

FORCIBLE ENTRY AND DETAINER

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lorie D. Fowlke

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill provides that the definition of tenant includes a commercial tenant.

Highlighted Provisions:

This bill:

- ▶ provides that the definition of tenant includes a commercial tenant; and
- ▶ exempts commercial tenants from the expedited unlawful detainer provisions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

78B-6-801. Definitions.

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

(2) "Forcible detainer" means:

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

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

(3) "Forcible entry" means:

(a) entering any real property by:

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

(ii) fraud, intimidation, or stealth; or

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

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

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

(5) "Owner:"

(a) means the actual owner of the premises;

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

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

(6) "Tenant" means any natural person and any individual [~~other than~~], including a commercial tenant.

(7) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

Section 2. Section **78B-6-810** is amended to read:

78B-6-810. Court procedures.

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

(a) the court shall expedite the proceedings, including the resolution of motions and

trial;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The expedited hearing provisions in this section do not apply to actions involving commercial tenants.