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OREGON LAW COMMISSION

Report to the 2007 Legislative Assembly

**Judgments and Judicial Sales Work Group: Summary Determination
Senate Bill 499**

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**From the Offices of the Executive Director
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I. Introductory Summary

For the 2007 Legislative Session, the Oregon Law Commission’s Judgments and Judicial Sales Work Group proposes a bill that clarifies terminology, primarily in ORCP 47 for consistency with legislation involving judgments that was approved by the Legislative Assembly in 2003 and 2005.

II. History of the Project

In 2005, the Legislative Assembly dealt with and approved large and significant bills involving judgments/garnishments (HB 2359) and judicial sales (SB 920). The Judgments bill itself was the continuation of a major overhaul of Oregon judgments law approved by the 2003 Legislative Assembly, culminating in HB 2646. At its meeting on March 31, 2006, the Program Committee of the Oregon Law Commission acknowledged that cross-referencing problems and unintended consequences were likely to come up involving this legislation, and that the Work Group should continue for the purpose of dealing with “clean up” and “follow-up” issues. The Law Commission accepted that recommendation at its meeting on July 19, 2006, authorizing a reorganized work group to meet and consider such issues.

Law Commissioner John DiLorenzo served as chair of the Judgments and Judicial Sales Work Group.¹ The work group met five times in the fall and early winter of 2006/2007. The Work Group decided to divide its task into manageable components. SB 499, the legislative proposal addressed here, advances the Work Group’s recommendation with regard to a narrow, but important issue involving judgments and terminology in ORCP 47.²

III. The Problem that This Proposal Addresses

In 2003 and 2005, the Legislative Assembly enacted significant reforms dealing with judgments in ORS Chapter 18, including codifying key terms, such as a “general judgment,”

¹ The Work Group included the following members:

Cleve Abbe	Oregon Land Title Association
Gary Blackledge	Greene & Markley PC
Doug Bray	Oregon Judicial Department
Mark Comstock	Garrett, Hemann, Robertson, Jennings, Comstock & Trethewy PC
Nori Cross	Oregon Judicial Department
John Davenport	Davenport & Hasson LLP
Brian DeMarco	Oregon Judicial Department
David Hercher	Miller Nash LLP
Randy Jordan	Oregon Department of Justice
Tim Leader	Washington County Sheriff’s Office
Jim Markee	Markee & Associates
Jim Nass	Appellate Courts Staff Attorney
Dennis Paterson	Davis Wright Tremaine LLP
Marshall Ross	Multnomah County Sheriff’s Office

Jerry Watson, Special Counsel to the Oregon Law Commission, provided staff and research assistance. Dave Heynderickx, Special Counsel to the Legislative Counsel, provided drafting assistance.

² Remaining issues have been brought to the Law Commission in separate proposed legislation.

“limited judgment,” and “supplemental judgment.” ORS 18.005. Concerns exist about possible confusion between the procedures for dealing with “judgments” established in ORS Chapter 18 and the concept of a “summary judgment” described in ORCP 47. A party may seek summary judgment upon all or any part of an action that the party has brought or against which the party is defending. The fundamental concern is that the concept of a “summary judgment” includes the determination of many matters which should not be regarded as judgments under ORS Chapter 18.

The last sentence of ORCP 47C provides that “a summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.” A specific concern is that ORS 18.005(16)³ might be read together with ORCP 47C as an argument that a summary determination of liability by itself is a “claim for relief” that could serve as the basis for an appealable judgment because ORCP 47C specifically authorizes disposition of that issue by judgment.

IV. Objective of the Proposal

The objective of the proposal is to clarify terminology in order to avoid confusion between the different ways in which “judgment” is used in ORS Chapter 18 and in “summary judgment” under ORCP 47. Upon review, the Work Group concluded that the concept “summary judgment” refers to the summary determination of some issue or matter. That issue or matter may or may not be a “judgment” as that term is used in ORS Chapter 18. To avoid confusion, the Work Group recommends substituting the term “summary determination” for the term “summary judgment” throughout ORCP 47. The Work Group recognized and gave considerable attention to the fact that “summary judgment” is a widely used and commonly understood term. However, the Work Group felt that the term “summary determination” more accurately reflected what kinds of action that can be taken under ORCP 47, and avoids potentially significant confusion with ORS Chapter 18.

V. The Proposal

Sections 1-7.

Sections 1-7 amend ORCP 47 (subject to amendment by the Council on Court Procedures) at Sections A-F and H, respectively, by substituting “summary determination” for “summary judgment” throughout the rule. Other conforming changes are made throughout ORCP 47 Sections A-H to eliminate references to judgment (for example, replacing “enter judgment for the moving party” with the phrase “grant the motion”) that could perpetuate confusion.

³ ORS 18.005 (11) defines a judgment” to mean “the concluding decision of a court on one or more requests for relief in one or more actions, as reflected in a judgment document.” ORS 18.005(16) defines a “request for relief as “a claim, or charge in a criminal action or any other request for a determination of the rights and liabilities of one or more parties in an action that a legal authority allows the court to decide by a judgment.”

Section 8.

This section makes a single conforming amendment to ORS 86.742 to substitute “summary determination” for “summary judgment” in ORS 86.742(3).

VI. Conclusion

The proposed bill amends ORCP 47 and ORS 86.742. It addresses ambiguity and possible confusion between the judgment provisions of ORS Chapter 18 and the use of “summary judgment” elsewhere in the statute. It resolves that ambiguity by substituting a new term “summary determination” for the existing term “summary judgment.”

VII. Amendment Needed

The Oregon Law Commission approved SB 499 as introduced in the Legislative Assembly subject to a single amendment: the addition of language at Section 7 (amending ORCP 47H) specifically indicating that if a "summary determination" results in a resolution of all claims (against one or more parties), then a "general" judgment is to be entered. This amendment parallels existing language in Paragraph H indicating that a "limited" judgment can be entered. It was intended to eliminate ambiguity created by mentioning "limited" judgments without also providing for the entry of a "general" judgment when appropriate. The Oregon Law Commission anticipates that an appropriate amendment will be advanced through the legislative committee process.