

UNLAWFUL DETAINER REVISIONS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keith Grover

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill makes changes to the unlawful detainer statutes.

Highlighted Provisions:

This bill:

- ▶ defines peaceable possession;
- ▶ allows that in unlawful detainer actions, the plaintiff need only show that the plaintiff was in peaceable possession of the premises;
- ▶ defines trespasser;
- ▶ allows the defense in an unlawful detainer action to show that the plaintiff had no right to possession of the premises; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-801, as last amended by Laws of Utah 2009, Chapters 184 and 298

78B-6-809, as renumbered and amended by Laws of Utah 2008, Chapter 3



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 possession
35 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 unlawful
47 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) (a) "Peaceable possession" means having a legal right to possession.

54 (b) "Peaceable possession" does not include:

55 (i) the occupation of premises by \hat{S} → [entry or possession without permission of an entity or
56 person with possessory rights] a trespasser ← \hat{S} ; or

57 (ii) continuing to occupy real property after being served with \hat{S} → [a notice to quit by the
58 person or entity with possessory rights] an order of restitution issued by a court of competent
58a jurisdiction ← \hat{S} .

59 ~~[(6)]~~ (7) (a) "Tenant" means any natural person and any individual, including a
60 commercial tenant.

61 (b) "Tenant" does not include a person or entity that has no legal right to the premises.

62 (8) "Trespasser" means a person or entity that occupies real property but ~~Œ→~~ ~~[has no]~~ ~~never~~
62a ~~had~~ ~~←Œ~~

63 possessory rights ~~Œ→~~ ~~[obtained from a person or entity with possessory rights]~~ ~~in the premises~~ ~~←Œ~~ .

64 ~~[(7)]~~ (9) "Unlawful detainer" means unlawfully remaining in possession of property
65 after receiving a notice to quit, served as required by this chapter, and failing to comply with
66 that notice.

67 ~~[(8)]~~ (10) "Willful exclusion" means preventing the tenant from entering into the
68 premises with intent to deprive the tenant of entry.

69 Section 2. Section **78B-6-809** is amended to read:

70 **78B-6-809. Proof required of plaintiff -- Defense.**

71 (1) On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff
72 shall only be required to show, in addition to the forcible entry or forcible detainer complained
73 of, that ~~[he]~~ the plaintiff was ~~[peaceably in the]~~ in actual peaceable possession at the time of the
74 forcible entry, or was entitled to the possession at the time of the forcible detainer.

75 (2) In defense, the defendant may show that ~~[he or his]~~ the defendant or the defendant's
76 ancestors, or those whose interest in the premises ~~[he claims]~~ is claimed, had been in the quiet
77 possession of the property for the space of one entire year continuously before the
78 commencement of the proceedings, and that his interest is not ended or determined, and that
79 this showing is a bar to the proceedings.

80 ~~Œ→~~ ~~[(3) It shall be a defense to any forcible entry action that the plaintiff had no possessory~~
81 ~~rights given from a person or entity with existing possessory rights, that the plaintiff paid no~~
82 ~~consideration for its occupancy, or that the plaintiff acted in bad faith in obtaining possession~~
83 ~~of the real property:~~

84 ~~—— (4) A plaintiff in any forcible entry action shall be limited to actual damages if the~~
85 ~~possession was wrongful.]~~

85a (3) An action for unlawful detainer may also be brought in the form of a
85b counterclaim. ~~←Œ~~