Chapter 23

1989 EDITION

Enforcement of Judgments and Decrees; Executions and Exemptions

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IN GENERAL

23.010 [Repealed by 1979 c.284 §199]

23.020 [Amended by 1955 c.648 §3, 1979 c.284 §61; repealed by 1981 c 898 §53]

23.030 When party entitled to writ of execution; recordation. Except as otherwise provided in this section, or as otherwise provided by law, 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, at any time after the entry thereof, may have a writ of execution issued for its enforcement. In the case of real property:

(1) No writ shall be issued under this section unless, at the time the application for writ is made, the judgment upon which the writ is issued is docketed in the judgment docket.

(2) Upon issuance of the writ, the party requesting the writ shall have a certified copy of the writ or an abstract of the writ recorded in the County Clerk Lien Record of the county in which the real property is located. [Amended by 1987 c 586 §12; 1989 c.768 §9]

23.040 Kinds of execution. There are two kinds of executions:

(1) Against the property of the judgment debtor.

(2) For the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. [Amended by 1981 c.898 §24]

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 such debtor on the day when the judgment was docketed in the county, or at any time thereafter.

(2) 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. [Amended by 1981 c.898 §25, 1989 c 229 §14]

23.060 Indorsement of writ; time for return. The sheriff shall indorse upon a writ of execution, the time when the sheriff 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 [Repealed by 1981 c.898 §53]

23.090 [Repealed by 1981 c 898 §53]

23.100 [Repealed by 1989 c.229 §15]

23.105 Execution not to issue against property of deceased party. Execution shall not issue against the property of a deceased party, but such judgment shall be paid as a claim against the estate of the deceased party in the manner prescribed by ORS chapter 115 or ORS 114.505 to 114.560. [1989 c.229 §13]

Note: Section 16, chapter 229, Oregon Laws 1989, provides:

Sec. 16. This Act [chapter 229, Oregon Laws 1989] applies to estate proceedings initiated by the filing of a petition for appointment of a personal representative on or after the effective date of this Act [May 30, 1989]. [1989 c.229 §16]

EXEMPTIONS

23.160 Leviable 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 the agent of the judgment debtor at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, ex-

cept as provided in ORS 23.220, shall be exempt from execution:

(a) Books, pictures and musical instruments to the value of $300.

(b) Wearing apparel, jewelry and other personal items to the value of $900.

(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 the judgment debtor habitually earns a living, to the value of $750. 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 $1,200. 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 $1,000 and food sufficient to support such animals and poultry for 60 days.

(f) Household goods, furniture, radios, a television set and utensils all to the total value of $1,450, if the judgment debtor holds the property primarily for the personal, family or household use of the judgment debtor; 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.

(h) All professionally prescribed health aids for the debtor or a dependent of the debtor.

(i) Spousal support, child support, or separate maintenance to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(j) The debtor's right to receive, or property that is traceable to:

(A) An award under any crime victim reparation law;

(B) A payment, not to exceed $7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(C) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(k) The debtor's interest, not to exceed $400 in value, in any personal property. However, this exemption may not be used to increase the amount of any other exemption.

(2) If the property selected or reserved by the judgment debtor as exempt is 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. 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), (d) and (j) 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 §1, 1965 c.577 §1; 1975 c 208 §1, 1981 c.903 §2]

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, or the owner's spouse, parent or child, when that mobile home is occupied as a sole residence and no other homestead exemption exists, shall be exempt from execution and from liability in any form for the debts of the owner to the value of $15,000, 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 $20,000. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor.

(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 $15,000 or $20,000, whichever

amount is applicable under subsection (1) of this section, while the proceeds are held for a period not exceeding one year and with the intention to procure another mobile or other homestead therewith.

(3) Upon the issuance of an order authorizing sale as provided in ORS 23.445, the levying officer may proceed to advertise and sell the premises and, if the homestead exemption applies, out of the proceeds pay the mobile home owner the sum of $15,000 or $20,000, whichever amount is applicable under subsection (1) of this section, and apply the balance of the proceeds on the execution. However, no sale shall be made where the homestead exemption applies unless the sum bid for the property is in excess of the sum of the costs of sale and $15,000 or $20,000, whichever amount is applicable. If no such bid is received, the expense of the advertising and preparation for sale shall be borne by the petitioner.

(4)(a) The provisions of subsections (1), (2), (3) and (7) of this section do not apply to construction liens for work, labor or material done or furnished exclusively for the improvement of the mobile home, or to purchase money liens and to mortgages lawfully executed, or to executions issued on a judgment recovered for the purchase price.

(b) The provisions of subsections (3) and (7) of this section do not apply to the sale on execution of a judgment of restitution under ORS 105.155 of a mobile home removed from premises by the levying officer pursuant to the execution.

(5) If a debtor owns a mobile home but not the property upon which the mobile home is situated, subsections (1), (2), (3) and (4) of this section shall apply, but the value of the debtor's interest exempt from execution and liability shall not exceed $13,000 for an individual debtor, or $18,000 when two or more members of a household are debtors whose interests in the homestead are subject to execution or liability in any form.

(6) When the owner of a homestead under this section has been granted a discharge in bankruptcy 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, whether the value is determined in the bankruptcy proceedings or not, or on the date the conveyance becomes effective, whichever shall first occur.

(7) No mobile home, or property upon which the mobile home is situated, that is the actual abode of and occupied by the owner, or the owner's spouse, dependent parent or dependent child, shall be sold on execution to satisfy a judgment that at the time of entry does not exceed $3,000. However, such judgment shall remain a lien upon the real property owned by the judgment debtor and upon which the mobile home is situated. The limitation provided by this subsection shall not be impaired by temporary removal or absence with the intention to reoccupy the mobile home and property as a home.

(8) As used in this section, unless the context requires otherwise, "mobile home" includes, but is not limited to, a houseboat. [1957 c.687 §2, 1971 c.765 §1, 1975 c.208 §2; 1981 c.840 §3; 1981 c.903 §3a, 1983 c.454 §1]

23.166 Certain funds exempt when deposited in account; limitations. (1) All funds exempt from execution and other process under ORS 23.170, 23.185 (1)(b) and (c), 237.201, 239.261, 344.580, 401.405, 407.595, 411.760, 412.115, 412.610, 413.130, 414.095, 655.530, 656.234, 657.855 and 748.207 and section 3101, title 38, United States Code and section 407, title 42, United States Code shall remain exempt when deposited in an account of a judgment debtor as long as the exempt funds are identifiable.

(2) The provisions of subsection (1) of this section shall not apply to any accumulation of funds greater than $7,500. [1977 c.623 §4, 1979 c.814 §4; 1980 s.s. c.19 §1; 1983 c.586 §42; 1987 c.490 §48; 1989 c.356 §2]

23.168 Adjudication of judgment debtor's claim of exemption. Except as provided in ORS 23.445, the judgment debtor's claim of exemption shall, upon application of either plaintiff or judgment debtor, be adjudicated in a summary manner at a hearing in the following court:

(1) The court out of which the execution issued.

(2) In the case of garnishment, the court where the judgment was originally entered or, if a foreign judgment registered in this state, in the court where the judgment was originally filed. [1957 c.687 §3; 1977 c.623 §5; 1981 c.840 §4; 1987 c.873 §22]

23.170 Certain retirement plans exempt from execution without necessity of claims; exceptions. (1) As used in this section:

(a) "Beneficiary" means a person for whom retirement plan benefits are provided and their spouse.

(b) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on December 31, 1987.

(c) "Permitted contribution" means:

(A) A contribution that, at the time of the contribution, is not taxable income to the

beneficiary and, if the sponsor is a taxable entity, is tax deductible to the sponsor;

(B) A nondeductible contribution by a beneficiary to a retirement plan to the extent that the contribution is permitted to be made under the Internal Revenue Code;

(C) A deductible or nondeductible contribution to an individual retirement account to the extent the contribution is not subject to federal excise tax as an excess contribution;

(D) A contribution, pursuant to a rollover or transfer, from one retirement plan to another, to the extent the federal tax deferred status is preserved at such time; and

(E) Any earnings under a retirement plan which are attributable to a contribution described in subparagraphs (A) to (D) of this paragraph.

(d) "Retirement plan" means:

(A) A pension plan and trust, including a profit sharing plan, that is described in sections 401(a), 401(c), 401(k), 403 and 457 of the Internal Revenue Code, including that portion attributable to contributions made by or attributable to a beneficiary;

(B) An individual retirement account or annuity, including one that is pursuant to a simplified employee pension, as described in section 408 of the Internal Revenue Code; and

(C) Any pension not described in subparagraphs (A) and (B) of this paragraph granted to any person in recognition or 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.

(e) "Sponsor" means an individual or entity which establishes a retirement plan.

(2) Subject to the limitations set forth in subsection (3) of this section, a retirement plan shall be conclusively presumed to be a valid spendthrift trust under these statutes and the common law of this state, whether or not the retirement plan is self-settled, and a beneficiary's interest in a retirement plan shall be exempt, effective without necessity of claim thereof, from execution and all other process, mesne or final.

(3) Notwithstanding subsection (2) of this section:

(a) A contribution to a retirement plan, other than a permitted contribution, shall be subject to ORS 95.200 to 95.310 concerning fraudulent transfers; and

(b) A beneficiary's interest in a retirement plan shall not be exempt from execution or other process arising out of a support obligation or an order or notice entered or issued under ORS 25.050, 25.060, 25.310, 25.350, 25.360, 25.450, 416.445 or 419.515. [Amended by 1979 c.85 §1; 1985 c.671 §1; 1987 c.688 §1; 1989 c.356 §1; 1989 c.726 §1a]

23.175 Definitions for ORS 23.175, 23.185 and 25.310. As used in this section, ORS 23.185, 25.050, 25.310, 25.450 and 416.445:

(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) "Employer" means any entity or individual who engages a person to perform work or services for which compensation is given in periodic payments or otherwise, even though the relationship of the person so engaged to the employer may be as an independent contractor for other purposes.

(4) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt. "Garnishment" does not include the procedure authorized by ORS 25.050, 25.310, 25.350, 25.450, 416.445 and 419.515. [1969 c.403 §2, 1985 c.671 §2, 1989 c.726 §2]

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

23.181 [1965 c.486 §2 (enacted in lieu of 23.180); repealed by 1969 c.403 §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 subsections (2) and (6) 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 the individual's disposable earnings for that week;

(b) The amount by which the individual's 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 January 8, 1979, including future minimum hourly wages then prescribed in that section; or

(c) The amount described in paragraph (a) or (b) of this subsection, minus any amount required to be withheld from the individual's disposable earnings for that week

pursuant to an order issued under ORS 25.050, 25.310, 25.350, 25.450, 416.445 or 419.515,

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) or under the Act of November 6, 1978 (Public Law 95-598).

(b) Any debt due for federal tax or state tax under garnishments issued pursuant to ORS 29.375 (3)(c).

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

(6) The restrictions of paragraphs (b) and (c) of subsection (1) of this section do not apply in the case of any debt due for state tax. [1969 c 403 §3; 1971 c.498 §1; 1973 c.273 §1; 1973 c 519 §1; 1975 c 208 §3; 1975 c 458 §3; 1979 c 847 §1; 1981 c.883 §32; 1983 c 622 §1; 1989 c.726 §3, 1989 c.810 §11]

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 the possession of the clerk or officer in the custody of the law. [Amended by 1959 c 671 §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 the own use and defense of the citizen and shall have exempt from execution one rifle or shotgun and one pistol. [Amended by 1961 c.599 §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 §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 $15,000, except as otherwise provided by law. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor. 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 $20,000. The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the 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 $15,000 or $20,000, whichever amount is applicable under subsection (1) of this section, if the proceeds are held for a period not exceeding one year and held with the intention to procure another homestead therewith.

(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 granted a discharge in bankruptcy 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, whether the value is determined in the bankruptcy proceedings or not, or on the date the conveyance becomes effective, whichever shall first occur. However, with respect to judgments not discharged in the bankruptcy, or entered against the owner after discharge, the value on the effective date of conveyance shall be controlling.

(5) No homestead that is the actual abode of and occupied by the owner, or the owner's spouse, dependent parent or dependent child, shall be sold on execution to satisfy a judgment that at the time of entry does not exceed $3,000. However, such judgment shall remain a lien upon the real property. The limitation provided by this subsection shall not be impaired by temporary removal or temporary absence with the intention to reoccupy the property as a homestead.

(6) Upon the issuance of an order authorizing sale as provided in ORS 23.445, and in conformance with subsection (5) of this section, the levying officer may proceed to advertise and sell the property. If the homestead exemption applies, the levying officer shall pay the homestead owner out of the proceeds the sum of $15,000 or $20,000, whichever is applicable, and apply the balance of the proceeds on the execution. However, no sale shall be made where the homestead exemption applies unless the sum bid for the homestead is in excess of the sum of the costs of sale and $15,000 or $20,000, whichever is applicable. If no such bid is received, the expense of the advertising and preparation for sale shall be borne by the petitioner. [Amended by 1959 c 561 §1; 1969 c 525 §1, 1975 c 208 §5; 1981 c.840 §5; 1981 c 903 §4a]

23.242 Waiver of homestead exemption for child support judgments; policy; factors considered. (1) It is the policy of this state:

(a) To afford protection to the debtor and the debtor's family homestead through the homestead exemption;

(b) To maintain dependent children from the financial resources of both parents of those children;

(c) That the homestead exemption should not be permitted to serve as a shield for a debtor's evasion of child support obligations;

(d) That the burden for that support should not be shifted in all cases to the present family of the debtor through the sale of the family residence; and

(e) That to accommodate these policies, the court should have the discretion to decline to allow all or part of a claimed homestead exemption in cases involving child support as provided in this section.

(2) Notwithstanding ORS 23.240 to 23.300, a court in its discretion may decline to allow a homestead exemption in whole or part in any proceeding under ORS 23.445 if the proceeding is based on a judgment for child support that arises out of an order or decree under ORS 24.115, 107.095, 107.105, 107.135, 108.120, 109.100, 109.103, 109.155, 109.165, 110.185, 110.201, 110.277, 126.157, 416.400 to 416.470 and 419.513.

(3) In exercising the discretion granted under subsection (1) of this section, the court shall consider:

(a) The financial resources of both parties;

(b) The number of dependents of each of the parties;

(c) The ages, health and conditions of parties and their dependents;

(d) The child support payment history of the judgment debtor on the judgment which is the subject of the petition; and

(e) Other collection attempts by the judgment creditor on the judgment which is the subject of the petition.

(4) This section shall not apply to any proceeding under ORS 23.445 brought by or on the behalf of the state or any agency of the state. [1989 c.1007 §3]

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. However, a homestead under this section shall not exceed in value the sum of $15,000 or $20,000, whichever amount is applicable under ORS 23.240 (1). [Amended by 1959 c 561 §2; 1975 c.208 §6; 1981 c.903 §5]

23.260 Exemption inapplicable to construction or purchase-money liens or mortgages. ORS 23.240 to 23.300 do not apply to construction liens for work, labor or material done or furnished exclusively for the improvement of the homestead property, to purchase money liens or to mortgages lawfully executed. [Amended by 1969 c.591 §270; 1981 c.840 §6; 1981 c 903 §6]

23.270 [Amended by 1959 c.561 §3; 1975 c.208 §7; repealed by 1981 c.840 §13 and 1981 c.903 §7a]

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 exists pursuant to ORS

23.240, the homestead owner or the owner's transferee may give notice of intent to effect discharge from the judgment lien to any owner of the judgment docketed against the homestead owner 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 or of any applicable petition in bankruptcy, whichever is applicable, 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 $15,000 or $20,000, whichever amount of the homestead exemption is applicable under ORS 23.240 (1), 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 holder 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 the holder's 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 §2; 1981 c.840 §7; 1981 c 903 §8a]

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 ORS 23.300 (4). 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 homestead exemption and objects only that the value placed upon the property in the notice is or was less than the fair market value of the property on the date of the notice or petition in bankruptcy, whichever is applicable, 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 on the date of the notice or petition in bankruptcy, whichever is applicable, 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 §4, 1981 c 840 §8]

23.300 Effect of deposit of excess over exemption; annulment of judgment lien. (1) If a deposit, as required by ORS 23.280 (1)(c), is made by a transferee of any property, the transferee may credit the amount of the deposit against the consideration owed by the transferee for the transfer.

(2) The holder of any judgment described in ORS 23.280 (1) 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 ORS 18.400 (2) and specifying that the property described in the notice is released from the judgment lien. If the real property is located in a county where a certified copy of the judgment or lien record abstract has been recorded, the holder of the judgment, upon receipt of the deposit, shall have a certified

copy of the annulment recorded in the County Clerk Lien Record.

(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 ORS 23.280 (1) 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 ORS 23.280 (1)(d), 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 the whereabouts of the holder are unknown, that a reasonably diligent effort has been made to find the holder. 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. The homestead claimant may have a certified copy of the ex parte order recorded in the County Clerk Lien Record. [1975 c 742 §3, 1987 c 586 §13]

23.305 Resident not entitled to certain federal bankruptcy exemptions. In accordance with Section 522 (b) of the Bankruptcy Code of 1978 (11 U.S.C. 522 (b)), residents of this state shall not be entitled to the federal exemptions provided in Section 522 (d) of the Bankruptcy Code of 1978 (11 U.S.C. 522 (d)). Nothing in this section shall affect the exemptions given to residents of this state by the Constitution of the State of Oregon and the Oregon Revised Statutes. [1981 c 903 §1]

INDEMNIFICATION FOR WRONGFUL LEVY; ADVERSE CLAIMS TO PROPERTY

23.310 Indemnity to sheriff or constable. (1) Subject to subsections (2) and (3) of this section, whenever a writ of 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 judgment creditor to file with the sheriff or constable a good and sufficient bond indemnifying the sheriff or constable and the sureties in the undertaking of the sheriff or constable 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 execution, which bond shall be in double the amount of the judgment by which the personal property is either held or to be sold.

