# Chapter 12

## 1963 REPLACEMENT PART

# Limitations of Actions and Suits


**12.010 Time of commencing actions; objection by answer**
**12.020 When action deemed begun**
**12.030 Attempt to begin action**
**12.040 Limitations of suits generally; land patent suits; defense of possession by equitable title; suits on new promise, fraud or mistake**
**12.050 Within 10 years; recovery of real property**
**12.060 Land contracts; time when they cease to affect the property**
**12.070 Within 10 years; action on judgment, decree or sealed instrument**
**12.080 Within six years**
**12.090 Mutual accounts; accrual of cause of action**
**12.100 Within three years**
**12.110 Within two years; determination of period in action for fraud or deceit**
**12.120 Within one year**
**12.130 Within one or two years; action for penalty**
**12.140 Within 10 years; causes not otherwise provided for**
**12.150 Suspension of running of statute by absence or concealment**
**12.160 Suspension as to persons under disability**
**12.170 Disability must exist when right of action accrues**
**12.180 Coexisting disabilities must all be removed**
**12.190 Suspension by death; revival; maximum limitation on claim against decedent's estate**
**12.200 Suspension by war as to alien**
**12.210 Suspension by injunction or prohibition of statute**
**12.220 Commencement of new action within one year after dismissal or reversal**
**12.230 Acknowledgment or promise taking case out of statute; effect of payment**
**12.240 Effect of payment after obligation becomes due**
**12.250 Actions by state, county, or public corporations**
**12.260 Action barred, when barred in another jurisdiction**


## CROSS REFERENCES

Claims against the state to be presented for settlement within two years, 293.325

**12.010**

Bank or trust upon discontinuing business, asserting claims against, 709.400, 709.420, 711.220, 711.230
Common carrier employes, overworking, recovery of penalty for, 764.040
Corporate existence after dissolution for purposes of suit, 57.630
Defenses not waived by answering over, 16.330
Escheated decedent's property, recovery of, 120.130
Escheated inmates property, recovery of, 120.230
Lien against judgment in favor of welfare recipient, 416.110
Liens against boats or vessels, actions for, 783.170
Pesticides, actions for damages resulting from application of, 573.210
Post-conviction relief, 138.510 to 138.680
Savings and loan association upon, asserting claims against, 722.750, 722.760
Time within which an act is to be done, computing, 174.120
Title obtained by county by tax foreclosure, attacking validity, 312.230
Torrens Act, actions for damages or loss occasioned under, 94.725

**12.020**

Commencement of actions, 15.020

**12.040**

Actions based on damages resulting from changing grades on roads, 105.755, 105.760
Adverse claims to realty, suits to determine, 105.605, 105.610
Court decrees under Torrens Act, asserting interests in realty contrary to, 94.115
Dower or curtesy, recovery of, 113.090
Mortgage debt, effect of part payment of, 88.120
Mortgage lien on realty, duration of, 88.110
Servicemen, suspending foreclosures on, during wartime, 408.440
Tax foreclosures on realty, contesting the validity of, 312.230
Torrens Act, asserting interests existing prior to registration of land, 94.120

**12.050**

Adverse possession of public streets, highways, parks, etc., does not extinguish title, 221.750, 368.620
Court decree under Torrens Act, asserting interests contrary to, 94.115
Delinquent municipal liens, recovery of realty sold for, 223.585, 223.590
Dower or curtesy, recovery of, 113.090
Easement of public way acquired by adverse user, 368.405
Materials unlawfully removed from beds of navigable waters, recovery of damages, 274.605
Mortgage payment, conclusive presumption of, 88.110
Registration of title to realty, effect on adverse possession, 94.220
Streets, contesting the closing or dead-ending of, 373.060
Tax foreclosures on realty, contesting validity of, 312.230
Telegraph poles, damages caused by erection of, 772.220
Torrens Act, asserting interests existing prior to registration under, 94.120

**12.060**

Mortgages, when they cease to affect the property, 88.110, 88.120

**12.070**

Actions on:
- Bond given by debt consolidating agency, 697.750
- Bond given on public contract, 279.536
- Bond of guardian, 126.171

