

Assignments for the Benefit of Creditors: Oregon

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A Q&A guide to an assignment for the benefit of creditors (ABC) in Oregon. This Q&A addresses the process by which assignments are generally administered in Oregon, including the commencement and administration of the ABC, the duties and actions of assignees, creditor claims, and the jurisdiction of the court. Answers to questions can be compared across a number of jurisdictions (see Assignments for the Benefit of Creditors: State Q&A Tool).

Commencing an ABC Proceeding

1. What are the applicable statutes for an assignment for the benefit of creditors (ABC) in your jurisdiction?

There is no statutory scheme governing ABCs in Oregon. Therefore, when an assignor company seeks to conduct an ABC in Oregon, it is done under common law and subject to the terms of a written agreement between the assignor and assignee.

However, there are specific statutes applicable to ABCs, including statutes for:

- Evaluating securities of secured creditor (O.R.S. § 33.610).
- Tax payments and claims (O.R.S. §§ 311.415 and 314.310).
- Notice of an assignee's qualification (O.R.S. § 316.392).
- Wage claims (O.R.S. §§ 652.510 and 652.570).
- Unemployment insurance (O.R.S. § 657.520).
- Claims of the U.S. Government (31 U.S.C. § 3713).

The Oregon Trust Code governs trusts generally and Chapter 130 of the Oregon Trust Code also contains certain statutes relevant for ABCs. For example, O.R.S. § 130.300 provides that if a beneficiary's interest is not protected by a spendthrift provision, the court may authorize an assignee of the beneficiary to reach the beneficiary's interest by garnishment or other execution against present or future distributions.

2. Generally, in which court can an assignment for the benefit of creditors (ABC) be commenced in your jurisdiction? Please explain if an ABC can be conducted without a court filing in your jurisdiction.

In Oregon, ABCs are not filed in court but instead begin with the contractual assignment of the assignor's assets to an assignee in trust for the assignor's creditors. The assignment document directs the assignee to liquidate the assets and distribute the proceeds to creditors. This document does not need to be filed, acknowledged, or recorded. However, if the assignment includes real property, the transfer of the real property must be reflected in the assignment document and the assignment document or a separate deed in favor of the assignee must be recorded in the county recorder's office in the county or counties where the real property is located.

3. What is required to file an assignment for the benefit of creditors (ABC) in your jurisdiction? Please include information on:

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



Documents

In Oregon, the written assignment agreement is the main document the assignor uses to assign its property to the assignee in trust for the assignor's creditors. This agreement does not need to be filed, acknowledged, or recorded. The assignee is also not required to sign the assignment document, but it must agree to accept its duties as assignee.

While the assignment document should provide for the transfer of all assets, the assignment agreement or a separate deed in favor of the assignee must be recorded in the county (or counties) where the real property is located when real property is being transferred. The assignor should also execute any separate documents necessary to transfer title to assets, such as vehicles or stock certificates.

Entity Governance Actions of Approval

An ABC agreement may be executed by any person or entity that has legal capacity to enter a binding contract.

Approval of the ABC depends, however, on the nature of the corporate entity. When the assignor is a:

- Partnership, the assignment agreement should be signed by all partners (unless the partnership agreement allows one or more of the partners to convey all partnership assets and effect a dissolution) (O.R.S. § 70.300).
- Corporation, it must first comply with sections 60.531 to 60.534 of the Oregon Revised Statutes, which govern the sale of a corporation's assets. These statutes require that:
 - the corporation's board of directors adopt a resolution directing that the assignment be submitted to a vote at a properly noticed meeting of the shareholders; and
 - the shareholders approve the ABC.(O.R.S. §§ 60.531 to 60.534).
- Limited liability company (LLC), all members should consent to the ABC (unless the operating agreement or articles of organization provide that less than all members can authorize the LLC to transfer its assets and dissolve the LLC) (O.R.S. § 63.130).

Filing Requirements

The Oregon Statutes do not contain express filing requirements for an ABC. However, if the ABC is transferring real property, either the assignment

agreement or a separate deed in favor of the assignee must be recorded in the county or counties where the real property is located. The assignor should also execute any separate documents necessary to transfer title to assets, such as vehicles or stock certificates.

4. Please identify the assignor's preliminary requirements and obligations, including any statutory requirements for completing and filing the schedules of assets. List all applicable statutes.

There are no requirements in Oregon for an assignor to file schedules of assets. However, the proposed assignee should ensure that the written assignment document clearly enumerates the obligations of the assignor, including the obligation to disclose accurate and complete lists of assets and creditors.

5. If your jurisdiction requires an assignor to file a schedule of assets, please explain if there are any statutory requirements regarding extensions of time or amendments to the filing of schedules. List all applicable statutes.

There are no requirements in Oregon regarding the extension of time for filing the required inventory schedules or making amendments.

Selecting an Assignee

6. Please explain how an assignee is selected in your jurisdiction and whether there are any statutory requirements or qualifications to be appointed as assignee.

In Oregon, the assignor selects the assignee. Assignees do not have to meet any specific qualifications or certification standards to be appointed in an assignment for the benefit of creditors (ABC). However, an assignee in an ABC must "give notice of qualification ...to the Department of Revenue, as may be required by regulation" (O.R.S. § 316.392).

Selecting an assignee typically depends on the amount, number, and nature of the company's debt obligations. The assignee is often a professional or business person

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with experience in liquidating and administering estates. For example, CPAs, attorneys, and liquidation or turnaround expert firms are all professionals that may be selected as an assignee.

If the purpose of the assignment is to resolve a distressed situation amicably and efficiently, the company should exercise care to choose an impartial professional that has both:

- The trust and confidence of creditors.
- The experience to deal with or manage other professionals including turnaround specialists, accounting or management firms, lawyers, or a Chapter 7 panel trustee (if the company later files for bankruptcy).

Duties and Actions of the Assignee

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

There are no statutes in Oregon that expressly govern an assignee's duties and responsibilities in an assignment for the benefit of creditors (ABC). However, the following Oregon Statutes address priority of claims and debtor-creditor issues:

- Evaluating securities of secured creditor (O.R.S. § 33.610).
- Tax payments and claims (O.R.S. §§ 311.415 and 314.310).
- Notice of an assignee's qualification (O.R.S. § 316.392).
- Wage claims (O.R.S. §§ 652.510 and 652.570).
- Unemployment insurance (O.R.S. § 657.520).
- Claims of the U.S. Government (31 U.S.C. § 3713).

An assignee generally has all the powers and duties of a trustee and creditors have the rights of beneficiaries (O.R.S. §§ 130.650 to 130.733). For example, the assignee is a fiduciary required to act with prudence to liquidate the assets within a reasonable time and distribute the proceeds to creditors entitled to the funds in order of priority. As a trustee, the assignee has also a duty to account to the creditors and regularly provide them with reports on the status of the liquidation and distribution. Specific duties include:

- The duty to administer the trust in good faith and according to the terms and purposes of the agreement (O.R.S. § 130.650).

- The duty of loyalty to the trust beneficiaries (O.R.S. § 130.655).
- Impartially investing, managing, and distributing the trust property (O.R.S. § 130.660).
- Prudently administering the trust by exercising reasonable care, skill, and caution (O.R.S. § 130.665).
- Maintaining adequate records and keeping trust property separate from the trustee's own property (O.R.S. § 130.695).
- The duty to keep the beneficiaries reasonably informed about:
 - the administration of the trust; and
 - the material facts necessary for the beneficiaries to protect their interests. and the duty to inform and report (O.R.S. § 130.710.)

The written assignment agreement also typically lays out the assignee's duties and responsibilities.

When appointed, the assignee should provide notice to all creditors of its appointment and the deadline for submitting claims (see Question 12).

8. In addition to statutory duties, please summarize any common law duties imposed on an assignee in your jurisdiction.

While an assignment for the benefit of creditors (ABC) in Oregon is conducted in accordance with common law certain statutes apply to an ABC, including statutes that prescribe an assignee's duties (see Question 7).

For example, the assignee is a fiduciary required to act with prudence to liquidate the assets within a reasonable time and distribute the proceeds to creditors entitled to the funds in order of priority. As a trustee, the assignee has also a duty to account to the creditors and regularly provide them with reports on the status of the liquidation and distribution. Specific duties include:

- The duty to administer the trust in good faith and according to the terms and purposes of the agreement (O.R.S. § 130.650).
- The duty of loyalty to the trust beneficiaries (O.R.S. § 130.655).
- Impartially investing, managing, and distributing the trust property (O.R.S. § 130.660).
- Prudently administering the trust by exercising reasonable care, skill, and caution (O.R.S. § 130.665).

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- Maintaining adequate records and keeping trust property separate from the trustee's own property (O.R.S. § 130.695).
- The duty to keep the beneficiaries reasonable informed about:
 - the administration of the trust; and
 - the material facts necessary for the beneficiaries to protect their interests and the duty to inform and report

(O.R.S. § 130.710.)

The written assignment agreement also typically lays out the assignee's duties and responsibilities.

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

In Oregon, an assignee is not required to post a bond. However, before beginning its duties, an assignee must agree to accept the duties of the trust.

10. Under what circumstances can an assignee be removed in your jurisdiction?

In Oregon, an assignee may be removed in an assignment for the benefit of creditors (ABC) when at least one creditor petitions the court and the court finds that:

- The assignee has committed a serious breach of trust.
- A lack of cooperation among co-trustees substantially impairs the administration of the trust.
- Removing the assignee best serves the interests of the creditors because:
 - the assignee is unfit or unwilling; or
 - has persistently failed to effectively administer the ABC.
- Removing of the assignee best serves the interest of all the creditors and:
 - there has been a substantial change of circumstances;
 - removal has been requested by all creditors;
 - a suitable successor assignee is available; and
 - the assignee fails to establish by clear and convincing evidence that removal is inconsistent with a material purpose of the ABC.

(O.R.S. § 130.625.)

An assignee may resign:

- After at least 30-days' notices to:
 - the qualified beneficiaries;
 - the settlor, if living; and
 - all co-trustees.
- At any time with the approval of a court.

(O.R.S. § 130.620.)

11. Please explain the process for terminating or removing an assignee, including all relevant notice requirements.

In Oregon, on removal of an assignee:

- The assignee has the duties of a trustee and the powers necessary to protect the trust property until the trust property is delivered to a successor assignee or other person entitled to the property.
- The assignee must expeditiously deliver any trust property in its possession to the successor assignee or other person entitled to the property.
- A successor assignee or the court may require a removed assignee to send a report as described in O.R.S. § 130.710.

(O.R.S. § 130.630.)

Administration of the ABC

12. What are the key processes during the assignment for the benefit of creditors (ABC) in your jurisdiction? Please describe:

- 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 an assignee in your jurisdiction and the relevant time period for recovering preferences.
- Assumption or rejection of executory contracts, including what actions an assignee must take to assume or reject a contract in your jurisdiction.

Sales

In Oregon, a sale of assets in an assignment for the benefit of creditors does not require court authority. The assignee must instead liquidate the assets in whatever manner reasonably generates the highest sale price. Therefore, an assignee may choose to sell asset as a private sale, public sale, public auction, or by sealed bids. However, when determining the best means to liquidate and sell assets, the assignee must act according to its duties set out in the Oregon Uniform Trust Code (O.R.S. §§ 130.650 to 130.733; see Question 7).

Avoidance Powers

An assignee in Oregon has no statutory avoidance powers.

Rejection or Assumption of Executory Contracts or Leases

An assignee in Oregon has no power to unilaterally assume or reject contracts.

Creditor Claims

13. 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

In Oregon, the written assignment document may include a deadline by which creditors must file claims with the assignee after receiving notice of the assignment for the benefit of creditors. If the written assignment document does not include a claim deadline, the assignee should set a reasonable claim deadline. Regardless of whether the assignment document contains a claims bar date or the assignee sets one on its own, the assignee should provide notice of the claims deadline to all creditors. While the statutes do not provide a method by which notice should be sent, it is common practice to send notice by mail or electronic mail.

An exception to the claim deadline applies to wage claims, which must be submitted within 45 days after

the assets “have been placed in the hands of any such assignee” (O.R.S. § 652.510(2)).

Claims Process

The claims deadline is either set by the assignment document or the assignee. A proof of claim is typically provided to creditors when the assignee sends notice to creditors of the bar date.

When providing notice of the claim deadline, the assignee typically includes a form proof of claim. There is no specific claim form that must be used; however, the assignee often uses a modified bankruptcy proof of claim and provides that to creditors.

Claims should be:

- Be in writing and entitled Proof of Claim.
- Contain the creditor’s name and address and the nature and amount of the claim.
- Be executed by the creditor or the creditor’s authorized agent.

Because the obligations of the assignee are primarily governed by the written assignment document, the proposed assignee should ensure that the assignment document includes the assignee’s obligations to provide notice, including the timing of notice, the form of notice, and the proof of claim form.

14. 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.

Allowance and Disallowance of Claims

In Oregon, there is no statutory guidance regarding allowance and disallowance of claims and typically claims that arise:

- After the effective date of the assignment are disallowed unless they are claims against the assignment estate arising from the assignee’s management, liquidation, and distribution of the estate assets.
- Before the effective date of the assignment and are consistent with the debtor’s records are allowed.

Disputed Claims

There is not an express mechanism for resolving a disputed claim. In practice, when the assignee disputes the amount or nature of a creditor's claim, the assignee should seek to reach an agreement with the creditor regarding the claim amount using the debtor's records. If the parties cannot reach an agreement, the assignee should file a declaratory judgment action with the appropriate state court to establish the validity and amount of the claim.

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

There are no statutes in Oregon setting out the priority scheme for payment of creditor's claims in an assignment for the benefit of creditors (ABC). However, secured creditors with valid perfected liens on the ABC property before the appointment of the assignee typically receive the proceeds from the disposition of their collateral, according to their respective priorities under applicable law.

There are also specific state and federal laws that create priorities for certain types of claim. For example,

- **US government claims.** These claims must be paid first when the "person indebted to the Government is insolvent and ... the debtor without enough property to pay all debts makes a voluntary assignment of property (31 U.S.C. § 3713).
- **State income tax claims.** The assignee is liable for taxes on the money or value of property it receives in the ABC estate. The property should be valued at the fair market value at the time the assignor transfers the property to the assignee (O.R.S. § 314.310).
- **State property taxes.** The assignee must pay property taxes in full before a court can grant a judgment or final order in an ABC (O.R.S. § 311.415).
- **Unemployment Compensation Trust Fund.** All contributions, interest charges, penalties, or amounts due to the Unemployment Compensation Trust Fund are given the same priority as taxes and are given priority over all general unsecured claims (O.R.S. § 657.520).
- **Industrial Accident Fund.** All premiums, fees, assessments, interest charges, penalties or amounts due to the Industrial Accident Fund are given priority over all general unsecured claims (O.R.S. § 656.562).
- **Wage claims.** Employee claims for wages in an amount up to \$2,000 for work or labor performed within 90

days before the filing of the ABC are treated as preferred debts (O.R.S. § 652.510).

Compensation of Assignee and Professionals

16. Please explain how assignees are compensated in your jurisdiction, including:

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

The Oregon statutes or common law do not contain a compensation structure for payment of an assignee's fees. However, the Oregon Uniform Trust Code authorizes the assignment agreement to establish reasonable compensation for the assignee (O.R.S. § 130.635.)

In practice, the assignee may be reasonably compensated by the trust estate for its services:

- If the terms of the assignment document do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances (O.R.S. § 130.635(1).)
- If the terms of the assignment agreement specify the assignee's compensation, the assignee is entitled to be compensated as specified in the agreement, but the court may modify the compensation if:
 - the duties of the assignee are substantially different from those contemplated when the assignment was made; or
 - the compensation specified by the terms of the assignee is unreasonably low or high.(O.R.S. § 130.635(2).)
- If more than one assignee is serving and the terms of the assignment agreement do not specify the assignee's compensation, the compensation paid to all assignees under O.R.S. § 130.635 must be based on the total services provided by all assignees (O.R.S. § 130.635(3)).
- If the terms of an assignment do not specify the assignee's compensation, the fees paid to third parties that perform functions for the assignee, including financial advisors, must be considered in determining reasonable trustee compensation (O.R.S. § 130.635(4)).

To avoid disputes, the assignment document should expressly include:

- A compensation structure for the assignee.
- Authority for the assignee to hire and compensate specific professionals.

Court approval or notice is not required to compensate an assignee.

17. What professionals are assignors permitted to retain in your jurisdiction? Please explain how an assignor's professionals are compensated.

The Oregon statutes do not state whether an assignor may retain professionals. The assignment agreement instead typically provides which professionals the assignor may retain and the terms of the compensation.

18. What professionals are assignees permitted to retain in your jurisdiction? Please describe how an assignee retains professionals and the compensation approval process for professionals.

There is no statute or law in Oregon that expressly governs the types of professionals an assignee may retain. However, an assignee may employ "persons, including attorneys, auditors, investment advisors or agents, to advise or assist the [assignee] in the performance of administrative duties" (O.R.S. § 130.725(28); see *Stern Mayer Co. v. Sabin*, 120 Or. 579, 585-86 (1927) (finding that it is appropriate to retain professionals that are reasonably necessary for the assignee to carry out its responsibilities)).

An assignee's professionals typically include lawyers, accountants, appraisers, auctioneers, and brokers. The ability to employ and compensate the assignee's professionals should be included in the written assignment agreement.

Closing the ABC

19. What is the process for closing an assignment for the benefit of creditors (ABC) proceeding in your jurisdiction? Where a court order is required, please explain the key provisions of an order closing the case.

In Oregon, there is no specific process for closing an ABC.

20. Is there a process in your jurisdiction for dissolving the assignor company after the assignment for the benefit of creditors (ABC) concludes?

Oregon has no formal process in the statutes for dissolving the assignor company after the ABC concludes.

When closing an ABC:

- The assignee may file articles of dissolution with the secretary of state before or during the closing of the assignor's business.
- The assignor's officers or directors may file articles of dissolution with the secretary of state after the ABC concludes.

For more information on dissolving a corporation in Oregon, see [State Q&A, Corporation Law: Oregon: Dissolving a Corporation](#).

Jurisdiction and Power of the Court

21. What statutes, if any, confer powers on the court relating to the estate, assignees, assignor, and creditors in your jurisdiction? Please explain those powers.

In Oregon, the circuit courts have subject matter jurisdiction over proceedings concerning the administration of an assignment for the benefit of creditors (ABC) (O.R.S. § 130.060).

Regarding the court's personal jurisdiction over the parties:

- By accepting an ABC and having its principal place of administration in Oregon, the assignee submits personally to the jurisdiction of the courts of Oregon (O.R.S. § 130.055(1)).
- A creditor that has its principal place of administration in Oregon in subject to the personal jurisdiction of the courts regarding any matter involving the creditor's interest in the ABC (O.R.S. § 130.055(2)).
- A creditor that accepts a distribution from the assignee submits personally to the jurisdiction of the courts regarding any matter involving the ABC (O.R.S. § 130.055(2)).

An ABC proceeding is not subject to continuing judicial supervision unless ordered by a court (O.R.S. § 130.050(2)).

A court may choose to intervene in the administration of an ABC to the extent the court's jurisdiction is invoked by an interested person (O.R.S. § 130.050(1)).

A court also has power to get involved in any matter involving an ABC's administration, including a request for instructions or a declaratory judgment action (O.R.S. § § 130.050(3)).

If a secured creditor and assignee cannot agree on the value of securities held by a secured creditor, the assignee or secured creditor may seek a declaratory judgment to determine the value (O.R.S. § 33.610).

22. What responsibilities does the clerk of court in your jurisdiction have in relation to maintaining the records of the assignment for the benefit of creditors (ABC)?

In Oregon, the clerk of the court has no responsibilities in an ABC apart from those it has in any other type of proceeding.

23. May the court appoint a referee in your jurisdiction?

In Oregon, there are no statutes that allow the court to appoint a referee in an assignment for the benefit of creditors (ABC). Because an ABC is an out-of-court proceeding in Oregon, the court does not get involved unless the assignee or a creditor initiates a state court action related to the ABC (see O.R.S. § 130.050(2)). If a party initiates a state court action, O.R.C.P. 65 permits the court to appoint a referee on:

- The written consent of the parties.
- Motion by any party.
- Its own initiative when an exceptional condition exists.

An order of reference to a referee may specify or limit the referee's powers.

Bankruptcy Considerations

24. If an involuntary petition is filed during the course of the assignment for the benefit of creditors (ABC) in your jurisdiction, what action, if any, must the assignee take?

The Oregon statutes do not address whether an assignee may start a bankruptcy proceeding. However, the US

Bankruptcy Code provides that an involuntary bankruptcy case may be filed by one or more creditors holding at least \$16,750 in non-contingent claims that are not subject to a bona fide dispute, if the petitioning creditors either:

- File their petition within 120 days after the debtor's assignment of assets to the assignee.
- Can show that the debtor is generally not paying its debts as they come due.

(§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process.](#))

If creditors file an involuntary bankruptcy petition during the ABC, the assignee may not "make any disbursement from, or take any action in the administration of" property of the assignment estate, "except such action as is necessary to preserve such property" (§ 543(a), Bankruptcy Code). If the petition is granted and an order for relief is entered by the bankruptcy court, the assignee typically must turn over all property of the assignment estate to the bankruptcy trustee with an accounting of the property (§ 543(b)(1), (2), Bankruptcy Code). However, after notice and a hearing, the bankruptcy court:

- May excuse the assignee's compliance if the interests of creditors are better served by permitting the assignee to continue in possession, custody, or control of the property of the ABC estate (§ 543(d)(1), Bankruptcy Code).
- Must excuse the assignee's compliance if the assignee took possession of the ABC estate more than 120 days before the involuntary bankruptcy petition was filed, unless compliance is necessary to prevent fraud or injustice (§ 543(d)(2), Bankruptcy Code).

25. May an assignee challenge an involuntary bankruptcy proceeding in your jurisdiction? Please explain.

The Oregon statutes do not provide that an assignee has any specific power to challenge an involuntary bankruptcy proceeding against the assignor.

Under the terms of the federal Bankruptcy Code, an assignee also may oppose the involuntary bankruptcy case or request that the bankruptcy court abstain from the proceeding, often on the basis that the assignment for the benefit of creditors proceeding has advanced to a point where the change in forum or fiduciary does not serve the best interests of creditors (§ 305(a)(1), Bankruptcy Code).

Instead of dismissing the case, the assignee can seek relief from the turnover provisions of Section 543 of the Bankruptcy Code to permit the assignee to continue in

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the possession, custody, or control of property of the ABC estate if:

- The assignee's continued management of the property is in the best interests of creditors.
- The bankruptcy petition was filed more than 120 days after the assignee took possession of the ABC estate.

(§ 543 (d)(1), (2), Bankruptcy Code.)

Other Topics

26. Are there any statutes or case law in your state that would prevent a business directly engaged in cannabis business (that is, cultivators, dispensaries), or a business that provides ancillary services to a cannabis business (that is, commercial landlords), from utilizing assignment for the benefit of creditors (ABC) statutes to liquidate its assets? If yes, please list and explain the statutes.

In Oregon, a trustee may also seek temporary authority to operate a cannabis or marijuana business for purposes of liquidating the assets (O.A.R. 845-025-1260).

27. If the state statutes for assignments for the benefit of creditors (ABCs) in your state are unique in aspects not covered by these questionnaires, please state so here.

There are no additional statutes in Oregon not otherwise covered by this Q&A.

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