Chapter 19

1991 EDITION

Appeals

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

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

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

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

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

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

(6) "Clerk" means the trial court administrator under ORS 8.185 or trial court clerk under ORS 8.205 for the county in which the judgment or appealable order is filed and entered, or either.

(7) "Notice of appeal" includes a notice of cross appeal. [1959 c.558 §2; 1985 c.734 §2]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The date that the order disposing of the motion is entered in the register.

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

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

(4) Except as otherwise ordered by the appellate court, when more than one notice of appeal is filed, the date on which the last such notice was filed shall be used in determining the time for preparation of the transcript, filing briefs and other steps in connection with the appeal. [1959 c.558 §4; 1973 c.207 §4; 1979 c.284 §55; 1987 c.852 §5]

19.028 Filing of notice of appeal or review by mail. (1) Filing a notice of appeal in the Court of Appeals or the Supreme Court may be accomplished by mail. The date of filing such notice shall be the date of mailing, provided it is mailed by registered or certified mail and the party filing the notice has proof from the post office of such mailing date. Proof of mailing shall be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken. If the notice is received by the court on or before the date by which such notice is required to be filed, the party filing the notice is not required to file proof of mailing.

(2) Service of notice of appeal on a party, court reporter or the clerk of the trial court, or service of a petition for judicial review on a party or administrative agency may be accomplished by first class, registered or certified mail. The date of serving such notice shall be the date of mailing. Proof of mailing shall be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken.

(3) Except as otherwise provided by law, the provisions of subsections (1) and (2) of this section are applicable to petitions for judicial review, cross petitions for judicial review and petitions under the original jurisdiction of the Supreme Court or Court of Appeals. [1979 c.297 §1; 1985 c.734 §3; 1987 c.852 §6; 1989 c.768 §12]

19.029 Contents of notice of appeal; amendment of designation of record. (1) The notice of appeal shall contain the following:

(a) The title of the cause.

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

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

(d) A designation of those portions of the proceedings and exhibits to be included in the record in addition to the trial court file. The appellant may amend the designation of record at any time after filing the notice of appeal until 35 days after the transcript is filed by filing and serving in the same manner as a notice of appeal a notice of amended designation of record. The amended notice shall clearly indicate those portions of the proceedings and exhibits being added to or deleted from the original designation of record. The designation may not be later amended by the appellant unless the appellate court so orders.

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

an amended statement of points. Except by approval of the court, the appellant may then rely on no other points than those set forth in such amended statement.

(f) The signature of the appellant or attorney for the appellant.

(2) Within 14 days after the filing of the notice of appeal or notice of amended designation of record any other party may serve and file a designation of additional parts of the proceedings and exhibits to be included in the record. Such designation shall be served and filed as provided for the serving and filing of a notice of appeal under ORS 19.023 and 19.028. If such party also appeals, the designation shall be included in the notice of appeal of the party and shall not be served and filed separately.

(3) The reporter shall prepare a transcript of such parts of the proceedings as are designated pursuant to paragraph (d) of subsection (1) of this section and subsection (2) of this section. [1959 c.558 §5; 1971 c.565 §6; 1973 c.207 §5; 1983 c.621 §1; 1985 c.734 §4]

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

19.033 Jurisdictional effect of filing notice; jurisdictional requirements; relief from nonjurisdictional errors; trial court jurisdiction to enter appealable judgment; end of appellate court jurisdiction. (1) When the notice of appeal has been served and filed as provided in ORS 19.023, 19.026 and 19.029, the Supreme Court or the Court of Appeals shall have jurisdiction of the cause, pursuant to rules of the court, but the trial court shall have such powers in connection with the appeal as are conferred upon it by law and shall retain jurisdiction for the purpose of allowance and taxation of attorney fees, costs and disbursements or expenses pursuant to rule or statute. If the trial court allows and taxes attorney fees, costs and disbursements or expenses after the notice of appeal has been served and filed, any necessary modification of the appeal shall be pursuant to rules of the appellate court.

(2) The following requirements of ORS 19.023, 19.026 and 19.029 are jurisdictional and may not be waived or extended:

(a) Service of the notice of appeal on all parties identified in the notice of appeal as adverse parties or, if the notice of appeal does not identify adverse parties, on all parties who have appeared in the action, suit or proceeding, as provided in ORS 19.023 (2)(a), within the time limits prescribed by ORS 19.026.

