

RULE 82

ENFORCING JUDGMENTS AGAINST TANGIBLE PERSONAL PROPERTY

A. Scope. Rule 82 applies to chattels, securities as defined in ORS 78.1020 except a certificate of an account or obligation or interest therein of a savings and loan institution, and negotiable instruments. As used in this rule "personal property" refers to any such assets owned by the debtor.

B. Lien of execution or attachment. A creditor obtains a lien on personal property by levy under a writ of attachment or execution.

C. Issuance of writ of execution; contents; duration; return.

C.(1) The party in whose favor a judgment is entered, which requires the payment of money, may at any time after the entry thereof, and so long as the judgment remains valid under Rule 80 B.(3), have a writ of execution issued for its enforcement.

C.(2) Upon receiving a written request from the creditor a writ shall be issued by the clerk and directed to the sheriff. It shall contain the name of the court, the names of the parties to the action, and the title thereof; it shall substantially describe the judgment, state the amount actually due thereon, and shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor.

C.(3) A writ may be issued to the sheriff of any county in this state. Writs may be issued at the same time, or at different times, to different counties. Successive levies may be made under a single writ.

C.(4) A writ remains valid for 60 days after its receipt by the sheriff and levies may be made thereunder only during such period. The sheriff shall endorse on the writ the time when he received it.

C.(5) Promptly after the expiration of the period of validity of the writ or after the completion of any sale held thereunder, the sheriff shall return the same to the clerk's office from whence it issued endorsing thereon a statement of the sheriff's proceedings thereunder with an inventory of any property levied upon and an accounting respecting the proceeds of any sales.

D. Manner of levying under writ of execution.

D.(1) Personal property capable of manual delivery to the sheriff, and not in the possession of a third person, shall be levied on by taking it into his custody.

D.(2) When, in the judgment of the sheriff, the cost of removal, transport, or storage of an item of property relative to the amount of the judgment makes physical seizure impractical, an effective levy may be made by inventorying the property and delivering to the debtor a copy of the inventory, a copy of the writ, and a notice signed by the sheriff stating that the property is levied on and directing the debtor to hold the same subject to further order. The sheriff may appoint some person as keeper in connection with such a levy.

E. Multiple writs against the same debtor.

E.(1) If several writs of execution or attachment against the same debtor have been delivered to a sheriff, a single levy creates a lien in favor of each creditor. Such liens rank in the order in which the several writs were delivered to the sheriff.

E.(2) If a writ against a debtor is delivered to a sheriff who has already levied upon an item of property of such debtor, a further levy thereon is not necessary and a lien in favor of the creditor for whom the writ was issued attaches to the item at the time the writ is delivered to the sheriff.

F. Liquidation and distribution.

F.(1) Unless otherwise provided by rule, or specially ordered by the court, the sheriff shall sell personal property he has levied upon at public auction not sooner than 15 days and not later than 30 days after it has been levied on under a writ of execution or after he is notified of entry of judgment by the creditor if the property is held by the sheriff under a writ of attachment.

F.(2) The auction may be conducted by any person and at any time and place designated by the sheriff that, in the sheriff's judgment, will be conducive to a favorable sale. Property held under several writs against the same, or different, debtors may be sold at a single auction and a sheriff may join with other sheriffs or public officials and conduct a joint auction.

F.(3) Not later than 10 days before the auction the sheriff shall publish an advertisement thereof in a newspaper published in the community in which the sale will be held or, if there is none, then in the community nearest thereto. Any person may, at his own expense, publish additional advertisements respecting the sale.

F.(4) The creditor must serve on the debtor notice of the time and place of sale not later than 7 days before the auction and must serve on senior and junior encumbrancers the notices required by Rule 77 B.(2) and (3).

F.(5) If, at the time appointed for the sale, the sheriff is prevented from attending at the place appointed, or being present deems it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week, next after the day appointed, and so from time to time for like cause, giving notice of every adjournment by public proclamation, made at the same time and by readvertisement.

F.(6) When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired, shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property, the sheriff shall give the purchaser a bill of sale with like acknowledgment.

F.(7) Securities, whether listed or unlisted, for which a regular market exists, shall be sold through a registered broker-dealer in the usual commercial manner. The debtor shall be notified of the broker's name and address and the time at which the securities will be delivered to him for sale, but no other notices or advertisement is required. The court may order the debtor to make any endorsements necessary to the sale of the shares, or may authorize the sheriff to make such endorsement on the debtor's behalf.

F.(8) Perishable property shall be sold promptly after levy in a commercially reasonable manner. The notices referred to in subsection F.(4) may be given by telephone and may be omitted, with the sheriff's approval, if delay would prevent a favorable sale.

F.(9) The proceeds of any sale shall be paid by the sheriff to the clerk and applied by the clerk first to payment of the expenses of the sale, then to creditors who held liens of the property in order of priority, and any surplus remaining to the debtor. Any unsold property shall be returned to the debtor.

G. Special rules for levy on chattels in which third persons have possessory rights.

G.(1) Personal property of the debtor in the possession of a pledgee may be levied on by serving on the pledgee a notice signed by the sheriff, stating that certain described property is levied on under a writ identified in the notice, and directing the pledgee to deliver the goods to the sheriff when the terms of the pledge have been satisfied. The creditor may redeem the property from the pledge

and add the expense of such redemption to the amount secured by the lien of execution or attachment under which the levy was made.

G.(2) Personal property of the debtor in the possession of a lessee may be similarly levied on except that the notice shall direct delivery to the sheriff at the termination of the lease and shall further direct the lessee to make any rental payments due or coming due under the lease to the sheriff.

G.(3) Personal property covered by a negotiable document of title may be levied on only in compliance with ORS 77.6020.

G.(4) If personal property of the debtor is in the possession of a third person but a creditor seeking to levy thereon contests the right of such person to retain possession, the creditor may institute proceedings analogous to those authorized by Rule 77 B.(5).

COMMENT

Rule 82

The treatment of securities as chattels in section A. is required by ORS 78.3170, the exception for savings and loan certificates by ORS 29.170(4).

Section B. is derived from ORS 23.410(5).

Subsection C.(1) is ORS 23.030 limited to money judgments. Subsection C.(2) is derived from ORS 23.050(1). Subsection C.(3) is derived from ORS 23.070. It contemplates that the clerk of a district court may issue writs to other counties without the necessity of filing a transcript of the judgment in the circuit court as seemingly required by ORS 46.275. Subsection C.(4) is derived from ORS 23.060. Subsection C.(5) is derived from ORS 23.060 and 29.180.

Section D. is derived from ORS 29.170(2) and the first four lines of ORS 29.170(3). It makes the sheriff's determination about "manual delivery" conclusive.

Section E. is suggested by New York C.P.L.R. 5234(b).

Subsections F.(1) and (2) are new. The idea is to allow some leeway but to require reasonably prompt sale. The 15-day minimum in subsection F.(1) is to allow the notices required by subsection F.(4) to be sent and reacted to. Subsection F.(2) is an effort to improve the chances of a remunerative sale by enlarging the sheriff's options. He may, e.g., hire a professional auctioneer or have levied on property sold in connection with one of the periodic auctions of surplus state property. Subsections F.(3) and (4) are derived from ORS 23.450(1) with the change that the responsibility for serving notice of the sale is put

on the creditor. Subsection F.(5) is ORS 23.470. Subsection F.(6) is ORS 23.480. Subsection F.(7) is new; ORS 23.420(2) was probably repealed by implication by 78.3170, at least where a share certificate is outstanding, and a sheriff's auction of this kind of property makes little sense. Subsection F.(8) is new. If the property is really perishable (less common today than in the unrefrigerated past), the 48-hour delay required by ORS 23.450(1) may be too long. The "commercially reasonable manner" language comes from ORS 79.5040. Subsection F.(9) is derived from ORS 23.410(5) and (6).

Subsections G.(1) and (2) are derived from ORS 29.170(3), in so far as that subsection applied to chattels in the garnishee's possession, and spells out more clearly that a levy does not disturb the rights of third persons. Subsection G.(2) conveniently combines a levy on a leased chattel with garnishment of accruing rent payments. Subsection G.(4) provides an alternate to the indemnity-to-the-sheriff procedure of Rule 77 G. when the third party is in actual possession of the property and not merely suspected of having a claim.

ORS sections superseded: 23.030-.070, 23.410, 23.420(2)(3), 23.450(1), 23.460-.480, 29.170(3)(4), 29.180, 29.200, 29.210, 46.275.



RULE 92

BONDS AND UNDERTAKINGS

A. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting his liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

B. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under C.(2) of this rule.

C. Qualifications of sureties.

C.(1) Individuals. Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where

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there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

C.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

D. Affidavits of sureties.

D.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section C. of this rule.

D.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and swearing that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

D.(3) Service. When a bond or undertaking is given for the benefit of a party, a copy of such bond or undertaking shall be served on that party promptly in the manner prescribed in Rule 9. Proof of service thereof shall thereupon be filed promptly in the court in which the bond or undertaking has been filed.

E. Objections to sureties. If the party for whose benefit a bond or undertaking is taken is not satisfied with the sufficiency of the sureties, that party may, within 10 days after

the receipt of a copy of the bond, serve upon the officer taking the bond and the party giving the bond, or the attorney for the party giving the bond, a notice that the party for whose benefit the bond is taken objects to the sufficiency of such sureties. If the party for whose benefit the bond is taken fails to do so, that party is deemed to have waived all objection to the sureties.

F. Hearing on objections to sureties.

F.(1) Request for hearing. Notice of objections to a surety as provided in section E. shall be filed in the form of a motion for hearing on objections to the bond. Upon demand of the objecting party, each surety shall appear at the hearing of such motion and be subject to examination as to such surety's pecuniary responsibility or the validity of the execution of the bond. Upon hearing of such motion, the court may approve or reject the bond as filed or require such amendment, substitute or additional bond as the circumstances shall warrant.

F.(2) Information to be furnished. Sureties on any bond or undertaking shall furnish such information as may be required by the judge approving the same.

F.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner or a certified copy thereof.

G. Deposits in lieu of undertakings and bonds. ORS Chapter 22 governs the circumstances and procedure whereby deposits may be made in lieu of a bond or undertaking.

RULE 92

COMMENT

Oregon has no general statutes regarding bonds and undertakings. Various ORS sections make reference to bonds and undertakings (e.g., ORS 20.160, 23.310, 29.220, and 105.140), but there are no general rules. The rule which follows does not cover when a bond or undertaking is required or permitted; this is left to individual statutes or rules. It does provide some uniform rules for approval and justification and proceeding against the surety. Under 1 A., these provisions would be followed in all civil actions when no other specific procedure is provided. The rule does not deal with deposits in lieu of undertakings, which is ORS Chapter 22. It might be desirable to put that here, but Chapter 22 applies to criminal and administrative proceedings as well as civil actions. The Council could not change Chapter 22 for anything but civil actions, and it would be confusing to have separate procedures in the rules and Chapter 22. The rule then merely contains a cross reference to Chapter 22 (section G.).

Section A.

This is the most important portion of the rule. It was adapted from Federal Rule 65.1. The rule provides a summary procedure for recovery on the bond. Someone relying upon the bond is entitled to more than the right to bring a separate action. The procedure is analogous to that provided for undertakings on appeal, ORS 19.040(3) and 19.190(2). The procedure does not prohibit an

independent action on the bond if desired. Lonogan v. Jackson, 229 Or. 205, 366 P.2d 725 (1961). For a general discussion, see 11 Wright and Miller, Federal Practice and Procedure §§ 2971 - 2974.

Sections B. through H.

These rules were drawn from Alaska Rules of Civil Procedure 80 and Michigan General Court Rules 763.4. The procedure is somewhat similar to that provided for bonds for civil arrest in ORS Chapter 29. Note, the rule preserves the possibility of private sureties. Although problems of approval and justification are more complex, commercial bonds are expensive and unavailable to some people.

RULE 79

BONDS AND UNDERTAKINGS

A. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting his liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

B. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under C.(2) of this rule.

C. Qualifications of sureties.

C.(1) Individuals. Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where

there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

C.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

D. Affidavits of sureties.

D.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section C. of this rule.

D.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and swearing that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

D.(3) Service. When a bond or undertaking is given for the benefit of a party, a copy of such bond or undertaking shall be served on that party promptly in the manner prescribed in Rule 9. Proof of service thereof shall thereupon be filed promptly in the court in which the bond or undertaking has been filed.

