Chapter 93

1965 REPLACEMENT PART

Conveyancing and Recording

GENERAL REQUIREMENTS FOR DISPOSITION OF REALTY

93.010 Conveyances, how made
93.020 Creating, transferring or declaring estates or interests in realty

SPECIAL MATTERS IN PARTICULAR CONVEYANCES

93.110 Quitclaim deed sufficient to pass estate
93.120 Words of inheritance unnecessary to convey fee; conveyances deemed to convey all grantor's estate
93.130 Conveyance of land in adverse possession of another
93.140 No implied covenants
93.150 Conveyance by tenant of greater estate than that possessed
93.160 Conveyance by reversioners and remaindermen to life tenant vests fee
93.170 Conveyance by spouse of insane person
93.180 Tenancy in common, when created; joint tenancy abolished
93.190 Trustees or executors as joint tenants; filling vacancies in office
93.200 Trustees or executors now hold as joint tenants
93.210 Presumption respecting deed from trustee of undisclosed beneficiary
93.220 Release, limitation or restriction of power of appointment
93.230 Copy of State Land Board deed or patent given when original lost
93.240 Rights of sellers to deferred or unpaid balance of purchase price where two or more persons join as sellers in contract of sale of real property

UNIFORM VENDOR AND PURCHASER RISK ACT

93.290 Risk of loss after contract to sell realty has been executed
93.295 Construction of ORS 93.290 to 93.300
93.300 Short title

DESCRIPTIONS, INCLUDING THE OREGON COORDINATE SYSTEM

93.310 Rules for construing description of real property
93.320 Oregon Coordinate System; zones
93.330 Definition
93.340 Use of terms in land description
93.350 Plane coordinates
93.360 Coordinates exempted from recordation
93.370 Description as supplemental; conflict in description
93.380 Purchaser or mortgagee not required to rely on description

EXECUTION, ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

93.410 Execution and acknowledgment of deeds
93.415 Acknowledgment by married woman
93.420 Execution of deed where personal representative is unable or refuses to act
93.430 Officer taking acknowledgment must know grantor
93.440 Proof of execution by subscribing witness
93.450 Proof where witnesses are dead or absent
93.460 Subpena to compel witness to testify to execution of deed
93.470 Indorsement of certificate of proof
93.480 Deed acknowledged or proved as evidence; recordability
93.490 Form of acknowledgments
93.500 Execution and acknowledgment of deed in other states
93.510 Necessity for certificate acknowledging officer's authority in another state
93.520 Execution and acknowledgment of deeds in foreign countries
93.530 Execution, acknowledgment and recordation of assignments of sheriffs' certificates of sale

RECORDATION AND ITS EFFECTS

93.610 Separate books for recording deeds and mortgages
93.620 Time and place of receipt for record; certification
93.630 Index of records of deeds and mortgages
93.640 Unrecorded conveyance or assignment of sheriff's certificate of sale void as to subsequent purchaser
93.650 Effect of record or certified transcript in evidence
93.660 Effect of abstract of title as evidence
93.670 Power of attorney and executory contract for sale or purchase of lands; recordability; effect as evidence; revocation
93.680 Patents, decrees in equity and official grants, recordability; evidence
93.690 Recording of instruments evidencing passage of title to land from United States to the State of Oregon
93.710 Instruments creating certain interests in realty; effect of recording
93.720 Certificates of foreclosure; entry of record
93.730 Recordation of decrees in other counties
93.740 Notice of lis pendens; contents; recordation; effect; discharge
93.750 Recordability of telegraphic copies of powers of attorney and other acknowledged instruments
93.760 Recordability of documents, orders and decrees of the United States District Court
93.770 Recordability of petitions, orders and decrees under National Bankruptcy Act

