

Chapter 12

1979 REPLACEMENT PART

Limitations of Actions and Suits

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12.010 Time of commencing actions.

Actions shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute. [Amended by 1979 c.284 §43]

12.020 When action deemed begun.

(1) Except as provided in subsection (2) of this section, for the purpose of determining whether an action has been commenced within the time limited, an action shall be deemed commenced as to each defendant, when the complaint is filed, and the summons served on him, or on a codefendant who is a joint contractor, or otherwise united in interest with him.

(2) If the first publication of summons or other service of summons in an action occurs before the expiration of 60 days after the date on which the complaint in the action was filed, the action against each person of whom the court by such service has acquired jurisdiction shall be deemed to have been commenced upon the date on which the complaint in the action was filed. [Amended by 1973 c.731 §1]

12.030 [Repealed by 1973 c.731 §2]

12.040 Limitations of suits generally; land patent suits; defense of possession by equitable title; suit on new promise, fraud or mistake. (1) A suit shall only be commenced within the time limited to commence an action as provided in this chapter; and a suit for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property.

(2) No suit shall be maintained to set aside, cancel, annul or otherwise affect a patent to lands issued by the United States or this state, or to compel any person claiming or holding under such patent to convey the lands described therein, or any portion of them, to the plaintiff in such suit, or to hold the same in trust for, or to the use and benefit of such plaintiff, or on account of any matter, thing or transaction which was had, done, suffered or transpired prior to the date of such patent, unless such suit is commenced within 10 years from the date of such patent.

(3) This section shall not bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery

of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action, or set up by bill in equity to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by bill for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred.

(4) In a suit upon a new promise, fraud or mistake, the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake.

12.050 Action to recover real property. An action for the recovery of real property, or for the recovery of the possession thereof, shall be commenced within 10 years. No action shall be maintained for such recovery unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within 10 years before the commencement of the action.

12.060 Suit or action on land contracts; time when they cease to affect the property. (1) Unless suit or action to enforce a contract for the sale of real property is instituted in the county in which the real property is situated within five years from the date of maturity of the final payment provided for in the contract, or from the date to which the final payment shall have been extended by agreement of record, the contract shall not thereafter be a lien, encumbrance, or cloud on the title of the property.

(2) When the purchase price fixed in the contract is payable in instalments, the contract shall be deemed to mature on the date upon which the final payment would be payable if the minimum amount of the principal due on each instalment had been paid as provided in the terms of the contract.

12.070 Action on judgment, decree or sealed instrument. (1) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States; or

(2) An action upon a sealed instrument entered into before August 13, 1965,

shall be commenced within 10 years. [Amended by 1965 c 502 §3]

12.080 Action on certain contracts or liabilities. (1) An action upon a contract or liability, express or implied, excepting those mentioned in ORS 12.070 and 12.110 and except as otherwise provided in ORS 72.7250;

(2) An action upon a liability created by statute, other than a penalty or forfeiture, excepting those mentioned in ORS 12.110;

(3) An action for waste or trespass upon or for interference with or injury to any interest of another in real property, excepting those mentioned in ORS 12.050, 12.060, 12.135 and 273.241; or

(4) An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof;

shall be commenced within six years. [Amended by 1957 c.374 §3; 1971 c.726 §396; 1973 c 363 §1]

12.085 Action on certain garnishment proceedings. Garnishment proceedings pursuant to ORS 29.270 to 29.370 shall be commenced within one year from the time of service of the writ and notice. [1977 c.786 §3]

12.090 Accounts; accrual of cause of action. In an action to recover a balance due upon an account, the cause of action shall be deemed to have accrued from the time of the last charge or payment proved in the account. Interest, financing and carrying charges shall not be deemed such a charge. [Amended by 1973 c.204 §1]

12.100 Action on official action or penalty. (1) An action against a sheriff or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution, but not including an action for an escape, shall be commenced within three years.

(2) An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state, excepting those actions mentioned in ORS 12.110, shall be commenced within three years. [Amended by 1957 c.374 §4; 1965 c.221 §10]

12.110 Determination of period in action for fraud or deceit; injuries to person from professional malpractice. (1) An action for assault, battery, false imprisonment, for criminal conversation, or for any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided, that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

(2) An action upon a statute for a forfeiture or penalty to the state or county shall be commenced within two years.

(3) An action for overtime or premium pay or for penalties or liquidated damages for failure to pay overtime or premium pay shall be commenced within two years.

(4) An action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation shall be commenced within two years from the date when the injury is first discovered or in the exercise of reasonable care should have been discovered. However, notwithstanding the provisions of ORS 12.160, every such action shall be commenced within five years from the date of the treatment, omission or operation upon which the action is based or, if there has been no action commenced within five years because of fraud, deceit or misleading representation, then within two years from the date such fraud, deceit or misleading representation is discovered or in the exercise of reasonable care should have been discovered. [Amended by 1957 c.374 §1; 1967 c.406 §1; 1969 c.642 §1; 1971 c.473 §1; 1975 c.796 §10a]

12.115 Action for negligent injury to person or property. (1) In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained of.

(2) Nothing in this section shall be construed to extend any period of limitation otherwise established by law, including but not limited to the limitations established by ORS 12.110. [1967 c.406 §2]

12.120 Action on escape. (1) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on

civil process; or

(2) An action for libel or slander

shall be commenced within one year. [Amended by 1957 c.374 §2]

12.125 Action arising under rental agreement. An action arising under a rental agreement or ORS 91.700 to 91.895 shall be commenced within one year. [1973 c.559 §39]

12.130 Action for penalty. An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense; and if the action is not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the state, by the district attorney of the county where the offense was committed or is triable.

12.135 Action for damages from construction, alteration or repair of improvement to real property; "substantial completion" defined; application. (1) An action to recover damages for injuries to a person or to property arising from another person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from such other person having furnished the design, planning, surveying, architectural or engineering services for such improvement, shall be commenced within two years from the date of such injury to the person or property; provided that such action shall be commenced within 10 years from substantial completion of such construction, alteration or repair of the improvement to real property.

(2) For purposes of subsection (1) of this section, "substantial completion" means the date when the contractee accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(3) The limitations prescribed in subsection (1) of this section:

(a) Apply, in addition to other actions, to actions brought in the name of the state or

any county or other public corporation therein, or for its benefit; and

(b) Do not apply to actions against any person in actual possession and control of the improvement, as owner, tenant or otherwise, at the time such cause of action accrues. [1971 c.664 §§2, 3, 4]

12.140 Actions not otherwise provided for. An action for any cause not otherwise provided for shall be commenced within 10 years.

12.150 Suspension of running of statute by absence or concealment. If, when a cause of action accrues against any person, he is out of the state and service cannot be made within the state or he is concealed therein, such action may be commenced within the applicable period of limitation in this chapter after his return into the state, or after the termination of his concealment; and if, after a cause of action has accrued against a person, he shall depart from and reside out of this state, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

[Amended by 1973 c.206 §1]

12.155 Effect of notice of advance payment on running of period of limitation. (1) If the person who makes an advance payment referred to in ORS 41.960 or 41.970 gives to each person entitled to recover damages for the death, injury or destruction, not later than 30 days after the date the first of such advance payments was made, written notice of the date of expiration of the period of limitation for the commencement of an action for damages set by the applicable statute of limitations, then the making of any such advance payment does not suspend the running of such period of limitation. The notice required by this subsection shall be in such form as the Insurance Commissioner prescribes.

(2) If the notice required by subsection (1) of this section is not given, the time between the date the first advance payment was made and the date a notice is actually given of the date of expiration of the period of limitation for the commencement of an action for damages set by the applicable statute of limitations is not part of the period limited for commencement of the action by the statute of limitations. [1971 c.331 §5]

12.160 Suspension as to persons under disability. If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050, 12.070 to 12.260, 109.100 or 109.125 is:

- (1) Within the age of 18 years,
- (2) Insane, or

(3) Imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life,

the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.

[Amended by 1973 c.827 §4; 1979 c.246 §1]

12.170 Disability must exist when right of action accrues. No person shall avail himself of a disability unless it existed when his right of action accrued.

12.180 Coexisting disabilities must all be removed. When two or more disabilities coexist at the time the right of action accrues, the limitation shall not attach until all are removed.

12.190 Effect of death on limitations.

(1) If a person entitled to bring an action dies before the expiration of the time limited for its commencement, an action may be commenced by his personal representative after the expiration of that time, and within one year after his death.

(2) If a person against whom an action may be brought dies before the expiration of the time limited for its commencement, an action may be commenced against his personal representative after the expiration of that time, and within one year after his death.

[Amended by 1969 c 591 §268]

12.200 Suspension by war as to alien. When a person is an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

12.210 Suspension by injunction or prohibition of statute. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continu-

ance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

12.220 Commencement of new action within one year after dismissal or reversal. Except as otherwise provided in ORS 72.7250, if an action is commenced within the time prescribed therefor and the action is dismissed upon the trial thereof, or upon appeal, after the time limited for bringing a new action, the plaintiff, or if he dies and any cause of action in his favor survives, his heirs or personal representatives, may commence a new action upon such cause of action within one year after the dismissal or reversal on appeal; however, all defenses that would have been available against the action, if brought within the time limited for the bringing of the action, shall be available against the new action when brought under this section.

[Amended by 1961 c.726 §397]

12.230 Acknowledgment or promise taking contract case out of statute; effect of payment. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

12.240 Effect of payment after obligation becomes due. Whenever any payment of principal or interest is made after it has become due, upon an existing contract, whether it is a bill of exchange, promissory note, bond, or other evidence of indebtedness, the limitation shall commence from the time the last payment was made.

12.250 Actions by state, county, or public corporations. Unless otherwise made applicable thereto, the limitations prescribed in this chapter shall not apply to actions brought in the name of the state, or any county, or other public corporation therein, or for its benefit.

12.260 Action barred, when barred in another jurisdiction. When the cause of action has arisen in another state, territory or country, between nonresidents of this state, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the

lapse of time, no action shall be maintained thereon in this state.

12.270 Conclusive presumption of validity of governmental subdivision boundary proceedings one year after effective date. On September 13, 1975, any proceeding which establishes or alters the boundaries of a governmental subdivision previously or hereafter initiated and purported to be effected in accordance with applicable legal requirements shall be conclusively presumed valid for all purposes one year after the purported effective date of the action. No direct or collateral attack on the action may thereafter be commenced. This statute of limitations includes but is not limited to the following proceedings:

- (1) Formations and change of organizations under ORS 198.705 to 198.955.
- (2) Boundary changes under ORS 199.410 to 199.512.
- (3) Consolidations under ORS 199.705 to 199.775.
- (4) Incorporations under ORS 221.010 to 221.090.
- (5) Annexations under ORS 222.111 to 222.180, 222.750 and 222.850 to 222.915.
- (6) Consolidations under ORS 222.210 to 222.310.

(7) Withdrawals and transfers of territory under ORS 222.510 to 222.580.

(8) Mergers under ORS 222.610 to 222.720.

(9) Formations and changes under ORS chapter 261.

(10) Alterations, changes, mergers and consolidations under ORS 330.080 to 330.123, 330.505 to 330.780, 335.490 to 335.505 and ORS chapter 333.

(11) Formations and boundary changes under ORS 341.025 to 341.125 and 341.565 to 341.575.

(12) Organizations and boundary changes under ORS 545.002 to 545.014, 545.582 to 545.612, 545.614 and 545.616 to 545.622.

(13) Formations and boundary alterations under ORS 547.005 to 547.060 and 547.250 to 547.260.

(14) Formations and organizations under ORS 551.010 to 551.180. [1975 c.326 §2]

Note: 12.270 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 12 by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel

