

# Chapter 23

## 1975 REPLACEMENT PART

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## IN GENERAL

**23.010 Application to suits.** The provisions of ORS 23.030 to 23.100, 23.160, 23.170 to 23.190, 23.220, 23.320 to 23.350, 23.410 to 23.600, and 23.710 to 23.750 shall apply to the enforcement of decrees, so far as the nature of the decree may require or admit of it; but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in a suit.

**23.020 Decree requiring performance deemed equivalent thereto; enforcement by contempt proceedings.** (1) A decree requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party does not comply therewith, be deemed to be equivalent thereto.

(2) The court or judge thereof may enforce an order or decree in a suit by punishing the party refusing or neglecting to comply therewith, as for a contempt.

(3) Subsection (2) of this section does not apply to an order or decree for the payment of money, except orders and decrees for the payment of suit money, alimony and money for support, maintenance, nurture, education or attorney's fees pendente lite, or by final decree, in:

(a) Suits for dissolution of marriages.

(b) Suits for separation from bed and board.

(c) Proceedings under ORS 108.110 and 108.120.

[Amended by 1955 c.648 s.3]

**23.030 When party entitled to writ of execution.** The party in whose favor a judgment is given, which requires the payment of money, the delivery of real or personal property, or either of them, may at any time after the entry thereof, and so long as the judgment remains a lien, have a writ of execution issued for its enforcement.

**23.040 Kinds of execution.** There are three kinds of executions:

(1) Against the property of the judgment debtor.

(2) Against his person.

(3) For the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

**23.050 Issuance of writ; contents.** The writ of execution shall be issued by the clerk and directed to the sheriff. It shall

contain the name of the court, the names of the parties to the action, and the title thereof; it shall substantially describe the judgment, and if it is for money, shall state the amount actually due thereon, and shall require the sheriff substantially as follows:

(1) If it is against the property of the judgment debtor, and the judgment directs particular property to be sold, it shall require the sheriff to sell such particular property and apply the proceeds as directed by the judgment; otherwise, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter.

(2) If it is issued after the death of the judgment debtor, and is against real or personal property, it shall require the sheriff to satisfy the judgment, with interest, out of any property in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees as such.

(3) If it is against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pays the judgment, with interest, or is discharged according to law.

(4) If it is for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in subsection (1) of this section, and in that respect it is to be deemed an execution against property.

**23.060 Indorsement of writ; time for return.** The sheriff shall indorse upon a writ of execution, the time when he received it, and the execution shall be returnable, within 60 days after its receipt by the sheriff, to the clerk's office from whence it issued.

**23.070 Counties to which writ may issue.** When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this state. When it requires delivery of real or personal property, it shall be issued to the sheriff of the county where the property or some part thereof is situated. Executions may be issued at the same time to different counties.

**23.080 Execution against person of debtor.** (1) If the action is one in which the defendant might have been arrested, as provided in ORS 29.520, an execution against the person of the judgment debtor may be issued to any county within the state after the return of the execution against his property, unsatisfied in whole or in part, as follows:

(a) When it appears from the record that the cause of action is also a cause of arrest, as prescribed in ORS 29.520, the execution may issue of course.

(b) When no such cause of arrest appears from the record, the execution may issue for any of the causes prescribed in ORS 29.520 that exist at the time of the application therefor, upon leave of the court or judge thereof.

(c) When the defendant has been provisionally arrested in the action, or an order has been made allowing such arrest, and in either case the order has not been vacated, the execution may issue of course.

(2) When execution is issued against the person of the defendant by leave of the court, it shall be applied for and allowed in the manner provided in ORS 29.530 for allowing a writ of arrest, except that the undertaking need not be for an amount exceeding the judgment. A defendant arrested on execution, who has not been arrested provisionally, may at any time be discharged from such arrest for the causes and in the manner provided in ORS 29.540 and 29.550.

**23.090 Detention of debtor; liability for expense.** A person arrested on execution shall be imprisoned in the county jail, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable in the first instance for such expense, as in other cases of arrest, in the same manner and to the same extent as prescribed in ORS 29.730 and 29.740.

**23.100 Issuance after death of judgment debtor.** Notwithstanding the death of a party after judgment, execution thereon

against his property, or for the delivery of real or personal property, may be issued and executed in the same manner, and with the same effect, as if he were still living; but such execution shall not issue within six months from the granting of letters testamentary or of administration upon the estate of such party, without leave of the court having probate jurisdiction or judge thereof.

## EXEMPTIONS

**23.160 Leviale property generally; selectable exemptions.** (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to him, the following property, or rights or interest therein, of the judgment debtor, except as provided in ORS 23.220, shall be exempt from execution:

(a) Books, pictures and musical instruments to the value of \$150.

(b) Wearing apparel, jewelry and other personal items to the value of \$500.

(c) The tools, implements, apparatus, team, harness or library, necessary to enable the judgment debtor to carry on the trade, occupation or profession by which he habitually earns his living, to the value of \$1,600. Also sufficient quantity of food to support such team, if any, for 60 days. The word "team" in this paragraph does not include more than a span of horses or mules.

(d) A vehicle to the value of \$800; but the total exemption claimed and allowed by reason of this paragraph and paragraph (c) of this subsection shall not exceed \$1,600. As used in this paragraph "vehicle" includes an automobile, truck, trailer, truck and trailer or other motor vehicle.

(e) Domestic animals and poultry kept for family use, to the total value of \$600 and food sufficient to support such animals and poultry for 60 days.

(f) If owned by a householder, and in actual use, or kept for use by and for his family or when being removed from one habitation to another on a change of residence: Household goods, furniture, radios, a television set and utensils all to the total value of \$800; provisions actually provided for family use and necessary for the support

of a householder and family for 60 days and also 60 days' supply of fuel.

(g) All property of the state or any county or incorporated city therein, or of any other public or municipal corporation of like character.

(2) If the property selected or reserved by the judgment debtor as exempt shall be adjudicated, by the court out of which the execution issued, to be of a value in excess of that allowed by the appropriate paragraph of subsection (1) of this section, the officer making the levy shall proceed to sell such property, and, out of the proceeds of such sale, the officer shall deduct costs of sale and shall pay to the judgment debtor an amount equivalent to the value declared to be exempt by any of the paragraphs of subsection (1) of this section and shall apply the balance of the proceeds of sale on the execution. No sale shall be made under such execution unless the highest bid made exceeds the appropriate exemption claimed and allowed plus costs of sale. If no bid is received in excess of the value allowed by the appropriate paragraph of subsection (1) of this section, the costs of sale shall be borne by the judgment creditor.

(3) If two or more members of a household are judgment debtors, each judgment debtor shall be entitled to claim the exemptions in paragraphs (a), (b), (c) and (d) of subsection (1) of this section in the same or different properties. The exemptions when claimed for the same property shall be combined at the option of the debtors.

[Amended by 1957 c.687 s.1; 1965 c.577 s.1; 1975 c.208 s.1]

**23.164 Exemption of mobile home and property on which situated.** (1) A mobile home, and the property upon which the mobile home is situated, that is the actual abode of and occupied by the owner, his spouse, parent or child, when such mobile home is occupied as their sole residence and no other homestead exemption is claimed, shall be exempt from execution and from liability in any form for the debts of the owner to the value of \$12,000, except as otherwise provided by law.

(2) The exemption provided for in subsection (1) of this section shall not be impaired by temporary removal or absence with the intention to reoccupy the mobile property as a home, nor by the sale thereof, but shall extend to the proceeds derived from such sale up to \$12,000 while held, with the intention to procure another mobile home or

other homestead therewith, for a period not exceeding one year.

(3) The owner of a mobile home, or the owner's spouse, parent, child, agent or attorney may notify the officer making the levy at any time before the sale that the property is claimed exempt as a home. Upon demand by the plaintiff, after such notice, the levying officer may proceed to advertise and sell the premises and out of the proceeds pay the home claimant the sum of \$12,000 and apply the balance of the proceeds on the execution; provided, however, that no sale shall be made where the mobile property is claimed as a home unless the sum bid for such property is in excess of \$12,000; if no bid in excess of \$12,000 is received, the expense of the advertising and preparation for sale shall be borne by the plaintiff.

(4) The judgment debtor's claim of exemption for a mobile home shall, upon application of either the plaintiff or the judgment debtor, be adjudicated as provided in ORS 23.168.

(5) The provisions of subsections (1), (2), (3) and (4) of this section do not apply to mechanics' liens for work, labor or material done or furnished exclusively for the improvement of the mobile home, or to purchase money liens and mortgages lawfully executed, or to executions issued on a judgment recovered for the purchase price.

(6) If a debtor owns a mobile home but not the property upon which the mobile home is situated, subsections (1), (2), (3), (4) and (5) of this section shall apply, but the value of the debtor's interest exempt from execution and liability shall not exceed \$10,000.

(7) When two or more members of a household are debtors whose interests in the mobile home or the mobile home and the property upon which the mobile home is situated are subject to execution or liability, their combined exemptions under this section shall not exceed \$10,000 or \$12,000, whichever is applicable.

(8) When the owner of real property claimed as a homestead under this section has been adjudicated bankrupt or has conveyed the property, the value thereof, for the purpose of determining a leviable interest in excess of the homestead exemption, shall be the value on the date of the petition in bankruptcy, or on the date the conveyance becomes effective, whichever shall first occur.

(9) As used in this section, unless the context requires otherwise, "mobile home"

includes, but is not limited to, a houseboat.  
[1957 c.687 s.2; 1971 c.765 s.1; 1975 c.208 s.2]

**23.168 Adjudication of judgment debtor's claim of exemption.** The judgment debtor's claim of exemption under ORS 23.160 or 23.164 shall, upon application of either plaintiff or judgment debtor, be adjudicated in a summary manner in the court out of which the execution issued, by affidavit, by oral testimony in open court, or otherwise as the court may determine.  
[1957 c.687 s.3]

**23.170 Pensions exempted without necessity for claim.** All pensions granted to any person in recognition by reason of a period of employment by or service for the government of the United States, or any state, or political subdivision of any state, or any municipality, person, partnership, association or corporation, shall be exempt from execution and all other process, mesne or final. Such exemption shall be effective without necessity of claim thereof by the pensioner.

**23.175 Definitions for ORS 23.175 and 23.185.** As used in this section and ORS 23.185:

(1) "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.

(2) "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.

(3) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.  
[1969 c.403 s.2]

**23.180**[Amended by 1957 c.550 s.1; repealed by 1965 c.486 s.1 (23.181 enacted in lieu of 23.180)]

**23.181**[1965 c.486 s.2 (enacted in lieu of 23.180); repealed by 1969 c.403 s.4]

**23.185 Maximum wage subject to garnishment; exceptions; debtor waiver void; contents of legal process served on garnishee; discharge from employment prohibited.** (1) Except as provided in subsection (2) of this section, the maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment may not exceed:

(a) 25 percent of his disposable earnings for that week;

(b) The amount by which his disposable earnings for that week exceed 40 times the applicable federal minimum hourly wage prescribed by section 6(a) (1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) as that section is in effect on March 31, 1975; or

(c) The amount described in paragraph (a) or (b) of this subsection, minus any amount required to be withheld from his disposable earnings for that week pursuant to an order issued under ORS 23.777 or 23.783,

whichever amount is less.

(2) The restrictions of subsection (1) of this section do not apply in the case of:

(a) Any order of a court of bankruptcy under sections 1 (601) to 1 (686) of the Act of June 22, 1938, ch. 575 (11 U.S.C. 1001 to 1080).

(b) Any debt due for state or federal tax.

(3) No court shall make, execute or enforce any order or process in violation of this section.

(4) Any waiver by a debtor of the provisions of this section is void.

(5) Any legal process served on a garnishee shall indicate whether the provisions of subsection (2) of this section apply.

(6) A copy of this section shall be attached to or made a part of any legal process served on a garnishee.

(7) No employer shall discharge any person for the reason that the person has had earnings garnished.

[1969 c.403 s.3; 1971 c.498 s.1; 1973 c.273 s.1; 1973 c.519 s.1; 1975 c.208 s.3; 1975 c.458 s.3]

**23.190 Public officers and agencies garnishable.** Any salary, wages, credits, or other personal property in the possession or under the control of the state or of any county, city, school district or other political subdivision therein, or any board, institution, commission, or officer of the same, belonging or owed to any person, firm or corporation, shall be subject to execution in the same manner and with the same effect as property in the possession of individuals is subject to execution; however, process in such proceedings may be served only on the board, department, institution, commission, agency, or officer charged with the duty of approving a voucher or claim for such salary, wages, credits, or other property. No clerk or officer of any court shall be required to answer as garnishee as to any moneys or property in

his possession in the custody of the law.

[Amended by 1959 c.671 s.1]

**23.200 Exemption of firearms.** Every citizen of this state above the age of 16 years shall be entitled to have, hold and keep, for his own use and defense and shall have exempt from execution one rifle or shotgun and one pistol.

[Amended by 1961 c.599 s.1]

**23.210 Firearms not to be demanded except where services of owner are required.** No officer, civil or military, or other person, shall take from or demand of the owner any firearms mentioned in ORS 23.200, except where the services of the owner are also required to keep the peace or defend the state.

**23.220 Property not exempt from execution for purchase price.** No article of property, or if the same has been sold or exchanged, then neither the proceeds of such sale nor the articles received in exchange therefor, shall be exempt from execution issued on a judgment recovered for its price.

[Amended by 1975 c.208 s.4]

**23.230 Proceeds of casualty and indemnity insurance attachable on execution.** Whenever a judgment debtor has a policy of insurance covering liability, or indemnity for any injury or damage to person or property, which injury or damage constituted the cause of action in which the judgment was rendered, the amount covered by the policy of insurance shall be subject to attachment upon the execution issued upon the judgment.

**23.240 Exemption of homestead or proceeds thereof; duration of exemption.**

(1) A homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of \$12,000, except as otherwise provided by law. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed \$12,000. The homestead must be the actual abode of and occupied by the owner, his spouse, parent or child, but such exemption shall not be impaired by:

(a) Temporary removal or temporary absence with the intention to reoccupy the same as a homestead;

(b) Removal or absence from the property; or

(c) The sale of the property.

(2) The exemption shall extend to the proceeds derived from such sale to an amount not exceeding \$12,000 held, with the intention to procure another homestead therewith, for a period not exceeding one year.

(3) The exemption period under paragraphs (b) and (c) of subsection (1) of this section shall be one year from the removal, absence or sale, whichever occurs first.

(4) When the owner of a homestead has been adjudicated bankrupt or has conveyed the homestead property, the value thereof, for the purpose of determining a leviable interest in excess of the homestead exemption, shall be the value on the date of the petition in bankruptcy, or on the date the conveyance becomes effective, whichever shall first occur.

[Amended by 1959 c.561 s.1; 1969 c.525 s.1; 1975 c.208 s.5]

**23.250 Limitation as to quantity of land.** The homestead mentioned in ORS 23.240 shall consist, when not located in any town or city laid off into blocks and lots, of any quantity of land not exceeding 160 acres, and when located in any such town or city, of any quantity of land not exceeding one block, provided such homestead shall not exceed in value the sum of \$12,000.

[Amended by 1959 c.561 s.2; 1975 c.208 s.6]

**23.260 Exemption inapplicable to mechanics' and purchase-money liens and mortgages.** ORS 23.240 to 23.300 do not apply to mechanics' liens for work, labor or material done or furnished exclusively for the improvement of the property claimed as a homestead, and to purchase money liens and mortgages lawfully executed.

[Amended by 1969 c.591 s.270]

**23.270 Claim and setting off of homestead; sale; return of execution.**

(1) Whenever a levy is made upon a homestead, the owner thereof, or the owner's spouse, parent or child, agent or attorney, may notify the officer making the levy, at any time before the sale, that he claims a homestead in such lands, giving a description of the quantity of land claimed as a homestead and an estimate of the value thereof, and the remainder alone shall be subject to sale un-

der such levy, unless the plaintiff in the execution shall deny the right to such homestead, or be dissatisfied with the quantity or estimate of the value of the land so claimed. If the plaintiff is so dissatisfied, he may direct the officer making the levy to select three disinterested freeholders of the county who shall examine and appraise, under oath, the lands and improvements, and if the appraised value exceeds \$12,000, said freeholders may cause to be surveyed and shall set off in compact form, including the dwelling house and appurtenances, so much of the land claimed as a homestead to the amount in value of \$12,000, and the remainder alone shall be subject to sale under such levy. After the lands are surveyed and set off, if, in the opinion of the plaintiff in the execution, the same are of greater value than \$12,000, the officer may proceed to advertise and sell the premises so set off, and out of the proceeds pay the homestead claimant the sum of \$12,000, and apply the balance of the proceeds on the execution; provided, however, that no sale shall be made in the case last mentioned unless a greater sum than \$12,000 is bid for said premises. When the freeholders are of the opinion that the property claimed as a homestead is worth more than \$12,000, and that because of its shape and quantity it cannot be set off without destroying the intrinsic value or use thereof, then they shall so certify to the officer making the levy and he shall proceed to advertise and sell the same, as in the case last mentioned. The expense of such appraisal, survey and sale shall be collected on the execution, if it appears that the owner claimed as his homestead a greater quantity of land or land of greater value than he was entitled to; otherwise such expenses shall be borne by the person directing the same.

(2) Whenever a judgment is recovered against a homestead owner, he may make and file for record in the proper registry of deeds of the county in which the homestead is situated, a statement executed with the same formality required for the execution of deeds of real property, giving the description and the quantity of land claimed by him as a homestead, an estimate of the value thereof, and his name and post-office address, with a declaration that he claims the property as his homestead; and the making and filing of such statement shall have the same effect as the giving of the notice above provided for.

(3) The officer, when making return of the execution upon such levy and sale, shall return and file therewith the claim of the

homesteader, the objections, if any, of the plaintiff in the execution, the oath of the freeholders and their appraisal, survey and a description of the homestead as set off by them, and also such other matters and proceedings as may be had in the premises.

[Amended by 1959 c.561 s.3; 1975 c.208 s.7]

**23.280 Notice of intent to effect discharge of judgment lien against homestead claimant.** (1) At any time after the date of execution of an agreement to transfer the ownership of property in which a homestead exemption is claimed pursuant to ORS 23.240, the homestead claimant or his transferee may give notice of intent to effect discharge from the judgment lien to any owner of the judgment docketed against the homestead claimant in the county in which the property is situated. Each notice shall be styled as a paper in the action in which the judgment was recovered and shall:

(a) Identify the property and the judgment and state that the judgment debtor is about to transfer, or has transferred, the property and that the transfer is intended to discharge the property from any lien lawfully arising out of the judgment;

(b) State the fair market value of the property on the date of the notice and list the encumbrances against the property, including the nature and date of each encumbrance, the name of the encumbrancer and the amount presently secured by each encumbrance;

(c) State that the property is claimed by the person giving the notice to be wholly exempt from the lien of the judgment or, if the value of the property exceeds the sum of the encumbrances specified as required under paragraph (b) of this subsection that are senior to the judgment lien and \$12,000, that the amount of the excess or the amount due on the judgment, whichever is less, will be deposited with the clerk of the court in which the judgment is docketed for the use of the judgment holder; and

(d) Advise the holder of the judgment that the property may be discharged from any lien arising from the judgment, without further notice to the holder of the judgment, unless prior to a specified date, which in no case may be earlier than 14 days after the date of mailing of the notice, the judgment owner files objections and a request for a hearing on the matter as provided in ORS 23.290.

(2) Each notice described by subsection (1) of this section shall be sent by certified mail to the present holder of the judgment,

as shown by the judgment lien docket, at his present or last-known address according to the best knowledge of the person sending the notice. A copy of each notice, together with proof of mailing, may be filed with the clerk of the court with whom the judgment is docketed and shall be filed by the clerk with the records and files of the action in which the judgment was recovered.

[1975 c.742 s.2]

**23.290 Objections to notice of intent to effect discharge; hearing.** (1) Any holder of an interest in a judgment described in a notice sent pursuant to ORS 23.280 may file, with the clerk of the court in which the judgment is docketed, objections to the notice and request for a hearing upon the application for an order made pursuant to subsection (4) of ORS 23.300. The objections and a request for hearing must be filed prior to the date specified in the notice and must indicate the grounds for the objections and include the address to which notice of any hearing upon request for an order may be sent.

(2) (a) If the holder of a judgment admits the validity of the claim to a homestead exemption and objects only that the value placed upon the property in the notice is less than the fair market value of the property, the court shall try the issue of fair market value without formal pleadings. Each party may offer evidence of fair market value, but the holder of the judgment has the burden of proving the fair market value.

(b) If the objection is made to other than the valuation of the property, the court shall try the issues of fact and law in the manner of a quiet title suit and may direct filing of formal pleadings as it considers necessary for definition of issues.

(3) If the court finds that the fair market value of the property specified in the notice reasonably approximates the fair market value of the property, or, if other issues are raised by the objections and are decided against the holder of the judgment, the court shall make an order that the property is not subject to the lien of the objecting judgment holder. In all other cases, the application for an order shall be dismissed and the lien upon the property shall not be affected by the notice.

[1975 c.742 s.4]

**23.300 Effect of deposit of excess over exemption; annulment of judgment lien.** (1) If a deposit, as required by paragraph (c) of subsection (1) of ORS 23.280, is

made by a transferee of any property, he may credit the amount of the deposit against the consideration owed by him for the transfer.

(2) The holder of any judgment described in subsection (1) of ORS 23.280 is entitled to receive the full amount of any deposit made with respect to the judgment upon delivery to the clerk of the court of a certificate of annulment of the lien, prepared as provided in subsection (2) of ORS 18.400 and specifying that the property described in the notice is released from the judgment lien.

(3) If no certificate of annulment of the lien is delivered by the holder of the judgment to the clerk, as required by subsection (2) of this section, the clerk shall hold the deposit described in subsection (1) of ORS 23.280 and the deposit shall be paid by the clerk to the homestead claimant upon expiration of the judgment and any subsequent renewal thereof as provided in ORS 18.360.

(4) At any time after the date specified in a notice, as provided by paragraph (d) of subsection (1) of ORS 23.280, the homestead claimant for the property described in the judgment may apply to the court in which the judgment is docketed for an order that the property described in the notice is no longer subject to the judgment lien. If no objections are filed and no hearing is requested in accordance with ORS 23.290, the judge shall issue an ex parte order that the property is no longer subject to the judgment lien if the judge is satisfied that the property has been, or is about to be, transferred and that the notice was prepared and mailed and a deposit was made as required in ORS 23.280. The judge must, in addition, find that the holder of the judgment actually received notice or, if his whereabouts are unknown, that a reasonably diligent effort has been made to find him. If objections and a request for a hearing have been filed by the holder of the judgment, the court shall set a hearing and notify the holder of the judgment of the time and place of the hearing.

[1975 c.742 s.3]

**INDEMNIFICATION FOR  
WRONGFUL LEVY; ADVERSE  
CLAIMS TO PROPERTY**

**23.310 Indemnity to sheriff or constable.** Whenever a writ of attachment or execution is delivered into the hands of any

sheriff or constable, under which the personal property of any person, firm or corporation is to be held or sold for the satisfaction of any judgment or costs of action or suit, if the sheriff or constable has actual notice of any third-party claim to the personal property, or is in doubt as to ownership of the property, or of encumbrances thereon, or damage to the property held that may result by reason of its perishable character, such sheriff or constable may require the plaintiff or judgment creditor to file with the sheriff or constable a good and sufficient bond, having the same qualifications as a bail bond, indemnifying the sheriff or constable and his bondsmen against any loss or damage by reason of the illegality of any such holding or sale on execution, or by reason of damage to any personal property held under attachment or execution, which bond shall be in double the amount of the claim or judgment by which the personal property is either held or to be sold.

**23.320 Notice of adverse claim; mode of trial.** When personal property is seized by virtue of any execution, and any person other than the defendant claims such property, or any part thereof, and gives notice thereof in writing, the sheriff may summon from his county six persons, qualified as jurors between the parties, to try the validity of the claim, giving five days' notice of the time and place of the trial to the plaintiff in the execution or his attorney; or the adverse claimant may, at his option, have his claim adjudicated in a summary manner in the court out of which the execution issued, by affidavit, by oral testimony in open court or otherwise, as the court may determine.

**23.330 Proceedings on trial; effect of verdict.** The sheriff, at the request of either party, shall subpoena witnesses, and compel them to attend and give testimony, and he shall administer the necessary oaths to the jurors and witnesses. On the trial the defendant and the claimant may be examined by the plaintiff as witnesses, and the verdict of such jury being rendered in writing, and signed by the foreman, shall be a full indemnity to the sheriff, proceeding in accordance therewith, but shall not preclude the claimant from maintaining an action at law for the recovery of the possession of such property, or for damages for taking the same.

**23.340 Withdrawal of claim; discharge of property from levy; costs of trial.** (1) The claimant, at any time before the jury retires, may withdraw his claim, or the plaintiff in the writ may, within the same time, direct the sheriff to discharge the property from the execution or attachment, and thereupon the trial shall proceed no further. The costs and disbursements of the trial shall be paid by the party against whom the verdict is given, or, if no verdict is given, as in this section provided, then by the party who withdrew his claim, or directed the property to be discharged, as the case may be. The sheriff shall collect all such costs and disbursements, if not paid immediately, by levying on the property of the party liable for them as on execution, and pay the same to the jurors, witnesses and others entitled to receive them.

(2) When the jury is summoned, the sheriff or constable, as the case may be, shall require both the claimant and plaintiff in the writ to deposit with him the fees allowed by law to the jurors, which fee shall be the same as allowed to jurors serving on a jury of inquest, and at the hearing shall pay the jurors from the deposit of the party failing to prevail in such proceeding, and shall return to the prevailing party the moneys so deposited. If the claimant fails to so deposit the fees, the officer holding the writ of execution or attachment shall be relieved of all liability to the claimant in all respects as though the jury after hearing had returned a verdict against the claimant or his claim; if the plaintiff in the writ fails to deposit the fees, the property claimed and held under the writ shall be in all respects released from the lien of the execution or attachment under which it is held.

**23.350 Sale notwithstanding verdict for claimant; indemnity to sheriff.** Notwithstanding the verdict of the jury is for the claimant, the sheriff shall proceed to sell the property seized in satisfaction of the execution, if the plaintiff tenders to him a written undertaking, executed by two or more good and sufficient sureties, residents of the state, and householders or freeholders therein, in double the value of the property, to the effect that he will indemnify the sheriff against all damages and costs which he may sustain in consequence of the seizure and sale of such property, and moreover, that he will pay to the claimant of such property all damages which he may sustain in consequence of such seizure and sale. If

such undertaking is given, it shall be returned by the sheriff with the execution.

**EXECUTION PROCEDURE;  
SALE; REDEMPTION**

**23.410 Manner of executing writ of execution; disposition of proceeds.** When the writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff, as follows:

(1) If the property has been attached, he shall indorse on the execution, and pay to the clerk forthwith the amount, if any, of the proceeds of sales of perishable property or debts due the defendant received by him, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in his custody, he shall sell the same or sufficient thereof to satisfy the judgment.

(3) If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment.

(4) Property shall be levied on in like manner and with like effect as similar property is attached.

(5) Until a levy, property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day which the writ is returnable.

(6) When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor, without delay. If, after satisfying the judgment, any property or the proceeds thereof remain in the custody of the sheriff, he shall deliver the same to the judgment debtor.

**23.420 Proceedings in case of property in possession of or owing from garnishee.** In the case of property in the possession of or owing from any garnishee mentioned in ORS 29.280, the sheriff shall proceed as follows:

(1) If it appears from the certificate of the garnishee that he owes a debt to the judgment debtor, which is then due, if such debt is not paid by the garnishee to the sheriff on demand, he shall levy on the property of the garnishee for the amount

thereof, in all respects as if the execution were against the property of the garnishee. But if such debt is not then due, the sheriff shall sell the same according to the certificate, as other property.

(2) If, in like manner, it appears that the judgment debtor has rights or shares in the stock of the garnishee as provided in ORS 29.280, the sheriff shall sell the same according to the certificate, as other property.

(3) If, in like manner, it appears that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same is delivered to the sheriff on demand, he shall levy upon the same wherever he may find it. If such property is in the possession of such garnishee upon a bailment then unexpired, the sheriff shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

**23.430 Proceedings where garnished property is not delivered; delivery, payment or transfer to sheriff; release.** When the sheriff with an execution levies upon any of the personal property mentioned in subsection (3) of ORS 29.170, and if the same is not delivered, paid, or transferred to him at the time, and the garnishee furnishes him the certificate required in ORS 29.280, he shall proceed thereafter in reference to such property as provided in ORS 23.420. Such property, or sufficient thereof to satisfy the execution, may be delivered, paid, or transferred to the sheriff at the time of levy, and the sheriff's receipt to the garnishee shall be a sufficient discharge thereof; provided, however, that such property, and also the garnishee having possession thereof, may, upon written request of the attorney of record or the judgment creditor if there is no attorney of record, be released and discharged in whole or in part by the clerk of the court by whom the writ of execution was issued, in the same manner and with like effect as is provided in ORS 29.400 for the issuance of releases of garnishments based upon writs of attachment.

**23.440 Debtor may retain property on giving bond.** When the sheriff levies upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written undertaking

to the sheriff, with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale; and for nondelivery thereof an action may be maintained upon such undertaking by the sheriff or the plaintiff in the execution; but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

**23.450 Notice of sale.** Before the sale of property on execution, notice thereof shall be given as follows:

(1) In case of personal property, by posting written or printed notice of the time and place of sale in three public places of the county where the sale is to take place, not less than 10 days successively, and by sending, forthwith upon such posting, a copy of such notice by registered mail to the judgment debtor at his last-known post-office address or place of residence; provided, that in the sale of perishable property the notice shall be posted for not less than 48 hours.

(2) In case of real property, by publishing a similar notice, particularly describing the property, once a week for four successive weeks, making four publishings in all, with the last publication at least one week prior to the day of sale, in a newspaper of the county, if there is one, or if there is none, in a newspaper published nearest to the place of sale, and by sending forthwith upon the making of the first of such publishings, a copy of such notice by registered mail to the judgment debtor at his last-known post-office address or place of residence.

**23.460 Time and manner of sale.** All sales of property upon execution shall be made by auction, between 9 a.m. and 4 p.m. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution, nor his deputy, shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price. When the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately, or otherwise, as is likely to bring the highest price, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be sold separately.

[Amended by 1971 c.120 s.1]

**23.470 Adjournment of sale.** If, at the time appointed for the sale, the sheriff is prevented from attending at the place appointed, or being present deems it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week, next after the day appointed, and so from time to time for like cause, giving notice of every adjournment by public proclamation, made at the same time. The sheriff for like cause may also adjourn the sale from time to time, not exceeding 30 days beyond the day at which the writ is made returnable, with the consent of the plaintiff indorsed upon the writ.

**23.480 Delivery of personal property to purchaser; bill of sale.** When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired, shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property, the sheriff shall give the purchaser a bill of sale with like acknowledgment.

**23.490 Proceedings after sale of realty; confirmation.** Whenever real property is sold on execution, the provisions of this section shall apply to the subsequent proceedings, as follows:

(1) The plaintiff in the writ of execution is entitled, on motion therefor, to have an order confirming the sale at any time after the expiration of 10 days from the date of filing the return of sale, unless the judgment debtor, or in case of his death, his representative, files with the clerk within 10 days after the return of the execution, his objections thereto.

(2) If such objections are filed, the court or judge thereof shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion it satisfactorily appears that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court or judge shall disallow the motion, and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date.

(3) Upon the return of the execution, the sheriff shall pay the proceeds of the sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of

resale is afterwards made, and the property sells for a greater amount to any person, other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid, out of the proceeds of the latter sale. Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount.

(4) An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale, as to all persons, in any other action, suit or proceeding.

(5) If, after the satisfaction of the judgment, there are any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor or his representative, at any time before the order is made upon the motion to confirm the sale, provided such party files with the clerk a waiver of all objections to the proceedings concerning the sale. If the sale is confirmed, such proceeds shall be paid to such party, of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

[Amended by 1959 c.638 s.8]

**23.500 Evicted purchaser may recover price.** If the purchaser of real property sold on execution, or his successor in interest, is evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with interest and the costs and disbursements of the suit by which he was evicted, from the plaintiff in the writ of execution.

**23.510 Sheriff's certificate of sale.** At the time of sale, the sheriff shall give to the purchaser a certificate of the sale containing a particular description of the property sold, the price bid for each distinct lot or parcel, the whole price paid, and, when subject to redemption, a statement of that fact. The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

**23.520 When realty sales are absolute; when redeemable.** Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as provided in ORS 23.530 to 23.600.

**23.530 Who may redeem.** Property sold subject to redemption, as provided in ORS 23.520, or any part thereof separately sold, may be redeemed by the following persons:

(1) The mortgagor or judgment debtor whose right and title were sold, or his heir, devisee or grantee, who has acquired, by inheritance, devise, deed, sale, or by virtue of any execution or by any other means, the legal title to the whole or any part of the property separately sold; provided, that in the event redemption is made by anyone acquiring the legal title after attachment, or after a judgment becomes a lien on the property, such person shall acquire no greater or better right thereby to the property so redeemed than the holder of the legal title at the time of such attachment or judgment.

(2) A creditor having a lien by judgment, decree or mortgage on any portion of the property, or any portion of any part thereof separately sold, subsequent in time to that on which the property was sold. Such creditors, after having redeemed the property, are to be termed redemptioners.

**23.540 Redemption by lien creditor.** A lien creditor may redeem the property within 60 days from the date of the sale by paying the amount of the purchase money, with interest at the rate of 10 percent per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and any other sum which the judgment debtor might be required to pay for redemption, with like interest, and if the purchaser is also a creditor having a lien prior to that of the redemptioner, the amount of such lien, with interest; provided, that if objections to any sale are filed, a lien creditor may redeem within 60 days from the date of the order confirming the sale.

**23.550 Redemption from redemptioner.** If the property is redeemed under ORS 23.540, any other lien creditor may, within 60 days from the last redemption, again redeem it, on paying the sum paid on the last redemption, with interest at the rate of 10 percent per annum thereon from the date of the last preceding redemption in addition, together with any taxes which the last redemptioner may have paid thereon, and, unless his lien is prior to that of such redemptioner, the amount of such lien, with interest. The property may be again, and as often as any lien creditor or redemptioner is

disposed, redeemed from the last previous redemptioner, within 60 days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of 10 percent per annum thereon, from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner prior to his own, with interest.

**23.560 Redemption by mortgagor, judgment debtor or successors; lien of purchaser.**

(1) The mortgagor or judgment debtor whose right and title were sold, or his heir, devisee or grantee, who has acquired by inheritance, devise, deed, sale, or by virtue of any execution or by any other means, the legal title to the property sold, may, at any time within one year after the date of sale, redeem the property; provided that a transfer of the judgment debtor's interest in the property, either before or after sale, shall preclude him from the right to redeem unless the proceeds from the sale are insufficient to satisfy the judgment, in which event the judgment debtor shall have the right to redeem at any time within 10 days after the year herein allowed for redemption, and not otherwise.

(2) Redemption shall be made by paying the amount of the purchase money, with interest thereon at the rate of six percent per annum from the date of sale, together with the amount of any taxes the purchaser may have been required to pay thereon, and any sums necessarily expended by him to prevent waste, and also all sums that the purchaser may have been required to pay on prior liens, with interest upon every such payment made by the purchaser at the rate of six percent per annum from the date of payment thereof; subject to the set-off provided for in subsection (3) of this section.

(3) The mortgagor or judgment debtor, his heir, devisee or grantee shall be entitled to a set-off, against the amount necessary to be paid to redeem any property subject to redemption, for all rents, issues and profits accruing from the property sought to be redeemed while the same was in the possession of the purchaser, upon his giving to the purchaser or his successors in interest at least 10 days' written notice to render an accounting for all rents, issues and profits accruing from the property sought to be redeemed. If the property sold is farm land, the purchaser shall have a lien on the first crops sown or grown thereon after the sale,

for all sums reasonably expended by him in plowing, cultivating or seeding the premises in the usual husbandlike manner, which lien shall be superior to all other liens except the liens of laborers for work in cultivating said lands or harvesting the crops grown thereon, as now provided by law. If the premises are other than farm lands, the purchaser shall have a lien on the profits thereof arising during the period of redemption for sums necessarily expended by him to prevent waste.

(4) Within 10 days after the notice provided for in subsection (3) of this section is given, the purchaser or his successors in interest shall file with the sheriff of the county wherein the property sought to be redeemed is situate a verified account of all rents, issues and profits accruing from, and of all sums for which he claims a lien upon the property sought to be redeemed while the same was in the possession of the purchaser or his successors in interest. At any time within five days thereafter the judgment debtor or mortgagor shall file any objection which he may have to said account with the sheriff, who forthwith shall transmit all papers in his possession touching upon said foreclosure, sale and redemption to the circuit court having jurisdiction, or to the judge thereof. The sums, if any, due the mortgagor or judgment debtor, or claimed by the purchaser under his lien, shall thereafter be determined by the circuit court or the judge thereof at chambers in a summary manner at the time of redemption, and, upon such determination, the judge shall immediately return the files in the case, together with his findings, to the sheriff of such county. Either party may appeal to the Supreme Court from such determination and decision by the circuit court. An appeal by the redemptioner shall not extend the time for redemption unless the redemptioner shall, in addition to the undertaking otherwise required by law upon appeal, and within the time allowed for filing an undertaking upon appeal, give an undertaking with one or more sureties, who shall justify in like manner as bail upon arrest, that the redemptioner will fully consummate the redemption and pay such sums as shall finally be determined to be the amounts required for the redemption.

(5) As used in this section, "purchaser" or "purchaser or his successors in interest" means the original purchaser or his assigns, or his successors in interest or those holding after him or under him.

**23.570 Mode of redeeming.** The mode of redeeming shall be as provided in this section:

(1) The person seeking to redeem shall give the purchaser or redemptioner not less than two days' nor more than 30 days' notice of his intention to apply to the sheriff for that purpose; if with reasonable diligence personal service of such notice can not be made within the state, then proof thereof by affidavit filed with the sheriff shall be equivalent to such personal service. At the time and place specified in the notice, which place shall be the office of the sheriff at the courthouse, such person may redeem by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate, as in the case of sale on execution, adding therein the sum paid on redemption, from whom redeemed, and the date thereof. The redemptioner shall file the certificate of redemption with the clerk of the court out of which execution issued. The clerk shall record it in the book of executions, under the same heading as the original execution, and shall index the same in like manner with the additional words "redemption certificate," and when the certificate is so recorded, shall place it with the execution and judgment roll.

(2) A party seeking to redeem shall submit to the sheriff the evidence of his right thereto as follows:

(a) Proof that the notice required by this section was given to the purchaser or redemptioner or waived.

(b) If he is a lien creditor, a copy of the docket of the judgment or decree under which he claims the right to redeem, certified to by the clerk of the court where such judgment or decree is docketed, or if he seeks to redeem upon a mortgage, the certificate of the record thereof.

(c) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent; an affidavit by himself or agent showing the amount then actually due on the judgment, decree or mortgage.

(3) If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the like evidence thereof and of the amount due thereon, or the same may be disregarded.

(4) When two or more persons apply to the sheriff to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the

person from whom the property is redeemed, if he attends at the redemption; or if not, at any time thereafter when demanded. When a sheriff wrongfully refuses to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon submission of the evidence and the tender of the money to the sheriff as provided in this section he may be required by order of the court or judge thereof to allow such redemption.

**23.580 Court may restrain waste; what use permitted.** Until the expiration of the time allowed for redemption, the court, or judge thereof, may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor; but it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs to buildings thereon; or to use wood or timber on the property for the repair of fences or for fuel for his family while he occupies the property.

**23.590 Possession after sale; right to rents or value of use.** The purchaser, from the day of sale until a resale or a redemption, and a redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same is in the possession of a tenant holding under an unexpired lease, and in such case, shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period.

**23.600 Conveyance to purchaser or redemptioner; effect of redemption by judgment debtor.** If redemption is not made as prescribed in ORS 23.520 to 23.590, or when redemption is made and a period of 60 days has elapsed without any other redemption, the purchaser or redemptioner shall be entitled to a conveyance from the sheriff. If the judgment debtor redeems at any time before the time for redemption expires, the effect of the sale shall terminate and he shall be restored to his estate. If, at any time prior to the expiration of the statutory period of redemption, it is made to appear to the satisfaction of the court, that the purchaser or redemptioner has acquired the

rights of all persons entitled to redeem, the court may direct the sheriff to execute a deed of conveyance to such purchaser or redemptioner forthwith, and upon the execution thereof the title of such purchaser or redemptioner shall become absolute.

### SUPPLEMENTARY PROCEEDINGS IN AID OF EXECUTION

**23.710 Proceedings to required debtor to appear and make disclosure.** (1) At any time after judgment a judgment creditor may upon motion obtain an order requiring the judgment debtor to appear before the court or a referee appointed by the court at the time and place specified in the order, and answer under oath questions concerning any property or interest in property that he may have or claim. The motion shall be supported by either return of service of an unsatisfied execution, or by proof of service of a notice of demand to pay the judgment within 10 days, which notice may be served in the same manner as a summons, or by any form of mail addressed to the judgment debtor and requesting a receipt.

(a) Except as herein provided, no judgment debtor may be required to attend before a judge or referee out of the county in which he resides or may be found at the time of service of the order requiring his appearance, unless the place where the judgment debtor is to appear is not more than 100 miles from his residence.

(b) If the judgment debtor resides more than 100 miles from the place of examination, the judgment debtor shall be required to appear and shall be paid mileage at the time of the hearing as provided for witnesses in ORS chapter 44.

(2) The judgment debtor at any time after receiving such an order to appear and make disclosure may, upon motion seasonably made and upon notice and for good cause shown, request of the court an order that the proceedings requiring the appearance of the judgment debtor shall not be taken at the time and location indicated in the original order, or that it may be taken only at some other designated time or place. [Amended by 1975 c.131 s.1]

**23.720 Examination of judgment debtor; order subjecting property; interrogatories.** (1) (a) On the appearance of the judgment debtor, he may be examined on oath concerning his property. His examina-

tion, if required by the plaintiff in the writ, shall be reduced to writing, and filed with the clerk by whom the execution was issued. Either party may examine witnesses in his behalf.

(b) If by examination of the judgment debtor it appears that he has any property liable to execution, the court or judge before whom the proceeding takes place, or to whom the report of the referee is made, shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on by execution, or both, as may seem most likely to effect the object of the proceeding.

(2) (a) At any time after judgment, plaintiff may serve personally or in the same manner as a summons, or by any form of mail addressed to the judgment debtor and requesting a receipt, written interrogatories concerning the judgment debtor's property and financial affairs. Said interrogatories shall notify the judgment debtor that his failure to answer the interrogatories truthfully shall subject him to the penalties for false swearing contained in ORS 162.075.

(b) Within 20 days after receipt of said interrogatories the judgment debtor shall answer all questions under oath and return the original interrogatories to the judgment creditor or the judgment creditor's attorney, and shall retain a copy for himself. [Amended by 1975 c.131 s.2]

**23.730 Restraining disposal of property.** At the time of allowing the order prescribed in ORS 23.710, or at any time thereafter pending the proceeding, the court or judge may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any of his property liable to execution, pending the proceeding.

**23.740 Arrest of judgment debtor; undertaking.** Instead of the order requiring the attendance of the judgment debtor, as provided in ORS 23.720 and 23.730, the court or judge may, upon proof by affidavit of a party, or otherwise to his satisfaction, that there is danger of the debtor leaving the state, or concealing himself therein, and that there is reason to believe he has property which he unjustly refuses to apply to the judgment, issue a warrant requiring the sheriff of any county where such debtor may be to arrest him and bring him before the court or judge. Upon being brought before the court or judge, he may be examined on

oath, and if it then appears that there is danger of the debtor leaving the state, and that he has property which he has unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking, with one or more sureties, that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge.

**23.750 Garnishment on execution.**

Whenever the sheriff, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subsection (3) of ORS 29.170, for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the sheriff a certificate in the manner prescribed in ORS 29.280. If such person or officer refuses to do so, or if the certificate is unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in ORS 29.280 against such person or officer. Thereafter the proceeding upon such order shall be conducted in the manner prescribed in ORS 29.180, 29.270 and 29.290 to 29.370.

**SUPPORT PAYMENTS**

**23.760 Definitions applicable to support payments.** As used in chapter 458, Oregon Laws 1975, and other statutes providing for support payments or support enforcement procedures:

(1) "Obligor" means any person who has been ordered by a court to make payments for the support of a child or a caretaker parent or other dependent person pursuant to ORS chapter 107, 108, 109, 110 or 419.

(2) "Obligee" means a child or caretaker parent or other dependent person for whose benefit a court has ordered a payment of support pursuant to subsection (1) of this section.

[1975 c.458 s.1]

**Note:** The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 23.760, 23.765, 23.767 and 23.777. Chapter 458, Oregon Laws 1975, enacted into law and amended the ORS sections which may be found by referring to the 1975 Comparative Section Table located following the Index in volume 6 of Oregon Revised Statutes (1975 Replacement Parts).

**23.765 When support payments payable to Department of Human Resources; fee.** (1) (a) Subject to ORS 23.767, after January 1, 1976, when any court decrees, orders or modifies any preexisting order for support of any person under ORS chapter 107, 108, 109, 110 or 419, the obligor shall make payment thereof to the Department of Human Resources which shall transmit the payment to the obligee except that when the obligee is receiving general or public assistance, as defined by ORS 411.010, or care, support or services pursuant to ORS 418.015, the Department of Human Resources shall, except for amounts required by federal law or regulation to be paid to the obligee, retain either all of the support money or the amount equal to the general or public assistance or care, support or services being paid, whichever is less.

(b) Except as provided in this paragraph, the department shall not transmit any payment to an obligee until and unless the check or other instrument tendered by the obligor has cleared or has been paid. For a three-month period beginning on January 1, 1976, the department may immediately transmit payments received from any obligor who has not previously tendered any payment by a check or instrument which was not paid or was dishonored, to the obligee, without waiting for payment or clearance of the check or instrument received. The department shall no later than March 15, 1976, report its collection experience for such checks and instruments to the Emergency Board, which may then or at a later time authorize continuation of the practice, subject to any conditions which it may then or later impose, until adjournment of the next succeeding legislative session or until the authorization is terminated.

(2) The decree or order shall contain the home address and Social Security number of the obligee and the home, business address and Social Security number of the obligor. Each person shall inform the court and the Department of Human Resources in writing of any change in his home or business address within 10 days after such change. The Department of Human Resources may also require of the parties any additional information which is authorized by law and is necessary for the operation of support enforcement and collection activities.

(3) Notwithstanding the provisions of subsection (1) of this section, the Department of Human Resources shall withhold from every nonpublic assistance support payment it receives pursuant to chapter 458, Oregon

Laws 1975, a fee not to exceed \$1 to reimburse the department for the cost of processing.

(4) When a support payment is delinquent, the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall promptly send notice by certified mail to the defaulting party of the amount due. If payment is not made to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, within 10 days after the notice is sent, the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall send to the Support Enforcement Division of the Department of Justice or to the district attorney, whichever is appropriate, a copy of the statement of the delinquent amount. Upon receipt of a copy of the statement of the delinquent amount, the district attorney or the Support Enforcement Division may, in his or its discretion institute contempt proceedings under ORS 33.010 to 33.150 or other enforcement action against the person ordered to pay the money, or, when requested by the obligee, shall institute such proceedings. A statement of the amount due may be used in lieu of the affidavit required under ORS 33.040.

(5) (a) In addition to support enforcement service fees established under subsection (3) of this section, a support enforcement service fee of \$10 may automatically be imposed upon the obligor in any case in which the Department of Human Resources does not receive payment from the defaulting obligor before the department sends a copy of the statement of the delinquent amount to the Support Enforcement Division or the district attorney pursuant to subsection (4) of this section, 10 days after the notice required by subsection (4) of this section is sent to the obligor. The notice sent pursuant to subsection (4) of this section shall inform the obligor that such fee will automatically be imposed upon failure to pay in accordance with the notice.

(b) Any \$10 support enforcement service fee imposed pursuant to this section shall when collected be paid over to the Support Enforcement Division or the district attorney, whichever is appropriate.

(6) Whether or not any payments by an obligor are delinquent, payment of any money by an obligor direct to an obligee or on behalf of an obligee to a person other than the Department of Human Resources or the clerk of the court out of which the order

is issued, whichever is appropriate, shall not be credited against his support obligation.

(7) Subject to ORS 23.767, this section, to the extent it imposes any duty or function upon the Department of Human Resources, shall be deemed to supersede any provisions of ORS chapter 107, 108, 109, 110 and 419 which would otherwise impose the same duties or functions upon the county clerk.

(8) Before enforcing collection of the additional fee provided in paragraph (a) of subsection (5) of this section, the court out of which the order to pay support was issued may by rule provide to the obligor such hearing as it deems appropriate to meet the requirements of due process provided such hearing is requested by prompt application of the obligor.

[1975 c.458 s.10]

Note: See note under 23.760.

**23.767 Where county authorizes payment to clerk of court.** (1) Notwithstanding any other provision of chapter 458, Oregon Laws 1975, support orders in respect of obligees none of whom are recipients of general or public assistance may provide for payment under the order to the clerk of the court in any county in which the governing body by resolution or ordinance elects to maintain support collection, accounting and disbursement services for those persons not receiving general or public assistance.

(2) At any time after July 1, 1975, the governing body of a county providing child support collection, accounting and disbursement services under subsection (1) of this section may by resolution or ordinance discontinue such service. Immediately upon such discontinuance, the support due under orders of the court of record in such county shall become payable to the Department of Human Resources and subject to all of the applicable provisions of chapter 458, Oregon Laws 1975, relating to such payments.

[1975 c.458 s.19]

Note: See note under 23.760.

**23.775 When support payments payable to clerk of court.** (1) When any court decrees or orders the payment of money for the support of any person under ORS 107.095, 107.105, 108.120, 109.155 or 419.513, the person ordered to pay the money shall make payment thereof to the clerk of the court, who shall transmit the payment to the person for whose benefit the decree or order was made.

(2) The decree or order shall contain the home address of the person for whose benefit the decree or order was made and the home and business address of the person against whom the decree or order is directed. Each person shall inform the clerk in writing of any change in his home or business address within 10 days after such change.

(3) Within 10 days after the second payment is delinquent, the clerk shall send notice by certified mail to the defaulting party of the amount due and an explanation of the procedure for collection under this section, ORS 23.780 and 23.790 to 23.805.

[1961 c.210 s.1; 1963 c.497 s.3; 1969 c.619 s.9; 1971 c.280 s.21; 1973 c.502 s.12]

**23.777 Alternative procedure when payments delinquent.** (1) In addition to any other remedy provided in law for the enforcement of support, the court, upon notice that support payments or any fees provided for in chapter 458, Oregon Laws 1975, are delinquent and application by the obligee or by the district attorney or Support Enforcement Division of the Department of Justice, shall issue an order directing any employer or trustee, including but not limited to a conservator, of the obligor to withhold and pay over to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, money due or to become due such obligor in an amount not to exceed:

(a) One-fourth of the disposable earnings as defined in ORS 23.175 due or becoming due the obligor at each pay period, until all delinquent amounts due together with interest are paid in full, plus all further amounts coming due before the delinquent amounts are paid in full.

(b) Thereafter at each pay period, the amount ordered to be paid for support, but not more than one-fourth of the disposable earnings as defined in ORS 23.175 due or becoming due the obligor at each pay period.

(2) (a) An order entered pursuant to this section shall recite the amount of all delinquent support amounts due, together with interest, and the amount required to be paid as continuing support.

(b) Effective January 1, 1976, the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall notify any employer or trustee upon whom such an order has been served whenever all delinquent support payment and interest have been paid in full, and whenever for any other reason the amount required to be

withheld and paid over to the department under the order as to future pay periods is to be reduced. Prior to January 1, 1976, the district attorney or the Support Enforcement Division shall provide such notification.

(c) If the obligor's support obligation is required to be paid monthly and his pay periods are at more frequent intervals, the employer or trustee may at the request of the obligor and with the consent of the department withhold and pay over to the department, after all delinquent amounts together with interest have been paid in full, an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation; otherwise the full amount of the support obligation (but not more than one-fourth, or such larger proportion as the court may have ordered pursuant to subsection (3) of this section, of the disposable earnings coming due) shall be withheld and paid from the obligor's first pay periods each month.

(3) Subject to the provisions of subsections (1) and (2) of this section, the court may in its discretion order the payment of a percentage or gross amount per pay period which is more than one-fourth of the disposable earnings due or becoming due the obligor at each pay period, if so requested in the application filed under subsection (1) of this section, and after citation and opportunity for hearing being accorded to the obligor and the employer or trustee. Upon application of the obligor, the court out of which the order was issued may provide for a hearing based upon affidavits and exhibits and such testimony as the court may find necessary to determine whether to continue the order of the court as it affects future earnings and future, unaccrued support obligations.

(4) An order issued under subsection (1) or (3) of this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the court.

(5) An order to withhold issued and served pursuant to this section shall have priority over any notice of garnishment subsequently served upon any employer or trustee of an obligor.

(6) No employer or trustee who complies according to its terms with an order under this section or the notice provided for in paragraph (b) of subsection (2) of this section shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding.

(7) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered shall be deemed to be in contempt of the authority of the court and may be held personally liable.

(8) No employer shall discharge or refuse to hire an employe because of the entry or service of an order of withholding under this section. Any person who violates this subsection shall be deemed to be in contempt of the authority of the court.

[1975 c.458 s.2]

Note: See note under 23.760.

**23.780 Clerk of court to notify district attorney of continued delinquencies; when other agencies to be notified.** (1) If payment is not made within 10 days after the notice is sent, the clerk shall send to the district attorney a copy of the support decree or order and a statement of the delinquent amount. If the person for whose benefit a payment described in ORS 23.775 is decreed or ordered is a person to whom or for whom general assistance or public assistance, as the terms are defined in ORS 411.010, is granted, the clerk, if he has notice thereof, or the district attorney, if he has notice thereof, shall send the notice of default to the Support Enforcement Division if such a division is functioning in that county; otherwise the district attorney shall proceed as he would in any other case under this section.

(2) If the Public Welfare Division is required to grant or increase assistance for the benefit of any child because support payments under a court decree or order are not being paid when due, the division shall cause notice to be sent to the district attorney or to the Support Enforcement Division if such a division is functioning in that county.

[1961 c.210 s.2; 1971 c.779 s.2]

**23.783 Order to employer or trustee to withhold delinquent payments from money otherwise due.** (1) Any decree, judgment or order for the payment of support for the benefit of a spouse and child may in the discretion of the court include an order directing any employer or trustee, including but not limited to a conservator, of the obligor to withhold and pay over to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, out of money due or to become due such obligor at each pay period, an amount ordered to be paid for support.

(2) (a) The order shall recite the amount of the obligor's continuing support obligation and shall require withholding from the gross amounts due or becoming due to the obligor at each pay period and payment to the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, of the amount of the support obligation.

(b) If the obligor's support obligation is required to be paid monthly and his pay periods are at more frequent intervals, the employer or trustee may at the request of the obligor and with the consent of the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, withhold and pay over to the department or clerk an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation.

(3) An order issued under this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the court.

(4) An order to withhold issued and served pursuant to this section shall have priority over any notice of garnishment subsequently served upon any employer or trustee of an obligor.

(5) No employer or trustee who complies according to its terms with an order under this section served upon him shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding.

(6) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered shall be deemed to be in contempt of the authority of the court and may be held personally liable.

(7) No employer shall discharge an employe or refuse to hire a person because of the entry or service of an order of withholding under this section. Any person who violates this subsection shall be deemed to be in contempt of the authority of the court.

[1975 c.458 s.4]

23.785 [1961 c.210 s.3; repealed by 1975 c.458 s.18]

**23.787 Order may include payment of support enforcement fees; limitation; use.** Any decree, judgment or order entered in a proceeding for the enforcement of any delinquent support obligation, including an order entered under ORS 23.777, shall include, on the motion of the Support Enforcement Division of the Department of Justice

or the district attorney, if either has appeared in the case, an order for payment of support enforcement fees established by subsection (3) of ORS 23.765, in addition to any other costs chargeable to the obligor, and in addition to his support obligation. The Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall deduct the amount of any previously imposed support enforcement fees from any payment subsequently made by the obligor but the amount of the deduction shall not exceed 25 percent of any payment. The support enforcement fee, when collected, shall be paid to the Support Enforcement Division of the Department of Justice or the district attorney whichever appeared in the case.

