

Judgments/Enforcement of Judgments Work Group:

JUDICIAL SALES

SB 920

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This summary was prepared by Oregon Law Commission Staff after the Oregon Law Commission's approval of SB 920, at its April 11, 2005 meeting. Due to time constraints, the report was never formally approved by the Oregon Law Commission, but was reviewed by the Judgments Work Group.

SB 920 (LC 1198) substantially revises laws relating to execution sales. The purpose is primarily to update and clarify legal procedures dealing with judicial sales under writs of execution. Writs of execution are set forth at ORS 18.465-18.598 of the current statute.

Sections 1-14 of SB 920 deal with the purposes for which writs of execution may be used, the required form of such writs, the procedures by which such writs are initially issued, and the manner in which a sheriff levies on real and personal property. Those topics are generally covered currently by ORS 18.465-494. With the exception of ORS 18.472, dealing with execution on judgments awarding child support, the specific provisions in ORS 18.465-494 are deleted by SB 920, to be replaced by Sections 1-14 of SB 920. The proposed statutory provisions in Sections 1-14 of SB 920 provide substantially more detail in two areas: first, certain specific instructions are to be provided by the judgment creditor to the sheriff with all writs of execution (see Section 7); second, a more detailed description of how different types of property (real property, tangible personal property and intangible personal property) are to be levied upon (see Section 8-11) is provided.

ORS 18.505-18.518 remain largely unchanged from their current format. Those provisions deal with the circumstances under which, and the procedures by which, a writ of execution may be "challenged." With the exception of a minor housekeeping amendment to ORS 18.505, those provisions are not affected by SB 920.

Sections 15-37 of SB 920 deal with the procedures for sale once property has been levied upon. These provisions are designed to replace ORS 18.532-562, each of which is deleted by SB 920. Sections 15-37 substantially reorganize and clarify the procedures with regard to sale of personal and real property. Those sections also make relatively minor substantive changes in the existing law of execution.

Sections 15-19 deal with the sale of “residential property.” As with current law (see ORS 18.536), the sale of residential property under SB 920 requires specific court authorization. The definition of “residential property” in Section 15 includes real property with 1-4 residential units, as well as condominium units, manufactured dwellings, and floating homes under certain circumstances. This definition of residential property is somewhat broader than the comparable language contained in existing ORS 18.536. The procedure for obtaining an order authorizing sale of residential property is set out in detail in Sections 16-19. Those procedures, although reorganized, are substantially similar to those currently required by ORS 18.536.

Sections 20-24 deal with the requirements for providing Notice of Sale for both personal and real property, including but not limited to “residential” property. These provisions substantially expand upon the current notice requirements of ORS 18.532. Section 20 requires a judgment creditor to prepare a list of all persons entitled to written notice of an execution sale and to include this list in the instructions provided to the sheriff called for by section 7 of the Act. While ORS 18.532 provides for general notice by posting (for sale of personal property) and by publication (for real property or a mobile home), with specific written notice only to the judgment debtor, Section 20 calls for written notice to the judgment debtor and any attorney for a judgment debtor for both personal and real property, as well as additional written notice to persons with a lien of record in real property or recorded interest in real property acquired after the judgment lien attached. Sections 21 and 22 (as to personal property) and Section 23 (as to real property) set forth specific requirements concerning how notice is to be provided and the time within which such notices are to be provided. Sections 21 and 23 additionally provide a new method of providing general notice-- publication on the internet. Section 24 authorizes the State Court Administrator to establish and maintain a website for this purpose.

Sections 25-37 set forth requirements for the conduct of an execution sale. These sections replace current ORS 18.538-562 and ORS 18.594-598. SB 920 provides much greater detail concerning how a judgment creditor is to make bids (see Section 28), as well as the manner in which payment is to be made (Section 29). These provisions are substantially new and do not have any counterparts in existing law. Section 34 deals with confirmation of the sale of real property. It replaces ORS 18.548. Section 34 clarifies an ambiguity in current law, by providing that the sale of real property is “conclusively established” unless an appropriate person files an objection within 10 days after the sheriff’s return is filed. Current law provides only that the plaintiff seeking a writ of execution is entitled, on motion, to have a court order confirming the sale after 10 days (ORS 18.548(1)). The conclusive presumption eliminates the inference that it is necessary to obtain a court order to confirm the sale unless an objection is filed. Section

35 expands upon existing ORS 18.548(3), by setting forth in some detail the costs of sale which can be recovered by the judgment debtor. Section 33 deals with the right of possession after sale. It replaces ORS 18.594, but does not substantially alter the purpose, intent, or effect of the existing provision. Section 36 deals, in part, with the effect of sale on the judgment debtor's title where the property is subject to redemption. The intent of this section is to clarify, but not alter the substantive law set forth in ORS 18.598. Section 36 provides that if the judgment debtor redeems the property, it is treated as if the sale had "never occurred" as far as liens of record are concerned. ORS 18.598, on the other hand, indicates only that the "judgment debtor shall be restored to the estate of the judgment debtor," language which is arguably ambiguous. Section 37 is new. It allows an individual court to direct by judgment that a specific execution sale be conducted in a manner different than otherwise set forth in SB 920. However, to limit the potential for different procedures to be adopted by courts across the state, Section 37 also provides that only the Chief Justice of the Supreme Court is authorized to establish (by court rule) an alternative procedure generally applicable to execution sales.

Sections 38-48 deal with the circumstances under which, and the procedures by which, the judgment debtor or other redemptioners may redeem real property from execution sale. Redemption is currently governed by ORS 18.565-588.

Section 38 replaces ORS 18.565. Under existing law, only an interest in real property may be redeemed. All other execution sales are absolute. Section 38 substantively changes current law by allowing redemption of a "manufactured dwelling" where it is "sold together with real property," as well as redemption for an interest in a land sale contract and the right to receive payments under a contract for the sale of real property, under some limited circumstances. These changes reflect the greater complexity of interests that judgment debtors may have in real property today. Sections 39 and 40 clarify who may redeem and the time for redemption, but are not intended to make any substantive changes other than clarifying that successors in interest are proper redemptioners. Sections 41-43 provide new detailed descriptions of the amounts which must be paid by a redemptioner to the purchaser, or previous redemptioner. Section 44 and 45 provide a more detailed procedure for redemption than is found in the current statute. Sections 44 and 45 include procedures for notifying the person from whom redemption is to be made, providing proof of service, and an accounting. Section 45 also provides a mechanism for objecting to the accounting. Existing statutory provisions provide only that in redeeming property, the redeemer shall "pay the amount" due. Section 46 provides greater clarity by specifically indicating the forms of payment that are acceptable, and the procedure to be used by the sheriff's office in dealing with payment.

Sections 49-53 are new and are not included, to any substantial degree, in the existing provisions of ORS 18.465-598. Sections 49-52 provide special rules for specific types of property. Special rules are provided with regard to manufactured dwellings and floating homes (Section 49), a purchaser's interest in a land sale contract (Section 50), a seller's right to receive payments under a contract for the sale of real property (Section 51), and equitable interests in real property. Section 53 provides a mechanism for the

sheriff to refer disputes concerning the sheriff's performance of any duties under the Act to the court for resolution and additional instructions.

Sections 55-73 make housekeeping changes to other statutory sections, primarily, but not exclusively in ORS Chapter 18. Those changes typically involve renumbering provisions for consistency with changes made in Sections 1-54 of SB 920, or adding parallel language (notably references to manufactured dwellings, floating homes and homestead exemptions).

Amendment Note:

SB 920 was amended in both the House and the Senate. The amendments were developed through the Law Commission's work group process and had the support of the Judicial Sales Sub-Work Group of the Judgments Work Group. The amendments provided additional clarification of execution and redemption processes including: (a) clarification of those persons to receive notices; (b) the types of financial instruments that can be used for payment at sale or redemption; and (c) the manner in which proceeds are to be distributed upon sale or redemption of property.