

# Chapter 42

1991 EDITION

## Execution, Formalities and Interpretation of Writings

### DEFINITION

42.005 "Signature" defined

### PRIVATE WRITINGS

42.010 Private writings  
42.020 Execution of a writing  
42.030 Subscribing witness  
42.040 Proof of attested writing other than a will

### SEALS

42.110 Seal defined  
42.115 Effect of presence or absence of seal  
42.125 Seal of state officer or state agency authorized

### INTERPRETATION OF WRITINGS

42.210 Effect of the place of execution  
42.220 Consideration of circumstances  
42.230 Office of judge in construing instruments

42.240 Intention of the parties; general and particular provisions and intents  
42.250 Terms construed as generally accepted; evidence of other signification  
42.260 Ambiguous terms  
42.270 Written words control printed form  
42.280 Deciphering characters and translating languages  
42.290 Construction of notices  
42.300 Parties to written instrument not to deny facts recited therein

### CROSS REFERENCES

42.020

Validation of instruments previously executed, 93.810

42.110

Notarial stamp has same effect as seal, 194.031

## EVIDENCE AND WITNESSES

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**DEFINITION**

**42.005 "Signature" defined.** As used in this section and ORS 12.155, 17.250, 18.510, 40.010 to 40.585, 41.270, 41.505, 41.905, 42.300, 91.115, 107.600, 135.173, 135.185, 136.655, 161.735, 162.055, 165.845, 171.515, 192.501 to 192.505, 192.695, 336.185, 418.750, 418.775, 675.010, 722.442 and ORCP 59 C., "signature" includes any symbol executed or adopted by a party with present intention to authenticate a writing. [1981 c.892 §79a]

**PRIVATE WRITINGS**

**42.010 Private writings.** All writings, other than public writings, are private and may be sealed or unsealed.

**42.020 Execution of a writing.** The execution of a writing is the subscribing and delivering it, with or without affixing a seal.

**42.030 Subscribing witness.** A subscribing witness is one who sees a writing executed, or hears it acknowledged, and at the request of the party thereupon signs one's name as a witness.

**42.040 Proof of attested writing other than a will.** Any attested writing other than a will may be proved in the same manner as though it had not been attested.

42.050 [Repealed by 1981 c.892 §98]

42.060 [Repealed by 1981 c.892 §98]

42.070 [Repealed by 1981 c.892 §98]

42.080 [Repealed by 1981 c.892 §98]

**SEALS**

**42.110 Seal defined.** A seal is a particular sign made to attest in the most formal manner the execution of an instrument.

**42.115 Effect of presence or absence of seal.** The presence or absence of a seal, corporate or otherwise, shall have no effect upon the validity, enforceability or character of any written instrument except where specifically otherwise provided by statute. A writing under seal may be modified or discharged by writing not under seal or by a valid oral agreement. [1965 c.502 §2]

42.120 [Repealed by 1965 c.502 §6]

**42.125 Seal of state officer or state agency authorized.** (1) For the purposes of ORS 40.510 (1) and (4), each state officer and state agency may have a seal which, unless specifically provided otherwise by law, shall consist of an impression, imprint or likeness of the state seal accompanied by the name of the state officer or state agency.

(2) As used in this section:

(a) "Seal" has the meaning given that term in ORS 42.110.

(b) "State agency" means every state officer, board, commission, department, institution, branch or agency of the state government, except the Legislative Assembly and the courts and their officers and committees.

(c) "State officer" includes any appointed state official who is authorized by the Executive Department to have a seal and any elected state official, except members of the Legislative Assembly. [1982 s.s.1 c.14 §1]

42.130 [Repealed by 1965 c.502 §6]

42.140 [Repealed by 1965 c.502 §6]

42.150 [Repealed by 1965 c.502 §6]

42.160 [Repealed by 1965 c.502 §6]

**INTERPRETATION OF WRITINGS**

**42.210 Effect of the place of execution.** The language of a writing is to be interpreted according to the meaning it bears in the place of execution, unless the parties have reference to a different place.

**42.220 Consideration of circumstances.** In construing an instrument, the circumstances under which it was made, including the situation of the subject and of the parties, may be shown so that the judge is placed in the position of those whose language the judge is interpreting.

**42.230 Office of judge in construing instruments.** In the construction of an instrument, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such construction is, if possible, to be adopted as will give effect to all.

**42.240 Intention of the parties; general and particular provisions and intents.** In the construction of an instrument the intention of the parties is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent shall control a general one that is inconsistent with it.

**42.250 Terms construed as generally accepted; evidence of other signification.** The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible that they have a technical, local, or otherwise peculiar signification and were used and understood in the particular instance, in which case the agreement shall be construed accordingly.

**42.260 Ambiguous terms.** When the terms of an agreement have been intended in a different sense by the parties, that sense is

to prevail, against either party, in which the party supposed the other understood it. When different constructions of a provision are otherwise equally proper, that construction is to be taken which is most favorable to the party in whose favor the provision was made.

**42.270 Written words control printed form.** When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls.

**42.280 Deciphering characters and translating languages.** When the characters in which an instrument is written are difficult to be deciphered, or the language is not understood by the court, evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

**42.290 Construction of notices.** A written notice is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or indorsers of a bill of exchange or promissory note, that it has been protested for want of acceptance or payment, shall be held to import that it has been duly presented for acceptance or payment and refused, and that the holder looks for payment to the person to whom the notice is given.

**42.300 Parties to written instrument not to deny facts recited therein.** Except for the recital of a consideration, the truth of the facts recited from the recital in a written instrument shall not be denied by the parties thereto, their representatives or successors in interest by a subsequent title. [1981 c.892 §83]

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