

RULE 80

ENFORCING JUDGMENT AGAINST INTERESTS IN REAL PROPERTY

A. Scope. For purposes of this rule, real property means vested legal interests in real property greater than a leasehold of two years unexpired term including unit ownership interests as defined in ORS 91.539. Land sale contract interests are covered in Rule 81 and contingent and equitable interests and short term leaseholds in Rule 83 C.

B. Judgment liens.

B.(1) Necessity; priority. As a prerequisite to enforcement of a judgment against a specific piece of real property the creditor must hold a presently valid judgment lien thereon. The order of priority of judgment liens is determined by the time of docketing judgment in the county in which the land lies, except that:

B.(1)(a) When real property has been attached and judgment is subsequently recovered the lien of such judgment retains the priority of the attachment lien; and

B.(1)(b) When several creditors have docketed judgments against a debtor who subsequently acquires real property, the liens of such creditors rank, as against each other, according to the time of docketing the original judgments.

B.(2) How lien obtained.

B.(2)(a) Original docketing; docketing of transcript in other counties.

B.(2)(a)(i) Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket,

noting thereon the day, hour, and minute of each docketing. At any time thereafter, so long as the original judgment remains in force under section B.(3), a certified transcript of the original docket may be filed in the office of the county clerk of any county in this state. Upon the filing of such transcript the clerk shall docket the same in the judgment docket of his office, noting thereon the day, hour, and minute of such docketing. A certified transcript of the new docket entry of a judgment renewed under section B.(3) may likewise be filed in another county.

B.(2)(a)(ii) From the time of docketing an original or renewed judgment of a circuit court or the transcript thereof, as provided in subparagraph (i), such judgment shall be a lien upon all the real property of the defendant within the county or counties where the same is docketed, or which the defendant may acquire therein, during the time prescribed in section B.(3).

B.(2)(b) A certified transcript of a district court judgment may be filed in the office of the county clerk of any county in this state and thereupon shall be a lien on all the real property of the defendant in such county.

B.(2)(c) A judgment of the federal district court for the District of Oregon when entered in the docket of that court shall be a lien on all the real property of the defendant located in the county in which that court is located and its judgment docket kept. As long as such judgment or a renewal thereof remains in force, a

certified transcript of the federal docket may be filed with the county clerk of any county in this state in the same manner and with the same effect as a judgment of a state court.

B.(3) Duration and renewal of liens. Whenever, after the entry of a judgment, a period of 10 years shall elapse, the judgment and the lien thereof shall expire. However, before the expiration of 10 years the circuit court in which such judgment was docketed, on motion, may renew such judgment and cause a new entry of the same to be made in the judgment docket, after which entry the lien of the judgment shall continue for another 10 years unless sooner satisfied, and after which entry execution may issue upon such judgment for another 10 years. This subsection also limits the time during which a judgment of the federal district court shall be a lien on land in this state.

B.(4) Discharge of liens.

B.(4)(a) A judgment lien on property is discharged by satisfaction or discharge of the judgment under Rule 77 H.

B.(4)(b) When an appeal is taken from any judgment and an understaking on appeal is filed, with a surety corporation licensed to do business in Oregon as surety on such undertaking, to the effect that if the judgment or any part thereof shall be affirmed the appellant will satisfy it so far as affirmed, the lien of the judgment shall cease and be annulled upon the expiration of the time allowed to except to the surety in the undertaking or upon the justification thereof, if excepted to, and that fact shall be noted upon the judgment lien docket over the signature of the officer having custody of such docket.

B.(4)(c) When the lien of a judgment ceases in the county in which the judgment was originally entered, it shall cease in every county in which a transcript thereof has been filed.

C. Foreclosure of judgment liens. A creditor holding a judgment lien may compel the transfer of the property at any time after the judgment has been finally affirmed on appeal or the time for taking an appeal has expired by proceeding as follows:

C.(1) Notice to debtor. The creditor shall file with the circuit court for the county in which the land lies and serve on the debtor in the manner of a summons a Notice of Foreclosure in substantially the following form:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR _____ COUNTY

Plaintiff

No. _____

v.

NOTICE OF FORECLOSURE

Defendant

TO (debtor) :

READ CAREFULLY. THIS NOTICE CONCERNS YOUR PROPERTY.

1. Judgment was entered against you in the above named lawsuit for \$ _____. \$ _____ is now owed by you on this judgment.

2. On (date, at least six months in future) the real property owned by you at

(Post office address) *

will be taken by the court in order to pay this judgment.

3. You can prevent this by PROMPTLY:

a) paying the judgment;

or b) claiming an exemption, if the property is your homestead;

or c) arranging with the court to sell the property yourself and pay the judgment out of the proceeds.

IF YOU DO NOTHING BEFORE (date) YOU WILL LOSE THE PROPERTY WITHOUT POSSIBILITY OF REDEMPTION.

4. Information about your eligibility for a homestead exemption, and the forms for claiming it, are available without charge at the county courthouse.

5. If you have any questions about this matter, you should consult an attorney.

(creditor's name,
address, and telephone
number)
(date of notice)

*The legal description of the property to be taken is:

(There shall be attached to the notice, or printed on the back, copies of Rule 80 C. (introductory clause), C.(1)(omitting the form), and C.(4)), and ORS 23.240.)

C.(2) Notice to junior lienors. Promptly after serving the Notice of Foreclosure, the creditor shall serve on each holder of an interest in the property junior to his own whose interest was of record at least one week before the date of the Notice:

C.(2)(a) A copy of the Notice of Foreclosure;

C.(2)(b) A listing of all the interests in the property in order of priority. This requirement may be satisfied by a copy of a title insurer's report respecting the property dated not more than one week before the date of the Notice;

C.(2)(c) A notice which shall state that:

C.(2)(c)(i) Written claims showing the amount presently secured by the claimant's junior interest in the property may be filed with the court within 30 days of the notice date;

C.(2)(c)(ii) All junior interests will be extinguished by a transfer of the property to the creditor or by the debtor, whether or not claims are filed under subparagraph (i);

C.(2)(c)(iii) If the debtor sells the property, the proceeds will be applied to payment of claims that have been filed in order of priority;

C.(2)(c)(iv) At any time after 40 days after the notice date and before a transfer of the property, a holder of a junior interest may redeem by proceeding under Rule 80 C.(3)(c).

C.(3) Claims of junior lienors.

C.(3)(a) Not later than 30 days after the date of the notice described in subsection (2), any holder of an interest in the property junior to that of the foreclosing creditor may file with the court a written Statement of Claim. Such Statement shall refer to the judgment of the foreclosing creditor by names of parties and docket number and to the Notice of Foreclosure by date and name of foreclosing creditor and shall state the amount presently due the junior claimant and secured by an interest in the the property and the nature of the interest and the date on which it attached to the property.

C.(3)(b) The debtor, or a lienor junior to a filed claim, may request a hearing on the validity or amount of any filed claim. The court shall set a date for such hearing and direct notice thereof to be served on the filer of the disputed claim. At such hearing the filer of the disputed claim has the burden of proving that his, her, or its lien initially attached and the disputant has the burden of proving payment.

C.(3)(c) At any time after 40 days from the date of Notice of Foreclosure and before a sale by the debtor or transfer to the creditor has been authorized or ordered, the holder of a junior

interest may acquire all the rights of the foreclosing creditor, including the right to acquire the property under the original Notice of Foreclosure, by paying to the court the amount presently due the creditor and all filed claims senior to his own. Holders of interests junior to that of such redeeming creditor may similarly redeem from him. Amounts paid in order to redeem shall be added to the judgment of the redeeming creditor.

C.(4) Order for sale by debtor or transfer to creditor.

C.(4)(a) Any time after 40 days from the date of the Notice of Foreclosure, the debtor may apply to the court under Rule 77 F.(2).

C.(4)(b)(i) Any time after six months from the date of the Notice of Foreclosure, the foreclosing creditor, or a junior lienor who has acquired the rights of the foreclosing creditor under paragraph C.(3)(c), may apply for an order transferring ownership of the property to him, or a person designated by him, and discharging all junior interests therein.

C.(4)(b)(ii) Notice of hearing on such application shall be served on the debtor and all holders of junior interests who have filed claims.

C.(4)(b)(iii) If, at the hearing, it appears that the applying creditor is, or has acquired the rights of, the original foreclosing creditor and that all the notices required by this section C. have been duly served, the court may grant the application; provided that if the debtor does not appear, or if the

appraised value of the property significantly exceeds the amount due the applicant, the court, on its own initiative or on motion of a party, may direct some further notice to be given to the debtor, or extend the time within which the debtor may pay the judgment, or order a public sale of the property.

C.(4)(b)(iv). An order of transfer made under this paragraph (b) shall: direct the transferee to pay \$12,000 to the debtor if a homestead exemption has been claimed in the property; shall vest title in the transferee free and clear of all claims of the debtor and of holders of junior interests who were duly served with notice or whose interests attached later than one week before the date of the Notice of Foreclosure; shall provide that the transferee is personally and primarily liable to pay any obligation secured by a lien on the property senior to that of the foreclosing creditor; and shall order that the applicant's judgment against the debtor is satisfied wholly or in the amount of the tax assessor's appraised value of the property, whichever is less, provided that the amount paid in compensation for the debtor's homestead and the amount of any of the debtor's obligations assumed by the transferee shall be deducted from the appraised value in determining the amount in which the judgment is satisfied.

