

1 **UNLAWFUL DETAINER AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: David P. Hinkins

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to unlawful detainer of property.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ reinstates references to the federal law governing certain aspects of a foreclosure of
- 13 residential property occupied by a tenant;
- 14 ▶ amends a requirement for unlawful detainer by a tenant if the tenant fails to make
- 15 payments, continues to possess the property, and receives notice;
- 16 ▶ provides that if a court denies a submitted order of restitution when a tenant
- 17 continues to possess the property, the court shall give notice to the parties upon
- 18 request and hold a hearing;
- 19 ▶ provides that if the tenant fails to appear the court shall issue an order of restitution
- 20 and enter a default judgment, unless the court finds otherwise;
- 21 ▶ allows for a court to issue an order of restitution regardless of whether a judgment is
- 22 entered;
- 23 ▶ allows for the court to modify a judgment for additional amounts owed;
- 24 ▶ requires a defendant to provide an address to the court and plaintiff within a certain
- 25 time period;
- 26 ▶ provides that failure of a defendant to provide an address after an order of restitution
- 27 does not create a burden on the plaintiff or the court to seek out the defendant for
- 28 further notice; and
- 29 ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **78B-6-802**, as last amended by Laws of Utah 2016, Chapter 325

37 **78B-6-810**, as last amended by Laws of Utah 2018, Chapter 291

38 **78B-6-811**, as last amended by Laws of Utah 2018, Chapter 291



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

41 Section 1. Section **78B-6-802** is amended to read:

42 **78B-6-802. Unlawful detainer by tenant for a term less than life.**

43 (1) A tenant holding real property for a term less than life[;] is guilty of an unlawful
44 detainer if the tenant:

45 (a) [~~except as provided in Subsection (1)(i);~~] continues in possession, in person or by
46 subtenant, of the property or any part of [it] the property, after the expiration of the specified
47 term or period for which it is let to [him] the tenant, which specified term or period, whether
48 established by express or implied contract, or whether written or parol, shall be terminated
49 without notice at the expiration of the specified term or period;

50 (b) having leased real property for an indefinite time with monthly or other periodic
51 rent reserved [~~and except as provided in Subsection (1)(i);~~]:

52 (i) continues in possession of [it] the property in person or by subtenant after the end of
53 any month or period, in cases where the owner, the owner's designated agent, or any successor
54 in estate of the owner, 15 calendar days or more [~~prior to~~] before the end of that month or
55 period, has served notice requiring the tenant to quit the premises at the expiration of that
56 month or period; or

57 (ii) in cases of tenancies at will, remains in possession of the premises after the

58 expiration of a notice of not less than five calendar days;

59 (c) continues in possession, in person or by subtenant, after default in the payment of
60 any rent or other amounts due and after a notice in writing requiring in the alternative the
61 payment of the rent and other amounts due or the surrender of the detained premises, has
62 remained uncomplied with for a period of three [~~calendar~~] business days after service, which
63 notice may be served at any time after the rent becomes due;

64 (d) assigns or sublets the leased premises contrary to the covenants of the lease, or
65 commits or permits waste on the premises after service of a three calendar days' notice to quit;

66 (e) sets up or carries on any unlawful business on or in the premises after service of a
67 three calendar days' notice to quit;

68 (f) suffers, permits, or maintains on or about the premises any nuisance, including
69 nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

70 (g) commits a criminal act on the premises and remains in possession after service of a
71 three calendar days' notice to quit;

72 (h) continues in possession, in person or by subtenant, after a neglect or failure to
73 perform any condition or covenant of the lease or agreement under which the property is held,
74 other than those previously mentioned, and after notice in writing requiring in the alternative
75 the performance of the conditions or covenant or the surrender of the property, served upon the
76 tenant and upon any subtenant in actual occupation of the premises remains uncomplied with
77 for three calendar days after service; or

78 [~~(i) (i) is a bona fide tenant of a foreclosed rental property, as defined in Section~~
79 ~~57-1-25.5 or Section 78B-6-802.7; and]~~

80 (i) (i) is a tenant under a bona fide tenancy as described in Section 702 of the
81 Protecting Tenants at Foreclosure Act; and

