# Chapter 15

## 1959 REPLACEMENT PART

# Commencement of Actions and Suits; Summons


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**15.010 Action provisions applicable to suits.** The provisions of ORS 15.020 to 15.080, 15.100 to 15.120, and 15.140 to 15.160 shall apply to and govern the mode of proceedings in suits as well as actions, except as otherwise provided by statute.

**15.020 How action is commenced; issuance of summons.** Action shall be commenced by filing a complaint with the clerk of the court. Any time after the action is commenced the plaintiff or his attorney may issue as many original summonses as either may elect and deliver one of such summonses to the sheriff of each county in which service on any defendant is desired.

**15.030 When jurisdiction is acquired; appearance.** From the time of the service of the summons, or the allowance of a provisional remedy, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

**15.040 Contents of summons; time to answer.** The summons shall contain the name of the court in which the complaint is filed, the names of the parties to the action, and the title thereof. It shall be subscribed by the plaintiff if the plaintiff is a resident of this state, or by a resident attorney of this state, either of whom shall state his residence or postoffice address thereon, and be directed to the defendant, and shall require him to appear and answer the complaint, as in this section provided, or judgment for want thereof will be taken against him. If the defendant is served within the county in which the action is commenced he shall appear and answer within 10 days from the date of the service, but if he is served in any other county in the state he shall appear and answer within 20 days from the date of the service.

**15.050 Summons must contain notice of demand.** There shall also be inserted in the summons a notice, in substance as follows:

(1) In any action for the recovery of money or damages only, that the plaintiff will take judgment for a sum specified therein, if the defendant fails to answer the complaint.

(2) In other actions, that if the defendant fails to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

**15.060 Officer or person to serve summons; return; indorsement of delivery date; compensation of person serving summons taxed as disbursements.** (1) The summons shall be served by the sheriff of the county where the defendant is found, or his deputy, or by any competent person over the age of 21 years who is a resident of the State of Oregon and is not a party to or an attorney in the action. The summons shall be returned to the clerk with whom the complaint is filed within 60 days after its delivery to the person for service, with proof of such service, or that the defendant cannot be found. A person, other than an officer, making such service shall make proof thereof by his affidavit in the same manner as provided in ORS 15.110. When served out of the county in which the action is commenced, the summons may be returned by mail. The person to whom the summons is delivered shall indorse thereon the date of such delivery.

(2) Compensation to such person serving the summons shall be equal to that as is prescribed by law for sheriffs who perform that service. This compensation shall be part of the disbursements and shall be recovered as provided in ORS 20.020. [Amended by 1955 c.165 §1]

**15.070 Procedure where defendant not found.** Whenever it appears by the return that the defendant is not found, the plaintiff may deliver another summons to be served, and so on, until service is had; or the plaintiff may proceed by publication, at his election.

**15.080 Upon whom summons and copy of complaint to be served.** The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared and certified by the plaintiff, his agent or attorney, or by the county clerk, as follows:

(1) If the action is against a private corporation, to the president or other head of the corporation, vice-president, secretary, cashier, assistant cashier or managing agent, or, in case none of such officers reside or have an office in the county where the cause of action arose, then to any attorney in fact who may have been designated by the corporation to receive and accept such service, or to any clerk or agent of the corporation who may reside or be found in the

county, or, if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent.

(2) If against any county, incorporated city, school district, or other public corporation, commission or board in this state, to the clerk or secretary thereof. If any such commission or board does not have a clerk or secretary, to any member thereof.

(3) If against a minor under the age of 14 years, to the minor personally, and also to his father, mother or guardian, or, if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

(4) If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom or for whose estate a guardian has been appointed, to such guardian and to the defendant personally.

(5) If against a person who has appointed some officer of this state his agent or attorney to receive and accept such service, then to such agent or attorney.

(6) In all other cases to the defendant personally, or, if he is not found, to some person of the family, above the age of 14 years, at the dwelling house or usual place of abode of the defendant.

**15.090 Service of copy of complaint in suits where there is more than one defendant.** When there is more than one defendant in a suit in equity, whether service of the summons is actual or constructive or both, a copy of the complaint need be delivered or mailed as the case may be, to only one of the defendants, such defendant to be designated therefor on the summons by the plaintiff or his attorney.

**15.100 Procedure where part of defendants are served; judgment against one or more of several defendants.** (1) When an action is against two or more defendants, and the summons is served on one or more, but not all of them:

(a) If the action is against defendants jointly indebted upon a contract, the plaintiff may proceed against the defendants served, unless the court otherwise directs; and if he recovers judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the persons of the defendants served; or,

(b) If the action is against defendants severally liable, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

(2) If all the defendants have been served, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendant, or defendants, if the action had been against them, or any of them alone.

**15.110 Personal service outside the state; time within which to answer.** (1) If the defendant is not within the state, and the court has jurisdiction of the subject matter of the action, the plaintiff may, as an equivalent of service by publication and in lieu thereof and of the affidavit and order therefor, and of the requirement for mailing a copy of the summons and complaint, cause a summons, together with a copy of the complaint certified by the plaintiff, his attorney or agent, or by the clerk of the court, personally to be served on the defendant outside the state.

(2) Such service outside the state may be made by any competent person over the age of 21 years not a party to the action, and proof thereof made by his affidavit stating the time and place of service, that he is a competent person over the age of 21 years, that he is not a party to the action, and that the person, firm or corporation so served is the identical one named as defendant in the action. The affidavit may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and his official seal, if he has one, shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of his official seal, if he has one, shall be prima facie evidence of his authority to take and certify such affidavit.

(3) The summons shall, where the defendant is within the United States, require the defendant to appear and answer within four weeks from the date of the service upon him, and where the defendant is outside the United States, to appear and answer within six weeks from the date of the

service upon him; and if he does not appear within such time judgment may be taken against him for want thereof. [Amended by 1955 c.293 §1]

**15.120 Service by publication; when authorized; contents of published summons.** (1) When service of the summons can not be made as prescribed in ORS 15.080, and the defendant after due dilligence can not be found within the state, and that fact appears by affidavit to the satisfaction of the court or judge thereof, or judge authorized to grant the order as provided in subsection (3) of this section, and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this state, the court or judge thereof, or judge authorized to grant the order, shall grant an order that the service be made by publication of a summons in any of the following cases:

(a) When the defendant is a foreign corporation and has property within the state, or the cause of action arose therein.

(b) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or with like intent keeps himself concealed therein, or has departed from the state and remained absent therefrom six consecutive weeks; provided, that if the defendant after due and diligent search cannot be found within the state, he shall be deemed to have kept himself concealed therein with intent to avoid the service of a summons.

(c) When the defendant is not a resident of the state but has property therein, and the court has jurisdiction of the subject of the action.

(d) When the defendant is a corporation organized under the laws of this state, and has property therein, and the court has jurisdiction of the subject of the action, and all the officers of such corporation are nonresidents of the state, or have removed therefrom, or have departed from the state and have remained absent therefrom six consecutive weeks.

(2) The summons published shall contain the name of the court, the title of the cause, a succinct statement of the relief demanded, the date of the order for service by publication and the time within which the defendant is required to answer the complaint.

(3) Where a suit, action or proceeding is pending in the circuit court of any county, the county judge, if any, of that county also is authorized, upon application, to grant an order in the suit, action or proceeding for service of summons by publication as provided in this section and in ORS 15.140, and such order when made and filed in the suit, action or proceeding shall have the same force and effect as though made by a circuit judge.

**15.130 Service of summons by publication in suits.** In addition to the cases enumerated in ORS 15.120, service of the summons in a suit may be made by publication in the following cases:

(1) When the subject of the suit is real or personal property in this state, and the defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein.

(2) When the suit is for divorce, or separation from bed and board, in all cases provided for in ORS chapter 107. [Amended by 1955 c.70 §1]

**15.140 Time and manner of publication; mailing; time for answer.** An order for publication of summons shall direct the publication to be made in a newspaper published in the county where the action is commenced, or, if no newspaper is published in the county, then in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for four weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it appears that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. The summons shall always specify the time prescribed in the order for publication and the date of the first publication. The time prescribed in the order shall begin to run from the day of first publication, and the defendant shall appear and answer on or before the last day of the time so prescribed, and if he does not appear judgment may be taken against him for want thereof.

**15.150 Defense, before or after judgment, by defendant served by publication.**

The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. The defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defend after judgment, and within one year after the entry of judgment, on such terms as may be just; and, if the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct; but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

**15.160 Proof of service of summons.** (1) Proof of service of summons, or of the deposit thereof in the post office, shall be as follows:

(a) If the service or deposit in the post office is by the sheriff or his deputy, or by a constable or marshal, the certificate of such officer; or,

(b) If by any other person, except those persons making proof of service as provided in ORS 15.060 or 15.110, his affidavit thereof; or,

(c) In case of publication, the affidavit of the owner, editor, publisher, manager or advertising manager of the newspaper or the principal clerk of any of them, or the printer or his foreman, showing the same; or,

(d) The written admission of the defendant.

(2) In case of service otherwise than by publication, the certificate, affidavit or admission must state the time and place of service; and in case of deposit in the post office the time and place thereof. In case of publication the affidavit may be in substantially the following form:

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Affidavit of Publication

State of Oregon,
County of———— } ss.

I, ——— ———, being first duly sworn, depose and say that I am the owner, editor, publisher, manager, advertising manager, principal clerk of the ——— ———, printer or his foreman of the ——— ———, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at ——— in the aforesaid county and state; that the ———, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for ——— successive and consecutive weeks in the following issues (here set forth dates of issues in which the same was published).

——— ———

Subscribed and sworn to before me this —— day of ——, 19——.

——— ———

Notary Public of Oregon.
My commission expires
—— day of ——, 19——.

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**15.170 Publication of summons against unknown heirs and unknown claimants.** (1) Upon presentation of an affidavit to the court or judge, showing to his satisfaction that the heirs of a deceased person are proper parties to the suit or action, and that their names and residences can not with reasonable diligence be ascertained, the court or judge may grant an order that service of summons be made on such "unknown heirs" by publication thereof in the same manner as in actions against nonresident defendants.

(2) Service of summons may be had upon all unknown persons or parties defendant proceeded against under ORS 13.070, by publication as provided by statute in cases of nonresident defendants.

**15.180 Rights of, and conclusiveness of judgment against, unknown heirs and claimants.** All unknown heirs of deceased persons, and all unknown persons or parties, served by publication, as provided in ORS 15.170, shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the suit or action shall proceed against such unknown heirs, or unknown persons or parties, in the same manner as against named defendants served by publication, and with like effect; and any such unknown heirs or unknown persons or parties who have or claim any right, estate, lien or interest in the real property in controversy, at the time of the commencement of the suit or action, duly served as aforesaid, shall be bound and concluded by the judgment or decree in the suit or action, if the same is in favor of the plaintiff therein, as effectually as if the suit or action was brought against such defendant

by name and constructive service of summons obtained.

**15.190 Motorist deemed to appoint Director of the Department of Motor Vehicles as agent for service of process; exception; manner of service; content of summons; continuances.** (1) The acceptance by a nonresident or foreign corporation, or by anyone on his or its behalf, or by any person for his own use and benefit, of the rights and privileges conferred by the laws of the State of Oregon to use the roads, highways and streets of this state, as evidenced by his or its operating, or causing to be operated on his or its behalf, a motor vehicle thereon, shall be deemed equivalent to an appointment by such person or foreign corporation of the Director of the Department of Motor Vehicles of Oregon to be his or its lawful attorney, upon whom may be served all summonses and processes against him or it growing out of any accident, collision or liability in which said motor vehicle may be involved while being operated upon such roads, highways and streets.

(2) Said acceptance or operation shall be a signification of his or its agreement that any summons or process against him or it which is so served shall be of the same legal force and validity as if served on him or it personally within this state; provided, however, that any foreign corporation maintaining an attorney in fact within this state shall be served with summons or process by service upon such attorney in fact in lieu of service upon the Director of the Department of Motor Vehicles under this section.

(3) When service of the summons or process cannot be made as prescribed in ORS 15.080, and the defendant after due diligence cannot be found within the state, and that fact appears by affidavit to the satisfaction of the court or judge thereof or the judge described in subsection (3) or ORS 15.120, service may be made by leaving a copy of the summons or process, with a fee of $2, in the hands of the Director of the Department of Motor Vehicles or in his office. Such service shall be sufficient and valid personal service upon said person or foreign corporation; provided, notice of such service and a copy of the summons or process is sent forthwith by registered mail by the plaintiff or his attorney to the defendant, at the most recent address furnished to the Director of the Department of Motor Vehicles at the time of making application for an operator's license or to the last-known address of the defendant, and the affidavit of plaintiff or his attorney of compliance with this section is appended to the process and entered as a part of the return thereof. However, personal service outside of the state in accordance with the statutes of Oregon relating to personal service of summons outside of the state shall relieve a plaintiff from mailing copies of the summons or process by registered mail.

(4) The summons provided for in this section shall require the defendant to appear and answer the complaint within four weeks after receipt thereof by the Director of the Department of Motor Vehicles. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

[Amended by 1955 c.287 §15; subsection (5) of 1955 part derived from 1955 c.287 §§33, 34; 1959 c.440 §1]

**15.200 Taxing service fees as costs; keeping record of summonses issued; disposition of fees.** (1) The fee of $2 paid by the plaintiff to the Director of the Department of Motor Vehicles under ORS 15.190 and the service shall be taxed in his costs if he prevails in the action.

(2) The director shall keep a record of all summonses or processes served pursuant to ORS 15.190, which shall show the day and hour of service.

(3) Fees paid to the Department of Motor Vehicles under ORS 15.190 and this section shall be deposited by the department to the credit of the General Fund.

[Amended by 1955 c.287 §16; subsection (3) of 1955 part derived from 1955 c.287 §§33, 34; 1959 c.440 §2]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel