

## **Oregon Debt Collection Laws**

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*The Law Firm of Davis Galm is a general litigation firm in Oregon handling cases throughout the state. The firm is very active, and the below discussion of Oregon law is peppered with comments gleaned from experience. Assisted by an excellent support staff, the firm furnishes its clients with quality legal representation at a reasonable cost. With its varied background and experience, the firm is able to provide broad legal expertise to its clients, including collections, business and real estate transactions, estate planning, dispute resolutions, personal injury and wrongful death actions, and criminal defense.*

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### **Jurisdiction**

A plaintiff outside of Oregon can use Oregon courts to collect a debt owing to it, so long as the debtor lives here or circumstances underlying the debt transpired in Oregon. An agency or outside law firm does not need to be registered as a collection agency or admitted to the bar in Oregon to file to collect a debt. [ORS 697.005](#). Debts up to \$10,000 can be sought in small claims court. Attorneys cannot appear in small claims court per [ORS 46.41.5\(4\)](#) without the consent of the Judge. Corporations must appear by an attorney per [ORS 9.320](#). Many small claims judges overlook the discrepancy and allow non-attorneys, but permission should be obtained. The other court of general jurisdiction is the circuit court, which can handle any dollar amount.

Concepts of the Federal Debt Collection Practices Act (FDCPA) are contained in [ORS Chapter 646](#) and pertain to Unlawful Trade Practices. Most of the litigation concerns whether the plaintiff is attempting to collect a debt that is not owing or a prohibited collection activity. Very few cases have been decided, because most consumers bring claims in the U.S. District Court of Oregon, as the federal law may provide more detailed, greater benefits to consumers.

### **Collection Costs and Attorney Fees**

[ORS Chapter 20.080 and 20.082](#) provide for attorney fees if the claim is under \$10,000 and if the debtor is given twenty days notice prior to suit being filed. The amount of notice conflicts with federal law, which requires thirty days notice. Most careful practitioners in Oregon provide thirty days notice so as not to become a test case. No decision has yet been rendered by the Oregon court. There are other provisions for attorney fees. [ORS 30.701](#) provides that if thirty days notice were given on an NSF check claim, attorney fees shall be awarded to the prevailing party. Also, the plaintiff is entitled to three times the amount of the check, with a minimum of \$100 and maximum of \$500 per check.

In Oregon, attorney fees are awarded only if a statute or contract allows attorney fees. The most common is if the contract signed by the debtor awards attorney fees to the prevailing party. The court will award attorney fees, but there is a specific format that the court requires. This format includes the date, service and time involved of any task, along with a showing that it was reasonable and necessary. See [ORS 20.075](#).

Often the creditor would like to include the costs of a collection agency. If the debtor signed a contract allowing for collection costs, such as the typical credit card application, the court will require the same detail from the collection agency before any collection costs are added. The theory is that the creditor and agency can contract for any amount of services to be rendered, but before the court will require the debtor defendant to pay, the agency must detail the request in the same manner that the court requires an attorney to detail in a request for attorney fees. No one wants to wait to take a default, so it is recommended that the collection agency submit a detailed affidavit when the file is forwarded, if the agency wants collection costs added. This becomes a business decision, if it is cost effective. At the beginning of a suit, it is hard to predict if a defendant will contest anything, and it is also problematic if additional costs added to the amount of the judgment will ever be collected.

### **Defendants**

The proper defendant needs to be identified. The Oregon Secretary of State at [www.filinginoregon.com](http://www.filinginoregon.com) provides online information for businesses. If the defendant is a corporation, it must properly be identified

in the complaint as Inc., Co., or Ltd. If the defendant is an individual, the caption should be “John Doe, dba It Never Rains in Oregon.” Regarding auto accidents, if the driver was in the course and scope of his employment, then both the driver and his employer are named as defendants. Otherwise, simply because someone owns a car, they are not automatically a defendant, unless the owner committed negligence, such as giving the car keys to someone who was intoxicated.

### **Statute of Limitations**

[ORS Chapter 12](#) provides a detailed list of statute of limitations. There are exceptions. Generally, a suit must be filed within two years of the event for personal injury and for the typical “tort” case. Property damage is six years. Oregon courts have said that a plaintiff must combine both causes of action, if it is based on the same accident. A contract claim must be brought within six years of the date of the contract or date of last payment, whichever is latest.

One trap for the unwary pertains to landlord tenant residential cases. If a claim is brought on the lease such as for unpaid rent, it must be filed within one year. If the claim is for common law damages to the premises, the statute is six years.

