

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 621 Possession of Real Property

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Mathews	Jones

SUMMARY ANALYSIS

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed, or, when the guest is no longer welcome by the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for a property owner. Absent the commission of a criminal act, law enforcement may remain neutral, leaving the property owner to resort to legal action to remove the unwelcome guest.

Pursuant to s. 82.035(1), F.S., a “transient occupant” is a person whose residency in real property intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature. Florida law has identified several factors that establish a person’s occupancy of residential property as transient, including a person who:

- Does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy.
- Does not have any property utility subscriptions.
- Cannot produce documentation, correspondence, or identification cards sent or issued by a government agency which show that the person used the property address of record with the agency within the previous 12 months.
- Pays minimal or no rent for his or her stay at the property.
- Does not have a designated space of his or her own, such as a personal bedroom, at the property.
- Has minimal, if any belongings, at the property.
- Has an apparent permanent residence elsewhere.

PCS for HB 621 amends s. 82.035, F.S., to create a presumption that an individual is a transient occupant, and thus subject to be removed, if such individual is unable to offer specified proof of a lease or adverse possession.

Additionally, the PCS amends s. 817.03, F.S., and provides that the use of a fraudulent lease or other specified document with the intent to remain on the property is a first-degree misdemeanor.

The PCS is unlikely to have a fiscal impact on the state or local governments.

The PCS has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida residential property owners commonly allow relatives, friends, or acquaintances to temporarily reside in their home as guests. These residencies are often terminated when the guest voluntarily vacates the property at the time agreed, or, when the guest is no longer welcome by the property owner. However, the process of removing an unwanted guest who refuses to leave can be frustrating and costly for a property owner. Absent the commission of a criminal act, law enforcement may remain neutral and uninvolved, leaving the property owner to have to resort to legal action to remove the unwelcome guest.

A property owner seeking a court order for removal of a guest must file an action for possession in county or civil court. If the owner prevails in his or her case, the clerk of court will issue a writ of possession to the Sheriff commanding the Sheriff to return possession of the property to the owner. Without an order from the court, law enforcement is not required to remove unwanted guests from an owner's property.

Actions for Possession

Property owners possess three separate, yet somewhat overlapping, judicial remedies for removing an unwanted guest from their home, depending on the applicable circumstances.

Eviction

Part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act" (FRLATA), governs the relationship between landlords and tenants under a residential lease agreement. A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.¹ Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party. The amount of notice required may range from 7 to 60 days.² A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated by filing an action for possession.³ The FRLATA may apply to situations in which an invited guest made some minor contributions for the purchase of household goods or the payment of household expenses while residing in the property with the consent of the owner if a court decides that such an arrangement is a residential tenancy based on an agreement to pay "rent" in exchange for occupancy. However, if the court determines that possession is not based on residential tenancy (a landlord-tenant relationship), eviction is not the proper remedy and procedures under FRLATA not available.⁴

Unlawful Detainer

An unlawful detainer action can be filed to remove an unwanted guest who occupied residential property with the consent of the owner but who has refused to surrender possession of the property upon the expiration or revocation of the property owner's consent.⁵ In such situation, the person unlawfully detaining the property ordinarily is not a tenant and claims no other right or interest in the property.

¹ S. 83.43(12), F.S. ("A rental agreement" means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

² S. 83.57, F.S.

³ S. 83.59, F.S.

⁴ *Grimm v. Huckabee*, 891 So. 2d 608 (Fla. 1st DCA 2005).

⁵ S. 82.01(4), F.S.

