Chapter 79

1989 EDITION

Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper

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SHORT TITLE, APPLICABILITY AND DEFINITIONS

79.1010 Short title. ORS 79.1010 to 79.5070 may be cited as Uniform Commercial Code-Secured Transactions. [1961 c.726 §79.1010]

79.1020 Policy and scope of ORS 79.1010 to 79.5070. (1) Except as otherwise provided in ORS 79.1040 on excluded transactions, ORS 79.1010 to 79.5070 apply:

(a) To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) To any sale of accounts or chattel paper.

(2) ORS 79.1010 to 79.5070 apply to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. ORS 79.1010 to 79.5070 do not apply to statutory liens except as provided in ORS 79.3100.

(3) The application of ORS 79.1010 to 79.5070 to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which ORS 79.1010 to 79.5070 do not apply. [1961 c.726 §79.1020; 1973 c.504 §5]

79.1030 Laws governing perfection and nonperfection of security interests. (1)(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2) of this section, mobile goods described in subsection (3) of this section, and minerals described in subsection (5) of this section.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected. However, if action is required by ORS 79.3010 to 79.3180 to perfect the security interest:

(A) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal.

(B) If the action is taken before the expiration of the period specified in subparagraph (A) of paragraph (d) of subsection (1) of this section, the security interest continues perfected thereafter.

(C) For the purpose of priority over a buyer of consumer goods as described in ORS 79.3070 (2), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (A) and (B) of paragraph (d) of subsection (1) of this section.

(2)(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in paragraph (d) of this subsection, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1) of this section.

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3)(a) This subsection applies to accounts (other than an account described in subsection (5) of this section on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2) of this section.

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at the debtor's place of business if the debtor has one, at the debtor's chief executive office if the debtor has more than one place of business, otherwise at the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, 49 U.S.C.A. 1301, et seq., it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for goods in subsection (1) of this section apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) of this section apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities. [1961 c 726 §79 1030; 1973 c.504 §6; 1985 c.676 §79 1030]

79.1040 Transactions excluded from ORS 79.1010 to 79.5070. ORS 79.1010 to 79.5070 do not apply:

(1) To a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(2) To a landlord's lien; or

(3) To a lien given by statute or other rule of law for services or materials except as provided in ORS 79.3100 on priority of such liens; or

(4) To a transfer of a claim for wages, salary or other compensation of an employee; or

(5) To a transfer by a government or governmental subdivision or agency; or

(6) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(7) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds as defined in ORS 79.3060 and priorities in proceeds as defined in ORS 79.3120; or

(8) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(9) To any right of setoff; or

(10) Except to the extent that provision is made for fixtures in ORS 79.3130, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder or a seller's or purchaser's interest in a land sale contract and the proceeds thereof; or

(11) To a transfer in whole or in part of any claim arising out of tort; or

(12) To a transfer of an interest in any deposit account as described in ORS 79.1050 (1), except as provided with respect to proceeds as defined in ORS 79.3060 and priorities in proceeds as defined in ORS 79.3120. [1961 c.726 §79.1040; 1973 c.504 §7; 1989 c.567 §1]

79.1050 Definitions and index of definitions. (1) In ORS 79.1010 to 79.5070 unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of ORS 79.1010 to 79.5070 dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in ORS 71.2010, and a receipt of the kind described in ORS 77.2010 (2).

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes the unborn young of animals and growing crops; and standing timber which is to be cut and removed under a conveyance or contract of sale.

(i) "Instrument" means a negotiable instrument as defined in ORS 73.1040, or a certificated security as defined in ORS 78.1020 or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound the secured party to make it, whether or not a subsequent event of default or other event not within the control of the secured party has relieved or may relieve the secured party from the obligation.

(L) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(n) "Transmitting utility" means any person primarily engaged in the railroad, street

railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to ORS 79.1010 to 79.5070 and the sections in which they appear are:

(a) "Account," as defined in ORS 79.1060.

(b) "Attach," as defined in ORS 79.2030.

(c) "Construction mortgage," as defined in ORS 79.3130 (1).

(d) "Consumer goods," as defined in ORS 79.1090 (1).

(e) "Equipment," as defined in ORS 79.1090 (2).

(f) "Farm products," as defined in ORS 79.1090 (3).

(g) "Fixture," as defined in ORS 79.3130.

(h) "Fixture filing," as defined in ORS 79.3130.

(i) "General intangibles," as defined in ORS 79.1060.

(j) "Inventory," as defined in ORS 79.1090 (4).

(k) "Lien creditor," as defined in ORS 79.3010.

(L) "Proceeds," as defined in ORS 79.3060 (1).

(m) "Purchase money security interest," as defined in ORS 79.1070.

(n) "United States," as defined in ORS 79.1030 (3)(c).

(3) The following definitions in other sections apply to ORS 79.1010 to 79.5070:

(a) "Check," as defined in ORS 73.1040.

(b) "Contract for sale," as defined in ORS 72.1060.

(c) "Holder in due course," as defined in ORS 73.3020.

(d) "Note," as defined in ORS 73.1040.

(e) "Sale," as defined in ORS 72.1060.

(4) In addition, ORS 71.1010 to 71.2080 contain general definitions and principles of construction and interpretation applicable throughout ORS 79.1010 to 79.5070. [1961 c.726 §79.1050; 1963 c.402 §10; 1973 c.504 §8; 1985 c.676 §79.1050; 1989 c.813 §3]

79.1060 Definitions: "account"; "general intangibles." In ORS 79.1010 to 79.5070 unless the context otherwise requires:

(1) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(2) "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money. [1961 c.726 §79.1060; 1973 c.504 §9]

79.1070 Definition: "purchase money security interest." A security interest is a "purchase money security interest" to the extent that it is:

(1) Taken or retained by the seller of the collateral to secure all or part of its price; or

(2) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. [1961 c.726 §79.1070]

79.1080 When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property the security interest of the party in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires rights in such collateral either in the ordinary course of business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. [1961 c 726 §79 1080]

79.1090 Classification of goods: "consumer goods"; "equipment"; "farm products"; "inventory." Goods are:

(1) "Consumer goods" if they are used or bought for use primarily for personal, family or household purposes.

(2) "Equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods.

(3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory.

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if the person has so furnished them, or if they are raw materials, work in process or mate-

rials used or consumed in a business. Inventory of a person is not to be classified as the equipment of the person. [1961 c.726 §79.1090]

79.1100 Sufficiency of description. For the purposes of ORS 79.1010 to 79.5070 any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. [1961 c.726 §79.1100]

79.1110 Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under ORS 76.1010 to 76.1110. [1961 c.726 §79.1110]

79.1120 Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under ORS 79.5020 (2) or under ORS 79.5040 (1), and is not liable for the debt or for any deficiency after resale, and the owner has the same right as the debtor:

(1) To receive statements under ORS 79.2080;

(2) To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under ORS 79.5050;

(3) To redeem the collateral under ORS 79.5060;

(4) To obtain injunctive or other relief under ORS 79.5070 (1); and

(5) To recover losses caused to the owner under ORS 79.2080 (2). [1961 c.726 §79.1120]

79.1130 Security interests arising under ORS 72.1010 to 72.7250 on sales. A security interest arising solely under ORS 72.1010 to 72.7250 on sales is subject to the provisions of ORS 79.1010 to 79.5070 except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(1) No security agreement is necessary to make the security interest enforceable; and

(2) No filing is required to perfect the security interest; and

(3) The rights of the secured party on default by the debtor are governed by ORS 72.1010 to 72.7250 on sales. [1961 c.726 §79.1130]

Note: The amendments to 79.1130 by section 82, chapter 676, Oregon Laws 1989, take effect September 1, 1991. See section 84, chapter 676, Oregon Laws 1989. The text is set forth for the user's convenience.

79.1130. A security interest arising solely under ORS 72.1010 to 72.7250 on sales or sections 1 to 78, of this 1989 Act [chapter 676, Oregon Laws 1989] on leases is subject to the provisions of ORS 79.1010 to 79.5070 except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

(1) No security agreement is necessary to make the security interest enforceable; and

(2) No filing is required to perfect the security interest; and

(3) The rights of the secured party on default by the debtor are governed by ORS 72.1010 to 72.7250 on sales in the case of a security interest arising solely under ORS 72.1010 to 72.7250 or by sections 1 to 78 of this 1989 Act [chapter 676, Oregon Laws 1989] in the case of a security interest arising solely under sections 1 to 78 of this 1989 Act [chapter 676, Oregon Laws 1989].

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

79.2010 General validity of security agreement. Except as otherwise provided by the Uniform Commercial Code a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in ORS 79.1010 to 79.5070 validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail instalment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. [1961 c.726 §79.2010]

79.2020 Title to collateral immaterial. Each provision of ORS 79.1010 to 79.5070 with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [1961 c.726 §79.2020]

79.2030 Enforceability of security interest; proceeds, formal requisites. (1) Subject to the provisions of ORS 74.2080 on the security interest of a collecting bank, ORS 78.3210 on security interests in securities and ORS 79.1130 on a security interest arising under ORS 72.1010 to 72.7250, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) Value has been given; and

(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) of this section have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by ORS 79.3060.

(4) A transaction, although subject to ORS 79.1010 to 79.5070 on secured transactions, is also subject to ORS 83.510 to 83.680 on retail instalment contracts and ORS chapter 725 on small loans, and in the case of conflict between the provisions of ORS 79.1010 to 79.5070 and ORS 83.510 to 83.680 or ORS chapter 725, the provisions of ORS 83.510 to 83.680 or ORS chapter 725 control. Failure to comply with any applicable statute has only the effect which is specified therein. [1961 c.726 §79.2030; 1973 c.504 §11, 1985 c.676 §79.2030]

79.2040 When security interest attaches; after-acquired property; future advances. (1) Except as provided in subsection (2) of this section, a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions as defined in ORS 79.3140 when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment as defined in ORS 79.1050 (1)(k). [1961 c.726 §79.2040; 1963 c.402 §5; 1973 c.504 §12]

79.2050 Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. [1961 c.726 §79.2050; 1973 c.504 §13]

79.2060 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers of consumer goods, an agreement by a buyer that the buyer will not assert against an assignee any claim or defense which the buyer may have against the seller is enforceable by an assignee who takes the assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under ORS 73.1010 to 73.8050 on commercial paper. A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods ORS 72.1010 to 72.7250 govern the sale and any disclaimer, limitation or modification of the seller's warranties. [1961 c.726 §79.2060]

79.2070 Rights and duties when collateral is in secured party's possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in the possession of the party. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession:

(a) Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral.

(b) The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage.

(c) The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation.

(d) The secured party must keep the collateral identifiable but fungible collateral may be commingled.

(e) The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by failure to meet any obligation imposed by subsections (1) and (2) of this section but does not lose the security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. [1961 c.726 §79.2070]

79.2080 Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a re-

quest that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in a reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply the secured party is liable for any loss caused to the debtor thereby; and if the debtor has properly included in a request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by the failure of the secured party to comply. If the secured party no longer has an interest in the obligation or collateral at the time the request is received the secured party must disclose the name and address of any successor in interest known to the secured party and the secured party is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by the successor.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding $10 for each additional statement furnished. [1961 c.726 §79 2080]

RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

79.3010 Persons who take priority over unperfected security interests; "lien creditor." (1) Except as otherwise provided in subsections (2) and (3) of this section, an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under ORS 79.3120.

