Chapter 19

2017 EDITION

Appeals

GENERAL PROVISIONS

19.005 Definitions. As used in this chapter:

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

(2) "Judgment" means a judgment or appealable order, as provided in ORS 19.205.

(3) "Notice of appeal" includes a notice of cross-appeal.

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

(5) "Supersedeas undertaking" means an undertaking on appeal that secures performance of a judgment being appealed and operates to stay enforcement of the judgment pending appeal.

(6) "Transcript" means the transcript of the court reporter's report as provided in ORS 8.340, 8.350 and 8.360 and any transcript of an audio record prepared under ORS 19.370.

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

(8) "Undertaking for costs" means an undertaking on appeal that secures payment of costs and disbursements that may be awarded against an appellant on appeal, and any amounts that may be awarded to the respondent under the provisions of ORS 19.445.

(9) "Undertaking on appeal" means a promise secured by sureties or by money, bond or any other security described in ORS 22.020. "Undertaking on appeal" includes undertakings for costs and supersedeas undertakings. [1959 c.558 §2; 1985 c.734 §2; 1997 c.71 §12; 1997 c.389 §23; 1997 c.801 §124; 1999 c.59 §9; 1999 c.367 §5; 2003 c.576 §280]

19.010 [Amended by 1973 c.197 §1; 1977 c.208 §4; 1979 c.562 §3; 1981 c.898 §18; 1997 c.389 §24; renumbered 19.205 in 1997]

19.013 [Formerly 13.410; renumbered 19.215 in 1997]

19.015 [Formerly 13.400; renumbered 19.225 in 1997]

19.020 [Renumbered 19.245 in 1997]

19.023 [Formerly 19.030; 1969 c.198 §37; 1973 c.207 §3; 1981 c.177 §1; 1997 c.389 §5; renumbered 19.240 in 1997]

19.026 [1959 c.558 §4; 1973 c.207 §4; 1979 c.284 §55; 1987 c.852 §5; renumbered 19.255 in 1997]

19.028 [1979 c.297 §1; 1985 c.734 §3; 1987 c.852 §6; 1989 c.768 §12; 1997 c.389 §6; renumbered 19.260 in 1997]

19.029 [1959 c.558 §5; 1971 c.565 §6; 1973 c.207 §5; 1983 c.621 §1; 1985 c.734 §4; renumbered 19.250 in 1997]

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

19.033 [1959 c.558 §6; 1969 c.198 §38; 1971 c.565 §7; 1983 c.673 §22; 1983 c.740 §4; 1985 c.734 §5; 1989 c.195 §1; 1995 c.800 §11; 1997 c.71 §14; 1997 c.389 §20; 1997 c.801 §90; renumbered 19.270 in 1997]

19.034 [1987 c.712 §2; renumbered 19.235 in 1997]

19.035 [1959 c.558 §7; 1963 c.27 §1; 1969 c.198 §39; 1971 c.193 §19; 1983 c.774 §6; renumbered 19.265 in 1997]

19.038 [1959 c.558 §8; 1981 c.483 §1; 1983 c.673 §23; 1985 c.734 §6; 1991 c.331 §3; 1995 c.79 §7; repealed by 1997 c.71 §20]

19.040 [Amended by 1977 c.416 §6; 1981 c.483 §2; 1985 c.734 §7; 1991 c.331 §4; repealed by 1997 c.71 §20]

19.045 [1959 c.558 §9; 1977 c.416 §1; 1985 c.734 §8; repealed by 1997 c.71 §20]

19.050 [Amended by 1983 c.763 §60; 1987 c.852 §7; repealed by 1997 c.71 §20]

19.060 [Amended by 1997 c.71 §15; renumbered 19.345 in 1997]

19.065 [1959 c.558 §10; 1969 c.198 §40; 1997 c.389 §21; 1997 c.801 §124a; renumbered 19.365 in 1997]

19.069 [1971 c.565 §10; 1997 c.801 §125; renumbered 19.385 in 1997]

19.070 [Repealed by 1959 c.558 §51]

19.074 [1959 c.558 §11; 1969 c.198 §41; 1971 c.193 §20; 1971 c.565 §8; repealed by 1997 c.389 §22]

19.078 [1959 c.558 §12; 1971 c.193 §21; 1971 c.565 §11; 1981 c.51 §1; 1989 c.1053 §9; 1995 c.273 §7; 1997 c.801 §126; renumbered 19.370 in 1997]

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

19.084 [1959 c.558 §13; 1985 c.565 §2a; renumbered 19.375 in 1997]

19.088 [1959 c.558 §14; 1969 c.198 §42; 1971 c.193 §22; renumbered 19.380 in 1997]

19.090 [Repealed by 1959 c.558 §51]

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

19.095 [1971 c.565 §13 (19.095 enacted in lieu of 19.094); renumbered 19.395 in 1997]

19.098 [1959 c.558 §16; 1969 c.198 §44; 1971 c.193 §23; 1971 c.565 §14; repealed by 1997 c.389 §22]

19.100 [Repealed by 1959 c.558 §51]

19.104 [1959 c.558 §27; 1979 c.284 §56; 1997 c.389 §25; 1997 c.801 §128; renumbered 19.500 in 1997]

19.108 [1959 c.558 §20 (enacted in lieu of 19.110); 1969 c.198 §45; 1971 c.193 §24; 1985 c.734 §9; repealed by 1997 c.389 §22]

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

19.111 [1985 c.734 §11; 1997 c.389 §19; 1997 c.801 §89; renumbered 19.410 in 1997]

19.114 [1959 c.558 §22; renumbered 19.390 in 1997]

19.118 [Formerly 19.080; 1969 c.198 §46; 1983 c.763 §7; renumbered 19.400 in 1997]

19.120 [Repealed by 1959 c.558 §51]

19.125 [1959 c.558 §21; 1965 c.177 §6; 1979 c.396 §1; renumbered 19.415 in 1997]

19.130 [Amended by 1955 c.497 §6; 1959 c.558 §24; 1969 c.198 §47; 1985 c.540 §45; renumbered 19.420 in 1997]

19.140 [Renumbered 19.425 in 1997]

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

19.160 [Renumbered 19.445 in 1997]

19.170 [1959 c.558 §17; renumbered 19.510 in 1997]

19.180 [1959 c.558 §23; 1969 c.198 §48; renumbered 19.435 in 1997]

19.190 [1959 c.558 §26 (enacted in lieu of 19.150); 1969 c.198 §49; 1981 c.178 §1; 1985 c.540 §27; 1985 c.734 §12; 1987 c.586 §11; 1997 c.71 §16; renumbered 19.450 in 1997]

19.200 [1979 c.284 §58; renumbered 19.430 in 1997]

APPEALABLE JUDGMENTS

(Generally)

19.205 Appealable judgments and orders. (1) Unless otherwise provided by law, a limited judgment, general judgment or supplemental judgment, as those terms are defined by ORS 18.005, may be appealed as provided in this chapter. A judgment corrected under ORCP 71 may be appealed only as provided in ORS 18.107 and 18.112.

(2) An order in an action that affects a substantial right, and that effectively determines the action so as to prevent a judgment in the action, may be appealed in the same manner as provided in this chapter for judgments.

(3) An order that is made in the action after a general judgment is entered and that affects a substantial right, including an order granting a new trial, may be appealed in the same manner as provided in this chapter for judgments.

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

(5) An appeal may be taken from the circuit court in any special statutory proceeding under the same conditions, in the same manner and with like effect as from a judgment or order entered in an action, unless appeal is expressly prohibited by the law authorizing the special statutory proceeding.

(6) Nothing in ORS chapter 18 affects the authority of an appellate court to dismiss an appeal or to remand a proceeding to the trial court under ORS 19.270 (4) based on the appellate court's determination that the appeal has not been taken from an appealable judgment or order. [Formerly 19.010; 2003 c.576 §85]

19.210 [1981 c.550 §2; 1997 c.389 §3; renumbered 19.405 in 1997]

(Class Actions)

19.215 Determining amount in controversy in class action for purposes of appeal. The aggregate amount of the claims of all potential class members in a class action under ORCP 32 shall determine whether the amount in controversy is sufficient to satisfy the provisions of ORS 19.205 (4) for the purposes of any appeal to the Court of Appeals. [Formerly 19.013; 2003 c.576 §573]

19.220 [1981 c.897 §107; renumbered 19.440 in 1997]

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

19.230 [1987 c.793 §1; 1991 c.817 §17; 1995 c.595 §20; renumbered 34.102 in 1997]

(Determining Whether Judgment Appealable)

19.235 Jurisdiction for determining whether decision is appealable. (1) Notwithstanding ORS 19.270, if any party or the trial court on its own motion, on receiving actual notice of the filing of the notice of appeal, raises the issue whether the decision being appealed is appealable, the trial court shall have jurisdiction to make a summary determination, with or without a hearing, whether the decision is appealable. As used in this section, "decision" means any trial court ruling, either oral or written.

(2) If the trial court determines that the decision is not appealable, the trial court, in its discretion, may proceed through entry of judgment or stay proceedings pending an appellate court determination of the existence of an appealable decision. The trial court may refer the question of the existence of an appealable decision to the court to which the appeal is taken. Neither an order by the trial court to proceed through entry of judgment, an order by the trial court to stay proceedings pending an appellate court determination, nor a trial court referral of the question of the existence of an appealable decision to the appellate court is appealable. However, on motion of any party or on its own motion the appellate court may stay proceedings in the trial court or stay any order or judgment entered by the trial court pending a final determination of appealability.

(3) When a party by motion, the trial court by referral or the appellate court on its own motion raises the issue whether the decision is appealable, the appellate court may

make a summary determination of the appealability of the decision. A summary determination of the appealability of a decision under this subsection is subject to review by the Supreme Court as provided in ORS 2.520 except that the petition for review shall be served and filed within 14 days after the date of the court's determination. Either the Court of Appeals or the Supreme Court may shorten the time period within which the petition for review shall be filed. A petition for review of a determination under this subsection shall not be treated as a request for reconsideration by the Court of Appeals. The Supreme Court shall expedite its review of the Court of Appeals' summary determination under this subsection.

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

(b) No action by the trial court taken pursuant to subsections (1) and (2) of this section, except for entry of judgment, shall be void solely because an appellate court later determines that a notice of appeal was filed from an appealable decision. [Formerly 19.034]

COMMENCING AN APPEAL

(Generally)

19.240 How appeal to Court of Appeals taken. (1) An appeal to the Court of Appeals shall be taken in the manner prescribed in this chapter.

(2) The appeal shall be taken by causing a notice of appeal, in the form prescribed by ORS 19.250, to be served:

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

(b) On the trial court administrator; and

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

(3) The original of the notice with proof of service indorsed thereon or affixed thereto shall be filed with the Court of Appeals. [Formerly 19.023; 1999 c.367 §2]

19.245 Who may appeal; appeal of default judgments and judgments taken by confession; appeal of stipulated judgments. (1) Except as provided in subsections (2) and (3) of this section, any party to a judgment may appeal from the judgment.

(2) A party to a judgment given by confession or for want of an answer may not appeal from the judgment except as follows:

(a) A plaintiff, third party plaintiff or a party who pleaded a cross-claim or counterclaim may appeal from the judgment if the judgment is not in accord with the relief demanded in the complaint.

(b) A defendant may appeal from the judgment if the trial court has entered a default judgment against the defendant as a sanction or has denied a motion to set aside a default order or judgment.

(c) A defendant may appeal from the judgment if it is void.

(3) A party to a stipulated judgment may appeal from the judgment only if:

(a) The judgment specifically provides that the party has reserved the right to appellate review of a ruling of the trial court in the cause; and

(b) The appeal presents a justiciable controversy. [Formerly 19.020; 1999 c.367 §1; 2001 c.541 §1]

(Notice of Appeal)

19.250 Contents of notice of appeal. (1) The notice of appeal must contain the following:

(a) The title of the cause. The party appealing a judgment must be designated the appellant and the adverse party the respondent, but the title of the action or proceeding is not otherwise changed by reason of the appeal.

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

(c)(A) If an appellant is not represented by an attorney, a postal address for the appellant and either an electronic mail address for the appellant or a statement that the appellant does not have an electronic mail address.

(B) If the appellant is represented by an attorney, a postal address and electronic mail address for the attorney.

(d) A notice to each party that appeared in the action or proceeding, or to the attorney for the party, that an appeal is taken from the judgment or some specified part of the judgment and designating the adverse parties to the appeal. The notice of appeal must contain the postal address and electronic mail address, if known to the appellant, for all other parties designated as parties to the appeal.

(e) A designation of those portions of the proceedings and exhibits to be included in

the record in addition to the trial court file. The appellant may amend the designation of record at any time after filing the notice of appeal until 35 days after the filing of a certificate of preparation for the transcript under ORS 19.370 (3). The amendment must be made by filing and serving in the same manner as a notice of appeal a notice of amended designation of record. The amended designation must clearly indicate those portions of the proceedings and exhibits being added to or deleted from the original designation of record. The designation may not be later amended by the appellant unless the appellate court so orders.

(f) A plain and concise statement of the points on which the appellant intends to rely. On appeal, the appellant may rely on no other points than those set forth in such statement. If the appellant has designated for inclusion in the record all the testimony and all the instructions given and requested, no statement of points is necessary. Not later than the 15th day following the filing of the certificate of preparation for the transcript under ORS 19.370 (3), the appellant may serve and file an amended statement of points. Except by approval of the court, the appellant may then rely on no other points than those set forth in such amended statement.

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

(2) Within 14 days after the filing of the notice of appeal or amended designation of record, any other party may serve and file a designation of additional parts of the proceedings and exhibits to be included in the record. Such designation must be served and filed as provided for the serving and filing of a notice of appeal under ORS 19.240 and 19.260. If such party also appeals, the designation must be included in the notice of appeal of the party and may not be served and filed separately. [Formerly 19.029; 1999 c.367 §3; 2013 c.685 §4]

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

(2) If a motion for a new trial is filed and served within the time allowed by ORCP 64, or a motion for judgment notwithstanding the verdict is filed and served within the time allowed by ORCP 63, a notice of appeal must be served and filed:

(a) Within 30 days after the order disposing of the motion is entered in the register, or within 30 days after the motion is deemed denied under ORCP 63 D or 64 F, whichever is first; or

(b) Within the time allowed by subsection (1) of this section, if the period of time provided for in subsection (1) of this section expires later than the period of time provided for in paragraph (a) of this subsection.

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

(4) Except as otherwise ordered by the appellate court, when more than one notice of appeal is filed, the date on which the last such notice was filed shall be used in determining the time for preparation of the transcript, filing briefs and other steps in connection with the appeal. [Formerly 19.026; 2003 c.281 §1]

19.260 Filing by mail or delivery. (1)(a) Filing a notice of appeal in the Court of Appeals or the Supreme Court may be accomplished by mail or delivery. Regardless of the date of actual receipt by the court to which the appeal is taken, the date of filing the notice is the date of mailing or dispatch for delivery, if the notice is:

(A) Mailed by registered or certified mail and the party filing the notice has proof from the United States Postal Service of the mailing date; or

(B) Mailed or dispatched via the United States Postal Service or a commercial delivery service by a class of delivery calculated to achieve delivery within three calendar days, and the party filing the notice has proof from the United States Postal Service or the commercial delivery service of the mailing or dispatch date.

(b) Proof of the date of mailing or dispatch under this subsection must be certified by the party filing the notice and filed thereafter with the court to which the appeal is taken. Any record of mailing or dispatch from the United States Postal Service or the commercial delivery service showing the date that the party initiated mailing or dispatch is sufficient proof of the date of mailing or dispatch. If the notice is received by the court on or before the date by which the notice is required to be filed, the party filing the notice is not required to file proof of mailing or dispatch.

(2)(a) Service of notice of appeal on a party, transcript coordinator or the trial court administrator, or service of a petition

for judicial review on a party or administrative agency may be accomplished by:

(A) First class, registered or certified mail; or

(B) Mail or dispatch for delivery via the United States Postal Service or a commercial delivery service by a class of delivery calculated to achieve delivery within three calendar days.

(b) The date of serving the notice under this subsection is the date of mailing or dispatch. The party filing the notice must certify the date and method of service.

(3) Notwithstanding subsections (1) and (2) of this section, if the party filing a notice of appeal is involuntarily confined in a state or local governmental facility, the date of filing of a notice of appeal in the Court of Appeals or the Supreme Court, and the date of service under subsection (2) of this section, is the date on which the party delivers the original notice of appeal, and the appropriate number of copies of the notice for service under subsection (2) of this section, to the person or place designated by the facility for handling outgoing mail.

(4) Except as otherwise provided by law, the provisions of this section are applicable to petitions for judicial review, cross petitions for judicial review and petitions under the original jurisdiction of the Supreme Court or Court of Appeals. [Formerly 19.028; 1999 c.367 §6; 2011 c.310 §1; 2015 c.80 §1]

19.265 Payment of filing fee. At the time the notice of appeal is filed as provided in ORS 19.240, the appellant shall deposit with the State Court Administrator the amount of the appropriate filing fee. The timely deposit of such fee is not jurisdictional, but omission to do so shall be cause for dismissal of the appeal, subject to the provisions of ORS 19.270 (3). [Formerly 19.035]

(Jurisdiction of Appellate Court and Trial Court)

19.270 Appellate jurisdiction of Supreme Court and Court of Appeals; trial court jurisdiction to enter appealable judgment or order. (1) The Supreme Court or the Court of Appeals has jurisdiction of the cause when the notice of appeal has been served and filed as provided in ORS 19.240, 19.250 and 19.255. The trial court may exercise those powers in connection with the appeal as are conferred by law, and retains jurisdiction in the matter for the following purposes:

(a) Deciding requests for attorney fees, costs and disbursements or expenses pursuant to ORCP 68 or other provision of law.

(b) Enforcing the judgment, subject to any stay of the judgment.

(c) Deciding a motion for judgment notwithstanding the verdict under ORCP 63.

(d) Deciding a motion for new trial under ORCP 64.

(e) Deciding a motion for relief from judgment under ORCP 71 B.

(2) The following requirements of ORS 19.240, 19.250 and 19.255 are jurisdictional and may not be waived or extended:

(a) Service of the notice of appeal on all parties identified in the notice of appeal as adverse parties or, if the notice of appeal does not identify adverse parties, on all parties who have appeared in the action, suit or proceeding, as provided in ORS 19.240 (2)(a), within the time limits prescribed by ORS 19.255.

(b) Filing of the original of the notice of appeal with the Court of Appeals as provided in ORS 19.240 (3), within the time limits prescribed by ORS 19.255.

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

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

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

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

(5) Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction:

(a) To enter in the trial court register a judgment or order that the trial judge signed before the notice of appeal was filed;

(b) To enter an order or supplemental judgment under ORCP 71 or ORS 19.275, 107.105 (4) or 107.452; and

(c) To enter an order or supplemental judgment for the purpose of implementing a settlement as allowed by ORS 19.410 (3).

(6) Jurisdiction of the appellate court over a cause ends when a copy of the appellate judgment is mailed by the State Court Administrator to the court from which the appeal was taken pursuant to ORS 19.450, except that the appellate court may:

(a) Recall the appellate judgment as justice may require;

(b) Stay enforcement of the appellate judgment to allow the filing of a petition for writ of certiorari to the Supreme Court of the United States; and

(c) Stay enforcement of the appellate judgment pending disposition of the matter by the Supreme Court of the United States or for such other time as the Oregon appellate court may deem appropriate.

(7) If a limited or supplemental judgment is appealed, the jurisdiction of the appellate court is limited to the matters decided by the limited or supplemental judgment, and the trial court retains jurisdiction over all other matters in the proceeding.

(8) After jurisdiction of the appellate court ends, all orders which may be necessary to carry the appellate judgment into effect shall be made by the court from which the appeal was taken. [Formerly 19.033; 2003 c.576 §86; 2005 c.568 §25c; 2007 c.66 §1; 2013 c.10 §1]

19.275 Continuing jurisdiction of trial court in certain domestic relations cases. (1) Any motion that requires a showing of a change of circumstances before the court may modify a judgment, including a motion to reconsider the spousal or child support provisions of a judgment pursuant to ORS 107.135, may be filed with the trial court while an appeal from the judgment is pending before an appellate court. The filing of a motion under this subsection does not affect the right of the appellant to pursue the appeal of the judgment.

(2) The trial court in its discretion may proceed to hear and decide a motion under this section or may hold the motion in abeyance pending disposition of the appeal.

(3) Pursuant to the provisions of ORS 19.205, the court's decision on a motion under this section is a supplemental judgment. The appellate court in its discretion may consolidate an appeal from a supplemental judgment under this section with the pending appeal of the general judgment in the case, may direct that both appeals be heard at the same time or may allow the appeals to proceed independently. [1997 c.71 §11; 2003 c.576 §87; 2005 c.568 §26]

UNDERTAKINGS ON APPEAL AND STAYS OF JUDGMENT

(Undertakings)

19.300 Undertakings on appeal generally; filing and service. (1) An appellant must serve and file an undertaking for costs within 14 days after the filing of a notice of appeal. Unless the undertaking is waived, reduced or limited under ORS 19.310, an undertaking for costs must be in the amount of $500.

(2) A supersedeas undertaking may be served and filed by an appellant at any time while a case is pending on appeal.

(3) The original of an undertaking on appeal, with proof of service, must be filed with the trial court administrator. A copy of the undertaking must be served on each adverse party on appeal in the manner prescribed by ORCP 9 B. [1997 c.71 §2; 1999 c.367 §7]

19.305 Qualifications of sureties; objections. (1) Undertakings on appeal are subject to the provisions of ORS 22.020 to 22.070.

(2) A surety for an undertaking on appeal must be qualified as provided in ORCP 82. The amount of liability assumed by a surety or letter of credit issuer must be stated in the undertaking. The liability of a surety or letter of credit issuer is limited to the amount specified in the undertaking.

(3) Objections to the sufficiency of an undertaking on appeal, including the objections to the amount of the undertaking and to the sufficiency of the security for the undertaking, must be filed in and determined by the trial court in the manner provided by ORCP 82. Notwithstanding ORCP 82 F, objections to the undertaking must be filed within 14 days after the date on which a copy of the undertaking is served on the party who objects to the undertaking. [1997 c.71 §3]

19.310 Waiver, reduction or limitation of undertaking. (1) By written stipulation of the parties, an undertaking on appeal may be waived, reduced or limited. The stipulation must be filed with the trial court administrator within 14 days after the filing of the notice of appeal. Unless disapproved or modified by the trial court, the stipulation has the effect specified by the terms of the stipulation.

(2) The trial court may waive, reduce or limit an undertaking on appeal upon a showing of good cause, including indigence, and on such terms as are just and equitable. [1997 c.71 §4; 1999 c.367 §8]

19.312 Supersedeas undertaking in certain actions against tobacco product manufacturer. (1) The provisions of this section apply only to civil actions against a tobacco product manufacturer as defined in ORS 323.800, or against an affiliate or successor of a tobacco product manufacturer, in which:

(a) The tobacco product manufacturer is subject to the requirements of ORS 323.806; and

(b) The state is not a plaintiff.

(2) In any civil action described in subsection (1) of this section, the supersedeas undertaking required of the tobacco product manufacturer, or of an affiliate or successor of the tobacco product manufacturer, as a condition of a stay of judgment throughout all appeals or discretionary appellate review, shall be established in the manner provided by the laws and court rules of this state applicable to supersedeas undertakings, but the amount of the supersedeas undertaking may not exceed $150 million.

(3) If at any time after the posting of the supersedeas undertaking pursuant to the provisions of this section the court determines that a tobacco product manufacturer, affiliate or successor, outside of the ordinary course of its business, is purposely dissipating or diverting assets for the purpose of avoiding payment on final judgment in the action, the court may condition continuance of the stay on an order requiring that the tobacco product manufacturer, affiliate or successor post a supersedeas undertaking in an amount up to the full amount of the judgment.

(4) The provisions of this section apply to any supersedeas undertaking required for a judgment entered by a court of this state and to any security required as a condition of staying enforcement of a foreign judgment under the provisions of ORS 24.135 (2). [2003 c.804 §87; 2005 c.22 §9]

(Letter of Credit in Support of Undertaking)

19.315 Requirements for use of letter of credit. (1) Except as provided in subsection (4) of this section, an irrevocable letter of credit filed in support of an undertaking on appeal must contain:

(a) The name and address of the issuing bank, the date of issuance and the limit of the bank's liability under the letter of credit.

(b) The name of the court that entered the judgment being appealed and the title and file number of the case for which the judgment was entered.

(c) The name and address of the party who is filing the undertaking or, if the party is represented by an attorney, the name and address of the attorney.

(d) The name and address of the beneficiary or, if the beneficiary is represented by an attorney, the name and address of the attorney for the beneficiary.

(e) A statement that the issuing bank will pay to the beneficiary, up to the limit stated in the letter of credit, the amount of any drafts submitted to the issuing bank under ORS 19.325.

(2) An irrevocable letter of credit filed in support of an undertaking on appeal may be issued only by an insured institution, as defined in ORS 706.008, that has an office or other facility in this state or that has a registered agent in this state.

(3) A letter of credit under this section may contain an expiration date. Any letter of credit containing an expiration date must comply with ORS 19.320.

(4) A party filing a letter of credit in support of an undertaking on appeal and the party for whose benefit an undertaking is filed may by agreement waive any of the requirements of subsection (1) of this section. [1997 c.172 §2; 1999 c.59 §10]

19.320 Expiration and renewal of letter of credit. (1) If a letter of credit issued under ORS 19.315 contains an expiration date, the letter of credit must also state an automatic renewal period and contain a statement that the issuing bank will automatically renew the letter of credit on the expiration date and at the end of each automatic renewal period thereafter unless the bank has elected not to renew the letter in the manner provided by subsection (2) of this section.

(2) A bank that issues a letter of credit may elect not to renew a letter of credit by giving written notice to the following persons:

(a) To the party that files the letter of credit, at the address stated in the letter of credit, or, if the attorney for the party is named in the letter of credit, to the attorney at the address stated in the letter of credit.

(b) To the beneficiary, at the address stated in the letter of credit, or, if the attorney for the beneficiary is named in the letter, to the attorney at the address stated in the letter of credit.

(3) Notice of nonrenewal under subsection (2) of this section must be given by certified mail. The notice must be mailed at least 60 days before the expiration date reflected on the letter of credit or 60 days be-

fore the end of any subsequent automatic renewal period.

(4) If an issuing bank has given notice of nonrenewal under the provisions of this section, the bank must pay to the trial court administrator who is holding the letter of credit the amount stated in the letter of credit as the limit of the bank's liability unless the beneficiary gives written notice to the bank that the letter of credit has been released. A beneficiary shall promptly notify the issuing bank in writing if the court has entered an order releasing the letter of credit.

(5) Any amount paid by an issuing bank to a trial court administrator under subsection (4) of this section shall be treated as a deposit of money under ORS 22.020. Any amount that is not paid out to the beneficiary pursuant to the appellate judgment shall be refunded to the bank making the deposit. [1997 c.172 §3; 1999 c.367 §9]

19.325 Payment on letter of credit. (1) If an appellate judgment entitles a beneficiary to payment from the issuing bank of a letter of credit, the appellate judgment must direct the trial court administrator to release the letter of credit to the beneficiary. Upon issuance of the appellate judgment, the beneficiary may enforce the letter of credit by submitting a draft to the issuing bank in accordance with the terms of the letter of credit. The amount of the draft must include all amounts determined necessary to cover the interest that will accrue until the date that disbursement will be made to the beneficiary.

(2) Except as provided in this section, a draft submitted by a beneficiary under this section need not be in any particular form. The draft must be dated, must be for a specific sum of money and must contain the following language:

_____

Pay to the order of the undersigned beneficiary the amount of this draft. The undersigned beneficiary hereby certifies that there is now an appellate judgment in this case pursuant to which the amount of the draft stated above is now due and owing to the beneficiary from the party on whose behalf the letter of credit was issued.

_____

(3) In addition to the requirements of subsection (2) of this section, the following items must be attached to a draft submitted by a beneficiary under this section:

(a) The original letter of credit under which the draft is drawn.

(b) A copy of the appellate judgment certified by the State Court Administrator that shows the amount that the beneficiary is entitled to recover under the letter of credit.

(4) If the issuing bank of a letter of credit does not honor a letter of credit, on motion of the beneficiary the trial court shall enter judgment against the issuing bank unless the bank establishes that the bank is not required under the law to honor the letter of credit. [1997 c.172 §4; 1999 c.367 §10]

(Stays)

19.330 Stays generally. The filing of a notice of appeal does not automatically stay the judgment that is the subject of the appeal. A party may seek to stay a judgment in the manner provided by ORS 19.335, 19.340 or 19.350, or as provided by other law. [1997 c.71 §5]

19.335 Stay by filing of supersedeas undertaking. (1) If a judgment is for the recovery of money, a supersedeas undertaking acts to stay the judgment if the undertaking provides that the appellant will pay the judgment to the extent that the judgment is affirmed on appeal.

(2) If a judgment requires the transfer or delivery of possession of real property, a supersedeas undertaking acts to stay the judgment if the undertaking provides that the appellant will not commit waste or allow waste to be committed on the real property while the appellant possesses the property, and the appellant will pay the value of the use and occupation of the property for the period of possession if the judgment is affirmed. The value of the use and occupation during the period of possession must be stated in the undertaking.

(3)(a) If a judgment requires the transfer or delivery of possession of personal property, a supersedeas undertaking acts to stay the judgment if the undertaking provides that the appellant will obey the judgment of the appellate court, and that if the appellant does not obey the judgment, the appellant will pay an amount determined by the trial court and stated in the undertaking.

(b) If a judgment requires the transfer or delivery of possession of personal property, the judgment is stayed without the filing of a supersedeas undertaking if the appellant transfers or delivers the personal property to the court or places the property in the custody of an officer or receiver appointed by the trial court.

(4) If a judgment requires the foreclosure of a mortgage, lien or other encumbrance, and also requires payment of the debt secured by the mortgage, lien or other encumbrance, a supersedeas undertaking acts to

stay that portion of the judgment that requires payment of the debt if the undertaking provides that the appellant will pay any portion of the judgment remaining unsatisfied after the sale of the property subject to the mortgage, lien or other encumbrance. The amount of the undertaking must be stated in the undertaking. The requirements of this subsection are in addition to any provisions in a supersedeas undertaking that may be required under subsection (2) or (3) of this section to stay delivery or transfer of property.

(5) If a judgment requires the execution of a conveyance or other instrument, the judgment is stayed without the filing of a supersedeas undertaking if the appellant executes the instrument and deposits the instrument with the trial court administrator. Unless otherwise directed by the appellate court, the instrument must be held by the trial court administrator until issuance of the appellate judgment terminating the appeal.

(6) Except as provided in ORCP 72, a stay of judgment described in this section takes effect only after the party has filed a notice of appeal and filed any supersedeas undertaking required for the stay. [1997 c.71 §6; 1999 c.367 §11; 2007 c.547 §5]

19.340 Waiver of supersedeas undertaking; sale of perishables. (1) The trial court, in its discretion, may stay a judgment without requiring a supersedeas undertaking, or reduce the amount of the supersedeas undertaking required of the appellant, if the appellant is an executor, administrator, trustee or other person acting on behalf of another.

(2) If a judgment that has been stayed requires the sale of perishable property, or if perishable property has been seized to satisfy or secure a judgment that has been stayed, the trial court may order that perishable property be sold and the proceeds of the sale deposited or invested until issuance of the appellate judgment terminating the appeal. [1997 c.71 §7]

19.345 Enforcement of judgment in contract action notwithstanding appeal. If the judgment has been given in an action or suit upon a contract, notwithstanding an appeal and supersedeas undertaking, the respondent may proceed to enforce such judgment, if within 10 days from the time the appeal is perfected the respondent files with the trial court administrator an undertaking to the effect that if the judgment is reversed or modified the respondent will make such restitution as the appellate court may direct. Such undertaking may be excepted to by the appellant in like manner and with like effect as the undertaking of an appellant, and the sureties therein shall have the same qualifications. [Formerly 19.060; 1999 c.367 §12; 2003 c.576 §281]

19.350 Discretionary stay by court. (1) A party may seek a stay of judgment pending a decision on appeal in the manner provided by this section only if the judgment may not be stayed under the provisions of ORS 19.335 or 19.340, or under any other provision of law specifying a procedure or grounds for staying the judgment. A stay of judgment may not be granted under this section if any other provision of law specifies that a stay may not be granted pending a decision on appeal.

(2) Except as provided in subsection (5) of this section, a party seeking a stay under the provisions of this section must first request a stay from the trial court. The trial court may act on a request for a stay before or after a notice of appeal is filed. The time for filing a notice of appeal is not tolled by the making of a request for a stay under this section or by the trial court's action on the request.

(3) The trial court shall consider the following factors in deciding whether to grant a stay under this section, in addition to such other factors as the trial court considers important:

(a) The likelihood of the appellant prevailing on appeal.

(b) Whether the appeal is taken in good faith and not for the purpose of delay.

(c) Whether there is any support in fact or in law for the appeal.

(d) The nature of the harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

(4) The trial court has discretion to impose reasonable conditions on the grant of a stay under the provisions of this section. The court may require that a supersedeas undertaking be filed in a specified amount as a condition of granting a stay under the provisions of this section.

(5) A party may request a stay pending appeal from the appellate court in the first instance, and the appellate court may act on that request without requiring the party to seek a stay from the trial court, if the party establishes that the filing of a request for a stay with the trial court would be futile or that the trial court is unable or unwilling to act on the request within a reasonable time. In considering a request for a stay under this subsection, the appellate court shall consider the factors set out in subsection (3) of this section in addition to any other factors the court considers important. [1997 c.71 §8]

19.355 Stay of domestic relations judgment. (1) The provisions of this chapter relating to stays on appeal apply to a domestic relations judgment.

(2) If an appellant seeks a stay of only specific provisions of a domestic relations judgment, the motion seeking the stay must identify those provisions of the judgment that are to be stayed. If the court allows a stay of only certain provisions of the judgment, the order of the court must specifically indicate those provisions. If a supersedeas undertaking is filed with the court for the purpose of staying specific provisions of the judgment, the undertaking must indicate the specific provisions of the judgment covered by the undertaking. A stay of any specific provision of a domestic relations judgment may be granted only if:

(a) The specific provision is subject to stay under the provisions of this chapter; and

(b) All requirements of this chapter for a stay of the provision are satisfied.

(3) For the purposes of this section, "domestic relations judgment" means a judgment entered in proceedings under ORS chapter 107, 108 or 109. [1997 c.71 §10; 2003 c.576 §282]

(Appellate Review of Trial Court Orders Relating to Undertakings and Stays)

19.360 Appellate review of trial court orders relating to undertakings and stays. (1) Any party aggrieved by the trial court's final order relating to an undertaking on appeal, the trial court's grant or denial of a stay or the terms and conditions imposed by the trial court on the granting of a stay may seek review of the trial court's decision by filing a motion in the appellate court to which the appeal is made. The motion must be filed within 14 days after the entry of the trial court's order. During the 14-day period after the entry of the trial court's order, the judgment shall automatically be stayed unless the trial court orders otherwise. The trial court may impose terms or conditions on the stay or take such other action as may be necessary to prevent prejudice to the parties.

(2) The appellate court may review the decision of the trial court under the provisions of this section at any time after the filing of the notice of appeal. Notwithstanding ORS 19.415 (3), the appellate court shall review the decision de novo upon the record.

(3) On de novo review under subsection (2) of this section, the record shall be restricted to the record made before the trial court unless:

(a) There is additional relevant information relating to the period of time following the decision of the trial court that the appellate court determines to be important to review of the decision; or

(b) The party submitting new information establishes that there was good cause for not submitting the information to the trial court.

(4) On review of a trial court's decision relating to a request for a stay pending appeal, an appellate court may remand the matter to the trial court for reconsideration, may vacate a stay granted by the trial court, may grant a stay, and may impose or modify terms and conditions on a stay. Upon receipt of a request for a stay pending appeal made to the appellate court in the first instance, the appellate court may remand the matter to the trial court for consideration in the first instance, may grant or deny a stay, and may impose terms and conditions on a stay issued by the appellate court. [1997 c.71 §9; 1999 c.294 §1; 2009 c.231 §4]

RECORD ON APPEAL

19.365 Preparation and transmission of record generally. (1) The record of the case must be prepared and transmitted to the court to which the appeal is made in the manner provided in this chapter.

(2) The record on appeal consists of those parts of the trial court file, exhibits and record of oral proceedings in the trial court that are designated under ORS 19.250. The record of oral proceedings is the transcript prepared under ORS 19.370, an agreed narrative statement prepared under ORS 19.380 or the audio record if the appellate court has waived preparation of a transcript under ORS 19.385.

(3) The trial court administrator shall make the trial court record available to the State Court Administrator in the manner specified by rules of the appellate court.

(4) When it appears to the appellate court that the record on appeal is erroneous or that the record does not contain material that should have been part of the trial court file, and the erroneous or incomplete record substantially affects the merits of the appeal, on motion of a party or on its own motion the appellate court may make such order to correct or supplement the record as may be just.

(5) If the record on appeal is not sufficient to allow the appellate court to review an assignment of error, the appellate court may decline to review the assignment of error and may dismiss the appeal if there are no other assignments of error that may be reviewed.

(6) Except as provided by rules of the appellate court, the State Court Administrator shall return the trial court file and the

exhibits to the trial court administrator upon issuance of the appellate judgment disposing of the appeal. [Formerly 19.065; 2013 c.685 §5]

19.370 Certification and service of transcript; correction of errors; settlement of transcript. (1) If a transcript is prepared from audio records by a person other than the reporter, the reporter shall certify the records and the transcriber shall certify the transcript. In all other cases, the transcript must be certified by the reporter or the trial judge.

(2) A transcriber shall prepare a transcript in the format prescribed by the court by the later of:

(a) Thirty days after the filing of the notice of appeal; or

(b) Thirty days after the expiration of any abeyance of the appeal imposed by reason of the referral of the appeal to the appellate settlement program established by the Court of Appeals pursuant to ORS 2.560.

(3) Immediately after preparing a transcript, the transcriber shall:

(a) Serve a copy of the transcript on the parties to the appeal in the manner required by subsection (4) of this section; and

(b) File a certificate of preparation for the transcript with the State Court Administrator. The certificate must indicate that the transcript has been served in the manner required by subsection (4) of this section. A copy of the certificate must be served on the trial court administrator, the transcript coordinator and the parties.

(4) A transcriber may agree with a party or an attorney on the manner in which a transcript will be served. If there is no agreement, a transcriber shall serve a transcript in the following manner:

(a) Subject to paragraph (d) of this subsection, if an appellant is not represented by an attorney, the transcriber shall serve an electronic copy of the transcript on the appellant at the electronic mail address provided by the appellant unless the appellant specifically requests that a paper copy of the transcript be mailed to the appellant at the postal address indicated in the notice of appeal. If an electronic mail address for the appellant does not appear in the notice of appeal, the transcriber shall mail a paper copy of the transcript to the appellant at the postal address indicated in the notice of appeal.

(b) Subject to paragraph (d) of this subsection, if a respondent is not represented by an attorney, the transcriber shall mail a paper copy of the transcript to the respondent at the postal address indicated in the notice of appeal unless the respondent specifically requests that the transcriber serve an electronic copy of the transcript on the respondent at the electronic mail address provided by the respondent.

(c) If a party is represented by an attorney, the transcriber shall serve an electronic copy of the transcript on the attorney at the electronic mail address of the attorney identified in the notice of appeal.

(d) If two or more unrepresented appellants request paper copies of a transcript under paragraph (a) of this subsection, or two or more unrepresented respondents request paper copies of a transcript under paragraph (b) of this subsection, the transcriber shall deposit a copy of the transcript with the trial court administrator for the use of the unrepresented parties. The copy must be in the medium specified by the trial court administrator. The transcriber shall serve notice on the unrepresented parties that the transcript has been deposited with the trial court administrator, and file proof of that service with the trial court administrator and with the State Court Administrator. Deposit of a copy of a transcript with the trial court administrator under this paragraph constitutes service of the transcript on the unrepresented parties to the appeal.

(5) If two or more transcribers are preparing parts of the transcript, the certificate of preparation is considered filed under subsection (3) of this section when the final certificate of preparation is filed with the State Court Administrator.

(6)(a) Within 15 days after a certificate of preparation is filed under subsection (3) of this section, any party may file a motion with the trial court for correction of errors appearing in the transcript or to have additional parts of the proceedings included in the transcript. If a certificate of preparation is filed with the State Court Administrator during any period that the appeal is in abeyance by reason of the referral of the appeal to the appellate settlement program established by the Court of Appeals pursuant to ORS 2.560, a motion under this subsection must be filed within 15 days after the expiration of the abeyance.

(b) A copy of a motion to correct or add to the transcript made under this subsection must be served on the State Court Administrator. If the motion is denied, the trial court shall enter an order settling the transcript and transmit a copy of the order to the State Court Administrator.

(c) If a motion is granted under this subsection, the trial court shall direct the making of such corrections and the adding of such matter as may be appropriate and shall fix the time within which such corrections

or additions must be made. Immediately after preparing the corrected or additional transcript, the transcriber shall serve a copy of the transcript on the parties in the manner required by subsection (4) of this section, and file proof of that service with the trial court administrator, the transcript coordinator and the State Court Administrator. Upon receiving proof of service from all transcribers of the proceedings, the State Court Administrator shall issue a notice to the parties indicating that the transcript has been settled.

(7) Unless a motion to correct or add to the transcript is made under subsection (6) of this section, a transcript is automatically settled 15 days after a certificate of preparation is filed under subsection (3) of this section. If a motion to correct or add to the transcript is made, the transcript is settled on the date that the State Court Administrator issues the notice to the parties under subsection (6) of this section.

(8) When a transcript is settled, the State Court Administrator shall notify each transcriber who filed a certificate of preparation. Upon receiving the notice, a transcriber shall file an electronic copy of the transcript with the State Court Administrator in the manner and format prescribed by rules of the appellate court. [Formerly 19.078; 1999 c.367 §13; 2001 c.341 §1; 2001 c.962 §62; 2012 c.48 §7; 2013 c.685 §6]

19.375 Cost of transcript. (1) Where more than one appeal is taken from the same judgment, only one original transcript shall be filed.

(2) The cost of preparing the transcript and copy shall be paid by the party designating it to be made, except that where a party has designated additional parts of the proceedings to be included in the transcript as provided in ORS 19.250 (2), the trial court on motion of such party may direct that the cost of preparing all or part of the additional parts of the transcript be paid by the appellant if it appears that such additional parts are necessary to the determination of the appeal. The cost of preparing the original and copy of the transcript shall be taxable as part of the costs on appeal. [Formerly 19.084]

19.380 Agreed narrative statement. In lieu of or in addition to a transcript, the parties may prepare an agreed narrative statement of the proceedings below or parts thereof. The narrative statement shall be signed by the parties or their attorneys and shall be filed with the trial court administrator within 30 days after the filing of the notice of appeal. When such a statement is filed, the appellant shall promptly notify the State Court Administrator, at Salem. [Formerly 19.088; 1999 c.367 §14]

19.385 Audio records. Where the trial proceedings are recorded on audio records, the court to which the appeal is made may waive transcription and provide for hearing of the appeal on the basis of the audio records alone under such rules as the court may prescribe. The reporter shall certify and file the audio recordings with the trial court administrator immediately upon receiving notice that the appeal is to be heard on the basis of the recordings alone. [Formerly 19.069; 1999 c.367 §15]

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

19.395 Time extensions for preparation of record. Extensions of time for the performance of any act in connection with the preparation of the record may be granted only by the court to which the appeal is made and under such rules as that court may prescribe. [Formerly 19.095]

HEARINGS ON APPEALS

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

DISPOSITION OF APPEALS

(Certification of Appeal to Supreme Court)

19.405 Certification of appeal to Supreme Court. (1) When the Court of Appeals has jurisdiction of an appeal, the court, through the Chief Judge and pursuant to appellate rules, may certify the appeal to the Supreme Court in lieu of disposition by the Court of Appeals. The Court of Appeals shall provide notice of certification to the parties to the appeal.

(2) The Supreme Court, by order entered within 20 days after the date of receiving certification of an appeal from the Court of Appeals under subsection (1) of this section, may accept or deny acceptance of the certified appeal. The Supreme Court, by order entered within that 20-day period, may extend by not more than 10 days the time for acceptance or denial of acceptance of the certified appeal. If the Supreme Court ac-

cepts a certified appeal, the Court of Appeals shall transmit the record of the case and the briefs of parties to the Supreme Court, the Supreme Court shall have jurisdiction of the cause, and the appeal shall be considered pending in the Supreme Court without additional notice of appeal, filing fee, undertaking or, except as the Supreme Court may require, briefs of parties. A certified appeal shall remain pending in the Court of Appeals before the Supreme Court accepts or denies acceptance, and if the Supreme Court denies acceptance or fails to accept or deny acceptance within the time provided for in this subsection. The Supreme Court shall provide notice of acceptance or denial of acceptance of certification to the parties to the appeal. [Formerly 19.210]

(Stipulated Dismissals and Settlements)

19.410 Stipulated dismissals; settlement; effect of settlement on pending appeal. (1) An appellate court may dismiss an appeal at any time if the parties to the appeal stipulate to the dismissal.

(2) Dismissal of an appeal shall operate as an affirmance of the judgment being appealed if the appellate court so directs in the order of dismissal.

(3) If the parties to an appeal settle all or part of the matter on appeal, the trial court has jurisdiction to enter any orders or judgments that may be necessary to implement the settlement. If the settlement disposes of all issues on appeal, the appellate court may dismiss the appeal. If the settlement disposes of part of the issues on appeal, the appellate court may limit the scope of the appeal to the issues not disposed of by the settlement. [Formerly 19.111]

(Disposition on Merits)

19.415 Scope of appellate review. (1) Except as provided in this section, upon an appeal in an action or proceeding, without regard to whether the action or proceeding was triable to the court or a jury, the scope of review shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution.

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

(3) Upon an appeal in an equitable action or proceeding, review by the Court of Appeals shall be as follows:

(a) Upon an appeal from a judgment in a proceeding for the termination of parental rights, the Court of Appeals shall try the cause anew upon the record; and

(b) Upon an appeal in an equitable action or proceeding other than an appeal from a judgment in a proceeding for the termination of parental rights, the Court of Appeals, acting in its sole discretion, may try the cause anew upon the record or make one or more factual findings anew upon the record.

(4) When the Court of Appeals has tried a cause anew upon the record or has made one or more factual findings anew upon the record, the Supreme Court may limit its review of the decision of the Court of Appeals to questions of law. [Formerly 19.125; 2003 c.576 §88; 2005 c.568 §27; 2009 c.231 §2]

19.420 Action by appellate court on appeal; review of order granting new trial or judgment notwithstanding verdict; reversal upon loss or destruction of reporter's notes or audio records. (1) Upon an appeal, the court to which the appeal is made may affirm, reverse or modify the judgment or part thereof appealed from as to any or all of the parties joining in the appeal, and may include in such decision any or all of the parties not joining in the appeal, except a codefendant of the appellant against whom a several judgment might have been given in the court below; and may, if necessary and proper, order a new trial.

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

(3) Whenever it appears that an appeal cannot be prosecuted, by reason of the loss or destruction, through no fault of the appellant, of the reporter's notes or audio records, or of the exhibits or other matter necessary to the prosecution of the appeal, the judgment appealed from may be reversed and a new trial ordered as justice may require. [Formerly 19.130]

19.425 Review of intermediate orders; directing restitution. Upon an appeal, the appellate court may review any intermediate order involving the merits or necessarily affecting the judgment appealed from; and when it reverses or modifies such judgment, may direct complete restitution of all property and rights lost thereby. [Formerly 19.140; 2003 c.576 §283]

19.430 Review of trial court order granting a new trial on court's own initiative. If an appeal is taken from an order of the trial court granting a new trial on its own initiative, the order shall be affirmed on appeal only on grounds set forth in the order

or because of reversible error affirmatively appearing in the record. [Formerly 19.200]

19.435 Memorandum decisions. The Supreme Court or the Court of Appeals may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper. [Formerly 19.180]

(Attorney Fees and Penalties)

19.440 Award of attorney fees authorized by statute. (1) If a statute of this state authorizes or requires an award of attorney fees to a party to a proceeding, but does not expressly authorize or require that award on appeal, judicial review or other appellate review of the decision in the proceeding, and does not expressly prohibit that award on an appeal, judicial review or other appellate review, the statute shall be construed as authorizing or requiring the award of attorney fees on appeal, judicial review or other appellate review of the decision in the proceeding, including any denial of a petition for review by the Supreme Court in the proceeding.

(2) If a statute of this state authorizes or requires an award of attorney fees to a party to a proceeding, but does not expressly authorize or require an award of attorney fees in a mandamus proceeding arising out of the original proceeding, the statute shall be construed as authorizing or requiring the award of attorney fees in the mandamus proceeding.

(3) The provisions of this section apply to statutes that authorize or require the award of attorney fees in administrative proceedings in addition to statutes that authorize or require the award of attorney fees in civil proceedings in courts. [Formerly 19.220; 2011 c.513 §1]

19.445 Damages upon affirmance of judgment. Whenever a judgment is affirmed on appeal, and it is for recovery of money, or personal property or the value thereof, the judgment shall be given for 10 percent of the amount thereof, for damages for the delay, unless it appears evident to the appellate court that there was probable cause for taking the appeal. [Formerly 19.160; 2003 c.576 §284]

(Appellate Judgment)

19.450 Appellate judgment; when effective; effect of entry in trial court register; effect on judgment lien. (1) As used in this section:

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

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

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

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

(4) A party entitled to enforce an undertaking may obtain judgment against a surety by filing a request with the State Court Administrator and serving a copy of the request on the other parties and the surety. The request must identify the surety against whom judgment is to be entered and the amount of the judgment sought to be imposed against the surety. Unless otherwise directed by the appellate court, upon receiving the request the State Court Administrator shall include in the appellate judgment a judgment against the surety in the amount specified.

(5) If the appellate judgment terminating an appeal contains a judgment against a surety for an undertaking, the trial court administrator shall enter the judgment against the surety in like manner and with like effect as if the judgment was given in the court below.

(6) Except as provided in ORS 18.154, an appeal does not discharge the lien of a judgment and unless the judgment is reversed,

the lien of the judgment merges with and continues in the affirmed or modified judgment given on appeal, from the time of the entry of the judgment in the court below. The lien of any judgment created by recording a certified copy of the judgment or a lien record abstract continues in force in the same manner as the original judgment lien as provided in this subsection. [Formerly 19.190; 1999 c.367 §16; 2003 c.576 §89]

MISCELLANEOUS

19.500 Service of documents under provisions of chapter. Except as otherwise provided in this chapter, when any provision of this chapter requires that a document be served and filed, the document shall be served in the manner provided in ORCP 9 B on all other parties who have appeared in the action, suit or proceeding and who are not represented by the same counsel as the party serving the document, and shall be filed, with proof of service indorsed thereon, with the trial court administrator. [Formerly 19.104; 2007 c.129 §10]

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