

Select Year:

The 2006 Florida Statutes

CHAPTER 83

LANDLORD AND TENANT

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83.001 Application.--This part applies to nonresidential tenancies and all tenancies not governed by part II of this chapter.

History.--s. 1, ch. 73-330.

83.01 Unwritten lease tenancy at will; duration.--Any lease of lands and tenements, or either, made shall be deemed and held to be a tenancy at will unless it shall be in writing signed by the lessor. Such tenancy shall be from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.--ss. 1, 2, ch. 5441, 1905; RGS 3567, 3568; CGL 5431, 5432; s. 34, ch. 67-254.

83.02 Certain written leases tenancies at will; duration.--Where any tenancy has been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which tenancy is unlimited, the tenancy shall be a tenancy at will. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then the tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.--s. 2, ch. 5441, 1905; RGS 3568; CGL 5432; s. 2, ch. 15057, 1931; s. 34, ch. 67-254.

83.03 Termination of tenancy at will; length of notice.--A tenancy at will may be terminated by either party giving notice as follows:

- (1) Where the tenancy is from year to year, by giving not less than 3 months' notice prior to the end of any annual period;
- (2) Where the tenancy is from quarter to quarter, by giving not less than 45 days' notice prior to the end of any quarter;
- (3) Where the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and
- (4) Where the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.--s. 3, ch. 5441, 1905; RGS 3569; CGL 5433; s. 34, ch. 67-254; s. 3, ch. 2003-5.

83.04 Holding over after term, tenancy at sufferance, etc.--When any tenancy created by an instrument in writing, the term of which is limited, has expired and the tenant holds over in the possession of said premises without renewing the lease by some further instrument in writing then such holding over shall be construed to be a tenancy at sufferance. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law.

History.--s. 4, ch. 5441, 1905; RGS 3570; CGL 5434; s. 3, ch. 15057, 1931; s. 34, ch. 67-254.

83.05 Right of possession upon default in rent; determination of right of possession in action or surrender or abandonment of premises.--

- (1) If any person leasing or renting any land or premises other than a dwelling unit fails to pay the rent at the time it becomes due, the lessor has the right to obtain possession of the premises as provided by law.
- (2) The landlord shall recover possession of rented premises only:
 - (a) In an action for possession under s. 83.20, or other civil action in which the issue of right of possession is determined;
 - (b) When the tenant has surrendered possession of the rented premises to the landlord; or
 - (c) When the tenant has abandoned the rented premises.
- (3) In the absence of actual knowledge of abandonment, it shall be presumed for purposes of paragraph (2)(c) that the tenant has abandoned the rented premises if:
 - (a) The landlord reasonably believes that the tenant has been absent from the rented premises for a period of 30 consecutive days;
 - (b) The rent is not current; and
 - (c) A notice pursuant to s. 83.20(2) has been served and 10 days have elapsed since service of such

notice.

However, this presumption does not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence.

History.--s. 5, Nov. 21, 1828; RS 1750; GS 2226; RGS 3534; CGL 5398; s. 34, ch. 67-254; s. 1, ch. 83-151.

83.06 Right to demand double rent upon refusal to deliver possession.--

(1) When any tenant refuses to give up possession of the premises at the end of the tenant's lease, the landlord, the landlord's agent, attorney, or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

(2) All contracts for rent, verbal or in writing, shall bear interest from the time the rent becomes due, any law, usage or custom to the contrary notwithstanding.

History.--ss. 4, 6, Nov. 21, 1828; RS 1759; GS 2235; RGS 3554; CGL 5418; s. 34, ch. 67-254; s. 427, ch. 95-147.

83.07 Action for use and occupation.--Any landlord, the landlord's heirs, executors, administrators or assigns may recover reasonable damages for any house, lands, tenements, or hereditaments held or occupied by any person by the landlord's permission in an action on the case for the use and occupation of the lands, tenements, or hereditaments when they are not held, occupied by or under agreement or demise by deed; and if on trial of any action, any demise or agreement (not being by deed) whereby a certain rent was reserved is given in evidence, the plaintiff shall not be dismissed but may make use thereof as an evidence of the quantum of damages to be recovered.

History.--s. 7, Nov. 21, 1828; RS 1760; GS 2236; RGS 3555; CGL 5419; s. 34, ch. 67-254; s. 428, ch. 95-147.

83.08 Landlord's lien for rent.--Every person to whom rent may be due, the person's heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

(1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

(2) Upon all other property of the lessee or his or her sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.

(3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

History.--ss. 1, 9, 10, ch. 3131, 1879; RS 1761; GS 2237; RGS 3556; CGL 5420; s. 34, ch. 67-254; s. 429, ch. 95-147.

83.09 Exemptions from liens for rent.--No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes and wearing apparel.

History.--s. 6, Feb. 14, 1835; RS 1762; GS 2238; RGS 3557; CGL 5421; s. 34, ch. 67-254.

83.10 Landlord's lien for advances.--Landlords shall have a lien on the crop grown on rented land for advances made in money or other things of value, whether made directly by them or at their instance and requested by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well-being of the tenant or the tenant's family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market. They shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained, by barter or exchange for any articles advanced, for the aggregate value or price of all the property or articles so advanced. The liens upon the crop shall be of equal dignity with liens for rent, and upon the articles advanced shall be paramount to all other liens.

History.--s. 2, ch. 3247, 1879; RS 1763; GS 2239; RGS 3558; CGL 5422; s. 34, ch. 67-254; s. 430, ch. 95-147.

83.11 Distress for rent; complaint.--Any person to whom any rent or money for advances is due or the person's agent or attorney may file an action in the court in the county where the land lies having jurisdiction of the amount claimed, and the court shall have jurisdiction to order the relief provided in this part. The complaint shall be verified and shall allege the name and relationship of the defendant to the plaintiff, how the obligation for rent arose, the amount or quality and value of the rent due for such land, or the advances, and whether payable in money, an agricultural product, or any other thing of value.

History.--s. 2, ch. 3131, 1879; RS 1764; GS 2240; RGS 3559; CGL 5423; s. 34, ch. 67-254; s. 1, ch. 80-282; s. 431, ch. 95-147.

83.12 Distress writ.--A distress writ shall be issued by a judge of the court which has jurisdiction of the amount claimed. The writ shall enjoin the defendant from damaging, disposing of, secreting, or removing any property liable to distress from the rented real property after the time of service of the writ until the sheriff levies on the property, the writ is vacated, or the court otherwise orders. A violation of the command of the writ may be punished as a contempt of court. If the defendant does not move for dissolution of the writ as provided in s. 83.135, the sheriff shall, pursuant to a further order of the court, levy on the property liable to distress forthwith after the time for answering the complaint has expired. Before the writ issues, the plaintiff or the plaintiff's agent or attorney shall file a bond with surety to be approved by the clerk payable to defendant in at least double the sum demanded or, if property, in double the value of the property sought to be levied on, conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the distress.

History.--s. 2, ch. 3131, 1879; RS 1765; GS 2241; s. 10, ch. 7838, 1919; RGS 3560; CGL 5424; s. 34, ch. 67-254; s. 2, ch. 80-282; s. 432, ch. 95-147.

83.13 Levy of writ.--The sheriff shall execute the writ by service on defendant and, upon the order of the court, by levy on property distrainable for rent or advances, if found in the sheriff's jurisdiction. If the property is in another jurisdiction, the party who had the writ issued shall deliver the writ to the sheriff in the other jurisdiction; and that sheriff shall execute the writ, upon order of the court, by levying on the property and delivering it to the sheriff of the county in which the action is pending, to be disposed of according to law, unless he or she is ordered by the court from which the writ emanated to hold the property and dispose of it in his or her jurisdiction according to law. If the plaintiff shows by a sworn statement that the defendant cannot be found within the state, the levy on the property suffices as service on the defendant.

History.--s. 3, ch. 3721, 1887; RS 1765; GS 2241; RGS 3560; CGL 5424; s. 34, ch. 67-254; s. 3, ch. 80-282; s. 15, ch. 82-66; s. 8, ch. 83-255; s. 433, ch. 95-147; s. 5, ch. 2004-273.

83.135 Dissolution of writ.--The defendant may move for dissolution of a distress writ at any time. The court shall hear the motion not later than the day on which the sheriff is authorized under the writ to levy on property liable under distress. If the plaintiff proves a prima facie case,

or if the defendant defaults, the court shall order the sheriff to proceed with the levy.

History.--s. 4, ch. 80-282.

83.14 Replevy of distrained property.--The property distrained may be restored to the defendant at any time on the defendant's giving bond with surety to the sheriff levying the writ. The bond shall be approved by such sheriff; made payable to plaintiff in double the value of the property levied on, with the value to be fixed by the sheriff; and conditioned for the forthcoming of the property restored to abide the final order of the court. It may be also restored to defendant on defendant's giving bond with surety to be approved by the sheriff making the levy conditioned to pay the plaintiff the amount or value of the rental or advances which may be adjudicated to be payable to plaintiff. Judgment may be entered against the surety on such bonds in the manner and with like effect as provided in s. 76.31.

History.--s. 3, ch. 3131, 1879; RS 1766; s. 1, ch. 4408, 1895; RGS 3561; CGL 5425; s. 34, ch. 67-254; s. 16, ch. 82-66; s. 9, ch. 83-255; s. 434, ch. 95-147.

83.15 Claims by third persons.--Any third person claiming any property so distrained may interpose and prosecute his or her claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

History.--s. 7, ch. 3131, 1879; RS 1770; GS 2246; RGS 3565; CGL 5429; s. 34, ch. 67-254; s. 17, ch. 82-66; s. 435, ch. 95-147.

83.18 Distress for rent; trial; verdict; judgment.--If the verdict or the finding of the court is for plaintiff, judgment shall be rendered against defendant for the amount or value of the rental or advances, including interest and costs, and against the surety on defendant's bond as provided for in s. 83.14, if the property has been restored to defendant, and execution shall issue. If the verdict or the finding of the court is for defendant, the action shall be dismissed and defendant shall have judgment and execution against plaintiff for costs.

