

Part 8 Forcible Entry and Detainer

78B-6-801 Definitions.

- (1) "Commercial tenant" means any tenant who may be a body politic and corporate, partnership, association, or company.
- (2) "Forcible detainer" means:
 - (a) holding and keeping by force, or by menaces and threats of violence, the possession of any real property, whether acquired peaceably or otherwise; or
 - (b) unlawfully entering real property during the absence of the occupants or at night, and, after demand is made for the surrender of the property, refusing for a period of three days to surrender the property to the former occupant.
- (3) "Forcible entry" means:
 - (a) entering any real property by:
 - (i) breaking open doors, windows, or other parts of a house;
 - (ii) fraud, intimidation, or stealth; or
 - (iii) any kind of violence or circumstances of terror; or
 - (b) after entering peaceably upon real property, turning out by force, threats, or menacing conduct the party in actual possession.
- (4) "Occupant of real property" means one who within five days preceding an unlawful entry was in the peaceable and undisturbed possession of the property.
- (5) "Owner":
 - (a) means the actual owner of the premises;
 - (b) has the same meaning as landlord under common law and the statutes of this state; and
 - (c) includes the owner's designated agent or successor to the estate.
- (6)
 - (a) "Peaceable possession" means having a legal right to possession.
 - (b) "Peaceable possession" does not include:
 - (i) the occupation of premises by a trespasser; or
 - (ii) continuing to occupy real property after being served with an order of restitution issued by a court of competent jurisdiction .
- (7)
 - (a) "Tenant" means any natural person and any individual, including a commercial tenant.
 - (b) "Tenant" does not include a person or entity that has no legal right to the premises.
- (8) "Trespasser" means a person or entity that occupies real property but never had possessory rights in the premises.
- (9) "Unlawful detainer" means unlawfully remaining in possession of property after receiving a notice to quit, served as required by this chapter, and failing to comply with that notice.
- (10) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of entry.

Amended by Chapter 264, 2016 General Session

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, after the expiration of the specified term or period for which it is let to him, 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 rent reserved and except as provided in Subsection (1)(i):
 - (i) continues in possession of it 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 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 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
 - (ii) continues in possession after the effective date of a notice to vacate given in accordance with Subsection 57-1-25.5(3) or Subsection 78B-6-802.7(3).
- (2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its 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 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.

Amended by Chapter 325, 2016 General Session

78B-6-802.5 Unlawful detainer after foreclosure or forced sale.

- A previous owner, trustor, or mortgagor of a property is guilty of unlawful detainer if the person:
- (1) defaulted on his or her obligations resulting in disposition of the property by a trustee's sale or sheriff's sale; and
 - (2) continues to occupy the property after the trustee's sale or sheriff's sale after being served with a notice to quit by the purchaser.

Enacted by Chapter 184, 2009 General Session

78B-6-802.7 Foreclosure of residential rental property -- Effect on tenancy.

- (1) As used in this section:
 - (a) "Bona fide residential rental agreement" means an agreement, for a property secured by a mortgage:
 - (i) that was the result of an arm's-length transaction;
 - (ii) established before the filing of an action to foreclose the mortgage under Part 9, Mortgage Foreclosure;
 - (iii) that provides an individual the right to exclusive use and occupancy of the residential property:
 - (A) on an at-will basis; or
 - (B) for a period specified by the agreement that is no longer than twelve months; and
 - (iv) that requires the individual to pay rent in an amount that:
 - (A) is not substantially less than fair market rent for the property; or
 - (B) is less than fair market rent due to a federal, state, or local subsidy.
 - (b) "Bona fide tenant" means an individual who:
 - (i) has the right to occupy a residential property under a bona fide residential rental agreement;
 - (ii) is not the mortgagor; and
 - (iii) is not the mortgagor's child, spouse, or parent.
 - (c) "Foreclosed rental property" means a property that:
 - (i) is the subject of a bona fide residential rental agreement; and
 - (ii) is foreclosed under Part 9, Mortgage Foreclosure.
 - (d) "New owner" means the immediate successor in interest of a foreclosed rental property following foreclosure of the property.
- (2)
 - (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of a foreclosed rental property subject to a bona fide tenant's right to occupy the foreclosed rental property:
 - (i) according to the terms of a bona fide residential rental agreement; and
 - (ii) until the end of the term of the bona fide residential rental agreement.
 - (b) Subject to Subsection (3), a new owner who intends to occupy a foreclosed rental property as the new owner's primary residence may terminate:
 - (i) the bona fide residential rental agreement; and
 - (ii) the bona fide tenant's occupancy of the foreclosed rental property.
- (3)
 - (a) A new owner who terminates a bona fide tenant's occupancy of a foreclosed rental property shall serve, to the bona fide tenant, a notice to vacate:
 - (i) at least 45 days before the day on which the new owner requires the bona fide tenant to vacate the foreclosed rental property; and

