

Senate Bill 920

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises laws relating to execution sales.

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A BILL FOR AN ACT

Relating to execution sales; creating new provisions; amending ORS 18.005, 18.322, 18.395, 18.398, 18.428, 18.472, 18.505, 18.600, 18.618, 18.685, 18.750, 18.835, 18.910, 88.080, 407.375 and 540.610; and repealing ORS 18.465, 18.468, 18.476, 18.478, 18.482, 18.486, 18.492, 18.494, 18.532, 18.536, 18.538, 18.542, 18.545, 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598.

Be It Enacted by the People of the State of Oregon:

WRITS OF EXECUTION (Function and Form of Writ)

SECTION 1. Function of writ. (1) A writ of execution may direct a sheriff to:

(a) Levy on and sell real property of the judgment debtor and deliver the proceeds to the court for application against a money award.

(b) Levy on and sell personal property of the judgment debtor in the possession of the judgment debtor, and deliver the proceeds to the court for application against a money award.

(c) Levy on and deliver possession of specific real or personal property pursuant to the terms of the judgment.

(d) Levy on and sell specific real or personal property pursuant to the terms of the judgment.

(e) Levy on currency that is in the possession of the judgment debtor and deliver the currency to the court for application against a money award.

(2) A single writ of execution may be issued for two or more of the purposes specified in this section.

SECTION 2. Form of writ. (1) A writ of execution must be directed to a sheriff and must contain the name of the court, the names of the parties to the action and the case number for the action. The writ must describe the judgment and, if the writ of execution is issued for application of property of the judgment debtor against a money award, the writ must state the amount owing on the money award when the writ is issued.

(2) If the judgment requires that specific real or personal property of the judgment debtor be sold, the writ must particularly describe the property and direct the sheriff to sell

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 the specified property.

2 (3) If the judgment requires the delivery of the possession of real or personal property,
 3 the writ must direct the sheriff to deliver the possession of the property. The writ must
 4 particularly describe the property and specify the party to whom the property is to be de-
 5 livered.

6
 7 (Issuance of Writ)

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 9 **SECTION 3. Court administrator to issue writ.** (1) Except as otherwise provided by law,
 10 upon request of a judgment creditor or other prevailing party under a judgment, a court
 11 administrator shall issue a writ of execution for any judgment that includes a money award
 12 or that requires the delivery or sale of specific real or personal property. Except as provided
 13 by ORS 18.255 and 18.472, writs of execution may be issued only by the court administrator
 14 for the court in which the judgment was entered.

15 (2) A court administrator may rely on the information provided by the person seeking
 16 issuance of a writ of execution and is not liable for any errors or omissions in that infor-
 17 mation.

18 **SECTION 4. Sheriff to whom writ is issued.** (1) If a writ of execution directs a sheriff to
 19 sell real property or tangible personal property of a judgment debtor and deliver the proceeds
 20 to the court for application against a money award, the writ may be issued to the sheriff of
 21 any county in this state where property of the judgment debtor is located.

22 (2) If the writ of execution directs the sheriff to sell or deliver possession of specific real
 23 or tangible personal property, the writ must be issued to the sheriff of the county where the
 24 property is located.

25 (3) If the writ of execution directs the sheriff to sell intangible personal property and
 26 deliver the proceeds to the court for application against a money award, the court adminis-
 27 trator shall issue the writ to the sheriff for the county in which the court sits.

28 (4) More than one writ of execution may be issued at the same time to different sheriffs
 29 for the enforcement of a single judgment. If the writ or the instructions to the sheriff direct
 30 the sale of a single, contiguous parcel of real property that is located in more than one
 31 county, and the judgment creditor has recorded copies of the writ or abstracts of the writ
 32 under section 5 of this 2005 Act in each county that contains part of the property, the sheriff
 33 for any county in which part of the property is located may levy on and sell the entire
 34 property.

35 **SECTION 5. Recording of writ.** Upon issuance of a writ of execution to the sheriff of any
 36 county, the judgment creditor must record a copy of the writ certified to be true by the
 37 court administrator or an abstract of the writ in the County Clerk Lien Record for the
 38 county if the writ of execution or the accompanying instructions to the sheriff require the
 39 sale of real property. The recorded documents must contain a legal description of the real
 40 property. The recording of the writ or abstract in any county in which a judgment lien does
 41 not exist under ORS 18.150 or 18.152, or in a county in which a notice of pendency under ORS
 42 93.740 has not been previously recorded for the property to be sold, has the same effect as
 43 recording a notice of pendency under ORS 93.740.

44
 45 (Return on Writ)

1 **SECTION 6. Return on writ of execution.** (1) The sheriff shall make a return on the writ
 2 of execution to the court administrator within 60 days after the sheriff receives the writ.
 3 The person that requested issuance of the writ may authorize the sheriff to continue exe-
 4 cution under the writ and delay making a return on the writ to a date not later than 150 days
 5 after the sheriff receives the writ. The final date for return on the writ may be extended as
 6 provided in sections 26 and 29 of this 2005 Act.

7 (2) The return on a writ of execution must reflect whether the sheriff levied on any
 8 property pursuant to the terms of the writ. If the sheriff did levy on property pursuant to
 9 the terms of the writ, the return must reflect the disposition made of the property by the
 10 sheriff. If any property was sold, the sheriff shall deliver the net proceeds of the sale to the
 11 court administrator with the return as required by section 35 of this 2005 Act. If currency
 12 was levied on, the sheriff shall deliver the currency to the court administrator with the re-
 13 turn.

14 (3) The sheriff shall mail a copy of the return by first class mail to the judgment debtor
 15 and to the person that requested issuance of the writ.

16
 17 (Instructions to Sheriff)
 18

19 **SECTION 7. Instructions to sheriff.** (1) The judgment creditor shall provide instructions
 20 to the sheriff with a writ of execution. The instructions may be delivered to the sheriff after
 21 the writ is delivered to the sheriff. The instructions must include:

22 (a) The names and addresses of all debtors to whom notice must be given under section
 23 13 of this 2005 Act;

24 (b) The names and addresses of any other persons to whom notice must be given under
 25 section 20 of this 2005 Act;

26 (c) A description of any personal property to be levied on;

27 (d) A street address or other description of the place where any tangible personal prop-
 28 erty may be found;

29 (e) A legal description for any real property to be levied on;

30 (f) A statement indicating whether any real property to be levied on is residential prop-
 31 erty that is subject to section 16 of this 2005 Act;

32 (g) Whether any condominium unit, manufactured dwelling or floating home to be levied
 33 on is inventory held for sale or lease in the regular course of business; and

34 (h) A statement identifying whether any portion of the property to be levied on is in-
 35 tangible personal property, and any special instructions required to implement an order en-
 36 tered pursuant to section 11 of this 2005 Act.

37 (2) If instructions to the sheriff direct the sale of tangible personal property, the judg-
 38 ment creditor may request in the instructions that the property not be seized by the sheriff
 39 and that the property be secured in the manner provided by section 9 of this 2005 Act. The
 40 instructions may request that the property be rendered inoperable, and the manner in which
 41 the property should be rendered inoperable.

42 (3) If a judgment creditor seeks sale of real property under a writ of execution and the
 43 real property has a street address, the instructions to the sheriff must include the street
 44 address of the real property to be sold. If the real property is residential property that is
 45 subject to section 16 of this 2005 Act, a copy of the court order authorizing the sale must

1 be attached to the instructions.

2 (4) In addition to the instructions required by this section, a sheriff may require that a
3 judgment creditor provide all other instructions as may be necessary to allow the sheriff to
4 levy on and to sell or deliver property pursuant to a writ of execution.

5
6 (Levy)
7

8 **SECTION 8. Manner of levying on property.** Upon receipt of a writ of execution, the
9 sheriff shall indorse upon the writ of execution the time when the sheriff received the writ.
10 The sheriff shall then levy on property pursuant to the writ of execution and the instructions
11 provided to the sheriff under section 7 of this 2005 Act by doing all of the following:

12 (1) Filing a notice of levy with the court if real property is to be sold under the writ.

13 (2) Seizing any tangible personal property that the sheriff has not been instructed to se-
14 cure in the manner provided by section 9 of this 2005 Act.

15 (3) Securing any tangible personal property in the manner provided by section 9 of this
16 2005 Act if the sheriff has been instructed to secure the property in that manner.

17 (4) Filing a notice of levy with the court in the manner provided by section 11 of this 2005
18 Act if the sheriff has been instructed to sell intangible personal property.

19 (5) Securing and delivering possession of real property if the writ requires that real
20 property be delivered under the writ.

21 **SECTION 9. Alternative procedure for levying on tangible personal property.** (1) If a
22 sheriff is instructed to secure tangible personal property under this section, the sheriff shall
23 leave the property in the custody of the judgment debtor.

24 (2) The sheriff shall attach a notice to the property in substantially the following form:
25 _____
26

27 **NOTICE:** This property is to be sold by the sheriff pursuant to a writ of execution. Any
28 person who moves this property from this place without authorization from the sheriff, who
29 damages this property or who uses property that the sheriff has rendered inoperable without
30 authorization from the sheriff, commits a crime and is subject to prosecution. If you have
31 any questions, you should contact the Sheriff of _____ County.

32 [] If this box has been checked, the sheriff has rendered the property inoperable and the
33 property may not be used by any person without the authorization of the sheriff.
34 _____
35

36 (3) A sheriff is not liable to the judgment creditor, to the judgment debtor or to any other
37 person for any loss or damage to property that is secured in the manner provided by this
38 section.

39 **SECTION 10. Criminal penalty for moving, using or damaging secured property.** A judg-
40 ment debtor or other person commits a Class A misdemeanor if the person knows that a
41 notice has been attached to property secured under section 9 of this 2005 Act and the person:

42 (1) Moves the property without authorization from the sheriff;

43 (2) Damages the property; or

44 (3) If the sheriff has rendered the property inoperable, uses the property without au-
45 thorization from the sheriff.

1 **SECTION 15. Definition of residential property.** For the purposes of this section and
 2 sections 16, 17, 18 and 19 of this 2005 Act, “residential property” means any of the following
 3 property:

4 (1) Real property on which no more than four units designed to be used as dwellings are
 5 located.

6 (2) A condominium unit that is designed to be used as a dwelling and that is not being
 7 held as inventory for sale or lease in the regular course of business.

8 (3) A manufactured dwelling as defined by ORS 446.003 that is not being held as inventory
 9 for sale or lease in the regular course of business.

10 (4) A floating home as defined in ORS 830.700 that is not being held as inventory for sale
 11 or lease in the regular course of business.

12 **SECTION 16. Order required for sale of residential property; exceptions.** (1) If the judg-
 13 ment debtor is a natural person, residential property may be sold under a writ of execution
 14 only after the entry of a court order authorizing the sale.

15 (2) This section does not apply to writs of execution that direct the sheriff to sell specific
 16 property pursuant to the terms of the judgment.

17 (3) This section does not apply to a writ of execution issued to enforce a judgment fore-
 18 closing:

19 (a) A construction lien for work, labor or material done or furnished exclusively for the
 20 improvement of the property to be sold;

21 (b) A lawfully executed purchase money lien against the property to be sold; or

22 (c) A lawfully executed mortgage or trust deed on the property to be sold.

23 **SECTION 17. Motion for order authorizing sale of residential property.** (1) A judgment
 24 creditor may file a motion with a court requesting an order authorizing the sheriff to sell
 25 residential property. The motion must be filed with a court that has authority to issue a writ
 26 of execution for the judgment. The motion must include a statement that does all of the
 27 following:

28 (a) Indicates the amount of the money award or money awards, as reflected in the judg-
 29 ment or judgments.

30 (b) Indicates the amount owing on the money award or money awards on the date the
 31 motion is filed.

32 (c) Indicates whether any of the money awards arise out of an order or judgment for
 33 child support as described in ORS 18.398.

34 (d) Identifies the residential property to be sold.

35 (e) Indicates whether the property is a homestead. If the property is a homestead, the
 36 motion must allege facts showing that the homestead may be sold on execution.

37 (2) A motion under this section must be accompanied by an affidavit disclosing the basis
 38 of the allegations contained in the motion. If the judgment creditor relies on more than one
 39 judgment to support the order, the motion must be accompanied by copies of all other judg-
 40 ments on which the judgment creditor relies.

41 (3) A court shall promptly schedule a hearing on a motion filed under this section. In
 42 setting the hearing the court shall allow adequate time to allow service on the judgment
 43 debtor under section 18 of this 2005 Act.

44 **SECTION 18. Notice of motion for order authorizing sale of residential property.** (1) At
 45 least 10 days before the hearing on a motion filed under section 17 of this 2005 Act, the

1 judgment creditor must:

2 (a) Serve the judgment debtor in the manner provided by ORCP 7 with a copy of the
3 motion and the supporting affidavit, and with a notice of the time and place of the hearing;
4 and

5 (b) Send a copy of the motion and the notice by first class mail to the property at the
6 mailing address for the property.

7 (2) The notice required by subsection (1) of this section must be in substantially the fol-
8 lowing form:

9 _____
10
11 **NOTICE OF HEARING ON SHERIFF'S**
12 **SALE OF YOUR PROPERTY**
13

14 This is to notify you that _____ has asked the court to order the sheriff to sell property
15 located at _____ to satisfy a judgment against _____.

16 Before deciding whether to order the sale, the court will hold a hearing on _____,
17 2____, at _____ a.m./p.m., in Room _____, _____.

18 The law provides that property is your homestead if the property is actually used as a
19 home by you, your spouse, a dependent parent or a dependent child. If you are temporarily
20 absent from the property but intend to move back in, the property is still your homestead.

21 The law provides that if the property is your homestead, then \$_____ of its value
22 (\$_____ for a manufactured dwelling if you do not own the property where the dwelling is
23 located) may not be taken to satisfy a judgment against you. In addition, a homestead usually
24 may not be sold to satisfy a judgment for \$3,000 or less.

25 The law provides that property may be sold despite the fact that it is your homestead
26 and all of its value may be taken to satisfy a judgment against you if the judgment is for
27 child support.

28 **IF YOU WISH TO PROTECT THIS PROPERTY FROM A SHERIFF'S SALE, YOU**
29 **SHOULD COME TO THE COURT HEARING.**

30 **IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.**

31 If you do not own this property, please give this notice and the papers served with it to
32 the owner.
33 _____

34
35 **SECTION 19. Hearing on motion for order authorizing sale of residential property.** (1)
36 Whether or not the judgment debtor appears at the hearing, the court shall inquire as to the
37 facts alleged in a motion filed under section 17 of this 2005 Act and make a summary deter-
38 mination on the motion.

39 (2) The court shall authorize sale of the property pursuant to a motion filed under sec-
40 tion 17 of this 2005 Act unless the court finds:

41 (a) That the property is the homestead of the judgment debtor;

42 (b) That the judgment is subject to the homestead exemption; and

43 (c) That the amount of the judgment or judgments was \$3,000 or less at the time of entry
44 of the judgment or judgments as described in ORS 18.395 (7) and 18.428 (9).

45 (3) If the court authorizes the sale of residential property, the order must state whether

1 the homestead exemption applies to the property. If the homestead exemption does apply to
 2 the property, the order must state the amount of the exemption.

3 (4) If the court authorizes the sale of residential property, the judgment creditor may
 4 recover the costs of service of the motion and notice under section 18 of this 2005 Act as part
 5 of the costs of the sale.

6
 7 (Notice of Sale)

8
 9 SECTION 20. Person entitled to written notice of sale. (1) A judgment creditor must
 10 prepare a list of all persons entitled to written notice of an execution sale and provide the
 11 list to the sheriff in the instructions required by section 7 of this 2005 Act. For each person
 12 listed, the list must include the address last known to the judgment creditor. For all exe-
 13 cution sales, the list must include:

14 (a) The name of the judgment debtor; and

15 (b) The name of any attorney for a judgment debtor reflected in the judgment document.

16 (2) If real property is to be sold in the execution sale, the list prepared by the judgment
 17 creditor under this section must include the name of each person with one of the following
 18 interests in the real property, determined as of a date that is identified by the judgment
 19 creditor and that is not more than 10 days before the request for issuance of the writ of
 20 execution was filed:

21 (a) Any person who has a lien of record against the property that attached to the prop-
 22 erty after the judgment lien attached and before the determination date identified by the
 23 judgment creditor.

24 (b) Any person who has an interest in the property that was acquired from the debtor
 25 or any successor to the debtor, and that was recorded after the judgment lien attached and
 26 before the determination date identified by the judgment creditor.

27 (3) Subsection (2) of this section does not apply to a writ of execution requiring the sale
 28 of specific property pursuant to a judgment of foreclosure, pursuant to a deficiency judgment
 29 in a foreclosure proceeding or pursuant to any other judgment directing the sale of the
 30 specific real property. If a writ of execution is issued pursuant to a judgment in an in rem
 31 proceeding, a judgment of foreclosure or another judgment directing the sale of the specific
 32 real property, the list prepared by the judgment creditor under this section must contain the
 33 names and last known addresses of the persons who were parties to the action at the time
 34 of judgment in lieu of the names required under subsection (2) of this section.

35 (4) Failure to include the name of a person required to be listed under this section does
 36 not affect the validity of an execution sale or in any way give that person any right to
 37 challenge the sale of the property. By submitting the instructions to the sheriff, a judgment
 38 creditor certifies that the list of persons reflected in the instructions complies with this
 39 section, and the failure to include the name of any person as required by this section is
 40 subject to sanction under ORCP 17.

41 SECTION 21. Notice of sale of personal property. (1) Before conducting an execution sale
 42 of personal property, a sheriff shall give written notice of the sale in the manner provided
 43 by this section. The notice must identify the property to be sold and the time and place of
 44 the sale.

45 (2) Before any execution sale of personal property, the sheriff shall:

1 (a) Mail copies of the notice of sale by first class mail and by certified mail, return re-
2 ceipt requested, to the judgment debtor at the address provided in the instructions to the
3 sheriff; and

4 (b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment
5 debtor identified in the instructions at the address provided in the instructions to the sheriff.

6 (3) The notices required by subsection (2) of this section must be mailed not less than
7 10 days before an execution sale is conducted.

8 (4) The sheriff shall post a notice of the sale in three public places in the county in which
9 the sale is to take place. The notice must be posted not more than 20 days before the date
10 of sale identified in the notice of sale and not less than 10 days before that date.

11 (5) In lieu of posting notice under subsection (4) of this section, a sheriff shall give notice
12 of an execution sale by Internet posting if the judgment creditor requests that posting in the
13 instructions given to the sheriff under section 7 of this 2005 Act and the State Court Ad-
14 ministrators has established a website for the purpose of giving legal notice pursuant to sec-
15 tion 24 of this 2005 Act. Subject to section 24 (3) of this 2005 Act, the notice must be posted
16 on the Internet not less than 20 days before the date identified in the notice of sale and re-
17 main posted until that date.

18 **SECTION 22. Expedited sale of perishable personal property; expedited sale to prevent**
19 **loss of value.** (1) Notwithstanding section 21 of this 2005 Act, if perishable personal property
20 is levied on by a sheriff:

21 (a) The notices required by section 21 (2) of this 2005 Act must be mailed by express mail
22 not less than 48 hours before the execution sale is conducted; and

23 (b) The sheriff shall post notice of the sale in the manner required by section 21 (4) of
24 this 2005 Act not less than 48 hours before the execution sale is conducted.

25 (2) In lieu of conducting an expedited sale under subsection (1) of this section, a judgment
26 creditor or a sheriff may seek an ex parte order from the court directing the manner of
27 conducting an expedited sale to prevent loss of value. An order issued under this section may
28 modify or eliminate any of the requirements of section 21 of this 2005 Act. If an ex parte
29 order is entered under this subsection at the request of the judgment creditor, the judgment
30 creditor must attach a copy of the order to instructions provided to the sheriff under section
31 7 of this 2005 Act.

32 **SECTION 23. Notice of sale of real property.** (1) Before conducting an execution sale of
33 real property, a sheriff shall give written notice of the sale in the manner provided by this
34 section. The notice must identify the property to be sold and the time and place of the sale.

35 (2) Before any execution sale of real property, the sheriff shall:

36 (a) Mail copies of the notice of sale by first class mail and by certified mail, return re-
37 ceipt requested, to the judgment debtor at the address provided in the instructions to the
38 sheriff;

39 (b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment
40 debtor identified in the instructions at the address provided in the instructions; and

41 (c) Mail a copy of the notice of sale by first class mail to any other person listed in the
42 instructions pursuant to section 20 of this 2005 Act at the address provided in the in-
43 structions.

44 (3) The notices required by subsection (2) of this section must be mailed not less than
45 28 days before an execution sale is conducted.

1 (4) Before any execution sale of real property for which the judgment creditor has pro-
2 vided a street address under section 7 (3) of this 2005 Act, the sheriff shall post a notice of
3 the sale in a conspicuous place on the property. The notice must be posted not more than
4 seven days after the sheriff mails notices as required by subsection (2) of this section.

5 (5) The sheriff shall publish a copy of the notice of sale of real property once a week for
6 four successive weeks in a newspaper of general circulation in the county where the real
7 property is located. The sheriff may not conduct the sale until the expiration of the four-
8 week period.

9 (6) In lieu of publication in a newspaper under subsection (5) of this section, a sheriff
10 may publish a notice of sale of real property by Internet posting if the State Court Admin-
11 istrator has established a website for the purpose of giving legal notice pursuant to the
12 provisions of section 24 of this 2005 Act and the judgment creditor has requested that notice
13 be published by Internet posting in the instructions provided to the sheriff under section 7
14 of this 2005 Act. Subject to section 24 (3) of this 2005 Act, the notice must be posted on the
15 Internet not less than 28 days before the date identified in the notice of sale and remain
16 posted until that date.

17 SECTION 24. Legal notices website. (1) Subject to the availability of funding, the State
18 Court Administrator may establish and maintain a website for the purpose of giving legal
19 notices pursuant to sections 1 to 54 of this 2005 Act.

20 (2) The State Court Administrator may establish fees for posting legal notices on a
21 website maintained under this section. All fees collected by the State Court Administrator
22 under this subsection shall be deposited in the Judicial Department Operating Account es-
23 tablished under ORS 1.009.

24 (3) For the purpose of determining whether a legal notice has been posted for the period
25 of time required by law, an interruption of service of a website maintained under this section
26 that does not exceed 48 hours does not affect the continuity of the posting. An interruption
27 of service of a website maintained under this section does not prevent the sheriff from con-
28 ducting an execution sale unless the court orders otherwise.

29
30 (Conduct of Execution Sale)
31

32 SECTION 25. Conduct of sale generally; county fee. (1) The sheriff shall conduct an exe-
33 cution sale by public oral auction. The sale must be conducted between 9 a.m. and 4 p.m.
34 All property shall be sold by the sheriff in such parcels as are likely to bring the highest
35 price. Any portion of real property belonging to a person other than the judgment debtor
36 must be sold separately if the person requests a separate sale.

37 (2) The judgment creditor may set a minimum bid amount for property to be sold at an
38 execution sale.

39 (3) Tangible personal property to be sold at an execution sale must be present at the
40 place where the sale is conducted unless the property is not in the possession of the sheriff.

41 (4) The county may establish a fee to be collected by the sheriff at the time of sale. The
42 amount of the fee shall be established by the governing body of the county and may not be
43 greater than the amount necessary to pay the county for the expenses incurred by the
44 county for giving notice of the sale and conducting the sale and for the anticipated expenses
45 for any notices required to be given after the sale and other post-sale administration of the

1 sale.

2 **SECTION 26. Postponement of sale.** (1) A sheriff may postpone an execution sale to a
3 specified date if:

4 (a) The sheriff is unable to conduct the sale at the place and time specified in the notice
5 of the sale;

6 (b) The sheriff considers it appropriate to postpone the sale for want of purchasers; or

7 (c) For other sufficient cause.

8 (2) A sheriff shall postpone an execution sale to a specified date upon the request of a
9 judgment creditor.

10 (3) If possible, the sheriff shall make a public announcement of a postponement at the
11 time and place scheduled for the sale.

12 (4) An execution sale may be postponed more than one time under the provisions of this
13 section. An execution sale may not be postponed beyond the date that a return on the writ
14 is due. If the judgment creditor requests a postponement to a specified date, and the date is
15 more than 60 days after the sheriff received the writ, the request for a postponement of the
16 sale automatically operates as a request for an extension of the time for a return on the writ
17 of execution under section 6 (1) of this 2005 Act.

18 (5) The sheriff need not give additional notice of sale in the manner provided by section
19 20, 21, 22 or 23 of this 2005 Act by reason of a postponement. The State Court Administrator
20 by rule may establish procedures for giving notice of a postponement by a posting on a
21 website maintained under section 24 of this 2005 Act.

22 **SECTION 27. Amount of property to be sold; officers and deputies may not purchase.** At
23 an execution sale, the sheriff shall sell only the property necessary to satisfy the judgment.
24 A sheriff conducting an execution sale and deputies of the sheriff may not purchase property
25 at the sale or acquire any interest in property by reason of the sale.

26 **SECTION 28. Bid by judgment creditor.** (1) A judgment creditor may make oral bids for
27 property to be sold at an execution sale. Unless the amount bid by the judgment creditor
28 exceeds the full amount of the money award, calculated as of the date that the sale is to be
29 conducted, plus the costs of the sale as described in section 35 (2) of this 2005 Act that have
30 been paid by the judgment creditor, the judgment creditor need not make any payment to
31 the sheriff if the judgment creditor is the highest bidder. If the judgment creditor is the
32 highest bidder, the judgment creditor may reduce the amount bid by all costs of the sale as
33 described in section 35 (2) of this 2005 Act that have been paid by the judgment creditor be-
34 fore applying the net proceeds towards satisfaction of the judgment.

35 (2) A judgment creditor may submit a written bid for property to be sold in an execution
36 sale before the sale is conducted. A bid under this subsection may not be for more than the
37 full amount of the money award, calculated as of the date that the sale is to be conducted,
38 plus the costs of the sale that are recoverable by the judgment creditor as described in sec-
39 tion 35 (2) of this 2005 Act. A bid under this subsection must be received by the sheriff not
40 less than 48 hours before the sale is conducted. The sheriff may rely on the judgment cred-
41 itor's calculation of the amount due under the money award and for the costs of sale, and
42 is not required to make a separate calculation.

43 (3) A judgment creditor may instruct the sheriff to accept any bid that matches the
44 amount of the bid made by the judgment creditor under subsection (2) of this section.

45 (4) A written bid under subsection (2) of this section is irrevocable, but the judgment

1 creditor who submits the written bid may make an oral bid at the time of the sale that is
2 higher than the written bid.

3 **SECTION 29. Manner of payment.** (1) Except as provided in this section, a sheriff shall
4 accept as payment from a purchaser of real property at an execution sale a cashier's check,
5 a teller's check or cash. Except as provided in this section, a sheriff shall accept any com-
6 bination of cashier's checks, teller's checks or cash that is adequate to pay the purchase
7 price.

8 (2) A sheriff shall accept a cashier's check or teller's check as payment from a purchaser
9 at an execution sale only if the cashier's check or teller's check is made payable to the
10 sheriff and is drawn on a financial institution that is authorized to do business under the
11 laws of Oregon or the United States.

12 (3) If any part of the purchase price at an execution sale is paid with a cashier's check
13 or teller's check, the sheriff shall give the purchaser a receipt for the funds in lieu of a bill
14 of sale under section 30 of this 2005 Act or certificate of sale under section 31 of this 2005
15 Act. The receipt must state that the purchaser is the successful bidder and must describe
16 the property sold. If the property sold is personal property in the possession of the sheriff,
17 the sheriff shall retain possession of the property until such time as provided in subsection
18 (5) of this section. Notwithstanding ORS 206.325, the purchaser is liable to the sheriff for all
19 costs to the sheriff relating to storage and care of the property after the date of the sale.

20 (4) If any part of the purchase price at an execution sale is paid with a cashier's check
21 or teller's check, the sheriff shall deposit the check in a financial institution not later than
22 the end of the first business day after the day on which the sale is conducted. The check
23 must be deposited in a separate account.

24 (5) If the sheriff receives verification from a financial institution within 15 days after the
25 date of the sale that all cashier's checks and teller's checks delivered to the sheriff for a
26 purchase have received final settlement, the sheriff shall:

27 (a) Mail to the purchaser by first class mail a bill of sale for all personal property pur-
28 chased and a certificate of sale for all real property purchased;

29 (b) Make available to the purchaser all personal property in the possession of the sheriff
30 that was sold to the purchaser; and

31 (c) Deliver the net proceeds of the sale to the court administrator or other official as
32 provided by law.

33 (6) Subject to subsections (8) and (9) of this section, if the sheriff does not receive ver-
34 ification from a financial institution within 15 days after the date of the sale that all cash-
35 ier's checks and teller's checks delivered to the sheriff for a purchase have received final
36 settlement, the sale is void and the sheriff shall return to the purchaser any cash tendered
37 by the purchaser and any amounts received for cashier's checks and teller's checks for
38 which final settlement was received, less any amounts for which the purchaser is liable un-
39 der subsection (3) of this section, any bank charges incurred for cashier's checks or teller's
40 checks and any other amount allowed by law.

41 (7) If any part of the purchase price at an execution sale is paid with a cashier's check
42 or teller's check, and the return date for the writ that is the basis for the sale is less than
43 16 days after the date of the sale, the return date is automatically extended to 16 days after
44 the date of the sale.

45 (8) The judgment creditor may extend the time for the sheriff to receive verification of

1 a cashier's check or teller's check provided for in subsections (5) and (6) of this section. If
 2 the judgment creditor extends the time for the sheriff to receive verification of a cashier's
 3 check or teller's check, the return date for the writ is automatically extended to the next
 4 business day after the date specified by the judgment creditor.

5 (9) A judgment creditor may elect to pursue remedies under ORS chapter 73 by reason
 6 of the failure of a financial institution to honor a cashier's check or teller's check tendered
 7 under this section, as though the judgment creditor had been the person to whom the check
 8 was payable. If the judgment creditor elects to pursue remedies under this subsection, the
 9 judgment creditor must give written notice to the sheriff not less than 15 days after the date
 10 of the sale. If the judgment creditor gives notice to the sheriff under this subsection, the
 11 sheriff shall proceed as provided in subsection (5) of this section as though the full purchase
 12 price had been paid.

13 (10) As used in this section:

14 (a) "Cashier's check" has the meaning given that term in ORS 73.0104.

15 (b) "Financial institution" has the meaning given that term in ORS 706.008.

16 (c) "Teller's check" has the meaning given that term in ORS 73.0104.

17 **SECTION 30. Bill of sale for personal property.** (1) Except as provided in section 29 of this
 18 2005 Act, if a sheriff sells personal property at an execution sale, upon receipt of the pur-
 19 chase money the sheriff shall give a bill of sale to the purchaser for any property not in the
 20 possession of the sheriff. The sheriff shall deliver personal property in the possession of the
 21 sheriff to the purchaser, but shall give the purchaser a bill of sale for that property only if
 22 the purchaser requests it.

23 (2) If the sheriff has secured property in the manner provided by section 9 of this 2005
 24 Act and the judgment debtor refuses to make the property available to the purchaser, with-
 25 out further court order the sheriff shall use all reasonable force necessary to allow the
 26 purchaser to access the property at the place where the property was located when the
 27 sheriff secured the property.

28 **SECTION 31. Sheriff's certificate of sale for real property.** (1) If a sheriff sells real
 29 property at an execution sale, the sheriff shall prepare a certificate of sale containing a
 30 particular description of the property sold, the price bid for each distinct lot or parcel and
 31 the total amount paid. The certificate must state whether the property is subject to re-
 32 demption. Except as provided in section 29 (3) of this 2005 Act, the sheriff shall give the
 33 certificate to the purchaser.

34 (2) A purchaser may record in the County Clerk Lien Record the sheriff's certificate of
 35 sale provided to the purchaser under the provisions of this section.

36 **SECTION 32. Notice of completed sale.** (1) After the execution sale of any residential
 37 property as defined in section 15 of this 2005 Act that is subject to redemption and not later
 38 than 30 days after the purchaser is given the certificate of sale, the sheriff shall:

39 (a) Securely attach to the main entrance of any dwelling unit upon the property a written
 40 notice stating that the property has been sold; and

41 (b) Send a copy of the notice described in paragraph (a) of this subsection by first class
 42 mail and by registered or certified mail to the judgment debtor.

43 (2) The notice required by subsection (1)(a) of this section shall be in substantially the
 44 following form:

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YOUR PROPERTY HAS BEEN SOLD

Your property located at _____ has been sold. The property was sold on _____, 2____, to satisfy a court judgment against you. The purchaser’s name and address are _____. The purchaser paid _____ for your property.

Oregon law gives you the right to buy back the property from the purchaser by paying the purchaser the amount paid at the sale plus taxes, expenses and interest. **YOU WILL LOSE THE RIGHT TO BUY BACK YOUR PROPERTY ON _____, 2____.** If you do not buy back your property, the sheriff will give a deed for your property to the purchaser on that date.

The law that gives you the right to buy back your property is found in sections 1 to 54 of this 2005 Act. You must follow exactly the instructions provided there.

IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.

(3) The sheriff shall retain the return receipt for a notice sent by registered or certified mail as provided in subsection (1)(b) of this section and shall make and retain a record of the posting of notice required by subsection (1)(a) of this section.

(4) Failure of the sheriff to comply with any provision of this section does not affect the validity of the sale of residential property. However, this subsection does not limit any other right the judgment debtor may have.

SECTION 33. Possession after sale; right to rents or value of use. (1) Subject to subsection (2) of this section, the purchaser of real property at an execution sale is entitled to possession of the property from the date of sale until a redemption of the property, if any. Subject to subsection (2) of this section, the redemptioner of real property is entitled to possession of the property from the date the payment required by section 41 or 42 of this 2005 Act is made until another redemption, if any.

(2) If property sold on execution or redeemed is in the possession of a tenant who holds the property at the time of the sale under an unexpired lease that has a priority that is inferior to the claim of the judgment creditor, the lessee has the right to remain in possession of the property until expiration of the period allowed for redemption if the lessee makes the lease payments to the purchaser or redemptioner, or pays to the purchaser or redemptioner a monthly payment equal to the value of the use and occupancy of the property, whichever amount is greater.

SECTION 34. Confirmation of sale of real property. (1) A sale of real property in an execution sale is conclusively established to have been conducted in the manner required by sections 1 to 54 of this 2005 Act unless the judgment debtor or another person adversely affected by the sale files an objection to the sale within 10 days after the filing of the sheriff’s return under section 6 of this 2005 Act.

(2) If an objection to a sale is filed, the court shall schedule a hearing on the objection. The court shall grant an order confirming the sale unless the person objecting to the sale establishes that the sale was not conducted in a manner that substantially conformed with the manner required by law, and that as a result it was probable that the person suffered damage. An order confirming a sale under this subsection conclusively establishes that the sale was conducted in the manner required by sections 1 to 54 of this 2005 Act. If the court

1 sustains the objection, the court shall direct that the property be resold. Notwithstanding
2 any other provision of sections 1 to 54 of this 2005 Act, the court may establish timelines for
3 the conduct of the second sale and the return by the sheriff upon completion of the second
4 sale.

5 (3) If the court orders that real property be resold under this section, the sheriff may
6 not accept any bid in the second sale that is less than the amount paid in the first sale. If
7 no higher bid is received in the second sale, the sheriff shall so indicate in the sheriff's re-
8 turn to the court. If a higher bid is received at the second sale, upon receipt of the proceeds
9 the court administrator shall return to the first purchaser the amounts paid by the pur-
10 chaser. If the original purchaser makes the highest bid in the second sale, the purchaser
11 need pay to the sheriff only the difference between the bid in the second sale and the
12 amounts already paid by the purchaser.

13 **SECTION 35. Delivery and distribution of proceeds.** (1) After the deduction of all sheriff's
14 fees and costs allowed by law that have not been paid by the judgment creditor, the sheriff
15 shall deliver all net proceeds from an execution sale to the court administrator with the
16 sheriff's return on the writ.

17 (2) Except as provided in subsection (3) of this section, a judgment creditor is entitled
18 to recover from the proceeds of the sale all of the following costs of sale paid by the judg-
19 ment creditor:

20 (a) Sheriff's fees;

21 (b) The cost of any title report required to determine persons entitled to notice under
22 section 20 of this 2005 Act;

23 (c) The cost of any indemnity bond required by section 12 of this 2005 Act; and

24 (d) Recording fees incurred pursuant to section 5 of this 2005 Act.

25 (3) Unless a judgment creditor purchases the property sold at an execution sale, the
26 judgment creditor may recover the costs specified in subsection (2) of this section from the
27 proceeds of the sale only pursuant to an order of the court for the distribution of the pro-
28 ceeds. The court shall order that the costs specified in subsection (2) of this section be paid
29 before application of the remaining proceeds to satisfaction of the judgment.

30 (4) If any proceeds from an execution sale remain after the payment of costs under
31 subsection (3) of this section and satisfaction of the judgment, the court administrator shall
32 pay the remaining proceeds as directed by the court in an order of distribution.

33 **SECTION 36. Effect of sale on judgment debtor's title; effect of redemption by judgment**
34 **debtor.** (1) A judgment debtor's title to real property that is subject to redemption under
35 sections 38 to 46 of this 2005 Act is not affected by the sale of the property at an execution
36 sale. If a judgment debtor redeems property of the judgment debtor sold at an execution sale,
37 the judgment debtor takes the property subject to all liens of record, whether arising before,
38 on or after the sale, as though the sale had never occurred.

39 (2) If a judgment debtor redeems property of the judgment debtor sold at an execution
40 sale, the property may not be redeemed by any other person. The sheriff shall provide the
41 judgment debtor with a certificate of redemption. A certificate of redemption may be re-
42 corded in the County Clerk Lien Record for the county in which the property is located.

43 **SECTION 37. Conduct of sale pursuant to court rule or terms of order or judgment.** A
44 court, by the terms of a judgment or order, may direct that an execution sale under a spe-
45 cific judgment be conducted in a manner different than the manner specified by sections 1

1 to 54 of this 2005 Act. The Chief Justice of the Supreme Court may by court rule provide that
 2 execution sales be conducted in a manner different than the manner specified by sections 1
 3 to 54 of this 2005 Act.

4
 5 (Redemption)

6
 7 **SECTION 38. Property that may be redeemed.** (1) All real property sold at an execution
 8 sale may be redeemed except for a leasehold interest with an unexpired term of less than two
 9 years.

10 (2) A manufactured dwelling, as defined by ORS 446.003, may be redeemed only if the
 11 manufactured dwelling is sold together with the real property on which the manufactured
 12 dwelling is located.

13 (3) The right of a seller to receive payments under a contract for the sale of real property
 14 that is sold with the real property may be redeemed.

15 (4) A purchaser's interest in a land sale contract may be redeemed unless the interest
 16 is sold pursuant to a land sale contract and the judgment directs that the interest be sold
 17 without right of redemption.

18 **SECTION 39. Who may redeem.** (1) Subject to subsection (3) of this section, property that
 19 is described in section 38 of this 2005 Act and that is sold at an execution sale may be re-
 20 deemed by:

21 (a) The judgment debtor;

22 (b) Any person with a lien against the property that has a priority that is inferior to the
 23 claim of the judgment creditor; or

24 (c) The successor in interest of any person described in paragraph (a) or (b) of this sub-
 25 section.

26 (2) Subject to subsection (3) of this section, for the purposes of sections 38 to 46 of this
 27 2005 Act:

28 (a) All references to a judgment debtor include a successor in interest to a judgment
 29 debtor; and

30 (b) A person described in subsection (1)(b) of this section, and any successor in interest
 31 of that person, is a lien claimant.

32 (3) Any person described in subsection (1) of this section who conveys all of the person's
 33 interest in property sold on execution to a successor in interest may not redeem the prop-
 34 erty.

35 **SECTION 40. Time for redemption.** (1) Except as otherwise provided in sections 38 to 46
 36 of this 2005 Act, the ability of a judgment debtor to redeem property sold at an execution sale
 37 expires unless the judgment debtor redeems the property within 180 days after the date of
 38 sale.

39 (2) Except as provided in subsection (3) of this section, a lien claimant loses all interest
 40 in property sold at an execution sale unless the lien claimant redeems the property within
 41 60 days after the date of sale.

42 (3) If any lien claimant redeems property within the time provided by subsection (2) of
 43 this section, any other lien claimant may redeem the property from the redemptioner. The
 44 subsequent redemption must be made within 60 days after the redemption amount specified
 45 in section 41 or 42 of this 2005 Act is paid to the sheriff. Other lien claimants may thereafter

1 redeem from a preceding redemptioner, in the same manner, as long as each redemption is
 2 made within 60 days after the previous redemption.

3 **SECTION 41. Redemption amount payable to purchaser.** Subject to section 43 of this 2005
 4 Act, a judgment debtor or lien claimant may redeem property from the purchaser at an ex-
 5 ecution sale by paying to the sheriff:

6 (1) The amount paid by the purchaser at the execution sale, with interest on that amount
 7 at the rate of nine percent per annum from the date of sale;

8 (2) The amount of any taxes the purchaser has paid on the property, with interest at the
 9 rate of nine percent per annum from the date of payment;

10 (3) Any amounts necessarily expended by the purchaser to prevent waste, with interest
 11 at the rate of nine percent per annum from the date of payment; and

12 (4) Any amounts that the purchaser has paid on liens superior to the lien of the pur-
 13 chaser, with interest at the rate of nine percent per annum from the date of payment.

14 **SECTION 42. Redemption amount payable to redemptioner.** Subject to section 43 of this
 15 2005 Act, a judgment debtor or lien claimant may redeem property from a redemptioner by
 16 paying to the sheriff:

17 (1) The amount paid by the redemptioner, with interest on that amount at the rate of
 18 nine percent per annum from the date of payment;

19 (2) The amount owing on the lien of the redemptioner, unless the payment is made by a
 20 lien claimant and the lien claimant has a lien that has a priority that is superior to the lien
 21 of the redemptioner;

22 (3) The amount of any taxes the redemptioner has paid on the property, with interest at
 23 the rate of nine percent per annum from the date of payment;

24 (4) Any amounts necessarily expended by the redemptioner to prevent waste, with in-
 25 terest at the rate of nine percent per annum from the date of payment; and

26 (5) Any amounts that the redemptioner has paid on liens superior to the lien of the
 27 redemptioner, with interest at the rate of nine percent per annum from the date of payment.

28 **SECTION 43. Setoff for rents, income and profits realized by purchaser or redemptioner;**
 29 **purchaser's lien for crops and amounts expended to prevent waste.** (1) A judgment debtor is
 30 entitled to a setoff against the amounts required to redeem property sold at an execution
 31 sale for all rents, income and profits realized by the purchaser from the property or by a
 32 redemptioner of the property.

33 (2) If the real property sold at an execution sale is farmland, the purchaser has a lien
 34 on the first crops sown or grown after the sale and for all sums reasonably expended by the
 35 purchaser in plowing, cultivating or seeding the property. The lien of the purchaser is supe-
 36 rior to all other liens except the liens provided by law for payment of wages for work in
 37 cultivating the land or harvesting the crops grown on the property. If the real property is
 38 not farmland, the purchaser has a lien on the profits accruing from the property during the
 39 period that the purchaser held the land for sums necessarily expended by the purchaser to
 40 prevent waste.

41 **SECTION 44. Purchaser or redemptioner must provide current address.** A purchaser or
 42 redemptioner other than the judgment debtor shall provide a current address to the sheriff
 43 at the time the purchase or redemption is made, and shall notify the sheriff of any change
 44 in address until a subsequent redemption or the expiration of the time for redeeming,
 45 whichever occurs first. If the purchaser or redemptioner fails to comply with the require-

1 ments of this section, the purchaser or redemptioner may not object to a subsequent re-
2 demption by reason of failure of a judgment debtor or lien claimant to give notice under
3 section 44a of this 2005 Act.

4 **SECTION 44a. Notice of intent to redeem.** (1) A judgment debtor or lien claimant shall
5 serve the purchaser or redemptioner with a notice of intent to redeem. The notice must
6 specify a payment date on which the judgment debtor or lien claimant will make payment
7 to the sheriff, the redemption amount calculated by the judgment debtor or lien claimant and
8 the manner in which the redemption amount was calculated. The notice must inform the
9 purchaser or redemptioner if an accounting under section 45 of this 2005 Act is requested.

10 (2) If the person giving notice of intent to redeem is a lien claimant, the notice must
11 reflect the nature of the lien claimant's interest and the person shall attach to the notice
12 copies of any documents necessary to establish that interest. If the person is a successor in
13 interest to the judgment debtor or a lien claimant, the person shall attach to the notice
14 copies of any documents necessary to establish how the person acquired the interest of the
15 judgment debtor or lien claimant. If the person claims to have an interest with a priority
16 that is superior to the interest of the purchaser or redemptioner, the person shall attach to
17 the notice copies of any documents necessary to establish that priority.

18 (3) A notice of intent to redeem must be served by personal service or by first class mail.
19 If the notice is served by first class mail, service is effective on mailing. A copy of the notice
20 may be filed with the sheriff before the notice is given to the purchaser or redemptioner, but
21 must be filed with the sheriff no later than 24 hours after the notice is served on the pur-
22 chaser or redemptioner. The notice must be served on the purchaser or redemptioner not
23 more than 30 days before the payment date specified in the notice of intent to redeem, and:

24 (a) Not less than 14 days before the payment date specified in the notice of intent to re-
25 deem, if service is made by first class mail; or

26 (b) Not less than seven days before the payment date specified in the notice of intent to
27 redeem, if personal service is made.

28 (4) A judgment debtor or lien claimant shall submit proof of service of the notice required
29 by this section at the time the judgment debtor or lien claimant pays the sheriff under sec-
30 tion 44e of this 2005 Act.

31 **SECTION 44b. Objection to notice of intent to redeem.** (1) A purchaser or redemptioner
32 may object to a notice of intent to redeem if the purchaser or redemptioner asserts that the
33 person serving the notice of intent to redeem under section 44a of this 2005 Act is not eligible
34 to redeem. An objection under this section must be filed with the court administrator, filed
35 with the sheriff and mailed by first class mail to the person serving the notice of intent to
36 redeem, before the payment date specified in the notice of intent to redeem.

37 (2) The filing of an objection under this section does not affect the requirement of pay-
38 ment of the redemption amount specified in the notice of intent to redeem under section 44e
39 of this 2005 Act.

40 **SECTION 44c. Response to notice of intent to redeem.** (1) A purchaser or redemptioner
41 shall respond to a notice of intent to redeem under section 44a of this 2005 Act if:

42 (a) The notice of intent to redeem requests an accounting under section 45 of this 2005
43 Act; or

44 (b) The purchaser or redemptioner objects to the redemption amount specified in the
45 notice of intent to redeem.

1 (2) A response to a notice of intent to redeem must be served by personal service or by
2 first class mail. If the response is served by first class mail, service is effective on mailing.
3 A copy of the response may be filed with the sheriff before the response is given to the
4 judgment debtor or lien claimant, but must be filed with the sheriff before the payment date
5 specified in the notice of intent to redeem. The response must be served on the judgment
6 debtor or lien claimant before the payment date specified in the notice of intent to redeem.

7 (3) If the notice of intent to redeem requests an accounting, the accounting must be at-
8 tached to the response given under this section.

9 (4) A response filed under this section must reflect the amount claimed as the proper
10 redemption amount after deductions or additions by reason of any accounting provided with
11 the response.

12 **SECTION 44d. Objection to response.** (1) A judgment debtor or lien claimant may object
13 to the amount claimed in the response as the proper redemption amount under section 44c
14 of this 2005 Act. An objection under this section must be filed with the court administrator,
15 filed with the sheriff and mailed by first class mail to the person serving the response, within
16 14 days after the response is served on the judgment debtor or lien claimant under section
17 44c of this 2005 Act.

18 (2) The filing of an objection under this section does not affect the requirement of pay-
19 ment of the redemption amount specified in the notice of intent to redeem under section 44e
20 of this 2005 Act.

21 **SECTION 44e. Payment of redemption amount.** (1) A judgment debtor or lien claimant
22 who serves a notice of intent to redeem under section 44a of this 2005 Act shall pay the
23 sheriff at least the redemption amount specified in the notice on or before the payment date
24 specified in the notice.

25 (2) The sheriff shall issue to the person making a payment under this section a certificate
26 of sale in the form prescribed by section 31 of this 2005 Act on the payment date specified
27 in the notice of intent to redeem unless, before the payment date specified in the notice:

28 (a) An objection is filed with the sheriff under section 44b; or

29 (b) A response is filed with the sheriff under section 44c, and the judgment debtor or lien
30 claimant declines to pay the amount claimed in the response as the proper redemption
31 amount.

32 (3) If a judgment debtor or lien claimant pays the sheriff the redemption amount speci-
33 fied in the notice of intent to redeem, but the sheriff does not issue a certificate of sale
34 pursuant to subsection (2) of this section, the sheriff shall give the judgment debtor or lien
35 claimant a receipt for the funds in lieu of a certificate of sale.

36 (4) If a judgment debtor or lien claimant does not make payment as required by sub-
37 section (1) of this section, the notice of intent to redeem is of no effect.

38 **SECTION 44f. Court proceedings on objections.** (1) If an objection is filed under section
39 44b or 44d of this 2005 Act, the sheriff shall transmit to the court administrator copies of
40 all records relating to the sale that are within the sheriff's possession.

41 (2) The court shall schedule a hearing on an objection filed under section 44b or 44d of
42 this 2005 Act as soon as possible.

43 (3) If a person files an objection under section 44b of this 2005 Act, and the court deter-
44 mines that the person is eligible to redeem, the court shall direct the sheriff to issue a cer-
45 tificate of sale to the person, dated as of the date that the receipt was issued under section

1 44e of this 2005 Act. If the court determines that the person is not eligible to redeem, the
2 court shall direct the sheriff to return all amounts paid by the person to the sheriff under
3 section 44e of this 2005 Act.

4 (4) If an objection is filed under section 44d of this 2005 Act, the court shall determine
5 the proper redemption amount. If the court determines that the proper redemption amount
6 is greater than the amount paid by the judgment debtor or lien claimant under section 44e
7 of this 2005 Act, the court shall direct the sheriff to issue a certificate of sale to the judg-
8 ment debtor or lien claimant upon payment of the additional amounts within 10 days after
9 entry of the court's order, dated as of the date that the receipt was issued under section 44e
10 of this 2005 Act. If the court determines that the proper redemption amount is less than the
11 amount paid by the judgment debtor or lien claimant under section 44e of this 2005 Act, the
12 court shall direct the sheriff to issue a certificate of sale to the judgment debtor or lien
13 claimant, dated as of the date that the receipt was issued under section 44e of this 2005 Act,
14 and order repayment to the judgment debtor or lien claimant of the amounts determined by
15 the court to be in excess of the proper redemption amount.

16 (5) Upon issuance of a certificate of sale under this section, the sheriff shall deliver to
17 the purchaser or preceding redemptioner the amount determined to be the proper redemp-
18 tion amount.

19 (6) If the court determines under subsection (4) of this section that the proper redemp-
20 tion amount is greater than the amount paid by the judgment debtor or lien claimant under
21 section 44e of this 2005 Act, and determines that the amount specified in the notice of intent
22 to redeem does not represent a good faith attempt to determine the proper redemption
23 amount, the court shall enter judgment against the judgment debtor or lien claimant for all
24 attorney fees incurred by the purchaser or preceding redemptioner in the proceedings.

25 **SECTION 45. Accounting.** (1) If a notice of intent to redeem served under section 44a of
26 this 2005 Act includes a request for an accounting, the purchaser or redemptioner shall at-
27 tach an accounting to the response given by the purchaser or redemptioner under section
28 44c of this 2005 Act. The accounting must reflect:

29 (a) The amount of any taxes the purchaser or redemptioner has paid on the property,
30 with interest at the rate of nine percent per annum from the date of payment.

31 (b) Any amounts necessarily expended by the purchaser or redemptioner to prevent
32 waste, with interest at the rate of nine percent per annum from the date of payment.

33 (c) Any amounts that the purchaser or redemptioner has paid on liens superior to the
34 lien of the purchaser or redemptioner, with interest at the rate of nine percent per annum
35 from the date of payment.

36 (d) All amounts received as rents, income or profits from the property by a purchaser
37 or redemptioner while the purchaser or redemptioner has been in possession of the property.

38 (2) If a notice of intent to redeem served under section 44a of this 2005 Act includes a
39 request for an accounting, and the purchaser or redemptioner fails to respond as required
40 by section 44c of this 2005 Act, the judgment debtor or lien claimant may file a motion with
41 the court requesting an order requiring the purchaser or redemptioner to show cause why
42 the purchaser or redemptioner should not be held in contempt. A motion under this sub-
43 section must be made not more than 28 days after the notice of intent to redeem is served
44 on the purchaser or redemptioner.

45 (3) If a motion is filed by a judgment debtor or lien claimant under subsection (2) of this

1 section, the court shall determine the proper redemption amount in the same manner as
 2 provided in section 44f of this 2005 Act for determinations on objections filed under section
 3 44d of this 2005 Act.

4 (4) The filing of a motion under this section does not affect the requirement of payment
 5 of the redemption amount specified in the notice of intent to redeem under section 44a of
 6 this 2005 Act.

7 **SECTION 46. Manner of payment.** (1) Except as provided in this section, a sheriff shall
 8 accept as payment from a redemptioner a cashier's check, a teller's check or cash. Except
 9 as provided in this section, a sheriff shall accept any combination of cashier's checks, teller's
 10 checks or cash that is adequate to pay the redemption amount.

11 (2) A sheriff shall accept a cashier's check or teller's check as payment from a
 12 redemptioner only if the cashier's check or teller's check is made payable to the sheriff and
 13 is drawn on a financial institution that is authorized to do business under the laws of Oregon
 14 or the United States.

15 (3) If any part of the redemption amount is paid with a cashier's check or teller's check,
 16 the sheriff shall deposit the check in a financial institution not later than the end of the first
 17 business day after the day on which the check is received. The check must be deposited in
 18 a separate account.

19 (4) If the sheriff receives verification from a financial institution within 15 days after the
 20 date of the sale that all cashier's checks and teller's checks delivered to the sheriff for the
 21 redemption have received final settlement, and the sheriff is required to file a certificate of
 22 sale under section 44e of this 2005 Act, the sheriff shall mail to the redemptioner by first
 23 class mail a certificate of sale in the form prescribed by section 31 of this 2005 Act and de-
 24 liver to the purchaser or former redemptioner all amounts paid to the sheriff. If the sheriff
 25 is not required to file a certificate of sale under section 44e of this 2005 Act, the sheriff shall
 26 give the person tendering the amounts a receipt for the funds in lieu of a certificate of sale,
 27 and shall deliver a certificate of sale and the amounts paid to the sheriff only as provided in
 28 section 44f of this 2005 Act after a final decision by the court.

29 (5) If the sheriff does not receive verification from a financial institution within 15 days
 30 after the checks are deposited that all cashier's checks and teller's checks delivered to the
 31 sheriff have received final settlement, the redemption is void and the sheriff shall return to
 32 the redemptioner any cash tendered by the redemptioner and any amounts received for
 33 cashier's checks and teller's checks for which final settlement was received, less any bank
 34 charges incurred for cashier's checks or teller's checks and any other amount allowed by
 35 law.

36 (6) As used in this section:

37 (a) "Cashier's check" has the meaning given that term in ORS 73.0104.

38 (b) "Financial institution" has the meaning given that term in ORS 706.008.

39 (c) "Teller's check" has the meaning given that term in ORS 73.0104.

40
 41 (Waste)

42
 43 **SECTION 47. Court may restrain waste.** Upon motion of a purchaser who is not in pos-
 44 session of the real property or any person with redemption rights, the court may restrain
 45 waste of the real property sold at an execution sale. A person in possession of the real

1 property does not commit waste of the property by continuing to use the property in the
 2 same manner in which the property was used before the execution sale, by engaging in the
 3 ordinary course of husbandry on the property or by making necessary repairs to buildings.

4
 5 (Sheriff's Deed)

6
 7 **SECTION 48. Sheriff's deed.** (1) Unless the property is redeemed by the judgment debtor,
 8 the sheriff shall execute and deliver a deed for real property sold at an execution sale. The
 9 deed shall convey the property to the purchaser or, if the property has been redeemed by a
 10 lien claimant, to the lien claimant. The deed shall be delivered to the purchaser or lien
 11 claimant as soon as possible after the expiration of the time allowed for redemption by the
 12 judgment debtor.

13 (2) Notwithstanding subsection (1) of this section, the court may direct the sheriff to
 14 execute a deed to a purchaser or redemptioner before the expiration of the time allowed for
 15 redemption by the judgment debtor if the purchaser or redemptioner establishes that the
 16 purchaser or redemptioner has acquired the rights of all persons entitled to redeem.

17
 18 **SPECIAL RULES FOR SPECIFIC TYPES OF PROPERTY**

19
 20 **SECTION 49. Manufactured dwellings and floating homes.** (1) Except as provided in sub-
 21 section (2) of this section, a manufactured dwelling or floating home must be levied on and
 22 sold in the same manner as provided for real property under sections 1 to 54 of this 2005 Act
 23 if the real property upon which the manufactured dwelling or floating home is located is to
 24 be sold at the execution sale.

25 (2) A manufactured dwelling or floating home that is held as inventory for sale or lease
 26 in the normal course of business must be levied on and sold in the same manner as provided
 27 for tangible personal property under sections 1 to 54 of this 2005 Act.

28 (3) If the real property upon which a manufactured dwelling or floating home is located
 29 is not to be sold at the execution sale, and the manufactured dwelling or floating home is
 30 not held as inventory for sale or lease in the normal course of business, the manufactured
 31 dwelling or floating home must be levied on and sold in the same manner as provided for real
 32 property under sections 1 to 54 of this 2005 Act except that:

33 (a) The legal description required by section 7 (1)(e) of this 2005 Act need not be included
 34 in the instructions to the sheriff; and

35 (b) The sheriff shall give the purchaser of a manufactured dwelling or floating home a
 36 bill of sale under section 30 of this 2005 Act and not a certificate of sale under section 31 of
 37 this 2005 Act.

38 (4) For the purposes of this section:

39 (a) "Floating home" has the meaning given that term in ORS 830.700.

40 (b) "Manufactured dwelling" has the meaning given that term in ORS 446.003.

41 **SECTION 50. Purchaser's interest in a land sale contract; leasehold interest in land with**
 42 **unexpired term of more than two years.** (1) Except as provided in this section, a purchaser's
 43 interest in a contract for the sale of real property or a leasehold interest in land with an
 44 unexpired term of more than two years must be levied on and sold in the same manner as
 45 provided for real property under sections 1 to 54 of this 2005 Act.

1 creditor, purchaser or lien claimant objects to the performance by a sheriff of any duty im-
 2 posed on the sheriff under sections 1 to 54 of this 2005 Act, the sheriff may give written
 3 notice of the objection to the court and request that the court resolve the dispute. If written
 4 notice is given to the court under this section, the court shall resolve the dispute and provide
 5 such additional instructions to the sheriff as may be necessary.

6 **SECTION 54.** Nothing in sections 1 to 54 of this 2005 Act affects the ability of a court to
 7 direct seizure of property under ORS 18.268 (2).

8 **SECTION 55.** ORS 18.005 is amended to read:

9 18.005. As used in this chapter:

10 (1) "Action" means any proceeding commenced in a court in which the court may render a
 11 judgment.

12 (2) "Child support award" means a money award or agency order that requires the payment of
 13 child support in installments and that is entered under ORS 108.010 to 108.550, 416.310 to 416.340,
 14 416.400 to 416.470, 416.510 to 416.990, 419B.400 or 419C.590 or ORS chapter 25, 107, 109 or 110.

15 (3) "Civil action" means any action that is not a criminal action.

16 (4) "Claim" includes a charge in a criminal action.

17 (5) "Court administrator" means a trial court administrator in a circuit court that has a trial
 18 court administrator and the clerk of the court in all other courts.

19 (6) "Criminal action" has the meaning given in ORS 131.005.

20 (7) "Execution" means enforcement of the money award portion of a judgment or enforcement
 21 of a judgment requiring delivery of the possession or sale of specific real or personal property, by
 22 means of writs of execution, writs of garnishment and other statutory or common law writs or
 23 remedies that may be available under the law.

24 (8) "General judgment" means the judgment entered by a court that decides all claims in the
 25 action except:

26 (a) A claim previously decided by a limited judgment; and

27 (b) A claim that may be decided by a supplemental judgment.

28 (9) "Judgment" means the concluding decision of a court on one or more claims in one or more
 29 actions, as reflected in a judgment document.

30 (10) "Judgment document" means a writing in the form provided by ORS 18.038 that incorpo-
 31 rates a court's judgment.

32 (11) "Judgment lien" means the effect of a judgment on real property as described in ORS 18.150
 33 (2) and (3) for the county in which the judgment is entered, and as described in ORS 18.152 (2) and
 34 (3) for a county in which the judgment is recorded under ORS 18.152. "Judgment lien" includes any
 35 support arrearage lien attaching to real property under ORS 18.150 (3) or 18.152 (3).

36 (12) "Judgment remedy" means:

37 (a) The ability of a judgment creditor to enforce a judgment through execution; and

38 (b) Any judgment lien arising under ORS 18.150 or 18.152.

39 (13) "Limited judgment" means a judgment rendered before entry of a general judgment in an
 40 action that disposes of at least one but fewer than all claims in the action and that is rendered
 41 pursuant to a statute or other source of law that specifically authorizes disposition of fewer than
 42 all claims in the action. "Limited judgment" includes:

43 (a) A judgment entered under ORCP 67 B or 67 G;

44 (b) A judgment entered before the conclusion of an action in a circuit court for the partition
 45 of real property, defining the rights of the parties to the action and directing sale or partition; and

1 (c) An interlocutory judgment foreclosing an interest in real property.

2 (14) "Money award" means a judgment or portion of a judgment that requires the payment of
3 money.

4 (15) "Person" includes a public body as defined in ORS 174.109.

5 [(15)] (16) "Supplemental judgment" means a judgment that by law may be rendered after a
6 general judgment has been entered in the action and that affects a substantial right of a party.

7 [(16)] (17) "Support arrearage lien" means a lien that attaches to real property under the pro-
8 visions of ORS 18.150 (3) or 18.152 (3).

9 [(17)] (18) "Support award" means a money award or agency order that requires the payment
10 of child or spousal support in installments.

11 **SECTION 56.** ORS 18.322 is amended to read:

12 18.322. [Except as provided in ORS 18.536,] The judgment debtor's claim of exemption shall, upon
13 application of either plaintiff or judgment debtor, be adjudicated in a summary manner at a hearing
14 in the court out of which the execution issues.

15 **SECTION 57.** ORS 18.395 is amended to read:

16 18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment
17 and from liability in any form for the debts of the owner to the amount in value of \$25,000, except
18 as otherwise provided by law. The exemption shall be effective without the necessity of a claim
19 thereof by the judgment debtor. When two or more members of a household are debtors whose in-
20 terests in the homestead are subject to sale on execution, the lien of a judgment or liability in any
21 form, their combined exemptions under this section shall not exceed \$33,000. The homestead must
22 be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the
23 exemption shall not be impaired by:

24 (a) Temporary removal or temporary absence with the intention to reoccupy the same as a
25 homestead;

26 (b) Removal or absence from the property; or

27 (c) The sale of the property.

28 (2) The exemption shall extend to the proceeds derived from such sale to an amount not ex-
29 ceeding \$25,000 or \$33,000, whichever amount is applicable under subsection (1) of this section, if
30 the proceeds are held for a period not exceeding one year and held with the intention to procure
31 another homestead therewith.

32 (3) The exemption period under subsection (1)(b) and (c) of this section shall be one year from
33 the removal, absence or sale, whichever occurs first.

34 (4) When the owner of a homestead has been granted a discharge in bankruptcy or has conveyed
35 the homestead property, the value thereof, for the purpose of determining a leviable interest in ex-
36 cess of the homestead exemption, shall be the value on the date of the petition in bankruptcy,
37 whether the value is determined in the bankruptcy proceedings or not, or on the date the
38 conveyance becomes effective, whichever shall first occur. However, with respect to judgments not
39 discharged in the bankruptcy, or entered against the owner after discharge, the value on the effec-
40 tive date of conveyance shall be controlling.

41 (5) Except as provided in subsection (7) of this section, no homestead that is the actual abode
42 of and occupied by the judgment debtor, or that is the actual abode of and occupied by a spouse,
43 dependent parent or dependent child of the judgment debtor, shall be sold on execution to satisfy a
44 judgment that at the time of entry does not exceed \$3,000. However, such judgment shall remain a
45 lien upon the real property, and the property may be sold on execution:

1 (a) At any time after the sale of the property by the judgment debtor; and

2 (b) At any time after the property is no longer the actual abode of and occupied by the judgment
3 debtor or the spouse, dependent parent or dependent child of the judgment debtor.

4 (6) The limitation on execution sales imposed by subsection (5) of this section is not impaired
5 by temporary removal or temporary absence with the intention to reoccupy the property as a
6 homestead.

7 (7) The limitation on execution sales imposed by subsection (5) of this section does not apply if
8 two or more judgments are owing to a single judgment creditor and the total amount owing to the
9 judgment creditor, determined by adding the amount of each individual judgment as of the date the
10 judgment was entered, is greater than \$3,000.

11 (8) Upon the issuance of an order authorizing sale as *provided in ORS 18.536* **required by**
12 **section 16 of this 2005 Act**, and in conformance with subsection (5) of this section, the *levying*
13 *officer* **sheriff** may proceed to *advertise and* sell the property. If the homestead exemption applies,
14 the *levying officer* **sheriff** shall pay the homestead owner out of the proceeds the sum of \$25,000
15 or \$33,000, whichever is applicable, and apply the balance of the proceeds on the execution. How-
16 ever, no sale shall be made where the homestead exemption applies unless the sum bid for the
17 homestead is in excess of the sum of the costs of sale and \$25,000 or \$33,000, whichever is applica-
18 ble. If no such bid is received, the expense of the *advertising and preparation for* sale shall be borne
19 by the petitioner.

20 **(9) The homestead exemption provided by this section applies to a purchaser’s interest**
21 **under a contract for the sale of real property.**

22 **SECTION 58.** ORS 18.398 is amended to read:

23 18.398. (1) It is the policy of this state:

24 (a) To afford protection to the debtor and the debtor’s family homestead through the homestead
25 exemption;

26 (b) To maintain dependent children from the financial resources of both parents of those chil-
27 dren;

28 (c) That the homestead exemption should not be permitted to serve as a shield for a debtor’s
29 evasion of child support obligations;

30 (d) That the burden for that support should not be shifted in all cases to the present family of
31 the debtor through the sale of the family residence; and

32 (e) That to accommodate these policies, the court should have the discretion to decline to allow
33 all or part of a claimed homestead exemption in cases involving child support as provided in this
34 section.

35 (2) Notwithstanding ORS 18.395 to 18.422, a court in its discretion may decline to allow a
36 homestead exemption in whole or part in any proceeding under *ORS 18.536* **section 19 of this 2005**
37 **Act** if the proceeding is based on a judgment for child support that arises out of an order or judg-
38 ment under ORS 24.115, 107.095, 107.105, 107.135, 108.120, 109.100, 109.103, 109.155, 109.165, 416.400
39 to 416.470, 419B.400 or 419C.590 or ORS chapter 110 or 125.

40 (3) In exercising the discretion granted under subsection (1) of this section, the court shall
41 consider:

42 (a) The financial resources of both parties;

43 (b) The number of dependents of each of the parties;

44 (c) The ages, health and conditions of parties and their dependents;

45 (d) The child support payment history of the judgment debtor on the judgment which is the

1 subject of the petition; and

2 (e) Other collection attempts by the judgment creditor on the judgment which is the subject of
3 the petition.

4 (4) This section shall not apply to any proceeding under [*ORS 18.536*] **section 19 of this 2005**
5 **Act** brought by or on the behalf of the state or any agency of the state.

6 **SECTION 59.** ORS 18.428 is amended to read:

7 18.428. (1) **Except as otherwise provided by law,** a [*mobile home,*] **manufactured dwelling or**
8 **floating home** and the property upon which the [*mobile home*] **manufactured dwelling or floating**
9 **home** is situated[, *that is the actual abode of and occupied by the owner, or the owner's spouse, parent*
10 *or child, when that mobile home is occupied as a sole residence and no other homestead exemption*
11 *exists, shall be*] **are** exempt from execution and from liability in any form for the debts of the owner
12 to the value of \$23,000[, *except as otherwise provided by law*] **if the manufactured dwelling or**
13 **floating home is the actual abode of and occupied by the owner, or by the spouse, parent or**
14 **child of the owner, the manufactured dwelling or floating home is occupied as a sole resi-**
15 **dence and no other homestead exemption exists.** When two or more members of a household are
16 debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment
17 or liability in any form, their combined exemptions under this section may not exceed \$30,000. The
18 exemption shall be effective without the necessity of a claim thereof by the judgment debtor.

19 (2) The exemption provided for in subsection (1) of this section is not impaired by temporary
20 removal or absence with the intention to reoccupy the [*mobile property*] **manufactured dwelling**
21 **or floating home** as a home, nor by the sale thereof, but shall extend to the proceeds derived from
22 such sale up to \$23,000 or \$30,000, whichever amount is applicable under subsection (1) of this sec-
23 tion, while the proceeds are held for a period not exceeding one year and with the intention to
24 procure another [*mobile or other*] homestead [*therewith*] **with those proceeds.**

25 (3) Upon the issuance of an order authorizing sale as [*provided in ORS 18.536*] **required by**
26 **section 16 of this 2005 Act,** the [*levying officer*] **sheriff** may proceed to [*advertise and*] sell the
27 premises and, if the homestead exemption applies, out of the proceeds pay the [*mobile home*] owner
28 the sum of \$23,000 or \$30,000, whichever amount is applicable under subsection (1) of this section,
29 and apply the balance of the proceeds on the execution. However, no sale shall be made where the
30 homestead exemption applies unless the sum bid for the property is in excess of the sum of the costs
31 of sale and \$23,000 or \$30,000, whichever amount is applicable. If no such bid is received, the ex-
32 pense of the [*advertising and preparation for*] sale shall be borne by the petitioner.

33 (4) The provisions of subsections (1), (2), (3) and (7) of this section do not apply to construction
34 liens for work, labor or material done or furnished exclusively for the improvement of the [*mobile*
35 *home*] **manufactured dwelling or floating home,** or to purchase money liens and to mortgages
36 lawfully executed, or to executions issued on a judgment recovered for the purchase price.

37 (5) If a debtor owns a [*mobile home*] **manufactured dwelling or floating home** but not the
38 property upon which the [*mobile home*] **manufactured dwelling or floating home** is situated, sub-
39 sections (1), (2), (3) and (4) of this section [*shall*] apply, but the value of the debtor's interest exempt
40 from execution and liability may not exceed \$20,000 for an individual debtor, or \$27,000 when two
41 or more members of a household are debtors whose interests in the homestead are subject to exe-
42 cution or liability in any form.

43 (6) When the owner of a homestead under this section has been granted a discharge in bank-
44 ruptcy or has conveyed the property, the value thereof, for the purpose of determining a leviable
45 interest in excess of the homestead exemption, shall be the value on the date of the petition in

1 bankruptcy, whether the value is determined in the bankruptcy proceedings or not, or on the date
2 the conveyance becomes effective, whichever shall first occur.

3 (7) Except as provided in subsection (9) of this section, [*no mobile home*] a **manufactured**
4 **dwelling or floating home**, [*or*] **and the** property upon which the [*mobile home*] **manufactured**
5 **dwelling or floating home** is situated, that is the actual abode of and occupied by the judgment
6 debtor, or that is the actual abode of and occupied by a spouse, dependent parent or dependent child
7 of the judgment debtor, [*shall*] **may not** be sold on execution to satisfy a judgment that at the time
8 of entry does not exceed \$3,000. The judgment shall remain a lien upon the real property owned by
9 the judgment debtor and upon which the [*mobile home*] **manufactured dwelling or floating home**
10 is situated, and the [*mobile home*] **manufactured dwelling or floating home** and real property upon
11 which [*it*] **the manufactured dwelling or floating home** is situated may be sold on execution:

12 (a) At any time after the sale of the [*mobile home*] **manufactured dwelling or floating home**
13 **by the judgment debtor, or the sale of the** real property **on which the manufactured dwelling**
14 **or floating home is situated** by the judgment debtor; and

15 (b) At any time after the [*mobile home*] **manufactured dwelling or floating home** [*or real*
16 *property*] is no longer the actual abode of and occupied by the judgment debtor or the spouse, de-
17 pendent parent or dependent child of the judgment debtor.

18 (8) The limitation on execution sales imposed by subsection (7) of this section is not impaired
19 by temporary removal or absence with the intention to reoccupy the [*mobile home*] **manufactured**
20 **dwelling, floating home** and property as a home.

21 (9) The limitation on execution sales imposed by subsection (7) of this section does not apply if
22 two or more judgments are owing to a single judgment creditor and the total amount owing to the
23 judgment creditor, determined by adding the amount of each individual judgment as of the date the
24 judgment was entered, is greater than \$3,000.

25 (10) As used in this section[, *unless the context requires otherwise, "mobile home" includes, but*
26 *is not limited to, a houseboat.*]:

27 (a) **"Floating home" has the meaning given that term in ORS 830.700.**

28 (b) **"Manufactured dwelling" has the meaning given that term in ORS 446.003.**

29 **SECTION 60.** ORS 18.472 is amended to read:

30 18.472. (1) If support enforcement services are being provided under ORS 25.080, the adminis-
31 trator as defined in ORS 25.010 may issue a writ of execution for the support award portion of the
32 judgment for which support enforcement services are being provided. A copy of the writ of execution
33 must be filed with the circuit court of the county in which the judgment was entered or recorded.
34 A writ of execution issued under this section must be executed by the sheriff in the same manner
35 as a writ issued by the court administrator [*under ORS 18.468*].

36 (2) The Department of Justice shall adopt an appropriate form for writs of execution under this
37 section. The form must be substantially as set forth for writs of execution [*issued under ORS*
38 *18.468*] **described in section 2 of this 2005 Act.**

39 **SECTION 61.** ORS 18.505 is amended to read:

40 18.505. (1) Except as provided in subsection (2) of this section, a judgment debtor may use a
41 challenge to execution form only to claim such exemptions under a writ of execution as are per-
42 mitted by law.

43 (2) A judgment debtor may not use a challenge to execution form to challenge execution on
44 residential [*real*] property [*or a mobile home*] of the debtor **as defined by section 15 of this 2005**
45 **Act** if the judgment creditor has obtained an order under [*ORS 18.536*] **section 16 of this 2005 Act**

1 authorizing the sale or if the judgment directs the sale or delivery of specific property.

2 (3) Any person other than a judgment debtor who has an interest in any [*personal*] property
 3 [*seized*] **levied on** by a sheriff [*under ORS 18.476, or in any real property or a mobile home for which*
 4 *a notice of an execution sale has been given under ORS 18.532,*] may assert that interest by delivering
 5 a challenge to execution in the manner provided by subsection (4) of this section.

6 (4) A person may make a challenge to an execution by completing the challenge to execution
 7 form provided in ORS 18.512, or a substantially similar form, and by delivering, in person or by first
 8 class mail, the original of the completed form to the court administrator for the court identified in
 9 the writ of execution and a copy of the challenge to the person who requested issuance of the writ.

10 (5) A challenge to execution [*against personal property*] must be delivered in the manner pro-
 11 vided by subsection (4) of this section within 30 days after the property is [*seized under ORS 18.476,*
 12 *or before the property is sold on execution, whichever is first*] **levied on as described in section 8**
 13 **of this 2005 Act.**

14 [(6) A judgment debtor must deliver a challenge to execution against real property or a mobile
 15 home in the manner provided in subsection (4) of this section within 30 days after mailing of the notice
 16 required by ORS 18.532, or before the property is sold on execution, whichever is first.]

17 **SECTION 62.** ORS 18.600 is amended to read:

18 18.600. As used in ORS 18.600 to 18.850:

19 (1) “Check” has the meaning given that term in ORS 73.0104.

20 (2) “Creditor” means a person to whom a debt is owed by a debtor.

21 (3) “Debt” means any monetary obligation for which a garnishment may be issued under ORS
 22 18.605.

23 (4) “Debtor” means a person whose property is being garnished for the purpose of paying a debt
 24 owed to a creditor.

25 (5) “Financial institution” means a financial institution or trust company as those terms are
 26 defined in ORS 706.008.

27 (6) “Garnishable property” means all property described in ORS 18.615, but does not include:

28 (a) Any property that is not subject to garnishment under ORS 18.618; and

29 (b) Any property that is applied as a setoff under ORS 18.620 or 18.795.

30 (7) “Garnishee” means a person to whom a writ of garnishment has been delivered.

31 (8) “Garnishor” means:

32 (a) The creditor, if the writ is issued by the court administrator on behalf of the creditor under
 33 ORS 18.635 (2); or

34 (b) The issuer, if the writ is issued under ORS 18.635 by any person other than the court ad-
 35 ministrator.

36 (9) “Past due support” means the amount of child or spousal support, or both, determined under
 37 a court or administrative order in a proceeding under ORS chapter 107, 108, 109, 110, 416, 419B or
 38 419C that has not been paid or is certified to be owed by another state under ORS 25.083.

39 [(10) “Person” includes any public body, as defined in ORS 174.109.]

40 [(11)] (10) “Wages” includes all amounts paid for the services of an employee by an employer,
 41 including amounts paid as a commission or bonus.

42 [(12)] (11) “Writ” means a writ of garnishment.

43 **SECTION 63.** ORS 18.618 is amended to read:

44 18.618. (1) Notwithstanding ORS 18.615, the following are not garnishable property:

45 (a) Equitable interests.

1 (b) Property in the custody of the law.

2 (c) Property in the possession of a conservator.

3 (d) Property in the possession of a personal representative that constitutes the subject matter
4 of a trust contained in a duly probated will of a decedent.

5 **(e) The right of a seller to receive payments under a contract for the sale of real prop-**
6 **erty that are due more than 45 days after the writ of garnishment is delivered.**

7 (2) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy peti-
8 tion has been filed by or on behalf of the debtor after a writ of garnishment could be issued under
9 ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or
10 custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to
11 1330).

12 **SECTION 64.** ORS 18.750 is amended to read:

13 18.750. (1) A garnishee shall not deliver the property described in this section to the garnishor.
14 If the garnishor seeks to apply the property described in this section against the debt of the debtor,
15 the property must be sold by the sheriff in the manner specified in ORS 18.750 to 18.760.

16 (2) The provisions of ORS 18.750 to 18.760 apply to:

17 (a) **Except as provided in ORS 18.618 (1)(e)**, any money owed by a garnishee to a debtor the
18 payment of which is not due at the time the writ of garnishment is delivered to the garnishee and
19 the payment of which does not become due within 45 days after the date of delivery;

20 (b) Property of the debtor that the garnishee holds under an unexpired bailment or lease;

21 (c) Property of the debtor in which the garnishee has a security interest that was granted to the
22 garnishee by the debtor before the delivery of the writ; and

23 (d) Any other garnishable property that is not payable in money.

24 (3) The property described in subsection (2)(a) to (c) of this section must be delivered by the
25 garnishee to the purchaser in the manner provided by ORS 18.758 (3) if the interest of the debtor
26 in the property is sold by the sheriff under ORS 18.758. Subject to the provisions of ORS 18.755, the
27 garnishee must deliver to the sheriff any other garnishable property that is not payable in money
28 upon receiving notice from the sheriff under ORS 18.755 (4).

29 **SECTION 65.** ORS 18.685 is amended to read:

30 18.685. A garnishee must note upon a garnishee response the date on which the garnishee re-
31 ceived the writ of garnishment. The garnishee must also note upon the response the following in-
32 formation and deliver the response in the manner provided by ORS 18.690:

33 (1) If the garnishee discovers that a voluntary or involuntary bankruptcy petition has been filed
34 by or on behalf of the debtor and the petition was filed after the date shown on the face of the writ
35 as the date on which the judgment was entered or otherwise first became subject to garnishment.

36 (2) If the garnishee does not employ the debtor and the garnishee does not have any garnishable
37 property of the debtor in the possession, control or custody of the garnishee, the garnishee must so
38 note on the response.

39 (3) If the garnishee employs the debtor, the garnishee must so state on the response and make
40 all other responses required by this section or ORS 18.688. The garnishee must thereafter make
41 payment under the writ in the manner provided by ORS 18.735.

42 (4) If the garnishee has any cash belonging to the debtor, or the garnishee owes any money to
43 the debtor other than wages that is due as of the time the response is made, the garnishee must so
44 note on the response. The garnishee must make payment with the response in the manner provided
45 by ORS 18.730 of the amount subject to the garnishment, or of such amount as will satisfy the

1 garnishment, whichever amount is less.

2 (5) If the garnishee owes any money to the debtor other than wages that is not due as of the
3 time the response is made but that will become due within 45 days after the time the [response is
4 made] **writ is delivered**, the garnishee must so note on the response. When the money becomes due,
5 the garnishee must make payment in the manner provided by ORS 18.732 of the amount subject to
6 the garnishment, or of such amount as will satisfy the garnishment, whichever amount is less.

7 (6) **Except as provided in ORS 18.618 (1)(e)**, if the garnishee owes any money to the debtor
8 other than wages that is not due as of the time the response is made and the money will not become
9 due within 45 days after the time the [response is made] **writ is delivered**, the garnishee must so
10 note on the response. The garnishee must thereafter comply with ORS 18.750 to 18.760.

11 (7) If the garnishee has any garnishable property of the debtor in the possession, control or
12 custody of the garnishee that is not cash or owed money, the garnishee must so note on the re-
13 sponse. The garnishee must thereafter comply with ORS 18.750 to 18.760.

14 (8) If the garnishee can determine from the writ that the garnishee may owe money to or hold
15 garnishable property of the debtor, but is not sure what or how much, the garnishee must so state
16 on the response and must state that the garnishee will file an amended response when the garnishee
17 determines what or how much money or property the garnishee owes or holds.

18 (9) If the garnishee determines that the writ of garnishment does not comply on its face with
19 ORS 18.600 to 18.850, or if the garnishee is unable to determine the identity of the debtor from the
20 information contained in the writ, the writ of garnishment is ineffective to garnish the property of
21 the debtor. The garnishee must so note on the response and provide an explanation.

22 (10) If, before delivering the garnishee response, the garnishee receives an order to withhold
23 income issued under ORS chapter 25 that applies to the income of the debtor, the garnishee must
24 so note on the response. The garnishee must provide details of the order to withhold income, in-
25 cluding the name of the agency serving the order, the date the order was served on the garnishee
26 and the amount to be withheld. If the garnishee employs the debtor, the garnishee must make the
27 responses required under ORS 18.688.

28 (11) If the garnishee receives notice of a challenge to the garnishment before delivering the re-
29 sponse, the garnishee must so note on the response. The garnishee must thereafter comply with ORS
30 18.708.

31 **SECTION 66.** ORS 18.835 is amended to read:

32 18.835. A garnishee response must be in substantially the following form:

33 _____

34
35 _____ COURT
36 COUNTY OF _____

37
38 _____)
39 Plaintiff,) GARNISHEE
40) RESPONSE
41 vs.) Case No. _____
42)
43 _____)
44 Defendant.)

1 The writ of garnishment was delivered to me on the ____ day of _____, 2____. The following
2 responses are accurate and complete as of that date.

3 _____

4
5 PART I: DEBTOR’S PROPERTY
6 GENERALLY
7 (ALL GARNISHEES MUST FILL OUT
8 THIS PORTION OF THE RESPONSE)
9

10 Place a check in front of all the following statements that apply. You may need to check more than
11 one statement.

12
13 — I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or
14 on behalf of the Debtor after the date shown on the face of the writ as the date on which
15 the judgment was entered against the Debtor or after the debt otherwise became subject to
16 garnishment. (You need not complete any other part of this response, but you must sign the
17 response and deliver it in the manner specified in Step 2 of the Instructions to Garnishee
18 form.)

19
20 — I do not employ the Debtor, I do not have in my possession, control or custody any personal
21 property of the Debtor, and I do not owe any debts or other obligations to the Debtor.

22
23 — I employ the Debtor. (You must complete Part II of this response.)

24
25 — I have in my possession, control or custody money that belongs to the Debtor (other than
26 wages), or I owe a debt or other obligation to the Debtor (other than wages) that is due as
27 of the time of this response. I am forwarding this money, or enough of it to satisfy the
28 garnishment, to the Garnishor.

29
30 — I owe a debt or other obligation to the Debtor (other than wages) that [is] **was** not due as
31 of the time of this response but will become due within 45 days **after the writ was deliv-**
32 **ered to me.** I will forward the money, or enough of it to satisfy the garnishment, to the
33 Garnishor when the debt or other obligation becomes due.

34
35 — I owe the following debt or other obligation to the Debtor (other than wages) that will not
36 become due within 45 days [of the time of this response] **after the date that the writ was**
37 **delivered to me.** I will not make any payments on the debt or obligation until I receive
38 instructions from the Sheriff or until 30 days have passed from the date on which I deliver
39 this response. (See Instructions to Garnishee form.)

40
41 _____
42
43 _____
44
45 _____

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— I have in my possession, control or custody the following personal property (other than money) that belongs to the Debtor. I will hold all of the property for the Garnishor until I receive instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form.)

— I may owe money to or hold property of the Debtor, but I am not sure what or how much it might be. (You must provide an explanation in the following space and you must deliver an amended response when you find out. You must deliver an amended response even if you find out that you have no property of the Debtor or owe no money to the Debtor.)

— The writ of garnishment delivered to me, on its face, does not comply with the Oregon laws governing writs of garnishment, or I cannot determine the identity of the Debtor from the information in the writ. (You must provide an explanation in the following space.)

— I have received an order to withhold income that applies to the income of the Debtor. The order to withhold income has priority over the writ of garnishment, and compliance with the order will reduce or eliminate the money that I would otherwise deliver under the writ. (Provide details, including the name of the agency serving the order to withhold income, the date the order was served on you and the amount to be withheld. If you employ the Debtor,

1 you must still complete Part II of this response.)

2
3 _____
4
5 _____
6
7 _____
8
9 _____

10
11 — I have received notice of a challenge to the garnishment. I will deliver to the court admin-
12 istrator all money that I would otherwise deliver to the Garnishor. (See Step 3 of In-
13 structions to Garnishee form.)

14
15 — Other (Explain)
16
17 _____
18
19 _____
20
21 _____
22
23 _____

24
25 _____

26
27 PART II: DEBTOR'S EMPLOYER
28 (GARNISHEES WHO EMPLOY THE
29 DEBTOR MUST FILL OUT THIS
30 PORTION OF THE RESPONSE)

31
32 Place a check in front of all the following statements that apply. You may need to check more than
33 one statement.

34
35 NOTE: THE LAW PROHIBITS DISCHARGE OF THE DEBTOR FROM EMPLOYMENT BY REA-
36 SON OF GARNISHMENT.

37
38 — I employ the Debtor. The Debtor is paid on a _____ basis (insert "weekly," "monthly" or
39 other pay period). Wages will next be payable to the Debtor on the _____ day of _____,
40 2____. I will complete a Wage Exemption Calculation form for each payment of wages that is
41 made during the 90-day period immediately following the date that the writ of garnishment
42 was delivered to me. I will also complete a Wage Exemption Calculation form for the payday
43 immediately following the end of the 90-day period. I will forward to the Garnishor on each
44 of these occasions those wages calculated to be subject to garnishment, or enough of those
45 wages to satisfy the garnishment.

1 — I had already received a writ of garnishment from another Garnishor before this writ was
2 delivered to me. Under Oregon law, the previous writ has priority. The previous writ will
3 terminate on the _____ day of _____, 2____.

4 _____

5

6 I hereby certify that I have fully and accurately completed this garnishee response.

7

8 Dated _____, 2____

9

10 _____

11 Name of Garnishee

12

13 _____

14 Signature

15

16 Telephone number _____

17

18 Fax number (if available) _____

19

20 _____

21 Address

22 _____

23

24 **SECTION 67.** ORS 18.910 is amended to read:

25 18.910. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
26 has expended to recover a debt under ORS 18.900 or to enforce a judgment and establishes proce-
27 dures for that recovery. The following apply to this section:

28 (1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff
29 may proceed as follows:

30 (a) Before crediting the total amount of moneys received against the judgment or debt, the
31 plaintiff may recover and keep from the total amount received under the garnishment, attachment
32 or payment any moneys allowed to be recovered under this section.

33 (b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall
34 credit the remainder of the moneys received against the judgment or debt as provided by law.

35 (2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid
36 on and to be credited against the original judgment or debt sought to be enforced. No additional
37 judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

38 (3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those
39 described in subsection (4) of this section that the plaintiff has paid to enforce the existing specific
40 judgment or debt that the specific garnishment or attachment was issued to enforce or upon which
41 the payment was received. Moneys recoverable under subsection (1)(a) of this section remain re-
42 coverable and, except as provided under subsection (8) of this section, may be recovered from mon-
43 eys received by the plaintiff under subsequent garnishments, attachments or payments on the same
44 specific judgment or debt.

45 (4) This section allows the recovery only of the following:

1 (a) Statutorily established moneys that meet the requirements under subsection (3) of this sec-
 2 tion, as follows:

3 (A) Garnishee’s search fees under ORS 18.790.

4 (B) Fees for delivery of writs of garnishment under ORS 18.652.

5 (C) Circuit court fees as provided under ORS 21.325.

6 (D) County court fees as provided under ORS 5.125.

7 (E) County clerk recording fees as provided in ORS 205.320.

8 (F) Actual fees or disbursements made under ORS 21.410.

9 (G) Costs of execution as provided in ORS 105.112.

10 (H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$4 for each
 11 garnishment.

12 **(I) Costs of an execution sale as described in section 35 (2) of this 2005 Act.**

13 (b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for
 14 judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and
 15 ending upon recovery of the amount under this section.

16 (5) The plaintiff shall be responsible for doing all of the following:

17 (a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section
 18 and making the accounting available for any proceeding relating to that judgment or debt.

19 (b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under sub-
 20 section (1)(a) of this section.

21 (6) Moneys recovered under subsection (1)(a) of this section remain subject to all other pro-
 22 visions of law relating to payments, or garnished or attached moneys including, but not limited to,
 23 those relating to exemption, claim of exemption, overpayment and holding periods.

24 (7) Nothing in this section limits the right of a plaintiff to recover moneys described in this
 25 section or other moneys in any manner otherwise allowed by law.

26 (8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recov-
 27 erable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced
 28 to a judgment or to a debt enforceable under ORS 18.900.

29 **SECTION 68.** ORS 88.080 is amended to read:

30 88.080. A judgment of foreclosure shall order the mortgaged property sold. Property sold on ex-
 31 ecution issued upon a judgment may be redeemed in like manner and with like effect as property
 32 sold [on] at an execution sale pursuant to [ORS 18.478, 18.486, 18.532, 18.536, 18.538, 18.542, 18.545,
 33 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598]
 34 **sections 1 to 54 of this 2005 Act**, and not otherwise. A sheriff’s deed for property sold on execution
 35 issued upon a judgment shall have the same force and effect as a sheriff’s deed issued for property
 36 sold [on] at an execution sale pursuant to [ORS 18.478, 18.486, 18.532, 18.536, 18.538, 18.542, 18.545,
 37 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598]
 38 **sections 1 to 54 of this 2005 Act**.

39 **SECTION 69.** ORS 407.375 is amended to read:

40 407.375. (1) When the Director of Veterans’ Affairs offers for sale a home or farm obtained for
 41 and in behalf of the state under ORS 407.135 and 407.145 (1), the director shall provide notice of the
 42 proposed sale to prospective purchasers. The notice shall state the minimum bid that will be ac-
 43 cepted.

44 (2) Subject to subsection (3) of this section, the director shall accept the highest such bid or
 45 offer received during the 15-day period after a home or farm acquired under ORS 407.135 or 407.145

1 (1) is first offered for sale unless the person making the highest bid or offer is disqualified from such
2 purchase based on prior credit history, inadequate income or other grounds for refusal established
3 in rules adopted by the director. Prior to such refusal, the person making the highest bid or offer
4 shall be given the opportunity to purchase the property for cash.

5 (3) When the highest bid under subsection (2) of this section is made by a person who is not
6 eligible for a loan under Article XI-A of the Oregon Constitution, the person who submits the high-
7 est bid or offer received from those persons eligible for a loan under Article XI-A of the Oregon
8 Constitution shall be given the opportunity to purchase the property for the amount bid by the
9 highest bidder. The property must be purchased by matching the highest bid within a period of time
10 and at a place specified by rule of the director.

11 (4) When the director sells a home or farm obtained under ORS 407.135 or 407.145 (1) to a per-
12 son, the director may accept improvement of the property by such purchaser in lieu of other means
13 of satisfying the requirements of ORS 407.225 (3). For the purpose of this section, all purchasers are
14 subject to the provisions of ORS 407.225 (3). The director shall require the purchaser to provide an
15 improvement plan containing a description of the proposed improvements to be made and the cost
16 of the necessary work and materials. An appraiser employed by the director must certify that the
17 ratio of the purchase price and the net appraised value of the home and farm after the proposed
18 improvement is completed will satisfy the requirements of ORS 407.225 (3). The director may then
19 approve the sale subject to the condition that the improvement of the home or farm be completed
20 within 180 days after purchase. Failure by the applicant to complete the improvement within the
21 time allowed shall be considered a breach of the purchase agreement and grounds for foreclosure
22 by the director. Upon timely application and a showing that the improvement cannot be completed
23 within the time allowed because of circumstances beyond the applicant's control, the director may
24 grant the applicant an additional period not to exceed 180 days in which to complete the improve-
25 ment.

26 (5) The rate of interest for a contract made for the acquisition of a home or farm obtained by
27 the director under ORS 407.135 or 407.145 (1) shall be the rate per annum prescribed by the director.

28 (6) Notwithstanding subsection (5) of this section, if the provisions of subsections (1) to (3) of
29 this section have been complied with and no satisfactory bid has been received, the director, after
30 considering the time value of money, may sell the home or farm at a private negotiated sale at any
31 price or at any rate of interest, either fixed or variable, that the director considers to be necessary
32 and prudent to sell the property and that provides an economic benefit to the home and farm loan
33 program that is equivalent to the property being marketed at the current appraised value of the
34 property and the rate prescribed under subsection (5) of this section.

35 (7) Except as provided in this subsection, redemption of a home or farm obtained and sold by
36 the director under ORS 407.135 or 407.145 (1) shall be made as provided in *[ORS 18.565 to 18.594]*
37 **sections 38 to 46 of this 2005 Act**. When the director accepts improvement of property by a pur-
38 chaser in lieu of purchase money or cash down payment under subsection (4) of this section, re-
39 demption shall be made by paying an amount equal to the fair market value of those improvements
40 actually made to the property under the improvement plan described in subsection (4) of this section,
41 with interest thereon at the rate of nine percent per annum from the date of sale. The director shall
42 determine the fair market value of the improvements and such amount shall be paid in addition to
43 the amount of purchase money and interest thereon required under *[ORS 18.582 (2)]* **sections 41 and**
44 **42 of this 2005 Act**.

45 **SECTION 70.** ORS 540.610 is amended to read:

1 540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use
2 of water in this state. Whenever the owner of a perfected and developed water right ceases or fails
3 to use all or part of the water appropriated for a period of five successive years, the failure to use
4 shall establish a rebuttable presumption of forfeiture of all or part of the water right.

5 (2) Upon a showing of failure to use beneficially for five successive years, the appropriator has
6 the burden of rebutting the presumption of forfeiture by showing one or more of the following:

7 (a) The water right is for use of water, or rights of use, acquired by cities and towns in this
8 state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

9 (b) A finding of forfeiture would impair the rights of such cities and towns to the use of water,
10 whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,
11 or which may hereafter be acquired.

12 (c) The use of water, or rights of use, are appurtenant to property obtained by the Department
13 of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of [*redemp-*
14 *tions as provided in ORS 18.568 to 18.598*] **the period of redemption provided for in section 40**
15 **of this 2005 Act** while the land is held by the Director of Veterans' Affairs, even if during such time
16 the water is not used for a period of more than five successive years.

17 (d) The use of water, or rights of use, under a water right, if the owner of the property to which
18 the right is appurtenant is unable to use the water due to economic hardship as defined by rule by
19 the Water Resources Commission.

20 (e) The period of nonuse occurred during a period of time within which land was withdrawn
21 from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;
22 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December
23 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-
24 der this section, the water right holder rebutting the presumption under this paragraph shall provide
25 documentation that the water right holder's land was withdrawn from use under a federal reserve
26 program.

27 (f) The end of the alleged period of nonuse occurred more than 15 years before the date upon
28 which evidence of nonuse was submitted to the commission or the commission initiated cancellation
29 proceedings under ORS 540.631, whichever occurs first.

30 (g) The owner of the property to which the water right was appurtenant is unable to use the
31 water because the use of water under the right is discontinued under an order of the commission
32 under ORS 537.775.

33 (h) The nonuse occurred during a period of time within which the water right holder was using
34 reclaimed water in lieu of using water under an existing water right.

35 (i) The nonuse occurred during a period of time within which the water right holder was reusing
36 water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using
37 water under an existing water right.

38 (j) The owner or occupant of the property to which the water right is appurtenant was unable
39 to make full beneficial use of the water because water was not available. A water right holder re-
40 butting the presumption under this paragraph shall provide evidence that the water right holder
41 was ready, willing and able to use the water had it been available.

42 (k) The holder of a water right is prohibited by law from using the water. If the prohibition is
43 subject to remedial action that would allow the use of the water, the water right holder shall pro-
44 vide evidence that the water right holder is conducting the remedial action with reasonable dili-
45 gence.

1 (L) The nonuse occurred during a period of time within which the exercise of all or part of the
 2 water right was not necessary due to climatic conditions, so long as the water right holder had a
 3 facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able
 4 to use the entire amount of water allowed under the water right.

5 (m) The nonuse occurred during a period of time within which the water was included in a
 6 transfer application pending before the Water Resources Department.

7 (3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed
 8 water right uses less water to accomplish the beneficial use allowed by the right, the right is not
 9 subject to forfeiture so long as:

10 (a) The user has a facility capable of handling the entire rate and duty authorized under the
 11 right; and

12 (b) The user is otherwise ready, willing and able to make full use of the right.

13 (4) The right of all cities and towns in this state to acquire rights to the use of the water of
 14 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-
 15 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes
 16 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water
 17 supply in cases of emergency, is expressly confirmed.

18 (5) After a water right is forfeited under subsection (1) of this section, the water that was the
 19 subject of use shall revert to the public and become again the subject of appropriation in the manner
 20 provided by law, subject to existing priorities.

21 **SECTION 71. ORS 18.472, 18.505, 18.508, 189.512, 18.515 and 18.518 are added to and made**
 22 **a part of sections 1 to 54 of this 2005 Act.**

23 **SECTION 72. Sections 1 to 54 of this 2005 Act are added to and made a part of ORS 18.252**
 24 **to 18.850.**

25 **SECTION 73. ORS 18.465, 18.468, 18.476, 18.478, 18.482, 18.486, 18.492, 18.494, 18.532, 18.536,**
 26 **18.538, 18.542, 18.545, 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585,**
 27 **18.588, 18.594 and 18.598 are repealed.**

28 **SECTION 74. The unit and section captions used in this 2005 Act are provided only for**
 29 **the convenience of the reader and do not become part of the statutory law of this state or**
 30 **express any legislative intent in the enactment of this 2005 Act.**

31