(b) A person who becomes a lien creditor before the security interest is perfected.

(c) In the case of goods, instruments, documents and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that the person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected.

(d) In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that the person gives value without knowledge of the security interest and before it is perfected.

(2) Except as provided in subsection (3) of this section, if the secured party files with respect to a purchase money security interest before or within 10 days after the debtor receives possession of the collateral, the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) If the secured party files with respect to a purchase money security interest in farm implements before or within 20 days after the debtor receives possession of the farm implements, the secured party takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing. As used in this subsection, "farm implements" means any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways.

(4) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(5) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before the person becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. [1961 c.726 §79.3010; 1973 c.504 §14; 1983 c.394 §1; 1985 c.765 §79.3010; 1989 c.813 §1]

79.3015 When person delivering goods under consignment has priority over secured party creditor of consignee. (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file by ORS 72.3260 (3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) The consignor complies with the filing provision with respect to consignments of ORS 72.3260 (3)(c) before the consignee receives possession of the goods; and

(b) The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) The holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) The notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of subsection (1) of this section have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor. [1973 c.504 §10]

79.3020 When filing is required to perfect security interest; security interests to which filing provisions of ORS 79.1010 to 79.5070 do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under ORS 79.3050.

(b) A security interest temporarily perfected in instruments or documents without delivery under ORS 79.3040 or in proceeds for a 10-day period under ORS 79.3060.

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate.

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in ORS 79.3130.

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor.

(f) A security interest of a collecting bank as provided in ORS 74.2080 or in securities as provided in ORS 78.3210 or arising under ORS 72.1010 to 72.7250 on sales or covered in subsection (3) of this section.

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under ORS 79.1010 to 79.5070 is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by ORS 79.1010 to 79.5070 is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in ORS 79.1010 to 79.5070 for filing of the security interest;

(b) The following statutes of this state: ORS chapters 830 and 837 and the Oregon Vehicle Code; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of ORS 79.4010 to 79.4080 apply to a security interest in that collateral created by the person as debtor; or

(c) A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection as described in ORS 79.1030 (2).

(4) Compliance with a statute or treaty described in subsection (3) of this section is equivalent to the filing of a financing statement under ORS 79.1010 to 79.5070, and a security interest in property subject to such a statute or treaty can be perfected only by compliance therewith except as provided in ORS 79.1030 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with such a statute or treaty are governed by the provisions of that statute or treaty; in other respects the security interest is subject to ORS 79.1010 to 79.5070.

(5) ORS 79.4010 to 79.4080 does not apply to a security interest in property of any description created by a deed of trust or mortgage made by a corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipeline, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under ORS 79.1010 to 79.5070 by filing, including payment of the required fee, such deed of trust or mortgage in the office of the Secretary of State. When so filed, such instrument remains effective until terminated, without the need for filing a continuation statement.

Assignments and releases of such instruments also may be filed in the office of the Secretary of State. [1961 c.726 §79.3020; 1965 c.209 §1; 1967 c.395 §2; 1969 c.386 §1; 1973 c.504 §15; 1985 c.16 §445, 1985 c.676 §79.3020; 1989 c.111 §9]

79.3030 When security interest is perfected; continuity of perfection. (1) A security interest is perfected when it has attached and when all the applicable steps required for perfection have been taken. Such steps are specified in ORS 79.3020, 79.3040, 79.3050 and 79.3060. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under ORS 79.1010 to 79.5070 and is subsequently perfected in some other way under ORS 79.1010 to 79.5070, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of ORS 79.1010 to 79.5070. [1961 c.726 §79.3030]

79.3040 Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and ORS 79.3060 (2) and (3) on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to ORS 79.3120 (3); or

(b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) of this section perfection depends upon compliance with applicable provisions of ORS 79.1010 to 79.5070. [1961 c.726 §79.3040; 1973 c.504 §16; 1985 c.676 §79.3040]

79.3050 When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit as provided in ORS 75.1160 (2)(a), goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in ORS 79.1010 to 79.5070. The security interest may be otherwise perfected as provided in ORS 79.1010 to 79.5070 before or after the period of possession by the secured party. [1961 c.726 §79.3050; 1973 c.504 §17; 1985 c.676 §79.3050]

79.3060 "Proceeds"; secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds." All other proceeds are "noncash proceeds."

(2) Except where ORS 79.1010 to 79.5070 otherwise provide, a security interest continues in collateral notwithstanding sale, ex-

change or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in ORS 79.1010 to 79.5070 for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph is:

(A) Subject to any right of setoff; and

(B) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of: (i) the payments to the secured party on account of cash proceeds received by the debtor during such period, and (ii) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) to (c) of this subsection.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) of this subsection to the extent that the transferee of the chattel paper was entitled to priority under ORS 79.3080.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a) of this subsection.

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) of this subsection must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [1961 c.726 §79.3060; 1973 c.504 §18]

79.3070 Protection of buyers of goods. (1) A buyer in ordinary course of business as defined in ORS 71.2010 (9), other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by the seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if the buyer buys without knowledge of the security interest, for value and for personal, family or household purposes of the buyer unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business as defined in ORS

71.2010 (9) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period. [1961 c.726 §79.3070; 1973 c.504 §19]

79.3080 Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of business has priority over a security interest in the chattel paper or instrument:

(1) Which is perfected under ORS 79.3040 on permissive filing and temporary perfection, or under ORS 79.3060 on perfection as to proceeds, if the purchaser acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) Which is claimed merely as proceeds of inventory subject to a security interest under ORS 79.3060 on perfection as to proceeds, even though the purchaser knows that the specific paper or instrument is subject to the security interest. [1961 c.726 §79.3080; 1973 c.504 §20]

79.3090 Protection of purchasers of instruments and documents. Nothing in ORS 79.1010 to 79.5070 limits the rights of a holder in due course of a negotiable instrument under ORS 73.3020 or a holder to whom a negotiable document of title has been duly negotiated as provided in ORS 77.5010, or a bona fide purchaser of a security as provided in ORS 78.3020 and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under ORS 79.1010 to 79.5070 does not constitute notice of the security interest to such holders or purchasers. [1961 c.726 §79.3090; 1985 c.676 §79.3090]

79.3100 Priority of certain liens arising by operation of law. When a person in the ordinary course of business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise. [1961 c.726 §79.3100]

79.3110 Alienability of debtor's rights; judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. [1961 c.726 §79.3110]

79.3120 Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of ORS 79.3010 to 79.3180 and in the following sections shall govern when applicable: ORS 74.2080 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; ORS 79.1030 on security interests related to other jurisdictions; ORS 79.3015 on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) The purchase money security interest is perfected at the time the debtor receives possession of the inventory;

(b) The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (A) before the date of the filing made by the purchase money secured party, or (B) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession as provided in ORS 79.3040 (5);

(c) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) Except as provided in subsection (5) of this section, a purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives pos-

session of the collateral or within 10 days thereafter.

(5) A purchase money security interest in farm implements other than inventory has priority over a conflicting security interest in the same farm implements or in the proceeds of the farm implements if the purchase money security interest is perfected at the time the debtor receives possession of the farm implements or within 20 days thereafter. As used in this subsection, "farm implements" means any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways.

(6) In all cases not governed by other rules stated in this section, including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) to (5) of this section, priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(7) For the purposes of subsection (6) of this section a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(8) If future advances are made while a security interest is perfected by filing, the taking of possession or under ORS 78.3210 on securities, the security interest has the same priority for the purposes of subsection (6) of this section with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. [1961 c.726 §79.3120; 1973 c.504 §21; 1983 c.394 §2; 1985 c.676 §79.3120; 1985 c.765 §2; 1989 c.813 §2]

79.3130 Priority of security interests in fixtures. (1) In this section and in those provisions of ORS 79.4010 to 79.4070 referring to fixture filing, unless the context otherwise requires:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.

(b) A "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of ORS 79.4020 (5).

(c) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under ORS 79.1010 to 79.5070 may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under ORS 79.1010 to 79.5070 in ordinary building materials incorporated into an improvement on land.

(3) ORS 79.1010 to 79.5070 do not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by ORS 79.1010 to 79.5070; or

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by ORS 79.1010 to 79.5070.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

(a) The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section, a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections of this section, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When a secured party has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the provisions of ORS 79.5010 to 79.5070, remove the collateral from the real estate but the secured party must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1961 c.726 §79.3130; 1973 c.504 §22]

79.3140 Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) of this section and subject to ORS 79.3150 (1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) of this section but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) of this section do not take priority over:

(a) A subsequent purchaser for value of any interest in the whole; or

(b) A creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) A creditor with a prior perfected security interest in the whole to the extent that the creditor makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at the foreclosure sale of the holder is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) of this section a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, the secured party may on default subject to the provisions of ORS 79.5010 to 79.5070 remove the collateral from the whole but the secured party must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1961 c.726 §79.3140]

79.3150 Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

(a) The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) of this subsection applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under ORS 79.3140.

(2) When under subsection (1) of this section more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. [1961 c.726 §79.3150]

79.3160 Priority subject to subordination. Nothing in ORS 79.1010 to 79.5070 prevents subordination by agreement by any person entitled to priority. [1961 c.726 §79.3160]

79.3170 Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. [1961 c.726 §79.3170]

79.3180 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in ORS 79.2060 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest. [1961 c.726 §79.3180; 1973 c.504 §23]

FILING

79.4010 Place of filing; erroneous filing; removal of collateral. (1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to ORS 79.1030 (5) on minerals, or when the financing statement is filed as a fixture filing under ORS 79.3130 and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded.

(b) In all other cases, in the office of the Secretary of State.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of ORS 79.1010 to 79.5070 and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in ORS 79.1030 on perfection in multiple state transactions determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections of this section, and subject to ORS 79.3020 (3) on required filings, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. This filing constitutes a fixture filing under ORS 79.3130 as to the collateral described therein which is or is to become fixtures. [1961 c.726 §79.4010; 1963 c.402 §6; 1973 c.504 §24; 1975 c.703 §3; 1977 c.452 §1]

79.4015 [1977 c.452 §3; repealed by 1989 c.111 §14]

79.4020 Formal requisites of financing statement; amendments. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed

by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to ORS 79.1030 (5) on minerals, or when the financing statement is filed as a fixture filing under ORS 79.3130 and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5) of this section. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement or financing statement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) of this section is sufficient when it is signed by the secured party instead of the debtor when it is filed to perfect a security interest in:

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) Proceeds under ORS 79.3060 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) Collateral as to which the filing has lapsed; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor under subsection (7) of this section.

(3) A form substantially as follows is sufficient to comply with subsection (1) of this section:

_____

Name of debtor (or assignor)_____

Address_____

Name of secured party (or assignee)_____

Address_____

1. This financing statement covers the following types (or items) of property:

(Describe)_____

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe real estate)_____

3. (If applicable) The above goods are to become fixtures on:

(Describe real estate)_____

and this financing statement is to be filed in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is_____

4. (If products of collateral are claimed) Products of the collateral are also covered.

Signature of debtor (or assignor)_____

Signature of secured party (or assignee)_____

_____

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In ORS 79.1010 to 79.5070, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to ORS 79.1030 (5) on minerals, or a financing statement filed as a fixture filing under ORS 79.3130 where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if: (a) The goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in

this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes the name of the debtor or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. [1961 c.726 §79.4020; 1963 c 402 §7; 1973 c.504 §25; 1987 c.552 §1; 1989 c.111 §1]

79.4023 Filing by consignor or lessor of goods; use of terms; effect of filing. A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in ORS 79.4020. The provisions of ORS 79.4010 to 79.4070 shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security under ORS 71.2010 (37). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing. [1973 c.504 §31]

79.4025 Secretary of State as filing officer; approval of forms; effect. (1) The Secretary of State is the Chief Uniform Commercial Code Filing Officer of this state, and it is the responsibility of the Secretary of State to obtain and maintain uniformity and standardization in the filing of secured transactions in this state as required by provisions of ORS chapter 79. The Secretary of State shall prescribe rules for filing secured transactions, and shall cause to be prepared and distributed to each county clerk or county recorder detailed and comprehensive written directions and instructions relating to and based upon the Uniform Commercial Code laws as they apply to the filing of secured transactions which by law are under the direction and control of the county clerk or county recorder.

(2) Notwithstanding of ORS 79.4020 (3), for the purpose of standardization, the Secretary of State shall approve for general use such forms of financing statements, continuation statements, statements of assignment, statements of partial release, statements of release and termination statements for filing with any filing officer pursuant to the Uniform Commercial Code, as shall conform to the provisions thereof.

(3)(a) The Secretary of State shall adopt rules that prescribe the amount of the following fees payable, prior to filing or issuance, under ORS 79.3020 and 79.4025 to 79.4070:

(A) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement as required under ORS 79.4030.

(B) The uniform fee for filing and indexing the termination statement required under ORS 79.4040.

(C) The uniform fee for filing, indexing and furnishing filing data for a financial statement indicating an assignment as described under ORS 79.4050.

(D) The uniform fee for filing, indexing and furnishing filing data about a separate statement of assignment as described in ORS 79.4040 (1), 79.4050 (2) and 79.4060.

(E) The uniform fee for filing and noting a statement of release as described under ORS 79.4060.

(F) A uniform fee for issuance of certificates pursuant to written request on standard or nonstandard form, telephone request or in person unwritten request, under ORS 79.4070 (2).

(G) The uniform fee for filing, indexing and furnishing filing data relating to a security interest in collateral, including fixtures, of a transmitting utility as described under ORS 79.3020 (5).

(H) A uniform fee for filing, indexing and furnishing filing data relating to an amendment to a financing statement, a continuation statement, a statement of assignment, a statement of partial release, a termination statement or other statement pursuant to ORS 79.4025 to 79.4070.

(b) If the Secretary of State has approved for general use any form described under subsection (2) of this section and such standard form is not used, a fee or fees in addition to the fees described under para-

graph (a) of this subsection are payable for the purpose of defraying the additional costs of filing and indexing a nonstandard form serving only the same purpose. The amount of the fee or fees shall be prescribed by rules adopted by the Secretary of State.

(c) If pursuant to any filing under ORS 79.3020 and 79.4025 to 79.4070, more than one name is required to be indexed, or if the secured party shows a trade name for any person, which the secured party is permitted to do, an extra uniform indexing fee or fees are payable prior to filing. The amount of the extra fee or fees shall be prescribed by rule adopted by the Secretary of State.

(d) The Secretary of State shall adopt rules prescribing a fee per page for furnishing a copy of any instrument on file with the Secretary of State pursuant to ORS 79.3020 and 79.4025 to 79.4070. The fee is in addition to any other fee prescribed for purposes of ORS 79.4025 to 79.4070.

(e) The Secretary of State shall adopt rules prescribing the fees for furnishing the summaries, compilations and computer remote access to data base as described under ORS 79.4080.

(f) Any fee prescribed under this subsection is in addition to any other fee prescribed under this subsection. No fee prescribed under this subsection shall exceed $5.

(4) Upon payment of the fees payable pursuant to ORS 79.4025 to 79.4070, financing statements, continuation statements, statements of assignment, statements of partial release, statements of release, termination statements and amendments thereto may be filed and filing officers shall accept, file and index the same and make certificates with respect thereto. [1963 c 370 §§1, 2; 1977 c.452 §2; 1989 c.111 §2]

Note: 79.4025 was enacted into law by the Legislative Assembly but was not added to or made a part of 79.1010 to 79.5070 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

79.4030 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee and additional fees, if applicable, or acceptance of the statement by the filing officer constitutes filing under ORS 79.1010 to 79.5070.

(2)(a) Except as provided in subsection (6) of this section a filed financing statement is effective for a period of five years from the date of filing.

(b) The effectiveness of a filed financing statement lapses on the expiration of the period described in paragraph (a) of this subsection, unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until the expiration of the period described in paragraph (a) of this subsection, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3)(a) A continuation statement may be filed by the secured party within six months prior to the expiration of the period specified in paragraph (a) of subsection (2) of this section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with ORS 79.4050 (2), including payment of the required fee.

(b) Not less than three months or more than six months prior to the expiration of any previously filed financing statement or effective financing statement, as defined in ORS 79.6020, or continuation thereof, the Secretary of State shall mail a renewal notice to the secured party, or assignee of record, if any, at the address indicated on the financing statement, effective financing statement, assignment thereof or amendment thereto. The renewal notice shall include:

(A) The file number and expiration date of the financing statement or effective financing statement.

(B) The name of the debtor.

(C) A statement that the financing statement or effective financing statement may be continued by the secured party by filing a continuation statement pursuant to this section.

(c) Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing

officer may remove a lapsed statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other relating filings, or by other means, that if the filing officer physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) of this section shall be retained.

