

# Chapter 92

## 1974 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 When sales or transfers of lots 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 with respect to which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, 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 for which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, prior to such approval.

[1955 c.756 §24; 1973 c.696 §5; 1974 s.s. c.74 §1]

**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 corpo-

rate 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.

(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.

(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 §9; 1973 c.696 §9; 1974 s.s. c.74 §2]

**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 ap-

proval, 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 per-

forming 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 indorse 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 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) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commissioner of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed plat; or

(b) A bond, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed plat; and the amount of any such bond, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivi-

der shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commissioner of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed plat; or

(b) A bond, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed plat; and the amount of such bond, contract or other assurance shall be determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in paragraph (c) of subsection (1) of ORS 454.755. A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of

the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

[Amended by 1955 c.31 §1; 1955 c.756 §18; 1965 c.393 §1; 1973 c.696 §16; 1974 s.s. c.74 §3]

**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 previous year's taxes, special assessments, fees and other charges upon such subdivision.

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

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

[1965 c.393 §2; 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 sub-

division 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]

### OREGON SUBDIVISION CONTROL LAW (Generally)

**92.305 Definitions for ORS 92.305 to 92.495 and 92.820.** As used in ORS 92.305 to 92.495 and 92.820:

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

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

(3) "Person" includes a natural person, a domestic or foreign corporation, a partnership, an association, a joint stock company, a trust and any unincorporated organization. As used in ORS 92.305 to 92.495 and 92.820 the term "trust" includes a common law or business trust, but does not include a private trust or a trust created or appointed under or by virtue of any last will and testament, or by a court of law or equity.

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

(5) "Sale" or "lease" includes every disposition, transfer or offer or attempt to dispose of or transfer land in a subdivision, or an interest or estate therein, by a subdivider or his agent, including the offering of such

property as a prize or gift when a monetary charge or consideration for whatever purpose is required by the subdivider or his agent.

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

(7) "Subdivider" means any person who causes land to be subdivided into a subdivision for himself or for others, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to make subdivisions. [1974 s.s. c.1 §1]

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

### 92.313 Policy; construction; citation.

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

(2) The provisions of ORS 92.305 to 92.495 and 92.820 are in addition to, and not in lieu of, the existing provisions of ORS 92.010 to 92.160.

(3) ORS 92.305 to 92.495 and 92.820 may be cited as the Oregon Subdivision Control Law.

[1974 s.s. c.1 §2]

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

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

**92.325 Application.** (1) No person shall offer any subdivided lands for sale or lease after January 25, 1974, without having complied with all the applicable provisions of ORS 92.305 to 92.495 and 92.820.

(2) ORS 92.305 to 92.495 and 92.820 do not apply to the sale or leasing of:

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

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

(c) Subdivided lands in Oregon containing less than 20 separate lots or parcels, which are not in unit ownership created under ORS 91.505 to 91.675 but which are contained within a recorded subdivision plat which has met the requirements of ORS 92.010 to 92.160, as amended by chapter 696, Oregon Laws 1973, or as an alternative have met the following conditions:

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

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

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

(D) Domestic water supply and sanitary sewage disposal are available at or near each lot, meeting the requirements of the Environmental Quality Commission.

[1974 s.s. c.1 §2a.]

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

92.335 **Compliance required.** No person shall offer for sale or lease, any land or property as defined in subsection (13) of ORS 91.505 without having complied with all applicable provisions of ORS 92.305 to 92.495 and 92.820. The requirement of this section shall be in addition to, and not in lieu of, ORS 91.505 to 91.675.

[1974 s.s. c.1 §3]

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

#### (Filing Requirements)

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

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

(b) The names and the business addresses of all licensees of the commissioner and of all other persons selling or leasing,

within this state, lots or parcels in the subdivision;

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

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

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

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

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

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

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

(a) For subdivisions containing 10 lots or parcels, or less, \$100;

(b) For subdivisions containing over 10 lots or parcels, \$100, and \$25 for each additional lot or parcel.

