1983

Session Law 83-151

Florida Senate & House of Representatives

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### Committee Records

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### Tape Recordings

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### Other Documentation

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HB 958 (1983) DOF 83-151

LOBBYISTS CARDS (JUD)

9/20/83
Jay Rose / FL. Legal Services Speaker
Malcolm B. Wischert / "
Art Green / Property Mgrs. Assn. Speaker/Appointed
Mike Vuggar / SELF - TLH / Infor. Only

5/9/83
John Boyle / SELF - Miami Speaker/Appointed 83,67
Malcolm B. Wischert, Jr. / SELF - Coral Gables "
Art Green / Prop. Mgrs. Assn. "
John Koeckemeyer / FL. Homebuilders Assn. "
Jay Rose / SELF Speaker / Infor. Only

4/20/83
Judy Koew / FL. Legal Services - Cocoa / "
"
LOF 83-151

Meeting TAPES

58 261
SECA 4/12/83 RG 920/5.414/422/1 tape

HJUD 5/4/83 RG 920/5.414/422/2 tapes

HB 958

HJUD/ SUBCMT.- Consumer, Probate
Family Law

HJUD/ Full CMT.

RG 920/5.414/422/1 tape
4/20/83 (above)

5/4/83 (above)
P. 356

H 1124 GENERAL BILL BY JUDICIARY; DEFENDANT; ORAGE (IDENTICAL CS/5 665); COMPARE CS/5 0658, CS/5 0655

LANDLORD & TENANT; SPECIFIES ALTERNATIVE METHODS BY WHICH LANDLORD MAY RECOVER POSSESSION OF NONRESIDENTIAL PREMISES; PROVIDES ADDITIONAL DUTIES FOR CERTAIN SERVICE OF SUMMONS FOR REMOVAL OF TENANT; CREATES "DISPOSAL OF PERSONAL PROPERTY LANDLORD & TENANT ACT" ETC. AMENDS CH. 83, EFFECTIVE DATE: 10/01/83.
04/24/83 HOUSE FILED
05/05/83 HOUSE PLACED ON SPECIAL ORDER CALENDAR
05/16/83 HOUSE READ SECOND TIME - HJ 00413 AMENDMENTS ADOPTED; IDEM/SIM. SENATE BILL SUBSTITUTED, LAID ON TABLE UNDER RULE, 10/26/83. COMPARE BILL PASSED; REFER TO SB 261 (CH. 83-151) - HJ 00415

P. 356

H 0950 GENERAL BILL/CS BY JUDICIARY; ORAGE (SIMILAR ENG/3 020); COMPARE H 3354, CS/5 0653

LANDLORD & TENANT; SPECIFIES ALTERNATIVE METHODS BY WHICH LANDLORD MAY RECOVER POSSESSION OF NONRESIDENTIAL PREMISES; REQUIRES ADDITIONAL METHOD OF SERVICE OF SUMMONS FOR REMOVAL OF TENANT; REDEFINES "DWELLING UNIT" FOR PURPOSES OF PROVISIONS RE RESIDENTIAL TENANCIES, ETC. AMENDS CH. 83. EFFECTIVE DATE: 10/01/83.
04/07/83 HOUSE FILED
04/11/83 HOUSE INTRODUCED, REFERRED TO JUDICIARY - HJ 00432
04/14/83 HOUSE SUBREFERRED TO SUBCOMMITTEE ON CONSUMER, PROBATE AND FAMILY LAW
04/15/83 HOUSE ON COMMITTEE AGENDA - SUBCOMM., JUDICIARY, 212 MMB; BLDG. AM. 04/20/83
04/29/83 HOUSE ON COMMITTEE AGENDA - JUDICIARY, 317 C, 9:30 AM.
05/06/83 HOUSE COMMITTEE REPORT: CS PLACED ON CALENDAR BY JUDICIARY - HJ 00583
05/07/83 HOUSE FILED
05/10/83 HOUSE INTRODUCED PLACED ON CALENDAR BY JUDICIARY - HJ 00583
06/03/83 HOUSE INDEF. POSTPONED (SCR 1204); WAS ON CALENDAR (SC BILL PASSED, SEE SB 261 (CH. 83-151)
Laws of Florida, Chapter 83-151


S 0852 GENERAL BILL BY ATAPATRIA (SIMILAR CS/0 0951; COMPARE H 1154; CS/5 0053).

LANDLORD & TENANTS: SPECIFIES ALTERNATIVE METHODS BY WHICH LANDLORD MAY
RECOVER POSSESSION OF NONRESIDENTIAL PREMISES; PROVIDES ADDITIONAL
GUIDELINES FOR CERTAIN SERVICE OF SUMMONS FOR REMOVAL OF A TENANT; REDEFINES
MOULDING UNITS, ET AL. AMENDS CH. 83- EFFECTIVE DATE: 10/01/83.
04/08/83 SENATE FILED
04/11/83 SENATE INTRODUCED; REFERRED TO ECONOMIC, COMMUNITY AND
CONSUMER AFFAIRS; JUDICIARY-CIVIL - SJ 0024.
04/15/83 SENATE ON COMMITTEE AGENDA -- ECON., 04/19/83, 2100 PM, RR, H.
04/19/83 SENATE COMM. REPORT: CS BY ECONOMIC, COMMUNITY AND CONSUMER
AFFAIRS -- SJ 00154; CS READ FIRST TIME 05/05/83
05/05/83 SENATE COMM. REPORT: FAVORABLE WITH AMENDS., PLACED ON CALENDAR
BY JUDICIARY-CIVIL -- SJ 0024.
05/10/83 SENATE MEMBERS UNAMENDED, THEN ENROLLED SJ 0053.
05/05/83 SENATE AMENDED; AMENDING BILL AS
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06/08/83 SENATE IN MESSAGES
05/30/83 SENATE IN SENATE AMENDMENTS TO HOUSE AMENDMENTS;
PASSED AS FURTHER AMENDED; YEAS 110 NAYS 0 -- SJ 0053.
05/18/83 SENATE ORDERED ENROLLED; THEN ENROLLED SJ 0053.
05/22/83 SENATE APPROVED BY OFFICERS AND PRESENTED TO GOVERNOR
05/30/83 SENATE IN MESSAGES
06/08/83 SENATE CONCURRED IN HOUSE AMENDMENTS; CONCURRED IN HOUSE AMENDMENTS AS
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05/10/83 SENATE AMENDED; REQUESTED HOUSE TO CONCUR, PASSED AS AMENDED;
YEAS 38 NAYS 0 -- SJ 0053.
05/30/83 SENATE IN MESSAGES
05/31/83 SENATE IN SENATE AMENDMENTS TO HOUSE AMENDMENTS;
PASSED AS FURTHER AMENDED; YEAS 110 NAYS 0 -- SJ 0053.
06/08/83 SENATE ORDERED ENROLLED; THEN ENROLLED SJ 0053.
06/22/83 SENATE IN HOUSE
06/22/83 SENATE AMENDED; AMENDING BILL AS
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06/27/83 SENATE IN MESSAGES
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07/09/83 SENATE IN MESSAGES
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07/30/83 SENATE AMENDED; AMENDING BILL AS
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I. SUMMARY:

A. Present Situation:

Section 83.59(3)(c), Florida Statutes, provides for a presumption of abandonment for a residential tenancy; however, there is no presumption of abandonment either in case law or statutory law for a commercial tenancy. Landlords of commercial property must file an action for eviction when tenants abandon property or possibly be subject to an action for unlawful dispossession.

Section 83.22, Florida Statutes, provides in a suit for removal of a tenant, that if the tenant cannot be located, the sheriff may serve a summons by posting the summons on the premises.

Chapter 83, part I (nonresidential tenancies) and part II (residential tenancies), Florida Statutes, do not provide a method for a landlord to dispose of personal property left on the premises after eviction, termination of the tenancy, or abandonment. In this case a landlord would have to go to court and get a judgment against the former tenant and dispose of the property through a sheriff's sale.

B. Effect of Proposed Changes:

This bill establishes a presumption of abandonment for commercial tenancies which is similar, except for the time periods, to the presumption of abandonment for residential tenancies. In the absence of actual knowledge of abandonment, a landlord shall presume a commercial tenant has abandoned the premises if: the landlord reasonably believes the tenant has been absent from the premises for 30 consecutive days; the rent is not current; and 10 days have elapsed since service of notice for payment of rent or possession of the premises.

Section 83.22, Florida Statutes, would require in addition to posting that a summons be mailed to the address or location designated by the tenant for receipt of notice or to the residence of the tenant, and to the last known business address of the tenant.

A new part V of the Landlord and Tenant Act is created as the "Disposition of Personal Property Landlord and Tenant Act." This bill would allow a non-judicial remedy for residential and nonresidential landlords (chapter 83, parts I and II, Florida Statutes) to dispose of personal property left on the premises after eviction, surrender, or abandonment. After proper notice, the personal property may be sold at a public sale, or if it is believed to be valued at less than $100, it may be retained or disposed of in any manner by the landlord.
The bill also provides the following:

- The landlord shall give written notice describing the property to the tenant or any other person believed to be the owner of the property.

- The property shall be released to the former tenant or the person reasonably believed to be the owner upon the payment of reasonable storage charges and advertising expenses.

- If the property is not released; it may be sold at a public sale 10 days after delivery of notice, or 15 days if the notice was mailed.

- The landlord may deduct the costs for storage, advertising, and the sale from the proceeds of the public sale. The balance is remitted to the county where the owner of the property may claim the funds within 1 year of the sale. If not claimed, the county would be entitled to the funds.

The statute provides a form for notice to the former tenant and a form for an owner other than the former tenant.

A provision is also included which exempts the landlord from liability after disposition of the personal property.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Owners of residential and commercial rental property may recognize some savings in having fewer expenses associated with legal proceedings relating to disposition of abandoned personal property. Any savings are assumed to ultimately be passed on to tenants in the form of lower rental fees.

B. Government:

The workload of the judicial system could be decreased by an indeterminable amount. Any savings resulting from the cases being resolved without passing through the court system should ultimately be passed on to taxpayers.

III. COMMENTS:

Many of the provisions contained in this bill, or similar provisions, are in SB 261, which was passed by the Legislature. SB 261 was ordered enrolled by the Senate on May 31, 1983.

IV. AMENDMENTS:

None.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST: Malloy
STAFF DIRECTOR: Burns
REFERENCE: ECCA
ACTION: FAV/1

BILL NO. AND SPONSOR:
SB 261 by Senator Kirkpatrick

A. Present Situation:

Section 83.59(1)(c), F.S., provides for a presumption of abandonment for a residential tenancy; however, there is no presumption of abandonment either in case law or statutory law for a commercial tenancy. Landlords of commercial property must file an action for eviction when tenants abandon property or possibly be subject to an action for unlawful dispossession.

Section 83.22, F.S., provides in a suit for removal of a tenant, that if the tenant cannot be located, the sheriff may serve a summons by posting the summons on the premises.

For purposes of part II of ch. 83, F.S., "dwelling unit" includes a mobile home lot within a mobile home park which is rented by the person who owns the mobile home.

Section 83.48, F.S., provides that if a rental agreement allows for attorney's fees for the landlord, the court may allow attorney's fees for the tenant.

Section 83.49, F.S., 1982 Supp., provides the duties of a landlord when money is deposited or advanced by a tenant. These funds must be deposited in a separate interest-bearing or noninterest-bearing account for the benefit of the tenants, or after posting a surety bond, these funds may be commingled with funds of the landlord and placed in an interest-bearing account with annual interest due the tenants. Section 83.49(4), F.S., 1982 Supp., exempts from these provisions transient rentals and instances where application of these provisions are prohibited by federal law. Prior to the 1982 Legislative Session, certain non-profit, federally financed and subsidized, low-income housing projects were specifically exempted from the security deposit and advance rent requirements of ch. 83, part II, F.S. These housing projects were permitted to deposit advance rent and security funds in interest-bearing accounts with interest accruing to the benefit of the residents as a whole through enhanced operating budgets. Presently, because of the wording of the exemption in s. 83.49(4), F.S., 1982 Supp., the non-profit status of these housing projects, and the cost of calculating and making interest payments to tenants, these projects are forced to deposit advance rent and security funds into noninterest-bearing accounts and forfeit interest which could be added to the federally controlled operating budgets.

Section 83.56, F.S., 1982 Supp., provides for termination of a rental agreement if the tenant fails to comply with certain requirements. If the noncompliance constitutes a subsequent or continuing violation, the tenant may be given written notice and a chance to cure certain noncompliances.
Section 83.60, F.S., provides certain defenses to an action for rent or possession.

Chapter 83, part I (nonresidential tenancies) and part II (residential tenancies), F.S., do not provide a method for a landlord to dispose of personal property left on the premises after eviction, termination of the tenancy, or abandonment. In this case, a landlord would have to go to court and get a judgment against the former tenant and dispose of the property through a sheriff's sale.

B. Effect of Proposed Changes:

This bill establishes a presumption of abandonment for commercial tenancies which is similar, except for the time periods, to the presumption of abandonment for residential tenancies. In the absence of actual knowledge of abandonment, a landlord shall presume a commercial tenant has abandoned the premises if: the landlord reasonably believes the tenant has been absent from the premises for 30 consecutive days; the rent is not current; and 10 days have elapsed since service of notice for payment of rent or possession of the premises.

Section 83.22, F.S., would require at least two attempts at personal service and in addition to posting on the premises the clerk of court must mail a copy of the summons and complaint to the defendant at the address or location designated by the tenant for receipt of notice and at the tenant's last known business address. A certificate of the fact and date of mailing shall be kept in the court file and 5 days from the date of mailing must pass before a final judgment is entered.

Section 83.43, F.S., is amended to delete from the definition of “dwelling unit” a mobile home lot rented by the person who owns the mobile home located on the lot.

Section 83.48, F.S., is amended to allow reasonable court costs, including attorney's fees, to a prevailing party in an action under the residential landlord and tenant law.

Section 83.49, F.S., 1982 Supp., provides the following ways in which a landlord shall hold security deposits and advance rents (for those other than the next immediate rental period): in a separate noninterest-bearing account for the benefit of the tenants; in a separate interest-bearing account and pay interest to the tenant of at least 75% of the annualized average interest rate payable on the account or 5% per year, simple interest; or post a surety bond and pay 5% interest per year, simple interest. No interest shall be due to the tenant who wrongfully terminates the tenancy prior to the end of the rental term.

This bill will restore the wording and exemptions of s. 83.49(4), F.S., 1982 Supp., as they existed prior to the 1982 Session with the addition of section 8 housing. Non-profit, federally financed and subsidized, low-income housing projects would be allowed to deposit security and advance rent monies into interest-bearing accounts with interest benefiting the tenants as a whole through enhanced operating budgets. Section 83.49, F.S., 1982 Supp., is also limited in its application to housing authorities or public housing agencies created pursuant to ch. 421, F.S., or other statutes.

Section 83.56, F.S., 1982 Supp., is amended to require that subsequent or continuing noncompliances occur within 12 months of the prior violation and be of a similar nature.

Section 83.60, F.S., is amended to provide an additional defense of retaliatory conduct. A new section is created
A new part V of the Landlord and Tenant Act is created as the "Disposition of Personal Property Landlord and Tenant Act." This bill would allow a non-judicial remedy for residential and nonresidential landlords (ch. 83, parts I and II, F.S.) to dispose of personal property left on the premises after eviction, surrender, or abandonment. After proper notice, the personal property may be sold at a public sale, or if it is believed to be valued at less than $250, it may be retained or disposed of in any manner by the landlord. The bill also provides the following:

- The landlord shall give written notice describing the property to the tenant or any other person believed to be the owner of the property.
- The property shall be released to the former tenant or the person reasonably believed to be the owner upon the payment of reasonable storage charges and advertising expenses.
- If the property is not released, it may be sold at a public sale 10 days after delivery of notice, or 15 days if the notice was mailed.
- The landlord may deduct the costs for storage, advertising, and the sale from the proceeds of the public sale. The balance is remitted to the county where the owner of the property may claim the funds within 1 year of the sale.

The statute provides a form for notice to the former tenant and a form for an owner other than the former tenant. A provision is also included which exempts the landlord from liability after disposition of the personal property.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Residents of certain low-income housing projects will benefit from the accumulated interest through enhanced operating budgets which may provide for additional recreational facilities, building improvements, or other benefits for the tenants. According to the Florida Association of Homes for the Aging, a housing project with an average annual budget of approximately $100,000 could accumulate about $3,000 interest per year.

The prevailing party (landlord or tenant) in any action brought under part II of ch. 83, F.S., may receive court costs, including attorney's fees, regardless of whether a provision for attorney's fees is included in a rental agreement.

Owners of residential and commercial rental property may recognize some savings in having fewer expenses associated with legal proceedings relating to disposition of abandoned personal property. Any savings are assumed to ultimately be passed on to tenants in the form of lower rental fees.

B. Government:

The workload of the judicial system could be decreased by an indeterminable amount if abandoned personal property is
disposed of by a non-judicial process. Any savings resulting from the cases being resolved without passing through the court system should ultimately be passed on to taxpayers.

III. COMMENTS:

According to the Florida Homebuilders Association, the projects which operate under s. 202, s. 221(d)(3), s. 236, and s. 8 of the National Housing Act do so pursuant to a federal contract which limits the amount of tenants' security deposits and requires that these funds be kept separate and apart from all other funds, limits the owners return on investment, limits and requires federal approval of staff salaries, and limits and requires federal approval of operating budgets.

SB 261 was ordered enrolled by the Senate on May 31, 1983.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Chapter 83, Part I- Commercial Tenancies

Section 1. Amends §83.05, F. S., to establish a presumption of abandonment in commercial tenancies. In the absence of actual knowledge, abandonment will be presumed if the tenant has been absent from the premises for 30 consecutive days, rent is not current, and 10 days has elapsed since service of a notice demanding rent or possession.

Section 2. Amends §83.22, F.S., to provide that if service of process prior to removal of a commercial tenant cannot be made on the person and posting of the summons is required, that the landlord shall additionally provide the clerk of the court a copy of the summons, the complaint and a prestamped envelope addressed to the defendant at the subject premises at least 7 days before a judgment for final removal of the defendant may be entered.

B. Chapter 83, Part II, Residential Tenancies

Section 3. Amends §83.43(2), F.S., by deleting from the definition of "dwelling unit" for purposes of Part II (residential tenancies) of Chapter 83, mobile home lots within mobile home parks rented by the person who owns the mobile home.

Section 4. Amends §83.48, F.S., to provide that the prevailing party in landlord-tenant actions shall recover reasonable costs, including attorney's fees. Presently, if a lease provides for attorney's fees to the landlord, the court may award them to a prevailing tenant.

Section 5 amends §83.49, F.S., with regard to security deposits and advance rents. The landlord may (1) hold such funds in a separate non-interest bearing account in a Florida bank, (2) hold such funds in a separate interest-bearing account in a Florida bank and pay interest to the tenant in an amount at least 75% of the interest payable on the account, or (3) post a surety bond in the amount of the deposits held or $50,000, whichever is less. Any deposited funds in excess of $50,000 shall be invested prudently. If a tenant terminates his tenancy prior to the end of the term, no interest shall be due the tenant.

§83.49(4) is amended to exclude public housing programs from having to comply with the provisions relating to deposit money and advance rent.

83.49(5) is amended to require the tenant, in his notice of vacation or abandonment, to include an address where he can be reached.

Section 6. Presently, if a noncompliance with the rental agreement or §83.52 constitutes a subsequent or continuing noncompliance, the landlord may terminate the rental agreement. Section 6 of the bill would specify that the subsequent violation occur within 12 months of the prior violation; and further that the violations be of a similar nature.
Violations of reasonable rules or regulations could constitute the basis of a noncompliance as well as the rental agreement or §83.52.

Section 7. amends §83.60 to provide that in any action for possession, the tenant shall pay the accrued rent into the registry of the court if he raises any defense other than payment. The court is required to so notify the tenant.

Section 8. creates §83.64, which provides that it is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services, or to bring or threaten to bring an action for possession primarily because of a tenant's complaint to a governmental agency or participation in a tenant's organization. Evidence of a complaint or notice of violation within 6 months constitutes a rebuttable presumption of retaliatory conduct. Such evidence may be raised as a defense in any action for possession.

C. Chapter 83, Part III (Mobile Homes)

Section 9 amends §83.752(3), F.S., by amending the definition of "mobile home park" so that lots or spaces rented to mobile home owners which number less than 10 will come within the purview of Part III of Chapter 83.

Section 10. amends §83.759(1)(c), which provides as a ground for the eviction of a mobile home or mobile home owner, the material failure to comply with §83.758 or material provisions of the rental agreement or reasonable rules or regulations. As amended this paragraph borrows from Part II the notion of noncompliances for which the tenant should or should not be given an opportunity to cure. With regard to those noncompliances for which the mobile home owner should be given an opportunity to cure, the park owner must deliver a written notice giving the home owner 30 days to correct the noncompliance. With regard to those noncompliances for which the mobile home owner should not be given the opportunity to cure or a noncompliance which constitutes a subsequent or continuing noncompliance within 12 months of a written warning, the park owner may terminate the rental agreement and shall give the mobile home owner 30 days in which to vacate the premises.

Section 11. amends §83.7594, F.S. to provide that where notice of a violation, noncompliance or ground for eviction is required, the notice shall be given within 7 days of the date the park owner knew or should have known of its occurrence.

This section further establishes a presumption of abandonment in mobile home tenancies where the rent is not current and the tenant is absent from the premises for a stated period of time unless the mobile home owner has notified the part owner of an intended absence.

§83.7594(6) is created to provide for waiving of noncompliances if the landlord accepts or the tenant pays rent with actual knowledge of the noncompliance.
Section 12 amends §83.7597 to provide that a writ of possession shall not issue earlier than 30 days from the date judgment is granted.

Section 13 amends §83.760 by deleting the provision that a mobile home tenancy cannot be enforceable or terminated by the park owner unless the mobile home owner has been offered a written lease prior to occupancy. A written lease would be required to be offered in order for the park owner to enforce or terminate the tenancy. Leases entered into after October 1, 1983 would be required to be offered for at least a 1-year term and could not permit an increase in the amount of rent for the term.

Section 14. creates Part V, the "Disposition of Personal Property Landlord and Tenant Act". This part establishes a method for non-judicial disposition of abandoned personal property. After notice, as required, to the tenant or other persons believed to be the owner of the property, such property may be sold at public sale, or if valued at less than $100, may be disposed of in any manner by the landlord.

II. FISCAL IMPACT:

No significant fiscal impact is foreseen as a result of the proposed changes.

III. COMMENTS:

Section 1 (presumption of abandonment in commercial tenancies) and Section 14 (disposition of personal property) were proposed by the Florida Bar.

Many portions of HB 958 were identified by the Conference of County Court Judges as areas where the statutes or common law were unclear or for some other reason needed attention. These include sections 5, 6, 8, 10, 12, and 13 of the bill.

IV. AMENDMENTS:

The bill was made into a committee substitute and amended as follows: Section 83.22 now requires a second attempt at personal service before service by posting will suffice in nonresidential tenancies. In order to effect service by posting, the landlord must deliver two prestamped envelopes and copies of the complaint to the clerk of the court. Final judgment may not be entered before 5 days from the date the clerk mailed the complaints and summons.

Section 83.49(1) has been amended so that security deposits or advance rents held by a landlord in a separate interest-bearing account are to accrue for the tenant, interest of at least 75% of the interest payable on the account or 5%, whichever the landlord chooses. In those instances in which the landlord posts a surety bond to protect the deposits, there are no further requirements as to the investment of funds in excess of the amount of the bond.

CS for HB 958 does not include in s. 83.64 a presumption of retaliatory conduct upon evidence of a complaint or notice of violation within 6 months. Amendments to ss 83.759(1)(c) and 83.760 have been deleted. Sections relating to a presumption of abandonment and waiving of noncompliances has been deleted.
MEMORANDUM

Re: Disposition of Personal Property remaining on premises after termination of tenancy

BACKGROUND

There has been a continuing complaint from both lawyers and landlords that they do not know what to do with personal property left on the premises after a tenant has either been evicted or voluntarily vacated or the lease has expired and the tenant has left. This situation occurs both in the residential and in the commercial setting. There is very little case law anywhere throughout the United States and there is very little statutory law. California has a statutory framework upon which this proposed statute is modeled. This framework allows a non-judicial remedy for the landlord, which has particular requirements to follow, being very similar to the execution on a warehouseman's lien or the enforcing of a security interest under the Uniform Commercial Code.

Our committee believes that all the requirements of due process have been satisfied because of the various notice provisions and because of the fact that this is property left on the premises after the tenant has been evicted or there is an abandonment or the tenant has vacated the premises.

We believe it is very important that such a framework be enacted so that there is a non-judicial remedy for landlords. The judicial remedies such as receiving an inpersonam judgment against a tenant and then having a sheriff's sale, or through the Distress for Rent part of Chapter 83, are all too cumbersome and difficult to use in many settings, and therefore a non-judicial remedy is necessary.

This framework does not give the landlord a right to keep any money for past rent due, but it does give him a right to retain monies for storage charges. For a landlord to receive any monies for past rent due he still must file a lawsuit-- either a Distress for Rent, an Inpersonam action or through some form of Creditor's Bill in order to collect on the past rent due.

What this framework also provides, is a means of getting rid of the personal property left on the premises, for which the value is unknown.
TO: Senator Kirkpatrick  
FROM: Fran  
DATE: 11 April 1983  
RE: Presentation of SB 261, relating to the Landlord and Tenant Act.

This bill would restore language to the "Landlord and Tenant Act." This language was deleted in 1982 in HB 1075. There are 2 parts to this bill.

This first part corrects the conflicting requirements of State and Federal law regarding the handling of security deposits on tenants in Federally subsidized projects.

Federal law and rules require certain handling of the deposits, amount that can be required, what to do with interest earned, etc. All interest earned goes into a pool for the benefit of all the tenants and is strictly controlled by federal law and rules, and is controlled in the mandatory contracts signed by the tenant and landlord. THIS AMENDMENT WOULD SPEAK ONLY TO THE FEDERAL PROJECTS BUILT UNDER THE NATIONAL HOUSING ACT; THIS IS THE EXACT LANGUAGE DELETED INCORRECTLY IN 1982.

An amendment will be offered. (minor)

Kinney Harley will be available to answer technical questions.
July 16, 1982

Representative Thomas B. Drage, Jr
Post Office Box 87
Orlando, Florida 32802

Re: Legislative proposals--(1) Disposition of personal property remaining on premises after termination of tenancy, (2) Presumption of abandonment in commercial tenancies

Dear Tom,

Knowing of your interest and involvement in the Landlord and Tenant area, I thought you might like to see the enclosed first drafts of two proposals of the Real Property, Probate and Trust Law Section of the Florida Bar's Landlord and Tenant Committee. I solicit your thoughts.

I must add that these matters have not been acted upon by either the Executive Council of the Section or the Board of Governors of the Florida Bar. They are in their infant stages.

Assuming for the moment that they do become "approved proposals," we would certainly like to have your support and leadership behind them.

I hope your campaign is going well and you draw no opposition.

With best regards, I a .

Very truly yours,

William B. Wiley

Enclosures
LEGISLATIVE PROPOSAL OF LANDLORD AND TENANT COMMITTEE, REAL PROPERTY, PROBATE & TRUST LAW SECTION OF THE FLORIDA BAR, REGARDING DISPOSITION OF PERSONAL PROPERTY REMAINING ON PREMISES AFTER TERMINATION OF TENANCY.

[APPROPRIATE TITLE]

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 83., Florida Statutes, is created to read:

83. Short Title.--Sections 83. - 83. shall be known and may be cited as the "Disposition of Personal Property Landlord and Tenant Act."

Section 2. Section 83., Florida Statutes, is created to read:

83. Application.--

(1) Sections 83. through 83. apply to Residential and Commercial Tenancies.

(2) This part provides an optional procedure for the disposition of personal property which remains on the premises, be they a Dwelling Unit or not, after a tenancy has terminated or expired, and the premises have been vacated by the Tenant through eviction, surrender, abandonment, or otherwise.

(3) This part does not apply to property which exists for the purpose of providing utility services and is owned by an utility, whether or not such property is actually in operation to provide such utility services.

(4) If the requirements of this part are not satisfied, nothing in this part affects the rights and liabilities of the landlord, former tenant, or any other person.

Section 3. Section 83., Florida Statutes, is created to read:

83. Definitions.--As used in this part, the following

CODING Words in struck through type are deletions from existing law, words underlined are additions.
words and terms shall have the following meanings unless some
other meaning is plainly indicated:

(1) "Landlord" means any operator, keeper, lessor, or
sublessor of any furnished or unfurnished premises for rent, be
they a Dwelling Unit or not, or his agent, or successor-in-
interest.

(2) "Owner" means any person other than the Landlord who
has any right, title or interest in personal property.

(3) "Premises" includes any common areas associated
therewith.

(4) "Reasonable belief" means the actual knowledge or
belief a prudent person should have without making an
investigation (including any investigation of public records)
except that, where the Landlord has specific information
indicating that such an investigation would more probably than
not reveal pertinent information and the cost of such an
investigation would be reasonable in relation to the probable
value of the personal property involved, "reasonable belief"
includes the actual knowledge or belief a prudent person would
have if such an investigation were made.

(5) "Tenant" includes any paying guest, lessee, or subles
see of any premises for rent, whether a dwelling unit or not.

Section 4. Section 84. Florida Statutes is created to
read:

83. ___ Prerequisites to Disposition of Abandoned Prop-
erty.--The personal property which the Landlord reasonably
believes to have been lost shall be disposed of as otherwise
provided by the Florida Statutes. The Landlord is not liable to
the Owner of the property if he complies with this subsection.
If the appropriate police or sheriff's department or other gov-
ernment agency refuses to accept custody of property pursuant
to 'his subdivision, the Landlord may dispose of the property
pursuant to this par'.

Section 5. Section 83,___, Florida Statutes, is created to
read:

83.____ Notification of Tenant.--

(1) Where personal property remains on the premises after
a tenancy has terminated or expired, and the premises have been
vacated by the Tenant, through eviction or otherwise, the Land-
lord shall give written notice to such Tenant and to any other
person the Landlord reasonably believes to be the owner of the
property.

(2) The notice shall describe the property in a manner
reasonably adequate to permit the Owner of the property to
identify it. The notice may describe all or a portion of the
property, but the limitation of liability provided by s.83___
does not protect the Landlord from any liability arising from
the disposition of property not described in the notice except
that a trunk, valise, box, or other container which is locked,
fasted, or tied in a manner which deters immediate access to
its contents may be described as such without describing its
contents. The notice shall advise the person to be notified
that reasonable costs of storage may be charged before the
property is returned, where the property may be claimed, and the
date before which the claim must be made. The date specified in
the notice shall be a date not less than 15 days after the
notice is personally delivered or, if mailed, not less than 18
days after the notice is deposited in the mail.

(3) The notice shall be personally delivered to the person
to be notified or sent by first-class mail, postage prepaid, to
the person to be notified at his last known address and, if
there is reason to believe that the notice sent to that address

CODING Words in strike through type are deletions from existing law, words underlined are additions
will not be received by that person, also to such other address
if any, known to the landlord where such person may reasonably
be expected to receive the notice. If the notice is sent by
mail to the former tenant, one copy shall be sent to the premi-

Section 6. Section 83., Florida Statutes, is created to
read:

83. Form of Notice Tenant.--
(1) A notice to the former tenant which is in substan-
tially the following form satisfies the requirements of
s.83.:

Notice of Right to Peculiar Abandoned Property

To: [Name of former tenant]

[Address of former tenant]

When you vacated the premises at [address of premi-

ses, including room or apartment number, if any], the fol-

lowing personal property remained: [insert description of

personal property].

You may claim this property at [address where prop-

erty may be claimed].

Unless you pay the reasonable cost of storage and ad-

vertising, if any, for all the above-described property, and
take possession of the property which you claim, not later than
[insert date not less than 15 days after notice is personally
delivered or, if mailed, not less than 18 days after notice is
deposited in the mail] this property may be disposed of pursuant
to F.S. 83.:

[Insert here the statement required by subdivision (2) of
this section]

Dated: [Signature of landlord]

[Type or print name of landlord]
(2) The notice set forth in subdivision (1) shall also contain one of the following statements:

(a) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money."

(b) "Because this property is believed to be worth less than $100, it may be kept, sold or destroyed without further notice, if you fail to reclaim it within the time indicated above."

Section 6. Section 83. , Florida Statutes, is created to read:

83. Form of Notice to Owner Other Than Tenant.--A notice which is in substantially the following form given to a person (other than the former tenant) the landlord reasonably believes to be the owner of personal property satisfies the requirements of s.83.:

Notice of Right to Reclaim Abandoned Property

To: ___[Name]  
____[Address]

When ___[name of former tenant] vacated the premises at ___[address of premises, including room or apartment number, if any] the following personal property remained: ___[insert description of personal property].

If you own any of this property, you may claim it at ___[address where property may be claimed]. Unless you pay the
reasonable cost of storage and advertising, if any, and take possession of the property to which you are entitled not later than __[insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail], this property may be disposed of pursuant to F.S. Section 83.____.

Dated: ____ [signature of landlord]

(_[Type or print name of landlord]

___[Telephone number]

___[Address]

Section 7. Section 83.____, Florida Statutes, is created to read:

83.____ Storage of Abandoned Property.—The personal property described in the notice shall either be left on the vacated premises or be stored by the landlord in a place of safekeeping until the landlord either releases the property pursuant to s.83.____, or disposes of the property pursuant to s.83.____. The landlord shall exercise reasonable care in storing the property, but he is not liable to the tenant or any other owner for any loss not caused by his deliberate or negligent act.

Section 8. Section 83.____, Florida Statutes, is created to read:

83.____ Release of Personal Property.—

(1) The personal property described in the notice shall be released to the landlord to the former tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner, if such tenant or other person pays the reasonable cost of storage and advertising, and takes possession of the property not later than the date specified in the notice for taking possession.

(2) Where personal property is not released pursuant to
subdivision (1) and the notice stated that the personal property
would be sold at a public sale, the landlord shall release the
personal property to the former tenant if he claims it prior to
the time it is sold and pays the reasonable costs of storage,
advertising, and sale incurred prior to the time the property is
withdrawn from sale.

Section 8. Section 83.____, Florida Statutes, is created to
read:

83.____ Action of Abandoned Property.____

1. If the personal property described in the notice is
not released pursuant to s.83.____, it shall be sold at public
sale by competitive bidding. However, if the landlord reason-
ably believes that the total resale value of the property not
released is less than One Hundred Dollars ($100), he may retain
such property for his own use or dispose of it in any manner he
chooses. Nothing in this section shall be construed to preclude
the landlord or tenant from bidding on the property at the pub-
ic sale.

2. Notice of the time and place of the public sale shall
be given by an advertisement of the sale published once a week
for two weeks consecutively in a newspaper of general circu-
lation where the sale is to be held. The sale must be held at
the nearest suitable place to that where the personal property
is held or stored. The advertisement must include a description
of the goods, the name of the former tenant, and the time and
place of the sale. The sale must take place at least 15 days
after the first publication. If there is no newspaper of gen-
eral circulation where the sale is to be held, the advertisement
must be posted at least 10 days before the sale in not less than
five conspicuous places in the neighborhood of the proposed sale.
The last publication shall not be less than 5 days before th
sale is to be held. Notice of sale may begin publication before
the last of the dates specified for taking possession of the
property in any notice given pursuant to s.83.

The notice of the sale shall describe the property to be
sold in the manner reasonably adequate to permit the owner of
the property to identify it. The notice may describe all or a
portion of the property, but the limitation of liability pro-
vided by s.83. does not protect the landlord from any liabil-
ity arising from the disposition of property not described in
the notice, except that a trunk, valise, box, or other container
which is locked, fastened, or tied in a manner which deters im-
mediate access to its contents may be described as such without
describing its contents.

(3) After deduction of the costs of storage, advertising,
and sale, any balance of the proceeds of the sale which is not
claimed by the former tenant or an owner other than such tenant
shall be paid into the treasury of the county in which the sale
took place not later than 30 days after the date of sale. The
former tenant or other owner may claim the balance within one
year from the date of payment to the county by making applica-
tion to the county treasurer or other official designated by the
county. If the county pays the balance or any part thereof to a
claimant, neither the county nor any officer or employee thereof
is liable to any other claimant as to the amount paid.

Section 9. Section 83. ____ Florida Statutes, is created to
read:

83. ____ Nonliability of Landlord After Disposition of Prop-
erty.--

(1) Notwithstanding s.83. ____ after the landlord releases
to the former tenant property which remains on the premises
after a tenancy is terminated, the landlord is not liable with
respect to that property to any person.

(2) After the landlord releases property pursuant to
s. 83.____ to a person (other than the former tenant) reasonably
believed by the landlord to be the owner of the property, the
landlord is not liable with respect to that property to:
(a) Any person to whom notice was given pursuant to
s. 83.____; or
(b) Any person to whom notice was not given pursuant
to s. 83.____ unless such person proves that, prior to releasing
the property, the landlord believed or reasonably should have
believed that such person had an interest in the property and
also that the landlord knew or should have known upon reasonable
investigation the address of such person.

(3) Where property is disposed of pursuant to s. 83.____,
the landlord is not liable with respect to that property to:
(a) Any person to whom notice was given pursuant to
s. 83.____; or
(b) Any person to whom notice was not given pursuant
to s. 83.____ unless such person proves that, prior to disposing
of the property pursuant to s. 83.____, the landlord believed or
reasonably should have believed that such person had an interest
in the property and also that the landlord knew or should have
known upon reasonable investigation the address of such person.

Section 10. Section 83.____, Florida Statutes, is created
to read:

83.____ Assessing Cost of Storage.--

(1) Cost of storage which may be required to be paid under
this part shall be assessed in the following manner:
(a) Where a former tenant claims property pursuant to
s. 83.____, he may be required to pay the reasonable costs of
storage for all the personal property remaining on the premises.
at the termination of the tenancy which are unpaid at the time
the claim is made.

Where an owner other than the former tenant
pursuant to s. 8, he may be required to pay the
reasonable costs of storage for only the property in which the
owner claims an interest.

(2) In determining the costs to be assessed under sub-
section (1), the landlord shall not charge more than one person
for the "costs".

(3) If the landlord stores the personal property on the
premises, the cost of storage shall be the fair rental value of
the space reasonably required for each storage of the term of
the tenancy, or the storage space reasonably required for such storage for the term of
the tenancy.
LEGISLATIVE PROPOSAL OF LANDLORD AND TENANT COMMITTEE,
REAL PROPERTY, PROBATE & TRUST LAW SECTION OF THE
FLORIDA BAR, REGARDING PRESUMPTION OF ABANDONMENT IN
COMMERCIAL TENANCIES

[APPROPRIATE TITLE]

Be It Enacted by the Legislature of the State of Florida

Section 1 Section 83 05, Florida Statutes, is amended to read

83 05 Right of entry upon default in rent, determination of right of possession in action, surrender or abandonment of premises.--

(1) If any person leasing or renting any land or house fails to pay the rent at the time it becomes due, the lessor may immediately thereafter enter and take possession of the property so leased or rented

(2) The Landlord shall not recover possession of rented premises other than a dwelling unit except

(a) In an action for possession under F S 83 20, or other civil action in which the issue of right of possession is determined, or

(b) When the tenant has surrendered possession of the rented premises to the Landlord, or

(c) When the Tenant has abandoned the rented premises. In the absence of actual knowledge of abandonment, it shall be presumed that the Tenant has abandoned the rented premises if (1) the Landlord reasonably believes that the Tenant has been absent from the rented premises for a period of thirty (30) days, (2) the rent is not current, and (3) a notice pursuant to s 83 20(2) has been served and ten (10) days have elapsed since service. However, this presumption shall not
apply if the rent is current or the Tenant has notified the Landlord of an intended absence in writing.
April 18, 1983

Senator Joe Gersten, Chairman
Economic, Community & Consumer Affairs
432 Senate Office Building
Tallahassee, Florida 32301

Re: SB 653

Dear Mr. Chairman:

Senate Bill 653, concerning landlord and tenant and disposal of property which has been drafted by the Real Property Section of the Florida Bar Association, is before your committee. As I am unable to attend the committee meeting, I would appreciate your allowing Bill Wiley of the Florida Bar Association to present this bill.

Thank you for your consideration and assistance in this matter.

Very truly yours,

Roberta Fox
State Senate
District 40
A bill to be entitled

An act relating to landlord and tenant;

amending s. 83.05, Florida Statutes, specifying
alternative methods by which a landlord may
recover possession of nonresidential premises;
amending s. 83.22, Florida Statutes, requiring
an additional method of service of summons for
the removal of a tenant under certain
circumstances; amending s. 83.43(2), Florida
Statutes, redefining "living unit" for
purposes of provisions relating to residential
tenancies; amending s. 83.48, Florida Statutes,
changing provisions relating to award of
attorney's fees in actions relating to
residential tenancies; amending s. 83.49(1),
(2), (4), and (5), Florida Statutes, 1982
Supplement, changing the duties of residential
landlords with respect to deposits and advance
rents; requiring the payment of interest to the
tenant; expanding certain exemptions from
provisions regulating the use of such funds;
amending s. 83.56(2), Florida Statutes, 1982
Supplement, changing the circumstances in which
a residential tenancy may be terminated;
amending s. 83.60(2), Florida Statutes,
expanding the applicability of provisions
requiring tenants to pay accrued rent into the
court registry; requiring certain notice;
creating s. 83.64, Florida Statutes,
prohibiting certain retaliatory conduct by a
landlord against a tenant for specified actions

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
Section 5. Subsections (1), (2), (4), and (5) of section 83.49, Florida Statutes, 1982 Supplement, are amended to read:

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 his agent shall either:

(a) Hold the total amount of such money in either a separate interest-bearing account or noninterest-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; or

(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 5 percent, 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
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.