(4) Except as provided in subsection (7) of this section a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. The index may be made up of the statements themselves, copies thereof, separate cards or otherwise.

(5) If a financing statement is subject to ORS 79.4020 (5), the regular recording and satisfaction fees with respect to a mortgage are payable, prior to filing.

(6) If the debtor is a transmitting utility under ORS 79.4010 (5) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under ORS 79.4020 (6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to ORS 79.1030 (5) on minerals, or is filed as a fixture filing under ORS 79.3130, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described. [1961 c.726 §79.4030; 1963 c.402 §8; 1971 c.621 §13; 1973 c.504 §26; 1975 c.607 §15; 1979 c.833 §16; 1981 c.835 §6; 1987 c.552 §2; 1989 c.111 §3]

79.4040 Termination statement. (1) If a financing statement covering consumer goods is filed on or after January 1, 1974, then within one month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with ORS 79.4050 (2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within 10 days after proper demand therefor the secured party shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement the filing officer must note it in the index. If the filing officer has received the termination statement in duplicate, the filing officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if the filing officer has no such record, the filing officer may remove them from the files at any time after one year after receipt of the termination statement. [1961 c.726 §79.4040; 1971 c.621 §14; 1973 c.504 §27; 1975 c.607 §16, 1979 c.833 §17; 1981 c.835 §7; 1989 c.111 §4]

79.4050 Assignment of security interest; duties of filing officer; fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing state-

ment of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation, including payment of the required fee, to the filing officer of such a financing statement the filing officer shall mark the same as provided in ORS 79.4030 (4).

(2) A secured party may assign of record all or part of the secured party's rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, including payment of the required fee, the filing officer shall mark such separate statement with the date and hour of the filing. The filing officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing under ORS 79.3130, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to ORS 79.1030 (5), the filing officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the filing officer shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (ORS 79.4020 (6)) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than the Uniform Commercial Code.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. [1961 c.726 §79.4050; 1971 c.621 §15; 1973 c.504 §28; 1975 c.607 §17; 1979 c.833 §18; 1981 c.835 §8; 1989 c.111 §5]

79.4060 Release of collateral; duties of filing officer. A secured party of record may by signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with ORS 79.4050 (2), including payment of the required fee. Upon presentation of such a statement of release, including payment of the required fee, to the filing officer the filing officer shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. [1961 c.726 §79.4060, 1971 c 621 §16; 1973 c.504 §29; 1975 c.607 §18; 1979 c.833 §19; 1981 c 835 §9, 1989 c.111 §6]

79.4070 Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. All notices of federal lien or certificates or notices affecting any lien, if any, filed pursuant to ORS 87.806 to 87.831 for a particular person whose name is identical to the particular debtor named in the financing statement shall be shown on this certificate. All other notices filed with the Secretary of State may be shown on the certificate as prescribed by the Secretary of State by rule. If the Secretary of State determines that it is feasible to accept telephone requests for certificates, the secretary may adopt by rule a format for such requests. [1961 c.726 §79 4070; 1971 c.621 §17; 1973 c.504 §30; 1975 c 607 §19; 1979 c.833 §20; 1981 c.835 §10; 1983 c.246 §1; 1985 c 469 §79 4070; 1989 c.111 §7]

79.4080 Summaries of financing statements and assignments filed with Secretary of State. (1) The Secretary of State may prepare, in appropriate and convenient form, daily or other periodic summaries or compilations of filed, presently effective financing statements or statements of assignment thereof. Summaries or compilations authorized under this subsection may be in the form of microfilm copies or such other form as may be necessary or convenient to provide the required information.

(2) The Secretary of State may furnish, upon request, such summaries or compilations to any person upon payment of a fee prescribed by the Secretary of State by rule

and sufficient to pay at least the actual cost of such service.

(3) Nothing in this section or in ORS 192.410 to 192.505 authorizes the purchase by any person of electronic data processing programs or tapes used to record, process and store statements filed with the Secretary of State under this chapter.

(4) The Secretary of State may furnish, upon request, computer remote access to the Uniform Commercial Code data base to any person upon payment of a fee prescribed by the Secretary of State and sufficient to pay at least the actual cost of such service. [1979 c.548 §2, 1989 c.111 §8]

UNIFORM COMMERCIAL CODE REVOLVING ACCOUNT

79.4090 Uniform Commercial Code Revolving Account. There hereby is established in the General Fund of the State Treasury an account to be known as the Uniform Commercial Code Revolving Account. All moneys received by the Secretary of State under this chapter and ORS 87.246, 87.767 and 87.806 to 87.831 shall be deposited in the account. All moneys in the Uniform Commercial Code Revolving Account are appropriated continuously to the Secretary of State for the payment of expenses incurred in performing the duties and functions of the Secretary of State required under this chapter and ORS 87.246, 87.767 and 87.806 to 87.831. [1979 c.548 §3; 1983 c.220 §3, 1989 c.111 §13]

DEFAULT

79.5010 Default; procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in ORS 79.5010 to 79.5070 and except as limited by subsection (3) of this section those provided in the security agreement. The secured party may reduce the claim of the secured party to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in ORS 79.2070. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in ORS 79.5010 to 79.5070, those provided in the security agreement and those provided in ORS 79.2070.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral in ORS 79.5040 (3) and 79.5050 and with respect to redemption of collateral as provided in ORS 79.5060, but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) ORS 79.5020 (2) and 79.5040 (2) in so far as they require accounting for surplus proceeds of collateral;

(b) ORS 79.5040 (3) and 79.5050 (1) which deal with disposition of collateral;

(c) ORS 79.5050 (2) which deals with acceptance of collateral as discharge of obligation;

(d) ORS 79.5060 which deals with redemption of collateral; and

(e) ORS 79.5070 (1) which deals with the secured party's liability for failure to comply with ORS 79.5010 to 79.5070.

(4) If the security agreement covers both real and personal property, the secured party may proceed under ORS 79.5010 to 79.5070 as to the personal property or may proceed as to both the real and the personal property in accordance with the rights and remedies of the secured party in respect of the real property in which case the provisions of ORS 79.5010 to 79.5070 do not apply.

(5) When a secured party has reduced the claim of the secured party to judgment the lien of any levy which may be made upon the collateral of the secured party by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of ORS 79.1010 to 79.5070. [1961 c.726 §79.5010, 1973 c.504 §32]

79.5020 Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to the secured party whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which the secured party is entitled under ORS 79.3060.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse

against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. [1961 c.726 §79.5020, 1973 c 504 §33]

79.5030 Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under ORS 79.5040. [1961 c.726 §79.5030]

79.5040 Secured party's right to dispose of collateral after default; effect of disposition. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to ORS 72.1010 to 72.7250 on sales. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party.

(b) The satisfaction of indebtedness secured by the security interest under which the disposition is made.

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of the interest of the holder, and unless the holder does so, the secured party need not comply with the demand of the holder.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if the debtor has not signed after default a statement renouncing or modifying the right of the debtor to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending notification to the debtor or before the debtor's renunciation of rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the secured party may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of ORS 79.5010 to 79.5070 or of any judicial proceedings:

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the purchaser does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the

secured party or is subrogated to the rights of the secured party has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under ORS 79.1010 to 79.5070. [1961 c 726 §79.5040; 1973 c.504 §34]

79.5050 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation. (1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying the debtor's rights under ORS 79.5010 to 79.5070 a secured party who has taken possession of collateral must dispose of it under ORS 79.5040 and if the secured party fails to do so within 180 days after the secured party takes possession the debtor at the debtor's option may recover in conversion or under ORS 79.5070 (1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if the debtor has not signed after default a statement renouncing or modifying the debtor's rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending the secured party's notice to the debtor or before the debtor's renunciation of the debtor's rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under ORS 79.5040. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. [1961 c.726 §79.5050; 1973 c 504 §35, 1981 c.573 §1]

79.5060 Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under ORS 79.5040 or before the obligation has been discharged under ORS 79.5050 (2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonable incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses of the secured party. [1961 c.726 §79.5060]

79.5070 Secured party's liability for failure to comply with ORS 79.5010 to 79.5070. (1) If it is established that the secured party is not proceeding in accordance with the provisions of ORS 79.5010 to 79.5070 disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of ORS 79.5010 to 79.5070. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than $350, together with the debtor's reasonable attorney fees.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if the secured party sells at the price current in such market at the time of the sale or if the secured party has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold the secured party has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1961 c.726 §79.5070; 1981 c.573 §2]

79.6010 [1983 c.246 §3; renumbered 79 8010 in 1987]

CENTRAL FILING SYSTEM FOR FARM PRODUCTS

79.6020 Definitions for ORS 79.6020 to 79.7010. As used in ORS 79.6020 to 79.7010:

(1) "Buyer" means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

(2) "Central filing system" means a system for filing effective financing statements on a state-wide basis that is operated by the Secretary of State and has been certified by the Secretary of the United States Department of Agriculture.

(3) "Commission merchant" means any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

(4) "Effective financing statement" means a document filed with the Secretary of State to register and describe farm products subject to a security interest created by a debtor or seller of farm products that is an effective financing statement under the provisions of section 1324 of the Food Security Act of 1985, 7 U.S.C. 1631 now existing or hereafter amended. An effective financing statement does not create or perfect a security interest.

(5) "Farm product" means an agricultural commodity including but not limited to wheat, corn, soybeans, or a species of fish or livestock such as cattle, hogs, sheep, horses or poultry used or produced in farming operations, or a product of such crop, fish or livestock in its unmanufactured state, including but not limited to wool clip, milk and eggs, that is in the possession of a person engaged in farming operations.

(6) "Knows" or "knowledge" means actual knowledge.

(7) "Security interest" means an interest in farm products that secures payment or performance of an obligation.

(8) "Selling agent" means any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations. [1987 c.645 §1]

79.6030 Establishment of central filing system for farm products. The Secretary of State shall establish, implement and operate the central filing system for farm products. The Secretary of State shall insure that the central filing system for farm products described in ORS 79.6020 to 79.7010 complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on December 24, 1986. The Secretary of State shall prescribe the rules, fees and forms to implement and operate the central filing system. The fees prescribed by the Secretary of State shall not exceed the cost of administering the central filing system. [1987 c.645 §4]

79.6040 Protection of buyers of farm products, commission merchants and selling agents; exception. Except as provided in ORS 79.6050, a buyer who in the ordinary course of business buys farm products from a seller engaged in farming operations shall take free of a security interest created by the seller, and a commission merchant or selling agent who sells in the ordinary course of business farm products for others shall not be subject to a security interest created by the seller in such products, even though the security interest is perfected and the buyer or commission merchant or selling agent knows of the existence of such interest. [1987 c 645 §2]

79.6050 When buyer of farm product, commission merchant and selling agent subject to security interest in farm product created by seller. Under the central filing system for farm products, a buyer of farm products or commission merchant or selling agent who sells farm products for others shall be subject to a security interest in such farm products created by the seller if:

(1) The buyer or commission merchant or selling agent has failed to register with the Secretary of State prior to the purchase of farm products and the secured party has filed an effective financing statement that covers the farm products being sold;

(2) The buyer or commission merchant or selling agent has received from the Secretary of State a copy of the master list of farm products or written notice, pursuant to ORS 79.6070 or 79.6080, that names the seller and specifies the farm products being sold by such seller as being subject to an effective financing statement and the buyer or commission merchant or selling agent does not secure a waiver or release of the security interest specified in such effective financing statement from the secured party by performing any payment obligation or otherwise; or

