Chapter 92

1971 REPLACEMENT PART

Plats and Subdivisions

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APPROVAL OF PLAN; PLATS

92.010 Definitions. As used in ORS 92.020 to 92.090 and 92.100 to 92.160:

(1) "Plat" includes a final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

(2) "Subdivide land" means to partition a parcel of land into four or more parcels of less than five acres each for the purpose of transfer of ownership or building development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership as shown on the tax roll for the year preceding the partitioning.

(3) "Subdivision" means either an act of subdividing land or a tract of land subdivided as defined in this section.

[Amended by 1955 c.756 §1]

92.014 Approval of planning commission or governing body of city or county required before creating street or way to partition land. No person shall create a street or way for the purpose of partitioning a parcel of land without the approval of the agency or body authorized to give approval of plans for subdivision under ORS 92.040 with respect to the area in which the parcel is situated.

[1955 c.756 §3]

92.016 Sales or transfers of lots when approval required under regulations adopted under ORS 92.046 prohibited until approval obtained. No person shall dispose of, transfer, sell or agree, offer or negotiate to sell any lot or parcel of land in any subdivision or division of land with respect to which approval is required by any ordinance or regulation adopted under ORS 92.046 and 92.048 until such approval is obtained.

[1955 c.756 §24]

92.020 [Repealed by 1955 c.756 §5 (ORS 92.025 enacted in lieu of ORS 92.020 and 92.030)]

92.025 Prohibition of sales or transfers of lots prior to recordation of plat. (1) No person shall dispose of, transfer, sell or agree, offer or negotiate to sell any lot or parcel of land in any subdivision until the plat thereof has been acknowledged and recorded with the recording officer of the county in which the lot is situated.

(2) No person shall dispose of, transfer, sell or agree, offer or negotiate to sell any lot or parcel of land in any subdivision by reference to or exhibition or other use of a plat or plan of such subdivision before the plat for such subdivision has been so recorded.

[1955 c.756 §6 (enacted in lieu of ORS 92.020 and 92.030)]

92.030 [Repealed by 1955 c.756 §5 (ORS 92.025 enacted in lieu of ORS 92.020 and 92.030)]

92.040 Application to planning commission or governing body of city or county for approval of subdivision plan before recording. Before a plat of any subdivision of land may be made and recorded, the subdivider or his authorized agent or representative shall make an application in writing to the planning commission of the county or city having jurisdiction under ORS 92.042 or, if there is no such commission in such county or city, to the governing body of such county or city for approval of a plan of subdivision and at the same time shall submit a tentative map showing the general design of the proposed subdivision. Approval of the tentative map shall not constitute final acceptance of a subdivision plat for recording.

[Amended by 1955 c.756 §7]

92.042 Planning commission or governing body having jurisdiction to approve plans or plats. (1) Land within six miles outside of the corporate limits of a city is under the jurisdiction of the city for the purpose of giving approval of plans or plats of subdivisions under ORS 92.040 and 227.110. However, when the governing body of a county has appointed a county planning commission and has adopted regulations for subdivision control as authorized by ORS 215.150, land in such county within such six-mile limit shall be under the jurisdiction of the county for such purpose.

(2) Land over six miles from the corporate limits of a city is under the jurisdiction of the county for the purpose of giving approval of plans for subdivisions under ORS 92.040.

[1955 c.756 §4]

92.044 Adoption of standards governing approval of plats and of partitioning of land by creation of street or way. (1) The governing body of a county or a city may, by regulation or ordinance, adopt standards, in addition to those otherwise provided by law,

governing, in the area over which the county or the city has jurisdiction under ORS 92.042, the approval of plats of subdivisions and of partitioning of land by creation of a street or way where the additional standards are considered necessary to carry out development patterns or plans and to promote the public health, safety or general welfare. Such standards may include, taking into consideration the location and surrounding area of the proposed subdivisions, requirements for placement of utilities, for the width and location of streets or for minimum lot sizes and such other requirements as the governing body considers necessary for lessening congestion in the streets, for securing safety from fire, flood, pollution or other dangers, for providing adequate light and air, for preventing overcrowding of land or for facilitating adequate provision of transportation, water supply, sewerage, drainage, education, recreation or other needs.