Ejectment

An ejectment action can be filed to eject an unwanted guest who once may have had permission to live upon the property, but subsequently claimed that he or she had a legal right to be there and refused to leave when asked to do so by the property owner. To prevail in an ejectment action, the plaintiff must prove that he or she has good title to the property and has been deprived of its possession by the unwanted guest.⁶

The actions for eviction, unlawful detainer, and ejectment are similar, but a number of the respective pleading requirements differ, as may the forum in which the property owner is required to file the appropriate complaint. An eviction or unlawful detainer action must be filed in county court⁷ and is entitled to the summary procedure of s. 51.011, F.S., which provides that a defendant must answer the action within 5 days.⁸ Thus, an action for possession based upon eviction or unlawful detainer may only take several weeks before entry of a judgment. Ejectment actions, however, are subject to the exclusive original jurisdiction of the circuit court⁹ and governed by the Florida Rules of Civil Procedure which generally results in a longer court process before a property owner may obtain a judgment for possession.

Transient Occupant

The term “transient” describes something that is temporary, impermanent, or passing; accordingly, a transient is understood to mean a person whose presence is temporary or fleeting.¹⁰ Pursuant to s. 82.035(1), F.S., a “transient occupant” is a person whose residency in real property intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.¹¹ Florida law has identified several factors that may establish a person’s occupancy of residential property as transient, including a person who:

- Does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy;
- Does not have any property utility subscriptions;
- Cannot produce documentation, correspondence, or identification cards sent or issued by a government agency which show that the person used the property address of record with the agency within the previous 12 months;
- Pays minimal or no rent for his or her stay at the property;
- Does not have a designated space of his or her own, such as a personal bedroom, at the property;
- Has minimal, if any belongings, at the property; and
- Has an apparent permanent residence elsewhere.¹²

Although a transient occupant may have once been on the residential property legally, with permission by the property owner, the transient occupant may unlawfully detain residential property if he or she remains in occupancy after the owner has asked or directed the transient occupant to leave.¹³ In the case of a transient occupant who unlawfully remains on residential property, current law authorizes law enforcement to direct the transient occupant to leave.¹⁴ An owner of a residential property may present a sworn affidavit detailing the transient occupant’s unlawful detainer of the property to a law

⁶ S. 66.021, F.S.

⁷ S. 34.011(2), F.S.

⁸ Under the summary procedure of s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant’s answer which must be filed within five days after service of process of the plaintiff’s complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

⁹ S. 26.012(2)(f), F.S.

¹⁰ *Black’s Law Dictionary* 1637 (9th ed. 2009).

¹¹ S. 82.035(1), F.S.

¹² S. 82.035(1)(a), F.S.

¹³ S. 82.035(2), F.S.

¹⁴ S. 82.035(3), F.S.

enforcement officer.¹⁵ The sworn affidavit must set forth facts to establish that the transient occupant remains unlawfully on the property.

Upon receipt of a sworn affidavit, a law enforcement officer may, but is not required to, direct the transient occupant to leave the property. A transient occupant who fails to comply with such direction from a law enforcement officer is considered to be trespassing on the property pursuant to s. 810.08, F.S.¹⁶ Current law provides redress against the person who requested the removal for a party who is wrongfully removed from a property under the transient occupancy provisions of ch. 82, F.S.¹⁷

Pursuant to s. 82.035(4), F.S., an owner or person who is otherwise entitled to possession of real property has a cause of action for unlawful detainer against a transient occupant. However, if the court determines that the defendant is not a transient occupant, but rather is a tenant of the property, the petitioner must seek eviction to remove the defendant.¹⁸

Adverse Possession

Adverse possession is a legal doctrine under which a person in possession of land owned by someone else may acquire valid title to it under certain circumstances.¹⁹ Florida law recognizes two routes to adverse possession: adverse possession under color of title, and adverse possession without color of title. Generally, "color of title" refers to a document or other instrument that appears to be a legitimate claim of title to a piece of real property, but due to a title defect, cannot transfer or convey ownership of such property.²⁰ As such, color of title means a person purports to have a valid title to the property but there is some defect in the title that prevents it from being properly transferred to another person.

