Chapter 94

1965 REPLACEMENT PART

Registration of Titles; Torrens Law

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APPLICATION, EXAMINATION, NOTICE AND PLEADINGS

94.005 Who may apply to register land. The owner of any estate or interest in land, whether legal or equitable, may apply as provided in this chapter to have his title registered. He may apply in person or by an attorney in fact authorized so to do. A corporation may apply by its authorized agent, an infant by his natural or legal guardian, and any other person under disability by his legal guardian. The person in whose behalf the application is made shall be named as applicant.

94.010 Fee must be registered first. No mortgage, lien, charge, or lesser estate than a fee simple shall be registered unless the fee simple to the same land is first registered.

94.015 Notation of lesser estate or encumbrance. It shall not be an objection to registering land under this chapter that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge, but every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to the estates, mortgages, liens and charges so noted, except as provided in this chapter.

94.020 Registration of tax title; prerequisites. No title derived through sale for any tax or assessment shall be entitled to be first registered unless it is made to appear that the applicant, or those through whom he claims title, has been in the actual and undisputed possession of the land under such title at least 10 years, and has paid all taxes and assessments legally levied thereon for seven successive years of that time.

94.025 Contents of application. The application shall be in writing, signed and sworn to by the applicant or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and if married, the name and residence of the husband or wife.

(3) The description of the land.

(4) The applicant's estate or interest in the land, and whether the land is subject to an estate of homestead.

(5) Whether the land is occupied or unoccupied, and if occupied by any person other than the applicant, the name and postoffice address of each occupant, and what estate or interest he has or claims in the land.

(6) Whether the land is subject to any lien or encumbrance, and if so, the nature and amount of the lien or encumbrance, with the book and page of record if recorded; also the name and postoffice address of each holder thereof.

(7) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if so, the name and postoffice address of every such person and the nature of his estate or claim.

(8) In case it is desired to settle or establish boundary lines, the names and postoffice addresses of all the owners of adjoining lands that may be affected thereby, so far as the applicant is able upon diligent inquiry to ascertain.

(9) If the applicant is a male, that he is of the full age of 21 years; if a female, that she is of the full age of 18 years. If the application is on behalf of a minor, the age of the minor shall be stated. If the application is by a husband or wife, the other shall by indorsement thereon, acknowledged as in the case of deeds or by a separate instrument acknowledged in the same way, signify his or her assent to the registration as prayed.

(10) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant also states that upon diligent inquiry he has been unable to ascertain the same.

94.030 Statutory form. The form of the application may be, with appropriate changes, as follows:

Form of Application for Initial Registration of Title to Land.

To the Circuit Court of the State of Oregon, for ——— County.

State of Oregon, }
County of ——— } ss.

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the

statements herein contained, are true to the best of my knowledge and belief.

1. Name of applicant ——— ———; age —— years. Residence ———. Married to ——— ———, whose residence is ———.

2. Application made by ——— ———, acting as owner, agent, attorney or guardian. Residence of agent, attorney or guardian ———.

3. Description of real estate is as follows: ———. Estate or interest therein is ———, and is (or is not) subject to homestead.

4. The land (is not occupied or) is occupied by ——— ———, whose address is ———. The estate, interest or claim of occupant is ———.

5. Liens and encumbrances on the land are ———. Name of holder or owner thereof ——— ———. Postoffice address ———. Amount of claim, $———. Recorded, book ——, page ——.

6. Other persons having or claiming any estate, interest, or claim in law or equity, in possession, remainder, reversion, or expectancy in said land are: Name ——— ———. Address ———. Character of estate, interest, or claim ———.

7. Other facts connected with said land are ———.

8. The applicant prays the court to find and declare his title or interest in said land, and decree the same, and order the registrar of titles to register the same, and to grant such other and further relief as shall be accorded to equity.

——— ———.
(Applicant's signature)

By ——— ———, agent, attorney, or guardian.

Subscribed and sworn to before me by the above named ——— ———, as owner, agent, attorney or guardian, this —— day of ——, A. D. 19—.

——— ———.

I hereby assent to the registration of the above described real estate as prayed for by ——— ———, who is my husband (or wife).

——— ———.
(Signature of husband or wife)

State of Oregon, }
County of ——— } ss.

I, ———, a ——— in and for said county in the state aforesaid do hereby certify that ———, personally known to me to be the same person whose name is subscribed to the foregoing assent, appeared before me this day in person and acknowledged the said assent as his (or her) free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this —— day of —— A. D. 19—.

——— ———.

94.035 Inclusion of two or more parcels in one application. Any number of contiguous pieces of land in the same county and owned by the same person and in the same right, or any number of pieces of land in the same county having the same chain of title and belonging to the same person, may be included in one application.

94.040 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original.

94.045 Plat and certificate necessary. Where the land sought to be registered is not in an addition or subdivision of which there is a plat recorded or adopted by authority in the county where the land lies, or subdivision according to the United States survey, the application shall be accompanied by a plat made by a surveyor who shall add thereto his certificate duly verified that he has surveyed the land and that the plat and the distances and angles marked thereon are a true representation of such survey and of the land so surveyed. The plat and certificate shall be on tracing cloth not to exceed 12 by 18 inches in size. The survey shall be begun from a definite and ascertained monument recognized by the government surveys when practicable; otherwise from a monument which can be located by any competent surveyor.

94.050 Power to determine title in circuit court; court always open. (1) The application for registration may be made to the circuit court in the county where the land is situated, and such court shall have power to inquire into the condition of the title to and any interest in the land, and any lien or encumbrance thereon, and to make all such orders, judgments and decrees as may be necessary:

(a) To determine, establish and declare the title or interest, legal or equitable, as against all persons, known or unknown.

(b) To determine, establish and declare all liens and encumbrances existing thereon,

whether created by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order and preferences as between the same.

(c) To remove clouds from the title.

(2) For the purposes of this section the court shall always be open, and orders, judgments and decrees authorized by this section may be made and entered as well in vacation as in term time.

94.055 Docketing of application; defendants. (1) Upon the filing of the application in the office of the clerk of the court, the clerk shall docket the same in a book to be kept for that purpose, which shall be known as the "land registration docket." The application and all entries and proceedings pertaining thereto may be entitled as follows: "In the matter of the application of (name of applicant) to register the title to (here insert short description of the land)".

(2) If any person is named as being in possession of the premises or having any lien or encumbrance upon the land, or as having or claiming any interest in the land, such person shall be named as defendant. All other persons shall be made and deemed to be defendants by the name or designation of "all whom it may concern."

94.060 Numbering of applications. All applications for initial registration of title shall be numbered consecutively, beginning with number one, in the land registration docket. All orders, judgments and decrees of the court in each case shall be minuted in such docket under the number so given it, with proper reference to the book and page where the order or decree is recorded.