Section 3. Subsection (2) of section 83.43, Florida
Statutes, is amended to read:

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:

(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 mobile-home-located-on-the-infant

(d) 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.

Section 4. Section 83.48, Florida Statutes, is amended
to read:

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 shall recover reasonable court costs, including
attorney’s fees, from the nonprevailing party. If a rental
agreement contains a provision allowing attorney’s fees to the
landlord when he is required to take any action to enforce the
A bill to be entitled
An act relating to landlord and tenant;
amending s. 83 05, Florida Statutes, specifying
alternative methods by which a landlord may
recover possession of nonresidential premises,
amending s. 83 22, Florida Statutes, providing
additional duties for certain service of
summons for the removal of a tenant, creating
part V of chapter 83, Florida Statutes;
creating the "Disposition of Personal Property
Landlord and Tenant Act", providing procedures
for the disposition of personal property left
by a residential or commercial tenant,
providing definitions; providing certain
prerequisites to disposition, requiring
notification of tenant and specifying the form
of notice; providing for the storage of
abandoned property, authorizing the release of
personal property by the landlord; providing
procedures for the sale of abandoned property;
exempting the landlord from certain liability
after disposition of the property, providing
for the assessment of the cost of storage,
providing an effective date

Be It Enacted by the Legislature of the State of Florida

Section 1 Section 83 05, Florida Statutes, is amended
to read

CODING Words in struck through type are deletions from existing law, words underlined are additions
83.05 Right of possession entry upon default in rent

determination of right of possession in action or surrender or
abandonment of premises --

(1) If any person leasing or renting renting renting any
land or premises other than a dwelling unit lease fails to pay
the rent at the time it becomes due, the landlord has the
right to obtain possession of the premises as provided by law
lessor may immediately thereafter enter and take possession of
the property so leased or rented

(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 subsection (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. 93 20(2) has been served
and 10 days have elapsed since service.

However, this presumption shall not apply if the rent is
current or the tenant has notified the landlord in writing of
an intended absence.
Section 2. Section 83.22, Florida Statutes, is amended to read:

83.22 Removal of tenant, service.--

(1) If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his 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 proceedings.

(2) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching it to some part of the premises involved in the proceedings, the landlord shall provide the clerk of the court with two additional copies of the summons and complaint, along with two prestamped envelopes addressed to the defendant, at least 7 days before a judgment for final removal of defendant may be entered. 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 complaints 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.

Section 3. Part V of chapter 83, Florida Statutes, consisting of sections 83.821, 83.822, 83.823, 83.824, 83.825, 83.826, 83.827, 83.828, 83.829, 83.831, 83.832, and 83.833, is created to read:

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
PART V

DISPOSITION OF PERSONAL PROPERTY

83.821 Short title.--Sections 83.821-83.833 may be cited as the "Disposition of Personal Property Landlord and Tenant Act."

83.822 Application.--
(1) This part shall apply to all tenancies to which parts I or II of this chapter are applicable.
(2) This part provides an optional procedure for the disposition of personal property which remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant through eviction, surrender, abandonment, or otherwise.
(3) This part does not apply to property which exists for the purpose of providing utility services and is owned by a utility, whether or not such property is actually in operation to provide such utility services.
(4) If the requirements of this part are not satisfied, nothing in this part affects the rights and liabilities of the landlord, former tenant, or any other person.

83.823 Definitions.--As used in this part, unless some other meaning is clearly indicated:
(1) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for rent, or his agent or successor-in-interest.
(2) "Owner" means any person other than the landlord who has any right, title, or interest in personal property.
(3) "Premises" includes any common areas associated therewith.

(4) "Reasonable belief" means the actual knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made.

(5) "Tenant" includes any paying guest, lessee, or sublessee of any premises for rent, whether a dwelling unit or not.

83.824 Lost property -- Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law. However, if the appropriate law enforcement agency or other government agency refuses to accept custody of property pursuant to chapter 705, the landlord may dispose of the property pursuant to this part. The landlord is not liable to the owner of the property if he complies with this section and this part.

83 825 Notification of tenant --

(1) Where personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, through eviction or otherwise, the landlord shall give written notice to such tenant and to any other person the landlord reasonably believes to be the owner of the property.
(2) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by s. 83.832 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, and shall state where the property may be claimed and the date before which the claim must be made. The date specified in the notice shall be a date not less than 10 days after the notice is personally delivered or, if mailed, not less than 15 days after the notice is deposited in the mail.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also to such other address, if any, known to the landlord where such person may reasonably be expected to receive the notice.

83.826 Form of notice to former tenant --
(1) A notice to the former tenant which is in substantially the following form satisfies the requirements of s. 83.825:

Notice of Right to Reclaim Abandoned Property
To: . (Name of former tenant)
...(Address of former tenant)
When you vacated the premises at .(address of premises, including room or apartment number, if any) . . , the following personal property remained . . (insert description of personal property)

You may claim this property at . (address where property may be claimed) . .

Unless you pay the reasonable cost of storage and advertising, if any, for all the above-described property and take possession of the property which you claim, not later than . . (insert date not less than 10 days after notice is personally delivered or, if mailed, not less than 15 days after notice is deposited in the mail) . . , this property may be disposed of pursuant to s 83 831 (Insert here the statement required by subsection (2))

Dated: . . (Signature of landlord) . .

. . (Type or print name of landlord) . .

. . (Telephone number) . .

. . (Address) . .

(2) The notice set forth in subsection (1) shall also contain one of the following statements.

(a) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within 1 year after the county receives the money."

(b) "Because this property is believed to be worth less than $250, it may be kept, sold, or destroyed without
further notice if you fail to reclaim it within the time
indicated above."

83.827 Form of notice to owner other than former
tenant.--

(1) A notice which is in substantially the following
form given to a person other than the former tenant and whom
the landlord reasonably believes to be the owner of any of the
abandoned personal property satisfies the requirements of s
83 825.

Notice of Right to Reclaim Abandoned Property

To . (Name) .
(Address) .

When . (name of former tenant) . vacated the premises
at ...(address of premises, including room or apartment
number, if any) . , the following personal property remained:
(insert description of personal property).

If you own any of this property, you may claim it at
...(address where property may be claimed) . Unless you pay
the reasonable cost of storage and advertising, if any, and
take possession of the property to which you are entitled, not
later than ...(insert date not less than 10 days after notice
is personally delivered or, if mailed, not less than 15 days
after notice is deposited in the mail) . this property may
be disposed of pursuant to 83.831
(Insert here the statement required by subsection (2))

Dated: . (Signature of landlord).
...(Type or print name of landlord)
...(Telephone number) .
...(Address) .

(2) The notice set forth in subsection (1) shall also
contain one of the following statements:

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
1. "If you fail to reclaim the property, it will be
2. sold at a public sale after notice of the sale has been given
3. by publication. You have the right to bid on the property at
4. this sale. After the property is sold and the cost of
5. storage, advertising, and sale is deducted, the remaining
6. money will be paid over to the county. You may claim the
7. remaining money at any time within 1 year after the county
8. receives the money."
9.
10. (b) "Because this property is believed to be worth
11. less than $250, it may be kept, sold, or destroyed without
12. further notice if you fail to reclaim it within the time
13. indicated above."
14.
15. 83.828 Storage of abandoned property.--The personal
16. property described in the notice shall either be left on the
17. vacated premises or be stored by the landlord in a place of
18. safekeeping until the landlord either releases the property
19. pursuant to s. 83.829 or disposes of the property pursuant to
20. s. 83.831. The landlord shall exercise reasonable care in
21. storing the property, but he is not liable to the tenant or
22. any other owner for any loss unless caused by his deliberate
23. or negligent act.
24.
25. 83.829 Release of personal property --
26. (1) The personal property described in the notice
27. shall be released by the landlord to the former tenant or, at
28. the landlord's option, to any person reasonably believed by
29. the landlord to be its owner, if such tenant or other person
30. pays the reasonable cost of storage and advertising and takes
31. possession of the property not later than the date specified
32. in the notice for taking possession
33. (2) Where personal property is not released pursuant
34. to subsection (1) and the notice stated that the personal
35.
36.
property would be sold at a public sale, the landlord shall
release the personal property to the former tenant if he
claims it prior to the time it is sold and pays the reasonable
costs of storage, advertising, and sale incurred prior to the
time the property is withdrawn from sale.

83 831 Sale of abandoned property --

(1) If the personal property described in the notice
is not released pursuant to s. 83 829, it shall be sold at
public sale by competitive bidding. However, if the landlord
reasonably believes that the total resale value of the
property not released is less than $250, he may retain such
property for his own use or dispose of it in any manner he
chooses. Nothing in this section shall be construed to
preclude the landlord or tenant from bidding on the property
at the public sale. The successful bidder's title is subject
to ownership rights, liens, and security interests which have
priority by law.

(2) Notice of the time and place of the public sale
shall be given by an advertisement of the sale published once
a week for two consecutive weeks in a newspaper of general
circulation where the sale is to be held. The sale must be
held at the nearest suitable place to that where the personal
property is held or stored. The advertisement must include a
description of the goods, the name of the former tenant, and
the time and place of the sale. The sale must take place at
least 10 days after the first publication. If there is no
newspaper of general circulation where the sale is to be held,
the advertisement must be posted at least 10 days before the
sale in not less than six conspicuous places in the
neighborhood of the proposed sale. The last publication shall
not be less than 5 days before the sale is to be held. Notice
of sale may be published before the last of the dates
specified for taking possession of the property in any notice
given pursuant to s. 83.825.

(3) The notice of the sale shall describe the property
to be sold in the manner reasonably adequate to permit the
owner of the property to identify it. The notice may describe
all or a portion of the property, but the limitation of
liability provided by s. 83.832 does not protect the landlord
from any liability arising from the disposition of property
not described in the notice, except that a trunk, valise, box,
or other container which is locked, fastened, or tied in a
manner which deters immediate access to its contents may be
described as such without describing its contents.

(4) After deduction of the costs of storage,
advertising, and sale, any balance of the proceeds of the sale
which is not claimed by the former tenant or an owner other
than such tenant shall be paid into the treasury of the county
in which the sale took place not later than 30 days after the
date of sale. The former tenant or other owner or other
person having interest in the funds may claim the balance
within 1 year from the date of payment to the county by making
application to the county treasurer or other official
designated by the county. If the county pays the balance or
any part thereof to a claimant, neither the county nor any
officer or employee thereof is liable to any other claimant as
to the amount paid.

83 832 Nonliability of landlord after disposition of
property. --

(1) Notwithstanding the provisions of s 83 822, after
the landlord releases to the former tenant property which
remains on the premises after a tenancy is terminated, the

CODING Words in struck through type are deletions from existing law, words underlined are additions.
landlord is not liable with respect to that property to any person.

(2) After the landlord releases property pursuant to s. 83.829 to a person, other than the former tenant, reasonably believed by the landlord to be the owner of the property, the landlord is not liable with respect to that property to:

(a) Any person to whom notice was given pursuant to s. 83.825, or

(b) Any person to whom notice was not given pursuant to s. 83.825 unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(3) Where property is disposed of pursuant to s. 83.831, the landlord is not liable with respect to that property to:

(a) Any person to whom notice was given pursuant to s. 83.825; or

(b) Any person to whom notice was not given pursuant to s. 83.825 unless such person proves that, prior to disposing of the property pursuant to s. 83.831, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

83 833 Assessing cost of storage --

(1) Cost of storage which may be required to be paid under this part shall be assessed in the following manner
(a) Where a former tenant claims property pursuant to s. 83.829, he may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy which are unpaid at the time the claim is made.

(b) Where an owner other than the former tenant claims property pursuant to s. 83.829, he may be required to pay the reasonable costs of storage for only the property in which he claims an interest.

(2) In determining the costs to be assessed under subsection (1), the landlord shall not charge more than one person for the same costs.

(3) If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the space reasonably required for such storage for the term of the storage.

Section 4. This act shall take effect October 1, 1983.
I. SUMMARY:

A. Present Situation:

Section 83.59(3)(c), Florida Statutes, provides for a presumption of abandonment for a residential tenancy; however, there is no presumption of abandonment either in case law or statutory law for a commercial tenancy. Landlords of commercial property must file an action for eviction when tenants abandon property or possibly be subject to an action for unlawful dispossession.

Section 83.22, Florida Statutes, provides in a suit for removal of a tenant, that if the tenant cannot be located, the sheriff may serve a summons by posting the summons on the premises.

Chapter 83, part I (nonresidential tenancies), part II (residential tenancies), and part III (mobile home park lots), Florida Statutes, do not provide a method for a landlord to dispose of personal property left on the premises after eviction, termination of the tenancy, or abandonment. In this case a landlord would have to go to court and get a judgment against the former tenant and dispose of the property through a sheriff's sale.

B. Effect of Proposed Changes:

This bill establishes a presumption of abandonment for commercial tenancies which is similar, except for the time periods, to the presumption of abandonment for residential tenancies. In the absence of actual knowledge of abandonment, a landlord shall presume a commercial tenant has abandoned the premises if: the landlord reasonably believes the tenant has been absent from the premises for 30 consecutive days; the rent is not current; and 10 days have elapsed since service of notice for payment of rent or possession of the premises.

Section 83.22, Florida Statutes, would require in addition to posting that a summons be mailed.

A new part V of the Landlord and Tenant Act is created as the "Disposition of Personal Property Landlord and Tenant Act." This bill would allow a non-judicial remedy for residential and nonresidential landlords (chapter 83, parts I, II and III, Florida Statutes) to dispose of personal property left on the premises after eviction, surrender, or abandonment. After proper notice, the personal property may be sold at a public sale, or if it is believed to be valued at less than $100, it may be retained or disposed of in any manner by the landlord.

The bill also provides the following:
The landlord shall give written notice describing the property to the tenant or any other person believed to be the owner of the property.

The property shall be released to the former tenant or the person reasonably believed to be the owner upon the payment of reasonable storage charges and advertising expenses.

If the property is not released, it may be sold at a public sale 15 days after delivery of notice, or 20 days if the notice was mailed.

The landlord may deduct the costs for storage, advertising, and the sale from the proceeds of the public sale. The balance is remitted to the county where the owner of the property may claim the funds within 1 year of the sale. If not claimed, the county would be entitled to the funds.

The statute provides a form for notice to the former tenant and a form for an owner other than the former tenant.

A provision is also included which exempts the landlord from liability after disposition of the personal property.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Owners of residential and commercial rental property may recognize some savings in having fewer expenses associated with legal proceedings relating to disposition of abandoned personal property. Any savings are assumed to ultimately be passed on to tenants in the form of lower rental fees.

B. Government:

The workload of the judicial system could be decreased by an indeterminable amount. Any savings resulting from the cases being resolved without passing through the court system should ultimately be passed on to taxpayers.

III. COMMENTS:

On page 2, lines 5 and 6, new language is added relating to the mailing of a summons as provided in section 48.183, Florida Statutes. The referenced section does not apply to mailing, but rather to posting a summons on the property.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Section 83.59(3)(c), Florida Statutes, provides for a presumption of abandonment for a residential tenancy; however, there is no presumption of abandonment either in case law or statutory law for a commercial tenancy. Landlords of commercial property must file an action for eviction when tenants abandon property or possibly be subject to an action for unlawful dispossession.

Section 83.22, Florida Statutes, provides in a suit for removal of a tenant, that if the tenant cannot be located, the sheriff may serve a summons by posting the summons on the premises.

Chapter 83, part I (nonresidential tenancies) and part II (residential tenancies), Florida Statutes, do not provide a method for a landlord to dispose of personal property left on the premises after eviction, termination of the tenancy, or abandonment. In this case a landlord would have to go to court and get a judgment against the former tenant and dispose of the property through a sheriff's sale.

B. Effect of Proposed Changes:

This bill establishes a presumption of abandonment for commercial tenancies which is similar, except for the time periods, to the presumption of abandonment for residential tenancies. In the absence of actual knowledge of abandonment, a landlord shall presume a commercial tenant has abandoned the premises if: the landlord reasonably believes the tenant has been absent from the premises for 30 consecutive days; the rent is not current; and 10 days have elapsed since service of notice for payment of rent or possession of the premises.

Section 83.22, Florida Statutes, would require in addition to posting that a summons be mailed to the address or location designated by the tenant for receipt of notice or to the residence of the tenant, and to the last known business address of the tenant.

A new part V of the Landlord and Tenant Act is created as the "Disposition of Personal Property Landlord and Tenant Act." This bill would allow a non-judicial remedy for residential and nonresidential landlords (chapter 83, parts I and II, Florida Statutes) to dispose of personal property left on the premises after eviction, surrender, or abandonment. After proper notice, the personal property may be sold at a public sale, or if it is believed to be valued at less than $100, it may be retained or disposed of in any manner by the landlord.
The bill also provides the following:

- The landlord shall give written notice describing the property to the tenant or any other person believed to be the owner of the property.

- The property shall be released to the former tenant or the person reasonably believed to be the owner upon the payment of reasonable storage charges and advertising expenses.

- If the property is not released; it may be sold at a public sale 10 days after delivery of notice, or 15 days if the notice was mailed.

- The landlord may deduct the costs for storage, advertising, and the sale from the proceeds of the public sale. The balance is remitted to the county where the owner of the property may claim the funds within 1 year of the sale. If not claimed, the county would be entitled to the funds.

The statute provides a form for notice to the former tenant and a form for an owner other than the former tenant.

A provision is also included which exempts the landlord from liability after disposition of the personal property.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Owners of residential and commercial rental property may recognize some savings in having fewer expenses associated with legal proceedings relating to disposition of abandoned personal property. Any savings are assumed to ultimately be passed on to tenants in the form of lower rental fees.

B. Government:

The workload of the judicial system could be decreased by an indeterminable amount. Any savings resulting from the cases being resolved without passing through the court system should ultimately be passed on to taxpayers.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
- Provides that in addition to posting a summons on a premises pursuant to section 83.22, Florida Statutes, the summons must also be mailed to the address or location designated by the tenant for receipt of notice or to the residence of the tenant, and to the last known business address of the tenant.

- Applies the "Disposition of Personal Property Landlord and Tenant Act" to parts I and II, chapter 83, Florida Statutes.

- Allows property believed to be valued at less than $250 to be disposed of in any manner by the landlord after proper notice to the tenant or owner of the personal property.

- Owners of personal property would have no less than 10 days to claim their property after personally delivered notification, or 15 days if the notice is mailed.

- Deletes the requirement that one copy of the notice be mailed to the tenant at the vacated premises.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

I. SUMMARY:

A. Present Situation:

Part I of chapter 83, F.S., governs the rental of nonresidential property and all other tenancies not governed by Part II. Part II applies to the rental of a dwelling unit and a mobile home lot.

Part II, s. 83.59(3)(c), F.S., provides a presumption that residential property has been abandoned when the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments, except where the rent is current or the tenant has notified the lessor of an intended absence. Where premises are abandoned, the lessor is entitled to recover possession without the necessity of bringing a civil action. There is no comparable provision under Part I, thus necessitating an eviction action even where the premises have in fact been abandoned.

Neither Part I nor Part II provides a method of disposal of personal property left on the premises after eviction, abandonment, or termination of a tenancy. A landlord, therefore, must obtain a judgment against the former tenant and dispose of the property at a sheriff's sale.

B. Effect of Proposed Changes:

The bill provides that, where the tenant fails to pay rent when due, a lessor under Part I has a right to obtain possession as provided by law. A lessor shall recover possession only in a civil action for removal of tenant or any other action in which the right to possession is determined, when the tenant has surrendered the premises to the landlord, or when the premises have been abandoned. This provision is substantially similar to a landlord's right to recover possession of residential property under Part II.

The bill creates a presumption of abandonment of nonresidential property, absent actual knowledge of abandonment, where: (a) the landlord reasonably believes that the tenant has been absent from the premises for 30 consecutive days; (b) the rent is not current; and (c) the 3-days notice for payment of rent or possession of property, as required before commencement of a removal of tenant action, has been served on the tenant and 10 days have elapsed since service.

The presumption of abandonment does not apply where the rent is current or the tenant has provided the landlord with written notice of an intended absence.
In a removal of tenant action under s. 83.22, F.S., where service is made by posting, the tenant shall also be served by mail.

The landlord may dispose of personal property he reasonably believes to have been lost if the appropriate law enforcement agency or other governmental agency refuses to accept custody of the property under ch. 705 (seized, abandoned, wrecked or derelict property).

Notice describing the property and providing a date before which it may be reclaimed must be served on or sent to the former tenant or other person believed to be the owner. The landlord incurs no liability arising from the disposition of property which is described in the notice, and which the owner fails to reclaim.

The landlord must advertise the sale either in a newspaper of general circulation or, if no such newspaper exists in the area in which the property is to be sold, by posting in conspicuous places around the neighborhood. The landlord incurs no liability arising from the disposition of property which is described in this notice or advertisement.

