



## GARNISHEE LIABILITY: HIDDEN TRAPS UNDER OREGON'S REVISED GARNISHMENT LAW

By Erich Paetsch

Oregon's legislature has made effective a number of important changes to Oregon's garnishment laws. The amendments are intended to streamline and simplify the garnishment process. Despite these changes, appropriately responding to garnishments remains a liability trap for many Oregon businesses.

### GARNISHMENT LIABILITY TRAPS

A garnishee is a third party holding property of a debtor who receives a writ of garnishment from a creditor, called the garnishor. Examples include an employer owing wages to an employee or a business owing accounts receivable. A garnishee is liable to the garnishor if it fails to properly respond to the garnishment. There are several mistakes you could make that can result in liability:

- **Defective Forms:** Responding to a garnishment by delivering money or property to the garnishor when the garnishment is patently false can create liability. For example, the new garnishment laws use a standard writ of garnishment form. If a garnishor uses the old forms they can be liable to the debtor for improperly paying the garnishment.
- **Priority:** When you receive multiple garnishments, the law requires you to pay the oldest garnishment received first in most cases. Delivering money or property to a garnishor whose writ of garnishment was received more recently could result in liability. When a garnishee receives a writ of garnishment, they should note the date and time it is received.
- **Expired Garnishments:** Responding to an expired writ of garnishment by delivering money or property to the garnishor can also create liability. Inspect the garnishment to determine the date the garnishment was issued. A garnishment is only valid for sixty (60) days. A garnishment could expire before a debtor is located and the garnishment forwarded to you.
- **Late Responses:** Failing to deliver garnishable property to the garnishor within the proper time may also result in liability. Maintaining accurate receipt records can help to avoid liability by ensuring that the garnishment is responded to timely and accurately.

### SAFE HARBOR PROTECTIONS

Oregon's legislature recognized the burden responding to a garnishment places upon a garnishee. While not perfect, the law protects a garnishee under some circumstances. When a garnishment's effectiveness is in question, a garnishee may pay to the court clerk any money or deliver to the sheriff any property that the garnishee believes is subject to garnishment. A prudent garnishee should consider using this safe harbor provision to avoid liability if they are unsure of the validity of the garnishment.

Many of the difficulties in handling garnishments continue to exist despite recent legislative changes to the garnishment laws. A garnishee is always advised to consult with an attorney if there are any questions surrounding the form of garnishment or its effectiveness before responding. For a more detailed version of this article please visit our website at [www.sglaw.com](http://www.sglaw.com).





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