

Insights

New Florida Law Will Improve Remedies for Owners to Remove Squatters from Homes

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Florida has attracted a lot of investors buying homes to rent out, as well as persons buying vacation or second homes. Additionally, some owners downsize or upsize their homes, keeping and renting out their old home after they buy their new one. Since these homes are not the primary residence of the owners, it is not uncommon for them to be vacant at times, and thereby attract squatters. Most people have probably heard horror stories about squatters taking over an unoccupied home, and the nightmares they can cause for owners. Squatters can live rent-free and cause significant damage to a home while the owner undertakes the legal proceedings to remove them, after which some squatters move on to occupy and damage another vacant home the same way.

In response to increasing concerns among Florida property owners about squatters' rights and the time and cost required to remove them, not to mention the damage they can do to the property, the Florida Legislature approved a bill that was signed by Governor DeSantis and will become law on July 1, 2024.

This new law establishes Florida Statute, Section 82.036, which is designed to facilitate the prompt removal of squatters from residential dwellings, a process which until now has required the owner to initiate potentially lengthy and expensive Court proceedings that can sometimes take months to resolve while the squatters remain in occupancy of (and potentially cause damage to) an owner's residential dwelling.

Instead of filing a Complaint with the Court, an owner can request the local County Sheriff to remove unauthorized occupant(s) immediately upon the owner filing a Complaint with the Sheriff, as long as all of the following conditions are met:

1. The person filing the Complaint is the owner of the dwelling or its authorized agent;
2. The property being occupied includes a residential dwelling;

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3. An unauthorized person or persons have unlawfully entered and remain on the property;
4. The property was not open to the public when the entry occurred;
5. The owner directed the unauthorized occupant(s) to leave the property
6. The unauthorized occupant(s) are not current or former tenants of the property pursuant to a written or oral lease with the owner;
7. The unauthorized occupant(s) are not immediate family members of the owner; and
8. There is no pending litigation relating to the property between the owner and the unauthorized occupant(s).

The Complaint form is prescribed by the Statute, and must state: (i) that all of these conditions have been met, (ii) the date on which the owner acquired the property, (iii) that the unauthorized occupant(s) are not co-owners of the property nor listed on the title to the property (unless engaged in title fraud), and (iv) that the owner acknowledges that any false statements in the Complaint can subject the owner to liability for actual damages, penalties, costs and reasonable attorneys' fees. The owner is required to provide the Sheriff with the owner's valid governmentally issued identification at the time of filing the Complaint, along with evidence that the party filing the Complaint, if an agent of the owner, is duly authorized by the owner to do so.

Once the Complaint is filed, the Sheriff is required to verify that it was submitted by or on behalf of the proper owner of the property (presumably by checking public records). After this is done, and "without delay" (according to the new law), the Sheriff must serve a Notice of the Complaint on the unauthorized occupant(s) of the dwelling by hand delivery or by posting on the front door of the dwelling. At that time, the Sheriff is required to put the owner in possession of the property, meaning that the Sheriff can forcibly remove the unauthorized occupant(s), if needed.

The Sheriff is required to attempt to verify the identity of the unauthorized occupant(s) when the Notice is served, and note that information in its confirmation that service has been accomplished. Nothing prohibits the Sheriff from arresting any person found in the dwelling for trespass, outstanding warrants, or any other legal cause. The Sheriff is entitled to require the owner to pay a statutory fee for service of the Notice.

The owner can request the Sheriff to make a deputy available to keep the peace while the owner changes the locks and removes the personal property of the unauthorized occupant(s), which can be left at or near the property line. The Sheriff is entitled to require the owner to pay a reasonable hourly rate for any deputy assigned to such a duty. Neither the Sheriff nor the owner will be liable to the unauthorized occupant(s) for loss, destruction or damage to their personal property, except that the owner could be found liable if the removal is later found to have been unlawful.

The new law does not limit an owner's remedies against, or the Sheriff's right to arrest, any unlawful occupant for trespassing, vandalism, theft or other crimes.

An occupant who has been wrongfully removed has the right to pursue a civil claim in Court against the owner, which may include as remedies the restoration of possession and the recovery of damages. In addition to actual damages, the occupant can recover damages equal to triple the fair market rental value of the property for the period that they were wrongfully denied possession, as well as reasonable attorneys' fees and court costs.

The new law amends the penalties for criminal mischief under Florida Statutes, Section 806.13, to provide that a person who unlawfully detains, occupies or trespasses upon a residential dwelling and who intentionally damages the dwelling causing \$1,000 or more in damage commits a 2nd degree felony, which can be punishable

by incarceration and/or fines.

The new law also amends Florida Statutes, Section 817, pertaining to fraudulent practices, in two respects. First, any person who presents a false document purporting to be a valid lease or deed in order to detain or remain on real property commits a 1st degree misdemeanor. Second, any person who lists or advertises residential real property for sale, or rents the property to another, in either case without the authority of the owner, commits a 1st degree felony. Each of these offenses is punishable by incarceration and/or fines.

Given the potential liability that could be asserted against an owner who wrongfully removes occupants from the owner's property, any owner whose property is being occupied by unauthorized persons should consult an experienced real estate attorney before proceeding to recover their property under this new law.

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