

Justice Courts: Appeals in Civil Cases: Undertakings: Draft Wording

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SECTION 1. ORS 55.305 is amended to read:

55.305. Undertaking for costs and disbursements and stay of proceedings. (1)[(a)] As used in ORS 55.160 to 55.335 **and Section 3 of this 2027 Act,**

(a) “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]* **security.**

(A) “Undertaking for costs” means a promise to pay all costs and disbursements that may be awarded against the appellant on appeal.

(B) “Supersedeas undertaking” means a promise to satisfy the judgment of the justice court for the purpose of staying enforcement of the judgment pending an appeal.

(b) “Security” means a deposit of money with the justice court, a bond or one or more sureties. *[A surety for an undertaking on appeal must have the qualifications established by ORCP 82.]*

(c) “Surety” means a person with the qualifications established by ORCP 82.

(2) (a) The appellant shall file an undertaking **for costs** *[stating that the appellant will]* **promising to** pay all costs and disbursements that may be awarded against the appellant on appeal. **The undertaking must be supported by security in the amount of \$400.**

(b) 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 shall include in the undertaking a promise to pay the justice court judgment to the extent that the circuit court affirms the judgment.]* **To stay enforcement of a money judgment on appeal, the appellant shall file a supersedeas undertaking promising to pay the circuit court judgment. The undertaking must be supported by security in the amount of the justice court judgment.**

(b) To stay enforcement of a judgment for the recovery of real property, the appellant's supersedeas undertaking must 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 response to the motion. The justice court for good cause may extend the time to file a motion or response under this subsection. The justice court must decide the matter within five days after expiration of respondent's opportunity to file a response, or as soon as practicable thereafter.

[5] **(6)(a)** If a tenant on appeal of a judgment for possession of real property files [an] a **supersedeas** undertaking to stay enforcement of the judgment during the appeal, absent [a bond or] sufficient [surety] **security**, 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 by promising not to commit waste or allow waste to be committed of the property during the period of possession. As used in this subsection, 'waste' includes, but is not necessarily limited to, action or neglect that damage or destroy real property or that alter the character of the real property in a way that reduces its value.**

(b) 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 rent, attorney fees, or any other amount other than the fair market rental value of the real property accruing after entry of judgment.

[(b)] (c) 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 **or commits or allows waste of the property**, 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.

[(c)] (d) 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) Either party may file a motion in the circuit court for de novo 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 defendant for review of the justice court’s decision with respect to a supersedeas undertaking does not 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 proceedings for 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*] **any surety of the appellant’s undertaking [of the appellant, according to its nature and effect] consistent with its purpose.**

SECTION 2. Section 3 of this 2027 Act is added to and made a part of ORS chapter 55.

SECTION 3. (1) The State Court Administrator shall create model forms for an undertaking for costs under section (2) of ORS 55.305 Act and for supersedeas undertakings under subsections 3(a) and (6) of ORS 205.

(2) The clerk of the justice court shall provide a party, at the party's request, a copy of any undertaking form created under subsection (1) of this section.