

# Chapter 92

## 1973 REPLACEMENT PART

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**APPROVAL OF PLAN; PLATS**

**92.010 Definitions for ORS 92.025 to 92.160.** As used in ORS 92.025 to 92.160, unless the context requires otherwise:

(1) "Lot" means a unit of land that is created by a subdivision of land.

(2) "Major partition" means a partition which includes the creation of a road or street.

(3) "Map" means a final diagram, drawing or other writing concerning a major partition.

(4) "Minor partition" means a partition that is subject to approval by a city or county under a regulation or ordinance adopted pursuant to ORS 92.046 and that does not include the creation of a road or street.

(5) "Parcel" means a unit of land that is created by a partitioning of land.

(6) "Partition" means either an act of partitioning land or an area or tract of land partitioned as defined in this section.

(7) "Partition land" means to divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. "Partition land" does not include divisions of land resulting from lien foreclosures; divisions of land resulting from the creation of cemetery lots; and divisions of land made pursuant to a court order, including but not limited to court orders in proceedings involving testate or intestate succession; and "partition land" does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size established by any applicable zoning ordinance.

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

(9) "Road" or "street" means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

(10) "Subdivide land" means to divide

an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

(11) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivided as defined in this section.  
[Amended by 1955 c.756 §1; 1973 c.696 §3]

**92.012 Compliance with ORS 92.010 to 92.160 required.** No person may subdivide land or partition land except in accordance with ORS 92.010 to 92.160.  
[1973 c.696 §2]

**92.014 Approval of planning commission or governing body of city or county required before creating street or road to partition land.** (1) No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the city or county having jurisdiction over the area or tract of land to be partitioned.

(2) No instrument dedicating land to public use shall be accepted for recording in this state unless such instrument bears the approval of the city or county authorized by law to accept such dedication.  
[1955 c.756 §3; 1973 c.696 §4]

**92.016 Sales or transfers of lots when approval required prohibited until approval obtained; exception.** (1) No person shall dispose of, transfer, sell or agree, offer or negotiate to sell any lot in any subdivision with respect to which approval is required by any ordinance or regulation adopted under ORS 92.044 and 92.048 until such approval is obtained.

(2) A person may offer or negotiate to sell any parcel in a major partition or in a minor partition prior to the approval of the tentative plan for the major or minor partition, but no person may dispose of, transfer, sell or agree to sell any parcel in a major partition or in a minor partition prior to such approval.

[1955 c.756 §24; 1973 c.696 §5]

**92.020** [Repealed by 1955 c.756 §5 (92.025 enacted in lieu of 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 in any subdivision until the plat of the subdivision 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 in any subdivision by reference to or exhibition or other use of a plat of such subdivision before the plat for such subdivision has been so recorded.

[1955 c.756 §6 (enacted in lieu of 92.020 and 92.030); 1973 c.696 §6]

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

**92.040 Application to planning commission or governing body of city or county for approval of subdivision plan or map before recording.** Before a plat of any subdivision or the map of any major partition may be made and recorded, the person proposing the subdivision or the major partition or his authorized agent or representative shall make an application in writing to the county or city having jurisdiction under ORS 92.042 for approval of the proposed subdivision or the proposed major partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044. Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or the proposed major partition. No plat for any proposed subdivision and no map for any proposed major partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or the proposed major partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or the map of the proposed major partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the plat or map and the city or county may require only such changes in the plat or the map as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or the proposed major partition.

[Amended by 1955 c.756 §7; 1973 c.696 §7]

**92.042 Governing body having jurisdiction to approve plans, maps 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, maps and plats of subdivisions and major partitions under ORS 92.040 and

227.110. However, when the governing body of a county has adopted ordinances or regulations for subdivision and major partition control as required by ORS 92.044, land in such county within such six-mile limit shall be under the jurisdiction of the county for such purposes.

(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, maps and plats for subdivisions and major partitions under ORS 92.040.

[1955 c.756 §4; 1973 c.261 §1; 1973 c.696 §8]

**92.044 Adoption of standards and procedures governing approval of plats and of partitioning of land.** (1) The governing body of a county or a city shall, by regulation or ordinance, adopt standards and procedures, 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 submission and approval of tentative plans and plats of subdivisions and governing the submission and approval of tentative plans and maps of major partitions to carry out its comprehensive plan and to promote the public health, safety and general welfare.

(a) Such standards may include, taking into consideration the location and surrounding area of the proposed subdivisions or the proposed major partitions, 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, slides, 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.

(b) Such ordinances or regulations shall establish the form and contents of tentative plans of major partitions and subdivisions submitted for approval and shall establish the form and contents of maps of major partitions for filing upon approval with the county recording officer.

(c) The procedures established by each such ordinance or regulation shall provide for the coordination in the review of the

tentative plan of any subdivision or major partition with all affected city, county, state and federal agencies and all affected special districts.

(2) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to subdivisions and major partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose. If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a subdivision or major partition, such ordinance or regulation shall also provide for appeal to the governing body from such approval or disapproval and require initiation of any such appeal within 30 days after the date of the approval or disapproval from which the appeal is taken.

(3) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed subdivisions that are submitted for approval pursuant to this section. As used in this subsection, "costs" does not include costs for which fees are prescribed under ORS 92.100 and 205.350.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed major partitions that are submitted for approval pursuant to this section.

(5) Ordinances and regulations adopted under this section shall be adopted in accordance with ORS 92.048.

[1955 c.756 §9; 1973 c.696 §9]

**92.046 Adoption of regulations requiring approval of partitioning of land not otherwise subject to approval.** (1) 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 county or city of proposed partitions not otherwise subject to approval under a regulation or ordinance adopted pursuant to ORS 92.044. 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 such partitions which require approval under this section and may establish standards and procedures governing the approval of tentative plans for such partitions. 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 92.160 and may provide for different standards and procedures for different classifications of such partitions so long as the standards are no more stringent than are imposed by the city or county in connection with subdivisions.

(2) Such ordinances or regulations may establish the form and contents of the tentative plans of minor partitions submitted for approval and may establish adequate measures for the central filing, including but not limited to recording with the city recorder or the county recording officer, and for the maintenance of tentative plans for minor partitions following approval.

(3) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to minor partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose. If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a minor partition, such ordinance or regulation shall also provide for appeal to the governing body from such approval or disapproval and require initiation of any such appeal within 10 days after the date of the approval or disapproval from which the appeal is taken.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon applications for approval of proposed minor partitions.

(5) No tentative plan of a proposed minor partition may be approved unless the tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under this section that are then in effect for the city or

county within which the land described in the tentative plan is situated.

(6) Any ordinance or regulation adopted under this section shall comply with the comprehensive plan for the city or county adopting the ordinance or regulation.  
[1955 c.756 §22; 1973 c.696 §10]

**92.048 Procedure for adoption of regulations under ORS 92.044 and 92.046.** The procedure for adoption of any ordinance or regulation under ORS 92.044 and 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) Prior to the expiration of 60 days after the date of such hearing, the planning commission may transmit its recommendation regarding the proposed ordinance or regulation to the governing body of the county or city, as the case may be. If the planning commission recommendation has not been received by the governing body of the county or the city prior to the expiration of such 60-day period, the governing body may consider the ordinance or regulation without recommendation of the planning commission thereon.

(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 and a brief statement of the different classifications, if any, of land partitioning under the ordinance or regulation, 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. If

the ordinance or regulation is applicable throughout all of the area over which the county or city has jurisdiction under ORS 92.042, only an outline map of such area shall be filed with the recording officer of the county.

(5) The ordinance or regulation may be amended from time to time by following the procedure prescribed in this section.  
[1955 c.756 §23; 1973 c.314 §1; 1973 c.696 §11]

**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 and roads 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.

(5) All monuments for the exterior boundaries of a subdivision shall be marked and such monuments shall be referenced on the plat of the subdivision before the plat of the subdivision is offered for recording. However, interior monuments for the subdivision need not be set prior to the recording of the plat of the subdivision if the engineer or land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in subsection (2) of ORS 92.070 and if the person subdividing the land furnishes to the governing body of the county or city by which the subdivision was approved a bond or cash deposit guaranteeing the payment of the cost of setting the interior monuments for the subdivision as provided in ORS 92.065.

[Amended by 1955 c.756 §11; 1973 c.696 §12]

**92.065 Marking interior monuments after recording of plat; bond or cash deposit required; release of bond; return of cash deposit; payment for survey work; county surveyor performing survey work.** (1) If the interior monuments for a subdivision are to be marked on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in such plat shall furnish, prior to recording the plat, to the governing body of the city or county by which the plat was approved a bond or cash deposit, at the option of the governing body, in an amount equal to not more than 120 percent of the estimated cost of performing the work for the interior monumentation.

(2) If the person subdividing the lands described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within three months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit held by it for such purpose and return the excess of the cash deposit, if any, to such person.

(3) In the event of the death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure or refusal of such surveyor to set such monuments, the governing body may direct the county surveyor in his official capacity or contract with a surveyor in private practice to set such monuments and reference such monuments for recording as provided in ORS 92.070. Payment of the fees of a county surveyor or private surveyor performing such work shall be made as otherwise provided in this section.

[1973 c.696 §14]

**92.070 Surveyor's affidavit necessary to record plat; contents of affidavit.** (1) Except as otherwise provided in this section, 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 marked 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.

(2) If the person subdividing any land has complied with subsection (1) of ORS 92.065, the surveyor may prepare the plat of the subdivision for recording with only the exterior monuments referenced thereon as submitted for recording. There shall be attached to any such plat the affidavit of the surveyor that the interior monuments for the subdivision

will be marked on or before a specified date in accordance with ORS 92.060 and referenced on the plat for the subdivision as approved by the city or county.

(3) After the interior monuments for a subdivision have been marked as provided in an affidavit submitted under subsection (2) of this section, the surveyor performing such work shall:

(a) Within five days after completion of such work, notify the person subdividing the land involved, the surveyor or engineer of the city or county by which the subdivision was approved and the governing body of such city or county; and

(b) Reference such monuments on an exact copy of the subdivision plat as previously recorded; and

(c) Upon approval of such plat copy under ORS 92.100, file such plat copy with the county recording officer with whom the plat of the subdivision was previously recorded.

(4) The county recording officer, upon receipt of a plat copy filed pursuant to subsection (3) of this section, shall record such plat copy and endorse the recording reference for such plat copy upon the plat of the subdivision previously recorded. The recording reference for such plat copy shall operate as reference to the interior monuments referenced on such plat copy and shall constitute constructive notice of such monument references for all purposes as though such monuments had been referenced on the plat of the subdivision as previously recorded.  
[Amended by 1973 c.696 §13]

**92.080 Preparation of plat.** All plats subdividing any tracts of land in any county in this state, and dedications of streets 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 material that is 18 inches by 24 inches in size, that is suitable for binding and copying purposes, and that has such characteristics of strength and permanency as may be required by the city or county under ORS 92.044. 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 be clearly legible, but no part shall come nearer any edge of the sheet than one inch. The plat may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for plats

placed upon two or more sheets. Plat materials may be placed on both sides of a sheet.  
[Amended by 1955 c.756 §12; 1973 c.696 §15]

**92.090 Requisites for approval of tentative plan or plat.** (1) No tentative plan or 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 tentative plan for a proposed subdivision and no tentative plan for a proposed major partition shall be approved unless:

(a) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the city or county determines it is in the public interest to modify the street or road pattern.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

(c) The tentative plan complies with the comprehensive plan and the applicable zoning ordinances and regulations and the ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

(3) No plat of a proposed subdivision and no map of a proposed major partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.

(b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or major partition have been approved by the city or county.

(c) The plat or map complies with any applicable zoning ordinances and regulations

and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plat or map is situated.

(d) The plat or map is in substantial conformity with the provisions of the tentative plan for the subdivision or the major partition, as approved.

(e) The plat or map contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or the major partition.

(f) Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or the major partition have been recorded and referenced on the plat or map.

(4) No plat of a subdivision shall be approved unless there will exist an adequate quantity and quality of water and an adequate sewage disposal system to support the proposed use of the land described in the plat. [Amended by 1955 c.31 §1; 1955 c.756 §13; 1965 c.393 §1; 1973 c.696 §16]

**92.095 Payment of taxes required before plat recorded.** (1) No plat shall be recorded 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 pre-

vious 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; 1973 c.696 §17]

**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 special districts; approval of plat; appeal from refusal of district to approve or act.** All plans, plats, or replats of subdivisions located within the boundaries of an irrigation district, drainage district, water control district or district improvement company shall be submitted to the board of directors of the district or company and its approval thereof shall be indorsed thereon by the board before approval of such plan, plat, or replat of any subdivision by the governing body of the county. Except that if a subdivider is unable to obtain action or approval of any district or company within 45 days, the subdivider shall notify the governing body in writing and thereafter the governing body shall serve notice on that district or company by certified mail advising the district or company that any objections to the plan, plat, or replat must be filed in writing with the governing body within 20 days and failure of the district or company to respond shall be considered by the governing body as approval of such plan, plat, or replat and the governing body shall indorse thereon a finding that the district or company failed to act and the governing body may thereafter approve such plan, plat, or replat without the approval of such district or company indorsed thereon.

[Amended by 1955 c.756 §15; 1973 c.351 §1]

**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 or any other suitable drafting material having the same or better characteristics of strength, stability and transparency. The engineer or surveyor who made the plat shall make an affidavit to indicate that the photocopy or tracing 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 the number of prints from such copy as may be required by the governing body of the county.

[Amended by 1955 c.756 §16; 1973 c.696 §18]

**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]

## UNDEVELOPED SUBDIVISIONS

Note: Section 6, chapter 569, Oregon Laws 1973, provides:

**Sec. 6.** The Land Conservation and Development Commission shall review the activities of agencies or bodies authorized to approve subdivision plats under ORS 92.040 and shall report to the Fifty-eighth Legislative Assembly on the progress of such agencies or bodies in carrying out the review of subdivisions as provided by this Act [chapter 569, Oregon Laws 1973].

**92.205 Policy.** (1) The Legislative Assembly finds that many subdivisions for which plats have been approved and recorded have not been developed and that many such subdivisions were approved prior to the adoption of a comprehensive plan, zoning regulations and ordinances and modern subdivision control standards by the jurisdiction within which the lands described in the subdivision plats are situated.

(2) The Legislative Assembly finds, therefore, that it is necessary for the protection of the public health, safety and welfare to provide for the review of undeveloped subdivisions for the purpose of modifying such subdivisions, if necessary, to comply with the current comprehensive plan, zoning ordinances and regulations and modern subdivision control standards, or, if such modification is not feasible, of vacating the nonconforming, undeveloped subdivisions and to vacate any lands dedicated for public use that are described in the plat of each such vacated subdivision.

[1973 c.569 §1]

**92.210** [1963 c.624 §3; 1965 c.584 §3; repealed by 1973 c.421 §52]

**92.215 Review authorized; manner.** (1) Each agency or body authorized to approve subdivision plats under ORS 92.040 may:

(a) Review each subdivision approved on or after October 5, 1973, after the expiration of 10 years after the date of such approval.

(b) Review each subdivision plat approved more than 10 years prior to October 5, 1973.

(2) Each review conducted pursuant to subsection (1) of this section shall be conducted in the manner and subject to the conditions prescribed in ORS 92.225.

[1973 c.569 §2]

Note: See note preceding 92.205.

**92.220** [1963 c.624 §§1, 2, 25; repealed by 1973 c.421 §52]

**92.225 Determining whether subdivision subject to review and need for revision or vacation; determining need for revision or vacation of undeveloped subdivision; hearings; notice to landowners.** (1) The agency or body required to conduct the review under ORS 92.215 shall investigate the status of the lands included within a subdivision to determine whether the subdivision is undeveloped.

(2) For the purposes of this section, the lands described in the plat of any subdivision under review shall be considered to be developed if any of the following conditions are found by the agency or body conducting the review to exist on such lands:

(a) Roadways providing access into and travel within the subdivision have been or are being constructed to meet the specifications prescribed therefor by the agency or body that approved the plat of the subdivision;

(b) Facilities for the supply of domestic or industrial water to lots created by the subdivision have been or are being constructed;

(c) Sanitary sewerage disposal facilities have been or are being constructed for lots created by the subdivision, or septic tanks have been or are being installed on the land or permits have been issued for their installation on the land;

(d) Buildings have been or are being constructed upon the land or permits have been issued for the construction of buildings upon the land; and

(e) One or more lots described in the plat

of the subdivision have been sold or otherwise transferred prior to the date of the initiation of such review.

(3) If the agency or body determines that a subdivision is undeveloped after its investigation of the subdivision under subsection (1) of this section, it shall also determine:

(a) If the undeveloped subdivision complies with the comprehensive plan, zoning regulations and ordinances and subdivision ordinances and regulations then in effect with respect to lands in the subdivision; and

(b) If the undeveloped subdivision does not comply with such plan and ordinances and regulations, whether the subdivision may be revised to comply with such plan and ordinances and regulations.

(4) If the agency or body determines that a subdivision is undeveloped after its investigation of the subdivision under subsection (1) of this section, it shall hold a hearing to determine whether the undeveloped subdivision should be revised and the subdivision replatted or vacated and all lands within the subdivision that have been dedicated for public use vacated. Not later than 30 days before the date of a hearing held by an agency or body under this section, the agency or body shall notify, in writing, each owner of record of land described in the plat of the subdivision under review of the date, place, time and purpose of such hearing.

[1973 c.569 §3]

92.230 [1963 c.624 §§4, 19; 1969 c.508 §1; repealed by 1973 c.421 §52]

**92.234 Revision, vacation of undeveloped subdivisions; replatting, approval of replats; vacation proceedings; initiation by affected landowner of vacation proceedings, effect.** (1) Following a hearing conducted as required under subsection (4) of ORS 92.225, the agency or body conducting the hearing may:

(a) Require the revision of a subdivision and a replat of the subdivision as it considers necessary, if it finds that the subdivision may be revised to comply with the comprehensive plan, zoning ordinances and regulations and other modern subdivision control standards not in existence when the subdivision was initially approved; or

(b) Initiate proceedings, as provided in subsection (3) of this section, for vacation of the subdivision, if it finds that the subdivision cannot be revised in accordance with the comprehensive plan, zoning ordinances and regulations and other modern subdivision

control standards not in existence when the subdivision was initially approved.

(2) If an agency or body requires the revision and replat of a subdivision under paragraph (a) of subsection (1) of this section, it shall approve the subdivision only upon the completion of the revisions as required by it and the replat of the subdivision.

(3) If the agency or body determines that it is necessary to vacate a subdivision, the agency or body shall adopt an ordinance vacating the subdivision and providing for the vacation of lands within the subdivision that have been dedicated for public use. Title to lands within a vacated subdivision shall vest as provided in ORS 271.060. Any owner of lands described in the plat of the vacated subdivision who is aggrieved by the action of the agency or body in vacating the subdivision may appeal such action in the manner provided in ORS 271.070 and, for the purposes of ORS 271.070, such owner shall be considered a petitioner. The ordinance adopted by the agency or body for the vacation of the subdivision and the lands therein dedicated to public use shall be filed with the county recording officer as provided in ORS 271.150.

(4) Nothing in ORS 92.205 to 92.245 shall prevent the owner of any lands within an undeveloped subdivision from seeking vacation of such subdivision under ORS 271.040 or 271.050 and, if such vacation proceedings are commenced after the date of the notice of review of the subdivision by the agency or body, the review proceeding shall be suspended during such vacation proceedings. If the subdivision is vacated at the initiation of an owner, the review proceedings under ORS 92.205 to 92.245 shall be discontinued; but, if the subdivision is not vacated at the request of an owner, the review proceedings under ORS 92.205 to 92.245 shall be resumed at the termination of the proceedings brought by an owner of lands in the subdivision.

[1973 c.569 §4]

92.235 [1969 c.508 §3; repealed by 1973 c.421 §52]

92.240 [1963 c.624 §5; 1969 c.663 §5; 1971 c.106 §1; repealed by 1973 c.421 §52]

**92.245 Fees for review proceedings resulting in modification or vacation.** The governing body of a city or county may, by ordinance or regulation adopted in accordance with ORS 92.048, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon undeveloped

subdivisions for which the plat is modified or vacated under ORS 92.205 to 92.245. [1973 c.569 §5]

**92.250** [1963 c.624 §6; 1969 c.663 §4; 1971 c.106 §2; repealed by 1973 c.421 §52]

**92.255** [1965 c.584 §5; repealed by 1973 c.421 §52]

**92.260** [1963 c.624 §§7, 17; 1965 c.584 §6; repealed by 1973 c.421 §52]

**92.270** [1963 c.624 §8; 1965 c.584 §7; repealed by 1973 c.421 §52]

### MISCELLANEOUS PROVISIONS

**92.275 Appeal to circuit court from board or governing body actions; trial de novo.** An appeal from the action of the board or governing body 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. [1973 c.351 §3]

**92.280** [1963 c.624 §9; 1965 c.584 §8; repealed by 1973 c.421 §52]

**92.285 Retroactive ordinances prohibited.** No retroactive ordinances shall be adopted under ORS 92.010 to 92.048, 92.060 to 92.095, 92.120, 93.640, 93.710 and 215.110. [1973 c.696 §21]

**92.290** [1963 c.624 §§10, 11; 1965 c.584 §9; repealed by 1973 c.421 §52]

**92.300** [1963 c.624 §12; 1969 c.663 §6; repealed by 1973 c.421 §52]

**92.310** [1963 c.624 §13; repealed by 1973 c.421 §52]

**92.315** [1969 c.508 §4; repealed by 1973 c.421 §52]

**92.320** [1963 c.624 §14; repealed by 1973 c.421 §52]

**92.330** [1963 c.624 §15; repealed by 1973 c.421 §52]

**92.340** [1963 c.624 §16; repealed by 1973 c.421 §52]

**92.350** [1963 c.624 §18; repealed by 1973 c.421 §52]

**92.360** [1963 c.624 §21; repealed by 1973 c.421 §52]

**92.370** [1963 c.624 §22; 1965 c.584 §10; repealed by 1973 c.421 §52]

**92.380** [1963 c.624 §23; 1965 c.584 §11; repealed by 1973 c.421 §52]

**92.390** [1963 c.624 §24; repealed by 1973 c.421 §52]

### DISPOSITION OF LAND DEVELOPMENT INTERESTS (General Provisions)

**92.500 Legislative findings; construction.** (1) The Legislative Assembly finds that there is an immediate need to protect the public interest and the interest of purchasers in connection with the promotion and sale of interests in land developments, in light of the following considerations:

(a) It is necessary for the prospective purchaser of an interest in a land development to have sufficient knowledge about the property, and in many cases about the developer, to enable him to make an informed decision concerning the purchase;

(b) It has become difficult, in many instances, for the prospective purchaser to obtain adequate information concerning present and future conditions on or in the vicinity of the land development, or concerning other matters such as financing of the development, which significantly affect the property, or a purchaser's interest in it;

(c) The enhanced mobility of the population, mass production techniques commonly utilized in the construction of housing for large land developments, and the proliferation of financing and promotional practices have contributed to the difficulty of the purchaser in obtaining this information; and

(d) The developer is in virtually every instance in a much better position to obtain any such information if it is not already within his knowledge.

(2) The Legislative Assembly further finds that in order to provide for such protection of the public interest and the interest of purchasers in connection with the promotion and sale of interest in land developments, and in conformity with the Federal Interstate Lands Full Disclosure Act, it is necessary:

(a) To guarantee to purchasers of interests in land developments full disclosure of all relevant information concerning conditions on and in the vicinity of the land development, or which may otherwise affect a purchaser;

(b) To place the burden of furnishing this information to purchasers on the developer;

(c) To establish state standards for the information to be disclosed;

(d) To require the developer to file with the Real Estate Commissioner complete and accurate information concerning a land development;

(e) To grant the Real Estate Commissioner authority to require full and fair disclosure to purchasers, and to protect them from fraudulent and negligent land sale practices;

(f) To grant purchasers adequate remedies, by rescission or in damages, against fraudulent and negligent land sale practices; and

(g) To provide state sanction by way of criminal and civil penalties against fraudulent and negligent land sale practices.

(3) ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 shall be liberally construed in order to effectuate its purposes.

[1973 c.421 §1]

**92.505 Short title.** ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 shall be known as the Land Development Consumer Protection Act.

[1973 c.421 §2]

**92.510 Definitions for 92.500 to 92.810.** As used in ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300, unless the context requires otherwise:

(1) "Advertising" means the publication or causing to be published of any material relating to disposition of interests in a land development which has been prepared for public distribution by any means of communication. The term does not include stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities, prospectuses, applications for listing securities on stock exchanges and the like; prospectuses, property reports, offering statements or other documents required to be delivered to a prospective purchaser by an agency of another state or the Federal Government; and any communications addressed to and relating to the account of persons who have previously executed a contract for the purchase of the developer's lands, except where directed to the sale of additional lands.

(2) "Agent" means any person who represents, or acts for or on behalf of, a developer in disposing of interests in a land development and includes a real estate broker as defined in subsection (8) of ORS 696.010, but does not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

(3) "Blanket encumbrance" means a trust

deed or mortgage or mechanic's lien or any other lien or financial encumbrance, securing or evidencing money debt and affecting lands to be subdivided or affecting more than one lot, parcel, unit or interest of subdivided land; or an agreement affecting more than one lot, parcel, unit or interest by which the developer holds the subdivision under an option, contract to purchase or trust agreement, except a lien or other encumbrance arising as a result of the imposition of a tax assessment by a public authority so long as no portion thereof is past due.

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

(5) "Contiguous land" means any additional land development adjacent to or adjoining the land included in any earlier land development for which a certificate of registration has been issued and which is offered under the same common subdivision name and the same common promotional plan of advertising and disposition.

(6) "Developer" means a person, or his agent, who, directly or indirectly, offers subdivided land for disposition, or who advertises a land development for disposition.

(7) "Disposition" includes sale, lease for more than one year, option, assignment, award by lottery or as a prize or any offer or solicitation of an offer to do any of the foregoing concerning a land development or any part of a land development.

(8) "Interest" includes a lot, parcel, share, unit, undivided interest, membership or similar interest, or lessee's interest for more than one year in a land development.

(9) "Land development" includes the division of land into two or more lots, parcels, units, memberships or interests for the purpose of disposition. "Land development" includes a development located outside this state which is promoted by mail, telephone calls, solicitation or advertisements within or directed into this state. The term also includes the disposition of any land, whether contiguous or not, if two or more lots, parcels, units or interests are offered as a part of a common promotional plan of advertising and disposition where the land development is offered for disposition by a single developer or a group of developers acting in concert. If the land is contiguous or is known, designated or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, to be

offered for disposition as part of a common promotional plan.

(10) "Notice" means a communication by mail from the commissioner. Notice to developers shall be deemed complete when mailed by certified mail with return receipt requested, to the developer's last-known address or to such address as can be reasonably ascertained by the commissioner.

(11) "Offer" includes every inducement, solicitation or encouragement of a person to acquire a lot, unit, parcel or interest in land.

(12) "Person" means an individual, corporation, government or governmental division or agency, business, trust, estate, partnership, unincorporated association, or any two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(13) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(14) "Unit" has the meaning as defined in subsection (13) of ORS 91.505.  
[1973 c.421 §3]

**92.515 Prohibited acts.** (1) Unless land development or the transaction is exempt under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) or 92.990 and ORS 696.300:

(a) No person may offer or dispose of any interest in a land development located in this state or offer or dispose in this state of any interest in a land development located without this state unless the land development is first registered in accordance with ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

(b) No person may dispose of any interest in a land development unless a current disclosure statement is first delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the disclosure statement prior to the disposition.

(2) No person may engage in any unfair or deceptive act or practice in the conduct of or disposition of interests in a land development.

(3) No person may advertise that the commissioner approves, or represent that the commissioner recommends, the land development or disposition thereof.  
[1973 c.421 §6]

#### Application

**92.530 Land development interest dispositions subject to regulation.** The disposition of lots, parcels, units, memberships or other interests in land developments is sub-

ject to regulation and control under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

[1973 c.421 §4]

**92.535 Land development interest dispositions not subject to regulation.** ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 do not apply to offers or dispositions of an interest in land:

(1) On which lot, parcel or unit there is a commercial or industrial building, shopping center, or dwelling unit or apartment which is not being disposed of for the first time;

(2) When the disposition is of a parcel of more than 320 acres;

(3) Where all parcels after division are used for agricultural, timber or grazing purposes;

(4) For cemetery lots or interests in cemetery lots;

(5) To any person who acquires such lots for the purpose of engaging in and does engage in, or who is engaged in:

(a) The business of constructing residential, commercial or industrial buildings for the purpose of resale;

(b) The constructing of commercial or industrial buildings for his own use; or

(c) The leasing of such lots to persons engaged in such business described in paragraph (a) or (b) of this subsection;

(6) Pursuant to court order;

(7) Consisting of an evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(8) Consisting of securities or units of interest issued by a real estate investment trust which are regulated under any state or federal statute;

(9) Consisting of any interest in oil, gas or other minerals or any royalty interest therein, if the offers of dispositions of such interests are regulated as securities by the United States or by an agency of this state; or

(10) Constituting adjustment of a lot line, involving the relocation of a common boundary without creation of an additional building site.

[1973 c.421 §8(1)]

#### Registration of Land Developments

**92.545 Disposition of land interest without registration or exemption prohibited.** Disposition of an interest in a land development is prohibited unless:

(1) The land development is currently registered with the Real Estate Commissioner; or

(2) The land development is exempt from registration under ORS 92.535, 92.550 and 92.560 to 92.570, or by rule or order of the commissioner.

[1973 c.421 §16]

**92.550 Developers of certain land developments exempt from registration requirements.** A developer shall be exempt from the requirements of registration, subject to ORS 92.555, if each lot, parcel, unit or other interest in the land development satisfies all of the following conditions:

(1) Each interest is situated within a planned unit development which has been approved by the governing body, or is situated on a road or street which has a right of way, improvements and means for the operation and maintenance which meet the standards of the governing body;

(2) The land development, where necessary, has drainage structures and fill designed to prevent flooding, which structures and fill have been approved by the appropriate governing body.

(3) Electric power for normal domestic uses is available and ready for hookup at each interest at the time of disposition;

(4) Adequate potable water, in quantities sufficient for year-round domestic use, is available to each interest at the time of disposition, as determined by the State Board of Health, or is available through a municipally owned and operated water system; and

(5) A sewage disposal system is available to each interest at the time of disposition, which meets the requirements of the Environmental Quality Commission, and, in the case where septic tanks are intended for an interim period, that there is a sewerage system committed and funded which will be installed prior to the expiration of the interim period.

[1973 c.421 §8(2)]

**92.555 Exempt developer must file notice of conformance to exemption conditions, accompanied by disclosure statement.** (1) A developer exempt under ORS 92.550 from the registration requirements of ORS 92.580 shall file with the commissioner, upon a form furnished or approved by the commissioner, a notice verifying that the land development conforms to the requirements of ORS 92.550.

(2) The notice shall be accompanied by a copy of the disclosure statement for the land development.

[1973 c.421 §17]

**92.560 Developers of land developments of five or fewer interests exempt from registration; prior land division limit.** The developer of any land development of five or fewer interests shall be exempt from filing a registration application and disclosure statement with the commissioner, provided the land comprising the land development has not been divided from a larger parcel within five years of the commencement of the land development.

[1973 c.421 §8(3)]

**92.565 Commissioner may grant exemptions from registration requirements; developer petitions for exemption; exemption prohibited for promotional land sales.** (1) The commissioner may by rule provided for the exemption of classes of land developments or, by order upon petition by the developer, of particular land developments or developments of a particular developer, from all or part of the requirements of registration, when the commissioner finds that the characteristics of class of land developments, or the ability and responsibility of the developer and his agents, or other relevant considerations, are such that protection of the public interest and of purchasers do not require compliance with some or all of the registration requirements.

(a) The burden shall be on the developer to provide facts and other proof sufficient to justify the granting of any exemption.

(b) The commissioner may establish a reasonable fee schedule to offset expenses incurred in the processing of such petitions.

(2) Notwithstanding subsection (1) of this section, no exemption shall be granted to any land development if the commissioner determines that such land development is a promotional land sale. In making this determination, the commissioner may consider the factors he finds to be frequently occurring elements in promotional land sales. The existence of one or more of the following elements creates a presumption of a "promotional land sale":

(a) The intended use of the property involves recreation;

(b) The intended use of the property involves construction of a second home or vacation dwelling;

(c) The property has been promoted for retirement living;

(d) The property has been promoted for investment;

(e) The property has been promoted by offering "free lots," or conducting lotteries or contests, or offering prizes, gifts or other material inducements for the purpose of influencing a purchaser or prospective purchaser of real property;

(f) Any other factor the commissioner has found to be a frequently occurring element in promotional land sales.

[1973 c.421 §8(4), (5)]

**92.570 Commissioner may grant exemption from or special registration requirements for land developments qualified as securities; exemption from disclosure requirements prohibited.** The commissioner may exempt any land development which qualifies as a security from the registration requirements of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or he may require such land development to be registered in a way which he prescribes, but he shall not exempt such land development from the disclosure requirements of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

[1973 c.421 §8(6)]

**92.575 Modification, denial or withdrawal of certain exemptions.** In addition to his authority under ORS 92.765, the commissioner may by rule or order deny, withdraw or condition the exemption allowed by ORS 92.535, 92.550, 92.560 to 92.570, if, in his opinion, the further disposition of interests would work a fraud or imposition upon the purchaser.

[1973 c.421 §28(1)]

**92.580 Application for registration; form; contents; proposed disclosure statement and fees included; material changes in information to be reported.** (1) An applicant for registration of a land development shall file with the commissioner, upon a form furnished or approved by the commissioner, a verified application for a registration certificate, containing such information and exhibits as the commissioner may require, including:

(a) The applicant's name and address and if a general partnership, limited partnership or corporation the name and address of each of its resident agents, general partners,

limited partners with 10 percent or more interest, officers and directors in the state; the name, address and principal occupation for the past five years of every director and officer, each owner of 10 percent or more of the shares of the applicant and any person occupying a similar status or performing similar functions, and the extent and nature of his interest in the applicant and the land development as of a specified date within 30 days of the filing of the application.

(b) The states or jurisdictions in which the applicant is licensed to do business, or in which an application for registration or similar document has been filed and any order, judgment or decree entered in connection with the land development by the regulatory authorities in each jurisdiction or by any court.

(c) A legal description based on a survey of a registered land surveyor, or a United States survey, and a statement of the total area included in the land development, and a statement of the topography thereof, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units or interests and the relation of the land development to existing streets, roads and other offsite improvements.

(d) A statement, in a form acceptable to the commissioner, which may include title insurance or a certificate from an attorney, of the condition of the title to the land comprising the land development, including all encumbrances and deed restrictions and covenants applicable thereto with information as to recording.

(e) Copies of the instruments by which the interest in the land development was acquired or proof of marketable title to the land development.

(f) Copies of instruments which will be delivered to a purchaser to evidence his interest in the land development and of the contracts and other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rents or leases at which it is proposed to dispose of the lots, units, parcels or interests in the land development.

(g) Copies of instruments creating, altering or removing easements, restrictions, or other encumbrances affecting the land development.

(h) A statement of the present condition of access to the land development, the availability of sewage disposal facilities and other public utilities, including water, electricity,

gas and telephone facilities, in the land development, the proximity in miles of the land development to nearby municipalities and the nature of any improvements to be installed and by whom they are to be installed and paid for and an estimated schedule for completion, together with a statement as to the provisions for improvement maintenance.

(i) A statement of the zoning and other governmental regulations affecting the use of the interests in the land development and also of any existing tax and existing or pending special assessments which affect the land development.

(j) If there is a blanket encumbrance against any land development or portion thereof, a description of the encumbrance and a statement of the consequences for an individual purchaser of a failure by the persons bound to fulfill obligations under the instrument creating the encumbrance and the steps, if any, taken to protect the purchaser in such eventuality.

(k) A narrative description of the promotional plan for the disposition of the land development together with a narrative description of the contents of the proposed advertising campaign.

(L) Such financial statements of the developer as the commissioner may require.

(m) A statement that the developer, directors, officers, partners and principal shareholders have or have not been subject to any injunction or administrative order entered within the past 10 years restraining a false or misleading promotional plan involving land dispositions.

(n) Such other information and such other documents and certifications as the commissioner may require as being reasonably necessary or appropriate for the protection of purchasers.

(2) The application shall be accompanied by a copy of the developer's proposed disclosure statement.

(3) The applicant shall submit the registration fees required by ORS 92.755 with the application.

(4) The applicant shall report immediately to the commissioner any material changes in the information contained in the application for registration.

[1973 c.421 §18]

**92.585 Additional land developments; consolidation with earlier registration; effective date of consolidated registration; deficiencies; delays.** If the developer desires to register an additional land development

for disposition, he may apply for consolidation of the subsequent registration with any earlier registration of a land development. The disclosure statement shall be amended to include the additional land development so registered. The consolidation of registration of additional land developments shall be deemed registered after 30 days from the receipt of the additional registration application unless a rejection is entered issuing a specific statement of the deficiencies within 30 days of the receipt of the application or a delay is agreed upon in writing by the applicant.

[1973 c.421 §19]

**92.590 Notice of filing; action upon application by commissioner; failure to reject application within 60 days, effect; filing of amendments, effect.** (1) Upon receipt of an application for registration in proper form, the commissioner shall issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the commissioner shall enter an order registering the land development or rejecting the registration with notice of specific deficiencies therein.

(2) If an order of rejection is not entered within 60 days from the date of notice of filing, the land development shall be deemed registered unless the applicant has consented in writing to a delay.

(3) If any amendment to the application for registration is filed prior to the time when the land development shall be deemed registered, the application shall be deemed to have been filed when the amendment was filed.

[1973 c.421 §20]

**92.595 Developer objections to refusal to register; hearing; failure of commissioner to act, effect.** Any developer objecting to a refusal to issue a certificate of registration order may, within 30 days after receipt of the order of refusal, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing shall have requested a postponement. The developer shall have the burden of proving the commissioner's act was unreasonable. If the hearing is not held within 20 days after request for a hearing is received plus the period of any such postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting

such proposed decision is not issued within 15 days thereafter, a certificate of registration shall be issued.

[1973 c.421 §27]

**92.600 Investigating applications; conditions for compliance; commissioner's powers; onsite inspections, costs, advance deposit by developer.** (1) Upon receipt of an application for registration in proper form, the commissioner shall initiate an investigation to determine compliance with the following conditions for registration:

(a) The developer can convey or cause to be conveyed marketable title to the interest in the land development offered for disposition if the purchaser complies with the terms of the offer and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided.

(b) There is reasonable assurance that all proposed improvements will be completed as represented.

(c) The general promotional plan and advertising material are not false or misleading and they comply with the commissioner's rules.

(d) The developer has not, or if a corporation or partnership, its officers, directors, shareholders holding in aggregate a majority of the shares and general partners have not, been convicted of a crime involving land dispositions or any aspect of land sales business, fraud, misuse of funds or unfair trade practices in this state, the United States or any other state or foreign country within the past 10 years.

(e) The disclosure statement requirements of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 and of the commissioner's rules have been satisfied.

(2) The commissioner shall make such further investigation concerning a land development for which an application for registration has been received, or which has been registered, as he deems necessary. In carrying out this investigation, without limitation on his power to do other things, he may:

(a) Rely upon any relevant information concerning land developments obtained from any federal agency having comparable duties in relation to subdivision of real estate.

(b) Accept registrations filed in other states or with the Federal Government and cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform property re-

ports, and disclosure statements, advertising standards, rules and common administrative practices.

(c) Require the applicant to submit reports prepared by registered or licensed engineers as to any hazard, or any other factor which, in the opinion of the commissioner, affects the utility of lots, units, parcels or interests within the land development to be offered and require evidence of compliance to remove or minimize all hazards stated by competent engineering reports.

(d) Make an onsite inspection of each land development prior to its registration and periodic onsite inspections thereafter. The developer shall defray all actual and necessary expenses incurred in the course of the inspection.

(e) Require the developer to deposit, in advance, with the commissioner the expenses to be incurred in any inspection or reinspection based upon an estimate by the commissioner of the expenses likely to be incurred.

(f) Obtain and consider reports and recommendations from planning commissions or from any other agencies with jurisdiction or which may have performed studies or have an interest in the development or in conditions in the vicinity of the development or in the general area.

[1973 c.421 §§21, 22]

**92.605 Certificate of registration; issuance; rejection; denial; conditional registration; compliance with ORS 92.010 to 92.160 required.** (1) If the commissioner affirmatively determines, upon inquiry and examination, that the requirements of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 and the rules promulgated thereunder have been met, he shall issue a certificate of registration registering the land development and approve the form of the disclosure statement.

(2) If the commissioner determines upon inquiry and examination that any of the requirements of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or the rules promulgated thereunder have not been met, he shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days from receipt of notice, unless the time is extended in writing by the commissioner. If the requirements are not met within the time allowed, the commissioner may enter an order rejecting the registration

which shall include the findings of fact upon which the order is based.

(3) If the commissioner determines upon inquiry and examination that the proposed plan for disposition of interests in the land development is not, in any particular or taken as a whole, fair, just and equitable, he shall deny the application, or if he finds that it is necessary to impose conditions, limitations or restrictions to make the proposed plan fair, just and equitable, he may issue a certificate of registration conditioned upon compliance with such conditions, limitations or restrictions.

(4) If the commissioner determines that a land development is subject to ORS 92.010 to 92.160, he shall not issue a certificate of registration until the developer complies with the provisions of ORS 92.010 to 92.160. [1973 c.421 §23]

**92.610 Material changes in registered developments; filing amendments; action by commissioner; effective date of amendments; failure to file amendments, effect.**

(1) If at any time subsequent to the issuance of the certificate of registration, a change occurs affecting any material fact required to be contained in the application, the developer shall file an amendment thereto within 30 days. Upon receipt of any amendment or report of material change, the commissioner may suspend the certificate of registration until such time as the amendment shall be deemed registered if he determines such action is necessary or appropriate in the public interest or for the protection of purchasers. The amendment shall be deemed to be registered after 30 days unless a rejection is entered or a delay agreed upon.

(2) In the case of a change described in subsection (1) of this section, the commissioner may prohibit further dispositions until such time as the amendment is registered, or place conditions on such sales.

[1973 c.421 §24]

**92.615 Misstatements of material facts or omissions in registration; suspension after notice and hearing; corrections.** (1) If it appears to the commissioner at any time that an application, for which there has been issued a certificate of registration, includes any untrue statement of a material fact or omits to state any material fact required by ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or neces-

sary to make the statements not misleading or deceptive, after notice and after an opportunity for hearing at a time fixed by the commissioner within 20 days after the notice, the commissioner may issue an order suspending or revoking the registration.

(2) A suspension of a certificate of registration under this section may be rescinded by the commissioner upon amendment of the application, or may be continued until the developer complies with any conditions required by the commissioner.

[1973 c.421 §25]

**92.620 Refusal to register; issuance of order prohibiting disposition of land development interests; grounds.** The commissioner shall refuse to issue a certificate of registration, or, pursuant to ORS 92.575 and 92.765, shall issue a cease and desist order prohibiting any developer from disposing of any interest in a land development, where he finds one or more of the following:

(1) Failure to comply with any of the provisions of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or the regulations of the commissioner pertaining thereto.

(2) The disposition would constitute misrepresentation, deceit or fraud of the purchasers or lessees.

(3) Inability to deliver marketable title or other interest contracted for.

(4) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the land development.

(5) Inability to demonstrate that adequate financial arrangements have been made for any community, recreational or other facilities included in the offering.

(6) Failure to make a showing that the parcels can be used for the purpose for which they are offered; and in the case of a land development being offered for residential purposes failure to make a showing that vehicular access and a source of potable domestic water are available or will be available.

(7) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto.

(8) Agreements or bylaws to provide for management or other services pertaining to common facilities in the land development, which fail to comply with the regulations of the commissioner, or absence of such agreements if he deems them to be necessary.

(9) Failure to demonstrate that adequate financial arrangements have been made to secure performance of any guaranty or warranty included in ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or in the advertising or other documents.

(10) If not already approved by a local jurisdiction, any part of the total complex of existing or proposed improvements serving in the land development, including storm sewers, sanitary sewers, water systems, roads, utilities, community facilities, recreational amenities, does not satisfy requirements set forth in published state or local guidelines and standards for the projected population of the entire development, or if there are no published guidelines and standards, that the existing or proposed improvements will not reasonably be adequate to serve the projected population of the entire development.

(11) The arrangements that have been made to assure adequate completion, maintenance and financing of the total complex of existing or proposed improvements referred to in subsection (10) of this section are inadequate or unreasonable. In determining the reasonableness of such arrangements, the commissioner shall consider whether the probable continuing financial burden with respect to the financing of completion and maintenance of improvements within the land development bears a reasonable relationship to the value of the lots therein.

(12) The offsite and onsite measures, including the overall design of the entire land project, taken to prevent damage to property by reason of flooding, erosion and other natural occurrences which are usual or predictable for the area, do not satisfy requirements set forth in published state and local guidelines and standards, or if there are no published guidelines and standards, that these measures are not sound or reasonable in light of all the circumstances.

(13) The method of financing the purchase of individual interests, including the effect of balloon payments, is not reasonable.

(14) If not already approved by a local jurisdiction, the proposed use of the lots within the land development is incompatible with existing zoning.

(15) The proposed land development is incompatible with the adopted comprehensive plan, use or zoning of adjacent properties.

(16) Developer's plan of disposition or any portion thereof or any execution of such plan is false, deceptive or misleading or not in conformity with the plan on file with the commissioner.

[1973 c.421 §26]

**92.625 Expiration of registration; renewal application; filing, fee payment, effect; developer required to file report of material changes within specified time.** (1) A registration certificate shall expire five years from the date of its issuance, or from the date of issuance of a consolidated registration certificate.

(2) Not more than 30 days prior to expiration, a developer desiring renewal of a registration certificate shall file an application for such renewal in the form prescribed by the commissioner. The renewal fee shall be submitted with the application. If such application is received before expiration of the certificate, the certificate shall continue in effect until a renewal certificate is issued, or until 30 days after the commissioner enters an order denying the renewal application.

(3) A developer shall file a report with the commissioner in the form and with the contents prescribed by the commissioner within 30 days after expiration or revocation of a registration certificate. The report shall include, but not be limited to, a summary of all material changes in information reported as required under ORS 92.580.

[1973 c.421 §30]

#### (Disclosure Statements)

**92.650 Distribution of disclosure statements required to prospective purchasers; purchaser's waiver void.** (1) A copy of the disclosure statement shall be given by the developer or his agents or salesmen to every prospective purchaser, upon oral or written request, or to whom the developer, his agent or salesman makes a sale presentation or to whom promotional material, other than a preliminary solicitation, is sent, in the case of any land development of any number of interests.

(2) Any agreement or condition purporting to negate or waive a prospective purchaser's right to receive a disclosure statement as specified in subsection (1) of this section shall be void.

[Subsection (1) enacted as 1973 c.421 §9; subsection (2) enacted as 1973 c.421 §12(8)]

**92.655 Form; contents; purchaser intended use, developer to supply information on use; local governments to certify zoning and permitted uses upon request.** (1) The commissioner shall by rule prescribe the form and content of disclosure statements.

(2) In addition to any other information which the commissioner may require, every disclosure statement shall contain each of the following:

(a) Name and principal address of developer.

(b) A statement of the uses for which the property is prepared and offered by the developer.

(c) A notice to the prospective purchaser that warranties provided in ORS 92.665 apply only to those uses specifically set forth in the disclosure statement. Such notice shall be printed in 16-point bold type which shall be at least 4-point type larger than the body of the disclosure statement. The disclosure statement shall contain sufficient space upon its face in immediate conjunction with the notice for the signature of each person receiving a disclosure statement.

(d) A statement describing the provisions made at the time of disposition to furnish potable water at the site.

(e) A statement describing the available or proposed method of sewage disposal, whether or not the method has been approved by the Department of Environmental Quality, and any conditions or limitations placed on such approval, including, but not limited to, location or capacity of the system.

(f) A statement describing the available or proposed method of furnishing any electricity, natural gas, and telephone, garbage and postal service at the site, if such are provided.

(g) A statement describing the developer's knowledge of any environmental or health hazards found by public agencies to affect the land development.

(h) A statement specifying the zoning and the uses permitted under the adopted comprehensive plan within the land development and in areas adjacent to the land development, and indicating the office where the zoning and plan are filed.

(i) A statement that there is no warranty that the zone can be changed or other special provisions or adjustments can be made except by the local governing body in compliance with ORS chapter 215 or 227.

(j) A statement describing the nature

and type of all easements affecting the property.

(k) A statement describing access to the property, ownership of the access, and the party or parties responsible for maintaining the access.

(l) A statement describing the developer's knowledge of unusual conditions on the property such as high water table, slope, bedrock or other topographic or geologic conditions which limit the capability to build on the land using ordinary and reasonable construction techniques.

(m) A statement describing specific emergency services, if any, available to the occupant of the site, including police and fire protection, ambulance service and emergency medical facilities.

(n) A statement of the approximate distance from the land development to schools located in the school district serving the land development, and the type of transportation provided to these schools.

(o) A statement of approval of the development executed by the local governing body or its authorized representative and any conditions or limitations which have been included in such approval.

(p) A statement describing common facilities or areas, their maintenance and operations, completion schedules, eventual ownership and date of expected transfer and any restrictions or limitations on their use.

(q) A statement describing the condition of title and any assessments, encumbrances or liens for which the purchaser will be held responsible.

(r) Notice of the right to rescind and the time allowed therefor as specified in ORS 92.685.

(3) When approval of a governmental body or its authorized representative is required for any service or facility in the land development, the disclosure statement shall name the governmental body and list any conditions placed on the approval.

(4) The disclosure statement shall set forth which party, developer or purchaser, shall pay for the installation, connection or maintenance of any service, improvement or facility.

(5) If a prospective purchaser states in writing an intended use which makes it necessary that he be provided with additional information about state laws, local ordinances or conditions on the land itself, as they pertain to that use, the developer or his agent

shall add such additional information to the disclosure statement, or shall furnish it to the prospective purchaser in writing before the signing of any contract, agreement, or evidence of indebtedness.

(6) Local governmental jurisdictions shall certify the zoning and uses permissible under the comprehensive plan upon request of the developer.

[1973 c.421 §12(1), (2), (3), (4), (7), (10)]

**92.660 Single form, exceptions; permitted omissions, separate disclosure of omitted material; required amendments.**

(1) A single form of disclosure statement shall ordinarily be used for the entire land development, but in an appropriate case the developer may with the consent of the commissioner prepare two or more separate disclosure statements, each covering a part of the development, if conditions required to be set forth in the disclosure statement differ between parts of the development.

(2) A developer may with the consent of the commissioner omit from the basic form of disclosure statement for a land development information relating to conditions affecting only one or a small proportion of interests in the development, but in such case shall add such information to the disclosure statement before furnishing it to a prospective purchaser of an affected interest.

(3) The commissioner may require a developer to alter or amend a disclosure statement in order to assure full and fair disclosure to prospective purchasers.

[1973 c.421 §12(5), (6), (9)]

**92.665 Developer warranties on delivery of statement; failure of developer to deliver statement, effect; warranties run with transferred interests; waiver of warranties void.**

(1) When a disclosure statement is given the developer warrants that the information contained in it is accurate, complete and up-to-date at the time of the disposition through either:

(a) The developer's knowledge of, or control over, facts and conditions existing at the time of disposition, or

(b) The developer's reliance on information certified by appropriate governmental bodies or their designated representatives, provided the designated representatives and dates of certification of such information are listed in the disclosure statement.

(2) Unless there is an exemption under ORS 92.535 from the disclosure statement

requirement, failure to give a disclosure statement shall be deemed a warranty that construction of a single family dwelling is permissible under, and in compliance with, all applicable state and local laws and regulations in force at the time of disposition.

(3) The warranties created by this section shall run with the transferred interest. Any agreement or condition purporting to negate or waive such warranties shall be void.

[1973 c.421 §13]

**92.670 Filing of draft copy of statement with local governments required in certain cases; commissioner may require local government filings, waiver; forwarding of statements in categories to commissioner; quarterly sales reports.**

The developer shall file a draft copy of the disclosure statement with the local governing body or its designated representative at the time the developer files with the local governing body the final map or plat for approval, or if the land development has been approved and recorded, before disposition of any additional interests subsequent to January 1, 1974. In case of any land development not requiring approval of any local public authority, other than approval of water supply or waste disposal system, or recording of a map or plat, the commissioner may by rule require filing of the draft copy of the disclosure statement with an appropriate local authority, or waive the requirement. The commissioner may require the governing body to forward to said commissioner copies of disclosure statements in categories specified by said commissioner. The commissioner may require the developer to submit reports on sales at quarterly intervals.

[1973 c.421 §14]

**92.675 Notice of disclosure statement; form; publicity.** As part of the mailing of each tax statement for the tax years 1974-75 and 1975-76 every county tax collector shall mail to each taxpayer a notice concerning the requirement for a disclosure statement for the disposition of any interest in a land development. The notice shall be in a form specified by the commissioner. The commissioner shall periodically publicize the disclosure statement requirements to potential developers.

[1973 c.421 §45]

**(Rights of Purchasers)**

**92.685 Purchasers may rescind agreements or revoke offers; conditions; effect upon certain other remedies.** (1) A purchaser

of an interest in a land development may rescind, for any reason, any contract, agreement or other evidence of indebtedness, or revoke any offer:

(a) Within three business days from the receipt by purchaser of legible signed copies of all documents which constitute a part of the transaction.

(b) If the purchaser did not receive a disclosure statement prior to signing, at any time up to and including the third business day following receipt of the disclosure statement.

(2) The remedies granted under this section shall not be deemed to derogate from or substitute for any right to rescind under any other statute or the common law of this state.

(3) The remedies granted under this section shall not be cumulative with any remedy granted and exercised under the Interstate Land Sales Full Disclosure Act (15 U.S.C., §§ 1701 to 1720) or any other federal act pursuant to which the purchaser or party contracting with respect to a lot in a land development may have a right of rescission.

[1973 c.421 §34]

**92.690 Time of rescission; notice by purchaser, manner, form, contents; return of payments by developer; reconveyance of title by purchaser; waivers void.** (1) Rescission occurs when the purchaser gives written notice to the developer or lender at the address stated in the contract, agreement or other evidence of indebtedness.

(2) Notice of rescission, if given by mail, shall be by certified mail with return receipt requested and is effective when deposited with the U.S. Postal Service, properly addressed and postage prepaid.

(3) A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract, agreement or other evidence of indebtedness.

(4) Upon receipt of a timely notice of rescission, the developer shall immediately return all payments received from the purchaser; upon return of all such payments, the purchaser shall immediately convey back an unencumbered title.

(5) No act of a purchaser shall be effective to waive the right to rescind as provided in ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

[1973 c.421 §35]

**92.695 Predated documents; effect on rescission.** (1) A predated document does not defeat the time in which the right to rescind may be exercised.

(2) The burden of proof that a document was not predated is upon the developer or lender.

[1973 c.421 §36]

**92.700 Caption of land interest disposition documents; notice of purchaser rights to be included; acknowledgement of notice required.** (1) Each contract, agreement or other evidence of indebtedness relating to disposition of an interest in a land development shall be prominently labeled and captioned that it is a document taken in connection with a sale or other disposition of lands under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

(2) Each such document shall prominently contain upon its face the following notice printed in at least 16-point bold type which shall be at least 4-point type larger than the body of the document stating:

#### NOTICE TO PURCHASER

YOU ARE ENTITLED TO CANCEL THIS AGREEMENT FOR ANY REASON WITHIN THREE BUSINESS DAYS FROM THE DAY YOU ACTUALLY RECEIVE A LEGIBLE SIGNED COPY OF THIS DOCUMENT. IF YOU DID NOT RECEIVE A DISCLOSURE STATEMENT BEFORE SIGNING YOU ARE ENTITLED TO CANCEL THIS AGREEMENT FOR ANY REASON UNTIL THREE BUSINESS DAYS AFTER RECEIVING A DISCLOSURE STATEMENT.

\* \* \* \* \*

IN ADDITION, IF YOU DISCOVER ANY MATERIAL MISSTATEMENT OF FACT IN THE DISCLOSURE STATEMENT, OR A MATERIAL FACT ADVERSELY AFFECTING MARKET VALUE OR YOUR ENJOYMENT AND USE OF THE PROPERTY, IF THAT FACT SHOULD HAVE BEEN STATED IN A DISCLOSURE STATEMENT BUT WAS NOT, YOU ARE ENTITLED TO TAKE APPROPRIATE LEGAL ACTION TO RECOVER DAMAGES OR CANCEL THIS AGREEMENT. SUCH ACTION MUST BE TAKEN WITHIN TWO YEARS OF THE DATE OF DELIVERY OF THE DISCLOSURE STATEMENT BUT IN ANY CASE NOT MORE THAN FIVE YEARS FROM THE DATE OF SALE.

(3) The contract, agreement or other evidence of indebtedness shall contain sufficient space upon its face in immediate conjunction with the above notice for the signature of each person bound by such instrument acknowledging such person has read the notice. [1973 c.421 §37]

**92.710 Causes of action by purchaser; grounds.** The purchaser of an interest in a land development or anyone taking from or through such purchaser, shall have a cause of action against the developer upon proving any one or more of the following:

(1) The developer failed to provide a disclosure statement to the purchaser or, if the property has been repossessed, to the subsequent purchaser;

(2) The developer was involved in any misrepresentation, fraud or deceit in the transaction with the purchaser;

(3) The developer made any material misstatement of fact in a disclosure statement or omitted a material fact adversely affecting market value or the purchaser's enjoyment and use of the property;

(4) The developer wilfully engaged in false or misleading advertising upon which the purchaser relied for information regarding the development;

(5) The developer breached any one of the warranties specified in ORS 92.665;

(6) The developer failed to comply with ORS 92.010 to 92.160 or regulations or ordinances promulgated thereunder;

(7) The developer disposed of an interest in the land development in violation of prohibition against further dispositions issued by the commissioner;

(8) The developer failed to return a down payment under ORS 92.690; or

(9) The developer failed to record the deed, unit, contract of sale, lease or a memorandum thereof, within 30 days of the date of sale, in accordance with ORS 92.805 unless specifically exempted therefrom by the commissioner.

[1973 c.421 §38]

**92.715 Commencement of actions; limitation.** Any action under ORS 92.710 shall be brought within two years of the date of delivery of the disclosure statement but in any case not more than five years from the date of sale.

[1973 c.421 §41]

**92.720 Liability of developer and real estate licenses; contribution; affirmative de-**

**fenses.** Officers of the developer and real estate licensees involved in the disposition of the property shall be liable jointly and severally with the developer under ORS 92.710, and there shall be a right of contribution. However, lack of knowledge, when in the reasonable course such officers and real estate licensees could not reasonably have known of the disposition, shall be an affirmative defense.

[1973 c.421 §39]

**92.725 Recovery by purchasers.** In the event one or more of the wrongs specified in ORS 92.710 is established, a purchaser or anyone taking through a purchaser shall have, without limitation on the right to rescind set forth in ORS 92.685, the right to recover from the defendant or defendants:

(1) Any one of the following:

(a) All the past payments, including interest, principal, property taxes, and other charges upon tender of a quitclaim deed back to the developer; or

(b) The cost of making any physical repair or improvements to bring the interest up to the level represented by the developer; or

(c) If the interest in the land development was sold after the wrong specified in ORS 92.710 was discovered, the difference between the purchase price plus cost of improvements and the sales price; or

(d) Other appropriate relief.

(2) Any attorney fees incurred in pursuing the remedies of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

(3) Punitive damages in a proper case. [1973 c.421 §40]

#### (Administration and Enforcement)

**92.745 Administration; rule-making; approval of land use rules required.** (1) ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 shall be administered by the commissioner.

(2) In addition to the rules he is specifically required or authorized to promulgate under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300, the commissioner shall adopt such other rules he deems necessary or desirable to carry out the purposes of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300, or to permit him to carry out his duties under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS

696.300, including, but not limited to, rules relating to his authority to:

- (a) Inspect books;
- (b) Issue subpoenas; and
- (c) Define terms.

(3) Any rule thus adopted which regulates land use shall not be effective until approved by the Land Conservation and Development Commission.

[1973 c.421 §§5, 43]

**92.750 Commissioner as agent for service of process; manner of service.** (1) The commissioner shall be an agent for the following persons upon whom may be served at any time any process, notice or demand in a civil proceeding under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300, including a proceeding brought by the commissioner:

(a) Every applicant for registration and every person who offers for disposition an interest in a land development, unless the land development is exempt under ORS 92.535, 92.550, 92.560 to 92.570; and

(b) Every person, a resident or nonresident of this state, who has engaged in conduct prohibited or made actionable under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300.

(2) Service shall be made as provided in subsection (2) of ORS 59.155.  
[1973 c.421 §15]

**92.755 Fees.** (1) Except as provided in subsection (2) of this section, a registration fee shall be paid with the application for registration and shall be set by rule of the commissioner.

(2) A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration and shall be set by rule of the commissioner.

(3) A fee shall not be charged for amendments to the disclosure statement as a result of amendments to the initial filing, unless the commissioner determines the amendments are made for the purpose of avoiding the payment of a fee, in which event the amendment may be treated as an application for registration consolidating additional lots with a prior registration.

(4) The commissioner may by rule establish a fee to be paid by the developer with the submission of any materials which may be required by the commissioner, not more than sufficient to pay expenses of review of such submission.

(5) In addition to the payment of inspection expenses as provided in subsection (2) of ORS 92.600, an annual renewal fee set by rule of the commissioner shall be paid with the application.

[1973 c.421 §31]

**92.760 Assistance by Attorney General and district attorneys.** The Attorney General upon request by the commissioner shall have concurrent authority with district attorneys to enforce ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 and the rules promulgated thereunder, in any particular case.

[1973 c.421 §44]

**92.765 Orders to cease and desist dispositions involving unlawful practices; issuance; notice; hearing.** If the commissioner finds or has grounds to believe that any land development is being or will be promoted or any interests in it are being sold or offered for sale or will be sold or offered in violation of any provision of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or any rule or order of the commissioner under ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300, he shall order the developer and any other persons to cease and desist from such unlawful practice, and may in an appropriate case revoke a registration certificate. Except as provided in ORS 92.775, the commissioner shall before issuing a cease and desist order give notice to the developer and other persons affected and shall provide a time for a hearing not to exceed 20 days after the notice, unless the developer agrees to a postponement. The developer shall have the burden of proof to show cause why a cease and desist order should not issue.

[1973 c.421 §28(2)]

**92.770 Cease and desist orders for violations of disclosure requirements.** Any violation of subsection (1) of ORS 92.650 shall be deemed an irreparable harm and against the public interest, and the commissioner may issue a temporary cease and desist order under ORS 92.775 for such a violation.

[1973 c.421 §11]

**92.775 Temporary cease and desist orders; issuance; notice; duration of order.** (1) If the commissioner makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing a cease and desist order, he may issue a temporary cease and desist order.

(2) Prior to issuing the temporary cease and desist order, the commissioner whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person affected.

(3) After a temporary cease and desist order has been issued and after the developer has received notice, the developer shall have 30 days to show cause at a time and place specified by the commissioner why the order should not remain in effect.

[1973 c.421 §29]

**92.780 Injunction of violations.** If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or a rule promulgated hereunder, the commissioner, with or without prior administrative proceedings, may bring suit in the Circuit Court of Marion County to enjoin the acts or practices and to enforce compliance with ORS 91.530, 92.500 to 92.810, subsections (2) and (3) of 92.990 and ORS 696.300 or any rule promulgated hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The commissioner is not required to post a bond in any court proceedings.

[1973 c.421 §46]

**92.785 Civil penalties assessed by commissioner; notice; hearing compromise; withholding of security registration until payment or compromise.** (1) Any developer violating ORS 91.530, 92.500 to 92.810 or 696.300 or the regulations of the commissioner issued thereunder, may be assessed a civil penalty by the commissioner of not more than \$10,000 for each offense. Such fine shall be in addition to and not in lieu of any other penalties specified in ORS 92.990.

(2) No penalty shall be assessed unless the developer charged shall have been given notice and opportunity for a hearing on such charge, as provided in ORS 183.415 and 183.425 to 183.470.

(3) Each violation is a separate offense.

(4) Any such civil penalty may be compromised by the commissioner.

(5) In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the developer charged, the effect on the developer's ability to continue in business, and the gravity of the

violation shall be considered by the commissioner.

(6) The Corporation Commissioner shall withhold, at the request of the Real Estate Commissioner, the registration of any security of a developer who is subject to the foregoing penalty until such time as the civil fine is paid or compromised.

[1973 c.421 §47]

#### (Miscellaneous Provisions)

**92.800 Notes and evidences of indebtedness to be marked "consumer paper"; negotiability; exempted transactions.** (1) Except as provided in subsection (2) of this section, all notes or other evidence of indebtedness given by the purchaser to the land developer shall be marked "consumer paper," which shall have the same negotiability as "consumer paper" included within the provisions of ORS 83.820.

(2) This section does not apply to transactions between land developers and purchasers engaged in the business of land investment or realty, or purchasers who purchase the land to engage in the business of construction.

[1973 c.421 §42]

**92.805 Form of conveyances for disposition of land development interests; contents; exemptions.** Unless exempted from this section by the commissioner, every contract of sale, deed, unit, lease or memorandum for disposition of an interest in land development shall be in a form entitling it to be recorded and shall state clearly the legal description of the lot, unit, parcel or interest disposed of, shall be recorded by the developer within 30 days of the sale, and shall contain all disclosures required by the Federal Truth in Lending Act, Public Law 90-321, and the rules promulgated thereunder.

[1973 c.421 §33]

**92.810 Disposition of land development interest subject to blanket encumbrance; conditions by commissioner.** The commissioner shall by rule establish conditions which must be complied with by a developer before he may dispose of an interest in a land development which is subject to a blanket encumbrance, to guarantee that purchasers will receive marketable title not subject to the blanket encumbrance upon payment of the full purchase price by such purchasers.

[1973 c.421 §32]

**PENALTIES**

**92.990 Penalties.** (1) Violation of any provision of ORS 92.010 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) Wilful failure to furnish a copy of the disclosure statement as required by subsection (1) of ORS 92.650 is a Class A misdemeanor.

(3) Any developer who violates any of the

provisions of ORS 92.515, 92.545, 92.555, 92.580, 92.610, 92.625, subsection (2) of 92.650, ORS 92.655 to 92.670, 92.700 or 92.805, or of a rule adopted under it, shall be punished, upon conviction, by a fine not less than \$10,000 or double the amount of gain from the transaction, whichever is the larger, but not more than \$50,000, or he may be imprisoned for not more than two years, or both.

[Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12; 1973 c.421 §48; subsection (2) enacted as 1973 c.421 §10; subsection (3) enacted as 1973 c.421 §49]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 1, 1973.

Thomas G. Clifford  
Legislative Counsel