VALIDATING AND CURATIVE ACTS

93.810 Validating and curative Acts

PENALTIES

93.990 Penalties

CROSS REFERENCES

Cemetery lots, conveyancing of, Ch. 97
Conveyances between spouses, 108.090
Cooperative corporation interests in realty, effect of merger or consolidation, 62.160
Cooperative corporation realty, conveyance of, 62.125, 62.165
Corporate interests in realty, effect of merger or consolidation, 57.480
Corporate realty, conveyance of, 57.030
County clerks, duties of, Ch. 205
Employes' trusts, 128.520
Escrows, regulation, 696.505 to 696.580
Farm land specially taxed, recordation, 308.385
Fees for recording, indexing and certifying copies of instruments, Ch. 205
Fraudulent conveyances, Ch. 95
Fraudulent intent, conveyance with, as a crime, 165.220
Guardian conveying ward's real property, 126.285, 126.406 to 126.495
Limited partnership realty, conveyance of, 69.090
Mining claims, recordation and conveyancing, 517.090
Partnership realty, conveyance of, 68.130, 68.220
Presumption of conveyance by person under a duty to convey, 41.360(38)
Recorder of conveyances, duties of, Ch. 205
Recording or approval prior to sale or transfer of subdivision lots, 92.016, 92.025
Reforestation land or forest crop thereon, notice to tax collector, State Forester, and State Tax Commission required before transfer, 321.295 (2)
Restraining disposition of realty after commencement of suit for divorce or annulment, 107.090
Subdivided property, controlling sales and leases of, 92.210 to 92.390
Subdivision plat, donation or grant to public, construction of, 92.150
Title obtained by county in tax foreclosure, proceedings affecting, 312.214 to 312.230
Trust deed, foreclosure of, 86.710
Trustee conveying property of missing person, 127.070
Trustee's deed:
Interest conveyed to purchaser, 86.755
Land, acreage description, 86.705
Unit ownership, deed for unit of property subject to, 91.565, 91.605
Water rights, transfer of, Ch. 540

93.010

Conveyance of land mortgaged to state as security for loan from Oregon War Veterans' Fund, necessity of purchaser covenanting to assume mortgage to validity of, 407.070
Unit ownership, conveyance of unit of property subject to, 91.605

93.020

Statute of frauds relating to realty agreements, 41.580

93.120

Registered land, use of "heirs and assigns," 94.135

93.180

Partition by tenants in common, 105.205
Permanent separation of spouses changes tenancy by entirety to tenancy in common, 107.280

93.410

Clerk of Supreme Court taking acknowledgments, 8.120
County clerk taking acknowledgments, 205.110
Execution of instrument defined, 42.020
Subdivisions, conveyance of lots in, 92.310

93.610

Assignment of mortgage, recordability, 86.080
County clerks and recorders of conveyances, duties of, Ch. 205
Declaration and floor plans for property subject to unit ownership, 91.540
Discharge of encumbrances on unit subject to unit ownership, 91.570
Discharge of mortgage of record, 86.090 to 86.130

93.640

Application to chattel mortgages, 86.330
Mechanic's lien as prior to unrecorded mortgage or other encumbrance, 87.025
Priority between judgment lien and unrecorded conveyance, 18.370

93.650

Effect of photocopy of public record, 192.050, 192.070
Proof of public record of private writing, 43.340

93.670

Filing power of attorney as to registered land, 94.370

93.690

State Land Board's instruments and copies, recordability and effect as evidence, 273.555, 273.575

93.710

Interpretation of 1963 amendments, 1963 c.416 §2

93.730

Docketing judgment in other counties, 18.320

93.740

Registered land, filing notice of lis pendens affecting, 94.515

93.810

Aliens, property rights, Const. Art. I, § 31
Repeal of validating or curative statutes, effect of, 174.070
Stability of title obtained by county in past and future tax foreclosures, 312.214

GENERAL REQUIREMENTS FOR DISPOSITION OF REALTY

93.010 Conveyances, how made. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person of lawful age from whom the estate or interest is intended to pass, or by his lawful agent or attorney, and acknowledged or proved, and recorded without any other act or ceremony. No seal of the grantor, corporate or otherwise, shall be required on the deed.
[Amended by 1965 c.502 §4]

93.020 Creating, transferring or declaring estates or interests in realty. (1) No estate or interest in real property, other than a lease for term not exceeding one year, nor any trust or power concerning such property, can be created, transferred or declared otherwise than by operation of law or by a conveyance or other instrument in writing, subscribed by the party creating, transferring or declaring it, or by his lawful agent under written authority, and executed with such formalities as are required by law.

(2) This section does not affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent a trust from arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel the specific performance of an agreement in relation to such property.

93.030 to 93.100 [Reserved for expansion]

SPECIAL MATTERS IN PARTICULAR CONVEYANCES

93.110 Quitclaim deed sufficient to pass estate. A deed of quitclaim and release, of the form in common use, is sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

93.120 Words of inheritance unnecessary to convey fee; conveyances deemed to convey all grantor's estate. The term "heirs," or other words of inheritance, is not necessary to create or convey an estate in fee simple. Any conveyance of real estate passes all the estate of the grantor, unless the intent to pass a lesser estate appears by express terms, or is necessarily implied in the terms of the grant.

93.130 Conveyance of land in adverse possession of another. No grant or conveyance of lands or interest therein is void for the reason that at the time of its execution the lands were in the actual possession of another claiming adversely.

93.140 No implied covenants. No covenant shall be implied in any conveyance of real estate, whether it contains special covenants or not.

93.150 Conveyance by tenant of greater estate than that possessed. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possesses or could lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the estate which the tenant could lawfully convey.

93.160 Conveyance by reversioners and remaindermen to life tenant vests fee. Where real property has been devised to a person for life, and in case of the death of the life tenant without leaving lawful issue born alive and living at the time of his death, then to other heirs of the testator, a conveyance to the life tenant from all reversioners or remaindermen and all issue of the life tenant as are in being, of all their interest in the real property, vests a fee simple estate in the life tenant.

93.170 Conveyance by spouse of insane person. If a spouse is adjudged insane by a court having jurisdiction, and is committed to a public insane asylum, during the continuance of such disability the other spouse may convey any real estate owned in his or her sole right, and acquired after the other spouse has been committed to the insane asylum, in the same manner as though they had never been married. Such conveyance conveys the title thereto free from all estate by the curtesy or in dower. However, in such cases neither has the power to convey any real estate held and owned jointly, except by proper proceedings in the probate court after the appointment of a guardian for the insane person. Any deed executed under this section shall be accompanied by the certificate of the superintendent of the insane asylum in which the person is detained, to the effect that such person is under such disability.

93.180 Tenancy in common, when created; joint tenancy abolished. Every conveyance or devise of lands, or interest therein, made to two or more persons, other than to executors and trustees, as such, creates a tenancy in common unless it is expressly declared in the conveyance or devise that

the grantees or devisees take the lands as joint tenants. Joint tenancy is abolished and all persons having an undivided interest in real property are to be deemed and considered tenants in common.

93.190 Trustees or executors as joint tenants; filling vacancies in office. (1) Every conveyance, deed of trust, mortgage or devise of an interest or lien in or upon real or personal property to two or more persons as trustees or executors, creates a joint tenancy in such interest or lien in the trustees or executors unless it is expressly declared in the conveyance, deed of trust, mortgage or devise that the trustees or executors shall take or hold the property as tenants in common or otherwise.

(2) If the conveyance, deed of trust, mortgage or devise provides for filling any vacancy in the office of trustee or executor, it may be filled as therein provided excepting that a court of competent jurisdiction may fill a vacancy in the trusteeship according to the established rules and principles of equity. In whichever way the vacancy is filled the new trustee shall hold the property with all powers, rights and duties of an original trustee unless otherwise directed by conveyance, deed of trust, mortgage or devise, or order or decree of the court. No vacancy in an executorship shall be filled without an order therefor by a county court sitting in probate as in the case of an original appointment of an executor.

93.200 Trustees or executors now hold as joint tenants. All trustees or executors holding real or personal property in trust on May 19, 1905, hold as joint tenants and not as tenants in common unless the conveyance, deed of trust, mortgage or devise, or order or decree of court creating or appointing the trustees or executors has declared otherwise.

93.210 Presumption respecting deed from trustee of undisclosed beneficiary. If a deed to real estate has been made to a grantee in trust or designating the grantee as trustee, and no beneficiary is indicated or named in the deed, a deed thereafter executed by such grantee conveying the property is presumed to have been executed with full right and authority and conveys prima facie title to the property. The grantee in the last-mentioned deed is under no duty whatsoever to see to the application of the purchase price. If the last-mentioned deed is recorded after June 7, 1937, after five years from its recording or, if it was recorded prior to June 7, 1937, then after June 7, 1942 the presumption is conclusive as to any undisclosed beneficiary and the title to the real estate, based upon the last-mentioned deed, shall not be called in question by any one claiming as beneficiary under the first-mentioned deed.

93.220 Release, limitation or restriction of power of appointment. (1) Any person to whom there has been granted or reserved any power of appointment or other power by which he may elect to take any action affecting the disposition of property may at any time release, or, from time to time, limit or restrict such power in whole or in part by an instrument in writing evidencing that purpose and subscribed by him.

(2) If the power is one to affect title to real property, the instrument shall be executed, acknowledged, proved and recorded, or filed with the registrar of title in each county in which the land is situated in the same manner as a conveyance of real property.

(3) If the power is of such nature that its exercise may affect the duty of any trustee or other fiduciary, such trustee or other fiduciary is not bound to take notice thereof unless he has received the original or an executed duplicate of the release or a copy thereof certified by the county clerk or county recorder of the county in which it has been recorded.

93.230 Copy of State Land Board deed or patent given when original lost. (1) Where parties to whom deeds have been issued by the State Land Board have lost such deeds before they have been placed on record in the county wherein the land conveyed is located, the clerk of the State Land Board, or other proper officer having the custody of the records of the board, on application of the party entitled thereto, may issue a certified copy of the record of the deed in the office of the board, under its seal.

(2) Where parties to whom patents for lands have been issued by the United States for lands in the State of Oregon have lost such patents before they have been placed on record in the county wherein the land conveyed is located, such parties, or their successors in interest, may apply to and obtain from the General Land Office at

Washington, D. C., copies of the records of such patents, duly certified to be correct copies or exemplifications of the original patents, or of the record thereof, either by the Commissioner of the General Land Office, or by the Recorder of the General Land Office.

(3) Every certified copy issued in accordance with subsection (1) or (2) of this section is entitled to record in the proper county with like effect as the original deed or patent. Every such copy so certified may be read in evidence in any court in this state without further proof thereof. The record of any such certified copy, or a transcript thereof certified by the county clerk in whose office it may have been recorded, may be read in evidence in any court in this state with like effect as the original thereof or the original lost deed or patent.

93.240 Rights of sellers to deferred or unpaid balance of purchase price where two or more persons join as sellers in contract of sale of real property. (1) Subject to the provisions contained in this section, whenever two or more persons join as sellers in the execution of a contract of sale of real property, unless a contrary purpose is expressed in the contract, the right to receive payment of deferred instalments of the purchase price shall be owned by them in the same proportions, and with the same incidents, as title to the real property was vested in them immediately preceding the execution of the contract of sale.

(2) If immediately preceding the execution of any such contract one or more of the sellers held no estate in the real property covered thereby other than an inchoate estate of or right to dower or curtesy, then, unless a contrary purpose is expressed in the contract, the joinder of such party or parties shall be deemed to have been for the purpose of barring dower or curtesy only and, except to the extent specifically prescribed therein, such person or persons shall have no interest in or right to any portion of the unpaid balance of the purchase price of said real property.

(3) If immediately prior to the execution of a contract of sale of real property title to any interest in the property therein described was vested in the sellers or some of the sellers as tenants by the entirety or was otherwise subject to any right of survivorship, then, unless a contrary purpose is expressed in the contract, the right to receive payment of deferred instalments of the purchase price of such property shall likewise be subject to like rights of survivorship.

(4) This section, being declaratory of existing law, applies to contracts of sale of real property heretofore executed as well as to those hereafter executed. Nothing contained in this section shall be deemed to modify or amend the provisions of subsection (4) of ORS 118.010 relating to inheritance taxes payable by reason of succession by survivorship as provided by subsection (3) of this section.

[1957 c.402 §§1, 2]

93.250 to 93.280 [Reserved for expansion]

UNIFORM VENDOR AND PURCHASER RISK ACT

93.290 Risk of loss after contract to sell realty has been executed. Any contract made on or after August 3, 1955, in this state for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(1) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid;

(2) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid.

[1955 c.144 §1]

93.295 Construction of ORS 93.290 to 93.300. ORS 93.290 to 93.300 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the Uniform Vendor and Purchaser Risk Act.

[1955 c.144 §2]

93.300 Short title. ORS 93.290 to 93.300 may be cited as the Uniform Vendor and Purchaser Risk Act.

[1955 c.144 §3]

DESCRIPTIONS, INCLUDING THE OREGON COORDINATE SYSTEM

93.310 Rules for construing description of real property. The following are the rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful, and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others, which are indefinite, unknown or false, does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road, or the thread of the stream, are included in the conveyance, except where the road or bed of the stream is held under another title.

(5) When tide water is the boundary, the rights of the grantor to low water mark are included in the conveyance, and also the right of this state between high and low water mark.

(6) When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appears that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

93.320 Oregon Coordinate System; zones. (1) The system of plane coordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Oregon is known and designated as the "Oregon Coordinate System."

(2) For the purpose of the use of this system the state is divided into a "north zone" and a "south zone."

(3) The area included in the following counties on June 16, 1945 constitutes the north zone: Baker, Benton, Clackamas, Clatsop, Columbia, Gilliam, Grant, Hood River, Jefferson, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Wheeler and Yamhill.

(4) The area included in the following counties on June 16, 1945 constitutes the south zone: Coos, Crook, Curry, Deschutes, Douglas, Harney, Jackson, Josephine, Klamath, Lake, Lane and Malheur.

(5) The use of the term "Oregon Coordinate System" on any map, report of survey or other document, is limited to coordinates based on the Oregon Coordinate System as defined in ORS 93.330.

93.330 Definition. (1) For more precisely defining the Oregon Coordinate System, the following definition by the United States Coast and Geodetic Survey is adopted:

(a) The Oregon Coordinate System, north zone, is a Lambert conformal projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 44 degrees 20 minutes and 46 degrees 00 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120 degrees 30 minutes west of Greenwich and the parallel 43 degrees 40 minutes north latitude. This origin is given the coordinates: $x = 2{,}000{,}000$ feet and $y = 0$ feet.

(b) The Oregon Coordinate System, south zone, is a Lambert conformal projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 42 degrees 20 minutes and 44 degrees 00 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120 degrees 30 minutes west of Greenwich and the parallel 41 degrees 40 minutes north latitude. This origin is given the coordinates: $x = 2{,}000{,}000$ feet and $y = 0$ feet.

(2) The position of the Oregon Coordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose coordinates have been computed on the system defined in this section. Any such station may be used for establishing a survey con-

nection with the Oregon Coordinate System.

93.340 Use of terms in land description. (1) As established for use in the north zone, the Oregon Coordinate System shall be named, and in any land description in which it is used it shall be designated the "Oregon Coordinate System, north zone."

(2) As established for use in the south zone, the Oregon Coordinate System shall be named, and in any land description in which it is used it shall be designated the "Oregon Coordinate System, south zone."

(3) When any tract of land to be defined by a single description extends from one into the other of the coordinate zones mentioned in ORS 93.320, the positions of all points on its boundaries may be referred to either of those zones, the zone which is used being specifically named in the description.

93.350 Plane coordinates. The plane coordinates of a point on the earth's surface, used in expressing the position or location of such point in the appropriate zone of the Oregon Coordinate System, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-coordinate," shall give the position in an east and west direction; the other, to be known as the "y-coordinate," shall give the position in a north and south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the Oregon Coordinate System, of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the State of Oregon, as those coordinates have been determined by that Survey.

93.360 Coordinates exempted from recordation. No coordinates based on the Oregon Coordinate System, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless that point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in ORS 93.330. However, the one-half mile limitation may be modified by an authorized state agency to meet local conditions.

93.370 Description as supplemental; conflict in description. If coordinates based on the Oregon Coordinate System are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates is construed as supplemental to the basic description of that subdivision, line or corner contained in the official plats and field notes filed of record. In the event of any conflict the description by reference to the subdivision, line or corner of the United States public land surveys prevails over the description by coordinates.

93.380 Purchaser or mortgagee not required to rely on description. Nothing contained in ORS 93.320 to 93.370 requires any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Oregon Coordinate System.

93.390 to 93.400 [Reserved for expansion]

EXECUTION, ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

93.410 Execution and acknowledgment of deeds. Deeds executed within this state, of lands or any interest in lands therein, shall be signed by the grantors and may be acknowledged before any judge of the Supreme Court, circuit judge, county judge, justice of the peace or notary public within the state. No seal of the grantor, corporate or otherwise, shall be required on the deed. The officer taking the acknowledgment shall indorse thereon under his hand a certificate of the acknowledgment thereof, and the date of making it.

[Amended by 1965 c.502 §5]

93.415 Acknowledgment by married woman. All acknowledgments of married women to conveyances of real property in this state shall be taken in the same manner as if they were unmarried.

93.420 Execution of deed where personal representative is unable or refuses to act. If any person is entitled to a deed from an executor, administrator, guardian or conservator who has died or resigned, has been discharged, disqualified or removed or refuses to execute it, the deed may be executed by the judge authorizing the sale, or by his successor.

[Amended by 1961 c.344 §104]

93.430 Officer taking acknowledgment must know grantor. No acknowledgment of any executed conveyance shall be taken by any officer unless he knows or has satisfactory evidence that the person making the

acknowledgment is the individual described in and who executed the conveyance.

93.440 Proof of execution by subscribing witness. Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgments of deeds, and shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in and who executed the conveyance. Such proof shall not be taken unless the officer is personally acquainted with the subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to the instrument.

93.450 Proof where witnesses are dead or absent. When any grantor is dead, out of this state, or refuses to acknowledge his deed, and all the subscribing witnesses to the deed are also dead or reside out of this state, it may be proved before the circuit court, or any judge thereof, by proving the handwriting of the grantor and of any subscribing witness thereto.

93.460 Subpena to compel witness to testify to execution of deed. Upon the application of any grantee, or any person claiming under him, verified by the oath of the applicant setting forth that the grantor is dead, out of the state, or refuses to acknowledge his deed, and that any witness to the conveyance residing in the county where the application is made refuses to appear and testify touching its execution and that the conveyance cannot be proven without his evidence, any officer authorized to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpena requiring the witness to appear and testify before him touching the execution of the conveyance.

93.470 Indorsement of certificate of proof. Every officer who takes the proof of any conveyance shall indorse a certificate thereof, signed by himself, on the conveyance. In the certificate he shall set forth those matters required by ORS 93.440 to 93.460 to be done, known or proved, together with the names of the witnesses examined before the officer, and their places of residence, and the substance of the evidence given by them.

93.480 Deed acknowledged or proved as evidence; recordability. Every conveyance acknowledged, proved or certified in the manner prescribed by law by any of the authorized officers may be read in evidence without further proof thereof and is entitled to be recorded in the county where the land is situated.

93.490 Form of acknowledgments. Certificates of acknowledgment need not be in any particular form. A certificate substantially in the following form is sufficient:

(1) By individuals:

State of Oregon, County of ————, ss.
————A. D. 19—

Personally appeared the above-named ———————— and acknowledged the foregoing instrument to be ———— voluntary act and deed. Before me:

———— ———————— (Official Seal)
(Signature) (Title of Officer)

(2) By a corporation:

State of Oregon, County of ————, ss.
————A. D. 19—

Personally appeared ————————, who, being duly sworn (or affirmed), did say that he is the president (or other officer) of ———————— (naming the corporation) and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act and deed. Before me:

———— ———————— (Official Seal)
(Signature) (Title of Officer)

(3) By an attorney in fact:

State of Oregon, County of ————, ss.
————A. D. 19—

Personally appeared ————————, who, being duly sworn (or affirmed), did say that he is the attorney in fact for ———— and that he executed the foregoing instrument by authority of and in behalf of said principal; and he acknowledged said instrument to be the act and deed of said principal. Before me:

———— ———————— (Official Seal)
(Signature) (Title of Officer)

93.500 Execution and acknowledgment of deed in other states. If any deed is executed in any other state, territory or district

of the United States, it may be executed according to the laws of that place or of the State of Oregon. The execution may be acknowledged either according to the laws of such other place or the State of Oregon, before any judge of a court of record, justice of peace, notary public or other officer authorized by the laws of the state, territory or district to take acknowledgment of deeds therein, or before any commissioner appointed by the Governor of this state for that purpose.

93.510 Necessity for certificate acknowledging officer's authority in another state. In the cases provided for in ORS 93.500, unless the acknowledgment is taken before a commissioner appointed by the Governor of this state for that purpose, or before a notary public certified under his notarial seal, or before the clerk of a court of record certified under the seal of the court, the deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which the acknowledgment was taken, under the seal of his office that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, that he believes the signature of such person subscribed thereto to be genuine and that the deed is executed and acknowledged according to the laws of such state, territory or district.

93.520 Execution and acknowledgment of deeds in foreign countries. If a deed is executed in any foreign country, it may be executed according to the laws of that country or of the State of Oregon. Its execution may be acknowledged either according to the laws of the foreign country or of the State of Oregon, before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge' d'affaires, commissioner, consul, vice consul or consul general of the United States appointed to reside therein. The acknowledgment shall be certified thereon by the officer taking it, under his hand, and if taken before a notary public his seal of office shall be affixed to the certificate. It is not necessary for any of such persons to state in the certificate that the deed or instrument is executed according to the laws of such country.

93.530 Execution, acknowledgment and recordation of assignments of sheriffs' certificates of sale. All assignments of sheriffs' certificates of sale of real property on execution or mortgage foreclosure shall be executed and acknowledged and recorded in the same manner as deeds of real property.

93.540 to 93.600 [Reserved for expansion]

RECORDATION AND ITS EFFECTS

93.610 Separate books for recording deeds and mortgages. Separate books shall be provided by the county clerk in each county for the recording of deeds and mortgages. In one book all deeds left with the clerk shall be recorded at full length, with the certificates of acknowledgment or proof of their execution, and in the other all mortgages left with the county clerk shall in like manner be recorded.

93.620 Time and place of receipt for record; certification. The county clerk shall certify upon every conveyance recorded by him the time when it was received and a reference to the book and page where it is recorded. Every conveyance is considered recorded at the time it was so received.

93.630 Index of records of deeds and mortgages. The county clerk shall also keep a proper index, direct and inverted, to the books for the recording of deeds, and also one to the books for the recording of mortgages, in which he shall enter, alphabetically, the name of every party to each instrument recorded by him, with a reference to the book and page where it is recorded.

93.640 Unrecorded conveyance or assignment of sheriff's certificate of sale void as to subsequent purchaser. (1) Every conveyance affecting the title of real property within this state which is not recorded as provided by law is void as against any subsequent purchaser of the same real property, or any portion thereof, in good faith and for a valuable consideration whose conveyance is first filed for record, and as against the heirs and assigns of such purchaser.

(2) Every assignment of sheriffs' certificates of sale of real property on execution or mortgage foreclosure which is not recorded in the records of deeds in the county where the land is situated within five days after its execution is void as

against any subsequent purchaser of such certificate of sale, or the real property covered thereby, or any portion thereof, in good faith and for a valuable consideration whose assignment is first recorded.

93.650 Effect of record or certified transcript in evidence. The record of a conveyance duly recorded, or a transcript thereof certified by the county clerk in whose office it is recorded may be read in evidence in any court in the state, with the like effect as the original conveyance. However, the effect of such evidence may be rebutted by other competent testimony.

93.660 Effect of abstract of title as evidence. Any abstract of title to real property in this state certified by any person regularly engaged in this state in the business of preparing and certifying such abstracts shall be received in all courts as prima facie evidence of the existence, condition and nature of the record of all deeds, mortgages and other instruments, conveyances or liens shown or mentioned in the abstract as affecting the property, and that the record is as described in such abstract.

93.670 Power of attorney and executory contract for sale or purchase of lands; recordability; effect as evidence; revocation. (1) Every letter of attorney, or other instrument containing a power to convey lands, as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed for the acknowledgment or proof of conveyances, may be recorded in the county clerk's office of any county in which the lands to which such power or contract relates is situated. When so acknowledged or proved, such letter, instrument or contract, and the record thereof when recorded, or the certified transcript of such record, may be read in evidence in any court in this state without further proof of the same.

(2) No letter of attorney, or other instrument so recorded, is deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

93.680 Patents, decrees in equity and official grants, recordability; evidence. (1) The following are entitled to be recorded in the record of deeds of the county in which the lands lie, in like manner and with like effect as conveyances of land duly acknowledged, proved or certified:

(a) The Patents from the United States or of this state for lands within this state.

(b) Decrees of courts of equity in this state requiring the execution of a conveyance of real estate within this state.

(c) Approved lists of lands granted to this state, or to corporations in this state.

(d) Conveyances executed by any officer of this state by authority of law, of lands within this state.

(2) The record of any such patent, decree, approved lists or deeds recorded, or a transcript thereof certified by the county clerk in whose office it is recorded, may be read in evidence in any court in this state, with like effect as the original.

93.690 Recording of instruments evidencing passage of title to land from United States to the State of Oregon. (1) The clerk of the State Land Board shall forward all patents and clear lists of land and other documents evidencing that title to land has passed from the United States to the State of Oregon, which have been or shall be received by the State of Oregon, to the officer in each county of the state in which any of such land is situated whose duty it is to record conveyances of real estate. Upon the receipt of such patents, clear lists or other documents, the recording officer of the county shall, without charging or collecting any fee therefor, forthwith record the instruments in the records of deeds of the county and index them in the manner provided for indexing deeds. When the recording officer has properly recorded such instruments he shall return them to the clerk of the State Land Board.

(2) When any such instrument includes land in more than one county, the record of the instrument in each county need include only the description of the land lying wholly or partly in that county and all other land may be indicated as omitted.

93.700 [Reserved for expansion]

93.710 Instruments creating certain interests in realty; effect of recording. Any instrument creating a license, easement, profit a prendre, or a leasehold interest or oil, gas or other mineral interest or estate in real property, which is executed by the person from whom the interest is intended to

pass, and acknowledged or proved in the manner provided for the acknowledgment or proof of other conveyances, may be indexed and recorded in the records of deeds of real property in the county where such real property is located. Such recordation, whether the instrument be recorded prior to or subsequent to May 29, 1963, constitutes notice to third persons of the rights of the parties under the instrument irrespective of whether the party granted such interest or estate is in possession of the real property. Any such interest when so acknowledged or proved, or certified in the manner prescribed by law by any of the authorized officers, may be read in evidence without further proof thereof.
[Amended by 1963 c.416 §1]

93.720 Certificates of foreclosure; entry of record. (1) Whenever a decree foreclosing a mortgage on real estate is returned in the circuit court of any county, the clerk of the court, in counties where there is a recorder, shall make out a certificate stating that such mortgage has been foreclosed, the date of foreclosure and the number of the journal and page thereof in which such decree is entered. The clerk shall deliver the certificate to the recorder, who shall enter upon the margin of the record of such mortgage the word "foreclosed" and the date of foreclosure, with the number and page of the journal of the decree.

(2) In counties where the county clerk acts as recorder of conveyances, he shall, upon the entry of any decree foreclosing a mortgage on real estate, make on the margin of the record of such mortgage the record provided for in subsection (1) of this section.

93.730 Recordation of decrees in other counties. A certified copy of any judgment, decree or order of confirmation affecting lands in this state made in any suit may be recorded in the records of deeds in any county in which the land affected is wholly or partly situated by any party interested in the land or suit. After the transcript is so recorded, the decree is notice to all persons of such suit and the judgment, order or decree, as completely as if the entire proceedings were had originally in the county in which the transcript is recorded. The record of the transcript is prima facie evidence of title as therein determined.

93.740 Notice of lis pendens; contents; recordation; effect; discharge. In all suits in which the title to or any interest in or lien upon real property is involved, affected or brought in question, any party thereto at the commencement of the suit, or at any time during the pendency thereof, may file of record with the county clerk or other recorder of deeds of every county in which any part of the premises lies, except in the county in which the suit is brought, a notice of the pendency of the action containing the names of the parties, the object of the suit, and the description of the real property in the county involved, affected, or brought in question, signed by the party or his attorney. From the time of filing the notice, and from that time only, the pendency of the suit is notice, to purchasers and incumbrancers, of the rights and equities in the premises of the party filing the notice. The notice shall be recorded in the same book and in the same manner in which mortgages are recorded, and may be discharged in like manner as mortgages are discharged, either by such party or the attorney signing the notice.

93.750 Recordability of telegraphic copies of powers of attorney and other acknowledged instruments. Any power of attorney, or other instrument in writing, proved or acknowledged, and certified, so as to be entitled to record, may, together with the certificate or proof or acknowledgment, be sent by telegraph. The telegraphic copy, as defined in ORS 758.090, shall prima facie have the same effect in all respects and may be admitted to record and be recorded in the same manner and with like effect as the original.

93.760 Recordability of documents, orders and decrees of the United States District Court. (1) Copies of documents, orders and decrees in proceedings in the District Court of the United States for the District of Oregon, which have been certified by the clerk of such court, and which affect title to real property in this state, shall be entitled to be recorded in the deed records of any county in which such real property is located.

(2) Whenever any person presents to the recorder of conveyances, or county clerk acting as such, a certificate from the clerk of the United States District Court of the foreclosure of any mortgage on real estate the recorder shall make the record required by subsection (1) of ORS 93.720, provided in such section.

93.770 Recordability of petitions, orders and decrees under National Bankruptcy Act. Copies of any petition, with the schedules omitted, and copies of orders and decrees filed or made and entered in any proceeding under the National Bankruptcy Act which have been certified by the clerk of the United States District Court for the District of Oregon, shall be entitled to be recorded in the deed records of any county where the bankrupt owns or has an interest in real property.

93.780 to 93.800 [Reserved for expansion]

VALIDATING AND CURATIVE ACTS

93.810 Validating and curative Acts. The following are subjects of validating or curative Acts applicable to this chapter:

(1) Evidentiary effect and recordation of conveyances before 1854.

(2) Evidentiary effect and recordation of certified copies of deeds issued by State Land Board prior to 1885 where original deed was lost.

(3) Defective acknowledgments of married women to conveyances prior to 1891.

(4) Foreign instruments executed prior to 1903.

(5) Deeds of married women before 1907, validity; executed under power of attorney and record as evidence.

(6) Conveyances by reversioners and remaindermen to life tenant.

(7) Decrees affecting lands in more than one county.

(8) Irregular deeds and conveyances; defective acknowledgments; irregularities in judicial sales; sales and deeds of executors, administrators and guardians; vested rights arising by adverse title; recordation.

(9) Defective acknowledgments.

(10) Title to lands from or through aliens.

[Subsection (1) enacted as 1854, D p. 653 §36; subsection (2) enacted as 1885 p. 78 §3; subsection (3) enacted as 1891 p. 152 §2; subsection (4) enacted as 1903 p.17 §2; subsection (5) enacted as 1907 c.170 §5; subsection (6) enacted as 1915 c.247 §1; subsection (7) enacted as 1917 c.329; subsection (8) enacted as 1943 c.26; subsection (9) enacted as 1945 c.380 §5; amended by 1947 c.579 §1; subsection (10) enacted as 1949 c.350 §2]

93.820 to 93.980 [Reserved for expansion]

PENALTIES

93.990 Penalties. Any person served with the subpena mentioned in ORS 93.460 who, without reasonable cause, refuses or neglects to appear, or appearing refuses to answer upon oath touching the matter mentioned in ORS 93.460 shall forfeit to the injured party $100. He may also be committed to prison as for a contempt by the officer who issued the subpena until he submits to answer on oath as aforesaid.

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 15, 1965.

Sam R. Haley
Legislative Counsel