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Dear Oregon Legal Professional:

We are pleased to bring you this eighth edition of *Oregon Statutory Time Limitations*. The *OSTL* has long been a go-to resource for Oregon practitioners. A considerable undertaking that involves the coordinated efforts of many, this 2026 edition is again a joint publication of the OSB Professional Liability Fund and OSB Legal Publications and replaces the 2022 edition.

While we hope you find this publication useful in your practice, we want to offer a note of caution. The *OSTL* is a reference guide to many of the statutes, cases, and procedural rules containing time limitations that are relevant to the practice of law in Oregon. 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 at no charge 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**. Oregon lawyers and licensed paralegals may also request a print copy from the PLF.

The Professional Liability Fund and OSB Legal Publications gratefully acknowledge the Editorial Review Board members for their guidance and leadership and extend our thanks to the authors for their diligence and dedication in researching, writing, reviewing, and editing this handbook. The *OSTL* would not be possible without the efforts of volunteer experts, and we greatly appreciate their contribution.

With every edition, we strive to maintain the quality that lawyers have come to expect while seeking to improve its usefulness as an educational and malpractice prevention tool. If you have any questions, comments or suggestions about the *OSTL*, you are welcome to reach out to either of us directly.

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§ 1.1 INTRODUCTION TO CHAPTER

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 36.210. *See generally ADR in Oregon* (OSB Legal Pubs 2019).

NOTE: Chapter 13 of the Uniform Trial Court Rules (UTCR) applies only to arbitration under ORS 36.400 to 36.425, the mandatory court arbitration program. However, individual judicial districts may, by supplementary local rule, require arbitration proceedings under ORS 742.505 and ORS 742.521 to be conducted in accordance with UTCR chapter 13. UTCR 13.010(1)–(2).

§ 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. *See generally* ORS chapter 12 (procedure in civil proceedings).

§ 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 and Unenforceable Arbitration Clauses

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).

An arbitration clause in a contract can be challenged on a motion to compel arbitration as unenforceable on the ground of unconscionability. *Hinman v. Silver Star Group, LLC*, 280 Or App 34, 41, 380 P3d 994 (2016). In determining whether an arbitration clause is unenforceable, the trial court cannot constrain its decision to the pleadings, but it must review the facts presented by the parties. *Hinman*, 280 Or App at 41.

§ 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. A subpoena must be served in the manner for service of subpoenas under ORCP 55 D." ORS 36.675(1).

> CAVEAT: Since the passage of ORS 36.675 in 2003, ORCP 55 has been revised numerous times by both the Oregon Legislature and the Oregon Council on Court Procedures. ORS 36.675 has not been amended since its passage, and its reference to subsection D of ORCP 55 is most likely out of date. Subsection D currently applies to "[s]ubpoenas for documents and things containing confidential health information."

§ 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 limitations period for confirming an arbitration award. "After a party to an arbitration proceeding receives notice of an award," a party may file and serve a petition for an order confirming the award. ORS 36.700(1). *See* ORS 36.615(1) (application and filing fee for judicial relief). "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 the order).

§ 1.2G(2) Confirming Order

The court must issue a confirming order unless, within 20 days after the petition for an order confirming the award is served on the other parties to the arbitration proceedings, a party (1) requests that the arbitrator modify or correct the award; or (2) petitions the court to vacate, modify, or correct the award. ORS 36.700(1). *See* § 1.2H (challenging the award), § 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 36.705(2). *See* ORS 36.700(1).

If the petitioner alleges that the award was procured by corruption, fraud, 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 [arbitration] award, the court shall enter a judgment in conformity with the order." ORS 36.715(1).

§ 1.2J Appeal

Except as otherwise provided in ORS 19.255, 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 36.730(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(1); *Snider v. Production Chemical Manufacturing, 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").

"Any other party who has appeared in the action, suit or proceeding, desiring to appeal against the appellant or any other party to the action, suit or proceeding, may serve and file notice of appeal within 10 days after the expiration" of the 30-day period. ORS 19.255(3). "Any party not an appellant or respondent, but who becomes an adverse party to a cross appeal, may cross appeal against any party to the appeal by a written statement in the brief." ORS 19.255(3).

A "person determined to be a person with mental illness as provided in ORS 426.130, or determined to be an extremely dangerous person with mental illness under ORS 426.701 or 426.702" may, by motion, request leave to file a notice of appeal after the expiration of the applicable time limit. ORS 19.255(4). The motion "must be filed within 90 days after entry of the order being appealed." ORS 19.255(4). The court must grant the motion if (1) the person, "by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the person personally"; and (2) the person "shows a colorable claim of error in the proceeding from which the appeal is taken." ORS 19.255(4).

§ 1.3 MANDATORY COURT ARBITRATION PROGRAM, ORS 36.400–36.425

§ 1.3A Applicable Rules

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

§ 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 the party's 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. UTCR 13.160(1). 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 (court clerk must post notice of arbitration hearing).

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).

> PRACTICE TIP: The lawyer should check supplementary local rules because a court may adopt a rule establishing a different deadline and continuance process. UTCR 13.160(2) ("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(2).

In the absence of a governing supplementary local rule, the requirements set forth in UTCR 13.160(3) and (4) apply. UTCR 13.160(2).

§ 1.3H Prehearing Statement of Proof

A prehearing statement of proof, including exhibit and 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); § 1.3J (admissible documents).

§ 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, date, and place of the arbitration hearing. UTCR 13.160(1). 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

The arbitrator must file the award with the trial court administrator within 42 days after the completion of the arbitration hearing. UTCR 13.220(1). See § 1.3K(2) regarding requesting a hearing de novo.

> NOTE: Before the arbitrator files the award with the court, the arbitrator must send the award to the parties within 28 days and "establish procedures for determining attorney fees and costs." UTCR 13.210(5). *See* § 1.3K(5)(a) (attorney fees and costs).

§ 1.3K(2) Challenging the Award: Request for Trial De Novo

A party "against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award" 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)(a). *See* UTCR 13.250 (request for trial de novo). 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) (entry of judgment).

"A party may file with the court and serve on the other parties to the arbitration written exceptions directed solely to the award or denial of attorney fees or

costs." ORS 36.425(6). *See* § 1.3K(5)(b) (exceptions to award or denial of attorney fees and costs).

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 court clerk 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 28 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 28 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 "written exceptions directed solely to the award or denial of attorney fees or costs." ORS 36.425(6). The exceptions 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 a written response with the court and serve a copy of the response on the party filing the exceptions" within seven days after the exceptions are served on the responding party. ORS 36.425(6). *See Marandas Family Trust v. Pauley*, 286 Or App 381, 384–86, 398 P3d 914, *rev den*, 362 Or 208 (2017) (describing the procedures for challenging a denial of attorney fees under ORS 20.080(1) in an action for damages for an injury or wrong to a person or property in which the amount pleaded is $10,000 or less).

NOTE: Filing a request for a trial de novo under ORS 36.425(2) will also serve to preserve objections to an award or denial of attorney fees. *Lee v. American Family Mutual Insurance Co.*, 279 Or App 282, 289, 379 P3d 698 (2016). However, a lawyer wishing to challenge only an award or denial of attorney fees should consider the burden of requesting a trial de novo if an award of attorney fees is the only issue in dispute.

§ 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

During the period of any referred or elected mediation, all trial and discovery timelines, schedules, and requirements are tolled and stayed as to the participants. 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 mediation is completed, 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 timelines 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 ADR in Oregon (OSB Legal Pubs 2019).

Chapter 2

CIVIL PROCEDURE AND LITIGATION

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§ 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 commenced on the date that the summons was served on the defendant. ORS 12.020(1). In such a case where service of summons is made more than 60 days after the complaint is filed, the summons must be served within the applicable statute of limitations for the action to commence timely. *See Baker v. Kennedy*, 115 Or App 360, 362–63, 838 P2d 634 (1992), *aff'd*, 317 Or 372, 856 P2d 314 (1993); *Johnson v. MacGregor*, 55 Or App 374, 376–77, 637 P2d 1362 (1981), *rev den*, 292 Or 589 (1982).

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)

Subsection (1) of ORS 12.160, which extends the time limit for a minor to commence an action, tolls 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) (ORS 30.260 to 30.300). *See Robbins v. State ex rel. Department of Human Services*, 276 Or App 17, 20, 366 P3d 752 (2016) ("ORS 12.160(1) does not serve to eliminate a minor's ability to extend the statute of limitation in claims

under the OTCA."); *Smith v. Oregon Health Science University Hospital & Clinic*, 272 Or App 473, 486, 356 P3d 142 (2015). See § 7.3B for further discussion.

NOTE: Although ORS 12.160 tolls the statute of limitations for claims brought by minors, that tolling provision does not apply to the notice requirements that the OTCA imposes. Thus, while a minor plaintiff may receive additional time to file suit, the plaintiff may not rely on ORS 12.160 to extend the time within which notice must be provided to the public body under the OTCA. *Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 71, 404 P3d 959 (2017); *see* § 2.18A.

NOTE: If a minor has a claim against a public body, the 270-day notice period prescribed in ORS 30.275(2) is not tolled pending the appointment of a guardian ad litem. *Perez ex rel. Yon v. Bay Area Hospital*, 315 Or 474, 482–83, 846 P2d 405 (1993). See, however, ORS 30.275(8)(a), 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 as it relates to minors, 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 some alternative means, such as 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 sufficient cause shown, the court must allow a defendant who was served by an alternative means to defend after the 30-day period and before judgment. The court, for good cause shown, may even allow a defendant who was served by an alternative means to defend after judgment, for up to one year after the judgment. ORCP 7 D(6)(d).

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.

When a party files an amended pleading, the responding party must file its response within 10 days after service of the amended pleading or within the time remaining to respond to the original pleading, whichever is longer. ORCP 15 C.

NOTE: The 2021 Oregon Legislature amended ORS 1.002 so that the following now appears as subsection (6)(b) of that statute:

> During a period of statewide emergency, and upon a finding of good cause, the Chief Justice may extend or suspend any time period or time requirement established by statute or rule, other than ORS 133.060, 136.290 or 136.295, that:
>
> (A) Applies in any case, action or proceeding after the case, action or proceeding is initiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court;
>
> (B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;
>
> (C) Applies to the initiation of an appeal or judicial review proceeding in the Court of Appeals; or
>
> (D) Applies to the initiation of any type of case or proceeding in the Supreme Court.
>
> ORS 1.002(6)(b).

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); § 2.2A(2)(b) (amended pleadings).

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

§ 2.2A(2)(a) Pleading After Motion

If the responding party files a motion as its first appearance and the court denies that motion, the responding party must file its responsive pleading within 10 days of service of the court's order denying the motion unless the court orders otherwise. ORCP 15 B(1).

If the court otherwise grants the motion and permits the pleading party to file an amended pleading, that pleading must be filed within 10 days of service of the court's order unless the court orders otherwise. ORCP 15 B(2). Failure to do so provides grounds for dismissal of the complaint. *Seabold Construction Co. v. KOZ 2211 SW 4th Ave, LLC*, 344 Or App 688, 697–98, 582 P3d 212 (2025).

If the court grants a motion to dismiss a complaint in its entirety, the pleading party's right to amend as a matter of course is extinguished and they must seek leave

to amend under ORCP 25 A, which the trial court may grant in its discretion. *Alfieri v. Solomon*, 358 Or 383, 407–09, 365 P3d 99 (2015).

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 at any time within 20 days after it is served." ORCP 23 A. *But see Alfieri v. Solomon*, 358 Or 383, 407–09, 365 P3d 99 (2015) (once the court has granted a motion to dismiss the complaint in its entirety, a party's right to amend as a matter of course is extinguished, and a plaintiff must seek leave to amend under ORCP 25 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 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise directs." 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 any pleading, motion, or response or reply to a 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, 563, 242 P3d 740 (2010).

NOTE: The 2021 Oregon Legislature amended ORS 1.002 so that the following now appears as subsection (6)(b) of that statute:

> During a period of statewide emergency, and upon a finding of good cause, the Chief Justice may extend or suspend any time period or time requirement established by statute or rule, other than ORS 133.060, 136.290 or 136.295, that:
>
> (A) Applies in any case, action or proceeding after the case, action or proceeding is initiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court;
>
> (B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax Court or an appeal from the magistrate division to the regular division;
>
> (C) Applies to the initiation of an appeal or judicial review proceeding in the Court of Appeals; or

(D) Applies to the initiation of any type of case or proceeding in the Supreme Court.

ORS 1.002(6)(b).

§ 2.2C Computation of Time After Service of Document Electronically or 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, email, fax, or electronic service, three days are added to the time period prescribed for performance. ORCP 10 B.

§ 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) ("A motion to strike is not a pleading.").

§ 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 or response must include (1) "an estimate of the time required for argument" and (2) "a statement whether official court reporting services are requested." UTCR 5.050(1).

A request for oral argument by remote means must be in the caption of the motion or response. UTCR 5.050(2)(a). If the argument proceeds via conference call, the requesting party must initiate and pay for the call unless the court orders otherwise. UTCR 5.050(2)(c).

§ 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 "the party or attorney cannot have a fair and impartial trial or hearing before the judge." ORS 14.260(1). The motion must be made "in good faith and not for the purpose of delay." ORS 14.260(1); *State v. Ovalle*, 325 Or App 538, 541, 529 P3d 278 (2023).

If the judicial district has a population of 200,000 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";

(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; 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.

ORS 14.260(4); ORS 14.270.

NOTE: See the exception for assignment to the presiding judge. ORS 14.270.

If the judicial district has a population of 100,000 or more, but less than 200,000, the same rules apply unless the court has made local rules adopting the procedure in ORS 14.260 (see below). ORS 14.260(5).

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; 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. 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).

"If a party, attorney, law firm, district attorney's office, defense consortium or public defender's office files a motion or series of motions" to disqualify a judge predicated on the belief that they or their client cannot have a fair or impartial trial *and* the motion "effectively denies the judge assignment to a criminal or juvenile delinquency docket in any county within the judge's judicial district, the judge moved against may request a hearing before a disinterested judge." ORS 14.260(7)(a). *See* ORS 14.260(7)(b) for the factors a court will consider when ruling on a matter under this section.

§ 2.2D(2)(b) Motion to Dismiss

A motion to dismiss that raises any defense listed in ORCP 21 A(1)(a) to A(1)(i) "must be filed before pleading if a further pleading is permitted." ORCP 21 A(2)(a).

A defense listed in ORCP 21 A(1)(a) to A(1)(i), whether made by motion or in a pleading, "must be heard and determined before trial on the motion 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 the motion of any party, unless the court orders that the hearing and determination thereof be deferred until the 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 such other time as the court allows, 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 any type of claim or to obtain a declaratory judgment 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 under ORS 107.700 to 107.735 (the Family Abuse Prevention Act), ORS 124.005 to 124.040 (the Elderly Persons and Persons with Disabilities Abuse Prevention Act), or ORS 163.760 to 163.777 (sexual abuse restraining orders), or to TROs or preliminary injunctions granted under the provisional-process rules of ORCP 83. ORCP 79 E(1)–(2).

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 the court . . . orders) 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 the court fixes a different time period. 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 serve and 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 times. ORCP 47 C.

NOTE: When the period of time prescribed by a rule is less than seven days, intermediate Saturdays and legal holidays, including Sundays, are excluded from the time computation. ORCP 10 A. ORCP 10 B adds three days for service by mail, email, FAX or electronic service except in the case of service of summons.

§ 2.2D(3)(b) Other Motions

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

"A reply memorandum, if any, must be filed within seven days of the service or filing of the responding memorandum, whichever is later." UTCR 5.030(2).

§ 2.2E Receivers

§ 2.2E(1) Oregon Receivership Code

For receiverships governed by the Oregon Receivership Code (ORS 37.020–37.410), the provisions of the code govern over any conflicting provisions of ORCP 80. ORCP 80 A(2).

§ 2.2E(2) Appointment of Receiver

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

§ 2.2E(3) 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(4) 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(2)–(3).

§ 2.2F Third-Party Practice

Within 90 days after service of a summons and complaint on a defendant, the defendant, as a matter of right, may serve a summons and third-party complaint on any nonparty or a third-party defendant. If, however, more than 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. *See* ORCP 15 B(2), C.

Persons other than the original parties may be made parties to a counterclaim or cross-claim in accordance with ORCP 28 (permissive joinder) and ORCP 29 (mandatory joinder). ORCP 22 D(1). Any person so joined is treated as a defendant for purposes of service of summons and time to answer under ORCP 7. 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 if the claim survives or continues. 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

Upon 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

Upon the death of a defendant, the court must, on motion, 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 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 or Separation from Office 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, resigns, or otherwise ceases to hold office, "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). *But see* ORCP 32 D (dismissal of class actions).

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

See ORCP 54 A 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 against each unserved defendant 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) "[g]ood cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order," 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 appeared 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 of judgment has been applied for," (2) "[g]ood cause to continue the case is shown to the court on motion supported by affidavit and accompanied by a proposed order," 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(3), 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 Pleading and Litigation* (OSB Legal Pubs 2025).

§ 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 govern civil practice and procedure 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 [the Oregon Rules of Civil Procedure], 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 for the applicability of the Uniform Trial Court Rules.

"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 OTCA). *Tyree v. Tyree*, 116 Or App 317, 320, 840 P2d 1378 (1992), *rev den*, 315 Or 644 (1993) (emphasis added); *see* § 2.1A(2) (commencement of action), § 2.3E to § 2.3F (computation of time: case law and OTCA).

§ 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. *See* ORCP 10 A. (The term *legal holiday* is defined in ORS 187.010(1) to (2) and ORS 187.020 to include each Sunday, 10 specific holidays, the preceding Friday or the following Monday when one of those specific holidays falls on a weekend, 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, email, fax, or electronic service under ORCP 10 B), 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, 2018, the first day to count to compute the period of time for appearance by the defendant is Saturday, December 22, 2018, and every day, including Saturdays, Sundays, and other legal holidays, is counted for 30 days. The 30th day is Sunday, January 20, 2019. 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, 2019. *See, e.g.*, *Minor v. Leisure*

Lodge, Inc., 154 Or App 301, 304, 961 P2d 915 (1998) (discussing the operation of ORCP 10 A in the context of ORCP 62).

(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 for all of or before the end 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, email, fax, or electronic service.* 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 document, and the notice or document was served by mail, email, fax, or electronic service, add three days to the prescribed period of time. ORCP 10 B.

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

NOTE: Service by email is allowed unless the party or the party's attorney is exempted from email service by court order. Service is effective under this method upon confirmation of the email's receipt, or upon transmission of the email if the receiving party has consented to email service. 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," the first day does not count. ORS 174.120(1). *See In re Marriage of Goertel*, 209 Or App 585, 590, 149 P3d 247 (2006) (limiting the application of ORS 174.120 to relevant times set by statute and not alternative sources such as dissolution decrees). The last day does count, unless the last day falls on a legal holiday or a Saturday, in which case the last day does not count. ORS 174.120(1).

NOTE: The term *legal holiday* includes Sundays. ORS 187.010(1)(a); *see* § 2.3B.

§ 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 pleadings and other documents may be filed." ORS 174.120(2). Intermediate Saturdays and legal holidays are counted.

NOTE: The term *legal holiday* includes Sundays. ORS 187.010(1)(a); *see* § 2.3B.

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(1). 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 the notice of appeal was Saturday, November 24. Saturdays and Sundays are excluded from being the last day under ORS 174.120(2), 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 the time is computed 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. *See Kowalski v. Hereford L'Oasis*, 190 Or App 236, 239, 79 P3d 319 (2003), *rev den*, 336 Or 597 (2004) (explaining that the term "year" refers to a calendar year, not a 365-day period).

§ 2.3E Application and Case Law

ORCP 10 A (computation of time) does not apply to any time limitation governed by ORS 174.120. ORCP 10 A; *Harvey v. Christie*, 237 Or App 237, 242–43, 239 P3d 279 (2010); *Webster v. Harmon*, 205 Or App 196, 202 n 5, 134 P3d 1012 (2006).

The rule in ORCP 10 B permitting three additional days when service is by mail, email, fax, or electronic service applies regardless of whether the time calculation is governed by ORCP 10 or ORS 174.120. *See Harvey*, 237 Or App at 243 (the plaintiff had the three-day grace period provided by ORCP 10 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, Oregon Constitution*, 228 Or 575, 577 n 2, 365 P2d 1042 (1961);

(2) emergency civil commitment proceedings brought under ORS 426.232, *State v. M.D.D.*, 323 Or App 442, 444, 523 P3d 1152 (2022);

(3) 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 Building Partnership v. Gladys Enterprises, Inc.*, 62 Or App 792, 796, 662 P2d 15, *rev den*, 295 Or 447 (1983); and

(4) civil statutes of limitation set forth in ORS 12.010 "and the corresponding statutes of limitations," *Stupek v. Wyle Laboratories Corp.*, 327 Or 433, 444–45, 963 P2d 678 (1998).

In *Stupek*, 327 Or at 444, the court held that statutes of limitations under "ORS 12.010 and the corresponding statutes of limitations" 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. However, in *City of Springfield v. $10,000.00 in U.S. Currency*, 95 Or App 66, 69, 767 P2d 476 (1989), *aff'd*, 309 Or 272, 786 P2d 723 (1990), the court held that because the statute of limitations was "substantive," ORCP 10 A did not apply to the requirement in the forfeiture ordinance that a complaint be brought within 20 judicial days after seizure of the property.

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). For discussion of time limitations in criminal cases, see chapter 3.

§ 2.3F Oregon Tort Claims Act

Neither ORCP 10 nor ORS 174.120 (computation of time) applies to the requirement that notice of a claim under ORS 30.275(2) (notice provision of the OTCA) 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*, 116 Or App at 320, 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

Notwithstanding ORCP 10 and ORS 174.120(1) (computation of time), 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, 2011 US Dist LEXIS 131783 at *8–9, 2011 WL 5570655 at *3–4 (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 operated 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 tort claim notice 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, Email, Fax, or Electronic Service

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 document, and the notice or document was served by mail, email, fax, or electronic service, three days are added to the prescribed period of time. ORCP 10 B.

Service by email or fax on an attorney for a party is treated the same as service by mail for purposes of ORCP 10 B. ORCP 9 F–G.

Service by email is permissible unless a party or attorney is exempt by court order. Service is effective under this method upon confirmation of the email's receipt, or upon transmission of the email if the receiving party has consented to email service. ORCP 9 G.

§ 2.3H Legal Holidays

"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 shall 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 National Bank of Oregon v. Mobil Oil Corp.*, 272 Or 672, 679, 538 P2d 919 (1975) (emphasis in original), the court held that this provision (which was subsection (2) of ORS 187.010 at the time) extended to private contracts:

> [I]t follows, in our opinion, that by the subsequent enactment in 1949 of what is now ORS 187.010(2) referring in broad and all-inclusive terms to "*any* act *authorized*, required or *permitted* to be performed on a holiday" the legislature intended that this statute extend 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 computing time (i.e., exclude the first day and include the last day unless the last day is a Saturday or legal holiday, ORS 174.120(1)), applies equally to periods of time measured in days, weeks, months, or years. *Grant v. Paddock*, 30 Or 312, 317–19, 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, 539–40, 113 P 852 (1912).

§ 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 or 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. Or Laws 2003, ch 228, § 1. Cases predating the 2003 amendment interpreted the word *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) ("The word year, as used in statutes or constitutions, ordinarily means calendar year, but the meaning in all cases is dependent on the subject-matter and the connection in which the word is used. It may mean a political year, or the period between two elections." (Internal quotation marks and citations omitted)).

§ 2.3J References

See generally Tort Law in Oregon ch 32 (OSB Legal Pubs 2024) (statutes of limitations and statutes of repose).

§ 2.4 JUSTICE COURTS

§ 2.4A Rules and Procedures in General

Unless otherwise specifically provided by statute, the rules for civil actions in circuit court govern the rules of pleadings, procedure, and evidence in justice courts. 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, which is the date of the first publication. 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 52.420(1).

§ 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(1), (3).

The party who requested the change of venue bears all costs incurred in the transfer of the case, 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

Oregon's prior statutory scheme governing civil appeals from justice courts, codified as ORS 53.005–53.130, was repealed by the legislature in 2025. Or Laws 2025, ch 268, § 35 (HB 2460).

(1) *Appropriate court to file an appeal.* "Any party to a judgment in a civil action in a justice court, other than a judgment by confession or for want of an answer, may appeal from the judgment when" the sum in controversy is greater than $100 exclusive of costs and disbursements, or when the action is for the recovery of the possession of real property. ORS 55.300. Parties may also appeal a decision made on a defendant's motion to set aside a default order or judgment. ORS 55.300.

The appropriate court with which to file an appeal will depend on whether the justice court was a court of record. If it is, then appeals are taken to the Court of Appeals as provided in ORS chapter 19. ORS 55.150. If the justice court is not a court of record, then its decision will be appealed to the circuit court of the county in which the justice court is located as provided in ORS 52.815, ORS 52.280, and ORS 55.160 to 55.335. ORS 55.150.

(2) *Service of notice of appeal.* A party appealing to the circuit court must file and serve a written notice of appeal on the adverse party "within 30 days of the date of entry in the justice court docket of the judgment or order being appealed." ORS 55.160. "Timely filing of the notice of appeal and timely service on the adverse party is jurisdictional, and except as otherwise provided in this section, neither the justice court nor the circuit court may waive or extend the time limits for filing or serving the notice of appeal." ORS 55.180(2).

(3) *Undertaking for costs and disbursements*. The appellant must file an undertaking for costs and disbursements on the appeal within five days after filing the notice of appeal. ORS 55.305(2). The justice court may extend this deadline for good cause. ORS 55.305(2).

(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 files an undertaking for restitution within five days from the date that the notice of appeal is filed. ORS 55.320. The undertaking must be filed with the justice court after at least two days' notice to the other party. ORS 55.320.

(5) *Perfection of Appeal.* "Upon the timely filing of the notice of appeal, service on the adverse party and transfer of the case record to the circuit court, the appeal is deemed perfected." ORS 55.180.

§ 2.4I References

See Oregon Civil Pleading and Litigation ch 1 (OSB Legal Pubs 2025) (Oregon state courts).

§ 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); ORS 46.570. Upon the filing of the claim, the court issues a notice of the claim, which is directed to the defendant. ORS 46.445(1)–(2).

§ 2.5B Defendant's Response

Within 30 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, plus filing fees and service expenses paid by plaintiff, (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) "[p]aying 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)(a).

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 ("including identified prejudgment or preaward interest, fees and costs"), 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. *See* 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 by mail a summons and 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 (excluding costs and disbursements) 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(2). ORS 46.488(3); *see, e.g.*, *Grogan v. Harvest Capital Co.*, 476 BR 270, 275 (Bankr D Or 2012), *aff'd*, No OR-12-1483-JuTaPa, 2013 Bankr LEXIS 4671, 2013 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).

> NOTE: Small claims that arise within the circuit court are controlled by ORS chapter 46 and are distinguished from small claims operating within a county justice court that are otherwise governed by ORS chapter 55. For small claims courts operating within a county justice court, appeals are permitted to be brought in the circuit court of the county where the justice court is located, provided that the small claims department of a justice court is not a court of record. ORS 52.815(3)(a).

§ 2.5H References

See Oregon Civil Pleading and Litigation chs 1, 45 (OSB Legal Pubs 2025) (Oregon state courts; postjudgment collections).

§ 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. "[I]t is the gravamen or the predominant characteristic of the 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 Tort Law in Oregon* ch 32 (OSB Legal Pubs 2024); § 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) 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 to be raised at trial. *Brusco v. Brusco*, 241 Or 550, 553, 407 P2d 645 (1965); *Hewitt v. Thomas*, 210 Or 273, 276, 310 P2d 313 (1957); *see also Castro v. Ogburn*, 140 Or App 122, 128, 914 P2d 1 (1996); ORCP 21 A(1)(i).

See § 2.6A(2) regarding waiver of the statute of limitations affirmative 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 was not commenced within the time limited by the applicable statute of limitations is waived if not raised by motion before pleading, included in a responsive pleading, or, with leave of court, included in an amended responsive pleading. ORCP 21 A, G(2); *Castro v. Ogburn*, 140 Or App 122, 128, 914 P2d 1 (1996) ("The defenses of lack of jurisdiction over the person or that the action has not been commenced within the time limited by statute must be asserted in a responsive pleading or by motion before pleading, or they are waived, and may not be raised by amendment." (Citations omitted.)).

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 ex rel. Jones v. Salem Hospital*, 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, five elements must be established:

> (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 Wilkinson v. Public Employees Retirement Board*, 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

"[T]he 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 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) (quoting *Johnson v. Kentner*, 71 Or App 61, 72–73, 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 County Department of Environmental Services*, No CV-99-1295-HU, 2000 US Dist LEXIS 18656 at *56–57, 2000 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 Management Advisors, Inc.*, 296 Or 208, 221–23, 675 P2d 172 (1983); *cf. Hendgen v. Forest Grove Community Hospital*, 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, *adh'd to as 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. American Legion Post 83*, 188 Or App 139, 142–45, 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. *Welch*, 296 Or at 221; *Worthington v. Estate of Davis*, 250 Or App 755, 764–65, 282 P3d 895, *rev den*, 352 Or 565 (2012); *Mitchell v. The Timbers*, 163 Or App 312, 315, 987 P2d 1236 (1999) (holding 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, in *Waybrant v. Clackamas County*, 54 Or App 740, 746, 635 P2d 1365 (1981), 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.

§ 2.6A(6) Counterclaims

"[A] counterclaim based on a cause of action which 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) (concluding that, 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 Employers' Fire Insurance 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 Services, Inc. v. Koresko*, 346 Or 215, 230–37, 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 § 2.8B(5) (effect of involuntary dismissal on statutes of limitations).

§ 2.6B Tolling the Statute of Limitations

§ 2.6B(1) Minors; Disabling Mental Conditions

§ 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 (1) is younger than 18 years of age, or (2) has a disabling mental condition that bars the person from comprehending their rights, the statute is suspended for the period of minority or disability, except that the time for bringing the action cannot be extended for more than five years or for more than one year after the minority or disability ceases, whichever occurs first. ORS 12.160.

Using the disability to suspend the running of the statute of limitations requires that the disability existed 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 Mutual Automobile Insurance 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(1)–(2)) plus the two years provided in ORS 12.110(1), 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 System 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 a disabling mental condition to less than the period of minority or disability without violating the remedies clause, Article I, section 10, of the Oregon Constitution. *Christiansen*, 344 Or at 454 (rejecting a remedies-clause challenge to a statute of repose for a medical-malpractice claim on behalf of a minor child); *see Fields v. Legacy Health System*, 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 persons with a disabling mental condition is not lost by the commencement and subsequent dismissal of a claim by a conservator or by the appointment of a conservator. *Luchini ex rel. 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) (applicability of ORS 12.160 to the OTCA).

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

The minority-tolling statute, ORS 12.160 (*see* § 2.6B(1)(a)), tolls the two-year limitations period under the OTCA for a minor's cause of action. *Robbins v. State ex rel. Department of Human Services*, 276 Or App 17, 19–20, 366 P3d 752 (2016); *Smith v. Oregon Health Science University Hospital & Clinic*, 272 Or App 473, 486, 356 P3d 142 (2015). 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(2)(b) is not tolled pending the appointment of a guardian ad litem. *Perez ex rel. Yon v. Bay Area Hospital*, 315 Or 474, 482–83, 846 P2d 405 (1993) (the language of ORS 30.275(2) grants a 270-day notice period "to persons who are unable to give notice for the reasons described therein"). However, see ORS 30.275(8) regarding a claim against the Department of Human Services, the Oregon Youth Authority, or certain private nonprofits that provide public transportation.

See also § 2.1A(1) to § 2.1B (actions in general), § 2.18A to § 2.18C (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), § 7.16C (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, the person's personal representative may commence an action 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 § 2.18C (governmental and public bodies), § 2.2G to § 2.2G(4) and § 6.4A(1) to § 6.4A(2) (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)(a).

Notwithstanding ORS 12.190(2)(a),

> if an action is commenced against a defendant who dies before the expiration of the time limited for commencement of the action or within 60 days after the action is commenced, a party may amend the complaint within 90 days after the action is commenced to substitute the personal representative of the defendant's estate for the deceased defendant. An amendment under [ORS 12.190(2)(b)] relates back to the date the complaint was filed.

ORS 12.190(2)(b).

See § 6.4B(2) (defendant's death), § 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.

> QUESTION: Is a student in Oregon who maintains a permanent residence outside the state and returns to their home in another state during breaks and vacations "absent from Oregon" for those periods for purposes of tolling the statute of limitations?

> QUESTION: Is the statute of limitations 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, 693–94, 780 P2d 783, *rev den*, 308 Or 660 (1989) (citing ORS 12.080(1) and ORS 12.150), *questioned by Wright*, 151 Or App at 469 n 1.

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

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

ORS 31.560 and ORS 31.565 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 31.565, 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).

> NOTE: The term *advance payment* means "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. However, a party's provision of free or discounted medical services can also qualify as compensation for an injury and can constitute compensation "prior to the determination of legal liability" for purposes of tolling the statute of limitations. *Humphrey v. Oregon Health & Sciences University*, 286 Or App 344, 356, 398 P3d 360 (2017).

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(7), made without providing written notice of the statute of limitations as set forth in ORS 12.155(1), will toll the limitations period. *Hamilton v. Paynter*, 342 Or 48, 53–54, 58, 149 P3d 131 (2006).

§ 2.6C(3) Advance Payment to Minor

The Oregon Court of Appeals has held that an advance payment to a minor does not toll the two-year statute of limitations provided for under the OTCA (ORS 30.275(9)). It reasoned that because of the "notwithstanding" clause in that statute, the tolling provision of ORS 12.155(2) did not apply to the OTCA limitations period. *Lawson v. Coos County School District 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). However, in *Baker*, the Oregon Supreme Court interpreted the "notwithstanding" clause differently. It held that the clause "applies only to those provisions of ORS chapter 12 and other statutes that provide a limitation on the commencement of an action." *Baker*, 343 Or at 83. Given that interpretation, it appears that ORS 12.155, which does not provide a limitation on the commencement of an action, would apply to the OTCA limitations period. It follows that, although no appellate court has so ruled yet, an advance payment made without the notice specified in ORS 12.155(1) would, in accordance with ORS 12.155(2), toll the OTCA's two-year limitations period in ORS 30.275(9).

§ 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 § 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 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 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.

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 bankruptcy 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 § 362, 11 USC § 922, 11 USC § 1201, or 11 USC § 1301; dismissal of the petition; or the debt on which the creditor bases its claim being excepted from discharge. *See* 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 debtor's filing of a bankruptcy petition does not suspend or extend the period for giving notice of a claim for a statutory lien against the debtor. *See* 11 USC § 546(b).

See § 11.21 to § 11.21E(18) for further discussion of creditors' rights when a debtor declares bankruptcy.

§ 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. But the defendant must have had actual notice of the filing of the original action within 60 days after the original action's filing. ORS 12.220(1)–(2); *see* § 2.8

to § 2.8C (commencing a new action after involuntary dismissal); *see also Tort Law in Oregon* § 32.7 (OSB Legal Pubs 2024) (dismissal or reversal and savings statute).

§ 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 Urbick v. Suburban Medical 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(1), 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. 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(1) (specifying both a limitations period and a repose period for wrongful-death actions) *with* ORS 12.115(1) (statute of ultimate repose for negligent injury to persons or property). 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.

> NOTE: In *Marshall v. PricewaterhouseCoopers LLP*, 371 Or 536, 539 P3d 766 (2023), *recons granted*, 2024 Or LEXIS 40 (Feb 1, 2024), the Supreme Court held that the statute of ultimate repose in ORS 12.115(1) also applied to claims based on negligent injury to economic interests.

§ 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 § 7.27A to § 7.27C(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 Brothers, Inc.*, 113 Or App 566, 572, 833 P2d 348, *rev den*, 314 Or 727 (1992).

§ 2.7G Effect of Minority or Disabling Mental Condition

§ 2.7G(1) Minority or Disabling Mental Condition Does Not Toll Statutes of Ultimate Repose

If a minor or a person with "a disabling mental condition that bars the person from comprehending rights that the person is otherwise bound to know" 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. ORS 12.160(1)–(3); *see* § 2.6B(1)(a) to § 2.6B(1)(b).

However, neither minority nor such a disabling mental condition suspends the running of a statute of ultimate repose. ORS 12.160(2), (4); *Christiansen v. Providence Health System of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008); *DeLay v. Marathon LeTourneau Sales & Service Co.*, 291 Or 310, 316, 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) 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).

Similarly, if a person has "a disabling mental condition that bars the person from comprehending rights that the person is otherwise bound to know" at the time the cause of action accrues, the statute of limitations for commencing the action "is tolled for so long as the person has [such] a disabling mental condition." ORS 12.160(3). But, while a disabling mental condition suspends the running of the two-year statute of limitations for tort actions, the period of ultimate repose continues to run. *See De Lay*, 291 Or at 316.

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. *E.g.*, ORS 12.110(4) ("[N]otwithstanding the provisions of ORS 12.160, every such action shall be commenced within five years . . . ."); ORS 12.115(1) ("In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained of."); *see Christiansen*, 344 Or at 456 (discussing the effect of a statute of repose on a "suspension" of a statute of limitations); *see also* § 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 is barred by the statute of ultimate repose set forth in ORS 12.115(1). *Davis v. Blanchard*, 84 Or App 99, 101–02, 733 P2d 460 (1987).

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

Notwithstanding ORS 12.160(1), which tolls the statute of limitations for most claims brought by 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 System of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008). Alternatively, if no action has commenced "within five years because of fraud, deceit or misleading representation," then a minor's claim for medical negligence must be commenced "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).

§ 2.7G(1)(c) Child Abuse

Notwithstanding ORS 12.110, ORS 12.115, or ORS 12.160, an action based on child abuse, or based on knowingly allowing, permitting or encouraging child abuse, while the injured person is under 18 years of age 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)(a); *see Lourim v. Swensen*, 328 Or 380, 388–89, 977 P2d

1157 (1999) (ORS 12.117 applies to claims of negligence for "knowingly allowing, permitting or encouraging child abuse"); *Doe v. Silverman*, 286 Or App 813, 822–23, 399 P3d 1069 (2017), *rev den*, 362 Or 508 (2018) (concluding that the summary judgment record was sufficient to raise a genuine issue of fact that the defendant had actual knowledge of the plaintiff's abuse; not reaching the issue whether knowledge of risk of harm was sufficient).

NOTE: The 2009 amendment to ORS 12.117(1) applies "to *all* causes of action" based on child abuse for which judgment has not been entered before the effective date of the amendment, "no matter when the cause of action arose." *Doe v. Silverman*, 287 Or App 247, 250, 401 P3d 793 (2017), *rev den*, 362 Or 389 (2018) (emphasis in original).

Notwithstanding ORS 12.110, ORS 12.115, or ORS 12.160, "An action based on child sexual abuse or conduct allowing, permitting or encouraging child sexual abuse may be commenced at any time." ORS 12.117(1)(b).

§ 2.7G(2) Advance Payment to Minor or Person with Disabling Mental Condition 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 set forth in 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 a person with a disabling mental condition under ORS 12.160. *Davis v. Blanchard*, 84 Or App 99, 101–02, 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), a plaintiff may refile that same action within 180 days, even if the statute of limitations has then run on the action. ORS 12.220(2); *see* § 2.8A(1) to § 2.8C; *see also Tort Law in Oregon* ch 32 (OSB Legal Pubs 2024) (discussing statutes of limitations and statutes of repose in the context of tort claims).

ORS 12.220 is known as the "saving" statute because, if the requirements of the statute are met, the dismissal of the action does not terminate the plaintiff's rights. *See Hatley v. Truck Insurance Exchange*, 261 Or 606, 610–12, 494 P2d 426, *adh'd to on denial of reh'g*, 261 Or 622, 495 P2d 1196 (1972); *Porter v. Veenhuisen*, 302 Or App 480, 483–84, 461 P3d 276 (2020). 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. *Ram Technical Services, Inc. v. Koresko*, 346 Or 215, 234, 208 P3d 950 (2009) (acknowledging "the basic premise of a saving statute is that if an action is dismissed without prejudice on some ground not adjudicating its substantive merits and thus not giving rise to claim preclusion, the plaintiff should be entitled

to reinstitute the same claim or claims against the same defendant or defendants in a new action" (quoting report from the Oregon Law Commission)); *see Hatley*, 261 Or at 614–15.

CAVEAT: Cases predating 2003, when the legislature significantly amended ORS 12.220, 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

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 for the action 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, after involuntary dismissal under 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." (Footnote omitted.)).

§ 2.8A(4) Only One Refiling Is Permitted

After the original action has been involuntarily dismissed, a plaintiff may refile 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 (new action after dismissal) applies only when the original action is "involuntarily dismissed." ORS 12.220(1). A plaintiff may not file a new claim under this statute if that same plaintiff, at any time, voluntarily dismissed the original claim. *See* ORS 12.220(1).

NOTE: Before the 2003 amendments to ORS 12.220 (Or Laws 2003, ch 296, § 1), Oregon courts permitted a plaintiff to use the statute if the plaintiff voluntarily dismissed the original claim during trial, but they 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) (voluntary dismissal during trial); *Alderson v. State*, 105 Or App 574, 581, 806 P2d 142 (1991) (voluntary dismissal before trial). 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

Before the 2003 amendments to ORS 12.220 (Or Laws 2003, ch 296, § 1), Oregon courts permitted a plaintiff to use the statute if the plaintiff voluntarily dismissed the original claim during trial. *See Quick v. Andresen*, 238 Or 433, 435–36, 395 P2d 154 (1964). 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: As noted in § 2.8B(1), 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 White v. Pacific Telephone & Telegraph Co.*, 168 Or 371, 375, 123 P2d 193 (1942), *overruled in part on other grounds 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 Foundation–Family of Uri, Inc. v. Vaughan*, 114 Or App 448, 452, 835 P2d 938 (1992) (declining to apply ORS 12.220 when the plaintiffs failed to secure counsel to pursue their claims and the court dismissed the lawsuit with prejudice). *But see Cornus Corp. v. Geac Enterprise Solutions, Inc.*, 252 Or App 595, 603–05, 289 P3d 267 (2012), *rev den*, 353 Or 428, *cert den*, 571 US 952 (2013) (a dismissal without prejudice and "not based on the substantive validity of plaintiff's claims" is not an adjudication on the merits).

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" upon filing within the meaning of the saving statute. *Hatley v. Truck Insurance Exchange*, 261 Or 606, 612–13, 494 P2d 426, *adh'd to on denial of reh'g*, 261 Or 622, 495 P2d 1196 (1972) (interpreting a prior version of the statute); *see Stevens v. Scanlon*, 248 Or 229, 232, 430 P2d 1019 (1967) (discussing same). 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 (Or Laws 2003, ch 296, § 1), 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 after a reversal on appeal.

§ 2.8C References

See Tort Law in Oregon § 32.7 (OSB Legal Pubs 2024) (savings statute).

§ 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 summons or the appearance of the defendant and after reasonable notice in writing to all parties to the action. ORCP 39 A; ORCP 39 C(1); *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 (1) a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) the notice of deposition states that the person to be deposed is about to go out of state and will be unavailable for examination unless the deposition is taken before the time to appear expires, and the notice sets forth facts to support the statement. 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; changes, if any; and statement of correctness." ORCP 39 F(1). If the witness desires to change any of the transcribed or recorded testimony, their changes, and a statement of the reasons for making the changes, must be promptly served on all parties by the party who took the deposition. ORCP 39 F(2).

Within 30 days (or a shorter period upon court order) 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 (or the period specified in the order), the party taking the deposition must "state on the transcription or in a writing to accompany the recording the fact of 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 testimony, are not waived by the failure to make them before or

during a deposition, unless the ground for the objection might have been remedied if presented at that time. 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. 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 under the standards of 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

After an action is commenced, and upon stipulation of the parties or leave of court, any party may take the testimony of any person by written questions. Notice of the written questions and the identity of the person to answer them 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(1).

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, a party must serve a response 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 in writing. 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). An objection does not relieve the responding party of the obligation to comply with the request or any part of the request to the extent there is no objection. ORCP 43 B(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 55 C(3)(a); *see* ORCP 43 D. The nonparty is allowed at least 14 days to produce the material, unless the time is shortened by the court. ORCP 55 C(3)(b).

See § 2.9C regarding the production of confidential health information.

§ 2.9C Production of Confidential Health Information

Records containing confidential health information (CHI) may be obtained by subpoena only as provided in ORCP 55 D. The attorney for the party issuing a subpoena requesting production of CHI must serve the custodian of the records with either a qualified protective order or an affidavit or a declaration. ORCP 55 D(4)(a).

The affidavit or declaration supporting the subpoena for CHI must demonstrate that

> D(4)(a)(i) Written notice. The party has made a good faith attempt to provide the person whose CHI is sought, or the person's attorney, written notice that allowed 14 days after the date of the notice to object;
>
> D(4)(a)(ii) Sufficiency. The written notice included the subpoena and sufficient information about the litigation underlying the subpoena to enable the person or the person's attorney to meaningfully object;
>
> D(4)(a)(iii) Information regarding objections. The party must certify that either no written objection was made within the 14 days, or objections made were resolved and the command in the subpoena is consistent with that resolution; and
>
> D(4)(a)(iv) Inspection requests. The party must certify that the person or the person's representative was or will be permitted, promptly on request, to inspect and copy any CHI received.

ORCP 55 D(4)(a).

In lieu of the affidavit or declaration described above, the subpoena can instead be accompanied by a qualified protective order. ORCP 55 D(4)(a).

§ 2.9D Requests for Admissions; Response

Requests 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 a shorter or longer time period as the court allows), or the matter is deemed admitted. 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, unless the court allows a shorter time period. ORCP 45 B.

§ 2.9E References

See Oregon Civil Pleading and Litigation chs 23–27 (OSB Legal Pubs 2025) (scope of discovery and e-discovery; requests for medical records and examinations; production, inspection, and admission; depositions; subpoenas).

§ 2.10 DECLARATORY JUDGMENTS

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).

§ 2.10A 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 UDJA, 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 an 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).

§ 2.10B Appeal

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

§ 2.10C References

See Administering Oregon Estates § 8.2-3(a) to § 8.2-3(b)(7) (OSB Legal Pubs 2023); *Oregon Civil Pleading and Litigation* ch 11 (OSB Legal Pubs 2025).

§ 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).

§ 2.11B Recoupment

Recoupment relates back to the original complaint because it is the "cutting back" of the plaintiff's claim. *Rogue River Management Co. v. Shaw*, 243 Or 54, 58–59, 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); *Dixon v. Schoonover*, 226 Or 443, 453–54, 359 P2d 115 (1961) ("[R]ecoupment 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."); *see Wright v. Hage*, 214 Or 400, 404–05, 330 P2d 342 (1958) (recoupment properly applied to a defense for which the statute of limitations had run).

§ 2.11C Setoff

Setoff is a "money demand by the defendant against the plaintiff arising upon contract and constituting a debt *independent of and unconnected with the cause of action* set forth in the [plaintiff's] complaint." *Jones v. Four Corners Rod & Gun Club*, 366 Or 100, 115, 456 P3d 616 (2020) (quoting *Rogue River Management Co. v. Shaw*, 243 Or 54, 59, 411 P2d 440 (1966)) (emphasis in *Rogue River Management*).

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. *Jewell v. Compton*, 277 Or 93, 96–97, 559 P2d 874 (1977); *see Lamb v. Young*, 250 Or 228, 230, 441 P2d 616 (1968).

§ 2.11D References

See Oregon Civil Pleading and Litigation § 16.7-7 (OSB Legal Pubs 2025). *See also* § 2.6 to § 2.6A(8) (statutes of limitations—defenses).

§ 2.12 SUMMARY JUDGMENT

§ 2.12A Motion for Summary Judgment

A party seeking to recover on any type of 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 and all supporting materials "must be filed and served at least 60 days before the date set for trial." ORCP 47 C. The court has discretion to modify this time period. ORCP 47 C.

§ 2.12B Opposing Affidavits; Reply

The party opposing a motion for summary judgment must file and serve opposing affidavits or declarations and supporting documents within 20 days. The moving party then has five days within which to reply. The court has discretion to modify these time periods. 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, or if the court grants summary judgment on fewer than all claims or defenses, the court may enter a limited judgment if it enters the judgment in accordance with ORCP 67 B that there is no just reason for delay. ORCP 47 H.

§ 2.12D References

See generally Oregon Civil Pleading and Litigation ch 28 (OSB Legal Pubs 2025).

§ 2.13 UNIFORM TRIAL COURT RULES

NOTE: The Uniform Trial Court Rules are found online at https://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx. Lawyers should review the current Uniform Trial Court Rules at this website because the rules are updated every August and are occasionally amended out of cycle. *See* Oregon Judicial Branch, *UTCR Committee*, https://www.courts.oregon.gov/programs/utcr/committee/Pages/default.aspx.

§ 2.13A Applicability of UTCRs

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

UTCR 1.010(3) provides that chapters 2 to 13 of the Uniform Trial Court Rules do not apply to small claims, violations, or parking violations, except that:

(a) UTCR 7.050 applies to all cases that may be subject to a federal bankruptcy stay, including small claims cases.

(b) Supplementary Local Rules relating to these subjects are placed in chapters as provided by UTCR 1.080(3).

ORCP 10 applies when computing time under the Uniform Trial Court Rules. 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 Uniform Trial Court Rules with the Oregon Rules of Civil Procedure. *See* UTCR 1.050(1) (promulgation of supplementary local rules).

Counsel or an unrepresented party whose name, mailing address, telephone number, email address, or fax number has changed must immediately notify the trial court administrator and all other parties of the change. UTCR 2.010(13); *see* UTCR 1.110(2) (defining *court contact information*).

§ 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 of the Oregon Supreme Court. 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 and contain the date of any scheduled trial or hearing. UTCR 3.140(1); *see also* ORS 9.380 (changing attorneys and terminating the attorney-client relationship); ORS 9.390 (notice of change or termination).

§ 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 notify 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 (defenses and objections) and ORCP 23 (amended and supplemental pleadings), other than a motion to dismiss for failure to state a claim or for lack of jurisdiction, or a discovery motion under ORCP 36 to 46 or ORCP 55, the moving party must make a good-faith effort to confer with the other party or parties about the disputed issues. If the moving party fails to do so, the court will deny the motion. UTCR 5.010(1)–(3).

When the motion is filed, the moving party must also file a certificate of compliance stating that the parties conferred or stating facts showing good cause for not conferring. UTCR 5.010(4).

A motion may be presented *ex parte* upon filing a certification that the motion is unopposed. UTCR 5.010(5); *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 after the motion is served or filed, whichever is later. UTCR 5.030(1).

A reply memorandum, if any, must be filed within seven days after the response is served or filed, whichever is later. 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 Remote Means

A party may request that a motion not requiring testimony or a nonevidentiary hearing be heard by remote means. UTCR 5.050(2).

A request for oral argument by remote means must be in the caption of the pleading, motion, response, or other initiating document. UTCR 5.050(2)(a). The request must also "include the names, email addresses, and telephone numbers of all parties served with the request" in the first paragraph of the document. UTCR 5.050(2)(b). If the mode of hearing is by conference call, the requesting party must initiate and pay for it. UTCR 5.050(2)(c).

NOTE: UTCR 1.110 defines the term *remote means* (or, alternatively, *remote proceeding*) as "the use of telephone, telecommunication, video, other two-way electronic communication device, or simultaneous electronic transmission, in a manner that permits all participants to hear and speak with each other."

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

> Any stipulated or *ex parte* matter that may be presented conventionally may be delivered by mail or messenger to the trial court administrator for distribution to a judge for signature. An *ex parte* default, a stipulated order, or a stipulated judgment that may be presented conventionally also may be personally presented to a judge by the attorney or the attorney's agent. Other types of *ex parte* matters personally presented to a judge must be presented by the attorney.

UTCR 5.060(2).

Ex parte matters may be presented conventionally at any time during court hours, unless promulgated supplementary local rules otherwise modify the time for presenting such matters. UTCR 5.060(4).

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 put the decision on the record, 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 both." UTCR 6.020(2). After written notice to the parties, and if no order or judgment has been filed, the court may dismiss the case 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-impaneling 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 before trial. 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 then set for trial," and "[t]he new trial date must be within the time periods set forth in UTCR 7.020(5)." UTCR 6.030(4)(a)–(b). 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 presiding judges of the affected courts will resolve the scheduling conflict upon 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(1).

§ 2.13E Interstate Deposition Instruments

Once issued by the court, a commission under 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, unless otherwise requested by the party and ordered by the court. UTCR 5.130(2).

§ 2.13F Filings with the Court

§ 2.13F(1) Trial Memoranda and Exhibits

Trial memoranda must be filed, with copies delivered to the court and served on opposing parties. The court may specify the manner and time of submission. UTCR 6.050(1)–(2).

Trial exhibits are not filed with the court but must be delivered or submitted as directed by the assigned judge, except as required by UTCR 11.110 (exhibits in juvenile proceedings) or UTCR 24.040(3)(a) (exhibits in postconviction cases). UTCR 6.050(3).

§ 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 (1) served on each opposing counsel at least three days before it is submitted to the court, (2) accompanied by each opposing counsel's stipulation that no objection to the proposed judgment or proposed order exists, or (3) served on a self-represented party with notice of the time period to object at least seven days before it is submitted to the court. UTCR 5.100(1).

The requirements of UTCR 5.100(1) do not apply to proposed judgments or proposed orders that are (1) submitted in open court with all parties present; (2) not required to be served by statute, rule, or otherwise (as long as the "submitting party sets out the specific legal basis for why service is not required"); (3) "in a proceeding

in which all other parties previously filed waivers of appearance"; (4) subject to UTCR 10.090 (proceedings relating to vehicle laws and suspensions of driving privileges); (5) related to uncontested probate and protective proceedings; (6) certified to the court under certain statutes; or (7) proposed orders allowing attorney resignation under UTCR 3.140. UTCR 5.100(3).

Except for proposed judgments or proposed orders submitted in open court, proposed judgments or proposed orders must contain a certificate stating the information required in UTCR 5.100(2).

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(5).

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

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 filed, delivered to the court and served on opposing parties. *See* UTCR 6.060(1)–(2). Proposed verdict forms and written interrogatories must be submitted at the commencement of trial and as otherwise allowed by the court. 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 ORS 133.707 and ORS 419A.255(1)(a), exhibits are returned to the custody of counsel for the submitting parties upon the conclusion of the trial or hearing, and counsel must retain custody and control of the exhibits until final disposition of the case (unless the exhibits are returned to the trial court in accordance with 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). UTCR 6.120(1).

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. 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 from the court regulating the handling, use and disposition of the hazardous substance." UTCR 6.140(1). 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 the 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 and accompanied by a proposed order," 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 an order of default and applies for entry of judgment within the 28-day period; (2) the plaintiff files a motion, supported by affidavit and accompanied by a proposed order, showing good cause to continue the case; or (3) the defendant has appeared. 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." UTCR 7.030(1). A complex case is not subject to the time-limitation or trial-setting procedures set forth in subsections (5), (6), and (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 do not apply 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(1); UTCR 7.070(1).

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

§ 2.13I Proceedings Relating to Motor Vehicle Laws and Driving Privilege Suspensions

(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) "submit the record to the trial court administrator within 30 days of service of the petition for review." UTCR 10.020(1)–(2). For good cause, the court may extend the time for filing the record. UTCR 10.020(2).

(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. Absent such a motion, 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(10)(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. *See* 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. "Courts have a reasonable time given their ordinary workload and resources available." 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 provided at https://www.courts.oregon.gov/forms. 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 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 when the court accepts the document for filing. UTCR 21.060(1)(b).

§ 2.13K(3) Courtesy Copy 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 submission or acceptance email in the manner and time specified by the court. UTCR 21.070(1)(a).

§ 2.13K(4) Electronic Filing Deadline

"A filer may use the electronic filing system at any time," 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(1)–(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, the filer must do one of the following:

(1) submit "an imaged 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.

UTCR 21.090(4).

§ 2.13K(6) Retention of Electronically Filed Documents

Unless the court orders otherwise, if a filer electronically files an imaged document "that contains the original signature of a person other than the filer, the filer must retain the document in the filer's possession in its original paper form for no less than 30 days." UTCR 21.090(3)(b).

§ 2.13L Resources

See generally Oregon Civil Pleading and Litigation (OSB Legal Pubs 2025). See also the Oregon Judicial Department's website for updated state and county court rules, https://www.courts.oregon.gov/rules/Pages/default.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] written 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 applying for the order, or a shorter time period if the court allows. The notice of intent to apply for an order of default must also be filed with the court and must be in the form prescribed by

UTCR 2.010. ORCP 69 B(2); *Unifund CCR Partners v. Kelley*, 240 Or App 23, 28, 245 P3d 694 (2010) ("Failure to comply with the notice requirement before obtaining default judgment results in the judgment being void."); *see Wells Fargo Bank, N.A. v. Jasper*, 289 Or App 610, 613, 411 P3d 388 (2017).

§ 2.14A(2) Default Judgment Against Nonappearing Party

If the party against whom a default is sought has been served with summons or is otherwise subject to the jurisdiction of the court and has not appeared, the party seeking relief may apply for an order of default and a judgment by default after the time to answer or appear has expired. *See* 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. If the motion is made for "(a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under [ORCP 64 F]; [or] (c) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party," it must be accompanied by a pleading or motion asserting a claim or defense. ORCP 71 B(1); *see* 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); *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(1), including "excusable neglect." 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(1); *see* § 2.14B(1) to § 2.14B(5) (relief from judgment).

ORCP 71 does not limit a court's inherent authority "to modify a judgment within a reasonable time" or to set aside a judgment for fraud upon the court, or the power of a court to entertain an independent action to relieve a party from a judgment. ORCP 71 C.

§ 2.14B Relief from Judgment

§ 2.14B(1) Grounds for Relief from Judgment

On a timely motion (see below), and on such terms as are just, the court may relieve a party from a judgment for any of the following reasons:

(1) "mistake, inadvertence, surprise, or excusable neglect" (*see* § 2.14B(2));

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

(3) "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;"

(4) "the judgment is void" (*see* § 2.14B(3)); or

(5) "the 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). A motion for relief from judgment based on any of the above reasons must be made within a "reasonable time." ORCP 71 B(1); *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 on grounds of "mistake, inadvertence, surprise, or excusable neglect"). Furthermore, a motion based on any of the first three reasons must be made "not more than one year after receipt of notice by the moving party of the judgment" and must "be accompanied by a pleading or motion under [ORCP 21 A] which contains an assertion of a claim or defense." 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 brought within a reasonable time, not to exceed one year, and that the party has a meritorious defense." *National 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); *see Hoddenpyl v. Fiskum*, 281 Or App 42, 46, 383 P3d 432 (2016) (when the defendant took reasonable steps to respond to a complaint, the court held that inadvertent mailing of the notice of appearance to the former address of the plaintiff's attorney was excusable).

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. *National 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 Industries, 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 void judgment. *See Citizens Savings & Loan Ass'n v. McDonald*, 191 Or App 45, 49, 80 P3d 532 (2003).

§ 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 an appeal from [the] judgment is pending before an appellate court." ORCP 71 B(2). "The moving party [must] serve a copy of the motion on the appellate court." ORCP 71 B(2). 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 (UCLLA), ORS 12.410 to 12.480.

The UCLLA applies to claims "[a]ccruing after January 1, 1988," or to claims "[a]sserted in a civil action or proceeding more than one year after January 1, 1988." ORS 12.460. The UCLLA does not revive a claim barred before January 1, 1988. ORS 12.460.

See § 2.15B (application of the UCLLA).

§ 2.15B Application of the UCLLA

The UCLLA requires application of the statute of limitations that corresponds to the substantive law forming the basis of the plaintiff's claim. ORS 12.430; *see 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, 92, 760 P2d 1350, *rev den*, 307 Or 246 (1988) ("[T]he 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 governing tolling and accrual apply in computing the limitation 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 limitation period of another state applicable under ORS 12.430 and 12.440 is substantially different from" the Oregon limitation 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 Unifund CCR Partners v. Deboer*, 249 Or App 136, 138, 277 P3d 562, *rev den*, 352 Or 378 (2012); *CACV of Colorado, LLC v. Stevens*, 248 Or App 624, 639–40, 274 P3d 859, *rev den*, 352 Or 377 (2012).

§ 2.15C References

See Tort Law in Oregon § 32.10-2(a) to § 32.10-2(b) (OSB Legal Pubs 2024); *Contract Law in Oregon* ch 13 (Oregon CLE 2003 & Supp 2008) (choice of law).

§ 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)(a)–(b); *Benj. Franklin Federal Savings & Loan Ass'n v. Phillips*, 88 Or App 354, 356–57, 745 P2d 437 (1987) (stating a right to attorney fees in an amended complaint is sufficient for purposes of compliance with ORCP 68, even when the original complaint did not comply).

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)(c); *Arabian v. Kearns*, 64 Or App 204, 206–07, 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). The court has discretion to "enlarge" this time period. ORCP 15 D; ORCP 68 C(4)(d)(ii); *see*

Ornduff v. Hobbs, 273 Or App 169, 175, 181, 359 P3d 331 (2015) (noting the 14-day period specified in ORCP 68 may be "properly extended" under ORCP 15 D or the untimeliness may be otherwise excused); *see also* UTCR 5.080 (form of the statement must "substantially" follow that provided in https://www.courts.oregon.gov/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 not decided before entry of a general or supplemental judgment, any award or denial of attorney fees or costs and disbursements shall be made by supplemental judgment." ORCP 68 C(5)(b)(i).

§ 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 28 days after the date of the court's decision, or such further time as the court allows. ORAP 13.05(5)(a); ORS 20.320. Likewise, a petition for attorney fees must be filed and served within the same 28-day period. ORAP 13.10(2).

NOTE: On January 1, 2025, ORAP 13.05(5)(a) changed the time period for filing and serving statements of costs and disbursements from 21 days to 28 days, but ORS 20.320, which also addresses statements of costs and disbursements in appellate court, has not been updated and still provides a time period of 21 days ("The statement must be accompanied by proof of service on all adverse parties, and must be filed within 21 days from the date of the court's decision . . . ."). An appellate court has discretion to extend the time for filing a statement of costs and disbursements. ORS 20.320.

PRACTICE TIP: Given the discrepancy between ORAP 13.05(5)(a) and ORS 20.320, best practice is to use the 21-day timeline for filing and serving statements of costs and disbursements in appellate court instead of the 28-day timeline. *See* ORS 20.320; ORAP 13.05(5)(a).

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 Oregon Civil Pleading and Litigation ch 46 (OSB Legal Pubs 2025).

§ 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 diligence could have discovered" the grounds for the challenge, "and in any event before the jury is sworn." ORCP 57 A(1).

§ 2.17B Special Findings

A party who requests 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." ORCP 62 B. Any such objections or requests must be "heard and determined by the court within 30 days after the date of 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 of the above time periods, 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 Judgment Notwithstanding the Verdict 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 conclusively deemed 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 under 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; otherwise, 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 Oregon Civil Pleading and Litigation ch 40 (OSB Legal Pubs 2025) (posttrial matters); *see also* § 2.13 to § 2.13L (Uniform Trial Court Rules).

§ 2.18 GOVERNMENTAL AND PUBLIC BODIES

§ 2.18A Oregon Tort Claims Act

The OTCA 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 § 7.3B.

§ 2.18A(1) Notice

(1) *Notice of claim.* If an action other than a wrongful-death action arises out of an act or omission of a public body or an officer, employee, or agent 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). However, "a plaintiff who is a minor at the time of an alleged loss or injury must give notice of claim within 270 days." *Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 69, 404 P3d 959 (2017) (quoting *Doe v. Lake Oswego School District*, 353 Or 321, 327, 297 P3d 1287 (2013)); *see* ORS 30.275(2)(b) (90-day period for minority plus 180-day notice period). The minority tolling provided in ORS 12.160(1) for commencement of an action "does not alter the 270-day period in which minors must provide notice . . . of a tort claim" to a public body. *Buchwalter-Drumm*, 288 Or App at 71; *see* § 2.18A(4)(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 Department of Justice*, 261 Or App 680, 691, 322 P3d 601 (2014) ("[T]he 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); ORS 30.275(6) (requirements for actual notice); *see also Heng-Nguyen v. Tigard-Tualatin School District 23J*, 275 Or App 724, 729, 365 P3d 1173 (2015) (plaintiff's telephone call with the school's liability insurer regarding a traffic accident with a school employee was sufficient to provide actual notice).

(3) *When 180-day period starts.* The 180-day period for filing a notice of claim against a public body does not begin to run until the plaintiff "has a reasonable opportunity to discover [their] injury and the identity of the party responsible for that injury." *Doe*, 353 Or at 327 (emphasis omitted) (quoting *Adams v. Oregon State Police*, 289 Or 233, 239, 611 P2d 1153 (1980)). "An injury is discovered when a

plaintiff knows, or should have known, of a substantial possibility that three elements exist: (1) harm; (2) causation; and (3) tortious conduct." *Skille v. Martinez*, 288 Or App 207, 214–15, 406 P3d 126, *adh'd to as modified on recons*, 289 Or App 637, 407 P3d 998 (2017) (internal quotation marks omitted).

(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, 320, 840 P2d 1378 (1992), *rev den*, 315 Or 644 (1993); *see* ORS 30.275(6).

(5) *Federal claims.* The OTCA's notice requirements do not apply to actions based on a federal claim. *Sanok v. Grimes*, 306 Or 259, 262, 760 P2d 228 (1988).

(6) *Exceptions.* The notice requirements of ORS 30.275(1) to (7) are subject to limited exceptions (such as claims against nonprofit organizations that provide public transportation services as described in ORS 30.260(4)(d) or claims against the Oregon Department of Human Services (ODHS) or the Oregon Youth Authority (OYA) by individuals who were under 18 years of age and in the custody of ODHS or the OYA when the acts or omissions giving rise to the claim occurred). 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 or an officer, employee, or agent 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(1), (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, incompetency, or other incapacity." ORS 30.275(2).

> NOTE: The OTCA notice provisions are not tolled pending the appointment of a guardian ad litem for a minor. *Perez ex rel. Yon v. Bay Area Hospital*, 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); *see Bell v. Tri-County Metropolitan Transportation District of Oregon*, 353 Or 535, 548, 301 P3d 901 (2013) (holding that the two-year statute of limitations under ORS 30.275(9) applied to the plaintiff's survival action against the transportation district, which would have otherwise had a three-year statute of limitations if not for the transportation district's public status). But see § 2.18A(4)(b) regarding the commencement of an action by a minor or person with a disabling mental condition.

NOTE: Construction-defect actions must be commenced within two years, but ORS 12.135 can affect the period of ultimate repose. ORS 12.135(2); ORS 30.275(9).

§ 2.18A(4)(b) Commencement of Action by Minor or Person with Disabling Mental Condition

ORS 12.160, as amended in 2015 (Or Laws 2015, ch 510, § 1), the tolling statute for minors and for persons with disabling mental conditions that prevent them from comprehending their rights at the time the cause of action accrues, tolls the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action against a public body under the OTCA. *Robbins v. State ex rel. Department of Human Services*, 276 Or App 17, 19–20, 366 P3d 752 (2016).

NOTE: Case law predating the 2015 amendments provides helpful context but is based on former versions of ORS 12.160, so earlier cases should be relied on only with caution. *See 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."). The legislature expressly made the 2015 amendments retroactive to "all causes of actions arising on or after January 1, 2008." Or Laws 2015, ch 510, § 2(1).

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), § 7.3A to § 7.3B (actions against governmental bodies).

§ 2.18A(4)(c) Exceptions to General Rule

Under 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(1).

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

(3) *Actions arising from the construction, alteration, or repair of an improvement to real property.* These types of actions are subject to their own limitations periods. *See* ORS 12.135.

(4) *Unlawful employment practice.* An action against a public body or an officer, employee, or agent of a public body based on an unlawful employment practice under ORS 659A.885 must be commenced within one year (or, for certain unlawful employment practices, within five years), 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; *Medford v. Budge-McHugh Supply Co.*, 91 Or App 213, 219, 754 P2d 607, *rev den*, 306 Or 661 (1988), *abrogated on other grounds by Shasta View Irrigation District v. Amoco Chemicals Corp*, 329 Or 151, 158–59, 986 P2d 536 (1999), *as recognized in State 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. 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 Oregon Civil Pleading and Litigation ch 9 (OSB Legal Pubs 2025) (governmental units and officers); *Tort Law in Oregon* ch 28 (OSB Legal Pubs 2024) (claims against governmental bodies).

Chapter 3

CRIMINAL LAW

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§ 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 in Oregon* (OSB Legal Pubs 2022).

§ 3.2 STATUTES OF LIMITATIONS FOR CRIMES AND VIOLATIONS

The time for a criminal statute of limitations "starts to run on the day after the offense is committed." ORS 131.145(1); *see, e.g.*, *State v. Chatfield*, 148 Or App 13, 19, 939 P2d 55 (1997). The statutes of limitations are tolled during "[a]ny time when the accused is not an inhabitant of or usually resident within this state" or "[a]ny time when the accused hides within the state so as to prevent process being served upon the accused." ORS 131.145(2). However, in no case will the tolling period "be extended by more than three years." ORS 131.155.

Under Oregon law, to assess compliance with the statute of limitations, "[a] prosecution is commenced when a warrant or other process is issued, provided that

the warrant or other process is executed without unreasonable delay." ORS 131.135. For purposes of ORS 131.135, "other process" does not include filing of accusatory instrument. *State v. Williams*, 232 Or App 303, 307, 319, 222 P3d 31 (2009). The filing of a warrant alone does not commence prosecution if the warrant was not executed without unreasonable delay. *See State v. McMillan*, 293 Or App 598, 599–600, 429 P3d 746 (2018).

When the state knows of a defendant's location and takes no action to execute the warrant, the state has engaged in unreasonable delay. *State v. Barnes*, 66 Or App 896, 900, 676 P2d 344 (1984). Likewise, a delay is unreasonable if the state does not know a defendant's location, but the state can find the defendant with minimal effort. *State v. Huskey*, 171 Or App 550, 554, 17 P3d 541 (2000); *see also State v. Melecio*, 318 Or App 359, 363, 507 P3d 764, *rev den*, 370 Or 212 (2022).

§ 3.2A State Felonies

Oregon law provides for a general three-year statute of limitations for felony offenses. ORS 131.125(8)(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(6).

Certain sex offenses carry a 20-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." ORS 131.125(2). These crimes are

(a) Rape in the first degree under ORS 163.375.

(b) Sodomy in the first degree under ORS 163.405.

(c) Unlawful sexual penetration in the first degree under ORS 163.411.

(d) Sexual abuse in the first degree under ORS 163.427.

ORS 131.125(2).

Certain other sex offenses, as well as the crimes of felony strangulation and first-degree criminal mistreatment, 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(3). 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) Sodomy in the third degree under ORS 163.385.

(f) Sodomy in the second degree under ORS 163.395.

(g) Unlawful sexual penetration in the second degree under ORS 163.408.

(h) Sexual abuse in the second degree under ORS 163.425.

(i) Using a child in a display of sexual conduct under ORS 163.670.

(j) Encouraging child sexual abuse in the first degree under ORS 163.684.

(k) Incest under ORS 163.525.

(L) Promoting prostitution under ORS 167.012.

(m) Compelling prostitution under ORS 167.017.

(n) Luring a minor under ORS 167.057.

ORS 131.125(3).

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 "[r]ape 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(10)(a). When a defendant is identified after the period described in subsection (3) of ORS 131.125 on the basis of DNA comparisons, a prosecution for "[r]ape in the second degree, sodomy in the second degree or unlawful sexual penetration in the second degree," the statute of limitations is extended to 25 years after commission of the crime. ORS 131.125(10)(b). However, if any of these prosecutions would otherwise be barred by subsections (2) or (3), the prosecution must commence within two years of the DNA identification. ORS 131.125(11).

If a prosecutor obtains certain types of corroborating evidence after the period described in subsection (2) of ORS 131.125, 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(12)(a). The types of corroborating evidence that allow for this extension of the statute of limitations are listed in ORS 131.125(12)(b).

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) 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(7).

Subsection (9) of ORS 131.125 sets forth additional offense-specific exceptions to the three-year rule.

§ 3.2B State Misdemeanors

The general statute of limitations for misdemeanors under Oregon law is two years. ORS 131.125(8)(b).

Like Oregon's felonies (*see* § 3.2A), there are several exceptions to the general misdemeanor rule, such as the offense-specific exceptions of ORS 131.125(9). 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(4). 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(4).

§ 3.2C State Violations

The statute of limitations for most Oregon violations is six months, ORS 131.125(8)(c); however, several offense-specific exceptions are listed in ORS 131.125(9). 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 limitations, including an appendix with offense descriptions and statutory citations, see Charles Doyle, Congressional Research Service, *Statute of Limitation in Federal Criminal Cases: An Overview* (Nov 14, 2017), https://sgp.fas.org/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 bodily 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 major 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), *superseded by statute on other grounds by* Act of Sept 28, 1971, Pub L 92-129, § 101(a)(31), 85 Stat 348, 353 (1971). 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 for a particular offense, it is necessary to determine not only what the statute of limitations is, but also when the statute of limitations began to run.

§ 3.3 RIGHTS TO A SPEEDY TRIAL

§ 3.3A Time Limits for Trial Generally

Trial in cases where the most serious charge is a misdemeanor must begin two years from the filing of the charging instrument; trial in cases where the most serious charge is a felony must begin three years from the filing of the charging instrument. ORS 135.746(1). The remedy for a violation of this timeline is dismissal

without prejudice. ORS 135.752. These time limits cease to apply after a defendant has failed to appear at a trial date. ORS 135.746(2). If trial dates are scheduled outside of the period required in ORS 135.746(1), defense counsel must object within seven days of notice of the trial date, or else the time limit is extended until that scheduled trial date. ORS 135.746(3).

Some time periods are excluded from the time limits set by ORS 135.746. Most notably, ORS 135.748 excludes time periods when the defendant is either pending a determination of their fitness to proceed, has been determined unfit to proceed, is pending examination related to a qualifying mental disorder, or, due to illness or physical disability is unable to appear. ORS 135.748(1)(a). This statute also excludes the period of time between when a defendant fails to appear at a court appearance and the next scheduled court appearance other than an appearance occurring to address a warrant related to the defendant's prior failure to appear. ORS 135.748(1)(c). See ORS 135.748 for the full enumeration of excluded time periods.

> PRACTICE TIP: Separate from the statutory right to a speedy trial, all defendants have a constitutional right to a trial "without delay" under Article I, section 10, of the Oregon Constitution and the right to a speedy trial under the Sixth and Fourteenth Amendments to the United States Constitution. When raising a motion to dismiss on statutory grounds, defense counsel should consider raising alternative motions to dismiss on constitutional grounds.

§ 3.3B The "60 Day" Right

Generally, for an in-custody defendant, the court must set a trial date that is within 60 days of the defendant's arrest. ORS 136.290. The remedy for a violation of this statute is the defendant's release from custody. Any delays resulting from proceedings regarding the "defendant's mental condition or competency to stand trial," or other motions or appeal by the defendant will not be counted towards the 60-day period. ORS 136.295(3). Otherwise, absent the defendant's consent or an extension under ORS 136.295, a defendant may not be held in custody beyond 60 days. ORS 136.290(1). See ORS 136.295 for specific application of the 60-day rule, including possible extensions.

The 60-day maximum period that a defendant can be held in custody "after arrest" refers to the time of the defendant's initial arrest—if the defendant is rearrested after release, this does not start the 60-day timeline anew. *State v. McDowell*, 352 Or 27, 32, 279 P3d 198 (2012).

§ 3.3C Department of Corrections (DOC) "Fast and Speedy" Notices

Defendants with pending charges in state court while in DOC custody submit written notice of a request for an early trial to the district attorney of the county where the charge is pending. ORS 135.760. Such notices are commonly called "Fast and Speedy" notices. Upon receipt of the notice, the district attorney has 90 days to bring the defendant to trial on the pending charge. ORS 135.763(1). The court may

extend this 90-day timeline upon the defendant's consent, or on its own motion "for good cause shown." ORS 135.763(2). The fact of continued imprisonment is not good cause for the purpose of this subsection. The remedy for a violation of this statute is dismissal with prejudice. ORS 135.765; *State v. Waechter*, 163 Or App 282, 294, 986 P2d 1281 (1999).

§ 3.3D Interstate Agreement on Detainers

Defendants in the custody of other states with a detainer from Oregon may deliver a notice to the prosecuting attorney in the appropriate jurisdiction where the charge is pending to request their case be brought to disposition. ORS 135.775 Art. III(a). Upon receipt of that notice, the prosecutor has 180 days to bring that defendant to trial. ORS 135.775 Art. III(a). The remedy for a violation of the Agreement on Detainers is a dismissal with prejudice. ORS 135.775 Art. III(d). This timeline may be extended upon consent of the defendant or a finding of good cause by the trial court. ORS 135.775 Art. III(a).

§ 3.4 PRETRIAL MATTERS

§ 3.4A Indictments and Preliminary Hearings

"[Once] a person has been held to answer for a crime," the prosecution shall be dismissed if an indictment or information is not filed against the person within 30 days. ORS 135.745. If the defendant requests a preliminary hearing, such hearing must be held "within five judicial days if the defendant is in custody or within 30 days if the defendant is not in custody." ORS 135.070(2). Each of these timelines may be extended for good cause shown.

> COMMENT: Many jurisdictions in Oregon do not conduct preliminary hearings. For instance, in Multnomah County, the court requires indictments to be issued within five judicial days for in-custody defendants or 30 days for out-of-custody defendants. By requiring that an indictment be filed within the statutorily required timelines for a preliminary hearing, the possibility of preliminary hearing can be mooted. But the timelines of ORS 135.070(2), and the possibility that the defendant could otherwise demand a preliminary hearing, are what force the state to issue timely indictments.

§ 3.4B 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 apply to all criminal prosecutions. ORS 135.805(1). Discovery generally applies to "material and information within [a party's] possession or control." ORS 135.815(1); ORS 135.835.

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" in the party's possession or control that is subject to discovery, "the party must promptly notify the other party of the additional material or information." ORS 135.845(2).

See Criminal Law in Oregon ch 14 (OSB Legal Pubs 2022).

§ 3.4C Release Decisions

A magistrate must "make a release decision at the time of arraignment or other first appearance" unless there is good cause to postpone the release decision, which includes circumstances where the district attorney plans to seek preventative detention under ORS 135.240(4)(a). ORS 135.245(2)(a). If the release decision is postponed, the release hearing must be held within 48 hours of the first appearance "unless both parties agree, or the court finds good cause, to hold the hearing at a later time." ORS 135.245(7)(a). Under no circumstances may the release hearing be held more than five days after the first appearance without the consent of the defendant. ORS 135.245(7)(a).

COMMENT: The practice for how courts procedurally handle these timelines in cases where the state is seeking preventative detention varies by jurisdiction. Some jurisdictions have Presiding Judicial Orders interpreting the statutory scheme of ORS 135.240 to 135.245, because a plain reading of the statutes does not resolve all potential ambiguities. For more information, it may be necessary to consult a local practitioner who handles violent felony cases in your jurisdiction.

§ 3.4D 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 seven days after the arraignment, whichever is later," unless, for good cause, the court permits a different time. 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).

PRACTICE TIP: A motion to suppress may rely solely on the fact that a search or seizure was made without a warrant to "impos[e] upon the state the burden to show the legality of the search." *State v. Miller*, 269 Or 328, 335, 524 P2d 1399 (1974). Motions do not need to allege further facts to comply with this timing requirement or preserve a suppression issue, which may be helpful for defense attorneys working under tight time constraints.

§ 3.4E Notice of Mental-Health Defenses

A defendant may not introduce evidence on the issue of insanity under ORS 161.295, nor may a defendant introduce in the case-in-chief expert testimony on

partial responsibility or diminished capacity under ORS 161.300, unless the defendant files written notice of intent to do so at least 45 days before trial and, in the case of insanity, files with the court before trial a report of a psychiatric or psychological evaluation conducted by a certified evaluator. ORS 161.309(1)–(4).

A defendant who plans to introduce evidence of extreme emotional disturbance as an affirmative defense to second-degree murder must file written notice at the time the defendant pleads not guilty, or at any time before trial if the court finds just cause for failure to file the notice at the time of the plea. ORS 163.135(2).

§ 3.4F Dismissal or Change in Plea

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

§ 3.4G 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 "(a) [w]hether a jury is requested; (b) [t]he probable length of trial; (c) [t]he need for a pretrial hearing; and (d) [a]ny other matter affecting the case." UTCR 7.010(3).

For good cause, the court will grant relief from the date set for conclusion of plea agreements, negotiations, discovery, and investigations. UTCR 7.010(4).

§ 3.4H Time Limit for Making Certain Motions

"A motion to set aside the indictment or dismiss the accusatory instrument shall be made and heard at the time of the arraignment or within 10 days thereafter, unless for good cause the court allows additional time." ORS 135.520.

§ 3.4I Notice of Defenses

When a defense other than an affirmative defense is raised at trial, the state has the burden of disproving the defense beyond a reasonable doubt. "The state is not required to negate a defense . . . unless it is raised by the defendant[]" by written notice to the state before commencement of trial or via affirmative evidence presented in the defendant's case-in-chief. ORS 161.055(3). An affirmative defense, which the defendant has the burden of proving by a preponderance of the evidence, may be raised through the presentation of evidence at trial. ORS 161.055(2).

If the defendant intends to rely on alibi evidence, the defendant must file notice of the intent to offer such evidence no fewer than five days before the trial. ORS 135.455(1). The notice must "state specifically the place or places where the

defendant claims to have been at the time or times of the alleged offense together with the name [and address] of each witness upon whom the defendant intends to rely for alibi evidence." ORS 135.455(1).

Some other defenses have specific notice requirements. *See, e.g.*, § 3.4E (notice of mental-health defenses).

§ 3.4J Notice of Intent to Introduce Victim's Past Sexual Behavior

If a party intends to offer a victim's past sexual behavior or manner of dress in a sexual-offense case, the party must "make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin." OEC 412(4)(a) (ORS 40.210(4)(a)). The court may allow the motion to be made at a later date, including during trial, "if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case." OEC 412(4)(a).

A written offer of proof must accompany the motion. If the court determines that the offer of proof contains evidence that meets the exception to OEC 412, the court must order a hearing in camera to determine if the evidence is admissible. At that hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. OEC 412(4)(b). If the court determines that the evidence is relevant and that its probative value outweighs the danger of unfair prejudice, the evidence is admissible in the trial to the extent specified in an order. OEC 412(4)(c). An order admitting this evidence in a criminal prosecution may be appealed by the state before trial. OEC 412(4)(d).

> NOTE: The scope of "past sexual behavior" is broadly defined to mean "a volitional or non-volitional physical act that the victim has performed for the purpose of the sexual stimulation or gratification of either the victim or another person or an act that is sexual intercourse, deviate sexual intercourse or sexual contact, or an attempt to engage in such an act, between the victim and another person." *State v. Wright*, 97 Or App 401, 406, 776 P2d 1294, *rev den*, 308 Or 593 (1989).

§ 3.4K Notice of Intent to Introduce Statements Concerning an Act of Abuse Against a Child or Elderly Person

OEC 803(18a)(b) (ORS 40.460(18a)(b)) requires that a party intending to offer out-of-court statements concerning an act of abuse against a child or elderly person must "make[] known to the adverse party the proponent's intention to offer the statement and the particulars of the statement no later than 15 days before trial, except for good cause shown."

This hearsay exception applies if either the declarant testifies at trial and is subject to cross-examination, or if the declarant "is unavailable as a witness but was either chronologically or mentally under 12 years of age," or "65 years of age or

older[,] when the statement was made." OEC 803(18a)(b). The proponent of the statement must establish sufficient indicia of reliability for the statement if the declarant is unavailable. OEC 803(18a)(b).

§ 3.4L Notice of Intent to Rely on the Residual Hearsay Exception

OEC 803(28) (ORS 40.460(28)) and OEC 804(3)(h) (ORS 40.465(3)(h)) codify what is colloquially known as the "residual hearsay exception," which allows for the admission of an out-of-court statement not otherwise covered by the enumerated hearsay exception if it has equivalent guarantees of trustworthiness, is relevant, is more probative on the point for which its offered than any other reasonably available evidence, and its admission serves the interests of justice.

The proponent of such a statement must make the particulars of the statement known to the adverse party, along with the name and address of the declarant, "sufficiently in advance of the trial or hearing, or as soon as practicable after it becomes apparent that such statement is probative of the issues at hand." OEC 803(28)(b). The same notice requirements apply to residual hearsay offered for an unavailable witness under OEC 804(3)(h).

§ 3.4M Victims' Rights

ORS 147.510(4) establishes the deadline for the prosecutor to file a notice of compliance with victims' rights at 21 days after the defendant is arraigned on an indictment, waives indictment, or is held to answer following a preliminary hearing. This notice of compliance must include whether the prosecuting attorney made reasonable efforts to inform the victim of their constitutional rights, whether the charging instrument contains the names of each victim known to the prosecution, whether the victim requested the prosecutor to assert and enforce a constitutional right granted to the victim, and whether the victim requested to be informed in advance of any critical stage of the proceeding. ORS 147.510(4).

> PRACTICE TIP: These filings can be useful as a preliminary way to determine if the prosecutor has contact with the alleged victim and the level of engagement that the alleged victim has in the case.
>
> PRACTICE TIP: Prosecutors in some jurisdictions may include in these filings that they are asserting the alleged victim's "right to refuse an interview" by the defense under ORS 147.510(4)(c) and Article I, section 42(1)(c) of the Oregon Constitution. Different defense attorneys may interpret the impact of this assertion differently: some may think that this assertion prohibits the defense team from contacting the alleged victim, whereas others may believe that they may still permissibly contact the alleged victim as long as the alleged victim is immediately informed of their rights and their right to refuse the interview. Consulting with an ethics attorney on this issue may be advisable.

Under ORS 147.522(1), a victim or prosecutor who "seeks a determination of an issue involving a right granted by Article I, section 42 or 43," that will impact the trial's conduct must "file a motion within 35 days of the arraignment, or of the defendant's entry of [their] initial plea, whichever is sooner." If the factual basis for that request does not become known to the movant until a later time, the motion may be made at a later point if it is "filed promptly." ORS 147.522(1).

A defendant may challenge the designation of a person as a victim in their criminal case under ORS 147.522(2). This challenge must be raised either in a response to a victim's claim under ORS 147.517(4) or within seven days after the alleged victim first exercises a right granted by Article I, section 42 or 43 of the Oregon Constitution, unless the court finds good cause to allow the motion later. ORS 147.522(2).

The defendant may also raise an objection to a victim's presence at trial by filing a motion within 35 days of arraignment or entry of initial plea. ORS 147.522(3). If the factual basis for an objection is discovered later, the objection may be raised at a later time if it is "filed promptly." ORS 147.522(3).

§ 3.4N Driving Under the Influence of Intoxicants Diversion

After a defendant has been charged with driving under the influence of intoxicants (DUII), the defendant may file a petition for DUII diversion within 30 days after the date of the defendant's first appearance on the summons, unless the court allows a later filing date upon a showing of good cause. ORS 813.210(1)(a). However, a petition for DUII diversion "may be filed up to 14 days after the date the prosecuting attorney sends the laboratory test results of the defendant's urine or blood sample analysis to the defendant's attorney or, if the defendant is unrepresented, the defendant," if (1) the accusatory instrument alleges that the defendant was under the influence of a controlled substance or an inhalant, (2) "[t]he defendant has not received notice of what the defendant's blood alcohol content was at the time the conduct occurred" or the defendant had less than 0.08 percent by weight of alcohol in the blood at the time the conduct occurred, and (3) the police obtained a urine or blood sample from the defendant. ORS 813.210(1)(c). Within 15 days after the date of service of defendant's petition for DUII diversion, the prosecuting attorney may file a written objection to the petition and request a hearing. ORS 813.210(6).

"Within 30 days prior to the end of the diversion period," a defendant may apply by motion for an order extending the diversion period. ORS 813.225(1). However, "[i]f the defendant is serving on active duty as a member of the Armed Forces of the United States, or is a member of the reserve components of the Armed Forces of the United States or the National Guard," the defendant may apply for an order extending the diversion period at any time before the end of the diversion period. ORS 813.225(1). *See Veterans, Military Servicemembers, and the Law* § 4.3-1(b) (OSB Legal Pubs 2018).

A person who wishes to challenge the results of a blood or breath test must request a hearing from the Department of Transportation within 10 days from the date of arrest or, if the person failed a blood test, within 10 days from the date the department sends a notice of driver license suspension. ORS 813.410(4). Generally, the department must hold the hearing and issue a final order within 30 days of the arrest or, if the person failed a blood test, within 60 days from the date the department received the report of the failure. ORS 813.410(5)(e). The person may appeal the order by filing a petition in the circuit court within 30 days of the order's issuance. ORS 813.410(10)(a).

§ 3.4O 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.

§ 3.5 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.

§ 3.6 RESTITUTION

§ 3.6A 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 the damages" at the time of sentencing. ORS 137.106(1)(a). If the state is unable to present such evidence at sentencing, it may file a motion requesting that the judgment be amended to require restitution. ORS 137.106(1)(b)(A). "The court may extend the time by which the district attorney must file the motion for good cause." ORS 137.106(1)(b)(A).

Upon receipt of the state's motion for restitution, the court must set a hearing. ORS 137.106(1)(b)(B). "If the defendant objects to the motion, the objection must be filed at least 15 days prior to the hearing and . . . contain a description of the nature of the objection." ORS 137.106(1)(b)(B). At least 10 days prior to the hearing, the district attorney must "[d]isclose to the defendant the names of any witnesses that may be called during the presentation" and provide copies of any

exhibits. ORS 137.106(7)(a). If the district attorney violates any of the requirements of ORS 137.106(7)(a), "the court shall grant a continuance to allow additional time for preparation upon request of the defendant." ORS 137.106(7)(b).

For more information about restitution in state criminal cases, see *Criminal Law in Oregon* chapter 24 (OSB Legal Pubs 2022).

§ 3.6B 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 § 3664.

> Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the [prosecutor], after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

18 USC § 3664(d)(1). 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 after discovery of those losses 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 section 3664(d) are subject to harmless-error review on appeal. *United States v. Moreland*, 622 F3d 1147, 1172–73 (9th Cir 2010).

§ 3.7 ACTION FOR PENALTY OR FORFEITURE

§ 3.7A 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 commence 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).

§ 3.7B 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 agency that seizes the property (sometimes referred to as the "forfeiting agency" in ORS chapter 131A) must issue the notice within 15 days after the seizure. ORS 131A.150(2)–(3).

The seizing 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).

> CAVEAT: Since the passage of ORS 131A.150 in 2009, ORCP 7 D has been revised numerous times by both the Oregon Legislature and the Oregon Council on Court Procedures. ORS 131A.150 has not been amended since its passage. The reference in ORS 131A.150 (2009) to ORCP 7 D(6)(b) to (d) corresponds generally to current (2026) ORCP 7 D(6) and ORCP 7 D(6)(a)(i) to 7 D(6)(a)(i)(A).

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 [seizing] 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.150(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 seizing 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 [seizing agency's] forfeiture counsel." ORS 131A.100(1).

A seizing 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 those involving the seizure for forfeiture of real property), the seizing 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(1)–(2).

§ 3.7C 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).

> CAVEAT: Since the passage of ORS 131.570 in 2005, ORCP 7 D has been revised numerous times by both the Oregon Legislature and the Oregon Council on Court Procedures. ORS 131.570 has not been amended since its passage. The reference in ORS 131.570 (2005) to ORCP 7 D(6)(b) to (d) corresponds generally to current (2026) ORCP 7 D(6) and ORCP 7 D(6)(a)(i) to 7 D(6)(a)(i)(A).

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 seizing 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." ORS 131.564(8). 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 affidavit 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 prove that the person took the interest (1) before the property was seized, in good faith, and without intent to defeat the seizing agency's interest; or (2) "[a]s a bona fide purchaser for value without acquiescing in the prohibited conduct." 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(10)(a)(B).

Appeals of orders from a hearing held under 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 *Criminal Law in Oregon* chapter 32 (OSB Legal Pubs 2022).

§ 3.8 PETITION FOR POSTCONVICTION RELIEF

§ 3.8A 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 White v. Premo*, 365 Or 1, 11, 443 P3d 597 (2019), *cert dismissed*, 589 US 1271 (2020); *Bartz v. State*, 314 Or 353, 358–59, 839 P2d 217 (1992). *See generally Criminal Law in Oregon* ch 30 (OSB Legal Pubs 2022).

§ 3.8B 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).

§ 3.8C Motions and Other Filings, Demurrer or Answer

The lawyer appointed for a petitioner for postconviction relief "has 120 days from the date of appointment to file an amended petition, a notice that [the] petitioner will proceed on the original petition, or, if unable to plead a viable claim for relief or proceed on the original petition, an affidavit [under] ORS 138.590(5)."

UTCR 24.010(1)(a). The court will grant a motion for extension of time only upon demonstrated good cause. UTCR 24.010(1)(b).

The defendant "has 30 days after the notice, amended petition, or affidavit is entered in the court register, or from the expiration of the [filing period], to file an answer, demurrer, or motion against the pleadings." UTCR 24.010(2)(a)(ii). "If the petition is filed by counsel, or if [the] petitioner files the petition pro se and does not seek appointment of counsel, [the] defendant has 30 days from the date the petition is entered in the court register to file an answer, demurrer, or motion against the pleadings." UTCR 24.010(2)(b). The court will grant a motion for extension of time to file an answer, any other motion, or a demurrer only upon demonstrated good cause. UTCR 24.010(2)(c).

"If [the] defendant files a demurrer or motion against the pleadings, [the] petitioner has 30 days to file a response." UTCR 24.010(3). "If [the] petitioner files a response to the defendant's demurrer or motion against the pleadings, [the] defendant has 20 days to file a reply." UTCR 24.010(4). "If the court grants [the] defendant's demurrer or motion against the pleadings, and if it appears to the court that there is a reasonable expectation that [the] petitioner will be able to cure the defect, the court [must] grant [the] petitioner 30 days to file an amended petition." UTCR 24.010(5). For good cause, the court may allow additional time to file the amended petition. UTCR 24.010(5). "If the court denies [the] defendant's motion against the pleadings, [the] defendant has 14 days to file an answer." UTCR 24.010(6).

"All substantive pretrial motions must be filed at least 60 days before trial. The court may allow . . . late filing for good cause . . . ." UTCR 24.050(1). The "[p]etitioner's trial memoranda, including legal memoranda, and any additional exhibits not already filed . . . , must be filed [no] later than 30 days before trial." UTCR 24.050(2). The "[d]efendant's trial memoranda, including any legal memoranda, and any additional exhibits not already filed . . . , must be filed not later than 20 days" before trial. UTCR 24.050(3). "No later than 10 days before trial, [the] petitioner may respond to [the] defendant's memoranda and exhibits with a further memorandum and additional exhibits." UTCR 24.050(4). "Unless otherwise ordered by the court for good cause . . . , the disclosure of witness information required under ORS 138.615 must be made no later than 60 days before trial." UTCR 24.060.

Trials are scheduled for 30 minutes "and without the expectation of live witness testimony other than [the] petitioner. If the trial will take longer than 30 minutes, or if witnesses other than [the] petitioner will be called, the party requesting additional time must notify the court no later than 45 days before the trial date." UTCR 24.100(2).

§ 3.8D Appeal

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

Chapter 4

FAMILY AND JUVENILE

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§ 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 108.705; 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. *See generally Family Law in Oregon* ch 16 (OSB Legal Pubs 2023) (prenuptial agreements).

"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 to the agreement. 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, "except the power to consent to adoption of a minor ward." ORS 109.056(1).

To a School Administrator. If the delegation of these powers 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. ORS 109.056(3)(c). However, when the servicemember-parent shares joint custody of the child, and the servicemember-parent is married to someone else, then the delegation may be to the servicemember's spouse for a period not exceeding the term of active-duty service plus 30 days. ORS 109.056(3)(d). 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 under ORS chapter 107 (dissolution, annulment, and separation) when the plaintiff is a resident of or is domiciled in Oregon. ORCP 4 K(1). *See Family Law in Oregon* § 1.2-1 to § 1.2-4 (OSB Legal Pubs 2023) (jurisdiction).

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. ORCP 4 K(2). 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). *See generally Family Law in Oregon* ch 5 (OSB Legal Pubs 2023) (discovery).

If a support hearing is pending fewer 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 in ORS 107.089(1)(a) to (d) no later than three judicial days before the hearing. ORS 107.089(2)(b). For the obligor's noncompliance, the court must postpone the hearing on the obligee's request, and when support is eventually ordered, it will be retroactive to the original hearing date. ORS 107.089(4)(a). For the obligee's noncompliance, the court must postpone the hearing on the obligor's request, and when support is eventually ordered, it will be prospective only. ORS 107.089(4)(b).

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), or the equivalent document under UTCR 8.010(5), must be filed and served within 30 days of service of a petition or other pleading that seeks child support or spousal support on other than a temporary basis, unless the relevant supplementary local rule provides to the contrary. UTCR 8.010(6)(b).

When prejudgment support is sought under ORS 107.095(1), each party must file a Uniform Support Declaration. UTCR 8.040(3). The party seeking temporary support must include a Uniform Support Declaration as a documentary exhibit to the motion. UTCR 8.040(3)(a). The opposing party must file a Uniform Support Declaration and serve it on the party seeking temporary support within 14 days of service of the motion seeking temporary support, unless the relevant supplementary local rule provides to the contrary. UTCR 8.040(3)(b). A party seeking temporary support, or the opposing party, is not required to file a Uniform Support Declaration under UTCR 8.040(3) if the party is simultaneously filing a pleading under UTCR 8.010(4) incorporating a Uniform Support Declaration or has filed such a pleading within the prior 30 days and the information therein has not changed. UTCR 8.040(4)(a).

§ 4.2B(3) Statement of Assets and Liabilities

In a contested dissolution of marriage, separate maintenance, or annulment action, the statement listing and valuing assets and liabilities and proposing their distribution, required under UTCR 8.010(3), must be filed and served not fewer than 14 days before the trial on the merits, unless the relevant supplementary local rule provides to the contrary. The parties may stipulate otherwise but, in any event, the documents must be filed and served no later than the beginning of trial. UTCR 8.010(6)(a).

§ 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 an 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 18.190, judgment remedies for a judgment in a civil action 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 several 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 of marriage is commenced by filing a petition in the 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 on which the respondent is served with summons for summary dissolution of marriage (or, if service is made by publication or posting, within 30 days from the date of last publication or posting), 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 supported by affidavit setting forth facts which satisfy the court that such waiver is warranted." ORS 107.560(2).

§ 4.2G(3) Temporary Orders

A circuit court with conciliation jurisdiction and the spouses' consent may make orders with respect to the spouses' conduct and to the subject of the controversy 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 SEPARATION

§ 4.3A Conversion to Dissolution

Within two years after entry of a judgment of separation, the court may convert the judgment of separation to a judgment of dissolution upon motion of a party and at least 30 days' notice to the other party before the scheduled hearing. ORS 107.465(1). The other party may file a written consent to conversion and waiver of the hearing at any time before the hearing. ORS 107.465(1). Furthermore, ORS 107.465(1) does not prevent either party to a judgment of separation from commencing a suit for dissolution of the marriage at any time. ORS 107.465(2). *See Family Law in Oregon* § 2.3-2(f)(1) to § 2.3-2(f)(2) (OSB Legal Pubs 2023) (amendments to petition to change to dissolution).

§ 4.3B Duration

The court will fix the period of separation, and the judgment has no effect after the period has expired. ORS 107.475. 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 of the judgment. 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. *See Family Law in Oregon* § 2.3 to § 2.3-4 (OSB Legal Pubs 2023) (separation agreements).

§ 4.4 CHILD CUSTODY

§ 4.4A 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 fewer than 30 days before trial, except for good cause shown. ORS 107.179(1). 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). *See generally Family Law in Oregon* ch 8 (OSB Legal Pubs 2023) (custody).

§ 4.4B 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).

§ 4.4C Enforcement of Parenting Time

"Unless the parties otherwise agree or an alternative dispute resolution conference under ORS 107.103 is scheduled," 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).

§ 4.5 CHILD SUPPORT

§ 4.5A When Payments Are Due

Orders for child support must set an initial due date on the first day of a specified month, "with subsequent payments due on the first day of each subsequent month." ORS 25.166(1). Support becomes delinquent if not paid in full within one month of the due date. ORS 25.166(4). A monthly child support obligation that is to be paid in two or more installments becomes delinquent only if the obligation has not been "paid in full by the due date for the first installment in the next month."

ORS 25.166(4). *See generally Family Law in Oregon* ch 10 (OSB Legal Pubs 2023) (child support).

§ 4.5B 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).

§ 4.5C Child Attending School, Administrative Modification

An unmarried child who is at least 18 years old and under 21 years old may request notice of any 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). *See Family Law in Oregon* § 10.7-1 to § 10.7-1(e) (OSB Legal Pubs 2023) (child attending school).

§ 4.5D Multiple Orders

If two or more child support orders have been issued for the same obligor and child, a tribunal of this state having personal jurisdiction over both the obligor and the obligee may determine which order controls. ORS 110.533(3). 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 110.533(7).

§ 4.5E Interstate Enforcement

"A support order or income withholding order issued in another state, or a foreign support order, is registered when the order is filed in the registering tribunal of [Oregon]." ORS 110.608(1).

§ 4.5F Nonregistering Party's Challenge to Registered Support Order

A nonregistering party who wishes to contest the validity or enforcement of a registered support order or income-withholding order (other than an order under ORS 110.657, i.e., an order under the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (*see* ORS 110.503(3))) must request a hearing within 20 days after the date that the notice of registration was mailed or personally served. ORS 110.617(1); ORS 110.614(2)(b). If the party fails to make a timely request, the order is confirmed by operation of law. ORS 110.617(2).

A party contesting a registered Convention support order must file a contest within 30 days (or, if the party resides outside the United States, within 60 days) after notice of the registration. ORS 110.657(2).

§ 4.5G Child Support Liens

§ 4.5G(1) Expiration upon Satisfaction

Support arrearage liens attaching to real property expire upon satisfaction of the unpaid installment that gave rise to the support arrearage lien. ORS 18.180(2).

§ 4.5G(2) Expiration After 35 Years

"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).

§ 4.5H Incarceration

An obligor who is incarcerated for a period of 180 or more consecutive days is "rebuttably presumed" to be unable to pay any child support, and no child support accrues for the duration of the incarceration, unless the presumption is rebutted. ORS 25.247(1).

Within 30 days following identification of such incarcerated obligor, the entity responsible for child support services under ORS 25.080 must provide notice of the presumption to the obligee and the obligor that unless a party objects, "child support shall cease accruing beginning with the first day of the first month that follows the obligor becoming incarcerated for a period of at least 180 consecutive days." ORS 25.247(3).

Before the support order is suspended, a party may object to the presumption by sending an objection to the entity that served the notice under ORS 25.247(3) within 30 days after the date of service of the notice. ORS 25.247(4).

§ 4.5I Worksheets

If child support is an issue at the time of trial, the UTCR 8.010(3) statement of each party must include completed Division of Child Support computation worksheets. UTCR 8.060(1).

When prejudgment support is sought, the party seeking temporary support must serve the opposing party with Division of Child Support computation worksheets. UTCR 8.060(2). If child support is an issue at the time of hearing, the parties must submit the completed Division of Child Support computation worksheets to the court. UTCR 8.060(2).

§ 4.6 SPOUSAL SUPPORT

§ 4.6A When Payments Are Due

Orders for spousal support must set an initial due date on the first day of a specified month, "with subsequent payments due on the first day of each subsequent month." ORS 25.166(1). Support becomes delinquent if not paid in full within one month of the due date. ORS 25.166(4). *See generally Family Law in Oregon* ch 11 (OSB Legal Pubs 2023) (spousal support).

§ 4.6B Spousal Support Liens

§ 4.6B(1) Expiration upon Satisfaction

Support arrearage liens attaching to real property expire upon satisfaction of the unpaid installment that gave rise to the lien. ORS 18.180(2).

§ 4.6B(2) Unpaid Spousal Support

Except as provided by ORS 18.180(6)(b) (*see* § 4.6B(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).

§ 4.6B(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.

ORS 18.180(6)(b). *See* § 4.6B(4) (extension of lien).

§ 4.6B(4) Extension of Judgment Lien of Spousal Support Award

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)." ORS 18.185(1).

If a certificate of extension is filed under ORS 18.185(1),

> (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.

ORS 18.185(1)(b).

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(2).

§ 4.6B(5) Spousal Support Awards in Judgments Entered Before January 1, 2004

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.

ORS 18.190(1).

"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." ORS 18.190(2).

ORS 18.190 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(3).

§ 4.6C Termination of Spousal Support

A paying spouse who has paid support for more than 10 years may petition the court to set aside spousal support in a judgment of dissolution or annulment if the former spouse "has not made a reasonable effort during that period of time to become financially self-supporting and independent of the support provided under the judgment." ORS 107.407.

The 10-year rule set forth in ORS 107.407 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.

§ 4.7 MODIFICATION

§ 4.7A Prefiling Discovery

After a spousal support judgment has been entered, a party may demand documentation described in ORS 107.408(1)(a) to (b) (regarding tax returns and income) from the other party "once every two years," even before any modification

action is formally initiated. ORS 107.408(1)–(3). The party must provide copies of its same information when making the request. ORS 107.408(5).

§ 4.7B Motion to Modify Judgment

At any time after a judgment of annulment, dissolution, or separation is granted, 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). *See generally Family Law in Oregon* ch 14 (OSB Legal Pubs 2023) (modification).

§ 4.7C Uniform Support Declaration

"Modification proceedings must be initiated by an order to show cause based on a motion supported by an affidavit or a declaration under penalty of perjury setting forth the factual basis for the motion or by other procedure established by [a 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 within 30 days of service of the order to show cause, unless a supplementary local rule provides to the contrary. UTCR 8.050(2)(a)–(b). *See Family Law in Oregon* § 14.4-3(c) (OSB Legal Pubs 2023) (Uniform Support Declaration).

§ 4.7D Immediate Postjudgment Orders

A party who files an *ex parte* order under ORS 107.139 for temporary custody or parenting time must 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).

§ 4.7E Postjudgment 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. ORS 107.138(1)(a). Notice must be served to the other party at least 21 days before the date set for the hearing. ORS 107.138(1)(c).

§ 4.7F Worksheets

If child support is an issue at the time of hearing, parties must submit the completed Division of Child Support computation worksheets to the court. UTCR 8.060.

§ 4.8 REINSTATEMENT OF SPOUSAL SUPPORT

> When a court has terminated the duty of spousal support under ORS 107.135, the court may reinstate the remaining duration and remaining amount of the support award 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). *See* § 4.8A (duration), § 4.8B (amount), § 4.8C (time limit).

§ 4.8A Duration

As stated in § 4.8, when a court has terminated the duty of spousal support under ORS 107.135, the court may reinstate the remaining duration of the support award. ORS 107.136(1).

> 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).

§ 4.8B Amount

As stated in § 4.8, when a court has terminated the duty of spousal support under ORS 107.135, the court may reinstate the remaining amount of the support award. ORS 107.136(1).

> 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).

§ 4.8C 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).

§ 4.9 ADOPTION

§ 4.9A Service of Documents on Department of Human Services

Within 30 days after filing a petition for the adoption of a minor child, the petitioner must serve copies of the petition and other required documents "on the

Director of Human Services by either registered or certified mail with return receipt or personal service." ORS 109.285(5)(a). *See Family Law in Oregon* § 19.7-1 to 19.7-11(c) (OSB Legal Pubs 2023) (adoption procedures).

§ 4.9B Placement Report

Within 90 days after service of copies of the adoption petition and other required documents on the Director 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 and upon receipt of all required documentation and fees. ORS 109.276(8)(a)(A).

§ 4.9C Hearing

No earlier than provided in ORS 109.276 and no later than six months from the date on which an adoption petition is filed, the court must hold a hearing and (1) "[e]nter a judgment under ORS 109.350," (2) "[c]ontinue the guardianship or legal custodial status of the child," (3) "[w]aive the child to a court having jurisdiction under ORS 419B.100 or [ORS] 419C.005," or (4) "[t]ake such other action as the court considers necessary." ORS 109.272(1).

§ 4.9D Notice to Alleged Genetic Parent

In an adoption proceeding or other court proceeding concerning the custody of a child (except for juvenile court proceedings), if the child's parentage has not been established under ORS 109.065 or has not been established or acknowledged under ORS 419B.609 (regarding an Indian child), the alleged genetic parent 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 alleged genetic parent at any time during the 60 days immediately preceding the 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 alleged genetic parent 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). *See generally Family Law in Oregon* ch 18 (OSB Legal Pubs 2023) (parentage).

§ 4.9E Motion for Judgment of Nonparentage

A spouse who is served with a summons and a motion and order to show cause why a judgment of nonparentage should not be entered in an adoption proceeding must file a written answer within 30 days after the date of service or, if service is made by publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting. ORS 109.326(7).

§ 4.9F Objection to Adoption

A parent who is served with a summons and a motion and order to show cause why a proposed adoption should not be ordered without the parent's consent must file a written answer within 30 days after the date of service or, if service is made by publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting. 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. *Phariss v. Welshans*, 150 Or App 498, 503–04, 946 P2d 1160 (1997), *disavowed on other grounds by J.B.D. v. Plan Loving Adoptions Now, Inc. (In re Adoption of G.I.B)*, 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).

§ 4.10 PARENTAGE

§ 4.10A Jurisdiction

In an action to establish parentage, the court has jurisdiction when the act of sexual intercourse that resulted in the child's birth is alleged to have taken place in Oregon. ORCP 4 K(3). *See generally Family Law in Oregon* ch 18 (OSB Legal Pubs 2023) (parentage).

§ 4.10B No Statute of Limitations

The statutes that apply to filiation proceedings (ORS 109.124–109.173) do not include a statute of limitations. The old statutes of limitations for filiation proceedings, ORS 109.135(3) (1979) (10 years) and ORS 109.135(3) (1971) (six years) were held unconstitutional. *State ex rel. Adult & Family Services Division v. Tuttle*, 304 Or 270, 273, 744 P2d 990 (1987); *State ex rel. Adult & Family Services Division v. Bradley*, 295 Or 216, 225–26, 666 P2d 249 (1983).

§ 4.10C Challenge to Voluntary Acknowledgment

A person may rescind a voluntary acknowledgment of parentage up to the earlier of (1) 60 days after the form is filed with the state registrar or (2) the date of the first court hearing in a proceeding relating to the child in which the person wishing to rescind the acknowledgment is a party. ORS 109.070(5) (renumbered as ORS 109.070(6) operative January 1, 2027). At any time after the 60-day period, a signed, filed, voluntary acknowledgment of parentage may be challenged and set aside on the basis of fraud, duress, or material mistake of fact. ORS 109.070(6)(a) (renumbered as ORS 109.070(7)(a) operative January 1, 2027).

§ 4.10D Genetic Testing

Within one year after a voluntary acknowledgment of parentage or denial of parentage becomes effective, 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 genetic testing, if genetic testing has not previously been completed. ORS 109.070(7) (renumbered as ORS 109.070(8) operative January 1, 2027); ORS 25.554(1)–(2).

§ 4.10E Admissibility of Genetic Testing Report

A court-ordered report of genetic testing is admissible as evidence, subject to the right of a party to object to the report's admission, citing specific grounds for exclusion. The party's objection must be made not later than 14 days after the party receives the report. ORS 109.189(1)–(2).

§ 4.10F Petition to Vacate or Set Aside Judgment

A petition to vacate or set aside a parentage determination on the grounds that the determination resulted from mistake, inadvertence, surprise, or excusable neglect must be filed within one year after entry of the parentage judgment. ORS 109.072(2)(c).

A petition to vacate or set aside a parentage determination on the grounds that the 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).

§ 4.11 CHANGE OF NAME, SEX

The 2017 Oregon Legislature amended ORS 33.420 and ORS 33.460, eliminating the need for public notice of an application for a change of name or sex. Or Laws 2017, ch 100, §§ 3–4. In response to those amendments, the Uniform Trial Court Rules Committee repealed UTCR 9.320 effective January 1, 2018, which had provided deadlines for posting and publishing such notices. *See generally Family Law in Oregon* ch 22 (OSB Legal Pubs 2023) (change of identity).

§ 4.12 FAMILY ABUSE PREVENTION 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). *See generally Family Law in Oregon* ch 4 (OSB Legal Pubs 2023) (domestic violence; Family Abuse Prevention Act).

§ 4.12A 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 petitioner's request 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 two years or until withdrawn, amended, or superseded, whichever is sooner. ORS 107.718(3).

§ 4.12B 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).

§ 4.12C Hearing Date

If the respondent requests a hearing under ORS 107.718(10) (*see* § 4.12B), 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).

§ 4.12D Child Custody Hearing

If the court determines under ORS 107.718(2) that "exceptional circumstances exist that affect the custody of a child," the court must hold a hearing within 14 days after 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).

§ 4.12E 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).

§ 4.12F 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).

§ 4.13 SEXUAL ABUSE PROTECTION ACT

Before January 1, 2020, a person requesting a sexual abuse protection order had to show that the abuse occurred within the preceding 180 days. ORS 163.763(2)(b)(B) (2019); ORS 163.765(1). However, the 2019 Oregon Legislature removed any restriction on the time frame in which the abuse must have occurred. Or Laws 2019, ch 353, §§ 1–2.

§ 4.13A Hearing and Duration

If a person petitions the court for a protection order under ORS 163.763 (*see* § 4.13), 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 finding that the respondent has subjected the petitioner to sexual abuse and 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," the court must issue a restraining order. ORS 163.765(1).

The restraining order (or consent agreement) continues for a period of five years from the date that the restraining order issued or, if the petitioner is under 18 years of age when the order issued, until the petitioner attains 19 years of age, whichever occurs later, unless the court enters a permanent order under ORS 163.765(8) or the restraining order is renewed, modified, or terminated. ORS 163.767(5).

§ 4.13B 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).

§ 4.13C Hearing Date

If the respondent requests a hearing in accordance with the statute (*see* § 4.13B), the court must hold the hearing within 21 days after the request. ORS 163.767(1).

§ 4.13D Extension of Time

"If service of a notice of hearing [on a petition for a restraining order] 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).

§ 4.13E Renewal of Order

If the court renews a restraining 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).

§ 4.14 CHILD ABDUCTION

A petition for return under the Hague Convention of October 25, 1980, on the Convention on the Civil Aspects of International Child Abduction (hereinafter the Convention) may be filed in state or federal court (not with the United States Department of State). For the text of the Convention, see https://www.hcch.net /index_en.php?act=conventions.text&cid=24. If filed less than one year after the date of the wrongful removal, return is mandatory, with some exceptions. If filed one year or more after the date of the wrongful removal, return is discretionary if "the child is now settled in its new environment." Convention, Article 12. The Convention ceases to apply when the child attains the age of 16 years. Convention, Article 4. Oregon courts may enforce an order for a child's return as they would enforce a child custody determination. ORS 109.777. *See* § 4.4A to § 4.4C (child custody).

§ 4.15 JUVENILE PROCEEDINGS

§ 4.15A Protective Custody

"A child or ward [taken into protective custody under the authority granted in ORS chapter 419B] may not be held in 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. *See generally Juvenile Law in Oregon: Dependency* ch 8 (OSB Legal Pubs 2025) (preadjudication procedure and shelter hearings).

§ 4.15B Length of Stay in Detention

Except as otherwise provided in ORS 419C.150, a youth'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).

However, the 28-day limit does not apply if the youth 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).

§ 4.15C Appointed Counsel

An application for court-appointed counsel and a declaration of financial condition, made under penalty of perjury, 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).

§ 4.15D 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.

§ 4.15E 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. ORS 419C.153(1). However, if the state has requested a hearing under ORS 419C.349 (waiver of youth to adult court), the youth must have a review hearing every 30 days. ORS 419C.153(2).

If a youth intends to ask for release at a review hearing, the youth's attorney must notify the district attorney at least five days before the hearing. ORS 419C.153(3).

§ 4.15E(1) Predispositional Investigation

In juvenile cases, "the 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.

§ 4.15E(2) Prehearing Investigation Report

A prehearing investigation report, if one is prepared, 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

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§ 5.1 APPEALS

§ 5.1A Notice of Appeal

§ 5.1A(1) Civil Appeals

A notice of appeal is jurisdictional and generally 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(1)–(2). Appealable judgments include limited judgments, general judgments, and supplemental judgments, as well as certain orders. ORS 19.205(1)–(3), (5). There are very limited exceptions to the 30-day rule, as described below. Timely filing a notice of appeal is jurisdictional; the courts do not have the power to extend a jurisdictional deadline.

If any party has timely filed and served a motion for a new trial or a motion for 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 the 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 after 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(1); ORCP 64 F(1); ORS 19.255(2)(a); *Schmidling v. Dove*, 65 Or App 1, 7, 670 P2d 166 (1983).

Upon a motion of a person determined to be "a person with mental illness" or "an extremely dangerous person with mental illness," the Oregon Court of Appeals must allow the person to file a notice of appeal of the determination after the 30-day time limit if the person shows by clear and convincing evidence that "the failure to file a timely notice of appeal is not attributable to the person personally" and "shows a colorable claim of error in the proceeding from which the appeal is taken." ORS 19.255(4). The motion must be filed within 90 days after entry of the order being appealed. ORS 19.255(4).

Notice of a cross-appeal must be filed and served within 10 days after the expiration of the time for filing the original notice of appeal. ORS 19.255(3).

Within 14 days after the filing of the notice of appeal or amended designation of record, any other party may designate additional parts of the proceedings or exhibits to be included in the record. ORS 19.250(2).

§ 5.1A(2) Criminal Appeals

Unless one of the specific exceptions applies, 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). Filing the notice timely is jurisdictional. The few exceptions to the 30-day rule are described below.

A timely filed motion for a new trial or a motion in arrest of judgment extends the filing and service period to 30 days after the earlier of 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 notice of a cross-appeal within 10 days of the expiration of the time for filing the original notice of appeal (40 days after the judgment's entry date). ORS 138.071(3).

Within 90 days after entry of the order or 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 a pretrial order to suppress evidence). ORS 138.071(5)(b)–(c). The Oregon 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).

"When an appeal is pending and the trial court enters an amended, corrected or supplemental judgment, or an amended or corrected order that is appealable" under ORS 138.035, ORS 138.045, or any other statutory provision:

> (A) If the appellant intends to assign error to any part of the amended, corrected or supplemental judgment, or amended or corrected order that is appealable, the appellant shall file an amended notice of appeal from such judgment or order not later than 30 days after the appellant receives notice that such judgment or order has been entered.
>
> (B) If the appellant does not intend to assign error to any part of the amended, corrected or supplemental judgment, or amended or corrected order that is appealable, the appellant need only file a notice of intent to proceed with the appeal not later than 30 days after the appellant receives notice that such judgment or order has been entered. The notice of intent to proceed is not jurisdictional.

ORS 138.071(4)(a).

§ 5.1A(3) Appeals from Postconviction-Relief Judgments

The judgment on a petition for postconviction relief may be appealed to the Oregon 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 defendant's attorney; 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 is 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).

A notice of cross-appeal must be served and filed within 10 days of the expiration of the time allowed for a notice of appeal (40 days after entry of judgment) or, if the court allowed the petitioner to file the notice of appeal later under ORS 138.650(2), within 10 days of the expiration of the time allowed. ORS 138.650(3).

§ 5.1B Undertaking on Appeal

In a civil case, 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 the filing of 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 from the time the appeal is perfected. ORS 19.345.

§ 5.1C Transcript

To be used on appeal, the trial court's audio record must be transcribed by an official transcriber. ORS 19.370. The county's transcript coordinator will have a list of official transcribers and will ordinarily take care of assigning one.

The transcriber must prepare the transcript by the later of (1) 30 days after the filing of the notice of appeal or (2) 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 court may grant the transcriber extensions to the filing deadline. ORS 19.395; ORAP 3.30. The transcriber 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: If applicable, serving the notice of appeal on the trial court's transcript coordinator is required. The coordinator will assign an official transcriber, and then the parties must arrange for payment directly with the transcriber. Failing to serve the coordinator with the notice of appeal is not jurisdictional, but failing to do so will mean that no transcript is produced. *See* ORS 19.240(2)(c). "The email address for each judicial district's transcript coordinator is available on the Oregon Judicial Department's website." ORAP 3.40(1)(b). Arrangements should be made immediately for payment of the cost of the transcript. *See* 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.

ORAP 3.40(1)(b). 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); ORAP 3.40(1)(b).

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 notifies the parties. ORS 19.370(7).

In theory, an "agreed narrative statement" may be filed in lieu of or in addition to the transcript within 30 days after the filing of the notice of appeal. ORS 19.380; *see* ORAP 3.45. In practice, the court permits an agreed narrative statement only when absolutely necessary, such as when the audio record has been destroyed.

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

Generally, 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).

The Court of Appeals will generally grant a motion for an extension of time to file a brief. *See* ORAP 7.25; ORAP app 7.10-3. If all that is needed is 14 days, see ORAP 7.27.

§ 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). The Court of Appeals will generally grant a motion for an extension. *See* § 5.1D(1) (appellant's opening brief).

> NOTE: As of April 1, 2025, the Oregon Court of Appeals has an opt-in system for oral argument requiring parties who intend to appear at oral argument to file a request for oral argument within "14 days after the filing of the answering brief or notification of waiver of appearance by the last respondent, whichever is later. If more than one answering brief is filed, the 14-day period runs from the date on which the last answering brief is filed,"

with exceptions for cases subject to ORAP 4.60 to 4.74 and ORAP 10.15. ORAP 6.05(4)(b). *See also* ORAP 6.05(3)–(4). The request for oral argument should express a preference for the format (in-person, by remote means, or hybrid, as described in ORAP 6.30). ORAP 6.05(1); *see also* ORAP 6.05(6).

Joint requests are encouraged and the court has the final say on the format. ORAP 6.05(3)(b), (6)(e). If no party opts-in, the case is submitted on the briefs, unless the court determines that oral argument will aid its decision-making process. ORAP 6.05(5)(a), (c). There is a "phase-in" process for this new rule as described in ORAP 6.05(7).

§ 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 filing of the respondent's answering brief or after a motion to file a reply brief is granted. ORAP 5.80(3). An appellant's answering brief on cross-appeal (or a 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).

PRACTICE TIP: The "Brief Time Charts" in ORAP 5.80 provide specific briefing schedules for different case types.

§ 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 failed to comply with the applicable statutes or rules and did not adequately respond within 14 days to the court's notice of noncompliance. ORAP 1.20(4).

§ 5.1E Reconsideration in Court of Appeals

The Oregon Rules of Appellate Procedure distinguish between a *petition* for reconsideration and a *motion* for reconsideration. A party seeking reconsideration of an Oregon Court of Appeals' decision (meaning "an opinion, per curiam opinion, nonprecedential memorandum opinion, affirmance without opinion, and an order ruling on a motion or an own motion matter that disposes of the appeal") must file a petition for reconsideration. ORAP 6.25(1). *See* § 5.1E(1) to § 5.1E(2) (petition for and response to a motion for reconsideration). A party seeking reconsideration of an Oregon Court of Appeals' order other than a decision must file a motion for reconsideration. ORAP 6.25(5). *See* § 5.1E(3) (motion for reconsideration). The timelines for petitions and motions are different.

§ 5.1E(1) Petition for Reconsideration

A party seeking reconsideration of a Court of Appeals' decision, as defined in ORAP 6.25(1) (*see* § 5.1E), must file a petition within 14 days after the decision. ORAP 6.25(2). The grounds for reconsideration are quite limited. *See* ORAP 6.25(1).

§ 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 the court will consider a response if one is filed before the petition for reconsideration is considered and decided. ORAP 6.25(4).

§ 5.1E(3) Motion for Reconsideration

When a party is seeking reconsideration of a Court of Appeals' order not specified in ORAP 6.25(1), the time limitations for motions apply. ORAP 6.25(5). *See* ORAP 7.05 (motions in general). Under those limitations, a response to the motion for reconsideration must be filed within 14 days after the filing of the motion for reconsideration. ORAP 7.05(3). A reply, though discouraged, must be filed within seven days after the filing of the response. ORAP 7.05(4). *See* § 5.1I (motions).

§ 5.1F Petition for Review and Petition for Reconsideration in Supreme Court

Generally, a petition for review of an Oregon Court of Appeals' decision must be served and filed in the Oregon Supreme Court within 35 days after the date of the Court of Appeals' decision. ORS 2.520; ORAP 9.05(2)(a). The Supreme Court may grant an extension. ORS 2.520; ORAP 9.05(2)(b). *But see* § 5.1H (summary determination of appealability).

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 a timely petition for reconsideration is filed in the Court of Appeals, the time for filing a petition for review in the Supreme Court concerning that decision for all parties does not "begin to run until the Court of Appeals issues its written disposition of the petition for reconsideration." ORAP 9.05(2)(c)(i).

A petition for reconsideration of a decision by the Supreme Court must be filed within 14 days after the date of the decision. ORAP 9.25(1).

> NOTE: Filing a petition for review does not stop the clock for filing a petition for costs and attorney fees in the Court of Appeals. *See* § 5.1J (costs and attorney fees on appeal).

§ 5.1G Review of Administrative Agency Proceedings

Unless otherwise provided by statute, a petition for judicial review of an agency order must be filed in the Oregon Court of Appeals "within 60 days only following the date the order upon which the petition is based is served." ORS 183.482(1). If a petition for rehearing or reconsideration has been filed, the petition for judicial review must be filed within 60 days following service of the order denying rehearing or reconsideration. ORS 183.482(1). "If the agency does not otherwise act, a petition for rehearing or reconsideration [is] deemed denied the 60th

day following the date the petition was filed, and in such cases, petition for judicial review [must] be filed within 60 days" following the date the petition for rehearing or reconsideration was deemed denied. ORS 183.482(1).

However, shorter timelines apply to petitions for review of certain agencies. *See, e.g.*, ORS 657.282 (a petition for judicial review of an order of the Employment Appeals Board must be filed within 30 days after service of the order); ORS 197.850(3)(a) (a petition for judicial review of an order of the Land Use Board of Appeals must be filed within 21 days following delivery or mailing of the order); ORS 197.651(3) (a petition for judicial review of an order of the Land Conservation and Development Commission concerning designation of urban or rural reserves must be filed within 21 days after delivery or mailing of the 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 (or the shortened part of the record as stipulated by the parties) within 30 days after service of the petition, 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). *See* ORAP 4.20 (record on judicial review).

§ 5.1H Summary Determination of Appealability

The Oregon Supreme Court and the Oregon 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 after the determination, or within 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); ORAP 7.05(2).

A party may move the court to grant an extension of time. ORAP 7.25. The court will usually decide a motion for an extension of time within a few days after it is filed. If the court grants a motion for an extension, an objection to that decision is treated as a motion for reconsideration of the ruling. ORAP 7.25(5).

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:

- motion to hold the appeal in abeyance
- motion to amend a designation of record

- motion to dismiss
- motion to determine jurisdiction
- motion for summary affirmance under ORS 34.712, ORS 138.225, or ORS 138.660
- motion to remand
- motion to strike a brief
- motion to supplement the record
- motion 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 the appellate commissioner resolves a motion 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). *See* § 5.1E(1)–(3) (petition for, response to, and motion for reconsideration). 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 decision in the Oregon Supreme Court, unless the commissioner's decision is a summary determination of appealability. ORAP 7.55(4)(c)–(d). *See* ORAP 9.05(1) (reviewable decisions).

§ 5.1J Costs and Attorney Fees on Appeal

ORS 20.320 provides that a party seeking to recover costs must file a statement of costs and disbursements within "21 days from the date of the court's decision," while ORAP 13.05(5)(a) states that it must be filed "within 28 days after the date of the decision." In *State v. Harding*, 347 Or 368, 372–73, 223 P3d 1029 (2009), the court held that rules of appellate procedure, being created under statutory authorization, are subordinate to the statutes that authorize them. When there is an inconsistency between a statute and a rule, the statute governs. Until this difference is addressed by statute, filing within 21 days is the prevailing rule.

"The filing of a petition for review or a petition for reconsideration does not suspend the time for filing the statement of costs and disbursements." ORAP 13.05(5)(a). Objections to a statement of costs and disbursements must be filed within 14 days after service of the statement. ORAP 13.05(5)(c). Any reply must be filed within 14 days after service of the objections. ORAP 13.05(5)(c).

"If a prevailing party who has been allowed costs untimely files a statement of costs and disbursements," or does not file one at all, the court will still award the prevailing party its "filing or first appearance fee and the prevailing party fee" as part of the appellate judgment. ORAP 13.05(6)(f)–(g).

A petition for attorney fees must be served and filed within 28 days after the date of decision. ORAP 13.10(2). "The filing of 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 to the petition must be served and filed within 14 days after the date the petition is filed. ORAP 13.10(6). 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 (disobedience 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).

PRACTICE TIP: The courts are reluctant to award these punitive kinds of damages; the petitioner should file a petition for them only if the other side's actions were obvious and egregious.

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 after entry 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 after entry of 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 last day of the period so computed shall be included," unless the last day is a Saturday; a Sunday; a legal holiday; or a 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. ORAP 1.25(1). "In any of those events, the period runs until the end of the next day the court is open." ORAP 1.25(1).

§ 5.1L Electronic Filing ("eFiling")

"Unless an exception applies under ORAP 16.30 [(documents that must or may be filed conventionally)] or ORAP 16.60(2) [(mandatory electronic filing; exceptions)], an active licensee of the Oregon State Bar must deliver any document for filing using the appellate eFiling system." ORAP 1.35(1)(a)(ii)(A). That includes any initiating document. *See* ORAP 16.05(7) (defining the term *initiating document*). Unless the eFiling system is temporarily unavailable, "the filing deadline for any document filed electronically is 11:59:59 p.m. in the time zone in which the court is located on the date by which the document must be filed." ORAP 16.25(1).

NOTE: The Oregon Rules of Appellate Procedure still have provisions mentioning service or filing by "facsimile transmission," or FAX. *See, e.g.*, ORAP 1.35(2)(b)(iii). If the filer is a licensee of the Oregon State Bar, ORAP chapter 16 (electronic filing) supersedes those provisions.

The eFiler's electronic submission of a document and the court's acceptance of the document accomplishes electronic filing. "When accepted for filing, the electronic document constitutes the court's official record of the document." ORAP 16.25(2). "The court considers a document received when the eFiling system receives the document." ORAP 16.25(3)(a). The eFiling system sends the eFiler a confirmation email that includes the date and time of receipt. ORAP 16.25(3)(a).

Importantly, with regard to service of an eFiled document, if the document to be served "initiates a case in the [Oregon] Court of Appeals"; "initiates a case in the [Oregon] Supreme Court under that court's original jurisdiction"; is "a first motion for extension of time to file a petition for review in the Supreme Court"; or "if no motion for extension of time has been filed, is a petition for review in the [Oregon] Supreme Court," service must be accomplished conventionally "via paper service or other form of service permitted by ORCP 9." ORAP 16.45(3).

Additionally, a party must conventionally serve an eFiled document when the party to be served is "self-represented and is not a registered eFiler" or the "attorney to be served is not a licensee of the Oregon State Bar and is not a registered eFiler, or is a licensee of the Oregon State Bar but has obtained a waiver to the mandatory eFiling requirement under ORAP 16.60." ORAP 16.45(3)(b)–(c). Otherwise, the service of an eFiled document with the appellate court on any other party's attorney, if that attorney is a registered eFiler, is accomplished by using the eService function of the eFiling system. The system will generate an email to the attorney being served that includes a link to the document. Such service is effective when the eFiler has received a confirmation email stating that the system has received the document. ORAP 16.45(2).

When filing a document in a circuit court, any active licensee of the Oregon State Bar "must file [the] document using the electronic filing system, instead of using conventional filing," unless the document is required to be conventionally filed under UTCR 21.070(3), or the filer has obtained a waiver under UTCR 21.140(2). UTCR 21.140(1).

When using the eFiling system in circuit court, the filing deadline "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). The court considers a document submitted when the electronic filing system receives the document. The system will send an email to the filer that includes the date and time of receipt, unless the filer has elected not to receive the email. UTCR 21.080(3). "Electronic service is complete when the electronic filing system sends the email to the selected service contacts in the action." UTCR 21.100(5).

§ 5.1M Filing and Service by Mail; Special Requirements

The timely filing of a notice of appeal, a petition for judicial review of an administrative decision, or a petition under the original jurisdiction of the appellate court is jurisdictional, and courts apply the requirements of the rule strictly. *See*

ORS 19.270 (timely and proper filing and service of a notice of appeal are jurisdictional and may not be waived or extended). See also the Note below. Filing of the above documents is accomplished on the date of mailing or dispatch for delivery, regardless of the date of actual receipt by the court to which the appeal is taken, only if the notice is (1) "[m]ailed by any class of mail from the United States Postal Service [(USPS)] and the party filing the notice has proof from the [USPS] of the mailing date"; or (2) "[m]ailed or dispatched via a commercial delivery service by a class of delivery calculated to achieve delivery within three calendar days, and the party filing the notice has proof from the commercial delivery service of the mailing or dispatch date." ORS 19.260(1)(a). *See also* ORAP 1.35(1)(b)(iii)(A)–(B). If the notice is mailed via USPS first-class mail, the date shown on the postmark affixed by the USPS constitutes sufficient proof of mailing or dispatch. ORS 19.260(1)(b)(B).

> NOTE: *See, e.g.*, *Haynes v. Board of Parole & Post-Prison Supervision*, 362 Or 15, 23, 403 P3d 394 (2017), *cert den*, 584 US 984 (2018) ("We have repeatedly held that when the legislature confers jurisdiction on the courts to review an agency's final order, the courts' jurisdiction depends upon the timely filing of a petition for review."); *Ososke v. Driver & Motor Vehicle Services*, 320 Or 657, 661, 891 P2d 633 (1995) ("[T]he untimely filing of a petition for judicial review of a final order of [Driver and Motor Vehicle Services] is a jurisdictional defect."); *1000 Friends of Oregon v. Land Conservation & Development Commission*, 301 Or 622, 632, 724 P2d 805 (1986) ("The Court of Appeals' jurisdiction to review [Land Conservation and Development Commission] orders is purely statutory and depends for its existence on the timely filing of a request for review from a final order."). *Cf. State v. Harding*, 347 Or 368, 373, 223 P3d 1029 (2009) ("Because defendant's notice of appeal was not timely filed, neither the Court of Appeals nor this court has jurisdiction over the trial court judgment challenged by defendant in this case.").

The filing of any other item required to be filed within a prescribed time "is complete if mailed via the [USPS] or dispatched via commercial delivery service on or before the due date if the class of mail or delivery is calculated to result in the [Appellate Court] Administrator receiving the document within three calendar days." ORAP 1.35(1)(b)(iii)(C).

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, a party may serve a document on another person as provided in ORCP 9 or by commercial delivery service," subject to the following limitations:

(1) If service is by the USPS or a commercial delivery service, the class of service must be calculated to result in delivery within three calendar days.

(2) Service via the eFiling system may be made only on attorneys who are authorized users of the eFiling system.

(3) Service via email or fax is permitted only as provided in ORCP 9 F or 9 G.

ORAP 1.35(2)(b).

Two exceptions to the above rules 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. ORAP 1.35(2)(b) n 5.

§ 5.1N References

See § 2.2A(1) to § 2.3J (civil procedure and computation of time periods); *Appeal & Review: The Basics* (OSB Legal Pubs 2010).

§ 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

Before the court will allow the writ of review, the plaintiff must give an undertaking of $100 for payment of costs that may be adjudged to the defendant. ORS 34.050. The failure to file an undertaking in a writ of review proceeding is not a jurisdictional defect but merely a statutory limit on the court's authority to proceed. *Magar v. City of Portland*, 179 Or App 104, 110, 39 P3d 234 (2002).

§ 5.2A(3) Service

A certified copy of the writ must "be served by delivery to 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 (appeals). *See also* § 5.1A(1) to § 5.1N (appeals).

§ 5.2B Writ of Mandamus

§ 5.2B(1) Filing

A petition for a writ of mandamus is generally controlled by the rules of equity, and the doctrine of laches applies. *See State ex rel. Fidanque v. Paulus*, 297 Or 711, 717, 688 P2d 1303 (1984). The petition must be filed promptly after the challenged ruling. When "parties seek mandamus relief, their petitions in order to be timely must be filed in time to meet any analogous statutory deadline." *State ex rel. Marbet v. Keisling*, 314 Or 235, 238, 838 P2d 585 (1992). Typically, the analogous deadline is 30 days (the time to file a notice of appeal), but the court may allow a longer period if a party exercised due diligence and demonstrates, for example, that a transcript was necessary and that 30 days was not long enough to secure the transcript. *State ex rel. Redden v. Van Hoomissen*, 282 Or 415, 417–18, 579 P2d 222 (1978).

§ 5.2B(2) Jurisdiction

Exclusive jurisdiction of mandamus proceedings lies with the circuit court or judge of the circuit court of the county where the "defendant, if a public officer or body, exercises functions, or if a private person or corporation, in which such person resides or may be found." ORS 34.120(1). However, the regular division of the Oregon Tax Court or judge thereof has jurisdiction in mandamus proceedings in all cases involving tax laws as described in ORS 305.410, and the Oregon Supreme Court may take original jurisdiction in mandamus proceedings as provided in section 2 of Article VII (Amended) of the Oregon Constitution. ORS 34.120(2). If the mandamus petition is filed under the Supreme Court's original jurisdiction, the procedure to be followed is set forth in ORS 34.250. For further discussion of mandamus procedures under the Supreme Court's original jurisdiction, see § 5.2C(1) to § 5.2C(6).

§ 5.2B(3) 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." ORS 34.130(2). Service is sufficient if it complies with ORCP 9 B. However, the court "may act on a petition regardless of defects in the service of the petition on any adverse party," and the court may allow the petition "with or without notice to the adverse party, as in a writ of review proceeding." ORS 34.130(2).

§ 5.2B(4) Stay

"The filing or allowance of a petition for a writ of mandamus does not stay any judicial or administrative proceeding from which the mandamus proceeding may arise," but the court may stay the proceeding. ORS 34.130(5).

§ 5.2B(5) 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 of the date the petition was 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, with the court's permission, at any time after the return date of the alternative writ. ORS 34.130(4)(a).

§ 5.2B(6) Alternative Writ

The alternative writ of mandamus will command that the defendant or judge or court to whom the writ is directed to "immediately after the receipt of the writ," or at another date specified in the writ, perform the act required or show cause why the defendant has not performed it. ORS 34.150(2)(b). *See* ORS 34.250(5)–(6) (certain mandamus proceedings under the Supreme Court's original jurisdiction).

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. ORS 34.180; *see* ORS 34.160. Answers or replications containing new matter may be moved against within the time prescribed by the court. ORS 34.180.

The pleadings in a mandamus proceeding may be amended in the same manner as pleadings in an action. ORS 34.190. *See* ORCP 23 (amended and supplemental pleadings).

§ 5.2B(7) 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 (appeals). *See also* § 5.1A(1) to § 5.1N (appeals).

§ 5.2C Mandamus Under the Oregon Supreme Court's Original Jurisdiction

§ 5.2C(1) Filing

A party seeking a writ of mandamus in the Oregon Supreme Court must file a petition substantially in the form prescribed by ORAP 11.05. The petitioner must be designated as "relator" and any party adverse to relator must be designated as

"adverse party." ORS 34.250(2). Service must be made on all parties who appeared in the lower court and on the judge or court whose action is being challenged. ORS 34.250(3).

PRACTICE TIP: The petition must be accompanied by a memorandum of law that explains in detail why mandamus jurisdiction is applicable, why the court should exercise its discretion to consider the writ, and why the court should grant the writ. ORAP 11.05(3). That is, filing a petition in the Supreme Court is both time-sensitive and time-consuming.

§ 5.2C(2) Stay

The stay procedure for Oregon Supreme Court mandamus petitions is set forth in ORAP 11.05(2)(e) and requires a party to first ask the lower tribunal for a stay or to show that such a request would be futile.

§ 5.2C(3) Intervention

The judge or court whose action is challenged in an original jurisdiction Oregon Supreme Court mandamus proceeding may request to intervene if they wish to assert an interest separate from the parties. ORS 34.250(4).

§ 5.2C(4) Memorandum in Opposition

Within 14 days after the filing date of a petition for a writ of mandamus, the adverse party may file a memorandum in opposition to the petition. A relator may not file a reply unless the court requests one. ORAP 11.10(1).

§ 5.2C(5) Briefing

Unless the court directs otherwise, "and provided the court does not receive notice of compliance with the alternative writ of mandamus," the relator must file and serve an opening brief within "28 days after the date that the case is at issue on the pleadings[] in any other mandamus proceeding" or within 28 days after the date that an alternative writ of mandamus is issued. 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 to which permission to reply is sought." ORAP 11.15(3).

§ 5.2C(6) Alternative Writ

In an original jurisdiction mandamus proceeding in the Oregon Supreme Court, the Supreme Court may elect to issue either a peremptory writ of mandamus or an alternative writ of mandamus. *See* ORS 34.250(5); ORAP 11.10(3). If the judge or court complies with an alternative writ issued by the Supreme Court, the mandamus proceeding may be dismissed by the court on its own motion or on motion of any party. ORS 34.250(6); ORAP 11.10(5). If the judge or court being challenged does not comply with the writ, then further briefing and oral argument

follows. No answer or other responsive pleading needs to be filed unless the writ specifically requires one. ORS 34.250(7).

§ 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 is within 20 miles of the place of service, the 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 or neglects to obey a duly served writ of habeas corpus and fails to show a sufficient excuse. 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 any order made. ORS 34.550.

§ 5.2D(5) Appeal

Appeal from any judgment in the habeas corpus proceeding or from a judgment refusing to allow the writ must be brought in the same manner as in an action. ORS 34.710. *See* ORS ch 19 (appeals). *See also* § 5.1A(1) to § 5.1N (appeals).

§ 5.2E References

See generally Criminal Law in Oregon ch 29 (OSB Legal Pubs 2022) (state habeas corpus); *Oregon Civil Pleading and Litigation* chs 42–43 (OSB Legal Pubs 2025) (mandamus; writs of review).

Chapter 6

ELDER LAW; SURVIVAL OF ACTIONS; DECEDENTS' ESTATES; TRUSTS

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§ 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(2)

at least 15 days before the final date for the filing of objections to the petition. ORS 125.065(3). In addition, if the initial petition seeks to appoint a guardian for a person who is alleged to be incapacitated, the persons/organizations listed in ORS 125.060(7) must be given notice. If the respondent is a minor, and the petition is based on the fact that the respondent is a minor, notice must be served on the minor's parents. ORS 125.065(1). The contents of the notice are set forth in ORS 125.070.

(2) *Intent to place a person in a facility.* Before changing an adult protected person's abode or placing a protected person in a mental-health treatment facility, a nursing home, or any other residential facility, the guardian must file a statement with the court of the intent to make the placement. Notice to the protected person or others is also required. Notice must be given at least 15 days before the change or placement, unless the change must occur sooner to protect the immediate health, welfare, or safety of the protected person. ORS 125.320(3); *see* ORS 125.225(3)(c)(B) (court may remove guardian for failure to comply with 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 actions of the fiduciary, including those 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 or filed with the court within 15 days after notice of the petition or motion is served or mailed." ORS 125.075(2). However, if the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (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 period).

(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).

See generally Guardianships, Conservatorships, and Transfers to Minors in Oregon ch 2 (OSB Legal Pubs 2023) (provisions generally applicable to protective proceedings).

§ 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. However, if the proceeding involves the custody of a minor under the UCCJEA, notice must be served at least 21 days before the deadline for filing objections. ORS 125.065(3). *See Guardianships, Conservatorships, and Transfers to Minors in Oregon* § 2.9-2(a)(1) to § 2.9-2(c)(4) (OSB Legal Pubs 2023) (notice).

(2) *Notice of hearing on objections.* Notice of a hearing on objections must be given at least 15 days before the hearing. ORS 125.075(3). For good cause, the court can change the time for giving notice. ORS 125.075(5).

(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)(a)(A). The visitor's report is due 15 days after the visitor is appointed, unless the court grants additional time. ORS 125.155(1). *See Guardianships, Conservatorships, and Transfers to Minors in Oregon* § 2.8 to § 2.8-4 (visitors).

(4) *Consent by vulnerable youth.* "If a petition for the appointment of a guardian for a vulnerable youth is filed when the respondent is a minor," the respondent's declaration of consent to appointment "must be filed no later than 10 days after the respondent attains the age of majority." ORS 125.055(6)(b).

(5) *Notice of appointment.* The guardian must give notice of the guardian's appointment to the persons described in ORS 125.060(3) no later than 30 days following the date of appointment. ORS 125.082(1)(a), (3).

(6) *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(1). If the guardian's report indicates that the guardianship should not continue, or if the guardian fails to provide adequate information supporting the need for the guardianship to continue, "the court [will] order the guardian to supplement the report or . . . file a motion to terminate" the guardianship. Failure to comply before the 30th day after the court's order is grounds for the guardian's removal. ORS 125.325(2)–(3). *See Guardianships, Conservatorships, and Transfers to Minors in Oregon* § 3.2-1(a) to § 3.2-5 (guardians).

(7) *Limits on association.* A motion to modify the guardian's authority to limit association between the protected person and a third party must be scheduled for hearing no later than 60 days after the motion was filed. The person making the motion must give notice of the hearing at least 15 days before the hearing date. Notice must be given to all persons entitled to notice under ORS 125.060(3). The court may provide for a different time period. ORS 125.323(4)(d).

(8) *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 or Conservator

(1) *Limitations on appointment.* A temporary guardian or conservator 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 no more than an additional 30 days "upon motion and good cause shown." ORS 125.600(3).

(2) *Notice.* A person seeking the appointment of a temporary fiduciary, or an extension of a temporary appointment beyond the initial appointment, must give notice to the persons listed in ORS 125.060(2) at least two days before the temporary fiduciary is appointed or the appointment is extended. The court can waive prior notice of the appointment upon a finding of "immediate and serious danger." If prior notice is waived, notice must be given within 2 days after the appointment is made. 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 a temporary 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 who will exercise the powers of a guardian for an adult." ORS 125.150(1). Within three days after the appointment of the temporary guardian, the visitor must interview the respondent. 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 fiduciary's report is due when the fiduciary completes the fiduciary duties, when the temporary appointment expires, or when the court terminates the fiduciary's authority. ORS 125.610(1). If the temporary fiduciary's appointment becomes permanent, however, the report can be included in the guardian's first report or the conservator's first accounting. ORS 125.610(2).

See generally Guardianships, Conservatorships, and Transfers to Minors in Oregon ch 3 (OSB Legal Pubs 2023) (guardianships and temporary fiduciaries).

§ 6.1D Conservator

(1) *Notice of petition.* Notice to interested persons must be served or mailed, no less than 15 days before the deadline for filing objections to the petition to appoint a conservator. However, if the proceedings involve the custody of a minor under the UCCJEA, notice must be served or mailed at least 21 days before the deadline for filing objections. ORS 125.065(3).

(2) *Objections.* Objections to the appointment of a conservator must be filed within 15 days after service or mailing 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 must be given at least 15 days before the hearing. ORS 125.075(3). The court, for good cause, can provide for a different time period. ORS 125.075(5).

(4) *Visitor's report.* If the court has appointed a visitor (*see* ORS 125.150(1)(c)), the visitor's report is due 15 days after the visitor's appointment. ORS 125.155(1).

(5) *Bond.* Letters of conservatorship will not be issued until any required bond has been filed. *See* ORS 125.405. 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 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 court can grant a longer period of time. 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 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. The court can shorten the period. 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 the creditor must 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 protected person under a conservatorship is tolled from the time the claim is presented until 30 days after the claim is disallowed. If the claim is not allowed or disallowed within 60 days of presentation, then the time is tolled for 90 days from the date of presentation. ORS 125.515(1). An action is considered commenced upon the filing of a request for summary determination. ORS 125.515(2).

(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 attaining the age of majority, or (d) an adult protected person becoming capable of managing their 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 if the vouchers were not filed with the court. ORS 125.475(3)(a).

(12) *Approval of accountings.* An order approving an accounting can be obtained only after 15 days' prior notice of the accounting to persons entitled to notice. However, if the proceedings involve the custody of a minor under the UCCJEA, an accounting can be obtained only after 21 days' prior notice. ORS 125.065(3); see ORS 125.480 for the effect of orders approving accountings.

(13) *Tax returns.* The conservator must file federal and state income tax returns on behalf of the protected person. IRC § 6012(b)(2).

See generally Guardianships, Conservatorships, and Transfers to Minors in Oregon ch 4 (OSB Legal Pubs 2023) (conservatorships).

§ 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, or if the court so orders, through a guardian ad litem. ORCP 27 A–B.

(2) *Tolling during minority or disabling mental condition.* 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 has a disabling mental condition 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 no longer has a disabling mental condition, whichever occurs first. ORS 12.160(2), (4). See § 6.3B(2), § 6.5C(1), and § 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 (OTCA).

NOTE: The minority-tolling statute (ORS 12.160) also tolls the two-year limitation period under the OTCA to commence an action. *Robbins v. State ex rel. Department of Human Services*, 276 Or App 17, 19–20, 366 P3d 752 (2016). See § 2.18A(4)(b) for further discussion.

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 ex rel. Luchini v. Harsany*, 98 Or App 217, 221–23, 779 P2d 1053, *rev den*, 308 Or 608 (1989).

NOTE: The Oregon Constitution does not prevent the legislature from imposing statutes of limitations on claims accruing during the minority of a claimant. *Christiansen v. Providence Health System of Oregon Corp.*, 344 Or 445, 454–56, 184 P3d 1121 (2008).

§ 6.1F References

See generally Guardianships, Conservatorships, and Transfers to Minors in Oregon (OSB Legal Pubs 2023).

§ 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). "An elderly person or a person with a disability may not file a petition under ORS 124.005 to 124.040 against a guardian or conservator for the person." ORS 124.010(8).

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).

The petition must be filed in the county in which "(a) [t]he petitioner resides; (b) [t]he respondent resides; or (c) [t]he abuse occurred." ORS 124.012(1). A contempt proceeding for violation of any restraining order issued under ORS 124.005 to 124.040 must be conducted either by the court that issued the order, or by the circuit court in the county in which the violation of the restraining order occurred. ORS 124.012(2). In the latter case, "the person initiating the contempt proceedings shall file with the court a copy of the restraining order, certified by the clerk of the court that issued the order." ORS 124.012(2).

PRACTICE TIP: The attorney should determine the process and requirements for obtaining certified copies of the restraining order under this statute at the time the order is issued to make sure that quick action may be taken if necessary to enforce the restraining order in a different county.

(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 and an objection form, to the alleged victim no later than 72 hours after the court issues a restraining order. ORS 124.024(1), (4). Notice must be by personal service. ORS 124.024(4). Proof of service must be filed with the court before the court holds a hearing requested under ORS 124.015. ORS 124.024(5).

(4) *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).

(5) *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 (6) below regarding extending the time for the hearing.

(6) *Extra time to seek representation.* "If the respondent is represented by an attorney, 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 "time for the hearing may be extended for up to five days at the request of the respondent or guardian petitioner so that the respondent or guardian petitioner may seek representation." ORS 124.015(3)(b).

See Elder Law § 9.3 to § 9.3-3 (OSB Legal Pubs 2017) (restraining orders, injunctive relief, mandatory reporting, and investigation of suspected abuse).

§ 6.2B Reporting Abuse

(1) *Duty to report.* With limited exceptions, 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 124.060; *see* ORS 124.050(9) (officials who have a duty to report). 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 Oregon Department of Human Services (ODHS) or to a law-enforcement agency in "the county where the person making the report is at the time of contact." ORS 124.065(1).

> NOTE: Attorneys are among the mandatory reporters in ORS 124.050(9). However, there are exceptions to this rule involving attorney-client privilege and when reporting information about a client that would be detrimental to an attorney's client if disclosed.

(2) *Investigation.* Upon receipt of the report, ODHS or the law enforcement agency must "cause an investigation to be commenced promptly." ORS 124.070(1).

(3) *Notification to ODHS from law enforcement agency.* "After receiving notification from [ODHS] that there is reasonable cause to believe that a crime has

occurred," a law enforcement agency must notify ODHS whether a criminal investigation will take place or whether the findings have been given to the district attorney. ORS 124.070(3).

(4) *Notification to ODHS from district attorney.* After receiving findings from a law enforcement agency, the district attorney must notify ODHS that the findings have been received and inform ODHS "whether the findings have been received for review or for filing charges." ORS 124.070(4).

(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 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 ODHS and explain the basis for the determination. ORS 124.070(5).

See Elder Law § 9.3-2 (OSB Legal Pubs 2017) (mandatory reporting).

§ 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. For a case discussing the issue of when discovery of the conduct occurred, see *Landauer v. Landauer*, 221 Or App 19, 188 P3d 406 (2008).

A copy of the complaint must be mailed to the Attorney General at the time the action is commenced. ORS 124.100(6). Failure to mail is not a jurisdictional defect, but the court may not enter judgment for the plaintiff until proof of mailing is filed.

See Elder Law § 9.4-1(a) to § 9.4-4(d)(3) (OSB Legal Pubs 2017) (elder abuse litigation).

§ 6.2D Elder Financial Abuse

A *vulnerable person*, which includes an *elderly 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 (family and juvenile law), *but see*, *Landauer v. Landauer*, 221 Or App 19, 27–28, 188 P3d 406 (2008) (assuming without deciding that testimony as to discovery of abuse is relevant to when a statute of limitations on an elder abuse claim runs).

§ 6.2E References

See Elder Law ch 9 (OSB Legal Pubs 2017) (elder abuse and nursing home litigation).

§ 6.3 DEATH OR DISABILITY

§ 6.3A Death of a Party

§ 6.3A(1) Action Continued by Personal Representative

Upon the death of a party, the court, on motion, must allow the action to be continued by the party's personal representative or successors in interest if the motion is made any time within one year after the party's death. ORCP 34 B(1); *see* § 6.5A to § 6.5F (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. In the case of such failure, the claim may be barred.

§ 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(2).

§ 6.3B Disability of a Party

§ 6.3B(1) Action Continued

If a party to an action becomes disabled, the court, within one year of the disability, on motion, may "allow the action to be continued by or against" the disabled party's guardian, conservator, or successors in interest. ORCP 34 C.

§ 6.3B(2) Tolling for Minority or Disabling Mental Condition

If a person is younger than 18 years of age or has "a disabling mental condition that bars the person from comprehending rights that the person is otherwise bound to know" 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 has such a disabling mental condition. ORS 12.160(1), (3); *see* § 6.1E (guardian ad litem or conservator). However, the statute of limitations will not be extended for more than five years by reason of age or disabling mental condition, or for more than one year after the person reaches 18 years of age or no longer has such a disabling mental condition, whichever occurs first. ORS 12.160(2), (4). See § 6.5C(1) and § 2.6B(1)(a) to § 2.6B(1)(b) for discussion of how the OTCA affects the tolling statute.

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 a disabling mental condition as defined in ORS 12.160(3), the 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 v. Drew*, 105 Or App 251, 254, 804 P2d 503 (1991) (quoting *Hoffman v. Keller*, 193 F Supp 733, 735 (D Or 1961)). Whether that condition existed when the cause of action accrued is usually a question of fact. *Roberts*, 105 Or App at 255.

CAVEAT: The *Roberts* decision uses language regarding the mental capacity of a party that is likely to strike current readers as antiquated and possibly offensive.

§ 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 limitations period set forth in ORS 30.075(1), 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(1), the personal representative must commence the action within three years (extending the otherwise applicable two-year statute of limitations under ORS 12.110 by one year). *See Giulietti v. Oncology Associates of Oregon, P.C.*, 178 Or App 260, 265–66, 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).

NOTE: An action for wrongful death is subject to the limitations period set forth in ORS 30.020(1) (generally, three years).

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)(a). If the action is commenced against a defendant who dies before the statute of limitations expires, or within 60 days after the action is commenced, "a party may amend the complaint within 90 days after the action is commenced to substitute the personal representative of the defendant's estate for the deceased defendant," and such an amendment relates back to the date the complaint was filed. ORS 12.190(2)(b).

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 & n 3, 647 P2d 972 (1982).

§ 6.3C(3) Death of an Attorney

If an attorney for a person dies, the person must commence the action within 180 days after the attorney's death, 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.

§ 6.3D References

See Oregon Civil Pleading and Litigation § 6.3-1 to § 6.3-5(c) (OSB Legal Pubs 2025) (substitution of parties); *see also Tort Law in Oregon* ch 30 (OSB Legal Pubs 2024) (wrongful death and survival of personal-injury actions).

§ 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 upon the plaintiff's death and against the defendant's personal representative upon the defendant's death. ORS 115.305; *see* § 6.3A(1) to § 6.3A(2) (death of a party).

NOTE: A proceeding to terminate a marriage does not survive the death of one of the parties. *See 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: With some exceptions, if a claim survives the defendant's death, 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 § 6.6N(1) to § 6.6N(3) regarding presentation of claims to personal representative.

§ 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. 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 statute of limitations expires, the plaintiff's personal representative may commence the action 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 limitations 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. ORS 115.305. 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)(a).

If an action is commenced against a defendant who dies before the statute of limitations expires or within 60 days after the action is commenced, a party may, within 90 days after the action is commenced, amend the complaint to substitute the personal representative of the defendant's estate. Such an amendment relates back to the date the complaint was filed. ORS 12.190(2)(b).

§ 6.4C References

See generally Tort Law in Oregon ch 30 (OSB Legal Pubs 2024) (wrongful death and survival of personal-injury actions).

§ 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) "[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), 12.115, 12.135, 12.137, and 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, e.g.*, § 7.16A (time for commencing a products-liability action in general), § 7.16F(1) (asbestos-related disease), § 7.16F(2) (breast implants), § 7.16F(3) (sidesaddle gas tank), § 7.16F(4) (COX-2 inhibitors), § 7.16F(5) (manufactured dwellings), § 7.16F(6) (R-type metal halide or mercury vapor light bulbs), and § 7.16F(7) (damage caused by extendable equipment's contact with power lines). Chapter 7 discusses these 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 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. *See Repp v. Hahn*, 45 Or App 671, 675–76, 609 P2d 398, *rev den*, 289 Or 373 (1980).

§ 6.5C Action for Wrongful Death Against a Public Body

§ 6.5C(1) Limitations Periods

The 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, § 2.18A to § 2.18A(4)(c), and § 7.3A 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). Notice for a wrongful-death claim under ORS 30.275 must be given within one year after the alleged loss or injury and within 180 days after the alleged loss or injury for all other claims. ORS 30.275(2)(a)–(b).

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 a person with a disabling mental condition and § 6.3B(2) regarding tolling for a minor or a person with a disabling mental condition.

The period for giving notice under ORS 30.275 and the applicable 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) ("We . . . hold that the 180 day period and the period of limitations does not commence to run until plaintiff has a reasonable opportunity to discover his injury and the identity of the party responsible for that injury.").

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, 407–09, 788 P2d 443 (1990).

> NOTE: ORS 30.275(9) does not bar application of the tolling provisions of ORS 12.160 to OTCA claims. *Smith v. Oregon Health Science University Hospital & Clinic*, 272 Or App 473, 486, 356 P3d 142 (2015).

> NOTE: If a minor has a claim against a public body, the one-year-and-90-day notice period prescribed in ORS 30.275(2)(a) is not tolled pending the appointment of a guardian ad litem. *See Perez ex rel. Yon v. Bay Area Hospital*, 315 Or 474, 482–83, 846 P2d 405 (1993) (in a minor's non-wrongful-death claim against a public body, the 270-day notice period of ORS 30.275(2)(b) is not tolled pending the appointment of a guardian ad

litem). *See also Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 75–78, 404 P3d 959 (2017) (discovery rule focuses on the minor's knowledge). *But see* ORS 30.275(8)(a) (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(3) (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 on other grounds by Farmers Insurance Co. of Oregon v. Mowry*, 350 Or 686, 695–97, 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. 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 the wrongdoer's 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 that person's 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)(a).

"[I]f an action is commenced against a defendant who dies before" the statute of limitations expires or within 60 days after the action is commenced, a party may, within 90 days after the action is commenced, amend the complaint "to substitute the personal representative of the defendant's estate." ORS 12.190(2)(b). Such an amendment relates back to the date the complaint was filed. ORS 12.190(2)(b).

§ 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 benefits. ORS 654.325.

§ 6.5F References

See generally Damages in Oregon ch 11 (OSB Legal Pubs 2024) (wrongful death); *Tort Law in Oregon* ch 30 (OSB Legal Pubs 2024) (wrongful death and survival of personal-injury actions).

§ 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 destroy the will if the will is not subject to a contract to either make or not revoke a will or devise, and either

(1) the attorney knows the testator died at least five years before the attorney destroys the will, and

(a) the attorney, after diligent inquiry, has been unable to find the addresses of all personal representatives named in the will, or

(b) the attorney has located one or more personal representatives, but none will accept delivery of the will; or

(2) the attorney does not know whether the testator is deceased, at least 20 years have passed since the will was signed, and the attorney is unable to find the testator's address after diligent inquiry.

ORS 112.815; *see* ORS 112.820(1).

> QUERY: Can the attorney determine whether a contract regarding the will exists, if that contract is not referenced in the will itself? For example, a contract to make a will could be included in a premarital agreement or a dissolution agreement that is not referenced in the will, so that an attorney unfamiliar with the underlying purpose of the will provisions may not be able to determine whether a contract regarding the will exists.

Before destroying the will, the attorney must "[p]rovide notice of the attorney's intent to destroy the will to the testator" (or to all personal representatives named in the will if the attorney knows the testator is deceased). ORS 112.820(1)(a). Notice must be delivered by mail, email, telephone, or "any other method reasonably calculated to convey the notice," to the physical or email addresses and telephone numbers "known to the attorney or reasonably ascertainable through public records or other searches." ORS 112.820(1)(b). The attorney should retain documentation of the diligent efforts to provide notice, for purposes of the affidavit required by ORS 112.820(4). ORS 112.820(4)(b).

The attorney may destroy the will if the testator fails to contact the attorney within 90 days of the date notice is delivered, or if the testator is deceased and none of the personal representatives accept delivery of the will within 90 days of the notice. ORS 112.820(3).

When the attorney destroys the will, the attorney must sign an affidavit affirming the following:

(1) that the attorney was unable to locate the testator after diligent inquiry, or that the attorney knows of the testator's death and either

(a) the attorney was unable to locate any named personal representative despite diligent inquiry, or

(b) none of the located personal representatives would accept delivery of the will;

(2) that the attorney has created a complete digital copy of the will and any codicils, as well as any affidavit of attesting witnesses; and

(3) That the attorney will retain a digital copy of the affidavit, will, any codicils, and any affidavit of attesting witnesses for at least 20 years following the date of the affidavit.

ORS 112.820(4)(a).

The affidavit must include the documentation described in ORS 112.820(4)(b) (efforts to provide notice to the testator and personal representatives).

After 20 years following the date of the affidavit, the attorney may destroy the electronic copies of the affidavit and will (and the associated materials such as codicils and witness affidavits), without giving notice to any person or court. ORS 112.820(4)(c).

See Administering Oregon Estates § 4.2-8(a) to § 4.2-8(e) (OSB Legal Pubs 2023) (disposition of wills).

§ 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 or letters of administration 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

A personal representative's duties and powers "commence upon the issuance of the letters of the personal representative." ORS 114.255. The powers of a personal representative relate back in time to give the representative's acts occurring before appointment the same effect as those occurring after appointment. A personal representative may also 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 rare cases, a personal representative may be bound by others on behalf of the estate, even before the personal representative's appointment. In *Rennie v. Pozzi*, 294 Or 334, 343, 656 P2d 934 (1982), the court held that an action filed by the named personal representative, although filed 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

Upon appointment, a personal representative must publish a notice to interested persons in "[a] newspaper published in the county in which the estate proceeding is pending" or, if none, a newspaper designated by the court. ORS 113.155(1). No notice is required, however, if the petition for appointment states that "no assets of the estate are known to the petitioner and no assets of the estate have come into the possession or knowledge of the personal representative." ORS 113.155(5)(a). If assets later come into the personal representative's possession or

knowledge, the personal representative must publish a notice to interested persons within 30 days after filing the inventory or supplemental inventory that first identifies such assets. ORS 113.155(5)(b).

All persons having claims against the estate must present such claims to the personal representative within four months after the date the notice to interested persons is published or the claims may be barred. ORS 113.155(2)(d).

NOTE: If a personal representative dies, resigns, or is removed by the court after the notice to interested persons has been published but before the four months have expired, the successor personal representative must publish a new notice to interested persons "as if the successor were the original personal representative." ORS 113.225(1). Persons with claims against the estate must submit those claims to the personal representative within four months from the date the notice is republished. ORS 113.225(1)(c).

PRACTICE TIP: The statute provides no required time for publication, but because the four-month claims period does not commence until publication, the personal representative should commence publication as soon as practicable.

See generally Administering Oregon Estates ch 7 (OSB Legal Pubs 2023) (initial responsibilities and liabilities of personal representative).

§ 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(1).

Within 30 days after appointment, the personal representative must file in the estate proceeding proof of the delivery or mailing as required by ORS 113.145(1), or a waiver of notice under ORS 111.225. ORS 113.145(4).

NOTE: The statute does not specify a time for delivery or mailing, but the requirement to file proof of delivery or mailing within 30 days of appointment creates a deadline earlier than expiration of that 30 days.

See § 6.6O (failure to investigate or inform potential claimants).

§ 6.6D(3) Inventory of Estate Property

Within 90 days after appointment, or longer if the court allows, the personal representative must file in the estate proceeding "an inventory of all property of the estate that has come into the possession or knowledge of the personal representative." ORS 113.165. The inventory must include the personal representative's estimate of the value of each asset of the estate as of the date of the decedent's death (determined by appraisal if desired or required under ORS 113.185). ORS 113.165.

If the personal representative does not possess or have knowledge of any estate property, the personal representative must file an inventory so stating. ORS 113.165. Practitioners may refer to this as a no-asset probate.

The personal representative of a no-asset probate must include newly discovered property in a supplemental inventory filed within 30 days of possession or knowledge of the property. ORS 113.175(2). A personal representative who has already filed an inventory reporting estate property must either 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(1).

§ 6.6D(4) Diligent Search for and Notice to Claimants

In any probate with known assets, during the three months following appointment, or longer if the court allows, 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 Professional Collection Services, Inc. v. Pope*, 485 US 478, 487–91, 108 S Ct 1340, 99 L Ed 2d 565 (1988) (reasonably ascertainable creditors have a due-process right to actual notice of the running of a nonclaim statute).

NOTE: The statute uses a three-month period rather than a 90-day period.

No later than 30 days after the expiration of the three-month period, including any extensions (meaning three months, plus any extensions, and 30 days from appointment), the personal representative must notify known claimants that claims against the estate may be barred unless they are presented to the personal representative within 45 days of the notice. ORS 115.003(2)–(3). The personal representative may 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).

The investigation and notice requirements of ORS 115.003(1)–(5) do not apply to a personal representative in a no-asset probate. ORS 115.003(6)(a). If assets later come into the personal representative's possession or knowledge, the personal representative must comply with ORS 115.003(1)–(5), and the three-month period described in ORS 115.003(1) begins on the date the personal representative files the inventory or supplemental inventory first showing estate assets. ORS 115.003(6)(b).

See Administering Oregon Estates § 7.3-3(a) to § 7.3-3(b) (OSB Legal Pubs 2023) (diligent search for and notice to claimants).

§ 6.6E Setting Apart the Whole Estate for Support

If, after four months following the publication of notice to interested persons, it appears that providing support for the decedent's spouse or dependent children warrants setting aside the entire estate for that purpose after payment of claims, taxes, and the expenses of administration, the court may order such a result. Upon such an order, 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 in ORS chapter 111 through chapter 117 (most probate matters), unless a statute in those chapters specifically provides otherwise, the person filing the matter must provide notice to the personal representative and each interested person in one of the following ways:

(1) by first class mail;

(2) by personal delivery;

(3) by electronic mail if the recipient has consented in writing to electronic notice, or if the recipient is the Oregon Department of Human Services or Oregon Health Authority and the organization has adopted rules allowing for electronic notice;

(4) by mail or delivery to the recipient's attorney, if the recipient has appeared by attorney or requested that notice be sent to the attorney;

(5) if the recipient's place of residence or business 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 probate court sits"; or

(6) for good cause shown, by "any other method determined by the court to be reasonably suitable under the circumstances and likely to result in receipt of the notice, including notice by electronic mail irrespective of whether the person has consented to electronic service."

ORS 111.215(3).

Unless the court orders otherwise, or unless a specific statute in ORS chapter 111 through chapter 117 provides otherwise, notice must be given no later than 15 days before the earlier of the date of the hearing or the date for filing objections. ORS 111.215(4)(a). If a notice is published as provided in ORS 111.215(3)(e), the last date of publication must be at least 15 days before the earlier of the date of the hearing or the date for filing objections. ORS 111.215(4)(b).

Proof of timely notice must be filed with the court at or before the relevant hearing, if any. ORS 111.215(5). Proof is made by certificate of service on the document or by separate filing. ORS 111.218(2).

Objections to a petition or motion must be filed on or before the final date for filing objections. ORS 111.235(2)(c).

§ 6.6G Order of Probate Commissioner May Be Modified

A judge may modify or set aside an order or judgment of a probate commissioner or deputy probate commissioner within 30 days after the date of the order or judgment. ORS 111.185(3).

Any interested person may object to a probate commissioner's or deputy probate commissioner's order or judgment within 30 days after the date of the order or judgment, and the judge may modify or set it aside. ORS 111.185(4).

§ 6.6H Accounting by Personal Representative

A personal representative must file an account of administration:

(1) "[u]nless the court orders otherwise, annually[,] within 60 days after the anniversary . . . of the personal representative's appointment";

(2) within 30 days after the personal representative's resignation;

(3) within 30 days after the personal representative's removal "or the revocation of the personal representative's letters";

(4) "[w]hen the estate is ready for final settlement and distribution"; and

(5) 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).

Evidence of disbursements must generally accompany accountings. ORS 116.083(2)(d). "Unless the fiduciary is excused from the requirement of filing vouchers, the accounting shall include depository statements for each account." UTCR 9.180(2).

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.

See generally Administering Oregon Estates ch 11 (OSB Legal Pubs 2023) (accounting, distribution, and closing).

§ 6.6I Will Contests

Within 30 days from the date the personal representative first delivers or mails information under ORS 113.145(1), 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) "[f]our months after the date of delivery or mailing of the information described in ORS 113.145" if the contestant is entitled to receive the information; or

(2) four months after the 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).

§ 6.6J Discharge of Personal Representative

After the personal representative files satisfactory 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. However, the court, in its discretion, may allow an action to be brought against the personal representative or surety of the personal representative for cause within one year after the supplemental judgment of discharge is entered. ORS 116.213.

§ 6.6K Appeal of Estate Tax

The personal representative may file an appeal in tax court of an estate tax determination within 90 days after the date of the notice from the Department of Revenue. ORS 118.171; ORS 305.280(2). *See* § 6.6R to § 6.6R(5) (deadlines for filing tax returns and paying taxes).

§ 6.6L Simple Estates

If a decedent's estate is within certain monetary limits, the simple-estate affidavit procedure avoids the necessity of proceeding through the full probate process to transfer the decedent's assets to their proper recipients. *See* ORS 114.515(1)–(2); *see also* ORS 114.505–114.560; § 6.6L(1) to § 6.6L(6); *Administering Oregon Estates* § 5.5-1 to § 5.5-11 (OSB Legal Pubs 2023) (probate of simple estates).

§ 6.6L(1) When to File; Who May File

A simple-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 simple-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) "[i]f 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).

§ 6.6L(2) Contents of Affidavit; Amendment of Affidavit

The simple-estate affidavit must include the information required by ORS 114.525. ORS 114.515(4). This includes a statement that "claims against the estate not listed in the affidavit or in amounts larger than those listed" may be barred unless a claim is presented to the affiant within four months after the affidavit is filed. ORS 114.525(1)(v)(A). The affidavit may be amended by filing an amended affidavit. ORS 114.515(6).

NOTE: The Oregon Judicial Department has published a sample simple-estate affidavit form with instructions, available at https://www.courts.oregon.gov/forms/Documents/ProbateSimpleEstate.pdf.

§ 6.6L(3) Transfer of Property to Affiant

To receive payment or delivery of the estate property, the affiant must deliver a certified copy of the affidavit to any person indebted to or holding property of the decedent. ORS 114.535(1). If such a person fails to pay the debt or transfer the property to the affiant within 30 days after a written demand under ORS 114.535(7)(a), the affiant may file a motion to compel payment of the debt or transfer of the property. ORS 114.535(7)(b).

NOTE: The estate assets remain subject to claims of creditors, heirs, and devisees for the time prescribed by statute. *See* ORS 114.540; § 6.6L(5) to § 6.6L(6).

§ 6.6L(4) Delivery of Instruments

Within 30 days after filing the affidavit, the affiant must mail or deliver each instrument that the affidavit states will be mailed or delivered (including notices to heirs, devisees, and creditors under ORS 114.525). ORS 114.545(1)(d).

§ 6.6L(5) Claims Against a Simple Estate

"A claim against an estate . . . may be presented to the affiant within four months after the affidavit was filed," which period will be extended to four months from the filing of any amended affidavit. ORS 114.540(1)(a). 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)(a); *see* § 6.6L(5)(a) to § 6.6L(5)(b).

§ 6.6L(5)(a) 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. ORS 114.542(1)(a). 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 or amended affidavit. ORS 114.542(1)(b).

§ 6.6L(5)(b) Summary Review of Administration of Estate

Within two years after the filing of the simple-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(1)(a).

Within 60 days after the date that is two years after the simple-estate affidavit is filed, a person may file a petition for summary review for the purpose of compelling the affiant to distribute estate property. ORS 114.550(1)(b).

If someone other than the affiant filed a petition for summary review, the affiant must file an answer to the petition within 30 days. ORS 114.550(2).

§ 6.6L(6) Failure to Appoint Personal Representative

If a petition to appoint a personal representative is not filed within four months after the simple-estate affidavit is filed, then, after expiration of the creditor claims period and payment of unsecured creditors, and before the two-year anniversary of filing the simple-estate affidavit, the decedent's property will be transferred to the persons shown by the affidavit to be entitled to the property. ORS 114.555(1)(a). Any other claims will be barred except as provided in ORS 114.540 (procedure for claims), ORS 114.542 (summary determination), ORS 114.545 (duties of affiant), ORS 114.550 (summary review of administration of estate), and ORS 114.555 (transfer of decedent's interest), and except for the purposes of a surviving spouse's claim for an elective share under ORS 114.600 to 114.725. ORS 114.555(1)(a).

§ 6.6M Surviving Spouse's Elective Share

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. *See* § 6.6M(1) to § 6.6M(2). *See Administering Oregon Estates* § 8.2-5(a) to § 8.2-5(i)(2) (OSB Legal Pubs 2023) (surviving spouse's elective share).

§ 6.6M(1) 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 follows:

(1) If no probate proceeding has been commenced, the election may be made by filing a petition for the appointment of a personal representative for the deceased spouse's estate, as well as a motion for the exercise of the election, within nine months after the deceased spouse's death.

(2) If a probate proceeding for the deceased spouse has been commenced, the election may be made by filing a motion in the probate proceeding for the exercise of the election within nine months after the deceased spouse's death.

(3) The election may also be made by filing a petition for the exercise of the election under ORS 114.720(1) in circuit court within nine months of the deceased spouse's death. If a probate proceeding is commenced either before or after such a petition, the court must consolidate proceedings under the petition with the probate proceedings. ORS 114.720(3).

ORS 114.610(1).

In any event, the surviving spouse must make the election before the surviving spouse's death. ORS 114.600(1).

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(1); ORS 114.720(1). The time for serving the motion or petition is not specified in ORS 114.600 to 114.725, but the time requirements of ORS 111.215(4) apply. *See* § 6.6F (notice of hearing).

§ 6.6M(2) Withdrawal of Motion or Petition

A surviving spouse may withdraw a motion under ORS 114.610 or petition under ORS 114.720 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 against a decedent 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; *see* ORS 12.190(2).

§ 6.6N(2) Claims Allowed and Disallowed

See Administering Oregon Estates § 9.5-1 to § 9.5-10 (OSB Legal Pubs 2023) (disposition of claims).

§ 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 presentment. ORS 115.135(1). Presentment of claims is not required in a no-asset probate. ORS 115.135(5)(a). If the personal representative later gains knowledge or possession of an estate asset, the personal representative will have 60 days from the date of filing the supplemental inventory disclosing the asset to disallow a claim presented before the supplemental inventory was filed. ORS 115.135(5)(b).

§ 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) "[f]ile with the court . . . a request for summary determination of the claim by the probate court," with proof of service on the personal representative or the personal representative's attorney; 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 or the personal representative's attorney), the personal representative has 30 days after the date of service to notify the claimant in writing that the claimant must commence a separate action on the claim. Without such notice by the personal representative, the claim will be resolved by summary determination. ORS 115.155.

If the personal representative requires a separate action (denying the claimant summary determination) 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) "[f]our months after the date of publication of notice to interested persons"; or

(2) "[i]f 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)), 45 days after the date that a notice complying with ORS 115.003(3) is mailed or delivered to the claimant's last-known address.

ORS 115.005(2).

Claims barred as untimely may be paid from the residue of the estate after paying priority expenses and after paying all previously presented claims. ORS 115.005(3)–(4).

> ORS 115.005 does not affect or prevent
>
> (a) 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; or
>
> (b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent or personal representative is protected by liability insurance at the time the proceeding is commenced.

ORS 115.005(5).

§ 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 Interests 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 (meaning accepted by the IRS as an effective disclaimer and not a deemed transfer by the disclaimant), the time limits of IRC § 2518(b) apply.

If a person disclaims an interest in property in accordance with the UDPIA, the disclaimer will not result in a taxable gift if the disclaimer meets the requirements of IRC § 2518. Among other qualification rules, the Internal Revenue Code requires that the transferor of the interest receive the disclaimer 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).

> NOTE: To be a tax-qualified disclaimer, in addition to meeting the disclaimer deadline, all other requirements of IRC § 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 the personal representative's administration. ORS 116.083(1)(d). See § 6.6H regarding accountings; *see also Administering Oregon Estates* ch 11 (OSB Legal Pubs 2023) (accounting, distribution, and closing).

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) (diligent search for and notice to claimants); § 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 the personal representative's (or the personal representative's surety's) fraud or misrepresentation, or through the claimant's mistake, inadvertence, surprise, or excusable neglect. ORS 116.213.

§ 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 it 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 of and requirements for requesting an extension of time for paying a tax. *See generally Administering Oregon Estates* chs 12–14 (OSB Legal Pubs 2023) (federal estate and generation-skipping transfer tax; fiduciary income tax; Oregon estate 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. Returns made on the basis of a calendar year must be filed by April 15 of the year following the year of the decedent's death, 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); *see* IRS Form 1040.

CAVEAT: A decedent may have income tax returns due relating to years preceding the decedent's 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(a)–(b); *see* IRS Form 4868 (Application for Automatic Extension of Time to File U.S. Individual Income Tax Return), https://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.* Upon a showing of undue hardship, the IRS may extend the time for payment of taxes due on an income tax return for up to six months (or longer for "a taxpayer who is abroad"), provided the taxpayer applies for the extension on or before the original due date for payment of 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 date the federal tax return is due (*see* § 6.6R(1)(a)). ORS 314.385(1)(a); *see* Oregon Department of Revenue (DoR) Form OR-40 (Oregon Individual Income Tax Return for Full-year Residents), https://www.oregon.gov/dor/forms/pages/default.aspx.

Oregon accepts federal extensions of time for filing returns. OAR 150-314-0167(2); *see* ORS 314.385(1)(c).

> [T]he due date or extension period for a return shall be the same as the due date, or extension period, would have been if the taxpayer had been required to file a return for federal income tax purposes for the tax year. However, the due date for returns filed for purposes of ORS chapter 317 or 318 shall be on or before the 15th day of the month following what would have been the federal return due date for the tax year.

ORS 314.385(1)(d). If a taxpayer does not pay all tax when due, interest will be owed on the unpaid balance until paid, and penalties may be due. ORS 314.395(2); *see* 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 (U.S. Income Tax Return for Estates and Trusts), https://www.irs.gov/forms-instructions.

> NOTE: 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(a); *see* IRS Form 1041.
>
> NOTE: Unlike an individual taxpayer, an estate may elect a fiscal tax year, so the due date may be a date other than April 15. IRC § 443(a); Treas Reg § 1.441-1(c)(1); *see* IRC § 6072(a).

(2) *Extension of time to file.* An estate or trust may apply for an automatic five-and-one-half-month extension on or before the due date of the income tax return by filing IRS Form 7004 (Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns), https://www.irs.gov/forms-instructions. Treas Reg § 1.6081-6(a)(1). 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(a).

(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. IRC § 6654(l)(2).

§ 6.6R(2)(b) Oregon Law

If a fiduciary income tax return is required to be filed under Oregon Law, DoR Form OR-41 has the same due dates as IRS Form 1041 (*see* § 6.6R(2)(a)), and Oregon accepts the same extension of time allowed for Form 1041. ORS 314.385(1)(a); OAR 150-314-0167(2); *see* ORS 314.385(1)(c). All tax due must be paid at the time of the extension. ORS 314.395(1).

§ 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:

> The 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; IRC § 6075(a); *see* IRS Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return), https://www.irs.gov/forms-instructions.

> NOTE: 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 (the deceased spousal unused exclusion amount, or DSUE 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)(A).

(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.* The time for paying the estate tax may be extended for a reasonable period of up to one year for "reasonable cause." IRC § 6161(a)(1); Treas Reg § 20.6161-1(a)(1). (Any 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. IRC § 6161(a)(2); 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 reasonable cause and 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(a).

(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 up to 10 equal installments, and to defer payment of the first installment for up to five years. IRC § 6166(a)(1), (3).

See generally Administering Oregon Estates ch 12 (OSB Legal Pubs 2023) (federal estate and generation-skipping transfer tax).

§ 6.6R(3)(b) Oregon Estate Tax Return

(1) *Due date.* Oregon estate tax returns must be filed within 12 months following the decedent's date of death. ORS 118.100(1); Or Laws 2021, ch 372, §§ 1–2. Specifically, an estate tax return is due "the day of the 12th calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if the decedent dies on February 29 in a leap year, the estate transfer tax return and tax payment must be made on or before February 28 of the next year." OAR 150-118-0090(1). If the due date falls on a Saturday, Sunday or a legal holiday, the estate tax return is due the next succeeding day that is not a Saturday, Sunday or legal holiday. OAR 150-118-0090(2).

(2) *Extension of time to file.* The Oregon Department of Revenue may grant an extension of time to file an estate tax return. The extension granted generally will not exceed six months, except where "the executor of the estate responsible for filing the estate transfer tax return is outside the United States when the return is due." In that case, "[t]he department may grant an additional six-month extension." OAR 150-118-0090(3), (3)(c). If a federal extension is granted, the Oregon Department of Revenue will treat it as an approved extension for Oregon purposes. If there is no federal extension, the executor may file Oregon Form OR-706-EXT (Application for Extension of Time to File a Return and/or Pay Oregon

Estate Transfer Tax), https://www.oregon.gov/dor/forms/pages/default.aspx. For an extension request filed on or before the original due date of the return, the department "shall grant" an extension. OAR 150-118-0090(3)(a). If the extension request is filed after the original due date, the department has discretion to grant the extension when there is "good and sufficient cause" for the executor's failure to file the extension request prior to the original due date. OAR 150-118-0090(3)(b).

(3) *Extension of time to pay.* An executor may request an extension of time to pay the estate tax. *See* ORS 118.225. The request must be in writing and submitted to the Oregon Department of Revenue on or before the original payment due date, or 30 days from the date of a notice of deficiency. OAR 150-118-0150(1).

(4) *Payment voucher.* To avoid penalty and interest, the taxpayer must use DoR Form OR-706-V (Oregon Estate Transfer 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).

See generally Administering Oregon Estates ch 14 (OSB Legal Pubs 2023) (Oregon estate tax).

§ 6.6R(3)(c) Estate Tax Apportionment

See ORS 116.303 to 116.383 and *Administering Oregon Estates* § 14.3-8 (OSB Legal Pubs 2023) (apportionment of the Oregon estate tax).

§ 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)(1), (3).

(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)(2). 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(a).

(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(1)(a).

§ 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, clerk of the county court, or court administrator must give the State Treasurer "the titles of estates of decedents 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 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 that the petitioner has reason to believe and believes the absentee is dead. ORS 117.005.

The clerk of the court will set a hearing date at least 30 days after the petition is filed, unless the court sets an earlier date. 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. ORS 117.075(1). 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(2).

§ 6.6V Uniform Statutory 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(1); ORS 105.970(1); ORS 105.975(1); Or Laws 1989, ch 208, § 10. See *Administering Trusts in Oregon* § 14.2-5 (OSB Legal Pubs 2024) ("later-of" drafting is modified to the common-law period) for an excellent discussion of the interaction between the two statutory time periods, including the effect of attempting to draft for the "later of" those two periods in a savings clause.

The Uniform Statutory Rule Against Perpetuities does not apply to a stewardship trust created under ORS 130.193, if the trust instrument expressly provides that it will be enforceable in perpetuity or for a specific period of not less than 90 years. ORS 130.193(14).

§ 6.6W References

See generally *Administering Oregon Estates* (OSB Legal Pubs 2023).

§ 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).

> CAVEAT: The lawyer should consider, however, whether a claim might be brought as a breach of duty, rather than negligence, and therefore be subject to the six-year statute of limitations under ORS 12.274 rather than a two-year one. *See* § 6.7A(3). For discussion of claims for breach of duty against a trustee, see *Administering Trusts in Oregon* ch 15 (OSB Legal Pubs 2024) (litigation).

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) (quoting 2 *Scott on Trusts* § 219, 1609 (2d ed 1956)).

§ 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. ORS 12.274. A statute of ultimate repose applies to such 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; ORS 130.820(1), (3). *But see* ORS 130.820(2) (providing a more specific limitation for beneficiaries); § 6.7H (limitation of action).

§ 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)(b).

§ 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 of transfer is given. ORS 130.022(3)(b)(E).

§ 6.7D Nonjudicial Settlement Agreements

(1) *Settlement agreement.* Interested persons may enter into a 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 and includes terms and conditions that a court could properly approve under applicable law. ORS 130.045(3)–(4).

(2) *Filing the agreement.* Any interested person may file such a settlement agreement, or a memorandum summarizing its provisions, with the court. 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 beneficiary of the trust whose address is known at the time of filing and who is not a party to the agreement, 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 60 days after the filing of the agreement or memorandum, the agreement is effective and binding on all beneficiaries who received notice

under [ORS 130.045(6)(c)] and [on] all beneficiaries who waived notice under [ORS 130.045](7)(e)." ORS 130.045(6)(e).

(5) *Objections to agreement; hearing.* "If objections are filed with the court within 60 days after the filing of a . . . agreement or memorandum," the court will set a time and place for a hearing. "The person filing the objections must serve a copy of the objections on all beneficiaries who are parties to the agreement and all beneficiaries who received notice under [ORS 130.045(6)(c)]" and must notify 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)(a).

§ 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 Revocable Trust

Certain claims against a trust must be presented within certain limitations periods, or they are barred. ORS 130.350(1). The statute applies only if

(1) "[a] claim is made against assets of a trust";

(2) "[t]he 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 trust assets 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 under ORS 130.365, or within 30 days after notice to individual claimants is mailed or delivered under ORS 130.370, whichever is later; or

(2) within the statute of limitations applicable to the claim.

ORS 130.350(1); 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 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 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 limitations and other time limitations 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 limitations and time limitations provided by ORS 130.350 to 130.450 for claims against revocable 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) "[t]o 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(1).

Within four months after the trustee's petition is entered in the court register, the trustee must notify 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 the court allows, 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(1).

§ 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 for disallowed claim).

§ 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 (1) "[f]ile 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 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." ORS 130.400(7).

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 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 person "must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death" 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 (including the time allowed to commence the proceeding), whichever is earlier. ORS 130.515(1).

§ 6.7F Distribution on Termination of Trust

> Unless a . . . trust clearly indicates a contrary intent, 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 terminated trust, portion or distribution indefeasibly vests in the beneficiary as of the event, satisfaction or exercise, subject to ORS 114.600 to 114.725 [(spousal elective share rights)], rights of creditors and the administration and sale of trust property by the trustee.

ORS 130.730(2).

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(2).

§ 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 is earlier. ORS 130.820(1).

A beneficiary, however, "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 ORS 130.820 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 Notice of Proposed Trustee Action

A trustee may provide beneficiaries with a written notice of an action the trustee proposes to take. ORS 130.733(1). If the notice contains certain information and meets certain requirements, including those described in ORS 130.733(2), a beneficiary must object to the proposed action in writing within 45 days after the notice was sent (or a longer time as stated in the notice) or, if the beneficiary does not properly and timely object, the beneficiary will be barred from subsequently objecting to, and will be deemed to have consented to, the action. ORS 130.733(2)–(3). Such a notice, however, will not be effective for a variety of actions that involve the trustee, described in ORS 130.733(3), perhaps the most significant of which is ORS 130.733(3)(b) regarding the trustee's report. In general, a notice under ORS 130.733 may not be used to bar claims against a trustee that involve conflicts of interest, and such a notice must identify specific transactions rather than the range of actions described in an accounting or trustee report. As a result, trustees must

often look to ORS 130.820 (limitation of action against trustee; see § 6.7H) for protection, rather than or in addition to ORS 130.733.

§ 6.7J References

See generally Administering Trusts in Oregon (OSB Legal Pubs 2024).

Chapter 7

MISCELLANEOUS TORT ACTIONS AND ISSUES

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§ 7.1 INTRODUCTION

§ 7.1A Scope of Chapter

This chapter covers tort claims for personal injury and property damage. A tort is a civil wrong, other than breach of contract, for which a claimant may obtain a remedy, usually in the form of money damages.

§ 7.1B Statutes of Limitations—In General

A statute of limitations is a law that bars claims after a specified period of time. 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 in contract).

This chapter points out when a specific statute of limitations applies to a particular type of claim.

See chapter 2 for discussion of defenses available to avoid application of statutes of limitations (*see* § 2.6A(1) to § 2.6A(8)); tolling of statutes of limitations (*see* § 2.6B(1)(a) to § 2.6B(3)); and 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 (50 USC §§ 3901–4043) provides, under some circumstances, for the suspension of civil proceedings by or against persons in military service who could be detrimentally affected by the proceedings. 50 USC § 3902.

§ 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*

District v. Amoco Chemicals Corp., 329 Or 151, 162, 986 P2d 536 (1999)). *See also Urbick v. Suburban Medical Clinic, Inc.*, 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999). By establishing definite endpoints for potential liability, statutes of ultimate repose "mitigate that somewhat unpredictable approach to the time that a party will have to initiate an action" that can result from discovery-based limitations periods. *Marshall v. PricewaterhouseCoopers, LLP*, 334 Or App 751, 755, 557 P3d 190 (2024). Statutes of ultimate repose do not violate the Remedy Clause or the right to jury trial contained in the Oregon Constitution. *Lunsford v. NCH Corp.*, 285 Or App 122, 128–29, 396 P3d 288, *rev den*, 362 Or 38 (2017).

A specific statute of ultimate repose may apply to a particular claim, which can shorten or lengthen the time in which a plaintiff can file the claim relative to other similar types of claims. *See, e.g.*, § 7.16B, § 7.27B(8) to § 7.27B(8)(h) (product liability cases); § 7.27B(7), § 7.27B(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 the conflict-of-laws context 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 (within 180 days after the alleged loss or injury) 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). 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 set forth in ORS 12.020(2). *Cannon v. Oregon Department of Justice*, 261 Or App 680, 691, 322 P3d 601 (2014).

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*, 261 Or App at 691 ("[T]he

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.").

The notice period is subject to a discovery rule and commences on the date the claimant knew or should have known of the injury, which may turn on the claimant's ability to recognize the alleged harm or loss. *Doe 1 v. Lake Oswego School District*, 353 Or 321, 334–35, 297 P3d 1287 (2013) (reversing dismissal of adult plaintiffs' claims alleging grade-school sexual touching because there was a jury question as to when the plaintiffs knew or should have known that they had a claim); *Skille v. Martinez*, 288 Or App 207, 214–19, 406 P3d 126, *adh'd to as modified on recons*, 289 Or App 637, 407 P3d 998 (2017) (reversing dismissal when a psychiatric inmate's ability to recognize wrongful sexual conduct of a hospital employee was in dispute). That said, by its terms, ORS 12.117 (actions based on child abuse) applies, in lieu of ORS 12.115 (action for negligent injury to person or property), without exception or limitation, to actions based on conduct that constitutes child abuse, and the Oregon Supreme Court has refused to read an exception for public entities or a limitation on the statute's application into ORS 12.117. *Sherman v. State ex rel. Department of Human Services*, 368 Or 403, 418, 492 P3d 31 (2021).

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

The OTCA's 180-day notice requirement is extended to 270 days for claims brought by minors. ORS 30.275(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"). The 270-day notice requirement is not tolled by ORS 12.160, the tolling statute for minors (*Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 71, 404 P3d 959 (2017)), nor is it tolled pending the appointment of a guardian ad litem (*Perez ex rel. Yon v. Bay Area Hospital*, 315 Or 474, 482, 846 P2d 405 (1993)).

The OTCA's notice requirement may not apply to claims brought by minors against the Department of Human Services or the Oregon Youth Authority if the minor was in the custody of one of those entities when the acts or omissions giving rise to the claim occurred. ORS 30.275(8). As with any plaintiff, a minor's notice requirement under the OTCA is subject to the discovery rule. *Buchwalter-Drumm*, 288 Or App at 78 (for claims of harm to a minor, the notice period commences when the injured party—the minor—"discover[s] the cognizable injury, either directly or through knowledge imputed to the child").

While ORS 12.160 does not apply to the OTCA's 270-day notice requirement for claims brought by minors, it does apply to the two-year statute of limitations for commencing a tort action. *Buchwalter-Drumm*, 288 Or App at 71 (the minority tolling provision applies to OTCA claims). When ORS 12.160 applies, a child has five additional years, or up to one additional year after the child turns 18, to commence an action. ORS 12.160(2).

ORS 12.117 creates a different, more relaxed limitations period for claims involving child abuse. It provides that "[a]n action based on conduct that constitutes child abuse or conduct allowing, permitting or encouraging child abuse that occurs while the person is under 18 years of age must be commenced before the person attains 40 years of age" or within five years of the discovery of the causal connection between the child abuse and the injury, "whichever period is longer." ORS 12.117(1)(a). Furthermore, now claims for "child sexual abuse or conduct allowing, permitting or encouraging child sexual abuse may be commenced at any time." ORS 12.117(1)(b). The terms *child abuse* and *child sexual abuse* are defined in ORS 12.117(2). The Oregon Supreme Court recently held that ORS 12.117 applies to claims against the state with respect to the operative statute of repose. *Sherman v. State ex rel. Department of Human Services*, 368 Or 403, 492 P3d 31 (2021).

The discovery rule applies to minor's claims with respect to the operative two-year statute of limitations for filing a tort action, just as it applies to the OTCA's notice requirement. *See Doe 1 v. Lake Oswego School District*, 353 Or 321, 327–28, 297 P3d 1287 (2013) ("[T]he limitations period for an OTCA claim . . . does not begin to run until a plaintiff has a reasonable opportunity to *discover his injury* and the identity of the party responsible for that injury." (Internal quotation marks omitted; emphasis added by court.)).

§ 7.3C References

See generally Tort Law in Oregon ch 28 (OSB Legal Pubs 2024) (claims against governmental bodies).

§ 7.4 PERSONAL INJURY

§ 7.4A Statutes of Limitations—In General

In general, an action for personal injury is subject to a two-year statute of limitations. *See* ORS 12.110. However, different statutory limitations periods exist for different causes of action and circumstances, many of which are covered separately in this chapter—for example, defamation claims are subject to a one-year statute of limitations. ORS 12.120(2). *See* § 7.8A(1)(a) to § 7.8F (defamation).

§ 7.4B ORS 12.110—The Personal-Injury "Catch All" Statute of Limitations

"An action for assault, battery, false imprisonment, or for any 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." ORS 12.110(1). Assault and battery is addressed in more detail in § 7.6A to § 7.6C.

ORS 12.110(1) governs claims of negligent injury to persons or property not explicitly covered in another statute. Note, however, that ORS 12.115 (negligent injury to person or property) provides the statute of ultimate repose, not the statute of limitations for such claims. See § 7.27A to § 7.27D (statutes of ultimate repose) for further detail.

PRACTICE TIP: ORS 30.765 establishes parental liability for the intentional or reckless acts of a minor who is in the legal custody of a parent. No Oregon case comments on the time limit for such claims, but ORS 12.110(1) should by its terms apply.

§ 7.4C Discovery Rule

Oregon's two-year statute of limitations for negligence claims (ORS 12.110) incorporates a discovery rule. "[T]he statute of limitations begins to run when the plaintiff knew or in the exercise of reasonable care should have known facts that would make a reasonable person aware of a substantial possibility that each of the three following elements exists: harm, causation, and tortious conduct." *Doughton v. Morrow*, 255 Or App 422, 428–29, 298 P3d 578, *rev den*, 353 Or 787 (2013).

§ 7.4D Minority or Disabling Mental Condition

ORS 12.160(1) tolls the two-year statute of limitations provided in ORS 12.110 for persons who are younger than 18 years of age when the cause of action accrues. However, the time for commencing an action may not be extended under ORS 12.160(1) "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).

ORS 12.160(3) applies the same tolling rule for persons with "a disabling mental condition." If the disabling mental condition bars the person from comprehending rights that they are otherwise bound to know, the statute of limitations is tolled for five years, or for one year after the person no longer has a disabling mental condition, whichever occurs first. ORS 12.160(4).

CAVEAT: ORS 12.160 tolls the two-year statute of limitations found in ORS 30.275(9) for commencing a cause of action under the OTCA. *Robbins v. State ex rel. Department of Human Services*, 276 Or App 17, 366 P3d 752 (2016). However, the OTCA's notice requirement is not tolled under ORS 12.160; instead, ORS 30.275 extends the regular notice requirement only up to an additional 90 days for minority, incompetency, or other incapacity. ORS 30.275(2); *Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 71, 404 P3d 959 (2017). See § 7.3B for further discussion of this issue.

§ 7.4D(1) 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). If a child's cause of action for such medical expenses is tolled by ORS 12.160(1), the cause of action brought by the child's parent, guardian, or conservator for recovery of those medical expenses "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), in the absence of fraud, deceit, or misleading representation. ORS 12.110(4).

§ 7.4D(2) References

See § 2.1A(1) to § 2.1B (when an action is commenced); § 2.6B(1)(a) to § 2.6B(1)(b) (tolling the statute of limitations); § 7.14A(1) to § 7.14C(3), § 7.25A(2)(b) (medical and dental malpractice); § 7.21A(1) (action for wrongful death). *See also Tort Law in Oregon* chs 28, 32 (OSB Legal Pubs 2024) (claims against governmental bodies; statutes of limitations and repose).

§ 7.5 PROPERTY DAMAGE

The statute of limitations for trespass, waste, or other injury to interests in real property is six years (ORS 12.080(3)–(4)), as is the statute of limitations for injury to personal property. ORS 12.080(4). Claims for damage to real property are subject to the "catch-all" two-year limitations of ORS 12.110(1), in the absence of any other more specific statute of limitations setting a longer period. *Goodwin v. Kingsmen Plastering, Inc.*, 359 Or 694, 698–714, 375 P3d 463 (2016).

§ 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(5) 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); *Tort Law in Oregon* ch 1 (OSB Legal Pubs 2024) (assault and battery).

§ 7.7 CONVERSION

§ 7.7A Statute of Limitations

An action for conversion must be filed within six years after the injury. ORS 12.080(4); *see Everman v. Lockwood*, 144 Or App 28, 31, 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. 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).

§ 7.7C References

See generally Damages in Oregon ch 18 (OSB Legal Pubs 2024) (dispossession of personal property); *Tort Law in Oregon* ch 7 (OSB Legal Pubs 2024) (intentional interference with property).

§ 7.8 DEFAMATION

§ 7.8A Libel or Slander

§ 7.8A(1) Statute of Limitations

§ 7.8A(1)(a) In General

Under ORS 12.120(2) "an action for libel or slander shall be commenced within one year." The date is calculated from when the statement or publication was made. *Bock v. Collier*, 175 Or 145, 148, 151 P2d 732 (1944).

§ 7.8A(1)(b) Multiple Publications

The limitations period for an action for libel or slander runs separately for each statement or publication made because a new injury could occur with each new statement or publication. *Kraemer v. Harding*, 159 Or App 90, 104, 976 P2d 1160, *rev den*, 329 Or 357 (1999) ("Each publication of a defamatory statement is a discrete tort for which the publisher may be subject to liability."); *Schenck v. Oregon Television, Inc*., 146 Or App 430, 435, 934 P2d 480 (1997) (an actionable "defamatory statement" occurs with each new communication or publication of the statement).

When a document containing defamatory statements has been kept confidential, the statute of limitations is tolled until the plaintiff learns or reasonably should have learned of the existence of the document containing the defamatory statements. *White v. Gurnsey*, 48 Or App 931, 935–37, 618 P2d 975 (1980).

§ 7.8A(2) Demand for Correction or Retraction

§ 7.8A(2)(a) Delivery of Demand

Under ORS 31.215(1), a demand for the 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 knowledge of the statement. *See* § 7.8A(2)(c) (failure to demand retraction).

§ 7.8A(2)(b) Publisher's Response to Demand

Under ORS 31.215(2), after receiving a demand for correction or retraction (*see* § 7.8A(2)(a)), the publisher has two weeks to investigate the demand and publish the correction or retraction.

§ 7.8A(2)(c) Failure to Demand Retractions

Because each defamatory broadcast constitutes a new tort (*Schenck v. Oregon Television, Inc.*, 146 Or App 430, 435, 934 P2d 480 (1997)), the plaintiff's failure to timely demand a retraction after the original broadcast does not preclude a claim if a timely demand for retraction is made after a rebroadcast.

§ 7.8B Slander of Title

"The elements of a cause of action for slander of title are . . . (1) [t]he uttering and publication of the slanderous words by defendant; (2) the falsity of the words; (3) malice; and (4) special damages." *Shenefield v. Axtell*, 274 Or 279, 282, 545 P2d 876 (1976) (quoting *Cawrse v. Signal Oil Co.*, 164 Or 666, 670, 103 P2d 729 (1940)). The statute of limitations is one year. ORS 12.120(2). The cause of action begins to run, not from when the defendant's title was recorded, but from when the sale was lost. *Shenefield*, 274 Or at 284.

In *Diamond v. Huffman*, 64 Or App 330, 333, 667 P2d 1040, *rev den*, 295 Or 840 (1983), the plaintiff tried to get around the one-year limit by styling his claim as "negligence and intentional interference with contract." The court held that the claim was actually for "slander of title" and dismissed the case because it had been filed more than one year after the slander. *Diamond*, 64 Or App at 333–34.

§ 7.8C False Light and Other Claims Related to Defamation

Claims tangentially related to libel or slander may also be subject to the one-year limitations period of ORS 12.120(2). *See* § 7.8C(1) (false light), § 7.8C(2) (negligent injury to reputation), § 7.8C(3) (negligent release of confidential information).

§ 7.8C(1) False Light

The torts of "false light" and of defamation are similar. Both have a one-year statute of limitations and both require proof that the published material is false. ORS 12.120(2). But the two torts are distinct in that a defamation action is primarily concerned with damage to one's reputation, while a claim of false light is concerned with wanting to be left alone and to be compensated for the suffering caused by the invasion. *See Magenis v. Fisher Broadcasting, Inc.*, 103 Or App 555, 558–60, 798 P2d 1106 (1990) (distinguishing these torts and applying the one-year time limit of ORS 12.120(2) to both).

§ 7.8C(2) Negligent Injury to Reputation

An action for negligent injury to reputation is in fact an action for defamation and is subject to the one-year statute of limitations of ORS 12.120(2). In *Coe v. Statesman-Journal Co.*, 277 Or 117, 119, 560 P2d 254 (1977), a newspaper published a picture of a convicted embezzler with the plaintiff's name below the picture. The plaintiff did not sue for defamation but for negligence and argued that the general two-year statute of limitations of ORS 12.110(1) applied. The court rejected this argument, holding that the case was one for defamation regardless of how the plaintiff characterized it. *Coe*, 277 Or at 119–20.

§ 7.8C(3) Negligent Release of Confidential Information

In *Bradbury v. Teacher Standards & Practices Commission*, 151 Or App 176, 181–82, 947 P2d 1145 (1997), *aff'd*, 328 Or 391, 977 P2d 1153 (1999), the plaintiff, a school superintendent, claimed that the defendant was "negligent" in

releasing confidential information obtained through an investigation into alleged improper sexual involvement with a staff member of the school district. The court held that although the defendant's action had harmed the plaintiff's reputation, the tort sounded in negligence rather than libel or slander and thus the one-year statute of limitations in ORS 12.120(2) did not apply. *Bradbury*, 151 Or App at 183–84.

§ 7.8D Discovery Rule

In limited circumstances, the "discovery rule" extends the one-year limitations period of ORS 12.120(2). In *White v. Gurnsey*, 48 Or App 931, 935–36, 618 P2d 975 (1980), the plaintiff did not know of the publication of a confidential memorandum. In those circumstances, the court held that the limitations period began to run only when the plaintiff discovered or reasonably should have discovered the existence of the memorandum. By contrast, in *Holdner v. Oregon Trout, Inc.*, 173 Or App 344, 351–52, 22 P3d 244 (2001) (citing *Gaston v. Parsons*, 318 Or 247, 255, 864 P2d 1319 (1994)), the plaintiff was aware that the defendant had mailed a newsletter to 4,000 subscribers and he generally knew the content of the publication, even though he did not receive the actual article until later. In these circumstances, the court held that the statute of limitations began running when the plaintiff first learned of the general contents of the publication, not when he received the actual article.

But the discovery rule does not apply to defamatory statements made in public meetings. Because the content of such meetings is deemed to be "*inherently discoverable* upon the occurrence" and "so intrinsically susceptible to immediate discovery," the discovery extension does not apply. *Workman v. Rajneesh Foundation International*, 84 Or App 226, 230–31, 733 P2d 908, *rev den*, 303 Or 700 (1987) (emphasis in original).

When discovery should have occurred is a question of fact. *Uruo v. Clackamas County*, 166 Or App 133, 139, 997 P2d 269 (2000) (a plaintiff may introduce evidence that creates an issue as to when discovery occurred).

§ 7.8E Oregon Tort Claims Act

Although most OTCA claims enjoy a two-year statute of limitations under ORS 30.275(9), the one-year statute of limitations in ORS 12.120(2) applies to defamation claims against public bodies. *See Masters v. Secretary of State*, 88 Or App 221, 224, 744 P2d 1309 (1987). *See also* § 7.3A to § 7.3B (actions against governmental bodies).

§ 7.8F References

See generally Tort Law in Oregon chs 5–6, 24 (OSB Legal Pubs 2024) (defamation; invasion of privacy; fraud, misrepresentation, and unfair trade practices, respectively).

§ 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). However, this is not always the case. *Fossen v. Clackamas County*, 271 Or App 842, 848, 352 P3d 1288 (2015) ("Although 'false arrest' and 'false imprisonment' contain identical legal elements, the two terms can be understood as 'synonymous,' as defendant argues, only to the extent that the theory of false imprisonment is based on the fact of the arrest. Here, plaintiff articulated a theory whereby, even if the initial arrest was lawful, the imprisonment became wrongful at a later time based on a change in circumstances. . . .We therefore reject defendant's view that the summary judgment order dismissing the false arrest claim necessarily disposed of the false imprisonment claim, either by operation of law or because the trial court intended that result.").

§ 7.9B Accrual of Action

Note that the discovery rule applies to any tort claim subject to ORS 12.110(1) that involves a claim for bodily harm. *See e.g.*, *Whalen v. American Medical Response Northwest, Inc.*, 256 Or App 278, 287 n 8, 300 P3d 247 (2013).

§ 7.9C References

See generally Damages in Oregon ch 14 (OSB Legal Pubs 2024) (false imprisonment); *Tort Law in Oregon* ch 2 (OSB Legal Pubs 2024) (false arrest).

§ 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); 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

The discovery rule in the statutory provision that sets forth the two-year statute of limitations for a fraud claim (ORS 12.110(1)),

> creates the following disjunctive test for fraud-claim accrual: a fraud claim accrues when the plaintiff has discovered facts *or*, in the exercise of reasonable diligence, should have discovered facts that would alert a reasonable

> person to the existence of the three elements of an actionable injury, which are (1) harm, (2) causation, and (3) tortious conduct—*viz.*, the alleged fraud.

Murphy v. Allstate Insurance Co., 251 Or App 316, 321, 284 P3d 524 (2012) (emphasis in original).

"Discovery" of fraud is triggered when the plaintiff "knew 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 (quoting *Linebaugh v. Portland Mortgage Co.*, 116 Or 1, 14, 239 P 196 (1925); and *Wood v. Baker*, 217 Or 279, 287, 341 P2d 134 (1959)). *See also Bodunov v. Kutsev*, 214 Or App 356, 359, 164 P3d 1212 (2007); *Gaston v. Parsons*, 318 Or 247, 256–57, 864 P2d 1319 (1994).

§ 7.10C References

See generally 5 *Oregon Real Estate Deskbook* ch 66 (OSB Legal Pubs 2015) (rescission, reformation, and specific performance); *Tort Law in Oregon* chs 24, 32 (OSB Legal Pubs 2024) (fraud and misrepresentation; statutes of limitations); *Contract Law in Oregon* ch 7 (Oregon CLE 2003 & Supp 2008) (problems in contract formation).

§ 7.11 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

§ 7.11A Statute of Limitations—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)), except when fraud or deceit conceals discovery of the tort. *See* § 7.11B (continuing torts; course of conduct).

§ 7.11B Continuing Torts; Course of Conduct

When a defendant's conduct occurs over a span of time and produces cumulative harms (such as emotional distress), but each act is discrete and actionable, evidence of acts occurring more than two years before filing the complaint are barred by the statute of limitations. *Davis v. Bostick*, 282 Or 667, 673–74, 580 P2d 544 (1978); *see, e.g.*, *Moore v. Portland Public Schools*, 328 Or App 391, 410–11, 537 P3d 544 (2023) (rejecting the continuing-tort doctrine in the context of discrete instances of battery and finding that instances of battery that occurred before the limitations period were properly dismissed).

By contrast, when each of a defendant's acts does not independently support a claim but the pattern of conduct eventually results in severe emotional distress, the claim "accrues" when the plaintiff finally suffers actionable 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" 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 671–72.

If 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 8 (Kistler, J., concurring).

> PRACTICE TIP: Justice Kistler explained that "[t]he doctrine of 'continuing tort' typically refers to wrongful conduct that is repeated until desisted, and *each day constitutes a separate cause of action*." *Barrington*, 164 Or App at 308 n 8 (Kistler, J., concurring) (emphasis added; internal quotation marks omitted). As the words emphasized above conflict with the rational of *Davis*, quoted above, attorneys on both sides of a case may argue either that continuing actions are "separate and distinct" torts or "one continuous" tort. An excellent discussion between the two concepts is set forth in *Simpson v. Burrows*, 90 F Supp 2d 1108, 1125–26 (D Or 2000). *See also* § 7.25A(1) to § 7.25A(4) (continuing torts).

§ 7.11C References

See generally Damages in Oregon ch 5 (OSB Legal Pubs 2024) (mental distress); *Tort Law in Oregon* ch 3 (OSB Legal Pubs 2024) (intentional infliction of emotional distress); *Labor and Employment Law in Oregon: Private Sector* § 1.4 to § 1.4-9 (OSB Legal Pubs 2025) (intentional infliction of emotional distress).

§ 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 accrued, not within two years after the date of discovery of the interference. ORS 12.110(1); *Butcher v. McClain*, 244 Or App 316, 321, 260 P3d 611 (2011); *Cramer v. Stonebridge Inn, Inc.*, 77 Or App 407, 411, 713 P2d 645 (1986).

§ 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). *See 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 generally Damages in Oregon ch 15 (OSB Legal Pubs 2024) (interference with contractual and business relations); *Tort Law in Oregon* ch 26 (OSB Legal Pubs 2024) (intentional interference with economic relations and related actions).

§ 7.13 LEGAL MALPRACTICE

§ 7.13A Statute of Limitations

A claim for legal malpractice must be filed within two years of the date of loss. ORS 12.110(1). The claim "accrues" when the client "suffers damage" and knows or should know that "the . . . damage . . . was caused by the lawyer's acts or omissions." *Stevens v. Bispham*, 316 Or 221, 227, 851 P2d 556 (1993) (emphasis and internal quotation marks omitted).

Under the "discovery rule," the statutory period begins to run when the plaintiff either (1) discovers the injury or (2) should have discovered the injury, including by asking questions that would have led to discovery. *See Greene v. Legacy Emanuel Hospital & Health Care Center*, 335 Or 115, 123, 60 P3d 535 (2002), as cited in *Padrick v. Lyons*, 277 Or App 455, 465, 372 P3d 528, *rev den*, 360 Or 26 (2016). 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

A 10-year statute of ultimate repose applies to legal malpractice claims, calculated not from the date of "accrual" but from the date of the "act or omission complained of." ORS 12.115. *See 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) (the 10-year cutoff occurs "regardless of when the damage resulted or when the act or omission was discovered"); *Cannon v. Oregon Department of Justice*, 288 Or App 793, 799, 407 P3d 883 (2017), *rev den*, 362 Or 860 (2018) (the statute of ultimate repose depends on when the action "occurred" not when it "accrued").

§ 7.13C Contract Claim

A lawyer's breach of a specific promise may support either a tort claim or a contract claim. A contract claim has a six-year statute of limitations (ORS 12.080), while a tort claim has only a two-year statute of limitations (ORS 12.110(1)).

In a 2015 case, the Oregon Court of Appeals held that a plaintiff wishing to qualify for the longer six-year limitations period "must plead and prove that the attorney contracted . . . 'to perform specific contractual duties irrespective of the

general standard of care.'" *Yoshida's Inc. v. Dunn Carney Allen Higgins & Tongue LLP*, 272 Or App 436, 454–55 & n 10, 356 P3d 121 (2015), *rev den*, 358 Or 794 (2016) (quoting *Allen v. Lawrence*, 137 Or App 181, 184, 903 P2d 919 (1995), *rev den*, 322 Or 644 (1996)). In *McComas v. Bocci*, 166 Or App 150, 156, 996 P2d 506 (2000), the court held that a promise or prediction of success made after the creation of a contract for legal services "is gratuitous and establishes no [contractual] duty unless it is supported by new consideration."

PRACTICE TIP: If two years have already passed, it may be useful for the plaintiff's attorney to cast the claim in contract and thus enjoy the longer limitations period. But the attorney should be aware that *Hale v. Groce*, 304 Or 281, 287–89, 744 P2d 1289 (1987), illustrates the difficulties in determining whether a claim sounds in tort or in contract. As the frustrated court in *Hale* expressed, "the different statutory time limitations for tort and contract claims deserved legislative reconsideration." *Hale*, 304 Or at 287. *See also Tort Law in Oregon* § 12.2-3(a) (OSB Legal Pubs 2024) (bases for contractual liability).

§ 7.13D Accrual of Cause of Action

§ 7.13D(1) In General

The statute of limitations for legal malpractice begins to run when the harm occurs and it is reasonably probable that the damage complained of was caused by the lawyer's negligence. *Melgard v. Hanna*, 45 Or App 133, 136, 607 P2d 795 (1980).

§ 7.13D(2) Discovery Rule

Oregon follows the "discovery rule" to determine when a legal malpractice claim accrues. In *Stevens v. Bispham*, 316 Or 221, 227, 851 P2d 556 (1993) (internal quotation marks omitted), the court held that the statute of limitations does not begin running until the client knows or reasonably should know "every fact which it would be necessary . . . to prove . . . in order to support his right to judgment," including both that the client has suffered damage and that the lawyer was the cause. *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." *Melgard v. Hanna*, 45 Or App 133, 136, 607 P2d 795 (1980). In *Padrick v. Lyons*, 277 Or App 455, 465, 372 P3d 528, *rev den*, 360 Or 26 (2016), the court held, under the "discovery rule," that the statutory period begins to run when the plaintiff discovers or should have discovered the injury. The plaintiff may be obligated to ask questions to learn the facts.

The date of discovery is usually a question of fact for the jury. *Hoeck v. Schwabe, Williamson & Wyatt*, 149 Or App 607, 612, 945 P2d 534 (1997); *Padrick*,

277 Or App at 465–67 ("A plaintiff discovers an 'injury' when the plaintiff knows or should have known the existence of three elements: (1) harm; (2) causation; and (3) tortious conduct.").

The plaintiff need not be aware of every potential breach of duty. All that is required is that the plaintiff has discovered "*some* invasion" of the plaintiff's legally protected interests. *Padrick*, 277 Or App at 469 (quoting *Gaston v. Parsons*, 318 Or 247, 255, 864 P2d 1319 (1994) (emphasis added in *Padrick*)). Although "tortious conduct" is an element under the discovery rule, a plaintiff need not "identify a particular theory of recovery before the statute of limitations begins to run." *Doe v. American Red Cross*, 322 Or 502, 513, 910 P2d 364 (1996). What matters is when the plaintiff "had actual knowledge . . . of some invasion of a legally protected interest by defendant." *Logan v. Waterford Operations, LLC*, 340 Or App 528, 535, 571 P3d 1162 (2025) (internal quotation marks and citation omitted).

When the attorney continues to represent and reassure the client that the result was "as good as we could have expected," a genuine issue of fact exists as to when the client knew or should have known that the damages were caused by the attorney's negligence. *Brownstein, Rask, Arenz, Sweeney, Kerr & Grim v. Pearson*, 166 Or App 120, 128, 997 P2d 300 (2000).

That a client has been sued by a third party because the client followed a lawyer's advice does not mean that the client knew or should have known that the lawyer was negligent. *Fliegel v. Davis*, 73 Or App 546, 548–50, 699 P2d 674, *rev den*, 299 Or 583 (1985) ("It is unrealistic to require a client to recognize that the lawyer's advice is bad, even after being sued for acting on it, until there no longer exists a realistic possibility that a court will hold that the advice was good."). In *Fliegel*, 73 Or App at 548–50, the court held that a legal malpractice claim did not accrue until the Oregon Supreme Court issued its opinion concluding the case. Similarly, in *Stevens v. Bispham*, 316 Or 221, 238–39, 851 P2d 556 (1993), the court held that the statute of limitations against an attorney in a criminal case began running, not when the criminal defendant entered a "no contest" plea, but when the conviction was set aside and the client was released from custody. *See* § 7.13D(2)(b) (discovery of professional negligence—harm).

§ 7.13D(2)(b) Discovery of Professional Negligence—Harm

If the plaintiff has the requisite knowledge (*see* § 7.13D(2)(a)), the claim accrues when the plaintiff has discovered "some invasion" of the plaintiff's legally protected interests, even though the plaintiff is not yet aware of the full extent of the harm. *Padrick v. Lyons*, 277 Or App 455, 469, 372 P3d 528, *rev den*, 360 Or 26 (2016) (quoting *Gaston v. Parsons*, 318 Or 247, 255, 864 P2d 1319 (1994)). For example, in *Jaquith v. Ferris*, 297 Or 783, 788, 687 P2d 1083 (1984), the plaintiff learned within four months that an appraiser had undervalued her land, but she did not sue the appraiser until after losing a case brought against her for specific performance. On these facts, the court held that the claim accrued when the plaintiff

first learned of the faulty appraisal, not when she lost in court. "It is immaterial that the *extent* of damages could not be determined at the time of the tort." *Jaquith*, 297 Or at 788 (alteration omitted; emphasis added). However, the known harm must be measurable, not speculative, "dependent upon prognostications of potential future events that may, or may not, occur." *Merchants Paper Co. v. Newton*, 292 Or App 497, 506, 424 P3d 811 (2018), *rev den*, 364 Or 407 (2019).

In *Morris v. Zusman*, No 3:09-CV-620-PK, 2011 US Dist LEXIS 82939 at *25, 2011 WL 3236213 (D Or July 28, 2011), *partial summary judgment den*, 857 F Supp 2d 1082 (D Or 2012), *summary judgment granted*, 2012 US Dist LEXIS 52280 (D Or Apr 12, 2012), the United States District Court for the District of Oregon explained *Jaquith's* impact: "the limitations period began to run as soon as the plaintiff knew of the negligence and of some of the resulting harm, including the plaintiff's initial legal costs." *See also Godfrey v. Bick & Monte, P.C.*, 77 Or App 429, 713 P2d 655, *rev den*, 301 Or 165 (1986) (the limitations period began to run when the taxpayer was assessed a deficiency, not when the taxpayer settled the tax dispute).

On the other hand, in *Barnard v. Lannan*, 112 Or App 625, 629, 829 P2d 723 (1992), the court held that the statute of limitations did not begin running when an order of dismissal was entered, but only when that order ripened into judgment. "Until entry of the judgment of dismissal, there existed the possibility that the court still would resolve the claim . . . in plaintiffs' favor, obviating a malpractice claim." *Barnard*, 112 Or App at 629.

> PRACTICE TIP: Because it is difficult to reconcile *Jaquith* and its descendants with *Barnard* and *Merchants Paper Co.*, fertile ground exists to challenge the conflicting analysis of these decisions.

In *Timber By-Products, Inc. v. Sloan*, 148 Or App 415, 939 P2d 1177, *rev den*, 326 Or 62 (1997), the court held that a taxpayer's knowledge of an increased tax liability did not trigger the statute of limitations until he met with a new accountant who advised him that the subject business could have been sold in a way to avoid the tax liability.

In *Cairns v. Dole*, 195 Or App 742, 744–45, 99 P3d 781 (2004), the court made clear that a claim accrues when the plaintiff is harmed and knows or should know that the harm was "caused by the defendant's tortious conduct." See also *Niedermeyer v. Dusenbery*, 275 Or 83, 85–86, 549 P2d 1111 (1976), holding that the statute does not begin running until it is "reasonably probable that the cost of litigation was caused by the defendants' negligence rather than by a misapprehension of the corporation as to its legal rights."

But the "discovery rule" has limitations: the harm must be real and not merely hypothetical. For example, in *Berg v. Hirschy*, 206 Or App 472, 475–76, 136 P3d 1182 (2006), the court held that the plaintiffs' action against their former

attorneys was not justiciable because future tax liability and damages were only hypothetical and not yet real.

If the underlying case resulted in a criminal conviction, the statute does not begin running until the criminal defendant "has been exonerated" either through reversal on appeal, postconviction relief, "or otherwise." *Stevens v. Bispham*, 316 Or 221, 238, 851 P2d 556 (1993). However, "to the extent that plaintiff alleges damages that are unrelated to the conviction itself, the viability of plaintiff's malpractice claim does not depend on plaintiff alleging and proving that she has been exonerated of the crime of conviction." *Moore-Reed v. Griffin*, 374 Or 596, 613, 581 P3d 949 (2025). "[T]he requirement in *Stevens* to plead and prove exoneration applies when the complaint alleges that the defendant's negligence caused or contributed to the conviction." *Moore-Reed*, 374 Or at 615.

In *Abbott v. DeKalb*, 221 Or App 339, 343–44, 190 P3d 413 (2008), *rev dismissed as improvidently allowed*, 346 Or 306 (2009), *cert den*, 558 US 1123 (2010), the court held that the statute began running only when the state dismissed its postconviction appeal.

In *Sandgathe v. Jagger*, 165 Or App 375, 379–80, 996 P2d 1001 (2000), the court held that a criminal defendant's lawsuit against his attorney was premature because his conviction had not been overturned, directly or collaterally. But in *Drollinger v. Mallon*, 350 Or 652, 665–66, 260 P3d 482 (2011), the court held that the exoneration of criminal charges only applies to malpractice claims against criminal trial counsel; it does not apply to criminal postconviction relief counsel. "We hold that prior exoneration, by means of appeal, post-conviction proceedings, or otherwise, is not a prerequisite for asserting a malpractice claim against post-conviction counsel." *Drollinger*, 350 Or at 665–66. The court later explained that "in *Drollinger*[,] . . . the significant distinction is not between trial and direct appeal, but between the criminal context, on the one hand, and the civil post-conviction context, on the other." *Cannon v. Oregon Department of Justice*, 288 Or App 793, 804, 407 P3d 883 (2017), *rev den*, 362 Or 860 (2018).

§ 7.13E References

See generally Legal Ethics in Oregon ch 16 (OSB Legal Pubs 2026) (legal malpractice and lawyer professional responsibility); *Tort Law in Oregon* ch 12 (OSB Legal Pubs 2024) (lawyer malpractice).

§ 7.14 MEDICAL AND DENTAL MALPRACTICE

§ 7.14A Statutes of Limitations and Repose

§ 7.14A(1) Statutes of Limitations—In General

An action for injuries "arising from any medical, surgical or dental treatment . . . 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). However,

> every such action shall be commenced within five years from the date of the treatment, omission or operation upon which the action is based or, if there has been no action commenced within five years because of fraud, deceit or misleading representation, then 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 Gaston v. Parsons, 318 Or 247, 255–56, 864 P2d 1319 (1994) (the statute of limitations did not beginning running until the plaintiff knew or should have known of the defendant's negligence); *Asher v. Hald*, 100 Or App 630, 633–34, 788 P2d 468, *rev den*, 310 Or 133 (1990) (discovery occurs not with injury alone but when the plaintiff has reason to believe that the defendant was the cause). Whether plaintiff's discovery of the alleged tortious nature of his harm was delayed because of assurances by the defendant is a fact-specific question. *Tureck v. Taksali*, 344 Or App 50, 56–57, 580 P3d 288, 292 (2025). "[D]iscovery of a claim is imputed to a plaintiff who has been injured by another when the plaintiff becomes aware that there is a substantial possibility that a legally protected interest to be free from physical harm at the hands of another ha[s] been infringed." *Concienne v. Asante*, 299 Or App 490, 503, 450 P3d 533 (2019) (internal quotation marks and citation omitted).

But the lawyer should be aware that ORS 12.115(1) contains a hard 10-year statute of repose for all injuries, calculated from the date of the negligent conduct and not from any date of discovery.

The five-year limitations period of ORS 12.110(4) may not apply to a products liability claim arising out of use of the product in a medical procedure. *Doe v. American Red Cross*, 322 Or 502, 510, 910 P2d 364 (1996). For example, in *Doe*, 322 Or at 510, the plaintiff died of AIDS, which he alleged came from blood provided by the Red Cross. The court concluded that providing blood was not a medical procedure and thus the five-year outer limit for medical malpractice claims did not apply. It was a question of fact, the court held, as to when the plaintiff knew or should have known that tainted blood might have caused his illness, given the "nascent state of the law and science" with respect to AIDS in the late 1980s. *Doe*, 322 Or at 515.

> PRACTICE TIP: Although ORS 12.160 tolls the statute of limitations for minors by five additional years, ORS 12.160(2) ends this disability period one year after the child's 18th birthday, and ORS 12.160(4) limits the disability period for medical malpractice claims to a total of five years, in the absence of fraud or concealment (*see* § 7.14A(6)(b)). This five-year limit has been held constitutional in *Christiansen v. Providence Health System of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008), even when the malpractice is not even discovered until after five years. It is the child who must

discover the cognizable injury, either directly or through knowledge imputed to the child. *Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 78–79, 404 P3d 959 (2017). Also, ORS chapter 12 prescribes different limitations periods for breast implants (ORS 12.276, *see* § 7.14A(3)), nuclear incidents (ORS 12.137, *see* § 7.22), wrongful-death (ORS 30.020, *see* § 7.21A(1)), survival claims (ORS 30.075(1), *see* § 7.21A(2)), and other claims. ORS chapter 12 should be consulted regarding any injury, especially those involving minors or others with mental disabilities.

NOTE: A statute of ultimate repose is distinct from a statute of limitations. *See* § 7.14A(6)(a) (statutes of limitations), § 7.27A (statutes of ultimate repose).

§ 7.14A(2) Failure to Obtain Informed Consent

A physician's failure to obtain a patient's informed consent (ORS 677.097) may give rise to a cause of action distinct from other forms of negligence. *See Gaston v. Parsons*, 318 Or 247, 260, 864 P2d 1319 (1994) ("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."). The time of discovery for a medical-negligence claim and an informed-consent claim may differ, depending on the facts and the information available to the plaintiff. *Gaston*, 318 Or at 260.

§ 7.14A(3) Breast Implants

The statute of limitations for breast-implant cases is two years from the date on which the plaintiff "first discovered, or in the exercise of reasonable care should have discovered" (1) the "death or specific injury," (2) the "tortious nature of the act or omission" that "gives rise to a claim," and (3) "[a]ll other elements required to establish plaintiff's claim for relief." ORS 12.276(1). Significantly, ORS 12.276(2) provides that breast-implant claims are not subject to ORS 12.115 (a 10-year statute of repose for all other injury claims).

However, under ORS 12.276(3), if a breast-implant claim includes a physician as a defendant, then the five-year statute of repose against the physician remains (ORS 12.110(4)), as does the 10-year statute of repose for other injuries (ORS 12.115), as does the three-year statute of limitations for wrongful death (ORS 30.020, calculated from when the beneficiaries "discovered or reasonably should have . . . . discovered" "the injury causing the death"), as does the two-year statute of limitations when the decedent dies from causes other than the defendant's negligence (ORS 30.075).

Further, under ORS 12.276(4), a component supplier of a breast implant still enjoys the limitations of ORS 12.110(1), ORS 12.115, ORS 30.020, and ORS 30.075 if it did not manufacture the breast implant from "silicone, silica or silicon" and "was not owned by and did not own a business" that made implants from such

materials. *See* § 7.27B(7), § 7.27B(8)(f) (statute of ultimate repose for actions arising from breast implants).

§ 7.14A(4) COX-2 Inhibitor

Compiled as a note under ORS 30.927, the provisions of Oregon Laws 2007, chapter 536, section 1(2) to (3) provide that a civil action alleging injury or death from a "COX-2 inhibitor" must be filed within four or six years, respectively, calculated from when "plaintiff first discovered, or in the exercise of reasonable care should have discovered" the injury or death and its causal relationship to the product. These timelines apply only to claims arising on or before January 1, 2007. Or Laws 2007, ch 536, § 2(1). Claims arising after that date are subject to the same statutory time limits as other negligence or product liability actions under ORS 12.110(1), ORS 30.020, and ORS 30.905(2). The legislation did not revive claims for which a judgment was entered before January 1, 2007. Or Laws 2007, ch 536 § 2(2). As of the date of this publication, no Oregon appellate court has issued an opinion that applies this law.

§ 7.14A(5) Public Bodies

The OTCA, ORS 30.260 to 30.300, applies to any claim arising out of an act or omission of a *public body* as defined in ORS 30.260(4) and ORS 174.109. These rules apply to any medical malpractice claim against a hospital district or a state-funded public hospital, public clinic, or any of their officers, employees, or agents. *See* ORS 30.267–30.268. Claims against federally funded healthcare clinics are governed by entirely different rules. *See* § 7.23A to § 7.23C (federal issues).

Under ORS 30.275(1) to (8), notice of the claim must be given within 180 days of injury or within one year of death. This time is extended by 90 days for those "unable to give the notice because of the injury or because of minority, incompetency or other incapacity." ORS 30.275(2). Notice can be satisfied by "[f]ormal notice," "[a]ctual notice," "[c]ommencement of an action," or "[p]ayment of all or any part of the claim." ORS 30.275(3).

