

AMENDMENTS

TO ORCP 72

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

RULE 72

STAY OF PROCEEDINGS TO ENFORCE JUDGMENT

A. Immediate execution; discretionary stay. Execution or other proceeding to enforce a judgment may issue immediately upon the entry of the judgment, unless the court directing entry of the judgment, in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. No stay of proceedings to enforce judgment may be entered by the trial court under this section after the notice of appeal has been served and filed as provided in ORS 19.023 through 19.029 and during the pendency of such appeal.

B. Other stays. This rule does not limit the right of a party to a stay otherwise provided for by these rules or other statute or rule.

C. Stay or injunction in favor of public body. The federal government, any of its public corporations or commissions, the state, any of its public corporations or commissions, a county, a municipal corporation, or other similar public body shall not be required to furnish any bond or other security when a stay is granted by authority of section A. of this rule in any action to which it is a party or is responsible for payment or performance of the judgment.

D. Stay of judgment as to multiple claims or multiple parties. When a court has ordered a final judgment under the conditions stated in Rule 67 B., the court may stay enforcement of that judgment or judgments and may prescribe such conditions

as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

COMMENT

Existing ORS sections do not clearly cover stay of enforcement of judgment, other than providing for an automatic stay by the supersedeas bond. ORS 19.040, et. seq. This rule does not change the supersedeas bond provisions or affect the power of the appellate court to grant a stay pending appeal, but deals with the power of the trial court to stay enforcement of judgment.

Section 72 A. is taken from Utah Rule of Civil Procedure 62(a) and restates existing Oregon law. Helms Groover & Dubber Co. v. Copenhagen, 93 Or. 410, 416, 177 P. 935 (1919). The last sentence is not in the Utah rule but states the existing Oregon rule. State ex rel Peterkort v. Bohannon, 210 Or. 215, 217, 309 P.2d 800 (1957).

A bond is only necessary where the party against whom judgment is entered might not perform. Therefore, section 72 C. provides that when a public body would be responsible, no bond is needed. See ORS 22.010 and 20.140.

Section 72 D. is taken from ORS 18.125(2).

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COMMENT

Section A is amended, at the suggestion of the OSB Appellate Practice Section, to achieve consistency with ORS 19.140, and with what appears to be currently accepted practice, by clarifying that trial courts have discretionary authority to stay execution of their judgments both before and after a notice of appeal is filed.