

## Receiverships: Oregon

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A Q&A guide to receiverships in Oregon. This Q&A addresses the process by which receiverships are generally administered in Oregon, including the commencement and administration of the receiverships, the duties and actions of receivers, creditor claims, and the jurisdiction of the court. Answers to questions can be compared across many jurisdictions (see Receiverships: State Q&A Tool).

### Commencing a Receivership

#### 1. What are the applicable statutes for receiverships in your jurisdiction?

Before 2017, Oregon did not have comprehensive statutes that governed receiverships. The law of receiverships was derived primarily from case law, the Oregon Rules of Civil Procedure 80 to 82, and ad hoc references in various specialized chapters of Oregon Revised Statutes. In June 2017, Oregon enacted the Oregon Receivership Code (ORC), which is codified in Oregon Revised Statutes Chapter 37, and the ORC became effective in 2018.

The ORC applies to all receiverships initiated in Oregon state courts, except for:

- Receiverships commenced by a state agency under statutory authority.
- Federal receiverships authorized by or initiated under federal law.

(O.R.S. § 37.040(1).)

However, a state agency may elect for the receivership to be governed by the ORC (O.R.S. § 37.040(2)).

Except where specified, the provisions of the ORC control over conflicting provisions of state law, including Rule 80 of the Oregon Rules of Civil Procedure (O.R.S. § 37.040(3)). Oregon statutes that reference receiverships outside the ORC, include:

- O.R.S. § 60.667 (in a judicial proceeding brought to dissolve a corporation, when applicable, the ORC controls over conflicting provisions of this section).

- O.R.S. § 62.702 (in a judicial proceeding brought to dissolve a cooperative, when applicable, the ORC controls over conflicting provisions of this section).
- O.R.S. § 65.667 (in a judicial proceeding brought to dissolve a benefit corporation, when applicable, the ORC controls over conflicting provisions of this section).
- O.R.S. § 105.452 (the ORC applies to housing receiverships under Chapter 105, except that the provisions of Chapter 105 control over conflicting provisions of the ORC).
- O.R.S. § 415.253 (the ORC does not apply to coordinated care organization delinquency proceedings under ORS 415.203 to 415.430).
- O.R.S. § 652.515 (the ORC controls over conflicting provisions of O.R.S. 652.510 to 652.570 relating to payment of wage claims by receivers).
- O.R.S. § 734.113 (the ORC does not apply to delinquency proceedings relating to rehabilitation, liquidation, and conservations of insurers under Chapter 734).
- O.R.S. § 97.942 (authorizing the appointment of a receiver “necessary or advisable” for certain funeral related prearrangement providers and omitting any express reference to the ORC).
- O.R.S. § 586.529 (authorizing the appointment of an employee of the State Department of Agriculture as receiver relating to certain probable grain shortages in relation to certain warehouse receipts and omitting any express reference to the ORC).
- O.R.S. § 97.852 (authorizing the appointment of a receiver for an endowment care cemetery when “necessary or advisable” and omitting any express reference to the ORC).



- O.R.S. § 124.120 (authorizing the appointment of a receiver to protect against the abuse of vulnerable persons under Chapter 124 and omitting any express reference to the ORC).
- O.R.S. § 450.295 (authorizing the appointment of a receiver to operate certain district sewage systems as necessary to protect the interests of the state and of the district, but omitting any express reference to the ORC),
- O.R.S. § 93.915 (subject to the procedural requirements of Or. R. Civ. P. and the ORC, as applicable, an action may be instituted to appoint a receiver or to obtain a temporary restraining order during forfeiture under certain land sale contracts).
- O.R.S. § 86.752 (subject to the procedural requirements of Or. R. Civ. P. 79 and 80 and the ORC, as applicable, an action may be commenced to appoint a receiver or to obtain a temporary restraining order during foreclosure of a trust deed by advertisement and sale of certain non-residential trust deeds even after action on the note).

### **2. Please identify and describe the different types of receiverships available in your jurisdiction (for example, general receiver, special receiver, regulatory receiver, etc.) and their specific purposes. List any common law receiverships available in your jurisdiction.**

The Oregon Receivership Code (ORC) does not make a formal distinction between the types of receivers, such as special, specific, general, custodial, and pendente lite receivers. The ORC provides that a court may appoint a receiver over:

- All a person's property wherever located.
- Less than all the person's property, but the order must reasonably describe the property over which the receiver is to control.

(O.R.S. § 37.060(5).)

An order that appoints a receiver over a person and does not describe the property over which the receiver controls is construed to appoint the receiver over all the person's property.

The ORC does not purport to displace existing Oregon receivership case law, provided case law does not conflict with the ORC (O.R.S. § 37.010; see also *Oregon Civil Pleading and Litigation* (2020 ed.) Chapter 21, Receivers, § 21.2-1 ("the work group [involved in drafting the ORC] saw its mission as bringing clarity to existing law,

rather than attempting to make wholesale substantive changes to the law ... most of the prior case law in Oregon remains valid, except when it directly conflicts with provisions of [the ORC]"); Oregon Receivership Code Report of the Receivership Work Group on Senate Bill 899A (2017), pg. 1 (suggesting intent to "amplify upon the existing Oregon receivership provisions"); see Question 1).

### **3. Generally, in which court must a receivership be commenced? Please explain for each type of receiver.**

The Oregon Receivership Code (ORC) does not limit the court in which a receivership must be filed. It provides instead that the ORC applies to all receiverships initiated "in a court of this state" (O.R.S. § 37.040). Therefore, based on the language in the statute a receivership may be commenced in any Oregon trial court except those with limited jurisdiction, such as the justice court or small claims court (O.R.S. § 46.405 (small claims court jurisdiction); O.R.S. § 51.080 (civil jurisdiction of justice court)).

In receiverships concerning real property, the action to appoint a receiver should be brought in the county where the real property is located (O.R.S. § 14.040).

### **4. Please identify who has the authority to seek appointment of a receiver in your jurisdiction.**

The Oregon Receivership Code (ORC) provides that any person or the court on its own motion, may seek the appointment of a receiver (O.R.S. § 37.060). The ORC defines "person" to mean individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, cooperative, business trust, governmental entity, or other entity, of any kind or nature (O.R.S. § 37.060(13)).

A receivership is typically not available to creditors in consumer cases. A court cannot appoint a receiver over personal property held for consumer use, over exempt property, or over property that is held in trust, except in certain domestic relations cases (O.R.S. § 37.050(1)-(2)). Therefore, in practice, a receivership is not an appropriate substitute for creditors seeking sale of a residential property because of the limited marketability of the non-exempt portion of residential property.

Under the ORC, nearly any commercial litigant is empowered to seek appointment of a receiver. However,

litigants are prudent to consider whether a remedy of receivership is warranted because the court may assess the receiver's fees and costs, as well as sanctions if it finds the appointment of the receiver was wrongful or procured in bad faith (O.R.S. § 37.410(6)). The debtor, as owner of the property subject to the receivership, may also have an action for trespass (see *Clausen v. Carstens*, 83 Or. App. 112, 115 (1986)).

