

**Representative Gage Froerer** proposes the following substitute bill:

**DISPOSITION OF PERSONAL PROPERTY ON VACATED  
PROPERTY**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the rights of a property owner in disposing of abandoned personal property left by a former tenant or occupant.

**Highlighted Provisions:**

This bill:

- ▶ requires a property owner to give notice to a former tenant of abandoned personal property before it is sold or donated;
- ▶ allows a tenant to recover abandoned personal property under certain requirements;
- ▶ provides that a property owner is not required to store certain hazardous or dangerous abandoned personal property; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26           **78B-6-812**, as renumbered and amended by Laws of Utah 2008, Chapter 3

27           **78B-6-816**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

30           Section 1. Section **78B-6-812** is amended to read:

31           **78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of**  
32 **personal property -- Hearing.**

33           (1) Each order of restitution shall:

34           (a) direct the defendant to vacate the premises, remove [~~his~~] the defendant's personal  
35 property, and restore possession of the premises to the plaintiff, or be forcibly removed by a  
36 sheriff or constable;

37           (b) advise the defendant of the time limit set by the court for the defendant to vacate  
38 the premises, which shall be three calendar days following service of the order, unless the court  
39 determines that a longer or shorter period is appropriate under the circumstances; and

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

42           (2) (a) A copy of the order of restitution and a form for the defendant to request a  
43 hearing as listed on the form shall be served in accordance with Section 78B-6-805 by a person  
44 authorized to serve process pursuant to Subsection 78B-8-302(1). If personal service is  
45 impossible or impracticable, service may be made by:

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

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

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

53           (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property  
54 bond to the clerk of the court in an amount approved by the court according to the formula set  
55 forth in Subsection 78B-6-808(4)(b); and

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

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

60 (d) The person serving the order and the form shall file proof of service in accordance  
61 with Rule 4(e), Utah Rules of Civil Procedure.

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

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

69 (c) The personal property removed and stored shall be ~~[inventoried by the sheriff or~~  
70 ~~constable or the plaintiff who shall keep the original inventory and personally deliver or mail~~  
71 ~~the defendant a copy of the inventory immediately after the personal property is removed.]~~  
72 considered abandoned property and subject to Section 78B-6-816.

73 ~~[(4) (a) After demand made by the defendant within 30 days of removal of personal~~  
74 ~~property from the premises, the sheriff or constable or the plaintiff shall promptly return all of~~  
75 ~~the defendant's personal property upon payment of the reasonable costs incurred for its removal~~  
76 ~~and storage.]~~

77 ~~[(b) The person storing the personal property may sell the property remaining in~~  
78 ~~storage at a public sale if:]~~

79 ~~[(i) the defendant does not request a hearing or demand return of the personal property~~  
80 ~~within 30 days of its removal from the premises; or]~~

81 ~~[(ii) the defendant fails to pay the reasonable costs incurred for the removal and storage~~  
82 ~~of the personal property:]~~

83 ~~[(c) In advance of the sale, the person storing the personal property shall mail to the~~  
84 ~~defendant's last-known address a written notice of the time and place of the sale:]~~

85 ~~[(d) If the defendant is present at the sale, he may specify the order in which the~~  
86 ~~personal property shall be sold, and only so much personal property shall be sold as to satisfy~~  
87 ~~the costs of removal, storage, advertising, and conducting the sale. The remainder of the~~

88 personal property, if any, shall be released to the defendant. If the defendant is not present at  
89 the sale, the proceeds, after deduction of the costs of removal, storage, advertising, and  
90 conducting the sale shall be paid to the plaintiff up to the amount of any judgment the plaintiff  
91 obtained against the defendant. Any surplus shall be paid to the defendant, if the defendant's  
92 whereabouts are known. If the defendant's whereabouts are not known, any surplus shall be  
93 disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.]

94 [~~(e)~~ The plaintiff may donate the property to charity if:]

95 [~~(i)~~ the defendant does not request a hearing or demand return of the personal property  
96 within 30 days of its removal from the premises; or]

97 [~~(ii)~~ the defendant fails to pay the reasonable costs incurred for the removal and storage  
98 of the personal property; and]

99 [~~(iii)~~ the donation is a commercially reasonable alternative.]

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

105 [~~(5)~~] (4) In the event of a dispute concerning the manner of enforcement of the  
106 restitution order, the defendant [~~or any person claiming to own stored personal property~~] may  
107 file a request for a hearing. The court shall set the matter for hearing within 10 calendar days  
108 from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the  
109 hearing to the parties.

110 [~~(6)~~] (5) The Judicial Council shall draft the forms necessary to implement this section.

111 Section 2. Section **78B-6-816** is amended to read:

112 **78B-6-816. Abandoned or foreclosed premises -- Retaking and rerenting or**  
113 **selling by owner -- Liability of tenant -- Personal property of tenant or foreclosed**  
114 **borrower left on premises.**

115 (1) In the event of abandonment, the owner may retake the premises and attempt to rent  
116 them at a fair rental value and the tenant who abandoned the premises shall be liable:

117 (a) for the entire rent due for the remainder of the term; or

118 (b) for rent accrued during the period necessary to rerent the premises at a fair rental

119 value, plus the difference between the fair rental value and the rent agreed to in the prior rental  
120 agreement, plus a reasonable commission for the renting of the premises and the costs, if any,  
121 necessary to restore the rental unit to its condition when rented by the tenant less normal wear  
122 and tear. This Subsection (1) applies, if less than Subsection (1)(a), notwithstanding that the  
123 owner did not rerent the premises.

124 (2) (a) If the tenant or a foreclosed borrower has abandoned the premises and has left  
125 personal property on the premises, the owner is entitled to remove the personal property from  
126 the dwelling, store it for the tenant, and recover actual moving and storage costs from the  
127 tenant or foreclosed borrower.

128 (b) (i) The owner shall ~~[make reasonable efforts to notify the tenant of the location of~~  
129 ~~the personal property.]~~ mail to the last known address for the tenant or foreclosed borrower a  
130 notice that the personal property is considered abandoned.

131 (ii) The tenant or foreclosed borrower shall recover the personal property within 15  
132 days from the date the notice was sent, including payment of any costs of inventory, moving,  
133 and storage.

134 ~~[(ii) If]~~ (iii) Except as provided in Subsection (5), if the personal property has been in  
135 storage for ~~[over 30]~~ at least 15 days and the tenant or foreclosed borrower has made no  
136 reasonable effort to recover it from the date notice was sent and the tenant or foreclosed  
137 borrower fails to recover the personal property, pay the costs associated with the inventory,  
138 removal, and storage and no court hearing on the personal property is pending, the owner may:

139 (A) sell the personal property at a public sale and apply the proceeds toward any  
140 amount the tenant or foreclosed borrower owes; or

141 (B) donate the personal property to charity if the donation is a commercially reasonable  
142 alternative.

143 (c) Any money left over from the public sale of the personal property shall be handled  
144 as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property is  
145 Abandoned or Unclaimed.

146 (d) Nothing contained in this act shall be in derogation of or alter the owner's rights  
147 under Title 38, Chapter 3, Lessors' Liens[-], or any other contractual liens or rights.

148 (3) If abandoned personal property is determined to belong to a person who is the  
149 tenant, foreclosed borrower, or an occupant, the tenant, foreclosed borrower, or occupant may

150 claim the personal property by delivery of a written demand with evidence of ownership of the  
151 personal property within 15 days after the notice described in Subsection (2)(b) is sent. The  
152 owner may not be liable for the loss of the abandoned personal property if the written demand  
153 is not received.

154 (4) A tenant, foreclosed borrower, or occupant has no recourse for damage or loss if the  
155 tenant, foreclosed borrower, or occupant fails to recover any abandoned personal property as  
156 required in this section.

157 (5) An owner is not required to store the following abandoned personal property:

158 (a) chemicals, pests, potentially dangerous or other hazardous materials;

159 (b) animals, including dogs, cats, fish, reptiles, rodents, birds, or other pets;

160 (c) gas, fireworks, combustibles, or any item considered to be hazardous or explosive;

161 (d) garbage;

162 (e) perishable items; or

163 (f) items that when placed in storage might create a hazardous condition or a pest  
164 control issue.

165 (6) Items listed in Subsection (5) may be properly disposed of by the owner  
166 immediately upon determination of abandonment. A tenant, foreclosed borrower, or occupant  
167 may not recover for disposal of abandoned items listed in Subsection (5).

168 (7) Notice of any public sale shall be mailed to the last known address of the tenant,  
169 foreclosed borrower, or occupant at least five calendar days prior to the public sale.

170 (8) If the tenant, foreclosed borrower, or occupant is present at the public sale:

171 (a) the tenant, foreclosed borrower, or occupant may specify the order in which the  
172 personal property shall be sold;

173 (b) the owner may sell only as much personal property necessary to satisfy the amount  
174 due under the rental agreement, promissory note and statutorily allowed damages, costs, and  
175 fees associated with the abandoned items; and

176 (c) any unsold personal property shall be released to the tenant, foreclosed borrower, or  
177 occupant.

178 (9) If the tenant, foreclosed borrower, or occupant is not present at the public sale:

179 (a) all items may be sold; and

180 (b) any surplus amount over the amount due to the owner shall be paid to the tenant,

181 foreclosed borrower, or occupant, if a current location is known. If the current location is not  
182 known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, Unclaimed  
183 Property Act.