

OBTAINING A RESTRAINING ORDER TO STOP SWEEPSTAKES PROMOTIONAL MAILINGS

ELDERLY PERSONS AND PERSONS WITH DISABILITIES ABUSE PREVENTION ACT

INSTRUCTIONS

This packet contains forms and instructions to assist you in obtaining a Restraining Order under a specific Oregon law that deals with mailing sweepstakes promotional material to an elderly, disabled or incapacitated person. The instructions are designed to give you information about how to fill out the forms.

If you need to obtain a Restraining Order to stop a Respondent from threatening or abusing you and your situation does NOT involve the receipt of sweepstakes promotional mailings, please use the forms and instructions in Packet No. E1, available from the court clerk.

WHAT IS A RESTRAINING ORDER?

A "Restraining Order" is an order of the court that orders the person or company named in the Restraining Order (the "Respondent") to stop causing sweepstakes promotions to be mailed to you, if you are an elderly, disabled or incapacitated person. The Restraining Order can also order the Respondent to remove you from the Respondent's sweepstakes promotion mailing list. It can also require the Respondent to refund any payment received after the date a Restraining Order is issued by the court.

GUARDIAN PETITIONERS: You may also use this packet if you are a guardian or guardian ad litem for an elderly or disabled person on whose behalf you are seeking a restraining order to stop another person (the "Respondent") from mailing sweepstakes promotional material to an elderly, disabled or incapacitated person. You must be the guardian or guardian ad litem for the elderly person or disabled person for whom you are filing. If you are using the packet for this purpose, you are called a "GUARDIAN PETITIONER."

THROUGHOUT THE FORMS AND INSTRUCTIONS, INFORMATION IS PROVIDED FOR AND REQUESTED ABOUT THE ELDERLY OR DISABLED PERSON YOU REPRESENT. AS A GUARDIAN PETITIONER, YOU ARE TO PROVIDE INFORMATION, NOT ABOUT YOURSELF, BUT ABOUT THE ELDERLY OR DISABLED PERSON ON WHOSE BEHALF YOU ARE SEEKING A RESTRAINING ORDER. Provide information about yourself as "Guardian Petitioner" only where specifically requested.

IF YOU ARE AN ELDERLY PERSON OR A PERSON WITH DISABILITIES, AND A "GUARDIAN PETITIONER" FILES A PETITION ON YOUR BEHALF, YOU RETAIN THE RIGHT TO:

- Contact and retain counsel,
- Have access to personal records,
- File objections to the restraining order,
- Request a hearing, and
- Present evidence and cross-examine witnesses at any hearing.

If you have questions about how the law works or what it means, you may need to see a lawyer. The court clerk cannot give you any legal advice.

You do not have to have a lawyer to use this procedure, but you have the right to have a lawyer represent or help you. If you do not know a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free by dialing 1-800-452-7636. If you believe you cannot afford a lawyer, ask the court staff if your area has a legal service (legal aid) program that might help you.

WHO IS ELIGIBLE FOR A RESTRAINING ORDER?

Not everyone is eligible for a Restraining Order under the Elderly Persons and Persons With Disabilities Abuse Prevention Act. Check the eligibility list in the next section carefully to determine whether you are eligible to use the procedure and forms provided in this packet.

ELIGIBILITY REQUIREMENTS

You are eligible to use this Restraining Order procedure if:

You are 65 years of age or older **AND** you are NOT a resident of a long-term care facility;

OR

You are a “person with disabilities” because you have a physical or mental disability and one of the criteria listed below applies to you:

- you are mentally retarded or developmentally disabled and reside in or need placement in a residential program administered by the Senior and Disabled Services Division (SDSD), or
- you are mentally or emotionally disturbed and reside in or need placement in a residential program administered by SDSD, or
- you are an alcohol or drug abuser and reside in or need placement in a residential program administered by SDSD, or
- you have a physical or mental disability other than those described above, or
- you have experienced an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral, or physiological function for a sufficient time to affect your ability to perform the activities of daily living;

OR

You are a guardian or guardian ad litem for an elderly or disabled person who meets the eligibility requirements described above;

AND

You received sweepstakes promotional material in the United States mail and spent more than \$500 in the preceding year on any sweepstakes promotions or any combination of sweepstakes promotions from the same service,

AND

You feel you need the court's assistance to prevent you from incurring further expense on sweepstakes promotions from the Respondent,

AND

The Respondent caused the sweepstakes promotional material to be mailed to you within the 180 days preceding the filing of the petition,

AND

You are in immediate and present danger of receiving further sweepstakes promotions from the Respondent.

HOW DO I FILL OUT THE PAPERWORK?

You may either type or handwrite to fill out the forms. If you handwrite the forms, you must use a ball point, black ink pen only and you must print (no cursive) clearly. Answer each question carefully and tell the truth. Do not write in the parts of the papers that say "Judge's Initials." You will need to sign in front of a notary or court clerk. Bring ID (photo ID is best). If available, a court facilitator or advocate may be able to help you fill out the forms. They cannot answer legal questions.

As you fill out the forms, you must understand the definitions of "Sweepstakes," and "Sweepstakes promotion," that follow:

- Sweepstakes means a procedure for awarding a prize that is based on chance. It includes any such procedure in which a person is required to purchase anything, pay anything of value, or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize. It also includes any such procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything, or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.
- Sweepstakes promotion means an offer to participate in a sweepstakes.

WHAT HAPPENS ONCE I'VE FILLED OUT THE PAPERWORK?

After you complete the forms as directed in these instructions, you should present them to the court clerk. There is no fee for filing papers under the Elderly Persons and Persons with Disabilities Abuse Prevention Act.

WILL THERE BE A HEARING?

The court is required to hold a hearing on the day you file your papers or the next day that the court is open for business. The hearing may be done in person or, in some courts, by telephone. There is no hearing fee. The clerk will give you instructions about your hearing. The Respondent usually is not present at this hearing. At the hearing you can have witnesses to the abuse or adult protective services workers who have conducted an investigation testify concerning the abuse that you are complaining of.

If the judge decides that you qualify under the Elderly Persons and Persons with Disabilities Abuse Prevention Act, the judge must issue a Restraining Order. What protection the judge includes in the Restraining Order depends on what you ask for in the Restraining Order and the information the judge receives at the hearing.

Under the Elderly Persons and Persons with Disabilities Abuse Prevention Act, if you meet all of the eligibility criteria outlined above, the court can issue a Restraining Order to stop a Respondent from mailing sweepstakes promotions to you. The court can also order the Respondent to remove you from the Respondent's sweepstakes promotion mailing list. The court can also require the Respondent to refund any payment received after the date a Restraining Order is issued by the court.

HOW LONG DOES THE RESTRAINING ORDER LAST?

Once the judge signs the Restraining Order, it is in effect for one year unless it is ended earlier by the court at your request or unless the court renews it at your request. To renew the order, you must file the proper paperwork that can be obtained from the court.

WHO DO I SERVE WITH THE RESTRAINING ORDER AND HOW DO I SERVE THEM?

A copy of the Restraining Order must be "served on" (delivered to) the person or company that caused the sweepstakes promotions to be mailed to you. That person or company is called the "Respondent." The order must be given to the Respondent in person; or by mailing certified true copies of the petition and order by first class mail and by certified mail, return receipt requested, to the address to which you would have sent the payment for the goods or services promoted in the sweepstakes promotion; or in the manner directed by the court. There is no service fee when the sheriff's office serves the order. If you arrange to have a private process server serve the papers, you will need to pay any fees to the persons.

GUARDIAN PETITIONERS

A copy of the Petition and Order must also be given to (“served on”) the elderly or disabled person for whom you are guardian for ***within 72 hours after the court issues a restraining order***. The papers must be given “in person” by the sheriff or another person who is qualified to serve legal papers. ***You cannot serve the papers on the elderly or disabled person yourself***. The elderly or disabled person must also be served with a NOTICE containing a statement of their rights, together with an objection form that the elderly or disabled person may complete and mail to the court to request a hearing.

WHAT HAPPENS IF THE RESPONDENT OR ELDERLY/DISABLED PERSON REQUESTS A HEARING?

Within 30 days after receiving the Restraining Order, the Respondent or elderly/disabled person has the right to ask for a hearing. If such a request is made, the court must hold a hearing within 21 days following the request. If the Respondent or elderly/disabled person is represented by an attorney, the time for the hearing may be extended for up to five days to provide the other parties with time to seek legal representation. The judge may change or cancel the Restraining Order based on the information the judge receives at the second hearing.

The Respondent may request a hearing by filling out the "Respondent's Request for Hearing" portion of the “Notice to Respondent/Request for Hearing” form, and filing that form with the court clerk.

The elderly or disabled person may request a hearing by filling out the “Request for Hearing” portion of the “Notice to Elderly Person or Person with Disabilities/Objections and Request for Hearing” form, and personally filing or mailing that form to the court.

WHAT CAN I DO IF THE RESPONDENT DOES NOT OBEY THE RESTRAINING ORDER?

The Respondent can be arrested for violating the Restraining Order. The order will state the amount of security ("bail") to be posted if the Respondent is arrested for violating the order. The Respondent will be released if s/he is able to post 10 percent of this bail amount, but will still have to appear for trial. Violating a Restraining Order is contempt of court and is punishable by a fine of up to \$500 or one percent of Respondent's annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

There are also other things you may do to stay safe. When you receive this packet or when you file your papers with the court, you should receive information provided by the Seniors and Persons with Disabilities Division of the Department of Human Resources about the local adult protective services and local legal services available in your area. If you do not receive this information, ask the court clerk for a copy.

WHAT IF I NEED AN ACCOMMODATION OR AN INTERPRETER?

If you have a disability and need special help at the hearing or you are unable to speak English and need a foreign language interpreter at the hearing, you must notify the clerk immediately. You will need to tell the clerk specifically what specific disability you have and what type of assistance you need or prefer, or which language you speak.