

# Chapter 105

1993 EDITION

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## ACTIONS FOR RECOVERY OF REAL PROPERTY

**105.005 Right of action; recovery.** (1) Any person who has a legal estate in real property and a present right to the possession of the property, may recover possession of the property, with damages for withholding possession, by an action at law. The action shall be commenced against the person in the actual possession of the property at the time, or if the property is not in the actual possession of anyone, then against the person acting as the owner of the property.

(2) In an action brought under subsection (1) of this section or in a separate action for damages only, a person who, throughout the vesting period, used or occupied land of another with the honest and objectively reasonable belief that the person was the actual legal owner of the land shall not be liable for:

(a) Double or treble damages under ORS 105.810 or 105.815; or

(b) The value of the use or occupation of the land by the person throughout the vesting period. [Amended by 1989 c.1069 §2; 1991 c.109 §1]

**Note:** See note under 105.620

**105.010 Contents of complaint.** The plaintiff in the complaint shall set forth:

(1) The nature of the estate of the plaintiff in the property, whether it be in fee, for life, or for a term of years; including, when necessary, for whose life and the duration of the term.

(2) That the plaintiff is entitled to the possession thereof.

(3) That the defendant wrongfully withholds the property from the plaintiff to the damage of the plaintiff for such sum as is therein claimed.

(4) A description of the property with such certainty as to enable the possession thereof to be delivered if there is recovery.

**105.015 Answer.** The defendant shall not be allowed to give in evidence any estate, license or right of possession in the property in the defendant or another, unless the same is pleaded in the answer. If pleaded, the nature and duration of the estate, license or right of possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, the defendant shall specify for what particular part the defendant does defend.

**105.020 Substitution of landlord for tenant.** A defendant who is in actual possession may, for answer, plead that the de-

fendant is in possession only as tenant of another; naming the landlord and the place of residence of the landlord. Thereupon the landlord, if the landlord applies therefor, shall be made defendant in place of the tenant and the action shall proceed in all respects as if originally commenced against the landlord. If the landlord does not apply to be made defendant within the day the tenant is allowed to answer, the landlord shall not be allowed to, but shall be made defendant if the plaintiff requires it. If the landlord is made defendant on motion of the plaintiff the landlord shall be required to appear and answer within 10 days from notice of the pendency of the action and the order making the landlord defendant, or such further notice as the court or judge thereof may prescribe.

**105.025 Verdict.** The jury by their verdict shall find as follows:

(1) If the verdict is for the plaintiff, that the plaintiff is entitled to the possession of all or a part of the property described in the complaint, or that the plaintiff owns an undivided share or interest in all or a part of the property; including the nature and duration of the estate of the plaintiff in such property.

(2) If the verdict is for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or the part that the defendant defends, and the estate, license or right to possession in such property established on the trial by the defendant, if any, as the same is required to be pleaded.

**105.030 Damages for withholding; setoff for improvements.** The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from the commencement to the time of giving a verdict, excluding the value of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom the defendant claims, while holding under color of title in good faith and adverse to the claim of the plaintiff, the value of the improvements at the time of trial shall be allowed as a setoff against such damages.

**105.035 Judgment when plaintiff's right to possession expires.** If the right of the plaintiff to the possession of the property expires after the commencement of the action and before the trial, the verdict shall be given according to the fact and judgment shall be given only for the damages.

**105.040 Order to make survey.** (1) The court or judge thereof may, on motion, and after notice to the adverse party, or cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof for the purposes of the action.

(2) The order shall describe the property. A copy of the order shall be served upon the defendant, and thereupon the party may enter upon the property, and make the survey and admeasurement. If any unnecessary injury is done to the premises, the applying party is liable therefor.

**105.045 Action not prejudiced by alienation by person in possession.** An action for the recovery of the possession of real property against a person in possession is not prejudiced by any alienation made by such person, either before or after the commencement of the action. If the alienation is made after the commencement of the action, and the defendant does not satisfy the judgment recovered for damages for withholding the possession, the damages may be recovered by action against the purchaser.

**105.050 Cotenant shall prove ouster.** In an action by a tenant in common of real property against a cotenant, the plaintiff shall show, in addition to the evidence of right of possession, that the defendant either denied the plaintiff's right or did some act amounting to a denial. [Amended by 1969 c.591 §281]

**105.055 Conclusiveness of judgment.** (1) Except as provided in subsection (2) of this section, the judgment in an action to recover the possession of real property is conclusive as to the estate in the property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the judgment is given, and against all persons claiming from, through or under such party, after the commencement of the action.

(2) When service of the summons is made by publication and judgment is given for want of an answer, at any time within two years from the entry thereof the defendant or the successor in interest of the defendant as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting the defendant a new trial upon the payment of the costs of the action.

(3) In an action against a tenant the judgment is conclusive against a landlord, who has been made defendant in place of the tenant, to the same extent as if the action

had been originally commenced against the landlord.

**105.060 Effect of new trial on plaintiff's possession.** If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted as provided in ORS 105.055 (2), the possession is not thereby affected in any way. If judgment is given for the defendant in the new trial, the defendant is entitled to restitution by execution in the same manner as if the defendant were plaintiff.

**105.065** [Repealed by 1969 c.591 §305]

**105.070 Rights of donee under Donation Law.** In an action at law for the recovery of the possession of real property, if either party claims the property as a donee of the United States under the Act of Congress approved September 27, 1850, commonly called the Donation Law, or the Acts amendatory thereto, such party from the date of settlement of the party on the property, as provided in said Acts, is deemed to have a legal estate in fee in the property. The estate shall continue upon the condition that the party performs the conditions required by such Acts, and is unconditional and indefeasible after the performance of such condition. If both plaintiff and defendant claim title to the same real property by virtue of settlement under such Acts, the settlement and the performance of the subsequent conditions shall be conclusively presumed in favor of the party having, or claiming under, the elder patent certificate or patent, unless it appears upon the face of such certificate or patent that it is absolutely void.

**105.075 Notice to quit; action to recover possession not affected by forcible entry or wrongful detainer.** In any action to recover the possession of real property, as provided for in ORS 105.005, notice to quit, when necessary, may be given as prescribed in ORS 91.050 to 91.110 and 105.120. Nothing in ORS 105.105 to 105.168 prevents such action from being maintained for the recovery of the possession of real property although the entry of the defendant is forcible or the holding is unlawful and with force as defined in ORS 105.105.

**105.080 Reimbursement of tenants in common obtaining possession; lien.** In all cases where property in this state is or has been claimed or owned by residents of this state in common with others, and such residents have obtained or shall obtain the possession of the property at their own cost, expense or labor, they are entitled to reimbursement from the remaining claimant in common of the property, according to their proportionate interest therein. Residents so

obtaining possession of such property have a lien upon it until the remaining claimant has paid or tendered such proportionate share of the reasonable costs, expenses or labor aforesaid.

**FORCIBLE ENTRY AND WRONGFUL DETAINER**

**105.105 Entry to be lawful and peaceable only.** No person shall enter upon any land, tenement or other real property unless the right of entry is given by law. When the right of entry is given by law the entry shall be made in a peaceable manner and without force.

**105.110 Action for forcible entry or wrongful detainer.** Except as provided in ORS 46.060 (2), when a forcible entry is made upon any premises, or when an entry is made in a peaceable manner and possession is held by force, the person entitled to the premises may maintain in the county where the property is situated an action to recover the possession of the premises in the district court or before any justice of the peace of the county. [Amended by 1985 c.241 §1]

**105.112 Action by tenant to recover personal property.** (1) A tenant or former tenant may bring an action to recover personal property taken or retained by a landlord in violation of ORS 90.100 to 90.940.

(2) An action under this section shall be governed by the provisions of ORS 105.105 to 105.168 except that:

(a) The complaint form shall be available from the circuit or district court clerk in substantially the following form:

\_\_\_\_\_

IN THE \_\_\_\_\_ COURT FOR  
THE COUNTY OF \_\_\_\_\_

Plaintiff(s), )  
)  
vs. ) No. \_\_\_\_\_  
)  
(Landlord), )  
)  
Defendant(s). )

COMPLAINT FOR RETURN OF PERSONAL  
PROPERTY

I

Defendant(s) (is) (are) in possession of the following personal property belonging to the plaintiff(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[ ] See attached list.

II

Defendant(s) took the personal property alleged in paragraph I from premises rented by plaintiff(s) from defendant(s) at:

\_\_\_\_\_(street and number)  
\_\_\_\_\_(city)  
\_\_\_\_\_(county)

III

Plaintiff(s) (is) (are) entitled to possession of the personal property because:

\_\_\_\_\_ Defendant(s) took the personal property wrongfully because plaintiff(s) had not abandoned the property, and because either there was no court order awarding defendant(s) possession of the premises or the plaintiff(s) (was) (were) not continuously absent from the premises for seven days after such an order when defendant(s) removed the personal property.

\_\_\_\_\_ Defendant(s) lawfully took possession of the personal property after enforcement of a court order for possession of the premises, but refused to return the personal property to plaintiff(s) without payment although plaintiff(s) demanded return of the property within 15 days of any written notice from the landlord that the property had been taken or within 15 days of the plaintiff's written response to such a notice.

\_\_\_\_\_ Defendant(s) lawfully took possession of the personal property, but refused to return the personal property to plaintiff(s) although plaintiff(s) offered payment of all sums due for storage and any costs of removal of the personal property and demanded return of the property within 15 days of any written notice from the landlord that the property had been taken or within 15 days of the plaintiff's written response to such a notice.

Other: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Wherefore, plaintiff(s) pray(s) for possession of the personal property and costs and disbursements incurred herein.

Date \_\_\_\_\_ Signature of Plaintiff(s) \_\_\_\_\_

(b) The complaint shall be verified by a plaintiff or an agent of the plaintiff.

(c) The answer form shall be available from the circuit or district court clerk in substantially the following form:

IN THE \_\_\_\_\_ COURT FOR  
 THE COUNTY OF \_\_\_\_\_  
 (Tenant), )  
 )  
 Plaintiff(s), )  
 )  
 vs. ) No. \_\_\_\_\_  
 )  
 (Landlord), )  
 )  
 Defendant(s). )  
 ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession of the personal property subject of the complaint because:

\_\_\_\_\_ The defendant(s) did not take and do not have possession of any of the property listed in the complaint.

\_\_\_\_\_ The defendant(s) took possession of the personal property as provided in ORS 90.425 after giving written notice that it was considered abandoned, and the plaintiff(s) did not make a timely demand for return of the property.

\_\_\_\_\_ The defendant(s) took possession of the personal property as provided in ORS 90.425 after giving written notice that it was considered abandoned, but not after a sheriff's enforcement of an eviction judgment against the plaintiff(s) as provided in ORS 105.165, and the plaintiff(s) refused to pay charges lawfully due for storage. \_\_\_\_\_  
 Other: \_\_\_\_\_

I (we) ask that the plaintiff(s) take nothing by the complaint and that I (we) be awarded my (our) costs and disbursements.

Date \_\_\_\_\_ Signature of defendant(s) \_\_\_\_\_

(d) The issue at trial shall be limited to whether the plaintiff is entitled to possession of the personal property listed in the complaint.

(e) No claim for damages shall be asserted by either party in the action for possession of the personal property under this section, but each party may pursue any claim for damages in a separate action.

(f) A party may join an action for possession of personal property with an action for damages or a claim for other relief, but the proceeding shall not be governed by the provisions of ORS 105.105 to 105.168.

(g) If the court determines that the plaintiff is entitled to possession of the personal

property subject of the complaint, the court shall enter an order directing the sheriff to seize the personal property to which the court finds the plaintiff entitled, and to deliver that property to the plaintiff. The court may provide that the defendant have a period of time to deliver the property to the plaintiff voluntarily before execution. The costs of execution may be recovered in the manner provided in ORS 29.367.

(h) Subject to the provisions of ORCP 68, a prevailing party who has been represented by counsel may recover attorney fees as provided by ORS 90.255. [1989 c.506 §22; 1991 c.67 §21]

**105.115 Causes of unlawful holding by force.** (1) Except as provided by subsections (2) and (3) of this section, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after it is due under the lease or agreement under which the tenant or person in possession holds, or to deliver possession of the premises after being in default on payment of rent for 10 days.

(b) When the lease by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month, or year to year, and remains in possession after notice to quit as provided in ORS 105.120, or is holding contrary to any condition or covenant of the lease or is holding possession without any written lease or agreement.

(2) In the case of a dwelling unit to which ORS 90.100 to 90.940 applies, the following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.125:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 72 hours of the notice required by ORS 90.400 (2).

(b) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession is holding from month to month or from week to week and remains in possession after a valid notice to quit as provided in ORS 105.120 (2), or is holding contrary to any valid condition or covenant of the rental agreement or ORS 90.100 to 90.940.

(3) In an action under subsection (2) of this section, ORS 90.100 to 90.940 shall be applied to determine the rights of the parties, including:

(a) Whether and in what amount rent is due;

(b) Whether a tenancy or rental agreement has been validly terminated; and

(c) Whether the tenant is entitled to remedies for retaliatory conduct by the landlord as provided by ORS 90.385 and 90.765. [Amended by 1973 c.559 §34; 1977 c.365 §1; 1981 c.753 §5]

**105.120 Notice necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent.** (1) Except as provided in subsection (2) of this section, an action for the recovery of the possession of the premises may be maintained in cases provided in ORS 105.115 (1)(b), when the notice to terminate the tenancy or to quit has been served upon the tenant or person in possession in the manner prescribed by ORS 91.110 and for the period prescribed by ORS 91.060 to 91.080 before the commencement of the action, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for a period of 90 days before the commencement of the action. Any person entering into the possession of real estate under written lease as the tenant of another may, by the terms of the lease, waive the giving of any notice required by this subsection.

(2) An action for the recovery of the possession of a dwelling unit to which ORS 90.100 to 90.940 applies may be maintained in cases provided in ORS 105.115 (2) when the notice to terminate the tenancy or to quit has been served by the tenant upon the landlord or by the landlord upon the tenant or person in possession in the manner prescribed by ORS 90.910.

(3) The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against the tenant or person in possession for the possession of premises before the expiration of any period for which the tenant or person has paid the rent of the premises in advance except when:

(a) The only unused rent paid by the tenant was collected as a deposit for the last month's rent at the beginning of the tenancy;

(b) A 24-hour notice is given under ORS 90.400 (3);

(c) A notice for a pet violation is given under ORS 90.405; or

(d) The only unused rent was paid by the tenant for a rental period extending beyond a termination date specified in a valid and outstanding notice to terminate the tenancy, and the landlord refunded the unused rent within four days from receipt of the rent by delivering it to the tenant or by mailing it by first class mail. [Amended by 1973 c.559 §35; 1981 c.753 §6; 1983 c.303 §5; 1985 c.588 §13; 1989 c.506 §18; 1993 c.369 §15]

**105.125 Complaint.** (1) In an action pursuant to ORS 105.110 it is sufficient to state in the complaint:

(a) A description of the premises with convenient certainty;

(b) That the defendant is in possession of the premises;

(c) That the defendant entered upon the premises with force or unlawfully holds the premises with force; and

(d) That the plaintiff is entitled to the possession of the premises.

(2) The plaintiff may include, at the plaintiff's option, the defendant's social security number in the complaint, for the purpose of accuracy in tenant screening information. Nothing in this subsection shall be construed to require a tenant to have a social security number in order to enter into a rental agreement.

(3) In the case of a dwelling unit to which ORS 90.100 to 90.940 applies:

(a) The complaint form shall be available from the circuit or district court clerk in substantially the following form:

---

IN THE \_\_\_\_\_ COURT  
FOR THE COUNTY OF \_\_\_\_\_

No. \_\_\_\_\_

(Landlord), \_\_\_\_\_ Plaintiff(s),  
vs.  
(Tenant), \_\_\_\_\_ Defendant(s).  
Defendant's Social Security Number \_\_\_\_\_  
(Optional, not required, information for purposes of identification only.)

**COMPLAINT (Forcible Entry and Unlawful Detainer)**

I

Defendant(s) (is) (are) in possession of the following premises:  
\_\_\_\_\_  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (county)

II

Defendant(s) (entered upon the premises with force) (are/is unlawfully holding the premises with force).

III

Plaintiff(s) (is) (are) entitled to possession of the premises, because:  
\_\_\_\_\_ 24-hour notice (personal injury)  
\_\_\_\_\_ 24-hour notice (substantial damage)  
\_\_\_\_\_ 24-hour notice (extremely outrageous act)  
\_\_\_\_\_ 24-hour notice (unlawful occupant)

- \_\_\_\_\_ 24-hour notice (employee termination)
- \_\_\_\_\_ 72-hour notice (nonpayment of rent)
- \_\_\_\_\_ 10-day notice (repeat violation)
- \_\_\_\_\_ 10-day notice (pet violation)
- \_\_\_\_\_ 7-day notice (week-to-week tenancy-cause)
- \_\_\_\_\_ 10-day notice (week-to-week tenancy)
- \_\_\_\_\_ 30-day notice (month-to-month tenancy)
- \_\_\_\_\_ 30-day notice (cause)
- \_\_\_\_\_ Other notice
- \_\_\_\_\_ No notice

ATTACH A COPY OF THE NOTICE RELIED ON TO THE COMPLAINT

Wherefore, plaintiff(s) (prays) (pray) for possession of the premises and costs and disbursements incurred herein.

Plaintiff(s).

(b) The complaint shall be verified by the plaintiff or the agent of the plaintiff. [Amended by 1975 c.256 §9; 1981 c.753 §7; 1993 c.369 §16]

**105.130 How action conducted; fees.** (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.155, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

(2) Upon filing a complaint in the case of a dwelling unit to which ORS 90.100 to 90.940 applies, the clerk shall:

- (a) Collect a filing fee of \$22;
- (b) Collect any other fee authorized by law or ordinance;
- (c) Collect the applicable fee for service of the summons if service will be made by the sheriff; and
- (d) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and forward the summons, with sufficient copies, and a true copy of the complaint for service by a person authorized to serve summons in a civil action in a circuit court.

(3) After a complaint is filed under subsection (2) of this section, if the defendant demands a trial, the plaintiff shall pay the difference between the filing fee paid under subsection (2) of this section and the fee required of a plaintiff in a district court action and the defendant shall pay the fee required of a defendant in a district court action.

(4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to possession as plaintiff. The plaintiff

may appear in person or through an attorney. In an action to which ORS 90.100 to 90.940 apply, the plaintiff may also appear through a nonattorney who is an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(5) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, a state agency may appear in an action brought pursuant to ORS 105.110 through an officer or employee of the agency if:

(a) The Attorney General consents to the representation of the agency by an officer or employee in the particular action or in the class of actions that includes the particular action; and

(b) The agency, by rule, authorizes an officer or employee to appear on its behalf in the particular type of action being conducted. [Amended by 1975 c.256 §10; 1977 c.877 §15; 1979 c.284 §94; 1981 c.753 §10; 1983 c.581 §1; 1985 c.588 §16; 1987 c.829 §5; 1991 c.92 §1; 1993 c.369 §17]

**105.132 Assertion of counterclaim.** No person named as a defendant in an action brought under ORS 105.105 to 105.168 may assert a counterclaim unless the right to do so is otherwise provided by statute. [1985 c.244 §2]

**105.135 Service and return of summons; posting; contents.** (1) Except as provided in this section, the summons shall be served and returned as in other actions.

(2) At the time the clerk collects the filing fee under ORS 105.130, the clerk shall enter the first appearance date on the summons. That date shall be seven days after the judicial day next following payment of filing fees unless no judge is available for first appearance at that time, in which case the clerk shall enter the next later date on which a judge will be available. At the request of the plaintiff, the clerk may enter a date more than seven days after the judicial day next following payment of filing fees if a judge will be available.

(3) Notwithstanding ORCP 10, by the end of the judicial day next following the payment of filing fees:

(a) The clerk shall mail a true copy of the summons and complaint by first class mail to the defendant at the premises.

(b) The process server shall serve the defendant with a true copy of the summons and complaint at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching a true copy of the summons and complaint in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

(4) The process server shall indicate by affidavit upon the return the manner in which service was accomplished.

(5) In the case of premises to which ORS 90.100 to 90.940 applies, the summons shall inform the defendant of the procedures, rights and responsibilities of the parties as specified in ORS 105.137. [Amended by 1975 c.256 §11; 1977 c.327 §1; 1979 c.854 §2; 1981 c.753 §11; 1983 c.303 §6; 1983 c.581 §3; 1985 c.588 §14]

**105.137 Effect of failure of party to appear; appearance by attorney; scheduling of trial; unrepresented defendant.** In the case of a dwelling unit to which ORS 90.100 to 90.940 applies:

(1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default judgment shall be entered against the defendant in favor of the plaintiff for possession of the premises and costs and disbursements.

(2) If the defendant appears and the plaintiff fails to appear at the first appearance, an order shall be entered dismissing the complaint and awarding costs and disbursements against the plaintiff in favor of the defendant.

(3) An attorney at law shall be entitled to appear on behalf of any party, but no attorney fees may be awarded if the defendant does not contest the action.

(4) The plaintiff or an agent of the plaintiff may obtain a continuance of the action for as long as the plaintiff or the agent of the plaintiff deems necessary to obtain the services of an attorney at law.

(5) If both parties appear in court on the date contained in the summons, the court shall set the matter for trial as soon as practicable, unless the court is advised by the parties that the matter has been settled. The trial shall be scheduled no later than 15 days from the date of such appearance. If the matter is not tried within the 15-day period, and the delay in trial is not attributable to the landlord, the court shall order the defendant to pay rent that is accruing into court, provided the court finds after hearing that entry of such an order is just and equitable.

(6)(a) The court shall permit an unrepresented defendant to proceed to trial by directing the defendant to file an answer in writing on a form which shall be available from the court clerk, and to serve a copy upon the plaintiff on the same day as first appearance.

(b) The answer shall be in substantially the following form:

IN THE \_\_\_\_\_ COURT FOR  
THE COUNTY OF \_\_\_\_\_

(Landlord), )  
 )  
 Plaintiff(s), )  
 )  
 vs. ) No. \_\_\_\_\_  
 )  
(Tenant), )  
 )  
 Defendant(s). )

**ANSWER**

I (we) deny that the plaintiff(s) is (are) entitled to possession because:

— The landlord did not make repairs.

List any repair problems: \_\_\_\_\_  
\_\_\_\_\_

— The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is otherwise retaliatory).

— The eviction notice is wrong.

— List any other defenses: \_\_\_\_\_  
\_\_\_\_\_

I (we) ask that the plaintiff(s) take nothing by the complaint and that I (we) be awarded my (our) costs and disbursements.

Date \_\_\_\_\_ Signature of defendant(s) \_\_\_\_\_

(7) If an unrepresented defendant files an answer as provided in subsection (6) of this section, the answer shall not limit the defenses available to the defendant at trial under ORS 90.100 to 90.940. If such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff shall be entitled to a reasonable continuance for the purposes of preparing to meet the defense. [1975 c.256 §13; 1979 c.765 §5; 1979 c.854 §3; 1981 c.753 §12; 1989 c.506 §19]

**105.138 Compelling arbitration; procedure.** (1) Notwithstanding ORS 105.137 (5), if a party to an action to which ORS 90.500 to 90.940 apply moves for an order compelling arbitration and abating the proceedings, the court shall summarily determine whether the controversy between the parties is subject to an arbitration agreement enforceable under section ORS 90.610 (1) and, if so, shall issue an order compelling the parties to submit to arbitration in accordance with the agreement and abating the action for not more than 30 days, unless the parties agree

to an order of abatement for a longer period acceptable to the court.

(2) If the court issues an order compelling arbitration under subsection (1) of this section, the court shall not order the payment of rent into court pending the arbitration unless the court finds such an order is necessary to protect the rights of the parties. [1989 c.918 §7; 1991 c.844 §20]

**105.139 Burden of proof in certain cases.** If a landlord brings an action for possession under ORS 90.400 (3)(d) and the person in possession contends that the tenant has not vacated the premises, the burden of proof shall be on the defendant as to that issue. [1983 c.303 §3; 1993 c.369 §34]

**105.140 Continuance.** No continuance shall be granted to a defendant for a longer period than two days unless:

(1) The defendant gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant; or

(2) In an action for the recovery of the possession of a dwelling unit to which ORS 90.100 to 90.940 apply, the court orders a defendant to pay rent into court as it becomes due from the commencement of the action until final judgment in the action. If a defendant fails to pay rent into court as ordered under this subsection, the action shall be tried forthwith. [Amended by 1973 c.559 §36; 1977 c.365 §2, 1979 c.854 §4]

**105.145 Judgment on trial by court.** If an action is tried by the court without a jury, and after hearing the evidence it concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable.

105.150 [Repealed by 1989 c.506 §20]

**105.155 Forms; execution of judgment; notice of restitution; eviction trespass notice.** (1) The execution, should judgment of restitution be rendered, shall be in the following form:

State of Oregon, )  
 ) ss. EXECUTION OF  
 ) JUDGMENT OF

County of \_\_\_\_\_ ) RESTITUTION  
 )

To the Sheriff:

This was a forcible entry and detainer action for possession of the following premises:

\_\_\_\_\_  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (county)

Judgment was rendered on \_\_\_\_\_ (date) that plaintiff have restitution of the premises on or after \_\_\_\_\_ (date), and also that plaintiff recover costs and disbursements in the sum of \$\_\_\_\_\_.

In the name of the State of Oregon, you are ordered immediately to serve on the defendant in the manner specified in ORS 105.155 (4) a copy of this writ of execution and a notice of restitution.

If the goods, motor vehicles and other personal property belonging to the defendant are not removed by the end of three days, and if the plaintiff has paid all fees for enforcement of this execution, you shall immediately make legal service of an eviction trespass notice on the defendant and deliver possession of the premises to the plaintiff. Unless the premises are subject to ORS 105.165, and the plaintiff elects to remove the defendant's personal property under that section, you shall remove the goods, motor vehicles and other personal property belonging to the defendant to a safe place for storage, levy on this property, pay the costs and disbursements awarded to the plaintiff, as well as all accruing costs, and make due return of this writ.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Deputy District Court Administrator  
\_\_\_\_\_  
Plaintiff  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

(2) The notice of restitution referred to in subsection (1) of this section shall be in substantially the following form:

NOTICE OF RESTITUTION  
TO: \_\_\_\_\_  
(Defendant-Tenant)  
Case Number \_\_\_\_\_

In the case of \_\_\_\_\_  
vs. \_\_\_\_\_, the District  
Court for \_\_\_\_\_ County  
ordered you to move out of the premises at:

Sheriff

by \_\_\_\_\_, 19\_\_\_\_.

The plaintiff-landlord is now entitled to possession of these premises.

The Execution of Judgment of Restitution attached to this paper is an order by the court to the sheriff, directing the sheriff to enforce the court's order.

YOU ARE ORDERED TO VACATE THE PREMISES NO LATER THAN \_\_\_\_ M., \_\_\_\_\_, 19\_\_\_\_. IF YOU DO NOT VACATE THE PREMISES AND MOVE YOUR PERSONAL PROPERTY BY THAT TIME, THE SHERIFF WILL PHYSICALLY REMOVE YOU, AND YOUR PROPERTY LEFT ON THE PREMISES WILL BE STORED AS PROVIDED BY LAW. CONTACT THE PLAINTIFF-LANDLORD FOR FURTHER INFORMATION.

Posted at \_\_\_\_ M., \_\_\_\_\_, 19\_\_\_\_.

Sheriff

(3) The eviction trespass notice referred to in subsection (1) of this section shall be in substantially the following form:

EVICTION TRESPASS NOTICE

Occupants of these premises located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

have been evicted by an order of the court in \_\_\_\_\_ vs. \_\_\_\_\_, Case Number \_\_\_\_\_.

Trespassing or entering into or upon these premises without written consent of the landlord will result in arrest and prosecution.

Any personal property present on these premises at the time this notice was served, (date) \_\_\_\_\_,

[ ] is in the possession of the landlord and may be redeemed by contacting the landlord at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[ ] is in possession of the sheriff. Contact the sheriff for further information.

DATED \_\_\_\_\_

(4) Notwithstanding ORCP 10, by the end of the judicial day next following the payment of fees therefor:

(a) The sheriff shall mail the notice of restitution and a copy of the execution of the judgment of restitution by first class mail to the defendant at the premises; and

(b) The sheriff shall serve a copy of the notice of restitution and of the execution of the judgment of restitution at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching a copy of the notice in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

(5) Notwithstanding ORCP 10, the three-day period specified in subsection (1) of this section shall commence on the day following mailing and service pursuant to subsection (4) of this section and shall end on the third calendar day following such mailing and service unless the third day is a Saturday, Sunday or legal holiday, in which case the period shall end on the next judicial day.

(6) Unless the judgment otherwise provides, an execution of the judgment of restitution shall not issue more than 60 days after the judgment is entered.

(7) A judgment may not be enforced if the parties have entered a new rental agreement after that judgment was entered. [Amended by 1979 c.765 §6; 1985 c.588 §15; 1993 c.369 §27]

105.160 [Repealed by 1977 c.365 §3 and 1977 c.416 §5]

**105.165 Alternative method of removing, storing and disposing of tenant's personal property; requirements; landlord liability.** (1) In the case of a dwelling unit to which ORS 90.320 to 90.375, 90.385 to 90.900 and 90.920 to 90.940 applies, the landlord may elect to remove, store and dispose of the tenant's goods, chattels, motor vehicles and other personal property upon restitution of the premises pursuant to ORS 105.155, provided:

(a) The sheriff shall first serve the notice of restitution and shall thereafter deliver possession of the premises to the landlord, as provided in ORS 105.155.

(b) The landlord shall notify the tenant and shall store and dispose of the goods, chattels, motor vehicles and other personal property of the tenant pursuant to ORS 90.425, except that if the tenant claims that property within the time provided in ORS 90.425, the landlord must make that property available for removal by the tenant by appointment at reasonable times and without

the payment of any costs, charges or other sums, and the notice to the tenant shall so state.

(2) Any cost incurred by the landlord for execution pursuant to ORS 105.155 or for removal, storage or sale of the tenant's property under this section and not recovered pursuant to ORS 90.425 (9) shall be added to the judgment.

(3) If the landlord fails to permit the tenant to recover possession of the tenant's personal property under subsection (1)(b) of this section, the tenant may recover, in addition to any other amount provided by law, twice the actual damages or twice the monthly rent, whichever is greater. [1981 c.753 §9; 1989 c.506 §23; 1989 c.910 §5; 1993 c.369 §18]

**105.168 Minor as party in proceedings pertaining to residential dwellings.** Notwithstanding ORCP 27 or any other provision of law, a minor, as defined in ORS 109.697 and who is a tenant as defined under ORS 90.100, may appear as a party without appointment of a guardian or guardian ad litem in an action for forcible entry or wrongful detainer, under ORS 105.105 to 105.168 regarding possession of a residential dwelling unit to which ORS 90.100 to 90.940 apply, or in an action based upon a contract for a residential dwelling unit or for utility services provided to that unit. [1993 c.369 §31]

### EASEMENT OWNER OBLIGATIONS

**105.170 Definitions for ORS 105.170 to 105.185.** For purposes of ORS 105.170 to 105.185:

(1) "Easement" means a nonpossessory interest in the land of another which entitles the holders of an interest in the easement to a private right of way, embodying the right to pass across another's land.

(2) "Holders of an interest in an easement" means those with a legal right to use the easement, including the owner of the land across which the easement passes if the owner of the land has the legal right to use the easement. [1989 c.660 §1; 1991 c.49 §1]

**105.175 Easement to be kept in repair; sharing costs; agreements.** (1) The holders of an interest in any easement shall maintain the easement in repair.

(2) The cost of maintaining the easement in repair shall be shared by each holder of an interest in the easement, pursuant to the terms of any agreement entered into by the parties for that purpose or any recorded instrument creating the easement. Any such agreement, or a memorandum thereof, shall be recorded in the real property records of the county in which the easement is located. Failure to record the agreement shall not af-

fect the enforceability of the agreement among the parties to the agreement and any other person with actual notice of the agreement.

(3) The cost of maintaining the easement in repair in the absence of an agreement and in the absence of maintenance provisions in a recorded instrument creating the easement shall be shared by each holder of an interest in the easement in proportion to the use made of the easement by each holder of an interest in the easement.

(4) Unless inconsistent with an agreement between the holders of an interest in an easement or a recorded instrument creating the easement, in determining proportionate use and settling conflicts the following guidelines apply:

(a) The frequency of use and the size and weight of vehicles used by the respective parties are relevant factors.

(b) Unless inappropriate, based on the factors contained in paragraph (a) of this subsection or other relevant factors, costs for normal and usual maintenance of the easement and costs of repair of the easement damaged by natural disasters or other events for which all holders of an interest in the easement are blameless may be shared on the basis of percentages resulting from dividing the distance of total normal usage of all holders of an interest in the easement into the normal usage distance of each holder of an interest in the easement.

(c) Those holders of an interest in the easement that are responsible for damage to the easement because of negligence or abnormal use shall repair the damage at their sole expense. [1989 c.660 §§2,3,4; 1991 c.49 §2]

**105.180 Action for failure to comply with duty of holder; recovery of costs; arbitration.** (1) If any holder of an interest in an easement fails to maintain the easement contrary to an agreement or contrary to the maintenance provisions of a recorded instrument creating the easement or, in the absence of an agreement or recorded instrument imposing maintenance obligations, fails after demand in writing to pay the holder's proportion of the cost as indicated in ORS 105.175 (3) and (4), a civil action for money damages or specific performance or contribution may be brought against that person in a court of competent jurisdiction by one or more of the other holders of an interest in the easement, either jointly or severally. In any such civil action, the court may order such equitable relief as may be just in the circumstances. Nothing in ORS 105.170 to 105.185 shall impose a maintenance obligation on the holder of an interest in an easement based on the maintenance pro-

visions in an instrument creating the easement if such holder is not a party to such instrument, whether the instrument is recorded or not, after such holder ceases to use the easement.

(2) The prevailing party shall recover all court costs, arbitration fees and attorney fees.

(3) Any holder of an interest in the easement may apply to the court of competent jurisdiction where the easement is located and that has jurisdiction over the amount in controversy for the appointment of an impartial arbitrator to apportion the cost, and the matter may be arbitrated in accordance with ORS 36.300 to 36.365. The application may be made before, during or after performance of the maintenance work. [1989 c.660 §5; 1991 c.49 §3]

**105.185 Application of ORS 105.170 to 105.185.** The provisions of ORS 105.170 to 105.185:

(1) Apply to all easements existing on or created after January 1, 1992; and

(2) Do not apply to rights of way held or used by providers of public services including, but not limited to, railroad common carriers, pipeline companies, public utilities, electric cooperatives, people's utility districts, water utility districts, municipally owned utilities and telecommunications utilities, when used for the sole purpose of provision of service or maintaining or repairing facilities for the provision or distribution of service. [1989 c.660 §6; 1991 c.49 §4]

## PARTITION

**105.205 Who may maintain partition.** When several persons hold real property as tenants in common, in which one or more of them have an estate of inheritance; or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain a suit for the partition of the real property according to the respective rights of the persons interested therein, and for a sale of all or a part of the property if it appears that a partition cannot be had without great prejudice to the owner.

**105.210 When and how partition prevented.** If the court finds that the property can neither be partitioned nor sold without great prejudice to the owners, the court may receive evidence as to the value of the respective interests, fix the value thereof, and make an order permitting the owners, objecting to the partition or sale, to borrow money upon the property with which to pay off the claims, as so fixed, of the persons de-

manding a partition or sale. Upon payment of the amount in court, as so fixed, for the satisfaction of the claims of those demanding partition or sale, all right and interest in the property of the parties so demanding partition or sale is satisfied fully and discharged and the property is free and clear of all claims of any such parties.

**105.215 Complaint.** The interest of all known and unknown persons in the property shall be specifically and particularly set forth in the complaint for partition, as far as known to the plaintiff. If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff or is uncertain or contingent, or if the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder, so that the parties cannot be named, that fact shall be set forth in the complaint.

**105.220 Tenants and lien creditors as defendants; liens on undivided interests.** The plaintiff shall make a tenant in dower, by the curtesy, for life or for years of any portion of the entire property and creditors having a lien upon any portion of the property defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties and a partition is made, it is thenceforth a lien only upon the share assigned to such party; but such share shall be first charged with its just proportion of the cost of the partition in preference to such lien.

**105.225 Summons; to whom directed.** The summons shall be directed by name to all the tenants in common who are known, to all lien creditors who are made parties to the suit and generally to all persons unknown having or claiming an interest or estate in the property.

**105.230 Service by publication.** If a party having a share or interest in or lien upon the property is unknown or cannot be found, and such fact is made to appear by affidavit, the summons may be served on the unknown or unlocated party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication it must be accompanied by a brief description of the property which is the subject of the suit. [Amended by 1979 c.284 §95]

**105.235 Answer.** The defendant shall set forth in the answer the nature and extent of the interest of the defendant in the property. If the defendant is a lien creditor the defendant shall set forth how the lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of the other security.

**105.240 Rights determinable; ascertainment of title where defendant defaults or sale is necessary.** The rights of the plaintiffs and defendants may be put in issue, tried and determined in the suit. If a defendant fails to answer, or if a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the decree for partition or sale is given.

**105.245 Sale or partition ordered by court.** If it is alleged in the complaint and established by evidence, or if it appears by the evidence to the satisfaction of the court without an allegation in the complaint, that the property or any part of it is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale of the property, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties, as ascertained by the court. The court shall appoint three referees to partition the property and shall designate the portion to remain undivided for the owners whose interest remain unknown or not ascertained.

**105.250 Compensation when equal partition cannot be made.** When it appears that partition cannot be made without prejudice to the rights and interests of some of the parties, the court may adjudge compensation to be made by one party to another on account of the inequality of partition. Compensation shall not be required to be paid to others by owners unknown, nor by infants unless it appears that an infant has personal property sufficient for that purpose, and that the interest of the infant will be promoted thereby.

**105.255 How referees make partition; report.** In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court. They shall designate the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

**105.260 Power of court over report; final decree.** The court may confirm or set aside the report in whole or in part and if necessary appoint new referees. Upon the report being confirmed, a decree shall be

given stating that the partition shall be effectual forever. Except as provided in ORS 105.265, the decree is binding and conclusive:

(1) On all parties named therein, and their legal representatives, who have at the time any interest in any part of the property divided as owners in fee or as tenants for life or for years.

(2) On all parties named therein, and their legal representatives, entitled to the reversion, remainder or inheritance of the property or any part thereof after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property.

(3) On all parties named therein, or their legal representatives, who have an interest in any undivided share of the property as tenants for years or for life.

(4) On all persons interested in the property who are unknown, to whom notice was given of the application for partition by publication, as directed by ORS 105.230.

(5) On all persons claiming from parties or persons listed in subsections (1) to (4) of this section.

**105.265 Persons not affected by decree.** The decree provided for in ORS 105.260 shall not affect tenants for years or for life of the whole of the property which is the subject of partition. Except as provided in ORS 105.260, the decree and partition shall not preclude any person from claiming title to the property in question, or from controverting the title of the parties between whom the partition was made.

**105.270 Order of sale on referees' report.** If the referees report to the court that the property for which partition has been decreed, or any separate portion thereof, is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that the report is correct, it may, by an order, direct the referees to sell the property or separate portion thereof so situated.

**105.275 Conclusiveness of order confirming report.** If the report of the referee is confirmed the order of confirmation is binding and conclusive upon all parties to the suit.

**105.280 How sale made; notice of sale.** All sales of real property made by the referees shall be made by public auction to the highest bidder in the manner required for the sale of real property on execution. The notice shall state the terms of sale. If the property or any part of it is to be sold subject to a prior estate, charge or lien, that fact shall be stated in the notice.

**105.285 Distribution of proceeds of sale.** The proceeds of the sale of encumbered property shall be distributed by the decree of the court as follows:

- (1) To pay the property's just proportion of the general costs of the suit.
- (2) To pay the costs of the reference.
- (3) To satisfy the several liens in their order of priority, by payment of the sums due and to become due, according to the decree.
- (4) The residue among the owners of the property sold, according to their respective shares.

**105.290 Distribution of proceeds by referee or payment into court.** The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. If no such direction is given, all proceeds and securities shall be paid into court or deposited as directed by the court.

**105.295 Continuance of suit after proceeds paid into court.** When the proceeds of sales of any shares or parcel belonging to known persons who are parties to the suit are paid into court, the suit may be continued as between such parties for the determination by the court of their respective claims thereto. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original suit.

**105.300 When lienholder has other securities.** Whenever any party to the suit, who holds a lien upon any part of the property has other securities for the payment of the amount of the lien, the court may, in its discretion, order the securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property.

**105.305 Credit allowed.** The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises which it may direct to be sold on credit; and for that portion of which the purchase money is required by ORS 105.370 to be invested for the benefit of unknown owners, infants or parties out of the state. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court and the clerk's successor in office. When

there is a known owner of full age, the security for the share of the owner shall be executed in the name of the owner.

**105.310 Setting off estate for life or years in part not sold.** When only a part of the property is ordered to be sold, the whole of an estate for life or years in an undivided share of the property may be set off in any part of the property not ordered to be sold.

**105.315 Disposition of life estate or leasehold.** When the estate of any tenant for life or years in any undivided part of the property in question was admitted by the parties or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate was made a party to the suit, the estate may be first set off out of any part of the property and a sale made of such parcel subject to the tenants prior unsold estate; but if in the judgment of the court a due regard to the interest of all the parties requires that such estate should also be sold, the sale of the estate may be ordered.

**105.320 Compensation of tenants in case of sale.** Any person entitled to an estate for life or years in any undivided part of the property, whose estate has been sold, shall be entitled to receive such sum in gross as is, deemed, upon principles of law applicable to annuities, a reasonable satisfaction for the estate. If the person so entitled consents to that sum, the person shall accept it by executing an instrument that is duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the clerk.

**105.325 When court determines value of tenancy.** If a tenant does not consent pursuant to ORS 105.320, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the tenant's benefit, and shall order that sum to be deposited in court for that purpose.

**105.330 Rules for determining value of certain estates.** The proportion of the proceeds of the sale to be invested, as provided in ORS 105.325, shall be ascertained and determined as follows:

(1) If an estate in dower or curtesy is included in the order of sale its proportion shall be one-half of the proceeds of the sale of the property, or of the sale of the undivided share in the property upon which the claim or dower existed.

(2) If any other estate for life or years is included in the order of sale its proportion shall be the whole proceeds of the sale of the

property, or of the sale of an undivided share of the property in which the estate existed.

**105.335 Protection of unknown tenants.** If any person entitled to an estate for life or years is unknown, the court shall provide for the protection of the rights of the person in the same manner, as far as possible, as if the person were known and had appeared.