In addition to the Section 37 provisions of the ORC regarding the authority to appoint a receiver, other statutes also authorize persons or entities to seek the appointment of a receiver. For example:

- The Director of the Department of Consumer and Business Services may seek appointment of a receiver when related to certain violations of the Oregon Securities Law (O.R.S. § 59.255).
- The court may appoint a receiver in actions to dissolve an Oregon corporation, cooperative, or benefit corporation (O.R.S. §§ 60.667, 62.702, and 65.667).
- A creditor with rights under Oregon law governing fraudulent transfers may seek appointment of a receiver to take charge of a transferred asset or of other property of a transferee (O.R.S. § 95.260(1)(c)(B)).

### **5. What circumstances must exist for a receiver to be appointed in your jurisdiction? Please address whether the company must be insolvent and what insolvency means in your jurisdiction.**

In Oregon, receivers may be appointed at any time to protect and preserve property or the rights of parties in the property, however, appointment of a receiver is discretionary (O.R.S. § 37.060(1); Or. R. Civ. P. 80(B); see also *McMunn v. ML & H Lumber, Inc.*, 247 Or. 319, 323 (1967)). If a contract provides for the appointment of a receiver, a court may consider the contract provision but is not bound to uphold it (O.R.S. § 37.060(2)).

Oregon case law suggests that a receivership is a harsh remedy to be invoked as a last resort (see *Rugger v. Mt. Hood Elec. Co.*, 143 Or. 193, 223 (1933); *McKinney v. Nayberger*, 138 Or. 203, 217 (1931) (a receiver should not be appointed if a less drastic remedy is available)).

Under both the Oregon Receivership Code (ORC) and Or. R. Civ. P. 80, when a receivership is reasonably necessary to protect the entity's property or the interests of the debtor's owners or creditors, then courts look to the insolvency of an entity, or the imminent danger of

insolvency (O.R.S. § 37.060(1)(g); Or. R. Civ. P. 80(B)(8)). Insolvency exists when:

- The entity is generally not paying debts as they become due.
- The sum of the entity's debts or other obligations is greater than the fair value of its property, other than property:
  - transferred with intent to defraud creditors; or
  - that is otherwise exempt from execution.

(O.R.S. § 37.030(8).)

Insolvency is not defined by Or. R. Civ. P. 80.

The ORC and Or. R. Civ. P. 80 provide similar additional grounds for appointment of a receiver. Specifically, receivers may be appointed:

- Before judgment, if the property that is the subject of the action or rents or profits deriving from the property are in danger of being lost or materially injured or impaired.
- After judgment:
  - if reasonably necessary to carry the judgment into effect;
  - to dispose of property according to the judgment;
  - to preserve the property during the pendency of an appeal;
  - when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment; or
  - either before or after the issuance of an execution, to preserve, protect, or prevent the transfer of property subject to the execution and sale.
- In a statutory fraudulent conveyance action.
- When property is attached by a creditor, if:
  - the property is perishable or is otherwise in danger of waste, impairment, or destruction; or
  - the debtor has abandoned the property and receivership is reasonably necessary to conserve, protect, or dispose of the property (O.R.S. § 37.060; Or. R. Civ. P. 80).
- In any situation where:
  - the appointment of a receiver is expressly required or permitted by statute; or
  - in the discretion of the court, appointment of a receiver is reasonably necessary to secure justice to the parties.

(O.R.S. § 37.030(1).)

For statutes permitting appointment of receivers outside the ORC, see Question 1.

Common law in Oregon suggests that courts also have inherent power to appoint a receiver, even in the absence of a statute or rule authorizing the receiver's appointment (see *Wm. H. Taylor Fin. Corp. v. Oregon Logging & Timber Co.*, 116 Or. 440, 447 (1925)). Before enactment of the ORC, caselaw provided that the moving party seeking a receiver to protect property must demonstrate that the property subject to the action is in possession of the defendant and that the moving party has probable rights in the property (*Grayson v. Grayson*, 222 Or. 507, 510-11 (1960)). However, the requirements for appointment of a receivership in *Grayson* are likely abrogated by the more specific standard for appointment set out by the ORC in O.R.S. § 37.060. Although a receiver may be appointed on many grounds, Oregon courts have historically held that a receivership is an ancillary procedural remedy and may not be the sole object of a suit (see *French v. C.F. & T. Co.*, 124 Or. 686, 690 (1928); but see *Jackson v. Nicolai-Neppach Co.*, 219 Or. 560, 573-74 (1959) (suggesting statutory basis may abrogate common law rule)).

### 6. What is required to file a receivership in your jurisdiction. Please include information on:

- Documents, including any official forms and a description of the operative document.
- Filing requirements (including what needs to be filed and where, timing, electronic versus paper, and any fees that must be filed).

## Documents

In Oregon, there are no official forms specific to appointing a receiver. The Oregon Receivership Code (ORC) provides that the court may appoint a receiver on motion (O.R.S. § 37.060(1)). The motion should include:

- The grounds for the appointment of a receiver.
- A declaration or affidavit as necessary to adduce the supporting facts (O.R.S. § 37.060(1); see also *Grayson v. Grayson*, 222 Or. 507, 516 (1960) (referencing required showing)).
- A statement under oath from the proposed receiver of any necessary receiver disclosures required under O.R.S. § 37.080.
- A proposed order appointing receiver. The order appointing the receiver dictates the scope of receiver's powers and duties and, therefore, at a minimum:

- reasonably identify the property subject to the receivership;
- describe the receiver's powers; and
- describe the receiver's obligations for filing reports. (Or. R. Civ. P. 80(D); O.R.S. § 37.060(5); O.R.S. § 37.110.)

The person drafting the order may wish to include the following additional information:

- The identity of the receiver.
- The factual basis for the appointment.
- The terms of compensation for the receiver.
- Whether security is required and, if so, the amount provided.
- If appointed related to any real property, a legal description of the real property.

In receiverships under Or. R. Civ. P. 80, the order appointing the receiver must contain the deadline for submitting claims in liquidations (Or. R. Civ. P. 80(D)). The ORC, however, permits the receiver to give notice of the claims bar date in asset cases after providing initial notice of the receivership to interested persons, which occurs within 30 days after appointment (O.R.S. § 37.210 (claims-bar deadline); O.R.S. § 37.330 (initial notice to creditors)).

Corporate actions or approval are not required for seeking appointment of a receiver.

There is no special fee for seeking a receivership beyond the ordinary fees required under O.R.S. Chapter 21. However, when appointing a receiver under Or. R. Civ. P. 80, the court must require security in an amount covering the payment of any costs, damages, and attorney fees that may be sustained or suffered by any party due to the wrongful act of the receiver. Giving a security is discretionary under the ORC (O.R.S. § 37.060(6)).

## Notice

Notice of the receiver's appointment must be made on the adverse party at least five days before the time specified for the hearing unless the court orders a different notice period (Or. R. Civ. P. 80(C)). Any notices required under Or. R. Civ. P. 80, including notice of the hearing of the receiver's appointment must be served according to Or. R. Civ. P. 9 (Or. R. Civ. P. 80(F)(3)). The ORC does not expressly provide that notice must be given before a receiver's appointment, but Oregon case law indicates that notice must be given even in the absence of an express statutory requirement (see *Anderson v. Robinson*, 63 Or. 228, 233 (1912)).

A court may not appoint a receiver on an ex parte basis unless there is an emergency situation that gives rise to the right for a temporary restraining order under Or. R. Civ. P. 79, such as the threat of irreparable injury (see *Anderson*, 63 Or. at 233 (ex parte appointment of receiver is generally void); see also [Council on Court Procedures](#), Staff Comment to Rule 80 (1979-81 biennium) (“There is no provision for an ex parte receivership order. In an emergency situation, a temporary restraining order would be available under Rule 79 to protect a party until a receivership could be established”).

The ORC and Or. R. Civ. P. do not expressly provide for appointment of a receiver in a motion for an order to show cause why a receivership should not be approved. Orders appointing a receiver are expressly excluded from the definition of **provisional process** in Or. R. Civ. P. 81(A)(9). However, while the party seeking the appointment of a receiver under Or. R. Civ. P. 80 is not directed to use the procedure for provisional process set out in Or. R. Civ. P. 83, it is common practice for creditors to seek appointment of a receiver in a motion for an order to show cause. The choice of motion for an order to show cause is likely motivated by:

- Timing considerations because show cause hearings are generally heard on an expedited basis.
- Whether the moving party seeks additional provisional relief, such as a temporary restraining order prohibiting dissipation of assets.

Creditors using the show cause process under Or. R. Civ. P. 83 to obtain an order appointing a receiver should be mindful of the rule’s emphasis on the necessity of showing that the subject property is in danger of destruction, serious harm, concealment, removal from this state, or transfer to an innocent purchaser (Or. R. Civ. P. 83(D)).

### Selecting a Receiver

#### **7. Please explain how a receiver is selected in your jurisdiction and whether there are any statutory requirements or qualifications to be appointed as receiver.**

In Oregon, **any person** (as defined in O.R.S. § 37.030(13)), regardless of whether they are a resident of Oregon, may serve as receiver. Receivers are typically professionals, for example, attorneys, accountants, liquidation specialists, or property managers. The requesting party typically nominates a receiver, which may be an individual or an entity. However, 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 (O.R.S. § 37.070).

The receiver may not be:

- An entity that is not authorized to conduct business in Oregon.
- A person that has been convicted of a crime involving moral turpitude or is controlled by a person that has been convicted of a crime involving moral turpitude.
- The sheriff of any county, unless expressly permitted by statute.

(O.R.S. § 37.070.)

The person selecting the proposed receiver should consider:

- The scope of the duties necessary to administer the receivership together with the receiver’s qualifications.
- Whether the receiver:
  - should have specialized knowledge regarding the property or business; and
  - requires control.

The court is not required to appoint the person proposed as receiver, but practical considerations make it unlikely that the court substitutes the selection (O.R.S. § 37.060(1) (suggesting court’s ability to select receiver on its own motion)).

Under the ORC, the court may not appoint a person as receiver unless that person discloses if:

- It is an affiliate of a party.
- Holds an interest materially adverse to an interest of a party.
- Has a material financial interest in the outcome of the action.
- Has a debtor-creditor relationship with a party.
- Holds an equity interest in a party.

The proposed receiver must sign a declaration that its disclosures are true and correct (O.R.S. § 37.080; see Question 8).

#### **8. Please explain what is required to obtain court approval of a selected receiver in your jurisdiction.**

In Oregon, the requesting party typically nominates a proposed receiver.



The receiver may not be:

- An entity that is not authorized to conduct business in Oregon.
- A person that has been convicted of a crime involving moral turpitude or is controlled by a person that has been convicted of a crime involving moral turpitude.
- The sheriff of any county, unless expressly permitted by statute.

(O.R.S. § 37.070.)

The court is not required to appoint the person proposed as receiver, but practical considerations make it unlikely that the court substitutes the selection (O.R.S. § 37.060(1) (suggesting court's ability to select receiver on its own motion)).

The person selected to be receiver must disclose under oath whether the person:

- Is an affiliate of a party to the receivership.
- Has an interest materially adverse to an interest of a party to the receivership.
- Has a material financial interest in the outcome of the action, other than compensation approved by the court.
- Has a debtor-creditor relationship with the debtor.
- Holds an equity interest in a party to the receivership, other than a non-controlling interest in a publicly traded company.

(O.R.S. § 37.080.)

The proposed receiver must sign a declaration that its disclosures are true and correct.

A party to the case should typically not be appointed receiver unless other parties in interest consent or special circumstances exist making appointment of a receiver in the best interest of all concerned (see *N. Brewery Co. v. Princess Hotel*, 78 Or. 453, 46 (1915)).

## Duties and Actions of the Receiver

**9. Please identify and describe the main statutory duties and responsibilities for each type of receiver, as applicable, in your jurisdiction (for example, providing notice to creditors, holding meetings of creditors, etc.)**

In Oregon, the receiver's responsibilities are typically contained in the order appointing the receiver and are not limited based on historical distinctions or the scope

of the receivership property. The Oregon Receivership Code provides a non-exhaustive list of responsibilities the court may confer on the receiver, whether appointed over all or some of the debtor's property (O.R.S. § 37.110).

The statutes contain a broad range of powers, including authorizing the receiver to:

- Collect, control, manage, conserve, and protect estate property.
- Operate a business constituting estate property, including preservation, use, sale, lease, license, exchange, collection, or disposition of property in the ordinary course of business.
- In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of estate property.
- Assert a right, claim, cause of action, or defense of the debtor that relates to estate property.
- Assert, in its name, any claim for statutory fraudulent conveyance that may be asserted by any of the debtor's creditors.
- On subpoena, compel a person to:
  - submit to examination under oath in the manner of a civil deposition;
  - produce and permit inspection and copying of designated records or tangible things, regarding estate property or any other matter that may affect administration of the receivership.
- Engage and pay compensation to professionals as permitted in O.R.S. § 37.310.
- Incur debt for the use or benefit of estate property other than in the ordinary course of business as permitted by O.R.S. § 37.260.
- Make improvements to estate property.
- Use or transfer estate property, other than in the ordinary course of business, as permitted by O.R.S. § 37.250.
- Assume the debtor's executory contracts as permitted by O.R.S. § 37.240.
- Determine whether to establish a claims procedure under O.R.S. § 37.340.
- Allow or disallow creditors' claims as permitted by O.R.S. § 37.360.
- Distribute estate property under O.R.S. § 37.370.

(O.R.S. §§ 37.110(1)(a) to 37.110(1)(r).)

## Receiverships: Oregon

The party seeking appointment of the receiver may request that the court confer additional powers on the receiver that are reasonably necessary to avoid injustice, beyond those expressly listed (O.R.S. § 37.110(1)(s)). The court may also limit, expand, or modify the powers conferred on the receiver at any time (O.R.S. § 37.110(3)).

An appointed receiver has various duties, including the duty to:

- Notify all federal and state taxing agencies of the receiver's appointment in compliance with any applicable laws (O.R.S. § 37.120(1)).
- At all times comply with applicable law (O.R.S. § 37.120(2)).
- If appointed over real property, file a certified copy of the order of appointment, together with a legal description of the real property (if one is not included in the order), with the county recorder where the real property is located (O.R.S. § 37.120(4)(3)).
- Follow any additional duties imposed by the court at any time. The court may also limit, expand, or modify duties imposed by the court on a receiver at any time (O.R.S. § 37.120(4)).
- Within 30 days of appointment, provide notice of the receivership to all the debtor's known creditors and any other known person having a claim or interest in estate property (O.R.S. § 37.030(1)). The notice must include
  - the date of appointment of the receiver;
  - the name of the court and the case number of the receivership;
  - the deadline for the submission of claims by creditors, if known;
  - the name and address of the owner;
  - the name and address of the receiver and receiver's attorney, if any;
  - a procedure for notifying the receiver if the recipient is represented by an attorney;
  - a procedure for being placed on the special notice list; and
  - a statement that the person may not receive notice of all further proceedings in the receivership unless the person requests to be placed on the special notice list.

The notice must also be published at least once per week for two consecutive weeks in a newspaper of general circulation in all counties where the estate property is known to be located (O.R.S. § 37.030(3)).

- Within 60 days of appointment (unless the court sets a different time), a receiver must file with the court a schedule of:

- all the debtor's known creditors;
- the creditors' last known mailing addresses; and
- the amount and nature of the creditors' claims and whether their claims are disputed.

(O.R.S. § 37.190.)

The receiver is not required to file this schedule if can show that the estate is unlikely have sufficient assets to make distributions to unsecured creditors.

- Within 60 days of appointment, file an inventory of all the property that is part of the receivership estate and receiver's control, except that the inventory does not need to include legal claims that are estate property (O.R.S. § 37.190).
  - File monthly reports detailing the receiver's operations and financial affairs. The monthly report must include:
    - a concise narrative summary of the receiver's activities during the period and a description of any major upcoming events;
    - beginning and ending cash balances;
    - a statement of cash receipts and disbursements;
    - a statement of noncash receipts and payments;
    - a statement of receipts and dispositions of estate property outside the ordinary course of business, including a description of the property, the value of the property, and the amounts received from any disposition of the property;
    - a statement of accounts receivable;
    - a statement of the receiver's fees and expenses;
    - a tax disclosure statement listing taxes owed or required tax deposits, the name of the taxing agency, the date due, and an explanation for any failure to make payments or deposits; and
    - any other information required by the court.
- (O.R.S. § 37.200.)
- In liquidation cases with sufficient assets, set a bar date for claims submissions (O.R.S. § 37.210; see Question 15).

**10. In addition to statutory duties, please summarize any common law duties imposed on a receiver in your jurisdiction.**

In Oregon, the receiver, as an officer of the court, has a further duty to exercise independent judgment to impartially administer the property under the receiver's control for the benefit of all concerned (see *N. Brewery Co. v. Princess Hotel*, 78 Or. 453, 461 (1915)).

The court may limit, expand, or modify the statutory powers and duties of a receiver (O.R.S. § 37.120(4)).

### 11. Please explain if the receiver must post a bond in your jurisdiction and take any actions before beginning its duties.

In Oregon, when appointing a receiver under Or. R. Civ. P. 80, the court must require a bond or security in an amount that covers payment of any costs, damages, and attorney fees that may be sustained or suffered by any party due to the wrongful act of the receiver.

Under the Oregon Receivership Code, it is discretionary for the receiver to give a bond or security (O.R.S. § 37.060(6)). Unless otherwise provided by applicable law, the court may require the receiver to post a bond that:

- Is conditioned on the faithful discharge of the receiver's duties.
- Is in an amount determined by the court to be adequate to secure payment of any costs, damages, and attorney fees that may be sustained or suffered by any person due to a wrongful act of the receiver.
- Has one or more sureties that meet the qualifications set out in Or. R. Civ. P. 82(D), or that are approved by the court.

(O.R.S. § 37.090(1).)

Except as otherwise provided by applicable law, the court may require a receiver to post an alternative security in place of a bond, such as a letter of credit or a deposit of funds, with the clerk of the court. This alternative security is held to secure the receiver's faithful performance of the receiver's duties until the court authorizes the release or return of the alternative security. Interest accruing on any deposit of funds is remitted to the receiver on its discharge (O.R.S. § 37.090(2)).

The court may also require the receiver to carry an insurance policy with coverage and limits determined by the court instead of a bond, which may be charged against the estate (O.R.S. §§ 37.090(3) and (4)).

The court may authorize a receiver to act before the receiver posts bond, alternative security, or acquires an insurance policy (O.R.S. § 37.090(5)).

### 12. Under what circumstances can a receiver be removed in your jurisdiction?

In Oregon, a receiver may be removed by a motion made by the debtor, the receiver, any creditor, or the court's own motion if the receiver resigns, refuses, or fails to serve for any reason or for other good cause (O.R.S. § 37.400(1)).

When a receiver is removed, the court must appoint a successor receiver if the court determines that the estate requires further administration (O.R.S. § 37.400(1)). Any litigation involving the receiver continues by or against the successor receiver (O.R.S. § 37.290(6)).

### 13. Please explain the process for terminating or removing a receiver, including all relevant notice requirements.

In Oregon, the court may remove a receiver if the receiver resigns, refuses, or fails to serve for any reason or for any other good cause. Removal may be made by motion of the debtor, the receiver, any creditor, or on the court's own motion (O.R.S. § 37.400(1)).

If a receiver is replaced, litigation involving the receiver continues by or against the successor receiver (O.R.S. § 37.290(6)). Only a successor receiver appointed by the court has a cause of action against a former receiver to recover on behalf of the estate (O.R.S. § 37.290(9)).

If a receiver is removed but the receivership continues, the former receiver must:

- Fully account for and turn over to the successor receiver all the property of the estate.
- File a report of all receipts and disbursements during its tenure as receiver.
- Give notice to all persons on the special notice list.

(O.R.S. § 37.400(3).)

The court must then hold a hearing and enter an order discharging the former receiver from all further duties and responsibilities as receiver

The receiver's discharge releases:

- The receiver from any further duties and responsibilities under the Oregon Receivership Code.
- The receiver and any persons acting on behalf of the receiver from all further liability regarding the administration of estate property or the receivership.

(O.R.S. § 37.410(4).)



For receiverships proceeding according to Rule 80 of the Oregon Rules of Civil Procedure, the rules do not provide for a specific process for removal other than termination of the receivership (Or. R. Civ. P. 80(G)). Because the Or. R. Civ. P. 80 does not explicitly provide for a process for removal, in practice, the provisions of the Oregon Receivership Code generally control when removing a receiver.

At common law, the removal of a receiver may be made by motion (see *Giroux v. Bockler*, 98 Or. 398, 417 (1921)).

### Administration of the Receivership

#### 14. What are the key processes during the receivership in your jurisdiction? Please describe:

- Financing, including the ability of the receiver to obtain financing.
- Assets sales, including whether sales are held at private or public auction and the circumstances for each, as well as notice requirements.
- Avoidance powers, including the specific avoidance powers given to a receiver in your jurisdiction and the relevant time period for recovering preferences.
- Assumption or rejection of executory contracts, including what actions a receiver must take to assume or reject a contract in your jurisdiction.

### Financing

In Oregon, a receiver authorized to operate a business may:

- Obtain credit and incur debt in the ordinary course of business (O.R.S. §37.110(1)(c); O.R.S. §37.260(1)). The receiver's expenses related to this credit and debt are allowable as an administrative expense (O.R.S. §37.260(1)).
- With court approval, obtain credit or incur debt outside the ordinary course of business. The receiver may mortgage, pledge, hypothecate, or encumber estate property as security for repayment of any debt. A creditor's security interest may be in the form of a receiver's certificate (O.R.S. §37.260(2)).

### Use, Sale, or Transfer of Property

Under the Oregon Receivership Code (ORC), a receiver may:

- Have the general power to sell property in the ordinary course of business, if provided in the order appointing

the receiver (O.R.S. § 37.110(1)(b)). However, the receiver may not sell or dispose of real property without a court order (O.R.S. § 37.180).

- With court approval, use or transfer receivership property other than in the ordinary course of business (O.R.S. § 37.250). Unless a transfer agreement provides otherwise, this type of transfer is free and clear of any lien held by the person that obtained appointment of the receiver, any subordinate liens, and any right of redemption, but is subject to any senior liens (O.R.S. § 37.250(2)).

Estate property does not need to be sold at a public auction. In practice, the receiver may sell property as if it were the owner by permitting time for due diligence, allow regular commercial brokers to show the property, entering negotiated purchase and sale agreements that allow for financing and inspections, and permitting closing to occur in a commercially reasonable fashion (O.R.S. § 37.250(2)).

If a transfer extinguishes a lien on estate property, the lien attaches to the proceeds of the transfer with the same validity, perfection, and priority that the extinguished lien had on the transferred property before the transfer, regardless of whether the proceeds are sufficient to satisfy all obligations secured by the lien (O.R.S. § 37.250(3)).

A creditor that holds a valid lien on receivership property that is subject to a sale may credit bid the amount of its allowed secured claim to purchase the property and offset the price. However, the creditor must pay sufficient funds to satisfy the reasonable transfer expenses and any obligation secured by any senior lien extinguished by the transfer (O.R.S. § 37.250(4)).

If estate property includes an interest as a co-owner of property, the receiver has all rights and powers of a co-owner afforded by applicable law, including any rights of partition (O.R.S. § 37.250(6)). If the debtor holds an undivided interest in property as a tenant in common, joint tenant, or tenant by the entirety, the receiver may obtain court approval to sell both the interest that is estate property and the interest of any co-owner if the court determines that:

- Partition of the property is impracticable.
  - Sale of the estate's undivided interest in the property realizes significantly less for the estate than a sale of the property free and clear of the interests of the co-owner.
  - The benefit to the estate of the sale outweighs the detriment, if any, to the co-owner.
- (O.R.S. § 37.250(7).)

A receiver may not sell, transfer, or dispose of residential property or an undivided interest in residential property without specific judicial approval, which a court may grant only in case of:

- Waste, destruction, or obstruction of marketing of the property.
- Enforcement of an order in a domestic relations suit.
- Other good cause shown.

(O.R.S. § 37.250(8).)

A receiver, after giving 14-days' notice, may abandon estate property that is burdensome to the receiver or of inconsequential value or benefit. Abandoned property no longer constitutes estate property. A receiver may not abandon property in violation of a state statute or rule that is designed to protect the public health or safety from identified hazards (O.R.S. § 37.280).

For receiverships proceeding under Or. R. Civ. P. 80, a receiver's express authority to sell property is limited to:

- Disposing the property according to judgment.
- The circumstance when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(Or. R. Civ. P. 80(B)(3).)

### Avoidance Actions

The order appointing the receiver may confer the power on the receiver to:

- Assert a right, claim, cause of action, or defense of the debtor that relates to estate property.
- Assert any claim under Oregon's fraudulent conveyance statutes that may be asserted by any of the debtor's creditor (O.R.S. § 37.110(d) and (e)).

There are no statutory provisions granting a general receiver additional time to file a fraudulent conveyance. Therefore, any avoidance actions must be brought within four years after the transfer was made or the obligation was incurred or within one year after the transfer or obligation may reasonably have been discovered (O.R.S. § 95.280).

There are no statutory provisions for recovery of preferences by a receiver.

### Assumption or Rejection of Executory Contracts and Unexpired Leases

A debtor is typically party to executory contracts and unexpired leases as part of its ongoing business. A

receiver should assess the value of the contracts and leases and determine those that are beneficial and those that carry greater liabilities to the estate. The Oregon Receivership Code (ORC) expressly addresses assumption, rejection, and assignment of executory contracts.

The ORC defines **executory contract** to mean:

- A contract, including an unexpired lease, where the obligations of both parties remain unperformed so that failure to complete performance constitutes a material breach excusing the performance of the other.
- A contract, including an unexpired lease, where a party has an unexercised option to require its counterparty to perform.

(O.R.S. § 37.030(6).)

With court approval, a receiver may:

- Assume any of the debtor's executory contract.
- Reject any of the debtor's executory contract on 14-days' notice.

(O.R.S. § 37.240(1).)

Performance of an executory contract does not constitute an assumption of the contract or an agreement by the receiver to assume it, nor does it preclude the receiver from rejecting it (O.R.S. § 37.240(1)).

The court may condition assumption or rejection of any executory contract on terms and conditions that the court deems just and proper, however:

- If a receiver assumes an executory contract, the receiver must assume the contract in its entirety (O.R.S. § 37.240(2)).
- A rejection of an executory contract is treated as a breach of the contract occurring immediately before the receiver's appointment and the receiver's right to possess or use property under the executory contract terminates on rejection of the contract (O.R.S. § 37.240(3)). The other party to a rejected executory contract may take any necessary steps to terminate or cancel the contract.

Any claims resulting from a receiver's rejection of an executory contract must be submitted to the receiver within 30 days after the rejection (O.R.S. § 37.240(3)).

If the receiver rejects an executory contract for the sale of real property where the owner is the seller and the purchaser is in possession, the sale of a real property timeshare interest where the owner is the seller, the license of intellectual property rights where the owner is the licensor, or the lease of real property where the owner is the lessor, then the counterparty to the agreement may:

- Treat the rejection as a termination of the contract, license, agreement, or lease.
- Elect to treat rejection of an executory contract as a termination and hold a lien against the real property for the portion of the purchase price that the purchaser paid.
- Remain in possession and continue to perform all obligations arising under the contract but offset any damages from rejection against any payments. However, the counterparty has no claim or rights against the receiver for any damages arising from the receiver's rejection

(O.R.S. § 37.240(7).)

A receiver may assume an executory contract even if the contract provides that appointment of a receiver is a breach of the contract (O.R.S. § 37.240(4)). However, a receiver may not assume a debtor's executory contract without the consent of the other party to the contract if:

- Applicable law excuses the other party from accepting performance from or rendering performance to anyone other than the debtor even in the absence of any provisions in the contract expressly restricting or prohibiting an assignment of rights or duties.
- The contract:
  - makes a loan or extends credit or financial accommodations to or for the debtor's benefit; or
  - issues a security of the debtor.
- The contract expires by its own terms or under applicable law before the receiver's assumption.

(O.R.S. § 37.240(5).)

A receiver may not assign an executory lease without assuming it unless the receiver obtains consent from all other parties to the lease (O.R.S. § 37.240(6)).

If a receiver does not seek authorization from the court to assume an executory contract within 180 days after the receiver's appointment, the receiver is deemed to have rejected the contract (O.R.S. § 37.240(8)).

## Creditor Claims

**15. What is the procedure for notifying creditors of their rights to file claims in your jurisdiction? Please explain all notice requirements, including proof of claim requirements and deadlines. List all applicable statutes.**

## Notice

The Oregon Receivership Code (ORC) permits the receiver to give notice of a claim bar date in asset cases after having provided the initial notice of the receivership to interested persons, which occurs within 30 days after appointment (O.R.S. § 37.210).

In a liquidation under the ORC, the receiver is not required to provide notice and a claims process when there are insufficient funds to provide a distribution to creditors. In this case, the receiver may choose to notify creditors that there is no claims process (O.R.S. § 37.340(2)).

If the receiver determines that the estate has sufficient funds to provide distributions to creditors, the receiver must establish a claims process by sending a written document describing a claims process, including relevant dates and deadlines, to all known creditors (O.R.S. § 37.340(1)).

In a liquidating receivership under Or. R. Civ. P. 80, the order appointing the receiver must include a claims-bar deadline (Or. R. Civ. P. 80(D)(3)).

## Claims Process

Under the ORC, the receiver has flexibility to set the form and procedure of the claims process (O.R.S. § 37.340(1)). If the receiver does not prescribe a form or specify the required contents of a claim, claims must be in written form and:

- Include the name and address of the claimant.
- Describe the nature and amount of the claim.
- Be signed by the claimant or the claimant's agent.
- Include any other information required by the receiver.

(O.R.S. § 37.350(4).)

Claims may only be submitted after a claims process is established and claims must be delivered to the receiver and not filed with the court (O.R.S. §§ 37.350(1) and (5)). Claimants must submit their claims according to the following deadlines:

- Within 30 days after the claims process is established.
- Within 30 days from rejection of an executory contract for claims arising from the rejection of an executory contract.
- Within 180 days after the claims process is established for claims by state agencies.

The court may shorten or extend any of the deadlines (O.R.S. § 37.350(3)).

All unsecured claims that arose before the receiver was appointed must be submitted to participate in any distribution, regardless of whether the claim is contingent, liquidated, unliquidated, or disputed (O.R.S. § 37.350(2)).

A claim executed and submitted that follows the requirements of the ORC or the receiver's notice constitutes prima facie evidence of the validity and amount of the claim (O.R.S. § 37.350(6)).

### **16. Please explain the process for determining allowance and disallowance of claims in your jurisdiction, including the power and authority of the court regarding the process.**

In Oregon, at any time before court approval of the receiver's final report, the receiver may disallow a claim on 21-days' notice and a court order. The receiver's notice must contain the grounds for disallowance. (O.R.S. § 37.360(1)(a)).

At any time before the court approved the receiver's final report, any interested person may also object to a claim. The objector must mail a copy of the objection, together with a notice of hearing, to the receiver and claimant at least 21 days before the hearing. The court must then hear the objection and enter an order allowing or disallowing the claim (O.R.S. § 37.360(1)(b)).

On a receiver's or creditor's request or on order of the court, an objection is subject to mediation before adjudication of the objection. However, claims by the state are not subject to mediation unless the state consents to mediation (O.R.S. § 37.360(2)).

For claims allowance purposes, on a receiver's motion or a motion of any interested person, the receiver may estimate any:

- Contingent or unliquidated claim, which when fixed or liquidated unduly delays the administration of the receivership.
- Right to payment arising from a right to an equitable remedy.

(O.R.S. § 37.360(3).)

The court determines the process for objecting to and allowing claims in cases that are not subject to the Oregon Receivership Code (Or. R. Civ. P. 80).

### **17. Please explain the priority scheme for the payment of creditors' claims in your jurisdiction and the applicable statutes.**

In Oregon, allowed claims in a receivership must receive distribution according to the order of priority under the Oregon Receivership Code (ORC). The Priority of claims is as follows:

- First, allowable unpaid costs and expenses incurred in preserving secured property (recoverable from the secured property).
- Second, claims of creditors with liens on estate property that are duly perfected under applicable law. These creditors receive the proceeds from the disposition of their collateral and their claims must be paid from the proceeds according to their respective priorities under applicable law.
- Third, actual, necessary costs, and expenses incurred during the administration of the estate. This includes the allowed fees and reimbursement of the receiver and its professionals. Expenses incurred during the administration of the estate have priority over the secured claim of any creditor obtaining the appointment of the receiver.
- Fourth, certain claims of the federal government.
- Fifth, claims of creditors with liens on estate property that are not required to be perfected under applicable law. These creditors receive the proceeds of the disposition of their collateral.
- Sixth, claims of creditors with liens on estate property that have not been duly perfected under applicable law. These creditors receive the proceeds from the disposition of their collateral to the extent that unsecured claims are made subject to those liens under applicable law.
- Seventh, claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan up to the aggregate amount of \$12,850 for each claimant, earned by the claimant within 180 days of the earlier of the receiver's appointment and the cessation of the estate's business.
- Eighth, unsecured claims of individuals up to the amount of \$2,850 for each claimant, arising from any deposit (before receivership) for the purchase, lease, or rental of property or the purchase of services for personal, family, or household use that were not delivered or provided.
- Ninth, claims for a spousal support debt or child support debt, except if the debt:
  - is assigned to another entity, voluntarily, by operation of law, or otherwise; or
  - includes a liability designated as a support obligation.

- Tenth, unsecured claims of state governmental units for taxes that accrued before the receiver's appointment.
- Eleventh, other unsecured claims.
- Twelfth, interests of the owner.

(O.R.S. § 37.370(1).)

If the proceeds from the disposition of collateral securing an allowed secured claim are less than the amount of the claim or a creditor's lien is avoided on any basis, the creditor holds an unsecured claim in the amount of the deficiency (O.R.S. § 37.370(1)).

Except for claims of perfected secured creditors and certain claims of the federal government, claimants receive distributions on a pro rata basis (O.R.S. § 37.370(2)).

The ORC permits the receiver to pay claims without a court order setting the priority of claimants (O.R.S. § 37.180(1)). However, in practice, a prudent receiver obtains a court order regardless to avoid a later dispute.

## Compensation of Receiver and Professionals

### 18. Please explain how receivers are compensated in your jurisdiction, including:

- Whether there is a statutory or state law threshold compensation fee for receiver.
- Whether court approval is required for compensation.
- Whether parties must receive notice.

In Oregon, there is no statutory scheme or threshold for compensation of a receiver or its professionals. The case law provides that a receiver's fees must be reasonable (*U.S. Inv. Corp. v. Portland Hosp.*, 40 Or. 523, 525 (1902)).

In the case of a receivership proceeding under Or. R. Civ. P. 80, the court determines and enters order regarding the fees and costs paid to the receiver and its professionals on the termination of the receivership (Or. R. Civ. P. 80(G)).

In the case of a receivership proceeding under the Oregon Commercial Code (ORC), the receiver may compensate itself as the case progresses from available funds without further court approval if the order appointing the receiver permits (O.R.S. § 37.110(1)(n)). However, the receiver must provide a statement of its fees and expenses in the receiver's required monthly reports (O.R.S. § 37.200(2)(g)).

To avoid later dispute, the party seeking appointment of a receiver should outline the method and means of the receiver's compensation in the proposed order appointing the receiver. A receiver's compensation should accord with the realities of the estate. For example, receivers may be compensated on an hourly basis, on a set percentage of the liquidated assets, or a blend of the two.

The ORC permits the receiver to be paid third in priority in any distribution from the estate's assets, except that a receiver may obtain payment of its costs and expenses necessary to preserve or dispose of collateral directly from the proceeds of the collateral. (O.R.S. §§ 37.370 and 37.270).

### 19. What professionals are receivers permitted to retain in your jurisdiction? Please explain how a receiver's professionals are compensated.

In Oregon, a receiver may engage and pay compensation of professionals if the order appointing the receiver permits (O.R.S. § 37.110(1)(h)). The receiver must provide notice of the intent to hire a professional that includes:

- The professional's identity and qualifications.
- The proposed engagement's nature and scope.
- Any potential conflict of interest.
- The proposed compensation.

(O.R.S. § 37.310(2).)

After providing notice and resolving any objections, the receiver may employ attorneys, accountants, appraisers, brokers, real estate licensees, auctioneers, or any other professional to represent or assist the receiver in carrying out its duties (O.R.S. § 37.310).

Except if authorized by the court, a receiver may not employ a professional that holds or represents an interest adverse to the estate (O.R.S. § 37.310(4)). However, a professional is not disqualified solely because of the professional's employment by, representation of, or other relationship with a creditor or other interested person, provided the relationship is disclosed in the notice of the professional's employment (O.R.S. § 37.310(4)).

After giving notice, the receiver may make payments to professionals for services rendered to the receiver. The notice must include an itemized billing statement indicating:



- The time spent.
- Billing rates of all persons that performed work to be compensated.
- A detailed list of expenses.

(O.R.S. § 37.310(6).)

The receiver itself may act as attorney or accountant if it is in the best interests of the estate (O.R.S. § 37.310(5)).

### Closing the Receivership

**20. What is the process for closing a receivership proceeding in your jurisdiction? Where a court order is required, please explain the key provisions of an order closing the case.**

In Oregon, to terminate a receivership, the parties or the court must file a motion seeking to end the receivership (Or. R. Civ. P. 80(B); O.R.S. § 37.180(1)(h); O.R.S. § 37.410(1)).

Under the Oregon Receivership Code (ORC), a receivership may be terminated:

- On distribution or disposition of all estate property.
- The completion of the receiver's duties regarding estate property;
- For other good cause.

(O.R.S. §37.410(1).)

If any of the above conditions exist, the receiver must move the court for an order discharging the receiver (O.R.S. §37.410(1)). The motion must include a final report and accounting including:

- A list of estate property received during the receivership.
- A list of disbursements, including payments to the receiver's professionals.
- A list of dispositions of receivership property.
- A list of distributions made or proposed to be made from the estate for creditor claims.
- If not filed separately, a request for approval of the payment of the receiver's fees and expenses
- Any other information required by the court.

(O.R.S. §37.410(2).)

If the court approves the final report and accounting, the court must discharge the receiver (O.R.S. § 37.410(3)). The court may also issue an order exonerating the receiver's bond or alternative security (O.R.S. § 37.410(3)).

The receiver's discharge under the ORC:

- Releases the receiver from any further duties and responsibilities under the ORC
- Releases the receiver and any persons acting on behalf of the receiver from all further liability related to administering the estate property.

(O.R.S. § 37.410(4).)

The party seeking termination must give at least 14-days' notice (O.R.S. § 37.170(2)).

If a party seeking to appoint a receiver invokes Rule 80 of the Oregon Rules of Civil Procedure (ORCP), such as in an order to show cause, a receivership may be terminated only on a motion served with at least ten-days' notice on all parties appearing in the proceeding (Or. R. Civ. P. 80(G)). The court may:

- Require that the receiver file and serve a final account and report.
- Allow written objections to the receiver's account within a specified time.

(Or. R. Civ. P. 80(G).)

At the hearing on the motion to terminate, the court must:

- Hear all objections to the final account.
- Take evidence, as appropriate.
- Make orders concerning the termination of the receivership, including all necessary orders on the fees and costs of the receivership.

(Or. R. Civ. P. 80(G).)

When proceeding to commence and terminate a receivership, counsel should be aware of the differences between the provisions of the ORC and Rule 80 of ORCP to ensure compliance.

**21. Is there a process in your jurisdiction for dissolving the receive company after the receivership concludes?**

In Oregon, there is no statutory process for dissolving a debtor company after the receivership concludes.

Parties wishing to dissolve an entity after the conclusion of a receivership should follow the standard statutory processes, as applicable, contained in:

- O.R.S. Chapter 60 (corporations).
- O.R.S. Chapter 63 (limited liability companies).
- O.R.S. Chapter 67 (partnerships).

### Jurisdiction and Power of the Court

#### **22. What statutes, if any, confer powers on the court relating to the receivership, receiver, and creditors in your jurisdiction? Please explain those powers.**

In Oregon, the court has the power to appoint a receiver and the appointing court has:

- Exclusive authority over the receiver.
- Exclusive jurisdiction to control all real property, tangible, and intangible personal property constituting the estate, wherever located.
- Exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of the estate.
- Exclusive jurisdiction to determine all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties.

(O.R.S. §37.100(1).)

However, if any part of the estate is subject to the jurisdiction of another court in a domestic relations matter, the court appointing the receiver may not exercise authority over the property subject to the jurisdiction of the domestic relations court unless expressly permitted by order of that court (O.R.S. §37.100(2)).

#### **23. What responsibilities does the clerk of court in your jurisdiction have in relation to maintaining the records of the receivership?**

In Oregon, the Oregon Receivership Code provides that it is generally the responsibility of the receiver to prepare and retain appropriate business records, including records of all cash receipts, disbursements, and dispositions of receivership property (O.R.S. § 37.200 (setting out the requirements for the receiver's monthly reports)).

The clerk of the court must also secure any bond or alternative security until the receiver completes its duties or otherwise authorized by the court (O.R.S. § 37.090(2)).

### Bankruptcy Considerations

#### **24. May a receiver commence a bankruptcy proceeding in your jurisdiction?**

In Oregon, there is no statutory guidance or caselaw regarding a receiver's authority to file a bankruptcy case under Title 11 of the US Code. The power to initiate a bankruptcy proceeding is not included in the express list of powers in O.R.S. § 37.110 that may be conferred on a receiver in the court order appointing the receiver. However, the list is not exclusive and the power to take any act reasonably necessary to avoid injustice may be conferred on the receiver by the court order (O.R.S. §37.3110(1)(s)). If not included in the order, a receiver seeking to file a bankruptcy case should seek specific court approval.

#### **25. If an involuntary petition is filed during the course of the receivership in your jurisdiction, what action, if any, must the receiver take?**

There is no express rule or statutory authority in Oregon regarding the receiver's duties when an involuntary bankruptcy petition is filed during the course of the receivership.

An involuntary bankruptcy case may generally be filed by three creditors holding at least \$18,600 in liquidated unsecured claims, not subject to a bona fide dispute if they can show that the debtor is generally not paying its debts (§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process](#)).

An order appointing a receiver does not operate as a stay to the commencement of a bankruptcy case under federal bankruptcy laws.

If creditors file an involuntary petition during the receivership:

- The receiver must preserve and protect the assets of the receivership estate (§ 543(a), Bankruptcy Code).
- Unless otherwise ordered by the bankruptcy court, the receiver must turn over property of the receivership estate to the bankruptcy trustee (§ 543(b), Bankruptcy Code).

- The bankruptcy court may permit the receiver to continue to administer the debtor's assets if appointed or in possession of the assets more than 120 days before the bankruptcy, unless the assets must be returned to prevent fraud or injustice (§ 543(d), Bankruptcy Code). However, even if the receiver is appointed less than 120 days before bankruptcy, the bankruptcy court may exercise discretion in rare cases and allow the receiver, instead of the bankruptcy trustee, to administer the assets if:

- it is in the best interest of the creditors; and,
- the debtor is solvent, it is the best interest of equity holders.

(11 U.S.C. § 543(d).)

### **26. May a receiver challenge an involuntary bankruptcy proceeding in your jurisdiction? Please explain.**

In Oregon, there is no specific statutory authority giving receivers authority to object to an involuntary bankruptcy petition. However, if the receiver has the power under the Oregon Receivership Code to assert any of the debtor's right relating to estate property, it likely has the authority to object to an involuntary bankruptcy petition (O.R.S. § 37.110(1)(e) (power to assert the debtor's right may be conferred on receiver by court order)).

A bankruptcy court may:

- Dismiss an involuntary bankruptcy proceeding on certain circumstances including the consent of the petitioner and the debtor (§ 303(j), Bankruptcy Code).
- Dismiss or abstain from hearing a bankruptcy case if it is in the best interest of creditors depending on the facts and circumstances of the case and the length of time that a receiver has been in place (§ 305(a)(1), Bankruptcy Code).

## Other Topics

**27. Are there any statutes or case law in your jurisdiction that would prevent a business directly engaged in cannabis business (i.e. cultivators, dispensaries), or a business that provides ancillary services to a cannabis business (i.e. commercial landlords), from being placed into a receivership? If yes, please list and explain the statutes.**

Cannabis and marijuana are legal in Oregon for recreational use and Oregon's administrative rules permit a receiver to operate a licensed cannabis business (O.A.R. 845-025-1260). The receiver may obtain temporary authority to operate a licensed cannabis business "for a reasonable period to allow orderly disposition of the business" (O.A.R. 845-025-1260(1)).

The receiver of a licenses cannabis or marijuana business must provide the licensing commission with:

- Proof that the person is the legal receiver for the business.
- A written request for authority to operate receiver, listing the address and telephone number of the receiver.

(O.A.R. 845-025-1260(1)(a).)

The licensing commission may revoke or refuse to issue or extend authority for the receiver to operate the business:

- If the receiver does not propose to operate the business immediately or does not begin to operate the business immediately on receiving the temporary authority.
- For any of the reasons that the commission may ordinarily revoke or refuse to issue or renew a license.
- If the receiver operates the business in violation of any Oregon law or regulation governing legal cannabis.
- If a reasonable time for disposition of the business elapsed.

(O.A.R. 845-025-1260(2).)

The receiver may not operate the business until the licensing commission issues a certificate of authority. A certificate of authority is initially issued for a 60-day period and may be extended as reasonably necessary to allow for the disposition of the business (O.A.R. 845-025-1260(3) and (4)).

### **28. If the receivership statutes in your jurisdiction are unique in aspects not covered by the questions in this Q&A, please state so here.**

The Oregon Receivership Code (ORC) was primarily prepared by a commission of judges, practitioners, and law professors convened to form the Oregon Law Commission Work Group (Work Group) in March 2016 (see Oregon Receivership Code Report of the Receivership Work Group on Senate Bill 899A (2017), pg. 1). The Work Group's mission was to amplify existing receivership

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law, study the suitability for Oregon of a substantial set of receivership statutes, and, if suitable, prepare a draft bill for legislative introduction. The Work Group considered adopting the Uniform Commercial Real Estate Receivership Act (UCRERA) or adopting Washington's established receivership statutes, but ultimately set out to tailor an Oregon specific set of statutes.

The Work Group's result produced the ORC, which tracks language from statutes in other jurisdictions but is also unique to Oregon. One provision that initially drew criticism was the apparent breadth of the ORC's stay

provision in O.R.S. § 37.220. By its terms, the stay applies to actions the debtor without any apparent limitation on the application of the section to the debtor's receivership estate property (O.R.S. § 37.220). The UCRERA, however, more clearly limits application of its stay provision to receivership property, which is defined as "the property of an owner which is described in the order appointing a receiver or a subsequent order" (UCRERA, § 2(16)). For this reason, the broader language in the ORC may prove problematic when construed to reach the debtor's property that is not part of the estate.

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