Chapter 105

2011 EDITION

Property Rights

ACTIONS FOR RECOVERY OF REAL PROPERTY

105.005 Right of action; recovery; damages
105.010 Contents of complaint
105.015 Answer
105.020 Substitution of landlord for tenant
105.025 Verdict
105.030 Damages for withholding; setoff for improvements
105.035 Judgment when plaintiff's right to possession expires
105.040 Order to make survey
105.045 Action not prejudiced by alienation by person in possession
105.050 Cotenant shall prove ouster
105.055 Conclusiveness of judgment
105.060 Effect of new trial on plaintiff's possession
105.070 Rights of donee under Donation Law
105.075 Notice to quit; action to recover possession not affected by forcible entry or wrongful detainer
105.080 Reimbursement of tenants in common obtaining possession; lien

FORCIBLE ENTRY AND WRONGFUL DETAINER

105.105 Entry to be lawful and peaceable only
105.110 Action for forcible entry or wrongful detainer
105.111 Stay of eviction for state service member
105.112 Action by tenant to recover personal property; forms
105.113 Form of summons
105.115 Causes of unlawful holding by force; action for return of possession
105.120 Notice necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent
105.121 Forms in action for possession of group recovery home; limitation on issues; attorney fees
105.123 Complaint
105.124 Form of complaint if ORS chapter 90 applies
105.126 Form of complaint if ORS chapter 90 does not apply
105.128 Landlord action to remove perpetrator of domestic violence, sexual assault or stalking from possession of dwelling unit; retention of possession by victim
105.130 How action conducted; fees
105.132 Assertion of counterclaim
105.135 Service and return of summons; posting; contents; use of facsimile
105.137 Effect of failure of party to appear; attorney fees; judgment of dismissal; scheduling of trial; unrepresented defendant
105.138 Compelling arbitration; procedure
105.139 Burden of proof in certain cases
105.140 Continuance
105.145 Judgment on trial by court; duties of parties to stipulated agreement
105.146 Failure of defendant to perform as ordered; judgment of restitution
105.148 Contesting plaintiff's affidavit or declaration of noncompliance; ex parte review of hearing request; delaying execution upon judgment of restitution
105.149 Hearing on compliance with order
105.151 Enforcement of judgment of restitution; notice of restitution
105.152 Form of notice of restitution for judgment entered under ORS 105.146
105.153 Form of notice of restitution for judgment not entered under ORS 105.146
105.156 Form of writ of execution for judgment of restitution
105.157 Form of eviction trespass notice
105.158 Service of notice of restitution
105.159 Computation of time before plaintiff may request writ of execution
105.161 Service and enforcement of writ of execution and eviction trespass notice
105.165 Alternative method of removing, storing and disposing of tenant's personal property; requirements; landlord liability
105.168 Minor as party in proceedings pertaining to residential dwellings

EASEMENT OWNER OBLIGATIONS

105.170 Definitions for ORS 105.170 to 105.185
105.175 Easement to be kept in repair; sharing costs; agreements
105.180 Action for failure to comply with duty of holder; recovery of costs; arbitration
105.185 Application of ORS 105.170 to 105.185

MODIFICATION OF LEASE TERMS

105.190 Covenant of good faith and fair dealing; rights and obligations of parties

PARTITION

105.205 Who may maintain partition
105.210 When and how partition prevented
105.215 Complaint
105.220 Tenants and lien creditors as defendants; liens on undivided interests
105.225 Summons; to whom directed
105.230 Service by publication
105.235 Answer
105.240 Rights determinable; ascertainment of title where defendant defaults or sale is necessary
105.245 Sale or partition ordered by court
105.250 Compensation when equal partition cannot be made

105.255 How referees make partition; report
105.260 Power of court over report; final judgment
105.265 Persons not affected by judgment
105.270 Order of sale on referees' report
105.275 Conclusiveness of order confirming report
105.280 How sale made; notice of sale
105.285 Distribution of proceeds of sale
105.290 Distribution of proceeds by referee or payment into court
105.295 Continuance of suit after proceeds paid into court
105.300 When lienholder has other securities
105.305 Credit allowed
105.310 Setting off estate for life or years in part not sold
105.315 Disposition of life estate or leasehold
105.320 Compensation of tenants in case of sale
105.325 When court determines value of tenancy
105.330 Rules for determining value of certain estates
105.335 Protection of unknown tenants
105.340 Provision for future rights or interests
105.345 Notice of terms of sale; separate sale of distinct parcels
105.350 Purchase by referee, conservator or guardian forbidden
105.355 Report of sale
105.360 Exception to report; confirmation of sale; order of confirmation
105.365 Purchase by encumbrancer or party entitled to share
105.370 Investment of proceeds for certain parties
105.375 In whose name securities taken or investments made
105.380 When securities are payable to parties
105.385 Clerk's treatment of securities and investments
105.390 When proceeds paid to conservator or guardian of infant
105.395 Payment of proceeds to conservator of incapacitated person
105.400 When conservator or guardian may consent to partition
105.405 Costs and expenses of partition

HOUSING RECEIVERSHIP

105.420 Findings; policy
105.425 Definitions for ORS 105.420 to 105.445 and 105.455
105.430 Receivership for buildings that constitute threat to public health, safety or welfare; procedure
105.435 Authority of receiver; financing agreements; fee; abatement work exempt from public contracting law
105.440 Review of abatement expenditures by court; lien for unpaid expenses
105.445 Effect on purchase money security interest of lien for unpaid abatement expenses
105.450 Termination of receivership
105.455 Short title

SELLER'S PROPERTY DISCLOSURE STATEMENT

105.462 Definitions for ORS 105.462 to 105.490
105.463 Preemptive effect of ORS 105.464
105.464 Form of seller's property disclosure statement
105.465 Application of ORS 105.462 to 105.490, 696.301 and 696.870; disclosure statement
105.470 Exclusions from ORS 105.462 to 105.490, 696.301 and 696.870
105.475 Buyer's statement of revocation of offer; criteria
105.480 Representations in disclosure statement; application
105.485 Allocation of burden of proof
105.490 Effect of ORS 105.462 to 105.490, 696.301 and 696.870 on rights and remedies

ACTIONS AND SUITS FOR NUISANCES

105.505 Remedies available for private nuisance
105.510 Procedure for abating a nuisance
105.515 Stay of issuance of warrant to abate
105.520 Justification of sureties; proceedings when nuisance is not abated

ABATEMENT OF NUISANCE ACTIVITIES OR CONDITIONS

105.550 Definitions for ORS 105.550 to 105.600
105.555 Places declared nuisances subject to abatement
105.560 Action to restrain or enjoin nuisance; jurisdiction; remedies
105.565 Complaint; service; jury trial; admissibility of reputation as evidence
105.575 Precedence of action on court docket
105.580 Order of abatement; cancellation
105.585 Costs of securing or decontaminating property as lien; priority of lien; filing notice of pendency
105.590 Penalty for intentional violation of restraining order
105.595 Action to abate nuisance not to affect other remedies; exception
105.600 ORS 105.550 to 105.600 not to limit authority of cities or counties to further restrict activities

SUITS TO QUIET TITLE AND REMOVE CLOUD

105.605 Suits to determine adverse claims
105.610 Suit to cancel patent of donee under Donation Law
105.615 Action by tenant in common against cotenants
105.618 Adverse possession of railroad property
105.620 Acquiring title by adverse possession

UNIFORM DISCLAIMER OF PROPERTY INTERESTS

105.623 Short title
105.624 Definitions for ORS 105.623 to 105.649
105.626 Scope
105.628 Effect on other law
105.629 Power to disclaim; general requirements; when irrevocable

105.633 Disclaimer of interest in property
105.634 Disclaimer of rights of survivorship in jointly held property
105.636 Disclaimer of interest by trustee
105.638 Disclaimer of power of appointment or other power not held in fiduciary capacity
105.639 Disclaimer by appointee, object or taker in default of exercise of power of appointment
105.641 Disclaimer of power held in fiduciary capacity
105.642 Delivery or filing
105.643 When disclaimer barred or limited
105.645 Tax qualified disclaimer
105.646 Recording of disclaimer
105.647 Application to existing relationships
105.648 Effect on recovery of money or property under ORS 411.620
105.649 Uniformity of application and construction

PUBLIC USE OF LANDS

105.668 Immunity from liability for injury or property damage arising from use of trail or structures in public easement or right of way
105.672 Definitions for ORS 105.672 to 105.696
105.676 Public policy
105.682 Liabilities of owner of land used by public for recreational purposes, gardening, woodcutting or harvest of special forest products
105.688 Applicability of immunities from liability for owner of land; restrictions
105.692 Right to continued use of land following permitted use; presumption of dedication or other rights
105.696 Duty of care or liability not created; exercise of care required of person using land
105.699 Rules applicable to state lands
105.700 Prohibiting public access to private land; notice requirements; damages

ACTION TO ESTABLISH BOUNDARY

105.705 Right to bring action; filing of judgment
105.710 Pleadings
105.715 Mode of proceeding
105.718 Procedure for determining location of public land survey corner
105.720 Oath and report of commissioners
105.725 Proceedings on motion to confirm report

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
105.760 State or county liability for damages resulting from change of grade of streets; proceedings on cause of action

EXTINGUISHMENT OF FUTURE INTERESTS

105.770 Failure of contingency; application of extinguishment
105.772 Preservation of future interests; filing of notice of intent required; limitation
105.774 Exclusions from application of ORS 105.770 and 105.772

MISCELLANEOUS ACTIONS

105.805 Action for waste
105.810 Treble damages for injury to or removal of produce, trees or shrubs; costs and attorney fees; limitation on liability of contract logger
105.815 When double damages are awarded for trespass; exception
105.820 Remedy of tenants in common
105.825 Action for injury to inheritance
105.831 Damages for injury to mining claim
105.834 Owner's immunity from liability for theft of metal property

CARBON MONOXIDE ALARMS IN DWELLINGS

105.836 Definitions for ORS 105.836 to 105.842 and 476.725
105.838 Carbon monoxide alarm in dwelling
105.840 Action by purchaser for failure of seller to install carbon monoxide alarm
105.842 Tampering with carbon monoxide alarm
105.844 Short title

RADON HAZARDS AND METHODS FOR TESTING AND MITIGATION

105.848 Radon information for potential buyers of one and two family dwellings

ACTION FOR REDUCED COMMERCIAL PROPERTY VALUE RESULTING FROM STREET USE RESTRICTION

105.850 Commercial property defined
105.855 Requirement to compensate commercial property owners for reduced value of property caused by street use restriction; effect of other access to property
105.860 Cause of action against city for compensation; appeal procedure; intervention
105.865 Apportioning compensation among property owners; termination of city liability
105.870 Limitation on commencement of action

SOLAR ENERGY EASEMENTS

105.880 Conveyance prohibiting use of solar energy systems void
105.885 Definitions for ORS 105.885 to 105.895
105.890 Solar energy easement appurtenant; termination
105.895 Requirements for easement creation by instrument; recordation

WIND ENERGY EASEMENTS

105.900 "Wind energy easement" defined
105.905 Wind energy easement appurtenant; termination
105.910 Requirements for easement creation by instrument; recordation
105.915 Instrument creating lease or lease option of real property for wind energy conversion system may be recorded; requirements

PERSONAL PROPERTY RIGHTS

105.920 Joint tenancy in personal property; creation

MOTOR VEHICLE EVENT DATA RECORDERS

105.925 Definitions for ORS 105.925 to 105.945

105.928 Ownership of recorded data

105.932 Effect of vehicle ownership transfer on ownership of data; prohibited insurer and lessor actions

105.935 Court order for retrieval or use of data by law enforcement officers or certain emergency service providers

105.938 Court order for retrieval or use of data by insurer

105.942 Retrieval or use of data for responding to medical emergency, for medical research or for vehicle servicing or repair

105.945 Exempted data

RULE AGAINST PERPETUITIES

105.950 Statutory rule against perpetuities

105.955 When nonvested property interest or power of appointment created

105.960 Reformation

105.965 Exclusions from statutory rule against perpetuities

105.970 Prospective application

105.975 Short title; application and construction; supersession and repeal of common law

XERISCAPING COMMERCIAL OR INDUSTRIAL PROPERTY

105.980 Xeriscaping

ACTIONS FOR RECOVERY OF REAL PROPERTY

105.005 Right of action; recovery; damages. (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 (1) to (3) 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; 1999 c.544 §3]

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 defendant 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. 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 circuit court or before any justice of the peace of the county. [Amended by 1985 c.241 §1; 1995 c.658 §68]

105.111 Stay of eviction for state service member. (1) As used in this section, "state service member" means a member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 30 or more consecutive days.

(2) In an action pursuant to ORS 105.110, the court may stay the eviction of the defendant for up to 90 days if:

(a) The defendant is a state service member;

(b) The agreed-upon rent does not exceed $1,200 per month; and

(c) The premises are occupied chiefly for dwelling purposes by the spouse, children or other dependents of the defendant.

(3) If the defendant requests a stay of the eviction for up to 90 days and the defendant can prove that the ability of the defendant to pay the agreed-upon rent is materially affected by being called into active service, the court may grant the stay of the eviction. [2003 c.387 §7]

Note: 105.111 was added to and made a part of 105.105 to 105.168 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

105.112 Action by tenant to recover personal property; forms. (1) A tenant or former tenant may bring an action to recover personal property taken or retained by a landlord in violation of ORS chapter 90.

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

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

IN THE _____ COURT FOR
THE COUNTY OF _____

(Tenant),	)	
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 pursuant to ORS 105.165, but refused to return the personal property to plaintiff(s) without payment although plaintiff(s) demanded return of the property within the time provided by ORS 90.425 or 90.675.

_____ Defendant(s) lawfully took possession of the personal property pursuant to ORS 105.161, 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 the time provided by ORS 90.425 or 90.675.

_____ 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 signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17 or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

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

_____

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 or 90.675 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 or 90.675 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 is not 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 that is the 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 18.999.

(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; 1997 c.577 §30; 2001 c.596 §46]

105.113 Form of summons. Notwithstanding ORCP 7 C, for premises to which ORS chapter 90 or ORS 91.120 applies, the summons must be in substantially the following form and be available from the court clerk:

_____

IN THE CIRCUIT COURT
FOR THE COUNTY OF

_____

No. _____

SUMMONS
RESIDENTIAL EVICTION

PLAINTIFF (Landlord or agent):

_____

_____

vs.

DEFENDANT (Tenants/Occupants):

_____

_____

TO: _____ (Street address and city of property occupied by defendant)
_____(Mailing address if different)

NOTICE TO TENANTS:
READ THESE PAPERS CAREFULLY
YOUR LANDLORD WANTS TO
EVICT YOU

ON _____, 2_____ AT _____ A.M./P.M., you must come to the County Court House located at _____. You do not have to pay any fees to the court for this first hearing.

• If you do not appear in court and your landlord does, your landlord will win automatically and can have the Sheriff physically remove you.

• If you do show up in court and your landlord does not, this eviction action will be dropped.

• If both of you show up:

• The judge may ask you to try to reach an agreement with your landlord, but this is voluntary. Trained mediators may be available free of charge to help resolve disputes.

• The court will schedule a trial if you and your landlord do not reach an agreement or if you do not agree to move out.

IF YOU WANT A TRIAL, YOU MUST:

• Show up in court at the time scheduled above;

• On the same day, file an Answer with the Court giving a legal reason why you should not be evicted (the Court can give you a form);

• Give a copy of the Answer to your landlord (or your landlord's agent or attorney); and

• Pay a filing fee of $_____ (the judge may allow payment to be deferred in certain circumstances).

IF YOU HAVE QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help finding an attorney, you can contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling 503-684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at 800-452-7636.

_____
Signature of Plaintiff (landlord or agent)

Plaintiff's address:

_____

_____

Plaintiff's telephone number: _____

I certify that this is a true copy of the original summons:

_____
Signature of Plaintiff (landlord or agent)

_____

[2001 c.596 §8; 2011 c.398 §4]

105.115 Causes of unlawful holding by force; action for return of possession. (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, 105.123 and 105.126:

(a) When the tenant or person in possession of any premises fails or refuses to pay rent within 10 days after the rent 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.

(c) When the owner or possessor of a recreational vehicle that was placed or driven onto property without the prior consent of the property owner, operator or tenant fails to remove the recreational vehicle. The property owner or operator is not required to serve a notice to quit the property before commencing an action under ORS 105.126 against a recreational vehicle owner or possessor holding property by force as described in this paragraph.

(d) When the person in possession of a premises remains in possession after the time when a purchaser of the premises is entitled to possession in accordance with the provisions of ORS 18.946 or 86.755.

(e) When the person in possession of a premises remains in possession after the time when a deed given in lieu of foreclosure entitles the transferee named in the deed to possession of the premises.

(f) When the person in possession of a premises remains in possession after the time when a seller is entitled to possession in accordance with the provisions of ORS 93.930 (2)(c) or pursuant to a judgment of strict foreclosure of a recorded contract for transfer or conveyance of an interest in real property.

(g) When the person in possession of a premises remains in possession after the expiration of a valid notice terminating the person's right to occupy the premises pursuant to ORS 91.120, 91.122 or 91.130.

(2) In the case of a dwelling unit to which ORS chapter 90 applies:

(a) The following are causes of unlawful holding by force within the meaning of ORS 105.110 and 105.123:

(A) When the tenant or person in possession of any premises fails or refuses to pay rent within 72 hours or 144 hours, as the case may be, of the notice required by ORS 90.394.

(B) When a rental agreement by its terms has expired and has not been renewed, or when the tenant or person in possession remains in possession after a valid notice terminating the tenancy pursuant to ORS chapter 90, or is holding contrary to any valid condition or covenant of the rental agreement or ORS chapter 90.

(b) A landlord may not file an action for the return of possession of a dwelling unit based upon a cause of unlawful holding by force as described in paragraph (a) of this subsection until after the expiration of a rental agreement for a fixed term tenancy or after the expiration of the time period provided in a notice terminating the tenancy.

(3) In an action under subsection (2) of this section, ORS chapter 90 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; 1995 c.559 §45; 2001 c.596 §47; 2003 c.378 §19; 2005 c.391 §28; 2007 c.653 §1; 2009 c.569 §2; 2009 c.638 §1]

105.117 [2009 c.569 §1; renumbered 91.122 in 2011]

105.120 Notice necessary to maintain action in certain cases; waiver of notice; effect of advance payments of rent. (1) As used in this section, "rent" does not include funds paid under the United States Housing Act of 1937 (42 U.S.C. 1437f).

(2) Except as provided in subsection (3) 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 the 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.

(3) An action for the recovery of the possession of a dwelling unit to which ORS chapter 90 applies may be maintained in situations described 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 90.155.

(4) Except when a tenancy involves a dwelling unit subject to ORS chapter 90, 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.

(5) An action to recover possession of a dwelling unit subject to ORS chapter 90 may not be brought or filed against a tenant or person in possession based upon a notice under ORS 90.427 to terminate the tenancy until after the expiration of any period for which the tenant or person has paid the rent of the dwelling unit in advance, unless:

(a) The only other money paid by the tenant was collected as a last month's rent deposit as provided under ORS 90.300; or

(b) The only unused rent was paid by the tenant for a rental period extending beyond the termination date specified in a valid outstanding notice to terminate the tenancy and the landlord refunded the unused rent within six days after receipt by delivering the unused rent to the tenant in person or by first class mailing. [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; 1995 c.559 §52; 1997 c.577 §31; 1999 c.603 §35; 1999 c.676 §26; 2007 c.906 §36]

105.121 Forms in action for possession of group recovery home; limitation on issues; attorney fees. (1) A former tenant removed from a group recovery home under ORS 90.440 may bring an action for injunctive relief to recover possession if the removal was wrongful or in bad faith.

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

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

IN THE _____ COURT FOR
THE COUNTY OF _____

(Tenant),	)	
Plaintiff(s),	)	
vs.	)	No._____
(Landlord),	)	
Defendant(s).	)	

COMPLAINT FOR RETURN
OF POSSESSION OF A
DWELLING UNIT IN A
GROUP RECOVERY HOME

I

Defendant is a group recovery home subject to ORS 90.440. Defendant removed plaintiff from the group recovery home dwelling unit rented by plaintiff from defendant at:

_____ (street and number)

_____ (city)

_____ (county)

II

Notice of removal from the dwelling unit was served on plaintiff under ORS 90.440. The notice of removal was served on:

_____ (date)

III

Plaintiff is entitled to possession of the dwelling unit because:

_____ Defendant removed plaintiff wrongfully by failing to comply with the procedural requirements of ORS 90.440.

_____ Defendant removed plaintiff wrongfully because plaintiff did not use or possess alcohol or illegal drugs within seven days preceding delivery of a written notice of removal.

_____ Defendant removed plaintiff under ORS 90.440 in bad faith.

Wherefore, plaintiff prays for possession of the group recovery home dwelling unit and costs and disbursements incurred herein.

_____ _____
Date Signature of plaintiff

(b) The complaint shall be signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17 and served by personal delivery on the group recovery home house president or a person in an equivalent leadership position for the group recovery home.

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

IN THE _____ COURT FOR
THE COUNTY OF _____

(Tenant),	)	
Plaintiff(s),	)	
vs.	)	No._____
(Landlord),	)	
Defendant(s).	)	

ANSWER

We deny that the plaintiff is entitled to possession of the group recovery home dwelling unit that is the subject of the complaint because:

_____ The defendant removed the plaintiff in compliance with the procedural requirements of ORS 90.440.

_____ The plaintiff used or possessed alcohol or illegal drugs as described in ORS 90.440 within seven days preceding delivery of a written notice of removal.

_____ The defendant did not remove the plaintiff in bad faith as alleged.

We ask that the plaintiff take nothing by the complaint and that we be awarded our costs and disbursements.

_____ _____

Date Signature of defendant

(d) The issue at trial shall be limited to whether the plaintiff is entitled to possession of the dwelling unit described in the complaint.

(e) If the basis for the complaint is that removal was wrongful because the plaintiff did not use or possess alcohol or illegal drugs, the defendant has the burden of proving that the plaintiff used or possessed alcohol or illegal drugs as described in ORS 90.440 within seven days preceding delivery of the written notice of removal.

(f) A claim for damages may not be asserted by either party in the action for possession of the dwelling unit under this section, but each party may pursue any claim for damages in a separate action.

(g) A party may join an action for possession of the dwelling unit with an action for damages or a claim for other relief, but the proceeding is not governed by the provisions of ORS 105.105 to 105.168.

(h) If the court determines that the plaintiff is entitled to possession of the dwelling unit that is the subject of the complaint, the court shall enter an order directing the defendant to return possession of the dwelling unit to the plaintiff. The court may provide that the defendant have a period of time to deliver possession of the dwelling unit to the plaintiff.

(i) 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. [2007 c.715 §5]

Note: 105.121 was added to and made a part of 105.105 to 105.168 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

105.123 Complaint. In an action pursuant to ORS 105.110, it is sufficient to state in the complaint:

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

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

(3) That, in the case of a dwelling unit to which ORS chapter 90 does not apply, the defendant entered upon the premises with force or unlawfully holds the premises with force; and

(4) That the plaintiff is entitled to the possession of the premises. [2001 c.596 §4 (105.123, 105.124 and 105.126 enacted in lieu of 105.125); 2007 c.508 §12]

105.124 Form of complaint if ORS chapter 90 applies. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling unit:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

_____

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

_____

_____

Address: _____

City: _____

State: _____ Zip: _____

Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

_____

_____

MAILING ADDRESS: _____

City: _____

State: _____ Zip: _____

Telephone: _____

1.

Tenants are in possession of the dwelling unit, premises or rental property described above or located at:

_____

2.

Landlord is entitled to possession of the property because of:

_____ 24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.396 or 90.403.
_____ 24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.398.
_____ 24-hour notice for perpetrating domestic violence, sexual assault or stalking. ORS 90.445.
_____ 72-hour or 144-hour notice for nonpayment of rent. ORS 90.394.
_____ 7-day notice with stated cause in a week-to-week tenancy. ORS 90.392 (6).
_____ 10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.392 (5), 90.405 or 90.427 (2).
_____ 20-day notice for a repeat violation. ORS 90.630 (4).
_____ 30-day, 60-day or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (3) or (4) or 90.429.
_____ 30-day notice with stated cause. ORS 90.392, 90.630 or 90.632.
_____ Notice to bona fide tenants after foreclosure sale or termination of fixed term tenancy after foreclosure sale. ORS 86.755 (6)(c).
_____ Other notice _____
_____ No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

_____
Signature of landlord or agent.

_____

(2) The complaint must be signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(3) A copy of the notice relied upon, if any, must be attached to the complaint. [2001 c.596 §5 (105.123, 105.124 and 105.126 enacted in lieu of 105.125); 2005 c.22 §80; 2005 c.391 §29; 2007 c.508 §13; 2009 c.431 §3; 2011 c.510 §3]

Note: Section 8, chapter 510, Oregon Laws 2011, provides:

Sec. 8. Notwithstanding the amendments to ORS 105.124 and 105.126 by sections 3 and 4 of this 2011 Act, for the purpose of exhausting existing supplies of the complaint forms modified pursuant to the amendments to ORS 105.124 and 105.126 by sections 3 and 4 of this 2011 Act, complaint forms satisfying the requirements of ORS 105.124 or 105.126, as in effect on January 2, 2011, may be used until January 2, 2012. [2011 c.510 §8]

105.125 [Amended by 1975 c.256 §9; 1981 c.753 §7; 1993 c.369 §16; 1995 c.559 §47; 1997 c.577 §32; repealed by 2001 c.596 §3 (105.123, 105.124 and 105.126 enacted in lieu of 105.125)]

105.126 Form of complaint if ORS chapter 90 does not apply. For a complaint described in ORS 105.123, if ORS chapter 90 does not apply to the premises:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

_____

IN THE CIRCUIT COURT
FOR THE COUNTY OF

_____

EVICTION COMPLAINT
(Tenancy not covered by ORS chapter 90)

No. _____

(Landlord),
Plaintiff(s)

vs.

(Tenant),
Defendant(s)

1.

Defendant is in possession of the following premises:

_____

_____ (city)

2.

Defendant entered upon the premises with force or is unlawfully holding the premises with force.

3.

Plaintiff is entitled to possession of the premises, because:

_____ 30-day notice (month-to-month tenancy)
_____ 30-day notice (cause)
_____ Notice to bona fide tenants after foreclosure sale or termination of fixed term tenancy after foreclosure sale. ORS 86.755 (6)(c).
_____ Other notice (explain) _____
_____ No notice (explain) _____

A COPY OF ANY NOTICE RELIED UPON IS ATTACHED

Wherefore, plaintiff prays for possession of the premises, costs and disbursements and attorney fees, if applicable.

_____
Plaintiff

_____

(2) A copy of the notice relied upon, if any, must be attached to the complaint. [2001 c.596 §6 (105.123, 105.124 and 105.126 enacted in lieu of 105.125); 2003 c.378 §20; 2011 c.510 §4]

Note: See note under 105.124.

105.128 Landlord action to remove perpetrator of domestic violence, sexual assault or stalking from possession of dwelling unit; retention of possession by victim. In an action for possession of a dwelling unit to which ORS chapter 90 applies:

(1) If the defendant raises a defense under ORS 90.449 based upon the defendant's status as a victim of domestic violence, sexual assault or stalking and the perpetrator is a tenant of the dwelling unit, the court may issue an order terminating the tenancy of the perpetrator and ordering the perpetrator to vacate the dwelling unit without terminating the tenancy of the other tenants and without awarding possession to the plaintiff.

(2) If the action is based upon a notice terminating the tenancy of a perpetrator under ORS 90.445, the court may issue an order upholding the termination of the perpetrator's tenancy and ordering the perpetrator to vacate the dwelling unit without the tenancy of the other tenants being terminated and without awarding possession to the plaintiff.

(3) If a court issues an order described in subsection (1) or (2) of this section, the court may enter judgment in favor of the plaintiff against the perpetrator. The plaintiff may enforce the judgment against the perpetrator as provided in ORS 105.151, but may not enforce the judgment against any other tenant of the dwelling unit. The sheriff shall remove only the perpetrator from the dwelling unit. The sheriff may not return possession of the dwelling unit to the plaintiff. [2007 c.508 §6]

Note: 105.128 was added to and made a part of 105.105 to 105.168 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

105.130 How action conducted; fees. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.161, 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 chapter 90 applies, the clerk shall:

(a) Collect a filing fee of $75;

(b) Collect any other fee authorized by law or ordinance; and

(c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and provide to the plaintiff or an agent of the plaintiff sufficient copies of the summons and complaint for service.

(3) The court shall collect a filing fee of $75 from a defendant that demands a trial under this section.

(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 chapter 90 applies, 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.

(6) An action brought under ORS 105.110 by a person entitled to possession of premises on the basis of circumstances described in ORS 105.115 (1)(d), (e) or (f) is subject to the filing fees and other court or sheriff fees applicable to an action concerning a dwelling unit that is subject to ORS chapter 90. The procedure under ORS 105.105 to 105.168 that is applicable to an action concerning a dwelling unit subject to ORS chapter 90 shall

also apply to an action brought under ORS 105.115 (1)(d), (e) or (f), except that the complaint must be in the form prescribed in ORS 105.126. [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; 1995 c.273 §17; 1997 c.801 §34; 2003 c.737 §§47,48; 2005 c.702 §§53,54,55; 2007 c.493 §§8,18b; 2007 c.860 §8; 2009 c.638 §2; 2011 c.595 §55]

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; use of facsimile. (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 may extend the first appearance date for up to seven additional days. 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) A sheriff may serve a facsimile of a certified true copy of a summons and complaint that is transmitted to the sheriff by a trial court administrator or another sheriff using a telephonic facsimile communication device. A copy of the facsimile must be attached to the sheriff's return of service. Before transmitting a summons and complaint to a sheriff under this subsection, the person sending the facsimile must receive confirmation by telephone from the sheriff's office that a telephonic facsimile communication device is available and operating.

(5) The process server shall indicate the manner in which service was accomplished by promptly filing with the clerk a certificate of service as provided by ORCP 7 F(2)(a).

(6) In the case of premises to which ORS chapter 90 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; 1995 c.559 §48; 1997 c.577 §33; 2007 c.255 §3]

105.137 Effect of failure of party to appear; attorney fees; judgment of dismissal; scheduling of trial; unrepresented defendant. In the case of a dwelling unit to which ORS chapter 90 applies:

(1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default judgment shall be entered 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, a default judgment shall be entered in favor of the defendant dismissing the plaintiff's complaint and awarding costs and disbursements.

(3) An attorney at law shall be entitled to appear on behalf of any party, but attorney fees may not be awarded to the plaintiff if the defendant does not contest the action.

(4) If the plaintiff dismisses the action before the first appearance, a judgment of dismissal shall be entered in favor of the defendant dismissing the plaintiff's complaint and awarding costs and disbursements. The defendant may not recover attorney fees for prejudgment legal services provided after the delivery of written notice of the dismissal by the plaintiff to the defendant, or to an attorney for the defendant, in the manner provided under ORS 90.155.

(5) 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.

(6) 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.

(7)(a) The court shall permit an unrepresented defendant to proceed to trial by di-

recting 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 landlord is attempting to evict me because of my status as a victim of domestic violence, sexual assault or stalking.

__ The eviction notice is wrong.

__ List any other defenses: _____

_____

_____

_____

_____

I (we) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we) obtain legal services to defend this action pursuant to ORS 90.255.

I (we) ask that the plaintiff(s) not be awarded possession of the premises and that I (we) be awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

_____ _____

Date Signature of defendant(s)

---

(8) If an unrepresented defendant files an answer as provided in subsection (7) of this section, the answer may not limit the defenses available to the defendant at trial under ORS chapter 90. 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; 1997 c.577 §34; 2005 c.391 §33; 2007 c.508 §14]

105.138 Compelling arbitration; procedure. (1) Notwithstanding ORS 105.137 (6), if a party to an action to which ORS 90.505 to 90.840 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 ORS 90.610 (2) 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 may 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; 1995 c.559 §46; 2001 c.596 §49a; 2007 c.508 §15]

105.139 Burden of proof in certain cases. If a landlord brings an action for possession under ORS 90.403 and the person in possession contends that the tenant has not vacated the premises, the burden of proof is on the defendant as to that issue. [1983 c.303 §3; 1993 c.369 §34; 2003 c.378 §21; 2005 c.22 §81; 2005 c.391 §30]

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 chapter 90 applies, the court orders a defendant to pay rent into court as it becomes due from the commencement of the action until entry of a general 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; 2003 c.576 §237]

105.145 Judgment on trial by court; duties of parties to stipulated agreement. (1) If an action is tried by the court without a jury, and after hearing the evidence the court concludes that the complaint is not true, the court shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, the court 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, the court 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.

(2) If, as a result of a court-sponsored or other mediation or otherwise, the plaintiff and defendant agree, in the manner provided by ORCP 67 F for judgment by stipulation, that the defendant shall perform in a certain manner or that the plaintiff shall be paid moneys agreed to be owing by the defendant and that as a result of that performance or payment the defendant shall retain possession of the premises, including retention of possession contingent upon that performance or payment of moneys by the defendant by a certain date, the court shall enter an order or judgment to that effect. In addition, if the plaintiff and defendant agree that the plaintiff shall perform in a certain manner or pay moneys to the defendant by a certain date, the court shall enter an order or judgment to that effect.

(3) If, as provided by subsection (2) of this section, the parties enter an order or judgment by stipulation that requires the defendant to perform in a certain manner or make a payment by a certain date and the defendant later demonstrates compliance with the stipulation, the court shall enter a judgment of dismissal in favor of the defendant. [Amended by 1997 c.577 §35; 1999 c.603 §36; 2003 c.378 §22]

105.146 Failure of defendant to perform as ordered; judgment of restitution. (1) In an action to recover possession of the premises, if the court has entered an order by stipulation that provides for the defendant to retain possession of the premises contingent upon the defendant's performance or payment of moneys by a certain date as provided under ORS 105.145 (2), and the defendant fails to comply with the order, the plaintiff may obtain and enforce a judgment of restitution of the premises pursuant to this section and ORS 105.148 and 105.149.

(2) A plaintiff may obtain and enforce a judgment of restitution based upon an order entered as provided under ORS 105.145 (2), provided the order includes only:

(a) Future performance or conduct as described in the order for a period of not more than six months following entry of the order;

(b) Payment of past due rent and other past due amounts pursuant to a schedule provided in the order for a period of not more than six months following entry of the order;

(c) Payment of rent due for future rental periods that follow entry of the order pursuant to a schedule provided in the order for not more than the first three monthly rental periods following entry of the order; and

(d) Payment of any costs, disbursements or attorney fees pursuant to a schedule provided in the order.

(3) The order shall contain a statement providing that 12 months following the entry of the order, the court shall automatically dismiss the order without further notice to either the plaintiff or the defendant.

(4) If the defendant fails to comply with the order, the plaintiff may file with the clerk of the court an affidavit or declaration of noncompliance describing how the defendant has failed to comply. The plaintiff shall attach a copy of the order to the affidavit or declaration. The affidavit or declaration, or the order, must include the terms of the underlying settlement agreement or stipulation or have a copy of the agreement attached.

(5) Upon receipt of a plaintiff's affidavit or declaration:

(a) The court shall enter a judgment of restitution; and

(b) The clerk shall issue a notice of restitution as provided by ORS 105.151 and attach to the notice a copy of the plaintiff's affidavit or declaration of noncompliance and any attachments for service.

(6) The court shall establish a procedure that allows the defendant to request a hearing on the plaintiff's affidavit or declaration of noncompliance and delay expiration of the notice of restitution period or execution upon a judgment of restitution pending the hearing.

(7) The court shall enter a judgment dismissing the plaintiff's action in favor of the defendant without assessment of costs, disbursements, prevailing party fee or attorney fees against either party except as provided in the order and without further notice to either party:

(a) Upon receipt of a writing signed by the plaintiff showing compliance with or satisfaction of the order; or

(b) Twelve months following entry of the order, unless the plaintiff has filed an affidavit or declaration of noncompliance and the court has found in favor of the plaintiff on the affidavit or declaration. [2001 c.596 §10 (105.146, 105.148 and 105.149 enacted in lieu of 105.147); 2003 c.378 §23; 2007 c.508 §16]

Note: 105.146 to 105.149 were added to and made a part of 105.105 to 105.168 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

105.147 [1999 c.603 §4; repealed by 2001 c.596 §9 (105.146, 105.148 and 105.149 enacted in lieu of 105.147)]

105.148 Contesting plaintiff's affidavit or declaration of noncompliance; ex parte review of hearing request; delaying execution upon judgment of restitution. (1)(a) To contest a plaintiff's affidavit or declaration of noncompliance under ORS 105.146 and delay expiration of the notice of restitution period or execution upon the judgment of restitution, a defendant shall file a request for hearing with the clerk of the court. The request must be filed prior to issuance by the clerk of a writ of execution of judgment of restitution and must include a statement by the defendant describing how the defendant complied with the order or describing why the defendant should not be required to comply.

(b) A court may, as part of the procedure authorized by ORS 105.146 (6), require that a defendant submit a hearing request to the court for ex parte review prior to the defendant's filing the request with the clerk. If the court provides for ex parte review, the ex parte review must be available every judicial day for appearance by the defendant before the court within the time period between service of the notice of restitution and the date of expiration of the notice of restitution. The notice of restitution must include or have attached to it a description of the requirements for appearing before the court for ex parte review and a copy of the hearing request form. The court may not require that the defendant notify the plaintiff of the defendant's intention to appear before the court. If, after hearing the defendant at the ex parte review, the court finds that the reasons given by the defendant for opposing the plaintiff's affidavit or declaration of noncompliance do not relate to the issues listed in ORS 105.149 (2), the court shall deny the request for a hearing.

(2) The clerk shall make available a document providing for a request for hearing by a defendant. The document must be in substantially the following form:

_____

IN THE CIRCUIT COURT
FOR THE COUNTY OF

_____

Defendant's Request for Hearing to Contest an Affidavit or Declaration of Noncompliance
Case No. _____

Landlord or agent (Plaintiff):

_____

vs.

Tenant/Occupant (Defendant):

_____

Address of Property:

_____

_____

1. My landlord has filed a statement with the court saying that I have not complied with a court-approved agreement and that as a result my landlord is entitled to possession of the property.

2. I deny the landlord is entitled to possession of the property because (The reason must be one of the following. You must check one or more of these responses and you must explain in section 3.):

_____ a. The landlord is wrong. As explained below, I did comply with the agreement.

_____ b. Before I could comply with the agreement, the landlord was supposed to do what is explained below, which the landlord did not do.

_____ c. The landlord and I changed the agreement and I complied with the agreement as changed. The change we agreed to is explained below.

_____ d. The landlord prevented me from keeping the agreement. The way the landlord did that is explained below.

_____ e. The agreement was not made in good faith as required by ORS 90.130. The lack of good faith is explained below.

_____ f. The portion of the agreement described below was unconscionable as described in ORS 90.135.

_____ g. The landlord is required by law or contract to have good cause to force me to move out and my alleged conduct or

performance does not meet the standard of good cause, as explained below.

_____ h. The landlord is claiming I did not pay rent for a period of time following the date of the agreement. I did not pay that rent because I have claims for money against the landlord to offset the rent. Those claims arise from the landlord's violation of the Residential Landlord and Tenant Act or the rental agreement since the date of the court order and are explained below.

3. Here is my explanation for the reason or reasons checked above:

_____

_____

_____

4. I understand that if I lose in court, I may be responsible for the landlord's costs, disbursements, any attorney fees and a prevailing party fee.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

_____
(Signature of tenant)
Date: _____

_____

(3) As an alternative to the document described in subsection (2) of this section, a defendant may request a hearing by use of a notarized affidavit. [2001 c.596 §11 (105.146, 105.148 and 105.149 enacted in lieu of 105.147); 2003 c.378 §24; 2005 c.391 §35; 2007 c.508 §17]

Note: See note under 105.146.

105.149 Hearing on compliance with order. (1) Upon receipt of a timely filed request for hearing described in ORS 105.148, the clerk of the court:

(a) Shall schedule a hearing on the defendant's request as soon as practicable;

(b) Shall notify both parties of the hearing date;

(c) Shall mail or send by facsimile a copy of the defendant's request to the plaintiff; and

(d) May not issue a writ of execution of judgment of restitution pending the hearing.

(2)(a) At the hearing, except as provided in paragraph (b) of this subsection, the court may consider only the following issues:

(A) Whether the defendant complied with the order.

(B) Whether the plaintiff complied with any requirement of the order that is a predicate to compliance by the defendant.

(C) Whether the parties agreed to modify the order and complied with the modified order.

(D) Whether one party unfairly prevented compliance by the other party.

(b) If ORS chapter 90 applies to a dwelling unit, in addition to the issues described in paragraph (a) of this subsection, the court may consider the following issues:

(A) Whether the stipulated agreement was entered into in good faith as required by ORS 90.130 or is unconscionable as described in ORS 90.135.

(B) Whether, for a defendant whose noncompliance concerns performance or conduct, the noncompliance constitutes good cause for purposes of an applicable law or contract that requires the plaintiff to have good cause for terminating the tenancy.

(C) Whether, for a defendant whose noncompliance concerns a failure to pay rent due for future rental periods pursuant to ORS 105.146 (2)(c), the defendant has claims against the plaintiff for moneys that offset the rent. The defendant's claims must be pursuant to ORS chapter 90 or the rental agreement and must have arisen after the entry of the order.

(c) The defendant may not raise defenses or claims involving issues other than issues described in paragraphs (a) and (b) of this subsection.

(3) If the court finds in favor of the plaintiff after the hearing, the clerk may issue a writ of execution of judgment of restitution. If the defendant did not appear at the hearing, the clerk may issue the writ immediately. If the defendant did appear, the clerk may issue the writ no earlier than 24 hours after the court's ruling. Further notice to the defendant is not required.

(4) If the court finds in favor of the defendant after the hearing, the court shall set aside the judgment. The court may reinstate the order, terminate the order and enter a judgment dismissing the plaintiff's action in favor of the defendant, enter a new order or schedule a trial on the plaintiff's action as soon as practicable. [2001 c.596 §12 (105.146, 105.148 and 105.149 enacted in lieu of 105.147); 2003 c.378 §25; 2005 c.391 §36]

Note: See note under 105.146.

105.150 [Repealed by 1989 c.506 §20]

105.151 Enforcement of judgment of restitution; notice of restitution. (1) If the court renders judgment for restitution of the premises to the plaintiff, the plaintiff may

only enforce that judgment in the following manner:

(a) Issuance by the clerk of the court and service upon the defendant of a notice of restitution that shall give the defendant four days to move out of the premises, including removal of all personal property; and

(b) After the expiration of the four-day period provided in the notice of restitution, issuance by the clerk of the court and service by the sheriff upon the defendant of a writ of execution of judgment of restitution, directing the sheriff to enforce the judgment by removing the defendant and by returning possession of the premises to the plaintiff, along with an eviction trespass notice from the sheriff.

(2) Following entry of judgment for restitution of the premises in favor of a plaintiff, or any date for possession as specified in the judgment, whichever is later, the plaintiff may request that the clerk of the court in which the judgment is entered issue a notice of restitution. The notice of restitution shall order the defendant to move out of the premises, including removing all personal property, in no less than four days. The plaintiff may direct the clerk to extend the notice period beyond four days. Following payment of any required fees, the clerk shall issue the notice.

(3) This section does not prevent a landlord in a tenancy to which ORS chapter 90 does not apply from exercising a right of entry provided by law and described in ORS 105.105 in order to recover possession of the premises, provided that the right of entry is stated in the rental agreement between the parties. [2001 c.596 §14 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154); 2003 c.378 §26]

105.152 Form of notice of restitution for judgment entered under ORS 105.146. If the court entered a judgment pursuant to ORS 105.146, a notice of restitution issued by the clerk of the court pursuant to ORS 105.151 must be in substantially the following form:

IN THE CIRCUIT COURT FOR
THE COUNTY OF _____

Notice of Restitution
because of not complying
with a court-approved agreement

Case Number _____

TO: _____
(Tenant/Defendant)

_____
(Address of rental property)

You and your landlord made a court-approved agreement allowing you to stay in the property. Your landlord claims that you have not kept that agreement. (A copy of the landlord's claim is attached.) Unless you can prove to the court why you should not have to move out, you must move by the MOVE OUT DATE listed below. If you do not, the landlord can have the Sheriff physically remove you.

If you believe that you have kept the agreement or that you have a legal reason for not keeping the agreement, you are entitled to a court hearing. Legal reasons are listed in ORS 105.148 and 105.149. They include the landlord interfering with your effort to keep the agreement and your complying with a modification of the agreement made by you and your landlord.

To request a hearing, you must go to the court and complete a form explaining why you believe that you have kept (or should not be required to keep) the agreement. You have to do this before _____ a.m./p.m. on _____. The Sheriff will not physically remove you from the property before the hearing.

If the judge rules against you at the hearing, the landlord can have the Sheriff physically remove you.

DEADLINE TO MOVE OUT
MOVE OUT DATE: _____

If you do not request a hearing, you must move out of the property no later than 11:59 p.m. on the Move Out Date.

If you and everyone else living there do not move out by that time, the Sheriff will physically remove you. You must also move all of your belongings by that time. Anything you leave behind will be stored or disposed of as allowed by law.

_____
Deputy Court Administrator

[2001 c.596 §15 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154); 2003 c.378 §27]

105.153 Form of notice of restitution for judgment not entered under ORS 105.146. If a court entered a judgment other than pursuant to ORS 105.146, a notice of restitution issued by the clerk of the court pursuant to ORS 105.151 must be in substantially the following form:

_____

In the Circuit Court for the
County of _____

NOTICE OF RESTITUTION

Case Number _____
TO: _____
(Defendant/Tenant)

_____

_____

_____
(Address of property)

DEADLINE TO MOVE OUT
MOVE OUT DATE: _____

The Court has ordered you to move out of the property. You must move out no later than 11:59 p.m. on the Move Out Date.

If you and everyone else living there do not move out by that time, the Sheriff will physically remove you. You must also move all of your belongings by that time. Anything you leave behind will be stored or disposed of as allowed by law.

_____
Deputy Court Administrator

_____

[2001 c.596 §16 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154)]

105.154 [1995 c.559 §50 (enacted in lieu of 105.155); 1995 c.658 §70a; 1997 c.577 §§36,37; 1999 c.603 §37; repealed by 2001 c.596 §13 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154)]

105.155 [Amended by 1979 c.765 §6; 1985 c.588 §15; 1993 c.369 §27; repealed by 1995 c.559 §49 (105.154 enacted in lieu of 105.155)]

105.156 Form of writ of execution for judgment of restitution. The writ of execution of judgment of restitution referred to in ORS 105.151 must be in substantially the following form:

_____

State of Oregon,	)	WRIT OF
	) ss.	EXECUTION OF
	)	JUDGMENT OF
	)	RESTITUTION
County of _____	)	

To the Sheriff:

This was an eviction action for possession of the following premises:

_____

_____
(city)

_____
(county)

Judgment was entered that the plaintiff have restitution of the premises and that the plaintiff may be entitled to court costs and disbursements.

In the name of the State of Oregon, you are ordered to enforce and serve this writ on the defendant, in the manner provided in ORS 105.161.

You are ordered to enter the premises and remove the defendant and any other individual present on the premises who is subject to the judgment and return possession of the premises to the plaintiff. You may use all reasonable force that may be necessary to enter the premises and remove individuals who are subject to the judgment.

The plaintiff shall be responsible for removing, storing and disposing of any personal property left by the defendant on the premises following the removal of the defendant and the return of possession of the premises, as provided by ORS 105.165.

DATED this ____ day of _____, _____.

_____
Deputy Court Administrator

_____
Plaintiff

_____
Address

_____
City/State/Zip

_____

[2001 c.596 §17 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154); 2003 c.378 §29; 2005 c.391 §37; 2007 c.255 §4]

105.157 Form of eviction trespass notice. The eviction trespass notice referred to in ORS 105.151 must 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:

_____

_____

_____

DATED _____

_____
SHERIFF

_____

[2001 c.596 §18 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154); 2003 c.378 §30]

105.158 Service of notice of restitution. (1) For purposes of this section, "process server" means any competent person 18 years of age or older who:

(a) Is a resident of the State of Oregon;

(b) Is not the plaintiff, a relative of the plaintiff or an agent of the plaintiff for purposes of management of the premises;

(c) Is a person regularly employed in the business of serving process; and

(d) Charges a fee no greater than that set by ORS 21.300 (1)(a) for service of the notice of restitution.

(2) The sheriff or a process server shall serve the notice of restitution under ORS 105.152 or 105.153 in the manner provided by this subsection. Notwithstanding ORCP 10, by the end of the next judicial day following the payment of fees:

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

(b) The sheriff or process server shall serve the notice 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.

(3) If service of the notice of restitution is made by a process server, by the end of the next judicial day following service the process server shall file with the clerk of the court a certificate of service in the same manner as provided by ORCP 7 F(2)(a). [2001 c.596 §19 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154); 2003 c.304 §8]

105.159 Computation of time before plaintiff may request writ of execution. (1) Notwithstanding ORCP 10, the four-day period specified in ORS 105.151 (2) shall:

(a) Commence at 12:01 a.m. on the day following mailing and service of the notice of restitution pursuant to ORS 105.158, including a Saturday or a Sunday or other legal holiday; and

(b) End on the fourth calendar day following the mailing and service except that if the fourth day is a Saturday or a Sunday or other legal holiday, the period shall end at 12 midnight of the day preceding the next judicial day.

(2) Except as provided in subsection (3) of this section, at any time after the expiration of the period provided in the notice of restitution, the plaintiff may request that the clerk of the court issue a writ of execution of judgment of restitution directing the sheriff to enforce the judgment of restitution by returning possession of the premises to the plaintiff. Following payment of any required fees, the clerk shall issue the writ in substantially the form provided by ORS 105.156.

(3) Unless the judgment otherwise provides, the clerk may not issue a notice of restitution or a writ of execution of judgment of restitution more than 60 days after the judgment is entered or after any date for possession as specified in the judgment, whichever is later. [2001 c.596 §20 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154)]

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

105.161 Service and enforcement of writ of execution and eviction trespass notice. (1) Following issuance of the writ of execution of judgment of restitution and payment of any fees required by the sheriff,

the sheriff shall immediately enforce and serve the writ upon the defendant, along with the eviction trespass notice, as follows:

(a) The sheriff shall mail a copy of the writ and the eviction trespass notice by first class mail to the defendant at the premises;

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

(c) Immediately following the service of the writ and the eviction trespass notice, the sheriff shall return possession of the premises to the plaintiff by removing the defendant or any other person subject to the judgment; and

(d) Following the sheriff's removal of the defendant and return of possession of the premises to the plaintiff, the plaintiff shall be responsible for removing, storing and disposing of any personal property left by the defendant on the premises, as provided by ORS 105.165.

(2) Following issuance of the writ, at the plaintiff's request, the sheriff shall delay enforcement and service of the writ.

(3) Any writ not enforced and served within 30 days following issuance expires and becomes unenforceable unless the court extends the operation of the writ before the writ expires based on a showing of good cause by the sheriff. If the court extends the operation of a writ under this subsection, the sheriff shall promptly notify the plaintiff of the extension.

(4) A judgment may not be enforced if the parties have entered a new rental agreement or if the plaintiff has accepted rent for a period of occupancy beginning after the judgment was entered. [2001 c.596 §21 (105.151, 105.152, 105.153, 105.156, 105.157, 105.158, 105.159 and 105.161 enacted in lieu of 105.154); 2003 c.378 §31; 2011 c.366 §1]

105.165 Alternative method of removing, storing and disposing of tenant's personal property; requirements; landlord liability. (1) If ORS chapter 90 applies to a dwelling unit, following restitution of the premises to the plaintiff by the sheriff pursuant to ORS 105.161, the plaintiff shall remove, store and dispose of any personal property left by the defendant on the premises as provided in ORS 90.425 or 90.675.

(2) If ORS chapter 90 does not apply to a premises, the plaintiff or landlord shall remove, store and dispose of any personal property left by the defendant or tenant upon the premises following recovery of possession of the premises by the plaintiff or landlord:

(a) Pursuant to any landlord's lien available under ORS 87.162;

(b) As provided by any rental agreement between the plaintiff or landlord and the defendant or tenant; or

(c) At the plaintiff or landlord's discretion, by following the process described in ORS 90.425 (2), (3) and (5) to (11) and (13) to (16) except that:

(A) The plaintiff or landlord may require payment of any amount owed by the defendant or tenant to the plaintiff or landlord prior to allowing the defendant or tenant to remove or recover the personal property if the payment requirement is stated in the written notice; and

(B) ORS 90.425 may be applied to address only the rights and obligations of the plaintiff or landlord and defendant or tenant in the personal property and not the rights of other parties.

(3) Any cost incurred by the plaintiff for execution pursuant to ORS 105.151 or 105.158 to 105.161 or for removal, storage or sale of the defendant's property under this section and not recovered pursuant to ORS 90.425 (13) or 90.675 (13) shall be added to the judgment.

(4) If the plaintiff fails to permit the defendant to recover possession of the defendant's personal property under subsection (1) of this section, the defendant may recover from the plaintiff, 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; 1995 c.559 §51; 1997 c.577 §39; 2001 c.596 §48; 2003 c.378 §32; 2003 c.658 §10]

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 chapter 90 applies, 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 affect 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 provisions 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 36.600 to 36.740. The application may be made before, during or after performance of the maintenance work. [1989 c.660 §5; 1991 c.49 §3; 2003 c.598 §34]

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]

MODIFICATION OF LEASE TERMS

105.190 Covenant of good faith and fair dealing; rights and obligations of parties. Whenever a covenant of good faith and fair dealing is implied in the lease of real property, a party's rights or duties under such covenant may be modified only by express provision in the lease agreement. [1997 c.845 §1]

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. (1) 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 an owner to borrow money upon the property with which to pay off the interest, as so fixed, of another owner. Subject to subsection (2) of this section, an owner whose interest in the property is to be satisfied shall be fully discharged by proof of payment filed with the court of the amount fixed by the court as the value of that owner's interest. A discharged owner shall have no further interest in or claim upon the property.

(2) A court may not order the discharge of an interest of a public body in real property without the consent of the governing body of the public body. [Amended by 2001 c.606 §1]

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 judgment for partition or sale is given. [Amended by 2003 c.576 §361]

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 enter a judgment requiring 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. [Amended by 2003 c.576 §362]

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 judgment. 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 judgment shall be given stating that the partition shall be effectual forever. Except as provided in ORS 105.265, the judgment 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. [Amended by 2003 c.576 §363]

105.265 Persons not affected by judgment. The judgment 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 judgment 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. [Amended by 2003 c.576 §364]

105.270 Order of sale on referees' report. If the referees report to the court that the property to be partitioned, 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. [Amended by 2003 c.576 §365]

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 judgment 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 judgment.

(4) The residue among the owners of the property sold, according to their respective shares. [Amended by 2003 c.576 §366]

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 property sold. The order shall be binding and conclusive upon all such persons as if it were a judgment 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. [Amended by 2003 c.576 §367]

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 that will share in the lands divided in proportion to their respective interests therein, and shall be included and specified in the judgment. They shall be a lien on the several shares, and the judgment 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; 2003 c.576 §368]

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 105.445 and 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 com-

petent 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 456.235;

(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; 1995 c.79 §34]

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 105.161 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

279C.005, 279C.100 to 279C.125 and 279C.300 to 279C.470 and ORS chapters 279A and 279B, except ORS 279A.125, 279A.250 to 279A.290 and 279B.235. [1989 c.649 §§5,6; 2003 c.794 §196]

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 105.430 and 105.455 may be cited as the Oregon Housing Receivership Act. [1989 c.649 §1]

SELLER'S PROPERTY DISCLOSURE STATEMENT

105.462 Definitions for ORS 105.462 to 105.490. For purposes of ORS 105.462 to 105.490:

(1) "Financial institution" has the meaning given that term in ORS 706.008. "Financial institution" includes a:

(a) Trust company, as that term is defined in ORS 706.008;

(b) Mortgage banker, as that term is defined in ORS 86A.100;

(c) Mortgage broker, as that term is defined in ORS 86A.100; and

(d) Consumer finance company that is licensed under ORS chapter 725.

(2) "Real estate licensee" has the meaning given that term in ORS 696.010. [2003 c.328 §4; 2005 c.287 §1]

105.463 Preemptive effect of ORS 105.464. ORS 105.464 preempts any law, rule, regulation, code or ordinance of the political subdivisions of this state including, but not

limited to, the Lane Regional Air Protection Agency regarding the disclosure of solid fuel burning devices, as defined in ORS 468A.485, in connection with a written offer to purchase real property in this state for which a seller's property disclosure statement is required under ORS 105.465 and 105.470. [2009 c.387 §17]

105.464 Form of seller's property disclosure statement. A seller's property disclosure statement must be in substantially the following form:

If required under ORS 105.465, a seller shall deliver in substantially the following form the seller's property disclosure statement to each buyer who makes a written offer to purchase real property in this state:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. Please refer to the line number(s) of the question(s) when you provide your explanation(s). If you are not claiming an exclusion or refusing to provide the form under ORS 105.475 (4), you should date and sign each page of this disclosure statement and each attachment.

Each seller of residential property described in ORS 105.465 must deliver this form to each buyer who makes a written offer to purchase. Under ORS 105.475 (4), refusal to provide this form gives the buyer the right to revoke their offer at any time prior to closing the transaction. Use only the section(s) of the form that apply to the transaction for which the form is used. If you are claiming an exclusion under ORS 105.470, fill out only Section 1.

An exclusion may be claimed only if the seller qualifies for the exclusion under the law. If not excluded, the seller must disclose the condition of the property or the buyer may revoke their offer to purchase anytime prior to closing the transaction. Questions regarding the legal consequences of the seller's choice should be directed to a qualified attorney.

(DO NOT FILL OUT THIS SECTION UNLESS YOU ARE CLAIMING AN EXCLUSION UNDER ORS 105.470)

Section 1. EXCLUSION FROM ORS 105.462 TO 105.490:

You may claim an exclusion under ORS 105.470 only if you qualify under the statute. If you are not claiming an exclusion, you must fill out Section 2 of this form completely.

Initial only the exclusion you wish to claim.

_____ This is the first sale of a dwelling never occupied. The dwelling is constructed or installed under building or installation permit(s) #_____, issued by _____.

_____ This sale is by a financial institution that acquired the property as custodian, agent or trustee, or by foreclosure or deed in lieu of foreclosure.

_____ The seller is a court appointed receiver, personal representative, trustee, conservator or guardian.

_____ This sale or transfer is by a governmental agency.

_____
Signature(s) of Seller claiming exclusion
Date _____

_____
Buyer(s) to acknowledge Seller's claim
Date _____

(IF YOU DID NOT CLAIM AN EXCLUSION IN SECTION 1, YOU MUST FILL OUT THIS SECTION.)

Section 2. SELLER'S PROPERTY DISCLOSURE STATEMENT

(NOT A WARRANTY)

(ORS 105.464)

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. BUYER HAS FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO REVOKE BUYER'S OFFER BY DELIVERING BUYER'S SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE STATEMENT, UNLESS BUYER WAIVES THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY, BUYER IS ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON BUYER'S BEHALF INCLUDING, FOR EXAMPLE, ONE OR MORE OF THE FOLLOWING: ARCHITECTS, ENGINEERS, PLUMBERS, ELECTRICIANS, ROOFERS, ENVIRONMENTAL INSPECTORS, BUILDING INSPECTORS, CERTIFIED HOME 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, or any real estate licensee engaged by the seller or the buyer.

*If you mark yes on items with *, attach a copy or explain on an attached sheet.

1.	TITLE			
A.	Do you have legal authority to sell the property?	[ ]Yes	[ ]No	[ ]Unknown
*B.	Is title to the property subject to any of the following:	[ ]Yes	[ ]No	[ ]Unknown
(1)	First right of refusal			
(2)	Option			
(3)	Lease or rental agreement			
(4)	Other listing			
(5)	Life estate?			
*C.	Is the property being transferred an unlawfully established unit of land?	[ ]Yes	[ ]No	[ ]Unknown
*D.	Are there any encroachments, boundary agreements, boundary disputes or recent boundary changes?	[ ]Yes	[ ]No	[ ]Unknown
*E.	Are there any rights of way, easements, licenses, access limitations or claims that may affect your interest in the property?	[ ]Yes	[ ]No	[ ]Unknown
*F.	Are there any agreements for joint maintenance of an easement or right of way?	[ ]Yes	[ ]No	[ ]Unknown
*G.	Are there any governmental studies, designations, zoning overlays, surveys or notices that would affect the property?	[ ]Yes	[ ]No	[ ]Unknown
*H.	Are there any pending or existing governmental assessments against the property?	[ ]Yes	[ ]No	[ ]Unknown
*I.	Are there any zoning violations or nonconforming uses?	[ ]Yes	[ ]No	[ ]Unknown
*J.	Is there a boundary survey for the property?	[ ]Yes	[ ]No	[ ]Unknown
*K.	Are there any covenants, conditions, restrictions or private assessments that affect the property?	[ ]Yes	[ ]No	[ ]Unknown
*L.	Is the property subject to any special tax assessment or tax treatment that may result in levy of additional taxes if the property is sold?	[ ]Yes	[ ]No	[ ]Unknown

2. WATER

A. Household water

(1)	The source of the water is (check ALL that apply): [ ]Public [ ]Community [ ]Private [ ]Other _____				
(2)	Water source information:				
*a.	Does the water source require a water permit?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, do you have a permit?	[ ]Yes	[ ]No		
b.	Is the water source located on the property?	[ ]Yes	[ ]No	[ ]Unknown	
	*If not, are there any written agreements for a shared water source?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*c.	Is there an easement (recorded or unrecorded) for your access to or maintenance of the water source?	[ ]Yes	[ ]No	[ ]Unknown	
d.	If the source of water is from a well or spring, have you had any of the following in the past 12 months? [ ]Flow test [ ]Bacteria test [ ]Chemical contents test	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*e.	Are there any water source plumbing problems or needed repairs?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Are there any water treatment systems for the property? [ ]Leased [ ]Owned	[ ]Yes	[ ]No	[ ]Unknown	
B.	Irrigation				
(1)	Are there any [ ] water rights or [ ] other irrigation rights for the property?	[ ]Yes	[ ]No	[ ]Unknown	
*(2)	If any exist, has the irrigation water been used during the last five-year period?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*(3)	Is there a water rights certificate or other written evidence available?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
C.	Outdoor sprinkler system				
(1)	Is there an outdoor sprinkler system for the property?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Has a back flow valve been installed?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(3)	Is the outdoor sprinkler system operable?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
3.	SEWAGE SYSTEM				
A.	Is the property connected to a public or community sewage system?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Are there any new public or community sewage systems proposed for the property?	[ ]Yes	[ ]No	[ ]Unknown	
C.	Is the property connected to an on-site septic system?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, was it installed by permit?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	*Has the system been repaired or altered?	[ ]Yes	[ ]No	[ ]Unknown	
	Has the condition of the system been evaluated and a report issued?	[ ]Yes	[ ]No	[ ]Unknown	
	Has it ever been pumped? If yes, when? _____	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
*D.	Are there any sewage system problems or needed repairs?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Does your sewage system require on-site pumping to another level?	[ ]Yes	[ ]No	[ ]Unknown	
4.	DWELLING INSULATION				
A.	Is there insulation in the:				
(1)	Ceiling?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Exterior walls?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Floors?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Are there any defective insulated doors or windows?	[ ]Yes	[ ]No	[ ]Unknown	
5.	DWELLING STRUCTURE				
*A.	Has the roof leaked?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, has it been repaired?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
B.	Are there any additions, conversions or remodeling?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, was a building permit required?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, was a building permit obtained?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, was final inspection obtained?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
C.	Are there smoke alarms or detectors?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Are there carbon monoxide alarms?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Is there a woodstove or fireplace				

	insert included in the sale?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, what is the make? _____				
	*If yes, was it installed with a permit?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, is a certification label issued by the United States Environmental Protection Agency (EPA) or the Department of Environmental Quality (DEQ) affixed to it?	[ ]Yes	[ ]No	[ ]Unknown	
*F.	Has pest and dry rot, structural or "whole house" inspection been done within the last three years?	[ ]Yes	[ ]No	[ ]Unknown	
*G.	Are there any moisture problems, areas of water penetration, mildew odors or other moisture conditions (especially in the basement)?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, explain on attached sheet the frequency and extent of problem and any insurance claims, repairs or remediation done.				
H.	Is there a sump pump on the property?	[ ]Yes	[ ]No	[ ]Unknown	
I.	Are there any materials used in the construction of the structure that are or have been the subject of a recall, class action suit, settlement or litigation?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, what are the materials? _____				
(1)	Are there problems with the materials?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(2)	Are the materials covered by a warranty?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(3)	Have the materials been inspected?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(4)	Have there ever been claims filed for these materials by you or by previous owners?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
	If yes, when? _____				
(5)	Was money received?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
(6)	Were any of the materials repaired or replaced?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
6.	DWELLING SYSTEMS AND FIXTURES				
	If the following systems or fixtures are included in the purchase price, are they in good working order on the date this form is signed?				
A.	Electrical system, including wiring, switches, outlets and service	[ ]Yes	[ ]No	[ ]Unknown	
B.	Plumbing system, including pipes, faucets, fixtures and toilets	[ ]Yes	[ ]No	[ ]Unknown	
C.	Water heater tank	[ ]Yes	[ ]No	[ ]Unknown	
D.	Garbage disposal	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
E.	Built-in range and oven	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
F.	Built-in dishwasher	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
G.	Sump pump	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
H.	Heating and cooling systems	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
I.	Security system [ ]Owned [ ]Leased	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
J.	Are there any materials or products used in the systems and fixtures that are or have been the subject of a recall, class action settlement or other litigations?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, what product? _____				
(1)	Are there problems with the product?	[ ]Yes	[ ]No	[ ]Unknown	
(2)	Is the product covered by a warranty?	[ ]Yes	[ ]No	[ ]Unknown	
(3)	Has the product been inspected?	[ ]Yes	[ ]No	[ ]Unknown	
(4)	Have claims been filed for this product by you or by previous owners?	[ ]Yes	[ ]No	[ ]Unknown	
	If yes, when? _____				
(5)	Was money received?	[ ]Yes	[ ]No	[ ]Unknown	
(6)	Were any of the materials or products repaired or replaced?	[ ]Yes	[ ]No	[ ]Unknown	
7.	COMMON INTEREST				
A.	Is there a Home Owners' Association or other governing entity?	[ ]Yes	[ ]No	[ ]Unknown	
	Name of Association or Other Governing Entity _____				
	Contact Person _____				
	Address _____				
	Phone Number _____				
B.	Regular periodic assessments: $_____				

per [ ]Month [ ]Year [ ]Other _____

*C.	Are there any pending or proposed special assessments?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Are there shared 'common areas' or joint maintenance agreements for facilities like walls, fences, pools, tennis courts, walkways or other areas co-owned in undivided interest with others?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Is the Home Owners' Association or other governing entity a party to pending litigation or subject to an unsatisfied judgment?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
F.	Is the property in violation of recorded covenants, conditions and restrictions or in violation of other bylaws or governing rules, whether recorded or not?	[ ]Yes	[ ]No	[ ]Unknown	[ ]NA
8.	GENERAL				
A.	Are there problems with settling, soil, standing water or drainage on the property or in the immediate area?	[ ]Yes	[ ]No	[ ]Unknown	
B.	Does the property contain fill?	[ ]Yes	[ ]No	[ ]Unknown	
C.	Is there any material damage to the property or any of the structure(s) from fire, wind, floods, beach movements, earthquake, expansive soils or landslides?	[ ]Yes	[ ]No	[ ]Unknown	
D.	Is the property in a designated floodplain?	[ ]Yes	[ ]No	[ ]Unknown	
E.	Is the property in a designated slide or other geologic hazard zone?	[ ]Yes	[ ]No	[ ]Unknown	
*F.	Has any portion of the property been tested or treated for asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks or contaminated soil or water?	[ ]Yes	[ ]No	[ ]Unknown	
G.	Are there any tanks or underground storage tanks (e.g., septic, chemical, fuel, etc.) on the property?	[ ]Yes	[ ]No	[ ]Unknown	
H.	Has the property ever been used as an illegal drug manufacturing or distribution site?	[ ]Yes	[ ]No	[ ]Unknown	
	*If yes, was a Certificate of Fitness issued?	[ ]Yes	[ ]No	[ ]Unknown	
*I.	Has the property been classified as forestland-urban interface?	[ ]Yes	[ ]No	[ ]Unknown	
9.	FULL DISCLOSURE BY SELLERS				
*A.	Are there any other material defects affecting this property or its value that a prospective buyer should know about?	[ ]Yes	[ ]No		
	*If yes, describe the defect on attached sheet and explain the frequency and extent of the problem and any insurance claims, repairs or remediation.				

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 of this disclosure statement. I/we authorize my/our agents to deliver a copy of this disclosure statement to all prospective buyers of the property or their agents.

Seller(s) signature:

SELLER _____ DATE _____

SELLER _____ DATE _____

II. BUYER'S ACKNOWLEDGMENT

A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects that 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, or of any real

estate licensee engaged by the seller or buyer. A financial institution or real estate licensee is not bound by and has no 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 acknowledgment' portion of this disclosure statement below) hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's signature(s).

DISCLOSURES, IF ANY, 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. IF THE SELLER HAS FILLED OUT SECTION 2 OF THIS FORM, YOU, THE BUYER, HAVE FIVE DAYS FROM THE SELLER'S DELIVERY OF THIS DISCLOSURE STATEMENT TO REVOKE YOUR OFFER BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF REVOCATION TO THE SELLER DISAPPROVING THE SELLER'S DISCLOSURE 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 PROPERTY DISCLOSURE STATEMENT.

BUYER _____ DATE _____

BUYER _____ DATE _____

Agent receiving disclosure statement on buyer's behalf to sign and date:

_____ Real Estate Licensee

_____ Real Estate Firm

Date received by agent _____

[2003 c.328 §3; 2007 c.30 §13; 2007 c.866 §8; 2009 c.387 §18; 2009 c.591 §14a]

105.465 Application of ORS 105.462 to 105.490, 696.301 and 696.870; disclosure statement. (1) The provisions of ORS 105.462 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) Except as provided in ORS 105.475 (4), a seller shall complete, sign and deliver a seller's property disclosure statement as set forth in ORS 105.464 to each buyer who makes a written offer to purchase real property in this state. [1993 c.547 §1; 1997 c.816 §15; 1999 c.307 §24; 1999 c.677 §65; 2001 c.300 §74; 2003 c.328 §1]

105.470 Exclusions from ORS 105.462 to 105.490, 696.301 and 696.870. ORS 105.462 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 as custodian, agent or trustee, or by foreclosure or deed in lieu of foreclosure.

(3) The following sellers, if appointed by a court:

(a) Receivers;

(b) Personal representatives;

(c) Trustees;

(d) Conservators; or

(e) Guardians.

(4) Sales or transfers by governmental agencies. [1993 c.547 §7; 1995 c.198 §1; 2003 c.328 §5]

105.475 Buyer's statement of revocation of offer; criteria. (1) If a seller issues a seller's property 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 property disclosure statement to revoke the buyer's offer by delivering to the seller a separate signed written statement of revocation disapproving the seller's disclosure.

(2) 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.

(3) If a buyer closes the transaction, the buyer's right to revoke based on ORS 105.462 to 105.490, 696.301 and 696.870 is terminated.

(4) If the seller fails or refuses to provide a seller's property disclosure statement as required under this section, the buyer shall have a right of revocation until the right is terminated pursuant to subsection (3) of this section.

(5) If the buyer revokes the offer pursuant to this section, notwithstanding ORS 696.581, the buyer is 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.

(6) 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 are released from all liability for the deposits and other considerations.

(7) Any seller's property disclosure statement issued by the seller is part of and incorporated into the offer and the acceptance. [1993 c.547 §§2,3; 2003 c.328 §6]

105.480 Representations in disclosure statement; application. (1) The representations contained in a seller's property disclosure statement and in any amendment to the disclosure statement are the representations of the seller only. The representations of the seller are not representations of:

(a) A financial institution that may have made or that may make a loan pertaining to the property covered by a seller's property disclosure statement, or that may have or take a security interest in the property covered by a seller's property disclosure statement.

(b) A real estate licensee engaged by the seller or buyer.

(2) Neither a financial institution nor a real estate licensee is bound by or has any liability with respect to any representation, misrepresentation, omission, error or inaccuracy contained in the seller's property disclosure statement required by ORS 105.465 or any amendment to the disclosure statement. [1993 c.547 §4b; 1997 c.631 §400; 2001 c.300 §69; 2003 c.328 §7]

105.485 Allocation of burden of proof. The burden of proof of lawful delivery of a seller's property disclosure statement and any amendment thereto is on the seller. The burden of proof of lawful delivery of a notice of revocation of a buyer's offer is on the buyer. [1993 c.547 §5; 2003 c.328 §8]

105.490 Effect of ORS 105.462 to 105.490, 696.301 and 696.870 on rights and remedies. ORS 105.462 to 105.490, 696.301 and 696.870 do 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; 2003 c.328 §9]

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. Not more than six months after an order to abate is entered under ORS 105.505, the plaintiff may file a request with the clerk of court for the issuance of a warrant to the sheriff that directs the sheriff to abate the nuisance. The sheriff may require that the plaintiff pay all sheriff's fees required by ORS 21.300 before executing the warrant, and may require that the plaintiff also pay all expenses of the sheriff incurred in executing the warrant. [Amended by 2011 c.366 §2]

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 an insured institution, as defined in ORS 706.008, 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; 1997 c.631 §401]

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 NUISANCE ACTIVITIES OR CONDITIONS

105.550 Definitions for ORS 105.550 to 105.600. As used in ORS 105.550 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; 1999 c.168 §6]

105.555 Places declared nuisances subject to abatement. (1) The following are declared to be nuisances and shall be enjoined and abated as provided in ORS 105.550 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 or patronizing a prostitute occur;

(b) Any place that 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 that are forbidden by or made punishable by ORS 167.108 to 167.164;

(c) Any place that has been determined to be not fit for use under ORS 453.876 and that has not been decontaminated and certified as fit for use under ORS 453.885 within 180 days after the determination under ORS 453.876; and

(d) 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 paragraph, "devices, equipment, things" does not include hypodermic syringes or needles. This paragraph does not apply to acts that constitute violations under ORS 475.860 or 475.864.

(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; 1999 c.168 §7; 2005 c.706 §1; 2005 c.708 §43; 2011 c.151 §6]

105.560 Action to restrain or enjoin nuisance; jurisdiction; remedies. (1) 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. Except as provided in subsection (5) of this section, the action may be commenced in the small claims department of the circuit court for the county where the property is located.

(2) In addition to any other remedy that may be available under ORS 105.550 to 105.600, a plaintiff in an action brought to restrain or enjoin a nuisance described in

ORS 105.555 may seek damages for mental suffering, emotional distress, inconvenience and interference with the use of property suffered by the plaintiff by reason of the activities constituting a nuisance.

(3) The court may award reasonable attorney fees to the prevailing party in an action under ORS 105.550 to 105.600 unless the action is commenced and tried in the small claims department of a circuit court. Attorney fees may not be awarded to any party in an action under ORS 105.550 to 105.600 that is commenced and tried in the small claims department of a circuit court.

(4) The court may consolidate all actions that relate to the same property and that are brought to restrain or enjoin a nuisance described in ORS 105.555. Consolidation in the small claims department of a circuit court shall be for purposes of trial only. A separate judgment shall be entered for each action in the small claims department of a circuit court.

(5) An action may not be brought in the small claims department of a circuit court to restrain or enjoin a nuisance described in ORS 105.555 if the property alleged to be a nuisance is licensed under ORS chapter 471. [1989 c.846 §4; 1999 c.168 §1; 2009 c.11 §7]

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. The complaint must specify whether the plaintiff will seek the remedy provided in ORS 105.580 (2).

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

(3) Except in those cases tried in the small claims department of a circuit court, any party may demand a trial by jury in any action brought under ORS 105.550 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; 1999 c.168 §2]

105.570 [Formerly 465.140; repealed by 1999 c.168 §12]

105.575 Precedence of action on court docket. An action under ORS 105.550 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; 1999 c.168 §8]

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 general 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. The court shall not include provisions for the closing of the premises under the provisions of this subsection unless that relief is specifically requested in the complaint.

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

(4) Except for an order of abatement entered based on the manufacture of a controlled substance, 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.

(5) If the court enters an order under this section on the basis that the property was used for the manufacture of a controlled substance, the court shall send a copy of the order to the Director of the Oregon Health Authority. The director or the director's designee shall declare the property to be an illegal drug manufacturing site for purposes of ORS 453.855 to 453.912. An order of the court under this section shall not be canceled until the director or the director's designee determines the property to be fit for use. Upon determining the property to be fit for use, the director or designee shall notify the court, which shall cancel the abatement order. [1989 c.846 §7; 1997 c.769 §1; 1999 c.168 §3; 2003 c.576 §238; 2009 c.595 §65]

105.585 Costs of securing or decontaminating property as lien; priority of lien; filing notice of pendency. (1) Any costs associated with securing the property

under ORS 105.550 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.

(2) Any costs incurred by the county or local government to secure a property that is a nuisance described in ORS 105.555 (1)(c) and have the property decontaminated and certified as fit for use under ORS 453.885 shall constitute a lien against the property declared to be a nuisance from the time a notice specifying the costs is filed of record. Notwithstanding subsection (3) of this section, the priority of a lien created under this subsection is governed by ORS 453.886 (4).

(3) A lien created by ORS 105.550 to 105.600 is prior and superior to all other liens, mortgages and encumbrances against the property upon which the lien is imposed that attached to the property after any lien imposed by ORS 105.550 to 105.600.

(4) A notice of pendency of an action may be filed pursuant to ORS 93.740 with respect to any action filed under ORS 105.550 to 105.600. [1989 c.846 §8; 1999 c.168 §4; 2007 c.673 §2]

105.590 Penalty for intentional violation of restraining order. An intentional violation of a restraining order, preliminary injunction or order of abatement under ORS 105.550 to 105.600 is a Class B misdemeanor. [1989 c.846 §9; 1999 c.168 §9; 2011 c.597 §159]

105.595 Action to abate nuisance not to affect other remedies; exception. Except to the extent that a judgment has been entered in the action for damages under ORS 105.560 (2), the abatement of a nuisance under ORS 105.550 to 105.600 does not prejudice the right of any person to recover damages for its past existence. [1989 c.846 §10; 1999 c.168 §5]

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 possession 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]

105.618 Adverse possession of railroad property. A person may not acquire by adverse possession, as defined in ORS 105.620, property owned by a railroad or used for a railroad operation. [2007 c.440 §1]

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) 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.

(b) Absent additional supporting facts, the grazing of livestock is insufficient to satisfy the requirements of subsection (1)(a) of this section.

(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; 1999 c.950 §1]

UNIFORM DISCLAIMER OF PROPERTY INTERESTS

105.623 Short title. ORS 105.623 to 105.649 may be cited as the Uniform Disclaimer of Property Interests Act. [2001 c.245 §1]

105.624 Definitions for ORS 105.623 to 105.649. As used in ORS 105.623 to 105.649:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in property or a power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of two or more persons under an arrangement pursuant to which:

(a) All holders have concurrent interests; and

(b) The last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, public corporation or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by another state.

(8) "Trust" means:

(a) A charitable or noncharitable express trust, including any additions made to the trust, whenever and however created; and

(b) A trust created pursuant to a statute or judgment that requires the trust to be administered in the same manner as an express trust. [2001 c.245 §2; 2003 c.576 §369; 2009 c.294 §15]

105.625 [1975 c.622 §8; repealed by 2001 c.245 §19]

105.626 Scope. ORS 105.623 to 105.649 apply to disclaimers of any interest in or power over property without regard to when the interest or power that is disclaimed was created. [2001 c.245 §3]

105.627 [1975 c.622 §1; 1981 c.56 §1; repealed by 2001 c.245 §19]

105.628 Effect on other law. (1) Unless displaced by a provision of ORS 105.623 to 105.649, the principles of law and equity supplement ORS 105.623 to 105.649.

(2) ORS 105.623 to 105.649 do not limit any right of a person to waive, release, disclaim or renounce an interest in property, or power over property, under a law other than ORS 105.623 to 105.649. [2001 c.245 §4]

105.629 Power to disclaim; general requirements; when irrevocable. (1) A person may disclaim, in whole or part, any interest in property or any power over property, including a power of appointment. A person may disclaim the interest or power even if the person who created the interest or power imposed a spendthrift provision or similar restriction on transfer or imposed a

restriction or limitation on the right to disclaim.

(2) Except to the extent that a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in property or power over property, including a power of appointment, without regard to whether the fiduciary is acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(3) To be effective, a disclaimer must:

(a) Be in writing or otherwise recorded by inscription on a tangible medium or by storage in an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable form;

(b) Declare that the person disclaims the interest in the property or in the power;

(c) Describe the interest in property or power over property that is disclaimed;

(d) Be signed by the person making the disclaimer; and

(e) Be delivered or filed in the manner provided in ORS 105.642.

(4) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power or as any other interest or estate in the property.

(5) A disclaimer is irrevocable when the disclaimer is delivered or filed pursuant to ORS 105.642 or when the disclaimer becomes effective as provided in ORS 105.633 to 105.641, whichever occurs later.

(6) A disclaimer made under ORS 105.623 to 105.649 is not a transfer, assignment or release. [2001 c.245 §5]

105.630 [1975 c.622 §2; 1981 c.56 §2; 1983 c.740 §10; 1997 c.813 §1; repealed by 2001 c.245 §19]

105.632 [1975 c.622 §3; 1981 c.56 §3; 1997 c.813 §2; repealed by 2001 c.245 §19]

105.633 Disclaimer of interest in property. (1) For the purposes of this section:

(a) "Time of distribution" means the time when a disclaimed interest would have taken effect through possession or enjoyment.

(b) "Future interest" means an interest that takes effect through possession or enjoyment, if at all, at a time later than the time that the interest is created.

(2) Except for a disclaimer governed by ORS 105.634 or 105.636, the following rules apply to a disclaimer of an interest in property:

(a) The disclaimer takes effect when the instrument creating the interest becomes irrevocable or, if the interest arises under the law of intestate succession, when the decedent dies.

(b) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the specific interest in the event the interest is disclaimed, or according to any provision in the instrument creating the interest providing for the disposition of interests in general in the event the interests created by the instrument are disclaimed.

(3) If the instrument creating the interest does not contain a provision described in subsection (2)(b) of this section, or if the interest arises under the law of intestate succession, the following rules apply:

(a)(A) If the disclaimant is an individual, except as otherwise provided in subparagraphs (B) and (C) of this paragraph, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(B) If by law or under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(C) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state, but excluding the disclaimant, and in such shares, as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(b) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if

the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment. [2001 c.245 §6; 2009 c.17 §1]

105.634 Disclaimer of rights of survivorship in jointly held property. (1) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(a) A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(b) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(2) A disclaimer under subsection (1) of this section takes effect upon the death of the holder of jointly held property to whose death the disclaimer relates.

(3) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates. [2001 c.245 §7]

105.635 [1975 c.622 §4; 1981 c.56 §4; repealed by 2001 c.245 §19]

105.636 Disclaimer of interest by trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property. [2001 c.245 §8]

105.637 [1975 c.622 §5; repealed by 2001 c.245 §19]

105.638 Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective. [2001 c.245 §9]

105.639 Disclaimer by appointee, object or taker in default of exercise of power of appointment. (1) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(2) A disclaimer of an interest in property by a person who is an object of an exercise of a power of appointment, or by a person who is a taker in default of an exercise of a power of appointment, takes effect as of the time the instrument creating the power becomes irrevocable. [2001 c.245 §10]

105.640 [1975 c.622 §7; repealed by 2001 c.245 §19]

105.641 Disclaimer of power held in fiduciary capacity. (1) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section applies to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust or other person for whom the fiduciary is acting. [2001 c.245 §11]

105.642 Delivery or filing. (1) As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(a) An annuity or insurance policy;

(b) An account with a designation for payment on death;

(c) A security registered in beneficiary form;

(d) A pension, profit-sharing, retirement or other employment-related benefit plan; or

(e) Any other nonprobate transfer at death.

(2) Subject to subsections (3) to (12) of this section, delivery of a disclaimer may be made by personal delivery, first class mail or any other method likely to result in receipt of the disclaimer.

(3) If the interest to be disclaimed is created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(a) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(b) If a personal representative is not serving at the time the disclaimer is made, the disclaimer must be filed with a court having authority to appoint the personal representative.

(4) In the case of an interest in a testamentary trust:

(a) A disclaimer must be delivered to the trustee;

(b) If a trustee is not serving at the time the disclaimer is made but a personal representative for the decedent's estate is serving, the disclaimer must be delivered to the personal representative; or

(c) If neither a trustee nor a personal representative is serving at the time the disclaimer is made, the disclaimer must be filed with a court having authority to enforce the trust.

(5) In the case of an interest in an inter vivos trust:

(a) A disclaimer must be delivered to the trustee serving at the time the disclaimer is made;

(b) If a trustee is not serving at the time the disclaimer is made, the disclaimer must be filed with a court having authority to enforce the trust; or

(c) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

(6) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(7) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(8) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(9) In the case of a disclaimer by a person who is an object of an exercise of a power of appointment or a taker in default of an exercise of a power of appointment at any time after the power was created:

(a) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(b) If a fiduciary is not serving at the time the disclaimer is made, the disclaimer must be filed with a court having authority to appoint the fiduciary.

(10) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(a) The disclaimer must be delivered to the holder of the power, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(b) If a fiduciary is not serving at the time the disclaimer is made, the disclaimer must be filed with a court having authority to appoint the fiduciary.

(11) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (3), (4) or (5) of this section as if the power disclaimed were an interest in property.

(12) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative. [2001 c.245 §12]

105.643 When disclaimer barred or limited. (1) A disclaimer is barred by a written waiver of the right to disclaim.

(2) A disclaimer of an interest in property is barred if any of the following events occurs before the disclaimer becomes effective:

(a) The disclaimant accepts the interest sought to be disclaimed;

(b) The disclaimant voluntarily assigns, conveys, encumbers, pledges or transfers the interest sought to be disclaimed or contracts to do so; or

(c) The interest sought to be disclaimed is sold pursuant to a judicial sale.

(3) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

(4) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(5) A disclaimer is barred or limited if so provided by a law other than ORS 105.623 to 105.649.

(6) A disclaimer is barred if the purpose or effect of the disclaimer is to prevent recovery of money or property to be applied against a judgment for restitution under ORS 137.101 to 137.109.

(7) A disclaimer of a power over property that is barred under this section is ineffective. A disclaimer of an interest in property that is barred under this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under ORS 105.623 to 105.649 had the disclaimer not been barred. [2001 c.245 §13; 2007 c.483 §1]

105.645 Tax qualified disclaimer. Notwithstanding any other provision of ORS 105.623 to 105.649, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the

provisions of the Internal Revenue Code and the regulations promulgated under that code, as in effect on December 31, 2010, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under ORS 105.623 to 105.649. [2001 c.245 §14; 2011 c.526 §16]

Note: Section 30 (2), chapter 526, Oregon Laws 2011, provides:

Sec. 30. (2) The amendments to ORS 105.645 by section 16 of this 2011 Act apply to estates of decedents who die on or after January 1, 2010. [2011 c.526 §30(2)]

105.646 Recording of disclaimer. If an instrument transferring an interest in property or a power over property that is subject to a disclaimer is required or permitted by law to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Failure to file, record or register the disclaimer does not affect the validity of the disclaimer as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer. [2001 c.245 §15]

105.647 Application to existing relationships. Except as otherwise provided in ORS 105.643, an interest in property or power over property existing on January 1, 2002, may be disclaimed in the manner provided by ORS 105.623 to 105.649 after January 1, 2002, unless the time for delivering or filing a disclaimer had expired under law in effect immediately before January 1, 2002. [2001 c.245 §16]

105.648 Effect on recovery of money or property under ORS 411.620. ORS 105.623 to 105.649 do not allow any person to disclaim an interest in property, including any jointly held property, if the purpose or effect of the disclaimer is to prevent recovery of money or property under ORS 411.620. [2001 c.245 §17]

105.649 Uniformity of application and construction. In applying and construing ORS 105.623 to 105.649, consideration must be given to the need to promote uniformity of the law with respect to disclaimers among states that enact versions of the Uniform Disclaimer of Property Interests Act. [2001 c.245 §18]

105.655 [1971 c.780 §1; 1973 c.732 §4; 1979 c.258 §1; 1983 c.775 §1; 1991 c.968 §6; repealed by 1995 c.456 §9]

105.660 [1971 c.780 §2; 1973 c.732 §3; repealed by 1995 c.456 §9]

105.665 [1971 c.780 §3; repealed by 1995 c.456 §9]

PUBLIC USE OF LANDS

105.668 Immunity from liability for injury or property damage arising from use of trail or structures in public easement or right of way. (1) As used in this section:

(a) "Structures" means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance.

(b) "Unimproved right of way" means a platted or dedicated public right of way over which a street, road or highway has not been constructed to the standards and specifications of the city with jurisdiction over the public right of way and for which the city has not expressly accepted responsibility for maintenance.

(2) A personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against:

(a) A city with a population of 500,000 or more;

(b) The officers, employees or agents of a city with a population of 500,000 or more to the extent the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;

(c) The owner of land abutting the public easement, or unimproved right of way, in a city with a population of 500,000 or more; or

(d) A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right of way in a city with a population of 500,000 or more.

(3) Notwithstanding the limit in subsection (2) of this section to a city with a population of 500,000 or more, by adoption of an ordinance or resolution, a city or county to which subsection (2) of this section does not apply may opt to limit liability in the manner established by subsection (2) of this section for:

(a) The city or county that opts in by ordinance or resolution;

(b) The officers, employees or agents of the city or county that opts in to the extent the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;

(c) The owner of land abutting the public easement, or unimproved right of way, in the city or county that opts in by ordinance or resolution; and

(d) A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a

public easement or unimproved right of way in the city or county that opts in.

(4) The immunity granted by this section from a private claim or right of action based on negligence does not grant immunity from liability:

(a) Except as provided in subsection (2)(b) or (3)(b) of this section, to a person that receives compensation for providing assistance, services or advice in relation to conduct that leads to a personal injury or property damage.

(b) For personal injury or property damage resulting from gross negligence or from reckless, wanton or intentional misconduct.

(c) For an activity for which a person is strictly liable without regard to fault. [2011 c.528 §1]

105.670 [1971 c.780 §4; repealed by 1995 c.456 §9]

105.672 Definitions for ORS 105.672 to 105.696. As used in ORS 105.672 to 105.696:

(1) "Charge":

(a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner's land.

(b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner's land.

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of $15 or less per day.

(2) "Harvest" has that meaning given in ORS 164.813.

(3) "Land" includes all real property, whether publicly or privately owned.

(4) "Owner" means the possessor of any interest in any land, such as the holder of a fee title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land.

(5) "Recreational purposes" includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

(6) "Special forest products" has that meaning given in ORS 164.813.

(7) "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. [1995 c.456 §1; 2007 c.372 §1; 2009 c.532 §1; 2010 c.52 §1]

105.675 [1971 c.780 §5; 1987 c.708 §4; repealed by 1995 c.456 §9]

105.676 Public 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, for gardening, for woodcutting and for the harvest of special forest products by limiting their liability toward persons entering thereon for such purposes and 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, gardening, woodcutting or the harvest of special forest products. [1995 c.456 §2; 2009 c.532 §3]

105.677 [1973 c.732 §2; repealed by 1995 c.456 §9]

105.680 [1971 c.780 §6; repealed by 1995 c.456 §9]

105.682 Liabilities of owner of land used by public for recreational purposes, gardening, woodcutting or harvest of special forest products. (1) Except as provided by subsection (2) of this section, and subject to the provisions of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products when the owner of land either directly or indirectly permits any person to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products. The limitation on liability provided by this section applies if the principal purpose for entry upon the land is for recreational purposes, gardening, woodcutting or the harvest of special forest products, and is not affected if the injury, death or damage occurs while the person entering land is engaging in activities other than the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(2) This section does not limit the liability of an owner of land for intentional injury or damage to a person coming onto land for recreational purposes, gardening, woodcutting or the harvest of special forest products. [1995 c.456 §3; 2009 c.532 §4]

105.685 [1979 c.434 §1; 1985 c.375 §1; repealed by 1995 c.456 §9]

105.687 [1979 c.434 §2; repealed by 1995 c.456 §9]

105.688 Applicability of immunities from liability for owner of land; restrictions. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply to:

(a) All land, including but not limited to land adjacent or contiguous to any bodies of water, watercourses or the ocean shore as defined by ORS 390.605;

(b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on the land described in paragraph (a) of this subsection;

(c) All paths, trails, roads, watercourses and other rights of way while being used by a person to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest products, that are on land adjacent to the land that the person intends to use for recreational purposes, gardening, woodcutting or the harvest of special forest products, and that have not been improved, designed or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest products; and

(d) All machinery or equipment on the land described in paragraph (a) of this subsection.

(2) The immunities provided by ORS 105.682 apply to land if the owner transfers an easement to a public body to use the land.

(3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS 105.682 do not apply if the owner makes any charge for permission to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

(4) If the owner charges for permission to use the owner's land for one or more specific recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to any use of the land other than the activities for which the charge is imposed. If the owner charges for permission to use a specified part of the owner's land for recreational purposes and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges more than $25 per year for the use of the land for gardening. If the owner charges more than $25 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any use of the land other than gardening. If the owner charges more than $25 per year for permission to use a specific part of the owner's land for gardening and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges more than $75 per cord for permission to use the land for woodcutting. If the owner charges more than $75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682 apply to any use of the land other than woodcutting. If the owner charges more than $75 per cord for permission to use a specific part of the owner's land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(7) The immunities provided by ORS 105.682 for the harvest of special forest products do not apply if the owner makes any charge for permission to use the land for the harvest of special forest products. If the owner charges for permission to use the owner's land for the harvest of special forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the harvest of special forest products. If the owner charges for permission to use a specific part of the owner's land for harvesting special forest products and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

(8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a receipt, or by such other means as may be reasonably calculated to apprise a person of:

(a) The limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land; or

(b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land. [1995 c.456 §4; 1999 c.872 §7; 2001 c.206 §1; 2009 c.532 §2; 2010 c.52 §2]

105.689 [1979 c.434 §3; repealed by 1995 c.456 §9]

105.691 [1979 c.434 §4; repealed by 1995 c.456 §9]

105.692 Right to continued use of land following permitted use; presumption of dedication or other rights. (1) An owner of land who either directly or indirectly permits any person to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products does not give that person or any other person a right to continued use of the land for those purposes without the consent of the owner.

(2) The fact that an owner of land allows the public to use the land for recreational purposes, gardening, woodcutting or the harvest of special forest products without posting, fencing or otherwise restricting use of the land does not raise a presumption that the landowner intended to dedicate or other-

wise give over to the public the right to continued use of the land.

(3) Nothing in this section shall be construed to diminish or divert any public right to use land for recreational purposes acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973.

(4) Nothing in this section shall be construed to diminish or divert any public right to use land for woodcutting acquired by dedication, prescription, grant, custom or otherwise existing before October 3, 1979. [1995 c.456 §5; 2009 c.532 §5]

105.693 [1979 c.434 §5; repealed by 1995 c.456 §9]

105.695 [1979 c.434 §6; repealed by 1995 c.456 §9]

105.696 Duty of care or liability not created; exercise of care required of person using land. ORS 105.672 to 105.696 do not:

(1) Create a duty of care or basis for liability for personal injury, death or property damage resulting from the use of land for recreational purposes, for gardening, for woodcutting or for the harvest of special forest products.

(2) Relieve a person using the land of another for recreational purposes, gardening, woodcutting or the harvest of special forest products from any obligation that the person has to exercise care in use of the land in the activities of the person or from the legal consequences of failure of the person to exercise that care. [1995 c.456 §6; 2009 c.532 §6]

105.697 [1979 c.434 §7; repealed by 1995 c.456 §9]

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 105.672 to 105.696 on state land. [1979 c.434 §8; 1995 c.456 §7]

105.700 Prohibiting public access to private land; notice requirements; damages. (1) In addition to and not in lieu of any other damages that may be claimed, a plaintiff who is a landowner shall receive liquidated damages in an amount not to exceed $1,000 in any action in which the plaintiff establishes that:

(a) The plaintiff closed the land of the plaintiff as provided in subsection (2) of this section; and

(b) The defendant entered and remained upon the land of the plaintiff without the permission of the plaintiff.

(2) A landowner or an agent of the landowner may close the privately owned land of the landowner by posting notice as follows:

(a) For land through which the public has no right of way, the landowner or agent must place a notice at each outer gate and normal point of access to the land, including both sides of a body of water that crosses the land wherever the body of water intersects an outer boundary line. The notice must be placed on a post, structure or natural object in the form of a sign or a blaze of paint. If a blaze of paint is used, it must consist of at least 50 square inches of fluorescent orange paint, except that when metal fence posts are used, approximately the top six inches of the fence post must be painted. If a sign is used, the sign:

(A) Must be no smaller than eight inches in height and 11 inches in width;

(B) Must contain the words "Closed to Entry" or words to that effect in letters no less than one inch in height; and

(C) Must display the name, business address and phone number, if any, of the landowner or agent of the landowner.

(b) For land through which or along which the public has an unfenced right of way by means of a public road, the landowner or agent must place:

(A) A conspicuous sign no closer than 30 feet from the center line of the roadway where it enters the land, containing words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT _____ MILES"; or

(B) A sign or blaze of paint, as described in paragraph (a) of this subsection, no closer than 30 feet from the center line of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders the land, except that a blaze of paint may not be placed on posts where the public road enters the land.

(3) Nothing contained in this section prevents emergency or law enforcement vehicles from entering upon the posted land.

(4) An award of liquidated damages under this section is not subject to ORS 31.725, 31.730 or 31.735.

(5) Nothing in this section affects any other remedy, civil or criminal, that may be available for a trespass described in this section. [1999 c.933 §1]

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 (9)(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; 1997 c.210 §10; 2005 c.445 §11]

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 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 other civil actions from a 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 general 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; 2003 c.576 §239]

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 a 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 general 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.

(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; 2003 c.576 §240]

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 financially incapable, as defined in ORS 125.005, the notice may be filed by a conservator appointed pursuant to a protective proceeding under ORS chapter 125.

(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; 1995 c.664 §81]

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; costs and attorney fees; limitation on liability of contract logger. (1) Except as provided in ORS 477.090 and subsections (4) to (7) of this section, 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 tres-

passes 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.

(2) A court may, in its discretion, award to a prevailing party under subsection (1) of this section reimbursement of reasonable costs of litigation including but not limited to investigation costs and attorney fees.

(3) A court may, in its discretion, award to a prevailing plaintiff under subsection (1) of this section reasonable costs of reforestation activities related to the injury sustained by the plaintiff.

(4) A contract logger is liable only for actual damages in an action under this section if:

(a) The contract logger conducts an operation under a signed, written contract with a person the contract logger reasonably believes to be the legal owner of the produce, trees, timber or shrubs in the operation area;

(b) The contract identifies the operation area by a metes and bounds description or other sufficient legal description;

(c) Before the contract logger begins harvesting in the operation area, the person who engages the contract logger under the contract:

(A) Locates, marks and protects from damage all survey monuments in the operation area;

(B) Flags, stakes or otherwise clearly marks the boundaries of the operation area; and

(C) Provides the contract logger with a copy of the deed, contract or other instrument that the person who engages the contract logger under the contract relies upon as proof of ownership of the produce, trees, timber or shrubs in the operation area;

(d) The contract logger verifies the deed, contract or instrument described in paragraph (c)(C) of this subsection against the metes and bounds description or other sufficient legal description in the contract;

(e) The contract logger retains a copy of the deed, contract or instrument described in paragraph (c)(C) of this subsection for at least three years; and

(f) The contract logger does not receive written notice that any person has a claim of title to the land or timber in the operation area that is adverse to the person who engages the contract logger under the contract.

(5) Subsection (4) of this section does not affect an action for double or treble damages against a contract logger for damages outside the operation area as described in subsection (4) of this section.

(6) If an action is brought under this section against a contract logger, and the contract logger was engaged to harvest the timber by a person who purported to own the timber or to have authority to harvest the timber, the person who engaged the contract logger must be joined in the action as a defendant unless jurisdiction over the person cannot be had. If a judgment is entered against the contract logger and against the person who engaged the contract logger, the contract logger shall not be required to pay any part of the judgment unless the plaintiff establishes that the judgment cannot be enforced against the person who engaged the contract logger. The plaintiff may enforce the judgment against the contract logger only if:

(a) The plaintiff makes a good faith effort for at least six months after the judgment becomes final and subject to execution to enforce the judgment against the person who engaged the contract logger; and

(b) The court determines, upon motion of the plaintiff, that all or part of the judgment cannot be collected from the person who engaged the contract logger.

(7) Subsections (2) and (3) of this section apply in an action against a contract logger under subsection (4) of this section.

(8) For purposes of this section:

(a) "Contract logger" means a person engaged in a commercial timber harvesting operation.

(b) "Operation" has the meaning given in ORS 527.620 (12). [Amended by 1995 c.721 §1; 1999 c.544 §1]

105.815 When double damages are awarded for trespass; exception. (1) Except as provided in subsection (3) of this section, 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.

(2) A judgment for the costs of litigation and reforestation as provided in ORS 105.810

shall be in addition to and not in lieu of a judgment for damages under this section.

(3) This section does not apply to a contract logger if the contract logger is subject only to actual damages under ORS 105.810 (4). [Amended by 1995 c.721 §2; 1999 c.544 §2]

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 seised 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 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. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1989 c.1049 §2; 1995 c.618 §56]

105.834 Owner's immunity from liability for theft of metal property. (1) As used in this section, "owner" means a person, including a tenant, lessee, occupant or other person, that possesses an interest in land, including but not limited to a possession of a fee title.

(2) An owner of land is not liable for personal injury, death or property damage that arises out of:

(a) Theft or attempted theft of metal property as defined in ORS 165.116 from the owner's land; or

(b) A hazardous condition that results from theft or attempted theft of metal property as defined in ORS 165.116 from the owner's land when the owner did not know or could not reasonably have known of the hazardous condition.

(3) The immunities provided under this section apply to:

(a) Public and private land;

(b) Roads, bodies of water, watercourses, rights of way, buildings and fixtures or structures on the owner's land; and

(c) Machinery or equipment on the owner's land.

(4) This section does not create or impose a duty of care upon an owner or possessor of land that would not otherwise exist under common law. [2009 c.811 §10]

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

CARBON MONOXIDE ALARMS IN DWELLINGS

105.836 Definitions for ORS 105.836 to 105.842 and 476.725. As used in ORS 105.836 to 105.842 and 476.725, unless the context requires otherwise:

(1) "Carbon monoxide alarm" means a device that:

(a) Detects carbon monoxide;

(b) Produces a distinctive audible alert when carbon monoxide is detected;

(c) Conforms to State Fire Marshal rules;

(d) Is listed by Underwriters Laboratories or any other nationally recognized testing laboratory or an equivalent organization; and

(e) Operates as a distinct unit or as two or more single station units wired to operate in conjunction with each other.

(2) "Carbon monoxide source" means:

(a) A heater, fireplace, appliance or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion; or

(b) An attached garage with an opening that communicates directly with a living space.

(3) "Multifamily housing" means a building in which three or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.

(4) "One and two family dwelling" means a residential building that is regulated under the state building code as a one and two family dwelling. [2009 c.591 §1; 2011 c.42 §17]

105.838 Carbon monoxide alarm in dwelling. (1) A person may not convey fee title to a one and two family dwelling or multifamily housing that contains a carbon monoxide source, or transfer possession under a land sale contract of a one and two family dwelling or multifamily housing that contains a carbon monoxide source, unless one or more properly functioning carbon monoxide alarms are installed in the dwelling or housing at locations that provide carbon monoxide detection for all sleeping areas of the dwelling or housing.

(2) A carbon monoxide alarm in a one and two family dwelling or multifamily

housing described in subsection (1) of this section must be installed in conformance with applicable rules of the State Fire Marshal and in conformance with any applicable requirements of the state building code.

(3) Violation of this section or a rule adopted by the State Fire Marshal does not invalidate any sale or transfer of possession of a one and two family dwelling or multifamily housing. [2009 c.591 §2]

105.840 Action by purchaser for failure of seller to install carbon monoxide alarm. A purchaser or transferee of a one and two family dwelling or multifamily housing who is aggrieved by a violation of ORS 105.838 or of a rule adopted under ORS 476.725 may bring an individual action in an appropriate court to recover the greater of actual damages or $250 per residential unit. In any action brought under this section, the court may award to a prevailing party, in addition to the relief provided in this section, reasonable attorney fees at trial and on appeal, and costs. Actions brought under this section must be commenced within one year after the date of sale or transfer. [2009 c.591 §3]

105.842 Tampering with carbon monoxide alarm. (1) As used in this section, "tamper" includes, but is not limited to, the removal of working batteries.

(2) Except as otherwise provided in this section, a person may not remove or tamper with a carbon monoxide alarm installed in a one and two family dwelling or multifamily housing. This section does not prohibit the removal of, or tampering with, a carbon monoxide alarm:

(a) For the purpose of replacing a defective alarm or conforming the installation of the alarm with State Fire Marshal rules;

(b) In a dwelling or housing that is being demolished or converted to nonresidential use; or

(c) For the period that the removal or tampering is necessary for an active process of remodeling or renovating the installation location. [2009 c.591 §6]

105.844 Short title. ORS 90.316, 90.317, 105.836 to 105.842, 455.360 and 476.725 shall be known and may be cited as the Lofgren and Zander Memorial Act. [2009 c.591 §15]

RADON HAZARDS AND METHODS FOR TESTING AND MITIGATION

105.848 Radon information for potential buyers of one and two family dwellings. (1) The Real Estate Agency shall provide information to alert potential buyers of one and two family dwellings to issues concerning radon in the dwellings. The information may include, but need not be limited to, radon hazard potential and methods of testing for and mitigating radon. The agency may collaborate with public or private entities to provide the information.

(2) The agency shall place the information described in subsection (1) of this section on the agency's website and make printed copies of the information available to the public. The agency may charge a reasonable fee for providing a printed copy of the information.

(3) The agency shall encourage public and private entities dealing with potential buyers of one and two family dwellings to post the information described in subsection (1) of this section on entity websites and to assist in making printed copies of the information available to the public. [2010 c.83 §3]

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 connection 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 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; 2003 c.576 §241]

105.865 Apportioning compensation among property owners; termination of city liability. (1) The circuit court shall, in its general 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; 2003 c.576 §242]

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 Definitions for ORS 105.885 to 105.895. 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 judgment of a court 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; 2003 c.576 §370]

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 bur-

dened 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 judgment of a court 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; 2003 c.576 §371]

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 co-ownership 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]

MOTOR VEHICLE EVENT DATA RECORDERS

105.925 Definitions for ORS 105.925 to 105.945. As used in ORS 105.925 to 105.945:

(1) "Event data recorder" has the meaning given that term in 49 C.F.R 563.5, as in effect on January 1, 2008.

(2) "Owner" means a person:

(a) In whose name a motor vehicle is registered or titled;

(b) Who leases a motor vehicle for at least three months;

(c) Who is entitled to possession of a motor vehicle as the purchaser under a security agreement; or

(d) Who is the attorney in fact, conservator or personal representative for a person described in paragraphs (a) to (c) of this subsection. [2007 c.644 §1]

105.928 Ownership of recorded data. Except as specifically provided under ORS 105.925 to 105.945, the data on a motor vehicle event data recorder is exclusively owned by the owner of the motor vehicle and may not be retrieved or used by any person other than the owner of the motor vehicle without the written consent of the owner. If a motor vehicle is owned by more than one person, all owners must consent to the retrieval or use of the data from a motor vehicle event data recorder. [2007 c.644 §2]

105.932 Effect of vehicle ownership transfer on ownership of data; prohibited insurer and lessor actions. (1) Data on a motor vehicle event data recorder does not become the property of a lienholder or insurer solely because the lienholder or insurer succeeds in ownership of a motor vehicle as a result of an accident.

(2) An insurer may not condition the payment or settlement of an owner's claim on the owner's consent to the retrieval or use of the data on a motor vehicle event data recorder.

(3) An insurer or lessor of a motor vehicle may not require an owner to consent to the retrieval or use of the data on a motor vehicle event data recorder as a condition of providing the policy or lease. [2007 c.644 §3]

105.935 Court order for retrieval or use of data by law enforcement officers or certain emergency service providers. Data from a motor vehicle event data recorder may be retrieved or used without the consent of the owner after an accident if a court orders the production of the data based on a determination by the court that:

(1) A law enforcement officer has probable cause to believe that a crime has occurred and that the data is relevant to the investigation of the crime; or

(2) A law enforcement officer, firefighter or emergency medical services provider seeks to obtain the data in the course of responding to or investigating an emergency involving the physical injury or the risk of physical injury to any person. [2007 c.644 §4]

105.938 Court order for retrieval or use of data by insurer. (1) Upon petition of an insurer, a court may order that data from a motor vehicle event data recorder be retrieved or used without the consent of the owner of the motor vehicle after an accident if the court determines that:

(a) The owner has a policy of insurance for the vehicle issued by the insurer;

(b) The data is necessary to reconstruct the facts of the accident and to allow the insurer to determine the obligations of the insurer under the insurance policy; and

(c) An accurate and timely determination of the facts of the accident cannot occur without the data.

(2) A petition under this section must be filed in the circuit court for the county in which the owner of the motor vehicle resides. The petition must be served on the owner in the manner provided by ORCP 7 not less than 30 days before a hearing on the petition. An insurer filing a petition under this section must pay the filing fee specified by ORS 21.135. [2007 c.644 §4a; 2011 c.595 §122]

105.942 Retrieval or use of data for responding to medical emergency, for medical research or for vehicle servicing or repair. (1) Data from a motor vehicle event data recorder may be retrieved or used without the consent of the owner to facilitate or determine the need for emergency medical care for the driver or passenger of a motor vehicle that is involved in a motor vehicle crash or other emergency, including the retrieval of data from a company that provides subscription services to the owner of a motor vehicle for in-vehicle safety and security communications systems.

(2) Data from a motor vehicle event data recorder may be retrieved or used without the consent of the owner to facilitate medical research of the human body's reaction to motor vehicle crashes if:

(a) The identity of the owner or driver is not disclosed in connection with the retrieved data; and

(b) The last four digits of the vehicle identification number are not disclosed.

(3) Data from a motor vehicle event data recorder may be retrieved or used without the consent of the owner to diagnose, service or repair a motor vehicle. [2007 c.644 §5]

105.945 Exempted data. ORS 105.925 to 105.945 do not apply to data that is stored or transmitted pursuant to a subscription service agreement for the use of a recording device to record a history of where a motor vehicle travels or for the transmission of data to a central communications system. [2007 c.644 §6]

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 apply to a nonvested property interest or a power of appointment that is created on or after January 1, 1990. 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 January 1, 1990, and is determined in a judicial proceeding, commenced on or after January 1, 1990, to violate this state's rule against perpetuities as that rule existed before January 1, 1990, 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 supersede the rule of the common law known as the rule against perpetuities. [1989 c.208 §§6,7,8]

XERISCAPING COMMERCIAL OR INDUSTRIAL PROPERTY

105.980 Xeriscaping. (1) As used in this section:

(a) "Commercial or industrial property" means property that is not used primarily for residential occupancy or for local government purposes.

(b) "Local government" has the meaning given that term in ORS 174.116.

(c) "Xeriscaping" means the selection of drought tolerant plants, the minimization of

evaporation and runoff and the use of other landscape design features that minimize the need of the landscape for supplemental water from irrigation.

(2) Except as provided in subsection (3) of this section, an owner or occupant of a commercial or industrial property may install xeriscaping on landscaped portions of the property that are not otherwise set aside, dedicated or used to comply with a local government ordinance, rule or regulation regarding:

(a) Stormwater management;

(b) The preservation of natural habitat and tree canopy; or

(c) The control of invasive plant species.

(3) Subsection (2) of this section does not prohibit a local government from enforcing any contractual right of the local government with regard to the installation and maintenance of landscaping for a commercial or industrial structure developed in whole or in part with funding provided by the local government. [2011 c.178 §1]