

Oregon Statutory Time Limitations

August 2014

Published by

Oregon  State Bar

Professional Liability Fund
and OSB Legal Publications

Oregon State Bar Professional Liability Fund

16037 SW Upper Boones Ferry Road
Suite 300
Tigard, Oregon 97224

503-639-6911
1-800-452-1639

2014 Board of Directors and Officers

Guy B. Greco – Chair – *Newport*
John A. Berge – Vice Chair – *Bend*
Valerie Saiki – Public Member, Secretary-Treasurer – *Salem*
Valerie D. Fisher – (retired) – *Portland*
Robert D. Newell – *Portland*
Julie I. Manela – *Eugene*
Tim Martinez – Public Member – *Salem*
Teresa A. Statler – *Portland*
Dennis H. Black – *Medford*

Chief Executive Officer

Ira R. Zarov

Director of Personal and Practice Management Assistance

Barbara S. Fishleder

Loss Prevention Attorney

Tanya R. Hanson

Practice Management Advisors

Sheila Blackford
Dee Crocker
Hong Dao
Jennifer Meisberger
Beverly Michaelis

Important Notice

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials in their own practices. © 2014 OSB Professional Liability Fund.

Oregon State Bar

16037 SW Upper Boones Ferry Road
Tigard, Oregon 97224

503-620-0222
1-800-452-8260

2014 Board of Governors

Tom Kranovich – President
Patrick Joseph Ehlers, Jr. – Vice President
Hunter B. Emerick – Vice President
Matthew H. Kehoe – Vice President
Richard G. Spier – President-elect
Jenifer Billman
James C. Chaney
R. Ray Heysell
Theresa M. Kohlhoff
Johnathan E. Mansfield
Audrey T. Matsumonji
Caitlin Mitchel-Markley
Travis S. Prestwich
Joshua L. Ross
Simon Whang
Charles A. Wilhoite
Timothy L. Williams
Elisabeth Zinser

Executive Director

Sylvia Stevens

Legal Publications Staff

Linda L. Kruschke, Director
Jenni Abalan, Administrative Assistant
Lorraine Jacobs, Coordinating Attorney Editor
Dean Land, Attorney Editor
Cheryl L. McCord, Attorney Editor
Ian Pisarcik, Attorney Editor
Stacey Malagamba, Production Coordinator
Mauri Baggiano, of iNTELLiNDEX, Indexer

The case citations in this book were Key Cite checked through August 11, 2014. The ORS citations were checked through 2014. This revision replaces the 2010 edition.

This handbook may be cited as:
OREGON STATUTORY TIME LIMITATIONS (OSB PLF & Legal Pubs 2014).



August 2014

Dear Oregon Lawyer:

This fifth edition of *Oregon Statutory Time Limitations* replaces the *Oregon Statutory Time Limitations* handbook that was previously published by the Professional Liability Fund in 2010. This 2014 edition is a joint publication by the OSB Professional Liability Fund and OSB Legal Publications.

This handbook is a reference guide to many of the statutes, cases, and procedural rules containing time limitations that are relevant to the practice of law. Although the material in this handbook has been carefully researched and reviewed, it should not be relied on as a substitute for full examination of the statutes and cases on any issue. Readers should conduct their own appropriate legal research and consult original sources of authority.

This new edition of *Oregon Statutory Time Limitations* is available to all Oregon lawyers in searchable format on the OSB's BarBooks™ online library at www.osbar.org, and in PDF on the PLF website at www.osbplf.org.

The OSB Professional Liability Fund and OSB Legal Publications gratefully acknowledge the Editorial Review Board for their guidance and leadership, and the authors for their diligence and dedication in researching, writing, reviewing, and editing this handbook.

If you have any comments regarding this publication, please contact Tanya Hanson at 503-639-6911 or tanyah@osbplf.org, or Linda Kruschke at 503-431-6415 or Lkruschke@osbar.org.

Tanya Hanson
Loss Prevention Attorney
Professional Liability Fund

Linda Kruschke
Director of Legal Publications
Oregon State Bar

EDITORIAL REVIEW BOARD

- JEFFREY M. CHEYNE**, B.A., University of Oregon (1968); J.D., LL.M. (Tax) University of San Diego School of Law (1975, 1984); member of the Oregon State Bar since 1990, the Washington State Bar Association since 2003, and The State Bar of California since 1975; partner, Samuels Yoelin Kantor LLP, Portland.
- CRAIG COWLEY**, B.A., Raymond College, University of the Pacific (1973); J.D., University of Oregon School of Law (1980); member of the Oregon State Bar since 1985 and the Washington State Bar Association since 1990; of counsel, Gevurtz Menashe, Portland.
- HON. JOEL DEVORE**, B.A., Antioch College (1974); J.D., University of Oregon School of Law (1982); member of the Oregon State Bar since 1982; Judge, Oregon Court of Appeals.
- BRUCE C. HAMLIN**, B.A. (*cum laude*), Whitman College (1976); J.D., University of Oregon School of Law (1979); member of the Oregon State Bar since 1979; partner, Martin Bischoff Templeton Langslet & Hoffman, LLP, Portland.
- RICHARD F. LIEBMAN**, B.A., University of California, Berkeley, (1969); J.D., Boalt Hall School of Law, University of California (1972); member of the Hawaii State Bar Association since 1972, the Oregon State Bar since 1976, and the Washington State Bar Association since 2009; partner, Barran Liebman LLP, Portland.
- LISA J. LUDWIG**, B.A., University of Oregon (1991); J.D., Willamette University College Of Law (1995); member of the Oregon State Bar since 1995; sole practitioner, Portland.
- ROBERT J. MCGAUGHEY**, B.S.E.E., Lowell Technological Institute (1971); M.A. (Urban Studies), J.D., University of Akron (1975, 1980); member of the Oregon State Bar since 1980 and the Washington State Bar Association since 1985; owner, Law Office of Robert J. McGaughey, Portland.
- ALAN L. MITCHELL**, B.A., Miami University (1975); J.D., Lewis & Clark Law School (1996); member of the Oregon State Bar since 1996 and the Washington State Bar Association since 2005; owner, Mitchell Law Office, LLC, Portland.
- PHILLIP C. QUERIN**, B.S., University of Oregon (1968); J.D., University of Oregon School of Law (1971); member of the Oregon State Bar since 1972; owner, Querin Law, LLC Portland and Bend.
- SEAN PATRICK RAY**, B.S., University of Portland, (2001); J.D., University of Oregon Law School (2007); member of the Oregon State Bar since 2007 and the Washington State Bar Association since 2014; associate, Barran Liebman LLP, Portland.
- JANET SCHROER**, B.A., Bowling Green University (1978); J.D., University of Oregon Law School (1981); member of the Oregon State Bar since 1981; partner, Hart Wagner LLP, Portland.
- RICHARD A. SLOTTEE**, B.S., J.D., University of Oregon (1969, 1972); member of the Oregon State Bar since 1972; director, Lewis and Clark Legal Clinic; professor, Lewis & Clark Law School, Portland.
- BRENT G. SUMMERS**, B.S., University of Oregon (1978); J.D., University of Oregon (1982); member of the Oregon State Bar since 1982; partner, Tarlow Naito & Summers LLP, Portland.

TABLE OF CONTENTS

1	<i>Alternative Dispute Resolution</i>	Gavin W. Bruce
2	<i>Civil Procedure and Litigation</i>	Lindsey H. Hughes Elizabeth C. Knight Samuel T. Smith
3	<i>Criminal Law</i>	Erin K. Olson Patrick Ebbett Bronson James Amy Baggio
4	<i>Family and Juvenile</i>	Jessica Flint Nigel Vanderford Alex Sutton Mark Johnson Roberts Craig Cowley
5	<i>Appellate Practice and Procedure; Writs</i>	Matt Kalmanson Patrick Ebbett
6	<i>Elder Law; Survival of Actions; Decedents' Estates; Trusts</i>	Ian T. Richardson Timothy J. Wachter Michael A. Schmidt
7	<i>Personal Injury and Property Damage</i>	Bruce C. Hamlin Michael A. Yoshida Thomas W. Purcell Derek J. Ashton Victoria D. Blachly Benjamin Souede Craig J. Dorsay
8	<i>Employment Law and Civil Rights</i>	José Klein
9	<i>Business Organizations</i>	Melvin Oden-Orr Lisa Poplawski
10	<i>Business Litigation</i>	Keil Mueller Paul H. Trincherro

11	<i>Debtor-Creditor Issues; Unclaimed Property; Secured Transactions; Creditors' Rights in Bankruptcy</i>	Brent G. Summers
12	<i>Consumer Law</i>	Todd A. Struble
13	<i>Residential Trust Deeds and Mortgages; Foreclosure</i>	Pilar C. French
14	<i>Issues Arising under Contracts and Articles 2, 3, and 4 of the Uniform Commercial Code</i>	Jessica A. Rogers Brent G. Summers
15	<i>Real Estate and Landlord-Tenant Law</i>	Blake J. Robinson
16	<i>Insurance</i>	Michael J. Walker
17	<i>Construction Law</i>	Pete Viteznik Doug Gallagher Alan L. Mitchell
18	<i>Judgments and Liens</i>	Brent G. Summers

Table of Statutes and Rules

Table of Cases

Subject Index

Chapter 1

ALTERNATIVE DISPUTE RESOLUTION

GAVIN W. BRUCE, B.A., Robert D. Clark Honors College, University of Oregon (2008); J.D., Boston College School of Law (2011); member of the Oregon State Bar since 2011; associate, Lindsay Hart LLP, Portland.

§ 1.1	INTRODUCTION	1-2
§ 1.2	OREGON REVISED UNIFORM ARBITRATION ACT, ORS 36.600–36.740	1-2
§ 1.2A	Time to Commence	1-2
§ 1.2B	Compelling Arbitration Pursuant to Agreement	1-3
§ 1.2C	Ambiguous Arbitration Clause	1-3
§ 1.2D	Stay of Judicial Proceeding	1-3
§ 1.2E	Subpoena of Witnesses and Evidence	1-3
§ 1.2F	Modifying or Correcting Award	1-3
§ 1.2G	Confirming the Arbitrator’s Award	1-3
§ 1.2G(1)	Time for Confirming Award	1-3
§ 1.2G(2)	Confirming Order	1-3
§ 1.2H	Challenging the Award	1-4
§ 1.2I	Judgment	1-4
§ 1.2J	Appeal	1-4
§ 1.3	MANDATORY COURT ARBITRATION PROGRAM, ORS 36.400–36.425	1-4
§ 1.3A	Applicable Rules	1-4
§ 1.3B	When a Case May Be Transferred to Arbitration	1-4
§ 1.3C	Motions Pending When Case Is Referred to Arbitrator	1-5
§ 1.3D	Exemption from Arbitration	1-5
§ 1.3E	Appointment of Arbitrator	1-5
§ 1.3F	Arbitrator’s Fee	1-5
§ 1.3G	Scheduling the Hearing; Postponements	1-5
§ 1.3H	Prehearing Statement of Proof	1-6
§ 1.3I	Court Clerk Must Post Notice of Arbitration Hearing	1-6
§ 1.3J	Documents Admissible at Hearing	1-6
§ 1.3K	Awards in Mandatory Court Arbitration Programs	1-6

Chapter 1 / Alternative Dispute Resolution

§ 1.3K(1)	Time for Filing the Award	1-6
§ 1.3K(2)	Challenge to the Award: Request for Trial <i>De Novo</i>	1-6
§ 1.3K(3)	Entry of Judgment; Appeal	1-7
§ 1.3K(4)	Dissolution Cases	1-7
§ 1.3K(5)	Attorney Fees and Costs.....	1-7
§ 1.3K(5)(a)	Procedure if Attorney Fees and Costs Are to Be Awarded.....	1-7
§ 1.3K(5)(b)	Exceptions to Award or Denial of Attorney Fees and Costs.....	1-7
§ 1.4	COURT MEDIATION PROGRAM, ORS 36.185–36.210	1-8
§ 1.4A	Referral of Civil Action to Mediation	1-8
§ 1.4B	Stipulation to Mediate	1-8
§ 1.4C	Tolling Period during Mediation.....	1-8
§ 1.4D	Postmediation	1-8
§ 1.4E	Court’s Jurisdiction during Mediation	1-8
§ 1.4F	References	1-8

§ 1.1 INTRODUCTION

This chapter discusses time limitations pertaining to the Oregon Revised Uniform Arbitration Act (ORS 36.600–36.740), Oregon’s mandatory court arbitration program (ORS 36.400–36.425), and civil cases that are referred to mediation under ORS 36.185 to 36.205. *See generally Arbitration and Mediation* (Oregon CLE 1996 & Supp 2008).

NOTE: Chapter 13 of the Uniform Trial Court Rules applies only to arbitration under ORS 36.400 to 36.425, the mandatory court arbitration program.

§ 1.2 OREGON REVISED UNIFORM ARBITRATION ACT, ORS 36.600–36.740

§ 1.2A Time to Commence

The applicable time limitation to commence an arbitration proceeding pursuant to the Oregon Revised Uniform Arbitration Act is the same as would be applicable to commence a lawsuit, unless the parties have agreed to a longer or shorter time period to do so.

§ 1.2B Compelling Arbitration Pursuant to Agreement

If a party to an agreement to arbitrate refuses to arbitrate pursuant to the agreement, the other party may petition the circuit court for an order compelling the arbitration. ORS 36.625(1).

§ 1.2C Ambiguous Arbitration Clause

If an arbitration clause is ambiguous regarding whether arbitration is binding or a condition precedent to filing suit, courts will apply the presumption in favor of binding arbitration to resolve the ambiguity. *Gemstone Builders, Inc. v. Stutz*, 245 Or App 91, 95–99, 261 P3d 64 (2011).

§ 1.2D Stay of Judicial Proceeding

“If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.” ORS 36.625(7).

§ 1.2E Subpoena of Witnesses and Evidence

“An arbitrator or an attorney for any party to the arbitration proceeding may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing.” ORS 36.675(1). “A subpoena must be served in the manner for service of subpoenas under ORCP 55 D.” ORS 36.675(1).

§ 1.2F Modifying or Correcting Award

“Upon request by a party to an arbitration proceeding, an arbitrator may modify or correct an award.” ORS 36.690(1). Such request “must be made and notice given to all parties within 20 days after the requesting party receives notice of the award.” ORS 36.690(2). Objections to the request to modify or correct the award must be made within 10 days after receipt of the request to modify or correct the award. ORS 36.690(3).

§ 1.2G Confirming the Arbitrator’s Award

§ 1.2G(1) Time for Confirming Award

The Oregon Revised Uniform Arbitration Act contains no limitation period for confirming an arbitration award. A prevailing party may file and serve a petition for an order confirming the award. ORS 36.700(1), ORS 36.615(1). “The party filing the petition must serve a copy of the petition on all other parties to the proceedings.” ORS 36.700(1). *See* § 1.2G(2) (confirming order).

§ 1.2G(2) Confirming Order

The court must issue a confirming order within 20 days after the petition for an order confirming the award is served on the other parties to the arbitration proceedings, unless a party requests that the arbitrator modify the award or petitions the court to vacate the award (*see* § 1.2H). ORS 36.700(1). *See* § 1.2I (entry of judgment).

§ 1.2H Challenging the Award

A party to an arbitration proceeding may petition the court to vacate the award made in the arbitration proceeding. ORS 36.700(1)(b). The grounds for vacating an arbitration award are set forth in ORS 36.705(1).

Except for a petition alleging that the award was “procured by corruption, fraud or other undue means,” a petition to vacate an award must be filed within 20 days after the petitioner is served with a petition for an order confirming the arbitration award. ORS 36.700(1), ORS 36.705(2).

If the petitioner alleges that the award was procured by fraud, corruption, or “other undue means,” the petitioner must file the petition “within 90 days after the grounds for challenging the award are known or, by the exercise of reasonable care, would have been known by the petitioner.” ORS 36.705(2).

§ 1.2I Judgment

“Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity with the order.” ORS 36.715(1).

§ 1.2J Appeal

An appeal may be taken from an order denying a petition to compel arbitration, an order granting a petition to stay arbitration, or a judgment entered pursuant to the Oregon Revised Uniform Arbitration Act (ORS 36.600–36.740). ORS 36.730(1). An appeal must be taken as provided in ORS chapter 19; namely, a notice of appeal must be served and filed within 30 days after the order or judgment is entered in the trial court register. ORS 36.730(2), ORS 19.255; *Snider v. Prod. Chem. Mfg., Inc.*, 221 Or App 593, 600, 191 P3d 691 (2008), *aff’d*, 348 Or 257, 230 P3d 1 (2010) (“an appeal from an order denying a petition to compel arbitration, should a party choose to pursue one, must be commenced within 30 days after the order is entered in the trial court register”).

§ 1.3 MANDATORY COURT ARBITRATION PROGRAM, ORS 36.400–36.425

§ 1.3A Applicable Rules

The Oregon Rules of Civil Procedure (ORCP) apply until a case is referred to an arbitrator. UTCR 13.040(1)–(2). After a case is referred to arbitration under ORS 36.400 to 36.425, the procedure is governed by UTCR chapter 13 and supplementary local rules, unless those rules provide that the ORCPs apply.

§ 1.3B When a Case May Be Transferred to Arbitration

Except by court order, a case will not be transferred to arbitration within 63 days of the set trial date. UTCR 13.050(1). A court order is not necessary if the parties stipulate to an arbitrator and a hearing date at least 28 days before the scheduled trial date. UTCR 13.050(2).

§ 1.3C Motions Pending When Case Is Referred to Arbitrator

Once a case is referred to an arbitrator, all pending motions against the pleadings and any pretrial motions not then resolved will be submitted to, and determined by, the arbitrator only. UTCR 13.040(3). The arbitrator's determination of those motions, however, will apply only during the arbitration proceeding. UTCR 13.040(3).

§ 1.3D Exemption from Arbitration

After notification by the court that the case is transferred to arbitration, any party may seek an exemption from arbitration by filing and serving a motion within 14 days after such notification. UTCR 13.070.

§ 1.3E Appointment of Arbitrator

If the parties have not selected an arbitrator by stipulation, an arbitrator will be assigned within 21 days after a case is assigned to arbitration. UTCR 13.080(3).

§ 1.3F Arbitrator's Fee

Each party to an arbitration proceeding under ORS 36.400 to 36.425 must pay his or her share of the arbitrator's fee. ORS 36.400(4). "Within 14 days of the appointment of the arbitrator, each party must tender to the arbitrator a pro rata share of the preliminary payment for the arbitrator." UTCR 13.120(2).

"Relief from the payment of arbitration fees, in whole or in part, as provided for in ORS 36.420(3), must be applied for immediately upon a case or a small claim becoming eligible for arbitration." UTCR 13.120(3).

§ 1.3G Scheduling the Hearing; Postponements

The arbitrator will set the place, time, and date of the hearing. Except on a showing of good cause, the arbitration hearing "must be scheduled to take place not sooner than 14 days, or later than 49 days, from the date of assignment of the case to the arbitrator." UTCR 13.160(3).

"At least five days before the date set for an arbitration hearing, the arbitrator shall notify the clerk of the court of the time and place of the hearing." ORS 36.420(1). *See* § 1.3I.

The parties may stipulate to a postponement or continuance, but only with the arbitrator's permission. Any postponement or continuance must be within the 49-day period, unless the presiding judge approves a postponement or continuance beyond the 49-day period. UTCR 13.160(3).

NOTE: The lawyer should check supplementary local rules because a court may adopt a rule establishing a different deadline and continuance process. UTCR 13.160(1) ("A court may adopt a supplementary local rule establishing a deadline for the arbitration hearing and a process for obtaining a postponement or continuance."). However, "[a] supplementary local rule may not allow the arbitration process to extend more than six

months from the date the case is assigned to an arbitrator.” UTCR 13.160(1).

In the absence of a governing supplementary local rule, the requirements set forth in UTCR 13.160 apply. UTCR 13.160(2).

§ 1.3H Prehearing Statement of Proof

A prehearing statement of proof, including exhibit lists, witness lists, pleadings, and other relevant documents in the court file must be submitted to the arbitrator at least 14 days before the arbitration hearing. UTCR 13.170(1), (3). *See* UTCR 13.190(1); *see also* § 1.3J.

§ 1.3I Court Clerk Must Post Notice of Arbitration Hearing

As mentioned in § 1.3G, at least five days before the hearing, the arbitrator must notify the court clerk of the time and place of the arbitration hearing. The clerk must then post this information “in a conspicuous place for trial notices at the principal location for the sitting of the court in the county in which the action was commenced.” ORS 36.420(1).

§ 1.3J Documents Admissible at Hearing

Certain documents are admissible at the arbitration hearing only if the party offering the document (1) “has included in the prehearing statement of proof a description of the document and the name, address and telephone number of its author or maker, at least 14 days prior to the hearing” (*see* § 1.3H) and (2) “promptly has made available, after request, to all other parties, all other documents from the same author or maker.” UTCR 13.190(1).

§ 1.3K Awards in Mandatory Court Arbitration Programs

§ 1.3K(1) Time for Filing the Award

For all cases except dissolution cases, the arbitrator must file the award with the trial court administrator within 14 days after the completion of the arbitration hearing. The arbitrator must file the award in a dissolution case within 21 days after completion of the hearing. UTCR 13.220(1). *See* § 1.3K(2) regarding requesting a *de novo* hearing.

NOTE: Before the arbitrator files the award with the court, the arbitrator must send the award to the parties and “establish procedures for determining attorney fees and costs.” UTCR 13.210(5). *See* § 1.3K(5)(a).

§ 1.3K(2) Challenge to the Award: Request for Trial *De Novo*

A party may file a notice of appeal and request for a trial *de novo* to challenge the arbitrator’s award. The notice of appeal and request for a trial *de novo*, which must be in writing, must be filed with the trial court administrator within 20 days after the filing of the arbitrator’s decision and award. ORS 36.425(2); UTCR 13.250. If no request for a trial *de novo* is filed within the 20-

day period, the court will enter a judgment based on the arbitrator's decision and award. ORS 36.425(3); UTCR 13.240. *See* § 1.3K(3).

See § 1.3K(5)(b) regarding filing "written exceptions directed solely to the award or denial of attorney fees or costs." ORS 36.425(6).

NOTE: If two or more cases were consolidated for arbitration, and a party has filed an appeal from the arbitration award in one or more of the consolidated cases, any other qualifying party may file a request for a trial *de novo* "within 20 days from the filing of the arbitration award or within two judicial days after the service of the initial written request for trial *de novo*, notwithstanding the lapse of 20 days from the filing of the arbitration award." UTCR 13.250(2)(b).

§ 1.3K(3) Entry of Judgment; Appeal

If no written notice of appeal and request for a trial *de novo* is filed within 20 days after the filing of the decision and award (*see* § 1.3K(2)), the clerk of the court must enter the arbitration decision and award. After entry of the arbitrator's award as a final judgment, it may not be appealed. ORS 36.425(3); UTCR 13.240.

§ 1.3K(4) Dissolution Cases

In a dissolution case, the arbitrator must send the award to the parties within seven days after the hearing and must give the parties an opportunity to be heard on the form of the judgment. UTCR 13.210(6).

§ 1.3K(5) Attorney Fees and Costs

§ 1.3K(5)(a) Procedure if Attorney Fees and Costs Are to Be Awarded

If the arbitrator awards costs and attorney fees, the arbitrator must send the award to the parties within seven days after the arbitration hearing, without filing the award with the court, and must establish procedures for determining amounts of attorney fees and costs. UTCR 13.210(5).

§ 1.3K(5)(b) Exceptions to Award or Denial of Attorney Fees and Costs

A party who is not satisfied with an award or denial of attorney fees and costs in an arbitration proceeding may file exceptions to such award or denial. The exceptions, which must be in writing, must be filed with the court and served on the other parties within seven days after the filing of the arbitration decision and award. A party opposing the exceptions must file and serve a written response within seven days after the exceptions are served. If the court fails to enter a decision on the award within 20 days after the exceptions are filed, the award of attorney fees and costs is deemed affirmed. ORS 36.425(6).

§ 1.4 COURT MEDIATION PROGRAM, ORS 36.185–36.210

§ 1.4A Referral of Civil Action to Mediation

After the appearance of all parties in a civil action (except for proceedings involving the prevention of abuse or sexual abuse), a circuit court judge may refer the civil dispute to mediation. ORS 36.185.

PRACTICE TIP: Lawyers should review the supplementary local rules of the court in the county in which the case is filed for additional information regarding that court's mediation program.

§ 1.4B Stipulation to Mediate

At any time before trial, the parties to a civil action may elect to mediate their dispute by filing a written stipulation of all parties. ORS 36.190(1).

§ 1.4C Tolling Period during Mediation

All trial and discovery time lines, schedules, and requirements are tolled and stayed as to the participants during the period of any referred or elected mediation. Tolling commences on the date of referral or election to mediate and ends on the date that either the mediator notifies the court in writing of the termination of the mediation or a party requests that the case be returned to the court docket. During the tolling period, the judge still has discretion to adhere to preexisting pretrial order dates, trial dates, or dates relating to temporary relief. ORS 36.190(3).

§ 1.4D Postmediation

Within 10 judicial days after the completion of mediation, the mediator must “notify the court whether an agreement has been reached by the parties.” ORS 36.195(5). If the parties do not reach agreement, the action proceeds in the normal fashion on either an expedited or regular pretrial list. ORS 36.195(5).

§ 1.4E Court's Jurisdiction during Mediation

The court retains jurisdiction of a case during mediation even though court time lines and schedules are stayed. ORS 36.195(6).

NOTE: When parties elect to use private mediation (i.e., their case was not referred to mediation by the court or they did not stipulate to mediation pursuant to ORS 36.190(1)), discovery and trial deadlines are not tolled or stayed.

§ 1.4F References

See generally Arbitration and Mediation (Oregon CLE 1996 & Supp 2008).

Chapter 2

CIVIL PROCEDURE AND LITIGATION

LINDSEY H. HUGHES, B.A., University of Idaho (1978); J.D. (*cum laude*), Willamette University College of Law (1981); member of the Oregon State Bar since 1983; shareholder, Keating Jones Hughes, P.C., Portland.

ELIZABETH C. KNIGHT, B.A. (*cum laude*), University of Colorado (1992); J.D., University of Oregon School of Law (1999); member of the Oregon State Bar since 1999 and the Washington State Bar Association since 2000; partner, Dunn Carney Allen Higgins & Tongue, LLP, Portland.

SAMUEL T. SMITH, B.A. (*magna cum laude*), Willamette University (2002); J.D., University of Oregon School of Law (2008); member of the Oregon State Bar since 2008; attorney, Dunn Carney Allen Higgins & Tongue, Portland.

§ 2.1	ACTIONS.....	2-9
§ 2.1A	When an Action Is Commenced	2-9
§ 2.1A(1)	In General.....	2-9
§ 2.1A(2)	Commencement of an Action for Purposes of a Statute of Limitations.....	2-10
§ 2.1A(3)	Oregon Tort Claims Act (Minor Children).....	2-10
§ 2.1B	Stay.....	2-11
§ 2.2	CIVIL PROCEDURE.....	2-11
§ 2.2A	Time for Filing Pleadings and Motions	2-11
§ 2.2A(1)	Responsive Pleadings and Motions.....	2-11
§ 2.2A(2)	Pleading after Motion; Amended Pleadings	2-12
§ 2.2A(2)(a)	Pleading after Motion.....	2-12
§ 2.2A(2)(b)	Amended Pleadings.....	2-12
§ 2.2B	Court May Enlarge Time to Plead or Do Other Act	2-12
§ 2.2C	Computation of Time after Service of Document by Mail	2-12
§ 2.2D	Motions.....	2-12
§ 2.2D(1)	Request for Oral Argument on Motions	2-13
§ 2.2D(2)	Time for Filing Motion	2-13
§ 2.2D(2)(a)	Motion to Disqualify a Judge (Recusal)	2-13
§ 2.2D(2)(b)	Motion to Dismiss.....	2-13
§ 2.2D(2)(c)	Motion for Judgment on the Pleadings	2-14
§ 2.2D(2)(d)	Motion to Make More Definite and Certain	2-14

Chapter 2 / Civil Procedure and Litigation

§ 2.2D(2)(e)	Motion to Strike	2-14
§ 2.2D(2)(f)	Motion to Intervene.....	2-14
§ 2.2D(2)(g)	Motion for Summary Judgment	2-14
§ 2.2D(2)(h)	Motion for a Preliminary Injunction or a Temporary Restraining Order	2-15
§ 2.2D(3)	Time for Filing Response or Reply to Motion	2-15
§ 2.2D(3)(a)	Motion for Summary Judgment	2-15
§ 2.2D(3)(b)	Other Motions	2-15
§ 2.2E	Receivers	2-15
§ 2.2E(1)	Appointment of Receiver	2-15
§ 2.2E(2)	Termination of Receivership.....	2-16
§ 2.2E(3)	Receivership Hearings.....	2-16
§ 2.2F	Third-Party Practice	2-16
§ 2.2G	Substitution of Parties on a Party’s Death or Disability	2-16
§ 2.2G(1)	Death of the Plaintiff.....	2-16
§ 2.2G(2)	Death of the Defendant	2-16
§ 2.2G(3)	Disability of a Party.....	2-17
§ 2.2G(4)	Death of a Party Who Is a Public Officer	2-17
§ 2.2H	Dismissal before Trial	2-17
§ 2.2H(1)	Voluntary Dismissal.....	2-17
§ 2.2H(2)	Involuntary Dismissal for Lack of Prosecution	2-17
§ 2.2H(2)(a)	Dismissal for Incomplete Service	2-17
§ 2.2H(2)(b)	Dismissal Because of Nonappearing Defendants ...	2-18
§ 2.2I	Wrongful Use of Civil Proceeding.....	2-18
§ 2.2J	References	2-18
§ 2.3	COMPUTATION OF TIME PERIODS.....	2-18
§ 2.3A	Method of Computation	2-18
§ 2.3B	Computation of Time under ORCP 10.....	2-19
§ 2.3C	Computation of Time under ORS 174.120	2-20
§ 2.3C(1)	Civil and Criminal Procedure Statutes.....	2-20
§ 2.3C(2)	Act to Be Performed in an Oregon State Court.....	2-20
§ 2.3D	Leap Year	2-21
§ 2.3E	Application and Case Law	2-21
§ 2.3F	Oregon Tort Claims Act.....	2-22

§ 2.3G Computation of Time Period for Personal Service 2-22

 § 2.3G(1) Service at Closed Public Office—ORS 174.125 2-22

 § 2.3G(2) Service by Mail, Fax, or E-Mail 2-22

§ 2.3H Legal Holidays—ORS 187.010(3)..... 2-23

§ 2.3I Other Units of Time 2-23

 § 2.3I(1) General Rule..... 2-23

 § 2.3I(2) Month..... 2-23

 § 2.3I(3) Year 2-23

§ 2.3J References 2-24

§ 2.4 JUSTICE COURTS..... 2-24

 § 2.4A Rules and Procedures in General 2-24

 § 2.4B Time for Defendant to Appear 2-24

 § 2.4C Counterclaims Exceeding Jurisdictional Limits of Justice Court..... 2-24

 § 2.4D Dismissal for Lack of Prosecution 2-24

 § 2.4E Trial Fee 2-25

 § 2.4F Change of Venue..... 2-25

 § 2.4G Judgments..... 2-25

 § 2.4H Appeals..... 2-25

 § 2.4I References 2-26

§ 2.5 SMALL CLAIMS IN CIRCUIT COURT..... 2-26

 § 2.5A Commencement of Action 2-26

 § 2.5B Defendant’s Response 2-26

 § 2.5C Procedure When Defendant Demands a Jury Trial..... 2-27

 § 2.5D Procedure When Counterclaim Exceeds Jurisdictional Amount..... 2-27

 § 2.5E Setting Aside Default Judgment or Dismissal 2-27

 § 2.5F Judgment 2-27

 § 2.5F(1) Judgment of Less Than \$3,000 2-27

 § 2.5F(2) Judgment of \$3,000 or More..... 2-27

 § 2.5F(3) Judgment Lien..... 2-27

 § 2.5G No Appeal 2-28

 § 2.5H References 2-28

§ 2.6 STATUTES OF LIMITATIONS 2-28

Chapter 2 / Civil Procedure and Litigation

§ 2.6A	Defenses—Avoiding Application of the Statute of Limitations.....	2-28
§ 2.6A(1)	Affirmative Defense.....	2-28
§ 2.6A(2)	Waiver of Statute of Limitations.....	2-28
§ 2.6A(3)	Estoppel.....	2-29
§ 2.6A(3)(a)	Requirements of Estoppel Defense in General.....	2-29
§ 2.6A(3)(b)	Affirmative Inducement.....	2-29
§ 2.6A(4)	Wrongful Concealment.....	2-30
§ 2.6A(5)	Relation-Back Doctrine.....	2-30
§ 2.6A(6)	Counterclaims.....	2-31
§ 2.6A(7)	Refiling on Dismissal Permitted in Some Circumstances.....	2-32
§ 2.6A(8)	References.....	2-32
§ 2.6B	Tolling the Statute of Limitations.....	2-32
§ 2.6B(1)	Minors; Personal Disabilities.....	2-32
§ 2.6B(1)(a)	General Rule.....	2-32
§ 2.6B(1)(b)	Applicability of the Minority-Tolling Statute to the Oregon Tort Claims Act.....	2-33
§ 2.6B(2)	Death of a Party.....	2-34
§ 2.6B(2)(a)	Death of Plaintiff.....	2-34
§ 2.6B(2)(b)	Death of Defendant.....	2-34
§ 2.6B(3)	Absence or Concealment of Defendant.....	2-34
§ 2.6C	Advance Payments for Death, Injury, or Property Damage.....	2-35
§ 2.6C(1)	Notice of Expiration of Limitations Period.....	2-35
§ 2.6C(2)	Person Defined.....	2-35
§ 2.6C(3)	Advance Payment to Minor.....	2-36
§ 2.6D	Court Actions.....	2-36
§ 2.6D(1)	Limitations Period When Action Is Stayed by Injunction or Statutory Prohibition.....	2-36
§ 2.6D(2)	Extension of Limitations Period for Trustee on Debtor’s Bankruptcy or Debtor’s Action.....	2-36
§ 2.6D(3)	Bankruptcy Creditor’s Action.....	2-36
§ 2.6E	Effect of Involuntary Dismissal on Statute of Limitations.....	2-37
§ 2.7	STATUTES OF ULTIMATE REPOSE.....	2-37
§ 2.7A	Period of Ultimate Repose Is Absolute.....	2-37

§ 2.7B	When a Statute of Ultimate Repose Begins to Run	2-38
§ 2.7C	Statutory Construction.....	2-38
§ 2.7D	Specific Statutes of Ultimate Repose.....	2-38
§ 2.7E	Discovery of Defect after Expiration of Repose Period	2-38
§ 2.7F	Equitable Estoppel.....	2-39
§ 2.7G	Effect of Minority or Insanity	2-39
§ 2.7G(1)	Minority or Insanity Does Not Toll Statutes of Ultimate Repose	2-39
§ 2.7G(1)(a)	Minor’s Action for Personal Injury.....	2-39
§ 2.7G(1)(b)	Minor’s Action for Medical Malpractice.....	2-40
§ 2.7G(1)(c)	Child Abuse.....	2-40
§ 2.7G(2)	Advance Payment to Minor or Insane Person without Notice of Expiration of Limitations Period.....	2-40
§ 2.8	COMMENCING A NEW ACTION AFTER INVOLUNTARY DISMISSAL	2-40
§ 2.8A	General Rules	2-41
§ 2.8A(1)	Plaintiff May Refile an Action That Was Involuntarily Dismissed	2-41
§ 2.8A(2)	New Action Must Be Filed Within 180 Days.....	2-41
§ 2.8A(3)	Statute Does Not Apply to a New Cause of Action.....	2-41
§ 2.8A(4)	Only One Refiling Is Permitted	2-42
§ 2.8A(5)	Defenses in New Action.....	2-42
§ 2.8B	Application of the Rules.....	2-42
§ 2.8B(1)	Statute Does Not Apply to Voluntary Dismissals.....	2-42
§ 2.8B(2)	Lack of Prosecution.....	2-42
§ 2.8B(3)	Failure to Retain Counsel.....	2-43
§ 2.8B(4)	Lack of Jurisdiction in Original Case	2-43
§ 2.8B(5)	Dismissal or Reversal on Appeal	2-43
§ 2.8C	References	2-43
§ 2.9	DISCOVERY—PRETRIAL	2-43
§ 2.9A	Depositions.....	2-43
§ 2.9A(1)	When Deposition May Be Taken; Notice	2-43
§ 2.9A(2)	Transcription or Recording of Deposition	2-44
§ 2.9A(2)(a)	Submission of Transcription or Recording to Witness.....	2-44

Chapter 2 / Civil Procedure and Litigation

§ 2.9A(2)(b)	Corrections to Deposition Transcript or Recording	2-44
§ 2.9A(3)	Objections to Deposition	2-44
§ 2.9A(4)	Perpetuation of Testimony	2-44
§ 2.9A(5)	Written Depositions	2-45
§ 2.9B	Production of Documents	2-45
§ 2.9C	Production of Individually Identifiable Health Information	2-46
§ 2.9D	Requests for Admissions; Response	2-46
§ 2.9E	References	2-47
§ 2.10	DECLARATORY JUDGMENTS	2-47
§ 2.10A	In General	2-47
§ 2.10B	Challenges to the Election Process	2-47
§ 2.10C	Appeal	2-47
§ 2.10D	References	2-47
§ 2.11	COUNTERCLAIMS, RECOUPMENT, AND SETOFF	2-48
§ 2.11A	Counterclaims	2-48
§ 2.11B	Recoupment	2-48
§ 2.11C	Setoff	2-48
§ 2.11D	References	2-48
§ 2.12	SUMMARY JUDGMENT	2-48
§ 2.12A	Motion for Summary Judgment	2-48
§ 2.12B	Opposing Affidavits; Reply	2-49
§ 2.12C	Multiple Parties or Claims	2-49
§ 2.12D	References	2-49
§ 2.13	UNIFORM TRIAL COURT RULES	2-49
§ 2.13A	Applicability of UTCRs	2-49
§ 2.13B	Matters under Advisement	2-50
§ 2.13C	Appointment or Substitution of Counsel	2-50
§ 2.13C(1)	Substitution of Counsel	2-50
§ 2.13C(2)	Appointment of Counsel	2-50
§ 2.13C(3)	Out-of-State Counsel	2-50
§ 2.13D	Civil Proceedings	2-50
§ 2.13D(1)	Written Communications Made to Court	2-50
§ 2.13D(2)	Conferring on Motions	2-51

§ 2.13D(3) Response and Reply	2-51
§ 2.13D(3)(a) Oral Argument	2-51
§ 2.13D(3)(b) Oral Argument by Telephone	2-51
§ 2.13D(4) Stipulated and <i>Ex Parte</i> Matters	2-51
§ 2.13D(5) Court Notification on Settlement	2-52
§ 2.13D(6) Postponement of Trial	2-52
§ 2.13D(7) Notice to Court of Disputed Water Right	2-52
§ 2.13E Interstate Deposition Instruments	2-52
§ 2.13F Filings with the Court.....	2-52
§ 2.13F(1) Trial Memoranda.....	2-52
§ 2.13F(2) Proposed Orders or Judgments	2-52
§ 2.13F(2)(a) Submission of Proposed Orders or Judgments	2-52
§ 2.13F(2)(b) Proposed Judgment Containing an Award of Punitive Damages	2-53
§ 2.13F(3) Notice of Judgment or Verdict Containing an Award of Punitive Damages	2-53
§ 2.13F(4) Jury Instructions	2-53
§ 2.13F(5) Exhibits	2-53
§ 2.13F(6) Hazardous Substances.....	2-54
§ 2.13G Waiver of Jury: Civil.....	2-54
§ 2.13H Case Management and Calendaring.....	2-54
§ 2.13H(1) Filing of Return or Acceptance of Service.....	2-54
§ 2.13H(2) Defendant’s Failure to Appear	2-55
§ 2.13H(3) When Case Will Be Deemed at Issue	2-55
§ 2.13H(4) Setting Trial Date	2-55
§ 2.13H(5) Complex Cases.....	2-55
§ 2.13H(6) Court Notification of Settlement or Resolution of Matter	2-55
§ 2.13H(7) Bankruptcy Stay	2-55
§ 2.13H(8) ADA Accommodations; Foreign-Language Interpreters	2-56
§ 2.13I Proceedings Relating to Motor Vehicle Laws	2-56
§ 2.13J Segregation of Protected Personal Information	2-57
§ 2.13J(1) Filing New Documents	2-57
§ 2.13J(2) Information That Already Exists in a Court File	2-57

Chapter 2 / Civil Procedure and Litigation

§ 2.13J(3)	Family Law Cases	2-57
§ 2.13K	Electronically Filed Documents	2-57
§ 2.13K(1)	Filing Fees	2-57
§ 2.13K(2)	When Electronic Filing Is Accomplished	2-57
§ 2.13K(3)	Courtesy Copies of Electronically Filed Document	2-57
§ 2.13K(4)	Electronic Filing Deadline	2-57
§ 2.13K(5)	When More Than One Party Joins in Filing a Document Electronically	2-58
§ 2.13K(6)	Retention of Electronically Filed Documents	2-58
§ 2.13L	Resources	2-58
§ 2.14	JUDGMENTS	2-58
§ 2.14A	Default Judgment	2-58
§ 2.14A(1)	Notice of Intent to Apply for an Order of Default	2-58
§ 2.14A(2)	Default Judgment against Nonappearing Party	2-58
§ 2.14A(3)	Motion to Set Aside Default Judgment	2-59
§ 2.14B	Relief from Judgment	2-59
§ 2.14B(1)	Grounds for Relief from Judgment	2-59
§ 2.14B(2)	Relief from Judgment Because of Excusable Neglect	2-60
§ 2.14B(3)	Void Judgments	2-60
§ 2.14B(4)	Effect of Motion on Judgment	2-61
§ 2.14B(5)	When Appeal Is Pending	2-61
§ 2.15	CONFLICT OF LAWS	2-61
§ 2.15A	Statute of Limitations	2-61
§ 2.15B	Application of the UCLLA	2-61
§ 2.15C	References	2-62
§ 2.16	ATTORNEY FEES; COSTS AND DISBURSEMENTS	2-62
§ 2.16A	Trial Court	2-62
§ 2.16A(1)	Pleadings	2-62
§ 2.16A(2)	Statement of Attorney Fees or Costs and Disbursements	2-62
§ 2.16A(3)	Objections	2-62
§ 2.16A(4)	Judgment	2-63
§ 2.16B	Appellate Court	2-63

§ 2.16B(1) Statement of Costs and Disbursements; Petition for Attorney Fees	2-63
§ 2.16B(2) Objections and Replies.....	2-63
§ 2.16C References	2-63
§ 2.17 TRIAL PROCEEDINGS.....	2-63
§ 2.17A Jury Selection: Civil.....	2-63
§ 2.17B Special Findings	2-64
§ 2.17C Motion for Judgment N.O.V. or New Trial	2-64
§ 2.17D References	2-65
§ 2.18 GOVERNMENTAL AND PUBLIC BODIES	2-65
§ 2.18A Oregon Tort Claims Act.....	2-65
§ 2.18A(1) Notice	2-65
§ 2.18A(2) Notice in Wrongful-Death Action.....	2-66
§ 2.18A(3) Extension of Notice Period	2-66
§ 2.18A(4) When Action Must Be Commenced	2-67
§ 2.18A(4)(a) General Rule: Action Must Be Commenced Within Two Years.....	2-67
§ 2.18A(4)(b) Commencement of Action by Minor or Insane Person.....	2-67
§ 2.18A(4)(c) Exceptions to General Rule: Actions Involving Sheriff, Libel, Slander, or Unlawful Employment Practice	2-68
§ 2.18B Action Brought by a Public Body	2-68
§ 2.18C Action on a Penalty or Forfeiture.....	2-68
§ 2.18D References	2-69

§ 2.1 ACTIONS

§ 2.1A When an Action Is Commenced

§ 2.1A(1) In General

Other than for purposes of a statute of limitations (*see* ORS 12.020), an action is commenced when a complaint is filed with the clerk of the court. ORCP 3.

NOTE: ORS 12.020 is the only exception to ORCP 3.

See [§ 2.13K\(1\)](#) to [§ 2.13K\(6\)](#) regarding electronically filed documents; § 2.1A(2) regarding determining when an action is commenced for purposes of a

statute of limitations; and § 2.1A(3) regarding the commencement of an action by a minor.

§ 2.1A(2) Commencement of an Action for Purposes of a Statute of Limitations

For the purpose of determining whether an action has been commenced within the applicable statute of limitations, an action is deemed commenced as follows:

(1) If the summons is served on the defendant within 60 days after the date on which the complaint was filed, the action is deemed to have been commenced on the date that the complaint was filed. ORS 12.020(2).

(2) If the summons is not served within that 60-day period, the action is deemed to have been commenced on the date that the summons was served on the defendant. ORS 12.020(1). In such a case, the summons must be served within the applicable statute of limitations for the action to commence timely. *Johnson v. MacGregor*, 55 Or App 374, 637 P2d 1362 (1981), *rev den*, 292 Or 589 (1982); *Baker v. Kennedy*, 115 Or App 360, 362, 838 P2d 634 (1992).

NOTE: ORS 12.020 does not toll the statute of limitations. It merely provides that when a complaint is filed against a defendant within the limitations period, the summons may be served on the defendant within 60 days thereafter, even though service is beyond the limitations period. *Johnson*, 55 Or App at 376 n 2.

NOTE: ORS 12.020 is both a procedural rule and a substantive rule. The 60-day limitation of ORS 12.020 does not apply to causes of action based on federal law brought in state court (e.g., admiralty claims under the Jones Act). *Hurley v. Shinmei Kisen K.K.*, 98 Or App 180, 184–85, 779 P2d 1041 (1989), *rev den*, 309 Or 291 (1990).

See § 2.6 to § 2.6B(3) (statutes of limitations; tolling).

§ 2.1A(3) Oregon Tort Claims Act (Minor Children)

ORS 12.160, which extends the time limit for a minor to commence an action, may not toll the two-year statute of limitations found in ORS 30.275(9) for a minor to commence a cause of action under the Oregon Tort Claims Act (OTCA). See § 7.3B for further discussion.

NOTE: If a minor has a claim against a public body, the 270-day notice period prescribed in ORS 30.275 is not tolled pending the appointment of a guardian *ad litem*. *Perez By & Through Yon v. Bay Area Hosp.*, 315 Or 474, 482–83, 846 P2d 405 (1993). See, however, ORS 30.275(8), pertaining to a claim brought by a minor against the Department of Human Services or the Oregon Youth Authority.

For further discussion of the OTCA, see § 2.18A(4)(b).

§ 2.1B Stay

“When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.” ORS 12.210.

§ 2.2 CIVIL PROCEDURE

§ 2.2A Time for Filing Pleadings and Motions

§ 2.2A(1) Responsive Pleadings and Motions

A defendant must appear and defend (i.e., file an answer or a motion) within 30 days from the date of service of a summons and complaint or a third-party complaint. ORCP 7 C(2), ORCP 15 A. See § 2.2D to § 2.2D(3)(b) regarding motions.

NOTE: Although the court may enlarge the time to plead or to do any other act (*see* § 2.2B), a motion for an extension of time under ORCP 15 D is not a “motion or answer” and does not constitute an “appearance” for purposes of preventing the entry of a default under ORCP 69 A. *Charles Schwab & Co., Inc. v. Pletz*, 95 Or App 48, 52, 768 P2d 407 (1989).

A defendant served by publication must appear and defend within 30 days of the date stated in the summons, which is the date of the first publication. ORCP 7 C(2).

NOTE: However, for good cause shown, the court may allow a defendant who was served by publication to defend after the 30-day period, even up to one year after judgment. ORCP 7 D(6)(f).

An answer to a cross-claim or a reply to a counterclaim must be filed within 30 days after the date of service of the cross-claim or counterclaim. ORCP 7 C(2), ORCP 15 A.

Any other motion or responsive pleading must be filed within 10 days after the date of service of the pleading moved against or to which the responsive pleading is directed. ORCP 15 A.

CAVEAT: The court will deny certain motions unless the moving party, before filing the motion, “makes a good faith effort to confer” with the other parties concerning the issues in dispute. UTCR 5.010(1)–(2).

See § 2.2A(2)(a) (pleading after motion) and § 2.2A(2)(b) (amended pleadings).

§ 2.2A(2) Pleading after Motion; Amended Pleadings

§ 2.2A(2)(a) Pleading after Motion

If the court denies a motion, any responsive pleading must be filed within 10 days after service of the order denying the motion, unless the order otherwise directs. ORCP 15 B(1).

If the court grants a motion and an amended pleading is allowed or required, the amended pleading must be filed within 10 days after service of the order allowing the motion, unless the court directs otherwise. ORCP 15 B(2). *See Lamka v. KeyBank*, 250 Or App 486, 493, 281 P3d 639 (2012) (an amended complaint filed after dismissal relates back under ORCP 23 C as long as the amended complaint was filed within 10 days after service of the order granting the motion).

See § 2.2A(2)(b) (amended pleadings).

§ 2.2A(2)(b) Amended Pleadings

A party may amend a pleading “once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may so amend it any time within 20 days after it is served.” ORCP 23 A.

Otherwise, a party may amend a pleading “only by leave of court or by written consent of the adverse party.” ORCP 23 A. *See* UTCR 5.070 (stating the content and format rules for a motion for leave to amend a pleading).

A response to an amended pleading must be filed “within the time remaining for response to the original pleading or within ten days after the amended pleading is served, whichever period may be longer,” unless the court directs otherwise. ORCP 15 C.

See § 2.6A(5) (relation-back doctrine).

§ 2.2B Court May Enlarge Time to Plead or Do Other Act

The court, in its discretion, and on such terms as are just, may enlarge the time or allow an answer, reply, or any other pleading or motion to be filed after the time limited by the procedural rules. ORCP 15 D; *Johnson v. Best Overhead Door, LLC*, 238 Or App 559, 242 P3d 740 (2010).

§ 2.2C Computation of Time after Service of Document by Mail

Except for service of summons, whenever a party has the right or is required to do some act within a prescribed time period after receiving service of a notice or document by mail, three days are added to the time period prescribed for performance. ORCP 10 C.

§ 2.2D Motions

A motion is not a pleading. *See* ORCP 13, ORCP 14 A; *Colwell v. Chernabaeff*, 258 Or 373, 376, 482 P2d 157 (1971).

§ 2.2D(1) Request for Oral Argument on Motions

Oral argument, if desired, must be requested in the caption of the motion or response. The first paragraph of the motion must include (1) an estimate of the time necessary for the argument and (2) “a statement whether official court reporting services are requested.” UTCR 5.050(1).

A request for oral argument by telecommunication must be in the caption of the motion or response. The conference call must be initiated and paid for by the requesting party. UTCR 5.050(2).

§ 2.2D(2) Time for Filing Motion

§ 2.2D(2)(a) Motion to Disqualify a Judge (Recusal)

A party or attorney may file a motion supported by affidavit to disqualify a judge assigned to a case on the ground that “such party or attorney cannot have a fair and impartial trial or hearing before such judge.” ORS 14.260(1).

If the judicial district has a population of 100,000 or more:

(1) An affidavit and motion to disqualify a judge must be made “at the time of the assignment of the case to a judge for trial or for hearing upon a motion or demurrer,” ORS 14.270; *see also* ORS 14.260(4);

(2) Oral notice of intent to file the motion and affidavit is sufficient if the motion and affidavit are filed no later than the close of the next judicial day, ORS 14.270; and

(3) A motion to disqualify is not permitted after the judge has ruled on any petition, demurrer, or motion, other than a motion to extend time (see exception for assignment to the presiding judge), ORS 14.270.

If the judicial district has a population of less than 100,000:

(1) In uncontested cases, the motion and affidavit may be filed at any time before final determination of the matter or proceedings, ORS 14.260(2); and

(2) In contested cases, the motion and affidavit must be filed before or within five days after the matter is at issue on a question of fact, or within 10 days after the assignment of another judge, ORS 14.260(2).

No motion to disqualify a judge may be filed more than five days after the party or attorney receives notice of the assignment of a judge to serve *pro tem* in the county. ORS 14.260(3).

Furthermore, disqualification is not permitted after the judge has ruled on any petition, demurrer, or motion (other than a motion to extend time). ORS 14.260(3).

§ 2.2D(2)(b) Motion to Dismiss

A motion to dismiss that raises any defense listed in ORCP 21 A(1) to 21 A(9) must be filed before pleading, if a further pleading is permitted. ORCP 21 A.

A defense listed in ORCP 21 A(1) to 21 A(9), whether made by motion or in a pleading, must “be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.” ORCP 21 C.

NOTE: See ORCP 21 F and ORCP 21 G regarding requirements for consolidation and preservation or waiver of certain defenses.

§ 2.2D(2)(c) Motion for Judgment on the Pleadings

Any party may move for judgment on the pleadings “[a]fter the pleadings are closed, but within such time as not to delay the trial.” ORCP 21 B.

A motion for judgment on the pleadings must “be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.” ORCP 21 C.

§ 2.2D(2)(d) Motion to Make More Definite and Certain

A motion to make more definite and certain may be filed by a party before a responsive pleading, or within 10 days after service of a pleading if no responsive pleading is permitted. ORCP 21 D.

The pleading must be amended or supplemented within 10 days after service of the order granting the motion, or the court may strike the pleading. ORCP 21 D.

§ 2.2D(2)(e) Motion to Strike

A motion to strike may be filed before a responsive pleading or, if no responsive pleading is permitted, within 10 days after service of the pleading. ORCP 21 E.

§ 2.2D(2)(f) Motion to Intervene

A motion to intervene of right may be filed at any time before trial when a statute, the Oregon Rules of Civil Procedure, or the common law confers an unconditional right to intervene. ORCP 33 B. A motion for permissive intervention may be filed at any time before trial, but approval of the motion is a matter of discretion for the court. ORCP 33 C.

A responsive pleading must be filed within 10 days after the court allows intervention. ORCP 33 D.

§ 2.2D(2)(g) Motion for Summary Judgment

A party seeking to recover on a claim, counterclaim, or cross-claim may move for summary judgment at any time after the expiration of 20 days from the commencement of the action or after service of the adverse party’s motion for summary judgment. ORCP 47 A. By contrast, the defending party may move for summary judgment at any time. ORCP 47 B. However, except as modified by court order, neither party—the claimant or the defendant—may move for summary judgment within 60 days of the date set for trial. ORCP 47 C.

See § 2.12A, to § 2.12D, for further discussion of motions for summary judgment.

§ 2.2D(2)(h) Motion for a Preliminary Injunction or a Temporary Restraining Order

A motion for a preliminary injunction or a temporary restraining order (TRO) may be made at any time after an action commences and before judgment. ORCP 79 A(2).

NOTE: ORCP 79 A(2) does not apply to TROs issued in domestic relations, elder abuse, or sexual abuse cases, or to TROs or preliminary injunctions granted under the provisional process rules of ORCP 83. ORCP 79 E.

A TRO may not remain in effect longer than 10 days unless, before the TRO expires, the court extends the time for good cause or the opposing party consents to an extension. ORCP 79 B(2)(a).

On two days' notice (or on shorter notice if ordered by the court) to the party who obtained a TRO without notice, the adverse party may appear and move for dissolution or modification of the TRO. ORCP 79 B(4).

Notice of a motion for a preliminary injunction must be given to adverse parties at least five days before the date of the hearing, unless a different time period is fixed by the court. ORCP 79 C(1).

§ 2.2D(3) Time for Filing Response or Reply to Motion

§ 2.2D(3)(a) Motion for Summary Judgment

The party opposing a motion for summary judgment has 20 days to file its response, opposing affidavits or declarations, and other supporting documents. Thereafter, the moving party has five days to file a reply. The trial court has discretion to modify these stated times. ORCP 47 C.

§ 2.2D(3)(b) Other Motions

For all motions other than a motion for summary judgment (*see* § 2.2D(3)(a)), an opposing party may file a written memorandum of authorities in response to the matters raised by the motion no later than 14 days after the date of service of the motion. UTCR 5.030(1).

A reply memorandum, if any, must be filed within seven days of the service of the responding memorandum. UTCR 5.030(2).

§ 2.2E Receivers

§ 2.2E(1) Appointment of Receiver

Notice must be given to adverse parties at least five days before the hearing regarding the appointment of a receiver, unless a different time period is fixed by the court. ORCP 80 C.

§ 2.2E(2) Termination of Receivership

A receivership may be terminated only on a motion served with at least 10 days' notice to all parties appearing in the proceeding. ORCP 80 G.

§ 2.2E(3) Receivership Hearings

Notice must be sent to all interested persons at least five days before a hearing on a motion for the appointment or discharge of a receiver, an accounting in a receivership, or the disposition of the receivership property, unless a different time period is fixed by the court. ORCP 80 F(3).

§ 2.2F Third-Party Practice

Within 90 days after service of a summons and complaint on a defendant, that defendant, as a matter of right, may serve a summons and third-party complaint on any nonparty or a third-party defendant. If, however, 90 days have elapsed, the defendant may serve a summons and complaint only (1) by agreement of the appearing parties and (2) with leave of the court. ORCP 22 C(1).

A plaintiff against whom a counterclaim has been filed may file a summons and complaint against a third party under the same circumstances described for a defendant in ORCP 22 C(1). ORCP 22 C(2).

An answer or a motion under ORCP 21 to a third-party complaint must be filed within 30 days after the date of service. ORCP 7 C(2), ORCP 15 A.

Any other motion or responsive pleading must be filed within 10 days after service of the pleading moved against or to which the responsive pleading is directed. ORCP 15 A.

Persons other than the original parties may be made parties to a counterclaim or cross-claim in accordance with ORCP 28 and ORCP 29. ORCP 22 D(1). Any person so joined is treated as a defendant for purposes of service of summons and time to answer. ORCP 22 D(3).

§ 2.2G Substitution of Parties on a Party's Death or Disability

No action will abate by reason of the death or disability of a party. ORCP 34 A. Rather, the proper procedure is to move the court for an order substituting parties as described in § 2.2G(1) to § 2.2G(4).

§ 2.2G(1) Death of the Plaintiff

On the death of a plaintiff, the court must, on motion, allow the action to be continued by the plaintiff's personal representative or successors-in-interest at any time within one year after the plaintiff's death. ORCP 34 B(1).

See § 2.2G(4) regarding the death of a party who is a public officer.

§ 2.2G(2) Death of the Defendant

On the death of a defendant, the court must, on motion, allow the case to be continued against the defendant's personal representative or successors-in-interest,

unless (1) the defendant's personal representative or successor-in-interest mails or delivers to the opposing party a notice that conforms to the requirements of ORS 115.003(3), and (2) the opposing party fails to move for substitution within 30 days of the mailing or delivery of the notice. ORCP 34 B(2).

See § 2.2G(4) regarding the death of a party who is a public officer.

§ 2.2G(3) Disability of a Party

In the event of the disability of a party, "the court may, at any time within one year thereafter, on motion, allow the action to be continued by or against the [disabled] party's guardian or conservator or successors in interest." ORCP 34 C.

§ 2.2G(4) Death of a Party Who Is a Public Officer

When a public officer is a party to an action in the officer's official capacity and, during the pendency of the action, the officer dies, "such officer's successor is automatically substituted as a party." ORCP 34 F(1).

"An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution." ORCP 34 F(1).

§ 2.2H Dismissal before Trial

§ 2.2H(1) Voluntary Dismissal

If no counterclaim has been pleaded, a plaintiff may dismiss an action without court order by filing a notice of dismissal with the court and serving the notice on all parties not in default no less than five days before the day of trial. ORCP 54 A(1).

Otherwise, the plaintiff may not have a dismissal without the stipulation of all adverse parties who have appeared (ORCP 54 A(1)(b)) or by order of the court (ORCP 54 A(2)).

See ORCP 54 regarding whether dismissal is with or without prejudice.

On notice or on stipulation of dismissal and submission of a form of judgment, the court must enter a judgment of dismissal. ORCP 54 A(1).

§ 2.2H(2) Involuntary Dismissal for Lack of Prosecution

§ 2.2H(2)(a) Dismissal for Incomplete Service

If the plaintiff has not completed service on the defendant within 63 days after filing suit, the court will notify the plaintiff that the case "will be dismissed for want of prosecution 28 days from the date of mailing of the notice" unless (1) service is completed and the plaintiff files proof of service with the court within the 28-day period, (2) "good cause to continue the case is shown to the court on motion supported by affidavit," or (3) the defendant has appeared. UTCR 7.020(2).

§ 2.2H(2)(b) Dismissal Because of Nonappearing Defendants

If proof of service has been filed and any defendant has not filed an appearance within 91 days after the filing of the suit, the court will notify the plaintiff that the case will be dismissed against each nonappearing defendant for want of prosecution in 28 days unless (1) an “order of default has been filed and entry for judgment has been applied for,” (2) “[g]ood cause to continue the case is shown to the court on motion supported by affidavit,” or (3) the “defendant has appeared.” UTCR 7.020(3).

§ 2.2I Wrongful Use of Civil Proceeding

An action for the wrongful use of a civil proceeding must “be brought in an original action after the proceeding which is the subject matter of the claim is concluded,” ORS 31.230(2), and must be commenced within two years after the cause of action arises. ORS 12.110(1).

It is not a wrongful use of a civil proceeding to file an action within 60 days of the running of the statute of limitations for the purpose of preserving and evaluating the claim when the action is dismissed within 120 days after the date of filing. ORS 31.230(2).

§ 2.2J References

See generally *Oregon Civil Litigation Manual* (Oregon CLE 2004 & Supp 2009); *Oregon Civil Pleading and Practice* (OSB Legal Pubs 2012).

§ 2.3 COMPUTATION OF TIME PERIODS

§ 2.3A Method of Computation

Many statutes require specific methods of computing time periods, and the specific method required by the statute must be used instead of the general methods described below.

The Oregon Rules of Civil Procedure (ORCP) govern civil procedure and practice in all circuit courts, except in small claims departments. ORCP 1 A. ORCP 10 A specifies the method of computing any time period “prescribed or allowed by these rules [ORCP], by the local rules of any court or by order of court.” ORCP 10 also applies to any time period prescribed by the Uniform Trial Court Rules. UTCR 1.130. *See* § 2.13A.

“The time within which an act is to be done, as provided in the civil and criminal *procedure* statutes,” is governed by the method of time computation outlined in ORS 174.120. ORS 174.120(1) (emphasis added). *See* § 2.3C(1) for further discussion of ORS 174.120.

Neither ORCP 10 nor ORS 174.120 applies to a statute of limitations that is “a *substantive* condition precedent” to a plaintiff’s right to make a claim (e.g., under the Oregon Tort Claims Act). *Tyree v. Tyree*, 116 Or App 317, 320, 840 P2d

1378 (1992), *rev den*, 315 Or 644 (1993) (emphasis added). See § 2.1A(2), § 2.3E, § 2.3F.

§ 2.3B Computation of Time under ORCP 10

(1) *Day of act from which time period begins to run.* Do not count the day of the act, event, or default from which the period of time for the action begins to run. ORCP 10 A.

(2) *Saturdays and legal holidays (including Sundays).* In general, count intermediate Saturdays and legal holidays, including all Sundays. ORCP 10 A. (The term *legal holiday* is defined in ORS 187.010 and ORS 187.020 to include each Sunday, nine specific holidays, and other days so designated by the Governor.) However, there are exceptions to this general rule:

(a) If the period prescribed or allowed is less than seven days (without regard to the three extra days for service by mail under ORCP 10 C), exclude intermediate Saturdays and legal holidays, including Sundays, in the computation. ORCP 10 A.

(b) Count the last day of the period of time for the action unless it is a Saturday or a legal holiday. (Legal holidays include Sundays. ORCP 10 A.) If the period of time for the action ends on a Saturday or a legal holiday, the last day for the action is the next day that is not a Saturday or a legal holiday. ORCP 10 A.

EXAMPLE: A motion or an answer to a complaint must be filed with the court clerk within 30 days after the summons and complaint are served. ORCP 7 C(2), ORCP 15 A. If the defendant is served with the complaint on Friday, December 21, 2012, the first day to count to compute the period of time for appearance by the defendant is Saturday, December 22, 2012, and every day, including Saturdays, Sundays, and other legal holidays, is counted for 30 days. The 30th day is Sunday, January 20, 2013. It is counted as the 30th day, but the period of time for the action does not expire until the next business day. The last day on which the defendant can file a motion or answer to the complaint is Monday, January 21, 2013. See, e.g., *Minor v. Leisure Lodge, Inc.*, 154 Or App 301, 961 P2d 915 (1998).

(3) *Closed public office.* If the time period relates to serving a public officer or filing a document at a public office, and if the last day of the period falls on a day when the office is closed before the end of, or for all of, the normal work day, do not count the last day. The period of time for serving the public officer or filing the document then expires at the close of office hours on the next day on which the office is open for business. ORCP 10 A; ORS 174.125.

(4) *Additional time for service by mail or fax.* Except for service of summons, whenever a party must take some action within a prescribed period of time after being served with a notice or other paper, and the notice or paper was served by mail, add three days to the prescribed period of time. ORCP 10 C.

NOTE: Service by fax on an attorney for a party is treated the same as service by mail for purposes of ORCP 10 C. ORCP 9 F.

NOTE: Service by e-mail is prohibited unless attorneys agree in writing to e-mail service. Service is effective under this method when the sender has received confirmation that the attachment has been received by the designated recipient. ORCP 9 G.

§ 2.3C Computation of Time under ORS 174.120

§ 2.3C(1) Civil and Criminal Procedure Statutes

In computing the “time within which an act is to be done, as provided in the civil and criminal procedure statutes,” do not count the first day. ORS 174.120(1). However, include the last day, unless the last day falls on a legal holiday or a Saturday, in which case the last day is also excluded. ORS 174.120(1).

NOTE: The term *legal holiday* includes Sundays. ORS 187.010.

§ 2.3C(2) Act to Be Performed in an Oregon State Court

“For the purposes of determining whether a person has complied with a statutory time limitation governing an act to be performed” in an Oregon circuit court, the Oregon Tax Court, the Oregon Court of Appeals, or the Oregon Supreme Court, “the time prescribed by law for the performance of the act does not include the day on which the specified period begins to run.” ORS 174.120(2).

However, the designated period includes the last day, unless the last day falls on (1) a legal holiday; (2) a Saturday; (3) a day on which the court is closed for the purpose of filing pleadings and other documents; (4) a day on which the court is closed by order of the Chief Justice, to the extent provided by the order; or (5) a day on which the court is closed before the end of the normal hours during which any pleadings and other documents may be filed. ORS 174.120(2). Intermediate Saturdays and legal holidays are counted.

If the last day falls on one of the days mentioned above, then the act must be performed on the next day that the court is open for the filing of documents. ORS 174.120(3).

EXAMPLE: The trial court entered judgment against a plaintiff on August 30, 1990. The plaintiff moved for a new trial. The trial court did not act on the plaintiff’s motion before 11:59:59 p.m. on the 55th day (October 24) after the judgment was entered, so the motion was “deemed denied” on the next day (October 25). *See* ORCP 64 F. The day of the event, October 25, was not counted among the 30 days allowed for certified mailing of the notice of appeal. *See* ORCP 10 A. Thus, the 30th day to file was Saturday, November 24. Saturdays and Sundays are excluded under ORS 174.120, so the plaintiff’s certified mailing of the notice of appeal on Monday, November 26, was timely. *Propp v. Long*, 313 Or 218, 225–27, 831 P2d 685 (1992).

§ 2.3D Leap Year

If the act must be performed within one or more years, then compute the time using calendar years. If the time period begins to run on February 29, then the last day of the period is February 28 of the calendar year in which the period ends. If the period begins on any other day of the year, then the period ends on the same day of the calendar year in which the period ends.

§ 2.3E Application and Case Law

ORCP 10 A does not apply to any time limitation governed by ORS 174.120. ORCP 10 A; *Webster v. Harmon*, 205 Or App 196, 202 n 5, 134 P3d 1012 (2006); *Harvey v. Christie*, 237 Or App 237, 243, 239 P3d 279 (2010).

The rule in ORCP 10 C permitting three additional days when service is by mail applies regardless of whether the time calculation is governed by ORCP 10 or ORS 174.120. See *Harvey v. Christie*, 237 Or App at 243 (the plaintiff had the three-day grace period provided by ORCP 10 C to file a notice of appeal from an arbitration award that was mailed to the parties).

The method of computing time provided for in ORS 174.120 applies to:

(1) Proceedings arising under Article IV, section 6, of the Oregon Constitution, *In re Apportionment of Senators & Representatives under Article IV, § 6, Or. Constitution*, 228 Or 575, 577 n 2, 365 P2d 1042 (1961);

(2) Determining whether a tenant tenders a rental payment within the 10-day grace period provided for in ORS 91.090 for the payment of rent, *Locus Bldg. P'ship v. Gladys Enterprises, Inc.*, 62 Or App 792, 796, 662 P2d 15, *rev den*, 295 Or 447 (1983); and

(3) Civil statutes of limitation set forth in ORS 12.010, *Stupek v. Wyle Laboratories Corp.*, 327 Or 433, 963 P2d 678 (1998).

In *Stupek*, 327 Or at 444, the court held that statutes of limitations under ORS 12.010 were “civil procedure statutes” within the meaning of ORS 174.120. Thus, a wrongful-discharge claim filed on Monday, October 31, 1994, for a termination effective October 30, 1992, was timely filed because the end of the two-year statute of limitations fell on a Sunday. But see *City of Springfield v. \$10,000.00 in U.S. Currency*, 95 Or App 66, 767 P2d 476 (1989), *aff'd*, 309 Or 272, 786 P2d 723 (1990), in which the court held that because the statute of limitations was “substantive,” ORCP 10 did not apply to the requirement in the forfeiture ordinance that a complaint be brought within 20 judicial days after seizure of the property.

The time for a criminal statute of limitations starts to run on the day after the offense is committed. ORS 131.145(1). ORS 174.120 does not require that an additional day be added to the date from which the calculation of a criminal statute of limitations begins to run. *State v. Chatfield*, 148 Or App 13, 19, 939 P2d 55 (1997).

§ 2.3F Oregon Tort Claims Act

Neither ORCP 10 nor ORS 174.120 applies to the requirement that notice of a claim under a provision of the Oregon Tort Claims Act (ORS 30.275) be filed (1) within one year after the alleged loss or injury for wrongful death claims and (2) within 180 days after the alleged loss or injury for all other claims. *Tyree v. Tyree*, 116 Or App 317, 320, 840 P2d 1378 (1992), *rev den*, 315 Or 644 (1993). In *Tyree*, the court reasoned that the one-year limit applicable at the time was a “substantive condition precedent to recovery,” not a procedural requirement. Thus, the court held that notice received on a Monday was untimely because Saturday was the last day of the time period.

§ 2.3G Computation of Time Period for Personal Service

§ 2.3G(1) Service at Closed Public Office—ORS 174.125

Notwithstanding ORCP 10 and ORS 174.120(1), if a time period, other than a time period subject to ORS 174.120(2), relates to the personal service of a document or notice on a public officer or the filing of a document or notice with a public office, and if the last day falls on a day when that office is closed before the end of, or for all of, the normal workday, the last day is excluded in computing the period of time within which the document or notice is to be filed. If the last day is so excluded, the time period runs until the close of office hours on the next day that the office is open for business. ORS 174.125. *See, e.g., O’Connor v. Shelly*, No 3:11-CV-00022-KI, WL 5570655 (D Or Nov 15, 2011) (taking judicial notice of the fact that government buildings typically are open Monday through Friday in finding that ORS 174.125 operates to extend the deadline from Friday, December 10, 2010, to Monday, December 13, 2010, the next day that the office was open for business, when the county had chosen to switch from a more typical schedule to four 10-hour days).

COMMENT: Unlike ORS 174.120, ORS 174.125 is not limited on its face to “procedure” statutes. In *Tyree v. Tyree*, 116 Or App 317, 320, 840 P2d 1378 (1992), *rev den*, 315 Or 644 (1993), the court, without considering ORS 174.125, held that a notice of claim received on Monday, September 11, 1989, relating to an accident that occurred on September 9, 1988, was untimely because the one-year limit had expired over the weekend. However, if the county office was closed on Saturday, September 9, and Sunday, September 10, ORS 174.125 would seem to dictate the opposite result.

§ 2.3G(2) Service by Mail, Fax, or E-Mail

Except for service of summons, whenever a party must take some action within a prescribed period of time after being served with a notice or other paper, and the notice or paper was served by mail, add three days to the prescribed period of time. ORCP 10 C.

Service by fax on an attorney for a party is treated the same as service by mail for purposes of ORCP 10 C. ORCP 9 F.

Service by e-mail is prohibited unless attorneys agree in writing to e-mail service. Service is effective under this method when the sender has received confirmation that the attachment has been received by the designated recipient. ORCP 9 G.

§ 2.3H Legal Holidays—ORS 187.010(3)

“Any act authorized, required or permitted to be performed on a holiday . . . may be performed on the next succeeding business day[,] and no liability or loss of rights of any kind will result from such delay.” ORS 187.010(3). Despite the broad language of ORS 187.010(3), there is little case law applying the statute.

In *First Nat. Bank of Oregon v. Mobil Oil Corp.*, 272 Or 672, 679, 538 P2d 919 (1975) (en banc), the court held that the predecessor to this provision extended to acts to be performed as provided by contracts, so as to permit the performance of such acts upon the “next succeeding business day,” at least unless the contract specifically designates a Sunday as the day on which an act must be performed or as the last day on which the act may be performed.

§ 2.3I Other Units of Time

§ 2.3I(1) General Rule

The general rule for the computation of time (i.e., exclude the first day and include the last day unless the last day is a Saturday or legal holiday) applies equally to periods of time measured in days, weeks, months, or years. *Grant v. Paddock*, 30 Or 312, 47 P 712 (1897).

However, a time limitation allowing action up to and including a specified date expires on that date even if it is a Sunday or other legal holiday. *Zelig v. Blue Point Oyster Co.*, 61 Or 535, 113 P 852 (1911).

§ 2.3I(2) Month

When the word *month* is not defined by statute, “the word is uniformly held to mean a calendar month, unless a contrary intent is indicated.” *In re Standard Cafeteria Co.*, 68 Or 550, 555, 137 P 774 (1914).

§ 2.3I(3) Year

Calendar years are to be used for computation when statutes of limitations or other procedural statutes governing civil and criminal proceedings provide that an act must be done within one or more years. ORS 174.120(5).

CAVEAT: The 2003 Legislature added subsection (5) to ORS 174.120, effective January 1, 2004. Cases predating the 2003 amendment interpreted “year” differently, depending on subject matter and context. *See, e.g., State ex rel. Stadter v. Patterson*, 197 Or 1, 18, 251 P2d 123 (1952).

§ 2.3J References

See generally 2 Torts ch 32 (OSB Legal Pubs 2012) (statutes of limitations and statutes of ultimate repose).

§ 2.4 JUSTICE COURTS

§ 2.4A Rules and Procedures in General

Unless otherwise specifically provided by statute, the rules of pleadings, procedure, and evidence in justice courts are governed by the rules for civil actions in circuit court. ORS 52.010–52.030, ORS 52.310.

§ 2.4B Time for Defendant to Appear

In a justice court, if the summons is served by any manner other than publication, the defendant must appear and defend within 30 days from the date of service of the summons. ORCP 7 C(2); ORS 52.110(1).

If the summons is served by publication, the defendant must appear and defend within 30 days from the date stated in the summons. ORCP 7 C(2); ORS 52.110(1).

See § 2.4C regarding transfer of the case in the event that the defendant files a counterclaim exceeding the jurisdictional limits of the justice court.

§ 2.4C Counterclaims Exceeding Jurisdictional Limits of Justice Court

(1) *Transfer of case to circuit court.* If the defendant files a counterclaim exceeding the jurisdictional limits of the justice court, the justice court will transfer the claim to circuit court (by filing a transcript) within 10 days after the answer is filed. ORS 52.320. But see item (2) below.

(2) *Case will not be transferred if defendant fails to pay costs.* The defendant is responsible for all costs incurred in transferring the case from the justice court to the circuit court. If the costs are not paid when the counterclaim is filed, or within two days after it is filed, the claim will not be transferred and the justice of the peace will disregard the counterclaim and try the cause as though the counterclaim had never been filed. ORS 52.320.

(3) *Plaintiff's response to counterclaim.* After a justice court case is transferred to the circuit court, the plaintiff must move against or reply to the defendant's counterclaim within 10 days after the transcript is filed in circuit court. ORS 52.320.

§ 2.4D Dismissal for Lack of Prosecution

If no proceedings have occurred or no papers have been filed for more than one year in a justice court case, the court will notify the parties that the inactive case will be dismissed for lack of prosecution 60 days from the date the notice is

mailed, unless, on or before the expiration of the 60-day period, good cause is shown why the case should be continued. ORS 52.035.

§ 2.4E Trial Fee

The trial fee in justice court must be paid when the demand for a jury is made. If the fee is not paid at that time, the court will disregard the demand for a jury and proceed as though no demand had been made. ORS 52.410–52.420.

§ 2.4F Change of Venue

Either party to an action in a justice court may move to change the place of trial, but such a motion “cannot be made or allowed . . . until after the cause is at issue on a question of fact.” ORS 52.530(3).

All costs incurred in the transfer of the case are borne by the party who requested the change of venue, and such costs must be tendered at the time that the motion for the change of venue is filed. ORS 52.530(3).

If the party fails to tender the required fee when the motion is filed, the justice must disregard the motion and proceed to try the action as though no motion for change of venue had been filed. ORS 52.530(3).

§ 2.4G Judgments

(1) *Duration of judgment lien.* When a judgment of a justice court is docketed in circuit court, the judgment lien expires 10 years from the date that the judgment was originally entered in the justice court. ORS 52.635(5).

(2) *Return of execution.* A writ of execution issued by a justice must be made returnable within 30 days from the date of issue. ORS 52.700.

(3) *Renewal of execution.* At any time before the writ expires, the writ of execution may be renewed for another 30-day period. An entry of the renewal must also be made in the docket of the justice. ORS 52.710.

(4) *Attachment proceedings.* Unless otherwise specified by statute, the provisions for proceedings in the circuit courts on attachment and delivery of personal property govern in similar cases in justice court. ORS 52.220.

§ 2.4H Appeals

(1) *Appeal is to circuit court.* An appeal from a judgment of the justice court is taken to the circuit court. ORS 53.020.

(2) *Service of notice of appeal.* A party appealing to the circuit court must serve a written notice of appeal on the adverse party within 30 days after “rendition” of the judgment and file the original notice with proof of service in the court. ORS 53.030. “Rendition” of judgment means the date of entry in the docket. *Furlong v. Tish*, 189 Or 86, 218 P2d 476 (1950).

(3) *Undertaking for costs and disbursements.* The appellant must file an undertaking for costs and disbursements on the appeal within five days after the notice of appeal is “given or filed.” ORS 53.030, ORS 53.040. The failure to

timely file an undertaking is no longer jurisdictional, but may be waived only on a showing of good cause for the failure. ORS 53.040.

(4) *Enforcement of judgment pending appeal.* The respondent may enforce a judgment given for money in a contract action, notwithstanding an appeal, if the respondent serves an undertaking for restitution within five days from the date that the appeal is allowed. ORS 53.080.

(5) *Time for filing transcript.* Within 30 days after the allowance of the appeal, the appellant must file a transcript of the cause with the clerk of the appellate court. The circuit court may by order extend the time for filing the transcript, but the order must be made within the time allowed for filing the transcript. ORS 53.090.

§ 2.4I References

See 1 Oregon Civil Litigation Manual ch 1 (Oregon CLE 2004 & Supp 2009); 1 Oregon Civil Pleading and Practice ch 1 (OSB Legal Pubs 2012).

§ 2.5 SMALL CLAIMS IN CIRCUIT COURT

§ 2.5A Commencement of Action

An action in the small claims department of a circuit court is commenced by filing a verified claim with the circuit court clerk and paying the prescribed fee. ORS 46.425(1). Upon the filing of the claim, the court issues a notice of the claim, which notice is directed to the defendant. ORS 46.445(1).

§ 2.5B Defendant's Response

Within 14 days after being served with the notice and claim in a small claims case, the defendant must do one of the following: (1) pay the claim; (2) demand a hearing; or (3) demand a jury trial. ORS 46.445(4).

If the defendant admits the claim, the defendant may settle it by (1) paying to the plaintiff the amount of the claim, plus filing fees and service expenses paid by the plaintiff; and (2) mailing proof of that payment to the court. ORS 46.455(1).

If the defendant denies the claim, the defendant may demand a hearing in the small claims department and may even assert a counterclaim when demanding the hearing. ORS 46.455(2).

If the amount of the claim exceeds \$750, the defendant may demand a jury trial. ORS 46.455(3).

NOTE: If the defendant demands a jury trial, the plaintiff must then file a formal complaint. *See* § 2.5C.

If the defendant fails to pay the claim, demand a hearing, or demand a jury trial, the plaintiff may request in writing that the court clerk enter a judgment against the defendant. ORS 46.445(4), ORS 46.475(2).

§ 2.5C Procedure When Defendant Demands a Jury Trial

In a small claims case, if the defendant claims the right to a jury trial, the clerk will so notify the plaintiff by mail. Within 20 days after the mailing of the notice, the plaintiff must file a formal complaint with the court and serve a summons and a copy of the complaint on the defendant. ORS 46.465(3)(a). Otherwise, the case will be dismissed without prejudice. ORS 46.475(3).

The defendant must file an appearance within 10 days after delivery of the summons and complaint. ORS 46.465(3)(c).

§ 2.5D Procedure When Counterclaim Exceeds Jurisdictional Amount

If the defendant files a counterclaim that is beyond the jurisdictional limit of the small claims court and the defendant files a motion requesting transfer, the case is transferred to circuit court. ORS 46.461(3)(a).

The court clerk will send notice of the transfer to the parties. The plaintiff must file and serve a reply to the counterclaim within 20 days after the mailing of the notice of transfer. ORS 46.461(3)(a).

§ 2.5E Setting Aside Default Judgment or Dismissal

In a small claims case, the court may set aside a default judgment or dismissal within 60 days after entry on good cause shown. The claim will be reset for hearing. ORS 46.475(5).

§ 2.5F Judgment

§ 2.5F(1) Judgment of Less Than \$3,000

A judgment entered in the small claims department in an amount of \$10 or more, but less than \$3,000, may be docketed in the circuit court at any time before the judgment expires under ORS 18.180 (generally 10 years; *see* ORS 18.180(3)). ORS 46.488(3).

§ 2.5F(2) Judgment of \$3,000 or More

A judgment entered in the small claims department in an amount of \$3,000 or more is docketed in circuit court in the same manner as other judgments in circuit court. ORS 46.488(2).

§ 2.5F(3) Judgment Lien

Once docketed, a judgment rendered in the small claims department becomes a lien on real property of the judgment debtor in the county in which the judgment is docketed, as described in ORS 18.150. *See, e.g., In re Grogan*, 476 BR 270 (Bankr D Or 2012), *aff'd*, WL 5630627 (BAP 9th Cir, Oct 15, 2013).

After docketing, ORS 18.152 governs how the judgment can become a lien in other counties. ORS 46.488(3).

§ 2.5G No Appeal

A judgment in the small claims department is conclusive. No party may appeal. ORS 46.485(4).

§ 2.5H References

See 1–2 *Oregon Civil Litigation Manual* chs 1, 30 (Oregon CLE 2004 & Supp 2009); 1 *Oregon Civil Pleading and Practice* ch 1 (OSB Legal Pubs 2012).

§ 2.6 STATUTES OF LIMITATIONS

CAVEAT: A cause of action may be subject to a specific statute of limitations, and more than one statute of limitations may apply in a particular case. For example, in some circumstances, a plaintiff’s claim may be pleaded in either tort or contract. “It is the gravamen or the predominant characteristic of [an] action, not plaintiff’s election, which governs whether the action is one in contract or in tort.” *Lindemeier v. Walker*, 272 Or 682, 685, 538 P2d 1266 (1975). See 2 *Torts* ch 32 (OSB Legal Pubs 2012).

See § 14.2N(1) to § 14.2N(2)(b) (determining whether the tort or contract statute of limitations applies in a given case).

Defenses available to avoid application of the statute of limitations are discussed in § 2.6A(1) to § 2.6A(7). See § 2.6B(1)(a) to § 2.6B(3) regarding situations in which the statute of limitations is tolled.

See ~~§ 2.6E~~ and ~~§ 2.8B(1)~~ to ~~§ 2.8B(5)~~ regarding the effect of dismissal on a statute of limitations.

See § 2.11A to § 2.11C regarding statutes of limitations and counterclaims, recoupment, and setoff.

§ 2.6A Defenses—Avoiding Application of the Statute of Limitations

§ 2.6A(1) Affirmative Defense

The statute of limitations is an affirmative defense that must be timely pleaded in order to be raised at trial. *Brusco v. Brusco*, 241 Or 550, 553, 407 P2d 645 (1965); *Castro v. Ogburn*, 140 Or App 122, 128, 914 P2d 1 (1996). See § 2.6A(2) (waiver of the defense).

See § 2.7A to § 2.7G(2) regarding statutes of ultimate repose.

§ 2.6A(2) Waiver of Statute of Limitations

The defense that the action has not been commenced within the time limited by the applicable statute of limitations is waived if not raised by motion before pleading (under ORCP 21) or included in a responsive pleading or, with leave of court, an amended responsive pleading. ORCP 21 G(2); *Castro v. Ogburn*, 140 Or App 122, 128, 914 P2d 1 (1996).

EXAMPLE: When the defendant moved to dismiss the original complaint on the ground that it was time-barred, but later failed to raise the

statute of limitations in answer to the plaintiff's amended complaint, the statute-of-limitations defense was waived. It was necessary for the defendant to assert the defense anew in his answer to the amended complaint. *Simpson v. Simpson*, 83 Or App 86, 89, 730 P2d 592 (1986), *rev den*, 303 Or 454 (1987).

EXAMPLE: The court considered a defendant's statute-of-limitations defense although it was first raised in a "supplemental Rule 21 motion" because the defendant could have affirmatively raised the defense if the need to file an answer had arisen. *Jones By & Through Jones v. Salem Hosp.*, 93 Or App 252, 257–58, 762 P2d 303 (1988), *rev den*, 307 Or 514 (1989).

§ 2.6A(3) Estoppel

§ 2.6A(3)(a) Requirements of Estoppel Defense in General

Estoppel is an appropriate defense to a claim that a cause of action is barred by a statute of limitations. To constitute equitable estoppel:

(1) there must be a false representation; (2) it must be made with knowledge of the facts; (3) the other party must have been ignorant of the truth; (4) it must have been made with the intention that it should be acted upon by the other party; and (5) the other party must have been induced to act upon it.

Donohoe v. Mid-Valley Glass Co., 84 Or App 584, 587, 735 P2d 11, *rev den*, 303 Or 534 (1987) (quoting *Bennett v. City of Salem*, 192 Or 531, 541, 235 P2d 772 (1951)). *See also Wilkinson v. Pub. Employees Ret. Bd.*, 188 Or App 97, 102, 69 P3d 1266 (2003).

"To invoke the doctrine of estoppel, the defendant . . . must have done something that amounted to an affirmative inducement that would cause the plaintiff to delay bringing [the plaintiff's] action." *Lyden v. Goldberg*, 260 Or 301, 304, 490 P2d 181 (1971). *See* § 2.6A(3)(b) for further discussion of the affirmative-inducement requirement.

Appellate decisions in Oregon "have recognized that, under some circumstances, a defendant can be equitably estopped by verbal representations or conduct from invoking a statute of limitations defense." *Donohoe*, 84 Or App at 586.

§ 2.6A(3)(b) Affirmative Inducement

"The doctrine of estoppel depends on defendant or its agent having done something that amounted to an affirmative inducement that would cause plaintiff to delay bringing [his or her] action." *Dobie v. Liberty Homes, Inc.*, 53 Or App 366, 372, 632 P2d 449 (1981).

"Mere pendency of [settlement] negotiations does not give rise to an estoppel." *Donohoe v. Mid-Valley Glass Co.*, 84 Or App 584, 587, 735 P2d 11, *rev*

den, 303 Or 534 (1987); *Johnson v. Kentner*, 71 Or App 61, 73, 691 P2d 499 (1984), *rev den*, 299 Or 31 (1985).

When the defendant's insurance agent paid for the repairs to the claimant's vehicle, paid the claimant's medical bills that were then due, and assured the claimant that his claim would be settled when his medical condition was established, the defendant was estopped to raise the statute of limitations as a defense. *Lyden v. Goldberg*, 260 Or 301, 304–07, 490 P2d 181 (1971).

In a case involving the aerial spraying of pesticides, the court of appeals reversed the trial court's summary judgment for the defendant. The court found that the defendant was estopped to rely on the notice requirements of the pesticide spraying statute when the insurance adjuster's statements that he would "take care of the claim" and "you don't need to worry about it" could be interpreted as a promise to settle and pay damages. *Malaer v. Flying Lion, Inc.*, 65 Or App 154, 159, 670 P2d 214 (1983). These representations presented a genuine issue of material fact for the jury. *Malaer*, 65 Or App at 159.

§ 2.6A(4) Wrongful Concealment

The wrongful concealment of material facts preventing the discovery of the wrong suspends the statute of limitations until the facts are discovered or reasonably should have been discovered. *Chaney v. Fields Chevrolet Co.*, 264 Or 21, 26–27, 503 P2d 1239 (1972). However, the mere concealment of the legal remedy (as opposed to material facts) does not suspend the statute of limitations. *Frevach Land Co. v. Multnomah Cnty. Dep't of Envtl. Servs.*, No CV-99-1295-HU, WL 1875839 at *13 (D Or, Dec 21, 2000).

§ 2.6A(5) Relation-Back Doctrine

Under ORCP 23 C, an amended pleading filed after the statute of limitations has run may relate back to the date that the original pleading was filed when:

(1) The "claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading," ORCP 23 C; *see Welch v. Bancorp Mgmt. Advisors, Inc.*, 296 Or 208, 221–23, 675 P2d 172 (1983); *cf. Hendgen v. Forest Grove Cmty. Hosp.*, 109 Or App 177, 180–81, 818 P2d 966 (1991) (an amendment does not relate back when "newly alleged conduct has no discernible connection to, and is of an altogether different nature than, that originally alleged");

(2) The defendant "would have been able to discern from the earlier pleading a potential for the additional basis of liability," *Walters v. Hobbs*, 176 Or App 194, 208, 30 P3d 1214, *modified on recons*, 177 Or App 527, 33 P3d 1067 (2001) (quoting *Jeffries v. Mills*, 165 Or App 103, 119, 995 P2d 1180 (2000)); and

(3) The amendment is made "within the same action" as the original pleading, *Durham v. City of Portland*, 181 Or App 409, 419, 45 P3d 998 (2002)

(ORCP 23 C provides no basis for argument that a claim asserted in one action relates back to the filing of a previous action).

When an amendment changes the party against whom the claim is asserted, the amendment relates back to the date of the original pleading if the amended pleading “arose out of the conduct, transaction, or occurrence” set forth in the original pleading and, within the period of limitations, the new party (1) “received such notice of the institution of the action that the party will not be prejudiced in maintaining any defense on the merits” and (2) knew or should have known that the action would be brought against it but for a mistake in the identity of the proper party. ORCP 23 C. *See McLain v. Maletis Beverage*, 200 Or App 374, 377–78, 115 P3d 938 (2005); *see also Smith v. Am. Legion Post 83*, 188 Or App 139, 71 P3d 136, *rev den*, 336 Or 60 (2003).

An amendment to include new defendants did not relate back to the original pleading when the defendants did not receive actual or constructive notice of their inclusion in the litigation until the statute of limitations on the action against the new defendants had run. *Johnson v. MacGregor*, 55 Or App 374, 376–77, 637 P2d 1362 (1981), *rev den*, 292 Or 589 (1982).

If a plaintiff misnames but correctly identifies and serves the correct entity with a copy of the original complaint within the 60-day period allowed for service, and the entity served should reasonably understand from the complaint that it is the entity intended to be sued, then the amendment of the pleadings to correct the misnomer does not bring in a new entity and is not a change in party. Therefore, an amendment to correct a misnomer relates back as long as the claims asserted arose out of the same conduct, transaction, or occurrence set forth in the original pleading. *Worthington v. Estate of Davis*, 250 Or App 755, 282 P3d 895, *rev den*, 352 Or 565 (2012); *Welch v. Bancorp Mgmt. Advisors, Inc.*, 296 Or 208, 221, 675 P2d 172 (1983); *Mitchell v. The Timbers*, 163 Or App 312, 315, 987 P2d 1236 (1999) (the court held that ORCP 23 C may be used to substitute one defendant for another or to correct the name of a defendant who was named incorrectly in the original complaint). However, ORCP 23 C does not apply to the substitution or addition of a new, unrelated party after the limitations period has expired. *Krauel v. Dykers Corp.*, 173 Or App 336, 341, 21 P3d 1124 (2001).

Notice of an amendment to a new party may be constructive notice. For example, notice by service on a county board of commissioners and its individual members constituted constructive notice to the county and related back to the original pleading. *Waybrant v. Clackamas Cnty.*, 54 Or App 740, 746, 635 P2d 1365 (1981).

§ 2.6A(6) Counterclaims

“[A] counterclaim based on a cause of action [that] is not barred at the time of the commencement of plaintiff’s action is not thereafter barred because not pleaded before the expiration of the full statutory time.” *Lewis v. Merrill*, 228 Or

541, 545, 365 P2d 1052 (1961) (even though the applicable statute of limitations had run as of the date of the filing of the counterclaim, the counterclaim related back to the date of the filing of the original complaint); *see also Employers' Fire Ins. Co. v. Love It Ice Cream Co.*, 64 Or App 784, 787, 670 P2d 160 (1983).

§ 2.6A(7) Refiling on Dismissal Permitted in Some Circumstances

When an action is dismissed on procedural grounds, such as for ineffective service or lack of jurisdiction, ORS 12.220 allows a plaintiff to refile the action within 180 days of the dismissal without being barred by the statute of limitations if (1) the original action was timely filed, (2) the case was not decided on the merits but was dismissed on procedural grounds, and (3) the defendant had actual notice of the action within 60 days of the original filing. ORS 12.220(1)–(2).

A new action may be commenced only once for the same claim or claims, and all defenses that would have been available in the original action are available in the new action. ORS 12.220(3)–(4); *see Ram Technical Servs., Inc. v. Koresko*, 346 Or 215, 208 P3d 950 (2009).

See § 2.8 to § 2.8B(5) regarding commencing a new action after an involuntary dismissal.

§ 2.6A(8) References

See § 2.1A(1) to § 2.1B (actions), § 2.2A(1) to § 2.2I (civil procedure), § 2.6B(1)(a) to § 2.6B(3) (tolling the statute of limitations), § 2.8 to § 2.8C (effect of involuntary dismissal on statutes of limitations).

§ 2.6B Tolling the Statute of Limitations

§ 2.6B(1) Minors; Personal Disabilities

§ 2.6B(1)(a) General Rule

If a person is entitled to bring an action that is subject to a statute of limitations under ORS 12.010 to 12.050, ORS 12.070 to 12.250, or ORS 12.276, and, at the time that the cause of action accrues, the person is either (1) younger than 18 years of age or (2) insane, the statute is suspended for the period of minority or insanity, except that the time for bringing the action cannot be extended for more than five years or for more than one year after the disability ceases, whichever occurs first. ORS 12.160.

Using the disability to suspend the running of the statute of limitations requires that the disability exist when the right of action accrued. ORS 12.170.

When two or more disabilities coexist at the time that the right of action accrues, the time limitation does not attach until all disabilities are removed. ORS 12.180.

ORS 12.160 applies only at the time that the cause of action accrues or comes into existence as an enforceable claim. If the cause of action never accrues, the tolling provision cannot apply. *Wright v. State Farm Mut. Auto. Ins. Co.*, 223

Or App 357, 363, 196 P3d 1000 (2008) (ORS 12.160 did not apply to an underinsured-motorist claim when none of the requisite events set forth in ORS 742.504(12)(a) occurred within two years of the accident).

An infant suffering a personal injury has five years (ORS 12.160) plus the two years provided in ORS 12.110, for a total of seven years, to commence an action, *Shaw v. Zabel*, 267 Or 557, 559, 517 P2d 1187 (1974), unless a shorter period of repose applies, see ORS 12.110(4); *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 452, 184 P3d 1121 (2008) (a claim based on medical negligence must be brought within five years after the date of treatment, omission, or operation).

NOTE: A statute of ultimate repose may limit the time for tolling based on minority or insanity to less than the period of minority without violating the remedies clause, Article I, section 10, of the Oregon Constitution. *Christiansen*, 344 Or at 454 (the court rejected a remedies-clause challenge to a statute of repose for a medical-malpractice claim on behalf of a minor child); see also *Fields v. Legacy Health Sys.*, 413 F3d 943, 959 (9th Cir 2005) (the repose period for a wrongful-death action in ORS 30.020(1) barred the claim). See § 2.7A to § 2.7G(2) for further discussion of statutes of ultimate repose.

The five-year suspension of the limitations period for minors and insane persons is not lost by the commencement and subsequent dismissal of a claim by a conservator or by the appointment of a conservator. *Luchini By & Through Luchini v. Harsany*, 98 Or App 217, 221, 223, 779 P2d 1053, *rev den*, 308 Or 608 (1989) (as long as the right to sue remains in the person, the appointment of a conservator does not remove the statutory extension of the statute of limitations for minors).

See § 2.6B(1)(b).

§ 2.6B(1)(b) Applicability of the Minority-Tolling Statute to the Oregon Tort Claims Act

CAVEAT: It is not clear whether the minority-tolling statute (ORS 12.160) tolls the two-year limitations period under the Oregon Tort Claims Act to commence an action. See § 2.18A(4)(b) for further discussion.

NOTE: If a minor has a claim against a public body, the 270-day notice period prescribed in ORS 30.275 is not tolled pending the appointment of a guardian *ad litem*. *Perez By & Through Yon v. Bay Area Hosp.*, 315 Or 474, 482–83, 846 P2d 405 (1993). However, see ORS 30.275(8) regarding a claim against the Department of Human Services or the Oregon Youth Authority.

See also § 2.1A(1) to § 2.1B (actions in general), § 2.18A to § 2.18D (actions involving governmental and public bodies), § 7.3A (actions for wrongful death against a governmental body), § 7.4A to § 7.4D(1) (actions for personal

injury), § 7.16D (actions for wrongful death based on products liability), § 7.14A(5) (actions for wrongful death against a governmental body based on medical malpractice).

§ 2.6B(2) Death of a Party

§ 2.6B(2)(a) Death of Plaintiff

If a person who is entitled to bring an action dies during the time allowed for bringing the action, an action may be commenced by the person's personal representative after the statute of limitations has run, as long as the action is commenced within one year after the person's death. ORS 12.190(1).

See § 2.18A to § 2.18D (governmental and public bodies), § 2.2G to § 2.2G(4) (survival of actions), § 2.7A to § 2.7G(2) (statutes of ultimate repose), § 6.5A to § 6.5C(2) (actions for wrongful death in general).

§ 2.6B(2)(b) Death of Defendant

If a person who would be a defendant in an action dies before the statute of limitations has run, an action may be commenced against the person's personal representative after the statute has run, as long as the action is commenced within one year after the person's death. ORS 12.190(2).

See § 6.4B(2) (survival of actions), § 6.5D (death of wrongdoer).

§ 2.6B(3) Absence or Concealment of Defendant

If a cause of action accrues against a person when the person is out of state and service cannot be made on the person in Oregon, or if the person is concealed in Oregon, the action may be commenced within the applicable statute of limitations after the person returns to Oregon or is no longer concealed. ORS 12.150.

If a person leaves Oregon or hides in Oregon after the cause of action accrues, the statute of limitations is suspended during the time that the person is absent from, or concealed in, Oregon. The time of concealment or absence will not be counted as any part of the time within which the action must be commenced. ORS 12.150.

NOTE: A question exists regarding whether a student in Oregon who maintains a permanent residence outside the state and returns to his or her home in another state during breaks and vacations is "absent from Oregon" for those periods for purposes of tolling the statute of limitations.

NOTE: A question also exists regarding whether the statute of limitations is tolled in motor-vehicle cases against drivers who are absent from the state after the cause of action accrues. A plaintiff's alternative form of service for an action against a nonresident motorist, or against an Oregon motorist who moves out of state, is service by mail in compliance with ORCP 7 D(4)(a)(i) to the addresses specified in that provision. Service in this manner is deemed complete on the latest date on which any of the required mailings is made. ORCP 7 D(4)(a)(i). *See Whittington v. Davis*,

221 Or 209, 212, 350 P2d 913 (1960); *Wright v. Osborne*, 151 Or App 466, 470, 949 P2d 321 (1997), *rev den*, 327 Or 448 (1998).

In *Herzberg v. Moseley Aviation, Inc.*, 156 Or App 1, 6, 964 P2d 1137 (1998), *rev den*, 328 Or 275 (1999), the court held the two-year statute of limitations on a products-liability claim was tolled when personal service could not be effected in state and the defendant's partnership ultimately was served by mail to an address outside of Oregon.

When the maker of a promissory note defaults and moves out of state after the claim has accrued, the statute of limitations is tolled during the maker's absence from Oregon. *Gary M. Buford & Associates, Inc. v. Guillory*, 98 Or App 691, 694, 780 P2d 783, *rev den*, 308 Or 660 (1989), *modified by Wright v. Osborne*, 151 Or App 466, 949 P2d 321 (1997) (citing ORS 12.080(1) and ORS 12.150).

§ 2.6C Advance Payments for Death, Injury, or Property Damage

§ 2.6C(1) Notice of Expiration of Limitations Period

ORS 31.560 and ORS 51.565 allow a person to make an advance payment for damages arising from the death or injury of a person or the injury or destruction of property without admitting liability for the death or injury.

If, within 30 days after making the first advance payment referred to in ORS 31.560 or ORS 51.565, the payor gives to each person entitled to recover damages for the death or injury written notice of the date that the limitations period expires, then the making of any such advance payment does not suspend the running of the limitations period. ORS 12.155(1).

If such notice is not given within 30 days after the first advance payment is made, the limitations period is suspended from the date of the first advance payment until the date that the payor gives the person entitled to recover damages written notice of the expiration date of the limitations period. ORS 12.155(2); *Pipkin v. Zimmer*, 113 Or App 737, 740–41, 833 P2d 1350, *rev den*, 314 Or 727 (1992) (when the defendant's insurance company paid for property damage to the plaintiff's car but failed to give the notice, the statute of limitations was tolled).

See § 2.6C(2) for the meaning of the word *person* for purposes of ORS 12.155. See also § 2.6C(3) regarding an advance payment to a minor.

§ 2.6C(2) Person Defined

A "person" making an advance payment within the meaning of ORS 12.155 is not limited to insurers. *See* § 2.6C(1). An advance payment by any person, as defined in ORS 174.100(5), made without providing written notice of the statute of limitations as set forth in ORS 12.155(1) to (2), will toll the limitations period. *Hamilton v. Paynter*, 342 Or 48, 58, 149 P3d 131 (2006).

§ 2.6C(3) Advance Payment to Minor

An advance payment to a minor does not toll the two-year statute of limitations provided for under the Oregon Tort Claims Act (ORS 30.275(9)). *Lawson v. Coos Cnty. Sch. Dist. No. 13*, 94 Or App 387, 391, 765 P2d 829 (1988), *abrogated by Baker v. City of Lakeside*, 343 Or 70, 164 P3d 259 (2007).

§ 2.6D Court Actions

§ 2.6D(1) Limitations Period When Action Is Stayed by Injunction or Statutory Prohibition

If the commencement of an action is stayed by an injunction or a statutory prohibition, the statute of limitations does not run during the continuance of the injunction or prohibition. ORS 12.210.

§ 2.6D(2) Extension of Limitations Period for Trustee on Debtor's Bankruptcy or Debtor's Action

Under 11 USC section 108(a) to (b), a trustee, stepping into the debtor's shoes, receives an extension of time for filing an action or doing some other act required to preserve the debtor's right.

"If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action," and if that period has not expired before the date of the filing of the bankruptcy petition, the trustee may commence the action before the later of "(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) two years after the order for relief." 11 USC § 108(a).

Thus, the statute of limitations or the time period fixed by a nonbankruptcy order or agreement is extended for the commencement or continuation of an action by the debtor (trustee) for two years after the date of the order for relief, unless the fixed period would expire after two years from the order of relief. 11 USC § 108(a).

Under 11 USC section 108(b), the trustee receives an extension of 60 days from the date of the order for relief within which the trustee may file any pleading, demand, notice, or proof of claim or loss; cure a default; or perform any other similar act, such as filing an insurance claim, or any action not covered by 11 USC section 108(a). If the period for doing the act expires after 60 days from the date of the order for relief, the date of expiration of the time otherwise allowed for performing the action applies. 11 USC § 108(b).

§ 2.6D(3) Bankruptcy Creditor's Action

Section 108(c) of the Bankruptcy Code extends the statute of limitations for creditors. 11 USC § 108(c).

If a statute of limitations, a nonbankruptcy order, or an agreement "fixes a period for commencing or continuing a civil action in a court other than a bank-

ruptcy court on a claim against the debtor,” and if that period has not expired before the date of the filing of the bankruptcy petition, then that period does not expire until the later of:

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of [the Bankruptcy Code], as the case may be, with respect to such claim.

11 USC § 108(c).

Thus, the creditor is given an additional 30 days after notice of the termination or expiration of the automatic stay if the statute of limitations runs while the stay is in effect. An event that could result in the termination or expiration of the stay could include relief from the automatic stay under 11 USC sections 362, 922, 1201, or 1301; dismissal of the petition; or the debt on which the creditor bases its claim being excepted from discharge. 11 USC § 108(c).

The creditor must bring its action against the debtor within the later of the 30-day extension or the expiration of the statute of limitations period on the creditor’s claim. 11 USC § 108(c).

Section 108(c) applies to chapters 7, 11, 12, and 13 bankruptcies. 11 USC § 103(a).

The period for giving notice of a claim for a statutory lien against the debtor is not suspended or extended by the debtor’s filing of a bankruptcy petition. 11 USC § 546(b).

See § 11.18 to § 11.18E(19) for further discussion of creditors’ rights on the bankruptcy of a debtor.

§ 2.6E Effect of Involuntary Dismissal on Statute of Limitations

If a case is involuntarily dismissed, ORS 12.220 allows a plaintiff to refile that same action within 180 days even if the statute of limitations has then run on the action. *See* § 2.8 to § 2.8C (commencing a new action after involuntary dismissal). *See also* 2 *Torts* § 32.7 (OSB Legal Pubs 2012).

§ 2.7 STATUTES OF ULTIMATE REPOSE

§ 2.7A Period of Ultimate Repose Is Absolute

Although a statute of limitations may be tolled in certain circumstances (*see* § 2.6B(1)(a) to § 2.6B(3)), a statute of ultimate repose establishes an overall maximum limit on the time within which an action may be brought, regardless of the date of discovery of an injury or other circumstances that may affect the expiration of a statute of limitations. *Waxman v. Waxman & Associates, Inc.*, 224 Or App 499, 506–07, 198 P3d 445 (2008); *see also Urbick v. Suburban Med.*

Clinic, Inc., 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999).

§ 2.7B When a Statute of Ultimate Repose Begins to Run

The period of ultimate repose is triggered by a specified event. For example, the period runs from the “date of the act or omission complained of,” ORS 12.115, or the date of “delivery of a product or completion of work,” *Al Disdero Lumber Co. v. Dick W. Ebeling, Inc.*, 95 Or App 671, 674, 770 P2d 945, *rev den*, 308 Or 158 (1989).

A statute of ultimate repose “cannot be extended, regardless of any unfairness to a plaintiff.” *Al Disdero Lumber Co.*, 95 Or App at 674. “In contrast, a statute of limitations does not start to run until a claim is actionable, that is, until there is a legal injury.” *Al Disdero Lumber Co.*, 95 Or App at 674.

§ 2.7C Statutory Construction

Courts construe statutes of ultimate repose in accordance with the template for statutory construction set forth in *State v. Gaines*, 346 Or 160, 170–72, 206 P3d 1042 (2009). *See Giulietti v. Oncology Associates of Oregon, P.C.*, 178 Or App 260, 264, 36 P3d 510 (2001).

Statutory limitations and repose periods may be set forth within the same statute or stated in different statutes. *Compare* ORS 12.110(4) (specifying both a limitations period and a repose period for medical-negligence claims) *and* ORS 30.020 (specifying both a limitations period and a repose period for wrongful-death actions) *with* ORS 12.115 (statute of ultimate repose for negligence claims in general). If one statute is inconsistent with another, the court “is to determine the legislature’s intent as to which statute should control.” *Giulietti*, 178 Or App at 264.

§ 2.7D Specific Statutes of Ultimate Repose

The legislature has enacted specific statutes of ultimate repose for particular claims, and the lawyer must take care in reviewing applicable laws to determine the explicit periods of repose. *See, e.g.*, ORS 12.135 (the statute of repose is six years or 10 years for actions arising from the construction, alteration, or repair of improvements to real property), ORS 12.280 (a 10-year statute of repose applies to any action under any legal theory for damages or injury arising out of the survey of real property).

See § 7.28A to § 7.28C(2)(d) regarding other specific statutes of ultimate repose, including actions for negligence, malpractice, wrongful death, breast implants, and products liability.

§ 2.7E Discovery of Defect after Expiration of Repose Period

The failure to discover a defective work, practice, or product until after the statute of ultimate repose has run does not suspend the statute. *Simonsen v. Ford*

Motor Co., 196 Or App 460, 475–76, 102 P3d 710 (2004), *rev den*, 338 Or 681 (2005).

§ 2.7F Equitable Estoppel

Equitable estoppel is not available to avoid a statute of ultimate repose. *Beals v. Breeden Bros., Inc.*, 113 Or App 566, 572, 833 P2d 348, *rev den*, 314 Or 727 (1992).

§ 2.7G Effect of Minority or Insanity

§ 2.7G(1) Minority or Insanity Does Not Toll Statutes of Ultimate Repose

If a minor or an insane person is entitled to bring an action that is subject to a statute of limitations under ORS 12.010 to 12.050, ORS 12.070 to 12.250, or ORS 12.276, the limitations period is tolled pursuant to ORS 12.160. *See* § 2.6B(1)(a) to § 2.6B(1)(b).

However, neither minority nor insanity suspends the running of a statute of ultimate repose. ORS 12.160(2), (4); *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008); *DeLay v. Marathon LeTourneau Sales & Serv. Co.*, 291 Or 310, 315, 630 P2d 836 (1981).

If a person is younger than 18 years of age at the time the cause of action accrues, the statute of limitations for commencing the action “is tolled for so long as the person is younger than 18 years of age.” ORS 12.160(1). However, the time for commencing an action may not be extended longer than the earlier of (1) the expiration of five years or (2) one year after the person attains the age of 18. ORS 12.160(2); *see Christiansen*, 344 Or at 456 (rejecting the plaintiff’s challenge under the remedies clause to application of the five-year statute of repose for medical negligence, ORS 12.110(4)).

Similarly, if a person is insane at the time the cause of action accrues, the statute of limitations for commencing the action “is tolled for so long as the person is insane.” ORS 12.160(3); *see DeLay*, 291 Or at 315 (insanity suspends the running of the two-year statute of limitations for tort actions, but the period of ultimate repose continues to run).

Statutes of repose bar litigation filed after the specified date, regardless of any tolling for disability under ORS 12.160 that would extend the statute of limitations for the same action. *See* ORS 12.110(4) (“notwithstanding the provisions of ORS 12.160 . . .”), ORS 12.115 (“In no event shall . . .”); *see also Christiansen*, 344 Or at 456. *See* § 2.7G(1)(a) to § 2.7G(2).

§ 2.7G(1)(a) Minor’s Action for Personal Injury

An action brought more than 10 years after an accident that caused injuries to a minor was barred by the statute of ultimate repose set forth in ORS 12.155. *Davis v. Blanchard*, 84 Or App 99, 102, 733 P2d 460 (1987).

§ 2.7G(1)(b) Minor's Action for Medical Malpractice

Notwithstanding ORS 12.160, which tolls the statute of limitations for minors, the period of ultimate repose for a minor's action based on medical negligence is five years from the date of the treatment, omission, or operation. ORS 12.110(4); *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008).

§ 2.7G(1)(c) Child Abuse

Notwithstanding ORS 12.110, ORS 12.115, or ORS 12.160, an action based on child abuse must be brought before the injured person attains 40 years of age, or within five years of the date that the injured person discovers, or in the exercise of reasonable care should have discovered, the causal connection between the child abuse and the injury, whichever period is longer. ORS 12.117(1) (as amended by the 2009 Legislature). The longer time periods provided by the 2009 amendments apply to all causes of action based on child abuse, whether arising before, on, or after January 1, 2010. Or Laws 2009, ch 879, § 2.

ORS 12.117 applies to claims based on conduct that constitutes child abuse or conduct knowingly allowing, permitting, or encouraging child abuse that occurs while the person is under 18 years of age. *See Lourim v. Swensen*, 328 Or 380, 389, 977 P2d 1157 (1999) (ORS 12.117 applies to claims of negligence for “knowingly allowing, permitting, or encouraging child abuse”).

§ 2.7G(2) Advance Payment to Minor or Insane Person without Notice of Expiration of Limitations Period

The making of advance payments without proper notification of the expiration of the applicable statute of limitations, as required by ORS 12.155 (*see* § 2.6C(1) to § 2.6C(3)), does not suspend the statute of ultimate repose, even if the advance payments are made to a minor or an insane person. *Davis v. Blanchard*, 84 Or App 99, 102, 733 P2d 460 (1987).

§ 2.8 COMMENCING A NEW ACTION AFTER INVOLUNTARY DISMISSAL

After a case is involuntarily dismissed as described in ORS 12.220(1), ORS 12.220 allows a plaintiff to refile that same action within 180 days even if the statute of limitations has then run on the action. *See* §§ 2.8A(1) to § 2.8C. *See also* 2 *Torts* ch 32 (OSB Legal Pubs 2012).

ORS 12.220 is known as the saving statute because, if the requirements of the statute are met, the plaintiff's rights are not terminated by the dismissal of the action. *Hatley v. Truck Ins. Exch.*, 261 Or 606, 610–12, 494 P2d 426, *adh'd to on reh'g*, 261 Or 606, 495 P2d 1196 (1972); *see Quick v. Andresen*, 238 Or 433, 435–36, 395 P2d 154 (1964). The purpose of the saving statute is to prevent a statute of limitations from barring a diligent plaintiff whose timely action has been dismissed over the plaintiff's objection and without a determination on the merits.

Hatley, 261 Or at 614; *see White v. Pac. Tel. & Tel. Co.*, 168 Or 371, 376, 123 P2d 193 (1942), *overruled in part by Fuller v. Safeway Stores, Inc.*, 258 Or 131, 481 P2d 616 (1971).

NOTE: The Oregon legislature significantly amended ORS 12.220 in 2003. Many of the cases cited in this section and § 2.8A(1) to § 2.8B(5) predate the amendment. The cases are useful in understanding general propositions of the saving statute but should be cited and relied on with caution, particularly with respect to the mechanics of the statute.

§ 2.8A General Rules

§ 2.8A(1) Plaintiff May Refile an Action That Was Involuntarily Dismissed

ORS 12.220 provides that, notwithstanding ORS 12.020 (determination of when an action is commenced, *see* § 2.1A(1) to § 2.1A(2)), if an action is filed within the time allowed by statute but is either involuntarily dismissed without prejudice on any ground not adjudicating the merits of the action or involuntarily dismissed with prejudice on the ground that the plaintiff failed to properly effect service of summons within the time allowed by ORS 12.020 and the statute of limitations has expired, the plaintiff may commence a new action based on the same claim or claims against a defendant in the original action, as long as the defendant had actual notice of the original filing within 60 days after the original filing. ORS 12.220(1).

The new action must be commenced within the time specified in ORS 12.220(2). *See* § 2.8A(2).

§ 2.8A(2) New Action Must Be Filed Within 180 Days

If, pursuant to ORS 12.220(1), a new action is commenced within 180 days after the judgment dismissing the original action is entered, the new action is not subject to dismissal on the ground that it was not commenced within the statute of limitations. ORS 12.220(2).

NOTE: When the trial court dismisses a case, the time spent on an appeal of that dismissal is not included when calculating the 180-day period within which a party is allowed to commence a new action on the same cause. *Sanok v. Grimes*, 306 Or 259, 265, 760 P2d 228 (1988) (interpreting former statute).

§ 2.8A(3) Statute Does Not Apply to a New Cause of Action

The saving clause in ORS 12.220 does not apply to causes of action that were not brought in the original action. *McNeely v. Weyerhaeuser Co.*, 115 Or App 184, 188, 837 P2d 546 (1992), *rev den*, 315 Or 312 (1993) (“The clear purpose of ORS 12.220 is to preserve only pre-existing claims, not to create a . . . grace period for bringing untimely actions on claims that had never been stated before.”).

§ 2.8A(4) Only One Refiling Is Permitted

After the original action has been involuntarily dismissed, a plaintiff may reinitiate the action only once under ORS 12.220. ORS 12.220(3).

§ 2.8A(5) Defenses in New Action

All defenses that would have been available against the original action will be available in the new action. ORS 12.220(4).

§ 2.8B Application of the Rules

§ 2.8B(1) Statute Does Not Apply to Voluntary Dismissals

ORS 12.220 applies only when the original action is “involuntarily dismissed.” ORS 12.220(1). A plaintiff may not file a new claim pursuant to this statute if that same plaintiff, at any time, voluntarily dismissed the original claim. ORS 12.220(1).

NOTE: Before the 2003 amendments to ORS 12.220, Oregon courts permitted a plaintiff to use the statute if the plaintiff voluntarily dismissed the original claim during trial, but prohibited a plaintiff from relying on the statute when the plaintiff voluntarily dismissed the claim before trial. *See Quick v. Andresen*, 238 Or 433, 435–36, 395 P2d 154 (1964); *Alderson v. State*, 105 Or App 574, 581, 806 P2d 142 (1991). The current version of ORS 12.220(1) makes clear that the statute applies only to involuntary dismissals, and the distinction between a voluntary dismissal before trial or a voluntary dismissal during trial is therefore irrelevant.

§ 2.8B(2) Lack of Prosecution

As noted in § 2.8B(1), before the 2003 amendments to ORS 12.220, Oregon courts permitted a plaintiff to use the statute if the plaintiff voluntarily dismissed the original claim during trial. Under the pre-2003 statute, Oregon courts held that a dismissal for lack of prosecution was akin to a voluntary dismissal, and since a voluntary dismissal before trial did not qualify for protection under ORS 12.220, then a dismissal for lack of prosecution did not qualify either. *Pakos v. Warner*, 250 Or 203, 205, 441 P2d 593 (1968).

COMMENT: It is unlikely that a court would follow *Pakos* after the 2003 amendments because ORS 12.220 now applies to any case “involuntarily dismissed without prejudice on any ground *not adjudicating the merits of the action.*” ORS 12.220(1) (emphasis added). Dismissals for lack of prosecution are not adjudications on the merits of an action. *See generally White v. Pac. Tel. & Tel. Co.*, 168 Or 371, 375, 123 P2d 193 (1942), *overruled in part by Fuller v. Safeway Stores, Inc.*, 258 Or 131, 481 P2d 616 (1971). For this reason, when a case is dismissed for lack of prosecution (without prejudice), the plaintiff can likely avail itself of ORS 12.220.

§ 2.8B(3) Failure to Retain Counsel

An action that is involuntarily dismissed with prejudice for failing to obtain necessary counsel cannot be revived by the saving statute. *Te-Ta-Ma Truth Found. Family of Uri, Inc. v. Vaughan*, 114 Or App 448, 452, 835 P2d 938 (1992); *but see Cornus Corp. v. Geac Enter. Solutions, Inc.*, 252 Or App 595, 604–05, 289 P3d 267 (2012), *rev den*, 353 Or 428 (2013), *cert den*, 134 S Ct 421 (2013).

ORS 12.220(1) precludes a plaintiff from using the saving rule to revive a case that was dismissed with prejudice, except when a case is dismissed for failure to properly effect service of summons.

§ 2.8B(4) Lack of Jurisdiction in Original Case

Even if the trial court did not have personal or subject-matter jurisdiction over an action that was involuntarily dismissed, the original action has been “commenced” within the meaning of the saving statute. *Stevens v. Scanlon*, 248 Or 229, 232, 430 P2d 1019 (1967) (interpreting a prior version of the statute). Accordingly, a plaintiff has 180 days from the date of entry of that dismissal to refile the action. ORS 12.220(2).

§ 2.8B(5) Dismissal or Reversal on Appeal

ORS 12.220 no longer applies to appeals. Before being amended by the 2003 Legislature, the statute provided as follows:

[I]f an action is commenced within the time prescribed therefor and the action is dismissed upon the trial thereof, *or upon appeal*, after the time limited for bringing a new action, the plaintiff . . . may commence a new action upon such cause of action within one year after *the dismissal or reversal on appeal*.

ORS 12.220 (2001) (emphasis added). The 2003 amendments eliminated all reference to the right to refile on a dismissal or reversal on appeal.

§ 2.8C References

See generally 2 Torts ch 32 (especially § 32.7) (OSB Legal Pubs 2012).

§ 2.9 DISCOVERY—PRETRIAL

§ 2.9A Depositions

§ 2.9A(1) When Deposition May Be Taken; Notice

A deposition may be taken at any time after service of the summons and complaint on reasonable notice in writing to all parties to the action. ORCP 39 A, ORCP 39 C. *See* § 2.13E (interstate deposition instruments).

Leave of court must be obtained if the plaintiff seeks to take a deposition before a defendant’s time to appear has expired, unless a defendant has served a notice of taking deposition or otherwise sought discovery, or if the person to be deposed will be unavailable after the time for appearance has expired. ORCP 39 A, ORCP 39 C(2).

§ 2.9A(2) Transcription or Recording of Deposition

§ 2.9A(2)(a) Submission of Transcription or Recording to Witness

A recording or transcription of a witness's testimony at a deposition must be submitted to the witness for examination only when a request for submission to the witness is made at the time the deposition is taken, or by leave of the court when a request is made by a party or a witness at any time before trial. ORCP 39 F(1).

§ 2.9A(2)(b) Corrections to Deposition Transcript or Recording

If a party or the witness requests to review the recorded deposition testimony (*see* § 2.9A(2)(a)), the recording or transcription must be submitted to the witness for examination. ORCP 39 F(1). If the witness desires to change any of his or her transcribed or recorded testimony, the party who took the deposition must promptly serve all parties with notice of the changes, along with the reasons given by the witness for making the changes. ORCP 39 F(2).

Within 30 days after the deposition is submitted to the witness, the witness must then state in writing that the transcription or recording is correct subject to the changes. ORCP 39 F(2). If the statement is not made within the 30-day period, the party taking the deposition must “state on the transcription or in a writing to accompany the recording the fact of the waiver, or the physical incapacity or absence of the witness, or the fact of refusal of the witness to make the statement, together with the reasons, if any, given therefor.” ORCP 39 F(2).

§ 2.9A(3) Objections to Deposition

Objections to the competency of a witness, or to the competency, relevancy, or materiality of the testimony, are not waived by the failure to make them before or during deposition testimony, unless the ground for the objection might have been remedied if presented at the deposition. ORCP 41 C(1).

Objections to the manner of taking the deposition, to the form of the questions or answers, to the oath or affirmation, or to the conduct of the parties are waived if not made at the taking of the deposition. ORCP 41 C(2).

“Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with under [ORCP] 39 and [ORCP] 40” are waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence might have been, discovered. ORCP 41 D.

§ 2.9A(4) Perpetuation of Testimony

After the commencement of an action, any party may perpetuate the testimony of a witness for the purpose of trial by serving a perpetuation deposition notice. ORCP 39 I(1).

A perpetuation deposition must be taken not less than seven days before trial, and at least 14 days' notice must be given. ORCP 39 I(4). However, on a showing of good cause, the trial court may allow a shorter period for a perpetuation deposition before or during trial. ORCP 39 I(4).

Objections to a perpetuation deposition must be made by motion pursuant to ORCP 36 C before the time set for the deposition. ORCP 39 I(3).

All objections to testimony or evidence taken at the perpetuation deposition must be made at the time of the deposition and noted on the record. The court must rule on any objections before the testimony is offered. Objections not made at the perpetuation deposition are waived. ORCP 39 I(6).

See ORCP 37 B regarding the perpetuation of testimony pending appeal.

§ 2.9A(5) Written Depositions

Upon stipulation of the parties or leave of court, and after the commencement of an action, any party may take the testimony of any person by written questions. Notice of a deposition on written questions must be served on the parties. ORCP 40 A.

Cross-questions may be served within 30 days after the notice and questions are served. Redirect questions may be served within 10 days after service of cross-questions. Recross questions may be served within 10 days after service of redirect questions. ORCP 40 A.

Objections to the form of written questions are waived unless served in writing on the party propounding them within the time allowed for serving cross, redirect, or recross questions, and within 20 days after service of the last-authorized questions. ORCP 41 C(3).

§ 2.9B Production of Documents

A request for the production of documents may be served on the plaintiff after the commencement of the action and may be served on any other party with or after service of summons on that party. ORCP 43 B.

A defendant cannot be compelled to produce documents before 45 days after service of summons, unless the court specifies a shorter time. ORCP 43 B(2). Otherwise, within 30 days after service of a request in accordance with ORCP 43 B(1), or within such other time as the court may order or the parties may agree on in writing, the defendant must serve a response. ORCP 43 B(2).

The response must comply with ORCP 43 B(2). Any objection to the request for production of documents must be stated in the response, or the objection is waived. ORCP 43 B(2)(d), (3).

A subpoena requiring the production of documents without testimony from a nonparty in a civil case must be served on all parties at least seven days before service of the subpoena on the nonparty, unless the time is shortened by the court.

ORCP 43 D, ORCP 55 D(1). The nonparty is allowed at least 14 days to produce the material, unless the time is shortened by the court. ORCP 55 D(1).

See § 2.9C regarding the production of “individually identifiable health information.”

§ 2.9C Production of Individually Identifiable Health Information

“Individually identifiable health information” records may be obtained by subpoena only as provided in ORCP 55 H(2). The attorney for the party issuing a subpoena requesting production of individually identifiable health information must serve the custodian of the records with either a qualified protective order (ORCP 55 H(1)(b)) or an affidavit or declaration (ORCP 55 H(2)(a)).

If the subpoena requires the delivery of the records directly to the attorney or party issuing the subpoena, a copy of the proposed subpoena must first be served on the person whose records are sought and on all other parties to the litigation not less than 14 days before the subpoena is served on the custodian of the records. ORCP 55 H(2)(c).

The affidavit or declaration supporting the subpoena for individually identifiable health information must demonstrate that:

(1) “[T]he party has made a good faith attempt to provide written notice to the individual or the individual’s attorney that the individual or the attorney had 14 days from the date of the notice to object,” ORCP 55 H(2)(a)(i);

(2) “[T]he notice included the proposed subpoena and sufficient information about the litigation in which the individually identifiable health information was being requested to permit the individual or the individual’s attorney to object,” ORCP 55 H(2)(a)(ii); and

(3) “[T]he individual [or the individual’s attorney] did not object within the 14 days or, if objections were made, they were resolved and the information being sought is consistent with such resolution,” ORCP 55 H(2)(a)(iii).

The attorney issuing the subpoena must also certify that he or she will promptly, on request, permit the patient or the patient’s representative to inspect and copy the records received. ORCP 55 H(2)(a).

In lieu of the affidavit or declaration described above, the subpoena can instead be accompanied by a qualified protective order. ORCP 55 H(2)(a).

§ 2.9D Requests for Admissions; Response

A request for admissions may be served by any party on another party after the commencement of an action. ORCP 45 A.

A response must be made within 30 days after service of a request, or the matter is deemed admitted. ORCP 45 B. However, a defendant may not be required to answer or object to a request for admissions until 45 days after service of the summons and complaint on the defendant. ORCP 45 B.

§ 2.9E References

See 1 *Criminal Law* ch 14 (OSB Legal Pubs 2014) (discovery); 1–2 *Oregon Civil Litigation Manual* chs 16–19 (discovery, depositions, requests for production, inspection, physical and mental examinations, and admissions) (Oregon CLE 2004 & Supp 2009); 1 *Oregon Civil Pleading and Practice* chs 27–31 (OSB Legal Pubs 2012) (scope of discovery, depositions, requests for production and inspection, e-discovery, and requests for admission).

§ 2.10 DECLARATORY JUDGMENTS

§ 2.10A In General

Oregon has adopted the Uniform Declaratory Judgments Act (UDJA), ORS 28.010 to 28.160. The UDJA does not include any time limitation for the commencement of a declaratory-judgment action.

When declaratory relief is sought as an alternative to other appropriate and otherwise available relief, the relevant limitations period for the declaratory-judgment action is based on the limitations period of the underlying claim. *Brooks v. Dierker*, 275 Or 619, 623, 552 P2d 533 (1976); *Brooks v. Smith*, 27 Or App 441, 445, 556 P2d 696 (1976), *rev den*, 277 Or 99 (1977).

§ 2.10B Challenges to the Election Process

(1) *Preelection challenge*. Preelection challenges to the election process “in an action for which there is no statutorily prescribed deadline for initiating the action” must be filed within a “reasonable time.” *State ex rel. Keisling v. Norblad*, 317 Or 615, 629, 860 P2d 241 (1993); *see also Ellis v. Roberts*, 302 Or 6, 17–19, 725 P2d 886 (1986) (in a preelection challenge to a ballot measure brought under the Uniform Declaratory Judgments Act, the court determined that the challenge was not timely because it was not brought within 60 days after the ballot title was approved).

(2) *Postelection challenge*. A postelection challenge to the “constitutionality of a state statute or amendment to the Oregon Constitution initiated by the people or referred to the people” must be commenced “on or after the date that the Secretary of State certifies that the challenged measure has been adopted by the electors and within 180 days after the effective date of the measure.” ORS 250.044(1).

§ 2.10C Appeal

All orders and judgments in a declaratory-judgment action may be appealed from or reviewed as other orders and judgments. ORS 28.070.

§ 2.10D References

See *Administering Oregon Estates* § 8.2-3(a) to § 8.2-3(b)(7) (OSB Legal Pubs 2012); 1 *Insurance* § 17.2 to § 17.10 (Oregon CLE 1996 & Supp 2003); 2 *Oregon Civil Pleading and Practice* ch 37 (OSB Legal Pubs 2012).

§ 2.11 COUNTERCLAIMS, RECOUPMENT, AND SETOFF

§ 2.11A Counterclaims

When a counterclaim “arises out of the transaction alleged in the complaint and is in existence at the time that the complaint is filed and is not then barred by a statute of limitations,” the counterclaim “will not be barred by the running of the statutory time thereafter, but the statute will be suspended until the counterclaim is filed.” *Lewis v. Merrill*, 228 Or 541, 549, 365 P2d 1052 (1961). *See also* ORCP 22.

§ 2.11B Recoupment

Recoupment relates back to the original complaint because it is the “cutting back” of the plaintiff’s claim. *Rogue River Mgmt. Co. v. Shaw*, 243 Or 54, 58, 411 P2d 440 (1966).

“[T]he general statute of limitations does not bar the assertion of a claim by way of recoupment although such claim could not be made the basis of an action for affirmative relief because the statute of limitations had run.” *Lamb v. Young*, 250 Or 228, 230, 441 P2d 616 (1968); *see also* *Dixon v. Schoonover*, 226 Or 443, 453–54, 359 P2d 115 (1961) (“recoupment arising out of the same matter can be allowed to the extent of the relief demanded by plaintiffs on their first cause of action even though an independent action could not be maintained because of the statute”); *Wright v. Hage*, 214 Or 400, 404–05, 330 P2d 342 (1958).

§ 2.11C Setoff

Setoff is a “money demand by the defendant against a plaintiff arising upon contract and constituting a debt *independent of and unconnected with the cause of action* set forth in [the plaintiff’s] complaint.” *Rogue River Mgmt. Co. v. Shaw*, 243 Or 54, 59, 411 P2d 440 (1966) (emphasis in original) (citation omitted).

A setoff claim does not relate back to the date of the complaint but must stand on its own. It is barred if filed after the statute of limitations on the setoff claim has run as of the date of filing. *Jewell v. Compton*, 277 Or 93, 559 P2d 874 (1977); *Lamb v. Young*, 250 Or 228, 441 P2d 616 (1968).

§ 2.11D References

See 1 *Oregon Civil Pleading and Practice* § 23.2-7 (OSB Legal Pubs 2012); 1 *Oregon Civil Litigation Manual* § 7.68 (Oregon CLE 2004 & Supp 2009).

See also § 2.6 to § 2.6A(8) (statutes of limitations).

§ 2.12 SUMMARY JUDGMENT

§ 2.12A Motion for Summary Judgment

A party seeking to recover on a claim, counterclaim, or cross-claim, or to obtain a declaratory judgment, may file and serve a motion for summary judgment

“at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party.” ORCP 47 A.

A defendant may file and serve a motion for summary judgment at any time after commencement of the action. ORCP 47 B.

The motion for summary judgment must be filed and served at least 60 days before the date set for trial. ORCP 47 C.

The court has discretion to modify the above-stated times. ORCP 47 C.

§ 2.12B Opposing Affidavits; Reply

The party opposing a motion for summary judgment must file and serve opposing affidavits and supporting documents within 20 days. ORCP 47 C.

The moving party then has five days within which to reply. ORCP 47 C.

The court has discretion to modify the above-stated times. ORCP 47 C.

§ 2.12C Multiple Parties or Claims

If an action involves multiple claims or multiple parties, and the court grants summary judgment for fewer than all parties and claims, a limited judgment may be entered if the court makes the determination required by ORCP 67 B. ORCP 47 H.

§ 2.12D References

See generally 1 *Oregon Civil Litigation Manual* ch 11 (Oregon CLE 2004 & 2009 Supp); 2 *Oregon Civil Pleading and Practice* ch 44 (OSB Legal Pubs 2012).

§ 2.13 UNIFORM TRIAL COURT RULES

NOTE: The Uniform Trial Court Rules (UTCRRs) are found online at <<http://courts.oregon.gov/OJD/programs/utcr/utcrrules.page>>. Lawyers should review the current UTCRRs at this website because the rules are updated every August and are occasionally amended out-of-cycle.

§ 2.13A Applicability of UTCRRs

The Uniform Trial Court Rules (UTCRRs) apply to “all proceedings and actions in circuit court except those proceedings and actions specified in UTCRR 1.010(3) or proceedings and actions for which a limited application is specifically provided by [the UTCRRs].” UTCRR 1.010(1).

UTCRR 1.010(3) provides that chapters 2 to 13 of the UTCRRs do not apply to small claims, violations, or parking violations, except that:

(1) “UTCRR 7.050 applies to all cases that may be subject to a federal bankruptcy stay, including small claims cases,” UTCRR 1.010(3)(a); and

(2) “[Supplementary local rules] relating to these subjects are placed in chapters as provided by UTCR 1.080(3),” UTCR 1.010(3)(b).

ORCP 10 applies when computing time under the UTCRs. UTCR 1.130. *See* § 2.3A to § 2.3J (computation of time periods).

PRACTICE TIP: The lawyer should always check the supplementary local rules for the county in which the case is filed and cross-reference the UTCRs with the Oregon Rules of Civil Procedure. *See* UTCR 1.050(1).

Counsel or an unrepresented party whose address or telephone number has changed must immediately mail or deliver notification of the change to the trial court administrator and all other parties. UTCR 2.010(14).

§ 2.13B Matters under Advisement

If a judge has a matter under advisement for more than 60 days, all parties have a duty to immediately call the matter to the court’s attention in writing. UTCR 2.030(1).

If the matter remains under advisement for 90 days, all parties must again immediately call the matter to the judge’s attention in writing, with copies to the presiding judge, if any, and the Chief Justice. UTCR 2.030(2).

§ 2.13C Appointment or Substitution of Counsel

§ 2.13C(1) Substitution of Counsel

Notice of a change of the attorney of record must be promptly filed. UTCR 3.140(1); *see also* ORS 9.380, ORS 9.390.

§ 2.13C(2) Appointment of Counsel

An attorney newly employed in a pending case must immediately notify the court and other parties of the appointment, either in writing or in open court. UTCR 3.140(3).

§ 2.13C(3) Out-of-State Counsel

Each time a court or administrative body grants out-of-state counsel permission to appear before an Oregon court or administrative body, or revokes such permission, the local counsel must give notice to the Oregon State Bar in a manner and time determined by the bar. UTCR 3.170(4).

§ 2.13D Civil Proceedings

§ 2.13D(1) Written Communications Made to Court

“Except as exempted by statute, UTCR 2.100, or UTCR 2.110, when written communication is made to the court, copies must simultaneously be mailed or delivered to all other parties and indication made on the original of such mailing or delivery.” UTCR 2.080(1).

§ 2.13D(2) Conferring on Motions

Before filing a motion under ORCP 21, ORCP 23, or ORCP 36 to 46, the moving party must make a good-faith effort to confer with the other party about the disputed issues, or the court will deny the motion. UTCR 5.010(1)–(2). However, the court will not deny a motion to dismiss for failure to state a claim or for lack of jurisdiction due to the moving party’s failure to confer. UTCR 5.010(1).

When the motion is filed, the moving party must file a certificate of compliance stating that the parties conferred or stating facts showing good cause for not conferring. UTCR 5.010(3).

A motion may be presented *ex parte* upon filing a certification that the motion is unopposed. UTCR 5.010(4). See § 2.13D(4) (*ex parte* matters).

§ 2.13D(3) Response and Reply

A party opposing any motion (other than a motion for summary judgment) must file a written memorandum in response to the motion within 14 days from the date on which the motion is served. UTCR 5.030(1).

A reply memorandum, if any, must be filed within seven days after the response is served. UTCR 5.030(2).

§ 2.13D(3)(a) Oral Argument

Oral argument, if desired, must be requested in the caption of the motion or response. The first paragraph of the motion or response must include (1) an estimate of the time necessary for the argument and (2) “a statement whether official court reporting services are requested.” UTCR 5.050(1).

§ 2.13D(3)(b) Oral Argument by Telephone

A request for oral argument by telecommunication must be in the caption of the motion or response. The conference call must be initiated and paid for by the requesting party. UTCR 5.050(2).

§ 2.13D(4) Stipulated and *Ex Parte* Matters

“Any stipulated or *ex parte* matter may be delivered by mail or messenger to the trial court administrator for distribution to a judge for signature.” UTCR 5.060(1). “An *ex parte* default, a stipulated order, or a stipulated judgment also may be personally presented to a judge by the attorney or the attorney’s agent.” UTCR 5.060.

Ex parte matters may be delivered or personally presented at any time during court hours, unless local rules otherwise limit the time for presenting such matters. UTCR 5.060(3).

PRACTICE TIP: The lawyer should check the supplementary local rules for any specific *ex parte* procedure.

§ 2.13D(5) Court Notification on Settlement

(1) *Notice.* The parties must immediately notify the court of any settlement, dismissal, or other resolution of the case. The court may require the parties to (a) put the decision on the record, (b) give written notice to the parties that the case will be dismissed unless an appropriate judgment is tendered to the court within 28 days, or (c) both. After written notice to the parties, and if no order or judgment has been filed, the case will be dismissed following the 28th day after the date of the notice. UTCR 6.020(2).

(2) *Failure to give timely notice; costs.* The court may assess jury-impairing fees against any party or all parties for the failure to notify the court of a settlement before noon of the last judicial day before trial, or for late settlement if the case settles after noon on the last judicial day. UTCR 6.020(3).

§ 2.13D(6) Postponement of Trial

A request to postpone a trial date must be made by motion. UTCR 6.030(1). No time limit for filing such a motion is specified in UTCR 6.030, except that if the motion is based on stipulation of the parties, it must be filed at least 28 days before the date set for trial, and the new trial date must be within the time periods set forth in UTCR 7.020(5). UTCR 6.030(4). The lawyer should check the supplementary local rules.

When a party is scheduled to appear in more than one court at the same time, but has been unable to obtain a postponement in one of the courts, the scheduling conflict will be resolved by the presiding judges of the affected courts on motion filed in both courts by the conflicted party. UTCR 6.040(1).

§ 2.13D(7) Notice to Court of Disputed Water Right

Whenever a disputed water right becomes an issue in a case, the party making the assertion must notify the court. UTCR 5.090.

§ 2.13E Interstate Deposition Instruments

Once issued by the court, a commission pursuant to ORCP 38 to permit a deposition in a foreign jurisdiction for a case pending in Oregon is effective for 28 days from the date of issue. UTCR 5.130(2).

§ 2.13F Filings with the Court

§ 2.13F(1) Trial Memoranda

Trial memoranda must be filed with the court administrator, with copies delivered to the court and opposing parties at the same time. UTCR 6.050.

§ 2.13F(2) Proposed Orders or Judgments

§ 2.13F(2)(a) Submission of Proposed Orders or Judgments

Except as described below, any proposed judgment or proposed order submitted in response to a ruling of the court must be either (1) served on opposing counsel at least three days before it is submitted to the court, (2) accompanied by

opposing counsel's stipulation that no objection exists as to the form of the judgment or order, (3) mailed to an unrepresented party at least seven days before it is submitted to the court, or (4) presented in open court with the parties present. UTCR 5.100(1).

The requirements of UTCR 5.100(1) do not apply to proposed judgments subject to UTCR 10.090 (proceedings relating to vehicle laws and suspensions of driving privileges) or uncontested probate and protective proceedings. UTCR 5.100(3).

See § 2.13F(2)(b) regarding a proposed judgment containing an award of punitive damages.

§ 2.13F(2)(b) Proposed Judgment Containing an Award of Punitive Damages

Any proposed judgment containing an award of punitive damages must be served on the Director of the Crime Victims' Assistance Section, Oregon Department of Justice, 1162 Court Street NE, Salem, OR 97301, at least three days before submission to the court. UTCR 5.100(4).

See § 2.13F(3) regarding notices concerning verdicts and judgments that include punitive damages.

§ 2.13F(3) Notice of Judgment or Verdict Containing an Award of Punitive Damages

Upon the entry of a verdict that includes an award of punitive damages, the prevailing party must provide notice of the verdict to the Department of Justice. ORS 31.735(3).

In addition, upon entry of a judgment based on a verdict that includes an award of punitive damages, the prevailing party must provide notice of the judgment to the Department of Justice. ORS 31.735(3).

The notices required under ORS 31.735(3) must be in writing and must be delivered to the Department of Justice Crime Victims' Assistance Section in Salem, Oregon, within five days after the entry of the verdict or judgment.

The prevailing party must promptly file with the court a copy of each notice required by ORS 31.735(3), along with the proof of service. UTCR 5.120(2).

§ 2.13F(4) Jury Instructions

Jury instructions and verdict forms must be delivered to the court and to opposing parties at the same time. UTCR 6.060(1). Proposed verdict forms and interrogatories must be submitted at the commencement of trial. UTCR 6.060(6).

§ 2.13F(5) Exhibits

(1) *List of exhibits must be submitted to court.* Exhibits must be marked before trial, and a list of premarked exhibits must be submitted to the court at the time of trial. UTCR 6.080(1), (3).

(2) *Disposition of exhibits.* Unless otherwise ordered and except as provided in Oregon Laws 2011, chapter 275, section 1, exhibits are returned to the custody of counsel for the submitting parties upon the conclusion of the trial or hearing, and counsel must retain the exhibits until final disposition of the case (unless the exhibits are returned to the trial court pursuant to subsection (2) or (3) of UTCR 6.120). UTCR 6.120(1).

NOTE: Exhibits submitted by parties who are not represented by counsel are retained by the trial court, subject to UTCR 6.120(4).

Exhibits that are not returned to the submitting parties are retained by the court until the time for appeal has elapsed and there is a final disposition of the case. UTCR 6.120(1), (4). The court then sends a notice to the parties that they have 30 days within which to withdraw their exhibits, and that if the parties do not withdraw the exhibits, the court will dispose of them. UTCR 6.120(4).

(3) *Return of exhibits to court after filing of notice of appeal.* After a party has filed a notice of appeal, the trial court administrator will notify counsel that they must return documentary exhibits to the trial court within 21 days of the notice. Nondocumentary exhibits must be returned to the trial court on its request. UTCR 6.120(2)–(3).

§ 2.13F(6) Hazardous Substances

If a party intends to offer into evidence any hazardous substance at an evidentiary hearing or trial, the party must file a motion seeking an order regulating the handling, use, and disposition of the hazardous substance. The motion must be filed no later than 28 days before the hearing or trial. UTCR 6.140(1). A party's failure to file the motion at least 28 days before the hearing or trial "may be grounds for excluding any hazardous substance from the courthouse." UTCR 6.140(4).

§ 2.13G Waiver of Jury: Civil

A waiver of a jury in a civil case must be made before 5:00 p.m. of the last judicial day before trial. After that time, a jury trial may be waived only with the court's consent. The court may assess one or all parties with costs of impaneling a jury for a failure to timely notify the court of a waiver. UTCR 6.130.

§ 2.13H Case Management and Calendaring

§ 2.13H(1) Filing of Return or Acceptance of Service

After service is made, the serving party "must forthwith file the return or acceptance of service with the trial court administrator." UTCR 7.020(1).

If no return or acceptance of service is filed by the 63rd day after a complaint is filed, notice will be given to the plaintiff that his or her case will be dismissed for want of prosecution 28 days from the date of mailing of the notice unless (1) proof of service is filed within the 28-day period, (2) good cause to

continue the case is shown to the court on motion supported by affidavit, or (3) the defendant has appeared. UTCR 7.020(2).

§ 2.13H(2) Defendant’s Failure to Appear

The case is not at issue if the defendant fails to appear by the 91st day after the plaintiff filed the complaint. The court will notify the plaintiff that the case against each nonappearing defendant will be dismissed for want of prosecution 28 days from the date of the mailing of the notice unless (1) the plaintiff files a motion for default, and entry of judgment has been applied for within the 28-day period, (2) the plaintiff files a motion showing good cause to continue the case, or (3) the defendant appears. UTCR 7.020(3).

§ 2.13H(3) When Case Will Be Deemed at Issue

If all defendants have appeared, the case will be deemed at issue 91 days after the filing of the complaint or when the pleadings are complete, whichever is earlier. UTCR 7.020(4).

§ 2.13H(4) Setting Trial Date

A trial date must be set no later than one year from the date on which the complaint is filed, or six months from the date on which a third-party complaint is filed, whichever is later, unless good cause is shown to the presiding judge. UTCR 7.020(5).

The parties have 14 days after a case is at issue to either agree on a trial date or have a conference with the presiding judge to set a trial date. Otherwise, the calendar clerk will set a trial date. UTCR 7.020(6)–(7).

But see § 2.13H(5) regarding complex cases.

§ 2.13H(5) Complex Cases

Any party may apply to have a matter designated as a “complex case” at any time before a trial date is assigned. UTCR 7.030(1). A complex case is not subject to the time limitation or trial-setting procedures set forth in subsections (5), (6), or (7) of UTCR 7.020 (*see* § 2.13H(4)); however, such a case will be set for trial “as soon as practical, but in any event, within two years from the date of filing” unless the assigned judge, for good cause shown, extends the trial date. UTCR 7.030(4).

§ 2.13H(6) Court Notification of Settlement or Resolution of Matter

The parties must “report immediately to the court any resolution of any matter scheduled on the court’s docket.” UTCR 7.040.

§ 2.13H(7) Bankruptcy Stay

Time periods for setting trials set forth in UTCR 7.020 or a supplementary local rule are not applicable during a federal bankruptcy stay of the underlying action unless the court severs the claim. UTCR 7.050(2), (4).

§ 2.13H(8) ADA Accommodations; Foreign-Language Interpreters

A party who needs special accommodation under the Americans with Disabilities Act or who needs a foreign-language interpreter must notify the court as soon as possible, but no later than four judicial days before the proceeding. The court may waive the four-day notice requirement for good cause shown. UTCR 7.060–7.070.

A neutral court interpreter may request a list of specialized terminology expected to be used in the proceeding, which list must be provided by the parties before the commencement of the proceedings. UTCR 7.080.

§ 2.13I Proceedings Relating to Motor Vehicle Laws

(1) *Record of proceeding.* When a petition is served on the Driver and Motor Vehicle Services Division (DMV), a branch of the Oregon Department of Transportation, “the DMV must prepare the record of the proceeding, including a transcription of the oral proceedings, or the agreed portion thereof if the parties have stipulated to shorten the record, and all exhibits introduced and made a part of the record at the hearing.” UTCR 10.020(1).

(2) *Filing of record.* The DMV must (1) “serve certified true copies of the record on the petitioner and the Attorney General” and (2) “file the original record with the trial court administrator within 30 days of service of the petition for review.” UTCR 10.020(1). For good cause, the court may extend the time for filing the record. UTCR 10.020(1).

(3) *Motion to correct record.* A motion to correct a record prepared by the DMV must be filed within seven days of the filing of the record, or the record is deemed settled. UTCR 10.040.

(4) *Petitioner’s memorandum of points and authorities.* A petitioner “must file a memorandum of points and authorities in support of the challenge to the validity of the final order of the DMV.” UTCR 10.050(1). The memorandum, as well as proof of service on the Attorney General, must be filed no later than 14 days after settlement of the record. UTCR 10.050(2).

(5) *Respondent’s memorandum.* The respondent may file a written memorandum of points and authorities in response to the petitioner’s memorandum. The memorandum, as well as proof of service on the petitioner, must be filed no later than three days before the date set for hearing. UTCR 10.060.

(6) *Setting hearing date.* The court will schedule a hearing within 35 days after the petitioner’s memorandum or the settlement of the record is filed, whichever occurs later. The court must notify the parties of the hearing date at least 10 days before the hearing. UTCR 10.070(1); *see* ORS 813.410(8)(b).

(7) *Judgment.* The court must enter judgment within seven days after the hearing or the date provided for the hearing. UTCR 10.090.

§ 2.13J Segregation of Protected Personal Information

§ 2.13J(1) Filing New Documents

A request to segregate protected personal information in a newly filed document must be made at the time the document is filed. UTCR 2.100(4).

NOTE: The segregation of protected personal information that already exists in a court file is governed by UTCR 2.110. *See* § 2.13J(2). Family law cases are governed by UTCR 2.130. *See* § 2.13J(3).

§ 2.13J(2) Information That Already Exists in a Court File

UTCR 2.110 governs the segregation of protected personal information that already exists in a court file. The rule sets no time limit for a person to request the segregation of such information that exists in a court file, nor a time limit for the court to segregate the information. *See* UTCR 2.110(6). Moreover, “a court is not required to segregate information from existing court records based on a request under this rule if the workload created would adversely affect the resources available for a court to perform its ordinary duties.” UTCR 2.110(6).

§ 2.13J(3) Family Law Cases

Whenever a statute or rule requires the disclosure of confidential personal information in a family law case, a party must file that information with the court in a “Confidential Information Form” that is substantially in the form of UTCR Form 2.130.1. UTCR 2.130(1)–(2).

§ 2.13K Electronically Filed Documents

§ 2.13K(1) Filing Fees

A party filing a document electronically must pay the filing fees for filing at the time of electronic filing. UTCR 21.050(1). A waiver or deferral of fees may be obtained. *See* UTCR 21.050(2).

§ 2.13K(2) When Electronic Filing Is Accomplished

“The electronic filing of a document is accomplished when a filer submits a document electronically to the court, the electronic filing system receives the document, and the court accepts the document for filing.” UTCR 21.060(1)(a). The electronic document becomes the court’s record of the document. UTCR 21.060(1)(b).

§ 2.13K(3) Courtesy Copies of Electronically Filed Document

The court may require an electronic filer to submit a copy of the document that was filed electronically and a copy of the e-mail confirmation receipt in the manner and time specified by the court. UTCR 21.070(1).

§ 2.13K(4) Electronic Filing Deadline

“A filer may use the electronic filing system at any time,” UTCR 21.080(1), but the “filing deadline for any document filed electronically is

11:59:59 p.m. in the time zone where the court is located on the day the document must be filed.” UTCR 21.080(2).

§ 2.13K(5) When More Than One Party Joins in Filing a Document Electronically

When more than one party joins in filing a document electronically, UTCR 21.090(3) requires the filer to do one of the following:

(1) Submit a scanned document containing the signatures of all parties joining in the document;

(2) Recite in the document that all the parties joining in filing the document consent or stipulate to the document; or

(3) Identify in the document the signatures that are required and submit each party’s written confirmation no later than three days after the filing.

§ 2.13K(6) Retention of Electronically Filed Documents

Unless the court orders otherwise, if a filer electronically files a scanned document that contains the original signature of a person other than the filer, the filer must retain the document in its paper form for 10 years. UTCR 21.120(1). “On reasonable notice, the filer must provide a paper copy of the original for inspection by another party, the clerk, or the court.” UTCR 21.120(2).

§ 2.13L Resources

See generally Oregon Civil Litigation Manual (Oregon CLE 2004 & Supp 2009). See also the Oregon Judicial Department’s website for updated state and county court rules, <<http://courts.oregon.gov/OJD/rules/pages/index.aspx>>.

§ 2.14 JUDGMENTS

§ 2.14A Default Judgment

§ 2.14A(1) Notice of Intent to Apply for an Order of Default

If the party against whom a default is sought has filed an appearance in the action or has given notice of intent to file an appearance, the party seeking a default judgment must serve the defaulting party with written notice of intent to apply for an order of default at least 10 days before entry of the order. ORCP 69 B(1)–(2). The notice of intent to apply for an order of default must also be filed with the court. ORCP 69 B(2).

See Unifund CCR Partners v. Kelley, 240 Or App 23, 28, 245 P3d 694 (2010) (the failure to comply with notice requirements results in a void default judgment).

§ 2.14A(2) Default Judgment against Nonappearing Party

If the party against whom a default is sought has not appeared, the party seeking relief may apply to the clerk or the court for a default judgment at any time after the time to answer or appear has expired. ORCP 69 A(1).

§ 2.14A(3) Motion to Set Aside Default Judgment

A party may seek to have a default judgment set aside by filing a motion for relief from the judgment accompanied by a pleading or motion asserting a claim or defense. ORCP 71 B; *see also* ORCP 69 F.

A responsive pleading must be filed simultaneously with the motion, or the court cannot consider the motion to set aside the default judgment. *Duvall v. McLeod*, 331 Or 675, 680, 21 P3d 88 (2001); *see also Dickey v. Rehder*, 239 Or App 253, 259, 244 P3d 819 (2010), *rev den*, 349 Or 664 (2011).

A motion for relief from judgment must be based on one of the grounds listed in ORCP 71 B, including “excusable neglect.” *See* § 2.14B(1) to § 2.16B(5) (relief from judgment). The motion must be made “within a reasonable time” and, for certain reasons, “not more than one year after receipt of notice by the moving party of the judgment.” ORCP 71 B.

See § 2.14B(1) to § 2.14B(5).

§ 2.14B Relief from Judgment

§ 2.14B(1) Grounds for Relief from Judgment

On a timely motion (see below), the court may relieve a party from a judgment for any of the reasons listed in ORCP 71 B(1):

(1) “Mistake, inadvertence, surprise, or excusable neglect,” ORCP 71 B(1)(a); *see Severson v. Youngdahl*, 102 Or App 54, 56, 792 P2d 482 (1990) (a party was not entitled to wait two years to set aside a judgment); *see* § 2.14B(2);

(2) “[N]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under ORCP 64 F,” ORCP 71 B(1)(b);

(3) “[F]raud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party,” ORCP 71 B(1)(c);

(4) “[T]he judgment is void,” ORCP 71 B(1)(d) (*see* § 2.14B(3)); or

(5) “[T]he judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application,” ORCP 71 B(1)(e).

A motion for relief from judgment based on any of the above reasons must be made within a “reasonable time.” ORCP 71 B(1).

Furthermore, a motion based on the following reasons must both “be made not more than one year after receipt of notice by the moving party of the judgment” and “be accompanied by a pleading or motion under [ORCP] 21 A which contains an assertion of a claim or defense”:

(1) “Mistake, inadvertence, surprise, or excusable neglect”;

(2) “[N]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under ORCP 64 F”; and

(3) “[F]raud . . . , misrepresentation, or other misconduct of an adverse party.”

ORCP 71 B(1).

§ 2.14B(2) Relief from Judgment Because of Excusable Neglect

To be entitled to have a default judgment set aside under ORCP 71 B(1) because of “excusable neglect,” the defaulted party “must show, in addition to excusable neglect, that the motion to set aside the judgment was [filed] within a “reasonable time, not to exceed one year, and that the party has a meritorious defense.” *Nat’l Mortgage Co. v. Robert C. Wyatt, Inc.*, 173 Or App 16, 24, 20 P3d 216, *rev den*, 332 Or 430 (2001).

Excusable neglect may occur when a corporation’s registered agent is personally served and gives the summons and complaint to a subordinate with instructions to send the summons and complaint to the corporation’s insurance company, but that subordinate fails to do so. *Wood v. James W. Fowler Co.*, 168 Or App 308, 313–18, 7 P3d 577 (2000).

The mental illness of the sole shareholder of a corporation, who receives and fails to respond to service of process, may establish excusable neglect for the corporation. *Nat’l Mortgage Co.*, 173 Or App at 24.

When the defaulting party has been personally served, the required proof to establish excusable neglect or other cause for relief may be greater than when service has been achieved by mail or some other means. *Compare Pacheco v. Blatchford*, 91 Or App 390, 392–93, 754 P2d 1219, *rev den*, 306 Or 660 (1988) (the defendant’s failure to take action after being personally served did not constitute excusable neglect), *with Hiatt v. Congoleum Indus., Inc.*, 279 Or 569, 577, 569 P2d 567 (1977) (when the defendant’s mailroom clerk received a copy of the summons and complaint via certified mail but lost it, the court found excusable neglect for the defendant).

§ 2.14B(3) Void Judgments

Because a void judgment is a nullity *ab initio* without legal effect, the one-year time limit does not apply to a motion to set aside a void judgment under ORCP 71 B(1)(d). *Estate of Hutchins v. Fargo*, 188 Or App 462, 468–70, 72 P3d 638 (2003).

On the same principle, the doctrine of laches or waiver does not preclude a motion to set aside a judgment for voidness. *See Citizens Sav. and Loan Ass’n v. McDonald*, 191 Or App 45, 49, 80 P3d 532 (2003). A party should therefore not rely solely on the lapse of the one-year period in ORCP 71 B(1) when opposing a motion for relief from judgment on grounds of voidness.

§ 2.14B(4) Effect of Motion on Judgment

A motion for relief from judgment under ORCP 71 B neither affects the finality of a judgment nor suspends its operation. ORCP 71 B(1).

§ 2.14B(5) When Appeal Is Pending

A motion for relief from judgment under ORCP 71 B may be filed with and decided by the trial court during the time that an appeal from a judgment is pending before an appellate court. The moving party must serve a copy of the motion on the appellate court. The moving party must file a copy of the trial court's order in the appellate court within seven days of the date of the order. ORCP 71 B(2).

§ 2.15 CONFLICT OF LAWS

§ 2.15A Statute of Limitations

The statute of limitations in a conflict-of-laws situation is governed by the Uniform Conflict of Laws-Limitations Act, ORS 12.410 to 12.480 (UCLLA).

The UCLLA applies to claims accruing after January 1, 1988, or asserted in a civil action or proceeding more than one year after January 1, 1988. ORS 12.460(1)–(2). The UCLLA does not revive a claim barred before January 1, 1988. ORS 12.460(2).

See § 2.15B (application of the UCLLA).

§ 2.15B Application of the UCLLA

The Uniform Conflict of Laws-Limitations Act (UCLLA), ORS 12.410 to 12.480, requires application of the statute of limitations that corresponds to the substantive law forming the basis of the plaintiff's claim. ORS 12.430; *Spirit Partners, LP v. Stoel Rives LLP*, 212 Or App 295, 301, 157 P3d 1194 (2007).

“The threshold question in a choice-of-law problem is whether the laws of the different states actually conflict.” *Spirit Partners, LP*, 212 Or App at 301. If a conflict exists between the competing states' laws, the court then considers “which state has the most significant relationship to the parties and the transaction.” *Spirit Partners, LP*, 212 Or App at 304 (quoting *Stricklin v. Soued*, 147 Or App 399, 404, 936 P2d 398, *rev den*, 326 Or 58 (1997)). The law of the state with the most significant relationship to the parties and the transaction will be applied unless the interests of Oregon are so important that the court determines that it should not apply the law of another state. *Spirit Partners, LP*, 212 Or App at 304; *accord Straight Grain Builders v. Track N' Trail*, 93 Or App 86, 91–92, 760 P2d 1350, *rev den*, 307 Or 246 (1988) (“the public policy of Oregon should prevail when the interests of neither jurisdiction are clearly more important than those of the other”).

“If the statute of limitations of another state applies to the assertion of a claim in this state, the other state's relevant statutes and other rules of law govern-

ing tolling and accrual apply in computing the limitations period.” ORS 12.440. However, the other state’s statutes and other rules of law governing conflict of laws do not apply. ORS 12.440.

If the court determines that the limitations period of another state applicable under ORS 12.430 and ORS 12.440 is substantially different from the Oregon limitations period, and that difference has not afforded the claimant a fair opportunity to sue on the claim or imposes an unfair burden in defending against the claim, the Oregon limitations period applies. ORS 12.450. *See CACV of Colorado, LLC v. Stevens*, 248 Or App 624, 639–40, 274 P3d 859, *rev den*, 352 Or 377 (2012); *Unifund CCR Partners v. Deboer*, 249 Or App 136, 138, 277 P3d 562, *rev den*, 352 Or 378 (2012).

§ 2.15C References

See 2 Torts § 32.2-1, § 32.10-2(a) to § 32.10-3 (OSB Legal Pubs 2012); *Contract Law in Oregon* ch 13 (Oregon CLE 2003 & Supp 2008).

§ 2.16 ATTORNEY FEES; COSTS AND DISBURSEMENTS

§ 2.16A Trial Court

§ 2.16A(1) Pleadings

A party seeking attorney fees must assert the right to and basis for fees in the pleadings, or in a motion or a response to a motion if the party does not file pleadings. ORCP 68 C(2); *Benj. Franklin Fed. Sav. & Loan Ass’n v. Phillips*, 88 Or App 354, 745 P2d 437 (1987).

A party does not have to allege the right to a specific amount of attorney fees; an allegation that the party is entitled to “reasonable attorney fees” is sufficient. ORCP 68 C(2); *Arabian v. Kearns*, 64 Or App 204, 667 P2d 1038 (1983).

§ 2.16A(2) Statement of Attorney Fees or Costs and Disbursements

A party seeking attorney fees or costs and disbursements in a trial court must file with the court a “signed and detailed statement of the amount of attorney fees or costs and disbursements” and serve a copy of the statement on all appearing parties no later than 14 days after entry of judgment. ORCP 68 C(4)(a). *See Empire Holding Corp. v. Coshov*, 150 Or 252, 256, 45 P2d 167 (1935) (time-line was not extended by a pending petition for rehearing). *See* UTCR 5.080; Form 5.080, UTCR Appendix of Forms.

See § 2.16A(3) regarding objections to the statement.

§ 2.16A(3) Objections

Objections to a statement seeking attorney fees or costs and disbursements must be filed and served within 14 days of service of the statement on the party making the objection. ORCP 68 C(4)(b).

§ 2.16A(4) Judgment

“If all issues regarding attorney fees or costs and disbursements are decided before entry of a judgment” under ORCP 67, the court must “include any award or denial of attorney fees or costs and disbursements in that judgment.” ORCP 68 C(5)(a).

“If any issue regarding attorney fees or costs and disbursements is undecided before entry of a general judgment, any award or denial of attorney fees or costs and disbursements shall be by supplemental judgment.” ORCP 68 C(5)(b).

§ 2.16B Appellate Court

§ 2.16B(1) Statement of Costs and Disbursements; Petition for Attorney Fees

A certified statement of costs and disbursements in an appellate court must be filed and served within 21 days after the date of the court’s decision. ORS 20.320; ORAP 13.05(5)(a). Likewise, a petition for attorney fees must be filed and served within the same 21-day period. ORAP 13.10(2).

NOTE: An appellate court has discretion to extend the time for filing a statement of costs and disbursements. ORS 20.320. *See State v. Vanderburg*, 98 Or App 428, 432, 781 P2d 1216 (1989) (the time for filing a cost bill in the court of appeals may be extended if the underlying statute being sued on allows an extension).

The filing of a petition for review or a petition for reconsideration does not suspend the time for filing a statement of costs and disbursements or for filing a petition for attorney fees. ORAP 13.05(5)(a), ORAP 13.10(2).

§ 2.16B(2) Objections and Replies

In an Oregon appellate court, objections to a statement of costs and disbursements or a petition for attorney fees must be filed and served within 14 days after service of the statement or petition. ORS 20.320; ORAP 13.05(5)(c), ORAP 13.10(6).

A reply, if any, must be served and filed within 14 days after the date of service of the objections. ORAP 13.05(5)(c), ORAP 13.10(6).

§ 2.16C References

See 2 Oregon Civil Litigation Manual ch 27 (Oregon CLE 2004 & Supp 2009); *2 Oregon Civil Pleading and Practice* ch 43 (OSB Legal Pubs 2012).

§ 2.17 TRIAL PROCEEDINGS

§ 2.17A Jury Selection: Civil

Any challenge based on the failure to comply with the jury-selection provisions of ORS chapter 10 must be made within seven days after the party

“discovered or by the exercise of due diligence could have discovered” the grounds for the challenge and, in any event, the challenge must be made “before the jury is sworn.” ORCP 57 A(1).

§ 2.17B Special Findings

A party requesting special findings of fact must request them before commencement of the trial. ORCP 62 A.

Any special findings requested by a party or proposed by the court must be served on all parties and filed with the clerk within 10 days after the court makes its decision. ORCP 62 B.

Within 10 days after service of the requested or proposed findings, any party may object to the proposed findings and request other, different, or additional special findings. Any such objections or requests must be heard and determined by the court within 30 days after the filing thereof; otherwise, they are conclusively deemed denied. ORCP 62 B.

The court must enter the appropriate order or judgment upon (1) the determination of any objections or requests, (2) the expiration of the time for filing objections and requests if none is filed, or (3) the expiration of time at which the objections and requests are deemed denied. ORCP 62 C.

A judgment or order filed before the expiration of the above time periods is deemed not entered until the expiration of those time periods. ORCP 62 C.

NOTE: Before the expiration thereof, the court may extend or lessen the time periods provided in ORCP 62 B and ORCP 62 C on the stipulation of the parties or for good cause shown, but no time period may be extended for more than 30 days. ORCP 62 D.

§ 2.17C Motion for Judgment N.O.V. or New Trial

(1) *Filing of motion.* A motion for new trial, a motion for judgment notwithstanding the verdict (judgment n.o.v.), or a motion to set aside a judgment and for a new trial must be filed within 10 days after the entry of the judgment, “or such further time as the court may allow.” ORCP 63 D(1), ORCP 64 F(1).

(2) *Court’s determination of motion.* If the court does not hear and determine the motion within 55 days after the date on which the judgment is entered, the motion is deemed conclusively denied. ORCP 63 D(1), ORCP 64 F(1); *McCollum v. Kmart Corp.*, 347 Or 707, 716–17, 226 P3d 703 (2010).

NOTE: A trial court “determines” a motion when it “makes an effective order resolving it.” *McCollum*, 347 Or at 712 (internal quotation marks omitted). An order that is not signed in open court is effective when it is formally entered in the court’s register. *McCollum*, 347 Or at 712 (citing ORS 3.070). A memorandum or letter opinion is not an order. *McCollum*, 347 Or at 713.

(3) *Motion for a new trial.* A party whose verdict has been set aside on a motion for judgment n.o.v. may serve a motion for a new trial pursuant to ORCP 64 no later than 10 days after the judgment n.o.v. is filed. ORCP 63 F.

NOTE: A motion for a new trial must be made within this 10-day period or the appeal period will not be tolled. *Schmidling v. Dove*, 65 Or App 1, 7, 670 P2d 166 (1983).

CAVEAT: When a party files a motion for judgment n.o.v. but does not move, in the alternative, for a new trial, the party waives the opportunity to file a motion for a new trial. ORCP 63 C.

(4) *Counteraffidavits or counterdeclarations.* Any counteraffidavits or counterdeclarations entitled to be filed must be filed within 10 days after the motion is filed, or within such further time as the court may allow. ORCP 64 F(1).

(5) *New trial on court's motion.* An order granting a new trial on the court's own motion must be made within 30 days after judgment is entered. ORCP 64 G.

(6) *Effect of notice of appeal.* A motion for a new trial or for judgment n.o.v. may be filed by a party and decided by the trial court, notwithstanding that another party has filed a notice of appeal. The moving party must serve a copy of the motion on the appellate court. If the trial court rules on the motion, the moving party must file a copy of the order in the appellate court within seven days after the order is entered. ORCP 63 D(2), ORCP 64 F(2).

§ 2.17D References

See 2 *Oregon Civil Litigation Manual* ch 31 (Oregon CLE 2004 & Supp 2009). See also § 2.13 to § 2.15L regarding the Uniform Trial Court Rules.

§ 2.18 GOVERNMENTAL AND PUBLIC BODIES

§ 2.18A Oregon Tort Claims Act

The Oregon Tort Claims Act (ORS 30.260–30.300), applies to any action arising out of an act or omission of a public body. See § 2.18A(1) to § 2.18A(4)(c), § 7.3A to § 7.3C.

§ 2.18A(1) Notice

(1) *Notice of claim.* If an action arises out of an act or omission of a public body, the plaintiff must give the public body a notice of claim within 180 days of the injury. ORS 30.275(1), (2)(b). See § 2.18A(2) regarding notice in a wrongful-death action.

NOTE: The Oregon Court of Appeals has held that when notice is given by filing a lawsuit, the statute is satisfied if filing occurs within the 180-day period and service occurs within the 60-day period described in ORS 12.020(2). *Cannon v. Oregon Dep't of Justice*, 261 Or App 680, 691, 322 P3d 601 (2014) (“the trial court erred in interpreting the statute to

require both filing of the complaint and service of the summons within 180 days of the alleged injury”).

NOTE: See § 2.6B(1)(a) to § 2.6B(1)(b) (tolling), § 2.18A(3) (extension of the notice period), § 2.18A(4)(b) (action commenced by a minor), § 2.18A(4)(c) (exceptions to the general rule).

(2) *Form of notice.* “[N]otice can be either formal or actual.” *Shepard v. City of Portland*, 829 F Supp 2d 940, 957 (D Or 2011) (citing ORS 30.275(3)). See ORS 30.275(4)–(5) (requirements for formal written notice); see also ORS 30.275(6) (requirements for actual notice).

(3) *When 180-day period starts.* The 180-day period for the filing of a notice of claim against a public body does not begin to run until the plaintiff “has a reasonable opportunity to discover his [or her] injury and the identity of the party responsible for that injury.” *Adams v. Oregon State Police*, 289 Or 233, 239, 611 P2d 1153 (1980).

(4) *Timely notice.* To be timely, notice of a claim against a public body must actually be received by the public body within the stated period. *Tyree v. Tyree*, 116 Or App 317, 319, 840 P2d 1378 (1992), *rev den*, 315 Or 644 (1993). See ORS 30.275(6).

(5) *Federal claims.* The notice requirements of the Oregon Tort Claims Act do not apply to actions based on a federal claim. *Sanok v. Grimes*, 306 Or 259, 263, 760 P2d 228 (1988).

(6) *Exceptions.* The notice requirements of ORS 30.275(1) to (7) are subject to limited exceptions (such as claims involving the Department of Human Services, the Oregon Youth Authority, or a minor). ORS 30.275(8).

§ 2.18A(2) Notice in Wrongful-Death Action

In a wrongful-death action arising out of an act or omission of a public body, a notice of claim must be given to the public body within one year after the alleged injury or loss. ORS 30.275(2)(a).

§ 2.18A(3) Extension of Notice Period

The notice-of-claim period is extended for up to 90 days if the injured person is unable to give notice because of the injury or because of minority, incompetence, or other incapacity. ORS 30.275(2).

NOTE: The notice provisions of the Oregon Tort Claims Act are not tolled pending the appointment of a guardian *ad litem* for a minor. *Perez By & Through Yon v. Bay Area Hosp.*, 315 Or 474, 482–83, 846 P2d 405 (1993). See, however, ORS 30.275(8) regarding a claim against the Department of Human Services or the Oregon Youth Authority.

§ 2.18A(4) When Action Must Be Commenced

§ 2.18A(4)(a) General Rule: Action Must Be Commenced Within Two Years

Except as provided in ORS 12.120, ORS 12.135, and ORS 659A.875, “but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action,” an action arising from any act or omission of a public body or an officer, employee, or agent of a public body must be commenced within two years after the alleged loss or injury. ORS 30.275(9). But see § 2.18A(4)(b) regarding the commencement of an action by a minor or insane person.

NOTE: Construction-defect actions must be commenced within two years, but ORS 12.135 can affect the period of ultimate repose. ORS 12.135, ORS 30.275.

§ 2.18A(4)(b) Commencement of Action by Minor or Insane Person

It is not clear whether the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action against a public body under the Oregon Tort Claims Act (OTCA) is tolled by ORS 12.160 during the plaintiff’s minority. *Lawson v. Coos Cnty. Sch. Dist. No. 13*, 94 Or App 387, 390–91, 765 P2d 829 (1988), *abrogated by Baker v. City of Lakeside*, 343 Or 70, 164 P3d 259 (2007) (the plaintiff’s status as a minor did not toll the two-year limit to commence an action under ORS 30.275); *but see Bradford v. Davis*, 290 Or 855, 861–62, 626 P2d 1376 (1981) (the court held that the tolling statute for minors applies to the OTCA; however, *Bradford* was decided before the legislature enacted ORS 30.275(9)); *Baker*, 343 Or at 82 (“Nothing in the legislative history . . . suggest[s] that the legislature intended to deny children and persons with mental disabilities bringing OTCA claims the advantage of a tolling provision that is available to them in every other action.”).

CAVEAT: A question exists regarding whether the minority tolling statute (ORS 12.160) tolls the two-year limitation period when commencing an action under the OTCA. Lawyers should research this area of the law carefully before relying on this or any tolling statute.

See also § 2.1A(1) to § 2.1A(3) (discussing when an action is commenced), § 2.6 to § 2.6E (statutes of limitations and tolling the limitations period), § 2.18A(2) (wrongful death actions), chapter 7 (actions for personal injury or property damage), § 7.14A(1) to § 7.14D (medical and dental malpractice actions).

§ 2.18A(4)(c) Exceptions to General Rule: Actions Involving Sheriff, Libel, Slander, or Unlawful Employment Practice

Pursuant to ORS 30.275(9), the general rule requiring that an action against a public body be commenced within two years after the loss or injury is subject to the following exceptions:

(1) *Action against sheriff.* An action against “a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process” must be commenced within one year. ORS 12.120.

(2) *Libel or slander.* An action for libel or slander must be commenced within one year. ORS 12.120(2).

(3) *Unlawful employment practice.* An action against a public body based on an unlawful employment practice under ORS 659A.875 must be commenced within one year, unless a complaint has been timely filed under ORS 659A.820. ORS 659A.875(6).

See § 2.18B (action brought by a public body).

§ 2.18B Action Brought by a Public Body

Actions brought in the name of, or for the benefit of, “the state, or any county, or other public corporation therein” are not affected by the limitations set forth in ORS chapter 12, unless a statutory limitation is made expressly applicable or is applicable by necessary implication. ORS 12.250; *City of Medford By & Through Medford Water Comm’n v. Budge-McHugh Supply Co.*, 91 Or App 213, 219, 754 P2d 607, *rev den*, 306 Or 661 (1988), *abrogation recognized by State ex rel Dept. of H.S. v. Broyles*, 228 Or App 264, 269, 208 P3d 519 (2009).

§ 2.18C Action on a Penalty or Forfeiture

(1) *Generally.* “An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the state, excepting those actions mentioned in ORS 12.110, shall be commenced within three years.” ORS 12.100(2).

(2) *State or county.* An action on a statute for a forfeiture or penalty to the state or a county must be commenced within two years. ORS 12.110(2).

(3) *Private person.* An action on a statute for a penalty given in whole or in part to a person who will prosecute for the penalty must be commenced within one year after the offense was committed. ORS 12.130. If the action is not commenced within one year by a private party, the action may be commenced by the district attorney on behalf of the state within two years thereafter. ORS 12.130.

§ 2.18D References

See generally 1 *Oregon Civil Pleading and Practice* ch 8 (OSB Legal Pubs 2012) (governmental units and officers); 2 *Torts* ch 28 (OSB Legal Pubs 2012) (claims against governmental bodies).

Chapter 3

CRIMINAL LAW

ERIN K. OLSON, B.A., Stanford University (1986); J.D., University of Connecticut (1993); M.S., Northeastern University (2000); member of the Oregon State Bar since 1993, the Massachusetts Bar since 1996, and the Washington State Bar Association since 2004; owner, Law Office of Erin Olson, P.C., Portland.

PATRICK EBBETT, B.A., University of Vermont (1991); J.D., Lewis & Clark Law School (1996); member of the Oregon State Bar since 1997; senior assistant attorney general, Appellate Division, Oregon Department of Justice, Salem.

BRONSON JAMES, B.A., Reed College (1994); J.D., Lewis & Clark Law School (2003); member of the Oregon State Bar since 2003; owner, Bronson James LLC, Portland.

AMY BAGGIO, B.A., Wake Forest University (1995); J.D., Lewis & Clark Law School (2001); member of the Oregon State Bar since 2001; owner, Baggio Law, Portland.

§ 3.1	SCOPE.....	3-2
§ 3.2	STATUTES OF LIMITATIONS FOR CRIMES AND VIOLATIONS	3-2
§ 3.2A	State Felonies	3-2
§ 3.2B	State Misdemeanors	3-4
§ 3.2C	State Violations	3-4
§ 3.2D	Federal Misdemeanors and Felonies	3-4
§ 3.3	PRETRIAL MATTERS	3-5
§ 3.3A	Discovery	3-5
§ 3.3B	Pretrial Motions.....	3-5
§ 3.3C	Dismissal or Change in Plea	3-6
§ 3.3D	Pleas and Trial Dates.....	3-6
§ 3.3E	Notice of Sentencing Enhancement	3-6
§ 3.4	COUNTY ORDINANCE FINES.....	3-6
§ 3.5	RESTITUTION	3-6
§ 3.5A	State Restitution	3-6
§ 3.5B	Federal Restitution	3-7
§ 3.6	ACTION FOR PENALTY OR FORFEITURE	3-8
§ 3.6A	Statutes of Limitations	3-8
§ 3.6B	Civil Forfeiture.....	3-8

§ 3.6C Criminal Forfeiture.....3-9
§ 3.7 PETITION FOR POSTCONVICTION RELIEF3-11
§ 3.7A Filing3-11
§ 3.7B Service3-11
§ 3.7C Appeal3-11

§ 3.1 SCOPE

This chapter covers statutory timelines in trial-level criminal cases and trial-level postconviction cases. It does not cover timelines in criminal appeals, writs of mandamus, or writs of habeas corpus; for information on those topics, see chapter 5. For detailed information on Oregon criminal law, see *Criminal Law* (OSB Legal Pubs 2013).

§ 3.2 STATUTES OF LIMITATIONS FOR CRIMES AND VIOLATIONS

§ 3.2A State Felonies

Oregon law provides for a general three-year statute of limitations for felony offenses. ORS 131.125(7)(a). There are, however, a number of exceptions to the general three-year rule.

Prosecutions for aggravated murder, murder, attempted murder, attempted aggravated murder, or “conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.” ORS 131.125(1).

The crime of arson, in any degree, carries a six-year statute of limitations. ORS 131.125(5).

Certain sex offenses and the crime of strangulation carry a six-year statute of limitations

after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first.

ORS 131.125(2). These crimes are:

- (a) Strangulation under ORS 163.187(4).
- (b) Criminal mistreatment in the first degree under ORS 163.205.
- (c) Rape in the third degree under ORS 163.355.
- (d) Rape in the second degree under ORS 163.365.
- (e) Rape in the first degree under ORS 163.375.

- (f) Sodomy in the third degree under ORS 163.385.
- (g) Sodomy in the second degree under ORS 163.395.
- (h) Sodomy in the first degree under ORS 163.405.
- (i) Unlawful sexual penetration in the second degree under ORS 163.408.
- (j) Unlawful sexual penetration in the first degree under ORS 163.411.
- (k) Sexual abuse in the second degree under ORS 163.425.
- (L) Sexual abuse in the first degree under ORS 163.427.
- (m) Using a child in a display of sexual conduct under ORS 163.670.
- (n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- (o) Incest under ORS 163.525.
- (p) Promoting prostitution under ORS 167.012.
- (q) Compelling prostitution under ORS 167.017.
- (r) Luring a minor under ORS 167.057.

ORS 131.125(2).

The following crimes carry a six-year statute of limitations if the victim at the time of the crime was 65 years of age or older:

- (a) Theft in the first degree under ORS 164.055.
- (b) Aggravated theft in the first degree under ORS 164.057.
- (c) Theft by extortion under ORS 164.075.
- (d) Robbery in the third degree under ORS 164.395.
- (e) Robbery in the second degree under ORS 164.405.
- (f) Robbery in the first degree under ORS 164.415.
- (g) Forgery in the first degree under ORS 165.013.
- (h) Fraudulent use of a credit card under ORS 165.055(4)(b).
- (i) Identity theft under ORS 165.800.

ORS 131.125(6).

Subsection (8) of ORS 131.125 sets forth additional offense-specific exceptions to the three-year rule.

When a defendant is identified after the period described in subsection (2) of ORS 131.125 on the basis of DNA comparisons, a prosecution for rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree, or sexual abuse in the first degree may be commenced at any time after the commission of the crime. ORS 131.125(9)(a). If DNA comparison results in identification of a defendant to be charged with rape in the second degree, sodomy in the second degree, or unlawful sexual penetration in the second degree, the statute of limitations is expanded to 25 years after commission of the crime. ORS

131.125(9)(b). However, if any of these prosecutions would otherwise be barred by subsection (2), the prosecution must be commenced within two years of the DNA identification. ORS 131.125(10).

§ 3.2B State Misdemeanors

The general statute of limitations for misdemeanors under Oregon law is two years. ORS 131.125(7)(b).

Like Oregon's felonies, there are several exceptions to the general misdemeanor rule, such as the offense-specific exceptions of ORS 131.125(8). In addition, prosecutions for certain misdemeanor sex offenses and misdemeanor strangulation

may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first.

ORS 131.125(3). These crimes are:

- (a) Strangulation under ORS 163.187(3).
- (b) Sexual abuse in the third degree under ORS 163.415.
- (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- (d) Displaying obscene materials to minors under ORS 167.080.

ORS 131.125(3).

§ 3.2C State Violations

The statute of limitations for most Oregon violations is six months, ORS 131.125(7)(c); however, several offense-specific exceptions are listed in ORS 131.125(8). Another exception is violating Oregon's mandatory child abuse reporting law, for which officials have 18 months to commence prosecution. ORS 419B.010(5).

§ 3.2D Federal Misdemeanors and Felonies

Federal offenses—both misdemeanors and felonies—generally carry a five-year statute of limitations. 18 USC § 3282(a). There are, however, many exceptions to the general five-year rule.

PRACTICE TIP: For a detailed description of the federal statutes of limitation, including an appendix with offense descriptions and statutory citations, see Congressional Research Service, *Statutes of Limitation in Federal Criminal Cases: An Overview* (Oct. 1, 2012), available at <www.fas.org/sgp/crs/misc/RL31253.pdf>. This report was used extensively in the drafting of this section.

Among the many exceptions to the general five-year rule, there is no statute of limitations for capital offenses (18 USC § 3281), terrorism offenses resulting in

death or serious injury (or creating a foreseeable risk thereof) (18 USC § 3286(b)), and certain child-abduction and sex offenses (18 USC § 3299).

Other exceptions to the rule include a 20-year limitation for the theft of artwork. 18 USC § 3294. Federal felonies carrying a 10-year statute of limitations include arson (18 USC § 3295), certain crimes against financial institutions (18 USC § 3293), and immigration offenses (18 USC § 3291). Federal law provides for an eight-year statute of limitations for noncapital violations of the terrorism-associated statutes. 18 USC § 3286(a).

The general rule is that statutes of limitations begin to run upon completion of the crime. *Pendergast v. United States*, 317 US 412, 418, 63 S Ct 268, 87 L Ed 368 (1943). There are exceptions, however, such as conspiracies and so-called “continuing offenses.” Statutes of limitations for conspiracies begin to run upon completion of the last overt act, not the first. *Fiswick v. United States*, 329 US 211, 216, 67 S Ct 224, 91 L Ed 196 (1946). Whether an offense is a continuing offense is a question of law. *See Toussie v. United States*, 397 US 112, 115, 90 S Ct 858, 25 L Ed 2d 156 (1970). For example, the Supreme Court has held that escape from a federal correctional facility constitutes a continuing offense. *United States v. Bailey*, 444 US 394, 413, 100 S Ct 624, 62 L Ed 2d 575 (1980). Therefore, in conducting a federal statute-of-limitations analysis, it is necessary to not only determine what the statute of limitations is for a particular offense, but to also determine when the statute of limitations began to run.

§ 3.3 PRETRIAL MATTERS

§ 3.3A Discovery

The purpose of statutory discovery rules in criminal cases is to minimize surprise, not to ensure its absence. *See State v. Mai*, 294 Or 269, 273–74, 656 P2d 315 (1982). The discovery statutes of ORS 135.805 to 135.873 are applicable to all criminal prosecutions. ORS 135.805(1).

The obligations to disclose must be performed as soon as possible following the filing of an indictment, information, or complaint. ORS 135.845(1). If a party, after complying with the discovery requirements under ORS 135.805 to 135.873 and ORS 135.970, finds, either before or during trial, additional material or information that is subject to discovery, the party must promptly notify the other party of the additional material or information. ORS 135.845(2).

See 1 Criminal Law ch 14 (OSB Legal Pubs 2013).

§ 3.3B Pretrial Motions

Pretrial motions on matters subject to ORS 135.037 (“all pretrial motions and requests”) and ORS 135.805 to 135.873 (discovery) “must be filed in writing not less than 21 days before trial or within 7 days after the arraignment, whichever is later, unless a different time is permitted by the court for good cause shown.” UTCR 4.010.

Any opposition to a motion to suppress evidence must be served and filed no later than seven days after the motion to suppress is filed, absent a showing of good cause. UTCR 4.060(2)(a).

§ 3.3C Dismissal or Change in Plea

Notice of dismissal or a change in plea must be given to the court immediately. UTCR 6.020(1).

§ 3.3D Pleas and Trial Dates

At the time of arraignment, the court may accept a not-guilty plea and set a trial date, or the court may set a date for entry of a plea. UTCR 7.010(1).

Plea agreements, negotiations, discovery, and investigations must be concluded by a date set by the court. For in-custody defendants, the date must be no earlier than 21 days after arraignment, but no later than 21 days before the trial date. For out-of-custody defendants, the date must be no earlier than 35 days after arraignment, but no later than 35 days before the trial date. UTCR 7.010(2). By that date, trial counsel must report whether a jury is requested, the probable length of trial, the need for a pretrial hearing, and any other matter affecting the case. UTCR 7.010(3).

The court will grant relief from the date for good cause. UTCR 7.010(4).

§ 3.3E Notice of Sentencing Enhancement

If the state intends to rely on a sentencing enhancement fact, the state must plead the enhancement fact in the accusatory instrument or give written notice to the defendant “no later than 60 days after the defendant is arraigned on an indictment, waives indictment or is held to answer following a preliminary hearing, or 14 days before trial, whichever occurs earlier, unless the parties agree otherwise or the court authorizes a later date for good cause shown.” ORS 136.765.

§ 3.4 COUNTY ORDINANCE FINES

The defendant is personally liable to the county for unpaid fines or costs resulting from a proceeding before a county hearings officer to enforce county ordinances if the fines or costs are not paid within 60 days after payment is ordered. The order for payment may be recorded in the County Clerk Lien Record. ORS 30.460.

§ 3.5 RESTITUTION

§ 3.5A State Restitution

Victims have “[t]he right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury.” Or Const, Art I, § 42(1)(d). The law regarding imposition of restitution in state criminal cases is set forth at ORS 137.103 to 137.109. If a victim suffers economic damages as a result of a defendant’s crime or violation, the district attorney must investigate and present to

the court “evidence of the nature and amount of damages” at the time of sentencing or within 90 days after entry of the judgment. ORS 137.106(1)(a). The court may extend the 90-day deadline upon a showing of good cause. ORS 137.106(1)(a). *See also State v. Thompson*, 257 Or App 336, 343–45, 306 P3d 731, *rev den*, 354 Or 390 (2013) (court may amend its restitution order beyond the 90-day limit of ORS 137.106(1)(a) to remedy a violation of a victim’s constitutional rights).

At least 10 days before the restitution hearing, the district attorney must provide to the defendant (1) the names of any witnesses the district attorney intends to call at the restitution hearing and (2) copies of, or access to, any exhibits the district attorney will use or introduce at the hearing. ORS 137.106(6)(a). Violation of this 10-day rule may result in continuance of the restitution hearing to allow the defendant adequate time to respond to the restitution request. ORS 137.106(6)(b).

For more information about restitution in state criminal cases, see 2 *Criminal Law* chapter 24 (OSB Legal Pubs 2013).

§ 3.5B Federal Restitution

In federal criminal cases, restitution is mandatory when a victim is “directly and proximately” harmed by the defendant’s criminal conduct. 18 USC § 3663A(a)(1)–(2).

The timelines and processes for imposition of restitution are set forth at 18 USC section 3664. In preparation for sentencing, the federal prosecutor works with the probation officer assigned to write the presentence report to identify victims entitled to restitution and the amounts of restitution sought. *See* 18 USC § 3664(d). If the identity of victims and proposed restitution amounts are not ascertainable 10 days before sentencing, the government or probation officer must notify the court. The court may then schedule a restitution hearing within 90 days of sentencing. If a victim suffers losses or discovers additional losses after sentencing or after a restitution hearing, the victim has 60 days in which to seek an amended restitution order. 18 USC § 3664(d)(5).

A federal district court retains jurisdiction to order restitution beyond the 90 days allowed under the statute if the court articulates its intent to impose restitution before the 90-day deadline expires. *Dolan v. United States*, 560 US 605, 608, 130 S Ct 2533, 177 L Ed 2d 108 (2010). Restitution awards entered in violation of the procedural rules set forth in 18 USC section 3664(d) are subject to harmless-error review on appeal. *United States v. Moreland*, 622 F3d 1147, 1172–73 (9th Cir 2010).

§ 3.6 ACTION FOR PENALTY OR FORFEITURE

§ 3.6A Statutes of Limitations

An action on a statute for a forfeiture or penalty to the state or county must be commenced within two years. ORS 12.110(2).

An action on a statute for penalty or forfeiture, when the action is given to the aggrieved party, or to the aggrieved party and the state, except those actions mentioned in ORS 12.110, must be commenced within three years. ORS 12.100(2).

The double-damages provision for injuries to livestock caused by a dog (ORS 609.140(1)) is compensatory, rather than punitive, and therefore is not subject to the three-year limitations period of ORS 12.100(2). *Diaz v. Coyle*, 152 Or App 250, 257, 953 P2d 773 (1998).

§ 3.6B Civil Forfeiture

If a police officer who seizes property for civil forfeiture does not serve a forfeiture notice that contains the information set forth in ORS 131A.150(1) on the person from whose possession the property was taken or on the person in apparent control of the property, then the forfeiting agency must issue the notice within 15 days after the seizure. ORS 131A.150(3).

The forfeiting agency must make reasonable efforts to serve a forfeiture notice on all persons known to have an interest in the seized property, and it must publish notice in a newspaper as provided in ORCP 7 D(6)(b) to (d) if the seized property has a fair market value of more than \$1,000. ORS 131A.150(4).

A law enforcement agency that has seized property as evidence must decide whether to seek forfeiture of the seized property not more than 30 days after the property is seized. ORS 131A.105(1).

Any person served with a forfeiture notice by means other than publication under ORS 131A.150(4) must file a claim with the forfeiting agency's forfeiture counsel not more than 21 days after service of the forfeiture notice. ORS 131A.165(1). Persons served with forfeiture notice by publication under ORS 131A.165(4) must file a claim with forfeiture counsel not more than 21 days after the last publication date of the notice. Extensions of time cannot be granted. ORS 131A.165(2). The claim must conform with the requirements of ORS 131A.165(3).

“A person claiming an interest in seized property may file a petition for an expedited hearing within 15 days after service of a forfeiture notice on the person or within such further time as the court may allow for good cause shown.” ORS 131A.170(1). A hearing must be held “within 15 days after service of the petition on all persons known to have an interest in the property, or at such later time as the court may allow for good cause shown,” and the hearing is limited to “whether to grant the relief sought in the petition.” ORS 131A.170(4).

A person with an interest in property that has been seized for civil forfeiture may also apply to the court to have an order to show cause issued to the forfeiting agency to determine if probable cause existed to seize the property for forfeiture. The application must be filed not more than 15 days after forfeiture notice is served under ORS 131A.150 or within 15 days after the person receives actual knowledge of the seizure, whichever is later. A copy of the application must be served on the forfeiting agency's forfeiture counsel. ORS 131A.100(1).

A forfeiting agency must commence a civil forfeiture action not more than 15 days after receipt of a claim filed under ORS 131A.165, and in all other cases (including in all cases involving the seizure for forfeiture of real property), the forfeiting agency must commence a forfeiture action within 30 days after seizure of the property. ORS 131A.225(2). Deadlines following the commencement of a forfeiture action are those provided in the Oregon Rules of Civil Procedure. *See* ORS 131A.225(6), ORS 131A.235.

The court may stay a forfeiture action for good cause, including "a reasonable fear on the part of a claimant that the claimant could be prosecuted for conduct arising out of the same factual situation that gave rise to the seizure of property," or because a related criminal prosecution is pending against the claimant. ORS 131A.265.

§ 3.6C Criminal Forfeiture

A police officer who seizes property for criminal forfeiture must promptly "make an inventory of the property seized and . . . deliver a receipt embodying the inventory to the person from whose possession the property is taken or to the person in apparent control of the property at the time it is seized," and if the property is unoccupied or there is no one present in apparent control of the property, the officer must suitably affix the receipt to the property. ORS 131.561(6).

Within 30 days of the seizure of property for criminal forfeiture, the seizing agency, in consultation with the district attorney, must determine whether it will seek forfeiture of the property. ORS 131.564(2). If so, the prosecuting attorney must file a criminal information (if the underlying conduct is a Class A misdemeanor) or an indictment (following presentation of the criminal forfeiture to the grand jury), and must allege facts sufficient to establish that the property is subject to criminal forfeiture. ORS 131.570(1), ORS 131.582(1), (3).

Also within 30 days after seizure of property for criminal forfeiture, the seizing agency or forfeiture counsel must prepare a notice of seizure for criminal forfeiture and make reasonable efforts to serve the notice on all persons, other than the criminal defendant, who are known to have an interest in the seized property. For seizures of property with a fair market value of more than \$1,000, publication notice as provided in ORCP 7 D(6)(b) to (d) is required. ORS 131.570(1).

Any person other than the criminal defendant who is served with a notice of seizure for criminal forfeiture by means other than publication must file a claim

with the forfeiting agency's forfeiture counsel within 21 days after service of the forfeiture notice. ORS 131.570(2)(a). Persons other than the criminal defendant who are served with forfeiture notice by publication must file a claim with forfeiture counsel within 21 days after the last publication date of the notice. ORS 131.570(2)(b). Extensions of time for filing a claim cannot be granted. ORS 131.570(3). The claim must meet the requirements of ORS 131.570(3).

A person other than the criminal defendant who claims an interest in property seized for criminal forfeiture may file a petition for an expedited hearing within 15 days after service of a forfeiture notice on the person "or within such further time as the court may allow for good cause shown." ORS 131.573(1). The court must hold a hearing within 15 days after service of all persons known to have an interest in the property, or at such later time as the court may allow for good cause. The hearing is limited to determining whether the petitioner is a bona fide purchaser for value who did not acquiesce in the underlying prohibited conduct, whether to return the property to the petitioner during the pendency of the hearing, and whether to appoint a receiver to manage the property pending a final determination of its disposition. ORS 131.573(4).

An owner of or interest holder in property that has been seized for criminal forfeiture may also file a motion with the court to have an order to show cause issued to the seizing agency to determine if probable cause exists for criminal forfeiture of the property. The motion must be filed not more than 15 days after the owner or interest holder received notice or actual knowledge of the seizure, whichever is earlier. A copy of the motion must be served on forfeiture counsel and on the criminal defendant, the latter of whom is not an "owner" or "interest holder" within the meaning of this statute. ORS 131.564(8).

Within 30 days from the date of service of a notice of criminal forfeiture under ORS 131.570, a financial institution or other person claiming a good-faith interest in property seized for criminal forfeiture must file an affidavit with the court establishing the financial institution's or person's interest in the seized property. Failure to file a timely affidavit constitutes a default. ORS 131.579(1)–(3).

A seizing agency has 20 days to respond to an affidavit from a person other than a financial institution. The seizing agency may file an affidavit controverting any or all of the assertions made by the person, and the person has five days from the seizing agency's filing of its affidavit to file a supplemental affidavit responding to the seizing agency's affidavit. If the seizing agency does not file an affidavit within the time allowed, the person claiming the good-faith interest is treated as a financial institution upon the entry of a judgment of criminal forfeiture. ORS 131.579(4). Otherwise, the court will decide the issues raised in the affidavits in a proceeding under ORS 131.582. ORS 131.579(5).

Not more than 21 days after entry of a judgment of criminal forfeiture, forfeiture counsel must notify by mail all persons and entities who filed claims under ORS 131.570 or who filed affidavits under ORS 131.579. The notice must inform them of the requirements of ORS 131.582(9). ORS 131.582(8).

Persons who claim a good-faith interest in the forfeited property, but who were not eligible to file an affidavit under ORS 131.579, have 21 days after the date the notice required by ORS 131.582(8) was mailed to them in which to file an affidavit alleging facts that if true, would meet the requirements of ORS 131.582(9). If forfeiture counsel contests the affidavit, it must request a hearing with the trial court not more than 21 days after receipt of the affidavit. ORS 131.582(9)–(10).

Appeals of orders from a hearing held pursuant to ORS 131.582(10) must be filed within 30 days of the entry of the order and are governed by the provisions of ORS chapter 19 relating to appeals in civil actions. ORS 131.582(11)(d).

For more information about forfeiture, see 3 *Criminal Law* chapter 32 (OSB Legal Pubs 2013).

§ 3.7 PETITION FOR POSTCONVICTION RELIEF

§ 3.7A Filing

A petition for postconviction relief must be filed within two years of (1) the date of entry of judgment on the conviction; (2) if the defendant appealed, the date the appeal became final in the Oregon appellate courts; or (3) if a petition for certiorari to the United States Supreme Court was filed, the date of the denial of certiorari or, if the petition was allowed, the date of entry of the final state court judgment following remand from the Supreme Court. ORS 138.510(3). However, the two-year limitations period does not apply if the grounds for relief could not reasonably have been raised in an earlier petition. ORS 138.510(3), ORS 138.550(3); see *Bartz v. State*, 314 Or 353, 358–59, 839 P2d 217 (1992). See generally 3 *Criminal Law* ch 30 (OSB Legal Pubs 2013).

§ 3.7B Service

A petitioner does not need to serve a copy of the petition on the defendant. But the clerk of the court in which the petition is filed must immediately forward a copy to the Attorney General or other attorney for the defendant. ORS 138.560(1).

§ 3.7C Appeal

For information on appealing a judgment in a postconviction proceeding, see § 5.1A(3).

Chapter 4

FAMILY AND JUVENILE

- JESSICA FLINT**, B.S., Willamette University (2007); J.D., Lewis & Clark Law School (2011); member of the Oregon State Bar since 2011; associate, Gevurtz Menashe, Portland.
- NIGEL VANDERFORD**, B.S., University of Oregon (2008); J.D., Wake Forest University School of Law (2012); member of the Oregon State Bar since 2012; associate, Gevurtz Menashe, Portland.
- ALEX SUTTON**, B.A., Oregon State University (1999); J.D., Willamette University College of Law (2004); member of the Oregon State Bar since 2004; shareholder, Gevurtz Menashe, Portland.
- MARK JOHNSON ROBERTS**, B.A., Reed College (1982); J.D., University of California Berkeley School of Law (1987); LL.M., Willamette University College of Law (2011); member of the Oregon State Bar since 1987; of counsel, Gevurtz Menashe, Portland.
- CRAIG COWLEY**, B.A., Raymond College, University of the Pacific (1973); J.D., University of Oregon School of Law (1980); member of the Oregon State Bar since 1985 and the Washington State Bar Association since 1990; of counsel, Gevurtz Menashe, Portland.

§ 4.1	FAMILY RELATIONSHIPS	4-4
§ 4.1A	Marriage License	4-4
§ 4.1B	Premarital Agreement	4-4
§ 4.1C	Delegation of Powers	4-4
§ 4.2	DISSOLUTION OF MARRIAGE, ANNULMENT, SEPARATION	4-5
§ 4.2A	Jurisdiction	4-5
§ 4.2B	Documents to Be Exchanged	4-5
§ 4.2B(1)	Information Required by Statute	4-5
§ 4.2B(2)	Uniform Support Declaration	4-6
§ 4.2B(3)	Statement of Assets and Liabilities	4-6
§ 4.2C	Amendment	4-6
§ 4.2D	Termination Date	4-6
§ 4.2E	Liens	4-6
§ 4.2E(1)	Expiration of Judgment Remedies—Satisfaction	4-6
§ 4.2E(2)	Expiration—10 Years	4-6
§ 4.2E(3)	Money Award—Future Payment	4-7

Chapter 4 / Family and Juvenile

§ 4.2F	Summary Dissolution Procedure.....	4-7
§ 4.2F(1)	Commencement of Action	4-7
§ 4.2F(2)	Answer	4-7
§ 4.2G	Conciliation Services.....	4-7
§ 4.2G(1)	Court-Exercised Conciliation Jurisdiction	4-7
§ 4.2G(2)	Petition for Conciliation Jurisdiction	4-7
§ 4.2G(3)	Temporary Orders	4-8
§ 4.3	CHILD CUSTODY	4-8
§ 4.3A	Requesting Joint Custody	4-8
§ 4.3B	Challenging Another State’s Registered Order.....	4-8
§ 4.3C	Parenting Time Enforcement	4-8
§ 4.4	CHILD SUPPORT.....	4-8
§ 4.4A	Child Attending School	4-8
§ 4.4B	Child Attending School, Administrative Modification.....	4-8
§ 4.4C	Multiple Orders	4-9
§ 4.4D	Interstate Enforcement	4-9
§ 4.4E	Nonregistering Party’s Challenge to Order.....	4-9
§ 4.4F	Child Support Liens.....	4-9
§ 4.4F(1)	Expiration upon Satisfaction	4-9
§ 4.4F(2)	35 Years.....	4-9
§ 4.4F(3)	Child Support Awards in Judgments Entered before January 1, 1994	4-9
§ 4.5	SPOUSAL SUPPORT.....	4-10
§ 4.5A	Spousal Support Liens.....	4-10
§ 4.5A(1)	Expiration upon Satisfaction	4-10
§ 4.5A(2)	Unpaid Spousal Support.....	4-10
§ 4.5A(3)	Spousal Support Awards in Judgments Entered on or after January 1, 2004	4-10
§ 4.5A(4)	Extension of Judgment Lien of Spousal Support Award.....	4-10
§ 4.5A(5)	Spousal Support Awards in Judgments Entered before January 1, 2004	4-11
§ 4.5B	Termination of Spousal Support	4-11
§ 4.6	REINSTATEMENT OF SPOUSAL SUPPORT.....	4-11
§ 4.6A	Duration.....	4-12

§ 4.6B	Amount.....	4-12
§ 4.6C	Time Limit.....	4-12
§ 4.7	MODIFICATION.....	4-12
§ 4.7A	Motion to Modify Judgment	4-12
§ 4.7B	Uniform Support Declaration.....	4-12
§ 4.7C	Immediate Postjudgment Orders.....	4-13
§ 4.7D	Temporary Status Quo Order	4-13
§ 4.7E	Worksheets	4-13
§ 4.8	SEPARATION	4-13
§ 4.8A	Conversion to Dissolution.....	4-13
§ 4.8B	Duration.....	4-13
§ 4.9	ADOPTION AND PATERNITY	4-13
§ 4.9A	Service of Documents on Department of Human Services.....	4-13
§ 4.9B	Placement Report	4-14
§ 4.9C	Hearing	4-14
§ 4.9D	Putative Father.....	4-14
§ 4.9E	Motion for Judgment of Nonpaternity	4-14
§ 4.9F	Objection to Adoption.....	4-14
§ 4.9G	Grandparent Visitation	4-15
§ 4.9H	Finality of Adoption.....	4-15
§ 4.9I	Jurisdiction	4-15
§ 4.9J	No Statute of Limitations	4-15
§ 4.9K	Challenge to Voluntary Acknowledgment.....	4-15
§ 4.9L	Blood Test	4-15
§ 4.9M	Expert Testimony about Blood Test	4-16
§ 4.9N	Petition to Vacate or Set Aside Judgment.....	4-16
§ 4.10	CHANGE OF NAME, SEX.....	4-16
§ 4.11	FAMILY ABUSE PROTECTION ACT.....	4-16
§ 4.11A	Hearing and Duration.....	4-16
§ 4.11B	Respondent’s Request for a Hearing.....	4-17
§ 4.11C	Hearing Date	4-17
§ 4.11D	Child Custody Hearing.....	4-17
§ 4.11E	Extension of Time	4-17
§ 4.11F	Renewal of Order	4-17

§ 4.12	SEXUAL ABUSE PROTECTION ACT	4-17
§ 4.12A	Hearing and Duration	4-18
§ 4.12B	Respondent’s Request for a Hearing	4-18
§ 4.12C	Hearing Date.....	4-18
§ 4.12D	Extension of Time	4-18
§ 4.12E	Renewal of Order	4-18
§ 4.13	CHILD ABDUCTION.....	4-18
§ 4.14	JUVENILE PROCEEDINGS.....	4-19
§ 4.14A	Protective Custody	4-19
§ 4.14B	Length of Stay in Detention	4-19
§ 4.14C	Appointed Counsel.....	4-19
§ 4.14D	Preliminary Hearing	4-19
§ 4.14E	Review Hearings	4-19
§ 4.14F	Predispositional Investigation	4-19
§ 4.14G	Prehearing Investigation Report.....	4-19

§ 4.1 FAMILY RELATIONSHIPS

§ 4.1A Marriage License

A marriage license issued by the county clerk becomes effective three days after the date on which the applicants sign the application for the license, and it remains valid for 60 days after the effective date. ORS 106.077(1).

“For good and sufficient cause shown,” a judge or the county clerk may waive the three-day waiting period. ORS 106.077(2).

§ 4.1B Premarital Agreement

A premarital agreement signed by the parties becomes effective upon marriage. ORS 108.715. “After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties.” ORS 108.720.

“Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.” ORS 108.735.

§ 4.1C Delegation of Powers

To Another Person. A parent or guardian of a minor child may delegate powers regarding care, custody, or property of the child to another person for a period not exceeding six months. ORS 109.056(1).

To a School Administrator. If the delegation is to a school administrator, it may not exceed 12 months. ORS 109.056(2).

Servicemember's Delegation of Power. A servicemember-parent of a minor child may delegate these powers for a period not exceeding the term of active-duty service plus 30 days. ORS 109.056(3)(b).

Servicemember's Delegation of Power to Spouse. If the child is living with the other parent, the servicemember's delegation must be to the other parent. However, when the servicemember-parent shares joint custody of the child with the other parent, and the servicemember-parent is married to someone else, then the delegation may be to the servicemember's spouse. A court may disallow a servicemember's delegation by finding that the delegation would not be in the best interests of the child. ORS 109.056(3)(c)–(d).

§ 4.2 DISSOLUTION OF MARRIAGE, ANNULMENT, SEPARATION

§ 4.2A Jurisdiction

Party's Status. A court has jurisdiction over a properly served party to determine a question of the party's status under ORS chapter 106 (marriage and domestic partnership) or ORS chapter 107 (dissolution, annulment, and separation) when the plaintiff is a resident of or is domiciled in Oregon. ORCP 4 K(1).

Obligations. A court has jurisdiction over a properly served party to enforce personal obligations arising under ORS chapters 106 and 107 if the parties to a marriage have concurrently maintained the same or separate residences or domiciles in Oregon for six months, notwithstanding departure from Oregon and residence or domicile in another state or country before the action is filed. However, a court does not have jurisdiction if the action is brought more than one year after one of the parties establishes a new residence or domicile in another state or country. ORCP 4 K(2).

§ 4.2B Documents to Be Exchanged

§ 4.2B(1) Information Required by Statute

Each party to a suit for separation or dissolution must provide to the other party copies of the documents listed in ORS 107.089(1) no later than 30 days after being served with a copy of the statute. ORS 107.089(2)(a).

If a support hearing is pending less than 30 days after service of a copy of the statute on either party, the party being served must provide certain categories of the documents listed no later than three judicial days before the hearing. ORS 107.089(2)(b). For noncompliance by the obligor, the court must postpone the hearing on the request of the obligee, and when support is eventually ordered, it will be retroactive to the original hearing date. For noncompliance by the obligee, the court must postpone the hearing on the request of the obligor, and when support is eventually ordered, it will be prospective only. ORS 107.089(4).

If a party does not provide the required information in the time specified, the other party may apply for a motion to compel as provided in ORCP 46. ORS 107.089(3)(a).

§ 4.2B(2) Uniform Support Declaration

The Uniform Support Declaration required under UTCR 8.010(4) must be filed and served at the time designated by the relevant supplementary local rule or, in the absence of a rule, not less than 14 days before the hearing on the merits. The parties may stipulate otherwise but, in any event, must file and serve no later than the beginning of trial. UTCR 8.010(6).

When prejudgment support is sought under ORS 107.095(1), the moving party must file a Uniform Support Declaration with his or her motion. UTCR 8.040(3). The opposing party must file and serve a Uniform Support Declaration on the moving party at least seven days before the hearing. UTCR 8.040(4).

§ 4.2B(3) Statement of Assets and Liabilities

The statement listing and valuing assets and liabilities and proposing their distribution, required under UTCR 8.010(3), must be filed and served at the time designated by the relevant supplementary local rule or, in the absence of a rule, not less than 14 days before the hearing on the merits. The parties may stipulate otherwise but, in any event, must file and serve no later than the beginning of trial. UTCR 8.010(6).

§ 4.2C Amendment

At any time before the entry of judgment, on motion of a party and notice to the other party, “the court may allow amendment of pleadings to change the relief sought from annulment to dissolution or separation, from dissolution to annulment or separation, or from separation to annulment or dissolution.” ORS 107.400.

§ 4.2D Termination Date

“The marriage relationship is terminated when the court signs the judgment of dissolution of marriage.” ORS 107.115(2).

§ 4.2E Liens

§ 4.2E(1) Expiration of Judgment Remedies—Satisfaction

“Judgment remedies . . . expire upon full satisfaction of the money award portion of the judgment.” ORS 18.180(1).

§ 4.2E(2) Expiration—10 Years

“Except as provided in ORS 18.180 to 18.192, judgment remedies for a judgment in civil actions expire 10 years after the entry of the judgment.” ORS 18.180(3).

§ 4.2E(3) Money Award—Future Payment

Other than support awards,

[i]f a money award in a judgment under ORS 107.105(1)(f) provides for a future payment of money, judgment remedies for the portion of the judgment providing for future payment expire 10 years after the date on which the future payment becomes due. At any time before the judgment remedies for [the money award] expire, judgment remedies for the portion of the judgment providing for a future payment may be extended as provided in ORS 18.182.

ORS 18.180(7).

§ 4.2F Summary Dissolution Procedure

A marriage may be dissolved by a summary dissolution procedure when a number of conditions exist at the time the proceeding is commenced, including that the marriage is not more than 10 years in duration. ORS 107.485(3).

§ 4.2F(1) Commencement of Action

A proceeding for summary dissolution is commenced by filing a petition in circuit court in the form prescribed under ORS 107.500 and serving the petition and a summons on the respondent. ORS 107.490(1)–(2).

§ 4.2F(2) Answer

Within 30 days after the date the respondent is served, the respondent must file a written answer to the petition or a motion, with the required filing fee, and proof of service of the answer or motion on the petitioner. ORS 107.490(3). If the respondent fails to file a written answer or motion, or fails to appear for a hearing, the court may find the respondent in default, enter a judgment of summary dissolution, and award costs to the petitioner. ORS 107.490(4).

§ 4.2G Conciliation Services

§ 4.2G(1) Court-Exercised Conciliation Jurisdiction

“Whenever any domestic relations suit is commenced in a circuit court exercising conciliation jurisdiction and providing conciliation services, the court may, in its discretion, exercise conciliation jurisdiction over the controversy and over the parties . . . and all persons [related] to the controversy.” ORS 107.540. If a reconciliation or settlement of the controversy has not been effected within 45 days after the court exercises conciliation jurisdiction, the suit will proceed as if the court had not exercised conciliation jurisdiction. ORS 107.540.

§ 4.2G(2) Petition for Conciliation Jurisdiction

When a petition for conciliation jurisdiction is filed, no trial or hearing on the merits of a domestic relations suit between the parties may proceed until after the expiration of 45 days from the filing of the petition, except that the court may use its equitable powers to protect the rights of both spouses. ORS 107.560(1).

The court may waive the 45-day period upon stipulation of the parties or upon written motion and affidavit. ORS 107.560(2).

§ 4.2G(3) Temporary Orders

A circuit court with conciliation jurisdiction and the spouses' consent may make orders it considers necessary to preserve the marriage or implement the spouses' reconciliation. Any such order is not effective for more than 60 days unless the spouses consent to a continuance. ORS 107.590(1). The court may terminate or modify an order at any time. ORS 107.590(3).

§ 4.3 CHILD CUSTODY

§ 4.3A Requesting Joint Custody

A request for joint custody of minor children (other than temporary custody) must be made in the petition or the response or otherwise not less than 30 days before trial, except for good cause shown. If the other party objects to the request, the court will direct the parties to mediation. If the parties do not resolve their differences after 90 days, the court will determine custody. ORS 107.179(1).

§ 4.3B Challenging Another State's Registered Order

A person seeking to contest the validity of a registered order of a child custody determination issued by another state must request a hearing within 21 days after service of notice of the opportunity to contest the registration. ORS 109.787(5). If a timely request for hearing is not made, the registration is confirmed as a matter of law, and further contest of the order is precluded. ORS 109.787(6)–(7).

§ 4.3C Parenting Time Enforcement

Unless the parties otherwise agree, the court must conduct a hearing no later than 45 days after the filing of a motion seeking enforcement of a parenting time order. ORS 107.434(1).

§ 4.4 CHILD SUPPORT

§ 4.4A Child Attending School

If support enforcement services are being provided under ORS 25.080 and the Department of Justice has suspended or reinstated a support obligation under ORS 107.108(8) or (9) (child attending school), a party may request administrative review of the action within 30 days after the date of the notice that the department has suspended or reinstated the support obligation. ORS 107.108(11)(a).

§ 4.4B Child Attending School, Administrative Modification

A child may be a party to a proceeding initiated by the administrator to modify a support order that may affect the child's rights as a "child attending school" if the child sends a written request to the administrator within 30 days after the date of the notice of the proceeding. ORS 107.108(4)(b).

§ 4.4C Multiple Orders

If two or more child support orders have been issued for the same obligor and child, within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order must file a certified copy with each tribunal that had issued or registered an earlier order of child support. ORS 110.333(6).

§ 4.4D Interstate Enforcement

“A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of [Oregon].” ORS 110.408(1).

§ 4.4E Nonregistering Party’s Challenge to Order

A nonregistering party who wishes to contest the validity or enforcement of a registered support order or income-withholding order must request a hearing within 20 days after the date that the notice of registration was mailed or personally served. ORS 110.417(1). If the party fails to make a timely request, the order is confirmed by operation of law. ORS 110.417(2).

§ 4.4F Child Support Liens

§ 4.4F(1) Expiration upon Satisfaction

Support arrearage liens expire upon satisfaction of the unpaid installment that gave rise to the lien. ORS 18.180(2).

§ 4.4F(2) 35 Years

“Except as provided in ORS 18.192 [*see* § 4.4F(3)], judgment remedies for the child support award portion of a judgment, and any lump sum support award for child support, expire 35 years after the entry of the judgment that first establishes the support obligation.” ORS 18.180(5).

§ 4.4F(3) Child Support Awards in Judgments Entered before January 1, 1994

The judgment lien of the child support award portion of a judgment entered before January 1, 1994, and any installment arrearage lien that arose under the judgment lien, expires 10 years after the entry of the judgment that established the support obligation unless the judgment was renewed in the manner provided by the statutes in effect immediately before January 1, 2004, within 10 years after the judgment was entered.

ORS 18.192(1).

“ORS 18.180(5) does not operate to revive the judgment lien of any judgment that expired before January 1, 2004.” ORS 18.192(2).

ORS 18.192 and ORS 18.180(5) “do not limit the time during which judgment remedies are available for any judgment entered before January 1, 1994, and those judgments may continue to be enforced for the time provided by the law

in effect immediately before January 1, 2004, subject to any requirement for renewal of those judgments.” ORS 18.192(3).

§ 4.5 SPOUSAL SUPPORT

§ 4.5A Spousal Support Liens

§ 4.5A(1) Expiration upon Satisfaction

Support arrearage liens expire upon satisfaction of the unpaid installment that gave rise to the lien. ORS 18.180(2).

§ 4.5A(2) Unpaid Spousal Support

Except as provided by ORS 18.180(6)(b) (*see* § 4.5A(3)) and ORS 18.190, judgment remedies for any unpaid installment under the spousal support award portion of a judgment, including any installment arrearage lien arising under the judgment, expire 25 years after the entry of the judgment that first establishes the support obligation, or 10 years after an installment comes due under the judgment and is not paid, whichever is later.

ORS 18.180(6)(a).

§ 4.5A(3) Spousal Support Awards in Judgments Entered on or after January 1, 2004

The judgment lien for the spousal support award portion of a judgment that is entered on or after January 1, 2004, including any installment arrearage lien arising under the judgment, expires 25 years after the entry of the judgment that first establishes the support obligation unless a certificate of extension is filed under ORS 18.185 [*see* § 4.5A(4)].

ORS 18.180(6)(b).

§ 4.5A(4) Extension of Judgment Lien of Spousal Support Award

(1) If a judgment that is entered on or after January 1, 2004, includes a spousal support award, a judgment creditor may file a certificate of extension under ORS 18.182 at any time more than 15 years after the entry of the judgment that first establishes the support obligation and before the judgment lien for the spousal support award portion of a judgment expires under ORS 18.180(6)(b). If a certificate of extension is filed under this subsection:

(a) The judgment lien for the spousal support award portion of the judgment expires 10 years after the certificate of extension is filed; and

(b) Any installment arrearage lien that arises under the judgment, whether before or after the filing of the certificate, expires 10 years after the installment comes due and is not paid or when the judgment lien for the spousal support award portion of the judgment expires under paragraph (a) of this subsection, whichever is first.

(2) Notwithstanding ORS 18.182(5), certificates of extension under ORS 18.182 may continue to be filed in the manner provided by subsection (1) of this section and with like effect for as long as the judgment

lien for the spousal support award portion of a judgment has not expired and any installments remain to be paid under the judgment.

ORS 18.185.

§ 4.5A(5) Spousal Support Awards in Judgments Entered before January 1, 2004

(1) The judgment lien for the spousal support award portion of a judgment that is entered before January 1, 2004, including any installment arrearage liens that arise under the judgment, expires 10 years after the entry of the judgment that first establishes the support obligation unless a certificate of extension is filed under ORS 18.182, or the judgment was renewed in the manner provided by the statutes in effect immediately before January 1, 2004, within 10 years after the judgment was entered.

(2) ORS 18.180(6) does not operate to revive the judgment lien of any judgment that expired before January 1, 2004, under the statutes in effect immediately before January 1, 2004.

(3) This section and ORS 18.180(6) do not limit the time during which judgment remedies are available for any judgment entered before January 1, 2004, and those judgments may continue to be enforced for the time provided by the law in effect immediately before January 1, 2004, subject to any requirement for renewal of those judgments.

ORS 18.190.

§ 4.5B Termination of Spousal Support

A paying spouse may petition the court to set aside spousal support in a judgment of dissolution or annulment after the paying spouse has paid support for more than 10 years when the former spouse has not made reasonable efforts to become financially self-supporting and independent. ORS 107.407.

The 10-year rule does not apply if the supported spouse is 60 years of age or older at the time of the proceeding to determine the petition. ORS 107.412(4). Nor does the 10-year rule apply “if spousal support was granted . . . in lieu of a share of property in order to provide the other spouse with a tax benefit.” ORS 107.407.

§ 4.6 REINSTATEMENT OF SPOUSAL SUPPORT

When a court has terminated spousal support under ORS 107.135, the court may reinstate the remaining duration and remaining amount of the support award [*see* § 4.6A to § 4.6C] if the moving party alleges and proves that:

- (a) the basis for the termination has ceased to exist; and
- (b) the reinstatement is just and equitable under all the circumstances.

ORS 107.136(1).

§ 4.6A Duration

The remaining duration of a support award is the term of the award remaining as if the award had not been terminated and support had been paid from the date of termination to the date of reinstatement. For example, if the applicable judgment required payment of spousal support for 10 years, the award was terminated in year three and reinstatement of the award was sought at the end of year seven, the maximum remaining duration of the support award that could be reinstated would be three years.

ORS 107.136(2)(a).

§ 4.6B Amount

The remaining amount of a support award is the amount of support owed as if the award had not been terminated and support had been paid from the date of termination to the date of reinstatement. For example, if the applicable judgment required support payments of \$1,000 per month for five years and \$500 per month for the next five years, the award was terminated in year three and reinstatement of the award was sought at the end of year seven, the maximum remaining amount of the support award that could be reinstated would be \$500 per month.

ORS 107.136(2)(b).

§ 4.6C Time Limit

A motion for reinstatement of spousal support under ORS 107.136 “must be brought within the remaining duration of the award or within 10 years after the entry of the judgment terminating the award, whichever is sooner.” ORS 107.136(3).

§ 4.7 MODIFICATION

§ 4.7A Motion to Modify Judgment

At any time after a judgment of annulment, dissolution, or separation, either party may move the court to set aside, alter, or modify any portion of the judgment. The moving party must serve the motion on the other party and, when required by ORS 107.135(9), give notice to the Division of Child Support. ORS 107.135(1). A written response is required within 30 days after service of a motion to modify the judgment. ORS 107.135(14).

§ 4.7B Uniform Support Declaration

“Modification proceedings must be initiated by an order to show cause based on a motion supported by an affidavit setting forth the factual basis for the motion” or by any procedure permitted by supplementary local rule. UTCR 8.050(1).

When support will be an issue in a judgment modification proceeding under ORS 107.135, the moving party must file a Uniform Support Declaration at the same time the motion to modify support is filed, and the opposing party must file

and serve a Uniform Support Declaration on the moving party at least seven days before the hearing. UTCR 8.050(1), (3).

§ 4.7C Immediate Postjudgment Orders

A party who files an *ex parte* temporary custody or parenting time order under ORS 107.139 must also file a motion for permanent modification of custody or have one pending at the time that the application for the *ex parte* order is made. UTCR 8.050(5).

§ 4.7D Temporary Status Quo Order

Upon motion of a party and after hearing, the court may enter a temporary status quo order to either party in a proceeding to modify a judgment awarding custody of a child. Notice must be served to the other party at least 21 days before the date set for the hearing. ORS 107.138(1)(a), (c).

§ 4.7E Worksheets

If child support is an issue at the time of hearing, parties must submit the completed Division of Child Support child support computation worksheets to the court. UTCR 8.060(4).

§ 4.8 SEPARATION

§ 4.8A Conversion to Dissolution

Within two years after a judgment of separation is entered, the judgment may be converted to a judgment of dissolution upon motion of a party and at least 30 days' notice to the other party before the scheduled hearing. The other party may file a written consent to conversion and waiver of the hearing at any time before the hearing. ORS 107.465.

§ 4.8B Duration

The court will fix the period of separation, and the judgment has no effect after the period has expired. However, no rights created or granted in the judgment that have vested are affected by the termination. Upon motion of a party and service on the other party, the court may renew or extend the duration. When the judgment is for unlimited separation, a party may move the court for an order modifying or vacating the judgment if the cause for separation no longer exists. ORS 107.475.

§ 4.9 ADOPTION AND PATERNITY

§ 4.9A Service of Documents on Department of Human Services

A petitioner desiring to adopt a minor child must file with the court the required documents and serve copies of the documents, within 30 days of filing, on the Director of the Department of Human Services. ORS 109.315(5)(a).

§ 4.9B Placement Report

Within 90 days after service on the Director of the Department of Human Services, the department must investigate and file with the judge a placement report on the status of the child and evidence about the suitability of the proposed adoption. If the department designates a licensed adoption agency to investigate and report to the court, the department must provide all necessary information to the agency no later than 30 days after service on the director. ORS 109.309(8)(a).

§ 4.9C Hearing

No earlier than provided in ORS 109.309 and no later than six months from the date an adoption petition is filed, the court must hold a hearing and (1) enter a judgment under ORS 109.350, (2) continue the guardianship or legal custodial status of the child, (3) waive the child to a court having jurisdiction under ORS 419B.100 or ORS 419B.005, or (4) take other necessary action. ORS 109.307(1).

§ 4.9D Putative Father

When the paternity of a child has not been established under ORS 109.070, the putative father is entitled to reasonable notice in adoption or other court proceedings concerning the custody of the child, except for juvenile court proceedings, if the petitioner knows, or by the exercise of ordinary diligence should have known:

- (a) That the child resided with the putative father at any time during the 60 days immediately preceding initiation of the proceeding, or at any time since the child's birth if the child is less than 60 days old when the proceeding is initiated; or
- (b) That the putative father repeatedly has contributed or tried to contribute to the support of the child during the year immediately preceding the initiation of the proceeding, or during the period since the child's birth if the child is less than one year old when the proceeding is initiated.

ORS 109.096(1).

§ 4.9E Motion for Judgment of Nonpaternity

A husband who is served with a summons and a motion and order to show cause why a judgment of nonpaternity should not be entered must file a written answer within 30 days after the date of service. ORS 109.326(6).

§ 4.9F Objection to Adoption

A parent who is served with a summons and a motion and order to show cause why the proposed adoption should not be ordered without the parent's consent must file a written answer within 30 days after the date of service. ORS 109.330(3).

§ 4.9G Grandparent Visitation

When a stepparent has filed an adoption petition, a grandparent may file a motion within 30 days after service of the petition asking the court to award the grandparent regular visitation after the adoption. ORS 109.332(1).

§ 4.9H Finality of Adoption

After one year has expired from the date that an adoption judgment is entered, the validity of the adoption is conclusive and binding on all persons. ORS 109.381(3). However, a judgment of adoption entered without notice to one parent must be vacated. *Matter of Adoption of Welshans*, 150 Or App 498, 503–04, 946 P2d 1160 (1997), *abrogated on other grounds by J.B.D. v. Plan Loving Adoptions Now, Inc.*, 218 Or App 75, 178 P3d 266, *rev den*, 344 Or 670 (2008). Parties may still appeal a judgment of adoption as may be provided by other law. ORS 109.381(3).

§ 4.9I Jurisdiction

In an action to establish paternity, the court has jurisdiction when the act of sexual intercourse that resulted in the birth is alleged to have taken place in Oregon. ORCP 4 K(3).

§ 4.9J No Statute of Limitations

The statutes that apply to filiation proceedings (ORS 109.124–109.237), do not include a statute of limitations. The old statutes of limitations for filiation proceedings, *former* ORS 109.135(3) (1979) (10 years) and *former* ORS 109.135(3) (1971) (6 years) have been ruled unconstitutional. *State ex rel. Adult & Family Servs. Div. v. Tuttle*, 304 Or 270, 273, 744 P2d 990 (1987); *State ex rel. Adult & Family Servs. Div. v. Bradley*, 295 Or 216, 225–26, 666 P2d 249 (1983).

§ 4.9K Challenge to Voluntary Acknowledgment

A person may rescind a voluntary acknowledgment of paternity only up to the earlier of (1) 60 days after the form is filed with the state registrar or (2) the date an order relating to the child is entered in a proceeding in which the person is a party. ORS 109.070(4)(a). At any time after the 60-day period, a signed, filed, voluntary acknowledgment of paternity may be challenged and set aside on the basis of fraud, duress, or material mistake of fact. ORS 109.070(5)(a).

§ 4.9L Blood Test

Within one year after a voluntary acknowledgment of paternity is filed, a party to the acknowledgment (or the Department of Human Services if the child is in the department’s care and custody under ORS chapter 419B) may apply for an order for blood tests if blood tests have not previously been completed. ORS 109.070(6).

§ 4.9M Expert Testimony about Blood Test

“The blood test results and the conclusions and explanations of the blood test experts are admissible as evidence of paternity without . . . foundation testimony or other proof of authenticity or accuracy” if a copy is furnished to both parties (or their counsel) at least 20 days before any hearing set to determine the issue of paternity, unless written challenge to the procedure or results of the blood test is filed with the court and delivered to opposing counsel at least 10 days before the hearing. ORS 109.254(2).

§ 4.9N Petition to Vacate or Set Aside Judgment

A petition to vacate or set aside a paternity judgment on the grounds that the paternity determination was obtained by or was the result of fraud, misrepresentation, or other misconduct of an adverse party must be filed within one year after the petitioner discovers the fraud, misrepresentation, or other misconduct. ORS 109.072(2)(d).

§ 4.10 CHANGE OF NAME, SEX

Public notice of the application for a change of name or sex must be posted or published and must allow 14 days from the date of posting or publication for any person to appear and show cause. A judgment for a change may be entered 15 days after posting or publication if no appearance is made. Public notice of the judgment then must be posted or published, and a certificate of posting or publication must be submitted to the trial court administrator. UTCR 9.320. *See* ORS 33.420, ORS 33.460.

§ 4.11 FAMILY ABUSE PROTECTION ACT

“Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 107.700 to 107.735 [the Family Abuse Prevention Act], if the person is in imminent danger of further abuse from the abuser.” ORS 107.710(1). Time during which the respondent is incarcerated or has a principal residence more than 100 miles from the petitioner’s principal residence is not counted as part of the 180-day period. ORS 107.710(6).

§ 4.11A Hearing and Duration

When a person files a Family Abuse Prevention Act petition, the court must hold an *ex parte* hearing on the day the petition is filed or on the following judicial day. Upon the request of the petitioner and the requisite showing of abuse, danger, and threat, the court must issue an order restraining the respondent and including various specific provisions. ORS 107.718(1). The order is effective for one year or until withdrawn, amended, or superseded, whichever is sooner. ORS 107.718(3).

§ 4.11B Respondent’s Request for a Hearing

Within 30 days after a restraining order is served, the respondent may request a hearing. If the respondent fails to request a hearing within that time, the order is confirmed by operation of law. ORS 107.718(10)(a), (11).

§ 4.11C Hearing Date

If the respondent requests a hearing under ORS 107.718(10), the court must hold the hearing within 21 days after the request. However, if the respondent contests an order granting temporary child custody to the petitioner, the court must hold the hearing within five days after the request. ORS 107.716(1).

§ 4.11D Child Custody Hearing

If the court determines under ORS 107.718(2) that exceptional circumstances exist that affect custody of a child, the court must hold a hearing within 14 days of issuing the restraining order. ORS 107.716(2)(a). The respondent may request an earlier hearing to be held within five days after the request. ORS 107.716(2)(b). When the court schedules a hearing under ORS 107.716(2), the respondent may not request a hearing under ORS 107.718(10). ORS 107.716(2)(c).

§ 4.11E Extension of Time

If service of notice of a hearing under ORS 107.718(2) or (10) is inadequate to provide a party with sufficient notice, the court may extend the date of the hearing up to five days so that the party may seek representation. ORS 107.716(4)(a). If one party is represented by an attorney at such a hearing, the court may extend the date of the hearing up to five days at the other party’s request so the other party may seek representation. ORS 107.716(4)(b).

§ 4.11F Renewal of Order

If the court renews an order, the respondent may request a hearing within 30 days after being served. The court must hold a hearing within 21 days after the respondent’s request. ORS 107.725(4).

§ 4.12 SEXUAL ABUSE PROTECTION ACT

A person who has been subjected to sexual abuse within the preceding 180 days, and who reasonably fears for his or her physical safety with respect to the abuser, may petition the circuit court for relief. ORS 163.763(1), (2)(b)(B).

Time during which the respondent is incarcerated, has a principal residence more than 100 miles from the petitioner’s principal residence, or is subject to a foreign restraining order (as defined in ORS 24.190), an order issued under ORS 30.866, ORS 124.015, ORS 124.020, ORS 163.738, or ORS 419B.845, or an order entered in a criminal action prohibiting the respondent from contacting the petitioner is not counted as part of the 180-day period. ORS 163.763(3).

§ 4.12A Hearing and Duration

The court must hold an *ex parte* hearing in person or by telephone on the day the petition is filed or on the following judicial day. “Upon a finding that it is objectively reasonable for a person in the petitioner’s situation to fear for the person’s physical safety if an order granting relief . . . is not entered and that the respondent has subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition,” the court must issue a restraining order. ORS 163.765(1).

The restraining order or consent agreement is effective for one year or until renewed, modified, or terminated. ORS 163.765(8), ORS 163.767(5).

§ 4.12B Respondent’s Request for a Hearing

Within 30 days after a restraining order is served, the respondent may request a hearing. ORS 163.765(6)(a). If the respondent fails to request a hearing within that time, the order is confirmed by operation of law. ORS 163.765(7).

§ 4.12C Hearing Date

If the respondent requests a hearing in accordance with the statute (*see* § 4.12B), the court must hold the hearing within 21 days after the request. ORS 163.767(1).

§ 4.12D Extension of Time

“If service of a notice of hearing is inadequate to provide a party with sufficient notice of the hearing, the circuit court may extend the date of the hearing for up to five days so that the party may seek representation.” ORS 163.767(2)(a). “If one party is represented by an attorney at the hearing, the circuit court may extend the date of the hearing for up to five days at the other party’s request so that the other party may seek representation.” ORS 163.767(2)(b).

§ 4.12E Renewal of Order

If the court renews an order, the respondent may request a hearing within 30 days after being served. The court must hold a hearing within 21 days after the respondent’s request. ORS 163.775(1)(b).

§ 4.13 CHILD ABDUCTION

A petition for return under the Hague Convention of October 25, 1980, on the Civil Aspects of International Child Abduction (convention) may be filed in state or federal court (not with the U.S. Department of State). For the text of the convention, see <www.hcch.net/index_en.php?act=conventions.text&cid=24>. If filed before one year has expired, return is mandatory, with some exceptions. If filed after one year, return is discretionary if “the child is now settled in its new environment.” Article 12. The convention ceases to apply when the child attains the age of 16 years. Article 4. *See* ORS 109.777.

§ 4.14 JUVENILE PROCEEDINGS

§ 4.14A Protective Custody

“A child or ward [taken into protective custody under the authority granted in ORS chapter 419B] may not be held in detention or shelter care more than 24 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the court made pursuant to a hearing.” ORS 419B.183.

§ 4.14B Length of Stay in Detention

Except as provided in ORS 419C.150(3), a juvenile offender’s length of stay in a detention facility is limited to 28 days. The limit may be extended for up to an additional 28 days if, before expiration, the court finds good cause; and longer, if the adjudication is continued with the express consent of the youth. ORS 419C.150(1). The 28-day limit does not apply if the juvenile is alleged to have committed an act that, if committed by an adult, would be murder, attempted murder, conspiracy to commit murder, or treason, and proof of the act is evident or the presumption strong that the youth committed the act. ORS 419C.150(2).

§ 4.14C Appointed Counsel

An application for court-appointed counsel and a sworn statement of financial condition must be provided at intake or the earliest time practicable. UTCR 11.010(1). Unless otherwise ordered by the court, an order for appointment expires when the time for appeal has expired. UTCR 11.020(2).

§ 4.14D Preliminary Hearing

A child may not be held in detention or shelter care for more than 36 hours, excluding Saturdays, Sundays, and judicial holidays, except as ordered by the court pursuant to a hearing. ORS 419C.139, ORS 419C.170.

§ 4.14E Review Hearings

Review hearings pursuant to ORS 419C.153 for any youth detained under ORS 419C.145, ORS 419C.150, and ORS 419C.156 must occur at least every 10 days, excluding Saturdays, Sundays, and judicial holidays.

§ 4.14F Predispositional Investigation

Parties must immediately notify the court of an admission or stipulation of jurisdiction or of a dismissal before the jurisdictional or dispositional hearing. UTCR 11.040.

§ 4.14G Prehearing Investigation Report

A prehearing investigation report will be made available to the parties at least seven days before the dispositional hearing unless the parties stipulate to a shorter time. UTCR 11.060(1).

Chapter 5

APPELLATE PRACTICE AND PROCEDURE; WRITS

MATT KALMANSON, B.A., University of Massachusetts (1994); J.D., Yale Law School (1999); member of the New York State Bar Association since 2001, the Oregon State Bar since 2004, and the Washington State Bar Association since 2009; partner, Hart Wagner LLP, Portland.

PATRICK EBBETT, B.A., University of Vermont (1991); J.D., Lewis & Clark Law School (1996); member of the Oregon State Bar since 1997; senior assistant attorney general, Appellate Division, Oregon Department of Justice, Salem.

§ 5.1	APPEALS.....	5-2
§ 5.1A	Notice of Appeal	5-2
§ 5.1A(1)	Civil Appeals.....	5-2
§ 5.1A(2)	Criminal Appeals	5-3
§ 5.1A(3)	Appeals from Postconviction Relief Judgments	5-3
§ 5.1B	Undertaking on Appeal	5-4
§ 5.1C	Transcript	5-4
§ 5.1D	Briefs on Appeal.....	5-5
§ 5.1D(1)	Appellant’s Opening Brief.....	5-5
§ 5.1D(2)	Respondent’s Answering Brief.....	5-5
§ 5.1D(3)	Appellant’s Reply and Answering Briefs	5-5
§ 5.1D(4)	Dismissal of Appeal	5-5
§ 5.1E	Reconsideration in Court of Appeals.....	5-5
§ 5.1E(1)	Petition for Reconsideration.....	5-5
§ 5.1E(2)	Response to Petition for Reconsideration	5-6
§ 5.1F	Petition for Review and Petition for Reconsideration in Supreme Court.....	5-6
§ 5.1G	Review of Administrative Agency Proceedings	5-6
§ 5.1H	Summary Determination of Appealability	5-7
§ 5.1I	Motions.....	5-7
§ 5.1J	Costs and Attorney Fees on Appeal.....	5-7
§ 5.1K	Time Computation.....	5-8
§ 5.1L	Filing and Service by Mail; Special Requirements.....	5-8
§ 5.1M	References	5-9

§ 5.2	WRITS.....	5-9
§ 5.2A	Writ of Review.....	5-9
§ 5.2A(1)	Filing.....	5-9
§ 5.2A(2)	Undertaking.....	5-9
§ 5.2A(3)	Service.....	5-9
§ 5.2A(4)	Return.....	5-10
§ 5.2A(5)	Appeal.....	5-10
§ 5.2B	Writ of Mandamus.....	5-10
§ 5.2B(1)	Filing.....	5-10
§ 5.2B(2)	Service.....	5-10
§ 5.2B(3)	Stay.....	5-10
§ 5.2B(4)	Intervention.....	5-10
§ 5.2B(5)	Alternative Writ.....	5-10
§ 5.2B(6)	Appeal.....	5-11
§ 5.2C	Mandamus in Supreme Court.....	5-11
§ 5.2C(1)	Memorandum in Opposition.....	5-11
§ 5.2C(2)	Briefing.....	5-11
§ 5.2D	Writ of Habeas Corpus.....	5-11
§ 5.2D(1)	Service.....	5-11
§ 5.2D(2)	Time for Return.....	5-11
§ 5.2D(3)	Replication (Answer).....	5-12
§ 5.2D(4)	Warrant.....	5-12
§ 5.2D(5)	Appeal.....	5-12
§ 5.2E	References.....	5-12

§ 5.1 APPEALS

§ 5.1A Notice of Appeal

§ 5.1A(1) Civil Appeals

A notice of appeal is jurisdictional and must be filed and served within 30 days after the judgment appealed from is entered in the register. ORS 19.255(1), ORS 19.270(2)(b). Appealable judgments include limited judgments, general judgments, and supplemental judgments, as well as certain other orders. ORS 19.205(1)–(3), (5).

If any party has timely filed and served a motion for a new trial or judgment notwithstanding the verdict, the 30 days begins to run from the earlier of the date the order disposing of the motion is entered in the register or the date the motion is deemed denied under ORCP 63 D or ORCP 64 F. However, if the judgment appealed from is entered later, the party has 30 days from entry of judgment. ORS 19.255(2). A motion to set aside a judgment, for a new trial, or for judgment notwithstanding the verdict must be filed within 10 days from the date of entry of the judgment sought to be set aside, or later if the court allows; if not, the motion does not extend the time for filing an appeal. ORCP 63 D, ORCP 64 F; ORS 19.255(2)(a); *Schmidling v. Dove*, 65 Or App 1, 7, 670 P2d 166 (1983).

Notice of cross-appeal must be filed and served within 10 days from the expiration of the time for filing the original notice of appeal. ORS 19.255(3).

Within 14 days after filing the notice of appeal or amended designation of record, any other party may designate additional parts of proceedings or exhibits to be included in the record. ORS 19.250(2).

§ 5.1A(2) Criminal Appeals

Generally, a notice of appeal from a criminal judgment must be filed and served within 30 days after the judgment's entry date. ORS 138.071(1). However, a motion for new trial or a motion in arrest of judgment extends the filing and service period to 30 days after the entry date of the order disposing of the motion or the date that the motion is deemed denied. ORS 138.071(2).

A defendant must file and serve a notice of cross-appeal within 10 days from the expiration of the time for filing the original notice of appeal. ORS 138.071(3).

Within 90 days after entry of the judgment, a defendant may request leave to file a late notice of appeal or cross-appeal (except for a cross-appeal on the state's appeal of an order to suppress evidence). ORS 138.071(5)(b)–(c). The court of appeals must grant the request if the defendant shows by clear and convincing evidence that the failure to file a timely notice was not attributable to the defendant personally and shows a colorable claim of error in the proceeding from which the defendant appeals. ORS 138.071(5)(a).

§ 5.1A(3) Appeals from Postconviction Relief Judgments

The judgment on a petition for postconviction relief may be appealed to the court of appeals within 30 days after entry of judgment. ORS 138.650(1). If the petitioner appeals, the petitioner must serve the notice of appeal on the attorney for the defendant; if the defendant appeals, the defendant must serve the notice on the petitioner's attorney or, if the petitioner is unrepresented, on the petitioner. ORS 138.650(1)(b).

Within 90 days after entry of judgment, a petitioner may request leave to file a notice of appeal after the 30-day time limit. ORS 138.650(2)(b). The court of

appeals must grant the request if the petitioner shows by clear and convincing evidence that the failure to file a timely notice of appeal was not attributable to the petitioner personally and shows a colorable claim of error in the proceeding from which the petitioner appeals. ORS 138.650(2)(a).

§ 5.1B Undertaking on Appeal

An undertaking for costs on appeal must be filed and served within 14 days after filing the notice of appeal. ORS 19.300(1). A supersedeas undertaking may be filed and served at any time during the appeal. ORS 19.300(2).

Objections to the sufficiency of an undertaking must be filed within 14 days after the date on which a copy of the undertaking is served on the objecting party. ORS 19.305(3).

A stipulation that waives, reduces, or limits an undertaking on appeal must be filed within 14 days after filing the notice of appeal. ORS 19.310(1).

In an action on a contract, notwithstanding a pending appeal and supersedeas undertaking, the respondent may enforce the judgment if the respondent files a restitution bond within 10 days after the appeal is perfected. ORS 19.345.

§ 5.1C Transcript

The person preparing the transcript must prepare the transcript within 30 days after the filing of the notice of appeal, or within 30 days after the expiration of any abeyance of the appeal imposed because the appeal was referred to the appellate settlement program. ORS 19.370(2). The person must then immediately serve a copy of the transcript on the parties, file a certificate of preparation with the State Court Administrator, and serve a copy of the certificate on the trial court administrator, the transcript coordinator, and the parties. ORS 19.370(3).

PRACTICE TIP: Serving the notice of appeal on the trial court transcript coordinator will ensure that the transcript is prepared in a timely manner. *See* ORS 19.240(2)(c). Arrangements should be made immediately for payment of the cost of the transcript. ORAP 3.33(2)(b).

Unless an appeal is referred to the appellate settlement program, a transcript may be corrected or augmented by filing a motion in the trial court within 15 days after the certificate of preparation is filed and the transcript is served on the parties. ORS 19.370(6)(a); ORAP 3.40(1). If an appeal is referred to the appellate settlement program and the certificate of preparation is filed during the period of abeyance, a transcript may be corrected or augmented within 15 days after the appeal is no longer held in abeyance. ORS 19.370(6)(a).

The transcript is deemed settled 15 days after the certificate of preparation is filed, except in the case of a motion to correct or augment the transcript. Then, the transcript is settled when the State Court Administrator so notifies the parties. ORS 19.370(7).

An agreed narrative statement may be filed in lieu of or in addition to the transcript within 30 days after filing the notice of appeal. ORS 19.380; *see* ORAP 3.45.

The trial court administrator must file and serve copies of an audio or video record within 14 days after receiving notice that the appellate court has waived preparation of a transcript and is allowing the appeal to be heard only on the audio or video record. ORAP 3.63(2); *see* ORS 19.385; ORAP 3.05(2).

§ 5.1D Briefs on Appeal

§ 5.1D(1) Appellant's Opening Brief

The appellant's opening brief and excerpt of record must be filed and served within 49 days after (1) entry of a trial court order settling the transcript, (2) an agreed narrative statement is filed, (3) the transcript is deemed settled, (4) entry of an appellate court order waiving a transcript, (5) the agency record is settled in a judicial review case, or (6) the date the notice of appeal is filed (if there is no transcript or narrative statement). ORAP 5.80(1).

§ 5.1D(2) Respondent's Answering Brief

The respondent's answering brief must be served and filed within 49 days after the appellant's opening brief is filed. If, after the respondent files the answering brief, the appellant receives leave to file a supplemental brief, the respondent's supplemental brief must be filed and served within 21 days after the appellant's supplemental brief is filed. ORAP 5.80(2).

§ 5.1D(3) Appellant's Reply and Answering Briefs

The appellant's reply brief, if any, must be served and filed within 21 days after the respondent's answering brief is filed or after a motion to file a reply brief is granted. ORAP 5.80(3). An appellant's answering brief on cross-appeal (or combined reply brief on appeal and answering brief on cross-appeal) must be served and filed within 49 days after the opening brief on cross-appeal is filed. ORAP 5.80(4).

§ 5.1D(4) Dismissal of Appeal

The court may dismiss an appeal on its own motion or on the motion of a party if the appellant has failed to comply with the applicable statutes and rules and has not adequately responded within 14 days to the court's notice of non-compliance. ORAP 1.20(4).

§ 5.1E Reconsideration in Court of Appeals

§ 5.1E(1) Petition for Reconsideration

A party seeking reconsideration of a court of appeals decision or order must file a petition within 14 days of the decision. ORAP 6.25(2).

§ 5.1E(2) Response to Petition for Reconsideration

A response to a petition for reconsideration must be filed within seven days after the petition for reconsideration is filed. The court will consider the petition for reconsideration without waiting for a response to be filed, but will consider a response if one is filed before the petition for reconsideration is considered and decided. ORAP 6.25(4).

§ 5.1F Petition for Review and Petition for Reconsideration in Supreme Court

Generally, a petition for review of a court of appeals decision must be served and filed in the supreme court within 35 days from the date of the court of appeals decision. The supreme court may grant an extension. ORS 2.520; ORAP 9.05(2)(a). *But see* § 5.1H.

A response to a petition for review must be filed within 14 days after the petition for review is filed. ORAP 9.10(2).

If the court of appeals reconsiders its decision, a petition for review of the reconsideration must be filed in the supreme court within 35 days after the date of the court of appeals decision on the reconsideration. *See* ORAP 9.05(1)–(2).

Filing of a petition for reconsideration by any party tolls the time for all parties to file a petition for review. ORAP 9.05(2)(b)(i). A motion for reconsideration of any court of appeals order, other than an opinion, an affirmance without opinion, or an order dismissing or otherwise disposing of the appeal, does not toll the time for filing a petition for review. ORAP 6.25(1), (5), ORAP 9.05(2)(b)(iii) n 2.

A petition for reconsideration of a decision by the supreme court must be filed within 14 days from the date of the decision. ORAP 9.25(1).

§ 5.1G Review of Administrative Agency Proceedings

A petition for judicial review of an agency order generally must be filed in the court of appeals within 60 days after the agency has served the parties with the order on which the petition is based. If a petition for rehearing has been filed, the petition for judicial review must be filed within 60 days after service of the order denying rehearing. ORS 183.482(1). However, shorter timelines apply to petitions for review of certain agencies. *See, e.g.*, ORS 657.282 (petition for judicial review of Employment Appeals Board order must be filed within 30 days of service of order), ORS 197.850(3)(a) (petition for judicial review of Land Use Board of Appeals order must be filed within 21 days of delivery or mailing of order), ORS 197.651(3) (petition for judicial review of Land Conservation and Development Commission order concerning designation of urban or rural reserves must be filed within 21 days of delivery or mailing of order).

PRACTICE TIP: Because of varying timelines, prudent counsel should check applicable judicial review statutes carefully. Often, agency orders will provide notice of the applicable statutes.

In general, the agency must transmit to the court the original or a certified copy of the entire record within 30 days after the petition is served, unless the legislature has specified different timelines for a particular agency or type of case. The court may allow an extension. ORS 183.482(4); ORAP 4.20(2).

§ 5.1H Summary Determination of Appealability

The supreme court and court of appeals may make a summary determination of whether a decision is appealable. ORAP 2.35(2). A petition for review or reconsideration of that determination must be filed within 14 days of the order or decision, or such shorter time as the court may order. ORAP 2.35(4).

§ 5.1I Motions

A response to a motion must be served and filed within 14 days after the motion is filed, unless the court shortens the time period. ORAP 7.05(3).

The court will usually decide a motion for an extension of time within a few days after it is filed. If the court grants the motion for extension, an objection to that decision is treated as a motion for reconsideration of the ruling. ORAP 7.25(6).

The time established by rule for the next event in the appellate process is tolled by the filing of certain motions. The time is tolled until the court disposes of the motion, unless the court has ordered that it will not grant any further extensions of time. ORAP 7.30. The following is a nonexclusive list of motions that toll the appellate process: to hold the appeal in abeyance; to amend a designation of record; to dismiss; to determine jurisdiction; for summary affirmance under ORS 34.712, ORS 138.225, or ORS 138.660; to remand; to strike a brief; to supplement the record; and for leave to present additional evidence under ORS 183.482(5). These motions toll only time periods established by rule; they do not toll any time periods established by statute. ORAP 7.30(1).

When a motion is resolved by the Appellate Commissioner under ORAP 7.55, a party may seek reconsideration of the commissioner's ruling under the timelines and in the manner provided by ORAP 6.25. ORAP 7.55(4)(a). A petition or motion for reconsideration of a decision by the Appellate Commissioner is a prerequisite to filing a petition for review of the commissioner's order in the supreme court, unless the commissioner's order is a summary determination of appealability. ORAP 7.55(4)(c)–(d), ORAP 9.05(1).

§ 5.1J Costs and Attorney Fees on Appeal

A party seeking to recover costs must file a statement of costs and disbursements within 21 days after the date of decision. Filing a petition for review or a petition for reconsideration does not suspend the time for filing a statement of

costs and disbursements. ORAP 13.05(5). Objections must be filed within 14 days after the statement of costs and disbursements is served. Any reply must be filed within 14 days after the objections are served. ORAP 13.05(5)(c).

A petition for attorney fees must be served and filed within 21 days after the date of decision. Filing a petition for review or a petition for reconsideration does not suspend the time for filing the petition for attorney fees. ORAP 13.10(2). Objections must be served and filed within 14 days after the date the petition is filed. Any reply must be served and filed within 14 days after the date of service of the objections. ORAP 13.10(6).

Damages under ORS 19.445 (lack of probable cause for appeal), attorney fees under ORS 20.105 (disobeyance of court order or lack of reasonable basis for claim), and reasonable expenses (including attorney fees) under ORAP 1.40(4) (false verification or declaration) and ORCP 17 D (false certification) are recoverable only by filing a petition within 21 days after the decision. ORAP 13.25(1).

If the trial court enters a supplemental judgment awarding attorney fees or costs and disbursements after the notice of appeal has been filed, the appellant may challenge the supplemental judgment by filing and serving an amended notice of appeal within 30 days of the trial court's supplemental judgment. ORAP 2.20(1). A respondent whose request for attorney fees or costs and disbursements was disallowed and who wishes to challenge that ruling on appeal must file and serve a notice of cross-appeal or an amended notice of cross-appeal within 30 days from the trial court's supplemental judgment. ORAP 2.20(2).

§ 5.1K Time Computation

In computing time under the Oregon Rules of Appellate Procedure, the day of the event does not count. The act must be performed on or before the last day of the time period unless the last day is a Saturday, Sunday, legal holiday, or day or part of a day that the court is closed for filing documents, closed to the extent ordered by the Chief Justice, or closed before the end of normal working hours during which documents may be filed, in which case the act must be performed on the next day the court is open. ORAP 1.25(1).

§ 5.1L Filing and Service by Mail; Special Requirements

A notice of appeal, petition for judicial review, or petition under the original jurisdiction of the supreme court is not ordinarily considered filed until it is received in the office of the state court administrator. However, filing of one of those documents is complete upon deposit in the mail if it is mailed by registered or certified mail and the party filing the document has proof from the post office of the mailing date. ORS 19.260(1); ORAP 1.35(1)(c).

CAVEAT: The timely filing of these documents is jurisdictional, and the courts apply the requirements of the rule strictly. *See, e.g., Southwest Forest Industries v. Anders*, 299 Or 205, 211–13, 701 P2d 432 (1985). The date stamp on the registered or certified mailing receipt must be affixed at

the post office. A commercial postal machine stamp is not proof. *See* ORAP 1.35(1)(c).

The filing of any other item required to be filed within a prescribed time is complete upon mailing or dispatching to a third-party commercial carrier, as long as “the method of mailing or delivery is at least as expeditious as first-class mail.” ORAP 1.35(1)(d).

Except motions for waiver or deferral of court costs and accompanying documentation, any item filed under the Oregon Rules of Appellate Procedure must be served on the other parties. ORAP 1.35(2)(a).

Except as otherwise provided by law, service may be in person, by mail, or by third-party commercial carrier for delivery within three calendar days. Unless otherwise provided by law, service by mail or by third-party commercial carrier [is] complete on deposit in the mail or on dispatch to the carrier if the method of mailing or delivery is at least as expeditious as first-class mail.

ORAP 1.35(2)(b) (footnote omitted). Two exceptions are service of a petition for judicial review in a contested case on the administrative agency and all other parties of record in the agency proceeding (ORS 183.482(2)) and service of a petition for judicial review on the Land Use Board of Appeals and all other parties of record in the board proceeding (ORS 197.850(4)). In those instances, the documents must be served by registered or certified mail. Service is complete upon deposit in the mail. ORAP 1.35(2)(b) n 2.

§ 5.1M References

See § 2.2A(1) to § 2.3J; *Appeal and Review: The Basics* (OSB Legal Pubs 2010); *The Ethical Oregon Lawyer* ch 17 (Oregon CLE 2006).

§ 5.2 WRITS

§ 5.2A Writ of Review

§ 5.2A(1) Filing

A petition for writ of review of a decision of a lower court or other tribunal must be filed within 60 days from the date of the decision or determination. ORS 34.030.

§ 5.2A(2) Undertaking

The plaintiff must give an undertaking of \$100 for a payment of costs that may be adjudged to the defendant before the court will allow the writ. ORS 34.050.

§ 5.2A(3) Service

A certified copy of the writ must be served by delivery on the opposite party at least 10 days before the return of the original writ. ORS 34.080.

§ 5.2A(4) Return

The court allowing the writ fixes the date on which the writ is to be returned to the court. ORS 34.060.

§ 5.2A(5) Appeal

Judgment on the writ may be appealed by the same procedure for appeal from a circuit court judgment. ORS 34.100. *See* ORS ch 19; *see also* § 5.1A(1) to § 5.1M.

§ 5.2B Writ of Mandamus

§ 5.2B(1) Filing

A petition for a writ of mandamus must be filed promptly after the ruling being challenged in time to meet any analogous statutory deadline. *State ex rel. Marbet v. Keisling*, 314 Or 235, 238, 838 P2d 585 (1992).

§ 5.2B(2) Service

The relator, who is the beneficially interested party on whose relation the mandamus proceeding is brought, ORS 34.105(4), must serve a copy of the petition on the defendant and, if the mandamus proceeding arises from a judicial or administrative proceeding, on all parties. Service is sufficient if it complies with ORCP 9 B. However, the court may act on a petition regardless of defects in service on an adverse party, and the petition may be allowed with or without notice to the adverse party, as in a writ of review proceeding. ORS 34.130(2).

§ 5.2B(3) Stay

The filing or allowance of a petition for a writ of mandamus does not stay the judicial or administrative proceeding from which the mandamus proceeding arises, but the court may stay the proceeding. ORS 34.130(5).

§ 5.2B(4) Intervention

On a petition filed under ORS 215.429 or ORS 227.179 (county or city land use decisions), a motion to intervene must be filed with the court within 21 days after the petition is filed. ORS 34.130(4)(b). In all other cases, any adverse party may intervene at any time until the return date of the alternative writ, and any time after return with the court's discretion. ORS 34.130(4)(a).

§ 5.2B(5) Alternative Writ

The defendant will be commanded to immediately, or at a date specified in the writ, perform the act required or show cause why the defendant has not performed. ORS 34.150(2).

The defendant may show cause by (1) filing a motion to dismiss or (2) answering the writ as though it were a complaint on the return day of the writ or on a day allowed by the court. ORS 34.170.

If the defendant fails to show cause by filing a motion to dismiss or an answer, a peremptory mandamus, which is a writ for a situation when the right to require performance is clear, will be allowed against the defendant. Answers or replications containing new matter may be moved against within the time prescribed by the court. ORS 34.180.

Pleadings may be amended as pleadings in an action. ORS 34.190. *See* ORCP 23.

§ 5.2B(6) Appeal

A judgment by a circuit court or the Oregon Tax Court refusing to allow mandamus or directing a peremptory mandamus may be appealed by the same procedure as for appeal of an action. ORS 34.240. *See* ORS ch 19; *see also* § 5.1A(1) to § 5.1M.

§ 5.2C Mandamus in Supreme Court

§ 5.2C(1) Memorandum in Opposition

Within 14 days from the filing date of a petition for a writ of mandamus, the adverse party may serve and file a memorandum in opposition to the petition. ORAP 11.10(1).

§ 5.2C(2) Briefing

Unless the court directs otherwise, the relator has 28 days from the date that the case is at issue on the pleadings, or from the date that an alternative writ of mandamus is issued, in which to file the opening brief. ORAP 11.15(1). The adverse party has 28 days from the date that the relator serves and files the opening brief in which to file an answering brief. ORAP 11.15(2).

A motion for leave of the court to file a reply brief in a mandamus proceeding must be filed within seven days after the filing of the brief for which permission to reply is sought. ORAP 11.15(3).

§ 5.2D Writ of Habeas Corpus

§ 5.2D(1) Service

Service of a writ of habeas corpus is not complete until fees for bringing the person before the court and an undertaking are tendered to the custodian. ORS 34.440(1).

§ 5.2D(2) Time for Return

The court may set the time for return of the record. ORS 34.680(3). If the writ is returnable “forthwith,” and the place of return of the writ is within 20 miles of the place of service, return must be made within 24 hours, and the same time is allowed for every additional 20 miles. ORS 34.500.

§ 5.2D(3) Replication (Answer)

The defendant's replication must be made within such time as the court directs and will have the same effect as in an action. ORS 34.680(3).

§ 5.2D(4) Warrant

Upon proof of service, the court must issue a warrant against a person who refuses to obey a duly served writ. The sheriff must apprehend the person immediately, and the person will be held in jail until the writ is returned and until the person complies with the writ. ORS 34.550.

§ 5.2D(5) Appeal

Appeal from any final judgment in the habeas corpus proceeding or from judgment refusing to allow the writ must be brought in the same manner as in an action. ORS 34.710. *See* ORS ch 19; *see also* § 5.1A(1) to § 5.1M.

§ 5.2E References

See generally 3 *Criminal Law* ch 29 (OSB Legal Pubs 2013); 2 *Oregon Civil Pleading and Practice* chs 38–39 (OSB Legal Pubs 2012).

Chapter 6

ELDER LAW; SURVIVAL OF ACTIONS; DECEDENTS' ESTATES; TRUSTS

IAN T. RICHARDSON, B.A., University of California, Berkeley (1987); J.D. (*cum laude*), Lewis & Clark Law School (1997); member of the Oregon State Bar since 1997; partner, Gleaves Swearingen LLP, Eugene.

TIMOTHY J. WACHTER, B.A. (*cum laude*), Washington State University (1984); J.D. (*cum laude*), Willamette University College of Law (1987); member of the Oregon State Bar since 1987; partner, Duffy Kekel LLP, Portland.

MICHAEL A. SCHMIDT, B.A., Fort Hays State University (1974); J.D., Lewis & Clark Law School (1978); member of the Oregon State Bar since 1978; shareholder, Schmidt & Yee, P.C., Aloha.

§ 6.1	GUARDIANS AND CONSERVATORS	6-5
§ 6.1A	Protective Proceedings in General	6-5
§ 6.1B	Guardian	6-6
§ 6.1C	Temporary Guardian	6-7
§ 6.1D	Conservator	6-7
§ 6.1E	Guardian <i>Ad Litem</i> ; Civil Litigation	6-8
§ 6.1F	References	6-9
§ 6.2	PREVENTING AND REPORTING ABUSE; CIVIL ACTION FOR ABUSE	6-9
§ 6.2A	Elderly Persons and Persons with Disabilities Abuse Prevention Act.....	6-9
§ 6.2B	Reporting Abuse.....	6-10
§ 6.2C	Civil Action for Abuse of Vulnerable Person.....	6-11
§ 6.2D	Elder Financial Abuse	6-11
§ 6.2E	References	6-11
§ 6.3	DEATH OR DISABILITY.....	6-12
§ 6.3A	Death of a Party	6-12
§ 6.3A(1)	Action Continued by Personal Representative.....	6-12
§ 6.3A(2)	Action Continued against Personal Representative	6-12
§ 6.3A(3)	Abatement	6-12
§ 6.3B	Disability of a Party.....	6-12
§ 6.3B(1)	Action Continued	6-12

§ 6.3B(2)	Tolling for Minority or Insanity	6-12
§ 6.3C	Effect of Death on Unfiled Action	6-13
§ 6.3C(1)	Commencement of Action by Personal Representative	6-13
§ 6.3C(2)	Commencement of Action against Personal Representative	6-13
§ 6.3D	Death of an Attorney	6-14
§ 6.3E	References	6-14
§ 6.4	SURVIVAL OF ACTIONS.....	6-14
§ 6.4A	In General	6-14
§ 6.4A(1)	Cause of Action Survives to Personal Representative	6-14
§ 6.4A(2)	Procedure.....	6-14
§ 6.4B	Personal-Injury Actions.....	6-15
§ 6.4B(1)	Plaintiff’s Death	6-15
§ 6.4B(2)	Defendant’s Death.....	6-15
§ 6.4C	References	6-15
§ 6.5	ACTION FOR WRONGFUL DEATH	6-15
§ 6.5A	Limitations Period	6-15
§ 6.5B	Discovery Rule	6-16
§ 6.5C	Action for Wrongful Death against a Public Body	6-16
§ 6.5C(1)	Limitations Periods	6-16
§ 6.5C(2)	Discovery Rule under the OTCA	6-17
§ 6.5D	Death of Wrongdoer.....	6-17
§ 6.5E	Employer Liability Law	6-18
§ 6.5F	References	6-18
§ 6.6	DECEDENTS’ ESTATES	6-18
§ 6.6A	Disposition of Wills.....	6-18
§ 6.6A(1)	Duty of Custodian of Will on Testator’s Death	6-18
§ 6.6A(2)	Disposal of Will by Attorney	6-18
§ 6.6B	Special Administrator before Appointment of Personal Representative	6-18
§ 6.6C	Commencement of Personal Representative’s Duties; Relation Back	6-19
§ 6.6D	Personal Representative’s Initial Duties	6-19
§ 6.6D(1)	Notice of Appointment to Interested Persons	6-19

§ 6.6D(2)	Information to Devisees, Heirs, and Other Persons	6-20
§ 6.6D(3)	Inventory of Estate Property	6-20
§ 6.6D(4)	Diligent Search for and Notice to Claimants	6-20
§ 6.6E	Setting Apart the Whole Estate for Support.....	6-20
§ 6.6F	Notice of Hearing or Other Matter; Objections to Hearing	6-21
§ 6.6G	Order of Probate Commissioner May Be Modified.....	6-21
§ 6.6H	Accounting by Personal Representative.....	6-21
§ 6.6I	Will Contests	6-22
§ 6.6J	Discharge of Personal Representative.....	6-22
§ 6.6K	Appeal of Estate Tax	6-22
§ 6.6L	Small Estates	6-22
§ 6.6L(1)	In General.....	6-22
§ 6.6L(2)	When to File; Who May File	6-23
§ 6.6L(3)	Contents of Affidavit; Amendment of Affidavit.....	6-23
§ 6.6L(4)	Transfer of Property to Affiant	6-23
§ 6.6L(5)	Delivery of Instruments.....	6-23
§ 6.6L(6)	Claims against a Small Estate	6-23
§ 6.6L(6)(a)	In General.....	6-23
§ 6.6L(6)(b)	Summary Determination of Disallowed or Disputed Claim	6-24
§ 6.6L(6)(c)	Summary Review of Administration of Estate	6-24
§ 6.6L(7)	Failure to Appoint Personal Representative.....	6-24
§ 6.6M	Surviving Spouse’s Elective Share	6-24
§ 6.6M(1)	In General.....	6-24
§ 6.6M(2)	Manner of Making Election; Service of Motion or Petition	6-24
§ 6.6M(3)	Withdrawal of Motion or Petition.....	6-25
§ 6.6N	Claims against Estates.....	6-25
§ 6.6N(1)	Extension of Statute of Limitations on Death.....	6-25
§ 6.6N(2)	Claims Allowed and Disallowed.....	6-25
§ 6.6N(2)(a)	Claim Is Deemed Allowed if Not Disallowed within 60 Days	6-25
§ 6.6N(2)(b)	Rescission of Allowance of Unpaid Claim	6-25
§ 6.6N(2)(c)	Request for Summary Determination of Disallowed Claim.....	6-25

§ 6.6N(3)	Time Limitations on Presentation of Claims against Estate	6-26
§ 6.6O	Action against Personal Representative for Failure to Search for or Notify Potential Claimants	6-26
§ 6.6P	Disclaimers	6-26
§ 6.6Q	Final Accounting, Distribution, and Closing	6-27
§ 6.6R	Deadlines for Filing Tax Returns and Paying Taxes for Decedent's Estate	6-27
§ 6.6R(1)	Decedent's Individual Income Tax Return	6-28
§ 6.6R(1)(a)	Federal Law	6-28
§ 6.6R(1)(b)	Oregon Law	6-28
§ 6.6R(2)	Income Tax Returns for Estates	6-28
§ 6.6R(2)(a)	Federal Law	6-28
§ 6.6R(2)(b)	Oregon Law	6-29
§ 6.6R(3)	Estate Tax Return, Oregon Estate Transfer Tax Return, and Gift Tax Return	6-29
§ 6.6R(3)(a)	Federal Estate Tax Return	6-29
§ 6.6R(3)(b)	Oregon Estate Tax Return	6-30
§ 6.6R(4)	Decedent's Gift Tax Return	6-31
§ 6.6R(4)(a)	Federal Gift Tax Return	6-31
§ 6.6R(4)(b)	No Gift Tax Return Is Required in Oregon	6-31
§ 6.6R(5)	Date of Delivery of Return or Payment	6-31
§ 6.6S	Reopening of Estate	6-31
§ 6.6T	Escheat	6-31
§ 6.6U	Estates of Absentees	6-32
§ 6.6V	Rule against Perpetuities	6-32
§ 6.6W	References	6-32
§ 6.7	TRUSTS	6-32
§ 6.7A	Trusts—In General	6-32
§ 6.7A(1)	Action against Trustee for Negligence	6-32
§ 6.7A(2)	Laches	6-33
§ 6.7A(3)	Action against Trustee of Express Trust for Breach of Duty	6-33
§ 6.7B	Constructive Trust	6-33
§ 6.7C	Principal Place of Administration	6-33

§ 6.7C(1)	Notice of Transfer of Place of Administration.....	6-33
§ 6.7C(2)	Objection to Transfer	6-33
§ 6.7D	Nonjudicial Settlement Agreements	6-33
§ 6.7E	Claims against Trust Based on Debts of Settlor; Trust Contest.....	6-34
§ 6.7E(1)	Time Limitations.....	6-34
§ 6.7E(1)(a)	Limitations Periods for Presenting Claims against Trust.....	6-34
§ 6.7E(1)(b)	Waiver of Statute of Limitations.....	6-35
§ 6.7E(1)(c)	Tolling of Statute of Limitations on Settlor’s Death	6-35
§ 6.7E(1)(d)	Applicability of Time Limitations to Action by Public Body.....	6-35
§ 6.7E(1)(e)	Applicability of Time Limitations to Claims Based on Liens and Liability of Grantor or Trustee.....	6-35
§ 6.7E(2)	Commencement of Proceeding; Notice to Claimants	6-35
§ 6.7E(3)	Allowance and Disallowance of Claims	6-36
§ 6.7E(3)(a)	Claim Is Allowed Unless Disallowed.....	6-36
§ 6.7E(3)(b)	Remedies if Claim Is Disallowed	6-36
§ 6.7E(3)(c)	Summary Determination of Claim.....	6-36
§ 6.7E(4)	Petition to Close Case	6-36
§ 6.7E(5)	Contesting Validity of Revocable Trust.....	6-36
§ 6.7F	Distribution on Termination of Trust.....	6-36
§ 6.7G	Resignation of Trustee	6-37
§ 6.7H	Limitation of Action against Trustee	6-37
§ 6.7I	References	6-37

§ 6.1 GUARDIANS AND CONSERVATORS

§ 6.1A Protective Proceedings in General

(1) *Notice of petition.* When an initial petition is filed to appoint a fiduciary, notice of the petition must be given to the persons listed in ORS 125.060. If the respondent is a minor, notice must be served on the minor’s parents. ORS 125.065. The form of the notice is set forth in ORS 125.070.

(2) *Intent to place a person in a facility.* Before placing a protected person in a care facility, the guardian must file a statement with the court of the intent to make the placement. Timely notice is required. ORS 125.320(3).

(3) *Notice of motion.* After the initial petition is filed, a person who makes any of the following motions must give notice of the motion to the persons listed in ORS 125.060(3): (a) a motion to terminate protective proceedings, (b) a motion to remove a fiduciary, (c) a motion to modify the fiduciary's powers or authority, (d) a motion to approve certain actions of the fiduciary as listed in ORS 125.440, and (e) a motion for additional protective orders. ORS 125.060(3).

(4) *Objections.* Objections to a petition or motion must be made within 15 days after the notice of the petition or motion is served or mailed. ORS 125.075(2). However, if the Uniform Child Custody Jurisdiction Act (ORS 109.701–109.834) is involved, the deadline for filing objections to a petition to appoint a fiduciary is 21 days. ORS 125.065(3).

(5) *Notice of hearing on objections.* When the court schedules a hearing on the objections, the person who filed the petition or made the motion must notify the persons listed in ORS 125.060(3) of the date, time, and place of the hearing at least 15 days before the hearing date. ORS 125.075(3); *see* ORS 125.075(5) (the court may provide for a different time).

(6) *Failure to comply with notice requirements.* The statutory requirements regarding the timing and content of notice must be complied with, or the appointment of the fiduciary will be invalid. *Middleton v. Chaney*, 177 Or App 679, 684–86, 34 P3d 722 (2001), *aff'd as modified*, 335 Or 58, 57 P3d 893 (2002); *Spady v. Hawkins*, 155 Or App 454, 459, 963 P2d 125 (1998).

§ 6.1B Guardian

(1) *Notice of petition.* Notice to interested persons must be served no less than 15 days before the deadline for filing objections to the petition to appoint a guardian. ORS 125.065(3).

(2) *Notice of hearing on objections.* Notice of a hearing on objections is due 15 days before the hearing. ORS 125.075(3).

(3) *Appointment of visitor; visitor's report.* The court must appoint a visitor “upon the filing of a petition in a protective proceeding that seeks the appointment of a guardian for an adult respondent.” ORS 125.150(1). The visitor's report is due 15 days after the visitor is appointed. ORS 125.155(1).

(4) *Guardian's report.* The guardian must make an annual report, which is due 30 days after each anniversary of the guardian's appointment. ORS 125.325.

(5) *Tax returns.* If a conservator has not been appointed, a guardian must file federal and state income tax returns for the protected person within the times required by the applicable tax code. IRC § 6012(b)(2).

§ 6.1C Temporary Guardian

(1) *Limitations on appointment.* A temporary guardian may be appointed only for a specific purpose and only for a time period not exceeding 30 days. However, the court may extend the temporary fiduciary's authority for an additional 30 days on good cause shown. ORS 125.600(3).

(2) *Notice.* A person seeking the appointment of a temporary guardian, or an extension of a temporary guardianship beyond 30 days, must give notice to certain persons listed in ORS 125.060(2) at least two days before the temporary fiduciary is appointed or the guardianship is extended. ORS 125.605(2), (3).

(3) *Hearing on objections.* If objections are made to the appointment of a temporary fiduciary or to the extension of the fiduciary's authority, the court must hold a hearing within two judicial days after the objections are filed. ORS 125.605(5).

(4) *Appointment of visitor; visitor's report.* The court must appoint a visitor "upon the filing of a petition in a protective proceeding that seeks the appointment of a . . . temporary fiduciary." ORS 125.150(1). Within three days after the appointment of the temporary guardian, the visitor must interview the respondent. ORS 125.605(4). The visitor must report to the court within five days after the temporary fiduciary's appointment. ORS 125.605(4).

(5) *Report of temporary fiduciary.* The temporary guardian's report is due when the fiduciary completes his or her fiduciary duties, or when the temporary appointment expires, or when the court orders the termination of the fiduciary's authority. ORS 125.610(1). If the temporary guardian is appointed as a permanent guardian, however, the report is due one year after the appointment. ORS 125.610(2).

§ 6.1D Conservator

(1) *Notice of petition.* Notice to interested persons must be served no less than 15 days before the deadline for filing objections to the petition to appoint a conservator. ORS 125.065(3).

(2) *Objections.* Objections to the appointment of a conservator must be filed within 15 days after service of the notice of the filing of the petition to appoint a conservator. ORS 125.075(2).

(3) *Notice of hearing on objections.* Notice of a hearing on objections is due 15 days before the hearing. ORS 125.075(3).

(4) *Visitor's report.* If the court has appointed a visitor (*see* ORS 125.150(1)), the visitor's report is due 15 days after the visitor's appointment. ORS 125.155(1).

(5) *Notice of cancellation of bond.* The bonding company must give at least 30 days' notice before canceling the conservator's bond. ORS 125.415(1).

(6) *Inventory.* Within 90 days after his or her appointment, the conservator must file an inventory of all property of the protected person that “has come into the possession or knowledge of the conservator.” ORS 125.470(1). The conservator must file a supplemental inventory within 30 days after receiving, or learning of, additional estate property. ORS 125.470(2).

(7) *Claim against estate.* A creditor who has a claim against the estate of the protected person may not bring an action on the claim until either the claim is disallowed or 60 days have elapsed after presentment of the claim without payment. ORS 125.500(1). A secured creditor may not exercise remedies against the security until 30 days after presentment of the claim and after proper notice. ORS 125.500(2).

(8) *Summary determination of claim.* When the creditor requests a summary hearing of a claim against the conservatorship, the conservator has 30 days to notify the creditor that he or she may commence a separate action on the claim. The creditor then has 60 days to file that separate action. ORS 125.510(2).

(9) *Tolling of limitations period.* The statute of limitations against a conservatorship is tolled for up to 90 days while the conservator considers the claim. ORS 125.515.

(10) *Accounting.* The conservator must file an accounting within 60 days after any of the following events: (a) the anniversary of the conservator’s appointment, (b) the death of the protected person, (c) a minor protected person attains the age of majority, or (d) an adult protected person becomes capable of managing his or her financial resources. ORS 125.475(1), (1)(a). An accounting is due 30 days after the removal or resignation of the conservator or the termination of the conservator’s authority due to cancellation of a surety bond. ORS 125.475(1)(b).

(11) *Vouchers.* The conservator must maintain vouchers for disbursements for at least one year after entry of the order approving the final accounting. ORS 125.475(3).

(12) *Tax returns.* The conservator must file federal and state income tax returns on behalf of the protected person. IRC § 6012(b)(2).

§ 6.1E Guardian Ad Litem; Civil Litigation

(1) *Appearance in court action.* A minor or incapacitated person who has a conservator or guardian must appear in court through the conservator or guardian or, if no conservator or guardian has been appointed, through a guardian *ad litem*. ORCP 27.

(2) *Tolling during minority or insanity.* The statutes of limitations for most causes of action (except for those relating to land sale contracts) held by a person who is under the age of 18 are tolled for up to five years before the person reaches age 18. ORS 12.160(1)–(2). Causes of action that accrue while a person is insane are also tolled. ORS 12.160(3)–(4). The time for commencing an action

cannot be extended under the statute for more than five years, or for more than one year after the person reaches age 18 or is no longer insane, whichever occurs first. ORS 12.160(2), (4). See § 2.6B(1)(a) to § 2.6B(3) for further discussion on the tolling statute, including applicability of the statute to the Oregon Tort Claims Act.

NOTE: A claim brought by a parent, guardian, or conservator of a minor child for medical expenses resulting from the same wrongful conduct that is the basis of the minor's cause of action is also tolled. ORS 12.160(5). See § 7.4D to § 7.4D(1).

NOTE: The appointment of a guardian *ad litem*, conservator, or guardian does not affect the tolling period. *Luchini By & Through Luchini v. Harsany*, 98 Or App 217, 221–23, 779 P2d 1053, *rev den*, 308 Or 608 (1989).

CAVEAT: It is not clear whether the minority-tolling statute (ORS 12.160) tolls the two-year limitation period under the Oregon Tort Claims Act to commence an action. See § 2.18A(4)(b) for further discussion.

NOTE: The Oregon Constitution does not prevent the legislature from imposing statutes of limitation on claims accruing during the minority of a claimant. *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 184 P3d 1121 (2008).

§ 6.1F References

See generally *Guardianships, Conservatorships, and Transfers To Minors* (OSB Legal Pubs 2009).

§ 6.2 PREVENTING AND REPORTING ABUSE; CIVIL ACTION FOR ABUSE

§ 6.2A Elderly Persons and Persons with Disabilities Abuse Prevention Act

(1) *Petition for relief.* If an elderly person or a person with a disability has been the victim of abuse and “is in immediate and present danger of further abuse from the abuser,” the abused person (or the person's guardian or guardian *ad litem*) may petition the circuit court for relief under the Elderly Persons and Persons with Disabilities Abuse Prevention Act (ORS 124.005–124.040). The petition must be filed within 180 days of the occurrence of the abusive act. ORS 124.010(1)(a).

NOTE: The computation of the 180-day period does not include the time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the alleged victim. ORS 124.010(6).

(2) *Ex parte hearing.* The circuit court must hold an *ex parte* hearing on the day on which the petition is filed or on the following judicial day. ORS 124.020(1).

(3) *Notice.* If the petitioner is the guardian of the alleged victim, the petitioner must give notice of the petition, order, and related forms, as well as a statement of rights, to the alleged victim no later than 72 hours after the court issues a restraining order. ORS 124.024. Notice must be by personal service. ORS 124.024(4).

(4) *Proof of service.* Proof of service under the statute must be filed before the court holds a hearing. ORS 124.024(5).

(5) *Request for hearing.* The respondent, or the alleged victim if the petition was filed by the guardian, may request a hearing within 30 days after the restraining order has been served on the respondent or notice has been served on the alleged victim. ORS 124.020(9)(a).

(6) *Hearing.* If a hearing is requested, the court must hold the hearing “within 21 days following the request.” ORS 124.015(1). But see item (7) below regarding extending the time for the hearing.

(7) *Extra time to seek representation.* If the respondent is represented by an attorney, the time for the hearing may be extended for up to five days at the request of the petitioner so that the petitioner may seek representation. ORS 124.015(3)(a). Also, if the alleged victim is represented by an attorney, the hearing may be extended for up to five days at the request of the respondent or the guardian petitioner so that the respondent or the guardian petitioner may seek representation. ORS 124.015(3)(b).

§ 6.2B Reporting Abuse

(1) *Duty to report.* Certain public and private officials have a duty to report the suspected abuse of a person who is 65 years of age or older. ORS 124.050(9), ORS 124.060. When a report of abuse is required under ORS 124.060, an oral report must be made immediately by telephone or otherwise to the local office of the Department of Human Services (DHS) or to a law enforcement agency in the county. ORS 124.065(1).

(2) *Investigation.* On receipt of the report, the DHS or the law enforcement agency must “cause an investigation to be commenced promptly.” ORS 124.070(1).

(3) *Notification to DHS from law enforcement agency.* Within three days after receiving notification from DHS that there is reasonable cause to believe that a crime has occurred, a law enforcement agency must notify DHS whether or not a criminal investigation will take place or whether the findings have been given to the district attorney. ORS 124.070(3). (Note: Effective July 1,

2015, the statute is amended to delete the requirement that the law enforcement agency has only three days to notify DHS. *See* Or Laws 2009, ch 837, § 13.)

(4) *Notification to DHS from district attorney.* Within five days after receiving findings from a law enforcement agency, the district attorney must notify DHS that the findings have been received and inform DHS “whether the findings have been received for review or for filing charges.” ORS 124.070(4). (Note: Effective July 1, 2015, the statute is amended to delete the requirement that the district attorney has only five days to notify DHS. *See* Or Laws 2009, ch 837, § 13.)

(5) *Determination regarding whether to file charges.* Within six months after receiving the findings from the law enforcement agency, the district attorney must decide whether or not to file charges. ORS 124.070(4).

(6) *Decision not to go to trial after filing charges.* If a district attorney files charges and then decides not to proceed to trial, the district attorney must notify DHS within five days and explain the basis for the determination. ORS 124.070(5). (Note: Effective July 1, 2015, the statute is amended to delete the requirement that the district attorney has only five days to notify DHS. *See* Or Laws 2009, ch 837, § 13.)

§ 6.2C Civil Action for Abuse of Vulnerable Person

A civil action for the abuse of a vulnerable person must be commenced within seven years after discovery of the conduct that gives rise to the cause of action. ORS 124.130. *See Landauer v. Landauer*, 221 Or App 19, 188 P3d 406 (2008).

A copy of the complaint must be served on the Attorney General within 30 days after the action has been commenced. ORS 124.100(6).

§ 6.2D Elder Financial Abuse

An elderly or vulnerable person (as defined in ORS 124.100(1)) who suffers damage because of financial abuse “may bring an action against any person who has caused the . . . financial abuse or who has permitted another person to engage in . . . financial abuse.” ORS 124.100(2).

An action for financial abuse must be commenced within seven years after the discovery of the conduct described in ORS 124.110 that gives rise to a cause of action. ORS 124.130. No appellate case in Oregon defines “discovery” for the purposes of the statute. *See* chapter 4.

§ 6.2E References

See Elder Law ch 10 (Oregon CLE 2000 & Supp 2005).

§ 6.3 DEATH OR DISABILITY

§ 6.3A Death of a Party

§ 6.3A(1) Action Continued by Personal Representative

On the death of a plaintiff, the court, on motion, must allow the action to be continued by the plaintiff's personal representative or successors-in-interest if the motion is made any time within one year after the plaintiff's death. ORCP 34 B(1). *See* § 6.5A to § 6.5E (wrongful death).

§ 6.3A(2) Action Continued against Personal Representative

“An action against a decedent commenced before and pending on the date of death of the decedent may be continued as provided in ORCP 34 B(2) without presentation of a claim against the estate of the decedent.” ORS 115.315.

Under ORCP 34 B(2), if a defendant dies, the court, on motion, must allow the action to be continued against the defendant's personal representative or successors-in-interest, unless (1) the defendant's personal representative or successors-in-interest mail or deliver notice that includes the information required by ORS 115.003(3) to the claimant (or the claimant's attorney, if represented) and (2) the claimant or the claimant's attorney fails to move the court to substitute the personal representative or successors-in-interest within 30 days of mailing or delivery of the notice.

§ 6.3A(3) Abatement

If a plaintiff or defendant dies in an action in which the right sought to be enforced survives only to the surviving plaintiffs or against the surviving defendants, the action does not abate. ORCP 34 D. The proper procedure is to move the court for an order substituting parties as described in § 2.2G(1) to § 2.2G(4).

§ 6.3B Disability of a Party

§ 6.3B(1) Action Continued

If a party to an action becomes disabled, the court may allow the action to be continued by or against the disabled party's guardian, conservator, or successors-in-interest on a motion made within one year after the disability. ORCP 34 C.

§ 6.3B(2) Tolling for Minority or Insanity

If a person is younger than 18 years of age or insane at the time of the accrual of a cause of action mentioned in ORS 12.010 to 12.050, ORS 12.070 to 12.250, or ORS 12.276, the statute of limitations for the action is tolled for as long as the person is younger than 18 or for as long as the person is insane. ORS 12.160(1), (3). However, the statute of limitations will not be extended for more than five years by reason of age or insanity, or for more than one year after the person reaches 18 years of age or is no longer insane, whichever occurs first. ORS 12.160(2), (4). *See* § 2.6B(1)(a) to § 2.6B(1)(b) for further discussion.

NOTE: If a child's cause of action is tolled under ORS 12.160(1), an action seeking damages for medical expenses incurred by a parent, guardian, or conservator of the child is tolled for the same amount of time if the medical expenses resulted from the same wrongful conduct that is the basis of the child's cause of action. ORS 12.160(5). *See* § 7.4D(1).

To be sufficient to toll the statute of limitations for insanity, the insane person must suffer from "such a condition of mental derangement as actually to bar the sufferer from comprehending rights which he is otherwise bound to know." *Roberts By & Through Drew v. Drew*, 105 Or App 251, 254, 804 P2d 503 (1991). Whether that condition existed when the cause of action accrued is usually a question of fact. *Roberts By & Through Drew*, 105 Or App at 255.

§ 6.3C Effect of Death on Unfiled Action

§ 6.3C(1) Commencement of Action by Personal Representative

If a person who is entitled to bring an action dies before the applicable statute of limitations expires, the personal representative may commence the action after the expiration of that time, but the action must be commenced within one year after the death of the person. ORS 12.190(1).

However, the limitation period set forth in ORS 30.075, rather than ORS 12.190(1), applies to personal-injury actions in which the injured person dies before the action is commenced. Under ORS 30.075, the personal representative must commence the action within three years. *See Giuliatti v. Oncology Associates of Oregon, P.C.*, 178 Or App 260, 36 P3d 510 (2001). "ORS 30.075 is specific to personal injury claims," whereas ORS 12.190(1) applies to all other actions in which the decedent died before the action was brought. *Giuletti*, 178 Or App at 265–66.

NOTE: An action for wrongful death is subject to the limitations period set forth in ORS 30.020(1).

CAVEAT: A cause of action may be subject to a specific statute of limitations. *See* chapter 7 (discussing statutes of limitations applicable to various torts, including actions based on a products-liability civil action).

§ 6.3C(2) Commencement of Action against Personal Representative

If a person who would be a defendant in a case dies before the statute of limitations expires, the plaintiff may commence an action against the defendant's personal representative after the statute of limitations expires, but the action must be brought within one year after the defendant's death. ORS 12.190(2).

However, with certain exceptions, "no action against a personal representative on account of a claim shall be commenced until the claim of the plaintiff has been presented to and disallowed by the personal representative." ORS 115.325. *See Meissner v. Murphy*, 58 Or App 174, 177–78, 647 P2d 972 (1982).

See also ORS 115.005(5)(b) (limiting ORS 115.325 to claims that are not covered by insurance).

§ 6.3D Death of an Attorney

If an attorney for a person dies, the person must commence the action within 180 days after the death of the attorney, or within the statute of limitations, whichever is later, if:

- (1) “The attorney has agreed to represent the person in the action”;
- (2) “The attorney-client relationship between the person and the attorney is confirmed in a writing prepared by the attorney or at the direction of the attorney”; and
- (3) The attorney dies before the statute of limitations expires.

ORS 12.195.

§ 6.3E References

See 1 *Oregon Civil Pleading and Practice* ch 7 (OSB Legal Pubs 2012).
See also 2 *Torts* ch 30 (OSB Legal Pubs 2012).

§ 6.4 SURVIVAL OF ACTIONS

§ 6.4A In General

§ 6.4A(1) Cause of Action Survives to Personal Representative

A cause of action survives to the plaintiff’s personal representative on the plaintiff’s death and against the defendant’s personal representative on the defendant’s death. ORS 115.305. *See* § 6.3C(1) to § 6.3C(2) (commencement of an action by or against a personal representative).

NOTE: A proceeding to terminate a marriage does not survive the death of one of the parties. *Bauman v. Clark*, 203 Or 193, 195–96, 272 P2d 214 (1954).

§ 6.4A(2) Procedure

See § 6.3A(1) to § 6.3A(2) regarding the continuation of a pending action by or against a decedent’s personal representative.

See § 6.3C(1) to § 6.3C(2) regarding the commencement of an action by or against a decedent’s personal representative.

NOTE: If a claim survives the death of the defendant, the plaintiff must first present a claim against the defendant’s estate before filing a civil action against the personal representative. ORS 115.325; *Meissner v. Murphy*, 58 Or App 174, 177–78, 647 P2d 972 (1982). *See* ORS 115.005(5)(b) (limiting ORS 115.325 to claims that are not covered by insurance).

§ 6.4B Personal-Injury Actions

§ 6.4B(1) Plaintiff's Death

A cause of action arising out of injuries to a person caused by an act or omission of a wrongdoer survives the death of the injured person, and the personal representative of the injured person may maintain an action against the wrongdoer. ORS 30.075(1).

If commenced before the death of the injured person, the action must have been brought within the two-year statute of limitations of ORS 12.110 and then continued by the personal representative. ORS 30.075(1). If commenced by the personal representative after the death of the injured person, the action must be brought within three years. ORS 30.075(1).

If a person who is entitled to bring an action dies before the expiration of the statute of limitations, the action may be commenced by the plaintiff's personal representative after the expiration of that time but within one year after the plaintiff's death. ORS 12.190(1).

CAVEAT: An action for personal injury may be governed by one of several different statutory limitation periods. *See, e.g.*, ORS 12.110(4) (medical, surgical, and dental malpractice), ORS 30.905 (products liability), ORS 30.020 (wrongful death), and ORS 30.275 (claims against public bodies). Those actions are covered separately in chapter 7.

§ 6.4B(2) Defendant's Death

A cause of action for injury or death survives the death of the wrongdoer. If a wrongdoer dies before the time has run for commencing an action for injury or death against the wrongdoer, an action may be commenced against the wrongdoer's personal representative after the time has run if it is within one year of the wrongdoer's death. ORS 12.190(2).

§ 6.4C References

See generally 2 *Torts* ch 30 (OSB Legal Pubs 2012).

§ 6.5 ACTION FOR WRONGFUL DEATH

§ 6.5A Limitations Period

Generally, an action for wrongful death must be commenced within "three years after the injury causing the death of the decedent is discovered or reasonably should have been discovered by the decedent, by the personal representative or by a person for whose benefit the action may be brought under this section if that person is not the wrongdoer." ORS 30.020(1). *See* § 6.5B (the discovery rule).

In any event, an action for wrongful death must be commenced no later than the earliest of:

- (1) Three years after the decedent's death; or

(2) “The longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing the injury, including but not limited to the statutes of ultimate repose provided for in [ORS 12.110(4), ORS 12.115, ORS 12.135, ORS 12.137, and ORS 30.905].”

ORS 30.020(1).

But see § 6.5C(1) (action for wrongful death against a public body).

CAVEAT: A cause of action may be subject to a specific statute of limitations, such as an action for wrongful death based on products liability. See, for example, § 7.16C (time for commencing a products-liability action in general), § 7.16F(1) (asbestos-related disease), § 7.16F(2) (breast implants), § 7.16F(6) (R type metal halide or mercury vapor light bulbs). Chapter 7 discusses various types of actions.

§ 6.5B Discovery Rule

The “discovery rule” applies to actions for wrongful death. ORS 30.020(1). However, as noted in § 6.5A, the three-year time period is limited by the decedent’s date of death and the statute of ultimate repose.

The statute of limitations may begin to run when there has been a reasonable opportunity for discovery of the condition, the source of the injury, and the causal connection to the wrongdoer’s conduct. *Repp v. Hahn*, 45 Or App 671, 609 P2d 398 (1980).

§ 6.5C Action for Wrongful Death against a Public Body

§ 6.5C(1) Limitations Periods

The Oregon Tort Claims Act (OTCA), ORS 30.260 to 30.300, applies to any action arising out of an act or omission of a public body. See § 6.5C(2) to § 6.5E for further discussion on the OTCA.

In a wrongful-death action, a notice of claim must be given to the public body within one year after the alleged injury or loss. ORS 30.275(2)(a). See § 6.5C(2) (discovery rule).

In general, an action arising from any act or omission of a public body or an officer, employee, or agent of a public body must be commenced within two years after the alleged loss or injury. ORS 30.275(9). But see § 2.18A(4)(b) regarding the commencement of an action by a minor or insane person.

The statute of limitations may begin to run when there has been a reasonable opportunity for discovery of the condition, the source of the injury, and the causal connection to the wrongdoer’s conduct. See *Adams v. Oregon State Police*, 289 Or 233, 239, 611 P2d 1153 (1980).

In a wrongful-death action against a public body, the two-year statute of limitations under the OTCA prevails over the three-year limitations period for

wrongful-death actions in general. *Van Wormer v. City of Salem*, 309 Or 404, 788 P2d 443 (1990).

CAVEAT: It is not clear whether the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action under the OTCA is tolled during the plaintiff's minority by ORS 12.160. See § 7.3B for further discussion.

NOTE: If a minor has a claim against a public body, the 270-day notice period prescribed in ORS 30.275 is not tolled pending the appointment of a guardian *ad litem*. See, e.g., *Perez By & Through Yon v. Bay Area Hosp.*, 315 Or 474, 482–83, 846 P2d 405 (1993). But see ORS 30.275(8) (pertaining to a claim brought by a minor against the Department of Human Services or the Oregon Youth Authority).

See also § 2.1A(1) to § 2.1A(2) (commencement of an action), § 7.3A to § 7.3B (actions against governmental bodies), § 7.4A to § 7.4D(2) (actions for personal injury), § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations), § 7.14A(1) to § 7.14C(3) (actions based on medical or dental malpractice).

§ 6.5C(2) Discovery Rule under the OTCA

The discovery rule applies to claims for wrongful death against a public body. The rule applies both to giving notice and to bringing the action. *Stephens v. Bohlman*, 314 Or 344, 350, 838 P2d 600 (1992), *abrogated by Farmers Ins. Co. of Oregon v. Mowry*, 350 Or 686, 261 P3d 1 (2011). The discovery period begins on the date of the discovery of the tortfeasor rather than on the date of the discovery of the cause of death. *Stephens*, 314 Or at 350.

§ 6.5D Death of Wrongdoer

Claims for injury or death arising out of the conduct of the wrongdoer do not abate when the wrongdoer dies. ORS 30.080. Damages that may be awarded include those enumerated in ORS 30.020(2) (except for punitive damages, which are expressly excluded). ORS 30.080.

An action arising out of the conduct of a wrongdoer before his or her death is brought against the personal representative of the estate of the deceased wrongdoer. ORS 30.080, ORS 115.305.

If probate of the wrongdoer's estate has not been instituted within 60 days after the wrongdoer's death, the injured person or his or her personal representative may move the court for the appointment of a personal representative of the wrongdoer's estate for the purpose of bringing the injured person's claims against the estate. ORS 30.090.

If a person against whom an action may be brought dies before the expiration of the time limited for commencing the action, the action may be commenced against the wrongdoer's personal representative after the expiration of that time, and within one year after the wrongdoer's death. ORS 12.190(2).

§ 6.5E Employer Liability Law

If a worker dies as a result of a violation of Oregon’s Employer Liability Law (ORS 654.305–654.336), the worker’s surviving spouse, children, and adopted children, and, if none, then the worker’s lineal heirs, and, if none, then the worker’s mother or father, may bring an action against the employer for the worker’s wrongful death. If none of the persons entitled to maintain the action reside within the state, then the executor or administrator of a worker’s estate may bring the action for their respective benefit. ORS 654.325.

§ 6.5F References

See generally 1 *Damages* ch 13 (Oregon CLE 1998 & Supp 2007); 2 *Torts* ch 30 (OSB Legal Pubs 2012).

§ 6.6 DECEDENTS’ ESTATES

§ 6.6A Disposition of Wills

§ 6.6A(1) Duty of Custodian of Will on Testator’s Death

A person having custody of a will must deliver the will to a court having jurisdiction of the testator’s estate or to the personal representative of the estate within 30 days after learning that the testator is dead. ORS 112.810(1)(f).

§ 6.6A(2) Disposal of Will by Attorney

An Oregon attorney who has custody of a will may dispose of the will after 40 years have elapsed since the will was executed if the testator cannot be found, after diligent inquiry, and if the will is not subject to a contract to either make or not revoke a will. ORS 112.815.

However, before disposing of the will, the attorney must publish notice of the attorney’s intent to destroy the will. ORS 112.820(1)(a). The attorney may destroy the will if the testator fails to contact the attorney within 90 days of the date of published notice. ORS 112.820(1)(b).

Within 30 days after destroying the will, the attorney must file an affidavit in the county probate court. ORS 112.820(1)(c).

If a will has not been admitted to probate within 40 years after the testator’s death, the attorney who has custody of the will may destroy the will without notice. ORS 112.820(2).

§ 6.6B Special Administrator before Appointment of Personal Representative

If, before the appointment of a personal representative, the decedent’s property is “in danger of loss, injury or deterioration,” or disposition of the decedent’s remains is required, the court may appoint a special administrator to deal with the property or the remains. ORS 113.005(1).

The powers of the special administrator cease when a personal representative is appointed. ORS 113.005(5).

Within 30 days after letters testamentary have been issued to a personal representative, the special administrator must “make and file an account and deliver to the personal representative the assets of the estate in the possession of the special administrator.” ORS 113.005(5).

§ 6.6C Commencement of Personal Representative’s Duties; Relation Back

“The duties and powers of a personal representative commence upon the issuance of the letters of the personal representative.” ORS 114.255.

Also, the personal representative’s powers relate back in time to give his or her acts done before appointment the same effect as those occurring after appointment. ORS 114.255.

Furthermore, a personal representative may ratify and accept acts done by others on behalf of the estate if those acts would have been proper for a personal representative. ORS 114.255.

In *Rennie v. Pozzi*, 294 Or 334, 343, 656 P2d 934 (1982), the court held that an action filed by the named personal representative before his appointment was deemed commenced, even though the statute of limitations had run before the appointment became valid. The court stated:

[W]here an action potentially beneficial to an estate was commenced by a person who has good reason to believe that he or she may maintain that action as a duly appointed personal representative, but whose appointment was in fact invalid, then the plaintiff’s subsequent accession to the office of personal representative after the statute of limitations has run on the underlying cause of action will relate back in time to the original filing of the action, at least where the defendants have not been prejudiced by the error and there has been no significant change in the claim for relief alleged since the running of the statute.

Rennie, 294 Or at 343.

§ 6.6D Personal Representative’s Initial Duties

§ 6.6D(1) Notice of Appointment to Interested Persons

On appointment, a personal representative must cause a notice to interested persons to be published. ORS 113.155.

NOTE: If a personal representative dies, resigns, or is removed by the court after notice to interested persons has been published, but before four months have expired from the date of first publication, the successor personal representative must publish a new notice to interested persons. ORS 113.225(1).

§ 6.6D(2) Information to Devisees, Heirs, and Other Persons

Upon appointment, the personal representative must deliver or mail certain information to the devisees, heirs, and other persons as described in ORS 113.145.

Within 30 days after appointment, the personal representative must file in the estate proceeding proof of the delivery or mailing of the information to heirs and devisees as required by ORS 113.145, or a waiver of notice under ORS 111.225. ORS 113.145(4).

See § 6.6O (failure to investigate or inform potential claimants).

§ 6.6D(3) Inventory of Estate Property

Within 60 days after his or her appointment, the personal representative must file in the estate proceeding “an inventory of all the property of the estate that has come into the possession or knowledge of the personal representative.” ORS 113.165.

The personal representative must include newly discovered property in a supplemental inventory filed within 30 days of possession or knowledge of the property, or include the property in the next accounting. ORS 113.175.

Property is appraised at its true cash value as of the date of death of the decedent. ORS 113.185(3).

§ 6.6D(4) Diligent Search for and Notice to Claimants

During the three months following his or her appointment, the personal representative must (1) “make reasonably diligent efforts to investigate the financial records and affairs of the decedent” and (2) “take such further actions as may be reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the estate.” ORS 115.003(1). *See Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 US 478, 108 S Ct 1340, 99 L Ed 2d 565 (1988).

No later than 30 days after the expiration of the three-month period, the personal representative must notify known claimants that claims against the estate will be barred unless they are presented to the personal representative within 30 days of the notice. ORS 115.003(2)–(3). The personal representative must also provide notice to claimants discovered after that three-month period. ORS 115.003(2). *See* § 6.6N(1) to § 6.6N(2)(c) (claims against the estate).

§ 6.6E Setting Apart the Whole Estate for Support

If it appears, after four months of the first publication of notice to interested persons, that provision for support of the decedent’s spouse and dependent children consumes the entire estate after payment of claims, taxes, and the expenses of administration, the estate will be summarily closed. ORS 114.085.

§ 6.6F Notice of Hearing or Other Matter; Objections to Hearing

Whenever notice must be given for a hearing or any matter seeking an order in the probate court, the person filing the matter must provide notice to each interested person or the person's attorney in one of the following ways:

- (1) By mail at least 14 days before the hearing date, ORS 111.215(1)(a);
- (2) By personal delivery at least five days before the hearing date, ORS 111.215(1)(b); or
- (3) If the address of any person is not known or cannot be ascertained with reasonable diligence, by publishing "once in each of three consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held," with the last publication at least 10 days before the hearing date, ORS 111.215(1)(c).

Objections to a hearing must be filed on or before the date set for the hearing. ORS 111.235.

§ 6.6G Order of Probate Commissioner May Be Modified

A judge may modify or set aside an order of the probate commissioner within 30 days after the order is entered. ORS 111.185(1).

§ 6.6H Accounting by Personal Representative

A personal representative must file an account of administration:

- (1) Annually, within 60 days after the anniversary of the personal representative's appointment;
- (2) Within 30 days after the personal representative's removal or resignation or the revocation of the personal representative's letters;
- (3) When the estate is ready for final settlement and distribution; and
- (4) At other times as ordered by the court.

ORS 116.083(1).

For annual accountings, the last day of the accounting period must be within 30 days of the anniversary of appointment. UTCR 9.160(1)(a).

Vouchers for disbursements must generally accompany accountings. ORS 116.083(2)(d). Unless the fiduciary is excused from the requirement of filing vouchers, the accounting must include depository statements for each account. UTCR 9.180(2).

NOTE: When assets of an estate are placed in a depository and are subject to withdrawal only on court order, a writing showing the assets and signed by the depository must be filed with the court within 30 days of the entry of the order unless the order allows a longer period. UTCR 9.050.

The closing depository statement included in an accounting must show either the balance in the account within 30 days of the close of the accounting period or the balance on the date the account was closed. UTCR 9.180(2).

When assets of an estate or conservatorship may be withdrawn from deposit only on court order, a writing showing the assets and signed by the depository must be filed with the court within 30 days of the entry of the order unless the order allows a longer period. UTCR 9.050.

§ 6.6I Will Contests

Within 30 days after the order admitting the will to probate is made, any person interested in the estate may file a motion requesting the court to require that the attesting witness be brought before the court. ORS 113.055(2).

A will contest must be commenced before the later of:

(1) Four months after the date of delivery or mailing of the information required by ORS 113.145 if the contestant is entitled to receive the information, ORS 113.075(3)(a); or

(2) Four months after the first publication of notice to interested persons if the contestant was not required to be named in the probate petition as an interested person, ORS 113.075(3)(b).

§ 6.6J Discharge of Personal Representative

After the personal representative files evidence that distribution has been made as ordered in the general judgment of final distribution, the court will enter a supplemental judgment to discharge the personal representative. ORS 116.213.

Except as provided in ORS 115.004, the discharge releases the personal representative from further duties and bars any action against the personal representative or surety of the personal representative. ORS 116.213. However, the court, in its discretion, may allow an action to be brought against the personal representative for cause within one year after the supplemental judgment of discharge is entered. ORS 116.213.

See ORS 116.033, ORS 116.213 (relating to the discharge of the personal representative).

§ 6.6K Appeal of Estate Tax

The personal representative may file an appeal in tax court to an estate tax determination within 90 days after the date of the notice. ORS 118.171, ORS 305.280(2). *See* § 6.6R to § 6.6R(5) (deadlines for filing tax returns and paying taxes).

§ 6.6L Small Estates

§ 6.6L(1) In General

If a decedent's estate is within certain monetary limits, the small-estate affidavit procedure avoids the necessity of proceeding through the full probate

process to transfer the decedent's assets to their proper recipients. ORS 114.515(1)–(2). *See* ORS 114.505–114.560. *See* § 6.6L(2) to § 6.6L(6)(c).

§ 6.6L(2) When to File; Who May File

A small-estate affidavit “may not be filed until 30 days after the death of the decedent.” ORS 114.515(3).

Any of the following persons may file a small-estate affidavit with the clerk of the probate court in any county that has venue for a proceeding seeking appointment of a personal representative of the estate:

- (1) Any one or more of the decedent's claiming successors;
- (2) If the decedent died testate, any person named as personal representative in the decedent's will; or
- (3) The Director of Human Services, the Director of the Oregon Health Authority, or an attorney approved under ORS 114.517, if the decedent received public assistance, medical assistance, or care at an institution “and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.”

ORS 114.515(1), (3).

§ 6.6L(3) Contents of Affidavit; Amendment of Affidavit

The affidavit must include the information required by ORS 114.525, including a statement that claims against the estate may be barred unless a claim is presented to the affiant within four months after the affidavit is filed. ORS 114.525(12)(a).

The affidavit may be amended by a new affidavit filed within four months after the filing of the preceding affidavit. ORS 114.515(7).

§ 6.6L(4) Transfer of Property to Affiant

To receive payment or delivery of the property, the affiant must deliver a certified copy of the affidavit on or after the 10th day following the filing of the affidavit to any person indebted to or holding property of the decedent. ORS 114.535(1).

§ 6.6L(5) Delivery of Instruments

Within 30 days after filing the affidavit, the affiant must record, mail, or deliver each instrument that the affidavit states will be recorded, mailed, or delivered. ORS 114.545(1)(b).

§ 6.6L(6) Claims against a Small Estate

§ 6.6L(6)(a) In General

A claim against an estate may be presented to the affiant within four months after the affidavit was filed. ORS 114.540(1). A claim is considered to be allowed unless the affiant mails or delivers notice of disallowance to the claimant

and the claimant's attorney (if any) within 60 days after the date of presentment of the claim. ORS 114.540(2). *See* § 6.6L(6)(b) to § 6.6L(6)(c).

§ 6.6L(6)(b) Summary Determination of Disallowed or Disputed Claim

Within 30 days after the notice of disallowance is mailed or delivered, a creditor whose claim is disallowed may file a petition with the probate court for summary determination. A creditor whose claim is listed as disputed in the affidavit may file a petition for summary determination within four months after the filing of the affidavit. ORS 114.540(3).

§ 6.6L(6)(c) Summary Review of Administration of Estate

Within two years after the filing of the small-estate affidavit, the affiant or any claiming successor who has not been paid in full may file a petition for summary review of administration of the estate. ORS 114.550.

§ 6.6L(7) Failure to Appoint Personal Representative

If a personal representative is not appointed within four months after the small-estate affidavit is filed, the decedent's property will be transferred to the persons shown by the affidavit to be entitled to the property. Any other claims will be barred except as provided in ORS 114.540 (procedure for claims), ORS 114.545 (duties of affiant), and ORS 114.550 (summary review of administration of estate), and except for the purposes of a surviving spouse's claim for an elective share. ORS 114.555.

§ 6.6M Surviving Spouse's Elective Share

§ 6.6M(1) In General

For deaths occurring on or after January 1, 2011, a surviving spouse may elect to receive an elective share of a decedent's estate under ORS 114.600 to 114.725. The surviving spouse must make the election before his or her death. ORS 114.600(1).

§ 6.6M(2) Manner of Making Election; Service of Motion or Petition

The surviving spouse's election to receive an elective share of the decedent's estate may be made only as described in ORS 114.610:

(1) If no probate proceeding has been commenced, the election must be made by filing a petition for the appointment of a personal representative for the estate of the deceased spouse, as well as a motion for the exercise of the election, within nine months after the death of the spouse, ORS 114.610(1)(a);

(2) If a probate proceeding for the deceased spouse has been commenced, the election is made by filing a motion in the probate proceeding for the exercise of the election within nine months after the death of the decedent, ORS 114.610; or

(3) The election may be made by filing a petition for the exercise of the election in circuit court within nine months of the decedent's death, ORS 114.720.

If the election is made, the motion or petition must be served on the personal representative (if any), all persons who would be entitled to receive information under ORS 113.145, and certain distributees and recipients. ORS 114.610, ORS 114.720.

§ 6.6M(3) Withdrawal of Motion or Petition

A surviving spouse may withdraw a motion or petition to receive an elective share of the decedent's estate at any time before the entry of an order granting the motion or entry of a judgment on the petition. ORS 114.610(1)(b), ORS 114.720(2).

§ 6.6N Claims against Estates

§ 6.6N(1) Extension of Statute of Limitations on Death

If the statute of limitations on a claim has not expired on the date of the decedent's death, the time for filing an action is extended for one year after the date of death. ORS 115.215, ORS 12.190(2).

§ 6.6N(2) Claims Allowed and Disallowed

§ 6.6N(2)(a) Claim Is Deemed Allowed if Not Disallowed within 60 Days

A claim presented to the decedent's personal representative is deemed to be allowed unless the personal representative mails or delivers a notice of disallowance to the claimant and the claimant's attorney (if any) within 60 days of presentation. ORS 115.135(1).

§ 6.6N(2)(b) Rescission of Allowance of Unpaid Claim

If a claim was allowed because of error, misinformation, or excusable neglect, the personal representative may rescind the previous allowance of the claim if it has not yet been paid. The personal representative must give notice of the rescission to the claimant and the claimant's attorney (if any) "[n]ot less than 30 days before the date of the filing of the final account." ORS 115.135(3).

§ 6.6N(2)(c) Request for Summary Determination of Disallowed Claim

If the personal representative disallows a claim (in whole or in part), the claimant may, within 30 days after the date of mailing or delivery of the notice of disallowance, either (1) file a request for summary determination of the claim by the probate court, with proof of service on the personal representative; or (2) file a separate action against the personal representative. ORS 115.145(1).

If the claimant files a request for summary determination of the claim (and serves a copy of the request on the personal representative), the personal repre-

sentative has 30 days after the date of service to notify the claimant in writing that he or she must commence a separate action on the claim. ORS 115.155.

The claimant must commence a separate action against the personal representative within 60 days after receiving the notice, or the claim will be barred. ORS 115.155.

§ 6.6N(3) Time Limitations on Presentation of Claims against Estate

Claims against a decedent's estate, other than claims of the personal representative as a creditor of the decedent, are barred if not presented within the statute of limitations applicable to the claim and before the later of:

(1) Four months after the date of first publication of notice to interested persons; or

(2) If the claim was one with respect to which the personal representative was required to deliver or mail a notice under ORS 115.003(2) (*see* § 6.6D(4)), 30 days after a notice complying with ORS 115.003(3) is mailed or delivered to the claimant's last-known address. ORS 115.005(1)–(2).

Claims barred as untimely may be paid from any residue of the estate left after paying priority expenses or after paying earlier-presented claims of other persons. ORS 115.005(3)–(4).

ORS 115.005 does not affect or prevent:

(1) "Any proceeding to enforce a mortgage, pledge or other lien upon property of the estate, or to quiet title or reform any instrument with respect to title to property," ORS 115.005(5)(a); or

(2) Up to the limits of insurance protection only, any proceeding to establish the liability of the decedent or personal representative when such liability was protected by liability insurance when the proceeding was commenced, ORS 115.005(5)(b).

§ 6.6O Action against Personal Representative for Failure to Search for or Notify Potential Claimants

As discussed in § 6.6D(4), the personal representative has a duty to search for and notify persons who may have a claim against the decedent's estate. ORS 115.003(1). If the personal representative breaches this duty, a person whose claim was not paid during the estate proceeding may have a cause of action against the personal representative. Such an action against the personal representative must be commenced within two years after the decedent's death or within the statute of limitations applicable to the claim, whichever is earlier. ORS 115.004(5).

§ 6.6P Disclaimers

The Uniform Disclaimer of Property Interest Act (UDPIA), ORS 105.623 to 105.649, does not impose a specific time limit for making a disclaimer. *See*

ORS 105.629. However, if a disclaimer of an interest in property under the UDPIA is to be tax-qualified, the time limits of IRC section 2518(b) apply.

If a person disclaims an interest in property pursuant to the UDPIA, the disclaimer will not result in a taxable gift if the disclaimer meets the requirements of IRC section 2518. Among other qualification rules, the tax code requires that the disclaimer be received by the transferor of the interest not later than nine months after the later of (1) the day the transfer creating the interest in the disclaimant is made or (2) the disclaimant's 21st birthday. IRC § 2518(b)(2).

With regard to an interest transferred under a will or by intestacy, the nine-month period to make a qualified disclaimer will expire the later of (1) nine months after the date of decedent's death or (2) the disclaimant's 21st birthday.

NOTE: To qualify for a tax-qualified disclaimer, in addition to meeting the disclaimer deadline, all other requirements of IRC section 2518 must be met.

§ 6.6Q Final Accounting, Distribution, and Closing

When the estate is ready for final settlement and distribution, the personal representative must file an accounting of his or her administration. ORS 116.083(1).

The personal representative must mail notice of the final accounting and petition for a judgment of distribution to interested persons and allow interested persons at least 20 days to file objections to the accounting. ORS 116.093(1).

After the personal representative files proof that distribution has been made as ordered in the general judgment, the court will enter a supplemental judgment of discharge. ORS 116.213.

In general, the discharge releases the personal representative from further duties and bars any action against the personal representative. ORS 116.213. *But see* § 6.6D(4) and § 6.6O (breach of the duty to search for and notify potential claimants). The court, in its discretion, may permit an action against the personal representative within one year after the supplemental judgment of discharge if it was obtained through fraud or misrepresentation of the personal representative (or his or her surety), or through the mistake, inadvertence, surprise, or excusable neglect of the claimant. ORS 116.213.

See ORS 116.303 to 116.383 regarding the apportionment of estate taxes.

§ 6.6R Deadlines for Filing Tax Returns and Paying Taxes for Decedent's Estate

CAVEAT: The discussion in § 6.6R(1)(a) to § 6.6R(5) summarizes general filing and payment deadlines for income, estate, and gift tax returns that may need to be filed by an executor of a decedent's estate, and is not intended to be exhaustive. The Internal Revenue Code, Treasury Regulations, Oregon statutes, and Oregon administrative rules cited in those

sections provide additional information regarding the availability and requirements for requesting an extension of time for paying a tax.

§ 6.6R(1) Decedent's Individual Income Tax Return

§ 6.6R(1)(a) Federal Law

(1) *Due date.* In the year of death, the decedent's final income tax return is due at the same time that the return would have been due if the decedent had not died. *See* IRS Form 1040. Returns made on the basis of a calendar year must be filed by April 15, and returns made on the basis of a fiscal year are due on the 15th day of the fourth month following the close of the fiscal year. IRC § 6072(a).

CAVEAT: A decedent may have income tax returns due relating to years preceding his or her death. The due date for these returns also continues to be the due date as if the decedent had not died. For example, if a decedent died on February 15, 2014, an income tax return for 2013 may be due April 15, 2014, and a final income tax return may be due for the year of death (on April 15, 2015).

(2) *Extension of time to file.* An automatic extension of six months is available by filing IRS Form 4868 on or before the normal due date of the decedent's income tax return. Treas Reg § 1.6081-4. *See* <www.irs.gov/pub/irs-pdf/f4868.pdf>. This extension extends the time for filing the income tax return, but not the time for paying the tax. Treas Reg § 1.6081-4(c).

(3) *Extension of time to pay.* On a showing of undue hardship, the IRS may extend for up to six months the time for payment of taxes due on an income tax return, if the extension is applied for on or before the original due date of the payment for the tax. IRC § 6161(a)(1); Treas Reg § 1-6161-1(b).

§ 6.6R(1)(b) Oregon Law

Under Oregon law, a decedent's income tax return is due on or before the federal tax return is due (*see* § 6.6R(1)(a)), "except that the final return of a decedent shall be filed at any time following the death of the decedent, to and including the 15th day of the fourth month after expiration of the regular tax year of the decedent." ORS 314.385(1)(a). *See* Oregon Form 40.

Oregon accepts federal extensions. ORS 314.385(1)(a). If no federal extension is filed, a taxpayer may file a separate request with the Oregon Department of Revenue for an extension of time to file. ORS 314.385(1)(d). If a taxpayer does not pay all tax when due, interest will be owing on the unpaid balance until paid, and penalties may be due. ORS 314.395(2), ORS 314.400.

§ 6.6R(2) Income Tax Returns for Estates

§ 6.6R(2)(a) Federal Law

(1) *Due date.* If the fiduciary of an estate is required to file an income tax return, the due date for the return is the 15th day of the fourth month following the close of the tax year. IRC § 6072(a). *See* IRS Form 1041.

CAVEAT: If the fiduciary of an estate is required to file an income tax return, a copy of IRS Schedule K-1 must be furnished to each beneficiary who receives a distribution from the estate with respect to the taxable year or to whom any item with respect to the tax year is allocated. IRC § 6034A.

CAVEAT: Unlike an individual taxpayer, an estate may elect a fiscal tax year, so the due date may be a date other than April 15. *See* IRC § 6072(a).

(2) *Extension of time to file.* An estate or trust may apply for an automatic five-month extension on or before the due date of the income tax return by filing IRS Form 7004. Treas Reg § 1-6081-6(a). The extension does not extend the time for paying any tax due. Treas Reg § 1-6081-6(c).

(3) *No extension of time to pay tax.* The entire income tax liability of an estate or trust must be paid on the due date. IRC § 6151.

(4) *Estimated payments.* For the first two years of an estate administration, an estate is not required to make estimated tax payments. If an estate has been in existence for more than two years, the estate must pay quarterly estimated tax payments during the tax year. IRS § 6654(l).

§ 6.6R(2)(b) Oregon Law

If a fiduciary income tax return is required to be filed under Oregon Law, Oregon Form 41 has the same due dates as IRS Form 1041 (*see* § 6.6R(2)(a)), and accepts the same extension of time allowed for Form 1041. ORS 314.385(1)(a). All tax due must be paid at the time of the extension. ORS 314.395.

§ 6.6R(3) Estate Tax Return, Oregon Estate Transfer Tax Return, and Gift Tax Return

§ 6.6R(3)(a) Federal Estate Tax Return

(1) *Due date.* If an estate tax return must be filed, the return is due nine months after the date of the decedent's death:

[T]he due date . . . is . . . the day of the ninth calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred. However, if there is no numerically corresponding day in the ninth month, the last day of the ninth month is the due date.

Treas Reg § 20.6075-1; *see also* Treas Reg § 20.6018-1(d). *See* IRS Form 706.

CAVEAT: Even though an estate tax return may not be required, if an executor wishes to elect to combine a decedent's unused federal estate tax exclusion amount with the surviving spouse's unused exclusion amount (that is, a portability election), the executor must "file[] an estate tax return on which such amount is computed and make[] an election on such return that such amount may be so taken into account." IRC § 2010(c)(5).

(2) *Extension of time to file.* An executor may obtain an automatic six-month extension to file IRS Form 706 by filing IRS Form 4768, “Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes,” on or before the due date for Form 706. Treas Reg § 20.6081-1(b). An extension of time for filing an estate tax return does not extend the time for paying the estate tax. Treas Reg § 20.6081-1(e).

(3) *Extension of time to pay.* For federal purposes, the time for paying the estate tax may be extended for up to one year for “reasonable cause.” IRC § 6161(a). (Any reasonable-cause extension granted carries with it a charge for interest at the current rate for delinquent taxes when the tax is paid, and should be sent in as early as possible to prevent further hardship if the request is denied.) For “special” reasonable cause (undue hardship), the IRS can extend payment of the estate tax due for a reasonable period of up to 10 years after the due date. Treas Reg § 20.6161-1(a)(2). The Treasury Regulation contains examples of cases in which an extension of time may be granted based on undue hardship.

NOTE: If the decedent’s estate includes a future reversion or remainder interest in property, the tax attributable thereto may be postponed until six months after the termination of the preceding interest. IRC § 6163.

(4) *Installment payments.* If the decedent’s estate includes a sufficient percentage of an interest in a closely held business, the executor may elect to pay part or all of the tax attributable to the interest in the closely held business in installments. IRC § 6166.

§ 6.6R(3)(b) Oregon Estate Tax Return

(1) *Due date.* Oregon estate tax returns must be filed on the same dates as provided under federal law (nine months after the decedent’s death, *see* § 6.6R(3)(a)). ORS 118.100; *see* OAR 150-118.100(1); *see* OAR 150-118.160-(B) (for decedents who die on or after January 1, 2003, and before January 1, 2012). *See* Form OR706 (estate transfer tax).

(2) *Extension of time to file.* The Oregon Department of Revenue (ODR) may grant an extension of time to file an estate tax return, generally not to exceed six months. *See* OAR 150-118.100(1). If there is no federal extension, the executor may file IRS Form 4768 for Oregon only, and federal guidelines will be used to approve the extension. Any extension request must be filed or mailed by the original due date of the return.

(3) *Extension of time to pay.* An executor may request an extension of time to pay the estate tax. ORS 118.225. The request must be in writing and submitted to the ODR on or before the original payment due date. ORS 118.225. *See* OAR 150-118.225 for more details.

(4) *Payment voucher.* To avoid penalty and interest, the taxpayer must use Form IT-V (Oregon Inheritance Tax Payment Voucher) to make a payment by the due date.

(5) *Amended return.* If an executor files an amended federal estate tax return, an amended Oregon return must be filed within 90 days thereafter. ORS 118.100(2).

§ 6.6R(4) Decedent's Gift Tax Return

§ 6.6R(4)(a) Federal Gift Tax Return

(1) *Due date.* In the year of death, a decedent's gift tax return is generally due at the same time that the decedent's individual return would have been due (April 15). If, however, the due date for filing the taxpayer's estate tax return is earlier, the gift tax return must be filed by that date. IRC § 6075(b).

(2) *Extension of time to file.* An extension of time granted for filing an income tax return is also deemed to be an extension of time for filing a gift tax return. IRC § 6075(b). This extension extends the time for filing the gift tax return, but not the time for paying the tax. Treas Reg § 25.6081-1(c).

§ 6.6R(4)(b) No Gift Tax Return Is Required in Oregon

Oregon does not impose a gift tax; therefore, no gift tax return is required to be filed in Oregon.

§ 6.6R(5) Date of Delivery of Return or Payment

(1) *Federal law.* Generally, the date of the postmark on the cover in which a return or a payment is mailed is deemed to be the date of delivery or the date of payment. *See* IRC § 7502.

(2) *Oregon law.* Generally, a return or payment is "deemed filed or received on the date shown by the cancellation mark or other record of transmittal, or on the date it was mailed or deposited if proof satisfactory to the [Oregon Department of Revenue] establishes that the actual mailing or deposit occurred on an earlier date." ORS 305.820.

§ 6.6S Reopening of Estate

"A will may not be admitted to probate or an estate reopened to admit a will to probate more than one year after the estate of the decedent has been administered in Oregon and closed." ORS 113.027.

On the petition of an interested person, the court may reopen a decedent's estate at any time if property is discovered, if any necessary act remains unperformed, or "for any other proper cause appearing to the court." ORS 116.233.

§ 6.6T Escheat

The county clerk must give an estate administrator of the Department of State Lands "the titles of estates of decedent's that have remained open for more than three years and in which no heirs, or only persons whose right to inherit the

proceeds thereof is being contested, have appeared to claim the estate.” ORS 116.243.

Escheated property may be reclaimed within 10 years after the death of the decedent or within eight years after entry of a judgment or order of distribution if the claimant either had no actual knowledge of the escheat or, at the time of the escheat, was unable to prove entitlement to the property. ORS 116.253(1).

§ 6.6U Estates of Absentees

The estate of an absentee may be administered on a petition showing facts of the absentee’s death or showing that the absentee’s whereabouts has been unknown to the petitioner for not less than one year and the petitioner has reason to believe the absentee is dead. ORS 117.005.

A date for hearing will be set at least 30 days after the petition is filed. ORS 117.015(1).

The absentee has no rights in property sold by the personal representative in the administration of the absentee’s estate, but the absentee may recover remaining assets and proceeds realized that are still in the personal representative’s possession. The absentee may recover any of the estate or proceeds in the distributee’s possession for a period of five years after the estate is distributed. ORS 117.075.

§ 6.6V Rule against Perpetuities

Under the Uniform Statutory Rule Against Perpetuities, a “nonvested” interest in property created after January 1, 1990, is invalid unless (1) when it is created, the interest is “certain to vest or terminate no later than 21 years after the death of an individual then alive” or (2) the “interest either vests or terminates within 90 years after its creation.” ORS 105.950.

A property disposition is subject to judicial reformation if it does not vest or fails to vest within 90 years after its creation. ORS 105.950, ORS 105.960.

This statute eliminates the traps created by the “fertile octogenarian,” the “unborn widow,” and the “slothful executor” situations.

§ 6.6W References

See generally Administering Oregon Estates (Oregon CLE 2004 & Legis Supp 2006).

§ 6.7 TRUSTS

§ 6.7A Trusts—In General

§ 6.7A(1) Action against Trustee for Negligence

The two-year statute of limitations in ORS 12.110 applies to an action for negligence brought against a trustee by a beneficiary of a trust agreement. *Condon v. Bank of California, N.A.*, 92 Or App 691, 694–95, 759 P2d 1137 (1988).

The cause of action accrues when the negligence is or reasonably should have been discovered by the plaintiff. *Condon*, 92 Or App at 694–95.

§ 6.7A(2) Laches

“A beneficiary may be barred by his laches from holding the trustee liable for a breach of trust.” *Lulay v. Lulay*, 247 Or 497, 501, 429 P2d 802 (1967).

§ 6.7A(3) Action against Trustee of Express Trust for Breach of Duty

An action against a trustee of an express trust, whether in contract, tort, or otherwise, arising from a breach of duty must be commenced within six years from the date that the act or omission on which the claim is based is discovered or reasonably should have been discovered. A statute of ultimate repose applies to an action against a trustee: the action must be brought within “10 years from the date of the act or omission complained of, or two years from the termination of any fiduciary account established under the trust, whichever date is later.” ORS 12.274. See, however, § 6.7H and ORS 130.820.

§ 6.7B Constructive Trust

When the court impresses a constructive trust, the court applies the statute of limitations for an analogous law to determine whether the trust is barred by laches. *Albino v. Albino*, 279 Or 537, 553, 568 P2d 1344 (1977).

In the *Albino* case, the court applied the analogous six-year statute of limitations governing actions on implied contracts (ORS 12.080) to enforce a constructive trust in an action against the wrongful holder of proceeds of the sale of real property. *Albino*, 279 Or at 554.

§ 6.7C Principal Place of Administration

§ 6.7C(1) Notice of Transfer of Place of Administration

A trustee must notify qualified beneficiaries of a proposed transfer of the trust’s principal place of administration at least 60 days before initiating the transfer. ORS 130.022(3).

§ 6.7C(2) Objection to Transfer

The date for notifying a trustee of an objection to the proposed transfer may not be less than 60 days after the date on which the notice is given. ORS 130.022(3)(b)(E).

§ 6.7D Nonjudicial Settlement Agreements

(1) *Settlement agreement.* Interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, but only to the extent that the agreement does not violate a material purpose of the trust. ORS 130.045(3)–(4).

(2) *Filing the agreement.* Any interested person may file such a settlement agreement with the court, or a memorandum summarizing its provisions. ORS 130.045(6)(a).

(3) *Notice of filing of agreement.* Within five days after filing the agreement or memorandum, the person filing must serve a notice of the filing and a copy of the agreement or memorandum on each person interested in the trust, in substantially the form provided by the statute. ORS 130.045(6)(c).

(4) *Effective date of agreement, if no objections.* If no objections are filed with the court within 120 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons interested in the trust. ORS 130.045(6)(e).

(5) *Objections to agreement; hearing.* If objections are filed with the court within 120 days after the filing of the agreement or memorandum, the court will fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all persons interested in the trust and give notice to those persons of the time and place of the hearing. Service must be made at least 10 days before the hearing date. ORS 130.045(7).

§ 6.7E Claims against Trust Based on Debts of Settlor; Trust Contest

§ 6.7E(1) Time Limitations

§ 6.7E(1)(a) Limitations Periods for Presenting Claims against Trust

Pursuant to ORS 130.350, certain claims against a trust must be presented within certain limitations periods, or they are barred. The statute applies only if:

- (1) A claim is made against assets of a trust;
- (2) The trust came into existence during the settlor's lifetime and was revocable before the settlor's death;
- (3) The claim is based on the settlor's debts or liabilities; and
- (4) The claim is made against the assets of the trust after the settlor's death.

ORS 130.350(2).

All such claims against the trust estate will be barred unless they are presented within the earlier of the following time periods:

- (1) Within four months after publication of notice to claimants, or within 30 days after notice to individual claimants is mailed or delivered, whichever is later; or
- (2) Within the statute of limitations applicable to the claim.

ORS 130.350, ORS 130.360.

See § 6.7E(1)(b) (waiver of statute of limitations).

§ 6.7E(1)(b) Waiver of Statute of Limitations

A claim against a revocable living trust that is barred by the statute of limitations may not be allowed by the trustee or a court “except upon the written direction or consent of those interested persons who would be adversely affected by allowance of the claim.” ORS 130.415.

§ 6.7E(1)(c) Tolling of Statute of Limitations on Settlor’s Death

If a claim against a revocable living trust is not barred by the statute of limitations on the date of the settlor’s death, then the claim is not barred by any statute of limitations until at least one year after the date of the settlor’s death. ORS 130.420.

§ 6.7E(1)(d) Applicability of Time Limitations to Action by Public Body

Notwithstanding ORS 12.250, all statutes of limitation imposed under ORS 130.350 to 130.450 apply to actions brought against a trust in the name of or for the benefit of a public body. ORS 130.430.

§ 6.7E(1)(e) Applicability of Time Limitations to Claims Based on Liens and Liability of Grantor or Trustee

The statutes of limitation and time limitations provided by ORS 130.350 to 130.450 for claims against revocable living trusts do not affect:

- (1) A proceeding to enforce a mortgage, pledge, or other lien on property of the trust estate;
- (2) A proceeding to quiet title or reform an instrument with respect to title to property; or
- (3) “To the limits of the insurance protection only, any proceeding to establish liability of the settlor or the trustee for which the settlor or trustee is protected by liability insurance at the time the proceeding is commenced.”

ORS 130.435.

§ 6.7E(2) Commencement of Proceeding; Notice to Claimants

At any time after the death of a settlor of a trust described in § 6.7E(1)(a), the trustee may “petition the probate court to determine the claims of creditors of the settlor.” ORS 130.355.

Within four months after the trustee’s petition is entered in the court register, the trustee must give notice to persons with claims against the trust estate. ORS 130.360.

Within three months after the trustee’s petition is entered in the court register, or within a longer time as allowed by the court, the trustee must “make reasonably diligent efforts to investigate the financial records and affairs of the settlor and to take such further actions as are reasonably necessary to ascertain the

identity and address of each person who has or asserts a claim against the trust estate.” ORS 130.370.

§ 6.7E(3) Allowance and Disallowance of Claims

§ 6.7E(3)(a) Claim Is Allowed Unless Disallowed

A claim presented to a trustee will be considered allowed as presented unless, within 60 days after the date of presentment, the trustee mails or delivers a notice of disallowance of the claim to the claimant and the claimant’s attorney, if represented. ORS 130.400(2). *See* § 6.7E(3)(b) (remedies if a claim is disallowed).

§ 6.7E(3)(b) Remedies if Claim Is Disallowed

If a trustee disallows a claim, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may either (1) file a request for summary determination of the claim in the probate court or (2) bring a separate action against the trustee on the claim in the probate court. ORS 130.400(4). If the claimant does not pursue either of these courses of action in the time allowed, the claim is barred to the extent disallowed by the trustee. ORS 130.400(5).

§ 6.7E(3)(c) Summary Determination of Claim

If the claimant files a request for a summary determination of the claim in the probate court, the trustee may notify the claimant in writing that the claimant must bring a separate action against the trustee on the claim within 60 days after the claimant receives the notice.

The trustee must give this notice within 30 days after the request for summary determination is served on the trustee or the trustee’s attorney.

If the claimant then fails to bring a separate action within the time allowed, the claim is barred to the extent disallowed by the trustee. ORS 130.400(7).

§ 6.7E(4) Petition to Close Case

If the trustee petitioned the probate court to determine the claims of the settlor’s creditors, the trustee must file a petition to close the case with a statement that all claims received have been paid or otherwise resolved. The petition to close must be filed no earlier than four months after the publication of notice to claimants, or the date on which all claims against the trust have been resolved, whichever is later. ORS 130.440(1).

§ 6.7E(5) Contesting Validity of Revocable Trust

A judicial proceeding to contest the validity of a trust that was revocable at the settlor’s death must be commenced within three years after the settlor’s death, or within four months after the trustee sends the person a copy of the trust instrument and information about the trust, whichever is earlier. ORS 130.515(1).

§ 6.7F Distribution on Termination of Trust

“Upon the occurrence of an event, satisfaction of a condition or exercise of a power that terminates or partially terminates a trust or creates an obligation for

the trustee to pay or distribute all or any portion of a trust to a beneficiary,” the beneficiary’s interest in the trust or distribution “indefeasibly vests in the beneficiary as of the event, satisfaction or exercise, subject to ORS 114.600 to 114.725, rights of creditors and the administration and sale of trust property by the trustee.” ORS 130.730(1).

The trustee must “proceed expeditiously to distribute the trust property to the persons entitled to the property.” ORS 130.730(2). However, the trustee “may retain a reasonable reserve for the payment of debts, fees, expenses and taxes.” ORS 130.730(1).

§ 6.7G Resignation of Trustee

A trustee may resign after at least 30 days’ notice to the qualified beneficiaries, the settlor (if living), and all cotrustees, or at any time with the court’s approval. ORS 130.620(1).

§ 6.7H Limitation of Action against Trustee

Notwithstanding ORS chapter 12 or any other provision of law, a civil action against a trustee “based on any act or omission of the trustee, whether based in tort, contract or other theory of recovery,” must be brought within six years after the date on which the act or omission is discovered, or within six years after the date on which the act or omission should have been discovered, whichever date is earlier. ORS 130.820(1).

However, a beneficiary may not commence a proceeding against a trustee more than one year after the date on which the beneficiary or the beneficiary’s representative is sent a report that “adequately discloses the existence of a potential claim and that informs the beneficiary of the time allowed for commencing a proceeding.” ORS 130.820(2). A copy of this section of the statute must be attached to the report. ORS 130.820(2).

If subsections (1) and (2) of ORS 130.820 do not apply, a judicial proceeding against a trustee must be brought within 10 years after the date of the act or omission complained of, or within two years after the termination of any fiduciary account established under the trust, whichever is later. ORS 130.820(3).

§ 6.7I References

See generally Administering Trusts in Oregon (Oregon CLE 2007).

Chapter 7

PERSONAL INJURY AND PROPERTY DAMAGE

BRUCE C. HAMLIN, B.A. (*cum laude*), Whitman College (1976); J.D., University of Oregon School of Law (1979); member of the Oregon State Bar since 1979; partner, Martin Bischoff Templeton Langslet & Hoffman, LLP, Portland.

MICHAEL A. YOSHIDA, B.A., (*cum laude*), Pacific Lutheran University (2003); J.D., University of North Dakota (2006); member of the Oregon State Bar since 2006; associate attorney, Martin Bischoff Templeton Langslet & Hoffman, Portland.

THOMAS W. PURCELL, B.A., University of Oregon (2006); J.D., Lewis & Clark Law School (2011); member of the Oregon State Bar since 2011; attorney, Martin Bischoff Templeton Langslet & Hoffman, Portland.

DEREK J. ASHTON, B.A., University of Oregon (1983); J.D., University of Oregon School of Law (1987); member of the Oregon State Bar since 1987; partner, Cosgrave Vergeer Kester LLP, Portland.

VICTORIA D. BLACHLY, B.S., Washington State University (1993); J.D., Lewis & Clark Law School (1997); member of the Oregon State Bar since 1997; partner, Samuels Yoelin Kantor, Portland.

BENJAMIN SOUEDE, B.A. (*summa cum laude*), University of Pennsylvania (1999); J.D., Harvard University (2002); member of the Oregon State Bar since 2008; member, Angeli Ungar Law Group LLC, Portland.

CRAIG J. DORSAY, B.S., University of Michigan (1974); J.D., University of Oregon School of Law (1978); member of the Oregon State Bar since 1979; partner, Dorsay & Easton LLP, Portland.

§ 7.1	INTRODUCTION	7-8
§ 7.1A	Scope of Chapter	7-8
§ 7.1B	Statutes of Limitations—In General	7-8
§ 7.1C	Statutes of Ultimate Repose—In General	7-9
§ 7.2	CONFLICT OF LAWS	7-9
§ 7.3	ACTIONS AGAINST GOVERNMENTAL BODIES	7-9
§ 7.3A	The Oregon Tort Claims Act.....	7-9
§ 7.3B	Claims Brought by Minors.....	7-10
§ 7.3C	References	7-10
§ 7.4	PERSONAL INJURY	7-11
§ 7.4A	Statutes of Limitations—In General	7-11
§ 7.4B	Assault, Battery, False Imprisonment, or Injury to Person or Rights	7-11
§ 7.4C	Tort Actions Do Not Abate on Death of Injured Person.....	7-11

Chapter 7 / Personal Injury and Property Damage

§ 7.4D	Medical Bills of Injured Child	7-11
§ 7.4D(1)	Tolling (Claims Arising on or after January 1, 2008).....	7-12
§ 7.4D(2)	References	7-12
§ 7.5	PROPERTY DAMAGE	7-12
§ 7.6	ASSAULT AND BATTERY	7-12
§ 7.6A	Statute of Limitations	7-12
§ 7.6B	Counterclaim for Assault and Battery	7-12
§ 7.6C	References	7-13
§ 7.7	CONVERSION.....	7-13
§ 7.7A	Statute of Limitations	7-13
§ 7.7B	Accrual of Action	7-13
§ 7.7C	References	7-13
§ 7.8	DEFAMATION.....	7-13
§ 7.8A	Libel or Slander	7-13
§ 7.8A(1)	Statute of Limitations	7-13
§ 7.8A(1)(a)	In General	7-13
§ 7.8A(1)(b)	Multiple Publications	7-14
§ 7.8A(2)	Demand for Correction or Retraction	7-14
§ 7.8A(2)(a)	Delivery of Demand.....	7-14
§ 7.8A(2)(b)	Publisher’s Response to Demand.....	7-14
§ 7.8A(2)(c)	Failure to Demand Retractions	7-14
§ 7.8B	Slander of Title	7-14
§ 7.8C	False Light and Other Claims Related to Defamation	7-14
§ 7.8C(1)	False Light.....	7-14
§ 7.8C(2)	Negligent Injury to Reputation.....	7-15
§ 7.8C(3)	Negligent Release of Confidential Information	7-15
§ 7.8D	Discovery Rule	7-15
§ 7.8E	Oregon Tort Claims Act.....	7-15
§ 7.8F	References	7-15
§ 7.9	FALSE IMPRISONMENT OR ARREST.....	7-16
§ 7.9A	Statute of Limitations	7-16
§ 7.9B	References	7-16
§ 7.10	FRAUD AND DECEIT	7-16
§ 7.10A	Statute of Limitations	7-16

§ 7.10B	Discovery of Fraud.....	7-16
§ 7.10C	References	7-16
§ 7.11	INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS	7-17
§ 7.11A	Statute of Limitations	7-17
§ 7.11A(1)	In General.....	7-17
§ 7.11A(2)	Continuing Torts; Course of Conduct.....	7-17
§ 7.11A(3)	References	7-17
§ 7.12	INTENTIONAL INTERFERENCE WITH CONTRACTUAL OR ECONOMIC RELATIONS	7-17
§ 7.12A	Statute of Limitations	7-17
§ 7.12B	Accrual of Action	7-18
§ 7.12C	References	7-18
§ 7.13	LEGAL MALPRACTICE.....	7-18
§ 7.13A	Statute of Limitations	7-18
§ 7.13B	Statute of Ultimate Repose.....	7-18
§ 7.13C	Contract Claim	7-18
§ 7.13D	Accrual of Cause of Action.....	7-19
§ 7.13D(1)	In General.....	7-19
§ 7.13D(2)	Discovery Rule.....	7-19
§ 7.13D(2)(a)	Discovery of Professional Negligence— Knowledge	7-19
§ 7.13D(2)(b)	Discovery of Professional Negligence—Harm.....	7-20
§ 7.13E	References	7-20
§ 7.14	MEDICAL AND DENTAL MALPRACTICE	7-20
§ 7.14A	Statutes of Limitations and Repose.....	7-20
§ 7.14A(1)	Statute of Limitations—In General.....	7-20
§ 7.14A(2)	Failure to Obtain Informed Consent	7-21
§ 7.14A(3)	Breast Implants.....	7-21
§ 7.14A(4)	COX-2 Inhibitor	7-22
§ 7.14A(5)	Public Bodies	7-22
§ 7.14A(6)	Statute of Ultimate Repose	7-23
§ 7.14A(6)(a)	In General.....	7-23
§ 7.14A(6)(b)	Fraud Extends Period of Repose.....	7-23
§ 7.14A(6)(c)	Statute of Repose Applies to Minors	7-23

Chapter 7 / Personal Injury and Property Damage

§ 7.14A(6)(d) Misdiagnosis Does Not Extend Repose Period.....	7-24
§ 7.14A(7) Wrongful Death.....	7-24
§ 7.14B Accrual of Cause of Action.....	7-24
§ 7.14B(1) Discovery Rule.....	7-24
§ 7.14B(2) Minors.....	7-25
§ 7.14B(2)(a) Appointment of Guardian <i>Ad Litem</i>	7-25
§ 7.14B(2)(b) Appointment of Conservator.....	7-26
§ 7.14B(2)(c) Child’s Medical Bills.....	7-26
§ 7.14B(2)(d) Insurer’s Advance Medical Payments.....	7-26
§ 7.14C Continuing Treatment.....	7-27
§ 7.14C(1) Statute of Ultimate Repose.....	7-27
§ 7.14C(2) Prior Legislation.....	7-27
§ 7.14C(3) Analyze Claims Separately.....	7-27
§ 7.14D References.....	7-28
§ 7.15 PESTICIDES.....	7-28
§ 7.15A Liability Claims Procedure.....	7-28
§ 7.15A(1) Preservation of Claim—In General.....	7-28
§ 7.15A(2) Preservation of Claim against a Government Agency.....	7-28
§ 7.15B “Pesticide Operator” Defined.....	7-29
§ 7.15C Records.....	7-29
§ 7.15D References.....	7-29
§ 7.16 PRODUCTS LIABILITY.....	7-29
§ 7.16A Statute of Limitations—In General.....	7-30
§ 7.16B Statute of Ultimate Repose—In General.....	7-31
§ 7.16C Wrongful Death.....	7-31
§ 7.16D Claims Arising during Minority.....	7-32
§ 7.16E Exception for Products Provided by Physicians.....	7-32
§ 7.16F Products-Liability Actions—Specific Products.....	7-33
§ 7.16F(1) Asbestos.....	7-33
§ 7.16F(2) Breast Implants.....	7-33
§ 7.16F(3) Sidesaddle Gas Tank.....	7-34
§ 7.16F(4) COX-2 Inhibitors.....	7-35
§ 7.16F(5) Manufactured Dwellings.....	7-35
§ 7.16F(6) R Type Metal Halide or Mercury Vapor Light Bulbs.....	7-35

§ 7.16F(7) Damage Caused by Extendable Equipment’s Contact with Power Lines.....	7-36
§ 7.17 ACTIONS AGAINST SKI RESORTS	7-36
§ 7.17A Notice	7-36
§ 7.17A(1) Notice of Skier’s Personal Injury	7-36
§ 7.17A(2) Notice of Skier’s Wrongful Death	7-36
§ 7.17A(3) Failure to Give Notice.....	7-36
§ 7.17B Statute of Limitations	7-37
§ 7.18 COMPENSATION OF VICTIMS OF CRIME— COMPENSABLE CRIMES	7-37
§ 7.18A Application for Award of Compensation	7-37
§ 7.18B Compensable Crime Defined	7-37
§ 7.18C Eligibility for Award	7-38
§ 7.18D Amended Application for Compensation.....	7-39
§ 7.18E Order; Review of Order.....	7-39
§ 7.18F Appeal to Workers’ Compensation Board	7-39
§ 7.18G References	7-40
§ 7.19 ELDER FINANCIAL ABUSE.....	7-40
§ 7.20 LIQUOR LIABILITY	7-40
§ 7.20A In General.....	7-40
§ 7.20B Notice of Claim Required—Time Limits	7-40
§ 7.20B(1) Wrongful Death (within One Year)	7-40
§ 7.20B(2) Injuries Other Than Wrongful Death (within 180 Days)	7-41
§ 7.20B(3) Tolling Notice Period.....	7-41
§ 7.20C Form of Notice under Liquor-Liability Law	7-41
§ 7.20C(1) Formal Notice.....	7-41
§ 7.20C(2) Actual Notice	7-42
§ 7.20C(3) Notice by Commencement of Action within Specified Period of Time	7-42
§ 7.20C(4) Payment on Claim Satisfies Notice Requirement.....	7-42
§ 7.20D References	7-42
§ 7.21 STALKING	7-42
§ 7.21A Statute of Limitations.....	7-42
§ 7.21B References	7-42

Chapter 7 / Personal Injury and Property Damage

§ 7.22	DEATH OF A PARTY.....	7-43
§ 7.22A	Death of Injured Person.....	7-43
§ 7.22A(1)	Action for Wrongful Death.....	7-43
§ 7.22A(2)	Personal Representative May Continue or Commence Deceased Plaintiff’s Action	7-43
§ 7.22A(3)	Death of Plaintiff Worker (Employer Liability Law)	7-44
§ 7.22B	Death of Wrongdoer.....	7-44
§ 7.22C	Personal Representative’s Powers: The Relation Back Doctrine	7-45
§ 7.23	ACTION ARISING FROM A NUCLEAR ACCIDENT	7-45
§ 7.24	FEDERAL ISSUES	7-45
§ 7.24A	Choice of Law	7-45
§ 7.24B	Federal Enclaves.....	7-46
§ 7.24C	Federal Tort Claims Act.....	7-46
§ 7.25	ACTIONS INVOLVING TRIBAL LANDS, ENTITIES, AND PERSONS.....	7-47
§ 7.25A	Indian Tribes Are Generally Immune from Suit Unless Sovereign Immunity Is Waived.....	7-47
§ 7.25B	Jurisdiction—Tribal, State, or Federal Court.....	7-49
§ 7.25B(1)	Tribal Court.....	7-49
§ 7.25B(2)	State Jurisdiction	7-52
§ 7.25B(3)	Federal Jurisdiction	7-53
§ 7.26	TORT-RELATED ISSUES	7-54
§ 7.26A	Continuing Torts.....	7-54
§ 7.26A(1)	In General.....	7-54
§ 7.26A(2)	Negligence.....	7-55
§ 7.26A(2)(a)	Negligence Relating to Property.....	7-55
§ 7.26A(2)(b)	Medical and Dental Malpractice.....	7-55
§ 7.26A(2)(c)	Limiting Effect of Statutes of Ultimate Repose.....	7-55
§ 7.26A(3)	Intentional Infliction of Emotional Distress.....	7-56
§ 7.26A(4)	Action against a Public Body.....	7-56
§ 7.26A(5)	References	7-56
§ 7.26B	Contribution and Indemnity	7-56
§ 7.26B(1)	Contribution	7-56

§ 7.26B(1)(a)	Contribution among Tortfeasors—After Judgment	7-56
§ 7.26B(1)(b)	Contribution among Tortfeasors—If No Judgment	7-57
§ 7.26B(1)(c)	Contribution among Judgment Debtors	7-57
§ 7.26B(2)	Indemnity	7-57
§ 7.26B(2)(a)	In General.....	7-57
§ 7.26B(2)(b)	Express Contract	7-57
§ 7.26B(3)	References	7-57
§ 7.26C	Insurance	7-58
§ 7.26D	Tort or Contract.....	7-58
§ 7.27	LOSS OF CONSORTIUM.....	7-58
§ 7.28	ULTIMATE REPOSE.....	7-58
§ 7.28A	In General.....	7-58
§ 7.28B	When a Statute of Ultimate Repose Begins to Run	7-58
§ 7.28B(1)	Statutory Construction	7-59
§ 7.28B(2)	Specific Statute of Ultimate Repose May Apply to a Claim	7-59
§ 7.28B(3)	Negligence.....	7-59
§ 7.28B(4)	Legal Malpractice.....	7-59
§ 7.28B(5)	Medical Malpractice.....	7-59
§ 7.28B(6)	Wrongful Death.....	7-60
§ 7.28B(7)	Breast Implants (Action Not Based on Products Liability).....	7-60
§ 7.28B(8)	Products-Liability Actions	7-60
§ 7.28B(8)(a)	Products-Liability Action for Personal Injury or Property Damage	7-61
§ 7.28B(8)(b)	Products-Liability Action for Foreign Manufactured Products	7-61
§ 7.28B(8)(c)	Actions Prior to January 1, 2010—Personal Injury	7-61
§ 7.28B(8)(d)	Products-Liability Action for Wrongful Death.....	7-61
§ 7.28B(8)(e)	ORS 30.905 Does Not Apply to Actions Involving Manufactured Dwellings	7-62
§ 7.28B(8)(f)	Products-Liability Action for Breast Implants.....	7-62
§ 7.28B(8)(g)	Products-Liability Action for Asbestos	7-63

§ 7.28B(8)(h) Sidesaddle Gas Tank and Manufacturer of Extendable Equipment	7-63
§ 7.28C Discovery of Defect after Expiration of Repose Period.....	7-63
§ 7.28C(1) Equitable Estoppel.....	7-63
§ 7.28C(2) Effect of Minority or Insanity	7-63
§ 7.28C(2)(a) Minor’s Action for Personal Injury.....	7-64
§ 7.28C(2)(b) Minor’s Action for Medical Malpractice	7-64
§ 7.28C(2)(c) Insurer’s Advance Medical Payments.....	7-64
§ 7.28C(2)(d) Child Abuse.....	7-64
§ 7.28D References	7-64

§ 7.1 INTRODUCTION

§ 7.1A Scope of Chapter

This chapter covers tort claims for personal injury and property damage. For purposes of this chapter, a tort is the breach of a legal duty imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a person or property. Some claims for personal injury or property damage discussed in this chapter arise because of statutes; that is, they are statutorily based.

§ 7.1B Statutes of Limitations—In General

A cause of action may be subject to a specific statute of limitations, and more than one statute of limitations may apply in a particular case. *See Lindemeier v. Walker*, 272 Or 682, 685, 538 P2d 1266 (1975) (in some cases, a claim may be pleaded in tort or contract).

This chapter points out when a specific statute of limitations applies to a particular type of claim.

See chapter 2 for further discussion of statutes of limitations, including defenses available to avoid application of statutes of limitations (*see* § 2.6A(a) to § 2.6A(8)); situations in which statutes of limitations are tolled (*see* § 2.6B(1)(a) to § 2.6B(3)); the effect of dismissal on a statute of limitations (*see* § 2.6E, § 2.8 to § 2.8B(5)). See also § 7.3A to § 7.3B regarding claims against the government under the Oregon Tort Claims Act.

NOTE: The Servicemembers Civil Relief Act (*see* 50 USC App §§ 501–596), provides for the suspension of civil proceedings against persons in military service who could be detrimentally affected by the proceedings. 50 USC App § 502.

§ 7.1C Statutes of Ultimate Repose—In General

“[S]tatutes of ultimate repose establish ‘maximum times to file a claim, regardless of the date of discovery of an injury or other circumstances that may affect the expiration of a statute of limitations.’” *Waxman v. Waxman & Associates, Inc.*, 224 Or App 499, 506, 198 P3d 445 (2008) (quoting *Shasta View Irrigation Dist. v. Amoco Chemicals Corp.*, 329 Or 151, 162, 986 P2d 536 (1999)); see also *Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999).

A specific statute of ultimate repose may apply to a particular claim. See, e.g., § 7.16B, § 7.28B(8) to § 7.28B(8)(h) (products liability cases), § 7.28B(7), § 7.28B(8)(f) (breast-implant cases). This chapter points out when a specific statute of ultimate repose applies to a particular type of claim.

§ 7.2 CONFLICT OF LAWS

The statute of limitations in a conflict-of-laws situation is governed by the Uniform Conflict of Laws-Limitations Act, ORS 12.410 to 12.480. See § 2.15A to § 2.15B for further discussion.

§ 7.3 ACTIONS AGAINST GOVERNMENTAL BODIES

§ 7.3A The Oregon Tort Claims Act

The Oregon Tort Claims Act (OTCA), ORS 30.260 to 30.300, applies to any tort action arising out of an act or omission of a public body. The OTCA requires timely notice to the governmental or public body and imposes a statute of limitations for actions against governmental and public bodies. ORS 30.275(1)–(2), ORS 30.275(9). *Cannon v. Oregon Dep’t of Justice*, 261 Or App 680, 691, 322 P3d 601 (2014). The Oregon Court of Appeals held that when notice is given by filing a lawsuit, the statute is satisfied if filing occurs within the 180-day period, and service occurs within the 60-day period in ORS 12.020(2).

Notice of a claim against a governmental or public body must be given within the period of time prescribed by ORS 30.275(2), “not including the period, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity.” ORS 30.275(2).

For a wrongful-death action, notice of claim must be given “within one year after the alleged loss or injury.” ORS 30.275(2)(a).

For all other claims, notice of claim must be given “within 180 days after the alleged loss or injury.” ORS 30.275(2)(b). See *Cannon v. Oregon Dep’t of Justice*, 261 Or App 680, 691, 322 P3d 601 (2014) (“the trial court erred in interpreting the statute to require both filing of the complaint and service of the summons within 180 days of the alleged injury”).

In general, the action must be commenced within two years after the alleged injury. ORS 30.275(9). But see § 7.3B regarding claims brought by minors.

§ 7.3B Claims Brought by Minors

It is not clear whether the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action under the Oregon Tort Claims Act (OTCA) is tolled during the plaintiff's minority by ORS 12.160. *Lawson v. Coos Cnty. Sch. Dist. No. 13*, 94 Or App 387, 390–91, 765 P2d 829 (1988), *abrogated by Baker v. City of Lakeside*, 343 Or 70, 164 P3d 259 (2007) (the plaintiff's status as a minor did not toll the two-year limit to commence an action under ORS 30.275); *but see Bradford v. Davis*, 290 Or 855, 861, 626 P2d 1376 (1981) (the court held that the tolling statute for minors applies to the OTCA; note, however, that *Bradford* was decided before the legislature enacted what is now ORS 30.275(9) [former ORS 30.275(8)]); *Baker v. City of Lakeside*, 343 Or 70, 82, 164 P3d 259 (2007) (“Nothing in the legislative history suggests . . . that the legislature intended to deny children and persons with mental disabilities bringing OTCA claims the advantage of a tolling provision that is available to them in every other action.”); *Bell v. Tri-County Metropolitan Transp. Dist. Of Oregon*, 353 Or 535, 538, 301 P3d 901 (2013) (discussing *Baker* as it relates to the interplay between the survival of actions and claims against public bodies).

PRACTICE TIP: Because a question exists regarding whether the minority tolling statute (ORS 12.160) tolls the two-year limitation period when commencing an action under the OTCA, lawyers should research this area of the law carefully before relying on this or any tolling statute.

NOTE: If a minor has a claim against a public body, the 270-day notice period prescribed in ORS 30.275 is not tolled pending the appointment of a guardian ad litem. *See, e.g., Perez By & Through Yon v. Bay Area Hosp.*, 315 Or 474, 482–83, 846 P2d 405 (1993); *Catt v. Dep't of Human Servs. ex rel. State*, 251 Or App 488, 500, 284 P3d 532 (2012) (“we conclude that, under ORS 30.275(2), minors are required to give notice of a tort claim to a public body and its employees within 270 days of the discovery of their alleged injuries, and ORS 12.160 does not toll this notice period”); *but see* ORS 30.275(8) (pertaining to a claim brought by a minor against the Department of Human Services or the Oregon Youth Authority).

§ 7.3C References

See 2 Torts ch 28 (OSB Legal Pubs 2012).

§ 7.4 PERSONAL INJURY

§ 7.4A Statutes of Limitations—In General

An action for personal injury may be governed by one of several different statutory limitation periods, including medical, surgical, and dental malpractice (ORS 12.110(4)); products liability (ORS 30.905); wrongful death (ORS 30.020); and claims against public bodies (ORS 30.275). Those actions are covered separately in this chapter.

§ 7.4B Assault, Battery, False Imprisonment, or Injury to Person or Rights

“An action for assault, battery, false imprisonment, or for any [other] injury to the person or rights of another, not arising on contract and not especially enumerated in ORS chapter 12 shall be commenced within two years” after accrual of the cause of action. ORS 12.110(1). *See* ORS 147.065 (extending the statute of limitations to five years after the commission of a compensable crime); *see* § 7.18 to § 7.18F (compensable crimes).

§ 7.4C Tort Actions Do Not Abate on Death of Injured Person

Causes of action arising out of injuries to a person, caused by the wrongful act or omission of another, do not abate on the death of the injured person and may be maintained by the personal representative for the deceased person if the decedent might have maintained an action had the decedent lived. ORS 30.075(1).

The personal representative of the decedent may commence an action against the wrongdoer on behalf of the decedent if the action is commenced within three years after the injury causing the decedent’s death. ORS 30.075(1).

The personal representative also may continue an action already commenced by the injured person before his or her death, assuming that the cause of action was commenced within the time limits allowed by ORS 12.110. ORS 30.075(1).

§ 7.4D Medical Bills of Injured Child

Medical expenses incurred due to the negligent injury of an unemancipated minor are damages suffered by the parent, not the child. *Palmore v. Kirkman Laboratories, Inc.*, 270 Or 294, 305–06, 527 P2d 391 (1974). A parent’s action to recover the medical expenses of the child is governed by the two-year statute of limitations set forth in ORS 12.110(1) or, if the action is one for medical, surgical, or dental negligence, ORS 12.110(4). If a child’s guardian *ad litem* files an action on behalf of the child against the wrongdoer, the parents or conservator may file a consent along with the complaint in order to include the claims for medical expenses in the guardian’s action. ORS 31.700(1). If the court allows that consent, the parents may not thereafter maintain a separate action to recover the medical expenses paid to treat the child’s injuries. ORS 31.700(2). *See* § 7.3B (tolling of child’s action).

§ 7.4D(1) Tolling (Claims Arising on or after January 1, 2008)

For actions arising on or after January 1, 2008, if a child's cause of action is tolled by ORS 12.160(1), the cause of action brought by the parent, guardian, or conservator of the child is tolled for the same period of time as the child's cause of action if the medical expenses resulted from the same wrongful conduct that is the basis of the child's cause of action. ORS 12.160(5).

However, if the action is one for medical, surgical, or dental negligence, the time to file pursuant to ORS 12.160(1) may not exceed the five-year statute of ultimate repose found in ORS 12.110(4), absent fraud, deceit, or misleading representation. ORS 12.110(4).

CAVEAT: It is not clear whether the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action under the Oregon Tort Claims Act is tolled during the plaintiff's minority by ORS 12.160. See § 7.3B for further discussion of this issue.

See also § 2.1A(1) to § 2.1B (actions); § 2.6B(1)(a) to § 2.6B(1)(b) (tolling the statute of limitations); § 7.14A(1) to § 7.14C(3), § 7.26A(2)(b) (medical and dental malpractice); § 7.22A(1) (wrongful death).

§ 7.4D(2) References

See, e.g., 2 Torts chs 28, 32 (OSB Legal Pubs 2012).

§ 7.5 PROPERTY DAMAGE

The statute of limitations for injury to real property is six years (ORS 12.080(3)), as is the statute of limitations for injury to personal property. ORS 12.080(4).

§ 7.6 ASSAULT AND BATTERY

§ 7.6A Statute of Limitations

An action for assault and battery must be commenced within two years after the cause of action arises. ORS 12.110(1). If the alleged conduct constitutes a "compensable crime" under ORS 147.005(4) and the victim or the plaintiff has satisfied the conditions of ORS 147.015, the action may be commenced within five years after the commission of the compensable crime. ORS 147.065. *See* § 7.18 to § 7.18F (compensable crimes). *See also* ORS 12.117 (statute of limitations for actions based on child abuse).

§ 7.6B Counterclaim for Assault and Battery

When a counterclaim for assault and battery "arises out of the transaction alleged in the complaint and is in existence at the time that the complaint is filed and is not then-barred by a statute of limitations," the counterclaim "will not be barred by the running of the statutory time thereafter, but the statute will be suspended until the counterclaim is filed." *Lewis v. Merrill*, 228 Or 541, 549, 365

P2d 1052 (1961). However, the filing of a counterclaim terminates the suspension of the statute, so a claim in a subsequent counterclaim or cross-claim may be time-barred if filed more than two years after the complaint and the tolled period. *First Interstate Bank of Oregon, N.A. v. Bousquet*, 93 Or App 451, 455, 762 P2d 1046 (1988).