COMMENT

Rule 80

The two-year qualification in section A. is suggested by ORS 23.520. The limitation to legal interests reflects First Bank of Juntura v. Sitz, 1 P.2d 126, 6 P.2d 242 (1938), and the legislatures repeated, recent rejection of bills designed to extend judgment liens to equitable interests.

Paragraph B.(1)(b) states the rule of Creighton v. Leeds, Palmer & Co., 9 Or. 215 (1881).

Paragraph B.(2)(a) is ORS 18.320 and 18.350(1). Paragraph B.(2)(b) is ORS 46.276. Paragraph B.(2)(c) is derived from ORS 18.380 and .390.

Section B.(3) is ORS 18.360 plus the reference thereto in ORS 18.390.

Paragraphs B.(4)(b) and (c) are ORS 18.350(2) and (3).

Section C. effects a major change in the procedure for reaching a debtor's real property, abandoning the system of sale at public auction followed by judicial confirmation and a one-year period of redemption (ORS 23.490-.600). This system is an attempt to implement the principle stated in Rule 75 B.(2), but it has not been notably successful. Redemptions are of rare occurrence, yet the possibility of redemption discourages bidding at the sale. A common result is that the judgment creditor is the only bidder and bids the amount of his judgment. Inadequacy of price is not ordinarily grounds for refusing confirmation. There have been instances of debtors forfeiting a substantial equity above what was necessary to pay the judgment, though this is usually avoided by the debtor refinancing or arranging a private sale when execution is threatened. The point of Rule 80 C. is to institutionalize this de facto solution by requiring timely and intelligible notice to

the debtor (80 C.(1)) and enabling the debtor to give clear title to a buyer even when the property is encumbered beyond its value (80 C.(4)(a)). In the latter case, of course, there will be no surplus payment to the debtor, but the full value of the property will be applied to reduction of his debts (cf. 77 F.(2)). The redemption period is shortened to six months and made to precede the transfer of the property. If the debtor does not act within this period, the property is transferred outright to the judgment creditor or a redeeming junior lienor, the assumption being that the debtor's failure to act indicates that the property is worth no more than the claims against it. Enforcing judgments by transferring the debtor's land to the creditor at an appraised value is the traditional method in Maine (Me. R.S. 14-2001 ff) and Massachusetts (Mass. Ann. Laws, c. 236 § 1). A system somewhat similar to Rule 80 C. is provided by the Uniform Land Transactions Act, sec. 3-507.

A good discussion of the shortcomings of the traditional redemption system and a proposal for a system resembling Rule 80 C. may be found in 14 Business Lawyer 132 (1958). Comments on specific provisions follow.

Subsection C.(1). It seems reasonable to require the creditor to wait until his judgment is really final before initiating this drastic procedure. This provision makes ORS 23.500 unnecessary. Note that the Notice must be served in the manner of a summons; the idea is to hit the debtor between the eyes. Filing of a copy with the circuit court is required to give persons who subsequently acquire liens (not entitled to notice by subsection C.(2) but foreclosed by subparagraph C.(4)(b)(iv)) a chance to learn of the proceedings and redeem. Cf. a *lis pendens* notice.

Subsection C.(2). See comment to Rule 77 B.(3). Paragraph C.(2)(b) suggests that the creditor will have to obtain a title report before initiating foreclosure. This is essential to assuring that whoever gets the property at the end of the proceeding gets clear title and this is essential to realizing the full value of the property. Cf. Indiana Rule C.P. 69 F.

Paragraph C.(3)(c). The 40-day wait here, and in paragraph C.(4)(a), is to give junior lienors a chance to file claims.

Subparagraphs C.(4)(b)(i)-(iii). This is similar in purpose to the confirmation requirement of ORS 23.490. An important difference is that judicial scrutiny of the proceedings is required even if the debtor does not appear.

Subparagraph C.(4)(b)(iv). The personal liability of the transferee is explained in the Comment to Rule 77 B.(2). It is believed that, at the present time, tax appraisals are reasonably related to fair value. Note that the order is, in effect, a quiet title decree avoiding the necessity of post-execution lawsuits.

ORS sections superseded: 18.320, 18.350, 18.360, 18.380, 18.390, 23.450(2), 23.460, 23.490-.600, 46.276.

PROCEDURE AND PRACTICE COMMITTEE

COMMENTS

RULE 80

A. Scope: The author has selected, for purposes of defining an interest in real property, a vested legal interest greater than a leasehold of two years unexpired term. Unfortunately, as indicated earlier, the author is not clear in whether land sale contract interests in Rule 81 and contingent and equitable interests and short-term leaseholds are also included. Of course, the implication is that they are. However, it would seem clarity could be achieved by simply saying that these real property interests are also within the scope of the term "real property."

B. Judgment Liens:

B.(1). This section sets forth the fact that the order of priority of a judgment lien is determined by the time of docketing the judgment in the county in which the land lies.

B.(1)(a). This section provides that where real property has been attached and judgment is subsequently recovered, the judgment retains the priority of the attachment lien.

B.(1)(b). As the author has indicated in his comment, this paragraph sets forth the rule found in Creighton vs. Leeds, Palmer and Co., 9 OR 215 (1881).

B.(2). How lien obtained.

B.(2)(a)(i). This is ORS 18.320 and 18.350(1).

B.(2)(b). This is ORS 46.276.

B.(2)(c). As is indicated by the author, is derived

from ORS 18.380 and 18.390.

B.(3). This is ORS 18.360.

B.(4)(b) and B.(4)(c) are ORS 18.350(2) and 18.350(3).

C. This section effects a major change in the procedure for selling a debtor's real property. Essentially, rather than a public sale, the new rule provides for reduction of the judgment by the amount of the tax assessed value of the real property, less several other allowances. Since this section has such a far reaching affect, it is suggested that it be read closely by each member of the committee and set for further review at a future hearing.

C.(1). This sets forth the form of notice to the debtor. The section specifically provides that the notice must be served upon the debtor in the same way that a summons would be served. The notice must have a copy of the entire rule, 80(C), attached to it, a copy of all of subsection C.(4), and a copy of the homestead exemptions available to the debtor.

C.(2). This section provides that the creditor serving the notice of foreclosure serve upon each junior interest holder a specified notice. Unfortunately, the method of service is not clearly delineated.

C.(3). Claims of junior lienors. Section C.(3) discusses the procedures and remedies available to junior lien holders. Essentially, the junior lien holders are allowed to request a hearing on the validity or amount of any filed claim. In addition, the junior lien holders are given the right to "purchase" the positions of prior lien holders.

This is done through the payment by the junior lien holder of the amount presently due the foreclosing creditor and all filed claims senior to the junior lien holder's position. All amounts so paid are added to the judgment of the redeeming creditor.

C.(4). Order for sale by debtor or transfer to creditor.

Section C.(4)(a) provides that following the expiration of forty (40) days from the date of notice of foreclosure, the debtor may apply to the court under Rule 77(F)(2) for sale of the property. If this is not done, at any time after six months from the date of notice of foreclosure, the foreclosing creditor is given the right to request that the court order transfer of ownership of the property to him and also discharging all junior interests therein.

C.(4)(b)(iv). This section sets forth the contents of the order of transfer. Specifically, the order does the following:

(1) Directs satisfaction of a homestead exemption claimed;

(2) Vests title in the transferee free and clear of all liens of those holders of junior interests who were served with notice;

(3) Declare that the transferee is personally and primarily liable to pay any obligation secured by a lien on the property senior to that of the foreclosing creditor;

(4) Order that the applicant's judgment be fully satisfied or reduced by the amount of the tax assessor's appraised

value of the property, whichever is less.

The amount of the reduction of the judgment shall be reduced by any amounts paid to the debtor for his homestead exemption and also by the amount of any debtor's obligations assumed by the transferee.

The theory underlying this procedure is that all junior lien holders or the debtor will step in and acquire the rights of the foreclosing creditor so long as the value of the property exceeds the amount of the debt. As the author points out, this system theoretically should result in a more equitable treatment of debtors against whom the foreclosure remedy has been utilized.

RULE 80

RECEIVERS

A. Receiver defined. A receiver is a person appointed by a court, or judge thereof, to take charge of property during the pendency of a civil action or upon a judgment or order therein, and to manage and dispose of it as the court may direct.

B. When appointment of receiver authorized. Subject to the requirements of Rule 82, a receiver may be appointed by a court in the following cases:

B.(1) Provisionally to protect property. Provisionally, before judgment, on the application of any party, when such party's right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

B.(2) To effectuate judgment. After judgment to carry the same into effect.

B.(3) To dispose of property, to preserve during appeal, or when execution unsatisfied. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

B.(4) Creditor's action. In an action brought by a

creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

B.(5) Attaching creditor. At the instance of an attaching creditor when the property attached is of a perishable nature or is otherwise in danger of waste, impairment or destruction or where the debtor has absconded or abandoned the property and it is necessary to conserve or protect it, or to dispose of it immediately.

B.(6) Protect, preserve, or restrain property subject to execution. At the instance of a judgment creditor either before or after the issuance of an execution to preserve, protect, or prevent the transfer of property liable to execution and sale thereunder.

B.(7) Corporations and associations; when provided by statute. In cases provided by statute, when a corporation or cooperative association has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

B.(8) Corporations and associations; to protect property or interest of stockholders or creditors. When a corporation or cooperative association has been dissolved or is insolvent or in imminent danger of insolvency and it is necessary to protect the property of the corporation or cooperative association, or to conserve or protect the interests of the stockholders or creditors.

