Chapter 105

1981 REPLACEMENT PART

Property Rights

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ACTIONS FOR RECOVERY OF REAL PROPERTY

105.005 Right of action. Any person who has a legal estate in real property and a present right to the possession thereof, may recover possession of the property, with damages for withholding possession, by an action at law. The action shall be commenced against the person in the actual possession of the property at the time, or if the property is not in the actual possession of anyone, then against the person acting as the owner thereof

105.010 Contents of complaint. The plaintiff in his complaint shall set forth:

(1) The nature of his estate in the property, whether it be in fee, for life, or for a term of years; including, when necessary, for whose life and the duration of the term.

(2) That he is entitled to the possession thereof.

(3) That the defendant wrongfully withholds the property from him to his damage for such sum as is therein claimed.

(4) A description of the property with such certainty as to enable the possession thereof to be delivered if there is recovery.

105.015 Answer. The defendant shall not be allowed to give in evidence any estate, license or right of possession in the property in himself or another, unless the same is pleaded in his answer. If pleaded, the nature and duration of the estate, license or right of possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend.

105.020 Substitution of landlord for tenant. A defendant who is in actual possession may, for answer, plead that he is in possession only as tenant of another; naming his landlord and his place of residence. Thereupon the landlord, if he applies therefor, shall be made defendant in place of the tenant and the action shall proceed in all respects as if originally commenced against him. If the landlord does not apply to be made defendant within the day the tenant is allowed to answer, he shall not be allowed to, but shall be made defendant if the plaintiff requires it. If the landlord is made defendant on motion of the plaintiff he shall be required to appear and answer within 10 days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe.

105.025 Verdict. The jury by their verdict shall find as follows:

(1) If the verdict is for the plaintiff, that he is entitled to the possession of all or a part of the property described in the complaint, or that he owns an undivided share or interest in all or a part of the property; including the nature and duration of his estate in such property.

(2) If the verdict is for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or the part that the defendant defends, and the estate, license or right to possession in such property established on the trial by the defendant, if any, as the same is required to be pleaded.

105.030 Damages for withholding; setoff for improvements. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from the commencement to the time of giving a verdict, excluding the value of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims, while holding under color of title in good faith and adverse to the claim of the plaintiff, the value of the improvements at the time of trial shall be allowed as a setoff against such damages.

105.035 Judgment when plaintiff's right to possession expires. If the right of the plaintiff to the possession of the property expires after the commencement of the action and before the trial, the verdict shall be given according to the fact and judgment shall be given only for the damages.

105.040 Order to make survey. (1) The court or judge thereof may, on motion, and after notice to the adverse party, or cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof for the purposes of the action.

(2) The order shall describe the property. A copy of the order shall be served upon the defendant, and thereupon the party may enter

upon the property, and make the survey and admeasurement. If any unnecessary injury is done to the premises, the applying party is liable therefor.

105.045 Action not prejudiced by alienation by person in possession. An action for the recovery of the possession of real property against a person in possession is not prejudiced by any alienation made by such person, either before or after the commencement of the action. If the alienation is made after the commencement of the action, and the defendant does not satisfy the judgment recovered for damages for withholding the possession, the damages may be recovered by action against the purchaser.

105.050 Cotenant shall prove ouster. In an action by a tenant in common of real property against a cotenant, the plaintiff shall show, in addition to the evidence of his right of possession, that the defendant either denied the plaintiff's right or did some act amounting to a denial. [Amended by 1969 c 591 §281]

105.055 Conclusiveness of judgment. (1) Except as provided in subsection (2) of this section, the judgment in an action to recover the possession of real property is conclusive as to the estate in the property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the judgment is given, and against all persons claiming from, through or under such party, after the commencement of the action.

(2) When service of the summons is made by publication and judgment is given for want of an answer, at any time within two years from the entry thereof the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial upon the payment of the costs of the action.

(3) In an action against a tenant the judgment is conclusive against a landlord, who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him.

105.060 Effect of new trial on plaintiff's possession. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted as provided in ORS 105.055 (2), the possession is not thereby affected in any way. If judgment is given for the defendant in the new trial, he is entitled to restitution by execution in the same manner as if he were plaintiff.

105.065 [Repealed by 1969 c 591 §305]

105.070 Rights of donee under Donation Law. In an action at law for the recovery of the possession of real property, if either party claims the property as a donee of the United States under the Act of Congress approved September 27, 1850, commonly called the Donation Law, or the Acts amendatory thereto, such party from the date of his settlement on the property, as provided in said Acts, is deemed to have a legal estate in fee in the property. The estate shall continue upon the condition that he performs the conditions required by such Acts, and is unconditional and indefeasible after the performance of such condition. If both plaintiff and defendant claim title to the same real property by virtue of settlement under such Acts, the settlement and the performance of the subsequent conditions shall be conclusively presumed in favor of the party having, or claiming under, the elder patent certificate or patent, unless it appears upon the face of such certificate or patent that it is absolutely void.

105.075 Notice to quit; action to recover possession not affected by forcible entry or wrongful detainer. In any action to recover the possession of real property, as provided for in ORS 105.005, notice to quit, when necessary, may be given as prescribed in ORS 91.050 to 91.110 and 105.120. Nothing in ORS 105.105 to 105.165 prevents such action from being maintained for the recovery of the possession of real property although the entry of the defendant is forcible or the holding is unlawful and with force as defined in ORS 105.105.

105.080 Reimbursement of tenants in common obtaining possession; lien. In all cases where property in this state is or has been claimed or owned by residents of this state in common with others, and such residents have obtained or shall obtain the possession of the property at their own cost, expense or labor, they are entitled to reimbursement from the remaining claimant in common of the property, according to their proportionate interest therein. Residents so obtaining possession of such property have a lien upon it until the remaining claimant has paid or tendered such proportionate share of the reasonable costs, expenses or labor aforesaid.

FORCIBLE ENTRY AND WRONGFUL DETAINER

105.105 Entry to be lawful and peaceable only. No person shall enter upon any land, tenement or other real property unless the right of entry is given by law. When the right of entry is given by law the entry shall be made in a peaceable manner and without force.

105.110 Action for forcible entry or wrongful detainer. When a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and possession is held by force, the person entitled to the premises may maintain in the county where the property is situated an action to recover the possession thereof in the circuit court, district court or before any justice of the peace of the county.

105.115 Causes of unlawful holding by force. (1) Except as provided by subsections (2) and (3) of this section, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after it is due under the lease or agreement under which the tenant or person in possession holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(b) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

(2) In the case of a dwelling unit to which ORS 91.700 to 91.895 applies, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 72 hours of the notice required by ORS 91.820 (2).

(b) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month or from week to week and remains in possession after a valid notice to quit as provided in ORS 105.120 (2), or is holding contrary to any valid condition or covenant of the rental agreement or ORS 91.700 to 91.895.

(3) In an action under subsection (2) of this section, ORS 91.700 to 91.895 shall be applied to determine the rights of the parties, including:

(a) Whether and in what amount rent is due;

(b) Whether a tenancy or rental agreement has been validly terminated; and

(c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as provided by ORS 91.865 and 91.870 [Amended by 1973 c 559 §34, 1977 c 365 §1, 1981 c 753 §5]

105.120 Notice necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent. (1) Except as provided in subsection (2) of this section, an action for the recovery of the possession of the premises may be maintained in cases provided in ORS 105.115 (1)(b), when the notice to terminate the tenancy or to quit has been served upon the tenant or person in possession in the manner prescribed by ORS 91.110 and for the period prescribed by ORS 91.060 to 91.080 before the commencement of the action, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for a period of 90 days before the commencement of the action. Any person entering into the possession of real estate under written lease as the tenant of another may, by the terms of the lease, waive the giving of any notice required by this subsection.

