

Oregon Law Commission

Municipal and Justice Court Work Group
Waiver or Reduction of Undertakings
January 5, 2026

Overview

House Bill 2460 (2025), at Sections 25-29 (excluding 28a), addresses undertakings for costs and supersedeas undertakings on appeal from justice courts to the circuit court in civil cases. Section 25(2) requires the appellant to file an undertaking for the costs and disbursements that the respondent will incur on appeal (typically, the circuit court filing fee). Section 25(3) provides that, as to a defendant appealing a judgment against the defendant who wishes to stay enforcement of the judgment appeal (a “supersedeas undertaking”), the defendant must file an undertaking for the amount of the judgment.

Neither the law before HB 2460 nor HB 2460 itself authorizes waiver (or reduction) of undertakings for costs or supersedeas undertakings. By contrast, if a party appeals from the circuit court to the Court of Appeals in a civil case, circuit courts have authority to waive (or reduce) such undertakings for good cause including indigence. See ORS 19.310 and 19.340, relating to waiver (or reduction) of undertakings; and ORS 19.360, relating to appellate court review of circuit court decisions on undertaking and stay issues. See also ORS 19.340, applicable to undertakings in appeals taken by “an executor, administrator, trustee or other person acting on behalf of another” and judgments involving perishable property.

During the drafting of HB 2460 (2025), Judge Dan Cross shared his interest in exploring the possibility of a waiver or reduction in costs for undertakings which was incorporated into the proposal submitted to the Oregon Law Commission for this project.

A small group of the Oregon Law Commission’s Municipal and Justice Court Work Group met November 2025 through January 2026 to discuss incorporating a waiver or reduction for costs or supersedeas undertakings. The small group participants included: Judge Mary James (Chair), Justice Justin Kidd, Judge Juliet Britton, Jim Nass, Kimberly McCullough, Lindsey Detweiller, Kaiti Ferguson, Heather Marek, and Anna McCormick. Jessica Minifie from Legislative Counsel’s office along with Amy Zubko and Cara Goldfarb attended the meetings as well.

Outstanding Questions

The proposed language below came from conversations between Anna McCormick and Jim Nass between the December 2025 and January 2026 meetings. The language below has been updated since draft language was first shared and discussed at the December 2025 meeting.

The language below is not meant to outline consensus language but rather provide a framework for discussion. For example, during the small group meeting on December 8, 2025, there was discussion but no decision regarding whether to specifically identify “indigence” in Subsection 5, however “indigence” is included here. Further, the inclusion of Subsection 7 creates an opportunity for review by the circuit court, however this question was still under discussion during the full MJC meeting on December 17th. I have included comments to provide context.

Proposed Draft Language

SECTION 25. Undertaking for costs and disbursements and stay of proceedings.

(1)(a) As used in sections 8 to 30 of this 2025 Act, “undertaking” means a written promise signed by an appellant to take an action, in connection with an appeal from the justice court to the circuit court, that is supported by a bond, one or more sureties or a deposit of money with the justice court.

(b) A surety for an undertaking on appeal must have the qualifications established by ORCP 82.

(2) The appellant shall file a **supersedeas** undertaking stating that the appellant will pay all costs and disbursements that may be awarded against the appellant on appeal. The appellant shall file the undertaking with the justice court within **five** days after filing the notice of appeal. The justice court or the circuit court for good cause may extend the time to file the undertaking.

(3)(a) In order to stay the enforcement of a money judgment on appeal, the appellant’s ~~{shall include in the}~~ **supersedeas** undertaking **must also include** a promise to pay the justice court judgment to the extent that the circuit court affirms the judgment.

(b) In order to stay enforcement of a judgment for the recovery of real property, the appellant’s supersedeas undertaking must also meet the requirements of subsection (6) of this **section.**

(4)(a) The respondent may object to the sufficiency of an undertaking for costs and disbursements, or to stay enforcement of the judgment, including the amount of the undertaking, the security for the undertaking or the qualifications of a surety.

[(b)] The objection to the sufficiency of an undertaking must be filed as provided in ORCP 82. Notwithstanding ORCP 82 F, the respondent must file the objection within [14] **five** days after the date on which a copy of the undertaking is served on the respondent. The justice court for good cause may extend the time to file the objection. The justice court shall decide the sufficiency of the undertaking in the manner provided by ORCP 82.

(5) **The justice court may waive, reduce or limit an undertaking for costs under subsection (2) of this section or an undertaking to stay enforcement of a money judgment under subsection (3)(a) of this section upon a showing of good cause, including indigence, and on such terms as are just and equitable. The appellant must file a motion to waive, reduce or limit the undertaking within five days after filing the notice of appeal. The respondent shall have five days after the filing of the motion to file a [answer] response to the motion. The justice court for good cause may extend the time to file a motion or [answer] response under this subsection. The justice court must decide the matter within five days after expiration of respondent's opportunity to file a [answer] response, or as soon as practicable thereafter.**

[(5)] (6)(a)(i) If a tenant on appeal of a judgment for possession of real property files an **supersedeas** undertaking to stay enforcement of the judgment during the appeal, absent a bond or sufficient surety, the tenant shall support the undertaking by promising to deposit with the justice court by a date certain each month the fair market rental value of the real property, **and shall promise not to commit waste or allow waste to be committed on the property during the period of possession.**

(ii) The justice court may determine the fair market rental value of the real property based on the written or oral rental agreement between the parties or other evidence of the monthly rent amount due or in effect at the time the court's determination is made. **The justice court may not require an undertaking to include payment of pre-judgment rents, attorney fees, or any other amount(s) other than the fair market rental value of the real property accruing after entry of judgment.**

[(b)] (iii) The tenant must deposit the fair market **rental** value of the property with the justice court each month by the date specified in the undertaking or as ordered by the justice court. If the tenant fails to timely deposit the monthly amount, the landlord shall be

entitled to enforce the justice court judgment notwithstanding the pendency of the appeal to the circuit court. Upon motion by the landlord, the justice court may order issuance of a notice of restitution in accordance with ORS 105.153 or a writ of execution of judgment of restitution in accordance with ORS 105.156. For purposes of ORS 105.159 (3), any period during which the justice court judgment is stayed shall not be considered as part of the 60-day time period.

[{(e)} (iv)] On receipt of the circuit court's judgment disposing of the appeal, the justice court shall disburse the money deposited by the tenant in accordance with the circuit court's judgment. **If the circuit court judgment does not sufficiently address entitlement to the money, the justice court shall determine entitlement consistent with the circuit court judgment and the purpose of the undertaking, which is to compensate the landlord for the fair market rental value of the property during the pendency of the appeal.**

[{(7)} (7)] Either party may file a motion in the circuit court for review of the justice court's decision under subsections (4), (5), or (6) of this section. The adverse party shall have five days after the date of service of the motion to file a response to the motion. The circuit court may extend the time for filing either the motion or the response. **The filing of a motion by a tenant for review of the justice court's decision with respect to a supersedeas undertaking does not by itself stay enforcement of the judgment, but the circuit court may temporarily stay enforcement of the judgment pending a decision on the motion. The hearing and deciding of the motion for review shall not delay any hearing on the de novo disposition of the appeal itself.**

[{(6)} (8)] When judgment is given in the circuit court against the appellant, either with or without the trial of the action, it must also be given against the sureties in the undertaking of the appellant, according to its nature and effect