Chapter 78

1991 EDITION

Investment Securities

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SHORT TITLE AND GENERAL MATTERS

78.1010 Short title. ORS 78.1010 to 78.4060 shall be known and may be cited as Uniform Commercial Code-Investment Securities. [1961 c.726 §78.1010; 1985 c.676 §78.1010]

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

(a) A "certificated security" is a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

(A) Represented by an instrument issued in bearer or registered form;

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

(C) Either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

(b) An "uncertificated security" is a share, participation or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

(A) Not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(B) Of a type commonly dealt in on securities exchanges or markets; and

(C) Either one of a class or series or by its terms divisible into a class or series of shares, participations, interests or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by ORS 78.1010 to 78.4060 and not by ORS 73.1010 to 73.8050, even though it also meets the requirements of ORS 73.1010 to 73.8050. ORS 78.1010 to 78.4060 do not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of ORS 78.1010 to 78.4060.

(d) A certificated security is in "registered form" if:

(A) It specifies a person entitled to the security or the rights it represents; and

(B) Its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer or the security so states.

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

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

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(a) At least 90 percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20 percent of the capital stock of the corporation, and each of which is:

(A) Subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(B) A broker or dealer or investment company registered under the federal securities laws; or

(C) A national securities exchange or association registered under the federal securities laws; and

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

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

(5) Other definitions applying to ORS 78.1010 to 78.4060 or to specified parts thereof and the sections in which they appear are:

(a) "Adverse claim," as defined in ORS 78.3020.

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

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

(d) "Debtor," as defined in ORS 79.1050.

(e) "Financial intermediary," as defined in ORS 78.3130.

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

(g) "Initial transaction statement," as defined in ORS 78.4080.

(h) "Instruction," as defined in ORS 78.3080.

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

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

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

(L) "Secured party," as defined in ORS 79.1050.

(m) "Security agreement," as defined in ORS 79.1050.

(6) In addition, ORS 71.1010 to 71.2080 contain general definitions and principles of construction and interpretation applicable throughout ORS 78.1010 to 78.4060. [1961 c.726 §78.1020; 1965 c.271 §3; 1973 c.362 §1; 1985 c.676 §78.1020]

78.1030 Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) The security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(2) The security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or the registered pledgee. [1961 c.726 §78.1030; 1985 c.676 §78.1030]

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

(a) An identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for the person and either to deliver a certificated security or to register the transfer of an uncertificated security to the person, against surrender of any certificated security the person holds; or

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

(2) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue. [1961 c.726 §78.1040; 1985 c.676 §78.1040]

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

(2) Statements under ORS 78.4080, notices or the like, sent by the issuer of uncertificated securities and instructions as defined in ORS 78.3080 are neither negotiable instruments nor certificated securities.

(3) In any action on a security:

(a) Unless specifically denied in the pleadings, each signature on a certificated security, in a necessary indorsement, on an initial transaction statement, or on an instruction, is admitted;

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

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

(d) If signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(e) After it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect is ineffective as provided in ORS 78.2020. [1961 c.726 §78.1050; 1985 c.676 §78.1050]

78.1060 Applicability. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(1) Registration of transfer of a certificated security;

(2) Registration of transfer, pledge or release of an uncertificated security; and

(3) Sending of statements of uncertificated securities. [1961 c.726 §78.1060; 1985 c.676 §78.1060]

78.1070 Securities transferable; action for price. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to the transferee or in blank, or the person may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(a) Certificated securities accepted by the buyer;

(b) Uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) Other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale. [1985 c.676 §78.1070]

78.1080 Registration of pledge and release of uncertificated securities. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by the secured party. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under ORS 78.1010 to 78.4060 are terminated by the registration of release. [1985 c.676 §78.1080]

ISSUE; ISSUER

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

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

(b) Creates shares, participations or other interests in the person's property or in an enterprise or undertakes obligations, which shares, participations, interests or obligations are uncertificated securities;

(c) Directly or indirectly creates fractional interests in the person's rights or property which fractional interests are represented by certificated securities; or

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

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of the guarantor's guaranty whether or not the guarantor's obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to ORS 78.4080.

(3) With respect to registration of transfer, pledge or release under ORS 78.4010 to 78.4080 "issuer" means a person on whose behalf transfer books are maintained. [1961 c.726 §78.2010; 1985 c.676 §78.2010]

78.2020 Terms of security; issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) If the security is certificated, the terms stated on the security;

(b) If the security is uncertificated, the terms contained in the initial transaction statement sent to the purchaser or, if the interest of the purchaser is transferred to the purchaser other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) The terms made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if the purchaser is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures under ORS 78.2050, lack of genuineness of a certificated security or an initial transaction statement is a complete defense even against a purchaser for value and without notice.

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

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed. [1961 c.726 §78.2020; 1985 c.676 §78.2020]

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

(a) The act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities or any of these on presentation or surrender of the certificated security, the funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; and

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

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

78.2040 Effect of issuer's restrictions on transfer. A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(1) The security is certificated and the restriction is noted conspicuously thereon; or

(2) The security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if the person's interest is transferred to the person other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or the registered pledgee. [1961 c.726 §78.2040; 1985 c.676 §78.2040]

78.2050 Effect of unauthorized signature on issue. An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

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

(2) An employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement. [1961 c.726 §78.2050; 1985 c.676 §78.2050]

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

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

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

(2) A complete certificated security that has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

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

(b) Even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if the person purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms. [1961 c.726 §78.2060; 1985 c.676 §78.2060]

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

otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4) and (6) of this section, the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) Register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) Register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) Register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under paragraph (b) of subsection (4) of this section or by registration of release and pledge under paragraph (c) of subsection (4) of this section, if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) Any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) Any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) Any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in ORS 78.1010 to 78.4060 shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like. [1961 c.726 §78.2070; 1985 c.676 §78.2070]

78.2080 Effect of signature of authenticating trustee, registrar or transfer agent. (1) A person placing the person's signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect that:

(a) The certificated security or initial transaction statement is genuine;

(b) The person's own participation in the issue or registration of the transfer, pledge or release of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) The person has reasonable grounds to believe the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing the person's signature does not assume responsibility for the validity of the security in other respects. [1961 c.726 §78.2080; 1985 c.676 §78.2080]

PURCHASE

78.3010 Rights acquired by purchaser. (1) Upon transfer of a security to a purchaser as provided in ORS 78.3130, the purchaser acquires the rights in the security which the purchaser's transferor had, or had actual authority to convey, unless the purchaser's rights are limited by ORS 78.3020 (4).

(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security. [1961 c.726 §78.3010; 1985 c.676 §78.3010]

78.3020 "Bona fide purchaser"; "adverse claim." (1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(a) Who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to the purchaser or in blank;

(b) To whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or

(c) To whom a security is transferred under the provisions of ORS 78.3130 (1)(c), (d)(A) or (g).

(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that

a particular adverse person is the owner of or has an interest in the security.

(3) A bona fide purchaser in addition to acquiring the rights of a purchaser as provided in ORS 78.3010 also acquires the bona fide purchaser's interest in the security free of any adverse claim.

(4) Notwithstanding ORS 78.3010 (1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve the transferee's position by taking from a bona fide purchaser. [1961 c.726 §78.3020; 1985 c.676 §78.3020]

78.3030 "Broker." "Broker" means a person engaged for all or part of the person's time in the business of buying and selling securities who in the transaction concerned acts for, buys a security from or sells a security to a customer. Nothing in ORS 78.1010 to 78.4060 determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject. [1961 c.726 §78.3030; 1985 c.676 §78.3030]

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

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

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

(2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under ORS 78.4030 (4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge or release, the initial transaction statement sent to the registered owner or the registered pledgee.

(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. [1961 c.726 §78.3040; 1985 c.676 §78.3040]

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

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

(2) After six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. [1961 c.726 §78.3050; 1985 c.676 §78.3050]

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

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

(a) The transfer is effective and rightful;

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

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

(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only the intermediary's own good faith and authority even though the intermediary has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers a certificated security re-

ceived, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3) of this section.

(5) A person who originates an instruction warrants to the issuer that:

(a) The person is an appropriate person to originate the instruction; and

(b) At the time the instruction is presented to the issuer the person will be entitled to the registration of transfer, pledge or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing the person's signature as provided in ORS 78.3120 (3) that:

(a) The person is an appropriate person to originate the instruction; and

(b) At the time the instruction is presented to the issuer:

(A) The person will be entitled to the registration of transfer, pledge or release; and

(B) The transfer, pledge or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction as provided in ORS 78.3120 (6) that:

(a) The person is an appropriate person to originate the instruction;

(b) The uncertificated security referred to therein is valid; and

(c) At the time the instruction is presented to the issuer:

(A) The transferor will be entitled to the registration of transfer, pledge or release;

(B) The transfer, pledge or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction; and

(C) The requested transfer, pledge or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that the person is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraph (b) of subsection (7) of this section and subparagraphs (B) and (C) of paragraph (c) of subsection (7) of this section.

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) The person's transfer is effective and rightful; and

(b) The uncertificated security is valid.

(10) A broker gives to the broker's customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker, acting as an agent, are in addition to applicable warranties given by and in favor of the broker's customer. [1961 c.726 §78.3060; 1985 c.676 §78.3060]

78.3070 Effect of delivery without indorsement; right to compel indorsement. If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement the purchaser may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. [1961 c.726 §78.3070; 1985 c.676 §78.3070]

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

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

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

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge or release from

pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

(a) A writing signed by an appropriate person; or

(b) A communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) of this section means the person specified by the certificated security or by special indorsement to be entitled to the security.

(7) "An appropriate person" in subsection (5) of this section means:

(a) For an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) For an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7) of this section, "an appropriate person" in subsections (1) and (5) of this section includes:

(a) If the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or the person's successor;

(b) If the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(c) If the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, the person's executor, administrator, guardian or like fiduciary;

(d) If the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

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

(f) To the extent that the person designated or any of the foregoing persons may act through an agent, the person's authorized agent.

(9) Unless otherwise agreed, the indorser of a certificated security by indorsement or the originator of an instruction by the origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in ORS 78.3060.

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

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge or release, does not render the fiduciary's indorsement or an instruction originated by the fiduciary unauthorized for the purposes of ORS 78.1010 to 78.4060. [1961 c.726 §78.3080; 1985 c.676 §78.3080]

78.3090 Effect of indorsement without delivery. An indorsement of a certificated security whether special or in blank does not constitute a transfer until delivery of the certificated security on which it appears or if the indorsement is on a separate document until delivery of both the document and the certificated security. [1961 c.726 §78.3090; 1985 c.676 §78.3090]

78.3100 Indorsement of security in bearer form. An indorsement of a certificated security in bearer form may give notice of adverse claims as provided in ORS 78.3040 but does not otherwise affect any right to registration the holder possesses. [1961 c.726 §78.3100; 1985 c.676 §78.3100]

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

(1) The owner or pledgee may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge or release of an equivalent uncertificated security to the purchaser; and

(2) An issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration

under ORS 78.4040. [1961 c.726 §78.3110; 1985 c.676 §78.3110]

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

(a) The signature was genuine;

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

(c) The signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(a) The signature was genuine;

(b) The signer was an appropriate person to originate the instruction as provided in ORS 78.3080 if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty;

(c) The signer had legal capacity to sign; and

(d) The taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor under subsection (2) of this section but also warrants that at the time the instruction is presented to the issuer:

(a) The person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

(b) The transfer, pledge or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions and claims other than those specified in the instruction.

(4) The guarantor under subsections (1) and (2) of this section or the special guarantor under subsection (3) of this section does not otherwise warrant the rightfulness of the particular transfer, pledge or release.

(5) Any person guaranteeing an indorsement of a certificated security makes not only the warranties of a signature guarantor under subsection (1) of this section but also warrants the rightfulness of the particular transfer in all respects.

(6) Any person guaranteeing an instruction requesting the transfer, pledge or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (3) of this section but also warrants the rightfulness of the particular transfer, pledge or release in all respects.

(7) No issuer may require a special guarantee of signature under subsection (3) of this section, a guarantee of indorsement under subsection (5) of this section or a guarantee of instruction under subsection (6) of this section as a condition to registration of transfer, pledge or release.

(8) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties. [1961 c.726 §78.3120; 1985 c.676 §78.3120]

78.3130 When transfer to purchaser occurs; financial intermediary as holder; "financial intermediary." (1) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

(a) At the time the purchaser or a person designated by the purchaser acquires possession of a certificated security;

(b) At the time the transfer, pledge or release of an uncertificated security is registered to the purchaser or a person designated by the purchaser;

(c) At the time the purchaser's financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser;

(d) At the time a financial intermediary, not a clearing corporation, sends the purchaser confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(A) A specific certificated security in the financial intermediary's possession;

(B) A quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(C) A quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) With respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person

acknowledges that the person holds for the purchaser;

(f) With respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that the person holds for the purchaser;

(g) At the time appropriate entries to the account of the purchaser or a person designated by the purchaser on the books of a clearing corporation are made under ORS 78.3200;

(h) With respect to the transfer of a security interest when the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(A) A financial intermediary on whose books the interest of the transferor in the security appears;

(B) A third person, not a financial intermediary, in possession of the security, if it is certificated;

