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Show Me the Money—Obtaining and Collecting Your Client's Judgment

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Chapter 7

Show Me the Money—Obtaining and Collecting Your Client's Judgment

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You've won your case—whether in an Oregon court, in private arbitration, court-annexed arbitration in Oregon Circuit Court, or even in a forum outside of Oregon, and you want to collect, in Oregon, the amounts your client has been awarded. Maybe you have an order granting summary judgment, a jury verdict, or an arbitration award. We're going to be talking about the steps you'll need to take to get an enforceable judgment entered, to create a judgment lien, and to use Oregon state court procedures to try and get your client's judgment paid.

I. Obtaining a Proper Judgment

In a civil action, the court may designate one of the parties to prepare a proposed judgment document. If the court does not designate a party to prepare a proposed judgment document, the prevailing party shall prepare it. ORS 18.035(1).

A. Some Definitions

1. "**Judgment**" means the concluding decision of a court on one or more requests for relief in one or more actions, as reflected in a judgment document. ORS 18.005(7). Once entered, it (a) becomes the exclusive statement of the court's decision in the case and governs the rights and obligations of the parties that are subject to the judgment; (b) may be enforced in the manner provided by law; (c) may be appealed in the manner provided by law; (d) acts as official notice of the court's decision; and (d) may be set aside or modified only by the court rendering the judgment or by another court or tribunal with the same or greater authority than the court rendering the judgment. See ORS 18.082(1).

2. "**Judgment document**" means a writing in the form provided by ORS 18.038 that incorporates a court's judgment. ORS 18.005(9).

3. "**Order**," by contrast, as used in the ORCPs, means any other determination by a court or judge that is intermediate in nature. ORCP 67 A.

4. "**Limited Judgment**" means (a) a judgment entered under ORCP 67 B (Judgment for less than all claims or parties in action) or 67 G (Judgment on portion of claim exceeding counterclaim); (b) a judgment entered before the conclusion of an action in a circuit court for the partition of real property, defining the rights of the parties to the action and directing sale or partition; (c) an interlocutory judgment foreclosing an interest in real property; and (d) a judgment rendered before entry of a general judgment in an action that disposes of at least one but fewer than all requests for relief in the action and that is rendered pursuant to a legal authority that specifically authorizes that disposition by limited judgment. ORS 18.005(13).

Practice tip: A limited judgment may be appropriate, for example, where one of the defendants allows a default judgment to be taken against it, or where summary judgment is successful as to one defendant only, while another co-defendant continues to litigate the claims against it. Rather than wait until the end of the case, the plaintiff might wish obtain a limited judgment against the one defendant so that it can enforce judicial remedies against that defendant before the case is over as to both defendants.

5. "**General Judgment**" means the judgment entered by a court that decides all requests for relief in the action except: (a) a request for relief previously decided by a limited judgment; and (b) a request for relief that may be decided by a supplemental judgment. ORS 18.005(7). A general judgment incorporates a previous written decision of the court that decides one or more requests for relief in the case and that (a) is not a judgment, (b) is consistent with the terms of the general judgment and any limited judgments in the case; and (c) reflects an express determination by the court that the decision be conclusive as to the requests for relief that are resolved. ORS 18.082(2). *Upon entry of a general judgment, any request for relief in the action that is not decided by the general judgment or by a previous limited judgment, that has not been incorporated into the general judgment or that cannot be decided by a supplemental judgment, is* *dismissed with prejudice* *unless the judgment provides that the dismissal is without prejudice (except for general judgments of dismissal).* ORS 18.082(3), (5).

6. "**Money Award**" means a judgment or portion of a judgment that requires the payment of money. ORS 18.005(14).

7. "**Supplemental Judgment**" means a judgment that may be rendered after a general judgment pursuant to legal authority. ORS 18.005(17). Except as provided in ORS 25.529(5) (regarding child support enforcement), a supplemental judgment may only contain provisions that were not included in the general judgment. For example, attorneys' fees and costs: if all issues regarding attorney fees or costs and disbursements are decided before entry of a judgment, the court shall include any award or denial of attorney fees or costs and disbursements in that judgment. If any issue regarding attorney fees or costs and disbursements is not decided before entry of a general or supplemental judgment, then any award or denial of attorney fees or costs and disbursements shall be made by supplemental judgment. ORCP 68 C(5).

8. "**Judgment by Confession**" (sometimes called Confession of Judgment) (Sometimes With Covenant Not to Execute): may be entered without an action for money due in the manner prescribed by ORCP 73 and may be entered in any court having jurisdiction over the subject matter. The application to confess judgment shall be made in the county in which the defendants, or one of them, reside or may be found at the time of the application. A judgment entered by any court in any other county has no force or validity, notwithstanding anything in the defendant's statement to the contrary. NOTE: *Judgments by confession are* *not available for consumer transactions* *(contracts/obligations that arise out of the sale of goods or the furnishing of services for personal, family, or household use; out of a loan or promissory note or other extension of credit for personal, family, or household purposes).*

A statement in writing must be made, signed by any party against whom judgment is to be entered or a person authorized to bind that party, and verified by oath, as follows: (a) it must authorize the entry of judgment for a specific sum; (b) it must state concisely the facts out of which the judgment arose, and show that the sum confessed therefore is justly and presently due; (c) it must contain a statement that the person or persons signing the judgment understands that the statement authorizes entry of judgment without further proceeding that would authorize execution to enforce payment of the judgment and (d) it must have been executed after the date or dates when the sums described in the statement were due. Judgment by confession may be entered and enforced in the same manner and with the same effect as a judgment in an action. (The judgment is not a bar to an action against other joint debtors upon the same demand.) ORCP 73 D.

Practice tip: An unfiled judgment by confession will not create a judgment lien.

9. "**Stipulated Judgment**" (Sometimes With Covenant Not to Execute): At any time after commencement of an action, a judgment may be given upon stipulation that a judgment for a specified amount or for a specific relief be entered. See ORCP 67 F. If the stipulation provides for attorney fees, costs, and disbursements, they may be entered as part of the stipulated judgment.

Practice tip: After an action has been commenced, if the defendants agree that they are liable for the amounts due but need a structured payment plan, a stipulated judgment with a covenant not to execute may be appropriate. The stipulated judgment with a money award will create a judgment lien on real property in the county in which it is filed. The judgment can be executed upon if the defendants fail to comply with the payment plan set forth in the covenant not to execute.

10. "**Corrected Judgment**"

A motion seeking correction of a judgment must be filed within the time allowed by ORCP 71 B. The court may enter a corrected judgment pursuant to ORS 18.107. Unless a correction to a judgment affects a substantial right of a party, the time for appeal of the judgment commences upon entry of the original judgment. If the correction affects a substantial right of a party, and the corrected judgment is entered before the time for appealing the original judgment has expired, the time for appeal of the judgment commences upon the entry of the corrected judgment. See ORS 18.107.

B. Form of Judgments

For a money award to create a judgment lien, the judgment must comply with ORS 18.042(1) (regarding having a separate section clearly labeled as a money award). It is very important to comply with the judgment document form requirements.

1. A judgment document must be plainly titled as a judgment. ORS 18.038(1).

2. The title of a judgment document must indicate whether the judgment is a limited judgment, a general judgment, or a supplemental judgment (subject to certain exceptions). ORS 18.038(2).

3. A judgment document must be separate from any other document in the action, though it may have attached certificates or exhibits in support of the judgment. See ORS 18.038(3).

4. A judgment document must include the requirements of ORS 18.038(4):

a. The name of the court rendering the judgment and the case number;

b. The names of any parties in whose favor the judgment is given and the names of any parties against whom the judgment is given;

c. The signature of the judge rendering the judgment, or the signature of the court administrator, if the court administrator is authorized by law to sign the judgment document, and the date the judgment document is signed.

5. The judgment must accurately reflect the final decision of the court. For example, "This matter came before the court on __'s motion for summary judgment. The court having granted __'s motion and it further appearing that __ is entitled to entry of general judgment and money award; IT IS HEREBY ORDERED AND ADJUDGED that __ shall recover from __ the sum of X dollars, together with interest at the statutory rate of 9.0 percent per annum from the date judgment is entered until fully paid."

6. For judgments that include a money award, see ORS 18.042:

a. The judgment document for a judgment in a civil action that includes a money award **must contain a separate section clearly labeled as a money award**. Any judgment in a civil action that includes a money award, but does not contain a separate section clearly labeled as a money award, does not create a judgment lien but may be enforced by any other judgment remedy.

b. The separate section clearly labeled as a money award must contain all of the following, and in the order set forth in ORS 18.042(2):

i. the name and address of each judgment creditor and the name, address and telephone number of any attorney who represents one or more of the judgment creditors;

ii. The name of each judgment debtor and, to the extent known by the judgment creditor, the address of the judgment debtor; the year of birth of each judgment debtor; the tax identification number of each judgment debtor; or the final four digits of the Social Security number of each judgment debtor; the final four digits of the driver license number of each judgment debtor and the name of the state that issued the license; and the name of any attorney for each judgment debtor;

iii. The name of any person or public body, as defined in ORS 174.109, other than the judgment creditor's attorney, that is known by the judgment creditor to be entitled to any portion of the money award;

iv. The amount of money awarded in the judgment, exclusive of amounts required to be included in the separate section under ORS 18.042(2)(e) to (h);

v. Any interest owed as of the date the judgment is entered in the register, either by a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded, and, if compounded, at what intervals;

vi. Information about interest that accrues on the judgment after entry in the register, including the rate(s) of interest, the balance(s) upon which interest accrues, the date(s) from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals;

vii. For monetary obligations that are payable on a periodic basis, any accrued arrearages, required further payments per period and payment dates; and

viii. If the judgment allows any costs and disbursements and/or attorney fees, a statement indicating that the award is made; any specific amounts awarded; a clear identification of the specific requests for relief for which any attorney fees are awarded and the amount of attorney fees awarded for each request for relief.

c. The separate money award section must be placed immediately above the judge's or court administrator's signature. ORS 18.048(4).

Practice tip: If the relief awarded includes the right to obtain collateral (such as on a replevin claim), double check that your judgment correctly identifies the collateral's serial number or VIN; long strings of letters and numbers are prone to typos. The sheriff will not be able to execute on a writ if the judgment does not match the actual collateral.

7. Compliance with UTCR 2.010(11) (regarding form of orders, judgments, or writs); UTCR 2.060 (regarding entering judgment on face of negotiable instruments); UTCR 2.100 (regarding protected personal information, such as social security numbers, dates of birth, driver's license numbers, etc.).

8. Certificate of Readiness (UTCR 5.100): Subject to some exceptions set forth in the rule, any proposed judgment (or proposed order) submitted to the court for signature must be (a) served on each counsel not less than 3 days prior to submission to court, or (b) accompanied by a stipulation by each counsel that no objection exists as to the judgment (or order), or (c) served on a self-represented party not less than 7 days prior to submission to the court and be accompanied by notice of the time period to object. Must attach a signed certificate to the proposed judgment that shows compliance with this rule—UTCR 5.100(2)(b) sets forth the required form.

Practice tip: One of the exceptions to the advance notice requirement is for a proposed order or judgment presented in open court with the parties present. See UTCR 5.100(3)(a), (4). For example, if you are representing a judgment creditor in an in-person contested summary judgment hearing, you could bring a proposed order and judgment to court and present it if the court rules from the bench and grants your motion for summary judgment.

C. Judgment Liens

1. If a judgment document filed with a court administrator under ORS 18.075(2) includes a money award and complies with ORS 18.042(1) or 18.048(1), the court administrator shall note in the register of a circuit court that the judgment creates a judgment lien (subject to certain exceptions). See ORS 18.150.

2. If the court administrator notes in the register that a judgment creates a judgment lien, the judgment has the following effect <u>in the county in which the judgment is entered</u>: (a) When the judgment is entered, the judgment lien attaches to all real property of the judgment debtor in the county at that time; and (b) The judgment lien attaches to all real property that the judgment debtor acquires in the county at any time after the judgment is entered and before the judgment lien expires. See ORS 18.150.

3. Note that a judgment lien does not attach to any real property of a judgment debtor acquired after the debt giving rise to the judgment is discharged under federal bankruptcy laws. Debts are presumed to have not been discharged in bankruptcy until the judgment debtor establishes that the debt has been discharged.

4. If the judgment debtor has real property in multiple counties, record a certified copy of the filed judgment or a lien record abstract in the county clerk lien records of the other counties as provided in ORS 18.152.

5. Note that a judgment lien does not automatically attach to any personal or intangible property. The judgment creditor would need to a writ of execution or writ of garnishment (see Part II. below regarding enforcement).

D. Confirming an Arbitration Award

1. **Under Oregon Uniform Arbitration Act**: See ORS 36.700; ORS 36.715. After a party to an arbitration proceeding receives notice of an award, the party may make a petition to the circuit court for an order confirming the award. The party filing the petition must serve a copy of the petition on all other parties to the proceedings. The court shall issue a confirming order unless within 20 days after the petition is served on the other parties: (a) A party requests that the arbitrator modify or correct the award under ORS 36.690; or (b) A party petitions the court to vacate, modify or correct the award under ORS 36.705 or 36.710.

If a party requests that the arbitrator modify or correct the award under ORS 36.690, or petitions the court to vacate, modify or correct the award under ORS 36.705 or 36.710, the court may stay entry of an order on a petition until a final decision is made on the request or petition.

Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be entered in the register and enforced as any other judgment in a civil action.

A court may allow reasonable costs of the petition and subsequent judicial proceedings, and may add reasonable attorney fees. See ORS 36.715(2)–(3).

2. Under Section 9 of Federal Arbitration Act (FAA): The process to confirm the arbitration award is accomplished via a petition to confirm the arbitration award filed in the federal district court for the district where the award was made, within one year of the issuance of the award. As part of the petition, file (a) the arbitration agreement, the selection or appointment of arbitrator, and each written extension of time, if any, within which to make the award; (b) the award; and (c) each notice, affidavit, or other paper used upon an application to confirm and a copy of each order of the court upon such application. (9 U.S.C. § 13.) The court treats the petition like a motion, under 9 U.S.C. § 6. It is a summary proceeding; the court may hear argument, but does not hold an evidentiary proceeding. If the court confirms the arbitration award, then it dockets a judgment, which has the same force and effect as a judgment in the action. 9 U.S.C. § 13.

E. Entry of Judgment After Mandatory Arbitration in Oregon Circuit Court

Each Circuit Court requires arbitration under ORS 36.400–36.425 in matters involving $50,000 or less. ORS 36.400(3). In all cases, the arbitrator shall file the arbitration award with the trial court administrator, together with proof of service of a copy of the award upon each party, within 42 days after the conclusion of the hearing. UTCR 13.220(1). If no request for a trial de novo is filed within the time established by ORS 36.425(3), a judgment shall be prepared based on the arbitration decision and award and submitted to the court to be entered. UTCR 13.240.

F. Registering a Foreign Judgment

1. Registering in Oregon Circuit Court

The procedure for filing a foreign judgment under ORS 24.105 to 24.175 is straightforward and can be completed quickly because it does not require a judge's signature. The filing is completed as soon as it is entered in the registry by the trial court clerk. Note that there is a five-day waiting period for execution on most foreign judgments. However, that waiting period does not apply to judgments rendered by a federal court. ORS 24.125(3).

The process involves filing an authenticated copy of the foreign judgment along with (1) a statement containing specific information about the judgment; (2) an affidavit containing information about the parties and filing, and (3) a cost bill (optional). ORS 24.125. Additionally, a notice of the filing must be mailed to the judgment debtor and a certificate of service must be filed with the court. ORS 24.125(2). Payment of the standard filing fee is required. ORS 24.115(1).

Although you can only file the judgment in one court, be sure to record the judgment in the lien records of any counties where the judgment debtor has real property; if that step is not completed, the foreign judgment will not become a lien on real property in those counties. ORS 24.129.

2. Registering a Foreign Judgment in Federal District Court

A judgment in an action for the recovery of money or property entered in any district court may be registered by filing a certified copy of the judgment in any other district court when the judgment has become final by appeal or expiration of the time for appeal. Then, under FRCP 69, the judgment can be enforced in the District of Oregon (in accord with Oregon state law procedures).

Practice tip: Registering a judgment in federal court does not create lien on any real property, whereas recording a money judgment in state court creates a lien on real property located in the county of registration. ORS 18.152(1)–(2). Therefore, it will often be preferable to register a foreign judgment with a money award (even one rendered in a federal district court in a different state) in Oregon Circuit Court.

G. Expiration and Extension of Judgment Remedies

1. Except as provided in ORS 18.180 to 18.190, judgment remedies for a judgment in a civil action expire 10 years after the entry of the judgment. ORS 18.180(3). (Of course, judgment lien and judgment remedies also expire upon full satisfaction of the money award portion of the judgment, even if prior to the 10-year expiration.)

2. ORS 18.182 allows an extension of judgment remedies for one additional ten (10) year period beyond the initial period set in ORS 18.180. This must be done before the original judgment remedies expire, by filing a certificate of extension. ORS 18.182. The certificate should indicate when the original judgment was entered and that it has not been satisfied. The extension time (10 years) runs from the date the certificate is filed, not from the date the original judgment expires.

3. A judgment creditor must cause the renewed judgment to be recorded in the lien records of counties other than the county in which the judgment is renewed. ORS 18.152(4)(b).

Practice tip: After entry of any judgment, notify your client in writing of the details of the judgment, including the expiration date and the deadline by which to notify you if the client wishes to extend the judgment for an additional ten years. Include language making clear that you will take no action to extend the judgment unless the client requests that you do so by that date.

H. Effect of an Appeal

1. The filing of a notice of appeal **does not automatically stay** the judgment that is the subject of the appeal. A party may seek to stay a judgment in the manner provided by ORS 19.335, 19.340 or 19.350, or as provided by other law. ORS 19.330.

2. A judgment debtor who appeals a judgment may move the trial court for elimination of the judgment lien created by the judgment. A court may grant a motion under this

section if the judgment debtor files a **supersedeas undertaking**, as defined in ORS 19.005, and provides such additional **security** as may be required by the court to ensure that adequate amounts will be available to satisfy the judgment if affirmed on appeal. If the court grants the motion, the court administrator shall note in the register and in the judgment lien record that the judgment lien has been eliminated. ORS 18.154.

II. How to Use Creditor Rights to Locate and Collect Assets to Satisfy Your Client's Judgment

Now you've won your client's case, and even better, you've entered an enforceable judgment against one or more judgment debtors, and you've created a lien on the judgment debtor's real property (if any) in the county where the judgment was filed (and in any other county where a certified copy of the judgment has been recorded). But that only means you have a piece of paper entitling your client to a sum of money, perhaps secured by a lien if the judgment debtor owns real property.

What your client really wants is to be ***paid*** the amount of the judgment, along with costs of collection, and judgments are not self-executing. "Upon entry of a judgment, the judgment…(b) [m]ay be enforced in the manner provided by law." ORS 18.082(1)(b). Therefore, unless the debtor is voluntarily paying the judgment (such as under a stipulated judgment with a covenant not to execute during a performing payment plan), counsel for the judgment creditor will generally need to take additional steps to enforce the judgment against the judgment debtor's property.

Practice tip: While we are treating enforcement of judgments as a post-judgment consideration, creditor's counsel must consider enforcement of a potential judgment from the time of referral of the matter, and at each stage in the litigation. Some considerations will include:

- counseling the client on the likelihood of recovery of a future judgment, including cost/benefit considerations (i.e., does it make sense to spend $25,000 litigating a claim if the debtor has only over-encumbered assets and multiple prior judgment creditors);
- whether to seek pre-judgment attachment of assets (limiting transfers of assets during the litigation) or to bring fraudulent/voidable transfer claims (to claw-back recently transferred property of the debtor, when transferred for less than adequate value);
- whether the defendant(s) are or may become "judgment-proof"; whether there are additional parties who might be available to satisfy the judgment (insurers, guarantors, other indemnitors); and
- the nature and extent of competing claimants for debtor's assets (lien priority issues, additional litigation, etc.).

A. Some Definitions

1. **"Execution"** means enforcement of the money award portion of a judgment or enforcement of a judgment requiring delivery of the possession or sale of specific real or personal property, by means of writs of execution, writs of garnishment and other statutory or common law writs or remedies that may be available under the law. ORS 18.005(6).

Execution is not available against the property of a deceased party, except for execution under a judgment of foreclosure. ORS 18.312.

2. **"Exemption"** means a statutory right given to a debtor to retain a portion of his or her property free from seizure under judicial process by creditors. Exemptions allow the debtor to retain equity in certain real and personal property to assure the debtor and the debtor's dependents a minimal standard of living. Exemptions are only available to natural persons or certain government entities; corporations are not entitled to exemptions. Exemptions, 31 Am Jur 2d § 1, § 211 (2012) (supplemented periodically); *see Cabler v. Alexander*, 111 Or 257, 224 P 1076 (1924).

3. **"Garnishment"** means any legal or equitable procedure through which the (non-exempt) earnings of an individual are required to be withheld for payment of a debt. "Garnishment" does not include the procedure authorized by ORS 25.372 to 25.427 (withholding from wages for child support) or 419B.408 (enforcement of support obligations for children who become wards of the state) or ORS chapter 110 (interstate child support enforcement). ORS 18.375(4).

4. **"Earnings"** means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program. "**Disposable earnings**" means that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required to be withheld by law. ORS 18.375 (1; 2).

5. **"Residential Property"** (for purposes of the execution statute) means any of the following property: (1) Real property on which no more than four units designed to be used as dwellings are located; (2) A condominium unit that is designed to be used as a dwelling and that is not being held as inventory for sale or lease in the regular course of business; (3) A manufactured dwelling as defined by ORS 446.003 that is not being held as inventory for sale or lease in the regular course of business; or (4) A floating home as defined in ORS 830.700 that is not being held as inventory for sale or lease in the regular course of business. ORS 18.901.

6. **"Attachment"** means the act or process of seizing property, by virtue of a writ or other judicial order, and bringing the same into the custody of the court, to provide security for the payment of a subsequent judgment or "to arrest a fund in the hands of a third person who may become liable to pay it over." BLACK'S LAW DICTIONARY, 2d Ed. The plaintiff may have the defendant's property attached in an action on "a contract, expressed or implied, for the direct payment of money, when the contract is not secured by mortgage, lien, or pledge, or when it is so secured but such security has been rendered nugatory" by the defendant's act. ORCP 84 A(2)(a).

B. Exemptions

1. A judgment debtor may be entitled to exempt their equity interest (i.e., the liquidation value of the property, after deducting senior liens secured by the property) in certain

real and personal property, up to statutory amounts. Oregon law defines the nature and extent of exempt property interests primarily under ORS 18.300 through ORS 18.422.

2. Exemptions may be amended by the legislature from time to time, and the applicable exemption is that provided under current law at the time of the garnishment, execution, or other process is issued, or on the date a bankruptcy petition is filed.

Note: At the close of the 2023 Regular Session, the Oregon legislature was considering a bill that would substantially alter the exemptions amounts under Oregon law. *See* 2023 Oregon House Bill 2008 (Family Financial Protection Act). Given that all states surrounding Oregon have exemptions that are substantially higher than those available under current Oregon law, you should expect that the legislature will be modifying the exemption amounts in a subsequent session. Therefore, if your client holds a judgment or has a claim that would be impacted if the exemptions are increased, you should consider the impact of proposed/pending legislation on the timing of bringing a collection action or seeking execution against a debtor's property.

3. Funds that are exempt from execution remain exempt when deposited in an account in a financial institution as long as the exempt funds are reasonably identifiable, subject to certain limits. ORS 18.348.

4. **Exemption of Real Property ("Homestead Exemption")**.

a. Under current law, there is an individual homestead exemption of $40,000, and if the interests of two or more individuals *who are members of the same household* would be sold on execution, the exemption is $50,000. There is no obligation that the co-debtors be married or part of a domestic partnership to claim the joint exemption. ORS 18.398.

b. A homestead is residential real property that is "the actual abode of and occupied by" the debtor, or by the debtor's spouse, parent, or child. ORS 18.395(1).

c. A debtor may continue a homestead exemption in marital property during a separation, but the debtor's exemption in the property expires one year from the date that the property is no longer occupied by the spouse (i.e., one year from the date that the dissolution judgment is final). *In re Manz*, No 389-34802-S7, slip op at *2; ORS 18.395(3).

d. The exemption continues notwithstanding the sale of the property (i.e., identifiable proceeds of sale of a homestead that are held with the intent of purchasing a new homestead are protected for one year from the date of sale). ORS 18.395.

e. The existence of a homestead exemption does not mean that homestead residential property cannot be sold on execution to satisfy a judgment; rather, the property may be sold, but senior liens must be paid ***and*** the amount of the applicable exemption must be paid to the judgment debtor, before the sheriff distributes the net proceeds to the judgment creditor. Therefore, the sheriff cannot sell the property unless the opening bid exceeds the amount of the costs of sale, the senior liens, and the applicable homestead exemption. ORS 18.395(8).

f. The homestead exemption does not apply to construction liens for work, labor, or material done or furnished exclusively for the improvement of the homestead property; to purchase money liens; to mortgages lawfully executed; or to the enforcement of a seller's rights under a land sale contract. The exemption may be limited or denied, at the discretion of a court, in actions to enforce child support obligations, with the discretion exercised in light of the statutory policy goals related to support obligations and the rights of the debtor's new family unit. ORS 18.406; 18.398.

g. The judgment debtor may discharge a judgment lien against homestead property (or against the proceeds of a sale of homestead property up to the amount of the exemption) for purposes of allowing the sale of homestead property free and clear of the judgment lien. ORS 18.412.

5. **Exemption of Wages**. As a general rule, 75% of wages are exempt from execution, and there are additional minimums for net wages that must be paid to the judgment debtor ($254/week, $1,090/month).

Practice tip: Note that there is a distinction between wages and "self-employment income" and that the exemption limits for earnings apply to ***wages***. If the judgment debtor is a "gig worker," independent contractor, or otherwise paid earnings reported on IRS Form 1099 rather than a W-2, they are not subject to the same exemptions, and the full amount due may be subject to garnishment.

6. **Exemption of other Personal Property.** In general, while there may be equity in personal property of the debtor, collection against personal property other than: 1) free and clear vehicles of substantial value; 2) money, money equivalents, and liquid assets (e.g., bank deposits, stock accounts); and 3) wages, earnings (1099 income), or contract payment obligations will usually be cost-prohibitive and/or the assets will be exempt. See ORS 18.345-18.643 for specific exemption limits.

C. Execution (Delivery of Property; Sheriff's Sale)

1. **Writ of Execution.** A writ of execution under ORS 18.860 may direct a sheriff to:

a. Levy on and sell real or personal property of the judgment debtor (or levy on currency in possession of the debtor) and deliver the proceeds to the court for application against amounts owing on a money award; or

b. Levy on and deliver possession of specific real or personal property pursuant to the terms of the judgment.

2. **Form of Writ**. The proposed writ should contain the following:

a. Caption with parties, court, and case number, and must state the judgment creditor's mailing address (can be c/o the attorney's address). ORS 18.862(1).

b. When issued under a judgment with money award (or declaration of amount due in foreclosure), (i) a calculation of the amount due, with interest, as of the date of the request for the writ, and (ii) the per diem amount of interest accrual. ORS 18.862(1).

c. A particular description of the property to be delivered or sold, including a legal description for real property. ORS 18.862(2).

d. The writ is issued by the **court administrator**, not a judge, and the court administrator is not liable for the accuracy of the information in the writ. ORS 18.865.

e. The writ must be issued to the **sheriff of the county in which the property is found**; if the writ relates to *a single, contiguous parcel of land* that crosses a county line, *and the writ/writ abstract is recorded in each county*, then the **sheriff of any county in which a portion of the land is found** may sell the entire parcel in one sale. ORS 18.868(2); (4).

f. The writ may be issued to the sheriff of **any county within the state**, and multiple writ may be issued to multiple sheriffs concurrently. ORS 18.868(1); (3).

g. Upon delivery of the writ to the sheriff for the sale of real property, the **judgment creditor** must record a copy of the writ, or an abstract of writ, in each county where property is to be sold. If a lis pendens has not been previously recorded, the recording of the writ acts as a lis pendens (i.e., any party taking an interest in title subsequent to recording takes subject to the pending sale, and the execution sale will be free and clear of their interest). ORS 18.870.

3. **Instructions to Sheriff**. The judgment creditor shall provide instructions to the sheriff, signed by the creditor or their attorney, along with the writ, per ORS 18.875, with:

a. The names and addresses of the judgment creditor and all debtors to whom notice must be given under ORS 18.888, and any other notice parties under ORS 18.918;

b. A description of personal property to be levied on, and a street address or other description of where tangible property may be found;

c. The street address and legal description of real property, and a statement indicating (i) whether the property is residential property, and (ii) whether the property is a condominium unit, manufactured dwelling, or floating home held as inventory for sale in the ordinary course; and

d. A statement as to whether any of the property to be levied upon is intangible personal property, and special instructions required to implement the levy.

4. **Court Order Required for Sale of Residential Property; Contents of Motion**. If the judgment debtor is a natural person, residential property owned by the judgment debtor may be sold under a writ of execution only after the entry of a court order authorizing the

sale. ORS 18.904. There is no separate requirement for an order of sale for execution on a judgment of foreclosure of: (i) a construction lien for work, labor, or material done or furnished *exclusively* for the property to be sold; (ii) a purchase money lien on the property to be sold; and (iii) a mortgage/deed of trust on the property to be sold. ORS 18.904(3). However, the judgment of foreclosure should nevertheless contain a provision authorizing the sale of the specific property in satisfaction of the mortgages or lien(s) foreclosed in the judgment.

a. **Motion for Order Authorizing Sale**: The judgment creditor must file a motion, supported by affidavit, setting for the following, and the facts in support of each allegation:

i. the amount of the money award or money awards in the judgment;

ii. the amount owing as of the date of the motion;

iii. whether any of the money awards arise out of an order or judgment for child support as described in ORS 18.398;

iv. the legal description and street address, if any, of property to be sold; and

v. whether the property is a homestead, and if so, the motion must allege facts showing that the homestead may be sold on execution.

b. **Notice of Motion**. At least ten days before the hearing, the judgment debtor must be served with a copy of the motion and affidavits, and a notice of hearing in the form set out in ORS 18.908, *with service under ORCP 7*, and a copy must be mailed by first class mail to the property address. Therefore, the creditor should obtain a hearing date and time from the clerk sufficiently in the future to allow for 10 days + time for service of the notice.

c. **Hearing on Motion**. Even if the debtor fails to appear, the Court must hold a prima facie hearing and must make a "summary determination" on the merits of the motion. The Court *shall* order the sale unless it finds all of the following:

i. That the property is the homestead of the judgment debtor;

ii. The judgment is subject to the homestead exemption; **and**

iii. The amount of the judgment is less than $3,000.

The order on the motion must indicate whether the homestead applies, and the amount of the applicable homestead exemption. The creditor may not recover the costs of service of the motion as part of the costs of sale. ORS 18.912.

5. **Credit Bidding**. The judgment creditor who requested the issuance of a writ may bid at the sale, and does not need to advance cash other than for: (i) the sheriff's fees and costs; (ii) the amount of the homestead or other applicable exemption; and (iii) the amount in excess of the full amount owing under the judgment, plus the costs of sale. ORS 18.936.

Practice tip: If sums had been advanced for taxes, homeowners association dues, or other "protective advances" with respect to the property to be sold, or the judgment creditor has incurred attorneys' fees and costs in collection efforts under the judgment, *and even if the judgment has a general description in the money award/amount due section awarding future advances and/or future fees and costs of collection,* the judgment creditor **must seek a supplemental judgment** pursuant to ORCP 68 C(5)(b) or C(7) **prior to requesting a writ of execution**, as the writ is issued to enforce a specific judgment or judgments, and the amount due under the judgment(s), with interest, is the upper limit of the credit bid, and if the judgment creditor inadvertently bids more than it is due under the entered judgments, it will have to pay cash in the amount of the overbid to the judgment debtor or other parties entitled thereto, even if the amounts might have been recoverable if the proper procedure was followed. *See, Private Capital Group, LLC v. Harris*, 273 Or. App. 529 (2015).

D. Writ of Garnishment.

1. **Who may issue:** An active Oregon attorney; the court administrator; or Administrator of the Division of Child Support or a district attorney (for child support only). ORS 18.645.

2. **Court with Jurisdiction over Writ.** Multiple courts may have jurisdiction with respect to a writ of garnishment, including the court in which the judgment was entered, and, if recorded in another county, the court in the county where the debtor lives. ORS 18.610.

3. **What Is Delivered to the Garnishee.** For a writ of garnishment to be effective, the garnishor (judgment creditor) **must cause <u>all</u> of the following to be delivered** to the garnishee:

a. The original writ of garnishment in substantially the form provided by ORS 18.830 or a copy of the writ;

b. A garnishee response form in substantially the form provided by ORS 18.835;

c. An instructions to garnishee form in substantially the form provided by ORS 18.838;

d. A wage exemption calculation form in substantially the form provided by ORS 18.840; and

e. Any search fee required by ORS 18.790.

If ***any*** item described above is not delivered to the garnishee, the garnishment is defective and may be ignored. ORS 18.650.

4. **Manner of Delivery.** A writ of garnishment may be delivered by personal service, or by certified mail with return receipt requested. Delivery is effective upon receipt, so if the garnishee rejects the certified mailing, delivery is not complete, and the garnishor may send for personal service, but must issue a new writ to recover the additional service costs. ORS 18.652. The garnishor should carefully review ORS 18.655 to determine the proper party for receipt of a writ of garnishment.

5. **Documents to be delivered to Judgment Debtor**. *Promptly after delivery of the writ of garnishment to the garnishee*, the judgment creditor/garnishor must mail or deliver the following documents to the judgment debtor:

a. a copy of the writ of garnishment;

b. the original of a debt calculation form;

c. notice of exemptions in the form provided under ORS 18.845; and

d. A challenge to garnishment form provided under ORS 18.850, with the names of the garnishor and garnishee filled in by the garnishor. ORS 18.658.

6. **Garnishee's Duties**. Upon receiving a writ of garnishment, the garnishee shall make a response under ORS 18.685 and must do the following:

a. determine whether a response is required (ORS 18.680/18.682);

b. make a diligent effort to determine if the garnishee is an employer of the judgment debtor, or holds property of the debtor;

c. if the garnishee has possession, control or custody of garnishable property, the garnishee must hold the property, or as much of the property as is necessary to satisfy the garnishment, as required by ORS 18.600 to 18.850, and thereafter make delivery of the property in the manner required by ORS 18.600 to 18.850;

d. prepare and serve a garnishee response in substantially the form provided by ORS 18.835 and deliver the response in the manner provided in ORS 18.690 (i.e., to the garnishor, debtor, and court administrator). The response should include:

i. a notation of any bankruptcy filing the garnishee is aware of;

ii. a notation if the garnishee does not employ the debtor or hold debtor's property;

iii. if the garnishee employs the debtor, a notation to that effect, and provide all other responses required by ORS 18.685 or ORS 18.688. The garnishee must thereafter make payment under the writ in the manner provided by ORS 18.735;

iv. if the garnishee holds garnishable cash of the debtor, or owes any money to the debtor other than for wages, the garnishee should so note and deliver all of the funds up to the garnishment amount;

v. if the garnishee owes any money to the debtor, other than for wages, that is not yet due but will become due within forty-five (45) days, the garnishee should so note and deliver all of the funds up to the garnishment amount when the funds become due and payable;

vi. if the garnishee owes any money to the debtor, other than for wages, that is not yet due but will *not* become due within forty-five (45) days, or holds non-cash property of the debtor, the garnishee should so note and should thereafter comply with ORS 18.750 to 18.760 (which require holding the property for thirty (30) days, which awaiting further instructions; the garnishor should then request a writ of execution for the sheriff to seize and deliver or sell the property);

vii. if the garnishee needs additional time to determine the validity or amount subject to garnishment, or does not believe the garnishment is valid, the garnishee should serve a response indicating the reasons or that the determination is continuing, and should provide a supplemental response as appropriate; and

viii. if the garnishee receives a challenge to garnishment before the response is made, it should so note the objection, and should mail the garnished funds to the court administrator to hold pending judicial determination of the party entitled to the funds. ORS 18.708.

7. **Garnishee's Liability**. Under ORS 18.775, and except for the limits provided under ORS 18.787 for financial institutions as garnishees, if a garnishee fails to file a garnishee response within the time required by law, or fails to deliver all garnishable property required to be delivered under the writ of garnishment within the time required by law, the garnishee is liable to the creditor in an amount equal to the lesser of:

a. The amount required to satisfy the garnishment; or

b. The value of the debtor's garnishable property held by the garnishee at the time the writ is delivered to the garnishee.

A judgment may be entered against the garnishee for the amounts specified in ORS 18.775 if, after a hearing, the court finds that:

a. The garnishee at the time of the delivery of the writ of garnishment held garnishable property of the debtor beyond the amount reported in the garnishee response;

b. The garnishee held any garnishable property of the debtor and the garnishee failed to make a response; or

c. The garnishee failed to deliver garnishable property required to be delivered under the writ.