[1975 c.458 s.5]

**23.789 When district attorney or Support Enforcement Division to represent obligee; application fee.** (1) Except as provided in subsections (3) and (4) of this section, in any case in which the obligee is not a recipient of public assistance or care, support or services, the district attorney when requested shall represent the obligee for the purpose of seeking enforcement through contempt proceedings, garnishment, an order for assignment of wages under ORS 23.777 or 23.783, or through the Uniform Reciprocal Enforcement of Support Act, of any order or decree entered under ORS chapter 107, 108, 109, 110 or 419, and may when requested initiate proceedings for issuance or modification of orders of support under those chapters.

(2) In any case involving a child or custodial parent or other dependent person who is a recipient of public assistance or care, support or services, the Support Enforcement Division of the Department of Justice shall represent such child or children, caretaker parent, other dependent person or the Department of Human Resources for the purpose of seeking modification, or enforcement through contempt proceedings, garnishment, an order for assignment of wages under ORS 23.777 or 23.783 or the Uniform Reciprocal Enforcement of Support Act, of any order or decree entered under ORS chapter 107, 108, 109, 110 or 419. The Support Enforcement Division shall also move to initiate proceedings for orders of support under those chapters.

(3) The district attorney of any county, the Department of Human Resources and the Support Enforcement Division of the Department of Justice may provide by agreement

for assumption by the Support Enforcement Division of the functions of the district attorney under subsection (1) of this section.

(4) The Department of Human Resources may direct the Support Enforcement Division to assume all functions of the district attorney of any county under subsection (1) of this section, if the department finds that the level of support enforcement in such county is insufficient to a degree incurring a risk of imposition of a penalty or loss of federal matching funds to the department or otherwise deemed by the department to be insufficient.

(5) The district attorney or the Support Enforcement Division, whichever is appropriate, shall provide the services specified in subsections (1) and (2) of this section to any person requesting them, but may in his or its discretion, upon a determination and notice to the person requesting the service that prospect of successful recovery from the obligor of a portion of the delinquency or future payments is remote, require payment to the district attorney or the Support Enforcement Division of an application fee, in accordance with an application fee schedule established by rule by the Department of Human Resources. If service performed results in the district attorney or the Support Enforcement Division recovering any support enforcement fees, such fees shall be paid to the applicant in an amount equal to the amount of the application fee.

[1975 c.458 s.6]

**23.790 Compelling payment to clerk of court for transmission to beneficiary.** Any court which has decreed or ordered support payments paid directly to the person for whose benefit such payments are made may, upon notice that such payments are two months delinquent, order future payments to be made to the clerk of the court for transmission to the person for whose benefit the decree or order was made.

[1961 c.210 s.4]

**23.795 Transfer of files in support payment cases to county where party resides or property located.** With respect to any order or decree entered pursuant to ORS 107.095, 107.105, 108.120, 109.155 or 419.513, if the party in whose favor such order or decree for the payment of money has been made files an affidavit to the effect that the party ordered to make such payments is in default in the payment of moneys due under such order or decree and is presently in another county of this state, the

court may, upon motion of the party entitled to such support payments, order that certified copies of the files, records and transcripts of testimony in the original proceeding be transmitted to the county clerk of the county in which the moving party or the defaulting party resides or in which property of the defaulting party is located.

[1963 c.498 s.2; 1969 c.619 s.10; 1971 c.280 s.22; 1973 c.502 s.15; subsection (2) compiled as 107.400; 1973 c.524 s.3]

**23.800 Jurisdiction of circuit court in county to which files transferred.** Upon receipt of such certified copies referred to in ORS 23.795, the circuit court of the county to which such certified copies have been transmitted shall have jurisdiction to compel compliance with such order or decree, under ORS 33.010 to 33.150, the same as if it were the court which made and entered the original order or decree for the payment of support. However, no court shall have jurisdiction to modify any provision of the original order or decree except the court having original jurisdiction of the cause in which such order or decree was entered and the circuit court of the county in which the moving party or defaulting party resides if that court has received the certified copies referred to in ORS 23.795.

[1963 c.498 s.3; 1973 c.524 s.2]

**23.805 Transfer of files when party or child is recipient of public assistance.** The transmittal of such certified copies referred to in ORS 23.795 may be made upon motion of the district attorney or of the Support Enforcement Division of the Department of Justice with respect to any suit or proceeding in which a party thereto, or a child of such party, is a recipient of public assistance, and with respect to an order made pursuant to ORS 419.513.

[1963 c.498 s.4]

### DISCHARGE OF PERSON CONFINED ON EXECUTION

**23.810 When judgment debtor may be discharged.** Every person confined in jail on an execution issued on a judgment recovered in an action wherein the defendant is liable to arrest may be discharged therefrom at the end of 10 days from his first confinement, upon the conditions specified in ORS 23.810 to 23.930.

**23.820 Notice of application for discharge.** Such a person shall cause notice

in writing to be given to the plaintiff, his agent or attorney, that on a certain day and hour, and at a certain place, he will apply to a named judge of the circuit court, or two named justices of the peace of the county where the person is committed, for the purpose of obtaining a discharge from his imprisonment.

**23.830 Service of notice.** Such notice shall be served by copy on the plaintiff, his agent or attorney, 24 hours before the hour of hearing the application, in cases where the plaintiff, his agent or attorney lives within 20 miles of the place of hearing, and 24 hours shall be added to the time for every 20 additional miles the plaintiff, his agent or attorney shall reside from that place.

**23.840 Examination of applicant.** At the time and place specified in the notice, such prisoner shall be taken, under the custody of the sheriff or jailer, before the judge or justices, who shall examine him on oath concerning his estate and effects and the disposal thereof, and his ability to pay the judgment for which he is committed; and he or they shall also hear any other legal or pertinent evidence produced by the plaintiff or defendant.

**23.850 Interrogatories by plaintiff; sworn answers.** The plaintiff in the action may upon such examination propose to the prisoner any interrogatories pertinent to the inquiry, and they shall, if required by the plaintiff, be answered in writing, and the answers shall be signed and sworn to by the prisoner.

**23.860 Oath of prisoner.** If the judge or justices upon such examination are satisfied that the prisoner has not any real or personal property conveyed, concealed, or in any way disposed of with a design to secure the same to his own use, or to defraud his creditors, he or they shall administer to him the following oath, to wit:

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"I, C. D., do solemnly swear that I have not any estate, real or personal, to the amount of \$20, except such as is by law exempt from being taken in execution, and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use or to defraud my creditors. So help me God."

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**23.870 Certificate of discharge.**

After administering the oath, the judge or justices shall make a certificate, as follows:

"The undersigned, a judge of the circuit court (or two justices, as the case may be), hereby certifies that C. D., confined in your jail upon an execution at the suit of A. B., is entitled to be discharged from imprisonment if he be imprisoned for no other cause."

**23.880 Discharge on certificate.** The jailer, upon receiving such certificate, shall forthwith discharge the prisoner if he is detained for no other cause.

**23.890 Renewal of application for discharge.** If the judge or justices do not discharge the prisoner, he shall be entitled to apply for his discharge at the end of every 10 succeeding days, in the same manner as provided in ORS 23.810 to 23.880, and the same proceedings shall thereupon be had.

**23.900 Rearrest for same debt.** The prisoner, after being so discharged, shall be forever exempt from arrest or imprisonment for the same debt, unless he is convicted of having wilfully sworn falsely upon his examination before the judge or justices, or in taking the oath prescribed in ORS 23.860.

**23.910 Judgment to remain in force.**

The judgment against any prisoner who is so discharged shall remain in full force against any estate which may then or any time afterwards belong to him, and the plaintiff in the action may take out a new execution against the goods and estate of the defendant in like manner as if he had never been committed on the execution.

**23.920 Satisfaction of execution.**

If the defendant shall undertake to satisfy the execution, he shall not be entitled to his discharge until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the costs and charges thereon.

**23.930 Discharge on order of plaintiff.**

The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action, but the judgment against such prisoner shall remain in full force against any estate which may then or afterwards belong to him.

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
October 1, 1975.

Thomas G. Clifford  
Legislative Counsel

