

**Arkansas Landlord Tenant Law -
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**Subchapter 1.
General Provisions.**

18-16-101. Failure to pay rent - Refusal to vacate upon notice - Penalty.

(a) Any person who shall rent any dwelling house or other building or any land situated in the State of Arkansas and who shall refuse or fail to pay the rent therefor when due according to contract shall at once forfeit all right to longer occupy the dwelling house or other building or land.

(b) If, after ten (10) days' notice in writing shall have been given by the landlord or his agent or attorney to the tenant to vacate the dwelling house or other building or land, the tenant shall willfully refuse to vacate and surrender the possession of the premises to the landlord or his agent or attorney, the tenant shall be guilty of a misdemeanor. Upon conviction before any justice of the peace or other court of competent jurisdiction in the county where the premises are situated, the tenant shall be fined in any sum not less than one dollar (\$1.00) nor more than twenty-five dollars (\$25.00) for each offense. Each day the tenant shall willfully and unnecessarily hold the dwelling house or other building or land after the expiration of notice to vacate shall constitute a separate offense.

History. Acts 1901, No. 122, _ 1, p. 193; C. & M. Dig., _ 6569; Acts 1937, No. 129, _ 1; Pope's Dig., _ 8599; A.S.A. 1947, _ 50-523.

18-16-102. Lessee unlawfully collecting from subtenant - Penalty.

(a) It shall not be lawful for anyone who has leased any lands from one (1) or more persons and sublet any portion thereof to others to take or collect any rent from the subtenant before final settlement with the landlord, without first having obtained from the landlord or his agent and delivered to the subtenant a written direction stating the amount of rent authorized to be collected from the subtenant. If, afterward, the principal tenant shall fail to pay to the landlord his rent due, the amount paid by the subtenant upon the written direction shall be deducted from the pro rata amount of rent for which the land cultivated by the subtenant would otherwise be liable to the landlord under existing laws.

(b) Every principal tenant or his agent who without first having paid or settled with the landlord or produced and delivered the written directions as stated in subsection (a) of this section, shall collect or attempt to collect any rent from any subtenant shall be deemed guilty of a misdemeanor. Upon conviction, he shall be punished by fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or by imprisonment not exceeding six (6) months, or by both fine and imprisonment.

History. Acts 1883, No. 21, _ 1, p. 32; 1893, No. 131, _ 1, p. 228; C. & M. Dig., __ 6894-6896; Pope's Dig., __ 8850-8852; A.S.A. 1947, __ 50-521, 50-522.

18-16-103. Rent collection by personal representative of life tenant.

The executor or administrator of any tenant for life who shall have demised any lands or tenements so held and shall die on or before the day when any rent on the demise shall become payable may recover:

- (1) If the tenant for life dies on the day the rent becomes due, the whole rent;
- (2) If he dies before the day on which the rent becomes due, the proportion of the rent as shall have accrued before his death.

History. Rev. Stat., ch. 88, _ 1; C. & M. Dig., _ 6549; Pope's Dig., _ 8579; A.S.A. 1947, _ 50-501.

18-16-104. Penalty for enticing renter away.

If any person shall interfere with, entice away, knowingly employ, or induce a renter who has contracted with another person for a specified time to leave the leased premises before the expiration of his contract without the consent of the landlord, that person shall, upon conviction before any justice of the peace or circuit court, be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500). In addition, he shall be liable to the landlord for all advances made by him to the renter by virtue of his contract, whether verbal or written, with the renter and for all damages which he may have sustained by reason thereof.

History. Acts 1883, No. 96, _ 8, p. 176; 1905, No. 298, _ 1, p. 726; C. & M. Dig., _ 6570; Acts 1923 (1st. Ex. Sess.), No. 34, _ 1; Pope's Dig., _ 8600; A.S.A. 1947, _ 50-524.

18-16-105. Termination of oral lease of farmlands.

The owner of farmlands which are leased under an oral agreement may elect not to renew the oral rental or lease agreement for the following calendar year by giving written notice by certified registered mail to the renter or lessee, on or before June 30, that the lease or rental agreement will not be renewed for the following calendar year.