[1974 s.s. c.1 §4; 1974 s.s. c.53 §1]

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

92.355 **Commissioner may request further information; content.** (1) The commissioner may require the subdivider to furnish such additional information in a "Request for Further Information" as the commissioner determines to be necessary in the administration and enforcement of ORS 92.305 to 92.495 and 92.820 including but not limited to:

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

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

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

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

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

(b) Promised to prospective purchasers. [1974 s.s. c.1 §5]

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

**92.365 Filing information to be kept current.** The information required under ORS 92.345 and 92.355 shall be kept current by the subdivider. Any material change in the information furnished to the commissioner in the preliminary notice of intention shall be reported by the subdivider within 10 days after the change occurs. Any material change in the information furnished to the commissioner in the subdivider's reply to a request for further information shall be reported by the subdivider at least 10 days before the change occurs. [1974 s.s. c.1 §7]

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

**92.375 Consent to service of process on commissioner.** (1) Every nonresident subdivider, at the time of filing the preliminary notice of intention and information required by ORS 92.345 and 92.355 shall also file with the commissioner an irrevocable consent that if, in any suit or action commenced against him in this state arising out of a violation of ORS 92.305 to 92.495 and 92.820, personal service of summons or process upon him cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon him by service on the commissioner.

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

(a) The name of the subdivider.

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

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

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

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

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

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

[1974 s.s. c.1 §6]

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

#### (Examination of Subdivision; Public Report)

**92.385 Examination of subdivision; public report; waiver of examination in other state.** (1) The commissioner may make an examination of any subdivision subject to ORS 92.305 to 92.495 and 92.820 to be offered for sale or lease and may make a public report of his findings. If no report is made within 45 days after examination of the subdivision, the report shall be deemed waived.

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

[1974 s.s. c.1 §8]

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

**92.395 Waiver of examination in this state; notice to subdivider.** With respect to any subdivision within this state, if, after examination of the preliminary notice of intention required by ORS 92.345 or the reply

to the commissioner's request for further information, the commissioner concludes that the sale or lease of any portion of such subdivision would be reasonably certain not to involve any misrepresentation, deceit or fraud, he shall waive all of the provisions of ORS 92.305 to 92.495 and 92.820, except ORS 92.475 to 92.495 and subsection (2) of ORS 92.990, which he considers unnecessary for the protection of the public from fraud, deceit or misrepresentation. The commissioner shall notify the subdivider within 15 days of receipt of the preliminary notice of intention of his approval or disapproval of any waiver. However, the commissioner may, for good and sufficient cause, revoke any waiver at any time upon 10 days' notice and a hearing held for such purpose.  
[1974 s.s. c.1 §9]

**92.405 Sale prohibited where public report not waived; distribution and use of public report.** (1) Unless the making of a public report has been waived, no person shall sell or lease any lot or parcel in a subdivision prior to the issuance of the report.

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

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

(4) The commissioner may furnish at cost copies of his public report for the use of subdividers.  
[1974 s.s. c.1 §10]

**92.415 Advance of mileage fee for examination.** When an examination is to be made of subdivided lands situated in the State of Oregon, or situated outside the state for

sale or lease within this state, the commissioner, in addition to the filing fee provided in ORS 92.355, may require the subdivider to advance payment of an amount equivalent to 10 cents a mile for each mile estimated by the commissioner to be traveled in going to and returning from the location of the project, and an amount estimated to be necessary to cover the additional expense of such inspection not to exceed \$100 a day for each day consumed in the inspection of the project.  
[1974 s.s. c.1 §11]

#### (Requirements for Sale)

##### 92.425 Conditions prerequisite to sale.

(1) No person shall sell or offer to sell any lot or parcel within a subdivision unless all of the following conditions are complied with:

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

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

(c) A partial release of the lot or parcel being sold from the terms and provisions of any blanket encumbrance as described in subsection (1) of ORS 92.305 shall be included in such escrow deposit.

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

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

(2) Unless the legal owner of the lot or parcel being sold shall acknowledge execution of the contract of sale in the manner provided for acknowledgement of deeds and consent to recording of the contract by the purchaser, the legal owner shall execute, acknowledge and deliver a good and sufficient deed conveying title to such lot or parcel to a trustee under an agreement of trust in form

acceptable to the commissioner. The trustee shall record the deed as provided in ORS chapter 93. The agreement of trust shall provide generally for conveyance by the trustee to the purchaser, if and when the purchaser becomes entitled to delivery of the deed described in paragraph (e) of subsection (1) of this section, and shall further provide generally for reconveyance by the trustee to the trustee's grantor upon request of the trustee's grantor, if and when the purchaser shall be in default under the terms of the contract of sale.

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

(4) In lieu of the procedures provided in subsections (1) and (2) of this section, the subdivider shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section. [1974 s.s. c.1 §12]

**92.435 Rules governing sale or lease of condominiums and property in unit ownership.** In addition to the requirements of ORS 92.345, 92.355, 92.365, 92.405 and 92.425, the commissioner may adopt rules and regulations governing the submission of information and documents to his office involving the sale or lease of condominiums and property in unit ownership, which rules and regulations shall include, but shall not be limited to, the documentation of financial arrangements for the acquisition, development, use, control and management of common property or facilities and such other information or documents as the commissioner deems necessary in carrying out the provisions of ORS 92.305 to 92.495 and 92.820. [1974 s.s. c.1 §13]

**92.445 Water and sewage plans required; exception.** No subdivider of a real estate subdivision shall sell or enter into any contract for the sale or lease of any lot or parcel in such subdivision until preliminary plans for providing such lot or parcel with domestic water supply and sewage disposal facilities have been submitted to the Department of Environmental Quality. The provisions of this section shall not apply to those subdivisions which have been approved by the proper authority for the pur-

pose of building homes to be financed by the Federal Housing Administration insured loans, or Veterans' Administration guaranteed loans.

[1974 s.s. c.1 §16]

**92.455 Inspection of records.** Records of the sale or lease of real property within a subdivision shall be subject to inspection by the commissioner. No subdivider or agent shall make any change of address affecting the location of the subdivider's or agent's records without first obtaining the approval of the commissioner in writing of such intended change.

[1974 s.s. c.1 §14]

#### (Prohibited Acts)

**92.465 Fraud and deceit prohibited.** No person shall, in connection with the offer, sale or lease of any lot or parcel in a real estate subdivision, directly or indirectly:

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

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

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

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

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

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

[1974 s.s. c.1 §15]

**92.475 False or misleading advertising prohibited; liability.** It shall be unlawful for any owner, subdivider, agent or employe of

such subdivision or other person with intent, directly or indirectly, to sell or lease subdivided lands or lots or parcels therein, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning subdivided lands, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 92.305 to 92.495 and 92.820 unless the publisher, employe, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the subdivided lands advertised or the sale thereof.

[1974 s.s. c.1 §17]

**92.485 Waiver of legal rights void.** Any condition, stipulation or provision in any sales contract or lease, or in any other legal document, binding any purchaser or lessee to waive any legal rights against the subdivider, shall be deemed to be contrary to public policy and void.

[1974 s.s. c.1 §18]

**(Enforcement)**

**92.495 Cease and desist order; injunction.** (1) Whenever the commissioner finds that any owner, subdivider or other person is violating any of the provisions of ORS 92.305 to 92.495 and 92.820 or of the alternative requirements of the commissioner prescribed pursuant to subsection (4) of ORS 92.425, the commissioner may order the persons to desist and refrain from violating such provisions or requirements, or from the further sale or lease of lots or parcels within the subdivision.

(2) Whenever the commissioner finds that any subdivider or other person is violating, or has violated or is about to violate, any of the provisions of ORS 92.305 to 92.495 and 92.820 or the alternative requirements of the commissioner prescribed pursuant to subsection (4) of ORS 92.425 he may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where such person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against such person, firm or corporation, and any other person or persons

concerned in or in any way participating or about to participate in such violation, to enjoin such person, firm or corporation or any other person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof, and to apply for the appointment of a receiver or conservator of the assets of the defendant where such appointment is appropriate.

[1974 s.s. c.1 §§19, 20]

- 92.500 [1973 c.421 §1; repealed by 1974 s.s. c.1 §23]
- 92.505 [1973 c.421 §2; repealed by 1974 s.s. c.1 §23]
- 92.510 [1973 c.421 §3; repealed by 1974 s.s. c.1 §23]
- 92.515 [1973 c.421 §6; repealed by 1974 s.s. c.1 §23]
- 92.530 [1973 c.421 §4; repealed by 1974 s.s. c.1 §23]
- 92.535 [1973 c.421 §8(1); repealed by 1974 s.s. c.1 §23]
- 92.545 [1973 c.421 §16; repealed by 1974 s.s. c.1 §23]
- 92.550 [1973 c.421 §8(2); repealed by 1974 s.s. c.1 §23]
- 92.555 [1973 c.421 §17; repealed by 1974 s.s. c.1 §23]
- 92.560 [1973 c.421 §8(3); repealed by 1974 s.s. c.1 §23]
- 92.565 [1973 c.421 §8(4), (5); repealed by 1974 s.s. c.1 §23]
- 92.570 [1973 c.421 §8(6); repealed by 1974 s.s. c.1 §23]
- 92.575 [1973 c.421 §28(1); repealed by 1974 s.s. c.1 §23]
- 92.580 [1973 c.421 §18; repealed by 1974 s.s. c.1 §23]
- 92.585 [1973 c.421 §19; repealed by 1974 s.s. c.1 §23]
- 92.590 [1973 c.421 §20; repealed by 1974 s.s. c.1 §23]
- 92.595 [1973 c.421 §27; repealed by 1974 s.s. c.1 §23]
- 92.600 [1973 c.421 §§21, 22; repealed by 1974 s.s. c.1 §23]
- 92.605 [1973 c.421 §23; repealed by 1974 s.s. c.1 §23]
- 92.610 [1973 c.421 §24; repealed by 1974 s.s. c.1 §23]
- 92.615 [1973 c.421 §25; repealed by 1974 s.s. c.1 §23]
- 92.620 [1973 c.421 §26; repealed by 1974 s.s. c.1 §23]
- 92.625 [1973 c.421 §30; repealed by 1974 s.s. c.1 §23]
- 92.650 [Subsection (1) enacted as 1973 c.421 §9; subsection (2) enacted as 1973 c.421 §12(8); repealed by 1974 s.s. c.1 §23]

- 92.655 [1973 c.421 §12(1), (2), (3), (4), (7), (10); repealed by 1974 s.s. c.1 §23]
- 92.660 [1973 c.421 §12(5), (6), (9); repealed by 1974 s.s. c.1 §23]
- 92.665 [1973 c.421 §13; repealed by 1974 s.s. c.1 §23]
- 92.670 [1973 c.421 §14; repealed by 1974 s.s. c.1 §23]
- 92.675 [1973 c.421 §45; repealed by 1974 s.s. c.1 §23]
- 92.685 [1973 c.421 §34; repealed by 1974 s.s. c.1 §23]
- 92.690 [1973 c.421 §35; repealed by 1974 s.s. c.1 §23]
- 92.695 [1973 c.421 §36; repealed by 1974 s.s. c.1 §23]
- 92.700 [1973 c.421 §37; repealed by 1974 s.s. c.1 §23]
- 92.710 [1973 c.421 §38; repealed by 1974 s.s. c.1 §23]
- 92.715 [1973 c.421 §41; repealed by 1974 s.s. c.1 §23]
- 92.720 [1973 c.421 §39; repealed by 1974 s.s. c.1 §23]
- 92.725 [1973 c.421 §40; repealed by 1974 s.s. c.1 §23]
- 92.745 [1973 c.421 §§5, 43; repealed by 1974 s.s. c.1 §23]
- 92.750 [1973 c.421 §15; repealed by 1974 s.s. c.1 §23]
- 92.755 [1973 c.421 §31; repealed by 1974 s.s. c.1 §23]
- 92.760 [1973 c.421 §44; repealed by 1974 s.s. c.1 §23]
- 92.765 [1973 c.421 §28(2); repealed by 1974 s.s. c.1 §23]
- 92.770 [1973 c.421 §11; repealed by 1974 s.s. c.1 §23]
- 92.775 [1973 c.421 §29; repealed by 1974 s.s. c.1 §23]
- 92.780 [1973 c.421 §46; repealed by 1974 s.s. c.1 §23]
- 92.785 [1973 c.421 §47; repealed by 1974 s.s. c.1 §23]
- 92.800 [1973 c.421 §42; repealed by 1974 s.s. c.1 §23]

92.805 [1973 c.421 §33; repealed by 1974 s.s. c.1 §23]

92.810 [1973 c.421 §32; repealed by 1974 s.s. c.1 §23]

**92.820 Use of fees.** The moneys received under ORS 92.305 to 92.495 and 92.820 shall be paid into the State Treasury and placed to the credit of the General Fund in the Oregon Real Estate Department Account. Such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 92.305 to 92.495 and 92.820.  
[1974 s.s. c.1 §21]

### (Penalties)

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

(2) Any person who violates any of the provisions of subsection (1) of ORS 92.325, ORS 92.345 to 92.365, subsections (1), (2) and (3) of ORS 92.405, ORS 92.425 and 92.445 to 92.475 and any alternative requirements of the commissioner prescribed pursuant to subsection (4) of ORS 92.425, not waived by the commissioner pursuant to ORS 92.395, shall be punished by a fine not exceeding \$10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment.

[Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12; 1973 c.421 §48; subsection (2) (1973 Replacement Part) enacted as 1973 c.421 §10; subsection (3) (1973 Replacement Part) enacted as 1973 c.421 §49; subsections (2), (3) (1973 Replacement Part) repealed by 1974 s.s. c.1 §23; subsection (2) (1974 Replacement Part) enacted as 1974 s.s. c.1 §22]

### 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 June 1, 1974.

Thomas G. Clifford  
Legislative Counsel