

FORCIBLE ENTRY AND DETAINER

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Keith Grover

LONG TITLE

General Description:

This bill modifies provisions related to forcible entry and detainer.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to how notice is served;
- ▶ addresses a complaint and summons;
- ▶ amends provisions related to court procedures;
- ▶ addresses attorney fees;
- ▶ modifies enforcement provisions;
- ▶ addresses abandonment; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

78B-6-805, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-807, as last amended by Laws of Utah 2016, Chapter 33

78B-6-810, as last amended by Laws of Utah 2017, Chapter 414

78B-6-811, as last amended by Laws of Utah 2017, Chapter 203

78B-6-812, as last amended by Laws of Utah 2017, Chapter 414

30 **78B-6-815**, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 **Utah Code Sections Affected by Coordination Clause:**

32 **78B-6-807**, as last amended by Laws of Utah 2016, Chapter 33

33

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

35 Section 1. Section **78B-6-805** is amended to read:

36 **78B-6-805. Notice -- How served.**

37 (1) ~~[The notices]~~ A notice required by this part may be served:

38 (a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant,
39 by delivering a copy to the commercial tenant's usual place of business by leaving a copy of the
40 notice with a person of suitable age and discretion;

41 (b) by sending a copy through registered ~~[or]~~ mail, certified mail, or an equivalent
42 means, addressed to the tenant at the tenant's residence~~[or, if the tenant is a commercial tenant,~~
43 ~~by sending a copy through registered or certified mail addressed to the commercial tenant's],~~
44 leased property, or usual place of business;

45 (c) if the tenant is absent from the residence, leased property, or usual place of
46 business, by leaving a copy with a person of suitable age and discretion ~~[at either place and~~
47 ~~mailing a copy to the tenant at the tenant's residence or place of business]~~ at the tenant's
48 residence, leased property, or usual place of business;

49 (d) if a person of suitable age or discretion cannot be found at the place of residence,
50 leased property, or usual place of business, then by affixing a copy in a conspicuous place on
51 the leased property; or

52 (e) if an order of abatement by eviction of the nuisance is issued by the court as
53 provided in Section **78B-6-1109**, when issued, the parties present shall be on notice that the
54 abatement by eviction order is issued and immediately effective or as to any absent party,
55 notice shall be given as provided in Subsections (1)(a) through (e).

56 (2) Service upon a subtenant may be made in the same manner as provided in
57 Subsection (1).

58 Section 2. Section **78B-6-807** is amended to read:

59 **78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service.**

60 (1) The plaintiff, in ~~his~~ the plaintiff's complaint:

61 (a) shall set forth the facts on which ~~he~~ the plaintiff seeks to recover;

62 (b) may set forth any circumstances of fraud, force, or violence ~~which~~ that may have
63 accompanied the alleged forcible entry, or forcible or unlawful detainer; and

64 (c) may claim damages or compensation for the occupation of the premises, or both.

65 (2) If the unlawful detainer charged is after default in the payment of rent or other
66 amounts due, the complaint shall state the amount of rent due or other amounts due.

67 (3) (a) The summons shall include the number of days within which the defendant is
68 required to appear and defend the action, which shall be three business days from the date of
69 service, unless the defendant objects to the number of days, and the court determines that the
70 facts of the case should allow more time.

71 ~~[(4) The court may authorize service by publication or mail for cause shown.]~~

72 ~~[(5) Service by publication is complete one week after publication.]~~

73 ~~[(6) Service by mail is complete three days after mailing.]~~

74 ~~[(7) The summons shall be changed in form to conform to the time of service as~~
75 ~~ordered, and shall be served as in other cases.]~~

76 (b) A claim for unlawful detainer brought by counterclaim shall be served to any
77 opposing party in accordance with Utah Rules of Civil Procedure, and any response required
78 shall be due within the timelines stated under Subsection (3)(a).

79 (4) The court may authorize alternative service pursuant to the Utah Rules of Civil
80 Procedure.

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

82 **78B-6-810. Court procedures.**

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

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

86 trial;

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

89 (c) if this chapter requires a hearing to be held within a specified time, the time may be
90 extended to the first date thereafter on which a judge is available to hear the case in a
91 jurisdiction in which a judge is not always available~~[-]; and~~

92 (d) if this chapter requires a hearing to be held within a specified time, this section does
93 not require a hearing to be held before the assigned judge, and the court may, out of
94 convenience, schedule a hearing before another judge within the jurisdiction.

95 (2) (a) In an action for unlawful detainer, the court shall hold an evidentiary hearing,
96 upon request of either party, within 10 business days after the day on which the defendant files
97 an answer or response.

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

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

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

104 (3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges
105 an act that would be considered criminal under the laws of this state, the court shall hold an
106 evidentiary hearing upon request within 10 days after the day on which the complaint is filed to
107 determine whether the alleged act occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

141 Section 4. Section **78B-6-811** is amended to read:

142 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**
143 **enforcement -- Remedies.**

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

145 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution
146 of the premises as provided in Section [78B-6-812](#).

147 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any
148 condition or covenant of the lease or agreement under which the property is held, or after
149 default in the payment of rent, the judgment shall also declare the forfeiture of the lease or
150 agreement.

151 (d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any
152 obligation for payments on a lease for the remainder of the lease's term.

153 (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate
154 damages.

155 (2) The jury or the court, if the proceeding is tried without a jury or upon the
156 defendant's default, shall also assess the damages resulting to the plaintiff from any of the
157 following:

158 (a) forcible entry;

159 (b) forcible or unlawful detainer;

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

162 (d) the amounts due under the contract, if the alleged unlawful detainer is after default
163 in the payment of amounts due under the contract; and

164 (e) the abatement of the nuisance by eviction as provided in Sections [78B-6-1107](#)
165 through [78B-6-1114](#).

166 (3) The judgment shall be entered against the defendant for the rent, for three times the
167 amount of the damages assessed under Subsections (2)(a) through (2)(e).

168 (4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be
169 issued immediately after the entry of the judgment.

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

171 (5) In an action under this chapter, the court [may] shall award costs and reasonable
172 attorney fees to the prevailing party.

173 Section 5. Section **78B-6-812** is amended to read:

174 **78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of**
175 **personal property -- Hearing.**

176 (1) An order of restitution shall:

177 (a) direct the defendant to vacate the premises, remove the defendant's personal
178 property, and restore possession of the premises to the plaintiff, or be forcibly removed by a
179 sheriff or constable;

180 (b) advise the defendant of the time limit set by the court for the defendant to vacate
181 the premises, which shall be three calendar days following service of the order, unless the court
182 determines that a longer or shorter period is appropriate after a finding of extenuating
183 circumstances; and

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

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

190 [~~(i) mailing a copy of the order and the form by first class mail to the defendant's~~
191 ~~last-known address and posting a copy of the order and the form at a conspicuous place on the~~
192 ~~premises; or]~~

193 [~~(ii) mailing a copy of the order and the form to the commercial tenant defendant's~~
194 ~~last-known place of business and posting a copy of the order and the form at a conspicuous~~
195 ~~place on the business premises.]~~

196 (b) A request for hearing or other pleading filed by the defendant may not stay
197 enforcement of the restitution order unless:

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

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

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

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

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

210 (b) Personal property [~~of the defendant~~] remaining in the leased property may be
211 removed from the premises by the sheriff or constable and transported to a suitable location for
212 safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and
213 storage to the plaintiff, who shall store the personal property in a suitable place and in a
214 reasonable manner.

215 (c) A tenant may not access the property until the removal and storage costs have been
216 paid in full, except that the tenant shall be provided reasonable access within five business days
217 to retrieve:

218 (i) clothing;

219 (ii) identification;

220 (iii) financial documents, including all those related to the tenant's immigration
221 status[;] or employment status;

222 (iv) documents pertaining to receipt of public services; and

223 (v) medical information, prescription medications, and any medical equipment required
224 for maintenance of medical needs.

225 (d) The personal property removed and stored [~~shall, after 15 calendar days, be~~] is

226 considered abandoned property and subject to Section 78B-6-816.

227 (4) In the event of a dispute concerning the manner of enforcement of the restitution
228 order, the defendant may file a request for a hearing. The court shall set the matter for hearing
229 within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and
230 shall mail notice of the hearing to the parties.

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

232 Section 6. Section 78B-6-815 is amended to read:

233 **78B-6-815. Abandonment.**

234 (1) [“]Abandonment[”] is presumed in either of the following situations:

235 [(1)] (a) The tenant has not notified the owner that [~~he or she~~] the tenant will be absent
236 from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is
237 no reasonable evidence other than the presence of the tenant's personal property that the tenant
238 is occupying the premises.

239 [(2)] (b) The tenant has not notified the owner that [~~he or she~~] the tenant will be absent
240 from the premises, and the tenant fails to pay rent when due and the tenant's personal property
241 has been removed from the dwelling unit and there is no reasonable evidence that the tenant is
242 occupying the premises.

243 (2) Abandonment is established as a matter of law if the owner has reason to believe
244 that the presumption of abandonment under Subsection (1) has been met, the owner serves the
245 tenant with a declaration of abandonment, and the tenant fails to dispute or rebut the
246 declaration of abandonment in accordance with this Subsection (2).

247 (a) The tenant may be served with a declaration of abandonment that includes at least a
248 contact address for the owner, contains a brief factual basis supporting the owner's reasonable
249 belief that the presumption of abandonment under Subsection (1) has been met, and states the
250 date and time of service and includes the following language, or language that is substantially
251 similar: "It is believed that these premises are abandoned and the owner is seeking to regain
252 possession of the premises. If a tenant in legal possession of the premises has not abandoned
253 the premises, the tenant must dispute abandonment in writing within 24 hours of service of this

254 declaration of abandonment by providing a copy to the owner at the contact address included
255 with this declaration of abandonment. If written notice is not served on the owner within 24
256 hours, the owner may retake possession of the premises." The 24-hour period stated in this
257 Subsection (2)(a) does not include a Saturday, a Sunday, or a holiday during which the Utah
258 state courts are closed.

259 (b) Service of the declaration of abandonment by the owner and any dispute or rebuttal
260 by the tenant shall be made pursuant to Section [78B-6-805](#).

261 (c) If the tenant fails to dispute the declaration of abandonment in writing by serving
262 notice to the owner within 24 hours of being served a declaration of abandonment, excluding a
263 Saturday, a Sunday, or a holiday during which the Utah state courts are closed, the declaration
264 of abandonment serves as prima facia evidence that the tenant has vacated and abandoned the
265 premises.

266 (d) The tenant bears the burden to rebut an abandonment that is established by a
267 declaration of abandonment by clear and convincing evidence.

268 **Section 7. Coordinating S.B. 159 with S.B. 79 -- Substantive and technical**
269 **amendments.**

270 If this S.B. 159 and S.B. 79, Judiciary Amendments, both pass and become law, it is the
271 intent of the Legislature that the Office of Legislative Research and General Counsel shall
272 prepare the Utah Code database for publication by amending Subsection [78B-6-807\(4\)](#) to read:

273 "(4) The court may authorize alternative service pursuant to the Utah Rules of Civil
274 Procedure."