§ 7.6C References

See § 7.18 to § 7.18F (compensable crimes); 1 *Torts* ch 1 (OSB Legal Pubs 2012).

§ 7.7 CONVERSION

§ 7.7A Statute of Limitations

An action for conversion must be filed within six years after injury. ORS 12.080(4). See *Everman v. Lockwood*, 144 Or App 28, 925 P2d 128 (1996); but see *Stull v. Hoke*, 141 Or App 150, 154, 917 P2d 69 (1996), *aff'd in part, rev'd in part*, 326 Or 72, 948 P2d 722 (1997) (the court erroneously applied the general two-year statute of limitations found in ORS 12.110(1) to a claim for conversion).

§ 7.7B Accrual of Action

In *Rice v. Mary Rabb*, 354 Or 721, 728, 320 P3d 554 (2014), the Oregon Supreme Court concluded that the six-year statute of limitations applicable to conversion claims under ORS 12.080(4) incorporates a discovery rule to determine when such claims accrue pursuant to ORS 12.010. Thus, the court held that a conversion claim accrues “when the plaintiff knows or reasonably should know of the elements of [the claim].” *Rice*, 354 Or at 733–34.

NOTE: In so ruling, the supreme court reversed the court of appeals, which had held that ORS 12.080(4) does not contain a discovery rule and that a conversion claim accrues “at the time the defendant exercises wrongful dominion or control over property in a manner that seriously interferes with the owner’s rights.” *Rice v. Rabb*, 251 Or App 603, 608, 284 P3d 1178 (2012), *rev'd*, 354 Or 721, 320 Or 721 (2014).

§ 7.7C References

See generally 1 *Damages* ch 20 (Oregon CLE 1998 & Supp 2007); 1 *Torts* ch 7 (OSB Legal Pubs 2012).

§ 7.8 DEFAMATION

§ 7.8A Libel or Slander

§ 7.8A(1) Statute of Limitations

§ 7.8A(1)(a) In General

An action for libel or slander must be filed within one year. ORS 12.120(2). The statute generally runs from the date of the statement or publication. *Bock v.*

Collier, 175 Or 145, 148, 151 P2d 732 (1944). But see § 7.8D regarding the discovery rule.

§ 7.8A(1)(b) Multiple Publications

Each statement or publication of the same defamatory content is treated as a discrete tort for purposes of the statute of limitations. The statute of limitations runs separately for each statement or publication because a new injury could occur with each statement or publication. *Schenck v. Oregon Television, Inc.*, 146 Or App 430, 435, 934 P2d 480 (1997); *Kraemer v. Harding*, 159 Or App 90, 104, 976 P2d 1160, *rev den*, 329 Or 357 (1999).

§ 7.8A(2) Demand for Correction or Retraction

§ 7.8A(2)(a) Delivery of Demand

A demand for correction or retraction of a published defamatory statement must be delivered to the publisher, either personally or by registered or certified mail, at the publisher's place of business or residence within 20 days after the defamed person receives actual knowledge of the statement. ORS 31.215(1). *See* § 7.8A(2)(c) (failure to demand retraction).

§ 7.8A(2)(b) Publisher's Response to Demand

After receiving a demand for correction or retraction of a defamatory statement (*see* § 7.8A(2)(a)), the publisher has two weeks to investigate the demand and publish the correction or retraction. ORS 31.215(2).

§ 7.8A(2)(c) Failure to Demand Retractions

A plaintiff's failure to timely demand a retraction after the original broadcast of a defamatory statement does not preclude a claim based on a timely demand for retraction following a rebroadcast. *Schenck v. Oregon Television, Inc.*, 146 Or App 430, 934 P2d 480 (1997).

§ 7.8B Slander of Title

An action for slander of title to real property must be commenced within one year from the date that a prospective sale was lost due to the slander of title. ORS 12.120(2); *Diamond v. Huffman*, 64 Or App 330, 667 P2d 1040, *rev den*, 295 Or 840 (1983); *Shenefield v. Axtell*, 274 Or 279, 284, 545 P2d 876 (1976).

§ 7.8C False Light and Other Claims Related to Defamation

Claims related to libel or slander may also be subject to the one-year limitations period in ORS 12.120(2). *See* § 7.8C(1) to § 7.8C(3).

§ 7.8C(1) False Light

A false-light claim alleging facts that could also constitute a claim for defamation is subject to the one-year limitations period set forth in ORS 12.120(2). *Magenis v. Fisher Broad., Inc.*, 103 Or App 555, 559–60, 798 P2d 1106 (1990).

§ 7.8C(2) Negligent Injury to Reputation

An action for negligent injury to reputation is an action for defamation subject to the one-year statute of limitations in ORS 12.120(2). *Coe v. Statesman-Journal Co.*, 277 Or 117, 120, 560 P2d 254 (1977).

§ 7.8C(3) Negligent Release of Confidential Information

When a claim is based on the negligent release of confidential information under ORS 342.176(4), the claim is not governed by the one-year statute of limitations in ORS 12.120(2), but is governed by the two-year statute of limitations in ORS 12.110(1). *Bradbury v. Teacher Standards & Practices Comm'n*, 151 Or App 176, 181–82, 947 P2d 1145 (1997), *aff'd*, 328 Or 391, 977 P2d 1153 (1999).

§ 7.8D Discovery Rule

The discovery rule may apply to extend the one-year limitations period in ORS 12.120(2) for bringing an action for libel or slander.

When an allegedly libelous memorandum was confidential in nature and the initial publication was not of a type that the plaintiff would be presumed to know about, the limitations period in ORS 12.120(2) began to run when the plaintiff discovered the existence of the memorandum. *White v. Gurnsey*, 48 Or App 931, 935–36, 618 P2d 975 (1980).

For purposes of the discovery rule, the plaintiff does not have to know the precise nature of the claim. Rather, the limitations period begins to run when the plaintiff knows, or in the exercise of reasonable care should have known, facts that would make a reasonable person aware of a substantial possibility that he or she had suffered harm that was caused by tortious conduct. *Holdner v. Oregon Trout, Inc.*, 173 Or App 344, 351, 22 P3d 244 (2001) (citing *Gaston v. Parsons*, 318 Or 247, 255, 864 P2d 1319 (1994)).

The discovery rule, under which the statute of limitations is tolled until the plaintiff knows or reasonably should know of a claim against the defendant, does not apply to an action for defamatory statements made in a public meeting. In such a case, the relevant facts are deemed to be “inherently discoverable upon the occurrence.” *Workman v. Rajneesh Found. Int'l*, 84 Or App 226, 230–31, 733 P2d 908, *rev den*, 303 Or 700 (1987).

§ 7.8E Oregon Tort Claims Act

The one-year statute of limitations in ORS 12.120(2) applies to defamation claims brought under the Oregon Tort Claims Act. *Masters v. Sec'y of State*, 88 Or App 221, 224, 744 P2d 1309 (1987); *see* ORS 30.275(9); *see also* § 7.3A to § 7.3B.

§ 7.8F References

See generally 1 *Torts* chs 5–6 (OSB Legal Pubs 2012); 2 *Torts* ch 24 (OSB Legal Pubs 2012).

§ 7.9 FALSE IMPRISONMENT OR ARREST

§ 7.9A Statute of Limitations

An action for false imprisonment or arrest must be commenced within two years of the injury. ORS 12.110(1).

NOTE: The Oregon Supreme Court recognizes “false arrest” as a synonym for “false imprisonment.” *Hylton v. Phillips*, 270 Or 766, 767, 529 P2d 906 (1974).

§ 7.9B References

See generally 1 *Damages* ch 16 (Oregon CLE 1998 & Supp 2007); 1 *Torts* ch 2 (OSB Legal Pubs 2012).

§ 7.10 FRAUD AND DECEIT

§ 7.10A Statute of Limitations

An action based on fraud or deceit must be commenced within two years after the date of discovery of the fraud or deceit. ORS 12.110(1); *see also* ORS 12.040(4). Thus, the statute of limitations contains an express discovery rule. *See* § 7.10B (discovery of fraud).

§ 7.10B Discovery of Fraud

“Discovery” of fraud is triggered when the plaintiff “knows or should have known of the alleged fraud.” *Mathies v. Hoeck*, 284 Or 539, 542, 588 P2d 1 (1978). Knowledge of the fraud includes the fact of the misrepresentation (or omission) and its falsity. *Bramel v. Brandt*, 190 Or App 432, 442, 79 P3d 375 (2003), *rev den*, 336 Or 509 (2004).

The plaintiff should have known of the fraud or deceit if (1) the plaintiff “had sufficient knowledge to ‘excite attention and put a party upon his guard or call for [the plaintiff to make] an inquiry,’” and (2) with such knowledge, “a reasonably diligent inquiry” by the plaintiff would have disclosed the fraud. *Mathies*, 284 Or at 543 (internal citations omitted); *see also* *Bodunov v. Kutsev*, 214 Or App 356, 359, 164 P3d 1212 (2007); *Gaston v. Parsons*, 318 Or 247, 864 P2d 1319 (1994).

§ 7.10C References

See generally *Contract Law in Oregon* ch 7 (Oregon CLE 2003 & Supp 2008); *Real Estate Disputes* ch 12 (Oregon CLE 1993 & Supp 2002) (NOTE: Effective in 2015, *Real Estate Disputes* will be *Oregon Real Estate Deskbook*. The information on fraud and deceit will be found in chapter 17 of the deskbook); 2 *Torts* chs 24, 32 (OSB Legal Pubs 2012).

§ 7.11 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

§ 7.11A Statute of Limitations

§ 7.11A(1) In General

An action for the intentional infliction of emotional distress must be commenced within two years of the date of injury. ORS 12.110(1). *See* § 7.11A(2) (continuing torts; course of conduct).

§ 7.11A(2) Continuing Torts; Course of Conduct

When a defendant engages in a course of conduct over a period of time that can produce cumulative compensable harm (e.g., emotional distress), but each act is discrete and produces compensable harm, evidence of those acts occurring before the two years preceding the filing of the complaint is barred by the statute of limitations. *Davis v. Bostick*, 282 Or 667, 673–74, 580 P2d 544 (1978).

However, when each of a defendant's acts does not by itself support a claim, but the pattern of conduct eventually results in severe emotional distress to the plaintiff—a necessary element of the tort of the intentional infliction of emotional distress—the plaintiff's claim accrues when the plaintiff “in fact” suffers such distress. *Barrington ex rel. Barrington v. Sandberg*, 164 Or App 292, 297, 991 P2d 1071 (1999). Under those circumstances, the defendant's conduct constitutes a “continuing tort,” which is based on “the concept that recovery is for the cumulative effect of wrongful behavior, not for discrete elements of that conduct.” *Davis*, 282 Or at 671.

When the continuing-tort doctrine applies, it “tolls the statute of limitations on otherwise actionable conduct until that conduct stops.” *Barrington*, 164 Or App at 308 n 2 (Kistler, J., concurring).

See § 7.26A(1) to § 7.26A(4) (continuing torts).

§ 7.11A(3) References

See generally 1 *Damages* ch 5 (Oregon CLE 1998 & Supp 2007); *Labor and Employment Law: Private Sector* § 1.4 to § 1.4-9 (OSB Legal Pubs 2011); 1 *Torts* ch 3 (OSB Legal Pubs 2012).

§ 7.12 INTENTIONAL INTERFERENCE WITH CONTRACTUAL OR ECONOMIC RELATIONS

§ 7.12A Statute of Limitations

An action for intentional interference with contractual or economic relations must be commenced within two years after the date that the damages actually accrued, not within two years after the date of discovery of the interference. ORS 12.110(1); *Cramer v. Stonebridge Inn, Inc.*, 77 Or App 407, 411, 713 P2d 645 (1986). *See* § 7.12B regarding when a cause of action accrues.

§ 7.12B Accrual of Action

A cause of action for intentional interference with contractual or economic relations accrues when the plaintiff is “damaged beyond the fact of the interference itself.” *Cramer v. Stonebridge Inn, Inc.*, 77 Or App 407, 411, 713 P2d 645 (1986) (citing *Top Serv. Body Shop, Inc. v. Allstate Ins. Co.*, 283 Or 201, 582 P2d 1365 (1978)); *see also Butcher v. McClain*, 244 Or App 316, 324, 260 P3d 611 (2011) (the plaintiffs’ cause of action for intentional interference with economic relations based on alleged disinheritance from a will did not accrue until the decedent’s death, as opposed to when the will was executed).

§ 7.12C References

See 2 Torts ch 26 (OSB Legal Pubs 2012); *1 Damages* ch 17 (Oregon CLE 1998 & Supp 2007).

§ 7.13 LEGAL MALPRACTICE

§ 7.13A Statute of Limitations

An action for legal malpractice is an action in tort that must be commenced within two years from the date that the cause of action accrues. ORS 12.110(1); *U. S. Nat. Bank of Oregon v. Davies*, 274 Or 663, 665–66, 548 P2d 966 (1976); *Stevens v. Bispham*, 316 Or 221, 227, 851 P2d 556 (1993); *Abbott v. DeKalb*, 221 Or App 339, 342, 190 P3d 413 (2008), *rev dismissed as improvidently granted*, 346 Or 306 (2009), *cert den*, 558 US 1123 (2010), *reh’g den*, 559 US 1032 (2010).

See § 7.13D(1) to § 7.13D(2)(b) regarding when a cause of action accrues. *See also* § 7.13C (an alleged breach of a specific promise may support a contract claim).

§ 7.13B Statute of Ultimate Repose

The 10-year statute of ultimate repose applies to legal-malpractice claims. ORS 12.115; *Davis v. Somers*, 140 Or App 567, 571–72, 915 P2d 1047, *rev den*, 324 Or 78 (1996); *Withers v. Milbank*, 67 Or App 475, 478, 678 P2d 770 (1984).

§ 7.13C Contract Claim

A lawyer’s alleged breach of a specific promise may support a contract claim, which would have a six-year statute of limitations. ORS 12.080. *See Hale v. Groce*, 304 Or 281, 287–89, 744 P2d 1289 (1987); *Allen v. Lawrence*, 137 Or App 181, 185, 903 P2d 919 (1995), *rev den*, 322 Or 644 (1996). *But see McComas v. Bocci*, 166 Or App 150, 156, 996 P2d 506 (2000) (a promise or prediction of success made after the creation of a contract for legal services and “arising in the course of its performance is gratuitous and establishes no [contractual] duty unless it is supported by new consideration”). *See 1 Torts* § 12.2-3(a) (OSB Legal Pubs 2012).

§ 7.13D Accrual of Cause of Action

§ 7.13D(1) In General

The statute of limitations for legal malpractice begins to run when harm occurs and it is reasonably probable that the damage complained of was caused by the defendant's negligence. *Melgard v. Hanna*, 45 Or App 133, 136, 607 P2d 795 (1980).

§ 7.13D(2) Discovery Rule

Oregon follows the discovery rule for establishing when a legal-malpractice claim accrues. *Stevens v. Bispham*, 316 Or 221, 227, 851 P2d 556 (1993). The statute of limitations does not begin to run until the plaintiff incurs harm and knows, or in the exercise of reasonable care should know, that the harm actually suffered was caused by the defendant. *Stevens*, 316 Or at 227 (citing *U. S. Nat. Bank of Oregon v. Davies*, 274 Or 663, 669–70, 548 P2d 966 (1976)). See § 7.13D(2)(a) (discussing knowledge of professional negligence), § 7.13D(2)(b) (discussing when harm occurs).

§ 7.13D(2)(a) Discovery of Professional Negligence—Knowledge

“When discovery of professional negligence may be said to occur is an objective matter, for a claimant is charged with knowledge which the exercise of reasonable care would disclose when facts are known from which the inference flows.” *Melgard v. Hanna*, 45 Or App 133, 136, 607 P2d 795 (1980).

When a person reasonably should have known that the harm was caused by an attorney's negligence is generally a question of fact. *Hoeck v. Schwabe, Williamson & Wyatt*, 149 Or App 607, 612, 945 P2d 534 (1997).

In a case in which a continuing attorney-client relationship existed and the attorney reassured the client that the result was “at least as good as we could have expected,” a genuine issue of fact existed regarding when the client knew or should have known that her damages were caused by the attorney's negligence for purposes of the discovery rule. *Brownstein, Rask, Arenz, Sweeney, Kerr & Grim v. Pearson*, 166 Or App 120, 127–28, 997 P2d 300 (2000).

“The fact that a plaintiff has been sued over some action taken as a result of the defendant attorney's advice is not necessarily cause for the plaintiff to know that the defendant was negligent.” *Fliegel v. Davis*, 73 Or App 546, 548, 699 P2d 674, *rev den*, 299 Or 583 (1985). In *Fliegel*, 73 Or App at 549–50, the court held that a legal-malpractice claim does not accrue until the Oregon Supreme Court issues its opinion on the underlying contract action, because it is not until the Oregon Supreme Court reverses the Oregon Court of Appeals and concludes the entire case that the client can know that his or her attorney's advice was negligent.

See *Stevens v. Bispham*, 316 Or 221, 238, 851 P2d 556 (1993) (discussing harm and knowledge of harm in a malpractice case brought by a former criminal defendant against his defense counsel). See also § 7.13D(2)(b).

§ 7.13D(2)(b) Discovery of Professional Negligence—Harm

Assuming that the plaintiff has the requisite knowledge (*see* § 7.13D(2)(a)), the claim accrues (and the statute begins to run) when the plaintiff has incurred some harm. The plaintiff need not be aware of the full extent of the harm nor must the harm be complete. *Jaquith v. Ferris*, 297 Or 783, 788, 687 P2d 1083 (1984); *Godfrey v. Bick & Monte, P.C.*, 77 Or App 429, 433, 713 P2d 655, *rev den*, 301 Or 165 (1986) (“knowledge of the extent of damage is immaterial in determining when the statute commences running”); *Cairns v. Dole*, 195 Or App 742, 751–52, 99 P3d 781 (2004). However, the harm must not be hypothetical. *Berg v. Hirschy*, 206 Or App 472, 475–76, 136 P3d 1182 (2006) (the plaintiffs’ declaratory-judgment action against their former attorneys was not justiciable because future tax damages were hypothetical).

When a continuing attorney-client relationship exists, merely incurring additional legal expense may not constitute harm. The statute of limitations does not begin to run until it appears reasonably probable that the cost of litigation was caused by the attorney’s negligence. *Niedermeyer v. Dusenberry*, 275 Or 83, 85–86, 549 P2d 1111 (1976).

When the alleged harm is based on the result of the underlying case, the claim accrues when the adverse judgment is entered, not when an order of dismissal is entered. *Barnard v. Lannan By & Through Lannan*, 112 Or App 625, 629, 829 P2d 723 (1992).

In a legal malpractice case by a former criminal defendant against his or her criminal defense counsel, harm occurs when the former defendant knows or should know that he or she “has been exonerated of the criminal offense through reversal on direct appeal, through post-conviction relief proceedings, or otherwise.” *Stevens v. Bispham*, 316 Or 221, 238, 851 P2d 556 (1993); *Abbott v. DeKalb*, 221 Or App 339, 343–44, 190 P3d 413 (2008), *rev dismissed as improvidently granted*, 346 Or 306 (2009), *cert den*, 558 US 1123 (2010); *Sandgathe v. Jagger*, 165 Or App 375, 380, 996 P2d 1001 (2000).

§ 7.13E References

See generally *The Ethical Oregon Lawyer* ch 15 (Oregon CLE 2006); 1 *Torts* ch 12 (OSB Legal Pubs 2012); 2 *Torts* § 32.10-1(a) (OSB Legal Pubs 2012).

§ 7.14 MEDICAL AND DENTAL MALPRACTICE

§ 7.14A Statutes of Limitations and Repose

§ 7.14A(1) Statute of Limitations—In General

An action to recover damages for injuries “arising from any medical, surgical or dental treatment, omission or operation shall be commenced within two years from the date when the injury is first discovered or in the exercise of reasonable care should have been discovered.” ORS 12.110(4); *see Asher v. Hald*, 100 Or App 630, 633–34, 788 P2d 468, *rev den*, 310 Or 133 (1990).

NOTE: Notwithstanding ORS 12.160, which tolls the statute of limitations for minors, the period of ultimate repose for a minor's action based on medical negligence is five years from the date of the treatment, omission, or operation. ORS 12.110(4); *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008).

CAVEAT: ORS chapter 12 may prescribe a different limitations period for a specific type of claim. *See, e.g.*, ORS 12.276 (regarding death, injury, or damage resulting from breast implants), ORS 30.020 (regarding wrongful-death actions).

Although an action against a physician or healthcare facility arising from any medical, surgical, or dental treatment is subject to the limitations period in ORS 12.110(4), an action against the person who provides a prepared product for general use in medical procedures is subject to the limitations period in ORS 12.110(1). *Doe v. Am. Red Cross*, 322 Or 502, 510, 910 P2d 364 (1996) (a supplier of blood does not undertake medical treatment).

NOTE: A statute of ultimate repose is distinct from a statute of limitations. *See* § 7.14A(6)(a).

§ 7.14A(2) Failure to Obtain Informed Consent

A physician's failure to obtain a patient's informed consent (*see* ORS 677.097) may give rise to a separate cause of action. *See Gaston v. Parsons*, 318 Or 247, 260, 864 P2d 1319 (1994) ("For the purpose of the statute of limitations, an informed consent claim is not the same as a negligent surgery claim."). An informed-consent claim is subject to the limitations in ORS 12.110(4), although the time of discovery for a claim for medical negligence and an informed-consent claim may differ, depending on the facts and information available to the plaintiff. *Gaston*, 318 Or at 260.

§ 7.14A(3) Breast Implants

An action for death, injury, or damage resulting from breast implants must be commenced within two years after the plaintiff first discovered or, in the exercise of reasonable care, should have discovered:

- (1) The "death or specific injury, disease or damage," ORS 12.276(1)(a);
- (2) The "tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant," ORS 12.276(1)(b); and
- (3) "All other elements required to establish plaintiff's claim for relief," ORS 12.276(1)(c).

However, an action against a licensed physician or healthcare facility resulting from breast implants remains subject to the limitations period in ORS 12.110(4). ORS 12.276(3). Also, an action against the person who supplied components to manufacturers of breast implants remains subject to ORS 12.110(1),

ORS 12.115, ORS 30.020, and ORS 30.075 as long as (1) the supplier did not at any time manufacture or own a business that manufactured implants, and (2) the supplier was not owned by a business that manufactured implants at any time. ORS 12.276(4).

See § 7.28B(7), § 7.28B(8)(f) (statute of ultimate repose for actions arising from breast implants).

§ 7.14A(4) COX-2 Inhibitor

A civil action for injury—including a products liability or an action based on negligence—alleging injury “resulting from the use of a COX-2 inhibitor” must be commenced no later than four years after the date on which the plaintiff first discovered, or reasonably should have discovered, the injury and the causal relationship between the injury and the product, or the causal relationship between the injury and the defendant’s conduct. Or Laws 2007, ch 536, § 1(2) (printed in a note following ORS 30.927).

NOTE: The Oregon Legislature enacted this provision in 2007, exempting claims for injuries relating to the use of COX-2 inhibitors from the limitations periods set forth in ORS 30.905(2). However, the exception applies only to causes of action that arose on or before January 1, 2007. Thus, claims arising after January 1, 2007, are subject to the same statutory time limits as other products liability or negligence actions under ORS 30.020 and ORS 30.905(2). Furthermore, the legislation does not revive causes of action for which a judgment was entered before January 1, 2007. Or Laws 2007, ch 536, § 2 (printed in a note following ORS 30.927).

§ 7.14A(5) Public Bodies

The Oregon Tort Claims Act, ORS 30.260 to 30.300, applies to any action arising out of an act or omission of a public body. Therefore, the following rules apply when a medical-malpractice claim arises out of an act or omission of a public hospital or an officer, employee, or agent of a public hospital:

(1) Notice of the claim must be given pursuant to and within the time prescribed by ORS 30.275(1) to (8); and

(2) The action must be commenced within two years after the alleged injury as required by ORS 30.275(9).

NOTE: It is not clear whether the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action against a public body is tolled during the plaintiff’s minority by ORS 12.160. See § 7.3A to § 7.3B for further discussion.

NOTE: If a minor has a claim against a public body, the notice period prescribed in ORS 30.275 is not tolled pending the appointment of a guardian ad litem. See, e.g., *Perez By & Through Yon v. Bay Area Hosp.*,

315 Or 474, 482–83, 846 P2d 405 (1993); *Catt v. Dep’t of Human Servs. ex rel. State*, 251 Or App 488, 284 P3d 532 (2012). See § 7.3B.

See also § 2.1A(1) to § 2.1B (actions), § 7.3A to § 7.3B (actions involving governmental and public bodies), § 7.4A to § 7.4B (personal injury), § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations).

§ 7.14A(6) Statute of Ultimate Repose

§ 7.14A(6)(a) In General

A statute of ultimate repose is distinct from a statute of limitations. An action to recover for injuries arising from medical, surgical, or dental treatment must be commenced within five years from the date of the treatment, omission, or operation on which the action is based. ORS 12.110(4); *Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 455–56, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999). It does not matter when the claim accrued, or even whether it has accrued. *Urbick*, 141 Or App at 457. “[I]n the absence of fraud, deceit or misleading representation, the five-year period is *absolute*.” *Urbick*, 141 Or App at 456 (emphasis added).

NOTE: Wrongful-death actions and products-liability actions are subject to different statutes of ultimate repose. See § 7.14A(7) (wrongful death in general), § 7.28B(8)(d) (products-liability action for wrongful death), § 7.16A to § 7.16F(7) (products liability).

The statute of repose for medical malpractice applies to minors. See § 7.14A(6)(c). See § 7.14A(6)(b) regarding the effect of fraud on a statute of ultimate repose. See also § 7.14A(6)(d) regarding the effect of misdiagnosis on the statute.

See also § 2.7A to § 2.7G(2), § 7.28B(5) (statute of ultimate repose).

§ 7.14A(6)(b) Fraud Extends Period of Repose

If the plaintiff failed to bring a medical-malpractice action within five years because of fraud, deceit, or misleading representation, the five-year period of repose is extended by two years “from the date such fraud, deceit or misleading representation is discovered or in the exercise of reasonable care should have been discovered.” ORS 12.110(4).

§ 7.14A(6)(c) Statute of Repose Applies to Minors

The five-year statute of ultimate repose for medical-malpractice claims applies to minors as well as adults. *Jones By & Through Jones v. Salem Hosp.*, 93 Or App 252, 762 P2d 303 (1988), *rev den*, 307 Or 514 (1989). Although ORS 12.160 suspends the statute of limitations for claims of minors, ORS 12.110(4) specifically limits that suspension to five years from the date of treatment. *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008).

§ 7.14A(6)(d) Misdiagnosis Does Not Extend Repose Period

The five-year statute of ultimate repose for medical malpractice applies even if the plaintiff's action is based on the misdiagnosis of a disease with a long latency period. *Barke v. Maeyens*, 176 Or App 471, 478, 31 P3d 1133 (2001), *rev den*, 333 Or 655 (2002).

§ 7.14A(7) Wrongful Death

If the alleged medical malpractice causes the death of a patient, the three-year limitations period for wrongful death applies (ORS 30.020(1)), rather than the two-year limitation period for personal injury in ORS 12.110(4). *Baxter v. Zeller*, 42 Or App 873, 877, 601 P2d 902 (1979).

A wrongful-death action is also subject to a statute of ultimate repose. The action must be commenced no later than the earlier of:

- (1) “[T]hree years after the death of the decedent,” ORS 30.020(1)(a); or
- (2) “[T]he longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing the injury, including but not limited to the statutes of ultimate repose provided for in [ORS 12.110(4), ORS 12.115, ORS 12.135, ORS 12.137, and ORS 30.905],” ORS 30.020(1)(b).

See, e.g., Fields v. Legacy Health Sys., 413 F3d 943 (9th Cir 2005) (the five-year statute of ultimate repose in ORS 12.110(4) applies to wrongful-death actions arising from medical malpractice).

See also § 2.7A to § 2.7G(2) (ultimate repose), § 2.6B(2)(a) (wrongful death).

§ 7.14B Accrual of Cause of Action

§ 7.14B(1) Discovery Rule

(1) *The discovery rule.* A medical-malpractice action must be commenced “within two years from the date when the injury is first discovered or in the exercise of reasonable care should have been discovered.” ORS 12.110(4).

NOTE: See § 7.14B(2)(a) regarding the rule when the plaintiff is a minor.

(2) *When discovery occurs.* The plaintiff “discovers” that he or she has a claim for malpractice when the plaintiff “knows or in the exercise of reasonable care should have known facts which would make a reasonable person aware of a *substantial possibility* that each of the three elements (harm, causation, and tortious conduct) exists.” *Gaston v. Parsons*, 318 Or 247, 256, 864 P2d 1319 (1994) (emphasis added).

(3) *Policy.* The general policy behind the discovery rule is to delay the running of the statute of limitations until the injured person knows or should have known in the exercise of reasonable care that he or she has a cause of action so

that the law does not deprive the plaintiff of a remedy before he or she could know of the wrong. *See* ORS 12.110(4); *Frohs v. Greene*, 253 Or 1, 4, 452 P2d 564 (1969).

(4) *Expert testimony*. The fact that a plaintiff did not have “confirmation that [her physician’s] conduct was outside the standard of care required of physicians until her attorney had occasion to have the medical information reviewed by other physicians” did not delay the running of the statute of limitations. *Greene v. Legacy Emanuel Hosp. Health Care Ctr.*, 165 Or App 543, 549, 997 P2d 265 (2000), *aff’d*, 335 Or 115, 60 P3d 535 (2002). “[A]ctual knowledge of malpractice is not required; only a ‘substantial possibility’ of tortious conduct must exist.” *Greene*, 165 Or App at 549 (quoting *Gaston*, 318 Or at 256).

(5) *Action accrues from date of injury*. A cause of action “accrues from the date the injury is, or should have been, discovered, not from the time the full extent of damages is ascertained.” *Raethke v. Oregon Health Sci. Univ.*, 115 Or App 195, 198, 837 P2d 977 (1992), *rev den*, 315 Or 442 (1993) (the statute of limitations began running when the plaintiff discovered that the defendant’s negligence rendered her infertile, not later when the plaintiff discovered that her infertility was permanent).

§ 7.14B(2) Minors

§ 7.14B(2)(a) Appointment of Guardian *Ad Litem*

The statute of limitations for medical malpractice begins to run when the plaintiff has “knowledge, actual or implied, of facts that, if proved, will at least raise an issue of fact on each element of the claim.” *Banda By & Through Banda v. Danner*, 87 Or App 69, 73, 741 P2d 514 (1987), *aff’d*, 307 Or 302, 766 P2d 385 (1988) (quoting *Duncan v. Augter*, 62 Or App 250, 255, 661 P2d 83, *rev den*, 295 Or 122 (1983)). (Note that the *Banda* decision was abrogated by *Cooksey By & Through Cooksey v. Portland Pub. Sch. Dist. No. 1*, 143 Or App 527, 532, 923 P2d 1328, *rev den*, 324 Or 394 (1996).) *See* § 7.14B(1).

In the *Banda* case, the court discussed “who is the ‘plaintiff’ whose knowledge begins the running of the [notice period described in the Oregon Tort Claims Act]” when the plaintiff is a minor. *Banda By & Through Banda*, 87 Or App at 73. The appellate court held that a mother’s knowledge that a doctor may have been negligent in causing her child’s brain damage was not attributable to her child before the mother was appointed as the child’s guardian *ad litem*. *Banda By & Through Banda*, 87 Or App at 74. Thus, the mother’s knowledge did not trigger the running of the notice period until the mother was appointed as the child’s guardian *ad litem*, at which time the mother “gained the legal ability to act in court on [her child’s] behalf with regard to this claim.” *Banda By & Through Banda*, 87 Or App at 74.

CAVEAT: But see *Perez By & Through Yon v. Bay Area Hosp.*, 315 Or 474, 482, 846 P2d 405 (1993), in which the court held that the notice provision for a minor's claim under the Oregon Tort Claims Act (ORS 30.275(2)) is not tolled pending the appointment of a guardian *ad litem*. The court in *Perez* noted that *Banda* is not entitled to precedential weight because *Banda* was affirmed by an equally divided court. *Perez*, 315 Or at 478 n 5. See also *Cooksey By & Through Cooksey*, 143 Or App at 532 (which abrogated the decision in *Banda*). See § 7.3B.

PRACTICE TIP: If a minor has a claim against a public body, the notice period under ORS 30.275 is not tolled pending the appointment of a guardian *ad litem*. See § 7.3B. But see the exceptions to the notice requirement under ORS 30.275(8).

NOTE: In the absence of fraud, deceit, or misleading representation, the period of ultimate repose for a minor's action based on medical negligence is five years from the date of the treatment, omission, or operation. ORS 12.110(4). Moreover, the period of suspension for minority tolling under ORS 12.160(1) is limited to five years by ORS 12.110(4). *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008).

See § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations).

§ 7.14B(2)(b) Appointment of Conservator

The five-year extension of statutes of limitations for minors and insane persons under ORS 12.160 is not terminated by the commencement and subsequent dismissal of a claim by a conservator or by the appointment of a conservator. *Luchini By & Through Luchini v. Harsany*, 98 Or App 217, 221–23, 779 P2d 1053, *rev den*, 308 Or 608 (1989).

As long as the right to sue remains in the person, the appointment of a conservator does not remove the statutory extension of the statute of limitations for minors. *Luchini*, 98 Or App at 221–23.

§ 7.14B(2)(c) Child's Medical Bills

If a child's cause of action is tolled under ORS 12.160(1) (for causes of action arising on or after January 1, 2008), a cause of action for the recovery of damages for medical expenses incurred by a parent, guardian, or conservator of a child is tolled for the same period of time as the child's cause of action if the medical expenses result from the same wrongful act. ORS 12.160(5).

See § 2.6B(10)(a) to § 2.6B(3) (tolling a statute of limitations).

§ 7.14B(2)(d) Insurer's Advance Medical Payments

An insurer's advance medical payments without proper notification of the expiration of the applicable statute of limitations, as required by ORS 12.155, do

not suspend the statute of ultimate repose for negligence under ORS 12.115(1). See *Davis v. Blanchard*, 84 Or App 99, 102, 733 P2d 460 (1987).

§ 7.14C Continuing Treatment

§ 7.14C(1) Statute of Ultimate Repose

A medical-malpractice claim based on the continuing-treatment theory is subject to the five-year period of ultimate repose. *Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 455–57, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999) (citing with approval *Lesch v. DeWitt*, 118 Or App 397, 399–400, 847 P2d 888, *vac'd on other grounds*, 317 Or 585, 858 P2d 872 (1993)).

§ 7.14C(2) Prior Legislation

Before the enactment of ORS 12.110(4), the doctrine of “continuing treatment” allowed the argument that when treatment is ongoing, the entire course of treatment is considered to be a single action, and the claim accrues when treatment ceases. See *Shives v. Chamberlain*, 168 Or 676, 685, 126 P2d 28 (1942); *Hotelling v. Walther*, 169 Or 559, 565, 130 P2d 944 (1942). ORS 12.110(4) has abrogated the ability to argue that the statute of ultimate repose accrues based on the continuing-treatment theory. See *Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 455–57, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999).

NOTE: Although the history of ORS 12.110(4) illustrates that the provisions for the accrual of a cause of action for medical malpractice and its ultimate repose have evolved together, they are distinct. *Lesch v. DeWitt*, 118 Or App 397, 400 n 2, 847 P2d 888, *vac'd*, 317 Or 585, 858 P2d 872 (1993).

§ 7.14C(3) Analyze Claims Separately

The lawyer must carefully review the facts of each case to determine whether the facts could give rise to different types of injuries or claims. Claims can be factually and legally distinct. “Just because one specification of negligence in a complaint is barred by the statute of limitations, it does not necessarily follow that a specification of negligence having a different factual or legal basis is barred.” *Gaston v. Parsons*, 318 Or 247, 260, 864 P2d 1319 (1994) (the plaintiff’s informed-consent claim that was time-barred did not bar the plaintiff’s medical-negligence claim as a matter of law).

The plaintiff’s discovery of one injury may not apply to the accrual of a cause of action for a separate and distinct injury. *McClure v. LeRoy*, 133 Or App 229, 235, 890 P2d 425 (1995) (the plaintiff’s later discovery of the alleged improper setting of one crown, which was not connected to harm caused by two other failed crowns, was a separate injury, which was not barred by the statute of limitations under ORS 12.110(4)). Compare *Raethke v. Oregon Health Sci. Univ.*, 115 Or App 195, 199, 837 P2d 977 (1992), *rev den*, 315 Or 442 (1993) (the statute of limitations began running when the plaintiff discovered that the defendant’s

negligence rendered her infertile, not later when the plaintiff discovered that her infertility was permanent).

§ 7.14D References

See generally 1 *Torts* ch 11 (OSB Legal Pubs 2012); 2 *Torts* chs 28, 32 (OSB Legal Pubs 2012).

§ 7.15 PESTICIDES

§ 7.15A Liability Claims Procedure

§ 7.15A(1) Preservation of Claim—In General

To preserve a claim arising out of the use or application of pesticides against a landowner, a person for whom the pesticide was applied, or a pesticide operator, a claimant must:

(1) File a report of loss with the Oregon Department of Agriculture within 60 days after the loss occurred, within 60 days after the loss is discovered, or, if the loss occurred from damage to growing crops, before 50 percent of the crop is harvested, ORS 634.172(1)(a);

(2) Mail or personally deliver a true copy of the report to (a) the landowner or pesticide operator who is allegedly responsible for the loss and (b) the person for whom the pesticide was applied if that person is not the claimant, ORS 634.172(1)(b) to (c); *see also* ORS 12.272 (the report must be mailed or personally delivered to the landowner or pesticide operator who is responsible for the loss and the person for whom the pesticide was applied if that person is not the person commencing the action).

See § 7.15B for the definition of *pesticide operator*. See § 7.15A(2) regarding preserving a claim against a government agency.

§ 7.15A(2) Preservation of Claim against a Government Agency

To preserve a claim arising out of the use or application of pesticides by a government agency, a claimant must:

(1) File a report of loss with the Oregon Department of Agriculture within 60 days after the loss occurred; within 60 days after the loss is discovered; or, if the loss occurred from damage to growing crops, before 50 percent of the crop is harvested;

(2) Mail or personally deliver a true copy of the report to (a) the landowner or pesticide operator who is allegedly responsible for the loss and (b) the person for whom the pesticide was applied if that person is not the person commencing the action.

ORS 634.172(1).

Subsection (2) of the statute provides as follows:

Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the [Oregon Department of Agriculture], and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within the time provided in [ORS 634.172(1)].

ORS 634.172(2). *But see* ORS 12.272 (the report must be mailed or personally delivered to the landowner or pesticide operator who is responsible for the loss and the person for whom the pesticide was applied if that person is not the person commencing the action).

See § 7.15B for the definition of *pesticide operator*.

§ 7.15B “Pesticide Operator” Defined

The term *pesticide operator* is defined as “a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.” ORS 634.006(13).

§ 7.15C Records

Pesticide operators must prepare and maintain records on forms approved by the Oregon Department of Agriculture for at least three years from the date that pesticides are applied. ORS 634.146(1)–(2). See § 7.15B for the definition of *pesticide operator*.

On the request of “any owner of field crops on which pesticides were applied,” the pesticide operator must, within 40 days after applying the pesticides, provide a written statement setting forth certain information, including the location of the property to which the pesticides were applied, the name and strength of pesticides used, and the date and approximate time of application. ORS 634.146(1), (3).

§ 7.15D References

See generally Real Estate Disputes ch 9 (Oregon CLE 1993 & Supp 2002). (NOTE: Effective in 2015, *Real Estate Disputes* will be *Oregon Real Estate Deskbook*. The information from chapter 9 of *Real Estate Disputes* will be found in chapter 60 of the deskbook.)

§ 7.16 PRODUCTS LIABILITY

NOTE: “A physician licensed pursuant to ORS chapter 677 is not a manufacturer, distributor, seller or lessor of a product for the purposes of [a products liability civil action under] ORS 30.900 to 30.920 if the product is provided by the physician to a patient as part of a medical procedure and the physician was not involved in the design or manufacture of the product.” ORS 30.902.

§ 7.16A Statute of Limitations—In General

With certain exceptions, a products-liability civil action for personal injury or property damage arising on or after January 1, 2010, must be commenced no later than two years after the date on which “the plaintiff discovers, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the product, or the causal relationship between the injury or damage and the conduct of the defendant.” ORS 30.905(1).

NOTE: ORS 30.905 does not apply to certain types of products-liability actions, which are subject to separate statutes of limitations. *See, e.g.*, ORS 30.905(5), ORS 12.135 (manufactured dwellings); ORS 30.907 (asbestos-related disease); ORS 30.908 (breast implants); ORS 30.928(3) (R-type metal halide or mercury vapor light bulbs).

See also § 7.16C (an action for wrongful death based on a products-liability civil action), § 7.16D (the statute of limitations is tolled during minority).

The term *product-liability civil action* is broadly defined in ORS 30.900. However, not every claim brought with respect to a product is a products-liability civil action. Furthermore, “[w]hether a claim is based on a product defect or failure under ORS 30.900 is not always readily discernable [*sic*].” *Weston v. Camp’s Lumber & Bldg. Supply, Inc.*, 205 Or App 347, 358, 135 P3d 331, *adh’d to as modified on recons*, 206 Or App 761, 138 P3d 931 (2006), *rev dismissed as improvidently granted*, 342 Or 665 (2007).

In *Weston*, 205 Or App at 358, the Oregon Court of Appeals stated that “two guiding principles inform [its] determination of whether a claim is based on a product defect or failure within the meaning of ORS 30.900 and ORS 30.905”:

First, our analysis is driven by the operative facts alleged in the claim at issue, regardless of how the claim is captioned or characterized by the plaintiff. In other words, we look beyond the label of the claim to the operative facts alleged; it is from those facts that we discern the gravamen or predominant characteristic of the claim. Second, if the gravamen of the claim is, in fact, one that is based on a product defect or failure as defined by ORS 30.900, ORS 30.905 will apply regardless of the characterization of the theory given to it by the plaintiff.

CAVEAT: The lawyer should consider with care whether the claim is one for a product-liability civil action before relying on the two-year statute contained in ORS 30.905, as opposed to a separate statute of limitation for injury to person (ORS 12.110), injury to property (ORS 12.080), breach of an express warranty under the Uniform Commercial Code based on products liability (ORS 72.7250(1); *see* § 14.3A(6)(a)), or some other statute.

The general statute of limitations set forth in ORS 30.905(1) is subject to the limitation imposed by ORS 30.905(2) (general statute of ultimate repose for products-liability actions). *See* § 7.16B.

§ 7.16B Statute of Ultimate Repose—In General

In general, a products-liability civil action for personal injury or property damage arising on or after January 1, 2010, must be commenced before the later of:

(1) “Ten years after the date on which the product was first purchased for use or consumption,” ORS 30.905(2)(a); or

(2) “The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported,” ORS 30.905(2)(b).

NOTE: The statute of ultimate repose for products-liability actions was changed by the Oregon Legislature in 2009. The reader is cautioned to look elsewhere for statutes applying to claims for personal injury or property damage arising before January 1, 2010.

NOTE: ORS 30.905 does not apply to certain types of products-liability actions, which are subject to separate statutes of ultimate repose. *See, e.g.*, ORS 30.907 (asbestos-related disease); ORS 30.908 (breast implants); ORS 30.928(3) (R type metal halide or mercury vapor light bulbs); ORS 12.135, ORS 30.905(5) (manufactured dwellings).

See § 7.16C (wrongful death based on a products-liability civil action).

§ 7.16C Wrongful Death

With certain exceptions, an action for wrongful death based on a products-liability civil action arising on or after January 1, 2010, must be commenced no later than three years after the decedent, the decedent’s personal representative, or a person for whose benefit an action could be brought under ORS 30.020 “discovers, or reasonably should have discovered, the causal relationship between the death and the product, or the causal relationship between the death and the conduct of the defendant.” ORS 30.905(3).

NOTE: ORS 30.905 does not apply to certain types of products-liability actions, which are subject to separate statutes of limitations and repose. *See, e.g.*, ORS 30.907 (asbestos-related disease); ORS 30.908 (breast implants); ORS 30.928(3) (R type metal halide or mercury vapor light bulbs); ORS 12.135, ORS 30.905(5) (manufactured dwellings). *See* § 7.16F(1) to § 7.16F(7).

Claims for wrongful death under ORS 30.905(3) are also subject to the limitations imposed by ORS 30.905(4). An action for wrongful death based on a products-liability claim arising on or after January 1, 2010, must be commenced before the earlier of:

- (1) “Three years after the death of the decedent,” ORS 30.905(4)(a);
- (2) “Ten years after the date on which the product was first purchased for use or consumption,” ORS 30.905(4)(b); or
- (3) “The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported,” ORS 30.905(4)(c).

NOTE: The statute of ultimate repose for product-liability cases was changed by the Oregon Legislature in 2009.

§ 7.16D Claims Arising during Minority

ORS 12.160 suspends the statute of limitations for the claims of minors who are entitled to bring an action under ORS 12.010 to 12.050, ORS 12.070 to 12.250, or ORS 12.276. The limitations period “is tolled for so long as the person is younger than 18 years of age.” ORS 12.160. However, the time for commencing an action may not be extended “for more than five years, or for more than one year after the person attains 18 years of age, whichever occurs first.” ORS 12.160(2).

In *Kearney v. Montgomery Ward & Co.*, 55 Or App 641, 639 P2d 682 (1982), a 14-year-old plaintiff was injured while riding an allegedly defective bicycle. A products-liability action was not commenced until more than two years after the injury. The defendant argued that the action was barred because it was not commenced within the two-year limitations period set forth in ORS 30.905(2) for bringing a products-liability action. The court held that ORS 12.160, which tolls a limitations period during a plaintiff’s minority, applied to toll the statute of limitations during the plaintiff’s minority under the products-liability statute (ORS 30.905(2)). *Kearney*, 55 Or App at 645. *See* ORS 12.110(1).

See also § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations); § 7.28C(2), § 2.7G(1) (minority does not toll statutes of ultimate repose).

§ 7.16E Exception for Products Provided by Physicians

For the purposes of a products-liability civil action under ORS 30.900 to 30.920, a licensed physician “is not a manufacturer, distributor, seller or lessor of a product . . . if the product is provided by the physician to a patient as part of a medical procedure and the physician was not involved in the design or manufacture of the product.” ORS 30.902.

§ 7.16F Products-Liability Actions—Specific Products

§ 7.16F(1) Asbestos

The statute of ultimate repose is generally 10 years for actions against any person who performs the construction, alteration, or repair of any improvement to real property. ORS 12.135. However, a products-liability action arising from asbestos-related disease is governed by ORS 30.907.

Any products-liability action for damages resulting from asbestos-related disease must be commenced within two years after the date on which “the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the disease and the cause of [the disease].” ORS 30.907.

The question regarding when a person “should have discovered” the asbestos-related disease and its cause is guided by the meaning the Oregon Supreme Court has given to that phrase in cases interpreting ORS 12.110(4). The question “will turn, among other things, on the evidence regarding the nature of that disease, the degree to which the disease remains latent after exposure, and the difficulty in diagnosing asbestos as the cause of plaintiff’s conditions.” *Keller v. Armstrong World Indus., Inc.*, 342 Or 23, 37, 147 P3d 1154 (2006).

A products-liability action for damages resulting from asbestos-related disease is not subject to ORS 12.135, ORS 30.905 (products-liability actions in general), or any other statute of limitations or statute of ultimate repose. ORS 30.907(2); *Purcell v. Asbestos Corp., Ltd.*, 153 Or App 415, 427, 959 P2d 89, *as modified on recons*, 155 Or App 1, 963 P2d 729 (1998), *rev den*, 329 Or 438 (1999) (contrasting the applicability of ORS 30.907 with the statute of ultimate repose for improvements to real property provided in ORS 12.135, and holding that ORS 12.135 does not apply when liability and damages flow from manufacturing, selling, or delivering an asbestos product).

Note, however, that ORS 30.907 applies only when the asbestos-related products-liability action is one for “disease.” In a case involving purely economic damage from the installation of an asbestos-containing product, the Ninth Circuit Court of Appeals applied the statute of ultimate repose in ORS 12.135. *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F3d 1255 (9th Cir 1993), *cert den*, 512 US 1236 (1994); *but see Purcell*, 153 Or App at 429 (questioning the analysis in the *Sch. Dist. No. 1J* case without deciding whether it was “correct, as far as it went”).

§ 7.16F(2) Breast Implants

With some exceptions, products-liability actions for death or injury arising from breast implants are specifically exempt from ORS 30.905 or any other Oregon statute of limitations or statute of ultimate repose. ORS 30.908(2). Such actions are governed by ORS 30.908.

A products-liability civil action alleging death, injury, or damage resulting from breast implants must be commenced no later than two years after the date on which the plaintiff “first discovered or, in the exercise of reasonable care, should have discovered”:

- (1) The death, specific injury, disease, or damage;
 - (2) The tortious nature of the act or omission giving rise to the claim;
- and
- (3) All other elements required to establish the plaintiff’s claim for relief.

ORS 30.908(1).

For the purposes of ORS 30.908(1), an action for wrongful death must be commenced no later than two years after the earliest date that the discoveries required by ORS 30.908(1) are made by any of the following persons: (1) the decedent, (2) the personal representative for the decedent, or (3) any person for whose benefit the action could be brought. ORS 30.908(3).

Subsections (1) to (3) of ORS 30.908 do not apply to an action against a person who “supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component,” ORS 30.908(4), and such a person remains subject to the limitations set forth in ORS 30.020 (wrongful death) and ORS 30.905 (products-liability civil action), if:

- (1) “The person did not manufacture breast implants containing silicone, silica or silicon as a component at any time,” ORS 30.908(4)(a); and
- (2) “The person was not owned by and did not own a business that manufactured breast implants containing silicone, silica or silicon as a component at any time,” ORS 30.908(4)(b).

For purposes of ORS 30.900 to 30.920, a healthcare facility licensed under ORS chapter 442 is not a manufacturer, distributor, seller, or lessor of a breast implant if “the implant is provided by the facility to a patient as part of a medical implant procedure.” ORS 30.908(5).

NOTE: For the purposes of a products-liability civil action under ORS 30.900 to 30.920, a licensed physician “is not a manufacturer, distributor, seller or lessor of a product . . . if the product is provided by the physician to a patient as part of a medical procedure and the physician was not involved in the design or manufacture of the product.” ORS 30.902.

§ 7.16F(3) Sidesaddle Gas Tank

“A civil action against a manufacturer of pickup trucks for injury or damage resulting from a fire caused by rupture of a sidesaddle gas tank in a vehicle collision . . . must be commenced not later than two years after the injury or damage occurs.” ORS 12.278(1). This provision also applies to any products-

liability actions and actions based on negligence against the manufacturer. ORS 12.278(1).

Wrongful-death actions against manufacturers under this provision, including products-liability and negligence claims, must be brought within three years after the death. ORS 12.278(1).

Lawsuits for death, injury, or damage resulting from a fire caused by the rupture of a sidesaddle gas tank in a vehicle collision are not subject to ORS 12.115, ORS 30.020, ORS 30.905, or any other Oregon statute of limitations or statute of ultimate repose. ORS 12.278(2).

§ 7.16F(4) COX-2 Inhibitors

A civil action for injury—including a products-liability action and an action based on negligence—alleging injury “resulting from the use of a COX-2 inhibitor” must be commenced no later than four years after the plaintiff “first discovered, or in the exercise of reasonable care should have discovered, the injury and the causal relationship between the injury and the product, or the causal relationship between the injury and the conduct of the defendant.” Or Laws 2007, ch 536, § 1(2), *compiled as a note after* ORS 30.927 (2013).

NOTE: This provision, which was added by the 2007 Oregon Legislature, exempts claims relating to the use of COX-2 inhibitors from the limitations periods set forth in ORS 30.905(2) (products-liability actions). However, the exception applies only to causes of action that arose on or before January 1, 2007. Or Laws 2007, ch 536, § 2(1). Thus, claims arising after January 1, 2007, are subject to the same statutory time limits as other products-liability or negligence actions under ORS 30.020 and ORS 30.905. Furthermore, the provision does not revive causes of action for which a judgment was entered before January 1, 2007. Or Laws 2007, ch 536, § 2(2).

§ 7.16F(5) Manufactured Dwellings

ORS 30.905 (which sets forth the limitations periods for products-liability actions) “does not apply to a civil action brought against a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010.” ORS 30.905(5). Actions of this type are subject to the statute of limitations imposed in ORS 12.135. ORS 30.905(5).

§ 7.16F(6) R Type Metal Halide or Mercury Vapor Light Bulbs

A products-liability action for damages caused by “R type metal halide or mercury vapor light bulbs” must be commenced no later than two years after the date on which the plaintiff “first discovered, or in the exercise of reasonable care should have discovered, the injury and the causal relationship between the injury and the conduct of the defendant.” ORS 30.928(2).

The 2009 Oregon Legislature enacted this provision exempting personal-injury and wrongful-death claims alleging injury from R type metal halide or mercury vapor light bulbs from ORS 30.905 or any other statute of limitation or statute of ultimate repose. ORS 30.928(3).

NOTE: The statute does not specifically mention actions for wrongful death. However, Oregon Laws 2009, chapter 485, section 12, *compiled as a note after* ORS 30.928 (2009), provides that the statute “applies only to *deaths*, personal injuries or property damage that occur on or after [January 1, 2010]” (emphasis added).

§ 7.16F(7) Damage Caused by Extendable Equipment’s Contact with Power Lines

An action against “a manufacturer of extendable equipment” for injury, death, or other damage “arising out of contact with power lines, including any product liability action under ORS 30.900 to 30.920 and any action based on negligence, must be commenced not later than two years after the injury or damage occurs.” ORS 12.282(1). Such an action is not subject to ORS 12.115, ORS 30.020, ORS 30.905, or any other Oregon statute of limitations or repose. ORS 12.282(2).

§ 7.17 ACTIONS AGAINST SKI RESORTS

§ 7.17A Notice

§ 7.17A(1) Notice of Skier’s Personal Injury

A skier injured at a ski resort must notify the ski area operator of the injury by registered or certified mail within 180 days after the injury, or within 180 days after the skier discovers or reasonably should have discovered the injury. ORS 30.980(1).

§ 7.17A(2) Notice of Skier’s Wrongful Death

If an injury to a skier results in the skier’s death, the decedent’s personal representative, or any person who may maintain an action for the wrongful death of the skier under ORS 30.020, must notify the ski area operator within 180 days after the date of death. However, notice of death is not necessary if the skier notified the ski area operator of the injury within 180 days after the injury. ORS 30.980(2).

§ 7.17A(3) Failure to Give Notice

Failure to provide a ski area operator with notice of a skier’s injury or death as required by ORS 30.980 bars a claim for the skier’s injury or wrongful death unless:

- (1) The ski area operator had knowledge of the injury or death within 180 days after its occurrence;
- (2) Good cause existed for failure to give notice; or

(3) The ski resort operator failed to inform the skier of the notice procedures and the consequences of failure to give notice.

ORS 30.980(4)–(5).

§ 7.17B Statute of Limitations

An action against a ski area operator to recover damages for injuries to a skier must be commenced within two years of the date of the injury. ORS 30.980(3). However, ORS 12.160 (suspension of a statute of limitations for disability) and ORS 12.190 (effect of death on a limitations period) apply to such actions. ORS 30.980(3).

§ 7.18 COMPENSATION OF VICTIMS OF CRIME—COMPENSABLE CRIMES

Oregon law affords victims of crime a number of rights, including the right to restitution. *See, e.g.*, ORS 137.106 (a crime victim is entitled to full restitution for economic damages caused by a defendant’s criminal conduct); *see also* Or Const, Art I, § 42(1)(d). For a thorough discussion on the rights of crime victims, see 3 *Criminal Law* chapter 34 (OSB Legal Pubs 2013).

Under ORS 147.005 to 147.367, a crime victim may be eligible for compensation through the Criminal Injuries Compensation Account administered by the Oregon Department of Justice. *See* ORS 147.225.

Sections 7.18A to § 7.18F discuss the compensation of a crime victim for a “compensable crime” under ORS 147.005 to 147.367. *See* § 7.18B (definition of *compensable crime*), § 7.18A (application for an award of compensation), § 7.18C (eligibility).

§ 7.18A Application for Award of Compensation

Notwithstanding the two-year statute of limitations in ORS 12.110 (general statute of limitations for injuries), the victim of a “compensable crime” or the victim’s representative may apply to the Oregon Department of Justice (DOJ) for an award of compensation at any time within five years after the commission of the compensable crime. ORS 147.015, ORS 147.065. *See* § 7.18B for the definition of *compensable crime*.

An applicant for compensation under ORS 147.005 to 147.367 must file the application under oath on a form furnished by the DOJ. ORS 147.105(1).

§ 7.18B Compensable Crime Defined

ORS 147.005 defines the term *compensable crime* as “abuse of corpse in any degree or an intentional, knowing, reckless or criminally negligent act that results in injury or death of another person and that, if committed by a person of full legal capacity, would be punishable as a crime in this state.” ORS 147.005(4).

NOTE: Before being amended by the 2013 Legislature, the statute defined *compensable crime* as “abuse of corpse in any degree or an inten-

tional, knowing, reckless or criminally negligent act that results in *serious bodily* injury or death of another person and that, if committed by a person of full legal capacity, would be punishable as a crime in this state.” *Former* ORS 147.005(4) (2013) (emphasis added).

§ 7.18C Eligibility for Award

Pursuant to ORS 147.015, a person is eligible for an award of compensation under ORS 147.005 to 147.367 for a compensable crime if:

(1) “The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable crime that has resulted in or may result in a compensable loss,” ORS 147.015(1)(a);

(2) “The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the [Oregon] Department of Justice finds [that] good cause exists for the failure of notification,” ORS 147.015(1)(b);

(3) “The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant, or the department has found that the applicant’s failure to cooperate was for good cause,” ORS 147.015(1)(c);

(4) “The application for compensation is not the result of collusion between the applicant and the assailant of the victim,” ORS 147.015(1)(d);

(5) “The death or injury to the victim was not substantially attributable to the wrongful act of the victim or substantial provocation of the assailant of the victim,” ORS 147.015(1)(e); and

(6) The application for an award of compensation is filed with the Oregon Department of Justice within one year of the victim’s injury or within “such further extension of time as the department[,] for good cause shown, allows,” ORS 147.015(1)(f).

NOTE: Oregon Laws 2009, chapter 272, section 2, effective January 1, 2010, provides that a person is eligible for an award of compensation under ORS 135.905 (now repealed) and ORS 147.005 to 147.367 if: “(1) The person meets the requirements of ORS 147.015; and (2) The victim was related to or shared the same household as the assailant between January 1, 1978, and September 28, 1987.”

NOTE: ORS 147.345(1) provides that “[t]he acceptance of an award made pursuant to ORS 147.005 to 147.367 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant or recipient against the assailant or any other person or entity liable for the injury constituting the basis for the award.”

§ 7.18D Amended Application for Compensation

An applicant for compensation under ORS 147.005 to 147.367 must file the application under oath on a form furnished by the Oregon Department of Justice. ORS 147.105(1).

“An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the [Oregon Department of Justice] has completed its consideration of the original application.” ORS 147.105(4). Such material is considered to have been filed at the same time as the original application. ORS 147.105(5).

§ 7.18E Order; Review of Order

After processing an application for compensation filed under ORS 147.105 for a compensable crime, the Oregon Department of Justice (DOJ) will enter an order stating its findings of fact and its “decision as to whether or not compensation is due under ORS 147.005 to 147.367.” ORS 147.135.

An applicant who disagrees with an order entered under ORS 147.135 may request review by the DOJ. The DOJ must notify the applicant of its decision within 30 days of the DOJ’s receipt of the request for review. ORS 147.145.

Adult applicants “have a 90-day period after an initial determination order is entered to request reconsideration” by the DOJ. OAR 137-076-0056(1). The DOJ may consider whether a “good cause” exception exists for requests received after the 90-day period. OAR 137-076-0056(1).

The time limit for applicants under the age of 21 is within three years of the initial denial or reduction order or when the child victim attains the age of 21, whichever occurs later. OAR 137-076-0056(2).

An applicant who disagrees with the DOJ’s decision on review may appeal to the Workers’ Compensation Board. ORS 147.155. *See* § 7.18F.

§ 7.18F Appeal to Workers’ Compensation Board

If an applicant for compensation under the compensable-crimes statutes disagrees with the decision of the Oregon Department of Justice (DOJ) on review (*see* § 7.18E), the applicant may appeal in writing to the Workers’ Compensation Board (WCB).

The WCB must “conduct a hearing upon at least 10 days’ notice by mail to all interested persons.” ORS 147.155(3). The WCB’s decision is final and is not subject to further administrative or judicial review. ORS 147.155(5); OAR 438-082-0050(2).

NOTE: “Upon its own motion or the request of any interested party, within 30 days after a final decision of the [WCB] the [WCB] may withdraw its decision for reconsideration.” OAR 438-082-0050(1). The WCB may “affirm its previous decision, issue a new order or make such other disposition of the case as it deems justified.” OAR 438-082-0050(1).

§ 7.18G References

See 1 *Torts* ch 1 (OSB Legal Pubs 2012); 3 *Criminal Law* ch 34 (OSB Legal Pubs 2013).

§ 7.19 ELDER FINANCIAL ABUSE

An elderly or vulnerable person (as defined in ORS 124.100(1)) who suffers damage because of financial abuse “may bring an action against any person who has caused the . . . financial abuse or who has permitted another person to engage in . . . financial abuse.” ORS 124.100(2). See *Elder Law* ch 10 (Oregon CLE 2000 & Supp 2005). An action for financial abuse must be commenced within seven years after the discovery of the conduct described in ORS 124.110 that gives rise to a cause of action. ORS 124.130. No appellate case in Oregon defines “discovery” for the purposes of the statute. See chapters 4 and 6.

In *Landauer v. Landauer*, 221 Or App 19, 27, 188 P3d 406 (2008), the court assumed without deciding that testimony by a father that he did not learn of a trust in his name until eight years after it was made was relevant to determining when the statute of limitations started to run. The act may or may not incorporate the discovery standard applied elsewhere.

§ 7.20 LIQUOR LIABILITY

§ 7.20A In General

In general, an action for the wrongful death of a person is governed by the three-year statute of limitations set forth in ORS 30.020(1). An action to recover damages for injuries not resulting in death are governed by the two-year limitation period contained in ORS 12.110(1).

Oregon’s liquor-liability law, which limits the liability of servers of alcohol for injuries sustained by third parties, imposes notice requirements on a plaintiff who brings an action for damages caused by an intoxicated patron or guest. ORS 471.565; *Grady v. Cedar Side Inn, Inc.*, 154 Or App 622, 630, 963 P2d 36 (1998). See § 7.20B(1) to § 7.20B(3)

§ 7.20B Notice of Claim Required—Time Limits

§ 7.20B(1) Wrongful Death (within One Year)

An action for wrongful death caused by an intoxicated patron or guest may only be brought against a licensee, permittee, or social host if the person bringing the claim has given the licensee, permittee, or social host notice of the claim within one year after the date of death, or within one year after the person asserting the claim discovers or reasonably should have discovered the existence of the claim, whichever is later. ORS 471.565(3)(a). See § 7.20B(3) (tolling the notice period).

§ 7.20B(2) Injuries Other Than Wrongful Death (within 180 Days)

An action for injuries other than wrongful death caused by an intoxicated patron or guest may only be brought against a licensee, permittee, or social host if the person bringing the claim has given the licensee, permittee, or social host notice of the claim within 180 days after the injury occurs, or within 180 days after the person asserting the claim discovers or reasonably should have discovered the existence of the claim, whichever is later. ORS 471.565(3)(b). *See* § 7.20B(3) (tolling the notice period).

§ 7.20B(3) Tolling Notice Period

Under Oregon's liquor-liability law, the time provided for the giving of notice of claim against a server of alcohol does not include any period during which:

- (1) "The claimant is under 18 years of age," ORS 471.565(4)(a);
- (2) "The claimant is unable to give notice by reason of the injury or by reason of being financially incapable, as defined in ORS 125.005, or is incapacitated, as defined in ORS 125.005," ORS 471.565(4)(b); or
- (3) "The claimant is unable to determine that the licensee, permittee or social host is liable because the patron or guest who caused the damages asserts a right against self-incrimination and cannot be compelled to reveal the identity of the licensee, permittee or social host, or cannot be compelled to reveal facts that would establish the liability of the licensee, permittee or social host," ORS 471.565(4)(c).

§ 7.20C Form of Notice under Liquor-Liability Law

Notice of a claim under the liquor-liability law may be given in several manners. ORS 471.565(5). *See* § 7.20C(1) to § 7.20C(4).

§ 7.20C(1) Formal Notice

Formal notice of a claim under the liquor-liability law may be given in one of several methods. ORS 471.565(5)(a), (6). Formal notice must:

- (1) Be in writing;
- (2) Be mailed to, or personally served on, the licensee, permittee, or social host; and
- (3) Contain all of the following:
 - (a) "A statement that a claim for damages is made against the licensee, permittee or social host";
 - (b) "A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant"; and
 - (c) The name and mailing address of the claimant.

ORS 471.565(6).

§ 7.20C(2) Actual Notice

A licensee, permittee, or social host is considered to have been given notice under the liquor-liability law if such person receives actual notice as described in ORS 471.565(7). ORS 471.565(5).

Actual notice means

any communication to a licensee, permittee or social host that gives the licensee, permittee or social host actual knowledge of time, place and circumstances of the claim, if the communication is such that a reasonable person would conclude that a particular person intends to assert a claim [for damages] against the licensee, permittee or social host.

ORS 471.565(7).

§ 7.20C(3) Notice by Commencement of Action within Specified Period of Time

Notice of a liquor-liability claim is established by the commencement of an action against a licensee, permittee, or social host within the notice periods specified in subsections (3) and (4) of ORS 471.565. ORS 471.565(5)(c).

§ 7.20C(4) Payment on Claim Satisfies Notice Requirement

Notice of a liquor-liability claim is established if “[a]ny payment on the claim is made to the claimant by or on behalf of the licensee, permittee or social host.” ORS 471.565(5)(d).

§ 7.20D References

See 1 Torts ch 14 (OSB Legal Pubs 2012).

§ 7.21 STALKING

§ 7.21A Statute of Limitations

An action under the stalking statute must be commenced within two years of the first, not the last, of the “repeated” contacts relied on by the plaintiff. ORS 30.866(6); *Jones v. Lindsey*, 193 Or App 674, 681, 91 P3d 781 (2004) (an incident that “occurred more than two years before the petition was filed . . . cannot be counted as one of the two or more unwanted contacts required by the statute”); *Smith v. Di Marco*, 207 Or App 558, 563, 142 P3d 539 (2006) (an incident that occurred more than two years before the petition was filed could not be considered an “unwanted contact” under the terms of the statute, but could be considered as “context for other contacts that occurred within two years of the filing of the petition”).

§ 7.21B References

See 1 Family Law ch 4 (OSB Legal Pubs 2013).

§ 7.22 DEATH OF A PARTY

§ 7.22A Death of Injured Person

§ 7.22A(1) Action for Wrongful Death

Generally, an action for wrongful death must be commenced within “three years after the injury causing the death of the decedent is discovered or reasonably should have been discovered by the decedent, by the personal representative or by a person for whose benefit the action may be brought under this section if that person is not the wrongdoer.” ORS 30.020(1).

NOTE: The “discovery rule” applies to wrongful-death actions. ORS 30.020(1). However, as discussed below, the three-year time period is limited by the decedent’s date of death and the statute of ultimate repose.

In any event, an action for wrongful death must be commenced no later than the earliest of:

- (1) “Three years after the death of the decedent”; or
- (2) “The longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing the injury, including but not limited to the statutes of ultimate repose provided for in” ORS 12.110(4), ORS 12.115, ORS 12.135, ORS 12.137, and ORS 30.905.

ORS 30.020(1)(a)–(b).

See also ORS 147.065 (extending the period to five years for an action based on a compensable crime).

See § 7.22A(2) (survival of actions), § 7.22A(3) (action for the death of an employee), § 7.22C (personal representative’s powers). *See also* § 7.18 to § 7.18F (compensable crimes); § 2.2G to § 2.2G(4) (death or disability of a party); § 2.18A to § 2.18D, § 7.3A to § 7.3B (governmental and public bodies); § 7.14A(7) (medical or dental malpractice resulting in wrongful death); § 7.16C (action for wrongful death based on a products-liability action); § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations); § 7.28B(6) (statute of ultimate repose); § 7.22A(3) (death of worker); § 7.23 (death resulting from a nuclear accident).

NOTE: A person claiming to be a beneficiary in a wrongful-death action may appeal an order of distribution or apportionment as though the order were a judgment of the circuit court. ORS 30.060. *See* ORS chapter 19.

§ 7.22A(2) Personal Representative May Continue or Commence Deceased Plaintiff’s Action

“Causes of action arising out of injuries to a person, caused by the wrongful act or omission of another, shall not abate upon the death of the injured person.” ORS 30.075(1). *See* ORS 115.305.

If, before his or her death, the decedent commenced an action for injuries within the limitations set forth in ORS 12.110 (two years), the action may be continued by the plaintiff's personal representative or successors-in-interest at any time within one year after the plaintiff's death. ORS 12.190(1); ORCP 34 B(1); ORS 30.075(1).

If the decedent did not commence, but could have maintained, an action against a wrongdoer for injuries, had the decedent lived, the personal representative of the decedent may maintain an action against the wrongdoer. The action must be commenced within three years of the injury if commenced by the personal representative after the injured person's death. ORS 30.075(1). *See also* ORS 12.190(1).

§ 7.22A(3) Death of Plaintiff Worker (Employer Liability Law)

If a worker dies by reason of a violation of the Employer Liability Law (ORS 654.305–654.336), the surviving spouse or children (including adopted children), and, if none, then the lineal heirs, and, if none, then the mother or father, “have a right of action without any limit as to the amount of damages which may be awarded.” ORS 654.325. If none of the persons entitled to maintain such action reside within Oregon, then the executor or administrator of a worker's estate may bring an action for the wrongful death of a worker “for their respective benefits and in the order above named.” ORS 654.325.

§ 7.22B Death of Wrongdoer

“Claims for relief arising out of injury or death of a person, caused by the wrongful act or negligence of another, shall not abate upon the death of the wrongdoer.” ORS 30.080.

If the plaintiff commenced an action against the wrongdoer before the wrongdoer died, the case may be continued against the wrongdoer's personal representative as described in ORCP 34 B(2).

If the plaintiff did not bring an action against the wrongdoer before the wrongdoer died, an action may be brought against the personal representative of the estate of the deceased wrongdoer. ORS 30.080, ORS 115.305. Damages that may be awarded include those enumerated in ORS 30.020(2), except for punitive damages. ORS 30.080.

If probate of the wrongdoer's estate has not been instituted within 60 days after the wrongdoer's death, the injured person or his or her personal representative may move the court for the appointment of an administrator of the wrongdoer's estate so that the injured person's claims may be brought against the estate. ORS 30.090.

The death of a wrongdoer may extend by one year the time for commencing an action against the personal representative of the wrongdoer's estate if the wrongdoer dies before the time for commencing an action expires. ORS 12.190(2).

§ 7.22C Personal Representative’s Powers: The Relation Back Doctrine

The duties and powers of the personal representative commence when the letters of the personal representative are issued. The powers of the personal representative relate back in time to give the acts of the personal representative made before appointment the same effect of those made after appointment. “A personal representative may ratify and accept acts on behalf of the estate done by others where those acts would have been proper for a personal representative.” ORS 114.255.

In *Rennie v. Pozzi*, 294 Or 334, 656 P2d 934 (1982), an action potentially beneficial to a decedent’s estate was timely commenced by a person who had good reason to believe that he could maintain that action as a duly appointed personal representative. Although the court later determined that the person’s appointment was in fact invalid, the court held that the person’s subsequent appointment as the personal representative after the statute of limitations had run on the underlying cause of action related back in time to the original filing of the action, at least when the defendants had not been prejudiced by the error and no significant change had occurred in the claim for relief alleged since the running of the statute.

§ 7.23 ACTION ARISING FROM A NUCLEAR ACCIDENT

An action arising from a nuclear incident that involves the release of radioactive material (except for releases from an act of war) and that causes bodily injury, sickness, or death must be commenced:

(1) “[W]ithin two years from the time an injured person discovers or reasonably could have discovered the injury and the causal connection between the injury and the nuclear incident”; or

(2) “[W]ithin two years from any substantial change in the degree of injury to the person arising out of a nuclear incident.”

ORS 12.110(5).

The statute of ultimate repose is 30 years from the date of the nuclear incident. ORS 12.137(3).

§ 7.24 FEDERAL ISSUES

§ 7.24A Choice of Law

A statute of limitations, statute of ultimate repose, or time limitations provided by other than Oregon law may apply because of choice-of-law principles. *See* § 2.15A to § 2.15B (conflicts of laws). In addition, federal law may supply the statute of limitations, statute of ultimate repose, or time limitation.

§ 7.24B Federal Enclaves

A federal enclave is property within a state that is under the jurisdiction of the federal government. *See Paul v. United States*, 371 US 245, 264–68, 83 S Ct 426, 9 L Ed 2d 292 (1963). Under the federal enclave doctrine,

federal jurisdiction over the newly-acquired land becomes exclusive. State law has effect in the enclave only if it was enacted before the land became a federal enclave (and assuming it is consistent with federal law), unless Congress has authorized the state to exercise authority (such as by enacting an assimilative statute) or powers are reserved to the state at the time of the transfer.

Naigan v. Nana Servs., LLC, No 12CV2648-LAB NLS, WL 5278641 at *1 (SD Cal Sept 18, 2013) (citing *Paul v. United States*, 371 US 245, 264, 268, 83 S Ct 426, 9 L Ed 2d 292 (1963); *Goodyear Atomic Corp. v. Miller*, 486 US 174, 180 n 1, 186, 108 S Ct 1704, 100 L Ed 2d 158 (1988)).

In *King v. E.I. DuPont De Nemours & Co.*, 741 F Supp 2d 699 (ED Pa 2010) (internal citations and footnotes omitted), the court analyzed the law:

Under the Erie doctrine, in cases heard on diversity jurisdiction, a federal court must apply state substantive law and federal procedural law. . . . For cases removed to federal court on the basis of federal question jurisdiction, where the assertion of jurisdiction is based on federal officer or federal enclave status, the *Erie* substantive/procedural dichotomy also applies with equal force. . . . In *Chevron Oil Co.*, the Supreme Court held that a federal court acting under federal enclave jurisdiction must apply Louisiana’s statute of limitations, as it is “coordinated with the substance of the [state] remedy” and not a mere procedural “housekeeping rule.”

King, 741 F Supp 2d at 701–02 (citing *Erie T. Co. v. Tompkins*, 304 US 64, 78, 58 S Ct 817 (1938); *Hanna v. Plumer*, 380 US 460, 473, 85 S Ct 1136, 14 L Ed 2d 8 (1965); *Chevron Oil Co. v. Huson*, 404 US 97, 92 S Ct 349, 30 L Ed 2d 296 (1971), *disapproved of by Harper v. Virginia Dep’t of Taxation*, 509 US 86, 113 S Ct 2510, 125 L Ed 2d 74 (1993); *Adams v. Alliant Techsystems Inc.*, 218 F Supp 2d 792, 796 (WD Va 2002) (holding that the National Parks Act “does not incorporate state procedural housekeeping rules, such as rules of evidence or civil procedure, [but] the Act does incorporate outcome determinative state law”)).

NOTE: When faced with a claim for personal injury or property damage on federal property, the lawyer must first determine whether the property is a federal enclave, whether specific legislation relates to this property or class of property, and what statute of limitations applies.

§ 7.24C Federal Tort Claims Act

The limitations provision applicable to tort claims against the United States, 28 USC section 2401(b), provides as follows:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years

after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

NOTE: Section 2401(b) has been held to be nonjurisdictional and subject to equitable tolling, without distinguishing between the six-month and two-year provisions. *Gallardo v. United States*, No 12-55255, WL 1424469 at *4 (9th Cir Apr 15, 2014).

Furthermore, 28 USC section 2675(a) provides that

[a]n action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

§ 7.25 ACTIONS INVOLVING TRIBAL LANDS, ENTITIES, AND PERSONS

NOTE: The discussion of substantive Indian law and jurisdiction in § 7.25A to § 7.25B(3) is necessary to put statute-of-limitations issues in context.

§ 7.25A Indian Tribes Are Generally Immune from Suit Unless Sovereign Immunity Is Waived

Indian tribes are separate sovereigns under the United States Constitution, along with states and the federal government. Special legal status is generally accorded only to what is known as “federally recognized Indian tribes.” An annual list (in reality, about every 14 months) of federally recognized Indian tribes is published in the Federal Register. *See Indian Entities Recognized & Eligible to Receive Servs. from the United States Bureau of Indian Affairs*, 79 FR 4748 (Jan 29, 2014) (available at <www.federalregister.gov/agencies/indian-affairs-bureau>).

Jurisdiction over a particular personal-injury or property-damage case involving an Indian tribe or an enrolled member of a tribe may depend on a variety of factors, including, but not limited to, the Indian status of the plaintiff or the defendant; whether any Indian involved is a member of the tribe where the accident or damage took place or is a member of a different tribe; the status of the land (e.g., trust or reservation status, “Indian country,” and rights-of-way) on

which the injury or damage occurred; the status of the tribe under federal law; whether the state or tribe in question is subject to what is known as Public Law 280; and, if a suit against a tribe for the actions of a tribal official or employee is contemplated, whether that person was employed pursuant to a federal or state grant as opposed to funded directly by the tribe in question. *See* Pub L 83-280, 67 Stat 590 (1953) (codified as amended at 18 USC section 1162, 28 USC section 1360, and 25 USC sections 1321 to 1326). The lawyer should consult an Indian law treatise for more in-depth discussion of these issues. *See* § 7.25B(2) for discussion on Public Law 280. *See* also § 7.25B(3) for further discussion on jurisdiction. *See Hinkle v. Abeita*, 283 P3d 877 (NM Ct App 2012), *cert den*, 294 P3d 1243 (NM 2012) (discussing many of these concepts).

Indian tribes and tribal employees, officials, and agents are generally immune from suit unless Congress has expressly authorized the suit, or the tribe has voluntarily waived its immunity. *Michigan v. Bay Mills Indian Cmty.*, ___ US ___, 134 S Ct 2024, 2030–32, 188 L Ed 2d 1071 (May 27, 2014); *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 US 751, 754, 118 S Ct 1700, 140 L Ed 2d 981 (1998); *Chance v. Coquille Indian Tribe*, 327 Or 318, 321, 963 P2d 638 (1998). Tribal sovereign immunity extends to both commercial and governmental activities of a tribe and to activities both within and without Indian country. *Bay Mills Indian Cmty.*, 134 S Ct at 2031–32; *Kiowa Tribe of Oklahoma*, 523 US at 760. It applies to suits for damages. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F2d 1269, 1271 (9th Cir 1991). It applies to “arms” of the tribe, including economic development ventures of the tribe (such as gaming operations). *Allen v. Gold Country Casino*, 464 F3d 1044, 1046–47 (9th Cir 2006). Tribal immunity protects tribal officials and employees acting within the scope of their authority. *Hardin v. White Mountain Apache Tribe*, 779 F2d 476, 479–80 (9th Cir 1985). Suits against tribal officials or employees in their individual capacities are also barred unless the alleged actions were not “under color” of the authority delegated by the tribe. *Hardin*, 779 F2d at 479–80. Suits for injunctive relief against tribal officials and employees responsible for unlawful acts may be permitted under an analogy set forth in *Ex parte Young*, 209 US 123, 28 S Ct 441, 52 L Ed 714 (1908). *Bay Mills Indian Cmty.*, 134 S Ct at 2035.

Tribes are also immune from state and federal legal process, such as subpoenas and discovery. *Bishop Paiute Tribe v. Cnty. of Inyo*, 275 F3d 893 (9th Cir 2002), *vacated and remanded on other grounds*, 538 US 701, 123 S Ct 1887, 155 L Ed 2d 933 (2003); *United States v. James*, 980 F2d 1314 (9th Cir 1992). Tribal members are not immune from suit, however, solely by virtue of their status as tribal members. *Puyallup Tribe, Inc. v. Dep’t of Game of State of Wash.*, 433 US 165, 172–73, 97 S Ct 2616, 53 L Ed 2d 667 (1977) (tribal members were not exempt from application of state fishery conservation measures).

This discussion of sovereign immunity is meant to emphasize that when a tribe does voluntarily waive its sovereign immunity, which it sometimes does in

“limited” fashion for personal-injury or property-damage cases, the time limitations and procedures set forth in such waiver must be strictly complied with because such waivers are narrowly construed by the courts; otherwise there is no waiver and the tribe is completely immune from suit.

NOTE: By “limited,” the authors are referring to the fact that no tribe waives its sovereign immunity in general fashion, exposing all of its assets and revenues to a damages award. Most tribes waive their sovereign immunity to the extent of available insurance, or for the value of a contract, or for assets of a particular tribal enterprise only, and do not allow punitive or other extraordinary damages. This is a limited waiver of the tribe’s sovereign immunity.

§ 7.25B Jurisdiction—Tribal, State, or Federal Court

Jurisdiction over a personal-injury action involving an Indian tribe or a tribal member may, depending on the facts, lie in tribal court, state court, federal court, or concurrently in one or more of those courts. Time limitations for filing suit vary with each court. *See* § 7.25B(1) to § 7.25B(3).

§ 7.25B(1) Tribal Court

When a sovereign waives its sovereign immunity, the general rule is that the sovereign consents to suit only in its own courts. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 US 89, 99, 99 n 9, 104 S Ct 900, 79 L Ed 2d 67 (1984) (“A State’s constitutional interest in immunity encompasses not merely *whether* it may be sued, but *where* it may be sued.” (subsequent history omitted; emphasis in original)); *Great N. Life Ins. Co. v. Read*, 322 US 47, 54, 64 S Ct 873, 88 L Ed 1121 (1944) (a clear declaration of a sovereign’s intent to submit a dispute to a court other than a court of its own creation must be found). This rule applies to Indian tribes. As a general matter, therefore, if a tribe has agreed to a waiver of sovereign immunity pursuant to tribal law, that waiver provides for suit against the tribe or its entities, employees, officials, and agents only in the courts of that tribe. *See Demontiney v. U.S. ex rel. Dep’t of Interior, Bureau of Indian Affairs*, 255 F3d 801, 812–13 (9th Cir 2001); *Big Horn Cnty. Elec. Co-op., Inc. v. Adams*, 219 F3d 944, 954–55 (9th Cir 2000).

NOTE: Tribes often agree to a limited waiver of sovereign immunity in contracts with non-Indian companies, providing for jurisdiction in contractual disputes in various state or federal courts. These waivers are usually limited in scope and usually are limited only to the parties to a contract.

The laws of each tribe are different. As a general matter, the time limitations for bringing suit against an Indian tribe are shorter than the time requirements for filing suit against the State of Oregon or for general statutes of limitations applicable to tort or property-damage actions. The laws also include

Chapter 7 / Personal Injury and Property Damage

procedural restrictions. Therefore, the lawyer should examine tribal laws as soon as possible in any potential lawsuit involving an Indian tribe or tribal member.

Nine federally recognized Indian tribes exist in Oregon at this time and most of these tribes have posted their laws online:

(1) Burns Paiute Tribe, <www.burnspaiute-nsn.gov> (click on “Documents” to see the Tribal Code and Constitution);

(2) Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, <<http://ctclusi.org>> (click on “Tribal Code”; see Title 2, Chapter 2-7, regarding tort claims);

(3) Coquille Indian Tribe, <www.coquilletribe.org>; <www.coquilletribe.org/docbin/624TortClaimsOrdinance.pdf> (Chapter 624, Tort Claims Ordinance);

(4) Cow Creek Band of Umpqua Tribe of Indians, <<http://cowcreek.com>>;

(5) Confederated Tribes of Grand Ronde, <www.grandronde.org> (click on “Departments,” and then on “Tribal Court”);

(6) Klamath Tribes, <<http://klamathtribes.org>> (click on “Background Information and Documents,” then on “Tribal Court,” and then on “Tribal Laws”);

(7) Confederated Tribes of Siletz Indians, <www.ctsi.nsn.us> (click on “Government Listings,” then on “Tribal Ordinances,” and then on “Torts & Indian Civil Rights Act”);

(8) Confederated Tribes of the Umatilla Indian Reservation, <<http://ctuir.org>> (click on “Our Government,” then on “CTUIR’s Statutes,” and then on “Tort Claims Code”); and

(9) Confederated Tribes of Warm Springs, <<http://warmsprings.com>> (click on “Tribal Community,” then on “Tribal Government,” then on “Tribal Code Book,” and then on “Chapter 205 Tort Claims”).

NOTE: The above list is provided only for illustrative purposes. Other tribal laws may apply, including tribal constitutions. Also, postings on websites may not be current; the location of tribal laws may have changed; and defenses and other legal rights or claims may be asserted that affect application of the laws cited in this chapter. Counsel is encouraged in every case to contact the Tribal Court for each tribe to obtain copies of all current applicable tribal laws. For example, most tribes have general statutes of limitations that apply to regular civil actions, which limitations may not apply to tort claims against the tribal government.

NOTE: Two additional tribes actually have land in Oregon but they are headquartered in other states. One is the Nez Perce Tribe of Idaho, which has land holdings in northeastern Oregon. The second is the Fort McDermitt Paiute and Shoshone Tribe in southeastern Oregon, which has

small land holdings in Oregon but is headquartered in Nevada. If an accident or property damage were to occur that involved these two tribes, the laws of those tribes would need to be scrutinized.

Many of the tort claims that might be brought against Indian tribes in Oregon arise at tribal casinos, which are arms or entities of the tribe and protected by the tribe's sovereign immunity. Tribes engage in gaming pursuant to federal law, the Indian Gaming Regulatory Act (IGRA), 25 USC sections 2701 to 2721. That law requires that a tribe and the state negotiate a "compact" before a tribe can operate casino-style gaming (*see* 25 USC § 2710), and one of the permissible subjects in such compacts is providing jurisdiction for personal-injury claims against the tribe or the casino. Oregon has negotiated relatively uniform Gaming Compacts under the IGRA with the nine Oregon tribes, and all nine tribes have tort-claim language similar to that from Section 8 of the Grand Ronde Compact:

G. Liability for damage to persons and property.

1. During the term of this Compact, the Tribal Gaming Operation shall maintain public liability insurance with limits of not less than \$250,000 for one person and \$2,000,000 for any one occurrence for any bodily injury or property damage. The insurance policy shall have an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy for claims brought against the Tribal Gaming Operation pursuant to the process described in subsection 8(G)(3) below. . . .

3. The Tribe shall provide a process under Tribal law pursuant to which patrons injured at the Gaming Facility may maintain claims for relief within the policy limits provided in subsection 8(G)(1) against the Tribal Gaming Operation in Tribal Court, provided, however, that nothing in this Compact shall prevent the Tribe from excluding or limiting the amount of non-economic damages (including without limitation, pain and suffering and emotional distress) recoverable under Tribal law.

NOTE: The above provisions are online at <www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/compacts/Grande%20Ronde,%20Confederated%20Tribes%20of/granderonderestatecomp5.12.06.pdf>. Each tribe's compact addresses the jurisdiction for that tribe.

Tort or property-damage suits by or against individual tribal members are a completely separate subject. As discussed in § 7.25B(2) regarding state jurisdiction, the State of Oregon has "concurrent" jurisdiction with many, but not all, of the tribes in Oregon for cases arising on tribal lands or within Indian country. In that instance, a case may be filed in either tribal court or state court with one significant exception.

The United States Supreme Court has ruled that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe" (including Indians who are members of different tribes), with two narrow exceptions. *See Strate v. A-1 Contractors*, 520 US 438, 452–53, 117 S Ct 1404,

137 L Ed 2d 661 (1997) (quoting *Montana v. U.S.*, 450 US 544, 565, 101 S Ct 1245, 67 L Ed 2d 493 (1981)). This principle is most applicable when an Indian is trying to sue a non-Indian as a defendant in tribal court. The most common of the two exceptions is when the non-Indian “consents” to tribal jurisdiction. It is for this reason that signs usually are posted at the entry of a tribal casino or tribal lands stating that by entering the casino or lands, any person expressly consents to tribal jurisdiction for any matter arising out of his or her presence on tribal property. Case law also holds that the act of filing a suit in tribal court as a plaintiff also operates as consent to tribal jurisdiction. *Smith v. Salish Kootenai College*, 434 F3d 1127, 1140 (9th Cir 2006).

Likewise, except when a state or tribe is subject to what is known as Public Law 280, a non-Indian generally cannot file suit in state court against a tribal member Indian who resides on tribal lands or for matters arising on tribal lands. *See N. Pac. Ins. Co. v. Switzler*, 143 Or App 223, 924 P2d 839 (1996); *see also* Pub L 83-280, 67 Stat 590 (1953) (codified as amended at 18 USC section 1162, 28 USC section 1360, and 25 USC sections 1321 to 1326). Thus, in some situations a tribal member Indian may be forced to go off-reservation to file suit in state court to obtain a remedy, and a non-Indian may be forced to go into tribal court to obtain a remedy against a tribal member Indian.

§ 7.25B(2) State Jurisdiction

Under the United States Constitution, states generally lack authority over Indian tribes or Indian lands. Indian tribes are not subject to state jurisdiction unless they expressly consent to such jurisdiction or Congress expressly imposes such jurisdiction on them. *See Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng’g, P.C.*, 467 US 138, 104 S Ct 2267, 81 L Ed 2d 113 (1984); *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng’g*, 476 US 877, 106 S Ct 2305, 90 L Ed 2d 881 (1986). Jurisdiction exists as an initial matter only in the tribes and in the federal government.

Federal policy towards Indian tribes changes periodically. In the period after World War II, Congress adopted several policies designed to move the federal government out of the Indian business. One of these statutes was a 1953 law commonly known as Public Law 280. *See* Pub L 83-280, 67 Stat 590 (1953) (codified as amended at 18 USC section 1162, 28 USC section 1360, and 25 USC sections 1321 to 1326). While this law was directed primarily at delegating federal criminal jurisdiction over Indians and Indian country to certain states (*see* 18 USC § 1162), the law also included a civil component (*see* 28 USC § 1360). With certain exceptions, 28 USC section 1360 delegated federal jurisdiction over civil causes of action by and against Indians in Indian country to the states, including tort claims. Congress named six mandatory states in the statute that would be subject to the new law, one of which was Oregon. However, Warm Springs Reservation was expressly exempted from operation of the statute. Two other Oregon tribes—the Burns Paiute Tribe and the Confederated Tribes of the

Umatilla Indian Reservation—have partially or fully “retroceded” Public Law 280 jurisdiction, meaning that they have returned to pre-Public Law 280 jurisdictional status. See *Umatilla Indian Reservation; Oregon’s Acceptance of Retrocession of Jurisdiction*, 46 Fed Reg 2195-02 (Jan 8, 1981) (criminal jurisdiction); *Burns-Paiute Indian Reservation; Acceptance of Retrocession of Jurisdiction*, 44 Fed Reg 26169-01 (May 4, 1979).

What the civil-jurisdiction provision of Public Law 280 did was to vest concurrent jurisdiction in the State of Oregon over private civil adjudications for most tribes in Oregon. The federal government delegated its authority in this limited arena to the state. The statute did not deprive the tribes of their existing inherent jurisdiction on their own lands and over their own members, so the affected tribes retain concurrent jurisdiction as applicable. See *Bryan v. Itasca Cnty., Minnesota*, 426 US 373, 96 S Ct 2102, 48 L Ed 2d 710 (1976); *Doe v. Mann*, 415 F3d 1038, 1048–49, 1050, 1067 (9th Cir 2005). Notably, the United States Supreme Court has held that Public Law 280 did not vest state jurisdiction over Indian tribes themselves, and had no effect on tribal sovereignty. *Bryan*, 426 US at 387–88. Therefore, Public Law 280 affects only individual Indians and private civil lawsuits.

Many tribes also have entered into contracts or grants with the State of Oregon for specific programs. Some of these contracts or grants specifically subject the tribe to state jurisdiction to the same extent as the state under the Oregon Tort Claims Act.

§ 7.25B(3) Federal Jurisdiction

Federal courts generally do not have jurisdiction over tort claims or property-damage actions involving Indian tribes or tribal members. A tort-claim action is not a federal action just because an Indian tribe or a tribal member is involved. Indian tribes are not “citizens of states for purposes of diversity jurisdiction.” *Am. Vantage Companies, Inc. v. Table Mountain Rancheria*, 292 F3d 1091, 1097 (9th Cir 2002); see 28 USC § 1332.

In one major area, however, federal courts have jurisdiction over tort claims involving Indian tribes and tribal employees. The federal government used to directly provide all federal services to Indian tribes and Indians. In the late 1960s the new federal policy of tribal self-determination began and in 1975 Congress passed a law known as the Indian Self-Determination and Education Assistance Act (the “Indian Self-Determination Act”) (25 USC §§ 450–458ddd). This statute allows Indian tribes to contract for and run themselves most of the programs previously provided by the Bureau of Indian Affairs, Indian Health Service, and Department of Housing and Urban Development (and some other smaller programs). Most tribes now operate as many federal programs as possible under this statute.

Federal funding for Indian tribes and Indians, however, is not sufficient to meet tribal needs, and tribes run a variety of programs using their own funds or by obtaining grants or contracts from other governments or private agencies. In any particular case, a tribal employee may be funded by federal funds, tribal funds, state funds, private funds, or a combination thereof. Also, some of the persons providing services under tribal programs will be tribal employees, and others may be contractors. These facts are important because one of the main problems that Indian tribes ran into under the Indian Self-Determination Act (ISDA) was obtaining insurance coverage for the programs operated by tribes under ISDA contracts. Under ISDA, the federal government is supposed to provide to the tribe the amount of funding that the federal government expended to run the program itself. However, the federal government did not spend money on insurance in running its own programs because it is subject to the Federal Tort Claims Act (FTCA). So, in 1991, Congress enacted an amendment to the ISDA, providing that any tort-claim action against a tribe, a tribal organization, or a tribal contractor or employee that provides services under an ISDA contract is deemed to be an action against the United States and must be brought pursuant to the FTCA. 25 USC § 450f(c)–(d).

This provision makes potential tort claims against tribal-government-services providers extremely complicated, based on the source of funding and employee status of the provider at issue. Since the time limitations under the FTCA and tribal-tort-claims statutes tend to be short, the potential for missing those limitations is substantial, especially for the attorney who assumes that state law time limitations apply. A large amount of case law exists involving FTCA coverage for Indian tribal programs and providers, especially in the healthcare field. Close attention should be paid to potential jurisdictional issues and time limitations at the earliest available opportunity.

§ 7.26 TORT-RELATED ISSUES

§ 7.26A Continuing Torts

§ 7.26A(1) In General

Oregon courts have applied a continuing-tort analysis to allow claims that would otherwise be time-barred. A continuing tort is based on the concept that recovery is for the cumulative effect of wrongful behavior, not for discrete elements of that conduct. *Davis v. Bostick*, 282 Or 667, 671–72, 580 P2d 544 (1978). For purposes of a statute of limitations, a cause of action based on a continuing tort does not “accrue” until the conduct culminates to cause injury. *Barrington ex rel. Barrington v. Sandberg*, 164 Or App 292, 298, 991 P2d 1071 (1999).

§ 7.26A(2) Negligence

§ 7.26A(2)(a) Negligence Relating to Property

The continuing-tort doctrine has been applied to extend the statute of limitations and the time for filing a tort-claim notice in an action for negligent property damage against a public body. In *Holdner v. Columbia Cnty.*, 51 Or App 605, 613, 627 P2d 4 (1981), the plaintiff alleged that the defendant's "continuing tort of negligent upkeep of [property], result[ed] in an ongoing nuisance or trespass." The court held that the action was timely, even though the negligence began more than two years before the complaint was filed. *Holdner*, 51 Or App at 613–14.

§ 7.26A(2)(b) Medical and Dental Malpractice

The continued treatment of a plaintiff for an eye disease from 1932 to 1939 based on a mistaken diagnosis constituted a continuing tort in *Shives v. Chamberlain*, 168 Or 676, 685, 126 P2d 28 (1942). The statute of limitations started to run only when the treatment ceased. *Shives*, 168 Or App at 685. *See also Hotelling v. Walther*, 169 Or 559, 562–65, 130 P2d 944 (1942) (continued treatment for more than a year by a dentist after the partial removal of a wisdom tooth, the failure to discover an infection, and the failure to take X-rays constituted a continuing tort; the cause of action accrued and the statute of limitations started to run from the date of the last treatment).

PRACTICE TIP: If the incidents of care and treatment giving rise to the malpractice claim are separately actionable, the continuing-tort doctrine likely will not apply.

CAVEAT: Application of the continuing-tort doctrine in actions arising from medical, surgical, or dental treatment has been severely limited by the statute of repose in ORS 12.110(4). *See* § 7.26A(2)(c), § 7.28B(5).

See also § 7.14C(1) to § 7.14C(3) (medical and dental malpractice).

§ 7.26A(2)(c) Limiting Effect of Statutes of Ultimate Repose

Notwithstanding the two-year statute of limitations in ORS 12.110(4) (for medical malpractice) and its extension under ORS 12.160 (for minority and insanity), any medical or dental malpractice claim brought under a continuing-tort theory is subject to the five-year period of ultimate repose set forth in ORS 12.110(4). An action must be commenced within five years after the date of the medical, surgical, or dental treatment, unless the harm was not discovered because of "fraud, deceit or misleading representation," in which case the action must be brought within "two years from the date such fraud, deceit or misleading representation is discovered or in the exercise of reasonable care should have been discovered." ORS 12.110(4). *See, e.g., Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 455–57, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999); *Cornell v. Merck & Co., Inc.*, 87 Or App 373, 376, 742 P2d 667 (1987). *See also DeLay v.*

Marathon LeTourneau Sales & Serv. Co., 291 Or 310, 315–17, 630 P2d 836 (1981) (although insanity suspends the running of the two-year statute of limitations for tort actions, insanity does not suspend the running of the period of ultimate repose).

Similarly, the 10-year repose period in ORS 12.115 would limit other actions for negligent injury to persons or property.

NOTE: “Although the history of ORS 12.110(4) shows that the provisions for the accrual of a cause of action for medical malpractice and its ultimate repose have evolved together, they are distinct.” *Lesch v. DeWitt*, 118 Or App 397, 400 n 2, 847 P2d 888, *vac’d on other grounds*, 317 Or 585, 858 P2d 872 (1993).

§ 7.26A(3) Intentional Infliction of Emotional Distress

A cause of action for intentional infliction of emotional distress can be based on a continuing-tort theory, with the limitations period tolled until actual injury is incurred, as long as the incidents giving rise to the claim are not separately actionable. *Barrington ex rel. Barrington v. Sandberg*, 164 Or App 292, 297, 991 P2d 1071 (1999); *Davis v. Bostick*, 282 Or 667, 672, 580 P2d 544 (1978) (the continuing-tort doctrine does not apply to claims of intentional infliction of emotional distress when separate tortious acts give rise to separate compensable claims).

§ 7.26A(4) Action against a Public Body

When each incident in a series of discriminatory incidents does not by itself support a claim but the incidents as a whole constitute a course of conduct, all of the incidents are “part of the basis of the claim even though some occurred before the tort claim notice period.” *Barrington ex rel. Barrington v. Sandberg*, 164 Or App 292, 298, 991 P2d 1071 (1999).

§ 7.26A(5) References

See 1 *Torts* chs 3, 11 (OSB Legal Pubs 2012); 2 *Torts* ch 32 (OSB Legal Pubs 2012).

§ 7.26B Contribution and Indemnity

§ 7.26B(1) Contribution

§ 7.26B(1)(a) Contribution among Tortfeasors—After Judgment

If two or more tortfeasors are responsible for the same injury or wrongful death, a tortfeasor against whom judgment has been entered may seek contribution from the other responsible person or persons by a separate action “commenced within two years after the judgment has become final by lapse of time for appeal or after appellate review.” ORS 31.810(3).

§ 7.26B(1)(b) Contribution among Tortfeasors—If No Judgment

If there is no judgment against a tortfeasor, that tortfeasor cannot seek contribution against other persons who are also responsible for an injury or wrongful death unless the tortfeasor either:

(1) Has discharged the common liability by payment made within the limitations period for the tort and commenced the contribution action within two years after payment; or

(2) Has agreed while the tort action is pending to discharge the common liability and has paid the liability and commenced the contribution action within two years after the agreement.

ORS 31.810(4).

§ 7.26B(1)(c) Contribution among Judgment Debtors

When property liable to an execution against several persons is sold, “and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than that person’s proportion, that person may compel contribution from the others.” ORS 18.242. The person will be entitled to the benefit of the judgment to enforce contribution if, within 30 days after payment, the person files notice of payment and claim to contribution with the court. ORS 18.242.

§ 7.26B(2) Indemnity

§ 7.26B(2)(a) In General

A common-law action for indemnity sounds in contract and must be commenced within six years. ORS 12.080. The statute of limitations starts to run from the date of payment made by the indemnitee. *Huff v. Shiomi*, 73 Or App 605, 607–08, 699 P2d 1178 (1985); *Owings v. Rosé*, 262 Or 247, 263, 497 P2d 1183 (1972).

§ 7.26B(2)(b) Express Contract

When parties make an express and enforceable contract of indemnity, the contract’s terms control and supersede a claim based on the common-law right to indemnity. *S. Pac. Co. v. Morrison-Knudsen Co.*, 216 Or 398, 408–09, 338 P2d 665 (1959).

When an indemnity provision in an express contract provided that notice of the indemnity claim must be delivered within a certain time period, an indemnity claim delivered after the time period had run was contractually barred. *Sw. Forest Indus., Inc. v. Vanply, Inc.*, 43 Or App 347, 357–58, 602 P2d 1113 (1979).

§ 7.26B(3) References

See 1 *Torts* chs 16, 17 (OSB Legal Pubs 2012).

§ 7.26C Insurance

Advance payments and advance permits to unions may have the effect of tolling statutes of limitations. *See* § 7.14B(2)(d), § 7.28C(2)(c).

§ 7.26D Tort or Contract

“[I]t is the gravamen or the predominant characteristic[s] of an action, not plaintiff’s election [of remedies], which governs whether the action is one in contract or in tort” (and determines whether the tort or the contract statute of limitations applies). *Lindemeier v. Walker*, 272 Or 682, 685, 538 P2d 1266 (1975). The issue of which statute of limitations applies arises “only when a defending party challenges the timeliness of an action on a contract theory brought after ‘the first two years.’” *Metro. Prop. & Cas. v. Harper*, 168 Or App 358, 368–69, 7 P3d 541 (2000) (quoting *Securities-Intermountain, Inc. v. Sunset Fuel Co.*, 289 Or 243, 258–59, 611 P2d 1158 (1980)). *See* § 14.2N(1) to § 14.2N(2)(b) for further discussion.

§ 7.27 LOSS OF CONSORTIUM

A claim for loss of consortium is governed by the two–year, catch-all statute of limitations in ORS 12.110(1) or, alternatively, by the appropriate statute of limitations for the tortious conduct that gave rise to the loss of consortium. *Gannon v. Rogue Valley Med. Ctr.*, 92 Or App 314, 316, 758 P2d 873, *rev den*, 307 Or 145 (1988) (when loss of consortium was caused by medical malpractice, the statute of limitations for a medical-malpractice claim applied to a loss-of-consortium claim as well). When a claim for loss of consortium arises as a result of medical malpractice, the claim accrues when the injury is “discoverable in the exercise of reasonable diligence.” *O’Gara v. Kaufman*, 81 Or App 499, 504, 726 P2d 403 (1986).

§ 7.28 ULTIMATE REPOSE

§ 7.28A In General

Statutes of ultimate repose establish overall maximum upper limits on the time within which an action may be brought, regardless of the date of discovery of an injury or other circumstances that might affect the expiration of a statute of limitations. *Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999); *Waxman v. Waxman & Associates, Inc.*, 224 Or App 499, 507, 198 P3d 445 (2008).

§ 7.28B When a Statute of Ultimate Repose Begins to Run

The period of ultimate repose runs from date of “the act or omission complained of,” or the date of “delivery of a product or completion of work,” and cannot be extended. ORS 12.115; *Al Disdero Lumber Co. v. Dick W. Ebeling, Inc.*, 95 Or App 671, 674, 770 P2d 945, *rev den*, 308 Or 158 (1989). In contrast, a period for commencing an action under a statute of limitations does not begin until

a claim is actionable (i.e., until there is a legal injury). *Al Disdero Lumber Co. v. Dick W. Ebeling, Inc.*, 95 Or App 671, 674, 770 P2d 945, *rev den*, 308 Or 158 (1989).

§ 7.28B(1) Statutory Construction

Courts construe statutes of ultimate repose in accordance with the template for statutory construction set forth in *State v. Gaines*, 346 Or 160, 170–72, 206 P3d 1042 (2009). See *Giulietti v. Oncology Associates of Oregon, P.C.*, 178 Or App 260, 264, 36 P3d 510 (2001).

§ 7.28B(2) Specific Statute of Ultimate Repose May Apply to a Claim

The legislature has enacted specific statutes of ultimate repose for particular claims, and the lawyer must take care in reviewing applicable law(s) to determine the explicit periods of repose. See, e.g., ORS 12.135 (the statute of repose is six years or 10 years for actions arising from construction, alteration, or repair of improvements to real property); ORS 12.280 (a 10-year statute of repose applies to any action under any legal theory for damages or injury arising out of the survey of real property).

NOTE: Statutory limitations and repose periods may be set forth within the same statute or stated in different statutes. Compare ORS 12.110(4) (statute of limitations and repose for medical negligence claims) and ORS 30.020 (specifying both limitations and repose periods) with ORS 12.115 (statute of ultimate repose for negligence claims in general).

§ 7.28B(3) Negligence

No action for negligent injury to a person or property may be commenced more than 10 years after the date “of the act or omission complained of.” ORS 12.115.

CAVEAT: Specific claims may have shorter statutes of repose (see, e.g., ORS 12.110(4), providing a five-year repose period for claims for medical negligence).

§ 7.28B(4) Legal Malpractice

The statute of ultimate repose for negligence (ORS 12.115) applies to actions for legal malpractice. *Davis v. Somers*, 140 Or App 567, 570, 915 P2d 1047, *rev den*, 324 Or 78 (1996).

§ 7.28B(5) Medical Malpractice

The period of ultimate repose for a medical-malpractice action is five years “from the date of the treatment, omission or operation upon which the action is based.” ORS 12.110(4). However, if no action has been commenced within the five-year period because of fraud, deceit, or misleading representation, then the action must be commenced within two years from the date that the fraud, deceit, or

misleading representation is discovered or, in the exercise of reasonable care, should have been discovered. ORS 12.110(4).

NOTE: The doctrine of continuing treatment does not toll the five-year statute of ultimate repose. Rather, the “triggering event for the five-year period of ultimate repose is ‘the date of the treatment, omission or operation upon which the action is based,’” and, “in the absence of [allegations of] fraud, deceit or misleading representation, the five-year period is absolute.” *Urbick v. Suburban Med. Clinic, Inc.*, 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999).

§ 7.28B(6) Wrongful Death

No action for wrongful death may be commenced later than the earliest of :

- (1) “Three years after the death of the decedent,” ORS 30.020(1)(a); or
- (2) “The longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing injury,” ORS 30.020(1)(b).

See Fields v. Legacy Health Sys., 413 F3d 943, 959 (9th Cir 2005) (the repose period does not violate the Remedies Clause or the Privileges and Immunities Clause of the Oregon Constitution (Or Const, Art I, §§ 10, 20)).

NOTE: The repose period for a products-liability civil action for wrongful death is set forth in ORS 30.905(4). *See* § 7.28B(8)(d).

§ 7.28B(7) Breast Implants (Action Not Based on Products Liability)

With some specific exceptions, a nonproducts-liability action for death, injury, or damages resulting from silicone breast implants is not subject to any statute of ultimate repose. ORS 12.276(2).

Exceptions include an action against a licensed physician or licensed health-care facility and an action against a person who supplied component parts or raw materials to a manufacturer of breast implants as long as the supplier neither manufactured (or owned a business that manufactured) implants at any time nor was owned by a business that manufactured implants at any time. ORS 12.276(3)–(4).

The actions excepted remain subject to ORS 12.110(4), ORS 12.115, ORS 30.020, and ORS 30.075. *See* ORS 12.276(3)–(4).

See § 7.28B(8)(f) regarding products-liability actions for death, injury, or damage resulting from breast implants.

§ 7.28B(8) Products-Liability Actions

CAVEAT: The statutes of ultimate repose for products liability actions vary depending on the claim, the injury, and when the cause of action arises. *See* § 7.28B(8)(a) to § 7.28B(8)(h).

§ 7.28B(8)(a) Products-Liability Action for Personal Injury or Property Damage

Generally, for causes of action arising on or after January 1, 2010, a products-liability civil action for personal injury or property damage must be commenced before the later of:

- (1) “Ten years after the date on which the product was first purchased for use or consumption,” ORS 30.905(2)(a); or
- (2) “The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured,” ORS 30.905(2)(b).

There are some exceptions to the statute, such as claims against manufacturers or distributors of manufactured dwellings. *See* ORS 30.905(5); *see also* § 7.28B(8)(e).

NOTE: The period of repose for a products-liability action for personal injury arising before January 1, 2010, is 10 years after the date on which the product was first purchased for use or consumption. *Former* ORS 30.905(2)(b), (3)(b).

NOTE: See § 7.28B(8)(b) regarding a products-liability action involving a product that was manufactured in a foreign country.

§ 7.28B(8)(b) Products-Liability Action for Foreign Manufactured Products

Effective January 1, 2010, the repose period for a products-liability action involving a product that was manufactured in a foreign country is the later of:

- (1) “Ten years after the date on which the product was first purchased for use or consumption,” ORS 30.905(2)(a); or
- (2) “The expiration of any statute of repose for an equivalent civil action in the state into which the product was imported,” ORS 30.905(2)(b).

§ 7.28B(8)(c) Actions Prior to January 1, 2010—Personal Injury

The period of repose for products-liability actions for personal injury arising before January 1, 2010, is 10 years after the date on which the product was first purchased for use or consumption. *Former* ORS 30.905(2)(b), (3)(b) (2009); *see Simonsen v. Ford Motor Co.*, 196 Or App 460, 475, 102 P3d 710 (2004), *rev den*, 338 Or 681 (2005) (“[A] product liability civil action is subject to an eight-year ultimate repose period, but, if the plaintiff’s injury occurs within that eight-year period, the plaintiff then has two years in which to file the claim.”).

§ 7.28B(8)(d) Products-Liability Action for Wrongful Death

The repose period for a products-liability civil action for wrongful death that arises on or after January 1, 2010, is the earlier of:

- (1) “Three years after the death of the decedent,” ORS 30.905(4)(a); or

(2) “Ten years after the date on which the product was first purchased for use or consumption,” ORS 30.905(4)(b); or

(3) “The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign country, the expiration of any statute or repose for an equivalent civil action in the state into which the product was imported,” ORS 30.905(4)(c).

NOTE: For a products-liability wrongful-death action that arose before January 1, 2010, the statute of repose is the earlier of the limitation provided by ORS 30.020 (the wrongful-death statute, *see* § 7.28B(6)) or 10 years after the date on which the product was first purchased for use or consumption. *Former* ORS 30.905(3) (2009).

§ 7.28B(8)(e) ORS 30.905 Does Not Apply to Actions Involving Manufactured Dwellings

ORS 30.905 does not apply to a products-liability claim against “a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010.” ORS 30.905(5). Such an action is subject to the limitations period set forth in ORS 12.135. ORS 30.905(5).

§ 7.28B(8)(f) Products-Liability Action for Breast Implants

With some specific exceptions, products-liability actions for death or injury arising from breast implants are specifically exempt from ORS 30.905 or any other Oregon statute of limitations or statute of ultimate repose. ORS 30.908(2). Such actions are governed by ORS 30.908, which sets forth the following rules:

(1) *In general.* ORS 30.908(1) provides that a products-liability action for death or injury arising from breast implants must be brought “not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered”: (a) “[t]he death or specific injury, disease or damage for which the plaintiff seeks recovery”; (b) “[t]he tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant”; and (c) “[a]ll other elements required to establish plaintiff’s claim for relief.” ORS 30.908(1).

(2) *When an action for death must be commenced.* An action for wrongful death arising from breast implants must be commenced “not later than two years after the earliest date that the discoveries required by [ORS 30.908(1)] are made by any of the following persons”: (a) the decedent, (b) the decedent’s personal representative, or (c) “[a]ny person for whose benefit the action could be brought.” ORS 30.908(3).

(3) *Suppliers of component parts or raw materials.* ORS 30.908(1) (products-liability civil action) and ORS 30.908(3) (wrongful-death action) do not

apply to lawsuits against a person who “supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component,” and the person remains subject to the limitations on actions set forth in ORS 30.020 (wrongful death, *see* § 7.28B(6)) and ORS 30.905 (products-liability civil action) if “(a) [t]he person did not manufacture breast implants containing silicone, silica or silicon as a component at any time; and (b) [t]he person was not owned by and did not own a business that manufactured breast implants containing silicone, silica or silicon as a component at any time.” ORS 30.908(4).

(4) *Healthcare facility.* “A health care facility licensed under ORS chapter 441 is not a manufacturer, distributor, seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is provided by the facility to a patient as part of a medical implant procedure.” ORS 30.908(5).

§ 7.28B(8)(g) Products-Liability Action for Asbestos

Products-liability actions for damages resulting from asbestos-related disease are specifically exempted from ORS 30.905(1) and are not subject to any other Oregon statute of limitation or statute of ultimate repose. ORS 30.907(2).

§ 7.28B(8)(h) Sidesaddle Gas Tank and Manufacturer of Extendable Equipment

Other particular claims are not subject to periods of repose by express legislative directive. For example, actions against manufacturers of pickup trucks for death or injury resulting from fire caused by the rupture of a sidesaddle gas tank in a collision, as well as actions against manufacturers of extendable equipment for injury arising out of contact with power lines, are not subject to ORS 12.115, ORS 30.020, ORS 30.905, or any other Oregon statute of limitations or statute of repose. ORS 12.278(2), ORS 12.282(2).

§ 7.28C Discovery of Defect after Expiration of Repose Period

The failure to discover a defective work, practice, or product until after the statute of ultimate repose has run does not suspend the statute. *Simonsen v. Ford Motor Co.*, 196 Or App 460, 475–76, 102 P3d 710 (2004), *rev den*, 338 Or 681 (2005).

§ 7.28C(1) Equitable Estoppel

Equitable estoppel is not available to avoid a statute of ultimate repose. *Beals v. Breeden Bros., Inc.*, 113 Or App 566, 572, 833 P2d 348, *rev den*, 314 Or 727 (1992).

§ 7.28C(2) Effect of Minority or Insanity

If a minor or an insane person is entitled to bring an action that is subject to a statute of limitations under ORS 12.010 to 12.050, ORS 12.070 to 12.250, or ORS 12.276, the limitations period is tolled pursuant to ORS 12.160. *But see* § 7.3B.

However, neither minority nor insanity suspends the running of a statute of ultimate repose. ORS 12.160(2), (4); *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008); *DeLay v. Marathon LeTourneau Sales & Serv. Co.*, 291 Or 310, 315, 630 P2d 836 (1981).

§ 7.28C(2)(a) Minor's Action for Personal Injury

An action brought more than 10 years after an accident that caused injuries to a minor was barred by the statute of ultimate repose set forth in ORS 12.155. *Davis v. Blanchard*, 84 Or App 99, 102, 733 P2d 460 (1987).

§ 7.28C(2)(b) Minor's Action for Medical Malpractice

Notwithstanding ORS 12.160, which tolls the statute of limitations for minors, the period of ultimate repose for a minor's action based on medical negligence is five years from the date of the treatment, omission, or operation. ORS 12.110(4); *Christiansen v. Providence Health Sys. of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008).

§ 7.28C(2)(c) Insurer's Advance Medical Payments

An insurer's advance medical payments without proper notification of the expiration of the applicable statute of limitations, as required by ORS 12.155, does not suspend the statute of ultimate repose. *See Davis v. Blanchard*, 84 Or App 99, 102, 733 P2d 460 (1987).

§ 7.28C(2)(d) Child Abuse

Notwithstanding ORS 12.110, ORS 12.115, or ORS 12.160, an action based on child abuse must be brought before the injured person attains 40 years of age, or within five years of the date that the injured person discovers, or in the exercise of reasonable care should have discovered, the causal connection between the child abuse and the injury, whichever period is longer. ORS 12.117(1) (as amended by the 2009 Legislature). The longer time periods provided by the 2009 amendments apply to all causes of action based on child abuse, whether arising before, on, or after January 1, 2010. Or Laws 2009, ch 879, § 2.

ORS 12.117 applies to claims based on conduct that constitutes child abuse or conduct knowingly allowing, permitting, or encouraging child abuse that occurs while the person is under 18 years of age. *See Lourim v. Swensen*, 328 Or 380, 389–90, 977 P2d 1157 (1999) (ORS 12.117 applies to claims of negligence for “knowingly allowing, permitting, or encouraging child abuse”).

§ 7.28D References

See generally 1 *Torts* ch 20 (OSB Legal Pubs 2012); 2 *Torts* ch 32 (OSB Legal Pubs 2012).

Chapter 8

EMPLOYMENT LAW AND CIVIL RIGHTS

JOSÉ KLEIN, B.A., Vassar College (1997); M.A., Universiteit van Amsterdam (2000); J.D., Harvard Law School (2008); member of the Oregon State Bar since 2008; associate, Barran Liebman LLP, Portland.

§ 8.1	CIVIL RIGHTS	8-6
§ 8.1A	Discrimination in Employment, Housing, and Public Accommodations.....	8-6
§ 8.1A(1)	Bureau of Labor and Industries Filing	8-7
§ 8.1A(2)	Civil Action.....	8-7
§ 8.1B	Employment Discrimination	8-7
§ 8.1B(1)	State Statutory Employment Discrimination Claims	8-7
§ 8.1B(2)	Time Limitations.....	8-8
§ 8.1B(3)	Common-Law Employment Discrimination Claims	8-8
§ 8.1B(4)	Tort Claims Notice.....	8-8
§ 8.1B(5)	Federal Employment Discrimination Claims.....	8-9
§ 8.1C	Public Accommodation Discrimination.....	8-9
§ 8.1C(1)	Bureau of Labor and Industries Filing.....	8-9
§ 8.1C(2)	Civil Action.....	8-9
§ 8.1C(3)	Tort Claims Notice.....	8-9
§ 8.1C(4)	Federal Public Accommodation Discrimination Claims	8-9
§ 8.1D	Housing Discrimination	8-9
§ 8.1D(1)	Bureau of Labor and Industries Filing.....	8-10
§ 8.1D(2)	Civil Action.....	8-10
§ 8.1D(3)	Tort Claims Notice.....	8-10
§ 8.1D(4)	Federal Housing Discrimination Claims.....	8-10
§ 8.1E	Discrimination against Disabled Persons.....	8-10
§ 8.1E(1)	Civil Action Deadline	8-10
§ 8.1E(2)	Unlawful Employment Discrimination Deadline	8-11
§ 8.1E(3)	Unlawful Public Accommodation Discrimination Deadline	8-11
§ 8.1E(4)	Unlawful Housing Discrimination Deadline.....	8-11

Chapter 8 / Employment Law and Civil Rights

§ 8.1E(5)	Tort Claims Notice	8-11
§ 8.1E(6)	Federal Law	8-12
§ 8.1F	Discrimination in Education.....	8-12
§ 8.1F(1)	Tort Claim Notice.....	8-12
§ 8.1F(2)	Civil Action Deadline.....	8-12
§ 8.1G	Federal Civil Rights and Discrimination Claims	8-12
§ 8.1G(1)	Applying Oregon’s Statute of Limitations to Federal Civil Rights Claims	8-13
§ 8.1G(1)(a)	Contracts	8-14
§ 8.1G(1)(b)	Property	8-14
§ 8.1G(1)(c)	State Action.....	8-14
§ 8.1G(1)(d)	Conspiracy.....	8-14
§ 8.1G(2)	Federal Employment Discrimination Law	8-14
§ 8.1G(3)	Federal Public Accommodations and Public Services Discrimination Law.....	8-17
§ 8.1G(4)	Federal Fair Housing and Housing Discrimination Law.....	8-18
§ 8.1G(5)	Federal Education Discrimination Law	8-20
§ 8.1H	References	8-20
§ 8.2	EMPLOYER—EMPLOYEE	8-21
§ 8.2A	Payment of Final Wages.....	8-21
§ 8.2B	State Law Claims for Unpaid Wages or Overtime.....	8-21
§ 8.2C	Federal Wage Claims under the Fair Labor Standards Act.....	8-22
§ 8.2D	Priority of Wage Claims.....	8-22
§ 8.2E	Contracts in Employment.....	8-23
§ 8.2E(1)	Employment Contracts.....	8-23
§ 8.2E(2)	Noncompetition Agreements	8-23
§ 8.2F	Employer Liability Law	8-23
§ 8.2G	Other Employment Laws	8-23
§ 8.2H	Occupational Safety and Health.....	8-24
§ 8.2H(1)	Advance Notice	8-24
§ 8.2H(2)	Execution of Inspection Warrant	8-24
§ 8.2H(3)	Employer Appeals of Violations.....	8-24
§ 8.2H(4)	Correction of Violations.....	8-24

§ 8.2H(5)	Hearings Subject to Oregon Administrative Procedures Act	8-24
§ 8.2H(6)	Retaliation Claims	8-24
§ 8.2I	Unemployment Insurance	8-25
§ 8.2I(1)	Eligibility	8-25
§ 8.2I(2)	Initial Benefits Determination	8-25
§ 8.2I(3)	Allowing or Denying Claim	8-25
§ 8.2I(4)	Following an Administrative Hearing	8-25
§ 8.2I(5)	Employment Appeals Board	8-26
§ 8.2I(6)	Judicial Review	8-26
§ 8.2J	Securities Law	8-26
§ 8.2J(1)	Oregon Securities Law	8-26
§ 8.2J(1)(a)	Administrative Actions against Broker-Dealers	8-26
§ 8.2J(1)(b)	Orders of the Director of the Department of Consumer and Business Services	8-26
§ 8.2J(2)	Federal Securities Law and the Sarbanes-Oxley Act	8-27
§ 8.2J(2)(a)	Securities Fraud	8-27
§ 8.2J(2)(b)	Trading During Blackout Periods	8-27
§ 8.2J(2)(c)	Whistleblower Protection	8-27
§ 8.2K	References	8-27
§ 8.3	WORKERS' COMPENSATION	8-27
§ 8.3A	Noncomplying Employer	8-27
§ 8.3A(1)	Claim of Noncompliance by Employee	8-28
§ 8.3A(2)	Hearing	8-28
§ 8.3B	Coverage	8-28
§ 8.3B(1)	Effective Date	8-28
§ 8.3B(2)	Cancellation of Coverage	8-28
§ 8.3B(2)(a)	By Employer	8-28
§ 8.3B(2)(b)	By Insurer	8-29
§ 8.3B(3)	Permanent Total Disability	8-30
§ 8.3B(4)	Temporary Disability Benefits	8-30
§ 8.3B(4)(a)	Authorization of Benefits	8-30
§ 8.3B(4)(b)	Duration of Benefits	8-30

Chapter 8 / Employment Law and Civil Rights

§ 8.3B(4)(c)	Vocational Assistance Training	8-31
§ 8.3B(4)(d)	First Payment	8-31
§ 8.3B(5)	First Payment of Permanent Disability	8-32
§ 8.3C	Hearing	8-32
§ 8.3D	Medical Services	8-32
§ 8.3E	Vocational Assistance Services.....	8-32
§ 8.3F	Claim Disposition Agreement.....	8-32
§ 8.3G	Claims Procedure	8-33
§ 8.3G(1)	Employer’s Obligation	8-33
§ 8.3G(2)	Worker’s Obligation.....	8-33
§ 8.3G(3)	Failure of Notice.....	8-33
§ 8.3G(4)	Acceptance or Denial Notification.....	8-33
§ 8.3G(4)(a)	Disputing the Claim	8-33
§ 8.3G(4)(b)	Independent Medical Examination	8-34
§ 8.3G(5)	Omitted Condition/Deficient Notice	8-34
§ 8.3G(6)	New Medical or Omitted Condition Claims	8-34
§ 8.3G(7)	Aggravation.....	8-34
§ 8.3G(8)	Appeal of Denials.....	8-34
§ 8.3G(9)	Temporary Disability	8-35
§ 8.3G(10)	Duty to Cooperate	8-35
§ 8.3H	Closure and Reconsideration Procedures.....	8-35
§ 8.3H(1)	Closure	8-35
§ 8.3H(1)(a)	Worker’s Request.....	8-35
§ 8.3H(1)(b)	Updated Notice.....	8-35
§ 8.3H(2)	Reconsideration.....	8-35
§ 8.3H(2)(a)	Reconsideration Deadlines.....	8-36
§ 8.3H(2)(b)	Exceptions—Postponement	8-36
§ 8.3H(2)(c)	Objections	8-36
§ 8.3I	Hearings Procedure	8-36
§ 8.3I(1)	Hearing	8-36
§ 8.3I(2)	Order Declaring Person to Be Noncomplying Employer or Civil Penalty Assessment.....	8-37
§ 8.3I(3)	Deadlines for Timely Filing of Hearing Request.....	8-37
§ 8.3I(3)(a)	Denied Claim	8-37

§ 8.3I(3)(b)	De Facto Denials	8-37
§ 8.3I(4)	Reconsideration	8-38
§ 8.3I(5)	Evidence	8-38
§ 8.3I(5)(a)	Untimely Disclosure	8-38
§ 8.3I(5)(b)	Vocational Reports.....	8-38
§ 8.3I(5)(c)	Impeachment Evidence	8-38
§ 8.3I(6)	Expedited Claim Service.....	8-39
§ 8.3I(7)	Final Order Disposition.....	8-39
§ 8.3I(7)(a)	“Matter Concerning a Claim”	8-39
§ 8.3I(7)(b)	Order Declaring Person to Be Noncomplying Employer or Civil Penalty Assessment.....	8-39
§ 8.3I(8)	Board Review	8-39
§ 8.3I(8)(a)	“Matter Concerning a Claim”	8-39
§ 8.3I(8)(b)	Appeal	8-39
§ 8.3I(9)	Court of Appeals Review	8-40
§ 8.3I(10)	Mediation or Arbitration	8-40
§ 8.3J	Self-Insured Employer	8-40
§ 8.3J(1)	Certification.....	8-40
§ 8.3J(2)	Security Deposit	8-41
§ 8.3J(3)	Claims Records	8-41
§ 8.3K	SAIF-Insured Employers	8-41
§ 8.3K(1)	Payroll Report	8-41
§ 8.3K(2)	Lien	8-41
§ 8.3K(3)	Payroll Statement	8-41
§ 8.3L	Recovery against Third Persons.....	8-41
§ 8.3M	Civil Penalty.....	8-42
§ 8.3M(1)	Penalty for Noncompliance.....	8-42
§ 8.3M(2)	Hearing.....	8-42
§ 8.3N	Civil Negligence Action in Claims Denied for Failure to Prove Major Contributing Cause	8-42
§ 8.3O	References	8-43
§ 8.4	PUBLIC AND PRIVATE SECTOR LABOR LAW	8-43
§ 8.4A	Public Employee Collective Bargaining Act	8-43
§ 8.4A(1)	Grievance Arbitration.....	8-43

Chapter 8 / Employment Law and Civil Rights

§ 8.4A(2)	Interest Arbitration	8-43
§ 8.4A(2)(a)	Collective Bargaining.....	8-43
§ 8.4A(2)(b)	Public Employee Strikes	8-44
§ 8.4A(2)(c)	Interest Arbitration Procedures	8-44
§ 8.4A(2)(d)	Expedited Bargaining Process	8-44
§ 8.4B	Teacher Dismissals and Nonextension of Contract.....	8-44
§ 8.4C	National Labor Relations Act.....	8-45
§ 8.4D	Judicial Enforcement of National Labor Relations Board Orders	8-45
§ 8.4E	Review of Adverse Benefits Decisions under the Employment Retirement Income Security Act	8-45
§ 8.4E(1)	Timelines for Group Health Claims	8-45
§ 8.4E(1)(a)	Initial Benefit Determinations.....	8-46
§ 8.4E(1)(b)	Internal Appeal of Adverse Group Health Plan Determinations	8-46
§ 8.4E(1)(c)	External Review of Adverse Benefit Determinations	8-47
§ 8.4E(2)	Timelines for Determinations under Other Employee Benefit Plans	8-47
§ 8.4E(2)(a)	Internal Review of Adverse Benefit Determinations	8-47
§ 8.4E(2)(b)	Claims Involving Adverse Disability Benefit Determinations	8-48
§ 8.4E(3)	Judicial Review of Adverse Benefits Determinations	8-48
§ 8.4E(3)(a)	Injunctive or Equitable Relief.....	8-48
§ 8.4E(3)(b)	Breach of Fiduciary Duty Claims against the Plan Administrator	8-48
§ 8.5	IMMIGRATION AND NATIONALITY ACT	8-49

§ 8.1 CIVIL RIGHTS

§ 8.1A Discrimination in Employment, Housing, and Public Accommodations

Oregon prohibits unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, or familial status, and it prohibits unreasonable acts of discrimination in employment based on age. *See* ORS 659A.001–659A.990.

§ 8.1A(1) Bureau of Labor and Industries Filing

A person aggrieved by an unlawful practice, including discrimination in employment, housing, and public accommodations, may file a “verified, written complaint” with the Commissioner of the Bureau of Labor and Industries (BOLI) no later than one year after the unlawful practice, unless the person is proceeding under ORS 654.062. ORS 659A.820(1)–(2). *See* § 8.1B(2).

Generally, a person who files a civil action under ORS 659A.885 or federal law waives the right to file a complaint with BOLI. ORS 659A.870(1). However, there is an exception for claims alleging violations of ORS 659A.145 (discrimination in housing based on disability), ORS 659A.421 (discrimination in housing based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status, or source of income), or comparable federal law. A person filing those claims does not waive the right to file an administrative complaint with BOLI, but the commissioner will dismiss the administrative complaint upon commencement of a trial in the civil action. ORS 659A.870(3).

Filing a complaint under ORS 659A.820 is not a condition precedent to filing a civil action. ORS 659A.870(2).

BOLI will notify the respondent (the person against whom the complaint is made) within 30 days of the filing, or within 10 days if the complaint is of discrimination under ORS 659A.145, ORS 659A.421, or federal housing law. ORS 659A.820(5)–(6).

BOLI issues a 90-day notice if it dismisses the complaint. ORS 659A.830(2), ORS 659A.880. The notice must be in writing and must notify the complainant that a civil action against the respondent under ORS 659A.885 may be filed within 90 days of the date of the notice’s mailing and that the right to bring a civil action will be lost if not filed within the 90 days. ORS 659A.880(3). Suit is timely if filed within 90 days of BOLI’s dismissal notice. *Macy v. Zusman Metals Co., Inc.*, 314 Or 320, 326–27, 838 P2d 591 (1992). A person who has filed a complaint under ORS 659A.820 need not receive BOLI’s 90-day notice before filing a civil action that is based on the same matters alleged in the complaint filed with BOLI. ORS 659A.870(5).

§ 8.1A(2) Civil Action

When no complaint has been filed with the Bureau of Labor and Industries, the complainant must file a civil action within the relevant statute of limitations. *See* § 8.1B(1) to § 8.1F(2).

§ 8.1B Employment Discrimination

§ 8.1B(1) State Statutory Employment Discrimination Claims

Unlawful employment discrimination includes discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, or age if the individual is 18 years of age or older, or because of the race, color, religion,

sex, sexual orientation, national origin, marital status, or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262. ORS 659A.030(1). Unlawful employment discrimination also includes discrimination against injured workers (ORS 659A.040–659A.069), discrimination against disabled persons (ORS 659A.103–659A.145), discrimination against whistle blowers (ORS 659A.199–659A.236), discrimination in employee housing (ORS 659A.250–659A.262), and other specified employment discrimination (ORS 659A.300–659A.350). Prohibited employment practices also include denying family leave to an eligible employee. ORS 659A.183.

§ 8.1B(2) Time Limitations

The statutory actions for unlawful employment discrimination discussed in § 8.1B(1) must be commenced within one year after the occurrence of the unlawful practice, unless a complaint has been timely filed under ORS 659A.820. ORS 659A.885(1)–(2), ORS 659A.875(1). *See* § 8.1A(1). The one-year statute of limitations for employment discrimination claims runs from the date of the alleged unlawful employment practice, which is not necessarily the date that employment was terminated. *See Dobie v. Liberty Homes, Inc.*, 53 Or App 366, 369–71, 632 P2d 449 (1981). “[A] plaintiff’s belated discovery of an employer’s unlawful motive does not delay the commencement of the statutory limitations period.” *Huff v. Great W. Seed Co.*, 322 Or 457, 460, 909 P2d 858 (1996).

§ 8.1B(3) Common-Law Employment Discrimination Claims

The statute of limitations for a common-law tort claim of wrongful discharge is two years. ORS 12.110(1); *Stupek v. Wyle Laboratories Corp.*, 327 Or 433, 437–38, 963 P2d 678 (1998).

NOTE: A statutory employment discrimination claim abrogates the common-law tort of wrongful discharge if it is one of the claims for which broader remedies are authorized under ORS 659A.885(3), and if the legislature enacted the statute with the intent to abrogate the common-law remedy. *See Holien v. Sears, Roebuck & Co.*, 298 Or 76, 90–97, 689 P2d 1292 (1984) (*interpreting former* ORS 659.121 (the predecessor to ORS 659A.885), *repealed by* Or Laws 2001, ch 621, § 90); *Farrimond v. Louisiana-Pac. Corp.*, 103 Or App 563, 798 P2d 697 (1990) (same).

§ 8.1B(4) Tort Claims Notice

In any civil action against a public body or any officer, employee, or agent of a public body alleging unlawful discrimination under ORS 659A.885, the notice of claim required under ORS 30.275 must be given within 180 days, not counting a period of up to 90 days during which the claimant “is unable to give the notice because of the injury [that is the subject of the claim] or because of minority, incompetency or other incapacity.” ORS 30.275(2), ORS 659A.875(5).

§ 8.1B(5) Federal Employment Discrimination Claims

See § 8.1G(2).

§ 8.1C Public Accommodation Discrimination

Generally,

it is an unlawful practice for any person to aid or abet any place of public accommodation . . . or any employee or person acting on behalf of the place of public accommodation to make any distinction, discrimination or restriction on account of race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older.

ORS 659A.406. However, exceptions apply for age-related restrictions on alcohol and special rates or services for persons 50 or older. ORS 659A.403(2). It is unlawful for an employment agency, labor union, or place of public accommodation to discriminate against a disabled person. ORS 659A.142(2)–(4).

§ 8.1C(1) Bureau of Labor and Industries Filing

A person aggrieved by discrimination in any place of public accommodation may within one year after the unlawful practice file a written, verified complaint with the Bureau of Labor and Industries, unless the person has filed a civil action in state or federal court alleging the same matters. ORS 659A.820(2)–(3).

§ 8.1C(2) Civil Action

A person alleging discrimination in a place of public accommodation under ORS 659A.403 or ORS 659A.406 may file a civil action within one year of the unlawful practice. ORS 659A.875(4).

§ 8.1C(3) Tort Claims Notice

In any civil action against a public body or any officer, employee, or agent of a public body alleging unlawful discrimination under ORS 659A.885, the notice of claim required under ORS 30.275 must be given within 180 days, not counting a period of up to 90 days during which the claimant “is unable to give the notice because of the injury [that is the subject of the claim] or because of minority, incompetency or other incapacity.” ORS 30.275(2), ORS 659A.875(5).

§ 8.1C(4) Federal Public Accommodation Discrimination Claims

See § 8.1G(3).

§ 8.1D Housing Discrimination

Unlawful housing discrimination includes advertising, selling, leasing, renting, brokering, appraising, or lending for real property transactions that discriminates on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, familial status, or source of income (ORS 659A.421), or on the basis of disability (ORS 659A.145).

§ 8.1D(1) Bureau of Labor and Industries Filing

A person aggrieved by an unlawful practice, including discrimination in housing, may within one year after the unlawful practice file a written, verified complaint with the Bureau of Labor and Industries, unless the person has filed a civil action in state or federal court alleging the same matters. ORS 659A.820(1)–(3).

§ 8.1D(2) Civil Action

A civil action for housing discrimination must be filed within two years of the occurrence or the termination of the unlawful practice, or within two years of the breach of any settlement agreement, whichever is later. The two-year period does not include any time during the pendency of an administrative proceeding based on the unlawful practice. ORS 659A.875(3).

§ 8.1D(3) Tort Claims Notice

In any civil action against a public body or any officer, employee, or agent of a public body alleging unlawful discrimination under ORS 659A.885, the notice of claim required under ORS 30.275 must be given within 180 days, not counting a period of up to 90 days during which the claimant “is unable to give the notice because of the injury [that is the subject of the claim] or because of minority, incompetency or other incapacity.” ORS 30.275(2), ORS 659A.875(5).

§ 8.1D(4) Federal Housing Discrimination Claims

See § 8.1G(4).

§ 8.1E Discrimination against Disabled Persons

It is unlawful to discriminate against disabled persons in employment (ORS 659A.112); in employment agencies, labor organizations, or places of public accommodation (ORS 659A.142); and in housing and real property transactions (ORS 659A.145). It is also unlawful “for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual has a disability.” ORS 659A.142(5)(a). Places of public accommodation and places of access to state government services, programs, or activities must abide by certain restrictions regarding assistance animals. *See* ORS 659A.143.

§ 8.1E(1) Civil Action Deadline

A person aggrieved by an unlawful practice of discrimination against a disabled person may file a written, verified complaint with the Bureau of Labor and Industries (BOLI) no later than one year after the unlawful practice. ORS 659A.820(2). However, a person who has filed a civil action in state or federal court alleging the same matters may not file a complaint with BOLI unless the BOLI complaint alleges discrimination under ORS 659A.145, ORS 659A.421, or federal housing law. ORS 659A.820(3).

“A person who has filed a complaint [with BOLI] under ORS 659A.820 must commence a civil action under ORS 659A.885 within 90 days after a 90-day notice is mailed to the complainant under ORS 659A.880.” ORS 659A.875(2); *see* § 8.1A(1). A person who has not filed a BOLI complaint must commence a civil action under ORS 659A.885 within one year of the occurrence of the unlawful practice. ORS 659A.875(1).

CAVEAT: A person alleging discrimination under ORS 659A.145, ORS 659A.421, or federal housing law has more time to file a civil action. ORS 659A.875(3); *see* § 8.1E(4).

§ 8.1E(2) Unlawful Employment Discrimination Deadline

A civil action for unlawful employment discrimination against a disabled person must be filed within one year after the unlawful practice occurred, unless a complaint has been timely filed with the Bureau of Labor and Industries under ORS 659A.820, in which case the civil action must be filed within 90 days after a 90-day notice is mailed to the complainant. ORS 659A.875(1)–(2); *see* § 8.1A(1). Oregon statutes that prohibit employment discrimination against a disabled person are construed in a manner consistent with similar provisions of the federal Americans with Disabilities Act. ORS 659A.139(1).

§ 8.1E(3) Unlawful Public Accommodation Discrimination Deadline

Oregon’s discrimination statutes in ORS chapter 659A do not address the time limitation for a civil action for unlawful discrimination against a disabled person in a place of public accommodation. Such a case is subject to the two-year statute of limitations of ORS 12.110(1). *T.L. ex rel. Lowry v. Sherwood Charter School*, No 03:13-CV-01562-HZ, WL 897123 at *8–9 (D Or March 6, 2014).

§ 8.1E(4) Unlawful Housing Discrimination Deadline

A civil action for unlawful housing discrimination against a disabled person must be filed within “two years after the occurrence or the termination of the unlawful practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last.” ORS 659A.875(3). The two-year period does not include any time during which an administrative proceeding was pending with respect to the unlawful practice. ORS 659A.875(3).

§ 8.1E(5) Tort Claims Notice

The notice of tort claim required under ORS 30.275 must be given within 180 days in any civil action alleging unlawful discrimination under ORS 659A.885 against a public body or any officer, employee, or agent of a public body. ORS 659A.875(5).

§ 8.1E(6) Federal Law

For information on federal laws about discrimination on the basis of disability, see § 8.1G(2) (employment discrimination), § 8.1G(3) (public accommodation discrimination), and § 8.1G(4) (housing discrimination).

§ 8.1F Discrimination in Education

§ 8.1F(1) Tort Claim Notice

In any public school service, program, or activity, or in any higher education service, program, or activity that receives state funding, no person may be subject to discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, or disability. ORS 659.850(2). A person aggrieved by such discrimination must file a notice of claim within 180 days of the alleged discrimination. ORS 30.275(2), ORS 659.860(6). The person must also file a grievance within 180 days with the appropriate governing body. ORS 659.860(3).

§ 8.1F(2) Civil Action Deadline

A civil action for unlawful discrimination in education must be filed within one year after the grievance is filed. ORS 659.860(2). *See* § 8.1F(1). Unless only injunctive relief under ORCP 79 is sought, the civil action must be filed at least 90 days after the grievance. ORS 659.860(4).

§ 8.1G Federal Civil Rights and Discrimination Claims

Various federal statutes provide private rights of action for a wide variety of claims of discrimination and violations of civil rights. Some of these, and the relevant statutes of limitations, are discussed in § 8.1G(1) to § 8.1G(5).

State law statutes of limitation for personal injury actions are applied to various federal civil rights claims, but the Supreme Court has held that state notice-of-claim requirements cannot be applied to federal civil rights claims such as 42 USC section 1983 (claim against public entity), whether brought in federal or state court. *Felder v. Casey*, 487 US 131, 140–41, 108 S Ct 2302, 101 L Ed 2d 123 (1988). However, state law claims against public entities are governed by the Oregon Tort Claims Act (ORS 30.260–30.300), whether brought in state or federal court.

Equitable tolling of time limitations may avail a plaintiff's excusable delay in filing. "If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs." *Johnson v. Henderson*, 314 F3d 409, 414 (9th Cir 2002) (quoting *Santa Maria v. Pacific Bell*, 202 F3d 1170, 1178 (9th Cir 2000), *overruled on other grounds by Socop-Gonzalez v. I.N.S.*, 272 F3d 1176, 1194–96 (9th Cir 2001)). *Cf. Lukovsky v. City & Cnty. of San Francisco*, 535 F3d 1044, 1051 (9th Cir 2008), *cert den*, 556 US 1183 (2009).

§ 8.1G(1) Applying Oregon’s Statute of Limitations to Federal Civil Rights Claims

The federal civil rights laws found in 42 USC section 1981 (contracts), 42 USC section 1982 (property), 42 USC section 1983 (state action), and 42 USC sections 1985 to 1986 (conspiracy) do not include a statute of limitations. When a federal civil rights statute does not include its own statute of limitations, federal courts borrow the forum state’s limitations period for personal-injury torts. *See Taylor v. Regents of Univ. of California.*, 993 F2d 710, 711 (9th Cir 1993), *cert den*, 510 US 1076 (1994). Thus, the two-year limitation of ORS 12.110(1), the general tort statute, applies in the district of Oregon. *See Wilson v. Garcia*, 471 US 261, 275–80, 105 S Ct 1938, 85 L Ed 2d 254 (1985); *Addisu v. Fred Meyer, Inc.*, 198 F3d 1130, 1140 (9th Cir 2000); *Davis v. Harvey*, 789 F2d 1332 (9th Cir 1986).

“Although state law determines the length of the limitations period, federal law determines when a civil rights claim accrues.” *Olsen v. Idaho State Bd. of Med.*, 363 F3d 916, 926 (9th Cir 2004) (quoting *Morales v. City of Los Angeles*, 214 F3d 1151, 1153–54 (9th Cir 2000)). Accrual is the date on which the statute of limitations begins to run; under federal law, “[a] claim accrues ‘when the plaintiff knows or has reason to know of the injury which is the basis of the action.’” *Olsen*, 363 F3d at 926 (quoting *TwoRivers v. Lewis*, 174 F3d 987, 991 (9th Cir 1999)).

In 1990, Congress enacted 28 USC section 1658(a), which provides that “a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues.” This statute was meant to apply to acts enacted after December 1, 1990, not containing their own statute of limitations and that create a new right to maintain an action. *Jones v. R.R. Donnelley & Sons Co.*, 541 US 369, 382–83, 124 S Ct 1836, 158 L Ed 2d 645 (2004). A year after the passage of 28 USC section 1658, Congress passed the Civil Rights Act of 1991. Pub L 102-166, 105 Stat 1071 (1991). Among the provisions of the new act was a clarification of the phrase “make and enforce contracts” contained in section 1981. Civil Rights Act of 1991, § 101. In *Jones*, the Supreme Court held that this clarification created a new right of action for racial discrimination in the ““ termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.”” *Jones*, 541 US at 383 (quoting 42 USC § 1981(b)). Thus, the plaintiffs could rely on the four-year statute of limitations in bringing claims under laws created by Congress after 1990.

PRACTICE TIP: Whether a claim of federal civil rights violation in Oregon is subject to the two-year or four-year limitations period depends on whether the claim is one newly created by an act of Congress after December 1, 1990, without an independent statute of limitations.

§ 8.1G(1)(a) Contracts

42 USC section 1981 prohibits discriminatory interference with private contracts, as well as purely private discrimination in contracts. The federal law also prohibits discriminatory interference with the rights to sue, be a party, give evidence, and receive “the full and equal benefit of all laws and proceedings for the security of persons and property.” 42 USC § 1981. It provides a private right of action. *See Rivers v. Roadway Exp., Inc.*, 511 US 298, 304, 114 S Ct 1510, 128 L Ed 2d 274 (1994). As noted in § 8.1G(1), to the extent that such claims derive from the 1991 amendments to section 1981, they are subject to a four-year statute of limitations.

§ 8.1G(1)(b) Property

42 USC section 1982 provides a private right of action for discrimination against citizens with regard to the inheritance, purchase, lease, sale, holding, and conveyance of real and personal property, independent of the rights granted in the Fair Housing Act of 1968. *See* § 8.1G(4). Claims under section 1982 are subject to a two-year statute of limitations. *See* § 8.1G(1).

§ 8.1G(1)(c) State Action

42 USC section 1983 provides a private right of action for “any citizen of the United States or other person within the jurisdiction thereof” for violations of civil rights resulting from state action. Claims under section 1983 are subject to a two-year statute of limitations. *See* § 8.1G(1).

§ 8.1G(1)(d) Conspiracy

42 USC sections 1985 and 1986 prohibit conspiracies to interfere with civil rights and provide a private right of action for enforcement of those civil rights. Such claims are subject to a two-year statute of limitations. *See* § 8.1G(1).

§ 8.1G(2) Federal Employment Discrimination Law

Federal employment discrimination claims often have administrative time lines and may require that administrative remedies be exhausted first. As a prerequisite to filing a federal civil suit for discrimination, Title VII of the Civil Rights Act of 1964, Pub L 88-352, 78 Stat 253, requires aggrieved persons to file a timely complaint with the Equal Employment Opportunity Commission (EEOC). 42 USC § 2000e-5(f)(1). Because Oregon is a “deferral” state, a plaintiff must first resort to the appropriate state administrative proceeding. 42 USC § 2000e-5(c). The Bureau of Labor and Industries (BOLI) enforces state antidiscrimination laws. The first step requires that a plaintiff file with BOLI, which constitutes a federal EEOC filing. *See* § 8.1A(1). A civil action must be filed within 90 days of the receipt of the BOLI right-to-sue letter. ORS 659A.875(2). In addition, the Oregon statute of limitations for filing a civil action after filing a complaint with BOLI applies to actions in federal court as well as state court. *Jensen v. Sweet Home Lodge No. 1972 of Benev. & Protective Order of Elks of U.S.*, No CIV. 06-6329-

AA, WL 3051657 at *2, US Dist LEXIS 77464 (D Or Oct 16, 2007) (citing *Sharer v. Oregon*, 481 F Supp 2d 1156, 1164 (D Or 2007)).

The following are examples of claims and applicable agency requirements:

Title VI of the Civil Rights Act of 1964 (codified at 42 USC §§ 2000d–2000d-7). Title VI prohibits discrimination on the grounds of race, color, or national origin in any program or activity receiving federal financial assistance. An administrative complaint must be filed with the respective federal or state agency no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible department official or designee. 28 CFR § 42.107(b).

Title VII of the Civil Rights Act of 1964 (codified at 42 USC §§ 2000e–2000e-17). Title VII prohibits discrimination in employment based on race, color, religion, sex, or national origin. A charge under Title VII must be filed within 180 days after the alleged unlawful employment practice occurred, unless the person has first instituted proceedings with a state agency (i.e., BOLI in Oregon) and waited 60 days to file with the EEOC. In that case, the EEOC charge must be filed within 300 days after the alleged unlawful employment practice occurred, or within 30 days after receiving notice that the state agency has terminated its proceedings, whichever is earlier. 42 USC § 2000e-5(e)(1); *Kang v. U. Lim Am., Inc.*, 296 F3d 810, 818 n 7 (9th Cir 2002). Furthermore, because Oregon has its own statute prohibiting such discrimination, a claimant must file a charge with BOLI and wait 60 days before filing with the EEOC. 42 USC § 2000e-5(c); *Laquaglia v. Rio Hotel & Casino, Inc.*, 186 F3d 1172, 1174 (9th Cir 1999). See § 8.1A(1) and § 8.1B(2) regarding the time limits for filing claims under the Oregon discrimination statutes.

The filing deadline under 42 USC section 2000e-5 acts as a statute of limitations. Failure to file a timely charge bars a subsequent action in federal court, unless the court finds a basis to apply equitable doctrines such as tolling or estoppel. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 US 101, 113, 122 S Ct 2061, 153 L Ed 2d 106 (2002). When the EEOC ceases its administrative process, the claimant will be issued a notice of right to sue. A civil action will be barred unless it is filed within 90 days of receipt of the notice. 42 USC § 2000e-16(c).

NOTE: Separate exhaustion and timeliness requirements apply to a federal employee alleging Title VII-related claims against a federal employer. See 29 CFR Part 1614. For example, federal employees must consult an EEOC counselor within 45 days of the date of the allegedly discriminatory matter before filing a claim of discrimination on the basis of race, color, religion, sex, national origin, age, disability, or genetic information against certain federal employers. 29 CFR § 1614.103, 29 CFR § 1614.105(a)(1).

Title I of the Americans with Disabilities Act of 1990 (ADA) (codified at 42 USC §§ 12101–12117). Title I of the ADA prohibits employment discrimination against qualified individuals on the basis of their disability by a “covered entity” (i.e., employer, employment agency, labor organization, or joint labor-management committee having 15 or more employees). 42 USC §§ 12111–12112. The requirements and time limits for filing an ADA charge with the EEOC and in court are the same as those described under Title VII (described above). 42 USC § 12117(a) (incorporating the enforcement procedures set forth in Title VII (42 USC § 2000e-5)); *Santa Maria v. Pac. Bell*, 202 F3d 1170, 1176 (9th Cir 2000), *overruled on other grounds by Socop-Gonzalez v. I.N.S.*, 272 F3d 1176, 1194–96 (9th Cir 2001); *O’Riley v. U.S. Bakery*, No CV-01-1705-ST, WL 31974407 at *7, US Dist LEXIS 25538 (D Or Dec 23, 2002).

NOTE: As with a Title VII claim, a federal employee alleging a claim of disability discrimination against a federal employer is subject to separate exhaustion requirements. *See Farris v. Shinseki*, 660 F3d 557, 562 (1st Cir 2011) (“Under Title VII, a federal employee must exhaust her administrative remedies before initiating a claim of discrimination in federal court. *See* 42 USC § 2000e-16(c). The same is true for claims under the ADA.” (footnote omitted)). *See also* the paragraph above on Title VII.

Section 504 of the Rehabilitation Act of 1973 (codified at 29 USC § 794). Section 504 protects disabled individuals from discrimination in employment in programs receiving federal financial assistance. 29 USC § 794(a). A complaint must be filed within 180 days of the alleged act of discrimination (but only 90 days for the Railroad Retirement Board (45 USC § 355(f))), although the agency may extend the deadline for good cause. 29 CFR § 100.570(d). The statute of limitations for a section 504 claim is provided by the analogous state law. *See Daviton v. Columbia/HCA Healthcare Corp.*, 241 F3d 1131, 1135–36 (9th Cir 2001). Oregon’s two-year statute of limitations for personal-injury actions (ORS 12.110(1)) applies. *See Pieri v. Dammasch State Hosp.*, 77 F3d 490 at *2 (9th Cir 1996) (unpublished opinion).

NOTE: Separate exhaustion and timeliness requirements apply to a federal employee alleging a section 504 disability discrimination claim against a federal employer. *See* 29 CFR § 1614.103, 29 CFR § 1614.105(a)(1).

The Age Discrimination in Employment Act (ADEA) (codified at 29 USC §§ 621–634). The ADEA protects against age discrimination and applies to employers with 20 or more employees in the current or preceding calendar year. 29 USC § 623(a), 29 USC § 630(b). A claimant must file a charge with the EEOC within 180 days after the alleged discrimination occurs, or within 300 days in “deferral” states such as Oregon. 29 USC § 626(d)(1). Before filing with the EEOC, the claimant must file a charge under the comparable state law and wait 60 days before filing with the EEOC. 29 USC § 633(b). In claims under the ADEA,

the 300-day period begins to run when the employee knows or should have known that an unlawful employment practice has been committed. *Aronsen v. Crown Zellerbach*, 662 F2d 584, 593 (9th Cir 1981), *cert den*, 459 US 1200 (1983). *Cf. Lukovsky v. City & Cnty. of San Francisco*, 535 F3d 1044, 1051 (9th Cir 2008), *cert den*, 556 US 1183 (2009) (stating that claims accrued, for limitations purposes, on the date applicants were informed they were not hired). When the EEOC ceases its administrative process, the claimant will be issued a notice of right to sue. A civil action under the ADEA will be barred unless it is filed within 90 days of receipt of the notice. 29 USC § 626(e).

NOTE: Separate exhaustion and timeliness requirements apply to a federal employee alleging an age discrimination claim against a federal employer. *See* 29 CFR § 1614.103, 29 CFR § 1614.105(a)(1).

The Equal Pay Act of 1963 (EPA) (codified in part at 29 USC § 206(d)). The EPA prohibits discrimination in employment pay based on sex. 29 USC § 206(d). An action must be filed within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued. 29 USC § 255(a); *E.E.O.C. v. First Citizens Bank of Billings*, 758 F2d 397, 401 (9th Cir 1985), *cert den*, 474 US 902 (1985). This time limit is more generous than that of Title VII. *Washington Cnty. v. Gunther*, 452 US 161, 175 n 14, 101 S Ct 2242, 68 L Ed 2d 751 (1981).

NOTE: Separate exhaustion and timeliness requirements apply to a federal employee alleging an EPA claim against a federal employer. *See* 29 CFR § 1614.103, 29 CFR § 1614.105(a)(1).

§ 8.1G(3) Federal Public Accommodations and Public Services Discrimination Law

Federal claims for discrimination in public accommodations or by entities providing public services may require that administrative remedies be exhausted first. In addition, such claims often have administrative time lines. Some of the claims use the state personal-injury time limit.

The following are some of the applicable causes of action:

Section 504 of the Rehabilitation Act of 1973 (codified at 29 USC § 794). Section 504 prohibits discrimination on the basis of disability by programs and activities receiving federal financial assistance, including private organizations. Oregon's two-year statute of limitations for personal-injury claims (ORS 12.110(1)) applies. *See* § 8.1G(2).

Title II of the Civil Rights Act of 1964 (codified at 42 USC §§ 2000a–2000a-6). Title II prohibits discrimination in places of public accommodation because of race, color, religion, or national origin (42 USC § 2000a), and provides a private right of action for injunctive relief, but not damages (42 USC § 2000a-3). A claimant is not required to exhaust administrative remedies but must give 30

days' written notice to any state or local agency that has jurisdiction before filing suit. 42 USC § 2000a-3(c).

Title II of the Americans with Disabilities Act of 1990 (ADA) (codified at 42 USC §§ 12131–12165). Title II of the ADA prohibits discrimination in the provision of public services and programs by a “public entity” and provides a private right of action, including damages. 42 USC § 12132. The remedies available are the same as those provided under section 504(a) of the Rehabilitation Act of 1973 (29 USC § 794(a)). 42 USC § 12133.

CAVEAT: In *Zimmerman v. Oregon Dep't of Justice*, 170 F3d 1169, 1172 (9th Cir 1999), *cert den*, 531 US 1189 (2001), the Ninth Circuit recognized in *dictum* that there is no exhaustion requirement under Title II of the ADA for cases involving nonfederal defendants. However, the *dictum* was based on a case that was decided before Congress amended the Rehabilitation Act, and Title II of the ADA is based on the Rehabilitation Act. *Zimmerman*, 170 F3d at 1178 (citing *Smith v. Barton*, 914 F2d 1330, 1338 (9th Cir 1990), *cert den*, 501 US 1217 (1991)). Congress amended the Rehabilitation Act in 1992 to incorporate the employment standards of Title I of the ADA, which has an exhaustion requirement. Rehabilitation Act Amendments of 1992, Pub L 102-569, § 506, 106 Stat 4344, 4428 (1992); *Zimmerman*, 170 F3d at 1178. Title I has an exhaustion requirement because it is modeled after Title VII of the Civil Rights Act of 1964, which has an exhaustion requirement. 42 USC § 12117(a); *Zimmerman*, 170 F3d at 1178.

Title III of the ADA (codified at 42 USC §§ 12181–12189). Title III of the ADA prohibits discrimination on the basis of disability in places of public accommodation (42 USC § 12182(a)), and provides a private right of action for injunctive relief, but not damages, to “any person who is being subjected to discrimination on the basis of disability” or who has “reasonable grounds for believing that such person is about to be subjected to discrimination” (42 USC § 12188(a)); *Pickern v. Holiday Quality Foods Inc.*, 293 F3d 1133, 1136 (9th Cir), *cert den*, 537 US 1030 (2002); *see PGA Tour, Inc. v. Martin*, 532 US 661, 677, 121 S Ct 1879, 149 L Ed 2d 904 (2001). Courts characterize a claim under the ADA as a personal-injury action, and they apply the personal-injury statute of limitations of the state where the claim arose. Thus, in Oregon, the 180-day Tort Claims Act notice requirement (ORS 30.275(2)(b)) and the two-year personal-injury statute of limitations (ORS 12.110(1)) apply. The limitations period begins to run when the plaintiff discovers the injury. *Pickern*, 293 F3d at 1136–37; *see* § 8.1C(3).

§ 8.1G(4) Federal Fair Housing and Housing Discrimination Law

The following are some of the federal claims for discrimination in housing:

The Fair Housing Act (FHA) and the Fair Housing Amendments Act of 1988 (FHAA) (codified at 42 USC §§ 3601–3631). The FHAA prohibits discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. 42 USC §§ 3604–3606. A suit must be commenced no later than two years after the occurrence or termination of an alleged discriminatory housing practice. 42 USC § 3613(a)(1)(A). The computation of the two-year period does not include any time during which a federal administrative proceeding was pending with respect to a complaint or charge based on the discriminatory housing practice. 42 USC § 3613(a)(1)(B).

CAVEAT: An aggrieved person under the FHA may file an administrative complaint with the United States Department of Housing and Urban Development (HUD) or with the Bureau of Labor and Industries. *See* § 8.1D(1) to § 8.1D(2). That complaint must be filed within one year of the discriminatory act. 42 USC § 3610(a)(1)(A)(i); ORS 659A.820(2). If a complaint has been filed, then the two-year statute of limitations is tolled until the agency issues a charge of discrimination or dismisses the complaint. If the complaint is dismissed, the complainant is allowed 90 days to file a civil action. 42 USC § 3613(a)(1)(B); *Fair Housing Council of Oregon v. Cross Water Development, LLC*, No C08-5755 FDB, WL 799685 at *2 (WD Wash Mar 24, 2009) (“Pursuant to 42 USC § 3613(a)(1)(B), the time during which a complaint is pending with HUD is not included in the computation of the two-year statute of limitations applicable to the commencement of a district court action.”).

The Equal Credit Opportunity Act (ECOA) (codified at 15 USC §§ 1691–1691f). The ECOA generally makes it unlawful for any creditor to discriminate against a credit applicant on the basis of race, color, religion, national origin, sex, marital status, or age. 15 USC § 1691(a)(1). The ECOA also applies to claims of discrimination against residents of a segregated neighborhood that are denied credit because of the racial makeup of their area. *See Barrett v. H & R Block, Inc.*, 652 F Supp 2d 104, 108–09 (D Mass 2009). Courts have recognized other disparate-impact claims under the ECOA. *See, e.g., Miller v. Am. Exp. Co.*, 688 F2d 1235, 1239–40 (9th Cir 1982) (recognizing claim under ECOA based on disparate impact on women). The statute of limitations is five years from the date of the occurrence of the alleged discrimination, unless the claim is filed administratively and an administrative agency action commences within five years of the occurrence or the attorney general commences a civil action within five years from the date of the occurrence. In either of these cases, the victim may bring suit no later than one year after the commencement of that proceeding or action. 15 USC § 1691e(f). *See Farrell v. Bank of New Hampshire-Portsmouth*, 929 F2d 871 (1st Cir 1991) (decided under former version of the statute, when the limitations period was two years).

§ 8.1G(5) Federal Education Discrimination Law

The following are some of the federal claims for discrimination in education:

The Equal Educational Opportunities Act of 1974 (EEOA) (codified at 20 USC §§ 1701–1721). The EEOA provides that all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin (20 USC § 1703), and an individual denied an equal educational opportunity may sue for appropriate relief in federal court (20 USC § 1706). A civil action for unlawful discrimination in higher education must be filed within one year after the grievance is filed. ORS 659.860(2). When pursuing a private right of action under 20 USC section 1706 for other levels of education, the same one-year time limit may apply.

Title IX of the Education Amendments of 1972 (codified at 20 USC §§ 1681–1688). Title IX prohibits discrimination on the basis of sex in educational programs receiving federal financial assistance. 20 USC § 1681(a). Comparing Title IX with civil rights statutes such as 42 USC section 1983 and Title VI of the Civil Rights Act of 1964 (codified at 42 USC §§ 2000d–2000d-7), the Ninth Circuit has implied that the state statute of limitations for personal-injury claims would be applied in a Title IX case. *See Taylor v. Regents of Univ. of California*, 993 F2d 710, 712 (9th Cir 1993), *cert den*, 510 US 1076 (1994). Thus, generally the two-year statute of limitations of ORS 12.110(1) will apply. *But see* ORS 659A.875(4) (one-year statute of limitations for discrimination in places of public accommodation).

Section 504 of the Rehabilitation Act of 1973 (codified at 29 USC § 794). Section 504 prohibits discrimination on the basis of disability by programs and activities receiving federal financial assistance and provides a private right of action. *See* § 8.1G(2). The exhaustion of administrative remedies and time lines described in § 8.1G(2) also apply to claims based on discrimination in education. Generally, the two-year statute of limitations of ORS 12.110(1) will apply, although there are exceptions, such as ORS 659A.875.

The Individuals with Disabilities Education Act (IDEA) (codified at 20 USC §§ 1400–1482). The IDEA provides a remedy for a disabled child who has been denied the right to a free appropriate public education. *See* 20 USC § 1415(a). The two-year statute of limitations of ORS 30.275(9) applies to IDEA claims in Oregon. *S.V. v. Sherwood Sch. Dist.*, 254 F3d 877, 880–82 (9th Cir 2001). The IDEA requires exhaustion of administrative appeal procedures before seeking judicial review, similar to other federal laws protecting the rights of children with disabilities. 20 USC § 1415(l). *See* § 8.1F(1) to § 8.1F(2).

§ 8.1H References

See 6 *Federal Procedure, L.Ed.*, ch 11 (Civil Rights) (Thomson Reuters 2004); Robert G. Schwemm, *Housing Discrimination: Law And Litigation*

(Thomson Reuters 2008–2013); 1 *Labor Employment Law: Private Sector* chs 5–9 (OSB Legal Pubs 2011); 2 *Torts* ch 27 (OSB Legal Pubs 2012).

§ 8.2 EMPLOYER—EMPLOYEE

§ 8.2A Payment of Final Wages

When an employee is discharged or when the employment relationship is terminated by mutual agreement, the employer must pay the employee all earned and unpaid wages by the end of the first business day after the discharge or termination. ORS 652.140(1).

When an employee quits employment after giving the employer not less than 48 hours' notice of the intention to quit employment (excluding Saturdays, Sundays, and holidays), unpaid wages are due immediately. This provision does not apply to an employee who has a contract of employment for a specific period. ORS 652.140(2)(a).

If the employee provides less than 48 hours' notice of his or her intention to quit employment, all wages are due within five days (excluding Saturdays, Sundays, and holidays), or at the next regularly scheduled payday after the employee has quit, whichever occurs first. ORS 652.140(2)(b). “[I]f the employee is regularly required to submit time records to the employer to enable the employer to determine the wages due the employee,” the employer must pay the employee the wages the employer estimates are due and payable within five days after the employee has quit. ORS 652.140(2)(c). Then, within five days after the employee has submitted the time records, all wages earned and unpaid become due and payable. ORS 652.140(2)(c).

For seasonal farmworkers, wages are due whenever the employment terminates, ORS 652.145(1), except if (1) the termination occurs at the end of the harvest season; (2) the employer is a farmworker camp operator described in ORS 658.715(1)(b) or (c); and (3) the farmworker is provided housing that complies with ORS 658.705 to 658.850 at no cost to the worker from the termination of work until the wages are paid. In those circumstances, wages are due by noon on the day after termination of the employment of the seasonal farmworker. ORS 652.145(1)(a).

§ 8.2B State Law Claims for Unpaid Wages or Overtime

An action for unpaid minimum wages is six years. ORS 12.080(1)–(2).

CAVEAT: There is no clear statute of limitations for actions to recover penalty wages. However, in the absence of a clear statute, courts generally apply the three-year statute of limitations found in ORS 12.100(2). See *Russell v. U.S. Bank Nat. Ass'n*, 246 Or App 74, 77, 265 P3d 1 (2011).

An action for overtime or premium pay, or for penalties or liquidated damages for failure to pay overtime or premium pay, must be commenced within two years. ORS 12.110(3).

An action based on a contract for the payment of wages must be commenced within six years of the date wages become due. ORS 12.080(1); *State ex rel. Nilsen v. Ben Jacques Chevrolet Buick, Inc.*, 16 Or App 552, 555, 520 P2d 366 (1974).

CAVEAT: An action for overtime or premium pay, or for penalties or liquidated damages for failure to pay overtime or premium pay, even if based on a contract, must be commenced within two years. ORS 12.110(3); *Massey v. Oregon-Washington Plywood Co.*, 223 Or 139, 143–44, 353 P2d 1039 (1960) (vacation pay held not to be premium pay).

§ 8.2C Federal Wage Claims under the Fair Labor Standards Act

An employee may bring an action under the Fair Labor Standards Act (FLSA) (codified at 29 USC §§ 201–262) for unpaid minimum wages, unpaid overtime, or liquidated damages. 29 USC § 216(b). Employees are not required to exhaust administrative remedies before bringing an FLSA action. *Local 246 Utility Workers Union of America v. Southern California Edison Co.*, 83 F3d 292, 297 (1996). The FLSA statute of limitations generally is two years, unless the violation was willful, in which case the action may be commenced three years from the date of the action's accrual. 29 USC § 255(a).

§ 8.2D Priority of Wage Claims

Within 30 days after an employer's property is seized by any court process or is placed in receivership, an employee may make a claim (up to \$2,000) for wages earned in the 90 days preceding the seizure, transfer, or assignment of the property. ORS 652.510(1). An employee enforcing a claim under ORS 652.510(1) may make a claim with the officer or person charged with the execution of the process within 30 days after the seizure of the property on any execution or writ of attachment, or may make a claim with the assignee or receiver within 45 days after the property is placed in the hands of the assignee or receiver. ORS 652.510(2).

Any interested person may object to the wage claim within 10 days after the claim report for wages is filed. ORS 652.540(1). If a claim has been objected to, the claimant must file a complaint within 30 days after the objection is filed and serve the complaint on the objecting party and the principal debtor. ORS 652.540(2).

Wage claimants have priority against property sold, transferred, mortgaged, or liened to pay or secure a preexisting debt, but must claim against the transferee within 10 days after actual delivery of the property to the transferee or within 30 days after the recording of a deed or transfer. The wage claimant must also file a court action within 30 days after the notice of claim is served. ORS 652.570(1).

§ 8.2E Contracts in Employment

§ 8.2E(1) Employment Contracts

Generally, a claim for breach of an employment contract, either express or implied, is bound by the same statute of limitations as other breach-of-contract actions in Oregon: six years. ORS 12.080(1).

§ 8.2E(2) Noncompetition Agreements

In Oregon, noncompetition agreements are voidable unless all of the following are met:

(1) The employee is informed in writing at least two weeks before the employee begins work that a noncompetition agreement is a condition of employment, or the agreement is entered into upon a bona fide advancement of the employee;

(2) The employee is in one of the categories listed in ORS 653.020 (excluded employees);

(3) The employer has a protectable interest; and

(4) The amount of the employee's annual gross salary and commissions at the time of termination exceeds the median family income for a four-person family (except for on-air talent in the broadcasting business).

ORS 653.295(1). The term of a noncompetition agreement cannot exceed two years from the date of termination. Any period of time beyond two years is voidable and may not be enforced by an Oregon court. ORS 653.295(2).

§ 8.2F Employer Liability Law

The two-year statute of limitations for negligent personal injury applies to actions under the Employer Liability Law (ORS 654.305–654.336). *Shelton v. Paris*, 199 Or 365, 373, 261 P2d 856 (1953).

§ 8.2G Other Employment Laws

For claims under ORS 659A.885 alleging discrimination or some other unlawful employment practice, see § 8.1E(2). For federal employment discrimination claims, see § 8.1G(2).

Claims for common-law wrongful discharge have a two-year statute of limitations. ORS 12.110(1); *Stupek v. Wyle Laboratories Corp.*, 327 Or 433, 435, 963 P2d 678 (1998). Common-law wrongful-discharge claims typically include allegations that a discharge was wrongful because the employee was discharged for fulfilling societal duties or for exercising rights of public importance related to his or her role as an employee. See *Delaney v. Taco Time Int'l, Inc.*, 297 Or 10, 14–16, 681 P2d 114 (1984).

Employment-related torts, including claims for intentional infliction of emotional distress, have a two-year statute of limitations. ORS 12.110(1); *Stupek*, 327 Or at 435.

§ 8.2H Occupational Safety and Health

§ 8.2H(1) Advance Notice

The Oregon Safe Employment Act, constituting much of ORS chapter 654, authorizes agents of the Department of Consumer and Business Services (DCBS) authority to inspect and investigate the safety conditions of any place of employment “without delay and at reasonable times.” ORS 654.067(1). The Oregon Occupational Safety and Health Division (commonly referred to as Oregon OSHA) is the agency within DCBS that implements the act. Unless authorized by DCBS, no one may give advance notice to the owner, employer, or agent of the employer. ORS 654.067(2).

§ 8.2H(2) Execution of Inspection Warrant

If an inspector secures a warrant for purposes of investigating potential workplace safety violations, the warrant must be executed and returned to the magistrate who issued it within 10 days from its issuance. The magistrate may extend the time for five days. ORS 654.216(4).

§ 8.2H(3) Employer Appeals of Violations

Employers and employees have the legal right to appeal a citation. If the employer or employee wants to contest any proposed civil penalty, the time fixed for correcting a violation, or the violation itself, the employer or employee must file a written request for an appeal within 30 days of receiving a citation, notice, or order. If no appeal is filed within 30 days, then the citation becomes a final order of the Department of Consumer and Business Services. OAR 437-001-0255(1).

§ 8.2H(4) Correction of Violations

Filing an appeal does not automatically extend the date by which an employer must abate the dangerous or harmful workplace condition. However, the employer may apply for an extension of the date to correct a violation. OAR 437-001-0240(1). Employers requesting a hearing on an extension of the correction date must do so within 10 days of posting the application. OAR 437-001-0251(1)(a).

§ 8.2H(5) Hearings Subject to Oregon Administrative Procedures Act

Employers have the right to contest proposed orders and violations in a contested case hearing and judicial review thereof. ORS 654.290(2). The statutory timelines for such hearings are prescribed by the Oregon Administrative Procedures Act, ORS chapter 183.

§ 8.2H(6) Retaliation Claims

Claims of discrimination or retaliation relating to an employee’s (or prospective employee’s) alleged opposition to an unsafe work practice, filing a complaint with Oregon Occupational Safety and Health Division (Oregon OSHA), or testimony in a proceeding under the Oregon Safe Employment Act have two

different statutes of limitations. First, an employee may, within 90 days after the employee or prospective employee has reasonable cause to believe that the violation has occurred, file a complaint with the Commissioner of the Bureau of Labor and Industries alleging discrimination under the provisions of ORS 659A.820. ORS 654.062(6)(a). Second, the employee (or prospective employee) may choose to file a civil action within one year after the employee or prospective employee has reasonable cause to believe a violation has occurred. ORS 654.062(6)(c).

§ 8.2I Unemployment Insurance

§ 8.2I(1) Eligibility

A person who worked at least 500 hours during his or her base year, or who earned at least \$1,000 in the base year and had total base-year earnings equal to or greater than 1.5 times wages in the highest quarter of the base year, is eligible for unemployment insurance. ORS 657.150(2). A qualifying worker may receive up to 26 weeks of benefits during the worker's benefit year, which is defined as the 52 weeks that follow the first week that the worker files for benefits. ORS 657.010(3), ORS 657.150(5).

§ 8.2I(2) Initial Benefits Determination

After a claimant files a claim for unemployment insurance, the Employment Department must promptly give written notice of the claim filing to the claimant's most recent employing unit or agent of the employing unit. ORS 657.265. The Employment Department then must promptly make an initial determination of eligibility and amount of benefits. ORS 657.266(1). Once the department makes an initial benefits determination, the claimant or base-year employer adversely affected may file a request for hearing. The request must be filed no more than 10 days after the delivery of the initial or amended determination, unless the department mails the determination, in which case the request for hearing must be filed not later than 10 days after the date the determination is mailed to the last-known address of the claimant and the base-year employer. If no party requests a hearing, the initial eligibility determination becomes final. ORS 657.266(5).

§ 8.2I(3) Allowing or Denying Claim

The department's decision to allow or deny the claim is final unless the claimant or employer requests a hearing within 20 days after delivery of notice of the decision or, if mailed, within 20 days after the notice was mailed to the party's last-known address. ORS 657.269.

§ 8.2I(4) Following an Administrative Hearing

After an administrative hearing, an administrative law judge (ALJ) must promptly affirm, modify, or set aside the decision of the Employment Department. ORS 657.270(4). Following a written decision by the ALJ, a party has 20 days to

ask to reopen the hearing if the party failed to appear at the hearing and can show good cause for failing to appear. ORS 657.270(5). Unless a party or the Director of the Employment Division files a motion to reopen or files an application for review with the Employment Appeals Board, the decision of the ALJ becomes final. ORS 657.270(6); *see* § 8.2I(5).

§ 8.2I(5) Employment Appeals Board

Upon an adverse decision from an administrative law judge (ALJ), parties have 20 days to appeal to the Employment Appeals Board. ORS 657.270(6). The board reviews the ALJ's ruling *de novo* on the record. The decision of the board becomes the final order unless a petition for judicial review is filed. ORS 657.275(2).

§ 8.2I(6) Judicial Review

Parties seeking judicial review of unemployment benefits determinations must file a petition for review within 30 days after being served with the decision of the Employment Appeals Board. ORS 657.282.

§ 8.2J Securities Law

§ 8.2J(1) Oregon Securities Law

Claims based on sale of securities in violation of Oregon law are generally subject to a three-year statute of limitations. ORS 59.115(6). Claims based on the unlawful purchase of securities are also generally subject to a three-year statute of limitations. ORS 59.127(6). Claims based on fraud or deceit with respect to securities or securities business must be commenced within the later of three years from the purchase or sale of the security to which the suit relates or two years from when the person bringing the action discovered or should have discovered the basis for the claim. ORS 59.137(6).

§ 8.2J(1)(a) Administrative Actions against Broker-Dealers

If the Director of the Department of Consumer and Business Services finds the assets or capital of a broker-dealer or investment advisor are impaired or the person's affairs are in an unsound condition, the director may take possession of all the property, business, and assets of the person that are located in Oregon. If the deficiency in assets or capital is not made good or the unsound condition remedied within 60 days, the property, business, and assets will be liquidated pursuant to the laws of liquidation of a private corporation in receivership. ORS 59.265(1), (3).

§ 8.2J(1)(b) Orders of the Director of the Department of Consumer and Business Services

To challenge an order of the Director of the Department of Consumer and Business Affairs, the person affected must demand a hearing within 20 days after service of the order. ORS 59.295(1). If timely demand for a hearing is filed, then a contested hearing will be held consistent with the procedures, including pro-

cedures for judicial review, described in the Oregon Administrative Procedures Act, ORS chapter 183. ORS 59.295(2).

§ 8.2J(2) Federal Securities Law and the Sarbanes-Oxley Act

§ 8.2J(2)(a) Securities Fraud

The statute of limitations for claims of fraud, deceit, or unlawful manipulation of securities is the earlier of two years after the discovery of the facts constituting the violation or five years after the violation. 28 USC § 1658(b).

§ 8.2J(2)(b) Trading During Blackout Periods

Section 306 of the Sarbanes-Oxley Act of 2002, Pub L 107-204, 116 Stat 745, 779, codified at 15 USC § 7244, generally prohibits directors or officers of issuers of equity securities from trading equity securities acquired in connection with their services as directors or officers during any blackout period. 15 USC § 7244(a)(1). The *blackout period* is defined as any period longer than three business days during which 50 percent or more of the participants or beneficiaries in the issuer's individual account plans are prevented from trading. 15 USC § 7244(a)(4). Issuers may bring claims directly; shareholders may bring claims derivatively to enforce section 306. Such actions are subject to a two-year statute of limitations. 15 USC § 7244(a)(2)(B).

§ 8.2J(2)(c) Whistleblower Protection

Section 806 of the Sarbanes-Oxley Act of 2002, Pub L 107-204, 116 Stat 745, 802, codified at 18 USC § 1514A, prohibits companies from discharging, demoting, suspending, threatening, harassing, or otherwise discriminating against employees who provide information pursuant to an investigation conducted by a federal agency, Congress, or a person with supervisory authority over the employee. 18 USC § 1514A(a). Affected employees may commence a private action by filing a complaint with the Occupational Safety and Health Administration (OSHA) within 180 days of the alleged violation. 18 USC § 1514A(b)(1)(A); 29 CFR § 1980.103(c)–(d). If OSHA fails to act within 180 days, then the employee may bring an action for *de novo* review in federal court. 18 USC § 1514A(b)(1)(B); 29 CFR § 1980.114(a).

§ 8.2K References

See generally Labor And Employment Law: Private Sector (OSB Legal Pubs 2011); *2 Torts* ch 29 (OSB Legal Pubs 2012). For information about garnishment, see chapter 11.

§ 8.3 WORKERS' COMPENSATION

ORS chapter 656 governs workers' compensation claims.

§ 8.3A Noncomplying Employer

A noncomplying employer is an employer who has failed to provide or maintain workers' compensation coverage for all subject workers in accordance

with ORS 656.052(1) and ORS 656.017. When the Director of the Department of Consumer and Business Services believes an employer is noncomplying, the director will serve a proposed order on the employer declaring the employer to be a noncomplying employer and possibly assessing a penalty. ORS 656.052(2). Failure to comply after the order becomes final will result in a suit commenced by the director in the circuit court of the county in which the alleged noncomplying employer resides or employs workers, enjoining employment of workers until compliance. That circuit court will set a date for a hearing on the director's suit and serve notice on the alleged noncomplying employer with no less than five days from notice to hearing. ORS 656.052(3).

§ 8.3A(1) Claim of Noncompliance by Employee

A claim by an employee of a noncomplying employer must be referred by the Director of the Department of Consumer and Business Services to an assigned claims agent within 60 days of the date the director receives notice of the claim. The time for payment of the first installment of compensation does not begin to run until the director has referred the claim to the assigned claims agent. ORS 656.054(1).

§ 8.3A(2) Hearing

At the time of the referral of the claim, the Director of the Department of Consumer and Business Services will notify the employer in writing regarding the referral and the employer's right to object to the claim. The employer may request a hearing to object to the claim within the time that the claim may be accepted or denied as provided in ORS 656.262 (60 days). ORS 656.054(1).

§ 8.3B Coverage

§ 8.3B(1) Effective Date

Coverage is effective when the application for coverage and required fees or premium are received and accepted by an insurer's authorized representative or on the date specified in writing by the employer and the insurer. ORS 656.419(3). For a self-insured employer, coverage is effective on the date specified in its election notice to the Director of the Department of Consumer and Business Services. ORS 656.039(1), ORS 656.430(2). An employer of nonsubject workers may elect to make the employees subject workers by filing written notice of election with the insurer with a copy to the director. ORS 656.039(1).

§ 8.3B(2) Cancellation of Coverage

§ 8.3B(2)(a) By Employer

An employer may cancel coverage by giving the insurer at least 30 days' written notice. ORS 656.423(1). An employer may cancel in less than 30 days if the employer provides other coverage or becomes a self-insured employer, or by agreement of the employer and the insurer. ORS 656.423(3).

