

Chapter 81

Tender and Receipts

81.010

NOTES OF DECISIONS

1. In general
2. Readiness and ability
3. Insufficient tender
4. Conditional tender
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1. In general

A chattel mortgage is discharged by an offer in writing to pay the debt. *Bartel v. Lope*, (1877) 6 Or 321.

An offer in writing to take the place of a legal tender must be made and kept alive in a similar manner as a tender of payment, that is, by performance of the offer at the proper time. *Milton v. Hare*, (1929) 130 Or 590, 280 P 511.

Except as modified by statute the common law definition of the word "tender" is still applicable in this state. *Equitable Life Assur. Socy. v. Boothe*, (1939) 160 Or 679, 86 P2d 960.

2. Readiness and ability

When written tender is made one must show that he had at the time and still has the means of making the tender good. *Ladd & Tilton v. Mason*, (1882) 10 Or 308; *McCourt v. Johns*, (1898) 33 Or 561, 53 P 601; *Short v. Rogue R. Irr. Co.*, (1917) 82 Or 662, 162 P 845; *Eastern Ore. Land Co. v. Moody*, (1912) 119 CCA 135, 198 Fed 7.

A written tender does not relieve one from the duty of bringing the money into court when the suit is begun in order to keep his tender good. *Holladay v. Holladay*, (1886) 13 Or 523, 11 P 260, 12 P 821; *Milton v. Hare*, (1929) 130 Or 590, 280 P 511; *Equitable Life Assur. Soc. v. Boothe*, (1939) 160 Or 679, 86 P2d 960.

An offer in writing of more than is due is not kept good by a deposit with the clerk of the court of a sum less than is due. *Anderson v. Griffith*, (1908) 51 Or 116, 93 P 934.

A mere assertion that the money is available is not enough. *Bembridge v. Miller*, (1963) 235 Or 396, 385 P2d 172.

The legislature, in this section, did not intend to supersede the common law requirement that the person making the written tender have the present ability to make the tender good if it is accepted. *Id.*

3. Insufficient tender

A written offer of part of the money due to the purchaser in repayment of sums advanced to the seller is not a sufficient tender. *Lilienthal v. McCormick*, (1902) 54 CCA 475, 117 Fed 89.

Where a contract contains an absolute provision for the payment of attorney's fees, a tender is insufficient if it does not include such fees. *Equitable Life Assur. Soc. v. Boothe*, (1939) 160 Or 679, 86 P2d 960.

A defendant had not complied with this section when he failed to answer a letter which indicated a prior written offer from him was not considered an offer to pay the present balance on a mortgage, together with expenses. *Portland Trust & Sav. Bank v. Lincoln Realty Co.*, (1946) 180 Or 96, 170 P2d 568.

In an action for claim and delivery, the submission of a written tender obviated the necessity of bringing the money into court, where plaintiff contended that defendant's tender was not sufficient because the money was not brought into court. *Woods v. Dixon*, (1952) 193 Or 681, 240 P2d 520.

4. Conditional tender

A tender of payment made conditional upon the delivery of a deed is not sufficient. *Eastern Ore. Land Co. v. Moody*, (1912) 119 CCA 135, 198 Fed 7.

A tender is good although accompanied by a condition if it is one upon which one has a right to insist. *Comstock Mfg. Co. v. Schiffmann*, (1925) 113 Or 677, 234 P 293.

5. Pleading

In order that a tender be made good one must allege that the thing tendered has been brought into court. *Equitable Life Assur. Soc. v. Boothe*, (1939) 160 Or 679, 86 P2d 960.

FURTHER CITATIONS: *State Hwy. Comm. v. EFEM Whse.*, (1956) 207 Or 237, 295 P2d 1101.

LAW REVIEW CITATIONS: 17 OLR 110; 35 OLR 20; 43 OLR 322.

81.020

NOTES OF DECISIONS

1. In general

Except as modified by statute the common law definition of the word "tender" is still applicable in this state and the money tendered must be a sum not less than the amount due. *Equitable Life Assur. Socy. v. Boothe*, (1939) 160 Or 679, 86 P2d 960.

To establish a waiver of objections to tender, the tenderer must show an existing capacity to perform. *Bembridge v. Miller*, (1963) 235 Or 396, 385 P2d 172.

2. Effect of failure to object

Where defendant failed to object to a guardian's deed within a two-year period he was precluded from objecting. *Vance v. Blakeley*, (1912) 62 Or 326, 123 P 390.

One who refused to accept goods solely on the ground that they were not of contract quality was not entitled at a later time to object on ground of quantity. *Seidenberg Inc. v. Tautfest*, (1937) 155 Or 420, 64 P2d 534.

3. Necessity of specifying

A payee of a check should specify his objection to it upon receipt. *Hawkins v. Fuller*, (1925) 116 Or 433, 240 P 549.

A faulty tender is sufficient in absence of objection by the other party. *Comstock Mfg. Co. v. Schiffmann*, (1925) 113 Or 677, 234 P 293.

FURTHER CITATIONS: *Sayre v. Mohney*, (1896) 30 Or 238, 47 P 197; *Moore Mill & Lbr. Co. v. Foster*, (1959) 216 Or 204, 336 P2d 39, 337 P2d 810.

LAW REVIEW CITATIONS: 43 OLR 322.

81.030

NOTES OF DECISIONS

An attorney employed to collect claims was entitled to

a receipt from his clients upon payment of the money collected. *State v. Farrin*, (1916) 81 Or 489, 160 P 124.

Mandamus will lie to compel issuance of receipt from Corporation Commissioner as evidence of license. *State v. Crews*, (1926) 118 Or 629, 247 P 775.