Revival of judgment lien, 18.360

**12.080**

Common carrier's liability for charges, 760.540, 760.545

Delinquent eastern Oregon timber severance taxes, collection, 321.465

Security sales made in violation of statute, recovery on, 59.250

Servicemen, suspending an action on a mortgage debt, during wartime, 408.440

Telegraph poles, damages caused by erection of, 772.220

Wife's liability for family expenses, 108.040

**12.140**

See cross references under ORS 12.010

**12.160**

Guardian, recovery of property sold by, 126.485

Torrens Act, disabilities under, 94.725

Will contests, extension of time by disabilities, 115.180

**12.190**

Abatement of actions, 13.080, 30.100

Executor or administrator, actions against, may not be brought until 120 days after granting of letters, nor until claim has been rejected, 121.080, 121.090

Survival of causes of action, 30.020, 30.080, 121.010, 121.020

**12.220**

Reopening of probate proceedings, 117.560

**12.230**

Effect of part payment of mortgage debt, 88.120

**12.240**

Effect of part payment of mortgage debt, 88.120

**12.250**

Change in grade of street or highway, actions against state or county for damages caused by, 105.755, 105.760

Escheat proceedings, persons not made a party may sue the state, 120.130

Public use of roads, etc., not extinguished by adverse possession, 221.750, 368.620

Streets, contesting closing or dead-ending of, 373.060

**12.010 Time of commencing actions; objection by answer.** Actions at law shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute. The objection that the action was not commenced within the time limited shall only be taken by answer, except as provided in ORS 16.260.

**12.020 When action deemed begun.** For the purpose of determining whether an action has been commenced within the time limited, an action shall be deemed commenced as to each defendant, when the complaint is filed, and the summons served on him, or on a codefendant who is a joint contractor, or otherwise united in interest with him.

**12.030 Attempt to begin action.** An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the complaint is filed, and the summons delivered, with the intent that it be actually served, to the sheriff or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt shall be followed by the first publication of the summons, or the service thereof, within sixty days.

**12.040 Limitations of suits generally; land patent suits; defense of possession by equitable title; suit on new promise, fraud or mistake.** (1) A suit shall only be commenced within the time limited to commence an action as provided in this chapter; and a suit for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property.

(2) No suit shall be maintained to set aside, cancel, annul or otherwise affect a patent to lands issued by the United States or this state, or to compel any person claiming or holding under such patent to convey the lands described therein, or any portion of them, to the plaintiff in such suit, or to hold the same in trust for, or to the use and benefit of such plaintiff, or on account of any matter, thing or transaction which was had, done, suffered or transpired prior to the date of such patent, unless such suit is commenced within ten years from the date of such patent.

(3) This section shall not bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action, or set up by bill in equity to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by bill for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred.

(4) In a suit upon a new promise, fraud or mistake, the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake.

**12.050 Within 10 years; recovery of real property.** An action for the recovery of real property, or for the recovery of the possession thereof, shall be commenced within 10 years. No action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seised or possessed of the premises in question within 10 years before the commencement of the action.

**12.060 Land contracts; time when they cease to affect the property.** (1) Unless suit or action to enforce a contract for the sale of real property is instituted in the county in which the real property is situated within five years from the date of maturity of the final payment provided for in the contract, or from the date to which the final payment shall have been extended by agreement of record, the contract shall not thereafter be a lien, encumbrance, or cloud on the title of the property.

(2) When the purchase price fixed in the contract is payable in instalments, the con-

tract shall be deemed to mature on the date upon which the final payment would be payable if the minimum amount of the principal due on each instalment had been paid as provided in the terms of the contract.

**12.070 Within 10 years; action on judgment, decree or sealed instrument.** (1) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States; or

(2) An action upon a sealed instrument

shall be commenced within 10 years.

**12.080 Within six years.** (1) An action upon a contract or liability, express or implied, excepting those mentioned in ORS 12.070 and 12.110 and except as otherwise provided in ORS 72.7250;

(2) An action upon a liability created by statute, other than a penalty or forfeiture, excepting those mentioned in ORS 12.110;

(3) An action for waste or trespass upon real property; or

(4) An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof;

shall be commenced within six years. [Amended by 1957 c.374 §3; 1961 c.726 §396]

**12.090 Mutual accounts; accrual of cause of action.** In an action to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

**12.100 Within three years.** (1) An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution, but not including an action for an escape; or

(2) An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state, excepting those actions mentioned in ORS 12.110,

shall be commenced within three years. [Amended by 1957 c.374 §4]

**12.110 Within two years; determination of period in action for fraud or deceit.** (1) An action for assault, battery, false imprisonment, for criminal conversation, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

(2) An action upon a statute for a forfeiture or penalty to the state or county shall be commenced within two years.

(3) An action for overtime or premium pay or for penalties or liquidated damages for failure to pay overtime or premium pay shall be commenced within two years. [Amended by 1957 c.374 §1]

**12.120 Within one year.** (1) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; or

(2) An action for libel or slander

shall be commenced within one year. [Amended by 1957 c.374 §2]

**12.130 Within one or two years; action for penalty.** An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense; and if the action is not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the state, by the district attorney of the county where the offense was committed or is triable.

**12.140 Within 10 years; causes not otherwise provided for.** An action for any cause not otherwise provided for shall be commenced within 10 years.

**12.150 Suspension of running of statute by absence or concealment.** If, when a cause of action accrues against any person, he is out of the state or concealed therein, such action may be commenced within the applicable period of limitation in this chapter after his return into the state, or the time of his concealment; and if, after a cause of action has accrued against a person, he shall depart from and reside out of this state, or

conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

**12.160 Suspension as to persons under disability.** If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050 or 12.070 to 12.260 is:

(1) Within the age of 21 years,

(2) Insane, or

(3) Imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life,

the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.

**12.170 Disability must exist when right of action accrues.** No person shall avail himself of a disability unless it existed when his right of action accrued.

**12.180 Coexisting disabilities must all be removed.** When two or more disabilities coexist at the time the right of action accrues, the limitation shall not attach until all are removed.

**12.190 Suspension by death; revival; maximum limitation on claim against decedent's estate.** If a person entitled to bring an action dies before the expiration of the time limited for its commencement, and the cause of action survives, an action may be commenced by his personal representatives after the expiration of the time, and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for its commencement, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration; but no suit or action for collection of any claim against the estate of a decedent may be maintained, when no letters testamentary or of administration shall have been issued before the expiration of six years after the death of the decedent.

**12.200 Suspension by war as to alien.** When a person is an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

**12.210 Suspension by injunction or prohibition of statute.** When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

**12.220 Commencement of new action within one year after dismissal or reversal.** Except as otherwise provided in ORS 72.7250, if an action is commenced within the time prescribed therefor and the action is dismissed upon the trial thereof, or upon appeal, after the time limited for bringing a new action, the plaintiff, or if he dies and any cause of action in his favor survives, his heirs or personal representatives, may commence a new action upon such cause of action within one year after the dismissal or reversal on appeal; however, all defenses that would have been available against the action, if brought within the time limited for the bringing of the action, shall be available against the new action when brought under this section.

[Amended by 1961 c.726 §397]

**12.230 Acknowledgment or promise taking case out of statute; effect of payment.** No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

**12.240 Effect of payment after obligation becomes due.** Whenever any payment of principal or interest is made after it has become due, upon an existing contract, whether it is a bill of exchange, promissory note, bond, or other evidence of indebtedness, the limitation shall commence from the time the last payment was made.

**12.250 Actions by state, county, or public corporations.** Unless otherwise made applicable thereto, the limitations prescribed in

this chapter shall not apply to actions brought in the name of the state, or any county, or other public corporation therein, or for its benefit.

**12.260 Action barred, when barred in another jurisdiction.** When the cause of action has arisen in another state, territory or country, between nonresidents of this state, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this state.

**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 December 1, 1963.

Sam R. Haley
Legislative Counsel