- (ii) as provided in Section 78B-6-805.
- (b) A notice to vacate under Subsection (3)(a) shall:
 - (i) be in at least 14-point font;
 - (ii) state the new owner's name, address, and contact information;
 - (iii) explain the reason the new owner requires the bona fide tenant to vacate the rental property;
 - (iv) state the date on which the bona fide tenant is required to vacate the rental property; and
 - (v) refer to this section as the law under which the notice to vacate is provided.
- (4) This section does not modify the requirements for termination of a federally subsidized tenancy.

Enacted by Chapter 325, 2016 General Session

78B-6-803 Right of tenant of agricultural lands to hold over.

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the owner, the tenant shall be considered to be in possession by permission of the owner. The tenant shall be entitled to hold under the terms of the lease for another full year and may not be guilty of an unlawful detainer during that year. The holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-804 Remedies available to tenant against undertenant.

A tenant may take proceedings similar to those prescribed in this part to obtain possession of premises let to an undertenant in case of the undertenant's unlawful detention of the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-805 Notice to quit -- How served.

- (1) The notices required by this part may be served:
 - (a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant, by delivering a copy to the commercial tenant's usual place of business by leaving a copy of the notice with a person of suitable age and discretion;
 - (b) by sending a copy through registered or certified mail addressed to the tenant at the tenant's residence or, if the tenant is a commercial tenant, by sending a copy through registered or certified mail addressed to the commercial tenant's usual place of business;
 - (c) if the tenant is absent from the residence or usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the tenant's residence or place of business;
 - (d) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property; or
 - (e) if an order of abatement by eviction of the nuisance is issued by the court as provided in Section 78B-6-1109, when issued, the parties present shall be on notice that the abatement by eviction order is issued and immediately effective or as to any absent party, notice shall be given as provided in Subsections (1)(a) through (e).
- (2) Service upon a subtenant may be made in the same manner as provided in Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-806 Necessary parties defendant.

- (1) No person other than the tenant of the premises, a lease signer, and subtenant if there is one in the actual occupation of the premises when the action is commenced, may be made a party defendant in the proceeding, except as provided in Section 78B-6-1111. A proceeding may not abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant. If it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment shall be rendered against those parties.
- (2) If a person has become a subtenant of the premises in controversy after the service of any notice as provided in this part, the fact that the notice was not served on the subtenant is not a defense to the action. All persons who enter under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.
- (3) A landlord, owner, or designated agent is a necessary party defendant only in an abatement by eviction action for an unlawful drug house as provided in Section 78B-6-1111.

Renumbered and Amended by Chapter 3, 2008 General Session

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

- (1) The plaintiff, in his complaint:
 - (a) shall set forth the facts on which he seeks to recover;
 - (b) may set forth any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer; and
 - (c) claim damages or compensation for the occupation of the premises, or both.
- (2) If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of rent due.
- (3) The summons shall include the number of days within which the defendant is required to appear and defend the action, which shall be three business days from the date of service, unless the defendant objects to the number of days, and the court determines that the facts of the case should allow more time.
- (4) The court may authorize service by publication or mail for cause shown.
- (5) Service by publication is complete one week after publication.
- (6) Service by mail is complete three days after mailing.
- (7) The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases.

Amended by Chapter 33, 2016 General Session

78B-6-808 Possession bond of plaintiff -- Alternative remedies.

- (1) At any time between the filing of the complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.
- (2) The court shall approve the bond in an amount which is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff.

- (3) The plaintiff shall notify the defendant of the possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (4).
- (4) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsections (1) through (3):
 - (a) With respect to an unlawful detainer action based solely upon nonpayment of rent or other amounts due, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three calendar days of the service of the notice of the possession bond, pays accrued rent, all other amounts due, and other costs, including attorney fees, as provided in the rental agreement.
 - (b)
 - (i) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action.
 - (ii) The form of the bond is at the defendant's option.
 - (iii) The bond shall be payable to the clerk of the court.
 - (iv) The defendant shall file the bond prior to the later of the expiration of three business days from the date he is served with notice of the filing of plaintiff's possession bond or within 24 hours after the court sets the bond amount.
 - (v) Notwithstanding Subsection (4)(b)(iv), the court may allow a period of up to 72 hours for the posting of the counter bond.
 - (vi) The court shall approve the bond in an amount which is the probable amount of costs of suit, including attorney fees and actual damages which may result to the plaintiff if the defendant has improperly withheld possession.
 - (vii) The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.
 - (c) If the defendant demands, within three days of being served with notice of the filing of plaintiff's possession bond, the defendant shall be granted a hearing within three days of the defendant's demand.
- (5) If the defendant does not elect and comply with a remedy under Subsection (4) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. A constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.
- (6) If the defendant demands a hearing under Subsection (4)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (4)(b) and shall expedite all further proceedings, including beginning the trial no later than 30 days from the posting of the plaintiff's bond, unless the parties otherwise agree.
- (7) If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-809 Proof required of plaintiff -- Defense.

- (1) On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that the plaintiff was in actual peaceable possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.
- (2) In defense, the defendant may show that the defendant or the defendant's ancestors, or those whose interest in the premises is claimed, had been in the quiet possession of the property for the space of one entire year continuously before the commencement of the proceedings, and that his interest is not ended or determined, and that this showing is a bar to the proceedings.
- (3) An action for unlawful detainer may also be brought in the form of a counterclaim .

Amended by Chapter 264, 2016 General Session

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 days after the day on which the defendant files the defendant's answer.
 - (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.

Amended by Chapter 184, 2009 General Session

Amended by Chapter 298, 2009 General Session

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

- (1)
 - (a) A judgment may be entered upon the merits or upon default.
 - (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), and for reasonable attorney fees.
- (4)
- (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be issued immediately after the entry of the judgment.
 - (b) In all cases, the judgment may be issued and enforced immediately.

Renumbered and Amended by Chapter 3, 2008 General Session

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

- (1) Each 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 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
 - (ii) the court orders that the restitution order be stayed.
 - (c) The date of service, the name, title, signature, and telephone number of the person serving the order and the form shall be legibly endorsed on the copy of the order and the form served on the defendant.
 - (d) The person serving the order and the form shall file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.
- (3)

- (a) If the defendant fails to comply with the order within the time prescribed by the court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the least destructive means possible to remove the defendant.
- (b) Personal property of the defendant may be removed from the premises by the sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable may delegate responsibility for inventory, moving, and storage to the plaintiff, who shall store the personal property in a suitable place and in a reasonable manner.
- (c) A tenant may not access the property until the removal and storage costs have been paid in full, except that the tenant shall be provided reasonable access within five business days to retrieve:
 - (i) clothing;
 - (ii) identification;
 - (iii) financial documents, including all those related to the tenant's immigration status, employment status;
 - (iv) documents pertaining to receipt of public services; and
 - (v) medical information, prescription medications, and any medical equipment required for maintenance of medical needs.
- (d) The personal property removed and stored shall, after 15 calendar days, be considered abandoned property and subject to Section 78B-6-816.
- (4) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant may file a request for a hearing. The court shall set the matter for hearing within 10 calendar days from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.
- (5) The Judicial Council shall draft the forms necessary to implement this section.

Amended by Chapter 206, 2013 General Session

78B-6-813 Time for appeal.

