Chapter 33

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CONTEMPT PROCEEDINGS

33.015 Definitions for ORS 33.015 to 33.155. For the purposes of ORS 33.015 to 33.155:

(1) "Confinement" means custody or incarceration, whether actual or constructive.

(2) "Contempt of court" means the following acts, done willfully:

(a) Misconduct in the presence of the court that interferes with a court proceeding or with the administration of justice, or that impairs the respect due the court.

(b) Disobedience of, resistance to or obstruction of the court's authority, process, orders or judgments.

(c) Refusal as a witness to appear, be sworn or answer a question contrary to an order of the court.

(d) Refusal to produce a record, document or other object contrary to an order of the court.

(e) Violation of a statutory provision that specifically subjects the person to the contempt power of the court.

(3) "Punitive sanction" means a sanction imposed to punish a past contempt of court.

(4) "Remedial sanction" means a sanction imposed to terminate a continuing contempt of court or to compensate for injury, damage or costs resulting from a past or continuing contempt of court. [1991 c.724 §1; 2005 c.22 §23]

33.020 [Repealed by 1991 c.724 §32]

33.025 Nature of contempt power; corporate defendants. (1) The power of a court to impose a remedial or punitive sanction for contempt of court is an inherent judicial power. ORS 33.015 to 33.155 establish procedures to govern the exercise of that power.

(2) A corporation is liable for contempt if:

(a) The conduct constituting contempt is engaged in by an agent of the corporation while acting within the scope of employment and on behalf of the corporation;

(b) The conduct constituting contempt consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by a court; or

(c) The conduct constituting contempt is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and on behalf of the corporation.

(3) The board of directors and high managerial agents shall be subject to the contempt powers of a court for contempt by a corporation if those persons engage in, authorize, solicit, request, command or knowingly tolerate the conduct constituting contempt.

(4) As used in this section, "agent" and "high managerial agent" have those meanings given in ORS 161.170. [1991 c.724 §2]

33.030 [Repealed by 1991 c.724 §32]

33.035 Appointed counsel. Whenever ORS 33.015 to 33.155 provide for appointed counsel, appointment of counsel and payment of counsel and related expenses shall be made as follows:

(1) For contempt of a circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court, appointment and payment of counsel shall be made as provided in ORS 135.055, 151.216 and 151.219.

(2) For contempt of a justice court, municipal court or other public body not described in subsection (1) of this section, payment for and appointment of counsel shall be made as otherwise provided by law for the court or public body. [1991 c.724 §3; 2001 c.962 §63]

33.040 [Amended by 1955 c.648 §2; 1961 c.210 §5; repealed by 1991 c.724 §32]

33.045 Types of sanctions. (1) A court may impose either remedial or punitive sanctions for contempt.

(2) Confinement may be remedial or punitive. The sanction is:

(a) Remedial if it continues or accumulates until the defendant complies with the court's order or judgment.

(b) Punitive if it is for a definite period that will not be reduced even if the defendant complies with the court's order or judgment.

(3) A fine may be remedial or punitive. A fine is:

(a) Punitive if it is for a past contempt.

(b) Remedial if it is for continuing contempt and the fine accumulates until the defendant complies with the court's judgment or order or if the fine may be partially or entirely forgiven when the defendant complies with the court's judgment or order.

(4) Any sanction requiring payment of amounts to one of the parties to a proceeding is remedial.

(5) Any sanction imposed by a court for contempt is in addition to any civil remedy or criminal sanction that may be available as a result of the conduct constituting contempt. In any civil or criminal proceedings arising out of the conduct constituting contempt, the court shall take into consideration

any contempt sanctions previously imposed for the same act. [1991 c.724 §4]

33.050 [Repealed by 1991 c.724 §32]

33.055 Procedure for imposition of remedial sanctions. (1) Except as otherwise provided in ORS 161.685, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding or, with leave of the court, participate in the proceeding, by filing a motion requesting that defendant be ordered to appear:

(a) A party aggrieved by an alleged contempt of court.

(b) A district attorney.

(c) A city attorney.

(d) The Attorney General.

(e) Any other person specifically authorized by statute to seek imposition of sanctions for contempt.

(3) A motion to initiate a proceeding under this section shall be filed in the proceeding to which the contempt is related, if there is a related proceeding.

(4) The person initiating a proceeding under this section shall file supporting documentation or affidavits sufficient to give defendant notice of the specific acts alleged to constitute contempt.

(5)(a) The court may issue an order directing the defendant to appear. Except as otherwise provided in paragraph (b) of this subsection, the defendant shall be personally served with the order to appear in the manner provided in ORCP 7 and 9. The court may order service by a method other than personal service or issue an arrest warrant if, based upon motion and supporting affidavit, the court finds that the defendant cannot be personally served.

(b) The defendant shall be served by substituted service if personal service is waived under ORS 107.835. If personal service is waived under ORS 107.835, the defendant shall be served by the method specified in the waiver.

(6) The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. The defendant may waive the opportunity for a hearing by stipulated order filed with the court.

(7) A defendant has no right to a jury trial and, except as provided in this section, has only those rights accorded to a defendant in a civil action.

(8) A defendant is entitled to be represented by counsel. A court shall not impose on a defendant a remedial sanction of confinement unless, before the hearing is held, the defendant is:

(a) Informed that such sanction may be imposed; and

(b) Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.

(9) If the defendant is not represented by counsel when coming before the court, the court shall inform the defendant of the right to counsel, and of the right to appointed counsel if the defendant is entitled to, and financially eligible for, appointed counsel under subsection (8) of this section.

(10) Inability to comply with an order of the court is an affirmative defense.

(11) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(12) Proceedings under this section are subject to rules adopted under ORS 33.145. Proceedings under this section are not subject to the Oregon Rules of Civil Procedure except as provided in subsection (5) of this section or as may be provided in rules adopted under ORS 33.145. [1991 c.724 §5; 1993 c.448 §7; 2001 c.962 §77; 2005 c.22 §24]

33.060 [Amended by 1981 c.781 §1; 1983 c.561 §1; repealed by 1991 c.724 §32]

33.065 Procedure for imposition of punitive sanctions. (1) Except as otherwise provided in ORS 161.685, proceedings to impose punitive sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive sanction:

(a) A city attorney.

(b) A district attorney.

(c) The Attorney General.

(3) If a city attorney, district attorney or Attorney General who regularly appears before the court declines to prosecute a contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is authorized to practice law in this state, and who is not counsel for an interested party, to prosecute the contempt. The court shall allow reasonable compensation for the appointed attorney's attendance, to be paid by:

(a) The Oregon Department of Administrative Services, if the attorney is appointed

by the Supreme Court, the Court of Appeals or the Oregon Tax Court;

(b) The city where the court is located, if the attorney is appointed by a municipal court; and

(c) The county where the prosecution is initiated, in all other cases.

(4) The prosecutor may initiate proceedings on the prosecutor's own initiative, on the request of a party to an action or proceeding or on the request of the court. After the prosecutor files an accusatory instrument, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(5) Except as otherwise provided by this section, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding, and all proceedings on the accusatory instrument shall be in the manner prescribed for criminal proceedings.

(6) Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. This subsection does not affect any right to a jury that may otherwise be created by statute.

(7) Inability to comply with an order of the court is an affirmative defense. If the defendant proposes to rely in any way on evidence of inability to comply with an order of the court, the defendant shall, not less than five days before the trial of the cause, file and serve upon the city attorney, district attorney or Attorney General prosecuting the contempt a written notice of intent to offer that evidence. If the defendant fails to file and serve the notice, the defendant shall not be permitted to introduce evidence of inability to comply with an order of the court at the trial of the cause unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice, or to file the notice within the time allowed, is made to appear.

(8) The court may impose a remedial sanction in addition to or in lieu of a punitive sanction.

(9) In any proceeding for imposition of a punitive sanction, proof of contempt shall be beyond a reasonable doubt. [1991 c.724 §6; 2001 c.962 §78]

33.070 [Amended by 1973 c.836 §321; repealed by 1991 c.724 §32]

33.075 Compelling attendance of defendant. (1) If a person served with an order to appear under ORS 33.055 fails to appear at the time and place specified in the order, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(2) A person against whom a complaint has been issued under ORS 33.065 may be cited to appear in lieu of custody as provided in ORS 133.055. If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(3) When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the sheriff shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings.

(4) The defendant shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in ORS 135.230 to 135.290, to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant.

(5) The sheriff shall return the warrant and the security deposit, if any, given to the sheriff by the defendant by the return day specified in the warrant.

(6) When a warrant for contempt issued under subsection (2) of this section has been returned after having been served and the defendant does not appear on the return day, the court may do either or both of the following:

(a) Issue another warrant.

(b) Proceed against the security deposited upon the arrest.

(7) If the court proceeds against the security under subsection (6) of this section and the sum specified is recovered, the court may award to any party to the action any or all of the money recovered as remedial damages.

(8) Security deposited under this section shall not be subject to the assessments provided for in ORS 137.309 (1) to (5). [1991 c.724 §7; 1993 c.196 §3]

33.080 [Amended by 1973 c.836 §322; repealed by 1991 c.724 §32]

33.085 Compelling testimony of witness. (1) Upon the motion of the person initiating the proceeding, the court may compel the testimony of a witness as provided under

ORS 136.617 in a contempt proceeding under ORS 33.055 or 33.065.

(2) In any case where the person initiating the proceeding is not represented by the district attorney, county counsel or Attorney General, the person initiating the proceeding shall serve a notice of intent to compel testimony on the district attorney of the county where the contempt proceeding is pending and on the Attorney General. The notice shall be served not less than 14 calendar days before any hearing on the motion to compel testimony.

(3) The notice required by this section shall identify the witness whose testimony the person initiating the proceeding intends to compel and include, if known, the witness' name, date of birth, residence address and Social Security number, and other pending proceedings or criminal charges involving the witness. The notice shall also include the case name and number of the contempt proceeding and the date, time and place set for any hearing scheduled as provided in ORS 136.617.

(4) If the person initiating the proceeding fails to serve the required advance notice or fails to serve the notice within the time required, the court shall grant a continuance for not less than 14 calendar days from the date the notice is served to allow the district attorney and Attorney General opportunity to be heard on the matter of compelling testimony. The court may compel testimony under this subsection only after the full notice period and opportunity to be heard, unless before that time the district attorney and Attorney General waive in writing any objection to the motion to compel.

(5) In any hearing on a motion to compel testimony under this section, the district attorney of the county in which the contempt proceeding is pending and the Attorney General each may appear to present evidence or arguments to support or oppose the motion.

(6) In lieu of compelling testimony under this section, the court may continue the contempt proceeding until disposition of any criminal action that is pending against the witness whose testimony is sought and that charges the witness with a crime. [1991 c.724 §7a]

33.090 [Amended by 1973 c.836 §323; repealed by 1991 c.724 §32]

33.095 [1975 c.516 §2; 1981 c.898 §38; 1987 c.803 §15; 1989 c.171 §5; repealed by 1991 c.724 §32]

33.096 Summary imposition of sanction. A court may summarily impose a sanction upon a person who commits a contempt of court in the immediate view and presence of the court. The sanction may be imposed for the purpose of preserving order in the court or protecting the authority and dignity of the court. The provisions of ORS 33.055 and 33.065 do not apply to summary imposition of sanctions under this section. [1991 c.724 §8]

33.100 [Repealed by 1991 c.724 §32]

33.105 Sanctions authorized. (1) Unless otherwise provided by statute, a court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for loss, injury or costs suffered by the party as the result of a contempt of court.

(b) Confinement for so long as the contempt continues, or six months, whichever is the shorter period.

(c) An amount not to exceed $500 or one percent of the defendant's annual gross income, whichever is greater, for each day the contempt of court continues. The sanction imposed under this paragraph may be imposed as a fine or to compensate a party for the effects of the continuing contempt.

(d) An order designed to insure compliance with a prior order of the court, including probation.

(e) Payment of all or part of any attorney fees incurred by a party as the result of a contempt of court.

(f) A sanction other than the sanctions specified in paragraphs (a) to (e) of this subsection if the court determines that the sanction would be an effective remedy for the contempt.

(2) Unless otherwise provided by statute, a court may impose one or more of the following punitive sanctions for each separate contempt of court:

(a) A fine of not more than $500 or one percent of the defendant's annual gross income, whichever is greater.

(b) Forfeiture of any proceeds or profits obtained through the contempt.

(c) Confinement for not more than six months.

(d) Probation or community service.

(3) In a summary proceeding under ORS 33.096, a court may impose one or more of the following sanctions for each separate contempt of court:

(a) A punitive fine of not more than $500;

(b) Confinement as a punitive sanction for not more than 30 days; or

(c) Probation or community service.

(4) The court may impose a punitive sanction for past conduct constituting contempt of court even though similar present conduct is a continuing contempt of court. [1991 c.724 §9]

33.110 [Repealed by 1991 c.724 §32]

33.115 Referral to another judge. A judge may be disqualified from a contempt proceeding as provided for in other cases under ORS 14.210 to 14.270. ORS 14.260 (3) shall not apply to a motion to disqualify a judge in a contempt proceeding. The judge to whom the contempt is referred shall assume authority over and conduct any further proceedings relating to the contempt. [1991 c.724 §10; 1995 c.658 §121]

33.125 Appeal. (1) The imposition of a sanction for contempt shall be by a judgment.

(2) A judgment in a proceeding for imposition of a remedial sanction may be appealed in the same manner as from a judgment in an action at law. An appeal from a judgment imposing a punitive sanction shall be in the manner provided for appeals in ORS chapter 138. Appeals from judgments imposing sanctions for contempt in municipal courts and justice courts shall be in the manner provided by law for appeals from those courts.

(3)(a) If a motion to initiate proceedings to impose remedial sanctions is filed in a related proceeding under ORS 33.055 (3) before entry of judgment in the related proceeding, and the court determines that the defendant is in contempt, the court may suspend imposition of sanctions and entry of judgment on the contempt until entry of judgment in the related proceeding.

(b) If a motion to initiate proceedings to impose remedial sanctions is filed in a related proceeding under ORS 33.055 (3) before entry of judgment in the related proceeding, and the court denies the motion or declines to impose sanctions, the court shall enter judgment on that denial or determination only as part of the judgment in the related proceeding.

(4) An appeal from a contempt judgment shall not stay any action or proceeding to which the contempt is related. [1991 c.724 §11; 2003 c.576 §233; 2005 c.568 §28]

33.130 [Repealed by 1991 c.724 §32]

33.135 Limitations of actions. (1) Except as provided in subsection (5) of this section, proceedings under ORS 33.055 to impose remedial sanctions for contempt and under ORS 33.065 to impose punitive sanctions for contempt shall be commenced within two years of the act or omission constituting the contempt.

