

**Oregon Rules of Civil Procedure
Legislative Amendments 1979-2023**

ORCP 82

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Lewis & Clark Law School | Oregon Council on Court Procedures

Rule 82 – Security; Bonds and Undertakings; Justification of Sureties

§	Latest Amendment
A	Or. Laws 1997 c.631 § 561
B	Or. Laws 1997 c.631 § 562
C	Or. Laws 1997 c.631 § 563
D	Or. Laws 1981 c.898 § 13
E	Or. Laws 2003 c.194 § 17
F	Unamended
G	Or. Laws 1995 c.79 § 407

Or. Laws 1981 c.898 § 13

Amends Rule 82(D)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. **Qualifications of sureties.**
 - 1. **Individuals.** Each individual surety must be a resident of the state. ~~Each must be worth~~ **If there is one individual surety, that surety must be worth twice** 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~~ is more than ~~two sureties~~ **one individual surety**, 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.
 - 2. [Unamended]
- E. [Unamended]
- F. [Unamended]
- G. [Unamended]

H.B. 3261

Or. Laws 1981 c.898 § 13

House Introduction

6/5/81

A-Engrossed Bill

6/23/81 – Passed unamended in House

7/17/81 – Passed with amendments in Senate (per Justice Committee recommendation)

7/24/81 – House refused to concur with Senate Amendments; Conference Committee formed

Conference Committee Bill

8/1/81 – House adopted and repassed Conference Committee Bill

8/1/81 – Senate adopted and repassed Conference Committee Bill

Governor signed Enrolled Bill

8/22/81

Or. Laws 1991 c.331 § 2
Amends Rule 82(A)

- A. Security Required.**
1. [Unamended]
 2. [Unamended]
 3. **Attachment or claim and delivery.**
 - 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 **or an irrevocable letter of credit issued by a commercial bank as that term is defined in ORS 706.005**, 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 **or letter of credit.**
 - b. Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond **or letter of credit** the court may require the plaintiff to give additional security.
 - c. No bond **or letter of credit** 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.
 4. [Unamended]
 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, **or a letter of credit issued by a commercial bank, as that term is defined in ORS 706.005.**
 6. [Unamended]
- 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, **or in the form of an irrevocable letter of credit issued by a commercial bank as that term is defined in ORS 706.005**, each surety **and each letter of credit issuer** submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's **or such issuer's** agent upon whom any papers affecting the surety's **or issuer's** liability on the bond, ~~or~~ undertaking **or letter of credit** may be served. Any surety's **or issuer'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 **or issuers** 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 **irrevocable letters of credit**, 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, **or where the same are issued by a commercial bank as that term is defined in ORS 706.005.**
- D.** [Unamended]
- E. Affidavits of sureties.**
1. [Unamended]
 2. [Unamended]
 3. **Service.** When ~~a~~ **an irrevocable letter of credit**, bond or undertaking is given for the benefit of a party, a copy of such letter of credit, 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 **letter of credit**, bond or undertaking has been filed.
- F. Objections to sureties.** If the party for whose benefit ~~a~~ **an irrevocable letter of credit**, bond or undertaking is given is not satisfied with the sufficiency of the **issuers or** sureties, that party may, within 10 days after the receipt of a copy of the **letter of credit or** bond, serve upon the party giving the **letter of credit or** bond, or the attorney for the party giving the **letter of credit or** bond, a notice that the party for whose benefit the **letter of credit or** bond is given objects to the sufficiency of such **issuers or** sureties. If the party for whose benefit the **letter of credit or** bond is given fails to do so, that party is deemed to have waived all objection to the **issuers or** sureties.
- G. Hearing on objections to sureties.**
1. **Request for hearing.** Notice of objections to an issuer or 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 **irrevocable letter of credit or** bond. Upon demand of the objecting party, each **issuer or** surety shall appear at the hearing of such motion and be subject to examination as to such **issuer's or** surety's pecuniary responsibility or the validity of the execution of the **letter of credit or** bond. Upon hearing of such motion, the court may approve or reject the letter of credit or

bond as filed or require such amended, substitute, or additional **letter of credit or** bond as the circumstances will warrant.

2. **Information to be furnished.** Sureties on any bond or undertaking **and any irrevocable letter of credit issuers** shall furnish such information as may be required by the judge approving the same.
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 ~~Director of the Department of Insurance and Finance~~ or a certified copy thereof.

S.B. 666

Or. Laws 1991 c.331 § 2

Senate Introduction

2/25/91

A-Engrossed Bill

5/22/91 – Passed with amendments in Senate (per Judiciary Committee recommendation)

6/10/91 – Passed unamended in House

Governor signed Enrolled Bill

6/25/91

Or. Laws 1995 c.79 § 407
Amends Rule 82(G)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. [Unamended]
- F. [Unamended]
- G. [No text]
 - 1. [Unamended]
 - 2. [Unamended]
 - 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~~ **Director of the Department of Consumer and Business Services** or a certified copy thereof.

S.B. 851 [Passed Unamended]
Or. Laws 1995 c.79 § 407

Or. Laws 1997 c.631 § 561–563

§561 Amends Rule 82(A);

§562 Amends Rule 82(B);

§563 Amends Rule 83(C)

A. **Security required.**

1. [Unamended]

2. [Unamended]

3. **Attachment or claim and delivery.**

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 or an irrevocable letter of credit issued by ~~a commercial bank as that term is defined in ORS 706.005~~ **an insured institution, as defined in section 3 of this 1997 Act**, 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 or letter of credit.

b. [Unamended]

c. [Unamended]

4. [Unamended]

5. 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, or a letter of credit issued by ~~a commercial bank, as that term is defined in ORS 706.005~~ **an insured institution, as defined in section 3 of this 1997 Act**.

6. [Unamended]

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, or in the form of an irrevocable letter of credit issued by ~~a commercial bank as that term is defined in ORS 706.005~~ **an insured institution, as defined in section 3 of this 1997 Act**, each surety and each letter of credit issuer submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's or such issuer's agent upon whom any papers affecting the surety's or issuer's liability on the bond, undertaking or letter of credit may be served. Any surety's or issuer'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 or issuers 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 irrevocable letters of credit, 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, or where the same are issued by ~~a commercial bank as that term is defined in ORS 706.005~~ **an insured institution, as defined in section 3 of this 1997 Act**.

D. [Unamended]

E. [Unamended]

F. [Unamended]

G. [Unamended]

S.B. 125

Or. Laws 1997 c.631 § 561–563

Senate Introduction

3/25/97

A-Engrossed Bill

4/34/95 – Passed with amendments in Senate (per Judiciary Committee and Business, Law, and Government Subcommittee recommendation)

6/27/97 – Passed with amendments in House (per Commerce Committee recommendation)

B-Engrossed Bill

7/1/97 – Senate concurred with House amendments and repassed bill

Governor signed Enrolled Bill

7/25/97

Or. Laws 2003 c.194 § 17
Amends Rule 82(E)

- A. [Unamended]
- B. [Unamended]
- C. [Unamended]
- D. [Unamended]
- E. **Affidavits or declarations of sureties.**
 - 1. **Individuals.** The bond or undertaking must contain an affidavit **or a declaration** of each surety which shall state that such surety possesses the qualifications prescribed by section D of this rule.
 - 2. **Corporations.** The bond or undertaking of a corporate surety must contain affidavits **or declarations** 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.
 - 3. [Unamended]
- F. [Unamended]
- G. [Unamended]

H.B. 2064 [Passed Unamended]
Or. Laws 2003 c.194 § 17