C. Appointment of receivers; notice. No receiver shall be appointed without notice to the adverse party at least 10 days before the time specified for the hearing, unless a different period is fixed by order of the court.

D. Form of order appointing receivers. Except for an order appointing a temporary receiver, every order or judgment appointing a receiver:

D.(1) Property description. Shall contain a reasonable description of the property included in the receivership;

D.(2) Time for report. Shall fix the time within which the receiver shall file a report setting forth (a) the property of the debtor in greater detail, (b) the interests in and claims against it, (c) its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled;

D.(3) Time to file claims. Shall set a time within which creditors and claimants shall file their claims or be barred; and

D.(4) Periodic reports. May require periodic reports from the receiver.

E. Notice to persons interested in receivership. A receiver appointed after notice and hearing shall, under the direction of the court, give notice to the creditors of the corporation, of the partnership or association, or of the individual, in such manner as the court may direct, requiring such creditors to file their claims, duly verified, with the receiver, the

receiver's attorney, or the clerk of the court, within such time as the court directs.

F. Special notices.

F.(1) Required notice. Creditors filing claims with the receiver, all persons making contracts with a receiver, all persons having claims against the receiver, all persons having any interests in receivership property, and all persons against whom the receiver asserts claims shall receive notice of any proposed action by the court affecting their rights.

F.(2) Request for special notice. At any time after a receiver is appointed, any person interested in said receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that such person desires special notice of any and all of the following named steps in the administration of said receivership:

F.(2)(a) Filing of motions for sales, leases, or mortgages of any property in the receivership;

F.(2)(b) Filing of accounts;

F.(2)(c) Filing of motions for removal or discharge of the receiver; and

F.(2)(d) Such other matters as are officially requested and approved by the court.

A request shall state the post office address of the person, or such person's attorney.

F.(3) Form of notices. Any notice required by this rule (except petitions for the sale of perishable property, or other personal property, the keeping of which will involve expense or loss) shall be addressed to the person to be notified, or such person's attorney, at their post office address, and deposited in the United States Post Office, with the postage thereon prepaid, at least five days before the hearing on any of the matters above described; or personal service of such notice may be made on the person to be notified or such person's attorney not less than five days before such hearing. Proof of mailing or personal service must be filed with the clerk before the hearing. If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order.

G. Termination of receiverships. A receivership may be terminated only upon motion served with at least ten days' notice upon all parties who have appeared in the proceedings. The court may require that a final account and report be filed and served, and may provide for the filing of written objections to such account within a specified time. At the hearing on the motion to terminate the court shall hear all objections to the final account and shall take such evidence as is appropriate, and shall make such order as is just concerning termination of the receivership, including all necessary orders on the fees and costs of the receivership.

COMMENT

This rule clarifies the procedure for a receivership now covered by ORS chapter 31. It adds necessary provisions for notice and hearing. Although some receiverships are post judgment, the rule is included with provisional remedies because of the provisions covering pre-judgment receivership.

Section A. is identical to ORS 31.010. Under this rule a district court could direct a receivership under subsections (1) through (6). See amendment to ORS 46.060(1)(h).

Section B. is exactly the same as ORS 31.020. Note, temporary receiverships to preserve a defendant's property are governed here and not under provisional process in Rule 83. See ORCP 81 A.(9). It was felt that a receivership was such a specialized provisional remedy that it should be kept separate. The bond requirements for a receivership appear in ORCP 82.

The present ORS sections do not provide for notice to the defendant and hearing relating to setting up a receivership. Such procedure is required by case law. Anderson v. Robinson, 63 Or. 228, 233, 126 P. 988, 127 P. 546 (1912); Stacy v. McNichols, 76 Or. 167, 144 P. 96, 148 P. 67 (1915). There is no provision for an ex parte receivership order. In an emergency situation, a temporary restraining order would be available under Rule 79 to protect a party until a receivership could be established.

Section D. was adapted from Pennsylvania Rule of Civil Procedure 1533(g) and Rhode Island Rule of Civil Procedure 66 D. Section E. is taken from Washington Superior Court Rule 66(c).

Subsection F.(1) is required by Pacific Lumber Co. v. Prescott, 40 Or. 374, 384, 67 P.2d 207 (1902). Subsections F.(2) and (3) were taken from Washington Superior Court Rules 66 D. and E. Section G. is not covered by ORS and was taken from Arizona Rule of Civil Procedure 66 C.(3). Note, termination may be controlled by statute. See ORS 311.415 and 652.550.

ORS 31.040(2) was eliminated as unnecessary, and ORS 31.050 would remain as a statute.

RULE 80
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B. When appointment of receiver authorized. Subject to the requirements of Rule 82, a receiver may be appointed by a circuit court in the following cases:

B.(1) Provisionally to protect property. Provisionally, before judgment, on the application of any party, when such party's right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

B.(2) To effectuate judgment. After judgment to carry the same into effect.

B.(3) To dispose of property, to preserve during appeal, or when execution unsatisfied. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

B.(4) Creditor's action. In an action brought by a

creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

B.(5) Attaching creditor. At the instance of an attaching creditor when the property attached is of a perishable nature or is otherwise in danger of waste, impairment or destruction or where the debtor has absconded or abandoned the property and it is necessary to conserve or protect it, or to dispose of it immediately.

B.(6) Protect, preserve, or restrain property subject to execution. At the instance of a judgment creditor either before or after the issuance of an execution to preserve, protect, or prevent the transfer of property liable to execution and sale thereunder.

B.(7) Corporations and associations; when provided by statute. In cases provided by statute, when a corporation or cooperative association has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

B.(8) Corporations and associations; to protect property or interest of stockholders or creditors. When a corporation or cooperative association has been dissolved or is insolvent or in imminent danger of insolvency and it is necessary to protect the property of the corporation or cooperative association, or to conserve or protect the interests of the stockholders or creditors.

C. Appointment of receivers; notice. No receiver shall be appointed without notice to the adverse party at least 10 days before the time specified for the hearing, unless a different period is fixed by order of the court.

D. Form of order appointing receivers. Every order or judgment appointing a receiver:

D.(1) Property description. Shall contain a reasonable description of the property included in the receivership;

D.(2) Time for report. Shall fix the time within which the receiver shall file a report setting forth (a) the property of the debtor in greater detail, (b) the interests in and claims against it, (c) its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled;

D.(3) Time to file claims. Shall set a time within which creditors and claimants shall file their claims or be barred; and

D.(4) Periodic reports. May require periodic reports from the receiver.

E. Notice to persons interested in receivership. A receiver appointed after notice and hearing shall, under the direction of the court, give notice to the creditors of the corporation, of the partnership or association, or of the individual, in such manner as the court may direct, requiring such creditors to file their claims, duly verified, with the receiver, the

receiver's attorney, or the clerk of the court, within such time as the court directs.

F. Special notices.

F.(1) Required notice. Creditors filing claims with the receiver, all persons making contracts with a receiver, all persons having claims against the receiver, all persons having any interests in receivership property, and all persons against whom the receiver asserts claims shall receive notice of any proposed action by the court affecting their rights.

F.(2) Request for special notice. At any time after a receiver is appointed, any person interested in said receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that such person desires special notice of any and all of the following named steps in the administration of said receivership:

F.(2)(a) Filing of motions for sales, leases, or mortgages of any property in the receivership;

F.(2)(b) Filing of accounts;

F.(2)(c) Filing of motions for removal or discharge of the receiver; and

F.(2)(d) Such other matters as are officially requested and approved by the court.

A request shall state the post office address of the person, or such person's attorney.

F.(3) Form of notices. Any notice required by this rule (except petitions for the sale of perishable property, or other personal property, the keeping of which will involve expense or loss) shall be addressed to the person to be notified, or such person's attorney, at their post office address, and deposited in the United States Post Office, with the postage thereon prepaid, at least five days before the hearing on any of the matters above described; or personal service of such notice may be made on the person to be notified or such person's attorney not less than five days before such hearing. Proof of mailing or personal service must be filed with the clerk before the hearing. If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order.

G. Termination of receiverships. A receivership may be terminated only upon motion served with at least ten days' notice upon all parties who have appeared in the proceedings. The court may require that a final account and report be filed and served, and may provide for the filing of written objections to such account within a specified time. At the hearing on the motion to terminate the court shall hear all objections to the final account and shall take such evidence as is appropriate, and shall make such order as is just concerning termination of the receivership, including all necessary orders on the fees and costs of the receivership.

COMMENT

This rule clarifies the procedure for a receivership now covered by ORS chapter 31. It adds necessary provisions for notice and hearing. Although some receiverships are post judgment, the rule is included with provisional remedies because of the provisions covering pre-judgment receivership.

Section A. is identical to ORS 31.010.

Section B. is exactly the same as ORS 31.020. Note, temporary receiverships to preserve a defendant's property are governed here and not under provisional process in Rule 83. See ORCP 81 A.(9). It was felt that a receivership was such a specialized provisional remedy that it should be kept separate. The bond requirements for a receivership appear in ORCP 82.

The present ORS sections do not provide for notice to the defendant and hearing relating to setting up a receivership. Such procedure is required by case law. Anderson v. Robinson, 63 Or. 228, 233, 126 P. 988, 127 P. 546 (1912); Stacy v. McNichols, 76 Or. 167, 144 P. 96, 148 P. 67 (1915). There is no provision for an ex parte receivership order. In an emergency situation, a temporary restraining order would be available under Rule 79 to protect a party until a receivership could be established.

Section D. was adapted from Pennsylvania Rule of Civil Procedure 1533(g) and Rhode Island Rule of Civil Procedure 66 D. Section E. is taken from Washington Superior Court Rule 66(c).

Subsection F.(1) is required by Pacific Lumber Co. v. Prescott, 40 Or. 374, 384, 67 P.2d 207 (1902). Subsections F.(2) and (3) were taken from Washington Superior Court Rules 66 D. and E. Section G. is not covered by ORS and was taken from Arizona Rule of Civil Procedure 66 C.(3). Note, termination may be controlled by statute. See ORS 311.415 and 652.550.

ORS 31.040(2) was eliminated as unnecessary, and ORS 31.050 would remain as a statute.

RULE 80
RECEIVERS

A. Receiver defined. A receiver is a person appointed by a circuit court, or judge thereof, to take charge of property during the pendency of a civil action or upon a judgment or order therein, and to manage and dispose of it as the court may direct.

B. When appointment of receiver authorized. Subject to the requirements of Rule 82 A.(2), a receiver may be appointed by a circuit court in the following cases:

B.(1) Provisionally to protect property. Provisionally, before judgment, on the application of any party, when such party's right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

B.(2) To effectuate judgment. After judgment to carry the same into effect.

B.(3) To dispose of property, to preserve during appeal, or when execution unsatisfied. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

B.(4) Creditor's action. In an action brought by a

creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

B.(5) Attaching creditor. At the instance of an attaching creditor when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction or where the debtor has absconded or abandoned the property and it is necessary to conserve or protect it, or to dispose of it immediately.

B.(6) Protect, preserve, or restrain property subject to execution. At the instance of a judgment creditor either before or after the issuance of an execution to preserve, protect, or prevent the transfer of property liable to execution and sale thereunder.

B.(7) Corporations and associations; when provided by statute. In cases provided by statute, when a corporation or cooperative association has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

B.(8) Corporations and associations; to protect property or interest of stockholders or creditors. When a corporation or cooperative association has been dissolved or is insolvent or in imminent danger of insolvency and it is necessary to protect the property of the corporation or cooperative association, or to conserve or protect the interests of the stockholders or creditors.

C. Appointment of receivers; notice. No receiver shall be appointed without notice to the adverse party at least 10 days before the time specified for the hearing, unless a different period is fixed by order of the court.

D. Form of order appointing receivers. Every order or judgment appointing a receiver:

D.(1) Shall contain a reasonable description of the property included in the receivership;

D.(2) Shall fix the time within which the receiver shall file a report setting forth (a) the property of the debtor in greater detail, (b) the interests in and claims against it, and (c) its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled;

D.(3) Shall set a time within which creditors and claimants shall file their claims or be barred; and

D.(4) May require periodic reports from the receiver.

E. Notice to persons interested in receivership. A receiver appointed after notice and hearing shall, under the direction of the court, give notice to the creditors of the corporation, of the partnership or association, or of the individual, in such manner as the court may direct, requiring such creditors to file their claims, duly verified, with the receiver, the

receiver's attorney, or the clerk of the court, within such time as the court directs.

F. Special notices.

F.(1) Required notice. Creditors filing claims with the receiver, all persons making contracts with the receiver, all persons having claims against the receiver, all persons having any interests in receivership property, and all persons against whom the receiver asserts claims shall receive notice of any proposed action by the court affecting their rights.

F.(2) Request for special notice. At any time after a receiver is appointed, any person interested in said receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that such person desires special notice of any and all of the following named steps in the administration of said receivership:

F.(2)(a) Filing of motions for sales, leases, or mortgages of any property in the receivership;

F.(2)(b) Filing of accounts;

F.(2)(c) Filing of motions for removal or discharge of the receiver; and

F.(2)(d) Such other matters as are officially requested and approved by the court.

A request shall state the post office address of the person, or such person's attorney.

F.(3) Form and service of notices. Any notice required by this rule (except petitions for the sale of perishable property, or other personal property, the keeping of which will involve expense or loss) shall be addressed to the person to be notified, or such person's attorney, at their post office address, and deposited in the United States Post Office, with the postage thereon prepaid, at least five days (10 days for notices under section C.) before the hearing on any of the matters above described; or personal service of such notice may be made on the person to be notified or such person's attorney not less than five days (10 days for notices under section C.) before such hearing. Proof of mailing or personal service must be filed with the clerk before the hearing. If upon the hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order.

G. Termination of receiverships. A receivership may be terminated only upon motion served with at least 10 days' notice upon all parties who have appeared in the proceeding. The court may require that a final account and report be filed and served, and may provide for the filing of written objections to such account within a specified time. At the hearing on the motion to terminate, the court shall hear all objections to the final account and shall take such evidence as is appropriate, and shall make such orders as are just concerning the termination of the receivership, including all necessary orders on the fees and costs of the receivership.

COMMENT

This rule clarifies the procedure for a receivership now covered by ORS chapter 31. It adds necessary provisions for notice and hearing. Although some receiverships are post judgment, the rule is included with provisional remedies because of the provisions covering pre-judgment receivership.

Section A. is identical to ORS 31.010.

Section B. is exactly the same as ORS 31.020. Note, temporary receiverships to preserve a defendant's property are governed here and not under provisional process in Rule 83. See ORCP 81 A.(9). It was felt that a receivership was such a specialized provisional remedy that it should be kept separate. The bond requirements for a receivership appear in ORCP 82.

The present ORS sections do not provide for notice to the defendant and hearing prior to a receivership. Such procedure is required by case law and is included in section C. Anderson v. Robinson, 63 Or. 228, 233, 126 P. 988, 127 P. 546 (1912); Stacy v. McNicholas, 76 Or. 167, 183, 144 P. 96, 148 P. 67 (1915). There is no provision for an ex parte receivership order. In an emergency situation, a temporary restraining order would be available under Rule 79 to protect a party until a receivership could be established.

Section D. was adapted from Pennsylvania Rule of Civil Procedure 1533(g) and Rhode Island Rule of Civil Procedure 66 D. Section E. is taken from Washington Superior Court Rule 66(c).

Subsection F.(1) is required by Pacific Lumber Co. v. Prescott, 40 Or. 374, 384, 67 P.2d 207 (1902). Subsections F.(2) and (3) were taken from Washington Superior Court Rules 66 D. and E. Section G. is not covered by ORS and was taken from Arizona Rule of Civil Procedure 66 C.(3). Note, termination may be controlled by statute. See ORS 652.550.

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B. When appointment of receiver authorized. Subject to the requirements of Rule 82 A.(2), a receiver may be appointed by a circuit court in the following cases:

B.(1) Provisionally to protect property. Provisionally, before judgment, on the application of any party, when such party's right to the property, which is the subject of the action, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired.

B.(2) To effectuate judgment. After judgment to carry the same into effect.

B.(3) To dispose of property, to preserve during appeal, or when execution unsatisfied. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

B.(4) Creditor's action. In an action brought by a

creditor to set aside a transfer, mortgage, or conveyance of property on the ground of fraud or to subject property or a fund to the payment of a debt.

8.(5) Attaching creditor. At the instance of an attaching creditor when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction or where the debtor has absconded or abandoned the property and it is necessary to conserve or protect it, or to dispose of it immediately.

8.(6) Protect, preserve, or restrain property subject to execution. At the instance of a judgment creditor either before or after the issuance of an execution to preserve, protect, or prevent the transfer of property liable to execution and sale thereunder.

8.(7) Corporations and associations; when provided by statute. In cases provided by statute, when a corporation or cooperative association has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

8.(8) Corporations and associations; to protect property or interest of stockholders or creditors. When a corporation or cooperative association has been dissolved or is insolvent or in imminent danger of insolvency and it is necessary to protect the property of the corporation or cooperative association, or to conserve or protect the interests of the stockholders or creditors.

C. Appointment of receivers; notice. No receiver shall be appointed without notice to the adverse party at least 10 days before the time specified for the hearing, unless a different period is fixed by order of the court.

D. Form of order appointing receivers. Every order or judgment appointing a receiver:

D.(1) Shall contain a reasonable description of the property included in the receivership;

D.(2) Shall fix the time within which the receiver shall file a report setting forth (a) the property of the debtor in greater detail, (b) the interests in and claims against it, and (c) its income-producing capacity and recommendations as to the best method of realizing its value for the benefit of those entitled;

D.(3) Shall, when a general receiver is appointed to liquidate and wind up affairs, set a time within which creditors and claimants shall file their claims or be barred; and

D.(4) May require periodic reports from the receiver.

E. Notice to persons interested in receivership. A general receiver appointed to liquidate and wind up affairs shall under the direction of the court, give notice to the creditors of the corporation, of the partnership or association, or of the individual, in such manner as the court may direct, requiring such creditors to file their claims, duly verified, with the receiver, the

receiver's attorney, or the clerk of the court, within such time as the court directs.

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F.(2) Request for special notice. At any time after a receiver is appointed, any person interested in said receivership as a party, creditor, or otherwise, may serve upon the receiver (or upon the attorney for such receiver) and file with the clerk a written request stating that such person desires special notice of any and all of the following named steps in the administration of said receivership:

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