

Senate Bill 322

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises laws governing judgments.

A BILL FOR AN ACT

1
2 Relating to judgments; creating new provisions; amending ORS 18.165, 18.235, 18.860, 18.868, 18.878,
3 18.884, 18.886, 18.888, 18.892, 18.896, 18.936, 18.950, 86.770 and 88.070; and repealing ORS 88.075.

4 **Be It Enacted by the People of the State of Oregon:**

JUDGMENT LIEN PRIORITY

5
6
7
8 **SECTION 1.** ORS 18.165 is amended to read:

9 18.165. (1) If a judgment with lien effect under ORS 18.150, 18.152 or 18.158 is entered or re-
10 corded in a county before a conveyance, or a memorandum of a conveyance, of real property of the
11 debtor is recorded in that county, the conveyance of the judgment debtor's interest is void as
12 against the lien of the judgment unless:

13 (a) The grantee under the conveyance is a purchaser in good faith for a valuable
14 consideration, **the conveyance is delivered and accepted before the judgment is entered or**
15 **recorded in the county where the property is located** and the conveyance or memorandum of the
16 conveyance is recorded within 20 days after delivery and acceptance of the conveyance, excluding
17 Saturdays and legal holidays under ORS 187.010 and 187.020;

18 (b) The judgment creditor has actual notice, record notice or inquiry notice of a conveyance
19 **of the debtor's interest** to a grantee when the judgment is entered or recorded in the county;

20 (c) The conveyance **by the debtor** is a fulfillment deed entitled to priority over the judgment
21 under ORS 93.645; or

22 (d) The conveyance is a mortgage, trust deed or other security instrument given **by the debtor**
23 to secure financing for the purchase **by the debtor** of the real property described in the conveyance.

24 (2) For the purpose of subsection (1)(a) of this section, a memorandum of conveyance must con-
25 tain the date of the instrument being memorialized, the names of the parties, a legal description of
26 the real property involved and a description of the nature of the interest created. The memorandum
27 must be signed by the person from whom the interest is intended to pass, and be acknowledged or
28 proved in the manner provided for the acknowledgment or proof of deeds.

29 (3) As used in this section:

30 (a) "Conveyance" means a deed, a land sale contract, an assignment of all or any portion of a
31 seller's or purchaser's interest in a land sale contract or any other agreement affecting the title of

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 real property within this state, including a trust deed, a mortgage, an assignment for security pur-
 2 poses or an assignment solely of proceeds, given by a purchaser or seller under a land sale contract
 3 or given by a person with title to the real property.

4 (b) "Grantee" means:

5 (A) The person deemed to be the mortgagee under a trust deed pursuant to ORS 86.715; and

6 (B) Any other person to whom the interest that is the subject of a conveyance is intended to
 7 pass.

8
 9 **MULTIPLE JUDGMENTS**

10
 11 **SECTION 2.** ORS 18.860 is amended to read:

12 18.860. (1) A writ of execution may direct a sheriff to:

13 (a) Levy on and sell real property of the judgment debtor and deliver the proceeds to the court
 14 for application against **amounts owing on** a money award.

15 (b) Levy on and sell personal property of the judgment debtor in the possession of the judgment
 16 debtor, and deliver the proceeds to the court for application against **amounts owing on** a money
 17 award.

18 (c) Levy on and deliver possession of specific real or personal property pursuant to the terms
 19 of the judgment.

20 (d) Levy on and sell specific real or personal property pursuant to the terms of the judgment.

21 (e) Levy on currency that is in the possession of the judgment debtor and deliver the currency
 22 to the court for application against **amounts owing on** a money award.

23 (2) A single writ of execution may be issued for two or more of the purposes specified in this
 24 section.

25 **(3) A single writ of execution may be issued for two or more judgments as long as the**
 26 **judgments are against the same judgment debtor or debtors and are entered in the same**
 27 **case.**

28
 29 **SATISFACTION OF JUDGMENTS**

30
 31 **SECTION 3.** ORS 18.235 is amended to read:

32 18.235. (1) A judgment debtor, or a person with an interest in real property against which a
 33 judgment lien exists, may move the court for an order declaring that a money award has been sat-
 34 isfied or for a determination of the amount necessary to satisfy the money award, when the person
 35 **making the motion** cannot otherwise obtain a satisfaction document from a judgment creditor.

36 (2) Motions under this section shall be filed in the action in which the judgment was entered.
 37 All proceedings on the motion shall be conducted as part of the action in which the judgment was
 38 entered. An appearance fee may not be charged for filing a motion under this section.

39 (3) A motion under this section must include the following information, to the extent known to
 40 the person making the motion:

41 (a) The date of entry and principal amount of the money award.

42 (b) The rate of interest and the date the interest commenced to accrue.

43 (c) The date or dates and amounts of any payments on the money award.

44 (d) Any amount that the person believes remains to be paid on the money award, including any
 45 supporting mathematical calculations.

1 (e) Any other information necessary or helpful to the court in making its determination.

2 (4) A person making a motion under this section must serve the motion on the judgment credi-
3 tor. If the person making the motion is not the judgment debtor, the person also must serve the
4 motion and supporting affidavit on the judgment debtor. If an assignment of judgment document has
5 been filed with the court under ORS 18.205, the motion must be served on the person named as the
6 assignee of the judgment. Service on the judgment creditor and judgment debtor under this sub-
7 section may be made as provided in ORCP 9 if the motion is filed within one year after entry of the
8 judgment. If the motion is filed more than one year after entry of the judgment, or service is to be
9 made on an assignee of the judgment, the motion may either be personally served as provided in
10 ORCP 7, or be served by certified mail, return receipt requested with signed receipt. The court may
11 waive service on any person under this subsection if the person making the motion files an affidavit
12 with the court stating that the person cannot be found after diligent effort by the person making the
13 motion. The *[party]* **person** making the motion shall file proof of service with the court.

14 (5) A person served with a motion under this section must file a response within 21 days after
15 service is made, or within such time as may be allowed by the court. The response must specifically
16 identify those assertions in the motion that the person contests. The response must contain any in-
17 formation or mathematical calculations necessary to support the contentions of the responding
18 party.

19 (6) The court shall hear the motion not less than seven days after notice of hearing is given to
20 the person *[filing]* **making** the motion and to the parties served with the motion. The court shall
21 hear and determine the issues in a summary fashion without a jury. The court shall give the parties
22 a reasonable opportunity to present evidence relevant to any factual issues.

23 (7) If the court determines that the person making the motion is entitled to relief, the court shall
24 issue an order providing that the money award has been satisfied in full or, if the money award has
25 not been satisfied in full, the specific amount that will satisfy the judgment on a specific date or
26 within a period of time specified in the order.

27 (8) If the court finds that the judgment creditor willfully failed to provide a satisfaction docu-
28 ment under ORS 18.225, the court may render a supplemental judgment awarding reasonable attor-
29 ney fees to the person making the motion. The supplemental judgment may provide that the
30 *[demanding party]* **person making the motion** may satisfy the judgment by paying such amounts
31 the court determines to be necessary to satisfy the judgment less that sum of money the court
32 awards as attorney fees.

33 (9) If the court finds that the money award has been satisfied, or if the amount specified by the
34 court is paid to the court administrator within the time specified by the court, the court adminis-
35 trator shall note in the register and in the separate record maintained under ORS 18.075 that the
36 money award has been satisfied in full. The court administrator shall deliver any money paid to the
37 court administrator to the party or parties specified in the court's order.

38 (10) Upon request of the *[judgment debtor or]* person making the motion, the court administrator
39 shall issue a certificate indicating that the money award has been satisfied. The certificate may be
40 recorded in any County Clerk Lien Record in which the judgment was recorded under ORS 18.152.
41 Recording of the certificate eliminates any judgment lien that was created by the recording of the
42 judgment.