Cancellation by written notice alone is effective at midnight 30 days after the cancellation notice is received by the insurer, unless a later date is specified. ORS 656.423(2). Cancellation by notice and replacement coverage or agreement is effective as of the date of the new coverage or certification as a self-insured employer or on a date agreed to in writing by the employer and the insurer. ORS 656.423(3).

An election to cover nonsubject workers under ORS 656.039(1) may be canceled by written notice to the insurer, or to the Director of the Department of Consumer and Business Services in the case of a self-insured employer. The cancellation is effective at midnight on the day the notice is received by the insurer or the director, unless a later date is specified in the notice. ORS 656.039(2).

The insurer must file a notice of cancellation with the director within 10 calendar days after the effective date of the cancellation or the date on which the insurer receives the notice from the employer, whichever is later. ORS 656.423(4). In the case of a cancellation of an election to cover nonsubject workers under ORS 656.039(1), the insurer must send a copy of the notice of cancellation to the director within 10 days of receipt. ORS 656.039(2).

§ 8.3B(2)(b) By Insurer

An insurer may cancel a policy or surety bond before the expiration date by giving the employer and the Director of the Department of Consumer and Business Services notice of the cancellation. The notice must be provided to the director within 10 calendar days after the effective date of the cancellation provided in the notice given to the employer. ORS 656.427(1).

Generally, cancellation of a policy is effective at midnight no less than 45 days after notice is mailed to the employer. ORS 656.427(2)(a). However, cancellation of a policy based on the insurer's decision not to offer insurance to employers within a specific premium category is effective no sooner than 90 days after the notice is mailed to the employer. ORS 656.427(2)(b). If the cancellation of a policy is based on nonpayment of premium, the cancellation is effective no sooner than 10 days after the date the notice is mailed to the employer. ORS 656.427(2)(c). Cancellation of a surety bond is effective at midnight no less than 30 days after the notice is received by the director. ORS 656.427(2)(d).

The cancellation of a policy under ORS 656.427 is effective on the earliest of the expiration of the policy term, the effective date of the insurer's cancellation, or the effective date of a policy for which another insurer makes a proof-of-coverage filing on behalf of the employer. ORS 656.427(7).

Cancellation of a policy or bond does not limit liability incurred under the policy or bond before the effective date of the cancellation. ORS 656.427(5).

§ 8.3B(3) Permanent Total Disability

Permanent total disability (PTD) benefits are payable for as long as the worker is unable to return to regular gainful employment in a suitable occupation. *See* ORS 656.206(1)(d). The insurer must reevaluate a PTD claim at least every two years. ORS 656.206(5).

If a worker receiving PTD benefits is found to be materially improved and capable of regularly performing gainful employment in a suitable occupation, the insurer or self-insured employer will issue a notice of closure and pay benefits through the notice of closure. If a worker requests a hearing on the notice of closure within 30 days of the notice date, benefits will continue until a Hearings Division or subsequent order affirms the notice of closure or until another order terminating benefits becomes final. If the worker requests a hearing on the notice of closure more than 30 days from the notice date but before the expiration of the 60-day period for requesting a hearing, benefits will resume from the date the hearing is requested and will continue until a Hearings Division or subsequent order affirms the notice of closure or until another order terminating benefits becomes final. ORS 656.206(6)(a).

§ 8.3B(4) Temporary Disability Benefits

No payment of temporary total disability or temporary partial disability benefits is made for the first three calendar days after the worker leaves work or loses wages, unless the worker is totally disabled after the injury and the total disability continues for 14 consecutive days, or the worker is admitted to a hospital as an inpatient within 14 days of the first onset of total disability. If the worker leaves work or loses wages on the day of injury, that day is counted as the first of the three-day period. ORS 656.210(3), ORS 656.212(1).

§ 8.3B(4)(a) Authorization of Benefits

A medical service provider who is not a member of a managed care organization and who is not an attending physician cannot authorize payment of temporary disability benefits. However, an emergency room physician may authorize temporary disability benefits for a maximum of 14 days. ORS 656.245(2)(b)(B). Notwithstanding the above, a licensed nurse practitioner may authorize payment of temporary disability benefits for up to 180 days from the date of the first visit on the initial claim. ORS 656.245(2)(b)(D)(ii).

§ 8.3B(4)(b) Duration of Benefits

Temporary total disability (TTD) benefits continue until one of the following events occurs:

- (1) The worker returns to regular or modified employment;
- (2) The attending physician or nurse practitioner who authorized TTD benefits advises the worker and documents in writing that the worker is released to regular employment;

(3) The attending physician or nurse practitioner who authorized TTD benefits advises the worker and documents in writing that the worker is released for modified employment, an offer of modified work is made in writing to the worker, and the worker fails to begin the offered employment. However, the worker may refuse the modified job offer without losing entitlement to TTD benefits if the offer:

- Requires a commute beyond the worker's physical capacity according to the attending physician or nurse practitioner who may authorize temporary disability;
- Is for a work site more than 50 miles from both the worker's residence and the site of injury, unless the intent of the parties at the time of hire or the pattern of employment before injury established multiple or mobile work sites and that the worker could be assigned to any of them;
- Is with an employer other than the employer at injury;
- Is not at a work site of the employer at injury;
- Is not consistent with either the existing written shift change policy or the common practice of the employer at injury or aggravation; or
- Is not consistent with an existing shift change provision of an applicable collective bargaining agreement;

(4) Any other event that would allow suspension, withholding, or termination of temporary benefits under ORS 656.262(4) or any other provision of ORS chapter 656; or

(5) Certain events applicable to home care workers.

ORS 656.268(4).

TTD benefits also terminate if the disability becomes partial. ORS 656.212(2).

§ 8.3B(4)(c) Vocational Assistance Training

Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary disability compensation for up to 16 months. The insurer or self-insured employer may voluntarily extend the payment up to 21 months. The Director of the Department of Consumer and Business Services may order the payment of temporary disability compensation for up to 21 months upon good cause shown by the injured worker. Costs related to vocational assistance training may be paid for longer than 21 months, but benefits cannot be paid for more than 21 months. ORS 656.340(12).

§ 8.3B(4)(d) First Payment

The first payment of temporary disability must be made within 14 days of the employer's notice or knowledge of the claim, if authorized by the attending physician or nurse practitioner, and payments must continue at least once every

two weeks thereafter unless the Director of the Department of Consumer and Business Services determines otherwise. ORS 656.262(4)(a).

§ 8.3B(5) First Payment of Permanent Disability

Payment of permanent disability must begin within 30 days of

- (1) The insurer's notice of claim closure;
- (2) The date of any litigation order that orders permanent total disability;
- (3) The date of any Workers' Compensation Division order that orders permanent disability;
- (4) The date that any litigation authorizing permanent partial disability becomes final;
- (5) The date that the Workers' Compensation Board or an administrative law judge disapproves a claim, if permanent disability benefits are otherwise due; or
- (6) The date that authorized training ends if the worker is medically stationary and any previous award remains unpaid.

OAR 436-060-0150(7).

§ 8.3C Hearing

Generally, an insurer's or employer's request for a hearing, review, or appeal stays payment of compensation. ORS 656.313.

§ 8.3D Medical Services

Medical services for compensable conditions continue for life, but generally, medical services directed solely to a worker's preexisting condition are not payable. *See* ORS 656.245(1), ORS 656.225.

No payment for medical services is due from the insurer or self-insured employer if the claim is denied within 14 days of the date of the employer's notice or knowledge of the claim. ORS 656.247(2).

§ 8.3E Vocational Assistance Services

Within 60 days after receiving a billing, the insurer or self-insured employer will pay for all vocational assistance services performed at the insurer's or employer's request, including the cost of an evaluation to determine whether a worker is eligible for vocational assistance, as well as those services performed in good faith without knowledge that the worker's eligibility has been terminated or that the worker has withdrawn or is otherwise ineligible. ORS 656.258.

§ 8.3F Claim Disposition Agreement

The parties may dispose of any matter relating to a claim (except for medical services) by a claim disposition agreement (CDA). The CDA must be approved by the administrative law judge (ALJ) who mediated the agreement or

by the Workers' Compensation Board. Submission of a CDA to the ALJ or the board stays all other proceedings and payment obligations on that claim, except for the payment of medical services. The CDA will be approved in a final order unless the disposition is unreasonable as a matter of law; is based on intentional misrepresentation of material fact; or the worker, insurer, or self-insured employer requests, within 30 days of submission, that the ALJ or the board disapprove the CDA. The CDA may waive the 30-day cooling-off period if the worker was represented by an attorney at the time of signing the CDA. ORS 656.236(1).

§ 8.3G Claims Procedure

§ 8.3G(1) Employer's Obligation

An employer must report a claim or injury that may result in a compensable claim to its insurer immediately, and not later than five days after notice or knowledge of the claim or accident. ORS 656.262(3).

Insurers and self-insured employers must report every claim for disabling injury to the Director of the Department of Consumer and Business Services within 14 days of the insurer's or self-insured employer's initial decision to either accept or deny the claim. ORS 656.277(3)(a); OAR 436-060-0010(10).

§ 8.3G(2) Worker's Obligation

The worker or his or her dependent must give notice of an accident resulting in injury or death immediately and not later than 90 days after the accident. ORS 656.265(1).

§ 8.3G(3) Failure of Notice

Failure to properly notify the employer bars the claim unless notice is given within one year after the accident and the employer had knowledge of the injury or death, the worker died within 180 days after the date of the accident, or the worker or the worker's beneficiaries establish that the worker had good cause for failure to give notice within 90 days. ORS 656.265(4).

§ 8.3G(4) Acceptance or Denial Notification

The insurer or self-insured employer must provide a written notice of acceptance or denial of the claim to the claimant within 60 days of the employer's notice or knowledge of the claim. ORS 656.262(6)(a). Any period of time during which the director suspends a claimant's compensation for noncooperation is not counted in the 60-day period. ORS 656.262(14).

§ 8.3G(4)(a) Disputing the Claim

If the insurer or self-insured employer disputes responsibility for a claim, it must so indicate as part of its denial. Upon written notice by the insurer or self-insured employer filed no more than 28 days or less than 14 days before the hearing, the administrative law judge will dismiss the party from the proceeding if the record does not contain substantial evidence to support a finding of responsibility against that party. ORS 656.308(2)(a), (c).

§ 8.3G(4)(b) Independent Medical Examination

If the director determines that the location selected for an independent medical examination of the worker is unreasonable, the insurer or self-insured employer must accept or deny the claim within 90 days after notice or knowledge of the claim. ORS 656.325(1)(d).

§ 8.3G(5) Omitted Condition/Deficient Notice

An injured worker who believes that a condition has been incorrectly omitted from a notice of acceptance, or that the notice is otherwise deficient, must communicate his or her written objection to the insurer or self-insured employer, who then has 60 days from receipt of the written communication to revise the notice or make other written clarification in response. ORS 656.262(6)(d); *see* ORS 656.267.

§ 8.3G(6) New Medical or Omitted Condition Claims

After claim acceptance, written notice of acceptance or denial of claims for aggravation or new medical or omitted-condition claims must be furnished to the claimant by the insurer or self-insured employer within 60 days after it receives the written notice of the claims. ORS 656.262(7)(a). The worker must clearly request formal written acceptance of any new medical or omitted-condition claims and may generally initiate a new medical or omitted-condition claim at any time. ORS 656.267(1).

§ 8.3G(7) Aggravation

A claim for aggravation must be in writing in a format prescribed by the Director of the Department of Consumer and Business Services, signed by the worker or the worker's representative and the attending physician. ORS 656.273(3). The insurer or self-insured employer has 60 days after receiving the worker's aggravation claim to accept or deny the worker's aggravation claim, but it must pay the first installment of time-loss compensation no later than 14 days after the employer receives notice or knowledge of a medically verified inability to work due to aggravation. ORS 656.262(7)(a), ORS 656.273(6).

A claim for aggravation must be filed within five years of the first closure for a disabling claim or within five years of the date of injury if the claim has been classified as nondisabling for at least one year after the date of acceptance. ORS 656.273(4).

§ 8.3G(8) Appeal of Denials

A hearing on the denial of a claim must be requested within 60 days after mailing the notice of denial to the claimant. ORS 656.319(1)(a). Limited exceptions include (1) a showing of good cause for not filing within 60 days if the request is filed within 180 days; and (2) a showing of lack of mental competency if the request is filed within one year of regaining mental competency and no later

than five years and 60 days of the date of mailing of the notice of denial. *See* ORS 656.319(1)–(2). *See* § 8.3I(3)(a).

§ 8.3G(9) Temporary Disability

If the attending physician or authorized nurse practitioner authorizes the payment of temporary disability compensation, it must be paid no later than the 14th day after the employer has notice or knowledge of the claim and must be paid at least once every two weeks. ORS 656.262(4)(a), ORS 656.273(6).

§ 8.3G(10) Duty to Cooperate

Injured workers have the duty to cooperate and assist in the investigation of claims. If the worker is represented by an attorney, and the attorney is not willing or available to participate in an interview at a reasonable time chosen by the insurer or employer within 14 days of an interview request, and there is cause to believe that the attorney’s unwillingness or unavailability is unreasonable, the insurer or employer will notify the Director of the Department of Consumer and Business Services, who may assess a civil penalty against the attorney. ORS 656.262(14).

§ 8.3H Closure and Reconsideration Procedures

§ 8.3H(1) Closure

§ 8.3H(1)(a) Worker’s Request

The worker may request closure if the insurer or self-insured employer has not closed the claim. Within 10 days of receiving the worker’s written request for closure, the insurer or self-insured employer must close the claim, or, if the requirements for closure have not been satisfied, it must issue a notice of refusal to close the claim. The worker has 60 days from the date of notice of closure to request a hearing. ORS 656.268(5)(b). *See also* ORS 656.319(5).

§ 8.3H(1)(b) Updated Notice

The insurer must issue an updated notice of acceptance at closure specifying all accepted conditions at the time of claim closure. ORS 656.262(7)(c).

§ 8.3H(2) Reconsideration

If a worker, an insurer, or a self-insured employer objects to a notice of closure, the party must request reconsideration within 60 days of the date of the notice of closure. “A request for reconsideration by an insurer or self-insured employer may be based only on disagreement with the findings used to rate impairment and must be made within seven days of the date of the notice of closure.” ORS 656.268(5)(c). A request for reconsideration from a notice of closure must be made before a request for hearing can be made pursuant to ORS 656.283. ORS 656.268(5)(c).

§ 8.3H(2)(a) Reconsideration Deadlines

If the worker requested the reconsideration, the reconsideration proceeding generally must be completed within 18 working days from the date of the department's receipt of the reconsideration request. If the insurer or self-insured employer requested the reconsideration, the reconsideration proceeding generally must be completed within 18 working days from the earlier of the date the worker requested reconsideration, the date of receipt of the worker's waiver of the right to request reconsideration, or the expiration date of the worker's right to request reconsideration. ORS 656.268(6)(d)–(e). *But see* § 8.3H(2)(b).

§ 8.3H(2)(b) Exceptions—Postponement

Reconsideration may be postponed by an additional 60 calendar days if, within the 18 working days, the department mails notice of review by a medical arbiter, or if the Director of the Department of Consumer and Business Services requires additional medical or other information with respect to the claims. ORS 656.268(6)(b), (d). If the claim is referred to a medical arbiter and the director determines that the worker failed to attend the examination without good cause or failed to cooperate with the medical arbiter, the director will postpone the reconsideration proceeding for up to an additional 60 days from the date of determination that the worker failed to attend or cooperate. ORS 656.268(6)(d), (8)(e)(B)–(C).

The director may toll the reconsideration timeline for up to 45 calendar days if the parties are actively engaged in settlement negotiations, the parties agree to the delay, and the parties notify the director of their request for delay before the 18th working day after the reconsideration proceeding has begun. ORS 656.268(7)(a).

§ 8.3H(2)(c) Objections

A party objecting to the reconsideration order must request a hearing under ORS 656.283 within 30 days from the date of the order. ORS 656.268(6)(g); *see also* ORS 656.319(4).

§ 8.3I Hearings Procedure

§ 8.3I(1) Hearing

The hearing will be scheduled for a date within 90 days after the Workers' Compensation Board's receipt of the request for a hearing, and it may not be postponed for more than 120 days and except in extraordinary circumstances beyond the control of the requesting party. ORS 656.283(3)(a). The parties will receive at least 60 days' notice of the hearing, unless waived by agreement of the parties and the board. ORS 656.283(4)(a), (4)(b)(A). The 60-day notice requirement "[d]oes not apply to hearings in cases assigned to the Expedited Claim Service under ORS 656.291, cases involving stayed compensation under ORS

656.313(1)(b) and requests for hearing that are consolidated with an existing case with an existing hearing date.” ORS 656.283(4)(b)(B).

§ 8.3I(2) Order Declaring Person to Be Noncomplying Employer or Civil Penalty Assessment

A person may contest a proposed order of the Director of the Department of Consumer and Business Services declaring that person to be a noncomplying employer, or a proposed assessment of civil penalty, by filing a written request for a hearing with the department within 60 days after the mailing of the order. ORS 656.740(1).

A person may contest a nonsubjectivity determination of the director by filing a written request for a hearing with the department within 60 days after the mailing of the determination. ORS 656.740(2).

When an employer alleges that an insurance carrier, including the State Accident Insurance Fund Corporation, contracted to provide the employer with workers’ compensation coverage, the Workers’ Compensation Board must join the insurance carrier as a party and must serve the insurance carrier with at least 30 days’ notice of hearing. ORS 656.740(3).

§ 8.3I(3) Deadlines for Timely Filing of Hearing Request

§ 8.3I(3)(a) Denied Claim

To contest a written denial of a claim, the claimant generally must request a hearing not later than the 60th day after the mailing of the denial to the claimant. ORS 656.319(1)(a). However, a hearing will be granted when the request for a hearing is filed more than 60 days but not later than the 180th day after the mailing of the denial if the claimant establishes good cause for missing the 60-day deadline. ORS 656.319(1)(b). A hearing will also be granted when the request was filed after 60 (or 180) days if the claimant proves a lack of mental competency to file within the deadlines. The claimant must request a hearing within one year after regaining competency. The extension of time for filing is limited to five years. ORS 656.319(2). *See* § 8.3G(8).

§ 8.3I(3)(b) De Facto Denials

A request for a hearing to contest a de facto denial must be made more than 60 days, but within two years, after giving notice of a claim. *See* ORS 656.262(6)(a), ORS 656.319(6).

For claims with a date of injury on or after January 1, 2002, a request for a hearing on aggravation, a new medical condition, or a condition that the worker believes has incorrectly been omitted from a notice of acceptance may be filed at any time more than 60 days after the claimant’s written communication to the insurer or self-insured employer requesting an amended notice of acceptance, unless the insurer or self-insured employer otherwise responds to the worker’s

request within 60 days. ORS 656.262(6)(d), (7)(a), ORS 656.386(1)(b)(B)–(C); Or Laws 2001, ch 865, §§ 7, 22(1).

For claims with a date of injury before January 1, 2002, written notice of acceptance or denial of a claim for aggravation or a new medical condition must be furnished to the claimant by the insurer or self-insured employer within 90 days after the insurer or self-insured employer receives written notice of the aggravation or new-condition claim. ORS 656.262(7)(a) (1999), *amended by* Or Laws 2001, ch 865, § 7.

For claims with a date of injury before January 1, 2002, written notice of acceptance or denial of a claim for an omitted condition must be furnished to the claimant by the insurer or self-insured employer within 30 days after the insurer or self-insured employer receives written notice of the omitted condition claim. ORS 656.262(6)(d) (1999), *amended by* Or Laws 2001, ch 865, § 7.

§ 8.3I(4) Reconsideration

If any party objects to a reconsideration order, the party may request a hearing under ORS 656.283 within 30 days from the date of the reconsideration order. ORS 656.268(6)(g).

§ 8.3I(5) Evidence

§ 8.3I(5)(a) Untimely Disclosure

Documents are generally admissible if disclosed within 15 days of the mailing of a copy of the request for a hearing to the insurer, self-insured employer, or claimant, or within 15 days of a written demand, or within seven days of receipt of the documents, whichever is later. *See* OAR 438-007-0015(2)–(4). The testimony of an expert witness at a hearing may be excluded if the identity of the witness is not disclosed by the insurer or self-insured employer 28 days before the hearing or by the claimant 14 days before the hearing. OAR 438-007-0016, OAR 438-007-0018(1)–(2).

§ 8.3I(5)(b) Vocational Reports

If there is an issue about loss of earning capacity, reports from vocational consultants offered by the insurer or self-insured employer are admissible only if provided to the claimant at least 10 days before the hearing and the author is made available, upon demand from the adverse party, for testimony and cross-examination. ORS 656.287(1).

§ 8.3I(5)(c) Impeachment Evidence

A party may withhold impeachment evidence until the opposing party's case-in-chief has been presented, at which time the impeachment evidence may be used. Impeachment evidence other than medical or vocational reports that is not presented as evidence at the hearing is not subject to disclosure. Impeachment evidence consisting of medical or vocational reports not used during the course of a hearing must be provided to any opposing party at the conclusion of the pre-

sentation of evidence by the party with the impeachment evidence and before closing arguments are presented. ORS 656.283(6).

§ 8.3I(6) Expedited Claim Service

Cases assigned to the Expedited Claim Service must be heard within 30 days of the request for a hearing, and an order must be issued within 10 days after the administrative law judge closes the hearing record. ORS 656.291(3)(b).

§ 8.3I(7) Final Order Disposition

§ 8.3I(7)(a) “Matter Concerning a Claim”

An administrative law judge (ALJ) must issue an order within 30 days after closing the hearing record. The order is final unless abated by the ALJ or review by the Workers’ Compensation Board is requested within 30 days after the date of the mailing of the order. ORS 656.289(1), (3).

If a party requests review of the ALJ’s order within 30 days, the other party or parties will have the remainder of the 30-day period and, in any case, at least 10 days to request board review in the same manner. ORS 656.289(3).

§ 8.3I(7)(b) Order Declaring Person to Be Noncomplying Employer or Civil Penalty Assessment

The order of the administrative law judge (ALJ) is a final order of the Director of the Department of Consumer and Business Services. ORS 656.740(5). A petition for judicial review must be filed with the court of appeals within 60 days after the date of the mailing of the ALJ’s order. If a petition for rehearing is filed, then the petition for judicial review must be filed within 60 days following the date the order denying the petition for rehearing is mailed. If the ALJ does not otherwise act, a petition for rehearing or reconsideration is deemed denied the 60th day following the date the petition (for rehearing or reconsideration) was filed, and a petition for judicial review must be filed within 60 days following that date. ORS 183.482(1).

§ 8.3I(8) Board Review

§ 8.3I(8)(a) “Matter Concerning a Claim”

Notice of review will be mailed to all parties, and review must be scheduled for a date no later than 90 days after the Workers’ Compensation Board’s receipt of the review request. ORS 656.295(4). The board must issue a decision within 30 days after review. ORS 656.295(6).

§ 8.3I(8)(b) Appeal

The order on review by the Workers’ Compensation Board is final unless an appeal is made to the Oregon Court of Appeals for judicial review under ORS 656.298 within 30 days after the date of mailing of copies of the board’s order. ORS 656.295(8).

§ 8.3I(9) Court of Appeals Review

Request for judicial review must be made within 30 days after the date of mailing of the Workers' Compensation Board's order. ORS 656.295(8), ORS 656.298(1). Any party served with a petition for judicial review has 10 days after service to also request judicial review. ORS 656.298(4).

Within 30 days after the board is served the petition for judicial review, the board will forward to the court of appeals the original copy of the transcribed record, all exhibits, and copies of all decisions and orders entered during the hearing and review proceedings. ORS 656.298(6).

§ 8.3I(10) Mediation or Arbitration

When the parties report to the hearings division that they have agreed on a mediation or arbitration process, the hearing will be deferred for 90 days. After 90 days, the matter will be docketed for a hearing unless the parties advise the hearings division in writing that progress has been made and request an extension of up to 90 days, which will be granted automatically. After the additional 90 days, the matter will be docketed for a hearing, and the hearing will proceed before an administrative law judge as before, unless the parties present a mediation settlement stipulation or signed arbitration decision before the hearing begins. ORS 656.307(6)(f).

§ 8.3J Self-Insured Employer

§ 8.3J(1) Certification

Certification of a self-insured employer is effective until revoked by the director or canceled. ORS 656.434(1). Revocation is effective within 10 days after the employer's receipt of notice of revocation from the Director of the Department of Consumer and Business Services, unless within that time the employer corrects the grounds for the revocation or appeals in writing to the director. The director will refer the request for a hearing to the Workers' Compensation Board for a hearing before an administrative law judge (ALJ). ORS 656.440(1).

If the employer appeals, the hearings division of the board must set a date for a hearing within 30 days of receiving the notice of appeal and must give the employer at least five days' notice of the hearing. Within 10 days after the hearing, the ALJ must either affirm or disaffirm the revocation and mail written notice to the employer. ORS 656.440(2).

If revocation is affirmed on review by the ALJ, the revocation becomes effective five days after the employer receives notice of affirmance, unless within that period of time the employer corrects the grounds for the revocation or petitions for judicial review. ORS 656.440(3). If the revocation is affirmed following judicial review, the revocation is effective five days after entry of a final judgment of affirmance of the revocation, unless within that period of time the employer corrects the grounds for the revocation. ORS 656.440(4).

§ 8.3J(2) Security Deposit

The employer's security deposit will be held on deposit for at least 62 months after the employer ceases to be a self-insured or carrier-insured employer if no policy of paid-up insurance is given to the director. ORS 656.443(3).

§ 8.3J(3) Claims Records

With the permission of the Director of the Department of Consumer and Business Services, a self-insured employer may keep all claims records and process claims from a location outside the state. If the director revokes permission, the employer has 60 days after the order of revocation becomes final to move its claims records to the State of Oregon. ORS 656.455(2).

§ 8.3K SAIF-Insured Employers

§ 8.3K(1) Payroll Report

The employer must file a payroll report or pay premiums and assessments within 30 days of the State Accident Insurance Fund's mailing of a written demand, or the employer will be in default, resulting in judgments, penalties, and liens against the employer. ORS 656.505(2); *see* ORS 656.560, ORS 656.564.

§ 8.3K(2) Lien

A lien against the employer's real and personal property for unpaid premiums and assessments must be perfected by the insurer by filing a written statement describing the property and the lien with the clerk of the county in which the property is located within 60 days after the employer defaults or within 60 days from completion of the work if the employer does not own the property. ORS 656.564(3).

A suit to foreclose the lien must be commenced within six months from the date of filing of the statement. ORS 656.564(4).

A lien in favor of the State Accident Insurance Fund attaches upon filing with the county clerk a notice of claim of lien for amounts due. ORS 656.566(2). A lien must be foreclosed by suit within two years from the date of filing. ORS 656.566(4).

§ 8.3K(3) Payroll Statement

Failure of an employer to send the signed payroll statement required by ORS 656.504 within 30 days after receipt of notice by the Director of the Department of Consumer and Business Services or by the State Accident Insurance Fund is a misdemeanor. ORS 656.990(5).

§ 8.3L Recovery against Third Persons

The insurer or self-insured employer may require the worker to elect to sue a noncomplying employer or third person by serving written demand by registered mail or personal service on the worker. ORS 656.583(1). The worker is deemed to have assigned the action to the insurer unless the election is made within 60 days

from the receipt or service of the demand and an action is commenced against the third person within the time granted by the insurer. The worker or the worker's beneficiaries or legal representative will be allowed at least 90 days after election to commence an action. ORS 656.583(2).

If the insurer insures the worker and the third party, the insurer must give written notice of that fact to the worker and the Director of the Department of Consumer and Business Services within 10 days after the accident. ORS 656.583(2).

§ 8.3M Civil Penalty

§ 8.3M(1) Penalty for Noncompliance

The Director of the Department of Consumer and Business Services will assess a civil penalty of not more than \$1,000 or twice the premium that would have been due for the period of noncompliance, whichever is greater, against any person who fails to comply with coverage requirements. ORS 656.735(1).

The order assessing the penalty becomes a judgment and lien if unpaid within 10 days after the order becomes final. ORS 656.735(4).

§ 8.3M(2) Hearing

An employer found noncomplying must file a written request for a hearing to object to the order and penalty within 60 days after mailing of the order, or the order declaring the employer to be noncomplying and assessing the penalty will become final without review. ORS 656.740(1), (4). *See* § 8.3I(7)(b).

§ 8.3N Civil Negligence Action in Claims Denied for Failure to Prove Major Contributing Cause

When an injured worker's work-related claim is determined noncompensable for failure to prove that work is the major contributing cause of the injury or disease, the worker may pursue a civil negligence claim against the employer. The injured worker may appeal an adverse workers' compensation decision through the court of appeals but may not file a civil negligence claim until the order affirming the major-contributing-cause denial becomes final. ORS 656.019(1)(a). This statute does not grant any civil negligence action that did not already exist. ORS 656.019(1)(b).

Any action arising under ORS 656.019(1) must be commenced within the later of two years from the date of injury or disease or 180 days from the final order affirming the major-contributing-cause denial. ORS 656.019(2)(a). However, an injured worker who files a workers' compensation claim after the time for commencing a civil negligence action has expired cannot file a civil negligence claim after the order affirming the major contributing cause denial becomes final. ORS 656.019(2)(b).

For more information regarding the time limitations for filing a negligence action, see chapter 7.

§ 8.30 References

See Workers' Compensation (OSB Legal Pubs 2008).

§ 8.4 PUBLIC AND PRIVATE SECTOR LABOR LAW

§ 8.4A Public Employee Collective Bargaining Act

§ 8.4A(1) Grievance Arbitration

Public employees and employers may bring claims to the Employment Relations Board (ERB) within 180 days of the occurrence of an unfair labor practice (ULP). ORS 243.672(3). The ERB will serve a copy of the complaint on the opposing party and determine whether a hearing is required. If a hearing is required, the ERB will set the hearing for not more than 20 days after a copy of the complaint has been served on the opposing party. ORS 243.676(1)(a), (c).

Parties may petition the ERB for reconsideration or rehearing within 14 days of the ERB's issuance of a final order. The ERB, at its discretion, may set petitions for oral argument. OAR 115-035-0050(4).

After the ERB issues a final order in a ULP proceeding, either party may file a petition for judicial review in the Oregon Court of Appeals within 60 days. ORS 183.482(1). All reviews of ULP proceedings are subject to the procedures described in the Oregon Administrative Procedures Act (ORS 183.480–183.502).

§ 8.4A(2) Interest Arbitration

§ 8.4A(2)(a) Collective Bargaining

Following certification of a union as the exclusive representative of the employee unit, the parties must negotiate in good faith the terms of a collective bargaining agreement for a period of 150 days. The 150 days of negotiation begin when the parties meet for their first bargaining session and each party has received the other party's initial proposal. After the expiration of 150 days, either party may notify the Employment Relations Board of the status of negotiations and request a mediator. Any period of time during which either party is found to have not bargained in good faith does not count toward the 150 days. ORS 243.712(1).

Any time after 15 days of mediation, either party may declare an impasse in bargaining. ORS 243.712(2)(a). Within seven days of a declared impasse, the parties must submit to the mediator in writing the final offer of the party, including a cost summary of the offer. ORS 243.712(2)(b). Within 30 days of the publication of the parties' final offers, the parties may mutually agree to petition for the appointment of a fact-finder. ORS 243.712(2)(c). The fact-finder will establish the dates and places of hearings on the matter. Within 30 days of the conclusion of the hearings, the fact-finder will make written findings and recommendations for resolution of the dispute. The parties then have five days to accept or reject the fact-finder's findings and recommendations. ORS 243.722(3).

§ 8.4A(2)(b) Public Employee Strikes

If a public employee is not prohibited from striking under ORS 243.726(1), that employee may strike if the employee has bargained in good faith and has engaged in the fact-finding process described in ORS 243.722. *See* § 8.4A(2)(a). The employee may not strike until 30 days have elapsed since the Employment Relations Board has made public the fact-finder's findings and recommendations or the mediator has made public the parties' final offers, and the union has provided the employer with 10 days' notice by certified mail of its intent to strike and the reasons for that intent to strike. ORS 243.726(2)(a)–(c).

For public employees statutorily prohibited from striking, the parties must resolve their impasses through binding arbitration, the hearings for which will be set by mutual agreement not less than 30 days following the submission of final-offer packages to the mediator. ORS 243.742(2).

§ 8.4A(2)(c) Interest Arbitration Procedures

Parties must exchange their “last best offer package[s]” not less than 14 days before the interest arbitration hearing. ORS 243.650(14), ORS 243.746(3). Within 30 days after the conclusion of hearings, the arbitrator must select only one of the “last best offer packages” submitted by the parties and must provide written findings along with an opinion and order. ORS 243.746(5).

§ 8.4A(2)(d) Expedited Bargaining Process

If during the term of a collective bargaining agreement the employer intends to initiate a change that imposes a duty to bargain, the employer must provide the employees' exclusive representative with written notice. ORS 243.698(2). Within 14 days of receipt of such notice, the exclusive representative may file a demand to bargain. After the 14-day period expires, the exclusive representative waives the right to bargain over the change. ORS 243.698(3). When the public employer is obligated to bargain over employment relations during the term of a collective bargaining agreement, and the exclusive representative demands to bargain, the bargaining may not, without the consent of both parties, continue past 90 calendar days after the employer's written notice of a change triggering mandatory bargaining. ORS 243.698(1), (4).

§ 8.4B Teacher Dismissals and Nonextension of Contract

A teacher or representative of a teacher may appeal a decision to dismiss or not extend the teacher's contract to the Fair Dismissal Appeals Board. In case of dismissal, the appeal must be filed within 10 days of the receipt of notice of the district school board's decision; in the case of nonextension of a teacher's contract, the appeal must be within 15 days. ORS 342.905(1). The Superintendent of Public Instruction must then appoint “[a]s soon as practicable” a panel of three members from the Fair Dismissal Appeals Board to conduct a hearing. ORS 342.905(2)(a).

“Within 10 days after receipt of the notice of an appeal of contract nonextension, the district shall serve upon the Fair Dismissal Appeals Board and the teacher a written statement of reason for the contract nonextension.” ORS 342.905(4).

In the case of nonextension of a teacher’s contract due to a prospective or actual reduction in staff, the teacher has “the right of recall . . . for 27 months after the last date of release by the district unless waived . . . by rejection of a specific position.” ORS 342.934(6). Appeals from decisions on reduction in staff or recall are subject to the rules of the Employment Relations Board or by a procedure mutually agreed on by the employee representatives and the employer. ORS 342.934(7).

§ 8.4C National Labor Relations Act

Employees and employers may bring claims to the National Labor Relations Board within six months of the occurrence of an unfair labor practice or, for a person who could not bring a claim in that time period because of his or her service in the armed forces, within six months of discharge. 29 USC § 160(b).

§ 8.4D Judicial Enforcement of National Labor Relations Board Orders

Any orders from the National Labor Relations Board (NLRB) may be enforced by petition to the federal courts of appeals. 28 USC § 2112(a). Additionally, any person aggrieved by a final order of the NLRB may obtain a review of the agency order in any United States court of appeals in the circuit where the alleged unfair labor practice is claimed to have occurred or where the person resides or transacts business, or in the United States Court of Appeals for the District of Columbia. Proceedings on such petitions for judicial review are conducted in accordance with the procedures for federal judicial review and enforcement of agency orders (28 USC § 2112). 29 USC § 160(f).

§ 8.4E Review of Adverse Benefits Decisions under the Employment Retirement Income Security Act

The Employment Retirement Income Security Act (ERISA) provides a process for challenging adverse benefits determinations by administrators of employer-provided benefits or retirement plans. 29 USC § 1133(2). Under the federal scheme, plan administrators must establish and maintain reasonable grievance and appeals processes for participants to challenge adverse benefits decisions. *See* 29 CFR § 2560.503-1. The Department of Labor has imposed different deadlines for different types of claims. *See* § 8.4E(1) to § 8.4E(2).

§ 8.4E(1) Timelines for Group Health Claims

Claims under group healthcare plans fall into three basic categories: urgent-care claims, preservice claims, and postservice claims. *See* § 8.4E(1)(a).

§ 8.4E(1)(a) Initial Benefit Determinations

If the claim for benefits involves urgent care, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim by the plan, unless the claimant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan. In the case of such a failure, the plan administrator shall notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim by the plan, of the specific information necessary to complete the claim.

29 CFR § 2560.503-1(f)(2)(i).

Federal regulations require that a preservice claim be determined by the plan in a "reasonable period of time appropriate to the medical circumstances, but not later than 15 days after receipt of the claim by the plan." 29 CFR § 2560.503-1(f)(2)(iii)(A). The plan may extend the determination period once for 15 days when "matters beyond the control of the plan" require it. 29 CFR § 2560.503-1(f)(2)(iii)(A).

For postservice claims, regulations require that the plan make a benefits determination within a "reasonable period" but not later than 30 days after receipt of the claim for benefits. As with preservice determinations, the plan may extend the determination period once for 15 days if "matters beyond the control of the plan" require it. 29 CFR § 2560.503-1(f)(2)(iii)(B).

§ 8.4E(1)(b) Internal Appeal of Adverse Group Health Plan Determinations

Claimants have 180 days to appeal the initial benefits determination of the plan. 29 CFR § 2560.503-1(h)(3)(i).

The plan administrator must provide a determination of the appeal of a decision about urgent-care benefits within 72 hours of the request for review. 29 CFR § 2560.503-1(i)(2)(i).

If the appeal is over preservice benefits under a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 30 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 15 days after receipt by the plan of the claimant's request for review of the adverse determination.

29 CFR § 2560.503-1(i)(2)(ii).

For appeals of postservice claims, the administrator must provide notification within 60 days of receipt of the request for review if the plan provides for one

level of appeal; and within 30 days if the plan provides for two levels of appeal. 29 CFR § 2560.503-1(i)(2)(iii)(A).

§ 8.4E(1)(c) External Review of Adverse Benefit Determinations

Insurers offering comprehensive health benefit plans must allow enrollees to appeal denials of coverage to independent review organizations (IROs). IROs are independent of the insurers and may make determinations of whether the treatment sought is (1) medically necessary, (2) experimental or investigational, (3) for the continuity of care, or (4) delivered in an appropriate setting at an appropriate level of care. ORS 743.857(1). Claimants must request IRO review within 180 days of “receipt of the insurer’s final written decision following its grievance and internal appeal process.” ORS 743.861(1).

On expedited claims, the IRO must issue a decision no later than the third day after the date on which the enrollee applies to the insurer for expedited review. ORS 743.862(3). Otherwise the IRO must issue a decision within 30 days of the request for independent review. ORS 743.862(4).

§ 8.4E(2) Timelines for Determinations under Other Employee Benefit Plans

If the plan administrator receives a claim for benefits other than benefits under a group health plan and denies the claim in whole or in part, the administrator must notify the claimant within a reasonable time, but not more than 90 days from receipt of the claim. However, the administrator may determine that a one-time extension of time for processing is required, in which case the administrator must provide written notice of the extension before the termination of the initial 90-day period. 29 CFR § 2560.503-1(f)(1).

§ 8.4E(2)(a) Internal Review of Adverse Benefit Determinations

As a general matter, every employee benefit plan must “establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.” 29 CFR § 2560.503-1(h)(1). At a minimum, claimants must have at least 60 days following a receipt of notification of an adverse benefit determination within which to appeal the determination. 29 CFR § 2560.503-1(h)(2)(i). Following an appeal, the plan administrator must notify the claimant of the benefit determination within 60 days (but may extend the term for an additional 60 days upon written notice provided to the claimant within the first 60 days). 29 CFR § 2560.503-1(i)(1)(i). But, for adverse disability benefit determinations, see § 8.4E(2)(b).

Alternatively, if the plan designates a committee or board of trustees as the appropriate named fiduciary that holds meetings at least quarterly,

the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting.

29 CFR § 2560.503-1(i)(1)(ii). Then, the determination must be made by the date of the second meeting following receipt of the request. The determination may be extended to the third meeting in special circumstances. 29 CFR § 2560.503-1(i)(1)(ii).

§ 8.4E(2)(b) Claims Involving Adverse Disability Benefit Determinations

For claims involving adverse disability benefit determinations, the plan administrator must respond with its decision within 45 days rather than the 60 days contemplated for other benefits determinations. 29 CFR § 2560.503-1(i)(3)(i); *see* § 8.4E(2)(a). Alternatively, if the plan designates a committee or board of trustees as the appropriate named fiduciary that holds meetings at least quarterly, the fiduciary may issue its determination no later than the date of the meeting. However, if the request for review is filed within 30 days before the meeting, the determination must be made by the date of the second meeting following receipt of the request. Special circumstances may allow for a further extension. 29 CFR § 2560.503-1(i)(1)(ii).

§ 8.4E(3) Judicial Review of Adverse Benefits Determinations

§ 8.4E(3)(a) Injunctive or Equitable Relief

Participants or beneficiaries of a plan may bring a civil action

(A) to enjoin any act or practice which violates any provision of [29 USC §§ 1001–1191c] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of [29 USC §§ 1001–1191c] or the terms of the plan.

29 USC § 1132(a)(3). Such claims are subject to exhaustion of administrative remedies. The Employment Retirement Income Security Act (ERISA) does not have a statute of limitations for benefits claims under the plan. Courts, therefore, must look to the most analogous state statute of limitations. Because the plan is a contract, the most analogous state statute in Oregon is the statute of limitations for contract actions. ORS 12.080(1) provides for a six-year statute of limitations for “[a]n action upon a contract.” *See, e.g., Frances v. Gucci Am., Inc.*, 543 F Supp 2d 1227, 1230 (D Or 2008) (applying six-year statute of limitations of ORS 12.080(1) to ERISA action).

§ 8.4E(3)(b) Breach of Fiduciary Duty Claims against the Plan Administrator

Claimants who have exhausted the internal appeal process of their plan may bring judicial claims for breach of fiduciary duty against plan administrators. Such

claims are subject to two distinct statutory time limitations. First, no action may be commenced more than “six years after . . . the date of the last action which constituted a part of the breach or violation, or . . . the latest date on which the fiduciary could have cured the breach or violation.” 29 USC § 1113(1). Second, no action may be brought more than “three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation.” 29 USC § 1113(2). But in case of fraud or concealment, the cause does not accrue until the date of discovery of the breach or violation. 29 USC § 1113.

§ 8.5 IMMIGRATION AND NATIONALITY ACT

Section 246(a) of the Immigration and Nationality Act creates a five-year statute of limitations for rescinding a lawful permanent resident’s (LPR’s) status upon a finding that the LPR was ineligible for LPR status at the time of adjustment and thus received the status erroneously. 8 USC § 1256(a).

Chapter 9

BUSINESS ORGANIZATIONS

MELVIN ODEN-ORR, B.A., University of California, Los Angeles (1993); J.D., University of Illinois College of Law (1996); member of the Oregon State Bar since 1996; owner, Oden-Orr Law, Portland.

LISA POPLAWSKI, B.S., University of Oregon (2008); J.D., University of California, Berkeley, School of Law (2011); member of the Oregon State Bar since 2012; attorney, Lane Powell, Portland.

§ 9.1	BUSINESS ENTITIES—NONCORPORATE	9-5
§9.1A	Limited Liability Companies	9-5
§ 9.1A(1)	Documents.....	9-5
§ 9.1A(2)	Notices.....	9-5
§ 9.1A(3)	Organization, Conversion, or Merger	9-6
§ 9.1A(4)	Registered Agent.....	9-6
§ 9.1A(5)	Voluntary Withdrawal of Member.....	9-6
§ 9.1A(6)	Admission of Members	9-6
§ 9.1A(7)	Voluntary Dissolution	9-7
§ 9.1A(8)	Administrative Dissolution	9-7
§ 9.1A(9)	Disposition of Assets after Dissolution.....	9-7
§ 9.1A(10)	Foreign Limited Liability Companies.....	9-8
§ 9.1A(11)	Limited Liability Company Records.....	9-8
§ 9.1A(12)	Annual Report.....	9-9
§ 9.1A(13)	References	9-9
§9.1B	Limited Partnerships	9-9
§ 9.1B(1)	Reservation of Limited Partnership Name.....	9-9
§ 9.1B(2)	Registered Agent.....	9-9
§ 9.1B(3)	Partnership Records	9-9
§ 9.1B(4)	Documents.....	9-9
§ 9.1B(5)	Formation	9-9
§ 9.1B(6)	Amendment of Certificate.....	9-10
§ 9.1B(7)	Cancellation of Certificate of Limited Partnership	9-10
§ 9.1B(8)	Admission of Limited Partners	9-10

Chapter 9 / Business Organizations

§ 9.1B(9)	When a Person Ceases to Be a General Partner	9-10
§ 9.1B(10)	Withdrawal of Limited Partner	9-10
§ 9.1B(11)	Liability of Partner Who Receives Return of Contribution	9-11
§ 9.1B(12)	Foreign Limited Partnerships	9-11
§ 9.1B(13)	Notice of Administrative Inactivation.....	9-11
§ 9.1B(14)	Merger	9-12
§ 9.1B(15)	Annual Report	9-12
§ 9.1B(16)	Certificates of Correction.....	9-13
§ 9.1B(17)	References	9-13
§9.1C	Partnerships and Limited Liability Partnerships	9-13
§ 9.1C(1)	Notices.....	9-13
§ 9.1C(2)	Creation of Partnership.....	9-13
§ 9.1C(3)	Actions by and against Partnership and Partners	9-14
§ 9.1C(4)	Partner Dissociation	9-15
§ 9.1C(5)	Purchase of Dissociated Interests.....	9-17
§ 9.1C(5)(a)	Purchase Price	9-17
§ 9.1C(5)(b)	Damages and Interest	9-17
§ 9.1C(5)(c)	Indemnity	9-17
§ 9.1C(5)(d)	Cash Payment.....	9-17
§ 9.1C(5)(e)	Timing	9-17
§ 9.1C(5)(f)	Information Accompanying Payment	9-18
§ 9.1C(5)(g)	Action to Determine Buyout Price.....	9-18
§ 9.1C(6)	Dissolution	9-18
§ 9.1C(7)	Conversion and Merger.....	9-18
§ 9.1C(8)	Documents.....	9-18
§ 9.1C(9)	Registration and Cancellation of Limited Liability Partnerships	9-19
§ 9.1C(10)	Annual Report	9-19
§ 9.1C(11)	Administrative Revocation.....	9-19
§ 9.1C(12)	Foreign Limited Liability Partnerships	9-20
§ 9.1C(13)	References	9-20
§9.1D	Professional Corporations	9-20
§ 9.1D(1)	Application of General Corporation Law	9-20

§ 9.1D(2)	Documents.....	9-21
§ 9.1D(3)	Disqualification of Physician	9-21
§ 9.1D(4)	Disposition of Deceased Shareholder’s Shares.....	9-21
§ 9.1D(5)	References	9-22
§ 9.2	CORPORATIONS—COOPERATIVE.....	9-22
§9.2A	Documents; Name	9-22
§9.2B	Meetings and Voting	9-22
§9.2C	Subscription and Membership Fee Agreements	9-23
§9.2D	Board of Directors and Officers	9-23
§9.2E	Court Proceedings	9-24
§9.2F	Unclaimed Distributions	9-24
§9.2G	Annual Reports.....	9-24
§9.2H	Amendment of Articles	9-24
§9.2I	Conversion and Merger	9-24
§9.2J	Dissolution	9-25
§9.2K	Manufactured Dwelling Park Nonprofit Cooperatives	9-26
§9.2L	Agricultural Cooperative.....	9-26
§9.2M	References	9-26
§ 9.3	CORPORATIONS—NONPROFIT	9-27
§9.3A	Documents; Name	9-27
§9.3B	Notices.....	9-27
§9.3C	Resignation of Registered Agent	9-28
§9.3D	Members and Memberships	9-28
§9.3E	Meetings of Members.....	9-28
§9.3F	Directors	9-29
§9.3G	Mergers and Sales	9-29
§9.3H	Dissolution	9-30
§9.3I	Claims against Dissolved Corporations	9-30
§9.3J	Records and Reports.....	9-30
§9.3K	Derivative Suits.....	9-31
§9.3L	References	9-31
§ 9.4	CORPORATIONS—PRIVATE.....	9-31
§9.4A	Documents.....	9-31
§9.4B	Notices.....	9-32

Chapter 9 / Business Organizations

§9.4C	Incorporation	9-32
§9.4D	Registered Agent	9-33
§9.4E	Subscription for Shares	9-33
§9.4F	Shareholders' Preemptive Rights	9-33
§9.4G	Shareholders' Meetings	9-33
§ 9.4G(1)	Notice	9-33
§ 9.4G(2)	Record Date	9-33
§ 9.4G(3)	Adjournment	9-34
§ 9.4G(4)	Proxies	9-34
§ 9.4G(5)	Court-Ordered Meetings	9-34
§ 9.4G(6)	Action without Meeting	9-34
§9.4H	Voting Trusts	9-34
§9.4I	Shareholder Agreements	9-34
§9.4J	Directors' Meetings	9-35
§9.4K	Amendment of Articles of Incorporation	9-35
§9.4L	Merger and Share Exchange	9-35
§9.4M	Dissenters' Rights to Obtain Payment of Shares	9-35
§9.4N	Voluntary Dissolution	9-36
§9.4O	Administrative Dissolution	9-36
§9.4P	Disposition of Assets after Dissolution	9-37
§9.4Q	Foreign Corporations	9-37
§9.4R	Corporate Records	9-37
§9.4S	Annual Report	9-38
§9.4T	Control-Share Acquisitions	9-38
§9.4U	Interested Shareholders	9-38
§9.4V	Forced Share Sale after Initiation of Close Shareholder Lawsuit	9-38
§9.4W	References	9-39
§ 9.5	INVESTMENT SECURITIES UNDER THE UNIFORM COMMERCIAL CODE	9-39
§9.5A	Immediate Performance as Notice	9-39
§9.5B	Missing Securities	9-39
§9.5C	Statute of Frauds Inapplicable	9-40
§9.5D	Security Interest	9-40

§ 9.5D(1) Perfection 9-40
§ 9.5D(2) Priority..... 9-40

§ 9.1 BUSINESS ENTITIES—NONCORPORATE

§9.1A Limited Liability Companies

§ 9.1A(1) Documents

Delivery of a document to the Secretary of State is accomplished only when the document is actually received by the office of the Secretary of State. ORS 63.004(10).

Generally, a document is effective at 12:01 a.m. on the date it is filed by the Secretary of State or at any time on the date filed as specified in the document. ORS 63.011(1). But a document is effective on a delayed date and time if specified or at 12:01 a.m. on the delayed date if no time is specified. A delayed effective date may not be later than 90 days after the date the document is filed. ORS 63.011(2).

Articles of correction are effective on the effective date of the document they correct. If persons who rely on the uncorrected document are adversely affected by the correction, the correction is effective when filed as to those persons. ORS 63.014(3).

If the Secretary of State refuses to file any limited liability company (LLC) document, the document must be returned to the LLC or its representative within 10 business days after the document was delivered, together with a brief written explanation of the reason for the refusal. ORS 63.017(3).

§ 9.1A(2) Notices

“A person knows a fact if the person has actual knowledge of it.” ORS 63.034(1).

A person has notice of a fact if the person knows of it, has received a notification of it, or has reason to know it exists from all the facts known to the person at the time in question. ORS 63.034(2).

“A person notifies or gives notification to another by taking steps reasonably required to inform the other person in the ordinary course, whether or not the other person learns of it.” ORS 63.034(3).

A person receives a notification when the notification comes to the person’s attention or is “addressed to the person and is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.” ORS 63.034(4).

A person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice or receives a notification of the fact, or in any event when the fact would have been

brought to the individual's attention if the person had exercised reasonable diligence.

ORS 63.034(5).

§ 9.1A(3) Organization, Conversion, or Merger

A limited liability company's (LLC) existence begins when the articles of organization are filed by the Secretary of State, unless a delayed effective date is specified in the articles of organization. ORS 63.051(1).

A business entity may convert to an LLC as provided by ORS 63.470 to 63.473. The conversion takes effect at the later date and time determined under either ORS 63.011 (*see* § 9.1A(1)) or the statutes governing the business entity. ORS 63.476(2).

NOTE: Before January 1, 2012, ORS 63.470(1)(a) excluded LLCs from among the business entities that could convert to a domestic LLC. Or Laws 2011, ch 147, §§ 9, 32(1). Any business entity may now convert to a domestic LLC.

One or more business entities may merge into an LLC as provided by ORS 63.481 to 63.487. The merger takes effect at the later date and time determined under either ORS 63.011 (*see* § 9.1A(1)) or the statutes governing any of the business entities other than an LLC. ORS 63.494(2).

§ 9.1A(4) Registered Agent

A change in the name or address of a limited liability company's (LLC) registered agent or registered office is effective on the date of filing. ORS 63.114(3).

A registered agent may resign by delivering a signed statement to the Secretary of State and giving a copy of the statement to the LLC. The agency and registered office are terminated on the 31st day after filing, unless a successor agent is appointed sooner. ORS 63.117(1), (3).

§ 9.1A(5) Voluntary Withdrawal of Member

Unless the articles of organization or operating agreement expressly provide otherwise, a member may withdraw on not less than six months' prior written notice to the limited liability company. Alternatively, a member may withdraw as provided in the articles of organization or operating agreement. ORS 63.205(1).

§ 9.1A(6) Admission of Members

A person becomes a member of a limited liability company (LLC) on the later of the date the initial articles of organization are filed or the date stated in the records of the LLC as the date the person becomes a member. ORS 63.245(1).

§ 9.1A(7) Voluntary Dissolution

A dissolved limited liability company (LLC) may dispose of known claims by giving written notice stating a deadline date at least 120 days from the effective date of the notice by which the LLC must receive the claim. ORS 63.641(2)(c).

A claim against the dissolved LLC is barred if not delivered to the dissolved LLC by the deadline date. If a claim is rejected and the claimant does not commence a proceeding to enforce the claim within 90 days of the rejection notice, the claim is barred. ORS 63.641(3).

A dissolved LLC may publish notice in a newspaper to persons with claims, stating that claims will be barred unless enforced within five years after publication of the notice. ORS 63.644(3). The claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved LLC within five years after the publication date of the newspaper notice:

- (1) A claimant who did not receive written notice under ORS 63.641;
- (2) A claimant whose claim was sent in a timely manner to the dissolved LLC but not acted on; or
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

ORS 63.644(3).

§ 9.1A(8) Administrative Dissolution

After the Secretary of State gives a limited liability company (LLC) written notice of the determination that grounds exist for dissolving the LLC, the LLC has 45 days to correct the grounds for dissolution or to demonstrate to the secretary's reasonable satisfaction that the grounds do not exist; otherwise, the LLC will be dissolved. ORS 63.651(1)–(2).

An LLC administratively dissolved may apply to the Secretary of State for reinstatement within five years from the date of dissolution. If the LLC is reinstated, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution. ORS 63.654(1), (3). The Secretary of State may waive the five-year limit on an application for reinstatement if the LLC requests the waiver and provides evidence of its “continued existence as an active concern during the period of administrative dissolution.” ORS 63.654(4). The LLC may appeal denial of reinstatement under the Oregon Administrative Procedures Act (ORS chapter 183). ORS 63.657(2).

§ 9.1A(9) Disposition of Assets after Dissolution

Assets that should be distributed to a creditor, shareholder, claimant, or member of the limited liability company who cannot be found or is not competent to receive them must be reduced to cash and deposited with the Department of State Lands within six months after the final distribution is payable. ORS 63.674.

§ 9.1A(10) Foreign Limited Liability Companies

A foreign limited liability company (LLC) must deliver to the Secretary of State an application to transact business with information current within 60 days of delivery, unless “the official who has custody of business entity records in the state or country under whose law the foreign limited liability company is organized provides free access via the Internet to a searchable database that contains evidence of limited liability company registrations.” ORS 63.707(2).

A change in the name or address of the registered agent or registered office is effective on the date of filing. ORS 63.724(3). Resignation of the registered agent terminates the agency and registered office on the 31st day after the signed resignation is filed with the Secretary of State, unless a successor registered agent is appointed sooner. ORS 63.727(1), (3).

A foreign LLC may withdraw from transacting business in Oregon by filing an application that includes a commitment to notify the Secretary of State for a period of five years of any change in its mailing address. ORS 63.734(1)(e). The foreign LLC’s authority to transact business ceases upon the secretary’s filing of the application to withdraw. ORS 63.734(2).

After the Secretary of State gives the foreign LLC written notice of the determination that grounds exist for revoking the LLC’s authority to transact business in the state, the LLC has 45 days to correct the grounds for revocation or to demonstrate to the secretary’s reasonable satisfaction that the grounds do not exist; otherwise, the foreign LLC’s authority will be revoked. ORS 63.741(1)–(2). The foreign LLC’s authority to transact business in Oregon ceases upon revocation. ORS 63.741(3).

A foreign LLC may appeal the revocation of its authority to transact business in Oregon under the Oregon Administrative Procedures Act (ORS chapter 183). ORS 63.744.

A foreign LLC that has had its authority to transact business revoked may apply to the Secretary of State for reinstatement within five years from the date of revocation. If the foreign LLC’s authority to transact business is reinstated, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation of authority. ORS 63.747(1), (3).

§ 9.1A(11) Limited Liability Company Records

Each limited liability company (LLC) must keep a copy of its three most recent years’ federal, state, and local income tax returns and copies of its financial statements. ORS 63.771(1)(c)–(d). A failure to keep or maintain required records is not grounds for imposing liability on any person for the debt and obligations of the LLC. ORS 63.771(3).

Any court order allowing inspection of records must give the LLC at least five days' advance notice of the hearing date unless the court sets a different notice period. ORS 63.781(5).

§ 9.1A(12) Annual Report

An annual report must contain information that is current as of 30 days before the anniversary of the limited liability company. ORS 63.787(2).

Any errors in the annual report must be corrected within 45 days of notice from the Secretary of State. ORS 63.787(4).

§ 9.1A(13) References

See generally 1 Advising Oregon Businesses ch 7 (Oregon CLE 2001 & Supp 2007).

§9.1B Limited Partnerships

§ 9.1B(1) Reservation of Limited Partnership Name

A person may reserve a limited partnership name for up to 120 days by submitting an application to the Secretary of State. ORS 70.015(2).

§ 9.1B(2) Registered Agent

A change in the name or address of the registered office or registered agent is effective on the date of filing. *See* ORS 70.030(1).

A registered agent may resign by delivering a signed statement to the Secretary of State and giving a copy of the statement to the partnership. The agency and registered office are terminated on the 31st day after filing, unless a successor agent is appointed. ORS 70.030(2).

§ 9.1B(3) Partnership Records

For three years, a limited partnership must keep copies of the partnership's federal, state, and local income tax returns and reports; copies of any then-effective written partnership agreements; and copies of any partnership financial statements. ORS 70.050(1)(c)–(d).

§ 9.1B(4) Documents

If the Secretary of State refuses to file any partnership document, the document must be returned to the partnership or its representative within 10 business days after the document was delivered, together with a brief explanation of the reason for the refusal. ORS 70.070(3).

§ 9.1B(5) Formation

“A limited partnership is formed when the Secretary of State has filed the certificate [of the limited partnership] or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of [ORS 70.075(1)].” ORS 70.075(2).

§ 9.1B(6) Amendment of Certificate

A certificate of limited partnership must be amended and filed with the Secretary of State no later than the 30th day after the admission of a new general partner, the withdrawal of a general partner, the continuation of the business after an event of withdrawal of a general partner, or a change in the name of the limited partnership. ORS 70.080(2).

§ 9.1B(7) Cancellation of Certificate of Limited Partnership

A certificate of limited partnership is cancelled on the date that the certificate of cancellation or the judgment or judicial order of cancellation is filed by the Secretary of State unless the certificate, judgment, or judicial order specifies another effective date. *See* ORS 70.085.

§ 9.1B(8) Admission of Limited Partners

A person becomes a limited partner on the later of the date the original certificate of limited partnership is filed or the date stated in the records of the limited partnership as the date the person becomes a limited partner. ORS 70.125(1).

§ 9.1B(9) When a Person Ceases to Be a General Partner

A person ceases to be a general partner of a limited partnership on the happening of any of several enumerated events, including the time-sensitive events listed below. Unless otherwise provided in writing in the partnership agreement, a person ceases to be a general partner:

- (a) If a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule has not been dismissed on or before the 120th day after commencement of the proceeding;
- (b) If an appointment, without the general partner's consent, of a trustee, receiver or liquidator either of the general partner or of all or any substantial part of the general partner's properties is not vacated or stayed on or before the 90th day after the appointment; or
- (c) If an appointment described in paragraph (b) [immediately above] is not vacated on or before the 90th day after expiration of the stay under paragraph (b)

ORS 70.180(5).

§ 9.1B(10) Withdrawal of Limited Partner

A limited partner may withdraw from a limited partnership at any time or upon the events specified in writing in the partnership agreement. ORS 70.255. If the partnership agreement does not specify in writing the time or events upon which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw by giving each general partner no less than six months' prior written notice. ORS 70.255(2).

In the event that a limited partnership converts into another form of entity, a limited partner who did not vote in favor of the conversion is considered to be a partner who has withdrawn from the limited partnership effective immediately upon the effective date of the conversion unless, within 60 days after the later of the effective date of the conversion or the date the partner receives notice of the conversion, the partner notifies the partnership of the partner's desire not to withdraw.

ORS 70.520(2)(a). Such a withdrawal is not wrongful. ORS 70.520(2)(a).

§ 9.1B(11) Liability of Partner Who Receives Return of Contribution

If a partner has received the return of any part of the partner's contribution without violation of the partnership agreement or [the Oregon Uniform Limited Partnership Act], the partner is liable to the limited partnership for a period of one year after the receipt of the return for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

ORS 70.275(1).

If a partner has received the return of any part of the partner's contribution in violation of the partnership agreement or [the Oregon Uniform Limited Partnership Act], the partner is liable to the limited partnership for a period of six years after receipt of the return for the amount of the contribution wrongfully returned.

ORS 70.275(2).

§ 9.1B(12) Foreign Limited Partnerships

A foreign limited partnership must deliver an application to the Secretary of State to transact business with information current within 60 days of delivery, unless "the official who has custody of limited partnership records in the state or country under whose law the limited partnership is registered provides free access via the Internet to a searchable database that contains evidence of limited partnership registrations." ORS 70.355(4).

§ 9.1B(13) Notice of Administrative Inactivation

If the Secretary of State determines that one or more grounds exist for inactivating a certificate of limited partnership or the registration of a foreign limited partnership, the Secretary of State will give the limited partnership notice of termination. The limited partnership has 45 days to correct each of the grounds, or its certificate of limited partnership or registration of foreign limited partnership will be inactivated. ORS 70.435(1)–(2). The administrative inactivation of a foreign limited partnership terminates the authority of its registered agent. ORS 70.435(4).

A limited partnership administratively inactivated may apply to the Secretary of State for reinstatement within five years from the date of inactivation. ORS 70.440(1). When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative inactivation and the limited partnership is considered to resume carrying on its business as if the administrative inactivation had never occurred. ORS 70.440(3).

The Secretary of State may waive the five-year limit on an application for reinstatement “if the limited partnership requests the waiver and provides evidence of the limited partnership’s continued existence as an active concern during the period of administrative inactivation.” ORS 70.440(4).

§ 9.1B(14) Merger

A merger of a limited partnership with any other entity takes effect on the latest of:

- (a) The filing of the articles of merger;
- (b) The filing of all documents required to be filed by the statute governing any party to the merger that is a business entity other than a limited partnership; or
- (c) Any later effective date specified in the articles of merger.

ORS 70.535(2).

If prior to merger an owner of a business entity was a general partner of a limited partnership or a foreign limited partnership, and after merger is an owner normally protected from personal liability, then such owner shall continue to be personally liable for the business entity’s obligations incurred during the 12 months following merger, if the other party or parties to the transaction reasonably believed that the owner would be personally liable and had not received notice of the merger.

ORS 70.540(1)(i).

Any limited partner who did not vote in favor of the merger is deemed to have withdrawn from the limited partnership effective immediately before the merger unless, within 60 days after the later of the effective date of the merger or the date the partner receives notice of the merger, the partner notifies the limited partnership of the partner’s desire not to withdraw.

ORS 70.540(2)(a). Such a withdrawal is not wrongful. ORS 70.540(2)(a).

§ 9.1B(15) Annual Report

Domestic and foreign limited partnerships must submit an annual report on forms prescribed by the Secretary of State. ORS 70.610(1)–(2). The annual report must contain information that is current as of 30 days before the anniversary of the limited partnership. ORS 70.610(2).

§ 9.1B(16) Certificates of Correction

Certificates of correction are effective on the effective date of the document they correct. But if persons are adversely affected by the correction, the correction is effective when filed as to those persons. ORS 70.620(3).

§ 9.1B(17) References

See generally 1 Advising Oregon Businesses ch 4 (Oregon CLE 2001 & Supp 2007).

§9.1C Partnerships and Limited Liability Partnerships

§ 9.1C(1) Notices

“A person knows a fact if the person has actual knowledge of it.” ORS 67.010(1).

A person has notice of a fact if the person knows of it, has received a notification of it, or has reason to know it exists from all the facts known to the person at the time in question. ORS 67.010(2).

“A person notifies or gives notification to another by taking steps reasonably required to inform the other person in the ordinary course, whether or not the other person learns of it.” ORS 67.010(3).

A person receives a notification when the notification comes to the person’s attention or is “addressed to the person and is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.” ORS 67.010(4).

[A] person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention if the person had exercised reasonable diligence.

ORS 67.010(5).

However,

[a] partner’s knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

ORS 67.010(6).

§ 9.1C(2) Creation of Partnership

Generally, “the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.” ORS 67.055(1).

§ 9.1C(3) Actions by and against Partnership and Partners

All partners are generally liable jointly and severally for all obligations of a partnership unless otherwise agreed by the claimant or provided by law. ORS 67.105(1). With some exceptions,

a creditor may proceed against one or more partners or their property to satisfy a judgment based on a claim that could have been successfully asserted against the partnership only if:

- (a) The partner is personally liable for the claim under ORS 67.105;
- (b) A judgment is also obtained against the partner; and
- (c) A judgment based on the same claim is obtained against the partnership that:
 - (A) Has not been reversed or vacated; and
 - (B) Remains unsatisfied for 90 days after:
 - (i) The date of entry of the judgment; or
 - (ii) The date of expiration or termination of the stay, if the judgment is contested by appropriate proceedings and execution on the judgment has been stayed.

ORS 67.110(4).

A partnership may maintain an action against a partner for breach of the partnership agreement or violation of a duty to the partnership. ORS 67.160(2).

A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (a) Enforce the partner's rights under the partnership agreement;
- (b) Enforce the partner's rights under [ORS chapter 67, including the partner's right on dissociation to have the partner's interest in the partnership purchased, and including the partner's right to compel a dissociation and winding up of the partnership business]; or
- (c) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

ORS 67.160(3).

“The accrual of and any time limitation on a right of action for a remedy under [ORS 67.160] is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.” ORS 67.160(4).

On application by a judgment creditor of a partner or partner's transferee, the court may charge the transferable interest of the judgment debtor (i.e., the partner's share of the partnership's profits and losses and the partner's right to receive distributions) to satisfy the judgment. ORS 67.205(1).

A charging order is a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest at any time. ORS 67.205(2).

At any time before foreclosure, an interest charged may be redeemed:

- (a) By the judgment debtor;
- (b) With property other than partnership property, by one or more of the other partners; or
- (c) With partnership property, by one or more of the other partners with the consent of all the partners whose interests are not so charged.

ORS 67.205(3).

ORS 67.205 "provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership." ORS 67.205(5).

§ 9.1C(4) Partner Dissociation

A partner is dissociated from the partnership upon any of the following events:

- The partnership's having notice of the partner's express will to withdraw as a partner or to withdraw on a later date specified by the partner. ORS 67.220(1).
- An event agreed to in the partnership agreement as causing the partner's dissociation. ORS 67.220(2).
- The partner's expulsion pursuant to the partnership agreement. ORS 67.220(3).
- The partner's expulsion by the unanimous vote of the other partners if:
 - "It is unlawful to carry on the partnership business with that partner";
 - "There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes that has not been foreclosed or a court order charging the partner's interest that has not been foreclosed";
 - Within 90 days after the partnership notifies a corporation, limited liability company, or limited partnership that is a partner that it will be expelled because the entity has filed articles of dissolution, a certificate of cancellation, or the equivalent; has been administratively dissolved or inactivated; or has had its right to conduct business suspended, there is no revocation of the action or reinstatement of its right to conduct business;

- A partnership that is a partner has been dissolved and its business is being wound up.
ORS 67.220(4).
- Upon application by the partnership or another partner, the partner's expulsion by judicial determination that:
 - The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under ORS 67.155; or
 - The partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner.
ORS 67.220(5).
- The partner is:
 - Becoming a debtor in bankruptcy;
 - Executing an assignment for the benefit of creditors;
 - Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property; or
 - Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of the stay to have the appointment vacated.
ORS 67.220(6).
- In the case of a partner who is an individual:
 - The partner's death;
 - The appointment of a guardian or general conservator for the partner; or
 - A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.
ORS 67.220(7).
- In the case of a partner that is a trust, distribution of the trust's entire transferable interests in the partnership. ORS 67.220(8).
- In the case of a partner that is an estate, distribution of the estate's entire transferable interests in the partnership. ORS 67.220(9).

- Termination of the existence of a partner who is not an individual, partnership, limited partnership, limited liability company, corporation, trust, or estate. ORS 67.220(10).

§ 9.1C(5) Purchase of Dissociated Interests

§ 9.1C(5)(a) Purchase Price

If a partner's dissociation does not result in dissolution of the partnership, the partnership must cause the departing partner's interest in the partnership to be purchased. ORS 67.250(1). The buyout price of a dissociated partner's interest is the fair value of the partner's interest in the partnership on the date of dissociation, without a minority discount. Interest must be paid from the date of dissociation to the date of payment. ORS 67.250(2).

§ 9.1C(5)(b) Damages and Interest

"Damages for wrongful dissociation . . . and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment." ORS 67.250(3).

§ 9.1C(5)(c) Indemnity

A partnership must indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after dissociation, except liabilities incurred by an act of the dissociated partner under ORS 67.255. Upon application by the partnership or a partner within 120 days after the date of dissociation, a court may determine that indemnification of the dissociated partner against all partnership liabilities incurred before the dissociation is not equitable based on either (1) the partnership's financial condition on the date of dissociation; or (2) the partnership's dissolution within 60 days after the date of dissociation. ORS 67.250(4).

§ 9.1C(5)(d) Cash Payment

If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership must pay the dissociated partner in cash the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets for wrongful dissociation and any accrued interest. ORS 67.250(5).

§ 9.1C(5)(e) Timing

A partner who wrongfully dissociates before the expiration of a definite term or completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner demonstrates to the court's satisfaction that earlier payment will not cause undue hardship to the business of the partnership. ORS 67.250(8).

§ 9.1C(5)(f) Information Accompanying Payment

Payment to a dissociated partner must be accompanied by:

- (1) A statement of partnership assets and liabilities as of the date of dissociation;
- (2) The latest available partnership balance sheet and income statement, if any;
- (3) An explanation of how the estimated amount was calculated; and
- (4) Written notice that the payment is in full satisfaction of the purchase obligation unless, within 120 days after the written notice, the dissociated partner brings an action to determine the buyout price, any offsets for wrongful dissociation, or other terms.

ORS 67.250(7).

§ 9.1C(5)(g) Action to Determine Buyout Price

A dissociated partner who brings an action against the partnership to determine the buyout price, any offsets, or other terms must commence the action within 120 days after the partnership has tendered payment or an offer to pay, or within one year after written demand for payment if no payment or offer to pay is tendered. ORS 67.250(9).

§ 9.1C(6) Dissolution

An event that makes it unlawful for all or substantially all of the partnership business to be continued dissolves the partnership. However, a cure of the illegality within 90 days after notice of the event to the partnership is effective retroactively to the date of the event. ORS 67.290(4).

§ 9.1C(7) Conversion and Merger

The conversion of another business entity to a partnership or merger of business entities into a partnership takes effect at “the later of the date and time determined pursuant to ORS 67.530 or the date and time determined pursuant to the statutes governing” the business entity or any party to the merger that is a business entity other than a partnership. ORS 67.346(2), ORS 67.364(2).

Any partner who did not vote for the conversion or merger is deemed to have dissociated from the partnership effective immediately before the conversion or merger unless, within 60 days after the later of the effective date of the conversion or merger or the date the partner receives notice of the conversion or merger, the partner notifies the partnership of the partner’s desire not to dissociate. Such a dissociation is not a wrongful withdrawal. ORS 67.348(2)(a), ORS 67.365(2)(a).

§ 9.1C(8) Documents

Delivery of a document to the Secretary of State is accomplished only when the office actually receives the document. ORS 67.520(10).

Generally, a document is effective at 12:01 a.m. on the date it is filed by the Secretary of State or at any time on the date filed as specified in the document. ORS 67.530(1). However, a document is effective on a delayed date and time if specified or at 12:01 a.m. on the delayed date if no time is specified. A delayed effective date may not be later than 90 days after the date the document is filed. ORS 67.530(2).

If the Secretary of State refuses to file any partnership document, the document must be returned to the partnership or its representative within 10 business days after the document was delivered, together with a brief written explanation for the refusal. ORS 67.535(3). The limited liability partnership may appeal the refusal under the Oregon Administrative Procedures Act (ORS chapter 183). ORS 67.540(1).

§ 9.1C(9) Registration and Cancellation of Limited Liability Partnerships

The status of a partnership as a limited liability partnership (LLP) “is effective upon the filing of the application for registration or, if applicable, upon the delayed effective time and date set forth in the application of registration.” ORS 67.590(5). The status remains effective, regardless of changes in the partnership, until the registration is voluntarily canceled under ORS 67.595 or revoked under ORS 67.660. ORS 67.590(5).

A cancellation notice filed with the Secretary of State terminates the status of the partnership as an LLP as of the date of filing or a later effective date specified in the notice. ORS 67.595(3).

§ 9.1C(10) Annual Report

An annual report must contain information that is current as of 30 days before the anniversary of the limited liability partnership. ORS 67.645(2). Any errors in the annual report must be corrected within 45 days of notice from the Secretary of State. ORS 67.645(4).

§ 9.1C(11) Administrative Revocation

After the Secretary of State gives a limited liability partnership (LLP) written notice of the determination that grounds exist for revoking the LLP’s registration, the LLP has 45 days to correct each ground for revocation or demonstrate to the secretary’s reasonable satisfaction that each ground does not exist; otherwise, the LLP’s registration will be revoked. ORS 67.660(1)–(2).

An LLP whose registration was administratively revoked may apply for reinstatement within five years from the date of revocation. ORS 67.665(1). If the LLP is reinstated, “the reinstatement relates back to and takes effect as of the effective date of the administrative revocation[,] and the partnership’s status as a limited liability partnership continues as if the administrative revocation had never occurred.” ORS 67.665(3). The Secretary of State may waive the five-year limit

on an application for reinstatement “if the limited liability partnership requests the waiver and provides evidence of the limited liability partnership’s continued existence as an active concern during the period of administrative revocation.” ORS 67.665(4).

The LLP may appeal denial of reinstatement under the Oregon Administrative Procedures Act (ORS chapter 183). ORS 67.670(2).

§ 9.1C(12) Foreign Limited Liability Partnerships

A foreign limited liability partnership (LLP) must deliver to the Secretary of State an application to transact business with information current within 60 days of delivery, unless “the official who has custody of limited liability partnership records in the state or country under whose law the foreign limited liability partnership is registered provides free access via the Internet to a searchable database that contains evidence of limited liability partnership registrations.” ORS 67.710(2).

After the Secretary of State gives the foreign LLP written notice of the determination that grounds exist for revoking the foreign LLP’s authority to transact business in the state, the foreign LLP has 45 days to correct each ground for revocation or demonstrate to the secretary’s reasonable satisfaction that each ground does not exist; otherwise, the Secretary of State will revoke the authority of the foreign LLP. ORS 67.755(1)–(2). The foreign LLP may appeal the revocation of its authority of the Oregon Administrative Procedures Act (ORS chapter 183). ORS 67.760.

A foreign LLP that has had its authority revoked may apply to the Secretary of State for reinstatement within five years from the date of the revocation. ORS 67.765(1). If the foreign LLP is reinstated, the reinstatement relates back to and takes effect as of the effective date of revocation of authority, and the foreign LLP resumes its business as if the revocation never occurred. ORS 67.765(3).

§ 9.1C(13) References

See generally 1 *Advising Oregon Businesses* chs 2, 3 (Oregon CLE 2001 & Supp 2007).

§9.1D Professional Corporations

§ 9.1D(1) Application of General Corporation Law

The Oregon Business Corporation Act, ORS chapter 60, applies to domestic and foreign professional corporations except when inconsistent with the Oregon Professional Corporation Act (ORS chapter 58). ORS 58.045(1). Time limitations that apply to private corporations also apply to professional corporations unless otherwise provided in the Oregon Professional Corporation Act. *See* ORS 58.045.

§ 9.1D(2) Documents

Delivery of a document to the Secretary of State is accomplished only when the office of the Secretary of State actually receives the document. ORS 58.400(10).

Generally, a document “is effective on the date it is filed by the Secretary of State and at the time, if any, specified in the document as its effective time.” ORS 58.420(1). However, a document is effective on a delayed date and time if specified in the document, or on the delayed date if no time is specified. A delayed effective date may not be later than 90 days after the date the document is filed. ORS 58.420(2).

Generally, articles of correction are effective on the effective date of the document they correct. But if persons relying on the uncorrected document are adversely affected by the correction, the correction is effective when filed as to those persons. ORS 58.430(3).

If the Secretary of State refuses to file any corporate document, the document must be returned to the professional corporation or its representative within 10 business days after the document was delivered to the Secretary of State, together with a brief written explanation of the reason for the refusal. ORS 58.450(3). The professional corporation may appeal the refusal under ORS 183.480. ORS 58.460.

§ 9.1D(3) Disqualification of Physician

If a physician practicing medicine on behalf of a professional corporation is disqualified from practicing medicine for more than six months or assumes a public office, the duties of which prohibit practicing medicine for more than six months . . . , the professional corporation [has] the right to redeem the shares of the physician within 60 days after the disqualification or prohibition occurs.

ORS 58.385(1).

§ 9.1D(4) Disposition of Deceased Shareholder’s Shares

If the shares of a deceased shareholder of a professional corporation organized for the purpose of practicing medicine are not disposed of within six months after the deceased shareholder’s death, a special meeting of the shareholders must be called for the remaining shareholders to vote whether the corporation will redeem the shares or whether the corporation will voluntarily dissolve. The meeting must be held within seven months after the death. The action taken by the shareholders must be completed within nine months after the death. ORS 58.387(1).

If the deceased shareholder was the only shareholder of the corporation at the time of death, the corporation must cease to practice medicine as of the date of death unless the corporation has retained another Oregon-licensed physician. ORS 58.387(2). Within six months of the death,

(1) The shares of the deceased shareholder must be sold to a physician or physicians who are licensed in Oregon to practice medicine;

(2) The name of the corporation must be changed and restated articles adopted and filed with the Secretary of State in accordance with ORS chapter 60; or

(3) The corporation must be dissolved.

ORS 58.387(2).

§ 9.1D(5) References

See generally 2 Advising Oregon Businesses ch 33 (Oregon CLE 2001 & Supp 2007).

§ 9.2 CORPORATIONS—COOPERATIVE

§9.2A Documents; Name

Delivery of a document to the Secretary of State is accomplished only when the office of the Secretary of State actually receives the document. ORS 62.025(10).

A document filed with the Secretary of State is effective on the date it is filed and at the time specified in the document, or on any date specified in the document, but in no event can the effective date be delayed more than 90 days after the date of filing. If the document does not specify a time, it is effective at 12:01 a.m. on the date of filing or other date specified in the document. ORS 62.035(1)–(2).

Generally, articles of correction are effective on the effective date of the document they correct. But if persons who rely on the uncorrected document are adversely affected by the correction, the articles of correction are effective when filed as to those persons. ORS 62.040(3).

If the Secretary of State refuses to file a document, the document must be returned to the cooperative or its representative within 10 business days, together with a brief written explanation for the refusal. ORS 62.050(3). The cooperative may appeal the refusal under ORS 183.480. ORS 62.055.

“A person may apply to the Office of Secretary of State to reserve a corporate name.” ORS 62.128(1). “If the Secretary of State finds that the corporate name applied for conforms to ORS 62.131, the Secretary of State shall reserve the name for the applicant for a 120-day period.” ORS 62.128(2).

§9.2B Meetings and Voting

A shareholder voting proxy is valid for 11 months from the date of execution, unless otherwise provided in the proxy. ORS 62.195(1).

A cooperative’s bylaws may fix a record date for determination of shareholders entitled to receive notice of meetings, to vote at meetings, or to

receive payment of any dividend, not more than 50 days and not less than 10 days before the date on which the action requiring determination is to be taken. If no record date is fixed by the bylaws, the date that the meeting notice is mailed or the date of the resolution declaring the dividend will be the record date. ORS 62.195(3).

An annual meeting must be held at the time provided in the bylaws. If the bylaws do not fix a time, the meeting must be held each calendar year at a time determined by the board. ORS 62.255(2). Notice of a meeting must be given not less than seven or more than 30 days before the meeting. Notice is deemed given when mailed. ORS 62.255(4).

Actions properly taken without a meeting are effective when the last member, director, executive committee member, or shareholder entitled to vote signs the consent, unless the consent specifies a different effective date. ORS 62.305.

For the following actions, notice must be given not less than seven or more than 30 days before the action:

- Amendment of articles (ORS 62.555(2)(b));
- Shareholder voting on amendments (ORS 62.560(2)); and
- Voluntary dissolution (ORS 62.655(2)).

§9.2C Subscription and Membership Fee Agreements

When a subscription agreement for shares (including membership stock of a cooperative) or a membership fee agreement is entered into before incorporation, the subscription agreement is irrevocable for six months, unless otherwise provided in the agreement or all parties consent to the revocation. ORS 62.205(1).

If a subscriber defaults on the subscription agreement or membership fee agreement entered into before incorporation, the cooperative may rescind the agreement if the debt remains unpaid more than 20 days after demand for payment is sent. ORS 62.205(2).

§9.2D Board of Directors and Officers

“Directors constituting the initial board named in the articles shall hold office until the first annual meeting of the members and until their successors are elected and take office.” ORS 62.280(5). Directors will be elected in the manner and for the term provided in the bylaws, not to exceed three years. ORS 62.280(5).

The principal officers of a cooperative are a president, one or more vice presidents, a secretary, and a treasurer. The offices of secretary and treasurer may be combined in one person. At least one principal officer must be a director of the cooperative. The principal officers must be elected annually by the board at the time and manner provided for in the bylaws. ORS 62.295(1).

§9.2E Court Proceedings

If an action is instituted by a member or shareholder in the name of the cooperative, the plaintiff must file the complaint within 20 days after notice was given to the cooperative or board, as provided in ORS 62.335(1)(b). ORS 62.335(1)(c).

§9.2F Unclaimed Distributions

A distribution that remains unclaimed for four years after the date authorizing payment may be forfeited by the board. Any amounts forfeited may revert to the cooperative if notice is given to the person entitled to the distribution at least six months before the declared forfeiture date. ORS 62.425(1).

All intangible personal property that is unclaimed within two years after the date of final distribution after dissolution is presumed to be abandoned and is subject to ORS 98.302 to 98.436 and ORS 98.992. With respect to agricultural cooperatives, the report of unclaimed property must be filed with the Department of State Lands as set forth in ORS 98.352, with a copy to the State Board of Higher Education. ORS 62.720(1).

The Department of State Lands must forward all funds received for unclaimed property of an agricultural cooperative to the State Board of Higher Education within 14 working days of receipt of the funds. ORS 62.720(2).

§9.2G Annual Reports

Information in the annual report must be current as of 30 days before the anniversary of the cooperative. ORS 62.455(2).

A cooperative must correct any errors in its annual report within 45 days of notice from the Secretary of State. ORS 62.455(4).

§9.2H Amendment of Articles

Notice of a proposed amendment to a cooperative's articles of incorporation must be given not less than seven or more than 30 days before the meeting of the members or shareholders to vote on the proposed amendment. ORS 62.555(2)(b), ORS 62.255(4).

§9.2I Conversion and Merger

A business entity may be converted to a cooperative, or a cooperative may be converted to another business entity, as provided in ORS 62.607 to 62.613. The conversion takes effect at the later of the date and time determined under either ORS 62.035 (*see* §9.2A) or the statutes governing the business entity that is not a cooperative. ORS 62.611(2).

One or more business entities may merge into a cooperative as provided in ORS 62.617 to 62.623. The merger takes effect on the later of the date and time determined under either ORS 62.035 (*see* §9.2A) or the statutes governing any of the business-entity parties to the merger that are not cooperatives. ORS 62.621(2).

§9.2J Dissolution

If voluntary dissolution proceedings have not been revoked, articles of dissolution may be filed with the Oregon Secretary of State when all debts, liabilities, and obligations of the cooperative have been paid off and discharged or provisions have been made therefor, or all assets have been distributed to creditors and all persons entitled thereto. ORS 62.680(1). A cooperative is voluntarily dissolved on the effective date of its articles of dissolution. ORS 62.680(2). Except for the purpose of proceedings and corporate action as provided in ORS chapter 62, the existence of the cooperative ceases when the Secretary of State files the articles of dissolution. ORS 62.685.

If a court determines that grounds for judicial dissolution described in ORS 62.695 exist, it may enter a judgment dissolving the cooperative and specifying the effective date of dissolution. The court clerk must deliver a certified copy of the judgment to the Secretary of State for filing, which the secretary must then file. ORS 62.704(1).

A dissolved cooperative may dispose of known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date. The notice must

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;
- (c) State the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved cooperative must receive the claim; and
- (d) State that the claim will be barred if not received by the deadline.

ORS 62.712(1)–(2).

A claim against the dissolved cooperative is barred if a claimant who was given written notice does not deliver the claim to the cooperative by the deadline, or if a claimant whose claim was rejected by the cooperative does not bring a proceeding to enforce the claim within 90 days from the effective date of the rejection notice. ORS 62.712(3).

“A dissolved cooperative may also publish notice of its dissolution and request that persons with claims against [it] present them in accordance with the notice.” ORS 62.714(1). The notice must:

- (a) Be published one time in a newspaper of general circulation in the county where the dissolved cooperative’s principal office is located, or if the principal office is not [Oregon], where its registered office is or was last located;
- (b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

- (c) State that a claim against the cooperative will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

ORS 62.714(2).

If the dissolved cooperative properly publishes the newspaper notice, the claim of each of the following claimants is barred unless the claimant brings a proceeding to enforce the claim against the cooperative within five years after publication of the newspaper notice:

- (a) A claimant who did not receive written notice under ORS 62.712;
- (b) A claimant whose claim was sent in a timely manner to the dissolved cooperative but not acted on; or
- (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

ORS 62.714(3).

§9.2K Manufactured Dwelling Park Nonprofit Cooperatives

Notwithstanding ORS 446.626, if a manufactured dwelling located in a manufactured dwelling park of a cooperative was recorded in the county deed records before title to the manufactured dwelling was transferred from the record owner of the manufactured dwelling, the county shall continue to list the manufactured dwelling in the deed records until the earlier of:

- (A) Twelve months after title is transferred from the record owner to a person other than a lienholder shown on the deed record for the manufactured dwelling, unless the county is notified that a subsequent buyer of the manufactured dwelling has become a member of the cooperative;
- (B) Twelve months after title is transferred to a lienholder shown on the deed record for the manufactured dwelling, unless the county is notified that a subsequent buyer of the manufactured dwelling has become a member of the cooperative; or
- (C) Issuance of a trip permit . . . for moving the dwelling.

ORS 62.809(8)(c).

§9.2L Agricultural Cooperative

“An agricultural cooperative organized and operating under ORS chapter 62 must send a notice to all members of the cooperative annually,” either in February or with the member’s contract, stating “that members may not file an agricultural produce lien under ORS 87.228 and ORS 87.700 to 87.736 against the cooperative.” ORS 62.870.

§9.2M References

See generally 2 Advising Oregon Businesses ch 32 (Oregon CLE 2001 & Supp 2007).

§ 9.3 CORPORATIONS—NONPROFIT

§9.3A Documents; Name

Except as provided in ORS 56.080 and ORS 65.014, a document filed with the Secretary of State is effective on the date it is filed and at the time specified in the document, or on any date specified in the document, but in no event can the effective date be delayed more than 90 days after the date of filing. If the document does not specify a time, it is effective at 12:01 a.m. on the date of filing or other date specified in the document. ORS 65.011.

Generally, articles of correction are effective on the effective date of the document they correct. But if persons who rely on the uncorrected document are adversely affected by the correction, the articles of correction are effective when filed as to those persons. ORS 65.014(4).

A public benefit or religious corporation may amend or restate its articles of incorporation to become designated as a mutual benefit corporation only if notice is given to the Attorney General at least 20 days before consummation of the amendment or restatement. ORS 65.431(2).

If the Secretary of State refuses to file a document, the document must be returned to the corporation or its representative within 10 business days after delivery to the Secretary of State, together with a brief written explanation of the reason for the refusal. ORS 65.017(3). The corporation may appeal the refusal under ORS 183.484. ORS 65.021.

“A person may apply to the Office of the Secretary of State to reserve a corporate name.” ORS 65.097(1). “If the Secretary of State finds that the corporate name applied for conforms to ORS 65.094, the Secretary of State shall reserve the name . . . for a 120-day period.” ORS 65.097(2).

§9.3B Notices

Notice may be oral or written, unless otherwise specified. ORS 65.034(1).

Written notice by a corporation to its members is effective when mailed (postpaid and correctly addressed). ORS 65.034(3). Other written notice is effective at the earliest of the following:

- When received;
- Five days after its postmark (postpaid and correctly addressed);
- On the date shown on the return receipt, if sent by registered or certified mail and the receipt is signed by or on behalf of the addressee;
- 30 days after its deposit in the mail if mailed other than first-class, registered, or certified (postpaid and correctly addressed); or

- The date specified by the articles or bylaws with respect to notice to directors.

ORS 65.034(5).

Oral notice is effective when communicated. ORS 65.034(4).

§9.3C Resignation of Registered Agent

The appointment of a registered agent is terminated, and the registered office discontinued if so provided, on the 31st day after filing a statement of resignation with the Secretary of State, unless the cooperation appoints a successor registered agent sooner. ORS 65.117(3).

§9.3D Members and Memberships

Expulsion or suspension of a member of, or termination of membership in, a public benefit or mutual benefit corporation requires a procedure that is fair and reasonable and carried out in good faith. ORS 65.167(1). A procedure that includes at least 15 days' prior written notice, with an opportunity for the member to be heard orally or in writing at least five days before the effective date of the expulsion, is fair and reasonable. ORS 65.167(2)(a). "Any proceeding challenging an expulsion, suspension or termination . . . must be commenced within one year after the effective date of the expulsion, suspension or termination." ORS 65.167(4).

§9.3E Meetings of Members

If notice of a special meeting called by demand of the members is not given within 30 days after the date of the written demand, the person signing the demand may set the time and place of the meeting. ORS 65.204(3).

Notice of annual, regular, and special meetings is fair and reasonable if the corporation gives notice at least seven days before the meeting. If notice is mailed by other than first-class or registered mail, it must be given at least 30 days but not more than 60 days before the meeting. ORS 65.214(3)(a).

A record date for determination of members entitled to notice of a meeting, or entitled to demand a special meeting, vote, or take any other lawful action may be fixed by the bylaws or directors, but in no event may be more than 70 days before the meeting or action requiring the determination of members is to take place. ORS 65.221(1)–(2). If no record date is fixed by the bylaws or directors, then the record date is determined in accordance with ORS 65.221(1). The determination is effective for any adjournment of the meeting unless the board fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the original meeting. ORS 65.221(3).

A list of members must be available for inspection by any member beginning two business days after notice of the meeting. ORS 65.224(2).

A proxy appointment is valid for 11 months unless a different period is expressly provided in the appointment form. ORS 65.231(2).

Voting agreements are valid for up to 10 years. ORS 65.254(1).

The circuit court of the county where a corporation's principal office is located, or where the registered office is located if the principal office is not in Oregon, may order a meeting to be held:

- (a) On application of any member or other person entitled to participate in an annual or regular meeting or, in the case of a public benefit corporation, the Attorney General, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting;
- (b) On application of any member or other person entitled to participate in a regular meeting or, in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held within 40 days after the date it was required to be held;
- (c) On application of a member who signed a demand for a special meeting . . . , a person or persons entitled to call a special meeting or, in the case of a public benefit corporation, the Attorney General, if notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary or the special meeting was not held in accordance with the notice.

ORS 65.207(1).

The court may not order a meeting without at least five days' notice to the corporation before the time specified for the hearing, unless the court fixes a different period. ORS 65.207(4).

§9.3F Directors

In the absence of any term in the bylaws or articles, the term of each director is one year. Directors may be elected for successive terms. Except for designated or appointed directors, the terms of directors may not exceed five years. ORS 65.314(1).

Unless the articles or bylaws provide otherwise, special meetings of the board require at least two days' notice to each director. ORS 65.344(2).

"Public benefit and religious corporations may not make a loan, guarantee an obligation or modify a preexisting loan or guarantee to or for the benefit of a director or officer" unless the loan, guarantee, or modification is part of a recruitment package not exceeding three years, and notice is given to the Attorney General 20 or more days before it is to become binding on the corporation. ORS 65.364(1)(c).

§9.3G Mergers and Sales

Notice of a plan of merger of a public benefit or religious corporation with a foreign or domestic business or mutual benefit corporation must be delivered to the Attorney General at least 20 days before consummation of the merger. ORS 65.484(2).

A public benefit or religious corporation must give 20 days' written notice to the Attorney General before the sale, lease, exchange, or disposition of all or substantially all corporate property, unless the transaction is in the usual course of business or the Attorney General has given the corporation a written waiver of the notice requirement. ORS 65.534(7).

§9.3H Dissolution

A public benefit or religious corporation must give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State, and it cannot transfer or convey assets as part of the dissolution process until at least 20 days after the notice. ORS 65.627(1)–(2). A corporation may revoke its dissolution within 120 days of its effective date. ORS 65.634.

If the Secretary of State notifies the corporation that grounds exist for administratively dissolving it, and the corporation does not correct the grounds for dissolution within 45 days, the corporation will be dissolved. ORS 65.651(2). A corporation that was administratively dissolved by the Secretary of State may apply for reinstatement within five years from the date of dissolution, or later if the Secretary of State allows based on “the corporation’s continued existence as an active concern during the period of administrative dissolution.” ORS 65.654(1), (4).

§9.3I Claims against Dissolved Corporations

A corporation must give written notice to known claimants that a claim must be filed by a date that is no fewer than 120 days from the date of the notice. ORS 65.641(1). A rejected claim must be enforced by commencing a proceeding against the corporation within 90 days from the effective date of the rejection notice. ORS 65.641(2)(b).

Unknown claimants may receive notice of dissolution by publication. A claim against the corporation based on a published notice will be barred unless the claim is enforced within five years. ORS 65.644(2). The following claimants must commence a proceeding to enforce a claim within five years after the date of publication of notice:

- Claimants who did not receive written notice;
- Claimants with claims that were not timely acted on by the corporation; and
- Claimants with claims that are contingent on or based postdissolution events. ORS 65.644(3).

§9.3J Records and Reports

A corporation must maintain permanent records of all meetings and actions without meetings. ORS 65.771(1). A corporation must keep a copy for inspection of minutes of all meetings of members and records of actions approved by the members for the past three years, written communications required by ORS

chapter 65 and those regarding general membership matters made to members within the past three years, the last three financial statements, and the last three accountant's reports if annual financial statements are reported. ORS 65.771(5)(d)–(e), (g)–(h).

A member can inspect records by giving five business days' written notice. ORS 65.774(1). If a corporation does not allow a member who complies with ORS 65.774(1) to inspect and copy any records that are required to be available for inspection, the circuit court may order inspection and copying, but not without at least five days' notice in advance of the time specified for a hearing, unless the court fixes a different time period. ORS 65.781(1), (5).

If a corporation indemnifies or advances expenses to a director under ORS 65.391 to 65.401 . . . , the corporation shall report the indemnification or advance in writing to: –

- (1) The members with or before notice of the next meeting of members; and
- (2) Any person having the right to designate or appoint the director no later than 90 days after the first indemnification or advance.

ORS 65.784.

Information contained in the annual report must be current as of 30 days before the anniversary of the corporation. ORS 65.787(2). A corporation must correct any errors in the annual report within 45 days of notice from the Secretary of State. ORS 65.787(4).

§9.3K Derivative Suits

A proceeding may be brought in the right of the corporation by any member or members having two percent or more of the voting power or by 20 members (whichever is less), or by any director. ORS 65.174(1). If the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation, the complainants must notify the Attorney General within 10 days of commencing the proceeding. ORS 65.174(4).

§9.3L References

See generally ORS ch 65 (Oregon Nonprofit Corporation Act).

§ 9.4 CORPORATIONS—PRIVATE

NOTE: The Oregon Business Corporation Act, ORS chapter 60, applies to all domestic corporations in existence on June 15, 1987. ORS 60.951, ORS 60.957.

§9.4A Documents

Delivery of a document to the Secretary of State is accomplished only when the office of the Secretary of State actually receives the document. ORS 60.004(10).

Generally, a document is effective at 12:01 a.m. on the date it is filed by the Secretary of State or at any time on the date filed as specified in the document. ORS 60.011(1). But a document is effective on a delayed date and time if specified or at 12:01 a.m. on the delayed date if no time is specified. A delayed effective date may not be later than 90 days after the date the document is filed. ORS 60.011(2).

Generally, articles of correction are effective on the effective date of the document they correct. But if persons who rely on the uncorrected document are adversely affected by the correction, the correction is effective when filed as to those persons. ORS 60.014(3).

If the Secretary of State refuses to file any corporate document, the document must be returned to the corporation or its representative within 10 business days after the document was delivered, together with a brief written explanation of the reason for the refusal. ORS 60.017(3).

§9.4B Notices

Any notices required under ORS chapter 60 must be in writing, unless oral notice is specifically permitted by the articles of incorporation or bylaws. All notices required under ORS chapter 60 by a corporation to its shareholders must be in writing. Notice by electronic transmission, other than voice mail, is written notice. ORS 60.034(1), (3).

Notice by a corporation to its shareholders or directors is effective when mailed (postpaid and correctly addressed), when electronically transmitted to a shareholder as authorized in writing by the shareholder, or when electronically transmitted to a director as authorized by the director. ORS 60.034(3). Other written notice is effective, unless the articles or bylaws provide otherwise for notices to directors, at the earliest of the following:

- When received;
- Five days after postmarked (correctly addressed); or
- On the date shown on the return receipt if sent by registered or certified mail, and the receipt is signed by or on behalf of addressee.

ORS 60.034(5).

Oral notice is effective when comprehensibly communicated. ORS 60.034(6).

§9.4C Incorporation

Corporate existence begins when the articles are filed by the Secretary of State, unless a delayed effective date is specified. ORS 60.051(1). The directors, or incorporators if no directors have been named, must hold an organizational meeting after incorporation. The incorporators may act by written consent (instead of a meeting) signed by each incorporator. ORS 60.057.

A person may apply to the office of the Secretary of State to reserve a corporate name. If the Secretary of State finds that the corporate name applied for conforms to ORS 60.094, the Secretary of State must reserve the name for a 120-day period. ORS 60.097(1)–(2).

§9.4D Registered Agent

A change in the name or address of the registered agent or registered office is effective on the date of filing. ORS 60.114(3).

A registered agent may resign by delivering a signed statement to the Secretary of State and giving a copy of the statement to the corporation. The agency is terminated and the registered office discontinued if so provided on the 31st day after filing unless a successor agent is sooner appointed. ORS 60.117(1), (3).

§9.4E Subscription for Shares

“A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.” ORS 60.144(1).

A subscription agreement entered into before incorporation, unless it provides otherwise, may be rescinded by the corporation if the subscriber’s debt remains unpaid more than 20 days after written demand for payment. ORS 60.144(4).

§9.4F Shareholders’ Preemptive Rights

Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for one year after being offered to shareholders. An offer at a consideration lower than that offered to shareholders or made after one year is subject to the shareholders’ preemptive rights. ORS 60.174(3)(f).

§9.4G Shareholders’ Meetings

§ 9.4G(1) Notice

The corporation must give notice of each annual and special shareholders’ meeting not more than 60 days or less than 10 days before the meeting date. ORS 60.214(1).

§ 9.4G(2) Record Date

A determination of shareholders entitled to receive notice of a meeting or action for the purpose of voting must be made as of the close of business on a record date, unless another time for making the determination is specified when the record date is set, and the record date may not be fixed more than 70 days before the meeting or action. ORS 60.221(1)–(2).

§ 9.4G(3) Adjournment

If a shareholders' meeting is adjourned for more than 120 days, a new record date must be fixed to determine which shareholders are entitled to notice. ORS 60.221(3).

§ 9.4G(4) Proxies

A proxy authorization is valid for 11 months unless a longer period is expressly provided. ORS 60.231(4).

§ 9.4G(5) Court-Ordered Meetings

The circuit court of a county where a corporation's principal office is located, or where the registered office is located if the principal office is not in this state, may order a meeting to be held:

- On application of any shareholder entitled to participate in an annual meeting if the annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting. ORS 60.207(1)(a).
- On application of a shareholder who signed a demand for a special meeting and notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporate secretary or the special meeting was not held in accordance with the notice. ORS 60.207(1)(b).

The shareholders' application to the court for a special meeting will be set for hearing. The court must give the corporation five days' notice of the hearing, unless a different period is fixed by the court. ORS 60.207(3).

§ 9.4G(6) Action without Meeting

If ORS chapter 60 requires that notice be given to nonvoting shareholders of a proposed action without a meeting, and the action is to be taken by unanimous consent of the voting shareholders, nonvoting shareholders must receive written notice of the action at least 10 days before the action is taken. ORS 60.211(4)(a).

If action is taken under ORS 60.211(1)(b) by fewer than all of the shareholders entitled to vote on the action, the shareholders who were entitled to vote on the action but who did not consent in writing to the action must be promptly notified in writing after the action is taken. ORS 60.211(5).

§9.4H Voting Trusts

A voting trust is valid for not more than 10 years after its effective date, unless extended for additional terms of not more than 10 years each with the voting trustee's written consent. An extension is valid for 10 years from the date that the first shareholder signs the extension agreement. ORS 60.254(2)–(3).

§9.4I Shareholder Agreements

A shareholder agreement is valid for 10 years, unless the agreement provides otherwise. ORS 60.265(2)(c).

The existence of a shareholder agreement must be noted conspicuously on the front or back of each stock certificate, or on the information statement required by ORS 60.164(2). Any purchaser of shares who did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. An action for rescission must be brought within the earlier of (1) 90 days after notice from the corporation or seller of the existence of the agreement, (2) one year after discovery of the existence of the agreement, or (3) three years after the purchase of the shares. ORS 60.265(3).

§9.4J Directors' Meetings

Special meetings of the board of directors must be preceded by at least two days' notice, unless the articles of incorporation or bylaws provide for a different time. ORS 60.344(2).

§9.4K Amendment of Articles of Incorporation

Articles of incorporation may be amended before shares are issued by giving notice of the amendment with a statement that subscribers of stock may rescind the subscription by giving written notice to the incorporators or board of directors within 30 days of delivery or mailing of the notice of amendment. If notice of rescission is not delivered or mailed within 30 days, the subscriber may not avoid the subscription agreement or assert a claim against any person based on the amendment. ORS 60.444.

§9.4L Merger and Share Exchange

If a plan of merger or share exchange is adopted, the corporation must give notice to each shareholder of a proposed shareholders' meeting not more than 60 days or fewer than 10 days before the meeting date. ORS 60.487(4), ORS 60.214(1).

A parent corporation owning at least 90 percent of each class of shares of a subsidiary may merge without approval of shareholders. ORS 60.491(1). Not later than 10 days after the effective date of the merger, a parent that is the surviving corporation must notify each shareholder of the subsidiary that the merger has become effective and mail a copy of the plan of merger to each shareholder of the subsidiary. ORS 60.491(2)(b). Not later than 10 days after the effective date of the merger, a parent that is not the surviving corporation must notify each shareholder of the subsidiary and of the parent that the merger has become effective and mail a copy of the plan of merger to each shareholder of the subsidiary and of the parent. ORS 60.491(3)(b).

§9.4M Dissenters' Rights to Obtain Payment of Shares

If dissenters' rights are created at a shareholders' meeting, the corporation must send a dissenters' notice no later than 10 days after the action was taken. ORS 60.567(2). The date set for receipt of the dissenters' payment demand must

be not fewer than 30 days and not more than 60 days after the dissenters' notice is delivered. ORS 60.567(2)(d).

If the corporation does not take the proposed action within 60 days after the date set for the dissenter's payment demand, the corporation must return the deposited certificates and release the transfer restrictions. ORS 60.581(1).

A dissenter may notify the corporation and demand payment of the estimated fair value of shares if the corporation fails to make payment, return certificates, or release transfer restrictions within 60 days after the date set for demanding payment. ORS 60.587(1)(b)–(c). A dissenter who is dissatisfied with the corporation's payment or offer must notify the corporation of its demand within 30 days after the corporation's offer or payment for the dissenter's shares, or the dissenter's right to demand a new payment amount is waived. ORS 60.587(2).

If a dissenter's demand for payment remains unsettled, the corporation must petition the court within 60 days after receipt of the payment demand to determine the fair value of the shares, plus accrued interest. If no such proceedings are commenced, the corporation must pay the amount demanded. ORS 60.591(1).

§9.4N Voluntary Dissolution

A corporation may revoke its voluntary dissolution within 120 days after the effective date of the dissolution. ORS 60.634(1).

A dissolved corporation must notify known claimants in writing of the deadline for receiving claims, which must be at least 120 days from the effective date of the notice. ORS 60.641(2)(c). A claim against the dissolved corporation by a claimant who received notice is barred if not delivered to the dissolved corporation by the deadline. If a claim is rejected, and the claimant does not commence a proceeding to enforce the claim within 90 days of the effective date of the rejection notice, the claim is barred. ORS 60.641(3).

A corporation may publish notice to unknown persons with claims, stating that claims will be barred unless a proceeding to enforce the claim is brought within five years after publication of the notice. ORS 60.644(3).

§9.4O Administrative Dissolution

After the Secretary of State gives a corporation written notice of the determination that grounds exist for administratively dissolving the corporation, the corporation has 45 days to correct the grounds for dissolution, or it will be dissolved. ORS 60.651(1)–(2).

A corporation that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years from the date of dissolution. ORS 60.654(1). The Secretary of State may waive the five-year deadline upon request of the corporation and “evidence of the corporation's continued existence as an active concern” during the dissolution period. ORS 60.654(4).

The corporation may appeal denial of reinstatement under the Oregon Administrative Procedures Act (ORS chapter 183). ORS 60.657(2).

§9.4P Disposition of Assets after Dissolution

Assets that should be distributed to a creditor, shareholder, or claimant but cannot be distributed because the party cannot be found must be reduced to cash and deposited with the Department of State Lands within one year after the final distribution is payable. ORS 60.674.

§9.4Q Foreign Corporations

A foreign corporation may not transact business in Oregon until authorized by the Secretary of State. ORS 60.701(1). An isolated transaction that is completed within 30 days and is not one in a course of repeated transactions of like nature does not constitute transacting business. ORS 60.701(2)(j).

A foreign corporation must deliver to the Secretary of State an application to transact business with information current within 60 days of delivery, unless “the official who has custody of corporate records in the state or country under whose law the foreign corporation is incorporated provides free access via the Internet to a searchable database that contains evidence of corporate registrations.” ORS 60.707(2).

Resignation of a foreign corporation’s registered agent terminates the agency and discontinues the registered office, if so provided, on the 31st day after the signed resignation is filed with the Secretary of State, unless a successor registered agent is sooner appointed. ORS 60.727(3).

A foreign corporation may withdraw from transacting business in Oregon by filing an application that includes a commitment to notify the Secretary of State for a period of five years of any change in its mailing address. ORS 60.734(1)(e).

After the Secretary of State gives a foreign corporation written notice of the determination that grounds exist for revoking its authority to transact business, the foreign corporation has 45 days to correct each ground for revocation, or the foreign corporation’s authority will be revoked. ORS 60.741(1)–(2). The foreign corporation may apply for reinstatement within five years from the date of revocation. ORS 60.747(1).

§9.4R Corporate Records

Among other documents, a corporation must keep for three years a copy of all written communications to shareholders, minutes of shareholders’ meetings, and records of actions taken without a meeting. ORS 60.771(5)(d)–(e).

A shareholder is entitled to inspect and copy corporate records by giving at least five business days’ notice. ORS 60.774(1)–(2). A court may not order a corporation to allow inspection of records unless the court gave the corporation at least five days’ notice of the hearing to determine the propriety of the request for inspection. ORS 60.781(5).

§9.4S Annual Report

An annual report must contain information that is current as of 30 days before the anniversary of the corporation. ORS 60.787(2). Any errors in the annual report must be corrected within 45 days of notice from the Secretary of State. ORS 60.787(4).

§9.4T Control-Share Acquisitions

A person who proposes to make a control-share acquisition may deliver an “acquiring person statement” to the issuing public corporation. If at the time of delivery of the statement, the person requests and undertakes to pay for the corporation’s special meeting, the corporation must, within 10 days after receipt of the statement, call a special meeting to consider the acquisition. ORS 60.810(1)–(2). Unless the person agrees in writing, the special meeting must be held no sooner than 30 days and no later than 50 days after receipt by the corporation of the request. ORS 60.810(3).

If the person does not request a special meeting, the voting rights and shares to be considered in the acquisition must be presented at the next special or annual meeting of shareholders that is held more than 60 days after the control-share acquisition. ORS 60.810(4).

A person whose voting rights for control shares are denied by the shareholders may request another special meeting no sooner than six months after the initial meeting. ORS 60.810(8).

§9.4U Interested Shareholders

For the purposes of ORS 60.825 to 60.845, and subject to certain exclusions, an *interested shareholder* includes any affiliate or associate of a corporation that owned 15 percent or more of outstanding voting stock of the corporation at any time within the three-year period before the date on which the interested-shareholder determination is made. ORS 60.825(5).

A person engaged in business as an underwriter of securities is not considered to own any shares acquired through the person’s good-faith participation in a “firm commitment underwriting” until 40 days after the date of acquisition of the shares. ORS 60.830(2)(c).

With certain exceptions, a corporation may not engage in any business combination with any interested shareholder for three years after the date the shareholder becomes an interested shareholder. ORS 60.835–60.840.

§9.4V Forced Share Sale after Initiation of Close Shareholder Lawsuit

In a close corporation, if a shareholder initiates litigation against the corporation, its directors, or other shareholders alleging deadlock, illegal, oppressive, or fraudulent actions, or the misapplication or wasting of corporate assets, and if the court orders a share purchase, the share purchase must be con-

summed within 20 days after the date of the order, unless the corporation files notice with the court of its intent to dissolve and articles of dissolution are filed with the Secretary of State within 50 days of the notice. ORS 60.952(5)(b).

Within 90 days of the filing of the lawsuit or at a time determined by the court to be equitable, the corporation or the other shareholders may elect to purchase all of the shares of the complaining shareholder. ORS 60.952(6). If the election to purchase is filed by one or more shareholders, the corporation must give written notice to all shareholders within 10 days. Shareholders who wish to participate in the election must file notice of their intention within 30 days after the date of the notice or at such time as allowed by the court. ORS 60.952(6)(b).

If the parties reach an agreement on fair value and terms of purchase of the shares within 30 days of the latest election to purchase, the court must enter an order directing the purchase of shares on those terms and conditions. ORS 60.952(6)(e). If the parties are unable to agree, upon application of any party, the court must stay the original proceeding and determine the terms of purchase and fair value as of the day before the filing date of the litigation, or such other date as the court deems appropriate. ORS 60.952(6)(f).

§9.4W References

See generally 1–2 Advising Oregon Businesses (Oregon CLE 2001 & Supp 2007).

§ 9.5 INVESTMENT SECURITIES UNDER THE UNIFORM COMMERCIAL CODE

§9.5A Immediate Performance as Notice

An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate . . . does not itself constitute notice of an adverse claim except in the case of a transfer more than:

- (a) One year after a date set for presentment or surrender for redemption or exchange; or
- (b) Six months after a date set for payment of moneys against presentation or surrender of the certificate, if moneys were available for payment on that date.

ORS 78.1050(3).

§9.5B Missing Securities

Lost, stolen, or destroyed securities must be replaced if the owner: (1) requests a new certificate before the issuer has notice that the certificate has been acquired by a protected purchaser, (2) files a sufficient indemnity bond with the issuer, and (3) satisfies the issuer's other reasonable requirements. ORS 78.4050. *See also* ORS 78.4060.

§9.5C Statute of Frauds Inapplicable

“A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a [signed writing] . . . , even if the contract or modification is not capable of performance within one year of its making.” ORS 78.1130.

§9.5D Security Interest

Previously, Article 8 of the Uniform Commercial Code (ORS chapter 78) governed the creation, perfection, and priority of security interests in securities or *investment property* (now defined by ORS 79.0102(1)(vv)). Revised Article 9 (ORS chapter 79) now governs such security interests. *See* ORS 79.0106, ORS 79.0305, ORS 79.0312, ORS 79.0314.

§ 9.5D(1) Perfection

A secured party may perfect a security interest in investment property (which includes a “security entitlement,” a “securities account,” and a certificated or an uncertificated security, ORS 79.0102(1)(vv)) in one of three ways:

- (1) By filing a financing statement (ORS 79.0312);
- (2) By possession (delivering a security certificate to the secured party) (ORS 79.0313); or
- (3) By obtaining control (ORS 79.0314).

If perfection depends on possession of the collateral by the secured party, “perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.” ORS 79.0313(4).

A secured party who perfects by control has priority over a secured party who perfects only by filing. ORS 79.0328(1). Multiple secured parties who perfect by control rank on a first-to-obtain-control (by agreement) basis. ORS 79.0328(2)(a).

A security interest in a certificated security “is perfected without filing or the taking of possession or control for a period of 20 days from the time [the security interest] attaches to the extent that it arises for new value given under an authenticated security agreement.” ORS 79.0312(5). After the 20-day period expires, perfection depends on compliance with ORS chapter 79. ORS 79.0312(8).

§ 9.5D(2) Priority

Priority disputes are governed by ORS 79.0322, ORS 79.0323, and ORS 79.0328. ORS 79.0328(7).

Chapter 10

BUSINESS LITIGATION

KEIL M. MUELLER, B.A. (*magna cum laude*), Williams College (1999); J.D. (*cum laude*), New York University School of Law (2005); member of the New York State Bar Association since 2006 and the Oregon State Bar since 2008; associate, Stoll Berne, Portland.

PAUL H. TRINCHERO, B.S., University of California, Davis (1995); J.D. (*cum laude*), Lewis & Clark Law School (2001); member of the Oregon State Bar since 2001; owner, Garvey Schubert Barer, Portland.

§ 10.1	ANTITRUST LAW	10-2
§ 10.1A	Investigative Demands	10-2
§ 10.1B	Statute of Limitations	10-3
§ 10.1B(1)	Action by the Attorney General to Recover a Civil Penalty	10-3
§ 10.1B(2)	Private Actions	10-3
§ 10.1C	References	10-3
§ 10.2	INTENTIONAL INTERFERENCE WITH CONTRACTUAL OR ECONOMIC RELATIONS	10-3
§ 10.2A	Statute of Limitations	10-3
§ 10.2B	Accrual of Cause of Action	10-3
§ 10.2C	References	10-4
§ 10.3	MISAPPROPRIATION OF A TRADE SECRET	10-4
§ 10.3A	Statute of Limitations under the Uniform Trade Secrets Act	10-4
§ 10.3B	References	10-4
§ 10.4	RACKETEERING STATUTES	10-4
§ 10.4A	In General	10-4
§ 10.4B	Statute of Limitations; Suspension of Limitations Period	10-4
§ 10.4C	Accrual of Cause of Action	10-5
§ 10.4D	Proof of a Pattern of Racketeering Activity	10-5
§ 10.4E	References	10-5
§ 10.5	SECURITIES VIOLATIONS—BLUE SKY LAWS	10-5
§ 10.5A	Actions against Sellers of Securities	10-5
§ 10.5A(1)	Statute of Limitations—In General	10-5

§ 10.5A(2)	Persons Liable under the Securities Laws to the Same Extent as Sellers	10-6
§ 10.5A(3)	Discovery Rule Applicable to Violations of ORS 59.115(1)(b) or ORS 59.135	10-6
§ 10.5B	Actions against Purchasers of Securities.....	10-6
§ 10.5B(1)	Statute of Limitations—In General.....	10-6
§ 10.5B(2)	Persons Liable under the Securities Laws to the Same Extent as Purchasers.....	10-7
§ 10.5B(3)	Discovery Rule Applicable to Violations of ORS 59.115(1)(b) or ORS 59.135	10-7
§ 10.5C	Actions under ORS 59.137.....	10-7
§ 10.5D	Broker Must Deliver Statement of Purchase or Sale to Customer	10-8
§ 10.5E	Actions against Mortgage Bankers, Brokers, or Loan Originators.....	10-8
§ 10.5F	Request for Hearing after Entry of Order; Review	10-8
§ 10.5G	Possession of Assets by the Director or a Receiver	10-8
§ 10.5H	Licenses and Records.....	10-9
§ 10.5I	References	10-9

§ 10.1 ANTITRUST LAW

§ 10.1A Investigative Demands

The Oregon Attorney General may serve an investigative demand on any person who is believed to have information relevant to an alleged or suspected violation of the Oregon Antitrust Law. ORS 646.750(1).

The demand will require the person “to produce relevant documentary material for examination and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers or testimony under penalty of perjury.” ORS 646.750(1).

At any time before the date specified in the investigative demand, or within 20 days after service of the demand, whichever time is shorter, the recipient must either comply with the demand or petition the appropriate court to extend the return date or to modify or set aside the demand. ORS 646.750(1)–(2).

§ 10.1B Statute of Limitations**§ 10.1B(1) Action by the Attorney General to Recover a Civil Penalty**

An action by the Attorney General under ORS 646.760 to recover a civil penalty for a violation of the antitrust laws must be commenced within four years after the cause of action accrued, or within one year after the conclusion of any civil or criminal proceeding brought by the United States under federal antitrust laws (except 15 USC § 15a), whichever is later. ORS 646.800(1).

§ 10.1B(2) Private Actions

An action by any person, the state, or any political subdivision to recover damages under ORS 646.780 for a violation of the antitrust laws must be commenced within four years after the cause of action accrued, or within one year after the conclusion of any proceeding by the United States under federal antitrust laws (except 15 USC § 15a) or by the state (except in an action for damages by the state), whichever is later. ORS 646.800(2).

§ 10.1C References

See chapter 12 (consumer law); 4 *Advising Oregon Businesses* ch 58 (Oregon CLE 2003 & Supp 2009).

§ 10.2 INTENTIONAL INTERFERENCE WITH CONTRACTUAL OR ECONOMIC RELATIONS**§ 10.2A Statute of Limitations**

An action for intentional interference with contractual or economic relations must be commenced within two years after the date that the damages actually accrue. ORS 12.110(1). The discovery rule does not apply to an action for intentional interference with contractual or economic relations. *Cramer v. Stonebridge Inn, Inc.*, 77 Or App 407, 713 P2d 645 (1986); *Butcher v. McClain*, 244 Or App 316, 321, 260 P3d 611 (2011). See § 10.2B (accrual of cause of action).

§ 10.2B Accrual of Cause of Action

A cause of action for intentional interference with contractual or economic relations accrues when the plaintiff is “damaged beyond the fact of the interference itself.” *Cramer v. Stonebridge Inn, Inc.*, 77 Or App 407, 411, 713 P2d 645 (1986) (citing *Top Serv. Body Shop, Inc. v. Allstate Ins. Co.*, 283 Or 201, 582 P2d 1365 (1978)). See also *Butcher v. McClain*, 244 Or App 316, 324, 260 P3d 611 (2011) (citing *Cramer*, 77 Or App at 411).

“[T]he accrual of the claim is not subject to a rule of discovery.” *Butcher*, 244 Or App at 321; see also *Cramer*, 77 Or App at 411.

§ 10.2C References

See generally 1 *Damages* ch 17 (Oregon CLE 1998 & Supp 2007); 2 *Torts* ch 26 (OSB Legal Pubs 2012).

§ 10.3 MISAPPROPRIATION OF A TRADE SECRET

§ 10.3A Statute of Limitations under the Uniform Trade Secrets Act

An action for misappropriation of a trade secret under the Uniform Trade Secrets Act (ORS 646.461 to 646.475) must be brought within three years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. ORS 646.471. For purposes of the statute of limitations, “a continuing misappropriation constitutes a single claim” for misappropriation of a trade secret. ORS 646.471.–

§ 10.3B References

See generally 2 *Torts* § 26.5-1(a)(1) to § 26.5-1(a)(7) (OSB Legal Pubs 2012).

§ 10.4 RACKETEERING STATUTES

§ 10.4A In General

See ORS 166.715(6) for a description of conduct that constitutes “racketeering activity” under the Oregon Racketeer Influenced and Corrupt Organization Act (ORS 166.715–166.735).

§ 10.4B Statute of Limitations; Suspension of Limitations Period

A civil action for a violation of the Oregon Racketeer Influenced and Corrupt Organization Act (ORICO) (ORS 166.715–166.735), may be commenced “at any time within five years after the conduct in violation of [ORICO] terminates or the cause of action accrues.” ORS 166.725(11)(a).

“If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of [ORICO],” the running of the statute of limitations “is suspended during the pendency of such prosecution, action or proceeding and for two years following its termination.” ORS 166.725(11)(a). “In addition to any suspension of the running of the period of limitations provided for in [ORS 166.725(11)(a)], the period of limitations prescribed by [ORS 166.725(11)(a)] is suspended during any appeal from the criminal conviction for the underlying activity.”

See § 10.4C (accrual of cause of action).

NOTE: Civil-enforcement actions under the federal Racketeer Influenced and Corrupt Organizations Act (18 USC §§ 1961–1968) are subject to the four-year limitations period set forth in the Clayton Act (15 USC § 15b). *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 US 143, 150–56, 107 S Ct 2759, 97 L Ed 2d 121 (1987).

§ 10.4C Accrual of Cause of Action

In general, a cause of action for a violation of the Oregon Racketeer Influenced and Corrupt Organization Act (ORS 166.715–166.735), accrues when the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, that he or she has been damaged and the cause of the damage. *Penuel v. Titan/Value Equities Grp., Inc.*, 127 Or App 195, 200, 872 P2d 28, *rev den*, 319 Or 150 (1994).

If the running of the statute of limitations has been suspended during the pendency of a criminal prosecution for the underlying activity (*see* § 10.4B), a cause of action under subsection (6)(a)(A) or (7)(a)(A) of ORS 166.725 accrues when the criminal conviction for the underlying activity is obtained. (As discussed in § 10.4B, the limitations period is also suspended during any appeal from the criminal conviction for the underlying activity. ORS 166.725(11)(b).)

§ 10.4D Proof of a Pattern of Racketeering Activity

To bring a civil action for racketeering against a party, it is not necessary that the party was convicted of violating the racketeering statutes in a prior criminal prosecution, but the plaintiff in a civil action must demonstrate a “pattern of racketeering activity” by showing at least two incidents of “racketeering activity.” ORS 166.715(4). The incidents cannot be isolated and must occur within five years of each other. ORS 166.715(4); *Computer Concepts, Inc. Profit Sharing Plan v. Brandt*, 98 Or App 618, 632, 780 P2d 249 (1989), *aff’d*, 310 Or 706, 801 P2d 800 (1990).

§ 10.4E References

See generally 2 *Torts* § 26.5-1(b) (OSB Legal Pubs 2012); *The Ethical Oregon Lawyer* § 15.33 (Oregon CLE 2006).

§ 10.5 SECURITIES VIOLATIONS—BLUE SKY LAWS

§ 10.5A Actions against Sellers of Securities

§ 10.5A(1) Statute of Limitations—In General

Except as discussed below for a violation of ORS 59.115(1)(b) or ORS 59.135, an action by a purchaser against a seller of a security (other than a federally covered security) for a violation of the Oregon Securities Law (ORS 59.005–59.451, ORS 59.991, ORS 59.995) must be commenced within three years after the sale. ORS 59.115(6). *See* § 10.5A(2) (persons liable under the securities laws).

A discovery rule applies to actions alleging that the security was sold in violation of either ORS 59.115(1)(b) (by means of a misstatement or omission of a material fact) or ORS 59.135 (by means of unlawful practices with respect to securities, including fraud or deceit). *See* § 10.5A(3).

§ 10.5A(2) Persons Liable under the Securities Laws to the Same Extent as Sellers

If a seller of securities is liable for a violation of the Oregon Securities Law, every person who “directly or indirectly controls” the seller is also liable, including partners, managers, officers, and directors of the seller. ORS 59.115(3).

Furthermore, every person who “participates or materially aids in the sale” is also liable “to the same extent as the seller,” unless the person proves that he or she “did not know, and, in the exercise of reasonable care, could not have known, of the existence of facts on which the liability is based.” ORS 59.115(3). *See Loewen v. Galligan*, 130 Or App 222, 235, 882 P2d 104, *rev den*, 320 Or 493 (1994) (an action brought by a purchaser of a security under ORS 59.115(3) against an officer, director, partner, or other person in control of the seller, or against a person alleged to have materially aided or participated in the illegal sale of securities, must be brought within three years after the sale); *see also Anderson v. Carden*, 146 Or App 675, 684, 934 P2d 562, *rev den*, 326 Or 68 (1997) (“a person who prepares documentation in connection with a sale of securities is a person who ‘participates or materially aids’ in the sale under ORS 59.115(3)”).

§ 10.5A(3) Discovery Rule Applicable to Violations of ORS 59.115(1)(b) or ORS 59.135

A discovery rule applies to actions by a purchaser against a seller of a security alleging that the security was sold in violation of either ORS 59.115(1)(b) (by means of a misstatement or omission of a material fact) or ORS 59.135 (by means of unlawful practices with respect to securities, including fraud or deceit).

In such a case, the action must be commenced within the later of the following timeframes: three years after the sale or two years after the purchaser discovered or should have discovered the facts on which the action is based. ORS 59.115(6). *See Anderson v. Carden*, 146 Or App 675, 684, 934 P2d 562, *rev den*, 326 Or 68 (1997) (the defendants violated ORS 59.135 by making untrue statements and omissions of material facts in connection with the sale of the securities; therefore, the plaintiffs’ action was “not subject to the three-year statute of limitations and, instead, is subject to the exception requiring actions to be commenced within two years of discovery of the facts on which the action is based”).

§ 10.5B Actions against Purchasers of Securities

§ 10.5B(1) Statute of Limitations—In General

Except as discussed below for a violation of ORS 59.127(1)(b) or ORS 59.135, an action by a seller against a purchaser of a security (other than a federally covered security) that was purchased in violation of the Oregon Securities Law (ORS 59.005–59.451, ORS 59.991, ORS 59.995) must be commenced within three years after the purchase. ORS 59.127(6). *See* § 10.5B(2) (persons liable under the securities laws).

A discovery rule applies to actions alleging that the security was purchased in violation of either ORS 59.127(1)(b) (by means of a misstatement or omission of a material fact) or ORS 59.135 (by means of unlawful practices with respect to securities, including fraud or deceit). *See* § 10.5B(3).

§ 10.5B(2) Persons Liable under the Securities Laws to the Same Extent as Purchasers

If a purchaser of securities is liable for a violation of the Oregon Securities Law, every person who “directly or indirectly controls” the purchaser is also liable, including partners, managers, officers, and directors of the purchaser. ORS 59.127(3).

Furthermore, every person who “participates or materially aids in the purchase” is also liable “to the same extent as the purchaser,” unless the person proves that he or she “did not know, and, in the exercise of reasonable care, could not have known, of the existence of facts on which the liability is based.” ORS 59.127(3). *See Anderson v. Carden*, 146 Or App 675, 684, 934 P2d 562, *rev den*, 326 Or 68 (1997) (a person “who prepares documentation that contains material misstatements and omissions is a ‘person, directly or indirectly, in connection with the purchase or sale of any security’”); *see also Loewen v. Galligan*, 130 Or App 222, 235, 882 P2d 104, *rev den*, 320 Or 493 (1994).

§ 10.5B(3) Discovery Rule Applicable to Violations of ORS 59.115(1)(b) or ORS 59.135

A discovery rule applies to actions by a seller against a purchaser of a security alleging that the security was purchased in violation of either ORS 59.127(1)(b) (by means of a misstatement or omission of a material fact) or ORS 59.135 (by means of unlawful practices with respect to securities, including fraud or deceit).

In such a case, the action must be commenced within the later of the following timeframes: three years after the purchase or two years after the seller discovered or should have discovered the facts on which the action is based. ORS 59.127(6); *see Anderson v. Carden*, 146 Or App 675, 684, 934 P2d 562, *rev den*, 326 Or 68 (1997).

§ 10.5C Actions under ORS 59.137

An action under ORS 59.137 against a person who allegedly violated, or materially aided in a violation of, subsection (1), (2), or (3) of ORS 59.135 (by means of unlawful practices with respect to securities, including fraud or deceit) must be commenced within the later of the following timeframes:

(1) Three years after the purchase or sale of a security to which the action relates; or

(2) Two years after the plaintiff discovered or should have discovered the facts on which the action is based.

ORS 59.137(1), (6).

§ 10.5D Broker Must Deliver Statement of Purchase or Sale to Customer

A broker who purchases or sells stocks or bonds on behalf of a customer must, on the customer's demand, deliver to the customer a statement or memorandum of the purchase or sale within five days after written demand for a statement is made, if the demand is made within six months after the purchase or sale. ORS 59.810. The broker's failure to do so is subject to penalties. *See* ORS 59.995.

§ 10.5E Actions against Mortgage Bankers, Brokers, or Loan Originators

Except as otherwise provided in ORS 86A.151(4) (discussed below), an action against a mortgage banker, mortgage broker, or mortgage-loan originator for a violation of the Oregon Mortgage Lender Law (ORS 86A.095–86A.198) or ORS 86A.200 to 86A.239 may not be commenced more than three years after the transaction. ORS 86A.151(4).

An action against a mortgage banker, broker, or loan originator under ORS 86A.151(1)(b) (for material misstatements and omissions) or ORS 86A.154 (for fraud and deceit) must be commenced within three years after the residential mortgage transaction or two years after the plaintiff discovered or should have discovered the facts on which the action is based, whichever is later, but in no event more than five years after the date of the transaction. ORS 86A.151(4).

§ 10.5F Request for Hearing after Entry of Order; Review

After entry of an order under the Oregon Securities Law or the Oregon Mortgage Lender Law, the Director of the Department of Consumer and Business Services (the “director”) must give appropriate notice of the order. ORS 59.295(1), ORS 86A.139(1). A hearing will be held on the order only if a written demand for a hearing is filed with the director within 20 days after the date of service of the order. ORS 59.295(1), ORS 86A.139(1).

Any person aggrieved by an order of the director that has been the subject of a timely application for hearing is entitled to judicial review of the order under ORS chapter 183. ORS 59.305, ORS 86A.142(1).

§ 10.5G Possession of Assets by the Director or a Receiver

If the Director of the Department of Consumer and Business Services or a receiver takes possession of a broker-dealer, investment adviser, mortgage banker, or mortgage broker because of a deficiency in its capital, or because its condition is impaired or unsound, the receiver or director can liquidate the entity within 60 days of possession if the deficiency or condition is not remedied within that period. ORS 59.265(1), (3), ORS 86A.133(1), (3).

§ 10.5H Licenses and Records

Every license of a broker-dealer, investment adviser, or mortgage banker's or mortgage broker's salesperson expires one year after the date of issuance, unless the director establishes a different expiration date. ORS 59.185(1), ORS 86A.109(1).

Every license of an issuer's or owner's salesperson expires when the securities are no longer authorized for sale or one year after the registration, whichever is sooner. ORS 59.185(2)(a).

Subject to the provisions of section 15 of the Securities Exchange Act of 1934, as amended (15 USC § 78o), and section 222 of the Investment Advisers Act of 1940, as amended (15 USC § 80b-18a), every "broker-dealer, state investment adviser, investment adviser representative and salesperson" must keep certain records. ORS 59.195(1). The records of state investment advisers or investment adviser representatives that are maintained in Oregon must be preserved for three years, unless the director rules otherwise. ORS 59.195(1).

§ 10.5I References

See 1 Advising Oregon Businesses chs 15, 17, and 18 (Oregon CLE 2001 & Supp 2007); *1 Damages* ch 18 (Oregon CLE 1998 & Supp 2007).

Chapter 11

DEBTOR-CREDITOR ISSUES; UNCLAIMED PROPERTY; SECURED TRANSACTIONS; CREDITORS' RIGHTS IN BANKRUPTCY

BRENT G. SUMMERS, B.S., University of Oregon (1978); J.D., University of Oregon School of Law (1982); member of the Oregon State Bar since 1982; partner, Tarlow Naito & Summers LLP, Portland.

The author wishes to acknowledge the assistance of the following lawyers in reviewing this chapter: **Timothy A. Lawson** (Greene & Markley, Portland) and **Stephen T. Boyke** (Law Office of Stephen T. Boyke, Portland).

§ 11.1	ACCOUNT AND ACCOUNT STATED.....	11-9
§ 11.1A	Distinction between an Account and an Account Stated	11-9
§ 11.1B	Statute of Limitations; Accrual of Action	11-9
§ 11.1B(1)	In General	11-9
§ 11.1B(2)	Action on Account or Account Stated That Arises out of Underlying Sale of Goods.....	11-10
§ 11.1C	Breach-of-Contract Claim under UCC Article 2—Goods Sold and Delivered	11-10
§ 11.1D	References	11-11
§ 11.2	TENDER AND RECEIPT.....	11-11
§ 11.2A	What a Tender Is	11-11
§ 11.2B	Objection to Tender.....	11-12
§ 11.2C	References	11-12
§ 11.3	LIMITATIONS PERIOD AS TO SECURITY OR PROMISSORY NOTE	11-12
§ 11.3A	Action on Security after Limitations Period on Debt Has Run	11-12
§ 11.3B	Promissory Note Not Subject to UCC.....	11-12
§ 11.3C	References	11-12
§ 11.4	DISHONORED BANK CHECKS AND INSTRUMENTS	11-12
§ 11.5	ASSIGNMENT.....	11-13
§ 11.5A	In General	11-13
§ 11.5B	References	11-13
§ 11.6	ACTION FOR TAKING, INJURING, OR RECOVERING POSSESSION OF PERSONAL PROPERTY.....	11-13

Chapter 11 / Debtor–Creditor; Secured Transactions; Creditor’s Rights

§ 11.6A	Time Limitation.....	11-13
§ 11.6A(1)	Statute of Limitations	11-13
§ 11.6A(2)	Time Limitation for Common-Law Remedies.....	11-13
§ 11.6B	Wrongful Dispossession.....	11-14
§ 11.6B(1)	Rule against Splitting a Claim.....	11-14
§ 11.6B(2)	Accrual of Cause of Action	11-14
§ 11.6C	Recovering Possession of Personal Property	11-14
§ 11.6C(1)	Claim and Delivery.....	11-14
§ 11.6C(2)	Procedure.....	11-14
§ 11.6C(2)(a)	Immediate Delivery (Prejudgment).....	11-14
§ 11.6C(2)(b)	<i>Ex Parte</i> Order.....	11-14
§ 11.6C(2)(c)	Defendant’s Right to a Hearing.....	11-15
§ 11.6D	References	11-15
§ 11.7	LOST, UNCLAIMED, OR ABANDONED PROPERTY	11-15
§ 11.7A	Finder’s Duties and Liability	11-15
§ 11.7A(1)	Finder’s Duties	11-15
§ 11.7A(2)	Finder’s Liability	11-15
§ 11.7B	Abandoned Property Reports	11-15
§ 11.7B(1)	In General	11-15
§ 11.7B(2)	Lawyer Trust Accounts	11-16
§ 11.7C	Limitation of Actions and Presumption of Abandonment	11-16
§ 11.7D	Claim for Unclaimed Property	11-16
§ 11.7E	Bailment and Consignment	11-17
§ 11.7E(1)	In General	11-17
§ 11.7E(2)	Proof of Notice and Owner’s Nonresponse.....	11-17
§ 11.7E(3)	Perishable Property.....	11-17
§ 11.7F	Banks and Instruments.....	11-17
§ 11.7F(1)	Intangible Property	11-17
§ 11.7F(2)	Checks, Traveler’s Checks, and Money Orders	11-18
§ 11.7F(3)	Life Insurance or Annuity Contracts.....	11-18
§ 11.7F(4)	Property Distributable on Dissolution of Business	11-18
§ 11.7F(5)	Safe-Deposit Box.....	11-18
§ 11.7G	Miscellaneous Property	11-18
§ 11.7G(1)	Intangible Property Held by Fiduciary	11-18

Debtor–Creditor; Secured Transactions; Creditor’s Rights / Chapter 11

§ 11.7G(2) Unpaid Wages 11-19

§ 11.7G(3) Property Held by Government 11-19

§ 11.7G(4) Credit Memo..... 11-19

§ 11.7G(5) Property Held by Business 11-19

§ 11.8 PREJUDGMENT ATTACHMENT; CLAIM AND DELIVERY; RECEIVERSHIPS 11-19

§ 11.8A Attachment 11-19

§ 11.8A(1) Order for Provisional Process 11-19

§ 11.8A(2) Actions in Which Attachment Is Allowed; Property That May Be Attached 11-19

§ 11.8A(3) Motion for Redelivery 11-20

§ 11.8B Claim and Delivery..... 11-20

§ 11.8C Receiverships (Personal Property and Real Property) 11-20

§ 11.8D References 11-21

§ 11.9 JUDGMENTS AND LIENS..... 11-21

§ 11.9A Execution Sales of Property 11-21

§ 11.9A(1) Return on Writ..... 11-21

§ 11.9A(2) Challenge to Writ 11-21

§ 11.9A(3) Notice of Hearing—Residential Property 11-22

§ 11.9A(4) Notice of Sale—Personal Property 11-22

§ 11.9A(5) Notice of Sale—Real Property 11-22

§ 11.9A(6) Report of Real Property..... 11-22

§ 11.9A(7) Postponement of Sale 11-22

§ 11.9A(8) Payment by Cashier’s Check..... 11-23

§ 11.9A(9) Notice of Residential Property Sold..... 11-23

§ 11.9B References 11-23

§ 11.10 EXEMPTIONS FROM, AND CHALLENGES TO, EXECUTION AND GARNISHMENT 11-24

§ 11.10A List of Exemptions 11-24

§ 11.10B Challenge to Writ of Execution..... 11-26

§ 11.10C Challenge to Garnishment 11-26

§ 11.10D Hearing on Challenge 11-27

§ 11.11 GARNISHMENT 11-27

§ 11.11A Delivery/Validity of Writ 11-27

Chapter 11 / Debtor–Creditor; Secured Transactions; Creditor’s Rights

§ 11.11B	Duration of Writ	11-27
§ 11.11C	Garnishee’s Response	11-28
§ 11.11D	Garnishee’s Duties	11-28
§ 11.11D(1)	Garnishee’s Duty to Hold Property	11-28
§ 11.11D(2)	Garnishee’s Duty to Deliver Property	11-28
§ 11.11D(3)	If Garnished Property Is Money Owed to Debtor within 45 Days; Challenge to Garnishment	11-28
§ 11.11D(4)	If Garnishee Is Debtor’s Employer	11-29
§ 11.11D(5)	Garnishee’s Duties Created by Challenge to Garnishment	11-29
§ 11.11E	Garnishor’s Duties	11-29
§ 11.11E(1)	Refund of Amount Exceeding Debt	11-29
§ 11.11E(2)	Garnishor to Hold Payment	11-29
§ 11.11E(3)	Costs Incurred by Garnishee in Gaining Access to Safe-Deposit Box	11-30
§ 11.11E(4)	Garnishor’s Duties Created by Challenge to Garnishment	11-30
§ 11.11F	Release of Garnishment	11-30
§ 11.11G	Exempt Payments on Challenge to Garnishment	11-30
§ 11.11H	Proceedings against Garnishee	11-30
§ 11.11I	Actions Relating to Garnishment	11-31
§ 11.11J	References	11-31
§ 11.12	ATTORNEY FEES	11-31
§ 11.13	SERVICEMEMBERS CIVIL RELIEF ACT	11-31
§ 11.13A	Suspension of Civil Proceedings against Servicemembers	11-31
§ 11.13B	References	11-32
§ 11.14	UNIFORM COMMERCIAL CODE	11-32
§ 11.14A	In General	11-32
§ 11.14B	Warehouse Receipts, Bills of Lading, and Other Documents of Title—UCC Article 7	11-32
§ 11.14B(1)	Termination of Storage at Warehouse	11-32
§ 11.14B(1)(a)	In General; Notice	11-32
§ 11.14B(1)(b)	Goods That May Deteriorate or Decline in Value	11-32
§ 11.14B(1)(c)	Hazardous Materials	11-33

§ 11.14B(2) Enforcement of Warehouse Lien—Sale of Goods 11-33

 § 11.14B(2)(a) In General 11-33

 § 11.14B(2)(b) Requirements Pertaining to Sale 11-33

 § 11.14B(2)(c) Liability of Warehouse 11-34

§ 11.14B(3) Carrier’s Lien 11-34

§ 11.14B(4) Missing Documents 11-34

§ 11.14C Investment Securities—UCC Article 8 11-34

 § 11.14C(1) Immediate Performance as Notice 11-34

 § 11.14C(2) Replacement of Lost, Destroyed, or Wrongfully
 Taken Security Certificate 11-35

 § 11.14C(3) Statute of Frauds Inapplicable 11-35

 § 11.14C(4) Perfection of Security Interest in Investment
 Property 11-35

§ 11.15 SECURED TRANSACTIONS—UCC ARTICLE 9 11-36

 § 11.15A In General 11-36

 § 11.15B Secured Transaction—Definition and Exclusions 11-36

 § 11.15C Perfection 11-36

 § 11.15C(1) Perfection by Possession 11-37

 § 11.15C(2) Perfection by Control 11-37

 § 11.15C(3) Automatic Perfection 11-38

 § 11.15C(4) Perfection by Filing 11-38

 § 11.15D Secured Party’s Right to Proceeds of Collateral 11-39

 § 11.15E Purchase-Money Security Interest 11-39

 § 11.15F Attachment 11-40

 § 11.15F(1) In General 11-40

 § 11.15F(2) After-Acquired Consumer Goods 11-40

 § 11.15F(3) After-Acquired Commercial Tort Claim 11-40

 § 11.15G Duties of Secured Party 11-40

 § 11.15G(1) Duty to Provide Accounting 11-40

 § 11.15G(2) Duty Regarding Deposit Accounts 11-40

 § 11.15G(3) Duty to Release Account Debtor after Notification
 of Assignment 11-41

 § 11.15H Priority among Conflicting Security Interests 11-41

 § 11.15H(1) In General 11-41

Chapter 11 / Debtor–Creditor; Secured Transactions; Creditor’s Rights

§ 11.15H(2)	Priority of Purchase-Money Security Interests	11-41
§ 11.15H(3)	Future Advances	11-42
§ 11.15H(3)(a)	Advance Made More Than 45 Days after Person Becomes Lien Creditor	11-42
§ 11.15H(3)(b)	Buyer or Lessee of Goods	11-42
§ 11.15H(4)	Special Cases	11-42
§ 11.15H(5)	Federal Tax Lien Trap for Holder of Article 9 Security Interest in Accounts and Inventory	11-43
§ 11.15I	Consignments	11-43
§ 11.15I(1)	In General	11-43
§ 11.15I(2)	Consignments of Fine Art	11-43
§ 11.15J	Filing, Duration, and Amendment of Financing Statement	11-43
§ 11.15J(1)	When a Financing Statement May Be Filed	11-43
§ 11.15J(2)	When Filing Occurs	11-43
§ 11.15J(3)	Refusal of Filing Office to Accept Filing	11-44
§ 11.15J(4)	Duration of Financing Statement	11-44
§ 11.15J(5)	Amendment of Financing Statement	11-44
§ 11.15J(6)	Change of Debtor’s Name	11-44
§ 11.15J(7)	Record of Mortgage as Financing Statement	11-44
§ 11.15K	Continuation Statement	11-44
§ 11.15K(1)	Filing to Continue Perfection	11-44
§ 11.15K(2)	Renewal Notice	11-45
§ 11.15L	Termination Statement	11-45
§ 11.15M	Records	11-45
§ 11.15N	Assignment	11-45
§ 11.15O	UCC Search	11-45
§ 11.15P	Secured Party’s Remedies after Default	11-46
§ 11.15P(1)	Claim Reduced to Judgment	11-46
§ 11.15P(2)	Collection from Account Debtors	11-46
§ 11.15P(3)	Possession and Disposition of Collateral	11-46
§ 11.15P(3)(a)	Notification before Disposition of Property	11-46
§ 11.15P(3)(b)	Right to Surplus or Liability for Deficiency after Disposition	11-47
§ 11.15P(3)(c)	Explanation of Calculation of Surplus or Deficiency	11-47

Debtor–Creditor; Secured Transactions; Creditor’s Rights / Chapter 11

§ 11.15P(4)	Compulsory Disposition of Collateral.....	11-48
§ 11.15P(5)	Retention of Property in Satisfaction of Obligation.....	11-48
§ 11.15Q	Debtor’s Remedies	11-49
§ 11.15Q(1)	Conversion.....	11-49
§ 11.15Q(2)	Redemption	11-49
§ 11.15Q(3)	Secured Party’s Liability for Failure to Comply with ORS Chapter 79	11-49
§ 11.15R	Farm Products.....	11-50
§ 11.15R(1)	Effective Financing Statement for Farm Products	11-50
§ 11.15R(2)	Lapse of Financing Statement for Farm Products.....	11-50
§ 11.15R(3)	Amendment of Financing Statement for Farm Products	11-50
§ 11.15S	Protection by Registration	11-50
§ 11.15T	References	11-51
§ 11.16	MOTOR VEHICLES.....	11-51
§ 11.17	SURETIES.....	11-51
§ 11.17A	Security—Requirement, Objection, and Discharge	11-51
§ 11.17B	Limitation of Action.....	11-51
§ 11.17B(1)	Surety’s Liability.....	11-51
§ 11.17B(2)	Accrual of Action against Surety	11-52
§ 11.17B(3)	Indemnification of Surety.....	11-52
§ 11.17B(4)	Involuntary Suretyship	11-52
§ 11.17C	References	11-52
§ 11.18	CREDITORS’ RIGHTS IN BANKRUPTCY—SELECTED BANKRUPTCY TIME LIMITATIONS; PERIODS OF DURATION; NOTICE PERIODS	11-52
§ 11.18A	Time Frames Affecting Creditors’ Rights before Bankruptcy Is Filed	11-53
§ 11.18A(1)	Discharge in Prior Chapter 7 or Chapter 13 Bankruptcy Case Prohibits Discharge in New Cases within Certain Time Frames	11-53
§ 11.18A(2)	Efforts to Hinder, Delay, or Defraud Creditors within Two to Four Years before Bankruptcy	11-53
§ 11.18A(3)	Transfers for Less Than Reasonably Equivalent Value within Two Years before Bankruptcy.....	11-53

Chapter 11 / Debtor–Creditor; Secured Transactions; Creditor’s Rights

§ 11.18A(4)	Insider Preferences within One Year before Bankruptcy	11-54
§ 11.18A(5)	Noninsider Preference within 90 Days before Bankruptcy	11-54
§ 11.18A(6)	Statute of Limitations on Actions Seeking to Avoid Prepetition Transfers under Sections 547 and 548	11-54
§ 11.18B	Proper Venue for Filing Bankruptcy Case	11-54
§ 11.18C	No Discharge for More Than \$650 in Luxury Goods Purchased within 90 Days before Order for Relief; No Discharge for Cash Advances in Excess of \$925 Taken 70 Days before Order for Relief	11-55
§ 11.18D	Mandated Bankruptcy Counseling before Filing Bankruptcy Case	11-55
§ 11.18E	Time Frames Affecting Creditor’s Rights after Bankruptcy Case Is Filed	11-55
§ 11.18E(1)	Date of Order for Relief Is Same Date That Bankruptcy Petition Is Filed in Voluntary Cases	11-55
§ 11.18E(2)	Creditors’ Involuntary Bankruptcy Petition	11-56
§ 11.18E(3)	Statute of Limitations for Trustee or Debtor-in- Possession to Commence Adversary Proceedings to Recover Avoidable Transfers under Trustee’s Strong-Arm Powers	11-56
§ 11.18E(4)	“Date First Set for the Meeting of Creditors” Is Critical Milestone Date in All Cases	11-57
§ 11.18E(5)	Thirty-Day Deadline from Conclusion of Meeting of Creditors for Trustee or Creditors to Object to Debtor’s Claimed Exemptions	11-57
§ 11.18E(6)	Sixty-Day Deadline for Creditors to File Adversary Proceeding to Determine Nondischargeability of Certain Debts under Section 523(a)(2), (4), or (6)	11-57
§ 11.18E(7)	Sixty-Day Deadline for Filing Adversary Proceeding for Denial of Discharge under Section 727	11-57
§ 11.18E(8)	Ninety-Day Deadline for Creditors to File Proof of Claim (Unless Case Is Designated a No-Asset Case)	11-57
§ 11.18E(9)	Enforcement of Individual Debtor’s Section 521 Statement of Intent	11-58

§ 11.18E(10)	Notice of Time to File Claims.....	11-58
§ 11.18E(11)	Time for Creditor to Respond to Objection to Proof of Claim Filed by Trustee, Debtor-in-Possession, or Debtor.....	11-58
§ 11.18E(12)	Time for Assumption or Rejection of Unexpired Nonresidential Leases.....	11-59
§ 11.18E(13)	Landlord’s Administrative-Rent Claim; Cap on Landlord’s Forward-Rent Claim.....	11-59
§ 11.18E(14)	Treatment of Reclamation Claims Held by Sellers of Goods to Debtor.....	11-60
§ 11.18E(15)	Treatment of Section 503(b)(9) Administrative Claims of Sellers of Goods to Debtor.....	11-60
§ 11.18E(16)	Treatment of Construction Lien Claims or Miller Act and Little Miller Act Bond Claims Subject to Statutes of Duration in Bankruptcy Cases.....	11-61
§ 11.18E(17)	Creditor’s Motion for Relief from Automatic Stay.....	11-63
§ 11.18E(18)	Single-Asset Real Estate Cases.....	11-63
§ 11.18F	Resources.....	11-63

§ 11.1 ACCOUNT AND ACCOUNT STATED

§ 11.1A Distinction between an Account and an Account Stated

An action on an “account” merely alleges a financial obligation but not necessarily an agreement to pay the obligation. *Cooley v. Roman*, 286 Or 807, 809 n 1, 596 P2d 565 (1979), *overruled on other grounds by Assn of Unit Owners of Timbercrest Condominiums v. Warren*, 352 Or 583, 288 P3d 958 (2012).

On the other hand, “an action on an ‘account stated’ rests on an express or implied agreement to pay a fixed sum due as a result of prior transactions.” *Cooley*, 286 Or at 809 n 1; *see also Sunshine Dairy v. Jolly Joan*, 234 Or 84, 85, 380 P2d 637 (1963) (an account stated “is an agreement between the parties that a certain amount is owing and will be paid”).

§ 11.1B Statute of Limitations; Accrual of Action

§ 11.1B(1) In General

Except as discussed in § 11.1B(2) to § 11.1C (relating to an action on an account or an account stated that arises out of an underlying sale of goods), an action on an account or an account stated must be commenced within six years. ORS 12.080(1).

The cause of action accrues at the time of the “last charge or payment proved in the account.” ORS 12.090. Interest, finance, and carrying charges are not considered a last charge or payment. ORS 12.090. *See also* ORS 12.240.

Partial payment on a balance due has the effect of tolling the running of the statute of limitations under ORS 12.080(1). *Nw. Foundry & Furnace Co. v. Willamette Mfg. & Supply Co.*, 268 Or 343, 356, 521 P2d 545 (1974). Under ORS 12.240, whenever any payment of principal or interest is made after it has become due on an existing contract, the limitations period commences from the time the last payment was made. *See Nw. Foundry & Furnance Co.*, 268 Or at 356.

§ 11.1B(2) Action on Account or Account Stated That Arises out of Underlying Sale of Goods

An action on an account or an account stated that arises out of an underlying sale of goods is subject to the four-year statute of limitations provided in the Uniform Commercial Code (ORS 72.7250(1)), not the general six-year statute of limitations for contracts (ORS 12.080). *Moorman Mfg. Co. of California, Inc. v. Hall*, 113 Or App 30, 830 P2d 606 (1992), *rev den*, 314 Or 175 (1992).

ORS 72.7250 does not alter the law on tolling the statute of limitations (ORS 72.7250(4)), but, applying the holding in *Moorman*, ORS 72.7250(2) modifies the law on the accrual of causes of actions on accounts (ORS 72.7250(2)). This means that:

- (1) ORS 12.240, which has the effect of tolling the running of the statute of limitations until the time of the last payment, applies to a cause of action on an account that arises out of an underlying sale of goods; and
- (2) ORS 12.090, which provides that a cause of action on an account does not accrue until the last payment is made, does not apply.

ORS 12.240 has been described as a tolling provision, and it has been applied to an action on an account arising out of an underlying sale of goods. *Nw. Foundry & Furnace Co. v. Willamette Mfg. & Supply Co.*, 268 Or 343, 356, 521 P2d 545 (1974). In contrast, ORS 12.090, by its terms an accrual provision, is displaced by ORS 72.7250(2) when the cause of action arises from an underlying sale of goods.

§ 11.1C Breach-of-Contract Claim under UCC Article 2—Goods Sold and Delivered

Article 2 of the Uniform Commercial Code (UCC) governs the sale of goods. *See* § 14.3A(1) to § 14.3A(7). Among the old common counts was a claim for “goods sold and delivered,” and a trap for the unwary has existed in Oregon since 1963 by the enactment of the UCC. Under the UCC, the statute of limitations for an action “for breach of any contract for sale” is four years (or less if provided in the contract). ORS 72.7250(1). An action on an account or an account stated

(for goods sold and delivered) relating to a breach-of-contract claim governed by Article 2 of the UCC is subject to the four-year statute of limitations in ORS 72.7250(1), which permits parties to contract for a limitations period of between one and four years. *See Moorman Mfg. Co. of California, Inc. v. Hall*, 113 Or App 30, 830 P2d 606 (1992), *rev den*, 314 Or 175 (1992). Because the same Article 2 statute-of-limitations rule applies to breach-of-implied-warranty claims, the same trap for the unwary is set by ORS 72.7250 for lawyers who look no further than the six-year statute of limitations for breach-of-contract claims in ORS 12.080. And, because of the possibility of a contractual shortening of the limitation period to as little as one year, the lawyer must also read the contract of sale, including any forms of purchase order, invoices, confirmation notices, and delivery terms, often found in boilerplate provisions and often subject to the “battle of the forms.” *See* ORS 72.2070.

§ 11.1D References

See generally Contract Law in Oregon (Oregon CLE 2003 & Supp 2008).

§ 11.2 TENDER AND RECEIPT

§ 11.2A What a Tender Is

A written offer “to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument or property.” ORS 81.010.

ORS 81.010 does not relate to the timeliness of payment but describes what a tender is. *Gordon v. Schumacher*, 83 Or App 544, 548, 733 P2d 35 (1987), *rev den*, 303 Or 370 (1987). *See also Spiess v. White*, 172 Or App 36, 17 P3d 568 (2001) (a time-essence provision is waived when late payments are accepted or tolerated).

To be effective under ORS 81.010 and ORS 81.020, an instrument of tender (such as a settlement offer) generally must be unconditional or accompanied by a condition for which the tendering party has a right to insist. *Reed v. Jackson Cnty. Citizens League*, 183 Or App 89, 96–97, 50 P3d 1287, *rev den*, 335 Or 142 (2002) (discussing the validity of a tender in connection with a claim for attorney fees under ORS 20.080). ORS 81.010 was not intended to “supersede the common law requirement that the person making the written tender have the present ability to make the tender good if it is accepted.” *Bembridge v. Miller*, 235 Or 396, 403, 385 P2d 172 (1963). *See McDowell Welding & Pipefitting, Inc. v. United States Gypsum Co.*, 345 Or 272, 290, 193 P3d 9 (2008) (“[t]o constitute a tender of money, . . . the money must actually be produced and made available for the acceptance and appropriation of the person to whom it is offered,” and the mere prospect that payment might be made in the future is not sufficient) (*distinguished on other grounds by M.K.F. v. Miramontes*, 352 Or 401, 287 P3d 1045 (2012)).

A person delivering money, an instrument, or property is entitled to a receipt on demand. A proper receipt may be a condition to payment or delivery. ORS 81.030.

§ 11.2B Objection to Tender

An objection to a tender must be specified when the tender is made or the objection is waived. ORS 81.020.

§ 11.2C References

See Contract Law in Oregon § 18.3 (Oregon CLE 2003 & Supp 2008).

§ 11.3 LIMITATIONS PERIOD AS TO SECURITY OR PROMISSORY NOTE

§ 11.3A Action on Security after Limitations Period on Debt Has Run

The creditor has the right to realize on its security even though the statute of limitations has run on the debt or note. *First Nat. Bank of Oregon v. Jack Mathis Gen. Contractor, Inc.*, 274 Or 315, 324–25, 546 P2d 754, 760 (1976).

§ 11.3B Promissory Note Not Subject to UCC

A promissory note (other than a note that is subject to the Uniform Commercial Code (UCC)) that is “payable ‘on demand’ is due immediately without an actual demand, and the statute of limitations commences to run against the note from the date of its execution and delivery and not from the date of demand.” *Angelini v. Delaney*, 156 Or App 293, 302, 966 P2d 223, 228 (1998), *rev den*, 328 Or 594 (1999).

A promissory note (other than a note that is subject to the UCC) that is “payable ‘on demand after date’ becomes due and payable, without a demand, on the day after its date, and the statute of limitations begins to run from that day.” *Matter of Culver’s Estate*, 26 Or App 809, 811, 554 P2d 541, 542 (1976).

§ 11.3C References

See § 11.15A to § 11.15S (secured transactions), § 11.14A to § 11.14C(4) (Uniform Commercial Code).

§ 11.4 DISHONORED BANK CHECKS AND INSTRUMENTS

(1) *Statutory damages.* In an action against the maker of a dishonored check, the plaintiff may recover statutory damages in an amount equal to the greater of \$100 or triple the amount of a dishonored check, but not more than \$500 over the face amount of the check. These statutory damages are in addition to the amount for which the check was drawn. ORS 30.701(1). But see the note below.

(2) *Payee must demand payment.* Statutory damages may be awarded under ORS 30.701 only if the payee gives the maker of the dishonored check a written demand for payment of the amount of the check at least 30 days before commencing an action on the check. ORS 30.701(2).

(3) *Attorney fees.* In addition, attorney fees are recoverable under the statute. ORS 30.701(1).

(4) *Satisfaction of claim before trial.* The payee’s claim will be satisfied if, after the action commences but before the trial, the defendant pays the amount of the check, interest, service fees (up to \$35 per check), court costs, and attorney fees. ORS 30.701(3), (5).

NOTE: If the claim is satisfied before trial as discussed above, statutory damages will not be awarded.

§ 11.5 ASSIGNMENT

§ 11.5A In General

An assignment of a chose in action made in writing for consideration is complete when the assignor executes the writing. The assignment is effective on execution or according to written terms without giving notice to the debtor unless notice is required by statute. ORS 80.010.

§ 11.5B References

See generally Contract Law in Oregon ch 19, § 19.10 (Oregon CLE 2003 & Supp 2008); 1 *Oregon Civil Pleading and Practice* § 5.2-1 (OSB Legal Pubs 2012).

§ 11.6 ACTION FOR TAKING, INJURING, OR RECOVERING POSSESSION OF PERSONAL PROPERTY

§ 11.6A Time Limitation

§ 11.6A(1) Statute of Limitations

An action for taking, detaining, or injuring personal property, or for specific recovery of personal property must be commenced within six years. ORS 12.080(4).

An action for conversion, with or without money damages, is subject to the six–year limitations period set forth in ORS 12.080(4).

See § 11.6A(2) (common-law remedies).

§ 11.6A(2) Time Limitation for Common-Law Remedies

The six-year statute of limitations in ORS 12.080(4) applies to all common-law remedies for interference with possession of personal property, such as replevin, detinue, trover, and conversion. *Lord Elec. Co., Inc. v. Pac. Intermountain Exp. Co.*, 282 Or 335, 341, 578 P2d 776 (1978) (personal property damaged in shipment); *Parker v. Richards*, 43 Or App 455, 462, 602 P2d 1154 (1979), *rev den*, 288 Or 527 (1980) (unlawful transfer of personal property on dissolution of corporation). *Cf. U.S. Nat. Bank of Oregon v. Davies*, 274 Or 663, 665–66, 548 P2d 966 (1976) (legal malpractice causing economic loss [money] is not within the contemplation of direct, physical injury to personal property).

§ 11.6B Wrongful Dispossession

§ 11.6B(1) Rule against Splitting a Claim

All claims arising from a wrongful dispossession of personal property, including money damages and personal-injury actions, must be included in the action for possession, or they will be precluded. *Peterson v. Temple*, 323 Or 322, 918 P2d 413 (1996); *Gust v. Edwards Co.*, 129 Or 409, 274 P 919 (1929).

§ 11.6B(2) Accrual of Cause of Action

A cause of action for wrongful dispossession of personal property accrues on the date of the wrongful taking, *Legg v. Allen*, 72 Or App 351, 696 P2d 9 (1985), or on the date that return is demanded when the personal property is lawfully obtained but wrongfully withheld, *Everman v. Lockwood*, 144 Or App 28, 925 P2d 128 (1996).

Even though ORS 12.080(4) does not include an express discovery provision, the Oregon Supreme Court has concluded that an action accrues under the statute when the plaintiff knew or should have known of the elements of the claim. *Rice v. Mary Rabb*, 354 Or 721, 728, 320 P3d 554 (2014), *rev’g Rice v. Rabb*, 251 Or App 603, 608–09, 284 P3d 1178 (2012).

§ 11.6C Recovering Possession of Personal Property

§ 11.6C(1) Claim and Delivery

Claim and delivery is a form of provisional process to obtain immediate delivery of wrongfully dispossessed personal property after an action for its recovery has commenced. ORCP 85. Prejudgment claim and delivery by a secured creditor who has a security interest under Article 9 of the Uniform Commercial Code or a statutory lien is discussed in § 11.8B and chapter 18, respectively.

The entitlement to possession is normally resolved through a show-cause order and hearing. The party receiving possession may be required to post a bond or provide other security, such as depositing funds into court. ORCP 82 A(3). When personal property is taken by the sheriff through claim and delivery, a plaintiff may not voluntarily dismiss an action for at least 30 days after the personal property is taken. ORCP 85 E.

§ 11.6C(2) Procedure

§ 11.6C(2)(a) Immediate Delivery (Prejudgment)

In an action to recover possession of personal property, the plaintiff may claim the immediate delivery of the property by provisional process at any time after the action is commenced but before a judgment is issued. ORCP 85 A.

§ 11.6C(2)(b) Ex Parte Order

After an action is commenced, the plaintiff may obtain an *ex parte* order of immediate provisional process or obtain such an order after an order to show cause

has been served and a hearing has been held on the plaintiff’s application. ORCP 83.

§ 11.6C(2)(c) Defendant’s Right to a Hearing

To protect the defendant from being deprived of a hearing on the merits of the plaintiff’s claimed right to possession of the personal property, ORCP 85 E prohibits the dismissal of a claim-and-delivery action by the plaintiff until 30 days after the plaintiff has recovered the property.

§ 11.6D References

See generally Creditors’ Rights and Remedies ch 1 (Oregon CLE 2002 & Supp 2006); *2 Oregon Civil Litigation Manual* ch 30 (Oregon CLE 2004 & Supp 2009); *2 Oregon Civil Pleading and Practice* ch 36 (OSB Legal Pubs 2012).

§ 11.7 LOST, UNCLAIMED, OR ABANDONED PROPERTY

§ 11.7A Finder’s Duties and Liability

§ 11.7A(1) Finder’s Duties

If a person finds money or goods valued at \$250 or more, and the owner is unknown, the person must give written notice to the county clerk within 10 days after the date of finding the money or goods. Within 20 days after the date of finding, the finder must publish a newspaper notice once each week for two weeks. ORS 98.005(1).

The finder becomes the owner if no response is received within three months after notice to the county clerk. ORS 98.005(2).

See § 11.7A(2) (finder’s liability for failure to comply with the statute).

§ 11.7A(2) Finder’s Liability

If a person who finds money or goods valued at \$250 or more fails to comply with ORS 98.005 (*see* § 11.7A(1)), the finder will be liable, on conviction, to the county for the full value of the money or goods. The county will then publish notice of finding the money or goods in the manner provided in ORS 98.005 (*see* § 11.7A(1)). The money or goods will be forfeited to the county general fund if the owner does not reclaim the goods or money within three months after the date of the first publication of notice by the county. ORS 98.015.

§ 11.7B Abandoned Property Reports

§ 11.7B(1) In General

Every person holding funds or other property presumed abandoned under ORS 98.302 to 98.436 and ORS 98.992 must report and pay or deliver to the Department of State Lands (DSL) all such property presumed abandoned, except that:

(1) Funds transferred to the General Fund under ORS 293.455(1)(a) must only be reported to the DSL, ORS 98.352(1)(a);

(2) Funds in the possession of the Child Support Program described in ORS 180.345 must only be reported to the DSL, ORS 98.352(1)(b); and

(3) Funds in lawyer trust accounts must only be reported to the DSL, ORS 98.352(1)(c), (6).

The report must be filed between October 1 and November 1 of each year for accounts dormant as of June 30. ORS 98.352(4).

PRACTICE TIP: The reporting forms are available on the DSL’s website at <www.oregon.gov/DSL/UP/upforms.shtml>.

§ 11.7B(2) Lawyer Trust Accounts

Effective January 1, 2010, holders of abandoned funds in lawyer trust accounts are no longer required to deliver the funds to the Department of State Lands (DSL). Instead, the unclaimed funds must only be reported to the DSL (*see* § 11.7B(1)), but must be delivered to the Oregon State Bar (OSB) along with a copy of the report. ORS 98.386(2).

PRACTICE TIP: The reporting forms are available at <www.oregon.gov/DSL/UP/upforms.shtml>. Forms 1a and 2a must be completed and sent to the DSL, with copies of the reports and the unclaimed funds forwarded to the OSB.

§ 11.7C Limitation of Actions and Presumption of Abandonment

The expiration of any statute of limitations or court order applicable to an action to obtain payment of a claim for money or recovery of property will not (1) prevent the money or property from being presumed to be abandoned property, (2) affect any duty to file a report required by ORS 98.352, or affect the requirement to pay or deliver abandoned property to the Department of State Lands. ORS 98.376. *See* § 11.7B(1).

§ 11.7D Claim for Unclaimed Property

A person claiming an interest in unclaimed property reported to the Department of State Lands (DSL) may file a claim to the property at any time after the person learns that the property has been reported to the DSL. ORS 98.392(1).

If a claim filed under ORS 98.392 is for amounts reported as lawyer trust account funds in the report required by ORS 98.352 (*see* § 11.7B(2)), the DSL will forward the claim to the Oregon State Bar (OSB) for review and for payment by the OSB if the claim is allowed. ORS 98.392(2).

The DSL will consider all claims filed under ORS 98.392 and may hold an evidentiary hearing before making a decision on a claim. ORS 98.396.

A person who is aggrieved by the decision of the DSL’s administrator regarding his or her claim may request a hearing. The DSL will conduct the hearing as a contested-case proceeding under the Oregon Administrative Procedures Act (ORS 183.413–183.470). If the administrator fails to act on a claim

within 120 days after the claim is filed under ORS 98.392, the person may file a petition under ORS 183.484 to request a court to compel the DSL to act pursuant to ORS 183.490. ORS 98.402.

§ 11.7E Bailment and Consignment

§ 11.7E(1) In General

If personal property deposited with a consignee or bailee is not claimed and taken away within one year after the time it was received, the person having possession of the property may sell the property in the manner provided in ORS 98.140 to 98.240. ORS 98.130.

Before selling the property, the person must give at least 60 days’ notice of the sale to the owner of the property, if the owner’s name and residence are known. If the name and address of the owner are not known, a notice must be published for “six weeks successively” in a newspaper in the county where the property was deposited, or, if no county newspaper is available, the notice must be published in the nearest newspaper thereto within this state. The last publication must occur at least 18 days before the time of sale. ORS 98.140.

§ 11.7E(2) Proof of Notice and Owner’s Nonresponse

If the owner of the property does not take it away and pay the charges after the 60-day notice has been given (*see* § 11.7E(1)), the person having possession of the property must make an affidavit describing the property remaining unclaimed and stating the date that the property was received, the dates of notice, and whether the owner of the property is known or unknown. The affidavit must be delivered to the justice of the peace of the county where the property was deposited. ORS 98.150.

The justice of the peace will then have the property examined in his or her presence, make an inventory of the property, and give to the sheriff the inventory and an order to sell the property at public auction. ORS 98.160.

The sheriff must give 10 days’ notice of the sale by posting written notices in three or more places in the district or county. ORS 98.170.

§ 11.7E(3) Perishable Property

Perishable property left with a consignee or bailee may be sold if not reclaimed within 30 days after it was deposited by giving 10 days’ notice of the sale. ORS 98.230.

§ 11.7F Banks and Instruments

§ 11.7F(1) Intangible Property

Intangible property held by a bank is presumed abandoned when the owner has failed to take certain action within three years. ORS 98.308(1).

§ 11.7F(2) Checks, Traveler’s Checks, and Money Orders

Except for traveler’s checks or money orders, any sum payable on a check, draft, or similar instrument on which a bank is directly liable, including a cashier’s check and a certified check, is presumed abandoned if the instrument has been outstanding for more than three years after it was payable or issued, unless the owner has communicated in writing with the bank within three years regarding the instrument. ORS 98.308(6).

Any sum payable on a traveler’s check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within the 15-year period, “has communicated in writing with the issuer concerning [the traveler’s check] or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.” ORS 98.309(1).

Any sum payable by a money order is also subject to ORS 98.309, but the time period is seven years. ORS 98.309(2).

§ 11.7F(3) Life Insurance or Annuity Contracts

Funds held or owing under any matured or terminated life or endowment insurance policy or annuity contract are presumed abandoned if unclaimed for more than three years after the funds become due and payable, or if unclaimed for more than two years if the policy or contract has not matured by actual proof of death of the insured or annuitant. ORS 98.314.

§ 11.7F(4) Property Distributable on Dissolution of Business

“All intangible personal property distributable in the course of a dissolution of a business association or financial institution that is unclaimed by the owner for more than one year after the date for final distribution is presumed abandoned.” ORS 98.326.

§ 11.7F(5) Safe-Deposit Box

All property held in a safe-deposit box in the ordinary course of the holder’s business that is unclaimed for more than two years after the lease or rental period on the box has expired is presumed abandoned. ORS 98.328.

§ 11.7G Miscellaneous Property

§ 11.7G(1) Intangible Property Held by Fiduciary

All intangible personal property and any income on it held by a fiduciary is presumed abandoned unless the owner, within two years after the property or income becomes payable or distributable, accepts payment of the principal or income, increases or decreases the principal, or corresponds in writing with the fiduciary concerning the property or otherwise indicates an interest in the property. ORS 98.332.

§ 11.7G(2) Unpaid Wages

Unpaid wages owing in the ordinary course of the holder’s business that remain unclaimed by the owner for more than three years after becoming payable are presumed abandoned. ORS 98.334.

§ 11.7G(3) Property Held by Government

Intangible or tangible property held for the owner by a court, agency, or governmental subdivision that has remained unclaimed by the owner for more than two years is presumed abandoned. ORS 98.336.

§ 11.7G(4) Credit Memo

A credit memo that remains unclaimed by the owner for more than three years after becoming payable is presumed abandoned. ORS 98.338.

§ 11.7G(5) Property Held by Business

All intangible personal property not otherwise covered by ORS 98.302 to 98.436 that is held or owing in the ordinary course of the holder’s business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned. ORS 98.342.

§ 11.8 PREJUDGMENT ATTACHMENT; CLAIM AND DELIVERY; RECEIVERSHIPS

§ 11.8A Attachment

§ 11.8A(1) Order for Provisional Process

Before a writ of attachment may be issued or any property may be attached under ORCP 84, the plaintiff must obtain, and have recorded in the County Clerk Lien Record, an order under ORCP 83 that provisional process may issue. ORCP 84 A(1).

See § 11.8A(2) (actions in which attachment is allowed), § 11.8A(3) (motion for redelivery).

§ 11.8A(2) Actions in Which Attachment Is Allowed; Property That May Be Attached

When a summons is issued or at any time afterwards, a plaintiff—but only a plaintiff in the following actions—may have certain property of the defendant attached as security for the satisfaction of any judgment that may be recovered:

(1) “An action upon a contract, express or implied, for the direct payment of money, when the contract is not secured by mortgage, lien, or pledge, or when it is so secured but such security has been rendered nugatory by act of the defendant,” ORCP 84 A(2)(a);

(2) “An action against a defendant not residing in this state to recover a sum of money as damages for breach of any contract, expressed or implied, other than a contract of marriage,” ORCP 84 A(2)(b); or

(3) “An action against a defendant not residing in this state to recover a sum of money as damages for injury to property in this state,” ORCP 84 A(2)(c).

The only kinds of property that may be attached are tangible personal property, debts, the interest of a distributee of a decedent’s estate, and, in an action in circuit court, real property. ORCP 84 B.

Before property is attached, the plaintiff must file a surety bond or an irrevocable letter of credit in an amount fixed by the court. ORCP 82 A(3).

A receiver may be appointed in aid of an attaching creditor under ORCP 80 B(5).

§ 11.8A(3) Motion for Redelivery

A motion for redelivery of attached property must be served on the plaintiff at least five days before a hearing on the motion, unless the court orders otherwise. ORCP 84 F(1).

§ 11.8B Claim and Delivery

Claim and delivery is a prejudgment remedy under which a secured creditor (or other lien creditor, such as a landlord’s lien claimant) may obtain possession of the collateral or personal property subject to the lien by court order. ORCP 85.

Unlike the provisional remedy of attachment (*see* § 11.8A(1) to § 11.8A(3)), the required showing for the issuance of provisional process in the claim and delivery setting is limited to a declaration of default and entitlement to possession under the terms of a contract or statute. *State ex rel. Aetna Bus. Credit, Inc. v. Davis*, 291 Or 369, 631 P2d 337 (1981). The only notice time frames that apply are the local rules for show-cause orders in the county in which the motion is filed. The order is not effective until the court-ordered bond or other undertaking has been entered. ORCP 82 A(3).

§ 11.8C Receiverships (Personal Property and Real Property)

A court-ordered receivership to take control of personal property (often subject to a security interest under Article 9 of the Uniform Commercial Code) or real property (subject to a trust deed, mortgage, or contract of sale) may be obtained both provisionally (i.e., before judgment) and after judgment to effectuate the judgment. The creditor’s right to a receiver is often set forth in the trust deed or commercial loan documents.

In addition to being subject to the local rules of each county for show-cause procedures, receiverships are governed by ORCP 80. ORCP 80 C provides: “No receiver shall be appointed without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.” The order appointing a provisional receiver is not effective until the court-ordered bond is posted. ORCP 82 A(4).

§ 11.8D References

See generally Creditors’ Rights and Remedies chs 1, 7 (Oregon CLE 2002 & Supp 2006).

§ 11.9 JUDGMENTS AND LIENS

See chapter 18 regarding judgments and liens, including statutory liens, attorney liens, chattel liens, and tax liens. Chapter 18 also discusses the duration of judgments and obtaining relief from judgments.

See chapter 17 regarding construction liens.

See § 11.9A to § 11.9A(9) regarding execution sales of property in general. See chapter 13 regarding the foreclosure of residential trust deeds and mortgages.

§ 11.9A Execution Sales of Property

NOTE: The discussion in § 11.9A(1) to § 11.9A(8) focuses on execution sales of personal property. See chapter 13 for further discussion on execution sales of real property, including possession of the property after sale (*see* § 13.6B), confirmation of the sale (*see* § 13.6C), and redemption of real property (*see* § 13.6D(1) to § 13.6E)).

A judgment may be enforced by execution upon entry of the judgment. The ability to enforce a judgment by execution expires as provided in ORS 18.180 to 18.192. ORS 18.252(1).

Any portion of a money award that the judgment states is to be paid on some date after the date the judgment is entered may be enforced by execution when payment becomes due under the terms of the money award and is not paid. ORS 18.252(2).

§ 11.9A(1) Return on Writ

The sheriff must make a return on the writ of execution to the court administrator within 60 days after receiving the writ. The person who requested the writ may authorize the sheriff to “continue execution under the writ and delay making a return on the writ to a date not later than 150 days after the sheriff receives the writ, as long as the execution sale occurs no later than 150 days after the sheriff receives the writ.” ORS 18.872(1). On a showing of good cause, the issuing court may extend the time for return on a writ beyond these time limits. ORS 18.872(1).

§ 11.9A(2) Challenge to Writ

A person may challenge a writ of execution by completing a “challenge to execution form” provided in ORS 18.896 and delivering the original of the form to the court administrator and a copy of it to the judgment creditor within 30 days after the property is levied on, as described in ORS 18.878, or before the property is sold on execution, whichever occurs first. ORS 18.892(4)–(5).

§ 11.9A(3) Notice of Hearing—Residential Property

At least 10 days before the hearing on a motion filed under ORS 18.906 for an order authorizing the sale of residential property, the judgment creditor must (1) serve the judgment debtor under ORCP 7 with a copy of the motion and the supporting affidavit and a notice of the hearing (in substantially the form provided), and (2) send a copy of the motion and notice by first-class mail to the mailing address for the property. ORS 18.908(1).

§ 11.9A(4) Notice of Sale—Personal Property

At least 10 days before an execution sale of personal property, the sheriff must mail copies of the notice of sale to both the judgment debtor and his or her attorney. ORS 18.920(1)–(3). Not more than 20 days before the date of sale and not less than 10 days before that date, the sheriff must post a notice of the sale in three public places in the county of the sale. ORS 18.920(4).

If perishable personal property is levied on:

(1) “The notices required by ORS 18.920(2) must be mailed by express mail not less than 48 hours before the execution sale,” ORS 18.922(1)(a); and

(2) The sheriff must “post notice of the sale in the manner required by ORS 18.920 (4) or (5) not less than 48 hours before the execution sale,” ORS 18.922(1)(b).

§ 11.9A(5) Notice of Sale—Real Property

Before conducting an execution sale of real property, the sheriff must comply with the notice provisions of ORS 18.924. See § 13.6A for further discussion.

The sheriff is not required to post or publish the notice of sale of real property until the judgment creditor provides all of the notice information required by ORS 18.924(2)–(3). ORS 18.924(5).

§ 11.9A(6) Report of Real Property

At least 10 days before the execution sale, a judgment creditor must provide the sheriff with any report for real property to be sold at the sale that is in the possession of the judgment creditor and that shows interests of record in the property. ORS 18.930(2).

§ 11.9A(7) Postponement of Sale

A sheriff may postpone an execution sale to a specified date for the reasons listed in ORS 18.932(1).

A sheriff must postpone an execution sale to a specified date on request of the judgment creditor, but may not postpone the sale to a date later than the final date for return of the writ under ORS 18.872. ORS 18.932(2).

An execution sale may be postponed more than once, but may not be postponed beyond the date that a return on the writ is due. ORS 18.932(4). If the judg-

ment creditor requests a postponement to a specified date that is more than 60 days after the sheriff received the writ, the request for a postponement “automatically operates as a request for an extension of the time for a return on the writ of execution under ORS 18.872(1), and the return on the writ is due three business days after the date specified by the judgment creditor for the sale.” ORS 18.932(4).

§ 11.9A(8) Payment by Cashier’s Check

(1) *Check must be deposited in a financial institution.* If any part of the purchase price at an execution sale is paid with a cashier’s check, the sheriff must give the purchaser a receipt for the funds and deposit the check in a financial institution by the end of the first business day after the day of the sale. ORS 18.938(3)–(4).

(2) *Verification of funds.* If the sheriff receives verification from a financial institution within 15 days after the date of the sale that all cashier’s checks delivered to the sheriff for purchase have received final settlement, the sale is effective as of the date and hour of the sale. ORS 18.938(5).

(3) *No verification of funds.* However, if the sheriff does not receive such verification within that 15-day period, the sale is void and the sheriff must return to the purchaser any payments made, less allowable bank charges. ORS 18.938(6).

(4) *Extension of time for verification of funds.* The judgment creditor may extend by a period of up to 60 days the time for the sheriff to receive verification of a cashier’s check. If the judgment creditor extends the time, the return date for the writ is automatically extended.

(5) *Extension of time when return date for writ is less than 18 days after sale.* If any part of the purchase price is paid with a cashier’s check, and the return date for the writ is less than 18 days after the date of the sale, “the return date is automatically extended to 18 days after the date of the sale.” ORS 18.938(7).

§ 11.9A(9) Notice of Residential Property Sold

After the execution sale of any residential property that is subject to redemption, and not later than 30 days after the purchaser is given the certificate of sale, the sheriff must (1) “attach to the main entrance of any dwelling unit upon the property a written notice stating that the property has been sold” and (2) send a copy of the notice to the judgment debtor. ORS 18.944(1).

