

1 **UNLAWFUL DETAINER AMENDMENTS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: Gregory S. Bell

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7 **LONG TITLE**

8 **General Description:**

9 This bill defines unlawful detainer and provides for recourse against a previous owner  
10 who remains in possession of property after a forced sale.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines "unlawful detainer";
- 14 ▶ provides a previous owner, mortgagor, or trustor is guilty of an unlawful detainer if  
15 the person remains in possession of property after a forced sale; and
- 16 ▶ allows for an expedited hearing on the issue.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **78B-6-801**, as enacted by Laws of Utah 2008, Chapter 3

24 **78B-6-810**, as renumbered and amended by Laws of Utah 2008, Chapter 3

25 ENACTS:

26 **78B-6-802.5**, Utah Code Annotated 1953

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

29 Section 1. Section **78B-6-801** is amended to read:

30           **78B-6-801. Definitions.**

31           (1) "Commercial tenant" means any tenant who may be a body politic and corporate,  
32 partnership, association, or company.

33           (2) "Forcible detainer" means:

34           (a) holding and keeping by force, or by menaces and threats of violence, the  
35 possession of any real property, whether acquired peaceably or otherwise; or

36           (b) unlawfully entering real property during the absence of the occupants or at night,  
37 and, after demand is made for the surrender of the property, refusing for a period of three days  
38 to surrender the property to the former occupant.

39           (3) "Forcible entry" means:

40           (a) entering any real property by:

41           (i) breaking open doors, windows, or other parts of a house;

42           (ii) fraud, intimidation, or stealth; or

43           (iii) any kind of violence or circumstances of terror; or

44           (b) after entering peaceably upon real property, turning out by force, threats, or  
45 menacing conduct the party in actual possession.

46           (4) "Occupant of real property" means one who within five days preceding an  
47 unlawful entry was in the peaceable and undisturbed possession of the property.

48           (5) "Owner:"

49           (a) means the actual owner of the premises;

50           (b) has the same meaning as landlord under common law and the statutes of this state;

51 and

52           (c) includes the owner's designated agent or successor to the estate.

53           (6) "Tenant" means any natural person and any individual other than a commercial  
54 tenant.

55           (7) "Unlawful detainer" means unlawfully remaining in possession of property after  
56 receiving a notice to quit, served as required by this chapter, and failing to comply with that  
57 notice.

58            [~~(7)~~] (8) "Willful exclusion" means preventing the tenant from entering into the  
59 premises with intent to deprive the tenant of entry.

60            Section 2. Section **78B-6-802.5** is enacted to read:

61            **78B-6-802.5. Unlawful detainer after foreclosure or forced sale.**

62            A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if  
63 the person:

64            (1) defaulted on his or her obligations resulting in disposition of the property by a  
65 trustee's sale or sheriff's sale; and

66            (2) continues to occupy the property after the trustee's sale or sheriff's sale after being  
67 served with a notice to quit by the purchaser.

68            Section 3. Section **78B-6-810** is amended to read:

69            **78B-6-810. Court procedures.**

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

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

74            (b) the court shall begin the trial within 60 days after the day on which the complaint  
75 is served, unless the parties agree otherwise; and

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

79            (2) (a) In an action for unlawful detainer where the claim is for nonpayment of rent or  
80 for occupancy of a property after a forced sale as described in Subsection 78B-6-802.5, the  
81 court shall hold an evidentiary hearing, upon request of either party, within ten days after the  
82 day on which the defendant files the defendant's answer.

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

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

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

89 (3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges  
90 an act that would be considered criminal under the laws of this state, the court shall hold an  
91 evidentiary hearing within ten days after the day on which the complaint is filed to determine  
92 whether the alleged act occurred.

93 (b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is  
94 filed and notice of the hearing shall be served upon the defendant with the summons at least  
95 three calendar days before the scheduled time of the hearing.

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

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

102 (e) The court may allow a period of up to 72 hours before restitution may be made  
103 under Subsection (3)(d) if the court determines the time is appropriate under the  
104 circumstances.

105 (f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court  
106 determines that all issues between the parties can be adjudicated without further proceedings,  
107 the court shall adjudicate those issues and enter judgment on the merits.

108 (g) "An act that would be considered criminal under the laws of this state" under  
109 Subsection (3)(a) includes only the following:

- 110 (i) an act that would be considered a felony under the laws of this state;
- 111 (ii) an act that would be considered criminal affecting the health or safety of a tenant,  
112 the landlord, the landlord's agent, or other person on the landlord's property;
- 113 (iii) an act that would be considered criminal that causes damage or loss to any

114 tenant's property or the landlord's property;

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

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

118 (vi) any other act that would be considered criminal that the court determines directly  
119 impacts the peaceful enjoyment of the premises by any tenant.

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

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

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