If a garnishee is liable to a creditor under ORS 18.775 (1) and (2), the creditor may also recover costs of the creditor as determined under ORCP 68. If the garnishee fails to file a garnishee response within the time required by law, the costs of the creditor may be recovered from the garnishee even if it is determined that the garnishee held no garnishable property of the debtor at the time the writ was delivered to the garnishee. Any amounts from a garnishee collected other than costs under a judgment entered pursuant to this section must be credited against the debt owed by the debtor to the creditor.

Practice tip: When in doubt, the garnishee should serve a response and deliver "any money that the garnishee reasonably believes may have been garnished…to the sheriff in the manner provided by ORS 18.600 to 18.850 any property that the garnishee reasonably believes to have been garnished. The garnishee has no duty to determine whether money or property held by the garnishee is exempt from garnishment or to determine whether the money or property is garnishable property." If the garnishee does so, it is discharged from liability to the creditor for the amount delivered. ORS 18.688.

E. Judgment Debtor's Exams. At any time after entry of judgment, the judgment creditor may move for an order requiring the debtor to appear and answer questions under oath concerning property or interests in property the debtor has or may claim. ORS 18.265.

1. **Prerequisites**: The motion must be supported by proof of one of the following:

a. Demand for payment of judgment within 10 days, with proof of service by mail, with return receipt, or service in the manner of a summons.

b. A return of a writ of execution, showing the judgment has not been satisfied; or

c. A garnishee response to a writ of garnishment that did not satisfy the judgment.

2. **Venue for Debtor's Exam**.

a. The court that issued the original judgment; or

b. Any circuit court for the county where the debtor resides, or where the debtor's principal place of business is found, and in which the judgment has been recorded, provided that the judgment debtor cannot be compelled to appear at a court more than 100 miles from the residence of the debtor, unless mileage is paid to the debtor as provided for witnesses under ORS 44.415.

3. **Conduct of Debtor's Exam; Seizure of Property**. The exam shall be conducted under oath. Upon request, the proceedings may be reduced to writing and filed with the court. The judgment creditor or debtor may subpoena and examine witnesses. The court may order the seizure of any property for application against the judgment. ORS 18.268.

F. Written Interrogatories. At any time after a judgment is entered, a judgment creditor may serve written interrogatories relating to the judgment debtor's property and financial affairs on a judgment debtor. The interrogatories may be personally served in the manner provided for summons or may be served by any form of mail addressed to the judgment debtor and requesting a receipt. Service by mail under this subsection is effective on the date of mailing. The interrogatories shall notify the judgment debtor that the judgment debtor's failure to answer the interrogatories truthfully shall subject the judgment debtor to the penalties for false swearing as provided in ORS 162.075 and for contempt of court as provided in ORS 33.015 to 33.155. The debtor shall respond in writing and under oath within twenty (20) days. ORS 18.268. Failure to comply is contempt of court, and the judgment creditor may thereafter move for sanctions under ORS 33.015-33.155.

G. Asset Searches; Voidable Transfers. In addition to discovery mechanisms provided by statute, creditor's counsel may employ various other lawful means to identify assets of the debtor, or assets the debtor has disposed of that might be subject to voidable transfers, including:

1. **Public Database Searches**:

a. Real Property title records (sometimes available on county websites; title companies may also provide access to title search websites for subscribers – contact a sales agent at a title company for access).

b. DMV Records; Oregon State Marine Board – searches for vehicles, boats, etc.

c. OECI/OJIN: Oregon court records can provide a wealth of information, including litigation over debtor assets, debtor's addresses, competing lien claims.

2. **Financial Institutions**:

a. typically will require a subpoena to disclose information

b. if the debtor paid your client any money, what bank was their check or wire from; or, if your client paid the debtor money, where did debtor cash/deposit the check

c. request for lien information under ORS 105.200: under this statute, a lienholder may request from another lienholder that they provide "an itemized statement of the amount that is necessary to pay off the other lien" without requiring a third party release from the debtor; useful in determining the amount of senior liens on real property.

3. **UCC Records Online Search**: In Oregon, search for free at: https://secure.sos.state.or.us/ucc/searchHome.action. Allows search for information on UCC secured transactions, as well as Farm Product notices, IRS Tax Liens, Agricultural Liens, Agricultural Produce Liens, Grain Producer's Liens, Revenue Warrants, and Employment Warrants. Search by debtor name (business or individual) or filing number.

a. Very effective to determine other liens on collateral;

b. Check for lien priority and whether asset worth pursuing; and

c. Terminated UCC filings may reveal specific, unencumbered property in the possession of debtor.

4. **Data Compilers:** Accurint (Lexis); TLO Reports.

5. **Social Media:** Debtors are often great witnesses against themselves; search social media for posts about asset purchases, properties, and asset transfers.

6. **Private Investigators**: Useful under certain circumstances, but be careful to determine accuracy of information received. Also should consider liability risks and insurance/indemnity issues if a PI working on behalf of counsel violates the FDCPA, OUDCPA, or similar consumer protection acts, including by contacting third parties in an attempt to collect a debt.

7. **Uniform Voidable Transactions Act (formerly, Uniform Fraudulent Transfers Act**). Under 2023 Oregon Regular Session House Bill 2330, Oregon has adopted the Uniform Voidable Transactions Act ("UVTA"), which will be effective January 1, 2024. Under the UVTA, a creditor may void transfers of assets by the debtor and "claw back" assets transferred to third parties **within four years after the transfer, or within one year after the transfer was discovered or reasonably could have been discovered**, if:

a. a debtor engages in a transaction with the intent to hinder, delay or defraud any creditor, or

b. when a debtor makes a transfer without receiving "reasonably equivalent value" under certain conditions.

H. FDCPA, OUDCPA, and Bankruptcy Stay.

1. Collection of debts typically requires compliance with the Fair Debt Collection Practices Act, 15 USC §1692 *et seq*. ("FDCPA"), and/or the Oregon Unlawful Debt Collection Practices Act, ORS 646.639 *et seq*. ("OUDCPA"), and attorneys do qualify as debt collectors subject to those Acts. The requirements for compliance with the FDCPA and OUDCPA are the subject of entire CLE presentations and beyond the scope of this presentation. Be certain to comply with those Acts if you intend to do any collection work.

2. The filing of a bankruptcy petition generally creates an immediate, nationwide stay prohibiting any action to enforce pre-bankruptcy judgments against the debtor, to recover or "exercise control over property" of the debtor or bankruptcy estate, or to enforce any lien against the property of the estate. 11 USC §362. Actions in violation of the stay are void under controlling 9th Circuit law, and even inadvertent stay violations can nevertheless expose the creditor and their attorney to sanctions for willful violations. Therefore, the careful practitioner will run bankruptcy searches before pursuing debtor assets.

I. Satisfaction of Judgment. When the money award portion of a judgment has been fully satisfied, the judgment creditor *must* file a satisfaction document for the full amount of the money award portion of the judgment in the county in which the judgment was entered; and deliver to the judgment debtor a satisfaction document for the full amount of the money award portion of the judgment for every county in which the judgment has been recorded. ORS 18.225.

1. A satisfaction may be for full or partial satisfaction of the judgment.

2. The satisfaction must be signed by the judgment creditor or their attorney, and must be notarized or contain declaration language under oath per ORCP 1 E.

3. Upon request of a judgment debtor, or other person with an interest in property subject to a judgment lien, a judgment creditor must provide a satisfaction document for all amounts credited against the money award as of the date the satisfaction is signed.

4. The satisfaction may be filed with the court clerk, and the court may not charge a filing fee.

5. The judgment debtor, or other person with an interest in property subject to a judgment lien, may file a motion for satisfaction of judgment when the person filing the motion cannot otherwise obtain a satisfaction. The motion is filed in the court which entered the original judgment, and no appearance fee may be required.

a. The motion must be served on the judgment creditor, who has twenty-one (21) days to respond, and must provide mathematical calculations in response.

b. The motion is resolved in a summary proceeding, after a reasonable opportunity to present evidence, with an order of full or partial satisfaction, and if not fully satisfied, with a statement as to the amount that will satisfy the judgment on a specific date or within a specific period.

c. If the Court finds that a judgment creditor willfully failed to provide a satisfaction, it may enter a supplemental judgment awarding attorneys' fees to the movant, and may provide for an offset of the amount awarded against the remaining amount required to satisfy the original judgment. ORS 18.235.

SHOW ME THE MONEY— OBTAINING AND COLLECTING YOUR CLIENT'S JUDGMENT

PRESENTED BY
TRISH WALSH AND TONY KULLEN

FARLEIGH WADA WITT

OCTOBER 19, 2023

OVERVIEW

I. OBTAINING A PROPER JUDGMENT

- Some definitions
- Form of judgment
- Judgment liens
- Confirming an arbitration award
- Entry of judgment after mandatory arbitration
- Registering a foreign judgment
- Expiration and extension of judgment remedies
- Effect of an appeal

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OVERVIEW

II. **HOW TO USE CREDITOR RIGHTS TO LOCATE AND COLLECT ASSETS TO SATISFY YOUR CLIENT'S JUDGMENT**

- Definitions
- Exemptions
- Execution on Real Property
- Garnishment
- Judgment Debtor Exams
- Additional Asset Searches
- Voidable Transfers
- FDCPA, OUDCPA, and Bankruptcy Stay
- Satisfaction of Judgment

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PREPARATION OF THE JUDGMENT

In a civil action, the court may designate one of the parties to prepare a proposed judgment document. If the court does not designate a party to prepare a proposed judgment document, the prevailing party shall prepare it. ORS 18.035(1).

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SOME DEFINITIONS

Judgment/Judgment document

Order

Limited Judgment

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SOME DEFINITIONS

General Judgment

Money Award

Supplemental Judgment

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SOME DEFINITIONS

Judgment by Confession

Stipulated Judgment

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FORM OF JUDGMENTS

- A judgment document must be plainly titled as a judgment. ORS 18.038(1).
- The title of a judgment document must indicate whether the judgment is a limited judgment, a general judgment, or a supplemental judgment. ORS 18.038(2).
- A judgment document must be separate from any other document in the action, though it may have attached certificates or exhibits. ORS 18.038(3).
- A judgment document must include the requirements of ORS 18.038(4).

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FORM OF JUDGMENTS

For judgments that include a money award, must contain a separate section clearly labeled as a money award. and following the statutory format in ORS 18.042.

FORM OF JUDGMENTS

UTCR requirements:

- 2.010(11) (regarding form of orders, judgments, or writs)
- 2.060 (regarding entering judgment on face of negotiable instruments)
- 2.100 (regarding protected personal information, such as social security numbers, dates of birth, driver's license numbers, etc.)
- 5.100 (Certificate of Readiness)

Correcting a Judgment

- A motion seeking correction of a judgment must be filed within the time allowed by ORCP 71 B.
- The court may enter a corrected judgment pursuant to ORS 18.107.

JUDGMENT LIENS

1. If a judgment document filed with a court administrator under ORS 18.075(2) includes a money award and complies with ORS 18.042(1) or 18.048(1), the court administrator shall note in the register of a circuit court that the judgment creates a judgment lien (subject to certain exceptions). See ORS 18.150.
2. If the court administrator notes in the register that a judgment creates a judgment lien, the judgment has the following effect in the county in which the judgment is entered: (a) the judgment lien attaches to all real property of the judgment debtor in the county at that time; and (b) The judgment lien attaches to all real property that the judgment debtor acquires in the county at any time after the judgment is entered and before the judgment lien expires. See ORS 18.150.
3. Judgment lien does not attach to any real property of a judgment debtor acquired after the debt giving rise to the judgment is discharged under federal bankruptcy laws.
4. If the judgment debtor has real property in multiple counties, record a certified copy of the filed judgment or a lien record abstract in the county clerk lien records of the other counties as provided in ORS 18.152.

CONFIRMING AN ARBITRATION AWARD

1. Under Oregon Uniform Arbitration Act (ORS 26.700)
2. Under Section 9 of Federal Arbitration Act

ENTRY OF JUDGMENT AFTER MANDATORY ARBITRATION IN OREGON CIRCUIT COURT

- The arbitrator shall file the arbitration award with the trial court administrator, together with proof of service of a copy of the award upon each party, within 42 days after the conclusion of the hearing. UTCR 13.220(1).
- If no request for a trial de novo is filed within the time established by ORS 36.425(3), a judgment shall be prepared based on the arbitration decision and award and submitted to the court to be entered. UTCR 13.240.

REGISTERING A FOREIGN JUDGMENT

1. Registering in Oregon Circuit Court
2. Registering in Federal District Court

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EXPIRATION AND EXTENSION OF JUDGMENT REMEDIES

1. Generally, judgment remedies for a judgment in a civil action expire 10 years after the entry of the judgment. ORS 18.180(3).
2. ORS 18.182 allows an extension of judgment remedies for an additional ten (10) years beyond the initial period set in ORS 18.180. Must be done before the original judgment remedies expire, by filing a certificate of extension. ORS 18.182.
3. Record the renewed judgment in the lien records of any other counties. ORS 18.152(4)(b).

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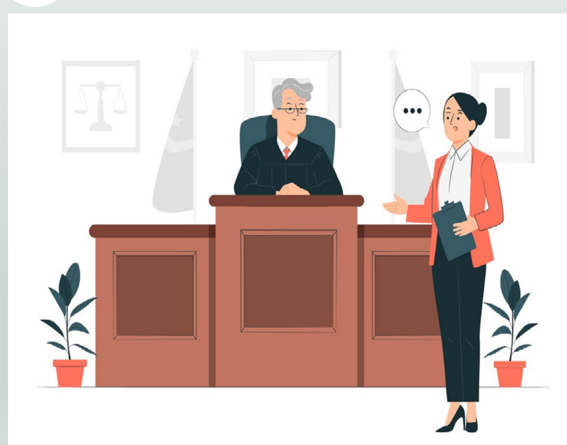
EFFECT OF AN APPEAL

1. The filing of a notice of appeal does not automatically stay the judgment that is the subject of the appeal.
2. A judgment debtor who appeals a judgment may move the trial court for elimination of the judgment lien created by the judgment by filing a **supersedeas undertaking**, as defined in ORS 19.005, and provides such additional **security** as may be required by the court to ensure that adequate amounts will be available to satisfy the judgment if affirmed on appeal.