(2) At the request of the judgment creditor the sheriff may accept a bond less than double the amount of the judgment but in no event will the sheriff or constable approve a bond less than double the estimated value of the property to be seized.

(3) When the property or the value of a third party interest exceeds the value of the judgment, the sheriff or constable may require an indemnity bond of double the estimated value of the property to be seized. [Amended by 1977 c.547 §2; 1981 c.898 §26]

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 the county of the sheriff 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 the attorney of the plaintiff; or the adverse claimant may, at the option of the adverse claimant, have the 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 the sheriff 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 the claim, or the plaintiff in the writ may, within the same time, direct the sheriff to discharge the property from the execution, 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 the 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 the sheriff or constable 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 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 the 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 under which it is held. [Amended by 1981 c 898 §27]

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 the sheriff 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 the plaintiff will indemnify the sheriff against all damages and costs which the sheriff may sustain in consequence of the seizure and sale of such property, and moreover, that the plaintiff will pay to the claimant of such property all damages which the sheriff 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, the sheriff 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 the sheriff, sufficient to satisfy the judgment.

(2) If the judgment is not then satisfied, and property has been attached and remains in the custody of the sheriff, the sheriff 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, the sheriff 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, the sheriff 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, the sheriff shall deliver the same to the judgment debtor.

23.420 [Repealed by 1981 c 883 §1]

23.425 Notice following levy to judgment debtor; content; method of delivery; duty of creditor to supply address; effect if address not known. (1) Following levy by the sheriff pursuant to ORS 23.410, the sheriff shall promptly mail or deliver the following to each judgment debtor who is not a corporation at the last-known address of each such judgment debtor:

(a) A copy of the writ; and

(b) A copy of the notice of exemptions and claim form described in ORS 29.225.

(2) The sheriff may meet the requirements of subsection (1) of this section by

mailing the documents to the last-known address of the judgment debtor as provided by the judgment creditor. The sheriff may withhold execution of the writ until the judgment creditor either provides such address or a statement that the judgment creditor has no knowledge of the judgment debtor's address. The sheriff shall have no duty under this section if the judgment creditor provides a statement that the judgment creditor has no knowledge of the judgment debtor's address. [1981 c.883 §35]

23.430 [Repealed by 1981 c 883 §1]

23.440 Debtor may retain property on giving bond. When the sheriff levies upon personal property by virtue of an execution, the sheriff may permit the judgment debtor to retain the same, or any part thereof, in the possession of the judgment debtor 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 liability to the plaintiff for such property.

23.445 Court authorization required for sale of residence; petition for sale; affidavit; hearing; service of notice; trial; findings; applicability; costs. (1) As used in this section and ORS 23.450 and 23.515:

(a) "Mobile home" does not include a mobile home that is held as inventory for sale or lease in the ordinary course of business.

(b) "Residential real property" means a single family dwelling or condominium unit.

(2) The sheriff shall not sell the residential real property or the mobile home of a natural person on execution without an order of the court authorizing the sale.

(3) The holder of a judgment desiring to have the residential real property or the mobile home of a natural person sold on execution may petition the court for an order authorizing the sheriff to sell. The petition must:

(a) Identify the judgment under which the property is to be sold and the amount due thereon;

(b) Indicate if the judgment arises out of an order or decree for child support as described in ORS 23.242;

(c) Identify the residential real property or mobile home to be sold;

(d) Allege whether the property is a homestead or not; and

(e) If the property is a homestead, allege facts showing that it may nevertheless be sold on execution.

(4) The petition shall be accompanied by an affidavit disclosing the basis of the allegations contained in the petition. If the sheriff is to serve the papers under subsection (6) of this section, the petition and affidavit shall be accompanied by a deposit sufficient to pay the fees of the sheriff for that service.

(5) Promptly upon the filing of a petition and affidavit as provided in subsections (3) and (4) of this section, the court shall schedule a hearing on the petition, allowing adequate time for notice to the judgment debtor at least 10 days prior to the hearing.

(6) At least 10 days prior to the hearing on the petition, the petitioner shall cause to be served upon the judgment debtor, in the manner provided by ORCP 7 for service of summons, a true copy of the petition and affidavit and of a notice of the time and place of the hearing in substantially the following form:

NOTICE OF HEARING ON SHERIFF'S SALE OF YOUR PROPERTY

This is to notify you that _____ has asked the court to order the sheriff to sell your property located at _____ to satisfy a court judgment against _____.

Before deciding whether to order the sale, the court will hold a hearing on _____, 19____, at _____ a.m./p.m., in Room _____,_____.

The law provides that your property is your homestead if you, or your spouse, dependent parent or dependent child, actually live in it as your home. If you are temporarily absent from the property but intend to move back in, it is still your homestead.

The law provides that if the property is your homestead, then $_____ of its value ($_____ for a mobile home if you do not own the property it is on) may not be taken to satisfy a judgment against you. In addition, a homestead may not be sold to satisfy a judgment for $3,000 or less.

The law provides that your property may be sold despite the fact that it is your homestead and all of its value taken to satisfy a judgment against you if the judgment is for child support.

IF YOU WISH TO PROTECT THIS PROPERTY FROM A SHERIFF'S SALE,

YOU SHOULD COME TO THE COURT HEARING.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.

If you do not own this property, please give this notice and the papers served with it to the owner.

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(7) Whether the judgment debtor appears at the hearing on the petition or not, the court shall try the issues without formal pleadings and shall inquire as to the facts alleged in the petition. The judgment creditor shall have the burden of proof on all issues.

(8) The court shall not authorize the sheriff to sell the property if the court finds:

(a) That the property is the homestead of the judgment debtor;

(b) That the judgment is subject to the homestead exemption; and

(c) That the amount of the judgment was $3,000 or less at the time of entry of the judgment.

(9) If the court authorizes the sheriff to sell the property, the order of the court shall state whether the homestead exemption applies to the property, and if so, the amount of the exemption.

(10) This section does not apply to a writ of execution to enforce a judgment that directs the sale of the particular property or to a writ of execution to enforce a judgment arising out of the foreclosure of:

(a) A construction lien for work, labor or material done or furnished exclusively for the improvement of the property;

(b) A lawfully executed purchase money lien; or

(c) A lawfully executed mortgage or trust deed.

(11) This section does not apply to the sale on execution of a judgment of restitution under ORS 105.155 of a mobile home removed from premises by the sheriff pursuant to the execution.

(12) If the petitioner prevails at the hearing, the court shall award the petitioner the costs of service of the papers under subsection (6) of this section. [1981 c.840 §2; 1983 c.454 §2; 1983 c.463 §1; 1989 c.1007 §4]

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, except for a mobile home, 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 the last-known post-office address or place of residence of the judgment debtor; however in the sale of perishable property the notice shall be posted for not less than 48 hours.

(2) In case of real property or a mobile home, by publishing a similar notice in a newspaper described in this subsection, 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. The notice shall be published 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. Prior to the making of the first of such publishings, the sheriff shall send a copy of such notice by first class and by registered or certified mail to the judgment debtor at the last-known post-office address or place of residence of the judgment debtor. [Amended by 1979 c.761 §1; 1981 c.840 §9, 1981 c.903 §9a]

23.460 Time and manner of sale; fee. (1) 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 a deputy of the officer, 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 the third person requires it to be sold separately, such portion shall be sold separately.

(2) The county may charge a fee to be collected by the sheriff from the purchaser of property at the time of sale. The amount of the fee shall be established by the governing body of the county and shall be the amount necessary to reimburse the county for:

(a) The actual cost of presale notice and of the sale; and

(b) The anticipated cost of postsale notice and administration. [Amended by 1971 c.120 §1; 1981 c.840 §10]

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, the sheriff 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 the purchaser the property, and if desired, shall give the purchaser 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 the death of the judgment debtor, the representative of the judgment debtor, files with the clerk within 10 days after the return of the execution, the objections of the judgment debtor or representative 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 the bid of the purchaser, 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 the representative of the judgment debtor, 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 §8]

23.500 Evicted purchaser may recover price. If the purchaser of real property sold on execution, or the successor in interest of the purchaser, is evicted therefrom in consequence of the reversal of the judgment, the purchaser or successor in interest may recover the price paid, with interest and the costs and disbursements of the suit by which the purchaser or successor in interest 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 the proceedings of the sheriff upon the writ.

23.515 Notice that sale of residence has occurred; content; return; effect of sheriff's failure to comply. After the sale on execution of the residential real property or the mobile home, as defined in ORS 23.445, of a natural person that is subject to redemption, as determined under ORS 23.520, notice of the sale shall be given as follows:

(1) Not later than 30 days after the purchaser is given the certificate of sale, the sheriff shall:

(a) Securely attach to the main entrance of any dwelling unit upon the property subject to redemption a written or printed no-

tice stating that the property has been sold; and

(b) Send a copy of the notice described in paragraph (a) of this subsection by first class and by registered or certified mail to the presale owner of the property subject to redemption at the last-known post-office address or place of residence of the presale owner.

(2) The notice required by paragraph (a) of subsection (1) of this section shall be in substantially the following form:

YOUR PROPERTY HAS BEEN SOLD

Your property located at _____ has been sold. The property was sold on _____, 19__, to satisfy a court judgment against you. The purchaser's name and address are _____. The purchaser paid _____ for your property.

Oregon law gives you the right to buy back the property from the purchaser by paying the purchaser the amount paid at the sale plus taxes, expenses and interest. YOU WILL LOSE THE RIGHT TO BUY BACK YOUR PROPERTY ON _____. If you do not do so, the County will deed your property over to the purchaser on that date.

The law that gives you the right to buy back your property is found in Oregon Revised Statutes 23.520 to 23.600. You must follow exactly the instructions provided there.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.

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(3) The sheriff shall retain and file the return receipt for a notice sent by registered or certified mail as provided in paragraph (b) of subsection (1) of this section and shall make and retain a record of the posting of notice required by paragraph (a) of subsection (1) of this section.

(4) Failure of the sheriff to comply with any provision of this section shall not void the sale of residential real property or a mobile home. However, this subsection shall not limit any other right the judgment debtor may have. [1981 c.840 §12]

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 the heir, devisee or grantee of the mortgagor or judgment debtor, 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 the lien of the lien creditor 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 the redemptioner's 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 the heir, devisee or grantee of the mortgagor or judgment debtor, 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 180 days 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 the judgment debtor 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 180 days 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 nine 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 the purchaser 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 nine 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, the heir, devisee or grantee of the mortgagor or judgment debtor 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 the mortgagor or judgment debtor giving to the purchaser or the purchaser's 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 the purchaser 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 the purchaser to prevent waste.

(4) Within 10 days after the notice provided for in subsection (3) of this section is given, the purchaser or the purchaser's successors in interest shall file with the sheriff of the county wherein the property sought to be redeemed is situated a verified account of all rents, issues and profits accruing from, and of all sums for which the purchaser claims a lien upon the property sought to be redeemed while the same was in the possession of the purchaser or the purchaser's successors in interest. At any time within five days thereafter the judgment debtor or mortgagor shall file any objection which the judgment debtor or mortgagor may have to said account with the sheriff, who forthwith shall transmit all papers in the sheriff's 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 the purchaser's 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 the judge's findings, to the sheriff of such county. Either party may appeal to the Court of Appeals 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 filingan 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 the purchaser's successors in interest" means the original purchaser or the original purchaser's assigns, or the purchaser's successors in interest or those holding after the purchaser or under the purchaser. [Amended by 1979 c.562 §4; 1979 c.794 §2a; 1985 c.760 §2]

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 an 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 the right thereto as follows:

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

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

(c) A copy of any assignment necessary to establish the claim, verified by the affidavit of the party or agent; an affidavit by the party 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, the sheriff 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 the person attends at the redemption; or if not, at any time thereafter when demanded. When a sheriff wrongfully refuses to allow any person to redeem, the right of the person 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 the sheriff 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 the family of the person in possession of the property while the person 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 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 the judgment debtor shall be restored to the estate of the judgment debtor. 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.

23.650 [1977 c.613 §1; repealed by 1981 c.883 §1]

23.655 [1977 c.613 §2; repealed by 1981 c.883 §1]

23.660 [1977 c.613 §3; repealed by 1981 c.883 §1]

23.665 [1977 c.613 §§4, 5; 1979 c.761 §2; repealed by 1981 c.883 §1]

23.670 [1977 c.613 §6; 1979 c.833 §12a; repealed by 1981 c.883 §1]

SUPPLEMENTARY PROCEEDINGS IN AID OF EXECUTION

23.710 Proceedings to require 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 the judgment debtor 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. The courts authorized to issue such an order are:

(a) The court in which the original judgment was entered; or

(b) Any circuit court or district court for the county in which the judgment debtor resides or in which the principal place of employment of the judgment debtor is located, and to which the original judgment has been transcribed, pursuant to ORS 18.320.

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

(3) 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.

(4) 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 §1; 1983 c.747 §1; 1989 c.171 §3]

23.720 Examination of judgment debtor; order subjecting property; interrogatories. (1)(a) On the appearance of the judgment debtor, the judgment debtor may be examined on oath concerning the judgment debtor's property. Examination of the judgment debtor, if required by the plaintiff in the writ, shall be reduced to writing, and filed with the clerk by whom the execution was issued. Both parties may examine witnesses in their own behalf. The power to call witnesses includes the power to subpoena them.

(b) If by examination of the judgment debtor it appears that the judgment debtor has any property liable to execution or garnishment, 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 garnishment 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. The interrogatories shall notify the judgment debtor that the judgment debtor's failure to answer the interrogatories truthfully shall subject the judgment debtor to the penalties for false swearing contained in ORS 162.075 and for contempt of court as provided in ORS 33.020.

(b) Within 20 days after receipt of the 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 thereof.

(c) Failure of the judgment debtor to comply with the provisions of this section is an indirect contempt of the authority of the court and the judgment creditor may proceed as provided in ORS 33.040. [Amended by 1975 c.131 §2; 1983 c.744 §1; 1983 c.747 §2; 1987 c.873 §23]

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 property of the judgment debtor liable to execution or garnishment, pending the proceeding. [Amended by 1987 c.873 §24]

23.740 [Repealed by 1981 c.898 §53]

23.750 [Repealed by 1981 c.883 §1]

23.760 [1975 c.458 §1; 1985 c.671 §25; renumbered 25.010]

23.765 [1975 c.458 §10; 1980 s.s. c.20 §1; 1981 c.168 §1; 1981 c.596 §1; 1981 c.822 §1; 1985 c.671 §50; renumbered 25.020]

23.767 [1975 c.458 §19; 1977 c.216 §3; 1981 c.822 §2; 1981 s.s. c.3 §25; renumbered 25.030]

23.775 [1961 c.210 §1; 1963 c.497 §3; 1969 c.619 §9, 1971 c.280 §21; 1973 c.502 §12; 1981 c.822 §4; 1981 s.s. c.3 §28; renumbered 25.040]

23.777 [1975 c.458 §2; 1981 c.822 §5; renumbered 25.050]

23.778 [1979 c.343 §2; 1985 c.610 §3; renumbered 25.360]

23.780 [1961 c.210 §2; 1971 c.779 §2; renumbered 25.060]

23.783 [1975 c.458 §4; 1981 c.822 §6; renumbered 25.350]

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

23.787 [1975 c.458 §5; 1981 c.822 §9; renumbered 25.070]

23.789 [1975 c.458 §6; 1979 c.589 §1, 1983 c.761 §8, 1985 c.671 §51; renumbered 25.080]

23.790 [1961 c.210 §4; 1981 c.822 §7, renumbered 25.090]

23.795 [1963 c.498 §2; 1969 c.619 §10; 1971 c.280 §22; 1973 c.502 §15; subsection (2) compiled as 107.400; 1973 c.524 §3; 1979 c.245 §1; 1981 s.s. c.3 §29; 1985 c.610 §5; renumbered 25.100]

23.800 [1963 c.498 §3; 1973 c.524 §2; 1979 c.245 §2; renumbered 25.110]

23.805 [1963 c.498 §4; renumbered 25.120]

23.807 [1977 c.216 §1; 1981 c.822 §8, 1981 s.s. c.3 §30; renumbered 25.130]

23.808 [1981 c.822 §10, 1981 s.s. c.3 §27; renumbered 25.140]

23.809 [1977 c.216 §2; repealed by 1981 c.822 §12]

23.810 [Repealed by 1981 c.898 §53]

23.815 [1981 c.822 §3; 1981 s.s. c.3 §26; renumbered 25.150]

23.820 [Repealed by 1981 c.898 §53]

23.825 [1981 c.822 §11; renumbered 25.160]

23.830 [Repealed by 1981 c.898 §53]

23.835 [1983 c.761 §1; renumbered 25.170]

23.837 [1983 c.761 §2; renumbered 25.180]

23.840 [Repealed by 1981 c.898 §53]

23.842 [1983 c.761 §3; renumbered 25.190]

23.845 [1983 c.761 §4, renumbered 25.200]

23.847 [1983 c.761 §5; renumbered 25.210]

23.850 [Repealed by 1981 c.898 §53]

23.855 [1983 c.767 §3; renumbered 25.220]

23.860 [Repealed by 1981 c.898 §53]

23.865 [1983 c.761 §7; renumbered 25.230]

23.870 [Repealed by 1981 c.898 §53]

23.880 [Repealed by 1981 c.898 §53]

23.890 [Repealed by 1981 c.898 §53]

23.900 [Repealed by 1981 c.898 §53]

23.910 [Repealed by 1981 c.898 §53]

23.920 [Repealed by 1981 c.898 §53]

23.930 [Repealed by 1981 c.898 §53]