

## TRANSIENT OCCUPANCY

**HOUSE BILL 305**, as passed, permits the removal of an unwanted occupant of a residence by law enforcement officials. The bill creates section 82.045 F.S. and establishes an additional remedy for the unlawful detention of residential property. Current law requires the owner or lessee to file an unlawful detainer action to remove the unwanted guest.

An unlawful detainer action involves the removal of an unwanted guest who occupied residential property with the consent of the owner or lessee but who has refused to surrender possession of the property once the property owner or lessee revokes consent to the guest remaining on the property. The person unlawfully detain the property is not a tenant and claims no other right or interest in the property.

In the present situation, if the owner or lessee prevails in the action, the clerk of court will issue a writ of possession to the Sheriff describing the premises and commanding the Sheriff to put him or her in possession of the property. §82.091 F. S. In addition to the time necessary to obtain and serve a writ of possession, the property owner or lessee must pay a number of fees and costs, including but not limited to filing fees, service charge for summons, sheriff's fee for service, service and execution of the writ of possession by the sheriff, attorney's fees, etc.

The new section 82.045 F.S. establishes an additional remedy to remove an unwanted guest who unlawfully detains residential property. Upon receipt of a sworn affidavit from the owner or lessee which establishes that the unwanted guest is a transient occupant, law enforcement may immediately direct the unwanted guest to surrender possession of the property. A knowingly fake statement in the sworn affidavit constitutes perjury.

Upon receipt of the sworn affidavit the law enforcement officer may direct the guest to surrender possession of the residential property. A person who fails to comply with the direction of the officer violates §810.08 F.S., and commits a criminal trespass in a structure. In any prosecution of a violation of §810.08 F.S., whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense.

The bill also creates a cause of action for a wrongful removal against the person who requested the removal. A wrongfully removed person does not have a cause of action against the law enforcement officer or the agency employing the law enforcement officer absent a showing of bad faith by the law enforcement officer,

The bill defines a transient occupant as a person whose residency in a dwelling intended for residential use, has occurred for a brief period of time, the residency is not pursuant to a lease, and the residency was intended as temporary in nature.

The bill looks at factors that establish that a person is a transient occupant include, but is not limited to:

1. Has no ownership, financial, or leasehold interest in the property;
2. Has no utility subscriptions at the property;
3. Pays minimal, if any, rent'
4. Does not list the property as the address of record with governmental agencies;
5. Has minimal, if any, personal belongings at the property;
6. Does not receive mail at the property;

7. Has no designated personal space at the property; and
8. Has an apparent permanent residence elsewhere.

Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses do not establish residency for the purposes of determining a transient occupancy.

The bill also affirms the existing right of the property owner or lessee to effect removal of the unwanted guest pursuant to a civil action for unlawful detainer. If the court determines the defendant is, not a transient occupant but a tenant of residential property governed by part II of Chapter 83 F.S., the court may not dismiss the unlawful detainer action. The court must allow the plaintiff time to give the defendant the pre-eviction notices required by Chapter 83 F.S. and amend the complaint to pursue eviction.

The bill was approved by the Governor on June 2, 2015, and will become effective on July 1, 2015.