History.--RS 1768; s. 3, ch. 4408, 1895; GS 2244; RGS 3563; CGL 5427; s. 14, ch. 63-559; s. 34, ch. 67-254; s. 18, ch. 82-66.

83.19 Sale of property distrained.--

(1) If the judgment is for plaintiff and the property in whole or in part has not been replevied, it, or the part not restored to the defendant, shall be sold and the proceeds applied on the payment of the execution. If the rental or any part of it is due in agricultural products and the property distrained, or any part of it, is of a similar kind to that claimed in the complaint, the property up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed), may be delivered to the plaintiff as a payment on the plaintiff's execution at his or her request.

(2) When any property levied on is sold, it shall be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on shall be sold at the location advertised in the notice of sheriff's sale.

(3) Before the sale if defendant appeals and obtains supersedeas and pays all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to defendant and there shall be no sale.

(4) In case any property is sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of the rental at the time it became due.

History.--ss. 5, 6, ch. 3131, 1879; RS 1769; GS 2245; RGS 3564; CGL 5428; s. 34, ch. 67-254; s. 19, ch. 82-66; s. 10, ch. 83-255; s. 436, ch. 95-147.

83.20 Causes for removal of tenants.--Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(1) Where such person holds over and continues in the possession of the demised premises, or any part thereof, after the expiration of the person's time, without the permission of the person's landlord.

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing requiring the payment of the rent or the possession of the premises has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place.

(3) Where such person holds over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent, and when 15 days' written notice requiring the cure of such breach or the possession of the premises has been served on the tenant. This subsection applies only when the lease is silent on the matter or when the tenancy is an oral one at will. The notice may give a longer time period for cure of the breach or surrender of the premises. In the absence of a lease provision prescribing the method for serving notices, service must be by mail, hand delivery, or, if the tenant is absent from the rental premises or the address designated by the lease, by posting.

History.--s. 1, ch. 3248, 1881; RS 1751; GS 2227; RGS 3535; CGL 5399; s. 34, ch. 67-254; s. 20, ch. 77-104; s. 2, ch. 88-379; s. 1, ch. 93-70; s. 437, ch. 95-147.

83.201 Notice to landlord of failure to maintain or repair, rendering premises wholly untenable; right to withhold rent.--When the lease is silent on the procedure to be followed to effect repair or maintenance and the payment of rent relating thereto, yet affirmatively and expressly places the obligation for same upon the landlord, and the landlord has failed or refused to do so, rendering the leased premises wholly untenable, the tenant may withhold rent after notice to the landlord. The tenant shall serve the landlord, in the manner prescribed by s. 83.20 (3), with a written notice declaring the premises to be wholly untenable, giving the landlord at least 20 days to make the specifically described repair or maintenance, and stating that the tenant will withhold the rent for the next rental period and thereafter until the repair or maintenance has been performed. The lease may provide for a longer period of time for repair or maintenance. Once the landlord has completed the repair or maintenance, the tenant shall pay the landlord the amounts of rent withheld. If the landlord does not complete the repair or maintenance in the allotted time, the parties may extend the time by written agreement or the tenant may abandon the premises, retain the amounts of rent withheld, terminate the lease, and avoid any liability for future rent or charges under the lease. This section is cumulative to other existing remedies, and this section does not prevent any tenant from exercising his or her other remedies.

History.--s. 2, ch. 93-70; s. 438, ch. 95-147.

83.202 Waiver of right to proceed with eviction claim.--The landlord's acceptance of the full amount of rent past due, with knowledge of the tenant's breach of the lease by nonpayment, shall be considered a waiver of the landlord's right to proceed with an eviction claim for nonpayment of that rent. Acceptance of the rent includes conduct by the landlord concerning any tender of the rent by the tenant which is inconsistent with reasonably prompt return of the payment to the tenant.

History.--s. 3, ch. 93-70.

83.21 Removal of tenant.--The landlord, the landlord's attorney or agent, applying for the removal of any tenant, shall file a complaint stating the facts which authorize the removal of the tenant, and describing the premises in the proper court of the county where the premises are situated and is entitled to the summary procedure provided in s. 51.011.

History.--s. 2, ch. 3248, 1881; RS 1752; GS 2228; RGS 3536; CGL 5400; s. 1, ch. 61-318; s. 34, ch. 67-254; s. 439, ch. 95-147.

83.22 Removal of tenant; service.--

(1) After at least two attempts to obtain service as provided by law, if the defendant cannot be found in the county in which the action is pending and either the defendant has no usual place of abode in the county or there is no person 15 years of age or older residing at the defendant's usual place of abode in the county, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceeding. The minimum time delay between the two attempts to obtain service shall be 6 hours.

(2) If a landlord causes, or anticipates causing, a defendant to be served with a summons and complaint solely by attaching them to some conspicuous part of the premises involved in the proceeding, the landlord shall provide the clerk of the court with two additional copies of the complaint and two prestamped envelopes addressed to the defendant. One envelope shall be addressed to such address or location as has been designated by the tenant for receipt of notice in a written lease or other agreement or, if none has been designated, to the residence of the tenant, if known. The second envelope shall be addressed to the last known business address of the tenant. The clerk of the court shall immediately mail the copies of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service shall be effective on the date of posting or mailing, whichever occurs later; and at least 5 days from the date of service must have elapsed before a judgment for final removal of the defendant may be entered.

History.--s. 2, ch. 3248, 1881; RS 1753; GS 2229; RGS 3537; CGL 5401; s. 1, ch. 22731, 1945; s. 34, ch. 67-254; s. 2, ch. 83-151; s. 3, ch. 84-339; s. 440, ch. 95-147.

83.231 Removal of tenant; judgment.--If the issues are found for plaintiff, judgment shall be entered that plaintiff recover possession of the premises. If the plaintiff expressly and specifically sought money damages in the complaint, in addition to awarding possession of the premises to the plaintiff, the court shall also direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment in favor of the plaintiff and against the defendant for the amount of money found due, owing, and unpaid by the defendant, with costs. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court, and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. Where otherwise authorized by law, the plaintiff in the judgment for possession and money damages may also be awarded attorney's fees and costs. If the issues are found for defendant, judgment shall be entered dismissing the action.

History.--s. 8, ch. 6463, 1913; RGS 3549; CGL 5413; s. 34, ch. 67-254; s. 1, ch. 87-195; s. 4, ch. 93-70; s. 441, ch. 95-147.

Note.--Former s. 83.34.

83.232 Rent paid into registry of court.--

(1) In an action by the landlord which includes a claim for possession of real property, the tenant

shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid. Unless the tenant disputes the amount of accrued rent, the tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his or her answer to the claim for possession is due. If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court registry on the day that the court makes its determination. The court may, however, extend these time periods to allow for later payment, upon good cause shown. Even though the defense of payment or satisfaction has been asserted, the court, in its discretion, may order the tenant to pay into the court registry the rent that accrues during the pendency of the action, the time of accrual being as set forth in the lease. If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds so held in the court registry.

(2) If the tenant contests the amount of money to be placed into the court registry, any hearing regarding such dispute shall be limited to only the factual or legal issues concerning:

(a) Whether the tenant has been properly credited by the landlord with any and all rental payments made; and

(b) What properly constitutes rent under the provisions of the lease.

(3) The court, on its own motion, shall notify the tenant of the requirement that rent be paid into the court registry by order, which shall be issued immediately upon filing of the tenant's initial pleading, motion, or other paper.

(4) The filing of a counterclaim for money damages does not relieve the tenant from depositing rent due into the registry of the court.

(5) Failure of the tenant to pay the rent into the court registry pursuant to court order shall be deemed an absolute waiver of the tenant's defenses. In such case, the landlord is entitled to an immediate default for possession without further notice or hearing thereon.

History.--s. 5, ch. 93-70; s. 442, ch. 95-147.

83.241 Removal of tenant; process.--After entry of judgment in favor of plaintiff the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put plaintiff in possession.

History.--s. 9, ch. 6463, 1913; RGS 3550; CGL 5414; s. 34, ch. 67-254; s. 1, ch. 70-360; s. 5, ch. 94-170; s. 1371, ch. 95-147.

Note.--Former s. 83.35.

83.251 Removal of tenant; costs.--The prevailing party shall have judgment for costs and execution shall issue therefor.

History.--s. 11, ch. 6463, 1913; RGS 3552; CGL 5416; s. 34, ch. 67-254.

Note.--Former s. 83.37.

PART II

RESIDENTIAL TENANCIES

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83.40 Short title.--This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.--s. 2, ch. 73-330.

83.41 Application.--This part applies to the rental of a dwelling unit.

History.--s. 2, ch. 73-330; ss. 2, 20, ch. 82-66.

83.42 Exclusions from application of part.--This part does not apply to:

- (1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- (2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part.
- (3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.
- (4) Occupancy by a holder of a proprietary lease in a cooperative apartment.
- (5) Occupancy by an owner of a condominium unit.

History.--s. 2, ch. 73-330.

83.43 Definitions.--As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

- (1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.
- (2) "Dwelling unit" means:
 - (a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.
 - (b) A mobile home rented by a tenant.
 - (c) A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.

- (3) "Landlord" means the owner or lessor of a dwelling unit.
- (4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.
- (5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.
- (6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.
- (7) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.
- (8) "Good faith" means honesty in fact in the conduct or transaction concerned.
- (9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.
- (10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.
- (11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.
- (12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.
- (13) "Legal holiday" means holidays observed by the clerk of the court.
- (14) "Servicemember" shall have the same meaning as provided in s. 250.01.
- (15) "Active duty" shall have the same meaning as provided in s. 250.01.
- (16) "State active duty" shall have the same meaning as provided in s. 250.01.

History.--s. 2, ch. 73-330; s. 1, ch. 74-143; s. 1, ch. 81-190; s. 3, ch. 83-151; s. 17, ch. 94-170; s. 2, ch. 2003-72.

83.44 Obligation of good faith.--Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.--s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.--

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.--s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.--

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

(3) If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of the tenancy, the duration is determined by the periods for which wages are payable. If wages are payable weekly or more frequently, then the tenancy is from week to week; and if wages are payable monthly or no wages are payable, then the tenancy is from month to month. In the event that the employee ceases employment, the employer shall be entitled to rent for the period from the day after the employee ceases employment until the day that the dwelling unit is vacated at a rate equivalent to the rate charged for similarly situated residences in the area. This subsection shall not apply to an employee or a resident manager of an apartment house or an apartment complex when there is a written agreement to the contrary.

History.--s. 2, ch. 73-330; s. 2, ch. 81-190; s. 2, ch. 87-195; s. 2, ch. 90-133; s. 1, ch. 93-255.

83.47 Prohibited provisions in rental agreements.--

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.--s. 2, ch. 73-330.

83.48 Attorney's fees.--In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the nonprevailing party.

History.--s. 2, ch. 73-330; s. 4, ch. 83-151.

83.49 Deposit money or advance rent; duty of landlord and tenant.--

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent for other than the next immediate rental

period, the landlord or the landlord's agent shall either:

(a) Hold the total amount of such money in a separate non-interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord;

(b) Hold the total amount of such money in a separate interest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, in which case the tenant shall receive and collect interest in an amount of at least 75 percent of the annualized average interest rate payable on such account or interest at the rate of 5 percent per year, simple interest, whichever the landlord elects. The landlord shall not commingle such moneys with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord; or

(c) Post a surety bond, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety, with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he or she holds on behalf of the tenants or \$50,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section. In addition to posting the surety bond, the landlord shall pay to the tenant interest at the rate of 5 percent per year, simple interest. A landlord, or the landlord's agent, engaged in the renting of dwelling units in five or more counties, who holds deposit moneys or advance rent and who is otherwise subject to the provisions of this section, may, in lieu of posting a surety bond in each county, elect to post a surety bond in the form and manner provided in this paragraph with the office of the Secretary of State. The bond shall be in the total amount of the security deposit or advance rent held on behalf of tenants or in the amount of \$250,000, whichever is less. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the Governor for the benefit of any tenant injured by the landlord's violation of this section. In addition to posting a surety bond, the landlord shall pay to the tenant interest on the security deposit or advance rent held on behalf of that tenant at the rate of 5 percent per year simple interest.

(2) The landlord shall, within 30 days of receipt of advance rent or a security deposit, notify the tenant in writing of the manner in which the landlord is holding the advance rent or security deposit and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant. Such written notice shall:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.

(c) Include a copy of the provisions of subsection (3).

Subsequent to providing such notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she shall notify the tenant within 30 days of the change according to the provisions herein set forth. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice shall not be a defense to the payment of rent when due.

(3)(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to

give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, shall constitute compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509; nor do they apply in those instances in which the amount of rent or deposit, or both, is regulated by law or by rules or regulations of a public body, including public housing authorities and federally administered or regulated housing programs including s. 202, s. 221(d)(3) and (4), s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization. With the exception of subsections (3), (5), and (6), this section is not applicable to housing authorities or public housing agencies created pursuant to chapter 421 or other statutes.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' written notice by certified mail or personal delivery to the landlord prior to vacating or abandoning the premises which notice shall include the address where the tenant may be reached. Failure to give such notice shall relieve the landlord of the notice requirement of paragraph (3)(a) but shall not waive any right the tenant may have to the security deposit or any part of it.

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned interest and with an accurate accounting showing the amounts to be credited to each

tenant account. Upon the transfer of such funds and records as stated herein, and upon transmittal of a written receipt therefor, the transferor shall be free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. However, nothing herein shall excuse the landlord or agent for a violation of the provisions of this section while in possession of such deposits.

(8) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his or her license by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the manner provided in s. 509.261.

(9) In those cases in which interest is required to be paid to the tenant, the landlord shall pay directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. However, no interest shall be due a tenant who wrongfully terminates his or her tenancy prior to the end of the rental term.

History.--s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400; s. 21, ch. 82-66; s. 5, ch. 83-151; s. 13, ch. 83-217; s. 3, ch. 87-195; s. 1, ch. 87-369; s. 3, ch. 88-379; s. 2, ch. 93-255; s. 5, ch. 94-218; s. 1372, ch. 95-147; s. 1, ch. 96-146; s. 1, ch. 2001-179; s. 53, ch. 2003-164.

Note.--Former s. 83.261.

83.50 Disclosure.--

(1) The landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

(2) The landlord or the landlord's authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, shall disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.

History.--s. 2, ch. 73-330; s. 443, ch. 95-147.

83.51 Landlord's obligation to maintain premises.--

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the

tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord shall not be liable for damages but shall abate the rent. The tenant shall be required to temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

(b) Unless otherwise agreed in writing, at the commencement of the tenancy of a single-family home or duplex, the landlord shall install working smoke detection devices. As used in this paragraph, the term "smoke detection device" means an electrical or battery-operated device which detects visible or invisible particles of combustion and which is listed by Underwriters Laboratories, Inc., Factory Mutual Laboratories, Inc., or any other nationally recognized testing laboratory using nationally accepted testing standards.

(c) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this subsection as a defense to an action for possession under s. 83.59.

(d) This subsection shall not apply to a mobile home owned by a tenant.

(e) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

History.--s. 2, ch. 73-330; s. 22, ch. 82-66; s. 4, ch. 87-195; s. 1, ch. 90-133; s. 3, ch. 93-255; s. 444, ch. 95-147; s. 8, ch. 97-95.

83.52 Tenant's obligation to maintain dwelling unit.--The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he or she occupies and uses clean and sanitary.

(3) Remove from the tenant's dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself or herself, and require other persons on the premises with his or her consent to conduct themselves, in a manner that does not unreasonably disturb the tenant's neighbors or constitute a breach of the peace.

History.--s. 2, ch. 73-330; s. 445, ch. 95-147.

83.53 Landlord's access to dwelling unit.--

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit upon reasonable notice to the tenant and at a reasonable time for the purpose of repair of the premises. "Reasonable notice" for the purpose of repair is notice given at least 12 hours prior to the entry, and reasonable time for the purpose of repair shall be between the hours of 7:30 a.m. and 8:00 p.m. The landlord may enter the dwelling unit when necessary for the further purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.--s. 2, ch. 73-330; s. 5, ch. 87-195; s. 4, ch. 93-255; s. 446, ch. 95-147.

83.535 Flotation bedding system; restrictions on use.--No landlord may prohibit a tenant from using a flotation bedding system in a dwelling unit, provided the flotation bedding system does not violate applicable building codes. The tenant shall be required to carry in the tenant's name flotation insurance as is standard in the industry in an amount deemed reasonable to protect the tenant and owner against personal injury and property damage to the dwelling units. In any case, the policy shall carry a loss payable clause to the owner of the building.

History.--s. 7, ch. 82-66; s. 5, ch. 93-255.

83.54 Enforcement of rights and duties; civil action.--Any right or duty declared in this part is enforceable by civil action.

History.--s. 2, ch. 73-330.

83.55 Right of action for damages.--If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.--s. 2, ch. 73-330.

83.56 Termination of rental agreement.--

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be adequate if it is in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because (cite the noncompliance).

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. The notice shall be adequate if it is in substantially the following form:

You are hereby notified that (cite the noncompliance). Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of _____ dollars for the rent and use of the premises (address of leased premises, including county), Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday, Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the _____ day of _____, (year).

(landlord's name, address and phone number)

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence.

(5) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes shall comply with the provisions in s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but shall enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2). This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 45 days of the noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3).

History.--s. 2, ch. 73-330; s. 23, ch. 82-66; s. 6, ch. 83-151; s. 14, ch. 83-217; s. 6, ch. 87-195; s. 6, ch. 93-255; s. 6, ch. 94-170; s. 1373, ch. 95-147; s. 5, ch. 99-6.

83.57 Termination of tenancy without specific term.--A tenancy without a specific duration, as defined in s. 83.46(2) or (3), may be terminated by either party giving written notice in the manner provided in s. 83.56(4), as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.--s. 2, ch. 73-330; s. 3, ch. 81-190; s. 15, ch. 83-217.

83.575 Termination of tenancy with specific duration.--

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement; however, a rental agreement may not require more than 60 days' notice before vacating the premises.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

History.--s. 3, ch. 2003-30; s. 1, ch. 2004-375.

83.58 Remedies; tenant holding over.--If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59 [F.S. 1973]. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.--s. 2, ch. 73-330.

83.59 Right of action for possession.--

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011 [F.S. 1971], and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord; or

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he or she is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption shall not apply if the rent is current or the tenant has notified the landlord, in writing, of an intended absence.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.--s. 2, ch. 73-330; s. 1, ch. 74-146; s. 24, ch. 82-66; s. 1, ch. 92-36; s. 447, ch. 95-147.

83.595 Choice of remedies upon breach by tenant.--

(1) If the tenant breaches the lease for the dwelling unit and the landlord has obtained a writ of possession, or the tenant has surrendered possession of the dwelling unit to the landlord, or the tenant has abandoned the dwelling unit, the landlord may:

(a) Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or

(b) Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rental stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a reletting; or

(c) Stand by and do nothing, holding the lessee liable for the rent as it comes due.

(2) If the landlord retakes possession of the dwelling unit for the account of the tenant, the landlord has a duty to exercise good faith in attempting to relet the premises, and any rentals received by the landlord as a result of the reletting shall be deducted from the balance of rent due from the tenant. For purposes of this section, "good faith in attempting to relet the premises" means that the landlord shall use at least the same efforts to relet the premises as were used in the initial rental or at least the same efforts as the landlord uses in attempting to lease other similar rental units but does not require the landlord to give a preference in leasing the premises over other vacant dwelling units that the landlord owns or has the responsibility to rent.

History.--s. 2, ch. 87-369; s. 4, ch. 88-379; s. 448, ch. 95-147.

83.60 Defenses to action for rent or possession; procedure.--

(1) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1) [F.S. 1973], or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The defense of a material noncompliance with s. 83.51(1) [F.S. 1973] may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50(1), a resident manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) [F.S. 1973] by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1) [F.S. 1973]. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default

judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. In the event a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies shall be required to deposit only that portion of the full rent for which the tenant is responsible pursuant to federal, state, or local program in which they are participating.

History.--s. 2, ch. 73-330; s. 7, ch. 83-151; s. 7, ch. 87-195; s. 7, ch. 93-255; s. 7, ch. 94-170; s. 1374, ch. 95-147.

83.61 Disbursement of funds in registry of court; prompt final hearing.--When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.--s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Restoration of possession to landlord.--

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises.

(2) At the time the sheriff executes the writ of possession or at any time thereafter, the landlord or the landlord's agent may remove any personal property found on the premises to or near the property line. Subsequent to executing the writ of possession, the landlord may request the sheriff to stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. Neither the sheriff nor the landlord or the landlord's agent shall be liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.

History.--s. 2, ch. 73-330; s. 3, ch. 82-66; s. 5, ch. 88-379; s. 8, ch. 94-170; s. 1375, ch. 95-147; s. 2, ch. 96-146.

83.625 Power to award possession and enter money judgment.--In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment with costs in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and no money judgment may be entered except in compliance with the Florida Rules of Civil Procedure. The prevailing party in the action may also be awarded attorney's fees and costs.

History.--s. 1, ch. 75-147; s. 8, ch. 87-195; s. 6, ch. 88-379.

83.63 Casualty damage.--If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may

vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3) [F.S. 1973].

History.--s. 2, ch. 73-330; s. 449, ch. 95-147.

83.64 Retaliatory conduct.--

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1); or

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

History.--s. 8, ch. 83-151; s. 450, ch. 95-147; s. 3, ch. 2003-72.

83.67 Prohibited practices.--

(1) A landlord of any dwelling unit governed by this part shall not cause, directly or indirectly, the termination or interruption of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, elevator, garbage collection, or refrigeration, whether or not the utility service is under the control of, or payment is made by, the landlord.

(2) A landlord of any dwelling unit governed by this part shall not prevent the tenant from gaining reasonable access to the dwelling unit by any means, including, but not limited to, changing the locks or using any bootlock or similar device.

(3) A landlord of any dwelling unit governed by this part shall not discriminate against a servicemember in offering a dwelling unit for rent or in any of the terms of the rental agreement.

(4) A landlord shall not prohibit a tenant from displaying one portable, removable, cloth or plastic United States flag, not larger than 4 and 1/2 feet by 6 feet, in a respectful manner in or on the

dwelling unit regardless of any provision in the rental agreement dealing with flags or decorations. The United States flag shall be displayed in accordance with s. 83.52(6). The landlord is not liable for damages caused by a United States flag displayed by a tenant. Any United States flag may not infringe upon the space rented by any other tenant.

(5) A landlord of any dwelling unit governed by this part shall not remove the outside doors, locks, roof, walls, or windows of the unit except for purposes of maintenance, repair, or replacement; and the landlord shall not remove the tenant's personal property from the dwelling unit unless such action is taken after surrender, abandonment, or a lawful eviction. If provided in the rental agreement or a written agreement separate from the rental agreement, upon surrender or abandonment by the tenant, the landlord is not required to comply with s. 715.104 and is not liable or responsible for storage or disposition of the tenant's personal property; if provided in the rental agreement, there must be printed or clearly stamped on such rental agreement a legend in substantially the following form:

BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER OR ABANDONMENT, AS DEFINED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

For the purposes of this section, abandonment shall be as set forth in s. 83.59(3)(c).

(6) A landlord who violates any provision of this section shall be liable to the tenant for actual and consequential damages or 3 months' rent, whichever is greater, and costs, including attorney's fees. Subsequent or repeated violations that are not contemporaneous with the initial violation shall be subject to separate awards of damages.

(7) A violation of this section constitutes irreparable harm for the purposes of injunctive relief.

(8) The remedies provided by this section are not exclusive and do not preclude the tenant from pursuing any other remedy at law or equity that the tenant may have. The remedies provided by this section shall also apply to a servicemember who is a prospective tenant who has been discriminated against under subsection (3).

History.--s. 3, ch. 87-369; s. 7, ch. 88-379; s. 3, ch. 90-133; s. 3, ch. 96-146; s. 2, ch. 2001-179; s. 2, ch. 2003-30; s. 4, ch. 2003-72; s. 1, ch. 2004-236.

83.681 Orders to enjoin violations of this part.--

(1) A landlord who gives notice to a tenant of the landlord's intent to terminate the tenant's lease pursuant to s. 83.56(2)(a), due to the tenant's intentional destruction, damage, or misuse of the landlord's property may petition the county or circuit court for an injunction prohibiting the tenant from continuing to violate any of the provisions of that part.

(2) The court shall grant the relief requested pursuant to subsection (1) in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases.

(3) Evidence of a tenant's intentional destruction, damage, or misuse of the landlord's property in an amount greater than twice the value of money deposited with the landlord pursuant to s. 83.49 or \$300, whichever is greater, shall constitute irreparable harm for the purposes of injunctive relief.

History.--s. 8, ch. 93-255; s. 451, ch. 95-147.

83.682 Termination of rental agreement by a servicemember.--

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty;

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days; or

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

(2) The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the servicemember's commanding officer.

(3) In the event a servicemember dies during active duty, an adult member of his or her immediate family may terminate the servicemember's rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders showing the servicemember was on active duty or a written verification signed by the servicemember's commanding officer and a copy of the servicemember's death certificate.

(4) Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at such time as would have otherwise been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due to the early termination of the tenancy as provided for in this section. Notwithstanding any provision of this section to the contrary, if a tenant terminates the rental agreement pursuant to this section 14 or more days prior to occupancy, no damages or penalties of any kind will be assessable.

(5) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

History.--s. 6, ch. 2001-179; s. 1, ch. 2002-4; s. 1, ch. 2003-30; s. 5, ch. 2003-72.

PART III

SELF-SERVICE STORAGE SPACE

83.801 Short title.

83.803 Definitions.

83.805 Lien.

83.8055 Withholding access to personal property upon nonpayment of rent.

83.806 Enforcement of lien.

83.808 Contractual liens.

83.809 Application of act.

83.801 Short title.--Sections 83.801-83.809 shall be known and may be cited as the "Self-storage Facility Act."

History.--s. 1, ch. 79-404; s. 1, ch. 82-151.

83.803 Definitions.--As used in ss. 83.801-83.809:

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property. No individual storage space may be used for residential purposes. A self-service storage facility is not a "warehouse" as that term is used in chapter 677. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the tenant shall be subject to the provisions of chapter 677, and the provisions of this act shall not apply.

(2) "Self-contained storage unit" means any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

(3) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit or his or her agent or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement.

(4) "Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space at a self-service storage facility or in a self-contained unit, under a rental agreement, to the exclusion of others.

(5) "Rental agreement" means any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility or use of a self-contained storage unit.

(6) "Last known address" means that address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery or certified mail in a subsequent written notice of a change of address.

History.--s. 1, ch. 79-404; s. 2, ch. 82-151; s. 2, ch. 92-36; s. 1, ch. 93-238; s. 452, ch. 95-147; s. 1, ch. 2006-4.

83.805 Lien.--The owner of a self-service storage facility or self-contained storage unit and the owner's heirs, executors, administrators, successors, and assigns have a lien upon all personal property, whether or not owned by the tenant, located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to ss. 83.801-83.809. The lien provided for in this section attaches as of the date that the personal property is brought to the self-service storage facility or as of the date the tenant takes possession of the self-contained storage unit, and the priority of this lien shall be the same as provided in s. 83.08; however, in the event of default, the owner must give notice to persons who hold perfected security interests under the Uniform Commercial Code in which the tenant is named as the debtor.

History.--s. 1, ch. 79-404; s. 3, ch. 82-151; s. 19, ch. 83-217; s. 2, ch. 93-238; s. 453, ch. 95-147.

83.8055 Withholding access to personal property upon nonpayment of rent.--Upon the failure of a tenant to pay the rent when it becomes due, the owner may, without notice, after 5 days from the date the rent is due, deny the tenant access to the personal property located in the self-service storage facility or self-contained storage unit. In denying the tenant access to personal property contained in the self-contained storage unit, the owner may proceed without judicial process, if this can be done without breach of the peace, or may proceed by action.

History.--s. 4, ch. 82-151; s. 3, ch. 93-238.

83.806 Enforcement of lien.--An owner's lien as provided in s. 83.805 may be satisfied as follows:

(1) The tenant shall be notified by written notice delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit.

(2) The notice shall include:

(a) An itemized statement of the owner's claim, showing the sum due at the time of the notice and the date when the sum became due.

(b) The same description, or a reasonably similar description, of the personal property as provided in the rental agreement.

(c) A demand for payment within a specified time not less than 14 days after delivery of the notice.

(d) A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(e) The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.

(a) The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).
2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.
3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication.

(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.

(5) Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section and shall be conducted in a commercially reasonable manner, as that term is used in s. 679.610.

(6) Before any sale or other disposition of personal property pursuant to this section, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the property to the tenant and thereafter shall have no liability to any person with respect to such personal property. If the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.

(7) A purchaser in good faith of the personal property sold to satisfy a lien provided for in s. 83.805 takes the property free of any claims, except those interests provided for in s. 83.808, despite noncompliance by the owner with the requirements of this section.

(8) In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by certified mail to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the balance. In the event that the owner's lien does not have priority over all other liens, the sale proceeds shall be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds shall be delivered by the owner to the tenant or secured lienholders in person or by certified mail to their last known addresses. If the tenant or the secured lienholders do not claim the sale proceeds within 2 years of the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the proceeds.

History.--s. 1, ch. 79-404; s. 5, ch. 82-151; s. 3, ch. 92-36; s. 4, ch. 93-238; s. 454, ch. 95-147; s. 15, ch. 2002-1.

83.808 Contractual liens.--Nothing in ss. 83.801-83.809 shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement nor shall it in any manner impair or affect any other lien arising at common law, in equity, or by any statute of this state or any other lien not provided for in s. 83.805.

History.--s. 6, ch. 82-151.

83.809 Application of act.--

(1) Nothing in this act shall be construed as in any manner impairing or affecting the right of parties to create additional rights, duties, and obligations in and by virtue of a rental agreement. The provisions of ss. 83.801-83.809 shall be in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.

(2) Chapter 82-151, Laws of Florida, shall apply to all rental agreements entered into, extended, or renewed after July 1, 1982.

History.--ss. 7, 10, ch. 82-151.

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ARTICLE I. LANDLORD PERMITS*

***Editor's note:** Ord. No. 960031, adopted July 22, 1996, created Art. I pertaining to landlordpermits. Formerly Art. I pertained to home occupation permits and was repealed by Ord. No. 3777, § 6, adopted June 10, 1992. The repealed provisions derived from Ord. No. 3548, § 1, adopted July 17, 1989.

Sec. 14.5-1. Landlord permits.

(a) *Application for permit; issuance of permit.* Every owner of a single-family dwelling, two-family dwelling, three-family dwelling, four-family dwelling, multiple-family dwelling, roominghouse, dormitory or other dwelling unit within a district designated in section 30-57 of this Code is required to get an annual landlord permit from the city manager or designee prior to leasing, subleasing, renting or allowing the occupancy of such unit to another natural person or other natural persons, unrelated to the owner, whether or not for consideration, except as provided in subsection (b). In the case of multiple owners of any such dwelling unit, it shall be sufficient for any one of the owners to have obtained a permit on the unit. The application shall be in writing and on a form provided by the city. Such annual permit shall be valid from January 1 through December 31 of each year and shall be issued and not revoked if:

- (1) An annual regulatory fee in accordance with the schedule set out in Appendix A is paid.
- (2) The applicant and the applicant's property are not in violation of this article.
- (3) The applicant provided the correct street address for all parcels or property covered by this article.

(b) *Exemption.* The provisions of this section do not apply if the dwelling unit is occupied by less than three persons 18 years of age or older, one of whom is the owner, and the children of one or both of these people.

(c) *Payment; late payment.* The city shall bill each applicant or holder of a landlord permit for the annual fee, once the city manager or designee determines that all requirements for the permit have been met. If payment is not received on the due date, an extra fee shall be due and payable as specified in Appendix A. If payment is not received within the time frames specified in Appendix A, the city manager or designee may refer the account to a collection agency. If the collection agency does not collect the amount due within 90 days of the referral, or if the city manager or designee decides not to refer the account to a collection agency, the applicant or permit holder shall be subject to citation for violation of this article and proceedings before the code enforcement board.

(d) *Failure to apply for permit.* If the city manager or designee has reasonable cause to believe that a dwelling unit is being leased, subleased, rented or occupied without a permit in violation of this article, the owner of the property shall be given notice that a permit is required and that an application must be filed with the city within 30 days of the notice. If an application, or evidence that a permit is not required, is not received on the due date, an extra fee shall be charged for the permit as specified in Appendix A. Failure to apply or provide evidence that a permit is not required within the time frames specified in Appendix A shall subject the owner to citation for violation of this article and proceedings before the code enforcement board.

(e) *Certifications of applicant for permit.* The applicant for a landlord permit will be required to

make the following certifications. Failure to comply with the provisions of either of these certifications shall be grounds for revocation of the permit for that unit, as described in section 14-5.2 below.

(1) Prior to executing a lease for the dwelling unit covered by the permit, applicant will provide each tenant with a copy of:

- a. F.S. ch. 83, pt. II, entitled "Residential Tenancies";
- b. Chapter 14.5, Article I of this Code, entitled "Landlord Permits"; and
- c. A pamphlet provided by the city containing guidelines for rentals in residential neighborhoods.

(2) That in the event the city provides notice to the applicant (property owner or designated agent) of repeated violations of certain ordinances by a tenant or guests of a tenant of the dwelling unit, as provided in section 14.5-2 below, the applicant will pursue all lawful remedies available under F.S. § 83.56, regarding termination of the rental agreement due to the tenant's failure to comply with F.S. ch. 83, the provisions of the lease or this Code.

(Ord. No. 960031, § 1, 7-22-96; Ord. No. 960604, § 1, 2-24-97; Ord. No. 990452, § 1, 11-8-99; Ord. No. 990861, § 1, 2-14-00; Ord. No. 020580, § 1, 4-28-03)

Sec. 14.5-2. Requirements of permittee.

(a) Any owner who resides outside Alachua County either at the time of procuring a permit or after having procured a permit shall appoint an agent who resides within the county for the purpose of receiving notices from the city concerning the permit. The owner shall notify the city in writing of the name, address, and telephone number of the agent. If the owner fails to appoint an agent or notify the city, the permittee shall be presumed to have agreed to constructive notice by publication in a newspaper of countywide circulation within Alachua County.

(b) The permittee and appointed agent, if any, shall maintain a list of the names of tenants in each dwelling unit. Such lists shall be available to the city upon reasonable notice.

(c) Adjudications of guilt or pleas of no contest of the city's noise ordinances (Chapter 15 of the Code of Ordinances), animal control ordinances (Chapter 5 of the Code of Ordinances), solid waste ordinances (Article III of Chapter 27 of the Code of Ordinances), ordinance on insects, storage, trash and yard maintenance (section 13-171 of the Code of Ordinances) or the provisions of section 30-57 concerning habitation by more than one family shall be a material breach of a lease of any unit regulated by this article, and grounds for termination of the lease.

(d) The city shall provide the permittee or agent with copies of pamphlets containing information on living in a residential neighborhood. The permittee or agent shall provide a pamphlet to at least one tenant of each dwelling unit covered by this ordinance before executing a lease for the unit.

(e) Rental units where there are repeated violations of ordinances that adversely affect the rights of nearby residents to the quiet enjoyment of their property constitute a public nuisance. To this end, repeated warnings of violation and/or adjudication of guilt or pleas of no contest (including, but not limited to, payment of fine) of the city's noise ordinances (Chapter 15 of the Code of Ordinances), animal control ordinances (Chapter 5 of the Code of Ordinances), solid waste ordinances (Article III of Chapter 27 of the Code of Ordinances), the provisions of section 30-57 concerning habitation by more than one family, yard parking ordinance (section 30-56(c) (4) of the Code of Ordinances), or sections 13-171 (related to insects, storage, trash and yard maintenance) and 13-181 (related to hazardous conditions) where the violation takes place at a unit regulated by this article shall be grounds for the commencement of permit revocation

proceedings as follows:

(1) For one or more written warnings given in any 24-hour period for violation of one or more of the ordinances listed above, one point will be assessed on the landlord permit for that unit. For each instance of adjudication of guilt or plea of no contest for violation of any of the ordinances listed above, two points will be assessed on the landlord permit for that unit. For purposes of this section, written warnings shall mean those warnings issued pursuant to civil citation or code enforcement procedures, including stickers placed on vehicles advising of violation of the yard parking ordinance.

(2) After three points are assessed on a landlord permit for a unit, the city manager or designee will send a written warning to the permittee or agent. The warning will specify which ordinance or ordinances have been violated and will state that further warnings or violations could lead to a revocation of the permit. No additional points will be assessed on the permit for the unit before this written warning is sent by mail or handdelivered to the last known address of the permittee or agent. The city may, as a courtesy, also attempt to notify the permittee or agent by e-mail or fax at the e-mail address or fax number provided to the city on the application for permit; however, failure to so notify the permittee or agent shall not affect the validity of the warning.

(3) Accumulation of six or more points on a landlord permit for a unit during a 12-month period commencing on August 1 and extending through the following July 31 shall constitute a violation of this section and the certifications of the applicant described above, subjecting the permittee to revocation of the permit. In this event, the following procedure shall be followed:

a. Service of the written notice to show cause why the permit should not be revoked shall be deemed complete if personally delivered upon the permittee or agent; and if the same cannot be delivered personally within the city, then service shall be made on the permittee or designated agent, and shall be deemed complete upon sending same by certified mail, return receipt requested, to the last known address of the owner or agent.

b. Any officer authorized by law to serve process or a duly appointed law enforcement officer of the city police department may make service of process. The person serving process shall make proof of service within the time during which the person served must respond to the process. Failure to make proof of service shall not affect the validity of the service.

c. The city attorney is authorized to appoint an independent person who is admitted to the practice of law in the State of Florida to conduct a hearing and make recommendations pursuant to this subsection.

d. The hearing officer shall conduct a hearing no sooner than 15 days after service is deemed complete and shall submit recommendations to the city manager within ten days of completion of the hearing.

e. The lack of knowledge of, acquiescence, or participation in, or responsibility for, a public nuisance on the part of the permittee or agent shall not be a defense by such permittee or agent. However, proof that the permittee or agent has commenced the process of terminating the lease and recovering possession of the rental unit under state law and is diligently pursuing completion or has completed the process shall be a defense.

f. If after notice and opportunity for a hearing, the hearing officer finds no public nuisance to exist or that the owner has commenced the process of terminating the lease and is diligently pursuing completion of the process, he/she will dismiss the revocation action and the points that were on the permit when the notice was sent prior to the hearing shall be rescinded.

g. If after notice and opportunity for a hearing, the hearing officer finds the existence of a public nuisance, the accumulation of the requisite points as provided under this section, and that the owner has failed to comply with the certifications as provided in section 14.5-1, the hearing officer shall submit written recommendations to the city manager.

h. The hearing officer shall have all the powers to this end, including power to subpoena.

i. The city manager shall approve, modify or reject the recommendation of the hearing officer, and issue a final order within ten days of receipt of the recommendation. The city manager may revoke the permit for the rental unit for a period not to exceed six months, and additionally may require the permittee to pay the full costs of the hearing officer prior to the permit being reinstated.

j. Orders of the city manager issued pursuant to this section shall be posted at the rental unit, and shall be mailed to the permittee and the rental unit within three business days of the posting.

k. If the permit is revoked under these procedures, the permittee shall have ten days from the day the order is mailed to commence proceedings to terminate the lease and recover possession of the rental unit under state law. The permittee shall diligently pursue the process to completion. The permittee shall provide copies of all documents provided to the tenants or filed with the court concerning the process to the city manager or designee. If the permittee fails to comply with these provisions, or fails to abide with the orders of the city manager, the city may cite the permittee for violation of section 14.5-1 (renting without a landlord permit), or seek other available legal or equitable relief.

l. In addition to other procedures, the city attorney is authorized to file for injunctive relief to abate the public nuisance pursuant to law.

(f) By applying for a permit, the owner agrees to allow inspection of the unit for violations of the housing code (Article II of chapter 13 of the Code of Ordinances) at any reasonable time; however, this provision shall not be interpreted as authorizing the city to conduct an inspection of an occupied rental unit without obtaining either the consent of an occupant or a warrant.

(g) No permit shall be issued or renewed until the applicant or permit holder has provided the name and phone number of a natural person 18 years of age or older who can be contacted 24 hours a day, seven days a week, regarding the rental unit. This contact person may be the owner, the owner's agent, or any other person other than a resident of the rental unit who has agreed to be the contact person.

(Ord. No. 960031, § 1, 7-22-96; Ord. No. 981389, § 1, 5-24-99; Ord. No. 990577, § 1, 11-8-99; Ord. No. 020580, § 2, 4-28-03)

Sec. 14.5-3. Denial or revocation of permit.

(a) The city manager or designee may deny issuance of, or revoke, any permits applied for under this section if it is determined either that the applicant or holder has made material misrepresentations about the condition of his/her property, or that the occupancy of the property is, or at any time subsequent to the issuance of the permit becomes, in excess of occupancy by a single-family as defined in section 30-23, or that the owner has otherwise violated a provision of this article.

(b) If the city manager or designee determines there is reasonable cause to believe that there are grounds to revoke or deny a permit applied for or held, a written notice shall be mailed by

registered mail the owner or agent whose address was provided in the application for such permit. If the dwelling unit in question is occupied, a copy of the notice shall be mailed to at least one tenant. Such written notice shall state the alleged grounds for revocation or denial. For revocation of a permit, such written notice shall also state that the revocation will become effective 30 days from the date of the notice unless, within the 30 days, the alleged grounds for revocation are remedied (or legal action to do so is begun) to the satisfaction of the city manager or designee or a hearing is applied for in accordance with this section.

(c) Within 30 days of the date the notice of revocation or denial is mailed, a holder of or applicant for a permit or the appointed agent may request in writing to the city manager a hearing on the revocation or denial. The city manager or designee shall schedule the hearing to occur within 15 days after receiving the request for hearing and shall notify the permit holder or applicant at least five days in advance. The hearing may be postponed if mutually agreed upon by all parties.

(d) The hearing shall be conducted informally and adherence to the rules of evidence normally followed by the courts shall not be required. Any person may present testimony, documents or other evidence as deemed relevant by the city manager or designee. Any person may be represented by counsel.

(e) The city manager or designee shall consider all evidence presented, and if the preponderance of the evidence supports the allegation of violation the permit shall be denied or revoked. If the preponderance of the evidence does not support the allegation of violation, the permit shall be issued or allowed to continue. The decision of the city manager or designee may be appealed to the county court of Alachua County.

(f) The city manager or designee may waive the revocation requirement as to any permit if it is determined that the owner has attempted in good faith to comply with this article. In determining asserted good faith as required for a waiver, the city manager or designee may consider, but not be limited to, the owner's having remedied the violation, and the owner's past history of violations of the conditions of the landlord permit.

(g) If a permit is revoked under this section, the owner whose permit was revoked shall not be issued another permit on the same premises for a period of 6 months after the date of revocation.

(Ord. No. 960031, § 1, 7-22-96)

Sec. 14.5-4. Inspections and complaints.

(a) *Inspections.* If there is cause to believe a violation of this article exists, the city manager or designee is hereby authorized to make inspections of any premises at reasonable times with 72 hours notice to the owner or agent at the address provided in the application for the permit for the premises or, if no permit has been applied for, to the owner as shown on the latest tax rolls, and one occupant (if any), to determine if a violation exists. Upon refusal to allow entry into the dwelling, the city may apply for a search warrant from the appropriate court for authorization to enter the dwelling.

(b) *Complaints.* All complainants shall be requested to state their names and addresses and give a statement of the facts giving rise to the complainant's belief that the provisions of this article are being violated. Such information may be obtained orally or in writing.

(Ord. No. 960031, § 1, 7-22-96)

Secs. 14.5-5--14.5-14. Reserved.



ORDINANCE NO. 070107
0-07-15

An ordinance of the City of Gainesville, Florida, relating to landlord permits; amending section 14.5 of the Code of Ordinances; creating additional owner certifications; changing the period in which points for code violations accrue; providing for revocation of permit for failure to comply with owner certifications; clarifying the process for revocation of a permit and the process for denial of a permit; amending Appendix A by changing the due dates for payment of landlord permit fees; providing for a transition permit; providing for a prorated permit fee; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, the Supreme Court of the United States in the case of Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) found that it is a permissible exercise of local government police power to regulate the occupancy of residential dwellings to maintain community “values, and the blessings of quiet seclusion and clean air (to) make the area a sanctuary for people.”

WHEREAS, after lengthy and considered deliberations by the City Community Development Committee, the City Public Safety Committee, the City Commission, City staff and members of the public, the City Commission finds that it is necessary to revise the City’s landlord permit regulations in order to prevent a decline in residential quality-of-life that may be caused by, among other things, tenant over-occupancy, noise, trash and yard parking; while at the same time recognizing and protecting the property rights of landowners engaged in the rental business.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

WHEREAS, a Public Hearing was held pursuant to the published notice described at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

1 decides not to refer the account to a collection agency, the applicant or permit holder shall be subject
2 to notice of citation for violation of this article and proceedings before the code enforcement board.
3

4 (d) *Failure to apply for permit.* If the city manager or designee has reasonable cause to believe
5 that a dwelling unit is ~~being leased, subleased, rented or~~ occupied without a permit in violation of
6 this article, the owner of the property shall be given notice that a permit is required and that an
7 application must be filed with the city within 30 days of the notice. If an application, ~~or evidence that~~
8 ~~a permit is not required,~~ is not received on the due date, an extra fee shall be charged for the permit
9 as specified in Appendix A. Failure to apply, ~~or provide evidence that a permit is not required,~~
10 within the time frames specified in Appendix A shall subject the owner to citation for violation of
11 this article and proceedings before the code enforcement board.
12

13 (e) *Certifications of applicant for permit.* The applicant for a landlord permit will be required to
14 make the following certifications. Failure to comply with any of the provisions of either of these
15 certifications shall be grounds for revocation of the permit for that unit, as described in section 14.5-
16 3 14.5.2 below or denial of a permit as described in section 14.5-4.
17

18 (1) Prior to ~~executing a lease for~~ allowing occupancy of the dwelling unit covered by the
19 permit, ~~the owner or agent~~ applicant provided each tenant with a copy of:

- 20
21 a. F.S. ch. 83, pt. II, entitled "Residential Tenancies";
22
23 b. Chapter 14.5, Article I of this Code, entitled "Landlord Permits"; and
24
25 c. A pamphlet prepared ~~provided~~ by the city containing guidelines for rentals in
26 residential neighborhoods.

27 (2) ~~That in~~ the event the city provides notice to the ~~applicant~~ (property owner or
28 ~~designated agent~~) of repeated violations of certain ordinances ~~by a tenant or guests of~~
29 ~~a tenant of~~ occurring at the dwelling unit, as provided in section 14.5-2 below, the
30 ~~applicant owner or agent~~ will pursue all lawful remedies available under F.S. § 83.56,
31 regarding termination of the rental agreement due to the tenant's failure to comply
32 with F.S. ch. 83, the provisions of the lease or this Code.
33

34 (3) The applicant is the fee simple owner of the dwelling unit or the agent of the fee
35 simple owner of the dwelling unit.
36

37 (4) The applicant owner has provided the city with an agent as required by section 14.5-
38 2(a), if applicable.
39

40 (f) *Definitions.* Unless otherwise specified in this article, "Days" shall mean calendar days and
41 "Notice" shall mean written notice (1) delivered by certified mail, return receipt requested, to the last
42 known address of the owner or agent, or (2) posted at the dwelling unit, in the event delivery cannot
43 be made by the method specified in (1).
44

45 **Sec. 14.5-2. Requirements of permittee owner.**
46

1 (a) Appointment of agent. Any owner who resides, either at the time of procuring a permit or
2 after having procured a permit, outside of Alachua County shall appoint an agent who resides within
3 the county for the purpose of receiving notices from the city concerning the permit. The owner shall
4 notify the city in writing of the name, address, and telephone number of the agent. ~~If the owner fails~~
5 ~~to appoint an agent or notify the city, the owner shall be presumed to have agreed to constructive~~
6 ~~notice by publication in a newspaper of countywide circulation within Alachua County.~~
7

8 (b) List of Tenants. The ~~owner or permittee and appointed agent~~ shall maintain a list of the
9 names of tenants in each dwelling unit. Such lists shall be available to the city upon reasonable
10 notice.
11

12 ~~(e) Adjudications of guilt or pleas of no contest of the city's noise ordinances (Chapter 15 of the~~
13 ~~Code of Ordinances), animal control ordinances (Chapter 5 of the Code of Ordinances), solid waste~~
14 ~~ordinances (Article III of Chapter 27 of the Code of Ordinances), ordinance on insects, storage, trash~~
15 ~~and yard maintenance (section 13-171 of the Code of Ordinances) or the provisions of section 30-57~~
16 ~~concerning habitation by more than one family shall be a material breach of a lease of any unit~~
17 ~~regulated by this article, and grounds for termination of the lease.~~
18

19 ~~(d) The city shall provide the owner or agent with copies of pamphlets containing information on~~
20 ~~living in a residential neighborhood. The owner or agent shall provide a pamphlet to at least one~~
21 ~~tenant of each dwelling unit covered by this ordinance before executing a lease for the unit.~~
22

23 ~~(e)-(c) Violations; warnings; points. Rental units where there are repeated violations of ordinances~~
24 ~~that adversely affect the rights of nearby residents to the quiet enjoyment of their property constitute~~
25 ~~a public nuisance at common law or a noxious use of private property. To this end, repeated~~
26 ~~warnings of violation and/or adjudication of guilt, finding of guilt with adjudication withheld, waiver~~
27 ~~of right to contest the violation, or pleas of no contest (including, but not limited to, payment of fine)~~
28 ~~of the following city's ordinances:~~
29

- 30 (1) noise ordinances (Chapter 15 of the Code of Ordinances),
- 31 (2) animal control ordinances (Chapter 5 of the Code of Ordinances),
- 32 (3) solid waste ordinances (Article III of Chapter 27 of the Code of Ordinances),
- 33 (4) the provisions of section 30-57 concerning habitation by more than one family,
- 34 (5) yard parking ordinance (section 30-56(c)(4) of the Code of Ordinances), ~~or~~
- 35 (6) sections 13-171 (related to insects, storage, trash and yard maintenance); ~~or and~~
- 36 (7) section 13-181 (related to hazardous conditions)
37

38 where the violation takes place at a unit regulated by this article shall be grounds for the
39 ~~commencement of permit revocation proceedings~~ accumulation of points as follows:
40

- 41 (1) For one or more written warnings given in any 24-hour period for violation of one or
42 more of the ordinances listed above, one point will be assessed on the landlord permit
43 for that unit. For each instance of adjudication of guilt, finding of guilt with
44 adjudication withheld, waiver of right to contest the violation, or plea of no contest
45 (including, but not limited to, payment of fine) for violation of any of the ordinances
46 listed above, two points will be assessed on the landlord permit for that unit.

1
2 However, to the extent more than one person is adjudicated guilty, found guilty with
3 adjudication withheld, waives the right to contest the violation or pleads no contest
4 for the same violations that occur within a 24-hour period, only two points will be
5 assessed on the landlord permit for that unit. For purposes of this section, written
6 warnings shall mean those warnings issued pursuant to civil citation or code
7 enforcement procedures, including stickers placed on vehicles advising of violation of
8 the yard parking ordinance.

9
10 (2) After each one point is assessed on a landlord permit for a unit, the city manager or
11 designee will send a written warning to the owner or agent. ~~After three points are~~
12 ~~assessed on a landlord permit for a unit, the city manager or designee will send a~~
13 ~~second written warning to the owner or agent. No additional points will be assessed~~
14 ~~on the permit for the unit before the second written warning is sent. Each warning~~
15 ~~will specify which ordinance or ordinances have been violated and will state that~~
16 ~~further warnings or violations could lead to a revocation of the permit. Each warning~~
17 ~~will be sent by regular mail or hand-delivered to the last known address of the owner~~
18 ~~or agent. The city may, as a courtesy, also attempt to notify the owner or agent by e-~~
19 ~~mail or fax at the e-mail address or fax number provided to the city on the application~~
20 ~~for permit; however, failure to so notify the owner or agent shall not affect the~~
21 ~~validity of the warnings.~~

22 ~~(3) Accumulation of six or more points on a landlord permit for a unit during a 12-~~
23 ~~month period commencing on August 1 and extending through the following July-~~
24 ~~31 shall constitute a violation of this section and the certifications of the applicant-~~
25 ~~described above, subjecting the permittee to revocation of the permit. In this~~
26 ~~event, the following procedure shall be followed:~~

27
28 ~~a. Service of the written notice to show cause why the permit should not be~~
29 ~~revoked shall be deemed complete if personally delivered upon the~~
30 ~~permittee or agent; and if the same cannot be delivered personally within~~
31 ~~the city, then service shall be made on the permittee or designated agent,~~
32 ~~and shall be deemed complete upon sending same by certified mail, return~~
33 ~~receipt requested, to the last known address of the owner or agent.~~

34 ~~b. Any officer authorized by law to serve process or a duly appointed law~~
35 ~~enforcement officer of the city police department may make service of~~
36 ~~process. The person serving process shall make proof of service within the~~
37 ~~time during which the person served must respond to the process. Failure~~
38 ~~to make proof of service shall not affect the validity of the service.~~

39
40 ~~c. The city attorney is authorized to appoint an independent person who is~~
41 ~~admitted to the practice of law in the State of Florida to conduct a hearing~~
42 ~~and make recommendations pursuant to this subsection.~~

43
44 ~~d. The hearing officer shall conduct a hearing no sooner than 15 days after~~
45 ~~service is deemed complete and shall submit recommendations to the city~~
46 ~~manager within ten days of completion of the hearing.~~

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~~e. The lack of knowledge of, acquiescence, or participation in, or responsibility for, a public nuisance on the part of the permittee or agent shall not be a defense by such permittee or agent. However, proof that the permittee or agent has commenced the process of terminating the lease and recovering possession of the rental unit under state law and is diligently pursuing completion or has completed the process shall be a defense.~~

~~f. If after notice and opportunity for a hearing, the hearing officer finds no public nuisance to exist or that the owner has commenced the process of terminating the lease and is diligently pursuing completion of the process, he/she will dismiss the revocation action and the points that were on the permit when the notice was sent prior to the hearing shall be rescinded.~~

~~g. If after notice and opportunity for a hearing, the hearing officer finds the existence of a public nuisance, the accumulation of the requisite points as provided under this section, and that the owner has failed to comply with the certifications as provided in section 14.5-1, the hearing officer shall submit written recommendations to the city manager.~~

~~h. The hearing officer shall have all the powers to this end, including power to subpoena.~~

~~i. The city manager shall approve, modify or reject the recommendation of the hearing officer, and issue a final order within ten days of receipt of the recommendation. The city manager may revoke the permit for the rental unit for a period not to exceed six months, and additionally may require the permittee to pay the full costs of the hearing officer prior to the permit being reinstated.~~

~~j. Orders of the city manager issued pursuant to this section shall be posted at the rental unit, and shall be mailed to the permittee and the rental unit within three business days of the posting.~~

~~k. If the permit is revoked under these procedures, the permittee shall have ten days from the day the order is mailed to commence proceedings to terminate the lease and recover possession of the rental unit under state law. The permittee shall diligently pursue the process to completion. The permittee shall provide copies of all documents provided to the tenants or filed with the court concerning the process to the city manager or designee. If the permittee fails to comply with these provisions, or fails to abide with the orders of the city manager, the city may cite the permittee for violation of section 14.5-1 (renting without a landlord permit), or seek other available legal or equitable relief.~~

1 ~~_____ 1. In addition to other procedures, the city attorney is authorized to file for~~
2 ~~_____ injunctive relief to abate the public nuisance pursuant to law.~~

3
4 ~~_____ (f) By applying for a permit, the owner agrees to allow inspection of the unit for~~
5 ~~violations of the housing code (Article II of chapter 13 of the Code of Ordinances) at any~~
6 ~~reasonable time; however, this provision shall not be interpreted as authorizing the city to~~
7 ~~conduct an inspection of an occupied rental unit without obtaining either the consent of an~~
8 ~~occupant or a warrant.~~

9
10 ~~_____ (g) No permit shall be issued or renewed until the applicant or permit holder has~~
11 ~~provided the name and phone number of a natural person 18 years of age or older who can be~~
12 ~~contacted 24 hours a day, seven days a week, regarding the rental unit. This contact person may~~
13 ~~be the owner, the owner's agent, or any other person other than a resident of the rental unit who~~
14 ~~has agreed to be the contact person.~~

15
16 **Sec. 14.5-3. Revocation of permit.**

17
18 (a) Accumulation of six or more points on a permit for a dwelling unit during three consecutive
19 annual (i.e., August 1 through July 31) permit periods or failure to comply with the certifications
20 required in section 14.5-1(e), shall constitute a violation of this article, subjecting the owner to
21 proceedings to revoke the permit.

22
23 (b) Upon the accumulation of six or more points or failure to comply with certifications as
24 described in (a) above, the following procedure shall be followed:

25
26 (1) The City Manager or designee shall cause to be served written notice to show cause
27 why the permit should not be revoked. Service shall be deemed complete if
28 personally delivered upon the owner or agent by any officer authorized by law to
29 serve process or a duly appointed law enforcement officer of the city police
30 department. The person serving process shall make proof of service within the time
31 during which the person served must respond to the process. If service cannot be
32 personally made within the city, then service may be made by Notice.

33
34 (2) The owner or agent shall have 15 days from the date of service to request a hearing to
35 contest the revocation of the permit. The request shall be sent to the city manager by
36 certified mail, return receipt requested. If such request is not timely made, the
37 revocation shall take effect on the 21st day after the date of service to show cause.

38
39 (3) Upon request for a hearing, the city attorney is authorized to arrange for the services
40 of a hearing officer to conduct the hearing and to prepare a recommended order.

41
42 (4) In conducting the hearing, the hearing officer shall have the power to administer
43 oaths, issue subpoenas, compel the production of books, paper, and other documents,
44 and receive evidence. All parties shall have an opportunity to respond, to present
45 evidence and argument on all issues involved, to conduct cross-examination and
46 submit rebuttal evidence, to submit proposed findings of facts and orders, to file

1 exceptions to the hearing officer's recommended order, and to be represented by
2 counsel or other qualified representative. Hearsay evidence may be used for the
3 purpose of supplementing or explaining other evidence, but it shall not be sufficient
4 in itself to support a finding unless it would be admissible over objection in civil
5 actions. The lack of actual knowledge of, acquiescence to, participation in, or
6 responsibility for, a public nuisance at common law or a noxious use of private
7 property on the part of the owner or agent shall not be a defense by such owner or
8 agent.
9

10 (5) If the hearing officer finds either: (a) the accumulation of the six points and the
11 existence of a public nuisance at common law or noxious use of private property, or
12 (b) the owner failed to comply with the certifications as required in section 14.5-1(e),
13 the hearing officer shall prepare a recommended order.
14

15 (6) If the hearing officer finds no failure to comply with the certifications exists, no
16 public nuisance at common law or noxious use of private property exists, or that the
17 owner has recovered possession of the dwelling unit, the hearing officer will prepare
18 a recommended order to dismiss the revocation action and recommend which points,
19 if any, should be rescinded from the permit based upon the actions taken by the
20 landlord to seek compliance with the city's ordinances.
21

22 (7) The hearing officer's recommended order shall consist of findings of fact,
23 conclusions of law and recommended relief. The hearing officer shall transmit the
24 recommended order to the city manager and the owner or agent. The owner or agent
25 shall have 15 days from the date of the hearing officer's order to submit written
26 exceptions to the hearing officer's recommended order. The city manager shall
27 review such order and any written exceptions by the owner and may set forth any
28 deficiencies he/she finds with respect to the order. Said deficiencies shall be limited
29 to determinations that the findings were not based upon competent, substantial
30 evidence, or that the proceedings on which the findings were based did not comply
31 with the essential requirements of law. In reviewing such recommended order, the
32 city manager shall not have the power to receive or consider additional evidence and
33 shall not have the power to reject or modify the findings of fact or conclusions of law
34 contained in the recommended order. The city manager may remand the
35 recommended order along with the delineated deficiencies back to the hearing officer
36 for consideration of the deficiencies. The hearing officer shall address the
37 deficiencies in an addendum to the recommended order. The city manager shall then
38 either: (a) adopt the recommended order and addendum, if applicable, in its entirety;
39 or (b) adopt the findings of fact and conclusions of law in the recommended order and
40 addendum, if applicable, and reject or modify the recommended relief. The action of
41 the city manager shall be the final order of the city.
42

43 (8) The city manager or designee shall provide Notice of the final order within 15 days of
44 the date of the final order.
45

1 (9) If the permit is revoked under these procedures, the owner or agent shall have 15 days
2 from the date of the final order to commence proceedings to recover possession of the
3 rental unit under state law, if not already done. The owner or agent shall diligently
4 pursue the process of eviction to completion. The owner or agent shall provide copies
5 of all documents provided to the tenants or filed with the court concerning the
6 eviction process to the city manager or designee. If the owner fails to comply with
7 these provisions, or fails to abide with the final order of the city, the city may cite the
8 owner for violation of section 14.5-1 (renting without a landlord permit), or seek
9 other available legal or equitable relief.

10
11 (10) In addition to the above-described procedures, the city attorney is authorized to file
12 for injunctive relief to abate the public nuisance at common law or noxious use of
13 private property pursuant to law.

14
15 (11) The final order of the city is subject to certiorari review in a court of competent
16 jurisdiction in Alachua County, Florida.

17
18 **Sec. 14.5-43. Denial ~~or revocation~~ of permit.**

19
20 (a) The city manager or designee may deny issuance of, ~~or revoke,~~ any permits applied for under
21 this section if it is determined either that the owner or agent applicant or holder has made material
22 misrepresentations about the condition of his/her property; or status of ownership, or that the
23 occupancy of the property is in violation of section 30-57; or that the owner or agent has refused to
24 make or comply with the certifications required in Sec. 14.5-1.(e) or at any time subsequent to the
25 issuance of the permit becomes, in excess of occupancy by a single family as defined in section 30-
26 23, or that the owner has otherwise violated a provision of this article.

27
28 (b) If the city manager or designee determines there is reasonable cause to believe that there are
29 grounds to ~~revoke or deny~~ a permit applied for ~~or held,~~ a written notice the city manager or designee shall
30 provide ~~Notice of the denial, including the grounds for the denial shall be mailed by registered mail~~
31 ~~the owner or agent whose address was provided in the application for such permit. If the dwelling~~
32 ~~unit in question is occupied, a copy of the notice shall be mailed to at least one tenant. Such written~~
33 ~~notice shall state the alleged grounds for revocation or denial. For revocation of a permit, such~~
34 ~~written notice shall also state that the revocation will become effective 30 days from the date of the~~
35 ~~notice unless, within the 30 days, the alleged grounds for revocation are remedied (or legal action to~~
36 ~~do so is begun) to the satisfaction of the city manager or designee or a hearing is applied for in~~
37 ~~accordance with this section.~~

38
39 (c) Within ~~30~~ 15 days of the date ~~of the~~ Notice ~~of revocation or denial is mailed,~~ a holder of or
40 ~~applicant for a permit or the appointed agent~~ the owner may request in writing to the city manager a
41 hearing on the ~~revocation or denial~~. The city manager or designee shall schedule the hearing to occur
42 within 15 days after receiving the request for hearing and shall notify the ~~permit holder or applicant~~
43 owner at least five days in advance of the time and location for the hearing. The hearing may be
44 postponed if mutually agreed upon by ~~all parties~~ the city manager and the owner.
45

1 (d) The hearing shall be conducted informally and adherence to the rules of evidence normally
2 followed by the courts shall not be required. Any person may present testimony, documents or other
3 evidence as deemed relevant by the city manager or designee. Any person may be represented by
4 counsel.

5
6 (e) The city manager or designee shall consider all evidence presented, and if the preponderance
7 of the evidence supports the allegation of violation the permit shall be ~~denied or revoked~~. If the
8 preponderance of the evidence does not support the allegation of violation, the permit shall be issued
9 ~~or allowed to continue~~. The decision of the city manager or designee may be appealed by a writ of
10 certiorari to a the county court of competent jurisdiction in Alachua County, Florida.

11
12 (f) The city manager or designee may waive the denial revocation requirement as to any permit
13 if it is determined that the owner has attempted in good faith to comply with this article. In
14 determining asserted good faith as required for a waiver, the city manager or designee may consider,
15 but not be limited to, the owner's response to current violations and remedy of past violations, and
16 ~~the owner's past history of violations of the conditions of the landlord permit.~~

17
18 (g) If a permit is denied ~~revoked~~ under this section, the owner whose permit was denied ~~revoked~~
19 shall not be issued another permit on the same premises dwelling unit for a period of 6 months after
20 the date of denial ~~revocation~~.

21
22 **Sec. 14.5-54. Inspections and complaints.**

23
24 (a) *Inspections.* ~~If there is cause to believe a violation of this article exists, the city manager or~~
25 ~~designee is hereby authorized to make inspections of any premises at reasonable times with 72 hours~~
26 ~~notice to the owner or agent at the address provided in the application for the permit for the premises~~
27 ~~or, if no permit has been applied for, to the owner as shown on the latest tax rolls, and one occupant~~
28 ~~(if any), to determine if a violation exists. Upon refusal to allow entry into the dwelling, the city may~~
29 ~~apply for a search warrant from the appropriate court for authorization to enter the dwelling. By~~
30 applying for a permit, the owner agrees to allow inspection of the unit for violations of this article, as
31 well as violations of the housing code (Article II of chapter 13 of the Code of Ordinances) at any
32 reasonable time; however, this provision shall not be interpreted as authorizing the city to conduct an
33 inspection of an occupied rental unit without obtaining either the consent of an occupant or a
34 warrant.

35
36 (b) *Complaints.* ~~All~~ Each complainants shall be requested to state ~~their~~ his/her names and
37 addresses and give a statement of the facts giving rise to the complainant's belief that the provisions
38 of this article are being violated. Such information may be obtained orally or in writing. A
39 complainant may be subpoenaed to appear in a revocation or denial proceeding to provide evidence
40 or testimony.

41
42 **Section 3.** Appendix A, relating to landlord permit fees, is amended to read as follows:

43 LAND DEVELOPMENT CODE

44
45 (4) *Zoning:*

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- a. Landlord permit:
 - 1. Initial applications:
 - a. Application received on time and payment received on or before 10 business days of city finding all other permit requirements met 177.00
 - b. Application received 1 business day to 30 calendar days late or payment received after 10 business days but on or before 30 calendar days of city finding all other permit requirements met 261.00
 - c. Application received 31 to 60 calendar days late or payment received after 30 calendar days but on or before 60 calendar days of city finding all other permit requirements met 345.00
 - d. Application received 61 to 90 calendar days late or payment received after 60 calendar days but on or before 90 calendar days of city finding all other permit requirements met 429.00
 - 2. Renewals:
 - a. Payment received on or before August ~~January~~ 31 177.00
 - b. Payment received after August ~~January~~ 31 but on or before October ~~March~~ 1 261.00
 - c. Payment received after October ~~March~~ 1 but on or before November ~~April~~ 1 345.00
 - d. Payment received after November ~~April~~ 1 but on or before December ~~May~~ 1 429.00

38
39 **Section 4.** Transition Period. Any holder of a landlord permit issued for the permit period of
40 January 1, 2007 through December 31, 2007, who desires to extend the existing permit until July 31,
41 2008 shall pay to the city a prorated permit fee of \$103.25 on or before January 1, 2008.

1 **Section 5.** It is the intention of the City Commission that the provisions of Sections 2 and 3 of
2 this ordinance shall become and be made a part of the Gainesville Code of Ordinance, of the City of
3 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered or
4 relettered in order to accomplish such intentions.

5 **Section 6.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or
6 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the
7 validity of the remaining portions of this ordinance.

8 **Section 7.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of such
9 conflict hereby repealed.

10 **Section 8.** This ordinance shall become effective on August 1, 2007.

11 **PASSED AND ADOPTED** this 25th day of June, 2007.

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ATTEST


KURT M. LANNON
CLERK OF THE COMMISSION


PEGEEN HANRAHAN, MAYOR

APPROVED AS TO FORM AND LEGALITY


MARION J. FAESON
CITY ATTORNEY

JUN 26 2007

This Ordinance passed on first reading this 11th day of June, 2007.
This Ordinance passed on second reading this 25th day of June, 2007.