43 (11) At least five days before filing a motion under this section, the person must serve by per-
44 sonal delivery or first class mail a copy of the motion on the Administrator of the Division of Child
45 Support of the Department of Justice, or on the branch office of the Department of Justice providing

1 support services to the county in which the motion will be made, if:

2 (a) The motion relates to satisfaction of a support award; and

3 (b) Child support rights, as defined in ORS 25.010, for the judgment creditor have been assigned
4 to the state.

5 (12) This section does not apply to justice courts, municipal courts or county courts performing
6 judicial functions.

7
8 **MONEY AWARDS**

9
10 **SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS chapter 18.**

11 **SECTION 5. After entry of a judgment, the amount owing on the money award portion**
12 **of a judgment shall be decreased by all payments made by or on behalf of the judgment**
13 **debtor against the money award and shall be increased by interest accruing on the money**
14 **award. In addition, the judgment creditor is entitled to recover the expenses specified in ORS**
15 **18.999 that are incurred by the judgment creditor in collecting on the judgment, in the**
16 **manner provided by ORS 18.999.**

17 **SECTION 6. ORS 18.868 is amended to read:**

18 18.868. (1) If a writ of execution directs a sheriff to sell real property or tangible personal
19 property of a judgment debtor and deliver the proceeds to the court for application against **amounts**
20 **owing on** a money award, the writ may be issued to the sheriff of any county in this state where
21 property of the judgment debtor to be levied on is located.

22 (2) If the writ of execution directs the sheriff to sell or deliver possession of specific real or
23 tangible personal property, the writ must be issued to the sheriff of the county where the property
24 is located.

25 (3) If the writ of execution directs the sheriff to sell intangible personal property and deliver the
26 proceeds to the court for application against **amounts owing on** a money award, the court admin-
27 istrator shall issue the writ to the sheriff for the county in which the court sits.

28 (4) More than one writ of execution may be issued at the same time to different sheriffs for the
29 enforcement of a single judgment. If the writ or the instructions to the sheriff direct the sale of a
30 single, contiguous parcel of real property that is located in more than one county, and the judgment
31 creditor has recorded copies of the writ or abstracts of the writ under ORS 18.870 in each county
32 that contains part of the property, the sheriff for any county in which part of the property is located
33 may levy on and sell the entire property. If the sheriff levies on property under this subsection, the
34 sheriff must record a copy of the notice of levy in the County Clerk Lien Record for any county not
35 served by the sheriff.

36 **SECTION 7. ORS 18.936 is amended to read:**

37 18.936. (1) A judgment creditor may make oral bids for property to be sold at an execution sale.
38 If the oral bid of the judgment creditor is the highest bid, the judgment creditor need not make any
39 payment to the sheriff other than for:

40 (a) Any unpaid sheriff's fees for the execution sale;

41 (b) The amount of an exemption claimed by the debtor that the judgment creditor agrees to or
42 that a court has determined applies to the property; and

43 (c) Any amount bid by the judgment creditor that exceeds the full amount [of] **owing on** the
44 money award, calculated as of the date that the sale is to be conducted, plus the costs of the sale
45 as described in ORS 18.950 (2) that have been paid by the judgment creditor.

1 (2) A judgment creditor may submit a written bid for property to be sold in an execution sale
2 before the sale is conducted. A bid under this subsection may not be for more than the full amount
3 [of] **owing on** the money award, calculated as of the date that the sale is to be conducted, plus the
4 costs of the sale that are recoverable by the judgment creditor as described in ORS 18.950 (2). A
5 bid under this subsection must be received by the sheriff not less than 48 hours before the sale is
6 conducted. The sheriff may rely on the judgment creditor's calculation of the amount due under the
7 money award and for the costs of sale, and is not required to make a separate calculation. If the
8 written bid of the judgment creditor is the highest bid, the judgment creditor need not make any
9 payment to the sheriff other than for:

10 (a) Any unpaid sheriff's fees for the execution sale; and

11 (b) The amount of an exemption claimed by the debtor that the judgment creditor agrees to or
12 that a court has determined applies to the property.

