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UCC Article 9 Sales: Oregon

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A Q&A guide to Uniform Commercial Code (UCC) Article 9 Sales in Oregon. Article 9 of the Model UCC is intended to create a uniform system across the country for creating, perfecting, and enforcing security interests in personal property. Although Article 9 has been adopted by many states, some states have made modifications to the law or have not adopted the most recent version of the law. This Q&A addresses the process by which secured creditors may exercise their rights to enforce their security interests in personal property under Oregon's equivalent Article 9 statutes, including repossession remedies, notice requirements, disposition of proceeds, and collateral repurchase. Answers to questions can be compared across a number of jurisdictions (see UCC Article 9 Sales: State Q&A Tool).

General

1. List the laws (statutes and regulations) by name and code number that govern secured transaction sales in your jurisdiction.

Sections 79.0101 to 79.0628 of the Oregon Revised Statutes govern Article 9 secured transactions sales in Oregon.

2. Has your jurisdiction adopted the model Uniform Commercial Code (UCC)? If no, please:

- Identify which among the statutes listed in Question 1 is your jurisdiction's adopted version of Article 9.
- Describe any significant differences between your jurisdiction's adopted version and the model UCC.

Oregon has adopted the model Uniform Commercial Code for secured transactions.

Initial Steps

3. If a debtor defaults on its obligations to a secured party, please explain what initial steps the secured party must take to properly effectuate a repossession or sale of collateral in your jurisdiction. Please list all applicable statutes.

In Oregon, after a debtor's default, a secured party has the right:

- Conferred on the debtor by the Uniform Commercial Code as adopted in Oregon (Or. Rev. Stat. § 79.0601).
- Provided for in the security agreement, except as otherwise provided under Or. Rev. Stat. § 79.0602 (Or. Rev. Stat. § 79.0601).
- To use any available judicial procedure to obtain a judgment, foreclose, or enforce the security interest, including:
  - taking possession of the collateral; and
  - without removal, rendering equipment unusable and disposing of it on a debtor's premises.

  (Or. Rev. Stat. § 79.0609.)

These rights are cumulative and may be exercised by the secured party simultaneously (Or. Rev. Stat. § 79.0601(3)). While circumstances vary from case to case, all repossession and sales follow the same basic process and timeline.

A secured creditor generally has several options for repossessing the collateral with or without judicial process, including:

- Surrender by the debtor.
- Peaceful self-help.
- Claim and delivery (replevin) and receivership.

Oregon statutes require the creditor to use specific methods of repossession for certain types of collateral (see Question 4). The secured party may also choose to forego repossession altogether.

Before disposing of the collateral, the secured creditor must give reasonable notice to the debtor and other parties with interest in the collateral of its intent to sell the collateral (Or. Rev. Stat. § 79.0611(2)). Determining if the notice is reasonable varies depending on:

- The type of collateral.
- The circumstances surrounding the sale of the collateral.

(Or. Rev. Stat. §§ 79.0611(3) and 79.0612.)

Notice is considered reasonable in a non-consumer transaction if the notice is sent ten days or more before the sale to the debtor and other interested parties (Or. Rev. Stat. § 79.0612(2)).

Repossession Remedies

4. What remedies may a secured creditor take to repossess collateral in your jurisdiction. Please address all applicable options, including:

- Self-help repossession.
- Right to make the debtor assemble collateral.
- Notifying account debtors.
- Any other available remedies.

Article 9 of the Uniform Commercial Code (UCC) provides various methods for a secured creditor to repossess collateral after default. The method for obtaining possession depends on the nature of the collateral and, to some extent, how the security interest was perfected.

In Oregon, the most common methods of repossession are:

- Self-help repossession (see Self-Help Repossession).
- Right to make the debtor assemble collateral (see Right to Make the Debtor Assemble Collateral).
- Notifying account debtors (see Notifying Account Debtors).
- Judicial remedies (see Judicial Remedies).

Self-Help Repossession

In Oregon, the two categories of collateral that may be subject to repossession using self-help are:

- Inventory and equipment (see Inventory and Equipment).
- Accounts (see Notifying Account Debtors).

Inventory and Equipment

Under the Oregon statutes, a secured creditor may exercise self-help without judicial process to:

- Repossess a piece of inventory or equipment pledged to the secured party.
- Render a piece of equipment unusable on the debtor's premises without removing the collateral from the debtor's property.

(Or. Rev. Stat. § 79.0609(2)(b).)

Self-help repossession is the fastest and most cost effective means of repossessing inventory and equipment because it does not require the time and expense of obtaining a court order. However, self-help repossession typically poses risks because the creditor must ensure that it does not breach the peace when acting (Or. Rev. Stat. § 79.0609(2)(b)). If the creditor or its agent causes a breach of the peace or wrongly repossesses the collateral, the creditor may be liable for conversion damages and possibly punitive damages (Or. Rev. Stat. § 79.0625).

The prohibition against breaching the peace cannot be waived by agreement between the parties, and the parties cannot determine by agreement what constitutes a breach of the peace (Or. Rev. Stat. § 79.0603(2)). A breach of the peace is not defined in the UCC. The prohibition therefore has been the subject of significant litigation, and case law is the only guidance for secured creditors. The following self-help repossession actions typically breach the peace:

- Any use of actual force against a person or property.
- Breaking and entering.
- Violating any law.
- Relying on color of authority (for example, a uniformed police officer accompanying the secured creditor without a court order).
- Failing to comply with a request from the debtor or representative of the debtor to stop when:
  - involving a nearby police officer;
  - cutting a chain securing a gate;
  - breaking a window; and
  - breaking into a closed garage.

(See *Westerman v. Or. Auto. Credit Corp.*, 168 Or. 216 (1942); *Harris v. Cantwell*, 614 P.2d 124 (Or. Ct. App. 1980).)

Acceptable means of repossession that generally do not breach the peace include:

- Tricking the debtor.
- Entering onto property that is not locked.
- Taking a vehicle from an open garage.

Secured creditors should consider discontinuing self-help repossession when faced with even a small amount of resistance from a debtor or third party, including oral protests. If a debtor asks a secured creditor to leave, the secured creditor runs the risk of breaching the peace if it does not listen to the request. Courts may also hold a secured party responsible for the actions of others taken on behalf of the secured party, including independent contractors engaged by the secured party to take possession of the collateral.

A secured creditor may also exercise self-help by disabling a piece of equipment (or rendering it unusable) and then disposing of the equipment in a sale while the equipment remains on the debtor's premises (Or. Rev. Stat. § 79.0609(1)(b)). Disabling the equipment may help preserve the value of the equipment. This self-help remedy is available only to secured creditors that have a security interest in the actual piece of equipment. For example, while a secured creditor may disable and dispose of a forklift used in warehouse operations on the debtor's property, it cannot do the same with a forklift that is held for resale in a business engaged in equipment sales because that forklift is inventory.

Right to Make the Debtor Assemble Collateral

A secured creditor may require a debtor to assemble the collateral and make it available at a mutually convenient place designated by the secured creditor when:

- The security agreement signed by the debtor grants the secured creditor that right.
- The debtor defaults.

(Or. Rev. Stat. § 79.0609(3).)

However, an agreement between the parties to require the debtor to assemble the collateral is valid regardless of whether it is conditioned on the debtor's default.

If a debtor is willing to assemble equipment, it is the preferred method of repossession under Article 9. However, debtors often do not comply with this requirement, and a secured creditor typically resorts to self-help or judicial intervention.

Counsel and creditors should be aware that demanding that a debtor assemble collateral may:

- Risk giving the debtor the opportunity and time to secrete or transfer collateral, which makes other repossession methods more difficult.
- Result in an expedited avenue to obtain judicial relief.

Notifying Account Debtors

Under the Oregon Revised Statutes, the secured creditor has the right to collect payment directly from accounts if a defaulting debtor pledged those accounts as collateral (Or. Rev. Stat. § 79.0607). If the security agreement allows, a secured party may take this action before the debtor's default.

A secured creditor that knows the identity of the debtor's account debtors (which are typically the debtor's customers but can be any person or entity that owes the debtor money) may provide written authenticated notice directing the account debtor to pay the secured creditor directly (Or. Rev. Stat. § 79.0607(1)(a)). After the secured creditor has provided notice to the account debtor, the account debtor must repay the secured creditor. An account debtor that does not repay the secured creditor directly remains liable for its debt to the secured creditor, even if the account debtor repays the debtor (Or. Rev. Stat. § 79.0406(1)).

An account debtor can request that the secured creditor provide proof of assignment of its account by the debtor to the secured creditor and continue paying the debtor until the secured creditor furnishes the proof (Or. Rev. Stat. § 79.0406(3)). The proof of assignment:

- Must be reasonable.
- Can be a copy of the security agreement signed by the debtor.

If a secured party exercises control over a deposit account under Or. Rev. Stat. § 79.0104, it may either:

- Apply the balance of the deposit account to the obligation secured by the deposit account.
- Instruct a bank to pay the balance of the deposit account to or for the secured party's benefit.

(Or. Rev. Stat. § 79.0607 (1)(d), (e).)

A secured party may deduct any costs incurred in collecting from third party obligors, including attorneys' fees and legal expenses, regardless of whether it is provided in the applicable agreement (Or. Rev. Stat. § 79.0607(4)).

While accounts are conveniently convertible to cash and the collection of accounts typically does not result in a breach of the peace, a secured creditor faces certain risks when sending out notices to account debtors, including:

- A refusal by an account obligor to make payment because of uncertainty.
- A belief that the secured creditor is not likely to pursue payment.
- A concern that the secured creditor will not honor the debtor's warranties, causing the account debtor to withhold payments to protect itself from bearing the cost of defective goods.
- An accounts debtor's valued business relationship with its creditors.

