

AMENDMENTS

TO ORCP 73

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

RULE 73

JUDGMENTS BY CONFESSION

A. Judgments which may be confessed.

A.(1) For money due; where allowed. Judgment by confession may be entered without action for money due in the manner prescribed by this rule. Such judgment may be entered in any court having jurisdiction over the subject matter. The application to confess judgment shall be made in the county in which the defendants, or one of them, reside or may be found at the time of the application. A judgment entered by any court in any other county has no force or validity, notwithstanding anything in the defendant's statement to the contrary.

A.(2) Consumer transactions. No judgment by confession may be entered without action upon a contract, obligation, or liability which arises out of the sale of goods or furnishing of services for personal, family, or household use, or out of a loan or other extension of credit for personal, family, or household purposes, or upon a promissory note which is based upon such sale or extension of credit.

B. Statement by defendant. A statement in writing must be made, signed by any party against whom judgment is to be entered or a person authorized to bind such party, and verified by oath, as follows:

B.(1) It must authorize the entry of judgment for a specified sum;

8.(2) It must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly and presently due;

8.(3) It must contain a statement that the person or persons signing the judgment understands that it authorizes entry of judgment without further proceeding which would authorize execution to enforce payment of the judgment; and

8.(4) It must have been executed after the date or dates when the sums described in the statement were due.

C. Application by plaintiff. Judgment by confession may be ordered by the court upon the filing of the statement required by section 8. of this rule. The judgment may be entered and enforced in the same manner and with the same effect as a judgment in an action.

D. Confession by joint debtors. One or more joint debtors may confess a judgment for a joint debt due. Where all the joint debtors do not unite in the confession, the judgment shall be entered and enforced against only those who confessed it and it is not a bar to an action against the other joint debtors upon the same demand.

#### COMMENT

This rule retains confessions of judgment without action in a more limited form than ORS 26.110-26.130 but is consistent with existing Oregon practice and constitutional limitations.

Under subsection 73 A.(1), the use of the device is limited to amounts actually due. The confession of judgment should not be used generally as a security device. The limiting of the place of entry is adapted from Ill. Stat. Ann. Ch. 110, § 50(3) (1968).

Subsection 73 A.(2) prohibits use of the procedure in actions arising from consumer transactions. This is simply carrying forward prior legislative action which prohibited the procedure in

many consumer transactions. See ORS 83.670(1), 91.745(1)(b), and 697.733(3). The language used was adapted from Cal. Code of Civ. Proc. § 1132.

Section 73 B. is new and is intended to allow confessions of judgments based upon agreement by the debtor after the amounts claimed were due and not allow confessions of judgment based upon a cognovit agreement in the original agreement or instrument creating the debt. The cognovit situation is the one most open to abuse and where due process may require some hearing or notice before entry of the judgment. Testimony received by the Council indicated that confessions of judgments based upon cognovit agreements were not used in Oregon practice, but the confession of judgment was needed to encourage some settlements when a debtor acknowledges that a debt is due but cannot pay immediately.

Sections 73 C. and D. were adapted from N.Y. C.P.L.R. § 3218.

RULE 74 (RESERVED)

RULE 75 (RESERVED)

RULE 76 (RESERVED)

RULE 77 (RESERVED)

JUDGMENTS BY CONFESSION

RULE 73

**A Judgments [which] that may be confessed.**

A(1) **For money due; where allowed.** Judgment by confession may be entered without action for money due in the manner prescribed by this rule[. *Such judgment*] **and** may be entered in any court having jurisdiction over the subject matter. The application to confess judgment shall be made in the county in which the defendants, or one of them, reside or may be found at the time of the application. A judgment entered by any court in any other county has no force or validity, notwithstanding anything in the defendant's statement to the contrary.

A(2) **Consumer transactions.** No judgment by confession may be entered without action upon a contract, obligation, or liability [*which*] **that** arises out of the sale of goods or **the** furnishing of services for personal, family, or household use[, *or*]; out of a loan or other extension of credit for personal, family, or household purposes[,]; or upon a promissory note [*which*] **that** is based upon such sale or extension of credit.

**B Statement by defendant.** A statement in writing must be made, signed by any party against whom judgment is to be entered or a person authorized to bind [*such*] **that** party, and verified by oath, as follows:

B(1) [*It*] **it** must authorize the entry of judgment for a specified sum;

B(2) [*It*] **it** must state concisely the facts out of which [*it*] **the judgment** arose, and show that the sum confessed therefor is justly and presently due;

B(3) [*It*] **it** must contain a statement that the person or persons signing the judgment understands that [*it*] **the statement** authorizes entry of judgment without further proceeding [*which*] **that** would authorize execution to enforce payment of the judgment; and

B(4) [*It*] **it** must have been executed after the date or dates when the sums described in the statement were due.

[C *Application by plaintiff.*] **C Filing of statement by plaintiff; entry, enforcement of**

1 **judgment.** Judgment by confession may be ordered by the court upon the filing of the statement  
2 required by section B of this rule. The judgment may be entered and enforced in the same manner  
3 and with the same effect as a judgment in an action.

4 **D Confession by joint debtors.** One or more joint debtors may confess a judgment for  
5 a joint debt due. Where all **of** the joint debtors do not unite in the confession, the judgment shall  
6 be entered and enforced against only those **debtors** who confessed it and [*it*] **the judgment** is not a  
7 bar to an action against the other joint debtors upon the same demand.