The landlord may retain property worth less than $250. Otherwise, if not released, the property shall be sold at public sale by competitive bidding. The successful bidder's title is subject to ownership rights, liens, and security interests which have priority by law.

After deducting the costs of storage, advertisement and sale, the balance of the proceeds shall be paid into the county treasury. The owner or other person having an interest in the funds may claim the balance within one year from the date of payment to the county.

The landlord is not liable to any person for releasing the property to the former tenant. If the landlord released property to someone other than the former tenant whom he believes to be the owner, he incurs no liability to any other person who received notice of where and by what date the property could be reclaimed, unless the person seeking to impose the liability proves that the landlord knew or should have known that such person had an interest in the property and that the landlord knew or should have known upon reasonable investigation the address of such person.

A former tenant who reclaims property may be required to pay all storage costs. An owner other than the former tenant may be required to pay costs of storage for only the property in which he claims an interest. The landlord shall not charge more than one person for the same costs.

If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the space reasonably required for such storage for the term of the storage.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Landlords may realize some savings in disposing of abandoned property themselves instead of by a sheriff's sale.

B. Government:

There may be savings associated with fewer cases passing through the court system and fewer sheriff's sales.
III. COMMENTS:

An identical bill, HB 1154, has been placed on the House Special Order Calendar.

A comparable bill, HB 958, has been referred to the House Committee on Judiciary.

IV. AMENDMENTS:

#1 by Judiciary-Civil:
Deletes the provision requiring the landlord to furnish two copies of the summons to the clerk.
A bill to be entitled
An act relating to landlord and tenant;
amending s. 83.49(4), Florida Statutes, 1982
Supplement; providing an exemption for certain
regulated housing, including federally
administered or federally regulated housing
programs; providing an effective date.

Be it enacted by the Legislature of the State of Florida.

Section 1. Subsection (4) of section 83.49, Florida
Statutes, 1982 Supplement, is amended to read:
83.49 Deposit money or advance rent, duty of landlord
and tenant.--
(4) The provisions of this section do not apply to
transient rentals by hotels or motels as defined in chapter
509, nor shall they apply in those instances in which the
amount of rent or deposit is regulated by law or rules or
regulations of a public body including federally administered
or regulated housing programs, s. 202, s. 221(d)(3), or s. 236
of the National Housing Act, as amended, other than for rent
stabilization, application is precluded by federal law.

Section 2. This act shall take effect October 1, 1983.

*****************************************************
SENATE SUMMARY
Excepts certain landlords from security deposit and
advance rental deposit restrictions

CODING Words in struck through type are deletions from existing law; words underlined are additions
I. SUMMARY:

A. Present Situation:

Section 83.49, Florida Statutes, 1982 Supplement, provides the duties of a landlord when money is deposited or advanced by a tenant. These funds must be deposited in a separate interest-bearing or non-interest-bearing account for the benefit of the tenants, or after posting a surety bond, these funds may be commingled with funds of the landlord and placed in an interest-bearing account with annual interest due the tenants.

Section 83.49(4), Florida Statutes, 1982 Supplement, exempts from these provisions transient rentals and instances where application of these provisions are prohibited by federal law. Prior to the 1982 Legislative Session, certain non-profit, federally financed and subsidized, low-income housing projects were specifically exempted from the security deposit and advance rent requirements of chapter 83, part II, Florida Statutes. These housing projects were permitted to deposit advance rent and security funds in interest-bearing accounts with interest accruing to the benefit of the residents as a whole through enhanced operating budgets. Presently, because of the wording of the exemption in section 83.49(4), Florida Statutes, 1982 Supplement, the non-profit status of these housing projects, and the cost of calculating and making interest payments to tenants, these projects are forced to deposit advance rent and security funds into non-interest-bearing accounts and forfeit interest which could be added to the federally controlled operating budgets.

B. Effect of Proposed Changes:

This bill will restore the wording and exemptions of section 83.49(4), Florida Statutes, 1982 Supplement, as they existed prior to the 1982 Session. Non-profit, federally financed and subsidized, low-income housing projects would be allowed to deposit security and advance rent monies into interest-bearing accounts with interest benefiting the tenants as a whole through enhanced operating budgets.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Residents of certain low-income housing projects will benefit from the accumulated interest through enhanced operating budgets which may provide for additional recreational facilities, building improvements, or other benefits for the tenants.
According to the Florida Association of Homes for the Aging, a housing project with an average annual budget of approximately $100,000 could accumulate about $3,000 interest per year.

B. Government:

None.

III. COMMENTS:

According to the Florida Homebuilders Association, another section, section 8, of the National Housing Act relates to non-profit, federally financed and subsidized, low-income housing projects which operate in the same manner as those regulated by sections of the housing act listed in this bill. It appears that section 8 projects would be included in this exemption even though section 8 is not specifically listed in the bill.

According to the Florida Homebuilders Association, the projects which operate under s. 202, s. 221(d)(3), and s. 236 of the National Housing Act do so pursuant to a federal contract which limits the amount of tenants' security deposits and requires that these funds be kept separate and apart from all other funds, limits the owners return on investment, limits and requires federal approval of staff salaries, and limits and requires federal approval of operating budgets.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Section 83.49, Florida Statutes, 1982 Supplement, provides the duties of a landlord when money is deposited or advanced by a tenant. These funds must be deposited in a separate interest-bearing or noninterest-bearing account for the benefit of the tenants, or after posting a surety bond, these funds may be commingled with funds of the landlord and placed in an interest-bearing account with annual interest due the tenants. Section 83.49(4), Florida Statutes, 1982 Supplement, exempts Tallahassee, FL 32399-0500 from these provisions transient rentals and instances where application of these provisions are prohibited by federal law. Prior to the 1982 Legislative Session, certain non-profit, federally financed and subsidized, low-income housing projects were specifically exempted from the security deposit and advance rent requirements of chapter 83, part II, Florida Statutes. These housing projects were permitted to deposit advance rent and security funds in interest-bearing accounts with interest accruing to the benefit of the residents as a whole through enhanced operating budgets. Presently, because of the wording of the exemption in section 83.49(4), Florida Statutes, 1982 Supplement, the non-profit status of these housing projects, and the cost of calculating and making interest payments to tenants, these projects are forced to deposit advance rent and security funds into noninterest-bearing accounts and forfeit interest which could be added to the federally controlled operating budgets.

B. Effect of Proposed Changes:

This bill will restore the wording and exemptions of section 83.49(4), Florida Statutes, 1982 Supplement, as they existed prior to the 1982 Session. Non-profit, federally financed and subsidized, low-income housing projects would be allowed to deposit security and advance rent monies into interest-bearing accounts with interest benefiting the tenants as a whole through enhanced operating budgets.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Residents of certain low-income housing projects will benefit from the accumulated interest through enhanced operating budgets which may provide for additional recreational facilities, building improvements, or other benefits for the tenants.
According to the Florida Association of Homes for the Aging, a housing project with an average annual budget of approximately $100,000 could accumulate about $3,000 interest per year.

B. Government:

None.

III. COMMENTS:

According to the Florida Homebuilders Association, the projects which operate under s. 202, s. 221(d)(3), and s. 236 of the National Housing Act do so pursuant to a federal contract which limits the amount of tenants' security deposits and requires that these funds be kept separate and apart from all other funds, limits the owners return on investment, limits and requires federal approval of staff salaries, and limits and requires federal approval of operating budgets.

IV. AMENDMENTS:

#1 by ECCA:

Specifically exempts section 8 of the National Housing Act from the security deposit and advance rent requirements of section 83.49, Florida Statutes.
The Committee on ECCA recommended the following amendment which was moved by Senator and adopted:

Amendment

On page 1, line 20, after programs,

insert:

s. 8,
II. FISCAL IMPACT:

There should be some reduction in landlord-tenant cases filed, but it is impossible to determine the dollar amount of savings.

III. COMMENTS:

These amendments to CH.83 have been recommended by the Landlord/Tenant Committee, Real Property, Probate and Trust Law Section, Florida Bar.
I. SUMMARY:

A. Present Situation:

There is no presumption of abandonment of commercial rental properties either in statutory law or case law. Landlords must either file an action for eviction each time a commercial tenant has abandoned the premises, or be subject to an action for unlawful dis­possession.

There are currently no provisions in Chapter 83 for the disposition of personal property left on the premises after a tenant has been evicted, has voluntarily vacated, or the lease has expired.

B. Probable Effect of Proposed Changes:

Section 1 of the bill amends §83.05, F.S. by establishing a pre­sumption of abandonment for commercial tenancies. In the absence of actual knowledge, if the rent is not current, the tenant has not notified the landlord in writing of an intended absence, and 10 days have elapsed from service of a notice, the landlord may pre­sume the tenant has abandoned if he reasonably believes the tenant has been absent from the premises for 30 consecutive days.

Section 2 amends §83.22 to provide for service by posting and mailing if personal service cannot be effected.

Section 3 of the bill creates Part V of chapter 83, establishing a method for non-judicial disposition of abandoned personal property. Such property may be sold at public sale, or, if valued at less than $250, may be retained or disposed of in any manner by the landlord.

A notice which describes the property shall be personally delivered or mailed to the last known address of the tenant or person believed to own the property. The property shall be released to the person reasonably believed by the landlord to be the owner if such person pays the reasonable cost of storage and advertising. If the property is not so released prior to sale, it may be sold at public sale 15 days after delivery of the notice (or 20 days, if the notice was mailed).

After sale, the landlord may deduct his costs for storage, advertising and sale. The landlord shall remit any balance to the county in which the sale took place. The owner of the property may claim such funds from the county within 1 year of the sale.
Section 2. Section 83.22, Florida Statutes, is amended to read:

83.22 Removal of tenant; service.--If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his 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 proceedings, and by mailing in the manner provided in s. 48.183.

Section 3. Section 83.49, Florida Statutes, is amended to read:

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

(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 mobile home located in a mobile-home park that is rented for occupancy by one or more persons who own the mobile home located on the lot.
(d) 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.

Section 4. Section 83.49, Florida Statutes, is amended to read:

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 his agent shall either:
Section 1. Section 83.05, Florida Statutes, is amended to read:

83.05 Right of entry 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 fails to pay the rent at the time it becomes due, the lessor either immediately thereupon enter and take possession of the property so leased or rented.

(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 subsection (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 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.

However, this presumption shall not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence.
(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 rented for occupancy by one or more persons who own the mobile home located on the lot.

(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.

Section 4. Section 83.48, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 83.48, F.S. for present text.)

83.48 Attorneys' 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 shall recover reasonable court costs, including attorney's fees, from the nonprevailing party.
Section 1. Section 83.05, Florida Statutes, is amended to read:

83.05  Right of entry 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, house, or structure 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 subsection (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.

However, this presumption shall not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence.
Journal
of the
SENATE
State of Florida

FIFTEENTH REGULAR SESSION
UNDER THE CONSTITUTION AS REVISED IN 1968
APRIL 5 THROUGH JUNE 13, 1983
Amendment 1—On page 1, between lines 12 and 13, insert:

Section 1. Section 401.245, Florida Statutes, is created to read:

401.245 Emergency and Nonemergency Medical Services Advisory Council.—

(1) The provisions of section 231.135(b), Florida Statutes notwithstanding, the Secretary of the Department of Health and Rehabilitative Services may appoint an advisory council for the purpose of acting as the advisory body to the emergency medical services program. No more than 15 members may be appointed to this council. Initially, the secretary shall appoint one-half of the members for terms of one year each. Thereafter, members shall be appointed for two year terms. The chairman of the council shall be designated by the secretary and shall serve for a term of one year. Vacancies shall be filled for the remainder of unexpired terms in the same manner as the original appointment. Members shall receive no compensation, nor shall they be reimbursed for per diem and travel expenses.

(2) Representation on the Emergency and Nonemergency Medical Services Advisory Council shall include: two licensed physicians who are "medical directors" as defined in s. 401.23141 or whose medical practice is closely related to emergency medical services; two emergency medical services administrators, one of which shall be employed by a fire service, two certified paramedics, one of which shall be employed by a fire service, one emergency medical services educator, one emergency nurse, one hospital administrator, one representative of an ambulance service, one representative of nonemergency medical transportation services, and two laypersons who are in no way connected with emergency medical services, one of which shall be a representative of the elderly. Ex officio members of the advisory council from state agencies shall include but not be limited to representatives from the Department of Education, the Department of General Services, the Department of Insurance, and the Department of Community Affairs.

(3) The secretary shall remove from office any Emergency and Nonemergency Medical Services Advisory Council member for malfeasance, misfeasance, neglect of duty, incompetence, permanent disability to perform official duties, or pleading guilty or nolo contendere to, or being found guilty of, a felony.

(4) The Emergency and Nonemergency Medical Services Advisory Council shall meet no more often than four times annually. The council shall hold meetings at the call of the chairman, upon the written request of five members of the council, or at the call of the staff director of the emergency medical services program office. A majority of the members of the council shall constitute a quorum. Minutes shall be recorded for all meetings of the council and shall be maintained on file in the emergency medical services program office.

(5) No later than December 1 of each year preceding a legislative session in which a biennial budget will be adopted, the department shall present a summary report to the President of the Senate and the Speaker of the House of Representatives documenting compliance with the act and accomplishments and expenditures of the Emergency and Nonemergency Medical Services Advisory Council.

(6) The Department of Health and Rehabilitative Services shall adopt rules to implement this act, which rules shall serve as formal operating procedures for the Emergency and Nonemergency Medical Services Advisory Council.

(Renumber subsequent sections)

Amendment 2—On page 1, between lines 12 and 13, insert:

Section 1. Paragraph (a) of subsection (5) of section 401.27, Florida Statutes, 1982 Supplement, is amended to read:

401.27 Personnel, standards and certification —

(5)(a) The department shall establish by rule a procedure for triennial renewal certification of emergency medical technicians. Such rules shall require a United States Department of Transportation refresher training program of at least 30 hours as approved by the department and shall require at least 10 contact hours in topics related to emergency medical technicians services every 3 years. The refresher program may be offered in multiple presentations spread over the 3 year period. The rules shall also provide that the refresher course requirement may be satisfied by passing a challenge examination.
Journal

of the

House of Representatives

Eighty-fifth
Regular Session
since Statehood in 1845
April 5 through June 13, 1983

Including a record of transmittal of Acts subsequent to sine die adjournment
tion of the port and be required to be physically located within the jurisdiction of the port authority.

Rep. Spaet moved the adoption of the amendment, which was adopted without objection. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 668—A bill to be entitled An act relating to maternal deaths, amending s 382 081 (3) and (4), Florida Statutes, and adding subsection (5) thereto, requiring that medical certification of death shall include a determination as to whether the death was a maternal death, providing a definition of maternal death, creating s 383 22, Florida Statutes, providing legislative intent; authorizing the director of the Health Program Office of the Department of Health and Rehabilitative Services to initiate a prompt and thorough investigation of all reported maternal deaths, providing an effective date.

—was read the second time by title.

Representative Lehman offered the following amendment:

Amendment 1—On page 2, line 7, after the period insert. No autopsy shall be performed for the purpose of determining the occurrence of maternal death without written consent as required by s. 872.04

Rep. Lehman moved the adoption of the amendment, which was adopted without objection. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

By the Committee on Health & Rehabilitative Services and Representative Lippman—

CS/HB 676—A bill to be entitled An act relating to pharmacy, adding a subsection to s 465 003, Florida Statutes, 1982 Supplement, providing a definition, adding a subsection to s 465 019, Florida Statutes, authorizing certain institutional pharmacies to adopt an institutional formulary system for the identification of drugs; amending s 465 016 (1)(i); Florida Statutes, providing an exception to provisions prohibiting use of an ingredient or article different from that prescribed, providing an effective date.

—was read the first time by title. On motion by Rep. Lippman, the rules were waived and the bill was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 1149—A bill to be entitled An act relating to hazardous materials safety, amending s 404 30, Florida Statutes, 1982 Supplement, changing the name of the Southeast Interstate Low-Level Radioactive Waste Management Commission to the Southeast Interstate Low-Level Radioactive Waste Management Compact, providing legislative policy and purpose, providing definitions, providing for rights and obligations of party states, creating the Southeast Interstate Low-Level Radioactive Waste Management Commission; directing the commission to identify a host state for the development of a second regional disposal facility under certain circumstances, authorizing the commission to prohibit the exportation of waste from a region for the purposes of management subsequent to January 1, 1986, providing for the development and operation of facilities, providing for the effect of the compact on other laws, rules and regulations, including Virginia within the list of parties to the compact, providing for revocation, entry into force and termination of the compact, amending s 404 31, Florida Statutes, 1982 Supplement, relating to Florida's participation in the compact, providing for two alternate members to the commission, providing an effective date.

—was read the second time by title.

Representative Deutsch offered the following amendment:

Amendment 1—On page 22, line 6, after the period, insert Section 3 There is hereby created the Florida Study Commission on Nuclear Power. The commission shall consist of five members of the general public selected by the Speaker of the House of Representa
tives. The purpose of the commission shall be to study Florida's participation in the Southeast Interstate Low-Level Radioactive Waste Management Compact. The commission shall further study the phasing out of nuclear power in the State of Florida and shall report to the Legislature prior to the first day of the 1984 regular session (and renumber the subsequent section)

Rep. Deutsch moved the adoption of the amendment. Rep. Shackleford raised a point of order under Rule 11.8 that the amendment was not germane. Pending consideration thereof, Rep. Lippman, Chairman, advised that the Committee on Regulatory Reform will deal with Sunset review of nuclear power next session. Without objection, the amendment was withdrawn. Under Rule 8.19, the bill was referred to the Engrossing Clerk.

HB 1150—A bill to be entitled An act relating to state parks and preserves, amending s 258 39 (28), Florida Statutes, changing the boundaries of the Estero Bay Aquatic Preserve, providing an effective date.

—was read the second time by title and, under Rule 8.19, referred to the Engrossing Clerk.

HB 1154—A bill to be entitled An act relating to landlord and tenant; amending s 83 05, Florida Statutes, specifying alternative methods by which a landlord may recover possession of nonresidential premises; amending s. 83 22, Florida Statutes, providing additional duties for certain service of summons for the removal of a tenant; creating part V of chapter 83, Florida Statutes, creating the "Disposition of Personal Property Landlord and Tenant Act", providing procedures for the disposition of personal property left by a residential or commercial tenant, providing definitions, providing certain prerequisites to disposition, requiring notification of tenant and specifying the form of notice, providing for the storage of abandoned property, authorizing the release of personal property by the landlord, providing procedures for the sale of abandoned property, exempting the landlord from certain liability after disposition of the property, providing for the assessment of the cost of storage, providing an effective date.

—was read the second time by title.

Representative Drage offered the following amendment:

Amendment 1—On page 3, lines 14-26, strike all of said lines and insert the following, renumbering remaining sections accordingly with two additional copies of the complaint and two pre-stamped envelopes addressed to the defendant. One envelope shall be addressed to such address or location as has been designated to 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 mailing and at least 5 days from the date of mailing shall have elapsed before a judgment for final removal of defendant may be entered.

Section 3 Subsection (2) of section 83 43, Florida Statutes, as amended to read

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

(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 mobile home lot within a mobile home park that is rented for occupancy by one or more persons who own the mobile home located on the lot.
(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.

Section 4 Section 83.48, Florida Statutes, is amended to read

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. If a rental agreement contains a provision allowing an attorney's fees to the landlord when he is required to take any action to enforce the rental agreement, the court may also allow reasonable attorney's fees to the tenant when he prevails in any action by or against him with respect to the rental agreement.

Section 5 Subsections (1), (2), (4), and (5) of section 83.49, Florida Statutes, 1982 Supplement, and paragraph (a) of subsection (3) of said section are amended and subsection (9) is added to said section, to read:

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 his agent shall either

(a) Hold the total amount of such money in either a separate interest-bearing account or a noninterest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, rent or security deposit, or

(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 rent or security deposit, and 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 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 holds on behalf of the tenants or $50,000, whichever is less, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety. 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. If the deposit moneys or advance rents are deposited in an interest-bearing account, such account shall be in a Florida banking institution, and the landlord shall immediately notify the tenant of the name and address of the banking institution and the amount of his money so deposited, and the tenant shall receive and collect at least 7 1/2 percent of the interest payable on such account. If the commingled funds are used in any other manner, the tenant shall receive and collect interest at the rate of 6 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 is holding the advance rent or security deposit, he shall notify the tenant within 30 days of the change according to the provisions herein set forth. The landlord shall remit directly to the tenant, or credit against the current month's rent, the interest due to the tenant at least once annually. 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, the landlord shall have 15 days to return said security deposit together with interest, if otherwise required, or in which to give the tenant written notice by certified mail to the tenant's last known mailing address of his intention to impose a claim therein. 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. 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 1 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 15-day period, he forfeits his right to impose a claim upon the security deposit.

(4) The provisions of this section do not apply to transient rentals by hotels or motels as defined in chapter 509, nor shall 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 federally administered or regulated housing programs included in s. 202, s. 221, s. 236, or s. 8 of the National Housing Act, as amended, other than for rent stabilization and including public housing authoritiesapplicability prohibited by federal law. With the exception of subsections (3), (5), and (6) hereof, 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' notice by certified mail 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 (a).