(2) For the purposes of this section, a proceeding to impose remedial sanctions shall be deemed commenced as to each defendant when the motion provided for in ORS 33.055 is filed.

(3) Proceedings to impose punitive sanctions are subject to ORS 131.135, 131.145 and 131.155.

(4) The time limitations imposed by subsection (1) of this section shall not act to bar proceedings to impose sanctions for an act or omission that constitutes a continuing contempt at the time contempt proceedings are commenced. The willful failure of an obligor, as that term is defined in ORS 110.303, to pay a support obligation after that obligation becomes a judgment is a contempt without regard to when the obligation became a judgment.

(5) Proceedings to impose remedial or punitive sanctions for failure to pay a support obligation by an obligor, as defined in ORS 110.303, shall be commenced within 10 years of the act or omission constituting contempt. [1991 c.724 §12; 2005 c.560 §15]

33.140 [Repealed by 1991 c.724 §32]

33.145 Rules. The Supreme Court may adopt rules to carry out the purposes of ORS 33.015 to 33.155. [1991 c.724 §13]

33.150 [Repealed by 1991 c.724 §32]

33.155 Applicability. ORS 33.015 to 33.145 apply to every court and judicial officer of this state, including municipal, county and justice courts. Rules adopted by the Supreme Court apply to those courts, but the application of such rules to municipal, county and justice courts does not confer any supervisory or administrative authority on the Supreme Court or the State Court Administrator with respect to those courts. [1991 c.724 §14]

33.210 [Amended by 1979 c.284 §67; 1989 c.955 §1; renumbered 36.300 in 1989]

33.220 [Renumbered 36.305 in 1989]

33.230 [Amended by 1979 c.284 §68; renumbered 36.310 in 1989]

33.240 [Renumbered 36.315 in 1989]

33.250 [Renumbered 36.320 in 1989]

33.260 [Renumbered 36.325 in 1989]

33.270 [Renumbered 36.330 in 1989]

33.280 [Renumbered 36.335 in 1989]

33.290 [Renumbered 36.340 in 1989]

33.300 [Amended by 1985 c.496 §19; renumbered 36.345 in 1989]

33.310 [Amended by 1985 c.496 §20; renumbered 36.350 in 1989]

33.320 [Amended by 1985 c.496 §21; renumbered 36.355 in 1989]

33.330 [Renumbered 36.360 in 1989]

33.340 [Amended by 1985 c.496 §22; renumbered 36.365 in 1989]

33.350 [1983 c.670 §1; 1985 c.342 §3; renumbered 36.400 in 1989]

33.360 [1983 c.670 §2; 1987 c.116 §1; 1987 c.125 §1; renumbered 36.405 in 1989]

33.370 [1983 c.670 §3; 1987 c.116 §2; renumbered 36.410 in 1989]

33.380 [1983 c.670 §4; 1985 c.342 §4; 1987 c.116 §3; renumbered 36.415 in 1989]

33.390 [1983 c.670 §5; renumbered 36.420 in 1989]

33.400 [1983 c.670 §6; renumbered 36.425 in 1989]

CHANGE OF NAME

33.410 Jurisdiction; grounds. Application for change of name of a person may be heard and determined by the probate court or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include this section pursuant to ORS 3.275 of the county in which the person resides. The change of name shall be granted by the court unless the court finds that the change is not consistent with the public interest. [Amended by 1967 c.534 §11; 1975 c.733 §1]

33.420 Notice of application and judgment; notice for change of name of minor child. (1) Before entering a judgment for a change of name, except as provided in ORS 109.360, the court shall require public notice of the application to be given, that all persons may show cause why the same should not be granted. The court shall also require public notice to be given of the change after the entry of the judgment.

(2) Before entering a judgment for a change of name in the case of a minor child the court shall require that, in addition to the notice required under subsection (1) of this section, written notice be given to the parents of the child, both custodial and noncustodial, and to any legal guardian of the child.

(3) Notwithstanding subsection (2) of this section, notice of an application for the change of name of a minor child need not be given to a parent of the child if the other parent of the child files a verified statement in the change of name proceeding that asserts that the minor child has not resided with the other parent and that the other parent has not contributed or tried to contribute to the support of the child. [Amended by 1983 c.369 §6; 1997 c.872 §22; 2001 c.779 §12; 2003 c.576 §308]

33.430 Change of name on birth certificate; court conference with child. (1) In the case of a change, by court order, of the name of the parents of any minor child, if the child's birth certificate is on file in this state, the State Registrar of the Center for Health Statistics, upon receipt of a certified copy of the court order changing the name, together with the information required to locate the original birth certificate of the child, shall prepare a new birth certificate for the child in the new name of the parents of the child. The name of the parents as so changed shall be set forth in the new certificate, in place of their original name.

(2) The evidence upon which the new certificate was made, and the original certificate, shall be sealed and filed by the State Registrar of the Center for Health Statistics, and may be opened only upon demand of the person whose name was changed, if of legal age, or by an order of a court of competent jurisdiction.

(3) When a change of name by parents will affect the name of their child under subsection (1) of this section, the court, on its own motion or on request of a child of the parents, may take testimony from or confer with the child and may exclude from the conference the parents and other persons if the court finds that such action would be in the best interests of the child. However, the court shall permit an attorney for the parents to attend the conference, and the conference shall be reported. If the court finds that a change of name would not be in the best interests of the child, the court may provide in the order changing the name of the parents that such change of name shall not affect the child, and a new birth certificate shall not be prepared for the child. [Amended by 1983 c.369 §7; 2005 c.22 §25]

33.440 Application by minor child; court conference. When a minor child applies for a change of name under ORS 33.410, the court may, upon its own motion, confer with the child and may exclude from the conference the parents and other persons if the court finds that such action would be in the best interests of the child. However, the court shall permit an attorney for the child to attend the conference, and the conference shall be reported. [1983 c.369 §5]

CHANGE OF SEX

33.460 Jurisdiction; grounds; procedure. (1) A court that has jurisdiction to determine an application for change of name of a person under ORS 33.410 and 33.420 may order a legal change of sex and enter a judgment indicating the change of sex of a person whose sex has been changed by surgical procedure.

(2) The court may order a legal change of sex and enter the judgment in the same manner as that provided for change of name of a person under ORS 33.410 and 33.420.

(3) If a person applies for a change of name under ORS 33.410 and 33.420 at the time the person applies for a legal change of sex under this section, the court may order change of name and legal change of sex at the same time and in the same proceeding. [1981 c.221 §1; 1997 c.872 §23; 2003 c.576 §309]

SURETIES

33.510 Discharge of surety or letter of credit issuer on application of surety or issuer. The surety or the representatives of any surety upon the bond of any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary, and any irrevocable letter of credit issuer for any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary is entitled as a matter of right to be discharged from liability as provided in this section, and to that end may, on notice to the principal named in the bond or irrevocable letter of credit, apply to the court that accepted the bond or irrevocable letter of credit or to the court of which the judge who accepted the bond or irrevocable letter of credit was a member or to any judge thereof, praying to be relieved from liability for the act or omission of the principal occurring after the date of the order relieving such person, and that the principal be required to account and give new sureties or cause to be issued new letters of credit. Notice of the application shall be served on the principal personally not less than five days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that personal service cannot be had with due diligence within the state, in which case notice may be given by personal service without the state or in such manner as the court or judge directs. Pending the hearing of the application the court or judge may restrain the principal from acting except to preserve the trust estate until further order. If upon the return of the application the principal fails to file a new bond or irrevocable letter of credit to the satisfaction of the court or judge, the court or judge must make an order requiring the principal to file a new bond or irrevocable letter of credit within a period not exceeding five days. If the new bond or irrevocable letter of credit is filed upon the return of the application, or within the time fixed by the order, the court or judge must make a judgment or order requiring the principal to account for all acts and proceedings to and including the date of the judgment or order, and to file such account within a time fixed, not exceeding 20 days, and discharge the surety or letter of credit issuer making application from liability for any act or default of the principal subsequent to the date of the judgment or order. If the principal fails to file a new bond or irrevocable letter of credit within the time specified, a judgment or order must be made revoking the appointment of the principal or removing and requiring the principal to file an account within not more than 20 days. If the principal fails to file the account, the surety or letter of credit issuer may make and file an account with like force and effect as though filed by the principal, and upon settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements and allowances to which the principal would be entitled were the principal accounting, and allowance shall be made to the surety or letter of credit issuer for the expense incurred in filing the account and procuring the settlement thereof. After the filing of the account, either by the principal or the surety or the letter of credit issuer, the court or judge must, upon the petition of the principal or surety or the letter of credit issuer, issue an order requiring all persons interested in the estate or trust to attend a settlement of the account at a time and place therein specified, and upon the trust fund or estate being found or made good and paid over or properly secured, the surety or the letter of credit issuer shall be discharged from all liability. Upon demand in writing by the principal, the surety or the letter of credit issuer shall return any compensation that has been paid for the unexpired period of the bond or the letter of credit. [Amended by 1991 c.331 §11; 2003 c.576 §310]

33.520 Discharge of surety or letter of credit issuer on application of principal. Any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary shall be entitled to have any surety on the bond of the fiduciary or of any irrevocable letter of credit issuer discharged from liability thereon, and the fiduciary may file a new bond or irrevocable letter of credit as provided in this section. The fiduciary may, on written notice to the surety or letter of credit issuer and to all other interested persons, apply to the court that accepted the bond or irrevocable letter of credit, or to a judge thereof, praying that the surety or irrevocable letter of credit be discharged from liability thereon, and that the principal be allowed to file a new bond or irrevocable letter of credit and to account. Notice of the application shall be served on the surety or letter of credit issuer and on each of the persons interested, within the state, not less than 10 days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that the notice cannot with due diligence be served within the state, in which case notice may be given in such manner as the court or judge shall direct. Upon the return of the application, the principal may file a new bond or irrevocable letter of credit satisfactory to the court or judge, and therewith file an account of all proceedings, whereupon the court or judge shall proceed, upon due notice to all persons interested, to judicially settle

the account and duly credit and charge the principal; and upon the trust fund or estate being found or made good and paid over or properly secured, the surety or letter of credit issuer shall be discharged from all liability. [Amended by 1991 c.331 §12]

33.530 Liability of sureties or letter of credit issuer after termination of bond or letter of credit. (1) When a bond or an irrevocable letter of credit of any personal representative, guardian or conservator is terminated upon the issuance of a new bond or irrevocable letter of credit to the personal representative, guardian or conservator by a new surety or letter of credit issuer, the former surety or letter of credit issuer shall not be liable on the old bond or irrevocable letter of credit for any acts or omissions of the personal representative, guardian or conservator which occur after the issuance of the new bond or irrevocable letter of credit.

(2) A new surety for a personal representative, guardian or conservator who issues a new bond or irrevocable letter of credit after the termination of a previous bond or irrevocable letter of credit written by another surety or letter of credit issuer for a personal representative, guardian or conservator shall not be liable for any acts or omissions of the personal representative, guardian or conservator which occurred prior to the issuance of the new bond or irrevocable letter of credit. [1983 c.613 §§2,3; 1991 c.331 §13]

EVALUATING SECURITIES OF SECURED CREDITOR

33.610 Evaluating securities of secured creditor. In the administration of a decedent's estate, or whenever the assets of any person, partnership or corporation are being administered in receivership or any liquidation proceedings, or under an assignment for the benefit of creditors, the value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which the securities were delivered to the creditors, or by the creditors and the person or official liquidating the assets by agreement, arbitration, compromise or litigation. Where the proceedings are in court, the determination shall be subject to the control or decision of the court. If, under an assignment for the benefit of creditors, the secured creditor and the assignee cannot, by agreement, arbitration or compromise, determine the value, either the assignee or the creditor may apply to a court of competent jurisdiction in the place of residence of the assignee for determination of the value by declaratory judgment, or otherwise. In all cases, the amount of the determined value shall be credited upon the secured claim and a general or unsecured creditor's dividend shall be paid only on the uncredited balance, if any, of the claim. Nothing contained in this section shall be construed to compel any creditor holding security to file a claim for participation in any such estate or proceeding, or to compel the creditor, if the creditor does not file a claim, to foreclose or realize upon the security of the creditor.

DETERMINATION OF LEGALITY OF MUNICIPAL CORPORATION ORGANIZATION AND ACTIONS

33.710 Definitions; judicial examination to determine legality of any municipal corporation's organization and actions. (1) As used in ORS 33.710 and 33.720, unless the context requires otherwise:

(a) "Governing body" means the city council, board of commissioners, board of directors, county court or other managing board of a municipal corporation including a board managing a municipally owned public utility or a dock commission.

(b) "Municipal corporation" means any county, city, port, school district, union high school district, community college district and all other public or quasi-public corporations including a municipal utility or dock commission operated by a separate board or commission.

(2) The governing body may commence a proceeding in the circuit court of the county in which the municipal corporation or the greater part thereof is located, for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of:

(a) The proceedings in connection with the establishment or creation of the municipal corporation, including any action or proceedings proclaiming the creation of the municipal corporation or declaring the result of any election therein.

(b) The proceedings of the governing body and of the municipal corporation providing for and authorizing the issue and sale of bonds of the municipal corporation, whether the bonds or any of them have or have not been sold or disposed of.

(c) Any order of the governing body levying a tax.

(d) The authorization of any contract and as to the validity of the contract, whether or not it has been executed.

(e) Any decision of the governing body that raises novel or important legal issues that would be efficiently and effectively resolved by a proceeding before the decision becomes effective, when the decision will:

(A) Require a significant expenditure of public funds;

(B) Significantly affect the lives or businesses of a significant number of persons within the boundaries of the governing body; or

(C) Indirectly impose a significant financial burden on the cost of conducting business within the boundaries of the governing body.

(f) The authority of the governing body to enact any ordinance, resolution or regulation.

(g) Any ordinance, resolution or regulation enacted by the governing body, including the constitutionality of the ordinance, resolution or regulation.

(3) All proceedings of the municipal corporation may be judicially examined and determined in one special proceeding, or any part thereof may be separately examined and determined by the court.

(4) Nothing in this section allows a governing body to have a judicial examination and judgment of the court without a justiciable controversy. [Amended by 1975 c.133 §1; 2003 c.548 §1]

33.720 Proceeding in rem; practice and procedure as in action not triable by right to jury; service by publication; appeal; costs. (1) The determination authorized by ORS 33.710 shall be in the nature of a proceeding in rem; and the practice and procedure therein shall follow the practice and procedure of an action not triable by right to a jury, as far as the same is consistent with the determination sought to be obtained, except as provided in this section.

(2) Jurisdiction of the municipal corporation shall be obtained by the publication of notice directed to the municipal corporation; and jurisdiction of the electors of the municipal corporation shall be obtained by publication of notice directed to all electors, freeholders, taxpayers and other interested persons, without naming such electors, freeholders, taxpayers and other interested persons individually. The notice shall be served on all parties in interest by publication thereof for at least once a week for three successive weeks in a newspaper of general circulation published in the county where the proceeding is pending, or if no such newspaper is published therein, then in a contiguous county. Jurisdiction shall be complete within 10 days after the date of completing publication of the notice as provided in this section.

(3) Any person interested may at any time before the expiration of the 10 days appear and contest the validity of such proceeding, or of any of the acts or things therein enumerated. Such proceeding shall be tried forthwith and judgment rendered as expeditiously as possible declaring the matter so contested to be either valid or invalid. Any order or judgment in the course of such proceeding may be made and rendered by the judge in vacation or otherwise; and for that purpose, the court shall be deemed at all times to be in session and the act of the judge in making the order or judgment shall be the act of the court.

(4) Any party may appeal to the Court of Appeals from a judgment rendered in such proceeding. The court, in inquiring into the regularity, legality or correctness of any proceeding of the municipal corporation or its governing body shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the special proceeding, and may approve the proceedings in part and may disapprove and declare illegal or invalid in part other or subsequent proceedings, or may approve or disapprove the proceedings, or may approve the proceedings in part and disapprove the remainder thereof.

(5) Costs of the proceeding may be allowed and apportioned between the parties in the discretion of the court.

(6) Upon conclusion of a proceeding authorized by ORS 33.710 (2)(b), including any appeal of a judgment, the judgment entered in the proceeding is binding upon the parties and all other persons. Claim preclusion and issue preclusion apply to all matters adjudicated in the proceeding. Except for an action to enforce a judgment, the courts of this state do not have jurisdiction over an action by or against the governing body or municipal corporation named in the judgment if the purpose of the action is to seek judicial review or judicial examination, directly or indirectly, of a matter adjudicated in the proceeding. [Amended by 1975 c.133 §2; 1979 c.284 §69; 2001 c.537 §1; 2003 c.576 §234]

33.810 [1955 c.522 §1; repealed by 1967 c.460 §8]

33.820 [1955 c.522 §2; repealed by 1967 c.460 §8]

33.830 [1955 c.522 §3; repealed by 1967 c.460 §8]

TRANSFER OF STRUCTURED SETTLEMENT PAYMENT RIGHTS

33.850 Definitions for ORS 33.850 to 33.875. As used in ORS 33.850 to 33.875:

(1) "Annuity issuer" means an insurer that has entered into a contract to fund periodic payments under a structured settlement agreement.

(2) "Obligor" means a party that has a continuing obligation to make periodic payments to a payee under a structured settlement agreement or an agreement that provides for a qualified assignment as defined

in section 130 of the Internal Revenue Code, as of January 1, 2006.

(3) "Payee" means an individual who is receiving tax-free payments under a structured settlement agreement and proposes to make a transfer of payment rights.

(4) "Payment rights" means rights to receive periodic payments under a structured settlement agreement, whether from the obligor or the annuity issuer.

(5) "Periodic payments" includes both recurring payments and scheduled future lump sum payments.

(6) "Responsible administrative authority" means a government authority vested by law with exclusive jurisdiction over the original tort claim or workers' compensation claim that was resolved in a structured settlement agreement.

(7) "Structured settlement agreement" means an agreement, judgment, stipulation or release embodying the terms of an arrangement for periodic payment of damages from an obligor or an annuity issuer for:

(a) Personal injuries or sickness established by settlement or judgment in resolution of a tort claim; or

(b) Periodic payments in settlement of a workers' compensation claim.

(8) "Terms of the structured settlement agreement" includes the terms of:

(a) A structured settlement agreement;

(b) An annuity contract;

(c) An agreement that provides for a qualified assignment as defined in section 130 of the Internal Revenue Code, as of January 1, 2006; and

(d) Any order or other approval of any court, responsible administrative authority or other government authority that authorized or approved the structured settlement agreement.

(9) "Transfer" means any sale, assignment, pledge or other alienation or encumbrance of payment rights made by a payee for consideration. "Transfer" does not include the creation or perfection of an unspecified security interest in all of the payee's payment rights entered into with an insured depository institution, or an agent or successor in interests of the insured depository institution, in the absence of any action to redirect the payments under the structured settlement agreement to the insured depository institution or otherwise to enforce a security interest against the payment rights.

(10) "Transfer agreement" means an agreement providing for a transfer of payment rights.

(11) "Transferee" means a party acquiring or proposing to acquire payment rights through a transfer agreement. [2005 c.173 §1]

Note: Section 7, chapter 173, Oregon Laws 2005, provides:

Sec. 7. Sections 1 to 6 of this 2005 Act [33.850 to 33.875] apply to transfer agreements entered into on or after the effective date of this 2005 Act [January 1, 2006]. [2005 c.173 §7]

33.855 Transfer of payment rights; application; notice. (1) A payee may transfer payment rights under ORS 33.850 to 33.875 if:

(a) The payee is domiciled in this state;

(b) The domicile or principal place of business of the obligor or the annuity issuer is located in this state;

(c) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(d) The structured settlement agreement is expressly governed by the laws of this state.

(2) Prior to transferring payment rights under ORS 33.850 to 33.875, the transferee shall file an application for approval of the transfer in:

(a) The county in which the payee resides;

(b) The county in which the obligor or the annuity issuer maintains its principal place of business; or

(c) Any court or before any responsible administrative authority that approved the structured settlement agreement.

(3) Not less than 20 days prior to the scheduled hearing on an application for approval of a transfer of payment rights, the transferee shall send notice of the proposed transfer to:

(a) The payee;

(b) Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death;

(c) The annuity issuer;

(d) The obligor; and

(e) Any other party that has continuing rights or obligations under the structured settlement agreement that is the subject of the hearing.

(4) The notice sent under subsection (3) of this section shall include:

(a) A copy of the transferee's application.

(b) A copy of the transfer agreement.

(c) A copy of the disclosure statement provided to the payee as required under ORS 33.860.

(d) A listing of each person for whom the payee is legally obligated to provide support, including the age of each of those persons.

(e) Notification that any person receiving notice under subsection (3) of this section is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing.

(f) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall not be less than 15 days after service of the transferee's notice, in order to be considered by the court or responsible administrative authority. [2005 c.173 §2]

Note: See note under 33.850.

33.860 Statement containing terms of transfer. Not less than three days prior to the day on which a payee is scheduled to sign a transfer agreement, a transferee shall provide the payee with a statement in not less than 14-point type that sets forth:

(1) The amounts and due dates of the structured settlement payments to be transferred.

(2) The aggregate amount of the payments to be transferred.

(3) The discounted present value of the payments and the rate used in calculating the discounted present value. The discounted present value shall be calculated by using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the Internal Revenue Service.

(4) The amount payable to a payee as the result of a transfer. The amount set forth in this subsection shall be calculated before any reductions are made for transfer expenses required to be listed under subsection (5) of this section or any related disbursements.

(5) An itemized listing of all applicable transfer expenses and the transferee's best estimate of the amount of any attorney fees and disbursements. For the purposes of this subsection, "transfer expenses":

(a) Includes all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the amount payable to a payee as the result of a transfer.

(b) Does not include attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer or preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

(6) The amount calculated by subtracting the aggregate amount of the actual and estimated transfer expenses required to be listed under subsection (5) of this section from the amount identified in subsection (4) of this section.

(7) The amount of any penalties or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee.

(8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee. [2005 c.173 §3]

Note: See note under 33.850.

33.865 Required findings by court or responsible administrative authority. A transfer of payment rights under ORS 33.850 to 33.875 is not effective and an obligor or annuity issuer is not required to make any payments directly or indirectly to a transferee unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or authority that:

(1) The transfer is in the best interest of the payee, taking into account the welfare and support of all persons for whom the payee is legally obligated to provide support.

(2) The payee has been advised in writing by the transferee to seek advice from an attorney, certified public accountant, actuary or other licensed professional adviser regarding the transfer, and the payee has either received the advice or knowingly waived advice in writing.

(3) The transfer does not contravene any applicable statute or order of any court or other government authority. [2005 c.173 §4]

Note: See note under 33.850.

33.870 Liability of parties after transfer. Following a transfer of payment rights under ORS 33.850 to 33.875:

(1) The obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from all liability for the transferred payments.

(2) The transferee shall be liable to the obligor and the annuity issuer:

(a) If the transfer contravenes the terms of the structured settlement agreement, for any taxes incurred by the parties as a consequence of the transfer; and

(b) For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the parties with the order of the court or responsible administrative authority or arising as a conse-

quence of the transferee's failure to comply with ORS 33.850 to 33.875.

(3) An annuity issuer or an obligor may not be required to divide any periodic payments between the payee and any transferee or assignee or between two or more transferees or assignees.

(4) Any further transfer of payment rights by the payee may be made only after compliance with all of the requirements of ORS 33.850 to 33.875. [2005 c.173 §5]

Note: See note under 33.850.

33.875 Limitations on transfers. (1) The provisions of ORS 33.850 to 33.875 may not be waived by any payee.

(2) A transfer agreement entered into on or after January 1, 2006, by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined under the laws of this state. A transfer agreement may not authorize the transferee or any other party to confess judgment or consent to entry to judgment against the payee.

(3) A transfer of payment rights may not extend to any payments that are life contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the obligor for:

(a) Periodically confirming the payee's survival.

(b) Giving the annuity issuer and the obligor prompt written notice in the event of the payee's death.

(4) A payee who proposes to make a transfer of payment rights does not incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or a assignee based on any failure of the transfer to satisfy the conditions of ORS 33.850 to 33.875.

(5) Nothing in ORS 33.850 to 33.875 shall be construed to authorize a transfer of payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to January 1, 2006, is valid or invalid.

(6) Compliance with the requirements set forth in ORS 33.860 and fulfillment of the conditions set forth in ORS 33.855 shall be solely the responsibility of the transferee in any transfer of payment rights, and neither the obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions. [2005 c.173 §6]

Note: See note under 33.850.