

## FROM THE EDITOR-IN-CHIEF

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The rise of home-sharing platforms, such as Airbnb and Vrbo, has significantly transformed the hotel and property rental industry. Along with the convenience and profitability of hosting complete strangers in your home, however, comes the risk of confronting what is known as the “Airbnb squatter.” The term, Airbnb squatter, refers to a guest who has forcibly prolonged their stay beyond the agreed-upon reservation period without the consent or approval of the property owner, taking advantage of lax monitoring on the part of the homeowner or unclear expectations. Indeed, many such squatters are pure con artists who are fully aware of the legal loopholes and use this knowledge of the law to their financial advantage. Also termed “professional tenants,” these unscrupulous individuals locate properties to rent with the full intention of not paying the accompanying rent for as long as possible.

Surprisingly perhaps, these unwanted guests are not completely without legal rights. In many states, the law provides unwanted guests with certain “squatters’ rights”—rights that are linked to adverse possession law. Recall that under the legal doctrine of adverse possession, if a person continuously occupies a parcel of real estate for a certain period without the owner taking legal action, then that person may obtain *legal title* to the property, with the time frame for establishing adverse possession ranging from seven years in states, such as Florida and California, to over 20 years in states, such as Massachusetts, New Jersey, and Pennsylvania.

Squatters’ rights, by contrast, provide an unwanted guest with the right only to remain on the property against the will of the legal property owner. Hence, the main distinction between the two doctrines is that squatters’ rights give a person the right to remain on the property, while adverse possession laws give a person the right to take legal ownership of the property if certain conditions are met. In many states, after 30 days of occupation, an unwanted guest can claim tenant rights, even without a rental agreement or having ever paid rent to the legal property owner; in others, the

required number of days of occupation is as low as 14. The following states, for example, allow an unwanted guest to claim tenant rights after 30 days of occupation: California, Colorado, Illinois, New Jersey, New York, Pennsylvania, and Washington.

Until an unwanted guest stays on the property for the required number of days of occupation under state law, this person remains merely a trespasser or loiterer and can be removed by law enforcement officials. But once this person has occupied the property for the required number of days, this person acquires squatters' rights and now has the right to go through an eviction process in order to be removed from the property: property owners must follow a prescribed formal eviction process to remove unwanted guests who have remained sufficiently long on the property, which can be costly or time-consuming.

In Florida, for example, a property owner must first issue a written eviction notice to the unwanted guest. If the unwanted guest continues to stay on the property, then the owner must file an eviction lawsuit. If the unwanted guest contests the eviction, then the judicial process can take much longer. If the unwanted guest fails to present valid reasons for why he or she should not be evicted, then the eviction process will proceed to a court hearing at which point a court will issue a final ruling as to whether the unwanted guest is permitted to remain on the premises. If the court rules in favor of the property owner, then the owner receives a writ of possession, meaning that the unwanted guest is now legally obligated to vacate the premises within 24 hours. If the unwanted guest refuses to vacate, then enforcement authorities will remove this person *by force*.

In fact, one of the primary public policy goals of the eviction process is to minimize instances of vigilantism in society. It is not hard to imagine how permitting property owners to use physical force to evict unwanted guests can quickly devolve into serious violence or result in physical harm to either party. This process of removal is best conducted by trained law enforcement officers. Nevertheless, this process is perceived as unduly costly or time-wasting by many aggrieved homeowners who have chosen to pursue other private informal courses of action, outside of the formal legal eviction process, to remove unwanted guests more quickly.

Flash Shelton, a self-described professional squatter remover, has received a fair amount of attention of late regarding his “anti-squatting” services. “Call law enforcement and when they tell you there’s nothing they can do, contact SquatterHunters.com, let us assess the situation, before you hire an attorney and go to civil process,” Shelton said, discussing his California business. What Flash Shelton does, as part of his professional anti-squatting business, is enter homes currently occupied by squatters, squatting alongside them until he can force them to leave. Shelton brings video cameras, recording every moment as he intentionally creates an environment as full of as many minor nuisances and various other petty aggravations for the original squatters as he can generate, until the squatters can take it no longer and choose to leave.

