

Chapter 93

1987 REPLACEMENT PART

Conveyancing and Recording

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GENERAL REQUIREMENTS FOR DISPOSITION OF REALTY

93.010 Conveyances, how made.

Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person of lawful age from whom the estate or interest is intended to pass, or by the lawful agent or attorney of the person, and acknowledged or proved, and recorded without any other act or ceremony. No seal of the grantor, corporate or otherwise, shall be required on the deed. [Amended by 1965 c 502 §4]

93.020 Creating, transferring or declaring estates or interests in realty.

(1) No estate or interest in real property, other than a lease for term not exceeding one year, nor any trust or power concerning such property, can be created, transferred or declared otherwise than by operation of law or by a conveyance or other instrument in writing, subscribed by the party creating, transferring or declaring it, or by the lawful agent of the party under written authority, and executed with such formalities as are required by law.

(2) This section does not affect the power of a testator in the disposition of real property by a last will and testament, nor to prevent a trust from arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel the specific performance of an agreement in relation to such property.

93.030 Contracts to convey, instruments of conveyance and related memoranda to state consideration.

(1) All instruments conveying or contracting to convey fee title to any real estate, and all memoranda of such instruments, shall state on the face of such instruments the true and actual consideration paid for such transfer, stated in terms of dollars. As used in this section, "consideration" includes the amount of cash and the amount of any lien, mortgage, contract, indebtedness or other encumbrance existing against the property to which the property remains subject or which the purchaser agrees to pay or assume. However, if the actual consideration consists of or includes other property or other value given or promised, neither the monetary value nor a description of such other property or value need be stated so long as it is noted on the face of the instrument that other property or value was either part or the whole consideration.

(2) The statement of consideration as required by subsection (1) of this section shall be

made by a grantor or a grantee. Failure to make such statement does not invalidate the conveyance.

(3) If the statement of consideration is in the body of the instrument preceding the signatures, execution of the instrument shall constitute a certification of the truth of the statement. If there is a separate statement of consideration on the face of the instrument, it shall be signed separately from the instrument, and such execution shall constitute a certification of the truth of the statement by the person signing. No particular form is required for the statement so long as the requirements of this section are reasonably met.

(4) No instrument conveying or contracting to convey fee title to any real estate nor any memorandum of such an instrument shall be accepted for recording by any county clerk or recording officer in this state unless the statement of consideration required by this section is included on the face of the instrument.

(5) This section applies to instruments executed on or after January 1, 1968. [1967 c.462 §§1, 3, 1967 s.s. c 7 §1; 1977 c 605 §1]

93.040 Warning in instrument relating to approved uses of land; liability of drafter and recorder.

(1) The following statement shall be included in the body of an instrument transferring or contracting to transfer fee title to real property: "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES."

(2) No action may be maintained against the county recording officer for recording an instrument that does not contain the statement required in subsection (1) of this section.

(3) No action may be maintained against any person for failure to include in the instrument, or for recording an instrument that does not contain the statement required in subsection (1) of this section, unless the person acquiring or agreeing to acquire fee title to the real property would not have executed or accepted the instrument but for the absence in the instrument of the statement required by subsection (1) of this section. No action may be maintained by the person acquiring or agreeing to acquire title to the real property

against any person other than the person transferring or contracting to transfer fee title to the real property. [1983 c 718 §2, 1985 c 719 §1]

SPECIAL MATTERS IN PARTICULAR CONVEYANCES

93.110 Quitclaim deed sufficient to pass estate. A deed of quitclaim and release, of the form in common use, is sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

93.120 Words of inheritance unnecessary to convey fee; conveyances deemed to convey all grantor's estate. The term "heirs," or other words of inheritance, is not necessary to create or convey an estate in fee simple. Any conveyance of real estate passes all the estate of the grantor, unless the intent to pass a lesser estate appears by express terms, or is necessarily implied in the terms of the grant.

93.130 Conveyance of land in adverse possession of another. No grant or conveyance of lands or interest therein is void for the reason that at the time of its execution the lands were in the actual possession of another claiming adversely.

93.140 Implied covenants. No covenant shall be implied in any conveyance of real estate, whether it contains special covenants or not, except as provided by ORS 93.850 to 93.870. [Amended by 1973 c 194 §6]

93.150 Conveyance by tenant of greater estate than that possessed. A conveyance made by a tenant for life or years, purporting to grant a greater estate than the tenant possesses or could lawfully convey, does not work a forfeiture of the estate of the tenant, but passes to the grantee all the estate which the tenant could lawfully convey.

93.160 Conveyance by reversioners and remaindermen to life tenant vests fee. Where real property has been devised to a person for life, and in case of the death of the life tenant without leaving lawful issue born alive and living at the time of death, then to other heirs of the testator, a conveyance to the life tenant from all reversioners or remaindermen and all issue of the life tenant as are in being, of all their interest in the real property, vests a fee simple estate in the life tenant.

93.170 [Repealed by 1969 c 591 §305]

93.180 Tenancy in common, when created; joint tenancy abolished. Every conveyance or devise of lands, or interest therein, made to two or more persons, other than to a

husband and wife, as such, or to executors or trustees, as such, creates a tenancy in common unless it is in some manner clearly and expressly declared in the conveyance or devise that the grantees or devisees take the lands with right of survivorship. Such a declaration of a right to survivorship shall create a tenancy in common in the life estate with cross-contingent remainders in the fee simple. Joint tenancy is abolished and the use in a conveyance or devise of the words "joint tenants" or similar words without any other indication of an intent to create a right of survivorship shall create a tenancy in common.

[Amended by 1983 c 555 §1]

93.190 Trustees or personal representatives as joint tenants; filling vacancies in office. (1) Every conveyance, deed of trust, mortgage or devise of an interest in or lien upon real or personal property to two or more persons as trustees or personal representatives, creates a joint tenancy in such interest or lien in the trustees or personal representatives unless it is expressly declared in the conveyance, deed of trust, mortgage or devise that the trustees or personal representatives shall take or hold the property as tenants in common or otherwise.

(2) If the conveyance, deed of trust, mortgage or devise provides for filling any vacancy in the office of trustee or personal representative, it may be filled as therein provided, but a court of competent jurisdiction may fill a vacancy in the trusteeship according to the established rules and principles of equity. In whichever way the vacancy is filled, the new trustee shall hold the property with all powers, rights and duties of an original trustee unless otherwise directed by conveyance, deed of trust, mortgage or devise, or order or decree of the court. [Amended by 1969 c 591 §275]

93.200 Trustees or executors now hold as joint tenants. All trustees or executors holding real or personal property in trust on May 19, 1905, hold as joint tenants and not as tenants in common unless the conveyance, deed of trust, mortgage or devise, or order or decree of court creating or appointing the trustees or executors has declared otherwise.

93.210 Presumption respecting deed from trustee of undisclosed beneficiary. If a deed to real estate has been made to a grantee in trust or designating the grantee as trustee, and no beneficiary is indicated or named in the deed, a deed thereafter executed by such grantee conveying the property is presumed to have been executed with full right and authority and conveys prima facie title to the property. The grantee

in the last-mentioned deed is under no duty whatsoever to see to the application of the purchase price. If the last-mentioned deed is recorded after June 7, 1937, after five years from its recording or, if it was recorded prior to June 7, 1937, then after June 7, 1942, the presumption is conclusive as to any undisclosed beneficiary and the title to the real estate, based upon the last-mentioned deed, shall not be called in question by any one claiming as beneficiary under the first-mentioned deed.

93.220 Release, limitation or restriction of power of appointment. (1) Any person to whom there has been granted or reserved any power of appointment or other power by which the person may elect to take any action affecting the disposition of property may at any time release, or, from time to time, limit or restrict such power in whole or in part by an instrument in writing evidencing that purpose and subscribed by the person.

(2) If the power is one to affect title to real property, the instrument shall be executed, acknowledged, proved and recorded, or filed with the registrar of title in each county in which the land is situated in the same manner as a conveyance of real property.

(3) If the power is of such nature that its exercise may affect the duty of any trustee or other fiduciary, such trustee or other fiduciary is not bound to take notice thereof unless the trustee or other fiduciary has received the original or an executed duplicate of the release or a copy thereof certified by the county clerk or county recorder of the county in which it has been recorded.

93.230 Copy of State Lands Division deed or patent given when original lost. (1) If parties to whom deeds have been issued by the Division of State Lands have lost such deeds before they were placed on record in the county wherein the land conveyed is located, the Director of the Division of State Lands, on application of the party entitled thereto, shall cause a certified copy of the record of the deed in the office of the division to be issued under its seal.

(2) If parties to whom patents for lands have been issued by the United States for lands in the State of Oregon have lost such patents before they were placed on record in the county wherein the land conveyed is located, such parties, or their successors in interest, may apply to and obtain from the Bureau of Land Management, or its successor agency, copies of the records of such patents, duly certified to be correct copies of the original patents, or of the record thereof, by the appropriate federal officer.

(3) Every certified copy issued in accordance with subsection (1) or (2) of this section is entitled to record in the proper county with like effect as the original deed or patent. Every such copy so certified may be read in evidence in any court in this state without further proof thereof. The record of any such certified copy, or a transcript thereof certified by the county clerk in whose office it may have been recorded, may be read in evidence in any court in this state with like effect as the original thereof or the original lost deed or patent. [Amended by 1967 c 421 §197]

93.240 Rights to deferred instalments of purchase price where two or more persons join as sellers in contract of sale of real property. (1) Subject to the provisions contained in this section, whenever two or more persons join as sellers in the execution of a contract of sale of real property, unless a contrary purpose is expressed in the contract, the right to receive payment of deferred instalments of the purchase price shall be owned by them in the same proportions, and with the same incidents, as title to the real property was vested in them immediately preceding the execution of the contract of sale.

(2) If immediately prior to the execution of a contract of sale of real property title to any interest in the property therein described was vested in the sellers or some of the sellers as tenants by the entirety or was otherwise subject to any right of survivorship, then, unless a contrary purpose is expressed in the contract, the right to receive payment of deferred instalments of the purchase price of the property shall likewise be subject to like rights of survivorship.

(3) Nothing contained in this section shall be deemed to modify or amend the provisions of ORS 118.010 (4) relating to inheritance taxes payable by reason by succession by survivorship as provided by subsection (2) of this section. [1957 c 402 §§1, 2, 1969 c.591 §276]

93.250 Effect of conveyance creating fee simple conditional or fee tail. Every conveyance or devise of lands, or interest therein, made subsequent to September 9, 1971, using language appropriate to create a fee simple conditional or fee tail estate shall create an estate in fee simple absolute in the grantees or devisees of such conveyances or devises. Any future interest limited upon such an interest is a limitation upon the fee simple absolute and its validity is determined accordingly. [1971 c 382 §1]

93.260 Tax statement information required in conveyancing instrument. (1) All instruments prepared for the purpose of con-

veying or contracting to convey fee title to any real estate shall contain on the face of such instruments a statement in substantially the following form:

Until a change is requested, all tax statements shall be sent to the following address:

(2) Failure to contain the statement required by this section does not invalidate the conveyance and if an instrument is recorded without the statement required by this section, the recording is valid.

(3) This section applies to all instruments executed after January 1, 1974. [1973 c 422 §2]

93.270 Certain discriminatory restrictions in conveyancing instruments prohibited. (1) No person conveying or contracting to convey fee title to real property shall include in an instrument for such purpose a provision restricting the use of the real property by any person or group of persons by reason of color, race, religion or national origin.

(2) Any such provision in an instrument executed in violation of subsection (1) of this section is void and unenforceable. [1973 c 258 §1]

93.280 Manner of conveyance to create joint property rights. (1) Any person or persons owning real property which the person or persons have power to convey may convey such property by a conveyance naming the person or persons and another person or persons, or one or more of themselves and another person or other persons, as grantees. The conveyance shall have the same effect as a conveyance from a stranger who owned the property to the persons named as grantees.

(2) Any two or more persons owning real property which they have power to convey may convey such property by a conveyance naming one, or more than one, of all such persons, as grantees. The conveyance shall have the same effect as a conveyance from a stranger who owned the property to the persons named as grantees.

(3) Any "person" mentioned in this section may be a married person, and any "persons" so mentioned may be married to each other. [1973 c 209 §§1, 2, 3]

UNIFORM VENDOR AND PURCHASER RISK ACT

93.290 Risk of loss after contract to sell realty has been executed. Any contract made on or after August 3, 1955, in this state for the

purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(1) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that the purchaser has paid;

(2) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is the purchaser entitled to recover any portion thereof that the purchaser has paid. [1955 c 144 §1]

93.295 Construction of ORS 93.290 to 93.300. ORS 93.290 to 93.300 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the Uniform Vendor and Purchaser Risk Act. [1955 c 144 §2]

93.300 Short title. ORS 93.290 to 93.300 may be cited as the Uniform Vendor and Purchaser Risk Act. [1955 c 144 §3]

DESCRIPTIONS, INCLUDING THE OREGON COORDINATE SYSTEM

93.310 Rules for construing description of real property. The following are the rules for construing the descriptive part of a conveyance of real property, when the construction is doubtful, and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others, which are indefinite, unknown or false, does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road, or the thread of the stream, are included in the conveyance, except where the road or bed of the stream is held under another title.

(5) When tidewater is the boundary, the rights of the grantor to low watermark are included in the conveyance, and also the right of this state between high and low watermark.

(6) When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appears that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

93.320 Oregon Coordinate System; zones. (1) The systems of plane coordinates which have been established by the National Geodetic Survey of the National Ocean Service, formerly the United States Coast and Geodetic Survey, for defining and stating the positions of points on the surface of the earth within the State of Oregon are known and designated as the Oregon Coordinate System of 1927 and the Oregon Coordinate System of 1983.

(2) For the purpose of the use of these systems the state is divided into a "north zone" and a "south zone."

(3) The area included in the following counties on June 16, 1945, constitutes the north zone: Baker, Benton, Clackamas, Clatsop, Columbia, Gilliam, Grant, Hood River, Jefferson, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Washington, Wheeler and Yamhill.

(4) The area included in the following counties on June 16, 1945, constitutes the south zone: Coos, Crook, Curry, Deschutes, Douglas, Harney, Jackson, Josephine, Klamath, Lake, Lane and Malheur.

(5) Any document submitted for recording that utilizes an Oregon Coordinate System shall use only one specified zone and system for the entire document.

(6) The use of the term "Oregon Coordinate System" on any document submitted for filing as a public record is limited to coordinates based on the Oregon coordinate systems as defined in ORS 93.330 and must include appropriate system date and zone designations. [Amended by 1985 c.202 §1]

93.330 Definition. (1) For more precisely defining the Oregon coordinate systems, the following definitions by the National Geodetic Survey of the National Ocean Service are adopted:

(a) The Oregon Coordinate System of 1927, north zone, is a Lambert conformal projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 44 degrees 20 minutes and 46 degrees 00 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120 degrees 30 minutes west of Greenwich and the parallel 43 degrees 40 minutes north latitude. This origin is given the coordinates: x —2,000,000 survey feet and y —0 survey feet, where one survey foot equals 1,200 divided by 3,937 meters exactly.

(b) The Oregon Coordinate System of 1927, south zone, is a Lambert conformal projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 42 degrees 20 minutes and 44 degrees 00 minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120 degrees 30 minutes west of Greenwich and the parallel 41 degrees 40 minutes north latitude. This origin is given the coordinates: x —2,000,000 survey feet and y —0 survey feet, where one survey foot equals 1,200 divided by 3,937 meters exactly.

(c) The Oregon Coordinate System of 1983, north zone, is a Lambert conformal projection of the Geodetic Reference System of 1980, having standard parallels at north latitudes 44 degrees 20 minutes and 46 degrees 00 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120 degrees 30 minutes west of Greenwich and the parallel 43 degrees 40 minutes north latitude. This origin is given the coordinates: x —2,500,000 meters (8,202,099.74 feet) and y —0 meters (0 feet), where one foot equals 0.3048 meters exactly.

(d) The Oregon Coordinate System of 1983, south zone, is a Lambert conformal projection of the Geodetic Reference System of 1980, having standard parallels at north latitudes 42 degrees 20 minutes and 44 degrees 00 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120 degrees 30 minutes west of Greenwich and the parallel 41 degrees 40 minutes north latitude. This origin is given the coordinates: x —1,500,000 meters (4,921,259.84 feet) and y —0 meters (0 feet), where one foot equals 0.3048 meters exactly.

(2) The position of the Oregon Coordinate System shall be as marked on the ground by monumented horizontal control stations established in conformity with the standards and specifications adopted by the Federal Geodetic Control Committee for first-order and second-

order geodetic surveying, whose geodetic positions have been rigidly adjusted on the North American datum of 1927 or 1983, and whose coordinates have been computed on a system defined in this section. Any such station may be used for establishing a survey connection with the Oregon Coordinate System.

(3) Nothing in this section is intended to limit the use of any coordinate system not identified as the "Oregon Coordinate System." [Amended by 1985 c 202 §2]

93.340 [Repealed by 1985 c.202 §7]

93.350 Plane coordinates. The plane coordinates of a point on the earth's surface, used in expressing the position of such point, shall consist of two distances, expressed in meters and decimals of a meter or feet and decimals of a foot. One of these distances, to be known as the "x-coordinate," shall give the position in an east and west direction; the other, to be known as the "y-coordinate," shall give the position in a north and south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the Oregon Coordinate System, of the triangulation and traverse stations of the National Geodetic Survey of the National Ocean Service within the State of Oregon, as those coordinates have been determined by that survey. [Amended by 1985 c 202 §3]

93.360 Coordinates excluded from recordation. No coordinates based on the Oregon Coordinate System, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless:

(1) Those coordinates were established in conformity with the standards and specifications adopted by the Federal Geodetic Control Committee for third-order geodetic surveying and are based upon horizontal control stations established in conformity with ORS 93.330 (2); and

(2) That point is within one mile of a horizontal control station established in conformity with ORS 93.330 (2). However, an authorized state agency, city or county may modify the one-mile limitation to meet local conditions. [Amended by 1979 c 129 §1, 1985 c 202 §4]

93.370 Description as supplemental. Distances, angles and areas derived by the use of the Oregon Coordinate System in compliance with the standards described in ORS 93.360 may be used in the basic description of any tract of land. If the coordinates based on the Oregon Coordinate System are used in the description of any tract of land, they shall be used only in

addition to the basic description. [Amended by 1985 c.202 §5]

93.380 Purchaser or mortgagee not required to rely on description. Nothing contained in ORS 93.320 to 93.370 requires any purchaser or mortgagee to rely on a description, any part of which consists only of coordinates. [Amended by 1985 c 202 §6]

EXECUTION, ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

93.410 Execution and acknowledgment of deeds. Deeds executed within this state, of lands or any interest in lands therein, shall be signed by the grantors and may be acknowledged before any judge of the Supreme Court, circuit judge, county judge, justice of the peace or notary public within the state. No seal of the grantor, corporate or otherwise, shall be required on the deed. [Amended by 1965 c 502 §5; 1977 c.404 §1]

93.415 [Repealed by 1977 c.404 §2 (194 500 to 194.580 enacted in lieu of 93.415)]

93.420 Execution of deed where personal representative, guardian or conservator is unable or refuses to act. If any person is entitled to a deed from a personal representative, guardian or conservator who has died or resigned, has been discharged, disqualified or removed or refuses to execute it, the deed may be executed by the judge before whom the proceeding is pending or by the successor of the judge. [Amended by 1961 c.344 §104, 1969 c 591 §277]

93.430 [Repealed by 1977 c 404 §2 (194 500 to 194 580 enacted in lieu of 93 430)]

93.440 Proof of execution by subscribing witness. Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgments of deeds, and shall be made by a subscribing witness thereto, who shall state the place of residence of the witness, and that the witness knew the person described in and who executed the conveyance. Such proof shall not be taken unless the officer is personally acquainted with the subscribing witness, or has satisfactory evidence that the witness is the same person who was a subscribing witness to the instrument.

93.450 Proof where witnesses are dead or absent. When any grantor is dead, out of this state, or refuses to acknowledge the deed, and all the subscribing witnesses to the deed are also dead or reside out of this state, it may be proved before the circuit court, or any judge thereof, by proving the handwriting of the grantor and of any subscribing witness thereto.

93.460 Subpena to compel witness to testify to execution of deed. Upon the application of any grantee, or any person claiming under the grantee, verified by the oath of the applicant setting forth that the grantor is dead, out of the state, or refuses to acknowledge the deed, and that any witness to the conveyance residing in the county where the application is made refuses to appear and testify touching its execution and that the conveyance cannot be proven without the evidence of the witness, any officer authorized to take the acknowledgment or proof of conveyances may issue a subpoena requiring the witness to appear and testify before the officer touching the execution of the conveyance. [Amended by 1981 c 11 §2]

93.470 Indorsement of certificate of proof. Every officer who takes the proof of any conveyance shall indorse a certificate thereof, signed by the officer, on the conveyance. In the certificate the officer shall set forth those matters required by ORS 93.440 to 93.460 to be done, known or proved, together with the names of the witnesses examined before the officer, and their places of residence, and the substance of the evidence given by them.

93.480 Deed acknowledged or proved as evidence; recordability. Every conveyance acknowledged, proved or certified in the manner prescribed by law by any of the authorized officers may be read in evidence without further proof thereof and is entitled to be recorded in the county where the land is situated.

93.490 [Repealed by 1977 c 404 §2 (194 500 to 194 580 enacted in lieu of 93 490)]

93.500 [Repealed by 1977 c.404 §2 (194 500 to 194 580 enacted in lieu of 93 500)]

93.510 [Repealed by 1977 c.404 §2 (194 500 to 194 580 enacted in lieu of 93 510)]

93.520 [Repealed by 1977 c 404 §2 (194 500 to 194 580 enacted in lieu of 93 520)]

93.530 Execution, acknowledgment and recordation of assignments of sheriffs' certificates of sale. All assignments of sheriffs' certificates of sale of real property on execution or mortgage foreclosure shall be executed and acknowledged and recorded in the same manner as deeds of real property.

RECORDATION AND ITS EFFECTS

93.600 Description of real property for purposes of recordation. Unless otherwise prescribed by law, real property shall be described for recordation by giving the subdivision according to the United States survey when coincident

with the boundaries thereof, or by lots, blocks and addition names, or by giving the boundaries thereof by metes and bounds, or by reference to the book and page of any public record of the county where the description may be found or in such other manner as to cause the description to be capable of being made certain. However, description by tax lot number shall not be adequate. Initial letters, abbreviations, figures, fractions and exponents, to designate the township, range, section or part of a section, or the number of any lot or block or part thereof, or any distance, course, bearing or direction, may be employed in any such description of real property. [1987 c 586 §2]

93.610 Separate books for recording deeds and mortgages. Separate books shall be provided by the county clerk in each county for the recording of deeds and mortgages. In one book all deeds left with the clerk shall be recorded at full length, or as provided in ORS 93.780 to 93.800, with the certificates of acknowledgment or proof of their execution, and in the other all mortgages left with the county clerk shall in like manner be recorded. All other real property interests provided by law shall be recorded in the records maintained under ORS 205.130. [Amended by 1969 c 583 §1, 1987 c 586 §21]

93.620 Time and place of receipt for record; certification. The county clerk shall certify upon every conveyance recorded by the county clerk the time when it was received and a reference to the book and page where it is recorded. Every conveyance is considered recorded at the time it was so received.

93.630 Index of records of deeds, mortgages and other real property interests. The county clerk shall also keep a proper index, direct and inverted, to the books for the recording of deeds, mortgages and all other real property interests provided by law, in which the county clerk shall enter, alphabetically, the name of every party to each instrument recorded by the county clerk, with a reference to the book and page where it is recorded. [Amended by 1987 c 586 §22]

93.635 Acknowledgment and recording of instruments contracting to convey fee title. (1) All instruments contracting to convey fee title to any real property, at a time more than 12 months from the date that the instrument is executed and the parties are bound, shall be acknowledged, in the manner provided for acknowledgment of deeds, by the conveyor of the title to be conveyed. Except for those instruments listed in subsection (2) of this section, all such instruments, or a memorandum thereof, shall be recorded by the conveyor not later than 15 days

after the instrument is executed and the parties are bound thereby.

(2) The following instruments contracting to convey fee title to any real property may be recorded as provided in subsection (1) of this section, but that subsection does not require such recordation of:

- (a) Earnest money or preliminary sales agreements;
- (b) Options; or
- (c) Rights of first refusal. [1975 c.618 §4, 1977 c.724 §1, 1987 c 586 §23]

93.640 Unrecorded instrument affecting title or unrecorded assignment of sheriff's certificate of sale void as to subsequent purchaser. (1) Every conveyance, deed, land sale contract or other agreement or memorandum thereof affecting the title of real property within this state which is not recorded as provided by law is void as against any subsequent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance, deed, land sale contract or other agreement or memorandum thereof is first filed for record, and as against the heirs and assigns of such subsequent purchaser. As used in this section, "every conveyance, deed, land sale contract or other agreement or memorandum thereof affecting the title of real property" includes mortgages, trust deeds, and assignments for security purposes given by purchasers under land sale contract. As used in this section, "memorandum" means an instrument that contains the date of the instrument being memorialized, the names of the parties, a legal description of the real property involved, and the nature of the interest created, which is signed by the person from whom the interest is intended to pass, and acknowledged or proved in the manner provided for the acknowledgment or proof of deeds. A memorandum of an instrument conveying or contracting to convey fee title to any real estate shall state on its face the true and actual consideration paid for such transfer as provided in ORS 93.030.

(2) Every assignment of sheriffs' certificates of sale of real property on execution or mortgage foreclosure which is not recorded in the records of deeds in the county where the land is situated within five days after its execution is void as against any subsequent purchaser in good faith and for a valuable consideration of such certificate of sale, or the real property covered thereby, or any portion thereof, whose assignment is first recorded. [Amended by 1973 c 696 §19, 1977 c 605 §2, 1987 c 225 §1]

Note: Section 5, chapter 225, Oregon Laws 1987, provides

Sec. 5. The amendments to ORS 93 640, 93 710, 93.935 and 93 940 by sections 1, 2, 3 and 4 of this Act do not constitute a change in, but are declaratory of, existing law and shall apply to all mortgages, trust deeds, assignments for security purposes and other interests referred to in said sections, whether executed or recorded on, before or after the effective date of this Act [June 3, 1987] [1987 c 225 §5]

93.643 Method of giving constructive notice of interest in real property. (1) To give constructive notice of an interest in real property, a person must have documentation of the interest recorded in the indices maintained under ORS 205.130 in the county where the property is located. Such recordation, and no other record, constitutes constructive notice to any person of the existence of the interest, except as provided in ORS 18.350, 311.405 and ORS chapters 87, 223, 450, 451, 452, 453, 454, 455, 456 and local government charters.

(2) Notwithstanding the provisions of this section:

(a) A judgment lien shall be created against all real property of the judgment debtor as provided in ORS 18.320 and 18.350.

(b) A lien shall be created against all real property of the person named in an order or warrant as provided in ORS 205.125 if the order or warrant is recorded in the County Clerk Lien Record. [1987 c 586 §2a]

93.645 Priority of purchaser; extinguishing judgment lien; right of judgment creditor; "judgment" defined. (1) The interest of the purchaser, the heirs and assigns of the purchaser, under a contract for the purchase and sale of realty, if such contract or memorandum thereof has been recorded in deed records, shall have priority over the lien of any subsequent judgment against the seller of the property, the heirs and assigns of the seller, and conveyance in fulfillment of said contract shall extinguish the lien of any such judgment.

(2) Subsection (1) of this section shall not be construed to limit the right of a judgment creditor to execute upon a vendor's interest in a land sales contract.

(3) For the purposes of subsection (1) of this section, "judgment" includes any lien which by law becomes a lien upon real property in the same manner as a judgment, and includes a judgment or any such lien in favor of the State of Oregon and its agencies. [1975 c 270 §§1, 2, 3]

93.650 Effect of record or certified transcript in evidence. The record of a con-

veyance duly recorded, or a transcript thereof certified by the county clerk in whose office it is recorded may be read in evidence in any court in the state, with the like effect as the original conveyance. However, the effect of such evidence may be rebutted by other competent testimony.

93.660 Effect of abstract of title as evidence. Any abstract of title to real property in this state certified by any person regularly engaged in this state in the business of preparing and certifying such abstracts shall be received in all courts as prima facie evidence of the existence, condition and nature of the record of all deeds, mortgages and other instruments, conveyances or liens shown or mentioned in the abstract as affecting the property, and that the record is as described in such abstract.

93.670 Power of attorney and executory contract for sale or purchase of lands; recordability; effect as evidence; revocation. (1) Every letter of attorney, or other instrument containing a power to convey lands, as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed for the acknowledgment or proof of conveyances, may be recorded in the county clerk's office of any county in which the lands to which such power or contract relates is situated. When so acknowledged or proved, such letter, instrument or contract, and the record thereof when recorded, or the certified transcript of such record, may be read in evidence in any court in this state without further proof of the same.

(2) No letter of attorney, or other instrument so recorded, is deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

93.680 Patents, judgments and official grants; recordability; evidence. (1) The following are entitled to be recorded in the record of deeds of the county in which the lands lie, in like manner and with like effect as conveyances of land duly acknowledged, proved or certified:

(a) The patents from the United States or of this state for lands within this state.

(b) Judgments of courts in this state requiring the execution of a conveyance of real estate within this state.

(c) Approved lists of lands granted to this state, or to corporations in this state.

(d) Conveyances executed by any officer of this state by authority of law, of lands within this state.

(2) The record of any such patent, judgment, approved lists or deeds recorded, or a transcript thereof certified by the county clerk in whose office it is recorded, may be read in evidence in any court in this state, with like effect as the original. [Amended by 1979 c 284 §93]

93.690 Recording of instruments evidencing passage of title to land from United States to State of Oregon. (1) The Director of the Division of State Lands shall forward all patents and clear lists of land and other documents evidencing that title to land has passed from the United States to the State of Oregon, which have been or shall be received by the State of Oregon, to the officer in each county of the state in which any of such land is situated whose duty it is to record conveyances of real estate. Upon the receipt of such patents, clear lists or other documents, the recording officer of the county shall, without charging or collecting any fee therefor, forthwith record the instruments in the records of deeds of the county and index them in the manner provided for indexing deeds. When the recording officer has properly recorded such instruments the recording officer shall return them to the Director of the Division of State Lands.

(2) When any such instrument includes land in more than one county, the record of the instrument in each county need include only the description of the land lying wholly or partly in that county and all other land may be indicated as omitted.

93.710 Instruments or memoranda creating certain interests in realty; reforestation order; effect of recording. (1) Any instrument creating a license, easement, profit a prendre, or a leasehold interest or oil, gas or other mineral interest or estate in real property or an interest in real property created by a land sale contract, or memorandum of such instrument or contract, which is executed by the person from whom the interest is intended to pass, and acknowledged or proved in the manner provided for the acknowledgment or proof of other conveyances, may be indexed and recorded in the records of deeds of real property in the county where such real property is located. Any instrument creating a mortgage, trust deed, or assignment for security purposes relating to any of the interests or estates in real property referred to in this subsection, which is executed by the person from whom the mortgage, trust deed, or assignment for security purposes is intended to be given, and acknowledged or proved in the manner provided for the acknowledgment or proof of other conveyances, may be indexed and recorded

in the records of mortgages of real property in the county where such real property is located. Such recordation, whether the instrument be recorded prior to or subsequent to May 29, 1963, constitutes notice to third persons of the rights of the parties under the instrument irrespective of whether the party granted such interest or estate is in possession of the real property. Any such instrument when so acknowledged or proved, or certified in the manner prescribed by law by any of the authorized officers, may be read in evidence without further proof thereof.

(2) Any notice under ORS 527.710 or order under ORS 527.680 by the State Forester requiring the reforestation of specific lands may be indexed and recorded in the records of deeds of real property in the county where such real property is located. Such recordation constitutes notice to third persons of the rights and obligations of the parties to the notice or order. Any such notice or order when properly prepared in the manner prescribed by law by any of the authorized officers may be read in evidence without further proof thereof.

(3) As used in this section, "memorandum" means an instrument that contains the date of the instrument being memorialized, the names of the parties, a legal description of the real property involved and the nature of the interest created which is signed by the person from whom the interest is intended to pass, and acknowledged or proved in the manner provided for the acknowledgment or proof of deeds. A memorandum of an instrument conveying or contracting to convey fee title to any real estate shall state on its face the true and actual consideration paid for such transfer as provided in ORS 93.030. [Amended by 1963 c 416 §1; 1973 c 696 §20; 1977 c 605 §3; 1983 c 759 §2; 1987 c 225 §2]

Note: See note under 93 640.

93.720 [Amended by 1985 c 540 §28; repealed by 1987 c 586 §49]

93.730 Recordation of decrees in other counties. A certified copy of any judgment, decree or order of confirmation affecting lands in this state made in any suit may be recorded in the records of deeds in any county in which the land affected is wholly or partly situated by any party interested in the land or suit. After the transcript is so recorded, the decree is notice to all persons of such suit and the judgment, order or decree, as completely as if the entire proceedings were had originally in the county in which the transcript is recorded. The record of the transcript is prima facie evidence of title as therein determined.

93.740 Notice of lis pendens; contents; recordation; effect; discharge. (1) In all suits

in which the title to or any interest in or lien upon real property is involved, affected or brought in question, any party thereto at the commencement of the suit, or at any time during the pendency thereof, may have recorded by the county clerk or other recorder of deeds of every county in which any part of the premises lies a notice of the pendency of the action containing the names of the parties, the object of the suit, and the description of the real property in the county involved, affected, or brought in question, signed by the party or the attorney of the party. From the time of recording the notice, and from that time only, the pendency of the suit is notice, to purchasers and incumbrancers, of the rights and equities in the premises of the party filing the notice. The notice shall be recorded in the same book and in the same manner in which mortgages are recorded, and may be discharged in like manner as mortgages are discharged, either by such party or the attorney signing the notice.

(2) Unless otherwise prescribed by law, a party recording a notice of pendency shall use substantially the following form:

**NOTICE OF PENDENCY
OF AN ACTION**

Pursuant to ORS 93.740, the undersigned states:

1. As plaintiff(s), _____, has filed an action in the _____ Court for _____ County, State of Oregon;
2. The defendant(s) is/are: _____
_____;
3. The object of the action is: _____
_____;
4. The description of the real property to be affected is:

Dated this _____ day of _____,
_____.

Plaintiff or
Plaintiff's attorney

Name: _____

Address: _____

Phone No.: _____
 STATE OF OREGON)
) ss.
 County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19____ by _____.

 Notary Public for Oregon

My commission expires: _____
 STATE OF OREGON)
) ss.
 County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19____ by _____ of _____, a corporation, on behalf of the corporation.

 Notary Public for Oregon

My commission expires: _____

[Amended by 1987 c 586 §24]

93.750 Recordability of telegraphic copies of powers of attorney and other acknowledged instruments. Any power of attorney, or other instrument in writing, proved or acknowledged, and certified, so as to be entitled to record, may, together with the certificate or proof or acknowledgment, be sent by telegraph. The telegraphic copy, as defined in ORS 165.840, shall prima facie have the same effect in all respects and may be admitted to record and be recorded in the same manner and with like effect as the original.

93.760 Recordability of documents, orders and decrees of the United States District Court. Copies of documents, orders and decrees in proceedings in the District Court of the United States for the District of Oregon, which have been certified by the clerk of such court, and which affect title to real property in this state, shall be entitled to be recorded in the deed records of any county in which such real property is located. [Amended by 1985 c.540 §46; 1987 c.586 §47]

93.770 Recordability of petitions, orders and decrees under National Bankruptcy Act. Copies of any petition, with the schedules omitted, and copies of orders and decrees filed or made and entered in any proceeding under the National Bankruptcy Act which have been certified by the clerk of the United States District Court for the District of Oregon,

shall be entitled to be recorded in the deed records of any county where the bankrupt owns or has an interest in real property.

93.780 Place of recording of instrument containing clauses of a mortgage or trust deed; county clerk to do recording; "Master Form." An instrument containing a form or forms of covenants, conditions, obligations, powers and other clauses of a mortgage or a trust deed may be recorded in any county. The county clerk, upon request of any person and on tender of the required fee, shall record the instrument. The instrument shall be entitled "Master Form" and recorded in the name of the entity or person causing it to be recorded. [1969 c.583 §2]

93.790 Effect of recording master form instrument; effect of incorporation by reference in mortgage or trust deed; effect of deviation. (1) After the master form instrument is recorded pursuant to ORS 93.780, any provisions of such instrument may be incorporated by reference in any mortgage or trust deed of real estate situated within this state, if the reference in the mortgage or trust deed states that:

(a) The master form instrument was recorded in the county in which the mortgage or trust deed is offered for record;

(b) The date when and the book and page or pages where the master form instrument was recorded; and

(c) A copy of the master form instrument was furnished to the party executing the mortgage or trust deed at or before the time of its execution.

(2) The recording of any mortgage or trust deed which has incorporated by reference any provision of a master form instrument recorded as provided in ORS 93.780 has like effect as if the incorporated provisions were set forth fully in the mortgage or trust deed.

(3) In the event any instrument recorded as provided in subsections (1) and (2) of this section should deviate in any respect from a recorded master form, that portion that deviates from the master form shall not be deemed notice to third parties. [1969 c.583 §§3, 5]

93.800 Matter not to be recorded when accompanying mortgage or trust deed; liability for nonrecording. (1) No county clerk shall record matter accompanying a mortgage or trust deed presented for recording if such matter:

(a) Purports to be copied or reproduced from a master form instrument recorded and identified as required by ORS 93.780;

(b) Is preceded by the words "do not record" or "not to be recorded"; and

(c) Is separated from the mortgage or trust deed so that it will not appear on a photographic reproduction of any page containing a part of the mortgage or trust deed.

(2) Notwithstanding any law to the contrary, no recorder is liable for failing to record matter the recorder is prohibited from recording by subsection (1) of this section. [1969 c.583 §4]

VALIDATING AND CURATIVE ACTS

93.810 Validating and curative Acts.

The following are subjects of validating or curative Acts applicable to this chapter:

(1) Evidentiary effect and recordation of conveyances before 1854.

(2) Evidentiary effect and recordation of certified copies of deeds issued by State Land Board prior to 1885 where original deed was lost.

(3) Defective acknowledgments of married women to conveyances prior to 1891.

(4) Foreign instruments executed prior to 1903.

(5) Deeds of married women before 1907, validity; executed under power of attorney and record as evidence.

(6) Conveyances by reversioners and remaindermen to life tenant.

(7) Decrees affecting lands in more than one county.

(8) Irregular deeds and conveyances; defective acknowledgments; irregularities in judicial sales; sales and deeds of executors, administrators, conservators and guardians; vested rights arising by adverse title; recordation,

(9) Defective acknowledgments.

(10) Title to lands from or through aliens.

[Amended by 1973 c 823 §96]

DEED FORMS

93.850 Warranty deed form; effect. (1)

Warranty deeds may be in the following form:

_____, Grantor, conveys and warrants to _____, Grantee, the following described real property free of encumbrances except as specifically set forth herein: (Describe the property conveyed.)

(If there are to be exceptions to the covenants described in paragraph (c) of subsection (2) of this section, here insert such exceptions.) The true consideration for this conveyance is \$_____. (Here comply with the requirements of ORS 93.030.)

Dated this _____ day of _____, 19__

(2) A deed in the form of subsection (1) of this section shall have the following effect:

(a) It shall convey the entire interest in the described property at the date of the deed which the deed purports to convey.

(b) The grantor, the heirs, successors and assigns of the grantor, shall be forever estopped from asserting that the grantor had, at the date of the deed, an estate or interest in the land less than that estate or interest which the deed purported to convey and the deed shall pass any and all after acquired title.

(c) It shall include the following covenants, each of which shall run in favor of the grantee and the successors in title of the grantee as if written in the deed:

(A) That at the time of the delivery of the deed the grantor is seized of the estate in the property which the grantor purports to convey and that the grantor has good right to convey the same.

(B) That at the time of the delivery of the deed the property is free from encumbrances except as specifically set forth on the deed.

(C) That the grantor warrants and will defend the title to the property against all persons who may lawfully claim the same.

(3) If the grantor desires to exclude any encumbrances or other interests from the scope of the covenants of the grantor, such exclusions must be expressly set forth on the deed. [1973 c.194 §1]

93.855 Special warranty deed form;

effect. (1) Special warranty deeds may be in the following form:

_____, Grantor, conveys and specially warrants to _____, Grantee, the following described real property free of encumbrances created or suffered by the grantor except as specifically set forth herein: (Describe the property conveyed.)

(If there are to be exceptions to the covenants described in this section, here insert such exceptions.

The true consideration for this conveyance is \$_____. (Here comply with the requirements of ORS 93.030.)

Dated this _____ day of _____, 19__

(2) A deed in the form of subsection (1) of this section shall have the same effect as a warranty deed as described in ORS 93.850, except that the covenant of freedom from encumbrances shall be limited to those encumbrances created or suffered by the grantor and the covenant of warranty shall be limited to read: That the grantor warrants and will defend the title to the property against all persons who may lawfully claim the same by, through or under the grantor.

(3) If the grantor desires to exclude any encumbrances or other interests from the scope of the covenants of the grantor, such exclusions must be expressly set forth on the deed. [1973 c.194 §2]

93.860 Bargain and sale deed form; effect. (1) Bargain and sale deeds may be in the following form:

-----, Grantor, conveys to -----, Grantee, the following described real property: (Describe the property conveyed.)

The true consideration for this conveyance is \$---. (Here comply with the requirements of ORS 93.030.)

Dated this ----- day of -----, 19--.

(2) A deed in the form of subsection (1) of this section shall have the following effect:

(a) It shall convey the entire interest in the described property at the date of the deed which the deed purports to convey.

(b) The grantor, the heirs, successors and assigns of the grantor, shall be forever estopped from asserting that the grantor had, at the date of the deed, an estate or interest in the land less than that estate or interest which the deed purported to convey and the deed shall pass any and all after acquired title.

(3) A bargain and sale deed shall not operate to provide any covenants of title in the grantee and the successors of the grantee. [1973 c 194 §3]

93.865 Quitclaim deed form; effect. (1) Quitclaim deeds may be in the following form:

-----, Grantor, releases and quitclaims to -----, Grantee, all right, title and interest in and to the following described real property: (Describe the property conveyed.)

The true consideration for this conveyance is \$---. (Here comply with the requirements of ORS 93.030.)

Dated this ----- day of -----, 19--

(2) A deed in the form of subsection (1) of this section shall have the effect of conveying whatever title or interest, legal or equitable, the grantor may have in the described property at the date of the deed but shall not transfer any title or interest which the grantor may thereafter obtain nor shall it operate as an estoppel.

(3) A grantee taking title by way of a quitclaim deed shall not, merely because of receipt of title by or through such a deed, be denied the status of a good faith purchaser for value. [1973 c.194 §4]

93.870 Statutory deed forms optional. The form of deeds set forth in ORS 93.850 to 93.865 are permissive and not mandatory. Other forms of deeds may be used for the conveyance of real property. [1973 c.194 §5]

FORFEITURE UNDER LAND SALES CONTRACT

93.905 Definitions for ORS 93.905 to 93.940. As used in ORS 93.905 to 93.940, unless the context requires otherwise:

(1) "Contract for transfer or conveyance of an interest in real property" shall not include earnest money or preliminary sales agreements, options or rights of first refusal.

(2) "Forfeiture remedy" means the non-judicial remedy whereby the seller cancels the contract for default, declares the purchaser's rights under the contract to be forfeited, extinguishes the debt and retains sums previously paid thereunder by the buyer.

(3) "Purchase price" means the total price for the interest in the real property as stated in the contract, including but not limited to down payment, other property or value given or promised for which a dollar value is stated in the contract and the balance of the purchase price payable in instalments, not including interest. If the contract provides for the conveyance of an interest in more than one parcel of property, the purchase price shall include only the portion of the price attributable to the remaining, unconveyed interest in real property, if the value thereof is separately stated or can be determined from the terms of the contract.

(4) "Purchaser" means any person who by voluntary transfer acquires a contractual interest in real property, any successor in interest to all or any part of the purchaser's contract rights of whom the seller has actual or constructive notice, and any person having a subordinate lien or encumbrance of record, including, but not limited

to, a mortgagee, a beneficiary under a trust deed and a purchaser under a subordinate contract for transfer or conveyance of an interest in real property.

(5) "Seller" means any person who transfers or conveys an interest in real property, or any successor in interest of the seller.

(6) "Unpaid balance" means the sum of the unpaid principal balance, accrued unpaid interest and any sums actually paid by the seller on behalf of the purchaser for items required to be paid by the purchaser, including amounts paid for delinquent taxes, assessments or liens, or to obtain or reinstate required insurance. [1985 c 718 §1]

93.910 Enforcement of forfeiture remedy after notice of default. Whenever a contract for transfer or conveyance of an interest in real property provides a forfeiture remedy, whether the remedy is self-executing or is optional, forfeiture of the interest of a purchaser in default under the contract may be enforced only after notice of the default has been given to the purchaser as provided in ORS 93.915, notwithstanding any provision in the contract to the contrary. [1985 c 718 §2]

93.915 Notice of default; contents; recordation; time of forfeiture. (1) In the event of a default under a contract for conveyance of real property, a seller who wishes to enforce a forfeiture remedy must give written notice of default by service pursuant to ORCP 7 D.(2) and 7 D.(3), or by both first class and certified mail with return receipt requested, to the last-known address of the following persons or their legal representatives, if any:

(a) The purchaser.

(b) An occupant of the property.

(c) Any person who has caused to be filed for record in the county clerk's office of a county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of default served upon or mailed to the purchaser. The request shall contain the name and address of the person requesting copies of the notice and shall identify the contract by stating the names of the parties to the contract, the date of recordation of the contract and the book and page where the contract is recorded. The county clerk shall immediately make a cross reference of the request to the contract, either on the margin of the page where the contract is recorded or in some other suitable place. No request, statement or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person

that any person so recording the request has any right, title, interest in, lien or charge upon the property referred to in the contract.

(2) Notices served by mail are effective when mailed.

(3) The notice shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than:

(a) Sixty days, when the purchaser has reduced the unpaid balance to an amount greater than 75 percent of the purchase price;

(b) Ninety days, when the purchaser has reduced the unpaid balance to an amount which is more than 50 percent but less than 75 percent of the purchase price; or

(c) One hundred twenty days, when the purchaser has reduced the unpaid balance to an amount which is 50 percent or less of the purchase price.

(4) The seller shall cause to be recorded in the real property records of each county in which any part of the property is located a copy of the notice, together with an affidavit of service or mailing of the notice of default, reciting the date the notice was served or mailed and the name and address of each person to whom it was given. From the date of recording, the notice and affidavit shall constitute constructive notice to third persons of the pending forfeiture. If, not later than one year after the time for cure stated in a recorded notice and affidavit or any recorded extension thereof, no declaration of forfeiture based upon the recorded notice and affidavit has been recorded and no extension of time for cure executed by the seller has been recorded, the notice and affidavit shall not be effective for any purpose nor shall it impart any constructive or other notice to third persons acquiring an interest in the purchaser's interest in the contract or the property or any portion of either. Any extension of time for cure executed by the seller shall be recorded in the same manner as the original notice and affidavit.

(5) The statement contained in the notice as to the time after which the contract will be forfeited if the default is not cured shall conclusively be presumed to be correct, and the notice adequate, unless one or more recipients of such notice notifies the seller or the attorney for the seller, by registered or certified mail, that

such recipient claims the right to a longer period of time in which to cure the default. [1985 c.718 §3; 1987 c 717 §1]

93.920 Curing default to avoid forfeiture; payment of costs and expenses. A purchaser in default may avoid a forfeiture under the contract by curing the default or defaults before expiration of the notice period provided in ORS 93.915. If the default consists of a failure to pay sums when due under the contract, the default may be cured by paying the entire amount due, other than sums that would not then be due had no default occurred, at the time of cure under the terms of the contract. Any other default under the contract may be cured by tendering the performance required under the contract. In addition to paying the sums or tendering the performance necessary to cure the default, the person effecting the cure of the default shall pay all costs and expenses actually incurred in enforcing the contract, including, but not limited to, late charges, attorney fees not to exceed \$350 and costs of title search. [1985 c.718 §4; 1987 c 717 §2]

93.925 Failure to cure default; exclusiveness of notice. Notwithstanding a seller's waiver of prior defaults, if notice is given and purchaser does not cure the default within the period specified in ORS 93.915, the contract forfeiture remedy may be exercised and the contract shall not be reinstated by any subsequent offer or tender of performance. The notice required in ORS 93.915 shall be in lieu of any notice that may be required under the terms of the contract itself, except where greater notice or notice to persons other than those described in ORS 93.915 is required by the terms of the contract, in which case notice shall be given for such longer period of time and to such additional persons as required by the contract. [1985 c 718 §5]

93.930 Recording affidavit after forfeiture; affidavit as evidence. (1) When a contract for conveyance of real property has been forfeited in accordance with its terms after the seller has given notice to the purchaser as provided in ORS 93.915, the seller shall record an affidavit with the property description, a copy of the notice of default and proof of mailing attached, setting forth that the default of the purchaser under the terms of the contract was not cured within the time period provided in ORS 93.915 and that the contract has been forfeited. When the affidavit is recorded in the deed records of the county where the property described therein is located, the recitals contained in the affidavit shall be prima facie evidence in any court of the truth of the matters set forth therein, but the recitals shall be conclusive in favor of a

purchaser for value in good faith relying upon them.

(2) Except as otherwise provided in ORS 93.905 to 93.945 and except to the extent otherwise provided in the contract or other agreement with the seller, forfeiture of a contract under ORS 93.905 to 93.930 shall have the following effects:

(a) The purchaser and all persons claiming through the purchaser who were given the required notices pursuant to ORS 93.915, shall have no further rights in the contract or the property and no person shall have any right, by statute or otherwise, to redeem the property. The failure to give notice to any of these persons shall not affect the validity of the forfeiture as to persons so notified;

(b) All sums previously paid under the contract by or on behalf of the purchaser shall belong to and be retained by the seller or other person to whom paid; and

(c) All of the rights of the purchaser to all improvements made to the property at the time the declaration of forfeiture is recorded shall be forfeited to the seller and the seller shall be entitled to possession of the property on the 10th day after the declaration of forfeiture is recorded. Any persons remaining in possession after that day under any interest, except one prior to the contract, shall be deemed to be tenants at sufferance. Such persons may be removed from possession by following the procedures set out in ORS 105.105 to 105.165 or other applicable judicial procedures.

(3) After the declaration of forfeiture is recorded, the seller shall have no claim against the purchaser and the purchaser shall not be liable to the seller for any portion of the purchase price unpaid or for any other breach of the purchaser's obligations under the contract. [1985 c 718 §6; 1987 c 717 §3]

93.935 Effect of purchaser's abandonment or reconveyance on interest, lien or claim. (1) In the event of a default under a contract for conveyance of real property, the recorded interest, lien or claim of a person with respect to the real property, by virtue of an assignment, conveyance, contract, mortgage, trust deed or other lien or claim from or through a purchaser, shall not be affected by the purchaser's abandonment or reconveyance to the seller unless the person is given notice in the manner specified in ORS 93.915.

(2) The notice shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the

purchaser's interest in the real property will be abandoned or reconveyed to the seller and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the purchaser's interest will be abandoned or reconveyed to the seller may not be less than:

(a) Sixty days, when the purchaser has reduced the unpaid balance to an amount greater than 75 percent of the purchase price;

(b) Ninety days, when the purchaser has reduced the unpaid balance to an amount which is more than 50 percent but less than 75 percent of the purchase price; or

(c) One hundred twenty days, when the purchaser has reduced the unpaid balance to an amount which is 50 percent or less of the purchase price.

(3) If the person having an interest, lien or claim with respect to the real property, by virtue of an assignment, conveyance, contract, mortgage, trust deed or other lien or claim from or through a purchaser whose interest arises under a contract for conveyance of real property, cures the default as provided in ORS 93.920 then such person's interest, lien or claim with respect to the real property shall not be affected by the purchaser's abandonment or reconveyance to the seller. [1985 c 718 §7, 1987 c 225 §3]

Note: See note under 93.640

93.940 Effect of seller's foreclosure or other action on interest, lien or claim. The recorded interest, lien or claim of a person with respect to the real property, by virtue of an assignment, conveyance, contract, mortgage, trust deed or other lien or claim from or through a purchaser whose interest arises under a contract for conveyance of real property, shall be not affected by the seller's foreclosure or other action on the contract unless such person is made a

party to the action brought by the seller to enforce or foreclose the contract. In such action, such person shall be entitled to the same rights and opportunities to cure the purchaser's default or satisfy the purchaser's obligations as are granted the purchaser. [1985 c 718 §8, 1987 c.225 §4]

Note: See note under 93.640

93.945 Application of ORS 93.905 to 93.940. (1) The provisions of ORS 93.910 to 93.930 shall apply only to forfeiture remedies enforced after July 13, 1985. The date that the initial written notice of a default is given to the purchaser shall be the date of enforcement of the forfeiture remedy.

(2) The provisions of ORS 93.935 and 93.940 shall apply to all contracts for transfer or conveyance of an interest in real property, whether executed on, before or after July 13, 1985. [1985 c 718 §§9, 10]

PENALTIES

93.990 Penalties. (1) The giving of a false statement of the true and actual consideration as required by ORS 93.030 is punishable, upon conviction, by a fine of not more than \$500.

(2) Any person served with the subpoena mentioned in ORS 93.460 who, without reasonable cause, refuses or neglects to appear, or appearing refuses to answer upon oath touching the matter mentioned in ORS 93.460 shall forfeit to the injured party \$100. The person may also be committed to prison as for a contempt by the officer who issued the subpoena until the person submits to answer on oath as aforesaid.

(3) Violation of ORS 93.635 is punishable, upon conviction, by a fine of not more than \$100. [Subsection (1) enacted as 1967 c 462 §2, subsection (3) enacted as 1975 c 618 §4, 1977 c 724 §2]