A secured creditor should consider protecting itself by requiring:

- The debtor to provide the secured creditor with monthly accounts receivable records including:
  - the amounts, names, and contact information for each account obligor; and
  - purchase orders, invoices, signed contracts, and any other records that the debtor may keep that show the account debtor's obligation.
- A lockbox arrangement under which the account debtors are instructed at the time of the loan to the debtor to send payments directly to a bank account under the control of the secured creditor. A lockbox arrangement is typically negotiated and included in the security agreement. In a default setting, a lockbox arrangement allows the secured creditor to pay itself first and then to remit the surplus to the debtor. However, the parties can agree to a split of collections to allow the debtor to continue to operate while the debt is paid down. With this arrangement, a secured creditor is relieved of:
  - the concern that the debtor is misappropriating funds; and
  - the obligation to notify account debtors to change payment locations.

Judicial Remedies

In Oregon, a secured party that cannot repossess collateral using non-judicial means may proceed by using a judicial process to obtain possession of collateral (Or. Rev. Stat. § 79.0609(2)(a)). This is most likely to occur when the secured party cannot repossess without breaching the peace.

Notice

5. What are the notice requirements and applicable statutes for a secured creditor to sell collateral in your jurisdiction? Please identify:

- Who must receive notice and any exceptions.
- The form of notice, including timing requirements.

Who Must Receive Notice

In Oregon, before any sale of collateral, a secured party must send an authenticated notice of disposition to:

- The debtor (Or. Rev. Stat. § 79.0611(3)(a)).
- Any secondary obligor (Or. Rev. Stat. § 79.0611(3)(b)).
- If the collateral is anything other than consumer goods, any other:
  - party from which the secured party received an authenticated notification of a claim of an interest in the collateral before the notification date (Or. Rev. Stat. § 79.0611(3)(c)(A));
  - secured party or lienholder that ten days before the notification date held a security interest or other lien on the collateral perfected by a financing statement that identified the collateral, was indexed under the debtor's name, and was properly filed against the debtor (Or. Rev. Stat. § 79.0611(3)(c)(B)); and
  - secured party that ten days before the notification date held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Or. Rev. Stat. § 79.0311(1) (Or. Rev. Stat. § 79.0611(3)(c)(C)).

(Or. Rev. Stat. § 79.0611(2).) The notification date is defined as the earlier of the date on which:

- The secured party sends an authenticated notification of disposition to the debtor and any secondary obligor.
- The debtor and any secondary obligor waive right to notification.

(Or. Rev. Stat. § 79.0611(1).)

Safe Harbor: Search for Other Creditors

The Oregon Uniform Commercial Code (UCC) contains a safe harbor for the permitted time frame within which the foreclosing creditor may conduct a lien search and satisfy the notice requirement to other creditors (Or.

Rev. Stat. § 79.0611(5)). The safe harbor provides that a secured creditor complies with the notice requirements of Or. Rev. Stat. § 79.0611(3)(c)(B) if:

- Between 20 and 30 days before the notification date, the secured creditor requests information about financing statements indexed in the debtor's name in the office indicated in Or. Rev. Stat. § 79.0611(3)(c)(B).
- Before the notification date, the secured creditor either did not receive a response to the request for information or the secured creditor received a response and sent an authenticated notification to each secured party or lienholder named in the response.

(Or. Rev. Stat. § 79.0611(5).)

To ensure that the secured creditor benefits from this safe harbor, a secured creditor should perform a UCC lien and judgment search of the debtor as soon as practicable. The UCC search should include:

- The state where the debtor is located. For example, the state of incorporation or formation of the debtor.
- The states in which the debtor has offices or plants. For example, if a debtor is a Delaware corporation and has offices in Oregon, the secured creditor must conduct a UCC search in Delaware to obtain the safe harbor protection. However, the creditor should also perform an Oregon UCC search because it may disclose other potential lien claimants, including state and federal tax liens.

Exceptions

A secured creditor is not required to provide reasonable notice of a sale if the collateral:

- Is perishable.
- Threatens to rapidly decline in value.
- Is sold on a recognized market.

(Or. Rev. Stat. § 79.0611(4).)

Examples of this type of collateral include perishable fruits, vegetables, dairy, publicly traded stocks and bonds, and seasonal products.

A secured creditor also does not owe a duty to notify an unknown debtor or an unknown creditor of a disposition of the secured creditor's collateral. For example, if a debtor transfers its interest in collateral to another party without notifying the secured creditor, the transferee becomes the debtor under Article 9. In these circumstances, because the secured party cannot identify the new debtor, the secured creditor is not required to provide notice to the unknown transferee (Or. Rev. Stat. § 79.0605(1)). Similarly, if another creditor sold or assigned its security interest without the knowledge of the secured creditor, the secured creditor does not have an obligation to send notice to the unknown creditor (Or. Rev. Stat. § 79.0605(2)).

Waiver

A secured creditor cannot rely on a pre-default waiver of notification. A debtor, secondary obligor, or other party holding an interest in the collateral may instead only validly waive notice post-default. (Or. Rev. Stat. § 79.0611.) A secured creditor does not have a duty to notify the debtor or a secondary obligor if the debtor or secondary obligor waived their right to the disposition notice in an agreement that was entered into and authenticated after default (Or. Rev. Stat. § 79.0611).

Form and Contents of Notice

A secured creditor should fully comply with the notice requirements in Article 9. The Oregon UCC requires that a notice of sale include:

- A description of the debtor and the secured party (Or. Rev. Stat. § 79.0613(1)(a)).
- A description of the collateral (Or. Rev. Stat. § 79.0613(1)(b)).
- The method of intended disposition (Or. Rev. Stat. § 79.0613(1)(c)).
- A statement informing the debtor that it is entitled to an accounting of the unpaid debt, together with any charge for the accounting (Or. Rev. Stat. § 79.0613(1)(d)).
- The time and place of a public sale or the time at which the collateral is being sold in a private disposition (Or. Rev. Stat. § 79.0613(1)(e)).

If the notice lacks any of the information required under Or. Rev. Stat. § 79.0613(1), the sufficiency of the notice becomes a question of fact, and it may be considered enough depending on the circumstances (Or. Rev. Stat. § 79.0613(2)). Notice is also considered sufficient if it contains minor errors that are not misleading or contains extraneous information but includes the information specified in Or. Rev. Stat. § 79.0613(1) (Or. Rev. Stat. § 79.0613(3)). To ensure that a notice has the required information, a creditor should review the form of notice provided in Or. Rev. Stat. § 79.0613(5).

Compliance with the notice provisions addresses the reasonableness of the notice of the sale only. A foreclosing

creditor must also ensure that the sale itself is conducted in a commercially reasonable method, manner, time, and place (Or. Rev. Stat. § 79.0610(2); see Questions 6 and 7).

Notice of Sale of Consumer Goods

The Oregon UCC requires that a notice of sale of consumer goods include:

- All the information required in section Or. Rev. Stat. § 79.0613(1).
- A description of any liability for a deficiency owed to the notice recipient.
- A telephone number for the secured party to redeem the collateral under Or. Rev. Stat. § 79.0623.
- A telephone number or mailing address where the consumer can obtain additional information about the sale.

(Or. Rev. Stat. § 79.0614(1).)

While the notice does not need to have specific phrasing, the Oregon UCC provides a form of notice that satisfies the requirements for a notice of sale of consumer goods when properly completed (Or. Rev. Stat. § 79.0614(1)).

Timing Requirements

In a consumer goods transaction, notice is considered reasonable if it is sent after default and at least 15 days before the sale (Or. Rev. Stat. § 79.0612(1)). For non-consumer transactions, notice is considered timely if it is sent after default and at least ten days before the sale (Or. Rev. Stat. § 79.0612(2)).

Notice periods apply to the reasonableness of the notice of the sale only. A foreclosing creditor must also conduct the sale at a commercially reasonable time and provide adequate notice to potential buyers (see Questions 6 and 7).

Commercial Reasonableness

6. Does your jurisdiction follow a definition of "commercial reasonableness"?

- If no, then please explain.
- If yes, what is the applicable statute or relevant case law?

Oregon law follows the model Uniform Commercial Code's (UCC) definition of commercial reasonableness (Or. Rev. Stat. § 79.0627). Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable (Or. Rev. Stat. § 79.0610(2)).

The disposition, collection, and enforcement of collateral is considered commercially reasonable if it is made:

- In the usual manner on any recognized market.
- At the current price in any recognized market at the time of the disposition.
- In conformity with reasonable commercial practices among dealers in the type of property that is the subject of the disposition.

(Or. Rev. Stat. § 79.0627(2).)

A collection, enforcement, disposition, or acceptance of collateral is commercially reasonable if it has been approved:

- In a judicial proceeding.
- By a bona fide creditors' committee.
- By a representative of creditors.
- By an assignee for the benefit of creditors.

(Or. Rev. Stat. § 79.0627(3).)

However, in many situations, the question of whether a sale was commercially reasonable is an issue of fact, dependent on the circumstances. The Oregon UCC recognizes this and provides that:

- A transaction may still be considered commercially reasonable even if the secured party might obtain a greater amount by collecting, enforcing, disposing, or accepting the collateral at a different time or in a different method from that selected by the secured party (Or. Rev. Stat. § 79.0627(1)).
- Lack of approval of a sale under Or. Rev. Stat. § 79.0627(3) does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable (Or. Rev. Stat. § 79.0627(4)).

Parties cannot waive or vary the requirement that disposition of collateral be conducted in a commercially reasonable manner (Or. Rev. Stat. § 79.0602(7)). However, the parties can agree on what constitutes a commercially reasonable disposition if the terms are not manifestly unreasonable.

If the collateral is consumer goods, a debtor or secondary obligor can recover damages for the secured creditor's non-compliance with the commercial reasonableness standard in an amount not less than $1,000 plus reasonable attorney fees (Or. Rev. Stat. § 79.0625(3)(b)).

7. What factors are typically considered when determining whether a sale is commercially reasonable in your jurisdiction?

General Standard

Under the Oregon Uniform Commercial Code, every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable (Or. Rev. Stat. § 79.0627; see *Spears v. Huddleston*, 508 P.2d 438 (Or. 1973); *All-States Leasing Co. v. Ochs*, 600 P.2d 899 (Or. Ct. App. 1979), *modified by F.D.I.C. v. Tempest Fugat, H.L.I., Inc.*, 707 P.2d 81 (Or. Ct. App. 1985); *Weiss v. Nw. Acceptance Corp.*, 546 P.2d 1065 (Or. 1976)). If commercially reasonable, a secured party may dispose of collateral:

- By public or private proceedings.
- By one or more contracts.
- As a unit or in parcels.
- At any time and place and on any terms.

(Or. Rev. Stat. § 79.0610(2).)

Commercial reasonableness is generally evaluated on a case-by-case basis, and courts have considered:

- Price.
- Manner of sale.
- Timing of sale.
- Conduct of sale.

(See *Allco Enters., Inc. v. Goldstein Family Living Tr.*, 51 P.3d 1275, 1279 (Or. Ct. Appl. 2002).)

Price

The sale price of the collateral is indicative but not solely determinative of whether the secured creditor makes a commercially reasonable sale. However, the value of the collateral is often a litigated issue. Because most secured creditor sales result in below fair-market-value returns, a secured creditor must be aware that a low disposition price is likely to cause a court to closely scrutinize the sale. The secured party has the burden of proving:

- The value of the collateral at the time of the repossession.
- That the value of the collateral does not equal the amount of the debt.

If the secured party does not provide this evidence, a court may presume that the value of the collateral is equal to the amount of the debt and therefore no deficiency remains.

Manner of Sale

A secured creditor may choose to dispose of its collateral in either a public or private sale if every aspect of the sale is commercially reasonable. Courts generally find a public sale commercially reasonable if the secured creditor provides sufficient notice to the public. While a secured creditor cannot typically control the price at a sale, it can control the notice of sale and often protect itself by:

- Holding a public sale.
- Providing at least ten days' notice.
- Advertising the sale in appropriate media.

A secured creditor's sale may be considered a public sale if:

- There is a meaningful opportunity for competitive bidding.
- There is some form of advertising notifying the public of the sale.
- A third-party liquidator or auctioneer is used.
- The public is granted access.

Courts generally find that a sale is not a public sale if only a portion of the public, for example dealers only, are allowed to attend. Courts also tend to scrutinize private sales more closely than public sales and are generally interested in determining how extensively the secured creditor marketed the collateral before the private sale.

A disposition of collateral is made in a commercially reasonable manner if the disposition is either:

- Made in the usual manner on any recognized market at a price recognized in any market at the time of the disposition.
- In conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(Or. Rev. Stat. § 79.0627(2).)

When making a private sale, a secured creditor should:

- Demonstrate that it solicited multiple offers for the collateral before making a sale.
- Consider whether to retain a broker to assist with the sale process.

Timing of Sale

When disposing of collateral, a secured creditor must ensure that it acts reasonably regarding:

- The amount of time that it holds the collateral after repossession.
- The economic conditions at the time of the sale.
- The type of collateral that it is selling.

A secured creditor should not delay a sale when:

- It causes the value of the collateral to decline.
- The collateral is perishable.
- The economic conditions reduce the value of the collateral.

If these conditions exist, the ten-day notice required by Or. Rev. Stat. § 79.0611 does not apply and the secured creditor must provide shorter notice (Or. Rev. Stat. § 79.0611(4)).

For example, it is not commercially reasonable for a secured creditor to let produce spoil before disposing of it. However, a secured creditor is deemed to have acted in a commercially reasonable manner when it sells seasonal products shortly before the start of the season.

Conduct of Sale

Every aspect of a collateral sale must be commercially reasonable. A secured creditor must therefore carefully consider whether all its choices regarding the sale are reasonable and focused on maximizing the proceeds of the sale, including deciding whether to repair the collateral or sell it as-is (Or. Rev. Stat. § 79.0610(1)). Although Article 9 does not require a secured creditor to repair collateral, a secured creditor must maximize proceeds and act in a commercially reasonable manner by, for example:

- Making inexpensive repairs that are likely to significantly increase the value of the collateral sale.
- Cleaning the collateral before an auction or inspection by a potential buyer.

(Or. Rev. Stat. § 79.0610(2).)

Under certain circumstances, it may be beneficial to have a court be involved in the sale and liquidation of collateral. For example, if the secured creditor anticipates a significant deficiency in the value, the secured creditor may be more likely to establish commercial reasonableness if the court orders the necessary steps to conduct a commercially reasonable sale before the sale takes place. The court's express directives may include:

- The content of the advertising and the type of publications.
- The type of sale, whether public or private.
- The date, time, location, and terms of the sale.
- Which party should conduct the sale.

Disposition and Priority of Proceeds

8. What is the priority scheme for distribution of proceeds of a collateral sale in your jurisdiction?

Under the Oregon Uniform Commercial Code, proceeds of a sale must be distributed according to the order of priority set out in Or. Rev. Stat. § 79.0615:

- First to repay:
  - the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral; and
  - if provided by agreement and not prohibited by law, the secured party's reasonable attorneys' fees and legal expenses.

  (ORS § 79.0615(1)(a)).)
- Second, the proceeds go to satisfying the obligations secured by the security interest or agricultural lien. In the absence of cross-collateralization, a secured party foreclosing under several different security agreements must apply the proceeds of each piece of collateral to the specific debt secured by the security agreement covering that collateral. A secured creditor cannot apply the proceeds of the distribution to a debt not specifically secured by a security agreement (Or. Rev. Stat. § 79.0615(1)(b))
- Third, a secured party must then apply any remaining cash proceeds to any lower priority security interests or liens on the collateral if the secured creditor receives an authenticated demand from the holder of subordinate interests or liens before the secured creditor completes the distribution of the proceeds. If a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor (Or. Rev. Stat. § 79.0615(1)(c)). However, in any case, a secured party should demand reasonable written proof of the subordinate interest. Proof should consist of either:

  - the security agreement entered into between the junior interest or lien holder and the debtor; or
  - some other document evidencing the creation of a lien, such as a judgment from a court of competent jurisdiction.

  By obtaining proof, a secured creditor:

  - receives assurances of the validity of the interest; and
  - protects itself against a debtor that disputes the subordinate interest or the amount of the interest.

  While the UCC does not require the subordinate holder to provide proof, if the subordinate holder does not comply or does not provide assurance of the interest within a reasonable amount of time, the secured party does not need to remit proceeds (Or. Rev. Stat. § 79.0615(2)). However, a secured creditor is liable for any unpaid security interest if it does not make a distribution to a subordinate interest that properly makes an authenticated demand and provides reasonable proof of its interest.

- Fourth, if a consignor has a secured interest in the collateral, then the remaining proceeds are distributed to the consigned party that provides the secured creditor with an authenticated demand for proceeds before distribution of the proceeds is completed (Or. Rev. Stat. § 79.0615(1)(d)). In certain circumstances, a consignment may have a higher priority if the consignor complied with the applicable provisions to become a perfected secured creditor. Consigned goods arising from a true consignment may result in a different outcome.
- Last, the secured party must account to and pay the debtor any surplus (Or. Rev. Stat. § 79.0615(4)(a)).

9. What is the process and procedures for addressing any deficiency claim or surplus of proceeds?

Under the Oregon Uniform Commercial Code, after applying sale proceeds according to the order of priorities in Or. Rev. Stat. 79.0615(4), the obligor is liable for any deficiency (Or. Rev. Stat. § 79.0615(4)(b)).

Therefore, if the proceeds from the sale of collateral do not cover the entire cost of the debt, the secured creditor has the right to pursue the obligor (which may or not be the debtor) for the balance of the claim (unless the secured creditor elected to have a strict foreclosure extinguish any deficiency claim). To obtain the deficiency, the secured creditor must provide the debtor or obligor with a statement that includes the information required by Or. Rev. Stat. § 79.0616(3).

If the debtor does not pay voluntarily, the secured party may seek a deficiency judgment from a court of competent jurisdiction. The debtor may defend itself by asserting that the secured creditor failed to comply with the provisions relating to notice, collection, enforcement, disposition, or acceptance. When the debtor (or secondary obligor) places the secured creditor's compliance at issue, the burden then shifts to the secured creditor to prove compliance with Article 9. (Or. Rev. Stat. § 79.0626 (1)(a), (b).) If a secured creditor fails to comply with the Article 9 provisions relating to notice, collection, enforcement, disposition, or acceptance, including making a commercially reasonable sale:

- The debtor's liability for a deficiency is limited to the amount that would have been realized had the sale complied with Article 9 (Or. Rev. Stat. § 79.0626(1)(c)).
- The secured creditor may:
  - lose the ability to recover a deficiency claim; and
  - be exposed to a damage claim by a junior creditor, debtor, or guarantor.

  (Or. Rev. Stat. §§ 79.0625 and 79.0626.)

A debtor may be entitled to a surplus if the secured creditor or a party related to the secure creditor acquires the collateral at its own foreclosure. In this case, a foreclosing creditor may lack the incentive to maximize the proceeds of a disposition. Therefore, a surplus or deficiency is calculated based on the amount of proceeds that would have been realized in a sale to a third party that complied with Or. Rev. Stat. § 79.0615(6) if:

- The transferee in the sale is:
  - the secured party;
  - a person related to the secured party; or
  - a secondary obligor.
- The amount of proceeds from the sale is significantly below the range of proceeds that would have been realized from a complying sale to a person other than:
  - the secured party;
  - a person related to the secured party; or
  - a secondary obligor.

(Or. Rev. Stat. § 79.0615(6); see Question 12.)

If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency (Or. Rev. Stat. § 79.0615(5)).

Consumer Transactions

In a consumer goods transaction, the debtor or consumer obligor is entitled to an explanation of how the surplus or deficiency was calculated (Or. Rev. Stat. § 79.0616(2)(a)). The secured party must provide the explanation when it either:

- Accounts to the debtor for any surplus.
- Demands the deficiency from the obligor.

(Or. Rev. Stat. § 79.0616(2)(a)(A).)

A secured party generally must provide the explanation within 14 days of receiving the request (Or. Rev. Stat. § 79.0616(2)(a)(B)). The secured party can also waive any right to a deficiency (Or. Rev. Stat. § 79.0616(2)(b)).

If a debtor or consumer obligor requests more than one explanation in a six-month period, the secured party may charge up to $25 for each explanation inside the six-month period (Or. Rev. Stat. § 79.0616(5)).

The explanation of how the surplus or deficiency is calculated must include:

- A statement regarding future debits, credits, or charges that may affect the surplus or deficiency (Or. Rev. Stat. § 79.0616(1)(a)(C)).
- A telephone number or mailing address where the debtor or obligor can obtain additional information (Or. Rev. Stat. § 79.0616(1)(a)(D)).
- An explanation of how the surplus or deficiency was calculated, by using the following information:
  - the aggregate amount of obligations secured by the security interest, including whether the amount reflects a rebate of unearned interest or credit service charge, calculated at a specified date (Or. Rev. Stat. § 79.0616(3)(a));
  - the amount of proceeds from the disposition (Or. Rev. Stat. § 79.0616(3)(b));
  - the aggregate amount of the obligations after deducting the amount of proceeds (Or. Rev. Stat. § 79.0616(3)(c));
  - the aggregate amount and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral that are known to the secured party and relate to the disposition (Or. Rev. Stat. § 79.0616(3)(d));
  - the aggregate amount and types of credits, including rebates of interest or credit service charges, that the obligor is entitled to and that are not already reflected in the accounting (Or. Rev. Stat. § 79.0616(3)(e)); and
  - the amount of the surplus or deficiency (Or. Rev. Stat. § 79.0616(3)(f)).

Exact wording is not required if the explanation substantially complies with the requirements. Minor errors do not affect the adequacy of the explanation if the errors are not misleading. (Or. Rev. Stat. § 79.0616(4).)

10. Does your jurisdiction permit a junior creditor to foreclose or sell collateral without participation from a senior security interest?

- If no, then please state so.
- If yes, then please explain the priority for disposition of the proceeds.

In Oregon, a secured creditor with an interest that is subordinate to another interest in the collateral may foreclose on a piece of collateral without participation from the senior creditor. While Article 9 does not require a foreclosing secured creditor to make a distribution to a senior security interest, foreclosing has the effect of discharging only an interest junior to the foreclosing creditor. Therefore, the buyer of the collateral takes the collateral subject to the senior secured creditor's lien (Or. Rev. Stat. § 79.0617(3))

If a junior secured creditor receives cash proceeds from a sale in good faith and without knowledge that the receipt violates the rights of any security, lien, or agriculture lienholder's interest, the junior creditor:

- Takes the cash proceeds free of the security interest or other lien.
- Is not obligated to apply the proceeds of the sale to satisfy obligations secured by the security interest or other lien.
- Is not obligated to account to or pay a secured creditor any surplus.

(Or. Rev. Stat. § 79.0615(7).)

Junior secured creditors should be comforted that cash distributions received from collateral sales conducted without knowledge of violations of a senior creditor's rights cannot be disgorged. However, the statute does not provide the same protections if the junior secured creditor accepts non-cash proceeds of a disposition.

Collateral Repurchase by a Secured Creditor

11. May a secured creditor repurchase the collateral securing a loan transaction in your jurisdiction?

- If no, then please state so.
- If yes, what are the limitations and applicable statutes?

In Oregon, a secured creditor may purchase its own collateral under certain conditions. However, a secured creditor does not have the same flexibility in selling the collateral to itself as it does in a disposition to a third party.

For example, a secured party may purchase collateral at either:

- A public sale.
- A private sale if the collateral is:
  - of a kind that is customarily sold on a recognized market; or
  - the subject of widely distributed standard price quotations.

(Or. Rev. Stat. § 79.0610(3).)

Unless the collateral is of a kind sold on a recognized market, the secured creditor must purchase the collateral at a public sale that:

- Is properly noticed and publicized.
- Is accessible to the general public. Dealer-only sales are generally not considered public sales.
- Fixes a price in a competitive bidding process.

(Or. Rev. Stat. § 79.0610(3)(b).)

A secured party should ensure that the sale is commercially reasonable because the secured party bears the burden of proving commercial reasonableness if the sale is challenged.

12. If a secured creditor purchases the collateral at a significantly lower price than would have been produced at a third-party sale, must the secured creditor calculate a deficiency or surplus?

- If no, then please state so.
- If yes, please explain.

In Oregon, a secured creditor must ensure that it pays a fair price when purchasing its own collateral. Otherwise, the secured creditor runs the risk of the debtor seeking a surplus based on the difference between a fair price for the collateral and the price actually paid (or credited) by the secured creditor. (Or. Rev. Stat. § 79.0615(6).)

When a secured creditor (or a party related to the secured creditor) purchases the collateral at a price that is significantly below the range of proceeds that can be produced at a sale to a third party, a surplus or deficiency is calculated based on the amount of proceeds that could be realized in a sale to a third party or secondary obligor that complied with Or. Rev. Stat. §§ 79.0601 to 79.0628 if:

- The transferee in the sale is:
  - the secured party;
  - a person related to the secured party; or
  - a secondary obligor.
- The amount of proceeds from the sale is significantly below the range of proceeds that could be realized from a complying sale to a person other than:
  - the secured party;
  - a person related to the secured party; or
  - a secondary obligor.

(Or. Rev. Stat. § 79.0615(6).)

This rule protects the debtor from excessive deficiency claims resulting from artificially low-priced sales.

13. Does your jurisdiction permit a secured creditor to accept collateral in full or partial satisfaction of its debt, otherwise known as strict foreclosure?

- If no, then please state so.
- If yes, please explain the requirements, including debtor consent and notice to parties.

In Oregon, in non-consumer transactions, a secured creditor may accept collateral in full or partial satisfaction of its debt (called strict foreclosure) if:

- The debtor consents to the acceptance of collateral under Or. Rev. Stat. § 79.0620(3).
- Within the time specified by Or. Rev. Stat. § 79.0620(4), the secured party does not receive an authenticated notification of objection to the proposal by:
  - secured creditors with perfected security interests; or
  - any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the foreclosure.

- The collateral is consumer goods, it is not in the debtor's possession when the debtor consents.
- The secured party is not required to dispose of the collateral under Or. Rev. Stat. § 79.0620(5) or the debtor waives the requirement under Or. Rev. Stat. § 79.0624.

(Or. Rev. Stat. § 79.0620(1).)

An acceptance of collateral under Or. Rev. Stat. § 79.0620 is not effective unless the secured party provides a proposal to the debtor, which is defined as a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of its debt (Or. Rev. Stat. § 79.0102(1)(mmm)).

In a non-consumer transaction, the debtor typically must provide affirmative consent in an authenticated record accepting the secured creditor's proposal to accept the collateral in satisfaction of the debt (Or. Rev. Stat. § 79.0620(3)(a)). However, a debtor may be deemed to have accepted a secured creditor's offer to accept its collateral in full satisfaction of its debt if:

- The proposal was unconditional or subject only to the condition that collateral not in the possession of the secured creditor be preserved or maintained (Or. Rev. Stat. § 79.0620(3)(b)(A)).
- After default, the secured creditor sent the debtor a proposal to accept the offer in full satisfaction of the debt (Or. Rev. Stat. § 79.0620(3)(b)(B)).
- The debtor did not send an authenticated notice of objection to the secured creditor within 20 days after the proposal was sent (Or. Rev. Stat. § 79.0620(3)(b)(C)).

Parties entitled to notification of a secured creditor's proposal to accept the collateral in full or partial satisfaction of its debt include:

- A person the secured creditor received authenticated notice from regarding a claim of interest in the collateral before the debtor consented to the acceptance (Or. Rev. Stat. § 79.0621(1)(a)).
- A secured party or lienholder that, ten days before the debtor consented to acceptance, had perfected its interest by filing a financing statement that:
  - identified the collateral;
  - was indexed under the debtor's name at that time; and
  - was filed in the correct office.

  (Or. Rev. Stat. § 79.0621(1)(b).)
- A secured party or lienholder that, ten days before the debtor consented to acceptance, had perfected an interest under Or. Rev. Stat. § 79.0311(1) (Or. Rev. Stat. § 79.0621(1)(c)).

A secured creditor can generally ensure that it noticed these three groups of parties by performing a UCC financing statement search after the debtor consents and then sending the proposal to any party with a perfected interest within ten days.

Any party entitled to notice of the strict foreclosure, including any person other than the debtor holding a claim subordinate to the security interest that is the subject of the foreclosure may object to the strict foreclosure (Or. Rev. Stat. § 79.0620(1)(b)).

To be effective, a notification of objection must be received by the secured party:

- Within 20 days after sending the required notification to the required parties under Or. Rev. Stat. § 79.0621 (Or. Rev. Stat. § 79.0620(4)(a)).
- Within 20 days after sending the last notification under Or. Rev. Stat. § 79.0621 (Or. Rev. Stat. § 79.0620(D)(2)(a)).
- If required notification was not sent, before the debtor consents to acceptance under Or. Rev. Stat. § 79.0620(3) (Or. Rev. Stat. § 79.0620(4)(b)(B)).

In a consumer transaction:

- A secured party may not accept collateral in **partial** satisfaction of the obligation it secures (Or. Rev. Stat. § 79.0620(7)).
- Strict foreclosure is not available for consumer goods that are in the possession of the debtor at the time the secured party proposes to retain the goods in satisfaction of the debt (Or. Rev. Stat. § 79.0620(1)(c)).
- A secured party that has taken possession of collateral must dispose of it within 180 days of taking possession or longer period if agreed after default 90 days if:
  - 60 percent of the cash price has been paid in a purchase money security interest (PMSI); or
  - 60 percent of the principal amount of the secured obligation has been paid in a non-PMSI.

  (Or. Rev. Stat. § 79.0620(5), (6).)