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Chapter 78

1973 REPLACEMENT PART
(1977 reprint)

Investment Securities

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SHORT TITLE AND GENERAL MATTERS

78.1010 Short title. ORS 78.1010 to 78.4060 may be cited as Uniform Commercial Code—Investment Securities.
[1961 c 726 §78 1010]

78.1020 Definitions and index of definitions. (1) In ORS 78.1010 to 78.4060, unless the context otherwise requires:

(a) A "security" is an instrument which:

(A) Is issued in bearer or registered form; and

(B) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(C) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(D) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by ORS 78.1010 to 78.4060 and not by ORS 73.1010 to 73.8050 relating to commercial paper even though it also meets the requirements of those sections. ORS 78.1010 to 78.4060 do not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(2) "Proper form" means regular on its face with regard to all formal matters.

(3) A "subsequent purchaser" is a person who takes other than by original issue.

(4) A "clearing corporation" is a corporation:

(a) At least 90 percent of the capital stock of which is held by or for one or more persons, other than individuals, each of whom:

(A) Is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or

(B) Is a broker or dealer or investment company registered under the Securities Exchange Act of 1934, sections 78-a through 78-jj, title 15, United States Code, or the Investment Company Act of 1940, sections 80a-1 through 80a-52, title 15, United States Code, or

(C) Is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, sections 78-a through 78-jj, title 15, United States Code,

and none of whom, other than a national securities exchange or association, holds in excess of 20 percent of the capital stock of the corporation; and

(b) Any remaining capital stock of which is held by individuals who have purchased the capital stock at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of the capital stock as may be necessary to permit them to qualify as directors.

(5) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(6) Other definitions which apply to ORS 78.1010 to 78.4060 and the sections in which they appear are:

(a) "Adverse claim," as defined in ORS 78.3010.

(b) "Bona fide purchaser," as defined in ORS 78.3020.

(c) "Broker," as defined in ORS 78.3030.

(d) "Guarantee of the signature," as defined in ORS 78.4020.

(e) "Intermediary bank," as defined in ORS 74.1050.

(f) "Issuer," as defined in ORS 78.2010.

(g) "Overissue," as defined in ORS 78.1040.

(7) In addition, ORS 71.1010 to 71.2080 contain general definitions and principles of construction and interpretation applicable throughout ORS 78.1010 to 78.4060.
[1961 c.726 §78 1020, 1965 c 271 §3, 1973 c 362 §1]

78.1030 Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.
[1961 c.726 §78 1030]

78.1040 Effect of overissue; "overissue." (1) The provisions of ORS 78.1010 to 78.4060 which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but:

(a) If an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) If a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

[1961 c 726 §78 1040]

78.1050 Securities negotiable; presumptions. (1) Securities governed by ORS 78.1010 to 78.4060 are negotiable instruments.

(2) In any action on a security:

(a) Unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) When the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) When signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) After it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective as provided in ORS 78.2020.

[1961 c 726 §78 1050]

78.1060 Applicability. The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

[1961 c 726 §78 1060]

ISSUE; ISSUER

78.2010 "Issuer." (1) With respect to obligations on or defenses to a security "issuer" includes a person who:

(a) Places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) Directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) Becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer under ORS 78.4010 to 78.4060 "issuer" means a person on whose behalf transfer books are maintained.

[1961 c 726 §78 2010]

78.2020 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of paragraph (a) of this subsection applies to an issuer which is a government or governmental agency or unit only if

either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in ORS 78.2050 relating to certain unauthorized signatures on issue, lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.
[1961 c 726 §78 2020]

78.2030 Staleness as notice of defects or defenses. (1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer:

(a) If the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) If the act or event is not covered by paragraph (a) of this subsection and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1) of this section.
[1961 c 726 §78.2030]

78.2040 Effect of issuer's restrictions on transfer. Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.
[1961 c 726 §78 2040]

78.2050 Effect of unauthorized signature on issue. An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(2) An employe of the issuer or of any of the foregoing entrusted with responsible handling of the security.
[1961 c 726 §78 2050]

78.2060 Completion or alteration of instrument. (1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) Any person may complete it by filling in the blanks as authorized; and

(b) Even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.
[1961 c 726 §78.2060]

78.2070 Rights of issuer with respect to registered owners. (1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in ORS 78.1010 to 78.4060 shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.
[1961 c 726 §78 2070]

78.2080 Effect of signature of authenticating trustee, registrar or transfer agent. (1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:

(a) The security is genuine and in proper form; and

(b) His own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) He has reasonable grounds to believe that the security is within the amount the issuer is authorized to issue

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.
[1961 c 726 §78 2080]

PURCHASE

78.3010 Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser. (1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased
[1961 c 726 §78 3010]

78.3020 "Bona fide purchaser." A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.
[1961 c 726 §78 3020]

78.3030 "Broker." "Broker" means a person engaged for all or part of his time in the business of buying and selling securities who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in ORS 78.1010 to 78.4060 determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.
[1961 c 726 §78 3030]

78.3040 Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if:

(a) The security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.
[1961 c 726 §78 3040]

78.3050 Staleness as notice of adverse claims. An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase:

(1) After one year from any date set for such presentment or surrender for redemption or exchange; or

(2) After six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.
[1961 c 726 §78 3050]

78.3060 Warranties on presentment and transfer. (1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature as provided in ORS 78.3110 in a necessary indorsement

(2) A person by transferring a security to a purchaser for value warrants only that:

(a) His transfer is effective and rightful; and

(b) The security is genuine and has not been materially altered; and

(c) He knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery. A broker is not an intermediary within the meaning of this subsection.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3) of this section.

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

[1961 c 726 §78 3060]

78.3070 Effect of delivery without indorsement; right to compel indorsement. Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

[1961 c 726 §78 3070]

78.3080 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment. (1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) of this section means:

(a) The person specified by the security or by special indorsement to be entitled to the security, or

(b) Where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—his successor; or

(c) Where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) Where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) Where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) A person having power to sign under applicable law or controlling instrument; or

(g) To the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of ORS 78.1010 to 78.4060 by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of ORS 78.1010 to 78.4060.

[1961 c 726 §78 3080]

78.3090 Effect of indorsement without delivery. An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.
[1961 c.726 §78 3090]

78.3100 Indorsement of security in bearer form. An indorsement of a security in bearer form may give notice of adverse claims as provided in ORS 78.3040, but does not otherwise affect any right to registration the holder may possess.
[1961 c 726 §78 3100]

78.3110 Effect of unauthorized indorsement. Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness:

(1) He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or reregistered security on registration of transfer; and

(2) An issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration.
[1961 c 726 §78 3110]

78.3120 Effect of guaranteeing signature or indorsement. (1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing:

(a) The signature was genuine: and

(b) The signer was an appropriate person to indorse as provided in ORS 78.3080; and

(c) The signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.
[1961 c 726 §78 3120]

78.3130 When delivery to the purchaser occurs; purchaser's broker as holder. (1) Delivery to a purchaser occurs when:

(a) He or a person designated by him acquires possession of a security; or

(b) His broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) His broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) Appropriate entries on the books of a clearing corporation are made under ORS 78.3200.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in paragraphs (b), (c) and (e) of subsection (1) of this section. Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.
[1961 c 726 §78 3130, 1965 c 271 §4]

78.3140 Duty to deliver, when completed. (1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers:

(a) The selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) The selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1) of this section.
[1961 c 726 §78 3140]

78.3150 Action against purchaser based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of ORS 78.3110 on unauthorized indorsements.

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.
[1961 c 726 §78 3150]

78.3160 Purchaser's right to requisites for registration of transfer on books. Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.
[1961 c 726 §78 3160]

78.3170 Attachment or levy upon security. (1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.
[1961 c 726 §78 3170]

78.3180 No conversion by good faith delivery. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.
[1961 c 726 §78 3180]

78.3190 Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) There is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(2) Delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(3) Within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) of this section has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) The party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.
[1961 c 726 §78 3190]

78.3200 Transfer or pledge of security by entry on books of clearing corporation; effect. (1) If a security is:

(a) In the custody of a clearing corporation

or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) In bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) Shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party. A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under ORS 78.4010 to 78.4060.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) of this section are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

[1965 c 271 §2]

REGISTRATION

78.4010 Duty of issuer to register transfer. (1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if:

(a) The security is indorsed by the appropriate person or persons as provided in ORS 78.3080; and

(b) Reasonable assurance is given that those indorsements are genuine and effective as provided in ORS 78.4020; and

(c) The issuer has no duty to inquire into adverse claims or has discharged any such duty as provided in ORS 78.4030; and

(d) Any applicable law relating to the collection of taxes has been complied with; and

(e) The transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

[1961 c 726 §78 4010]

78.4020 Assurance that indorsements are effective. (1) The issuer may require the following assurance that each necessary indorsement, as provided in ORS 78.3080, is genuine and effective:

(a) In all cases, a guarantee of the signature, as provided in subsection (1) of ORS 78.3120, of the person indorsing; and

(b) Where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) Where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) Where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) Where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) of this section means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) of this section means:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that

court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in paragraph (b) of subsection (3) of this section both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

[1961 c 726 §78 4020]

78.4030 Limited duty of inquiry. (1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if:

(a) A written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) The issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of ORS 78.4020.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) An appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) An indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of ORS 78.4020 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) An issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) An issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) The issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

[1961 c 726 §78 4030]

78.4040 Liability and nonliability for registration. (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if:

(a) There were on or with the security the necessary indorsements as provided in ORS 78.3080; and

(b) The issuer had no duty to inquire into adverse claims or has discharged any such duty as provided in ORS 78.4030.

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless:

(a) The registration was pursuant to subsection (1) of this section; or

(b) The owner is precluded from asserting any claim for registering the transfer under subsection (1) of ORS 78.4050; or

(c) Such delivery would result in overissue, in which case the issuer's liability is governed by ORS 78.1040.

[1961 c 726 §78 4040]

78.4050 Lost, destroyed and stolen securities. (1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under ORS 78.4040 or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner:

(a) So requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) Files with the issuer a sufficient indemnity bond; and

(c) Satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by ORS 78.1040. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

[1961 c 726 §78 4050]

78.4060 Duty of authenticating trustee, transfer agent or registrar. (1) Where a person acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities:

(a) He is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) He has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

[1961 c 726 §78 4060]

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
November 1, 1973

Thomas G Clifford
Legislative Counsel

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