E. Objections to sureties. If the party for whose benefit a bond or undertaking is taken is not satisfied with the sufficiency of the sureties, that party may, within 10 days after

the receipt of a copy of the bond, serve upon the officer taking the bond and the party giving the bond, or the attorney for the party giving the bond, a notice that the party for whose benefit the bond is taken objects to the sufficiency of such sureties. If the party for whose benefit the bond is taken fails to do so, that party is deemed to have waived all objection to the sureties.

F. Hearing on objections to sureties.

F.(1) Request for hearing. Notice of objections to a surety as provided in section E. shall be filed in the form of a motion for hearing on objections to the bond. Upon demand of the objecting party, each surety shall appear at the hearing of such motion and be subject to examination as to such surety's pecuniary responsibility or the validity of the execution of the bond. Upon hearing of such motion, the court may approve or reject the bond as filed or require such amendment, substitute or additional bond as the circumstances shall warrant.

F.(2) Information to be furnished. Sureties on any bond or undertaking shall furnish such information as may be required by the judge approving the same.

F.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner or a certified copy thereof.

G. Deposits in lieu of undertakings and bonds. ORS Chapter 22 governs the circumstances and procedure whereby deposits may be made in lieu of a bond or undertaking.



for the purpose of protecting plaintiff's ability to satisfy the judgment. There might be situations where some other type of preliminary order is needed to prevent a judgment from being useless. Both the provisional process rules and the preliminary injunction rules have the same basic due process elements: (a) court order, (b) bond, and (c) hearing before or soon after the provisional remedy. The exact procedure specified, however, is different.

The only change suggested by the Jackson subcommittee was in paragraph B.(1) where an affidavit, rather than a certificate, is required.

#### RULE 79 - BONDS AND UNDERTAKINGS

This rule is not limited to provisional remedies and would govern for all bonds. The most important and common bond provisions are in the area of provisional remedies, and this would cover bonds referred to in Rules 72, 73, 74, and 75.

The Jackson subcommittee did not suggest any changes in the draft of this rule.

#### RULE 90 - JUDGMENTS FOR SPECIFIC ACTS

This rule relates to enforcement of judgments. It covers the same area as Rule 70 of the federal rules. This was taken from Lacy's Rule 87 E.

#### RULE 91 - RECEIVERS

This rule again includes only receiverships ancillary to judgment and relating to corporations. Provisional receiverships to preserve property for enforcement of judgment, if one is

RULE 82

SECURITY; BONDS AND UNDERTAKINGS;  
JUSTIFICATION OF SURETIES

A.(1) Restraining orders; preliminary injunctions. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A.(2) When no security required. No security will be required under this section where:

A.(2)(a) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A.(2)(b) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies; or

A.(3) Receivers. No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A.(4) Attachment or claim and delivery bond.

A.(4)(a) Before any property is attached or taken by the sheriff under Rule 85, the plaintiff must file with the clerk

a surety bond, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond.

A.(4)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond, the court may require the plaintiff to give additional security.

A.(4)(c) No bond shall be required before property is taken by the sheriff under Rule 85, if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A.(5) Other provisional process. No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A.(6) Form of security or bond. Unless otherwise ordered by the court under subsection (6) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186.

A.(7) Modification of security requirements by court.

The court may waive, reduce, or limit any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon a showing of good cause and on such terms as may be just and equitable.

B. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting his liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

C. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under D.(2) of this rule.

D. Qualifications of sureties.

D.(1) Individuals. Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

D.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

E. Affidavits of sureties.

E.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section D. of this rule.

E.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and stating that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

E.(3) Service. When a bond or undertaking is given for the benefit of a party, a copy of such bond or undertaking shall be served on that party promptly in the manner prescribed

in Rule 9. Proof of service thereof shall thereupon be filed promptly in the court in which the bond or undertaking has been filed.

F. Objections to sureties. If the party for whose benefit a bond or undertaking is given is not satisfied with the sufficiency of the sureties, that party may, within 10 days after the receipt of a copy of the bond, serve upon the party giving the bond, or the attorney for the party giving the bond, a notice that the party for whose benefit the bond is given objects to the sufficiency of such sureties. If the party for whose benefit the bond is given fails to do so, that party is deemed to have waived all objection to the sureties.

G. Hearing on objections to sureties.

G.(1) Request for hearing. Notice of objections to a surety as provided in section F. shall be filed in the form of a motion for hearing on objections to the bond. Upon demand of the objecting party, each surety shall appear at the hearing of such motion and be subject to examination as to such surety's pecuniary responsibility or the validity of the execution of the bond. Upon hearing of such motion, the court may approve or reject the bond as filed or require such amendment, substitute, or additional bond as the circumstances will warrant.

G.(2) Information to be furnished. Sureties on any bond or undertaking shall furnish such information as may be required by the judge approving the same.

G.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner or a certified copy thereof.

COMMENT

The bond requirement for release of party from attachment lien is found in Rule 84 E. This rule has most of the bond requirements for provisional remedies in ORCP 79-85. See ORS 22.010, which provides that bonds are not required for certain parties. This rule also contains some general rules on the form of security when required and general rules for justification of sureties.

Subsections A.(1) through A.(5) state when bonds will be required for various provisional remedies. Subsection A.(1) was taken from Federal Rule 65 (c). The exceptions in A.(2) are those contained in ORS 32.020(3). Note, this bond requirement would apply to injunctions and restraining orders both under ORCP 79 and 83. Subsection A.(3) is adapted from ORS 31.030. Paragraph A.(4)(a) is taken from ORS 29.130, but the court sets the amount of the bond. Paragraph A.(4)(b) is new. The bond requirement also applies to claim and delivery as well as attachment. The bond requirement would apply to any attachment whether by Rule 84 or ORS chapter 29. The existing provisions for claim and delivery do not require a bond. Paragraph A.(4)(c) is new and recognizes that a bond should not be required in claim and delivery when the underlying claim is a wrongful taking. No bond should be necessary to recover stolen property. See paragraph A.(2)(b). Since under ORCP 83 the court must determine that there is probable cause the underlying claim has validity before claim and delivery is possible, the basis of the claim can be easily determined. Subsection A.(5) is new and makes clear that a bond is required for all provisional process no matter how labelled. The definition of provisional process is found in ORCP 83 A.(9).

Subsections A.(6) and A.(7) apply to all bonds required by the ORCP, not simply to those required by subsections A.(1) through A.(5) of this rule. Subsection A.(6) is new. Subsection A.(7) was adapted from ORS 32.020(2). Note, ORS chapter 22 allows deposit in lieu of bond without court order in some circumstances.

Sections B. through G. apply to all bonds in trial level civil proceedings, whether required by ORCP or ORS. Section B.

was adapted from Federal Rule 65.1 and authorizes a supplementary procedure to enforce the bond. The procedure is analogous to that provided for undertakings on appeal, ORS 19.040(3) and ORS 19.190(2). This would not prohibit an independent action on the bond. Lonogan v. Jackson, 229 Or. 205, 366 P.2d 723 (1961). Sections C. through G. were adapted from Alaska Rules of Civil Procedure 80 and Michigan General Court Rule 763.4.



RULE 82

SECURITY; BONDS AND UNDERTAKINGS;  
JUSTIFICATION OF SURETIES

A.(1) Restraining orders; preliminary injunctions. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A.(2) When no security required. No security will be required under this section where:

A.(2)(a) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A.(2)(b) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

A.(3) Receivers. No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A.(4) Attachment or claim and delivery bond.

A.(4)(a) Before any property is attached or taken by the sheriff under Rule 85, the plaintiff must file with the clerk

a surety bond, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond.

A.(4)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond, the court may require the plaintiff to give additional security.

A.(4)(c) No bond shall be required before property is taken by the sheriff under Rule 85, if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A.(5) Other provisional process. No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A.(6) Form of security or bond. Unless otherwise ordered by the court under subsection (7) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186.

A.(7) Modification of security requirements by court.

The court may waive, reduce, or limit any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon a showing of good cause and on such terms as may be just and equitable.

B. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting his liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

C. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under D.(2) of this rule.

D. Qualifications of sureties.

D.(1) Individuals. Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

D.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

E. Affidavits of sureties.

E.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section D. of this rule.

E.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and stating that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

E.(3) Service. When a bond or undertaking is given for the benefit of a party, a copy of such bond or undertaking shall be served on that party promptly in the manner prescribed

in Rule 9. Proof of service thereof shall thereupon be filed promptly in the court in which the bond or undertaking has been filed.