**105.340 Provision for future rights or interests.** In all cases of sales in partition when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of the contingent or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties. [Amended by 1969 c.591 §282]

**105.345 Notice of terms of sale; separate sale of distinct parcels.** In all cases of sales of property, the terms shall be known at the time. If the premises consist of distinct farms or lots they shall be sold separately, or otherwise if the court so directs.

**105.350 Purchase by referee, conservator or guardian forbidden.** Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase at a partition sale; nor shall the guardian or conservator of the estate of an infant party be interested in the purchase of any real property that is the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section are void. [Amended by 1973 c.823 §99]

**105.355 Report of sale.** After completing the sale the referees shall report it to the court with the description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale and the securities, if any, taken. The report shall be filed with the clerk.

**105.360 Exception to report; confirmation of sale; order of confirmation.** The report of sale may be excepted to by any party entitled to a share of the proceeds in like manner and with like effect as in ordinary cases. If the sale is confirmed the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to the sale, which acts they are hereby authorized to do. The order shall discharge the property of the estate or interest of every person mentioned in ORS 105.260 and of tenants for life or years of the prop-

erty sold. The order shall be binding and conclusive upon all such persons as if it were a decree for the partition of such property and except as provided in ORS 105.350, upon all persons whomsoever as to the regularity of the proceedings concerning such sale.

**105.365 Purchase by encumbrancer or party entitled to share.** When a party entitled to a share of the property, or an encumbrancer entitled to have the lien of the encumbrancer paid out of the sale, becomes a purchaser, the referees may take a receipt for so much of the proceeds of the sale as belongs to the party or the encumbrancer.

**105.370 Investment of proceeds for certain parties.** When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into court or otherwise deposited by order of the court, such proceeds shall be invested in securities on interest for the benefit of the persons entitled thereto.

**105.375 In whose name securities taken or investments made.** Except as provided in ORS 105.380, security for the proceeds of sale shall be taken or investments of the proceeds shall be made in the name of the clerk of the court and the clerk's successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

**105.380 When securities are payable to parties.** When security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of and payable to the parties entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

**105.385 Clerk's treatment of securities and investments.** The clerk in whose name a security is taken or by whom an investment is made, and the clerk's successors in office, shall receive the interest and principal as it becomes due and apply and invest it as the court may direct. The clerk shall file in the office of the clerk all securities taken, and keep an account in a book provided and kept for that purpose in the office, free for inspection by all persons, of investments and moneys received and disposed of by the clerk.

**105.390 When proceeds paid to conservator or guardian of infant.** When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to the guardian of the infant, the conservator of the estate of the infant or the special guardian appointed for the infant in the suit, upon the guardian or conservator giving the security required by law or ordered by the court. [Amended by 1973 c.823 §100]

**105.395 Payment of proceeds to conservator of incapacitated person.** When the interest in real property of an incapacitated person has been sold, the share of the incapacitated person of the proceeds shall be given, on the behalf of the incapacitated person, to the conservator of the estate of the incapacitated person if the conservator executes, with sufficient sureties, an undertaking approved by the judge of the court, that the conservator will faithfully discharge the trust reposed in the conservator and will render a true and just account to the person entitled to the proceeds or to the legal representative of the person. [Amended by 1973 c.823 §101]

**105.400 When conservator or guardian may consent to partition.** When an infant or an incapacitated person is interested in real estate held in common or in any other manner so as to authorize the infant or incapacitated person being made a party to an action for the partition thereof, the guardian of the infant or incapacitated person or the conservator of the estate of the infant or incapacitated person may consent to a partition without suit and agree upon the share to be set off to the infant or incapacitated person. When the court so orders, the guardian or conservator may execute a release on behalf of the infant or other incapacitated person to the owners of the other shares of the parts to which they are respectively entitled. [Amended by 1973 c.823 §102; 1987 c.158 §17]

**105.405 Costs and expenses of partition.** (1) The expenses of the referees, including those of a surveyor and assistants of the surveyor when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the costs of partition.

(2) The reasonable costs of partition, including reasonable attorney fees and disbursements, that are for services performed for the common benefit of all parties, shall be paid by the parties decreed to share in the lands divided in proportion to their respective interests therein, and shall be included and specified in the decree. They shall be a lien on the several shares, and the decree

may be enforced by execution against the parties separately. When, however, a controversy arises between some of the parties only, the court may require the expense of such controversy to be paid by any of, or all, the parties thereto. [Amended by 1971 c.502 §1]

## HOUSING RECEIVERSHIP

**105.420 Findings; policy.** (1) The Legislative Assembly recognizes that there exists residential property in this state that is insanitary and unsafe and that many citizens, especially those with lower incomes, are forced to live in and occupy these properties.

(2) The Legislative Assembly further recognizes that there are residential properties in this state that have not been maintained in compliance with basic sanitary and habitability standards and which have become abandoned. These conditions contribute to the spread of disease and criminal activity, create urban blight and community deterioration, adversely affect the state's economic and social viability and otherwise detrimentally impact the public's health, safety and welfare.

(3) In order to correct these conditions, it is necessary to revitalize these residential properties and thus add to the overall housing stock of this state. The Legislative Assembly deems it necessary to authorize county and municipal governments to adopt and implement receivership programs to allow for the upgrading of substandard and abandoned residential properties. [1989 c.649 §2]

**105.425 Definitions for ORS 105.420 to 105.455.** As used in ORS 105.420 to 105.445 and 105.455:

(1) "Abatement" means the removal or correction of any condition at a property including demolition that violates the provisions of any duly enacted building or housing code, as well as the making of such other improvements or corrections as are needed to effect the rehabilitation of the property or structure, but not including the closing or physical securing of the structure.

(2) "Building code" or "housing code" means any law, ordinance or governmental regulation concerning habitability or the construction, maintenance, operation, occupancy, use or appearance of any property.

(3) "Governing body" means the city council, board of commissioners, county court or other managing board of a municipality or county.

(4) "Interested party" means any person or entity that possesses any legal or equitable interest of record in the property, including but not limited to the holder of any

lien or encumbrance of record on the property.

(5) "Property" means real property and all improvements thereon including edifices, structures, buildings, unit or part thereof used or intended to be used for residential purposes including single-family, duplex, multifamily structures and mixed-use structures which have one or more residential units. [1989 c.649 §3]

**105.430 Receivership for buildings that constitute threat to public health, safety or welfare; procedure.** (1) If residential property is found to be in violation of building or housing codes which the city or county, in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare, the city or county in addition to any other remedies available to it may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement.

(2) At least 60 days prior to the filing of an application for appointment of a receiver pursuant to ORS 105.420 to 105.455, the city or county shall give written notice by regular mail to all interested parties of its intent to file the application and information relative to:

- (a) The identity of the property;
- (b) The violations of the building or housing codes giving rise to the application for the receiver;
- (c) The name, address and telephone number of the person or department where additional information can be obtained concerning violations and their remedy; and
- (d) The city or county which may seek the appointment of a receiver pursuant to ORS 105.420 to 105.455 unless action is taken within 60 days by an interested party.

(3) A city or county may not apply for the appointment of a receiver pursuant to ORS 105.420 to 105.455 if an interested party has commenced and is then prosecuting in a timely fashion an action or other judicial or nonjudicial proceeding to foreclose a security interest on the property, or to obtain specific performance of or forfeit the purchaser's interest in under a land sale contract.

(4) Notice of the application for the appointment of a receiver pursuant to ORS 105.420 to 105.455 shall be served on all interested parties.

(5) If, following the application for appointment of a receiver, one or more of the interested parties elects to correct the conditions at the property giving rise to the city's or county's application for the appointment of a receiver, the party or parties shall be required to post security in an

amount and character as the court deems appropriate to insure timely performance of all work necessary to make corrections, as well as such other conditions as the court deems appropriate to effect the timely completion of the corrections by the interested party or parties.

(6) In the event that no interested party elects to act pursuant to subsection (5) of this section or fails to timely perform work undertaken pursuant to subsection (5) of this section, the court shall make a determination that the property is an unsafe or insanitary condition and appoint a receiver to complete the abatement.

(7) A receiver may be any one of the following:

(a) A housing authority organized under the terms of ORS 456.055 to 456.230;

(b) An urban renewal agency organized under the terms of ORS 457.035 to 457.320;

(c) A private not-for-profit corporation, the primary purpose of which is the improvement of housing conditions within the city or county; or

(d) A city or county agency, bureau or similar subdivision designated by the city or county as being responsible for the rehabilitation of property.

(8) A receiver appointed by the court pursuant to ORS 105.420 to 105.455 shall not be required to give security or bond of any sort prior to appointment. [1989 c.649 §4]

**105.435 Authority of receiver; financing agreements; fee; abatement work exempt from public contracting law.** (1) A receiver appointed by the court, pursuant to ORS 105.420 to 105.455, shall have the authority to do any or all of the following unless specifically limited by the court:

(a) Take possession and control of the property including the right to enter, modify and terminate tenancies pursuant to ORS 105.105 to 105.155 and to charge and collect rents derived therefrom, applying said sum to the costs incurred due to the abatement and receivership;

(b) Negotiate contracts and pay all expenses associated with the operation and conservation of the property including, but not limited to, all utility, fuel, custodial, repair or insurance costs;

(c) Pay all accrued property taxes, penalties, assessments and other charges imposed on the property by a unit of government as well as any accruing charge of like nature accruing during the pendency of the receivership;

(d) Dispose of any or all abandoned personal property found at the structure; and

(e) Enter into contracts and pay for the performance of any work necessary to complete the abatement.

(2) In addition to the powers set forth in subsection (1) of this section, the receiver may, under such terms and condition as a court shall allow, enter into financing agreements with public or private lenders and encumber the property therewith so as to have moneys available to correct the conditions at the property giving rise to the abatement.

(3) A receiver may charge an administrative fee at an hourly rate approved by the court or at a rate of 15 percent of the total cost of the abatement, whichever the court deems more appropriate.

(4) All abatement work done under ORS 105.420 to 105.455 is exempt from the public contracting statutes set forth in ORS 279.011 to 279.063. [1989 c.649 §§5,6]

**105.440 Review of abatement expenditures by court; lien for unpaid expenses.**

(1) All moneys expended and all costs and obligations incurred by the receiver in performing the abatement shall be reviewed by the court for reasonableness and their necessity in performing the abatement. To the extent that the court finds the moneys, costs or obligations, or any combination thereof, to be reasonable and necessary, it shall issue an order reciting this fact as well as the amount found to be reasonable and necessary.

(2) If the costs and obligations incurred due to the abatement have not been paid, the order of the court shall be filed with the county recorder within 60 days of its filing with the court and shall thereafter constitute a lien on the property. [1989 c.649 §7]

**105.445 Effect on purchase money security interest of lien for unpaid abatement expenses.** (1) As used in this section, "purchase money security interest" means:

(a) The interest of a vendor under a land sale contract pertaining to the property if the contract was recorded prior to the issuance of the notice under ORS 105.430 (2);

(b) The interest of a mortgagee under a purchase money mortgage if the mortgage was recorded prior to the issuance of the notice under ORS 105.430 (2); or

(c) The interest of a beneficiary under a purchase money trust deed if the trust deed was recorded prior to the issuance of the notice under ORS 105.430 (2).

(2) Notwithstanding any other provision of law or any purchase money security interest, the issuance of the notice under ORS 105.430 (2) shall constitute a default under the purchase money security interest, and if

the violations of the building or housing codes listed in the notice are not corrected within 30 days after the mailing of the notice, the vendor, mortgagee or beneficiary under the purchase money security interest may commence proceedings to exercise the remedies set forth in the purchase money security interest.

(3) A lien created by ORS 105.440 (2) shall be prior and superior to any purchase money security interest in the property if:

(a) The city or county gave the holder of the purchase money security interest and any vendee, mortgagor or grantor under such purchase money security interest the notice required under ORS 105.430 (2); and

(b) The holder of the purchase money security interest has not, prior to the appointment of a receiver under ORS 105.430 (6), initiated proceedings or taken other action to foreclose the purchase money security interest or to otherwise gain possession of the property.

(4) A lien created under ORS 105.440 (2) shall, except for property tax liens, assessment liens, liens created by ORS 87.352 to 87.362 and purchase money security interests not covered by subsection (3) of this section, be prior and superior to all other liens, mortgages and encumbrances against the property upon which it is imposed without regard to whether the other liens, mortgages or encumbrances attached to the property before or after the lien created by ORS 105.440 (2) attached. [1989 c.649 §8]

**105.450 Termination of receivership.**

The receivership authorized pursuant to the terms of ORS 105.420 to 105.455 shall terminate only by an order of the court after a showing by an interested party or the receiver that:

(1) The abatement has been completed;

(2) The costs and obligations incurred due to the abatement have been paid by an interested party or a lien has been filed pursuant to ORS 105.440; and

(3) The interested party will manage the property in conformance with applicable housing codes. [1989 c.649 §9]

**105.455 Short title.** ORS 105.420 to 105.455 may be cited as the Oregon Housing Receivership Act. [1989 c.649 §1]

**SELLER'S PROPERTY DISCLOSURE AND DISCLAIMER STATEMENTS**

**105.465 Application of ORS 105.465 to 105.490; form of disclosure statement; disclaimer as alternative to disclosure statement.** (1) The provisions of ORS 105.465 to 105.490, 696.301 and 696.870:

(a) Apply to the real property described in subparagraphs (A) to (D) of this paragraph unless the buyer indicates to the seller, which indication shall be conclusive, that the buyer will use the real property for purposes other than a residence for the buyer or the buyer's spouse, parent or child:

(A) Real property consisting of or improved by one to four dwelling units;

(B) A condominium unit as defined in ORS 100.005 and not subject to disclosure under ORS 100.705;

(C) A timeshare property as defined in ORS 94.803 and not subject to disclosure under ORS 94.829; and

(D) A manufactured dwelling, as defined in ORS 446.003, that is owned by the same person who owns the land upon which the manufactured dwelling is situated.

(b) Do not apply to a leasehold in real property.

(2) A seller shall deliver one of the following to each buyer who makes a written offer to purchase real property in this state:

(a) A written disclaimer that the seller makes no representations or warranties as to the condition of the real property or any improvement thereon and that the buyer will be purchasing the property "as is," that is, with all defects, if any; or

(b) A seller's property disclosure statement in substantially the following form:

\_\_\_\_\_

**SELLER'S PROPERTY DISCLOSURE STATEMENT  
(NOT A WARRANTY)  
(SECTION 1 OF THIS ACT)**

**INSTRUCTIONS TO THE SELLER**

Please complete the following form. Do not leave any spaces blank unless the question clearly does not apply to the property. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment.

**NOTICE TO THE BUYER**

**THE FOLLOWING REPRESENTATIONS ARE MADE BY THE SELLER(S), CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT \_\_\_\_\_ ("THE PROPERTY").**

**DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT**

**THE TIME OF DISCLOSURE. YOU HAVE FIVE BUSINESS DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER, UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.**

**FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON YOUR BEHALF, FOR EXAMPLE, ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, OR PEST AND DRY ROT INSPECTORS.**

Seller \_\_\_\_\_ is/\_\_\_\_\_ is not occupying the property.

**I. SELLER'S REPRESENTATIONS:**

The following are representations made by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property.

**1. TITLE**

- Yes  No **A. Do you have legal authority to sell the property?**
- Yes  No **\*B. To your knowledge, is title to the property subject to any of the following:**
  - (1) First right of refusal
  - (2) Option
  - (3) Lease or rental agreement
  - (4) Other listing
  - (5) Life estate?
- Yes  No **\*C. Are you aware of any encroachments, boundary agreements, boundary disputes or recent boundary changes?**
- Yes  No **\*D. Are you aware of any rights of way, easements or licenses (access limitations) that may affect your interest in the property?**
- Yes  No **\*E. Are you aware of any written agreements for joint maintenance of an easement or right of way?**
- Yes  No **F. Are you aware of any governmental study, survey or notices that**

- would affect the property?  Yes  No
- Yes  No G. Are you aware of any pending or existing assessments against the property?  Yes  No
- Yes  No H. Are you aware of any zoning violations or nonconforming uses?  Yes  No
- Yes  No \*I. Are you aware of a boundary survey for the property?  Yes  No
- Yes  No \*J. Are you aware of any covenants, conditions or restrictions which affect the property?  Yes  No
2. WATER
- A. Household Water  Yes  No
- (1) The source of the water is:
- Public  Community  Yes  No
- Private  Shared  Yes  No
- (2) Water source information:
- Yes  No \*a. Are you aware of any written agreements for shared water source?
- Yes  No \*b. To your knowledge, is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?  Yes  No
- Yes  No c. Are any known problems or repairs needed?  Yes  No
- Yes  No (3) Are you aware of any water treatment systems for the property?  Yes  No
- Leased  Owned  Yes  No
- B. Irrigation  Yes  No
- (1) Are you aware of any water rights for the property?  Yes  No
- Yes  No \*(2) If there exist any, to your knowledge, have the water rights been used during the last five-year period?  Yes  No
- Yes  No \*(3) If so, is the certificate available?  Yes  No
- C. Outdoor Sprinkler system  Yes  No
- (1) To your knowledge, is there an outdoor sprinkler system for the property?  Yes  No
- Yes  No (2) To your knowledge, has a back flow valve been installed?  Yes  No
- (3) To your knowledge, is the outdoor sprinkler system operable?
3. SEWAGE
- A. To your knowledge, is the property connected to a sanitary sewer?  Yes  No
- B. Are you aware of any sanitary sewer proposed for the property?  Yes  No
- C. To your knowledge, is the property connected to a septic system or cesspool?  Yes  No
- D. Are you aware of any problems or repairs needed?  Yes  No
- E. To your knowledge, does your sewage system require onsite pumping to another level?  Yes  No
4. INSULATION
- A. To your knowledge, is there insulation in the:
- (1) Ceiling?  Yes  No
- (2) Exterior walls?  Yes  No
- (3) Floors?  Yes  No
- B. To your knowledge, are there any defective insulated windows?  Yes  No
5. STRUCTURAL
- \*A. To your knowledge, has the roof leaked? If yes, has it been repaired?  Yes  No
- B. Additions/conversions/remodeling?  Yes  No
- \*If yes, are you aware of whether a building permit was obtained? Was final inspection obtained?  Yes  No
- C. To your knowledge, are there smoke detectors? If there are, which are electrical (hard-wired)?  Yes  No
- D. To your knowledge, is there a woodstove? Make \_\_\_\_\_ Was it installed with a permit?  Yes  No
- \*E. Are you aware of whether a pest or dry rot, structural or "whole house" inspection has been done?  Yes  No
- \*F. Are you aware of any moisture problems in the structure (especially

- in the basement)? if yes, explain frequency and extend of problem on attached sheet
- [ ]Yes[ ]No G. Are you aware of a sump pump on the property? [ ]Yes[ ]No
6. SYSTEMS AND FIXTURES  
If the following systems or fixtures are included in the purchase price, are they, to your knowledge, in good working order on the date this form is signed?
- [ ]Yes[ ]No A. Electrical system, including wiring, switches, outlets and service
- [ ]Yes[ ]No B. Plumbing system, including pipes, faucets, fixtures and toilets
- [ ]Yes[ ]No C. Hot water tank [ ]Yes[ ]No
- [ ]Yes[ ]No D. Garbage disposal
- [ ]Yes[ ]No E. Built-in range and oven
- [ ]Yes[ ]No F. Built-in dishwasher
- [ ]Yes[ ]No G. Sump pump [ ]Yes[ ]No
- [ ]Yes[ ]No H. Heating and cooling systems
- [ ]Yes[ ]No I. Security system [ ]Owned[ ]Leased
7. COMMON INTEREST
- [ ]Yes[ ]No A. Home Owners' Association?  
Name of Association \_\_\_\_\_
- [ ]Yes[ ]No B. Regular periodic assessments: \$\_\_\_\_\_ per [ ] Month [ ] Year [ ] Other\_\_\_\_\_
- [ ]Yes[ ]No C. Are you aware of any pending special assessments?
- [ ]Yes[ ]No D. Are you aware of any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, pools, tennis courts, walkways or other areas co-owned in undivided interest with others)?
8. GENERAL
- [ ]Yes[ ]No A. Are you aware of any settling, soil, standing water or drainage problems on the property or in the immediate area?
- [ ]Yes[ ]No B. To your knowledge, does the property contain fill?
- [ ]Yes[ ]No C. Are you aware of any material damage to the property or any of the structure from fire, wind, floods, beach movements, earthquake, expansive soils or landslides?
- D. To your knowledge, is the property in a designated flood plain?
- E. To your knowledge, is the property in a designated slide zone?
- F. Are you aware of any substances, materials or products that may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property?
- G. Are you aware of any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property?
- H. To your knowledge, has the property ever been used as an illegal drug manufacturing site?
9. FULL DISCLOSURE BY SELLERS
- A. Other conditions or defects  
Are you aware of any other material defects affecting this property or its value that a prospective buyer should know about?
- B. Verification  
The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our agents to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.
- DATE \_\_\_\_\_ SELLER \_\_\_\_\_  
SELLER \_\_\_\_\_
- II. BUYER'S ACKNOWLEDGMENT
- A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects which

are known to me/us or can be known by me/us by utilizing diligent attention and observation.

B. Each buyer acknowledges and understands that the disclosures set forth in this statement and in any amendments to this statement are made only by the seller and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have or take a security interest in the property and no such financial institution shall be bound by or have any liability with respect to any representation, misrepresentation, omission, error or inaccuracy contained in another party's disclosure statement required by this section or any amendment to the disclosure statement.

C. Buyer (which term includes all persons signing the "buyer's acceptance" portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature.

\*If yes, attach a copy or explain on attached sheet

[1993 c.547 §1]

105.470 Exclusions from ORS 105.465 to 105.490. ORS 105.465 to 105.490, 696.301 and 696.870 do not apply to:

(1) The first sale of a dwelling never occupied, provided that the seller provides the buyer with the following statement on or before the date the buyer is legally obligated to purchase the subject real property: "THIS HOME WAS CONSTRUCTED OR INSTALLED UNDER BUILDING OR INSTALLATION PERMIT(S) #\_\_\_\_\_, ISSUED BY\_\_\_\_\_."

(2) Sales by financial institutions that acquired the property by foreclosure or deed in lieu of foreclosure.

(3) Court appointed receivers, personal representatives, trustees, conservators or guardians.

(4) A seller who has never occupied any part of the real property, provided the seller represents in writing that the seller has no knowledge of any material defects in the real property except for those set out in the writing, and further provided that the seller advises the buyer in writing to obtain a qualified inspector.

(5) Sales or transfers by governmental agencies. [1993 c.547 §7]

105.475 Seller's disclaimer; revocation of offer; criteria. (1) The following statement shall be included in the body of a seller's disclaimer: "YOU HAVE SEVEN BUSINESS DAYS FROM SELLER'S DELIVERY OF THIS DISCLAIMER TO REVOKE YOUR OFFER BY DELIVERING YOUR SIGNED WRITTEN STATEMENT TO SELLER TO THAT EFFECT. YOU HAVE AN OBLIGATION TO PERFORM WITH DUE DILIGENCE YOUR OFFER TO PURCHASE IN GOOD FAITH."

(2) If a seller issues a disclaimer and a buyer has not then delivered to the seller a written statement waiving the buyer's right to revoke the buyer's offer, the buyer shall have seven business days after delivery of the disclaimer to revoke the buyer's offer by delivering to the seller a separate signed written statement to that effect.

(3) If a seller issues a seller's disclosure statement and a buyer has not then delivered to the seller a written statement waiving the buyer's right to revoke the buyer's offer, the buyer shall have five business days after delivery of the seller's disclosure statement to revoke the buyer's offer by delivering to the seller a separate signed written statement to that effect.

DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. YOU, THE BUYER, HAVE FIVE BUSINESS DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS SELLER'S DISCLOSURE STATEMENT.

DATE \_\_\_\_\_  
BUYER \_\_\_\_\_  
BUYER \_\_\_\_\_

Agent to sign and date:

\_\_\_\_\_ Real Estate Licensee  
\_\_\_\_\_ Real Estate Organization

(4) If a buyer fails to timely deliver to a seller a written statement revoking the buyer's offer, the buyer's right to revoke the buyer's offer expires.

(5) If a buyer closes the transaction, the buyer's right to revoke based on ORS 105.465 to 105.490, 696.301 and 696.870 is terminated.

(6) If the seller fails or refuses to provide a disclosure or disclaimer as required under this section, the buyer shall have a right of revocation until such right is terminated pursuant to subsection (5) of this section.

(7) If the buyer revokes the offer pursuant to subsections (2) to (9) of this section, notwithstanding ORS 696.581, the buyer shall be entitled to immediate return of all deposits and other considerations delivered to any party or escrow agent with respect to the buyer's offer, and the buyer's offer is void.

(8) When the deposits and other considerations have been returned to the buyer, upon the buyer's signed, written release and indemnification of the holders of the deposits and other considerations, the holders shall be released from all liability for the deposits and other considerations.

(9) Any disclaimer or disclosure statement issued by the seller is part of and incorporated into the offer and the acceptance. [1993 c.547 §2,3]

**105.480 Representations in disclosure statement; application.** (1) The representations contained in a seller's disclosure statement and in any amendment to the disclosure statement are the representations of the seller only, and no financial institution that may have made or that may make a loan pertaining to the property covered by a seller's disclosure statement, or that may have or take a security interest in the property covered by a seller's disclosure statement, is bound by or has any liability with respect to any representation, misrepresentation, omission, error or inaccuracy contained in another party's disclosure statement required by ORS 105.465 or any amendment to the disclosure statement.

(2) For purposes of ORS 105.465 to 105.490, 696.301 and 696.870, "financial institution" has the meaning given that term in ORS 706.005 and also includes mortgage bankers and mortgage brokers as those terms are defined in ORS 59.840, and consumer finance companies licensed under ORS chapter 725. [1993 c.547 §4b]

**105.485 Allocation of burden of proof.** The burden of proof of lawful delivery of a seller's disclaimer or seller's disclosure statement and any amendment thereto shall be on the seller. The burden of proof of lawful delivery of a notice of revocation of a

buyer's offer shall be on the buyer. [1993 c.547 §5]

**105.490 Effect of ORS 105.465 to 105.490 on rights and remedies.** ORS 105.465 to 105.490, 696.301 and 696.870 shall not directly, indirectly or by implication limit or alter any preexisting common law or statutory right or remedy including actions for fraud, negligence or equitable relief. [1993 c.547 §8]

## ACTIONS AND SUITS FOR NUISANCES

**105.505 Remedies available for private nuisance.** Any person whose property or personal enjoyment thereof is affected by a private nuisance, may maintain an action for damages therefor. If judgment is given for the plaintiff in the action, the plaintiff may, on motion, in addition to the execution to enforce the judgment, obtain an order allowing a warrant to issue to the sheriff to abate the nuisance. The motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appears on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may proceed to have the defendant enjoined. [Amended by 1979 c.284 §96]

**105.510 Procedure for abating a nuisance.** If the order to abate provided for in ORS 105.505 is made, the clerk shall when requested by the plaintiff within six months after the order is made, issue a warrant directed to the sheriff, requiring the sheriff forthwith to abate the nuisance at the expense of the defendant and to return the warrant as soon thereafter as possible, with the proceedings of the sheriff indorsed thereon. The expense of abating the nuisance may be levied by the sheriff on the property of the defendant and in this respect the warrant is to be deemed an execution against property.

**105.515 Stay of issuance of warrant to abate.** At any time before an order to abate is made or a warrant to abate is issued, the defendant may, on motion to the court or judge thereof, have an order to stay the issuing of the warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance, upon giving an undertaking to the plaintiff in a sufficient amount, in the form of an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or a bond with one or more sureties, to the satisfaction of the court or judge thereof, that the defendant will abate the nuisance within the time and in the manner specified in the order. [Amended by 1991 c.331 §27]

**105.520 Justification of sureties; proceedings when nuisance is not abated.** If the plaintiff is not notified of the time and place of the application for the order provided for in ORS 105.515, the sureties therein provided for shall justify as bail upon arrest, otherwise the justification may be omitted unless the plaintiff requires it. If the order is made and undertaking given, and the defendant fails to abate the nuisance within the time specified in the order, at any time within six months thereafter, the warrant for the abatement of the nuisance may issue as if the warrant had not been stayed.

105.525 [Repealed by 1969 c.509 §8]

105.530 [Repealed by 1969 c.509 §8]

### **ABATEMENT OF UNLAWFUL GAMBLING, PROSTITUTION OR CONTROLLED SUBSTANCE ACTIVITIES**

**105.550 Definitions for ORS 105.555 to 105.565 and 105.575 to 105.600.** As used in ORS 105.555 to 105.565 and 105.575 to 105.600, unless the context requires otherwise:

(1) "Of record" means:

(a) With regard to real property, that an owner's 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; or

(b) With regard to personal property, that an owner's interest is recorded in the public records under any applicable state or federal law where the owner's interest must be recorded to perfect a lien or security interest, or provide constructive notice of the owner's interest.

(2) "Owner" 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.

(3) "Place" or "property" includes, but is not limited to, any premises, room, house, building or structure or any separate part or portion thereof whether permanent or not or the ground itself or any conveyance or any part or portion thereof. [1989 c.846 §2]

**105.555 Places of prostitution, gambling or controlled substances as nuisances subject to abatement.** (1) The following are declared to be nuisances and shall be enjoined and abated as provided in ORS 105.560, 105.565 and 105.575 to 105.600:

(a) Any place that, as a regular course of business, is used for the purpose of

prostitution and any place where acts of prostitution occur;

(b) Any place which is used and maintained for profit and for the purpose of gambling or a lottery, as defined in ORS 167.117, by any person, partnership or corporation organized for profit and wherein take place any of the acts or wherein are kept, stored or located any of the games, devices or things which are forbidden by or made punishable by ORS 167.117 to 167.164; and

(c) Any place where activity involving the unauthorized delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored or located any of the devices, equipment, things or substances used for unauthorized delivery, manufacture or possession of a controlled substance. As used in this subsection "devices, equipment and things" does not include hypodermic syringes or needles. This subsection shall not apply to acts which constitute violations under ORS 475.992 (2)(b) and (4)(f).

(2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance are kept, stored or located in or on the property for the purpose of lawful sale or use of these items. [1989 c.846 §3; 1989 c.915 §24]

**105.560 Action to restrain or enjoin nuisance; jurisdiction.** An action to restrain or enjoin a nuisance described in ORS 105.555 may be brought by the Attorney General, district attorney, county attorney, city attorney or a person residing or doing business in the county where the property is located. The action shall be brought in the circuit court in the county where the property is located. [1989 c.846 §4]

**105.565 Complaint; service; jury trial; admissibility of reputation as evidence.** (1) Any action shall be commenced by the filing of a complaint alleging facts constituting the nuisance, and containing a legal description of the property involved and an allegation that the owners of record of the property have been notified of the facts giving rise to the alleged nuisance at least 10 days prior to the filing of the action with the court.

(2) The complaint shall be served on owners of record and occupants of the property as provided in ORCP 7. No service need be made prior to an application for a temporary restraining order, provided the procedures of ORCP 79B are followed with regard to all persons entitled to service under this section.

(3) Any party or an owner of the property may demand a trial by jury in any action brought under ORS 105.560 to 105.600.

(4) On the issue of whether property is used in violation of ORS 105.555, evidence of its general reputation and the reputation of persons residing in or frequenting it shall be admissible. [1989 c.846 §5]

**105.570 Conditions for dismissal of complaint; substituting parties; when costs payable by taxpayer.** (1) If the complaint is filed by a person other than the Attorney General, district attorney, county attorney or city attorney, it shall not be dismissed except upon a sworn statement made by the complainant and the attorney of the complainant setting forth the reasons why the suit should be dismissed. If the court is of the opinion that the suit ought not to be dismissed, the court may direct the district attorney in writing to prosecute said suit to judgment.

(2) If the suit is continued more than one term of court, any citizen of the county or the district attorney may be substituted for the complaining party, and prosecute said suit to judgment.

(3) If the suit is brought by a taxpayer and the court finds that there was no reasonable ground or cause for said suit, the costs may be taxed to such taxpayer. [Formerly 465.140]

**105.575 Precedence of action on court docket.** An action under ORS 105.560 to 105.600 shall have precedence over all other actions, except prior matters of the same character, criminal proceedings and election contests. [1989 c.846 §6]

**105.580 Order of abatement; cancellation.** (1) Except as provided in subsection (3) of this section, if the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the final judgment in the case.

(2) The order of abatement may direct the effectual closing of the premises, building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released.

(3) The court, if satisfied of an owner's good faith, shall enter no order of abatement as to that owner if the court finds that the owner:

(a) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance;

(b) Has not been guilty of any contempt of court in the proceedings; and

(c) Will make best efforts to immediately abate any nuisance that may exist and pre-

vent it from being a nuisance for a period of one year thereafter.

(4) If an order of abatement has been entered and an owner subsequently meets the requirements of this section, the order of abatement shall be canceled as to that owner. [1989 c.846 §7]

**105.585 Costs of securing property as lien; priority of lien; filing notice of pendency; recovery of attorney fees.** (1) Any costs associated with securing the property under ORS 105.560 to 105.600 shall constitute a lien against the property declared to be a nuisance from the time a notice specifying the costs is filed of record. A lien created by ORS 105.560 to 105.600 is prior and superior to all other liens, mortgages and encumbrances against the property upon which the lien is imposed which attached to the property after any lien imposed by ORS 105.560 to 105.600.

(2) A notice of pendency of an action may be filed pursuant to ORS 93.740 with respect to any action filed under ORS 105.560 to 105.600.

(3) Any prevailing party may be entitled to reasonable attorney fees. [1989 c.846 §8]

**105.590 Intentional violation of order punishable as contempt; fine; imprisonment.** An intentional violation of a restraining order, preliminary injunction or order of abatement under ORS 105.560 to 105.600 is punishable as a contempt of court by a fine of not more than \$1,000 which may not be waived, or by imprisonment for not more than six months or by both. [1989 c.846 §9]

**105.595 Action to abate nuisance not to affect other remedies.** The abatement of a nuisance under ORS 105.560 to 105.600 does not prejudice the right of any person to recover damages for its past existence. [1989 c.846 §10]

**105.600 ORS 105.550 to 105.600 not to limit authority of cities or counties to further restrict activities.** The provisions of ORS 105.550 to 105.600, 166.715 and 167.158 shall not be construed to limit the powers of cities and counties to adopt ordinances and regulations that further restrict the activities declared by ORS 105.555 to be nuisances provided that no such ordinance or regulation shall affect real or personal property unless it is consistent with the provisions of ORS 105.550 to 105.600, 166.715 and 167.158. [1989 c.846 §11]

## SUITS TO QUIET TITLE AND REMOVE CLOUD

**105.605 Suits to determine adverse claims.** Any person claiming an interest or estate in real property not in the actual pos-

session of another may maintain a suit in equity against another who claims an adverse interest or estate therein for the purpose of determining such conflicting or adverse claims, interests or estates. Any municipal corporation or county of this state claiming any interest or estate in real property which is not in the actual possession of another, including real property acquired by foreclosure of delinquent tax liens situated in the same county, may maintain a suit in equity against all persons who claim an adverse interest or estate in all or any part of the property for the purpose of determining the conflicting or adverse claims, interests or estates. One or more parcels may be included in one suit and the issue made by the pleadings in any suit by a municipality or county relating only to a certain parcel or part of the real property, shall be separately tried and determined upon motion of any interested party.

**105.610 Suit to cancel patent of donee under Donation Law.** Whenever any person claims real property as a donee of the United States by virtue of a settlement thereon under the Act of Congress approved September 27, 1850, commonly called the Donation Law, or the Acts amendatory thereto, and the patent for such property, or any portion thereof, was wrongfully issued to another, the person may maintain a suit in equity against the person to whom the patent was issued, or those claiming under the person, for the purpose of having the patent canceled, and the estate or interest of the plaintiff in the property ascertained and established. In such suit, the party entitled to and making the settlement under such Acts of Congress, and complying with the subsequent conditions thereby required, is deemed to have a legal estate in fee in the property although the patent therefor was issued to another.

**105.615 Action by tenant in common against cotenants.** Unless otherwise agreed or provided in a granting document, a tenant in common of real property may acquire fee simple title to the real property by adverse possession as against all other cotenants if the tenant in common or the tenant in common's predecessor in interest has been in possession of the real property, exclusive of all other cotenants, for an uninterrupted period of 20 years or more and has paid all taxes assessed against such property while in possession. Notice of the exclusive possession need not be given to the other cotenants by the cotenant in possession. [1969 c.350 §1; 1989 c.1069 §3]

Note: See note under 105.620.

**105.620 Acquiring title by adverse possession.** (1) A person may acquire fee

simple title to real property by adverse possession only if:

(a) The person and the predecessors in interest of the person have maintained actual, open, notorious, exclusive, hostile and continuous possession of the property for a period of 10 years;

(b) At the time the person claiming by adverse possession or the person's predecessors in interest, first entered into possession of the property, the person entering into possession had the honest belief that the person was the actual owner of the property and that belief:

(A) By the person and the person's predecessor in interest, continued throughout the vesting period;

(B) Had an objective basis; and

(C) Was reasonable under the particular circumstances; and

(c) The person proves each of the elements set out in this section by clear and convincing evidence.

(2) A person maintains "hostile possession" of property if the possession is under claim of right or with color of title. "Color of title" means the adverse possessor claims under a written conveyance of the property or by operation of law from one claiming under a written conveyance.

(3) As used in this section and ORS 105.005 and 105.615, "person" includes, but is not limited to, the state and its political subdivisions as created by statute. [1989 c.1069 §1; 1991 c.109 §2]

Note: Section 4, chapter 1069, Oregon Laws 1989, as amended by section 3, chapter 109, Oregon Laws 1991, provides:

Sec. 4. The provisions of ORS 105.620 and the amendments to ORS 105.005 and 105.615 by sections 2 and 3, chapter 1069, Oregon Laws 1989, shall apply to all claims for recorded title or for the recovery of possession of real property for which the interest vested and for which the claim is filed after January 1, 1990. [1989 c.1069 §4; 1991 c.109 §3]

#### UNIFORM DISCLAIMER OF TRANSFERS UNDER NONTESTAMENTARY INSTRUMENTS

**105.625 Short title.** ORS 105.625 to 105.640 may be cited as the "Uniform Disclaimer of Transfers under Nontestamentary Instruments Act." [1975 c.622 §8]

**105.627 Disclaimer of interest in property transferred by nontestamentary instrument; duration of right to disclaim; form of disclaimer.** A person, or the representative of a deceased, incapacitated or protected person, or any other fiduciary for a person, who is a grantee, donee, surviving joint tenant or tenant by the entirety, person succeeding to a disclaimed interest, ben-

eficiary under a nontestamentary instrument or contract, or appointee under a power of appointment exercised by a nontestamentary instrument, may disclaim in whole or in part the right of transfer to that person of any property or interest therein by delivering a written disclaimer under ORS 105.625 to 105.640. A disclaimer may be of a fractional share or of any limited interest or estate. A surviving joint tenant or tenant by the entirety may disclaim as a separate interest any property or interest therein devolving to the surviving joint tenant or tenant by right of survivorship. A surviving joint tenant or tenant by the entirety may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy or tenancy by the entirety devolving to the surviving tenant or the tenant, if the joint tenancy or tenancy by the entirety was created by the act of a deceased joint tenant or tenant by the entirety and if the survivor did not join in creating the joint tenancy or tenancy by the entirety. The disclaimer shall describe the property or interest therein disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant. [1975 c.622 §1; 1981 c.56 §1]

**105.630 Delivery or filing of disclaimer; effective date of disclaimer; delivery of disclaimer to person entitled thereto; filing with county clerk.** (1) An instrument disclaiming (a) a present interest shall be delivered no later than nine months after the effective date of the nontestamentary instrument or contract; and (b) a future interest shall be delivered not later than nine months after the event determining that the taker of the property or interest is finally ascertained and that person's interest is indefeasibly vested. If the person entitled to disclaim does not have actual knowledge of the existence of the interest, the instrument of disclaimer shall be delivered not later than nine months after the person has actual knowledge of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to self-transfer or transfer to another the entire legal and equitable ownership of the interest. However, as to a transfer creating an interest in the disclaimant made after December 31, 1976, and subject to tax under chapter 11, 12 or 13 of the Internal Revenue Code of 1954, as amended, a disclaimer intended as a qualified disclaimer thereunder must be delivered not later than nine months after the later of the date the transfer is made or the day on which the person disclaiming attains age 21.

(2) The disclaimer shall be delivered in person or mailed by registered or certified

mail to the trustee or other person having legal title to, or possession of, the property or interest disclaimed or who is entitled thereto in the event of disclaimer. If real property or an interest therein is disclaimed, a copy of the instrument may be filed for record in the office of the county clerk of the county in which the real estate is situated. [1975 c.622 §2; 1981 c.56 §2; 1983 c.740 §10]

**105.632 Devolution of disclaimed property.** (1) Unless the nontestamentary instrument or contract provides for another disposition, the property or interest therein disclaimed devolves:

(a) As to a present interest, as if the disclaimant had died before the effective date of the instrument or contract; and

(b) As to a future interest, as if the disclaimant had died before the event determining that the taker of the property or interest had become finally ascertained and that person's interest is indefeasibly vested.

(2) A disclaimer relates back for all purposes to the effective date of the instrument or contract or the date of the determinative event, as the case may be. [1975 c.622 §3; 1981 c.56 §3]

**105.635 Bar of right to disclaim; right exists despite certain restrictions; disclaimer or waiver binding.** (1) The right to disclaim property or an interest therein is barred by:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;

(b) A written waiver of the right to disclaim;

(c) An acceptance of the property or interest or benefit thereunder; or

(d) A sale of the property or interest under judicial sale made before the disclaimer is effected.

(2) The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(3) The instrument of disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under the disclaimant or person waiving. [1975 c.622 §4; 1981 c.56 §4]

**105.637 Effect of ORS 105.625 to 105.640 on disclaimer under other statutes.** ORS 105.625 to 105.640 does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute. [1975 c.622 §5]

**105.640 Construction and application.** ORS 105.625 to 105.640 shall be applied and

construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 105.625 to 105.640 among states enacting it. [1975 c.622 §7]

### **PUBLIC RECREATIONAL USE OF PRIVATE LANDS**

**105.655 Definitions for ORS 105.655 to 105.680.** As used in ORS 105.655 to 105.680:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon the owner's land.

(2) "Land" means agricultural land, rangeland, forestland, and lands adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605, including roads, bodies of water, watercourses, private ways, private buildings and structures on such lands and machinery or equipment on the land when attached to the realty, but shall not include lands described in ORS 390.605 to 390.770. "Land" also includes abandoned borrow pits, gravel or rock quarries not currently being used for commercial or industrial purposes, whether or not such pits or quarries are situated on agricultural land, rangeland, forestland or lands adjacent or contiguous to the ocean shore as defined in ORS 390.605.

(3) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(4) "Recreational purpose" includes, but is not limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites and participating in a salmon and trout enhancement project under ORS 496.430 to 496.455. [1971 c.780 §1; 1973 c.732 §4; 1979 c.258 §1; 1983 c.775 §1; 1991 c.968 §6]

**105.660 Policy.** The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for recreational purposes. [1971 c.780 §2; 1973 c.732 §3]

**105.665 Duties and liabilities of owner of land used by public for recreation.** Except as otherwise provided in ORS 105.675:

(1) An owner of land owes no duty of care to keep the land safe for entry or use by others for any recreational purpose or to

give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use the land for any recreational purpose without charge does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. [1971 c.780 §3]

**105.670 ORS 105.665 applies to duties and liability of owner of land leased to public body or public corporation.** Unless otherwise agreed in writing, ORS 105.665 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for recreational purposes. [1971 c.780 §4]

**105.675 Liabilities of landowner unaffected in certain cases.** Nothing in ORS 105.655 to 105.680 limits in any way any liability of an owner of land:

(1) For the willful, wanton and reckless failure of an owner of land to guard or warn against a known dangerous structure or other improvement or a known dangerous activity on the land; or

(2) For any injury suffered where the owner of land charges any person who enters or goes upon the land for any recreational purpose, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection. [1971 c.780 §5; 1987 c.708 §4]

**105.677 Permissive recreational use of land does not create easement; preservation of preexisting public rights.** (1) An owner of land who either directly or indirectly invites or permits any person to use the land for any recreational purpose without charge shall not thereby give to such person or to other persons any right to continued use of the land for any recreational purpose without the consent of the owner.

(2) The fact that an owner of land allows the public to recreationally use the land without posting or fencing or otherwise restricting use of the land shall not raise a presumption that the landowner intended to dedicate or otherwise give over to said public the right to continued use of said land.

(3) Nothing in this section shall be construed to diminish or divert any public right acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973. [1973 c.732 §2]

**105.680 Construction.** Nothing in ORS 105.655 to 105.680 shall be construed:

(1) To create a duty of care or basis for liability upon any owner of land for injury to persons or property resulting from the use of such land for recreational purposes.

(2) To relieve any person using the land of another for recreational purposes from any obligation which the person may otherwise have, to exercise care in use of the land in the activities of the person thereon or from the legal consequences of failure of the person to employ such care. [1971 c.780 §6]

### **PUBLIC WOODCUTTING ON LAND OF OTHERS**

**105.685 Definitions for ORS 105.685 to 105.697.** As used in ORS 105.685 to 105.697:

(1) "Charge" means the admission price or fee asked by any owner in return for invitation or permission to enter or go upon the owner's land. However, "charge" does not include a reasonable fee, not to exceed \$15, for the cost of administration.

(2) "Owner" means the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.

(3) "Woodcutting" means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood. [1979 c.434 §1; 1985 c.375 §1]

**105.687 Declaration of legislative policy.** The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for woodcutting by limiting their liability toward persons entering thereon for such purpose and, in the case of permissive use, by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for such purpose. [1979 c.434 §2]

**105.689 Liability of landowner to woodcutters limited.** Except as otherwise provided in ORS 105.693:

(1) An owner of land owes no duty of care to keep the land safe for entry or use by others for woodcutting or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.

(2) An owner of land who either directly or indirectly invites or permits any person to use the land for woodcutting without charge does not thereby:

(a) Extend any assurance that the land is safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) Assume responsibility for or incur liability for any injury, death or loss to any person or property caused by an act or omission of that person. [1979 c.434 §3]

**105.691 Applicability of ORS 105.689 to land leased to public body.** Unless otherwise agreed in writing, ORS 105.689 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any political subdivision thereof or to any public corporation for woodcutting. [1979 c.434 §4]

**105.693 Limits to landowner exemption.** (1) Nothing in ORS 105.685 to 105.697 limits in any way any liability of an owner of land which may otherwise exist:

(a) For the reckless failure of the owner to guard or warn against a dangerous condition, use, structure or activity on the land; or

(b) For any injury suffered where the owner of land charges any person who enters or goes upon the land for woodcutting, except that where land is leased by the owner to the state or a political subdivision thereof or to any public corporation, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this subsection.

(2) The provisions of ORS 105.685 to 105.697 do not affect the liability of the State of Oregon under the provisions of ORS 30.260 to 30.300. [1979 c.434 §5]

**105.695 Presumption of permission for continued use limited.** (1) An owner of land who either directly or indirectly invites or permits any person to use the land for woodcutting without charge shall not thereby give to such person or to other persons any right to continued use of the land for such purpose without the consent of the owner.

(2) The fact that an owner of land allows the public to use the land for woodcutting without posting or fencing or otherwise restricting use of the land shall not raise a presumption that the landowner intended to dedicate or otherwise give over to said public the right to continued use of said land.

(3) Nothing in this section shall be construed to diminish or divert any public right acquired by dedication, prescription, grant,

custom or otherwise existing before October 3, 1979. [1979 c.434 §6]

**105.697 Construction of ORS 105.685 to 105.697.** Nothing in ORS 105.685 to 105.697 shall be construed:

(1) To create a duty of care or basis for liability upon any owner of land for injury to persons or property resulting from the use of such land for woodcutting.

(2) To relieve any person using the land of another for woodcutting from any obligation which the person may otherwise have to exercise care in the use of the land, in activities thereon or from the legal consequences of the failure of the person to employ such care. [1979 c.434 §7]

**105.699 Rules applicable to state lands.** The State Forester, under the general supervision of the State Board of Forestry, may adopt any rules considered necessary for the administration of the provisions of ORS 105.685 to 105.697 on state land. [1979 c.434 §8]

#### **ACTION TO ESTABLISH BOUNDARY**

**105.705 Right to bring action; filing of judgment.** (1) When any dispute or controversy exists between owners of adjacent or contiguous lands in this state, concerning the boundary lines thereof, or the location of the line dividing such lands, any party to the dispute or controversy may bring an action in the circuit court in the county where all or part of the lands are situated, for the purpose of having the controversy or dispute determined, and the boundary line or dividing line ascertained and marked by proper monuments upon the ground where such line is ascertained.

(2) Upon final determination of the dispute by the court, the clerk of the court shall file one copy of the judgment in the office of the county surveyor, one copy in the office of the county assessor and one copy in the office of the county officer who keeps the records of deeds for recording in the county deed records. [Amended by 1965 c.24 §1; 1979 c.284 §97]

**105.710 Pleadings.** The complaint in a boundary suit is sufficient if it appears therefrom that the plaintiff and defendant are owners of adjacent lands, some part of which is in the county in which the suit is brought and that there is a controversy or dispute between the parties concerning their boundary or dividing line. It shall not be necessary to set forth the nature of the dispute or controversy except that the plaintiff shall describe the boundary or dividing line as the plaintiff claims it to be. The defendant in the answer shall set forth the nature of the claim of the defendant with reference to the location of the line in controversy.

**105.715 Mode of proceeding.** The mode of proceeding in a boundary action is analogous to that of an action not triable by right to a jury. At the time of entering the judgment fixing the true location of the disputed boundary or dividing line the court shall appoint three disinterested commissioners, one of whom shall be a registered professional land surveyor, and shall direct the commissioners to go upon the land of the parties and establish and mark out upon the grounds, by proper monuments, the boundary or dividing line as ascertained and determined by the court in its judgment. The monuments shall be established by or under the direct supervision of the registered professional land surveyor who shall file a record of survey, complying with ORS 209.250, with the county surveyor. [Amended by 1979 c.284 §98; 1991 c.150 §1]

**105.718 Procedure for determining location of public land survey corner.** If the proceeding in a boundary action involves the location of a public land survey corner as defined by ORS 209.250 (3), the court shall determine the location of the public land survey corner by the following method:

(1) The court shall appoint three disinterested commissioners who are registered professional land surveyors, one of whom shall be the county surveyor of the county in which the action is brought, and shall direct the commissioners to go upon the land of the parties and establish and mark out upon the ground the true and correct location of the corner in accordance with ORS 209.070. If the county surveyor of the county in which the action is brought is interested in any tract of land, the title of which is in dispute before the court, the court shall appoint the county surveyor of an adjacent county to serve in lieu of the interested county surveyor.

(2) The three commissioners shall establish and monument the true location of the corner in accordance with the current United States Manual of Surveying Instructions. The monument set shall be in accordance with the standards of the county surveyor of the county in which the corner is located. For the purposes of ORS 672.002 (8)(b), the county surveyor shall be the person in "responsible charge" and shall affix a seal and signature to any plat or report prepared.

(3) The county surveyor shall be responsible for the preparation and filing of the survey in accordance with ORS 209.250.

(4) The corner, when properly established by the commission, shall be recognized by the court as the legal and permanent corner.

The decision of the commission is not subject to appeal.

(5) The costs for the services of the three commissioners shall be paid by either the plaintiff or the defendant, or both, as determined by the court. [1991 c.150 §2]

**105.720 Oath and report of commissioners.** Before entering upon the discharge of their duties, the commissioners shall make and file their oath in writing to faithfully and impartially perform their duties as commissioners. After designating the boundary or dividing line by proper marks and monuments they shall file in the court a report of their doings as commissioners, and the report shall be, when approved or confirmed by the court, a part of the trial court file, as defined in ORS 19.005. [Amended by 1967 c.471 §3]

**105.725 Proceedings on motion to confirm report.** The report of the commissioners may be confirmed by the court upon written motion of either party to the suit whenever it appears to the court that the motion was served upon the adverse party two days before the presentation thereof and no exceptions have been filed to the report within two days after the service. If exceptions are filed to the report, they may be heard with the motion to confirm, and the court may confirm, modify or set aside the report as is just, and in the latter case may appoint a new commission or refer the matter to the same commissioners with appropriate instructions.

### ACTIONS BASED ON CHANGE OF GRADE

**105.755 State liability for damages resulting from change of grade of roads other than city streets; proceedings on cause of action; limitation.** (1) As used in this section, "public road" means a road used by the general public, whether designated as a state highway, county or district road or otherwise, but does not include city streets under ORS 105.760.

(2) Whenever the Department of Transportation changes the grade of any public road from a previously established or maintained grade, the state shall be liable for and shall pay just and reasonable compensation for any legal damage or injury to real property abutting upon the public road affected by the grade change; except that the state shall not be liable for any damage or injury for any such change whenever the county has requested the Department of Transportation to make such change.

(3) Any person having any right, title or interest in any such real property has a cause of action against the state to enforce payment of the compensation. Any such ac-

tion may be commenced and maintained in the circuit court for the county in which the real property is situated. Any party to any such action has the right to appeal as in other civil actions from the final judgment of any circuit court. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving the real property in which the interest is claimed.

(4) The trial circuit court shall, in its final judgment, apportion such just compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(5) The liability of the state terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. Any cause of action granted by this section is barred unless such action is commenced within six months after the change of grade is physically completed and accepted by the Department of Transportation. [1961 c.510 §1; 1973 c.197 §5]

**105.760 State or county liability for damages resulting from change of grade of streets; proceedings on cause of action.** (1) If consent is given by the governing body of any city to change any grade of any street as such grade has been established or maintained by the consenting city and pursuant thereto the Department of Transportation or a county changes the grade, the state or the county, whichever makes such change of grade, shall be liable for and shall pay just and reasonable compensation for any damage or injury to any real property abutting upon the road or street affected by the grade change.

(2) Any person having any right, title or interest in any such real property has a cause of action against the state or against the county to enforce payment of the compensation. Any such action may be commenced and maintained in the circuit court for the county in which the real property is situated. Any party to any such action has the right to appeal as in any other civil action from the final judgment of any circuit court. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving the real property in which the interest is claimed.

(3) The trial circuit court shall, in its final judgment, apportion such just compen-

sation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(4) The liability of the state or the liability of the county, as the case may be, terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. Any cause of action granted by this section is barred unless such action is commenced within six months after the change of grade is physically completed and accepted by the Department of Transportation or the county. [Formerly 373.040, 1973 c.197 §6]

### EXTINGUISHMENT OF FUTURE INTERESTS

**105.770 Failure of contingency; application of extinguishment.** (1) A special limitation or a condition subsequent, which restricts a fee simple estate in land, and the possibility of reverter or right of entry for condition broken thereby created, shall, if the specified contingency does not occur within 30 years after the possibility of reverter or right of entry was created, be extinguished and cease to be valid.

(2) This section shall apply only to inter vivos instruments taking effect after January 1, 1978, to wills where the testator dies after such date, and to appointments made after such date, including appointments by inter vivos instruments or wills under power created before such date. [1977 c.723 §1]

**105.772 Preservation of future interests; filing of notice of intent required; limitation.** The following shall apply to all possibilities of reverter and rights of entry limited on fees simple existing on January 1, 1978:

(1) A special limitation or a condition subsequent, which restricts a fee simple estate in land, and the possibility of reverter or right of entry for condition broken thereby created, shall be extinguished and cease to be valid, unless within the time specified in this section, a notice of intention to preserve such possibility of reverter or right of entry is recorded as provided in ORS 105.770 to 105.774. Such extinguishment shall occur at the end of the period in which the notice or renewal notice may be recorded.

(2) Any person owning such possibility of reverter or right of entry may record in the deed records of the county in which the

land is situated a notice of intention to preserve such interest. Such notice may be filed for record by any person who is the owner or part owner of such interest, in which case the notice shall be effective as to the person filing the notice and any other person who is a part owner thereof. If any owner or part owner is a minor or incapacitated person, as defined in ORS 126.003, the notice may be filed by a conservator appointed pursuant to a protective proceeding under ORS 126.157.

(3) To be effective and to be entitled to record, such notice shall contain an accurate and full description of all land affected by such notice; but if such claim is founded upon a recorded instrument, then the description may be by reference to the recorded instrument. Such notice shall also contain the terms of the special limitation or condition subsequent from which the possibility of reverter or right of entry arises. The notice shall be executed, acknowledged, proved and recorded in each county in which the land is situated in the same manner as a conveyance of real property. In indexing such notices the county clerk shall enter such notices under the grantee indexes of deeds under the names of the persons on whose behalf such notices are executed.

(4) An initial notice may be recorded not less than 28 years, nor more than 30 years, after the possibility of reverter or right of entry was created; provided, however, if such possibility of reverter or right of entry was created prior to January 1, 1950, the notice may be recorded within two years after January 1, 1978. A renewal notice may be recorded after the expiration of 28 years and before the expiration of 30 years from the date of recording of the initial notice, and shall be effective for a period of 30 years from the recording of such renewal notice. In like manner, further renewal notices may be recorded after the expiration of 28 years and before the expiration of 30 years from the date of recording of the last renewal notice. [1977 c.723 §2]

**105.774 Exclusions from application of ORS 105.770 and 105.772.** ORS 105.770 to 105.774 shall not apply to conveyances made in favor of:

(1) The State of Oregon or any unit of local government as defined in ORS 190.003; or

(2) A corporation so long as it remains qualified as a nonprofit corporation pursuant to ORS chapter 65. If a corporation ceases to be so qualified, the conveyance to said corporation shall be treated in the same manner as a conveyance subject to the provisions of ORS 105.772. [1977 c.723 §3]

**MISCELLANEOUS ACTIONS**

**105.805 Action for waste.** If a guardian, conservator or tenant in severalty, or in common, for life or for years of real property commits waste thereon, any person injured thereby may maintain an action at law for damages against the guardian, conservator or tenant. In the action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste and eviction from the property. Forfeiture and eviction shall only be given in favor of the person entitled to a reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or when the waste was committed with malice. [Amended by 1973 c.823 §103]

**105.810 Treble damages for injury to or removal of produce, trees or shrubs.** Except as provided in ORS 477.090, whenever any person, without lawful authority, willfully injures or severs from the land of another any produce thereof or cuts down, girdles or otherwise injures or carries off any tree, timber or shrub on the land of another person, or of the state, county, United States or any public corporation, or on the street or highway in front of any person's house, or in any village, town or city lot, or cultivated grounds, or on the common or public grounds of any village, town or city, or on the street or highway in front thereof, in an action by such person, village, town, city, the United States, state, county, or public corporation, against the person committing such trespasses if judgment is given for the plaintiff, it shall be given for treble the amount of damages claimed, or assessed for the trespass. In any such action, upon plaintiff's proof of ownership of the premises and the commission by the defendant of any of the acts mentioned in this section, it is prima facie evidence that the acts were committed by the defendant willfully, intentionally and without plaintiff's consent.

**105.815 When double damages are awarded for trespass.** If, upon the trial of an action included in ORS 105.810, it appears that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was the land of the defendant or the land of the person in whose service or by whose direction the act was done, or that the tree or timber was taken from uninclosed woodland for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall be given for double damages.

**105.820 Remedy of tenants in common.** A tenant in common may maintain any

proper action, suit or proceeding against a cotenant for receiving more than the just proportion of the rents or profits of the estate owned by them in common.

**105.825 Action for injury to inheritance.** A person seized of an estate in remainder or reversion may maintain a civil action for any injury to the inheritance, notwithstanding the presence of an intervening estate for life or years.

**105.830** [1981 c.841 §1; repealed by 1989 c.693 §21]

**105.831 Damages for injury to mining claim.** If a court finds that a person has intentionally damaged or removed mining equipment or has intentionally removed or injured minerals, soil, gravel, sand, trees or shrubs located within the mining claim of another person, the court shall award actual damages to such other person, including costs and attorney fees and including any liability of such other person to third persons resulting from such damage, removal or injury. In an appropriate case, the court may award punitive damages to such other person. [1989 c.1049 §2]

**105.835** [1981 c.841 §2, repealed by 1989 c.693 §21]

**ACTION FOR REDUCED COMMERCIAL PROPERTY VALUE RESULTING FROM STREET USE RESTRICTION**

**105.850 Commercial property defined.** As used in ORS 105.850 to 105.870, "commercial property" means land and improvements used in a business operated thereon for the production of income, one of the principal aspects of which is the storing of motor vehicles or the providing of lodging to travelers using private conveyances. [1973 c.702 §1]

**105.855 Requirement to compensate commercial property owners for reduced value of property caused by street use restriction; effect of other access to property.** Whenever after January 1, 1973, a city or mass transit district, whether or not acting pursuant to its police powers or condemnation authority, restricts use of the street traffic lane immediately adjacent to a sidewalk abutting commercial property to public conveyances and the existing access to that property by the general public by means of private conveyances is thereby prohibited or materially restricted for more than six hours in any 24-hour period, the city or mass transit district shall be liable for and shall pay the difference between the fair market value of the property prior to the restriction and the fair market value of the property subsequent to the restriction, taking into account any special benefits to the property resulting from improvements made by the city or mass transit district in con-

nection with the restriction. The fact that other access to the property from a public way is available shall relieve the city or mass transit district from liability if the other access is reasonably equal to the access prohibited or materially restricted. [1973 c.702 §2]

**105.860 Cause of action against city for compensation; appeal procedure; intervention.** Any person having any right, title or interest in any such abutting real property has a cause of action against the city to enforce payment of the compensation. Any such action may be commenced and maintained in the circuit court for the county in which the real property is situated. Any party to any such action has the right to appeal from the final judgment of the circuit court as in other actions. A person having or claiming any right, title or interest in such real property may join as party plaintiff and may intervene in any action involving the real property in which the interest is claimed. [1973 c.702 §3]

**105.865 Apportioning compensation among property owners; termination of city liability.** (1) The circuit court shall, in its final judgment, apportion such just compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(2) The liability of the city terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. [1973 c.702 §4]

**105.870 Limitation on commencement of action.** Any cause of action granted by ORS 105.850 to 105.870 is barred unless such action is commenced within 60 days after the date upon which the change of use becomes effective and use of the streets is prohibited or restricted. [1973 c.702 §5]

## SOLAR ENERGY EASEMENTS

**105.880 Conveyance prohibiting use of solar energy systems void.** (1) No person conveying or contracting to convey fee title to real property shall include in an instrument for such purpose a provision prohibiting the use of solar energy systems by any person on that property.

(2) Any provision executed in violation of subsection (1) of this section after October 3, 1979, is void and unenforceable.

(3) For the purposes of this section, "solar energy system" means any device, structure, mechanism or series of mechanisms

which uses solar radiation as a source for heating, cooling or electrical energy. [1979 c.671 §5]

**105.885 "Solar energy easement" defined.** As used in ORS 105.885 to 105.895:

(1) "Instrument" means a deed, contract, covenant, condition, permit or order that creates an access right to sunlight.

(2) "Solar energy easement" means any easement, covenant or conditions designed to insure the passage of incident solar radiation, light, air or heat across the real property of another.

(3) "Solar envelope" means a three-dimensional space over a lot representing height restrictions for structures and vegetation on the lot designed to protect access to sunlight for neighboring lots.

(4) "Sun chart" means a representation showing the plotted position of the sun. The chart shall display the path of the sun during each hour of the day and each month of the year at the nearest degree of latitude to the property. [1979 c.671 §6; 1981 c.722 §7]

**105.890 Solar energy easement appurtenant; termination.** (1) A solar energy easement shall be appurtenant to and run with the real property benefited and burdened by such an easement.

(2) A solar energy easement shall terminate:

(a) Upon the conditions stated therein;

(b) By court decree based upon abandonment or changed conditions; or

(c) At any time by agreement of all owners of benefited and burdened property. [1979 c.671 §7]

**105.895 Requirements for easement creation by instrument; recordation.** (1) Any instrument creating a solar energy easement or any other access right to sunlight shall contain:

(a) A legal description of the real property benefited and burdened by the easement; and

(b) A description of the solar energy easement sufficient to determine the space over the burdened property which must remain unobstructed by means that shall include, but not be limited to:

(A) A sun chart showing the plotted skyline, including vegetation and structures from the perspective of the center of the lower edge of the collector surface, and a drawing showing the size and location of the collector surface being protected and its orientation with respect to true south; or

(B) A description of the solar envelope sufficient to determine the space over the

burdened property that must remain unobstructed.

(2) The instrument creating a solar energy easement or any other access right to sunlight shall be recordable under ORS 93.710. The instrument shall be recorded in the chains of title of the benefited and burdened properties as a transfer of the easement or access right from the owner of the burdened property to the owner of the benefited property.

(3) When an instrument creating a solar energy easement is issued by a city or otherwise requires approval from a city, the instrument shall be attested to and contain the original signature of a city official in addition to the descriptions and chart required under subsection (1) of this section.

(4) An instrument creating a solar energy easement shall be indexed when recorded by the name of the city and the names of all parties claiming any interest in the real property benefited or burdened by the easement. [1979 c.671 §8; 1981 c.590 §6; 1981 c.722 §8; 1991 c.230 §23]

### WIND ENERGY EASEMENTS

**105.900 "Wind energy easement" defined.** As used in ORS 105.905 and 105.910, "wind energy easement" means any easement, covenant or condition designed to insure the undisturbed flow of wind across the real property of another. [1981 c.590 §1]

**105.905 Wind energy easement appurtenant; termination.** (1) A wind energy easement shall be appurtenant to and run with the real property benefited and burdened by the easement.

(2) A wind energy easement shall terminate:

(a) Upon occurrence of the conditions stated in the creating instrument;

(b) By court decree based upon abandonment or changed conditions; or

(c) At any time by agreement of all the owners of the benefited and burdened property. [1981 c.590 §2]

**105.910 Requirements for easement creation by instrument; recordation.** (1) An instrument creating a wind energy easement shall include:

(a) A legal description of the real property benefited and burdened by the easement;

(b) A description of the dimensions of the easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed;

(c) The restrictions placed upon vegetation, structures and other objects that

would impair or obstruct the wind flow across and through the easement; and

(d) The terms or conditions, if any, under which the easement may be changed or terminated.

(2) The instrument creating a wind energy easement shall be recordable under ORS 93.710. If recorded, the instrument shall be recorded as a transfer of the easement from the owner of the burdened property to the owner of the benefited property. [1981 c.590 §3]

**105.915 Instrument creating lease or lease option of real property for wind energy conversion system may be recorded; requirements.** (1) An instrument creating a lease or an option to lease real property or the vertical space above real property for a wind energy conversion system or for wind measuring equipment shall be recordable under ORS 93.710.

(2) An instrument described in subsection (1) of this section shall contain:

(a) The parties' names;

(b) A legal description of the real property involved;

(c) The nature of the interest created;

(d) The consideration paid for the transfer; and

(e) The terms or conditions, if any, under which the interest may be revised or terminated.

(3) As used in this section, "wind energy conversion system" means any device, supporting structure, mechanism or series of mechanisms that uses wind for the production of electricity or a mechanical application. [1981 c.590 §4]

### PERSONAL PROPERTY RIGHTS

**105.920 Joint tenancy in personal property; creation.** There shall be a form of coownership of personal property known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law. A joint tenancy may be created only by a written instrument which expressly declares the interest created to be a joint tenancy. It may be created by a transfer or bequest from a sole owner to others, or to the sole owner and others; or from tenants in common or joint tenants to others, or to themselves or some of them, or to themselves or any of them and others; or from husband and wife, when holding title as community property or otherwise, to others, or to themselves, or to one of them and to another or others. A transfer or bequest creating a joint tenancy shall not derogate from the rights of creditors. [Formerly 91.355]

**RULE AGAINST PERPETUITIES**

**105.950 Statutory rule against perpetuities.** (1) A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) The interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment, not presently exercisable because of a condition precedent, is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a) or (3)(a) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) The language in a governing instrument is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives if, in measuring a period from the creation of a trust or other property arrangement, that language seeks:

(a) To disallow the vesting or termination of any interest or trust beyond the later of:

(A) The expiration of a period of time not exceeding 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; or

(B) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

(b) To postpone the vesting or termination of any interest or trust until:

(A) The expiration of a period of time not exceeding 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; or

(B) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement.

(c) To operate in effect in any similar fashion upon:

(A) The expiration of a period of time not exceeding 21 years after the death of the survivor of the specified lives in being at the creation of the trust or other property arrangement; or

(B) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement. [1989 c.208 §1; 1993 c.273 §1]

**105.955 When nonvested property interest or power of appointment created.**

(1) Except as provided in subsections (2) and (3) of this section and in ORS 105.970 (1), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of ORS 105.950 to 105.975, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of either a nonvested property interest or a property interest subject to a power of appointment described in ORS 105.950 (2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of ORS 105.950 to 105.975, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created. [1989 c.208 §2]

**105.960 Reformation.** Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by ORS 105.950 (1)(b), (2)(b) and (3)(b) if:

(1) A nonvested property interest or a power of appointment becomes invalid under ORS 105.950, statutory rule against perpetuities;

(2) A class gift is not but might become invalid under ORS 105.950, statutory rule against perpetuities, and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by ORS 105.950 (1)(a) can vest but not within 90 years after its creation. [1989 c.208 §3]

**105.965 Exclusions from statutory rule against perpetuities.** ORS 105.950, statutory rule against perpetuities, does not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(a) A premarital or postmarital agreement;

(b) A separation or divorce settlement;

(c) A spouse's election;

(d) A similar arrangement arising out of a prospective existing or previous marital relationship between the parties;

(e) A contract to make or not to revoke a will or trust;

(f) A contract to exercise or not to exercise a power of appointment;

(g) A transfer in satisfaction of a duty of support; or

(h) A reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent

contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state. [1989 c.208 §4]

**105.970 Prospective application.** (1) Except as extended by subsection (2) of this section, ORS 105.950 to 105.975 applies to a nonvested property interest or a power of appointment that is created on or after the effective date of ORS 105.950 to 105.975. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before the effective date of ORS 105.950 to 105.975 and is determined in a judicial proceeding, commenced on or after the effective date of ORS 105.950 to 105.975, to violate this state's rule against perpetuities as that rule existed before the effective date of ORS 105.950 to 105.975, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created. [1989 c.208 §5]

**105.975 Short title; application and construction; supersession and repeal of common law.** (1) ORS 105.950 to 105.975 shall be cited as the Uniform Statutory Rule Against Perpetuities.

(2) ORS 105.950 to 105.975 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 105.950 to 105.975 among states enacting it.

(3) ORS 105.950 to 105.975 supersedes the rule of the common law known as the rule against perpetuities. [1989 c.208 §§6,7,8]