(6) 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 tenancy prior to the end of the rental term.

Section 6. Subsection (2) of section 83.56, Florida Statutes, 1962 Supplement, is amended to read

83.56 Remedies; termination of rental agreement.—

(2) If the tenant materially fails to comply with s. 83.52 [F.S. 1973] 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 such 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 hereby notified 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, vehicles, or parking or failure 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.

Section 7 Section 83 60, Florida Statutes, is amended to read

83 60 Remedies; 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 may have, including the defense of retaliatory conduct in accordance with s. 83 64. The defense of 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 as prescribed in s. 83 56 (4) [F. S. 1973], specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. 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 based upon nonpayment of rent, 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 court shall notify the tenant of such requirement. Failure of the tenant to pay the rent into the registry of the court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

Section 8. Section 83 64, Florida Statutes, is created to read

83 64 Retaliatory conduct—

(1) It shall be unlawful for a landlord to discriminatorily increase a tenant's rent or decrease a tenant's services, 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 so 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)

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him for possession. In any event, this section shall not apply to actions for possession based on nonpayment of rent, or if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, violation of the rental agreement or reasonable rules, or violation of the terms of this chapter.

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

Section 9 Subsection (3) of section 83 752, Florida Statutes, is amended to read

83 752 Definitions—As used in this part, the following words and terms shall have the following meanings unless clearly indicated otherwise

(3) "Mobile home park" or "park" means a use of land in which 10 or more lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 10 Subsection (2) of section 83 7594, Florida Statutes, 1982 Supplement, is amended to read

83 7594 Remedies, termination of lease agreement—

(2) If the provisions of s. 83 759 (1) (b), (c), or (d) are applicable or if a mobile home owner materially fails to comply with material provisions of a written lease which are established as cumulative grounds for eviction, the mobile home park owner shall notify the mobile home owner, in writing, of the violation, noncompliance, or grounds for eviction within 7 days of the date the mobile home park owner knew or should have known of its occurrence. Such notice shall indicate the intention of the park owner to terminate the lease agreement and shall specify the date the mobile home owner and his mobile home are to vacate the mobile home lot.

The delivery of any written notice required by this subsection hereon shall be by United States mail or personal delivery.

Section 11 Section 83 7597, Florida Statutes, 1982 Supplement, is amended to read

83 7597 Remedies, removal of mobile home owner, process—In an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession, described by the lot or premises, and commanding him to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 30 days from the date judgment is granted service of the complaint for removal upon the mobile home owner.
Rep. Drage moved the adoption of the amendment, which was adopted without objection.

Representative Drage offered the following title amendment:

Amendment 2—On page 1, line 8, after the semicolon insert amending s. 83 43 (2), Florida Statutes, redifining "dwelling unit" for purposes of provisions relating to residential tenancies, amending s. 83 44 (6), Florida Statutes, changing provisions relating to payment of attorney's fees in actions relating to residential tenancies, amending s. 83 49 (1), (2), (4), and (5), Florida Statutes, 1982 Supplement, and paragraph (a) of subsection (3) of said section, and adding a subsection thereto, Supplement, and adding a subsection thereto, changing the duties of residential landlords with respect to deposits and advance rents; requiring the payment of interest to the tenant and providing procedure with respect thereto; expanding certain exemptions from provisions regulating the use of such funds, amending s. 83 56 (2), Florida Statutes, 1982 Supplement, changing the circumstances in which a residential tenancy may be terminated, amending s. 83 60, Florida Statutes, relating to defenses to an action for rent or possession, expanding the applicability of provisions requiring tenants to pay accrued rent into the court registry; requiring certain notice, creating s. 83 64, Florida Statutes, prohibiting certain retaliatory conduct by a landlord against a tenant for specified actions by the tenant, providing remedies, providing exceptions and defining "discrimination" for purposes therein, amending s. 83 752 (3), Florida Statutes, and adding a subsection thereto, expanding the definition of the term "mobile home park", amending s. 83 7594 (2), Florida Statutes, 1982 Supplement, changing provisions relating to notice of violations by mobile home owners; amending s. 83 7597, Florida Statutes, 1982 Supplement, changing the date for the issuance of writs of possession against mobile home owners, creating part V of chapter 83, Florida Statutes; creating the "Disposition of Personal Property Landlord and Tenant Act", providing procedures for the disposition of personal property left by a residential or commercial tenant, providing definitions, providing certain prerequisites to disposition, requiring notification of tenant and specifying the form of notice, providing for the storage of abandoned property; authorizing the release of personal property by the landlord, providing procedures for the sale of abandoned property, exempting the landlord from certain liability after disposition of the property; providing for the assessment of the cost of storage, providing an effective date

Rep. Drage moved the adoption of the amendment, which was adopted without objection.

Representative Friedman offered the following amendment.

Amendment 3 (applies to Amendment 1)—On page 3, lines 2-16, strike all of said lines and insert (a) hold the total amount of such money on deposit or in any other interest-earning account or noninterest-bearing account for the benefit of the tenant and, in event of event, the landlord shall not commingle such money with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such money until such moneys are actually due the landlord or

(a) 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 5 percent, 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

(b) Post a surety bond with the clerk of the

Rep. Friedman moved the adoption of the amendment. Rep. Patchett moved that the amendment be laid on the table. Rep. Hargrett raised a point of order under Rule 11 8 that the amendment was not germane. Without objection, the point of order was withdrawn. The question recurred on the motion to lay the amendment on the table, which was agreed to. The vote was

Yea—66

Allen Armstong Brown Burnsard Brown, T. C. Brown, C. Grant Burnum Burral Burrall canal Carpenter Casas Clements Comroe Cortina Crady Dansan Danszler

Nays—23

Abrams Belans Burke Clark Cosgrove Deutsch Figg

Representative Press offered the following amendment:

Amendment 4 (applies to Amendment 1)—On page 9, line 28, strike "based upon nonpayment of rent" and insert based upon nonpayment of rent

On motions by Rep. Drage, the rules were waived and—

SB 281—A bill to be entitled An act relating to landlord and tenant, amending s. 83 49 (4), Florida Statutes, 1982 Supplement, providing an exemption for certain regulated housing, including federally administered or federally regulated housing programs; providing an effective date.

—a similar or companion measure, was taken up, read the second time by title, and substituted for HB 1154. Under the rule, HB 1154 was laid on the table.

The Committee on Judiciary offered Amendment 1, inserting the text of CS/HB 958 and Representative Drage offered the following substitute amendment

Substitute Amendment 1—On page 1, lines 11 through 23, strike all of said lines 11 through 23 and insert: with two additional copies of the complaint and two pre-stamped 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, not 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 mailing and at least 5 days

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from the date of mailing shall have elapsed before a judgment for final removal of defendant may be entered.

Section 3. Subsection (2) of section 83 43, Florida Statutes, is amended to read

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

(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 mobile home lot within a mobile home park that is rented for occupancy by one or more persons who own the mobile home located on the lot

d) 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

Section 4 Section 83 48, Florida Statutes, is amended to read

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. If a rental agreement contains a provision allowing attorney's fees to the landlord when he is required to take any action to enforce the rental agreement, the court may also allow reasonable attorney's fees to the lessor when he prevails in any action brought against him with respect to the rental agreement.

Section 5. Subsections (1), (2), (4), and (5) of section 83 49, Florida Statutes, 1982 Supplement, and paragraph (a) of subsection (3) of said section are amended and subsection (5) is added to said section, to read

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 his agent shall either

(a) Hold the total amount of such money in either a separate interest-bearing account or a noninterest-bearing account in a Florida banking institution for the benefit of the tenant or tenants, and

(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 either event. The landlord shall not commute such money with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such money until such money are actually due the landlord; or

(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 5 percent, whichever the landlord elects. The landlord shall not commute such money with any other funds of the landlord or hypothecate, pledge, or in any other way make use of such money until such money are actually due the landlord; or

(c) Post a surety bond 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 holds on behalf of the tenants or $50,000, whichever is less, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety. 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. If the deposit money or advance rent are deposited in an interest-bearing account, such account shall be in a Florida banking institution. The landlord shall immediately notify the tenant of the name and address of the banking institution and the amount of money so deposited, and the tenant shall receive and collect at least 75 percent of the interest payable on such account. If the commingled funds are used in any other manner, the tenant shall receive and collect interest at the rate of 6 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 an interest-bearing 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 is holding the advance rent or security deposit, he shall notify the tenant within 30 days of the change according to the provisions herein set forth. 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. 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, the landlord shall have 15 days to return said security deposit together with interest if otherwise required, or in which to give the tenant written notice by certified mail to the tenant's last known mailing address of his intention to impose a claim thereon. 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. 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 15-day period, he forfeits his right to impose a claim upon the security deposit

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

(c) 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' notice by certified mail 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).

(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 tenancy prior to the end of the rental term.

Section 6 Subsection (2) of section 83.56, Florida Statutes, 1982 Supplement, is amended to read

83.56 Remedies, termination of rental agreement—

(2) If the tenant materially fails to comply with s. 83.52 (F S 1973) 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 an earlier 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 hereby notified that [cite the noncompliance]. You shall have 7 days from the delivery of written notice 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, vehicles, or parking or failure 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 the 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.

Section 7 Section 83.60, Florida Statutes, is amended to read

83.60 Remedies, 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 grounds of a material noncompliance with s. 83.52 (F S 1973), or may raise any other defense, whether legal or equitable, that he may have, including the defense of retaliatory conduct in accordance with s. 83.64. The defense of a material noncompliance with s. 83.51 (F S 1973) may only be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord as prescribed in s. 83.56 (F S 1973), specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. A material noncompliance with s. 83.51 (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 (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 based upon nonpayment of rent, 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 court shall notify the tenant of such requirement. Failure of the tenant to pay the rent into the registry of the court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

Section 8 Section 83.64, Florida Statutes, is created to read

83.64 Retaliatory conduct—

(1) It shall be unlawful for a landlord to discriminate increase a tenant's rent or decrease a tenant's services, 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 so 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 tenants' organization, or

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

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him for possession. In any event, this section shall not apply to actions for possession based on nonpayment of rent, or if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, violation of the rental agreement or reasonable rules, or violation of the terms of this chapter.

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

Section 9. Subsection (3) of section 83.752, Florida Statutes, is amended to read

83.752 Definitions.—As used in this part, the following words and terms shall have the following meanings unless clearly indicated otherwise:

(3) "Mobile home park" or "park" means a use of land in which 10 or more lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 10 Subsection (2) of section 83.7594, Florida Statutes, 1992 Supplement, is amended to read:

83.7594 Remedies, termination of lease agreement—

(2) If the provisions of a 83.759 (1) (b), (c), or (d) are applicable or if a mobile home owner materially fails to comply with material provisions of a written lease which are established as cumulative
grounds for eviction, the mobile home park owner shall notify the mobile home owner, in writing, of the violation, noncompliance, or grounds for eviction within 7 days of the date the mobile home park owner knew or should have known of its such occurrence. Such notice shall indicate the intention of the park owner to terminate the lease agreement and shall specify the date the mobile home owner and his mobile home are to vacate the mobile home lot. The delivery of any written notice required by this subsection hereof shall be by United States mail or personal delivery.

Section 11. Section 83 7597, Florida Statutes, 1982 Supplement, is amended to read:

83 7597 Remedies, removal of mobile home owner, process — In an action for possession, after entry of judgment in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff describing the lot or premises and commanding him to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 30 days from the date judgment is granted service of the complaint for removal upon the mobile home owner.

Rep. Drage moved the adoption of the substitute amendment, which was adopted without objection.

The Committee on Judiciary offered Amendment 2, inserting the title of CS/HS 588 and Representative Drage offered the following substitute title amendment.

Substitute Amendment 2 — On page 1, line 1, strike the entire title and insert amending s. 83 43 (2), Florida Statutes, defining "dwelling unit" for purposes of provisions relating to residential tenancies, amending s. 83 48, Florida Statutes, changing provisions relating to award of attorney’s fees in actions relating to residential tenancies, amending s. 83 49 (1), (2), (4), and (5), Florida Statutes, 1982 Supplement, and paragraph (a) of subsection (3) of said section, and adding a subsection thereto, Supplement, and adding a subsection thereto, changing the duties of residential landlords with respect to deposits and advance rents, requiring the payment of interest to the tenant and providing procedure with respect thereto, expanding certain exemptions from provisions regulating the use of such funds, amending s. 83 56 (2), Florida Statutes, 1982 Supplement, changing the circumstances in which a residential tenancy may be terminated, amending s. 83 60, Florida Statutes, relating to defenses to an action for rent or possession, expanding the applicability of provisions requiring tenants to pay accrued rent into the court registry, requiring certain notice; creating s. 83 64, Florida Statutes, prohibiting certain retaliatory conduct by a landlord against a tenant for specified actions by the tenant, providing remedies, providing exceptions and defining "discrimination" for purposes therein, amending s. 83 752 (3), Florida Statutes, and adding a subsection thereto, expanding the definition of the term "mobile home park", amending s. 83 7594 (2), Florida Statutes, 1982 Supplement, changing the date for the issuance of writ of possession against mobile home owners, creating part V of said section, and adding a subsection thereto, changing the use of such funds, amending s. 83 7597, Florida Statutes, 1982 Supplement, changing the date for the issuance of writ of possession against mobile home owners, creating part V of chapter 83, Florida Statutes; creating the "Disposition of Personal Property Landlord and Tenant Act"; providing procedures for the disposition of personal property left by a residential or commercial tenant, providing definitions, providing certain prerequisites to disposition; requiring notification of tenant and specifying the form of notice, providing for the storage of abandoned property, authorizing the release of personal property by the landlord, providing procedures for the sale of abandoned property, exempting the landlord from certain liability after disposition of the property, providing for the assessment of the cost of storage, providing an effective date.

Rep. Drage moved the adoption of the substitute amendment, which was adopted without objection.

THE SPEAKER IN THE CHAIR

Subsequently, Representative Drage offered the following amendment.

Amendment 3 (applies to Substitute Amendment 1) — On page 1, prior to the first line insert Section 1 Section 83 05, Florida Statutes, is amended to read:

83 05 Right of possession entry upon default in rent, determination of right of possession in action or surrender or abandonment of premises —

(1) If any person leasing or renting receiving any land or premises other than a dwelling unit home 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 immediately thereafter and take possession of the property so leased or rented

(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 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.

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

Section 2. Section 83 22, Florida Statutes, is amended to read

83 22 Removal of tenant, service —

(1) If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his usual place of abode in the county, after at least two attempts to obtain personal service, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceedings.

(2) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching it to some part of the premises involved in the proceedings, then the landlord shall provide the clerk of the court.

Rep. Drage moved the adoption of the amendment, which was adopted without objection.

Representative Drage offered the following amendment.

Amendment 4 (applies to Substitute Amendment 2) — On page 1, line 1, before the word "amending", insert A bill to be entitled An act relating to landlord and tenant, amending s. 83 05, Florida Statutes, specifying alternative methods by which a landlord may recover possession of nonresidential premises, amending s. 83 22, Florida Statutes, providing additional duties for certain service of summons for the removal of a tenant.

Rep. Drage moved the adoption of the amendment, which was adopted without objection. Under Rule 8 18, the bill was referred to the Engrossing Clerk.

SB 297 — A bill to be entitled An act relating to transportation, amending s. 334 03 (22), Florida Statutes, providing for the addition of parts of certain urban minor arterial routes to the state highway system, amending s. 355 04 (4), Florida Statutes, and adding section (7) thereto, directing the Department of Transportation to establish and distribute to local jurisdictions certain quantitative parameters with respect to arterial roads, providing that resurfacing or renovation of roads prior to transfer shall not apply
REGULAR SESSION 1967

GENERAL
ACTS AND RESOLUTIONS
ADOPTED BY THE
LEGISLATURE OF FLORIDA
At its Forty-first Regular Session
April 4th to July 14th, 1967
UNDER THE CONSTITUTION OF A. D. 1885

Published by Authority of Law
Under the Direction of
TOM ADAMS, SECRETARY OF STATE
Volume I, Part One
1967
Corporation to adopt the consolidation of Procedural Rules for law and chancery prepared by its Subcommittee on Civil Procedural Rules as the 1967 Revision of Florida Rules of Civil Procedure; and

WHEREAS, the Florida Supreme Court by opinion dated June 15, 1966, granted the petition of The Florida Bar and adopted said consolidation as The Florida Rules of Civil Procedure, 1967 Revision, which became effective on midnight December 31, 1966, and

WHEREAS, the Florida Statutes relating to civil procedure have not been revised since the 1955 session of the legislature following the adoption of the 1954 Florida Rules of Civil Procedure, and

WHEREAS, the adoption of the 1967 Revision of the Florida Rules of Civil Procedure necessitates the integration of many existing sections of the Florida Statutes with revised rules, and

WHEREAS, the Subcommittee of The Florida Bar on Civil Procedural Rules and the Statutory Revision Department of the Attorney General's office have diligently and constructively utilized all efforts to accomplish such integration to simplify procedure, to aid dispatch in litigation and in the dispensation of justice by revising all chapters of the Florida Statutes relating to civil procedure, and

WHEREAS, this revision has been approved by the committees on Rules and Jurisprudence and Law Reform and the Board of Governors of The Florida Bar, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida

Section 1 A new chapter 45, Florida Statutes, is created to read

560
82.03 Remedy declared for unlawful entry and forcible entry—If any person enters or has entered into lands or tenements when entry is not given by law, or if any person enters or has entered into any lands or tenements with strong hand or with multitude of people, even when entry is given by law, the party turned out or deprived of possession by the unlawful or forcible entry, by whatever right or title he held possession, or whatever estate he held or claimed in the lands or tenements of which he was so dispossessed, is entitled to the summary procedure under section 51011, Florida Statutes, within three (3) years thereafter.

82.04 Remedy declared for unlawful detention—If any person enters or has entered in a peaceful manner into any lands or tenements when the entry is lawful and after the expiration of his right continues to hold them against the consent of the party entitled to possession, the party so entitled to possession is entitled to the summary procedure under section 51011, Florida Statutes, at any time within three (3) years after the possession has been withheld from him against his consent.

82.05 Questions involved in this proceeding—No question of title, but only right of possession and damages, is involved in the action.

82.06 Process.—If no person can be found at the usual place of residence of defendant, summons may be served by posting a copy in a conspicuous place on the property, described in the complaint and summons.

82.07 Trial, evidence as to damages—At trial evidence shall be admitted about the monthly rental value of the premises and if plaintiff recovers, the jury shall fix his damages at double the rental value of the premises from the time of the unlawful or wrongful holding, but the damages in no action of detainer shall be fixed at more than rental value of the premises unless the jury is satisfied that such detention is willful and knowingly wrongful.

82.08 Trial; form of verdict—

(1) IN CASES OF FORCIBLE OR UNLAWFUL ENTRY—In forcible or unlawful entry the form of verdict shall be substantially as follows:

We, the jury, find that defendant did (or did not), within three (3) years next before the filing of the complaint, forcibly (or unlawfully) enter upon the real estate mentioned in the complaint and turn plaintiff out of possession, that defendant did (or did not) continue to hold possession at the date of the complaint, and we assess the damages of plaintiff at

(2) IN CASES OF UNLAWFUL DETAINER—The form of verdict in unlawful detainer shall be substantially as follows:

We, the jury, find that defendant did (or did not), at the time of filing the complaint, wrongfully hold possession of the real estate mentioned in the complaint against the consent of plaintiff, that defendant has (or has not) so held possession thereof against the consent of plaintiff, within three (3) years next before the filing of the complaint, and that plaintiff has (or has not) the right of possession in the real estate, and we assess the damages of plaintiff at

82.09 Judgment and execution—If the verdict is in favor of plaintiff, the court shall enter judgment that plaintiff recover possession of the property described in the complaint with his damages and costs, and shall award a writ of possession to be executed without delay and execution for his damages and costs. If the verdict is for defendant, the court shall enter judgment against plaintiff dismissing the complaint and order that defendant recover costs.

82.10 Effect of judgment.—No judgment rendered either for plaintiff or defendant bars any action of trespass for injury to the property or ejectment between the same parties respecting the same property. No verdict is conclusive of the facts therein found in any action of trespass or ejectment.

Section 34 Chapter 83, Florida Statutes, is revised and amended to read:

CHAPTER 83

LANDLORD AND TENANT

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 qua-
ter 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

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

83.03 Termination of tenancy at will; length of notice — A tenancy at will may be terminated by either party giving notice as follows. Where the tenancy is from year to year, by giving not less than three (3) months' notice prior to any annual period, where the tenancy is from quarter to quarter, by giving not less than forty-five (45) days' notice prior to the end of any quarter, where the tenancy is from month to month, by giving not less than fifteen (15) days' notice prior to the end of any monthly period, and where the tenancy is from week to week, by giving not less than seven (7) days notice prior to the end of any weekly period

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 is continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law

83.05 Right of entry upon default in rent — If any person leasing or renting any land or house fails to pay the rent at the time it becomes due, the lessor may immediately thereafter enter and take possession of the property so leased or rented

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 his lease, the landlord, his 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

83.07 Action for use and occupation — Any landlord, his heirs, executors, administrators or assigns, may recover reasonable damages for any house, lands, tenements, or hereditaments held or occupied by any person by his 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

83.08 Landlord's lien for rent — Every person to whom rent may be due, his 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 others liens, though of older date

(2) Upon all other property of the lessee or his 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
ACTS

OF THE

LEGISLATIVE COUNCIL

OF THE

Territory of Florida,

PASSED AT THEIR SEVENTH SESSION
1828

BY AUTHORITY.