13 (3) A judgment creditor may instruct the sheriff to accept any bid that matches the amount of
14 the bid made by the judgment creditor under subsection (2) of this section.

15 (4) A written bid under subsection (2) of this section is irrevocable, but the judgment creditor
16 who submits the written bid may make an oral bid at the time of the sale that is higher than the
17 written bid.

18 (5) A judgment creditor must notify the sheriff of any amounts included in a bid made by the
19 judgment creditor that are attributable to costs of sale under ORS 18.950 (2).

20 **SECTION 8.** ORS 18.892 is amended to read:

21 18.892. (1) Except as provided in subsection (2) of this section, a judgment debtor may use a
22 challenge to execution form only:

23 (a) To claim such exemptions under a writ of execution as are permitted by law; **and**

24 (b) **To assert that the amount specified in the writ of execution as being subject to exe-**
25 **cution is greater than the amount owed by the judgment debtor under the money award.**

26 (2) A judgment debtor may not use a challenge to execution form to challenge execution on
27 residential property of the debtor as defined by ORS 18.901 if the judgment creditor has obtained
28 an order under ORS 18.904 authorizing the sale or if the judgment directs the sale or delivery of
29 specific property.

30 (3) Any person other than a judgment debtor who has an interest in any property levied on by
31 a sheriff may assert that interest by delivering a challenge to execution in the manner provided by
32 subsection (4) of this section.

33 (4) A person may make a challenge to a writ of execution by completing the challenge to exe-
34 cution form provided in ORS 18.896, or a substantially similar form, and by delivering, in person or
35 by first class mail, the original of the completed form to the court administrator for the court
36 identified in the writ of execution and a copy of the challenge to the judgment creditor. Upon re-
37 ceiving a copy of the challenge, the judgment creditor shall promptly notify the sheriff of the chal-
38 lenge.

39 (5) A challenge to execution must be delivered in the manner provided by subsection (4) of this
40 section within 30 days after the property is levied on as described in ORS 18.878 or before the
41 property is sold on execution, whichever occurs first.

42 **SECTION 9.** ORS 18.896 is amended to read:

43 18.896. (1) The challenge to execution form described in this section does not expand or restrict
44 the law relating to exempt property. A determination as to whether property is exempt from at-
45 tachment or execution must be made by reference to other law. The form provided in this section

1 may be modified to provide more information or to update the notice based on subsequent changes
2 in exemption laws.

3 (2) A challenge to execution form must be in substantially the following form:

4 _____

5
6 _____ COURT
7 COUNTY OF _____

8
9 _____) CHALLENGE TO
10 Plaintiff,) EXECUTION
11)
12 vs.) Case No. _____
13)
14 _____)
15 Defendant.)

16
17 THIS FORM MAY BE USED BY THE DEBTOR ONLY [TO CLAIM SUCH EXEMPTIONS
18 FROM EXECUTION AS ARE PERMITTED BY LAW.] FOR THE FOLLOWING PURPOSES:

19 (1) To claim such exemptions from execution as are permitted by law.

20 (2) To assert that the amount specified in the writ of execution as being subject to exe-
21 cution is greater than the total amount owed.

22
23 THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM
24 AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

25
26 THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

27
28 I/We claim that the following described property or money is exempt from execution:

29 _____

30
31 _____

32
33
34 I/We believe this property is exempt from execution because (the Notice of Exempt Property at
35 the end of this form describes most types of property that you can claim as exempt from execution):

36 _____

37
38 _____

39
40
41 I am a person other than the Debtor and I have the following interest in the property:

42 _____

43
44 _____

1 Name _____ Name _____
 2 Signature _____ Signature _____
 3 Address _____ Address _____
 4 _____
 5 Telephone Telephone
 6 Number _____ Number _____
 7 (Required) (Required)

8
9 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

10 You may seek to reclaim your exempt property by doing the following:

- 11 (1) Fill out the Challenge to Execution form that you received with this notice.
- 12 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
- 13 shown on the writ of execution.
- 14 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the
- 15 address shown on the writ of execution.

16 You should be prepared to explain your exemption in court. If you have any questions about the
17 execution or the debt, you should see an attorney.

18
19 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY [TO CLAIM SUCH EX-
20 EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.] **FOR THE FOLLOWING**
21 **PURPOSES:**

- 22 (1) **To claim such exemptions from execution as are permitted by law.**
- 23 (2) **To assert that the amount specified in the writ of execution as being subject to exe-**
- 24 **cution is greater than the total amount owed.**

25
26 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
27 VALIDITY OF THE DEBT.

28
29 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
30 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
31 to are listed in ORS 18.899.

32
33 NOTICE OF EXEMPT PROPERTY

34
35 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
36 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
37 are enclosed.

38 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
39 FULLY.

40 State and federal law specify that certain property may not be taken. Some of the property that
41 you may be able to get back is listed below.

- 42 (1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following
- 43 amounts is greater:
- 44 (a) 75 percent of your take-home wages; or
- 45 (b) \$170 per workweek.

- 1 (2) Social Security benefits.
- 2 (3) Supplemental Security Income (SSI).
- 3 (4) Public assistance (welfare).
- 4 (5) Unemployment benefits.
- 5 (6) Disability benefits (other than SSI benefits).
- 6 (7) Workers' compensation benefits.
- 7 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
- 8 disability benefits when placed in a checking or savings account (up to \$7,500).
- 9 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
- 10 for your support or the support of any of your dependents.
- 11 (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your
- 12 spouse, parent or child. The value of the homestead is exempt up to the following amounts:
- 13 (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you
- 14 jointly own the mobile home or houseboat with another person who is also liable on the debt,
- 15 \$27,000.
- 16 (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly
- 17 own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.
- 18 (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who
- 19 is also liable on the debt, \$39,600.
- 20 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
- 21 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
- 22 another homestead.
- 23 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
- 24 to exceed \$3,000.
- 25 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
- 26 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
- 27 occupation, with a combined value not to exceed \$3,000.
- 28 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- 29 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
- 30 \$1,800.
- 31 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
- 32 and their food for 60 days.
- 33 (18) Provisions and fuel for your family for 60 days.
- 34 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
- 35 may not exceed \$1,000.
- 36 (20) Public or private pensions.
- 37 (21) Veterans' benefits and loans.
- 38 (22) Medical assistance benefits.
- 39 (23) Health insurance proceeds and disability proceeds of life insurance policies.
- 40 (24) Cash surrender value of life insurance policies not payable to your estate.
- 41 (25) Federal annuities.
- 42 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
- 43 emption as wages).
- 44 (27) Professionally prescribed health aids for you or any of your dependents.
- 45 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.

1 *(29) Your right to receive, or property traceable to:

2 *(a) An award under any crime victim reparation law.

3 *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
4 jury suffered by you or an individual of whom you are a dependent.

5 *(c) A payment in compensation of loss of future earnings of you or an individual of whom you
6 are or were a dependent, to the extent reasonably necessary for your support and the support of
7 any of your dependents.

8 (30) Amounts paid to you as an earned income tax credit under federal tax law.

9 (31) Interest in personal property to the value of \$400, but this cannot be used to increase the
10 amount of any other exemption.

11 (32) Equitable interests in property.

12 Note: If two or more people in your household owe the claim or judgment, each of them may
13 claim the exemptions marked by an asterisk (*).

14
15
16 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
17 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
18 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
19 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
20 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
21 obligation.

22
23
24
25 **COURT ORDER FOR ENTRY OF PREMISES**

26
27 **SECTION 10. Section 11 of this 2007 Act is added to and made a part of ORS 18.860 to**
28 **18.993.**

29 **SECTION 11. (1) A sheriff may forcibly enter a structure or other enclosure for the**
30 **purpose of levying on personal property only pursuant to an order issued by the court under**
31 **this section.**

32 **(2) A judgment creditor may at any time file an ex parte motion requesting a court order**
33 **directed to a sheriff that authorizes the sheriff to use force to enter a structure or other**
34 **enclosure for the purpose of levying on personal property pursuant to a writ of execution.**
35 **Except as provided in ORS 18.255, the motion must be filed with the court in which the**
36 **judgment was entered. The motion must identify the specific structure or other enclosure**
37 **to be entered and must contain a declaration under penalty of perjury made in the manner**
38 **described by ORCP 1 E that reflects facts supporting the judgment creditor's good faith belief**
39 **that personal property subject to a writ of execution is located within the structure or other**
40 **enclosure.**

41 **(3) An order issued under this section shall direct the sheriff to use all force reasonably**
42 **necessary to enter the structure or other enclosure and levy on personal property pursuant**
43 **to a writ of execution.**

44 **(4) A judgment creditor may deliver a copy of an order issued under this section to a**
45 **sheriff with a writ of execution, or at any time after a writ of execution is delivered to a**

1 **sheriff. A sheriff may rely on the copy of the order in entering a structure or other enclo-**
 2 **sure for the purpose of levying on personal property pursuant to a writ of execution.**

3
 4 **EFFECT OF LEVY BY SHERIFF**

5
 6 **SECTION 12.** ORS 18.878 is amended to read:

7 18.878. (1) Upon receipt of a writ of execution, the sheriff shall indorse upon the writ of exe-
 8 cution the time when the sheriff received the writ. The sheriff shall then levy on property pursuant
 9 to the writ of execution and the instructions provided to the sheriff under ORS 18.875 by doing all
 10 of the following:

11 [(1)] (a) Filing a notice of levy with the court if real property is to be sold under the writ, or
 12 if residential property as described in ORS 18.901 (2), (3) or (4) is to be sold under the writ.

13 [(2)] (b) Seizing any tangible personal property that the sheriff has not been instructed to secure
 14 in the manner provided by ORS 18.880.

15 [(3)] (c) Securing any tangible personal property in the manner provided by ORS 18.880 if the
 16 sheriff has been instructed to secure the property in that manner.

17 [(4)] (d) Filing a notice of levy with the court in the manner provided by ORS 18.884 if the
 18 sheriff has been instructed to sell intangible personal property.

19 [(5)] (e) Securing and delivering possession of property if the writ requires that property be de-
 20 livered under the writ.

21 **(2) When a sheriff levies on personal property in any manner described in subsection (1)**
 22 **of this section, the interest of the judgment creditor in the personal property is the same**
 23 **as that of a secured creditor with an interest in the property perfected under ORS chapter**
 24 **79.**

25 **SECTION 13.** ORS 18.888 is amended to read:

26 18.888. (1) After levying on property, a sheriff shall mail or deliver a copy of the writ of exe-
 27 cution to each judgment debtor. If the writ is issued pursuant to an in rem judgment against per-
 28 sonal property, the sheriff shall mail or deliver a copy of the writ to the person from whom the
 29 property was seized. If the writ is issued pursuant to an in rem judgment against real property, the
 30 sheriff shall mail or deliver a copy of the writ to the occupants of the property. The sheriff shall
 31 mail the copy of the writ to the addresses included in the instructions to the sheriff. If the judgment
 32 debtor has not provided an address for a person, the sheriff need not mail a copy of the writ to the
 33 person.

34 (2) If the sheriff has levied on intangible property, in addition to the copy of the writ required
 35 under subsection (1) of this section, the sheriff shall mail or deliver to the persons described in
 36 subsection (1) of this section a copy of the notice of levy filed with the court pursuant to ORS 18.878

37 [(4)] (1)(d).

38 (3) Unless the writ directs the sheriff to sell or deliver specific real or personal property pur-
 39 suant to the terms of the judgment, in addition to the copy of the writ required under subsection (1)
 40 of this section the sheriff shall mail or deliver to each judgment debtor:

- 41 (a) A copy of the notice of levy or a statement of the date and time of the levy; and
 42 (b) A challenge to execution form as provided by ORS 18.896.

43
 44 **LEVYING ON INTANGIBLE PROPERTY**

SECTION 14. ORS 18.884 is amended to read:

18.884. (1) A sheriff shall file a notice of levy on intangible property with the court upon receiving the instructions directing the sale of intangible personal property unless the sheriff is provided with an order entered under subsection [(2)] (3) of this section. The notice shall identify the nature of the property to be sold.

(2) A judgment creditor may seek an ex parte order from the court for the purpose of determining whether property to be levied on is tangible or intangible.

[(2)] (3) A judgment creditor may seek an ex parte order from the court directing the manner in which intangible personal property may be secured by the sheriff. The court shall approve the order if the proposed manner of securing the property is reasonable under the circumstances. The judgment creditor must attach a copy of the order to instructions provided to the sheriff under ORS 18.875. The sheriff shall file a notice of levy with the court upon securing the property in the manner directed by the order.

DEFICIENCY JUDGMENT UPON FORECLOSURE OF MORTGAGE

SECTION 15. ORS 88.070 is amended to read:

88.070. *[When a judgment is given for the foreclosure of any mortgage given to secure payment of the balance of the purchase price of real property, the judgment shall provide for the sale of the real property covered by such mortgage for the satisfaction of the judgment given therein, but the mortgagee shall not be entitled to a deficiency judgment on account of the mortgage or note or obligation secured by the same.]* **When real property is sold pursuant to a judgment foreclosing a mortgage and the proceeds of the sale are not adequate to satisfy the amounts secured by the mortgage, all judgment remedies for collection of the unsatisfied amounts expire when the sale is made if:**

(1) The mortgage was given to a seller to secure the unpaid balance of the purchase price of real property; or

(2) The mortgage was given after September 13, 1975, to a person other than a seller to secure not more than \$50,000 of the unpaid balance of the purchase price of real property used by the purchaser as the primary or secondary single family residence of the purchaser.

SECTION 16. ORS 86.770 is amended to read:

86.770. (1) A sale made by a trustee under ORS 86.705 to 86.795 shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under ORS 86.740 and 86.750 and of any other person claiming by, through or under such persons, and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of these persons shall not affect the validity of the sale as to persons so notified.

(2) Except as provided in subsection (4) of this section, no other or further action shall be brought, nor judgment entered for any deficiency, against the grantor, or the grantor's successor in interest, if any, on the note, bond, or other obligation secured by the trust deed or against any other person obligated on such note, bond or other obligation after a sale is made:

(a) By a trustee under ORS 86.705 to 86.795; or

(b) Under a judicial foreclosure of a residential trust deed.

(3) *[Under]* **Notwithstanding ORS 88.070, when there is** a judicial foreclosure of a trust deed that is not a residential trust deed, *[notwithstanding the purchase money mortgage provisions of ORS*

1 88.070 and 88.075,] the judgment shall provide that if the sale proceeds are insufficient to satisfy the
 2 judgment, execution may issue[,] for any amount by which the unpaid balance of the obligation se-
 3 cured by the trust deed exceeds the net sale proceeds payable to the beneficiary.

4 (4) Nothing in this section shall preclude an action judicially or nonjudicially foreclosing the
 5 same trust deed as to any other property covered thereby, or any other trust deeds, mortgages, se-
 6 curity agreements, or other consensual or nonconsensual security interest or liens covering any
 7 other real or personal property security for the note, bond or other obligation secured by the trust
 8 deed under which a sale has been made or an action against a guarantor to the extent of any re-
 9 maining deficiency following judicial foreclosure. A guarantor of an obligation secured by a resi-
 10 dential trust deed shall not have the right to recover any deficiency from the grantor or any
 11 successor in interest of the grantor.

12 **SECTION 17. ORS 88.075 is repealed.**

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 14 **CREDITOR BOND**

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 16 **SECTION 18.** ORS 18.886 is amended to read:

17 18.886. *[(1) As a condition of levying on personal property under a writ of execution, a sheriff may*
 18 *require that the judgment creditor file with the sheriff a good and sufficient bond or irrevocable letter*
 19 *of credit indemnifying the sheriff against any loss to the sheriff by reason of levying on or selling the*
 20 *property if:]*

21 *[(a) The sheriff has actual notice of any third-party claim to the property;]*

22 *[(b) The sheriff has doubt as to the ownership of the property or as to any encumbrances on the*
 23 *property; or]*

24 *[(c) The property is perishable.]*

25 *[(2) A bond or irrevocable letter of credit under this section must be in double the amount of the*
 26 *value of the property to be levied on, as estimated by the sheriff.]*

27 *[(3) The sheriff may not require a bond or irrevocable letter of credit under this section if the writ*
 28 *of execution directs the sale or delivery of specific personal property pursuant to the terms of the*
 29 *judgment.]*

30 **(1) Before levying on personal property a sheriff may require that the judgment creditor**
 31 **file with the sheriff a good and sufficient bond or irrevocable letter of credit indemnifying**
 32 **the sheriff against any loss to the sheriff by reason of levying on or selling the property if:**

33 **(a) The sheriff has identified a specific person other than the judgment debtor who claims**
 34 **an interest in the property to be levied on; or**

35 **(b) The property is perishable.**

36 **(2) If a sheriff has reasonable doubt as to the ownership of personal property, or if any**
 37 **encumbrances are asserted against the property, the sheriff may require a bond or irrev-**
 38 **ocable letter of credit as described in subsection (1) of this section before levying on the**
 39 **property unless:**

40 **(a) The judgment creditor delivers to the sheriff a copy of a title document or report for**
 41 **the property issued by a state or federal agency that shows that the judgment debtor is the**
 42 **sole owner of the property; or**

43 **(b) If there is no title document for the property to be levied on, the judgment creditor**
 44 **delivers to the sheriff a record, prepared under ORS 79.0523 (4) by a filing office described in**
 45 **ORS 79.0501, showing that no financing statement or lien, or certificate or notice affecting**

1 **a lien, is in effect for the property to be levied on.**

2 **(3) The sheriff may not require a bond or irrevocable letter of credit under this section**
 3 **if the writ of execution directs the sale or delivery of specific personal property pursuant to**
 4 **the terms of the judgment.**

5 **(4) A bond or irrevocable letter of credit under this section must be for double the**
 6 **amount of the value of the property to be levied on, as estimated by the sheriff.**

7 **SECTION 19.** ORS 18.950 is amended to read:

8 18.950. (1) After the deduction of all sheriff's fees and costs allowed by law that have not been
 9 paid by the judgment creditor, and deduction of all other amounts required by law, the sheriff shall
 10 deliver all net proceeds from an execution sale to the court administrator with the sheriff's return
 11 on the writ. The court shall enter an order of distribution for the proceeds. An order directing dis-
 12 tribution to the judgment creditor may be entered ex parte.

13 (2) A judgment creditor is entitled to recover from the proceeds of the sale all of the following
 14 costs of sale paid by the judgment creditor:

15 (a) Sheriff's fees;

16 (b) The cost of any title report required to determine persons entitled to notice under ORS
 17 18.918 (2);

18 (c) The cost of any indemnity bond **or letter of credit** required by ORS 18.886;

19 (d) Amounts that may be recovered by the judgment creditor under ORS 18.999;

20 (e) Services fees that may be recovered as costs under ORS 18.912; and

21 (f) Recording fees incurred pursuant to ORS 18.870.

22 (3) The court shall order that the costs specified in subsection (2) of this section be paid before
 23 application of the remaining proceeds to satisfaction of the judgment.

24 (4) If any proceeds from an execution sale remain after the payment of costs under subsection
 25 (3) of this section and satisfaction of the judgment, the court administrator shall pay the remaining
 26 proceeds as directed by the court in the order of distribution.

27
 28 **MISCELLANEOUS**

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 30 **SECTION 20.** **The unit captions used in this 2007 Act are provided only for the conven-**
 31 **ience of the reader and do not become part of the statutory law of this state or express any**
 32 **legislative intent in the enactment of this 2007 Act.**

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