94.065 Title examiner; investigation and report by. Immediately upon the filing of the application, an order may be entered referring the same to an examiner of titles, who shall be appointed by the court, and who shall proceed to examine the title and the truth of the matter set forth in the application; particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right. He shall report in writing to the court the substance of the proof and his conclusions. He shall have power to administer oaths and examine witnesses, and may at any time apply to the court for directions in any matter concerning his investigation. He shall not be required to report the evidence submitted to him, except upon the request of some party to the proceeding or by direction of the court. No report shall be made upon the application until after the expiration of the time specified for the appearance of the defendants in the notice provided in ORS 94.075 to 94.090, and in case of such appearance, until opportunity is given to the defendant to contest the rights of the applicant in a manner allowed by the court.

94.070 Examiner's report not conclusive. The court shall in no case be bound by the report of the examiner of title, but may require other or further proof.

94.075 Service of notice; time for appearance. The notice provided for in ORS 94.080 shall be forthwith served upon each defendant named in the application whose residence is shown to be in the State of Oregon, in the same manner provided for service of summons in ORS 15.080. If such defendant is served in the county where the proceeding is pending, but is not served 10 days before the time stated in the notice as the time within which he shall appear, then he shall have 10 days after service to appear. If he is served in the state but outside of said county, he shall have in any event 20 days after service to make an appearance. As to all unnamed defendants, defendants named but whose residence is unknown, and defendants named but whose residence is outside the State of Oregon, the provisions made for the publication and mailing of the notice in ORS 94.085 and ORS 94.090 shall be deemed full and complete service of the notice upon all such defendants, and shall give the court full and complete jurisdiction of each and all of said defendants for the purposes of the proceeding.

94.080 Form of notice. The notice provided for in ORS 94.075 may be substantially as follows:

REGISTRATION OF LAND TITLE

In the matter of the application of —— —— to register the title to (here insert description of land as in the application, and in case any person is named as defendant, the name of such defendant). All to whom it may concern:

TAKE NOTICE

That on the —— day of ——, 19—, an application was filed by —— ——, in the circuit court of —— county, for initial registration of the title of the land above described.

Now, unless you appear on or before the —— day of ——, 19—, (the time shall not

be less than 30 days after the filing of such application), and show cause why application shall not be granted, the same will be taken as confessed, and a decree will be entered according to the prayer of the application, and you will be forever barred from disputing the same.

94.085 Publication of notice. The clerk of the circuit court shall, immediately upon the filing of the application, cause notice of the filing thereof, in the form prescribed in ORS 94.080, to be published once a week for four successive weeks in a newspaper published, and of general circulation, in the county; if there is no newspaper published in the county, then in a newspaper published and of general circulation in one of the counties nearest thereto. The applicant for registration may designate the newspaper in which the notice shall be published.

94.090 Mailing of notice. Within 10 days after the first publication, the clerk of the circuit court shall send a copy of the notice by mail addressed to the defendants whose places of residence are stated in the application, and whose appearance is not entered and who are not served with process. The certificate of the clerk stating that he has sent the notice shall be evidence thereof. Further notice of the application may be given in such manner and to such persons as may be directed by the court or any judge thereof.

94.095 Answer and cross-application. Any person interested, whether named as defendant or not, may, upon entering his appearance and answering the application within the time allowed by ORS 94.075 to 94.090, or such further time as shall be allowed by the court, oppose any application or file a cross-application in like form as in case of an original application, to have the title registered in his behalf. In either case he shall state particularly what his interest is, and fully answer each material allegation of the application, admitting, avoiding or traversing the same, or showing some cause in law why the allegation need not be admitted, avoided or traversed. The answer shall be verified by the affidavit of the answering party, or his agent having knowledge of the facts. The answer shall have no greater weight as evidence than the application.

94.100 Effect of failure to appear or answer. If any person shall fail to appear within the time required by summons duly served upon him, or within the time required by any notice given pursuant to this chapter, or appearing shall fail to answer the application as provided in ORS 94.095, his default may be entered and the application taken as confessed. Upon report of the examiner showing that the facts stated in the application are true and the applicant has an interest in the land, as set forth in the application, the court may grant an order or decree in accordance with the prayer of the application.

DECREE AND ISSUANCE OF CERTIFICATE

94.105 Decree of court. The court may, in any proceeding under this chapter:

(1) Find and decree in whom the title to, or any interest in, the land is vested, whether in the applicant or in any other person.

(2) Remove clouds upon the title.

(3) By its decree, bar dower and curtesy rights, whether inchoate, vested, initiate or consummate, in the land sought to be registered, of all persons except the wife or husband of the applicant, unless appearance is made by such persons and such rights are set forth and established, in which case the same shall be preserved in the decree. Upon failure of such persons to appear and set forth and establish such rights or claims, they shall be forever barred and concluded by the decree from asserting the same in like manner as other defendants, and all such persons shall be made parties defendant in like manner as other defendants.

(4) Find and decree whether the land is subject to any lien, encumbrance, estate, trust or interest, and declare the same.

(5) Order the registrar of titles to register such title or interest, and in case the land is subject to any lien, encumbrance, estate, trust or interest, give directions as to the manner and order in which the same shall appear upon the certificate of title to be issued by the registrar.

(6) Make all such orders and decrees as are equitable and are in conformity with the principles of this chapter.

94.110 Conclusiveness of decree; appeal; reopening of case. Except as provided in this section, an order or decree made and entered as provided in ORS 94.105 shall be

forever binding and conclusive upon all persons, whether mentioned by name in the petition or included in "all whom it may concern." It shall not be an exception to such conclusiveness that the person is an infant, lunatic, or is under a disability, but such person may have recourse upon the indemnity fund provided for in ORS 94.620, for any loss he may suffer by reason of being so concluded. An appeal may be allowed to the Supreme Court, if prayed for at the time of entering the order or decree, and upon like terms as in other suits in equity. A writ of error may be sued out of the Supreme Court within two years after the entry of the order or decree. Any person having an interest in, or lien upon the land, who has not been actually served with process or notified of the filing of such application or the pendency thereof, may, at any time within two years after the entry of the order or decree, appear and file his sworn answer to such application, in like manner as provided in ORS 94.095; provided, the affidavit shall also state that such person had no notice, information or belief of the filing of the application or the pendency of the proceeding until within three months of the time of the filing of the answer. Upon the filing of the answer and the giving of not less than 10 days' notice to the applicant, the court shall proceed to review the case. If the court is satisfied that the order or decree should be opened, an order shall be entered to that effect, and the court may review the proceeding and make such order in the case as is equitable. An appeal may be taken in such case, within like time and in like manner as in the case of appeal from an original order or decree under this section.

94.115 Statute of limitation. No person shall commence any action at law or suit in equity for the recovery of land, or assert any interest or right in or lien or demand upon the land, or make entry on the land adversely to the title or interest as found, ordered or decreed by the court, except within two years after the entry of the order or decree. This section is intended to give such right of action only to persons who, because of some irregularity, insufficiency, or for some other cause, are not bound and concluded by the order or decree.

94.120 Presentation of claims existing but not actionable at date of registration. Any person having any interest, right, title, lien or demand, whether vested, contingent or inchoate, in, to or upon registered land, which existed at the time the land was first registered, and for which no cause of action had accrued at the date of the registration of the land, and who has not become barred or concluded by an order or decree, may, prior to the expiration of two years after the registration, file in the registrar's office a notice under oath, setting forth his interest, right, title, lien or demand, how and under whom derived, and its character and nature. If such counterclaim is so filed an action may be brought to assert or recover or enforce the same at any time within one year after the right of action shall have accrued. It is the duty of a life tenant or trustee to file such a counterclaim on behalf of any remainderman or reversioner, whether the remainder or reversion is at the time vested or contingent, and of a guardian to file a counterclaim on behalf of his ward.

94.125 Issuance of first certificate; form. Upon the filing of a certificate signed by the clerk giving the effect of the order or decree of the court, or a copy of the order or decree, in the registrar's office, the registrar shall proceed to register the title or interest pursuant to the terms of the order or decree. He shall make out a certificate of title which may, subject to such change as the case may require, be substantially as follows:

FIRST CERTIFICATE OF TITLE, PURSUANT TO ORDER OF THE CIRCUIT COURT OF —— COUNTY.

State of Oregon, }
County of ——— } ss.

——, of (residence, and, if a minor, give his age; if under other disability, state the nature of the disability), married to (name of husband or wife, or, if not married, say "not married"), is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, encumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation," as the case may be.)

Witness my hand and official seal this (date).

(Seal) ——— ———,
Registrar

94.130 Form of subsequent certificates. Subsequent certificates may be in like form as the first certificate, except that in place of the words "first certificate of title" shall be the words "transfer from certificate No. ——" (the number of the next previous certificate), also the words "first registered" (date of first registration).

94.135 Words of inheritance not necessary for fee. The words "heirs and assigns" shall not in any case be necessary to create a fee simple estate.

94.140 Data included in certificate. Each certificate shall bear the day and year of its issue, be under the hand and official seal of the registrar, and be numbered in order of its issue. It shall state whether the owner (except in the case of a corporation) is or is not married, and if married, the name of the husband or wife. If the owner is a minor it shall state his age; if under any other disability, the nature of the disability. The registrar shall note at the end of the certificate, in such manner as to show and preserve their priorities, the particulars of all estates, mortgages, encumbrances and charges to which the owner's title is subject.

94.145 Issuance of certificates to tenants in common. In all cases where two or more persons are entitled as tenants in common to an estate in registered land, such persons may receive one certificate for the entirety, or each may receive a separate certificate for his undivided share.

94.150 Entry of certificates on register; memorials and notations. The registrar shall keep a book, to be known as the "register of titles," wherein he shall enter all first and subsequent original certificates of title, by binding or recording them, in the order of their numbers, with appropriate blanks for the entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate folio of the register. All memorials and notations that may be entered upon the register under the terms of this chapter shall be entered upon the folio constituted by the last certificate of title of the land to which they relate. Whenever the term "certificate of title" is used in this chapter, it includes all memorials and notations thereunder noted.

94.155 Owner's duplicate certificate. The registrar shall, at the time that he makes out the original certificate of title, make out an exact duplicate thereof, with the memorials and notations thereunder noted, which shall be delivered to the owner and shall be known as the owner's duplicate.

94.160 Evidence of owner's handwriting. For the purpose of preserving evidence of the handwriting of the owner in his office, the registrar shall take from the owner, in every case where practicable, a receipt signed by the owner for the certificate of title, or whatever paper shall be issued to him. When the receipt is signed in the registrar's office it may be witnessed by the registrar or a deputy. If signed elsewhere, it may be acknowledged before any officer authorized to take acknowledgments of deeds. When so signed and witnessed or acknowledged, the receipt shall be prima facie evidence of the genuineness of the signature.

94.165 Effective date of certificate. In every case of final registration the certificate of title shall relate back to and take effect as of the date of the order or decree directing the registration. All dealings with the land, and statutory or other liens upon the land, subsequent to the filing of the application, shall be subject to such order or decree of the court.

94.170 Evidentiary effect of certificate or copy. Until the expiration of the time limited in ORS 94.110, 94.115 and 94.120 to bring an action or to contest the title of the registered owner, the certificate of title, with the memorials and notations thereunder noted, and any copy thereof duly certified under the hand and seal of the registrar, and the owner's duplicate certificate, shall be prima facie evidence that the provisions of the law have been complied with and that the certificate of title has been issued in compliance with a valid order or decree, and that the title to the land is as stated in the certificate. After the expiration of the time so limited, the certificate, shall be conclusive evidence of the same facts.

94.175 Issuance of single certificate in place of several, and vice versa. (1) As far as it may be done consistently with any regulations at the time being in force respecting the parcels of land that may be included in one certificate, the registrar may:

(a) Upon the application of any registered

owner of land held under two or more certificates of title and the delivering up of the certificates, issue to the owner a single certificate of title for all the land, in accordance with the application.

(b) Upon the application of any registered owner of land held under one certificate of title and the delivering up of the certificate, issue to the owner two or more certificates, each containing a portion of the land, in accordance with the application.

(2) Upon issuing a certificate of title as provided in subsection (1), the registrar shall indorse on the last previous certificate of title of the land so delivered up, a memorial setting forth the occasion of such cancellation, and referring to the volume and folio of the new certificate or certificates of title so issued.

94.180 Procedure when duplicate certificate is lost or destroyed. If a duplicate certificate of title is lost, mislaid or destroyed, the owner, together with other persons, if any, having knowledge of the circumstances, may make affidavit before the registrar or any other officer authorized to administer oaths, stating the facts of the case, the names and descriptions of the registered owners, and the particulars of all mortgages, encumbrances or other matters affecting such land and the title thereto, to the best of applicant's knowledge and belief. If the registrar is satisfied as to the truth of the affidavit and the bona fides of the transaction, he shall issue to the owner a certified copy of the original certificate, with the memorials and notations appearing upon the register, and shall note upon the register the fact, cause and date of such issue, and shall also mark upon the certified copy, "owner's certified copy, issued in place of lost (mislaid or destroyed, as the case may be,) certificate." The certified copy shall stand in the place of and have like effect as the missing duplicate certificate.

94.185 to 94.200 [Reserved for expansion]

EFFECT OF REGISTRATION; WITHDRAWAL

94.205 Registration subjects land to this chapter. The bringing of land under this chapter shall imply an agreement, which shall run with the land, that the land shall be subject to the terms of the chapter and all amendments and alterations thereof. All dealings with land or any estate or interest therein after the land has been brought under this chapter, and all liens, encumbrances and charges upon the land subsequent to the first registration thereof, are subject to the terms of this chapter.

94.210 Status of owner's estate or interest. The registered owner of any estate or interest in land brought under this chapter shall, except in cases of fraud to which he is a party, or the fraud of a person through whom he claims without valuable consideration paid in good faith, hold the same subject only to the estates, mortgages, liens, charges and interests noted in the last certificate of title in the registrar's office, and free from all others except:

(1) Any subsisting lease, or agreement for a lease, for a period not exceeding five years, where there is actual occupation of the land under the lease. The term "lease" shall include a verbal letting.

(2) All public highways embraced in the description of the land in the certificate are excluded from the certificate.

(3) Any subsisting right of way or other easement, however created, upon, over, or in respect to the land.

(4) Any tax or special assessment for which a sale of the land has not been had at the date the certificate is issued.

(5) Any right of appeal, right to appear and contest the application, or right to make counterclaim, allowed by ORS 94.110, 94.115 or 94.120.

94.215 Right of person claiming under registered owner. Except in case of fraud, and except as otherwise provided in this chapter, a person taking a transfer of any estate, interest or charge in or upon registered land, from the registered owner, shall not be held to inquire into the circumstances under which, or the consideration for which, such owner or any previous registered owner was registered, and shall not be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest. The knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed as fraud.

94.220 Effect of adverse possession. After land has been registered, no estate or interest in the land adverse or in derogation to the estate or interest of the registered

owner shall be acquired by any length of possession.

94.225 Certificate as proof of title in action or suit. (1) In a suit for specific performance brought by a registered owner of any land against a person who has contracted to purchase the land, not having notice of any fraud or other circumstances which, according to the provisions of this chapter, would affect the right of the vendor, the certificate of title of the registered owner shall be held in every court to be conclusive evidence that the registered owner has in the land a good and valid estate or interest, as described in the certificate.

(2) In any action or proceeding brought for ejectment, partition or possession of land, the certificate of title of a registered owner shall, except as to any person not bound by the order or decree of the court, or by some limitation contained in this chapter or in some other statute, be held to be conclusive evidence that the registered owner has in the land a good and valid estate or interest as described in the certificate, subject only to the estates, mortgages, liens, charges and interests noted in the certificate, unless it appears by the notations that the registered owner is entitled to the possession of the land.

94.230 Application for withdrawal from registry system. Any owner of real property registered under the provisions of this chapter shall, upon the surrender for cancellation to the registrar of title of the registration certificate, have the right to withdraw the land from the registry system and to restore or change the land back to the recording system, by making a written application to the registrar of titles in the following form:

To the Registrar of Titles in the County of ———, State of Oregon:

I, ——, am the owner in fee simple of the following described real property, situated in the county of ——, State of Oregon: (Here describe property), the title to which is registered under the provisions of ORS Chapter 94, and I hereby make application to have the title to said real property withdrawn from the registry system for the purpose of restoring and changing the same back to the recording system.

Witness my hand and seal this —— day of ——.

——— ———,
Applicant's Signature.

The application shall be witnessed by two witnesses and acknowledged in the same manner as is required for deeds.

94.235 Issuance of certificate of withdrawal. The application for withdrawal shall be filed with the registrar of titles, and shall by him be recorded in the record known as the "Register of Titles." Thereupon the title is withdrawn from the registry system and restored to the recording system, upon the issuance of the following certificate, which the registrar shall issue:

Certificate of Withdrawal of Title from the Registry System, and Changing or Restoring Same Back to the Recording System.

———, as the owner in fee simple of the following described real property, situated in the county of ———, State of Oregon, the title to which has been registered under the provisions of ORS Chapter 94, to wit: (Here describe property), has filed application for the withdrawal of title to said real property from the registry system, and restoring or changing the same back to the recording system.

This certifies that the title to said real property is withdrawn from the effect and operation of the title registry system and that the same is now under the recording system.

94.240 Status of land after withdrawal. The certificate of withdrawal issued by the registrar shall be recorded in the records of deeds in the county in which the real property is located, and thereafter all transfers and proceedings in connection with the title to the real property shall be in conformity with the recording system. The title shall not thereafter be subject to any of the conditions of the registry system, unless it is registered again.

94.245 Effect of withdrawal on proceedings under registry system. ORS 94.230 to 94.240 shall not be construed to disturb the effect of any proceedings under the registry system wherein the question of title to the real property has been determined. All proceedings had in connection with the registering of title, relating to the settlement or determination of the title, prior to withdrawal, shall have the same force and effect as if the title still remained under the registry system.

94.250 to 94.300 [Reserved for expansion]

TRANSFER AND ENCUMBRANCE OF REGISTERED LAND

94.305 Forms of conveyances and encumbrances. (1) Like forms of deeds, mortgages, leases or other instruments as are now or may hereafter be sufficient in law for the purpose intended, may be used in dealing with estates and interests in registered land.

(2) Every mortgage, lease for a term not exceeding 10 years, contract to sell, and other instrument intended to create a lien, encumbrance or charge upon registered land, or any interest therein, is a charge thereon and may be registered as provided in this chapter.

(3) A trust deed in the nature of a mortgage shall be subject to the same rules as a mortgage.

94.310 Interests transferable by conveyance; procedure of transfer. (1) A registered owner of land may, by deed or other instrument of conveyance, convey his whole interest or estate in the land, or some distinct part or parcel thereof, or an undivided interest therein, or a life estate or an estate for a term of not less than 10 years.

(2) Upon the filing of the deed or other instrument in the registrar's office and the surrendering to the registrar of the duplicate certificate of title, and it being made to appear to the registrar that the transferor has the title or interest proposed to be transferred and is entitled to make the conveyance, and that the transferee has the right to have such estate or interest transferred to him, the registrar shall make out and register a new certificate and an owner's duplicate, certifying the title to the estate or interest in the land to be in the transferee. The registrar shall note upon the original and duplicate certificate the date of the transfer, the name of the transferor and the volume and folio in which the new certificate is registered. He shall stamp across the original and surrendered duplicate the word "canceled". However, when the entire tract of land embraced in the original certificate is transferred, the transfer may be made by memorandum indorsed upon the original certificate and upon the owner's duplicate, and a new certificate need not be made out.

94.315 Retention of land or interest in land. When only a part of the land or a portion of the owner's interest in the land described in a certificate is transferred, a new certificate shall be issued to the transferor for the part, estate or interest remaining in him.

94.320 Effective date of registration of transfer or transaction. Except as provided in ORS 94.310, every transfer of registered land shall be deemed to be registered when the new certificate to the new transferee is entered in the register of titles. All other transactions shall be considered as registered when the memorial or notation is entered in the register upon the folio constituted by the existing certificate of title of the land. However, for the protection of the transferee or person claiming through any transfer or transaction, the registration shall relate back to the time of filing in the registrar's office the deed, instrument or notice, pursuant to which the transfer, memorial or notation was made.

94.325 Statements in certificate as to marital status of transferee. Every certificate issued upon transfer of registered land shall state whether the transferee (except when a corporation) is or is not married, and if married, the name of the husband or wife. The transferee shall furnish the registrar this information before he is entitled to have the land transferred to him on the register.

94.330 Registration of transfer or mortgage when interests are outstanding. No transfer or mortgage of any estate or interest in registered land shall be registered until it is made to appear to the registrar that the land has not been sold for any tax or assessment upon which a deed has been given and the title is outstanding, or upon which a deed may thereafter be given, and that the dower, right of dower, and estate of homestead, if any, have been released or extinguished or that the transfer or mortgage is intended to be subject thereto, in which case it shall be stated in the certificate of title.

94.335 Filing of instrument affecting registered land; noting of day and hour; effect as notice. The registrar shall mark as filed every deed, mortgage, lease or other instrument which is filed in his office, in the order of its receipt, and shall note thereon at the date of filing the minute, hour, day and year it is received. When the date of filing any instrument is required to be entered upon the register, it shall be the same

as that indorsed upon the instrument. An instrument so filed shall impart notice of its contents in like manner and with like effect as if it had been duly authenticated so as to be entitled to record and had been filed for record at the date of its filing and recorded in the proper records of the same county.

94.340 Indorsement of name and address on instruments to be registered; notices served at address given; change of address. On all instruments presented to the registrar for registration there shall be indorsed the name and address of the person presenting the same. All notices issued by the registrar or other person relating to the land described in the instrument may be served on such person at such address. The address may be changed from time to time by such person filing with the registrar a written notice of the change.

94.345 Effect of execution of instrument dealing with registered land; effect of registration. With the exception of a will or a lease not exceeding five years where the land is in actual possession of the lessee or his assigns, a deed, mortgage, lease or other instrument purporting to convey, transfer, mortgage, lease, charge or otherwise deal with an estate, interest or charge in or upon registered land, shall take effect only by way of contract between the parties, and as authority to the registrar to register the transfer, mortgage, lease, charge or other dealing upon compliance with the terms of this chapter. On the completion of registration, the estate, interest or charge shall become transferred, mortgaged, leased, charged or dealt with according to the purport and terms of the instrument.

94.350 Procedure for placing charge on land. When an instrument intended to create a charge is filed in the registrar's office, and the duplicate certificate of title is produced, and it appears to the registrar that the person intending to create the charge has the right to create the charge, and that the person in whose favor the charge is sought to be created is entitled by the terms of this chapter to have the charge registered, the registrar shall enter upon the proper folio of the register, and also upon the owner's certificate, a memorial of the purport thereof, and the date of filing the instrument with a reference thereto by its file number. The registrar shall sign the memorial and shall note upon the instrument on file the volume and folio of the register where the memorial is entered.

94.355 Procedure when charge is assigned. The holder of any charge upon registered land may execute an assignment of the whole or any part of the charge, and when the assignment is filed in the office of the registrar, and the duplicate or certified copy of the instrument creating the charge held by the assignor is produced, the registrar shall enter in the register opposite the charge a memorial of the transfer with a reference to the assignment by its proper file number. The registrar shall also note the transfer upon the instrument on file in his office, and shall note, upon the duplicate or certified copy thereof produced, the volume and folio where the memorial is entered with the date of the entry. The transferee is entitled to have a certified copy of the instrument of transfer, with the indorsement thereon, and if the entire charge is transferred, he is entitled to the duplicate or certified copy of the instrument creating the charge.

94.360 Release or surrender of charge. A release, discharge or surrender of a charge, or any part thereof, or the charge on any part of the land charged, may be effected in the same way as provided for a transfer in ORS 94.355. In case only a part of the charge or the charge on part of the land is intended to be released, discharged or surrendered, the entry shall be made accordingly. When the whole charge is released, discharged, or surrendered at the same or several times, the registrar shall stamp across the instrument on file and the memorial thereof and the duplicate or certified copy produced, the word "canceled."

94.365 Enforcement of charge; lis pendens notice. All charges upon any estate or interest in registered land may be enforced as allowed by law and, except as otherwise provided in this chapter, all laws with reference to the foreclosure and release or satisfaction of mortgages shall apply to mortgages upon any estate or interest in registered lands. Until notice of the pendency of any suit to enforce or foreclose the charge is filed in the registrar's office, and a memorial thereof entered on the register, the pendency of the suit shall not be notice to the registrar or any person dealing with the land or any charge thereon.

94.370 Filing of evidence of authority of court-appointed officer, or attorney in fact, to deal with registered land. (1) Before an assignee for the benefit of creditors, receiver, master in chancery, special commissioner, trustee in bankruptcy, or other person appointed by a court, shall deal with or transfer an estate or interest in registered land, he shall file in the registrar's office a certified copy of an order of the court showing that he is authorized to deal with or transfer such estate or interest. If it is within the power of such person he shall present to the registrar the duplicate certificate of title. The registrar shall enter upon the register, and the duplicate certificate if presented, a memorial of the order with a reference to the order by its file number. In the case of a deed of the land to the assignee or receiver, it shall be filed in the registrar's office as in other cases. If the duplicate certificate is not presented, the registrar shall enter a memorial of that fact upon the register.

(2) Before any person can convey, charge, or otherwise deal with any estate or interest in registered land as attorney in fact for another, the deed or instrument empowering him to act shall be filed with the registrar, and a memorial thereof entered upon the register in like manner as in the case of a charge. If the attorney so desires, the registrar shall deliver to him a certified copy of the power of attorney, with the indorsements thereon. Revocation of a power may be registered in like manner.

94.375 Power of court-appointed officer to deal with land. After memorials as provided for in subsection (1) of ORS 94.370 have been entered, the assignee, receiver, master in chancery, special commissioner or other person appointed by a court may, subject to the direction of the court, deal with or transfer such land as if he were the registered owner.

94.380 Creation of trust, condition or limitation affecting registered land. Whenever a deed or other instrument is filed in the registrar's office for the purpose of effecting a transfer of or charge upon an estate or interest in registered land, and it appears that the transfer or charge is to be upon a trust, condition or limitation expressed in the deed or instrument, the registrar shall, unless the deed or instrument expressly directs to the contrary, note in the certificate and duplicate thereof, or memorial, the words "in trust" or "upon condition" or "with limitations," as the case may be. No transfer or charge upon, or dealing with the estate or interest shall thereafter be registered, unless pursuant to the order of a court, or the filing of an affidavit of the person applying for registration that the transfer, charge or dealing is in accordance with the true intent and meaning of the trust, condition or limitation.

94.385 Registration of transfer or charge of land subject to a trust, condition or limitation; effect. Upon the filing with the registrar of an order of court or affidavit as provided in ORS 94.380, the registrar shall register the same. Such registration shall be conclusive evidence in favor of the person taking the transfer, charge or other right, and those claiming under him in good faith and for a valuable consideration, that the transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition or limitation.

94.390 Creation of statutory lien on registered land. In all cases where, by any law relating to the liens of mechanics or others, a claim or notice is authorized to be filed in a court or office, the claim or notice, when it relates to an interest in registered land, may be filed in the registrar's office. Upon being so filed, a memorial thereof shall be entered by the registrar, as in the case of other charges, and proceedings to enforce the lien may be had, as provided in the act creating the lien. Until it is so filed and registered no lien shall be deemed to have been created, and the title to registered land shall not be affected until the memorial regarding the lien is entered in the register.

94.395 Assertion of claim or lien in registrar's office. Any person making any claim to or asserting any lien upon registered land not existing at the initial registry of the land and not shown upon the register, or adverse to the title of the registered owner, when no other provision is made in this chapter for asserting the same in the registrar's office, may make affidavit thereof, setting forth his interest, right, title, lien or demand, and how and under whom derived, and the character and nature of his claim or lien. The affidavit shall state his place of residence, and his place of business

if he has one, and designate a place at which all notices relating thereto may be served. Upon the filing of the affidavit in the office of the registrar the registrar shall enter a memorial thereof, as in the case of a charge.

94.400 [Reserved for expansion]

DEVOLUTION OF REGISTERED LAND

94.405 Devolution and distribution of registered land, on death. Except as otherwise provided in this chapter any estate or interest in registered land shall, upon the death of the owner, go to the personal representatives of the deceased in like manner as personal property, whether the owner dies testate or intestate, and shall be subject to the same rules of administration as if the estate or interest was personalty. However, the rule of division shall be the same as in the descent of real property, or as shall be provided by will.

94.410 Filing of letters by personal representative; entry of memorial. Before the personal representative of a deceased owner of an estate or interest in registered land shall deal with the same, he shall file in the registrar's office a certified copy of his letters of administration. If there is a will, he shall file a certified copy of the will and of letters testamentary or of administration with the will annexed, as the case may be, and shall produce the duplicate certificate of title. The registrar shall then enter upon the register and the duplicate certificate a memorial thereof, with a reference to the letters, or will and letters, by their file number, and the date of filing the same.

94.415 Representative's power to deal with land. Unless the will devises the lands to an executor to his own use or upon some trust, or gives to the executor power to sell, no sale or transfer of registered land shall be made by the executor or by an administrator in the course of administration, for the payment of debts or otherwise, except in pursuance of an order of a competent court obtained as provided by law. However, if a memorial of the will and letters testamentary or of letters of administration is first entered upon the register as provided in ORS 94.410, the executor or administrator may deal with mortgages, leases, and other personal interests in or upon registered land as if he were the registered owner.

94.420 Procedure when devise to executor. Where it appears by the will, a certified copy of which, with the letters testamentary, is filed as provided in ORS 94.410, that registered land is devised to the executor to his own use or upon some trust, the executor may have the land transferred to himself upon the register in like manner and subject to like terms and conditions, and with like rights, as in the case of a transfer pursuant to a deed filed in the registrar's office.

94.425 Exercise by executor of power given by will to deal with land. When the will of a deceased owner of an estate or interest in registered land empowers the executor to sell, convey, encumber, charge or otherwise deal with the land, it shall not be necessary for the executor to be registered as the owner. Upon a certified copy of the will and letters testamentary being filed as provided in ORS 94.410, the executor may sell, convey, encumber, charge or otherwise deal with the land, pursuant to the power, in like manner as if he were the registered owner, subject to the same conditions as to the trust, limitations and conditions expressed in the will, as in case of trusts, limitations and conditions expressed in a deed.

94.430 Necessity and effect of filing proof of heirship. Before making distribution of undevised registered land the executor or administrator shall file in the registrar's office a certified copy of the proof of heirship made in the probate court, which shall be conclusive evidence in favor of all persons thereafter dealing with the land that the persons therein named as the only heirs at law of the deceased owner are such heirs.

94.435 Sale of registered land by order of probate court. The court of probate may, for the purpose of distribution of the estate, order that an estate or interest in registered land be sold by the executor or administrator. Upon the filing in the registrar's office of a certified copy of the order of sale and order of confirmation of the sale, and the deeds issued in pursuance of the sale, a transfer of the estate or interest to the purchaser may be made upon the register, as in the case of other sales by deed.

94.440 Partial distribution. Whenever, after the expiration of the time fixed for the adjustment of claims against the estate of the deceased, and after proof of heirship,

it is made to appear to the court of probate that the estate will justify it, the court may direct the executor or administrator to make over and transfer to the devisees or heirs, or some of them, a portion or the whole of the registered lands to which they might be entitled on final distribution. Upon the filing of a certified copy of such order in the registrar's office, the executor or administrator may cause the transfer to be made upon the register in like manner as in case of a sale. The land so transferred shall be held free from all liens or claims against the estate. In the proceedings to procure such direction such notice shall be given as the court of probate may direct.

94.445 Final distribution. For the purpose of final distribution, the court of probate may determine the right of all persons in the estate or interest of the deceased in registered lands, declare and enforce the rights of devisees, heirs, persons entitled to dower and homestead and others, assign dower and homestead, and make partition and distribution according to the rights of the parties. The court may give direction to the executor or administrator as to the transfer of any estate or interest in registered lands to the devisees or heirs, and may direct the transfer to be to several devisees or heirs as tenants in common, or otherwise, as shall appear to the court to be most convenient, consistent with the rights of the parties, or as the parties interested may agree.

94.450 to 94.500 [Reserved for expansion]

LIEN OR TRANSFER BY TAX SALE OR JUDICIAL PROCEEDINGS

94.505 Procedure for registration of certificate of sale for tax or assessment. The holder of any certificate of sale of registered land or any estate or interest therein, for any tax, assessment or imposition, shall, within three months after the date of sale, present the certificate or a sworn copy thereof to the registrar, who shall enter on the register of the land a memorial thereof, stating the day of sale and date of presentation. The registrar shall also note upon the certificate of sale the date of presentation and the book and page of the register where the memorial is entered. The holder of the certificate shall also, within the same time, mail to each of the persons, who appear by the register to have any interest in the land, a notice of the registration of the certificate, except that where certificates of sale have been issued directly to a county as provided in ORS 312.100, it shall not be necessary to give such notice. Unless the certificate is presented and registered and notice given as provided in this section within three months after the date of sale, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance of the certificate. When it shall appear by the affidavit of the holder of the certificate filed with the registrar that the place of residence of any person interested in the land cannot, upon diligent inquiry, be ascertained, the requirement of this section as to mailing notice shall not apply to such person.

94.510 Effect of tax deed. A tax deed of registered land or an estate or interest therein issued in pursuance of any sale for tax or assessment shall have the effect of a transfer of title upon the register, and may be filed in the registrar's office. A transfer shall be effected as in the case of other deeds or conveyances and the registrar shall upon presentation of such tax deed cancel all outstanding certificates and issue a new certificate to the grantee named in the deed.

94.515 Necessity of filing lis pendens notice of action or suit affecting land. No suit, bill, or proceeding at law or in equity for any purpose, affecting an estate, interest or charge in or upon registered land, shall be deemed to be lis pendens, or notice, to any person dealing with the same, until a certificate of the pendency of such suit, bill or proceeding, under the hand and official seal of the clerk of the court in which it is pending, shall be filed with the registrar, and a memorial thereof entered by him upon the register of the last certificate of the title to be affected. This section shall not apply to attachment proceedings in which the officer making the levy shall file his certificate of levy as provided in ORS 94.525.

94.520 When judgment or decree is binding on the land. No judgment, decree or order of any court shall be a lien upon or affect an estate or interest in registered land until a certificate, under the hand and official seal of the clerk of the court in which the same is of record, stating the date

and purport of the judgment, decree or order, or a certified copy of such judgment, decree or order, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected.

94.525 When levy of process creates lien on land. Whenever registered land is levied upon by virtue of any writ of attachment, execution or other process, it shall be the duty of the officer making the levy to file with the registrar a certificate of the fact of such levy. A memorial of the levy shall be entered upon the register, and no lien shall arise by reason of the levy until the filing of the certificate and the entry in the register of such memorial, any notice thereof, actual or constructive, to the contrary notwithstanding.

94.530 Procedure when land is sold on execution or by decree; redemption. When registered land is sold by virtue of any execution, judgment or decree, it shall be the duty of the officer making the sale to file a duplicate of his certificate of sale with the registrar. Upon its being so filed, the registrar shall enter a memorial thereof upon the register in the same manner as he is required to enter other memorials. Certificates of redemption shall be filed and noted upon the register in like manner.

94.535 Transfer of title following judicial sale. When registered land is sold by a sheriff, master in chancery, receiver, special commissioner, or other officer or person pursuant to a judgment, decree or order of court, no transfer of the title shall be made by the registrar except upon the surrender and cancellation of the outstanding certificate of title, or upon an order of the court filed with the registrar directing the transfer. When a fee is transferred the court order shall direct the cancellation of the outstanding certificate and grant to the transferee a writ of assistance to put him in possession of the premises.

94.540 Cancellation of memorial involving suit, judgment or levy. When one of the following certificates is filed in the registrar's office and noted upon the register, the registrar is authorized to cancel or otherwise treat, according to the purport of the certificate, the memorial of a suit, bill, proceeding, judgment, decree or levy:

(1) The certificate of the clerk of the court in which any suit, bill or proceeding has been pending or any judgment or decree is of record, that such suit, bill or proceeding has been dismissed or otherwise disposed of, or the judgment, decree or order has been satisfied, released, reversed or overruled.

(2) The certificate of any sheriff or other officer that the levy of any execution, attachment or other process certified by him has been released, discharged or otherwise disposed of.

94.545 to 94.600 [Reserved for expansion]

FEES; INDEMNITY FUND

94.605 Fees of clerk of court. On the filing of any petition, the petitioner shall pay to the clerk of the court the sum of $15, which is payment in full for all of the clerk's fees and charges in the proceeding on behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk the sum of $15, which is payment in full for all clerk's fees on behalf of such defendant. When any number of defendants shall enter their appearance at the same time, or before default, only one fee shall be charged.
[Amended by 1965 c.619 §31]

94.610 Registrar's and examiner's fees. The fees to be paid the registrar shall be as follows:

(1) At or before the time of referring the application for initial registration the applicant shall pay to the registrar the sum of $30, of which the sum of $7.50 is payment in full for the services of the registrar up to the granting of the certificate of title, and $22.50 is payment in full for the services of the examiner. However, when there is a contest or when the evidence of title is complicated the court shall allow to the examiner such further sum as is reasonable compensation for his services. In proper cases the court may direct the payment of such further fees by the applicant or defendant as it may determine.

(2) For the granting of certificates of title upon each application and registering the same, $3.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issue and registration of the new certificate of title, $1.50.

(4) For the entry of each memorial on the register, including the filing of all instruments connected therewith, and the issue

and registration of the new certificate of title, $1.50.

(5) For the entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and indorsement upon duplicate certificate, 75 cents.

(6) For filing copy of will with letters testamentary, or filing copies of letters of administration and entering memorial thereof, 75 cents.

(7) For the cancellation of each memorial or charge, 75 cents.

(8) For each certificate showing condition of register, 75 cents.

(9) For a certified copy of the register or any instrument of writing on file in his office, the same fees now allowed by law to recorders of deeds for like services.

(10) For the filing and recording of an application of withdrawal and the issuing of a certificate of withdrawal, under ORS 94.230 and 94.235, $3.

[Amended by 1965 c.619 §32]

94.615 Payments for purpose of indemnity fund. Upon the bringing of lands under the operation of this chapter, consequent upon the application of the owner, or upon the issuance of a certificate of title pursuant to ORS 94.510, or upon the entry of a new certificate showing a person, either by devise or by descent, as registered owner, there shall be paid to the registrar one-tenth of one percent of the value of the land, such value to be ascertained by the registrar.

94.620 Creation of indemnity fund; investment. All sums of money received under ORS 94.615 shall be paid by the registrar to the county treasurer of the county in which the land is situated, for the purpose of creating an indemnity fund. The treasurer shall invest all of said funds in his hands, from time to time, if not immediately required for payments of indemnities, and report annually to the county court the condition of the fund and income therefrom. All investments shall be made with the approval of the county court, by order entered of record. The fund shall be invested only in the bonds or securities of the United States or of this state, or of counties or other municipalities of this state.

94.625 to 94.700 [Reserved for expansion]

REMEDIES OF INJURED PERSONS

94.705 Equitable relief for aggrieved person. (1) Whenever any person interested in any estate of interest in or charge upon registered land is entitled to have any certificate of title, memorial or other entry upon the register canceled, removed or modified, and the registrar or other person whose duty it is to do any act towards the same shall, upon request, fail or refuse to do so, or is absent from the county, or cannot be found, or for any reason the request cannot be made upon him, a court of equity may, upon petition by the person interested, make such order as may be according to equity in the premises, and, upon a certified copy of the order being filed in the registrar's office, the registrar shall comply with the order.

(2) Any person feeling himself aggrieved by the action of the registrar, or by his refusal to act, in regard to anything required of him by this chapter, may file his petition in equity in any court of competent jurisdiction, making the registrar and other persons whose interests may be affected, parties defendant, and the court may proceed therein as in other cases in equity, and make such order or decree as shall be according to equity in the premises and the purport of this chapter.

(3) The court may in any case brought under this section, in addition to the costs, award such damages, including reasonable attorneys' fees, as it deems just.

94.710 Noting of order or decree giving equitable relief. Nothing contained in ORS 94.705 shall be construed to remove the bar of any order or decree, or extend the time of limitation provided in this chapter, or affect the right of any bona fide purchaser or encumbrancer, without notice filed with the registrar and noted as in case of other memorials.

94.715 Injured person's action for damages from indemnity fund. Any person who by the provisions of this chapter is barred or in any way precluded from bringing an action for recovery of an interest in or claim upon registered land may bring an action at law against the treasurer of the county in which the land is situated, for the recovery of damages, to be paid out of the indemnity fund, if:

(1) Such person has sustained loss or damage through any omission, mistake or

misfeasance of the registrar, or of any examiner of titles, or of any deputy or clerk of the registrar, in the performance of their respective duties under this chapter; or

(2) Such person has wrongfully been deprived of any interest in land through the bringing of the land under the provisions of this chapter, or by the registration of any other person as owner of the land, or by any mistake, omission or misdescription in any certificate or in any entry or memorandum in the register book, or by any cancellation.

94.720 Defendants in action for damages; secondary liability of indemnity fund; defense by district attorney. If an action brought under the provisions of ORS 94.715 is for recovery for loss or damage arising only through omission, mistake or misfeasance of the registrar, or of any examiner of titles, or any deputy or clerk of the registrar, in the performance of their respective duties under the provisions of this chapter, the county treasurer shall be the sole defendant to the action. If the action is brought for loss or damage arising only through the fraud or wrongful act of some person other than the registrar, examiner of titles, deputies and clerks, or arising jointly through the fraud or wrongful act of such other person and the omission, mistake or misfeasance of the registrar, examiner of titles, deputies or clerks, the action shall be brought against both the county treasurer and such person aforesaid. In all such actions where there are defendants other than the county treasurer and damages are recovered, no final judgment shall be entered against the county treasurer until execution against the other defendants is returned unsatisfied, in whole or in part, and the officer returning the execution certifies that the amount still due upon the execution cannot be collected except by application to the indemnity fund. When the court is satisfied as to the truth of the return, it may, upon proper showing, order the amount of the execution and costs, or so much thereof as remains, to be paid by the county treasurer out of the indemnity fund. It shall be the duty of the district attorney to appear for the county treasurer and defend all such suits.

94.725 Statute of limitations; disabilities. (1) Except as provided in subsection (2) of this section, no action or proceeding shall be brought under the provisions of ORS 94.715 except within 10 years from the time when the right to bring such action or proceeding first accrued.

(2) An action or proceeding may be brought at any time within two years after the disability is removed, even though more than 10 years has expired since the right accrued, if, at the time the cause of action accrued, the person bringing the action, or the person from, by or under whom he claims, was:

(a) A male under 21 years of age.

(b) A female under 18 years of age.

(c) Insane.

(d) Imprisoned.

(e) Absent from the United States in the service of the United States or of this state.

94.730 Criminal proceeding as affecting remedy by injured person. No proceeding or conviction for any act declared by this chapter to be a crime shall affect any remedy which any person aggrieved or injured by such act may be entitled to, at law or equity, against the person who has committed the act, or against his estate.

94.735 to 94.800 [Reserved for expansion]

POWERS AND DUTIES OF REGISTRARS

94.805 Registrars and deputies; laws governing their rights, powers and duties. The recorder of conveyances or other recording officer of each county shall be registrar of titles in the county, and his deputies shall be deputy registrars. All laws relative to recorders and their deputies, including their compensation, clerk hire and expense, shall extend to registrars and their deputies, so far as applicable.

94.810 Powers and duties of deputies. Deputies may perform any duties of the registrar, in the name of the registrar, and the acts of deputies shall be held to be the acts of the registrar. In case of the death of the registrar or his removal from office, the chief deputy shall become the acting registrar until the vacancy is filled, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as the registrar.

94.815 Registrar not to practice law. No registrar or deputy registrar shall practice as attorney at law, nor be in partnership

while in office with any practicing attorney at law.

94.820 Liability of registrar for neglect of deputy or examiner. The registrar is liable for any neglect or omission of the duties of the registrar's office by a deputy or examiner of titles, in the same manner as for his own personal neglect or omission.

94.825 Handling of memorials and notations. Whenever a memorial or notation has been entered as permitted by this chapter, the registrar shall carry the same forward upon all certificates of title until it is canceled in some manner authorized by this chapter.

94.830 Custody of papers filed. All instruments, notices and papers required or permitted by this chapter to be filed in the office of the registrar shall be retained and kept in such office. They shall be numbered consecutively, and shall be listed in a book kept for that purpose, and described with descriptions such as "warranty deed," "quitclaim deed," "mortgage."

94.835 Registration of instrument executed in duplicate or multiplicate. When any mortgage, lease or other instrument creating or dealing with an estate, interest or charge in or upon registered land is in duplicate, triplicate, or more parts, only one of the parts need be filed and kept in the registrar's office. However, the registrar shall note upon the register whether the instrument is in duplicate, triplicate, or more parts. He shall mark upon the others, "mortgagee's duplicate," "lessor's duplicate," "lessee's duplicate," or as the case may be, and note upon the instruments the date of the filing and the volume and folio of the register where the memorial is entered, and deliver them to the parties entitled thereto.

94.840 Issuance of certified copies of instruments. When an instrument is not executed in a sufficient number of parts for the convenience of the parties, the registrar may make and deliver to each of the parties entitled thereto, certified copies of the instrument filed in his office, with the indorsements thereon, marking the copies, "mortgagee's certified copy," "lessor's certified copy," or as the case may be, and shall note upon the register the fact of issuing such copies. The certified copies shall have the same force and effect and be treated as duplicates.

94.845 Tract indices. The registrar shall keep tract indices, in which shall be entered the lands registered in the numerical order of townships, ranges, sections, and, in all cases of subdivisions, the blocks and lots therein; also, the names of the owners and a reference to the volume and folio of the register in which the lands are registered.

94.850 Alphabetical indices. The registrar shall keep alphabetical indices in which shall be entered in alphabetical order the names of all registered owners and all other persons interested in or holding charges upon registered land, with a reference to the volume and folio of the register in which the land is registered.

CONSTRUCTION OF CHAPTER

94.855 Construction of chapter. This chapter shall be construed liberally so far as may be necessary for the purpose of effecting its general intent.

94.860 to 94.985 [Reserved for expansion]

PENALTIES

94.990 Penalties for forgery and fraud in registration. (1) Any person shall be imprisoned in the penitentiary for not more than 10 years, or fined not more than $1,000, or both, who:

(a) Forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of any officer of the registry office, where such officer is expressly or impliedly authorized to affix his signature.

(b) Fraudulently stamps, or procures to be stamped, or assists in stamping, any document with any forged seal of the registrar.

(c) Forges, or procures to be forged, or assists in forging, the name, signature or handwriting of any person to any instrument which is expressly or impliedly authorized to be signed by such person.

(d) Uses any document upon which any impression, or part of the impression, of any seal of the registrar has been forged, knowing the same to have been forged.

(e) Uses any document the signature to which has been forged, knowing the same to have been forged.

(f) Swears falsely concerning any mat-

ter or proceeding made or done in pursuance of this chapter.

(2) Any person who fraudulently procures, or assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the register or other book kept in the registrar's office, or of any erasure or alteration in any entry in said book, or in any instrument authorized by this chapter, or who knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit affecting registered land, shall be fined not more than $5,000, or imprisoned in the penitentiary for not more than five years, or both.

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