"Formal notice" under ORS 30.275(4) must include a statement that "a claim for damages is or will be asserted"; a "description of the time, place and circumstances giving rise to the claim, so far as known to the claimant"; and the "name of the claimant and the mailing address to which correspondence concerning the claim may be sent." Formal notice must be given by "mail or personal delivery" to the right person, as described in ORS 30.275(5).

"Actual notice" under ORS 30.275(6) may be satisfied in many ways, including "actual knowledge of the time, place and circumstances giving rise to the claim."

Under ORS 30.275(8), the above notice requirements do not apply if the claimant was under the age of 18 at the time of the loss, and the claim is against the Oregon Department of Human Services (ODHS) or the Oregon Youth Authority

(OYA), and the claimant was in the custody of ODHS or OYA. Notice requirements also do not apply if the claim is against a "private, nonprofit organization that provides public transportation services described under ORS 30.260(4)(d)." ORS 30.275(8)(b).

ORS 30.275(9) provides that

> [e]xcept as provided in ORS 12.120 [action arising from a prisoner's escape or for libel or slander], [ORS] 12.135 [action arising from construction] and [ORS] 659A.875 [action arising from unlawful employment practices], *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 within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury.

ORS 30.275(9) (emphasis added).

The awkward wording emphasized above has been the subject of at least 30 court cases as of the date of this publication. In *Baker v. City of Lakeside*, 343 Or 70, 83, 164 P3d 259 (2007), the Oregon Supreme Court held that the "notwithstanding clause" in ORS 30.275(9) applies "only to those provisions of ORS chapter 12 and other statutes that provide a limitation on the commencement of an action. *The notwithstanding clause does not bar application of ORS 12.020 to OTCA claims*." *Baker*, 343 Or at 83 (emphasis added). *See also Cannon v. Oregon Department of Justice*, 261 Or App 680, 687, 322 P3d 601 (2014). A later-enacted, longer statute of limitations may extend the time beyond the two-year deadline. *See Preble v. Centennial School District No. 287*, 298 Or App 357, 369, 447 P3d 42 (2019).

Although ORS 12.160(1) and (2) allow an additional five years for a minor to file a claim, a minor having a claim under the OTCA must still give a tort-claim notice within 270 days (180 days required by ORS 30.275(1) to (2) plus an additional 90 days under ORS 30.275(2) for those "unable to give the notice because of the injury or because of minority, incompetency or other incapacity"). However, in *Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 66, 404 P3d 959 (2017), the court concluded that "the time for filing a minor's tort claim notice commences when *the minor* discovers the cause of action" (emphasis in original). "When that discovery occurs ordinarily is a question of fact for the jury." *Buchwalter-Drumm*, 288 Or App at 78 (internal quotation marks omitted). The court applies an objective standard for the discovery rule and, in this case, held that a "seven-year-old sexual abuse victim did not discover the cognizable injury—particularly the substantial possibility that the state tortiously contributed to the harm—more than 270 days before the date of plaintiff's tort claim notice." *Buchwalter-Drumm*, 288 Or App at 78–79.

As long as the injury is "discovered" and the tortfeasor is known, the notice period set forth in ORS 30.275(1) to (2) is not tolled pending the appointment of a guardian ad litem. *Perez ex rel. Yon v. Bay Area Hospital*, 315 Or 474, 482–83, 846

P2d 405 (1993). Further, although ORS 12.160 allows minors and persons with mental disabilities an additional five years to file a lawsuit, such persons making claims under the OTCA are not granted these additional five years. They must file their claims within two years. *Cooksey ex rel. Cooksey v. Portland Public School District No. 1*, 143 Or App 527, 531, 923 P2d 1328, *rev den*, 324 Or 394 (1996).

A "survival action" against a public body under ORS 30.075 is subject to the two-year limitations period of ORS 30.275(9) rather than the two- or three-year periods of ORS 30.075(1). *Bell v. Tri-County Metropolitan Transportation District of Oregon*, 353 Or 535, 537, 301 P3d 901 (2013).

Under ORS 12.155 and ORS 31.550, an "advance payment" suspends the limitations period unless the tortfeasor gives notice of the applicable statute of limitations within 30 days after the first payment. In *Humphrey v. Oregon Health & Sciences University*, 286 Or App 344, 355–56, 398 P3d 360 (2017), the defendant's writing off its bill for medical services qualified as an advance payment and thus tolled the statute against a public body. *See* § 2.1A(1) to § 2.1B (when an action is commenced; stay), § 7.3A to § 7.3B (actions against 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

ORS 12.115(1) (negligent injury to person or property), ORS 12.135(2)(b) (damages to real property), and ORS 30.905(2)(a) (product liability civil action) each contain a 10-year deadline to file a claim, regardless of when the claim was discovered. ORS 12.110(4) (dealing with medical malpractice) contains a five-year deadline calculated from the date of treatment, except when there is fraud, deceit, or misrepresentation. These statutory outer limits are commonly referred to as "statutes of repose." *Miller v. Ford Motor Co*., 363 Or 105, 109, 419 P3d 392 (2018). Statutes of repose, also called statutes of ultimate repose, are distinct from statutes of limitations.

In *Urbick v. Suburban Medical Clinic, Inc.*, 141 Or App 452, 455–56, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999), the court considered whether the medical malpractice five-year statute of repose is extended under the theory that the plaintiff continued to be treated by the doctor who caused the injury. The court rejected the concept that "continuing treatment" extends the deadline, saying that "in the absence of fraud, deceit or misleading representation, the five-year period is absolute."

In *Christiansen v. Providence Health System of Oregon Corp.*, 344 Or 445, 452, 184 P3d 1121 (2008), the court held that the medical malpractice five-year statute of repose applies "notwithstanding the provisions" of ORS 12.160(4), which otherwise gives minors and those with mental disabilities an additional five years in addition to the usual two-year statute of limitations.

ORS 12.110(4) provides that a medical malpractice action must be filed within five years from the date of the medical treatment on which the action is based. However, if there has been no action commenced because of fraud, deceit, or misleading representation, then the plaintiff has until two years from the date the fraud, deceit, or misleading representation was discovered, or reasonably should have been discovered, to file suit. *Duncan v. Augter*, 286 Or 723, 726, 596 P2d 555 (1979).

A misleading representation within the meaning of ORS 12.110(4) does not have to be deliberate. *Duncan*, 286 Or at 731–32. Indeed, it can be "innocent." *Skuffeeda v. St. Vincent Hospital & Medical Center*, 77 Or App 477, 484, 714 P2d 235, *rev den*, 301 Or 240 (1986). A defendant "need not make an affirmative statement" to make a misleading representation. *Skuffeeda*, 77 Or App at 483 n 3. Thus, a "misleading representation" can be an omission. *Skuffeeda*, 77 Or App at 483.

The failure to disclose abnormal test results can constitute a misleading representation. Particularly in medical malpractice cases, the special nature of the doctor-patient relationship imposes an affirmative duty on the doctor to disclose the results of diagnostic tests to patients. *Skuffeeda*, 77 Or App at 483 n 3; *see also Sonsteng v. Dominican Sisters of Ontario, Inc.*, 630 F Supp 2d 1253, 1259 (2009).

Under ORS 30.020(1), a wrongful-death action "shall be commenced within three years after the injury causing the death of the decedent is discovered or reasonably should have been discovered." (Note: The statute runs from the date of the "injury causing the death" and not from the date of the death itself.)

A product liability action resulting in injury must be "commenced not later than two years after the plaintiff discovers, or reasonably should have discovered" the injury and its causal relationship to the defendant. ORS 30.905(1). Product liability actions resulting in death must be commenced within three years after the injury that leads to the death, or within three years of the discovery of the causal relationship between the product and the death. ORS 30.905(3). But product liability injury and death cases are still subject to a statute of repose, which is usually 10 years from when the product was "first purchased for use or consumption" (ORS 30.905(2)(a), (4)(b)), but can be longer if the state or country where the product was manufactured has a longer statute of repose (ORS 30.905(2)(b), (4)(c)). *See Miller*, 363 Or 105.

PRACTICE TIP: Wrongful-death actions and product liability actions are subject to different statutes of repose. *See* § 7.14A(7) (wrongful-death actions in general), § 7.27B(8)(d) (product liability action for wrongful death), § 7.16A to § 7.16F(7) (product liability actions). *See also* § 7.14A(6)(c) (statutes of repose and minors). Regarding the effects of fraud and misdiagnosis on the statute of ultimate repose, see § 7.14A(6)(b) and § 7.14A(6)(d). *See also* § 7.27B(5) (medical malpractice), § 2.7A to § 2.7G(2) (statutes of ultimate repose).

§ 7.14A(6)(b) Fraud, Deceit, or Misleading Representation Extends Period of Repose

If the medical provider conceals malpractice by "fraud, deceit or misleading representation," the five-year period of repose is extended by two years from the date on which such deceit "is discovered or in the exercise of reasonable care should have been discovered." ORS 12.110(4). The misleading representation need not be intentional to toll the statute of repose, but an unintentional representation "must misrepresent something other than the careful performance or the success of the very treatment or operation whose failure is the basis of plaintiff's [malpractice] complaint" in order to toll the statute. *Duncan v. Augter*, 286 Or 723, 731–32, 596 P2d 555 (1979).

§ 7.14A(6)(c) Statute of Repose for Minors and Persons with a Disability

Although ORS 12.160 extends the statute of limitations for minors and persons with mental disabilities by five years, or one year after the minor turns 18 (whichever occurs first), ORS 12.110(4) strictly "limits that suspension to five years from the date of medical treatment." *Christiansen v. Providence Health System of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008). Also, as noted in § 7.14A(5), minors having claims under the OTCA are not granted an additional five years. They must file their claims within two years. *Cooksey ex rel. Cooksey v. Portland Public School District No. 1*, 143 Or App 527, 531, 923 P2d 1328, *rev den*, 324 Or 394 (1996).

§ 7.14A(6)(d) Late Diagnosis Does Not Extend Repose Period

The five-year statute of ultimate repose for medical malpractice applies even if the action is based on a disease that was not even diagnosed during the five-year period. In *Barke v. Maeyens*, 176 Or App 471, 478, 31 P3d 1133 (2001), *rev den*, 333 Or 655 (2002), the plaintiff's doctor shaved a lesion from the plaintiff's head in December 1992 and sent it to a pathology lab, which determined it was only a benign mole. Almost six years later in May 1998, the lesion was properly determined to be a cancerous tumor. Even under these facts the court held that the five-year statute of ultimate repose allowed the plaintiff no relief. Be mindful, however, that fraud, deceit, or misrepresentations about test results may toll the statute of ultimate repose in medical negligence cases. ORS 12.110(4).

§ 7.14A(7) Wrongful Death

If death results from medical malpractice, the three-year limitations period for wrongful death applies (ORS 30.020(1)), rather than the two-year limitations period for personal injury (ORS 12.110(1)). *Baxter v. Zeller*, 42 Or App 873, 877, 601 P2d 902, *rev den*, 288 Or 253 (1979). The five-year statute of ultimate repose

in ORS 12.110(4) applies to wrongful-death actions arising from medical malpractice. *Fields v. Legacy Health System*, 413 F3d 943 (9th Cir 2005).

See § 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

A medical malpractice action must be filed "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). If discovery of the malpractice does not occur until later, the deadline is extended up to five years from the date of treatment, or longer if defendant has concealed negligence by "fraud, deceit or misleading representation," in which event the statute is extended to two years from when the deceit was or should have been discovered. ORS 12.110(4).

§ 7.14B(2) Minors

§ 7.14B(2)(a) Appointment of Guardian Ad Litem

The statute of limitations for medical malpractice (and various other claims) begins to run "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); *see also Zabriskie v. Lowengart*, 252 Or App 543, 548–49, 290 P3d 299 (2012) (quoting *Gaston*).

This "discovery rule" has been applied to medical malpractice claims (*Frohs v. Greene*, 253 Or 1, 452 P2d 564 (1969)), legal malpractice claims (*United States National Bank of Oregon v. Davies*, 274 Or 663, 548 P2d 966 (1976)), and occupational-disease claims (*Schiele v. Hobart Corp.*, 284 Or 483, 587 P2d 1010 (1978) (as cited in *Moore v. Mutual of Enumclaw Insurance Co.*, 317 Or 235, 247, 855 P2d 626 (1993))).

The fact that a plaintiff claimed not to know that her physician was negligent until her attorney consulted another physician did not toll the statute of limitations. Instead, the statute begins running when the plaintiff realized that she had suffered an "injury" (*Greene v. Legacy Emanuel Hospital & Health Care Center*, 165 Or App 543, 549, 997 P2d 265 (2000), *aff'd*, 335 Or 115, 60 P3d 535 (2002)), even though she then knew only of a "'substantial possibility' of tortious conduct" (*Greene*, 165 Or App at 549 (quoting *Gaston*, 318 Or at 256)). And the statute begins running even though the plaintiff has not yet discovered the "full extent of damages." *Raethke v. Oregon Health Sciences University*, 115 Or App 195, 198, 837 P2d 977 (1992), *rev den*, 315 Or 371 (1993) ("Discovery occurs when a plaintiff is or should be aware of (1) the injury, (2) the cause of the injury and (3) the identity of the tortfeasor.").

"By statute, a medical malpractice action accrues 'when the injury is first discovered or in the exercise of reasonable care should have been discovered.'" *Kastle v. Salem Hospital*, 284 Or App 342, 347, 392 P3d 374 (2017) (quoting ORS 12.110(4)). An "injury" under ORS 12.110(4) "consists of harm, causation, and tortious conduct." *Kastle*, 284 Or App at 347 (citing *Gaston*, 318 Or at 255).

"Therefore, a medical malpractice claim accrues, and the statute of limitations begins to run, 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 (1) the plaintiff suffered harm, (2) the harm was caused by the defendants acts[,] and . . . (3) the defendant's acts were tortious." *Kastle*, 284 Or App at 347–48 (citing *Gaston*, 318 Or at 255).

Whether a plaintiff discovered or reasonably should have discovered their cause of action is a question of fact. *Gaston*, 318 Or at 256 ("Whether a reasonable person of ordinary prudence would be aware of a substantial possibility of tortious conduct is a question of fact that depends upon the nature of the harm suffered, the nature of the medical procedure, and other relevant circumstances.").

The *Gaston* decision relied on the Oregon Supreme Court's earlier decision in *Berry v. Banner*, 245 Or 307, 312, 421 P2d 996 (1966), *superseded by ORS 12.115 as stated in Marshall v. PricewaterhouseCoopers, LLP*, 371 Or 536, 543–44, 539 P3d 766 (2023), which stated:

> To say that a cause of action accrues to a person when she may maintain an action thereon and, at the same time, that it accrues before she has or can reasonably be expected to have knowledge of any wrong inflicted upon her is patently inconsistent and unrealistic. She cannot maintain an action before she knows she has one.

But cf. Christiansen v. Providence Health System of Oregon Corp., 344 Or 445, 451–52, 184 P3d 1121 (2008). In that case, the plaintiff alleged that "defendants negligently caused injuries to plaintiff's son while plaintiff was in labor." *Christiansen*, 344 Or at 448. The child appeared fine at birth, developed normally, and had a normal CT scan. Later, the child was diagnosed with permanent injuries. Under these circumstances, the court held that the statute did not begin to run until a doctor diagnosed permanent injuries. *Christiansen*, 344 Or at 452. It is "the child who must discover the cognizable injury, either directly or through knowledge imputed to the child." *Buchwalter-Drumm v. State ex rel. Department of Human Services*, 288 Or App 64, 78, 404 P3d 959 (2017) (the Court of Appeals noted that the Supreme Court had "not yet decided whether the knowledge of a parent can be imputed to a child apart from becoming guardian *ad litem*" (*Buchwalter-Drumm*, 288 Or App at 79 n 6)).

The OTCA's notice provisions in ORS 30.275(2) for those "unable to give the notice because of the injury or because of minority, incompetency or other incapacity" is not tolled pending the appointment of a guardian ad litem. *Buchwalter-Drumm*, 288 Or App at 71 ("[T]he minority tolling provided in ORS 12.160 does

not alter the 270-day period in which minors must provide notice to a public body of a tort claim[.]"). *See also Perez ex rel. Yon v. Bay Area Hospital*, 315 Or 474, 482–83, 846 P2d 405 (1993) (when no notice was given within 270 days of a child's injury, the notice requirement of ORS 30.275 was not met).

See § 7.3B (claims brought by minors). But see the exceptions to the notice requirement under ORS 30.275(8). *See also* § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations).

§ 7.14B(2)(b) Appointment of a Conservator

The five-year extension for minors and persons with mental disabilities under ORS 12.160 was not altered when a conservator was appointed, filed a lawsuit, later dismissed it, and then refiled it. *Luchini v. Harsany*, 98 Or App 217, 221–23, 779 P2d 1053, *rev den*, 308 Or 608 (1989) (neither the appointment of a conservator nor the filing and dismissal of a lawsuit alters the statutory extension).

§ 7.14B(2)(c) Child's Medical Bills

If a child's claim is tolled under ORS 12.160(1), the claim for the child's injury-related medical bills incurred by a parent, guardian, or conservator is also tolled for the same amount of time. ORS 12.160(5). *See* § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations).

§ 7.14B(2)(d) Defendant's Advance Medical Payments

If the defendant pays any part of the plaintiff's claim, or offers free or discounted medical services, these are "advance payments" under ORS 12.155(1). Making an advance payment extends the statute of limitations, unless, within 30 days after the defendant makes the first of such advance payments, the defendant gives "written notice of the date of expiration of the period of limitation for the commencement of an action." ORS 12.155(1). If such notice is not given, "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." ORS 12.155(2). *See Humphrey v. Oregon Health & Sciences University*, 286 Or App 344, 355–56, 398 P3d 360 (2017) ("defendants' provision of free or discounted medical services" before the determination of legal liability "qualifies as 'compensation' for the 'injury' that plaintiff suffered" and constituted an advance payment). However, such advance payments do not suspend the 10-year statute of ultimate repose 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 a theory of "continuing treatment" is still subject to the five-year statute of ultimate repose set forth in ORS 12.110(4). *Urbick v. Suburban Medical Clinic, Inc.*, 141 Or App 452, 455–57, 918 P2d 453

(1996), *rev den*, 329 Or 287 (1999) (each new treatment creates a new date, rather than the last treatment being the sum of all previous treatments).

§ 7.14C(2) Prior Legislation

Before the enactment of ORS 12.110(4), the doctrine of "continuing treatment" held that when treatment was ongoing, the entire course of treatment constituted a single event, and the claim accrued only when treatment ended. *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) abolished that argument. *See Urbick v. Suburban Medical Clinic., Inc.*, 141 Or App 452, 455–57, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999).

§ 7.14C(3) Analyze Claims Separately

The lawyer should review each case to determine whether the facts could give rise to different claims. "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) (holding that the plaintiff's informed-consent claim was time-barred but that her medical negligence claim was not).

The plaintiff's discovery of one injury does not apply to a different and separate injury. In *McClure v. LeRoy*, 133 Or App 229, 235, 890 P2d 425 (1995), the plaintiff alleged that her dentist stuck a nerve while treating teeth numbers 7 and 10. The plaintiff further alleged that a month later the dentist set a crown too high on tooth number 28. The court concluded these were two distinct claims with different statutes of limitations.

§ 7.14D The Oregon Patient Safety Commission

The Oregon Patient Safety Commission (OPSC) is "a semi-independent state agency that supports healthcare facilities and providers in improving patient safety. We encourage broad information sharing, ongoing education, and open conversations to cultivate a more trusted healthcare system" according to its website (https://oregonpatientsafety.org (click on "About Us")). *See* ORS 442.819–442.851. The Oregon Legislature created the OPSC in 2003 as an independent voice for patient safety. ORS 442.820. It does this through two programs, providing support for both patients and providers.

One of those programs offered by the OPSC is an "Early Discussion and Resolution" (EDR) service, where patients or their families who have suffered serious harm or death can initiate a voluntary conversation through the EDR process. EDR conversations are protected under state law, allowing everyone involved to openly discuss what happened and to begin the path towards reconciliation. *See* ORS 442.820.

Once a patient or their family files a "Request for Conversation" through EDR, the statute of limitations for a related claim is extended for an additional 180 days. ORS 31.272(2). The 180-day extension begins upon filing the request. ORS 31.272(2).

Communication through and with the OPSC is confidential. ORS 442.831(3).

More information about this program is available at https: //oregonpatientsafety.org.

§ 7.14E References

See generally Tort Law in Oregon chs 11, 28, 32 (OSB Legal Pubs 2024) (medical malpractice; claims against governmental bodies; statutes of limitations and repose, respectively).

§ 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 do the following:

(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)–(c). *See also* ORS 12.272 (an action may not be commenced until the report is both filed and mailed).

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 do the following:

(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 person commencing the action. ORS 634.172(1)(b)–(c).

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 (1) the "landowner or pesticide operator who is allegedly responsible for the loss" and (2) 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(16).

§ 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).

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 5 *Oregon Real Estate Deskbook* ch 60 (OSB Legal Pubs 2015) (boundary-line disputes; encroachments).

§ 7.16 PRODUCTS LIABILITY

The term *product liability civil action* is broadly defined in ORS 30.900 so that most claims arising out of injury by an allegedly defective product are governed by a single statute of limitations. However, not every claim brought with respect to a product is a product 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." *Weston v. Camp's Lumber & Building Supply, Inc.*, 205 Or App 347, 356, 135 P3d 331, *adh'd to as clarified on recons*, 206 Or App 761, 138 P3d 931 (2006), *rev dismissed as improvidently allowed*, 342 Or 665 (2007).

In *Weston*, 205 Or App at 358, the Oregon Court of Appeals stated that

> two guiding principles inform our 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 plead carefully and give special consideration to whether the claim is one for a product liability civil action before relying on the two-year time limitation contained in ORS 30.905, as opposed to a separate statute of limitations for (1) injury to person (ORS 12.110); (2) injury to property (ORS 12.080); (3) breach of an express warranty under the Uniform Commercial Code based on product liability (ORS 72.7250(1), *see* § 14.3A(6)(a)); or (4) some other statute. *See Weston*, 205 Or App at 357.

ORS 30.902 contains exceptions to liability for products provided by certain individuals and entities in a healthcare setting. For purposes of a product liability civil action under ORS 30.900 to 30.920, a licensed physician, a healthcare facility, a professional corporation or entity organized to practice medicine or to render professional healthcare services, or a licensed residential care facility "is not a manufacturer, distributor, seller or lessor of a product" if the physician or entity "provides the product to a patient as part of health care services" and the individual or entity "was not involved in the design or manufacture of the product." ORS 30.902(1)–(4). See § 7.16E for further information.

§ 7.16A Statute of Limitations—In General

With certain exceptions, a product liability 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(1) does not apply to certain types of product liability actions, which are subject to separate statutes of limitations. *See, e.g.*, ORS 30.905(5) (manufactured dwellings and prefabricated structures, *see* § 7.16F(5)); ORS 12.135(2), (7) (construction, alteration, or repair of commercial structures); ORS 30.907 (asbestos-related disease, *see* § 7.16F(1)); ORS 30.908 (breast implants, *see* § 7.16F(2)); ORS 30.928(3) (R-type metal halide or mercury vapor light bulbs, *see* § 7.16F(6)).

See also § 7.16C (an action for wrongful death based on a product liability civil action) and § 7.16D (the statute of limitations is tolled during minority).

The general statute of limitations set forth in ORS 30.905(1) (product liability civil action for personal injury or property damage) is subject to the limitation imposed by ORS 30.905(2) (general statute of ultimate repose for such actions). *See* § 7.16B (statute of ultimate repose).

§ 7.16B Statute of Ultimate Repose—In General

In general, a product liability civil action for personal injury or property damage arising on or after January 1, 2010, must be commenced before the later of

(1) 10 years after "the product was first purchased for use or consumption"; 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).

NOTE: In 2009, the Oregon Legislature changed the statute of ultimate repose for product liability actions. The reader is cautioned to look to laws applying to claims arising before January 1, 2010.

NOTE: ORS 30.905(2) does not apply to certain types of product liability actions, which are subject to separate statutes of ultimate repose. *See, e.g.*, ORS 30.905(5) (manufactured dwellings and prefabricated structures, *see* § 7.16F(5)); ORS 12.135(2), (7) (construction, alteration, or repair of commercial structures); ORS 30.907 (asbestos-related disease, *see* § 7.16F(1)); ORS 30.908 (breast implants, *see* § 7.16F(2)); ORS 30.928(3) (R-type metal halide or mercury vapor light bulbs, *see* § 7.16F(6)).

See § 7.16C (wrongful death based on a product liability civil action).

§ 7.16C Wrongful Death

With certain exceptions, an action for wrongful death based on a product 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(3) does not apply to certain types of product liability actions, which are subject to separate statutes of limitations and repose. *See, e.g.*, ORS 30.905(5) (manufactured dwellings and prefabricated structures, *see* § 7.16F(5)); ORS 12.135(2), (7) (construction, alteration, or

repair of commercial structures); 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* § 7.16F(1) to § 7.16F(7) (specific product liability actions).

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 product liability claim arising on or after January 1, 2010, must be commenced before the earlier of

(1) three years after the decedent's death;

(2) 10 years after the product "was first purchased for use or consumption"; 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).

§ 7.16D Claims Arising During Minority

ORS 12.160 suspends the statute of limitations for product liability 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(1). 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., Inc.*, 55 Or App 641, 639 P2d 682 (1982), a 14-year-old plaintiff was injured while riding an allegedly defective bicycle. A product 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 product 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 product liability statute (ORS 30.905(2)). *Kearney*, 55 Or App at 645. *See* ORS 12.110(1). *See also* § 7.27C (discovery of defect after expiration of repose period).

See also § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations), § 2.7G(1) (minority does not toll statutes of ultimate repose).

§ 7.16E Exception for Products Provided by Physicians and Healthcare Entities

ORS 30.902 contains exceptions to liability under ORS 30.900 to 30.920 for products provided by certain individuals and entities in a healthcare setting, if (1)

the individual or entity provides the product to a patient as part of healthcare services and (2) the individual or entity was not involved in the design or manufacture of the product. The following individuals and entities are identified in ORS 30.902:

(1) a physician licensed pursuant to ORS chapter 677;

(2) a "health care facility" (as defined in ORS 442.015) or a "hospital-affiliated clinic" (as defined in ORS 442.612);

(3) a professional corporation or entity organized for the purpose of practicing medicine pursuant to ORS chapter 677 or rendering professional healthcare services pursuant to ORS 677.505 to 677.525 or ORS 678.375 to 678.390; and

(4) a residential care facility licensed under ORS chapter 443, including a facility with a memory care endorsement under ORS 443.886 and an assisted living facility.

The exceptions for entities listed in items (2) to (4) above do not apply if the entity offers the product "to the general public in a retail setting." ORS 30.902(2)(b), (3)(b), (4)(b).

§ 7.16F Product Liability Actions—Specific Products

§ 7.16F(1) Asbestos

The nature of a particular product liability case involving asbestos will determine which statutory time limitations apply. For actions against any person who performs the construction, alteration, or repair of any improvement to real property, the statute of ultimate repose is generally 10 years. ORS 12.135(2). However, a product liability action arising from asbestos-related disease is governed by ORS 30.907.

Any product 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(1).

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 Industries, Inc.*, 342 Or 23, 37, 147 P3d 1154 (2006).

A product liability action for damages resulting from asbestos-related disease is not subject to ORS 30.905 (product 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, 427–30, 959 P2d 89, *modified as adh'd to 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). Because ORS 30.907 is the only applicable statute governing the time limitations for asbestos-related disease, the 10-year statute of ultimate repose found in ORS 12.135 is inapplicable.

Note, however, that ORS 30.907 applies only when the asbestos-related product 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. *School District No. 1J, Multnomah County, Oregon 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 *ACandS* case without deciding whether it was "correct, as far as it went").

§ 7.16F(2) Breast Implants

With some exceptions, product 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 product 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) "[a]ll other elements required to establish 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 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: (1) the decedent, (2) the decedent's personal representative, or (3) "[a]ny 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 (product liability civil action), if the person

(1) "did not manufacture breast implants containing silicone, silica or silicon as a component at any time"; and

(2) "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).

For purposes of ORS 30.900 to 30.920, a healthcare facility "licensed under ORS chapter 441 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 purposes of a product liability civil action under ORS 30.900 to 30.920, a licensed physician, a healthcare facility, a professional corporation or entity organized to practice medicine or to render professional healthcare services, or a residential care facility "is not a manufacturer, distributor, seller or lessor of a product" if the physician or entity "provides the product to a patient as part of health care services" and the individual or entity "was not involved in the design or manufacture of the product." ORS 30.902(1)–(4). See § 7.16E for further information.

§ 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 product liability actions and actions based on negligence against the manufacturer. ORS 12.278(1).

Wrongful-death actions against manufacturers under this provision, including product 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 product 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.

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) (product liability actions). However, the exemption applies only to causes of action that arose on or

before January 1, 2007. Or Laws 2007, ch 536, § 2(1), *compiled as a note after* ORS 30.927. Thus, claims arising after January 1, 2007, are subject to the same statutory time limits as other negligence or product liability 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), *compiled as a note after* ORS 30.927.

§ 7.16F(5) Manufactured Dwellings

ORS 30.905 (which sets forth the limitations periods for product 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 product 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 limitations 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, 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 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). An action against a "manufacturer of extendable equipment for death 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 three years after the death." ORS 12.282(1). Such actions are 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. ORS 30.980(2). 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

The 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 the failure to give notice; or

(3) the ski resort operator failed to inform the skier of the notice procedures and the consequences of the 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). Note also that the discovery rule applies to any tort claim subject to ORS 12.110(1) that involves a claim for bodily harm. *See, e.g.*, *Whalen v. American Medical Response Northwest, Inc.*, 256 Or App 278, 287 n 8, 300 P3d 247 (2013).

§ 7.18 COMPENSATION OF VICTIMS OF CRIME—COMPENSABLE CRIMES

Oregon law affords victims of crime several rights, including the right to restitution. *See, e.g.*, ORS 137.106 (except as provided in ORS 137.106(8) regarding a victim that is an insurance carrier, 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 *Criminal Law in Oregon* chapter 34 (OSB Legal Pubs 2022).

Under ORS 147.005 to 147.365, a crime victim may be eligible for compensation through the Criminal Injuries Compensation Account administered by the Oregon Department of Justice (ODOJ). *See* ORS 147.225.

For discussion on the compensation of a crime victim for a "compensable crime" under ORS 147.005 to 147.365, see § 7.18A to § 7.18F. *See* § 7.18B (definition of *compensable crime*), § 7.18A (application for an award of compensation), § 7.18C (eligibility for an award).

§ 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 ODOJ for an award of compensation within one year after the date of the victim's injury, or within such further extension of time as the ODOJ, for good cause shown, allows. ORS 147.015(1)(e). Further, the victim of any compensable crime or the victim's representative may bring an action at any time within five years after the commission of the compensable crime. ORS 147.065. See § 7.18B for the definition of *compensable crime*.

An applicant for compensation under ORS 147.005 to 147.365 must file the application under oath on a form furnished by the ODOJ. 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(5).

§ 7.18C Eligibility for Award

A person is eligible for an award of compensation under ORS 147.005 to 147.365 for a compensable crime if the following requirements are met:

> (a) 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;
>
> (b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim, unless the Department of Justice finds that, notwithstanding the failure of notification, the applicant acted reasonably under the circumstances;
>
> (c) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;
>
> (d) The department determines that the victim acted reasonably with respect to the incident causing the death or injury to the victim, taking

> into account the specific situation of the victim and what a reasonable action would be for a person in the victim's circumstances; and
>
> (e) The application for an award of compensation under ORS 147.005 to [147.365] is filed with the department:
>
> (A) Within one year of the date of the injury to the victim; or
>
> (B) Within such further extension of time as the department, for good cause shown, allows.

ORS 147.015(1).

> NOTE: ORS 147.015(1)(e) incorrectly refers to ORS 147.367 rather than to ORS 147.365.
>
> NOTE: If an award of compensation is accepted, the State of Oregon is subrogated by that amount to any rights the applicant or recipient has "against the assailant or any other person or entity liable for the injury constituting the basis for the award." ORS 147.345(1).

§ 7.18D Amended Application for Compensation

An applicant for compensation under ORS 147.005 to 147.365 "must file an application under oath on a form furnished by the 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 department 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 ODOJ 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 147.365. ORS 147.135.

An applicant who disagrees with an order entered under ORS 147.135 may request review by the ODOJ. ORS 147.145(1). The ODOJ must notify the applicant of its decision within 30 days of the ODOJ's receipt of the request for review. ORS 147.145(2)(a).

Adult applicants have a 90-day period after the entry of an initial determination order to request reconsideration by the ODOJ. OAR 137-076-0056(1). For requests received after the 90-day period, the ODOJ may consider whether an extension is allowable for good cause. OAR 137-076-0056(1). "No good cause extensions will be considered after three years have passed from the date of the initial determination order." OAR 137-076-0056(1).

The time limit for applicants under the age of 18 to request reconsideration 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 ODOJ's decision on review may appeal to the Workers' Compensation Board. ORS 147.155. *See* § 7.18F (appeal to the Workers' Compensation Board).

§ 7.18F Appeal to Workers' Compensation Board

If an applicant for compensation under the compensable-crimes statutes disagrees with the ODOJ's decision on review (*see* § 7.18E), the applicant may appeal in writing to the Workers' Compensation Board (WCB). ORS 147.155(1)–(2).

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). *See also* OAR 438-082-0050(2) (notice requirement).

> 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 generally Tort Law in Oregon ch 1 (OSB Legal Pubs 2024) (assault and battery); *Criminal Law in Oregon* ch 34 (OSB Legal Pubs 2022) (crime victims' rights).

§ 7.19 LIQUOR LIABILITY

§ 7.19A In General

Oregon's previous liquor-liability law (*former* ORS 30.950 (2001)) was renumbered as ORS 471.565. The old statute provided for liability only to *third parties* injured by an intoxicated patron, not to the intoxicated patron. *Sager v. McClenden*, 296 Or 33, 40, 672 P2d 697 (1983).

In *Schutz v. La Costita III, Inc.*, 364 Or 536, 436 P3d 776 (2019), the Oregon Supreme Court held that ORS 471.565(1) allows first-party claims against servers and social hosts for negligent and intentional acts aside from the serving of alcohol. "The provisions of this subsection . . . do not apply to claims for relief . . . caused by negligent or intentional acts *other than the service of alcoholic beverages to a visibly intoxicated patron or guest*." *Schutz*, 364 Or at 544–45 (emphasis added; quoting the second sentence of ORS 471.565(1)).

In *Wilda v. Roe*, 290 Or App 599, 415 P3d 1146 (2018), the plaintiff was injured when an intoxicated driver lost control of his pickup and crashed into the plaintiff's home. The plaintiff sued the driver, and the driver filed a third-party

complaint against the tavern for contribution. The tavern argued that because the third-party claim would benefit the intoxicated patron, it should not be allowed. In rejecting the tavern's argument, the court reasoned that the legislature would not have intended to forbid the third-party claim because, even though it benefitted the intoxicated driver, it had the greater benefit of also protecting the innocent victim. The court concluded that "ORS 471.565(1) does not prohibit a patron's claim that seeks contribution for payment of the damages of the plaintiff injured by the intoxicated patron." *Wilda*, 290 Or App at 608.

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" (ORS 30.020(1)), while the limitations period for a survival action for injuries not resulting in death is two years (ORS 12.110(1)). Nothing in ORS 471.565 changes those deadlines.

PRACTICE TIP: The decisions in *Schutz*, 364 Or 536, and *Wilda*, 290 Or App 599, provide a narrow exception for intoxicated patrons to sue for themselves when there is some negligence aside from the serving of the alcohol. While the key to prosecuting such a claim is to find that negligence, the key to defending such a claim is to tie, directly or indirectly, all negligence back to the serving of alcohol.

§ 7.19B Notice of Claim Required—Time Limits

§ 7.19B(1) Wrongful Death (One Year)

A tort-claim notice against a licensee, permittee, or social host for wrongful death caused by an intoxicated patron or guest must be made within one year of the death, or within one year after the "person asserting the claim discovers or reasonably should have discovered the existence of a claim," whichever is later. ORS 471.565(3)(a). This deadline may be tolled in any number of ways. *See* § 7.19B(3) (tolling the notice period).

§ 7.19B(2) Injuries Other Than Wrongful Death (180 Days)

A tort-claim notice against a licensee, permittee, or social host for injuries caused by an intoxicated patron or guest other than wrongful death must be given within 180 days of the injury, or "within 180 days after the person asserting the claim discovers or reasonably should have discovered the existence of a claim, . . . whichever is later." ORS 471.565(3)(b). *See* § 7.19B(3) (tolling the notice period).

§ 7.19B(3) Tolling the Notice Period

The time for giving notice of a claim under ORS 471.565 "*does not include* any period during which" the claimant is under 18 years of age, is unable to give notice because of being "financially incapable" (as defined in ORS 125.005), or "is incapacitated" (as defined in ORS 125.005), or is "unable to determine" the correct licensee, permittee, or social host because the patron or guest asserts a "right against

self-incrimination." ORS 471.565(4). Although part of ORS 471.565 has been held to be unconstitutional (*see* § 7.19A), the notice deadlines are unaffected.

§ 7.19C Form of Notice Under Liquor-Liability Law

Notice of a claim under the liquor-liability law may be given in several ways. *See* ORS 471.565(5). *See also* § 7.19C(1) to § 7.19C(4) (forms of notice).

§ 7.19C(1) Formal Notice

Formal notice of a claim under ORS 471.565 must be in writing; must be mailed to or personally served on the defendant; must contain a statement that a claim for damages will be made; must describe the time, place, and circumstances giving rise to the claim; and must contain the claimant's name and mailing address to which correspondence can be sent. ORS 471.565(5)(a), (6).

§ 7.19C(2) Actual Notice

"Actual notice" of a claim under ORS 471.565 means "any communication" to the proper defendant that gives "actual knowledge of the time, place and circumstances of the claim" in a manner would be sufficient for a reasonable person to conclude that a claim is to be made against the defendant. ORS 471.565(7).

§ 7.19C(3) Notice by Commencement of Action

Notice of a claim under ORS 471.565 (other than wrongful death) may also be achieved by filing suit within 180 days after the date of the injury, or within 180 days after the person asserting the claim discovered or should have discovered the existence of a claim, whichever is later (ORS 471.565(3)(b)). ORS 471.565(5)(c).

Notice of a claim arising out of wrongful death must be given within one year after the date of death, or within one year after the person asserting the claim discovers or should have discovered the existence of a claim, whichever is later (ORS 471.565(3)(a)). ORS 471.565(5)(c).

§ 7.19C(4) Payment on Claim Satisfies Notice Requirement

Notice of a claim under ORS 471.565 is established if the defendant pays the claimant any part of the claim. ORS 471.565(5)(d).