(3) The buyer or commission merchant or selling agent participates in the Secretary of State's computer access program that names the seller and specifies the farm products being sold by such seller as being subject to an effective financing statement and the buyer or commission merchant or selling agent does not secure a waiver or release of the security interest specified in such effective financing statement from the secured party by performing any payment obligation or otherwise. [1987 c.645 §3]

79.6060 Formal requisites of effective financing statement; amendment; duration of filing; lapse of filing; fee. (1) An effective financing statement for farm products as defined in ORS 79.6020 is sufficient to register a security interest in a farm product if it:

(a) Contains the name and address of the secured party;

(b) Contains the name and address of the person indebted to the secured party;

(c) Contains the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;

(d) Describes the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, and describes the real property concerned, including the name of the county in this state in which the property is located;

(e) Is signed by the secured party;

(f) Is signed by the debtor;

(g) Is an original or reproduced copy thereof; and

(h) Is accompanied by the required filing fee.

(2) An effective financing statement must be amended in writing within three months, similarly signed and filed, to reflect material changes.

(3) An effective financing statement for farm products remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period.

(4) An effective financing statement for farm products lapses on either the expiration of the effective period of the statement or the filing of a notice signed by secured party that the statement has lapsed, whichever occurs first. Unless otherwise provided in writing between the secured party and the debtor, a statement that the effective financing statement has lapsed shall be filed within 15 days after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value under the security interest.

(5) The Secretary of State shall, by rule, prescribe the filing fee for each effective financing statement for farm products or change thereto and continuation thereof, and the filing fee for the notice that the effective financing statement has lapsed. Each effective financing statement may reflect more than one type of farm product. The filing fee shall be per debtor name.

(6) An effective financing statement is sufficient if it complies with this section even though it contains minor errors that are not seriously misleading. [1987 c.645 §7]

79.6070 Operation of central filing system; master list of farm products; list of buyers, commission merchants and selling agents; distribution of master list. (1) Under the central filing system for farm products, the Secretary of State shall record the date and time of filing of effective financing statements or changes thereto, and compile this information into a master list organized according to farm products. The Secretary of State shall by rule determine the categories of farm products.

(2) Within each category of farm products, the Secretary of State shall arrange the master list:

(a) In alphabetical order by last name of the debtor or in the case of a debtor doing business other than as an individual, by the first word in the name of such debtor;

(b) In numerical order according to social security number of the individual debtor or Internal Revenue Service taxpayer identification number of debtors doing business other than as individuals;

(c) Geographically by county; and

(d) By crop year.

(3) The master list shall contain all the information on all the effective financing statements filed in the system that have not lapsed. The master list shall be arranged to provide delivery to any registrant of any information relating to any product, produced in any county for any crop year covered by the system and shall be in a form that is readable by humans without special equipment.

(4) The Secretary of State shall maintain a list of all buyers of farm products, commission merchants and selling agents who register with the Secretary of State on a form indicating:

(a) The name and address of each buyer, commission merchant and selling agent;

(b) The interest of each buyer, commission merchant or selling agent in receiving the master list on farm products; and

(c) The farm products in which each buyer, commission merchant and selling agent has an interest.

(5) The Secretary of State shall distribute monthly to each buyer, commission merchant and selling agent registered under this section a printed or micrographic copy of those portions of the master list that the buyer, commission merchant or selling agent has registered an interest in receiving. The Secretary of State shall by rule prescribe the yearly subscription fee for each type of the monthly master list. [1987 c.645 §5]

79.6080 Oral confirmation of the existence of any effective financing statement. (1) On request, the Secretary of State shall furnish to persons not registered under ORS 79.6070 oral confirmation within 24 hours of the existence of any effective financing statement followed by written confirmation to any buyer of farm products buying from a debtor or commission merchant or selling agent selling for a seller covered by such statement.

(2) The request for oral confirmation shall be in writing and shall be presented to the office of the Secretary of State during normal business hours.

(3) Information on an effective financing statement may be furnished by telephone to the requestor of an oral confirmation.

(4) Oral confirmation shall be followed by written confirmation from the Secretary of State within 48 hours after the oral confirmation.

(5) The Secretary of State shall by rule prescribe the service fees for processing oral and written confirmation requests on effective financing statements. [1987 c.645 §6]

79.6090 Courtesy notice. Nothing in ORS 79.6020 to 79.7010 shall prevent a secured party from providing a courtesy notice to any person regarding the secured party's security interests in farm products. The rights or obligations of the secured party or any other person shall not be affected by the failure of a secured party to give a courtesy notice or by the accuracy or completeness of the information given in such a notice. [1987 c.645 §11]

79.7000 Place of filing effective financing statement. The proper place to file an effective financing statement on farm products as defined in ORS 79.6020 is in the office of the Secretary of State. [1987 c.645 §9]

79.7010 Place of registration as buyer of farm product, commission merchant or selling agent; duration of registration; fee. The proper place to register under ORS 79.6070 as a buyer of farm products or a commission merchant or selling agent of farm products as defined in ORS 79.6020 is in the office of the Secretary of State. The registration is effective for one year following the date of registration. Registration may be amended by filing a new registration. The Secretary of State shall, by rule, prescribe the registration fee. [1987 c.645 §8]

79.7020 [1987 c.645 §10, repealed by 1989 c.111 §15]

MISCELLANEOUS

79.8010 Liability of Secretary of State for administration of chapter. Except as provided in ORS 30.260 to 30.300, the Secretary of State and the secretary's officers and employees shall not be liable to debtors, secured parties or any other person in administering this chapter. [Formerly 79.6010]