Adverse Possession Under Color of Title

A person who enters into possession of real property under a claim of title to such property founded on a written instrument as a conveyance of the property, and has remained in continuous possession of that property for 7 years, adversely possesses that property.²¹ For cases of adverse possession after December 31, 1945, the claimant must also record the instrument upon which the claim is founded with the office of the clerk of the circuit court in the county where the subject property is located.²²

Adverse Possession Without Color of Title

Under Florida law, a person who has been in actual continual possession of real property for 7 years under a claim of title, may adversely possess the property and gain ownership of such.²³ To successfully adversely possess real property without color of title, the person claiming adverse possession must:

- Have paid all outstanding taxes and mature installments of special improvement liens levied against the property by the state, county, and municipality within one year after entering into possession;
- Have made a return, as required under s. 95.18(3), F.S., of the property by proper legal description to the property appraiser of the county the property is located in within 30 days after paying all outstanding taxes and liens listed above; and

¹⁵ *Id.*

¹⁶ S. 82.035(3)(a), F.S.

¹⁷ S. 82.035(3)(b), F.S.

¹⁸ S. 82.035(4), F.S.

¹⁹ Cornell Law School, Legal Information Institute, *Adverse Possession*, https://www.law.cornell.edu/wex/adverse_possession (last visited Jan. 29, 2024).

²⁰ Cornell Law School, Legal Information Institute, *Color of Title*, https://www.law.cornell.edu/wex/color_of_title (last visited Jan. 29, 2024).

²¹ S. 95.16(1), F.S.

²² *Id.*

²³ S. 95.18(1), F.S.

- Has subsequently paid, subject to s. 197.3335, F.S., all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.²⁴

Under current law, a property is deemed to be “possessed” if such property has been protected by substantial enclosure or cultivated, maintained, or improved in a usual manner.²⁵

Additionally, Florida law provides that a person who occupies or attempts to occupy a residential structure solely by claim of adverse possession prior to making the required return to the property appraiser commits a trespass.²⁶ Further, a person who occupies or attempts to occupy a residential property solely by claim of adverse possession and offers the property for lease to another person commits theft.²⁷

Effect of Proposed Changes

PCS for HB 621 amends s. 82.035, F.S., to create a presumption that an individual is a transient occupant, and thus subject to removal, if certain conditions are not met. The PCS creates a presumption that a person is a transient occupant if he or she is unable to provide one of the following:

- A notarized lease that includes the name and signature of the owner of the property.
- A proof of payment or other reliable evidence demonstrating that the person has paid the owner rent for the last rent payment period. If a monthly tenancy or shorter is alleged, a proof of payment or other reliable evidence must be dated within the last 60 days.
- Written evidence of actual possession for at least 7 years based upon a written claim of conveyance of the property or a decree or judgment providing a claim of title.
- Written evidence of payment of all outstanding taxes and special improvement liens levied against the property by the state, county, and municipality, and written evidence of a return filed with the Department of Revenue as required by s. 95.18, F.S.

As such, the enumerated factors establishing a presumption that a person is a transient occupant, along with the sworn affidavit of the same by the property owner, may offer law enforcement more confidence in directing the transient occupant to vacate the property.

Additionally, the PCS amends s. 817.03, F.S., to create a first-degree misdemeanor for the use of a false lease or other specified document with the intent to detain or remain upon the property. Under the PCS, a person who, with the intent to detain or remain on the property, knowingly and willfully presents to another person a false document purporting to be a valid lease, deed, or other document conveying rights to the property, commits a first-degree misdemeanor.²⁸

The PCS has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 82.035, F.S., relating to remedy for unlawful detention by a transient occupant of residential property; recovery of transient occupant’s personal belongings.

Section 2: Amends s. 817.03, F.S, relating to making false statement to obtain property or credit or to detain real property.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²⁴ *Id.*

²⁵ S. 95.18(2), F.S.

²⁶ S. 95.18(9), F.S.

²⁷ S. 95.18(10), F.S.

²⁸ A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may make the removal of an unwanted guest or transient occupant easier for a property owner. As such, the PCS may have a positive economic impact on the private sector based upon the quicker and more efficient removal of such transient occupants.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not Applicable. The PCS does not appear to affect county or municipal governments.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

The PCS neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES