

Overview of Oregon Receivership Law

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1. *Where is receivership law codified in Oregon?*

- a. Oregon Revised Statutes Chapter 37 – Oregon Receivership Code (“ORC”).
- b. Oregon Rules of Civil Procedure 80 (“ORCP”) – Receivers (although ORS 37.040 states that the provisions of the ORC control over conflicting provisions of state law, including ORCP 80).

2. *Do other states have similar laws?*

ORC is based on the Uniform Commercial Real Estate Receivership Act, which has been implemented by twelve states as of June 2023 (AZ, CT, FL, MD, MI, NV, NC, OR, RI, TN, UT, and WV).

3. *What is a receivership?*

ORS 37.030 defines a receivership as “the process by which a court appoints a person to take charge of property during the pendency of an action or upon a judgment or order entered therein and to manage or dispose of the property as the court may direct.”

4. *When is ORC applicable?* (ORS 37.040)

ORC applies to all receiverships initiated in state court, except:

- a. for actions a state agency is expressly authorized by statute to seek the appointment of a receiver; or
- b. actions authorized by or commenced under federal law.

5. *What personal property is not subject to a receivership?* (ORS 37.050)

- a. Personal property primarily used for family or household purposes (except domestic relations suits).
- b. Any power or interest that a person may exercise solely for the benefit of another person.
- c. Property held in trust for another person.

6. *When can a court appoint a receiver?* (ORS 37.060)

- a. A court may appoint a receiver upon motion by any person or its own motion in the following cases:
 - i. before judgment, if the property, or rents or profits deriving from the property, are in danger of being lost or materially injured or impaired;
 - ii. after judgment, if reasonably necessary to carry the judgment into effect;
 - iii. after judgment, to dispose of property according to the judgment;
 1. when property is attached by a creditor if the property is of a perishable nature or is otherwise in danger of waste, impairment, or destruction; or
 2. the debtor has abandoned the property and receivership is reasonably necessary to conserve, protect or dispose of the property.
 - iv. after judgment, to preserve, protector prevent the transfer of property;
 - v. when an entity is dissolved, insolvent or in imminent danger of insolvency, to protect the property or the interests of the entity’s stockholders, members, partners or creditors;
 - vi. when the appointment of a receiver is expressly required or permitted by statute; and
 - vii. in any situation in which, in the discretion of the court, appointment of a receiver is reasonably necessary to secure justice to the parties.
- b. A court may consider the existence of a contract provision providing for the appointment of a receiver, but the court is not bound by such a provision.
- c. A court in a foreign action has appointed a receiver over property in this state.

7. ***Who can be a receiver?*** (ORS 37.070)

- a. Any person, whether or not a resident of this state, may serve as a receiver, except for:
 - i. an entity that is not authorized to conduct business in this state;
 - ii. a person who has been convicted of a crime involving moral turpitude, or is controlled by a person who has been convicted of a crime involving moral turpitude; and
 - iii. the sheriff of any county, except as expressly permitted by statute.
- b. If a court appoints an entity as a receiver, the court may require a specific individual to appear in the receivership on behalf of the entity.
- c. ORS 37.080 required disclosures relating to conflicts of interest.

8. ***What are the powers and duties of a receiver?*** (ORS 37.110 and 37.120)

- a. The court appointing a receiver may confer upon the receiver the power to perform any of the following actions, in any combination:
 - i. collect, control, manage, conserve and protect estate property;
 - ii. operate a business constituting estate property, including preservation, use, sale, lease, license, exchange, collection or disposition of property in the ordinary course of business;
 - iii. in the ordinary course of business, incur unsecured debt and pay expenses for the receiver's preservation, use, sale, lease, license, exchange, collection or disposition of estate property;
 - iv. assert a right, claim, cause of action or defense of the owner that relates to estate property;
 - v. seek and obtain instruction from the court concerning estate property, exercise of the receiver's powers and performance of the receiver's duties;
 - vi. on subpoena, compel a person to submit to examination under oath in the manner of a deposition in a civil case, or to produce and permit inspection and copying of designated records or tangible things;
 - vii. engage and pay compensation to one or more professionals;
 - viii. apply to a court of another state for appointment as ancillary receiver with respect to estate property in that state;
 - ix. incur debt for the benefit of estate property other than in the ordinary course of business;
 - x. make improvements to estate property;
 - xi. use or transfer estate property other than in the ordinary course of business;
 - xii. assume an executory contract of the owner;
 - xiii. pay compensation to the receiver;
 - xiv. determine whether or not to establish a claims procedure;
 - xv. allow or disallow a claim of a creditor;
 - xvi. make a distribution of estate property;
 - xvii. take any other action authorized under the ORC or that the court deems reasonably necessary to avoid injustice.
- b. A receiver's duties include:
 - i. notifying all federal and state taxing and applicable regulatory agencies of the appointment;
 - ii. complying with applicable law;
 - iii. filing with the recorder of the county in which real property is located a certified copy of the order of appointment, together with a legal description of the real property;
- c. The court may limit, expand, modify, or impose additional duties on the receiver at anytime.

9. ***What are the limitations of a receiver?*** (ORS 37.180)

- a. A receiver may not take any of the following actions without a court order specifically authorizing the action:

- i. sale or other disposition of real property;
 - ii. use or transfer of property outside the ordinary course of business;
 - iii. sale of a co-owner's interest in jointly owned property;
 - iv. assumption of an executory contract;
 - v. obtaining credit or incurring debt outside the ordinary course of business;
 - vi. compromise or settlement that might affect the distribution to creditors from the estate;
 - vii. disallowance of all or part of a claim against the estate; and
 - viii. termination of the receivership.
- b. A court may establish conditions, either in the appointment order or any other order, under which a receiver may take the action without first obtaining an order specifically authorizing the action.

10. *Are other pending actions stayed during a receivership?* (ORS 37.220)

- a. Unless otherwise ordered, the entry of an order appointing a receiver operates as a stay of:
 - i. commencement or continuation, of a judicial, administrative or other action;
 - ii. enforcement of a judgment entered before the order of appointment;
 - iii. any act to obtain possession or lien against estate property from the receiver, or to interfere with, or exercise control over, estate property;
 - iv. any act to collect, assess or recover a claim that arose before the entry of the order of appointment; or
 - v. the exercise of a right of setoff.
- b. The stay under ORS 37.220(1)(a), (b) and (e) automatically expires six months after the entry of the order of appointment, unless the stay is extended by court order.
- c. A person whose action or proceeding is stayed may move the court for relief from the stay, and the court shall grant such relief for good cause shown.
- d. The entry of an order appointing a receiver does **not** operate as a stay of:
 - i. the continuation of a judicial or nonjudicial foreclosure action that was initiated by the party seeking the receiver's appointment;
 - ii. the commencement or continuation of a criminal action;
 - iii. the commencement or continuation of an action or proceeding to establish paternity, establish, modify or collect spousal or child support;
 - iv. any act to perfect, or to maintain or continue the perfection of an interest in property under certain circumstances;
 - v. the commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;
 - vi. the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a government under its police or regulatory power; or
 - vii. the establishment of any tax liability by a governmental authority.
- viii. The court may void an act that violates the stay imposed by this section if a person knowingly violates the stay and the court may award actual damages caused by the violation, reasonable attorney fees and costs and sanction the violation as civil contempt.
- e. The stay expires upon the termination of the receivership.

11. *What is the receivership estate doesn't have any money?* (ORS 37.260 and 37.270)

- a. The receiver may obtain credit and incur debt in the ordinary course of business.
- b. These expenses are allowable as an administrative expense of the receiver.
- c. Upon court order, a receiver may obtain credit or incur debt that is not in the ordinary course.
- d. The court may allow the receiver to mortgage, pledge, hypothecate or otherwise encumber estate property as security for repayment of any debt.

- e. A creditor's security interest may be in the form of a receiver's certificate.
- f. A receiver may recover the necessary costs and expenses of preserving or disposing of a property securing a secured claim to the extent of any benefit to the security holder.

12. *Can a receiver employ professionals?* (ORS 37.310)

- a. A receiver may employ attorneys, accountants, appraisers, brokers, real estate licensees, auctioneers or other professionals to assist the receiver in carrying out the receiver's duties.
- b. The notice given by the receiver before employing a professional must disclose:
 - i. the identity and qualifications of the professional;
 - ii. the scope and nature of the proposed engagement;
 - iii. any potential conflict of interest; and
 - iv. the proposed compensation.
- c. If an objection is filed after the receiver provides notice of the professional's employment, the professional may continue to perform the professional's duties while the objection is pending.
- d. A receiver may not employ a professional who holds or represents an interest adverse to the estate.
- e. A professional is not disqualified for employment solely because of the representation of or other relationship with a creditor or other interested person if the relationship is disclosed.
- f. The receiver may act as attorney or accountant if doing so is in the best interests of the estate.

13. *How do you wind up a receivership?* (ORS 37.410)

- a. Upon distribution or disposition of all property or the completion of the receiver's duties, or for other good cause, the receiver shall move the court for an order discharging the receiver.
- b. The receiver shall attach to the motion for discharge a final report and accounting setting forth:
 - i. a list of estate property received during the receivership;
 - ii. a list of disbursements, including payments to professionals engaged by the receiver;
 - iii. a list of dispositions of estate property; and
 - iv. a request for approval of the payment of fees and expenses of the receiver.
- c. If the court approves the final report and accounting, the court shall discharge the receiver and issue an order exonerating the receiver's bond or security, which:
 - i. releases the receiver from any further duties and responsibilities; and
 - ii. releases the receiver and any persons acting on behalf of the receiver from all further liability in connection with the administration of the receivership.
- d. Upon motion by the court or of any interested person, the court may discharge the receiver and terminate the court's administration of the receivership.
- e. If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess all of the receiver's fees and other costs of the receivership, and any other sanctions the court deems appropriate.

14. *What are the specific concerns of the agricultural industry within receiverships?*

Cash flow, financing for business operations or maintenance if operations are shut down, payment to employees, contractors, professionals, and others, and the handling of living things.

15. *What are the alternatives to receivership?*

Restructuring, assignment for the benefit of creditors, voluntary or involuntary bankruptcy.

The information provided in this Overview of Oregon Receivership law is intended as a summary and should not be considered legal advice. Please consult ORS Chapter 37 and ORCP 80 for the complete text of the law.