F. Objections to sureties. If the party for whose benefit a bond or undertaking is given is not satisfied with the sufficiency of the sureties, that party may, within 10 days after the receipt of a copy of the bond, serve upon the party giving the bond, or the attorney for the party giving the bond, a notice that the party for whose benefit the bond is given objects to the sufficiency of such sureties. If the party for whose benefit the bond is given fails to do so, that party is deemed to have waived all objection to the sureties.

G. Hearing on objections to sureties.

G.(1) Request for hearing. Notice of objections to a surety as provided in section F. shall be filed in the form of a motion for hearing on objections to the bond. Upon demand of the objecting party, each surety shall appear at the hearing of such motion and be subject to examination as to such surety's pecuniary responsibility or the validity of the execution of the bond. Upon hearing of such motion, the court may approve or reject the bond as filed or require such amendment, substitute, or additional bond as the circumstances will warrant.

G.(2) Information to be furnished. Sureties on any bond or undertaking shall furnish such information as may be required by the judge approving the same.

G.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner or a certified copy thereof.

#### COMMENT

The bond requirement for release of party from attachment lien is found in Rule 84. This rule has most of the bond requirements for provisional remedies in ORCP 79-85. See ORS 22.010, which provides that bonds are not required for certain parties. This rule also contains some general rules on the form of security when required and general rules for justification of sureties.

Subsections A.(1) through A.(5) state when bonds will be required for various provisional remedies. Subsection A.(1) was taken from Federal Rule 65 (c). The exceptions in A.(2) are those contained in ORS 32.020(3). Note, this bond requirement would apply to injunctions and restraining orders both under ORCP 79 and 83. Subsection A.(3) is adapted from ORS 31.030. Paragraph A.(4)(a) is taken from ORS 29.130, but the court sets the amount of the bond. Paragraph A.(4)(b) is new. The bond requirement also applies to claim and delivery as well as attachment. The existing provisions for claim and delivery do not require a bond. Paragraph A.(4)(c) is new and recognizes that a bond should not be required in claim and delivery when the underlying claim is a wrongful taking. No bond should be necessary to recover stolen property. See paragraph A.(2)(b). Since under ORCP 83 the court must determine that there is probable cause the underlying claim has validity before claim and delivery is possible, the basis of the claim can be easily determined. Subsection A.(5) is new and makes clear that a bond is required for all provisional process no matter how labelled. The definition of provisional process is found in ORCP 83 A.(9).

Subsections A.(6) and A.(7) apply to all bonds required by the ORCP, not simply to those required by subsections A.(1) through A.(5) of this rule. Subsection A.(6) is new. Subsection A.(7) was adapted from ORS 32.020(2). Note, ORS chapter 22 allows deposit in lieu of bond without court order in some circumstances.

Sections B. through G. apply to all bonds in trial level civil proceedings, whether required by ORCP or ORS. Section B.

was adapted from Federal Rule 65.1 and authorizes a supplementary procedure to enforce the bond. The procedure is analogous to that provided for undertakings on appeal, ORS 19.040(3) and ORS 19.190(2). This would not prohibit an independent action on the bond. Lonogan v. Jackson, 229 Or. 205, 366 P.2d 723 (1961). Sections C. through G. were adapted from Alaska Rules of Civil Procedure 80 and Michigan General Court Rule 763.4.

RULE 82

SECURITY; BONDS AND UNDERTAKINGS;  
JUSTIFICATION OF SURETIES

A.(1) Restraining orders; preliminary injunctions.

A.(1)(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A.(1)(b) No security will be required under this section where:

A.(1)(b)(i) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A.(1)(b)(ii) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

A.(2) Receivers. No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A.(3) Attachment or claim and delivery.

A.(3)(a) Before any property is attached under Rule 84 or taken by the sheriff under Rule 85, the plaintiff must file with



the clerk a surety bond, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond.

A.(3)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond, the court may require the plaintiff to give additional security.

A.(3)(c) No bond shall be required before property is taken by the sheriff under Rule 85 if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A.(4) Other provisional process. No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A.(5) Form of security or bond. Unless otherwise ordered by the court under subsection (6) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186.

A.(6) Modification of security requirements by court.

The court may waive, reduce, or limit any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon a showing of good cause and on such terms as may be just and equitable.

B. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

C. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under D.(2) of this rule.

D. Qualifications of sureties.

D.(1) Individuals. Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

D.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

E. Affidavits of sureties.

E.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section D. of this rule.

E.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and stating that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

E.(3) Service. When a bond or undertaking is given for the benefit of a party, a copy of such bond or undertaking shall be served on that party promptly in the manner prescribed

in Rule 9. Proof of service thereof shall thereupon be filed promptly in the court in which the bond or undertaking has been filed.

F. Objections to sureties. If the party for whose benefit a bond or undertaking is given is not satisfied with the sufficiency of the sureties, that party may, within 10 days after the receipt of a copy of the bond, serve upon the party giving the bond, or the attorney for the party giving the bond, a notice that the party for whose benefit the bond is given objects to the sufficiency of such sureties. If the party for whose benefit the bond is given fails to do so, that party is deemed to have waived all objection to the sureties.

G. Hearing on objections to sureties.

G.(1) Request for hearing. Notice of objections to a surety as provided in section F. shall be filed in the form of a motion for hearing on objections to the bond. Upon demand of the objecting party, each surety shall appear at the hearing of such motion and be subject to examination as to such surety's pecuniary responsibility or the validity of the execution of the bond. Upon hearing of such motion, the court may approve or reject the bond as filed or require such amended, substitute, or additional bond as the circumstances will warrant.

G.(2) Information to be furnished. Sureties on any bond or undertaking shall furnish such information as may be required by the judge approving the same.

G.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner or a certified copy thereof.

#### COMMENT

The bond requirement for release of party from attachment lien is found in Rule 84 F. This rule has most of the bond requirements for provisional remedies in ORCP 79-85. See ORS 22.010, which provides that bonds are not required for certain parties. This rule also contains some general rules on the form of security when required and general rules for justification of sureties.

Subsections A.(1) through A.(4) provide when bonds will be required for various provisional remedies. Subsection A.(1)(a) was taken from Federal Rule 65 (c). The exceptions in A.(1)(b) are those contained in ORS 32.020(3). Note, this bond requirement would apply to injunctions and restraining orders both under ORCP 79 and 83. Subsection A.(2) is adapted from ORS 31.030. Paragraph A.(3)(a) is taken from ORS 29.130, but the court sets the amount of the bond. Paragraph A.(3)(b) is new. The bond requirement also applies to claim and delivery as well as attachment. The existing provisions for claim and delivery do not require a bond. Paragraph A.(3)(c) is new and recognizes that a bond should not be required in claim and delivery when the underlying claim is a wrongful taking. No bond should be necessary to recover stolen property. See subparagraph A.(1)(b)(ii). Since under ORCP 83 the court must determine that there is probable cause the underlying claim has validity before claim and delivery is possible, the basis of the claim can be easily determined. Subsection A.(4) is new and makes clear that a bond is required for all provisional process. The definition of provisional process is found in ORCP 81 A.(9).

Subsections A.(5) and A.(6) apply to all bonds required by the ORCP, not simply to those required by subsections A.(1) through A.(4) of this rule. Subsection A.(5) is new. Subsection A.(6) was adapted from ORS 32.020(2). Note, ORS chapter 22 allows deposit in lieu of bond without court order in some circumstances and provides that the state, cities, or counties are not required to furnish bonds.

Sections B. through G. apply to all bonds in trial level civil proceedings, whether required by ORCP or ORS. Section B.

was adapted from Federal Rule 65.1 and authorizes a supplementary procedure to enforce the bond. The procedure is analogous to that provided for undertakings on appeal, ORS 19.040(3) and ORS 19.190(2). This would not prohibit an independent action on the bond. Lonogan v. Jackson, 229 Or. 205, 366 P.2d 723 (1961). Sections C. through G. were adapted from Alaska Rules of Civil Procedure 80 and Michigan General Court Rule 763.4.

SECURITY; BONDS AND UNDERTAKINGS;  
JUSTIFICATION OF SURETIES

A. Security required.

A.(1) Restraining orders; preliminary injunctions.

A.(1)(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A.(1)(b) No security will be required under this subsection where:

A.(1)(b)(i) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A.(1)(b)(ii) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

A.(2) Receivers. No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A.(3) Attachment or claim and delivery.

A.(3)(a) Before any property is attached under Rule 84 or taken by the sheriff under Rule 85, the plaintiff must file with

the clerk a surety bond, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond.

A.(3)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond, the court may require the plaintiff to give additional security.

A.(3)(c) No bond shall be required before property is taken by the sheriff under Rule 85 if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A.(4) Other provisional process. No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A.(5) Form of security or bond. Unless otherwise ordered by the court under subsection (6) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186.



A.(6) Modification of security requirements by court.

The court may waive, reduce, or limit any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon an ex parte showing of good cause and on such terms as may be just and equitable.

B. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. Any surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

C. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all undertakings, bonds, and stipulations of security given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under subsection D.(2) of this rule.

D. Qualifications of sureties.

D.(1) Individuals. Each individual surety must be a resident of the state. Each must be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities, except that where there are more than two sureties, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

D.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

E. Affidavits of sureties.

E.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section D. of this rule.

E.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and stating that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

E.(3) Service. When a bond or undertaking is given for the benefit of a party, a copy of such bond or undertaking shall be served on that party promptly in the manner prescribed

in Rule 9 A. Proof of service thereof shall thereupon be filed promptly in the court in which the bond or undertaking has been filed.

F. Objections to sureties. If the party for whose benefit a bond or undertaking is given is not satisfied with the sufficiency of the sureties, that party may, within 10 days after the receipt of a copy of the bond, serve upon the party giving the bond, or the attorney for the party giving the bond, a notice that the party for whose benefit the bond is given objects to the sufficiency of such sureties. If the party for whose benefit the bond is given fails to do so, that party is deemed to have waived all objection to the sureties.

G. Hearing on objections to sureties.

G.(1) Request for hearing. Notice of objections to a surety as provided in section F. of this rule shall be filed in the form of a motion for hearing on objections to the bond. Upon demand of the objecting party, each surety shall appear at the hearing of such motion and be subject to examination as to such surety's pecuniary responsibility or the validity of the execution of the bond. Upon hearing of such motion, the court may approve or reject the bond as filed or require such amended, substitute, or additional bond as the circumstances will warrant.

G.(2) Information to be furnished. Sureties on any bond or undertaking shall furnish such information as may be required by the judge approving the same.

G.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner or a certified copy thereof.

COMMENT

The provision allowing release of property from attachment by posting a bond is found in Rule 84 F. This rule has most of the bond requirements for provisional remedies in ORCP 79-85. See ORS 22.010, which provides that bonds are not required for certain parties. This rule also contains some general rules on the form of security when required and general rules for justification of sureties.

Subsections A.(1) through A.(4) provide when bonds will be required for various provisional remedies. Paragraph A.(1)(a) was taken from Federal Rule 65 (c). The exceptions in A.(1)(b) are those contained in ORS 32.020(3). Note, this bond requirement would apply to injunctions and restraining orders both under ORCP 79 and 83. Subsection A.(2) is adapted from ORS 31.030. Paragraph A.(3)(a) is taken from ORS 29.130, but the court sets the amount of the bond. Paragraph A.(3)(b) is new. The bond requirement also applies to claim and delivery as well as attachment. The existing provisions for claim and delivery do not require a bond. Paragraph A.(3)(c) is new and recognizes that a bond should not be required in claim and delivery when the underlying claim is a wrongful taking. No bond should be necessary to recover stolen property. See subparagraph A.(1)(b)(ii). Since under ORCP 83 the court must determine that there is probable cause the underlying claim has validity before claim and delivery is possible, the basis of the claim can be easily determined. Subsection A.(4) is new and makes clear that a bond is required for all provisional process. The definition of provisional process is found in ORCP 81 A.(9).

Subsections A.(5) and A.(6) apply to all bonds required by the ORCP, not simply to those required by subsections A.(1) through A.(4) of this rule. Subsection A.(5) is new. Subsection A.(6) was adapted from ORS 32.020(2). Note, ORS chapter 22 allows deposit in lieu of bond without court order in some circumstances and provides that the state, cities, or counties are not required to furnish bonds.

Sections B. through G. apply to all bonds in trial level civil proceedings, whether required by ORCP or ORS. Section B.

was adapted from Federal Rule 65.1 and authorizes a supplementary procedure to enforce the bond. The procedure is analogous to that provided for undertakings on appeal, ORS 19.040(3) and ORS 19.190(2). This would not prohibit an independent action on the bond. Lonogan v. Jackson, 229 Or. 205, 366 P.2d 725 (1961). Sections C. through G. were adapted from Alaska Rules of Civil Procedure 80 and Michigan General Court Rule 763.