



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Division of Financial Regulation

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OREGON DIVISION OF FINANCIAL REGULATION BULLETIN DFR 2016-2

TO: All Pawnbrokers

RE: Exceptions To The Requirement To Present A Pawn Ticket For Pledge Redemption

Purpose:

This bulletin is intended to contribute to a uniform understanding among pawnbrokers that there are exceptions to the general rule that a pawn ticket is necessary to redeem a pledge.

Relevant Statutes:

ORS 726.310

ORS 726.330

ORS 726.340

Background:

Pawnbrokers, when they make a pledge loan, are required to issue the pledgor (or a representative of the pledgor) a ticket detailing, among other things, the item pledged and the interest rate. The holder of the pawn ticket is presumed to be entitled to redeem the pledge through the payment of the principal, interest, and fees. Generally, Oregon law provides that a pawnbroker is not required to deliver a pledge unless the pawn ticket is presented. Oregon's Pawnbrokers Act does, however, address instances where a pawn ticket has been lost, stolen or destroyed. On March 30, 2016, the Oregon Court of Appeals decided *Hughes v. Ephrem* and *H&B Jewelry and Loan*¹ interpreting Oregon Revised Statute (ORS) 726.330. The opinion does not change the Pawnbrokers Act or the various responsibilities of pawnbrokers in general. The opinion makes clear that a writ of garnishment, as an act of the court, is an exemption from the general rule that a ticket must be presented to redeem a pledge.

Discussion:

Pawnbrokers are defined in ORS 726.310 as persons that lend money at a defined rate of interest which is secured by a personal property pledge. A pawnbroker does not own the pledge property, instead the pawnbroker has a possessory lien – the pledge is held as collateral on repayment of the loan. Unless the time for redemption passes without payment of the principal, interest and fees a pawnbroker's interest remains "possessory." The pawnbroker will only become the "owner" if the pledge is forfeited.

Forfeiture does not occur automatically upon the expiration of the original loan term. In many cases pawnbrokers need to take affirmative steps to obtain an ownership interest in a pledged item. For loans over \$500 a pawnbroker must give the pledgor notice of the risk of forfeiture if

¹ *Hughes v. Ephrem and H&B Jewelry and Loan*, 277 Or App 193 (2016).

the period of the loan, or renewal if any, has passed. A pledgor has a grace period of 30 days after the pledge loan expires or 30 days after mailing the risk of forfeiture notice, whichever is later, to redeem the pledge or renew the loan by paying any renewal fee and all the accrued interest and fees to date. Once a pledge is forfeited, a pawnbroker gets the pledgor's interest in the pledge and can hold and dispose of the pledge as the pawnbroker's own property.

Until a pledge is forfeited it can be redeemed through presenting the pawn ticket and paying the amount owed. Normally, a person presenting a pawn ticket is entitled to redeem the property, but the statutes do address situations in which a pawn ticket has been lost or destroyed (ORS 726.340) or where a court of law has stepped in and issues a court order. The Oregon Court of Appeals recently interpreted the Pawnbrokers Act and how an action by the courts can affect a pledge's ownership.

ORS 726.330 addresses pledge loans where a pawn ticket has been "impounded or its negotiation enjoined by a court of competent jurisdiction." The recent *Hughes v. Ephrem* case looked at the legislature's intention regarding ORS 726.330. The Oregon Court of Appeals, using the definition of "impound" found in the dictionary, held that a pawn ticket is not necessary to redeem a pledge, if a pawn ticket is confiscated and is being held by a law enforcement entity or where a court action overrides the ticket. The court decided that a "writ of garnishment" was an action of a court that directed a person to take (or not take) a specific action. Because a writ of garnishment requires a person to "hand over" any property specifically listed, it overrides the pawn ticket – or in the language of ORS 726.330 it "enjoins the negotiation of the ticket."

Because the language of ORS 726.330 is broad there are likely other ways that a court can enjoin the negotiation of a pawn ticket. Because pawnbrokers have a responsibility to safeguard pledges they should be vigilant regarding pawn tickets, but they should be aware that a court order accompanied by the payment of the amount due can be used to redeem a pledge. In a situation where a valid court order is presented at the same time as the ticket – it is the person holding the valid court order that is entitled to redeem the pledge.

This bulletin takes effect immediately.

Dated this 13th day of December, 2016 at Salem, Oregon.

A handwritten signature in black ink, appearing to read "Laura N. Cali", with a period at the end.

Laura N. Cali, Insurance Commissioner
Oregon Division of Financial Regulation