(2) An action for the recovery of the possession of a dwelling unit to which ORS 91.700 to 91.895 applies may be maintained in cases provided in ORS 105.115 (2) when the notice to terminate the tenancy or to quit has been served upon the tenant or person in possession in the manner prescribed by ORS 91.855.

(3) The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against the tenant or person in possession for the possession of premises before the expiration of any period for which the tenant or person has paid the rent of the premises in advance except when:

(a) A termination notice is given pursuant to ORS 91.855;

(b) A 24-hour notice for a personal injury, substantial damage or an extremely outrageous action is given under ORS 91.820 (3); or

(c) A notice for a pet violation is given under ORS 91.822. [Amended by 1973 c 559 §35, 1981 c 753 §6]

105.125 Complaint. (1) In an action pursuant to ORS 105.110 it is sufficient to state in the complaint:

(a) A description of the premises with convenient certainty;

(b) That the defendant is in possession of the premises;

(c) That the defendant entered upon the premises with force or unlawfully holds the premises with force; and

(d) That the plaintiff is entitled to the possession of the premises.

(2) In the case of a dwelling unit to which ORS 91.700 to 91.895 applies:

(a) The complaint form shall be available from the circuit or district court clerk in substantially the following form:

IN THE _____ COURT

FOR THE COUNTY OF _____

No. _____

(Landlord), Plaintiff(s),

vs.

(Tenant), Defendant(s).

COMPLAINT (Forcible Entry and Unlawful Detainer)

I

Defendant(s) (is) (are) in possession of the following premises:

_____

_____(city)

_____(county)

II

Defendant(s) (entered upon the premises with force) (are/is unlawfully holding the premises with force).

III

Plaintiff(s) (is) (are) entitled to possession of the premises, because:

_____ 24-hour notice (personal injury)

_____ 24-hour notice (substantial damage)

_____ 24-hour notice (extremely outrageous act)

_____ 72-hour notice (nonpayment of rent)

_____ 10-day notice (pet violation)

_____ 10-day notice (week-to-week tenancy)

_____ 30-day notice (month-to-month tenancy)

_____ 30-day notice (cause)

_____ No notice

ATTACH A COPY OF THE NOTICE RELIED ON TO THE COMPLAINT

Wherefore, plaintiff(s) (prays) (pray) for possession of the premises and costs and disbursements incurred herein.

_____

Plaintiff(s).

(b) The complaint shall be verified by the plaintiff or the agent of the plaintiff. [Amended by 1975 c 256 §9; 1981 c 753 §7]

105.130 How action conducted. (1) Except as provided in this section and ORS 105.135 to 105.155, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

(2) Upon filing a complaint in the case of a dwelling unit to which ORS 91.700 to 91.895 applies, the clerk shall:

(a) Collect all applicable fees; and

(b) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and forward the summons, with sufficient copies, and a true copy of the complaint for service by a person authorized to serve summons in a civil action in a circuit court.

(3) When a complaint is filed in the case of a dwelling unit to which ORS 91.700 to 91.895

applies, the sheriff, or any other person authorized by the district court or clerk to serve summons, shall insert an appearance date on the applicable summons under the circumstances and in the manner provided in ORS 105.135 (2). [Amended by 1975 c 256 §10, 1977 c 877 §15, 1979 c 284 §94; 1981 c 753 §10]

105.135 Service and return of summons; posting; contents. (1) Except as provided in subsection (2) of this section, the summons shall be served and returned as in other actions.

(2) The person, in an attempt to serve the summons under ORS 105.130 (3), shall make one service attempt If during the service attempt the person is unable to find the defendant, the person, if authorized by the district court or clerk, shall insert an appearance date on the summons. In determining the appearance date, the person shall accommodate any delay between the fulfillment of the requirements of this subsection for the summons posting by the person and the summons mailing by the clerk so that the service will meet the requirements of subsection (4) of this section. The person shall attach the summons in a secure manner to the main entrance of the dwelling unit. The person shall indicate by affidavit upon the return that the person has posted the dwelling unit. Upon receipt of the return by the person indicating the posting, the clerk shall mail a true copy of the summons by certified mail, return receipt requested, restricted delivery to the defendant at the dwelling unit.

(3) If the service is made in accordance with subsection (1) of this section, the service shall be not less than three nor more than seven days before the court appearance date contained in the summons.

(4) If the service is made in accordance with subsection (2) of this section, the service shall be not less than seven nor more than 10 days before the court appearance date contained in the summons.

(5) In the case of a dwelling unit to which ORS 91.700 to 91.900 applies, the summons shall inform the defendant of the procedures, rights and responsibilities of the parties as specified in ORS 105.137. [Amended by 1975 c 256 §11, 1977 c 327 §1, 1979 c 854 §2; 1981 c 753 §11]

105.137 Effect of failure of party to appear; appearance by attorney; scheduling of trial; unrepresented defendant. In the case of a dwelling unit to which ORS 91.700 to 91.900 applies:

(1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default judgment shall be entered against the defendant in favor of the plaintiff for possession of the premises and costs and disbursements.

(2) If the defendant appears and the plaintiff fails to appear at the first appearance, an order shall be entered dismissing the complaint and awarding costs and disbursements against the plaintiff in favor of the defendant.

(3) An attorney at law shall be entitled to appear on behalf of any party, but no attorney fees may be awarded if the defendant does not contest the action.

(4) The plaintiff or an agent of the plaintiff may obtain a continuance of the action for as long as the plaintiff or the agent of the plaintiff deems necessary to obtain the services of an attorney at law.

(5) If both parties appear in court on the date contained in the summons, the court shall set the matter for trial as soon as practicable, unless the court is advised by the parties that the matter has been settled. The trial shall be scheduled no later than 15 days from the date of such appearance. If the matter is not tried within the 15-day period, the court shall order the defendant to pay rent that is accruing into court, provided the court finds after hearing that entry of such an order is just and equitable.

(6)(a) The court shall permit an unrepresented defendant to proceed to trial by directing the defendant to file an answer in writing on a form which shall be available from the court clerk, and to serve a copy upon the plaintiff on the same day as first appearance.

(b) The answer shall be in substantially the following form:

IN THE_____COURT
FOR THE COUNTY
OF_____

(Landlord),	)	
	)	
Plaintiff(s),	)	
	)	
vs	)	No _____
	)	
(Tenant),	)	
	)	
Defendant(s)	)	

ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession because:

___ The landlord did not make repairs
List any repair problems:_____
_____
_____

___ The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is otherwise retaliatory).

___ The eviction notice is wrong.

___ List any other defenses:_____
_____
_____
_____
_____

I (we) ask that the plaintiff(s) take nothing by the complaint and that I (we) be awarded my (our) costs and disbursements.

_____

_____
Date
Signature of defendant(s)

---

(7) If an unrepresented defendant files an answer as provided in subsection (6) of this section, the answer shall not limit the defenses available to the defendant at trial under ORS 91.700 to 91.900. If such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff shall be entitled to a reasonable continuance for the purposes of preparing to meet the defense. [1975 c 256 §13, 1979 c 765 §5, 1979 c 854 §3, 1981 c.753 §12]

105.140 Continuance. No continuance shall be granted to a defendant for a longer period than two days unless:

(1) The defendant gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant; or

(2) In an action for the recovery of the possession of a dwelling unit to which ORS 91.700 to 91.900 apply, the court orders a defendant to pay rent into court as it becomes due from the commencement of the action until final judgment in the action. If a defendant fails to pay rent into court as ordered under this subsection, the action shall be tried forthwith. [Amended by 1973 c.559 §36; 1977 c.365 §2; 1979 c.854 §4]

105.145 Judgment on trial by court. If an action is tried by the court without a jury, and after hearing the evidence it concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable.

105.150 Verdict and judgment on trial by jury. If the action is tried by a jury and they find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, they shall render a general verdict of not guilty; if true in part, they shall render a verdict setting forth the facts they find, and the court shall render judgment according to the verdict.