(b) Filing of the original of the notice of appeal with the Court of Appeals as provided in ORS 19.023 (3), within the time limits prescribed by ORS 19.026.

(3) After the Supreme Court or the Court of Appeals has acquired jurisdiction of the cause, the omission of a party to perform any of the acts required in connection with an appeal, or to perform such acts within the time required, shall be cause for dismissal of the appeal. In the event of such omission, the court, on motion of a party or on its own motion may dismiss the appeal. An appeal dismissed on a party's motion or on the court's own motion may be reinstated upon showing of good cause.

(4) Notwithstanding the filing of a notice of appeal, the trial court shall have jurisdiction, with leave of the appellate court, to enter an appealable judgment if the appellate court determines that:

(a) At the time of the filing of the notice of appeal the trial court intended to enter an appealable judgment; and

(b) The judgment from which the appeal is taken is defective in form or was entered at a time when the trial court did not have jurisdiction of the cause under subsection (1) of this section, or the trial court had not yet entered an appealable judgment.

(5) Notwithstanding the filing of a notice of appeal, the trial court shall have jurisdiction to enter an order under ORCP 71.

(6) Jurisdiction of the appellate court over a cause ends when a copy of the appellate judgment is mailed by the State Court Administrator to the court from which the appeal was taken pursuant to ORS 19.190, except that the appellate court may recall the appellate judgment as justice may require. After jurisdiction of the appellate court ends, all orders which may be necessary to carry the appellate judgment into effect shall be made by the court from which the appeal was taken. [1959 c.558 §6; 1969 c.198 §38; 1971 c.565 §7; 1983 c.673 §22; 1983 c.740 §4; 1985 c.734 §5; 1989 c.195 §1]

19.034 Determination of whether decision is appealable in trial or appellate court; summary procedure; effect of determination. (1) Notwithstanding ORS 19.033, if any party or the trial court on its own motion, on receiving actual notice of the filing of the notice of appeal, raises the issue whether the decision being appealed is appealable, the trial court shall have jurisdiction to make a summary determination, with or without a hearing, whether the decision is appealable. As used in this section, "decision" means any trial court ruling, either oral or written.

(2) If the trial court determines that the decision is not appealable, the trial court, in its discretion, may proceed through entry of

judgment or stay proceedings pending an appellate court determination of the existence of an appealable decision. The trial court may refer the question of the existence of an appealable decision to the court to which the appeal is taken. Neither an order by the trial court to proceed through entry of judgment, an order by the trial court to stay proceedings pending an appellate court determination, nor a trial court referral of the question of the existence of an appealable decision to the appellate court is appealable. However, on motion of any party or on its own motion the appellate court may stay proceedings in the trial court or stay any order or judgment entered by the trial court pending a final determination of appealability.

(3) When a party by motion, the trial court by referral or the appellate court on its own motion raises the issue whether the decision is appealable, the appellate court may make a summary determination of the appealability of the decision. A summary determination of the appealability of a decision under this subsection is subject to review by the Supreme Court as provided in ORS 2.520 except that the petition for review shall be served and filed within 14 days after the date of the court's determination. Either the Court of Appeals or the Supreme Court may shorten the time period within which the petition for review shall be filed. A petition for review of a determination under this subsection shall not be treated as a request for reconsideration by the Court of Appeals. The Supreme Court shall expedite its review of the Court of Appeals' summary determination under this subsection.

(4)(a) The trial court's authority to proceed with a case under subsection (2) of this section shall end when the appellate court has made an express determination that an appeal has been taken from an appealable order or judgment, all means for obtaining review of that determination under subsection (3) of this section have been exhausted, and the State Court Administrator at the direction of the court has mailed copies of the final appellate court determination to the trial court and the parties; otherwise, the trial court's jurisdiction shall continue.

(b) No action by the trial court taken pursuant to subsections (1) and (2) of this section, except for entry of judgment, shall be void solely because an appellate court later determines that a notice of appeal was filed from an appealable decision. [1987 c.712 §2]

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

19.038 Filing of undertaking on appeal; exception to sureties or letter of credit issuers. (1) Except as provided in ORS 19.045, within 14 days after the filing of the notice of the appeal, the appellant shall serve on the adverse party or the attorney of the adverse party an undertaking as provided in ORS 19.040, and within such 14 days shall file with the clerk of the trial court the original undertaking, with proof of service indorsed thereon.

(2) Within 14 days after the service of the undertaking, the adverse party or the attorney of the adverse party may except to the sufficiency of the sureties or letter of credit issuers or the amount specified in the undertaking, or the adverse party shall be deemed to have waived the right thereto.

(3) The qualifications of sureties or letter of credit issuers in the undertaking on appeal shall be the same as in bail on arrest, and, if excepted to, they shall justify in like manner. [1959 c.558 §8; 1981 c.483 §1; 1983 c.673 §23; 1985 c.734 §6; 1991 c.331 §3]

19.040 Form of undertaking on appeal; minimum amount; conditions for stay of proceedings; enforcement against sureties or letter of credit issuer on dismissal of appeal; limit on liability of surety. (1) The undertaking of the appellant shall be given in the minimum amount of $500 unless otherwise fixed by the trial court with one or more sureties or in the form of one or more of irrevocable letters of credit issued by one or more commercial banks, as defined in ORS 706.005, to the effect that the appellant will pay all damages, costs and disbursements which may be awarded against the appellant on the appeal not exceeding the sum therein specified; but such undertaking does not stay the proceedings, unless the undertaking further provides to the effect following:

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

(b) If the judgment appealed from is for the recovery of the possession of real property, for a partition thereof, or the foreclosure of a lien thereon, that during the possession of such property by the appellant the appellant will not commit, or suffer to be committed, any waste thereon, and that if

such judgment or any part thereof is affirmed, the appellant will pay the value of the use and occupation of such property, so far as affirmed, from the time of the appeal until the delivery of the possession thereof, not exceeding the sum therein specified, to be ascertained and tried by the trial court or judge thereof.

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

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

(2) When the judgment appealed from requires the execution of a conveyance or other instrument, execution of the judgment is not stayed by the appeal, unless the instrument is executed and deposited with the clerk within the time allowed to file the undertaking, to abide the judgment of the appellate court.

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

(4) The liability of the surety or letter of credit issuer shall be limited to the amount specified in the undertaking and such amount shall be stated in all appeal bonds and irrevocable letters of credit and shall be fixed by the trial court or judge thereof unless it is in the minimum amount as provided in subsection (1) of this section. [Amended by 1977 c.416 §6; 1981 c.483 §2; 1985 c.734 §7; 1991 c.331 §4]

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

(2) The trial court may waive, reduce or limit the undertaking provided for in ORS 19.040 upon a showing of good cause, including indigency, and on such terms as shall be just and equitable. [1959 c.558 §9; 1977 c.416 §1; 1985 c.734 §8]

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

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

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

(4)(a) In cases in which proceedings are stayed on the filing of an undertaking for costs on appeal as provided in subsection (3) of this section, the trial court on motion of any party or on its own motion, for good cause, may deny the stay or condition the stay on such terms and conditions as the judge determines are sufficient to avoid prejudice to the responding party or to the court. "Good cause" includes but is not limited to a determination that the appeal is not made in good faith, is made solely for the purpose of delay, or otherwise is patently without any support in fact or in law. In determining whether good cause exists or whether to deny a stay or condition the stay on terms and conditions, the trial court shall consider the risk of irreparable harm to the appellant if a stay is not granted, the risk of irreparable harm to other parties if stay is granted, and the likelihood of appellant prevailing on appeal.

(b) A judge who denies a stay under this subsection or conditions the stay on terms and conditions shall afford the appellant 14 days in which to seek a stay from the appellate court, during which period the judgment being appealed shall be stayed on such terms and conditions as the judge determines are

sufficient to avoid prejudice to the responding party during that 14-day period. [Amended by 1983 c.763 §60; 1987 c.852 §7]

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

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

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

19.070 [Repealed by 1959 c.558 §51]

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

19.078 Certification of transcript; copies required; correction of errors; settlement order. (1) If a transcript is prepared from audio records by a person other than the reporter, then the reporter shall certify the audio records and the transcript shall be certified by the person preparing it. In all other cases the transcript shall be certified by the reporter or the trial judge. The transcript shall be filed by the reporter with the clerk within 30 days after the filing of the notice of appeal or within 30 days after the filing of an order granting a transcript under ORS 138.500 (3) but no longer than 60 days after filing a notice of appeal under ORS chapter 138. The reporter shall give immediate notice in writing to the parties that the transcript has been filed. Except as provided in subsection (2) of this section the reporter shall serve the respondent with a copy of the transcript and shall, at the time of filing the original transcript, file proof of such service with the trial court clerk, and with the clerk of the court to which the appeal is made.

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

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

(4) Upon the denial of a motion to correct or add to the transcript, or upon the making of such corrections or additions as may be ordered, whichever last occurs, the trial court shall enter an order settling the transcript and send copies thereof to each of the parties or their attorneys and to the State Court Administrator. In the absence of a motion to correct or add to the transcript, the transcript shall be deemed automatically settled 15 days after it is filed. [1959 c.558 §12; 1971 c.193 §21; 1971 c.565 §11; 1981 c.51 §1; 1989 c.1053 §9]

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

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

(2) The cost of preparing the transcript and copy shall be paid by the party designating it to be made, except that where a party has designated additional parts of the proceedings to be included in the transcript as provided in ORS 19.029 (2), the trial court on motion of such party may direct that the

cost of preparing all or part of the additional parts of the transcript be paid by the appellant if it appears that such additional parts are necessary to the determination of the appeal. The cost of preparing the original and copy of the transcript shall be taxable as part of the costs on appeal. [1959 c.558 §13; 1985 c.565 §2a]

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

19.090 [Repealed by 1959 c.558 §51]

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

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

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

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

19.100 [Repealed by 1959 c.558 §51]

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

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

(2) The court to which the appeal is made at any time may dismiss the appeal on a stipulation of the parties. [1959 c.558 §20 (enacted in lieu of 19.110); 1969 c.198 §45; 1971 c.193 §24; 1985 c.734 §9]

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

19.111 Effect of dismissal of appeal. Except as otherwise provided by statute or by decision of the appellate court, dismissal of an appeal shall operate as an affirmance of the judgment being appealed. [1985 c.734 §11]

Note: 19.111 was added to and made a part of ORS chapter 19 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

19.118 Where appeals heard. An appeal taken from any circuit court in any county lying east of the Cascade Mountains, except Klamath and Lake, shall be heard at Pendleton, unless otherwise ordered by the Court of Appeals if it has jurisdiction of the cause or if the cause is before the Supreme Court unless otherwise stipulated between the parties. All other appeals to the Supreme Court or to the Court of Appeals shall be heard at Salem, unless other locations are designated under ORS 1.085 (2). [Formerly 19.080; 1969 c.198 §46; 1983 c.763 §7]

19.120 [Repealed by 1959 c.558 §51]

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

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

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

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

19.130 Action by appellate court on appeal; new trial; reversal upon loss or destruction of reporter's notes or audio records. (1) Upon an appeal, the court to which the appeal is made may affirm, reverse or modify the judgment or part thereof appealed from as to any or all of the parties joining in the appeal, and may include in

such decision any or all of the parties not joining in the appeal, except a codefendant of the appellant against whom a several judgment might have been given in the court below; and may, if necessary and proper, order a new trial.

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

(3) Whenever it appears that an appeal cannot be prosecuted, by reason of the loss or destruction, through no fault of the appellant, of the reporter's notes or audio records, or of the exhibits or other matter necessary to the prosecution of the appeal, the judgment appealed from may be reversed and a new trial ordered as justice may require. [Amended by 1955 c.497 §6; 1959 c.558 §24; 1969 c.198 §47; 1985 c.540 §45]

19.140 Review of intermediate orders; directing restitution. Upon an appeal, the appellate court may review any intermediate order involving the merits or necessarily affecting the judgment or decree appealed from; and when it reverses or modifies such judgment or decree, may direct complete restitution of all property and rights lost thereby.

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

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

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

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

19.190 Content of decision on appeal; when appellate judgment effective; notice to lower court and parties; effect on judgment of lower court. (1) As used in this section:

(a) "Decision" means a memorandum opinion, an opinion indicating the author or an order denying or dismissing an appeal issued by the Court of Appeals or the Supreme Court. The decision shall state the court's disposition of the judgment being appealed, and may provide for final disposition of the cause. The decision shall designate the prevailing party or parties, state whether a party or parties will be allowed costs and disbursements, and if so, by whom the costs and disbursements will be paid.

(b) "Appellate judgment" means the decision of the Court of Appeals or Supreme Court, or such portion of the decision as may be specified by the rule of the Supreme Court, together with an award of attorney fees or allowance of costs and disbursements, if any.

(2) As to appeals from district, circuit and tax court, the appellate judgment is effective when a copy of the appellate judgment is entered in the court's register and mailed by the State Court Administrator to the court from which the appeal was taken. When the State Court Administrator mails a copy of the appellate judgment to the court from which the appeal was taken, the administrator also shall mail a copy to the parties to the appeal.

(3) If a new trial is ordered, upon the receipt of the appellate judgment by the clerk of the court below, the clerk shall enter the appellate court's decision in the register of the court below and thereafter the cause shall be deemed pending for trial in such court, according to the directions of the court which rendered the decision. If a new trial is not ordered, upon the receipt of the appellate judgment by the clerk, a judgment shall be entered in the register and docketed according to the directions of the court which rendered the decision, in like manner and with like effect as if the same was given in the court below.

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

(5) Except as provided in ORS 18.350, an appeal shall not discharge the lien of a judgment and unless the same is reversed, the

lien thereof shall be merged and continue in the affirmed or modified judgment given on appeal, from the time of the entry and docketing of the same in the court below. The lien of any judgment created by recording a certified copy of the judgment or a lien record abstract shall continue as a lien in the same manner as the original judgment lien as provided in this subsection. [1959 c.558 §26 (enacted in lieu of 19.150); 1969 c.198 §49; 1981 c.178 §1; 1985 c.540 §27; 1985 c.734 §12; 1987 c.586 §11]

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

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

(2) The Supreme Court, by order entered within 20 days after the date of receiving certification of an appeal from the Court of Appeals under subsection (1) of this section, may accept or deny acceptance of the certified appeal. The Supreme Court, by order entered within that 20-day period, may extend by not more than 10 days the time for acceptance or denial of acceptance of the certified appeal. If the Supreme Court accepts a certified appeal, the Court of Appeals shall transmit the record of the case and the briefs of parties to the Supreme Court, the Supreme Court shall have jurisdiction of the cause, and the appeal shall be considered pending in the Supreme Court without additional notice of appeal, filing fee, undertaking or, except as the Supreme Court may require, briefs of parties. A certified appeal shall remain pending in the Court of Appeals before the Supreme Court accepts or denies acceptance, and if the Supreme Court denies acceptance or fails to accept or deny acceptance within the time provided for in this subsection. The Supreme Court shall provide notice of acceptance or denial of acceptance of certification to the parties to the appeal. [1981 c.550 §2]

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

19.230 Review of decisions of municipal corporations; transfers between circuit court and Land Use Board of Appeals; limitations. (1) As used in this section, "municipal corporation" means a county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal corporations.

(2) Except for a proceeding resulting in a land use decision or limited land use decision as defined in ORS 197.015, for which review is provided in ORS 197.830 to 197.845, the decisions of the governing body of a municipal corporation acting in a judicial or quasi-judicial capacity and made in the transaction of municipal corporation business shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

(3) A petition for writ of review filed in the circuit court and requesting review of a land use decision or limited land use decision as defined in ORS 197.015 of a municipal corporation shall be transferred to the Land Use Board of Appeals and treated as a notice of intent to appeal if the petition was filed within the time allowed for filing a notice of intent to appeal pursuant to ORS 197.830. If the petition was not filed within the time allowed by ORS 197.830, the court shall dismiss the petition.

(4) A notice of intent to appeal filed with the Land Use Board of Appeals pursuant to ORS 197.830 and requesting review of a decision of a municipal corporation made in the transaction of municipal corporation business that is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015 shall be transferred to the circuit court and treated as a petition for writ of review. If the notice was not filed with the board within the time allowed for filing a petition for writ of review pursuant to ORS 34.010 to 34.100, the court shall dismiss the petition.

(5) In any case in which the Land Use Board of Appeals or circuit court to which a petition or notice is transferred under subsection (3) or (4) of this section disputes whether it has authority to review the decision with which the petition or notice is concerned, the board or court before which the matter is pending shall refer the question of whether the board or court has authority

to review to the Court of Appeals, which shall decide the question in a summary manner. [1987 c.793 §1; 1991 c.817 §17]

Note: 19.230 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 19 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.