82 (ii) continues in possession after the effective date of a notice to vacate given in
83 accordance with [~~Subsection 57-1-25.5(3) or Subsection 78B-6-802.7(3)] Section 702 of the
84 Protecting Tenants at Foreclosure Act.~~

85 (2) [~~Within three calendar days after the~~] After service of the notice and the time

86 period required for the notice, the tenant, any subtenant in actual occupation of the premises,
87 any mortgagee of the term, or other person interested in ~~[its]~~ the lease's continuance may
88 perform the condition or covenant and ~~[thereby]~~ save the lease from forfeiture, except that if
89 the covenants and conditions of the lease violated by the lessee cannot afterwards be
90 performed, or the violation cannot be brought into compliance, ~~[the]~~ a notice provided for in
91 Subsections (1)(d) through (g) may be given.

92 (3) Unlawful detainer by an owner resident of a mobile home is determined under Title
93 57, Chapter 16, Mobile Home Park Residency Act.

94 (4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to
95 nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

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

97 **78B-6-810. Court procedures.**

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

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

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

104 (c) if this chapter requires a hearing to be held within a specified time and a judge is
105 not available, the time may be extended to the first date ~~[thereafter]~~ after expiration of the
106 specified time on which a judge is available to hear the case ~~[in a jurisdiction in which a judge~~
107 ~~is not always available; and];~~

108 (d) if this chapter requires a hearing to be held within a specified time, this section does
109 not require a hearing to be held before the assigned judge, and the court may, out of
110 convenience, schedule a hearing before another judge within the jurisdiction~~[-];~~ and

111 (e) if a court denies an order of restitution submitted by a party, and upon a party's
112 request, the court shall give notice to the parties of the reason for denial and set a hearing
113 within 10 business days of the day on which the order was submitted to the court.

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

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

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

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

123 (3) (a) (i) As used in this Subsection (3)(a), "an act that would be considered criminal
124 under the laws of this state" means:

125 (A) an act that would constitute a felony under the laws of this state;

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

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

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

131 (E) an act or threat of violence against any tenant or other individual on the premises,
132 or against the landlord or the landlord's agent; and

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

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

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

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

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

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

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

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

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

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

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

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

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

163 ~~[(vi) any other act that would be considered criminal that the court determines directly
164 impacts the safety or peaceful enjoyment of the premises by any tenant.]~~

165 (4) (a) At any hearing held in accordance with this chapter in which the [tenant]
166 defendant after receiving notice fails to appear, the court shall issue an order of restitution and
167 enter a judgment of default against the defendant, unless the court makes a finding for why the
168 order of restitution or judgment of default should not be issued.

169 (b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable

170 or the sheriff of the county where the property is situated shall return possession of the property
171 to the plaintiff immediately.

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

174 Section 3. Section **78B-6-811** is amended to read:

175 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**
176 **enforcement -- Remedies.**

177 (1) (a) A ~~[judgment may be entered]~~ court may:

178 (i) enter a judgment upon the merits or upon default[-]; and

179 (ii) issue an order of restitution regardless of whether a judgment is entered.

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

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

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

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

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

193 (a) forcible entry;

194 (b) forcible or unlawful detainer;

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

197 (d) the amounts due under the contract, if the alleged unlawful detainer is after default

198 in the payment of amounts due under the contract; and

199 (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107
200 through 78B-6-1114.

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

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

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

206 (5) In an action under this chapter, the court:

207 (a) shall award costs and reasonable attorney fees to the prevailing party[-];

208 (b) may modify a judgment for additional amounts owed if a motion is submitted
209 within 180 days on the earlier of the day on which:

210 (i) the order of restitution is enforced; or

211 (ii) the defendant vacates the premises; and

212 (c) may grant a party additional time for a motion under Subsection (5)(b).

213 (6) (a) If the court issues an order of restitution, the defendant shall provide a current
214 address to the court and the plaintiff within 30 days of the day on which the court issues the
215 order of restitution.

216 (b) Failure of a defendant to provide an address under Subsection (6)(a) does not
217 require the plaintiff or the court to bear the burden of seeking out the defendant to provide
218 notice for any subsequent proceeding.