History. Acts 1981, No. 866, _ 1; A.S.A. 1947, _ 50-531.

18-16-106. Holding over after termination of term.

(a) If any tenant for life or years, or if any other person who may have come into possession of any lands and tenements under, or by, collusion with the tenant, shall willfully hold over after the termination of the term and thirty (30) days' previous notice in writing given, requiring the possession thereof by the person entitled thereto, the person so holding over shall pay to the person so kept out of possession double the yearly rent of the lands or tenements so detained for all the time he shall keep the person entitled thereto out of possession.

(b) There shall be no relief in equity against any recovery had at law under subsection (a) of this section.

History. Rev. Stat., ch. 88, __ 9, 10; C. & M. Dig., __ 6557, 6558; Pope's Dig., __ 8587, 8588; A.S.A. 1947, __ 50-509, 50-510.

18-16-107. Failure to quit after notice of intention.

(a) If any tenant shall give notice in writing of his intention to quit the premises held by him at a time specified in the notice and shall not deliver up the possession thereof at such time, the tenant, his executor or administrator, shall henceforth pay to the landlord, his heirs or assigns, double the rent reserved during all the time the tenant shall so continue in possession of the premises.

(b) The double rent may be recovered by a civil action in any court having jurisdiction thereof.

History. Rev. Stat., ch. 88, __ 7, 8; C. & M. Dig., __ 6555, 6556; Pope's Dig., __ 8585, 8586; A.S.A. 1947, __ 50-507, 50-508.

18-16-108. Property left on premises after termination of lease.

Upon the voluntary or involuntary termination of any lease agreement, all property left in and about the premises by the lessee shall be considered abandoned and may be disposed of by the lessor as the lessor shall see fit without recourse by the lessee. All property placed on the premises by the tenant or lessee is subjected to a lien in favor of the lessor for the payment of all sums agreed to be paid by the lessee.

History. Acts 1987, No. 577, _ 2._ 18-16-109. [Transferred.]

Subchapter 2.
Actions Against Tenants.

18-16-201. Ejectment for nonpayment of rent.

(a) Whenever a half-year's rent or more is in arrears from a tenant, the landlord, if he has a subsisting right by law to reenter for the nonpayment of the rent, may bring an action of ejectment to recover the possession of the demised premises.

(b) If a summons in the action cannot be served in the ordinary mode provided by law, it may be served by affixing a copy thereof on a conspicuous part of the demised premises, where it may be conveniently read.

(c) The service of the summons in such an action of ejectment shall be deemed and stand instead of a demand of the rent in arrears and of a reentry on the demised premises.

(d) If on the trial of the action it is proved or upon judgment by default it appears to the court by affidavit that the plaintiff had a right to commence the action according to the provisions of this section, then he shall have judgment to recover the possession of the demised premises and costs of suit.

(e) If the defendant, before judgment is given in the action, either tenders to the landlord or brings into court where the suit is pending all the rent then in arrears and all costs, all further proceedings in the action shall cease.

(f) If the rent and costs remain unpaid for six (6) months after execution upon such a judgment in ejectment is executed and no complaint for relief in equity is filed within that time, then the lessee and his assigns, and all other persons deriving title under the lease from the lessee, shall be barred from all relief in law or equity, except for error in the record or proceedings, and the landlords shall henceforth hold the demised premises discharged from the lease.

(g) A mortgagee of the lease not in possession of the demised premises who, within six (6) months after execution of any judgment in ejectment is executed, shall pay all rent in arrears, pay all costs and charges incurred by the landlord, and perform all the agreements which ought to be performed by the first lessee shall not be affected by the recovery in ejectment.

History. Rev. Stat., ch. 88, __ 15-21; C. & M. Dig., __ 6562-6568; Pope's Dig., __ 8592-8598; A.S.A. 1947, __ 50-514 - 50-520.

18-16-202. Duty of tenant to notify landlord.

Every tenant on whom a summons in ejectment to recover the tenements by him held shall be served shall forthwith give notice thereof to the person, or the agent of the person, of whom the tenant holds.

History. Rev. Stat., ch. 88, _ 6; C. & M. Dig., _ 6554; Pope's Dig., _ 8584; A.S.A. 1947, _ 50-506.

18-16-203. Actions for use and occupation.

(a) A landlord may recover in a civil action a reasonable satisfaction for the use and occupation of any lands and tenements held by any person under an agreement not made by deed.

(b) If a parol demise or other agreement not by deed, by which a certain rent is reserved, appears in evidence on the trial of the action, the plaintiff shall not on that account be barred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

(c) Where lands or tenements are held and occupied by any person without any special agreement for rent, the owner of the lands or tenements, or his executor or administrator, may sue for and recover a fair and reasonable compensation for the use and occupation by a civil action in any court having jurisdiction thereof.

History. Rev. Stat., ch. 88, __ 11-13; C. & M. Dig., __ 6559-6561; Pope's Dig., __ 8589-8591; A.S.A. 1947, __ 50-511 - 50-513.

18-16-204. Remedy where lease for life.

Any person having any rent due upon any lease for life may have the same remedy by action for the recovery thereof as if the lease was for years.

History. Rev. Stat., ch. 88, _ 4; C. & M. Dig., _ 6552; Pope's Dig., _ 8582; A.S.A. 1947, _ 50-504.

18-16-205. Recovery of rent in arrears due decedent.

(a) Every person entitled to any rent dependent upon the life of any other may, notwithstanding the death of the other person, have the same remedy by action for the recovery of all arrears of the rent that may be due and unpaid at the death of the person as he might have if the person were still living.

(b) Every person having in right of his wife any freehold estate in any rents may, if the rent is due and unpaid at the time of his wife's death, have the same remedy by action for the recovery of the arrears as he might have if the wife were still living.

(c) The executor or administrator of any person to whom any rent shall have been due and unpaid at the time of the death of the person may have the same remedy, by action against the tenant, or his executor or administrator, for the recovery thereof that the testator or intestate might have had.

History. Rev. Stat., ch. 88, __ 2, 3, 5; C. & M. Dig., __ 6550, 6551, 6553; Pope's Dig., __ 8580, 8581, 8583; A.S.A. 1947, __ 50-502, 50-503, 50-505.

Subchapter 3.
Security Deposits.

18-16-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part;

(2) "Dwelling unit" means a structure or the part of the structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(3) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(A) All or part of the legal title to property; or

(B) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

The term includes a mortgagor in possession;

(4) "Person" means any individual, firm, partnership, corporation, association, or other organization;

(5) "Rent" means all payments to be made to the landlord under the rental agreement;

(6) "Rental agreement" means all written or oral agreements and valid rules and regulations embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(7) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(8) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History. Acts 1979, No. 531, _ 1; A.S.A. 1947, _ 50-525.

18-16-302. Transferee, etc., bound.

The transferee, assignee, or other holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this subchapter.

History. Acts 1979, No. 531, _ 5; A.S.A. 1947, _ 50-529.

18-16-303. Exemptions.

(a) This subchapter shall not apply to dwelling units owned by an individual, if the individual, his spouse and minor children, and any and all partnerships, corporations, or other legal entities formed for the purpose of renting dwelling units and of which they are officers, owners, or majority shareholders own, or collectively own, five (5) or fewer dwelling units.

(b) This exemption does not apply to units for which management, including rent collection, is performed by third persons for a fee.

History. Acts 1979, No. 531, _ 6; A.S.A. 1947, _ 50-530.

18-16-304. Maximum amount.

A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two (2) months periodic rent.

History. Acts 1979, No. 531, _ 2; A.S.A. 1947, _ 50-526.

18-16-305. Refund required - Exceptions.

(a) Within thirty (30) days of termination of the tenancy, property or money held by the landlord as security shall be returned to the tenant. However, the money may be applied to the payment of accrued unpaid rent and any damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement, all as itemized by the landlord in a written notice delivered to the tenant, together with the remainder of the amount due thirty (30) days after termination of the tenancy and delivery of possession by the tenant.

(b) The landlord shall be deemed to have complied with subsection (a) of this section by mailing via first class mail the written notice and any payment required to the last known address of the tenant. If the letter containing the payment is returned to the landlord and if the landlord is unable to locate the tenant after reasonable effort, then the payment shall become the property of the landlord one hundred eighty (180) days from the date the payment was mailed.

History. Acts 1979, No. 531, _ 3; A.S.A. 1947, _ 50-527.

18-16-306. Remedies.

(a) If the landlord fails to comply with this subchapter, the tenant may recover the property and money due him, together with damages in an amount equal to twice the amount wrongfully withheld, costs, and reasonable attorney's fees. However, the landlord shall be liable only for costs and the sum erroneously withheld if the landlord shows by the preponderance of the evidence that his noncompliance resulted from an error which occurred despite the existence of procedures reasonably designed to avoid such errors or was based on a good faith dispute as to the amount due.

(b) This section does not preclude the landlord or tenant from any other relief to which either may be lawfully entitled.

History. Acts 1979, No. 531, _ 4; A.S.A. 1947, _ 50-528.

Subchapter 4.
Self-Service Storage Facilities.

18-16-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a self-service basis;
- (2) "Rental agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility;
- (3) "Leased space" means the individual storage space at the self-service facility which is rented to an occupant pursuant to a rental agreement;
- (4) "Occupant" means a person or entity entitled to the use of a leased space at a self-service storage facility under a rental agreement;
- (5) (A) "Operator" means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility;
(B) "Operator" does not mean a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;
- (6) (A) "Personal property" means movable property not affixed to the land;
(B) "Personal property" includes, but is not limited to, goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings;
- (7) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement;
- (8) "Last known address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent written notice of a change of address;
- (9) "Net proceeds" as used in _ 18-16-407(e) means the proceeds from the sale authorized after deduction for expenses incurred by the operator to exercise its rights under this subchapter including, but not limited to, attorneys' fees, auctioneers' fees, postage, and publication costs, together with the debt owed by the operator and charges directly related to preserving, assembling, advertising, and selling under this subchapter.

History. Acts 1987, No. 576, _ 1.

18-16-402. Operator's lien on stored property.

- (a) The operator of a self-service storage facility has a lien on all personal property stored within each leased space for rent, labor, or other charges and for expenses reasonably incurred in its sale, as provided in this subchapter.
- (b) The lien provided for in this section attaches as of the date the personal property is brought to the self-service storage facility and shall be superior to any other lien or security interest except the following:
 - (1) A lien which is perfected and recorded in Arkansas in the name of the occupant, either in the county of the occupant's last known address or in the county where the self-service storage facility is located, prior to the date of the rental agreement;
 - (2) Any tax lien; and
 - (3) Any lienholder with a perfected security interest in the property.
- (c) Nothing in this subchapter shall be construed to prohibit the occupant, operator, lienholder, or any other person or entity claiming an interest in the property stored in the leased space from applying to a court of competent jurisdiction to determine the validity of the lien or its priority.

History. Acts 1987, No. 576, ___ 3, 7.

18-16-403. Use for residential purposes.

(a) An operator may not knowingly permit a leased space at a self-service storage facility to be used for residential purposes.

(b) An occupant may not use a leased space for residential purposes.

History. Acts 1987, No. 576, _ 2.

18-16-404. Notice of lien.

The rental agreement shall contain a statement, in bold type, advising the occupant:

(1) Of the existence of the lien; and

(2) That property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

History. Acts 1987, No. 576, _ 3.

18-16-405. Access to leased space - Care of property.

(a) If an occupant is in default, the operator may deny the occupant access to the leased space.

(b) (1) Unless the rental agreement specifically provides otherwise and until a lien sale under this subchapter, the exclusive care, custody, and control of all personal property stored in the leased self-service storage space remains vested in the occupant.

(2) Entry of the leased space by the operator for the purpose of complying with this subchapter shall not constitute conversion nor impose any responsibility for the care, custody, and control of any of the personal property stored.

History. Acts 1987, No. 576, ___ 4, 5; 1991, No. 786, _ 28.

18-16-406. Default - Right to sell property.

If the occupant is in default for a period of more than forty-five (45) days, the operator may enforce the lien by selling the property stored in the leased space at a public sale for cash.

History. Acts 1987, No. 576, _ 4.

18-16-407. Sale procedure.

(a) Before conducting a sale under _ 18-16-406, the operator shall:

(1) Notify the occupant in writing of the default. The notice shall be sent by certified mail, return receipt requested, to the occupant at the occupant's last known address, and shall include:

(A) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(B) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;

(C) A demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place;

(E) The name, street address, and telephone number of the operator or his designated agent, whom the occupant may contact to respond to the notice; and

(F) Designation of the date, time, and place where the contents will be sold unless the default is remedied prior to sale;

(2) Publish one (1) advertisement in a newspaper of general circulation in the county in which the storage facility is located at least seven (7) days prior to sale;

(3) Contact the circuit clerk in the county where the personal property is stored to determine the name and address of any holder of liens or security interests in the personal property being sold. The owner shall notify by certified mail, return receipt requested, each holder of a lien or security interest of the time

and place of the proposed sale at least ten (10) days prior to conducting the sale. The owner shall be required to notify the holder of a lien or security interest only if the lien or security interest is filed under the name of the occupant.

(b) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the operator's lien and redeem the occupant's personal property.

(c) The sale under this subchapter shall be held at the self-service storage facility where the personal property is stored.

(d) A purchaser in good faith of any personal property sold under this subchapter takes the property free and clear of any rights of:

(1) Persons against whom the lien was valid; and

(2) Other lienholders.

(e) If the operator complies with the provisions of this subchapter, the operator's liability:

(1) To the occupant shall be limited to the net proceeds received from the sale of the personal property; and

(2) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by the other liens or the amount owed to such lienholders, whichever is less.

(f) The operator shall retain a copy of all notices and return receipts required by subsection (a) of this section for six (6) months following the date of the lien sale.

History. Acts 1987, No. 576, _ 4.

18-16-408. Disposition of sale proceeds.

(a) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (b) of this section.

(b) If a sale is held under this subchapter, the operator shall:

(1) Satisfy the lien from the proceeds of the sale;

(2) Hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholders. If demand is not made within two (2) years after the date of the sale, the surplus shall escheat to the county.

History. Acts 1987, No. 576, _ 4.

18-16-409. Notices - Method of delivery.

(a) Unless otherwise specifically provided, all notices required by this subchapter shall be sent by certified mail, return receipt requested.

(b) (1) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's property is stored.

(2) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(3) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in _ 18-16-407(a) with postage prepaid.

History. Acts 1987, No. 576, _ 4.

State of Arkansas

Title 18. Property.
Subtitle 5. Civil Actions.
Chapter 60. Miscellaneous Proceedings Relating to Property.
Subchapter 3. Forcible Entry and Detainer; Unlawful Detainer.

Subchapter 3. **Forcible Entry and Detainer; Unlawful Detainer.**

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18-60-303. Actions constituting forcible entry and detainer.
18-60-304. Actions constituting unlawful detainer.
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18-60-307. Proceedings in court.
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18-60-310. Execution of writ of possession.
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18-60-301. Legislative intent.

Acts 1875, No. 85 [repealed], as amended by Acts 1875 (Adj. Sess.) No. 56; Acts 1891, No. 8 [repealed]; and Acts 1947, No. 373 [repealed], which declare and describe the cause of action for forcible entry and detainer and unlawful detainer and prescribe the procedure for carrying out the rights and remedies granted to affected parties thereunder, is in need of clarification and revision in order that persons affected thereby may be afforded reasonable opportunity to be heard on legitimate objections to writs of possession entered in accordance with the provisions of this law. It is, therefore, found to be to the best interest of the people of this state that an additional procedure be specifically prescribed for the enforcement of the rights of parties claiming a cause of action by reason of forcible entry and detainer or unlawful detainer of real property and those persons against whom such causes of action are brought.

History. Acts 1981, No. 615, _ 1; A.S.A. 1947, _ 34-1501.

18-60-302. Improper entry prohibited.

No person shall enter into or upon any lands, tenements, or other possessions and detain or hold them except where an entry is given by law, and then only in a peaceable manner.

History. Acts 1981, No. 615, _ 2; A.S.A. 1947, _ 34-1502.

18-60-303. Actions constituting forcible entry and detainer.

Any person who shall enter into or upon any lands, tenements, or other possessions and detain or hold them without right or claim to title; shall enter by breaking open the doors and windows or other parts of the house, whether any person is in or not; shall threaten to kill, maim, or beat the party in possession or use words and actions as have a natural tendency to excite fear or apprehension of danger; shall put out of doors or carry away the goods of the party in possession; or shall enter peaceably and then turning out by force or frightening by threats or other circumstances of terror the party to yield possession shall be deemed guilty of a forcible entry and detainer within the meaning of this subchapter.

History. Acts 1981, No. 615, _ 3; A.S.A. 1947, _ 34-1503.

18-60-304. Actions constituting unlawful detainer.

Every person who shall, willfully and without right, hold over any lands, tenements, or possessions after the determination of the time for which they were demised or let to him, or the person under whom he claims; shall peaceably and lawfully obtain possession of any such property and hold it willfully and unlawfully after demand made in writing for the delivery or surrender of possession thereof by the person having the right to possession, his agent or attorney; or shall fail or refuse to pay the rent therefor when due, and after three (3) days' notice to quit and demand made in writing for the possession thereof by the person entitled thereto, his agent or attorney, shall refuse to quit possession, shall be deemed guilty of an unlawful detainer within the meaning of this subchapter.

History. Acts 1981, No. 615, _ 4; A.S.A. 1947, _ 34-1504.

18-60-305. Applicability to all estates.

Sections 18-60-303 and 18-60-304 shall extend to and comprehend all estates, whether freehold or less than freehold.

History. Acts 1981, No. 615, _ 5; A.S.A. 1947, _ 34-1505.

18-60-306. Jurisdiction.

Forcible entries and detainers and unlawful detainers are cognizable before the circuit court of any county in which the offenses may be committed.

History. Acts 1981, No. 615, _ 6; A.S.A. 1947, _ 34-1506.

18-60-307. Proceedings in court.

(a) When any person to whom any cause of action shall accrue under this subchapter shall file in the office of the clerk of the circuit court of the county in which the offense shall be committed a complaint signed by him, his agent or attorney, specifying the lands, tenements, or other possessions so forcibly entered and detained, or so unlawfully detained over, and by whom and when done, and shall also file the affidavit of himself or some other credible person for him, stating that the plaintiff is lawfully entitled to the possession of the lands, tenements, or other possessions mentioned in the complaint and that the defendant forcibly entered upon and detained them or unlawfully detains them, after lawful demand therefor made in the manner described in this subchapter, the clerk of the court shall thereupon issue a summons upon the complaint. The summons shall be in customary form directed to the sheriff of the county in which the cause of action is filed, with direction for service thereof on the named defendants. In addition, he shall issue and direct the sheriff to serve upon the named defendants a notice in the following form:

"NOTICE OF INTENTION TO ISSUE WRIT OF POSSESSION

You are hereby notified that the attached complaint in the above styled cause claims that you have been guilty of [forcible entry and detainer] [unlawful detainer] (the inapplicable phrase shall be deleted from the notice) and seeks to have a writ of possession directing the sheriff to deliver possession of the lands, tenements, or other possessions described in the complaint delivered to the plaintiff. If, within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, you have not filed in the office of the circuit clerk of this county a written objection to the claims made against you by the plaintiff for possession of the property described in the complaint, then a writ of possession shall forthwith issue from this office directed to the sheriff of this county and ordering him to remove you from possession of the property described in the complaint and to place the plaintiff in possession thereof. If you should file a written objection to the complaint of the plaintiff and the allegations for immediate possession of the property described in the complaint within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, a hearing will be scheduled by the circuit court of this county to determine whether or not the writ of possession should issue as sought by the plaintiff.

Circuit Clerk of

.....County"

(b) If, within five (5) days, excluding Sundays and legal holidays, following service of this summons, complaint, and notice seeking a writ of possession against the defendants named therein, the defendant or defendants have not filed a written objection to the claim for possession made by the plaintiff in his complaint, the clerk of the circuit court shall immediately issue a writ of possession directed to the sheriff commanding him to cause the possession of the property described in the complaint to be delivered to the plaintiff without delay, which the sheriff shall thereupon execute in the manner described in _ 18-60-310.

(c) If a written objection to the claim of the plaintiff for a writ of possession shall be filed by the defendant or defendants within five (5) days from the date of service of the notice, summons, and complaint as provided for in this section, the plaintiff shall obtain a date for the hearing of the plaintiff's demand for possession of the property described in the complaint at any time thereafter when the matter may be heard by the court and shall give notice of the date, time, and place of the hearing by certified mail, postage prepaid, either to the defendant or to his or their counsel of record.

(d) (1) If a hearing is required to be held on the demand of the plaintiff for an immediate writ of possession, the plaintiff shall there present evidence sufficient to make a prima facie case of entitlement to possession of the property described in the complaint. The defendant or defendants shall be entitled to present evidence in rebuttal thereof. If the court decides upon all the evidence that the plaintiff is likely to succeed on the merits at a full hearing and if the plaintiff provides adequate security as determined by the court, then the court shall order the clerk forthwith to issue a writ of possession to the sheriff to place the plaintiff in possession of the property described in the complaint, subject to the provisions of subsection (e) below. No such action by the court shall be final adjudication of the parties' rights in the action.

(2) A plaintiff demanding an immediate writ of possession who is a housing authority and who claims in its complaint that the defendant or defendants are being asked to surrender possession as result of the defendant or defendants having been convicted of a criminal violation of the Uniform Controlled Substances Act, _ 5-64-101 et seq., shall be entitled to receive an expedited hearing before the court within ten (10) days of the filing of the objection by the defendant or defendants.

(e) If the defendant desires to retain possession of the property, the court shall allow the retention upon the defendant providing, within five (5) days of issuance of the writ of possession, adequate security as determined by the court.

History. Acts 1981, No. 615, _ 7; A.S.A. 1947, _ 34-1507; Acts 1989 (3rd Ex. Sess.), No. 11, _ 1.

18-60-308. Title to premises not adjudicated.

In trials under the provisions of this subchapter, the title to the premises in question shall not be adjudicated upon or given in evidence, except to show the right to the possession and the extent thereof.

History. Acts 1981, No. 615, _ 11; A.S.A. 1947, _ 34-1511.

18-60-309. Judgment for plaintiff - Assessment of damages - Writs of possession and restitution.

- (a) If upon the trial of any action brought under this subchapter the finding or verdict is for the plaintiff, the court or jury trying it shall assess the amount to be recovered by the plaintiff for the rent due and agreed upon at the time of the commencement of the action and up to the time of rendering judgment or, in the absence of an agreement, the fair rental value.
- (b) In addition thereto in all cases the court shall assess the following as liquidated damages:
 - (1) Where the property sought to be recovered is used for residential purposes only, the plaintiff shall receive an amount equal to the rental value for each month, or portion thereof, that the defendant has forcibly entered and detained or unlawfully detained the property; and
 - (2) Where the property sought to be recovered is used for commercial or mixed residential and commercial purposes, the plaintiff shall receive liquidated damages at the rate of three (3) times the rental value per month for the time that the defendant has unlawfully detained the property.
- (c) Thereupon the court shall render judgment in favor of the plaintiff for the recovery of the property and for any amount of recovery that may be so assessed with costs. If possession of the premises has not already been delivered to the plaintiff, the court shall cause a writ of possession to be issued commanding

the sheriff to remove the defendant from possession of the premises and to place the plaintiff in possession thereof.

- (d) In case the finding or verdict is for the defendant, the court shall give judgment thereon with costs and for any damages that may be assessed in favor of the defendant. If the property described in the complaint has been turned over to the possession of the plaintiff, the court shall also issue a writ of restitution directed to the sheriff to cause the defendant to be repossessed of the property.
- (e) Any monetary judgments awarded either to the plaintiff or the defendant may be recovered upon in any manner otherwise authorized by law.

History. Acts 1981, No. 615, _ 9; A.S.A. 1947, _ 34-1509.

18-60-310. Execution of writ of possession.

- (a) Upon receipt of a writ of possession from the clerk of the circuit court, the sheriff shall immediately proceed to execute the writ in the specific manner described in this section and, if necessary, ultimately by ejecting from the property described in the writ the defendant or defendants and any other person or persons who shall have received or entered into the possession of the property after the issuance of the writ, and thereupon notify the plaintiff that the property has been vacated by the defendant or defendants.
- (b) Upon receipt of the writ, the sheriff shall notify the defendant of the issuance of the writ by delivering a copy thereof to the defendant or to any person authorized to receive summons in civil cases and in like manner. If, within eight (8) hours of receipt of the writ of possession, the sheriff shall not find any such person at their normal place of residence, he may serve the writ of possession by placing a copy conspicuously upon the front door or other structure of the property described in the complaint, which shall have like effect as if delivered in person pursuant to the terms hereof.
- (c) (1) If, at the expiration of twenty-four (24) hours from the service of the writ of possession in the manner indicated, the defendants or any or either of them shall be and remain in possession of the property or possession has not been returned to the plaintiff, the sheriff shall notify the plaintiff or his attorney of that fact and shall be provided with all labor and assistance required by him in removing the possessions and belongings of the defendants from the affected property to a place of storage in a public warehouse or in some other reasonable safe place of storage under the control of the plaintiff until a final determination by the court.

(2) If the determination is in favor of the defendant, then the possessions and belongings of the defendant shall be immediately restored to the defendant with the cost of storage assessed against the plaintiff.

(3) If the determination is in favor of the plaintiff, and it includes a monetary judgment for the plaintiff, then the court shall order the possessions and belongings of the defendant sold by the plaintiff in a commercially reasonable manner with the proceeds of the sale applied first to the cost of storage, second to any monetary judgment in favor of the plaintiff, and third any excess to be remitted to the defendant.
- (d) In executing the writ of possession, the sheriff shall have the right forcibly to remove all locks or other barriers erected to prevent entry upon the premises in any manner which he deems appropriate or convenient and, if necessary, physically to restrain the defendants from interfering with the removal of the defendants' property and possessions from the property described in the writ of possession.
- (e) The plaintiff shall not be required to give any bond, unless ordered to do so by the court, as a condition to the execution of the writ by the sheriff.
- (f) The sheriff shall return the writ at or before the return date of the writ and shall state in his return the manner in which he executed the writ and whether or not the properties described therein have been delivered to the plaintiff and, if not, the reason for his failure to do so.

History. Acts 1981, No. 615, _ 8; A.S.A. 1947, _ 34-1508; Acts 1987, No. 577, _ 1.

18-60-311. Judgment for defendant.

In all cases of forcible entry and detainer and unlawful detainer, where the defendant disputes the plaintiff's right of possession, it shall be lawful for the defendant to introduce before the court or the jury trying the main issue in the action evidence showing the damage he may have sustained in being dispossessed of the lands and premises mentioned in the complaint. The jury, if they find for the defendant, shall at the same

time find what damage the defendant has sustained by being dispossessed, if he has been so dispossessed, under the provisions of this subchapter, for all of which the court shall render judgment restoring the property to the defendant, as provided for in this subchapter, and shall render judgment against the plaintiff and any surety on any bond posted by the plaintiff for damages as found by the jury, as well as the costs of the suit.

History. Acts 1981, No. 615, _ 10; A.S.A. 1947, _ 34-1510.

18-60-312. Other causes of action not precluded.

- (a) Neither the judgment to be rendered by the court in matters brought pursuant to the provisions of this subchapter nor anything in this subchapter shall bar or preclude the party injured from bringing any cause of action for trespass or ejection, or any other action, against the offending party.
- (b) All claims, causes of action, and actions which have accrued, occurred, or been filed prior to March 23, 1981, and arising under acts repealed shall be, and remain, in full force and effect, but shall be governed by the terms of this subchapter.

History. Acts 1981, No. 615, __ 12, 13; A.S.A. 1947, _ 34-1512.