(C) A third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(D) A third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) With respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(j) With respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraphs (a), (b), (c), (d) or (g) of this subsection, at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) The purchaser is the owner of a security held for the purchaser by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in paragraphs (c) and (g) of subsection (1) of this section and subparagraph (A) of paragraph (d) of subsection (1) of this section. If a security so held is part of a fungible bulk, as in the circumstances specified in subparagraphs (A) and (B) of paragraph (d) of subsection (1) of this section, the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser, the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer. [1961 c.726 §78.3130; 1965 c.271 §4; 1985 c.676 §78.3130]

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

(a) The selling customer fulfills the selling customer's duty to transfer at the time the selling customer:

(A) Places a certificated security in the possession of the selling broker or a person designated by the broker;

(B) Causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(C) If requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(D) Places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) The selling broker, including a correspondent broker acting for a selling customer, fulfills the selling broker's duty to transfer at the time the selling broker:

(A) Places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(B) Causes an uncertificated security to be registered in the name of the buying bro-

ker or a person designated by the buying broker;

(C) Places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(D) Effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as provided in this section or unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until the transferor:

(a) Places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(b) Causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) If the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for the broker's own account is within subsection (2) of this section and not within subsection (1) of this section. [1961 c.726 §78.3140; 1985 c.676 §78.3140]

78.3150 Action against purchaser based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including the person's incapacity, as against anyone except a bona fide purchaser, may:

(a) Reclaim possession of the certificated security wrongfully transferred;

(b) Obtain possession of any new certificated security representing all or part of the same rights;

(c) Compel the origination of an instruction to transfer to the person or a person designated by the person an uncertificated security constituting all or part of the same rights; or

(d) Have damages.

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

(3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation. [1961 c.726 §78.3150; 1985 c.676 §78.3150]

78.3160 Purchaser's right to requisites for registration of transfer on books. Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor or pledgee of an uncertificated security on due demand must supply the purchaser of the security with any proof of authority to transfer, pledge or release or with any other requisite necessary to obtain registration of the transfer, pledge or release of the security. However, if the transfer, pledge or release is not for value, a transferor, pledgor or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge or release. [1961 c.726 §78.3160; 1985 c.676 §78.3160]

78.3170 Attachment or levy upon security. (1) Subject to the exceptions in subsections (3) and (4) of this section, no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the certificated security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) of this section is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(6) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [1961 c.726 §78.3170; 1985 c.676 §78.3170]

78.3180 No conversion by good faith delivery. An agent or bailee who in good faith (including observance of reasonable commercial standards if the agent or bailee is in the business of buying, selling or otherwise dealing with securities) has received certificated securities and sold, pledged or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which the agent or bailee had control according to the instructions of the agent's or bailee's principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities. [1961 c.726 §78.3180; 1985 c.676 §78.3180]

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

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

(2) Delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this subsection only to the extent of the delivery, registration or payment;

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

(4) The party against whom enforcement is sought admits in the party's pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price. [1961 c.726 §78.3190; 1985 c.676 §78.3190]

78.3200 Transfer or pledge of security by entry on books of clearing corporation; effect. (1) In addition to other methods, a transfer, pledge or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor or pledgee and increasing the account of the transferee, pledgee or pledgor by the amount of the obligation or the number of shares or rights transferred, pledged or released, if the security is shown on the account of a transferor, pledgor or pledgee on the books of the clearing corporation, is subject to the control of the clearing corporation and:

(a) If certificated:

(A) Is in the custody of the clearing corporation, another clearing corporation, a custodian bank or a nominee of any of them; and

(B) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank or a nominee of any of them; or

(b) If uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank or a nominee of any of them.

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

(3) A transfer under this section is effective as provided in ORS 78.3130 and the purchaser acquires the rights of the transferor as provided in ORS 78.3010. A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made as provided in ORS 78.3210. A transferee or pledgee under this section may be a bona fide purchaser as provided in ORS 78.3020.

(4) A transfer or pledge under this section is not a registration of transfer under ORS 78.4010 to 78.4080.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) of this section are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby. [1965 c.271 §2; 1985 c.676 §78.3200]

78.3210 Enforceability, attachment, perfection and termination of security interest. (1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by the secured party pursuant to a provision of ORS 78.3130 (1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under ORS 78.3130 (1)(i) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of ORS 78.3130 (1) are satisfied.

(3) A security interest in a security is subject to ORS 79.1010 to 79.5070 but:

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

(b) No written security agreement signed by the debtor is necessary to make the security interest enforceable, except as provided in ORS 78.3130 (1)(h), (i) or (j). The secured party has the rights and duties provided under ORS 79.2070, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in the possession of the secured party.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by the debtor pursuant to a provision of ORS 78.3130 (1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by the secured party pursuant to a provision of ORS 78.3130 (1). [1985 c.676 §78.3210]

REGISTRATION

78.4010 Duty of issuer to register transfer, pledge or release. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge or release, the issuer shall register the transfer, pledge or release as requested if:

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

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

(c) The issuer has no duty as to adverse claims or has discharged the duty as provided in ORS 78.4030;

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

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

(2) If an issuer is under a duty to register a transfer, pledge or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge or release. [1961 c.726 §78.4010; 1985 c.676 §78.4010]

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

(a) In all cases, a guarantee of the signature, as provided in ORS 78.3120 (1) or (2), of the person indorsing certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

(b) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) If the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

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

(e) If the indorsement is made or the instruction is originated by a person not cov-

ered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to paragraphs (a) to (d) of this subsection.

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

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

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer, pledge or release; or

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

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in paragraph (b) of subsection (3) of this section both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer, pledge or release. [1961 c.726 §78.4020; 1985 c.676 §78.4020]

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

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

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

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

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

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

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

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

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

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

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) Claims embodied in a restraining order, injunction or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5) of this section;

(b) Claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5) of this section;

(c) Claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to the present registered owner; and

(d) Claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under ORS 78.4020 (4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, the issuer discharges that duty by:

(a) Including a notation of the claim in any statements sent with respect to the security under ORS 78.4080 (3), (6) and (7); and

(b) Refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statements and all subsequent statements sent to the transferee and pledgee under ORS 78.4080.

(7) Notwithstanding subsections (4) and (5) of this section, if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(a) The claim was embodied in legal process which expressly provides otherwise;

(b) The claim was asserted in a written notification from the registered pledgee;

(c) The claim was one as to which the issuer was charged with notice from a controlling instrument it required under ORS 78.4020 (4) in connection with the pledgee's request for transfer; or

(d) The transfer requested is to the registered owner. [1961 c.726 §78.4030; 1985 c.676 §78.4030]

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

(a) There were on or with a certificated security the necessary indorsements or the issuer had received an instruction originated by an appropriate person as provided in ORS 78.3080; and

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

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

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

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

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

(3) If an issuer has improperly registered a transfer, pledge or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

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

(b) The registration would result in overissue, in which case the issuer's liability is governed by ORS 78.1040. [1961 c.726 §78.4040; 1985 c.676 §78.4040]

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

(2) If the owner of a certificated security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall

issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

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

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

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

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by ORS 78.1040. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under that person except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof. [1961 c.726 §78.4050; 1985 c.676 §78.4050]

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

(a) The person is under a duty to the issuer to exercise good faith and due diligence in performing the person's functions; and

(b) With regard to the particular functions the person performs, the person has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other agent is notice to the issuer with respect to the functions performed by the agent. [1961 c.726 §78.4060; 1985 c.676 §78.4060]

78.4070 Exchangeability of securities. (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if the issuer has no duty as to adverse claims or has discharged the duty as provided in ORS 78.4030, shall issue to the person or a person designated by the person surrendering the security an equivalent uncertificated security subject to all liens, restrictions and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under ORS 78.4030 (4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) The registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) The registered pledgee, if the uncertificated security was subject to a registered pledge. [1985 c.676 §78.4070]

78.4080 Statements of uncertificated securities. (1) Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The number of shares or units transferred;

(c) The name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(d) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under ORS 78.4030 (4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(e) The date the transfer was registered.

(2) Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The number of shares or units pledged;

(c) The name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under ORS 78.4030(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(e) The date the pledge was registered.

(3) Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The number of shares or units released from pledge;

(c) The name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under ORS 78.4030 (4) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(e) The date the release was registered.

(4) An "initial transaction statement" is the statement sent to:

(a) The new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1) of this section;

(b) The registered pledgee pursuant to subsection (2) of this section; or

(c) The registered owner pursuant to subsection (3) of this section.

Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement."

(5) Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The number of shares or units transferred;

(c) The name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) The date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The name and address and any taxpayer identification number of the registered owner;

(c) The number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) The name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(e) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under ORS 78.4030 (4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) A description of the issue of which the uncertificated security is a part;

(b) The name and address and any taxpayer identification number of the registered owner;

(c) The name and address and any taxpayer identification number of the registered pledgee;

(d) The number of shares or units subject to the pledge; and

(e) A notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under ORS 78.4030 (4)) to which the uncer-

tificated security is or may be subject or a statement that there are none of those liens, restrictions or adverse claims.

(8) If the issuer sends the statement described in subsections (6) and (7) of this section at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security." [1985 c.676 §78.4080]