Chapter 92

1985 REPLACEMENT PART

Subdivisions and Partitions

APPROVAL OF PLAN; PLATS

92.010 Definitions for ORS 92.010 to 92.190

92.012 Compliance with ORS 92.010 to 92.190 required

92.014 Approval of city or county required before creating street or road to partition land

92.016 When sales of lots prohibited until approval obtained; exception

92.017 When lawfully created lots and parcels remain discrete lots and parcels

92.018 Buyer's remedies for purchase of improperly created lot or parcel

92.025 Prohibition of sales of lots prior to recordation of plat

92.040 Application for approval of subdivision or partition; tentative plan

92.042 Governing body having jurisdiction to approve plans, maps or plats

92.044 Adoption of standards and procedures governing approval of plats and partition maps

92.046 Adoption of regulations requiring approval of partitioning of land not otherwise subject to approval; establishment of fees

92.048 Procedure for adoption of regulations under ORS 92.044 and 92.046

92.050 Requirements of survey and plat of subdivision

92.060 Marking certain points of plats with monuments; specifications of monuments

92.065 Monumenting interior corners after recording plat; bond or cash deposit

92.070 Surveyor's affidavits; procedure for recording monumented corners on plat previously recorded

92.080 Preparation of plat

92.090 Requisites for approval of tentative plan or plat

92.095 Payment of taxes, interest or penalties before plat recorded

92.097 Employment of private licensed engineer by private developer; government standards and fees

92.100 Approval of plat by city or county surveyor; approval by county assessor and county governing body; fees

92.105 Time limit for final action by city or county on tentative plan

92.110 Land in special districts; approval of plat; appeal from refusal of district to approve or act

92.120 Filing and recording plats; copies

92.130 Additional tracings transferred to county surveyor; replacing lost or destroyed records

92.140 Indexing of plat records

92.150 Construction of donations marked on plat

92.160 Notice to Real Estate Commissioner of receipt of plat

92.170 Amending recorded plat; affidavit of correction

REPLATTING

92.180 Authority to review replats

92.185 Reconfiguration of lots and public easements; vacation; notice; utility easements

92.190 Effect of replat; operation of other statutes; use of alternate procedures

UNDEVELOPED SUBDIVISIONS

92.205 Policy

92.215 Review authorized; manner

92.225 Determining whether subdivision subject to review and need for revision or vacation; determining need for revision or vacation of undeveloped subdivision; hearings; notice to landowners

92.234 Revision, vacation of undeveloped subdivisions; vacation proceedings; effect of initiation by affected landowner

92.245 Fees for review proceedings resulting in modification or vacation

MISCELLANEOUS PROVISIONS

92.285 Retroactive ordinances prohibited

OREGON SUBDIVISION AND SERIES PARTITION CONTROL LAW

(Generally)

92.305 Definitions for ORS 92.305 to 92.495

92.313 Policy; construction; citation

92.317 Policy; protection of consumers

92.325 Application of ORS 92.305 to 92.495

92.337 Exemption procedures; withdrawal of exemption; filing fee

92.339 Use of fees

(Filing Requirements)

92.345 Notice of intention; fee

92.355 Commissioner may request further information; content

92.365 Filing information to be kept current; fee for notice of material change

92.375 Consent to service of process on commissioner

(Examination of Subdivision and Series Partition; Public Report)

92.385 Examination; public report; waiver of examination in other state

92.395 Waiver of examination in this state; notice to subdivider or series partitioner

92.405 Sale prohibited where public report not waived; distribution and use of public report

92.410 Review of subdivisions for which public report issued; revised public report; compliance with ORS 92.305 to 92.495

92.415 Advance of travel expense for examination of subdivision or series partition

(Requirements for Sale)

92.425 Conditions prerequisite to sale

92.427 Cancellation of agreement to buy interest in subdivision or series partition; procedure; effect; waiver; exemptions

92.430 Notice to purchaser of cancellation rights; form

92.433 Escrow documents required of successor to vendor's interest

92.455 Inspection of records

(Prohibited Acts)

92.460 Blanket encumbrance permitted only in certain circumstances

92.465 Fraud and deceit prohibited

92.475 False or misleading advertising prohibited; liability

92.485 Waiver of legal rights void

(Enforcement)

92.490 Civil penalty; hearings; lien

92.495 Cease and desist order; injunction

PENALTIES

92.990 Penalties

CROSS REFERENCES

Apportioning special assessment among parcels formed by partition of single tract, 308.140 to 308.150

City planning commissions, Ch. 227

City zoning ordinances, application, 227 286

County planning commissions, Ch. 215

Land use planning assistance, 351.260

Recording plats, 205.190

Regulation of sale of timeshare property, 94.803 to 94.945

Subdivision plans, submission to city planning commission, 227.100

Unit ownership of real property (condominium), Ch. 94

Vacation of plats, 271.080 to 271.230

92.010 to 92.170

Exclusion of subdivision lands from irrigation districts, 545.611

92.042

Authority to approve subdivision plats in unincorporated area, 215.170, 227.110

92.050

Field notes and maps of survey to be filed with county surveyor, 209.250

92.060

Monuments established by county surveyor, 209.070

Monuments marking proposed county road, 368 106

92.100

City planning commission, approval of plats, necessity, 227.100, 227 110

APPROVAL OF PLAN; PLATS

92.010 Definitions for ORS 92.010 to 92.190. As used in ORS 92.010 to 92.190, unless the context requires otherwise:

(1) "Lot" means a unit of land that is created by a subdivision of land.

(2) "Major partition" means a partition which includes the creation of a road or street.

(3) "Map" means a final diagram, drawing or other writing concerning a major partition.

(4) "Minor partition" means a partition that does not include the creation of a road or street.

(5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.

(6) "Parcel" means a unit of land that is created by a partitioning of land.

(7) "Partition" means either an act of partitioning land or an area or tract of land partitioned.

(8) "Partition land" means to divide land into two or three parcels of land within a calendar year, but does not include:

(a) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance.

(9) "Plat" includes a final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

(10) "Replat" includes a final map, diagram, drawing of the reconfiguration of lots and easements of a recorded plat and other writings containing all the descriptions, location, specifications, dedications and provisions and information concerning a recorded subdivision.

(11) "Road" or "street" means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes.

(12) "Sale" or "sell" includes every disposition or transfer of land in a subdivision or partition or an interest or estate therein.

(13) "Subdivide land" means to divide land into four or more lots within a calendar year.

(14) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivided. [Amended by 1955 c.756 §1; 1973 c.696 §3; 1977 c.809 §4; 1979 c.46 §1; 1985 c 369 §5; 1985 c 717 §1]

92.012 Compliance with ORS 92.010 to 92.190 required. No land may be subdivided or partitioned except in accordance with ORS 92.010 to 92.190. [1973 c.696 §2; 1975 c.643 §24]

92.014 Approval of city or county required before creating street or road to partition land. (1) No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the city or county having jurisdiction over the area or tract of land to be partitioned.

(2) No instrument dedicating land to public use shall be accepted for recording in this state unless such instrument bears the approval of the city or county authorized by law to accept such dedication. [1955 c.756 §3: 1973 c.696 §4]

92.016 When sales of lots prohibited until approval obtained; exception. (1) No person shall sell any lot in any subdivision with respect to which approval is required by any ordinance or regulation adopted under ORS 92.044 and 92.048 until such approval is obtained. No person shall negotiate to sell any lot in a subdivision until a tentative plan has been approved.

(2) A person may negotiate to sell any parcel in a major partition or in a minor partition with respect to which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, prior to the approval of the tentative plan for the major or minor partition; but no person may sell any parcel in a major partition or in a minor partition for which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, prior to such approval. [1955 c.756 §24; 1973 c 696 §5; 1974 s.s. c.74 §1; 1977 c.809 §5]

92.017 When lawfully created lots and parcels remain discrete lots and parcels. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law. [1985 c.717 §3]

92.018 Buyer's remedies for purchase of improperly created lot or parcel. A person who buys a lot or parcel that was created without approval of the appropriate city or county authority may bring an individual action against the seller in an appropriate court to recover damages or to obtain equitable relief. The court may award, in addition to the remedies provided in this section, both reasonable attorney fees and costs incurred on trial and on appeal. [1983 c.718 §4]

92.020 [Repealed by 1955 c.756 §5 (92.025 enacted in lieu of 92.020 and 92.030)]

92.025 Prohibition of sales of lots prior to recordation of plat. (1) No person shall sell any lot in any subdivision until the plat of the subdivision has been acknowledged and recorded with the recording officer of the county in which the lot is situated.

(2) No person shall sell any lot in any subdivision by reference to or exhibition or other use of a plat of such subdivision before the plat for such subdivision has been so recorded. In negotiating to sell a lot in a subdivision under ORS 92.016 (1), a person may use the approved tentative plan for such subdivision. [1955 c 756 §6 (enacted in lieu of 92.020 and 92.030); 1973 c 696 §6; 1977 c.809 §6]

92.030 [Repealed by 1955 c 756 §5 (92 025 enacted in lieu of 92.020 and 92.030)]

92.040 Application for approval of subdivision or partition; tentative plan. Before a plat of any subdivision or the map of any partition subject to review under ORS 92.044 may be made and recorded, the person proposing the subdivision or partition or authorized agent or representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044. Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. No plat for any proposed subdivision and no map for any partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or the map of the partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the plat or map and the city or county may require only such changes in the plat or the map as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition. [Amended by 1955 c.756 §7; 1973 c.696 §7; 1983 c.826 §8]

92.042 Governing body having jurisdiction to approve plans, maps or plats. (1) Land within six miles outside of the corporate limits of a city is under the jurisdiction of the city for the purpose of giving approval of plans, maps and plats of subdivisions and major partitions under ORS 92.040 and 227.110. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, when the governing body of a county has adopted ordinances or regulations for subdivision and major partition control as required by ORS 92.044, land in the county within the six-mile limit shall be under the jurisdiction of the county for those purposes.

(2) Land over six miles from the corporate limits of a city is under the jurisdiction of the county for the purpose of giving approval of plans, maps and plats for subdivisions and major partitions under ORS 92.040. [1955 c.756 §4; 1973 c 261 §1, 1973 c.696 §8, 1983 c.570 §3]

92.044 Adoption of standards and procedures governing approval of plats and partition maps. (1) The governing body of a county or a city shall, by regulation or ordinance, adopt standards and procedures, in addition to those otherwise provided by law, governing, in the area over which the county or the city has jurisdiction under ORS 92.042, the submission and approval of tentative plans and plats of subdivisions, tentative plans and maps of major partitions and tentative plans and maps of minor partitions in exclusive farm use zones established under ORS 215.203 to 215.263.

(a) Such standards may include, taking into consideration the location and surrounding area of the proposed subdivisions or the partitions, requirements for:

(A) Placement of utilities, for the width and location of streets or for minimum lot sizes and such other requirements as the governing body considers necessary for lessening congestion in the streets;

(B) Securing safety from fire, flood, slides, pollution or other dangers;

(C) Providing adequate light and air including protection and assurance of access to incident solar radiation for potential future use;

(D) Preventing overcrowding of land;

(E) Facilitating adequate provision of transportation, water supply, sewerage, drainage, education, recreation or other needs; or

(F) Protection and assurance of access to wind for potential electrical generation or mechanical application.

(b) Such ordinances or regulations shall establish the form and contents of tentative plans of partitions and subdivisions submitted for approval and shall establish the form and contents of maps of partitions for filing upon approval with the county recording officer.

(c) The procedures established by each such ordinance or regulation shall provide for the coordination in the review of the tentative plan of any subdivision or partition with all affected city, county, state and federal agencies and all affected special districts.

(2)(a) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to subdivisions and partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose.

(b) If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a subdivision or partition, such ordinance or regulation shall also provide for appeal to the governing body from such approval or disapproval.

(c) The governing body may establish, by ordinance or regulation, a fee to be charged for an appeal under this subsection. The fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. That fee shall be reasonable and shall be no more than the actual cost of the transcript up to $500 plus one-half the actual costs over $500.

(3) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed subdivisions that are submitted for approval pursuant to this section. As used in this subsection, "costs" does not include costs for which fees are prescribed under ORS 92.100 and 205.350.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed partitions that are submitted for approval pursuant to this section.

(5) Ordinances and regulations adopted under this section shall be adopted in accordance with ORS 92.048.

(6) Any ordinance or regulation adopted under this section shall comply with the comprehensive plan for the city or county adopting the ordinance or regulation.

(7) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [1955 c.756 §9; 1973 c.696 §9; 1974 s.s. c.74 §2; 1979 c.671 §1, 1981 c.590 §5, 1983 c.570 §1; 1983 c.826 §9; 1983 c.827 §19e]

92.046 Adoption of regulations requiring approval of partitioning of land not otherwise subject to approval; establishment of fees. (1) The governing body of a county or a city may, as provided in ORS 92.048, when reasonably necessary to accomplish the orderly development of the land within the jurisdiction of such county or city under ORS 92.042 and to promote the public health, safety and general welfare of the county or city, adopt regulations or ordinances requiring approval, by the county or city of proposed partitions not otherwise subject to approval under a regulation or ordinance adopted pursuant to ORS 92.044. Such regulations or ordinances may be applicable throughout the area over which the county or city has jurisdiction under ORS 92.042, or over any portion thereof. Such ordinances or regulations may specify the classifications of such partitions which require approval under this section and may establish standards and procedures governing the approval of tentative plans for such partitions. The standards may include all, or less than all, of the same requirements as are provided or authorized for subdivisions under ORS 92.010 to 92.190 and may provide for different standards and procedures for different classifications of such partitions so long as the standards are no more stringent than are imposed by the city or county in connection with subdivisions.

(2) Such ordinances or regulations may establish the form and contents of the tentative plans of minor partitions submitted for approval and may establish adequate measures for the central filing, including but not limited to recording with the city recorder or the county recording

officer, and for the maintenance of tentative plans for minor partitions following approval.

(3)(a) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to minor partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose.

(b) If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a minor partition, such ordinance or regulation shall also provide for appeal to the governing body from such approval or disapproval and require initiation of any such appeal within 10 days after the date of the approval or disapproval from which the appeal is taken.

(c) The governing body may establish, by ordinance or regulation, a fee to be charged for an appeal under this subsection. The fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. That fee shall be reasonable and shall be no more than the actual cost of the transcript up to $500 plus one-half the actual costs over $500.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon applications for approval of proposed minor partitions.

(5) No tentative plan of a proposed minor partition may be approved unless the tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under this section that are then in effect for the city or county within which the land described in the tentative plan is situated.

(6) Any ordinance or regulation adopted under this section shall comply with the comprehensive plan for the city or county adopting the ordinance or regulation. [1955 c.756 §22; 1973 c.696 §10; 1983 c.827 §19f]

92.048 Procedure for adoption of regulations under ORS 92.044 and 92.046. The procedure for adoption of any ordinance or regulation under ORS 92.044 and 92.046 is as follows:

(1) The planning commission of the county or the city shall hold a public hearing on the proposed ordinance or regulation after publishing notice of the hearing 10 days prior to the hearing in a newspaper of general circulation published in the area in which land to be subject to such ordinance or regulation is situated or, if there is no such newspaper, a newspaper of general circulation published in the county. The notice shall contain the time, place and purpose of the hearing and a description of the land to be subject to the ordinance or regulation.

(2) Prior to the expiration of 60 days after the date of such hearing, the planning commission may transmit its recommendation regarding the proposed ordinance or regulation to the governing body of the county or city, as the case may be. If the planning commission recommendation has not been received by the governing body of the county or the city prior to the expiration of such 60-day period, the governing body may consider the ordinance or regulation without recommendation of the planning commission thereon.

(3) Prior to the adoption of such ordinance or regulation, the governing body of the county or the city shall hold a hearing thereon after giving notice of the hearing in the same manner provided in subsection (1) of this section.

(4) A copy of any regulation or ordinance adopted by the governing body of a county or a city under this section, together with a map of the area subject to the regulation or ordinance and a brief statement of the different classifications, if any, of land partitioning under the ordinance or regulation, shall be filed with the recording officer of the county in which the land subject to the ordinance or regulation is situated. Such ordinance or regulation shall not be effective until so filed. If the ordinance or regulation is applicable throughout all of the area over which the county or city has jurisdiction under ORS 92.042, only an outline map of such area shall be filed with the recording officer of the county.

(5) The ordinance or regulation may be amended from time to time by following the procedure prescribed in this section. [1955 c.756 §23; 1973 c.314 §1; 1973 c.696 §11; 1983 c.570 §2]

92.050 Requirements of survey and plat of subdivision. (1) No subdivider shall submit a plat of a subdivision for record, until all the requirements of ORS 209.250 and the plat of the subdivision have been met.

(2) The survey for the plat of the subdivision shall be of such accuracy that the error of closure shall not exceed one foot in 4,000 feet.

(3) The survey and plat of the subdivision shall be made by a registered professional land surveyor.

(4) The plat of a subdivision shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot shall be numbered consecutively. If used, blocks shall be lettered or numbered. The lengths of all boundaries of each lot shall be shown. Each street shall be named.

(5) The locations and descriptions of all monuments shall be carefully recorded upon all plats and the proper courses and distances of all boundary lines shall be shown. [Amended by 1955 c.756 §10; 1983 c 309 §3]

92.060 Marking certain points of plats with monuments; specifications of monuments. (1) The initial point of all subdivision plats shall be marked with a monument, either of stone, concrete or galvanized iron pipe. If stone or concrete is used it shall not be less than 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used it shall not be less than two inches in inside diameter and three feet long. The monument shall be set or driven six inches below the surface of the ground. The location of the monument shall be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a lot corner of a recorded subdivision.

(2) The intersections of all streets and roads and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of stone, concrete, galvanized iron pipe, or iron or steel rods. If stone or concrete is used it shall not be less than 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used it shall not be less than three-quarter inch inside diameter and 30 inches long, and if iron or steel rods are used they shall not be less than five-eighths of an inch in least dimension and 30 inches long.

(3) All lot corners except lot corners of cemetery lots shall be marked with monuments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long.

(4) Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth of a foot.

(5) All monuments on the exterior boundaries of a subdivision shall be placed and the monuments shall be referenced on the plat of the subdivision before the plat of the subdivision is offered for recording. However, interior monuments for the subdivision need not be set prior to the recording of the plat of the subdivision if the land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in ORS 92.070 (2) and if the person subdividing the land furnishes to the governing body of the county or city by which the subdivision was approved a bond, cash deposit or other security as required by the county or city guaranteeing the payment of the cost of setting the interior monuments for the subdivision as provided in ORS 92.065. [Amended by 1955 c.756 §11; 1973 c.696 §12; 1983 c.309 §4]

92.065 Monumenting interior corners after recording plat; bond or cash deposit. (1) If the interior corners of a subdivision are to be monumented on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish to the city or county surveyor, prior to approval of the plat by the city or county surveyor, a bond, cash deposit or other security, as required at the option of the governing body, in an amount equal to 120 percent of the estimated cost of performing the work for the interior monumentation.

(2) If the person subdividing the lands described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of the payment, the governing body, within three months after the notice, shall release the bond or other required security, or return the cash deposit upon a finding that the payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit held by it for that purpose and return the excess of the cash deposit, if any, to the person who made the deposit.

(3) In the event of the death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure or refusal of the surveyor to set the monuments, the subdivider shall cause the monumentation to be completed. [1973 c.696 §14; 1983 c.309 §5]

92.070 Surveyor's affidavits; procedure for recording monumented corners on plat previously recorded. (1) Except as otherwise provided in this section, all plats or diagrams designating the location of land in any county in the State of Oregon, offered for record, shall have attached thereon an affidavit of the surveyor having surveyed the land represented on the plat, to the effect that the surveyor has correctly surveyed and marked with proper mon-

uments the lands as represented, and has placed a proper monument as provided in ORS 92.060 indicating the initial point of the survey, and giving the dimensions and kind of monument, and its location in accordance with ORS 92.060 (1) and accurately describing the tract of land upon which the lots and blocks are laid out.

(2) If the person subdividing any land has complied with ORS 92.065 (1), the surveyor may prepare the plat of the subdivision for recording with only the exterior monuments referenced on the plat as submitted for recording. There shall be attached to any plat the affidavit of the surveyor that the interior corners for the subdivision will be monumented on or before a specified date in accordance with ORS 92.060 and referenced on the plat for the subdivision as approved by the city or county.

(3) After the interior corners for a subdivision have been monumented as provided in an affidavit submitted under subsection (2) of this section, the surveyor performing the work shall:

(a) Within five days after completion of the work, notify the person subdividing the land involved and the surveyor of the city or county by which the subdivision was approved;

(b) Upon approval of the work under ORS 92.100 by the city or county surveyor, reference the monuments on the subdivision plat and tracings as previously recorded under the supervision of the county surveyor; and

(c) Note upon the subdivision plat and tracings as previously recorded an affidavit to the effect that the surveyor has correctly surveyed and marked with proper monuments the interior corners of the subdivision.

(4) The county surveyor approving the work pursuant to subsection (3) of this section shall reference the approval upon the subdivision plat and tracings previously recorded. The city surveyor approving the work shall cause an affidavit of approval to be recorded with the county recorder who shall cause the county surveyor to indorse the recording reference of approval upon the subdivision plat and tracings previously recorded. [Amended by 1973 c.696 §13; 1983 c 309 §6]

92.080 Preparation of plat. All plats subdividing any tracts of land in any county in this state, and dedications of streets or roads or public parks and squares and other writings made a part of such plats offered for record in any county in this state shall be made in permanent black india type ink or silver halide permanent photocopy, upon material that is 18 inches by 24 inches in size, that is suitable for binding and copying purposes, and that has such characteristics of strength and permanency as may be required by the city or county under ORS 92.044. The plat shall be of such a scale, and the lettering of the approvals thereof, and of the dedication and affidavit of the surveyor, shall be of such a size or type as will be clearly legible, but no part shall come nearer any edge of the sheet than one inch. The plat may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for plats placed upon two or more sheets. [Amended by 1955 c.756 §12; 1973 c 696 §15; 1985 c.582 §1]

92.090 Requisites for approval of tentative plan or plat. (1) No tentative plan or plat of a subdivision shall be approved which bears a name which is the same as, similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All plats must continue the lot numbers and, if used, the block numbers of the plat of the same name last filed.

(2) No tentative plan for a proposed subdivision and no tentative plan for a proposed major partition shall be approved unless:

(a) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the city or county determines it is in the public interest to modify the street or road pattern.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

(3) No plat of a proposed subdivision and no map of a proposed major partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.

(b) Streets and roads held for private use and indicated on the tentative plan of such subdivi-

sion or major partition have been approved by the city or county.

(c) The plat or map complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plat or map is situated.

(d) The plat or map is in substantial conformity with the provisions of the tentative plan for the subdivision or the major partition, as approved.

(e) The plat or map contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or the major partition.

(f) Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or the major partition have been recorded and referenced on the plat or map.

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

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

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

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

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

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

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

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

agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken. [Amended by 1955 c.31 §1, 1955 c 756 §13; 1965 c 393 §1; 1973 c.696 §16, 1974 s.s. c.74 §3, 1983 c 309 §7]

92.095 Payment of taxes, interest or penalties before plat recorded. (1) No plat shall be recorded unless all ad valorem taxes, including potential additional taxes, interest and penalties imposed on land disqualified for special assessment granted under ORS 308.370 (2), 321.272 (2) or 321.420 (2), and all special assessments, fees, or other charges required by law to be placed upon the tax roll have been paid which have become a lien upon the subdivision or which will become a lien during the calendar year.

(2) After January 1, and before the certification under ORS 311.105 of any year, the subdivider shall:

(a) If the exact amount of taxes, special assessments, fees and charges are able to be computed by the assessor, pay such amount to the tax collector. The assessor is authorized to levy and the tax collector is authorized to collect such amount.

(b) If the assessor is unable to compute such amount at such time, either (A) pay the amount estimated by the assessor to be needed to pay the taxes, special assessments, fees and other charges to become due, or (B) deposit with the tax collector a bond with a good and sufficient undertaking in such amount as the assessor considers adequate to insure payment of the taxes to become due. In no event shall the bond amount exceed twice the amount of the previous year's taxes, special assessments, fees and other charges upon such subdivision.

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

(4) ORS 311.370 shall apply to all taxes levied and collected under subsection (2) of this section, except that any deficiency shall constitute a personal debt against the person subdividing the land and not a lien against the subdivision land, and shall be collected as provided by law for the collection of personal property taxes.

(5) If a plat is recorded, any potential additional taxes, interest or penalties imposed upon land disqualified for special assessment granted under ORS 308.370 (2), 321.272 (2) or 321.420 (2) shall become a lien upon the subdivision on the day before the plat was recorded. [1965 c.393 §2; 1973 c 696 §17; 1979 c.350 §3; 1981 c.804 §69, 1983 c.462 §1]

92.097 Employment of private licensed engineer by private developer; government standards and fees. (1) No city, county or special district shall prohibit the employment by a developer of a licensed engineer to design or supervise the installation of the improvements of streets, water and sewer lines or other public improvements that are to be installed in conjunction with the development of land using private funds.

(2) When design or supervision of installation of improvements is performed by a licensed engineer under subsection (1) of this section, the city, county or special district may elect to establish standards for such improvements, review and approve plans and specifications and inspect the installation of improvements. The city, county or special district may collect a fee for inspection and any other services provided in an amount not to exceed the actual cost of performing the inspection or other services provided. [1979 c.191 §2]

92.100 Approval of plat by city or county surveyor; approval by county assessor and county governing body; fees. (1) Before any plat can be recorded, covering land within the corporate limits of any city, it must be approved by the city surveyor, if any; otherwise by the county surveyor. However, the governing body of the city may designate the county surveyor to serve in lieu of the city surveyor. Except as provided in subsection (3) of this section, if the land is outside the corporate limits of any city, the plat shall be approved by the county surveyor before it is recorded. All plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording.

(2) Before approving the plat as required by this section, the city surveyor or the county surveyor, as the case may be, shall check the subdivision site and the plat and shall take such measurements and make such computations as are necessary to determine that the plat complies with the provisions of ORS 92.050 and with the subdivision requirements in effect in the area. For performing such service the city or county surveyor shall collect from the subdivider a fee of $100 plus $5 for each lot contained in the subdivision. The governing body of a city or county may establish a higher fee by ordinance.

(3) Any plat prepared by the county surveyor in a private capacity shall be approved in accord-

ance with subsection (2) of this section by the surveyor of a county other than the county where the land is located. The county governing body shall refer such a plat to the county surveyor of another county by indorsement on the plat. The county governing body may provide allowances for travel and other expenses of the surveyor to whom the plat is referred.

(4) Nothing in this section shall be construed to prohibit a city, county or special district from requiring engineering review and approval of a plat to assure compliance with state and local subdivision requirements that relate to matters other than survey adequacy. [Amended by 1955 c 31 §2; 1955 c.756 §14; 1957 c.688 §1; 1963 c.285 §1; 1971 c.419 §1; 1979 c.824 §1]

92.105 Time limit for final action by city or county on tentative plan. The governing body of a city or county or its designate is subject to the provisions of ORS 215.428 or 227.178 in taking final action on an application for approval of a tentative plan for a subdivision or major partition located within an acknowledged urban growth boundary. [1981 c.884 §2, 1983 c.827 §51]

92.110 Land in special districts; approval of plat; appeal from refusal of district to approve or act. All plans, plats, or replats of subdivisions located within the boundaries of an irrigation district, drainage district, water control district or district improvement company shall be submitted to the board of directors of the district or company and its approval thereof shall be indorsed thereon by the board before approval of such plan, plat, or replat of any subdivision by the governing body of the county. Except that if a subdivider is unable to obtain action or approval of any district or company within 45 days, the subdivider shall notify the governing body in writing and thereafter the governing body shall serve notice on that district or company by certified mail advising the district or company that any objections to the plan, plat, or replat must be filed in writing with the governing body within 20 days and failure of the district or company to respond shall be considered by the governing body as approval of such plan, plat, or replat and the governing body shall indorse thereon a finding that the district or company failed to act and the governing body may thereafter approve such plan, plat, or replat without the approval of such district or company indorsed thereon. [Amended by 1955 c.756 §15; 1973 c.351 §1]

92.120 Filing and recording plats; copies. (1) The plat of a subdivision described in ORS 92.050 when made and approved as required, and offered for record in the records of the county where the described land is situated, shall, upon the payment of the fees provided by law, be filed by the county recording officer. The fact of filing and the date thereof shall be entered thereon, and it shall then be securely bound with other plats of like character in a book especially prepared for that purpose and designated as "Record of Town Plats," or filed in a special cabinet for that purpose so as to insure safekeeping and preservation of the plat.

(2) At the time of filing such plat, the person offering it for filing shall also file with the county recording officer and with the county surveyor, if requested by the county surveyor, an exact copy thereof, made with permanent black india type ink or silver halide permanent photocopy upon a good quality of linen tracing cloth or any other suitable drafting material having the same or better characteristics of strength, stability and transparency. The engineer or surveyor who made the plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the plat. The copy filed with the county recording officer shall be certified by that officer to be an exact copy and then shall be filed in the archives of the county, and be preserved by filing without folding. The subdivider shall provide without cost the number of prints from such copy as may be required by the governing body of the county.

(3) For the purpose of preserving the original subdivision or town plats, any such plats may be stored for safekeeping and a copy of the original plat certified by the county recording officer may be used as the official plat for public use. [Amended by 1955 c.756 §16; 1973 c.696 §18; 1977 c.488 §1, 1985 c 582 §10]

92.130 Additional tracings transferred to county surveyor; replacing lost or destroyed records. Any additional tracings of plats as mentioned in ORS 92.120 other than the one copy filed with the county recording officer shall be transferred to the county surveyor, if requested by the county surveyor, who then shall keep them well bound and safeguarded as required by law. If such plat or copy thereof is lost, destroyed, mutilated or missing from the county records, the county surveyor shall make a copy thereof, and file it in the proper office of record. Each such copy made by the county surveyor pursuant to this section shall bear a certificate of the surveyor that it was made in compliance with this section, and that it is a true copy of the original record. [Amended by 1955 c.756 §17]

92.140 Indexing of plat records. The books entitled "Record of Town Plats" shall be

provided in the front part with indices, in which shall be entered in alphabetical order, all plats recorded therein. The dedications to such plats shall also be indexed in the indices of Records of Deeds for the county. When the plats are so filed, bound and indexed they shall be the legal record of all plats. [Amended by 1955 c.756 §18]

92.150 Construction of donations marked on plat. Every donation or grant to the public, including streets and alleys, or to any individual, religious society, corporation or body politic, marked or noted as such on the plat of the subdivision wherein the donation or grant was made, shall be considered a general warranty to the donee or grantee for the use of the donee or grantee for the purposes intended by the donor or grantor. [Amended by 1955 c.756 §19]

92.160 Notice to Real Estate Commissioner of receipt of plat. If the comprehensive plan and land use regulations of a city or county have not been acknowledged under ORS 197.251, the city engineer, city surveyor or county surveyor shall immediately notify the Real Estate Commissioner in writing of receipt for approval of any plat pursuant to ORS 92.100. The notification shall include a general description of the land with the number of lots and total acreage covered by the plat and the names of the persons submitting the plat for approval. [1965 c.584 §2, 1983 c.570 §6a]

92.170 Amending recorded plat; affidavit of correction. (1) Any plat of a subdivision filed and recorded under the provisions of ORS 92.018 to 92.190 may be amended by an affidavit of correction:

(a) To show any courses or distances omitted from the plat;

(b) To correct an error in any courses or distances shown on the plat;

(c) To correct an error in the description of the real property shown on the plat; or

(d) To correct any other errors or omissions where the error or omission is ascertainable from the data shown on the final plat as recorded.

(2) Nothing in this section shall be construed to permit changes in courses or distances for the purpose of redesigning lot configurations.

(3) The affidavit of correction shall be prepared by the registered professional land surveyor who filed the plat of the subdivision. In the event of the death, disability or retirement from practice of the surveyor who filed the plat, the county surveyor may prepare the affidavit of correction. The affidavit shall set forth in detail the corrections made and show the names of the present fee owners of the property materially affected by the correction. The seal and signature of the registered professional land surveyor making the correction shall be affixed to the affidavit of correction.

(4) The county surveyor or city surveyor having jurisdiction of the plat shall certify that the affidavit of correction has been examined and that the changes shown on the certificate are permitted under this section.

(5) The surveyor who prepared the affidavit of correction shall cause the affidavit to be recorded in the office of the county recorder where the plat is recorded. The county clerk shall promptly provide a recorded copy of the affidavit to the county surveyor. The county surveyor shall note the correction and the recorder's filing information, with permanent red ink, upon the original plat and upon any true and exact copies filed in accordance with ORS 92.120 (2). The corrections and filing information shall be marked in such a manner so as not to obliterate any portion of the plats.

(6) For recording the affidavit in the county deed records, the county clerk shall collect a fee set by the county governing body. The county clerk shall also collect a fee set by the county governing body to be paid to the county surveyor for services provided under this section. [1983 c.309 §2]

REPLATTING

92.180 Authority to review replats. (1) Each agency or body authorized to approve subdivision plats under ORS 92.040 shall have the same review and approval authority over any proposed replat of a recorded plat.

(2) Nothing in this section regarding replatting shall be construed to allow subdividing of land without complying with all the applicable provisions of this chapter. [1985 c.369 §2]

92.185 Reconfiguration of lots and public easements; vacation; notice; utility easements. The act of replatting shall allow the reconfiguration of lots and public easements within a recorded plat. Upon approval by the reviewing agency or body as defined in ORS 92.180, replats will act to vacate the platted lots and easements within the replat area with the following conditions:

(1) A replat, as defined in ORS 92.010 (10) shall apply only to a recorded plat.

(2) Notice shall be provided as described in ORS 92.225 (4) when the replat is replatting all of an undeveloped subdivision as defined in ORS 92.225.

(3) Notice, consistent with the governing body of a city or county approval of a tentative plan of a subdivision plat, shall be provided by the governing body to the owners of property adjacent to the exterior boundaries of the tentative subdivision replat.

(4) When a utility easement is proposed to be realigned, reduced in width or omitted by a tentative replat approval, all affected utility companies or public agencies shall be notified, consistent with a governing body's notice to owners of property contiguous to the tentative plat.

(5) A replat shall comply with all subdivision provisions of this chapter and all applicable ordinances and regulations adopted under this chapter. [1985 c.369 §3]

92.190 Effect of replat; operation of other statutes; use of alternate procedures. (1) The replat of a portion of a recorded plat shall not act to vacate any recorded covenants or restrictions.

(2) Nothing in ORS 92.180 to 92.190 is intended to prevent the operation of vacation actions by statutes in ORS chapter 271 or 368.

(3) The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust lot lines as described in ORS 92.010 (8), as long as those procedures include the recording or other central filing of the final lot line adjustment. [1985 c 369 §4]

UNDEVELOPED SUBDIVISIONS

92.205 Policy. (1) The Legislative Assembly finds that many subdivisions for which plats have been approved and recorded have not been developed and that many such subdivisions were approved prior to the adoption of a comprehensive plan, zoning regulations and ordinances and modern subdivision control standards by the jurisdiction within which the lands described in the subdivision plats are situated.

(2) The Legislative Assembly finds, therefore, that it is necessary for the protection of the public health, safety and welfare to provide for the review of undeveloped subdivisions for the purpose of modifying such subdivisions, if necessary, to comply with the current comprehensive plan, zoning ordinances and regulations and modern subdivision control standards, or, if such modification is not feasible, of vacating the nonconforming, undeveloped subdivisions and to vacate any lands dedicated for public use that are described in the plat of each such vacated subdivision. [1973 c.569 §1]

92.210 [1963 c.624 §3; 1965 c.584 §3, repealed by 1973 c 421 §52]

92.215 Review authorized; manner. (1) Each agency or body authorized to approve subdivision plats under ORS 92.040 may:

(a) Review each subdivision approved on or after October 5, 1973, after the expiration of 10 years after the date of such approval.

(b) Review each subdivision plat approved more than 10 years prior to October 5, 1973.

(2) Each review conducted pursuant to subsection (1) of this section shall be conducted in the manner and subject to the conditions prescribed in ORS 92.225. [1973 c.569 §2]

92.220 [1963 c.624 §§1, 2, 25; repealed by 1973 c.421 §52]

92.225 Determining whether subdivision subject to review and need for revision or vacation; determining need for revision or vacation of undeveloped subdivision; hearings; notice to landowners. (1) The agency or body required to conduct the review under ORS 92.215 shall investigate the status of the lands included within a subdivision to determine whether the subdivision is undeveloped.

(2) For the purposes of this section, the lands described in the plat of any subdivision under review shall be considered to be developed if any of the following conditions are found by the agency or body conducting the review to exist on such lands:

(a) Roadways providing access into and travel within the subdivision have been or are being constructed to meet the specifications prescribed therefor by the agency or body that approved the plat of the subdivision;

(b) Facilities for the supply of domestic or industrial water to lots created by the subdivision have been or are being constructed;

(c) Sanitary sewerage disposal facilities have been or are being constructed for lots created by the subdivision, or septic tanks have been or are being installed on the land or permits have been issued for their installation on the land;

(d) Buildings have been or are being constructed upon the land or permits have been issued for the construction of buildings upon the land; and

(e) One or more lots described in the plat of the subdivision have been sold or otherwise transferred prior to the date of the initiation of such review.

(3) If the agency or body determines that a subdivision is undeveloped after its investigation

of the subdivision under subsection (1) of this section, it shall also determine:

(a) If the undeveloped subdivision complies with the comprehensive plan, zoning regulations and ordinances and subdivision ordinances and regulations then in effect with respect to lands in the subdivision; and

(b) If the undeveloped subdivision does not comply with such plan and ordinances and regulations, whether the subdivision may be revised to comply with such plan and ordinances and regulations.

(4) If the agency or body determines that a subdivision is undeveloped after its investigation of the subdivision under subsection (1) of this section, it shall hold a hearing to determine whether the undeveloped subdivision should be revised and the subdivision replatted or vacated and all lands within the subdivision that have been dedicated for public use vacated. Not later than 30 days before the date of a hearing held by an agency or body under this section, the agency or body shall notify, in writing, each owner of record of land described in the plat of the subdivision under review of the date, place, time and purpose of such hearing. [1973 c.569 §3]

92.230 [1963 c.624 §§4, 19; 1969 c 508 §1; repealed by 1973 c.421 §52]

92.234 Revision, vacation of undeveloped subdivisions; vacation proceedings; effect of initiation by affected landowner. (1) Following a hearing conducted as required under ORS 92.225 (4), the agency or body conducting the hearing may:

(a) Require the revision of a subdivision and a replat of the subdivision as it considers necessary, if it finds that the subdivision may be revised to comply with the comprehensive plan, zoning ordinances and regulations and other modern subdivision control standards not in existence when the subdivision was initially approved; or

(b) Initiate proceedings, as provided in subsection (3) of this section, for vacation of the subdivision, if it finds that the subdivision cannot be revised in accordance with the comprehensive plan, zoning ordinances and regulations and other modern subdivision control standards not in existence when the subdivision was initially approved.

(2) If an agency or body requires the revision and replat of a subdivision under paragraph (a) of subsection (1) of this section, it shall approve the subdivision only upon the completion of the revisions as required by it and the replat of the subdivision as provided in ORS 92.180 to 92.190.

(3) If the agency or body determines that it is necessary to vacate a subdivision, the agency or body shall adopt an ordinance vacating the subdivision and providing for the vacation of lands within the subdivision that have been dedicated for public use. Title to lands within a vacated subdivision shall vest as provided in ORS 271.140 and 368.366. Any owner of lands described in the plat of the vacated subdivision who is aggrieved by the action of the agency or body in vacating the subdivision may appeal such action in the manner provided in ORS 34.010 to 34.100. The ordinance adopted by the agency or body for the vacation of the subdivision and the lands therein dedicated to public use shall be filed with the county recording officer as provided in ORS 271.150.

(4) Nothing in ORS 92.205 to 92.245 shall prevent the owner of any lands within an undeveloped subdivision from seeking vacation of such subdivision under city or county vacation procedures and, if such vacation proceedings are commenced after the date of the notice of review of the subdivision by the agency or body, the review proceeding shall be suspended during such vacation proceedings. If the subdivision is vacated at the initiation of an owner, the review proceedings under ORS 92.205 to 92.245 shall be discontinued; but, if the subdivision is not vacated at the request of an owner, the review proceedings under ORS 92.205 to 92.245 shall be resumed at the termination of the proceedings brought by an owner of lands in the subdivision. [1973 c.569 §4; 1981 c.153 §54; 1985 c.369 §7]

92.235 [1969 c.508 §3; repealed by 1973 c.421 §52]

92.240 [1963 c.624 §5; 1969 c.663 §5, 1971 c.106 §1; repealed by 1973 c.421 §52]

92.245 Fees for review proceedings resulting in modification or vacation. The governing body of a city or county may, by ordinance or regulation adopted in accordance with ORS 92.048, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon undeveloped subdivisions for which the plat is modified or vacated under ORS 92.205 to 92.245. [1973 c.569 §5]

92.250 [1963 c.624 §6; 1969 c 663 §4; 1971 c.106 §2; repealed by 1973 c.421 §52]

92.255 [1965 c.584 §5; repealed by 1973 c.421 §52]

92.260 [1963 c.624 §§7, 17; 1965 c.584 §6; repealed by 1973 c 421 §52]

92.270 [1963 c 624 §8; 1965 c.584 §7; repealed by 1973 c.421 §52]

MISCELLANEOUS PROVISIONS

92.275 [1973 c.351 §3; repealed by 1977 c.236 §1]

92.280 [1963 c.624 §9, 1965 c.584 §8; repealed by 1973 c.421 §52]

92.285 Retroactive ordinances prohibited. No retroactive ordinances shall be adopted under ORS 92.010 to 92.048, 92.060 to 92.095, 92.120, 93.640, 93.710 and 215.110. [1973 c.696 §21]

92.290 [1963 c.624 §§10, 11; 1965 c.584 §9; repealed by 1973 c.421 §52]

92.300 [1963 c.624 §12; 1969 c.663 §6; repealed by 1973 c.421 §52]

OREGON SUBDIVISION AND SERIES PARTITION CONTROL LAW

(Generally)

92.305 Definitions for ORS 92.305 to 92.495. As used in ORS 92.305 to 92.495:

(1) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting more than one interest in subdivided or series partitioned land, or an agreement affecting more than one such lot, parcel or interest by which the subdivider, series partitioner or developer holds such subdivision or series partition under an option, contract to sell or trust agreement.

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

(3) Except as otherwise provided in ORS 92.325 (2), "developer" means a person who purchases a lot, parcel or interest in a subdivision or series partition that does not have a single family residential dwelling or duplex thereon to construct a single family residential dwelling or duplex on the lot, parcel or interest and to resell the lot, parcel or interest and the dwelling or duplex for eventual residential use purposes. Developer also includes a person who purchases a lot, parcel or other interest in a subdivision or series partition that does not have a single family residential dwelling or duplex thereon for resale to another person. "Developer" does not mean a "developer" as that term is defined in ORS 94.004.

(4) "Interest" includes a lot or parcel, and a share, undivided interest or membership which includes the right to occupy the land overnight, and lessee's interest in land for more than three years or less than three years if the interest may be renewed under the terms of the lease for a total period more than three years. "Interest" does not include any interest in a condominium as that term is defined in ORS 94.004 or any security interest under a land sales contract, trust deed or mortgage. "Interest" does not include divisions of land created by lien foreclosures or foreclosures of recorded contracts for the sale of real property.

(5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale or lease of land in a subdivision or series partition, including but not limited to advertising, solicitation and promotion of the sale or lease of such land.

(6) "Lot," "parcel," "partition," "major partition" and "minor partition" have the meaning given those terms in ORS 92.010.

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

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

(9) "Sale" or "lease" includes every disposition or transfer of land in a subdivision or a series partition, or an interest or estate therein, by a subdivider or series partitioner or a developer, or their agents, including the offering of such property as a prize or gift when a monetary charge or consideration for whatever purpose is required by the subdivider, series partitioner or developer or their agents.

(10) "Series partitioned lands" and "series partition" mean a series of partitions of land located within this state resulting in the creation of four or more parcels over a period of more than one calendar year and whether composed of a series of minor partitions, a series of major partitions or a series combining both major partitions and minor partitions.

(11) "Series partitioner" means any person who causes land to be series partitioned into a series partition, or who undertakes to develop a series partition, but does not include a public agency or officer authorized by law to make partitions.

(12) "Subdivided lands" and "subdivision" mean improved or unimproved land or lands divided, or created into interests or sold under an agreement to be subsequently divided or created into interests, for the purpose of sale or lease,

whether immediate or future, into 11 or more undivided interests or four or more other interests. "Subdivided lands" and "subdivision" include but are not limited to a subdivision of land located within this state subject to an ordinance adopted under ORS 92.044 and do not include series partitioned lands. "Subdivided lands" and "subdivision" do not mean property submitted to ORS 94.004 to 94.480 or property located outside this state which has been committed to the condominium form of ownership in accordance with the laws of the jurisdiction within which the property is located.

(13) "Subdivider" means any person who causes land to be subdivided into a subdivision, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to make subdivisions. [1974 s.s. c.1 §1; 1975 c.643 §1; 1977 c.484 §30; 1977 c.809 §3a; 1979 c.46 §3; 1979 c.284 §92; 1979 c.650 §21a; 1983 c.570 §7]

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

92.313 Policy; construction; citation. (1) The Legislative Assembly finds that the development of new subdivisions and series partitions and the promotion of sales and leases of such property are now largely uncontrolled and unregulated in this state and that a need exists to protect the public from fraud, deceit and misrepresentation.

(2) The provisions of ORS 92.305 to 92.495 are in addition to, and not in lieu of, the existing provisions of ORS 92.010 to 92.190.

(3) ORS 92.305 to 92.495 may be cited as the Oregon Subdivision and Series Partition Control Law. [1974 s.s. c.1 §2; 1975 c.643 §1a; 1983 c.570 §9]

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

92.317 Policy; protection of consumers. The Legislative Assembly finds that the repeal of ORS 92.500 to 92.810 and 92.990 (2) and (3) (1973 Replacement Part), by section 23, chapter 1, Oregon Laws 1974 (special session), may cause irreparable damage to the interests of consumers involved in real estate transactions; and it is therefore declared to be the policy of the State of Oregon that the Attorney General protect the rights of such real estate purchasers to the greatest extent practicable through the application of the provisions of ORS 646.605 to 646.652. [1974 s.s. c.1 §29]

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

92.325 Application of ORS 92.305 to 92.495. (1) Except as provided in subsection (2) of this section, no person shall sell or lease any subdivided lands or series partitioned lands without having complied with all the applicable provisions of ORS 92.305 to 92.495.

(2) With respect to a developer, chapter 643, Oregon Laws 1975, applies only to a developer who acquires a lot, parcel or interest in a subdivision or series partition for which a public report has been issued after September 13, 1975, and a developer who acquires a lot or parcel in a subdivision for which a revised public report has been issued under ORS 92.410.

(3) Except as otherwise provided in paragraph (g) of this subsection, ORS 92.305 to 92.495 do not apply to the sale or leasing of:

(a) Apartments or similar space within an apartment building; or

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

(c) Subdivided lands and series partitioned lands in Oregon which are not in unit ownership or being developed as unit ownerships created under ORS 94.004 to 94.480 and 94.991, to be used for residential purposes and which qualify under ORS 92.337; or

(d) Property submitted to the provisions of ORS 94.004 to 94.480 and 94.991; or

(e) Subdivided lands and series partitioned lands in Oregon expressly zoned for and limited in use to nonresidential industrial or nonresidential commercial purposes; or

(f) Lands in this state sold by lots or parcels of not less than 160 acres each; or

(g) Timeshares regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945; or

(h) Subdivided and series partitioned lands in a city or county which, at the time tentative approval of a subdivision plat and each partition map for those lands is given under ORS 92.040 or a minor partition ordinance adopted under ORS 92.046, has a comprehensive plan and implementing ordinances that have been acknowledged under ORS 197.251. The subdivider or series partitioner of such lands shall comply with ORS 92.425, 92.427, 92.430, 92.433, 92.460 and 92.485 in the sale or leasing of such lands; or

(i) Mobile home parks, as defined in ORS 446.003 (22), located in Oregon. [1974 s.s. c.1 §2a; 1975 c.643 §19; 1977 c.484 §31; 1977 c.809 §2a; 1979 c.242 §1, 1983 c.530 §47; 1983 c.570 §8; 1985 c.371 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 92.325. Chapter 643, Oregon Laws 1975, enacted into law and amended the ORS sections which may be found by referring to the Comparative Section Table located in volume 6A of Oregon Revised Statutes.

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

92.335 [1974 s.s. c 1 §3; 1975 c 643 §2, repealed by 1977 c 484 §32]

92.337 Exemption procedures; withdrawal of exemption; filing fee. (1) The commissioner shall grant an exemption pursuant to this section if a subdivider or series partitioner submits on a form prepared by the commissioner, verification that:

(a) The subdivision or series partition is recorded pursuant to ORS 92.010 to 92.190;

(b) Each lot or parcel is situated on a surfaced roadway which, together with means for operation and maintenance, meets the standards of the governing body of the local jurisdiction and is either a concrete or asphalt surface road which has right of way and improvements, including curbs and necessary and adequate drainage structures, or a road which meets alternative standards of the governing body of the local jurisdiction;

(c) The subdivision or series partition, where necessary, has drainage structures and fill designed to prevent flooding and approved by the appropriate governing body;

(d) Energy sources and telephone services for normal domestic use are economically available to the subdivision or series partition and are ready for hookup for each lot or parcel at time of sale or lease;

(e) Water is available for each lot or parcel at the time of sale or lease of each lot or parcel in quantity and quality for domestic use as determined by the Health Division of the Department of Human Resources;

(f) A municipally owned disposal system, an individual or collective subsurface sewage disposal system to serve the lot or parcel, or a privately owned sewage disposal system is available for each lot or parcel at the time of sale or lease of each lot or parcel which meets the requirements of the Environmental Quality Commission;

(g) A surety bond, or bonds, or other security or agreements to complete the improvements is provided by the subdivider or series partitioner to the city or county having jurisdiction so that all of the subdivision or series partition improvements committed by the subdivider or series partitioner to the city or county will be completed; and

(h) Provisions, satisfactory to the commissioner, have been made for satisfaction of all liens and encumbrances existing against the subdivision or series partition which secure or evidence the payment of money.

(2) A subdivision or series partition granted exemption under this section shall be exempt from the provisions of ORS 92.305 to 92.495 and 92.820 except ORS 92.375, 92.385, 92.425, 92.427, 92.430, 92.433, 92.455, 92.460, 92.465, 92.475, 92.485, 92.490 and 92.495.

(3) The commissioner may withdraw the exemption provided by this section if the commissioner determines that the subdivider or series partitioner has provided false information or omitted to state material facts to obtain the exemption or has failed to comply with any provision to which the subdivider or series partitioner is subject under subsections (1) and (2) of this section.

(4) In the event that any provision under subsection (1) of this section is not or cannot be satisfied and without invoking the power granted under subsection (3) of this section, the commissioner and the subdivider or series partitioner may mutually agree in writing upon a written disclosure of the condition that shall be provided to any prospective purchaser prior to the sale or lease of any interest in the subdivision or series partition to carry out the public policy stated in ORS 92.313.

(5) The form required by subsection (1) of this section shall be accompanied by a filing fee of $100 plus $10 for each lot, parcel or interest in the subdivision or series partition, with a maximum fee of $500.

(6) For purposes of verification by the subdivider or series partitioner under paragraphs (b), (c) and (g) of subsection (1) of this section, a copy of the conditions imposed by the appropriate governing body will be sufficient. [1975 c.643 §20, 1977 c.809 §1, 1979 c 242 §2, 1983 c.570 §10]

92.339 Use of fees. The moneys received under ORS 92.305 to 92.495 and this section shall be paid into the State Treasury and placed to the credit of the General Fund in the Real Estate Account established under ORS 696.490. [Formerly 92.820]

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

(Filing Requirements)

92.345 Notice of intention; fee. (1) Prior to negotiating within this state for the sale or lease of subdivided lands located outside this state, or prior to the sale or lease of any subdivided or series partitioned lands located within this state, the subdivider, series partitioner or agent of the subdivider or series partitioner shall by a "Notice of Intention" notify the commissioner in writing of the intention to sell or lease. A

notice of intention shall contain true information as follows:

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

(b) The names and the business addresses of all licensees of the commissioner and of all other persons selling or leasing, within this state, interests in the subdivision or series partition;

(c) With respect to subdivided or series partitioned lands located in this state:

(A) For "subdivided land" or a "subdivision" as those terms are defined, respectively, by ORS 92.010 (13) and (14), a certified copy of the plat filed for record under ORS 92.120 and a copy of any conditions imposed by the city or county governing body;

(B) For "major partitions" as the term is defined by ORS 92.010 (2) and which are subject to ORS 92.305 to 92.495, a certified copy of the maps filed for record in accordance with ORS 92.010 to 92.190 and evidence of the final approval of the city or county governing body, including a copy of any conditions imposed by the governing body;

(C) For "minor partitions" subject to an ordinance adopted under ORS 92.046 and also subject to ORS 92.305 to 92.495, a copy of any surveys, diagrams, drawings or other writings in the final form required by the city or county governing body and evidence of the final approval of the governing body, including any conditions imposed by the governing body; and

(D) For all other land subject to ORS 92.305 to 92.495, a survey, diagram, drawing or other writing designating and describing, including location and boundaries when applicable, the interests to be sold and a statement from the city or county governing body that the proposal as depicted on the survey, diagram, drawing or other writing has received all necessary local approvals or that no local approval is required;

(d) With respect to subdivided lands located outside this state:

(A) A copy of the plat, map, survey, diagram, drawing or other writing designating and describing, including location and boundaries when applicable, the interests to be sold, in the final recorded form required by the governing body having jurisdiction over the property; and

(B) A written statement from the appropriate governing body that the plat, map, survey, diagram, drawing or other writing is in compliance with all applicable laws, ordinances and regulations;

(e) A brief but comprehensive statement describing the land on and the locality in which the subdivision or series partition is located;

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

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

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

(i) A statement of the provisions, if any, limiting the use or occupancy of the interests in the subdivision or series partition.

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

(a) For subdivisions or series partitions containing 10 or fewer lots, parcels or interests, $100.

(b) For subdivisions or series partitions containing over 10 lots, parcels or interests, $100, and $25 for each additional lot, parcel or interest, but in no case shall the fee be more than $2,500.

(3) For lands located outside this state, the notice of intention shall include only the area shown by the plat, survey, diagram, drawing or other writing required under paragraph (d) of subsection (1) of this section. The subdivision of any contiguous lands located outside this state shall be treated as a separate subdivision for which an additional complete filing must be made, even though the plat, map, survey, diagram, drawing or other writing of the contiguous lands is recorded simultaneously as part of an overall development. [1974 s.s. c.1 §4, 1974 s.s. c 53 §1; 1975 c 643 §3; 1977 c.809 §8; 1979 c.242 §5; 1983 c 570 §11; 1985 c.369 §6]

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

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

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

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

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

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

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

(b) Promised to prospective purchasers. [1974 s s. c.1 §5; 1983 c.570 §12]

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

92.365 Filing information to be kept current; fee for notice of material change. (1) The information required under ORS 92.345 and 92.355 shall be kept current by the subdivider or series partitioner. Any material change in the information furnished to the commissioner shall be reported by the subdivider or series partitioner within 10 days after the change occurs.

(2) A subdivider or series partitioner shall be responsible for the accuracy of and for providing all information required by ORS 92.345, 92.355 and this section for as long as the subdivider or series partitioner retains any unsold lot, parcel or interest in the subdivision or series partition to which the information pertains.

(3) A developer who acquires a lot, parcel or interest in a subdivision or series partition shall be responsible for as long as the developer retains any unsold lot, parcel or interest in the subdivision or series partition for all material changes in the information contained in the public report which the developer receives on acquisition of the property:

(a) Which the developer causes by action of the developer; and

(b) Concerning the zoning, sewage disposal and water supply which substantially affect the intended use of the property as stated in the public report.

(4) A developer shall accurately report to the commissioner a material change specified in subsection (3) of this section within 10 days after the change occurs. However, a developer who acquires less than 11 lots, parcels or interests in a subdivision or series partition during a six consecutive month period shall only be responsible for a material change specified in paragraph (b) of subsection (3) of this section and may revise a public report to reflect such material change without reporting the material change to the commissioner.

(5) The commissioner shall require a fee sufficient to recover any administrative expenses after receipt of a material change notice if, because of the changes, a public report must be issued or revised by the commissioner. The fee is subject to the review of the Executive Department and prior approval of the appropriate legislative review agency, as defined in ORS 291.371. [1974 s.s. c.1 §7; 1975 c 643 §4, 1983 c.181 §1, 1983 c.570 §13]

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

92.375 Consent to service of process on commissioner. (1) Every nonresident subdivider or series partitioner, at the time of filing the notice of intention and information required by ORS 92.345 and 92.355, and every nonresident developer who acquires more than 10 lots or parcels in a subdivision or series partition during a six consecutive month period, at the time the developer acquires the lots, parcels or interests in a subdivision or series partition, shall also file with the commissioner an irrevocable consent that if, in any suit or action commenced against the developer, subdivider or series partitioner in this state arising out of a violation of ORS 92.305 to 92.495, personal service of summons or process upon the developer, subdivider or series partitioner cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon the developer, subdivider or series partitioner by service on the commissioner.

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

(a) The name of the subdivider, series partitioner or developer.

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

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

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

(4) Service on the commissioner of any such process shall be made by delivery to the commissioner or a clerk on duty in any office of the

commissioner, duplicate copies of such process, with duplicate copies of any papers required by law to be delivered in connection with such service.

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

(6) The commissioner shall keep a record of all processes, notices and demands served upon the commissioner under this section, and shall record therein the time of such service and action with reference thereto. [1974 s.s. c 1 §6; 1975 c.643 §5; 1983 c.570 §14]

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

(Examination of Subdivision and Series Partition; Public Report)

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

(2) The commissioner may waive an examination of a real estate subdivision located in another state only when that state has an existing subdivision law which provides for the examination of and a public report on the real estate subdivision and only where that state will waive examination of a real estate subdivision or series partition located within this state and will accept in lieu thereof a report prepared by the commissioner under subsection (1) of this section. [1974 s.s. c.1 §8; 1975 c.643 §6; 1983 c.570 §15]

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

92.395 Waiver of examination in this state; notice to subdivider or series partitioner. With respect to any subdivision or series partition within this state, if, after examination of the preliminary notice of intention required by ORS 92.345 or the reply to the commissioner's request for further information, the commissioner concludes that the sale or lease of any portion of such subdivision or series partition would be reasonably certain not to involve any misrepresentation, deceit or fraud, the commissioner shall waive all of the provisions of ORS 92.305 to 92.495, except ORS 92.475 to 92.495 and 92.990 (2), which the commissioner considers unnecessary for the protection of the public from fraud, deceit or misrepresentation. The commissioner shall notify the subdivider or series partitioner within 15 days of receipt of the preliminary notice of intention of the approval or disapproval of any waiver. However, the commissioner may, for good and sufficient cause, revoke any waiver at any time upon 10 days' notice and a hearing held for such purpose. [1974 s.s. c.1 §9; 1983 c.570 §16]

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

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

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

(4) The commissioner may furnish at cost copies of the public report for the use of subdividers, series partitioners and developers.

(5) The requirements of this section extend to lots, parcels or other interests sold by the subdivider, series partitioner or developer after repossession.

(6) Violations of this section shall be subject to the provisions of ORS 646.605 to 646.656, 646.705 to 646.836, 646.890, 646.935 to 646.992 and 815.410, in addition to other sanctions provided by law. [1974 s.s. c.1 §10; 1975 c.643 §7; 1977 c.809 §9; 1983 c.570 §17]

92.410 Review of subdivisions for which public report issued; revised public

report; compliance with ORS 92.305 to 92.495. (1) Notwithstanding the effective date of chapter 643, Oregon Laws 1975, prior to February 1, 1976, the commissioner may review any subdivision for which a public report has been issued and is dated prior to September 13, 1975, and when the commissioner considers it necessary for the protection of the public from fraud, deceit or misrepresentation, the commissioner may, after notice to the subdivider, issue a revised public report for the subdivider and subsequent developers of interests in the subdivision to comply with the provisions of ORS 92.305 to 92.495 as though the public report had been issued and dated after September 13, 1975.

(2) Any subdivision for which a public report has been issued and is dated prior to September 13, 1975, and for which the commissioner has not issued a revised public report under subsection (1) of this section prior to February 1, 1976, shall not be required to comply with the amendments to ORS 92.305 to 92.495 and made by chapter 643, Oregon Laws 1975. [1975 c.643 §22]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 92.410. Chapter 643, Oregon Laws 1975, enacted into law and amended the ORS sections which may be found by referring to the Comparative Section Table located in volume 6A of Oregon Revised Statutes

92.415 Advance of travel expense for examination of subdivision or series partition. When an examination is to be made of subdivided or series partitioned lands situated in the State of Oregon, or of subdivided lands situated outside the state which will be offered for sale or lease within this state, the commissioner, in addition to the filing fee provided in ORS 92.355, may require the subdivider or series partitioner to advance payment of an amount estimated by the commissioner to be the expense incurred in going to and returning from the location of the project, and an amount estimated to be necessary to cover the additional expense of such examination, subject to the review of the Executive Department and prior approval of the appropriate legislative review agency, as defined in ORS 291.371. The amounts estimated by the commissioner, under this section shall be based upon any applicable limits established and regulated by the Executive Department under ORS 292.220. [1974 s.s c.1 §11; 1975 c.643 §8; 1979 c.242 §6; 1983 c.181 §2; 1983 c.570 §18]

(Requirements for Sale)

92.425 Conditions prerequisite to sale. (1) No lot, parcel or interest in a subdivision or series partition shall be sold by a subdivider, series partitioner or developer by means of a land sale contract unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

(a) A copy of the title report or abstract, as it relates to the property being sold.

(b) The original sales document or an executed copy thereof relating to the purchase of real property in the subdivision or series partition clearly setting forth the legal description of the property being purchased, the principal amount of the encumbrance outstanding at the date of the sales document and the terms of the document.

(c) A commitment to give a partial release for the lot, parcel or other interest being sold from the terms and provisions of any blanket encumbrance as described in ORS 92.305 (1). Except as otherwise provided in subsection (4) of this section, the commitment shall be in a form satisfactory to the commissioner.

(d) A commitment to give a release of any other lien or encumbrance existing against such lot, parcel or other interest being sold as revealed by such title report. Except as otherwise provided in subsection (4) of this section, the commitment shall be in a form satisfactory to the commissioner.

(e) A warranty or bargain and sale deed in good and sufficient form conveying merchantable and marketable title to the purchaser of such lot, parcel or other interest.

(2) The subdivider, series partitioner or developer shall submit written authorization allowing the commissioner to inspect all escrow deposits established pursuant to subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the subdivider, series partitioner or developer shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section.

(4) The requirements of paragraphs (c) and (d) of subsection (1) of this section relating to use of a commitment form acceptable to the commissioner and the provisions of subsection (2) of this section shall not apply to subdivided or series partitioned lands described by ORS 92.325 (3)(h). [1974 s s. c 1 §12; 1975 c.643 §9; 1977 c.809 §10; 1979 c.242 §7; 1983 c.530 §54; 1983 c.570 §19]

92.427 Cancellation of agreement to buy interest in subdivision or series parti-

tion; procedure; effect; waiver; exemptions. (1) A purchaser of a lot, parcel or interest in a subdivision or series partition may cancel, for any reason, any contract, agreement or any evidence of indebtedness associated with the sale of the lot, parcel or interest in the subdivision or series partition within three business days from the date of signing by the purchaser of the first written offer or contract to purchase.

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser of a lot, parcel or interest gives written notice to the seller at the seller's address. The three business days cancellation period in subsection (1) of this section does not begin until the seller provides the purchaser with seller's address for cancellation purposes.

(3) A notice of cancellation given by a purchaser of a lot, parcel or interest in a subdivision or series partition need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or evidence of indebtedness.

(4) Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that such notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the seller shall immediately return to the purchaser all payments received from the purchaser. In case of payments made by check, the seller shall not be required to return the payment to a purchaser until the check is finally paid as provided in ORS 74.2130. Upon return of all such payments the purchaser shall immediately transfer the purchaser's rights in the lot, parcel or interest to the seller, not subject to any encumbrance created or suffered by the purchaser. In the case of cancellation by a purchaser of any evidence of indebtedness, the purchaser shall return the purchaser's copy of the executed evidence of indebtedness to the seller, and the seller shall cancel the evidence of indebtedness. Any encumbrances against the purchaser's interest in the lot, parcel or interest arising by operation of law from an obligation of the purchaser existing prior to transfer of the lot, parcel or interest to the purchaser shall be extinguished by the reconveyance.

(6) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. A subdivider, series partitioner or developer may require that a purchaser of a lot, parcel or interest in a subdivision or series partition execute and deliver to the subdivider, series partitioner or developer, after the expiration of the three-day cancellation period, a signed statement disclaiming any notice of cancellation that may have been made by the purchaser prior to expiration of the three-day cancellation period for the offer under subsection (1) of this section, that may have been timely and properly done under this section and that has not been received by the subdivider, series partitioner or developer. In case of execution of any such statement by the purchaser, the statement shall be sufficient to rescind the notice of cancellation.

(7) This section shall not apply to:

(a) The sale of a lot in a subdivision or a parcel in a series partition that has a residential dwelling upon it at the time of sale;

(b) The sale of a lot in a subdivision or a parcel in a series partition when, at the time of sale, the seller has contracted with the purchaser to build a residential dwelling upon the lot or parcel; or

(c) The sale of a lot in a subdivision or a parcel in a series partition to a person who derives a substantial portion of income from the development or purchase and sale of real property. [1975 c.643 §16; 1983 c.570 §20]

92.430 Notice to purchaser of cancellation rights; form. (1) Subject to ORS 92.427 (7), the first written real property sales contract signed by the purchaser for the sale of a lot, parcel or interest in a subdivision or series partition shall contain, either upon the first page of such contract or upon a separate sheet attached to such first page, the following notice in at least 8-point type:

NOTICE TO PURCHASER

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE AN INTEREST IN LAND. HOWEVER, YOU HAVE THREE BUSINESS DAYS AFTER SIGNING THIS AGREEMENT TO CANCEL THE AGREEMENT BY WRITTEN NOTICE TO THE SELLER OR THE SELLER'S AGENT AT THE FOLLOWING ADDRESS:

_____

_____

_____

_____

_____

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE THREE-DAY

CANCELLATION PERIOD ENDS, YOU SHOULD DO THE FOLLOWING:

(1) CAREFULLY EXAMINE THE PUBLIC REPORT, IF ANY, ON THE SUBDIVISION OR SERIES PARTITION AND ANY ACCOMPANYING INFORMATION DELIVERED BY THE SELLER.

(2) INQUIRE OF YOUR LENDER AS TO WHETHER YOU CAN GET ADEQUATE FINANCING AT AN ACCEPTABLE INTEREST RATE.

(3) INQUIRE OF THE SELLER AND THE LENDER WHAT THE AMOUNT OF THE CLOSING COSTS WILL BE.

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(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser under a contract described in subsection (1) of this section at the time of or immediately following the purchaser's signing of such contract, for the use of the purchaser. [1975 c.643 §17; 1983 c 570 §21]

92.433 Escrow documents required of successor to vendor's interest. (1) A purchaser of a vendor's interest or a holder of an encumbrance secured by a vendor's interest in a land sale contract for which an escrow has been established pursuant to ORS 92.425 shall deposit in the escrow any instruments necessary to assure that the contract vendee can obtain the legal title bargained for upon compliance with the terms and conditions of the contract.

(2) A subdivider, series partitioner or developer who has sold lots, parcels or interests in a subdivision or series partition under a land sale contract shall not dispose of or subsequently encumber the vendor's interest therein unless the terms of the instrument of disposition or the encumbrance provide the means by which the purchaser or holder of the encumbrance will comply with subsection (1) of this section. [1977 c.809 §13; 1983 c.570 §22]

92.435 [1974 s.s. c 1 §13; repealed by 1977 c 484 §32]

92.445 [1974 s s. c.1 §16; repealed by 1975 c.643 §18]

92.455 Inspection of records. Records of the sale or lease of real property within a subdivision or series partition shall be subject to inspection by the commissioner. [1974 s.s. c 1 §14; 1975 c.643 §10; 1983 c.570 §23]

(Prohibited Acts)

92.460 Blanket encumbrance permitted only in certain circumstances. (1) Subject to the provisions of ORS 92.425, no lot, parcel or other interest in a subdivision or series partition shall be sold by a subdivider, series partitioner or developer subject to a blanket encumbrance unless there exists in the blanket encumbrance or other supplementary agreement a provision which by its terms shall unconditionally provide that the purchaser or lessee of a lot, parcel or other interest can obtain legal title or other interest bargained for, free and clear of the blanket encumbrance, upon compliance with the terms and conditions of the purchase or lease.

(2) In lieu of the requirement of subsection (1) of this section, the subdivider, series partitioner or developer shall conform to any alternative requirement or method which the commissioner deems acceptable to carry into effect the intent and provisions of this section. [1977 c.809 §12, 1983 c.570 §24]

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

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

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

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

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

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

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the real estate subdivision or series partition has been in any way approved or indorsed by the commissioner. [1974 s.s. c.1 §15, 1975 c.643 §11; 1983 c.570 §25]

92.475 False or misleading advertising prohibited; liability. It shall be unlawful for any owner, subdivider, developer, series parti-

tioner, agent or employe of such persons or other person, who with intent, directly or indirectly, to sell or lease subdivided or series partitioned lands or lots, parcels or interests therein, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning subdivided or series partitioned lands, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 92.305 to 92.495 unless the publisher, employe, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the subdivided or series partitioned lands advertised or the sale thereof. [1974 s.s c.1 §17; 1975 c.643 §12, 1983 c.570 §26]

92.485 Waiver of legal rights void. Any condition, stipulation or provision in any sales contract or lease, or in any other legal document, binding any purchaser or lessee to waive any legal rights under ORS 92.305 to 92.495 against the subdivider, series partitioner or developer shall be deemed to be contrary to public policy and void. [1974 s s. c.1 §18; 1975 c 643 §13; 1983 c.570 §27]

(Enforcement)

92.490 Civil penalty; hearings; lien. (1) In addition to any other penalties provided by law, the commissioner may impose a civil penalty for violation of the provisions of ORS 92.305 to 92.495. No civil penalty shall exceed $1,000 per violation.

(2) A civil penalty may be imposed by the commissioner after notice and hearing.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded in accordance with the provisions of ORS 18.320 to 18.370. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. [1975 c.643 §23; 1979 c.242 §8; 1983 c.696 §7a]

92.495 Cease and desist order; injunction. (1) Whenever the commissioner finds that any owner, subdivider, series partitioner, developer or other person is violating any of the provisions of ORS 92.305 to 92.495 or of the alternative requirements of the commissioner prescribed pursuant to ORS 92.425 (3), the commissioner may order the persons to desist and refrain from violating the provisions or requirements, or from the further sale or lease of lots, parcels or interests within the subdivision or series partition.

(2) Whenever the commissioner finds that any subdivider, series partitioner, developer or other person is violating, or has violated or is about to violate, any of the provisions of ORS 92.305 to 92.495 or the alternative requirements of the commissioner prescribed pursuant to ORS 92.425 (3) the commissioner may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where the person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person, firm or corporation, and any other person or persons concerned in or in any way participating or about to participate in the violation, to enjoin the person, firm or corporation or any other person from continuing the violation or engaging in the violation or doing any act or acts in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant where an appointment is appropriate. [1974 s.s. c.1 §§19, 20; 1975 c.643 §14; 1983 c 570 §28]

92.500 [1973 c.421 §1; repealed by 1974 s.s. c 1 §23]

92.505 [1973 c.421 §2, repealed by 1974 s s c 1 §23]

92.510 [1973 c 421 §3, repealed by 1974 s s c.1 §23]

92.515 [1973 c.421 §6; repealed by 1974 s.s c.1 §23]

92.530 [1973 c.421 §4; repealed by 1974 s s c 1 §23]

92.535 [1973 c.421 §8(1); repealed by 1974 s.s. c.1 §23]

92.545 [1973 c.421 §16; repealed by 1974 s s c 1 §23]

92.550 [1973 c 421 §8(2), repealed by 1974 s.s. c.1 §23]

92.555 [1973 c.421 §17; repealed by 1974 s s. c 1 §23]

92.560 [1973 c.421 §8(3); repealed by 1974 s s c 1 §23]

92.565 [1973 c 421 §8(4), (5); repealed by 1974 s.s. c.1 §23]

92.570 [1973 c.421 §8(6); repealed by 1974 s.s c 1 §23]

92.575 [1973 c.421 §28(1); repealed by 1974 s.s c 1 §23]

92.580 [1973 c.421 §18, repealed by 1974 s.s c 1 §23]

92.585 [1973 c.421 §19; repealed by 1974 s.s c 1 §23]

92.590 [1973 c 421 §20, repealed by 1974 s s c 1 §23]

92.595 [1973 c.421 §27, repealed by 1974 s.s. c 1 §23]

92.600 [1973 c.421 §§21, 22; repealed by 1974 s.s. c.1 §23]

92.605 [1973 c.421 §23; repealed by 1974 s.s. c.1 §23]

92.610 [1973 c.421 §24; repealed by 1974 s.s. c.1 §23]

92.615 [1973 c.421 §25, repealed by 1974 s s. c.1 §23]

92.620 [1973 c.421 §26; repealed by 1974 s.s. c.1 §23]

92.625 [1973 c.421 §30; repealed by 1974 s s. c.1 §23]

92.650 [Subsection (1) enacted as 1973 c.421 §9, subsection (2) enacted as 1973 c.421 §12(8); repealed by 1974 s.s c.1 §23]

92.655 [1973 c.421 §12(1), (2), (3), (4), (7), (10); repealed by 1974 s.s. c.1 §23]

92.660 [1973 c.421 §12(5), (6), (9); repealed by 1974 s s. c.1 §23]

92.665 [1973 c.421 §13; repealed by 1974 s.s. c.1 §23]

92.670 [1973 c.421 §14; repealed by 1974 s.s. c.1 §23]

92.675 [1973 c.421 §45; repealed by 1974 s.s. c.1 §23]

92.685 [1973 c.421 §34; repealed by 1974 s.s. c.1 §23]

92.690 [1973 c.421 §35; repealed by 1974 s.s. c.1 §23]

92.695 [1973 c.421 §36; repealed by 1974 s.s. c.1 §23]

92.700 [1973 c.421 §37; repealed by 1974 s s. c.1 §23]

92.710 [1973 c.421 §38; repealed by 1974 s.s c.1 §23]

92.715 [1973 c.421 §41; repealed by 1974 s.s c.1 §23]

92.720 [1973 c.421 §39; repealed by 1974 s.s. c.1 §23]

92.725 [1973 c.421 §40; repealed by 1974 s.s. c.1 §23]

92.745 [1973 c.421 §§5, 43, repealed by 1974 s.s. c.1 §23]

92.750 [1973 c.421 §15; repealed by 1974 s.s. c.1 §23]

92.755 [1973 c.421 §31; repealed by 1974 s.s. c.1 §23]

92.760 [1973 c 421 §44; repealed by 1974 s.s. c.1 §23]

92.765 [1973 c.421 §28(2), repealed by 1974 s.s. c.1 §23]

92.770 [1973 c.421 §11; repealed by 1974 s.s. c.1 §23]

92.775 [1973 c.421 §29; repealed by 1974 s.s. c 1 §23]

92.780 [1973 c.421 §46, repealed by 1974 s.s. c 1 §23]

92.785 [1973 c.421 §47; repealed by 1974 s.s. c 1 §23]

92.800 [1973 c.421 §42; repealed by 1974 s.s. c 1 §23]

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

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

92.820 [1974 s.s. c.1 §21; 1977 c.41 §1; renumbered 92.339]

PENALTIES

92.990 Penalties. (1) Violation of any provision of ORS 92.010 to 92.090, 92.100 and 92.110 to 92.170 or of any regulation or ordinance adopted thereunder, is punishable, upon conviction, by a fine of not less than $50 nor more than $500 or imprisonment in the county jail for not less than 25 days nor more than 50 days, or both.

(2) Any person who violates any of the provisions of ORS 92.325 (1), 92.345 to 92.365, 92.405 (1), (2) and (3), 92.425, 92.433, 92.460 to 92.475 and any alternative requirements of the commissioner prescribed pursuant to ORS 92.425 (3), not waived by the commissioner pursuant to ORS 92.395, or who provides false information or omits to state material facts pursuant to ORS 92.337, shall be punished by a fine not exceeding $10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12; 1973 c.421 §48; subsection (2) (1973 Replacement Part) enacted as 1973 c.421 §10; subsection (3) (1973 Replacement Part) enacted as 1973 c.421 §49; subsections (2), (3) (1973 Replacement Part) repealed by 1974 s.s. c 1 §23; subsection (2) (1974 Replacement Part) enacted as 1974 s s. c 1 §22; 1975 c.643 §21; 1977 c.809 §14]