105.155 Form of execution. The execution, should judgment of restitution be rendered, may be in the following form:

State of Oregon,)
) ss.
County of _____)

To the sheriff or any constable of the county:

Whereas, a certain action for the forcible entry and detention, (or the forcible detention) of the following described premises, to wit: ___, lately tried before the above entitled court, wherein _____ was plaintiff and ___ was defendant, judgment was rendered on the day of _____, A.D.,_____, that the plaintiff _____ have restitution of the premises, and also that he recover the costs and disbursements in the sum of $_____;

In the name of the State of Oregon, you are, therefore, hereby commanded forthwith to serve upon the defendant in the manner specified by ORS 105.135 (2) a notice that the plaintiff is to have restitution of the premises and that unless the goods, chattels, motor vehicles and other personal property on the premises are removed within three days you shall cause the same to be removed to a safe place for storage. In the event the goods, chattels, motor vehicles and other personal property are not removed by the end of the three

days you shall immediately cause the same to be removed to a safe place for storage. You are also commanded to levy on the goods, chattels, motor vehicles and other personal property of the defendant, and make the costs and disbursements, aforesaid, and all accruing costs, and to make legal service and due return of this writ.

Witness my hand and official seal (if issued out of a court of record) this _____ day of _____, A.D., _____.

_____
Justice of the peace, or clerk of the district or circuit court.

[Amended by 1979 c 765 §6]

105.160 [Repealed by 1977 c 365 §3 and 1977 c 416 §5]

105.165 Alternative method of removing, storing and disposing of tenant's personal property; requirements; landlord liability. (1) In the case of a dwelling unit to which ORS 91.770 to 91.900 applies, the landlord may elect to remove, store and dispose of the tenant's goods, chattels, motor vehicles and other personal property upon restitution of the premises pursuant to ORS 105.155, provided:

(a) The sheriff shall first serve the notice of restitution and shall thereafter deliver possession of the premises to the landlord, as provided in ORS 105.155.

(b) The landlord shall notify the tenant and shall store and dispose of the goods, chattels, motor vehicles and other personal property of the tenant pursuant to ORS 91.840, except that if the tenant claims that property within the time provided in ORS 91.840, the landlord must make that property available for removal by the tenant without the payment of any costs, charges or other sums, and the notice to the tenant shall so state.

(2) Any cost incurred by the landlord for execution pursuant to ORS 105.155 or for removal, storage or sale of the tenant's property under this section and not recovered pursuant to ORS 91.840 (8) shall be added to the judgment as provided in ORS 21.410 (1)(d).

(3) If the landlord fails to permit the tenant to recover possession of the tenant's personal property under paragraph (b) of subsection (1) of this section, the tenant may recover, in addition to any other amount provided by law, twice the actual damages or twice the monthly rent, whichever is greater. [1981 c 753 §9]

PARTITION

105.205 Who may maintain partition. When several persons hold real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain a suit for the partition of the real property according to the respective rights of the persons interested therein, and for a sale of all or a part of the property if it appears that a partition cannot be had without great prejudice to the owner.

105.210 When and how partition prevented. If the court finds that the property can neither be partitioned nor sold without great prejudice to the owners, the court may receive evidence as to the value of the respective interests, fix the value thereof, and make an order permitting the owners, objecting to the partition or sale, to borrow money upon the property with which to pay off the claims, as so fixed, of the persons demanding a partition or sale. Upon payment of the amount in court, as so fixed, for the satisfaction of the claims of those demanding partition or sale, all right and interest in the property of the parties so demanding partition or sale is satisfied fully and discharged and the property is free and clear of all claims of any such parties.

105.215 Complaint. The interest of all known and unknown persons in the property shall be specifically and particularly set forth in the complaint for partition, as far as known to the plaintiff. If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff or is uncertain or contingent, or if the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder, so that the parties cannot be named, that fact shall be set forth in the complaint.

105.220 Tenants and lien creditors as defendants; liens on undivided interests. The plaintiff shall make a tenant in dower, by the curtesy, for life or for years of any portion of the entire property and creditors having a lien upon any portion of the property defendants in the suit. When the lien is upon an

undivided interest or estate of any of the parties and a partition is made, it is thenceforth a lien only upon the share assigned to such party; but such share shall be first charged with its just proportion of the cost of the partition in preference to such lien.

105.225 Summons; to whom directed. The summons shall be directed by name to all the tenants in common who are known, to all lien creditors who are made parties to the suit and generally to all persons unknown having or claiming an interest or estate in the property.

105.230 Service by publication. If a party having a share or interest in or lien upon the property is unknown or cannot be found, and such fact is made to appear by affidavit, the summons may be served on the unknown or unlocated party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication it must be accompanied by a brief description of the property which is the subject of the suit. [Amended by 1979 c 284 §95]

105.235 Answer. The defendant shall set forth in his answer the nature and extent of his interest in the property. If he is a lien creditor he shall set forth how the lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of the other security.

105.240 Rights determinable; ascertainment of title where defendant defaults or sale is necessary. The rights of the plaintiffs and defendants may be put in issue, tried and determined in the suit. If a defendant fails to answer, or if a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the decree for partition or sale is given.

105.245 Sale or partition ordered by court. If it is alleged in the complaint and established by evidence, or if it appears by the evidence to the satisfaction of the court without an allegation in the complaint, that the property or any part of it is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale of the property, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties, as ascertained by the court. The court shall appoint three referees to partition the property and shall designate the portion to remain undivided for the owners whose interest remain unknown or not ascertained.

105.250 Compensation when equal partition cannot be made. When it appears that partition cannot be made without prejudice to the rights and interests of some of the parties, the court may adjudge compensation to be made by one party to another on account of the inequality of partition. Compensation shall not be required to be paid to others by owners unknown, nor by infants unless it appears that an infant has personal property sufficient for that purpose, and that his interest will be promoted thereby.

105.255 How referees make partition; report. In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court. They shall designate the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

105.260 Power of court over report; final decree. The court may confirm or set aside the report in whole or in part and if necessary appoint new referees. Upon the report being confirmed, a decree shall be given stating that the partition shall be effectual forever. Except as provided in ORS 105.265, the decree is binding and conclusive:

(1) On all parties named therein, and their legal representatives, who have at the time any interest in any part of the property divided as owners in fee or as tenants for life or for years.

(2) On all parties named therein, and their legal representatives, entitled to the reversion, remainder or inheritance of the property or any part thereof after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property.

(3) On all parties named therein, or their legal representatives, who have an interest in

any undivided share of the property as tenants for years or for life.

(4) On all persons interested in the property who are unknown, to whom notice was given of the application for partition by publication, as directed by ORS 105.230.

(5) On all persons claiming from parties or persons listed in subsections (1) to (4) of this section.

105.265 Persons not affected by decree. The decree provided for in ORS 105.260 shall not affect tenants for years or for life of the whole of the property which is the subject of partition. Except as provided in ORS 105.260, the decree and partition shall not preclude any person from claiming title to the property in question, or from controverting the title of the parties between whom the partition was made.

105.270 Order of sale on referees report. If the referees report to the court that the property for which partition has been decreed, or any separate portion thereof, is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that the report is correct, it may, by an order, direct the referees to sell the property or separate portion thereof so situated.

105.275 Conclusiveness of order confirming report. If the report of the referee is confirmed the order of confirmation is binding and conclusive upon all parties to the suit.

105.280 How sale made; notice of sale. All sales of real property made by the referees shall be made by public auction to the highest bidder in the manner required for the sale of real property on execution. The notice shall state the terms of sale. If the property or any part of it is to be sold subject to a prior estate, charge or lien, that fact shall be stated in the notice.

105.285 Distribution of proceeds of sale. The proceeds of the sale of encumbered property shall be distributed by the decree of the court as follows:

(1) To pay the property's just proportion of the general costs of the suit.

(2) To pay the costs of the reference.

(3) To satisfy the several liens in their order of priority, by payment of the sums due and to become due, according to the decree.

(4) The residue among the owners of the property sold, according to their respective shares.

105.290 Distribution of proceeds by referee or payment into court. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. If no such direction is given, all proceeds and securities shall be paid into court or deposited as directed by the court.

105.295 Continuance of suit after proceeds paid into court. When the proceeds of sales of any shares or parcel belonging to known persons who are parties to the suit are paid into court, the suit may be continued as between such parties for the determination by the court of their respective claims thereto. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original suit.

105.300 When lienholder has other securities. Whenever any party to the suit, who holds a lien upon any part of the property has other securities for the payment of the amount of the lien, the court may, in its discretion, order the securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property.

105.305 Credit allowed. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises which it may direct to be sold on credit; and for that portion of which the purchase money is required by ORS 105.370 to be invested for the benefit of unknown owners, infants or parties out of the state. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court and his successor in office. When there is a known owner of full age, the security for his share shall be executed in his name.

105.310 Setting off estate for life or years in part not sold. When only a part of the property is ordered to be sold, the whole of

an estate for life or years in an undivided share of the property may be set off in any part of the property not ordered to be sold.

105.315 Disposition of life estate or leasehold. When the estate of any tenant for life or years in any undivided part of the property in question was admitted by the parties or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate was made a party to the suit, the estate may be first set off out of any part of the property and a sale made of such parcel subject to the tenants prior unsold estate; but if in the judgment of the court a due regard to the interest of all the parties requires that such estate should also be sold, the sale of the estate may be ordered.

105.320 Compensation of tenants in case of sale. Any person entitled to an estate for life or years in any undivided part of the property, whose estate has been sold, shall be entitled to receive such sum in gross as is, deemed, upon principles of law applicable to annuities, a reasonable satisfaction for the estate. If the person so entitled consents to that sum, he shall accept it by executing an instrument that is duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the clerk.

105.325 When court determines value of tenancy. If a tenant does not consent pursuant to ORS 105.320, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the tenant's benefit, and shall order that sum to be deposited in court for that purpose.

105.330 Rules for determining value of certain estates. The proportion of the proceeds of the sale to be invested, as provided in ORS 105.325, shall be ascertained and determined as follows:

(1) If an estate in dower or curtesy is included in the order of sale its proportion shall be one-half of the proceeds of the sale of the property, or of the sale of the undivided share in the property upon which the claim or dower existed.

(2) If any other estate for life or years is included in the order of sale its proportion shall be the whole proceeds of the sale of the property, or of the sale of an undivided share of the property in which the estate existed.

105.335 Protection of unknown tenants. If any person entitled to an estate for life or years is unknown, the court shall provide for the protection of his rights in the same manner, as far as possible, as if he were known and had appeared.

105.340 Provision for future rights or interests. In all cases of sales in partition when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of the contingent or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties. [Amended by 1969 c 591 §282]

105.345 Notice of terms of sale; separate sale of distinct parcels. In all cases of sales of property, the terms shall be known at the time. If the premises consist of distinct farms or lots they shall be sold separately, or otherwise if the court so directs.

105.350 Purchase by referee, conservator or guardian forbidden. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase at a partition sale; nor shall the guardian or conservator of the estate of an infant party be interested in the purchase of any real property that is the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section are void. [Amended by 1973 c 823 §99]

105.355 Report of sale. After completing the sale the referees shall report it to the court with the description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale and the securities, if any, taken. The report shall be filed with the clerk.

105.360 Exception to report; confirmation of sale. The report of sale may be excepted to by any party entitled to a share of the proceeds in like manner and with like effect as in ordinary cases. If the sale is confirmed the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to the sale, which acts they are hereby authorized to do. The order shall discharge the property of the estate or

interest of every person mentioned in ORS 105.260 and of tenants for life or years of the property sold. The order shall be binding and conclusive upon all such persons as if it were a decree for the partition of such property and except as provided in ORS 105.350, upon all persons whomsoever as to the regularity of the proceedings concerning such sale.

105.365 Purchase by encumbrancer or party entitled to share. When a party entitled to a share of the property, or an encumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

105.370 Investment of proceeds for certain parties. When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into court or otherwise deposited by order of the court, such proceeds shall be invested in securities on interest for the benefit of the persons entitled thereto.

105.375 In whose name securities taken or investments made. Except as provided in ORS 105.380, security for the proceeds of sale shall be taken or investments of the proceeds shall be made in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

105.380 When securities are payable to parties. When security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of and payable to the parties entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

105.385 Clerk's treatment of securities and investments. The clerk in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due and apply and invest it as the court may direct. He shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in his office, free for inspection by all persons, of investments and moneys received and disposed of by him.

105.390 When proceeds paid to conservator or guardian of infant. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to his guardian, the conservator of his estate or the special guardian appointed for him in the suit, upon the guardian or conservator giving the security required by law or ordered by the court. [Amended by 1973 c 823 §100]

105.395 Payment of proceeds to conservator of incapacitated person. When the interest in real property of an incapacitated person has been sold, his share of the proceeds shall be given, on his behalf, to the conservator of his estate if the conservator executes, with sufficient sureties, an undertaking approved by the judge of the court, that he will faithfully discharge the trust reposed in him and will render a true and just account to the person entitled to the proceeds or to his legal representative. [Amended by 1973 c 823 §101]

105.400 When conservator or guardian may consent to partition. When an infant or an incapacitated person is interested in real estate held in common or in any other manner so as to authorize his being made a party to an action for the partition thereof, the guardian of the infant or the conservator of his estate may consent to a partition without suit and agree upon the share to be set off to the infant or incapacitated person. When the court so orders, the guardian or conservator may execute a release on behalf of the infant or other incapacitated person to the owners of the other shares of the parts to which they are respectively entitled. [Amended by 1973 c 823 §102]

105.405 Costs and expenses of partition. (1) The expenses of the referees, including those of a surveyor and his assistants when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the costs of partition.

(2) The reasonable costs of partition, including reasonable attorney fees and disbursements, that are for services performed for the common benefit of all parties, shall be paid by the parties decreed to share in the lands divided in proportion to their respective interests therein, and shall be included and specified in the decree. They shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately When, however, a controversy arises between some of the parties only, the court may require the expense of such controversy to be paid by any of, or all, the parties thereto. [Amended by 1971 c 502 §1]

ACTIONS AND SUITS FOR NUISANCES

105.505 Remedies available for private nuisance. Any person whose property or personal enjoyment thereof is affected by a private nuisance, may maintain an action for damages therefor. If judgment is given for the plaintiff in the action, the plaintiff may, on motion, in addition to the execution to enforce the judgment, obtain an order allowing a warrant to issue to the sheriff to abate the nuisance. The motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appears on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may proceed to have the defendant enjoined. [Amended by 1979 c 284 §96]

105.510 Procedure for abating a nuisance. If the order to abate provided for in ORS 105.505 is made, the clerk shall when requested by the plaintiff within six months after the order is made, issue a warrant directed to the sheriff, requiring him forthwith to abate the nuisance at the expense of the defendant and to return the warrant as soon thereafter as possible, with his proceedings indorsed thereon. The expense of abating the nuisance may be levied by the sheriff on the property of the defendant and in this respect the warrant is to be deemed an execution against property.

105.515 Stay of issuance of warrant to abate. At any time before an order to abate is made or a warrant to abate is issued, the defendant may, on motion to the court or judge thereof, have an order to stay the issuing of the warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself, upon his giving an undertaking to the plaintiff in a sufficient amount, with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate the nuisance within the time and in the manner specified in the order.

105.520 Justification of sureties; proceedings when nuisance is not abated. If the plaintiff is not notified of the time and place of the application for the order provided for in ORS 105.515, the sureties therein provided for shall justify as bail upon arrest, otherwise the justification may be omitted unless the plaintiff requires it If the order is made and undertaking given, and the defendant fails to abate the nuisance within the time specified in the order, at any time within six months thereafter, the warrant for the abatement of the nuisance may issue as if the warrant had not been stayed.

105.525 [Repealed by 1969 c 509 §8]

105.530 [Repealed by 1969 c 509 §8]

SUITS TO QUIET TITLE AND REMOVE CLOUD

105.605 Suits to determine adverse claims. Any person claiming an interest or estate in real property not in the actual possession of another may maintain a suit in equity against another who claims an adverse interest or estate therein for the purpose of determining such conflicting or adverse claims, interests or estates. Any municipal corporation or county of this state claiming any interest or estate in real property which is not in the actual possession of another, including real property acquired by foreclosure of delinquent tax liens situated in the same county, may maintain a suit in equity against all persons who claim an adverse interest or estate in all or any part of the property for the purpose of determining the conflicting or adverse claims, interests or estates. One or more parcels may be included in one suit and the issue made by the pleadings in any suit by a municipality or county relating only to a certain parcel or part of the real property, shall be separately tried and determined upon motion of any interested party.

105.610 Suit to cancel patent of donee under Donation Law. Whenever any person claims real property as a donee of the United States by virtue of a settlement thereon under the Act of Congress approved September 27, 1850, commonly called the Donation Law, or the Acts amendatory thereto, and the patent for such property, or any portion thereof, was wrongfully issued to another, the person may maintain a suit in equity against the person to whom the patent was issued, or those claiming under him, for the purpose of having the patent canceled, and the estate or interest of the plaintiff in the property ascertained and established. In such suit, the party entitled to and making the settlement under such Acts of Congress, and complying with the subsequent conditions thereby required, is deemed to have a legal estate in fee in the property although the patent therefor was issued to another.

105.615 Action by tenant in common against cotenants. An action may be brought under ORS 105.605 by a tenant in common of real property to establish adverse possession as against all other cotenants if the tenant in common has been in possession of the real property, exclusive of all other cotenants, for an uninterrupted period of 20 years or more and has paid all taxes assessed against such property while in possession. [1969 c 350 §1]

UNIFORM DISCLAIMER OF TRANSFERS UNDER NONTESTAMENTARY INSTRUMENTS

105.625 Short title. ORS 105.625 to 105.640 may be cited as the "Uniform Disclaimer of Transfers under Nontestamentary Instruments Act." [1975 c 622 §8]

105.627 Disclaimer of interest in property transferred by nontestamentary instrument; duration of right to disclaim; form of disclaimer. A person, or the representative of a deceased, incapacitated or protected person, or any other fiduciary for a person, who is a grantee, donee, surviving joint tenant or tenant by the entireties, person succeeding to a disclaimed interest, beneficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to that person of any property or interest therein by delivering a written disclaimer under ORS 105.625 to 105.640. A disclaimer may be of a fractional share or of any limited interest or estate. A surviving joint tenant or tenant by the entireties may disclaim as a separate interest any property or interest therein devolving to the surviving joint tenant or tenant by right of survivorship. A surviving joint tenant or tenant by the entireties may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy or tenancy by the entireties devolving to the surviving tenant or the tenant, if the joint tenancy or tenancy by the entireties was created by the act of a deceased joint tenant or tenant by the entireties and if the survivor did not join in creating the joint tenancy or tenancy by the entireties. The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant [1975 c 622 §1, 1981 c 56 §1]

105.630 Delivery or filing of disclaimer; effective date of disclaimer; delivery of disclaimer to person entitled thereto; filing with recorder. (1) An instrument disclaiming (a) a present interest shall be delivered no later than nine months after the effective date of the nontestamentary instrument or contract; and (b) a future interest shall be delivered not later than nine months after the event determining that the taker of the property or interest is finally ascertained and that person's interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the instrument of disclaimer shall be delivered not later than nine months after the person has actual knowledge of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to self-transfer or transfer to another the entire legal and equitable ownership of the interest. However, as to a transfer creating an interest in the disclaimant made after December 31, 1976, and subject to tax under chapter 11, 12 or 13 of the Internal Revenue Code of 1954, as amended, a disclaimer intended as a qualified disclaimer thereunder must be delivered not later than nine months after the later of the date the transfer is made or the day on which the person disclaiming attains age 21.

(2) The disclaimer shall be delivered in person or mailed by registered or certified mail to the trustee or other person having legal title to, or possession of, the property or

interest disclaimed or who is entitled thereto in the event of disclaimer. If real property or an interest therein is disclaimed, a copy of the instrument may be filed for record in the office of the recorder of the county in which the real estate is situated. [1975 c 622 §2, 1981 c 56 §2]

105.632 Devolution of disclaimed property. (1) Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed devolves:

(a) As to a present interest, as if the disclaimant had died before the effective date of the instrument or contract; and

(b) As to a future interest, as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and that person's interest is indefeasibly vested.

(2) A disclaimer relates back for all purposes to the effective date of the instrument or contract or the date of the determinative event, as the case may be. [1975 c 622 §3, 1981 c 56 §3]

105.635 Bar of right to disclaim; right exists despite certain restrictions; disclaimer or waiver binding. (1) The right to disclaim property or an interest therein is barred by:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;

(b) A written waiver of the right to disclaim;

(c) An acceptance of the property or interest or benefit thereunder; or

(d) A sale of the property or interest under judicial sale made before the disclaimer is effected.

(2) The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(3) The instrument of disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under the disclaimant or person waiving. [1975 c 622 §4; 1981 c.56 §4]

105.637 Effect of ORS 105.625 to 105.640 on disclaimer under other statutes. ORS 105.625 to 105.640 does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute. [1975 c 622 §5]

105.640 Construction and application. ORS 105.625 to 105.640 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 105.625 to 105.640 among states enacting it. [1975 c 622 §7]

PUBLIC RECREATIONAL USE OF PRIVATE LANDS

105.655 Definitions for ORS 105.655 to 105.680. As used in ORS 105.655 to 105.680:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon his land.

(2) "Land" means agricultural land, range land, forest land, and lands adjacent or contiguous to the ocean shore as defined by ORS 390.605, including roads, bodies of water, watercourses, private ways, private buildings and structures on such lands and machinery or equipment on the land when attached to the realty, but shall not include lands described in ORS 390.605 to 390.770. "Land" also includes abandoned borrow pits, gravel or rock quarries not currently being used for commercial or industrial purposes, whether or not such pits or quarries are situated on agricultural land, range land, forest land or lands adjacent or contiguous to the ocean shore as defined in ORS 390.605.

(3) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(4) "Recreational purpose" includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, winter sports and viewing or enjoying historical, archaeological, scenic or scientific sites. [1971 c 780 §1, 1973 c 732 §4; 1979 c 258 §1]

105.660 Policy. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest

or the acquisition by the public of any right to use or continue the use of such land for recreational purposes. [1971 c 780 §2, 1973 c 732 §3]

105.665 Duties and liabilities of owner of land used by public for recreation. Except as otherwise provided in ORS 105.675:

(1) An owner of land owes no duty of care to keep the land safe for entry or use by others for any recreational purpose or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use his land for any recreational purpose without charge does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. [1971 c 780 §3]

105.670 ORS 105.665 applies to duties and liability of owner of land leased to public body or public corporation. Unless otherwise agreed in writing, ORS 105.665 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for recreational purposes. [1971 c 780 §4]

105.675 Liabilities of landowner unaffected in certain cases. Nothing in ORS 105.655 to 105.680 limits in any way any liability of an owner of land which may otherwise exist:

(1) For his reckless failure to guard or warn against a dangerous condition, use, structure or activity on the land; or

(2) For any injury suffered where the owner of land charges any person who enters or goes upon the land for any recreational purpose, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection. [1971 c 780 §5]

105.677 Permissive recreational use of land does not create easement; preservation of preexisting public rights. (1) An owner of land who either directly or indirectly invites or permits any person to use his land for any recreational purpose without charge shall not thereby give to such person or to other persons any right to continued use of his land for any recreational purpose without his consent.

(2) The fact that an owner of land allows the public to recreationally use his land without posting or fencing or otherwise restricting use of his land shall not raise a presumption that the landowner intended to dedicate or otherwise give over to said public the right to continued use of said land.

(3) Nothing in this section shall be construed to diminish or divert any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973. [1973 c 732 §2]

105.680 Construction. Nothing in ORS 105.655 to 105.680 shall be construed:

(1) To create a duty of care or basis for liability upon any owner of land for injury to persons or property resulting from the use of such land for recreational purposes.

(2) To relieve any person using the land of another for recreational purposes from any obligation which he may otherwise have to exercise care in his use of the land in his activities thereon or from the legal consequences of his failure to employ such care. [1971 c 780 §6]

PUBLIC WOODCUTTING ON LAND OF OTHERS

105.685 Definitions for ORS 105.685 to 105.697. As used in ORS 105.685 to 105.697:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon his land. However, "charge" does not include a reasonable fee, not to exceed $5, for the cost of administration.

(2) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(3) "Woodcutting" means the cutting or removal of wood from land by an individual who has obtained permission from the owner

of the land to cut or remove wood. [1979 c 434 §1]

105.687 Declaration of legislative policy. The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for woodcutting by limiting their liability toward persons entering thereon for such purpose and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for such purpose [1979 c 434 §2]

105.689 Liability of landowner to woodcutters limited. Except as otherwise provided in ORS 105.693:

(1) An owner of land owes no duty of care to keep the land safe for entry or use by others for woodcutting or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use his land for woodcutting without charge does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. [1979 c 434 §3]

105.691 Applicability of ORS 105.689 to land leased to public body. Unless otherwise agreed in writing, ORS 105.689 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for woodcutting. [1979 c 434 §4]

105.693 Limits to landowner exemption. (1) Nothing in ORS 105.685 to 105.697 limits in any way any liability of an owner of land which may otherwise exist:

(a) For his reckless failure to guard or warn against a dangerous condition, use, structure or activity on the land; or

(b) For any injury suffered where the owner of land charges any person who enters or goes upon the land for woodcutting, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection.

(2) The provisions of ORS 105.685 to 105.697 do not affect the liability of the State of Oregon under the provisions of ORS 30.260 to 30.300. [1979 c 434 §5]

105.695 Presumption of permission for continued use limited. (1) An owner of land who either directly or indirectly invites or permits any person to use his land for woodcutting without charge shall not thereby give to such person or to other persons any right to continued use of his land for such purpose without his consent.

(2) The fact that an owner of land allows the public to use his land for woodcutting without posting or fencing or otherwise restricting use of his land shall not raise a presumption that the landowner intended to dedicate or otherwise give over to said public the right to continued use of said land.

(3) Nothing in this section shall be construed to diminish or divert any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 3, 1979. [1979 c 434 §6]

105.697 Construction of ORS 105.685 to 105.697. Nothing in ORS 105.685 to 105.697 shall be construed:

(1) To create a duty of care or basis for liability upon any owner of land for injury to persons or property resulting from the use of such land for woodcutting.

(2) To relieve any person using the land of another for woodcutting from any obligation which he may otherwise have to exercise care in his use of the land, in his activities thereon or from the legal consequences of his failure to employ such care. [1979 c 434 §7]

105.699 Rules applicable to state lands. The State Forester, under the general supervision of the State Board of Forestry, may adopt any rules considered necessary for the administration of the provisions of ORS 105.685 to 105.697 on state land. [1979 c 434 §8]

ACTION TO ESTABLISH BOUNDARY

105.705 Right to bring action; filing of judgment. (1) When any dispute or controversy exists between owners of adjacent or contiguous lands in this state, concerning the boundary lines thereof, or the location of the line dividing such lands, any party to the dispute or controversy may bring an action in the circuit court in the county where all or part of the lands are situated, for the purpose of having the controversy or dispute determined, and the boundary line or dividing line ascertained and marked by proper monuments upon the ground where such line is ascertained.

(2) Upon final determination of the dispute by the court, the clerk of the court shall file one copy of the judgment in the office of the county surveyor, one copy in the office of the county assessor and one copy in the office of the county officer who keeps the records of deeds for recording in the county deed records. [Amended by 1965 c 24 §1, 1979 c 284 §97]

105.710 Pleadings. The complaint in a boundary suit is sufficient if it appears therefrom that the plaintiff and defendant are owners of adjacent lands, some part of which is in the county in which the suit is brought and that there is a controversy or dispute between the parties concerning their boundary or dividing line. It shall not be necessary to set forth the nature of the dispute or controversy except that the plaintiff shall describe the boundary or dividing line as he claims it to be. The defendant in his answer shall set forth the nature of his claim with reference to the location of the line in controversy.

105.715 Mode of proceeding. The mode of proceeding in a boundary action is analogous to that of an action not triable by right to a jury. At the time of entering the judgment fixing the true location of the disputed boundary or dividing line the court shall appoint three disinterested commissioners, one of whom shall be a practical surveyor, and shall direct the commissioners to go upon the land of the parties and establish and mark out upon the grounds, by proper marks and monuments, the boundary or dividing line as ascertained and determined by the court in its judgment. [Amended by 1979 c 284 §98]

105.720 Oath and report of commissioners. Before entering upon the discharge of their duties, the commissioners shall make and file their oath in writing to faithfully and impartially perform their duties as commissioners. After designating the boundary or dividing line by proper marks and monuments they shall file in the court a report of their doings as commissioners, and the report shall be, when approved or confirmed by the court, a part of the trial court file, as defined in ORS 19.005. [Amended by 1967 c.471 §3]

105.725 Proceedings on motion to confirm report. The report of the commissioners may be confirmed by the court upon written motion of either party to the suit whenever it appears to the court that the motion was served upon the adverse party two days before the presentation thereof and no exceptions have been filed to the report within two days after the service. If exceptions are filed to the report, they may be heard with the motion to confirm, and the court may confirm, modify or set aside the report as is just, and in the latter case may appoint a new commission or refer the matter to the same commissioners with appropriate instructions.

ACTIONS BASED ON CHANGE OF GRADE

105.755 State liability for damages resulting from change of grade of roads other than city streets; proceedings on cause of action; limitation. (1) As used in this section, "public road" means a road used by the general public, whether designated as a state highway, county or district road or otherwise, but does not include city streets under ORS 105.760.

(2) Whenever the Department of Transportation changes the grade of any public road from a previously established or maintained grade, the state shall be liable for and shall pay just and reasonable compensation for any legal damage or injury to real property abutting upon the public road affected by the grade change; except that the state shall not be liable for any damage or injury for any such change whenever the county has requested the Department of Transportation to make such change.

(3) Any person having any right, title or interest in any such real property has a cause of action against the state to enforce payment of the compensation. Any such action may be commenced and maintained in the circuit court for the county in which the real property is situated. Any party to any such action has

the right to appeal as in other civil actions from the final judgment of any circuit court. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving the real property in which the interest is claimed.

(4) The trial circuit court shall, in its final judgment, apportion such just compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(5) The liability of the state terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. Any cause of action granted by this section is barred unless such action is commenced within six months after the change of grade is physically completed and accepted by the Department of Transportation. [1961 c.510 §1; 1973 c 197 §5]

105.760 State or county liability for damages resulting from change of grade of streets; proceedings on cause of action. (1) If consent is given by the governing body of any city to change any grade of any street as such grade has been established or maintained by the consenting city and pursuant thereto the Department of Transportation or a county changes the grade, the state or the county, whichever makes such change of grade, shall be liable for and shall pay just and reasonable compensation for any damage or injury to any real property abutting upon the road or street affected by the grade change.

(2) Any person having any right, title or interest in any such real property has a cause of action against the state or against the county to enforce payment of the compensation. Any such action may be commenced and maintained in the circuit court for the county in which the real property is situated. Any party to any such action has the right to appeal as in any other civil action from the final judgment of any circuit court. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving the real property in which the interest is claimed.

(3) The trial circuit court shall, in its final judgment, apportion such just compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(4) The liability of the state or the liability of the county, as the case may be, terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. Any cause of action granted by this section is barred unless such action is commenced within six months after the change of grade is physically completed and accepted by the Department of Transportation or the county. [Formerly 373 040; 1973 c 197 §6]

EXTINGUISHMENT OF FUTURE INTERESTS

105.770 Failure of contingency; application of extinguishment. (1) A special limitation or a condition subsequent, which restricts a fee simple estate in land, and the possibility of reverter or right of entry for condition broken thereby created, shall, if the specified contingency does not occur within 30 years after the possibility of reverter or right of entry was created, be extinguished and cease to be valid.

(2) This section shall apply only to inter vivos instruments taking effect after January 1, 1978, to wills where the testator dies after such date, and to appointments made after such date, including appointments by inter vivos instruments or wills under power created before such date. [1977 c 723 §1]

105.772 Preservation of future interests; filing of notice of intent required; limitation. The following shall apply to all possibilities of reverter and rights of entry limited on fees simple existing on January 1, 1978:

(1) A special limitation or a condition subsequent, which restricts a fee simple estate in land, and the possibility of reverter or right of entry for condition broken thereby created, shall be extinguished and cease to be valid, unless within the time specified in this section, a notice of intention to preserve such possibility of reverter or right of entry is recorded as provided in ORS 105.770 to 105.774. Such extinguishment shall occur at

the end of the period in which the notice or renewal notice may be recorded.

(2) Any person owning such possibility of reverter or right of entry may record in the deed records of the county in which the land is situated a notice of intention to preserve such interest. Such notice may be filed for record by any person who is the owner or part owner of such interest, in which case the notice shall be effective as to the person filing the notice and any other person who is a part owner thereof. If any owner or part owner is a minor or incapacitated person, as defined in ORS 126.003, the notice may be filed by a conservator appointed pursuant to a protective proceeding under ORS 126.157.

(3) To be effective and to be entitled to record, such notice shall contain an accurate and full description of all land affected by such notice; but if such claim is founded upon a recorded instrument, then the description may be by reference to the recorded instrument. Such notice shall also contain the terms of the special limitation or condition subsequent from which the possibility of reverter or right of entry arises. The notice shall be executed, acknowledged, proved and recorded in each county in which the land is situated in the same manner as a conveyance of real property. In indexing such notices the county clerk shall enter such notices under the grantee indexes of deeds under the names of the persons on whose behalf such notices are executed.

(4) An initial notice may be recorded not less than 28 years, nor more than 30 years, after the possibility of reverter or right of entry was created; provided, however, if such possibility of reverter or right of entry was created prior to January 1, 1950, the notice may be recorded within two years after January 1, 1978. A renewal notice may be recorded after the expiration of 28 years and before the expiration of 30 years from the date of recording of the initial notice, and shall be effective for a period of 30 years from the recording of such renewal notice. In like manner, further renewal notices may be recorded after the expiration of 28 years and before the expiration of 30 years from the date of recording of the last renewal notice. [1977 c 723 §2]

105.774 Exclusions from application of ORS 105.770 and 105.772. ORS 105.770 to 105.774 shall not apply to conveyances made in favor of:

(1) The State of Oregon or any unit of local government as defined in ORS 190.003; or

(2) A corporation so long as it remains qualified as a nonprofit corporation pursuant to ORS chapter 61. If a corporation ceases to be so qualified, the conveyance to said corporation shall be treated in the same manner as a conveyance subject to the provisions of ORS 105.772. [1977 c 723 §3]

MISCELLANEOUS ACTIONS

105.805 Action for waste. If a guardian, conservator or tenant in severalty, or in common, for life or for years of real property commits waste thereon, any person injured thereby may maintain an action at law for damages against the guardian, conservator or tenant. In the action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste and eviction from the property. Forfeiture and eviction shall only be given in favor of the person entitled to a reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or when the waste was committed with malice. [Amended by 1973 c 823 §103]

105.810 Treble damages for injury to or removal of produce, trees or shrubs. Except as provided in ORS 477.090, whenever any person, without lawful authority, wilfully injures or severs from the land of another any produce thereof or cuts down, girdles or otherwise injures or carries off any tree, timber or shrub on the land of another person, or of the state, county, United States or any public corporation, or on the street or highway in front of any person's house, or in any village, town or city lot, or cultivated grounds, or on the common or public grounds of any village, town or city, or on the street or highway in front thereof, in an action by such person, village, town, city, the United States, state, county, or public corporation, against the person committing such trespasses if judgment is given for the plaintiff, it shall be given for treble the amount of damages claimed, or assessed for the trespass. In any such action, upon plaintiff's proof of his ownership of the premises and the commission by the defendant of any of the acts mentioned in this section, it is prima facie evidence that the

acts were committed by the defendant wilfully, intentionally and without plaintiff's consent.

105.815 When double damages are awarded for trespass. If, upon the trial of an action included in ORS 105.810, it appears that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own or the land of the person in whose service or by whose direction the act was done, or that the tree or timber was taken from uninclosed woodland for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall be given for double damages.

105.820 Remedy of tenants in common. A tenant in common may maintain any proper action, suit or proceeding against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them in common.

105.825 Action for injury to inheritance. A person seised of an estate in remainder or reversion may maintain a civil action for any injury to the inheritance, notwithstanding the presence of an intervening estate for life or years.

105.830 Seller of domiciliary accommodation offering continuing or life care to provide financial statement to purchasers and residents; contents of statement. On and after November 1, 1981:

(1) The seller of any domiciliary accommodation or arrangement that entitles the purchaser thereof to continuing or life care must supply to the prospective purchaser the most recent year-end financial statement of the seller, and the name of any person owning more than a five percent interest in the seller. The statement shall be prepared in accordance with accepted accounting principles and shall be certified by an authorized representative of the seller that the financial statement is substantially correct and represents the financial condition of the seller after the closing date of this statement, and must be supplied at least 72 hours before any purchase commitment is requested. The statement must reflect the financial status of the seller within the year immediately preceding the sale. In addition, the seller shall certify to the prospective purchaser that no significant detrimental changes in the financial status of the seller have occurred since the financial statement was prepared If such changes have occurred, the seller must fully disclose such changes to the prospective purchaser.

(2) The seller shall make available on the premises annually a copy of the statement with the certification or disclosure required by subsection (1) of this section and give notice of the location of the statement to each person who is a resident of any domiciliary accommodation or arrangement entitled thereby to continuing or life care. [1981 c 841 §1]

105.835 Action for misrepresentation or failure to provide financial statement; liability of seller; commencement of action. (1) The seller described in ORS 105.830 (1) shall be liable to a prospective purchaser as provided in subsection (2) of this section if·

(a) The seller fails to supply the financial statement required by ORS 105.830 (1).

(b) The seller makes an untrue statement of material fact or fails to state a material fact necessary to make any statement made not misleading, in light of the circumstances under which the statement was made, the prospective purchaser not knowing of the untruth or omission.

(2) Upon tender of the contract or other evidence of purchaser's right to care, the purchaser may recover in addition to costs and reasonable attorney fees at trial and on appeal, the consideration paid for the accommodation or arrangement and interest from the date of payments at the rate of nine percent, less the reasonable value of any care or services received by the purchaser from the seller.

(3) Every person who directly or indirectly controls a seller liable under this section and every person who participates or materially aids in the sale is jointly and severally liable with and to the same extent as the seller. Any person held liable under this subsection shall be entitled to contribution from those jointly and severally liable with the person. However, no member of the board of directors shall be liable under this section.

(4) No action or suit may be commenced under this section more than six years after the sale. [1981 c 841 §2]

ACTION FOR REDUCED COMMERCIAL PROPERTY VALUE RESULTING FROM STREET USE RESTRICTION

105.850 Commercial property defined. As used in ORS 105.850 to 105.870, "commercial property" means land and improvements used in a business operated thereon for the production of income, one of the principal aspects of which is the storing of motor vehicles or the providing of lodging to travelers using private conveyances. [1973 c 702 §1]

105.855 Requirement to compensate commercial property owners for reduced value of property caused by street use restriction; effect of other access to property. Whenever after January 1, 1973, a city or mass transit district, whether or not acting pursuant to its police powers or condemnation authority, restricts use of the street traffic lane immediately adjacent to a sidewalk abutting commercial property to public conveyances and the existing access to that property by the general public by means of private conveyances is thereby prohibited or materially restricted for more than six hours in any 24-hour period, the city or mass transit district shall be liable for and shall pay the difference between the fair market value of the property prior to the restriction and the fair market value of the property subsequent to the restriction, taking into account any special benefits to the property resulting from improvements made by the city or mass transit district in connection with the restriction. The fact that other access to the property from a public way is available shall relieve the city or mass transit district from liability if the other access is reasonably equal to the access prohibited or materially restricted. [1973 c 702 §2]

105.860 Cause of action against city for compensation; appeal procedure; intervention. Any person having any right, title or interest in any such abutting real property has a cause of action against the city to enforce payment of the compensation. Any such action may be commenced and maintained in the circuit court for the county in which the real property is situated. Any party to any such action has the right to appeal from the final judgment of the circuit court as in other actions. A person having or claiming any right, title or interest in such real property may join as party plaintiff and may intervene in any action involving the real property in which the interest is claimed. [1973 c 702 §3]

105.865 Apportioning compensation among property owners; termination of city liability. (1) The circuit court shall, in its final judgment, apportion such just compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(2) The liability of the city terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. [1973 c 702 §4]

105.870 Limitation on commencement of action. Any cause of action granted by ORS 105.850 to 105.870 is barred unless such action is commenced within 60 days after the date upon which the change of use becomes effective and use of the streets is prohibited or restricted. [1973 c 702 §5]

SOLAR ENERGY EASEMENTS

105.880 Conveyance prohibiting use of solar energy systems void. (1) No person conveying or contracting to convey fee title to real property shall include in an instrument for such purpose a provision prohibiting the use of solar energy systems by any person on that property.

(2) Any provision executed in violation of subsection (1) of this section after October 3, 1979, is void and unenforceable.

(3) For the purposes of this section, "solar energy system" means any device, structure, mechanism or series of mechanisms which uses solar radiation as a source for heating, cooling or electrical energy. [1979 c 671 §5]

105.885 "Solar energy easement" defined. As used in ORS 105.885 to 105.895:

(1) "Instrument" means a deed, contract, covenant, condition, permit or order that creates an access right to sunlight.

(2) "Solar energy easement" means any easement, covenant or conditions designed to insure the passage of incident solar radiation, light, air or heat across the real property of another.

(3) "Solar envelope" means a three-dimensional space over a lot representing height restrictions for structures and vegetation on the lot designed to protect access to sunlight for neighboring lots.

(4) "Sun chart" means a representation showing the plotted position of the sun. The chart shall display the path of the sun during each hour of the day and each month of the year at the nearest degree of latitude to the property. [1979 c 671 §6, 1981 c 722 §7]

105.890 Solar energy easement appurtenant; termination. (1) A solar energy easement shall be appurtenant to and run with the real property benefited and burdened by such an easement.

(2) A solar energy easement shall terminate:

(a) Upon the conditions stated therein;

(b) By court decree based upon abandonment or changed conditions; or

(c) At any time by agreement of all owners of benefited and burdened property. [1979 c 671 §7]

105.895 Requirements for easement creation by instrument; recordation. (1) Any instrument creating a solar energy easement or any other access right to sunlight shall contain:

(a) A legal description of the real property benefited and burdened by the easement; and

(b) A description of the solar energy easement sufficient to determine the space over the burdened property which must remain unobstructed by means that shall include, but not be limited to:

(A) A sun chart showing the plotted skyline, including vegetation and structures from the perspective of the center of the lower edge of the collector surface, and a drawing showing the size and location of the collector surface being protected and its orientation with respect to true south; or

(B) A description of the solar envelope sufficient to determine the space over the burdened property that must remain unobstructed.

(2) The instrument creating a solar energy easement or any other access right to sunlight shall be recordable under ORS 93.710. The instrument shall be recorded in the chains of title of the benefited and burdened properties as a transfer of the easement or access right from the owner of the burdened property to the owner of the benefited property. [1979 c 671 §8, 1981 c 590 §6; 1981 c 722 §8]

WIND ENERGY EASEMENTS

105.900 "Wind energy easement" defined. As used in ORS 105.905 and 105.910, "wind energy easement" means any easement, covenant or condition designed to insure the undisturbed flow of wind across the real property of another. [1981 c 590 §1]

105.905 Wind energy easement appurtenant; termination. (1) A wind energy easement shall be appurtenant to and run with the real property benefited and burdened by the easement.

(2) A wind energy easement shall terminate:

(a) Upon occurrence of the conditions stated in the creating instrument;

(b) By court decree based upon abandonment or changed conditions; or

(c) At any time by agreement of all the owners of the benefited and burdened property. [1981 c 590 §2]

105.910 Requirements for easement creation by instrument; recordation. (1) An instrument creating a wind energy easement shall include:

(a) A legal description of the real property benefited and burdened by the easement;

(b) A description of the dimensions of the easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed;

(c) The restrictions placed upon vegetation, structures and other objects that would impair or obstruct the wind flow across and through the easement; and

(d) The terms or conditions, if any, under which the easement may be changed or terminated.

(2) The instrument creating a wind energy easement shall be recordable under ORS 93.710. If recorded, the instrument shall be recorded as a transfer of the easement from the owner of the burdened property to the owner of the benefited property. [1981 c 590 §3]

105.915 Instrument creating lease or lease option of real property for wind energy conversion system may be recorded; requirements. (1) An instrument creating a lease or an option to lease real property or the vertical space above real property for a wind energy conversion system or for wind

measuring equipment shall be recordable under ORS 93.710

(2) An instrument described in subsection (1) of this section shall contain:

(a) The parties' names;

(b) A legal description of the real property involved;

(c) The nature of the interest created;

(d) The consideration paid for the transfer; and

(e) The terms or conditions, if any, under which the interest may be revised or terminated.

(3) As used in this section, "wind energy conversion system" means any device, supporting structure, mechanism or series of mechanisms that uses wind for the production of electricity or a mechanical application.
[1981 c 590 §4]

PERSONAL PROPERTY RIGHTS

105.920 Joint tenancy in personal property; creation. There shall be a form of coownership of personal property known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law. A joint tenancy may be created only by a written instrument which expressly declares the interest created to be a joint tenancy. It may be created by a transfer or bequest from a sole owner to others, or to himself and others; or from tenants in common or joint tenants to others, or to themselves or some of them, or to themselves or any of them and others; or from husband and wife, when holding title as community property or otherwise, to others, or to themselves, or to one of them and to another or others. A transfer or bequest creating a joint tenancy shall not derogate from the rights of creditors.
[Formerly 91 355]