PRINTED BY WILLIAM WILSON
TALLAHASSEE
1829
AN ACT

To authorize the appointment of Measurers and Inspectors
of Lumbers, and for other purposes.

Sec. 1. Be it enacted by the Governor and Legislative Council of the Territory of Florida, That it shall be the duty of the Governor, upon the recommendation of a member of the Legislative Council, to appoint for the counties which said member may represent, two measurers and inspectors of lumber, to measure and ascertain the quantity of all lumber which may be cut in said counties and intended for exportation from the Territory. Provided, that when any county shall have two representatives, they shall concur in the recommendation stated.

Sec. 2. Be it further enacted, That when any person or persons, shall desire the attendance and service of either, or any of said measurers and inspectors of lumber, he or they shall give notice and inform all parties concerned and interested, of his intention of calling the aid of such measurer and inspector at least three days previous to the time when he shall require their service and inspector to inspect and measure the lumber in question; and it shall be the duty of the measurer and Inspector, when summoned, to attend at the place and the day to which he may be called, and then carefully to measure all lumber he may be required to do, and his report and return he may make concerning thereof, shall be received as the correct measurement of the same. Provided nevertheless, that the several parties interested, shall, at all times, have liberty to establish the correctness of such return and report, but in no case, did not regularly communicated in any court of this Territory having jurisdiction of the same.

Sec. 3. Be it further enacted, That the said measurers and inspectors shall receive the following fees for their services, to wit: two dollars for every twenty miles they may travel to and from the place at which they may be required to attend, and fifty cents per every thousand superficial feet of ranee lumber, and one dollar for every hundred cubical feet of live oak, or cypress lumber, and seventy-five cents for every thousand thousand superficial feet of ranee lumber, which said fees may be recovered in any court having jurisdiction thereof, of the several parties interested in the assaying and inspecting the lumber, measured and inspected, who are hereby made jointly and severally liable therefor. Provided, that in all cases the measurer shall have a lien on the lumber he has measured for the full amount of his fees, till the same are paid, which lien shall commence immediately after the performance of the services.

Sec. 4. Be it further enacted, That in any case or cases in which any person or persons, shall transport from any county in the Territory, any lumber or articles, in violation of the preceding sections, after he or they may have been notified by any person interested in said lumber of his wish and intention, to make the same measured, he or they shall, within ten days, deliver to the two parties a sum not exceeding twenty dollars.

Sec. 5. Be it further enacted, That all measurers and inspectors appointed by virtue of this act, shall before they enter upon the duties of their office, take an oath, faithfully to discharge the same, and they shall hold their offices during the pleasure of the Governor.

Passed 20th November, 1832.

PETER ALBA,
President of the Legislative Council.

THOMAS MUNROE, Clerk.
Approved November 24th, 1832.

WM. P. DUVALL,
Governor of the Territory of Florida.

AN ACT

To provide for the collection of rents.

Be it enacted by the Governor and Legislative Council of the Territory of Florida, That from and after the passage of this act, it shall and may be lawful for any person, his or her agent, attorney or legal representative, who may hereafter have rent due, when the sum does not exceed fifty dollars, to make application to any justice of the peace of the county where the same, or their tenant may reside, and on making affidavit before said justice of the amount of rent due, and tendering said amount, the justice shall be the duty of the said justice to issue a distress warrant for the amount so claimed to be due, directed to any constable of said county, and it shall be the duty of the constable to
An act to provide for the Condemnation of the Laws

An act enacted by the Governor and Legislative Council of the Territory of Florida, that the Acts and parts of Acts herein after mentioned and described shall continue and be in force in the Territory: (to wit,)

An act to regulate descents, approved 12th August, eighteen hundred and twenty.

An act regulating damages on Bills of Exchange, approved twelfth August, eighteen hundred and twenty.

An act concerning Notaries Public, approved thirteenth September, eighteen hundred and twenty.

An act concerning worthy and regulating the rate of interest, approved 31st August, eighteen hundred and twenty.

An act to provide for the appointment of Surveyors, approved thirteenth September, eighteen hundred and twenty.

An act providing for the payment of postage paid on communications directed to the Governor and Secretary of the Territory of Florida, approved September thirteenth, eighteen hundred and twenty.
A bill to be entitled
An act relating to landlord and tenant,
amending s. 83.05, Florida Statutes, specifying
alternative methods by which a landlord may
recover possession of nonresidential premises;
amending s. 83.22, Florida Statutes, providing
additional duties for certain service of
summons for the removal of a tenant; amending
s. 83.43(2), Florida Statutes, redefining
"dwelling unit" for purposes of provisions
relating to residential tenancies; amending s.
83.46, Florida Statutes, changing provisions
relating to award of attorney's fees in actions
relating to residential tenancies; amending s.
83.49(1), (2), (4), and (5), Florida Statutes,
1982 Supplement, and paragraph (a) of
subsection (3) of said section, and adding a
subsection thereto, changing the duties of
residential landlords with respect to deposits
and advance rents; requiring the payment of
interest to the tenant and providing procedure
with respect thereto; expanding certain
exceptions from provisions regulating the use
of such funds; amending s. 83.56(2), Florida
Statutes, 1982 Supplement, changing the
circumstances in which a residential tenancy
may be terminated; amending s. 83.60, Florida
Statutes, relating to defenses to an action for
rent or possession; expanding the applicability
of provisions requiring tenants to pay accrued
rent into the court registry, requiring certain
notice; creating s. 83.64, Florida Statutes,
prohibiting certain retaliatory conduct by a
landlord against a tenant for specified actions
by the tenant; providing remedies; providing
exceptions; defining "discrimination" for
purposes therein; amending s. 83.759(2),
Florida Statutes, 1982 Supplement; changing
provisions relating to notice of violations by
mobile home owners; amending s. 83.7597,
Florida Statutes, 1982 Supplement, changing the
date for the issuance of writ of possession
against mobile home owners; creating part V of
chapter 83, Florida Statutes; creating the
"Disposition of Personal Property Landlord and
Tenant Act"; providing procedures for the
disposition of personal property left by a
residential or commercial tenant; providing
definitions; providing certain prerequisites to
disposition; requiring notification of tenant
and specifying the form of notice; providing
for the storage of abandoned property;
authorizing the release of personal property by
the landlord; providing procedures for the sale
of abandoned property; exempting the landlord
from certain liability after disposition of the
property; providing for the assessment of the
cost of storage; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:
Section 1. Section 83.05, Florida Statutes, is amended to read:

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

(1) If any person leasing or renting retainer any land or premises other than a dwelling unit has not paid the rent at the time it becomes due, the lessor has the right to obtain possession of the premises as provided by law, immediately thereafter enter and take possession of the property as leased or rented.

(2) The landlord shall recover possession of rented premises only:

(a) In an action for possession under § 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 § 83.20(2) has been served and 10 days have elapsed since service.

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

Section 2. Section 83.22, Florida Statutes, is amended to read:

83.22 Removal of tenant; service.——

(1) If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his usual place of abode in the county, after at least two attempts to obtain personal service, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceedings.

(3) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching it to some part of the premises involved in the proceedings, then the landlord shall provide the clerk of the court with two additional copies of the complaint and two unstamped 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 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 mailing and at least 5 days from the date of mailing shall have elapsed before a judgment for final removal of defendant may be entered.
Section 3. Subsection (2) of section 83.43, Florida Statutes, is amended to read:

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:

(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 mobile home lot within a mobile home park that is rented for occupancy by one or more persons who own the mobile home located on the lot.

(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.

Section 4. Section 83.48, Florida Statutes, is amended to read:

83.48 Attorney's fees.--In any civil action brought to enforce the provisions of the rental agreement, 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 if a rental agreement contains a provision allowing attorney's fees to the landlord when he is required to take any action to enforce the rental agreement; the court may also allow reasonable attorney's fees to the tenant when he prevails in any action by or against him with respect to the rental agreement.

Section 5. Subsections (1), (2), (4), and (5) of section 83.49, Florida Statutes, 1982 Supplement, are amended.

SB 261

Section 3. Subsection (2) of section 83.43, Florida Statutes, is amended to read:

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:

(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 mobile home lot within a mobile home park that is rented for occupancy by one or more persons who own the mobile home located on the lot.

(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.

Section 4. Section 83.48, Florida Statutes, is amended to read:

83.48 Attorney's fees.--In any civil action brought to enforce the provisions of the rental agreement, 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 if a rental agreement contains a provision allowing attorney's fees to the landlord when he is required to take any action to enforce the rental agreement; the court may also allow reasonable attorney's fees to the tenant when he prevails in any action by or against him with respect to the rental agreement.

Section 5. Subsections (1), (2), (4), and (5) of section 83.49, Florida Statutes, 1982 Supplement, are amended.
I. SUMMARY:

A. Present Situation:

Section 83.59(3)(c), Florida Statutes, provides for a presumption of abandonment for a residential tenancy; however, there is no presumption of abandonment either in case law or statutory law for a commercial tenancy. Landlords of commercial property must file an action for eviction when tenants abandon property or possibly be subject to an action for unlawful dispossession.

Section 83.22, Florida Statutes, provides in a suit for removal of a tenant, that if the tenant cannot be located, the sheriff may serve a summons by posting the summons on the premises.

Chapter 83, part I (nonresidential tenancies) and part II (residential tenancies), Florida Statutes, do not provide a method for a landlord to dispose of personal property left on the premises after eviction, termination of the tenancy, or abandonment. In this case a landlord would have to go to court and get a judgment against the former tenant and dispose of the property through a sheriff’s sale.

B. Effect of Proposed Changes:

This bill establishes a presumption of abandonment for commercial tenancies which is similar, except for the time periods, to the presumption of abandonment for residential tenancies. In the absence of actual knowledge of abandonment, a landlord shall presume a commercial tenant has abandoned the premises if: the landlord reasonably believes the tenant has been absent from the premises for 30 consecutive days; the rent is not current; and 10 days have elapsed since service of notice for payment of rent or possession of the premises.

Section 83.22, Florida Statutes, would require in addition to posting that a summons be mailed to the address or location designated by the tenant for receipt of notice or to the residence of the tenant, and to the last known business address of the tenant.

A new part V of the Landlord and Tenant Act is created as the "Disposition of Personal Property Landlord and Tenant Act." This bill would allow a non-judicial remedy for residential and nonresidential landlords (chapter 83, parts I and II, Florida Statutes) to dispose of personal property left on the premises after eviction, surrender, or abandonment. After proper notice, the personal property may be sold at a public sale, or if it is believed to be valued at less than $100, it may be retained or disposed of in any manner by the landlord.
The bill also provides the following:

- The landlord shall give written notice describing the property to the tenant or any other person believed to be the owner of the property.

- The property shall be released to the former tenant or the person reasonably believed to be the owner upon the payment of reasonable storage charges and advertising expenses.

- If the property is not released; it may be sold at a public sale 10 days after delivery of notice, or 15 days if the notice was mailed.

- The landlord may deduct the costs for storage, advertising, and the sale from the proceeds of the public sale. The balance is remitted to the county where the owner of the property may claim the funds within 1 year of the sale. If not claimed, the county would be entitled to the funds.

The statute provides a form for notice to the former tenant and a form for an owner other than the former tenant.

A provision is also included which exempts the landlord from liability after disposition of the personal property.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Owners of residential and commercial rental property may recognize some savings in having fewer expenses associated with legal proceedings relating to disposition of abandoned personal property. Any savings are assumed to ultimately be passed on to tenants in the form of lower rental fees.

B. Government:

The workload of the judicial system could be decreased by an indeterminable amount. Any savings resulting from the cases being resolved without passing through the court system should ultimately be passed on to taxpayers.

III. COMMENTS:

Many of the provisions contained in this bill, or similar provisions, are in SB 261, which was passed by the Legislature. SB 261 was ordered enrolled by the Senate on May 31, 1983.

IV. AMENDMENTS:

None.
A bill to be entitled
An act relating to landlord and tenant;
amending § 83 49(4), Florida Statutes, 1982
Supplement, providing an exemption for certain
regulated housing, including federally
administered or federally regulated housing
programs, providing an effective date

Be It Enacted by the Legislature of the State of Florida:

Section 1  Subsection (4) of section 83 49, Florida
Statutes, 1982 Supplement, is amended to read

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

(4) The provisions of this section do not apply to
transient rentals by hotels or motels as defined in chapter
509, nor shall they apply in those instances in which the
amount of rent or deposit is regulated by law or rules or
regulations of a public body including federally administered
or regulated housing programs, § 202, s. 221(d)(3), or § 236
of the National Housing Act, as amended, or other than for rent
stabilization application prohibited by federal law.

Section 2. This act shall take effect October 1, 1983

SENATE SUMMARY

Excepts certain landlords from security deposit and
advance rental deposit restrictions

CODING  Words in struck through type are deletions from existing law, words underlined are additions
1 (1) If any person leasing or renting a dwelling unit in a multi-family housing project 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 Immediately thereafter enter and take possession of the property so leased or rented.

3 (2) The landlord shall recover possession of rented premises only:

4 (a) In an action for possession under § 83 20, or

5 other civil action in which the issue of right of possession is determined;

6 (b) When the tenant has surrendered possession of the rented premises to the landlord, or

7 (c) When the tenant has abandoned the rented premises;

8 (3) In the absence of actual knowledge of abandonment, it shall be presumed for purposes of subsection (2)(c) that the tenant has abandoned the rented premises if:

9 (a) The landlord reasonably believes that the tenant has been absent from the rented premises for a period of 10 consecutive days.

10 (b) The rent is not current; and

11 (c) A notice pursuant to § 83 20(2) has been served and 10 days have elapsed since service.

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

13 Section 2. Section 83 22, Florida Statutes, is amended to read

14 83 22. Removal of tenant; service --If the defendant cannot be found in the county in which the action is pending
A bill to be entitled

An act relating to landlord and tenant,
amending s. 83 05, Florida Statutes, specifying
alternative methods by which a landlord may
recover possession of nonresidential premises,
amending s. 83 22, Florida Statutes, requiring
an additional method of service of summons for
the removal of a tenant, creating part V of
chapter 83, Florida Statutes, creating the
"Dispossession of Personal Property Landlord and
Tenant Act", providing procedures for the
disposition of personal property left by a
residential or commercial tenant, providing
definitions, providing certain prerequisites to
disposition, requiring notification of tenant
and specifying the form of notice, providing
for the storage of abandoned property,
authorizing the release of personal property by
the landlord, providing procedures for the sale
of abandoned property, exempting the landlord
from certain liability after disposition of the
property, providing for the assessment of the
cost of storage, providing an effective date

Be It Enacted by the Legislature of the State of Florida:

Section 1 Section 83 05, Florida Statutes, is amended
to read

83.05 Right of possession entry upon default in rent;
determination of right of possession in action or surrender or
abandonment of premises —
and either he has no usual place of abode in the county or
there is no person of his family above 15 years of age at his
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 proceedings and by mailing it in the manner
provided in § 48.183

Section 3 Part V of chapter 83, Florida Statutes,
consisting of sections 83.821, 83.822, 83.823, 83.824, 83.825,
83.826, 83.827, 83.828, 83.829, 83.831, 83.832, and 83.833, is
created to read

PART V

DISPOSITION OF PERSONAL PROPERTY

83.821 Short title--Sections 83.821-83.833 may be
cited as the "Disposition of Personal Property Landlord and
Tenant Act."

83.822 Application.--
(1) This part shall apply to all tenancies to which
parts I, II, or III of this chapter are applicable
(2) This part provides an optional procedure for the
disposition of personal property which remains on the premises
after a tenancy has terminated or expired and the premises
have been vacated by the tenant through eviction, surrender,
abandonment, or otherwise.
(3) This part does not apply to property which exists
for the purpose of providing utility services and is owned by
a utility, whether or not such property is actually in
operation to provide such utility services
(4) If the requirements of this part are not
satisfied, nothing in this part affects the rights and

CODING Words in block through type are deletions from existing law, words underlined are additions
83.823 Definitions.—As used in this part, unless some other meaning is clearly indicated:

(1) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for rent, or his agent or successor-in-interest.

(2) "Owner" means any person other than the landlord who has any right, title, or interest in personal property therewith.

(3) "Premises" includes any common areas associated therewith.

(4) "Reasonable belief" means the actual knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made.

(5) "Tenant" includes any paying guest, lessee, or sublessee of any premises for rent, whether a dwelling unit or not.

83.824 Lost property.—Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law. However, if the appropriate law enforcement agency or other government agency refuses to accept custody of property pursuant to chapter 705, the landlord may dispose of the property pursuant to this chapter.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
part. The landlord is not liable to the owner of the property
if he complies with this section and this part

83 825 Notification of tenant --

(1) Where personal property remains on the premises
after a tenancy has terminated or expired and the premises
have been vacated by the tenant, through eviction or
otherwise, the landlord shall give written notice to such
tenant and to any other person the landlord reasonably
believes to be the owner of the property

(2) The notice shall describe the property in a manner
reasonably adequate to permit the owner of the property to
identify it. The notice may describe all or a portion of the
property, but the limitation of liability provided by s
83 832 does not protect the landlord from any liability
arising from the disposition of property not described in the
notice, except that a trunk, valise, box, or other container
which is locked, fastened, or tied in a manner which deters
immediate access to its contents may be described as such
without describing its contents. The notice shall advise the
person to be notified that reasonable costs of storage may be
charged before the property is returned, and shall state where
the property may be claimed and the date before which the
claim must be made. The date specified in the notice shall be
a date not less than 15 days after the notice is personally
delivered or, if mailed, not less than 20 days after the
notice is deposited in the mail

(3) The notice shall be personally delivered or sent
by first-class mail, postage prepaid, to the person to be
notified at his last known address and, if there is reason to
believe that the notice sent to that address will not be
received by that person, also to such other address, if any,
known to the landlord where such person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by such tenant.

83.826 Form of notice to former tenant.—

(1) A notice to the former tenant which is in substantially the following form satisfies the requirements of s 83 825:

Notice of Right to Reclaim Abandoned Property
To:  .  (Name of former tenant)
     .  (Address of former tenant)

When you vacated the premises at . (address of premises, including room or apartment number, if any) , the following personal property remained: (insert description of personal property) . .

You may claim this property at .(address where property may be claimed) .

Unless you pay the reasonable cost of storage and advertising, if any, for all the above-described property and take possession of the property which you claim, not later than . (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 20 days after notice is deposited in the mail) , this property may be disposed of pursuant to s 83 831.

(Insert here the statement required by subsection (2))

Dated: . (Signature of landlord) .
     . (Type or print name of landlord) .
     . (Telephone number)
     . (Address) .

(2) The notice set forth in subsection (1) shall also contain one of the following statements
(a) "If you fail to reclaim the property, it will be
sold at a public sale after notice of the sale has been given
by publication. You have the right to bid on the property at
this sale. After the property is sold and the cost of
storage, advertising, and sale is deducted, the remaining
money will be paid over to the county. You may claim the
remaining money at any time within 1 year after the county
receives the money."

(b) "Because this property is believed to be worth
less than $100, it may be kept, sold, or destroyed without
further notice if you fail to reclaim it within the time
indicated above."

83 827 Form of notice to owner other than former
tenant --

(1) A notice which is in substantially the following
form given to a person other than the former tenant and whom
the landlord reasonably believes to be the owner of any of the
abandoned personal property satisfies the requirements of s
83 825

Notice of Right to Reclaim Abandoned Property

To. (Name)

(Address)

When (name of former tenant) vacated the premises
at . . (address of premises, including room or apartment
number, if any), the following personal property remained:

(insert description of personal property)

If you own any of this property, you may claim it at

(address where property may be claimed) Unless you pay
the reasonable cost of storage and advertising, if any, and
take possession of the property to which you are entitled, not
later than (insert date not less than 15 days after notice
is personally delivered or, if mailed, not less than 20 days
after notice is deposited in the mail). , this property may
be disposed of pursuant to 83.831

(Insert here the statement required by subsection (2))

Dated: (Signature of landlord).

(Type or print name of landlord).

(Telephone number).

(Address).

(2) The notice set forth in subsection (1) shall also
contain one of the following statements:

(a) "If you fail to reclaim the property, it will be
sold at a public sale after notice of the sale has been given
by publication. You have the right to bid on the property at
this sale. After the property is sold and the cost of
storage, advertising, and sale is deducted, the remaining
money will be paid over to the county. You may claim the
remaining money at any time within 1 year after the county
receives the money."

