

1 **FORCIBLE ENTRY AND DETAINER**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Margaret Dayton**

5 House Sponsor: Keith Grover

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to forcible entry and detainer.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies provisions related to how notice is served;
- 13 ▶ addresses allegations permitted in a complaint;
- 14 ▶ addresses summons related to a complaint;
- 15 ▶ amends provisions related to court procedures;
- 16 ▶ addresses attorney fees;
- 17 ▶ modifies enforcement provisions;
- 18 ▶ addresses abandonment; and
- 19 ▶ makes technical and conforming amendments.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **78B-6-805**, as renumbered and amended by Laws of Utah 2008, Chapter 3

27 **78B-6-807**, as last amended by Laws of Utah 2016, Chapter 33



- 28 **78B-6-810**, as last amended by Laws of Utah 2017, Chapter 414
- 29 **78B-6-811**, as last amended by Laws of Utah 2017, Chapter 203
- 30 **78B-6-812**, as last amended by Laws of Utah 2017, Chapter 414
- 31 **78B-6-815**, as renumbered and amended by Laws of Utah 2008, Chapter 3

32

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

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

35 **78B-6-805. Notice -- How served.**

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

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

40 (b) subject to Subsection (3), by sending a copy through registered [or] mail, certified
41 mail, or an equivalent means, addressed to the tenant at the tenant's residence~~[or, if the tenant is~~
42 ~~a commercial tenant, by sending a copy through registered or certified mail addressed to the~~
43 ~~commercial tenant's], leased property, or usual place of business;~~

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

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

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

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

57 (3) Service by mail under Subsection (1)(b) is complete three calendar days after
58 mailing.

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

60 **78B-6-807. Allegations permitted in complaint -- Time for appearance -- Service**
61 **of summons.**

62 (1) The plaintiff, in ~~[his]~~ the plaintiff's complaint:

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

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

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

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

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

73 (b) A summons requiring a response within three business days under this section may
74 be used with a complaint, counterclaim, third-party claim, or similar claim.

75 (c) The time frames provided in this section may not be expanded by including
76 multiple causes of action in a complaint beyond unlawful detainer.

77 (4) (a) The court may authorize service by publication ~~[or]~~, mail, or email for cause
78 shown.

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

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

81 (d) Service by email is complete upon sending.

82 ~~[(7)]~~ (5) The summons shall be changed in form to conform to the time of service as
83 ordered, and shall be served as in other cases.

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

85 **78B-6-810. Court procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (e) The court may allow a period of up to 72 hours before restitution may be made

121 under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

145 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**
146 **enforcement -- Remedies.**

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

148 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution
149 of the premises as provided in Section **78B-6-812**.

150 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any
151 condition or covenant of the lease or agreement under which the property is held, or after

152 default in the payment of rent, the judgment shall also declare the forfeiture of the lease or
153 agreement.

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

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

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

161 (a) forcible entry;

162 (b) forcible or unlawful detainer;

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

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

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

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

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

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

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

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

177 **78B-6-812. Order of restitution -- Service -- Enforcement -- Disposition of**
178 **personal property -- Hearing.**

179 (1) An order of restitution shall:

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

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

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

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

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

196 [~~(ii) mailing a copy of the order and the form to the commercial tenant defendant's~~
197 ~~last-known place of business and posting a copy of the order and the form at a conspicuous~~
198 ~~place on the business premises:]~~

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

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

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

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

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

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

213 (b) Personal property [~~of the defendant]~~ remaining in the leased property may be

214 removed from the premises by the sheriff or constable and transported to a suitable location for
215 safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and
216 storage to the plaintiff, who shall store the personal property in a suitable place and in a
217 reasonable manner.

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

221 (i) clothing;

222 (ii) identification;

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

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

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

228 (d) The personal property removed and stored [~~shall, after 15 calendar days, be~~] is
229 considered abandoned property and subject to Section [78B-6-816](#).

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

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

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

236 **78B-6-815. Abandonment.**

237 (1) ["]Abandonment["] is presumed in either of the following situations:

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

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

245 occupying the premises.

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

250 (a) The tenant may be served with a declaration of abandonment that includes at least a
251 contact address for the owner and states the date and time of service and includes the following
252 language, or language that is substantially similar: "It is believed that these premises are
253 abandoned and the owner is seeking to regain possession of the premises. If a tenant in legal
254 possession of the premises has not abandoned the premises, the tenant must dispute
255 abandonment in writing within 24 hours of service of this declaration of abandonment by
256 providing a copy to the owner at the contact address included with this declaration of
257 abandonment. If written notice is not served on the owner within 24 hours, the owner may
258 retake possession of the premises."

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, the
263 declaration of abandonment serves as prima facia evidence that the tenant has vacated and
264 abandoned the premises.

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

Legislative Review Note
Office of Legislative Research and General Counsel