

AMENDMENTS

TO ORCP 80

promulgated by

COUNCIL ON COURT PROCEDURES

1980 to 2016

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.

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.

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 sections C. and G. of this rule) 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 sections C. and G. of this rule) 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.

Notice to the defendant and hearing prior to a receivership are required by case law and are 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 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.

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

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F. Special Notices.

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F(3) **Form and service of notices.** Any notice required by this [rule] section [(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] served in the manner provided in Rule 9, at least five days [(10 days for notices under section G of this rule)] 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 G of this rule) before such hearing], unless a different period is fixed by order of the court. [Proof of mailing or personal service must be filed with the clerk before the hearing. If upon hearing it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order.]

COMMENT

ORCP 80 F(3) was amended by the Council to eliminate an apparent drafting error in the original rule and to simplify the rule. The Council changed the language to make clear that the service described was only for notices under section 80 F. It also opted to provide for service in the same manner as service on parties under ORCP 9. The Council added explicit authority for the Court to vary the notice period and eliminated the parenthetical exception to the notice requirement for petitions for the sale of perishable property. Finally, the Council eliminated the last two sentences of the original rule, which required filing of proof of service before the hearing and finding by the court of the adequacy of notice. Filing and proof

of service are explicitly required by ORCP 9 C which would apply to notices served under ORCP 80 F because service of such notices must be in the manner provided for by ORCP 9. There seemed to be no stronger reason to direct the Court to make reference to the adequacy of service in an order entered under ORCP 80 F than any other type of order.