

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 400

INTRODUCER: Judiciary Committee and Senator Margolis

SUBJECT: Landlord/Possession of Dwelling Unit

DATE: February 22, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill permits a landlord to take possession of a dwelling unit and remove a deceased tenant's property 60 days after the tenant dies under certain circumstances. A landlord's possession of the dwelling unit is permissible if rent remains unpaid and the landlord has not been notified in writing of the existence of a probate estate or the name and address of the personal representative. The bill, however, does not apply to a dwelling unit occupied by a tenant participating in certain federally administered or regulated housing programs.

This bill substantially amends sections 83.59 and 83.67, Florida Statutes.

II. Present Situation:

Part II of chapter 83, F.S., titled "Florida Residential Landlord and Tenant Act" (act), governs the relationship between landlords and tenants in a residential lease agreement.¹ The provisions of the act specifically address the payment of rent,² duration of leases,³ security deposits,⁴ maintenance of the dwelling and premises,⁵ termination of rental agreements,⁶ liquidated

¹ Part II of ch. 83, F.S., expressly applies to the rental of a "dwelling unit," which is defined as a structure or part of a structure rented for use as a home, residence, or sleeping place. It also includes mobile homes rented by a tenant. *See* s. 83.43(2), F.S.

² Section 83.46, F.S.

³ *Id.*

⁴ Section 83.49, F.S.

⁵ Sections 83.51 and 83.52, F.S.

⁶ Section 83.56, F.S.

damages for failure to provide notice before vacating,⁷ penalty for holding over,⁸ and a landlord's remedies for the breach of a lease.⁹

Possession of a Dwelling Unit

Under s. 83.59, F.S., a landlord has three grounds to take possession of a rented dwelling unit:

- 1) The landlord files a legal action in court, and the court issues a judgment giving possession of the dwelling unit to the landlord;
- 2) The tenant surrenders possession of a dwelling unit to a landlord; or
- 3) The tenant abandons the dwelling unit.

Once a landlord is authorized to take possession of a rented dwelling unit, the landlord may remove the tenant's personal property.¹⁰

Probate Matters

The death of a tenant may create difficulties for landlords. Under s. 733.607(1), F.S., the tenant's property becomes the tenant's estate. As the property is no longer the tenant's, landlords may not have clear legal authority to remove the property under existing landlord-tenant law. The property may have to be removed by the personal representative of the tenant's estate. However, the law does not require the initiation of probate proceedings for all persons who pass away in this state. As such, in some cases, no personal representative will exist to take possession of the deceased tenant's property.

In the event that a probate proceeding is initiated, it will likely be initiated soon after a decedent's death. For example, s. 732.901, F.S., requires the custodian of a decedent's will to file it with a clerk of court within 10 days of notice of the testator's death. Once probate is commenced, the personal representative will have the authority to use the decedent's assets to pay the decedent's rental payments and to collect the decedent's property.¹¹

III. Effect of Proposed Changes:

The bill permits a landlord to take possession of a dwelling unit and remove a deceased tenant's property 60 days after the tenant dies under certain circumstances. A landlord's possession of the dwelling unit is permissible if rent remains unpaid and the landlord has not been notified in writing of the existence of a probate estate or the name and address of the personal representative.

The bill provides that it does not apply to a dwelling unit occupied by a tenant participating in federally administered or regulated housing programs, including those under ss. 8, 202, 221, and

⁷ Section 83.575, F.S.

⁸ Section 83.58, F.S.

⁹ Section 83.595, F.S.

¹⁰ Section 83.67(5), F.S. Sections 715.10-715.111, F.S., describe procedures by which landlords may dispose of personal property left behind by tenants.

¹¹ See s. 733.608, F.S.

236 of the National Housing Act (NHA). Section 8, NHA, authorizes the U.S. Department of Housing and Urban Development (HUD) to subsidize rental payments for lower-income families. Section 202 authorizes rental payment subsidies on behalf of very low-income elderly persons.

The bill, however, incorrectly implies that ss. 221 and 236, NHA, apply to tenants, rather than landlords. Those NHA sections authorize benefits to landlords who rent to low-to-moderate-income persons, families, and displaced persons. Section 221, NHA, authorizes HUD to insure mortgages. Section 236, NHA, authorizes mortgage payment subsidies. As a result, the Legislature may wish to make a technical amendment to the bill. That amendment should clarify that the bill does not apply to certain dwelling units regulated or administered under federal law, rather than dwelling units occupied by certain tenants participating in federal programs.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may facilitate the re-letting of rental dwelling units upon the death of their occupants.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The provisions of the bill incorrectly imply that s. 221 and s. 236 of the National Housing Act (NHA) apply to tenants rather than landlords. Those NHA sections authorize benefits to landlords who rent to low-to-moderate-income persons, families, and displaced persons. Section

221, NHA, authorizes HUD to insure mortgages. Section 236, NHA, authorizes mortgage payment subsidies. As a result, the Legislature may wish to make a technical amendment to the bill. That amendment should clarify that the bill does not apply to certain dwelling units regulated or administered under federal law, rather than dwelling units occupied by certain tenants participating in federal programs.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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