(b) "Because the property is believed to be worth
less than $100, it may be kept, sold, or destroyed without
further notice if you fail to reclaim it within the time
indicated above."

83.828 Storage of abandoned property -- The personal
property described in the notice shall either be left on the
vacated premises or be stored by the landlord in a place of
safekeeping until the landlord either releases the property
pursuant to s. 83.829 or disposes of the property pursuant to
s. 83.831. The landlord shall exercise reasonable care in
storing the property, but he is not liable to the tenant or
any other owner for any loss unless caused by his deliberate
or negligent act.
83 829  Release of personal property --

(1) The personal property described in the notice shall be released by the landlord to the former tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner, if such tenant or other person pays the reasonable cost of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) Where personal property is not released pursuant to subsection (1) and the notice stated that the personal property would be sold at a public sale, the landlord shall release the personal property to the former tenant if he claims it prior to the time it is sold and pays the reasonable costs of storage, advertising, and sale incurred prior to the time the property is withdrawn from sale.

83 831  Sale of abandoned property --

(1) If the personal property described in the notice is not released pursuant to § 83 829, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than $100, he may retain such property for his own use or dispose of it in any manner he chooses. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale. The successful bidder's title is subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by an advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held. The sale must be...
held at the nearest suitable place to that where the personal
property is held or stored. The advertisement must include a
description of the goods, the name of the former tenant, and
the time and place of the sale. The sale must take place at
least 15 days after the first publication. If there is no
newspaper of general circulation where the sale is to be held,
the advertisement must be posted at least 10 days before the
sale in not less than six conspicuous places in the
neighborhood of the proposed sale. The last publication shall
not be less than 5 days before the sale is to be held. Notice
of sale may be published before the last of the dates
specified for taking possession of the property in any notice
given pursuant to s 83.825.

(3) The notice of the sale shall describe the property
to be sold in the manner reasonably adequate to permit the
owner of the property to identify it. The notice may describe
all or a portion of the property, but the limitation of
liability provided by s 83.832 does not protect the landlord
from any liability arising from the disposition of property
not described in the notice, except that a trunk, valise, box,
or other container which is locked, fastened, or tied in a
manner which deters immediate access to its contents may be
described as such without describing its contents.

(4) After deduction of the costs of storage,
advertising, and sale, any balance of the proceeds of the sale
which is not claimed by the former tenant or an owner other
than such tenant shall be paid into the treasury of the county
in which the sale took place not later than 30 days after the
date of sale. The former tenant or other owner or other
person having interest in the funds may claim the balance
within 1 year from the date of payment to the county by making
application to the county treasurer or other official
designated by the county. If the county pays the balance or
any part thereof to a claimant, neither the county nor any
officer or employee thereof is liable to any other claimant as
to the amount paid

83.832 Nonliability of landlord after disposition of
property —

(1) Notwithstanding the provisions of s. 83.822, after
the landlord releases to the former tenant property which
remains on the premises after a tenancy is terminated, the
landlord is not liable with respect to that property to any
person

(2) After the landlord releases property pursuant to
s. 83.829 to a person, other than the former tenant,
reasonably believed by the landlord to be the owner of the
property, the landlord is not liable with respect to that
property to

(a) Any person to whom notice was given pursuant to s
83.825, or

(b) Any person to whom notice was not given pursuant
to s. 83.825 unless such person proves that, prior to
releasing the property, the landlord believed or reasonably
should have believed that such person had an interest in the
property and also that the landlord knew or should have known
upon reasonable investigation the address of such person

(3) Where property is disposed of pursuant to s
83.831, the landlord is not liable with respect to that
property to

(a) Any person to whom notice was given pursuant to s
83.825; or
(b) Any person to whom notice was not given pursuant to s 83.825 unless such person proves that, prior to disposing of the property pursuant to s 83.831, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

83.833 Assessing cost of storage --

(1) Cost of storage which may be required to be paid under this part shall be assessed in the following manner

(a) Where a former tenant claims property pursuant to s 83.829, he may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy which are unpaid at the time the claim is made

(b) Where an owner other than the former tenant claims property pursuant to s 83.829, he may be required to pay the reasonable costs of storage for only the property in which he claims an interest

(2) In determining the costs to be assessed under subsection (1), the landlord shall not charge more than one person for the same costs

(3) If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the space reasonably required for such storage for the term of the storage

Section 4. This act shall take effect October 1, 1983.
HOUSE SUMMARY

Provides alternative methods by which a landlord may recover possession of nonresidential premises. Specifies circumstances under which such premises may be presumed to have been abandoned by the tenant. Requires mailing of the summons for the removal of a tenant.

Creates the "Disposition of Personal Property Landlord and Tenant Act" which provides for the disposition of personal property left by a tenant. Provides that the act is applicable to nonresidential and residential tenancies as well as tenancies in mobile home parks. Provides exemptions. Provides definitions. Provides for the disposition of personal property which the landlord reasonably believes to have been lost. Provides a procedure for such disposition if the appropriate law enforcement or other government agency refuses to accept custody of the property.

Requires the landlord to give certain notification to the vacating tenant who has left personal property on the premises or to any other person the landlord reasonably believes to be the owner of the property. Specifies the content and form of such notice.

Authorizes the landlord to place the property in storage so long as he uses reasonable care. Provides for the release of such property to the tenant or owner upon reimbursing the landlord for certain costs.

Provides a procedure for the sale of abandoned property, including notification of such sale. Provides for the payment of the proceeds of the sale in excess of the landlord's costs into the treasury of the county in which the sale took place. Authorizes the tenant or other owner to claim such excess funds within 1 year of the payment to the county.

Exempts the landlord from certain liability to the former tenant or other owner for the release or sale of the property.

Provides for the assessment of storage costs.
A bill to be entitled
An act relating to landlord and tenant;
amending s. 83.05, Florida Statutes, specifying
alternative methods by which a landlord may
recover possession of nonresidential premises;
amending s. 83.22, Florida Statutes, providing
additional duties for certain service of
summons for the removal of a tenant; creating
part V of chapter 83, Florida Statutes;
creating the "Disposition of Personal Property
Landlord and Tenant Act"; providing procedures
for the disposition of personal property left
by a residential or commercial tenant;
providing definitions; providing certain
prerequisites to disposition; requiring
notification of tenant and specifying the form
of notice; providing for the storage of
abandoned property; authorizing the release of
personal property by the landlord; providing
procedures for the sale of abandoned property;
exempting the landlord from certain liability
after disposition of the property; providing
for the assessment of the cost of storage;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 83.05, Florida Statutes, is amended
to read:
83.05 Right of possession entry upon default in rent; determination of right of possession in action or surrender or abandonment of premises.--

(1) If any person leasing or renting or renting any
land or premises other than a dwelling unit house fails to pay
the rent at the time it becomes due, the landlord has the
right to obtain possession of the premises as provided by law
lessee may immediately thereafter enter and take possession of
the property so leased or rented.

(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 subsection (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; and

(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.

However, this presumption shall not apply if the rent is
current or the tenant has notified the landlord in writing of
an intended absence.
Section 2. Section 83.22, Florida Statutes, is amended to read:

83.22 Removal of tenant; service.--

(1) If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his 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 proceedings.

(2) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching it to some part of the premises involved in the proceedings, the landlord shall provide the clerk of the court with two additional copies of the summons and complaint, along with two prestamped envelopes addressed to the defendant, at least 7 days before a judgment for final removal of defendant may be entered. 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 complaints 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.

Section 3. Part V of chapter 83, Florida Statutes, consisting of sections 83.821, 83.822, 83.823, 83.824, 83.825, 83.826, 83.827, 83.828, 83.829, 83.831, 83.832, and 83.833, is created to read:

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PART V

DISPOSITION OF PERSONAL PROPERTY

83.821 Short title.--Sections 83.821-83.833 may be cited as the "Disposition of Personal Property Landlord and Tenant Act."

83.822 Application.--

(1) This part shall apply to all tenancies to which parts I or II of this chapter are applicable.

(2) This part provides an optional procedure for the disposition of personal property which remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant through eviction, surrender, abandonment, or otherwise.

(3) This part does not apply to property which exists for the purpose of providing utility services and is owned by a utility, whether or not such property is actually in operation to provide such utility services.

(4) If the requirements of this part are not satisfied, nothing in this part affects the rights and liabilities of the landlord, former tenant, or any other person.

83.823 Definitions.--As used in this part, unless some other meaning is clearly indicated:

(1) "Landlord" means any operator, keeper, lessor, or sublessee of any furnished or unfurnished premises for rent, or his agent or successor-in-interest.

(2) "Owner" means any person other than the landlord who has any right, title, or interest in personal property.

(3) "Premises" includes any common areas associated therewith.
(4) "Reasonable belief" means the actual knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made.

(5) "Tenant" includes any paying guest, lessee, or sublessee of any premises for rent, whether a dwelling unit or not.

83.824 Lost property.--Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law. However, if the appropriate law enforcement agency or other government agency refuses to accept custody of property pursuant to chapter 705, the landlord may dispose of the property pursuant to this part. The landlord is not liable to the owner of the property if he complies with this section and this part.

83.825 Notification of tenant.--

(1) Where personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, through eviction or otherwise, the landlord shall give written notice to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

(2) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the
property, but the limitation of liability provided by s. 83.832 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, and shall state where the property may be claimed and the date before which the claim must be made. The date specified in the notice shall be a date not less than 10 days after the notice is personally delivered or, if mailed, not less than 15 days after the notice is deposited in the mail.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his last known address and, if there is reason to believe that the notice sent to that address will not be received by that person, also to such other address, if any, known to the landlord where such person may reasonably be expected to receive the notice.

83.826 Form of notice to former tenant.—

(1) A notice to the former tenant which is in substantially the following form satisfies the requirements of s. 83.825:

Notice of Right to Reclaim Abandoned Property

To: ...(Name of former tenant)...

...(Address of former tenant)...

When you vacated the premises at ...(address of premises, including room or apartment number, if any)..., the

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following personal property remained: ...(insert description of personal property)....

You may claim this property at ...(address where property may be claimed)....

Unless you pay the reasonable cost of storage and advertising, if any, for all the above-described property and take possession of the property which you claim, not later than ...(insert date not less than 10 days after notice is personally delivered or, if mailed, not less than 15 days after notice is deposited in the mail)..., this property may be disposed of pursuant to s. 83.831.

[Insert here the statement required by subsection (2)]

Dated: ...(Signature of landlord)...
...(Type or print name of landlord)...
...(Telephone number)...
...(Address)...

(2) The notice set forth in subsection (1) shall also contain one of the following statements:

(a) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within 1 year after the county receives the money."

(b) "Because this property is believed to be worth less than $250, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."
83.827  Form of notice to owner other than former tenant.--

(1) A notice which is in substantially the following form given to a person other than the former tenant and whom the landlord reasonably believes to be the owner of any of the abandoned personal property satisfies the requirements of s. 83.825:

Notice of Right to Reclaim Abandoned Property

To: ...[Name]...
...(Address)...

When ...(name of former tenant) vacated the premises at ...(address of premises, including room or apartment number, if any)..., the following personal property remained:
...(insert description of personal property)....

If you own any of this property, you may claim it at ...(address where property may be claimed).... Unless you pay the reasonable cost of storage and advertising, if any, and take possession of the property to which you are entitled, not later than ...(insert date not less than 10 days after notice is personally delivered or, if mailed, not less than 15 days after notice is deposited in the mail)...., this property may be disposed of pursuant to 83.831.

(Insert here the statement required by subsection (2))

Dated: ...(Signature of landlord)...
...(Type or print name of landlord)...
...(Telephone number)...
...(Address)...

(2) The notice set forth in subsection (1) shall also contain one of the following statements:

(a) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given..."
by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within 1 year after the county receives the money."

(b) "Because this property is believed to be worth less than $250, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."

33.828 Storage of abandoned property.—The personal property described in the notice shall either be left on the vacated premises or be stored by the landlord in a place of safekeeping until the landlord either releases the property pursuant to s. 33.829 or disposes of the property pursuant to s. 33.831. The landlord shall exercise reasonable care in storing the property, but he is not liable to the tenant or any other owner for any loss unless caused by his deliberate or negligent act.

33.829 Release of personal property.—

(1) The personal property described in the notice shall be released by the landlord to the former tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner, if such tenant or other person pays the reasonable cost of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) Where personal property is not released pursuant to subsection (1) and the notice stated that the personal property would be sold at a public sale, the landlord shall release the personal property to the former tenant if he
claims it prior to the time it is sold and pays the reasonable costs of storage, advertising, and sale incurred prior to the time the property is withdrawn from sale.

83.831 Sale of abandoned property.--

(1) If the personal property described in the notice is not released pursuant to s. 83.829, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than $250, he may retain such property for his own use or dispose of it in any manner he chooses. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale. The successful bidder's title is subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by an advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation where the sale is to be held. The sale must be held at the nearest suitable place to that where the personal property is held or stored. The advertisement must include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale must take place at least 10 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The last publication shall not be less than 5 days before the sale is to be held. Notice of sale may be published before the last of the dates.
specified for taking possession of the property in any notice
given pursuant to s. 83.825.

(3) The notice of the sale shall describe the property
to be sold in the manner reasonably adequate to permit the
owner of the property to identify it. The notice may describe
all or a portion of the property, but the limitation of
liability provided by s. 83.832 does not protect the landlord
from any liability arising from the disposition of property
not described in the notice, except that a trunk, valise, box,
or other container which is locked, fastened, or tied in a
manner which deters immediate access to its contents may be
described as such without describing its contents.

(4) After deduction of the costs of storage,
advertising, and sale, any balance of the proceeds of the sale
which is not claimed by the former tenant or an owner other
than such tenant shall be paid into the treasury of the county
in which the sale took place not later than 30 days after the
date of sale. The former tenant or other owner or other
person having interest in the funds may claim the balance
within 1 year from the date of payment to the county by making
application to the county treasurer or other official
designated by the county. If the county pays the balance or
any part thereof to a claimant, neither the county nor any
officer or employee thereof is liable to any other claimant as
to the amount paid.

83.832 Nonliability of landlord after disposition of
property.—

(1) Notwithstanding the provisions of s. 83.822, after
the landlord releases to the former tenant property
remains on the premises after a tenancy is terminated, the

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landlord is not liable with respect to that property to any person.

(2) After the landlord releases property pursuant to s. 83.829 to a person, other than the former tenant, reasonably believed by the landlord to be the owner of the property, the landlord is not liable with respect to that property to:

(a) Any person to whom notice was given pursuant to s. 83.825; or

(b) Any person to whom notice was not given pursuant to s. 83.825 unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(3) Where property is disposed of pursuant to s. 83.831, the landlord is not liable with respect to that property to:

(a) Any person to whom notice was given pursuant to s. 83.825; or

(b) Any person to whom notice was not given pursuant to s. 83.825 unless such person proves that, prior to disposing of the property pursuant to s. 83.831, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

83.833 Assessing cost of storage.--

(1) Cost of storage which may be required to be paid under this part shall be assessed in the following manner:

12
(a) Where a former tenant claims property pursuant to s. 83.829, he may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy which are unpaid at the time the claim is made.

(b) Where an owner other than the former tenant claims property pursuant to s. 83.829, he may be required to pay the reasonable costs of storage for only the property in which he claims an interest.

(2) In determining the costs to be assessed under subsection (1), the landlord shall not charge more than one person for the same costs.

(3) If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the space reasonably required for such storage for the term of the storage.

Section 4. This act shall take effect October 1, 1983.
HOUSE SUMMARY

Provides alternative methods by which a landlord may recover possession of nonresidential premises. Specifies circumstances under which such premises may be presumed to have been abandoned by the tenant. Provides additional procedures with respect to summons to be served on a tenant for an action for removal if summons is to be served by attaching it to the premises. Requires mailing of the summons for the removal of a tenant.

Creates the "Disposition of Personal Property Landlord and Tenant Act" which provides for the disposition of personal property left by a tenant. Provides that the act is applicable to nonresidential and residential tenancies as well as tenancies in mobile home parks. Provides exemptions. Provides definitions. Provides for the disposition of personal property which the landlord reasonably believes to have been lost. Provides a procedure for such disposition if the appropriate law enforcement or other government agency refuses to accept custody of the property.

Requires the landlord to give certain notification to the vacating tenant who has left personal property on the premises or to any other person the landlord reasonably believes to be the owner of the property. Specifies the content and form of such notice.

Authorizes the landlord to place the property in storage so long as he uses reasonable care. Provides for the release of such property to the tenant or owner upon reimbursing the landlord for certain costs.

Provides a procedure for the sale of abandoned property, including notification of such sale. Provides for the payment of the proceeds of the sale in excess of the landlord's costs into the treasury of the county in which the sale took place. Authorizes the tenant or other owner to claim such excess funds within 1 year of the payment to the county.

Exempts the landlord from certain liability to the former tenant or other owner for the release or sale of the property.

Provides for the assessment of storage costs.
A bill to be entitled
An act relating to landlord and tenant;
amending s. 83.05, Florida Statutes, specifying
alternative methods by which a landlord may
recover possession of nonresidential premises;
amending s. 83.22, Florida Statutes, requiring
an additional method of service of summons for
the removal of a tenant; amending s. 83.43(2),
Florida Statutes, redefining "dwelling unit"
for purposes of provisions relating to
residential tenancies; amending s. 83.48,
Florida Statutes, changing provisions relating
to award of attorney's fees in actions relating
to residential tenancies; amending s. 83.49(1),
(2), (4), and (5), Florida Statutes, 1982
Supplement, changing the duties of residential
landlords with respect to deposits and advance
rents; expanding certain exemptions from
provisions regulating the use of such funds;
amending s. 83.56(2), Florida Statutes, 1982
Supplement, changing the circumstances in which
a residential tenancy may be terminated;
amending s. 83.60(2), Florida Statutes,
expanding the applicability of provisions
requiring tenants to pay accrued rent into the
court registry; requiring certain notice;
creating s. 83.64, Florida Statutes,
prohibiting certain retaliatory conduct by a
landlord against a tenant for specified actions
by the tenant; providing remedies; providing
exceptions; amending s. 83.752(3), Florida
Statutes, expanding the definition of the term "mobile home park" in provisions relating to mobile home park lots; amending s. 83.759(1)(c), Florida Statutes, 1982 Supplement, substantially revising provisions relating to evictions from mobile home parks; amending s. 83.7594(2), Florida Statutes, 1982 Supplement, and adding subsections thereto; changing provisions relating to notice of violations by mobile home owners; specifying circumstances in which mobile home park owners may recover possession of lots from mobile home owners; providing for certain waiver of rights by either party; amending s. 83.7597, Florida Statutes, 1982 Supplement, changing the date for the issuance of writs of possession against mobile home owners; amending s. 83.760(1) and (2), Florida Statutes, deleting restrictions upon mobile home leases and imposing certain requirements for such leases; creating part V of chapter 83, Florida Statutes; creating the "Disposition of Personal Property Landlord and Tenant Act"; providing procedures for the disposition of personal property left by a residential or commercial tenant; providing definitions; providing certain prerequisites to disposition; requiring notification of tenant and specifying the form of notice; providing for the storage of abandoned property; authorizing the release of personal property by the landlord; providing procedures for the sale

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procedures for the sale of abandoned property;
exempting the landlord from certain liability
after disposition of the property; providing
for the assessment of the cost of storage;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 83.05, Florida Statutes, is amended to read:

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

(1) If any person leasing or renting or re-renting any land or premises other than a dwelling unit house 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 may immediately thereafter enter and take possession of the property so leased or rented.

(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:

CODING Words stricken through type are deletions from existing law; words underlined are additions.
(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.

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

Section 2. Section 83.22, Florida Statutes, is amended to read:

83.22 Removal of tenant; service.--

(1) If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his 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 proceedings and by mailing it in the manner provided in s. 48.103.

(2) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching same to some conspicuous place on the property described in the complaint or summons, then the landlord shall provide the clerk of the court with an additional copy of the summons and complaint and a prestamped envelope addressed to the defendant at the premises involved in the proceedings at least 7 days before a judgment for final removal of the defendant may be entered. The clerk of the court shall immediately mail the copy of the summons and complaint by first class mail, note the fact of mailing in the docket, and

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file a certificate in the court file of the fact and date of
mailing. If the premises in the proceeding does not have a
mailing address, then the notice shall be sent to the
defendant’s last known address according to the landlord’s
records.

Section 3. Subsection (2) of section 83.43, Florida
Statutes, is amended to read:

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:

(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 mobile home located on the lot within a mobile home park that
is rented for occupancy by one or more persons who own the
mobile home located on the lot.

(d) 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.

Section 4. Section 83.48, Florida Statutes, is amended
to read:

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 shall recover reasonable court costs, including
attorney’s fees, from the nonprevailing party. If a rental
agreement contains a provision allowing attorney’s fees to the
landlord when he is required to take any action to enforce the
rental-agreement; the court may also allow reasonable
attorney's fees to the tenant when he prevails in any action
by or against him with respect to the rental agreement.