HOW TO USE CREDITOR RIGHTS TO LOCATE AND COLLECT ASSETS TO SATISFY YOUR CLIENT’S JUDGMENT



SOME DEFINITIONS

Execution

Exemption

Garnishment

Residential Property

Attachment

2023 Proposed Amendment to Oregon Exemptions (Did Not Pass)

- HB 2008 (LC 9060) (Family Financial Protection Act) did not pass/never reached a committee vote, but is expected to return in 2024 short session

Exemption Area	Current Law	HB 2008-1
Wages	$254/week or 75% of wages	Portland Metro min. wage or 75% of wages
Housing	$40,000	33% of real market value or 100% of real market value for seniors
Bank Accounts	Wages once deposited, plus possible $400 wildcard	Up to $2,500 balance
Car	$3,000	$10,000
Items Needed for Work	$5,000	$15,000 for work items and $30,000 of farm equipment
Household goods	$3,000	Protect all belongings except those identified as worth more than $3,000
Wildcard	$400	$1,500, intended not to stack on wages or bank account

Comparison to Exemptions in Other States

- Current Exemptions in Adjacent States and AZ (as of March 2023):

State	Homestead	Wages	Personal Property
California	Greater of $300K and median single family home in county (up to $600K)	All exempt if subject to support order; 80% exempt (with "basic needs" provision)	$8,725
Wash.	Median single family home in county (or $125k*)	75% or 35x min wage exempt	$3,500/ $3,500/ $10,000 wild card
Idaho	$175,000	75% or 30x min wage exempt	$7,500/ $10,000
Arizona	$250,000	75% or 30x min wage exempt	$6,000

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EXECUTION ON REAL PROPERTY

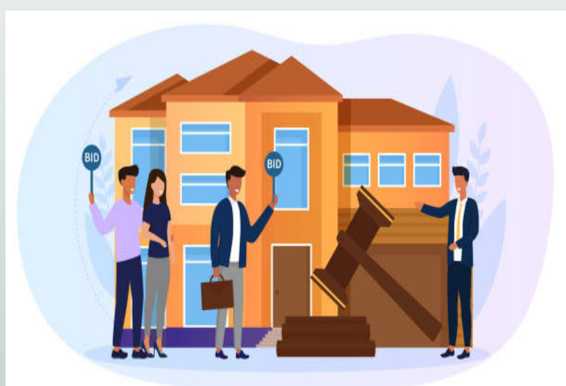
Homestead Exemption

Sale of Residential Property

In Judgment, or Additional Order Required?

Writ of Execution/ Instructions to Sheriff

Bidding Strategy



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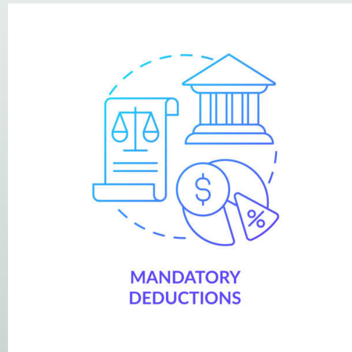
GARNISHMENT

Writ of Garnishment

Required Additional Forms:
- Garnishee Response – ORS 18.835
- Instructions – ORS 18.838
- Wage Exemption Calculations - ORS 18.840
- Search Fee Required under ORS 18.790



Delivery
- Personal Service
- Certified Mail

Who is party to receive the writ?
Effect of failure to include *all* required forms

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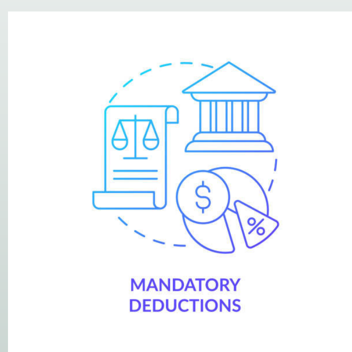
GARNISHMENT

Required Notice to Debtor *after service on Garnishee* - ORS 18.658:
- Copy of Writ of Garnishment
- Debt Calculation Form
- Notice of Exemptions – ORS 18.845
- Challenge Form – ORS 18.658



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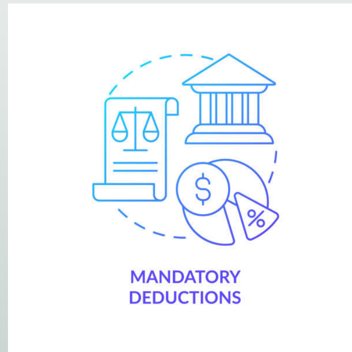
GARNISHMENT

Garnishee Response - ORS 18.685

- determine whether a response is required (ORS 18.680/18.682)
- Diligent effort
- Hold property, make delivery per ORS 18.600 to 18.850
- Serve garnishee response; supplement
- Money coming due in future – 45 days?
- Non-cash property? - 18.750 to 18.760
- Challenge to garnishment? – send to court – ORS 18.708



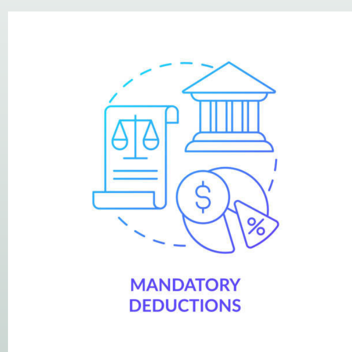
GARNISHMENT

Garnishee Liability – ORS 18.775

Lesser of:

- The amount required to satisfy the garnishment; or
- The value of the debtor's garnishable property held by the garnishee at the time the writ is delivered to the garnishee.

- Attorney Fees and Costs – ORCP 68



JUDGMENT DEBTOR'S EXAM

Prerequisites – Motion for Debtor's Exam:

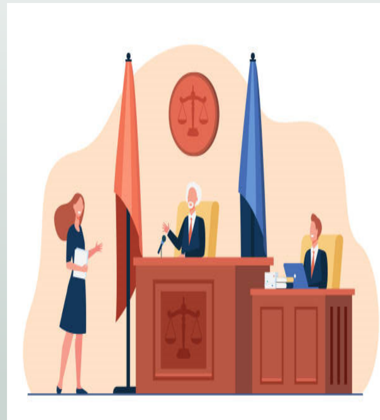
1. 10-Day Demand for Payment;
2. Return of Writ of Execution (unsatisfied); or
3. Garnishee Response (unsatisfied)

Where:

- Court issuing the judgment
- County where debtor lives or works
- *Note* – mileage fee for appearance >100 miles

Conduct of Hearing

- Under oath
- Reduce to writing and filed with court (on request)
- Seizure of Property from Debtor – ORS 18.268
- Alternatives – Consent to Appear in Lieu of Exam?
  - Interrogatories? Third Party Subpoena?



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ADDITIONAL ASSET SEARCH

- Other discovery tools
- Public Databases (title, DMV)
- OECI (civil and criminal)
- Financial Institutions
  - Subpoena or Release (Dodd-Frank)
  - Possible ORS 105.200 lienholder info
- UCC Search (free in Oregon)
- Data Compilers (Accurint, TLO)
- Social Media
- Private Investigators (but consider risks and indemnity)

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VOIDABLE TRANSFERS – "CLAW BACK"

2023 Oregon Regular Session House Bill 2330
Uniform Voidable Transactions Act
("UVTA")

Within 4 years of transfer, or
1 year of discovery, can claw back transfer:

- Made to hinder, delay or defraud creditors
- Transfer "for less than reasonably equivalent value"

Transfer is "voidable"; No proof of fraud by transferee required

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FDCPA, OUDCPA, and Bankruptcy Stay

- Fair Debt Collection Practices Act, 15 USC §1692 *et seq*. ("FDCPA")
- Oregon Unlawful Debt Collection Practices Act, ORS 646.639 *et seq*. ("OUDCPA")
- Bankruptcy Stay - 11 USC §362
- Attorneys may be liable parties

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Satisfaction of Judgment

- Creditor must file full satisfaction - ORS 18.225
- Partial or Full Satisfaction
- Signed by Creditor or Attorney
  - Notarized or Declaration per ORCP 1E
- Must provide full or partial on request of debtor or interested party
- Motion for Satisfaction
  - Fees and costs to debtor if willful refusal
  - Offset against remaining debt
- File Satisfaction (no fee)
- Copies for each county where recorded

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QUESTIONS

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THANK YOU

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