PIP reimbursement is a very complicated area that seems to change monthly. See [ORS 742.534](#) et seq. The current ways for an insurance company to recoup include the following:

1. Intercompany Arbitration. A recent Oregon case said that even if a party is not a member of intercompany arbitration, the insurance company must offer to arbitrate under the same provisions. See [Providence Health Plan v. Winchester, Ct. of Appeals A142272 \(Sept. 12,2012\)](#)
2. Pay the insured’s attorney to collect in the insured’s case. Whatever percentage the insured is paying his attorney, whether it be 25 percent or 40 percent, the insurance company must likewise pay a similar amount to the insured’s attorney to collect.
3. If the insured has not brought suit or if the insured’s attorney declines to collect the PIP payment, the insurance company can bring a separate action, but it must be clearly indicated that it is a subrogation action from the insured. The Oregon court has determined that under this allowable method, any right of the insurance company flows from its insured.

### **Service**

[ORCP 7](#) provides several methods of service. The most common is when the summons and complaint is personally handed to the defendant. [ORCP 7D\(2\)d](#) allows for service to be complete when a true copy of a summons and complaint is mailed by restricted mail to the defendant who personally signs the green card. A proof of service affidavit must be filed with the court identifying what was done and must include

the green postal card. Practitioners should review [\*Davis Wright Tremaine, LLP v. David Menken, 181 Or.App.332, 45P.3d983\(2002\).\*](#)

If the plaintiff has made a good faith effort to serve the defendant in an automobile case, per [ORCP 7D\(4\)](#) service is complete when true copies of the summons and complaint are sent by restricted mail and by regular mail to the defendant at the address listed in the police report, any accident report, the most recent address of the defendant with DMV, and any other address known to the defendant. Furthermore, no default can be taken unless a true copy of the summons and complaint was provided to the defendant's insurance company, if any. The plaintiff must file an affidavit or declaration as a proof of service detailing all of the reasonable steps the plaintiff took and each address where the summons and complaint was sent by restricted and regular mail. Note that it is not a requirement to file the green signature card if each of the steps has been taken. This is a big area of confusion with attorneys and court clerks. Also, it can become an area of attorney malpractice if best efforts weren't made prior to the mailing, because if a judge were to set aside the service, the statute of limitations most likely would already have expired.

Another way to get the defendant served is to obtain a specific court order that allows for alternate service by performing specific steps per [ORCP 7D\(6\)](#). Typical examples are when the debtor lives in a gated community and the server cannot get through the front gate or the debtor will not answer the front door, and the defendant has failed to sign the green card with the restricted mailing. Details should be included in an affidavit or declaration explaining why it is reasonable to assume that the defendant lives at the particular residence behind the gate and/or is avoiding service. Examples include adding DMV information and results of search engines showing that it is the defendant's residence. Online searches of property tax records showing ownership also is helpful to show residence. Often a judge will require that a true copy of the summons and complaint be posted on the front door or gate as well as mailed by regular and restricted mail.

As long as the complaint was filed within the statute of limitations, the defendant can be served after the statute expires. Service must be complete within sixty days of the date that the complaint was filed. This is why it is very important to forward cases with sufficient time to actually locate the defendant. These alternate methods of service all can be successfully attacked by a defendant later, if the court is convinced that the plaintiff knew or should have known that the defendant was not actually served.

### **Judgments**

A judgment may be taken in a small claims court proceeding 20 days after service, and in a circuit court proceeding 30 days after service. It is strongly recommended that the default be timely sought, because

according to “Murphy’s Law,” if not sought until day 33, the defendant will file an answer on day 32. In Oregon, a non-support judgment is valid for ten years but may then be renewed before expiration for another ten years. Support judgments have longer duration.

### **Small Claims Court Litigation**

If the defendant files an answer, the court will schedule a mandatory appearance at mediation for the parties. Volunteer attorneys and trained community members attempt to twist arms to get a resolution. The court will accept a stipulated agreement. If the mediator reports that the parties were unable to settle, the court will set a trial. Most trials in small claims court last 15 minutes, sometimes 30 minutes. A small claims court decision cannot be appealed.

If an agency brings a claim for non-payment of a medical bill, whether it be from a doctor’s office or PIP reimbursement, the plaintiff must be prepared to prove that the services rendered were reasonable and necessary and that what was charged was appropriate. Simply having a copy of an invoice is not sufficient. A trial judge will be far more willing to accept an affidavit if detailed copies of the invoices were provided to the defendant at the mediation.

### **Circuit Court Litigation**

If the defendant answers the suit, Oregon has mandatory, non-binding arbitration for cases under \$50,000, which is to be held within 49 days. Multnomah County will not extend the time line, but other county courts do allow the litigants and arbitrator to set convenient dates. To avoid the actual hearing, a summary judgment motion should be filed which requires an affidavit from someone knowledgeable of the account. If the defendant is proper, add a copy of the Summary Judgment rule ([ORCP 47](#)) with the motion. If the case is PIP reimbursement, it is necessary to have an affidavit from the insurance company detailing the necessity and reasonableness of payment. The insured should sign a similar affidavit to include the reasonableness of services rendered and specific details of the accident to show that the defendant was liable. Most arbitrators allow witnesses to appear by telephone. If liability of the accident is contested, the personal appearance of the insured is a necessity.

A common defense to credit card suits is that the suit is against the wrong defendant. Because very seldom are original, signed credit card application forms available, it is extremely helpful if copies of multiple monthly statements are shown to have been sent to an address that is verified to be that of the defendant.

Any party can appeal the result of the arbitrator by filing within 20 days a request for trial de novo and paying \$150. The case then starts over with a judge, and supposedly is put on a fast track for future court dates. However, if a party appeals and does not improve their results at trial, that party is subject to attorney fees.

### **Post Judgment**

Hopefully the creditor saved information about the bank account or place of employment of the defendant. In Oregon, an attorney can sign a garnishment and have it served. A bank account garnishment hits whatever is in the account at the time of service. By statute, the bank can withhold funds that are exempt, such as social security or worker's compensation proceeds. Otherwise, the funds are forwarded to the issuing attorney. A partial satisfaction should be filed with the court evidencing what amount was received. A bank account garnishment only covers the amount which is in the account at the moment the garnishment is received. It will not include future moneys that are deposited into the account. A new garnishment must be served. If the creditor does not know of the location of a bank account, it is possible to do a "shotgun" garnishment at a cost of \$20 per bank. This can include the six or seven larger banks in the state where most Oregonians have deposits. This of course will not hit the numerous credit unions and smaller banks.

[ORS 18.265-268](#) allows for debtor exams. The problem is that the Oregon Courts are strained, and debtor exams are at the bottom of the list. Each county handles them differently. For example, Washington County simply requires the defendant to appear at the clerk's counter to be sworn. Clackamas County actually has a judge who calls the case. Another county has refused to set up debtor exams because of no court or clerk availability. Typically only about 20% of the debtors actually show up at an exam. Most courts require at least two if not three skips before a Show Cause for Contempt will be issued. In Multnomah County, it takes five court appearances before a court will take sanctions. If at any point the debtor shows up, the court simply directs that the debtor undergo the exam. The fear of going to a debtor exam sometimes causes defendants to enter into a payment plan.

A POE garnishment costs \$10. It will seize approximately 25 percent of the net amount over minimum wage. With minimum wage being approximately \$1,200, this means that it will hit approximately \$200 if the monthly net is about \$2,000. It is valid for 90 days. When an employer receives multiple garnishments, there are confusing rules to determine the priority.

One effective tool with auto accident cases involves the suspension of the defendant's driver's license, because of being non insured. The suspension requires a specific motion, affidavit and order to the court which can be filed 60 days after the judgment is taken.

Often the first contact with the debtor is after funds have been seized from a bank or POE garnishment or the license has been suspended. Our experience has been that most debtors are willing to adhere to a payment plan so as to avoid future garnishments and/or to get the license reinstated.

### **Registration of Foreign Judgments**

[ORS Chapter 24](#) pertains to registering judgments from other states or countries. A court-authenticated copy of the judgment is required. When it is registered, true copies must be sent to the last known address of the defendant. Case law provides that unless a bond is posted, collection can begin after five days. A defendant may attack a judgment only in the forum state. Collection on a registered judgment is identical to that of one originally taken in Oregon.

### **Typical Costs**

#### Filing Costs

Under \$10,000	\$150
\$10,000 - \$50,000	\$240
\$50,000 - \$1,000,000	\$505

Service Cost: Usually \$28 - \$38 if service within 3 attempts is local; otherwise more

Motion Cost: \$100/Motion to Court

Arbitration Cost: Our ½ = \$350 - \$500

Registration of Foreign Judgment: \$51

Garnishments: POE: \$10; Bank: \$20/bank

Debtor Exam: \$28 local; \$250 non-local

Suspensions, Liens, Certified Copies Average Cost \$20 per document

### **Suggestions For Effective Collection**

Send complete file: Supportive data is necessary

Give good addresses:

- Bad addresses for service on defendants cost more in service fees and waste time
- Need correct contact information for insured, particularly car cases

Respond promptly to requests:

- Costs for filing and service or authority to advance

- Settlement instructions
- Be ready to provide witness name and number
- Ask creditor to respond promptly to production requests

Status responses and copies of documentation:

- Please don't ask daily or weekly for minor information  
(Time is better used in collecting)

Be ready to pay half of arbitrator fee:

- Oregon has mandatory, non-binding arbitration that must take place within 49 days from the date that the court transfers the matter to arbitration
- Return summary judgment affidavits quickly to avoid a full hearing

Please obtain bank and employment information:

- Garnishments can occur immediately after getting judgment
- Bank garnishment = \$20/bank (we have 6 or 7 major banks)
- Employer garnishment = \$10 (all costs added back into judgment)  
(All costs added back into judgment)

Please reimburse promptly:

- When the next monthly statement says "prior balance"
- Look to the first bill for detail of "prior balance"

Successful collection requires a team effort. Creditors can be most helpful by providing a detailed copy of the file, including copies of contracts, correspondence and processed checks. It is very helpful when the forwarder provides quick turnaround time for requested information, including signed affidavits and production of requested documents, as well as providing guidance to the attorney. It is the team effort that produces satisfactory results.

*Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.*