

Chapter 19

1983 REPLACEMENT PART

Appeals

- 19.005 Definitions for ORS 19.023, 19.026, 19.029 to 19.065 and 19.074 to 19.210
- 19.010 Appealable judgments, decrees and orders; amount in controversy; appeals in special proceedings
- 19.013 Determining amount in controversy in class action for purposes of appeal
- 19.015 Appealability of order stating existence of controlling question of law in class action
- 19.020 Who may appeal; designation of parties
- 19.023 How appeal to Court of Appeals taken; notice
- 19.026 Time for service and filing of notice of appeal
- 19.028 Filing of notice of appeal or review by mail
- 19.029 Contents of notice of appeal
- 19.033 Jurisdictional effect of filing notice; relief from nonjurisdictional errors
- 19.035 Filing fee for appeal; jurisdictional effect
- 19.038 Filing of undertaking on appeal; exception to sureties
- 19.040 Form of undertaking on appeal; minimum amount; conditions for stay of proceedings; enforcement against sureties on dismissal of appeal; limit on liability of surety
- 19.045 Dispensing with undertaking by stipulation or waiver
- 19.050 Sale of perishable property when proceedings stayed; stay without further undertaking in certain cases; exception
- 19.060 Restitution bond for enforcement of judgment or decree on contract, notwithstanding stay
- 19.065 Preparation and transmission of record
- 19.069 Use of audio records; waiver of transcription; certification and filing of audio records on notice
- 19.074 Trial court file part of record
- 19.078 Certification of transcript; copies required; correction of errors; settlement order
- 19.084 One original transcript required; cost of preparation
- 19.088 Agreed narrative statement
- 19.095 Time extensions
- 19.098 Delivery of record to appellate court; when returned
- 19.104 Service of papers
- 19.108 Defective record; dismissal of appeal
- 19.114 Bill of exceptions not required
- 19.118 Where appeals heard
- 19.125 Scope of appellate review
- 19.130 Action by appellate court on appeal; new trial; reversal upon loss or destruction of reporter's notes, tapes or audio records
- 19.140 Review of intermediate orders; directing restitution
- 19.160 Damages upon affirmance of judgment
- 19.170 Powers of successor judge in regard to appeal
- 19.180 Memorandum decisions
- 19.190 Content of decision on appeal; filing as date of entry; staying for filing of petition for review; notice to lower court; effect on judgment of lower court
- 19.200 Appeal from order for new trial
- 19.210 Certifying appeal to Supreme Court by Court of Appeals in lieu of disposition; Supreme Court to accept or deny; extension; effect of acceptance
- 19.220 Attorney fees on appeal if not prohibited

CROSS REFERENCES

Constitutional provisions as to appeals and appellate jurisdiction, Const. Art. VII (A), §§2, 3; Art. VII (O), §6

Costs on appeal, 20.140, 20.310

Court of Appeals, jurisdiction, 2.516

Criminal cases, appeals, Chs. 138, 157

District courts, appeals, 46.250 to 46.265

Duties relating to administration of justice, enforcement of performance, 1.025

Fees on appeal to appellate courts, 21.010 to 21.040

Justice's courts, appeals from in civil actions, Ch.53

Juvenile courts, appeal from final order, 419.561

Review, writ of, 34.010 to 34.100

Tax court, appeal from, review and action, 305.440, 305.445

19.010

Abandoned property, appeal from order of disposition, 98.402

Adoption decree, appeal, 109.345, 109.370, 109.381

Arbitration and award, appeal, 33.340

Costs, judgment taxing, appeal, 20.220

Declaratory judgment proceedings, appeals, 28.070

Mandamus proceedings, appeals, 34.240

19.020

Contempts appealable by both parties, 33.150

Habeas corpus appealable by both parties, 34.710

19.023

Eminent domain proceedings, appeals, 35.355

Review, writ of, 34.060

19.026

Appeals, time.

Public utility cases, 756.610

Water right cases, 539.150

Time for publication of legal notices, how computed, 193.060

Time, how computed, 174.120

19.040

Deposits in lieu of bond, Ch.22

Lien of judgment, when ceases on execution of supersedeas bond, 18.350

State, county or city not required to give bond, 22.010

Surety company bond authorized, 743.732

19.050

Contempt proceeding, appeal does not operate as stay, 33.150

PROCEDURE IN CIVIL PROCEEDINGS

19.065 Transcript for appellant without funds in post-conviction proceeding, 138.500	19.130 Justices' courts, powers of appellate court in reviewing judgments, 53.125
19.074 Whole testimony, instructions, and other matter may be attached to bill of exceptions on appeal, Const. Art. VII (A), §3	19.180 Concise written statements of decisions required, Const. Art. VII (A), §4; Art. VII (O), §7
19.125 Declaratory judgment proceedings, review, 28.070 Powers of Supreme Court on appeal, Const. Art. VII (A), §3	19.190 Lien of judgment, when ceases upon execution of supersedeas bond, 18.350

19.005 Definitions for ORS 19.023, 19.026, 19.029 to 19.065 and 19.074 to 19.210. As used in this section and in ORS 19.023, 19.026, 19.029 to 19.065 and 19.074 to 19.210 unless the context otherwise requires:

(1) "Exhibits" means exhibits offered and received or rejected in the trial court.

(2) "Judgment" means judgment, decree or appealable order, as provided in ORS 19.010.

(3) "Trial court file" means all the original papers filed in the trial court whether before or after judgment, including but not limited to the summons and proof of service thereof, pleadings, demurrers, motions, affidavits, depositions, stipulations, orders, the judgment, the notice of appeal and the undertaking on appeal.

(4) "Transcript" means the transcript of the court reporter's report as provided in ORS 8.340, 8.350 and 8.360.

(5) "Record" or "record of the case" means the trial court file and any transcript, narrative statement and exhibits.

(6) "Clerk" means the county clerk of, and as such ex officio clerk of the trial court for, the county in which the judgment or appealable order is filed and entered, or either. [1959 c.558 §2]

19.010 Appealable judgments, decrees and orders; amount in controversy; appeals in special proceedings. (1) A judgment or decree may be reviewed on appeal as prescribed in ORS 19.005 to 19.026 and 19.029 to 19.200.

(2) For the purpose of being reviewed on appeal the following shall be deemed a judgment or decree:

(a) An order affecting a substantial right, and which in effect determines the action or suit so as to prevent a judgment or decree therein.

(b) An interlocutory decree in a suit for the partition of real property, defining the rights of the parties to the suit and directing sale or partition.

(c) A final order affecting a substantial right, and made in a proceeding after judgment or decree.

(d) An order setting aside a judgment and granting a new trial.

(e) A final judgment or decree entered in accordance with ORCP 67 B.

(3) No appeal to the Court of Appeals shall be taken or allowed in any action for the recovery of money or damages only unless it appears from the pleadings that the amount in controversy exceeds \$250.

(4) An appeal may be taken from the circuit court in any special statutory proceeding under the same conditions, in the same manner and with like effect as from a judgment, decree or order entered in an action or suit, unless such appeal is expressly prohibited by the law authorizing such special statutory proceeding. [Amended by 1973 c.197 §1; 1977 c.208 §4; 1979 c.562 §3; 1981 c.898 §18]

19.013 Determining amount in controversy in class action for purposes of appeal. The aggregate amount of the claims of all potential class members in a class action under ORCP 32 shall determine whether the amount in controversy is sufficient to satisfy the provisions of ORS 19.010 (3) for the purposes of any appeal to the Court of Appeals. [Formerly 13.410]

19.015 Appealability of order stating existence of controlling question of law in class action. When a district or circuit court judge, in making in a class action under ORCP 32 an order not otherwise appealable, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order to the Court of Appeals if application is made to the court within 10 days after the entry of the order. Application for such an appeal shall not stay proceedings in the district or circuit court unless the district or circuit court judge or the Court of Appeals or a judge thereof shall so order. [Formerly 13.400]

19.020 Who may appeal; designation of parties. Any party to a judgment or decree, other than a judgment or decree given by confession or for want of an answer, may appeal therefrom. The plaintiff may appeal from a judgment or decree given by confession or for want of an answer where such judgment or decree is not in accordance with the relief demanded in the complaint. The party appealing is known as the appellant, and the adverse party as the respondent; but the title of the action or suit is not changed in consequence of the appeals.

19.023 How appeal to Court of Appeals taken; notice. (1) An appeal to the Court of Appeals shall be taken in the manner prescribed in this section, ORS 19.026, 19.029 to 19.065 and 19.074 to 19.210.

(2) The appeal shall be taken by causing a notice of appeal, in the form prescribed by ORS 19.029, to be served:

(a) On all parties who have appeared in the action, suit or proceeding;

(b) On the clerk of the trial court; and

(c) On the trial court reporter if a transcript is designated in connection with the appeal.

(3) The original of the notice with proof of service indorsed thereon or affixed thereto shall be filed with the Court of Appeals. [Formerly 19.030; 1969 c.198 §37; 1973 c.207 §3; 1981 c.177 §1]

19.026 Time for service and filing of notice of appeal. (1) Except as provided in subsections (2) and (3) of this section, the notice of appeal shall be served and filed within 30 days after the entry of the judgment appealed from.

(2) Where any party has served and filed a motion for a new trial or a motion for judgment notwithstanding the verdict, the notice of appeal of any party shall be served and filed within 30 days after the earlier of the following dates:

(a) The date of entry of the order disposing of the motion.

(b) The date on which the motion is deemed denied, as provided in ORCP 63 D. or 64 F.

(3) Any other party who has appeared in the action, suit or proceeding, desiring to appeal against the appellant or any other party to the action, suit or proceeding, may serve and file notice of appeal within 10 days after the expiration of the time allowed by subsections (1) and (2) of this section. Any party not an appellant or respondent, but who becomes an adverse party to a cross appeal, may cross appeal against any party to the appeal by a written statement in the brief.

(4) When more than one notice of appeal is filed, the date on which the last such notice was filed shall be used in determining the time for preparation of the transcript, filing briefs and other steps in connection with the appeal. [1959 c.558 §4; 1973 c.207 §4; 1979 c.284 §55]

19.028 Filing of notice of appeal or review by mail. Filing a notice of appeal or petition for review in an appeal or petition for review to the Court of Appeals or the Supreme Court may be accomplished by mail. The date of filing such notice or petition shall be the date of mailing, provided it is mailed by registered or certified mail and the appellant has proof from the post office of such mailing date. Inclosure with the mailed notice of the appropriate filing fee shall be considered timely deposit of that fee. Proof of mailing shall be certified by the appel-

lant and filed thereafter with the court to which the appeal is taken. [1979 c.297 §1]

19.029 Contents of notice of appeal.

(1) The notice of appeal shall contain the following:

(a) The title of the cause.

(b) The names of the parties and their attorneys.

(c) A notice to all parties or their attorneys as have appeared in the action, suit or proceedings that an appeal is taken from the judgment or some specified part thereof and designating who are the adverse parties to the appeal.

(d) A designation of those portions of the proceedings and exhibits to be included in the record in addition to the trial court file. The designation may not be later amended by the appellant unless the appellate court so orders.

(e) A plain and concise statement of the points on which the appellant intends to rely. On appeal, the appellant may rely on no other points than those set forth in such statement. If the appellant has designated for inclusion in the record all the testimony and all the instructions given and requested, no statement of points is necessary. Not later than the 15th day following the filing of the transcript, the appellant may serve and file an amended statement of points. Except by approval of the court, the appellant may then rely on no other points than those set forth in such amended statement.

(2) Within 10 days after the filing of the notice of appeal any other party may serve and file a designation of additional parts of the proceedings and exhibits to be included in the record. Such designation shall be served and filed as provided for the serving and filing of a notice of appeal under ORS 19.023 and 19.028. If such party also appeals, the designation shall be included in the notice of appeal of the party and shall not be served and filed separately.

(3) The reporter shall prepare a transcript of such parts of the proceedings as are designated pursuant to paragraph (d) of subsection (1) of this section and subsection (2) of this section. [1959 c.558 §5; 1971 c.565 §6; 1973 c.207 §5; 1983 c.621 §1]

19.030 [Amended by 1959 c.558 §3; renumbered 19.023]

19.033 Jurisdictional effect of filing notice; relief from nonjurisdictional errors. (1) When the notice of appeal has been served and filed as provided in ORS 19.023, 19.026 and 19.029, the Supreme Court or the Court of Appeals shall have jurisdiction of the cause, pursuant to rules of the court, but the trial

court shall have such powers in connection with the appeal as are conferred upon it by law and shall retain jurisdiction for the purpose of allowance and taxation of attorney fees, costs and disbursements or expenses pursuant to rule or statute. If the trial court allows and taxes attorney fees, costs and disbursements or expenses after the notice of appeal has been served and filed, any necessary modification of the appeal shall be pursuant to rules of the appellate court.

(2) The serving and filing of the notice of appeal as provided in ORS 19.023, 19.026 and 19.029 is jurisdictional and may not be waived or extended.

(3) After the Supreme Court or the Court of Appeals has acquired jurisdiction of the cause, the omission of a party to perform any of the acts required in connection with an appeal, or to perform such acts within the time required, shall be cause for dismissal of the appeal. In the event of such omission, the court, on motion of the respondent or, on its own motion, may dismiss the appeal. An appeal dismissed on the court's own motion may be reinstated upon showing of good cause for such omission. [1959 c.558 §6; 1969 c.198 §38; 1971 c.565 §7; 1983 c.673 §22; 1983 c.740 §4]

19.035 Filing fee for appeal; jurisdictional effect. At the time the notice of appeal is filed as provided in ORS 19.023, the appellant shall deposit with the State Court Administrator the amount of the appropriate filing fee. The timely deposit of such fee is not jurisdictional, but omission to do so shall be cause for dismissal of the appeal, subject to the provisions of ORS 19.033 (3). [1959 c.558 §7; 1963 c.27 §1; 1969 c.198 §39; 1971 c.193 §19; 1983 c.774 §6]

19.038 Filing of undertaking on appeal; exception to sureties. (1) Except as provided in ORS 19.045, within 10 days after the filing of the notice of the appeal, the appellant shall serve on the adverse party or the attorney of the adverse party an undertaking as provided in ORS 19.040, and within such 10 days shall file with the clerk the original undertaking, with proof of service indorsed thereon.

(2) Within 10 days after the service of the undertaking, the adverse party or the attorney of the adverse party may except to the sufficiency of the sureties or the amount specified in the undertaking, or the adverse party shall be deemed to have waived the right thereto.

(3) The qualifications of sureties in the undertaking on appeal shall be the same as in bail on arrest, and, if excepted to, they shall justify in like manner. [1959 c.558 §8; 1981 c.483 §1; 1983 c.673 §23]

19.040 Form of undertaking on appeal; minimum amount; conditions for stay of proceedings; enforcement against sureties on dismissal of appeal; limit on liability of surety. (1) The undertaking of the appellant shall be given in the minimum amount of \$500 unless otherwise fixed by the court with one or more sureties, to the effect that the appellant will pay all damages, costs and disbursements which may be awarded against the appellant on the appeal not exceeding the sum therein specified; but such undertaking does not stay the proceedings, unless the undertaking further provides to the effect following:

(a) If the judgment or decree appealed from is for the recovery of money, or of personal property or the value thereof, that if the same or any part thereof is affirmed, the appellant will satisfy it so far as affirmed.

(b) If the judgment or decree appealed from is for the recovery of the possession of real property, for a partition thereof, or the foreclosure of a lien thereon, that during the possession of such property by the appellant the appellant will not commit, or suffer to be committed, any waste thereon, and that if such judgment or decree or any part thereof is affirmed, the appellant will pay the value of the use and occupation of such property, so far as affirmed, from the time of the appeal until the delivery of the possession thereof, not exceeding the sum therein specified, to be ascertained and tried by the court or judge thereof.

(c) If the decree appealed from requires the transfer or delivery of any personal property, unless the things required to be transferred or delivered are brought into court, or placed in the custody of such officer or receiver as the court may appoint, that the appellant will obey the decree of the appellate court. The amount of such undertaking shall be specified therein, and be fixed by the court or judge thereof.

(d) When the decree appealed from is for the foreclosure of a lien, and also against the person for the amount of the debt secured thereby, the undertaking shall also be to the effect that the appellant will pay any portion of such decree remaining unsatisfied after the sale of the property upon which the lien is foreclosed, not exceeding the sum therein specified, to be fixed by the court or judge thereof.

(2) When the decree appealed from requires the execution of a conveyance or other instrument, execution of the decree is not stayed by the appeal, unless the instrument is executed and deposited with the clerk within the time

allowed to file the undertaking, to abide the decree of the appellate court.

(3) If the appeal is dismissed, the judgment or decree, so far as it is for the recovery of money, may, by the appellate court, be enforced in the amount specified against the sureties in the undertaking for a stay of proceedings, as if they were parties to the judgment or decree.

(4) The liability of the surety shall be limited to the amount specified in the undertaking and such amount shall be stated in all appeal bonds and shall be fixed by the court or judge thereof unless it is in the minimum amount as provided in subsection (1) of this section. [Amended by 1977 c.416 §6; 1981 c.483 §2]

19.045 Dispensing with undertaking by stipulation or waiver. (1) By written stipulation of the parties, the undertaking provided for in ORS 19.040 may be dispensed with. The stipulation shall be filed with the clerk within 10 days after the filing of the notice of appeal. The filing of the stipulation shall, upon approval of the trial court, have such effect with respect to staying the judgment as is provided for in the stipulation.

(2) The court may waive, reduce or limit the undertaking provided for in ORS 19.040 upon a showing of good cause, including indigency, and on such terms as shall be just and equitable. [1959 c.558 §9; 1977 c.416 §1]

19.050 Sale of perishable property when proceedings stayed; stay without further undertaking in certain cases; exception. (1) When the proceedings are stayed, if perishable property has been seized to satisfy or secure the judgment or decree, or has been directed to be sold thereby, the trial court or judge thereof may order the property to be sold as if the proceedings were not stayed, and the proceeds thereof to be deposited or invested to abide the decision of the appellate court.

(2) The trial court or judge thereof, in its discretion, may dispense with or limit the further undertaking required by ORS 19.040 (1)(a) to (d), when the appellant is an executor, administrator, trustee, or other person acting in another's right.

(3) In cases not provided for in ORS 19.040 (1)(a) to (d), and except as provided in subsection (4) of this section, when an appeal is perfected, with an undertaking for the appeal only, proceedings shall be stayed as if the further undertaking thereof had been given.

(4) In cases not provided for in ORS 19.040 (1)(a) to (d), the filing of the undertaking does not stay the proceedings if the trial court or

judge thereof determines, on the judge's own motion or the motion of any party, that the appeal is not made in good faith, is made solely for the purpose of delay, or otherwise is patently without any support in fact or in law.

(a) A judge who denies a stay under this subsection shall afford the appellant 10 days in which to seek a stay from the appellate court, during which period the order appealed from shall be stayed on such terms and conditions as the judge determines are sufficient to avoid prejudice to the responding party.

(b) In lieu of denying a stay under this subsection, the judge or appellate court may impose additional terms and conditions sufficient to avoid prejudice to the responding party or to the court. [Amended by 1983 c.763 §60]

19.060 Restitution bond for enforcement of judgment or decree on contract, notwithstanding stay. If the judgment or decree has been given in an action or suit upon a contract, notwithstanding an appeal and undertaking for the stay of proceedings, the respondent may proceed to enforce such judgment or decree, if within 10 days from the time the appeal is perfected he files with the clerk an undertaking, with one or more sureties, to the effect that if the judgment or decree is reversed or modified the respondent will make such restitution as the appellate court may direct. Such undertaking may be excepted to by the appellant in like manner and with like effect as the undertaking of an appellant, and the sureties therein shall have the same qualifications.

19.065 Preparation and transmission of record. The record of the case shall be prepared and transmitted to the court to which the appeal is made in the manner provided in ORS 19.074 to 19.098. [1959 c.558 §10; 1969 c.198 §40]

19.069 Use of audio records; waiver of transcription; certification and filing of audio records on notice. Where the trial proceedings are recorded on audio records, the court to which the appeal is made may waive transcription and provide for hearing of the appeal on the basis of the audio records alone under such rules as the court may prescribe. The reporter shall certify and file the audio recordings with the trial court clerk immediately upon receiving notice that the appeal is to be heard on the basis of the recordings alone. [1971 c.565 §10]

19.070 [Repealed by 1959 c.558 §51]

19.074 Trial court file part of record. In every case, the trial court file shall be transmitted to the court to which the appeal is

made as part of the record. Unless a transcript or narrative statement in lieu of a transcript is prepared as provided in ORS 19.029 and 19.078 to 19.098, the record shall consist of the trial court file alone. [1959 c.558 §11; 1969 c.198 §41; 1971 c.193 §20; 1971 c.565 §8]

19.078 Certification of transcript; copies required; correction of errors; settlement order. (1) If a transcript is prepared from audio records by a person other than the reporter, then the reporter shall certify the audio records and the transcript shall be certified by the person preparing it. In all other cases the transcript shall be certified by the reporter or the trial judge. The transcript shall be filed by the reporter with the clerk within 30 days after the filing of the notice of appeal or within 30 days after the filing of an order granting a transcript under ORS 138.500 (2) but no longer than 60 days after filing a notice of appeal under ORS chapter 138. The reporter shall give immediate notice in writing to the parties that the transcript has been filed. Except as provided in subsection (2) of this section the reporter shall serve the respondent with a copy of the transcript and shall, at the time of filing the original transcript, file proof of such service with the trial court clerk, and with the clerk of the court to which the appeal is made.

(2) If there are two or more parties in addition to the appellant who have appeared in the trial court and who are represented by different attorneys, the reporter shall at the time of filing the original transcript deposit a copy thereof with the clerk for use by all such other parties. The reporter shall serve notice of such deposit upon all such parties and file proof of such service with the trial court clerk and with the clerk of the court to which the appeal is made.

(3) Within 15 days after the transcript is filed, any party may move the trial court for an order to correct any errors appearing in the transcript or, where the interests of justice require, to have additional parts of the proceedings included in the transcript. A copy of any such motion shall be filed with the court to which the appeal is made. The trial court shall direct the making of such corrections and the adding of such matter as may be appropriate and shall fix the time within which such corrections or additions shall be made.

(4) Upon the denial of a motion to correct or add to the transcript, or upon the making of such corrections or additions as may be ordered, whichever last occurs, the trial court shall enter an order settling the transcript and send copies thereof to each of the parties or their attorneys

and to the State Court Administrator. In the absence of a motion to correct or add to the transcript, the transcript shall be deemed automatically settled 15 days after it is filed. [1959 c.558 §12; 1971 c.193 §21; 1971 c.565 §11; 1981 c.51 §1]

19.080 [Amended by 1959 c.558 §18; renumbered 19.118]

19.084 One original transcript required; cost of preparation. (1) Where more than one appeal is taken from the same judgment, only one original transcript shall be filed.

(2) The cost of preparing the transcript and copy shall be paid by the party designating it to be made, except that where a party has designated additional parts of the proceedings to be included in the transcript as provided in ORS 19.074 (3), the trial court on motion of such party may direct that the cost of preparing all or part of the additional parts of the transcript be paid by the appellant if it appears that such additional parts are necessary to the determination of the appeal. The cost of preparing the original and copy of the transcript shall be taxable as part of the costs on appeal. [1959 c.558 §13]

19.088 Agreed narrative statement. In lieu of or in addition to a transcript, the parties may prepare an agreed narrative statement of the proceedings below or parts thereof. The narrative statement shall be signed by the parties or their attorneys and shall be filed with the clerk within 30 days after the filing of the notice of appeal. When such a statement is filed, the appellant shall promptly notify the State Court Administrator, at Salem. [1959 c.558 §14; 1969 c.198 §42; 1971 c.193 §22]

19.090 [Repealed by 1959 c.558 §51]

19.094 [1959 c.558 §15; 1963 c.372 §1; 1969 c.198 §43; repealed by 1971 c.565 §12 (19.095 enacted in lieu of 19.094)]

19.095 Time extensions. Extensions of time for the performance of any act in connection with the preparation of the record may be granted only by the court to which the appeal is made and under such rules as that court may prescribe. [1971 c.565 §13 (19.095 enacted in lieu of 19.094)]

19.098 Delivery of record to appellate court; when returned. (1) The trial court clerk shall, upon request of the State Court Administrator, deliver the record of the case.

(2) Unless otherwise ordered by the court to which the appeal is made, the trial court file and the exhibits shall be returned to the clerk after the appeal has been disposed of. [1959 c.558 §16; 1969 c.198 §44; 1971 c.193 §23; 1971 c.565 §14]

19.100 [Repealed by 1959 c.558 §51]

19.104 Service of papers. Except as otherwise provided in ORS 19.023, 19.026 and 19.029 to 19.210, where ORS 19.023, 19.026 and 19.029 to 19.210 require any paper to be served and filed, the paper shall be served in the manner provided in ORCP 9 B. on all other parties who have appeared in the action, suit or proceeding and who are not represented by the same counsel as the party serving the paper, and shall be filed, with proof of service indorsed thereon, with the trial court clerk. [1959 c.558 §27; 1979 c.284 §56]

19.108 Defective record; dismissal of appeal. (1) When it appears to the court to which the appeal is made that the record is erroneous or incomplete in any particular substantially affecting the merits of the appeal, on motion of a party or on its own motion the court may make such order to correct or supplement the record as may be just or may dismiss the appeal if the error or omission is without reasonable excuse.

(2) The court to which the appeal is made at any time, or the trial court at any time before the record has been delivered to the court to which the appeal is made as provided in ORS 19.098, may dismiss the appeal on motion based upon stipulation of the parties.

(3) Where such a dismissal is made by the trial court, the clerk shall send a certified copy of the order to the State Court Administrator.

(4) The dismissal shall operate as an affirmation of the judgment appealed from. [1959 c.558 §20 (enacted in lieu of 19.110); 1969 c.198 §45; 1971 c.193 §24]

19.110 [Repealed by 1959 c.558 §19 (19.108 enacted in lieu of 19.110)]

19.114 Bill of exceptions not required. A bill of exceptions is not required. For the purposes of section 3, Article VII (Amended) of the Oregon Constitution, the transcript, as defined in ORS 19.005, is the bill of exceptions. [1959 c.558 §22]

19.118 Where appeals heard. An appeal taken from any circuit court in any county lying east of the Cascade Mountains, except Klamath and Lake, shall be heard at Pendleton, unless otherwise ordered by the Court of Appeals if it has jurisdiction of the cause or if the cause is before the Supreme Court unless otherwise stipulated between the parties. All other appeals to the Supreme Court or to the Court of Appeals shall be heard at Salem, unless other locations

are designated under ORS 1.085 (2). [Formerly 19.080; 1969 c.198 §46; 1983 c.763 §7]

19.120 [Repealed by 1959 c.558 §51]

19.125 Scope of appellate review. (1) Upon an appeal from a judgment in an action at law, the scope of review shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution.

(2) No judgment shall be reversed or modified except for error substantially affecting the rights of a party.

(3) Upon an appeal from a decree in a suit in equity, the Court of Appeals shall try the cause anew upon the record.

(4) When the Court of Appeals has tried a cause anew upon the record, the Supreme Court may limit its review of the decision of the Court of Appeals to questions of law. [1959 c.558 §21; 1965 c.177 §6; 1979 c.396 §1]

19.130 Action by appellate court on appeal; new trial; reversal upon loss or destruction of reporter's notes, tapes or audio records. (1) Upon an appeal, the court to which the appeal is made may affirm, reverse or modify the judgment or part thereof appealed from as to any or all of the parties joining in the appeal, and may include in such decision any or all of the parties not joining in the appeal, except a codefendant of the appellant against whom a several judgment might have been given in the court below; and may, if necessary and proper, order a new trial.

(2) Where in the trial court a motion for judgment notwithstanding the verdict and a motion for a new trial were made in the alternative, and an appeal is taken from a judgment notwithstanding the verdict or an order granting a new trial, the court to which the appeal is made may consider the correctness of the ruling of the trial court on either or both motions if such ruling is assigned as erroneous in the brief of any party affected by the appeal, without the necessity of a cross-appeal.

(3) Whenever it appears that an appeal cannot be prosecuted, by reason of the loss or destruction, through no fault of the appellant, of the reporter's notes, tapes or audio records, or of the exhibits or other matter necessary to the prosecution of the appeal, the judgment appealed from may be reversed and a new trial ordered as justice may require. [Amended by 1955 c.497 §6; 1959 c.558 §24; 1969 c.198 §47]

19.140 Review of intermediate orders; directing restitution. Upon an appeal, the appellate court may review any intermediate

order involving the merits or necessarily affecting the judgment or decree appealed from; and when it reverses or modifies such judgment or decree, may direct complete restitution of all property and rights lost thereby.

19.150 [Amended by 1959 c.33 §1; repealed by 1959 c.558 §25 (19.190 enacted in lieu of 19.150)]

19.160 Damages upon affirmance of judgment. Whenever a judgment or decree is affirmed on appeal, and it is for recovery of money, or personal property or the value thereof, the judgment or decree shall be given for 10 percent of the amount thereof, for damages for the delay, unless it appears evident to the appellate court that there was probable cause for taking the appeal.

19.170 Powers of successor judge in regard to appeal. In case of death, resignation, expiration of the term of office or vacancy in office for any other cause of the judge before whom the matter was tried, or in case illness or other cause prevents him from performing his duties, his successor in office or any other judge assigned to perform his duties, may take any action with respect to the appeal which the judge who tried it could take. [1959 c.558 §17]

19.180 Memorandum decisions. The Supreme Court or the Court of Appeals may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper. [1959 c.558 §23; 1969 c.198 §48]

19.190 Content of decision on appeal; filing as date of entry; staying for filing of petition for review; notice to lower court; effect on judgment of lower court. (1) The decision of the court to which the appeal is made shall include its judgment, shall state the disposition of the judgment, order or determination appealed from, and may provide for final disposition of the cause. The date of the filing of the decision shall be deemed to be the date of entry of the judgment, except that the judgment of the Court of Appeals shall be stayed until the expiration of the time provided in ORS 2.520 for filing a petition for review to the Supreme Court and thereafter as provided in the rules of the Supreme Court, and the judgment of the Supreme Court shall be stayed in accordance with the rules of the Supreme Court. The State Court Administrator shall mail a copy of the appellate court decision, or such part thereof as may be required by the rules of the Supreme Court, to the court below as soon as possible after the date when the decision is no longer stayed.

(2) If a new trial is ordered, upon the receipt of the decision by the clerk of the court below, the decision shall be entered in the journal of the court below and thereafter the cause shall be deemed pending for trial in such court, according to the directions of the court to which the appeal is made. If a new trial is not ordered, upon the receipt of the decision by the clerk, a judgment or decree shall be entered in the journal and docketed in pursuance of the direction of the court to which the appeal is made, in like manner and with like effect as if the same was given in the court below.

(3) If judgment is given against the appellant, it shall be entered against the sureties of the appellant also, in like manner and with like effect, according to the nature and extent of their undertaking.

(4) Except as provided in ORS 18.350, an appeal shall not discharge the lien of a judgment and unless the same is reversed, the lien thereof shall be merged and continue in the affirmed or modified judgment or decree given on appeal, from the time of the entry and docketing of the same in the court below. [1959 c.558 §26 (enacted in lieu of 19.150); 1969 c.198 §49; 1981 c.178 §1]

19.200 Appeal from order for new trial. If an appeal is taken from an order of the trial court granting a new trial on its own initiative, the order shall be affirmed on appeal only on grounds set forth in the order or because of reversible error affirmatively appearing in the record. [1979 c.284 §58]

19.210 Certifying appeal to Supreme Court by Court of Appeals in lieu of disposition; Supreme Court to accept or deny; extension; effect of acceptance. (1) When the Court of Appeals has jurisdiction of an appeal, the court, through the Chief Judge and pursuant to appellate rules, may certify the appeal to the Supreme Court in lieu of disposition by the Court of Appeals. The Court of Appeals shall provide notice of certification to the parties to the appeal. Parties to an appeal may not request certification.

(2) The Supreme Court, by order entered within 20 days after the date of receiving certification of an appeal from the Court of Appeals under subsection (1) of this section, may accept or deny acceptance of the certified appeal. The Supreme Court, by order entered within that 20-day period, may extend by not more than 10 days the time for acceptance or denial of acceptance of the certified appeal. If the Supreme Court accepts a certified appeal, the Court of Appeals shall transmit the record of the case and

the briefs of parties to the Supreme Court, the Supreme Court shall have jurisdiction of the cause, and the appeal shall be considered pending in the Supreme Court without additional notice of appeal, filing fee, undertaking or, except as the Supreme Court may require, briefs of parties. A certified appeal shall remain pending in the Court of Appeals before the Supreme Court accepts or denies acceptance, and if the Supreme Court denies acceptance or fails to accept or deny acceptance within the time provided for in this subsection. The Supreme Court shall provide notice of acceptance or denial of acceptance of certification to the parties to the appeal. [1981 c.550 §2]

19.220 Attorney fees on appeal if not prohibited. Any statute law of this state that authorizes or requires the award or allowance of attorney fees to a party in a civil action or proceeding, but does not expressly authorize or require that award or allowance on an appeal in the action or proceeding and does not expressly prohibit that award or allowance on an appeal, shall be construed as authorizing or requiring that award or allowance on an appeal in the action or proceeding. [1981 c.897 §107]
