Chapter 13

1961 REPLACEMENT PART
(1963 reprint)

Parties

DESIGNATION

13.010 Parties, how designated
13.020 Designating defendant by fictitious name; substitution of true name
13.030 Real party in interest; except fiduciary
13.041 Appearance of minor parties by guardian
13.051 Appearance of incompetent parties by guardian
13.060 Designation of unknown heirs in actions and suits relating to real property
13.070 When unknown claimants are proper parties
13.080 Nonabatement of action or suit by death, disability or transfer; continuing proceedings
13.090 Death of party after verdict does not abate action for wrong

JOINDER

13.110 When new parties must be brought in
13.120 Interpleader
13.130 Intervention
13.140 Joinder of persons severally liable
13.150 Joinder of owners in actions or suits relating to real property; owners of separate parcels
13.160 Permissive joinder as plaintiffs or defendants
13.170 Compulsory joinder; representative suits

CROSS REFERENCES

Delinquent cooperative, suits by and against, 62.835
Delinquent corporation, suits by and against, 57.779
State, county or public corporation, when may be party plaintiff or defendant, 30.310, 30.320, 30.360
State Tax Commission as party in cases involving state tax liens, 305.130

13.010

Contempt proceedings, state is plaintiff in, 33.060
State, when a party, to be designated "State of Oregon," 16.760

13.020

Unknown parties to suits respecting exercise of trustee's powers, 128.120, 128.140

13.030

Assignee of beneficial interest in marine insurance policy may sue in own name, 745.350
Assignee of cause of action of dissolved corporation may sue in own name, 57.585, 57.735, 62.690
Assignee's power to sue the state or public corporation restricted, 30.380
Attorney General necessary plaintiff to injunction or receivership proceeding against fraternal benefit societies, 740.350
Conservator, authority to sue for debts due his ward, 126.636, 126.270
Contempt proceedings, plaintiff in, 33.060
Cooperative corporation, effect of merger or consolidation, 62.620
Corporation's merger, effect of, 57.480
County actions and suits controlled by county court, 30.340
Guardian, appointment of, 126.106 to 126.186
Person having interest in real property affected by changing grades on roads, 105.755, 105.760
Receiver for delinquent insurer domiciled in another state may sue in this state, 751.100
State Treasurer authorized to institute actions to collect fines, penalties, forfeitures and escheats due the state, 178.080
Substitution in actions of a party erroneously presumed dead, 120.390
Superintendent of Banks, power to maintain actions against stockholders, 711.495

13.041

Guardian, appointment of, 126.106 to 126.186

13.051

Guardian ad litem for proceedings for commitment of an insane or mentally deficient person to a state institution, 179.640

13.060

Joinder of outstanding interests in partition suits, 105.220
Joinder of senior and junior lienors in foreclosure proceedings, 88.030
Service on unknown heirs, 15.170, 15.180
Unknown parties to suits respecting exercise of trustee's powers, 128.120, 128.140

13.080

Continuance of actions against municipal corporations after merger, 222.700
Continuance of action under Wrongful Death Act after death of wrongdoer, 30.100
Cooperative corporation, life continued for purpose of being sued after dissolution, 62.710
Corporate life continued after dissolution for purposes of being sued, 57.630
Corporation's change of name not to abate suit, 57.380
Corporation's suspension for delinquency not to abate suit, 57.779
Survival of causes of action, 30.020, 30.080, 121.010, 121.020
Survival of causes of suit, 121.220

13.110

Adverse claims to realty, parties to suit to determine, 105.605
Condemnation proceedings, proper parties to, 35.030, 35.080, 223.130
Continuance of actions against municipal corporations after merger, 222.700
Creditor's suit against heirs or devisees to collect debts of ancestor, 121.290

Fishermen's actions for lien for wages, joinder of, 87.215
Limited partner not a proper party to actions against the partnership; exceptions, 69.080
Loggers' claims for liens, joinder of, 87.655
Mechanic's liens, joinder of persons affected by foreclosure of, 87.060
Mine liens, persons affected by enforcement of, 87.165
Partition suits, joinder of outstanding interests, 105.220
Railroad charges, action on an award for, 760.550
Realty foreclosures proceedings, joinder of all lienors in, 88.030
Water rights, necessary parties to suit to determine, 541.310
Welfare recipient, perfection of lien against judgment in favor of, 416.550

13.120

Pawnbrokers can force redemptioners to interplead, 726.370
Substituting landlord for tenant in actions for possession of realty, 105.020
Warehousemen's right to interplead adverse claimants, 77.6030

13.130

Joinder of:
Fishermen's actions for liens for wages by intervention, 87.215
Loggers' claims for liens by intervention, 87.655
Landlord intervening in action against tenant for possession of realty, 105.020

13.140

Liability of husband and wife for family expenses, 108.040
Limited partner not a proper party to actions against the partnership; exceptions, 69.080
Taking judgment against defendants severally liable, 15.100

13.150

Adverse claims to realty, parties to suit to determine, 105.605
Joinder of:
Causes of suit involving the same realty, 88.020
Lienors in foreclosure proceedings, 88.030
Parties to suits respecting trustee's powers, 128.120
Mechanic's liens, persons affected by foreclosure of, 87.060
Partition suits, joinder of outstanding interest in, 105.220
Person in actual possession necessary party to action for possession of realty, 105.005

13.160

Joinder of:
Causes of suit involving the same realty, 88.020, 105.605
Employes' claims for unpaid wages and liquidated damages, 652.230
Lienors in realty foreclosures, 88.030
Limited partner in actions against the partnership; exceptions, 69.080
Loggers' claims for liens, 87.655
Persons affected by mechanic's lien foreclosures, 87.060
State in actions involving liens on realty, 30.360
Mine liens, persons affected by foreclosure of, 87.165
Railroad, award for wrongful charges, persons affected by, 760.550
Superintendent of Banks, joinder of stockholders in action by, 711.495
Trustee's powers, parties to suits respecting exercise of, 128.120

13.170

Attorney General necessary plaintiff to injunction or receivership proceeding against fraternal benefit societies, 740.350
Joinder of:
Heirs in creditor's suit to collect debts of ancestor, 121.290
Lienors in realty foreclosures, 88.030
Necessary parties in condemnation proceedings, 35.030, 35.080, 223.130
Outstanding interests in partition suits, 105.220
Parties to suits respecting exercise of trustee's powers, 128.120
Parties to suits to determine water rights, 541.310

DESIGNATION

13.010 Parties, how designated. In an action, suit or special proceeding the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

13.020 Designating defendant by fictitious name; substitution of true name. In an action or suit when the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

13.030 Real party in interest; except fiduciary. Every action or suit shall be prosecuted in the name of the real party in interest, except that an executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action or suit is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section. This section does not authorize the assignment of a thing in action not arising out of contract.

13.040 [Repealed by 1961 c.344 §109]

13.041 Appearance of minor parties by guardian. When a minor who has a general guardian is a party to any action, suit or proceeding, he shall appear by the general guardian or, if the court orders, by a guardian ad litem appointed by the court in which the action, suit or proceeding is brought. If the minor does not have a general guardian, he shall appear by a guardian ad litem ap-

pointed by the court. The court shall appoint some suitable person to act as such guardian ad litem:

(1) When the minor is plaintiff, upon application of the minor, if the minor is 14 years of age or older, or upon application of a relative or friend of the minor if the minor is under 14 years of age.

(2) When the minor is defendant, upon application of the minor, if the minor is 14 years of age or older, filed within the period of time specified by law for appearance and answer after service of summons, or if the minor fails so to apply or is under 14 years of age, upon application of any other party or of a relative or friend of the minor.
[1961 c.344 §96]

13.050 [Repealed by 1961 c.344 §109]

13.051 Appearance of incompetent parties by guardian. When an incompetent who has a general guardian is a party to any action, suit or proceeding, he shall appear by the general guardian or, if the court orders, by a guardian ad litem appointed by the court in which the action, suit or proceeding is brought. If the incompetent does not have a general guardian, he shall appear by a guardian ad litem appointed by the court. The court shall appoint some suitable person to act as such guardian ad litem:

(1) When the incompetent is plaintiff, upon application of a relative or friend of the incompetent.

(2) When the incompetent is defendant, upon application of a relative or friend of the incompetent filed within the period of time specified by law for appearance and answer after service of summons, or if such application is not so filed, upon application of any party other than the incompetent.
[1961 c.344 §97]

13.060 Designation of unknown heirs in actions and suits relating to real property. When the heirs of any deceased person are proper parties defendant to any suit or action relating to real property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of "the unknown heirs" of the deceased.

13.070 When unknown claimants are proper parties. In any suit or action to determine any adverse claim, estate, lien or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such suit or action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien or interest in the real property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, estate, lien or interest in the real property described in the complaint herein."

13.080 Nonabatement of action or suit by death, disability or transfer; continuing proceedings. No action or suit shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survives or continues. In case of the death or disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or suit to be continued by or against his personal representatives or successors in interest.

13.090 Death of party after verdict does not abate action for wrong. An action for a wrong shall not abate by the death of any party, after a verdict has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

13.100 [Reserved for expansion]

JOINDER

13.110 When new parties must be brought in. In actions or suits the court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

13.120 Interpleader. In any action or suit for the recovery of specific personal property, if a third person demands of the defendant the same property, the court in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party, and substitute such person in his place as defendant. The order shall not be made except on the condition that the defendant deliver the property or its value to such person as the court may direct, and unless it appears from the affidavit of the defendant, filed with the clerk by the day

he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

13.130 Intervention. At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. Intervention takes place when a third person is permitted to become a party to a suit, action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant. Intervention is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it within 10 days from the service thereof, if served within the county wherein the suit, action or proceeding is pending, or within 20 days if served elsewhere.

13.140 Joinder of persons severally liable. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action or suit, at the option of the plaintiff.

13.150 Joinder of owners in actions or suits relating to real property; owners of separate parcels. In suits and actions relating to the title to real property or the right to the possession thereof, owners in common taking their titles directly by the same written instrument or by inheritance directly from the same common ancestor may be joined as plaintiff or defendant, as the case may be. In case a defect in, or cloud on, the title to real property affects more than one parcel thereof separately owned, the owners may be joined as parties plaintiff or defendant in any suit to quiet title to the parcel owned by each. This section shall not cut off any right of joinder of parties which otherwise existed heretofore.

13.160 Permissive joinder as plaintiffs or defendants. All persons having an interest in the subject of a suit, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided by statute. Any person may be made a defendant to a suit who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved.

13.170 Compulsory joinder; representative suits. Parties to a suit who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason being stated in the complaint. When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impractical to bring them all before the court, one or more may sue or defend for the benefit of the whole.

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, 1961.

Sam R. Haley
Legislative Counsel