Chapter 93

1991 EDITION

Conveyancing and Recording

GENERAL REQUIREMENTS FOR DISPOSITION OF REALTY

93.010 Conveyances, how made

93.020 Creating, transferring or declaring estates or interests in realty

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

93.040 Warning in instrument relating to approved uses of land or existence of fire protection for structures; liability of drafter and recorder

93.050 Gift or conveyance of life estate

SPECIAL MATTERS IN PARTICULAR CONVEYANCES

93.110 Quitclaim deed sufficient to pass estate

93.120 Words of inheritance unnecessary to convey fee; conveyances deemed to convey all grantor's estate

93.130 Conveyance of land in adverse possession of another

93.140 Implied covenants

93.150 Conveyance by tenant of greater estate than that possessed

93.160 Conveyance by reversioners and remaindermen to life tenant vests fee

93.180 Tenancy in common, when created; joint tenancy abolished

93.190 Trustees or personal representatives as joint tenants; filling vacancies in office

93.200 Trustees or executors now hold as joint tenants

93.210 Presumption respecting deed from trustee of undisclosed beneficiary

93.220 Release, limitation or restriction of power of appointment

93.230 Copy of State Lands Division deed or patent given when original lost

93.240 Rights to deferred installments of purchase price where two or more persons join as sellers of real property

93.250 Effect of conveyance creating fee simple conditional or fee tail

93.260 Tax statement information required in conveyancing instrument

93.265 Notice to real property manager of certain actions; procedures; effect on title

93.270 Certain discriminatory restrictions in conveyancing instruments prohibited

93.272 Procedure for removal of certain discriminatory restrictions

93.273 Legislative findings regarding disease transmission

93.275 Incidents not material facts to real property transaction

93.280 Manner of conveyance to create joint property rights

UNIFORM VENDOR AND PURCHASER RISK ACT

93.290 Risk of loss after contract to sell realty has been executed

93.295 Construction of ORS 93.290 to 93.300

93.300 Short title

DESCRIPTIONS, INCLUDING THE OREGON COORDINATE SYSTEM

93.310 Rules for construing description of real property

93.320 Oregon Coordinate System; zones

93.330 Definition

93.350 Plane coordinates

93.360 Coordinates excluded from recordation

93.370 Description as supplemental

93.380 Purchaser or mortgagee not required to rely on description

EXECUTION, ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

93.410 Execution and acknowledgment of deeds

93.420 Execution of deed where personal representative, guardian or conservator is unable or refuses to act

93.440 Proof of execution by subscribing witness

93.450 Proof where witnesses are dead or absent

93.460 Subpoena to compel witness to testify to execution of deed

93.470 Indorsement of certificate of proof

93.480 Deed acknowledged or proved as evidence; recordability

93.530 Execution, acknowledgment and recordation of assignments of sheriffs' certificates of sale

RECORDATION AND ITS EFFECTS

93.600 Description of real property for purposes of recordation

93.610 Separate books for recording deeds and mortgages

93.620 Time and place of receipt for record; certification

93.630 Index of records of deeds, mortgages and other real property interests

93.635 Acknowledgment and recording of instruments contracting to convey fee title

93.640 Unrecorded instrument affecting title or unrecorded assignment of sheriff's certificate of sale void as to subsequent purchaser

93.643 Method of giving constructive notice of interest in real property

93.645 Priority of purchaser; extinguishing judgment lien; right of judgment creditor; "judgment" defined

93.650 Effect of record or certified transcript in evidence

93.660 Effect of abstract of title as evidence
93.670 Power of attorney and executory contract for sale or purchase of lands; recordability; effect as evidence; revocation
93.680 Patents, judgments and official grants; recordability; evidence
93.690 Recording of instruments evidencing passage of title to land from United States to State of Oregon
93.710 Instruments or memoranda creating certain interests in realty; reforestation order; effect of recording
93.730 Recordation of decrees in other counties
93.740 Notice of lis pendens; contents; recordation; effect; discharge
93.760 Recordability of documents, orders and decrees of the United States District Court
93.770 Recordability of petitions, orders and decrees under National Bankruptcy Act
93.780 Place of recording of instrument containing clauses of a mortgage or trust deed; county clerk to do recording; "Master Form"
93.790 Effect of recording master form instrument; effect of incorporation by reference in mortgage or trust deed; effect of deviation
93.800 Matter not to be recorded when accompanying mortgage or trust deed; liability for nonrecording
93.802 Recording of short form mortgage or short form trust deed
93.804 Requirement for original signatures for recording; recordation of certified copies
93.806 Recordation of instrument creating certain liens

VALIDATING AND CURATIVE ACTS

93.810 Validating and curative Acts

DEED FORMS

93.850 Warranty deed form; effect
93.855 Special warranty deed form; effect
93.860 Bargain and sale deed form; effect
93.865 Quitclaim deed form; effect
93.870 Statutory deed forms optional

FORFEITURE UNDER LAND SALES CONTRACT

93.905 Definitions for ORS 93.905 to 93.940
93.910 Enforcement of forfeiture remedy after notice of default
93.913 Forfeiture allowed for default under certain collateral assignments of interest
93.915 Notice of default; contents; recordation; time of forfeiture; interim measures
93.918 Continuation of proceedings after certain types of stay ordered by court; procedures
93.920 Curing default to avoid forfeiture; payment of costs and expenses
93.925 Failure to cure default; exclusiveness of notice
93.930 Recording affidavit after forfeiture; affidavit as evidence
93.935 Effect of purchaser's abandonment or reconveyance on interest, lien or claim
93.940 Effect of seller's foreclosure or other action on interest, lien or claim
93.945 Application of ORS 93.905 to 93.940

PENALTIES

93.990 Penalties

CROSS REFERENCES

Amendment to survey map or narrative by affidavit of correction, 209.255

Cemetery lots, conveyancing, Ch. 97

Character of timeshare estate or timeshare license, 94.813

Conservator, recording of appointment order, 126.257

Conveyances between spouses, 108.090

Cooperative corporation realty, conveyance of, 62.125, 62.165

County clerks, duties of, Ch. 205

Deceased vendor, conveyance by foreign personal representative, 114.333

Deferral of property taxes, deed or contract clauses prohibiting are void, 311.700

Employees' trusts, 128.520

Escrows, regulation, 696.505 to 696.590

Fees for recording, indexing and certifying copies of instruments, Ch. 205

Fraudulent conveyances, Ch. 95

Mining claims, recordation and conveyancing, 517.090

Partnership realty, conveyance, 68.130, 68.220

Public property held by taxable owner under contract of purchase, sale, 307.100

Reforestation, notice to be in forestland transfers, 527.665

Residential Landlord and Tenant Act, separation of rent and obligations to maintain premises prohibited, 90.250

Restraining disposition of realty after commencement of suit for marital annulment, dissolution or separation, 107.095

Solar energy and series partition easements, 105.880 to 105.895

Subdivision and Series Partition Control Law, 92.305 to 92.495, 696.300

Subdivision plat, donation or grant to public, construction, 92.150

Subdivisions and partitions, jurisdiction, duties, procedure, authority, review, 92.010 to 92.170, 92.205 to 92.285

Timeshare document not to be rejected for recording because of nature or duration of interest, 94.813

Title obtained by county in tax foreclosure, proceedings affecting, 312.214 to 312.230

Trust deed, foreclosure, 86.710

Trustee's deed interest conveyed to purchaser, 86.755

Uniform Disclaimer of Transfers under Nontestamentary Instruments Act, 105.625 to 105.640

Unit ownership, deed for unit of property, 100.430, 100.505

Water rights for irrigation purposes, disclosure required in certain transactions, 537.330

Water rights, transfer, Ch. 540

93.010

Unit ownership, conveyance of unit of property subject, 100.505

93.020

Statute of frauds relating to realty agreements, 41.580

93.180

Partition by tenants in common, 105.205

93.410

County clerk taking acknowledgments, 205.110

Execution of instrument defined, 42.020

State Court Administrator taking acknowledgments, 8.120

Uniform Law on Notarial Acts, 194.505 to 194.595

93.610

Assignment of mortgage, recordability, 86.080

Contract to convey, instrument and related memorandum conveying real estate, statement of consideration, 93.030

County clerks, duties, Ch. 205

Declaration and floor plans for property subject to unit ownership, 100.115

Discharge of mortgage of record, 86.100 to 86.130

93.640

Construction lien as prior to unrecorded mortgage or other encumbrance, 87.025

Priority between judgment lien and unrecorded conveyance, 18.370

93.650

Effect of photocopy or other reproduction of public record, 192.050, 192.070

93.690

State Lands Division's instruments and copies, recordability and effect as evidence, 273.085, 273.095

93.730

Docketing judgment in other counties, 18.320

93.740

Marital annulment, dissolution or separation, recording notice of pendency of action, 107.085

93.810

Repeal of validating or curative statutes, effect, 174.070

Stability of title obtained by county in past and future tax foreclosures, 312.214

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 or existence of fire protection for structures; 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 except for owner's sale agreements or earnest money receipts, or both, as provided in subsection (2) of this section: "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) In all owner's sale agreements and earnest money receipts, there shall be included in the body of the instrument the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. 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 AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES."

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

(4) 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) or (2) 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) or (2) 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; 1989 c.366 §1]

93.050 Gift or conveyance of life estate. A gift or conveyance of property under deed or other writing executed after June 30, 1993, to any person for the term of the life of the person, and after the death of the person to the children or heirs of the person, vests an estate or interest for life only in the grantee or person receiving the gift or conveyance, and remainder in the children or heirs. [1991 c.850 §3]

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 va-

cancy 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 installments of purchase price where two or more persons join as sellers 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 or sell and convey title to real property in exchange for a note for all or a part of the purchase price secured by either a mortgage or trust deed on the real property, unless a contrary purpose is expressed in the contract, note, mortgage or trust deed, the right to receive payment of deferred installments of the purchase price and the mortgage or trust deed, 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 or conveyance.

(2) If immediately prior to the execution of a contract of sale of real property, or a sale or conveyance of title to real property in exchange for a note for all or a part of the

purchase price secured by a mortgage or trust deed on the 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, note, mortgage or trust deed, the right to receive payment of deferred installments of the purchase price of the property and the mortgage and trust deed 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; 1989 c.74 §1]

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 conveying 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:

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(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]

93.265 Notice to real property manager of certain actions; procedures; effect on title. (1) A licensed real estate property manager, as described in ORS 696.025, may request notice of any pending action, claim, lien or proceeding relating to a parcel of real property by recording in the county clerk's office of the county in which any portion of the real property is situated a request for any notice required by law to be provided to the owner.

(2) A request submitted as allowed under subsection (1) of this section shall include the name and address of the property manager, the address and legal description of the property in question, the signature and real estate license number of the requester and the date of the request. The request for notification shall be valid for one year from filing.

(3) Compliance with subsection (1) of this section shall be deemed adequate upon mailing, by first class mail with postage prepaid, to the address provided in the form required under subsection (2) of this section.

(4) The county assessor of the county in which the notice is recorded shall note on the tax roll, prepared pursuant to ORS chapter 311, the filing made under subsection (1) of this section.

(5) No request, statement or notation filed under subsection (1) of 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 request for notice. [1989 c.1062 §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:

(a) Restricting the use of the real property by any person or group of persons by reason of color, race, religion, national origin or physical or mental handicap.

(b) Restricting the use of the real property by any home or facility that is licensed by or under the authority of the department under ORS 443.400 to 443.455 to provide residential care alone or in conjunction with treatment or training or a combination thereof.

(2) Any such provision in an instrument executed in violation of subsection (1) of this section is void and unenforceable. [1973 c.258 §1; 1989 c.437 §1; 1991 c.801 §7]

93.272 Procedure for removal of certain discriminatory restrictions. (1) Any owner of record of real property that is subject to an instrument conveying or contracting to convey fee title to the property that contains a provision that is in violation of ORS 93.270 may file a petition to remove that provision from the title to the property. The petition shall be filed in the circuit court for the county in which the property is located. No fee shall be charged for the

filing of the petition. The petition shall contain:

(a) The name and mailing address of the person filing the petition;

(b) The name and mailing address of all owners of record of the property;

(c) The legal description of the property subject to the provision in violation of ORS 93.270; and

(d) A clear reference to the provision claimed to be in violation of ORS 93.270.

(2) Notice and a copy of the petition shall be served on all owners of record in any manner provided for in ORCP 7. The notice shall inform the owners of record that:

(a) The petition seeks the removal of a provision that is in violation of ORS 93.270 from the title to the property;

(b) The person served may request a hearing within 10 days after service of the petition; and

(c) The court is authorized to enter a default judgment removing the provision if no hearing is requested by the owners of record.

(3) The petitioner shall file with the court proof of service in the manner provided in ORCP 7 F. If no request for hearing is made by any person served within 10 days after service on that person, the court shall enter a judgment removing the provision from the title to the property if the court determines that the provision is in violation of ORS 93.270.

(4) If a hearing is requested by any person served under subsection (2) of this section, the clerk of the court shall schedule a hearing within 20 days after the filing of the request for a hearing. The clerk of the court shall mail notification of the hearing date to the petitioner and to all owners of record listed in the petition.

(5) At any hearing under the provisions of this section, the sole issue that shall be decided by the court is whether the provision that is the subject of the petition is in violation of ORS 93.270. The matter shall be tried to the court sitting without jury. If the court finds that the provision is not in violation of ORS 93.270, the court shall dismiss the petition. If the court finds that the provision is in violation of ORS 93.270, the court shall enter a judgment removing the provision from the title to the property.

(6) If a court finds only part of a provision to be in violation of ORS 93.270 under this section, the court shall enter a judgment removing only that part of the provision that is in violation.

(7) For the purposes of this section, "owner of record" means a person having any legal or equitable interest in property, including, but not limited to, a purchaser, lienholder or holder of any security interest in such property whose interest is recorded in the public records provided for by Oregon statutes where the owner's interest must be recorded to perfect a lien or security interest or provide constructive notice of the owner's interest. [1991 c.850 §2]

93.273 Legislative findings regarding disease transmission. The Legislative Assembly finds that there is no known risk of the transmission of human immunodeficiency virus or acquired immune deficiency syndrome by casual contact. [1989 c.523 §2]

93.275 Incidents not material facts to real property transaction. (1) The following are among incidents that are not material facts to a real property transaction, need not be disclosed in a real property transaction and no cause of action arises against an owner of real property, an agent of the owner or any agent of the transferee of real property for failure to disclose:

(a) The occurrence of an occupant's death by homicide or suicide upon the real property or any details of the death; or

(b) That an occupant or owner of the real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

(2) As used in this section, "transferee" includes a purchaser, lessee or renter of real property. [1989 c.523 §3]

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 ad-

dition 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 Subpoena 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 partition plat recording and parcel numbers, 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; 1989 c.772 §26]

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, assignment of all or any portion of a seller's or purchaser's interest in a 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, assignment of all or any portion of a seller's or purchaser's interest in a 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, assignment of all or any portion of a seller's or purchaser's interest in a land sale contract or other agreement or memorandum thereof affecting the title of real property" includes mortgages, trust deeds, and assignments for security purposes or assignments solely of proceeds, given by purchasers or sellers 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; 1989 c.516 §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, 223.005 to 223.105, 223.205 to 223.930, 311.405 and 446.515 to 446.547 and ORS chapters 87, 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 conveyance 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
Plantiff'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 [Repealed by 1991 c.230 §35]

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]

93.802 Recording of short form mortgage or short form trust deed. (1) After a master form instrument is recorded in a county under ORS 93.780 and 93.790, an instrument entitled "Short Form Mortgage" or "Short Form Trust Deed" may be recorded.

(2) The short form instrument shall contain the title of the instrument, the names of all parties involved in the encumbrance of the real property described in the instrument, the legal description of the property that is encumbered by the instrument, the amount of the encumbrance, the date on which the instrument was executed and any other information required by law for recording the instrument.

(3) Any provision of the master form instrument recorded under ORS 93.780 may be incorporated in a short form instrument by reference to:

(a) The date when and the book and page or fee number where the master form instrument was recorded; and

(b) Any specific provision of the master form instrument that applies to the short form instrument.

(4) A short form instrument recorded under this section shall describe provisions in the short form instrument that deviate in any respect from the recorded master form instrument.

(5) The person presenting a short form instrument for recording shall cause a complete copy of the master form instrument to which reference is made in the short form instrument to be provided or disclosed to each party involved in the encumbrance of the real property described in the short form instrument. [1991 c.230 §20]

93.804 Requirement for original signatures for recording; recordation of certified copies. (1) Except as provided in subsection (2) of this section, when any instrument presented for recording conveys an interest in real property and is required by law to be acknowledged or proved, a county clerk shall not record the instrument unless the instrument contains the original signatures of the persons executing the instrument and the original signature of the officer before whom the acknowledgment was made.

(2) A county clerk may record a certified copy of an instrument that conveys an interest in real property when the recording of a certified copy of the instrument is authorized by law and the instrument contains the original certification of the certifying officer. [1991 c.230 §21]

93.806 Recordation of instrument creating certain liens. (1) Any instrument creating a lien on unpaid rents and profits of real property within this state, by assignment, mortgage, pledge or otherwise, or memorandum thereof, which is executed by the person from whom the lien 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, as provided in ORS 93.710. Such recordation constitutes notice to third persons, and shall otherwise have the same effect as recordation pursuant to ORS 93.710, specifically, but without limitation, such lien shall not be voidable by and shall not be subordinate to the rights of either:

(a) A subsequent lien creditor, as defined in ORS 79.3010 (4); or

(b) A subsequent bona fide purchaser of real property.

(2) Such an assignment, mortgage or pledge shall be so perfected by such recording, without the holder thereof obtaining the appointment of receiver, taking possession of the subject real property, filing a financing statement pursuant to ORS chapter 79 or taking any other action in addition to such recording.

(3) As used in this section, "memorandum" has the meaning provided in ORS 93.710 (3). [1991 c.299 §1]

Note: 93.806 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 93 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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____

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(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 nonjudicial 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 installments, 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]

93.913 Forfeiture allowed for default under certain collateral assignments of interest. In the event of a default under a collateral assignment of the interest of a seller or purchaser in a land sale contract, including a collateral assignment of the proceeds thereof, the assignee may enforce a remedy of forfeiture, as set forth in ORS 93.905 to 93.945, unless the agreement between the parties otherwise prohibits such remedy. [1989 c.516 §3]

Note: 93.913 and 93.918 were added to and made a part of ORS chapter 93 by legislative action but were not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

93.915 Notice of default; contents; recordation; time of forfeiture; interim measures. (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.

(6) Subject to the procedural requirements of the Oregon Rules of Civil Procedure, an action may be instituted to appoint a receiver or to obtain a temporary restraining order during forfeiture under a land sale contract, except that a receiver shall not be appointed with respect to a single-family residence which is occupied at the time the notice of default is given, as the principal residence of the purchaser, the purchaser's spouse or the purchaser's minor dependent children. [1985 c.718 §3; 1987 c.717 §1; 1991 c.12 §1]

93.918 Continuation of proceedings after certain types of stay ordered by court; procedures. (1) Except when a seller has participated in obtaining a stay, contract forfeiture proceedings that are stayed by order of the court, by proceedings in bankruptcy or for any other lawful reason, shall continue after release from the stay as if uninterrupted, if within 30 days after release the seller gives written amended notice of default by certified mail with return receipt requested, to the last-known address of those persons listed in ORS 93.915 (1). The amended notice of default shall:

(a) Be given at least 20 days prior to the amended date of forfeiture;

(b) Specify an amended date after which the contract will be forfeited, which may be the same as the original forfeiture date;

(c) Conform to the requirements of ORS 93.915 (3), except the time periods set forth therein; and

(d) State that the original forfeiture proceedings were stayed and the date the stay terminated.

(2) The new date of forfeiture shall not be sooner than the date of forfeiture as set forth in the seller's notice of default which was subject to the stay.

(3) Prior to the date of forfeiture, 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 amended notice of default, together with an affidavit of service or mailing of the amended notice of default, reciting the date the amended notice of default was served or mailed and the name and address of each person to whom it was given. From the date of its recording, the amended notice of default shall be subject to the provisions of ORS 93.915 (4) and (5). [1989 c.516 §4]

Note: See note under 93.913.

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]