§ 11.9B References

See generally Creditors’ Rights and Remedies ch 6 (Oregon CLE 2002 & Supp 2006); 2 *Oregon Civil Litigation Manual* chs 29–30 (Oregon CLE 2004 & Supp 2009).

See chapter 13 regarding the foreclosure of residential trust deeds and mortgages, including possession of the property after sale (*see* § 13.6B), confirmation

of the sale (*see* § 13.6C), and redemption of real property (*see* § 13.6D(1) to § 13.6E).

§ 11.10 EXEMPTIONS FROM, AND CHALLENGES TO, EXECUTION AND GARNISHMENT

§ 11.10A List of Exemptions

The following property is listed as exempt from both execution and garnishment as set forth on the challenge-to-execution form at ORS 18.896 (footnote omitted):

(1) Wages or a salary as described in ORS 18.375 [definitions] and 18.385 [wage exemption]. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
- (b) \$218 per workweek.
- (2) Social Security benefits;
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers’ compensation benefits.

(8) All Social Security benefits and Supplemental Security Income benefits, and up to \$7,500 in exempt wages, retirement benefits, welfare, unemployment benefits and disability benefits, that are held in a bank account.

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, manufactured dwelling or floating home) occupied by you, or occupied by your spouse, parent or child. Up to \$40,000 of the value of the homestead is exempt. If you jointly own the homestead with another person who is also liable on the debt, up to \$50,000 of the value of the homestead is exempt.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$3,000.

*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$5,000.

*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

(20) Public or private pensions.

(21) Veterans’ benefits and loans.

(22) Medical assistance benefits.

(23) Health insurance proceeds and disability proceeds of life insurance policies.

(24) Cash surrender value of life insurance policies not payable to your estate.

(25) Federal annuities.

(26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).

(27) Professionally prescribed health aids for you or any of your dependents.

*(28) Elderly rental assistance allowed pursuant to ORS 310.635.

*(29) Your right to receive, or property traceable to:

*(a) An award under any crime victim reparation law.

*(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.

*(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(30) Amounts paid to you as an earned income tax credit under federal tax law.

(31) Your right to the assets held in, or right to receive payments under, a medical savings account or health savings account authorized under section 220 or 223 of the Internal Revenue Code.

(32) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(33) Equitable interests in property.

NOTE: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers’ compensation benefits, unemployment benefits, veterans’ benefits and pensions are normally exempt, but only 50 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

NOTE: Effective July 1, 2013, ORS 18.300 now gives Oregon debtors the opportunity to elect either federal exemptions or Oregon exemptions when filing a bankruptcy petition. The statute reversed the 30-year ban on use of federal exemptions in Oregon bankruptcy cases.

§ 11.10B Challenge to Writ of Execution

The debtor may claim an exemption from execution or assert an objection to the amount that is subject to execution as provided in ORS 18.892. To do so, the debtor must:

(1) Complete the challenge-to-execution form provided in ORS 18.896 (which should have been served with the writ of execution at the time of the sheriff’s levy); and

(2) Within the 30-day period described below, deliver (in person or by first-class mail) the original form to the court administrator for the court identified in the writ of execution and a copy of the form to the judgment creditor (who is obligated by statute to notify the sheriff of the challenge).

ORS 18.892(4)–(5).

The challenge must be delivered “within 30 days after the property is levied on as described in ORS 18.878 or before the property is sold on execution, whichever occurs first.” ORS 18.892(5).

See § 11.10D (hearing on challenge).

§ 11.10C Challenge to Garnishment

A debtor may challenge a garnishment by filling out the challenge-to-garnishment form provided by ORS 18.850 and delivering the original form to the court administrator and a copy of the form to the garnishor at their respective addresses as shown on the writ of garnishment. Delivery may be in person or by first-class mail. ORS 18.700(2). The time frame for delivery depends on the type of challenge:

(1) If the garnishee is the debtor’s employer and the challenge is based on an exemption that is claimed for wages earned by the debtor, delivery must occur within 120 days after the debtor received the writ of garnishment, ORS 18.700(2)(a); or

(2) If the challenge is made on any other basis, delivery must occur within 30 days after the debtor received the writ of garnishment, ORS 18.700(2)(b).

A court administrator who has received a challenge to a garnishment under ORS 18.700 must provide written notice of the challenge as provided in ORS 18.702.

For discussion of the garnishee’s and garnishor’s duties created by the debtor’s filing of a challenge to garnishment, see § 11.11D(5) and § 11.11E(4), respectively. *See also* § 11.10D (hearing on challenge).

§ 11.10D Hearing on Challenge

If the debtor challenges a writ of execution or a garnishment, the court administrator will set a summary hearing “as soon as possible.” ORS 18.898 (challenge to execution), ORS 18.710 (challenge to garnishment).

The hearing may be heard by telecommunication. The judgment debtor has the burden of proof on the issue of the timely delivery of the challenge. ORS 18.898(2)–(3), ORS 18.710(2)–(3).

§ 11.11 GARNISHMENT

§ 11.11A Delivery/Validity of Writ

To effect a valid attachment of a debtor’s property or debt, a writ of garnishment issued by a court clerk or a plaintiff’s attorney must be delivered to the garnishee within 60 days after issuance of the writ. ORS 18.609(1).

The date of issuance is the date that the writ is stamped and signed by the court or the date that the writ is signed by an issuer other than the court. ORS 18.609(2).

§ 11.11B Duration of Writ

(1) *In general.* Except as provided in ORS 18.625(3), a writ of garnishment acts to garnish all of the debtor’s nonexempt wages during the period commencing with the date the writ is delivered and ending on the earlier of the following dates: (1) the expiration of 90 days after the date the writ is delivered or (2) the date on which the garnishment is released or satisfied in full. ORS 18.625(2).

(2) *Writ issued on behalf of a county or county agency.* If a writ of garnishment is issued on behalf of a county or county agency, a writ served on an employer acts as a continuing garnishment until the debt is paid in full or the writ is released. ORS 18.625(3). (For a writ issued on behalf of a state agency, see ORS 18.855.)

(3) *Writ delivered to a financial institution.* If a writ of garnishment is delivered to a financial institution after 4:00 p.m. and the institution has a deposit account held in the debtor’s name, the writ only garnishes money on deposit in the

account at the beginning of the next business day following the day on which the writ is delivered. ORS 18.798.

§ 11.11C Garnishee’s Response

Within seven calendar days after the day on which the writ is delivered to the garnishee, the garnishee must prepare and deliver a garnishee response in the form and manner provided in ORS 18.835 and ORS 18.690. ORS 18.680(1)–(2). (But see the statute for certain exceptions.)

However, if the seventh calendar day after delivery of a writ of garnishment is a Saturday, Sunday, or legal holiday, the garnishee must deliver a garnishee response on or before the next following day that is not a Saturday, Sunday, or legal holiday. ORS 18.680(3).

§ 11.11D Garnishee’s Duties

§ 11.11D(1) Garnishee’s Duty to Hold Property

If the garnishee holds any garnishable property described in ORS 18.750, the garnishee must hold the garnished property, or a portion of it sufficient to satisfy the garnishment, for 30 days after the garnishee delivers the garnishee response to the court, unless the garnishee is notified that the garnishment is released or terminated. ORS 18.752(1).

§ 11.11D(2) Garnishee’s Duty to Deliver Property

If the sheriff contacts the garnishee during the 30-day period after the garnishee delivers the garnishee response to the court (*see* § 11.11D(1)), the garnishee must deliver the property to the sheriff or take such other action as may be specified. ORS 18.752(1). If the sheriff fails to contact the garnishee within that 30-day period, the lien of garnishment becomes ineffective. ORS 18.752(2).

NOTE: The sheriff will direct the garnishee to deliver the defendant’s property only if the garnishor mails or delivers a written request for sale of the property and pays the fees within 20 days after the garnishee delivers the garnishee response. ORS 18.755(1).

The sheriff must conduct the sale of property within 20 days after notice is sent to the garnishee to hold property or within 20 days after the property is delivered to the sheriff. ORS 18.758(1).

§ 11.11D(3) If Garnished Property Is Money Owed to Debtor within 45 Days; Challenge to Garnishment

If the garnished property is a debt that will become due within 45 days after the writ is delivered to the garnishee, the garnishee must deliver the property within five days after the debt becomes due. ORS 18.732(1).

If the garnishee receives notice of a challenge to the garnishment at any time before the garnishee mails or delivers the amount due, the garnishee must comply with ORS 18.708. ORS 18.732(2). *See* § 11.11D(5).

§ 11.11D(4) If Garnishee Is Debtor’s Employer

On delivery of a writ of garnishment to a garnishee who employs the debtor, the garnishee must pay to the garnishor all nonexempt wages at the following times:

(1) “The garnishee must make an initial payment when the garnishee next pays any wages to the debtor,” which payment must be “for all wages that were owing to the debtor on the date that the writ was delivered to the garnishee, and [for] all amounts that are being paid to the debtor for work performed after the writ was delivered and before issuance of the paycheck,” ORS 18.735(1);

(2) Unless the writ is satisfied or released, the garnishee must make subsequent payments under the writ whenever the garnishee pays any wages to the debtor during the period specified in ORS 18.625, ORS 18.735(2); and

(3) Unless the writ is satisfied or released sooner, the garnishee must make a final payment under the writ when the garnishee next pays wages to the debtor after the writ expires under ORS 18.625, which payment must be for all wages owing to the debtor on the date that the writ expires, ORS 18.735(3).

§ 11.11D(5) Garnishee’s Duties Created by Challenge to Garnishment

On receiving notice of a challenge to a garnishment under ORS 18.702 (*see* § 11.10C), the garnishee has certain duties:

(1) If the garnishee would have otherwise been required to mail or deliver a payment to the garnishor, the garnishee must mail or deliver the required payment to the court within the time the garnishee would have otherwise been required to mail or deliver the payment to the garnishor. ORS 18.708(1).

(2) If the garnishee holds any property described in ORS 18.750, the garnishee must hold the property for the period specified in ORS 18.752(1). If the sheriff informs the garnishee before the end of that period that the property held by the garnishee will be sold, the garnishee must continue to hold the property until receiving further directions from the court. ORS 18.708(2).

§ 11.11E Garnishor’s Duties

§ 11.11E(1) Refund of Amount Exceeding Debt

Within 10 days after receiving payment under a writ of garnishment, a garnishor must return to the debtor any funds exceeding the amount owing on the debt. However, if payment was made by check, the garnishor need not return the payment until 10 days after the check has cleared. ORS 18.745.

§ 11.11E(2) Garnishor to Hold Payment

Except as provided in ORS 18.645 (writs for past-due child support) and ORS 18.745 (return of excess payments), a garnishor receiving payment under a writ of garnishment must hold the payment for 10 days after receiving it. The

payment must be (1) “held in this state,” (2) “clearly identifiable,” and (3) “held separate and apart” from other personal or business accounts. However, a payment under a writ may be commingled with other garnished money. ORS 18.730(2).

§ 11.11E(3) Costs Incurred by Garnishee in Gaining Access to Safe-Deposit Box

If the property subject to garnishment is in a safe-deposit box at the garnishee’s financial institution, the garnishor must pay the costs incurred by the garnishee in gaining entry to the safe-deposit box within 20 days after delivery of the garnishee response, or the garnishment becomes ineffective to garnish any property in the safe-deposit box. ORS 18.792.

§ 11.11E(4) Garnishor’s Duties Created by Challenge to Garnishment

The garnishor’s receipt of a challenge to a garnishment (*see* § 11.10C) does not affect the requirement under ORS 18.755(1) that the garnishor mail or deliver a written request for sale of the property and pay the required fees within 20 days after the garnishee delivers the garnishee response to the court. The garnishor must also note on the request for sale that the debtor has challenged the garnishment. ORS 18.705(5).

§ 11.11F Release of Garnishment

If the sheriff receives a release of garnishment from the garnishor, proceedings for the sale of property under ORS 18.758 will be terminated immediately. ORS 18.770(3). On the garnishee’s receipt of a copy of the release, the garnishee may deal with the released property as though the writ had not been issued. ORS 18.770(4).

§ 11.11G Exempt Payments on Challenge to Garnishment

See § 11.10C regarding the procedure for a debtor to file a challenge to garnishment.

See § 11.11D(5) regarding the duties of a garnishee created by a challenge to garnishment. The garnishor’s duties created by a challenge are discussed in § 11.11E(4).

If the court allows a challenge to a garnishment, the court administrator will mail to the debtor all exempt payments within 10 judicial days after the court’s order allowing the challenge. ORS 18.712(1). Nonexempt property will be mailed to the garnishor within 10 judicial days after the court’s order denying the challenge as to that amount. ORS 18.712(2).

§ 11.11H Proceedings against Garnishee

(1) *Court may order garnishee to appear for examination or hearing.* If the garnishee fails to either provide a timely garnishee response or deliver garnishable property within the time required, or if the response is unsatisfactory to the garnishor, the court, on application of the garnishor, may order the garnishee to

appear for examination or for a hearing. ORS 18.778(1). At any time after a garnishor applies for such an order, the court may enter an order restraining the garnishee from disposing of, or injuring, the debtor’s property that is allegedly in the garnishee’s possession. ORS 18.778(2).

(2) *Time for commencing proceeding against garnishee.* Except as provided in ORS 12.085(2), proceedings against the garnishee under ORS 18.755 to 18.782 must be commenced within one year after the delivery of the writ of garnishment. ORS 12.085(1). If the writ is delivered to a personal representative in that capacity, proceedings must be commenced within one year after the entry of judgment of final distribution for the estate. ORS 12.085(2).

(3) *Written allegations and interrogatories before hearing.* If the court issues an order requiring the garnishee to appear in court for failure to act, the garnishor must serve allegations and optional interrogatories on the garnishee not less than 20 days before the date set for hearing or within such other time as specified in the order. The allegations must inform the garnishee that his or her failure to answer not less than 10 days before the hearing may result in a default judgment against the garnishee. ORS 18.780(1).

(4) *Garnishee’s answer.* The garnishee’s answer to the garnishor’s allegations and interrogatories must be filed, and a true copy delivered to the garnishor, not less than 10 days before the hearing date, unless further time is allowed for good cause. ORS 18.780(2).

§ 11.11I Actions Relating to Garnishment

A one-year statute of limitations generally applies to causes of action based on writs of garnishment. ORS 12.085.

§ 11.11J References

See generally Creditors’ Rights and Remedies chs 1, 7 (Oregon CLE 2002 & Supp 2006); *2 Oregon Civil Pleading and Practice* ch 36 (OSB Legal Pubs 2012).

§ 11.12 ATTORNEY FEES

See § 2.16A(1) to § 2.16B(2) regarding attorney fees.

§ 11.13 SERVICEMEMBERS CIVIL RELIEF ACT

§ 11.13A Suspension of Civil Proceedings against Servicemembers

The Servicemembers Civil Relief Act (SCRA) (*see* 50 USC App §§ 501–596) provides for the suspension of civil proceedings against persons in military service who could be detrimentally affected by the proceedings. 50 USC App § 502. Relief under the SCRA is available for a wide range of matters and proceedings.

If a servicemember sends a written demand for relief under the SCRA, and the opposing party fails to remedy the violation within 30 days after the demand is mailed, a court must award the servicemember reasonable attorney fees and damages, in addition to any other remedy payable under the SCRA. ORS 30.138. The demand must be sent by certified mail, return receipt requested, and must include the information specified in ORS 30.138(3).

§ 11.13B References

See, e.g., Foreclosing Security Interests § 1.28 (Oregon CLE 1997 & Supp 2005); 1 *Oregon Civil Pleading and Practice* § 11.6-6, § 20.3-2 (OSB Legal Pubs 2012).

§ 11.14 UNIFORM COMMERCIAL CODE

§ 11.14A In General

Many debtor-creditor issues arise under the Uniform Commercial Code (UCC). This chapter discusses UCC Article 7—Warehouse Receipts, Bills of Lading, and Other Documents of Title (*see* § 11.14B(1)(a) to § 11.14B(4)); UCC Article 8—Investment Securities (*see* § 11.14C(1) to § 11.14C(4)); and UCC Article 9—Secured Transactions (*see* § 11.15A to § 11.15S).

Other UCC provisions are discussed in chapter 14. *See* § 14.3A(1) to § 14.3A(7) (Article 2—Sales), § 14.3B(1) to § 14.3B(7) (Article 3—Commercial Paper), and § 14.3C(1) to § 14.3C(6) (Article 4—Bank Deposits and Collections).

§ 11.14B Warehouse Receipts, Bills of Lading, and Other Documents of Title—UCC Article 7

§ 11.14B(1) Termination of Storage at Warehouse

§ 11.14B(1)(a) In General; Notice

Before requiring payment of charges and removal of goods held in a warehouse, a warehouse must notify the person on whose account the goods are held, or any person known to claim an interest in the goods, that the fixed storage period has terminated. If no storage period is fixed, the warehouse must allow at least 30 days after notification before requiring payment and removal of the goods. ORS 77.2060(1). But *see* § 11.14B(1)(b) regarding goods that may deteriorate or decline in value. *See also* § 11.14B(1)(c) (hazardous materials).

“If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to ORS 77.2100” (enforcement of a warehouse’s lien). ORS 77.2060(1).

§ 11.14B(1)(b) Goods That May Deteriorate or Decline in Value

If a warehouse “in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien” within the time provided by ORS 77.2060(1) and ORS 77.2100, the warehouse may specify in the notice

provided in ORS 77.2060(1) “any reasonable shorter time for removal of the goods.” ORS 77.2060(2).

If the goods are not removed within this time, the warehouse may sell the goods at public sale held not less than one week after advertising or posting a notice of sale. ORS 77.2060(2).

§ 11.14B(1)(c) Hazardous Materials

If the warehouse does not have notice at the time of deposit that the goods are a hazard to other property or persons, “the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods.” ORS 77.2060(3). If, “after a reasonable effort,” the warehouse is unable to sell the goods, the warehouse “may dispose of them in any lawful manner and does not incur liability by reason of that disposal.” ORS 77.2060(3).

§ 11.14B(2) Enforcement of Warehouse Lien—Sale of Goods

§ 11.14B(2)(a) In General

A warehouse may satisfy its lien from the proceeds of any sale but must “hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.” ORS 77.2060(5).

On demand made before the sale, a warehouse must deliver goods to any person entitled to the goods. ORS 77.2060(4).

A warehouse’s lien may be enforced by private or public sale of the goods at any commercially reasonable time or place after notifying all persons known to claim an interest in the goods. ORS 77.2100(1). *See* § 11.14B(2)(b) (notice of sale).

§ 11.14B(2)(b) Requirements Pertaining to Sale

A warehouse’s lien on goods, other than goods stored by a merchant in the course of business (see below), may be enforced only if the following requirements are satisfied:

(1) *Notification.* All persons known to claim an interest in the goods must be notified, ORS 77.2100(2)(a);

(2) *Contents of notice of sale.* The notice must include (a) “an itemized statement of the claim”; (b) “a description of the goods subject to the lien”; (c) “a demand for payment within a specified time [that is] not less than 10 days after receipt of the notification”; and (d) “a conspicuous statement that unless the claim is paid within that time[,] the goods will be advertised for sale and sold by auction at a specified time and place,” ORS 77.2100(2)(b);

(3) *Publication of advertisement of sale in newspaper.* After expiration of the time specified in the notification for payment, “an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of

general circulation where the sale is to be held,” and the sale must be held at least 15 days after the first publication, ORS 77.2100(2)(e); and

NOTE: If no newspaper of general circulation is available where the sale is to be held, advertisement of the sale must be posted at least 10 days before the sale in at least six conspicuous places in the neighborhood of the sale. ORS 77.2100(2)(e).

(4) *Sale.* The sale must (a) take place not sooner than the time periods set forth in ORS 77.2100(2)(e) (see above), (b) “conform to the terms of the notification,” and (c) “be held at the nearest suitable place to where the goods are held or stored,” ORS 77.2100(2)(c)–(d).

A lien on goods stored by a merchant in the course of business may be enforced pursuant to subsection (1) or (2) of ORS 77.2100 if proper notification is given. ORS 77.2100(8).

§ 11.14B(2)(c) Liability of Warehouse

A warehouse is liable for damages caused by its failure to comply with the requirements for sale under ORS 77.2100 (*see* § 11.14B(2)(b)), and, for a willful violation, the warehouse is liable for conversion. ORS 77.2100(9).

§ 11.14B(3) Carrier’s Lien

A carrier has a lien on goods covered by a bill of lading in the carrier’s possession for charges after the date of receiving the goods for storage or transportation and sale. ORS 77.3070(1).

A carrier may enforce its lien by public or private sale held after notification of all persons known to claim an interest in the goods. “The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale.” ORS 77.3080(1).

A carrier’s lien may be enforced pursuant to either ORS 77.3080(1) or the procedure set forth in ORS 77.2100(2) (*see* § 11.14B(2)(b)). ORS 77.3080(7).

§ 11.14B(4) Missing Documents

A bailee is liable to any person injured by a bailee’s delivery of goods to a person claiming under a missing negotiable document of title, unless the bailee delivers the goods pursuant to a court order. If the delivery is not in good faith, the bailee is liable for conversion. A person claiming injury under a missing negotiable document must file a notice of claim against the security posted with the bailee within one year after the delivery. ORS 77.6010(2).

§ 11.14C Investment Securities—UCC Article 8

§ 11.14C(1) Immediate Performance as Notice

“An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate . . . does not itself constitute notice of an adverse claim,” except in the case of a transfer more than:

(1) “One year after a date set for presentment or surrender for redemption or exchange”; or

(2) “Six months after a date set for payment of moneys against presentation or surrender of the certificate, if moneys were available for payment on that date.”

ORS 78.1050(3).

§ 11.14C(2) Replacement of Lost, Destroyed, or Wrongfully Taken Security Certificate

If a certificated security is “lost, destroyed or wrongfully taken,” the issuer must issue a new certificate if the owner:

(1) Requests a new certificate “before the issuer has notice that the certificate has been acquired by a protected purchaser”;

(2) Files a “sufficient indemnity bond” with the issuer; and

(3) Satisfies the issuer’s other reasonable requirements.

ORS 78.4050.

See also ORS 78.4060 (obligation to notify issuer).

§ 11.14C(3) Statute of Frauds Inapplicable

A contract or modification of a contract for the sale or purchase of a security is enforceable “whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.” ORS 78.1130.

§ 11.14C(4) Perfection of Security Interest in Investment Property

NOTE: Before July 1, 2001, Article 8 of the Uniform Commercial Code governed the creation, perfection, and priority of security interests in securities or “investment property” (now defined by ORS 79.0102(1)(vv)). Revised Article 9 (ORS chapter 79) now governs such security interests. See ORS 79.0106, ORS 79.0305, ORS 79.0312, and ORS 79.0314. Article 9 is discussed in § 11.15A to § 11.15S.

A secured party may perfect a security interest in investment property (which includes a “security entitlement” (defined in ORS 78.1020(1)(p)), a “securities account” (defined in ORS 78.5010), a commodity contract, a commodity account, and a certificated or an uncertificated security) in one of three ways: (1) by filing a financing statement (ORS 79.0312(1)), (2) by possession (delivering a security certificate to the secured party) (ORS 79.0313), or (3) by obtaining “control” (ORS 79.0314). For further discussion on perfection, see § 11.15C to § 11.15C(4).

Priority disputes are governed by ORS 70.0322, ORS 70.0323, and ORS 79.0328. ORS 79.0328(7).

§ 11.15 SECURED TRANSACTIONS—UCC ARTICLE 9

§ 11.15A In General

Effective July 1, 2001, the Oregon Legislature adopted Revised Article 9 of the Uniform Commercial Code (UCC), and Revised Article 9 applies to any transaction within its expanded scope, whether entered into before or after the July 1, 2001, effective date. Security interests and liens that were properly perfected under *former* Article 9 remain perfected for the remainder of their effective period under the old law and may be continued as required under the new law. Or Laws 2001, ch 445, §§ 188–195.

NOTE: Transition provisions regarding the revised laws are set forth in Oregon Laws 2001, chapter 445, sections 188 to 195. For further discussion of the transition provisions, see *Foreclosing Security Interests* chapters 6, 8 (Oregon CLE 1977 & Supp 2005). The transition rules are now generally moot due to the passage of time.

Secured transactions are covered in ORS 79.0101 to 79.0628.

§ 11.15B Secured Transaction—Definition and Exclusions

A “secured transaction” is any transaction that “creates a security interest in personal property or fixtures by contract.” ORS 79.0109(1)(a).

Pursuant to ORS 79.0109(1)(b)–(f), the secured-transaction statutes also apply to:

- (1) Agricultural liens;
- (2) The sale of accounts or chattel paper, payment intangibles, or promissory notes;
- (3) Consignments;
- (4) Security interests arising under ORS 72.4010, ORS 72.5050, ORS 72.7110(3), or ORS 72A.5080(5), as provided in ORS 79.0110; and
- (5) Security interests arising under ORS 74.2100 or ORS 75.1180.

Transactions excluded from the secured-transactions provisions are enumerated in ORS 79.0109(4). Excluded transactions include landlords’ liens and statutory liens (other than agricultural liens), except in questions of priority. ORS 79.0109(4)(b).

§ 11.15C Perfection

Except as otherwise stated in ORS 79.0308 to 79.0309, a security interest is perfected when it has attached and all of the requirements for perfection have been satisfied. ORS 79.0308(1). *See* § 11.15F(1) to § 11.15F(3) (attachment). Four methods of perfection are available under Article 9 of the Uniform Commercial Code: (1) perfection by taking possession of certain types of collateral, (2) perfection by control, (3) automatic perfection under certain circumstances, and (4) perfection by filing a financing statement. *See* § 11.15C(1) to § 11.15C(4).

See also § 11.15D (a security interest in collateral automatically attaches to the proceeds of the collateral).

§ 11.15C(1) Perfection by Possession

Under Article 9 of the Uniform Commercial Code (ORS chapter 79), perfection by possession of certain types of collateral is no longer mandatory.

Security interests in tangible negotiable documents, goods, tangible chattel paper, and instruments (including promissory notes) may be perfected by possession or filing (or by taking delivery of certificated securities). ORS 79.0313(1).

A security interest in money, however, may be perfected only by possession. ORS 79.0312(2)(c), ORS 79.0313(1).

If perfection depends on possession of the collateral by the secured party, “perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains control.” ORS 79.0313(4).

§ 11.15C(2) Perfection by Control

Perfection by control may be accomplished with respect to “investment property, deposit accounts, letter-of-credit rights, and electronic chattel paper or electronic documents.” ORS 79.0314(1); *see* ORS 79.0310(2)(h). (Ordinary chattel paper may also be perfected by possession because there is paper to hold.)

A security interest in investment property and electronic chattel paper may also be perfected by filing. ORS 79.0312(1). However, a security interest in deposit accounts (as opposed to proceeds of other collateral) and letter-of-credit rights may be perfected only by control. ORS 79.0312(2)(a)–(b).

A bank has control of deposit accounts maintained at the bank (thus, a bank perfects a security interest in a debtor’s bank account automatically if the debtor’s account is maintained at that bank). ORS 79.0104(1)(a).

A secured party other than a bank has control of a deposit account only if an agreement by the debtor allows the depository bank to pay the money to the creditor pursuant to the creditor’s instructions or directs the opening of an account in the creditor’s name. ORS 79.0104(1)(b)–(c). The control agreement among the bank, the debtor, and the secured party must be authenticated by the debtor. ORS 79.0104(1)(b). In most cases, the secured party has control even if the debtor retains the right to direct disposition of the funds from the deposit account. ORS 79.0104(2).

A secured party who perfects by having “control” of investment property has priority over a secured party who perfects only by filing. ORS 79.0328. Multiple secured parties who perfect by “control” rank on a first-to-obtain-control (by agreement) basis. ORS 79.0328(2)(a).

§ 11.15C(3) Automatic Perfection

ORS 79.0309 lists 13 types of collateral for which security interests are automatically perfected when they attach. *See* § 11.15F(1) to § 11.15F(3) (attachment). The most significant types are purchase-money security interests in consumer goods and sales of accounts, chattel paper, and promissory notes.

A security interest in certified securities, negotiable documents, or instruments is perfected without filing, possession, or control for 20 days from the time of attachment to the extent that it arises for new value given under an authenticated security agreement. ORS 79.0312(5).

“A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing” if the secured party makes the goods or documents representing them available to the debtor for the purpose of (1) sale or exchange, or (2) “dealing with them in a manner preliminary to their sale or exchange.” ORS 79.0312(6).

“A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing” if the secured party delivers the security certificate or instrument to the debtor for the purpose of (1) ultimate sale or exchange; or (2) presentment, collection, enforcement, renewal, or registration of transfer. ORS 79.0312(7).

NOTE: After the 20-day period specified in subsections (5), (6), and (7) of ORS 79.0312, perfection depends on compliance with ORS chapter 79.

§ 11.15C(4) Perfection by Filing

Financing statements must be filed only in the jurisdiction in which the debtor is located. ORS 79.0301(1), ORS 79.0307.

Corporations, limited liability companies, limited liability partnerships, limited partnerships, and other businesses that are registered organizations under the law of a state are located in the state where they are organized (sometimes referred to as the “birth certificate state”). ORS 79.0307(5).

Other businesses (e.g., sole proprietorships and unregistered partnerships) are located at their place of business, or, if they have more than one location, at their chief executive office. ORS 79.0307(2)(b)–(c).

Individuals are located at their principal residence. ORS 79.0307(2)(a).

All of the complex, multiple-state perfection rules in *former* UCC § 9-103 that were based on types of collateral such as “mobile goods” have been eliminated, except during the transition periods governed by the transition rules (*see* § 11.15A).

Several rules govern changes in the debtor’s location to another jurisdiction and transfers of collateral to a person in another jurisdiction who becomes a

debtor. A four-month grace period is allowed for filing in the new jurisdiction after the debtor changes its location from one state to another, and a one-year grace period is allowed for transfers of collateral to a person in a different state. ORS 79.0316(1)(b)–(c).

If a debtor changes its name and the debtor’s new name renders the name on a filed financing statement insufficient and seriously misleading, the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change. The financing statement is not effective to perfect a security interest in collateral acquired more than four months after the name change, unless an amendment to the financing statement that cures the seriously misleading information is filed within four months after the name change. ORS 79.0507(3)(a)–(b).

§ 11.15D Secured Party’s Right to Proceeds of Collateral

A security interest in collateral automatically attaches to the proceeds of the collateral and is automatically perfected in the proceeds. ORS 79.0315(1)(b), (3). Proceeds include (1) “[w]hatever is acquired upon the sale, lease, license, exchange or other disposition of collateral”; (2) “[w]hatever is collected on, or distributed on account of, collateral”; and (3) “[r]ights arising out of collateral.” ORS 79.0102(1)(kkk).

A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied: (a) “A filed financing statement covers the original collateral”; (b) the “proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed”; and (c) the “proceeds are not acquired with cash proceeds,” ORS 79.0315(4)(a);

(2) “The proceeds are identifiable cash proceeds,” ORS 79.0315(4)(b);
or

(3) “The security interest in the proceeds is perfected other than under [ORS 79.0315(3)] when the security interest attaches to the proceeds or within 20 days thereafter,” ORS 79.0315(4)(c).

If a filed financing statement covers the original collateral, a security interest in proceeds that remains perfected under ORS 79.0315(4)(a) becomes unperfected at the later of (1) the date that “the effectiveness of the filed financing statement lapses under ORS 79.0515 or is terminated under ORS 79.0513,” or (2) the “21st day after the security interest attaches to the proceeds.” ORS 79.0315(5).

§ 11.15E Purchase-Money Security Interest

A security interest qualifies as a “purchase-money security interest” (PMSI) in certain cases. *See* ORS 79.0103. A PMSI covers purchase-money collateral, which secures a purchase-money obligation.

Purchase-money obligation means “an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.” ORS 79.0103(1)(b).

ORS 79.0324 sets forth the rules regarding the priority of PMSIs. The general rule is that a PMSI in goods other than inventory or livestock takes priority over a conflicting security interest in the same goods. For a PMSI to have priority in inventory or livestock, the secured party must strictly comply with the time-of-possession and notice rules contained in ORS 79.0324(2)–(4), giving notice to the holders of all conflicting security interests of record.

§ 11.15F Attachment

§ 11.15F(1) In General

Unless an agreement expressly postpones the time of attachment, a security interest attaches when it “becomes enforceable against the debtor with respect to the collateral.” ORS 79.0203(1). A security interest is enforceable when the requirements of ORS 79.0203(2) are met, except as otherwise provided in ORS 79.0203(3) to (9).

§ 11.15F(2) After-Acquired Consumer Goods

A security interest in after-acquired consumer goods pledged as security attaches only if the debtor acquires rights in the goods within 10 days after the secured party gives value. ORS 79.0204(2)(a).

§ 11.15F(3) After-Acquired Commercial Tort Claim

A security interest in after-acquired collateral does not attach to an after-acquired commercial tort claim. ORS 79.0204(2)(b).

§ 11.15G Duties of Secured Party

§ 11.15G(1) Duty to Provide Accounting

If a debtor provides the secured party with an authenticated record requesting an accounting, indicating the debtor’s understanding of the unpaid indebtedness, or providing a list of the collateral, and the debtor requests that the secured party provide an accounting or approve or correct the statement of the account or list of collateral, the secured party must respond in writing within 14 days of receipt. A debtor may request such action every six months without charge. ORS 79.0210.

In a consumer transaction, the failure to comply with such a request entitles the debtor to statutory damages of \$1,500, unless the secured party proves a reasonable excuse for noncompliance. ORS 79.0625.

§ 11.15G(2) Duty Regarding Deposit Accounts

Within 10 days after receiving an authenticated demand by the debtor, a secured party having control of a deposit account under ORS 79.0104(1)(b) must

send the bank an “authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party.” ORS 79.0208(2).

This provision applies only if “[t]here is no outstanding secured obligation” and “[t]he secured party is not committed to make advances, incur obligations or otherwise give value. ORS 79.0208(1).

§ 11.15G(3) Duty to Release Account Debtor after Notification of Assignment

Within 10 days after receiving an authenticated demand by the debtor, a secured party must “send to an account debtor that has received notification of an assignment to the secured party as assignee under ORS 79.0406(1) an authenticated record that releases the account debtor from any further obligation to the secured party.” ORS 79.0209(2).

This provision does not apply to an “assignment constituting the sale of an account, chattel paper or payment intangible.” ORS 79.0209(3).

This provision applies only if “[t]here is no outstanding secured obligation” and “[t]he secured party is not committed to make advances, incur obligations, or otherwise give value.” ORS 79.0209(1).

§ 11.15H Priority among Conflicting Security Interests

§ 11.15H(1) In General

Except as provided in ORS 79.0322(7) (regarding priority when more than one security interest qualifies for priority in the same collateral), priority among conflicting security interests in the same collateral is determined according to the rules set forth in ORS 79.0322(1):

(a) Conflicting perfected security interests . . . rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest . . . is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest . . . has priority over a conflicting unperfected security interest.

(c) The first security interest . . . to attach or become effective has priority if conflicting security interests are unperfected.

For purposes of subsection (1)(a), “[t]he time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds.” ORS 79.0322(2)(a).

See § 11.15H(2) regarding priority of purchase-money security interests.

§ 11.15H(2) Priority of Purchase-Money Security Interests

Except as otherwise provided in ORS 79.0324(7) (regarding priority when more than one security interest qualifies for priority in the same collateral), a per-

perfected purchase-money security interest in goods (other than inventory or live-stock) “has priority over a conflicting security interest in the same goods . . . if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.” ORS 79.0324(1); *see also* ORS 79.0317(5).

A secured party must file a purchase-money security interest within 20 days after the debtor receives possession of the collateral in order to have priority over an intervening lien creditor, a transferee in bulk, a buyer, or a lessee. ORS 79.0324(1), ORS 79.0317(5).

§ 11.15H(3) Future Advances

§ 11.15H(3)(a) Advance Made More Than 45 Days after Person Becomes Lien Creditor

Except as discussed below, a security interest is subordinate to the rights of a person who becomes a lien creditor “to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor,” unless the advance is made:

- (1) “Without knowledge of the lien”; or
- (2) “[P]ursuant to a commitment entered into without knowledge of the lien.”

ORS 79.0323(2).

This provision does not apply to a security interest held by a secured party who “is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor.” ORS 79.0323(3).

§ 11.15H(3)(b) Buyer or Lessee of Goods

Except as discussed below, a buyer or lessee of goods, other than a buyer or lessee in the ordinary course of business, takes free of a security interest to the extent that it secures advances made after the earlier of (1) the time the secured party acquires knowledge of the purchase or lease, or (2) 45 days after the purchase or the lease becomes enforceable. ORS 79.0323(4), (6).

The foregoing provisions do not apply if the advance is made pursuant to a commitment entered into without knowledge of the purchase or lease and before expiration of the 45-day period. ORS 79.0323(5), (7).

§ 11.15H(4) Special Cases

The priority of security interests in transferred collateral, deposit accounts, investment property, letter-of-credit rights, chattel paper or instruments, financial assets or security entitlements, liens arising by operation of law, fixtures and crops, and other situations is governed by ORS 79.0325 to 79.0335.

§ 11.15H(5) Federal Tax Lien Trap for Holder of Article 9 Security Interest in Accounts and Inventory

With respect to revolving collateral (inventory and accounts receivable), a federal tax lien defeats a secured creditor’s interest in all newly acquired inventory and all newly generated accounts receivable, acquired or created more than 45 days after the filing of the IRS tax lien. 26 USC § 6323(c). The filing by the state taxing authorities of an Oregon tax warrant in the Secretary of State’s records does not benefit from such a 45-day rule. The priority of the warrant against competing security interests is governed by Article 9 of the Uniform Commercial Code as enacted in Oregon. ORS 314.423(1)(b).

§ 11.15I Consignments

§ 11.15I(1) In General

The security interest of a consignor in consigned goods is treated as a purchase-money security interest in inventory under Article 9 of the Uniform Commercial Code. ORS 79.0103(4).

To defeat a conflicting security interest in the consignee’s inventory, the consignor must follow the notification procedures in ORS 79.0324(2).

But see § 11.15I(2) regarding consignments of fine art.

§ 11.15I(2) Consignments of Fine Art

Outside of Article 9 of the Uniform Commercial Code, Oregon law includes provisions dealing with consignments of works of fine art. The “art transactions” laws (ORS 359.200–359.255), prescribe the contents of a consignment contract between an artist and an art dealer. ORS 359.220.

Of particular importance to this discussion, ORS 359.235 provides that the art-transactions laws trump any conflicting provision of the Uniform Commercial Code, including Article 9.

§ 11.15J Filing, Duration, and Amendment of Financing Statement

§ 11.15J(1) When a Financing Statement May Be Filed

A financing statement may be filed before or after a security interest attaches or before a security agreement is made. ORS 79.0502(4).

PRACTICE TIP: A copy of each statement or document filed should be sent to the filing officer, along with a request for return of the copies conformed by the filing officer with the number, date, and hour of filing.

§ 11.15J(2) When Filing Occurs

Subject to several exceptions listed in ORS 79.0516(2) (regarding the filing office’s refusal to accept the filing, *see* § 11.15J(3)), filing occurs when the filing office either (1) receives the financing statement (or a complying record) for filing along with filing fees or (2) accepts the record. ORS 79.0516(1).

§ 11.15J(3) Refusal of Filing Office to Accept Filing

If a filing office refuses to accept a record for filing under ORS 79.0516, ORS 79.0520 provides time limitations for when the office must communicate the reason for the refusal, how long the office must index the communication regarding the refusal, and when the secured party must file a request for a hearing.

§ 11.15J(4) Duration of Financing Statement

Except for minor exceptions found in subsections (2), (5), (6), and (7) of ORS 79.0515, a filed financing statement is effective as filed for five years after the date of filing. ORS 79.0515(1).

See § 11.15K(1) (continuation statement).

§ 11.15J(5) Amendment of Financing Statement

A financing statement may be amended at any time. An amendment that adds collateral is effective as to the additional collateral only from the filing date of the amendment. ORS 79.0512(3).

§ 11.15J(6) Change of Debtor’s Name

A financing statement generally remains effective if the debtor changes names. However, if the name change makes the financing statement “seriously misleading,” the filing is effective only for property acquired by the debtor before the name change and collateral acquired by the debtor within four months after the name change. ORS 79.0507(3).

§ 11.15J(7) Record of Mortgage as Financing Statement

A mortgage is effective as a financing statement filed as a fixture filing from the date of recording the mortgage if the goods are described in the mortgage, the goods are to become fixtures, the mortgage meets the requirements of a financing statement, and the mortgage is duly recorded. ORS 79.0502(3).

§ 11.15K Continuation Statement

§ 11.15K(1) Filing to Continue Perfection

A security interest becomes unperfected after five years unless it is perfected without filing. A continuation statement must be filed before the five-year period expires to continue the effectiveness of the filing. ORS 79.0515(3). To be effective, a continuation statement must be filed within six months before the expiration of the earlier filing. ORS 79.0510(3)–(4).

If a timely continuation statement is filed, the effectiveness of the original financing statement is continued for five years after the last effective date of the original filing. ORS 79.0515(4)–(5). The same five-year (duration) and six-month (continuation period) rules govern the duration and continuation of a timely filed continuation statement (and any number of successive continuation statements). ORS 79.0515(5).

§ 11.15K(2) Renewal Notice

Under prior law, the Secretary of State was required to mail a renewal notice to the secured party before the expiration of a financing statement. *See former* ORS 79.0515(8) (2007). Under current law, the secretary will, on request only, e-mail the secured party a renewal notice report that identifies each financing statement that will expire between 90 days and one year after the date of the notice. ORS 79.0515(8).

§ 11.15L Termination Statement

In a consumer transaction, the secured party must file a termination statement within “one month after there is no obligation secured by the collateral covered by the financing statement and no commitment exists to make an advance [*i.e.*, under a line of credit], incur an obligation or otherwise give value,” or, if earlier, “within 20 days after the secured party receives an authenticated demand from a debtor.” ORS 79.0513(1)–(2).

In a nonconsumer transaction, the secured party must file a termination statement within 20 days after receiving an authenticated demand from a debtor. ORS 79.0513(3).

In nonconsumer transactions, the debtor is entitled to recover actual damages for noncompliance with ORS 79.0513. ORS 79.0625(2). In a consumer transaction, in addition to actual damages under ORS 79.0625(2), the debtor is entitled to recover \$500 for each instance in which a secured party fails to file or send a termination statement. ORS 79.0625(5)(d).

A debtor may file an effective termination statement if the secured party otherwise has a duty to file a termination statement and has failed to do so. ORS 79.0509(4)(b).

§ 11.15M Records

The filing officer must retain a record of all filed statements for one year after the effectiveness of a financing statement lapses under ORS 79.0515 with respect to all secured parties of record. ORS 79.0519(7).

§ 11.15N Assignment

An assignee becomes a secured party of record only on the filing of a statement of assignment and the payment of the filing fee for each financing statement. ORS 79.0514.

§ 11.15O UCC Search

At the request of any person, the filing officer must make available certain information in a record, including all liens and encumbrances and the names and addresses of all parties holding security interests in all collateral included in all financing statements filed under a debtor’s name, as of a date and time specified but not a date earlier than five business days before the filing office receives the request. ORS 79.0523.

The filing officer will issue the requested record within two days after receiving a request other than by mail, or within four business days after receiving a request by mail. ORS 79.0523(5).

§ 11.15P Secured Party’s Remedies after Default

“After default, a secured party has the rights provided in ORS 79.0601 to 79.0628 and, except as otherwise provided in ORS 79.0602, those provided by agreement of the parties.” ORS 79.0601. Some of these rights are discussed in § 11.15Q(1) to § 11.15Q(3).

§ 11.15P(1) Claim Reduced to Judgment

When a secured party has reduced its claim to judgment, any lien based on the judgment relates back to the date of perfection of the security interest. ORS 79.0601(5). *See Foreclosing Security Interests* ch 6 (Oregon CLE 1997 & Supp 2005) (judicial foreclosure of security interests in personal property).

§ 11.15P(2) Collection from Account Debtors

On default or as agreed, the secured party may:

(1) Notify an account debtor or other obligor to make payment or render performance directly to the secured party, ORS 79.0607(1)(a); or

(2) Take control of any proceeds to which the secured party is entitled, ORS 79.0607(1)(b).

§ 11.15P(3) Possession and Disposition of Collateral

Unless otherwise agreed, the secured party has the right to take possession of the collateral on the debtor’s default. ORS 79.0609(1). The secured party may then sell or otherwise dispose of the collateral in a “commercially reasonable” manner. ORS 79.0610. *See* § 11.15P(3)(a) (notification before disposition).

NOTE: See § 11.15P(4) regarding compulsory disposition of collateral when the debtor has paid 60 percent of the cash price of a purchase-money security interest (PMSI) in consumer goods or repaid 60 percent of the loan when the loan is secured by a non-PMSI in consumer goods.

§ 11.15P(3)(a) Notification before Disposition of Property

Before disposing of the collateral, the secured party must give reasonable notification of the intended disposition to the following persons:

(1) The debtor, ORS 79.0611(3)(a);

(2) Any secondary obligor, ORS 79.0611(3)(b); and

(3) If the collateral is other than consumer goods, (a) any other person from whom the foreclosing secured party “has received, before the notification date, an authenticated notification of a claim of an interest in the collateral,” and (b) any other secured party or lienholder who, “10 days before the notification

date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement” as described in the statute, ORS 79.0611(3)(c).

NOTE: The secured party complies with ORS 79.0611(3)(c)(B) if (1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests information concerning financing statements indexed under the debtor’s name; and (2) before the notification date, the secured party sends the disposition notification to each secured party or lienholder identified in the response to the request. ORS 79.0611(5).

In nonconsumer transactions, notice given after default, and at least 10 days before the sale, is sent within a reasonable time. ORS 79.0612(2). In consumer transactions, 15 days’ notice after default and before disposition is a reasonable time. ORS 79.0612(1). Parties may agree to a shorter reasonable notice period in the security agreement.

PRACTICE TIP: For a statutory form of notice, see ORS 79.0613 (other than consumer transactions) and ORS 79.0614 (consumer transactions).

See § 11.15P(3)(b) (right to a surplus or liability for a deficiency).

§ 11.15P(3)(b) Right to Surplus or Liability for Deficiency after Disposition

In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under ORS 79.0615, the secured party must:

(1) “Send an explanation to the debtor or consumer obligor, as applicable, after the disposition” and (a) “[b]efore or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency,” and (b) “[w]ithin 14 days after receipt of a request”; or

(2) “In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party’s right to a deficiency,”

ORS 79.0616(2).

See § 11.15P(3)(c) (explanation of the calculation of the surplus or deficiency).

§ 11.15P(3)(c) Explanation of Calculation of Surplus or Deficiency

The secured party’s explanation of the calculation of the surplus or deficiency must provide certain specified information, including the “aggregate amount of obligations secured by the security interest under which the disposition was made” and any “unearned interest or credit service charge,” calculated as of a specified date:

(1) “If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession”; or

(2) “If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition.”

ORS 79.0616(3).

§ 11.15P(4) Compulsory Disposition of Collateral

If the debtor has paid 60 percent of the cash price of a purchase-money security interest (PMSI) in consumer goods or repaid 60 percent of the loan when the loan is secured by a non-PMSI in consumer goods, a secured party who has taken possession of collateral must dispose of it within 180 days after taking possession (unless a longer period is otherwise agreed to by the debtor, secured party, and all secondary obligors). ORS 79.0620(5)–(6).

The debtor may recover in conversion or on the secured party’s liability if the secured party fails to properly dispose of the goods within 180 days after possession. *See* UCC § 9-620 (ORS 79.0620), comment 12. *See* § 11.15Q(1), § 11.15Q(3).

§ 11.15P(5) Retention of Property in Satisfaction of Obligation

If the foreclosing secured party proposes to accept the collateral, in full or partial satisfaction of the obligation, the secured party must send notice of the intention to:

(1) “Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral,” ORS 79.0621(1)(a);

(2) “Any other secured party or lienholder [who], 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing a financing statement,” ORS 79.0621(1)(b); and

(3) “Any other secured party [who], 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in ORS 79.0311(1),” ORS 79.0621(1)(c).

NOTE: The practice known as “partial strict foreclosure” is not available in consumer transactions. ORS 79.0620(7).

If the secured party does not receive notification of objection to the secured party’s proposal within 20 days after sending notice to that person, the secured party may then accept the collateral in full or partial satisfaction of the obligation. ORS 79.0620(1)(b), (4).

§ 11.15Q Debtor’s Remedies

§ 11.15Q(1) Conversion

A debtor may bring an action for conversion if the secured party accepts the collateral in satisfaction of the obligation, but fails to comply with the applicable provisions of ORS chapter 79. *See* ORS 79.0611, ORS 79.0620–79.0621 (discussed in § 11.15P(3) to § 11.15P(5)). *See also* ORS 79.0625; UCC § 9-620 (ORS 79.0620), comment 12.

A debtor may, however, waive the right to notification of disposition of collateral under ORS 79.0611 (*see* § 11.15P(3)(a)) and the right to require disposition of collateral under ORS 79.0620(5) (*see* § 11.15P(4)), but only by an agreement entered into after default. ORS 79.0624.

The statute of limitations for conversion is six years. ORS 12.080(4).

§ 11.15Q(2) Redemption

The debtor or any other secured party may redeem the collateral by tendering full payment of the obligation and expenses (including attorney fees as described in ORS 79.0615(1)(a)) at any time before the secured party disposes of or sells the collateral or discharges the obligation. ORS 79.0623. A debtor may, however, waive the right to redeem collateral (except in a consumer-goods transaction) by an agreement entered into after default. ORS 79.0624(3).

§ 11.15Q(3) Secured Party’s Liability for Failure to Comply with ORS Chapter 79

If the foreclosing secured party fails to comply with ORS chapter 79, the debtor or any secured party may bring an action against the secured party to recover any loss caused by the failure to comply. ORS 79.0625.

If the collateral is consumer goods, the debtor has a right to recover its loss or an amount not less than \$1,000. ORS 79.0625(3)(b). The court may award attorney fees to the prevailing party. ORS 79.0625(3)(c).

When the secured transaction also involves a sale of goods governed by Article 2 of the Uniform Commercial Code (UCC), and the remedies enforced by the seller are derived from Article 9 of the UCC, the applicable statute of limitations appears to be six years, not four (or less) years as provided in ORS 72.7250. In *Chaney v. Fields Chevrolet Co.*, 264 Or 21, 503 P2d 1239 (1972), the plaintiff auto dealer (secured party), after a default in the debtor’s car payments, repossessed the debtor’s automobile and sold it for more than the debt owed to the secured party. The debtor sued more than four years (but less than six years) after discovery of the ultimate facts from the secured party. The Oregon Supreme Court held that because Article 9 has no statute of limitations, either the six-year general limitations period for contracts (ORS 12.080(1)) or the six-year limitations period for an action on a liability created by statute (ORS 12.080(2)) applied.

CAVEAT: This holding is suspect when the creditor files an action to collect on a secured installment sale contract or other sales transaction to which Article 9 applies because the four-year statute of limitations set forth in ORS 72.7250 clearly governs the transaction.

QUERY: Would the result have been the same if the creditor were suing the debtor for a deficiency judgment?

PRACTICE TIP: Disposition or sale of the collateral by the secured party after default must occur in a commercially reasonable manner in accordance with part 6 of Article 9 (ORS 79.0601–79.0628). For guidance on prescribed methods of judicial and nonjudicial foreclosure of security interests in personal property, see *Foreclosing Security Interests* chapters 6–7 (Oregon CLE 1997 & Supp 2005).

§ 11.15R Farm Products

NOTE: The central filing system for “farm products” is now governed by ORS 80.100 to 80.130.

§ 11.15R(1) Effective Financing Statement for Farm Products

An effective financing statement for farm products must be filed with the Secretary of State and is effective for five years from the date of filing. The statement may be extended for additional five-year periods by refileing or filing a continuation statement within six months before expiration of the five-year period. ORS 80.115(3).

§ 11.15R(2) Lapse of Financing Statement for Farm Products

An effective financing statement for farm products lapses when the effective period expires or when the secured party files a notice that the statement has lapsed, whichever occurs first. Unless otherwise provided in writing between the secured party and the debtor, the statement of notice of the lapse must be filed within 15 days after the secured obligation ceases. ORS 80.115(4).

§ 11.15R(3) Amendment of Financing Statement for Farm Products

An effective financing statement for farm products must be amended within three months of material changes in the information contained in the effective financing statement. ORS 80.115(2).

§ 11.15S Protection by Registration

A buyer of farm goods in the ordinary course of business, a selling agent, and commission merchants should register with the Secretary of State to receive notice of the seller’s perfected security interest from the secretary through the central filing system. ORS 80.118. The failure to register will not protect a buyer, selling agent, or commission merchant from a perfected security interest in the farm products created by the seller. ORS 80.109, ORS 80.112.

Registration as a buyer of farm products, commission merchant, or selling agent is effective for one year, subject to annual renewals. ORS 80.130.

On request, the Secretary of State will furnish to persons not registered under ORS 80.118 oral confirmation within 24 hours of the existence of any effective financing statement, followed by written confirmation within 48 hours, to any buyer of farm products buying from a debtor, commission merchant, or selling agent for a seller covered by such statement. ORS 80.121(1), (4).

§ 11.15T References

See generally Foreclosing Security Interests ch 8 (Oregon CLE 1997 & Supp 2005).

§ 11.16 MOTOR VEHICLES

See chapter 12 regarding security interests in a motor vehicle, as well as the transfer of any interest in a vehicle covered by an Oregon title.

§ 11.17 SURETIES

§ 11.17A Security—Requirement, Objection, and Discharge

A party to a civil action who seeks provisional process (e.g., a restraining order or a preliminary injunction) must generally provide security, such as a letter of credit or surety bond. ORCP 82. If the party for whose benefit the letter of credit or bond is given is dissatisfied with the sufficiency of the issuer or the surety, that party may object by serving notice of the objection on the party giving the letter of credit or surety bond within 10 days after receiving a copy of the letter of credit or bond. ORCP 82 F.

Court-appointed fiduciaries (e.g., trustees and guardians) may also be required to provide security via a surety or letter of credit. In such circumstances, the surety or letter of credit issuer may apply to the court for discharge from liability by giving personal notice of the application to the principal not less than five days before the date the application is to be made. ORS 33.510. The court may order the principal to account for all acts and proceedings within a time not to exceed 20 days. ORS 33.510. The principal may apply for discharge of the surety or letter of credit issuer by giving notice not less than 10 days before the date on which the application is to be made. ORS 33.520.

§ 11.17B Limitation of Action

§ 11.17B(1) Surety’s Liability

The court applied the six-year statute of limitations for a surety’s contract with a principal rather than the two-year statute of limitations for common-law fraud when a surety was found liable under a “blue-sky bond” for the tortious acts of the principal. *United Pac. Ins. Co. v. Stanford*, 486 F2d 556 (9th Cir 1973).

§ 11.17B(2) Accrual of Action against Surety

Subject to the terms of a suretyship agreement, a cause of action against a surety accrues when the principal defaults. *Chada v. Tapp*, 277 Or 3, 8, 558 P2d 1225 (1977).

§ 11.17B(3) Indemnification of Surety

Any claim asserted against a surety, regardless of its validity or relevance to the bond, triggers the obligation of the principal to indemnify the surety. *Fireman’s Fund Ins. Co. v. Nizdil*, 709 F Supp 975, 976–77 (D Or 1989).

§ 11.17B(4) Involuntary Suretyship

When an involuntary suretyship relationship was found to exist, the surety’s claim accrued on payment of the indebtedness for which the principal was primarily liable. *Twombley v. Wulf*, 258 Or 188, 192, 482 P2d 166 (1971).

§ 11.17C References

See Administering Oregon Estates ch 5 (OSB Legal Pubs 2012); 3 *Advising Oregon Businesses* ch 48 (Oregon CLE 2003 & Supp 2009); *Construction Law* ch 10 (OSB Legal Pubs 2011); *Contract Law in Oregon* ch 20 (Oregon CLE 2003 & Supp 2008); *Creditors’ Rights and Remedies* ch 1 (Oregon CLE 2002 & Supp 2006); 2 *Damages* ch 27 (Oregon CLE 1998 & Supp 2007); 1 *Federal Civil Litigation In Oregon* ch 13 (OSB Legal Pubs 2009); 2 *Oregon Civil Litigation Manual* chs 32–33 (Oregon CLE 2004 & Supp 2009); 2 *Oregon Civil Pleading and Practice* ch 36 (OSB Legal Pubs 2012).

§ 11.18 CREDITORS’ RIGHTS IN BANKRUPTCY—SELECTED BANKRUPTCY TIME LIMITATIONS; PERIODS OF DURATION; NOTICE PERIODS

CAVEAT: The discussion in § 11.18A(1) to § 11.18E(18) is limited to selected issues pertaining to creditors’ rights in bankruptcy.

This chapter includes a limited list of issues relating to time limitations, periods of duration, and notice periods regarding creditors’ rights in cases administered under the federal Bankruptcy Code (Title 11 of the United States Code) and the Federal Rules of Bankruptcy Procedure (FRBP). The Bankruptcy Code and the rules are often procedural in nature, and the administration of bankruptcy cases in the United States is driven by deadlines and rules designed to move cases through the system. Thus, it is beyond the scope of this chapter to include an exhaustive listing and treatment of all of the deadlines and time frames found in Title 11, the FRBPs, the Bankruptcy Rules applicable to bankruptcy appeals, the applicable Local Rules of the United States District Court for the District of Oregon, and the Local Rules of the United States Bankruptcy Court for the District of Oregon.

Likewise, treatment of the deadlines and time frames related to the representation of debtors in bankruptcy, trustees in bankruptcy, and creditors’ committees is beyond the scope of this chapter. Such matters are treated by a number of sources, including the two-volume practitioner’s guide, *Bankruptcy Law* (Oregon CLE 1999 & Supp 2007).

§ 11.18A Time Frames Affecting Creditors’ Rights before Bankruptcy Is Filed

§ 11.18A(1) Discharge in Prior Chapter 7 or Chapter 13 Bankruptcy Case Prohibits Discharge in New Cases within Certain Time Frames

An individual who has been granted a discharge in a Chapter 7 bankruptcy case commenced within the last eight years may not obtain a discharge in a new Chapter 7 case filed within the eight-year period. 11 USC § 727(a)(8).

An individual who has been granted a discharge in a Chapter 13 case commenced within the last six years may not obtain a discharge in a new Chapter 13 case filed within the six-year period, unless 70 percent or more of the debtor’s unsecured debts were paid in the prior Chapter 13 proceeding. 11 USC § 727(a)(9).

§ 11.18A(2) Efforts to Hinder, Delay, or Defraud Creditors within Two to Four Years before Bankruptcy

If the debtor transferred or concealed property or otherwise hindered, delayed, or defrauded creditors within two years before the filing of the bankruptcy case, the court may dismiss the bankruptcy case, and the debtor’s trustee in bankruptcy may recover any such property transferred or concealed in fraud of creditors from the transferee. 11 USC § 548(a)(1)(A).

In Oregon, if the debtor transferred or concealed property or otherwise hindered, delayed, or defrauded creditors within four years before the filing of the bankruptcy case, the debtor’s trustee in bankruptcy or a Chapter 11 debtor-in-possession may recover any such property transferred or concealed in fraud of creditors from the transferee through the strong-arm powers in 11 USC section 544(b) combined with the Uniform Fraudulent Transfers Act as enacted in Oregon (see ORS 95.280, which contains the four-year, look-back provision). 11 USC § 548(a)(1)(B).

§ 11.18A(3) Transfers for Less Than Reasonably Equivalent Value within Two Years before Bankruptcy

The debtor’s trustee in bankruptcy or a Chapter 11 debtor-in-possession may recover so-called “constructive fraudulent transfers” in which the debtor gives away or transfers property to another person or entity for less than the “reasonably equivalent value” of the property within two years before the filing of

the bankruptcy case if the debtor was insolvent at the time of the transfer or rendered insolvent by reason of the transfer. 11 USC § 548(a)(1)(b).

§ 11.18A(4) Insider Preferences within One Year before Bankruptcy

The debtor’s trustee in bankruptcy or a debtor-in-possession may recover preferential transfers to insiders of the debtor made within one year before the order for relief (the date of the filing of the bankruptcy petition in voluntary cases, or the date the bankruptcy court enters the order for relief in involuntary cases). 11 USC § 547(b)(4)(B). *See* 11 USC section 101(31) (definition of *insider*). *See also* § 11.18A(5) (noninsider preference).

§ 11.18A(5) Noninsider Preference within 90 Days before Bankruptcy

The debtor’s trustee in bankruptcy or a debtor-in-possession may recover preferential transfers to general creditors (noninsiders) of the debtor made within 90 days before the entry of the order for relief (the date the petition was filed in voluntary cases and the date the bankruptcy court enters the order for relief in involuntary cases). 11 USC § 547(b)(4)(A).

§ 11.18A(6) Statute of Limitations on Actions Seeking to Avoid Prepetition Transfers under Sections 547 and 548

The statute of limitations for avoidance actions under 11 USC section 544 (trustee’s strong-arm powers), 11 USC section 545 (avoidance of statutory liens), 11 USC section 547 (preferences), 11 USC section 548 (fraudulent transfers), and 11 USC section 553 (setoff) is generally two years from the entry of the order for relief in the bankruptcy case (which is the petition date in voluntary cases and a later date in involuntary bankruptcy cases). 11 USC § 546(a)(1)(A).

The limitation period may run longer than two years from the petition date if a trustee is first appointed more than one year into the two-year period described in 11 USC section 546(a)(1)(A). 11 USC § 546(a)(1)(B). The limitation period may also expire sooner (if the case is closed or dismissed before the running of the two-year period).

§ 11.18B Proper Venue for Filing Bankruptcy Case

The debtor must have maintained a residence, principal place of business, or principal assets in the filing district for 180 days immediately preceding the date of filing for bankruptcy, or for the longer part of such 180 days than in any other district. 28 USC § 1408.

§ 11.18C No Discharge for More Than \$650 in Luxury Goods Purchased within 90 Days before Order for Relief; No Discharge for Cash Advances in Excess of \$925 Taken 70 Days before Order for Relief

The following debts are presumed to be nondischargeable under 11 USC section 523(a)(2)(C) if the creditor timely files an adversary proceeding (within 60 days after the date first set for the meeting of creditors):

(1) “[C]onsumer debts owed to a single creditor and aggregating more than \$650 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief”; and

(2) “[C]ash advances aggregating more than \$925 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief.”

§ 11.18D Mandated Bankruptcy Counseling before Filing Bankruptcy Case

All individual debtors must attend a credit-counseling briefing by a certified credit-counseling agency before filing a bankruptcy petition, and that class must be completed within 180 days before the bankruptcy case is filed. 11 USC § 109(h), 11 USC § 521(b).

§ 11.18E Time Frames Affecting Creditor’s Rights after Bankruptcy Case Is Filed

§ 11.18E(1) Date of Order for Relief Is Same Date That Bankruptcy Petition Is Filed in Voluntary Cases

Numerous time frames and deadlines in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of the United States Bankruptcy Court for the District of Oregon run from the date of “the order for relief.” In voluntary cases, the date of the order for relief is the same date that the bankruptcy petition was filed. In involuntary cases filed by creditors (*see* § 11.18E(2)), the order for relief is entered some time after the petition is filed, either by default or after an evidentiary hearing on the involuntary petition. The period in between the filing of the involuntary petition and the order for relief in involuntary cases is called the “gap period.” *See* § 11.18E(2). The Bankruptcy Code and the rules are often procedural in nature, and the administration of bankruptcy cases in the United States is driven by deadlines and rules designed to move cases through the system. Thus, it is beyond the scope of this chapter to include an exhaustive listing and treatment of all of the deadlines and time frames found in Title 11, the FRBPs, the Bankruptcy Rules applicable to bankruptcy appeals, the applicable Local Rules of the United States District Court for the District of Oregon, and the Local Rules of the United States Bankruptcy Court for the District of Oregon.

§ 11.18E(2) Creditors’ Involuntary Bankruptcy Petition

In an involuntary bankruptcy case, the summons and complaint (an involuntary petition, usually signed by three or more petitioning creditors) must generally be served within 14 days after issuance of the summons. If service is made by an authorized form of mail, the summons and complaint must be deposited in the mail within 10 days after issuance of the summons. FRBP 1010, FRBP 7004(e). If the summons is not timely served, another summons must be issued and served. FRBP 7004(e).

CAVEAT: Effective December 1, 2014, the time for serving the summons and complaint will be reduced from 14 days to seven days after issuance of the summons. If service is made by an authorized form of mail, the summons and complaint must be deposited in the mail within seven days (reduced from 10 days) after the summons is issued. FRBP 7004(e).

A debtor or nonjoining general partner must serve and file an answer or motion within 21 days after the summons is served. FRBP 1011(b).

The time between the filing of the involuntary petition and the entry of an order for relief is generally referred to as the “involuntary gap period.” Except to the extent that the court orders otherwise, during the gap period the debtor may continue to operate its business and may continue to acquire, use, and dispose of its property as if the petition had not been filed. 11 USC § 303(f).

The prayer in an involuntary petition requests the court to enter an order for relief. If the debtor does not controvert the petition within 20 days after service of summons, the court will enter an order for relief. 11 USC § 303(h); FRBP 1013(b). In a contested case, the court will enter the order for relief after a trial of the issues raised by the pleadings if the petitioning creditors prevail. 11 USC § 303(h).

§ 11.18E(3) Statute of Limitations for Trustee or Debtor-in-Possession to Commence Adversary Proceedings to Recover Avoidable Transfers under Trustee’s Strong-Arm Powers

The statute of limitations for avoidance actions under 11 USC section 544 (trustee’s strong-arm powers), 11 USC section 545 (avoidance of statutory liens), 11 USC section 547 (preferences), 11 USC section 548 (fraudulent transfers), and 11 USC section 553 (setoff) is generally two years from the entry of the order for relief in the bankruptcy case (which is the petition date in voluntary cases, or possibly a later date in an involuntary bankruptcy case). 11 USC § 546(a)(1)(A).

The limitation period may run longer than two years from the petition date if a trustee is first appointed more than one year into the two-year period described in 11 USC section 546(a)(1)(A). 11 USC § 546(a)(1)(B). The limitation period may also expire sooner (if the case is closed or dismissed before the running of the two-year period).

§ 11.18E(4) “Date First Set for the Meeting of Creditors” Is Critical Milestone Date in All Cases

Many critical deadlines run from the “date first set for the meeting of creditors” set forth in the Notice of Bankruptcy sent by the clerk’s office to creditors and parties in interest. This date is not necessarily the date of the actual meeting of creditors (if, for example, the meeting date is reset or adjourned).

§ 11.18E(5) Thirty-Day Deadline from Conclusion of Meeting of Creditors for Trustee or Creditors to Object to Debtor’s Claimed Exemptions

In a case involving an individual debtor, the bankruptcy trustee and the parties in interest have 30 days after the conclusion of the meeting of creditors to file objections to any of the debtor’s claimed exemptions. FRBP 4003.

§ 11.18E(6) Sixty-Day Deadline for Creditors to File Adversary Proceeding to Determine Nondischargeability of Certain Debts under Section 523(a)(2), (4), or (6)

Creditors who allege that their debts were incurred by fraud or other misconduct (including the submission of false financial statements, a breach of a fiduciary duty, embezzlement, or willful injury to person or property) may file an adversary proceeding and seek to have the bankruptcy court declare the debt nondischargeable. 11 USC § 523(c). Such an action must be filed within 60 days after the first date set for the meeting of creditors. FRBP 4007(c). The time may be extended on motion made by a party in interest before the expiration of the 60-day period. 11 USC § 523(d). This deadline also applies to nondischargeability claims based on credit obtained for more than \$650 worth of luxury goods within 90 days before the bankruptcy filing and cash advances aggregating more than \$925 within 70 days before the bankruptcy filing. 11 USC § 523(a)(2)(C). *See* § 11.18C.

§ 11.18E(7) Sixty-Day Deadline for Filing Adversary Proceeding for Denial of Discharge under Section 727

An adversary proceeding or motion seeking to deny the debtor’s discharge in its entirety based on fraud, other misconduct, or disqualification specified in 11 USC section 727 must be filed within 60 days after the date first set for the meeting of creditors. FRBP 4004(a). The time may be extended on motion made by a party in interest before the expiration of the 60-day period. FRBP 4004(b).

§ 11.18E(8) Ninety-Day Deadline for Creditors to File Proof of Claim (Unless Case Is Designated a No-Asset Case)

In most bankruptcy cases in which the debtor has assets to be administered, the Notice of Bankruptcy will state that all creditors—except for certain taxing authorities and governmental units—must file their proofs of claim within 90 days after the first date set for the meeting of creditors. FRBP 3002(c). In a “no asset” Chapter 7 case, the Notice of Bankruptcy may expressly tell creditors not to file

claims unless they receive a subsequent notice from the court to do so, after the trustee has located assets to administer for the benefit of creditors. FRBP Official Form B 9A. Also, in many large, complex Chapter 11 cases, the bar dates for filing claims will be scheduled by the court after consultation with the Chapter 11 debtor-in-possession and the creditors’ committee, and a special notice of each claim’s bar date will be sent.

PRACTICE TIP: It is always best to assume that the bar date for filing a proof of claim is 90 days from the date first set for the meeting of creditors, and filing a creditor’s proof of claim within this time period cannot hurt.

§ 11.18E(9) Enforcement of Individual Debtor’s Section 521 Statement of Intent

If an individual debtor’s schedule of assets and liabilities includes debts that are secured by property of the estate, the debtor must file a statement of intention setting forth an individual debtor’s intent to reaffirm, redeem, or surrender the property not later than 30 days after the filing of the bankruptcy petition. 11 USC § 521(a)(2). If the debtor fails to file the statement of intention or fails to perform the stated intentions within the time specified in 11 USC section 521(a)(2), the automatic stay is terminated as to the collateral, and it is no longer property of the estate. 11 USC § 362(h).

§ 11.18E(10) Notice of Time to File Claims

It is worth repeating that a special “Notice of Time to File Claims” may be sent to creditors and parties in interest in “no-asset” cases after the trustee has discovered assets to be administered for the benefit of general creditors. On the Official Form Notice of Bankruptcy for “no asset” Chapter 7 cases, creditors are told not to file claims unless they receive a notice to do so. FRBP Official Form B 9A. Also, special bar dates may be established in complex, larger reorganization cases in which the debtor-in-possession and the creditors’ committee for administrative reasons decide to set (upon special notice to creditors and parties in interest) specific bar dates for the filing of creditors’ claims, and, in some cases, even identifying special bar dates for certain types of claims such as administrative priority claims.

§ 11.18E(11) Time for Creditor to Respond to Objection to Proof of Claim Filed by Trustee, Debtor-in-Possession, or Debtor

The bankruptcy trustee, the debtor-in-possession (DIP), and the debtor all have the duty to inspect all filed proofs of claim for accuracy and validity. Typically, the trustee in liquidation cases, the DIP in reorganization cases, and the Chapter 13 trustee will conduct a claims audit after the bar date for filing claims has passed. If a claim appears inaccurate or invalid, a written objection to the claim, stating the grounds for the objection, is filed with the court. The creditor is notified by mail of the objection on a form notice of objection to claim, which

typically requires the creditor to respond to the objection and request a hearing in writing filed with the court within 30 days after a date specified on the notice. The claim objection must be served 30 days before any hearing on the objection. FRBP 3007. That is why the claim objection forms specify that the creditor has 30 days to respond to the objection and request a hearing in writing. If the creditor fails to respond, an order sustaining the objection will be entered.

§ 11.18E(12) Time for Assumption or Rejection of Unexpired Nonresidential Leases

Section 365(d)(4) of the Bankruptcy Code seeks to protect commercial landlords by minimizing the amount of time that the debtor-in-possession or the trustee has to decide whether to assume or reject an unexpired lease as follows:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

- (i) the date that is 120 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 USC § 365(d)(4)(B).

§ 11.18E(13) Landlord’s Administrative-Rent Claim; Cap on Landlord’s Forward-Rent Claim

A landlord may have up to three different kinds of claims in a bankruptcy case: a claim for prepetition unpaid rent, a claim for postpetition administrative rent since the bankruptcy petition date, and a forward claim for the rent due on the remainder of the lease (assuming that the lease is rejected and the premises are returned to the landlord). 11 USC § 502(b)(6). The prepetition, unpaid-rent claim and the forward-rent claim are both treated as prepetition general claims to which the proof-of-claim filing deadlines apply. 11 USC § 501, 11 USC § 502(b)(6). The debtor-in-possession (DIP) or trustee must pay administrative rent (postpetition rent) as it comes due for as long as the premises are occupied by the DIP or trustee, and the landlord should take immediate steps by filing a motion in the bankruptcy court for payment of such rent or return of the premises. 11 USC § 503(a).

The forward-rent claim has a statutory cap on it. *See* 11 USC § 503(b)(7). The claim will not be allowed if such claim is the claim of a lessor for damages

resulting from the termination of a lease of nonresidential real property, and such claim exceeds:

- (A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—
 - (i) the date of the filing of the petition; and
 - (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
- (B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates.

11 USC § 502(b)(6) (cited in 11 USC § 503(b)(7)).

§ 11.18E(14) Treatment of Reclamation Claims Held by Sellers of Goods to Debtor

In 1994, Congress addressed the concerns of trade creditors who claimed they often had insufficient notice to exercise their reclamation rights when a debtor files bankruptcy. The Bankruptcy Code was amended to give trade creditors extra time to exercise reclamation rights after the commencement of a bankruptcy case. Section 546(c) of the Bankruptcy Code provides as follows:

- (1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller’s business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—
 - (A) not later than 45 days after the date of receipt of such goods by the debtor; or
 - (B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.
- (2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

11 USC § 546(c).

§ 11.18E(15) Treatment of Section 503(b)(9) Administrative Claims of Sellers of Goods to Debtor

The Bankruptcy Code provides an administrative priority for creditors who sell goods (not services) to the debtor within 20 days before the bankruptcy petition is filed. 11 USC § 503(b)(9). Entitlement to priority under 11 USC section 503(b)(9) may mean the difference between receiving nothing on account of the

seller’s claim and being paid 100 percent of the value of the goods delivered in the 20-day period before the debtor’s bankruptcy. The creditor must claim and prove:

- (1) That the creditor sold goods to the bankrupt customer;
- (2) That these goods were received by the debtor within 20 days prior to its bankruptcy filing;
- (3) That the goods were sold to the debtor in the ordinary course of the debtor’s business; and
- (4) The value of the goods sold to the debtor.

§ 11.18E(16) Treatment of Construction Lien Claims or Miller Act and Little Miller Act Bond Claims Subject to Statutes of Duration in Bankruptcy Cases

Although the automatic-stay provisions of the Bankruptcy Code prevent most actions against the debtor’s property, a limited exception permits a creditor to perfect certain statutory liens as long as the creditor acquired its rights in the property before the act of perfection takes place. 11 USC § 362(b)(3) (stay), 11 USC § 546(b) (limitations on avoidance powers).

In 1986, the United States Bankruptcy Court for the District of Oregon suggested that construction liens are not created until they are recorded, leading to the conclusion that postpetition perfection by recording a lien claim was not available to creditors under 11 USC section 362. *See In re N. Side Lumber Co.*, 59 BR 917, 922 (Bankr D Or 1986), *aff’d*, 83 BR 735 (BAP 9th Cir 1987), *aff’d sub nom Indus. Indem. Co. v. Seattle-First Nat. Bank*, 865 F2d 264, *aff’d*, 865 F2d 264 (9th Cir 1988) (citing *Phillips v. Graves*, 139 Or 336, 9 P2d 490 (1932)). In response, the 1987 Legislature amended ORS chapter 87 to provide that construction-lien rights are created on the claimant’s delivery of materials or the performance of labor to fit within the perfection exception to the automatic stay. Thus, ORS 87.010 establishes that the providing of labor, materials, or services causes the lien to attach, and ORS 87.035(2) establishes that the filing of the lien is the act of perfection, which does not violate the stay.

The same law and logic apply to the service of bond claims under the Miller Act pursuant to 40 USC sections 3131 to 3134 (the claimant has 90 days after last performing work or delivering materials to serve the notice of a bond claim (*see* 40 USC § 3133)), as well as service of bond claims under Oregon’s Little Miller Act pursuant to ORS 279C.600 to 279C.670 (the claimant has 180 days after last performing work or delivering materials to serve the notice of bond claim on projects that were commenced on or after May 26, 2009—120 days for projects that were commenced before May 26, 2009 (*see* ORS 279C.605)).

A bankruptcy court may consider that postlien notices are not part of the perfection of the lien. Thus, creditors should consider whether to obtain relief from the stay in order to send these notices. Aside from their main purpose of giving

notice to affected parties, a significant purpose of these notices (including the 10-day notice of intent to foreclose) is to preserve the lien claimant’s ability to recover attorney fees in a foreclosure action. ORS 87.039(2), ORS 87.057(3).

If the bankruptcy occurs after the lien is recorded but before the notices are served (or the notices are served without knowledge of the bankruptcy and, thus, may be void), the lien claimant must move quickly or he or she may lose the ability to recover attorney fees. The order granting relief from the stay should explicitly permit service of both the notice of filing a claim of lien (ORS 87.039) and the notice of intent to foreclose (ORS 87.057), and also allow a waiver of the additional 14-day stay provided by FRBP 4001(a)(3).

If obtaining timely relief from stay is not possible, or if the bankruptcy is not immediately discovered, the lawyer should consider filing and serving a notice under 11 USC section 546(b)(2). Once the lien claimant has perfected its claim, the next step in nonbankruptcy scenarios is to file a foreclosure action within 120 days from the date of recording. ORS 87.055. Yet, with the debtor in bankruptcy, the lien claimant is stayed from filing a foreclosure. A foreclosure action filed postpetition without relief from stay is void and ineffective to continue perfection of the lien. *See, e.g., In re Baldwin Builders*, 232 BR 406, 410–11 (BAP 9th Cir 1999) (a postpetition action to foreclose a California mechanic’s lien did not continue perfection). Instead, the issue is resolved under section 546(b) of the Bankruptcy Code, which provides that the construction lien is continued by giving notice within the time required by applicable law. 11 USC § 546(b). The notice is commonly referred to as a Section 546(b)(2) notice. The giving of the notice tolls the time frame for foreclosing the lien until the automatic stay expires or otherwise ends. Once the automatic stay ends, the deadline for filing the lien-foreclosure action will be tolled for only 30 days after notice of termination or expiration of the stay. 11 USC § 108(c). The automatic stay may cease as a result of obtaining relief from stay, the dismissal or closure of the bankruptcy case, the grant or denial of discharge, or an abandonment of the property by the bankruptcy estate. *See* 11 USC § 362(c). Caution dictates that a lien claimant should monitor the bankruptcy and file the lien-foreclosure action within the 30-day tolling period of 11 USC section 108(c). *See* 2 *Construction Law* ch 15 (OSB Legal Pubs 2011).

Section 546(b)(2) notices are also given to preserve bond-claim rights under the Miller Act and Oregon’s Little Miller Act when the action on the bond must be commenced within a certain time frame after the bond claimant last performed work or delivered materials on the job (Miller Act—within one year after the claimant last performed work (*see* 40 USC § 3133(b)(4)); Oregon’s Little Miller Act—within two years after the claimant last performed work (*see* ORS 279C.610)).

§ 11.18E(17) Creditor’s Motion for Relief from Automatic Stay

One of the hallmarks of the bankruptcy remedy is to stop all forced collection activity (including seizures and foreclosures) to allow the debtor time to reorganize or to conduct an orderly liquidation and distribution of the debtor’s assets. The principal tool in the Bankruptcy Code to accomplish the imposition of a breathing spell is the automatic stay that arises upon the filing of the bankruptcy petition under 11 USC section 362.

Creditors seeking relief from the automatic stay to complete foreclosure or other collection activity must file a motion and seek a hearing before the bankruptcy court. *See* 11 USC § 362(d). The court must conduct a preliminary hearing on the motion within 30 days after the motion is filed to evaluate the issues for the final hearing. 11 USC § 362(e)(1). The Bankruptcy Code mandates that the final hearing on the motion for relief from stay must occur within 60 days after the motion is filed, unless the deadline is waived by the creditor who filed the motion. 11 USC § 362(e)(2).

§ 11.18E(18) Single-Asset Real Estate Cases

The bankruptcy court may grant a creditor relief from stay with respect to single-asset real estate (as defined by 11 USC section 101(51B)) unless, not later than 90 days after entry of the order for relief (usually, the petition date) or 30 days after the date the bankruptcy court determines that the debtor is subject to the single-asset real estate provisions in 11 USC section 362(d)(3), whichever date is later, the debtor has either:

(1) Filed a plan of reorganization that “has a reasonable possibility of being confirmed within a reasonable time”; or

(2) Started making monthly payments of interest only to the debtor’s secured creditors, using the nondefault rate of interest under the loan documents.

11 USC § 362(d)(3).

If the debtor fails to comply with either of these requirements, the bankruptcy court should grant the secured creditor’s motion for relief from the automatic stay to permit foreclosure of the real estate.

§ 11.18F Resources

See generally Bankruptcy Law (Oregon CLE 1999 & Supp 2007).

Chapter 12

CONSUMER LAW

TODD A. STRUBLE, B.A., Oregon State University (2004); J.D., Lewis & Clark Law School (2009); member of the Oregon State Bar since 2010; attorney, Law Office of Todd Struble, Lake Oswego.

§ 12.1	MOTOR VEHICLES	12-2
§ 12.1A	Transfer of Title	12-2
§ 12.1A(1)	Transferee Must Submit Application for Title.....	12-2
§ 12.1A(2)	Failure to Deliver Documents on Transfer of Interest in Vehicle	12-3
§ 12.1B	Records.....	12-3
§ 12.1C	Security Interest in Vehicle.....	12-3
§ 12.1C(1)	Delivery or Presentment of Certificate of Title	12-3
§ 12.1C(2)	Satisfaction of Security Interest	12-4
§ 12.1C(3)	Release of Security Interest.....	12-4
§ 12.1C(4)	Penalty for Late Presentation of Title	12-4
§ 12.1C(5)	Application of Uniform Commercial Code	12-5
§ 12.1D	Warranties on Sale of Vehicle.....	12-5
§ 12.1D(1)	Implied Warranty	12-5
§ 12.1D(2)	Express Warranty	12-5
§ 12.1D(3)	Breach of Warranty	12-5
§ 12.1E	References	12-5
§ 12.2	SECURED TRANSACTIONS (UCC ARTICLE 9).....	12-6
§ 12.3	UNLAWFUL TRADE PRACTICES.....	12-6
§ 12.3A	Public Prosecution.....	12-6
§ 12.3A(1)	Suit to Enjoin Unlawful Trade Practice	12-6
§ 12.3A(2)	Temporary Restraining Order	12-6
§ 12.3A(3)	Investigative Demand.....	12-6
§ 12.3B	Private Action.....	12-7
§ 12.3C	References	12-7
§ 12.4	UNLAWFUL DEBT COLLECTION PRACTICE.....	12-7
§ 12.4A	Action to Enjoin Practice or Recover Damages.....	12-7

§ 12.4B	References	12-8
§ 12.5	ANTITRUST LAW	12-8
§ 12.6	FRANCHISE TRANSACTIONS.....	12-8
§ 12.6A	Action by Buyer	12-8
§ 12.6B	References	12-8
§ 12.7	CONSUMER ISSUES ARISING UNDER UNIFORM COMMERCIAL CODE	12-9
§ 12.7A	Breach of Contract or Warranty under Article 2 (Sales).....	12-9
§ 12.7A(1)	Breach of Contract	12-9
§ 12.7A(2)	Breach of Warranty	12-9
§ 12.7A(2)(a)	In General.....	12-9
§ 12.7A(2)(b)	Attorney Fees in Consumer-Warranty Action	12-9
§ 12.7B	References	12-10
§ 12.8	CREDIT REPAIR ORGANIZATIONS ACT	12-10
§ 12.8A	Statute of Limitations	12-10
§ 12.8B	References	12-10

§ 12.1 MOTOR VEHICLES

§ 12.1A Transfer of Title

§ 12.1A(1) Transferee Must Submit Application for Title

Except as provided in ORS 803.092(2), on the transfer of any interest in a vehicle covered by an Oregon title, the transferee must submit an application for title to the Department of Transportation within 30 days of the transfer. ORS 803.092(1).

Application is not required, however, when:

(1) The “change involves only a change in the security interest” when the holder or lessor is an entity described in the statute (e.g., a financial institution, a financial holding company, or a bank holding company) and the transfer (a) “[r]esults from the merger, conversion, reorganization, consolidation or acquisition of the security interest holder or lessor”; (b) “[i]s to an entity that is a member of the same affiliated group as the security holder or lessor”; or (c) “[i]s made in connection with a transfer in bulk,” ORS 803.092(2)(a);

(2) “The vehicle is transferred to a vehicle dealer and the vehicle will become part of the dealer’s inventory for resale,” ORS 803.092(2)(b);

(3) “The vehicle is to be titled in another jurisdiction,” ORS 803.092(2)(c);

(4) “The vehicle has been totaled, wrecked, dismantled, disassembled, substantially altered or destroyed,” ORS 803.092(2)(d); or

(5) The transfer involves a leasehold interest in the vehicle, ORS 803.092(2)(e).

§ 12.1A(2) Failure to Deliver Documents on Transfer of Interest in Vehicle

Except as provided in ORS 803.092 (*see* § 12.1A(1)), a person’s failure to deliver vehicle documents on the transfer of an interest in a vehicle is a Class D traffic violation. ORS 803.105(2). The following paragraphs are examples of documents that must be delivered on the transfer of a vehicle.

On the transfer of title to a motor vehicle or any interest in a vehicle, the transferee—other than a vehicle dealer—must present the certificate of title to the Driver and Motor Vehicle Services Division (DMV) of the Department of Transportation within 30 days after the transfer. A transferee who fails to do so may be required to pay a late-presentation fee. ORS 803.105(1)(a). *See* OAR 735-020-0050.

On the transfer of a title or any interest in a vehicle to a vehicle dealer, the dealer must notify the DMV immediately that the vehicle has been transferred to the dealer. ORS 803.105(1)(b).

On the creation of a leasehold interest in a vehicle, the lessor or holder must present the certificate of title to the DMV within 30 days of the transfer. ORS 803.105(1)(c).

On the termination of a leasehold interest, the lessor must deliver the certificate of title to the DMV within 30 days of the termination. ORS 803.105(1)(d).

On the creation of a leasehold interest in commercial vehicles that are proportionally registered under ORS 826.009 or ORS 826.011, the lessee must furnish the DMV with satisfactory proof of the lease. ORS 803.105(1)(e).

See OAR 735-020-0050 (fees for late presentation of title), OAR 735-020-0060 (good-faith effort to deliver documents; circumstances beyond the person’s control).

§ 12.1B Records

See § 2.13I regarding court proceedings relating to vehicle laws.

§ 12.1C Security Interest in Vehicle

§ 12.1C(1) Delivery or Presentment of Certificate of Title

When a security interest is created in a vehicle and the owner or lessor is in possession of a certificate of title, the owner or lessor must deliver the certificate of title to the person in whom the security interest is created. ORS 803.105(1)(f).

NOTE: This statute does not apply if “the debtor who granted the security interest is in the business of selling vehicles and the vehicle is inventory held for sale.” ORS 803.105(1)(f).

If a security interest is created in a vehicle when a prior security interest holder is in possession of the certificate of title, the owner or lessor must either provide for the delivery of the certificate of title to the person in whom the security was created or arrange for the delivery of the certificate of title to the Driver and Motor Vehicle Services Division (DMV) of the Department of Transportation by the prior security interest holder. ORS 803.105(1)(g).

NOTE: This statute does not apply if “the debtor who granted the security interest is in the business of selling vehicles and the vehicle constitutes inventory held for sale.” ORS 803.105(1)(g).

On the creation of a security interest in a vehicle, “a person in whom a security interest was created and who receives a certificate of title showing the interest from the person granting the security interest must present the certificate of title to the [DMV] within 30 days after receiving the certificate of title.” ORS 803.105(1)(h).

§ 12.1C(2) Satisfaction of Security Interest

Within 15 calendar days of satisfaction of a security interest in a vehicle, a security interest holder who is in possession of the certificate of title must “deliver the certificate of title and the release contained [on the certificate] to the security interest holder next named, if any, otherwise to the lessor or, if none, to the owner.” ORS 803.105(1)(i)(A).

If the security interest holder is not in possession of the certificate of title, the security interest holder must deliver a release of the security interest to the person entitled to a release. ORS 803.105(1)(i)(B). *See* § 12.1C(3) (release).

§ 12.1C(3) Release of Security Interest

If the person who receives a release of a security interest in a vehicle is not in possession of the certificate of title, the person must promptly deliver the release to the holder of the certificate. ORS 803.105(1)(j). The holder of the certificate of title and the release must then present both the certificate and the release to the Driver and Motor Vehicle Services Division of the Department of Transportation within 30 days after the date of the release. ORS 803.105(1)(k).

NOTE: These statutes do not apply if “the debtor who granted the security interest is in the business of selling vehicles and the vehicle constitutes inventory held for sale.” ORS 803.105(1)(j)–(k).

§ 12.1C(4) Penalty for Late Presentation of Title

The failure to deliver vehicle documents to the Driver and Motor Vehicle Services Division of the Department of Transportation on the transfer of an interest in a vehicle is a Class D traffic infraction. ORS 803.105(2). *See* OAR 735-

020-0050 (fees for late presentation of title), OAR 735-020-0060 (good-faith effort to deliver documents; circumstances beyond the person's control).

§ 12.1C(5) Application of Uniform Commercial Code

Except as provided in ORS 803.100(2), the rights and remedies of all persons in vehicles subject to security interests created under ORS 803.097 are determined under the Uniform Commercial Code. ORS 803.100(1).

However, if perfection of a security interest in a vehicle occurs within 30 days after attachment of the security interest, “the secured party takes priority over the rights of a transferee in bulk or a lien creditor that arise between the time the secured party’s interest attaches and the time of perfection of the security interest.” ORS 803.100(2)(a).

NOTE: ORS 803.100(2)(a) applies only to a “security interest in a vehicle that is not a purchase money security interest.” ORS 803.100(2)(b).

§ 12.1D Warranties on Sale of Vehicle

§ 12.1D(1) Implied Warranty

When “no express warranty is made or the duration of an express warranty is not stated,” the implied warranty of merchantability or, if applicable, the implied warranty of fitness expires one year after the sale of a motor vehicle to a retail buyer or after 12,000 miles of use, whichever occurs first. ORS 72.8070(2)(b).

§ 12.1D(2) Express Warranty

If an express warranty of a stated duration is made on the sale of a vehicle to a retail buyer, “the implied warranty of merchantability or, if applicable, the implied warranty of fitness endures for not less than 60 days after the sale and for the duration of the express warranty or the duration prescribed for the good under [ORS 72.8070(2)], whichever occurs first.” ORS 72.8070(3).

Under ORS 72.8070(2)(b), the implied warranty of fitness expires one year after the sale of a motor vehicle to a retail buyer or after 12,000 miles of use, whichever occurs first.

§ 12.1D(3) Breach of Warranty

An action for the breach of an implied warranty relating to the sale of a consumer good is subject to the statute of limitations in Article 2 of the Uniform Commercial Code, ORS 72.7250 (four years, or less by terms of the contract). See § 14.3A(3)(a) to § 14.3A(3)(c) regarding breach-of-warranty claims. See also § 14.3A(4) regarding the accrual of a cause of action (discussing ORS 72.7250(2) and *Permapost Products Co. v. Osmose, Inc.*, 200 Or App 699, 707, 116 P3d 909 (2005)).

§ 12.1E References

See Consumer Law in Oregon chs 10, 17 (OSB Legal Pubs 2013).

§ 12.2 SECURED TRANSACTIONS (UCC ARTICLE 9)

See § 11.15A to § 11.15T regarding secured transactions under Article 9 of the Uniform Commercial Code.

§ 12.3 UNLAWFUL TRADE PRACTICES

§ 12.3A Public Prosecution

§ 12.3A(1) Suit to Enjoin Unlawful Trade Practice

For probable cause, a prosecuting attorney may bring an action against a person alleged to be engaged in an unlawful trade practice in order to restrain the person from engaging in the practice. ORS 646.632(1).

Before filing a suit, the prosecutor must notify the person charged of the alleged unlawful trade practice and the relief to be sought. The notice must be in writing and be served in the manner set forth in ORS 646.622. ORS 646.632(2). *But see* § 12.3A(2) (discussing the court’s authority to grant a temporary restraining order without prior notice).

The person charged has 10 days to execute and deliver an assurance of voluntary compliance. On the expiration of 10 days from service of the notice, the prosecuting attorney’s notice is deemed a public record. ORS 646.632(2).

If the prosecuting attorney is satisfied with the assurance of voluntary compliance, it is submitted to the court for its approval. ORS 646.632(2).

If the assurance of voluntary compliance provides for the payment of money in a lump sum, the lump-sum payment must be made within 90 days of the court’s approval of the assurance. ORS 646.632(2). If the assurance requires periodic payments of money on specified dates, any periodic payment must be made within 30 days of the date specified. ORS 646.632(2). If any payment is not made within the applicable timeframe, “the prosecuting attorney may submit that portion of the assurance of voluntary compliance which provides for the payment of money to the court with a certificate stating the unpaid balance.” ORS 646.632(2). The unpaid balance becomes a civil judgment in favor of the state. ORS 646.632(2).

§ 12.3A(2) Temporary Restraining Order

The court may grant a temporary restraining order (TRO) without prior notice if the court finds that an unlawful trade practice presents a “threat of immediate harm to public health, safety or welfare.” ORS 646.632(7). Unless extended, the TRO may not exceed 10 days. ORS 646.632(7).

§ 12.3A(3) Investigative Demand

A prosecutor who believes that a person has information or evidence relevant to an unlawful trade practice may serve a written investigative demand on that person requiring him or her to testify, answer interrogatories, or produce documents or other evidence. ORS 646.618(1).

“At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter,” a person served with an investigative demand may petition an appropriate court to extend the return date specified on the demand or to modify or set aside the demand. ORS 646.618(2).

§ 12.3B Private Action

(1) *Action arising out of unlawful trade practice.* A person who suffers “an ascertainable loss of money or property” as a result of the willful use of an unlawful trade practice under ORS 646.608 may bring an action to recover “actual damages or statutory damages of \$200, whichever is greater.” ORS 646.638(6).

(2) *Ascertainable loss.* “Ascertainable loss” means “capable of being discovered, observed or established” and probably does not include emotional harm. *Creditors Protective Ass’n, Inc. v. Britt*, 58 Or App 230, 233–34, 648 P2d 414 (1982) (quoting *Scott v. W. Int’l Surplus Sales, Inc.*, 267 Or 512, 515, 517 P2d 661 (1973)).

(3) *Statute of limitations.* An action based on an unlawful trade practice must be commenced within one year after the discovery of the unlawful practice. ORS 646.638(6).

(4) *Counterclaim.* However, notwithstanding the one-year limitations period, when an action is initiated by a seller or lessor, the defending purchaser or lessee may assert any counterclaim arising out of a violation of ORS 646.605 to 646.652 (the statutes pertaining to unlawful trade practices). ORS 646.638(7).

(5) *Efforts to discourage plaintiff’s investigation.* When an unlawful trade practice is followed by representations or assurances tending to discourage a plaintiff’s investigation into the unlawful practice, the one-year limitations period begins to run from the time of these later representations or assurances. *McCulloch v. Price Waterhouse LLP*, 157 Or App 237, 247–50, 971 P2d 414 (1998), *rev den*, 328 Or 365 (1999).

(6) *Tolling.* The statute of limitations for private actions is tolled by the filing of a complaint by the state to restrain or punish the unlawful trade practice. ORS 646.638(6).

§ 12.3C References

See 1 Consumer Law in Oregon ch 4 (OSB Legal Pubs 2013).

§ 12.4 UNLAWFUL DEBT COLLECTION PRACTICE

§ 12.4A Action to Enjoin Practice or Recover Damages

(1) *Action relating to unlawful collection practice.* “Any person injured as a result of willful use or employment by another person of an unlawful [debt] collection practice may bring an action . . . to enjoin the practice or to recover actual damages or \$200, whichever is greater.” ORS 646.641(1). Actual damages

may include compensation for emotional harm. *Creditors Protective Ass'n, Inc. v. Britt*, 58 Or App 230, 233–34, 648 P2d 414 (1982).

(2) *Statute of limitations.* An action brought under ORS 646.641 alleging an unlawful debt collection practice must be commenced within one year from the date of the injury. ORS 646.641(3).

(3) *Counterclaim.* However, notwithstanding the one-year limitations period, when an action is initiated by a seller or lessor, the defending purchaser or lessee may assert any counterclaim arising out of a violation of ORS 646.605 to 646.652 (the statutes pertaining to unlawful trade practices). ORS 646.638(7).

(4) *When limitations period begins to run.* When a defendant's unlawful trade practice is followed by cover-up attempts in the nature of an unlawful debt collection practice, the date of the latter wrong controls for purposes of the limitations period. *Bennett v. Reliable Credit Ass'n, Inc.*, 125 Or App 531, 535, 865 P2d 496 (1993).

(5) *Federal law.* An action under the federal Fair Debt Collection Practices Act must be brought within one year from the date on which the violation occurred. 15 USC § 1692k(d).

§ 12.4B References

See 2 Consumer Law in Oregon ch 23 (OSB Legal Pubs 2013).

§ 12.5 ANTITRUST LAW

The Attorney General may investigate, and bring an action against, any person suspected of violating Oregon's antitrust laws. *See* ORS 646.750, ORS 646.760, ORS 646.800. For further discussion, see § 10.1A to § 10.1B(1).

Any person (including the state or any political subdivision) "injured in its business or property by a violation of [Oregon's antitrust laws] may sue for the injury." ORS 646.780(1). The action must be commenced within four years after the cause of action accrued, or within one year after the conclusion of any proceeding by the United States under federal antitrust laws (except 15 USC § 15a) or by the state under certain state antitrust laws, whichever is later. ORS 646.800(2). Treble damages may be recovered in such an action. ORS 646.780(1).

§ 12.6 FRANCHISE TRANSACTIONS

§ 12.6A Action by Buyer

A buyer must commence an action against a franchise seller who violates ORS 650.020 (fraud or material misrepresentations or omissions) within three years after the sale of the franchise. ORS 650.020(6).

§ 12.6B References

See generally 4 Advising Oregon Businesses chs 67–68 (Oregon CLE 2003 & Supp 2009).

§ 12.7 CONSUMER ISSUES ARISING UNDER UNIFORM COMMERCIAL CODE

Many consumer-related issues arise under the Uniform Commercial Code (UCC). This chapter briefly discusses UCC Article 2—Sales (*see* § 12.7A(1) to § 12.7A(2)(b)). Other provisions of the UCC are discussed elsewhere. *See* § 14.3B(1) to § 14.3B(7) (Article 3—Commercial Paper), § 14.3C(1) to § 14.3C(6) (Article 4—Bank Deposits and Collections), § 11.14B(1)(a) to § 11.14B(4) (Article 7—Warehouse Receipts, Bills of Lading, and Other Documents of Title), § 11.14C(1) to § 11.14C(4) (Article 8—Investment Securities), § 11.15A to § 11.15T (Article 9—Secured Transactions).

§ 12.7A Breach of Contract or Warranty under Article 2 (Sales)

§ 12.7A(1) Breach of Contract

An action for the breach of a contract for sale of a consumer good must be commenced within four years after the cause of action accrues, unless the parties reduce the period by agreement. ORS 72.7250(1). *See* § 14.3A(3)(a) to § 14.3A(3)(b) for further discussion.

§ 12.7A(2) Breach of Warranty

§ 12.7A(2)(a) In General

In the sale of a consumer good to a retail buyer, an implied warranty of merchantability or, if applicable, an implied warranty of fitness endures for one year after the sale. ORS 72.8070(2)(a).

However, if the good is a motor vehicle, the warranty expires one year after the sale or after 12,000 miles of use, whichever occurs first. ORS 72.8070(2)(b).

If an express warranty of a stated duration is made, the implied warranty of merchantability or fitness endures for at least 60 days after the sale and for the duration of the express warranty, or for the duration specified in ORS 72.8070(2), whichever occurs first. ORS 72.8070(3).

For further discussion on breach-of-warranty actions, *see* § 14.3A(6)(a) to § 14.3A(6)(c).

CAVEAT: The limitations periods for products-liability actions, not the four-year limitations period set forth in the Uniform Commercial Code, may apply to a breach-of-warranty action arising out of a defective product. *See* § 14.3A(6)(a) and § 7.16 to § 7.16F(7).

§ 12.7A(2)(b) Attorney Fees in Consumer-Warranty Action

To obtain attorney fees or expert witness fees in a consumer-warranty action when the amount pleaded is \$2,500 or less, the plaintiff must prevail and must have made a written demand for payment of the claim on the defendant not less than 30 days before the action was commenced, and the defendant must have

had a reasonable opportunity to inspect the item within that 30-day period. ORS 20.098(1).

If the court finds the action to have been frivolous, a defendant may be awarded attorney fees and expert witness fees if the defendant prevails and the plaintiff had requested fees. ORS 20.098(2).

§ 12.7B References

See 2 Consumer Law in Oregon chs 10, 16 (OSB Legal Pubs 2013).

§ 12.8 CREDIT REPAIR ORGANIZATIONS ACT

§ 12.8A Statute of Limitations

An action to enforce a liability under the Credit Repair Organizations Act may be brought before the later of the following time periods:

(1) Five years after the occurrence of the violation, 15 USC § 1679i(1);
or

(2) If the credit repair organization has materially and willfully misrepresented any information that it is required to disclose and the misrepresentation is material to the claim, five years after the consumer discovers the misrepresentation, 15 USC § 1679i(2).

See Zimmerman v. Cambridge Credit Counseling Corp., 322 F Supp 2d 95, 99 (D Mass 2004), *vac'd and rem'd on other grounds*, 409 F3d 473 (1st Cir 2005).

§ 12.8B References

See 2 Consumer Law in Oregon ch 27 (OSB Legal Pubs 2013).

Chapter 13

RESIDENTIAL TRUST DEEDS AND MORTGAGES; FORECLOSURE

PILAR C. FRENCH, B.A., Northwestern University (1992); J.D., Indiana University (1996); member of the Oregon State Bar since 1996; shareholder, Lane Powell PC, Portland.

The author would like to credit third-year law student, **Hans N. Huggler** (Lewis & Clark Law School) for assisting in checking the citations for this chapter.

§ 13.1	MORTGAGE DISTINGUISHED FROM TRUST DEED	13-3
§ 13.2	LIMITATIONS PERIOD FOR COMMENCING FORECLOSURE.....	13-4
§ 13.2A	In General.....	13-4
§ 13.2B	Limitations Period Does Not Bar Foreclosure in Certain Cases.....	13-4
§ 13.3	DISCHARGE OF MORTGAGE OR RECONVEYANCE OF TRUST DEED AFTER PERFORMANCE OF OBLIGATION.....	13-5
§ 13.3A	Discharge of Mortgage.....	13-5
§ 13.3B	Reconveyance or Release of Trust Deed	13-5
§ 13.3B(1)	Request for Reconveyance.....	13-5
§ 13.3B(2)	Release of Trust Deed; Notice	13-5
§ 13.4	PROVISIONS IN MORTGAGES OR TRUST DEEDS	13-6
§ 13.4A	Disclosure of Prepayment Penalty	13-6
§ 13.4B	Residential Line of Credit	13-6
§ 13.4C	Late Charges.....	13-6
§ 13.5	FORECLOSURE OF RESIDENTIAL TRUST DEEDS.....	13-7
§ 13.5A	Mandatory Mediation—Resolution Conferences	13-7
§ 13.5A(1)	Request for Resolution Conference	13-7
§ 13.5A(2)	Exemption from Mandatory Mediation	13-7
§ 13.5A(3)	Scheduling the Resolution Conference	13-8
§ 13.5A(4)	Certificate of Compliance Issued by Service Provider	13-9
§ 13.5B	Notice Regarding Foreclosure-Avoidance Measure; Penalties for Noncompliance	13-9
§ 13.5B(1)	Notice of Ineligibility for, or Breach of, Foreclosure-Avoidance Measure.....	13-9
§ 13.5B(2)	Penalties for Noncompliance with ORS 86.748	13-10

Chapter 13 / Residential Trust Deeds and Mortgages; Foreclosure

§ 13.5C	Affidavit or Certificate of Compliance	13-10
§ 13.5C(1)	Affidavit of Compliance Must Be Recorded before Nonjudicial Foreclosure	13-10
§ 13.5C(2)	Certificate of Compliance Must Be Attached to Complaint for Judicial Foreclosure	13-10
§ 13.5D	Notice Regarding Sale	13-10
§ 13.5D(1)	Notice to Grantor of Impending Sale	13-10
§ 13.5D(2)	Notice of Sale	13-11
§ 13.5D(2)(a)	Notice of Sale to Grantor and Other Interested Persons	13-11
§ 13.5D(2)(b)	Notice to Tenants Regarding Notice of Sale.....	13-11
§ 13.5D(2)(c)	Service of Notice of Sale on Occupant	13-11
§ 13.5D(2)(d)	Publication of Notice of Sale	13-12
§ 13.5D(2)(e)	Recording of Affidavits Regarding Notice of Sale	13-12
§ 13.5D(2)(f)	Notice to IRS If Property Is Subject to Federal Tax Lien	13-13
§ 13.5E	Request for Information	13-13
§ 13.5F	Cure of Default; Payment of Costs and Fees	13-13
§ 13.5G	Date, Time, and Place of Sale	13-14
§ 13.5H	Postponement of Sale	13-14
§ 13.5I	Amended Notice of Sale after Release from Stay	13-14
§ 13.5J	Payment after Sale; Delivery of Trustee's Deed	13-14
§ 13.5K	Rescission of Sale	13-15
§ 13.5L	Possession of Property after Sale	13-15
§ 13.5L(1)	When Purchaser Is Entitled to Possession of Property	13-15
§ 13.5L(2)	Obtaining Possession of Property	13-15
§ 13.5M	Failure to Give Notice of Sale	13-16
§ 13.5M(1)	Notice Not Given to Person with Lien or Interest Subsequent to Trust Deed	13-16
§ 13.5M(2)	Failure to Give Notice to Grantor	13-16
§ 13.6	SHERIFF'S SALE; REDEMPTION OF PROPERTY	13-17
§ 13.6A	Notice of Sale	13-17
§ 13.6B	Possession of Property	13-17
§ 13.6C	Confirmation of Sale	13-17

§ 13.6D	Redemption of Property	13-18
§ 13.6D(1)	Redemption by Mortgagor or Judgment Debtor	13-18
§ 13.6D(2)	Redemption by Lien Claimant	13-18
§ 13.6D(3)	Redemption Notice.....	13-18
§ 13.6D(4)	Objection or Response to Redemption Notice.....	13-19
§ 13.6D(4)(a)	Objection to Redemption Notice	13-19
§ 13.6D(4)(b)	Response to Notice: Objection to Redemption Amount or Request for Accounting.....	13-19
§ 13.6D(4)(c)	Objection to Response	13-19
§ 13.6D(5)	Payment of Redemption Amount.....	13-19
§ 13.6D(6)	Court Proceedings on Objections.....	13-20
§ 13.6D(6)(a)	Objection on Ground That Claimant Is Not Eligible to Redeem.....	13-20
§ 13.6D(6)(b)	Objection to Redemption Amount Claimed in Response	13-20
§ 13.6D(7)	Accounting	13-21
§ 13.6D(8)	Manner of Paying Redemption Amount	13-21
§ 13.6D(9)	Failure to Join Necessary Party.....	13-21
§ 13.6E	References	13-22

§ 13.1 MORTGAGE DISTINGUISHED FROM TRUST DEED

A mortgage of real property creates a lien or an encumbrance on the property, and does not transfer title. ORS 86.010. A mortgage lien is enforced by a statutory foreclosure suit and subsequent sale conducted by the sheriff. ORS 88.010. *See* § 13.6A to § 13.6E.

A trust deed is like a mortgage, except that the security holder may foreclose on the security interest—the property—either through a nonjudicial sale or through judicial foreclosure. *See* ORS 86.710, ORS 86.715 (“[a] trust deed is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of ORS 86.705 to 86.795”).

The time for commencing the foreclosure of a trust deed is the same as the time for commencing the foreclosure of a mortgage. *See* § 13.2A.

§ 13.2 LIMITATIONS PERIOD FOR COMMENCING FORECLOSURE

§ 13.2A In General

NOTE: The foreclosure of a trust deed, whether by advertisement and sale or by judicial foreclosure, must be commenced within the time, including extensions, allowed under ORS 88.110 and ORS 88.120 for the foreclosure of a mortgage on real property. ORS 86.815. (Note: The 2013 Legislature renumbered ORS 86.725 as ORS 86.815.)

Except as provided in ORS 88.120 (*see* § 13.2B), foreclosure proceedings must be commenced within 10 years from the later of the following dates: (1) the date on which the mortgage debt matures; (2) the date on which the mortgage debt expires; or (3) the date to which the mortgage payment has been extended by agreement of record. ORS 88.110.

NOTE: If neither the date of maturity nor the term of the debt is disclosed by the recorded mortgage or the recorded memorandum of mortgage, then the date that the recorded mortgage or memorandum was executed is deemed to be the date of maturity and expiration of the term of the mortgage. ORS 88.110.

If the mortgage and a memorandum or memoranda thereof are recorded and no date of maturity or statement of the term of the mortgage is contained in the record, then the date of execution of the earliest recorded document is used to determine the date of maturity and the expiration of the term of the debt. ORS 88.110.

After the expiration of the 10-year limitations period, the mortgage is “conclusively presumed paid and discharged,” and no suit may be maintained for its foreclosure. ORS 88.110.

See § 13.2B (discussing when foreclosure is not barred by ORS 88.110).

§ 13.2B Limitations Period Does Not Bar Foreclosure in Certain Cases

The foreclosure of a mortgage is not barred by the limitations period set forth in ORS 88.110 (*see* § 13.2A) when the mortgage is held by the State of Oregon, or when all the following facts exist at the time the foreclosure suit is commenced:

(1) “Any portion of the mortgage debt, or any interest thereon, has been voluntarily paid within the 10 years immediately preceding commencement of the suit,” ORS 88.120(1)(a);

(2) “The original mortgagor still owns the mortgaged property,” ORS 88.120(1)(b); and

(3) “No lien or right of a third person has attached to the property after the expiration of the 10-year period referred to in ORS 88.110,” ORS 88.120(1)(c).

§ 13.3 DISCHARGE OF MORTGAGE OR RECONVEYANCE OF TRUST DEED AFTER PERFORMANCE OF OBLIGATION

§ 13.3A Discharge of Mortgage

After full performance of the condition of the mortgage (before or after a breach), and within 30 days after a request and after tender of reasonable charges, the mortgagee or the mortgagee's personal representative or assignee must discharge the mortgage or execute and acknowledge a certificate of discharge or release. ORS 86.140.

The mortgagee's failure to do so renders the mortgagee "liable to the mortgagor, or the heirs or assigns of the mortgagor, in the sum of \$500 and also for all actual damages" caused by this failure. ORS 86.140.

§ 13.3B Reconveyance or Release of Trust Deed

§ 13.3B(1) Request for Reconveyance

Within 30 days after performance of the obligation secured by the trust deed, the beneficiary must deliver a written request to the trustee to reconvey the real property to the grantor. Within 30 days after delivery of the request, the trustee must reconvey the property to the grantor. If the beneficiary or the trustee fails to perform as requested, the party is liable, as provided in ORS 86.140 (*see* § 13.3A). ORS 86.720(1).

See § 13.3B(2) (release of the trust deed when a reconveyance has not been executed).

§ 13.3B(2) Release of Trust Deed; Notice

If a full reconveyance of a trust deed has not been executed and recorded pursuant to ORS 86.720(1) within 60 calendar days after the obligation secured by the trust deed was fully satisfied, then:

(1) If the obligation was satisfied through a title insurance company or insurance producer, that entity must execute and record a release of trust deed on the written request of the grantor, ORS 86.720(2)(a);

(2) Upon compliance with notice requirements, any title insurance company or insurance producer may execute and record a release of trust deed, ORS 86.720(2)(b).

Before issuing and recording the release, a title insurance company or insurance producer must notify the beneficiary of its intention to release the trust deed. The notice must provide that the party has 30 days from the date of mailing to send written objections to the release. ORS 86.720(3). The title insurance company or insurance producer may not record the release if the 30-day period following notice has not expired, or if it has received written objection to the release. ORS 86.720(6).

§ 13.4 PROVISIONS IN MORTGAGES OR TRUST DEEDS

§ 13.4A Disclosure of Prepayment Penalty

Any person making a loan with a loan period of more than three years secured by a mortgage or trust deed on real property in Oregon must “expressly and clearly state on the loan agreement and promissory note any maximum prepayment privilege penalty.” ORS 86.150(1). The statement must include “the maximum prepayment penalty applicable for prepayment during the first year of the loan period and for each year thereafter.” ORS 86.150(1).

A violation of this provision renders any prepayment penalty provision in the agreement void. ORS 86.150(2).

§ 13.4B Residential Line of Credit

A debtor may limit the indebtedness secured by a “residential line of credit instrument” to the amount of the credit outstanding by mailing or delivering a notice to the lien holder or trust deed beneficiary. ORS 86.155(4).

Within 20 days after receiving the notice, the lien holder or trust deed beneficiary must indorse on the notice the principal amount of indebtedness secured by the line of credit instrument on the date the notice was received, and must sign, acknowledge, and record the notice. ORS 86.155(5).

§ 13.4C Late Charges

No lender may impose a late charge on a mortgage or trust deed as described below:

(1) With respect to any periodic installment payment that it receives within 15 days after the due date; however, if the 15-day period ends on a weekend or legal holiday, the 15-day period is extended to the next business day, ORS 86.165(1);

(2) In a dollar amount greater than five percent of the delinquent installment plus interest, or in the amount provided in the note or mortgage, whichever is less, ORS 86.165(2);

(3) Unless the note or mortgage provides for payment of a late charge on delinquent periodic installments and the lender provides a monthly billing, coupon, or notice disclosing the date on which periodic installments are due and that a late charge may be imposed if payment is not received within 15 days, ORS 86.165(3); or

(4) “More than once on any single installment,” ORS 86.165(4).

§ 13.5 FORECLOSURE OF RESIDENTIAL TRUST DEEDS

§ 13.5A Mandatory Mediation—Resolution Conferences

§ 13.5A(1) Request for Resolution Conference

The 2013 Legislature enacted new statutes pertaining to the foreclosure of residential trust deeds. *See* ORS 86.726–86.741.

ORS 86.705(6) defines the term *residential trust deed* as

a trust deed on property upon which are situated four or fewer residential units, one of which the grantor, the grantor’s spouse or the grantor’s minor or dependent child occupies as a principal residence at the time the trust deed is recorded or, in the case of a purchase money loan, one of which is intended to be the principal residence of the grantor, the grantor’s spouse or the grantor’s minor or dependent child after the trust deed is recorded.

Unless exempt (*see* § 13.5A(2)), a beneficiary who wishes to foreclose on a residential trust deed must first request a “resolution conference” with the grantor before commencing the foreclosure—whether judicial or nonjudicial. ORS 86.726(1). *See* § 13.5A(3) (scheduling a resolution conference).

NOTE: The lawyer must be aware that the resolution-conference statutes apply whether the foreclosure is judicial or nonjudicial. *See* ORS 88.010(2)(a).

§ 13.5A(2) Exemption from Mandatory Mediation

The requirement to request or participate in a resolution conference with a grantor before the foreclosure of a residential trust deed does not apply to a beneficiary who follows the procedure outlined in ORS 86.726(1)(b)(A):

(1) The beneficiary must submit to the Attorney General a sworn affidavit stating that “the beneficiary did not commence or cause an affiliate, subsidiary or agent of the beneficiary to commence more than 175 actions to foreclose a residential trust deed” during the preceding calendar year;

(2) The affidavit must be submitted to the Attorney General either (a) no later than January 31 in any calendar year in which the exemption is claimed for the remainder of the year, (b) at the time the beneficiary files a notice of default under ORS 86.752, or (c) at the time the beneficiary commences a judicial foreclosure action.

An exemption expires at the end of the calendar year in which the beneficiary claims the exemption. ORS 86.726(1)(b)(B).

Even if exempt from the requirement to mediate, a beneficiary who evaluates a grantor for a foreclosure-avoidance measure still must comply with the requirements set forth in Oregon Laws 2012, chapter 112, section 4a (as amended by Oregon Laws 2013, chapter 304, section 9). ORS 86.726(1)(c).

See ORS 88.010(2)(a).

§ 13.5A(3) Scheduling the Resolution Conference

A beneficiary who wants to foreclose on a residential trust deed must request a resolution conference through the mediation service provider, and submit a fee set by the Attorney General. ORS 86.726(2); *see* ORS 88.010(2)(a).

If the beneficiary does not request a resolution conference, the grantor may do so if:

(1) The beneficiary is not exempt from the requirement to participate in a resolution conference, ORS 86.726(3)(a)(A) (*see* § 13.5A(2));

(2) A notice of default has not been filed or a foreclosure action has not already been started, ORS 86.726(3)(a)(A); and

(3) The grantor first obtains from a housing counselor a certification that the grantor is more than 30 days in default or, if not in default, is suffering from a financial hardship that the housing counselor believes may qualify the grantor for a foreclosure-avoidance measure, ORS 86.726(3)(a)(B).

Within 10 days after receiving a request for a resolution conference, the service provider must schedule the resolution conference and mail a notice to both the grantor and the beneficiary. The resolution conference must be scheduled to occur within 75 days after the date on which the service provider sends the notice. ORS 86.729(1)(a).

Within 25 days after the service provider sends the notice, the grantor must (1) pay a fee to the service provider in an amount not to exceed \$200, and (2) submit financial information to the service provider and a description of the financial hardship (if any). ORS 86.729(2)(b).

Within five days of receiving the fee from the grantor, the service provider must send a notice to both the grantor and the beneficiary scheduling the resolution conference. ORS 86.729(2)(a).

The grantor must consult with a housing counselor before attending the resolution conference, unless the grantor cannot obtain an appointment before that time. ORS 86.729(3).

Within 25 days after the service provider makes available to the beneficiary the information submitted by the grantor under ORS 86.729(2), the beneficiary must (1) pay a fee to the service provider in an amount not to exceed \$600, and (2) submit to the service provider documentation relating to its entitlement to foreclose and any foreclosure avoidance measures (if any). ORS 86.729(4).

Resolution conferences may be rescheduled if (1) both the beneficiary and the grantor agree to a new date; (2) the beneficiary or the grantor requests a new date in writing that is not more than 30 days after the original date scheduled, and can show good cause for the request; or (3) the beneficiary fails to pay the mediation fee when due. ORS 86.729(5)(a).

The service provider may wait to reschedule a resolution conference until the beneficiary has paid the mediation fee. ORS 86.729(5)(a). The service provider must cancel the resolution conference if the grantor does not pay the mediation fee by the due date. ORS 86.729(5)(b).

§ 13.5A(4) Certificate of Compliance Issued by Service Provider

The statutes governing the foreclosure of residential trust deeds require the facilitator of a resolution conference to submit a report to the service provider. ORS 86.732(4); *see* ORS 88.010(2)(a)(A).

Within five days after the service provider receives the report, the service provider must issue a certificate of compliance to a beneficiary who:

- (1) Complied with ORS 86.726, ORS 86.729, and ORS 86.732 (regarding the resolution conference), ORS 86.736(1)(a)(A) (*see* § 13.5A(1) to § 13.5A(3));
- (2) Submitted the required documentation, ORS 86.736(1)(a)(B) (*see* ORS 86.729(4), discussed in § 13.5A(3));
- (3) Appeared in person at the resolution conference (or sent an agent with complete authority to negotiate, or sent an agent and an authorized person who participated by telephone to negotiate), ORS 86.736(1)(a)(C); and
- (4) Signed a document memorializing any foreclosure-avoidance measures to which the beneficiary and the grantor agreed, ORS 86.736(1)(a)(D) (*see* ORS 88.010).

The certificate of compliance expires one year after the date of its issuance. ORS 86.736(1)(b).

If a service provider canceled a resolution conference under ORS 86.729(5)(b), the service provider must issue a certificate of compliance within five days after canceling the resolution conference. ORS 86.736(2).

NOTE: If a beneficiary failed to meet a requirement of the resolution-conference statutes, the service provider must notify the beneficiary that a certificate of compliance will not be issued, explaining in the notice why the certificate will not be issued. The service provider also must provide a copy of the notice to the grantor and the Attorney General. ORS 86.736(1)(c).

§ 13.5B Notice Regarding Foreclosure-Avoidance Measure; Penalties for Noncompliance

§ 13.5B(1) Notice of Ineligibility for, or Breach of, Foreclosure-Avoidance Measure

Whether or not a beneficiary participates in, or is exempt from, a resolution conference under ORS 86.726 (*see* § 13.5A(2)), “if the beneficiary determines that a grantor of a residential trust deed is not eligible for a foreclosure avoidance

measure or that the grantor has not complied with the terms of a foreclosure avoidance measure to which the grantor has agreed,” the beneficiary must notify the grantor of that determination in writing within 10 days of making it, and must contemporaneously mail a copy to the Attorney General. ORS 86.748(1).

A beneficiary who fails to comply with the notice requirement is liable to the grantor as discussed in § 13.5B(2).

§ 13.5B(2) Penalties for Noncompliance with ORS 86.748

If the beneficiary fails to provide notice of the grantor’s ineligibility for, or breach of, a foreclosure-avoidance measure (*see* § 13.5B(1)), or fails to record an affidavit of compliance (*see* § 13.5C(1)), the beneficiary “is liable to the grantor in the amount of \$500 plus the amount of the grantor’s actual damages for each failure.” ORS 86.748(3)(a).

An action by the grantor to recover these amounts from the beneficiary must be commenced within one year from the date on which the beneficiary should have complied with the requirements of the statute. ORS 86.748(3)(b).

§ 13.5C Affidavit or Certificate of Compliance

§ 13.5C(1) Affidavit of Compliance Must Be Recorded before Nonjudicial Foreclosure

At least five days before the trustee sells the property that is subject to foreclosure, the beneficiary must record in the county’s mortgage records an affidavit of compliance stating that the beneficiary has complied with the notice requirements set forth in ORS 86.748(1) (*see* § 13.5B(1)). ORS 86.748(2).

A beneficiary who fails to comply with this provision is liable to the grantor as discussed in § 13.5B(2). ORS 86.748(3)(a).

§ 13.5C(2) Certificate of Compliance Must Be Attached to Complaint for Judicial Foreclosure

A complaint for judicial foreclosure must include as an attachment a true copy of (1) a valid unexpired certificate of compliance that a service provider issued to a beneficiary under ORS 86.736 (*see* § 13.5A(4)), (2) the affidavit of exemption for an exempt party ORS 86.726(1)(b) (*see* § 13.5A(2)), or (3) the notice the beneficiary received under ORS 86.736(1)(c) stating that the beneficiary failed to satisfy the mediation requirements (*see* § 13.5A(4)). ORS 88.010(2)(a).

§ 13.5D Notice Regarding Sale

§ 13.5D(1) Notice to Grantor of Impending Sale

If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.764 must, on or before the date the notice of sale is served or mailed, give notice under ORS 86.756 to the grantor by both first-class and certified mail, return receipt requested. The notice

must be in substantially the form provided by the statute and printed in at least 14-point type. ORS 86.756.

If the person giving this notice has actual knowledge that the grantor is not the occupant of the residential real property, the sender must also give notice to the occupant of the property by both first-class mail and certified mail, return receipt requested. ORS 86.756(5). *See* § 13.5D(2)(c); *see also* § 13.5D(2)(b).

See § 13.5M(2) (failure to give notice to grantor).

§ 13.5D(2) Notice of Sale

§ 13.5D(2)(a) Notice of Sale to Grantor and Other Interested Persons

After the recording of a notice of default pertaining to a residential trust deed, and at least 120 days before the date that the sale is conducted, notice of the trustee's or sheriff's sale must be served pursuant to ORCP 7 D(2) and 7 D(3) on, or mailed by both first-class and certified mail with return receipt requested to, all persons listed in ORS 86.764. ORS 86.764(1)–(2).

Persons entitled to notice under the statute include the grantor, any person who “has a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest,” and a person who has requested notice. ORS 86.764(2)(c). *See* § 13.5M(1) (failure to give notice).

A notice served by mail is effective when mailed. ORS 86.764(3).

The notice of sale must contain the information required by ORS 86.771. ORS 86.764(1).

NOTE: A copy of the notice of sale must be published. *See* § 13.5D(2)(d).

See also § 13.5D(2)(b) (notice to tenants), § 13.5D(2)(c) (notice to occupant).

§ 13.5D(2)(b) Notice to Tenants Regarding Notice of Sale

If a property subject to foreclosure includes one or more dwelling units, a notice of the sale must be served or mailed (*see* ORS 86.764) to any person who occupies the property and who is or might be a residential tenant. ORS 86.771(9).

The notice to residential tenants must be in substantially the form set forth in ORS 86.771(9)(d).

CAVEAT: Effective January 1, 2015, subsection (9) of ORS 86.771 will be renumbered to subsection (10). *See* Or Laws 2014, ch 36, § 1.

§ 13.5D(2)(c) Service of Notice of Sale on Occupant

Except as provided in ORS 86.774(1)(b), notice of the sale of property subject to foreclosure must be served on the occupant of the property (in the

manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3)) at least 120 days before the date that the sale is conducted. ORS 86.774(1)(a).

If service of a notice of sale cannot be effected on an occupant as provided in ORS 86.774(1)(a), the statute sets forth the following rules:

(1) *First attempt to effect service.* If service cannot be effected on an occupant on the first attempt, the person attempting service must “post a copy of the notice in a conspicuous place on the property on the date of the first attempt.” ORS 86.774(1)(b)(A). The person attempting service must make a second attempt to effect service at least two days after the first attempt. ORS 86.774(1)(b)(A).

(2) *Second attempt to effect service.* If service cannot be effected on the second attempt, the person attempting service must “post a copy of the notice in a conspicuous place on the property on the date of the second attempt.” ORS 86.774(1)(b)(B). The person attempting service must make a third attempt to effect service at least two days after the second attempt. ORS 86.774(1)(b)(B).

(3) *Third attempt to effect service.* If service cannot be effected on the third attempt, the person attempting service must “send a copy of the notice, bearing the word ‘occupant’ as the addressee, to the property address by first class mail with postage prepaid.” ORS 86.774(1)(b)(C).

Service on an occupant is deemed effected on the earlier of the date that notice is served as provided in ORS 86.774(1)(a) or the first date on which notice is posted on the property. ORS 86.774(1)(c).

NOTE: On May 20, 2009, the Protecting Tenants at Foreclosure Act of 2009 (Pub L 111-22 §§ 701–704, 123 Stat 1660 (2009)) was signed into federal law, which applies to any residential property that is being foreclosed on after May 20, 2009.

§ 13.5D(2)(d) Publication of Notice of Sale

In addition to requiring that a notice of sale of property subject to foreclosure be served on an occupant of the property (*see* § 13.5D(2)(c)), the statute also requires that a copy of the notice of sale be published once a week for four successive weeks in a newspaper of general circulation in each of the counties in which the property is situated. The last publication must be made more than 20 days before the date that the sale is conducted. ORS 86.774(2)(a).

NOTE: The notice of sale does not need to include the notice to tenants required by ORS 86.771(9) (discussed in § 13.5D(2)(b)). ORS 86.774(2)(b). (Effective January 1, 2015, subsection (9) of ORS 86.771 will be renumbered to subsection (10). *See* Or Laws 2014, ch 36, § 1.)

§ 13.5D(2)(e) Recording of Affidavits Regarding Notice of Sale

On or before the date that the sale is conducted, the trustee must record in the county in which the property is located the following documents:

(1) An affidavit of mailing, if any, ORS 86.774(3)(a);

- (2) An affidavit of service, if any, ORS 86.774(3)(b);
- (3) An affidavit of service attempts and posting, if any, ORS 86.774(3)(c); and
- (4) An affidavit of publication, ORS 86.774(3)(d).

§ 13.5D(2)(f) Notice to IRS If Property Is Subject to Federal Tax Lien

If a federal tax lien is filed on the property more than 30 days before the foreclosure sale, a notice of nonjudicial sale must be given by registered or certified mail to the Internal Revenue Service (IRS) as specified in IRS Publication 786, “*Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale.*” 26 USC § 7425(b); 26 CFR § 301.7425-3. See <www.irs.gov/pub/irs-pdf/p786.pdf>. The notice must be given not less than 25 days before the sale. 26 USC § 7425(c).

Timely notice to the IRS divests the tax lien, subject to the right of the United States to redeem the property within 120 days of the sale. 26 USC § 7425(b)–(d).

§ 13.5E Request for Information

Not later than 15 days before the date set forth in the notice of sale under ORS 86.771, the grantor, an occupant, a junior lienholder, or any other interested bidder may request that the trustee provide a written statement of information as described in ORS 86.789, which information includes the amount required to cure the default or satisfy the obligation. ORS 86.786(1).

Upon receiving the request, the trustee must send the written statement of information to the person at least seven days before the date of the sale. ORS 86.786(5).

The person who requested the statement of information has the rights of an omitted person under ORS 86.767 if (1) the person proves that he or she sent a written request at least 15 days before the sale date, and (2) the trustee cannot prove that the trustee sent the written statement of information at least seven days before the sale date. ORS 86.789(4).

§ 13.5F Cure of Default; Payment of Costs and Fees

“[A]t any time prior to five days before the date last set for the sale,” the default may be cured by the grantor, the grantor’s successor-in-interest, any beneficiary under a subordinate trust deed, or any person having a subordinate lien or encumbrance of record. ORS 86.778(1).

In addition to paying the amount necessary to cure the default, the person curing must pay costs and expenses, attorney fees, and trustee fees, as set forth in ORS 86.778(1)(a)–(b). ORS 86.778(1).

§ 13.5G Date, Time, and Place of Sale

The trustee must hold the trustee's sale on the date and at the time and place designated in the notice of sale. The time of the sale must be after 9:00 a.m. and before 4:00 p.m. The place of the sale must be one of the counties in which the property is located. ORS 86.782(1)(a).

See § 13.5H (postponement of the sale), § 13.5I (amended notice of sale after release from stay).

§ 13.5H Postponement of Sale

The trustee or the trustee's attorney or agent may postpone the sale for one or more periods totaling not more than 180 days from the original sale date, giving notice of each postponement by public proclamation made at the time and place set for the sale. ORS 86.782(2)(a).

If the sale date is postponed, the trustee must provide written notice of the new date, time, and place for the sale. The notice, which must be in the manner provided for service of notice of sale in ORS 86.764(1) (*see* § 13.5D(2)(a)), must be provided to the grantor and to any person to whom notice of the sale was given under ORS 86.771 (*see* § 13.5D(2)(b)). The notice must be given at least 15 days before the new sale date. ORS 86.782(2)(b).

Note, however, that a person may postpone the sale once for not more than two days without giving written notice. ORS 86.782(2)(b).

§ 13.5I Amended Notice of Sale after Release from Stay

Notwithstanding ORS 86.782(2)(a) (*see* § 13.5H), and except when a beneficiary has participated in obtaining a stay, foreclosure proceedings that are stayed by court order, bankruptcy, or any other lawful reason will, after release from stay, continue as though uninterrupted, if, within 30 days after release, the trustee sends an amended notice of sale to the persons listed in ORS 86.764 and ORS 86.774 (*see* § 13.5D(2)(a) and § 13.5D(2)(c)). ORS 86.782(12)(a).

An amended notice of sale must:

(1) Be given at least 15 days before the amended date of sale, ORS 86.782(12)(c)(A); and

(2) Set an amended date of sale that may be the same as the original sale date, or postponed sale date, as long as the requirements of ORS 86.764 and ORS 86.774 are satisfied, ORS 86.782(12)(c)(B).

§ 13.5J Payment after Sale; Delivery of Trustee's Deed

At the time of the sale of property pursuant to the foreclosure statutes, the purchaser must pay the price bid, and, within 10 days after payment, the trustee must execute and deliver the trustee's deed to the purchaser. ORS 86.782(3).

§ 13.5K Rescission of Sale

Within 10 calendar days after the date of the sale of foreclosed property, the trustee may rescind the sale only if:

(1) The trustee asserts that a bona fide error occurred during the trustee's sale in (a) "[s]etting, advertising or otherwise specifying the opening bid amount for the property"; (b) "[p]roviding a correct legal description of the property that is the subject of the trustee's sale"; or (c) "[c]omplying with a requirement or procedure that is imposed by law," ORS 86.782(4)(a)(A); or

(2) "The grantor and the beneficiary agreed to a foreclosure avoidance measure . . . that would postpone or discontinue the trustee's sale," ORS 86.782(4)(a)(B); or

(3) "The beneficiary accepted funds to reinstate the trust deed and obligation in accordance with ORS 86.778, even if the beneficiary did not have a legal duty to do so," ORS 86.782(4)(a)(C).

"Within 10 calendar days after the date of the trustee's sale that the trustee rescinded," the trustee must provide notice of the rescission to all persons to whom notice of the sale was provided. ORS 86.782(4)(b). The notice must be served or mailed "in the manner provided for serving or mailing the notice of sale under ORS 86.764(1)." ORS 86.782(4)(b).

Within three calendar days of the rescission date, the trustee must refund to the purchaser the money paid for the purchase. ORS 86.782(4)(c).

§ 13.5L Possession of Property after Sale

§ 13.5L(1) When Purchaser Is Entitled to Possession of Property

Except as provided in subsection (b) or (c) of ORS 86.782(6) (*see* § 13.5L(2)), the purchaser of property at the trustee's sale is entitled to possession of the property on the 10th day after the sale. ORS 86.782(6)(a).

A person who remains in possession of the property after the 10th day under any interest, "except an interest prior to the trust deed, or an interest the grantor or a successor of the grantor created voluntarily, is a tenant at sufferance." ORS 86.782(6)(a).

See § 13.5L(2) regarding obtaining possession of property after the sale.

§ 13.5L(2) Obtaining Possession of Property

"The purchaser may obtain possession of the property from a tenant at sufferance [*see* § 13.5L(1)] by following the procedures set forth in ORS 105.105 to 105.168 or other applicable judicial procedure." ORS 86.782(6)(a).

The purchaser may follow the procedures set forth in ORS 105.105 to 105.168 to obtain possession of the property from a person holding possession under an interest created voluntarily by the grantor or a successor if, "not earlier than 30 days before the date first set for the sale, the person was served with not

less than 30 days' written notice of the requirement to surrender or deliver possession of the property." ORS 86.782(6)(b).

If the property purchased is a "dwelling unit" (*see* ORS 90.100) held under a tenancy that the grantor or a successor created voluntarily and in good faith, the purchaser may follow the procedures set forth in ORS 105.105 to 105.168 to obtain possession if, after the sale, the purchaser complies with the notice and other requirements in ORS 86.782(6)(c) to (e) and ORS 86.782(7) and (8).

§ 13.5M Failure to Give Notice of Sale

§ 13.5M(1) Notice Not Given to Person with Lien or Interest Subsequent to Trust Deed

Persons entitled to notice of a foreclosure sale include any person who "has a lien or interest subsequent to the trust deed if the lien or interest appears of record or the beneficiary has actual notice of the lien or interest." ORS 86.764(2)(c). If the trustee fails to give notice of the sale to any such person, and if such omitted person did not have actual notice of the sale at least 25 days before the sale:

(1) "The omitted person has the same rights that the holder of a junior lien or interest who was omitted as a party defendant in a judicial foreclosure proceeding possesses," ORS 86.767(1); and

(2) The purchaser at the sale has "the same rights that a purchaser at a sheriff's sale following a judicial foreclosure possesses," ORS 86.767(1).

The person who did not receive the notice must either redeem the property or commence an action against the trustee within five years of the date of the trustee's sale. The person's failure to redeem or commence an action within that time period bars any action under this statute or any other applicable law. ORS 86.767(6).

In an action against the trustee or any other party under the statute, the omitted person must affirmatively plead that he or she did not have actual knowledge of the sale at least 25 days before the date that the trustee conducted the sale. ORS 86.767(4).

§ 13.5M(2) Failure to Give Notice to Grantor

A grantor has the same rights as a holder of a junior lien or interest who was omitted in a judicial foreclosure proceeding if:

(1) The notice required by ORS 86.756 is not sent to the grantor (*see* § 13.5D(1)), ORS 86.761(1)(a);

(2) The grantor does not actually receive notice at least 25 days before the sale, ORS 86.761(1)(b); and

(3) "The grantor informs the trustee, the purchaser, the beneficiary or any loan servicer in writing not later than 60 days after the purchaser takes posses-

sion of the property upon which a trust deed was foreclosed that the grantor did not receive the notice and did not have actual notice of the sale,” ORS 86.761(1)(c).

The purchaser at a trustee’s sale has the same rights as a purchaser at a sheriff’s sale following a judicial foreclosure. ORS 86.761(2).

§ 13.6 SHERIFF’S SALE; REDEMPTION OF PROPERTY

§ 13.6A Notice of Sale

Before conducting an execution sale of real property, the sheriff must:

(1) Post the notice of sale on the website established under ORS 18.926 for at least 28 days, ORS 18.924(1)(a);

(2) Publish a copy of the notice of sale in a newspaper of general circulation in the county where the real property is located for four successive weeks, ORS 18.924(1)(b); and

(3) Not less than 28 days before the sale, mail by first-class and regular mail a copy of the notice of sale to the judgment debtor, the judgment debtor’s attorney, and any other person listed in the instructions pursuant to ORS 18.918. ORS 18.924(6)–(7).

The sheriff is not required to post or publish the notice of sale of real property until the judgment creditor provides all of the notice information required by ORS 18.924(2) to (3). ORS 18.924(5).

Within seven days after mailing the notices, the sheriff must post notice of the sale on the property. ORS 18.924(8).

§ 13.6B Possession of Property

Subject to ORS 18.946(2), “the purchaser of real property at an execution sale is entitled to possession of the property from the date of sale until a redemption of the property, if any.” ORS 18.946(1). A redemptioner is entitled to possession from the date payment is made until another redemption, if any. ORS 18.946(1).

If the property is in the possession of a tenant who holds the property at the time of the sale under an unexpired lease that is inferior to the judgment creditor’s claim, the lessee has the right to remain in possession “until expiration of the period allowed for redemption if the lessee makes the lease payments to the purchaser or redemptioner, or pays to the purchaser or redemptioner a monthly payment equal to the value of the use and occupancy of the property, whichever amount is greater.” ORS 18.946(2).

§ 13.6C Confirmation of Sale

A sale of real property at an execution sale “is conclusively established to have been conducted in the manner required by ORS 18.860 to 18.993,” unless the

judgment debtor or another person adversely affected by the sale files an objection to the sale within 10 days after the sheriff files a return on the writ of execution. ORS 18.948(1).

If an objection to the sale is filed, the court must schedule a hearing. If the court sustains the objection, the court will direct that the property be resold, and may establish time lines for the conduct of the second sale. ORS 18.948(2).

§ 13.6D Redemption of Property

§ 13.6D(1) Redemption by Mortgagor or Judgment Debtor

The mortgagor or judgment debtor whose rights and title were foreclosed may redeem the property within 180 days after the date of the sheriff's sale. ORS 18.964(1).

See ORS 18.960 to 18.982 for the timing requirements and manner of redeeming property.

§ 13.6D(2) Redemption by Lien Claimant

Except as provided in ORS 18.964(3), a lien claimant other than the mortgagor or judgment debtor may redeem the property sold at an execution sale within 60 days after the date of the sale. ORS 18.964(2).

If a lien claimant other than the mortgagor or judgment debtor redeems the property sold at an execution sale, any other lien claimant may redeem the property from the redemptioner within 60 days after the redemption amount is paid to the sheriff. Other lien claimants may thereafter redeem from a preceding redemptioner in the same manner, as long as each redemption is made within 60 days after the previous redemption. ORS 18.952(2), ORS 18.964(3).

§ 13.6D(3) Redemption Notice

A lien claimant who wishes to redeem property sold at a sheriff's sale must serve the certificate holder with a redemption notice in compliance with ORS 18.970. ORS 18.970(1).

The redemption notice must be served on the certificate holder by personal service or first-class mail not more than 30 days before the payment date specified in the redemption notice, and:

(1) Not less than 14 days before the specified payment date, if the notice is served by mail, ORS 18.970(3)(a); or

(2) Not less than seven days before the specified payment date, if the notice is served by personal service, ORS 18.970(3)(b).

The claimant must also file a copy of the redemption notice with the sheriff no later than seven days before the redemption date specified in the notice. ORS 18.970(3).

§ 13.6D(4) Objection or Response to Redemption Notice

§ 13.6D(4)(a) Objection to Redemption Notice

If the claimant is not entitled to redeem property sold at a sheriff's sale, a certificate holder may object to a redemption notice by filing an objection with the court administrator and sheriff and mailing it to the claimant before the first payment date specified in the notice. ORS 18.971(1).

See § 13.6D(4)(b) regarding objecting to the redemption amount. See also § 13.6D(6) to § 13.6D(6)(b) regarding court proceedings on objections.

§ 13.6D(4)(b) Response to Notice: Objection to Redemption Amount or Request for Accounting

A certificate holder must respond to a redemption notice if:

- (1) "The notice requests an accounting under ORS 18.980" (*see* § 13.6D(7)), ORS 18.972(1)(a); or
- (2) "The certificate holder objects to the redemption amount specified in the notice," ORS 18.972(1)(b).

The response must be served on the claimant and filed with the sheriff before the payment date specified in the notice. ORS 18.972(2).

The response may be served by personal service or first-class mail. If the response is served by mail, service is effective on mailing. ORS 18.972(2).

§ 13.6D(4)(c) Objection to Response

A claimant may object to the amount claimed in the response as the proper redemption amount by filing the objection with the court administrator and mailing the objection by first-class mail to the certificate holder within seven days after the response is served. ORS 18.973(1).

See § 13.6D(6) to § 13.6D(6)(b) regarding court proceedings on objections.

§ 13.6D(5) Payment of Redemption Amount

To redeem property sold at a sheriff's sale, a claimant must pay the sheriff at least the redemption amount on or before the payment date specified in the redemption notice. ORS 18.975(1).

If the claimant makes a timely payment of the redemption amount, the sheriff must issue to the claimant a certificate of redemption on the payment date specified in the redemption notice unless:

- (1) Before the specified payment date, an objection is filed with the sheriff, ORS 18.975(2)(a);
- (2) Before the specified payment date, a response is filed with the sheriff, and the claimant fails to pay additional amounts claimed in the response on the specified payment date, ORS 18.975(2)(b);

(3) An objection to a response is delivered to the sheriff with the payment, ORS 18.975(2)(c); or

(4) The calculations or other documentation provided to the sheriff appear irregular to the sheriff, ORS 18.975(2)(d).

If a response is filed with the sheriff before the specified payment date, and the claimant makes payment but fails to pay additional amounts claimed in the response, the redemption notice is of no effect and the sheriff must return the payment unless:

(1) The claimant objects to the response, ORS 18.975(5)(a); or

(2) The claimant pays the additional amounts claimed in the response, plus interest, ORS 18.975(5)(b).

If a response is filed with the sheriff before the payment date specified in the notice, and the claimant makes payment but fails to pay additional amounts claimed in the response, the sheriff must issue a certificate of redemption to the claimant dated as of the date the receipt was issued if the claimant pays the additional amounts claimed, plus interest, within seven days after the date the receipt was issued. ORS 18.975(6).

§ 13.6D(6) Court Proceedings on Objections

If an objection is filed under ORS 18.971 or ORS 18.973 (*see* § 13.6D(4) to § 13.6D(4)(c)), the court must schedule a hearing on the objection as soon as possible. ORS 18.978(2). *See* § 13.6D(6)(a) to § 13.6D(6)(b).

§ 13.6D(6)(a) Objection on Ground That Claimant Is Not Eligible to Redeem

If a certificate holder objected under ORS 18.971 (*see* § 13.6D(4)(a)), and the court determines that the claimant is eligible to redeem the property, the court will “direct the sheriff to issue a certificate of redemption to the claimant, dated as of the date that the receipt was issued.” ORS 18.978(3).

If the court determines that the claimant is not eligible to redeem, the court will “direct the sheriff to refund all amounts paid by the claimant to the sheriff.” ORS 18.978(3).

§ 13.6D(6)(b) Objection to Redemption Amount Claimed in Response

If the claimant files an objection under ORS 18.973 (*see* § 13.6D(4)(c)), the court will determine the proper redemption amount.

If the court determines that the proper redemption amount is greater than the amount paid, the court will “direct the sheriff to issue a certificate of redemption to the claimant upon payment of the additional amounts plus interest within 10 days after entry of the court’s order, dated as of the date that the receipt was issued.” ORS 18.978(4). “If the additional amounts and interest are not paid within

the time allowed, the redemption is void and the sheriff will refund to the claimant all amounts paid to the sheriff.” ORS 18.978(4).

If the court determines that the proper redemption amount is less than the amount paid, the court will “direct the sheriff to issue a certificate of redemption to the claimant, dated as of the date that the receipt was issued . . . , and order a refund to the claimant of the excess amounts.” ORS 18.978(4).

§ 13.6D(7) Accounting

If a redemption notice includes a request for an accounting and the certificate holder fails to respond as required by ORS 18.972:

(1) The “time for paying the redemption amount is automatically extended to 30 days after the redemption date specified in the redemption notice,” or until the time allowed for a claimant to file a motion for a show-cause order, ORS 18.980(2); and

(2) The claimant may file a motion, within 28 days after service of the redemption notice on the certificate holder, “requesting an order requiring the certificate holder to show cause why the certificate holder should not be held in contempt,” ORS 18.980(3).

If a motion for a show-cause order is filed, the time for redeeming the property and paying the redemption amount “is automatically extended to 30 days after the accounting is provided by the certificate holder.” ORS 18.980(4).

§ 13.6D(8) Manner of Paying Redemption Amount

The claimant may pay the redemption amount in cash or in a cashier’s check. ORS 18.981(1).

If any part of the redemption amount is paid with a cashier’s check, the sheriff must deposit the check in a financial institution by the end of the first business day after the day on which the check is received. ORS 18.981(3).

If the sheriff receives verification from a financial institution within 15 days after the redemption date that all cashier’s checks delivered to the sheriff have received final settlement, the sheriff must mail to the claimant a certificate of redemption (or a receipt if not required to give a certificate of redemption) and deliver to the certificate holder all amounts paid to the sheriff. ORS 18.981(4).

If the sheriff does not receive such verification within 15 days after the cashier’s checks are deposited, the redemption is void, and the sheriff must return to the claimant all amounts paid, less bank charges for any cashier’s checks. ORS 18.981(5).

§ 13.6D(9) Failure to Join Necessary Party

As a general rule, the failure to join a necessary party to a mortgage-foreclosure proceeding does not invalidate the mortgage foreclosure as to the parties who were properly joined; however, it leaves the unjoined lienholder “in

the same position as if no foreclosure had ever taken place.” *Portland Mortgage Co. v. Creditors Protective Ass’n*, 199 Or 432, 439–40, 262 P2d 918 (1953).

§ 13.6E References

See generally Consumer Law in Oregon ch 12 (OSB Legal Pubs 2013); *Foreclosing Security Interests* chs 1–3 (Oregon CLE 1997 & Supp 2005); *Real Estate Disputes* ch 11 (Oregon CLE 1993 & Supp 2002).

NOTE: Effective in 2015, *Foreclosing Security Interests* and *Real Estate Disputes* will be part of the *Oregon Real Estate Deskbook*.

Chapter 14

ISSUES ARISING UNDER CONTRACTS AND ARTICLES 2, 3, AND 4 OF THE UNIFORM COMMERCIAL CODE

JESSICA A. ROGERS, B.A. (*magna cum laude*), Gonzaga University (2002); J.D., University of Oregon School of Law (2005); member of the Oregon State Bar since 2005; partner, Luvaas Cobb, Eugene.

BRENT G. SUMMERS, B.S., University of Oregon (1978); J.D., University of Oregon School of Law (1982); member of the Oregon State Bar since 1982; partner, Tarlow Naito & Summers LLP, Portland.

The authors wish to acknowledge the assistance of **Stephen T. Boyke** (Law Office of Stephen T. Boyke, Portland) in reviewing portions of this chapter.

§ 14.1	ACCOUNT AND ACCOUNT STATED	14-4
§ 14.2	CONTRACTS AND CONTRACT-RELATED ISSUES	14-5
§ 14.2A	Statute of Limitations for Action on a Contract.....	14-5
§ 14.2B	When Action Is Commenced	14-5
§ 14.2C	Applicable Actions.....	14-5
§ 14.2D	Accrual of Action on a Contract	14-6
§ 14.2D(1)	General Rule.....	14-6
§ 14.2D(2)	Exception to Accrual Rule for Fraudulent Concealment.....	14-6
§ 14.2D(3)	Accrual of Action on an Account	14-6
§ 14.2E	Continuing Contract.....	14-6
§ 14.2F	Independent Acts.....	14-7
§ 14.2G	Damages an Element of Breach-of-Contract Claim.....	14-7
§ 14.2H	“Discovery Rule” Does Not Apply to Contract Actions.....	14-7
§ 14.2I	Exceptions to Six-Year Limitations Period Provided in ORS 12.080(1)	14-8
§ 14.2I(1)	Limitations Period Specified in Contract.....	14-8
§ 14.2I(2)	Party Owes Independent Standard of Care	14-8
§ 14.2I(3)	Action Arising from Construction, Alteration, or Repair of Improvement to Real Property	14-9
§ 14.2I(3)(a)	In General.....	14-9
§ 14.2I(3)(b)	Action in Contract against Architect, Landscape Architect, or Engineer	14-9

§ 14.2I(3)(c)	Action against Surveyor for Injury to Person or Property.....	14-10
§ 14.2I(4)	Action on Fire Insurance Policy.....	14-10
§ 14.2I(5)	Sealed Instruments Entered into before August 13, 1965	14-10
§ 14.2I(6)	Breach of Contract for Sale of Goods.....	14-10
§ 14.2I(7)	Action Arising under Rental Agreement.....	14-11
§ 14.2I(8)	Action for Overtime or Premium Pay under Employment Agreement	14-11
§ 14.2I(9)	Action (Suit) for Reformation.....	14-11
§ 14.2I(10)	Actions Relating to Real or Personal Property	14-11
§ 14.2I(10)(a)	Action to Recover Property.....	14-11
§ 14.2I(10)(b)	Action to Enforce Contract for Sale of Real Property	14-11
§ 14.2I(10)(c)	Action for Waste or Trespass.....	14-11
§ 14.2I(10)(d)	Action for Taking, Detaining, or Injuring Personal Property	14-12
§ 14.2I(11)	Action Relating to Garnishment.....	14-12
§ 14.2I(12)	Action Not Otherwise Provided for under Oregon Law.....	14-12
§ 14.2I(13)	References	14-12
§ 14.2J	Indemnity.....	14-12
§ 14.2J(1)	In General.....	14-12
§ 14.2J(2)	Express Contract	14-12
§ 14.2J(3)	References	14-12
§ 14.2K	Laches.....	14-13
§ 14.2K(1)	Elements of Laches Doctrine	14-13
§ 14.2K(2)	Time from Which Laches Runs; Analogous Statute of Limitations May Apply.....	14-13
§ 14.2K(3)	Laches Generally Does Not Apply against Government.....	14-13
§ 14.2K(4)	Burden of Proof.....	14-13
§ 14.2K(5)	References	14-14
§ 14.2L	Mistake	14-14
§ 14.2L(1)	In General.....	14-14
§ 14.2L(2)	References	14-14

§ 14.2M	Reformation of Contracts and Instruments	14-14
§ 14.2M(1)	In General.....	14-14
§ 14.2M(2)	References	14-14
§ 14.2N	Tort or Contract.....	14-15
§ 14.2N(1)	General Rule Regarding Whether Tort or Contract Limitations Period Applies	14-15
§ 14.2N(2)	Case Law	14-15
§ 14.2N(2)(a)	Securities-Intermountain: Analysis of Case.....	14-15
§ 14.2N(2)(b)	Other Cases Addressing Tort-Versus-Contract Issue	14-16
§ 14.2N(3)	References	14-19
§ 14.2O	Statutes of Ultimate Repose	14-19
§ 14.3	UNIFORM COMMERCIAL CODE—ARTICLES 2, 3, AND 4.....	14-19
§ 14.3A	Sales—UCC Article 2	14-20
§ 14.3A(1)	Statute of Frauds; Objection to Contract.....	14-20
§ 14.3A(2)	Warranties in Contracts for Sale	14-20
§ 14.3A(3)	Statute of Limitations for Contracts for Sale	14-20
§ 14.3A(3)(a)	In General.....	14-20
§ 14.3A(3)(b)	If Contract for Sale Also Involves Secured Transaction.....	14-21
§ 14.3A(3)(c)	Other Remedies When Timely Action Is Terminated	14-21
§ 14.3A(4)	Accrual of Cause of Action.....	14-22
§ 14.3A(5)	Seller’s Remedies against Insolvent Buyer.....	14-22
§ 14.3A(5)(a)	Reclamation from Insolvent Buyer.....	14-22
§ 14.3A(5)(b)	Stoppage of Delivery in Transit or Otherwise on Discovery of Buyer’s Insolvency.....	14-22
§ 14.3A(6)	Action for Breach of Warranty	14-23
§ 14.3A(6)(a)	Limitations Period.....	14-23
§ 14.3A(6)(b)	When Breach Occurs	14-24
§ 14.3A(6)(c)	Attorney Fees in Warranty Action.....	14-24
§ 14.3A(7)	Buyer’s Revocation of Acceptance.....	14-24
§ 14.3B	Commercial Paper—UCC Article 3.....	14-25
§ 14.3B(1)	Note Payable on Definite Date.....	14-25
§ 14.3B(2)	Note Payable on Demand.....	14-25

§ 14.3B(3)	Unaccepted Draft.....	14-25
§ 14.3B(4)	Certified Check, Teller’s Check, Cashier’s Check, or Traveler’s Check	14-25
§ 14.3B(5)	Certificate of Deposit	14-25
§ 14.3B(6)	Accepted Draft Other Than Certified Check	14-25
§ 14.3B(7)	Miscellaneous Other Actions	14-25
§ 14.3C	Bank Deposits and Collections—UCC Article 4	14-26
§ 14.3C(1)	Statute of Limitations	14-26
§ 14.3C(2)	Presentment	14-26
§ 14.3C(3)	Dishonor of Note or Draft	14-26
§ 14.3C(3)(a)	Governing Rules in General.....	14-26
§ 14.3C(3)(b)	Notice of Dishonor	14-27
§ 14.3C(3)(c)	When Notice of Dishonor Is Excused.....	14-27
§ 14.3C(4)	Stop Payment.....	14-27
§ 14.3C(5)	Death or Incompetence of Customer.....	14-28
§ 14.3C(6)	Unauthorized Signature or Indorsement, Forgery, or Alteration.....	14-28

§ 14.1 ACCOUNT AND ACCOUNT STATED

An action on an “account” merely alleges a financial obligation but not an express or implied agreement to pay the obligation. *Cooley v. Roman*, 286 Or 807, 809 n 1, 596 P2d 565 (1979), *overruled on other grounds by Assn of Unit Owners of Timbercrest Condominiums v. Warren*, 352 Or 583, 288 P3d 958 (2012).

An “account stated” is an agreement between parties that a certain amount is owing and will be paid. *Cooley*, 286 Or at 809 n 1; *see Sunshine Dairy v. Jolly Joan*, 234 Or 84, 85, 380 P2d 637 (1963).

In general, an action on an account or an account stated must be commenced within six years. ORS 12.080(1). See § 14.2D(3) and § 11.1B(1) regarding the accrual of a cause of action on an account or account stated.

CAVEAT: An action on an account or an account stated that arises out of an underlying sale of goods is subject to the four-year statute of limitations provided in Article 2 of the Uniform Commercial Code (ORS 72.7250(1)), not the general six-year statute of limitations for contracts (ORS 12.080). *Moorman Mfg. Co. of California, Inc. v. Hall*, 113 Or App 30, 33–34, 830 P2d 606 (1992), *rev den*, 314 Or 175 (1992). See § 14.3A(3)(a) to § 14.3A(3)(c), § 11.1B(2) to § 11.1C.

§ 14.2 CONTRACTS AND CONTRACT-RELATED ISSUES

§ 14.2A Statute of Limitations for Action on a Contract

Actions must be commenced within the periods prescribed in ORS chapter 12 after the cause of action has accrued, except when a different limitation period is prescribed by statute. ORS 12.010.

An action on a contract or liability, express or implied, must be commenced within six years, excepting those contracts or liabilities mentioned in ORS 12.070 (action on a judgment, decree, or sealed instrument), ORS 12.110 (action for injuries to person or rights not arising on contract), and ORS 12.135 (action arising from the construction, alteration, or repair of an improvement to real property), and except as otherwise provided in ORS 72.7250 (contract for sale under Article 2 of the Uniform Commercial Code). ORS 12.080(1).

NOTE: The six-year statute of limitations prescribed in ORS 12.080(1) does not apply to all actions relating to a contract. *See* § 14.2I to § 14.2I(12). *See also* § 14.2N(1) to § 14.2N(2)(b) regarding whether the tort or the contract limitations period applies in a given case.

See § 2.6B(1) regarding tolling a statute of limitations. For discussion of an action for intentional interference with contractual or economic relations, *see* § 10.2A to § 10.2B.

For statutes of limitations found outside of ORS chapter 12, the court may look to whether the legislature intended the discovery rule to apply. *See, e.g., Moore v. Mut. of Enumclaw Ins. Co.*, 317 Or 235, 247–48, 855 P2d 626 (1993) (the discovery rule does not apply to an action on an insurance policy under ORS 742.240).

§ 14.2B When Action Is Commenced

Other than for purposes of a statute of limitations (*see* ORS 12.020), an action is generally deemed to have been commenced as to a defendant when the complaint is filed. ORCP 3. *But see* ORS 12.150 *et seq.* (a statute of limitations is tolled in certain limited situations, for example, on the death of the plaintiff or the defendant, or for a minor defendant, an out-of-state party, or an insane plaintiff). *See* § 2.6B(1) to § 2.6D(3). *See also Warren v. Ruffcorn*, No CIV.00-0721-HA, WL 34043449 (D Or Sept 18, 2001) (a two-year statute of limitations was preempted by certain federal laws and rules).

§ 14.2C Applicable Actions

ORS 12.080 (and its six-year statute of limitations) applies not only to actions on contracts but also to actions on contracts implied-in-law or quasi-contracts, including indemnity actions (even though the indemnity action arises out of an underlying claim for negligence). *Owings v. Rosé*, 262 Or 247, 262–63, 497 P2d 1183 (1972). *See* § 14.2J(1) to § 14.2J(2) (indemnity).

But an action for contribution covered by ORS 31.810(3) (relating to injury or wrongful death) must generally be commenced within two years after the judgment has become final by lapse of time for appeal or after appellate review. ORS 31.810(3).

§ 14.2D Accrual of Action on a Contract

§ 14.2D(1) General Rule

An action on a contract accrues when the breach occurs, except in cases of fraudulent concealment (*see* § 14.2D(2)). *Waxman v. Waxman & Associates, Inc.*, 224 Or App 499, 512, 198 P3d 445 (2008), *distinguished on other grounds by Whalen v. Am. Med. Response Nw., Inc.*, 256 Or App 278, 287 n 8, 300 P3d 247 (2013). *See also* ORS 12.010 (time for commencement of actions); *Vega v. Farmers Ins. Co. of Oregon*, 134 Or App 372, 375–76, 895 P2d 337 (1995), *aff'd*, 323 Or 291, 918 P2d 95 (1996) (the insureds' cause of action against an uninsured/underinsured motorist carrier in which the insureds sought benefits accrued when the insurer refused the insureds' demand, not when the underlying accident occurred).

In *Tharp v. Jackson*, 85 Or 78, 82–83, 165 P 585, *reh'g den*, 85 Or 78 (1917), the defendant agreed to pay the plaintiff stenographer \$50 per month for her services, but payment was not due until five years after she began providing the services. The plaintiff commenced an action alleging nonpayment more than six years after she began providing services, but less than six years after payment was due. The court held that the action was not time-barred. Although the right to payment had been earned more than six years before the action was commenced, payment for the services had not been due for more than six years.

§ 14.2D(2) Exception to Accrual Rule for Fraudulent Concealment

The one exception to the rule regarding the accrual of a cause of action in a breach-of-contract claim applies in cases of fraudulent concealment. *See Chaney v. Fields Chevrolet Co.*, 264 Or 21, 27, 503 P2d 1239 (1972); *Bruns v. Walters*, 175 Or App 360, 365, 28 P3d 646 (2001). In fraudulent-concealment cases, the statute of limitations will be tolled until the plaintiff discovers, or reasonably should have discovered, the breach. *Chaney*, 264 Or at 27; *Bruns*, 175 Or App at 365.

§ 14.2D(3) Accrual of Action on an Account

In an action to recover a balance due on an account, the cause of action is “deemed to have accrued from the time of the last charge or payment proved in the account.” ORS 12.090. Interest, financing charges, and carrying charges are not deemed to be such a charge. ORS 12.090. *See* ORS 12.240 (effect of payment).

§ 14.2E Continuing Contract

A new or continuing contract may restart the running of the statute of limitations, but no acknowledgment or promise is sufficient evidence of the new or continuing contract unless it is contained in a writing signed by the party to be

charged. ORS 12.230; *Green v. Coos Bay Wagon-Rd. Co.*, 23 F 67, 70 (CCD Or 1885) (an “acknowledgment does not take the case out of the operation of the statute prospectively”; the statute “commences to run again simultaneously with the new promise, and in six years thereafter bars the remedy thereon”); *Buell v. Deschutes Cnty. Mun. Imp. Dist.*, 208 Or 56, 298 P2d 1000 (1956) (an acknowledgment tolls the statute of limitations).

§ 14.2F Independent Acts

“[I]f independent acts cause independent injuries, each act is separately actionable, and the statute of limitations begins to run separately with each alleged breach.” *Pritchard v. Regence Bluecross Blueshield of Oregon*, 225 Or App 455, 460, 201 P3d 290, *rev den*, 346 Or 184 (2009).

To toll the statute of limitations, a promise or acknowledgment must be an unconditional agreement and disclose a clear intention to admit liability. *Clostermann v. Rode*, 183 Or 412, 193 P2d 532 (1948); *Buell v. Deschutes Cnty. Mun. Imp. Dist.*, 208 Or 56, 298 P2d 1000 (1956).

§ 14.2G Damages an Element of Breach-of-Contract Claim

Oregon cases are in conflict concerning whether damages are an essential element of a breach-of-contract claim, thereby possibly essential to triggering the statute of limitations. *See Moini v. Hewes*, 93 Or App 598, 602–03, 763 P2d 414, *rev den*, 307 Or 245 (1988) (damages are an essential element of a breach-of-contract claim). Thus, an argument can be made that a breach-of-contract claim cannot be brought until damage has occurred. *But cf. Hollin v. Libby, McNeill & Libby*, 253 Or 8, 13, 452 P2d 555 (1969) (a party is liable in contract as soon as the party breaks any promise made).

The majority of Oregon case law holds that a party may maintain a breach-of-contract action without evidence of actual damages. *See, e.g., Schafer v. Fraser*, 206 Or 446, 486–87, 290 P2d 190 (1955) (actual damages are not element of a contract cause of action because nominal damages can be recovered); *Smith v. Abel*, 211 Or 571, 589, 316 P2d 793 (1957); *W. Feed Co. v. Heidloff*, 230 Or 324, 334, 370 P2d 612 (1962) (proof of actual damages was not necessary to survive a motion for a directed verdict; the jury could find nominal damages from evidence of the breach).

§ 14.2H “Discovery Rule” Does Not Apply to Contract Actions

No “discovery rule” applies to contract claims in Oregon, except in cases of fraudulent concealment or as otherwise provided by statute (*see* § 14.2D(2)). *See, e.g., Waxman v. Waxman & Associates, Inc.*, 224 Or App 499, 511, 198 P3d 445 (2008), *distinguished on other grounds by Whalen v. Am. Med. Response Nw., Inc.*, 256 Or App 278, 287 n 8, 300 P3d 247 (2013) (a “discovery rule cannot be assumed, but must be found in the statute of limitations itself” (citations omitted)); *Gladhart v. Oregon Vineyard Supply Co.*, 332 Or 226, 230, 26 P3d 817 (2001). The “applicable statute of limitations for . . . contract claims is, without a dis-

covery rule, six years from the date of breach.” *Waxman*, 224 Or at 512. *See also Abraham v. T. Henry Const., Inc.*, 230 Or App 564, 567–68, 217 P3d 212 (2009), *aff’d on other grounds*, 350 Or 29, 249 P3d 534 (2011).

§ 14.2I Exceptions to Six-Year Limitations Period Provided in ORS 12.080(1)

The six-year statute of limitations prescribed in ORS 12.080(1) does not apply to all actions relating to a contract. *See* § 14.2I(1) to § 14.2I(12) (exceptions). *See also* § 14.2N(1) to § 14.2N(2)(b) regarding whether the tort or the contract limitations period applies in a given case.

§ 14.2I(1) Limitations Period Specified in Contract

The limitation period provided in ORS 12.080(1) for “[a]n action upon a contract” is not “an *exclusive* limitation period for all contractual disputes.” *Reedsport Sch. Dist. No. 105 v. Gulf Ins. Co.*, 210 Or App 679, 686, 152 P3d 988 (2007). If the parties specify a different limitations period within a contract, the contract provision generally controls. *Reedsport Sch. Dist. No. 105*, 210 Or App at 686–88. “The parties to a contract may stipulate that an action for a breach [of the contract] must be brought within a certain period, and, if such limitation is reasonable, it will be upheld.” *Ausplund v. Aetna Indem. Co.*, 47 Or 10, 22, 81 P 577 (1905). *See also Biomass One, L.P. v. S-P Const.*, 103 Or App 521, 524–26, 799 P2d 152 (1990) (an action for the breach of a construction contract was governed by the one-year limitation period specified in the contract); *Fink v. Guardsmark, LLC*, No CV 03-1480-BR, WL 1857114 at *2–3 (D Or Aug 19, 2004) (following the *Ausplund* and *Biomass One* holdings, the court held that an employment agreement that limited claims to a six-month period was reasonable).

§ 14.2I(2) Party Owes Independent Standard of Care

ORS 12.080(1) does not apply to every claim merely because a contractual relationship exists between the parties, such as “an action for damages against a person engaged to provide professional or other independent services.” *Securities-Intermountain, Inc. v. Sunset Fuel Co.*, 289 Or 243, 259, 611 P2d 1158 (1980). If the contract “merely incorporates by reference or by implication a general standard of skill and care to which the defendant would be bound independent[ly] of the contract, and the alleged breach would also be a breach of this non-contractual duty, then [the two-year limitation provided in] ORS 12.110 applies.” *Securities-Intermountain*, 89 Or at 259. (The limitations provided by ORS 12.110 essentially apply to tort-based causes of action.) *See* § 14.2N(1) to § 14.2N(2)(b) regarding whether the tort or the contract limitations period applies in a given case.

Although certain insurer-insured relationships arise out of contract, the standard of care exists independent of the contract and without reference to the specific terms in the contract. *Georgetown Realty, Inc. v. Home Ins. Co.*, 313 Or

97, 106, 110–11, 831 P2d 7 (1992). *See also Metro. Prop. & Cas. v. Harper*, 168 Or App 358, 367–69, 7 P3d 541 (2000).

If the parties “have spelled out the performance expected by the plaintiff and promised by the defendant in terms that commit the defendant to this [standard of] performance without reference to and irrespective of any general standard,” then the six-year limitation provided in ORS 12.080 applies. *Securities-Intermountain*, 289 Or at 259; *accord Metro. Prop. & Cas.*, 168 Or App at 368 (when a generalized standard of care is incorporated into a contract, a violation of a provision gives rise to a claim for breach of contract).

§ 14.2I(3) Action Arising from Construction, Alteration, or Repair of Improvement to Real Property

§ 14.2I(3)(a) In General

Subsections (1) and (2) of ORS 12.135 apply in general to causes of action based on the construction, alteration, or repair of an improvement to real property, “whether in contract, tort or otherwise.” Such an action must be commenced within six years or 10 years from “substantial completion or abandonment” of the work, depending on the type of construction project and whether the plaintiff is a “public body” (*see* ORS 174.109, ORS 12.135(4)(a)). ORS 12.135(1)–(2).

Subsections (1) and (2) of ORS 12.135 were amended effective January 1, 2010, and the amendments apply only to causes of action arising after that date. For claims arising before January 1, 2010, see the prior version of the statute.

§ 14.2I(3)(b) Action in Contract against Architect, Landscape Architect, or Engineer

Whether in contract, tort, or otherwise, the discovery rule applies to an action against an architect, landscape architect, or engineer (as defined in ORS 671.010, ORS 671.310, and ORS 672.002, respectively) to “recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising out of the construction, alteration or repair of any improvement to real property.” ORS 12.135(3). Such an action must be commenced before the earliest of the following periods:

(1) “Two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered,” ORS 12.135(3)(a)(A);

(2) “Ten years after substantial completion or abandonment of the construction, alteration or repair” of a small commercial structure, a residential structure, or a large commercial structure that is owned or maintained by a homeowners’ association or an association of unit owners, ORS 12.135(3)(a)(B); or

(3) “Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure, . . . other than a

large commercial structure described in [ORS 12.135(3)(a)(B)],” ORS 12.135(3)(a)(C).

NOTE: ORS 12.135(3) was amended effective January 1, 2013, and applies only to causes of action arising after that date.

§ 14.2I(3)(c) Action against Surveyor for Injury to Person or Property

An action against a surveyor to recover damages for injury to person or property arising out of the practice of land surveying (as defined in ORS 672.005) must be commenced within “two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered.” ORS 12.280. In addition, the action is subject to a 10-year statute of ultimate repose dating from the date the surveyor’s map is filed or, if no map is filed, from the date of completion of work on the survey. ORS 12.280.

NOTE: ORS 12.280 was amended effective January 1, 2010, and the amendment applies only to causes of action arising on or after that effective date. For claims arising before January 1, 2010, see the prior version of the statute.

§ 14.2I(4) Action on Fire Insurance Policy

A statutory example of a contractual limitation is found in ORS 742.240, which provides that a fire insurance policy must contain a provision stating that an action must be “commenced within 24 months next after inception of the loss.”

The Oregon Supreme Court held that the predecessor to this statute (*former* ORS 743.660 (1989)) was not a statute of limitations but created a contractual limitation. *Ben Rybke Co. v. Royal Globe Ins. Co.*, 293 Or 513, 517–18, 651 P2d 138 (1982), *distinguished on other grounds by Hamilton v. Paynter*, 342 Or 48, 149 P3d 131 (2006). For further discussion, see *Insurance Law: The Basics* chapters 3–4 (OSB Legal Pubs 2011); *see also 2 Insurance* § 20.63 (Oregon CLE 1996 & Supp 2003).

§ 14.2I(5) Sealed Instruments Entered into before August 13, 1965

An action on a sealed instrument entered into before August 13, 1965, must be commenced within 10 years. ORS 12.070(2). A sealed instrument is nonnegotiable but is no different from an unsealed instrument, except as to the time of commencing actions or suits. In Oregon, “a seal may be made by a wafer or wax attached to the instrument” or “by a scroll with a pen after the signature to the instrument” at the time of its execution and delivery. *D.M. Osborne & Co. v. Hubbard*, 20 Or 318, 320, 25 P 1021 (1891). The seal does not need to be recognized in the body of the instrument. *D.M. Osborne & Co.*, 20 Or at 320.

§ 14.2I(6) Breach of Contract for Sale of Goods

An action for the breach of any contract for the sale of goods is subject to the four-year statute of limitations in ORS 72.7250(1), not the six-year limitations

period in ORS 12.080(1). Parties may reduce the four-year limitations period in their original agreement to not less than one year, but they may not extend the time for commencement of an action. ORS 72.7250(1). See § 14.3A(3)(a) to § 14.3A(3)(b) for further discussion.

§ 14.2I(7) Action Arising under Rental Agreement

An action arising under a rental agreement or under the Residential Landlord and Tenant Act (ORS chapter 90) must be commenced within one year. ORS 12.125. See § 15.2A to § 15.2A(2).

§ 14.2I(8) Action for Overtime or Premium Pay under Employment Agreement

An action for overtime pay or premium pay, or for penalties or liquidated damages for failure to pay overtime pay or premium pay, must be commenced within two years. ORS 12.110(3). See generally *Massey v. Oregon-Washington Plywood Co.*, 223 Or 139, 143–44, 353 P2d 1039 (1960) (“the term ‘premium pay’ as used in ORS 12.120(3) does not describe vacation pay”; therefore, the statute did not bar the action). See § 8.2B.

§ 14.2I(9) Action (Suit) for Reformation

An action (suit) for reformation is deemed to be a “cause not otherwise provided for,” and therefore the 10-year limitations period provided in ORS 12.140 applies, subject to a finding of laches. *Woodriff v. Ashcraft*, 263 Or 547, 553, 503 P2d 472 (1972). The six-year statute of limitations provided in ORS 12.080(1) does not apply.

§ 14.2I(10) Actions Relating to Real or Personal Property

§ 14.2I(10)(a) Action to Recover Property

A 10-year statute of limitations generally applies to causes of action to recover real property (including the right to possess real property). ORS 12.050. See § 15.3B(2), § 15.3G.

An action to recover personal property must be commenced within six years. ORS 12.080(4). See § 11.6A(1) to § 11.6C(2)(c).

§ 14.2I(10)(b) Action to Enforce Contract for Sale of Real Property

A five-year statute of limitations applies to an action to enforce a land sale contract. ORS 12.060. See § 15.3A.

§ 14.2I(10)(c) Action for Waste or Trespass

A six-year statute of limitations generally applies to causes of action for “waste or trespass upon or for interference with or injury to any interest of another in real property.” ORS 12.080(3).

§ 14.2I(10)(d) Action for Taking, Detaining, or Injuring Personal Property

An action for taking, detaining, or injuring personal property, except for an action arising out of a nuclear incident, must be commenced within six years. ORS 12.080(4). *See* § 11.6A(1) to § 11.6C(2)(c).

§ 14.2I(11) Action Relating to Garnishment

A one-year statute of limitations generally applies to causes of action based on writs of garnishment. ORS 12.085. *See* § 11.11H.

§ 14.2I(12) Action Not Otherwise Provided for under Oregon Law

An action “for any cause not otherwise provided for” under Oregon law must be commenced within 10 years. ORS 12.140. *See, e.g., Woodruff v. Ashcraft*, 263 Or 547, 553, 503 P2d 472 (1972) (reformation).

§ 14.2I(13) References

See generally Contract Law in Oregon (Oregon CLE 2003 & Supp 2008).

§ 14.2J Indemnity

§ 14.2J(1) In General

A common-law action for indemnity sounds in contract and must be commenced within the six-year period set forth in ORS 12.080(1). The statute of limitations starts to run from the date of payment made by the indemnitee. *Huff v. Shiomi*, 73 Or App 605, 607, 699 P2d 1178 (1985); *Owings v. Rosé*, 262 Or 247, 261–63, 497 P2d 1183 (1972). *But see PIH Beaverton, LLC v. Super One, Inc.*, 254 Or App 486, 501–04, 294 P3d 536 (2013), *aff’d*, No CC C072107CV, WL 1661341 (Or Apr 24, 2014) (the limitations periods set forth in ORS 12.135(3) applicable to improvements to real property applied to a general contractor’s contractual indemnity claim against subcontractors).

§ 14.2J(2) Express Contract

When parties make an express and enforceable contract of indemnity, the terms of the contract control and will supersede a claim based on the common-law right to indemnity. *S. Pac. Co. v. Morrison-Knudsen Co.*, 216 Or 398, 338 P2d 665 (1959).

When an indemnity provision in an express contract provided that notice of the indemnity claim must be delivered within a certain time period, an indemnity claim delivered after that time period had run was contractually barred. *Sw. Forest Indus., Inc. v. Vanply, Inc.*, 43 Or App 347, 357–58, 602 P2d 1113 (1979).

§ 14.2J(3) References

See Contract Law in Oregon § 17.41 to § 17.42, § 20.11(Oregon CLE 2003 & Supp 2008); *Insurance Law: The Basics* ch 4 (OSB Legal Pubs 2011).

§ 14.2K Laches

§ 14.2K(1) Elements of Laches Doctrine

Laches, which is an equitable doctrine that a party may assert in defense of an action, has three distinct elements: “(1) the plaintiff must delay asserting his claim for an unreasonable length of time (2) with full knowledge of all relevant facts, (3) resulting in such substantial prejudice to the defendant that it would be inequitable for the court to grant relief.” *Rise v. Steckel*, 59 Or App 675, 684, 652 P2d 364, *rev den*, 294 Or 212 (1982).

Laches applies only in equity and not to actions at law. *Corvallis Sand & Gravel Co. v. State Land Bd.*, 250 Or 319, 325, 439 P2d 575 (1968).

§ 14.2K(2) Time from Which Laches Runs; Analogous Statute of Limitations May Apply

“Until knowledge is shown to exist, the beginning of time from which laches will run cannot be said to commence.” *Wills v. Nehalem Coal Co.*, 52 Or 70, 89, 96 P 528, 528 (1908); *see also Albino v. Albino*, 279 Or 537, 552, 568 P2d 1344 (1977).

“Although equity is said not to be bound by statutes of limitations, those statutes are generally applied by analogy when laches is asserted.” *Rise v. Steckel*, 59 Or App 675, 684, 652 P2d 364, *rev den*, 294 Or 212 (1982).

An analogous statute of limitations may be used to define a presumptively reasonable period within which a party is not guilty of laches in initiating an action in equity. *Oregon State Bar v. Wright*, 309 Or 37, 42–43, 785 P2d 340, *cert den*, 498 US 829 (1990).

A plaintiff’s cause may be foreclosed by laches “even though the applicable statute of limitations has not run if substantial prejudice to the defendant’s position has resulted from the plaintiff’s delay.” *Woodriff v. Ashcraft*, 263 Or 547, 553, 503 P2d 472 (1972).

§ 14.2K(3) Laches Generally Does Not Apply against Government

Generally, the laches doctrine is not applicable as a defense in an action against the state or federal government, unless a recognized exception applies or the government appears by a private relator. *Corvallis Sand & Gravel Co. v. State Land Bd.*, 250 Or 319, 329–33, 439 P2d 575 (1968).

§ 14.2K(4) Burden of Proof

If an action is brought within an analogous statute of limitations, the burden is on the defendant to plead and prove laches. If the analogous statute of limitations has run, the burden is on the plaintiff to plead and prove that laches does not exist. *Albino v. Albino*, 279 Or 537, 552, 568 P2d 1344 (1977); *Oregon State Bar v. Wright*, 309 Or 37, 43, 785 P2d 340, *cert den*, 498 US 829 (1990).

§ 14.2K(5) References

See generally Contract Law in Oregon ch 5 (Oregon CLE 2003 & Supp 2008).

§ 14.2L Mistake

§ 14.2L(1) In General

In an action on a contract because of mistake, the statute of limitations begins to run from the discovery of the mistake. ORS 12.040(4).

A party seeking rescission (cancellation) of a contract based on mistake “must act promptly to disaffirm the contract.” *First W. Mortgage Co. v. Hotel Gearhart, Inc.*, 260 Or 196, 202, 488 P2d 450 (1971). A party seeking rescission cannot “retain the fruits of the contract awaiting further developments to determine whether it will be more profitable for him to affirm or disaffirm it.” *Edwards*, 278 Or at 95 (quoting *Ross v. Carlyle*, 216 Or 576, 578, 339 P2d 1114 (1959)).

For reformation of a contract based on mistake, see § 14.2M(1). For relief from judgment due to a mistake, see § 2.14B(1) to § 2.14B(5).

§ 14.2L(2) References

See Contract Law in Oregon ch 5 (Oregon CLE 2003 & Supp 2008); *Insurance* § 17.12 to § 17.18 (Oregon CLE 1996 & Supp 2003); *Real Estate Disputes* ch 2 (Oregon CLE 1993 & Supp 2002).

NOTE: Effective in 2015, *Real Estate Disputes* will be *Oregon Real Estate Deskbook*. The information from chapter 2 of *Real Estate Disputes* will be in chapter 66 of the new deskbook.

§ 14.2M Reformation of Contracts and Instruments

§ 14.2M(1) In General

An action for reformation is deemed to be a “cause not otherwise provided for,” and therefore the 10-year limitation period provided in ORS 12.140 applies, subject to a finding of laches. The six-year statute of limitations provided in ORS 12.080(1) does not apply. *Woodriff v. Ashcraft*, 263 Or 547, 553, 503 P2d 472 (1972).

§ 14.2M(2) References

See generally Contract Law in Oregon ch 5 (Oregon CLE 2003 & Supp 2008); *Insurance* § 17.12 to § 17.18 (Oregon CLE 1996 & Supp 2003); *Real Estate Disputes* ch 2 (Oregon CLE 1993 & Supp 2002). *See also* § 14.2K(1) to § 14.2K(4) (laches), § 14.2L(1) (mistake).

NOTE: Effective in 2015, *Real Estate Disputes* will be *Oregon Real Estate Deskbook*. The information from chapter 2 of *Real Estate Disputes* will be in chapter 66 of the new deskbook.

§ 14.2N Tort or Contract

§ 14.2N(1) General Rule Regarding Whether Tort or Contract Limitations Period Applies

The “gravamen or the predominant characteristic[s]” of an action, not the plaintiff’s election of remedies, determines whether the tort or contract statute of limitations applies. *Lindemeier v. Walker*, 272 Or 682, 685, 538 P2d 1266 (1975).

The issue of which statute of limitations applies arises “only when a defending party challenges the timeliness of an action on a contract theory brought after ‘the first two years.’” *Metro. Prop. & Cas. v. Harper*, 168 Or App 358, 368–69, 7 P3d 541 (2000) (quoting *Securities-Intermountain, Inc. v. Sunset Fuel Co.*, 289 Or 243, 258–59, 611 P2d 1158 (1980)).

In *Securities-Intermountain, Inc.*, 289 Or at 252 n 6, the Oregon Supreme Court explained that, to determine the predominant characteristic of a given action, the court should examine factors such as the legal source of the defendant’s liability, the factual setting of the dispute, the injuries asserted by the plaintiff, and the plaintiff’s claimed measure of damages. *See* § 14.2N(2)(a) (court’s analysis of the case).

§ 14.2N(2) Case Law

§ 14.2N(2)(a) Securities-Intermountain: Analysis of Case

The case of *Securities-Intermountain, Inc. v. Sunset Fuel Co.*, 289 Or 243, 258–59, 611 P2d 1158 (1980) is one of the leading Oregon decisions on the issue of whether an action is governed by the six-year period of limitations for contracts set forth in ORS 12.080 or by the general two-year statute of limitations governing torts, which is set forth in ORS 12.110. In that case, the assignee of a general contractor instituted an action against an architect and a heating contractor for installing an allegedly defective heating system. The court embarked on a historical review of the two limitations periods now codified as ORS 12.080 (action on certain contracts or liabilities) and ORS 12.110 (e.g., injuries to person or rights not based on contracts), respectively. After determining that the special two-year statute set forth in ORS 12.135 (governing injuries to persons or property arising from the construction, alteration, or repair of an improvement to real property) was inapplicable, the court turned to the task of distinguishing contractual and noncontractual obligations, noting that the two may overlap.

The court concluded that if a contract “merely incorporates by reference or by implication a general standard of skill and care to which the defendant would be bound independent of the contract, and the alleged breach would also be a breach of this noncontractual duty, then [the two-year period of] ORS 12.110 applies.” *Securities-Intermountain*, 289 Or at 259. Conversely, if the parties have specified in their contract “the performance expected by the plaintiff and promised by the defendant in terms that commit the defendant to this performance without reference to and irrespective of any general standard,” the six-year period of ORS

12.080 applies. *Securities-Intermountain*, 289 Or at 259. In the latter case, the court noted that the defendant would be liable for a breach of contract whether or not he or she was negligent, and regardless of facts that might excuse him or her from tort liability. *Securities-Intermountain*, 289 Or at 259. *Metro. Prop. & Cas. v. Harper*, 168 Or App 358, 368–69, 7 P3d 541 (2000).

The court then analyzed the contract between the architect and the general contractor. The contract spelled out the obligations of the architect in considerable detail, and the court found that it was “exactly the kind of contract that is designed not to leave the scope of expected professional services to tort standards of professional performance.” *Securities-Intermountain*, 289 Or at 262. Although the contract with Sunset Fuel was less comprehensive, the court found the allegations of the complaint sufficient to state contract claims against Sunset Fuel as well. *Securities-Intermountain*, 289 Or at 262–64.

In *McCraw v. Stapp*, 82 Or App 79, 727 P2d 160 (1986), the two-year statute of limitations for tort actions applied when the gravamen of the complaint was for fraud, although some of the claims were for restitution.

§ 14.2N(2)(b) Other Cases Addressing Tort-Versus-Contract Issue

The Oregon appellate courts have addressed the tort-versus-contract issue in a multitude of opinions dating back to the early 1900s. Some of these cases specifically involve a statute-of-limitations defense, while others only address whether a tort claim or a contract claim has been alleged. Summarized below is a sampling of the decisions in this area.

In *Abraham v. T. Henry Const., Inc.*, 230 Or App 564, 217 P3d 212 (2009), *aff'd on other grounds*, 350 Or 29, 249 P3d 534 (2011), the court held that a party in a construction-defect claim can bring both a breach-of-contract claim and a negligence claim, as long as the party alleges in the negligence claim that a breach of a standard of care that is independent of the contract, and without reference to the contract’s specific terms, has occurred. The court went on to say that an alleged breach of a rule or standard, such as the ones included in the Oregon Building Code, is sufficient to establish a standard of care independent of the terms of the contract.

In *Boyer v. Salomon Smith Barney*, 344 Or 583, 188 P3d 233 (2008), an investor brought negligence and breach-of-contract claims against a commodities broker and a financial consultant for losses sustained by the investor in trades handled by the defendants. In analyzing the viability of the plaintiff’s negligence allegations, the court discussed the concept of a “special relationship,” which may support a claim for negligence. *Boyer*, 344 Or at 590–91. The court explained that the principal-agent relationship is a special relationship that may give rise to liability for negligence. However, in this case, the independent-agency duty allegedly breached in most of the plaintiff’s allegations—the duty to provide

timely information—had been addressed in a contrary manner by the parties’ contract. As a result, no independent duty existed, and the plaintiff’s negligence claim based on those allegations failed as a matter of law.

In *Zehr v. Haugen*, 318 Or 647, 871 P2d 1006 (1994), the plaintiffs, a married couple, sued their doctor and hospital for failing to perform a tubal ligation on the wife, who subsequently became pregnant and bore a child. The court held that the complaint stated causes of action for both tort and contract because the plaintiffs had alleged the requisite elements of medical malpractice and the tubal ligation was a contracted-for procedure. *Zehr*, 318 Or at 653–55.

In *Georgetown Realty, Inc. v. Home Ins. Co.*, 313 Or 97, 831 P2d 7 (1992), the plaintiff brought an excess claim against its insurer, alleging that the insurer failed to defend a lawsuit against the plaintiff with reasonable care and to settle the action within policy limits. The insurer asserted that its duties to the plaintiff insured were solely contractual. After reviewing a series of cases involving tort actions against attorneys, doctors, engineers, and real estate brokers, the court concluded that, even though the relationship between the parties arose from a contract, the insurer owed a standard of care to the plaintiff independent of the contract. *Georgetown Realty, Inc.*, 313 Or at 110–11. Accordingly, the plaintiff’s excess claim could be brought as a claim for negligence.

In *Hale v. Groce*, 304 Or 281, 744 P2d 1289 (1987), the plaintiff stated both tort and contract claims against the attorney who drafted a will that failed to accomplish the testator’s objective of including a gift to the plaintiff. The court determined that the plaintiff had alleged a breach of a specific promise and held that the trial court erred in dismissing the breach-of-contract claim. *Hale*, 304 Or at 289–90. However, the court cautioned that on remand the plaintiff’s contract claim was subject to challenge on summary judgment as to whether the plaintiff could adduce proof sufficient to demonstrate a contractual promise more specific than the defendant’s general duty to use his professional skills.

In *Cabal v. Donnelly*, 302 Or 115, 121–22, 727 P2d 111 (1986), the purchasers’ action against the builder for breach of the implied warranty of habitability sounded in contract because the warranty “establishes not only the standard of workmanship to be employed but also the expected quality of the finished home—the subject matter of the contract.”

In *Archambault v. Ogier*, 194 Or App 361, 363, 95 P3d 257 (2004), the purchasers of real property brought a breach-of-contract claim against vendors for alleged defects in the physical condition of the property, alleging that the “defendants had failed to deliver the property in the condition described in an earnest money agreement and in a disclosure statement.” The court held that the purchasers’ claim sounded in contract and that the six-year statute of limitations applied, because the earnest money agreement expressly detailed the condition in which the property was to be sold. *Archambault*, 194 Or App at 367–68.

In *Jones v. Emerald Pac. Homes, Inc.*, 188 Or App 471, 71 P3d 574, *rev den*, 336 Or 125 (2003), homeowners brought an action against the builder and the builder's owners, asserting negligence and breach-of-contract claims regarding the quality and speed of construction. The court rejected the plaintiffs' negligence claim after finding that no special relationship existed between the plaintiffs and the defendants to support a duty independent of the parties' contract. In reaching the decision, the court noted that the special-relationship analysis is fact-specific and depends, in part, on the nature of the roles the parties assume in the particular interaction. *Jones*, 188 Or App at 479–80. *Cf. Abraham v. T. Henry Const., Inc.*, 230 Or App 564, 572–74, 217 P3d 212 (2009), *aff'd on other grounds*, 350 Or 29, 249 P3d 534 (2011) (the allegation that contractors violated the Oregon Building Code created a genuine issue of material fact as to whether contractors breached a standard of care that is independent of any contract and that is not merely the duty to avoid unreasonable risk of foreseeable harm).

In *McComas v. Bocci*, 166 Or App 150, 996 P2d 506 (2000), a client brought legal malpractice and contract claims against his attorney. Distinguishing *Allen v. Lawrence*, 137 Or App 181, 903 P2d 919 (1995), *rev den*, 322 Or 644 (1996) (discussed below), the court held that the client did not allege a contract claim against his attorney based on an alleged promise that the client would succeed on an appeal from the denial of the client's liquor-license application. The court reasoned that the promise was made months after the parties' existing contractual relationship was established, and there was no basis that the alleged promise was supported by additional consideration. *McComas*, 166 Or App at 155–57.

In *Fessler v. Quinn*, 143 Or App 397, 923 P2d 1294 (1996), homeowners brought an action asserting negligence and breach-of-contract claims against a home inspector. Noting that the same facts can give rise to both a contract theory and a tort theory, the court upheld the homeowners' negligence claim against the home inspector. The court stated that the duty to perform the inspection in a "workmanlike manner" was not a contractual obligation, but a standard independent of the contract. *Fessler*, 143 Or App at 402–03.

In *Allen v. Lawrence*, 137 Or App 181, 185, 903 P2d 919 (1995), *rev den*, 322 Or 644 (1996), the court upheld a breach-of-contract claim against the defendant's attorneys when they purportedly made an explicit promise to produce a particular result (i.e., to have the client's case reinstated).

In *Dauven v. St. Vincent Hosp. & Med. Ctr.*, 130 Or App 584, 588–89, 883 P2d 241 (1994), despite the fact that the plaintiffs sought tort damages in their action against a hospital, the court allowed the plaintiffs to proceed on a contract theory when the plaintiffs alleged an agreement that "spelled out" the hospital's duties.

In *S. Lake Ctr. P'ship v. Waker Associates, Inc.*, 129 Or App 581, 879 P2d 1342 (1994), the assignee of a contractor sued a subcontractor for breach of contract and negligence. Applying the methodology used in *Securities-Intermountain, Inc. v. Sunset Fuel Co.*, 289 Or 243, 258–59, 611 P2d 1158 (1980) (*see* § 14.2N(2)(a)), the court compared the allegations of the complaint with the language of the contract and concluded that two of the claims were contractual and two were not.

In *Jaqua v. Nike, Inc.*, 125 Or App 294, 865 P2d 442 (1993), the plaintiff claimed that defendant Nike used the plaintiff's product idea without compensating him. Nike asserted that the gist of the claim was tortious misappropriation and that it was barred by the applicable two-year statute of limitations. Based on the allegations of the plaintiff's complaint, the court found that the plaintiff could proceed on both implied contract and quasi-contract theories, and thus his action was not time-barred.

In *Serles v. Beneficial Oregon, Inc.*, 91 Or App 697, 756 P2d 1266 (1988), the plaintiffs borrowed money from the defendant to buy a truck. After the truck was damaged in a collision, the plaintiffs alleged that the defendant agreed in the loan contract to provide insurance for the truck. Finding the contract ambiguous, the court ruled that it was improper for the trial court to have granted the defendant's motion to dismiss the contract claim. The court, however, upheld the dismissal of the plaintiffs' negligence claims, finding that the defendant owed no duty of care apart from its contractual obligations and rejecting the "plaintiffs' suggestion that every breach of contract or failure to discuss a contract term is negligence." *Serles*, 91 Or App at 702.

§ 14.2N(3) References

See 2 *Torts* ch 32 (OSB Legal Pubs 2012).

§ 14.2O Statutes of Ultimate Repose

For a general discussion of statutes of ultimate repose, *see* § 2.7A to § 2.7G(2). Specific statutes of limitations in the tort context are discussed in chapter 7.

§ 14.3 UNIFORM COMMERCIAL CODE—ARTICLES 2, 3, AND 4

Many contract-related issues arise under the Uniform Commercial Code (UCC). This chapter discusses UCC Article 2—Sales (*see* § 14.3A(1) to § 14.3A(7)); UCC Article 3—Commercial Paper (*see* § 14.3B(1) to § 14.3B(7)); and UCC Article 4—Bank Deposits and Collections (*see* § 14.3C(1) to § 14.3C(6)).

Other provisions of the UCC are discussed in chapter 11. *See* § 11.14B(1)(a) to § 11.14B(4) (Article 7—Warehouse Receipts, Bills of Lading, and Other Documents of Title); § 11.14C(1) to § 11.14C(4) (Article 8—Investment Securities); § 11.15A to § 11.15G(3) (Article 9—Secured Transactions).

§ 14.3A Sales—UCC Article 2

§ 14.3A(1) Statute of Frauds; Objection to Contract

A contract for the sale of goods for the price of \$500 or more is not enforceable unless it satisfies the statute of frauds.

There must be “some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought” (or signed by the party’s authorized agent). ORS 72.2010(1).

If the contract is between merchants, the statute of frauds is satisfied if “within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents,” unless the party receiving the written confirmation objects to the contents of the contract within 10 days after it is received. ORS 72.2010(2).

§ 14.3A(2) Warranties in Contracts for Sale

Every contract for the sale of a consumer good is subject to any express warranty provided by the contract, as well as certain implied warranties (unless disclaimed). *See* ORS 72.8060 (express warranty), ORS 72.8020 (implied warranty of merchantability), ORS 72.8030–72.8040 (implied warranty of fitness). *See also* ORS 72.8050 and ORS 72.8070 (disclaimer of warranty).

In any sale of a consumer good to a retail buyer, an implied warranty of merchantability or, if applicable, an implied warranty of fitness endures for one year after the sale. ORS 72.8070(2)(a). If the good is a motor vehicle, the warranty expires one year after the sale or after 12,000 miles of use, whichever occurs first. ORS 72.8070(2)(b).

If an express warranty of a stated duration is made, “the implied warranty of merchantability or, if applicable, the implied warranty of fitness endures for not less than 60 days after the sale and for the duration of the express warranty or the duration prescribed for the good under [ORS 72.8070(2)], whichever first occurs.” ORS 72.8070(3).

See § 14.3A(6)(a) to § 14.3A(6)(c) (action for breach of warranty).

§ 14.3A(3) Statute of Limitations for Contracts for Sale

§ 14.3A(3)(a) In General

An action for the breach of any contract for the sale of goods under Article 2 of the Uniform Commercial Code (UCC) must be commenced within four years after the cause of action accrues. ORS 72.7250(1). Note, however, that the parties may reduce the four-year limitations period in their original agreement to not less than one year, but they may not extend the time for commencement of an action. ORS 72.7250(1).

The limitations period set forth in ORS 72.7250(1) also applies to an action for the breach of a warranty brought under the UCC. *See* § 14.3A(6)(a) to § 14.3A(6)(c).

§ 14.3A(3)(b) If Contract for Sale Also Involves Secured Transaction

If the sale of goods also involves a secured transaction, and the remedies sought by the seller are derived from Article 9 of the Uniform Commercial Code (UCC), the applicable statute of limitations appears to be six years, and not four (or less) years as provided in ORS 72.7250. In *Chaney v. Fields Chevrolet Co.*, 264 Or 21, 503 P2d 1239 (1972), the plaintiff purchased a car from the defendant automobile dealer pursuant to a contract of sale in which the automobile dealer retained a security interest. After the debtor failed to make car payments, the automobile dealer (i.e., the secured party) repossessed the car and sold it for more than the debt owed to the secured party. More than four years (but less than six years) after discovery of the ultimate facts, the plaintiff brought an action against the secured party seeking the surplus of the proceeds. The trial court granted the secured party's motion to dismiss based on ORS 72.7250. The Oregon Supreme Court reversed. Concluding that "the limitation in ORS 72.7250 was not intended to cover the present situation" and pointing out that Article 9 has no statute of limitations, the court held that the applicable provision was either ORS 12.080(1) (the general contract limitations period) or ORS 12.080(2) (the limitations period for "an action upon a liability created by a statute"), "both of which allow six years within which to bring an action." *Chaney*, 264 Or at 25–26.

CAVEAT: The holding in *Chaney* is suspect when the creditor files an action to collect on a secured installment sale contract or other secured sales transaction to which Article 9 applies, because the four-year statute of limitations contained in ORS 72.7250 clearly governs the sales transaction. Whether the result would have been the same if the creditor were suing the debtor on the sales contract is uncertain.

§ 14.3A(3)(c) Other Remedies When Timely Action Is Terminated

If an action for breach of a contract for sale is commenced within the time allowed by ORS 72.7250(1) (*see* § 14.3A(3)(a)), but "is so terminated as to leave available a remedy by another action for the same breach," the other remedy may be commenced after the time expires for bringing the original action but must be commenced within six months after the original action is terminated, unless the termination was the result of a voluntary dismissal or dismissal for lack of prosecution. ORS 72.7250(3).

§ 14.3A(4) Accrual of Cause of Action

A cause of action for the breach of a contract for the sale of goods “accrues when the breach occurs, regardless of the aggrieved party’s lack of knowledge of the breach.” ORS 72.7250(2).

A breach of warranty occurs when delivery is tendered, except when a warranty extends to future performance. When a warranty “explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance,” the cause of action accrues when the breach is, or should have been, discovered. ORS 72.7250(2). *See Permapost Products Co. v. Osmose, Inc.*, 200 Or App 699, 707, 116 P3d 909 (2005) (“an implied warranty of fitness for a particular use is not a warranty that explicitly extends to future performance”). *See* § 14.3A(6)(a) to § 14.3A(6)(c) (breach of warranty).

NOTE: If the sale of goods is by auction (*see* ORS 72.3280), the auctioneer has 21 days after conducting the auction to remit the sale proceeds to the consignor, and the funds must be held in a duly established trust account during that time frame. ORS 698.640. The requirements of ORS 698.640 “are in addition to the provisions of ORS 72.3280 that relate to auctions and in addition to other provisions of law that govern consignment sales.” ORS 698.640(1)(c).

§ 14.3A(5) Seller’s Remedies against Insolvent Buyer

§ 14.3A(5)(a) Reclamation from Insolvent Buyer

If a buyer has received goods on credit while insolvent, the seller may reclaim the goods by making demand within 10 days after the buyer receives the goods. But if the buyer misrepresented the insolvency in writing within three months before delivery, the 10-day limitation does not apply. ORS 72.7020(2).

NOTE: In 1994, Congress addressed the concerns of trade creditors who claimed that they often had insufficient notice to exercise their reclamation rights when a debtor files bankruptcy. The Bankruptcy Code was amended to give trade creditors extra time to exercise reclamation rights after the commencement of a bankruptcy case. *See* 11 USC § 546(c); *see also* § 11.18E(14) (quoting the statute).

§ 14.3A(5)(b) Stoppage of Delivery in Transit or Otherwise on Discovery of Buyer’s Insolvency

“The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent.” ORS 72.7050(1). To stop delivery, “the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.” ORS 72.7050(3).

§ 14.3A(6) Action for Breach of Warranty

§ 14.3A(6)(a) Limitations Period

Under the general rule, an action for the breach of a warranty in a contract of sale is subject to the four-year limitations period set forth in the Uniform Commercial Code (UCC), whether the warranty is express or implied. ORS 72.7250(1). *See* ORS 72.3140 (“a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind”), ORS 72.3150 (implied warranty of fitness for a particular purpose), ORS 72.7140 (buyer’s damages for breach). *See also* ORS 12.010. But see the discussion below regarding a breach-of-warranty action based on products liability.

An action for a purchaser’s personal injuries caused by a breach of an implied warranty in a contract for the sale of goods must be commenced within four years from the breach. *Redfield v. Mead, Johnson & Co.*, 266 Or 273, 283, 512 P2d 776 (1973).

CAVEAT: The lawyer must exercise caution in relying on the four-year limitations period set forth in the UCC for any cause of action arising out of the design, inspection, testing, manufacturing of, or other defect in, a product. Such claims are generally subsumed within the purview of ORS 30.900 and subject to ORS 30.905(1) (products-liability civil action for personal injury or property damage). *See Simonsen v. Ford Motor Co.*, 196 Or App 460, 479, 102 P3d 710 (2004), *rev den*, 338 Or 681 (2005). *But cf. Weston v. Camp’s Lumber & Bldg. Supply, Inc.*, 205 Or App 347, 358, 135 P3d 331, *adh’d to as modified on recons*, 206 Or App 761, 138 P3d 931 (2006), *rev dismissed as improvidently granted*, 342 Or 665 (2007). *See generally* § 7.16 to § 7.16F(7) regarding products liability.

In the *Weston* case, the plaintiffs brought an action for damages against a seller, lumber manufacturers, and wholesalers after purchasing lumber that was infested with wood-boring beetle larvae. The court held that the plaintiffs’ claim for the breach of an express warranty “arises predominantly from the contractual obligations of the parties and not from a defect in the lumber.” *Weston*, 205 Or App at 363. Therefore, the claim was governed by ORS 72.7250 rather than ORS 30.905 (the statute of limitations for products-liability actions).

An action for the breach of an implied warranty regarding goods is governed by the UCC. ORS 12.010, ORS 72.3140, ORS 72.3150, ORS 72.7250, ORS 72.7140.

An action for breach of an express warranty is contractual; the six-year statute of limitations set forth in ORS 12.080(1) applies to all contracts not specifically excepted by the statute. ORS 12.080(1); *Hous. Auth. of Portland v. Ash Nat., Inc.*, 36 Or App 391, 584 P2d 776 (1978).

An action for the breach of an implied warranty against the builder-seller of a house must be commenced within 10 years of substantial completion of the contract. *Sponseller v. Meltebeke*, 280 Or 361, 570 P2d 974 (1977) (citing ORS 12.135(1)).

§ 14.3A(6)(b) When Breach Occurs

A breach of warranty occurs when delivery is tendered, except when a warranty extends to future performance. ORS 72.7250(2).

When a warranty “explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance,” the cause of action accrues when the breach is, or should have been, discovered. ORS 72.7250(2). *See Hunter v. Woodburn Fertilizer, Inc.*, 208 Or App 242, 144 P3d 970, *rev den*, 342 Or 116 (2006) (discussing the factors for determining when a warranty extends to future performance); *see also Permapost Products Co. v. Osmose, Inc.*, 200 Or App 699, 707, 116 P3d 909 (2005) (stating that “an implied warranty of fitness for a particular use is not a warranty that explicitly extends to future performance,” the court refused to apply the discovery rule in the absence of any evidence that either the implied warranty or the express warranty applied to future performance).

§ 14.3A(6)(c) Attorney Fees in Warranty Action

To obtain attorney fees or expert witness fees in a consumer warranty action when the amount pleaded is \$2,500 or less, the plaintiff must prevail and must have made a written demand for payment of the claim on the defendant not less than 30 days before the action was commenced, and the defendant must have had a reasonable opportunity to inspect the item within that 30-day period. ORS 20.098(1).

If the court finds the action to have been frivolous, a defendant may be awarded attorney fees and expert witness fees if the defendant prevails and the plaintiff had requested fees. ORS 20.098(2).

§ 14.3A(7) Buyer’s Revocation of Acceptance

As described in ORS 72.6080, the buyer may revoke acceptance of goods that do not conform to the contract. To revoke acceptance, in addition to meeting other requirements concerning the nonconformity of the goods, the buyer must give notice within a reasonable time after the buyer discovered, or should have discovered, the nonconformity and before any substantial change in the condition of the goods that is not caused by their own defects. ORS 72.6080(2). What constitutes “reasonable time” depends on the facts of each case. *Compare Jorgensen v. Pressnall*, 274 Or 285, 545 P2d 1382 (1976) (timely revocation), *with Wadsworth Plumbing & Heating Co., Inc. v. Tollycraft Corp.*, 277 Or 433, 436–47, 560 P2d 1080 (1977) (the buyer’s retention of a boat for 32 months before attempting revocation constituted an unreasonable delay).

§ 14.3B Commercial Paper—UCC Article 3

§ 14.3B(1) Note Payable on Definite Date

An action to enforce a party's obligation to pay a note must be commenced within six years after the due date stated in the note. If the due date is accelerated, the action must be commenced within six years after the accelerated due date. ORS 73.0118(1).

§ 14.3B(2) Note Payable on Demand

If demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. ORS 73.0118(2).

CAVEAT: If demand for payment is not made to the maker of the note, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years. ORS 73.0118(2).

§ 14.3B(3) Unaccepted Draft

An action to enforce a party's obligation to pay an unaccepted draft must be commenced within six years after the draft is dishonored or 10 years after the date of the draft, whichever comes first. ORS 73.0118(3).

§ 14.3B(4) Certified Check, Teller's Check, Cashier's Check, or Traveler's Check

"An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check or traveler's check must be commenced within six years after the demand for payment is made to the acceptor or issuer." ORS 73.0118(4).

§ 14.3B(5) Certificate of Deposit

An action to enforce a party's obligation to pay a certificate of deposit "must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date, the six-year period begins when a demand for payment is in effect and the due date has passed." ORS 73.0118(5).

§ 14.3B(6) Accepted Draft Other Than Certified Check

An action to enforce a party's obligation to pay an accepted draft, other than a certified check, must be commenced within six years after the due date stated in the draft (or acceptance if the acceptor's obligation is payable at a definite time), or within six years after the date of the acceptance if the acceptor's obligation is payable on demand. ORS 73.0118(6).

§ 14.3B(7) Miscellaneous Other Actions

"Unless governed by other law regarding claims for indemnity or contribution, an action for any of the following must be commenced within six years after the claim for relief accrues":

(1) “Conversion of an instrument, for money had and received, or like action based on conversion”;

(2) “Breach of warranty”; or

(3) “Enforcement of an obligation, duty or right arising under [ORS chapter 73] and not governed by [ORS 73.0118].”

ORS 73.0118(7).

The limitations period may be tolled as determined by other law. ORS 73.0118(8).

§ 14.3C Bank Deposits and Collections—UCC Article 4

§ 14.3C(1) Statute of Limitations

The general statute of limitations for an action to enforce an obligation, duty, or right arising under ORS chapter 74 (bank deposits and collections) is three years after the claim for relief accrues. ORS 74.1110.

§ 14.3C(2) Presentment

Presentment means

a demand made by or on behalf of a person entitled to enforce an instrument to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or to accept a draft made to the drawee.

ORS 73.0501(1).

Presentment is effective (1) when the person to whom presentment is made receives the demand for payment or acceptance, and (2) if made to any one of two or more makers, acceptors, drawees, or other payors. ORS 73.0501(2)(a).

Presentment may be treated as occurring on the next business day if the party to whom presentment is made has established a cut-off hour not earlier than 2:00 p.m. and presentment is made after the cut-off time. ORS 73.0501(2)(d).

§ 14.3C(3) Dishonor of Note or Draft

§ 14.3C(3)(a) Governing Rules in General

Dishonor of a note depends on the nature of the instrument, as follows:

(1) *Note payable on demand.* “If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment,” ORS 73.0502(1)(a);

(2) *Note not payable on demand.* “If the note is not payable on demand and is payable at or through a bank or the terms of the note required presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later,” ORS 73.0502(1)(b); and

(3) *Other notes.* If a note is not payable on demand, and ORS 73.0502(1)(b) does not apply, “the note is dishonored if it is not paid on the day it becomes payable,” ORS 73.0502(1)(c).

Regarding dishonor of accepted drafts and unaccepted drafts, see ORS 73.0502(2) to (4).

§ 14.3C(3)(b) Notice of Dishonor

For an instrument taken for collection by a collecting bank, notice of dishonor “must be given by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or by any other person within 30 days following the day on which the person receives notice of dishonor.” ORS 73.0503(3).

“With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.” ORS 73.0503(3).

See § 14.3C(3)(c) regarding when notice of dishonor is excused.

§ 14.3C(3)(c) When Notice of Dishonor Is Excused

Notice of dishonor is excused when the instrument specifies that notice of dishonor is not necessary to enforce a party’s obligation to pay the instrument, or the party whose obligation is being enforced waives notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor. ORS 73.0504(2).

NOTE: If presentment is excused under ORS 73.0504, dishonor occurs without presentment if the instrument is not duly accepted or paid. ORS 73.0502(5).

“Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice” and that person “exercised reasonable diligence after the cause of the delay ceased to operate.” ORS 73.0504(3).

§ 14.3C(4) Stop Payment

A customer “may stop payment of any item drawn on the customer’s account or close the customer’s account by an order to the bank.” ORS 74.4030(1). The order must be made within a reasonable time to afford the bank a reasonable opportunity to act. ORS 74.4030(1).

“If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.” ORS 74.4030(1).

An oral stop-payment order is binding for 14 calendar days, but it lapses if it is not confirmed in writing during the 14-day period. A written order is effective for six months and may be renewed for additional six-month periods by a writing to the bank during the period that the stop-payment order is effective. ORS 74.4030(2).

The customer generally has the burden of proof to substantiate a loss caused by the bank's payment of an item contrary to a stop-payment order. ORS 74.4030(3).

§ 14.3C(5) Death or Incompetence of Customer

A bank has continuing authority to accept, pay, or collect an item until the bank knows of the death or an adjudication of incompetency of a customer and has reasonable opportunity to act on it. ORS 74.4050(1).

Unless a stop payment is ordered, a bank may, for 10 days after the date of death, pay or certify checks drawn on or before that date even if the bank knows of the death or incompetency. ORS 74.4050(2).

§ 14.3C(6) Unauthorized Signature or Indorsement, Forgery, or Alteration

The time rules governing an action under ORS 74.4010 against a customer's bank because of an unauthorized, forged, altered, or otherwise improper signature or indorsement are provided in ORS 74.4060.

When a bank provides a statement of account to a customer, the customer "must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized." ORS 74.4060(3).

A customer is precluded from asserting against the bank an unauthorized signature, indorsement, or alteration if the customer (1) "does not within 180 days after the statement or items are made available to the customer . . . discover and report the customer's unauthorized signature on or any alteration on the face or back of the item" or (2) "does not within 18 months from that time discover and report any unauthorized indorsement on the item." ORS 74.4060(6). *See* ORS 74.4010 (bank to pay over authorized signatures only).

Chapter 15

REAL ESTATE AND LANDLORD-TENANT LAW

BLAKE J. ROBINSON, B.A., Oregon State University (2005); J.D., Willamette University College of Law (2008); member of the Oregon State Bar since 2008; associate, Davis Wright Tremaine LLP, Portland.

§ 15.1	CHATTEL LIENS (POSSESSORY)	15-3
§ 15.1A	Foreclosure	15-4
§ 15.1A(1)	Waiting Period	15-4
§ 15.1A(2)	Storage Charges Incidental to Lien	15-4
§ 15.1A(3)	Storage Lien	15-4
§ 15.1A(4)	Notice to Debtor	15-4
§ 15.1A(5)	Public Notice	15-5
§ 15.1A(6)	Notice to Security Interest Holders	15-5
§ 15.1A(7)	Remaining Proceeds	15-5
§ 15.1B	Innkeeper's Lien	15-6
§ 15.1C	Landlord's Lien	15-6
§ 15.1C(1)	Commercial	15-6
§ 15.1C(2)	Residential	15-6
§ 15.1D	Self-Service Storage Facility Lien	15-6
§ 15.1D(1)	Nature of Lien	15-6
§ 15.1D(2)	Notice to Occupant	15-6
§ 15.1D(3)	Public Notice	15-7
§ 15.1D(4)	Remaining Proceeds	15-7
§ 15.1E	References	15-7
§ 15.2	LANDLORD-TENANT	15-7
§ 15.2A	Residential Landlord and Tenant Act	15-7
§ 15.2A(1)	Waste	15-7
§ 15.2A(2)	Personal-Injury Claims	15-8
§ 15.2A(3)	Tenant's Abandoned Personal Property	15-8
§ 15.2A(3)(a)	Landlord's Rights	15-8
§ 15.2A(3)(b)	Notice	15-8
§ 15.2A(3)(c)	Deceased Tenant	15-9

§ 15.3B(1) Cause of Action.....	15-14
§ 15.3B(2) Statute of Limitations.....	15-15
§ 15.3B(3) Tenant in Common.....	15-15
§ 15.3C Action for Waste, Trespass, Nuisance	15-15
§ 15.3C(1) Nuisance—Action for Damages	15-16
§ 15.3C(2) Nuisance—Action to Restrain or Enjoin	15-16
§ 15.3D Nuclear Incident	15-16
§ 15.3E Damage from Construction, Alteration, or Repair to Real Property	15-16
§ 15.3E(1) Statutes of Limitation.....	15-17
§ 15.3E(2) Statute of Repose—Plaintiff Not a Public Body.....	15-17
§ 15.3E(3) Statute of Repose—Action by Public Body.....	15-18
§ 15.3E(4) Action against Architect, Landscape Architect, or Engineer	15-18
§ 15.3F Mining, Land Preparation, Nurseryman, Irrigation	15-18
§ 15.3F(1) Notice and Filing.....	15-19
§ 15.3F(2) Foreclosure of Lien	15-19
§ 15.3G Right, Claim, or Interest in Real Property.....	15-19
§ 15.3H Breach of Implied Warranty in Sale of Used Residence	15-19
§ 15.3I Land Surveying	15-19
§ 15.3J Change of Grade; Street Use Restriction	15-19
§ 15.3K Fraudulent Transfer and Conveyance	15-20
§ 15.3L Extinguishment of Future Interests; Rule against Perpetuities	15-20

§ 15.1 CHATTEL LIENS (POSSESSORY)

Any person who performs services or supplies materials for a chattel generally has a possessory lien until the charges are paid. ORS 87.152. The specific types of liens created by ORS 87.152 to 87.162 attach to the chattels described in those sections when (1) the lien claimant performs services, provides labor, or furnishes materials or money to the lien debtor, and (2) the charges for the services, labor, or materials are due, and the lien debtor knows or reasonably should know they are due. ORS 87.166(1). However, a commercial landlord’s lien created by ORS 87.162 attaches “on the 20th day after rents or advances occur or attaches when the occupant or tenant attempts to remove the chattels from the premises while there are unpaid rents or advances.” ORS 87.166(2).

§ 15.1A Foreclosure

§ 15.1A(1) Waiting Period

A person claiming a chattel lien generally must retain possession of the chattel for at least 60 days after the lien attaches before foreclosing the lien. ORS 87.172(1). In the case of an animal, the person claiming the lien must retain possession of the animal for at least 30 days before foreclosure. But if the lien is for veterinary services to a domestic animal, the person need only retain possession for five days. ORS 87.172(2). For a vehicle appraised for \$1,000 or less but greater than \$500 in which the lien claimant removed, towed, or stored the vehicle, the lien claimant must retain the vehicle for at least 30 days after the lien attaches before foreclosing the lien. If the vehicle is appraised for \$500 or less, the lien claimant must retain the vehicle for at least 15 days after the lien attaches before foreclosing. Any appraisal must be conducted by an appraiser certified under ORS 819.480. ORS 87.172(3).

§ 15.1A(2) Storage Charges Incidental to Lien

A lien claimant under ORS 87.152 to 87.162 who incurs expenses in storing a chattel may charge for storage even if the lien is claimed for something other than storage (e.g., for services, labor, or materials). In such a case, the lien claimant may charge reasonable fees for the storage of the chattel for a period of up to six months from the date that the lien attaches to the chattel. To charge for storage, the lien claimant must send a written notice to the lien debtor by certified mail within 20 days from the date that the storage fees begin to accrue and within a reasonable time to any other person entitled to receive notice of foreclosure under ORS 87.196. If a lien claimant fails to comply with the notice requirements, the lien claimant may recover the reasonable fees for up to 20 days of storage from the date that the lien attached until foreclosure. ORS 87.176(1).

§ 15.1A(3) Storage Lien

When a lien is claimed under ORS 87.152 to 87.162 specifically for the storage of a chattel, the lien claimant must send a written notice to the lien debtor that storage fees are accruing. The notice must be sent to the lien debtor and to every other person entitled to receive notice of lien foreclosure under ORS 87.196 via certified mail within 20 days from the date that the chattel was placed in storage. If a lien claimant fails to comply with the notice requirements, the lien claimant is limited to recovery of reasonable storage fees for the 20-day period. ORS 87.176(2).

§ 15.1A(4) Notice to Debtor

Generally, notice of a foreclosure sale must be given to the lien debtor at least 30 days before the sale. However, for the cost of removing, towing, or storage of a vehicle appraised at \$1,000 or less, notice must be given at least 15 days before the sale. For a vehicle appraised at more than \$1,000, the 30-day notice

provision applies. An appraiser certified under ORS 819.480 must conduct the appraisal. ORS 87.192(1).

§ 15.1A(5) Public Notice

Public notice of a foreclosure sale must be given by posting notice in a public place at or near the county courthouse and, for chattel other than a vehicle that requires a certificate of title, in a public place at the location where the lien claimant obtained possession of the chattel. These notices must be posted no later than the time required for notice to the lien debtor under ORS 87.192(1) (*see* § 15.1A(4)). ORS 87.192(2).

If the chattel is something other than an abandoned vehicle and has a fair market value of \$1,000 or more, or if it is an abandoned vehicle with a fair market value of \$2,500 or more, notice of the foreclosure sale must be printed once a week for two successive weeks in a daily or weekly newspaper, as defined in ORS 193.010. ORS 87.192(3).

§ 15.1A(6) Notice to Security Interest Holders

At least 30 days prior to a foreclosure sale, the lien claimant must send notice via first-class, registered, or certified mail to all holders of security interests who perfected by public filing. ORS 87.196(1)(a), (c). If the chattel is one required by law to have a certificate of title (and is not inventory of a motor vehicle dealer), notice need be given only to security interest holders noted on the certificate of title. ORS 87.196(1)(b).

However, if the lien is claimed under ORS 87.152 (creating possessory liens generally), then notice must be given no later than the 20th day after storage charges begin. If no storage charges are imposed, then notice must be given no later than the 30th day after the date on which the services provided are completed. If the lien is for the cost of removing, towing, or storing a vehicle appraised at \$1,000 or less (by a certified appraiser under ORS 819.480), then notice must be given at least 15 days before the foreclosure sale. ORS 87.196(1)(c).

If the chattel is one required to have a certificate of title, failure to provide foreclosure notice to a secured party or lien holder may result in the buyer of the chattel taking it subject to the security interest or lien. ORS 87.196(3). In other cases, the lien claimant's failure to give foreclosure notice to a secured party or lien holder may result in the lien claimant becoming liable to the secured party or lien holder for either the value of the chattel or the amount owed on the security interest or lien, whichever is less. ORS 87.196(4).

§ 15.1A(7) Remaining Proceeds

After disbursement for expenses of the sale, discharge of the lien, and discharge of subordinate liens, any remaining proceeds from a foreclosure sale must be paid to the treasurer of the county where the sale occurred. ORS 87.206(1). A

lien debtor must claim such proceeds within three years of deposit with the county treasurer. ORS 87.206(3).

§ 15.1B Innkeeper's Lien

The keeper of an inn, hotel, or motel has a lien on certain chattels of a guest or boarder for the reasonable or agreed charges until the charges are paid. ORS 87.156(1). But an innkeeper may not retain prescription or nonprescription medications, medical equipment or apparatus, food, children's clothing, or accessories after the guest or boarder requests their return. ORS 87.156(2). The prevailing party may recover attorney fees in an action brought by a guest or boarder to compel the return of property or recover damages based on its retention. ORS 87.156(2)(c).

An innkeeper must retain the chattel subject to the lien for at least 60 days after the lien attaches before foreclosing the lien. ORS 87.172(1).

§ 15.1C Landlord's Lien

§ 15.1C(1) Commercial

A commercial landlord has a lien on a tenant's or occupant's chattels, except wearing apparel, to secure payment of rent and advances until rent and advances are paid. ORS 87.162. *See Ashmun v. G & H Ranches, Inc.*, 48 Or App 945, 618 P2d 462, *adh'd to on recons*, 49 Or App 625, 619 P2d 1359 (1980). Foreclosure is not permitted until at least 60 days after the lien attaches. ORS 87.172(1).

§ 15.1C(2) Residential

No possessory lien is available under the Residential Landlord and Tenant Act (RLTA) (ORS 90.100–90.875). ORS 90.420(1). *See Lyons v. Kamhoot*, 281 Or 615, 618–19, 575 P2d 1389 (1978) (rejecting application of RLTA to hotel occupancy and enforcing innkeeper's lien).

§ 15.1D Self-Service Storage Facility Lien

§ 15.1D(1) Nature of Lien

The owner of a self-service storage facility has a lien on all personal property located in a specific storage space to secure payment for rent, charges for services or materials, and expenses necessarily incurred in preserving or disposing of the personal property until the rent and other charges and expenses are paid. ORS 87.687(1). The lien may be foreclosed upon default. ORS 87.689(1).

§ 15.1D(2) Notice to Occupant

To foreclose the lien, the facility owner must send notice of foreclosure and sale to the occupant of the storage space via registered or certified mail. The notice must demand payment no earlier than 30 days after default and provide other required information to the occupant. ORS 87.689(2)–(3).

§ 15.1D(3) Public Notice

If foreclosing personal property with a fair market value of over \$300, the owner must advertise notice of the sale once a week for at least two consecutive weeks in a local newspaper or via a substitute method. The property can be sold no earlier than 15 days after the first publication. ORS 87.691(2)–(3).

§ 15.1D(4) Remaining Proceeds

After satisfaction of the lien, the balance of the sale proceeds must be held for delivery on demand to the occupant for two years from the date of the sale. After that period, the balance must be reported as abandoned property and paid to the Department of State Lands as provided in ORS 98.352. ORS 87.691(8).

§ 15.1E References

See Creditors' Rights and Remedies ch 3 (Oregon CLE 2002 & Supp 2006).

§ 15.2 LANDLORD-TENANT

§ 15.2A Residential Landlord and Tenant Act

An action arising under a rental agreement for a dwelling unit or under the Residential Landlord and Tenant Act (RLTA) (ORS 90.100–90.875), must be commenced within one year. ORS 12.125. The one-year statute governs only landlord-tenant actions that are covered by the RLTA. ORS 90.110 specifically excludes certain residential occupancies from the RLTA.

CAVEAT: Lawyers should carefully review ORS 90.150, ORS 90.155, and ORS 90.160 before issuing any notices under the RLTA. When written notices are required, if mailed, a minimum of three additional days must be added to the deadlines discussed below. In calculating the total time for compliance when notices are mailed, the date of mailing is not counted. All written notices are deemed to run to the end of the last day at midnight. ORS 90.160(1). Mailed notices generally should be sent first-class regular mail. Certified mail, or use of a commercial mailing service, such as overnight delivery, could invalidate the notice. *See* ORS 90.100(17) (“‘First class mail’ does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.”) (NOTE: Effective January 1, 2015, subsection (17) of ORS 90.100 will be renumbered subsection (16)).

§ 15.2A(1) Waste

Statutory actions for waste are not subject to ORS 12.125. *Vollertsen v. Lamb*, 302 Or 489, 509, 732 P2d 486 (1987). Although the court in *Vollertsen* declined to say whether a common-law action for waste would survive the Residential Landlord and Tenant Act (RLTA) (ORS 90.100–90.875), the court did conclude that the statutory claim could be alleged independently of the RLTA.

With some exceptions, an action for waste, trespass, or interference with or injury to any interest of another in real property must be commenced within six years. ORS 12.080(3).

§ 15.2A(2) Personal-Injury Claims

A tort action brought by a tenant who suffers personal injury due to defects on the rental premises is not subject to the one-year limitation of ORS 12.125 applicable to claims under the rental agreement. *Jones v. Bierek*, 306 Or 42, 755 P2d 698 (1988). A tort action must be commenced within two years from the date of injury. ORS 12.110(1); *Waldner v. Stephens*, 345 Or 526, 542–43, 200 P3d 556 (2008).

§ 15.2A(3) Tenant’s Abandoned Personal Property

The rights and responsibilities of tenants and landlords in disposing of a tenant’s abandoned personal property are set forth in ORS 90.425.

NOTE: If an abandoned manufactured dwelling is located on a rented or leased space in a manufactured housing facility, or a floating home is located in a rented or leased slip in a marina, ORS 90.675 applies to the disposition of the abandoned dwelling.

§ 15.2A(3)(a) Landlord’s Rights

A landlord, after proper notice, may store, sell, or dispose of a tenant’s personal property left on the premises when a tenancy has ended because (1) the rental agreement has terminated or expired or ended “by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property [behind] with no intention of asserting any further claim to the premises or to the personal property”; (2) the tenant has been absent from the premises continuously for seven days after the tenancy was terminated by a court order that has not been executed; or (3) the landlord receives possession of the premises from the sheriff following restitution under ORS 105.161. ORS 90.425(2).

§ 15.2A(3)(b) Notice

A landlord may dispose of a tenant’s abandoned property only if the landlord gives a written notice of a specified date for disposal. ORS 90.425(3)–(5). If the abandoned property is a recreational vehicle, manufactured dwelling, or floating home, a copy of the notice must also be given to any lienholder or owner and the tax collector and assessor of the county where the vehicle, dwelling, or home is located. ORS 90.425(4). The notice must specify a date by which the tenant must contact the landlord to arrange for disposition of the tenant’s property. For most personal property, the date is five days after personal delivery of the notice or eight days after first-class mailing of the notice. If the abandoned property is a recreational vehicle, manufactured dwelling, or floating home, the tenant has at least 45 days to contact the landlord. ORS 90.425(6).

§ 15.2A(3)(c) Deceased Tenant

A landlord must give notice under ORS 90.425(21)(b), if the personal property is considered abandoned as a result of the death of a tenant who was the only tenant and who owned the personal property. ORS 90.425(21).

§ 15.2A(3)(d) Sale of Tenant's Property

If the tenant fails to contact the landlord by the specified date and fails to remove the property within 15 days of the date specified in the notice (30 days for a recreational vehicle, manufactured dwelling, or floating home), the landlord may sell or dispose of the property. ORS 90.425(8)–(10).

§ 15.2A(3)(e) Tenant's Rights

If the tenant responds by actual notice to the landlord, on or before the date specified in the landlord's notice, that the tenant intends to remove his or her personal property, then the landlord must make the property available for removal during the next 15 days (30 days for a recreational vehicle, manufactured dwelling, or floating home). ORS 90.425(8).

§ 15.2A(4) Conversion of Rental Units

A landlord must give tenants 120 days' notice before converting rental units into condominiums. ORS 100.305(1), *see* ORS 90.493(1)(a).

§ 15.2A(5) Victims of Domestic Violence/Stalking

A tenant who has been a victim of domestic violence, sexual assault, or stalking within the past 90 days is required to give only 14 days' written notice to terminate a tenancy if the notice includes a qualified third-party signatory. ORS 90.453(2)–(3).

§ 15.2A(6) Eviction

An eviction action for possession of a residential rental premises covered by the Residential Landlord and Tenant Act (ORS 90.100–90.875) (previously titled a forcible entry and unlawful detainer or "FED") requires effective service of a valid written termination notice. *See* ORS 90.394, ORS 105.115(2), ORS 105.120(3). The calculation of the notice periods is set forth in ORS 90.160.

Timely notice may be as short as one day or as long as one year. For example, a 24-hour notice can be used for unauthorized nontenants in possession (ORS 90.403(1)) and to terminate tenancies for various causes, including substantial personal injury, substantial damage, or extremely outrageous conduct (ORS 90.396(1)). Closure of a manufactured dwelling or floating home facility requires 365 days' notice. ORS 90.645(1). *See* § 15.2A(9) to § 15.2A(9)(b). Some other notices include:

- *Material Noncompliance:* If there is material noncompliance with the rental agreement by a tenant, the landlord may deliver a 30-day notice for cause that terminates the tenancy unless the tenant cures the breach within 14

days. ORS 90.392(1)–(4). For a repeated act or omission within six months, the landlord may terminate the tenancy with 10 days' notice. ORS 90.392(5). For a week-to-week tenancy, the for-cause notice period is seven days rather than 30, and the cure period is four days. For a repeated act or omission within six months, the landlord may terminate a week-to-week tenancy with four days' notice. ORS 90.392(6).

- *Nonpayment of Rent:* Nonpayment-of-rent notices in week-to-week tenancies may be given no sooner than the fifth day rent is due. ORS 90.394(1). For all other tenancies, nonpayment of rent allows a landlord to terminate a tenancy upon 72 hours' notice given no sooner than the eighth day of the rental period or 144 hours' notice given no sooner than the fifth day. ORS 90.394(2). The notices must specify the date and time by which the tenant in default of rent may cure the nonpayment. ORS 90.394(3).
- *Pets:* If a tenant violates the rental agreement by keeping a pet capable of causing damage to persons or property, the landlord may deliver a notice that terminates the tenancy in 10 days unless the tenant removes the pet. ORS 90.405(1).
- *Fixed-Term and Subsidized Tenancies:* Residential tenancies for a fixed term and certain subsidized tenancies may be terminated early only for cause. See ORS 90.394–90.405.
- *Drug-and-Alcohol-Free Housing:* If a tenant of drug- and alcohol-free housing (as defined in ORS 90.243) with less than two years' residency violates the drug and alcohol rules, the landlord may give 48 hours' notice with a 24-hour opportunity to cure. ORS 90.398(1). A subsequent violation within six months provides grounds for a 24-hour termination notice with no opportunity to cure. ORS 90.398(3).

§ 15.2A(7) Prepaid Rent and Security Deposit

A landlord may claim from a security deposit only the amount reasonably necessary to remedy the tenant's defaults under the rental agreement, not including ordinary wear and tear. ORS 90.300(6)–(7). To claim all or part of prepaid rent or a security deposit, the landlord must give a specific written accounting to the tenant within 31 days after the tenancy has terminated and the tenant has returned possession to the landlord. ORS 90.300(12)–(13).

§ 15.2A(8) Notice Requirements to Terminate Tenancy

§ 15.2A(8)(a) Periodic Tenancy

A periodic tenancy may be terminated upon 30 days' notice in a month-to-month tenancy that is in its first year, ORS 90.427(3)(a), and upon 10 days' notice in a week-to-week tenancy, ORS 90.427(2).

§ 15.2A(8)(b) Periodic Tenancy after One Year of Occupancy

A landlord may terminate a month-to-month tenancy after the first year of occupancy only after 60 days' notice, except as provided in ORS 90.427(5). ORS 90.427(3)(c); *see* § 15.2A(8)(d).

§ 15.2A(8)(c) Fixed-Term Tenancy

If a lease is for a fixed term of at least one year, and by its terms it becomes a month-to-month tenancy after the fixed term has expired, then at any time during the fixed term, the landlord or tenant may terminate the tenancy without cause by giving the other notice in writing 30 days before the specified ending date of the lease or not fewer than 30 days before the date designated in the notice for termination of the tenancy, whichever is later. ORS 90.427(4)(a). After the lease has expired, at any time during the month-to-month tenancy, the landlord may terminate the tenancy without cause by giving written notice to the tenant at least 60 days in advance, except as provided in ORS 90.427(5). ORS 90.427(4)(b); *see* § 15.2A(8)(d).

§ 15.2A(8)(d) Sale of Rental Dwelling Unit

The landlord may terminate a month-to-month tenancy at any time by giving the tenant notice in writing not fewer than 30 days before the date designated in the notice for the termination of the tenancy if

- (a) The dwelling unit is purchased separately from any other dwelling unit;
- (b) The landlord has accepted an offer to purchase the dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence; and
- (c) The landlord has provided the notice, and written evidence of the offer to purchase the dwelling unit, to the tenant not more than 120 days after accepting the offer to purchase.

ORS 90.427(5).

§ 15.2A(8)(e) Tenant's Notice Requirement

A tenant must give a landlord 30 days' notice of vacancy if the tenancy is month-to-month. ORS 90.427(3)(a).

§ 15.2A(9) Manufactured Dwellings and Floating Homes

Manufactured-dwelling and floating-home tenancies in a facility (as defined in ORS 90.100(14)) may be terminated by the landlord for cause. *See* ORS 90.630, ORS 90.632. Manufactured-dwelling and floating-home tenancies not in a facility may be terminated by a landlord without a cause specified in ORS 90.392, ORS 90.394, or ORS 90.396 only by delivery of 180 days' notice. ORS 90.429(1).

§ 15.2A(9)(a) Conversion of Manufactured Dwelling Park

If a manufactured dwelling park is to be closed and the land converted to a use other than a manufactured dwelling park (and the closure is not required by

exercise of eminent domain or by order of a federal, state, or local agency), the landlord may terminate a month-to-month or fixed-term rental agreement by giving the tenant not less than 365 days' notice in writing before the date designated in the notice for termination. The landlord must pay the tenant \$5,000 if the manufactured dwelling is a single-wide dwelling, \$7,000 if the manufactured dwelling is a double-wide dwelling, or \$9,000 if the manufactured dwelling is a triple-wide or larger dwelling. ORS 90.645(1). *But see* § 15.2A(9)(b).

§ 15.2A(9)(b) Conversion of Park to Subdivision

If the landlord closes a manufactured dwelling park as a result of converting the park to a subdivision under ORS 92.830 to 92.845, the landlord may terminate a rental agreement by giving the tenant not less than 180 days' notice in writing before the date designated in the notice of termination. The landlord is not required to make a payment under ORS 90.645(1)(b) (*see* § 15.2A(9)(a)) if the tenant buys the space where the manufactured dwelling is located and does not move the dwelling or sells the manufactured dwelling to a person who buys the space or lot. ORS 90.645(2).

§ 15.2A(9)(c) Garbage Collection

The landlord of a manufactured dwelling or floating home must give the tenant not less than 180 days' written notice before converting the method of billing a tenant for garbage collection and disposal, and may not do so less than one year after giving notice of a rent increase, unless the rent increase is an automatic increase provided for in a fixed-term rental agreement entered into one year or more before the conversion. ORS 90.533.

§ 15.2A(9)(d) Utilities

The landlord of a manufactured dwelling or floating home must give the tenant not less than 180 days' written notice before converting a tenant's existing utility or service billing method to a submeter billing method. ORS 90.537(1).

§ 15.2A(9)(e) Registration

Every landlord of a manufactured dwelling park must register annually in writing with the Housing and Community Services Department. ORS 90.732(1).

§ 15.2A(9)(f) Continuing Education Requirement

Every two years, at least one manager from each manufactured dwelling park must complete four hours of continuing education relating to the management of manufactured dwelling parks. ORS 90.734(1).

§ 15.2B Tenancies Not Subject to Residential Landlord and Tenant Act

§ 15.2B(1) Notice

No notice is necessary to terminate a nonresidential tenancy at sufferance (one in which the tenant comes into possession of real estate of another lawfully, but wrongly holds over after the termination of the term). ORS 91.040.

§ 15.2B(2) Lease at Will

A lease at will, payable at intervals of less than three months, can be terminated by giving written notice equal to the time between rental payments. ORS 91.050.

§ 15.2B(3) Year-to-Year Tenancy

A tenancy from year to year may be terminated by giving written notice 60 days before the expiration of the period for which rents are to be paid. ORS 91.060.

§ 15.2B(4) Month-to-Month Tenancy

A tenancy from month to month may be terminated by giving at least 30 days' written notice before the date designated in the notice for the termination of tenancy, regardless of the expiration of the period for payment of rents. ORS 91.070.

§ 15.2B(5) Unpaid Rent

Failure to pay rent for a period of 10 days terminates the tenancy without notice unless a different period is stipulated in the lease. Accepting payment after the termination reinstates the lease for the full period. ORS 91.090.

§ 15.2C Unlawful Discrimination in Housing

An action for unlawful discrimination in selling, leasing, or renting housing on the basis of disability (ORS 659A.145) or on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, familial status, or source of income (ORS 659A.421) must be commenced no later than two years after the occurrence or the termination of the unlawful practice, or two years after the breach of any settlement under ORS 659A.840. ORS 659A.875(3). *See* § 8.1D to § 8.1D(4).

§ 15.2C(1) Consumer Bureau of Labor and Industries Complaint

A person aggrieved by an unlawful practice, including discrimination in housing, may file a written, verified complaint with the Commissioner of the Bureau of Labor and Industries not later than one year after the unlawful practice. ORS 659A.820(2). The two-year period within which a civil action may be filed (*see* § 15.2C) does not include any time during which an administrative proceeding was pending with respect to the unlawful practice. ORS 659A.875(3).

§ 15.2C(2) Federal Law

Generally, a complaint alleging violations of the federal Fair Housing Act must be commenced no later than two years after the occurrence or termination of an alleged discriminatory housing practice. 42 USC § 3613(a)(1)(A). The computation of the two-year period does not include any time during which an administrative proceeding was pending with respect to a complaint or charge based on

the alleged discriminatory housing practice. 42 USC § 3613(a)(1)(B). *See* § 8.1G(4).

§ 15.2D Trust Deed Foreclosure

Oregon law protects tenants residing in a property under foreclosure. The foreclosing entity must serve the tenant notice at least 120 days before the proposed foreclosure sale. ORS 86.774(1)(a). *See* § 13.5D(2)(b) to § 13.5D(2)(c).

The purchaser at the foreclosure sale must provide written notice of change in ownership to the occupants of each rental unit within 30 days after the date of the foreclosure sale and before or concurrently with service of a written termination notice. ORS 86.782(5)(a).

A bona fide tenant renting the property as a residential dwelling has the right to continue living in the property that is being foreclosed for the remainder of the fixed-term lease, if any, or at least 90 days from the date that the tenant is served with the written termination notice. But if the new owner intends to use the property as a primary residence, even a tenant on a fixed-term lease must move out after 90 days. ORS 86.782(6)(c).

CAVEAT: Beginning January 1, 2015, tenants have only a 30-day right to continue living in the property (or a 60-day right for a fixed-term lease on a property that the new owner does not intend to use as a primary residence). Or Laws 2011, ch 510, §§ 7, 9.

The purchaser of a foreclosed property is entitled to possession of the property from the former owner on the 10th day after the sale. ORS 86.782(6)(a).

§ 15.3 REAL PROPERTY

§ 15.3A Land Sale Contract

An action to enforce a contract for the sale of real property must be commenced in the county where the real property is situated within five years from the date of maturity of final payment as stated in the contract, or from the date to which final payment is extended by a recorded agreement. The contract ceases to be a lien, encumbrance, or cloud on the title unless an action is commenced within five years of these dates. ORS 12.060(1).

NOTE: Specific performance, breach of contract, and the various forms of contract foreclosure methods, such as judicial and strict foreclosure, are remedies for the enforcement action. The five-year statute of limitations applies regardless of the remedy chosen.

§ 15.3B Adverse Possession

§ 15.3B(1) Cause of Action

A person may acquire title to real property by adverse possession only if the person claiming adverse possession and the predecessors in interest of that person have maintained actual, open, notorious, exclusive, hostile, and continuous

possession of the property for 10 years. Also, the claiming party and the predecessors in interest during the relevant period must have had an honest belief that the property in question was owned by the claiming party, and this belief must have existed from the commencement of, and continued throughout, the vesting period. The honest belief must be objectively reasonable given the circumstances surrounding the property. ORS 105.620(1); *Mid-Valley Res., Inc. v. Engelson*, 170 Or App 255, 259, 13 P3d 118 (2000), *rev den*, 332 Or 137 (2001).

CAVEAT: This statute does not apply unless the claim was filed and the claimant's interest vested after January 1, 1990. *Nooteboom v. Bulson*, 153 Or App 361, 364 n 1, 956 P2d 1042, *rev den*, 327 Or 431 (1998); *Markovich v. Chambers*, 122 Or App 503, 506, 857 P2d 906 (1993). Instead, the common law of adverse possession applies. In other words, if the claimant's predecessor in interest acquired title by adverse possession before January 1, 1990, the "honest belief" requirement does not apply.

§ 15.3B(2) Statute of Limitations

An action to recover possession of real property must be commenced within 10 years. No action will be maintained unless it appears that the plaintiff, an ancestor, a predecessor, or a grantor possessed the property within 10 years before the action is commenced. ORS 12.050; *Evans v. Hogue*, 296 Or 745, 754, 681 P2d 1133 (1984).

§ 15.3B(3) Tenant in Common

Unless otherwise agreed or provided in a granting document, a tenant in common may acquire sole title to real property by adverse possession against other cotenants by possessing the property (either personally or through a predecessor in interest) to the exclusion of other cotenants and paying all taxes for an uninterrupted period of 20 years. No notice need be given to the other cotenants. ORS 105.615; *Miller v. Miller*, 101 Or App 371, 376, 790 P2d 1184 (1990).

§ 15.3C Action for Waste, Trespass, Nuisance

An action for waste, trespass, interference with, or injury to any interest of another in real property must be commenced within six years. ORS 12.080(3). Exceptions are for actions mentioned in ORS 12.050 (to recover possession), ORS 12.060 (to enforce a land sale contract), ORS 12.135(2) (for damages from construction, alteration, or repair to real property, see § 15.3E), ORS 12.137 (for damage to property arising from nuclear incident, see § 15.3D), and ORS 273.241 (for unlawful removal of material from state lands; however, this type of action also has a six-year limit).

COMMENT: The six-year statute of limitations for trespass also will likely apply for timber trespass under ORS 105.810 to 105.815.

§ 15.3C(1) Nuisance—Action for Damages

Any person whose property or personal enjoyment of the property is affected by a private nuisance may maintain an action for damages. If the plaintiff obtains a judgment in the action, the plaintiff may, on motion, in addition to the execution to enforce the judgment, obtain an order allowing a warrant for the sheriff to abate the nuisance. The motion must be made at the time at which the judgment is given. ORS 105.505.

If an order to abate is entered, the clerk must, when requested by the plaintiff within six months after the order is made, issue a warrant directed to the sheriff to abate the nuisance. ORS 105.510.

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 . . . , 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 a sufficient undertaking to the plaintiff. ORS 105.515. “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.” ORS 105.520.

§ 15.3C(2) Nuisance—Action to Restrain or Enjoin

An action to restrain or enjoin certain nuisances described in ORS 105.555(1) (places used for prostitution, gambling, illegal drugs) may be brought by certain government officials or a person residing in or doing business in the county where the nuisance is located. ORS 105.560(1). The action is commenced by filing a complaint alleging facts constituting the nuisance, containing a legal description of the property, and alleging that the property owners have been notified of the facts giving rise to the alleged nuisance at least 10 days before the filing of the action. ORS 105.565(1).

§ 15.3D Nuclear Incident

An action arising from loss or damage to property caused by a nuclear incident involving the release of radioactive material (excluding acts of war) must be commenced within two years after (1) the injured person discovers or reasonably could have discovered both the injury and the causal connection between the injury and the nuclear incident, or (2) any substantial change in the degree of injury. In no event may an action be commenced more than 30 years after the incident. ORS 12.137.

§ 15.3E Damage from Construction, Alteration, or Repair to Real Property

Many of the time limits related to improvements on real property depend on the date that work on the improvement was substantially completed. See § 15.3E(1) to § 15.3E(3). *Substantial completion* is defined as the date when the

contractee accepts in writing the work done as being completed to the point that the improvement may be used for its intended purpose. If there is no written acceptance, substantial completion occurs on the date the contractee accepts the work. ORS 12.135(4)(b).

PRACTICE TIP: Most Oregon residential real estate transactions have been written up using the statewide realtor sale agreement form published by Oregon Real Estate Forms, LLC. Those forms (e.g., for the sale of detached dwellings, preowned condominiums, farms and ranches, vacant land, and new construction) require mediation and arbitration between sellers and buyers. They also state that the applicable statutes of limitation on claims are met if the claimant timely filed for arbitration. Although this provision has not been tested in any Oregon appellate court, it has existed for a decade and has been widely adopted in other transactional forms drafted by Oregon attorneys (e.g., unit sale agreements involving new condominiums). If lawyers have a concern about relying on this tolling provision, they should consider first filing their claim in court, seeking to abate, and then filing in arbitration.

§ 15.3E(1) Statutes of Limitation

A breach of contract action for damages arising from the construction, alteration, or repair of any improvement to real property, or from the supervision or inspection of work on the improvement (unless the action is against an architect, a landscape architect, or an engineer (*see* § 15.3E(4))), must be commenced within six years from the date of substantial completion. ORS 12.080(1); *Waxman v. Waxman & Assoc., Inc.*, 224 Or App 499, 504–10, 198 P3d 445 (2008). However, the limitations period for a tort action arising from the construction, alteration, or repair of any improvement to real property, or from the supervision or inspection of such work, is two years from the date of discovery. ORS 12.110(1); *Abraham v. T. Henry Constr., Inc.*, 350 Or 29, 34 n 3, 249 P3d 534 (2011).

§ 15.3E(2) Statute of Repose—Plaintiff Not a Public Body

An action by a plaintiff who is not a public body, whether in contract, tort, or otherwise, arising from the construction, alteration, or repair of any improvement to real property; from the supervision or inspection of work on the improvement; or from the furnishing of design, planning, surveying, architectural, or engineering services for the improvement must be commenced within the earlier of:

- (1) The applicable limitations period;
- (2) Ten years after substantial completion or abandonment of work on a small commercial structure, a residential structure, or a large commercial structure (as these are defined in ORS 701.005) that is owned or maintained by a home-

owners association (as defined in ORS 94.550) or that is owned or maintained by an association of unit owners (as defined in ORS 100.005); or

(3) Six years after substantial completion or abandonment of work on a large commercial structure other than one owned or maintained by an association of homeowners or unit owners.

ORS 12.135(1).

NOTE: The 10-year period described in ORS 12.135(1) is a statute of ultimate repose, not a statute of limitation. *Waxman v. Waxman & Assoc., Inc.*, 224 Or App 499, 506, 198 P3d 445 (2008).

§ 15.3E(3) Statute of Repose—Action by Public Body

An action by a public body, whether in contract, tort, or otherwise, arising from the construction, alteration, or repair of any improvement to real property; from the supervision or inspection of work on the improvement; or from the furnishing of design, planning, surveying, architectural, or engineering services for the improvement must be commenced within 10 years from the date that the work on the improvement was substantially completed or abandoned. ORS 12.135(2).

§ 15.3E(4) Action against Architect, Landscape Architect, or Engineer

Any action against a registered architect (under ORS 671.010–671.220), a registered landscape architect (under ORS 671.310–671.459), or a registered engineer (under ORS 672.002–672.325), to recover damages for injury to a person, a property, or an interest in property (including damages due to delay or economic loss), regardless of the legal theory, must be commenced within two years from the date that the injury or damage is first discovered or reasonably should have been discovered. ORS 12.135(3)(a)(A). The statute of repose is either six years or 10 years, depending on the type of structure, similar to the statute of repose discussed in § 15.3E(2). ORS 12.135(3)(a)(B)–(C).

§ 15.3F Mining, Land Preparation, Nurseryman, Irrigation

A lien for labor performed or materials furnished for work on a mine or for preparing land for irrigation or cultivation is a lien on the mine, improvement, or prepared land as of the day the lien claimant ceases to perform labor or furnish materials. ORS 87.352(1), ORS 87.356, ORS 87.364(1). Likewise, a person who furnishes nursery stock worth at least \$25 for planting on land has a lien on the land as of the day the person ceases to furnish stock or perform labor. ORS 87.358, ORS 87.364(1).

A cooperative or utility that supplies electricity for irrigation of land has a lien on the land for the costs of the electricity. ORS 87.362. The lien attaches on the day of the first delivery of electricity to the land. ORS 87.364(2).

If the owner has less than a fee simple interest in the land, only the owner's interest is subject to the lien. ORS 87.356, ORS 87.358, ORS 87.362.

§ 15.3F(1) Notice and Filing

A written notice of claim of lien for labor or materials for mining or land preparation, for irrigation power, or for nursery stock must be filed within 120 days after the lien attaches, or the right to the lien is waived. ORS 87.366(1), (3). The notice must be filed in the form required by statute and filed with the recording officer of the county where the land is located. ORS 87.366(1)–(2).

§ 15.3F(2) Foreclosure of Lien

An action to foreclose a mining, land preparation, irrigation, or nursery lien must be commenced within six months after the notice of claim of lien is filed or within six months of extended payment; otherwise, the lien will cease to exist. In any event, a lien cannot be continued by agreement to extend payment for more than two years from the date the claim of lien was filed. ORS 87.376.

NOTE: Such liens must be foreclosed in accordance with ORS chapter 88. ORS 87.382.

§ 15.3G Right, Claim, or Interest in Real Property

An action to determine any right, claim, or interest in real property must be commenced within the same limitations period that applies to actions to recover possession of real property. ORS 12.040(1); *see Evans v. Hogue*, 296 Or 745, 754, 681 P2d 1133 (1984). An action to recover possession of real property must be commenced within 10 years. ORS 12.050; *see* § 15.3B(2).

§ 15.3H Breach of Implied Warranty in Sale of Used Residence

A breach of implied warranty in the sale of a used residence is barred if not commenced within 10 years from substantial completion. *See* ORS 12.135(1)(b); *Sponseller v. Meltebeke*, 280 Or 361, 366, 570 P2d 974 (1977).

§ 15.3I Land Surveying

Notwithstanding ORS 12.135 or any other statute of limitations, an action to recover damages for injury to a person or property (including damages due to delay or economic loss), regardless of the legal theory, arising out of the survey of real property must be commenced within two years after the injury is discovered or reasonably should have been discovered. The applicable statute of ultimate repose states that the action must be commenced within 10 years after the surveyor's map is filed or, if no map is filed, within 10 years after the work on the survey is completed. ORS 12.280.

§ 15.3J Change of Grade; Street Use Restriction

Any cause of action granted by ORS 105.755 to 105.760 (for damages resulting from the change of grade of public roads and streets) is barred unless the action is commenced within six months after the change of grade is physically completed and accepted by the Department of Transportation. ORS 105.755(5), ORS 105.760(4).

Any cause of action granted by ORS 105.850 to 105.870 (for the reduced value of certain commercial properties due to a street-use restriction) is barred unless the action is commenced within 60 days after the date on which the change of use becomes effective and use of the streets is prohibited or restricted. ORS 105.870.

§ 15.3K Fraudulent Transfer and Conveyance

Generally, an action alleging fraudulent transfer or obligation in which the debtor had an actual intent to hinder, delay, or defraud the creditor must be commenced within four years after the transfer was made or obligation was incurred or, if later, within one year after the transfer or obligation was or should have been discovered by the claimant. ORS 95.280(1), ORS 95.230(1)(a). However, an action alleging fraudulent transfer or obligation involving the following circumstances must be commenced within four years after the transfer was made or the obligation was incurred, and no discovery rule applies:

- The debtor did not receive a reasonably equivalent value in exchange for the transfer or obligation, and
- The debtor was engaged or about to engage in a business or transaction for which the debtor's remaining assets were unreasonably small in relation to the business or transaction; or
- The debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they become due. ORS 95.230(1)(b).
- The transfer or obligation is fraudulent as to a creditor whose claims arose before the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation. ORS 95.240(1).

ORS 95.280(2).

Lastly, an action alleging fraudulent transfer in which a creditor's claim arose before the transfer was made, if the transfer was made to an insider for other than a present, reasonably equivalent value, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent, must be commenced within one year after the transfer was made. ORS 95.280(3), ORS 95.240(2).

§ 15.3L Extinguishment of Future Interests; Rule against Perpetuities

A special limitation or 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.

ORS 105.770(1). This statute applies only to *inter vivos* instruments taking effect after January 1, 1978; to wills when the testator dies after that date; and to appointments made after that date, including appointments by *inter vivos* instruments or wills under power created before that date. ORS 105.770(2). *See* chapter 6.

Chapter 16

INSURANCE

MICHAEL J. WALKER, B.A., State University of New York (2000); J.D., University of Oregon School of Law (2005); member of the Oregon State Bar since 2005; attorney, Parks Bauer Sime Winkler & Fernety LLP, Salem.

§ 16.1	ADVANCE PAYMENTS	16-1
§ 16.1A	Written Notice	16-1
§ 16.1B	First-Party Insurance/Personal Injury Protection	16-2
§ 16.1C	Purpose of Statute.....	16-2
§ 16.1D	Commencement of Legal Action	16-3
§ 16.2	UNINSURED MOTORIST COVERAGE.....	16-3
§ 16.3	LIFE INSURANCE.....	16-4
§ 16.4	HEALTH INSURANCE	16-4
§ 16.5	FIRE AND HOMEOWNERS' INSURANCE.....	16-5
§ 16.6	ATTORNEY FEES	16-5
§ 16.7	REFERENCES	16-6

§ 16.1 ADVANCE PAYMENTS

Advance payments for death, injury, or property damage do not constitute “an admission of liability for the [death, injury, or property damage] by the person making the payment unless the parties to the payment agree to the contrary in writing.” ORS 31.560(1) (death or personal injury), ORS 31.565 (property damage). An *advance payment* is “compensation for the injury or death of a person or the injury or destruction of property prior to the determination of legal liability therefor.” ORS 31.550.

§ 16.1A Written Notice

If a person making an advance payment under ORS 31.560 or ORS 31.565 for death, injury, or property damage provides written notice, within 30 days after the first advance payment was made, of the date of expiration of the applicable statute of limitations, that statute continues to run. Notice must be given to “each person entitled to recover damages” for the death, injury, or property damage. ORS 12.155(1). In the case of bodily injuries, this could include, for example, a payment to a spouse to compensate for loss of consortium. The contents of the notice are prescribed by regulation. OAR 836-050-0150.

If the notice is not given, the statute of limitations is tolled as of the time the advance payment is made and until the notice “is actually given.” ORS 12.155(2) (“the time between the date the first advance payment was made and the date a notice is actually given . . . is not part of the period limited for commencement of the action by the statute of limitations”); *see Baker v. Kennedy*, 317 Or 372, 377, 856 P2d 314 (1993). The tolling of the statute of limitations applies even if the injured person timely commences an action based on the injury without naming the person on whose behalf the advance payment was made. *See Blanton v. Beiswenger*, 195 Or App 335, 344, 97 P3d 1247 (2004). The person making the advance payment for purposes of the notice requirement and tolling of the statute of limitations may be an insurer or any other person or entity who pays the claimant money on behalf of a putative tortfeasor. *Hamilton v. Paynter*, 342 Or 48, 58, 149 P3d 131 (2006) (statute of limitations tolled by payment to plaintiff by tortfeasor and his business). *See Snyder v. Espino-Brown*, 350 Or 141, 152, 252 P3d 318 (2011) (advance payment made to husband, joint owner of an automobile with wife, tolled the statute of limitations period for wife’s claim when notice under ORS 12.155 was not given to wife regarding the expiration period for commencement of an action for damages).

§ 16.1B First-Party Insurance/Personal Injury Protection

The notice requirement of ORS 12.155 does not apply in the context of first-party insurance, such as property insurance. *Minisce v. Thompson*, 149 Or App 746, 754–56, 945 P2d 582 (1997), *abrogated on other grounds by Hamilton v. Paynter*, 342 Or 48, 149 P3d 131 (2006). The notice requirement under ORS 12.155 also does not extend to personal injury protection (PIP) benefits, which are not advance payments within the meaning of ORS 12.155 because they are payable to an injured person without consideration of fault or tort liability of the insured. *Smith v. Riker*, 88 Or App 579, 582, 746 P2d 247 (1987), *rev den*, 305 Or 273 (1988). *See also Meoli v. Brown*, 200 Or App 44, 50, 114 P3d 507, *rev den*, 339 Or 406 (2005) (defendant’s insurer made payments under an insurance policy that required such payments “regardless of fault”; thus, ORS 12.155 did not apply).

§ 16.1C Purpose of Statute

The advance payment statutes, ORS 31.550 to 31.565 and ORS 12.155, have a twofold purpose. One purpose is to permit an insurer or other person to make advance payments without admitting liability and to encourage such payments. The other purpose is “to protect an injured party from being misled into believing that a limitation period upon his claim is no longer applicable because the insurer [or other person making payment] has, in effect, acknowledged that its insured [or the other person] is liable for the claim.” *Hamilton v. Paynter*, 342 Or 48, 55, 149 P3d 131 (2006) (quoting *Duncan v. Dubin*, 276 Or 631, 636, 556 P2d 105 (1976)).

§ 16.1D Commencement of Legal Action

Statutes of limitations apply to the commencement of legal actions. *See, e.g.*, ORS 12.080(1) (general contract statute of limitations), ORS 12.110(1) (general personal-injury statute of limitations). The commencement of a legal action includes both filing and service on the defendant. ORS 12.020; *see Baker v. Kennedy*, 317 Or 372, 376, 856 P2d 314 (1993). An action is considered to have been commenced on the day of filing, but only if the defendant is properly served no more than 60 days after the filing of the suit. ORS 12.020(2); *but see* ORS 12.220 (allowing claims dismissed for failure of timely service under ORS 12.020 to be refiled when the defendant had “actual notice” of the filing of the action within 60 days after filing).

When a third-party claimant is represented by counsel who files suit and properly serves the defendant within the applicable limitations period, ORS 12.155(2) does not toll the limitations statute even when statutory notice is not given by the insurer or other person making the advance payment. *Baker*, 317 Or at 376; *Dotson v. Smith*, 307 Or 132, 139, 764 P2d 540 (1988). The purpose of ORS 12.155 is, in part, “to protect a person from being “lulled” into falsely believing there is no limitation on when he can commence an action.” *Dotson*, 307 Or at 139 (quoting *Duncan v. Dubin*, 276 Or 631, 637, 556 P2d 105 (1976)). Moreover, in *Dotson*, the court found that requiring notice when a claimant’s attorney files a claim and serves the defendant within the statute of limitations “would be irrelevant, if not absurd” because a party being sued would be required to tell the plaintiff, “You have just sued me within the statute of limitations—now I advise you that you must sue me within the statute of limitations.” *Dotson*, 307 Or at 139.

However, when the insurer or other person making an advance payment does not provide statutory notice, and the claimant’s attorney files suit within the applicable limitations period, but does not serve the defendant until after the limitations period expires and more than 60 days after filing, ORS 12.155(2) tolls the applicable statute of limitations. The applicable limitations statute is tolled from the day the claimant receives the advance payment until service is completed (i.e., the day the action is deemed to have been commenced). *Baker*, 317 Or at 376–77.

PRACTICE TIP: Separate from the question of tolling by advance payment, lawyers should be aware of ORS 12.220, which provides another exception to the limitations bar otherwise applicable under ORS 12.020.

§ 16.2 UNINSURED MOTORIST COVERAGE

ORS 742.504 sets forth the limitation provisions that insurers providing uninsured motorist coverage may include in their policies. The statute includes a provision that no cause of action will accrue to the insured under such coverage unless, within two years from the date of the accident: (1) there is agreement on

the amount due under the policy; (2) the insured or the insurer has “formally instituted” arbitration proceedings; (3) the insured has filed an action against the insurer; or (4) a bodily injury suit has been filed against the uninsured motorist and “within two years from the date of settlement or final judgment against the uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action against the insurer.” ORS 742.504(12)(a). The terms *date of settlement* and *final judgment* are defined in ORS 742.504(12)(b).

Formal institution of arbitration proceedings may be accomplished unilaterally by the insured or insurer, but it requires express consent to arbitration “where that consent is not made explicitly contingent on a future event.” *Paton v. Am. Family Mut. Ins. Co.*, 256 Or App 607, 613, 302 P3d 1204, *rev den*, 354 Or 386 (2013).

The term in ORS 742.504(12)(a) is not mandatory and may or may not be incorporated by insurers into their policies of uninsured/underinsured motorist (UM/UIM) coverage. The statute’s terms set forth “a comprehensive model UM/UIM policy that may be varied only in the sense that terms that disfavor insureds may be excluded or softened and extraneous terms that are neutral or that favor insureds may be added.” *Vega v. Farmers Ins. Co. of Oregon*, 323 Or 291, 302, 918 P2d 95 (1996). When the policy does not contain the limitation term in subsection (12)(a), the six-year general statute of limitations for contracts (ORS 12.080(1)) applies to actions on a UM/UIM policy. *N. River Ins. Co. v. Kowaleski*, 275 Or 531, 534–35, 551 P2d 1286 (1976). When ORS 12.080 applies, the statute begins to run at the time a claim for UM/UIM benefits is denied by the insurer. *Vega*, 323 Or at 296.

NOTE: The tolling provision of ORS 12.160(1) to (2) (for minors) applies only when the cause of action accrues, that is, when it comes into existence as an enforceable claim. *Wright v. State Farm Mut. Auto. Ins. Co.*, 223 Or App 357, 363, 196 P3d 1000 (2008) (ORS 12.160 did not apply to UIM claim when none of the requisite events set forth in ORS 742.504(12)(a) occurred within two years of the accident).

§ 16.3 LIFE INSURANCE

A life insurance policy may not limit the time for commencing an action on the policy to less than three years after the cause of action accrues. ORS 743.225(1).

§ 16.4 HEALTH INSURANCE

A health insurance policy must contain a provision generally requiring that the insured furnish a written proof of loss to the insurer within 90 days, or within one year if timely proof of loss is not “reasonably possible.” See ORS 743.429 for the exact language of the provision. A health insurance policy must also include a provision stating that no action can be brought to recover on the policy until 60

days after the written proof of loss is furnished to the insurer, and no action can be brought more than three years after the time written proof of loss is required to be furnished by the insured. ORS 743.441.

§ 16.5 FIRE AND HOMEOWNERS' INSURANCE

The insured under a fire policy must give immediate written notice to the insurer of any loss, and, within 90 days after receipt of proof-of-loss forms from the insurer or a later time if the insurer agrees, the insured must submit the completed forms, signed and sworn, to the insurer providing details of the loss. ORS 742.230.

The amount of loss is payable within 60 days after the proof-of-loss forms are received by the insurer and ascertainment of loss is made by written agreement between the insured and the insurer or by filing an award with the insurer. ORS 742.238.

An action on a fire policy for recovery of a claim must be “commenced within 24 months next after inception of the loss.” ORS 742.240. Although the statute applies by its terms only to fire policies, it has been interpreted to apply to homeowners’ insurance policies as well. *Herman v. Valley Ins. Co.*, 145 Or App 124, 126 n 1, 928 P2d 985 (1996), *rev den*, 325 Or 438 (1997).

The statutory limitation for filing suit in a fire policy is a contract condition, not a statute of limitations for purposes of ORS 12.155. *Ben Rybke Co. v. Royal Globe Ins. Co.*, 293 Or 513, 517, 651 P2d 138 (1982); *cf. Herman*, 145 Or App at 130.

§ 16.6 ATTORNEY FEES

For all insurance policies delivered or issued in Oregon (other than reinsurance, wet marine policies, transportation policies, and surplus lines, ORS 742.001), when no settlement is made within six months from the date the insured files proof of loss with the insurer and an action is brought, reasonable attorney fees will be awarded if the insured’s recovery exceeds the amount of any tender made by the insurer. ORS 742.061(1). The insurer can take actions to avoid the risk of attorney fees. *See* ORS 742.061(2)–(3) (discussed below). The tender by the insurer must be timely. In *Dockins v. State Farm Ins. Co.*, 329 Or 20, 32–33, 985 P2d 796 (1999), an offer of settlement made more than six months after the service of the complaint was not a timely tender for purposes of ORS 742.061.

What constitutes proof of loss for purposes of starting the six-month period running is discussed in some detail in *Dockins*, 329 Or at 26–29. *See also Scott v. State Farm Mut. Auto. Ins. Co.*, 345 Or 146, 190 P3d 372 (2008). The court in *Dockins* held that the six-month requirement applied to the insurer, not to the insured, and adopted a liberal standard for the term *proof of loss*, notwithstanding more formal proof-of-loss requirements in the policy itself. *Dockins*, 329 Or at 28–29. The sufficiency of the proof of loss depends on the nature of the insurance

coverage at issue. *Zimmerman v. Allstate Property and Cas. Ins. Co.*, 354 Or 271, 285–86, 311 P3d 497 (2013) (discussing proof of loss in an underinsured motorist case).

Attorney fees are not awardable in actions by insureds against insurers to recover personal injury protection (PIP) benefits or uninsured/underinsured motorist (UM/UIM) benefits if, in writing and not later than six months from the date the insured files proof of loss with the insurer, (1) the insurer has accepted coverage and the only issues are the amount of PIP benefits due the insured or the liability of the UM/UIM and the UM/UIM damages due the insured, and (2) the insurer has consented to submit the case to binding arbitration. ORS 742.061(2)–(3). The insurer’s consent to arbitration may constitute formal institution of arbitration proceedings for purposes of ORS 742.504(12)(a). *See Paton v. Am. Family Mut. Ins. Co.*, 256 Or App 607, 613–14, 302 P3d 1204, *rev den*, 354 Or 386 (2013); *see also* § 16.2.

§ 16.7 REFERENCES

See generally Insurance Law: The Basics (OSB Legal Pubs 2011).

Chapter 17

CONSTRUCTION LAW

PETE VITEZNIK, B.S., Oregon State University (1987); J.D., Willamette University College of Law (1994); member of the Oregon State Bar since 1994 and the Washington State Bar Association since 1995; attorney, Kilmer, Voorhees & Laurick, P.C., Portland.

DOUG GALLAGHER, B.A., University of Oregon (1994); J.D., University of Oregon School of Law (1997); member of the Oregon State Bar since 1997; owner, Douglas Gallagher Law Office, Eugene.

ALAN L. MITCHELL, B.A., Miami University (1975); J.D., Lewis & Clark Law School (1996); member of the Oregon State Bar since 1996 and the Washington State Bar Association since 2005; owner, Mitchell Law Office, LLC, Portland.

§ 17.1	CONSTRUCTION CONTRACTORS BOARD COMPLAINTS	17-3
§ 17.1A	Overview	17-3
§ 17.1B	Complaints within CCB DRS Jurisdiction.....	17-3
§ 17.1C	Time Limitation for Filing CCB Complaint	17-4
§ 17.1D	Precomplaint Notice Requirement	17-6
§ 17.1E	Overview of CCB’s DRS Complaint Processes.....	17-6
§ 17.1F	Residential Complaint Process (ORS 701.145)	17-8
§ 17.1F(1)	No Mediation or Arbitration Clause	17-8
§ 17.1F(2)	Mediation or Arbitration Clause	17-8
§ 17.1F(3)	Action or Arbitration Commenced before Completion of CCB Mediation	17-9
§ 17.1G	Commercial Complaint Process (ORS 701.146)	17-10
§ 17.1G(1)	Precomplaint Notice.....	17-10
§ 17.1G(2)	Action or Arbitration.....	17-10
§ 17.1H	Payment from Surety of License Endorsement Bond	17-11
§ 17.1H(1)	Payment Limitations and Priority Rules: 90-Day Period	17-11
§ 17.1H(2)	Residential Bond Rules	17-12
§ 17.1H(3)	Commercial Bond Rules	17-12
§ 17.1H(4)	Surety Nonpayment.....	17-13
§ 17.1I	Late Filings and Contesting Closed Complaints.....	17-13
§ 17.1J	Contractor Bankruptcy	17-14

Chapter 17 / Construction Law

§ 17.1K	Complaints Filed on or after July 1, 2017	17-14
§ 17.1L	References	17-14
§ 17.2	PUBLIC PROJECTS	17-14
§ 17.2A	Oregon’s Little Miller Act.....	17-15
§ 17.2B	Federal Miller Act	17-15
§ 17.2C	Notice Received	17-15
§ 17.2D	References	17-16
§ 17.3	CONSTRUCTION LIENS	17-16
§ 17.3A	Statutory Implications of Construction Lien Law	17-16
§ 17.3B	Persons Who May File a Construction Lien	17-16
§ 17.3C	Preclaim Notice and Contract Requirements	17-17
§ 17.3C(1)	Requirements for Some Who Contract with Owner	17-17
§ 17.3C(1)(a)	Information Notice to Owner	17-17
§ 17.3C(1)(b)	Contract Requirement for Residential Structures and Zero-Lot-Line Dwellings	17-18
§ 17.3C(2)	Requirements for Some Who Do Not Contract with Owner: Notice of Right to a Lien.....	17-18
§ 17.3D	Preclaim Notice Requirement to Maintain Priority of Construction Lien over Mortgagees.....	17-19
§ 17.3E	Deadline to Perfect Claim of Construction Lien.....	17-20
§ 17.3E(1)	“Ceased to Provide”	17-20
§ 17.3E(2)	“Completion of Construction”	17-21
§ 17.3F	Postlien Notices.....	17-21
§ 17.3F(1)	Notice of Filing Lien.....	17-21
§ 17.3F(2)	Notice of Intent to Foreclose.....	17-21
§ 17.3F(3)	Obligation to Reply to Owner’s Demand for Information.....	17-22
§ 17.3F(4)	Postlien Notices Involving Consumer Debts	17-22
§ 17.3G	Foreclosure Suit Deadline	17-22
§ 17.3H	Lien Release Bond or Cash Deposit.....	17-23
§ 17.3H(1)	Removal of Lien from Property	17-23
§ 17.3H(2)	Deadlines Related to Lien Release Bond or Cash Deposit	17-23
§ 17.3H(2)(a)	Time for Filing Lien Release Bond or Cash Deposit	17-23

§ 17.3H(2)(b)	Service of Notice on Lien Claimant.....	17-24
§ 17.3H(2)(c)	Recordation of Affidavit of Notice	17-24
§ 17.3H(2)(d)	Petition to Determine Adequacy of Lien Release Bond.....	17-24
§ 17.3H(2)(e)	Lien Release Demand and Costs If Lien Not Foreclosed	17-24
§ 17.3H(2)(f)	Effect of Lien Release Demand If Claimant Prevails on Lien Foreclosure	17-25
§ 17.3H(3)	No New Cause of Action Created.....	17-25
§ 17.3I	References	17-25
§ 17.4	LICENSURE OR REGISTRATION	17-25
§ 17.4A	Licensure or Registration Required for Remedy	17-25
§ 17.4B	Construction Contractors Board.....	17-25
§ 17.4C	Other Construction Trades and Design Professionals.....	17-26
§ 17.4D	Plead-and-Prove Requirements	17-27

§ 17.1 CONSTRUCTION CONTRACTORS BOARD COMPLAINTS

§ 17.1A Overview

The Oregon Construction Contractors Board (CCB) is a state agency that licenses and regulates construction contractors under ORS chapter 701. The CCB’s authority includes processing certain types of complaints against contractors and their license surety bonds. These complaints are processed by the CCB Dispute Resolution Services (DRS) program, generally in conjunction with a lawsuit or an arbitration. To successfully utilize the CCB DRS complaint process, counsel should carefully review the various complaint forms, instructions, and other information found on the DRS section of the CCB’s website, <www.oregon.gov/ccb/pages/dispute_resolution.aspx>, as well as the applicable provisions of ORS chapter 701 and OAR chapter 812.

Except as noted, § 17.1B to § 17.1J describe the procedures applicable to complaints filed before July 1, 2017. *See* Or Laws 2011, ch 630, § 73. These materials do not describe the complaint process utilized by the CCB’s civil enforcement section under ORS 701.990 to 701.995.

§ 17.1B Complaints within CCB DRS Jurisdiction

A complaint must arise from the performance, or a contract for the performance, of work that requires a Construction Contractors Board (CCB) contractor license, and must be one or more of the following types:

- A complaint against a contractor by the owner of a structure or other real property for negligent work, improper work, or breach of contract; or to discharge, or recoup funds expended in discharging, a construction lien against the owner’s property upon meeting certain criteria.
- A complaint by a contractor against a subcontractor for negligent or improper work or breach of contract.
- A complaint against a contractor by a person furnishing labor or owed employee benefits (which includes both employees and trustees of employee benefit trusts, see OAR 812-002-0140(2)–(3)).
- A complaint by a person furnishing material or renting or supplying equipment to a contractor.
- A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

ORS 701.140. A number of “jurisdictional” requirements apply, such as licensure requirements for both the complainant and respondent, privity between the complainant and respondent, geographic limitations, and minimum complaint amounts. See generally OAR 812-004-1320 and the CCB complaint instructions, available at <www.oregon.gov/ccb/pages/dispute_resolution.aspx>. *See also* ORS 701.131(1)–(2) (contractor license required for remedies).

§ 17.1C Time Limitation for Filing CCB Complaint

A Construction Contractors Board complaint must be filed within the applicable time limitation periods set forth in ORS 701.143. The applicable limitation period, summarized in the following tables, depends on the type of complaint, type of structure, and other factors.

Owner and Contractor Complainants		
Type of Structure	Type of Complaint	
	Owner vs. Contractor	Contractor vs. Subcontractor
New structure, substantially completed	No later than the earlier of one year after the date the structure was first occupied or two years after substantial completion of the structure by the contractor filed against. ORS 701.143(1).	No later than the earlier of 14 months after the date the structure was first occupied or two years after substantial completion of the structure. ORS 701.143(5).

Existing structure; work substantially completed	No later than one year after the date the work was substantially completed by the contractor filed against. ORS 701.143(2).	No later than 14 months after the date the work on the structure was substantially completed. ORS 701.143(6).
Any structure, if contractor failed to start work	No later than one year after the date the parties entered into the contract. ORS 701.143(3).	n/a
Any structure, if contractor failed to substantially complete work	No later than one year after the date the contractor ceased to work on the structure. ORS 701.143(4).	No later than 14 months after the date the subcontractor ceased to work on the structure. ORS 701.143(7).

NOTE: *Substantial completion* “occurs when a person in the position of the owner would reasonably conclude that the contractor had fulfilled its obligations under the contract and that final payment was due.” OAR 812-002-0740(1)–(2) (also providing examples of specific evidence that may constitute substantial completion). Warranty work or repair to previously completed work does not extend substantial completion, except perhaps in relation to work wholly removed and replaced. OAR 812-002-0740(3).

CAVEAT: These time limitations may be extended depending on the date that the precomplaint notice is mailed. ORS 701.133(2). *See* § 17.1D.

NOTE: The surety of the license endorsement bond is not liable for a complaint filed more than 14 months after the earlier of:

- (a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or
- (b) The date that the surety canceled the bond.

ORS 701.150(3).

All Other Complainants	
Licensed contractor’s employees, employee trusts, subcontractors, or material or equipment suppliers	No later than one year after the date the contractor incurred the indebtedness. ORS 701.143(8); <i>see</i> OAR 812-004-0320(3)(c) (including employee trusts as a potential complainant).

NOTE: The statutory phrase *date the contractor incurred the indebtedness* is further defined by regulation and differs depending on the nature of the complaint. OAR 812-002-0220.

§ 17.1D Precomplaint Notice Requirement

At least 30 days before filing a Construction Contractors Board (CCB) Dispute Resolution Services (DRS) complaint, the complainant must send notice to the contractor that the complainant intends to file the complaint. The primary method of compliance is to mail the notice by certified mail to the last-known address of the contractor as shown by the CCB records. ORS 701.133(1). Compliance with this method does not require that the contractor receive actual notice.

If the notice is not mailed to the contractor's address of record with the CCB, the CCB will accept a return receipt "signed by the respondent" (see OAR 812-002-0673) more than 30 days before the complaint, or a letter signed by the respondent acknowledging receipt of the notice more than 30 days before the complaint. OAR 812-004-1340(9)(b). If no notice was provided, the CCB may accept evidence that the complainant and respondent are also parties to a mediation, arbitration, court action, or CCB complaint arising from the same contract or issues if copies of specific pleadings are provided. OAR 812-004-1340(9)(c)–(d).

If the precomplaint notice is mailed in compliance with ORS 701.133(1) within 45 days before the expiration of the time limitation for filing the complaint with the CCB (*see* § 17.1C), then the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed. ORS 701.133(2).

If the CCB returns a complaint for failure to provide evidence of a pre-complaint notice, the complainant may resubmit the complaint with proof of compliance and retain the original submission date as the filing date. OAR 812-004-1300(3).

By using the CCB DRS process, the complainant is not required to send a notice of defect under ORS 701.565. ORS 701.600(2).

§ 17.1E Overview of CCB's DRS Complaint Processes

The Construction Contractors Board (CCB) Dispute Resolution Services (DRS) program has two basic dispute resolution processes for resolving complaints against contractors and their license endorsement bonds: the residential complaint process against residential endorsement bonds described in ORS 701.145 (residential complaint process) and the commercial complaint process against commercial endorsement bonds described in ORS 701.146 (commercial complaint process).

Which process applies depends on the type of structure that is the subject of the complaint and the type of endorsement that the contractor holds, as shown by the following table.

Type of Structure	Endorsements Held		
	Residential only	Commercial only	Both residential and commercial
Residential structure; <i>see</i> ORS 701.005(15); OAR 812-002-0660	Residential complaint process (ORS 701.145); ORS 701.139(1)	No DRS available	Residential complaint process (ORS 701.145); ORS 701.139(3)(a)
Small commercial structure; <i>see</i> ORS 701.005(17); OAR 812-002-0675	Residential complaint process (ORS 701.145); ORS 701.139(1)	Commercial complaint process (ORS 701.146); ORS 701.139(2)	Complainant may choose between residential (ORS 701.145) or commercial (ORS 701.146) complaint process
Large commercial structure; <i>see</i> ORS 701.005(11); OAR 812-002-0430	No DRS available	Commercial complaint process (ORS 701.146); ORS 701.139(2)	Commercial complaint process (ORS 701.146); ORS 701.139(3)(c)

NOTE: A residential complaint may not be asserted against a commercial endorsement bond, and a commercial complaint may not be asserted against a residential endorsement bond. A complaint involving a small commercial structure may be asserted against either a residential or commercial bond by using the appropriate complaint process, which may have significant impact on the complainant’s potential recovery. *See* § 17.1H(2) to § 17.1H(3).

CAVEAT: When evaluating which process applies, the lawyer must carefully review the statutory and regulatory definitions of each structure type. “Residential” and “small commercial” labels may be misleading. For example, a four-story or smaller apartment building may be a residential structure (ORS 701.005(15)(a)(B)), while a four-story condominium building may not be (ORS 701.005(15)(a)(C)). Also, for example, a 100,000 square foot building may be a small commercial structure if “the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.” ORS 701.005(17)(c).

NOTE: The definitions of *residential structure* and *small commercial structure* both include the appurtenances to each structure. The lawyer

should consult the regulatory definitions, including *structure*, OAR 812-002-0700 (includes certain improvements in addition to buildings), and *appurtenance*, OAR 812-002-0040 (“any accessory improvement to real estate associated with a structure”).

§ 17.1F Residential Complaint Process (ORS 701.145)

If the residential complaint process applies (*see* § 17.1E), then a complainant must file a complaint on the appropriate complaint form. Complaint forms and instructions are found on the Dispute Resolution Services section of the Construction Contractors Board (CCB)’s website at <www.oregon.gov/ccb/Pages/dispute_resolution.aspx>. Complainants must pay a \$50 fee for an accepted complaint. OAR 812-004-1110(1). That fee may be recoverable as part of the final award. OAR 812-004-1250(1)(a). Certain nonlawyers may represent a business entity in proceedings before the CCB. ORS 701.160. Failure to timely respond to a request or otherwise act as directed or required by the CCB may result in closure of the complaint. *See generally* ORS 701.145(3).

How the CCB processes an accepted residential complaint depends on the dispute resolution terms of the underlying contract and when litigation or arbitration is commenced. *See* § 17.1F(1) to § 17.1F(3).

§ 17.1F(1) No Mediation or Arbitration Clause

Upon acceptance of a residential complaint in which the underlying contract contains no mediation or arbitration clause, the Construction Contractors Board (CCB) will attempt to conduct one or more meetings on site or via telephone to mediate a resolution.

If the complaint is settled, the complainant must notify the CCB in writing whether the terms of the settlement have been fulfilled within 30 days from the date the settlement agreement requires completion of the terms of the settlement. OAR 812-004-1500.

If the complaint is not settled, the complainant must obtain a final judgment (or arbitration award that has been reduced to a final judgment) in order to obtain payment from the bond. ORS 701.145(5). An employee or employee benefit trust complaint may also obtain a final order from the Bureau of Labor and Industries that states the amount of unpaid wages. ORS 701.145(6). *See also* OAR 812-004-1505. Generally, a complainant must provide the CCB proof of commencing an action or arbitration against the respondent (or in the case of a pending construction lien foreclosure, joining the respondent in the pending action) within 60 days after the last on-site meeting or telephone mediation. OAR 812-004-1530(3).

§ 17.1F(2) Mediation or Arbitration Clause

If a residential complaint is filed based on a contract that contains a mediation or arbitration clause, the contractor must initiate mediation or arbitration within 30 days after notification by the Construction Contractors Board (CCB), or

the contractor waives the right to mediation or arbitration in lieu of a CCB on-site or telephone mediation. ORS 701.180. If the parties do not resolve the dispute through CCB mediation, the complainant still must comply with any mediation or arbitration provision as a condition of obtaining judgment required for access to the bond, unless otherwise provided by certain statutes applicable to employee wage claims. ORS 701.180.

The CCB is the mediator unless the contract requires mediation by a specific mediator other than the CCB. OAR 812-004-1440(2). If the contract so specifies, the CCB must inform the respondent by written notice that if the respondent wants to mediate as provided by the contract terms, the respondent must provide proof of initiating contractual mediation within 40 days. OAR 812-004-1440(3). If the respondent complies, the CCB must suspend processing of the complaint pending mediation. OAR 812-004-1440(4).

§ 17.1F(3) Action or Arbitration Commenced before Completion of CCB Mediation

If either the complainant or the respondent provides evidence of filing an arbitration or action involving the same facts, the Construction Contractors Board (CCB) may suspend processing the residential complaint. ORS 701.145(2)(a). If the respondent filed the action, the complainant must give the CCB evidence of filing its complaint as a countersuit, counterclaim, or other action within 30 days from the date that the CCB suspended processing the complaint unless the CCB determines that there is good cause to extend the deadline. OAR 812-004-1520(6).

The CCB may also suspend processing of a residential complaint if the nature or complexity of the dispute is more appropriate for adjudication by a court. ORS 701.145(2)(b). And the CCB may suspend processing if an owner submits copies of a notice of defect under ORS 701.565 or submits a complaint based on the same facts and issues to a court, an arbitrator, or the Bureau of Labor and Industries (BOLI). OAR 812-004-1520(1).

If the CCB suspends processing, it will determine the complainant's access to the bond based on the final judgment (or arbitration award reduced to final judgment) or final BOLI order. The complainant must provide a certified copy of the final judgment or final BOLI order within 30 days from the date of final action by the court or BOLI, unless the CCB determines that there is good cause to extend the deadline. OAR 812-004-1520(4).

Pending the complainant's receipt of a final judgment or BOLI order, the CCB will require the complainant to provide status reports at least every six months regarding the litigation. OAR 812-004-1520(2); *see* ORS 701.149(1). Failure to provide timely status reports may result in closure of the complaint. ORS 701.149(1); OAR 812-004-1520(5).

§ 17.1G Commercial Complaint Process (ORS 701.146)

If the commercial complaint process applies (*see* § 17.1E), the complainant must take the steps set forth in § 17.1G(1) to § 17.1G(2) within the limitation period of ORS 701.143 (*see* § 17.1C) and any additional time that may be provided by ORS 701.133 (*see* § 17.1D).

§ 17.1G(1) Precomplaint Notice

The complainant must comply with the precomplaint notice requirement of ORS 701.133 (*see* § 17.1D) and any other contractual prelitigation or arbitration notice requirement.

§ 17.1G(2) Action or Arbitration

The complainant must file an action in a court of competent jurisdiction or initiate arbitration that substantially complies with ORS 36.600 to 36.740 on the matters in dispute. ORS 701.146(1). The Construction Contractors Board (CCB) should not be named as a party. The surety of the bond should not be named as a party except in very limited circumstances. *See* ORS 701.146(5) (prohibiting complainant from naming surety as a party except to determine validity or timeliness of surety's assertion that complainant notified the wrong surety or of complainant's delivery of a notice of court pleading or arbitration demand).

NOTE: The timeliness of the complainant's commercial complaint is based on the date the appropriate CCB complaint form is filed with the CCB, not the filing or commencement date of the action or arbitration. *See* ORS 701.146(3); OAR 812-004-1300(1), (5). Because the complainant is generally required to supply the CCB with proof of commencing an action or arbitration, the complainant should allow time for obtaining court-conformed or stamped copies of pleadings.

After filing an action or initiating arbitration, the complainant must deliver the CCB complaint form and court pleading, arbitration demand, or other document necessary to initiate arbitration to the CCB and the surety. ORS 701.146(2). The complainant must use the appropriate CCB complaint form. *See* <www.oregon.gov/ccb/Pages/index.aspx>. The CCB complaint and pleading or arbitration documents must be delivered to both the CCB and the surety by certified mail, return receipt requested, no later than the earliest of

- The 90th day after filing the action or initiating arbitration (whether by demand, filing, or otherwise);
- The 14th day before the first day of trial or arbitration; or
- The 30th day before the court issues a judgment or the arbitrator issues an award.

ORS 701.146(2).

The surety "has an absolute right to intervene" in the action or arbitration. ORS 701.146(5). Once the CCB accepts the complaint, the CCB will require the

complainant to provide status reports at least every six months regarding the litigation. OAR 812-004-1520(2); *see* ORS 701.149(1). Failure to provide timely status reports may result in closure of the complaint. ORS 701.149(1); OAR 812-004-1520(5).

After litigating the action or arbitration, the complainant must deliver a certified copy of the judgment to the CCB and the surety no later than 30 days after it is entered. ORS 701.146(6); OAR 812-004-1520(4). The CCB also accepts certified copies of final Bureau of Labor and Industries orders. OAR 812-004-1520(4). A complainant who obtains a successful arbitration award must reduce the award to a judgment and then submit a certified copy of that judgment. ORS 701.146(6); *see* ORS 36.700, ORS 36.715.

§ 17.1H Payment from Surety of License Endorsement Bond

Once the Construction Contractors Board (CCB) receives a final judgment or Bureau of Labor and Industries (BOLI) order, the CCB will determine what sums must be paid by the contractor's license endorsement bond. The CCB's determination is an order in other than a contested case and therefore is subject to judicial review under ORS 183.484. ORS 701.145(8), ORS 701.146(7).

A complaint is not ready for payment by a surety until at least 30 days have elapsed since the judgment was entered (or, in the case of a BOLI final order, at least 60 days have elapsed) and the respondent has not paid the judgment or BOLI order, a court or BOLI has not granted any stay, and all other complaints against the respondent in the same 90-day filing period are resolved, are closed, or have reached the same state of processing as the complaint. OAR 812-004-1600(2).

A surety may not condition payment of a complaint on the execution of a release by the complainant. OAR 812-400-1600(11).

§ 17.1H(1) Payment Limitations and Priority Rules: 90-Day Period

Certain complaints have priority over others in payment from a bond. Certain complaints are limited in the amount recoverable against a bond. These rules vary depending on the type of bond, the type of complaint, and the date on which the complaint is filed in relation to other complaints.

Payment limitation and priority rules are generally applied to all complaints filed against a bond within the same 90-day period. Each 90-day period commences when the first complaint is filed. A subsequent 90-day period commences on the date the first complaint is filed after the close of the earlier 90-day period. ORS 701.153(3)(b), ORS 701.157(1)(b).

If the bond amount changes during the *work period* (defined in OAR 812-002-0800) that gave rise to the complaint, the amount of the bond at the time the contract underlying the complaint was entered is the amount available for payment of the complaint. OAR 812-004-1600(5). If two or more contractors are jointly

and severally liable to pay a complaint, then certain payment rules apply. *See* OAR 812-004-1600(10).

§ 17.1H(2) Residential Bond Rules

A surety of a residential bond is liable only for residential complaints. ORS 701.150(1); *see* § 17.1E. The following payment and priority rules apply for each 90-day period:

Residential Complaint Determinations against Residential Bond		
Type	Priority	Payment Limitation
Owner complaint ORS 701.153(3)(a)(A)	Priority over all other types of complaints	Penal sum of bond
Nonowner complaint ORS 701.153(3)(a)(B)	Only paid if bond is not exhausted by owner complaints	\$3,000 total maximum for all nonowner complainants
Cost and interest ORS 701.153(6)	None	\$3,000 total maximum for all complainants

If more than one residential complaint that is filed within the same 90-day period must be paid, and the total amount due exceeds the penal sum of the residential bond (subject to the priorities of ORS 701.153), then the remaining amount of the bond must be paid to each complainant on a pro rata basis. ORS 701.153(4); OAR 812-004-1600(8).

Any residential complaint filed in an earlier 90-day period has priority over any complaint filed in a subsequent 90-day period. ORS 701.153(5).

§ 17.1H(3) Commercial Bond Rules

A surety on a commercial bond is liable only for commercial complaints. ORS 701.150(1); *see* § 17.1E. The following payment and priority rules apply for each 90-day period:

Commercial Complaint Determinations against Commercial Bond		
Type	Priority	Payment Limitation
Employee or employee trust complaint ORS 701.157(1)(a)(A)	Priority over all other types of complaints	Penal sum of bond
All other complaints, except costs, interest, and attorney fees ORS 701.157(1)(a)(B)	Only paid if bond is not exhausted by employee or employee trust complaints	Penal sum of bond

Costs, interest, and attorney fees ORS 701.157(1)(a)(C)	Only paid if bond not exhausted by all other complaints	Penal sum of the bond
--	---	-----------------------

If more than one commercial complaint that is filed within the same 90-day period must be paid, and the total amount due exceeds the penal sum of the commercial bond (subject to the priorities of ORS 701.157), then the remaining amount of the bond must be paid to each complainant on a pro rata basis. ORS 701.157(2); OAR 812-004-1600(8).

Any commercial complaint filed in an earlier 90-day period has priority over any complaint filed in a subsequent 90-day period. ORS 701.157(3).

§ 17.1H(4) Surety Nonpayment

If the surety fails to pay a final order within 30 days after receipt of notice from the Construction Contractors Board (CCB) to pay a determination, the complainant may file a court action against the surety for up to twice the damages awarded by the CCB, costs, and reasonable attorney fees as the prevailing party. ORS 701.068(9)–(10). The inactive status of the respondent’s license does not excuse payment of a CCB determination. OAR 812-004-1600(12).

§ 17.1I Late Filings and Contesting Closed Complaints

If a deadline is approaching, a complainant may file an incomplete complaint that complies with OAR 812-004-1300 for limitation purposes. Use of the Construction Contractors Board (CCB)’s current form, identification of the parties, and evidence of compliance with the precomplaint notice requirement is the minimum sufficient for the complaint to be deemed filed. The CCB must provide not less than 14 days from the date of its request for the complainant to provide the additional information. OAR 812-004-1350, OAR 812-004-1260(3).

If the agency has closed a complaint for any of the reasons described in OAR 812-004-1260(1) (including failure to file a complaint within the applicable limitations period or failure to respond to CCB requests for information), the CCB may reopen the complaint within 60 days of closing the complaint if the complainant’s failure to comply with CCB rules was due to excusable neglect. OAR 812-004-1260(4).

The closure of a complaint by the CCB is an order in other than a contested case and therefore is subject to judicial review under ORS 183.484. OAR 812-004-1260(5)–(6). Contrary to the Oregon Department of Justice’s general rules for proceeding under the Administrative Procedures Act, a party must file a motion for reconsideration of the CCB’s determination to close a complaint before seeking judicial review of the order. *Compare* OAR 137-004-0080(1) *with* OAR 812-004-1260(7).

§ 17.1J Contractor Bankruptcy

If a contractor files a bankruptcy or becomes subject to an involuntary bankruptcy order, the automatic stay prevents filing or continuing a Construction Contractors Board (CCB) complaint. *See* 11 USC § 362. Yet because the contractor's endorsement bond is not a bankruptcy estate asset, a complainant may obtain payment of the bond proceeds by obtaining the bankruptcy court's order granting relief from stay to file or continue the CCB complaint. *See In re Christensen*, 167 BR 213, 217 (D Or 1994).

PRACTICE TIP: Although not addressed in *Christensen*, relief from stay should be obtained before sending a precomplaint notice. A request for relief from stay may be more likely to be granted if the request provides that any judgment or arbitration award will not impose personal liability against the contractor and that recovery will be limited to the bond proceeds.

§ 17.1K Complaints Filed on or after July 1, 2017

For complaints filed on or after July 1, 2017, the Construction Contractors Board (CCB) will have authority to adopt rules for the arbitration of residential complaints and for mediation or arbitration of commercial complaints involving small commercial structures if the parties to the dispute agree. ORS 701.144(1)–(3); Or Laws 2011, ch 630, §§ 58, 73(1).

For residential complaints, the CCB will have authority to require binding arbitration, unless one of the parties requests a contested case hearing or files a court action and complies with certain notification requirements. ORS 701.144(1), (4). Any future rules adopted by the CCB under ORS 701.144 will not apply to complaints filed before July 1, 2017. Or Laws 2011, ch 630, § 73(2).

§ 17.1L References

See 2 Construction Law §§ 17.6 to 17.6-11 (OSB Legal Pubs 2011).

§ 17.2 PUBLIC PROJECTS

Bonding statutes were adopted for public works projects in lieu of suppliers' and subcontractors' construction lien rights on private projects. *See, e.g., Multnomah Cnty. v. U. S. Fid. & Guar. Co.*, 87 Or 198, 203, 170 P 525 (1918). However, not every public works project is required to have a payment or performance bond. Public bodies may exempt certain categories of projects from the bonding requirements or declare a project-specific emergency, which obviates the bonding requirements. Thus, although there are no preclaim requirements for public works bond claims under either Oregon's Little Miller Act (ORS 279C.600–279C.625), or the federal Miller Act (40 USC §§ 3131–3134), potential claimants may wish to confirm the existence of a bond through either an Oregon Public Records Law request or a federal Freedom of Information Act request before agreeing to work on a public works project.

§ 17.2A Oregon's Little Miller Act

To perfect a claim (other than one for contribution to an employee benefit plan) under Oregon's Little Miller Act (ORS 279C.600–279C.625), a protected party must give notice within 180 days after last providing labor or furnishing materials to the project. ORS 279C.605(1)–(2). If the contract for the project was first advertised or entered into before May 26, 2009, then the filing deadline is 120 days. Or Laws 2009, ch 160, §§ 1–2. Replacement or corrective materials can be used to calculate the notice timing requirements under the Oregon Little Miller Act. *City of The Dalles, Or. ex rel. Taylor Elec. Supply, Inc. v. D'Electric Co., Inc.*, 105 Or App 46, 52, 803 P2d 771 (1990), *rev den*, 311 Or 261 (1991). This is different from the timing requirements under Oregon's construction lien statutes, which generally do not permit repair work to qualify as the valid last day of work. *See* § 17.3E to § 17.3E(2).

A general form of notice of claim is provided in the statutes. ORS 279C.605(3). A claimant must give written notice of a claim to the contractor and the contracting agency. ORS 279C.600(1)(b). Methods of delivery include registered or certified mail and hand-delivery. ORS 279C.605(1).

An action on an Oregon Little Miller Act bond must be instituted no later than two years after the person last provided labor or materials (not two years from when the notice of claim was given). ORS 279C.610(3).

§ 17.2B Federal Miller Act

Persons furnishing labor or materials to a project for the federal government may be protected by what is commonly known as the Miller Act. 40 USC §§ 3131–3134. If the claimant does not have a direct contractual relationship with the prime contractor, the claimant must give written notice to the contractor within 90 days from the date the claimant last performed labor or furnished material or services for which a claim is made. 40 USC § 3133(b)(2).

NOTE: Persons entitled to make a Miller Act claim are much more limited than those entitled to make a claim under the Oregon Little Miller Act. See 40 USC § 3133(b)(1)–(2) for parties protected under the Miller Act. If written notice is required, methods of delivery are described at 40 USC § 3133(b)(2)(A)–(B).

A suit under the Miller Act must be brought in the United States District Court and in the name of the United States on behalf of the claimant. The suit must be commenced within one year after the day on which the last material was supplied or labor or services were performed (not one year from when the notice of claim was given). 40 USC § 3133(b)(3)–(4).

§ 17.2C Notice Received

Claim notices under the federal Miller Act (40 USC §§ 3131–3134), must be received before the relevant time period expires. *Pepper Burns Insulation, Inc.*

v. Artco Corp., 970 F2d 1340, 1343 (4th Cir 1992), *cert den*, 506 US 1053 (1993). The courts have not yet considered whether the date of mailing or the date of receipt is relevant under Oregon’s Little Miller Act (ORS 279C.600–279C.625).

§ 17.2D References

See 1 *Construction Law* §§ 10.5 to 10.6-6 (OSB Legal Pubs 2011).

§ 17.3 CONSTRUCTION LIENS

§ 17.3A Statutory Implications of Construction Lien Law

An Oregon construction lien (no longer called a mechanic’s lien) is a substantive and purely statutory remedy created by the Construction Lien Law found at ORS 87.001 to 87.060 and ORS 87.075 to 87.093. ORS 87.001. The statutory nature of Oregon construction liens has important implications.

Unless otherwise explicit in the Construction Lien Law, all references to the days in which some action or notice is required are calendar days. *See e.g., Tyree v. Tyree*, 116 Or App 317, 320, 840 P2d 1378 (1992), *rev den*, 315 Or 644 (1993) (because the Oregon Tort Claims Act is a substantive statutory scheme, neither ORS 174.120 nor ORCP 10 extends the time period for a person to give a tort claim notice).

The date for perfecting a construction lien (by recording) or maintaining perfection of the lien by filing an action in a proper court may not be extended or tolled by agreement or otherwise. *See, e.g., Evergreen Pac., Inc. v. Cedar Brook Way, LLC*, 251 Or App 194, 204–06 & n 5, 284 P3d 509 (2012) (third parties have the right to rely on the public record and should be protected against secret liens, such as unperfected construction liens) (*dicta*); *see also* ORS 87.055 (“No lien created under ORS 87.010 shall bind any improvement for a period longer than . . .”).

A person must clearly comply with the statutory requirements of the Construction Lien Law to avail him- or herself of the rights and remedies. *See Anderson v. Chambliss*, 199 Or 400, 404–05, 262 P2d 298 (1953) (“It is well established in this state that because the right to a lien is purely statutory, a claimant to such a lien must in the first instance bring himself clearly within the terms of such law. The statute is strictly construed as to persons entitled to its benefits and as to the procedure necessary to perfect the lien.”); 2 *Construction Law* ch 15 (OSB Legal Pubs 2011).

§ 17.3B Persons Who May File a Construction Lien

Persons who may perfect a construction lien are set forth in ORS 87.010. Notwithstanding, those persons may nevertheless be prevented from perfecting a valid construction lien if they

- fail to comply with (or do not cure as permitted) certain licensure requirements, such as those applicable to construction contractors and landscape contractors, *see, e.g.*, ORS 701.131, ORS 671.575; *see also* § 17.4A; or
- provide labor, materials, or equipment to an unlicensed contractor for the renovation, remodel, or repair of an owner-occupied residence at the time of contracting or date of first delivery or performance. ORS 87.036(1).

A person's lien rights may be limited by an owner who posts a notice of nonresponsibility in accordance with ORS 87.030(1). *See* ORS 87.005(8) (definition of *owner*).

§ 17.3C Preclaim Notice and Contract Requirements

The Construction Lien Law (ORS 87.001–87.060 and ORS 87.075–87.093), sometimes requires, as a condition of maintaining the ability to perfect a construction lien, that the claimant properly and timely provide a certain type of preclaim notice. *See, e.g.*, ORS 87.021, ORS 87.093. Sometimes a claimant must have a written contract to maintain the ability to perfect a lien. *See* ORS 87.037. Analysis of whether statutory preclaim notice and contract requirements apply starts by reviewing the potentially applicable statutes and answering these questions:

- *Whether the claimant contracts with an owner of the real property or improvement.* The term *owner* includes persons holding fee title or any lesser estate, lessees, and those who have entered into a contract to purchase an interest. ORS 87.005(8). *See* § 17.3C(1)(a) and § 17.3C(1)(b) for potential application if a lien claimant contracts with an owner. *See* § 17.3C(2) for potential application if a lien claimant does not contract with an owner.
- *What type of improvement is involved.* The subject improvement or project must be evaluated under each notice statute, because definitions vary. *Cf.* ORS 87.021(3)(b)(A), ORS 87.093(8)(a), ORS 87.037 (referring to ORS 701.305 and thereby incorporating the definition in ORS 701.005(8)).
- *If notice is required, how is it given.* *See* ORS 87.018 (manner of delivering notice other than an Information Notice to Owner), ORS 87.093(2)–(4) (manner of delivering Information Notice to Owner).

§ 17.3C(1) Requirements for Some Who Contract with Owner

§ 17.3C(1)(a) Information Notice to Owner

An *original contractor*, meaning a contractor who has a contractual relationship with an owner, ORS 87.005(7), must deliver a copy of the “Information Notice to Owner” to the owner or agent of the owner at the time of signing a residential construction or improvement contract with a price exceeding \$2,000. ORS 87.093(2), (4), (8). If the residential construction or improvement contract price was initially less than \$2,000, the notice must be mailed or otherwise

delivered within five days after the original contractor knows the contract price will exceed \$2,000. ORS 87.093(4).

The form of notice must be the form adopted by the Construction Contractors Board. *See* ORS 87.093(1). The notice must be delivered personally, or sent by registered or certified mail or by first-class mail with a certificate of mailing. ORS 87.093(3). If the owner is a licensed contractor, the original contractor is not required to give the notice. ORS 87.093(5).

§ 17.3C(1)(b) Contract Requirement for Residential Structures and Zero-Lot-Line Dwellings

An *original contractor*, meaning a contractor who has a contractual relationship with an *owner*, ORS 87.005(7), “may not claim a lien arising from the improvement of real property if a written contract for the work is required by ORS 701.305 and the contractor does not have a written contract.” ORS 87.037. ORS 701.305 applies to contracts to “construct, improve or repair a residential structure or zero-lot-line dwelling for a property owner” when the initial aggregate contract price exceeds \$2,000 or, during the course of performance, exceeds that amount. ORS 701.305(1). *Residential structure* and *zero-lot-line dwelling* have technical definitions that may include, but are not limited to, site-built homes, modular homes constructed offsite, condo units, “structure[s] that contain[] one or more dwelling units and [are] four stories or less above grade,” and any appurtenance thereto. ORS 701.005(15), (20). At the time of publication, there was no reported case regarding whether the terms required by ORS 701.305(2) are required to preserve the right to perfect a lien, or whether a written contract is all that is required.

§ 17.3C(2) Requirements for Some Who Do Not Contract with Owner: Notice of Right to a Lien

The following table sets forth whether a person’s right to perfect a lien requires the person to provide a notice of right to a lien to the owners of the site. *See* ORS 87.005(8), (10) (defining the terms *owner* and *site*).

Person Claiming Lien	Type of Improvement on Site	
	Commercial Improvement (<i>see</i> ORS 87.021(3)(b)(A) (defining the term))	Residential Improvement (<i>see</i> ORS 87.021(3)(b)(B) (defining <i>residential building</i>))
Performs Labor or Provides Labor and Materials	Not required* ORS 87.021(3)(b)	Required* ORS 87.021(1)
Furnishes Material	Required* ORS 87.021(1)	Required* ORS 87.021(1)

Rents Equipment	Not required ORS 87.021(3)(b)	Required ORS 87.021(1)
Provides Professional Services under ORS 87.010(5)–(6)	Required ORS 87.021(1)	Required, except no lien permitted if provided on owner-occupied residence at request of an agent of owner ORS 87.021(1)
*Failure to provide notice of right to a lien to a mortgagee may adversely affect the priority of the lien. <i>See</i> ORS 87.025(3).		

If a notice of right to a lien is required, the notice must be in substantially the statutory form set forth in ORS 87.023, in writing, and delivered in person or by registered or certified mail. ORS 87.018(1), ORS 87.021(2). The notice of right to a lien must be provided “during the progress of the improvement” and only preserves the right to perfect a lien for labor, material, equipment, or services provided within eight days (not including Saturdays, Sundays, and other holidays as defined in ORS 187.010) before the notice is delivered or mailed. ORS 87.021(1); *Sun Solutions, Inc. v. Brandt*, 300 Or 317, 321–23, 709 P2d 1079 (1985).

PRACTICE TIP: Careful review of the definitions of *commercial improvement* and *residential building* may be critical to determining whether a lien claimant has the right to record a valid lien despite the failure to deliver a timely notice of right to a lien to the owners. For example, a “spec home” that is owned and constructed by the builder for resale may be a commercial improvement and not a residential improvement. *See* ORS 87.021(3)(b) (a residential improvement is “a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes”).

If a notice of right to a lien is provided to an owner, then the owner may make written demand for certain information. Upon receipt of such a demand from an owner, the supplier (the person seeking to perfect a lien) must provide the information within 15 business days, or the supplier loses the right to recover attorney fees and costs otherwise allowable in a suit to foreclose a lien. ORS 87.027.

§ 17.3D Preclaim Notice Requirement to Maintain Priority of Construction Lien over Mortgagees

A construction lien potentially enjoys priority over mortgagees, that is, persons who hold a mortgage and trust deed that secures a loan or debt against the land or improvement. *See generally* ORS 87.005(6), ORS 87.025; *SERA Architects, Inc. v. Klahowya Condo., LLC*, 253 Or App 348, 290 P3d 881 (2012),

rev den, 353 Or 533 (2013). Persons who provide materials—regardless of the type of project—must provide a notice of right to a lien to any mortgagee of the project to maintain priority rights. ORS 87.025(3). The notice protects the priority of charges for materials provided after a date that is eight days (not including Saturdays, Sundays, and other holidays as defined in ORS 187.010) before the notice is delivered or mailed. ORS 87.021(1), ORS 87.025(3). Delivery of the notice must comply with ORS 87.018(1). Failure to provide the notice and a subsequent failure to segregate the charges claimed for materials in a perfected construction lien from other charges may result in loss of priority of the entire lien. *See, e.g., Benj. Franklin Fed. Sav. & Loan Ass’n v. Hallmark, Inc.*, 257 Or 436, 442, 479 P2d 740 (1971) (charges for materials lumped together in lien with charges for labor, causing loss of priority for all charges in lien).

If a notice of right to a lien is provided to a mortgagee, then the mortgagee may make written demand for certain information. ORS 87.005(6), ORS 87.025(4). Upon receipt of such a demand from a mortgagee, the person seeking to perfect a lien must provide the information within 15 business days, or the person waives the priority of ORS 87.025(1)–(2). ORS 87.025(4).

§ 17.3E Deadline to Perfect Claim of Construction Lien

A lien created by ORS 87.010 is perfected by filing with the county recording officer a claim of lien containing the elements required by ORS 87.035(3) to (4) in the county or counties in which the improvement or some part thereof is situated. ORS 87.035(2).

For persons who supplied labor, materials, or equipment under ORS 87.010(1) to (2), the claim of construction lien must be perfected “not later than 75 days after the person ceased to provide labor, rent equipment or furnish materials or 75 days after completion of construction, whichever is earlier.” ORS 87.035(1); *see* ORS 87.045 (completion of construction).

For all other persons claiming a lien under ORS 87.010 (i.e., employee trusts and certain professional service providers), the claim of construction lien must be perfected “not later than 75 days after the completion of construction.” ORS 87.035(1); *see* ORS 87.045 (completion of construction).

NOTE: All days are calendar days. Caution must be taken to be sure the county recording office is open before any deadline expires.

§ 17.3E(1) “Ceased to Provide”

Although the phrase is not defined, significant case law is generated over the concept of what day a person “ceased to provide” labor, materials, or equipment for purposes of the ORS 87.035(1) deadline. For example, a person cannot postpone the statutory deadline for filing a lien claim by the performance of “every trifling omission” or by repairing his or her own substandard work. *Fox & Co. v. Roman Catholic Bishop of the Diocese of Baker City*, 107 Or 557, 559, 215 P 178 (1923). *See 2 Construction Law* § 15.7-2(b) (OSB Legal Pubs 2011).

§ 17.3E(2) “Completion of Construction”

The phrase “completion of construction,” a trigger for the 75-day deadline to perfect a lien under ORS 87.035(1), is not defined. The “completion of construction of an improvement” occurs when:

- (a) The improvement is substantially complete;
- (b) A completion notice is posted and recorded as provided by [ORS 87.045(2)–(3)]; or
- (c) The improvement is abandoned as provided by [ORS 87.045(5)].

ORS 87.045(1). *See 2 Construction Law* § 15.7-2(c) (OSB Legal Pubs 2011). For purposes of determining the timeliness of a construction lien, a court may look at the circumstances behind the completion notice. *See, e.g., Dallas Lumber & Supply Co. v. Phillips*, 249 Or 58, 60, 436 P2d 739 (1968).

§ 17.3F Postlien Notices

Proper and timely service of postlien notices and responses to information requests is critical to maintain the claimant’s ability to recover attorney fees and costs in a lien foreclosure suit. *See* § 17.3F(1) to § 17.3F(4).

§ 17.3F(1) Notice of Filing Lien

After a person records a lien, the person must, within 20 days after the lien is recorded, mail to all the owners and mortgagees a written notice that a lien has been recorded, together with a copy of the lien. Such a notice mailed to the owners and mortgagees who received a notice of right to a lien under ORS 87.021 is sufficient unless the person giving the notice has actual knowledge of a change of owner or mortgagee. ORS 87.039(1). The notice must be mailed by certified or registered mail. ORS 87.018(1). Failure to comply with this notice requirement results in the loss of the opportunity to recover attorney fees, costs, and disbursements otherwise allowed by ORS 87.060. ORS 87.039(2).

§ 17.3F(2) Notice of Intent to Foreclose

At least 10 days before filing the foreclosure action under ORS 87.055, a lien claimant must deliver to the owners and mortgagees of the property on which the lien is claimed written notice of the claimant’s intent to commence suit to foreclose the construction lien. ORS 87.057(1). Delivery may occur in person or by certified or registered mail. ORS 87.018(1). The notice must be delivered to each owner and mortgagee regardless of whether the owner or mortgagee is a necessary party to the foreclosure. *Molalla Pump & Heating Co. v. Chaney*, 42 Or App 789, 791–92, 601 P2d 874 (1979). Notice delivered to a mortgagee who received a notice of right to a lien required by ORS 87.025 is sufficient unless the person giving notice has actual knowledge of a change of mortgagee. ORS 87.057(1).

PRACTICE TIP: Many attorneys combine postlien notices into one notice. Because a notice of intent to foreclose requires the claimant to

deliver notice at least 10 days before expiration of the 120-day foreclosure deadline (*see* § 17.3G), extreme diligence must be taken to allow enough time to (1) obtain title information about any changes in owners or mortgagees (i.e., obtain a foreclosure guaranty), and (2) deliver notices to new owners and mortgagees and otherwise address problems delivering such notices.

Failure to plead and prove compliance with ORS 87.057(1) will result in the loss of the opportunity to recover attorney fees, costs, and disbursements otherwise allowed by ORS 87.060. ORS 87.057(3).

§ 17.3F(3) Obligation to Reply to Owner’s Demand for Information

If a notice of intent to foreclose has been delivered and an owner requests information, the lien claimant must respond to that request within five days by providing “a list of the materials and supplies with the charge therefor, or a statement of a contractual basis” for the claim that will be made in the foreclosure action. ORS 87.057(2).

Failure to plead and prove compliance with ORS 87.057(2) will result in the loss of the opportunity to recover attorney fees, costs, and disbursements otherwise allowed by ORS 87.060. ORS 87.057(3).

§ 17.3F(4) Postlien Notices Involving Consumer Debts

When a construction lien secures a consumer debt, the Fair Debt Collection Practices Act (FDCPA) (15 USC §§ 1692–1692p) potentially applies. *See, e.g., Consumer Law in Oregon*, § 22.2-1(d)(1) (OSB Legal Pubs 2013). If the FDCPA applies, certain disclosures and time lines must be included in the first notice and all subsequent notices under the FDCPA (not as an element of the Oregon Lien Law). For example, postlien notices may need to include a statutory “validation notice” for initial communications. *Consumer Law in Oregon* at § 22.3-6(a) & App 22A.

§ 17.3G Foreclosure Suit Deadline

A suit must be filed in a proper court to foreclose a claim of construction lien no later than 120 days after the timely filing of the lien under ORS 87.035. If extended payment terms are provided and stated in the claim of lien, then the lien claimant must file suit no later than the earlier of 120 days after the expiration of the extended payment terms or two years from the date the lien was filed. ORS 87.055.

Lien claimants must consider certain pleading and proof requirements regarding the right to recover attorney fees (*see* § 17.3F(2) to § 17.3F(3)) and licensure or registration. *See* § 17.4D.

Lien claimants must not rely on the filing of a lien foreclosure action by another lien claimant as meeting the deadline for all lien claimants. Each lien claimant must foreclose its own lien by a claim, cross-claim, or counterclaim com-

menced within the 120-day period as determined by ORS 12.020. ORS 87.055(1). Other parties who are construction lien claimants are subject to ORS 87.055(2) for purposes of determining when the foreclosure commences.

An arbitration clause does not vitiate or waive the right to file a foreclosure suit, although the appropriate procedure is to abate the foreclosure suit once filed and served for arbitration of certain issues, leaving unresolved issues involving lien validity and foreclosure for trial. *See 2 Construction Law* § 15.9-7(a) (OSB Legal Pubs 2011).

NOTE: Generally, a trial date must be scheduled within one year of the filing of a complaint unless good cause is shown to the presiding judge or designee. UTCR 7.020(5).

§ 17.3H Lien Release Bond or Cash Deposit

§ 17.3H(1) Removal of Lien from Property

Any owner of an improvement or land subject to a lien, or any other interested party, may file a lien release bond with the county recording officer or a cash deposit with the county treasurer. The bond or cash deposit must be in an amount of not less than 150 percent of the amount claimed under the lien, or \$1,000, whichever is greater. ORS 87.076(1)–(2).

The effect of filing a lien release bond or cash deposit (ORS 87.076(1)–(2)), providing proper and timely notice of the filing to the lien claimant (ORS 87.078), and recording a sufficient affidavit of service of notice (ORS 87.081), is that the lien attaches to the bond or money, and the property described in the lien is entirely free of the lien and not involved in subsequent proceedings. ORS 87.083(1). In such a case, the lien foreclosure suit is filed and proceeds against the lien release bond or cash deposit. If the lien foreclosure suit proceeds against a cash deposit, the county treasurer is not to be named in the suit. ORS 87.083(2).

CAVEAT: A lien claimant should not record a lien release in the real property records. The transfer of the lien from the property to the bond or cash deposit is self-executing when the person filing the bond or cash deposit complies with ORS 87.076 to 87.081. *See* ORS 87.083(1). *But see* ORS 87.076(4) (providing a remedy to recover the cost of the bond or cash deposit from the lien claimant if the lien is not foreclosed).

§ 17.3H(2) Deadlines Related to Lien Release Bond or Cash Deposit

§ 17.3H(2)(a) Time for Filing Lien Release Bond or Cash Deposit

The lien release bond or cash deposit may be filed any time after a lien is filed, including before a foreclosure suit is commenced or while such a suit is pending. ORS 87.076(3), ORS 87.083(1).

§ 17.3H(2)(b) Service of Notice on Lien Claimant

A person who files a bond or deposits money under ORS 87.076 must serve a notice of the filing or deposit, and if a bond, a copy thereof, not later than 20 days after the filing or deposit. The notice must state the location and time of the filing or deposit. ORS 87.078(1). Service must occur by delivery in person or registered or certified mail. ORS 87.018(1). Failure to notify the lien claimant as required means that the filing of the bond or deposit of money is of no effect, and the lien remains an encumbrance against the real property and improvements. ORS 87.078(2). *See Tualatin Valley Builders Supply, Inc. v. TMT Homes of Oregon, Inc.*, 179 Or App 575, 581–82, 41 P3d 429 (2002) (error to allow lien claimant’s recovery from lien release bond when ORS 87.078 notice not provided, even though notice was for lien claimant’s benefit).

§ 17.3H(2)(c) Recordation of Affidavit of Notice

Once the person has filed the bond or made the cash deposit under ORS 87.076 and provided notice required by ORS 87.078(1), the person must file an affidavit stating that the notice was served, and if the filing is a cash deposit, the affidavit must also state that the deposit was made with the county. ORS 87.081.

PRACTICE TIP: The affidavit of a cash deposit should state the particulars of the deposit or attach the receipt provided by the county treasurer to show that the deposit complies with ORS 87.076(2).

§ 17.3H(2)(d) Petition to Determine Adequacy of Lien Release Bond

A petition to determine the adequacy of a lien release bond, for some reason other than the amount of the bond, must be filed within 10 days of receipt of the notice of filing. Not later than two days after the petition is filed with the court, the lien claimant who challenged the bond must send a notice of the filing and a copy of the petition by registered or certified mail to the person who filed the bond. ORS 87.086.

§ 17.3H(2)(e) Lien Release Demand and Costs If Lien Not Foreclosed

A person who posts a bond or makes a cash deposit in compliance with ORS 87.076(1) to (2), ORS 87.078, and ORS 87.081 may make a written demand that the lien claimant release the lien. ORS 87.076(4)(a). The demand must be served by delivery in person or by registered or certified mail. ORS 87.018(1). If the lien claimant subsequently does not release the lien within 10 days of receiving the demand and does not bring a suit to foreclose within the time required, then the lien claimant is liable to the person for the greater of \$500 or the actual costs of complying with ORS 87.078 to 87.081. ORS 87.076(4)(a). To recover attorney fees, the person must make an additional written demand, at least 20 days before commencing action, for payment of the \$500 or actual costs on the lien claimant

who did not timely foreclose its lien. ORS 87.076(4)(b). The written demand must be served in compliance with ORS 87.018(1).

§ 17.3H(2)(f) Effect of Lien Release Demand If Claimant Prevails on Lien Foreclosure

As a counterbalance to a person's right to make a lien release demand, the court must award a prevailing lien claimant in a foreclosure suit the greater of \$500 or the actual costs of addressing the lien release demand, in addition to other costs and attorney fees to which the claimant is otherwise entitled. ORS 87.076(4)(c).

§ 17.3H(3) No New Cause of Action Created

The provisions of ORS 87.076, ORS 87.083, and ORS 87.088 do not create a new cause of action and may not be asserted as a basis for a *per se* negligence action (such as in a claim against the county treasurer). ORS 87.089.

§ 17.3I References

See generally 2 Construction Law ch 15 (OSB Legal Pubs 2011).

§ 17.4 LICENSURE OR REGISTRATION

§ 17.4A Licensure or Registration Required for Remedy

The State of Oregon licenses contractors and certain professionals. Licensure is often a condition of maintaining the person's right to various remedies, including the right to perfect a lien, file an action or arbitration in court, or file a complaint with the Construction Contractors Board. Furthermore, some remedies require the person to plead and prove licensure or registration. *See* § 17.4B to § 17.4D.

§ 17.4B Construction Contractors Board

Persons who perform work as a *contractor* (defined in ORS 701.005(5)), and who are not otherwise exempt under ORS 701.010, must be licensed and properly endorsed by the Oregon Construction Contractors Board (CCB) for the work performed “[a]t the time the contractor bid or entered into the contract for performance of the work” and “[c]ontinuously while performing the work for which compensation is sought.” ORS 701.131(1). Endorsements include “residential” (for work on residential and small commercial structures) and “commercial” (for work on small commercial and large commercial structures). *See* ORS 701.005(2), (11), (13), (15), (17) (definitions of endorsements and various structures), ORS 701.021 (endorsement requirements).

Failure to comply with these license and endorsement requirements results in a complete defense to a contractor's remedy for payment arising out of work or a contract subject to ORS chapter 701, with very limited exceptions. *See* ORS 701.131(1). Substantial compliance with license requirements is not sufficient. *Parthenon Const. & Design, Inc. v. Neuman*, 166 Or App 172, 179–81, 999 P2d

1169 (2000) (decided under *former* ORS 701.065, *renumbered as* ORS 701.131 (2007)).

NOTE: ORS 701.131(1) bars the ability of the contractor to seek collection of the entire claim, not merely the portions of unlicensed work. *Parthenon Const. & Design, Inc.*, 166 Or App at 178–79 (two lapses in registration under *former* ORS 701.065 barred claim for all work on project); *Bannister v. Longview Fibre Co.*, 134 Or App 332, 336–37, 894 P2d 1259 (1995) (contractor’s contract and tort claims barred under *former* ORS 701.065); *Hooker Creek Companies, LLC v. Remington Ranch, LLC*, No CV 11-090-MO, WL 2414344 at *2 (D Or June 9, 2011) (lien for supplying materials and equipment, which does not require a CCB license, could not be enforced separately from labor charges in lien that required a CCB license).

A lien claimant not aware of a lapse or the requirement to be licensed may revive the ability to file an action or arbitration, or record and foreclose a valid lien, by becoming licensed and properly endorsed for the entire period of work (including the date of bid or contracting) no later than 90 days after becoming aware of the lapse or requirement. In the case of a claimant who was never licensed, the claimant must become properly licensed and endorsed for the entire time required before the lien is recorded. ORS 701.131(2).

NOTE: Subsection (2) of ORS 701.131 and *former* ORS 701.065 is intended to ameliorate the sometimes harsh effects that subsection (1) has on contractors. The Oregon Legislature has amended subsection (2) a number of times. *See, e.g.*, Or Laws 2007, ch 836, § 58; Or Laws 2003, ch 675, § 71. When reading case law, it is important to determine which version of the statute the court is applying.

Remedies to recover for construction defects are generally excluded from the remedy bar of ORS 701.131(1). *See* ORS 701.131(2)(c)(B); *Pincetich v. Nolan*, 252 Or App 42, 47–49, 285 P3d 759 (2012).

§ 17.4C Other Construction Trades and Design Professionals

In addition to the Construction Contractors Board license requirements, certain construction trades must hold an additional license or a registration at certain times as a condition of maintaining the right to a remedy, including:

- Electrical contractors—ORS 479.670
- Plumbing contractors—ORS 447.070
- Boiler/pressure vessel contractors—ORS 480.640
- Architects—ORS 671.220(3)
- Landscape contractors—ORS 671.575(1).

Architects must be licensed to practice architecture at the time services were rendered (the requirement will change from licensure to registration effective January 1, 2014). ORS 671.220(3); Or Laws 2013, ch 196, § 14.

§ 17.4D Plead-and-Prove Requirements

Certain statutes, including those applying to electrical contractors (ORS 479.670), plumbing contractors (ORS 447.070), boiler/pressure vessel contractors (ORS 480.640), and architects (ORS 671.220(3)), require the licensee to affirmatively plead and prove licensure or registration at all times required by the applicable statutes as a condition of maintaining an action. Each statute must be carefully reviewed.

Chapter 18

JUDGMENTS AND LIENS

BRENT G. SUMMERS, B.S., University of Oregon (1978); J.D., University of Oregon (1982); member of the Oregon State Bar since 1982; partner, Tarlow Naito & Summers LLP, Portland.

§ 18.1	INTRODUCTION	18-5
§ 18.2	JUDGMENTS	18-5
§ 18.2A	Default Judgment	18-5
§ 18.2B	Relief from Judgment.....	18-5
§ 18.2C	Expiration of Judgment Remedies	18-6
§ 18.2C(1)	Civil Actions—Expiration and Renewal of Judgment Lien	18-6
§ 18.2C(2)	Expiration of Criminal Judgment.....	18-6
§ 18.2C(3)	Expiration of Family Law Judgments	18-7
§ 18.3	JUDGMENT LIENS—IN GENERAL	18-7
§ 18.3A	How a Judgment Becomes a Lien on Property	18-7
§ 18.3B	Judgment Lien in Property That Is Subject to a Homestead Exemption	18-7
§ 18.3B(1)	Notice of Intent to Discharge Homestead Property from Judgment Lien	18-7
§ 18.3B(2)	Objections to Discharge of Lien	18-8
§ 18.3C	Motion to Satisfy, or for Determination of the Amount Needed to Satisfy, a Money Award	18-8
§ 18.4	VARIOUS STATUTORY LIENS	18-8
§ 18.4A	Agricultural Produce Lien.....	18-8
§ 18.4A(1)	Attachment of Lien	18-8
§ 18.4A(2)	Duration of Lien.....	18-9
§ 18.4A(3)	Extension of Agricultural Produce Lien	18-9
§ 18.4A(4)	Expiration of Agricultural Produce Lien	18-10
§ 18.4A(5)	Payment in Full	18-10
§ 18.4B	Employee Benefit Plan.....	18-10
§ 18.4B(1)	Lien for Delinquent Contributions to Benefit Plan.....	18-10
§ 18.4B(2)	Notice of Claim	18-10

Chapter 18 / Judgments and Liens

§ 18.4B(3)	Enforcement of Lien.....	18-10
§ 18.4C	Grain Producer's Lien	18-10
§ 18.4C(1)	Attachment of Lien.....	18-10
§ 18.4C(2)	Duration of Lien	18-11
§ 18.4C(3)	Extension of Grain Producer's Lien.....	18-11
§ 18.4C(4)	Discharge of Lien	18-11
§ 18.4C(5)	Expiration of Grain Producer's Lien.....	18-11
§ 18.4C(6)	Certificate Declaring Payment in Full.....	18-12
§ 18.4C(7)	Computation of Time Periods	18-12
§ 18.4D	Medical Services Liens	18-12
§ 18.4D(1)	Ambulance Services Lien	18-12
§ 18.4D(2)	Hospital and Physician Liens	18-12
§ 18.4D(3)	Lien for Long-Term Care.....	18-13
§ 18.4E	Molder's Lien	18-14
§ 18.4F	Self-Service Storage Facility Lien	18-15
§ 18.4F(1)	Lien on Personal Property in Rented Storage Space.....	18-15
§ 18.4F(2)	Foreclosure of Lien by Sale	18-15
§ 18.4G	Construction Liens	18-16
§ 18.4H	Uniform Federal Tax Lien Registration Act	18-16
§ 18.4I	References	18-16
§ 18.5	ATTORNEY'S LIENS AND FEES	18-16
§ 18.5A	In General	18-16
§ 18.5B	Retaining Lien	18-17
§ 18.5B(1)	In General.....	18-17
§ 18.5B(2)	Effective Date of Retaining Lien	18-17
§ 18.5B(3)	Discharge of Retaining Lien	18-18
§ 18.5C	Charging Lien on Actions and Judgments	18-18
§ 18.5C(1)	In General.....	18-18
§ 18.5C(2)	Claim of Lien on Money Judgment	18-18
§ 18.5C(3)	Claim of Lien on Judgment for Possession of Personal Property	18-19
§ 18.5C(4)	Claim of Lien on Judgment for Possession of Real Property	18-19
§ 18.5D	References	18-19

§ 18.6	CHATTEL LIENS (NONPOSSESSORY)	18-20
§ 18.6A	Claim of Lien	18-20
§ 18.6B	Notice to Owner and Holders of Security Interests	18-20
§ 18.6C	Discharge of Lien	18-20
§ 18.6D	Foreclosure of Lien	18-21
§ 18.6D(1)	Limitations Period for Commencing Foreclosure.....	18-21
§ 18.6D(2)	Discharge of Lien before Sale.....	18-21
§ 18.6D(3)	Certificate of Lien Satisfaction	18-21
§ 18.6D(4)	Disposition of Proceeds of Sale	18-21
§ 18.6E	Agricultural Service Lien	18-21
§ 18.6E(1)	Attachment of Lien	18-21
§ 18.6E(2)	Notice of Lien Claim.....	18-22
§ 18.6E(3)	Foreclosure of Lien	18-22
§ 18.6E(3)(a)	Limitations Period for Commencing Foreclosure.....	18-22
§ 18.6E(3)(b)	Certificate of Discharge	18-22
§ 18.6F	References	18-23
§ 18.7	CHATTEL LIENS (POSSESSORY)	18-23
§ 18.7A	Possessory Lien for Labor or Materials	18-23
§ 18.7B	Attachment of Lien.....	18-23
§ 18.7C	Foreclosure of Possessory Chattel Lien	18-23
§ 18.7C(1)	Retention of Chattel before Foreclosure	18-23
§ 18.7C(1)(a)	In General.....	18-23
§ 18.7C(1)(b)	Animals	18-23
§ 18.7C(1)(c)	Vehicles Appraised at \$1,000 or Less but More Than \$500.....	18-23
§ 18.7C(2)	Storage Charges	18-24
§ 18.7C(2)(a)	Storage Fees before Foreclosure When Lien Is Claimed for Other than Storage of Chattel	18-24
§ 18.7C(2)(b)	Storage Fees When Lien Claimed Is for Storage of Chattel.....	18-24
§ 18.7C(3)	Notice of Sale.....	18-25
§ 18.7C(3)(a)	Notice of Sale to Debtor.....	18-25
§ 18.7C(3)(b)	Public Notice of Sale.....	18-25
§ 18.7C(3)(c)	Notice to Holders of Security Interests	18-26

§ 18.8F(2) Collection of Unpaid Tax on Production of Oil and Gas.....	18-32
§ 18.8F(2)(a) Thirty-Day Demand	18-32
§ 18.8F(2)(b) Recording of the Warrant and Execution.....	18-33
§ 18.8F(3) Collection of Delinquent Taxes on Real Property	18-33
§ 18.8F(3)(a) Date of Delinquency	18-33
§ 18.8F(3)(b) Notice of Delinquency	18-33
§ 18.8F(3)(c) Foreclosure by County.....	18-34
§ 18.8F(4) Collection of Delinquent Taxes on Personal Property.....	18-34
§ 18.8F(4)(a) Enforcement by the Issuance of a Warrant	18-34
§ 18.8F(4)(a)(i) When a Warrant May Be Issued.....	18-34
§ 18.8F(4)(a)(ii) Notice and Service of Warrant.....	18-35
§ 18.8F(4)(b) Enforcement by Seizure and Sale of Personal Property	18-35

§ 18.1 INTRODUCTION

This chapter begins by discussing judgments and relief from judgment. The bulk of the chapter focuses on various liens available under Oregon law, including attorney’s liens, chattel liens (both possessory and nonpossessory), and tax liens.

See chapter 11 regarding execution sales of property in general. Secured transactions, as well as creditors’ rights in bankruptcy, are also discussed in chapter 11. For discussion on the foreclosure of residential trusts deeds and mortgages, see chapter 13.

NOTE: The Servicemembers Civil Relief Act (SCRA), *see* 50 USC App §§ 501–596, provides for the suspension of civil proceedings against persons in military service who could be detrimentally affected by the proceedings. 50 USC App § 502. Relief under the SCRA is available for a wide range of matters and proceedings.

§ 18.2 JUDGMENTS

§ 18.2A Default Judgment

See § 2.16A(1) to § 2.16A(3) regarding the procedure for seeking a default judgment, as well as grounds for seeking relief from a default judgment.

§ 18.2B Relief from Judgment

On a timely motion (*see* § 2.16B(1)), the court may relieve a party from a judgment for any of the reasons listed in ORCP 71 B(1):

(1) “Mistake, inadvertence, surprise, or excusable neglect,” ORCP 71 B(1)(a);

NOTE: See § 2.16B(2) for further discussion of relief from judgment because of excusable neglect.

(2) “[N]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under ORCP 64 F,” ORCP 71 B(1)(b);

(3) “[F]raud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party,” ORCP 71 B(1)(c);

(4) “[T]he judgment is void,” ORCP 71 B(1)(d); or

(5) “[T]he judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application,” ORCP 71 B(1)(e).

See § 2.16B(1) to § 2.16B(5) for further discussion regarding a motion for relief from judgment, including the effect of the motion on the judgment.

§ 18.2C Expiration of Judgment Remedies

§ 18.2C(1) Civil Actions—Expiration and Renewal of Judgment Lien

A judgment lien expires 10 years after the judgment is docketed, except judgments for child support and those arising from criminal actions (*see* § 18.2C(2) to § 18.2C(3)). ORS 18.180(3).

For civil judgments, the lien may be extended for 10 years by filing a certificate of extension before the first 10-year limit expires. The renewed judgment and lien expire 10 years after the renewed judgment is entered. ORS 18.182(1), (4)–(5).

A judgment creditor must cause the renewed judgment to be recorded in the lien record of counties other than the county in which it is renewed. ORS 18.152(4).

A lien on a renewed judgment recorded in other counties expires when the judgment expires. ORS 18.152(4).

§ 18.2C(2) Expiration of Criminal Judgment

Except as provided in the statute, criminal judgments are enforceable for 20 years after entry. ORS 18.180(4). “Judgment remedies for a judgment in a criminal action that includes a money award for restitution expire 50 years after the entry of the judgment.” ORS 18.180(4).

Criminal judgments are not renewable. ORS 18.182(8).

§ 18.2C(3) Expiration of Family Law Judgments

For expiration and extension of judgment liens on spousal support or child support awards, see chapter 4.

§ 18.3 JUDGMENT LIENS—IN GENERAL

§ 18.3A How a Judgment Becomes a Lien on Property

(1) *In general.* A judgment is a lien on the real property of the judgment debtor in the county in which the judgment is taken from the date the judgment is docketed until the lien expires. ORS 18.150(1), (2).

(2) *Perfection of lien.* After a judgment that creates a judgment lien is entered under ORS 18.150 (see above), a judgment creditor may create a judgment lien on the judgment debtor’s property in any other county in this state by recording a certified copy of the judgment or a lien record abstract. ORS 18.152. See ORS 18.170 for an example of a lien record abstract form.

(3) *Lien for child or spousal support.* Upon entry of a judgment for child or spousal support, a lien arises by operation of law encumbering all personal property of the debtor in Oregon. ORS 25.670(1). The judgment creditor must file a written notice of claim of lien that includes certain specific information. ORS 25.670(2)(a). The lien expires five years after the date of recording if no expiration date is provided. ORS 25.670(2)(a)(F).

(4) *Out-of-state judgment (support in arrears).* An out-of-state judgment for overdue payments under a support order becomes a lien on real property in the county in which the obligor owns property once the support order is recorded and served as required by the statute. ORS 18.158(5).

§ 18.3B Judgment Lien in Property That Is Subject to a Homestead Exemption

§ 18.3B(1) Notice of Intent to Discharge Homestead Property from Judgment Lien

At any time after the “execution of an agreement to transfer the ownership of property in which a homestead exemption exists pursuant to ORS 18.395, the homestead owner or the owner’s transferee may give notice of intent to discharge the property from the judgment lien to a judgment creditor.” ORS 18.412(1). The notice must include the information specified in the statute and must advise the judgment holder that

the property may be discharged from any lien arising from the judgment, without further notice to the judgment creditor, unless prior to a specified date, which in no case may be earlier than 14 days after the date of mailing of the notice, the judgment creditor files objections and a request for a hearing on the matter as provided in ORS 18.415.

ORS 18.412(1)(d).

See § 18.3B(2) (objections to discharge).

§ 18.3B(2) Objections to Discharge of Lien

On the sale or transfer of homestead property that is subject to a judgment lien (*see* § 18.3B(1)), a judgment creditor may file objections to the discharge of the judgment lien and request a hearing. The objections and request for a hearing must be filed before the date specified in the notice, which date may not be earlier than 14 days after the date of mailing the notice of intent to effect discharge from the judgment lien. ORS 18.415(1).

§ 18.3C Motion to Satisfy, or for Determination of the Amount Needed to Satisfy, a Money Award

(1) *Motion.* A judgment debtor, or any person with an interest in real property that is subject to a judgment lien, “may move the court for an order declaring that a money award has been satisfied or for a determination of the amount necessary to satisfy the money award, when the person making the motion cannot otherwise obtain a satisfaction document from a judgment creditor.” ORS 18.235(1).

NOTE: If the motion relates to satisfaction of a support award and if child support rights for the judgment creditor have been assigned to the state, the person filing the motion must serve a copy of the motion on the Administrator of the Division of Child Support or the Department of Justice at least five days before filing the motion. ORS 18.235(11).

(2) *Service of motion.* The motion must be served on the judgment creditor and, if the person making the motion is not the judgment debtor, the motion must also be served on the judgment debtor. If the motion is filed within one year after entry of the judgment, service may be made under ORCP 9. If the motion is filed more than one year after entry of the judgment, service must be made personally under ORCP 7 or by certified mail, return receipt requested with signed receipt. ORS 18.235(4).

(3) *Response.* The person served must file a response within 21 days after service, or within such other time as allowed by the court. ORS 18.235(5).

(4) *Hearing.* The court will hear the motion not less than seven days after notice of hearing is given to all parties. ORS 18.235(6).

§ 18.4 VARIOUS STATUTORY LIENS

§ 18.4A Agricultural Produce Lien

§ 18.4A(1) Attachment of Lien

A lien attaches to all agricultural produce, inventory, and proceeds thereof held by the purchaser on the date that the agricultural producer delivers or transfers physical possession of the produce to the purchaser or the purchaser’s agent. If the agricultural produce consists of meat animals, the lien also attaches to

all accounts receivable by the purchaser from the sale of the agricultural produce to a third party. ORS 87.705(1).

§ 18.4A(2) Duration of Lien

An agricultural produce lien expires no later than 45 days after the date that the final payment to the agricultural producer is originally due, unless suit to foreclose the lien is brought or the agricultural producer extends the lien within that 45-day period. ORS 87.710(1), ORS 87.730. Furthermore, it is not necessary to file a notice of that lien, unless the agricultural producer extends the lien. ORS 87.705(1), (2). See § 18.4A(3) regarding extending the lien.

NOTE: Final payment is due on the date specified for payment in the contract between the purchaser and producer. However, if no date of payment is specified in the contract, or if there is no contract, final payment is due two business days after the purchaser takes delivery of the produce. ORS 87.710(5).

If the last day of the period for performing an act is a Saturday or a legal holiday (as specified in ORS 187.010 and ORS 187.020), “the period runs until the end of the next day that is not a Saturday or legal holiday.” ORS 87.710(6).

§ 18.4A(3) Extension of Agricultural Produce Lien

(1) *Notice of lien or claim of lien must be filed.* An agricultural producer may extend an agricultural produce lien by filing a notice of lien with the Secretary of State or a notice of claim of lien under ORS 87.242 before the expiration of the 45-day period after the final payment is due. ORS 87.710(1), (2).

NOTE: A person entitled to a lien for labor, services, or materials created by ORS 87.705 must file a notice of claim of lien within 45 days after furnishing the labor, services, or materials. ORS 87.242(1).

(2) *Notice to persons.* Within 20 days after filing a notice of lien under ORS 87.710, the producer must “send notice to all persons [who] have filed a financing statement under ORS chapter 79 that perfects a security interest in all or part of the same inventory, proceeds or accounts receivable.” ORS 87.710(3)–(4).

(3) *Failure to comply with statutes.* If an agricultural producer does not send a notice of lien to a person described in ORS 87.710(3) within the required time (i.e., within 20 days after filing a notice of lien under ORS 87.710), the agricultural produce lien becomes subordinate to that person’s perfected security interest. ORS 87.710(3), (4). If a person does not file a notice of claim of lien under ORS 87.242 within 45 days of furnishing of labor, services, or materials, the person waives the right to the lien. ORS 87.242(3).

(4) *Expiration of extended lien.* “If the agricultural producer extends the lien, the lien expires no later than the 225th day after the date that the final payment to the producer is originally due.” ORS 87.710(1).

§ 18.4A(4) Expiration of Agricultural Produce Lien

An agricultural produce lien created by ORS 87.705 expires 45 days after the date on which final payment is originally due, unless suit to foreclose the lien is brought within that 45-day period or the agricultural producer extends the lien within that period (*see* § 18.4A(3)). ORS 87.730. If the producer extends the lien by filing a notice of lien under ORS 87.710, the lien expires 225 days after the date on which final payment is originally due. ORS 87.730.

§ 18.4A(5) Payment in Full

If an agricultural producer filed a notice to either extend a lien or foreclose a lien, and the producer receives full payment for the produce, the producer must file a certificate with the Secretary of State declaring that full payment has been received and that the lien is discharged. ORS 87.735(1).

If the producer fails to file the certificate within 10 days after receiving a purchaser's request for such filing, the producer is liable to the purchaser for \$100 plus all actual damages caused by the failure. ORS 87.735(3).

§ 18.4B Employee Benefit Plan

§ 18.4B(1) Lien for Delinquent Contributions to Benefit Plan

An employer who must contribute to a fund for an employee benefit plan must pay the required amounts at the stipulated time, or each employee will have a lien on earnings and property used in the business up to the amount owed including any penalties. ORS 87.855(1).

§ 18.4B(2) Notice of Claim

A lien claimant under ORS 87.855(1) (or the claimant's representative or the trustees of the employee benefit fund) must file a notice of claim for recording with the county clerk within 60 days after the last delinquent payment to the employee benefit plan becomes due. Within that 60-day period, a copy of the notice of claim must be delivered to the employer, "in person or mail by registered mail or by certified mail with return receipt." ORS 87.860(1).

§ 18.4B(3) Enforcement of Lien

Any complaint enforcing a lien under ORS 87.855(1) (*see* § 18.4B(1)) must be filed and a summons issued within six months from the date of filing the claim of lien. ORS 87.865(3).

§ 18.4C Grain Producer's Lien

§ 18.4C(1) Attachment of Lien

An agricultural producer that delivers or transfers grain for consideration has a lien on all the purchaser's grain inventory and the proceeds from selling that inventory. ORS 87.755(1). The lien attaches on the date that physical possession of the grain is delivered or transferred to the purchaser or the purchaser's agent. ORS 87.755(2).

§ 18.4C(2) Duration of Lien

A grain producer's lien under ORS 87.755 continues for 180 days after the date of attachment, unless the lien is extended. ORS 87.762(1). It is not necessary to file a notice of claim of lien, unless the producer extends the lien. ORS 87.762(1), ORS 87.755(4). See § 18.4C(3) regarding extending the lien.

§ 18.4C(3) Extension of Grain Producer's Lien

(1) *Notice of lien or claim of lien must be filed.* A grain producer may extend a grain producer's lien under ORS 87.755 by filing a notice of lien with the Secretary of State or by filing a notice of claim of lien under ORS 87.242(1) before the expiration of the 180-day period after attachment of the lien. ORS 87.762(1), (2).

NOTE: A person entitled to a lien for labor, services, or materials created by ORS 87.755 must file a notice of claim of lien within 180 days after furnishing the labor, services, or materials. ORS 87.242(1).

(2) *Form of notice of lien.* A notice of lien must be supported by an affidavit, contain the information described in ORS 87.762(2), and be in the form described in ORS 87.767. ORS 87.762(1)–(2).

(3) *Notice to persons.* Within 20 days after filing the notice of lien, the producer must “send notice to all persons [who] have filed a financing statement under ORS chapter 79 that perfects a security interest in all or part of the inventory of the purchaser or the proceeds from the sale of the inventory.” ORS 87.762(3), (4).

(4) *Failure to comply with statutes.* If the producer fails to send notice to a person described in ORS 87.762(3) within the required time (i.e., within 20 days after filing a notice of lien), the lien becomes subordinate to that person's perfected security interest in the inventory or proceeds. ORS 87.762(4). If a person does not file a notice of claim of lien under ORS 87.242 within 180 days of furnishing of labor, services, or materials, the person waives the right to the lien. ORS 87.242(3).

(5) *Expiration of extended lien.* If the agricultural producer extends the lien, the lien expires no later than 18 months after the date on which the lien attaches. ORS 87.762(1).

§ 18.4C(4) Discharge of Lien

A lien on grain is discharged when the grain is sold to a third party, but the lien on the proceeds from the sale and on the remaining grain continues. ORS 87.755(6).

§ 18.4C(5) Expiration of Grain Producer's Lien

A grain producer's lien created under ORS 87.755(1) expires 180 days after the lien attaches, unless suit to foreclose the lien is brought within that 180-day

period or the producer extends the lien within that period (*see* § 18.4C(3)). ORS 87.772(1).

§ 18.4C(6) Certificate Declaring Payment in Full

If, after filing a notice of lien under ORS 87.762, a grain producer receives full payment for the grain, the producer must “file with the Secretary of State a certificate declaring that full payment has been received and that the lien is discharged.” ORS 87.777(1). The certificate must be filed within 10 days after the producer receives a request from a purchaser; otherwise, the producer is liable to the purchaser for \$100 in damages plus actual damages. ORS 87.777(3).

§ 18.4C(7) Computation of Time Periods

If the last day of a period for performing an act is a Saturday or a legal holiday (as specified in ORS 187.010 and 187.020), “the period runs until the end of the next day that is not a Saturday or legal holiday.” ORS 87.762(5).

§ 18.4D Medical Services Liens

§ 18.4D(1) Ambulance Services Lien

(1) *Lien on amount payable under contract.* When an individual receives ambulance services and the individual has a contract providing for indemnity or compensation for those services, the ambulance service provider has a lien on the amount payable under the contract. ORS 87.607.

(2) *Perfecting the lien.* To perfect the lien, the ambulance service provider must (a) file a notice of lien with the county recording officer within 15 days after providing the services and (b) serve a certified copy of the notice of lien on the insurer or health care service contractor before the date of judgment, settlement, or compromise. ORS 87.613.

(3) *Payment after notice of lien.* After receiving a certified copy of a notice of lien for ambulance services, if the insurer or health care service contractor pays the individual named in the notice without paying the ambulance service provider, the insurer or contractor is liable to the service provider for the amount claimed in the notice of lien. The service provider has a cause of action against the insurer or contractor for 180 days after the date of such payment. ORS 87.627(1).

NOTE: If an insurer or health care service contractor pays for ambulance services in response to a claim received earlier than the notice of lien, it is not liable for the amount claimed in the notice of lien. ORS 87.627(2).

§ 18.4D(2) Hospital and Physician Liens

(1) *Lien on amount injured person receives in court case.* A hospital or licensed physician has a lien on any judgment, award, settlement, or compromise awarded to an injured person for services performed on behalf of the injured

person before the date of a judgment, award, settlement, or compromise in a court case brought by the injured person. ORS 87.555(1).

NOTE: The 2014 Legislature amended the statute to provide that a licensed physician assistant or nurse practitioner who treats the injured person also has lien for services rendered. *See* Or Laws 2014, ch 45, § 5 (effective July 1, 2014).

(2) *Perfection of lien.* The lien is perfected by filing a notice of lien within 30 days after the injured person is discharged and by serving the required parties. ORS 87.565.

NOTE: In *Rogue Valley Mem'l Hosp. v. Salem Ins. Agency, Inc.*, 265 Or 603, 615, 510 P2d 845 (1973), the Oregon Supreme Court held that a notice of lien filed one day late was acceptable to support a judgment in favor of the hospital. Finding “no ‘clear’ pronouncement of legislative intent” on the time-limitations issue, the court held that “the time limitations included in [the hospital-lien] statutes were not intended to be jurisdictional in that sense, so as to permit a collateral attack on such a judgment.” *Rogue Valley Mem'l Hosp.*, 265 Or at 615.

(3) *Limitations on liens.* No lien under ORS 87.555(1) is allowed (a) “[f]or hospitalization and treatment from a physician, physician assistant or nurse practitioner rendered after a settlement has been effected by or on behalf of the party causing the injury”; (b) against attorney fees, costs, or expenses incurred by the injured party in securing the settlement, compromise, award, or judgment; or (c) for an amount payable for medical services under a policy that provides personal-injury-protection coverage provided to an injured person before perfection of the lien. ORS 87.560(1).

(4) *Commencement of action.* If any payment is made from an award in violation of the hospital-lien statutes, a cause of action under ORS 87.581(1) must be commenced within 180 days after the payment is made. ORS 87.581(2).

§ 18.4D(3) Lien for Long-Term Care

(1) *Lien for contracted costs of care.* When a person receives care at a long-term care facility under a legal written contract, the person receiving care—and, on the person’s death, the decedent’s estate—is liable for the contracted costs of care. If the person or the person’s authorized representative refuses to pay the costs of care within 30 days after services are rendered and billed, the care facility has a lien against the person’s real property for the unpaid amount plus interest. ORS 87.503(1).

(2) *Attachment of lien.* The lien attaches to the real property on the later of the 30th day after the first services are performed or the 30th day after the first unpaid payment for care becomes due. ORS 87.503(1).

(3) *Perfecting the lien.* To perfect the lien, the care facility must file a notice of lien with the recording officer of the county in which the property is located “no sooner than 60 days and no later than 120 days after the date on which the lien attached” to the person’s property. ORS 87.507(1), (2). The care facility must also serve a certified copy of the notice of lien on the person (or his or her representative). ORS 87.507(1)(b). The notice of lien must contain the information required by ORS 87.512, including a statement regarding Medicaid (see below), ORS 87.512(6).

(4) *Statement regarding eligibility for Medicaid.* The notice of lien must include a statement that the care facility has given the person or the person’s authorized representative a “written summary of the requirements and procedures for establishing eligibility for Medicaid.” ORS 87.512(6). The written summary must be given “no fewer than 30 days and no more than 60 days before the notice of lien is filed.” ORS 87.512(6).

(5) *Expiration of lien.* A suit to foreclose the lien must be commenced within 180 days immediately following the date on which the lien is perfected, or the lien ceases to exist. ORS 87.537(1). Any period of time during which the lien may not be foreclosed under ORS 87.527 is not counted toward the 180-day period during which the lien exists. ORS 87.537(2). However, the lien may not be extended for longer than 180 days after a circumstance preventing foreclosure under ORS 87.527 ceases. In any case, the lien will expire 10 years after the date it was perfected. ORS 87.537(2).

§ 18.4E Molder’s Lien

(1) *Liens on molds and services performed with molds.* “If a molder does not retain title to a mold that the molder fabricated, molded, cast or made for a customer[,] or if a molder performs manufacturing, assembly or fabrication work using a mold furnished by a customer,” the molder has a lien on a mold that is retained by the molder. ORS 87.872(1). The amount of the lien is equal to the balance due from the customer to the molder, including the value of materials. The molder may retain possession of the mold until the amount is paid. ORS 87.872(1).

(2) *Notice of lien.* The molder must serve notice of the lien to the customer and demand payment of the amount due within 60 days after service. ORS 87.872(2).

(3) *Public sale if customer fails to pay.* If the molder is not paid the amount due within 60 days after the customer’s receipt of the notice of lien, the molder may sell the mold at a public sale in compliance with ORS 87.876. ORS 87.872(3).

(4) *Notice of sale.* Before a molder may sell a mold pursuant to ORS 87.872, the molder must give the customer written notice of the molder’s intention to sell the mold 30 days after the customer receives the notice. ORS 87.876(1).

§ 18.4F Self-Service Storage Facility Lien

§ 18.4F(1) Lien on Personal Property in Rented Storage Space

The owner of a self-service storage facility has a lien on all personal property, whether or not the property is owned by the occupant, that is located in a specified storage space rented by an occupant at the facility to secure payment for rent, labor, materials, or other services provided by the owner at the occupant's request, and reasonably necessary expenses for the preservation, sale, or disposition of the property. The owner may retain the property until the rent, charges, and expenses are paid. ORS 87.687(1).

The lien attaches to the property at the time at which the property is stored at the storage facility. ORS 87.687(2).

See § 18.4F(2) (foreclosure of lien by sale).

§ 18.4F(2) Foreclosure of Lien by Sale

(1) *Foreclosure on occupant's default.* The owner of a self-service storage facility may foreclose a lien created by ORS 87.687 on the occupant's default. ORS 87.689(1).

(2) *Notice to occupant and demand for payment.* Before an owner may foreclose a lien by sale, the owner must give notice to the occupant and demand payment within a specified time that is not earlier than 30 days after the default. ORS 87.689(2)–(3).

(3) *Disposition of property; notice of sale.* After the expiration of the time specified in the notice to the occupant, if the property subject to the lien has a fair market value of \$300 or less, the owner may dispose of the property at the owner's discretion. ORS 87.691(1). If the property has a fair market value of more than \$300, the owner must advertise the sale once a week for two consecutive weeks in a newspaper of general circulation in the city or county where the storage facility is located. ORS 87.691(2).

(4) *Time of sale.* The sale of the property may not take place earlier than 15 days after the first advertisement, publication, or posting regarding the sale. ORS 87.691(3).

(5) *Satisfaction of lien before sale.* Before a sale or disposition of the property in the storage space, the occupant may redeem the property by paying the amount necessary to satisfy the lien and the owner's reasonable expenses. On receiving payment, the owner must return the property. ORS 87.691(7).

(6) *Proceeds from sale or other disposition of property.* If the owner of the storage facility receives no bids at the public sale, the owner may dispose of the property "in another manner at the owner's sole discretion." ORS 87.691(5)(a). After a sale or other disposition of the property, the owner may satisfy the lien and reasonable disposition expenses from the proceeds of the sale, but the owner must hold any balance for delivery on demand to the occupant for two years from the

date of disposition. If the occupant does not claim the balance within that time, the balance is presumed abandoned, and the owner must report and deliver the balance as provided in ORS 98.352 (abandoned property must be paid or delivered to the Department of State Lands). ORS 87.691(5), (8).

§ 18.4G Construction Liens

Any person who performs labor on, transports or furnishes any material to be used in, or rents equipment used in the construction of any improvement has “a lien upon the improvement for the labor, transportation or material furnished or equipment rented at the instance of the owner of the improvement or the construction agent of the owner.” ORS 87.010(1). For further discussion on construction liens, see chapter 17.

§ 18.4H Uniform Federal Tax Lien Registration Act

“Notices of liens, certificates and other notices affecting federal tax liens or other federal liens must be filed in accordance with ORS 87.806 to 87.855.” ORS 87.806(1).

Notice of a federal lien or a refiling of a notice of a federal lien is effective for 10 years from the date of assessment. A notice or refiling of a notice of a federal lien must state (1) the date on which the tax was assessed and (2) “[t]hat the effective period of the lien is as provided by federal law.” ORS 87.816(5).

§ 18.4I References

See generally Creditors’ Rights and Remedies ch 3 (Oregon CLE 2002 & Supp 2006); *Foreclosing Security Interests* ch 6 (Oregon CLE 1997 & Supp 2005).

§ 18.5 ATTORNEY’S LIENS AND FEES

§ 18.5A In General

Oregon law recognizes two types of attorney’s liens for services: retaining liens and charging liens.

A “retaining lien” is a possessory lien that attaches to papers, money, and other personal property of a client that comes into the attorney’s hands during the course of employment, giving the attorney the right to retain that property until the attorney’s fees are paid. ORS 87.430. *See* § 18.5B(1) to § 18.5B(3).

A “charging lien” is the right of the attorney to be paid from a judgment or other recovery in an action in which the attorney’s services are rendered. ORS 87.445. *See* § 18.5C(1) to § 18.5C(4).

See generally Crawford v. Crane, 204 Or 60, 62, 282 P2d 348 (1955).

See § 2.18A(1) regarding pleading the right to attorney fees.

§ 18.5B Retaining Lien

§ 18.5B(1) In General

“An attorney has a lien for compensation[,] whether specially agreed upon or implied, upon all papers, personal property and money of the client in the possession of the attorney for services rendered to the client.” ORS 87.430. The attorney may retain the papers, personal property, and money until the lien, and the claim based on the lien, are satisfied, and the attorney may apply the money retained to satisfy the lien and the claim. ORS 87.430.

CAVEAT: The Oregon Rules of Professional Conduct may abridge the attorney’s right to take a retaining lien under ORS 87.430. *See* Oregon RPC 1.15-1(d), Oregon RPC 1.16(d). *See also* OSB Formal Ethics Op No 2005-90 (discussed below).

A formal ethics opinion offers the following guidance regarding whether an attorney may retain client documents or information until all past-due attorney fees are paid:

ORS 87.430 creates an attorney’s possessory lien on client papers and property, and ORS 87.435 and 87.440 provide a procedure by which a client may file a surety bond and obtain discharge of the lien. If the lien is otherwise valid and if the client has sufficient resources to pay the lawyer what is due but chooses neither to make payment nor to file a bond, the lawyer may lawfully withhold the client’s materials. If, however, the client does not have sufficient resources to pay the lawyer in full and if surrender of the materials is necessary to avoid foreseeable prejudice to the client, the attorney lien must yield to the fiduciary duty that the lawyer owes to the client on payment of whatever amount the client can afford to pay.

OSB Formal Ethics Op No 2005-90, at 216 (footnote omitted).

§ 18.5B(2) Effective Date of Retaining Lien

ORS 87.430 does not contain any explicit notice requirement to perfect a retaining lien, and no Oregon cases address when an attorney’s retaining lien becomes effective. However, in *In re Century Cleaning Servs., Inc.*, 202 BR 149, 152–53 (Bankr D Or 1996), *aff’d*, 215 BR 18 (BAP 9th Cir 1997), *rev’d on other grounds*, 195 F3d 1053 (9th Cir 1999), *abrogated by Lamie v. U.S. Tr.*, 540 US 526, 124 S Ct 1023, 157 L Ed 2d 1024 (2004), the bankruptcy court construed Oregon law in holding that “a retaining lien is effective upon the attorney’s possession of the client’s money or other property.” The court further held that “[b]ecause a lien can secure an obligation consisting of a contract for performance of an obligation in the future, . . . it is not necessary that the services have been actually performed before the lien becomes effective.” *In re Century Cleaning Servs., Inc.*, 202 BR at 153.

§ 18.5B(3) Discharge of Retaining Lien

To discharge an attorney's retaining lien created by ORS 87.430, the client may file a bond with the county recording officer for 150 percent of the amount claimed under the lien. ORS 87.435(1)–(2).

NOTE: In lieu of a bond, a client may deposit with the county treasurer an “irrevocable letter of credit . . . or a sum of money or its equivalent equal in value to 150 percent of the amount claimed under the lien.” ORS 87.435(2)(a). The client must also file an affidavit with the county recording officer stating that the deposit was made. ORS 87.435(2)(b).

The bond must be filed before the commencement of a foreclosure proceeding by the attorney. ORS 87.435(1).

When the bond or affidavit is filed, the recording officer will issue to the client a certificate of discharge. ORS 87.435(3). The client must promptly send a copy of the certificate to the attorney by registered or certified mail. ORS 87.435(4).

If the attorney considers the bond or letter of credit inadequate to protect the attorney's claim (for a reason other than the amount), the attorney must, within 10 days of receipt of the notice of filing, petition the court for a determination of the adequacy of the bond or letter of credit. ORS 87.440.

§ 18.5C Charging Lien on Actions and Judgments

§ 18.5C(1) In General

Under ORS 87.445, an attorney has a lien upon actions, suits, and proceedings after their commencement and a lien on subsequent judgments, orders, and awards entered in the client's favor and any resulting proceeds to the extent of fees and compensation agreed on with the client, or, if there is no agreement, for the reasonable value of the attorney's services.

To perfect a lien on a judgment, the attorney must give notice of the lien; the type of notice depends on the type of judgment. *See* ORS 87.450 to 87.460. *See also* § 18.5C(2) to § 18.5C(4). The form and contents of the notice of claim of lien are prescribed by ORS 87.470.

§ 18.5C(2) Claim of Lien on Money Judgment

If the result of a case is a money judgment, “the attorney must file a notice of claim of lien with the clerk of the court that entered the judgment within three years after the judgment is entered.” ORS 87.450(1).

NOTE: A money judgment does not include a judgment or order for the payment of money for the support of any person under ORS 107.095, ORS 107.105, ORS 108.120, ORS 109.155, ORS 419B.400, or ORS 419C.590. ORS 87.450(4).

After filing a notice of claim of lien, the attorney must immediately send a copy of the notice to the client by registered or certified mail to the client's last-known address. ORS 87.450(2).

The lien remains a lien on the judgment until the judgment remedies for the judgment expire under ORS 18.180 to 18.192. ORS 87.450(3).

§ 18.5C(3) Claim of Lien on Judgment for Possession of Personal Property

When an attorney claims a lien under ORS 87.445 for fees and compensation, "if the judgment is for the possession, award or transfer of personal property, the attorney must file a notice of claim of lien not later than one year after entry of the judgment and disposition of any appeal of the judgment." ORS 87.455(1).

The notice must be filed with the recording officer of the county in which the judgment is rendered and, if known, the county in which the personal property is located and the county in which the attorney's client resides. ORS 87.455(1).

A personal-property lien must be foreclosed within one year after the notice of claim of lien is filed, unless the parties agree to extend that time period. ORS 87.455(2). *See* ORS ch 88 (foreclosure of liens).

The attorney and client may agree in writing to extend the period for foreclosing the lien to two years after the notice of claim of lien is filed. The extension agreement must be filed with the recording officer of the county in which the notice was filed. ORS 87.455(3).

§ 18.5C(4) Claim of Lien on Judgment for Possession of Real Property

When an attorney claims a lien under ORS 87.445, "if the judgment is for the possession, award or conveyance of real property, the attorney must file a notice of claim of lien not later than six months after entry of the judgment and disposition of any appeal of the judgment." ORS 87.460(1).

The notice must be filed with the recording officer of the county in which the real property, or any part of it, is located. ORS 87.460(1).

A real-property lien must be foreclosed within one year after the notice of claim of lien is filed, unless the parties agree to extend that time period. ORS 87.460(2). *See* ORS ch 88 (foreclosure of liens).

The attorney and client may agree in writing to extend the period for foreclosing the lien to two years after the notice of claim of lien is filed. The extension agreement must be filed with the recording officer of the county in which the notice was filed. ORS 87.460(3).

§ 18.5D References

See generally The Ethical Oregon Lawyer ch 3 (Oregon CLE 2006).

§ 18.6 CHATTEL LIENS (NONPOSSESSORY)

§ 18.6A Claim of Lien

A person claiming a nonpossessory chattel lien under ORS 87.216 (lien for labor, services, and materials), ORS 87.222 (logger's, woodworker's, or timberland-owner's lien), or ORS 87.232 (fishermen's lien) must file a written notice of claim of lien with the recording officer in the county in which the lien debtor resides, or, if the lien debtor is a business, the county in which the lien debtor has its principal place of business, within 60 days after termination of furnishing labor, services, or materials. ORS 87.242.

NOTE: "Persons claiming liens created by ORS 87.216 to 87.232 are only entitled to liens for labor, materials or services performed or furnished during the six months immediately preceding the filing of the notice of claim lien under ORS 87.242." ORS 87.256.

§ 18.6B Notice to Owner and Holders of Security Interests

After filing a notice of claim of lien under ORS 87.242 (*see* § 18.6A), the lien claimant must immediately send a copy of such notice to the owner of the chattel by registered or certified mail to the owner's last-known address. ORS 87.252(1). Additionally, the lien claimant must send a copy of the notice of claim of lien to all holders of perfected security interests in the chattel within 30 days after filing. ORS 87.252(2).

A lien claimant who fails to comply with these notice requirements is not entitled to costs, disbursements, or attorney fees otherwise allowable by ORS 87.336. ORS 87.252(3).

§ 18.6C Discharge of Lien

The owner of a chattel subject to a lien under ORS 87.216 to 87.232 may file a bond with the county recording officer "in an amount not less than 150 percent of the amount claimed under the lien." ORS 87.342(1). The bond must be filed before the lien claimant commences a foreclosure proceeding. ORS 87.342(1).

NOTE: In lieu of a bond, a person may deposit with the county treasurer an "irrevocable letter of credit . . . or a sum of money or its equivalent equal in value to 150 percent of the amount claimed under the lien." ORS 87.342(2)(a). The person must also file an affidavit with the county recording officer stating that the deposit was made. ORS 87.342(2)(b).

The county recording officer will then issue to the owner a certificate stating that the lien is discharged. ORS 87.342(3). The owner must promptly send a copy of the certificate to the lien claimant by registered or certified mail to the lien claimant's last-known address. ORS 87.342(4).

§ 18.6D Foreclosure of Lien

§ 18.6D(1) Limitations Period for Commencing Foreclosure

A suit to foreclose a nonpossessory, nonagricultural chattel lien must be commenced (or a petition to foreclose the lien without suit under ORS 87.272 must be filed) within six months after the notice of claim of lien is filed. ORS 87.266(1). *See* § 18.6A. If an agreement to extend payment has been made, a foreclosure suit must be filed within six months after the extended payment period expires. ORS 87.266(1).

A lien continued by an agreement to extend payment may not continue in force for more than two years from the date that the notice of claim of lien is filed. ORS 87.266(1).

§ 18.6D(2) Discharge of Lien before Sale

After receiving proper notice of the foreclosure sale of a chattel, a person who has a lien on or a security interest in the chattel may discharge the foreclosing claimant's lien and preserve the security interest or lien claim by paying the foreclosing claimant the amount of the lien claim plus foreclosure expenses. ORS 87.312(1). The lien claimant or security interest holder must discharge the lien before the day of the foreclosure sale, or the security interest or lien claim is extinguished. ORS 87.312(1).

§ 18.6D(3) Certificate of Lien Satisfaction

When a lien claimant under ORS 87.216 to 87.232 receives full payment of the claim, including foreclosure costs, the claimant must file with the Secretary of State or the county recording officer a certificate declaring receipt of full payment and discharge of the lien. ORS 87.346(1).

After receiving full payment of the claim, if any lien claimant fails to discharge the lien within 10 days after being requested to do so, the person is liable to the chattel owner for \$100 plus actual damages. ORS 87.346(3).

§ 18.6D(4) Disposition of Proceeds of Sale

After the payment of expenses of the foreclosure sale and the discharge of the lien, any remaining amount is given to the county treasurer. The lien debtor may reclaim the remaining proceeds within three years from the date of deposit with the county treasurer, or the proceeds become property of the county. ORS 87.316.

§ 18.6E Agricultural Service Lien

§ 18.6E(1) Attachment of Lien

A person who performs labor, supplies materials, or provides services on agricultural land "to aid the growing or harvesting of crops or the raising of animals has a lien upon the crops or animals for the reasonable or agreed charges for labor, materials or services." ORS 87.226(1).

The lien on crops and animals and their proceeds “attaches on the date a person performs labor, delivers materials or provides services to aid” the growing or harvesting of crops or the raising of animals. ORS 87.226(3). However, “in the case of unborn progeny, [the lien] attaches on the date the claim of lien is filed.” ORS 87.226(3).

§ 18.6E(2) Notice of Lien Claim

A person claiming an agricultural service lien under ORS 87.226 must file a notice of claim of lien with the Secretary of State within 75 days after the furnishing of labor, materials, or services has terminated. ORS 87.242(1). *See McGregor Co. v. Heritage*, 291 Or 420, 431–33, 631 P2d 1355 (1981) (after attachment, the lien follows chattels upon sale if the chattels are sold before the filing of a notice of claim of lien and the purchaser is notified of the filing of a claim of lien before the proceeds are delivered to the owner).

The lien claimant must also send a copy of the notice to the owner of the chattel and holders of security interests in the chattel. ORS 87.252(1)–(2). The lien claimant can lose its priority for failure to send notice to holders of perfected security interests as required by ORS 87.252(2). ORS 87.252(4).

§ 18.6E(3) Foreclosure of Lien

§ 18.6E(3)(a) Limitations Period for Commencing Foreclosure

An agricultural service lien will cease to exist if a suit to foreclose the lien or a petition to foreclose without suit under ORS 87.272 is not commenced within 18 months after the notice of claim of lien is filed, unless the parties agree to extend the time period. ORS 87.266(2).

If the parties agree to extend the lien, the foreclosure proceeding must be brought within six months after expiration of the agreed-upon extended payment. ORS 87.266(2). A lien continued by agreement to extend payment may not continue in force for more than two years from the time the claim of lien is filed. ORS 87.266(2).

§ 18.6E(3)(b) Certificate of Discharge

After expiration of the 18-month period allowed by ORS 87.266(2) for commencing the foreclosure of an agricultural service lien (*see* § 18.6E(3)(a)), the owner of the chattel that is subject to the lien may file with the Secretary of State a notarized certificate stating that the lien has expired and is discharged and that the owner has personally contacted the court clerk of the county where the claim of lien was filed to determine that no foreclosure proceeding has been commenced. ORS 87.346(4).

Within 10 days of filing the certificate, the chattel owner must mail or deliver a copy to all holders of perfected security interests. ORS 87.346(5).

§ 18.6F References

See Creditors' Rights and Remedies ch 3 (Oregon CLE 2002 & Supp 2006); *Foreclosing Security Interests* ch 6 (Oregon CLE 1997 & Supp 2005).

§ 18.7 CHATTEL LIENS (POSSESSORY)

§ 18.7A Possessory Lien for Labor or Materials

Any person who performs services or supplies materials for a chattel generally has a possessory lien until the charges are paid. ORS 87.152.

§ 18.7B Attachment of Lien

The specific types of liens created by ORS 87.152 to 87.162 attach to the chattels as described in those sections when (1) the lien claimant performs services, provides labor, or furnishes materials or money to the lien debtor; and (2) the charges for such services, labor, materials, or money are due and the lien debtor either knows or reasonably should know that the charges are due. ORS 87.166(1).

However, a commercial landlord's lien created by ORS 87.162 attaches to the chattel "on the 20th day after rents or advances occur or attaches when the occupant or tenant attempts to remove the chattels from the premises while there are unpaid rents or advances." ORS 87.166(2).

§ 18.7C Foreclosure of Possessory Chattel Lien

§ 18.7C(1) Retention of Chattel before Foreclosure

§ 18.7C(1)(a) In General

Except as otherwise provided in ORS 87.172, a person claiming a chattel lien generally must retain possession of the chattel for at least 60 days after the lien attaches before foreclosing the lien. ORS 87.172(1).

See § 18.7C(1)(b) to § 18.7C(1)(c) for exceptions to the general rule.

§ 18.7C(1)(b) Animals

A person claiming a lien under ORS 87.152 for "cost of care, materials and services bestowed on an animal" must retain possession of the animal for at least 30 days after the lien attaches to the animal before foreclosure. ORS 87.172(2). However, if the lien is for veterinary services to a domestic animal (i.e., an animal that is not livestock), the person must retain possession of the animal for only five days. ORS 87.172(2).

§ 18.7C(1)(c) Vehicles Appraised at \$1,000 or Less but More Than \$500

A person claiming a lien for "the cost of removing, towing or storage of a vehicle" must retain possession of the vehicle for the amount of time specified in the statute before foreclosing the lien:

(1) If the vehicle is appraised for \$1,000 or less but more than \$500, the lien claimant must retain the vehicle for at least 30 days after the lien attaches before foreclosing the lien, ORS 87.172(3)(a); or

(2) If the vehicle is appraised for \$500 or less, the lien claimant must retain the vehicle for at least 15 days after the lien attaches before foreclosing, ORS 87.172(3)(b).

Any appraisal must be conducted by an appraiser certified under ORS 819.480. ORS 87.172(3).

§ 18.7C(2) Storage Charges

§ 18.7C(2)(a) Storage Fees before Foreclosure When Lien Is Claimed for Other than Storage of Chattel

When the lien claimed under ORS 87.152 to 87.162 is for other than storage of a chattel, if the lien claimant incurs expenses in storing the chattel before foreclosure, the claimant may charge reasonable storage expenses for a period of up to six months from the date that the lien attaches to the chattel. To recover such storage expenses, the lien claimant must send (by certified mail) a written notice to the lien debtor within 20 days from the date that the storage fees begin to accrue. The lien claimant must also send notice to any other person entitled to receive notice under ORS 87.196, but such person need not receive the notice within the 20-day period (receipt of the notice “within a reasonable time” is acceptable). ORS 87.176(1).

A lien claimant who fails to comply with the notice requirements “is limited to recovering reasonable fees for the storage of the chattel prior to foreclosure for a period of time not exceeding 20 days from the date that the lien attached to the chattel.” ORS 87.176(1).

§ 18.7C(2)(b) Storage Fees When Lien Claimed Is for Storage of Chattel

When the lien claimed under ORS 87.152 to 87.162 is specifically for the storage of a chattel, the lien claimant must send a written notice to the lien debtor stating that storage fees are accruing. The notice must be sent to the lien debtor via certified mail within 20 days after the date that the chattel was placed in storage. The lien claimant must also send notice to every other person entitled to receive notice under ORS 87.196, but such persons need not receive the notice within the 20-day period (receipt of the notice “within a reasonable time” is acceptable). ORS 87.176(2).

If a lien claimant fails to comply with the notice requirements, the lien claimant is limited to recovering reasonable storage fees for the 20-day period. ORS 87.176(2).

§ 18.7C(3) Notice of Sale

§ 18.7C(3)(a) Notice of Sale to Debtor

Except as discussed below, notice of a foreclosure sale must be given to the lien debtor at least 30 days before the sale. ORS 87.192(1)(a).

NOTE: Effective January 1, 2015, if the chattel is a vehicle, boat, or aircraft described in the statute, the lien claimant must include with the notice “a copy of an invoice, work or repair order, authorization for towing, official form that authorizes a law enforcement agency to impound the chattel or any other record or document that is evidence of the basis for the lien.” ORS 87.192(1)(b).

If the lien is for the costs of removing, towing, or storing a vehicle appraised at \$1,000 or less, notice must be given at least 15 days before the sale. ORS 87.192(1). For a vehicle appraised at more than \$1,000, the 30-day notice provision applies.

An appraiser certified under ORS 819.480 must conduct the appraisal. ORS 87.192(1).

§ 18.7C(3)(b) Public Notice of Sale

The lien claimant must give public notice of the foreclosure sale by posting notice in “a public place at or near the front door of the county courthouse of the county in which the sale is to be held” and, except as discussed in ORS 87.192(2)(b), “in a public place at the location where the lien claimant obtained possession of the chattel to be sold.” ORS 87.192(2). These notices must be posted no later than the time required for notice to the lien debtor under ORS 87.192(1) (*see* § 18.7C(3)(a)). ORS 87.192(2)(a).

No notice need be posted at the location of possession if the chattel is a vehicle required to have a certificate of title under the Oregon Vehicle Code (ORS chapter 803). ORS 87.192(2)(b). Effective January 1, 2015, the statute also provides that no notice need be posted at the location of possession if the chattel is a boat for which the State Marine Board requires a certificate of title under ORS 830.810 or an aircraft for which the Oregon Department of Aviation requires a certificate of registration under ORS 837.040.

Furthermore, if the chattel to be sold is either “something other than an abandoned vehicle [that] has a fair market value of \$1,000 or more” or “an abandoned vehicle [that] has a fair market value of \$2,500 or more,” the lien claimant must also “have a notice of foreclosure sale printed once a week for two successive weeks in a daily or weekly newspaper, as defined in ORS 193.010, published in the county in which the sale is held or, if there is none, in a daily or weekly newspaper, as defined in ORS 193.010, generally circulated in the county in which the sale is held.” ORS 87.192(3).

§ 18.7C(3)(c) Notice to Holders of Security Interests

§ 18.7C(3)(c)(i) Statute in Effect until January 1, 2015

Before foreclosing a lien by sale, the lien claimant must send notice via first-class, registered, or certified mail to all holders of security interests who perfected their interests by public filing. ORS 87.196(1)(a).

NOTE: If the chattel is one required by law to have a certificate of title (and is not inventory of a motor vehicle dealer), notice need be given only to security interest holders noted on the certificate of title. ORS 87.196(1)(b).

In general, the notice to holders of security interests must be sent at least 30 days before the foreclosure sale. ORS 87.196(1)(a), (c). However, if the lien is claimed under ORS 87.152 (possessory liens for labor or materials), the following notice requirements apply:

(1) Notice must be given no later than the 20th day after storage charges begin or, if no storage charges are imposed, no later than the 30th day after the date on which the services provided are completed, ORS 87.196(1)(c)(A)–(B); and

(2) Notice must be given at least 15 days before the sale if the lien is for the cost of removing, towing, or storing a vehicle appraised at a value of less than \$1,000 (by a certified appraiser under ORS 819.480), ORS 87.196(1)(c)(C)–(D).

If the chattel is one required to have a certificate of title and the lien claimant fails to provide notice of the foreclosure sale to a secured party or lienholder, the buyer of the chattel at the sale takes the chattel subject to the security interest or lien. ORS 87.196(3). In other cases, the lien claimant's failure to give foreclosure notice to a secured party or lienholder may result in the lien claimant's becoming liable to the secured party or lienholder for either the value of the chattel or the amount owed on the security interest or lien, whichever is less. ORS 87.196(4).

§ 18.7C(3)(c)(ii) Statute in Effect on or after January 1, 2015

Before foreclosing a lien by sale, the lien claimant must send notice via first-class, registered, or certified mail to all holders of security interests who perfected their interests by public filing. ORS 87.196(1)(a)(A).

NOTE: If the chattel is a vehicle (other than part of the motor vehicle inventory of a dealer), boat, or aircraft for which a certificate of title or a certificate of registration has been issued, notice need be given only to security interest holders noted on the certificate of title or certificate of registration. ORS 87.196(1)(a)(B).

In general, the notice to holders of security interests must be sent at least 30 days before the foreclosure sale. ORS 87.196(1)(a)(C). However, if the lien is claimed under ORS 87.152 (possessory liens for labor or materials), the following notice requirements apply:

(1) Notice must be given no later than the 20th day after storage charges begin or, if no storage charges are imposed, no later than the 30th day after the date on which the services provided are completed, ORS 87.196(1)(a)(C)(i)–(ii); and

(2) Notice must be given at least 15 days before the sale if the lien is for the cost of removing, towing, or storing a vehicle appraised at a value of less than \$1,000 (by a certified appraiser under ORS 819.480), ORS 87.196(1)(a)(C)(iii).

NOTE: Effective January 1, 2015, if the chattel is a vehicle, boat, or aircraft described in the statute, the lien claimant must include with the notice “a copy of an invoice, work or repair order, authorization for towing, official form that authorizes a law enforcement agency to impound the chattel or any other record or document that is evidence of the basis for the lien.” ORS 87.196(1)(b).

If the lien claimant fails to provide notice of the foreclosure sale to a secured party or lienholder, the lien claimant is liable to that party for either the value of the chattel or the amount owed on the security interest or lien, whichever is less. ORS 87.196(3).

§ 18.7C(4) Proceeds of Foreclosure Sale

The proceeds of a sale to foreclose a lien created by ORS 87.152 to 87.162 are disbursed as follows: (1) the expenses of the sale are paid first, (2) the amount necessary to satisfy the indebtedness secured by the lien is then paid, (3) subordinate liens are then satisfied, and (4) any remaining proceeds are paid to the treasurer of the county where the sale occurred. ORS 87.206(1).

A lien debtor has three years to claim any proceeds paid to the county treasurer. ORS 87.206(3).

§ 18.7D Innkeeper’s Lien

§ 18.7D(1) In General

The keeper of an inn, hotel, or motel has a lien on most chattels of a guest or boarder for the reasonable or agreed charges due the keeper until the charges are paid. ORS 87.156(1).

However, an innkeeper may not retain prescription or nonprescription medications, medical equipment or apparatus, food, or children’s clothing or accessories after the guest or boarder requests their return. ORS 87.156(2)(a). If the innkeeper retains such property, the innkeeper waives any claim to unpaid charges against the guest or boarder. ORS 87.156(2)(b).

§ 18.7D(2) Retention of Chattel before Foreclosure

Except as provided in the statute, an innkeeper must retain the chattel subject to the lien for at least 60 days after the lien attaches before foreclosing the lien. ORS 87.172(1).

§ 18.7D(3) Attorney Fees in Action Brought by Guest

In an action brought by a guest or boarder to compel the return of property or to recover damages based on its retention, the prevailing party may recover attorney fees. ORS 87.156(2)(c).

§ 18.7E Landlord's Lien

§ 18.7E(1) Commercial Landlord

A commercial landlord has a lien on a tenant's or occupant's chattels, except for wearing apparel, to secure the payment of rent and advances until rent and advances are paid. ORS 87.162. *See Ashmun v. G & H Ranches, Inc.*, 48 Or App 945, 948, 618 P2d 462, *adh'd to on recons*, 49 Or App 625, 619 P2d 1359 (1980).

This lien applies only to property "owned by a lessee or tenant" that is brought upon the leased premises. ORS 87.162. Thus, a landlord's lien does not attach to chattels leased by the tenant from a third party or to those chattels owned by a sublessee who is current on payments, because such property is not "owned" by the lessee in arrears. *Chapman Bros. Stationery & Office Equip. Co. v. Miles-Hiatt Investments, Inc.*, 282 Or 643, 650–51, 580 P2d 540 (1978); *In re Sabre Farms, Inc.*, 27 BR 532, 537 (Bankr D Or 1982).

Before foreclosing a landlord's lien on a chattel, the landlord must retain the chattel for at least 60 days after the lien attaches. ORS 87.172(1).

§ 18.7E(2) Residential Landlord

No possessory landlord's lien is available under the Residential Landlord and Tenant Act (RLTA), ORS 90.100 to 90.875. ORS 90.120(1), ORS 90.420. *See Lyons v. Kamhoot*, 281 Or 615, 618, 575 P2d 1389 (1978) (rejecting application of the RLTA to hotel occupancy and enforcing an innkeeper's lien).

§ 18.7F Self-Service Storage Facility Lien

§ 18.7F(1) Nature of Lien

The owner of a self-service storage facility has a lien on "all personal property, whether or not owned by the occupant, that is located in a specified storage space rented by an occupant at the facility" to secure (1) payment for rent; (2) charges for materials, labor, or other services provided by the owner at the occupant's request; and (3) expenses "reasonably incurred in the sale or other disposition of the personal property under ORS 87.689." ORS 87.687(1). The owner of the facility may retain the property until the rent and other charges and expenses are paid. ORS 87.687(1).

The owner of the facility may foreclose the lien on the occupant's default. ORS 87.689(1). *See* § 18.7F(2)(a) to § 18.7F(2)(b).

§ 18.7F(2) Foreclosure of Lien

§ 18.7F(2)(a) Notice to Occupant

Before foreclosing a lien under ORS 87.687, the owner of the self-service storage facility must send notice of the foreclosure and sale to the occupant of the storage space via “registered or certified mail or other verified mail to the occupant’s last known address or by sending electronic mail to the occupant’s last known address.” ORS 87.689(2). The notice must demand payment “within a specified time that is not earlier than 30 days after the default” and provide other required information to the occupant. ORS 87.689(3).

§ 18.7F(2)(b) Public Notice

If the owner of the self-service storage facility determines that the property subject to the lien has a value of over \$300, the owner must advertise notice of the foreclosure sale once a week for at least two consecutive weeks in a local newspaper of general circulation or, if there is none, “the advertisement must be posted in not fewer than six conspicuous places in the neighborhood in which the self-service storage facility is located.” ORS 87.691(2).

The property can be sold no earlier than 15 days after the first advertisement, publication, or posting regarding the sale. ORS 87.691(3).

§ 18.7F(2)(c) Disposition of Proceeds of Sale

After the foreclosure sale, the owner of the self-service storage facility may satisfy the lien created by ORS 87.687 from the proceeds of the sale. Any balance of the sale proceeds must be held for delivery on demand to the occupant for two years from the date of the sale. After that period, the balance must be reported as abandoned property and paid to the Department of State Lands as provided in ORS 98.352. ORS 87.691(8).

§ 18.7G References

See Creditors’ Rights and Remedies ch 3 (Oregon CLE 2002 & Supp 2006); *Foreclosing Security Interests* ch 6 (Oregon CLE 1997 & Supp 2005).

§ 18.8 TAX LIENS

§ 18.8A Statute of Limitations for Collection

Once a timely assessment of a federal tax has been made, the tax may be collected “by levy or by a proceeding in court, but only if the levy is made or the proceeding begun” within the following applicable time period:

- (1) Within 10 years after the date of assessment; or
- (2) If the taxpayer and the IRS have entered into an installment agreement, within “90 days after the expiration of any period for collection agreed upon”; or

(3) If the levy is released under 26 USC section 6343 “after such 10-year period,” before “the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.”

26 USC § 6502(a).

Otherwise, the lien lapses and the assessed tax liability becomes uncollectible. 26 USC § 6502(a); *see* 26 USC § 6331 (levy and distraint).

The running of the period of limitations may be suspended on the happening of certain events or circumstances described in 26 USC section 6503 and other sections of the United States Code. Thus, the tax liability may continue long after the expiration of the initial 10-year period.

§ 18.8B Uniform Federal Tax Lien Registration Act

§ 18.8B(1) Filing

“Notices of liens, certificates and other notices affecting federal tax liens or other federal liens must be filed in the deed records (for real property) and with the Secretary of State (for personal property) in accordance with ORS 87.806 to 87.831.” ORS 87.806(1).

§ 18.8B(2) Duration of Lien

“Notice of a federal lien or a refiling of a notice of federal lien is effective for a period of 10 years from the date of assessment.” ORS 87.816(5). A notice or refiling of a notice of a federal lien must state (1) the date on which the tax was assessed and (2) that the effective period of the lien is as provided by federal law. ORS 87.816(5).

§ 18.8C Special Federal Tax Liens

§ 18.8C(1) Special Gift Tax Lien

A gift tax lien attaches on the making of a gift and constitutes a lien on the gifted property that continues for 10 years after the date of the gift unless the tax is “sooner paid in full or becomes unenforceable by reason of lapse of time.” 26 USC § 6324(b). The donor is initially responsible for paying the gift tax, but if the tax is not paid when due, the donee becomes personally liable for payment of the tax to the extent of the value of the gift. 26 USC § 2502(c), 26 USC § 6324(b).

§ 18.8C(2) Special Estate Tax Lien

An estate tax lien attaches on the date of the decedent’s death to all the decedent’s gross estate, not just the probate estate. 26 CFR § 301.6324-1(a)(1); 26 USC § 6324. There is no requirement for assessment, notice, or demand of the tax liability for the estate tax lien to come into existence, and the estate tax lien is in addition to the general tax lien of 26 USC section 6321.

If the estate tax is not paid when due, the transferee or distributee of any property includable in the decedent’s gross estate is personally liable for payment to the extent of the value of the property received. 26 USC § 6324(a)(2); *see*

Chevron, U.S.A., Inc. v. United States, 705 F2d 1487, 83-1 US Tax Cas P 13523 (9th Cir 1983) (the federal government could effectively foreclose, through levy, on its liens to recover estate taxes even though the property had been transferred and the government had refiled notices of liens after expiration of the statutory period).

See § 18.8C(3) regarding a special (consensual) estate tax lien.

§ 18.8C(3) Special (Consensual) Estate Tax Lien

In lieu of the estate tax lien of 26 USC section 6324 (*see* § 18.8C(2)), an additional special estate tax lien is available for estates in cases in which payment of the tax is deferred under 26 USC section 6166 (extension of the time for payment of the estate tax when the estate consists largely of an interest in a closely held business). 26 USC § 6324A. If the executor “makes an election” under 26 USC section 6324A(a) and “files” a lien agreement referred to in 26 USC section 6324A(c) that is signed by each person who has an interest in the property designated in the agreement, a lien arises for the deferred amount. 26 USC § 6324A(a), (c); *see* Treas Reg § 301.6324A-1(a), (b).

Unlike the special estate tax lien of 26 USC section 6324, the lien created by 26 USC section 6324A is consensual, the lien arises only after a lien agreement is filed with the IRS, and a notice of lien is filed in the same manner as a notice of general tax lien. 26 USC § 6324A; Treas Reg § 301.6324A-1. Also, the lien under 26 USC section 6324A arises when the executor is discharged from liability under 26 USC section 2204 (or, if earlier, the date on which the lien notice is filed), and the lien continues “until the liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.” 26 USC § 6324A(d)(2).

§ 18.8D Trap for the Holder of an Article 9 Security Interest in Accounts and Inventory

With respect to revolving collateral (inventory and accounts receivable), a federal tax lien defeats the Article 9 secured creditor in all newly acquired inventory and all newly generated accounts receivable, acquired or created more than 45 days after the filing of the IRS tax lien. 26 USC § 6323(c).

§ 18.8E References

See Foreclosing Security Interests ch 4 (Oregon CLE 1997 & Supp 2005).

§ 18.8F Collection of Delinquent Taxes

§ 18.8F(1) Collection of Unpaid Taxes—In General

§ 18.8F(1)(a) Thirty-Day Demand

Before issuing a warrant for the collection of a tax, the Department of Revenue must send the taxpayer a written notice and demand for payment. ORS 305.895(1)–(2). If the taxpayer fails to pay the tax within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, and if no provision is made to secure the payment of the tax, the

Department of Revenue may issue a warrant for the payment of the amount of the tax, “with the added penalties, interest and any collection charge incurred.” ORS 305.895(2), ORS 314.430. The Department of Revenue must mail or deliver a copy of the warrant to the taxpayer at the taxpayer’s last-known address. ORS 314.430(1).

§ 18.8F(1)(b) Recording of the Warrant and Execution

At any time after issuing a warrant to collect unpaid taxes under ORS 314.430, the Department of Revenue may record the warrant in the County Clerk Lien Record of any county of this state. ORS 314.430(2). The warrant then has the effect described in ORS 205.125 (County Clerk Lien Record). ORS 314.430(2).

After recording a warrant in a county, the Department of Revenue may direct the county sheriff “to levy upon and sell the real and personal property of the taxpayer . . . found within that county,” and “to levy upon any currency of the taxpayer . . . found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff’s cost of executing the warrant.” ORS 324.190(2).

The sheriff will then “proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment.” ORS 324.190(2). The sheriff’s fees are “added to and collected as a part of the warrant liability.” ORS 324.190(2).

Until the warrant is satisfied in full, the Department of Revenue “has the same remedies to enforce the claim for taxes against the taxpayer or for amounts payable by the transferee as if the state had recovered a judgment against the taxpayer for the amount of the tax.” ORS 324.190(4). See § 11.9A(1) to § 11.9A(9) regarding levy and execution on money judgments.

§ 18.8F(2) Collection of Unpaid Tax on Production of Oil and Gas

§ 18.8F(2)(a) Thirty-Day Demand

“A privilege tax of six percent of the gross value at the well is levied upon the production of oil and gas within the State of Oregon.” ORS 324.070(1).

Before issuing a warrant for the collection of the tax, the Department of Revenue must send the taxpayer a written notice and demand for payment. ORS 305.895; ORS 324.190(1). If the taxpayer fails to pay any tax imposed by ORS chapter 324 within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, “the Department of Revenue shall issue a warrant for the payment of the amount of the tax, with the added penalties, interest and cost of executing the warrant.” ORS 324.190(1). The Department of Revenue must mail or deliver a copy of the warrant to the taxpayer at the taxpayer’s last-known address. ORS 324.190(1).

§ 18.8F(2)(b) Recording of the Warrant and Execution

At any time after issuing a warrant under ORS 324.190 for the collection of unpaid oil and gas taxes (*see* § 18.8F(2)(a)), the Department of Revenue may record the warrant in the County Clerk Lien Record of any county of this state. The warrant then has the effect described in ORS 205.125 (County Clerk Lien Record).

After recording a warrant in a county, the Department of Revenue may direct the county sheriff “to levy upon and sell the real and personal property of the taxpayer found within that county,” and “to levy upon any currency of the taxpayer found within that county, for the application of the proceeds or currency against the amount reflected in the warrant and the sheriff’s cost of executing the warrant.” ORS 324.190(2).

The sheriff will then “proceed on the warrant in the same manner prescribed by law for executions issued against property pursuant to a judgment, and is entitled to the same fees as provided for executions issued against property pursuant to a judgment.” ORS 324.190(2). The sheriff’s fees are “added to and collected as a part of the warrant liability.” ORS 324.190(2).

Until the warrant is satisfied in full, the Department of Revenue “has the same remedies to enforce the claim for taxes against the taxpayer as if the state had a recorded judgment against the taxpayer for the amount of the tax.” ORS 324.190(4). See § 11.9A(1) to § 11.9A(9) regarding levy and execution on money judgments.

§ 18.8F(3) Collection of Delinquent Taxes on Real Property

§ 18.8F(3)(a) Date of Delinquency

Real property taxes are generally due in three installments (November 15, February 15, and May 15). ORS 311.505(1). Although interest on an unpaid installment accrues immediately on passage of the payment date, generally no portion of the tax is delinquent until May 16, the day after the last installment is due. ORS 311.510. The same is true for manufactured structures assessed as real property. ORS 311.512(1).

§ 18.8F(3)(b) Notice of Delinquency

After taxes on real property become delinquent, the tax collector must give written notice to the taxpayer, setting forth (1) a description of the property, (2) the total amount of taxes due and delinquent, (3) the rate of interest and penalties applicable thereto, and (4) the earliest date on which foreclosure proceedings may be initiated. ORS 311.545(1). The notice must be mailed to the taxpayer’s last-known address. ORS 311.545(2).

NOTE: The notice requirement does not apply if the amount of the delinquent tax is less than \$1. ORS 311.545(3).

§ 18.8F(3)(c) Foreclosure by County

Real property becomes subject to foreclosure for delinquent property taxes three years after the earliest date of delinquency. ORS 312.010(1).

Three months after the date on which the taxes of the latest year are delinquent, the tax collector will institute proceedings to foreclose the lien for delinquent taxes. ORS 312.050.

Notice of each foreclosure proceeding must be given by publication and by both certified and first-class mail as described in ORS 312.040.

On the first day of publication of the foreclosure list, the tax collector must file the application for judgment with the court clerk, along with a certified copy of the foreclosure list. ORS 310.060(1).

Within 30 days after the first publication of the foreclosure list, any person with an interest in property on the list may file an answer and defense to the application for judgment. ORS 312.070.

The circuit court will examine the application for judgment. If an answer and defense is filed by an interested person, the court will conduct a summary hearing. ORS 312.080.

If the property is not taken out of the foreclosure proceeding (*see* ORS 312.110), and if the court finds that the taxes and interest are due, the court will enter a judgment requiring that the tax lien be foreclosed and order that the property be sold to the county in satisfaction of the unpaid taxes and interest. ORS 312.090, ORS 312.100.

The county must hold the real property for two years after the judgment of foreclosure, “unless sooner redeemed.” ORS 312.120(1). The property is subject to certain statutory rights of redemption during that two-year period. ORS 312.120(2).

Not more than 30 days nor less than 10 days before the end of the redemption period, the tax collector must publish a general notice regarding the expiration of the redemption period. ORS 312.190(1). The notice must be published in two weekly issues of a “duly designated newspaper of general circulation in the county within the period of 20 days” as specified in the statute. ORS 312.190(3).

Property not redeemed within the two-year redemption period is deeded to the county, terminating all rights of redemption. ORS 312.200.

§ 18.8F(4) Collection of Delinquent Taxes on Personal Property

§ 18.8F(4)(a) Enforcement by the Issuance of a Warrant

§ 18.8F(4)(a)(i) When a Warrant May Be Issued

“Promptly after a period of 30 days has elapsed from the date any tax on personal property has become delinquent (or within such period, at the tax collec-

tor's discretion), the tax collector shall issue a warrant to enforce payment thereof." ORS 311.610(1). *See* § 18.8F(4)(a)(ii) (notice and service of warrant).

§ 18.8F(4)(a)(ii) Notice and Service of Warrant

After the issuance of a warrant to enforce payment of delinquent taxes due on personal property (*see* § 18.8F(4)(a)(i)), the tax collector must give notice of the warrant by both a single publication of the notice in a newspaper of general circulation in the county (to be designated by the county court) and first-class mail to the persons named in the notice. ORS 311.615(1).

In lieu of service by publication, notice may be given "by service of the warrant in the same manner as summons is served in an action at law, or by service of the warrant by certified mail, return receipt requested." ORS 311.620.

§ 18.8F(4)(b) Enforcement by Seizure and Sale of Personal Property

"Each year, the tax collector may collect taxes on property that are delinquent by seizure and sale of any of the following property": (1) the "property assessed" and/or (2) the "taxable property belonging to or in the possession or control of the person assessed." ORS 311.640(2)(a).

"Immediately upon taking the property into possession," the tax collector must:

(1) Mail notice to (a) the owner or the "person in possession or control of the property at the time of the seizure" and (b) "all security interest holders and other encumbrancers of record," at their respective addresses as shown in tax roll or the records of encumbrance; and

(2) "Advertise the seized property for sale by posting written or printed notices of the time and place of sale in three public places in the county not less than 10 days prior to the sale."

ORS 311.640.

TABLE OF STATUTES AND RULES

OREGON CONSTITUTION

Or Const, Art I, § 10	2-33, 7-60
Or Const, Art I, § 20	7-60
Or Const, Art I, § 42(1).....	3-6, 7-37
Or Const, Art IV, § 6	2-21

OREGON REVISED STATUTES

ORS	Page	ORS	Page
2.520.....	5-6	12.080(2).....	11-49, 14-21
3.070.....	2-64	12.080(3).....	7-12, 14-11, 15-8, 15-15
9.380.....	2-50	12.080(4).....	7-12, 7-13, 11-13, 11-14, 11-49, 14-11, 14-12
9.390.....	2-50	12.085.....	11-31, 14-12
ch 10.....	2-63	12.085(1).....	11-31
ch 12.....	2-67, 2-68, 6-37, 7-11, 7-21, 14-5	12.085(2).....	11-31
12.010–12.050.....	2-32, 2-39, 6-12, 7-32, 7-63	12.090.....	11-10, 14-6
12.010.....	2-21, 7-13, 14-5, 14-6, 14-23	12.100(2).....	2-68, 3-8, 8-21
12.020.....	2-9, 2-10, 2-41, 14-5, 6-3, 17-23	12.110.....	2-33, 2-40, 2-68, 3-8, 6-15, 6-32, 7-11, 7-30, 7-37, 7-44, 7-64, 14-5, 14-8, 14-15
12.020(1).....	2-10	12.110(1).....	2-18, 7-11, 7-12, 7-13, 7-15, 7-16, 7-17, 7-18, 7-21, 7-32, 7-40, 7-58, 8-8, 8-11, 8-13, 8-16, 8-17, 8-18, 8-20, 8-23, 10-3, 15-8, 15-17, 16-3
12.020(2).....	2-10, 2-65, 7-9, 16-3	12.110(2).....	2-68, 3-8
12.040(1).....	15-19	12.110(3).....	8-22, 14-11
12.040(4).....	7-16, 14-14	12.110(4).....	2-33, 2-38, 2-39, 2-40, 6-15, 6-16, 7-11, 7-12, 7-20, 7-21, 7-23, 7-24, 7-25, 7-26, 7-27, 7-33, 7-43, 7-55, 7-56, 7-59, 7-60, 7-64
12.050.....	14-11, 15-15, 15-19	12.110(5).....	7-45
12.060.....	14-11, 15-15	12.115.....	2-38, 2-39, 2-40, 6-16, 7-18, 7-22, 7-24, 7-35, 7-36, 7-43, 7-56, 7-58, 7-59, 7-60, 7-63, 7-64
12.060(1).....	15-14	12.115(1).....	7-27
12.070–12.250.....	2-32, 2-39, 6-12, 7-32, 7-63	12.117.....	2-40, 7-12, 7-64
12.070.....	14-5	12.117(1).....	2-40, 7-64
12.070(2).....	14-10		
12.080.....	6-33, 7-18, 7-30, 7-57, 11-10, 11-11, 14-4, 14-5, 14-9, 14-15, 16-4		
12.080(1)–(2).....	8-21		
12.080(1).....	2-35, 8-22, 8-23, 8-48, 11-9, 11-10, 11-49, 14-4, 14-5, 14-8, 14-11, 14-12, 14-14, 14-21, 14-23, 15-17, 16-3, 16-4		

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
12.120.....	2-67, 2-68	12.220(2).....	2-41, 2-43
12.120(2).....	2-68, 7-13, 7-14, 7-15	12.220(3)–(4).....	2-32
12.120(3).....	14-11	12.220(3).....	2-42
12.125.....	14-11, 15-7, 15-8	12.220(4).....	2-42
12.130.....	2-68	12.230.....	14-7
12.135.....	2-38, 2-67, 6-16, 7-24, 7-30, 7-31, 7-33, 7-35, 7-43, 7-59, 7-62, 14-5, 14-9, 14-15, 15-19	12.240.....	11-10, 14-6
12.135(1)–(2).....	14-9	12.250.....	2-68, 6-35
12.135(1).....	14-9, 14-24, 15-18, 15-19	12.272.....	7-28, 7-29
12.135(2).....	14-9, 15-15, 15-18	12.274.....	6-33
12.135(3).....	14-9, 14-10, 14-12, 15-18	12.276.....	2-32, 2-39, 6-12, 7-21, 7-32, 7-63
12.135(4).....	14-9, 15-17	12.276(1).....	7-21
12.137.....	6-16, 7-24, 7-43, 15-15, 15-16	12.276(2).....	7-60
12.137(3).....	7-45	12.276(3)–(4).....	7-60
12.140.....	14-11, 14-12, 14-14	12.276(3).....	7-21
12.150.....	2-34, 2-35, 14-5	12.276(4).....	7-22
12.155.....	2-35, 2-39, 2-40, 7-26, 7-64, 16-2, 16-3, 16-5	12.278(1).....	7-34, 7-35
12.155(1)–(2).....	2-35	12.278(2).....	7-35, 7-63
12.155(1).....	2-35, 16-1	12.280.....	2-38, 7-59, 14-10, 15-19
12.155(2).....	2-35, 16-2, 16-3	12.282(1).....	7-36
12.160.....	2-10, 2-32, 2-33, 2-39, 2-40, 2-67, 6-9, 6-17, 7-10, 7-12, 7-21, 7-22, 7-23, 7-26, 7-32, 7-37, 7-55, 7-63, 7-64, 16-4	12.282(2).....	7-36, 7-63
12.160(1)–(2).....	6-8, 16-4	12.410–12.480.....	2-61, 7-9
12.160(1).....	2-39, 6-12, 6-13, 7-12, 7-26	12.430.....	2-61, 2-62
12.160(2).....	2-39, 6-9, 6-12, 7-32, 7-64	12.440.....	2-62
12.160(3)–(4).....	6-8	12.450.....	2-62
12.160(3).....	2-39, 6-12	12.460(1)–(2).....	2-61
12.160(4).....	2-39, 6-9, 6-12, 7-64	12.460(2).....	2-61
12.160(5).....	6-9, 6-13, 7-12, 7-26	14.260(1).....	2-13
12.170.....	2-32	14.260(2).....	2-13
12.180.....	2-32	14.260(3).....	2-13
12.190.....	7-37	14.260(4).....	2-13
12.190(1).....	2-34, 6-13, 6-15, 7-44	14.270.....	2-13
12.190(2).....	2-34, 6-13, 6-15, 6-17, 6-25, 7-44	18.150.....	2-27, 18-7
12.195.....	6-14	18.150(1)–(2).....	18-7
12.210.....	2-11, 2-36	18.152.....	2-27, 18-7
12.220.....	2-32, 2-37, 2-40, 2-41, 2-42, 2-43, 16-3	18.152(4).....	18-6
12.220(1)–(2).....	2-32	18.158(5).....	18-7
12.220(1).....	2-40, 2-41, 2-42, 2-43	18.170.....	18-7
		18.180–18.192.....	4-6, 11-21, 18-19
		18.180.....	2-27
		18.180(1).....	4-6
		18.180(2).....	4-9, 4-10
		18.180(3).....	2-27, 4-6, 18-6
		18.180(4).....	18-6
		18.180(5).....	4-9

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
18.180(6)	4-10, 4-11	18.712(1)	11-30
18.180(7)	4-7	18.712(2)	11-30
18.182	4-7, 4-10, 4-11	18.730(2)	11-30
18.182(1)	4-10, 18-6	18.732(1)	11-28
18.182(4)–(5)	18-6	18.732(2)	11-28
18.182(5)	4-10	18.735(1)	11-29
18.182(8)	18-6	18.735(2)	11-29
18.185	4-10, 4-11	18.735(3)	11-29
18.190	4-10, 4-11	18.745	11-29
18.192	4-9	18.750	11-28, 11-29
18.192(1)	4-9	18.752(1)	11-28, 11-29
18.192(2)	4-9	18.752(2)	11-28
18.192(3)	4-10	18.755–18.782	11-31
18.235(1)	18-8	18.755(1)	11-28, 11-30
18.235(4)	18-8	18.758	11-30
18.235(5)	18-8	18.758(1)	11-28
18.235(6)	18-8	18.770(3)	11-30
18.235(11)	18-8	18.770(4)	11-30
18.242	7-57	18.778(1)	11-31
18.252(1)	11-21	18.778(2)	11-31
18.252(2)	11-21	18.780(1)	11-31
18.300	11-26	18.780(2)	11-31
18.375	11-24	18.792	11-30
18.395	18-7	18.798	11-28
18.412(1)	18-7	18.835	11-28
18.415	18-7	18.850	11-26
18.415(1)	18-8	18.855	11-27
18.609(1)	11-27	18.860–18.993	13-17
18.609(2)	11-27	18.872	11-22
18.625	11-29	18.872(1)	11-21, 11-23
18.625(2)	11-27	18.878	11-21, 11-26
18.625(3)	11-27	18.892	11-26
18.645	11-29	18.892(4)–(5)	11-21, 11-26
18.680(1)–(2)	11-28	18.892(5)	11-26
18.680(3)	11-28	18.896	11-21, 11-24, 11-26
18.690	11-28	18.898	11-27
18.700	11-27	18.898(2)–(3)	11-27
18.700(2)	11-26, 11-27	18.906	11-22
18.702	11-27, 11-29	18.908(1)	11-22
18.705(5)	11-30	18.918	13-17
18.708	11-28	18.920(1)–(3)	11-22
18.708(1)	11-29	18.920(2)	11-22
18.708(2)	11-29	18.920(4)	11-22
18.710	11-27	18.922(1)	11-22
18.710(2)–(3)	11-27	18.924	11-22

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
18.924(1).....	13-17	18.981(1).....	13-21
18.924(2)–(3).....	11-22, 13-17	18.981(3).....	13-21
18.924(5).....	11-22, 13-17	18.981(4).....	13-21
18.924(6)–(7).....	13-17	18.981(5).....	13-21
18.924(8).....	13-17	ch 19.....	1-4, 3-11, 5-10, 5-11, 5-12, 7-43
18.926.....	13-17	19.205(1)–(3).....	5-2
18.930(2).....	11-22	19.205(5).....	5-2
18.932(1).....	11-22	19.240(2).....	5-4
18.932(2).....	11-22	19.250(2).....	5-3
18.932(4).....	11-22, 11-23	19.255.....	1-4
18.938(3)–(4).....	11-23	19.255(1).....	5-2
18.938(5).....	11-23	19.255(2).....	5-3
18.938(6).....	11-23	19.255(3).....	5-3
18.938(7).....	11-23	19.260(1).....	5-8
18.944(1).....	11-23	19.270(2).....	5-2
18.946(1).....	13-17	19.300(1).....	5-4
18.946(2).....	13-17	19.300(2).....	5-4
18.948(1).....	13-18	19.305(3).....	5-4
18.948(2).....	13-18	19.310(1).....	5-4
18.952(2).....	13-18	19.345.....	5-4
18.960–18.982.....	13-18	19.370(2).....	5-4
18.964(1).....	13-18	19.370(3).....	5-4
18.964(2).....	13-18	19.370(6).....	5-4
18.964(3).....	13-18	19.370(7).....	5-4
18.970.....	13-18	19.380.....	5-5
18.970(1).....	13-18	19.385.....	5-5
18.970(3).....	13-18	19.445.....	5-8
18.971.....	13-20	20.080.....	11-11
18.971(1).....	13-19	20.098(1).....	12-10, 14-24
18.972.....	13-21	20.098(2).....	12-10, 14-24
18.972(1).....	13-19	20.105.....	5-8
18.972(2).....	13-19	20.320.....	2-63
18.973.....	13-20	24.190.....	4-17
18.973(1).....	13-19	25.080.....	4-8
18.975(1).....	13-19	25.670(1).....	18-7
18.975(2).....	13-19, 13-20	25.670(2).....	18-7
18.975(5).....	13-20	28.010–28.160.....	2-47
18.975(6).....	13-20	28.070.....	2-47
18.978(2).....	13-20	30.020.....	2-38, 6-15, 7-11, 7-21, 7-22, 7-31, 7-34, 7-35, 7-36, 7-59, 7-60, 7-62, 7-63
18.978(3).....	13-20	30.020(1).....	2-33, 6-13, 6-15, 6-16, 7-24, 7-40, 7-43, 7-60
18.978(4).....	13-20, 13-21	30.020(2).....	6-17, 7-44
18.980.....	13-19		
18.980(2).....	13-21		
18.980(3).....	13-21		
18.980(4).....	13-21		

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
30.060.....	7-43	30.905(5).....	7-30, 7-31, 7-35, 7-61, 7-62
30.075.....	6-13, 7-22, 7-60	30.907.....	7-30, 7-31, 7-33
30.075(1).....	6-15, 7-11, 7-43, 7-44	30.907(2).....	7-33, 7-63
30.080.....	6-17, 7-44	30.908.....	7-30, 7-31, 7-33, 7-62
30.090.....	6-17, 7-44	30.908(1)–(3).....	7-34
30.138.....	11-32	30.908(1).....	7-34, 7-62
30.138(3).....	11-32	30.908(2).....	7-33, 7-62
30.260–30.300.....	2-65, 6-16, 7-9, 7-22, 8-12	30.908(3).....	7-34, 7-62
30.275.....	2-10, 2-22, 2-33, 2-67, 6-15, 6-17, 7-10, 7-11, 7-22, 7-26, 8-8, 8-9, 8-10, 8-11	30.908(4).....	7-34, 7-63
30.275(1)–(8).....	7-22	30.908(5).....	7-34, 7-63
30.275(1)–(7).....	2-66	30.927.....	7-22, 7-35
30.275(1)–(2).....	7-9	30.928.....	7-36
30.275(1).....	2-65	30.928(2).....	7-35
30.275(2).....	2-65, 2-66, 6-16, 7-9, 7-10, 7-26, 8-8, 8-9, 8-10, 8-12, 8-18	30.928(3).....	7-30, 7-31, 7-36
30.275(3).....	2-66	30.980.....	7-36
30.275(4)–(5).....	2-66	30.980(1).....	7-36
30.275(6).....	2-66	30.980(2).....	7-36
30.275(8).....	2-10, 2-33, 2-66, 6-17, 7-10, 7-26	30.980(3).....	7-37
30.275(9).....	2-10, 2-36, 2-67, 2-68, 6-16, 6-17, 7-9, 7-10, 7-12, 7-15, 7-22, 8-20	30.980(4)–(5).....	7-37
30.460.....	3-6	31.215(1).....	7-14
30.701.....	11-12	31.215(2).....	7-14
30.701(1).....	11-12, 11-13	31.230(2).....	2-18
30.701(2).....	11-12	31.550–31.565.....	16-2
30.701(3).....	11-13	31.550.....	16-1
30.701(5).....	11-13	31.560.....	2-35, 16-1
30.866.....	4-17	31.560(1).....	16-1
30.866(6).....	7-42	31.565.....	16-1
30.900–30.920.....	7-29, 7-32, 7-34, 7-36, 7-63	31.700(1).....	7-11
30.900.....	7-30, 14-23	31.700(2).....	7-11
30.902.....	7-29, 7-32, 7-34	31.735(3).....	2-53
30.905.....	6-15, 6-16, 7-11, 7-24, 7-30, 7-31, 7-33, 7-34, 7-35, 7-36, 7-43, 7-62, 7-63, 14-23	31.810(3).....	7-56, 14-6
30.905(1).....	7-30, 7-31, 7-63, 14-23	31.810(4).....	7-57
30.905(2).....	7-22, 7-31, 7-32, 7-35, 7-61	33.420.....	4-16
30.905(3).....	7-31, 7-32, 7-61, 7-62	33.460.....	4-16
30.905(4).....	7-32, 7-60, 7-61, 7-62	33.510.....	11-51
		33.520.....	11-51
		34.030.....	5-9
		34.050.....	5-9
		34.060.....	5-10
		34.080.....	5-9
		34.100.....	5-10
		34.105(4).....	5-10
		34.130(2).....	5-10
		34.130(4).....	5-10
		34.130(5).....	5-10

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
34.150(2)	5-10	46.455(2)	2-26
34.170	5-10	46.455(3)	2-26
34.180	5-11	46.461(3)	2-27
34.190	5-11	46.465(3)	2-27
34.240	5-11	46.475(2)	2-26
34.440(1)	5-11	46.475(3)	2-27
34.500	5-11	46.475(5)	2-27
34.550	5-12	46.485(4)	2-28
34.680(3)	5-11, 5-12	46.488(2)	2-27
34.710	5-12	46.488(3)	2-27
34.712	5-7	51.565	2-35
36.185–36.205	1-2	52.010–52.030	2-24
36.185–36.210	1-8	52.035	2-25
36.185	1-8	52.110(1)	2-24
36.190(1)	1-8	52.220	2-25
36.190(3)	1-8	52.310	2-24
36.195(5)	1-8	52.320	2-24
36.195(6)	1-8	52.410–52.420	2-25
36.400–36.425	1-2, 1-4, 1-5	52.530(3)	2-25
36.400(4)	1-5	52.635(5)	2-25
36.420(1)	1-5, 1-6	52.700	2-25
36.420(3)	1-5	52.710	2-25
36.425(2)	1-6	53.020	2-25
36.425(3)	1-7	53.030	2-25
36.425(6)	1-7	53.040	2-25, 2-26
36.600–36.740	1-2, 1-4, 17-10	53.080	2-26
36.615(1)	1-3	53.090	2-26
36.625(1)	1-3	56.080	9-27
36.625(7)	1-3	ch 58	9-20
36.675(1)	1-3	58.045	9-20
36.690(1)	1-3	58.045(1)	9-20
36.690(2)	1-3	58.385(1)	9-21
36.690(3)	1-3	58.387(1)	9-21
36.700	17-11	58.387(2)	9-21, 9-22
36.700(1)	1-3, 1-4	58.400(10)	9-21
36.705(1)	1-4	58.420(1)	9-21
36.705(2)	1-4	58.420(2)	9-21
36.715	17-11	58.430(3)	9-21
36.715(1)	1-4	58.450(3)	9-21
36.730(1)	1-4	58.460	9-21
36.730(2)	1-4	59.005–59.451	10-5, 10-6
46.425(1)	2-26	59.115(1)	10-5, 10-6, 10-7
46.445(1)	2-26	59.115(3)	10-6
46.445(4)	2-26	59.115(6)	8-26, 10-5, 10-6
46.455(1)	2-26	59.127(1)	10-6, 10-7

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
59.127(3)	10-7	60.211(5)	9-34
59.127(6)	8-26, 10-6, 10-7	60.214(1)	9-33, 9-35
59.135	10-5, 10-6, 10-7	60.221(1)–(2)	9-33
59.135(1)	10-7	60.221(3)	9-34
59.135(2)	10-7	60.231(4)	9-34
59.135(3)	10-7	60.254(2)–(3)	9-34
59.137	10-7	60.265(2)	9-34
59.137(1)	10-8	60.265(3)	9-35
59.137(6)	8-26, 10-8	60.344(2)	9-35
59.185(1)	10-9	60.444	9-35
59.185(2)	10-9	60.487(4)	9-35
59.195(1)	10-9	60.491(1)	9-35
59.265(1)	8-26, 10-8	60.491(2)	9-35
59.265(3)	8-26, 10-8	60.491(3)	9-35
59.295(1)	8-26, 10-8	60.567(2)	9-35, 9-36
59.295(2)	8-27	60.581(1)	9-36
59.305	10-8	60.587(1)	9-36
59.810	10-8	60.587(2)	9-36
59.991	10-5, 10-6	60.591(1)	9-36
59.995	10-5, 10-6, 10-8	60.634(1)	9-36
ch 60	9-20, 9-22, 9-31, 9-32, 9-34	60.641(2)	9-36
60.004(10)	9-31	60.641(3)	9-36
60.011(1)	9-32	60.644(3)	9-36
60.011(2)	9-32	60.651(1)–(2)	9-36
60.014(3)	9-32	60.654(1)	9-36
60.017(3)	9-32	60.654(4)	9-36
60.034(1)	9-32	60.657(2)	9-37
60.034(3)	9-32	60.674	9-37
60.034(5)	9-32	60.701(1)	9-37
60.034(6)	9-32	60.701(2)	9-37
60.051(1)	9-32	60.707(2)	9-37
60.057	9-32	60.727(3)	9-37
60.094	9-33	60.734(1)	9-37
60.097(1)–(2)	9-33	60.741(1)–(2)	9-37
60.114(3)	9-33	60.747(1)	9-37
60.117(1)	9-33	60.771(5)	9-37
60.117(3)	9-33	60.774(1)–(2)	9-37
60.144(1)	9-33	60.781(5)	9-37
60.144(4)	9-33	60.787(2)	9-38
60.164(2)	9-35	60.787(4)	9-38
60.174(3)	9-33	60.810(1)–(2)	9-38
60.207(1)	9-34	60.810(3)	9-38
60.207(3)	9-34	60.810(4)	9-38
60.211(1)	9-34	60.810(8)	9-38
60.211(4)	9-34	60.825–60.845	9-38

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
60.825(5).....	9-38	62.714(1).....	9-25
60.830(2).....	9-38	62.714(2).....	9-26
60.835–60.840.....	9-38	62.714(3).....	9-26
60.951.....	9-31	62.720(1).....	9-24
60.952(5).....	9-39	62.720(2).....	9-24
60.952(6).....	9-39	62.809(8).....	9-26
60.957.....	9-31	62.870.....	9-26
ch 62.....	9-25, 9-26	63.004(10).....	9-5
62.025(10).....	9-22	63.011.....	9-6
62.035.....	9-24	63.011(1).....	9-5
62.035(1)–(2).....	9-22	63.011(2).....	9-5
62.040(3).....	9-22	63.014(3).....	9-5
62.050(3).....	9-22	63.017(3).....	9-5
62.055.....	9-22	63.034(1).....	9-5
62.128(1).....	9-22	63.034(2).....	9-5
62.128(2).....	9-22	63.034(3).....	9-5
62.131.....	9-22	63.034(4).....	9-5
62.195(1).....	9-22	63.034(5).....	9-6
62.195(3).....	9-23	63.051(1).....	9-6
62.205(1).....	9-23	63.114(3).....	9-6
62.205(2).....	9-23	63.117(1).....	9-6
62.255(2).....	9-23	63.117(3).....	9-6
62.255(4).....	9-23, 9-24	63.205(1).....	9-6
62.280(5).....	9-23	63.245(1).....	9-6
62.295(1).....	9-23	63.470–63.473.....	9-6
62.305.....	9-23	63.470(1).....	9-6
62.335(1).....	9-24	63.476(2).....	9-6
62.425(1).....	9-24	63.481–63.487.....	9-6
62.455(2).....	9-24	63.494(2).....	9-6
62.455(4).....	9-24	63.641.....	9-7
62.555(2).....	9-23, 9-24	63.641(2).....	9-7
62.560(2).....	9-23	63.641(3).....	9-7
62.607–62.613.....	9-24	63.644(3).....	9-7
62.611(2).....	9-24	63.651(1)–(2).....	9-7
62.617–62.623.....	9-24	63.654(1).....	9-7
62.621(2).....	9-24	63.654(3).....	9-7
62.655(2).....	9-23	63.654(4).....	9-7
62.680(1).....	9-25	63.657(2).....	9-7
62.680(2).....	9-25	63.674.....	9-7
62.685.....	9-25	63.707(2).....	9-8
62.695.....	9-25	63.724(3).....	9-8
62.704(1).....	9-25	63.727(1).....	9-8
62.712.....	9-26	63.727(3).....	9-8
62.712(1)–(2).....	9-25	63.734(1).....	9-8
62.712(3).....	9-25	63.734(2).....	9-8

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
63.741(1)–(2)	9-8	65.534(7)	9-30
63.741(3)	9-8	65.627(1)–(2)	9-30
63.744	9-8	65.634	9-30
63.747(1)	9-8	65.641(1)	9-30
63.747(3)	9-8	65.641(2)	9-30
63.771(1)	9-8	65.644(2)	9-30
63.771(3)	9-8	65.644(3)	9-30
63.781(5)	9-9	65.651(2)	9-30
63.787(2)	9-9	65.654(1)	9-30
63.787(4)	9-9	65.654(4)	9-30
ch 65	9-30, 9-31	65.771(1)	9-30
65.011	9-27	65.771(5)	9-31
65.014	9-27	65.774(1)	9-31
65.014(4)	9-27	65.781(1)	9-31
65.017(3)	9-27	65.781(5)	9-31
65.021	9-27	65.784	9-31
65.034(1)	9-27	65.787(2)	9-31
65.034(3)	9-27	65.787(4)	9-31
65.034(4)	9-28	ch 67	9-14
65.034(5)	9-28	67.010(1)	9-13
65.094	9-27	67.010(2)	9-13
65.097(1)	9-27	67.010(3)	9-13
65.097(2)	9-27	67.010(4)	9-13
65.117(3)	9-28	67.010(5)	9-13
65.167(1)	9-28	67.010(6)	9-13
65.167(2)	9-28	67.055(1)	9-13
65.167(4)	9-28	67.105	9-14
65.174(1)	9-31	67.105(1)	9-14
65.174(4)	9-31	67.110(4)	9-14
65.204(3)	9-28	67.155	9-16
65.207(1)	9-29	67.160	9-14
65.207(4)	9-29	67.160(2)	9-14
65.214(3)	9-28	67.160(3)	9-14
65.221(1)–(2)	9-28	67.160(4)	9-14
65.221(1)	9-28	67.205	9-15
65.221(3)	9-28	67.205(1)	9-14
65.224(2)	9-28	67.205(2)	9-15
65.231(2)	9-28	67.205(3)	9-15
65.254(1)	9-29	67.205(5)	9-15
65.314(1)	9-29	67.220(1)	9-15
65.344(2)	9-29	67.220(2)	9-15
65.364(1)	9-29	67.220(3)	9-15
65.391–65.401	9-31	67.220(4)	9-16
65.431(2)	9-27	67.220(5)	9-16
65.484(2)	9-29	67.220(6)	9-16

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
67.220(7)	9-16	70.075(1)	9-9
67.220(8)	9-16	70.075(2)	9-9
67.220(9)	9-16	70.080(2)	9-10
67.220(10)	9-17	70.085	9-10
67.250(1)	9-17	70.125(1)	9-10
67.250(2)	9-17	70.180(5)	9-10
67.250(3)	9-17	70.255	9-10
67.250(4)	9-17	70.255(2)	9-10
67.250(5)	9-17	70.275(1)	9-11
67.250(7)	9-18	70.275(2)	9-11
67.250(8)	9-17	70.355(4)	9-11
67.250(9)	9-18	70.435(1)–(2)	9-11
67.255	9-17	70.435(4)	9-11
67.290(4)	9-18	70.440(1)	9-12
67.346(2)	9-18	70.440(3)	9-12
67.348(2)	9-18	70.440(4)	9-12
67.364(2)	9-18	70.520(2)	9-11
67.365(2)	9-18	70.535(2)	9-12
67.520(10)	9-18	70.540(1)	9-12
67.530	9-18	70.540(2)	9-12
67.530(1)	9-19	70.610(1)–(2)	9-12
67.530(2)	9-19	70.610(2)	9-12
67.535(3)	9-19	70.620(3)	9-13
67.540(1)	9-19	70.0322	11-35
67.590(5)	9-19	70.0323	11-35
67.595	9-19	72.2010(1)	14-20
67.595(3)	9-19	72.2010(2)	14-20
67.645(2)	9-19	72.2070	11-11
67.645(4)	9-19	72.3140	14-23
67.660	9-19	72.3150	14-23
67.660(1)–(2)	9-19	72.3280	14-22
67.665(1)	9-19	72.4010	11-36
67.665(3)	9-19	72.5050	11-36
67.665(4)	9-20	72.6080	14-24
67.670(2)	9-20	72.6080(2)	14-24
67.710(2)	9-20	72.7020(2)	14-22
67.755(1)–(2)	9-20	72.7050(1)	14-22
67.760	9-20	72.7050(3)	14-22
67.765(1)	9-20	72.7110(3)	11-36
67.765(3)	9-20	72.7140	14-23
70.015(2)	9-9	72.7250	12-5, 11-10, 11-11, 11-49, 11-50, 14-5, 14-21, 14-23
70.030(1)	9-9	72.7250(1)	7-30, 11-10, 11-11, 12-9, 14-4, 14-10, 14-11, 14-20, 14-21
70.030(2)	9-9	72.7250(2)	11-10, 12-5, 14-22, 14-24
70.050(1)	9-9		
70.070(3)	9-9		

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
72.7250(3)	14-21	77.2060(4)	11-33
72.7250(4)	11-10	77.2060(5)	11-33
72.8020	14-20	77.2100	11-32, 11-34
72.8030–72.8040	14-20	77.2100(1)	11-33, 11-34
72.8050	14-20	77.2100(2)	11-33, 11-34
72.8060	14-20	77.2100(8)	11-34
72.8070	14-20	77.2100(9)	11-34
72.8070(2)	12-5, 12-9, 14-20	77.3070(1)	11-34
72.8070(3)	12-5, 12-9, 14-20	77.3080(1)	11-34
72A.5080(5)	11-36	77.3080(7)	11-34
ch 73	14-26	77.6010(2)	11-34
73.0118	14-26	ch 78	9-40
73.0118(1)	14-25	78.1020(1)	11-35
73.0118(2)	14-25	78.1050(3)	9-39, 11-35
73.0118(3)	14-25	78.1130	9-40, 11-35
73.0118(4)	14-25	78.4050	9-39, 11-35
73.0118(5)	14-25	78.4060	9-39, 11-35
73.0118(6)	14-25	78.5010	11-35
73.0118(7)	14-26	ch 79	9-40, 11-35, 11-37, 11-38, 11-49, 18-9, 18-11
73.0118(8)	14-26	79.0101–79.0628	11-36
73.0501(1)	14-26	79.0102(1)	9-40, 11-35, 11-39
73.0501(2)	14-26	79.0103	11-39
73.0502(1)	14-26, 14-27	79.0103(1)	11-40
73.0502(2)–(4)	14-27	79.0103(4)	11-43
73.0502(5)	14-27	79.0104(1)	11-37, 11-40
73.0503(3)	14-27	79.0104(2)	11-37
73.0504	14-27	79.0106	9-40, 11-35
73.0504(2)	14-27	79.0109(1)	11-36
73.0504(3)	14-27	79.0109(4)	11-36
ch 74	14-26	79.0110	11-36
74.1110	14-26	79.0203(1)	11-40
74.2100	11-36	79.0203(2)	11-40
74.4010	14-28	79.0203(3)–(9)	11-40
74.4030(1)	14-27	79.0204(2)	11-40
74.4030(2)	14-27	79.0208(1)	11-41
74.4030(3)	14-28	79.0208(2)	11-41
74.4050(1)	14-28	79.0209(1)	11-41
74.4050(2)	14-28	79.0209(2)	11-41
74.4060	14-28	79.0209(3)	11-41
74.4060(3)	14-28	79.0210	11-40
74.4060(6)	14-28	79.0301(1)	11-38
75.1180	11-36	79.0305	9-40, 11-35
77.2060(1)	11-32, 11-33	79.0307	11-38
77.2060(2)	11-33	79.0307(2)	11-38
77.2060(3)	11-33		

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
79.0307(5).....	11-38	79.0406(1).....	11-41
79.0308–79.0309.....	11-36	79.0502(3).....	11-44
79.0308(1).....	11-36	79.0502(4).....	11-43
79.0309.....	11-38	79.0507(3).....	11-39, 11-44
79.0310(2).....	11-37	79.0509(4).....	11-45
79.0311(1).....	11-48	79.0510(3)–(4).....	11-44
79.0312.....	9-40, 11-35	79.0512(3).....	11-44
79.0312(1).....	11-35, 11-37	79.0513.....	11-39, 11-45
79.0312(2).....	11-37	79.0513(1)–(2).....	11-45
79.0312(5).....	9-40, 11-38	79.0513(3).....	11-45
79.0312(6).....	11-38	79.0514.....	11-45
79.0312(7).....	11-38	79.0515.....	11-39, 11-45
79.0312(8).....	9-40	79.0515(1).....	11-44
79.0313.....	9-40, 11-35	79.0515(2).....	11-44
79.0313(1).....	11-37	79.0515(3).....	11-44
79.0313(4).....	9-40, 11-37	79.0515(4)–(5).....	11-44
79.0314.....	9-40, 11-35	79.0515(5).....	11-44
79.0314(1).....	11-37	79.0515(6).....	11-44
79.0315(1).....	11-39	79.0515(7).....	11-44
79.0315(3).....	11-39	79.0515(8).....	11-45
79.0315(4).....	11-39	79.0516.....	11-44
79.0315(5).....	11-39	79.0516(1).....	11-43
79.0316(1).....	11-39	79.0516(2).....	11-43
79.0317(5).....	11-42	79.0519(7).....	11-45
79.0322.....	9-40	79.0520.....	11-44
79.0322(1).....	11-41	79.0523.....	11-45
79.0322(2).....	11-41	79.0523(5).....	11-46
79.0322(7).....	11-41	79.0601–79.0628.....	11-46, 11-50
79.0323.....	9-40	79.0601.....	11-46
79.0323(2).....	11-42	79.0601(5).....	11-46
79.0323(3).....	11-42	79.0602.....	11-46
79.0323(4).....	11-42	79.0607(1).....	11-46
79.0323(5).....	11-42	79.0609(1).....	11-46
79.0323(6).....	11-42	79.0610.....	11-46
79.0323(7).....	11-42	79.0611.....	11-49
79.0324.....	11-40	79.0611(3).....	11-46, 11-47
79.0324(1).....	11-42	79.0611(5).....	11-47
79.0324(2).....	11-43	79.0612(1).....	11-47
79.0324(2)–(4).....	11-40	79.0612(2).....	11-47
79.0324(7).....	11-41	79.0613.....	11-47
79.0325–79.0335.....	11-42	79.0614.....	11-47
79.0328.....	9-40, 11-35, 11-37	79.0615.....	11-47
79.0328(1).....	9-40	79.0615(1).....	11-49
79.0328(2).....	9-40, 11-37	79.0616(2).....	11-47
79.0328(7).....	9-40, 11-35	79.0616(3).....	11-48

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
79.0620–79.0621.....	11-49	86.720(3).....	13-5
79.0620.....	11-48	86.720(6).....	13-5
79.0620(1).....	11-48	86.725.....	13-4
79.0620(4).....	11-48	86.726–86.741.....	13-7
79.0620(5)–(6).....	11-48	86.726.....	13-9
79.0620(5).....	11-49	86.726(1).....	13-7, 13-10
79.0620(7).....	11-48	86.726(2).....	13-8
79.0621(1).....	11-48	86.726(3).....	13-8
79.0623.....	11-49	86.729.....	13-9
79.0624.....	11-49	86.729(1).....	13-8
79.0624(3).....	11-49	86.729(2).....	13-8
79.0625.....	11-40, 11-49	86.729(3).....	13-8
79.0625(2).....	11-45	86.729(4).....	13-8, 13-9
79.0625(3).....	11-49	86.729(5).....	13-8, 13-9
79.0625(5).....	11-45	86.732.....	13-9
80.010.....	11-13	86.732(4).....	13-9
80.100–80.130.....	11-50	86.736.....	13-10
80.109.....	11-50	86.736(1).....	13-9, 13-10
80.112.....	11-50	86.736(2).....	13-9
80.115(2).....	11-50	86.748.....	13-10
80.115(3).....	11-50	86.748(1).....	13-10
80.115(4).....	11-50	86.748(2).....	13-10
80.118.....	11-50, 11-51	86.748(3).....	13-10
80.121(1).....	11-51	86.752.....	13-7
80.121(4).....	11-51	86.756.....	13-10, 13-11, 13-16
80.130.....	11-51	86.756(5).....	13-11
81.010.....	11-11	86.761(1).....	13-16, 13-17
81.020.....	11-11, 11-12	86.761(2).....	13-17
81.030.....	11-12	86.764.....	13-10, 13-11, 13-14
86.010.....	13-3	86.764(1)–(2).....	13-11
86.140.....	13-5	86.764(1).....	13-11, 13-14, 13-15
86.150(1).....	13-6	86.764(2).....	13-11, 13-16
86.150(2).....	13-6	86.764(3).....	13-11
86.155(4).....	13-6	86.767.....	13-13
86.155(5).....	13-6	86.767(1).....	13-16
86.165(1).....	13-6	86.767(4).....	13-16
86.165(2).....	13-6	86.767(6).....	13-16
86.165(3).....	13-6	86.771.....	13-11, 13-13, 13-14
86.165(4).....	13-6	86.771(9).....	13-11, 13-12
86.705–86.795.....	13-3	86.771(10).....	13-11
86.705(6).....	13-7	86.774.....	13-14
86.710.....	13-3	86.774(1).....	13-11, 13-12, 15-14
86.715.....	13-3	86.774(2).....	13-12
86.720(1).....	13-5	86.774(3).....	13-12, 13-13
86.720(2).....	13-5	86.778.....	13-15

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
86.778(1)	13-13	87.025(1)–(2)	17-20
86.782(1)	13-14	87.025(3)	17-19, 17-20
86.782(2)	13-14	87.025(4)	17-20
86.782(3)	13-14	87.027	17-19
86.782(4)	13-15	87.030(1)	17-17
86.782(5)	15-14	87.035	17-22
86.782(6)	13-15, 13-16, 15-14	87.035(1)	17-20, 17-21
86.782(7)	13-16	87.035(2)	11-61, 17-20
86.782(8)	13-16	87.035(3)–(4)	17-20
86.782(12)	13-14	87.036(1)	17-17
86.786(1)	13-13	87.037	17-17, 17-18
86.786(5)	13-13	87.039	11-62
86.789	13-13	87.039(1)	17-21
86.789(4)	13-13	87.039(2)	11-62, 17-21
86.815	13-4	87.045	17-20
86A.095–86A.198	10-8	87.045(1)	17-21
86A.109(1)	10-9	87.045(2)–(3)	17-21
86A.133(1)	10-8	87.045(5)	17-21
86A.133(3)	10-8	87.055	11-62, 17-16, 17-21, 17-22
86A.139(1)	10-8	87.055(1)	17-23
86A.142(1)	10-8	87.055(2)	17-23
86A.151(1)	10-8	87.057	11-62
86A.151(4)	10-8	87.057(1)	17-21, 17-22
86A.154	10-8	87.057(2)	17-22
86A.200–86A.239	10-8	87.057(3)	11-62, 17-22
ch 87	11-61	87.060	17-21, 17-22
87.001–87.060	17-16, 17-17	87.075–87.093	17-16, 17-17
87.001	17-16	87.076–87.081	17-23
87.005(6)	17-19, 17-20	87.076	17-24, 17-25
87.005(7)	17-17, 17-18	87.076(1)–(2)	17-23, 17-24
87.005(8)	17-17, 17-18	87.076(2)	17-24
87.005(10)	17-18	87.076(3)	17-23
87.010	11-61, 17-16, 17-20	87.076(4)	17-23, 17-24, 17-25
87.010(1)–(2)	17-20	87.078–87.081	17-24
87.010(1)	18-16	87.078	17-23, 17-24
87.010(5)–(6)	17-19	87.078(1)	17-24
87.018	17-17	87.078(2)	17-24
87.018(1)	17-19, 17-20, 17-21, 17-24, 17-25	87.081	17-23, 17-24
87.021	17-17, 17-21	87.083	17-25
87.021(1)	17-18, 17-19, 17-20	87.083(1)	17-23
87.021(2)	17-19	87.083(2)	17-23
87.021(3)	17-17, 17-18, 17-19	87.086	17-24
87.023	17-19	87.088	17-25
87.025	17-19, 17-21	87.089	17-25
		87.093	17-17

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
87.093(1).....	17-18	87.252(3).....	18-20
87.093(2)–(4).....	17-17	87.252(4).....	18-22
87.093(2).....	17-17	87.256.....	18-20
87.093(3).....	17-18	87.266(1).....	18-21
87.093(4).....	17-17, 17-18	87.266(2).....	18-22
87.093(5).....	17-18	87.272.....	18-21, 18-22
87.093(8).....	17-17	87.312(1).....	18-21
87.152–87.162.....	15-3, 15-4, 18-23, 18-24, 18-27	87.316.....	18-21
87.152.....	15-3, 15-5, 18-23, 18-26, 18-27	87.336.....	18-20
87.156(1).....	15-6, 18-27	87.342(1).....	18-20
87.156(2).....	15-6, 18-27, 18-28	87.342(2).....	18-20
87.162.....	15-3, 15-6, 18-23, 18-28	87.342(3).....	18-20
87.166(1).....	15-3, 18-23	87.342(4).....	18-20
87.166(2).....	15-3, 18-23	87.346(1).....	18-21
87.172.....	18-23	87.346(3).....	18-21
87.172(1).....	15-4, 15-6, 18-23, 18-28	87.346(4).....	18-22
87.172(2).....	15-4, 18-23	87.346(5).....	18-22
87.172(3).....	15-4, 18-24	87.352(1).....	15-18
87.176(1).....	15-4, 18-24	87.356.....	15-18
87.176(2).....	15-4, 18-24	87.358.....	15-18
87.192(1).....	15-5, 18-25	87.362.....	15-18
87.192(2).....	15-5, 18-25	87.364(1).....	15-18
87.192(3).....	15-5, 18-25	87.364(2).....	15-18
87.196.....	15-4, 18-24	87.366(1)–(2).....	15-19
87.196(1).....	15-5, 18-26, 18-27	87.366(1).....	15-19
87.196(3).....	15-5, 18-26, 18-27	87.366(3).....	15-19
87.196(4).....	15-5, 18-26	87.376.....	15-19
87.206(1).....	15-5, 18-27	87.382.....	15-19
87.206(3).....	15-6, 18-27	87.430.....	18-16, 18-17, 18-18
87.216–87.232.....	18-20, 18-21	87.435.....	18-17
87.216.....	18-20	87.435(1)–(2).....	18-18
87.222.....	18-20	87.435(1).....	18-18
87.226.....	18-22	87.435(2).....	18-18
87.226(1).....	18-21	87.435(3).....	18-18
87.226(3).....	18-22	87.435(4).....	18-18
87.228.....	9-26	87.440.....	18-17, 18-18
87.232.....	18-20	87.445.....	18-16, 18-18, 18-19
87.242.....	18-9, 18-11, 18-20	87.450–87.460.....	18-18
87.242(1).....	18-9, 18-11, 18-22	87.450(1).....	18-18
87.242(3).....	18-9, 18-11	87.450(2).....	18-19
87.252(1)–(2).....	18-22	87.450(3).....	18-19
87.252(1).....	18-20	87.450(4).....	18-18
87.252(2).....	18-20, 18-22	87.455(1).....	18-19
		87.455(2).....	18-19
		87.455(3).....	18-19

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
87.460(1)	18-19	87.710(5)	18-9
87.460(2)	18-19	87.710(6)	18-9
87.460(3)	18-19	87.730	18-9, 18-10
87.470	18-18	87.735(1)	18-10
87.503(1)	18-13	87.735(3)	18-10
87.507(1)–(2)	18-13	87.755	18-11
87.507(1)	18-14	87.755(1)	18-10, 18-11
87.512	18-14	87.755(2)	18-10
87.512(6)	18-14	87.755(4)	18-11
87.527	18-14	87.755(6)	18-11
87.537(1)	18-14	87.762	18-12
87.537(2)	18-14	87.762(1)–(2)	18-11
87.555(1)	18-12, 18-13	87.762(1)	18-11
87.560(1)	18-13	87.762(2)	18-11
87.565	18-13	87.762(3)–(4)	18-11
87.581(1)	18-13	87.762(3)	18-11
87.581(2)	18-13	87.762(4)	18-11
87.607	18-12	87.762(5)	18-12
87.613	18-12	87.767	18-11
87.627(1)	18-12	87.772(1)	18-12
87.627(2)	18-12	87.777(1)	18-12
87.687	18-15, 18-29	87.777(3)	18-12
87.687(1)	15-6, 18-15, 18-28	87.806–87.855	18-16
87.687(2)	18-15	87.806–87.831	18-30
87.689	18-28	87.806(1)	18-16, 18-30
87.689(1)	15-6, 18-15, 18-29	87.816(5)	18-16, 18-30
87.689(2)–(3)	15-6, 18-15	87.855(1)	18-10
87.689(2)	18-29	87.860(1)	18-10
87.689(3)	18-29	87.865(3)	18-10
87.691(1)	18-15	87.872	18-14
87.691(2)–(3)	15-7	87.872(1)	18-14
87.691(2)	18-15, 18-29	87.872(2)	18-14
87.691(3)	18-15, 18-29	87.872(3)	18-14
87.691(5)	18-15, 18-16	87.876	18-14
87.691(7)	18-15	87.876(1)	18-14
87.691(8)	15-7, 18-16, 18-29	ch 88	15-19, 18-19
87.700–87.736	9-26	88.010	13-3, 13-9
87.705	18-9, 18-10	88.010(2)	13-7, 13-8, 13-9, 13-10
87.705(1)–(2)	18-9	88.110	13-4
87.705(1)	18-9	88.120	13-4
87.710	18-9, 18-10	88.120(1)	13-4
87.710(1)–(2)	18-9	ch 90	14-11
87.710(1)	18-9	90.100–90.875	15-6, 15-7, 15-9, 18-28
87.710(3)–(4)	18-9	90.100	13-16
87.710(3)	18-9	90.100(14)	15-11

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
90.100(16)	15-7	90.630	15-11
90.100(17)	15-7	90.632	15-11
90.110	15-7	90.645(1)	15-9, 15-12
90.120(1)	18-28	90.645(2)	15-12
90.150	15-7	90.675	15-8
90.155	15-7	90.732(1)	15-12
90.160	15-7, 15-9	90.734(1)	15-12
90.160(1)	15-7	91.040	15-12
90.243	15-10	91.050	15-13
90.300(6)–(7)	15-10	91.060	15-13
90.300(12)–(13)	15-10	91.070	15-13
90.392	15-11	91.090	2-21, 15-13
90.392(1)–(4)	15-10	92.830–92.845	15-12
90.392(5)	15-10	94.550	15-18
90.392(6)	15-10	95.230(1)	15-20
90.394–90.405	15-10	95.240(1)	15-20
90.394	15-9, 15-11	95.240(2)	15-20
90.394(1)	15-10	95.280	11-53
90.394(2)	15-10	95.280(1)	15-20
90.394(3)	15-10	95.280(2)	15-20
90.396	15-11	95.280(3)	15-20
90.396(1)	15-9	98.005	11-15
90.398(1)	15-10	98.005(1)	11-15
90.398(3)	15-10	98.005(2)	11-15
90.403(1)	15-9	98.015	11-15
90.405(1)	15-10	98.130	11-17
90.420	18-28	98.140–98.240	11-17
90.420(1)	15-6	98.140	11-17
90.425	15-8	98.150	11-17
90.425(2)	15-8	98.160	11-17
90.425(3)–(5)	15-8	98.170	11-17
90.425(4)	15-8	98.230	11-17
90.425(6)	15-8	98.302–98.436	9-24, 11-15, 11-19
90.425(8)–(10)	15-9	98.308(1)	11-17
90.425(8)	15-9	98.308(6)	11-18
90.425(21)	15-9	98.309	11-18
90.427(2)	15-10	98.309(1)	11-18
90.427(3)	15-10, 15-11	98.309(2)	11-18
90.427(4)	15-11	98.314	11-18
90.427(5)	15-11	98.326	11-18
90.429(1)	15-11	98.328	11-18
90.453(2)–(3)	15-9	98.332	11-18
90.493(1)	15-9	98.334	11-19
90.533	15-12	98.336	11-19
90.537(1)	15-12	98.338	11-19

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
98.342.....	11-19	107.089(1).....	4-5
98.352.....	9-24, 11-16, 15-7, 18-16, 18-29	107.089(2).....	4-5
98.352(1).....	11-15, 11-16	107.089(3).....	4-6
98.352(4).....	11-16	107.089(4).....	4-5
98.352(6).....	11-16	107.095.....	18-18
98.376.....	11-16	107.095(1).....	4-6
98.386(2).....	11-16	107.105.....	18-18
98.392.....	11-16, 11-17	107.105(1).....	4-7
98.392(1).....	11-16	107.108(4).....	4-8
98.392(2).....	11-16	107.108(8).....	4-8
98.396.....	11-16	107.108(11).....	4-8
98.402.....	11-17	107.115(2).....	4-6
98.992.....	9-24, 11-15	107.135.....	4-11, 4-12
100.005.....	15-18	107.135(1).....	4-12
100.305(1).....	15-9	107.135(9).....	4-12
105.105–105.168.....	13-15, 13-16	107.135(14).....	4-12
105.115(2).....	15-9	107.136.....	4-12
105.120(3).....	15-9	107.136(1).....	4-11
105.161.....	15-8	107.136(2).....	4-12
105.505.....	15-16	107.136(3).....	4-12
105.510.....	15-16	107.138(1).....	4-13
105.515.....	15-16	107.139.....	4-13
105.520.....	15-16	107.179(1).....	4-8
105.555(1).....	15-16	107.400.....	4-6
105.560(1).....	15-16	107.407.....	4-11
105.565(1).....	15-16	107.412(4).....	4-11
105.615.....	15-15	107.434(1).....	4-8
105.620(1).....	15-15	107.465.....	4-13
105.623–105.649.....	6-26	107.475.....	4-13
105.629.....	6-27	107.485(3).....	4-7
105.755–105.760.....	15-19	107.490(1)–(2).....	4-7
105.755(5).....	15-19	107.490(3).....	4-7
105.760(4).....	15-19	107.490(4).....	4-7
105.770(1).....	15-21	107.500.....	4-7
105.770(2).....	15-21	107.540.....	4-7
105.810–105.815.....	15-15	107.560(1).....	4-7
105.850–105.870.....	15-20	107.560(2).....	4-8
105.870.....	15-20	107.590(1).....	4-8
105.950.....	6-32	107.590(3).....	4-8
105.960.....	6-32	107.700–107.735.....	4-16
ch 106.....	4-5	107.710(1).....	4-16
106.077(1).....	4-4	107.710(6).....	4-16
106.077(2).....	4-4	107.716(1).....	4-17
ch 107.....	4-5	107.716(2).....	4-17
		107.716(4).....	4-17

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
107.718(1).....	4-16	112.815.....	6-18
107.718(2).....	4-17	112.820(1).....	6-18
107.718(3).....	4-16	112.820(2).....	6-18
107.718(10).....	4-17	113.005(1).....	6-18
107.718(11).....	4-17	113.005(5).....	6-19
107.725(4).....	4-17	113.027.....	6-31
108.120.....	18-18	113.055(2).....	6-22
108.715.....	4-4	113.075(3).....	6-22
108.720.....	4-4	113.145.....	6-20, 6-22, 6-25
108.735.....	4-4	113.145(4).....	6-20
109.056(1).....	4-4	113.155.....	6-19
109.056(2).....	4-5	113.165.....	6-20
109.056(3).....	4-5	113.175.....	6-20
109.070.....	4-14	113.185(3).....	6-20
109.070(4).....	4-15	113.225(1).....	6-19
109.070(5).....	4-15	114.085.....	6-20
109.070(6).....	4-15	114.255.....	6-19, 7-45
109.072(2).....	4-16	114.505–114.560.....	6-23
109.096(1).....	4-14	114.515(1).....	6-23
109.124–109.237.....	4-15	114.515(1)–(2).....	6-23
109.135(3).....	4-15	114.515(3).....	6-23
109.155.....	18-18	114.515(7).....	6-23
109.254(2).....	4-16	114.517.....	6-23
109.307(1).....	4-14	114.525.....	6-23
109.309.....	4-14	114.525(12).....	6-23
109.309(8).....	4-14	114.535(1).....	6-23
109.315(5).....	4-13	114.540.....	6-24
109.326(6).....	4-14	114.540(1).....	6-23
109.330(3).....	4-14	114.540(2).....	6-24
109.332(1).....	4-15	114.540(3).....	6-24
109.350.....	4-14	114.545.....	6-24
109.381(3).....	4-15	114.545(1).....	6-23
109.701–109.834.....	6-6	114.550.....	6-24
109.777.....	4-18	114.555.....	6-24
109.787(5).....	4-8	114.600–114.725.....	6-24, 6-37
109.787(6)–(7).....	4-8	114.600(1).....	6-24
110.333(6).....	4-9	114.610.....	6-24, 6-25
110.408(1).....	4-9	114.610(1).....	6-24, 6-25
110.417(1).....	4-9	114.720.....	6-25
110.417(2).....	4-9	114.720(2).....	6-25
111.185(1).....	6-21	115.003(1).....	6-20, 6-26
111.215(1).....	6-21	115.003(2)–(3).....	6-20
111.225.....	6-20	115.003(2).....	6-20, 6-26
111.235.....	6-21	115.003(3).....	2-17, 6-12, 6-26
112.810(1).....	6-18	115.004.....	6-22

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
115.004(5)	6-26	124.070(3)	6-10
115.005	6-26	124.070(4)	6-11
115.005(1)–(2)	6-26	124.070(5)	6-11
115.005(3)–(4)	6-26	124.100(1)	6-11, 7-40
115.005(5)	6-14, 6-26	124.100(2)	6-11, 7-40
115.135(1)	6-25	124.100(6)	6-11
115.135(3)	6-25	124.110	6-11, 7-40
115.145(1)	6-25	124.130	6-11, 7-40
115.155	6-26	125.005	7-41
115.215	6-25	125.060	6-5
115.305	6-14, 6-17, 7-43, 7-44	125.060(2)	6-7
115.315	6-12	125.060(3)	6-6
115.325	6-13, 6-14	125.065	6-5
116.033	6-22	125.065(3)	6-6, 6-7
116.083(1)	6-21, 6-27	125.070	6-5
116.083(2)	6-21	125.075(2)	6-6, 6-7
116.093(1)	6-27	125.075(3)	6-6, 6-7
116.213	6-22, 6-27	125.075(5)	6-6
116.233	6-31	125.150(1)	6-6, 6-7
116.243	6-32	125.155(1)	6-6, 6-7
116.253(1)	6-32	125.320(3)	6-6
116.303–116.383	6-27	125.325	6-6
117.005	6-32	125.415(1)	6-7
117.015(1)	6-32	125.440	6-6
117.075	6-32	125.470(1)	6-8
118.100	6-30	125.470(2)	6-8
118.100(2)	6-31	125.475(1)	6-8
118.171	6-22	125.475(3)	6-8
118.225	6-30	125.500(1)	6-8
124.005–124.040	6-9	125.500(2)	6-8
124.010(1)	6-9	125.510(2)	6-8
124.010(6)	6-9	125.515	6-8
124.015	4-17	125.600(3)	6-7
124.015(1)	6-10	125.605(2)	6-7
124.015(3)	6-10	125.605(3)	6-7
124.020	4-17	125.605(4)	6-7
124.020(1)	6-10	125.605(5)	6-7
124.020(9)	6-10	125.610(1)	6-7
124.024	6-10	125.610(2)	6-7
124.024(4)	6-10	130.022(3)	6-33
124.024(5)	6-10	130.045(3)–(4)	6-33
124.050(9)	6-10	130.045(6)	6-34
124.060	6-10	130.045(7)	6-34
124.065(1)	6-10	130.350–130.450	6-35
124.070(1)	6-10	130.350	6-34

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
130.350(2).....	6-34	131.579(5).....	3-10
130.355.....	6-35	131.582.....	3-10
130.360.....	6-34, 6-35	131.582(1).....	3-9
130.370.....	6-36	131.582(3).....	3-9
130.400(2).....	6-36	131.582(8).....	3-11
130.400(4).....	6-36	131.582(9)–(10).....	3-11
130.400(5).....	6-36	131.582(9).....	3-11
130.400(7).....	6-36	131.582(10).....	3-11
130.415.....	6-35	131.582(11).....	3-11
130.420.....	6-35	131A.150.....	3-9
130.430.....	6-35	131A.150(1).....	3-8
130.435.....	6-35	131A.150(3).....	3-8
130.440(1).....	6-36	131A.150(4).....	3-8
130.515(1).....	6-36	131A.165.....	3-9
130.620(1).....	6-37	131A.165(1).....	3-8
130.730(1).....	6-37	131A.165(2).....	3-8
130.730(2).....	6-37	131A.165(3).....	3-8
130.820.....	6-33	131A.165(4).....	3-8
130.820(1).....	6-37	131A.170(1).....	3-8
130.820(2).....	6-37	131A.170(4).....	3-8
130.820(3).....	6-37	131A.225(2).....	3-9
131A.100(1).....	3-9	131A.225(6).....	3-9
131A.105(1).....	3-8	131A.235.....	3-9
131.125(1).....	3-2	131A.265.....	3-9
131.125(2).....	3-2, 3-3, 3-4	135.037.....	3-5
131.125(3).....	3-4	135.805–135.873.....	3-5
131.125(5).....	3-2	135.805(1).....	3-5
131.125(6).....	3-3	135.845(1).....	3-5
131.125(7).....	3-2, 3-4	135.845(2).....	3-5
131.125(8).....	3-3, 3-4	135.905.....	7-38
131.125(9).....	3-3	135.970.....	3-5
131.125(10).....	3-4	136.765.....	3-6
131.145(1).....	2-21	137.103–137.109.....	3-6
131.561(6).....	3-9	137.106.....	7-37
131.564(2).....	3-9	137.106(1).....	3-7
131.564(8).....	3-10	137.106(6).....	3-7
131.570.....	3-10, 3-11	138.071(1).....	5-3
131.570(1).....	3-9	138.071(2).....	5-3
131.570(2).....	3-10	138.071(3).....	5-3
131.570(3).....	3-10	138.071(5).....	5-3
131.573(1).....	3-10	138.225.....	5-7
131.573(4).....	3-10	138.510(3).....	3-11
131.579.....	3-11	138.550(3).....	3-11
131.579(1)–(3).....	3-10	138.560(1).....	3-11
131.579(4).....	3-10	138.650(1).....	5-3

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
138.650(2)	5-3, 5-4	163.767(2)	4-18
138.660	5-7	163.767(5)	4-18
147.005	7-37	163.775(1)	4-18
147.005–147.367	7-37, 7-38, 7-39	164.055	3-3
147.005(4)	7-12, 7-37, 7-38	164.057	3-3
147.015	7-12, 7-37, 7-38	164.075	3-3
147.015(1)	7-38	164.395	3-3
147.065	7-11, 7-12, 7-37, 7-43	164.405	3-3
147.105	7-39	164.415	3-3
147.105(1)	7-37, 7-39	165.013	3-3
147.105(4)	7-39	165.055(4)	3-3
147.105(5)	7-39	165.800	3-3
147.135	7-39	166.715–166.735	10-4, 10-5
147.145	7-39	166.715(4)	10-5
147.155	7-39	166.715(6)	10-4
147.155(3)	7-39	166.725(6)	10-5
147.155(5)	7-39	166.725(7)	10-5
147.225	7-37	166.725(11)	10-4, 10-5
147.345(1)	7-38	167.012	3-3
163.187(3)	3-4	167.017	3-3
163.187(4)	3-2	167.057	3-3
163.205	3-2	167.075	3-4
163.355	3-2	167.080	3-4
163.365	3-2	174.100(5)	2-35
163.375	3-2	174.109	14-9
163.385	3-3	174.120	2-18, 2-20, 2-21, 2-22, 17-16
163.395	3-3	174.120(1)	2-18, 2-20, 2-22
163.405	3-3	174.120(2)	2-20, 2-22
163.408	3-3	174.120(3)	2-20
163.411	3-3	174.120(5)	2-23
163.415	3-4	174.125	2-19, 2-22
163.425	3-3	180.345	11-16
163.427	3-3	ch 183	8-24, 8-27, 9-7, 9-8, 9-19, 9-20, 9-37, 10-8
163.525	3-3	183.413–183.470	11-16
163.670	3-3	183.480–183.502	8-43
163.684	3-3	183.480	9-21, 9-22
163.738	4-17	183.482(1)	5-6, 8-39, 8-43
163.763(1)	4-17	183.482(2)	5-9
163.763(2)	4-17	183.482(4)	5-7
163.763(3)	4-17	183.482(5)	5-7
163.765(1)	4-18	183.484	9-27, 11-17, 17-11, 17-13
163.765(6)	4-18	183.490	11-17
163.765(7)	4-18	187.010	2-19, 2-20, 17-19, 17-20, 18-9, 18-12
163.765(8)	4-18		
163.767(1)	4-18		

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
187.010(3)	2-23	311.505(1)	18-33
187.020	2-19, 18-9, 18-12	311.510	18-33
193.010	15-5, 18-25	311.512(1)	18-33
197.651(3)	5-6	311.545(1)	18-34
197.850(3)	5-6	311.545(2)	18-34
197.850(4)	5-9	311.545(3)	18-34
205.125	18-32, 18-33	311.610(1)	18-35
215.429	5-10	311.615(1)	18-35
227.179	5-10	311.620	18-35
243.650(14)	8-44	311.640	18-35
243.672(3)	8-43	311.640(2)	18-35
243.676(1)	8-43	312.010(1)	18-34
243.698(1)	8-44	312.040	18-34
243.698(2)	8-44	312.050	18-34
243.698(3)	8-44	312.070	18-34
243.698(4)	8-44	312.080	18-34
243.712(1)	8-43	312.090	18-34
243.712(2)	8-43	312.100	18-34
243.722	8-44	312.110	18-34
243.722(3)	8-43	312.120(1)	18-34
243.726(1)	8-44	312.120(2)	18-34
243.726(2)	8-44	312.190(1)	18-34
243.742(2)	8-44	312.190(3)	18-34
243.746(3)	8-44	312.200	18-34
243.746(5)	8-44	314.385(1)	6-28, 6-29
250.044(1)	2-47	314.395	6-29
273.241	15-15	314.395(2)	6-28
279C.600(1)	17-15	314.400	6-28
279C.600–279C.670	11-61	314.423(1)	11-43
279C.600–279C.625	17-14, 17-15,	314.430	18-32
	17-16	314.430(1)	18-32
279C.605	11-61	314.430(2)	18-32
279C.605(1)–(2)	17-15	ch 324	18-33
279C.605(1)	17-15	324.070(1)	18-32
279C.605(3)	17-15	324.190	18-33
279C.610	11-62	324.190(1)	18-33
279C.610(3)	17-15	324.190(2)	18-32, 18-33
293.455(1)	11-15	324.190(4)	18-32, 18-33
305.280(2)	6-22	342.176(4)	7-15
305.820	6-31	342.905(1)	8-44
305.895	18-32, 18-33	342.905(2)	8-44
305.895(1)–(2)	18-32	342.905(4)	8-45
305.895(2)	18-32	342.934(6)	8-45
310.060(1)	18-34	342.934(7)	8-45
310.635	11-25	359.200–359.255	11-43

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
359.220.....	11-43	646.608.....	12-7
359.235.....	11-43	646.618(1).....	12-6
419A.260.....	8-8	646.618(2).....	12-7
419A.262.....	8-8	646.622.....	12-6
ch 419B.....	4-15, 4-19	646.632(1).....	12-6
419B.005.....	4-14	646.632(2).....	12-6
419B.010(5).....	3-4	646.632(7).....	12-6
419B.100.....	4-14	646.638(6).....	12-7
419B.183.....	4-19	646.638(7).....	12-7, 12-8
419B.400.....	18-18	646.641.....	12-8
419B.845.....	4-17	646.641(1).....	12-7
419C.139.....	4-19	646.641(3).....	12-8
419C.145.....	4-19	646.750.....	12-8
419C.150.....	4-19	646.750(1)–(2).....	10-2
419C.150(1).....	4-19	646.750(1).....	10-2
419C.150(2).....	4-19	646.760.....	10-3, 12-8
419C.150(3).....	4-19	646.780.....	10-3
419C.153.....	4-19	646.780(1).....	12-8
419C.156.....	4-19	646.800.....	12-8
419C.170.....	4-19	646.800(1).....	10-3
419C.590.....	18-18	646.800(2).....	10-3, 12-8
ch 441.....	7-63	650.020.....	12-8
ch 442.....	7-34	650.020(6).....	12-8
446.003.....	7-35, 7-62	652.140(1).....	8-21
446.626.....	9-26	652.140(2).....	8-21
447.070.....	17-26, 17-27	652.145(1).....	8-21
455.010.....	7-35, 7-62	652.510(1).....	8-22
471.565.....	7-40	652.510(2).....	8-22
471.565(3).....	7-40, 7-41, 7-42	652.540(1).....	8-22
471.565(4).....	7-41, 7-42	652.540(2).....	8-22
471.565(5).....	7-41, 7-42	652.570(1).....	8-22
471.565(6).....	7-41	653.020.....	8-23
471.565(7).....	7-42	653.295(1).....	8-23
479.670.....	17-26, 17-27	653.295(2).....	8-23
480.640.....	17-26, 17-27	ch 654.....	8-24
609.140(1).....	3-8	654.062.....	8-7
634.006(13).....	7-29	654.062(6).....	8-25
634.146(1)–(2).....	7-29	654.067(1).....	8-24
634.146(1).....	7-29	654.067(2).....	8-24
634.146(3).....	7-29	654.216(4).....	8-24
634.172(1).....	7-28, 7-29	654.290(2).....	8-24
634.172(2).....	7-29	654.305–654.336.....	6-18, 7-44, 8-23
646.461–646.475.....	10-4	654.325.....	6-18, 7-44
646.471.....	10-4	ch 656.....	8-27, 8-31
646.605–646.652.....	12-7, 12-8	656.017.....	8-28

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
656.019(1)	8-42	656.289(1)	8-39
656.019(2)	8-42	656.289(3)	8-39
656.039(1)	8-28, 8-29	656.291	8-36
656.039(2)	8-29	656.291(3)	8-39
656.052(1)	8-28	656.295(4)	8-39
656.052(2)	8-28	656.295(6)	8-39
656.052(3)	8-28	656.295(8)	8-39, 8-40
656.054(1)	8-28	656.298	8-39
656.206(1)	8-30	656.298(1)	8-40
656.206(5)	8-30	656.298(4)	8-40
656.206(6)	8-30	656.298(6)	8-40
656.210(3)	8-30	656.307(6)	8-40
656.212(1)	8-30	656.308(2)	8-33
656.212(2)	8-31	656.313	8-32
656.225	8-32	656.313(1)	8-36
656.236(1)	8-33	656.319(1)–(2)	8-35
656.245(1)	8-32	656.319(1)	8-34, 8-37
656.245(2)	8-30	656.319(2)	8-37
656.247(2)	8-32	656.319(4)	8-36
656.258	8-32	656.319(5)	8-35
656.262	8-28	656.319(6)	8-37
656.262(3)	8-33	656.325(1)	8-34
656.262(4)	8-31, 8-32, 8-35	656.340(12)	8-31
656.262(6)	8-33, 8-34, 8-37, 8-38	656.386(1)	8-38
656.262(7)	8-34, 8-35, 8-38	656.419(3)	8-28
656.262(14)	8-33, 8-35	656.423(1)	8-28
656.265(1)	8-33	656.423(2)	8-29
656.265(4)	8-33	656.423(3)	8-28, 8-29
656.267	8-34	656.423(4)	8-29
656.267(1)	8-34	656.427	8-29
656.268	8-31	656.427(1)	8-29
656.268(4)	8-31	656.427(2)	8-29
656.268(5)	8-35	656.427(5)	8-29
656.268(6)	8-36, 8-38	656.427(7)	8-29
656.268(7)	8-36	656.430(2)	8-28
656.268(8)	8-36	656.434(1)	8-40
656.273(3)	8-34	656.440(1)	8-40
656.273(4)	8-34	656.440(2)	8-40
656.273(6)	8-34, 8-35	656.440(3)	8-40
656.277(3)	8-33	656.440(4)	8-40
656.283	8-35, 8-36, 8-38	656.443(3)	8-41
656.283(3)	8-36	656.455(2)	8-41
656.283(4)	8-36, 8-37	656.504	8-41
656.283(6)	8-39	656.505(2)	8-41
656.287(1)	8-38	656.560	8-41

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
656.564.....	8-41	659A.143.....	8-10
656.564(3).....	8-41	659A.145.....	8-7, 8-9, 8-10, 8-11, 15-13
656.564(4).....	8-41	659A.183.....	8-8
656.566(2).....	8-41	659A.199–659A.236.....	8-8
656.566(4).....	8-41	659A.250–659A.262.....	8-8
656.583(1).....	8-41	659A.300–659A.350.....	8-8
656.583(2).....	8-42	659A.403.....	8-9
656.735(1).....	8-42	659A.403(2).....	8-9
656.735(4).....	8-42	659A.406.....	8-9
656.740(1).....	8-37, 8-42	659A.421.....	8-7, 8-9, 8-10, 8-11, 15-13
656.740(2).....	8-37	659A.820.....	2-68, 8-7, 8-8, 8-11, 8-25
656.740(3).....	8-37	659A.820(1)–(3).....	8-10
656.740(4).....	8-42	659A.820(1)–(2).....	8-7
656.740(5).....	8-39	659A.820(2)–(3).....	8-9
656.990(5).....	8-41	659A.820(2).....	8-10, 8-19, 15-13
657.010(3).....	8-25	659A.820(3).....	8-10
657.150(2).....	8-25	659A.820(5)–(6).....	8-7
657.150(5).....	8-25	659A.830(2).....	8-7
657.265.....	8-25	659A.840.....	8-11, 15-13
657.266(1).....	8-25	659A.870(1).....	8-7
657.266(5).....	8-25	659A.870(2).....	8-7
657.269.....	8-25	659A.870(3).....	8-7
657.270(4).....	8-25	659A.870(5).....	8-7
657.270(5).....	8-26	659A.875.....	2-67, 2-68, 8-20
657.270(6).....	8-26	659A.875(1)–(2).....	8-11
657.275(2).....	8-26	659A.875(1).....	8-8, 8-11
657.282.....	5-6, 8-26	659A.875(2).....	8-11, 8-14
658.705–658.850.....	8-21	659A.875(3).....	8-10, 8-11, 15-13
658.715(1).....	8-21	659A.875(4).....	8-9, 8-20
659.121.....	8-8	659A.875(5).....	8-8, 8-9, 8-10, 8-11
659.850(2).....	8-12	659A.875(6).....	2-68
659.860(2).....	8-12, 8-20	659A.880.....	8-7, 8-11
659.860(3).....	8-12	659A.880(3).....	8-7
659.860(4).....	8-12	659A.885.....	8-7, 8-8, 8-9, 8-10, 8-11, 8-23
659.860(6).....	8-12	659A.885(1)–(2).....	8-8
ch 659A.....	8-11	659A.885(3).....	8-8
659A.001–659A.990.....	8-6	671.010–671.220.....	15-18
659A.030(1).....	8-8	671.010.....	14-9
659A.040–659A.069.....	8-8	671.220(3).....	17-26, 17-27
659A.103–659A.145.....	8-8	671.310–671.459.....	15-18
659A.112.....	8-10	671.310.....	14-9
659A.139(1).....	8-11	671.575.....	17-17
659A.142.....	8-10	671.575(1).....	17-26
659A.142(2)–(4).....	8-9	672.002–672.325.....	15-18
659A.142(5).....	8-10		

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
672.002.....	14-9	701.145.....	17-6, 17-7, 17-8
672.005.....	14-10	701.145(2).....	17-9
ch 677.....	7-29	701.145(3).....	17-8
677.097.....	7-21	701.145(5).....	17-8
698.640.....	14-22	701.145(6).....	17-8
698.640(1).....	14-22	701.145(8).....	17-11
ch 701.....	17-3, 17-25	701.146.....	17-6, 17-7, 17-10
701.005.....	15-17	701.146(1).....	17-10
701.005(2).....	17-25	701.146(2).....	17-10
701.005(5).....	17-25	701.146(3).....	17-10
701.005(8).....	17-17	701.146(5).....	17-10
701.005(11).....	17-7, 17-25	701.146(6).....	17-11
701.005(13).....	17-25	701.146(7).....	17-11
701.005(15).....	17-7, 17-18, 17-25	701.149(1).....	17-9, 17-11
701.005(17).....	17-7, 17-25	701.150(1).....	17-12
701.005(20).....	17-18	701.150(3).....	17-5
701.010.....	17-25	701.153.....	17-12
701.021.....	17-25	701.153(3).....	17-11, 17-12
701.065(1).....	17-26	701.153(4).....	17-12
701.065(2).....	17-26	701.153(5).....	17-12
701.068(9)–(10).....	17-13	701.153(6).....	17-12
701.131.....	17-17, 17-26	701.157.....	17-13
701.131(1)–(2).....	17-4	701.157(1).....	17-11, 17-12, 17-13
701.131(1).....	17-25, 17-26	701.157(2).....	17-13
701.131(2).....	17-26	701.157(3).....	17-13
701.133.....	17-10	701.160.....	17-8
701.133(1).....	17-6	701.180.....	17-9
701.133(2).....	17-5, 17-6	701.305.....	17-17, 17-18
701.139(1).....	17-7	701.305(1).....	17-18
701.139(2).....	17-7	701.305(2).....	17-18
701.139(3).....	17-7	701.565.....	17-6, 17-9
701.140.....	17-4	701.600(2).....	17-6
701.143.....	17-4, 17-10	701.990–701.995.....	17-3
701.143(1).....	17-4	742.001.....	16-5
701.143(2).....	17-5	742.061.....	16-5
701.143(3).....	17-5	742.061(1).....	16-5
701.143(4).....	17-5	742.061(2)–(3).....	16-5, 16-6
701.143(5).....	17-4	742.230.....	16-5
701.143(6).....	17-5	742.238.....	16-5
701.143(7).....	17-5	742.240.....	14-5, 14-10, 16-5
701.143(8).....	17-5	742.504.....	16-3
701.144.....	17-14	742.504(12).....	2-33, 16-4, 16-6
701.144(1)–(3).....	17-14	743.225(1).....	16-4
701.144(1).....	17-14	743.429.....	16-4
701.144(4).....	17-14	743.441.....	16-5

Table of Statutes and Rules (continued)

ORS	Page	ORS	Page
743.660.....	14-10	803.100(2).....	12-5
743.857(1).....	8-47	803.105(1).....	12-3, 12-4
743.861(1).....	8-47	803.105(2).....	12-3, 12-4
743.862(3).....	8-47	813.410(8).....	2-56
743.862(4).....	8-47	819.480.....	15-4, 15-5, 18-24, 18-25, 18-26, 18-27
ch 803.....	18-25	826.009.....	12-3
803.092.....	12-3	826.011.....	12-3
803.092(1).....	12-2	830.810.....	18-25
803.092(2).....	12-2, 12-3	837.040.....	18-25
803.097.....	12-5		
803.100(1).....	12-5		

OREGON RULES OF CIVIL PROCEDURE

ORCP	Page	ORCP	Page
1 A.....	2-18	21 D.....	2-14
3.....	2-9, 14-5	21 E.....	2-14
4 K(1).....	4-5	21 G.....	2-14
4 K(2).....	4-5	21 G(2).....	2-28
4 K(3).....	4-15	22.....	2-48
7.....	11-22, 18-8	22 C(1).....	2-16
7 C(2).....	2-11, 2-16, 2-19, 2-24	22 C(2).....	2-16
7 D(2).....	13-11, 13-12	22 D(1).....	2-16
7 D(3).....	13-11, 13-12	22 D(3).....	2-16
7 D(4).....	2-34	23.....	2-51, 5-11
7 D(6).....	2-11, 3-8, 3-9	23 A.....	2-12
9.....	18-8	23 C.....	2-12, 2-30, 2-31
9 B.....	5-10	27.....	6-8
9 F.....	2-20, 2-23	28.....	2-16
9 G.....	2-20, 2-23	29.....	2-16
10.....	2-18, 2-19, 2-21, 2-22, 2-50, 17-16	33 B.....	2-14
10 A.....	2-18, 2-19, 2-20, 2-21	33 C.....	2-14
10 C.....	2-12, 2-19, 2-20, 2-21, 2-22, 2-23	33 D.....	2-14
13.....	2-12	34 A.....	2-16
14 A.....	2-12	34 B(1).....	2-16, 6-12, 7-44
15 A.....	2-11, 2-16, 2-19	34 B(2).....	2-17, 6-12, 7-44
15 B(1).....	2-12	34 C.....	2-17, 6-12
15 B(2).....	2-12	34 D.....	6-12
15 C.....	2-12	34 F(1).....	2-17
15 D.....	2-11, 2-12	36.....	2-51
17 D.....	5-8	36 C.....	2-45
21.....	2-16, 2-28, 2-29, 2-51	37 B.....	2-45
21 A.....	2-13	38.....	2-52
21 A(1).....	2-13, 2-14	39 A.....	2-43
21 B.....	2-14	39 C.....	2-43
21 C.....	2-14	39 C(2).....	2-43

Table of Statutes and Rules (continued)

ORCP	Page	ORCP	Page
39 F(1).....	2-44	64 F.....	2-20, 5-3
39 F(2).....	2-44	64 F(1).....	2-64, 2-65
39 I(1).....	2-44	64 F(2).....	2-65
39 I(3).....	2-45	64 G.....	2-65
39 I(4).....	2-45	67.....	2-63
39 I(6).....	2-45	67 B.....	2-49
40 A.....	2-45	68 C(2).....	2-62
41 C(1).....	2-44	68 C(4).....	2-62
41 C(2).....	2-44	68 C(5).....	2-63
41 C(3).....	2-45	69 A.....	2-11
41 D.....	2-44	69 A(1).....	2-58
43 B.....	2-45	69 B(1)–(2).....	2-58
43 B(1).....	2-45	69 B(2).....	2-58
43 B(2).....	2-45	69 F.....	2-59
43 B(3).....	2-45	71 B.....	2-59, 2-61
43 D.....	2-46	71 B(1).....	2-59, 2-60, 2-61, 18-5, 18-6
45 A.....	2-46	71 B(2).....	2-61
45 B.....	2-46	79.....	8-12
46.....	4-6	79 A(2).....	2-15
47 A.....	2-14, 2-49	79 B(2).....	2-15
47 B.....	2-14, 2-49	79 B(4).....	2-15
47 C.....	2-14, 2-15, 2-49	79 C(1).....	2-15
47 H.....	2-49	79 E.....	2-15
54.....	2-17	80.....	11-20
54 A(1).....	2-17	80 B(5).....	11-20
54 A(2).....	2-17	80 C.....	2-15, 11-20
55 D.....	1-3	80 F(3).....	2-16
55 D(1).....	2-46	80 G.....	2-16
55 H(1).....	2-46	82.....	11-51
55 H(2).....	2-46	82 A(3).....	11-14, 11-20
57 A(1).....	2-64	82 A(4).....	11-20
62 A.....	2-64	82 F.....	11-51
62 B.....	2-64	83.....	2-15, 11-15, 11-19
62 C.....	2-64	84.....	11-19
62 D.....	2-64	84 A(1).....	11-19
63 C.....	2-65	84 A(2).....	11-19, 11-20
63 D.....	5-3	84 B.....	11-20
63 D(1).....	2-64	84 F(1).....	11-20
63 D(2).....	2-65	85.....	11-14, 11-20
63 F.....	2-65	85 A.....	11-14
64.....	2-65	85 E.....	11-14, 11-15

Table of Statutes and Rules (continued)

OREGON RULES OF APPELLATE PROCEDURE

ORAP	Page	ORAP	Page
1.20(4)	5-5	6.25(4)	5-6
1.25(1)	5-8	6.25(5)	5-6
1.35(1)	5-8, 5-9	7.05(3)	5-7
1.35(2)	5-9	7.25(6)	5-7
1.40(4)	5-8	7.30	5-7
2.20(1)	5-8	7.30(1)	5-7
2.20(2)	5-8	7.55	5-7
2.35(2)	5-7	7.55(4)	5-7
2.35(4)	5-7	9.05(1)–(2)	5-6
3.05(2)	5-5	9.05(1)	5-7
3.33(2)	5-4	9.05(2)	5-6
3.40(1)	5-4	9.10(2)	5-6
3.45	5-5	9.25(1)	5-6
3.63(2)	5-5	11.10(1)	5-11
4.20(2)	5-7	11.15(1)	5-11
5.80(1)	5-5	11.15(2)	5-11
5.80(2)	5-5	11.15(3)	5-11
5.80(3)	5-5	13.05(5)	2-63, 5-8
5.80(4)	5-5	13.10(2)	2-63, 5-8
6.25	5-7	13.10(6)	2-63, 5-8
6.25(1)	5-6	13.25(1)	5-8
6.25(2)	5-5		

UNIFORM TRIAL COURT RULES

UTCR	Page	UTCR	Page
1.010(1)	2-49	3.170(4)	2-50
1.010(3)	2-49, 2-50	4.010	3-5
1.050(1)	2-50	4.060(2)	3-6
1.080(3)	2-50	5.010(1)–(2)	2-11, 2-51
1.130	2-18, 2-50	5.010(1)	2-51
chs 2–13	2-49	5.010(3)	2-51
2.010(14)	2-50	5.010(4)	2-51
2.030(1)	2-50	5.030(1)	2-15, 2-51
2.030(2)	2-50	5.030(2)	2-15, 2-51
2.080(1)	2-50	5.050(1)	2-13, 2-51
2.100	2-50	5.050(2)	2-13, 2-51
2.100(4)	2-57	5.060	2-51
2.110	2-50, 2-57	5.060(1)	2-51
2.110(6)	2-57	5.060(3)	2-51
2.130(1)–(2)	2-57	5.070	2-12
2.130	2-57	5.080	2-62
3.140(1)	2-50	5.090	2-52
3.140(3)	2-50	5.100(1)	2-53

Table of Statutes and Rules (continued)

UTCR	Page	UTCR	Page
5.100(3).....	2-53	8.010(3).....	4-6
5.100(4).....	2-53	8.010(4).....	4-6
5.120(2).....	2-53	8.010(6).....	4-6
5.130(2).....	2-52	8.040(3).....	4-6
6.020(1).....	3-6	8.040(4).....	4-6
6.020(2).....	2-52	8.050(1).....	4-12, 4-13
6.020(3).....	2-52	8.050(3).....	4-13
6.030.....	2-52	8.050(5).....	4-13
6.030(1).....	2-52	8.060(4).....	4-13
6.030(4).....	2-52	9.050.....	6-21, 6-22
6.040(1).....	2-52	9.160(1).....	6-21
6.050.....	2-52	9.180(2).....	6-21, 6-22
6.060(1).....	2-53	9.320.....	4-16
6.060(6).....	2-53	10.020(1).....	2-56
6.080(1).....	2-53	10.040.....	2-56
6.080(3).....	2-53	10.050(1).....	2-56
6.120(1).....	2-54	10.050(2).....	2-56
6.120(2)–(3).....	2-54	10.060.....	2-56
6.120(2).....	2-54	10.070(1).....	2-56
6.120(3).....	2-54	10.090.....	2-53, 2-56
6.120(4).....	2-54	11.010(1).....	4-19
6.130.....	2-54	11.020(2).....	4-19
6.140(1).....	2-54	11.040.....	4-19
6.140(4).....	2-54	11.060(1).....	4-19
7.010(1).....	3-6	ch 13.....	1-2, 1-4
7.010(2).....	3-6	13.040(1)–(2).....	1-4
7.010(3).....	3-6	13.040(3).....	1-5
7.010(4).....	3-6	13.050(1).....	1-4
7.020.....	2-55	13.050(2).....	1-4
7.020(1).....	2-54	13.070.....	1-5
7.020(2).....	2-17, 2-55	13.080(3).....	1-5
7.020(3).....	2-18, 2-55	13.120(2).....	1-5
7.020(4).....	2-55	13.120(3).....	1-5
7.020(5).....	2-52, 2-55, 17-23	13.160.....	1-6
7.020(6)–(7).....	2-55	13.160(1).....	1-5, 1-6
7.020(6).....	2-55	13.160(2).....	1-6
7.020(7).....	2-55	13.160(3).....	1-5
7.030(1).....	2-55	13.170(1).....	1-6
7.030(4).....	2-55	13.170(3).....	1-6
7.040.....	2-55	13.190(1).....	1-6
7.050.....	2-49	13.210(5).....	1-6, 1-7
7.050(2).....	2-55	13.210(6).....	1-7
7.050(4).....	2-55	13.220(1).....	1-6
7.060–7.070.....	2-56	13.240.....	1-7
7.080.....	2-56	13.250.....	1-6

Table of Statutes and Rules (continued)

UTCR	Page	UTCR	Page
13.250(2).....	1-7	21.080(1).....	2-57
21.050(1).....	2-57	21.080(2).....	2-58
21.050(2).....	2-57	21.090(3).....	2-58
21.060(1).....	2-57	21.120(1).....	2-58
21.070(1).....	2-57	21.120(2).....	2-58

OREGON ADMINISTRATIVE RULES

OAR	Page	OAR	Page
115-035-0050(4).....	8-43	812-004-1110(1).....	17-8
137-004-0080(1).....	17-13	812-004-1250(1).....	17-8
137-076-0056(1).....	7-39	812-004-1260(1).....	17-13
137-076-0056(2).....	7-39	812-004-1260(3).....	17-13
150-118.100(1).....	6-30	812-004-1260(4).....	17-13
150-118.160-(B).....	6-30	812-004-1260(5)-(6).....	17-13
150-118.225.....	6-30	812-004-1260(7).....	17-13
436-060-0010(10).....	8-33	812-004-1300.....	17-13
436-060-0150(7).....	8-32	812-004-1300(1).....	17-10
437-001-0240(1).....	8-24	812-004-1300(3).....	17-6
437-001-0251(1).....	8-24	812-004-1300(5).....	17-10
437-001-0255(1).....	8-24	812-004-1320.....	17-4
438-007-0015(2)-(4).....	8-38	812-004-1340(9).....	17-6
438-007-0016.....	8-38	812-004-1350.....	17-13
438-007-0018(1)-(2).....	8-38	812-004-1440(2).....	17-9
438-082-0050(1).....	7-39	812-004-1440(3).....	17-9
438-082-0050(2).....	7-39	812-004-1440(4).....	17-9
735-020-0050.....	12-3, 12-4	812-004-1500.....	17-8
735-020-0060.....	12-3, 12-5	812-004-1505.....	17-8
ch 812.....	17-3	812-004-1520(1).....	17-9
812-002-0040.....	17-8	812-004-1520(2).....	17-9, 17-11
812-002-0140(2)-(3).....	17-4	812-004-1520(4).....	17-9, 17-11
812-002-0220.....	17-6	812-004-1520(5).....	17-9, 17-11
812-002-0430.....	17-7	812-004-1520(6).....	17-9
812-002-0660.....	17-7	812-004-1530(3).....	17-8
812-002-0673.....	17-6	812-004-1600(2).....	17-11
812-002-0675.....	17-7	812-004-1600(5).....	17-11
812-002-0700.....	17-8	812-004-1600(8).....	17-12, 17-13
812-002-0740(1)-(2).....	17-5	812-004-1600(10).....	17-12
812-002-0740(3).....	17-5	812-004-1600(12).....	17-13
812-002-0800.....	17-11	812-400-1600(11).....	17-11
812-004-0320(3).....	17-5	836-050-0150.....	16-1

OREGON RULES OF PROFESSIONAL CONDUCT

RPC 1.15-1(d).....	18-17
RPC 1.16(d)	18-17

UNITED STATES CODE

USC	Page	USC	Page
8 USC § 1256(a)	8-49	11 USC § 546(c)	11-60, 14-22
11 USC § 101(31)	11-54	11 USC § 546(d)	11-60
11 USC § 101(51B)	11-63	11 USC § 547	11-54, 11-56, 11-60
11 USC § 103(a)	2-37	11 USC § 547(b)	11-54
11 USC § 108(a)–(b).....	2-36	11 USC § 548	11-54, 11-56
11 USC § 108(a)	2-36	11 USC § 548(a)	11-53, 11-54
11 USC § 108(b)	2-36	11 USC § 549	11-60
11 USC § 108(c)	2-36, 2-37, 11-62	11 USC § 553	11-54, 11-56
11 USC § 109(h)	11-55	11 USC § 727	11-57
11 USC § 303(f)	11-56	11 USC § 727(a)	11-53
11 USC § 303(h)	11-56	11 USC § 922	2-37
11 USC § 362	2-37, 11-61, 11-63, 17-14	11 USC § 1201	2-37
11 USC § 362(b)	11-61	11 USC § 1301	2-37
11 USC § 362(c)	11-62	15 USC § 15a	10-3, 12-8
11 USC § 362(d)	11-63	15 USC § 15b	10-4
11 USC § 362(e)	11-63	15 USC § 78o	10-9
11 USC § 362(h)	11-58	15 USC § 80b-18a	10-9
11 USC § 365(d)	11-59	15 USC § 1679i(1)	12-10
11 USC § 501	11-59	15 USC § 1679i(2)	12-10
11 USC § 502(b)	11-59, 11-60	15 USC §§ 1691–1691f	8-19
11 USC § 503(a)	11-59	15 USC § 1691(a)	8-19
11 USC § 503(b)	11-59, 11-60	15 USC § 1691e(f)	8-19
11 USC § 507(c)	11-60	15 USC §§ 1692–1692p	17-22
11 USC § 521	11-58	15 USC § 1692k(d)	12-8
11 USC § 521(a)	11-58	15 USC § 7244	8-27
11 USC § 521(b)	11-55	15 USC § 7244(a)	8-27
11 USC § 523(4)	11-57	18 USC § 1162	7-48, 7-52
11 USC § 523(6)	11-57	18 USC § 1514A	8-27
11 USC § 523(a)	11-55, 11-57	18 USC § 1514A(a)	8-27
11 USC § 523(c)	11-57	18 USC § 1514A(b)	8-27
11 USC § 523(d)	11-57	18 USC §§ 1961–1968	10-4
11 USC § 544	11-54, 11-56	18 USC § 3281	3-4
11 USC § 544(a)	11-60	18 USC § 3282(a)	3-4
11 USC § 544(b)	11-53	18 USC § 3286(a)	3-5
11 USC § 545	11-54, 11-56, 11-60	18 USC § 3286(b)	3-5
11 USC § 546(a)	11-54, 11-56	18 USC § 3291	3-5
11 USC § 546(b)	2-37, 11-61, 11-62	18 USC § 3293	3-5
		18 USC § 3294	3-5

Table of Statutes and Rules (continued)

USC	Page	USC	Page
18 USC § 3295	3-5	28 USC § 2112(a)	8-45
18 USC § 3299	3-5	28 USC § 2401(b)	7-46, 7-47
18 USC § 3663A(a)	3-7	28 USC § 2675(a)	7-47
18 USC § 3664	3-7	29 USC § 160(b)	8-45
18 USC § 3664(d)	3-7	29 USC § 160(f)	8-45
20 USC §§ 1400–1482	8-20	29 USC §§ 201–262	8-22
20 USC § 1415(a)	8-20	29 USC § 206(d)	8-17
20 USC § 1415(l)	8-20	29 USC § 216(b)	8-22
20 USC §§ 1681–1688	8-20	29 USC § 255(a)	8-17, 8-22
20 USC § 1681(a)	8-20	29 USC §§ 621–634	8-16
20 USC §§ 1701–1721	8-20	29 USC § 623(a)	8-16
20 USC § 1703	8-20	29 USC § 626(d)	8-16
20 USC § 1706	8-20	29 USC § 626(e)	8-17
25 USC §§ 450–458ddd	7-53	29 USC § 630(b)	8-16
25 USC § 450f(c)–(d)	7-54	29 USC § 633(b)	8-16
25 USC §§ 1321–1326	7-48, 7-52	29 USC § 794	8-16, 8-17, 8-20
25 USC §§ 2701–2721	7-51	29 USC § 794(a)	8-16, 8-18
25 USC § 2710	7-51	29 USC §§ 1001–1191c	8-48
26 USC § 2204	18-31	29 USC § 1113	8-49
26 USC § 2502(c)	18-30	29 USC § 1113(1)	8-49
26 USC § 6166	18-31	29 USC § 1113(2)	8-49
26 USC § 6321	18-30	29 USC § 1132(a)	8-48
26 USC § 6323(c)	11-43, 18-31	29 USC § 1133(2)	8-45
26 USC § 6324	18-30, 18-31	40 USC §§ 3131–3134	11-61, 17-14, 17-15
26 USC § 6324(a)	18-31	40 USC § 3133	11-61
26 USC § 6324(b)	18-30	40 USC § 3133(b)	11-62, 17-15
26 USC § 6324A	18-31	42 USC § 1981	8-13, 8-14
26 USC § 6324A(a)	18-31	42 USC § 1981(b)	8-13
26 USC § 6324A(c)	18-31	42 USC § 1982	8-13, 8-14
26 USC § 6324A(d)	18-31	42 USC § 1983	8-12, 8-13, 8-14, 8-20
26 USC § 6331	18-30	42 USC §§ 1985–1986	8-13
26 USC § 6343	18-30	42 USC § 1985	8-14
26 USC § 6502(a)	18-30	42 USC § 1986	8-14
26 USC § 6503	18-30	42 USC §§ 2000a–2000a-6	8-17
26 USC § 7425(b)–(d)	13-13	42 USC § 2000a	8-17
26 USC § 7425(b)	13-13	42 USC § 2000a-3	8-17
26 USC § 7425(c)	13-13	42 USC § 2000a-3(c)	8-18
28 USC § 1332	7-53	42 USC §§ 2000d–2000d-7	8-15, 8-20
28 USC § 1360	7-48, 7-52	42 USC §§ 2000e–2000e-17	8-15
28 USC § 1408	11-54	42 USC § 2000e-5	8-15, 8-16
28 USC § 1658	8-13	42 USC § 2000e-5(c)	8-14, 8-15
28 USC § 1658(a)	8-13	42 USC § 2000e-5(e)	8-15
28 USC § 1658(b)	8-27	42 USC § 2000e-5(f)	8-14
28 USC § 2112	8-45		

Table of Statutes and Rules (continued)

USC	Page	USC	Page
42 USC § 2000e-16(c)	8-15, 8-16	42 USC § 12132	8-18
42 USC §§ 3601–3631	8-19	42 USC § 12133	8-18
42 USC §§ 3604–3606	8-19	42 USC §§ 12181–12189	8-18
42 USC § 3610(a)	8-19	42 USC § 12182(a)	8-18
42 USC § 3613(a)	8-19, 15-13, 15-14	42 USC § 12188(a)	8-18
42 USC §§ 12101–12117	8-16	45 USC § 355(f)	8-16
42 USC §§ 12111–12112	8-16	50 USC App §§ 501–596	7-8, 11-31, 18-5
42 USC § 12117(a)	8-16, 8-18	50 USC App § 502	7-8, 11-31, 18-5
42 USC §§ 12131–12165	8-18		

CODE OF FEDERAL REGULATIONS

CFR	Page	CFR	Page
26 CFR § 301.6324-1(a)(1)	18-30	29 CFR § 1980.114(a)	8-27
26 CFR § 301.7425-3	13-13	29 CFR § 2560.503-1	8-45
28 CFR § 42.107(b)	8-15	29 CFR § 2560.503-1(f)	8-46, 8-47
29 CFR § 100.570(d)	8-16	29 CFR § 2560.503-1(h)	8-46, 8-47
29 CFR § 1614.103	8-15, 8-16, 8-17	29 CFR § 2560.503-1(i)	8-46, 8-47, 8-48
29 CFR § 1614.105(a)	8-15, 8-16, 8-17	29 CFR pt 1614	8-15
29 CFR § 1980.103(c)–(d)	8-27		

FEDERAL REGISTER

44 Fed Reg 26169-01 (May 4, 1979)	7-53
46 Fed Reg 2195-02 (Jan 8, 1981)	7-53

INTERNAL REVENUE CODE

IRC	Page	IRC	Page
§ 220	11-25	§ 6072(a)	6-28, 6-29
§ 223	11-25	§ 6075(b)	6-31
§ 2010(c)	6-29	§ 6151	6-29
§ 2518	6-27	§ 6161(a)	6-28, 6-30
§ 2518(b)	6-27	§ 6163	6-30
§ 6012(b)	6-6, 6-8	§ 6166	6-30
§ 6034A	6-29	§ 7502	6-31

TREASURY REGULATION

Treas Reg	Page	Treas Reg	Page
§ 1.6081-4	6-28	§ 1-6161-1(b)	6-28
§ 1.6081-4(c)	6-28	§ 20.6018-1(d)	6-29
§ 1-6081-6(a)	6-29	§ 20.6075-1	6-29
§ 1-6081-6(c)	6-29	§ 20.6081-1(b)	6-30

Table of Statutes and Rules (continued)

Treas Reg	Page	Treas Reg	Page
§ 20.6081-1(e).....	6-30	§ 301.6324A-1	18-31
§ 20.6161-1(a).....	6-30	§ 301.6324A-1(a)-(b)	18-31
§ 25.6081-1(c).....	6-31		

TABLE OF CASES

<i>Abbott v. DeKalb</i> , 221 Or App 339, 190 P3d 413 (2008).....	7-18, 7-20
<i>Abraham v. T. Henry Const., Inc.</i> , 230 Or App 564, 217 P3d 212 (2009).....	14-8, 14-16, 14-18
<i>Abraham v. T. Henry Constr., Inc.</i> , 350 Or 29, 249 P3d 534 (2011)	15-17
<i>Adams v. Alliant Techsystems Inc.</i> , 218 F Supp 2d 792 (WD Va 2002)	7-46
<i>Adams v. Oregon State Police</i> , 289 Or 233, 611 P2d 1153 (1980)	2-66, 6-16
<i>Addisu v. Fred Meyer, Inc.</i> , 198 F3d 1130 (9th Cir 2000)	8-13
<i>Agency Holding Corp. v. Malley-Duff & Associates, Inc.</i> , 483 US 143, 107 S Ct 2759, 97 L Ed 2d 121 (1987).....	10-4
<i>Al Disdero Lumber Co. v. Dick W. Ebeling, Inc.</i> , 95 Or App 671, 770 P2d 945 (1989).....	2-38, 7-58, 7-59
<i>Albino v. Albino</i> , 279 Or 537, 568 P2d 1344 (1977)	6-33, 14-13
<i>Alderson v. State</i> , 105 Or App 574, 806 P2d 142 (1991).....	2-42
<i>Allen v. Gold Country Casino</i> , 464 F3d 1044 (9th Cir 2006)	7-48
<i>Allen v. Lawrence</i> , 137 Or App 181, 903 P2d 919 (1995).....	7-18, 14-18
<i>Am. Vantage Companies, Inc. v. Table Mountain Rancheria</i> , 292 F3d 1091 (9th Cir 2002)	7-53
<i>Anderson v. Carden</i> , 146 Or App 675, 934 P2d 562 (1997).....	10-6, 10-7
<i>Anderson v. Chambliss</i> , 199 Or 400, 262 P2d 298 (1953)	17-16
<i>Angelini v. Delaney</i> , 156 Or App 293, 966 P2d 223 (1998).....	11-12
<i>Arabian v. Kearns</i> , 64 Or App 204, 667 P2d 1038 (1983).....	2-62

Table of Cases (continued)

<i>Archambault v. Ogier</i> , 194 Or App 361, 95 P3d 257 (2004).....	14-17
<i>Aronsen v. Crown Zellerbach</i> , 662 F2d 584 (9th Cir 1981)	8-17
<i>Asher v. Hald</i> , 100 Or App 630, 788 P2d 468 (1990).....	7-20
<i>Ashmun v. G & H Ranches, Inc.</i> , 48 Or App 945, 618 P2d 462 (1980).....	15-6, 18-28
<i>Ausplund v. Aetna Indem. Co.</i> , 47 Or 10, 81 P 577 (1905)	14-8
<i>Baker v. Kennedy</i> , 115 Or App 360, 838 P2d 634 (1992).....	2-10
<i>Baker v. Kennedy</i> , 317 Or 372, 856 P2d 314 (1993)	16-2, 16-3
<i>Banda By & Through Banda v. Danner</i> , 87 Or App 69, 741 P2d 514 (1987).....	7-25, 7-26
<i>Bannister v. Longview Fibre Co.</i> , 134 Or App 332, 894 P2d 1259 (1995).....	17-26
<i>Barke v. Maeyens</i> , 176 Or App 471, 31 P3d 1133 (2001).....	7-24
<i>Barnard v. Lannan By & Through Lannan</i> , 112 Or App 625, 829 P2d 723 (1992).....	7-20
<i>Barrett v. H & R Block, Inc.</i> , 652 F Supp 2d 104 (D Mass 2009).....	8-19
<i>Barrington ex rel. Barrington v. Sandberg</i> , 164 Or App 292, 991 P2d 1071 (1999).....	7-17, 7-54, 7-56
<i>Bartz v. State</i> , 314 Or 353, 839 P2d 217 (1992)	3-11
<i>Bauman v. Clark</i> , 203 Or 193, 272 P2d 214 (1954)	6-14
<i>Baxter v. Zeller</i> , 42 Or App 873, 601 P2d 902 (1979).....	7-24
<i>Beals v. Breeden Bros., Inc.</i> , 113 Or App 566, 833 P2d 348 (1992).....	2-39, 7-63
<i>Bell v. Tri-County Metropolitan Transp. Dist. Of Oregon</i> , 353 Or 535, 301 P3d 901 (2013)	7-10
<i>Bembridge v. Miller</i> , 235 Or 396, 385 P2d 172 (1963)	11-11
<i>Ben Rybke Co. v. Royal Globe Ins. Co.</i> , 293 Or 513, 651 P2d 138 (1982)	14-10, 16-5

Table of Cases (continued)

<i>Benj. Franklin Fed. Sav. & Loan Ass'n v. Hallmark, Inc.</i> , 257 Or 436, 479 P2d 740 (1971)	17-20
<i>Benj. Franklin Fed. Sav. & Loan Ass'n v. Phillips</i> , 88 Or App 354, 745 P2d 437 (1987).....	2-62
<i>Bennett v. City of Salem</i> , 192 Or 531, 235 P2d 772 (1951)	2-29
<i>Bennett v. Reliable Credit Ass'n, Inc.</i> , 125 Or App 531, 865 P2d 496 (1993).....	12-8
<i>Berg v. Hirschy</i> , 206 Or App 472, 136 P3d 1182 (2006).....	7-20
<i>Big Horn Cnty. Elec. Co-op., Inc. v. Adams</i> , 219 F3d 944 (9th Cir 2000)	7-49
<i>Biomass One, L.P. v. S-P Const.</i> , 103 Or App 521, 799 P2d 152 (1990).....	14-8
<i>Bishop Paiute Tribe v. Cnty. of Inyo</i> , 275 F3d 893 (9th Cir 2002)	7-48
<i>Blanton v. Beiswenger</i> , 195 Or App 335, 97 P3d 1247 (2004).....	16-2
<i>Bock v. Collier</i> , 175 Or 145, 151 P2d 732 (1944)	7-13
<i>Bodunov v. Kutsev</i> , 214 Or App 356, 164 P3d 1212 (2007).....	7-16
<i>Boyer v. Salomon Smith Barney</i> , 344 Or 583, 188 P3d 233 (2008)	14-16
<i>Bradbury v. Teacher Standards & Practices Comm'n</i> , 151 Or App 176, 947 P2d 1145 (1997).....	7-15
<i>Bradford v. Davis</i> , 290 Or 855, 626 P2d 1376 (1981)	2-67, 7-10
<i>Bramel v. Brandt</i> , 190 Or App 432, 79 P3d 375 (2003).....	7-16
<i>Brooks v. Dierker</i> , 275 Or 619, 552 P2d 533 (1976)	2-47
<i>Brooks v. Smith</i> , 27 Or App 441, 556 P2d 696 (1976).....	2-47
<i>Brownstein, Rask, Arenz, Sweeney, Kerr & Grim v. Pearson</i> , 166 Or App 120, 997 P2d 300 (2000).....	7-19
<i>Bruns v. Walters</i> , 175 Or App 360, 28 P3d 646 (2001).....	14-6
<i>Brusco v. Brusco</i> , 241 Or 550, 407 P2d 645 (1965)	2-28

Table of Cases (continued)

<i>Bryan v. Itasca Cnty., Minnesota</i> , 426 US 373, 96 S Ct 2102, 48 L Ed 2d 710 (1976).....	7-53
<i>Buell v. Deschutes Cnty. Mun. Imp. Dist.</i> , 208 Or 56, 298 P2d 1000 (1956)	14-7
<i>Butcher v. McClain</i> , 244 Or App 316, 260 P3d 611 (2011).....	7-18, 10-3
<i>Cabal v. Donnelly</i> , 302 Or 115, 727 P2d 111 (1986)	14-17
<i>CACV of Colorado, LLC v. Stevens</i> , 248 Or App 624, 274 P3d 859 (2012).....	2-62
<i>Cairns v. Dole</i> , 195 Or App 742, 99 P3d 781 (2004).....	7-20
<i>Cannon v. Oregon Dep't of Justice</i> , 261 Or App 680, 322 P3d 601 (2014).....	2-65, 7-9
<i>Castro v. Ogburn</i> , 140 Or App 122, 914 P2d 1 (1996).....	2-28
<i>Catt v. Dep't of Human Servs. ex rel. State</i> , 251 Or App 488, 284 P3d 532 (2012).....	7-10, 7-23
<i>Chada v. Tapp</i> , 277 Or 3, 558 P2d 1225 (1977)	11-52
<i>Chance v. Coquille Indian Tribe</i> , 327 Or 318, 963 P2d 638 (1998)	7-48
<i>Chaney v. Fields Chevrolet Co.</i> , 264 Or 21, 503 P2d 1239 (1972)	2-30, 11-49, 14-6, 14-21
<i>Chapman Bros. Stationery & Office Equip. Co. v. Miles-Hiatt Investments, Inc.</i> , 282 Or 643, 580 P2d 540 (1978)	18-28
<i>Charles Schwab & Co., Inc. v. Pletz</i> , 95 Or App 48, 768 P2d 407 (1989).....	2-11
<i>Chevron Oil Co. v. Huson</i> , 404 US 97, 92 S Ct 349, 30 L Ed 2d 296 (1971).....	7-46
<i>Chevron, U.S.A., Inc. v. United States</i> , 705 F2d 1487 (9th Cir 1983)	18-31
<i>Christiansen v. Providence Health Sys. of Oregon Corp.</i> , 344 Or 445, 184 P3d 1121 (2008)	2-33, 2-39, 2-40, 6-9, 7-21, 7-23, 7-26, 7-64
<i>Citizens Sav. and Loan Ass'n v. McDonald</i> , 191 Or App 45, 80 P3d 532 (2003).....	2-60

Table of Cases (continued)

<i>City of Medford By & Through Medford Water Comm'n v. Budge-McHugh Supply Co.</i> , 91 Or App 213, 754 P2d 607 (1988).....	2-68
<i>City of Springfield v. \$10,000.00 in U.S. Currency</i> , 95 Or App 66, 767 P2d 476 (1989).....	2-21
<i>City of The Dalles, Or. ex rel. Taylor Elec. Supply, Inc. v. D'Lectric Co., Inc.</i> , 105 Or App 46, 803 P2d 771 (1990).....	17-15
<i>Clostermann v. Rode</i> , 183 Or 412, 193 P2d 532 (1948)	14-7
<i>Coe v. Statesman-Journal Co.</i> , 277 Or 117, 560 P2d 254 (1977)	7-15
<i>Colwell v. Chernabaeff</i> , 258 Or 373, 482 P2d 157 (1971)	2-12
<i>Computer Concepts, Inc. Profit Sharing Plan v. Brandt</i> , 98 Or App 618, 780 P2d 249 (1989).....	10-5
<i>Condon v. Bank of California, N.A.</i> , 92 Or App 691, 759 P2d 1137 (1988).....	6-32, 6-33
<i>Cooksey By & Through Cooksey v. Portland Pub. Sch. Dist. No. 1</i> , 143 Or App 527, 923 P2d 1328 (1996).....	7-25, 7-26
<i>Cooley v. Roman</i> , 286 Or 807, 596 P2d 565 (1979)	11-9, 14-4
<i>Cornell v. Merck & Co., Inc.</i> , 87 Or App 373, 742 P2d 667 (1987).....	7-55
<i>Cornus Corp. v. Geac Enter. Solutions, Inc.</i> , 252 Or App 595, 289 P3d 267 (2012).....	2-43
<i>Corvallis Sand & Gravel Co. v. State Land Bd.</i> , 250 Or 319, 439 P2d 575 (1968)	14-13
<i>Cramer v. Stonebridge Inn, Inc.</i> , 77 Or App 407, 713 P2d 645 (1986).....	7-17, 7-18, 10-3
<i>Crawford v. Crane</i> , 204 Or 60, 282 P2d 348 (1955)	18-16
<i>Creditors Protective Ass'n, Inc. v. Britt</i> , 58 Or App 230, 648 P2d 414 (1982).....	12-7, 12-8
<i>D.M. Osborne & Co. v. Hubbard</i> , 20 Or 318, 25 P 1021 (1891)	14-10
<i>Dallas Lumber & Supply Co. v. Phillips</i> , 249 Or 58, 436 P2d 739 (1968)	17-21
<i>Dauven v. St. Vincent Hosp. & Med. Ctr.</i> , 130 Or App 584, 883 P2d 241 (1994).....	14-18

Table of Cases (continued)

<i>Davis v. Blanchard</i> , 84 Or App 99, 733 P2d 460 (1987).....	2-39, 2-40, 7-27, 7-64
<i>Davis v. Bostick</i> , 282 Or 667, 580 P2d 544 (1978)	7-17, 7-54, 7-56
<i>Davis v. Harvey</i> , 789 F2d 1332 (9th Cir 1986)	8-13
<i>Davis v. Somers</i> , 140 Or App 567, 915 P2d 1047 (1996).....	7-18, 7-59
<i>Daviton v. Columbia/HCA Healthcare Corp.</i> , 241 F3d 1131 (9th Cir 2001)	8-16
<i>Delaney v. Taco Time Int’l, Inc.</i> , 297 Or 10, 681 P2d 114 (1984)	8-23
<i>DeLay v. Marathon LeTourneau Sales & Serv. Co.</i> , 291 Or 310, 630 P2d 836 (1981)	2-39, 7-55, 7-56, 7-64
<i>Demontiney v. U.S. ex rel. Dep’t of Interior</i> , <i>Bureau of Indian Affairs</i> , 255 F3d 801 (9th Cir 2001)	7-49
<i>Diamond v. Huffman</i> , 64 Or App 330, 667 P2d 1040 (1983).....	7-14
<i>Diaz v. Coyle</i> , 152 Or App 250, 953 P2d 773 (1998).....	3-8
<i>Dickey v. Rehder</i> , 239 Or App 253, 244 P3d 819 (2010).....	2-59
<i>Dixon v. Schoonover</i> , 226 Or 443, 359 P2d 115 (1961)	2-48
<i>Dobie v. Liberty Homes, Inc.</i> , 53 Or App 366, 632 P2d 449 (1981).....	2-29, 8-8
<i>Dockins v. State Farm Ins. Co.</i> , 329 Or 20, 985 P2d 796 (1999)	16-5
<i>Doe v. Am. Red Cross</i> , 322 Or 502, 910 P2d 364 (1996)	7-21
<i>Doe v. Mann</i> , 415 F3d 1038 (9th Cir 2005)	7-53
<i>Dolan v. United States</i> , 560 US 605, 130 S Ct 2533, 177 L Ed 2d 108 (2010).....	3-7
<i>Donohoe v. Mid-Valley Glass Co.</i> , 84 Or App 584, 735 P2d 11 (1987).....	2-29
<i>Dotson v. Smith</i> , 307 Or 132, 764 P2d 540 (1988)	16-3

Table of Cases (continued)

<i>Duncan v. Augter</i> , 62 Or App 250, 661 P2d 83 (1983).....	7-25
<i>Duncan v. Dubin</i> , 276 Or 631, 556 P2d 105 (1976)	16-2, 16-3
<i>Durham v. City of Portland</i> , 181 Or App 409, 45 P3d 998 (2002).....	2-30
<i>Duvall v. McLeod</i> , 331 Or 675, 21 P3d 88 (2001)	2-59
<i>E.E.O.C. v. First Citizens Bank of Billings</i> , 758 F2d 397 (9th Cir 1985)	8-17
<i>Ellis v. Roberts</i> , 302 Or 6, 725 P2d 886 (1986)	2-47
<i>Empire Holding Corp. v. Coshow</i> , 150 Or 252, 45 P2d 167 (1935)	2-62
<i>Employers' Fire Ins. Co. v. Love It Ice Cream Co.</i> , 64 Or App 784, 670 P2d 160 (1983).....	2-32
<i>Erie T. Co. v. Tompkins</i> , 304 US 64, 58 S Ct 817 (1938).....	7-46
<i>Estate of Hutchins v. Fargo</i> , 188 Or App 462, 72 P3d 638 (2003).....	2-60
<i>Evans v. Hogue</i> , 296 Or 745, 681 P2d 1133 (1984)	15-15, 15-19
<i>Evergreen Pac., Inc. v. Cedar Brook Way, LLC</i> , 251 Or App 194, 284 P3d 509 (2012).....	17-16
<i>Everman v. Lockwood</i> , 144 Or App 28, 925 P2d 128 (1996).....	7-13, 11-14
<i>Ex parte Young</i> , 209 US 123, 28 S Ct 441, 52 L Ed 714 (1908).....	7-48
<i>Fair Housing Council of Oregon v. Cross Water Development, LLC</i> , No C08-5755 FDB, WL 799685 (WD Wash Mar 24, 2009).....	8-19
<i>Farrell v. Bank of New Hampshire-Portsmouth</i> , 929 F2d 871 (1st Cir 1991).....	8-19
<i>Farrimond v. Louisiana-Pac. Corp.</i> , 103 Or App 563, 798 P2d 697 (1990).....	8-8
<i>Farris v. Shinseki</i> , 660 F3d 557 (1st Cir 2011).....	8-16
<i>Felder v. Casey</i> , 487 US 131, 108 S Ct 2302, 101 L Ed 2d 123 (1988).....	8-12
<i>Fessler v. Quinn</i> , 143 Or App 397, 923 P2d 1294 (1996).....	14-18

Table of Cases (continued)

<i>Fields v. Legacy Health Sys.</i> , 413 F3d 943 (9th Cir 2005)	2-33, 7-24, 7-60
<i>Fink v. Guardsmark, LLC</i> , No CV 03-1480-BR, WL 1857114 (D Or Aug 19, 2004)	14-8
<i>Fireman’s Fund Ins. Co. v. Nizdil</i> , 709 F Supp 975 (D Or 1989)	11-52
<i>First Interstate Bank of Oregon, N.A. v. Bousquet</i> , 93 Or App 451, 762 P2d 1046 (1988).....	7-13
<i>First Nat. Bank of Oregon v. Jack Mathis Gen. Contractor, Inc.</i> , 274 Or 315, 546 P2d 754 (1976)	11-12
<i>First Nat. Bank of Oregon v. Mobil Oil Corp.</i> , 272 Or 672, 538 P2d 919 (1975)	2-23
<i>First W. Mortgage Co. v. Hotel Gearhart, Inc.</i> , 260 Or 196, 488 P2d 450 (1971)	14-14
<i>Fiswick v. United States</i> , 329 US 211, 67 S Ct 224, 91 L Ed 196 (1946).....	3-5
<i>Fliegel v. Davis</i> , 73 Or App 546, 699 P2d 674 (1985).....	7-19
<i>Fox & Co. v. Roman Catholic Bishop of the Diocese of Baker City</i> , 107 Or 557, 215 P 178 (1923)	17-20
<i>Frances v. Gucci Am., Inc.</i> , 543 F Supp 2d 1227 (D Or 2008)	8-48
<i>Frevach Land Co. v. Multnomah Cnty. Dep’t of Env’tl. Servs.</i> , No CV-99-1295-HU, WL 1875839 (D Or, Dec 21, 2000).....	2-30
<i>Frohs v. Greene</i> , 253 Or 1, 452 P2d 564 (1969)	7-25
<i>Furlong v. Tish</i> , 189 Or 86, 218 P2d 476 (1950)	2-25
<i>Gallardo v. United States</i> , No 12-55255, WL 1424469 (9th Cir Apr 15, 2014).....	7-47
<i>Gannon v. Rogue Valley Med. Ctr.</i> , 92 Or App 314, 758 P2d 873 (1988).....	7-58
<i>Gary M. Buford & Associates, Inc. v. Guillory</i> , 98 Or App 691, 780 P2d 783 (1989).....	2-35
<i>Gaston v. Parsons</i> , 318 Or 247, 864 P2d 1319 (1994)	7-15, 7-16, 7-21, 7-24, 7-25, 7-27
<i>Gemstone Builders, Inc. v. Stutz</i> , 245 Or App 91, 261 P3d 64 (2011).....	1-3
<i>Georgetown Realty, Inc. v. Home Ins. Co.</i> , 313 Or 97, 831 P2d 7 (1992)	14-8, 14-17

Table of Cases (continued)

<i>Giulietti v. Oncology Associates of Oregon, P.C.</i> , 178 Or App 260, 36 P3d 510 (2001).....	2-38, 6-13, 7-59
<i>Gladhart v. Oregon Vineyard Supply Co.</i> , 332 Or 226, 26 P3d 817 (2001)	14-7
<i>Godfrey v. Bick & Monte, P.C.</i> , 77 Or App 429, 713 P2d 655 (1986).....	7-20
<i>Goodyear Atomic Corp. v. Miller</i> , 486 US 174, 108 S Ct 1704, 100 L Ed 2d 158 (1988).....	7-46
<i>Gordon v. Schumacher</i> , 83 Or App 544, 733 P2d 35 (1987).....	11-11
<i>Grady v. Cedar Side Inn, Inc.</i> , 154 Or App 622, 963 P2d 36 (1998).....	7-40
<i>Grant v. Paddock</i> , 30 Or 312, 47 P 712 (1897)	2-23
<i>Great N. Life Ins. Co. v. Read</i> , 322 US 47, 64 S Ct 873, 88 L Ed 1121 (1944).....	7-49
<i>Green v. Coos Bay Wagon-Rd. Co.</i> , 23 F 67 (CCD Or 1885)	14-7
<i>Greene v. Legacy Emanuel Hosp. Health Care Ctr.</i> , 165 Or App 543, 997 P2d 265 (2000).....	7-25
<i>Gust v. Edwards Co.</i> , 129 Or 409, 274 P 919 (1929)	11-14
<i>Hale v. Groce</i> , 304 Or 281, 744 P2d 1289 (1987)	7-18, 14-17
<i>Hamilton v. Paynter</i> , 342 Or 48, 149 P3d 131 (2006)	2-35, 16-2
<i>Hanna v. Plumer</i> , 380 US 460, 85 S Ct 1136, 14 L Ed 2d 8 (1965).....	7-46
<i>Hardin v. White Mountain Apache Tribe</i> , 779 F2d 476 (9th Cir 1985)	7-48
<i>Harvey v. Christie</i> , 237 Or App 237, 239 P3d 279 (2010).....	2-21
<i>Hatley v. Truck Ins. Exch.</i> , 261 Or 606, 494 P2d 426 (1972)	2-40, 2-41
<i>Hendgen v. Forest Grove Cmty. Hosp.</i> , 109 Or App 177, 818 P2d 966 (1991).....	2-30
<i>Herman v. Valley Ins. Co.</i> , 145 Or App 124, 928 P2d 985 (1996).....	16-5
<i>Herzberg v. Moseley Aviation, Inc.</i> , 156 Or App 1, 964 P2d 1137 (1998).....	2-35

Table of Cases (continued)

<i>Hiatt v. Congoleum Indus., Inc.</i> , 279 Or 569, 569 P2d 567 (1977)	2-60
<i>Hinkle v. Abeita</i> , 283 P3d 877 (NM Ct App 2012).....	7-48
<i>Hoeck v. Schwabe, Williamson & Wyatt</i> , 149 Or App 607, 945 P2d 534 (1997).....	7-19
<i>Holdner v. Columbia Cnty.</i> , 51 Or App 605, 627 P2d 4 (1981).....	7-55
<i>Holdner v. Oregon Trout, Inc.</i> , 173 Or App 344, 22 P3d 244 (2001).....	7-15
<i>Holien v. Sears, Roebuck & Co.</i> , 298 Or 76, 689 P2d 1292 (1984)	8-8
<i>Hollin v. Libby, McNeill & Libby</i> , 253 Or 8, 452 P2d 555 (1969)	14-7
<i>Hooker Creek Companies, LLC v. Remington Ranch, LLC</i> , No CV 11-090-MO, WL 2414344 (D Or June 9, 2011).....	17-26
<i>Hotelling v. Walther</i> , 169 Or 559, 130 P2d 944 (1942)	7-27, 7-55
<i>Hous. Auth. of Portland v. Ash Nat., Inc.</i> , 36 Or App 391, 584 P2d 776 (1978).....	14-23
<i>Huff v. Great W. Seed Co.</i> , 322 Or 457, 909 P2d 858 (1996)	8-8
<i>Huff v. Shiomi</i> , 73 Or App 605, 699 P2d 1178 (1985).....	7-57, 14-12
<i>Hunter v. Woodburn Fertilizer, Inc.</i> , 208 Or App 242, 144 P3d 970 (2006).....	14-24
<i>Hurley v. Shinmei Kisen K.K.</i> , 98 Or App 180, 779 P2d 1041 (1989).....	2-10
<i>Hylton v. Phillips</i> , 270 Or 766, 529 P2d 906 (1974)	7-16
<i>Imperial Granite Co. v. Pala Band of Mission Indians</i> , 940 F2d 1269 (9th Cir 1991)	7-48
<i>In re Apportionment of Senators & Representatives under Article IV, § 6, Or. Constitution</i> , 228 Or 575, 365 P2d 1042 (1961)	2-21
<i>In re Baldwin Builders</i> , 232 BR 406 (BAP 9th Cir 1999).....	11-62
<i>In re Century Cleaning Servs., Inc.</i> , 202 BR 149 (Bankr D Or 1996).....	18-17

Table of Cases (continued)

<i>In re Christensen</i> , 167 BR 213 (D Or 1994)	17-14
<i>In re Grogan</i> , 476 BR 270 (Bankr D Or 2012).....	2-27
<i>In re N. Side Lumber Co.</i> , 59 BR 917 (Bankr D Or 1986).....	11-61
<i>In re Sabre Farms, Inc.</i> , 27 BR 532 (Bankr D Or 1982).....	18-28
<i>In re Standard Cafeteria Co.</i> , 68 Or 550, 137 P 774 (1914)	2-23
<i>Jaqua v. Nike, Inc.</i> , 125 Or App 294, 865 P2d 442 (1993).....	14-19
<i>Jaquith v. Ferris</i> , 297 Or 783, 687 P2d 1083 (1984)	7-20
<i>Jeffries v. Mills</i> , 165 Or App 103, 995 P2d 1180 (2000).....	2-30
<i>Jensen v. Sweet Home Lodge No. 1972 of Benev. & Protective Order of Elks of U.S.</i> , No CIV. 06-6329-AA, WL 3051657, US Dist LEXIS 77464 (D Or Oct 16, 2007)	8-14
<i>Jewell v. Compton</i> , 277 Or 93, 559 P2d 874 (1977)	2-48
<i>Johnson v. Best Overhead Door, LLC</i> , 238 Or App 559, 242 P3d 740 (2010).....	2-12
<i>Johnson v. Henderson</i> , 314 F3d 409 (9th Cir 2002)	8-12
<i>Johnson v. Kentner</i> , 71 Or App 61, 691 P2d 499 (1984).....	2-30
<i>Johnson v. MacGregor</i> , 55 Or App 374, 637 P2d 1362 (1981).....	2-10, 2-31
<i>Jones By & Through Jones v. Salem Hosp.</i> , 93 Or App 252, 762 P2d 303 (1988).....	2-29, 7-23
<i>Jones v. Bierek</i> , 306 Or 42, 755 P2d 698 (1988)	15-8
<i>Jones v. Emerald Pac. Homes, Inc.</i> , 188 Or App 471, 71 P3d 574 (2003).....	14-18
<i>Jones v. Lindsey</i> , 193 Or App 674, 91 P3d 781 (2004).....	7-42
<i>Jones v. R.R. Donnelley & Sons Co.</i> , 541 US 369, 124 S Ct 1836, 158 L Ed 2d 645 (2004).....	8-13

Table of Cases (continued)

<i>Jorgensen v. Pressnall</i> , 274 Or 285, 545 P2d 1382 (1976)	14-24
<i>Kang v. U. Lim Am., Inc.</i> , 296 F3d 810 (9th Cir 2002)	8-15
<i>Kearney v. Montgomery Ward & Co.</i> , 55 Or App 641, 639 P2d 682 (1982).....	7-32
<i>Keller v. Armstrong World Indus., Inc.</i> , 342 Or 23, 147 P3d 1154 (2006)	7-33
<i>King v. E.I. DuPont De Nemours & Co.</i> , 741 F Supp 2d 699 (ED Pa 2010).....	7-46
<i>Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.</i> , 523 US 751, 118 S Ct 1700, 140 L Ed 2d 981 (1998).....	7-48
<i>Kraemer v. Harding</i> , 159 Or App 90, 976 P2d 1160 (1999).....	7-14
<i>Krauel v. Dykers Corp.</i> , 173 Or App 336, 21 P3d 1124 (2001).....	2-31
<i>Lamb v. Young</i> , 250 Or 228, 441 P2d 616 (1968)	2-48
<i>Lamka v. KeyBank</i> , 250 Or App 486, 281 P3d 639 (2012).....	2-12
<i>Landauer v. Landauer</i> , 221 Or App 19, 188 P3d 406 (2008).....	6-11, 7-40
<i>Laquaglia v. Rio Hotel & Casino, Inc.</i> , 186 F3d 1172 (9th Cir 1999)	8-15
<i>Lawson v. Coos Cnty. Sch. Dist. No. 13</i> , 94 Or App 387, 765 P2d 829 (1988).....	2-36, 2-67, 7-10
<i>Legg v. Allen</i> , 72 Or App 351, 696 P2d 9 (1985).....	11-14
<i>Lesch v. DeWitt</i> , 118 Or App 397, 847 P2d 888 (1993).....	7-27, 7-56
<i>Lewis v. Merrill</i> , 228 Or 541, 365 P2d 1052 (1961)	2-31, 2-48, 7-12
<i>Lindemeier v. Walker</i> , 272 Or 682, 538 P2d 1266 (1975)	2-28, 7-8, 7-58, 14-15
<i>Local 246 Utility Workers Union of America v. Southern California Edison Co.</i> , 83 F3d 292 (1996).....	8-22
<i>Locus Bldg. P'ship v. Gladys Enterprises, Inc.</i> , 62 Or App 792, 662 P2d 15 (1983).....	2-21

Table of Cases (continued)

<i>Loewen v. Galligan</i> , 130 Or App 222, 882 P2d 104 (1994).....	10-6, 10-7
<i>Lord Elec. Co., Inc. v. Pac. Intermountain Exp. Co.</i> , 282 Or 335, 578 P2d 776 (1978)	11-13
<i>Lourim v. Swensen</i> , 328 Or 380, 977 P2d 1157 (1999)	2-40, 7-64
<i>Luchini By & Through Luchini v. Harsany</i> , 98 Or App 217, 779 P2d 1053 (1989).....	2-33, 6-9, 7-26
<i>Lukovsky v. City & Cnty. of San Francisco</i> , 535 F3d 1044 (9th Cir 2008)	8-12, 8-17
<i>Lulay v. Lulay</i> , 247 Or 497, 429 P2d 802 (1967)	6-33
<i>Lyden v. Goldberg</i> , 260 Or 301, 490 P2d 181 (1971)	2-29, 2-30
<i>Lyons v. Kamhoot</i> , 281 Or 615, 575 P2d 1389 (1978)	15-6, 18-28
<i>Macy v. Zusman Metals Co., Inc.</i> , 314 Or 320, 838 P2d 591 (1992)	8-7
<i>Magenis v. Fisher Broad., Inc.</i> , 103 Or App 555, 798 P2d 1106 (1990).....	7-14
<i>Malaer v. Flying Lion, Inc.</i> , 65 Or App 154, 670 P2d 214 (1983).....	2-30
<i>Markovich v. Chambers</i> , 122 Or App 503, 857 P2d 906 (1993).....	15-15
<i>Massey v. Oregon-Washington Plywood Co.</i> , 223 Or 139, 353 P2d 1039 (1960)	8-22, 14-11
<i>Masters v. Sec’y of State</i> , 88 Or App 221, 744 P2d 1309 (1987).....	7-15
<i>Mathies v. Hoeck</i> , 284 Or 539, 588 P2d 1 (1978)	7-16
<i>Matter of Adoption of Welshans</i> , 150 Or App 498, 946 P2d 1160 (1997).....	4-15
<i>Matter of Culver’s Estate</i> , 26 Or App 809, 554 P2d 541 (1976).....	11-12
<i>McClure v. LeRoy</i> , 133 Or App 229, 890 P2d 425 (1995).....	7-27
<i>McCollum v. Kmart Corp.</i> , 347 Or 707, 226 P3d 703 (2010)	2-64
<i>McComas v. Bocci</i> , 166 Or App 150, 996 P2d 506 (2000).....	7-18, 14-18

Table of Cases (continued)

<i>McCraw v. Stapp</i> , 82 Or App 79, 727 P2d 160 (1986).....	14-16
<i>McCulloch v. Price Waterhouse LLP</i> , 157 Or App 237, 971 P2d 414 (1998).....	12-7
<i>McDowell Welding & Pipefitting, Inc. v. United States Gypsum Co.</i> , 345 Or 272, 193 P3d 9 (2008)	11-11
<i>McGregor Co. v. Heritage</i> , 291 Or 420, 631 P2d 1355 (1981)	18-22
<i>McLain v. Maletis Beverage</i> , 200 Or App 374, 115 P3d 938 (2005).....	2-31
<i>McNeely v. Weyerhaeuser Co.</i> , 115 Or App 184, 837 P2d 546 (1992).....	2-41
<i>Meissner v. Murphy</i> , 58 Or App 174, 647 P2d 972 (1982).....	6-13, 6-14
<i>Melgard v. Hanna</i> , 45 Or App 133, 607 P2d 795 (1980).....	7-19
<i>Meoli v. Brown</i> , 200 Or App 44, 114 P3d 507 (2005).....	16-2
<i>Metro. Prop. & Cas. v. Harper</i> , 168 Or App 358, 7 P3d 541 (2000).....	7-58, 14-9, 14-15, 14-16
<i>Michigan v. Bay Mills Indian Cmty.</i> , ___ US ___, 134 S Ct 2024, 188 L Ed 2d 1071 (May 27, 2014)	7-48
<i>Mid-Valley Res., Inc. v. Engelson</i> , 170 Or App 255, 13 P3d 118 (2000).....	15-15
<i>Middleton v. Chaney</i> , 177 Or App 679, 34 P3d 722 (2001).....	6-6
<i>Miller v. Am. Exp. Co.</i> , 688 F2d 1235 (9th Cir 1982)	8-19
<i>Miller v. Miller</i> , 101 Or App 371, 790 P2d 1184 (1990).....	15-15
<i>Minisce v. Thompson</i> , 149 Or App 746, 945 P2d 582 (1997).....	16-2
<i>Minor v. Leisure Lodge, Inc.</i> , 154 Or App 301, 961 P2d 915 (1998).....	2-19
<i>Mitchell v. The Timbers</i> , 163 Or App 312, 987 P2d 1236 (1999).....	2-31
<i>Moini v. Hewes</i> , 93 Or App 598, 763 P2d 414 (1988).....	14-7
<i>Molalla Pump & Heating Co. v. Chaney</i> , 42 Or App 789, 601 P2d 874 (1979).....	17-21

Table of Cases (continued)

Montana v. U.S.,
450 US 544, 101 S Ct 1245, 67 L Ed 2d 493 (1981)..... 7-52

Moore v. Mut. of Enumclaw Ins. Co.,
317 Or 235, 855 P2d 626 (1993) 14-5

Moorman Mfg. Co. of California, Inc. v. Hall,
113 Or App 30, 830 P2d 606 (1992).....11-10, 11-11, 14-4

Morales v. City of Los Angeles,
214 F3d 1151 (9th Cir 2000) 8-13

Multnomah Cnty. v. U. S. Fid. & Guar. Co.,
87 Or 198, 170 P 525 (1918) 17-14

Naigan v. Nana Servs., LLC,
No 12CV2648-LAB NLS, WL 5278641 (SD Cal Sept 18, 2013)..... 7-46

Nat'l Mortgage Co. v. Robert C. Wyatt, Inc.,
173 Or App 16, 20 P3d 216 (2001)..... 2-60

Nat'l R.R. Passenger Corp. v. Morgan,
536 US 101, 122 S Ct 2061, 153 L Ed 2d 106 (2002)..... 8-15

Niedermeyer v. Dusenberry,
275 Or 83, 549 P2d 1111 (1976) 7-20

Nooteboom v. Bulson,
153 Or App 361, 956 P2d 1042 (1998)..... 15-15

N. Pac. Ins. Co. v. Switzler,
143 Or App 223, 924 P2d 839 (1996)..... 7-52

N. River Ins. Co. v. Kowaleski,
275 Or 531, 551 P2d 1286 (1976) 16-4

Nw.Foundry & Furnace Co. v. Willamette Mfg. & Supply Co.,
268 Or 343, 521 P2d 545 (1974) 11-10

O'Connor v. Shelly,
No 3:11-CV-00022-KI, WL 5570655 (D Or Nov 15, 2011)..... 2-22

O'Gara v. Kaufman,
81 Or App 499, 726 P2d 403 (1986)..... 7-58

O'Riley v. U.S. Bakery,
No CV-01-1705-ST, WL 31974407, US Dist LEXIS 25538
(D Or Dec 23, 2002) 8-16

Olsen v. Idaho State Bd. of Med.,
363 F3d 916 (9th Cir 2004) 8-13

Oregon State Bar v. Wright,
309 Or 37, 785 P2d 340 (1990) 14-13

Owings v. Rosé,
262 Or 247, 497 P2d 1183 (1972)7-57, 14-5, 14-12

Table of Cases (continued)

<i>Pacheco v. Blatchford</i> , 91 Or App 390, 754 P2d 1219 (1988).....	2-60
<i>Pakos v. Warner</i> , 250 Or 203, 441 P2d 593 (1968)	2-42
<i>Palmore v. Kirkman Laboratories, Inc.</i> , 270 Or 294, 527 P2d 391 (1974)	7-11
<i>Parker v. Richards</i> , 43 Or App 455, 602 P2d 1154 (1979).....	11-13
<i>Parthenon Const. & Design, Inc. v. Neuman</i> , 166 Or App 172, 999 P2d 1169 (2000).....	17-25, 17-26
<i>Paton v. Am. Family Mut. Ins. Co.</i> , 256 Or App 607, 302 P3d 1204 (2013).....	16-4, 16-6
<i>Paul v. United States</i> , 371 US 245, 83 S Ct 426, 9 L Ed 2d 292 (1963).....	7-46
<i>Pendergast v. United States</i> , 317 US 412, 63 S Ct 268, 87 L Ed 368 (1943).....	3-5
<i>Pennhurst State Sch. & Hosp. v. Halderman</i> , 465 US 89, 104 S Ct 900, 79 L Ed 2d 67 (1984).....	7-49
<i>Penuel v. Titan/Value Equities Grp., Inc.</i> , 127 Or App 195, 872 P2d 28 (1994).....	10-5
<i>Pepper Burns Insulation, Inc. v. Artco Corp.</i> , 970 F2d 1340 (4th Cir 1992)	17-15
<i>Perez By & Through Yon v. Bay Area Hosp.</i> , 315 Or 474, 846 P2d 405 (1993)	2-10, 2-33, 2-66, 6-17, 7-10, 7-22, 7-26
<i>Permapost Products Co. v. Osmose, Inc.</i> , 200 Or App 699, 116 P3d 909 (2005).....	12-5, 14-22, 14-24
<i>Peterson v. Temple</i> , 323 Or 322, 918 P2d 413 (1996)	11-14
<i>PGA Tour, Inc. v. Martin</i> , 532 US 661, 121 S Ct 1879, 149 L Ed 2d 904 (2001).....	8-18
<i>Phillips v. Graves</i> , 139 Or 336, 9 P2d 490 (1932)	11-61
<i>Pickern v. Holiday Quality Foods Inc.</i> , 293 F3d 1133 (9th Cir 2002)	8-18
<i>Pieri v. Dammasch State Hosp.</i> , 77 F3d 490 (9th Cir 1996)	8-16
<i>PIH Beaverton, LLC v. Super One, Inc.</i> , 254 Or App 486, 294 P3d 536 (2013).....	14-12

Table of Cases (continued)

<i>Pincetich v. Nolan</i> , 252 Or App 42, 285 P3d 759 (2012).....	17-26
<i>Pipkin v. Zimmer</i> , 113 Or App 737, 833 P2d 1350 (1992).....	2-35
<i>Portland Mortgage Co. v. Creditors Protective Ass’n</i> , 199 Or 432, 262 P2d 918 (1953)	13-22
<i>Pritchard v. Regence Bluecross Blueshield of Oregon</i> , 225 Or App 455, 201 P3d 290 (2009).....	14-7
<i>Propp v. Long</i> , 313 Or 218, 831 P2d 685 (1992)	2-20
<i>Purcell v. Asbestos Corp., Ltd.</i> , 153 Or App 415, 959 P2d 89 (1998).....	7-33
<i>Puyallup Tribe, Inc. v. Dep’t of Game of State of Wash.</i> , 433 US 165, 97 S Ct 2616, 53 L Ed 2d 667 (1977).....	7-48
<i>Quick v. Andresen</i> , 238 Or 433, 395 P2d 154 (1964)	2-40, 2-42
<i>Raethke v. Oregon Health Sci. Univ.</i> , 115 Or App 195, 837 P2d 977 (1992).....	7-25, 7-27
<i>Ram Technical Servs., Inc. v. Koresko</i> , 346 Or 215, 208 P3d 950 (2009)	2-32
<i>Redfield v. Mead, Johnson & Co.</i> , 266 Or 273, 512 P2d 776 (1973)	14-23
<i>Reed v. Jackson Cnty. Citizens League</i> , 183 Or App 89, 50 P3d 1287 (2002).....	11-11
<i>Reedsport Sch. Dist. No. 105 v. Gulf Ins. Co.</i> , 210 Or App 679, 152 P3d 988 (2007).....	14-8
<i>Rennie v. Pozzi</i> , 294 Or 334, 656 P2d 934 (1982)	6-19, 7-45
<i>Repp v. Hahn</i> , 45 Or App 671, 609 P2d 398 (1980).....	6-16
<i>Rice v. Mary Rabb</i> , 354 Or 721, 320 P3d 554 (2014)	7-13, 11-14
<i>Rice v. Rabb</i> , 251 Or App 603, 284 P3d 1178 (2012).....	7-13
<i>Rise v. Steckel</i> , 59 Or App 675, 652 P2d 364 (1982).....	14-13
<i>Rivers v. Roadway Exp., Inc.</i> , 511 US 298, 114 S Ct 1510, 128 L Ed 2d 274 (1994).....	8-14
<i>Roberts By & Through Drew v. Drew</i> , 105 Or App 251, 804 P2d 503 (1991).....	6-13

Table of Cases (continued)

<i>Rogue River Mgmt. Co. v. Shaw</i> , 243 Or 54, 411 P2d 440 (1966)	2-48
<i>Rogue Valley Mem'l Hosp. v. Salem Ins. Agency, Inc.</i> , 265 Or 603, 510 P2d 845 (1973)	18-13
<i>Ross v. Carlyle</i> , 216 Or 576, 339 P2d 1114 (1959)	14-14
<i>Russell v. U.S. Bank Nat. Ass'n</i> , 246 Or App 74, 265 P3d 1 (2011).....	8-21
<i>S.V. v. Sherwood Sch. Dist.</i> , 254 F3d 877 (9th Cir 2001)	8-20
<i>Sandgathe v. Jagger</i> , 165 Or App 375, 996 P2d 1001 (2000).....	7-20
<i>Sanok v. Grimes</i> , 306 Or 259, 760 P2d 228 (1988)	2-41, 2-66
<i>Santa Maria v. Pacific Bell</i> , 202 F3d 1170 (9th Cir 2000)	8-12, 8-16
<i>Schafer v. Fraser</i> , 206 Or 446, 290 P2d 190 (1955)	14-7
<i>Schenck v. Oregon Television, Inc.</i> , 146 Or App 430, 934 P2d 480 (1997).....	7-14
<i>Schmidling v. Dove</i> , 65 Or App 1, 670 P2d 166 (1983).....	2-65, 5-3
<i>Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.</i> , 5 F3d 1255 (9th Cir 1993)	7-33
<i>Scott v. State Farm Mut. Auto. Ins. Co.</i> , 345 Or 146, 190 P3d 372 (2008)	16-5
<i>Scott v. W. Int'l Surplus Sales, Inc.</i> , 267 Or 512, 517 P2d 661 (1973)	12-7
<i>Securities-Intermountain, Inc. v. Sunset Fuel Co.</i> , 289 Or 243, 611 P2d 1158 (1980)	7-58, 14-8, 14-9, 14-15, 14-16, 14-19
<i>SERA Architects, Inc. v. Klahowya Condo., LLC</i> , 253 Or App 348, 290 P3d 881 (2012).....	17-19
<i>Serles v. Beneficial Oregon, Inc.</i> , 91 Or App 697, 756 P2d 1266 (1988).....	14-19
<i>Severson v. Youngdahl</i> , 102 Or App 54, 792 P2d 482 (1990).....	2-59
<i>Sharer v. Oregon</i> , 481 F Supp 2d 1156 (D Or 2007)	8-15
<i>Shasta View Irrigation Dist. v. Amoco Chemicals Corp.</i> , 329 Or 151, 986 P2d 536 (1999)	7-9

Table of Cases (continued)

<i>Shaw v. Zabel</i> , 267 Or 557, 517 P2d 1187 (1974)	2-33
<i>Shelton v. Paris</i> , 199 Or 365, 261 P2d 856 (1953)	8-23
<i>Shenefield v. Axtell</i> , 274 Or 279, 545 P2d 876 (1976)	7-14
<i>Shepard v. City of Portland</i> , 829 F Supp 2d 940 (D Or 2011)	2-66
<i>Shives v. Chamberlain</i> , 168 Or 676, 126 P2d 28 (1942)	7-27, 7-55
<i>Simonsen v. Ford Motor Co.</i> , 196 Or App 460, 102 P3d 710 (2004).....	2-38, 7-61, 7-63, 14-23
<i>Simpson v. Simpson</i> , 83 Or App 86, 730 P2d 592 (1986).....	2-29
<i>Smith v. Abel</i> , 211 Or 571, 316 P2d 793 (1957)	14-7
<i>Smith v. Am. Legion Post 83</i> , 188 Or App 139, 71 P3d 136 (2003).....	2-31
<i>Smith v. Barton</i> , 914 F2d 1330 (9th Cir 1990)	8-18
<i>Smith v. Di Marco</i> , 207 Or App 558, 142 P3d 539 (2006).....	7-42
<i>Smith v. Riker</i> , 88 Or App 579, 746 P2d 247 (1987).....	16-2
<i>Smith v. Salish Kootenai College</i> , 434 F3d 1127 (9th Cir 2006)	7-52
<i>Snider v. Prod. Chem. Mfg., Inc.</i> , 221 Or App 593, 191 P3d 691 (2008).....	1-4
<i>Snyder v. Espino-Brown</i> , 350 Or 141, 252 P3d 318 (2011)	16-2
<i>S. Lake Ctr. P'ship v. Waker Associates, Inc.</i> , 129 Or App 581, 879 P2d 1342 (1994).....	14-19
<i>S. Pac. Co. v. Morrison-Knudsen Co.</i> , 216 Or 398, 338 P2d 665 (1959)	7-57, 14-12
<i>Southwest Forest Industries v. Anders</i> , 299 Or 205, 701 P2d 432 (1985)	5-8
<i>Southwest Forest Indus., Inc. v. Vanply, Inc.</i> , 43 Or App 347, 602 P2d 1113 (1979).....	7-57, 14-12
<i>Spady v. Hawkins</i> , 155 Or App 454, 963 P2d 125 (1998).....	6-6

Table of Cases (continued)

<i>Spiess v. White</i> , 172 Or App 36, 17 P3d 568 (2001).....	11-11
<i>Spirit Partners, LP v. Stoel Rives LLP</i> , 212 Or App 295, 157 P3d 1194 (2007).....	2-61
<i>Sponseller v. Meltebeke</i> , 280 Or 361, 570 P2d 974 (1977)	14-24, 15-19
<i>State v. Chatfield</i> , 148 Or App 13, 939 P2d 55 (1997).....	2-21
<i>State v. Gaines</i> , 346 Or 160, 206 P3d 1042 (2009)	2-38, 7-59
<i>State v. Mai</i> , 294 Or 269, 656 P2d 315 (1982)	3-5
<i>State v. Thompson</i> , 257 Or App 336, 306 P3d 731 (2013).....	3-7
<i>State v. Vanderburg</i> , 98 Or App 428, 781 P2d 1216 (1989).....	2-63
<i>State ex rel. Adult & Family Servs. Div. v. Bradley</i> , 295 Or 216, 666 P2d 249 (1983)	4-15
<i>State ex rel. Adult & Family Servs. Div. v. Tuttle</i> , 304 Or 270, 744 P2d 990 (1987)	4-15
<i>State ex rel. Aetna Bus. Credit, Inc. v. Davis</i> , 291 Or 369, 631 P2d 337 (1981)	11-20
<i>State ex rel. Keisling v. Norblad</i> , 317 Or 615, 860 P2d 241 (1993)	2-47
<i>State ex rel. Marbet v. Keisling</i> , 314 Or 235, 838 P2d 585 (1992)	5-10
<i>State ex rel. Nilsen v. Ben Jacques Chevrolet Buick, Inc.</i> , 16 Or App 552, 520 P2d 366 (1974).....	8-22
<i>State ex rel. Stadter v. Patterson</i> , 197 Or 1, 251 P2d 123 (1952)	2-23
<i>Stephens v. Bohlman</i> , 314 Or 344, 838 P2d 600 (1992)	6-17
<i>Stevens v. Bispham</i> , 316 Or 221, 851 P2d 556 (1993)	7-18, 7-19, 7-20
<i>Stevens v. Scanlon</i> , 248 Or 229, 430 P2d 1019 (1967)	2-43
<i>Straight Grain Builders v. Track N' Trail</i> , 93 Or App 86, 760 P2d 1350 (1988).....	2-61
<i>Strate v. A-1 Contractors</i> , 520 US 438, 117 S Ct 1404, 137 L Ed 2d 661 (1997).....	7-51

Table of Cases (continued)

Stricklin v. Soued,
147 Or App 399, 936 P2d 398 (1997)..... 2-61

Stull v. Hoke,
141 Or App 150, 917 P2d 69 (1996)..... 7-13

Stupek v. Wyle Laboratories Corp.,
327 Or 433, 963 P2d 678 (1998)2-21, 8-8, 8-23

Sun Solutions, Inc. v. Brandt,
300 Or 317, 709 P2d 1079 (1985) 17-19

Sunshine Dairy v. Jolly Joan,
234 Or 84, 380 P2d 637 (1963) 11-9, 14-4

T.L. ex rel. Lowry v. Sherwood Charter School,
No 03:13-CV-01562-HZ, WL 897123 (D Or March 6, 2014) 8-11

Taylor v. Regents of Univ. of California.,
993 F2d 710 (9th Cir 1993)8-13, 8-20

Te-Ta-Ma Truth Found. Family of Uri, Inc. v. Vaughan,
114 Or App 448, 835 P2d 938 (1992)..... 2-43

Tharp v. Jackson,
85 Or 78, 165 P 585 (1917) 14-6

Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng’g,
476 US 877, 106 S Ct 2305, 90 L Ed 2d 881 (1986)..... 7-52

Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng’g, P.C.,
467 US 138, 104 S Ct 2267, 81 L Ed 2d 113 (1984)..... 7-52

Top Serv. Body Shop, Inc. v. Allstate Ins. Co.,
283 Or 201, 582 P2d 1365 (1978) 7-18, 10-3

Toussie v. United States,
397 US 112, 90 S Ct 858, 25 L Ed 2d 156 (1970)..... 3-5

Tualatin Valley Builders Supply, Inc. v. TMT Homes of Oregon, Inc.,
179 Or App 575, 41 P3d 429 (2002)..... 17-24

Tulsa Prof’l Collection Servs., Inc. v. Pope,
485 US 478, 108 S Ct 1340, 99 L Ed 2d 565 (1988)..... 6-20

Twombly v. Wulf,
258 Or 188, 482 P2d 166 (1971) 11-52

TwoRivers v. Lewis,
174 F3d 987 (9th Cir 1999) 8-13

Tyree v. Tyree,
116 Or App 317, 840 P2d 1378 (1992)..... 2-18, 2-22, 2-66, 17-16

Unifund CCR Partners v. Deboer,
249 Or App 136, 277 P3d 562 (2012)..... 2-62

Unifund CCR Partners v. Kelley,
240 Or App 23, 245 P3d 694 (2010)..... 2-58

Table of Cases (continued)

<i>United Pac. Ins. Co. v. Stanford</i> , 486 F2d 556 (9th Cir 1973)	11-51
<i>United States v. Bailey</i> , 444 US 394, 100 S Ct 624, 62 L Ed 2d 575 (1980).....	3-5
<i>United States v. James</i> , 980 F2d 1314 (9th Cir 1992)	7-48
<i>United States v. Moreland</i> , 622 F3d 1147 (9th Cir 2010)	3-7
<i>U. S. Nat. Bank of Oregon v. Davies</i> , 274 Or 663, 548 P2d 966 (1976)	7-18, 7-19, 11-13
<i>Urbick v. Suburban Med. Clinic, Inc.</i> , 141 Or App 452, 918 P2d 453 (1996).....	2-37, 7-9, 7-23, 7-27, 7-55, 7-58, 7-60
<i>Van Wormer v. City of Salem</i> , 309 Or 404, 788 P2d 443 (1990)	6-17
<i>Vega v. Farmers Ins. Co. of Oregon</i> , 134 Or App 372, 895 P2d 337 (1995).....	14-6
<i>Vega v. Farmers Ins. Co. of Oregon</i> , 323 Or 291, 918 P2d 95 (1996)	16-4
<i>Vollertsen v. Lamb</i> , 302 Or 489, 732 P2d 486 (1987)	15-7
<i>Wadsworth Plumbing & Heating Co., Inc. v. Tollycraft Corp.</i> , 277 Or 433, 560 P2d 1080 (1977)	14-24
<i>Waldner v. Stephens</i> , 345 Or 526, 200 P3d 556 (2008)	15-8
<i>Walters v. Hobbs</i> , 176 Or App 194, 30 P3d 1214 (2001).....	2-30
<i>Warren v. Ruffcorn</i> , No CIV.00-0721-HA, WL 34043449 (D Or Sept 18, 2001)	14-5
<i>Washington Cnty. v. Gunther</i> , 452 US 161, 101 S Ct 2242, 68 L Ed 2d 751 (1981).....	8-17
<i>Waxman v. Waxman & Assoc., Inc.</i> , 224 Or App 499, 198 P3d 445 (2008).....	2-37, 7-9, 7-58, 14-6, 14-7, 14-8, 15-17, 15-18
<i>Waybrant v. Clackamas Cnty.</i> , 54 Or App 740, 635 P2d 1365 (1981).....	2-31
<i>Webster v. Harmon</i> , 205 Or App 196, 134 P3d 1012 (2006).....	2-21
<i>Welch v. Bancorp Mgmt. Advisors, Inc.</i> , 296 Or 208, 675 P2d 172 (1983)	2-30, 2-31

Table of Cases (continued)

<i>W. Feed Co. v. Heidloff</i> , 230 Or 324, 370 P2d 612 (1962)	14-7
<i>Weston v. Camp's Lumber & Bldg. Supply, Inc.</i> , 205 Or App 347, 135 P3d 331 (2006).....	7-30, 14-23
<i>White v. Gurnsey</i> , 48 Or App 931, 618 P2d 975 (1980).....	7-15
<i>White v. Pac. Tel. & Tel. Co.</i> , 168 Or 371, 123 P2d 193 (1942)	2-41, 2-42
<i>Whittington v. Davis</i> , 221 Or 209, 350 P2d 913 (1960)	2-34
<i>Wilkinson v. Pub. Employees Ret. Bd.</i> , 188 Or App 97, 69 P3d 1266 (2003).....	2-29
<i>Wills v. Nehalem Coal Co.</i> , 52 Or 70, 96 P 528 (1908)	14-13
<i>Wilson v. Garcia</i> , 471 US 261, 105 S Ct 1938, 85 L Ed 2d 254 (1985).....	8-13
<i>Withers v. Milbank</i> , 67 Or App 475, 678 P2d 770 (1984).....	7-18
<i>Wood v. James W. Fowler Co.</i> , 168 Or App 308, 7 P3d 577 (2000).....	2-60
<i>Woodruff v. Ashcraft</i> , 263 Or 547, 503 P2d 472 (1972)	14-11, 14-12, 14-13, 14-14
<i>Workman v. Rajneesh Found. Int'l</i> , 84 Or App 226, 733 P2d 908 (1987).....	7-15
<i>Worthington v. Estate of Davis</i> , 250 Or App 755, 282 P3d 895 (2012).....	2-31
<i>Wright v. Hage</i> , 214 Or 400, 330 P2d 342 (1958)	2-48
<i>Wright v. Osborne</i> , 151 Or App 466, 949 P2d 321 (1997).....	2-35
<i>Wright v. State Farm Mut. Auto. Ins. Co.</i> , 223 Or App 357, 196 P3d 1000 (2008).....	2-32, 16-4
<i>Zehr v. Haugen</i> , 318 Or 647, 871 P2d 1006 (1994)	14-17
<i>Zelig v. Blue Point Oyster Co.</i> , 61 Or 535, 113 P 852 (1911)	2-23
<i>Zimmerman v. Allstate Property and Cas. Ins. Co.</i> , 354 Or 271, 311 P3d 497 (2013)	16-6
<i>Zimmerman v. Cambridge Credit Counseling Corp.</i> , 322 F Supp 2d 95 (D Mass 2004).....	12-10

Table of Cases (continued)

Zimmerman v. Oregon Dep't of Justice,
170 F3d 1169 (9th Cir 1999) 8-18

SUBJECT INDEX

References are to section numbers in the 2014 edition of OREGON STATUTORY TIME LIMITATIONS.

ABANDONED PROPERTY
See LOST, UNCLAIMED, OR
ABANDONED PROPERTY

Sale of goods (UCC) actions, 11.1B(2),
11.1C
Tolling, 11.1B(1)

ABATEMENT OF ACTIONS
Death of party, 6.3A(3)

ADMINISTRATIVE ORDERS
Appeals, 5.1G

ABDUCTIONS
Minors, 4.13

ADMINISTRATORS OF ESTATES
See PERSONAL REPRESENTATIVES

ABSENT PERSONS
Decedents' estates, 6.6U
Failure to appear. *See* APPEARANCES

ADOPTION PROCEEDINGS
Finality of adoption, 4.9H
Grandparent-visitation petitions, 4.9G
Hearings, 4.9C
Jurisdiction, 4.9I
Motion for judgment of nonpaternity, 4.9E
Objections, 4.9F
Placement report, 4.9B
Service of documents on DHS, 4.9A
Statute of limitations, 4.9J

ABUSE
Disabilities, persons with. *See* DISABLED
PERSON ABUSE
Domestic abuse. *See* FAMILY ABUSE
Elderly persons. *See* ELDER ABUSE
Sexual abuse. *See* SEXUAL ABUSE
Vulnerable persons, 6.2C

ADVERSE POSSESSION
Actions, 15.3B(1)
Overview of, 15.3B(1)
Statute of limitations, 15.3B(2)
Tenants in common, 15.3B(3)

ACCOUNT/ACCOUNT STATED
Accrual of actions, 11.1B(1),
14.2D(3)
Conservators, 6.1D
Definitions, 11.1A, 14.1
Distinguished, 11.1A, 14.1
Overview of, 14.1
Personal representatives, 6.6H, 6.6Q
References, 11.1D
Sale of goods (UCC) actions, 11.1B(2),
11.1C
Sheriff's sales, redemption of property at,
13.6D(7)
Statute of limitations
Contract actions, 14.2A(3)
Overview, 11.1B(1)

AFFIRMATIVE DEFENSES
Statute of limitations, 2.6A(1)

AGED PERSONS
See ELDERLY PERSONS

AGRICULTURAL COOPERATIVES
Cooperative corporations, 9.2L

AGRICULTURAL PRODUCE LIEN
Attachment of, 18.4A(1)

Subject Index (continued)

Duration of, 18.4A(2)
Expiration of, 18.4A(4)
Extension of, 18.4A(3)
Payment-in-full certificate, 18.4A(5)

AGRICULTURAL SERVICE LIEN

Attachment of, 18.6E(1)
Foreclosures
 Certificate of discharge, 18.6E(3)(b)
 Commencement of action, 18.6E(3)(a)
Notice of lien claim, 18.6E(2)

ALCOHOL SERVERS' LIABILITY

See LIQUOR LIABILITY

ALTERNATIVE DISPUTE RESOLUTION

Arbitration. *See* ARBITRATION
Mediation. *See* MEDIATION
Overview of, 1.1

AMBULANCE SERVICES

Liens, 18.4D(1)

AMENDED PLEADINGS

Dissolution of marriage, 4.2C
Overview of, 2.2A(2)(b)
Responses to, 2.2A(2)(b)

AMERICANS WITH DISABILITIES ACT

Accommodations needed, notice of,
 2.13H(8)

ANIMALS

Lien foreclosure, retention before,
 18.7C(1)(b)

ANNUITY CONTRACT FUNDS

Lost, unclaimed, or abandoned property,
 11.7F(3)

ANNULMENT

See DISSOLUTION OF MARRIAGE

ANTITRUST LAW

Investigative demands, 10.1A
Overview of, 12.5
References, 10.1C
Statute of limitations
 Attorney General, actions by, 10.1B(1)
 Private actions, 10.1B(2)

APPEAL OR REVIEW

Administrative orders, 5.1G
Appellate Commissioner's decisions,
 reconsideration of, 5.1I
Arbitration awards, 1.2J, 1.3K(3)
Attorney fees, 2.16B, 5.1J
Briefs
 Appellant's answering brief (cross-
 appeals), 5.1D(3)
 Appellant's opening brief, 5.1D(1)
 Appellant's reply brief, 5.1D(3)
 Respondent's answering brief, 5.1D(2)
Computation of time, 5.1K
Costs and disbursements
 Generally, 2.16B, 5.1J
 Justice court appeals, 2.4H
 Undertakings on appeal, 5.1B
Court of appeals decisions, 5.1E, 5.1F
Criminal appeals, 5.1A(2)
Declaratory judgments, 2.10C
Dismissal of, 5.1D(4)
Employee group healthcare claims,
 8.4E(1)(b)
Estate taxes, 6.6K
Extensions of time, 5.1I
Habeas corpus, 5.2D(5)
Justice court appeals, 2.4H
Mail service, 5.1L
Mandamus judgments, 5.2B(6)
Mandatory arbitration appeals, 1.3K(3)
Motions, 5.1I
Notice of appeal
 Civil appeals, 5.1A(1)
 Criminal appeals, 5.1A(2)
 Justice court judgments, 2.4H
 Postconviction relief, 5.1A(3)

Occupational safety and health violations, 8.2H(3)
Postconviction relief, 3.7C, 5.1A(3)
References, 5.1M
Refiling of actions after, 2.8B(5)
Relief from judgment pending, 2.14B(5)
Small claims (circuit court), 2.5G
Summary determinations, 5.1H
Transcript below, 5.1C
Undertakings, 5.1B
Unemployment compensation. *See* UNEMPLOYMENT INSURANCE BENEFITS
Workers' compensation. *See* WORKERS' COMPENSATION
Writs of review, judgments on, 5.2A(5)

APPEARANCES

Failure to appear
 Defendant's failure, 2.13H(2)
 Dismissal of action, 2.2H(2)(b)
Guardians *ad litem*, 6.1E
Justice courts, 2.4B

APPOINTMENT OF COUNSEL

Juvenile proceedings, 4.14C
Uniform Trial Court Rules, 2.13C(2)

ARBITRATION

Agreements
 Ambiguous clauses, 1.2C
 Compelling arbitration pursuant to, 1.2B
Appeals, 1.2J, 1.3K(3)
Awards
 Challenging, 1.2H
 Confirmation of, 1.2G
 Correcting, 1.2F
 Judgments, 1.2I
 Mandatory court arbitration program, 1.3K
 Modifying, 1.2F
Commencement of actions, 1.2A
Compelling pursuant to agreement, 1.2B

Construction Contractors Board
 complaints
 Commercial construction complaints, 17.1G(2)
 Residential construction complaints, 17.1F(1) to 17.1F(3)
Judgments, 1.2I, 1.3K(3)
Mandatory court arbitration program
 Appeals, 1.3K(3)
 Applicable rules, 1.3A
 Appointment of arbitrator, 1.3E
 Arbitrator's fee, 1.3F
 Attorney fees, 1.3K(5)
 Awards, 1.3K, 1.3K(2)
 Challenging awards, 1.3K(2)
 Costs, 1.3K(5)
 Dissolution cases, 1.3K(4)
 Documentary evidence, 1.3J
 Entry of judgment, 1.3K(3)
 Exemption, motion for, 1.3D
 Notice of hearing, 1.3I
 Pending motions, consideration of, 1.3C
 Postponements or continuances, 1.3G
 Prehearing statement of proof, 1.3H
 Scheduling the hearing, 1.3G
 Transfer of case to arbitration, 1.3B
 Trial *de novo* requests, 1.3K(2)
Public employee labor disputes, 8.4A(1), 8.4A(2)
Stay of judicial proceeding, 1.2D
Subpoenas, 1.2E
Workers' compensation, 8.3I(10)

ARCHITECTS

Actions against, 15.3E(4)
Contract actions against, 14.2I(3)(b)
Landscape. *See* LANDSCAPE ARCHITECTS/PROFESSIONALS
Licenses, 17.4C, 17.4D

ARREST

False arrest, 7.9

Subject Index (continued)

“ART TRANSACTIONS”

Secured transactions, 11.15I(2)

ASBESTOS

Products liability actions, 7.16F(1),
7.28B(8)(g)

ASSAULT AND BATTERY

Counterclaims, 7.6B

References, 7.6C

Statute of limitations

Counterclaims, 7.6B

General rule, 7.4B, 7.6A

ASSIGNMENTS

Personal property, 11.5

Secured transactions, 11.15N

ATTACHMENT

Justice court proceedings, 2.4G

Prejudgment. *See* PREJUDGMENT

ATTACHMENT

ATTORNEY FEES

Appeals, 5.1J

Appellate court proceedings, 2.16B

Dishonored checks, 11.4

Innkeeper’s lien, guest’s legal fees with
respect to, 18.7D(3)

Insurance claims, 16.6

Judgments, 2.16A(4)

Lien for. *See* ATTORNEY LIENS

Mandatory arbitration proceedings,
1.3K(5)

Objections

Appellate proceedings, 5.1J

Generally, 2.16A(3), 2.16B(2)

Pleadings, 2.16A(1)

References, 2.16C

Sale-of-goods warranties, breach of,
12.7A(2)(b)

Sales warranty actions, 14.3A(6)(c)

Statement of, 2.16A(2)

ATTORNEY LIENS

Charging lien

Definition of, 18.5A

Money judgments, 18.5C(2)

Overview of, 18.5C(1)

Personal property, judgment for
possession of, 18.5C(3)

Real property, judgment for possession
of, 18.5C(4)

References, 18.5C(5)

Money judgments, 18.5C(2)

Retaining lien

Definition of, 18.5A

Discharge of, 18.5B(3)

Effective date, 18.5B(2)

Overview of, 18.5B(1)

Types of, 18.5A

ATTORNEYS

Abuse cases

Disabled person abuse, 6.2A

Elder abuse, 6.2A

Address changes, 2.13A

Appointment of counsel

Juvenile proceedings, 4.14C

Uniform Trial Court Rules,
2.13C(2)

Death of, 6.3D

Failure to retain, refiling of action due to,
2.8B(3)

Malpractice. *See* LEGAL
MALPRACTICE

Out-of-state counsel, 2.13C(3)

Substitution of, 2.13C(1)

Telephone number changes, 2.13A

Uniform Trial Court Rules

Appointment of counsel,
2.13C(2)

Out-of-state counsel, 2.13C(3)

Substitution of counsel, 2.13C(1)

AUCTIONS

Sale of goods (UCC), 14.3A(4)

BAD CHECKS

See BANK DEPOSITS AND
COLLECTIONS

BAILMENTS

Overview of, 11.7E
Perishable property, 11.7E(3)

**BANK DEPOSITS AND
COLLECTIONS**

Alterations, 14.3C(6)
Certificates of deposit, 14.3B(5)
Death of customer, 14.3C(5)
Dishonor of note/draft
 Checks, 11.4
 Notice of dishonor, 14.3C(3)(b),
 14.3C(3)(c)
 Overview of, 14.3C(3)(a)
Forgery, 14.3C(6)
Incompetence of customer, 14.3C(5)
Presentment, 14.3C(2)
Statute of limitations, 14.3C(1)
Stop payment orders, 14.3C(4)
Unauthorized endorsements/signatures,
 14.3C(6)

BANKRUPTCY CASES

Administrative claims, 11.18E(15)
Automatic stay, motion for relief from,
 11.18E(17)
Claims of creditors
 Administrative claims, 11.18E(15)
 Construction lien claims, 11.18E(16)
 Little Miller Act bond claims,
 11.18E(16)
 Miller Act bond claims, 11.18E(16)
 Notice of time to file, 11.18E(10)
 Proof of claims, *below*
 Reclamation claims, 11.18E(14)
 Rent claims, *below*
Construction contractors, filings by, 17.1J
Construction lien claims, 11.18E(16)
“Constructive fraudulent transfers,”
 11.18A(3)
Credit-counseling requirement, 11.18D

Creditors’ rights
 After case filed, 11.18E
 Before case filed. Creditors’ rights
 before case filed, *below*
 Overview of, 11.18
Creditors’ rights before case filed
 “Constructive fraudulent transfers,”
 11.18A(3)
 Defrauding creditors, 11.18A(2)
 Delaying creditors, 11.18A(2)
 Hindering creditors, 11.18A(2)
 Insider preferences, 11.18A(4)
 Noninsider preferences, 11.18A(5)
 Prior bankruptcy discharges, 11.18A(1)
 Statute of limitations on actions seeking
 to avoid prepetition transfers,
 11.18A(6)
Debtor’s § 521 statement of intent,
 enforcement of, 11.18E(9)
Debtor’s postpetition transfers
 Debtor-in-possession actions to
 recover, 11.18E(3)
 Trustee-actions to recover, 11.18E(3)
Debtor’s prepetition transfers
 “Constructive fraudulent transfers,”
 11.18A(3)
 Insider transfers, 11.18A(4)
 Noninsider transfers, 11.18A(5)
 Statute of limitations, 11.18A(6)
Defrauding creditors, 11.18A(2)
Delaying creditors, 11.18A(2)
Denial of discharge, action for, 11.18E(7)
Discharge of debtor
 Advances exceeding \$925 in value,
 11.18C
 Denial of discharge, action for,
 11.18E(7)
 Luxury goods exceeding \$650 in value,
 11.18C
 Nondischargeability of debts, action
 challenging, 11.18E(7)
 Order for relief, 11.18E(1)
Fraud and deceit
 “Constructive fraudulent transfers,”
 11.18A(3)

Subject Index (continued)

Creditors' rights before case filed,
11.18A(2)
Hindering creditors, 11.18A(2)
Insider preferences, 11.18A(4)
Involuntary petitions, 11.18E(2)
Leases. Nonresidential leases, *below*
Little Miller Act bond claims,
11.18E(16)
Meeting of creditors, date first set for,
11.18E(4)
Miller Act bond claims, 11.18E(16)
Nondischargeability of debts, action
challenging, 11.18E(7)
Noninsider preferences, 11.18A(5)
Nonresidential leases
Assumption of, 11.18E(12)
Rejection of, 11.18E(12)
Objections to debtor's claimed
exemptions, 11.18E(4)
Order for relief, 11.18E(1)
Preferences
Insider preferences, 11.18A(4)
Noninsider preferences, 11.18A(5)
Prior bankruptcy discharges, 11.18A(1)
Proof of claims
Filing of, 11.18E(8)
Response to objections to, 11.18E(11)
Reclamation claims, 11.18E(14)
Rent claims
Administrative-rent claim, 11.18E(13)
Forward-rent claim, cap on, 11.18E(13)
Resources, 11.18F
Single-asset real estate cases, 11.18E(18)
Statute of limitations, extension of,
2.6D(2), 2.6D(3)
Stays, 2.13H(7)
Transfers by debtors
Postpetition. Debtor's postpetition
transfers, *above*
Prepetition. Debtor's prepetition
transfers, *above*
Venue, 11.18B

BATTERY
See ASSAULT AND BATTERY

BILLS OF LADING
Carrier's lien, 11.14B(3)

BLOOD TESTS
Paternity actions, 4.9L, 4.9M

BLUE SKY LAWS
See SECURITIES LAW
CLAIMS/VIOLATIONS

BONDS, SECURITY
Appeals, 5.1B
Conservator's bond, cancellation of, 6.1D
Construction complaints. *See*
CONSTRUCTION CONTRACTORS
BOARD COMPLAINTS
Construction liens. *See* CONSTRUCTION
LIENS
Public construction projects, 17.2
References, 11.3C
Sureties. *See* SURETIES
Writs of review, 5.2A(2)

BREAST IMPLANTS
Medical/dental malpractice, 7.14A(3)
Products liability
Statute of limitations, 7.16F(2)
Statute of ultimate repose, 7.16F(2),
7.28B(8)(f)
Statutes of ultimate repose
Nonproducts-liability actions, 7.28B(7)
Products-liability actions, 7.16F(2),
7.28B(8)(f)

BRIEFS
Appellate. *See* APPEAL OR REVIEW
Mandamus in Supreme Court, 5.2C(2)

BUSINESS CORPORATIONS
See CORPORATIONS

BUSINESS ORGANIZATIONS
Corporations. *See* CORPORATIONS
Investment securities. *See* INVESTMENT
SECURITIES

LLCs. *See* LIMITED LIABILITY COMPANIES

LLPs. *See* PARTNERSHIPS/LIMITED LIABILITY PARTNERSHIPS

LPs. *See* LIMITED PARTNERSHIPS

Partnerships. *See* PARTNERSHIPS/LIMITED LIABILITY PARTNERSHIPS

CARRIERS

Liens, 11.14B(3)

CASE AT ISSUE

When case deemed to be at issue, 2.13H(3)

CASHIER'S CHECKS

Actions to enforce obligations on, 14.3B(4)

CCB

See CONSTRUCTION CONTRACTORS BOARD

CCB COMPLAINTS

See CONSTRUCTION CONTRACTORS BOARD COMPLAINTS

CERTIFICATES OF DEPOSIT

Commercial paper, 14.3B(5)

CERTIFIED CHECKS

Actions to enforce obligations on, 14.3B(4)

CHANGE OF VENUE

Justice courts, 2.4F

CHATTEL LIENS (NONPOSSESSORY)

Agricultural service lien. *See* AGRICULTURAL SERVICE LIEN
Claim of, 18.6A
Discharge of, 18.6C, 18.6D(2)

Foreclosure sales

Certificate of lien satisfaction, 18.6D(3)

Commencement of action, 18.6D(1)

Discharge of lien before sale, 18.6D(2)

Sales proceeds, 18.6D(4)

Notice of claim, 18.6A, 18.6B

References, 18.6F

CHATTEL LIENS (POSSESSORY)

Attachment of, 18.7B

Foreclosure sales

Notice requirements, 15.1A(2) to 15.1A(6), 18.7C(3)

Retention of chattel before foreclosure, 18.7C(1)

Sales proceeds, 15.1A(7), 18.7C(4)

Storage charges/liens, 15.1A(2), 15.1A(3), 18.7C(2)

Waiting period, 15.1A(1)

Overview of, 15.1, 18.7A

CHECKS

See also COMMERCIAL PAPER

Cashier's checks, enforcement of obligations on, 14.3B(4)

Certified checks, enforcement of obligations on, 14.3B(4)

Dishonored checks, 11.4

Lost, unclaimed, or abandoned property, 11.7F(2)

Teller's checks, enforcement of obligations on, 14.3B(4)

Traveler's checks

Actions to enforce obligations on, 14.3B(4)

Lost, unclaimed, or abandoned property, 11.7F(2)

CHILD ABDUCTIONS

Overview of, 4.13

CHILD ABUSE CASES

See also FAMILY ABUSE

Statutes of ultimate repose, 2.7G(1)(c), 7.28C(2)(d)

Subject Index (continued)

CHILD CUSTODY

Abuse cases, 4.11D
Grandparent visitation, 4.9G
Joint custody, requests for, 4.3A
Modification of orders
 Immediate postjudgment orders, 4.7C
 Temporary status quo orders, 4.7D
Parenting time enforcement, 4.3C
Protective custody, 4.14A. *See also*
 JUVENILE PROCEEDINGS
Registered order of other state,
 challenging, 4.3B

CHILD SUPPORT

Child attending school
 Administrative support modifications, 4.4B
 Overview, 4.4A
Interstate enforcement, 4.4D
Judgment liens, 18.3A
Liens, 4.4F
Multiple orders of, 4.4C
Nonregistering party's challenge to order, 4.4E

CHOICE OF LAW

See also CONFLICT OF LAWS
Federal law, 7.24A

CHOSES IN ACTION

See PERSONAL PROPERTY

CIVIL FINES

See PENALTIES

CIVIL RIGHTS

See DISCRIMINATION

CLAIM AND DELIVERY

Definition of, 11.6C(1), 11.8B
Overview of, 11.6C(1)
Show-cause hearings, 11.6C(1)
Show-cause orders, 11.6C(1), 11.8B

COLLECTION OF DEBT

Attachment
 Justice court proceedings, 2.4G
 Prejudgment. *See* PREJUDGMENT
 ATTACHMENT
Foreclosures. *See* FORECLOSURES
Garnishment. *See* GARNISHMENT
Injured child's bills, 7.4D
Taxes
 Federal taxes, 18.8A
 State taxes. *See* TAX LIENS

COLLECTIVE BARGAINING

See LABOR LAW

COMMENCEMENT OF ACTIONS

Arbitration, 1.2A
Contract actions, 14.2B
Foreclosures
 Agricultural service lien, 18.6E(3)(a)
 Chattel liens (nonpossessory), 18.6D(1), 18.6E(3)(a)
 Residential trust deeds, 13.2
Insurance claims, 16.1D
Marital dissolution, summary procedure, 4.2F(1)
Mortgage/trust deed foreclosures, 13.2
New action after involuntary dismissal
 Application of rules, 2.8B
 General rules, 2.8A
 Overview of, 2.8
 References, 2.8C
Oregon Tort Claims Act. *See* OREGON TORT CLAIMS ACT
Overview of, 2.1A(1)
Small claims (circuit court), 2.5A
Statute of limitations, for purposes of, 2.1A(2)
Stays, effect of, 2.1B
Trusts, claims against, 6.7E(2)
Wrongful-death actions, 6.5A

COMMERCIAL CODE

See UNIFORM COMMERCIAL CODE

COMMERCIAL PAPER

Accepted draft (other than certified check), 14.3B(6)
Cashier's checks, 14.3B(4)
Certificates of deposit, 14.3B(5)
Certified checks, 14.3B(4)
Contribution actions, 14.3B(7)
Dishonor of note/draft
 Checks, 11.4
 Notice of dishonor, 14.3C(3)(b) to 14.3C(3)(c)
 Overview of, 14.3C(3)(a)
Indemnity/indemnification, 14.3B(7)
Note payable on a definite date, 14.3B(1)
Note payable on demand, 14.3B(2)
Teller's checks, 14.3B(4)
Traveler's checks, 14.3B(4)
Unaccepted drafts, 14.3B(3)

COMMON CARRIERS

Liens, 11.14B(3)

COMPLEX CASES

Overview of, 2.13H(5)

COMPUTATION OF TIME

Acts to be performed in Oregon state courts, 2.3C(2)
Appeals, 5.1K
Day of act
 Acts to be performed in Oregon state courts, 2.3C(2)
 First day, 2.3C(1)
 General rule, 2.3B
 Last day, 2.3C(1) to 2.3C(2)
E-mail service, 2.3G(2)
Fax service, 2.3B, 2.3G(2)
Governing law, 2.3A
Grain producer's lien, 18.4C(7)
Holidays, 2.3B, 2.3C(2), 2.3H
Leap years, 2.3D
Mail service
 After service, 2.2C
 Overview, 2.3B, 2.3G(2)
Methods of
 Application, 2.3E

Case law, 2.3E
 Overview, 2.3A
Months, 2.3I(2)
Oregon Tort Claims Act, 2.3F
Public office closed, 2.3B, 2.3G(1)
References, 2.3J
Saturdays, 2.3B, 2.3C(2)
Service of process/papers
 E-mail service, 2.3G(2)
 Fax service, 2.3B, 2.3G(2)
 Mail service, 2.3B, 2.3G(2)
 Public office closed, 2.3B, 2.3G(1)
Sundays, 2.3B, 2.3C(2)
Units of time, 2.3I
Years, 2.3D, 2.3I(3)

**CONCILIATION SERVICES,
COURT-EXERCISED**

Overview of, 4.2G(1)
Petition for, 4.2G(2)
Temporary orders, 4.2G(3)

CONDOMINIUMS

Conversion of rental units into, 15.2A(4)

CONFIDENTIAL INFORMATION

Family law cases, 2.13J(3)
Negligent release of, 7.8C(3)
Personal information in court records
 Already filed, information, 2.13J(2)
 Family law cases, 2.13J(3)
 Newly filed information, 2.13J(1)
 Overview, 2.13J(1)

CONFLICT OF LAWS

Erie doctrine, 7.24B
Federal law, 7.24A
Resources, 2.15C
Statute of limitations, 2.15A, 7.2
Uniform Conflict of Laws-Limitations Act (UCLLA), 2.15B

CONSENT

See INFORMED CONSENT

Subject Index (continued)

CONSERVATORS

Account/account stated, 6.1D
Bond cancellation, 6.1D
Claims against estate, 6.1D
Inventories, 6.1D
Medical/dental malpractice, 7.14B(2)(b)
Notice requirements, 6.1D
Objections, 6.1D
References, 6.1F
Tax returns, 6.1D
Vouchers for disbursements, 6.1D

CONSIGNMENTS

Perishable property, 11.7E(3)
Personal property, 11.7E
Secured transactions
 Fine art, 11.15I(2)
 Overview, 11.15I(1)

CONSORTIUM

Loss of, 7.27

CONSPIRACY TO DISCRIMINATE

Federal claims, 8.1G(1)(d)

CONSTRUCTION

Contractors Board. *See* CONSTRUCTION CONTRACTORS BOARD
Licensure/registration requirements
 Architects, 17.4C to 17.4D
 Boiler/pressure vessel contractors, 17.4C to 17.4D
 Compliance required for remedies, 17.4A
 Construction Contractors Board, 17.4B
 Electrical contractors, 17.4C to 17.4D
 Landscape contractors, 17.4C to 17.4D
 Plumbing contractors, 17.4C to 17.4D
Liens. *See* CONSTRUCTION LIENS
Miller Acts
 Federal Miller Act, 17.2B
 Oregon's Little Miller Act, 17.2A
Public construction projects
 Federal Miller Act, 17.2B
 Notice, receipt of, 17.2C
 Oregon's Little Miller Act, 17.2A

 Overview of, 17.2
 References, 17.2D
Registration requirements.
 Licensure/registration requirements, *above*

CONSTRUCTION CONTRACTORS BOARD

Authority of, 17.1A
Complaints. *See* CONSTRUCTION CONTRACTORS BOARD COMPLAINTS
Licensure/registration requirements, 17.4B

CONSTRUCTION CONTRACTORS BOARD COMPLAINTS

Allowable complaints, 17.1B
Arbitration
 Commercial construction complaints, 17.1G(2)
 Residential construction complaints, 17.1F(1) to 17.1F(3)
Bankruptcy of contractor, effect of, 17.1J
Bonds, security
 Commercial complaint process, 17.1H(3)
 Release bond or cash deposit, *below*
 Residential complaint process, 17.1H(2)
Cash deposit. Release bond or cash deposit, *below*
Commercial complaint process
 Actions in court, 17.1G(2)
 Arbitration, 17.1G(2)
 Bond rules, 17.1H(3)
 Notice of intent to file complaint, 17.1G(1)
 Overview of, 17.1G
 Payment of complaint, 17.1H(3)
Complainants, 17.1C
Contesting closed complaints, 17.1I
Filing of
 Complaints filed on or after July 1, 2017, 17.1K
 Late filings, 17.1I
 Time limitations, 17.1C

- Jurisdictional requirements, 17.1B
- Late filings, 17.1I
- Mediation
 - Commercial construction complaints, 17.1G(2)
 - Residential construction complaints, 17.1F(1), 17.1F(3)
- Notice of intent to file
 - Commercial construction complaints, 17.1G(1)
 - Requirements, 17.1D
- Overview of, 17.1A
- Payment of complaint
 - Commercial construction complaints, 17.1H(3)
 - Limitations, 17.1H(1)
 - Nonpayment by surety, 17.1H(4)
 - Overview of, 17.1H
 - Priority rules, 17.1H(1)
 - Residential construction complaints, 17.1H(2)
- References, 17.1L
- Residential complaint process
 - Actions commenced before completion of mediation, 17.1F(3)
 - Arbitration, 17.1F(1) to 17.1F(3)
 - Bond rules, 17.1H(2)
 - Mediation, 17.1F(1), 17.1F(3)
 - Overview of, 17.1F
 - Payment of complaint, 17.1H(2)
- Resolution processes
 - Commercial complaint process, *above*
 - Overview of, 17.1E
 - Residential complaint process, *above*
- Structures complained about, 17.1C
- Surety's payment of complaint. Payment of complaint, *above*
- Types of, 17.1C
- CONSTRUCTION LIENS**
- Actions to enforce, 17.3H(3)
- Bankruptcy claims, 11.18E(16)
- Bond to release. Release bond or cash deposit, *below*
- Cash deposit to release. Release bond or cash deposit, *below*
- Consumer indebtedness, 17.3F(4)
- Demands to release lien, 17.3H(2)(e), 17.3H(2)(f)
- Filing of
 - Notice, 17.3F(1)
 - Persons who may file liens, 17.3B
- Foreclosures
 - Deadline for suit, 17.3G
 - Demands to release lien, 17.3H(2)(e) to 17.3H(2)(f)
 - Notice of intent to foreclose, 17.3F(2) to 17.3F(3)
 - Reply to owner's demand for information, 17.3F(3)
- Negligence, 17.3H(3)
- Notice requirements
 - Consumer indebtedness, postlien notices, 17.3F(4)
 - Filing of lien, 17.3F(1)
 - Intent to foreclose, 17.3F(2) to 17.3F(3)
 - Persons who contract with owner, 17.3C(1)
 - Persons who did not contract with owner, 17.3C(2)
 - Postlien notices, 17.3F
 - Preclaim notice, 17.3C to 17.3D
 - Release bond or cash deposit, 17.3H(2)(b) to 17.3H(2)(c)
- Overview of, 17.3A, 18.4G
- Perfection of
 - "Ceased to provide" claims, 17.3E(1)
 - "Completion of construction" trigger for, 17.3E(2)
 - Deadlines, 17.3A, 17.3E
- Priority over mortgagees, 17.3D
- References, 17.3I
- Release bond or cash deposit
 - Adequacy, petition to determine, 17.3H(2)(d)
 - Affidavit, recordation of, 17.3H(2)(c)
 - Amount of, 17.3H(1)
 - Deadlines, 17.3H(2)
 - Demands to release lien, 17.3H(2)(e) to 17.3H(2)(f)
 - Effect of filing, 17.3H(1)
 - Filing of, 17.3H(2)(a)

Subject Index (continued)

- Notice requirements, 17.3H(2)(b) to 17.3H(2)(c)
- Overview of, 17.3H(1)
- Removal of. Release bond or cash deposit, *above*
- Residential property, 17.3C(1)(b)
- Statutory compliance required, 17.3A
- Zero-lot-line dwellings, 17.3C(1)(b)
- CONSTRUCTIVE TRUSTS**
- Overview of, 6.7B
- CONTINUANCE OF ACTIONS**
- Death of party
 - Action continued against personal representative, 6.3A(2)
 - Action continued by personal representative, 6.3A(1)
- Disability of party, 6.3B(1)
- CONTINUING CONTRACTS**
- Contract actions, 14.2E
- CONTINUING-TORT DOCTRINE**
- Intentional infliction of emotional distress, 7.11A(2), 7.26A(3)
- Medical/dental malpractice, 7.26A(2)(b)
- Negligence, 7.26A(2)
- Overview of, 7.26A(1)
- Public bodies, actions against, 7.26A(4)
- References, 7.26A(5)
- Statutes of ultimate repose, 7.26A(2)(c)
- CONTINUING-TREATMENT THEORY**
- Medical/dental malpractice, 7.14C
- CONTRACT ACTIONS**
- Account/account stated. *See* ACCOUNT/ACCOUNT STATED
- Accrual of action, 14.2D
- Actions not covered under Oregon law, 14.2I(12)
- Architects, against, 14.2I(3)(b)
- Commencement of actions, 14.2B
- Continuing contracts, 14.2E
- Damages, 14.2G
- Discovery rule, 14.2A(2), 14.2D(2), 14.2H
- Employment contracts
 - Breach-of-contract claims, 8.2E(1)
 - Noncompetition agreements, 8.2E(2)
 - Overtime/premium pay, action for, 14.2I(8)
- Engineers, against, 14.2I(3)(b)
- Fire insurance policy, action on, 14.2I(4)
- Fraudulent concealment, 14.2A(2), 14.2D(2)
- Garnishment, action relating to, 14.2I(11)
- Improvements to realty, actions arising from, 14.2I(3)
- Indemnity actions. *See* INDEMNITY/INDEMNIFICATION
- Independent acts, 14.2F
- Independent standard of care, when party owes, 14.2I(2)
- Intentional interference with contractual relations
 - Accrual of action, 7.12B, 10.2B
 - Discovery rule, 10.2A
 - References, 7.12C, 10.2C
 - Statute of limitations, 7.12A, 10.2A
- Land sale contracts, 15.3A
- Landscape architects, against, 14.2I(3)(b)
- Legal malpractice, 7.13C
- Mistake
 - Overview of, 14.2L(1)
 - References, 14.2L(2)
- Personal property, 14.2I(10)
- Property-related actions, 14.2I(10)
- Real property, 14.2I(10)
- Reformation, suit for, 14.2I(9), 14.2M
- Rental agreement, action arising under, 14.2I(7)
- Sale of goods (UCC), 14.2I(6)
- Sealed instruments entered into before August 13, 1965, 14.2I(5)
- Statute of limitations, 7.26D
 - Account, actions on, 14.2A(3)
 - Actions not covered under Oregon law, 14.2I(12)
 - Contract clauses specifying limitations period, 14.2I(1)

Exceptions, 14.2I
Fire insurance policy, action on,
14.2I(4)
Fraudulent concealment, effect of,
14.2A(2)
Garnishment, action relating to,
14.2I(11)
General rule, 14.2A(1)
Improvements to realty, actions arising
from, 14.2I(3)
Independent standard of care, when
party owes, 14.2I(2)
Overtime/premium pay under
employment agreement, action for,
14.2I(8)
Property-related actions, 14.2I(10)
References, 14.2I(13)
Reformation, suit for, 14.2I(9)
Rental agreement, action arising under,
14.2I(7)
Sale of goods (UCC), 14.2I(6)
Sealed instruments entered into before
August 13, 1965, 14.2I(5)
Tort-*versus*-contract issue, 14.2N
Statutes of ultimate repose, 14.20
Surveyors, against, 14.2I(3)(c)
Tort actions *versus*, 7.26D, 14.2N
UCC. *See* SALE OF GOODS (UCC)

CONTRIBUTION ACTIONS

Commercial paper, 14.3B(7)
Judgment debtors, contribution among,
7.26B(1)(c)
Tortfeasors, contribution among
Judgment, following, 7.26B(1)(a)
Judgment, nonexistence of, 7.26B(1)(b)

CONTROL SHARE ACQUISITIONS

Corporations, 9.4T

CONVERSION ACTIONS

Accrual of action, 7.7B
References, 7.7C
Secured transaction debtors, by, 11.15Q(1)
Statute of limitations, 7.7A

CONVERSION OF ENTITIES

Cooperative corporations, 9.2I
Limited liability companies, 9.1A(3)
Partnerships/limited liability partnerships,
9.1C(7)

CONVERSION OF RENTAL UNITS

Conversion into condominiums, 15.2A(4)

COOPERATIVE CORPORATIONS

Actions in the name of, 9.2E
Agricultural cooperatives, 9.2L
Annual reports, 9.2G
Articles of correction, 9.2A
Articles of incorporation, amendment of,
9.2H
Conversions, 9.2I
Directors and officers, 9.2D
Dissolutions, 9.2J
Documents, 9.2A
Manufactured dwelling parks, 9.2K
Meetings of shareholders, 9.2B
Membership fee agreements, 9.2C
Mergers, 9.2I
Names, reservation of, 9.2A
Notice of meetings, 9.2B
References, 9.2M
Subscription agreements, 9.2C
Unclaimed distributions, 9.2F
Voting by shareholders, 9.2B

CORPORATIONS

Amendment of articles of incorporation,
9.4K
Annual reports, 9.4S
Articles of correction, 9.4A
Business Corporation Act, application of,
9.4
Close-corporation shareholder lawsuit,
forced share sale after initiation of,
9.4V
Control share acquisitions, 9.4T
Cooperative. *See* COOPERATIVE
CORPORATIONS
Directors' meetings, 9.4J

Subject Index (continued)

- Dissenters' rights, 9.4M
- Dissolutions
- Administrative dissolution, 9.4O
 - Disposition of assets, 9.4P
 - Voluntary dissolution, 9.4N
- Documents, 9.4A
- Existence, beginning of, 9.4C
- Foreign corporations, 9.4Q
- Incorporation of, 9.4C
- Interested shareholders, 9.4U
- Meetings of directors, 9.4J
- Meetings of shareholders, 9.4G
- Mergers, 9.4L
- Nonprofit. *See* NONPROFIT
- CORPORATIONS**
- Notice requirements
- Overview of, 9.4B
 - Shareholders' meetings, 9.4G(2)
- PCs. *See* PROFESSIONAL
- CORPORATIONS**
- Proxy authorizations, 9.4G(4)
- Records of, 9.4R
- References, 9.4W
- Registered agents, 9.4D
- Share exchanges, 9.4L
- Shareholders
- Action without meeting, 9.4G(6)
 - Agreements, 9.4I
 - Close-corporation shareholder lawsuit, forced share sale after initiation of, 9.4V
 - Court-ordered meetings, 9.4G(5)
 - Dissenters' rights, 9.4M
 - Interested shareholders, 9.4U
 - Meetings of, 9.4G
 - Preemptive rights of, 9.4F
 - Proxies, 9.4G(4)
 - Voting trusts, 9.4H
- Subscription agreements, 9.4E
- Voting trusts, 9.4H
- COSTS AND DISBURSEMENTS**
- Appeals, 5.1J
- Justice court appeals, 2.4H
 - Undertakings on, 5.1B
- Appellate court proceedings, 2.16B
- Attorney fees. *See* ATTORNEY FEES
- Judgments, 2.16A(4)
- Mandatory arbitration proceedings, 1.3K(5)
- Objections, 2.16A(3), 2.16B(2)
- References, 2.16C
- Settlement, failure to give timely notice of, 2.13D(5)
- Statement of, 2.16A(2)
- COUNTERCLAIMS**
- Assault and battery, 7.6B
- Debt collection practices, 12.4A
- Justice courts, outside jurisdictional limits of, 2.4C
- Overview of, 2.2F, 2.11A, 2.11D
- Smalls claims (circuit court), outside jurisdictional limits of, 2.5D
- Statutes of limitations, 2.6A(6)
- COUNTY ORDINANCES**
- Fines, 3.4
- COURT MEDIATION PROGRAM**
- See* MEDIATION
- COURT RECORDS, PERSONAL INFORMATION IN**
- Already filed, information, 2.13J(2)
- Family law cases, 2.13J(3)
- Newly filed information, 2.13J(1)
- Overview, 2.13J(1)
- COX-2 INHIBITORS**
- Medical/dental malpractice, 7.14A(4)
- Products liability, 7.16F(4)
- CREDIT APPLICANTS**
- Discrimination against, 8.1G(3)
- CREDIT MEMOS**
- Lost, unclaimed, or abandoned property, 11.7G(4)

CREDIT REPAIR ORGANIZATIONS'

LIABILITY

References, 12.8B

Statute of limitations, 12.8A

CRIMES AND OFFENSES

Racketeering activity. *See*

RACKETEERING ACTIVITY

Statute of limitations

Federal felonies, 3.2D

Federal misdemeanors, 3.2D

State felonies, 3.2A

State misdemeanors, 3.2B

Violations, 3.2C

Victims

Compensation of. *See* CRIME

VICTIMS COMPENSATION

Restitution. *See* RESTITUTION

CRIME VICTIMS COMPENSATION

Applications for

Amended applications, 7.18D

Generally, 7.18A

Compensable crime, definition of, 7.18B

Eligibility for, 7.18C

Orders for, 7.18E

Overview of, 7.18

References, 7.18G

Review of orders, 7.18E

Workers' Compensation Board appeals,
7.18F

CRIMINAL CASES

See also CRIMES AND OFFENSES

Appeals, 5.1A(2)

Discovery, 3.3A

Forfeitures

Civil forfeiture, 3.6B

Criminal forfeiture, 3.6C

Overview, 3.6A

Judgments, expiration of, 18.2C(2)

Notice of dismissal, 3.3C

Pleas

Change in plea, 3.3C

Overview of, 3.3D

Postconviction relief. *See*

POSTCONVICTION RELIEF

Pretrial motions, 3.3B

Restitution

Federal restitution, 3.5B

State restitution, 3.5A

Sentencing enhancement, notice of, 3.3E

Statutes of limitations

Federal felonies, 3.2D

Federal misdemeanors, 3.2D

Forfeiture, action for, 3.6A

Overview, 3.1

Penalty, action for, 3.6A

State felonies, 3.2A

State misdemeanors, 3.2B

Violations, 3.2C

Trial dates, 3.3D

CROSS-CLAIMS

Overview of, 2.2F

CUSTODY OF CHILDREN

See CHILD CUSTODY

DAMAGE TO PROPERTY

See PROPERTY-DAMAGE CLAIMS

DAMAGES

Advance payments for

Insane persons, payments to, 2.7G(2)

Minors, payments to, 2.7G(2)

Statutes of limitations, suspension of,
2.6C

Statutes of ultimate repose, suspension
of, 2.7G(2)

Contract actions, 14.2G

Debt collection practices, 12.4A

Dishonored checks, 11.4

Nuisance actions, 15.3C(1)

Partner(s), wrongful dissociation of,
9.1C(5)(b)

Punitive damages

Notice of judgment, 2.13F(2)(c)

Proposed judgments, 2.13F(2)(b)

Subject Index (continued)

DEATH

Attorneys, 6.3D
Bank customers, 14.3C(5)
Employees, 7.22A(3)
Injured persons
 Commencement of action by personal representative, 7.22A(2)
 Continuance of action by personal representative, 7.22A(2)
 Employees, 7.22A(3)
 Wrongful death. *See* WRONGFUL DEATH
Parties. *See* PARTIES
Survival of actions, 7.22A(2). *See also* SURVIVAL OF ACTIONS
Wrongdoer's death, 7.22B
Wrongful death. *See* WRONGFUL DEATH

DEBT COLLECTION PRACTICES

Counterclaims, 12.4A
Damages, 12.4A
Injunctions, 12.4A
References, 12.4B
Statute of limitations, 12.4A

DEBTORS' ACTIONS

Statute of limitations, extension of, 2.6D(2)

DECEDENTS' ESTATES

Absent persons, 6.6U
Accountings, 6.6Q
Claims against estates
 Allowance of, 6.6N(2)
 Disallowance of, 6.6N(2), 6.6N(2)(c)
 Extension of time, 6.6N(1)
 Notice to potential claimants, 6.6D(4), 6.6O
 Presentation of, 6.6N(3)
 Search for claimants, 6.6D(4), 6.6O
 Small estates, 6.6L(6)
 Statute of limitations, 6.6N(1)
 Summary determination of disallowed claim, 6.6N(2)(c)

Unpaid claims, rescission of allowance of, 6.6N(2)(b)
Disclaimers, 6.6P
Elective share. *See* ELECTIVE SHARE OF SURVIVING SPOUSE
Escheated property, 6.6T
Gift tax return
 Federal law, 6.6R(4)(a)
 Filing returns, 6.6R(5)
 Oregon law, 6.6R(4)(b)
 Paying taxes, 6.6R(5)
Hearings
 Notice of, 6.6F
 Objections to, 6.6F
Income tax returns (estate)
 Federal law, 6.6R(2)(a)
 Filing returns, 6.6R(5)
 Oregon law, 6.6R(2)(b)
 Paying taxes, 6.6R(5)
Income tax returns (individual)
 Federal law, 6.6R(1)(a)
 Filing returns, 6.6R(5)
 Oregon law, 6.6R(1)(b)
 Paying taxes, 6.6R(5)
Information to devisees, heirs, and other persons, 6.6D(2)
Inventories, 6.6D(3)
Notice of hearing or other matter, 6.6F
Notice to interested persons/potential claimants
 Action against personal representative for failure to give/do, 6.6O
 Duty of personal representative, 6.6D(4)
 Overview, 6.6D(1)
Personal representatives. *See* PERSONAL REPRESENTATIVES
Probate commissioner's orders, modification of, 6.6G
References, 6.6W
Reopening of estate, 6.6S
Rule against perpetuities, 6.6V
Search for claimants
 Action against personal representative for failure to give/do, 6.6O

Duty of personal representative,
6.6D(4)

Small estates

- Affidavits, 6.6L(2)
- Claims against, 6.6L(6)
- Delivery of instruments, 6.6L(5)
- Overview of, 6.6L(1)
- Personal representative, failure to
appoint, 6.6L(7)
- Transfer of property to affiant, 6.6L(4)

Special administrators, 6.6B

Spousal support, 6.6E

Spouses

- Elective share. *See* ELECTIVE SHARE
OF SURVIVING SPOUSE
- Spousal support, 6.6E

Taxes

- Estate taxes. *See* ESTATE TAXES
- Gift taxes. *See* GIFT TAXES
- Income taxes. *See* INCOME TAXES

Wills. *See* WILLS

DECEIT

See FRAUD AND DECEIT

DECLARATORY JUDGMENTS

Appeals, 2.10C

Election-process challenges, 2.10B

Overview of, 2.10A

References, 2.10D

Uniform Declaratory Judgments Act,
2.10A

DEEDS OF TRUST

See MORTGAGES AND TRUST DEEDS

DEFAMATION

False light claims, 7.8C(1)

Libel or slander. *See* LIBEL OR
SLANDER

Title, 7.8B

DEFAULT JUDGMENTS

Motion to set aside, 2.14A(3)

Nonappearing party, against, 2.14A(2)

Notice of intent to apply for, 2.14A(1)

Setting aside

- Motion to set aside, 2.14A(3)
- Small claims (circuit court), 2.5E

DEFENSES

Affirmative defenses, 2.6A(1)

Refiled actions, 2.8A(d)

Statutes of limitations, 2.6A

DENTAL MALPRACTICE

See MEDICAL/DENTAL
MALPRACTICE

DEPOSITIONS

Interstate deposition instruments, 2.13E

Notice of taking, 2.9A(1)

Objections to, 2.9A(3)

Perpetuation of testimony, 2.9A(4)

Time for taking, 2.9A(1)

Transcription/recording

- Correction of, 2.9A(2)(b)
- Submission to witness, 2.9A(2)(a)

Written depositions, 2.9A(5)

DERIVATIVE SUITS

Nonprofit corporations, 9.3K

DESIGN PROFESSIONALS

Licenses, 17.4C, 17.4D

DISABILITIES, PERSONS WITH

Abuse of. *See* DISABLED PERSON
ABUSE

Discrimination against

- Civil actions, 8.1E(1)
- Educational discrimination, 8.1G(5)
- Employment discrimination, 8.1E(2),
8.1G(2)
- Federal claims, 8.1E(6), 8.1G(2) to
8.1G(3)
- Housing discrimination, 8.1E(4)
- Oregon Tort Claims Act, 8.1E(5)
- Overview of, 8.1E
- Public accommodation discrimination,
8.1E(3), 8.1G(3)
- Unlawful, 8.1E

Subject Index (continued)

IDEA claims, 8.1G(5)

Parties. *See* PARTIES

DISABLED PERSON ABUSE

Attorneys, 6.2A

Charges

Decision not to go to trial after filing,
6.2B

Decision to file, 6.2B

Civil actions, 6.2C

Ex parte hearings, 6.2A

Hearings

Ex parte hearings, 6.2A

Requests for, 6.2A

Time for, 6.2A

Investigations, 6.2B

Notice requirements, 6.2A

Petition for relief, 6.2A

Proof of service, 6.2A

References, 6.2E

Reporting requirements, 6.2B

DISCOVERY

Criminal cases, 3.3A

Depositions. *See* DEPOSITIONS

Production of documents

Health information records, 2.9C

Overview of, 2.9B

References, 2.9E

Requests for admissions

Overview of, 2.9D

Responses to, 2.9D

DISCOVERY RULE

Contract actions, 14.2A(2), 14.2D(2),
14.2H

Contractual relations, intentional
interference with, 10.2A

Economic relations, intentional
interference with, 10.2A

Employment discrimination, 8.1B(2)

Fraud and deceit, 7.10B

Intentional interference with

contractual/economic relations, 10.2A

Legal malpractice

Harm, 7.13D(2)(b)

Knowledge, 7.13D(2)(a)

Overview, 7.13D(2)

Libel or slander, 7.8D

Medical/dental malpractice, 7.14B(1)

Products liability, 7.28C

Securities violations

Actions against purchasers of securities,
10.5B(3)

Actions against sellers of securities,
10.5A(3)

Statutes of ultimate repose, 2.7E

Wrongful-death actions

Application to, 6.5B

Generally, 6.5B, 7.22A(1)

Public bodies, actions against, 6.5C(2)

DISCRIMINATION

Credit applicants, against, 8.1G(3)

Disabilities, persons with. *See*

DISABILITIES, PERSONS WITH

Education, in. *See* EDUCATIONAL

DISCRIMINATION

Employment, in. *See* EMPLOYMENT

DISCRIMINATION

Federal claims

Conspiracy to discriminate, 8.1G(1)(d)

Contract-based discrimination,
8.1G(1)(a)

Educational discrimination, 8.1G(5)

Employment discrimination, 8.1G(2)

Fair housing discrimination, 8.1G(4)

Housing discrimination, 8.1G(4)

Oregon's statute of limitations,
application of, 8.1G(1)

Overview of, 8.1G

Property-related discrimination,
8.1G(1)(b)

Public accommodation discrimination,
8.1G(3)

Public services discrimination,
8.1G(3)

"State action" discrimination,
8.1G(1)(c)

Housing, in. *See* HOUSING

DISCRIMINATION

Overview of, 8.1A

Public accommodations, in. *See* PUBLIC ACCOMMODATION DISCRIMINATION

References, 8.1H

“State action” discrimination, 8.1G(1)(c)

Types of, 8.1A

DISHONOR OF NOTE/DRAFT

Checks, 11.4

Notice of dishonor, 14.3C(3)(b) to 14.3C(3)(c)

Overview of, 14.3C(3)(a)

DISMISSAL OF ACTIONS

Appeals, 5.1D(4)

Involuntary dismissals

Commencement of new action after.
See COMMENCEMENT OF ACTIONS

Incomplete service, 2.2H(2)

Nonappearing defendants, 2.2H(2)(b)

Refiling of action, *below*

Statute of limitations, extension of, 2.6E

Motions, 2.2D(2)(b)

Refiling of action

Appeals, after, 2.8B(5)

Defenses in new action, 2.8A(d)

Failure to prosecute, 2.8B(2)

Failure to retain counsel, 2.8B(3)

Involuntary dismissal, after, 2.8A(1)

Jurisdiction lacking in original case, 2.8B(4)

New actions, 2.8A(3)

Number of refilings allowed, 2.8A(4)

References, 2.8C

Statute of limitations, 2.6A(7), 2.8A(2)

Voluntary dismissal, after, 2.8B(1)

Setting aside small claims court dismissals, 2.5E

Voluntary dismissals, 2.2H(1)

DISPOSITIONAL HEARINGS

Juvenile proceedings, 4.14H

DISSENTERS’ RIGHTS

Corporations, 9.4M

DISSOLUTION OF ENTITIES

Cooperative corporations, 9.2J

Corporations

Administrative dissolution, 9.4O

Disposition of assets, 9.4P

Voluntary dissolution, 9.4N

Limited liability companies

Administrative dissolution, 9.1A(8)

Disposition of assets, 9.1A(9)

Voluntary dissolution, 9.1A(7)

Lost, unclaimed, or abandoned property, 11.7F(4)

Nonprofit corporations

Claims against dissolved corporations, 9.3I

Generally, 9.3H

Partnerships/limited liability partnerships, 9.1C(6)

DISSOLUTION OF MARRIAGE

Amended pleadings, 4.2C

Assets/liabilities statement, 4.2B(3)

Court-exercised conciliation

Overview, 4.2G(1)

Petition for, 4.2G(2)

Temporary orders, 4.2G(3)

Exchange of documents/information

Assets/liabilities statement, 4.2B(3)

Overview, 4.2B

Statute, information required by, 4.2B(1)

Uniform Support Declaration, 4.2B(2)

Jurisdiction, 4.2A

Liens, 4.2E

Money awards, 4.2E(3)

Summary procedure

Answers, 4.2F(2)

Commencement of actions, 4.2F(1)

Overview of, 4.2F

Termination of date, 4.2D

Uniform Support Declaration, 4.2B(2)

Subject Index (continued)

DIVORCE

See DISSOLUTION OF MARRIAGE

DOCUMENTARY EVIDENCE

Mandatory arbitration proceedings, 1.3J

Production of documents

Health information records, 2.9C

Overview of, 2.9B

Workers' compensation, 8.3I(5)(a),
8.3I(5)(b)

DOCUMENTS OF TITLES

Missing documents, 11.14B(4)

DOMESTIC ABUSE

See FAMILY ABUSE

DRAM SHOP LIABILITY

See LIQUOR LIABILITY

E-MAIL SERVICE

Computation of time, 2.3G(2)

ECONOMIC RELATIONS, INTENTIONAL INTERFERENCE WITH

Accrual of action, 7.12B, 10.2B

Discovery rule, 10.2A

References, 7.12C, 10.2C

Statute of limitations, 7.12A, 10.2A

EDUCATIONAL DISCRIMINATION

Civil actions, 8.1F(2)

Disabilities, persons with, 8.1G(5)

Federal claims, 8.1G(5)

Oregon Tort Claims Act, 8.1F(1)

Sex-based, 8.1G(5)

ELDER ABUSE

Attorneys, 6.2A

Charges

Decision not to go to trial after filing,
6.2B

Decision to file, 6.2B

Civil actions, 6.2C

Ex parte hearings, 6.2A

Financial abuse, 6.2D, 7.19

Hearings

Ex parte hearings, 6.2A

Requests for, 6.2A

Time for, 6.2A

Investigations, 6.2B

Notice requirements, 6.2A

Petition for relief, 6.2A

Proof of service, 6.2A

References, 6.2E

Reporting requirements, 6.2B

ELDERLY PERSONS

Abuse. *See* ELDER ABUSE

Conservators

Account/account stated, 6.1D

Bond cancellation, 6.1D

Claims against estate, 6.1D

Inventories, 6.1D

Notice requirements, 6.1D

Objections, 6.1D

Tax returns, 6.1D

Vouchers for disbursements,
6.1D

Employment discrimination,
8.1G(2)

Financial abuse, 7.19

Guardians

Guardians *ad litem*, 6.1E

Notice requirements, 6.1B

Reports, 6.1B

Tax returns, 6.1B

Temporary guardians, 6.1C

Protective proceedings

Appointment of visitor, 6.1B to 6.1C

Conservators, 6.1D

Guardians, *above*

Notice requirements, 6.1A

Objections, 6.1A

Statement of intent to place person in
facility, 6.1A

Visitor's report, 6.1B to 6.1C

ELECTION-PROCESS CHALLENGES

Declaratory judgments, 2.10B

ELECTIVE SHARE OF SURVIVING SPOUSE

Manner of making election, 6.6M(2)
Motion or petition
 Filing of, 6.6M(2)
 Service of, 6.6M(2)
 Withdrawal of, 6.6M(3)
Overview of, 6.6M(1)
Service of process/papers, 6.6M(2)

ELECTRONICALLY FILED DOCUMENTS

Courtesy copies of, 2.13K(3)
Filing deadline, 2.13K(4)
Filing fees, 2.13K(1)
Multiple parties, 2.13K(5)
Resources, 2.13L
Retention of, 2.13K(6)
When accomplished, 2.13K(2)

EMOTIONAL DISTRESS, INFLICTION OF

See also INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
Continuing-tort doctrine, 7.26A(3)

EMPLOYEE BENEFIT PLANS

Claims for benefits
 Adverse disability benefit determinations, 8.4E(2)(b)
 Breach of fiduciary duty by plan administrator, 8.4E(2)(b)
 Internal review of adverse determinations, 8.4E(2)(a)
 Judicial review of adverse determinations, 8.4E(3)
 Notice of, 8.4E(2)
Lien for delinquent contributions
 Enforcement of, 18.4B(3)
 Notice of claim, 18.4B(2)
 Overview of, 18.4B(1)
Violations
 Equitable relief, 8.4E(3)(a)
 Injunctive relief, 8.4E(3)(a)

EMPLOYER LIABILITY LAW

Death of plaintiff worker, 7.22A(3)
Negligence, 8.2F
Personal-injury actions, 8.2F
Statute of limitations, 8.2F
Wrongful-death actions, 6.5E

EMPLOYERS AND EMPLOYEES

Benefit plans. *See* EMPLOYEE BENEFIT PLANS

Contracts in employment

 Breach-of-contract claims, 8.2E(1)
 Noncompetition agreements, 8.2E(2)
 Overtime/premium pay, action for, 14.2I(8)

Death of employee, 7.22A(3)

Discrimination in employment. *See* EMPLOYMENT DISCRIMINATION

Employer Liability Law. *See* EMPLOYER LIABILITY LAW

Group healthcare claims

 Appeal of initial determinations, 8.4E(1)(b)
 Independent review organizations, 8.4E(1)(c)
 Initial benefit determinations, 8.4E(1)(a)

 Types of, 8.4E(1)

Immigration law, 8.5

Labor law. *See* LABOR LAW

Safety in the workplace. *See* OCCUPATIONAL SAFETY AND HEALTH

Unemployment benefits. *See* UNEMPLOYMENT INSURANCE BENEFITS

Wages. *See* WAGES

Workers' compensation. *See* WORKERS' COMPENSATION

Wrongful discharge. *See* WRONGFUL DISCHARGE

EMPLOYMENT AGREEMENTS

Breach-of-contract claims, 8.2E(1)
Noncompetition agreements, 8.2E(2)

Subject Index (continued)

Overtime/premium pay, action for,
14.2I(8)

EMPLOYMENT APPEALS BOARD

Unemployment insurance, 8.2I(5)

EMPLOYMENT DISCRIMINATION

Civil actions, 8.1A(2)

Common-law, 8.1B(3)

Complaints, 8.1A(1)

Disabilities, persons with, 8.1E(2),
8.1G(2)

Discovery rule, 8.1B(2)

Elderly persons, 8.1G(2)

Oregon Tort Claims Act, 8.1B(4)

Overview of, 8.1B(1)

Sex discrimination, 8.1G(2)

Statute of limitations, 8.1B(2)

Statutory claims

 Federal, 8.1G(2)

 State, 8.1B(2)

Unlawful, 8.1A, 8.1B(1)

EMPLOYMENT RETIREMENT

INCOME SECURITY ACT

Adverse benefits decisions, review of,
8.4E

ENFORCEMENT OF JUDGMENTS

Executions. *See* EXECUTIONS

(PROPERTY)

Execution sales. *See* EXECUTION
SALES

ENGINEERS

Actions against, 15.3E(4)

Contract actions against, 14.2I(3)(b)

EQUAL PAY FOR EQUAL WORK

Sex discrimination, 8.1G(2)

EQUITABLE ESTOPPEL

See ESTOPPEL DEFENSE

ERIE DOCTRINE

Diversity jurisdiction cases, 7.24B

ERISA BENEFITS

Adverse decisions, review of, 8.4E

ESCHEATED PROPERTY

Decedents' estates, 6.6T

ESTATE TAXES

Appeals, 6.6K

Liens

 Consensual liens, 18.8C(3)

 Overview, 18.8C(2)

Tax returns

 Federal law, 6.6R(3)(a)

 Filing returns, 6.6R, 6.6R(5)

 Oregon law, 6.6R(3)(b)

 Paying taxes, 6.6R, 6.6R(5)

ESTOPPEL DEFENSE

Affirmative inducement requirement,
2.6A(3)(b)

Products liability, 7.28C(1)

Requirements of, 2.6A(3)(a)

Statutes of ultimate repose, 2.7F

EVICCTIONS

Landlord and tenant, 15.2A(6)

EVIDENCE

Documentary. *See* DOCUMENTARY
EVIDENCE

Hazardous substances, 2.13F(6)

Laches, burden of proving, 14.2K(4)

Presumptions

 Lost, unclaimed, or abandoned

 property. *See* LOST,

 UNCLAIMED, OR

 ABANDONED PROPERTY

 Unpaid wages, presumption of

 abandonment of, 11.7G(2)

Racketeering activity, 10.4D

Workers' compensation. *See* WORKERS'
COMPENSATION

EXECUTION SALES

Cashier's check payments, 11.9A(8)

Challenge to writ, 11.9A(2)

Notice of hearing (residential property),
11.9A(3)
Notice of sale
 Personal property, 11.9A(4)
 Real property, 11.9A(5)
Overview of, 11.9A
Postponement of sale, 11.9A(7)
Real property
 Notice of hearing (residential property),
 11.9A(3)
 Notice of sale, 11.9A(5)
 Report of, 11.9A(6)
 Residential property, *below*
References, 11.9B
Residential property
 Notice of hearing, 11.9A(3)
 Notice of property sold, 11.9A(9)
Return on writ, 11.9A(1)

EXECUTIONS (PROPERTY)

Challenging writs of execution
 Hearing on challenge, 11.10D
 Overview of, 11.10B
Exempt property, 11.10A
Justice court judgments
 Renewal of execution, 2.4G
 Return of execution, 2.4G
Sales. *See* EXECUTION SALES

EXECUTORS

See PERSONAL REPRESENTATIVES

EXHIBITS

Disposition of, 2.13F(5)
List of, 2.13F(5)
Return after filing notice of appeal,
2.13F(5)
Uniform Trial Court Rules, 2.13F(5)

EX PARTE MATTERS

Uniform Trial Court Rules, 2.13D(4)

EXPERT TESTIMONY

Paternity, blood test, 4.9M

EXTENDABLE EQUIPMENT

DAMAGING POWER LINES

Products liability, 7.16F(7), 7.28B(8)(h)

EXTENSION OF TIME

Appeals, 5.11
Decedents' estates, claims against, 6.6N(1)
Domestic abuse hearings, 4.11E
Oregon Tort Claims Act, notice under,
2.18A(3)
Overview of, 2.2B
Sexual abuse hearings, 4.12D
Statute of limitations. *See* STATUTES OF
LIMITATIONS

FAIR HOUSING DISCRIMINATION

Federal claims, 8.1G(4)

FALSE ARREST

References, 7.9B
Statute of limitations, 7.9A

FALSE IMPRISONMENT

References, 7.9B
Statute of limitations, 7.4B, 7.9A

FALSE LIGHT CLAIMS

Defamation actions, 7.8C(1)

FAMILY ABUSE

Child abuse cases, 2.7G(1)(c), 7.28C(2)(d)
Child custody hearing, 4.11D
Ex parte hearings/orders, 4.11A
Hearings
 Child custody hearing, 4.11D
 Date of, 4.11C
 Ex parte hearings/orders, 4.11A
 Extension of time, 4.11E
 Respondent's request for, 4.11B
Overview of, 4.11
Renewal of orders, 4.11F
Residential tenant-victims, 15.2A(5)
Sexual abuse. *See* SEXUAL ABUSE

Subject Index (continued)

FAMILY LAW CASES

Abuse. *See* FAMILY ABUSE
Adoption proceedings. *See* ADOPTION PROCEEDINGS
Child custody. *See* CHILD CUSTODY
Child support. *See* CHILD SUPPORT
Confidential information, 2.13J(3)
Dissolution of marriage. *See* DISSOLUTION OF MARRIAGE
Judgments, expiration of, 18.2C(3)
Separation of spouses
 Conversion to dissolution action, 4.8A.
 See also DISSOLUTION OF MARRIAGE
 Duration of, 4.8B
Spousal support. *See* SPOUSAL SUPPORT

FARM PRODUCTS

Liens. *See* AGRICULTURAL PRODUCE LIEN
Secured transactions, 11.15R, 11.15S

FAX SERVICE

Computation of time, 2.3B, 2.3G(2)

FEDERAL ENCLAVES

Jurisdiction, 7.24B

FEDERAL TAX LIENS

Collection of tax, 18.8A
Duration of, 18.8B(2)
Estate taxes. *See* ESTATE TAXES
Filing requirements, 18.8B(1)
Foreclosure sales, notices required, 13.5D(2)(f)
Gift taxes. *See* GIFT TAXES
References, 18.8E
Secured transactions, 11.15H(5), 18.8D
Statute of limitations, 18.8A
Uniform Federal Tax Lien Registration Act
 Duration of lien, 18.8B(2)
 Filing requirements, 18.8B(1)
 Overview, 18.4H

FEDERAL TORT CLAIMS ACT

Overview of, 7.24C

FELONIES

Federal felonies, 3.2D
State felonies, 3.2A

FINANCIAL ABUSE

Elder abuse, 6.2D, 7.19

FINANCIAL INSTITUTIONS

See BANK DEPOSITS AND COLLECTIONS

FINANCING STATEMENTS

Amendment of, 11.15J(5)
Change of debtor's name on, 11.15J(6)
Duration of, 11.15J(4)
Farm products, 11.15R(1) to 11.15R(3)
Filing of, 11.15J(1) to 11.15J(3)
Mortgage record, 11.15J(7)
Refusal of filing office to accept, 11.15J(3)

FINDINGS OF FACT

Special findings, 2.17B

FINES

See PENALTIES

FIRE INSURANCE

Actions on policies, 14.2I(4)
Claims of loss, 16.5
Commencement of actions, 16.5
Overview of, 16.5

FLOATING-HOME TENANCIES

See also MANUFACTURED DWELLINGS
Termination of, 15.2A(9)

FORECLOSURE OF RESIDENTIAL TRUST DEEDS

Commencement of actions, 13.2
Cure of default, 13.5F

Delivery of trustee's deed, 13.5J
Exemptions, 13.2B
Foreclosure-avoidance measure
 Notice of breach of, 13.5B(1) to
 13.5B(2)
 Notice of ineligibility, 13.5B(1) to
 13.5B(2)
 Penalties for noncompliance with
 requirements, 13.5B(2)
Overview of, 13.2A
Resolution conference
 Affidavit of compliance, 13.5C(1)
 Certificate of compliance, 13.5A(4),
 13.5C(2)
 Mandatory mediation exemption,
 13.5A(2)
 Request for, 13.5A(1)
 Scheduling of, 13.5A(3)
Sale of property
 Cure of default, 13.5F
 Delivery of trustee's deed, 13.5J
 Failure to give notice of, 13.5M
 Information requests, 13.5E
 Notice requirements, 13.5D, 13.5I,
 13.5M
 Payment after, 13.5J
 Place of, 13.5G
 Possession after, 13.5L
 Postponement of, 13.5H
 Rescission of, 13.5K
 Time and date, 13.5G
Tenant's rights upon, 15.2D

FORECLOSURES

Agricultural service lien
 Certificate of discharge, 18.6E(3)(b)
 Commencement of action, 18.6E(3)(a)
Chattel liens. *See* CHATTEL LIENS
 (NONPOSSESSORY); CHATTEL
 LIENS (POSSESSORY)
Commencement of actions
 Agricultural service lien, 18.6E(3)(a)
 Chattel liens (nonpossessory), 18.6D(1)
 Residential trust deeds, 13.2
Construction liens
 Deadline for suit, 17.3G

Demands to release lien, 17.3H(2)(e) to
 17.3H(2)(f)
Notice of intent to foreclose, 17.3F(2),
 17.3F(3)
Reply to owner's demand for
 information, 17.3F(3)
Irrigation work liens, 15.3F(2)
Land preparation liens, 15.3F(2)
Mining liens, 15.3F(2)
Nursery liens, 15.3F(2)
Partnership interests, 9.1C(3)
Property taxes in delinquency
 Personal property taxes, 18.8F(4)(b)
 Real property taxes, 18.8F(3)(c)
Residential trust deeds. *See* FORE-
 CLOSURE OF RESIDENTIAL
 TRUST DEEDS
Sale of property
 Chattel liens. *See* CHATTEL LIENS
 (NONPOSSESSORY); CHATTEL
 LIENS (POSSESSORY)
 Self-service storage facility lien,
 satisfaction of, 18.4F(2)
 Sheriff's sales. *See* SHERIFF'S SALES
Self-service storage facility lien. *See*
 SELF-SERVICE STORAGE
 FACILITY LIEN

FOREIGN ENTITIES

Corporations, 9.4Q
Limited liability companies, 9.1A(10)
Limited partnerships, 9.1B(12)
Partnerships/limited liability partnerships,
 9.1C(12)

**FOREIGN LANGUAGE
INTERPRETERS**

Notification of court, 2.13I

**FOREIGN MANUFACTURED
PRODUCTS**

Products liability, 7.28B(8)(b)

FORFEITURES

Criminal cases
 Civil forfeiture, 3.6B

Subject Index (continued)

Criminal forfeiture, 3.6C
Overview, 3.6A
Statute of limitations, 3.6A
Oregon Tort Claims Act, 2.18C

FORGERY

Bank deposits and collections, 14.3C(6)

FRANCHISE TRANSACTIONS

Buyer-actions, 12.6A
References, 12.6B

FRAUD AND DECEIT

Contract actions, 14.2A(2), 14.2D(2)
Discovery rule, 7.10B
Medical/dental malpractice, 7.14A(6)(b)
Real property transfers, 15.3K
References, 7.10C
Relief from judgment, 2.14B(1), 18.2B
Securities law claims
 Federal law, 8.2J(2)(a)
 Oregon law, 8.2J(1)
Statute of limitations, 7.10A

GARNISHMENT

Actions relating to, 11.11I
Challenges
 Exempt payments on, 11.11G
 Garnishee's duties created by,
 11.11D(5)
 Garnishee's duty after notice of,
 11.11D(3)
 Garnishor's duties, 11.11F
 Hearing on, 11.10D
 Overview of, 11.10C
Delivery of writ, 11.11A
Duration of writ, 11.11B
Duties
 Garnishee's duties, *below*
 Garnishor's duties, *below*
Exempt property, 11.10A
Garnishee, proceedings against, 11.11H
Garnishee's duties
 Challenge to garnishment, after notice
 of, 11.11D(3)

Challenge to garnishment, duties
 created by, 11.11D(5)
Debtor's employer, when garnishee is,
 11.11D(4)
Debts due within 45 days, 11.11D(3)
Duty to deliver property, 11.11D(2)
Duty to hold property, 11.11D(1)
Garnishor's duties
 Challenge to garnishment, duties
 created by, 11.11E(4)
 Duty to hold payment, 11.11E(2)
 Duty to pay costs incurred by garnishee
 in gaining access to safe-deposit
 box, 11.11E(3)
 Duty to refund amount exceeding debt,
 11.11E(1)
References, 11.11J
Release of, 11.11F
Response to writ, 11.11C
Statute of limitations, 14.2I(11)
Validity of writ, 11.11A

GAS TANKS, SIDESADDLE

Products liability, 7.16F(3), 7.28B(8)(h)

GENDER

Change of, 4.10
Educational discrimination, 8.1G(5)
Employment discrimination, 8.1G(2)

GIFT TAXES

Decedent's tax return
 Federal law, 6.6R(4)(a)
 Filing returns, 6.6R, 6.6R(5)
 Oregon law, 6.6R(4)(b)
 Paying taxes, 6.6R, 6.6R(5)
Liens, 18.8C(1)
Tax returns
 Filing returns, 6.6R(5)
 Paying taxes, 6.6R(5)

GOVERNMENTAL BODIES

See PUBLIC BODIES

GRAIN PRODUCER'S LIEN

Attachment of, 18.4C(1)

Computation of time, 18.4C(7)
Discharge of, 18.4C(4)
Duration of, 18.4C(2)
Expiration of, 18.4C(5)
Extension of, 18.4C(3)
Payment-in-full certificate, 18.4C(6)

GRANDPARENT VISITATION

After adoption of grandchild, 4.9G

GROUP HEALTHCARE CLAIMS

See EMPLOYERS AND EMPLOYEES

GUARDIANS

Ad litem. Temporary guardians, *below*
Delegation of child responsibilities, 4.1C
Notice requirements, 6.1B
References, 6.1F
Reports, 6.1B
Tax returns, 6.1B
Temporary guardians
 Appearances, 6.1E
 Appointment of, 6.1C
 Medical/dental malpractice,
 7.14B(2)(a)
 Notice requirements, 6.1C
 Objections, 6.1C
 Overview of, 6.1C
 Reports, 6.1C
 Tolling of limitations period during
 minority or insanity, 6.1E

GUARDIANS AD LITEM

See GUARDIANS

HABEAS CORPUS

Appeals, 5.2D(5)
References, 5.2E
Replication (answer), 5.2D(3)
Service of writ
 Time for return, 5.2D(2)
 When complete, 5.2D(1)
Warrants, 5.2D(4)

**HAZARDOUS MATERIALS/
SUBSTANCES**

Evidence of, 2.13F(6)
Warehouses, 11.14B(1)(c)

HEALTH INFORMATION RECORDS

Production of documents, 2.9C

HEALTH INSURANCE

Contents of policies, 16.4
Group healthcare claims. *See*
 EMPLOYERS AND EMPLOYEES

HOLIDAYS

Computation of time, 2.3B, 2.3C(2),
 2.3H

HOMEOWNERS' INSURANCE

Claims of loss, 16.5
Commencement of actions, 16.5
Overview of, 16.5

HOMESTEAD EXEMPTION

Judgment liens, discharge from, 18.3B(1)
 to 18.3B(2)

HOSPITALS

Liens, 18.4D(2)

HOTEL LIENS

See INNKEEPER'S LIEN

HOUSING DISCRIMINATION

Civil actions, 8.1A(2), 8.1D(2)
Complaints, 8.1A(1), 8.1D(1)
Disabilities, persons with, 8.1E(4)
Federal claims, 8.1G(4)
Landlord and tenant, 15.2C
Oregon Tort Claims Act, 8.1D(3)
Overview of, 8.1D
Unlawful, 8.1A, 8.1D

HUSBAND AND WIFE

See SPOUSES

Subject Index (continued)

IMMIGRATION LAW

Employers and employees, 8.5

IMPRISONMENT

False imprisonment, 7.9

INCOME TAXES

Decedent's estate tax returns

Federal law, 6.6R(2)(a)

Filing returns, 6.6R, 6.6R(5)

Oregon law, 6.6R(2)(b)

Overview of, 6.6R

Paying taxes, 6.6R, 6.6R(5)

Decedent's individual income tax returns

Federal law, 6.6R(1)(a)

Filing returns, 6.6R, 6.6R(5)

Oregon law, 6.6R(1)(b)

Paying taxes, 6.6R, 6.6R(5)

INCOMPETENT PERSONS

Bank customers, 14.3C(5)

Insane persons. *See* INSANE PERSONS

Minors. *See* MINORS

INDEMNITY/INDEMNIFICATION

Commercial paper, 14.3B(7)

Dissociated partners, 9.1C(5)(c)

Express contracts, 7.26B(2)(b), 14.2J(2)

Laches doctrine. *See* LACHES
DOCTRINE

Overview of, 7.26B(2)(a), 14.2J(1)

References, 7.26B(3), 14.2J(3)

Statute of limitations, 14.2J(1)

Sureties, of, 11.17B(3)

INDEPENDENT MEDICAL EXAMINATIONS

Workers' compensation, 8.3G(4)(b)

INDIAN TRIBES

Jurisdiction

Factors considered, 7.25A

Federal jurisdiction, 7.25B(3)

Overview, 7.25B

State jurisdiction, 7.25B(2)

Tribal courts, 7.25B(1)

Personal-injury actions, 7.25A

Property-damage claims, 7.25A

Sovereign immunity

Overview, 7.25A

Waiver of immunity, 7.25A

INFORMED CONSENT

Dental procedure, failure to obtain for,
7.14A(2)

Medical procedure, failure to obtain for,
7.14A(2)

INJUNCTIONS

Debt collection practices, 12.4A

Employee benefit plan violations,
8.4E(3)(a)

Filing, effect of, 2.6D(1)

Nuisance actions, 15.3C(2)

Preliminary injunctions, motions for,
2.2D(2)(h)

Statute of limitations, extension of,
2.6D(1)

TROs. *See* TEMPORARY
RESTRAINING ORDERS

Unlawful trade practices, 12.3A(1)

INNKEEPER'S LIEN

Attorney fees in action brought by guest,
18.7D(3)

Overview of, 15.1B, 18.7D(1)

Retention of chattel before foreclosure,
18.7D(2)

INSANE PERSONS

Advance payment of damages to, 2.7G(2)

Oregon Tort Claims Act, 2.18A(4)(c)

Products liability, 7.28C(2)

Statutes of limitations

Generally, 2.6B(1)(a)

Tolling of limitations period,
2.6B(1)(a), 6.1E, 6.3B(2)

Statutes of ultimate repose

Advance payment of damages,
2.7G(2)

Overview, 2.7G(1)

Tolling of limitations period, 6.1E

INSIDER PREFERENCES

Bankruptcy cases, 11.18A(4)

INSURANCE

Claims. *See* INSURANCE CLAIMS

Fire insurance. *See* FIRE INSURANCE

Health insurance

 Contents of policies, 16.4

 Group healthcare claims. *See*
 EMPLOYERS AND
 EMPLOYEES

Homeowners' insurance. *See*

 HOMEOWNERS' INSURANCE

Life insurance. *See* LIFE INSURANCE

References, 16.7

Unemployment insurance. *See*

 UNEMPLOYMENT INSURANCE
 BENEFITS

INSURANCE CLAIMS

Advance payments

 First-party insurance, 16.1B

 Medical bills, 7.14B(2)(c), 7.14B(2)(d)

 Notice, effect of, 16.1A

 Overview of, 16.1

 Personal injury protection, 16.1B

 Purpose of statutes, 16.1C

Attorney fees, 16.6

Commencement of actions, 16.1D

Fire insurance, 16.5

Health insurance, 16.4

Homeowners' insurance, 16.5

Life insurance, 16.3

References, 16.7

Statute of limitations

 Advance payments, notice of, 16.1A

 Commencement of actions, 16.1D

Uninsured motorists, 16.2

INTANGIBLE PROPERTY

Lost, unclaimed, or abandoned property.

See LOST, UNCLAIMED, OR
 ABANDONED PROPERTY

Misappropriation of trade secrets, 10.3

**INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

Continuing-tort doctrine, 7.11A(2),
7.26A(3)

Course of conduct, 7.11A(2)

References, 7.11A(3)

Statute of limitations, 7.11A

**INTENTIONAL INTERFERENCE
WITH CONTRACTUAL/
ECONOMIC RELATIONS**

Accrual of action, 7.12B, 10.2B

Discovery rule, 10.2A

References, 7.12C, 10.2C

Statute of limitations, 7.12A, 10.2A

INTERPRETERS

Notification of court, 2.13I

INTERSTATE ENFORCEMENT

Child support, 4.4D

INTERVENTION OF PARTIES

CCB actions, right of sureties to intervene
in, 17.1G(2)

Mandamus, 5.2B(4)

Motions, 2.2D(2)(f)

INVENTORIES

Conservators, 6.1D

Decedents' estates, 6.6D(3)

INVESTIGATIONS

Antitrust law, 10.1A

Disabled person abuse, 6.2B

Elder abuse, 6.2B

Juvenile proceedings

 Predispositional investigations, 4.14F

 Prehearing investigation reports, 4.14G

Unlawful trade practices, 12.3A(3)

INVESTMENT ADVISERS

Securities violations. *See* SECURITIES
LAW CLAIMS/VIOLATIONS

Subject Index (continued)

INVESTMENT SECURITIES

Adverse claim, immediate performance as notice of, 9.5A, 11.14C(1)
Destroyed certificates, replacement of, 9.5B, 11.14C(2)
Lost certificates, replacement of, 9.5B, 11.14C(2)
Perfection of security interests, 11.14C(4)
Statute of frauds, 9.5C, 11.14C(3)
Wrongfully taken certificates, replacement of, 9.5B, 11.14C(2)

IRRIGATION WORK

Liens, 15.3F

JOINT CHILD CUSTODY

Requests for, 4.3A

JUDGES

Matters under advisement, 2.13B
Recusal, motions for, 2.2D(2)(a)

JUDGMENT DEBTORS

Contribution among, 7.26B(1)(c)

JUDGMENT LIENS

Child support, 18.3A
Expiration of, 18.2C
Homestead exemption. *See* HOME-STEAD EXEMPTION
Justice courts, 2.4G
Money awards, satisfaction of, 18.3C
Out-of-state judgment for, 18.3A
Overview of, 11.9
Perfection of, 18.3A
Procedure, 18.3
Renewal of, 18.2C
Small claims (circuit court), 2.5F(3)
Spousal support. *See* SPOUSAL SUPPORT
Support arrears, 18.3A

JUDGMENT NOTWITHSTANDING THE VERDICT

Motion for, 2.17C

JUDGMENT ON THE PLEADINGS

Hearings, 2.2D(2)(c)
Motions, 2.2D(2)(c)

JUDGMENTS

Arbitration, 1.2I, 1.3K(3)
Attorney, charging liens. *See* ATTORNEY LIENS
Attorney fees, 2.16A(4)
Costs and disbursements, 2.16A(4)
Declaratory judgments. *See* DECLARATORY JUDGMENTS
Default judgments. *See* DEFAULT JUDGMENTS
Enforcement of
 Execution sales. *See* EXECUTION SALES
 Executions. *See* EXECUTIONS (PROPERTY)
Expiration of
 Criminal judgments, 18.2C(2)
 Family law judgments, 18.2C(3)
Justice courts
 Enforcement pending appeal, 2.4H
 Execution of judgment, 2.4G
 Liens, 2.4G
Liens. *See* JUDGMENT LIENS
Motions
 Default judgments, motion to set aside, 2.14A(3)
 Judgment N.O.V., 2.17C
 Judgment on the pleadings, 2.2D(2)(c)
 Relief from judgment, 2.14B(4)
 Summary judgment. *See* SUMMARY JUDGMENT
Motor vehicle-related proceedings, 2.13I
Notwithstanding the verdict, 2.17C
Overview of, 11.9, 18.1
Proposed judgments/orders, 2.13F(2)
Punitive damages
 Notice of judgment, 2.13F(2)(c)
 Proposed judgments, 2.13F(2)(b)
References, 2.17D, 18.4I
Relief from. *See* RELIEF FROM JUDGMENT

Small claims (circuit court)
Default judgments, setting aside, 2.5E
Judgments of \$3,000, or more, 2.5F(2)
Judgments of less than \$3,000, 2.5F(1)
Summary judgment. *See* SUMMARY
JUDGMENT
Uniform Trial Court Rules
Proposed judgments, 2.13F(2)
Punitive damages, 2.13F(2)(b) to
2.13F(2)(c)
Void judgments, 2.14B(3)

JUDICIAL REVIEW

See APPEAL OR REVIEW

JURISDICTION

Adoption proceedings, 4.9I
Court mediation, during, 1.4E
Dissolution of marriage, 4.2A
Federal enclaves, 7.24B
Indian tribes
Factors considered, 7.25A
Federal jurisdiction, 7.25B(3)
Overview, 7.25B
State jurisdiction, 7.25B(2)
Tribal courts, 7.25B(1)
Refiling of action for lack of, 2.8B(4)
Tribal courts, 7.25B(1)

JURY INSTRUCTIONS

Uniform Trial Court Rules, 2.13F(4)

JURY SELECTION

Challenges, 2.17A

JURY TRIAL DEMAND

Small claims proceedings (circuit court),
2.5C

JURY WAIVERS

Uniform Trial Court Rules, 2.13G

JUSTICE COURTS

Appeals, 2.4H
Appearances, 2.4B
Attachment proceedings, 2.4G

Change of venue, 2.4F
Counterclaims outside jurisdictional limits
of, 2.4C
Dismissal for lack of prosecution, 2.4D
Execution of judgments
Renewal of execution, 2.4G
Return of execution, 2.4G
Governing law, 2.4A
Judgment liens, 2.4G
Judgments
Enforcement of pending appeal, 2.4H
Execution of judgments, 2.4G
Liens, 2.4G
Overview of, 2.4A
References, 2.4I
Trial fee, 2.4E

JUVENILE PROCEEDINGS

Appointment of counsel, 4.14C
Detention, length of, 4.14B
Dispositional hearings, 4.14H
Predispositional investigations, 4.14F
Prehearing investigation reports, 4.14G
Preliminary hearings, 4.14D
Protective custody, 4.14A
Review hearings, 4.14E

LABOR LAW

National Labor Relations Board
Claims to, 8.4C
Orders, enforcement of, 8.4D
Public employees
Collective bargaining, 8.4A(2)(a),
8.4A(2)(d)
Expedited bargaining process,
8.4A(2)(d)
Grievance arbitration, 8.4A(1)
Interest arbitration, 8.4A(2)
Strikes, 8.4A(2)(b)
Teachers, 8.4B
Strikes, 8.4A(2)(b)
Teachers
Dismissal from employment, 8.4B
Nonextension of contract, 8.4B

Subject Index (continued)

LABOR/SERVICES

See also EMPLOYERS AND EMPLOYEES

Chattel liens (possessory), 18.7A. *See also* CHATTEL LIENS (POSSESSORY)

Construction liens. *See* CONSTRUCTION LIENS

LACHES DOCTRINE

Burden of proof, 14.2K(4)

Elements of, 14.2K(1)

Public bodies, 14.2K(3)

References, 14.2K(5)

Statute of limitations, 14.2K(2)

Time from which laches runs, 14.2K(2)

Trusts/trustees

 Breach of trust, 6.7A(2)

 Constructive trusts, 6.7B

LAND PREPARATION SERVICES

Liens, 15.3F

LAND SURVEYORS

Contract actions against, 14.2I(3)(c)

LANDLORD AND TENANT

Abandoned property of tenant

 Deceased tenants, 15.2A(3)(c)

 Landlord's rights, 15.2A(3)(a)

 Notice of intent to dispose of, 15.2A(3)(b)

 Overview, 15.2A(3)

 Sale of, 15.2A(3)(d)

 Tenant's rights, 15.2A(3)(e)

Conversion of rental units into condominiums, 15.2A(4)

Domestic violence victims, 15.2A(5)

Evictions, 15.2A(6)

Fixed-term tenancy, termination of, 15.2A(8)(c)

Floating home tenancies, termination of, 15.2A(9)

Housing discrimination, 15.2C

Leases

 Actions arising under, 14.2I(7)

Bankruptcy cases. *See* BANKRUPTCY CASES

Liens. *See* LANDLORD'S LIEN

Manufactured dwellings. *See* MANUFACTURED DWELLINGS

Notice of eviction, 15.2A(6)

Overview of, 15.2A

Periodic tenancy, termination of, 15.2A(8)(a) to 15.2A(8)(b)

Personal-injury actions, 15.2A(2)

Prepaid rent, 15.2A(7)

Rent

 Bankruptcy claims. *See* BANKRUPTCY CASES

 Prepaid residential rent, 15.2A(7)

 Unpaid nonresidential rent, 15.2B(5)

Residential Landlord and Tenant Act, 15.2A

Sale of rental units, 15.2A(8)(d)

Security deposits, 15.2A(7)

Stalking victims, 15.2A(5)

Termination of tenancy

 Domestic abuse victims, 15.2A(5)

 Evictions, 15.2A(6)

 Floating-home tenancies, 15.2A(9)

 Nonresidential tenancies, 15.2B

 Notice requirements, 15.2A(8), 15.2B(1)

 Stalking victims, 15.2A(5)

Trust deed foreclosures, 15.2D

Waste, actions for, 15.2A(1)

LANDLORD'S LIEN

Commercial landlords, 15.1C(1), 18.7E(1)

Residential landlords, 15.1C(2), 18.7E(2)

LANDSCAPE ARCHITECTS/ PROFESSIONALS

Actions against, 15.3E(4)

Contract actions against, 14.2I(3)(b)

Licenses, 17.4C, 17.4D

LAWYER TRUST ACCOUNTS

Lost, unclaimed, or abandoned property, 11.7B(2)

LEAP YEARS

Computation of time, 2.3D

LEASES

See also LANDLORD AND TENANT

Actions arising under, 14.2I(7)

Bankruptcy cases. See BANKRUPTCY
CASES

LEGAL HOLIDAYS

See HOLIDAYS

LEGAL MALPRACTICE

Accrual of action, 7.13D

Contract claims, 7.13C

Discovery rule

Harm, 7.13D(2)(b)

Knowledge, 7.13D(2)(a)

Overview, 7.13D(2)

References, 7.13E

Statute of limitations, 7.13A

Statute of ultimate repose, 7.13B, 7.28B(4)

LIBEL OR SLANDER

Demand for correction or retraction,
7.8A(2)

Discovery rule, 7.8D

Multiple publications, 7.8A(1)(b)

Negligence

Negligent injury to reputation, 7.8C(2)

Negligent release of confidential
information, 7.8C(3)

Oregon Tort Claims Act, 7.8E

References, 7.8F

Statute of limitations, 7.8A(1)

LICENSES

Architects, 17.4C to 17.4D

Construction industry. See
CONSTRUCTION

Design professionals, 17.4C to 17.4D

Landscape professionals, 17.4C to
17.4D

Marriage, 4.1A

Securities brokers-dealers, 10.5H

LIENS

Agricultural produce lien. See

AGRICULTURAL PRODUCE LIEN

Agricultural service lien. See

AGRICULTURAL SERVICE LIEN

Ambulance services, 18.4D(1)

Attorney liens. See ATTORNEY LIENS

Carrier's lien, 11.14B(3)

Child support, 4.4F

Construction. See CONSTRUCTION
LIENS

Dissolution of marriage, 4.2E

Employee benefit plans. See EMPLOYEE
BENEFIT PLANS

Estate taxes

Consensual liens, 18.8C(3)

Overview, 18.8C(2)

Gift taxes, 18.8C(1)

Grain producer's lien. See GRAIN
PRODUCER'S LIEN

Hospitals, 18.4D(2)

Hotels. See INNKEEPER'S LIEN

Irrigation work, 15.3F

Judgments. See JUDGMENT LIENS

Landlord and tenant. See LANDLORD'S
LIEN

Land preparation services, 15.3F

Long-term care facilities, 18.4D(3)

Medical services liens. See MEDICAL
SERVICES LIENS

Mining work, 15.3F

Molder's lien, 18.4E

Motels. See INNKEEPER'S LIEN

Motor vehicles, preforeclosure retention
of, 18.7C(1)(c)

Nursery services, 15.3F

Overview of, 18.1

Personal property

Agricultural produce lien. See

AGRICULTURAL PRODUCE
LIEN

Nonpossessory liens. See CHATTEL
LIENS (NONPOSSESSORY)

Possessory liens. See CHATTEL
LIENS (POSSESSORY)

Subject Index (continued)

Self-service storage facility lien. *See*
SELF-SERVICE STORAGE
FACILITY LIEN

Physicians, 18.4D(2)

References, 18.4I

SAIF-insured employers, against, 8.3K

Spousal support. *See* SPOUSAL
SUPPORT

Taxes. *See* FEDERAL TAX LIENS; TAX
LIENS

Trusts, claims against, 6.7E(1)(e)

Warehouse goods, sale of, 11.14B(2)

LIFE INSURANCE

Commencement of actions, 16.3

Lost, unclaimed, or abandoned funds,
11.7F(3)

LIGHT BULBS

Products liability, 7.16F(6)

LIMITATION OF ACTIONS

See STATUTES OF LIMITATIONS

LIMITED LIABILITY COMPANIES

Admission of members, 9.1A(6)

Annual report of, 9.1A(12)

Articles of correction, 9.1A(1)

Conversions, 9.1A(3)

Dissolution

Administrative dissolution, 9.1A(8)

Disposition of assets, 9.1A(9)

Voluntary dissolution, 9.1A(7)

Documents, 9.1A(1)

Existence, beginning of, 9.1A(3)

Foreign companies, 9.1A(10)

Mergers, 9.1A(3)

Notices, 9.1A(2)

Records of, 9.1A(11)

References, 9.1A(13)

Registered agents, 9.1A(4)

Withdrawal of members, 9.1A(5)

LIMITED LIABILITY

PARTNERSHIPS

See PARTNERSHIPS/LIMITED
LIABILITY PARTNERSHIPS

LIMITED PARTNERSHIPS

Administrative inactivation, notice of,
9.1B(13)

Annual report of, 9.1B(15)

Certificate of limited partnership
Administrative inactivation, notice of,
9.1B(13)

Amendments, 9.1B(6)

Cancellation of, 9.1B(7)

Filing, effect of, 9.1B(5)

Certificates of correction, 9.1B(16)

Contribution of partner, liability of partner
receipt of, 9.1B(11)

Documents

Certificate of limited partnership, *above*

Certificates of correction, 9.1B(16)

Secretary's refusal to file, 9.1B(4)

Foreign partnerships, 9.1B(12)

Formation of, 9.1B(5)

General partner, when person ceases to be,
9.1B(9)

Limited partners

Admission of, 9.1B(8)

Withdrawal of, 9.1B(10)

Mergers, 9.1B(14)

Names, reservation of, 9.1B(1)

Records of, 9.1B(3)

References, 9.1B(17)

Registered agents, 9.1B(2)

LIQUOR LIABILITY

Notice of claim

Actual notice, 7.20C(2)

Commencement of action within
specified period of time, notice by,
7.20C(3)

Form of, 7.20C

Formal notice, 7.20C(1)
Injuries other than wrongful death,
7.20B(2)
Payment on claim as satisfaction of
requirement of, 7.20C(4)
Tolling of period for, 7.20B(3)
Wrongful-death claims, 7.20B(1)
Overview of, 7.20A
References, 7.20D

LLCs

See LIMITED LIABILITY COMPANIES

LONG-TERM CARE FACILITIES

Liens, 18.4D(3)

**LOST, UNCLAIMED, OR
ABANDONED PROPERTY**

Annuity contract funds, 11.7F(3)
Checks, 11.7F(2)
Claims for, 11.7D
Cooperative corporation distributions,
9.2F
Credit memos, 11.7G(4)
Finder's duties, 11.7A(1)
Finder's liability, 11.7A(2)
Government-held property, 11.7G(3)
Intangible property
Bank-held property, 11.7F(1)
Business dissolution, property
distributable on, 11.7F(4)
Business-held property, 11.7G(5)
Fiduciary-held property, 11.7G(1)
Intangible property distributable on
dissolution of business, 11.7F(4)
Lawyer trust accounts, 11.7B(2)
Life insurance funds, 11.7F(3)
Money orders, 11.7F(2)
Presumptions
Annuity contract funds, 11.7F(3)
Checks, 11.7F(2)
Credit memos, 11.7G(4)
Government-held property,
11.7G(3)
Intangible property distributable on
dissolution of business, 11.7F(4)

Intangible property held by bank,
11.7F(1)
Intangible property held by fiduciary,
11.7G(1)
Intangible property held on dissolution
of business, 11.7F(4)
Life insurance funds, 11.7F(3)
Money orders, 11.7F(2)
Overview of, 11.7C
Safe-deposit boxes, 11.7F(5)
Traveler's checks, 11.7F(2)
Unpaid wages, 11.7G(2)
Reporting requirements, 11.7B
Safe-deposit boxes, 11.7F(5)
Statute of limitations, 11.7C
Tenant's personal property
Deceased tenants, 15.2A(3)(c)
Landlord's rights, 15.2A(3)(a)
Notice of intent to dispose of,
15.2A(3)(b)
Overview, 15.2A(3)
Sale of, 15.2A(3)(d)
Tenant's rights, 15.2A(3)(e)
Traveler's checks, 11.7F(2)
Unpaid wages, 11.7G(2)

LPs

See LIMITED PARTNERSHIPS

MAIL SERVICE

Appellate proceedings, 5.1L
Computation of time
After service, 2.2C
Overview, 2.3B, 2.3G(2)

MALPRACTICE

Attorneys. *See* LEGAL MALPRACTICE
Dentists. *See* MEDICAL/DENTAL
MALPRACTICE
Physicians. *See* MEDICAL/DENTAL
MALPRACTICE

MANDAMUS

Appeal of judgments, 5.2B(6)
Intervention of parties, 5.2B(4)

Subject Index (continued)

Petitions

- Effect of filing, 5.2B(3)
- Filing of, 5.2B(1)
- Service of, 5.2B(2)
- Stay of proceeding below, 5.2B(3)
- Supreme Court, in, 5.2C

MANDATORY COURT

ARBITRATION PROGRAM

See ARBITRATION

MANUFACTURED DWELLINGS

- Conversion of dwelling parks
 - Overview of, 15.2A(9)(a)
 - Subdivision, conversion to, 15.2A(9)(b)
- Garbage collection, 15.2A(9)(c)
- Landlord and tenant
 - Conversion of park, 15.2A(9)(a) to 15.2A(9)(b)
 - Garbage collection, 15.2A(9)(c)
 - Manager's continuing education, 15.2A(9)(4)
 - Overview of, 15.2A(9)
 - Registration of landlord, 15.2A(9)(e)
 - Utilities, 15.2A(9)(d)
- Nonprofit cooperative corporations, 9.2K
- Nonresidential tenancies, 15.2B
- Products liability, 7.16F(5), 7.28B(8)(e)
- Utilities, 15.2A(9)(d)

MARRIAGE

Dissolution of. *See* DISSOLUTION OF MARRIAGE

Licenses, 4.1A

Spouses. *See* SPOUSES

MATERIALS

- Chattel liens (possessory), 18.7A. *See also* CHATTEL LIENS (POSSESSORY)
- Construction liens. *See* CONSTRUCTION LIENS

MECHANIC'S LIENS

See CONSTRUCTION LIENS

MEDIATION

- Construction Contractors Board complaints
 - Commercial construction complaints, 17.1G(2)
 - Residential construction complaints, 17.1F(1), 17.1F(3)
- Court mediation program
 - Court's jurisdiction during mediation, 1.4E
 - Postmediation procedure, 1.4D
 - References, 1.4F
 - Referral of civil action to, 1.4A
 - Stipulation to mediate, 1.4B
 - Tolling period during mediation, 1.4C
- Foreclosure-exemption, 13.5A(2)
- Stipulations, 1.4B
- Workers' compensation, 8.3I(10)

MEDICAL BILLS

- Insurer's advance medical payments
 - Medical/dental malpractice actions, 7.14B(2)(d)
 - Statute of ultimate repose, 7.28C(2)(c)
- Medical/dental malpractice
 - Child's medical bills, 7.14B(2)(c)
 - Insurer's advance medical payments, 7.14B(2)(d)
- Minors
 - Collection actions, 7.4D
 - Medical/dental malpractice actions, 7.14B(2)(c)

MEDICAL/DENTAL MALPRACTICE

- Accrual of action, 7.14B
- Breast implants, 7.14A(3)
- Conservators, 7.14B(2)(b)
- Continuing-tort doctrine, 7.26A(2)(b)
- Continuing-treatment theory, 7.14C
- COX-2 inhibitors, 7.14A(4)
- Discovery rule, 7.14B(1)
- Fraud and deceit, 7.14A(6)(b)
- Guardians *ad litem*, 7.14B(2)(a)

- Informed consent
 - Dental procedure, failure to obtain for, 7.14A(2)
 - Medical procedure, failure to obtain for, 7.14A(2)
- Insurer's advance medical payments, 7.14B(2)(d)
- Medical bills
 - Child's medical bills, 7.14B(2)(c)
 - Insurer's advance medical payments, 7.14B(2)(d)
- Minors
 - Conservators, 7.14B(2)(b)
 - Generally, 2.7G(1)(b), 7.28C(2)(b)
 - Guardians *ad litem*, 7.14B(2)(a)
 - Medical bills, 7.14B(2)(c)
 - Statute of repose, 7.14A(6)(c)
- Misdiagnoses, 7.14A(6)(d)
- Oregon Tort Claims Act, 7.14A(5)
- References, 7.14D
- Statute of limitations, 7.14A
- Statute of ultimate repose
 - Continuing-treatment theory, 7.14C
 - Generally, 7.14A(6), 7.28B(5)
 - Minors, 2.7G(1)(b), 7.14A(6)(c)
- Wrongful death, 7.14A(7)
- MEDICAL SERVICES**
 - Physicians. *See* PHYSICIANS
 - Workers' compensation, 8.3D
- MEDICAL SERVICES LIENS**
 - Ambulance services, 18.4D(1)
 - Hospital services, 18.4D(2)
 - Long-term care facilities, 18.4D(3)
 - Physician services, 18.4D(2)
- MERCURY VAPOR BULBS**
 - Products liability, 7.16F(6)
- MERGERS**
 - Cooperative corporations, 9.2I
 - Corporations, 9.4L
 - Limited liability companies, 9.1A(3)
 - Limited partnerships, 9.1B(14)
 - Nonprofit corporations, 9.3G
- Partnerships/limited liability partnerships, 9.1C(7)
- MILITARY PERSONNEL**
 - Delegation of child responsibilities, 4.1C
 - Servicemembers Civil Relief Act, 11.13
 - Suspension of proceedings against, 11.13A
- MILLER ACTS**
 - Federal Miller Act
 - Bond claims in bankruptcy cases, 11.18E(16)
 - Overview of, 17.2B
 - Oregon's Little Miller Act
 - Bond claims in bankruptcy cases, 11.18E(16)
 - Overview of, 17.2A
- MINING WORK**
 - Liens, 15.3F
- MINORS**
 - Abductions, 4.13
 - Abuse of, 2.7G(1)(c), 7.28C(2)(d). *See also* FAMILY ABUSE
 - Adoption of. *See* ADOPTION PROCEEDINGS
 - Advance payment of damages to
 - Generally, 2.7G(2)
 - Statutes of limitations, 2.6C(3)
 - Statutes of ultimate repose, 2.7G(2)
 - Custody. *See* CHILD CUSTODY
 - Guardian's delegation of responsibilities for, 4.1C
 - Juvenile proceedings. *See* JUVENILE PROCEEDINGS
 - Medical bills
 - Collection actions, 7.4D
 - Medical/dental malpractice actions, 7.14B(2)(c)
 - Medical/dental malpractice
 - Conservators, 7.14B(2)(b)
 - Generally, 2.7G(1)(b), 7.28C(2)(b)
 - Guardians *ad litem*, 7.14B(2)(a)

Subject Index (continued)

Medical bills, 7.14B(2)(c)
Statute of repose, 7.14A(6)(c)
Oregon Tort Claims Act
Commencement of actions, 2.1A(3)
Generally, 2.18A(4)(b)
Statute of limitations, 7.3B
Tolling, 2.6B(1)(b)
Parents. *See* PARENTS
Paternity of. *See* PATERNITY ACTIONS
Personal-injury actions, 2.7G(1)(a),
7.28C(2)(a)
Products liability
Claims, 7.16D, 7.28C(2)
Medical malpractice actions,
7.28C(2)(b)
Personal-injury actions, 7.28C(2)(a)
Statutes of limitations
Advance payments to minors, 2.6C(3)
Generally, 2.6B(1)(a)
Medical bills of injured child, 7.4D
Tolling of limitations period, 2.1A(3),
2.6B(1), 2.6C(3), 6.1E, 6.3B(2),
7.3B
Statutes of ultimate repose
Advance payment of damages, 2.7G(2)
Child abuse cases, 2.7G(1)(c)
Medical-malpractice actions,
2.7G(1)(b)
Overview, 2.7G(1)
Personal-injury actions, 2.7G(1)(a)
Tolling, 2.6B(1)(a), 2.7G(1)
Support of. *See* CHILD SUPPORT

MISDEMEANORS

Federal misdemeanors, 3.2D
State misdemeanors, 3.2B

MISDIAGNOSES

Medical/dental malpractice, 7.14A(6)(d)

MISTAKE

See CONTRACT ACTIONS

MOLDERS

Liens, 18.4E

MONEY

Awards. *See* MONEY AWARDS
Lost, unclaimed, or abandoned. *See* LOST,
UNCLAIMED, OR ABANDONED
PROPERTY

MONEY AWARDS

See also DAMAGES
Attorney liens, 18.5C(2)
Dissolution of marriage, 4.2E(3)
Satisfaction of, 18.3C

MONEY ORDERS

Lost, unclaimed, or abandoned property,
11.7F(2)

MONTHS

Computation of time, 2.3I(2)

MORTGAGE BANKERS/BROKERS

Securities violations. *See* SECURITIES
LAW CLAIMS/VIOLATIONS

MORTGAGES AND TRUST DEEDS

Definitions, 13.1
Discharge of mortgage, 13.3A
Distinguished, 13.1
Foreclosures. *See* FORECLOSURE OF
RESIDENTIAL TRUST DEEDS
Late charges, 13.4C
Line of credit, 13.4B
Prepayment penalties, 13.4A
Reconveyance of trust deed, 13.3B(1)
Release of trust deed, 13.3B(2)

MOTEL LIENS

See INNKEEPER'S LIEN

MOTIONS

Appeals, 5.1I
Attached property, redelivery of,
11.8A(3)
Conferring on, 2.13D(2)
Criminal, pretrial motions, 3.3B
Dismissal of actions, 2.2D(2)(b)

- Elective share of surviving spouse. *See*
ELECTIVE SHARE OF
SURVIVING SPOUSE
- Intervention of parties, 2.2D(2)(f)
- Judgments
Default judgments, motion to set aside,
2.14A(3)
Judgment N.O.V., 2.17C
Judgment on the pleadings, 2.2D(2)(c)
Relief from judgment, 2.14B(4)
Summary judgment. *See* SUMMARY
JUDGMENT
- Memorandum of authorities, 2.2D(3)(b)
- Nonpaternity, motion for judgment of,
4.9E
- Oral argument
Request for argument, 2.2D(1)
Telephonic oral argument, 2.13D(3)(b)
- Pleading after, 2.2A(2)(a)
- Pleadings
Judgment on the pleadings, 2.2D(2)(c)
More definite statement, 2.2D(2)(d)
Striking of allegations, 2.2D(2)(e)
- Pleadings, distinguished, 2.2D
- Preliminary injunctions, 2.2D(2)(h)
- Recusal of judge, 2.2D(2)(a)
- Relief from judgment, 2.14B(4)
- Responses and replies, 2.13D(3)
- Responsive motions, filing of, 2.2A(1)
- Summary judgment. *See* SUMMARY
JUDGMENT
- Temporary restraining orders,
2.2D(2)(h)
- Uniform Trial Court Rules
Conferring on motions, 2.13D(2)
Oral argument, 2.13D(3)(a) to
2.13D(3)(b)
Responses and replies, 2.13D(3)
Telephonic oral argument,
2.13D(3)(b)
- MOTOR VEHICLES**
Applications for title, 12.1A(1)
Certificates of title
Delivery of, 12.1C(1)
Late presentation of, 12.1C(4)
Presentment of, 12.1C(1)
- DMV orders, 2.13I
DMV records, 2.13I
Express warranties, 12.1D(2)
Foreclosure of lien, retention of vehicle
before, 18.7C(1)(c)
Implied warranties, 12.1D(1)
Judgments, 2.13I
Overview of proceedings relating to, 2.13I
References, 12.1E
Security interests in
Certificates of title, 12.1C(1)
Release of, 12.1C(3)
Satisfaction of, 12.1C(2)
- Title
Applications for, 12.1A(1)
Certificates of title, above
Transfer of title, *below*
- Transfer of title
Applications for title, 12.1A(1)
Failure to deliver documents on,
12.1A(2)
- Uniform Commercial Code, 12.1C(5)
- Warranties
Breach of, 12.1D(3)
Express warranties, 12.1D(2)
Implied warranties, 12.1D(1)
- MULTIPLE CLAIMS**
Summary judgment on, 2.12C
- MULTIPLE PARTIES**
Contribution actions. *See*
CONTRIBUTION ACTIONS
- Electronically filed documents, 2.13K(5)
Summary judgment in cases involving,
2.12C
- NAMES**
Change of, 4.10
Cooperative corporations, 9.2A
Limited partnerships, 9.1B(1)
Nonprofit corporations, 9.3A

Subject Index (continued)

NATIONAL LABOR RELATIONS BOARD

Claims to, 8.4C
Orders, enforcement of, 8.4D

NEGLIGENCE

Construction liens, 17.3H(3)
Continuing-tort doctrine, 7.26A(2)
Employer Liability Law, 8.2F
Libel or slander
 Negligent injury to reputation, 7.8C(2)
 Negligent release of confidential information, 7.8C(3)
Professional malpractice. *See* LEGAL MALPRACTICE; MEDICAL/DENTAL MALPRACTICE
Property-damage claims, 7.26A(2)
References, 8.3O
Statute of ultimate repose, 7.28B(3)
Trustees, 6.7A(1)
Worker's work-related claim, 8.3N

NEGOTIABLE INSTRUMENTS

See COMMERCIAL PAPER

NEW TRIAL

Motion for, 2.17C

NONCOMPETITION AGREEMENTS

Overview of, 8.2E(2)
Validity of, 8.2E(2)

NONPROFIT CORPORATIONS

Agents, resignation of, 9.3C
Articles of correction, 9.3A
Derivative suits, 9.3K
Directors, 9.3F
Dissolutions
 Claims against dissolved corporations, 9.3I
 Overview, 9.3H
Documents, 9.3A
Meetings of members, 9.3E
Members
 Expulsion or suspension of, 9.3D
 Meetings of, 9.3E

Mergers, 9.3G
Names, reservation of, 9.3A
Notices, 9.3B
Records and reports, 9.3J
References, 9.3L
Registered agents, 9.3C
Sales, 9.3G
Termination of membership in, 9.3D

NUCLEAR ACCIDENTS

Actions arising from, 7.23, 15.3D

NUISANCE ACTIONS

Damages, 15.3C(1)
Injunctions, 15.3C(2)
Overview of, 15.3C

NURSERY SERVICES

Liens, 15.3F

OCCUPATIONAL SAFETY AND HEALTH

Contested case hearings, 8.2H(5)
Inspections/investigations
 Advance notice of, 8.2H(1)
 Warrant, execution of, 8.2H(2)
Retaliation claims, 8.2H(6)
Violations
 Contested case hearings, 8.2H(5)
 Correction of, 8.2H(4)
 Employer appeals of, 8.2H(3)

OIL AND GAS TAXES

Liens, 18.8F(2)

OLD PERSONS

See ELDERLY PERSONS

ORAL ARGUMENT ON MOTIONS

Request for argument, 2.2D(1)
Telephonic oral argument, 2.13D(3)(b)

ORDINANCES

Fines, 3.4

**OREGON RACKETEER INFLUENCE
AND CORRUPT
ORGANIZATION ACT**

See RACKETEERING ACTIVITY

**OREGON REVISED UNIFORM
ARBITRATION ACT**

See ARBITRATION

OREGON TORT CLAIMS ACT

Commencement of actions

Exceptions to general rule, 2.18A(4)(c)

General rule, 2.1A(3), 2.18A(4)(a)

Insane persons, by, 2.18A(4)(b)

Minors, by, 2.1A(3), 2.18A(4)(b)

Computation of time, 2.3F

Continuing-tort doctrine, 7.26A(4)

Disabilities, discrimination against persons
with, 8.1E(5)

Educational discrimination, 8.1F(1)

Employment discrimination, 8.1B(4)

Forfeiture, action on, 2.18C

Housing discrimination, 8.1D(3)

Libel or slander, 7.8E

Medical/dental malpractice, 7.14A(5)

Minors' claims, 2.1A(3), 2.6B(1)(b),
2.18A(4)(b), 7.3B

Notice of claim

Extension of time for, 2.18A(3)

Generally, 2.18A(1), 7.3A

Wrongful-death actions, 2.18A(2), 7.3A

Overview of, 2.18A, 7.3A

Penalty, action on, 2.18C

Public accommodation discrimination,
8.1C(3)

Public bodies

Actions against, 2.18A, 7.3B

Actions by, 2.18B

References, 2.18D

Statutes of limitations

Minors' claims, 2.1A(3), 2.6B(1)(b),
2.18A(4)(b), 7.3B

Wrongful death

Notice of claim, 7.3A

Wrongful-death actions

Discovery rule, 6.5C(2)

Generally, 2.18A(2)

Limitations periods, 6.5C(1)

ORICO

See RACKETEERING ACTIVITY

OTCA

See OREGON TORT CLAIMS ACT

OVERTIME PAY

See WAGES

PARENTAGE PROCEEDINGS

See PATERNITY ACTIONS

PARENTING TIME

Enforcement of, 4.3C

PARENTS

Child custody. *See* CHILD CUSTODY

Child support. *See* CHILD SUPPORT

Delegation of child responsibilities, 4.1C

Parenting time enforcement, 4.3C

PARTIES

Absence of defendant, 2.6B(3)

Appearances. *See* APPEARANCES

Concealment of defendant, 2.6B(3)

Death of party

Abatement of actions, 6.3A(3)

Action continued against personal
representative, 6.3A(2)

Action continued by personal
representative, 6.3A(1)

Defendant's death, 2.2G(2), 2.6B(2),
2.6B(2)(b), 6.4B(2)

Personal-injury actions, 6.4B

Plaintiff's death, 2.2G(1), 2.6B(2),
2.6B(2)(a), 6.4B(1)

Public officers, 2.2G(4)

References, 6.3E

Tolling of limitations period, 2.6B(2)

Unfiled actions, effect on, 6.3C

Disability of party

Continuance of actions, 6.3B(1)

Subject Index (continued)

Insanity, tolling for, 6.3B(2)
Minority, tolling for, 6.3B(2)
Overview of, 2.2G(3)
References, 6.3E
Substitution upon, 2.2G
Intervention of. *See* INTERVENTION OF PARTIES
Multiple parties
Contribution actions. *See* CONTRIBUTION ACTIONS
Electronically filed documents, 2.13K(5)
Summary judgment in cases involving, 2.12C
Sheriff's sales, redemption of property at, 13.6D(9)

PARTNERSHIPS

Limited partnerships. *See* LIMITED PARTNERSHIPS
LLPs. *See* PARTNERSHIPS/LIMITED LIABILITY PARTNERSHIPS

PARTNERSHIPS/LIMITED LIABILITY PARTNERSHIPS

Actions by and against, 9.1C(3)
Administrative revocation of, 9.1C(11)
Annual report of, 9.1C(10)
Cancellation of LLP, 9.1C(9)
Conversions, 9.1C(7)
Creation of, 9.1C(2)
Dissociation from
Dissociated interests, purchase of, 9.1C(5)
Overview of, 9.1C(4)
Wrongful dissociation, 9.1C(5)(b)
Dissolutions, 9.1C(6)
Documents, 9.1C(8)
Foreign partnerships, 9.1C(12)
Mergers, 9.1C(7)
Notices, 9.1C(1)
Partners
Actions by and against, 9.1C(3)
Dissociation from partnership, 9.1C(4)
References, 9.1C(13)

Registration of, 9.1C(9)
Wrongful dissociation from, 9.1C(5)(b)

PATERNITY ACTIONS

Blood tests
Applications for, 4.9L
Expert testimony, 4.9M
Motion for judgment of nonpaternity, 4.9E
Putative father's rights, 4.9D
Relief from judgment, 4.9N
Voluntary acknowledgments, rescission of, 4.9K

PCs

See PROFESSIONAL CORPORATIONS

PENALTIES

Foreclosure-avoidance measure requirements noncompliance with, 13.5B(2)
Oregon Tort Claims Act, 2.18C
Statute of limitations, 3.6A
Workers' compensation, noncomplying employers, 8.3A, 8.3I(2), 8.3I(7)(b), 8.3M

PERFECTION OF SECURITY INTERESTS

Investment securities, 11.14C(4)
Secured transactions. *See* SECURED TRANSACTIONS

PERISHABLE GOODS

Bailments, 11.7E(3)
Consignments, 11.7E(3)
Warehouses, 11.14B(1)(b)

PERPETUATION OF TESTIMONY

Depositions, 2.9A(4)

PERSONAL INFORMATION IN COURT RECORDS

Already filed, information, 2.13J(2)
Family law cases, 2.13J(3)
Newly filed information, 2.13J(1)
Overview, 2.13J(1)

PERSONAL-INJURY ACTIONS

See also TORT ACTIONS
Employer Liability Law, 8.2F
Indian tribes, 7.25A
Landlord and tenant, 15.2A(2)
Minors, 2.7G(1)(a) to 2.7G(1)(b),
7.28C(2)(a)
Overview of, 7.1A
Skiers, 7.17A(1). *See also* SKI RESORTS,
ACTIONS AGAINST
Statutes of limitations
Assault, 7.4B
Battery, 7.4B
Conflict-of-laws situation, 7.2
Death of injured person, effect of,
7.4C
False imprisonment, 7.4B
Medical bills of injured child, 7.4D
Overview, 7.1B, 7.4A
Person or rights, injury to, 7.4B
Statutes of ultimate repose
Conflict-of-laws situation, 7.2
Overview, 7.1C
Products-liability actions, 7.28B(8)(a),
7.28B(8)(c)
Survival of actions
Defendant's death, 6.4B(2)
Plaintiff's death, 6.4B(1)
Tolling, 7.4D(1)
Warranty, breach of, 14.3A(6)

PERSONAL PROPERTY

Abandoned property. *See* LOST,
UNCLAIMED, OR ABANDONED
PROPERTY
Assignments, 11.5
Bailments, 11.7E
Consignments. *See* CONSIGNMENTS
Contract actions, 14.2I(10)
Conversion of. *See* CONVERSION
ACTIONS
Execution sales. *See* EXECUTION
SALES

Intangible property
Lost, unclaimed, or abandoned
property. *See* LOST,
UNCLAIMED, OR
ABANDONED PROPERTY
Misappropriation of trade secrets, 10.3
Liens
Agricultural produce lien. *See*
AGRICULTURAL PRODUCE
LIEN
Nonpossessory liens. *See* CHATTEL
LIENS (NONPOSSESSORY)
Possessory liens. *See* CHATTEL
LIENS (POSSESSORY)
Self-service storage facility lien. *See*
SELF-SERVICE STORAGE
FACILITY LIEN
Lost property. *See* LOST, UNCLAIMED,
OR ABANDONED PROPERTY
Perishable goods
Bailments, 11.7E(3)
Consignments, 11.7E(3)
Warehouses, 11.14B(1)(b)
Possession of
Recovering possession of, *below*
Wrongful dispossession of, *below*
Property-damage claims
Takings, detaining, or injuring
personality, 11.6A
Wrongful dispossession of, *below*
Receiverships. *See* RECEIVERS AND
RECEIVERSHIP
Recovering possession of
Claim and delivery, 11.6C(1)
Ex parte orders, 11.6C(2)(b)
Hearing, right to, 11.6C(2)(c)
Immediate delivery (prejudgment),
11.6C(2)(a)
Procedure, 11.6C(2)
References, 11.6D
Self-service storage facility lien. *See*
SELF-SERVICE STORAGE
FACILITY LIEN

Subject Index (continued)

Taking, detaining, or injuring
 Common-law remedies, 11.6A(2)
 Generally, 14.2I(10)(d)
 Statute of limitations, 11.6A(1)
Wrongful dispossession of
 Accrual of action, 11.6B(2)
 Splitting claims, 11.6B(1)

PERSONAL PROPERTY TAXES

Delinquent taxes
 Seizure and sale of property,
 enforcement by, 18.8F(4)(b)
 Warrants, enforcement by, 18.8F(4)(a)
Tax liens, 18.8F(4)

PERSONAL REPRESENTATIVES

Accountings by, 6.6H, 6.6Q
Actions, effect of death of party on,
 6.3C
Commencement of duties/powers, 6.6C
Conservators. *See* CONSERVATORS
Death actions
 Commencement of, 7.22A(2)
 Continuance of, 7.22A(2)
 Powers, 7.22C
 Relation back doctrine, 7.22C
Discharge of, 6.6J, 6.6Q
Estate tax appeals, 6.6K
Guardians. *See* GUARDIANS
Information to devisees, heirs, and other
 persons, 6.6D(2)
Initial duties, 6.6D
Inventory of estate property, 6.6D(3)
Notice of appointment, 6.6D(1)
Notice to potential claimants, 6.6D(4),
 6.6O
Relation back of duties/powers, 6.6C,
 7.22C
Search for claimants, 6.6D(4), 6.6O
Small-estate representatives, failure to
 appoint, 6.6L(7)
Special administrators, 6.6B
Survival of actions, 6.4A(1), 7.22A(2)

PERSONAL RESIDENCE

See RESIDENTIAL PROPERTY

PESTICIDE CLAIMS

Government agencies, against, 7.15D
Preservation of
 Government agencies, against,
 7.15A(2)
 Overview, 7.15A(1)
References, 7.15D

PESTICIDE OPERATORS

Claims against. *See* PESTICIDE CLAIMS
Definition of, 7.15B
Recordkeeping duties, 7.15C

PHYSICIANS

Liens, 18.4D(2)
Malpractice. *See* MEDICAL/DENTAL
 MALPRACTICE
Products liability, 7.16, 7.16E
Professional corporations, 9.1D(3)

PLEADINGS

Amendment of. *See* AMENDED
 PLEADINGS
Attorney fees, 2.16A(1)
Judgment on the pleadings
 Hearings, 2.2D(2)(c)
 Motions, 2.2D(2)(c)
Motions. *See also* MOTIONS
 Distinguished, 2.2D
 Judgment on the pleadings, 2.2D(2)(c)
 More definite statement, 2.2D(2)(d)
 Pleading after, 2.2A(2)(a)
 Striking of allegations, 2.2D(2)(e)
Responsive pleadings, 2.2A(1)
Service of. *See* SERVICE OF
 PROCESS/PAPERS

PLEAS

Change in plea, 3.3C
Overview of, 3.3D

POSTCONVICTION RELIEF

Appeals, 3.7C, 5.1A(3)

Petitions

Filing of, 3.7A

Service of, 3.7B

POWER LINES

Damage caused by extendable equipment,
7.16F(7), 7.28B(8)(h)

PREJUDGMENT ATTACHMENT

Actions in which allowable, 11.8A(2)

Motion for redelivery of attached property,
11.8A(3)

Process, 11.8A(1)

Property that may be attached, 11.8A(2)

PRELIMINARY HEARINGS

Juvenile proceedings, 4.14D

PRELIMINARY INJUNCTIONS

Motions, 2.2D(2)(h)

PREMARITAL AGREEMENTS

Overview of, 4.1B

PRESUMPTIONS

Lost, unclaimed, or abandoned property.

See LOST, UNCLAIMED, OR
ABANDONED PROPERTY

Unpaid wages, presumption of
abandonment of, 11.7G(2)

PRIVATE CORPORATIONS

See CORPORATIONS

PROCESS

Prejudgment attachment, 11.8A(1)

Service of. *See* SERVICE OF
PROCESS/PAPERS

PRODUCTION OF DOCUMENTS

Health information records, 2.9C

Overview of, 2.9B

PRODUCTS LIABILITY

Asbestos, 7.16F(1), 7.28B(8)(g)

Breast implants

Statute of limitations, 7.16F(2)

Statute of ultimate repose, 7.16F(2),
7.28B(8)(f)

COX-2 inhibitors, 7.16F(4)

Defect *versus* failure, 7.16A

Discovery rule, 7.28C

Equitable estoppel, 7.28C(1)

Extendable equipment causing damage to
power lines, 7.16F(7), 7.28B(8)(h)

Foreign manufactured products,
7.28B(8)(b)

Gas tanks, sidesaddle, 7.16F(3),
7.28B(8)(h)

Insane persons, 7.28C(2)

Insurer's advance medical payments,
7.28C(2)(c)

Light bulbs

Mercury vapor bulbs, 7.16F(6)

R type metal halide bulbs, 7.16F(6)

Manufactured dwellings, 7.16F(5),
7.28B(8)(e)

Minors

Claims, 7.16D, 7.28C(2)

Medical-malpractice actions,
7.28C(2)(b)

Personal-injury actions, 7.28C(2)(a)

Minors' claims, 7.16D

Pesticide claims. *See* PESTICIDE

CLAIMS

Physicians, 7.16, 7.16E

References, 7.28D

Statute of limitations, 7.16A

Statutes of ultimate repose

Asbestos, 7.28B(8)(g)

Breast implants, 7.28B(8)(f)

Extendable equipment, 7.28B(8)(h)

Foreign manufactured products,
7.28B(8)(b)

Gas tanks, sidesaddle, 7.28B(8)(h)

Manufactured dwellings, 7.28B(8)(e)

Overview of, 7.16B, 7.28B(8)

Subject Index (continued)

- Personal-injury actions, 7.28B(8)(a), 7.28B(8)(c)
- Property-damage claims, 7.28B(8)(a)
- Wrongful death, 7.28B(8)(d)
- Wrongful death
 - Statute of limitations, 7.16C
 - Statute of ultimate repose, 7.28B(8)(d)
- PROFESSIONAL CORPORATIONS**
 - Articles of correction, 9.1D(3)
 - Business Corporation Act, application of, 9.1D(1)
 - Deceased shareholder's shares, 9.1D(4)
 - Documents, 9.1D(2)
 - Physicians, 9.1D(3)
 - References, 9.1D(5)
- PROFESSIONAL MALPRACTICE**
 - See* LEGAL MALPRACTICE;
MEDICAL/DENTAL
MALPRACTICE
- PROMISSORY NOTES**
 - Notes not subject to UCC, 11.3B to 11.3C
 - Notes subject to UCC. *See*
COMMERCIAL PAPER
- PROPERTY**
 - Action to recover, 14.2I(10)(a)
 - Attachment of
 - Justice court proceedings, 2.4G
 - Prejudgment. *See* PREJUDGMENT
ATTACHMENT
 - Damage to. *See* PROPERTY-DAMAGE
CLAIMS
 - Execution sales. *See* EXECUTION
SALES
 - Intangible property
 - Lost, unclaimed, or abandoned
property. *See* LOST,
UNCLAIMED, OR
ABANDONED PROPERTY
 - Misappropriation of trade secrets,
10.3
 - Personal. *See* PERSONAL PROPERTY
 - Real. *See* REAL PROPERTY
- Uniform Disclaimer of Property Interest
Act, 6.6P
- PROPERTY-DAMAGE CLAIMS**
 - See also* PERSONAL PROPERTY; REAL
PROPERTY
 - Construction, alteration, or repair, damage
from
 - Overview of, 15.3E
 - Public bodies, actions by, 15.3E(3)
 - Statute of limitations, 15.3E(1)
 - Statutes of repose, 15.3E(2) to 15.3E(3)
 - Indian tribes, 7.25A
 - Negligence, 7.26A(2)
 - Overview of, 7.1A
 - Statutes of limitations
 - Conflict-of-laws situation, 7.2
 - Generally, 7.1B, 7.5
 - Real property, 15.3E(1)
 - Statutes of ultimate repose
 - Conflict-of-laws situation, 7.2
 - Overview, 7.1C
 - Products-liability actions, 7.28B(8)(a)
 - Real property, 15.3E(2)
- PROPERTY TAXES**
 - Personal property taxes. *See* PERSONAL
PROPERTY TAXES
 - Real property taxes. *See* REAL
PROPERTY TAXES
- PROTECTIVE PROCEEDINGS**
 - Appointment of visitor, 6.1B to 6.1C
 - Conservators. *See* CONSERVATORS
 - Elderly persons. *See* ELDERLY
PERSONS
 - Guardians. *See* GUARDIANS
 - Notice requirements, 6.1A
 - Objections, 6.1A
 - Statement of intent to place person in
facility, 6.1A
 - Visitor's report, 6.1B, 6.1C
- PUBLIC ACCOMMODATION
DISCRIMINATION**
 - Civil actions, 8.1A(2), 8.1C(2)

Complaints, 8.1A(1), 8.1C(1)
Disabilities, persons with, 8.1E(3),
8.1G(3)
Exceptions, 8.1C
Federal claims, 8.1G(3)
Oregon Tort Claims Act, 8.1C(3)
Overview of, 8.1C
Unlawful, 8.1A, 8.1C

PUBLIC BENEFIT CORPORATIONS
See NONPROFIT CORPORATIONS

PUBLIC BODIES

Continuing-tort doctrine, 7.26A(4)
Federal Tort Claims Act, 7.24C
Laches doctrine, 14.2K(3)
Oregon Tort Claims Act. *See also*
OREGON TORT CLAIMS ACT
Pesticide claims, 7.15D
Property-damage claims, 15.3E(3)
Trusts, claims against, 6.7E(1)(d)
Wrongful-death actions against
Discovery rule, 6.5C(2)
Limitations periods, 6.5C(1)

**PUBLIC CONSTRUCTION
PROJECTS**

Federal Miller Act, 17.2B
Notice, receipt of, 17.2C
Oregon's Little Miller Act, 17.2A
Overview of, 17.2
Performance bonds, 17.2
References, 17.2D

PUBLIC OFFICERS

Actions against public employers. *See*
PUBLIC BODIES
Death of officer who is party, 2.2G(4)

PUBLIC-SECTOR LABOR UNIONS

Collective bargaining, 8.4A(2)(a),
8.4A(2)(d)
Expedited bargaining process, 8.4A(2)(d)
Grievance arbitration, 8.4A(1)
Interest arbitration, 8.4A(2)
Strikes, 8.4A(2)(b)

Teachers, 8.4B

PUNITIVE DAMAGES

Notice of judgment, 2.13F(2)(c)
Proposed judgments, 2.13F(2)(b)

**PURCHASE-MONEY SECURITY
INTERESTS**

Secured transactions, 11.15E, 11.15H(2)

R TYPE METAL HALIDE BULBS

Products liability, 7.16F(6)

RACKETEERING ACTIVITY

Accrual of action, 10.4C
Evidence, 10.4D
Overview of, 10.4B
References, 10.4E
Statute of limitations, 10.4B

REAL PROPERTY

Actions

Adverse possession. *See* ADVERSE
POSSESSION
Contract actions, 14.2I(10)
Damage from construction, alteration,
or repair, *below*
Nuisance actions. *See* NUISANCE
ACTIONS
Right, claim, or interest in property,
15.3H
Trespass actions. *See* TRESPASS
ACTIONS
Waste, actions for. *See* WASTE,
ACTION FOR
Adverse possession. *See* ADVERSE
POSSESSION
Contract actions, 14.2I(10)
Damage from construction, alteration, or
repair
Architects, actions against, 15.3E(4)
Engineers, actions against, 15.3E(4)
Landscape architects, actions against,
15.3E(4)
Statute of limitations, 14.2I(3)

Subject Index (continued)

Executions. *See* EXECUTION SALES;
EXECUTIONS (PROPERTY)
Fraudulent transfers, 15.3K
Future interests, extinguishment of, 15.3L
Grade, change of, 15.3J
Land sale contracts, 15.3A
Receiverships. *See* RECEIVERS AND
RECEIVERSHIP
Residential property. *See* RESIDENTIAL
PROPERTY
Rule against perpetuities, 15.3L
Sales contracts
 Enforcement of, 14.2I(10)(b)
 Land sale contracts, 15.3A
Street use restrictions, 15.3J
Surveying, 15.3I
Surveyors, contract actions against,
 14.2I(3)(c)
Taxes. *See* REAL PROPERTY TAXES
Trespass actions. *See* TRESPASS
ACTIONS
Waste, actions for. *See* WASTE, ACTION
FOR

REAL PROPERTY TAXES

Delinquent taxes
 Date of delinquency, 18.8F(3)(a)
 Foreclosure by county, 18.8F(3)(c)
 Notice of delinquency, 18.8F(3)(b)
Tax liens, 18.8F(3)

RECEIPT

Overview of, 11.2A

RECEIVERS AND RECEIVERSHIP

Appointment of receiver, 2.2E(1)
Hearings, 2.2E(3)
Notice requirements, 2.2E(1) to 2.2E(3)
Overview of, 11.8C
Securities brokers-dealers' assets,
 10.5G
Termination of receivership, 2.2E(2)

RECOUPMENT

Overview of, 2.11B, 2.11D

RECUSAL OF JUDGE

Motions for, 2.2D(2)(a)

REFORMATION OF CONTRACT

Actions for, 14.2I(9), 14.2M

REGISTERED AGENTS

Corporations, 9.4D
Limited liability companies, 9.1A(4)
Limited partnerships, 9.1B(2)
Nonprofit corporations, 9.3C

RELATION BACK DOCTRINE

Personal representative's duties/powers,
 6.6C, 7.22C
Statutes of limitations, 2.6A(5)

RELIEF FROM JUDGMENT

Default judgment, motion to set aside,
 2.14A(3)
Excusable neglect, 2.14B(2), 18.2B
Fraud or deceit, 2.14B(1), 18.2B
Grounds, list of, 2.14B(1), 18.2B
Motion, effect of, 2.14B(4)
Paternity actions, 4.9N
Pendency of appeal, 2.14B(5)
Void judgments, 2.14B(3)

RELIGIOUS CORPORATIONS

See NONPROFIT CORPORATIONS

RENT

Bankruptcy claims. *See* BANKRUPTCY
CASES
Prepaid rent, 15.2A(7)

REPUTATION, INJURY TO

False light claims, 7.8C(1)
Generally. *See* DEFAMATION
Libel or slander, *se* libel or slander
Negligent injury, 7.8C(2)

REQUESTS FOR ADMISSIONS

Overview of, 2.9D
Responses to, 2.9D

RESIDENTIAL PROPERTY

Construction complaints. *See*
CONSTRUCTION CONTRACTORS
BOARD COMPLAINTS
Construction liens, 17.3C(1)(b)
Deeds of trust. *See* MORTGAGES AND
TRUST DEEDS
Execution sales
Notice of hearing, 11.9A(3)
Notice of property sold, 11.9A(9)
Homestead exemption, 18.3B(1), 18.3B(2)
Landlord and tenant. *See* LANDLORD
AND TENANT
Landlord's lien. *See* LANDLORD'S LIEN
Mortgages. *See* MORTGAGES AND
TRUST DEEDS
Used residence warranty, breach of,
15.3H

RESTITUTION

Federal restitution, 3.5B
State restitution, 3.5A

RETALIATION CLAIMS

Occupational safety and health,
8.2H(6)

REVOCABLE TRUSTS

See also TRUSTS
Contesting validity of, 6.7E(5)

RULE AGAINST PERPETUITIES

Decedents' estates, 6.6V
Real property, 15.3L

SAFE-DEPOSIT BOXES

Garnishor's duty to pay garnishee's costs
for gaining access, 11.11E(3)
Lost, unclaimed, or abandoned property,
11.7F(5)

SAFETY IN THE WORKPLACE

See OCCUPATIONAL SAFETY AND
HEALTH

SALE OF GOODS (UCC)

Account/account stated, action on,
11.1B(2), 11.1C
Accrual of action, 14.3A(4)
Auctions, 14.3A(4)
Breach-of-contract actions
Attorney fees, 12.7A(2)(b)
Overview, 12.7A(1)
Breach-of-warranty actions, 12.7A(2)(a)
Buyer's revocation of acceptance,
14.3A(7)
Insolvent buyer, seller's remedies against,
14.3A(5)
Objection to contract, 14.3A(1)
References, 12.7C
Remedies
Insolvent buyer, seller's remedies
against, 14.3A(5)
When timely action is terminated,
14.3A(3)(c)
Statute of frauds, 14.3A(1)
Statute of limitations
Breach of warranty, 14.3A(6)(a)
General rule, 14.2I(6), 14.3A(3)(a)
Remedies, *above*
Secured transactions, contract
involving, 14.3A(3)(b)
Stoppage of delivery in transit,
14.3A(5)(b)
Warehouse goods, 11.14B(2)
Warranties
Breach of warranty, 14.3A(4), 14.3A(6)
Breach-of-warranty actions,
12.7A(2)(a)
Express warranties, 14.3A(2)
Implied warranties, 14.3A(2)

SALES

Execution sales. *See* EXECUTION
SALES
Nonprofit corporations, 9.3G
Real estate contracts
Enforcement of, 14.2I(10)(b)
Land sale contracts, 15.3A
UCC. *See* SALE OF GOODS (UCC)

Subject Index (continued)

SARBANES-OXLEY ACT

Securities law claims, 8.2J(2)(b) to
8.2J(2)(c)

SATURDAYS

Computation of time, 2.3B, 2.3C(2)

SAVING STATUTE

General rules

Application of, 2.8B

Discussion of, 2.8A

References, 2.8C

Overview of, 2.8

SCHOOL ADMINISTRATORS

Delegation of child responsibilities to,
4.1C

SECURED TRANSACTIONS

After-acquired commercial tort claims,
11.15F(3)

After-acquired consumer goods, 11.15F(2)

Art transactions, 11.15I(2)

Assignments, 11.15N

Attachment of security interests

After-acquired commercial tort claims,
11.15F(3)

After-acquired consumer goods,
11.15F(2)

Overview of, 11.15F(1)

Claims reduced to judgment, 11.15P(1)

Collateral

Calculation of deficiency/surplus,
explanation of, 11.15P(3)(c)

Compulsory disposition of, 11.15P(4)

Deficiency after disposition, liability
for, 11.15P(3)(b)

Disposition of, 11.15P(3) to 11.15P(4)

Notice before disposition of,
11.15P(3)(a)

Possession of, 11.15P(3)

Proceeds, secured party's right to,
11.15D

Redemption of, 11.15Q(2)

Right to surplus after disposition of,
11.15P(3)(b)

Consignments

Fine art, 11.15I(2)

Overview, 11.15I(1)

Continuation statements

Filing to continue perfection, 11.15K(1)

Renewal notice, 11.15K(2)

Contract actions involving, 14.3A(3)(b)

Debtor's remedies

Conversion, action for, 11.15Q(1)

ORS Chapter 79, secured party's
liability for noncompliance with,
11.15Q(3)

Redemption of collateral, 11.15Q(2)

Definition of, 11.15B

Excluded transactions, 11.15B

Farm products, 11.15R, 11.15S

Federal tax liens, 11.15H(5), 18.8D

Financing statements

Amendment of, 11.15J(5)

Change of debtor's name on,
11.15J(6)

Duration of, 11.15J(4)

Farm products, 11.15R(1) to
11.15R(3)

Filing of, 11.15J(1) to 11.15J(3)

Mortgage record, 11.15J(7)

Refusal of filing office to accept,
11.15J(3)

Motor vehicles, security interests in. *See*
MOTOR VEHICLES

Overview of, 9.5D, 11.15A

Perfection of security interests

Automatic perfection, 11.15C(3)

Continuation statement, filing of,
11.15K(1)

Control, by, 11.15C(2)

Filing, by, 11.15C(4)

Overview of, 9.5D(1), 11.15C

Possession, by, 11.15C(1)

Priorities among security interests

Federal tax liens, 11.15H(5)

Future advances, 11.15H(3)

Overview of, 9.5D(2), 11.15H(1)

Purchase-money security interests,
11.15H(2)

Special cases, 11.15H(4)

Purchase-money security interests
 Overview, 11.15E
 Priorities, 11.15H(2)
Records of filed statements
 Access to information in, 11.15O
 Retention of, 11.15M
References, 11.15T
Remedies
 Debtor's remedies, *above*
 Secured party's remedies after default,
 below
Retention of property to satisfy debt,
 11.15P(5)
Secured party's duties
 Duty regarding deposit accounts,
 11.15G(2)
 Duty to provide an accounting,
 11.15G(1)
 Duty to release account debtor after
 notification of assignment,
 11.15G(3)
Secured party's remedies after default
 Claims reduced to judgment,
 11.15P(1)
 Compulsory disposition of collateral,
 11.15P(4)
 Disposition of collateral, 11.15P(3)
 Overview of, 11.15P
 Possession of collateral, 11.15P(3)
 Retention of property to satisfy debt,
 11.15P(5)
Termination statements, 11.15L

SECURITIES

Actions after limitations period has run,
 11.3A
Brokers-dealers. *See* SECURITIES
 BROKERS-DEALERS
Legal claims/violations. *See* SECURITIES
 LAW CLAIMS/VIOLATIONS

SECURITIES BROKERS-DEALERS

Licenses, 10.5H
Records of, 10.5H
Statement of security purchases/sales,
 10.5D

**SECURITIES LAW CLAIMS/
VIOLATIONS**

Actions against brokers, 10.5E
Actions against loan originators, 10.5E
Actions against mortgage bankers, 10.5E
Actions against purchasers of securities
 Discovery rule, 10.5B(3)
 Persons vicariously liable, 10.5B(2)
 Statute of limitations, 10.5B(1)
Actions against sellers of securities
 Discovery rule, 10.5A(3)
 Persons vicariously liable, 10.5A(2)
 Statute of limitations, 10.5A(1)
Actions under ORS 59.137, 10.5C
Blackout periods, trading during,
 8.2J(2)(b)
Discovery rule
 Actions against purchasers of securities,
 10.5B(3)
 Actions against sellers of securities,
 10.5A(3)
Federal law, 8.2J(2)
Fraud or deceit
 Federal law, 8.2J(2)(a)
 Oregon law, 8.2J(1)
Hearing requests, 10.5F
Orders
 Entry of, 10.5F
 Review of, 10.5F
Oregon law, 8.2J(1)
Possession of assets, 10.5G
References, 8.2K, 10.5I
Sarbanes-Oxley Act, 8.2J(2)(b) to
 8.2J(2)(c)
Statute of limitations
 Actions against purchasers of securities,
 10.5B(1)
 Actions against sellers of securities,
 10.5A(1)
Vicarious liability
 Purchasers of securities, 10.5B(2)
 Sellers of securities, 10.5A(2)
Whistleblower protection, 8.2J(2)(c)

SECURITY

See BONDS, SECURITY

Subject Index (continued)

SECURITY DEPOSITS

Landlord and tenant, 15.2A(7)

SELF-SERVICE STORAGE FACILITY LIEN

Foreclosures

Notice to occupant, 15.1D(2),
18.7F(2)(a)

Overview of, 18.4F(2)

Public notice, 15.1D(3), 18.7F(2)(b)

Sales proceeds, 15.1D(4), 18.7F(2)(c)

Nature of, 15.1D(1), 18.7F(1)

Overview of, 18.4F(1)

References, 15.1E, 18.7G

SENIOR CITIZENS

See ELDERLY PERSONS

SENTENCING ENHANCEMENTS

Notice of, 3.3E

SEPARATION OF SPOUSES

Conversion to dissolution action, 4.8A.

See also DISSOLUTION OF
MARRIAGE

Duration of, 4.8B

SERVICE OF PROCESS/PAPERS

Acceptance, 2.13H(1)

Adoption documents, 4.9A

Antitrust, investigative demands,
10.1A

Appellate motions, 5.1I

Commencement of actions, 2.1A(2)

Computation of time

E-mail service, 2.3G(2)

Fax service, 2.3B, 2.3G(2)

Mail service, 2.3B, 2.3G(2)

Public office closed, 2.3G(1)

Construction lien release bond, notice of
filing, 17.3H(2)(b)

Elective share of surviving spouse, motion
for, 6.6M(2)

Foreclosure sales, notice of, 13.5D(2)(c)

Habeas corpus writs

Time for return, 5.2D(2)

When service complete, 5.2D(1)

Incomplete service, dismissal of action for,
2.2H(2)(a)

Mail service. *See* MAIL SERVICE

Mandamus petitions, 5.2B(2)

Postconviction-relief petitions, 3.7B

Proof of service

Disabled person abuse, 6.2A

Elder abuse, 6.2A

Return of service, 2.13H(1)

Show-cause orders, 5.2B(5)

Third-party practice, 2.2F

Writs of review, 5.2A(3)

SERVICEMEMBERS CIVIL RELIEF ACT

Overview of, 11.13A

References, 11.13B

SETOFFS

Overview of, 2.11C, 2.11D

SETTLEMENT

Notice of, 2.13D(5), 2.13H(6)

SETTLEMENT AGREEMENTS

Trusts, 6.7D

SEX

Change of, 4.10

Educational discrimination, 8.1G(5)

Employment discrimination, 8.1G(2)

SEXUAL ABUSE

Ex parte hearings, 4.12A

Hearings

Date of, 4.12C

Ex parte hearings, 4.12A

Extension of time, 4.12D

Respondent-requests, 4.12B

Overview of, 4.12A

Renewal of orders, 4.12E

SHARE EXCHANGES

Corporations, 9.4L

SHERIFF'S SALES

See EXECUTION SALES

Confirmation of sale, 13.6C

Notice of sale, 13.6A

Possession of property, 13.6B

Redemption of property

Accountings, 13.6D(7)

Amount, payment of, 13.6D(5),

13.6D(8)

Judgment debtor, by, 13.6D(1)

Lien claimant, by, 13.6D(2)

Mortgagor, by, 13.6D(1)

Necessary party, failure to join,
13.6D(9)

Notices, 13.6D(3) to 13.6D(4)

Objection to notice, 13.6D(4)(a)

Objection to redemption, 13.6D(6)

Objection to response to notice,
13.6D(4)(c)

References, 13.6E

Response to notice, 13.6D(4)(b)

References, 13.6E

SIDESADDLE GAS TANKS

Products liability, 7.16F(3), 7.28B(8)(h)

SKI RESORTS, ACTIONS AGAINST

Notice requirements

Failure to give notice, 7.17A(3)

Skier's personal injury, 7.17A(1)

Skier's wrongful death, 7.17A(2)

Statute of limitations, 7.17B

SLANDER OF PERSON

See LIBEL OR SLANDER

SLANDER OF TITLE

Overview of, 7.8B

SMALL CLAIMS (CIRCUIT COURT)

Appeals, 2.5G

Commencement of actions, 2.5A

Counterclaims exceeding jurisdictional
amount of, 2.5D

Default judgments, setting aside, 2.5E

Defendant's response(s), 2.5B

Demand for hearing, 2.5B

Demand for jury trial, 2.5C

Dismissals, setting aside, 2.5E

Judgment liens, 2.5F(3)

Judgments

Default judgments, setting aside, 2.5E

Judgments of \$3,000, or more, 2.5F(2)

Judgments of less than \$3,000, 2.5F(1)

References, 2.5H

SMALL ESTATES

See DECEDENTS' ESTATES

SOVEREIGN IMMUNITY

Indian tribes, 7.25A

SPECIAL ADMINISTRATORS

Decedents' estates, 6.6B

SPECIAL FINDINGS OF FACT

Overview of, 2.17B

SPOUSAL SUPPORT

Decedents' estates, 6.6E

Judgment liens

Judgments entered before January 1,
2004, 4.5A(5)

Judgments entered on or after January
1, 2004, 4.5A(3)

Overview, 18.3A

Liens

Extension of, 4.5A(4)

Judgment liens, *above*

Satisfaction of, 4.5A(1)

Unpaid support, 4.5A(2)

Modification of, 4.7

Motion to modify, 4.7A

Reinstatement of, 4.6

Termination of

Overview, 4.5B

Satisfaction of arrearages, 4.5A(1)

Subject Index (continued)

- Uniform Support Declaration, 4.7B
- Worksheets, 4.7E
- SPOUSES**
- Annulment of marriage. *See*
DISSOLUTION OF MARRIAGE
- Consortium, loss of, 7.27
- Court-exercised conciliation
 - Overview, 4.2G(1)
 - Petition for, 4.2G(2)
 - Temporary orders, 4.2G(3)
- Decedents' estates
 - Elective share. *See* ELECTIVE SHARE
OF SURVIVING SPOUSE
 - Spousal support, 6.6E
- Divorce. *See* DISSOLUTION OF
MARRIAGE
- Premarital agreements, 4.1B
- Separations
 - Conversion to dissolution action, 4.8A.
See also DISSOLUTION OF
MARRIAGE
 - Duration of, 4.8B
- Servicemember's delegation of child
responsibilities to spouse, 4.1C
- Support. *See also* SPOUSAL SUPPORT
- STALKING**
- Residential tenant-victims, 15.2A(5)
- STALKING ACTIONS**
- References, 7.21B
- Statute of limitations, 7.21A
- "STATE ACTION" DISCRIMINA-
TION**
- Overview of, 8.1G(1)(c)
- STATUTE OF FRAUDS**
- Investment securities, 9.5C, 11.14C(3)
- Sale of goods (UCC), 14.3A(1)
- STATUTES OF LIMITATIONS**
- Account/account stated. *See* ACCOUNT/
ACCOUNT STATED
- Adoption proceedings, 4.9J
- Advance payments
 - Damages, of, 2.6C
 - Insurance claims, of, 7.26D, 16.1A
- Adverse possession, 15.3B(2)
- Affirmative defense, as, 2.6A(1)
- Antitrust law
 - Attorney General, actions by, 10.1B(1)
 - Private actions, 10.1B(2)
- Assault and battery
 - Counterclaims, 7.6B
 - General rule, 7.4B, 7.6A
- Bank deposits and collections, 14.3C(1)
- Conflict of laws, 2.15A, 7.2
- Contract actions. *See* CONTRACT
ACTIONS
- Contractual relations, intentional
interference with, 7.12A, 10.2A
- Conversion actions, 7.7A
- Counterclaims, 2.6A(6)
- Credit repair organizations' liability,
12.8A
- Criminal cases
 - Federal felonies, 3.2D
 - Federal misdemeanors, 3.2D
 - Forfeiture, action for, 3.6A
 - Overview, 3.1
 - Penalty, action for, 3.6A
 - State felonies, 3.2A
 - State misdemeanors, 3.2B
 - Violations, 3.2C
- Debt collection practices, 12.4A
- Defenses, 2.6A
- Dismissals, refilings on, 2.6A(7), 2.8A(2)
- Economic relations, intentional
interference with, 7.12A, 10.2A
- Employer Liability Law, 8.2F
- Employment discrimination, 8.1B(2)
- Estoppel defense
 - Affirmative inducement requirement,
2.6A(3)(b)
 - Requirements of, 2.6A(3)(a)
- Extension of
 - Bankruptcy creditors actions, for,
2.6D(3)
 - Bankruptcy trustees, for, 2.6D(2)
 - Bankrupt debtors, for, 2.6D(2)

- Debtors' actions, for, 2.6D(2)
- Injunctions, effect of, 2.6D(1)
- Statutory prohibition, effect of, 2.6D(1)
- False arrest, 7.9A
- False imprisonment, 7.4B, 7.9A
- Federal discrimination claims, 8.1G(1)
- Federal tax liens, 18.8A
- Felonies
 - Federal felonies, 3.2D
 - State felonies, 3.2A
- Forfeitures in criminal cases, 3.6A
- Fraud and deceit, 7.10A
- Indemnity/indemnification, 14.2J(1)
- Insane persons
 - Generally, 2.6B(1)(a)
 - Tolling of limitations period, 2.6B(1)(a), 6.1E, 6.3B(2)
- Insurance claims
 - Advance payments notice, effect of, 16.1A
 - Commencement of actions, 16.1D
- Intentional infliction of emotional distress, 7.11A
- Intentional interference with
 - contractual/economic relations, 7.12A, 10.2A
- Involuntary dismissals, effect of, 2.6E
- Laches doctrine, 14.2K(2)
- Legal malpractice, 7.13A to 7.13B
- Libel or slander, 7.8A(1)
- Lost, unclaimed, or abandoned property, 11.7C
- Minors
 - Advance payments to minors, 2.6C(3)
 - Generally, 2.6B(1)(a)
 - Medical bills of injured child, 7.4D
 - Tolling of limitations period, 2.1A(3), 2.6B(1), 2.6C(3), 6.1E, 6.3B(2), 7.3B
- Misdemeanors
 - Federal misdemeanors, 3.2D
 - State misdemeanors, 3.2B
- Oregon Tort Claims Act
 - Minors' claims, 2.1A(3), 2.6B(1)(b), 2.18A(4)(b), 7.3B
- Overview of, 2.6
- Penalties, 3.6A
- Personal-injury actions. *See* PERSONAL-INJURY ACTIONS
- Personal property, taking, detaining, or injuring, 11.6A(1)
- Products liability, 7.16A
- Racketeering activity, 10.4B
- References, 2.6A(8)
- Refilings on dismissals, 2.6A(7), 2.8A(2)
- Relation back doctrine, 2.6A(5)
- Running of
 - Tolling, *below*
 - When statute begins to run, 2.1A(2)
- Sale of goods (UCC), 14.2I(6). *See* SALE OF GOODS (UCC)
- Securities violations
 - Actions against purchasers of securities, 10.5B(1)
 - Actions against sellers of securities, 10.5A(1)
- Ski resorts, actions against, 7.17B
- Stalking actions, 7.21A
- Sureties, 11.17B
- Tolling
 - Absence of defendant, 2.6B(3)
 - Account/account stated, action on, 11.1B(1)
 - Advance insurance payments/permits to unions, 7.26D
 - Advance payments for damages, 2.6C
 - Concealment of defendant, 2.6B(3)
 - Conservatorships, 6.1D
 - Contract actions, 14.2A
 - Court mediation, during, 1.4C
 - Death of defendant, 2.6B(2)(b)
 - Death of plaintiff, 2.6B(2)(a)
 - Disability of party, 6.3B(2)
 - Injured child's medical bills, 7.4D(1)
 - Insane persons, 2.6B(1)(a), 6.1E, 6.3B(2)
 - Minors, 2.1A(3), 2.6A(3), 2.6B(1), 2.18A(4)(b), 6.3B(2)
 - Oregon Tort Claims Act, 2.1A(3), 2.6B(1)(b)
 - Racketeering offenses, 10.4B
 - Trusts, claims against, 6.7E(1)(c)

Subject Index (continued)

- Wrongful concealment of material facts, 2.6A(4)
- Tort actions, 7.26D
- Trade secrets, misappropriation of, 10.3A
- Trustees
 - Actions against. *See* TRUSTEES
 - Generally, 6.7H
- Trusts, claims against. *See* TRUSTS
- Unlawful trade practices, private actions against, 12.3B
- Violations, 3.2C
- Waiver of, 2.6A(2)
- When statute begins to run, 2.1A(2)
- Wrongful concealment of material facts, 2.6A(4)
- Wrongful-death actions
 - General rule, 6.5A, 7.16C, 7.22A(1)
 - Public bodies, actions against, 6.5C(1)
- Wrongful-discharge claims, 8.2G
- STATUTES OF ULTIMATE REPOSE**
- Breast implants
 - Nonproducts-liability actions, 7.28B(7)
 - Products-liability actions, 7.16F(2), 7.28B(8)(f)
- Child abuse cases, 2.7G(1)(c), 7.28C(2)(d)
- Commencement of, 2.7B, 7.28B
- Construction of, 2.7C, 7.28B(1)
- Continuing-tort doctrine, 7.26A(2)(c)
- Contract actions, 14.20
- Discovery rule, 2.7E
- Equitable estoppel, 2.7F
- Insane persons
 - Advance payment of damages, 2.7G(2)
 - Overview, 2.7G(1)
- Legal malpractice, 7.28B(4)
- Medical bills, insurer's advance payment of, 7.28C(2)(c)
- Medical/dental malpractice
 - Continuing-treatment theory, 7.14C
 - Generally, 7.14A(6), 7.28B(5)
 - Minors, 2.7G(1)(b), 7.14A(6)(c)
- Minors
 - Advance payment of damages, 2.7G(2)
 - Child abuse cases, 2.7G(1)(c)
- Medical-malpractice actions,
 - 2.7G(1)(b)
 - Overview, 2.7G(1)
 - Personal-injury actions, 2.7G(1)(a)
 - Tolling, 2.6B(1)(a), 2.7G(1)
- Nature of, 2.7A
- Negligence, 7.28B(3)
- Overview of, 7.28A
- Personal-injury actions
 - Conflict-of-laws situation, 7.2
 - Overview, 7.1C
 - Products-liability actions, 7.28B(8)(a), 7.28B(8)(c)
- Products-liability actions. *See* PRODUCTS LIABILITY
- Property-damage claims. *See* PROPERTY-DAMAGE CLAIMS
- Running of
 - Commencement, 2.7B
 - Overview, 7.28B
- Specific statutes for specific claims, 2.7D, 7.28B(2)
- Tolling
 - Insane persons, for, 2.7G(1)
 - Minors, for, 2.6B(1)(a), 2.7G(1)
- Wrongful-death actions, 7.28B(6)
- STAYS**
- Arbitration, judicial proceeding pending, 1.2D
- Bankruptcy cases, 2.13H(7)
- Commencement of actions, effect on, 2.1B
- Mandamus petition, effect of filing, 5.2B(3)
- STIPULATIONS**
- Mediation, 1.4B
- Uniform Trial Court Rules, 2.13D(4)
- STOP PAYMENT ORDERS**
- Bank deposits and collections, 14.3C(4)
- STORAGE**
- Chattel liens (possessory). *See* CHATTEL LIENS (POSSESSORY)

Self-service storage facility lien. *See*
SELF-SERVICE STORAGE
FACILITY LIEN
Warehouses. *See* WAREHOUSES

STRIKES

Labor law, 8.4A(2)(b)

SUBPOENAS

Arbitration, 1.2E

SUMMARY JUDGMENT

Motions for
Filing, 2.2D(2)(g)
Opposing affidavits, 2.12B
Overview, 2.12A
Replies, 2.12B
Responses, 2.2D(3)(a)
Multiple claims, 2.12C
Multiple parties, 2.12C
References, 2.12D

SUNDAYS

Computation of time, 2.3B, 2.3C(2)

SUPPORT AND MAINTENANCE

Assets/liabilities statement, 4.2B(3)
Child support. *See* CHILD SUPPORT
Spousal support. *See* SPOUSAL
SUPPORT
Uniform Support Declaration, 4.2B(2)

SUPREME COURT

Mandamus in, 5.2C

SURETIES

See also BONDS, SECURITY
Accrual of actions against, 11.17B(2)
CCB actions, right of sureties to intervene
in, 17.1G(2)
Construction complaints. *See*
CONSTRUCTION CONTRACTORS
BOARD COMPLAINTS
Discharge of, 11.17A
Indemnification of, 11.17B(3)
Involuntary suretyship, 11.17B(4)

Liability of, 11.17B(1)
Objections to, 11.17A
References, 11.17C
Statute of limitations, 11.17B

SURVEYING

Land surveying, 15.3I

SURVEYORS

Contract actions against, 14.2I(3)(c)

SURVIVAL OF ACTIONS

Death, 7.22A(2)
Overview of, 6.4A
Personal-injury actions
Defendant's death, 6.4B(2)
Plaintiff's death, 6.4B(1)
Personal representatives, 6.4A(1)
Procedure, 6.4A(2)
References, 6.4C

TAX LIENS

Collection of tax
Execution, recordation of, 18.8F(1)(b)
Oil and gas taxes, 18.8F(2)
Personal property taxes, 18.8F(4)
Real property taxes, 18.8F(3)
Thirty-day demand, 18.8F(1)(a)
Warrant, recordation of, 18.8F(1)(b)
Delinquent taxes. Collection of tax, *above*
Federal. *See* FEDERAL TAX LIENS
Oil and gas taxes, 18.8F(2)
Personal property taxes, 18.8F(4)
Real property taxes, 18.8F(3)
Unpaid taxes. Collection of tax, *above*

TAX RETURNS

Conservators, 6.1D
Estate taxes. *See* ESTATE TAXES
Gift taxes. *See* GIFT TAXES
Guardians, 6.1B

TEACHERS

Dismissal from employment, 8.4B
Nonextension of contract, 8.4B

TELLER'S CHECKS

Actions to enforce obligations on,
14.3B(4)

TEMPORARY GUARDIANS

See GUARDIANS

**TEMPORARY RESTRAINING
ORDERS**

Motions, 2.2D(2)(h)
Unlawful trade practices, 12.3A(2)

TENANTS IN COMMON

Adverse possession, 15.3B(3)

TENDER

Definition of, 11.2A
Instrument, validity of, 11.2A
Objections to, 11.2B
References, 11.2C

THIRD-PARTY PRACTICE

Counterclaims. *See* COUNTERCLAIMS
Cross-claims, 2.2F
Intervention of parties. *See*
INTERVENTION OF PARTIES
Overview of, 2.2F
Service of process/papers, 2.2F
From workers' compensation, 8.3L

TITLE TO PROPERTY

Fraudulent conveyances, 15.3K
Motor vehicles. *See* MOTOR VEHICLES
Slander of, 7.8B

TOLLING

See STATUTES OF LIMITATIONS;
STATUTES OF ULTIMATE
REPOSE

TORT ACTIONS

See also specific tort
Continuing-tort doctrine
Intentional infliction of emotional
distress, 7.26A(3)

Medical/dental malpractice,
7.26A(2)(b)

Negligence, 7.26A(2)

Overview of, 7.26A(1)

Public bodies, actions against,
7.26A(4)

References, 7.26A(5)

Statutes of ultimate repose, 7.26A(2)(c)

Contract actions *versus*, 7.26D, 14.2N

Contribution among tortfeasors,
7.26B(1)(a) to 7.26B(1)(b)

Employment-related, 8.2G

Federal Tort Claims Act, 7.24C

OTCA. *See* OREGON TORT CLAIMS
ACT

Personal injuries, actions for. *See*
PERSONAL-INJURY ACTIONS

Property-damage claims. *See*
PROPERTY-DAMAGE CLAIMS

Statute of limitations, 7.26D. *See also*
specific torts

Statutes of ultimate repose. *See*
STATUTES OF ULTIMATE
REPOSE

TRADE PRACTICES, UNLAWFUL

See UNLAWFUL TRADE PRACTICES

TRADE SECRETS

Misappropriation of, 10.3

TRANSFER OF CASES

Arbitration, to, 1.3B

Justice courts, counterclaims outside
jurisdictional limits of, 2.4C

TRAVELER'S CHECKS

Actions to enforce obligations on,
14.3B(4)

Lost, unclaimed, or abandoned property,
11.7F(2)

TRESPASS ACTIONS

Overview of, 15.3C

Statute of limitations, 14.2I(10)(c)

TRIAL

Jury instructions, 2.13F(4)
Jury selection, 2.17A
Jury trial demand, 2.5C
New trial, motion for, 2.17C
Postponement of, 2.13D(6)

TRIAL DATE

Criminal cases, 3.3D
Setting of, 2.13H(4)

TRIAL DE NOVO

Mandatory arbitration proceedings,
1.3K(2)

TRIAL MEMORANDA

Uniform Trial Court Rules, 2.13F(1)

TROs

See TEMPORARY RESTRAINING
ORDERS

TRUST DEEDS

See MORTGAGES AND TRUST DEEDS

TRUSTEES

Actions against
 Breach of trust, 6.7A(2) to
 6.7A(3)
 Laches, 6.7A(2)
 Limitations on, 6.7H
 Negligence, 6.7A(1)
Breach of duty
 Express breach, 6.7A(3)
 Laches, 6.7A(2)
Claims against trust, 6.7E(1)(e)
Negligence, 6.7A(1)
Notice of transfer of place of
 administration, 6.7C(1)
Place of administration, transfer of
 Notice requirements, 6.7C(1)
 Objections to, 6.7C(2)
References, 6.7I
Resignation of, 6.7G

TRUSTS

See also TRUSTEES

Administration, transfer of place of, 6.7C
Claims against trusts
 Allowance of, 6.7E(3)
 Commencement of proceedings,
 6.7E(2)
 Debts of settlor, based on, 6.7E
 Disallowance of, 6.7E(3)
 Grantors, claims against, 6.7E(1)(e)
 Liens, claims based on, 6.7E(1)(e)
 Notice of claimants, 6.7E(2)
 Petition to close case, 6.7E(4)
 Presentation of, 6.7E(1)(a)
 Public bodies, action by, 6.7E(1)(d)
 Remedies if claim disallowed,
 6.7E(3)(b)
 Revocable trust's validity, contesting,
 6.7E(5)
 Summary determination of, 6.7E(3)(c)
 Time limitations, 6.7E(1)
 Tolling of limitations period on settlor's
 death, 6.7E(1)(c)
 Trustees, claims against, 6.7E(1)(e)
 Waiver of limitations period, 6.7E(1)(b)
Constructive trusts, 6.7B
Distributions on termination of, 6.7F
References, 6.7I
Revocable trusts, contesting validity of,
 6.7E(5)
Settlement agreements, 6.7D

UCC

See UNIFORM COMMERCIAL CODE

UNDERTAKINGS

See BONDS, SECURITY

UNEMPLOYMENT INSURANCE

BENEFITS

Administrative law judge's decision
 Appeal of, 8.2I(5)
 Finality of, 8.2I(4)

Subject Index (continued)

Appeal or review

Administrative law judge's decision,
8.2I(4)

Employment Appeals Board, 8.2I(5)

Judicial review, 8.2I(6)

Claims for benefits

Administrative law judge's decision,
above

Allowance of, 8.2I(3)

Denial of, 8.2I(3)

Initial determination, 8.2I(2)

Eligibility for, 8.2I(1)

Employment Appeals Board, 8.2I(5)

Judicial review, 8.2I(6)

UNIFORM ARBITRATION ACT

See ARBITRATION

UNIFORM COMMERCIAL CODE

Bank deposits and collections. *See* BANK
DEPOSITS AND COLLECTIONS

Bills of lading, 11.14B(3)

Contract-related issues, 14.3. *See also*
BANK DEPOSITS AND

COLLECTIONS; COMMERCIAL
PAPER; SALE OF GOODS (UCC)

Documents of title, missing, 11.14B(4)

Investment securities. *See* INVESTMENT
SECURITIES

Motor vehicles, 12.1C(5)

Negotiable instruments. *See*
COMMERCIAL PAPER

Overview of, 11.14A

Sale of goods. *See* SALE OF GOODS
(UCC)

Secured transactions. *See* SECURED
TRANSACTIONS

Warehouse receipts. *See* WAREHOUSES

UNIFORM CONFLICT OF LAWS- LIMITATIONS ACT (UCLLA)

See also CONFLICT OF LAWS

Overview of, 2.15B

UNIFORM DECLARATORY JUDGMENTS ACT

See also DECLARATORY JUDGMENTS

Adoption of, 2.10A

UNIFORM DISCLAIMER OF PROPERTY INTEREST ACT

Overview of, 6.6P

UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

Duration of lien, 18.8B(2)

Filing requirements, 18.8B(1)

Overview of, 18.4H

UNIFORM SUPPORT DECLARA- TION

Marital dissolution actions, 4.2B(2)

Spousal support, 4.7B

UNIFORM TRIAL COURT RULES

Applicability of, 2.13A

Appointment of counsel, 2.13C(2)

Attorneys

Appointment of counsel, 2.13C(2)

Out-of-state counsel, 2.13C(3)

Substitution of counsel, 2.13C(1)

Exhibits, 2.13F(5)

Ex parte matters, 2.13D(4)

Filings with the court, 2.13F

Hazardous substances, evidence of,
2.13F(6)

Interstate deposition instruments,
2.13E

Judgments

Proposed judgments, 2.13F(2)

Punitive damages, 2.13F(2)(b) to
2.13F(2)(c)

Jury, waiver of, 2.13G

Jury instructions, 2.13F(4)

Matters under advisement, 2.13B

Motions

Conferring on motions, 2.13D(2)

Oral argument, 2.13D(3)(a) to
2.13D(3)(b)
Responses and replies, 2.13D(3)
Telephonic oral argument, 2.13D(3)(b)
Proposed orders, 2.13F(2)(a)
Punitive damages, 2.13F(3)
Settlement, notice of, 2.13D(5)
Stipulations, 2.13D(4)
Trial memoranda, 2.13F(1)
Trial postponements, 2.13D(6)
Water rights in dispute, notice of,
2.13D(7)
Website, 2.13
Written communications made to court,
2.13D(1)

UNINSURED MOTORISTS

Insurance claims, 16.2

UNLAWFUL TRADE PRACTICES

Injunctions, 12.3A(1)
Investigative demands, 12.3A(3)
Private actions, 12.3B
Public prosecution of, 12.3A
References, 12.3C
Temporary restraining orders,
12.3A(2)

UTCR

See UNIFORM TRIAL COURT RULES

UTILITIES

Manufactured dwellings, 15.2A(9)(d)

VENUE

Bankruptcy cases, 11.18B
Justice court actions, change of venue of,
2.4F

VERDICTS

Judgment notwithstanding the verdict,
motion for, 2.17C
Punitive damages, 2.13F(3)

VICTIMS OF CRIMES

Compensation of. *See* CRIME VICTIMS
COMPENSATION

Restitution. *See* RESTITUTION

VIOLATIONS

Statute of limitations, 3.2C

VISITATION

Grandparent-visitation petitions, 4.9G

**VOCATIONAL ASSISTANCE
SERVICES**

Workers' compensation, 8.3E

**VOCATIONAL ASSISTANCE
TRAINING**

Workers' compensation, 8.3B(4)(c)

VOID JUDGMENTS

Relief from judgment, 2.14B(3)

VULNERABLE PERSONS

Abuse, 6.2C. *See also* DISABLED
PERSON ABUSE; ELDER ABUSE

WAGES

Claims for. Unpaid wage claims, *below*
Equal pay for equal work, 8.1G(2)
Overtime pay claims. Unpaid wage claims,
below
Payment of
Final wages, 8.2A
Unpaid wage claims, *below*
Unpaid wage claims
Employment agreement, actions based
on, 14.2I(8)
Federal law claims, 8.2C
Priority of, 8.2D
State-law claims, 8.2B
Unpaid wages
Claims. Unpaid wage claims, *above*
Presumption of abandonment, 11.7G(2)

Subject Index (continued)

WAREHOUSES

Hazardous materials, 11.14B(1)(c)
Missing documents of titles, 11.14B(4)
Notice of termination of storage period,
11.14B(1)(a)
Perishable goods, 11.14B(1)(b)
Sale of goods, 11.14B(2)
Termination of storage, 11.14B(1)

WARRANTIES

Motor vehicles. *See* MOTOR VEHICLES
Sale of goods (UCC). *See* SALE OF
GOODS (UCC)
Used residence warranty, breach of, 15.3H

WARRANTS

Habeas corpus, 5.2D(4)

WASTE, ACTION FOR

Landlord and tenant, 15.2A(1)
Overview of, 15.3C
Statute of limitations, 14.2I(10)(c)

WATER RIGHTS

Notice of dispute, 2.13D(7)

WHISTLEBLOWER PROTECTION

Securities law claims, 8.2J(2)(c)

WILLS

See also DECEDENTS' ESTATES
Contests, 6.6I
Delivery to court, 6.6A(1)
Disposal by attorney, 6.6A(2)

WIVES

See SPOUSES

WORKERS' COMPENSATION

Aggravation claims, 8.3G(7)
Appeal or review
Court of appeals, by, 8.3I(9)
Crime victims compensation, 7.18F
Denied claims, 8.3G(8)
Overview of, 8.3G(8)
Request, effect of, 8.3C

Workers' Compensation Board, by,
8.3I(8)

Arbitration, 8.3I(10)

Benefits

Authorization of, 8.3B(4)(a)
Claims for benefits, *below*
Duration of, 8.3B(4)(b)
Permanent total disability benefits,
8.3B(3), 8.3B(5)
Temporary disability benefits, 8.3B(3),
8.3G(9)

Cancellation of coverage

Employer, by, 8.3B(2)(a)
Insurer, by, 8.3B(2)(b)

Claims for benefits

Aggravation claims, 8.3G(7)
Civil penalty assessment, 8.3I(2),
8.3I(7)(b)

Closure of, 8.3H(1)

Denial of claims, *below*

Disposition agreement, 8.3F

Disputing, 8.3G(4)(a)

Employer's obligation, 8.3G(1)

Expedited Claim Service, 8.3I(6)

New medical conditions, 8.3G(6)

Noncompliance with Act by employer,
8.3I(2), 8.3I(7)(b)

Notice of acceptance of claim, *below*

Notice of claim, *below*

Notice of denial, 8.3G(4)

Omitted conditions, 8.3G(6)

Orders, 8.3I(7)(a)

Procedure, 8.3G

Reconsideration of, 8.3H(2)

Reporting requirements, 8.3G(1)

Worker's obligations, 8.3G(2),
8.3G(10)

Closure of claims, 8.3H(1)

Coverage

Cancellation of, 8.3B(2)

Effective date, 8.3B(1)

Vocational assistance training,
8.3B(4)(c)

Denial of claims

Appeals, 8.3G(8)

De facto denials, 8.3I(3)(b)

- Hearing requests, 8.3I(3)
 - Notice of denial, 8.3G(4)
 - Documentary evidence, 8.3I(5)(a) to 8.3I(5)(b)
 - Evidence
 - Documentary evidence, 8.3I(5)(a), 8.3I(5)(b)
 - Impeachment evidence, 8.3I(5)(c)
 - Vocational reports, 8.3I(5)(b)
 - Expedited Claim Service, 8.3I(6)
 - Hearings
 - Denied claims, on, 8.3I(3)
 - Effect of request for, 8.3C
 - Evidence, *above*
 - Noncompliance with Act by employer, 8.3A(2), 8.3M(2)
 - Notice of, 8.3I(1)
 - Reconsideration claims, on, 8.3I(4)
 - Scheduling of, 8.3I(1)
 - Impeachment evidence, 8.3I(5)(c)
 - Independent medical examinations, 8.3G(4)(b)
 - Judicial review. Appeal or review, *above*
 - Mediation, 8.3I(10)
 - Medical services, 8.3D
 - New medical claims, 8.3G(6)
 - Noncomplying employer(s)
 - Employee claims against, 8.3A(1)
 - Hearing on noncompliance, 8.3A(2), 8.3M(2)
 - Hearings, 8.3M(2)
 - Order declaring employer noncompliant, 8.3I(2), 8.3I(2)(b)
 - Overview of, 8.3A
 - Penalty assessment, 8.3A, 8.3I(2), 8.3I(7)(b), 8.3M
 - Notice of acceptance of claim
 - Deficient notice, 8.3G(5)
 - Omitted conditions, 8.3G(5)
 - Time for, 8.3G(4)
 - Updated notice at closure, 8.3H(1)(b)
 - Notice of claim
 - Deficient notice, 8.3G(5)
 - Failure to give, 8.3G(3)
 - Late notice, 8.3G(3)
 - Omitted conditions, 8.3G(5)
 - Worker's obligation(s), 8.3G(2)
 - Notice of denial of claim, 8.3G(4)
 - Notice of hearing, 8.3I(1)
 - Orders
 - Civil penalty assessment, 8.3I(2), 8.3I(7)(b)
 - Finality of, 8.3I(7)(a)
 - Issuance of, 8.3I(7)(a)
 - Noncompliance of employer with Act, 8.3I(2), 8.3I(7)(b)
 - Reconsideration of. Reconsideration of claims, *below*
 - Review of. Appeal or review, *above*
 - Permanent disability benefits
 - First payment of, 8.3B(5)
 - Permanent total disability, 8.3B(3)
 - Reconsideration of claims
 - Deadlines, 8.3H(2)(a) to 8.3H(2)(b)
 - Hearing requests, 8.3I(4)
 - Objections, 8.3H(2)(c)
 - Overview of, 8.3H(2)
 - Report of claim/injury, 8.3G(1)
 - SAIF-insured employers, 8.3K
 - Self-insured employers, 8.3J
 - Temporary disability benefits
 - First payment of, 8.3B(4)(d)
 - Generally, 8.3B(3)
 - Medically authorized payment of, 8.3G(9)
 - Third persons, recovery from, 8.3L
 - Vocational assistance services, 8.3E
 - Vocational assistance training, 8.3B(4)(c)
 - Worker's obligation(s)
 - Duty to cooperate, 8.3G(10)
 - Notice of claim, 8.3G(2)
- WRITS OF HABEAS CORPUS**
See HABEAS CORPUS
- WRITS OF MANDAMUS**
See MANDAMUS
- WRITS OF REVIEW**
Appeal of judgments on, 5.2A(5)
Filing of, 5.2A(1)
Return of, 5.2A(4)

Subject Index (continued)

Service of, 5.2A(3)

Undertakings, 5.2A(2)

WRONGFUL DEATH

Commencement of actions, 6.5A

Discovery rule

 Application of, 6.5B

 Generally, 6.5B, 7.22A(1)

 Public bodies, actions against, 6.5C(2)

Employer Liability Law, 6.5E

Liquor liability, 7.20B(1)

Medical/dental malpractice, 7.14A(7)

Oregon Tort Claims Act

 Discovery rule, 6.5C(2)

 Generally, 2.18A(2)

 Limitations periods, 6.5C(1)

 Notice of claim, 7.3A

Products liability

 Statute of limitations, 7.16C

 Statute of ultimate repose, 7.28B(8)(d)

Public body, notice of claim against, 7.3A

References, 6.5F

Skiers, 7.17A(2). *See also* SKI RESORTS,
ACTIONS AGAINST

Statute of limitations

 General rule, 6.5A, 7.16C, 7.22A(1)

 Public bodies, actions against,
 6.5C(1)

Statute of ultimate repose, 7.28B(6)

Wrongdoer's death, effect of, 6.5D

WRONGFUL-DISCHARGE CLAIMS

Allegations, 8.2G

Statute of limitations, 8.2G

WRONGFUL USE OF CIVIL PROCEEDING

Overview of, 2.2I

YEARS

Computation of time, 2.3D, 2.3I(3)