

LANDLORD-TENANT RIGHTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions related to forcible entry and detainer.

Highlighted Provisions:

This bill:

- ▶ addresses timing of an evidentiary hearing;
- ▶ repeals exemption involving commercial tenants;
- ▶ amends provisions related to an order of restitution; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-810, as last amended by Laws of Utah 2009, Chapters 184 and 298

78B-6-812, as last amended by Laws of Utah 2013, Chapter 206

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

Section 1. 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; and

(c) if this chapter requires a hearing to be held within a specified time, the time may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

(2) (a) In an action for unlawful detainer [~~where the claim is for nonpayment of rent or for occupancy of a property after a forced sale as described in Section 78B-6-802.5~~], the court shall hold an evidentiary hearing, upon request of either party, within 10 business days after the day on which the defendant files [~~the defendant's answer.~~] 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 issues and enter judgment on the merits.

(3) (a) 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 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) 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 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), 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 peaceful enjoyment of the premises by any tenant.

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

(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.

~~[(6) The expedited hearing provisions in this section do not apply to actions involving commercial tenants.]~~

Section 2. Section 78B-6-812 is amended to read:

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

(1) ~~Each~~ An order of restitution shall:

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

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

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

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

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

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

(b) A request for hearing by the defendant may not stay enforcement of the restitution order unless:

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

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

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

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

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

123 (b) Personal property of the defendant may be removed from the premises by the
124 sheriff or constable and transported to a suitable location for safe storage. The sheriff or
125 constable may delegate responsibility for inventory, moving, and storage to the plaintiff, who
126 shall store the personal property in a suitable place and in a reasonable manner.

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

130 (i) clothing;

131 (ii) identification;

132 (iii) financial documents, including all those related to the tenant's immigration status,
133 employment status;

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

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

137 (d) The personal property removed and stored shall, after 15 calendar days, be
138 considered abandoned property and subject to Section 78B-6-816.

139 (4) In the event of a dispute concerning the manner of enforcement of the restitution
140 order, the defendant may file a request for a hearing. The court shall set the matter for hearing
141 within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and

142 shall mail notice of the hearing to the parties.

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