

## Chapter 28

### 1961 REPLACEMENT PART (1977 reprint)

### Declaratory Judgments

28.010	Power of courts; form of declaration	28.100	Costs
28.020	Declarations as to writings and laws	28.110	Parties; service on Attorney General when constitutional question involved
28.030	Construction of contract before or after breach	28.120	Construction and administration
28.040	Declaratory judgments on trusts or estates	28.130	Person defined
28.050	Enumeration not exclusive	28.140	Provisions severable
28.060	Discretion of court to refuse judgment or decree	28.150	Uniformity of interpretation
28.070	Appeal or review	28.160	Short title
28.080	Supplemental relief		
28.090	Trial of issues of fact		

### CROSS REFERENCES

Declaratory judgment on Public Utility Commissioner's rules, 756 440	Inspection of public records proceedings, 192 450
Declaratory judgment on right to review public records, 192.450 to 192 480	Submitting controversy without action or suit, Ch 27
Declaratory judgment on validity of state agency rule, 183 400	Summary judgment proceedings, 18 105

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**28.010 Power of courts; form of declaration.** Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

**28.020 Declarations as to writings and laws.** Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a constitution, statute, municipal charter, ordinance, contract or franchise may have determined any question of construction or validity arising under any such instrument, constitution, statute, municipal charter, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

**28.030 Construction of contract before or after breach.** A contract may be construed either before or after there has been a breach thereof.

**28.040 Declaratory judgments on trusts or estates.** Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, ward or insolvent, may have a declaration of rights or legal relations in respect thereto.

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other; or

(2) To direct the executors, administrators, trustees, guardians or conservators to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

[Amended by 1961 c 344 §101]

**28.050 Enumeration not exclusive.** The enumeration in ORS 28.010 to 28.040 does not limit or restrict the exercise of the general powers conferred in ORS 28.010, in any proceedings where declaratory relief is sought, in which a judgment or decree will

terminate the controversy or remove an uncertainty.

**28.060 Discretion of court to refuse judgment or decree.** The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

**28.070 Appeal or review.** All orders, judgments and decrees under this chapter may be appealed from or reviewed as other orders, judgments and decrees.

**28.080 Supplemental relief.** Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application thereof shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

**28.090 Trial of issues of fact.** When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other actions at law or suits in equity in the court in which the proceeding is pending.

**28.100 Costs.** In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

**28.110 Parties; service on Attorney General when constitutional question involved.** When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal charter, ordinance or franchise, the municipality affected shall be made a party, and shall be entitled to be heard, and if the constitution, statute, charter, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

**28.120 Construction and administration.** This chapter is declared to be remedial; its purpose is to settle and to afford relief