(2) Such governing body may also prescribe procedures to be followed in submitting plans and plats of subdivisions for approval.
[1955 c.756 §9]

92.046 Adoption of regulations requiring approval of partitioning of land not otherwise subject to approval. The governing body of a county or a city may as provided in ORS 92.048, when reasonably necessary to accomplish the orderly development of the land within the jurisdiction of such county or city under ORS 92.042 and to promote the public health, safety and general welfare of the county or city, adopt regulations or ordinances requiring approval, by the agency or body of the county or city which is authorized to approve plans for subdivisions under ORS 92.040, of the partitioning of land not otherwise subject to approval under ORS 92.010 to 92.090 and 92.100 to 92.160 or 227.100 and 227.110. Such regulations or ordinances may be applicable throughout the area over which the county or city has jurisdiction under ORS 92.042, or over any portion thereof. Such ordinances or regulations may specify the classifications of land partitioning which require approval under this section and may establish standards governing the approval of plats or plans for such partitioning. The standards may include all, or less than all, of the same requirements as are provided or authorized for subdivisions under ORS 92.010 to 92.090 and 92.100 to 92.160 and may provide for different standards for different classifications of land partitioning so long as the standards are no more stringent than are imposed in connection with subdivisions.
[1955 c.756 §22]

92.048 Procedure for adoption of regulations under ORS 92.046. The procedure for adoption of any ordinance or regulation under ORS 92.046 is as follows:

(1) The planning commission of the county or the city shall hold a public hearing on the proposed ordinance or regulation after publishing notice of the hearing once a week for two successive weeks prior to the hearing in a newspaper of general circulation published in the area in which land to be subject to such ordinance or regulation is situated or, if there is no such newspaper, a newspaper of general circulation published in the county. The notice shall contain the time, place and purpose of the hearing and a description of the land to be subject to the ordinance or regulation.

(2) After such hearing, the planning commission may recommend to the governing body of the county or city, as the case may be, the adoption of such ordinance or regulation.

(3) Prior to the adoption of such ordinance or regulation, the governing body of the county or the city shall hold a hearing thereon after giving notice of the hearing in the same manner provided in subsection (1) of this section.

(4) A copy of any regulation or ordinance adopted by the governing body of a county or a city under this section, together with a map of the area subject to the regulation or ordinance, shall be filed with the recording officer of the county in which the land subject to the ordinance or regulation is situated. Such ordinance or regulation shall not be effective until so filed.

(5) The ordinance or regulation may be amended from time to time by following the procedure prescribed in this section.
[1955 c.756 §23]

92.050 Requirements of survey and plat of subdivision. (1) No subdivider shall submit a plat of a subdivision for record, until all the requirements for the survey and the plat of the subdivision have been met.

(2) The survey for the plat of the subdivision shall be of such accuracy that the error of closure shall not exceed one foot in 4,000 feet.

(3) The survey and plat of the subdivision shall be made by a surveyor who is a registered engineer or a licensed land surveyor.

(4) The plat of a subdivision shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot shall be numbered and each block shall be lettered or numbered. The lengths of all boundaries of each lot shall be shown. Each street shall be named.

(5) The locations and descriptions of all monuments shall be carefully recorded upon all plats and the proper courses and distances of all boundary lines shall be shown.
[Amended by 1955 c.756 §10]

92.060 Marking certain points of plats with monuments; specifications of monuments. (1) The initial point of all subdivision plats shall be marked with a monument, either of stone, concrete or galvanized iron pipe. If stone or concrete is used it shall not be less than 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used it shall not be less than two inches in diameter and three feet long. The monument shall be set or driven six inches below the surface of the ground. The location of the monument shall be with reference to some known corner established by the United States survey.

(2) The intersections of all streets, avenues and public highways and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of stone, concrete, galvanized iron pipe, or iron or steel rods. If stone or concrete is used it shall not be less than 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used it shall not be less than one inch in diameter and 30 inches long, and if iron or steel rods are used they shall not be less than five-eighths of an inch in least dimension and 30 inches long.

(3) All lot corners except lot corners of cemetery lots shall be marked with monuments of either galvanized iron pipe not less than one-half inch in diameter or iron or steel rods not less than one-half inch in least dimension and two feet long.

(4) Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth of a foot.
[Amended by 1955 c.756 §11]

92.070 Surveyor's affidavit necessary to record plat; contents of affidavit. All plats or diagrams designating the location of land in any county in the State of Oregon, offered for record, shall have attached thereon an affidavit of the surveyor having surveyed the land represented on the plat, to the effect that he has correctly surveyed and marked with proper monuments the lands as represented, that he planted a proper monument as provided in ORS 92.060 indicating the initial point of such survey, and giving the dimensions and kind of such monument, and its location with reference to some known corner established by the United States survey, or giving two or more objects for identifying its location, and accurately describing the tract of land upon which the lots and blocks are laid out.

92.080 Preparation of plat. All plats subdividing any tracts of land in any county in this state, and dedications of streets, alleys, avenues or roads or public parks and squares and other writings made a part of such plats offered for record in any county in this state shall be made in black India ink, upon a good quality of white cold-pressed, double-mounted drawing paper 18 inches by 24 inches in size, with the muslin extending three inches at one end for binding purposes. The plat shall be of such a scale, and the lettering of the approvals thereof, and of the dedication and affidavit of the surveyor, shall be of such a size or type as will permit the whole thereof to be placed upon one single sheet of paper, but no part shall come nearer any edge of the sheet than one inch. All of the plat shall be on one side of the sheet, but the dedication or other written matter may be on the other side.
[Amended by 1955 c.756 §12]

92.090 Requisites for approval of plat. (1) No plat of a subdivision shall be approved which bears a name using a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in the same county, except for the words "town," "city," "place," "court," "addition" or similar words, unless the land platted is contiguous to and platted by the

same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the subdivision bearing that name. All plats must continue the block numbers of the plat of the same name last filed.

(2) No plat shall be approved unless:

(a) The streets and alleys are laid out so as to conform to the plats of adjoining property already filed as to width, general direction and in all other respects unless the planning commission or governing body authorized to give approval of plans of subdivisions under ORS 92.040 determines it is in the public interest to modify the street pattern.

(b) Streets and alleys are dedicated to the public use without any reservation or restriction whatever.

(c) The name is proper, so as to comply with this section.

(d) All taxes and assessments have been paid, as provided in ORS 92.095.

[Amended by 1955 c.31 §1; 1955 c.756 §13; 1965 c.393 §1]

92.095 Payment of taxes required before plat approved. (1) No plat shall be approved unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed upon the tax roll have been paid which have become a lien upon the subdivision or which will become a lien during the calendar year.

(2) After January 1, and before the certification under ORS 311.105 of any year, the subdivider shall:

(a) If the exact amount of taxes, special assessments, fees and charges are able to be computed by the assessor, pay such amount to the assessor who is authorized to levy and collect such amount.

(b) If the assessor is unable to compute such amount at such time, either pay an amount computed using the value then on the assessment roll for such subdivision and the previous year's millage rate increased by 10 percent plus the assessor's best estimate of special assessments, fees and other charges, or deposit with the tax collector a bond with a good and sufficient undertaking in such amount as the assessor considers adequate to insure payment of the taxes to become due. In no event shall the bond amount exceed twice the amount of the previous year's taxes, special assessments, fees and other charges upon such subdivision.

(3) Taxes paid or bonded for under paragraph (a) or (b) of subsection (2) of this section shall be entitled to the discount provided by ORS 311.505.

(4) The provisions of ORS 311.370 shall apply to all such taxes so collected, except that any deficiency shall constitute a personal debt against the person subdividing the land and not a lien against the subdivision land, and shall be collected as provided by law for the collection of personal property taxes.

[1965 c.393 §2]

92.100 Approval of plat by city engineer or surveyor or by county surveyor; approval by county assessor and county governing body; fees. (1) Before any plat can be recorded, covering land within the corporate limits of any city, it must be approved by the city engineer or city surveyor, if any; otherwise by a county surveyor. However, the governing body of the city may designate any county surveyor to serve in lieu of the city engineer. Except as provided in subsection (3) of this section, if the land is outside the corporate limits of any city, the plat shall be approved by the county surveyor before it is recorded. All plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording.

(2) Before approving the plat as required by this section, the city engineer, city surveyor or the county surveyor, as the case may be, shall check the subdivision site and the plat and shall take such measurements and make such computations as are necessary to determine that the plat complies with the provisions of ORS 92.050 and with the subdivision requirements in effect in the area. For performing such service the county surveyor shall collect from the subdivider a fee in accordance with the following schedule:

(a) For subdivisions containing 10 lots or parcels, or less, $40;

(b) For subdivisions containing over 10 but not more than 25 lots or parcels, $90;

(c) For subdivisions containing over 25 but not more than 50 lots or parcels, $190;

(d) For subdivisions containing over 50 but not more than 100 lots or parcels, $290;

(e) For subdivisions containing over 100 lots or parcels, $490, and $2 for each additional lot or parcel.

(3) Any plat prepared by the county surveyor in his private capacity shall be approved in accordance with subsection (2) of this section by the surveyor of a county other than the county where the land is located. The county governing body shall refer such a plat to the county surveyor of another county by indorsement on the plat. The county governing body, in accordance with ORS 204.401, may provide allowances for travel and other expenses of the surveyor to whom the plat is referred.
[Amended by 1955 c.31 §2; 1955 c.756 §14; 1957 c.688 §1; 1963 c.285 §1; 1971 c.419 §1]

92.110 Land in irrigation districts; approval of plat; appeal from refusal to approve. All subdivision plats located within the boundaries of an irrigation district, and all plans or plats for vacating, laying out, widening, extending, parking or locating streets or alleys in irrigation districts shall be submitted to the board of directors of the irrigation district and a report thereon shall be secured from the board in writing before approval by the governing body of the county. No such plan, plat or replat or deed shall be received or recorded in any public office, unless the approval of the board of directors of the irrigation district is indorsed thereon in writing. An appeal from the action of the board to the circuit court of the county in which the land is situated may be taken, perfected and prosecuted in the same manner as an appeal from the justice court. On appeal the matter shall be tried de novo.
[Amended by 1955 c.756 §15]

92.120 Filing and recording plats; copies. (1) The plat of a subdivision described in ORS 92.050 when made and approved as required, and offered for record in the records of the county where the described land is situated, shall, upon the payment of the fees provided by law, be filed by the county recording officer. The fact of filing and the date thereof shall be entered thereon, and it shall then be securely bound with other plats of like character in a book especially prepared for that purpose and designated as "Record of Town Plats."

(2) At the time of filing such plat, the person offering it for filing shall also file with the county recording officer and with the county surveyor, if requested by him, an exact copy thereof, made with black India ink or photocopy upon a good quality of linen tracing cloth to the same scale and degree of legibility as the plat. The engineer or surveyor who made the plat shall make an affidavit to indicate that the tracing cloth copy is an exact copy of the plat. The copy filed with the county recording officer shall be certified by him to be an exact copy and then shall be filed in the archives of the county, and be preserved by filing without folding. The subdivider shall provide without cost one print each from such copy for the county assessor, the county surveyor and the city or county planning commission.
[Amended by 1955 c.756 §16]

92.130 Additional tracings transferred to county surveyor; replacing lost or destroyed records. Any additional tracings of plats as mentioned in ORS 92.120 other than the one copy filed with the county recording officer shall be transferred to the county surveyor, if requested by him, who then shall keep them well bound and safeguarded as required by law. If such plat or copy thereof is lost, destroyed, mutilated or missing from the county records, the county surveyor shall make a copy thereof, and file it in the proper office of record. Each such copy made by the county surveyor pursuant to this section shall bear a certificate of the surveyor that it was made in compliance with this section, and that it is a true copy of the original record.
[Amended by 1955 c.756 §17]

92.140 Indexing of plat records. The books entitled "Record of Town Plats" shall be provided in the front part with indices, in which shall be entered in alphabetical order, all plats recorded therein. The dedications to such plats shall also be indexed in the indices of Records of Deeds for the county. When the plats are so filed, bound and indexed they shall be the legal record of all plats.
[Amended by 1955 c.756 §18]

92.150 Construction of donations marked on plat. Every donation or grant to the public, including streets and alleys, or to any individual, religious society, corporation or body politic, marked or noted as such on the plat of the subdivision wherein the donation or grant was made, shall be considered a general warranty to the donee or grantee for his use for the purposes intended by the donor or grantor.
[Amended by 1955 c.756 §19]

92.160 Notice to Real Estate Commissioner of receipt of plat. Each city engineer, city surveyor or county surveyor shall immediately notify the Real Estate Commissioner in writing of his receipt for approval of any plat pursuant to ORS 92.100. The notification shall include a general description of the land with the number of lots and total acreage covered by the plat and the names of the persons submitting the plat for approval.
[1965 c.584 §2]

CONTROL OF SALES AND LEASES

92.210 Definitions for ORS 92.210 to 92.390. As used in ORS 92.210 to 92.390:

(1) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the subdivider holds such subdivision under an option, contract to sell or trust agreement. Taxes and assessments levied by public authority shall not be considered a blanket encumbrance.

(2) "Commissioner" means the Real Estate Commissioner.

(3) "Person" includes a natural person, a domestic or foreign corporation, a partnership, an association, a joint stock company, a trust and any unincorporated organization. As used in ORS 92.210 to 92.390 the term "trust" includes a common law or business trust, but does not include a private trust or a trust created or appointed under or by virtue of any last will and testament, or by a court of law or equity.

(4) "Real property sales contract" means an agreement wherein one party agrees to lease or to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract.

(5) "Sale" or "lease" includes every disposition, transfer or offer or attempt to dispose of or transfer land in a subdivision, or an interest or estate therein, by a subdivider or his agent, including the offering of such property as a prize or gift when a monetary charge or consideration for whatever purpose is required by the subdivider or his agent.

(6) "Subdivided lands" and "subdivision" mean improved or unimproved land or lands divided or sold under an agreement to be subsequently divided for the purpose of sale or lease, whether immediate or future, into four or more lots or parcels.

(7) "Subdivider" means any person who causes land to be subdivided into a subdivision for himself or for others, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to make subdivisions.
[1963 c.624 §3; 1965 c.584 §3]

92.220 Legislative findings; construction; short title. (1) The Legislative Assembly finds that vast tracts of marginal or submarginal lands in this and other states have been and are now being subdivided and offered to the public as investments and potential residential and commercial property, that the development of new subdivisions and the promotion of sales and leases of such property are now largely uncontrolled and unregulated in this state and that a need exists to protect the public from fraud, deceit and misrepresentation.

(2) The provisions of ORS 92.210 to 92.390 are in addition to, and not in lieu of, the existing provisions of ORS 92.010 to 92.090 and 92.100 to 92.160.

(3) ORS 92.210 to 92.390 may be cited as the Oregon Subdivision Control Law.
[1963 c.624 §§1, 2, 25]

92.230 Compliance with ORS 92.210 to 92.390 required; exceptions. (1) No person shall offer any subdivided lands for sale or lease after September 2, 1963, without having complied with all the applicable provisions of ORS 92.210 to 92.390.

(2) ORS 92.210 to 92.390 do not apply to the sale or leasing of:

(a) Apartments, offices, stores or similar space within an apartment building, industrial building or commercial building; or

(b) Cemetery lots, parcels or units in Oregon; or

(c) Subdivided lands in Oregon containing less than 20 separate lots or parcels, which are not in unit ownership created under ORS 91.505 to 91.675 but which are contained within a recorded subdivision plat which has met the requirements of ORS 92.020 to 92.160, or as an alternative have met the following conditions:

(A) Each lot is situated on a dedicated road or street constructed to the specifications of the county commissioners of the county or the governing body of the municipality which has accepted such road or street for maintenance; and

(B) The subdivision has drainage structures and fill necessary to prevent flooding, which structures and fill have been approved by the county commissioners of the county or the governing body of the municipality; and

(C) Electric power is available at or near each lot; and

(D) Domestic water supply and sanitary sewage disposal are available at or near each lot, meeting the requirements of the State Board of Health, the Environmental Quality Commission and, in the case of septic tanks, the local health department of the county in which the land is situated.
[1963 c.624 §§4, 19; 1969 c.508 §1]

92.235 Compliance with ORS 92.210 to 92.390 prerequisite to offering property for sale or lease. No person shall offer for sale or lease, any land or property as defined in subsection (13) of ORS 91.505 without having complied with all applicable provisions of ORS 92.210 to 92.390. The requirement of this section shall be in addition to, and not in lieu of, ORS 91.505 to 91.675.
[1969 c.508 §3]

92.240 Preliminary notice of intention; fees. (1) Prior to the time when subdivided lands in another state are to be offered for sale or lease within this state, or when any subdivided lands located within this state are to be offered for sale or lease, the subdivider or his agent shall by a "Notice of Intention" notify the commissioner in writing of his intention to sell or lease. A notice of intention shall contain true information as follows:

(a) The name and the business and residence address of the subdivider;

(b) The names and the business addresses of all licensees of the commissioner and of all other persons selling or leasing, within this state, lots or parcels in the subdivision;

(c) A certified copy of the plat filed with the county or city, or a statement of the county or city governing body certifying that they have been advised of this intent to subdivide or a statement by the county or city governing body that the proposal is not subject to local regulation or ordinance;

(d) A brief but comprehensive statement describing the land on and the locality in which the subdivision is located;

(e) A statement of the condition of the title to the land;

(f) A statement of the provisions, if any, that have been made for legal access, sewage disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities;

(g) A statement of the use or uses for which the proposed subdivision will be offered; and

(h) A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(2) The notice of intention shall be accompanied by a filing fee as follows:

(a) For subdivisions containing 10 lots or parcels, or less, $40;

(b) For subdivisions containing over 10 but not more than 25 lots or parcels, $90;

(c) For subdivisions containing over 25 but not more than 50 lots or parcels, $190;

(d) For subdivisions containing over 50 but not more than 100 lots or parcels, $290;

(e) For subdivisions containing over 100 lots or parcels, $490, and $2 for each additional lot or parcel.
[1963 c.624 §5; 1969 c.663 §5; 1971 c.106 §1]

92.250 Request for further information; reply. (1) The commissioner may require the subdivider to furnish such additional information in a "Request for Further Information" as the commissioner determines to be necessary in the administration and enforcement of ORS 92.210 to 92.390 including but not limited to:

(a) A statement of the terms and conditions on which it is intended to transfer or dispose of the land or interest therein, together with copies of any contract, conveyance, lease, assignment or other instrument intended to be used;

(b) Copies of all sales pamphlets and literature to be used in connection with the proposed subdivision; and

(c) Any other information that the subdivider may desire to present.

(2) The subdivider's reply to the first request for further information required by the commissioner under subsection (1) of this section shall be accompanied by proof of the financial ability of the subdivider to complete improvements and facilities which are:

(a) Required by the appropriate state, city and county authorities; and

(b) Promised to prospective purchasers.
[1963 c.624 §6; 1969 c.663 §4; 1971 c.106 §2]

92.255 Consent to service of process on commissioner; form; method of service; record. (1) Every nonresident subdivider, at the time of filing the preliminary notice of intention and information required by ORS 92.240 and 92.250 shall also file with the commissioner an irrevocable consent that if, in any suit or action commenced against him in this state arising out of a violation of ORS 92.210 to 92.390, personal service of summons or process upon him cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon him by service on the commissioner.

(2) The consent shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by an individual subdivider and shall set forth:

(a) The name of the subdivider.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the subdivider is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service on the commissioner of any such process shall be made by delivery to him or a clerk on duty in any office of the commissioner, duplicate copies of such process, with duplicate copies of any papers required by law to be delivered in connection with such service.

(5) When the commissioner is served with any such process, he shall immediately cause one of the copies thereof, with any accompanying papers, to be forwarded by registered mail to the subdivider at the address set forth in the consent.

(6) The commissioner shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

[1965 c.584 §5]

92.260 Subdivider to keep information current. The information required under ORS 92.240 and 92.250 shall be kept current by the subdivider. Any material change in the information furnished to the commissioner in the preliminary notice of intention shall be reported by the subdivider within 10 days after the change occurs. Any material change in the information furnished to the commissioner in the subdivider's reply to a request for further information shall be reported by the subdivider at least 10 days before the change occurs.

[1963 c.624 §§7, 17; 1965 c.584 §6]

92.270 Examination of subdivision. (1) The commissioner may make an examination of any subdivision subject to ORS 92.210 to 92.390 to be offered for sale or lease and may make a public report of his findings. If no report is made within 45 days after examination of the subdivision, the report shall be deemed waived.

(2) The commissioner may waive an examination of a real estate subdivision located in another state when that state has an existing subdivision law which provides for the examination of and a public report on the real estate subdivision and where that state will waive investigation of a real estate subdivision located within this state and will accept in lieu thereof a report prepared by the commissioner under subsection (1) of this section.

[1963 c.624 §8; 1965 c.584 §7]

92.280 Waiver of certain requirements of ORS 92.210 to 92.390. With respect to any subdivision within this state, if, after examination of the preliminary notice of intention required by ORS 92.240 or the reply to the commissioner's request for further information, the commissioner concludes that the sale or lease of any portion of such subdivision would be reasonably certain not to involve any misrepresentation, deceit or fraud, he shall waive all of the provisions of ORS 92.210 to 92.390, except ORS 92.350 to 92.380 and subsection (2) of ORS 92.990, which he considers unnecessary for the protection of the public from fraud, deceit or misrepresentation. The commissioner shall notify the subdivider within 15 days of receipt of the preliminary notice of intention of his approval or disapproval of any waiver. However, the commissioner may, for good and sufficient cause, revoke any waiver at any time upon 10 days' notice and a hearing held for such purpose.

[1963 c.624 §9; 1965 c.584 §8]

92.290 Public report. (1) Unless the making of a public report has been waived, no person shall sell or lease any lot or parcel

in a subdivision prior to the issuance of the report.

(2) A copy of the public report, when issued, shall be given to the prospective purchaser by the subdivider or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. If required by the commissioner, the subdivider or agent shall take a receipt from such prospective purchaser or lessee upon delivery of a copy of the commissioner's public report, and such receipts shall be kept on file within this state in the possession of the subdivider subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

(3) The commissioner's public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized or printed in larger or heavier type than the balance of the report unless the true copy of the report so emphasizes such portion.

(4) The commissioner may furnish at cost copies of his public report for the use of subdividers.

[1963 c.624 §§10, 11; 1965 c.584 §9]

92.300 Reimbursement for cost of out-of-state examination. When an examination is to be made of subdivided lands situated in the State of Oregon, or situated outside the state for sale or lease within this state, the commissioner, in addition to the filing fee provided in ORS 92.250, may require the subdivider to advance payment of an amount equivalent to 10 cents a mile for each mile estimated by the commissioner to be traveled in going to and returning from the location of the project, and an amount estimated to be necessary to cover the additional expense of such inspection not to exceed $100 a day for each day consumed in the inspection of the project.

[1963 c.624 §12; 1969 c.663 §6]

92.310 Conditions precedent to sales of parcels; alternate requirements. (1) No person shall sell or offer to sell any lot or parcel within a subdivision unless all of the following conditions are complied with:

(a) A copy of the title report or abstract, as it relates to the property being sold, shall be placed in escrow with a bank, an attorney at law, a trust company, a title insurance company or any other person or firm authorized to receive escrows under the laws of this state.

(b) The original sales contract relating to the purchase of real property in such subdivision clearly setting forth the legal description of the property being purchased, the principal amount of the encumbrance outstanding at the date of the sales contract and the terms of the contract shall be included in such escrow deposit.

(c) A partial release of the lot or parcel being sold from the terms and provisions of any blanket encumbrance as described in subsection (1) of ORS 92.210 shall be included in such escrow deposit.

(d) A release of any other lien or encumbrance existing against such lot or parcel being sold as revealed by such title report shall be included in such escrow deposit.

(e) A warranty or bargain and sale deed in good and sufficient form conveying merchantable and marketable title to the purchaser of such lot or parcel shall be included in such escrow deposit.

(2) Unless the legal owner of the lot or parcel being sold shall acknowledge execution of the contract of sale in the manner provided for acknowledgement of deeds and consent to recording of the contract by the purchaser, the legal owner shall execute, acknowledge and deliver a good and sufficient deed conveying title to such lot or parcel to a trustee under an agreement of trust in form acceptable to the commissioner. The trustee shall record the deed as provided in ORS chapter 93. The agreement of trust shall provide generally for conveyance by the trustee to the purchaser, if and when the purchaser becomes entitled to delivery of the deed described in paragraph (e) of subsection (1) of this section, and shall further provide generally for reconveyance by the trustee to the trustee's grantor upon request of the trustee's grantor, if and when the purchaser shall be in default under the terms of the contract of sale.

(3) Only a bank, attorney at law, trust company, title insurance company or other firm or person authorized to receive escrows under the laws of this state and located within this state may act as trustee under subsection (2) of this section.

(4) In lieu of the procedures provided in subsections (1) and (2) of this section, the subdivider shall conform to such alternative

requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section.
[1963 c.624 §13]

92.315 Authority of Real Estate Commissioner to make rules. In addition to the requirements of ORS 92.240, 92.250, 92.260, 92.290 and 92.310, the commissioner may adopt rules and regulations governing the submission of information and documents to his office involving the sale or lease of condominiums and property in unit ownership, which rules and regulations shall include, but shall not be limited to, the documentation of financial arrangements for the acquisition, development, use, control and management of common property or facilities and such other information or documents as the commissioner deems necessary in carrying out the provisions of ORS 92.210 to 92.390.
[1969 c.508 §4]

92.320 Records of subdivider. Records of the sale or lease of real property within a subdivision shall be subject to inspection by the commissioner. No subdivider or agent shall make any change of address affecting the location of the subdivider's or agent's records without first obtaining the approval of the commissioner in writing of such intended change.
[1963 c.624 §14]

92.330 Prohibited acts. No person shall, in connection with the offer, sale or lease of any lot or parcel in a real estate subdivision, directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or fail to state a material fact necessary to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deception upon any person;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature which contains an untrue statement of a material fact or fails to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated;

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the real estate subdivision has been in any way approved or indorsed by the commissioner.
[1963 c.624 §15]

92.340 Water and sewage facilities. No subdivider of a real estate subdivision shall sell or enter into any contract for the sale or lease of any lot or parcel in such subdivision until preliminary plans for providing such lot or parcel with domestic water supply and sewage disposal facilities have been submitted to the State Health Officer or his designated county representative. The provisions of this section shall not apply to those subdivisions which have been approved by the proper authority for the purpose of building homes to be financed by the Federal Housing Administration insured loans, or Veterans' Administration guaranteed loans.
[1963 c.624 §16]

92.350 False or misleading advertising prohibited. It shall be unlawful for any owner, subdivider, agent or employe of such subdivision or other person with intent, directly or indirectly, to sell or lease subdivided lands or lots or parcels therein, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning subdivided lands, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 92.210 to 92.390 unless the publisher, employe, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the subdivided lands advertised or the sale thereof.
[1963 c.624 §18]

92.360 Waiver of rights by purchaser or lessee void. Any condition, stipulation or provision in any sales contract or lease, or in any other legal document, binding any purchaser or lessee to waive any legal rights

against the subdivider, shall be deemed to be contrary to public policy and void.
[1963 c.624 §21]

92.370 Order to desist from unlawful acts. Whenever the commissioner finds that any owner, subdivider or other person is violating any of the provisions of ORS 92.210 to 92.390 or of the alternative requirements of the commissioner prescribed pursuant to subsection (4) of ORS 92.310, the commissioner may order the person to desist and refrain from violating such provisions or requirements, or from the further sale or lease of lots or parcels within the subdivision.
[1963 c.624 §22; 1965 c.584 §10]

92.380 Enjoining violations of ORS 92.210 to 92.390; appointment of receiver or conservator. Whenever the commissioner finds that any subdivider or other person is violating, or has violated or is about to violate, any of the provisions of ORS 92.210 to 92.390 or the alternative requirements of the commissioner prescribed pursuant to subsection (4) of ORS 92.310, he may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where such person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against such person, firm or corporation, and any other person or persons concerned in or in any way participating or about to participate in such violation, to enjoin such person, firm or corporation or any other person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof, and to apply for the appointment of a receiver or conservator of the assets of the defendant where such appointment is appropriate.
[1963 c.624 §23; 1965 c.584 §11]

92.390 Disposition of receipts. The moneys received under ORS 92.210 to 92.390 shall be paid into the State Treasury and placed to the credit of the General Fund in the Oregon Real Estate Department Account. Such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 92.210 to 92.390.
[1963 c.624 §24]

PENALTIES

92.990 Penalties. (1) Violation of any provision of ORS 92.010 to 92.090 and 92.100 to 92.160 or of any regulation or ordinance adopted thereunder, is punishable, upon conviction, by a fine of not less than $50 nor more than $500 or imprisonment in the county jail for not less than 25 days nor more than 50 days, or both.

(2) Any person who violates any of the provisions of subsection (1) of ORS 92.230, ORS 92.240, 92.250 or 92.260, subsections (1), (2) and (3) of 92.290, ORS 92.310 and 92.320 to 92.350 and any alternative requirement of the commissioner prescribed pursuant to subsection (4) of ORS 92.310, not waived by the commissioner pursuant to ORS 92.280, shall be punished by a fine not exceeding $10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment.
[Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12]

CERTIFICATE OF LEGISLATIVE COUNSEL

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

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel