

OREGON STATE BAR
Legislative Proposal

RE: Judicial Sales

FROM: OSB Debtor/Creditor Section

Legislative Contact: Patrick Wade
Phone: (541) 686-8511
E-mail: pwade@hershnerhunter.com

This bill would amend ORS 18.538, 18.542, 18.545, 18.548 and 18.562.

1. PROBLEM PRESENTED

In several Oregon counties, the sheriffs are requiring prospective bidders at judicial sales to deposit their funds with the sheriff before the date set for the sale to make certain that the cashier's or official bank checks presented are good and not counterfeit. This procedure has the effect of chilling bidding and eliminating potential bidders who have not previously deposited their funds with the sheriff. This process potentially works to the detriment of the debtor and any junior lien creditors who may have been entitled to receive any surplus proceeds from the sale. Bidders who are not successful may have to wait days for the sheriff to return their funds.

2. SOLUTION

The proposed new law will require the sheriffs to accept cashier's or official bank checks at the time of sale from financial institutions, as defined in ORS 706.008, that are authorized to do business under the laws of Oregon or the United States. The sale will be final subject to the check clearing through normal banking channels. The sheriff shall deliver a receipt to the purchaser at the time of sale acknowledging receipt of the funds and that the purchaser is the successful bidder. Upon confirming that final payment of the instrument has occurred, the sheriff shall deliver to the purchaser a bill of sale, in the case of personal property, or a certificate of sale, in the case of real property, and make return upon the writ as provided by law. If the check does not clear, the sheriff will not be obligated to deliver the sheriff's certificate or bill of sale and the sale will be void.

3. PUBLIC POLICY IMPLICATION

The new law will further the public policy of attempting to obtain the highest and best price for a debtor's property when sold on execution. The new procedure will also protect the sheriffs in circumstances where counterfeit cashier's checks are received at the time of sale.