Court procedures.**

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

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

173 (b) the court shall begin the trial within 60 days after the day on which the complaint is  
174 served, unless the parties agree otherwise.

175 (c) If this chapter requires a hearing to be held within a specified time, the time may be  
176 extended to the first date thereafter on which a judge is available to hear the case in a  
177 jurisdiction in which a judge is not always available.

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

- 181 (b) At the evidentiary hearing held in accordance with Subsection (2)(a):  
182 (i) the court shall determine who has the right of occupancy during the litigation's  
183 pendency; and  
184 (ii) if the court determines that all issues between the parties can be adjudicated  
185 without further proceedings, the court shall adjudicate those issues and enter judgment on the  
186 merits.
- 187 (3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges  
188 an act that would be considered criminal under the laws of this state, the court shall hold an  
189 evidentiary hearing within ten days after the day on which the complaint is filed to determine  
190 whether the alleged act occurred.
- 191 (b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is  
192 filed and notice of the hearing shall be served upon the defendant with the summons at least  
193 three calendar days before the scheduled time of the hearing.
- 194 (c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a),  
195 determines that it is more likely than not that the alleged act occurred, the court shall issue an  
196 order of restitution.
- 197 (d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable  
198 or the sheriff of the county where the property is situated shall return possession of the property  
199 to the plaintiff immediately.
- 200 (e) The court may allow a period of up to 72 hours before restitution may be made  
201 under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.
- 202 (f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court  
203 determines that all issues between the parties can be adjudicated without further proceedings,  
204 the court shall adjudicate those issues and enter judgment on the merits.
- 205 (g) "An act that would be considered criminal under the laws of this state" under  
206 Subsection (3)(a) includes only the following:
- 207 (i) an act that would be considered a felony under the laws of this state;  
208 (ii) an act that would be considered criminal affecting the health or safety of a tenant,  
209 the landlord, the landlord's agent, or other person on the landlord's property;  
210 (iii) an act that would be considered criminal that causes damage or loss to any tenant's  
211 property or the landlord's property;

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

213 (v) an act or threat of violence against any tenant or other person on the premises, or

214 against the landlord or the landlord's agent; and

215 (vi) any other act that would be considered criminal that the court determines directly

216 impacts the peaceful enjoyment of the premises by any tenant.

217 (4) (a) At any hearing held in accordance with this chapter in which the tenant after

218 receiving notice fails to appear, the court shall issue an order of restitution.

219 (b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable

220 or the sheriff of the county where the property is situated shall return possession of the property

221 to the plaintiff immediately.

222 (5) A court adjudicating matters under this chapter may make other orders as are

223 appropriate and proper.

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

225 **78-36-10. Judgment for restitution, damages, and rent -- Immediate enforcement**

226 **-- Treble damages.**

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

228 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution

229 of the premises as provided in Section 78-36-10.5.

230 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any

231 condition or covenant of the lease or agreement under which the property is held, or after

232 default in the payment of rent, the judgment shall also declare the forfeiture of the lease or

233 agreement.

234 (d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any

235 obligation for payments on a lease for the remainder of the lease's term.

236 (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate

237 damages.

238 (2) The jury or the court, if the proceeding is tried without a jury or upon the

239 defendant's default, shall also assess the damages resulting to the plaintiff from any of the

240 following:

241 (a) forcible entry;

242 (b) forcible or unlawful detainer;



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

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

248 (e) the abatement of the nuisance by eviction as provided in Sections 78-38-9 through  
249 78-38-16.

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

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

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

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

257 **78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of**  
258 **personal property -- Hearing.**

259 (1) Each order of restitution shall:

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

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

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

269 (2) (a) A copy of the order of restitution and a form for the defendant to request a  
270 hearing as listed on the form shall be served in accordance with Section 78-36-6 by a person  
271 authorized to serve process pursuant to Subsection 78-12a-2(1). If personal service is  
272 impossible or impracticable, service may be made by:

273 (i) mailing a copy of the order and the form to the defendant's last-known address and

274 posting a copy of the order and the form at a conspicuous place on the premises; or

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

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

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

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

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

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

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

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

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

299 (4) (a) After demand made by the defendant within 30 days of removal of personal  
300 property from the premises, the sheriff or constable or the plaintiff shall promptly return all of  
301 the defendant's personal property upon payment of the reasonable costs incurred for its removal  
302 and storage.

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

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

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

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

311 (d) If the defendant is present at the sale, he may specify the order in which the  
312 personal property shall be sold, and only so much personal property shall be sold as to satisfy  
313 the costs of removal, storage, advertising, and conducting the sale. The remainder of the  
314 personal property, if any, shall be released to the defendant. If the defendant is not present at  
315 the sale, the proceeds, after deduction of the costs of removal, storage, advertising, and  
316 conducting the sale shall be paid to the plaintiff up to the amount of any judgment the plaintiff  
317 obtained against the defendant. Any surplus shall be paid to the defendant, if the defendant's  
318 whereabouts are known. If the defendant's whereabouts are not known, any surplus shall be  
319 disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

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

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

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

325 (iii) donation is a commercially reasonable alternative.

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

331 (5) In the event of a dispute concerning the manner of enforcement of the restitution  
332 order, the defendant or any person claiming to own stored personal property may file a request  
333 for a hearing. The court shall set the matter for hearing within ten calendar days from the filing  
334 of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the  
335 parties.

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

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**S.B. 136 1st Sub. (Green) - Unlawful Detainer Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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