

HB0462S01 compared with HB0462

~~deleted text~~ shows text that was in HB0462 but was deleted in HB0462S01.

inserted text shows text that was not in HB0462 but was inserted into HB0462S01.

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Representative James A. Dunnigan proposes the following substitute bill:

UNLAWFUL DETAINER AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to unlawful detainer of property.

Highlighted Provisions:

This bill:

- ▶ reinstates references to the federal law governing certain aspects of a foreclosure of residential property occupied by a tenant;
- ▶ amends a requirement for unlawful detainer by a tenant if the tenant fails to make payments, continues to possess the property, and receives notice;
- ▶ provides that if a court denies a submitted order of restitution when a tenant continues to possess the property, the court shall give notice to the parties upon request and hold a hearing;
- ▶ provides that if the tenant fails to appeal the court shall issue an order of restitution

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and enter a default judgment, unless the court finds otherwise;

- ▶ allows for a court to issue an order of restitution ~~{without}~~ regardless of whether a judgment is entered;
- ▶ allows for the court to modify a judgment for additional amounts owed;
- ▶ requires a ~~{tenant}~~ defendant to provide an address to the court and plaintiff within a certain time period;
- ▶ provides that failure of a defendant to provide an address after an order of restitution does not create a burden on the plaintiff or the court to seek out the defendant for further notice; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

(b) having leased real property for an indefinite time with monthly or other periodic

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rent reserved [~~and except as provided in Subsection (1)(i)~~]:

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

(ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;

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

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

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

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

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

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

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

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

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

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

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

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

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

78B-6-810. Court procedures.

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

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

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

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

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

(e) if a court denies an order of restitution submitted by a party, and upon a party's request, the court shall give notice to the parties of the reason for denial and set a hearing

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within 10 **business** days of the day on which the order was submitted to the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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order of restitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) issue an order of restitution ~~{without entering}~~ regardless of whether a judgment is entered.

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

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

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

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

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

(a) forcible entry;

(b) forcible or unlawful detainer;

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

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

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

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

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

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

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

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

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

(i) the order of restitution is enforced; or

(ii) the defendant vacates the premises; and

(c) may grant a party additional time for a motion under Subsection (5)(b) if good cause is shown by the party submitting the motion}.

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

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