

Enrolled
House Bill 2692

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Sheriff's Civil Command Council)

CHAPTER

AN ACT

Relating to execution; creating new provisions; and amending ORS 18.618, 18.755, 18.792, 18.860, 18.862, 18.875, 18.888, 18.924, 18.926, 18.930 and 18.936.

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

SECTION 1. ORS 18.618 is amended to read:

18.618. (1)(a) Notwithstanding ORS 18.615, the following are not garnishable property:

- (A) Equitable interests, except to the extent allowed under ORS chapter 130.
- (B) Property in the custody of the law.
- (C) Property in the possession of a conservator.

(D) Property in the possession of a personal representative that constitutes the subject matter of a trust contained in a duly probated will of a decedent.

(E) If a residential landlord is the garnishee, property in the possession of a residential landlord that is held as a security deposit or prepaid rent under ORS 90.300.

(F) The right of a seller under a land sale contract, as defined by ORS 18.960, to receive payments that are due more than 45 days after the writ of garnishment is delivered.

(G) Amounts in an account in a financial institution that are not subject to garnishment under ORS 18.619.

(H) An identification document, such as a driver license, passport, birth certificate or Social Security card.

(b) If a garnishee holds any property described in paragraph (a) of this subsection, the garnishee must note in the garnishee response required by ORS 18.680 that the garnishee holds the property, but may not deliver the property to the garnishor.

(2)(a) Notwithstanding ORS 18.615, wages owing by a garnishee to a debtor for a specific pay period are not garnishable property if:

(A) The writ is delivered within two business days before the debtor's normal payday for the pay period;

(B) When the writ is delivered to the garnishee, the debtor's wages are paid by direct deposit to a financial institution, or the garnishee uses the Oregon Department of Administrative Services or an independent contractor as defined in ORS 670.600 as payroll administrator for the garnishee's payroll; and

(C) Before the writ is delivered to the garnishee, the garnishee issued instructions to the financial institution or the payroll administrator to pay the debtor for the pay period.

(b) If a garnishee owes any wages as described in paragraph (a) of this subsection, the garnishee must so note in the garnishee response required by ORS 18.680.

(3) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor after a writ of garnishment could be issued under ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330).

SECTION 2. ORS 18.860 is amended to read:

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

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

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

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

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

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

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

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

(4) An identification document, such as a driver license, passport, birth certificate or Social Security card, is not subject to execution and a writ of execution may not direct a sheriff to levy on an identification document except for the purpose of delivering the document pursuant to the terms of a judgment under subsection (1)(c) of this section.

SECTION 3. ORS 18.755 is amended to read:

18.755. (1) If a garnishee indicates in the garnishee response that the garnishee holds any property described in ORS 18.750, the garnishor may require that the property be sold and that the proceeds of the sale be applied against the debt owed to the creditor. A sale of the property shall be conducted by the sheriff only if the garnishor mails or delivers a written request for sale of the property, and pays the fees determined by the sheriff under subsection (3) of this section, not later than 20 days after the garnishee delivers the garnishee response to the court administrator for the court specified in the writ of garnishment as having authority over the writ. A copy of the writ and a copy of the garnishee response must be attached to the request for sale of the property.

(2) A sale of the property described in ORS 18.750 may be conducted under ORS 18.750 to 18.760 only by the sheriff of the county in which the writ was delivered or, if the property is not located within the county in which the writ was delivered, by the sheriff of the county in which the property is located.

(3) A garnishor may request that the sheriff of a county described in subsection (2) of this section provide a statement to the garnishor of the fees that the sheriff will charge for conducting a sale of property that is described in ORS 18.750. The sheriff shall conduct such investigation as may be necessary to determine the difficulty of conducting any sale of the property under ORS 18.758, including any costs that the sheriff may incur in taking into possession any of the property described in ORS 18.750 (3). The sheriff shall determine whether the property described in ORS 18.750 (3) should be taken into possession of the sheriff, or whether the sheriff should enter into an agreement with the garnishee for the garnishee to continue to hold the property pending sale by the sheriff. The sheriff shall provide the statement of fees to the garnishor not later than five days after the garnishor requests the statement.

(4) If the garnishor mails or delivers a written request for sale of property and pays the sheriff fees determined under subsection (3) of this section within the time allowed by subsection (1) of this section, the sheriff shall promptly mail or deliver a written notice to the garnishee. The notice shall direct the garnishee to:

(a) Hold all property described in ORS 18.750 (2)(a) to (c) until the garnishee receives further instructions with respect to disposition of the property; and

(b) Deliver all property described in ORS 18.750 (2)(d) to the sheriff, unless the sheriff has agreed with the garnishee that the property should continue to be held by the garnishee pending sale.

(5) Upon sending a notice to a garnishee under subsection (4) of this section, the sheriff shall mail or deliver a copy of the notice to the court administrator for the court with authority over the writ.

(6) A sheriff is not liable to the garnishor, the debtor or any other person for loss of, or damage to, property that is not delivered to the sheriff pending sale of the property.

SECTION 4. The amendments to ORS 18.755 by section 3 of this 2011 Act apply to all writs of execution, whether issued before, on or after the effective date of this 2011 Act.

SECTION 5. ORS 18.792 is amended to read:

18.792. (1) Notwithstanding any other provision of ORS 18.600 to 18.850, but subject to the provisions of ORS 18.854, the duty of a financial institution that is a garnishee to deliver any property of the debtor that may be contained in a safe deposit box that is in the garnishee's possession, control or custody at the time the writ of garnishment is delivered is conditioned upon the garnishor first paying to the garnishee, in addition to the search fee provided for in ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the safe deposit box. The costs must be paid to the garnishee by the garnishor before access to the safe deposit box is granted. If the garnishor fails to pay such costs to the garnishee within 20 days after the delivery of the garnishee response, the garnishment shall not be effective to garnish any property of the debtor that may be contained in the safe deposit box and the garnishee may proceed to deal with the safe deposit box and its contents as though the writ of garnishment had not been issued. Nothing in this section limits the right of a garnishor to reach the contents of any safe deposit box in any manner otherwise provided by law.

(2) If a sheriff is instructed to seize and sell the contents of a safe deposit box, and the box is found to contain an identification document, such as a driver license, passport, birth certificate or Social Security card, the sheriff shall take possession of the identification document, but the document may not be sold to satisfy the debt.

SECTION 6. ORS 18.862 is amended to read:

18.862. (1) A writ of execution must be directed to a sheriff and must contain the name of the court, the names of the parties to the action and the case number for the action. The writ must contain a mailing address for the judgment creditor. The writ must describe the judgment and, if the writ of execution is issued for application of property of the judgment debtor against a money award, the writ must state the amount owing on the money award [*when the writ is issued*], **including interest, as of the date that the request for issuance of the writ is mailed or delivered to the court administrator. The writ must also state the amount of interest accruing on the money award each day.**

(2) If the judgment requires that specific real or personal property of the judgment debtor be sold, the writ must particularly describe the property and direct the sheriff to sell the specified property.

(3) If the judgment requires the delivery of the possession of real or personal property, the writ must direct the sheriff to deliver the possession of the property. The writ must particularly describe the property and specify the party to whom the property is to be delivered.

SECTION 7. The amendments to ORS 18.862 by section 6 of this 2011 Act apply only to writs of execution issued on or after the effective date of this 2011 Act.

SECTION 8. ORS 18.875 is amended to read:

18.875. (1) The judgment creditor shall provide instructions to the sheriff with a writ of execution. The instructions must be signed by the judgment creditor or the judgment creditor's attorney. The instructions may be delivered to the sheriff after the writ is delivered to the sheriff. The instructions must include:

(a) The names and addresses of the judgment creditor and all debtors to whom notice must be given under ORS 18.888;

(b) The names and addresses of any other persons to whom notice must be given under ORS 18.918;

(c) A description of any personal property to be levied on;

(d) A street address or other description of the place where any tangible personal property may be found;

(e) A legal description for any real property or interest in real property to be levied on;

(f) A statement indicating whether any property to be levied on is residential property as defined by ORS 18.901;

(g) A statement indicating whether any condominium unit, manufactured dwelling or floating home to be levied on is inventory held for sale or lease in the regular course of business; and

(h) A statement identifying any portion of the property to be levied on that is intangible personal property, and any special instructions required to implement an order entered pursuant to ORS 18.884.

(2) If instructions to the sheriff direct the sale of tangible personal property, the judgment creditor may request in the instructions that the property not be seized by the sheriff and that the property be secured in the manner provided by ORS 18.880. The instructions may request that the property be rendered temporarily inoperable, and the manner in which the property should be rendered inoperable.

(3) If a judgment creditor seeks sale of real property under a writ of execution and the real property has a street address, the instructions to the sheriff must include the street address of the real property to be sold. If the real property is residential property that is subject to ORS 18.904, a copy of the court order authorizing the sale, or a copy of the judgment directing sale or foreclosure of the property, must be attached to the instructions.

[(4) If a judgment creditor seeks sale of real property under a writ of execution, the instructions to the sheriff must direct the sheriff to include the following notice in conspicuous language in the notice of sale required by ORS 18.924:]

[_____]

Before bidding at the sale a prospective bidder should independently investigate:

(a) The priority of the lien or interest of the judgment creditor;

(b) Land use laws and regulations applicable to the property;

(c) Approved uses for the property;

(d) Limits on farming or forest practices on the property;

(e) Rights of neighboring property owners; and

(f) Environmental laws and regulations that affect the property.

[_____]

[(5)] (4) In addition to the instructions required by this section, a sheriff may require that a judgment creditor provide all other instructions as may be necessary to allow the sheriff to levy on and to sell or deliver property pursuant to a writ of execution.

SECTION 9. The amendments to ORS 18.875 by section 8 of this 2011 Act apply only to writs of execution issued on or after the effective date of this 2011 Act.

SECTION 10. ORS 18.888 is amended to read:

18.888. (1) After levying on property, a sheriff shall mail or deliver a copy of the writ of execution to each judgment debtor. If the writ is issued pursuant to an in rem judgment against personal property, the sheriff shall mail or deliver a copy of the writ to the person from whom the property was seized. If the writ is issued pursuant to an in rem judgment against real property, the sheriff shall mail or deliver a copy of the writ to the occupants of the property. The sheriff shall mail the copy of the writ to the addresses included in the instructions to the sheriff. If the judgment

[debtor] creditor has not provided an address for a person, the sheriff need not mail a copy of the writ to the person.

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

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

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

SECTION 11. ORS 18.924 is amended to read:

18.924. (1) Before conducting an execution sale of real property, a sheriff shall give written notice of the sale in the manner provided by this section. The notice must identify the property to be sold and the time and place of the sale[.], **and must include the following notice:**

Before bidding at the sale, a prospective bidder should independently investigate:

- (a) The priority of the lien or interest of the judgment creditor;**
 - (b) Land use laws and regulations applicable to the property;**
 - (c) Approved uses for the property;**
 - (d) Limits on farming or forest practices on the property;**
 - (e) Rights of neighboring property owners; and**
 - (f) Environmental laws and regulations that affect the property.**
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(2) Before any execution sale of real property, the sheriff shall:

(a) Mail copies of the notice of sale by first class mail and by certified mail, return receipt requested, to the judgment debtor at the address provided in the instructions to the sheriff;

(b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment debtor identified in the instructions at the address provided in the instructions; and

(c) Mail a copy of the notice of sale by first class mail to any other person listed in the instructions pursuant to ORS 18.918 at the address provided in the instructions.

(3) The notices required by subsection (2) of this section must be mailed not less than 28 days before an execution sale is conducted.

(4) Before any execution sale of real property for which the judgment creditor has provided a street address under ORS 18.875 (3), the sheriff shall post a notice of the sale in a conspicuous place on the property. The notice must be posted not more than seven days after the sheriff mails notices as required by subsection (2) of this section.

(5) The sheriff shall publish a copy of the notice of sale of real property once a week for four successive weeks in a newspaper of general circulation in the county where the real property is located. The sheriff may not conduct the sale until the expiration of the four-week period.

(6) In lieu of publication in a newspaper under subsection (5) of this section, a sheriff shall publish a notice of sale of real property by Internet posting if a website has been established under ORS 18.926 for the purpose of giving legal notices under ORS 18.860 to 18.993, and the judgment creditor has requested that notice be published by Internet posting in the instructions provided to the sheriff under ORS 18.875. Subject to ORS 18.926 (3), the notice must be posted on the Internet not less than 28 days before the date identified in the notice of sale and remain posted until that date.

SECTION 12. The amendments to ORS 18.924 by section 11 of this 2011 Act apply only to notices of sale given under ORS 18.924 on or after the effective date of this 2011 Act.

SECTION 13. ORS 18.926 is amended to read:

18.926. (1) A website where legal notices under ORS 18.860 to 18.993 may be posted shall be established if *[all]* a **majority of the elected** sheriffs in this state enter into an intergovernmental agreement under ORS chapter 190 for the purpose of establishing and maintaining the website.

(2) An intergovernmental agreement entered into under this section may establish fees for posting legal notices on a website maintained under this section.

(3) For the purpose of determining whether a legal notice has been posted for the period of time required by law, an interruption of service of a website maintained under this section that does not exceed 48 hours does not affect the continuity of the posting. An interruption of service of a website maintained under this section does not prevent the sheriff from conducting an execution sale unless the court orders otherwise.

SECTION 14. ORS 18.930 is amended to read:

18.930. (1) The sheriff shall conduct an execution sale by public oral auction. The sale must be conducted between 9 a.m. and 4 p.m. All property shall be sold by the sheriff in such parcels as are likely to bring the highest price. Any portion of real property belonging to a person other than the judgment debtor must be sold separately if the person requests a separate sale.

(2) At least 10 days before the date first set for an execution sale, a judgment creditor must provide the sheriff with any report for real property to be sold at the execution sale that is in the possession of the judgment creditor and that shows interests of record in the property. The sheriff shall make the report available to bidders who appear at the sale. No civil action may be brought against a title company, the judgment creditor, the sheriff or any other person by reason of omissions or errors in the report, and the validity of the sale is not affected by reason of any omissions or errors in the report.

(3) A judgment creditor that is a public body, as defined in ORS 174.109, may set a minimum bid amount for property to be sold at an execution sale.

(4) Tangible personal property to be sold at an execution sale must be present at the place where the sale is conducted unless the property is not in the possession of the sheriff.

(5) The county may establish a fee to be collected by the sheriff at the time of sale. The amount of the fee shall be established by the governing body of the county and may not be greater than the amount necessary to pay the county for the expenses incurred by the county for giving notice of the sale and conducting the sale and for the anticipated expenses for any notices required to be given after the sale and other post-sale administration of the sale.

(6) A person who purchases real property that is subject to redemption at an execution sale must provide the sheriff with an address to which a redemption notice may be sent and must notify the sheriff of any change in address until the purchaser transfers the purchaser's interest in the property, the property is redeemed or the time allowed for redemption expires, whichever occurs first. Any person who thereafter acquires the purchaser's interest in the property must notify the sheriff of the transfer, provide the sheriff with an address to which a redemption notice may be sent and notify the sheriff of any change in address until there is a another transfer, the property is redeemed or the time allowed for redemption expires, whichever occurs first.

(7) At any time before the sheriff conducts an execution sale for personal property, the judgment debtor may pay to the sheriff the full amount owing on the judgment as of the date the payment is made along with the costs of sale as described in ORS 18.950 (2). The payment must be made in United States currency. If payment is made under this subsection, the sheriff may not sell the property, and shall deliver the property to the debtor. The sheriff shall deliver the amount paid by the judgment debtor to the court administrator with the sheriff's return on the writ. The sheriff is not liable to any person by reason of accepting payment under the provisions of this subsection.

SECTION 15. The amendments to ORS 18.930 by section 14 of this 2011 Act apply to all writs of execution, whether issued before, on or after the effective date of this 2011 Act.

SECTION 16. ORS 18.936 is amended to read:

18.936. (1) [A] **The judgment creditor who requested issuance of the writ of execution** may make oral bids for property to be sold at an execution sale. If the oral bid of the judgment creditor is the highest bid, the judgment creditor need not make any payment to the sheriff other than for:

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

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

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

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

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

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

(3) A judgment creditor **who makes a bid under subsection (2) of this section** may instruct the sheriff to accept any bid that matches the amount of the bid made by the judgment creditor [*under subsection (2) of this section*].

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

(5) A judgment creditor **who makes a bid under this section** must notify the sheriff of any amounts included in [a] **the bid** [*made by the judgment creditor*] that are attributable to costs of sale under ORS 18.950 (2).

Passed by House April 21, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 17, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State