- (1) Except as provided in Subsection (2), either party may, within 10 days, appeal from the judgment rendered.
- (2) In a nuisance action under Sections 78B-6-1107 through 78B-6-1114, any party may appeal from the judgment rendered within three days.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-814 Exclusion of tenant without judicial process prohibited -- Abandoned premises excepted.

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the leased premises under Subsection 78B-6-816(2) and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-815 Abandonment.

"Abandonment" is presumed in either of the following situations:

- (1) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence

other than the presence of the tenant's personal property that the tenant is occupying the premises.

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

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-816 Abandoned premises -- Retaking and rerenting by owner -- Liability of tenant -- Personal property of tenant left on premises.

- (1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:
- (a) for the entire rent due for the remainder of the term; or
 - (b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This Subsection (1) applies, if less than Subsection (1)(a), notwithstanding that the owner did not rerent the premises.
- (2)
- (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.
 - (b)
 - (i) The owner shall post a copy of the notice in a conspicuous place and send by first class mail to the last known address for the tenant a notice that the property is considered abandoned.
 - (ii) The tenant may retrieve the property within 15 calendar days from the date of the notice if the tenant tenders payment of all costs of inventory, moving, and storage to the owner.
 - (iii) Except as provided in Subsection (5), if the property has been in storage for at least 15 calendar days and the tenant has made no reasonable effort to recover the property after notice was sent, pay reasonable costs associated with the inventory, removal, and storage, and no court hearing on the property is pending, the owner may:
 - (A) sell the property at a public sale and apply the proceeds toward any amount the tenant owes; or
 - (B) donate the property to charity if the donation is a commercially reasonable alternative.
 - (c) Any money left over from the public sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property Is Abandoned or Unclaimed.
 - (d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens, or any other contractual liens or rights.
- (3) If abandoned property is determined to belong to a person who is the tenant or an occupant, the tenant or occupant may claim the property, upon payment of any costs, inventory, moving, and storage, by delivery of a written demand with evidence of ownership of the personal property within 15 calendar days after the notice described in Subsection (2)(b) is sent. The owner may not be liable for the loss of the abandoned personal property if the written demand is not received.
- (4) As used in this section, "personal property" does not include a motor vehicle, as defined in Section 41-1a-102.

- (5) A tenant has no recourse for damage or loss if the tenant fails to recover any abandoned property as required in this section.
- (6) An owner is not required to store the following abandoned personal property:
 - (a) chemicals, pests, potentially dangerous or other hazardous materials;
 - (b) animals, including dogs, cats, fish, reptiles, rodents, birds, or other pets;
 - (c) gas, fireworks, combustibles, or any item considered to be hazardous or explosive;
 - (d) garbage;
 - (e) perishable items; or
 - (f) items that when placed in storage might create a hazardous condition or a pest control issue.
- (7) An owner shall give an extension for up to 15 calendar days, beyond the 15 calendar day limit described in Subsection (2)(b)(ii), to recover the abandoned property, if a tenant provides:
 - (a) a copy of a police report or protection order for situations of domestic violence, as defined in Section 77-36-1;
 - (b) verification of an extended hospitalization from a verified medical provider; or
 - (c) a death certificate or obituary for a tenant's death, provided by an immediate family member.
- (8) Items listed in Subsection (6) may be properly disposed of by the owner immediately upon determination of abandonment. A tenant may not recover for disposal of abandoned items listed in Subsection (6).
- (9) Notice of any public sale shall be mailed to the last known address of the tenant at least five calendar days prior to the public sale.
- (10) If the tenant is present at the public sale:
 - (a) the tenant may specify the order in which the personal property is sold;
 - (b) the owner may sell only as much personal property necessary to satisfy the amount due under the rental agreement and statutorily allowed damages, costs, and fees associated with the abandoned items; and
 - (c) any unsold personal property shall be released to the tenant.
- (11) If the tenant is not present at the public sale:
 - (a) all items may be sold; and
 - (b) any surplus amount over the amount due to the owner shall be paid to the tenant, if the tenant's current location is known. If the tenant's location is not known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Amended by Chapter 206, 2013 General Session