Shelton’s interest in this business started in 2019 when his father died, and his mother decided to sell her Northern California home. While the house sat empty and for sale, seven strangers moved in. Local law enforcement told Shelton nothing could be done. So, Flash Shelton decided to take matters into his own hands. When the group was out, Shelton snuck in through an open window, placed cameras throughout the home, and otherwise ensured that these unwanted guests could not enter the house again, moving their furniture and other personal belongings, which they had moved into the home during the original trespass, out onto the driveway. “I figured out that if they can take a home, I can take a home.” Emphasizing that he always works in consultation with local police and “does his homework to assess the threat” before moving into a property, taking back homes in this manner has become a full-time job, with fees starting at \$5,000. Social media posts for his business receive millions of views as Shelton shares video clips of his confrontations with squatters online to the delight of many.

Flash Shelton is not alone, however, in his fight against unwanted guests. Several states have introduced legislation to curtail or otherwise eliminate squatters’ rights. Such proposed legislative initiatives include:

- Oklahoma State Senate Bill 456, which seeks to repeal part of property acquisition law to target squatters.
- New York Assembly Bill A6894, which seeks to exclude squatters from tenant protections.

- Alabama House Bill 182, which seeks to provide property owners with more robust rights to remove squatters.
- Georgia Squatter Reform Act (H.B. 1017), which seeks to add squatting to the definition of criminal trespass.

On March 27, 2024, Governor Ron DeSantis of Florida signed House Bill 621 into law, eliminating squatters' rights in the state. "You are not going to be able to commandeer somebody's private property and expect to get away with it. We are, in the state of Florida, ending the squatter scam once and for all," declared Governor DeSantis. "While other states are siding with the squatters, we are protecting property owners and punishing criminals looking to game the system," the governor said.

Interestingly, H.B. 621 singles out a property owner's *right to exclude* as most important among the total bundle of property rights, stating that "the right to exclude others from entering, and the right to direct others to immediately vacate, residential real property are the most important real property rights." The bill finds that "existing remedies regarding unauthorized persons who unlawfully remain on residential real property fail to adequately protect the rights of the property owner and fail to adequately discourage theft and vandalism," stating that the intent of the legislation "is to quickly restore possession of residential real property to the lawful owner of the property when the property is being unlawfully occupied and to thereby preserve property rights while limiting the opportunity for criminal activity."

As part of a new set of available statutory remedies, a property owner may request from the sheriff of the county in which the property at issue is located the *immediate removal* of an unwanted guest provided all the following conditions are met:

- The requesting person is the property owner,
- The real property that is being occupied includes a residential dwelling,
- An unauthorized person or persons have unlawfully entered and continue to reside on the owner's property,
- The real property was not open to members of the public at the time the unauthorized person or persons entered,
- The property owner has directed the unauthorized person or person to leave the property,

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- The unauthorized person or persons are not current or former tenants pursuant to a written or oral rental agreement authorized by the property owner,
- The unauthorized person or persons are not immediate family members of the property owner, and
- There is no pending litigation related to real property between the property owner and any known unauthorized person.

HB 621 also creates more severe penalties for squatting and other related activities. The bill, for example, makes it:

- A first-degree misdemeanor for making any false statement, in writing, to obtain real property or for knowingly and willfully presenting to another person a false document purporting to be a valid lease agreement, deed, or other instrument conveying real property rights;
- A second-degree felony for unlawfully occupying or trespassing upon a residential dwelling and intentionally causing \$1,000 or more in damages; and
- A first-degree felony for listing or advertising residential real property for sale knowing that the purported seller has no legal title or authority to sell the property, or renting or leasing the property to another person knowing that he or she has no lawful ownership in the property or leasehold interest in the property.

The actual practical effect of this legislation remains to be seen, however. For example, does an Airbnb guest, who books a short-term rental, count as a “current or former tenant pursuant to a written or oral rental agreement authorized by the property owner,” and thus fall outside the scope of this legislation? If so, this would appear to significantly limit the impact of this statutory initiative. What we do know is that Florida will surely not be the last state to enact legislation of this kind. Stay tuned.

Real Estate Law Journal  
Summer 2024  
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