Section 5. Subsections (1), (2), (4), and (5) of
section 83.49, Florida Statutes, 1982 Supplement, are amended
to read:

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 his agent shall
either:

(a) Hold the total amount of such money in either a
separate interest-bearing account or noninterest-bearing
account in a Florida banking institution for the benefit of
the tenant or tenants. In either event, 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

(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 at least 75
percent of the amount of interest payable on such account; or

(c) Post a surety bond 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 holds on behalf of the tenants or $50,000,
whichever is less, executed by the landlord as principal and a
surety company authorized and licensed to do business in the state as surety. 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. Upon posting the bond, any surplus of security deposits or advance rents in excess of $50,000 shall be deposited or invested in a bank account, readily marketable secured loan arrangement, money market mutual fund, or other prudent investment. 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 terminates his tenancy prior to the end of the rental term. If-the-deposit-moneys-or-advance-rents-are deposited-in-an-interest-bearing-account-such-account-shall be-in-a-florida-banking-institution; the-landlord-shall immediately-notify-the-tenant-of-the-name-and-address-of-the banking-institution-and-the-amount-of-his-money-so-deposited, and-the-tenant-shall-receive-and-collect-at-least-75-percent of-the-interest-payable-on-such-account—if-the-commingled funds-are-used-in-any-other-manner, the-tenant-shall-receive and-collect-interest-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 is holding the advance rent
or security deposit, he shall notify the tenant within 30 days
of the change according to the provisions herein set forth.

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. 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.

(4) The provisions of this section do not apply to
transient rentals by hotels or motels as defined in chapter
509, nor shall 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 federally
administered or regulated housing programs pursuant to s. 202,
s. 224(d)(3), s. 236, or s. 8 of the National Housing Act, as
amended, other than for rent stabilization and including
public housing authorities application is prohibited by
federal law.
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' notice by certified mail 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).

Section 6. Subsection (2) of section 83.56, Florida Statutes, 1982 Supplement, is amended to read:

83.56 Remedies; termination of rental agreement.—

(2) If the tenant materially fails to comply with s. 83.52 (F. S. 1973) 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 prior 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

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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, vehicles, or parking or failure 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.

Section 7. Subsection (2) of section 83.69, Florida Statutes, is amended to read:

CODING Words in struck through type are deletions from existing law, words underlined are additions.
83.60 Remedies; defenses to action for rent or
possession; procedure.--

(2) In an action by the landlord for possession of a
dwelling unit based-upon-nonpayment-of-rent, 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 court shall notify the tenant of such requirement.

Failure of the tenant to pay the rent into the registry of the
court as provided herein constitutes an absolute waiver of the
tenant's defenses other than payment, and the landlord is
entitled to an immediate default.

Section 8. Section 83.64, Florida Statutes, is created
to read:

83.64 Retaliatory conduct.--

(1) It shall be unlawful for a landlord to retaliate
against the tenant by discriminatorily increasing his rent or
decreasing services, or by bringing or threatening to bring an
action for possession or other civil action, primarily
because:

(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; or

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

(2) Evidence of a complaint or notice of violation, or
evidence of any other activity protected by subsection (1),
within 6 months prior to the action of the landlord, shall

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create a rebuttable presumption that the action of the
landlord constitutes retaliatory conduct.

(3) If the landlord acts in violation of subsection
(1), the tenant shall be entitled to an award of reasonable
attorney's fees and costs. Evidence of retaliatory conduct
may be raised by the tenant as a defense in any action brought
against him for possession. In any event, this section shall
not apply to actions for possession based on nonpayment of
rent, violation of the rental agreement or reasonable rules,
or violation of the terms of this chapter. In no event shall
a landlord be precluded from refusing to renew a lease or
rental agreement 1 year after the alleged retaliatory conduct
by the landlord.

Section 9. Subsection (3) of section 83.752, Florida
Statutes, is amended to read

83.752 Definitions.—As used in this part, the
following words and terms shall have the following meanings
unless clearly indicated otherwise:

(3) "Mobile home park" or "park" means a use of land
in which 10 or more lots or spaces are offered for rent or
lease for the placement of mobile homes and in which the
primary use of the park is residential.

Section 10. Paragraph (c) of subsection (1) of section
83.759, Florida Statutes, 1982 Supplement, is amended to read:

83.759 Mobile home parks, eviction, grounds,
proceedings.—

(1) A mobile home park owner or operator may not evict
a mobile home or a mobile home dweller other than for the
following reasons

(Substantial rewording of paragraph. See
§ 83.759(1)(c), P.S., 1982 Supp., for present text.)
(c) Material failure to comply with s. 83.758, or material provisions of the rental agreement other than a failure to pay rent, or reasonable rules or regulations.

1. If such noncompliance is of a nature that the mobile home owner 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 mobile home park owner of a violation of a similar nature, the mobile home park owner may deliver a written notice to the mobile home owner specifying the noncompliance and the mobile home park owner's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the mobile home owner should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the mobile home park owner's or other mobile home owners' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the mobile home park owner may terminate the rental agreement, and the mobile home owner shall have 30 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 30 days from the delivery of this letter to vacate the premises. This action is taken because (Cite the noncompliance).

2. If such noncompliance is of a nature that the mobile home owner should be given an opportunity to cure it, the mobile home park owner may deliver a written notice to the mobile home owner specifying the noncompliance, including a

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notice that, if the noncompliance is not corrected within 30
days from the date the written notice is delivered, the mobile
home park owner shall terminate the rental agreement by reason
thereof. Examples of such noncompliance include, but are not
limited to, activities in contravention of the lease, this
act, or reasonable rules or regulations, such as having or
permitting unauthorized pets, guests, vehicles, or parking or
failure 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 30 days of receipt of this notice or your
lease shall be deemed terminated and you shall vacate the
premises upon such termination.

3. A copy of all rules and regulations shall be
delivered by the park owner or operator to the mobile home
owner prior to his signing the lease or entering into a rental
agreement. A copy of the rules and regulations shall also be
posted in the recreation hall, if any, or some other
conspicuous place in the park. A mobile home park rule or
regulation shall be presumed to be reasonable if it is similar
to rules and regulations customarily established in other
mobile home parks located in this state or if the rule or
regulation is not immoderate or excessive. No reasonable rule
or regulation may be arbitrarily applied and used as a ground
for eviction.

Section 11. Subsection (2) of section 83.7594, Florida
Statutes, 1982 Supplement, is amended, and subsections (5) and
(6) are added to said section, to read:

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83.7594 Remedies; termination of lease agreement.—

(2) If the provisions of s. 83.759(1)(b), (c), or (d) are applicable or if a mobile home owner materially fails to comply with material provisions of a written lease which are established as cumulative grounds for eviction, the mobile home park owner shall notify the mobile home owner, in writing, of the violation, noncompliance, or grounds for eviction within 7 days of the date the mobile home park owner knew or should have known of its such occurrence. Such notice shall indicate the intention of the park owner to terminate the lease agreement and shall specify the date the mobile home owner and his mobile home are to vacate the mobile home lot. The delivery of any written notice required by this subsection herein shall be by United States mail or personal delivery.

(5) The mobile home park owner shall not recover possession of a mobile home lot except:

(a) In an action for possession under subsection (4) or other civil action in which the issue of right of possession is determined;

(b) When the mobile home owner has surrendered possession of the lot to the mobile home park owner; or

(c) When the mobile home owner has abandoned the lot.

In the absence of actual knowledge of abandonment, it shall be presumed that the mobile home owner has abandoned the lot if he 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 mobile home owner has notified the mobile home park owner, in writing, of an intended absence.

(6) If the mobile home park owner accepts rent with actual knowledge of a noncompliance by the mobile home owner...
or a failure by the mobile home owner of any other provision of the rental agreement, that is at variance with its provisions, or if the mobile home owner pays rent with actual knowledge of a noncompliance by the mobile home park owner or acceptance by the mobile home park owners of any other provision of the rental agreement that is at variance with its provisions, the mobile home park owner or mobile home owner shall have the right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance.

Section 12, Section 83.7597, Florida Statutes, 1982

Supp 1. Section 83.7597 Remedies; removal of mobile home owner, process.--In an action for possession, after entry of judgment, in favor of the mobile home park owner, the clerk shall issue a writ of possession to the sheriff describing the lot or premises and commanding him to put the mobile home park owner in possession. The writ of possession shall not issue earlier than 30 days from the date judgment is granted service-of-the

complaint-for-removal-upon-the-mobile-home-owner.

Section 12 Subsections 11 and 12 of section 83.760, Florida Statutes, are amended to read:

83.760 Mobile home lease.--

1 (1) No tenancy, except one of transient occupancy, of any person owning a mobile home owner who thereafter rents, lessee or Occupier-real-property in a mobile home park for a valuable consideration shall be enforceable, or be terminated, by the mobile home park owner unless the mobile home owner has been offered a written lease as herein provided in the event a mobile home owner does not enter into a written lease or upon the expiration of a written

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(2) With respect to any tenancy entered into after October 1, 1983, including renewals of existing tenancies, the lease shall not terminate except as provided in this section.

Section 14. Part V of chapter 83, Florida Statutes, consisting of sections 83.821, 83.822, 83.823, 83.824, 83.825, 83.826, 83.827, 83.828, 83.829, 83.831, 83.832, and 83.833, is hereby created to read:

PART V

DISPOSITION OF PERSONAL PROPERTY

83.821 Short title. -- Sections 83.821-83.833 may be cited as the "Disposition of Personal Property Landlord and Tenant Act."

83.822 Application. --

(1) This part shall apply to all tenancies to which parts I, II, or III of this chapter are applicable.

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(2) This part provides an optional procedure for the disposition of personal property which remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant through eviction, surrender, abandonment, or otherwise.

(3) This part does not apply to property which exists for the purpose of providing utility services and is owned by a utility, whether or not such property is actually in operation to provide such utility services.

(4) If the requirements of this part are not satisfied, nothing in this part affects the rights and liabilities of the landlord, former tenant, or any other person.

83.823 Definitions.—As used in this part, unless some other meaning is clearly indicated:

(1) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for rent, or his agent or successor-in-interest.

(2) "Owner" means any person other than the landlord who has any right, title, or interest in personal property.

(3) "Premises" includes any common areas associated therewith.

(4) "Reasonable belief" means the actual knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief"
includes the actual knowledge or belief a prudent person would
have if such an investigation were made.

(5) "Tenant" includes any paying guest, lessee, or
sublessee of any premises for rent, whether a dwelling unit or
not.

83.824 Lost property.--Personal property which the
landlord reasonably believes to have been lost shall be
disposed of as otherwise provided by law. However, if the
appropriate law enforcement agency or other government agency
refuses to accept custody of property pursuant to chapter 705,
the landlord may dispose of the property pursuant to this
part. The landlord is not liable to the owner of the property
if he complies with this section and this part.

83.825 Notification of tenant.--

(1) Where personal property remains on the premises
after a tenancy has terminated or expired and the premises
have been vacated by the tenant, through eviction or
otherwise, the landlord shall give written notice to such
tenant and to any other person the landlord reasonably
believes to be the owner of the property.

(2) The notice shall describe the property in a manner
reasonably adequate to permit the owner of the property to
identify it. The notice may describe all or a portion of the
property, but the limitation of liability provided by

83.832 does not protect the landlord from any liability
arising from the disposition of property not described in the
notice, except that a trunk, valise, box, or other container
which is locked, fastened, or tied in a manner which deters
immediate access to its contents may be described as such
without describing its contents. The notice shall advise the
person to be notified that reasonable costs of storage may be

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charged before the property is returned, and shall state where
the property was claimed and the date before which the
claim must be made. The date specified in the notice shall be
a date not less than 15 days after the notice is personally
delivered or, if mailed, not less than 20 days after the
notice is deposited in the mail.

(3) The notice shall be personally delivered or sent
by first-class mail, postage prepaid, to the person to be
notified at his last known address and, if there is reason to
believe that the notice sent to that address will not be
received by that person, also to such other address, if any,
known to the landlord where such person may reasonably be
expected to receive the notice. If the notice is sent by mail
to the former tenant, one copy shall be sent to the premises
vacated by the tenant.

83.826 Form of notice to former tenant.--

(1) A notice to the former tenant which is in
substantially the following form satisfies the requirements of
83.825:

Notice of Right to Reclaim Abandoned Property
To: ...(Name of former tenant)...
...(Address of former tenant)...

When you visited the premises at ...(address of
premises, including room or apartment number, if any).... the
following personal property remained: ...(insert description
of personal property)....

You may claim this property at ...(address where
property may be claimed)....

Unless you pay the reasonable cost of storage and
advertising, if any, for all the above-described property and
take possession of the property which you claim, not later
...

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than ... (in not less than 15 days after notice is
personally delivered or, if mailed, not less than 10 days
after notice is deposited in the mail) ... this property may
be disposed of pursuant to \( \text{83.22} \):

(Insert here the statement required by subsection (2))

Dated ... Signature of landlord...
...(Type or print name of landlord)
...(Telephone number)...
...(Address)...

[2] The notice set forth in subsection (1) shall also
contain one of the following statements:

(a) "If you fail to claim the property, it will be
sold at a public sale after notice of the sale has been given
by publication in the time to bid on the property at
this sale. After the property is sold and the cost of
storage, advertising, and sale is deducted, the remaining
money, will be paid over to the county. If you claim the
remaining money at any time within 1 year after the county,
receives the money."

(b) "Because this property is believed to be worth
less than $100, it may be kept, sold, or destroyed without
further notice if you fail to reclaim it within the time
indicated above."

83.827 Form of notice to owner other than former
tenant.--

[1] A notice which is in substantially the following
form given to a person other than the former tenant and whom
the landlord reasonably believes to be the owner of any of the
abandoned personal property satisfies the requirements of s.
83.825:

Notice of Right to Reclaim Abandoned Property

CODING: Words in struck through type are deleted from existing law which underlines the addition.
To: ...(Name)...
...(Address)...

When ...(name of former tenant) ... vacated the premises at ...(address of premises, including room or apartment number, if any)..., the following personal property remained:
...(insert description of personal property)....

If you own any of this property, you may claim it at ...(address where property may be claimed).... Unless you pay the reasonable cost of storage and advertising, if any, and take possession of the property to which you are entitled, not later than ...(insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 20 days after notice is deposited in the mail).... this property may be disposed of pursuant to 83.831.

(Insert here the statement required by subsection (2))

Dated: ...(Signature of landlord)...
...(Type or print name of landlord)...
...(Telephone number)...
...(Address)...

(2) The notice set forth in subsection (1) shall also contain one of the following statements:

(a) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publica. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within 1 year after the county receives the money."

(b) "Because this property is believed to be worth less than $100, it may be kept, sold, or destroyed without..."
further notice if you fail to reclaim it within the time indicated above."

83.828 Storage of abandoned property.--The personal property described in the notice shall either be left on the vacated premises or be stored by the landlord in a place of safekeeping until the landlord either releases the property pursuant to s. 83.829 or disposes of the property pursuant to s. 83.831. The landlord shall exercise reasonable care in storing the property, but he is not liable to the tenant or any other owner for any loss unless caused by his deliberate or negligent act.

83.829 Release of personal property.--

(1) The personal property described in the notice shall be released by the landlord to the former tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner, if such tenant or other person pays the reasonable cost of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) Where personal property is not released pursuant to subsection (1) and the notice stated that the personal property would be sold at a public sale, the landlord shall release the personal property to the former tenant if he claims it prior to the time it is sold and pays the reasonable costs of storage, advertising, and sale incurred prior to the time the property is withdrawn from sale.

83.831 Sale of abandoned property.--

(1) If the personal property described in the notice is not released pursuant to s. 83.829, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the...
property not released is less than $100, he may retain such
property for his own use or dispose of it in any manner he
chooses. Nothing in this section shall be construed to
preclude the landlord or tenant from bidding on the property
at the public sale. The successful bidder's title is subject
to ownership rights, liens, and security interests which have
priority by law.

(2) Notice of the time and place of the public sale
shall be given by an advertisement of the sale published once
a week for two consecutive weeks in a newspaper of general
circulation where the sale is to be held. The sale must be
held at the nearest suitable place to that where the personal
property is held or stored. The advertisement must include a
description of the goods, the name of the former tenant, and
the time and place of the sale. The sale must take place at
least 15 days after the first publication. If there is no
newspaper of general circulation where the sale is to be held,
the advertisement must be posted at least 10 days before the
sale in not less than six conspicuous places in the
neighborhood of the proposed sale. The last publication shall
not be less than 5 days before the sale is to be held. Notice
of sale may be published before the last of the dates
specified for taking possession of the property in any notice
given pursuant to s. 83.825.

(3) The notice of the sale shall describe the property
to be sold in the manner reasonably adequate to permit the
owner of the property to identify it. The notice may describe
all or a portion of the property, but the limitation of
liability provided by s. 83.832 does not protect the landlord
from any liability arising from the disposition of property
not described in the notice, except that a trunk, valise, box,
or other container which is locked, fastened, or tied in a manner which detains immediate access to its contents may be described as such without describing its contents.

(4) After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale which is not claimed by the former tenant or an owner other than such tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The former tenant or other owner or other person having interest in the funds may claim the balance within 1 year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof is liable to any other claimant as to the amount paid.

83.832 Nonliability of landlord after disposition of property.--

(1) Notwithstanding the provisions of s. 83.822, after the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated, the landlord is not liable with respect to that property to any person.

(2) After the landlord releases property pursuant to s. 83.829 to a person, other than the former tenant, reasonably believed by the landlord to be the owner of the property, the landlord is not liable with respect to that property to:

(a) Any person to whom notice was given pursuant to s. 83.825, or
(b) Any person to whom notice was not given pursuant to s. 83.825 unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(3) Where property is disposed of pursuant to s. 83.831, the landlord is not liable with respect to that property to:

(a) Any person to whom notice was given pursuant to s. 83.825; or

(b) Any person to whom notice was not given pursuant to s. 83.825 unless such person proves that, prior to disposing of the property pursuant to s. 83.831, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

83.833 Assessing cost of storage.—

(1) Cost of storage which may be required to be paid under this part shall be assessed in the following manner:

(a) Where a former tenant claims property pursuant to s. 83.829, he may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy which are unpaid at the time the claim is made.

(b) Where an owner other than the former tenant claims property pursuant to s. 83.829, he may be required to pay the reasonable costs of storage for only the property in which he claims an interest.
(2) In determining the costs to be assessed under subsection (1), the landlord shall not charge more than one person for the same costs.

(3) If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the space reasonably required for such storage for the term of the storage.

Section 15. This act shall take effect October 1, 1983.

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HOUSE SUMMARY

Provides alternative methods by which a landlord may recover possession of nonresidential premises. Specifies circumstances under which such premises may be presumed to have been abandoned by the tenant. Requires mailing of the summons for the removal of a tenant.

Removes certain mobile home lots from the definition of "dwelling unit" for purposes of provisions relating to residential tenancies. Changes provisions authorizing award of attorney's fees in actions involving residential tenancies. Substantially changes provisions relating to the duties of residential landlords who receive deposits or advance rents. Expands provisions which exempt tenancies whose rent or deposits are publicly regulated from provisions regulating the use of such funds.

Removes a limitation upon the kinds of actions for possession by a residential landlord in which the tenant must pay accrued rent into the court registry. Requires the court to notify the tenant of this obligation. Prohibits residential landlords from taking certain retaliatory action against tenants who make certain complaints or organize or participate in tenants' organizations.

Redefines "mobile home park" for purposes of provisions relating to mobile home park tenancies to include all such parks, regardless of size. Conforms provisions relating to evictions of mobile home owners to those for residential tenants. Changes provisions relating to notification of mobile home owners of certain violations. Changes the date for the issuance of writs of possession against mobile home owners. Deletes certain restrictions upon mobile home leases and imposes others. Restricts the circumstances in which a mobile home park owner may recover possession of a lot from a mobile home owner. Provides circumstances in which either party may waive certain rights.

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Creates the "Disposition of Personal Property Landlord and Tenant Act" which provides for the disposition of personal property left by a tenant. Provides that the act is applicable to nonresidential and residential tenancies as well as tenancies in mobile home parks. Provides exemptions. Provides definitions. Provides for the disposition of personal property which the landlord reasonably believes to have been lost. Provides a procedure for such disposition if the appropriate law enforcement or other government agency refuses to accept custody of the property.

Requires the landlord to give certain notification to the vacating tenant who has left personal property on the premises or to any other person the landlord reasonably believes to be the owner of the property. Specifies the content and form of such notice. Authorizes the landlord to place the property in storage so long as he uses reasonable care. Provides for the release of such property to the tenant or owner upon reimbursing the landlord for certain costs.

Provides a procedure for the sale of abandoned property, including notification of such sale. Provides for the payment of the proceeds of the sale in excess of the landlord's costs into the treasury of the county in which the sale took place. Authorizes the tenant or other owner to claim such excess funds within 1 year of the payment to the county. Exempts the landlord from certain liability to the former tenant or other owner for the release or sale of the property. Provides for the assessment of storage costs.