> PRACTICE TIP: While Oregon's general liquor-liability statute (ORS 471.565) has strict notice requirements, ORS 471.410 (serving alcohol to those under 21), does not have such notice requirements. Thus, if a lawyer represents an injured person under the age of 21 and the time has passed for a tort-claim notice, the lawyer can still use ORS 471.410.

§ 7.20 STALKING

§ 7.20A Statute of Limitations

An action under the stalking statute for "repeated and unwanted contact" must be commenced within two years of the subject contacts, as any contacts falling

outside of that two-year period are not actionable. ORS 30.866(1), (6). *See, e.g.*, *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"); *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").

§ 7.20B References

See generally Family Law in Oregon ch 4 (OSB Legal Pubs 2023) (stalking and domestic violence).

§ 7.21 DEATH OF A PARTY

§ 7.21A Death of Injured Person

§ 7.21A(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 [ORS 30.020] 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 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)(a)–(b). *See also* ORS 147.065 (extending the period to five years for an action based on a compensable crime); § 7.18 to § 7.18F (compensation for compensable crimes).

For related subjects, see § 7.21A(2) (survival of actions), § 7.21A(3) (action for the death of an employee), § 7.21C (personal representative's powers), and § 7.22 (death resulting from a nuclear accident). *See also* § 2.2G to § 2.2G(4) (death or disability of a party), § 2.6B(1)(a) to § 2.6B(3) (tolling a statute of limitations), § 2.18A to § 2.18D (OTCA), § 7.3A to § 7.3B (governmental and public bodies), § 7.14A(7) (medical or dental malpractice resulting in wrongful death), § 7.27B(6) (statute of ultimate repose for wrongful death).

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.

§ 7.21A(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 (survival of causes of action).

If, before the decedent's death, the decedent commenced an action for injuries within the limitations period 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. ORS 30.075(1). 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). *But see* ORS 12.190(1) ("If a person entitled to bring an action dies before the expiration of the time limited for its commencement, an action may be commenced by the personal representative of the person after the expiration of that time, and within one year after the death of the person.").

§ 7.21A(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.

§ 7.21B Death of Wrongdoer

"Claims for relief arising out of injury to 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). ORS 30.080; ORS 115.305.

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

wrongdoer's estate. 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 their 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)(a). Further,

> if an action is commenced against a defendant who dies before the expiration of the time limited for commencement of the action or within 60 days after the action is commenced, a party may amend the complaint within 90 days after the action is commenced to substitute the personal representative of the defendant's estate for the deceased defendant.

ORS 12.190(2)(b).

Any such amendment relates back to the date the complaint was filed. ORS 12.190(2)(b).

§ 7.21C Personal Representative's Powers: The Relation-Back Doctrine

ORS 114.255 provides as follows:

> The duties and powers of a personal representative commence upon the issuance of the letters of the personal representative. The powers of a personal representative relate back in time to give the acts of the personal representative occurring prior to appointment the same effect as those occurring thereafter. 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.

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 person's appointment was later held invalid, the Oregon Supreme 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 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.

§ 7.22 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) 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).

§ 7.23 FEDERAL ISSUES

§ 7.23A Choice of Law

Federal law, or another state's statutes of limitations, ultimate repose, or other limitations may apply because of choice-of-law principles. *See* § 2.15A to § 2.15B (conflicts of laws). "Federal courts sitting in diversity must apply 'the forum state's choice of law rules to determine the controlling substantive law.'" *Fields v. Legacy Health System*, 413 F3d 943, 950 (9th Cir 2005) (quoting *Patton v. Cox*, 276 F3d 493, 495 (9th Cir 2002)). *See also AMC, LLC v. Northwest Farm Food Cooperative*, 481 F Supp 3d 1153, 1162 (D Or 2020) (quoting *Fields*).

§ 7.23B Federal Enclaves

A "federal enclave" is property within a state that remains under federal jurisdiction. US Const, Art I, § 8, cl 17 (enclaves include "Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings"). *See Paul v. United States*, 371 US 245, 264–68, 83 S Ct 426, 9 L Ed 2d 292 (1963). Federal jurisdiction is exclusive. State law that was in effect before the enclave was created remains, but only if it is consistent with federal law. *Naigan v. Nana Services*, *LLC*, No 12cv2648-LAB (NLS), 2013 US Dist LEXIS 133751 at *3–6, 2013 WL 5278641 (SD Cal Sept 18, 2013) (subsequent history omitted) (citing *Paul*, 371 US at 264, 268, and *Goodyear Atomic Corp. v. Miller*, 486 US 174, 180 n 1, 186, 108 S Ct 1704, 100 L Ed 2d 158 (1988)).

The court's opinion in *Abikar v. Bristol Bay Native Corp.*, 300 F Supp 3d 1092, 1103 (SD Cal 2018) (subsequent history omitted), contains a robust discussion of the federal enclave doctrine (holding that it applies only to work performed inside an enclave, not to work performed outside the enclave).

In federal enclave cases, the court must apply state substantive law and federal procedural law, just as in federal diversity cases. *King v. E.I. DuPont De Nemours & Co*., 741 F Supp 2d 699, 701–02 (ED Pa 2010) (subsequent history omitted).

> PRACTICE TIP: When faced with a claim for personal injury or property damage potentially occurring within a federal enclave, the lawyer must first determine whether the subject property is a federal enclave, then

find out whether some of the work may have been done outside the enclave, and then whether specific state or federal legislation relates to this property. From all this, the lawyer must calculate the statute of limitations.

§ 7.23C Federal Tort Claims Act

A tort claim against the United States must be "presented in writing *to the appropriate Federal agency* within two years after such claim accrues." 28 USC § 2401(b) (emphasis added). If the federal agency denies the claim, then action must be filed against the United States within six months of the agency's "final denial of the claim." 28 USC § 2401(b).

No action can be filed until the federal agency has had at least six months to examine the claim. 28 USC § 2675(a). After six months, the plaintiff may either continue to wait for the agency to respond or may consider the agency's inaction to be a form of denial and file suit.

CAVEAT: A tort-claim notice must go to the appropriate federal agency, not to the United States, even though the claim to be filed must be against the United States alone. Also, a deadline within six months of rejection of the claim may shorten the statute of limitations to less than two years.

§ 7.24 ACTIONS INVOLVING TRIBAL LANDS, ENTITIES, AND PERSONS

NOTE: The discussion of substantive Indian law and jurisdiction in § 7.24A to § 7.24B(3) is necessary to put statute-of-limitations issues involving Indian tribes and Indian lands in context.

§ 7.24A 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 are known as "federally recognized Indian tribes." An annual list of federally recognized Indian tribes is published in the Federal Register. *See* Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 89 Fed Reg 99,899 (Dec 11, 2024).

Jurisdiction over a particular personal-injury or property-damage case involving an Indian tribe or an enrolled member of a tribe or taking place on or near an Indian reservation 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," fee land 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 (*see* § 7.24B(2)); and, if a suit against a tribe for the actions of a tribal official or employee is contemplated, whether that person

was working in an official or individual capacity and 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 588 (1953) (codified as amended at 18 USC § 1162, 28 USC § 1360, and 25 USC §§ 1321 to 1326). The lawyer should consult an Indian law treatise for more in-depth discussion of these issues. See § 7.24B(2) for discussion on Public Law 280 and § 7.24B(3) for further discussion on federal jurisdiction. *See generally Hinkle v. Abeita*, 283 P3d 877 (NM Ct App), *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 on or off reservation for governmental or commercial activity, unless Congress has expressly authorized the suit or the tribe has voluntarily waived its immunity. *Michigan v. Bay Mills Indian Community*, 572 US 782, 797–99, 134 S Ct 2024, 188 L Ed 2d 1071 (2014); *Kiowa Tribe of Oklahoma v. Manufacturing 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); *Wright v. Colville Tribal Enterprise Corp.*, 159 Wash 2d 108, 112–15, 147 P3d 1275 (2006), *cert dismissed*, 550 US 931 (2007). 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 Community*, 572 US at 788–91; *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 (such as gaming operations). *Allen v. Gold Country Casino*, 464 F3d 1044, 1046–47 (9th Cir 2006), *cert den*, 549 US 1231 (2007); *see also Management 88, Inc. v. Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians*, No 25CV24602 at *2 (Or Cir Ct Coos Cnty Nov 26, 2025) (holding that the pharmacy is an arm of the Tribe protected from suit in the absence of any evidence indicating the pharmacy is a separate business entity not part of the Tribe). The various tests for what is an arm of a tribe protected by sovereign immunity is discussed at great length in *Great Plains Lending, LLC v. Department of Banking*, 339 Conn 112, 259 A3d 1128 (Conn Sup Ct 2021).

NOTE: As of the time of authorship, the *Management 88, Inc.* case is currently pending on appeal before the Oregon Court of Appeals.

Tribal immunity generally 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 for injunctive relief against tribal officials and employees responsible for unlawful acts may be permitted in appropriate situations under an analogy set forth in *Ex parte Young*, 209 US 123, 28 S Ct 441, 52 L Ed 714 (1908); *Bay Mills Indian Community*, 572 US at 795–96. In 2017, the United States Supreme Court qualified the foregoing principles in a manner that has been clarified some by additional litigation. In *Lewis v. Clarke*, 581 US 155, 159–60, 137 S Ct 1285, 197 L Ed 2d 631 (2017), the Court held that personal-injury suits

against a tribal employee, in the employee's individual capacity, for torts committed within the scope of employment do not implicate tribal sovereign immunity and are brought against the individual, not the sovereign, even when the individual will be indemnified by the tribe. The Court held that the question is whether the sovereign is the real party in interest, that is, whether the suit is in fact against the tribal official's office and thus against the sovereign itself, in which case tribal sovereign immunity would apply. *Lewis*, 581 US at 162–66. In *Lewis*, a tribal casino employee was involved in an automobile accident 70 miles off the reservation while driving casino patrons back to their home. *See Great Plains Lending, LLC*, 259 A3d at 1149–53.

Several questions are left unanswered by the *Lewis* decision, such as where an individual-capacity lawsuit against a tribal employee may be filed. In *Lewis*, because the accident took place far off the reservation and did not involve any tribal actions, state court jurisdiction was sustained. But the Court in *Lewis* did not disturb long-standing precedent holding that when an action took place on the reservation or in Indian country and the defendant is a tribal member or tribal employee, tribal court is the exclusive forum for any legal action. *See e.g.*, *Williams v. Lee*, 358 US 217, 221–22, 79 S Ct 269, 3 L Ed 2d 251 (1959). This issue becomes more complicated in Public Law 280 states such as Oregon. *See* § 7.24B(2) (state jurisdiction). Another open question is what personal immunities a tribal-employee-defendant can utilize, even though tribal sovereign immunity is not implicated. The Court in *Lewis* did not address this question because the defendant only raised the personal-immunity defense of official immunity on appeal. *Lewis*, 581 US at 164 n 2 (the court assumed that such defenses apply to tribal employees without addressing or deciding that question or the scope of such immunities as applied to Indian tribes).

Tribes are generally immune from state and federal legal process, such as subpoenas and discovery. *Bishop Paiute Tribe v. County of Inyo*, 291 F3d 549, 558 (9th Cir 2002), *vac'd and rem'd on other grounds*, 538 US 701, 123 S Ct 1887, 155 L Ed 2d 933 (2003) (warrant); *United States v. James*, 980 F2d 1314, 1319 (9th Cir 1992), *cert den*, 510 US 838 (1993) (subpoena). Tribal members are not immune from suit, however, solely by virtue of their status as tribal members. *Puyallup Tribe, Inc. v. Department of Game of Washington*, 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). In some cases, limited discovery may be allowed to determine whether tribal sovereign immunity applies (e.g., if an entity is really an "arm" of the tribe entitled to the tribe's sovereign immunity) or if one of the personal immunities applies. *See, e.g.*, *Tohono O'odham Nation v. Ducey*, No CV-15-01135-PHX-DGC, 2016 US Dist LEXIS 80440 at *5–6, 2016 WL 3402391 at *5 (D Ariz June 21, 2016) (legislative immunity); *Great Plains Lending, LLC*, 259 A3d at 1147–48.

This discussion of sovereign immunity is meant to emphasize that when a tribe voluntarily waives its sovereign immunity, which it sometimes does in

"limited" fashion in contract cases or personal-injury or property-damage cases, the time limitations and procedures set forth in such a 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. *See, e.g.*, *Wilson v. Umpqua Indian Development Corp.*, No 6:17-cv-00123-AA, 2017 US Dist LEXIS 101808 at *8–11, 17–18, 2017 WL 2838463 at *6–7 (D Or June 29, 2017) (holding that tribal sovereign immunity was not waived for failure to properly serve one tribal official who was required to receive notice under the tribe's tort-claims ordinance).

NOTE: By "limited," the authors are referring to the fact that no tribe waives its sovereign immunity in general fashion, exposing all 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, indirect, or other extraordinary damages. Attorney fees and costs for prevailing parties are usually included. This is a limited waiver of the tribe's sovereign immunity.

§ 7.24B Jurisdiction—Tribal, State, or Federal Court

Jurisdiction over a personal-injury action involving an Indian tribe, tribal employee, or a tribal member may, depending on the facts, lie in tribal court, state court, federal court, or concurrently in two or more of those courts. *See Lewis v. Clarke*, 581 US 155, 137 S Ct 1285, 197 L Ed 2d 631 (2017). Time limitations for filing suit vary with each court. *See* § 7.24B(1) to § 7.24B(3) (jurisdiction).

§ 7.24B(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. *Great Northern Life Insurance 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); *Raygor v. Regents of University of Minnesota*, 534 US 533, 542, 122 S Ct 999, 152 L Ed 2d 27 (2002) (the grant of supplemental jurisdiction in 28 USC § 1367(a) does not extend to claims against nonconsenting state defendants). This rule applies to Indian tribes. As a general matter, therefore, if a tribe has agreed under its laws to a waiver of sovereign immunity without specifying a jurisdiction, 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. United States ex rel. Department of Interior, Bureau of Indian Affairs*, 255 F3d 801, 812–13 (9th Cir 2001); *Big Horn County Electric Cooperative, 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 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 (including tribal entities and tribal employees acting within the scope of their authority) 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 tribal laws also include procedural restrictions. *See Wilson v. Umpqua Indian Development Corp.*, No 6:17-cv-00123-AA, 2017 US Dist LEXIS 101808 at *8–11, 2017 WL 2838463 at *4 (D Or June 29, 2017). 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 "Tribal Code" under "Government" to see the Tribal Code and Constitution).

(2) Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, https://ctclusi.org (click on "Tribal Code" under "Government"; see Title 2, Chapter 2-7, regarding tort claims).

(3) Coquille Indian Tribe, www.coquilletribe.org; https://www.coquilletribe.org/?page_id=1326 (Chapter 624, Tort Claims Ordinance).

(4) Cow Creek Band of Umpqua Tribe of Indians, www.cowcreek-nsn.gov.

(5) Confederated Tribes of Grand Ronde, www.grandronde.org (click on "Government," and then on "Tribal Court").

(6) Klamath Tribes, https://www.klamathtribalcourts.com/tribal-laws.

(7) Confederated Tribes of Siletz Indians, www.ctsi.nsn.us (click on "Government" then on "Tribal Ordinances," and then on "Torts & Indian Civil Rights Act").

(8) Confederated Tribes of the Umatilla Indian Reservation, https://ctuir.org (click on "Our Government," then on "Codes/Statutes/Laws," and then on "Tort Claims Code").

(9) Confederated Tribes of Warm Springs, https://warmsprings-nsn.gov (click on "Tribal Code," under "Government" 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 web-sites 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 have land in Oregon but they are headquartered in other states. One is the Nez Perce Tribe of Idaho, https://nezperce.org, 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. Other tribes claim legal interests within Oregon or conduct business within Oregon. If an accident or property damage were to occur in Oregon that involved any of these tribes, their laws would need to be scrutinized.

Many of the tort claims that might be brought against Indian tribes in Oregon arise at tribal casinos, which generally are arms or entities of the tribe and protected by the tribe's sovereign immunity. *See* § 7.24A. Tribes engage in gaming pursuant to federal law, the Indian Gaming Regulatory Act (IGRA), 25 USC §§ 2701 to 2721. This law requires that a tribe and the state negotiate a "compact" before a tribe can operate casino-style Class III gaming (*see* 25 USC § 2710(d)), and one of the permissible subjects that can be negotiated in such compacts is where jurisdiction for personal-injury claims against the tribe or the casino will lie. Oregon has negotiated relatively uniform Gaming Compacts under 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, as amended and restated December 2022 (https://www.bia.gov/as-ia/oig/gaming-compacts/2023-02-08/confederated-tribes-grand-ronde-community-tribal-state-gaming):

> 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: See https://www.indianaffairs.gov/as-ia/oig/gaming-compacts for Gaming Compacts, U.S. Department of the Interior, Indian Affairs. Each tribe's compact addresses tort-claim jurisdiction for that tribe.

Tort or property-damage suits by or against individual tribal members are a separate subject. As discussed in § 7.24B(2) regarding state jurisdiction, the State of Oregon has concurrent jurisdiction with many, but not all, 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. *Strate v. A-1 Contractors*, 520 US 438, 452–53, 117 S Ct 1404, 137 L Ed 2d 661 (1997) (quoting *Montana v. United States*, 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. *But see Dolgencorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F3d 167 (5th Cir 2014), *aff'd sub nom by equally divided Court*, *Dollar General Corp. v. Mississippi Band of Choctaw Indians*, 579 US 545, 136 S Ct 2159, 195 L Ed 2d 637 (2016) (upholding tribal jurisdiction over a sexual-assault suit against a non-Indian company operating under a tribal lease and under a tribal program). Of the two exceptions, the most commonly asserted is that the non-Indian "consents" to tribal jurisdiction. *See, e.g.*, *Dolgencorp, Inc.*, 746 F3d 167. 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 their presence on tribal property. This notice allows the tribe to assert tribal court jurisdiction against non-Indians. Case law also holds that the act of filing a suit in tribal court as a plaintiff operates as consent to tribal jurisdiction. *Smith v. Salish Kootenai College*, 434 F3d 1127, 1136 (9th Cir), *cert den*, 547 US 1209 (2006).

> NOTE: The second *Montana* exception allows tribal jurisdiction over non-member Indians and non-Indians when their conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 US at 566. This exception has been interpreted extremely narrowly. *See Strate*, 520 US at 452. The United States Supreme Court recently upheld tribal authority to detain non-Indians suspected of committing a crime and to turn them over to non-Indian authorities. *United States v. Cooley*, 593 US 345, 347–48, 350–51, 141 S Ct 1638, 210 L Ed 2d 1 (2021). The Supreme Court may have another opportunity to address the *Montana* exceptions if it grants certiorari in *McGowan v. Tix*, 161 F4th 1118 (8th Cir 2025). In *McGowan*, the Eighth Circuit held that the tribal court lacked subject-matter jurisdiction over a divorce proceeding between a tribal member and nonmember on the grounds that neither *Montana* exception applied. *McGowan*, 161 F4th at 1127–29.

In the opposite situation, except when a state or tribe is subject to Public Law 280 (*see* § 7.24B(2)), 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 North Pacific Insurance Co. v. Switzler*, 143 Or App 223, 229, 924 P2d 839 (1996); *Williams v. Lee*, 358 US 217, 79 S Ct 269, 3 L Ed 2d 251 (1959), *questioned by Hoffman v. Wood*, No CS-93-026-CI; No CS-92-082-CI, 1994 US Dist LEXIS 21858 at *6 (ED Wash Oct 25, 1994); *see also* Pub L 83-280, 67 Stat 588 (1953) (codified as amended at 18 USC § 1162, 28 USC § 1360, and 25 USC §§ 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.

§ 7.24B(2) State Jurisdiction

Under the United States Constitution, states generally lack authority over Indian tribes or Indian lands. *Seminole Tribe of Florida v. Florida*, 517 US 44, 62, 116 S Ct 1114, 134 L Ed 2d 252 (1996) (states "have been divested of virtually all authority over Indian commerce and Indian tribes"). Indian tribes generally 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 Engineering, P.C.*, 476 US 877, 890–91, 106 S Ct 2305, 90 L Ed 2d 881 (1986); *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 US 138, 104 S Ct 2267, 81 L Ed 2d 113 (1984). Jurisdiction over Indian tribes and tribal lands exists as an initial matter only in the tribes themselves 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 end its responsibility for Indian tribes and to move the federal government out of Indian affairs. One of these statutes was a 1953 law commonly known as Public Law 280. *See* Pub L 83-280, 67 Stat 588 (1953) (codified as amended at 18 USC § 1162, 28 USC § 1360, and 25 USC §§ 1321 to 1326). While this law was directed primarily at delegating federal criminal jurisdiction over Indians and Indian country to certain states, including Oregon (*see* 18 USC § 1162(a)), the law also included a limited civil component (*see* 28 USC § 1360(a)–(b)). With certain exceptions, 28 USC § 1360 delegated federal jurisdiction over private 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, one of which was Oregon. However, the Warm Springs Reservation was expressly exempted from operation of the statute. 28 USC § 1360(a). 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 for criminal cases. *See* Umatilla Indian Reservation; Oregon's Acceptance of Retrocession of Jurisdiction, 46 Fed Reg 2195 (Jan 8, 1981) (criminal jurisdiction). *See also* Burns-Paiute Indian Reservation; Acceptance of Retrocession of Jurisdiction, 44 Fed Reg 26,169 (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 over their own lands and members, so the tribes retain concurrent jurisdiction as applicable. *See Bryan v. Itasca County, Minnesota*, 426 US 373, 96 S Ct 2102, 48 L Ed 2d 710 (1976); *Doe v. Mann*, 415 F3d 1038, 1048–50, 1067 (9th Cir 2005), *cert den*, 547 US 1111 (2006). 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 387–89. Therefore, Public Law 280 affects only individual Indians and private civil lawsuits, not Indian tribes or tribal arms or entities.

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 for the purposes of the grant to the same extent as the state under the OTCA.

§ 7.24B(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 [federal] diversity jurisdiction." *American Vantage Cos. v. Table Mountain Rancheria*, 292 F3d 1091, 1097 (9th Cir 2002). *See* 28 USC § 1332.

In one major area, however, federal courts have exclusive 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 Congress passed a law in 1970 known as the Indian Self-Determination and Education Assistance Act (ISDEAA), Pub L 93-638, 88 Stat 2203 (codified as amended at 25 USC §§ 5301 to 5423). This statute allows Indian tribes to contract for and run 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 supplement 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. The specific facts are important because one of the main problems that Indian tribes ran into under the ISDEAA was obtaining insurance coverage for the programs they operated under ISDEAA contracts. Under the ISDEAA, 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 covered by the Federal Tort Claims Act (FTCA). So, in 1990, Congress amended the ISDEAA, providing that any tort-claim action against a tribe, a tribal organization, or a tribal contractor or employee that provides services under an ISDEAA contract is "deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the [FTCA]." 25 USC § 5321 note. *See* Pub L 101-512, tit III, § 314, 104 Stat 1915, 1959–60 (1990).

This provision makes potential tort claims against tribal-government-services providers extremely complicated, based on the source of funding and the 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 the 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.

§ 7.25 TORT-RELATED ISSUES

§ 7.25A Continuing Torts

§ 7.25A(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).

Oregon courts draw a critical distinction between two categories of factual circumstances when determining whether a tort qualifies as "continuing." *Barrington ex rel. Barrington v. Sandberg*, 164 Or App 292, 301, 991 P2d 1071 (1999) (Edmonds, P.J., concurring). "The first category involves repetitious, discrete acts that result in similar but separate injuries that may accumulate in effect," in which a claim for each injury accrues when the injury occurs. *Barrington*, 164 Or App at 301. These cases are not susceptible to continuing-tort analysis. *Barrington*, 164 Or App at 301. The second category "involves an injury that is due to no single act or occurrence but that accumulates and is continuous in nature," in which a plaintiff may bring a claim at any time while the injury is continuing or within the limitations period after its conclusion. *Barrington*, 164 Or App at 301–02.

§ 7.25A(2) Negligence

§ 7.25A(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 County*, 51 Or App 605, 613, 627 P2d 4 (1981), the plaintiff alleged a "continuing tort of negligent upkeep of [property], resulting 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.

§ 7.25A(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 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* § 7.25A(2)(c) (statutes of ultimate repose), § 7.27B(5) (statute of repose for medical malpractice); *see also* § 7.14C(1) to § 7.14C(3) (medical and dental malpractice); *Urbick v. Suburban Medical Clinic, Inc.*, 141 Or App 452, 457, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999) (in the absence of fraud, deceit, or misleading representation, Oregon's five-year period of ultimate repose for medical malpractice actions, triggered when the negligent act or omission occurs, is absolute; running of the repose period is not tolled on a theory of "continuing treatment," regardless of when the claim has accrued or whether it even has accrued).

§ 7.25A(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 (tolling of a statute of limitations for minors and persons with a disabling mental condition), any medical malpractice claim 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 or omission, 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 Medical Clinic, Inc.*, 141 Or App 452, 455–57, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999); *Cornell v. Merck & Co.*, 87 Or App 373, 376, 742 P2d 667 (1987); *see also DeLay v. Marathon LeTourneau Sales & Service 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).

§ 7.25A(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).

§ 7.25A(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 the incidents are "part of the basis of the claim even though some occurred before the tort claims notice period." *Barrington ex rel. Barrington v. Sandberg*, 164 Or App 292, 298, 991 P2d 1071 (1999).

§ 7.25A(5) References

See generally Tort Law in Oregon chs 3, 11, 32 (OSB Legal Pubs 2024) (intentional infliction of emotional distress; medical malpractice; statutes of limitations and repose, respectively).

§ 7.25B Contribution and Indemnity

§ 7.25B(1) Contribution

§ 7.25B(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).

§ 7.25B(1)(b) Contribution Among Tortfeasors—If No Judgment

If there is no judgment for injury or wrongful death 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).

§ 7.25B(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 a notice of payment and a claim to contribution with the court. ORS 18.242.

§ 7.25B(2) Indemnity

§ 7.25B(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).

§ 7.25B(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. *Southern Pacific 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 in *Southwest Forest Industries, Inc. v. Vanply, Inc.*, 43 Or App 347, 357–58, 602 P2d 1113 (1979).

§ 7.25B(3) References

See generally Tort Law in Oregon chs 16–17 (OSB Legal Pubs 2024) (multiple tortfeasors; indemnity and contribution).

§ 7.25C Insurance

Advance payments and advance permits to unions may have the effect of tolling statutes of limitations. *See* § 7.14B(2)(d) (defendant's advance medical payments), § 7.27C(2)(c) (insurer's advance medical payments).

§ 7.25D Tort or Contract

"[I]t is the gravamen or the predominant characteristic 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.'" *Metropolitan Property & Casualty 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.

§ 7.26 LOSS OF CONSORTIUM

A claim for loss of consortium is governed by the two-year catch-all limitations period 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 Medical Center*, 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).

§ 7.27 ULTIMATE REPOSE

§ 7.27A 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. *Waxman v. Waxman & Associates, Inc.*, 224 Or App 499, 506–07, 198 P3d

445 (2008); *Urbick v. Suburban Medical Clinic, Inc.*, 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999).

§ 7.27B When a Statute of Ultimate Repose Begins to Run

The period of ultimate repose runs from the date of "the act or omission complained of" (ORS 12.115(1)), or from the date of "delivery of a product or completion of work and cannot be extended, regardless of any unfairness to a plaintiff" (*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 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.

§ 7.27B(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, 264–65, 36 P3d 510 (2001); *Miller v. Ford Motor Co.*, 363 Or 105, 108, 419 P3d 392 (2018). *See generally Interpreting Oregon Law* (OSB Legal Pubs 2009).

§ 7.27B(2) Specific Statute of Ultimate Repose May Apply to a Claim

The Oregon 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 for actions arising from construction, alteration, or repair of improvements to real property is six years or 10 years after "substantial completion or abandonment" of the project, depending on whether the projects involves a "large commercial structure" or a "small commercial structure or residential structure"); 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 periods and repose periods may be set forth within the same statute or stated in different statutes. *See* ORS 12.110(4) (statutes of limitations and repose for medical malpractice claims); ORS 30.020 (specifying both limitations and repose periods for an action for wrongful death); ORS 12.115 (statute of ultimate repose for negligence claims in general).

§ 7.27B(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 (e.g., ORS 12.110(4) provides a five-year repose period for claims for medical negligence).

§ 7.27B(4) Legal Malpractice

The statute of ultimate repose for negligence (ORS 12.115) applies to actions for legal malpractice. *Marshall v. PricewaterhouseCoopers, LLP*, 371 Or 536, 555–57, 539 P3d 766 (2023); *Davis v. Somers*, 140 Or App 567, 570–72, 915 P2d 1047, *rev den*, 324 Or 78 (1996). There is no exception to the 10-year statute of repose for a "continuous relationship" between the parties in a legal malpractice case, and Oregon law does not provide for a "failure to correct" theory that would allow a plaintiff to avoid or extend the statute of repose. *Marshall* v. *PricewaterhouseCoopers, LLP*, 334 Or App 751, 755, 557 P3d 190 (2024).

§ 7.27B(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 such 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 Medical Clinic, Inc.*, 141 Or App 452, 456, 918 P2d 453 (1996), *rev den*, 329 Or 287 (1999) (internal quotation marks omitted).

§ 7.27B(6) Wrongful Death

No action for wrongful death may be commenced 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."

ORS 30.020(1). *See Fields v. Legacy Health System*, 413 F3d 943, 958–60 (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 product liability civil action for wrongful death is set forth in ORS 30.905(4). *See* § 7.27B(8)(d).

§ 7.27B(7) Breast Implants (Action Not Based on Product Liability)

With some specific exceptions, a nonproduct 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 a licensed healthcare 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 § 7.27B(8)(f) regarding product liability actions for death, injury, or damage resulting from breast implants.

§ 7.27B(8) Product Liability Actions

CAVEAT: The statutes of ultimate repose for product liability actions vary depending on the claim, the injury, and when the cause of action arises. *See* § 7.27B(8)(a) to § 7.27B(8)(h).

§ 7.27B(8)(a) Product Liability Action for Personal Injury or Property Damage

Generally, for causes of action arising on or after January 1, 2010, a product liability civil action for personal injury or property damage must be commenced before the later of

(1) 10 years after "the product was first purchased for use or consumption"; 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).

There are some exceptions to the statute, such as claims against manufacturers or distributors of manufactured dwellings. *See* ORS 30.905(5). *See also* § 7.27B(8)(e) (actions involving manufactured dwellings).

NOTE: The period of repose for a product 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. *See* Or Laws 2009, ch 485, §§ 1–2; ORS 30.905(2)(b), (3)(b) (2007).

NOTE: The text of ORS 30.905(2)(b) does not address how the statute of repose applies when the product was manufactured in a state that has no equivalent statute of repose. However, the Oregon Supreme Court has clarified that in such instances, a product liability action is not subject to a statute of repose. *Miller v. Ford Motor Co.*, 363 Or 105, 107, 419 P3d 392 (2018).

In *Miller*, the court analyzed the context and legislative history of ORS 30.905(2)(b) and concluded that this "look-away" provision was intended to protect Oregon citizens against improperly designed products in states outside Oregon by allowing plaintiffs "to bring their claims involving

out-of-state manufacturers in Oregon courts, without significantly expanding manufacturer liability." *Miller*, 363 Or at 112–13. Moreover, it was the legislature's intent "to extend that benefit to *all* Oregonians with such claims, not just to those with claims involving states that had enacted statutes of repose." *Miller*, 363 Or at 113 (emphasis in original).

NOTE: See § 7.27B(8)(b) regarding a product liability action involving a product that was manufactured in a foreign country.

§ 7.27B(8)(b) Product Liability Action for Foreign Manufactured Products

Effective January 1, 2010, the repose period for a product liability action involving a product that was manufactured in a foreign country is the later of

(1) 10 years after the product was "first purchased for use or consumption"; 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).

§ 7.27B(8)(c) Actions Before January 1, 2010—Personal Injury

The period of repose for product 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. 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.").

§ 7.27B(8)(d) Product Liability Action for Wrongful Death

The repose period for a product liability civil action for wrongful death that arises on or after January 1, 2010, is the earlier of

(1) three years after the decedent's death; or

(2) 10 years after the product "was first purchased for use or consumption"; 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).

NOTE: For a product liability wrongful-death action that arose before January 1, 2010, the statute of repose is the earlier of the limitations period provided by ORS 30.020 (the wrongful-death statute, *see* § 7.27B(6)) or 10

years "after the date on which the product was first purchased for use or consumption." ORS 30.905(3) (2009).

§ 7.27B(8)(e) ORS 30.905 Does Not Apply to Actions Involving Manufactured Dwellings

ORS 30.905 does not apply to a product 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).

§ 7.27B(8)(f) Product Liability Action for Breast Implants

With some specific exceptions, product liability actions for death or injury arising from breast implants are specifically exempt from ORS 30.905 and 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*.

> [A] product liability civil action for death, injury, or damage resulting from breast implants containing silicone, silica or silicon as a component must be commenced 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) The death or specific injury, disease or damage for which the plaintiff seeks recovery;
>
> (b) The tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant; and
>
> (c) All other elements required to establish plaintiff's claim for relief.

ORS 30.908(1).

(2) *When an action for death must be commenced.*

> [A]n 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 personal representative for the decedent; or
>
> (c) Any person for whose benefit the action could be brought.

ORS 30.908(3).

(3) *Suppliers of component parts or raw materials.*

> [A] person that supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component . . . shall remain subject to the limitations on actions imposed by

> ORS 30.020 [wrongful death, *see* § 7.27B(6)] and [ORS] 30.905 [product liability civil action], if:
>
> (a) The person did not manufacture breast implants containing silicone, silica or silicon as a component at any time; and
>
> (b) 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).

(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).

§ 7.27B(8)(g) Product Liability Action for Asbestos

Product 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 limitations or statute of ultimate repose. ORS 30.907(2).

§ 7.27B(8)(h) Sidesaddle Gas Tank and Manufacturer of Extendable Equipment

Several other claims are not subject to periods of repose by express legislative directive. For example, actions against manufacturers of pickup trucks for death, injury, or damage resulting from "a fire caused by rupture of a sidesaddle gas tank in a vehicle collision," as well as actions against manufacturers of extendable equipment for injury, death, or damage "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).

§ 7.27C 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).

§ 7.27C(1) Equitable Estoppel

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

§ 7.27C(2) Effect of Minority or Disabling Mental Condition

If a minor or a person with a disabling mental condition 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 (claims brought by minors).

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

§ 7.27C(2)(a) Minor's Action for Personal Injury

An action for personal injury 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 12.115. *Davis v. Blanchard*, 84 Or App 99, 102, 733 P2d 460 (1987).

§ 7.27C(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 System of Oregon Corp.*, 344 Or 445, 456, 184 P3d 1121 (2008).

§ 7.27C(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, 101–02, 733 P2d 460 (1987).

§ 7.27C(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). The longer time periods provided by the 2009 amendments to the statute apply to all causes of action based on child abuse, whether arising before, on, or after January 1, 2010. Or Laws 2009, ch 879, § 1. *See Doe v. Silverman*, 287 Or App 247, 253, 401 P3d 793 (2017), *rev den*, 362 Or 389 (2018) (holding that ORS 12.117(1) "applies to any applicable cause of action for which judgment has not been entered before the effective date of the 2009 amendment").

The exemption from the statute of repose also applies to child abuse actions brought against governmental entities. *Sherman v. State ex rel. Department of Human Services*, 368 Or 403, 418, 492 P3d 31 (2021).

ORS 12.117 applies to claims "based on conduct that constitutes child abuse or conduct allowing, permitting or encouraging child abuse that occurs while the person is under 18 years of age." ORS 12.117(1)(a). *See Lourim v. Swensen*, 328 Or 380, 389–90, 977 P2d 1157 (1999).

NOTE: The legislature amended section (1)(a) of ORS 12.117 in 2025, removing the term *knowingly* that originally appeared in ORS 12.117(1).

§ 7.27D References

See generally Tort Law in Oregon chs 20, 32 (OSB Legal Pubs 2024) (products liability; statutes of limitations and repose).

§ 7.28 ELDER FINANCIAL ABUSE

An *elderly* or *vulnerable person* (as defined in ORS 124.100(1)(a) and (e), respectively) 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 generally Elder Law* ch 9 (OSB Legal Pubs 2017). 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, which may or may not incorporate the discovery standard applied elsewhere. *See Landauer v. Landauer*, 221 Or App 19, 27, 188 P3d 406 (2008) (assuming without deciding that a father's proffered testimony 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). *See generally* ch 4 (family law), ch 6 (elder law).

Chapter 8

EMPLOYMENT LAW AND CIVIL RIGHTS

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§ 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, gender identity, 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). "A complaint alleging an unlawful employment practice as described in ORS 243.323, 659A.030, 659A.082, 659A.112 or 659A.370 must be filed no later than five years after" the unlawful practice. ORS 659A.820(3). For all other claims, the complaint must be filed no later than one year after the unlawful practice. ORS 659A.820(2); *see* § 8.1B(2) (time limitations).

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, gender identity, national origin, marital status, familial status, or source of income), or comparable federal law. ORS 659A.870(3). 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 alleges discrimination under ORS 659A.145, ORS 659A.421, or federal housing law. ORS 659A.820(6)–(7).

BOLI issues a notice to the complainant, if required under ORS 659A.880, 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 the applicable time period" and that the right to bring a civil action will be lost if not filed within the established time period. ORS 659A.880(2). If BOLI "has conducted an investigation and made a finding of substantial evidence," or if no investigation is conducted, the complainant may file a civil action against the respondent within 90 days of the date of the

notice's issuance, "if 90 days or less remain on the applicable statute of limitations" at the time of issuance, or before the statute of limitations period expires "if more than 90 days remain on the applicable statute of limitations" at the time of issuance. ORS 659A.880(3)(a). If BOLI has conducted an investigation and made a finding of no substantial evidence, the complainant may file a civil action against the respondent within one year of the date of the notice's issuance, "if more than one year remains on the applicable statute of limitations" at the time of issuance, or before the statute of limitations period expires if at least 90 days but not more than one year remain on the limitations period at the time of issuance, or within 90 days of the date of issuance if less than 90 days remain on the limitations period at the time of issuance. ORS 659A.880(3)(b). A person who has filed a complaint under ORS 659A.820 need not receive BOLI's notice before filing a civil action that is based on the same matters alleged in the complaint filed with BOLI. ORS 659A.870(6).

§ 8.1A(2) Civil Action

When no complaint has been filed with BOLI, 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, gender identity, 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, gender identity, 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 to 419A.271.

ORS 659A.030(1). Unlawful employment discrimination also includes discrimination against injured workers (ORS 659A.040–659A.069), discrimination against military servicepersons (ORS 659A.082–659A.099), discrimination against disabled persons (ORS 659A.103–659A.145), discrimination related to pregnancy (ORS 659A.146–659A.148), discrimination against whistleblowers (ORS 659A.199–659A.236), discrimination in employee housing (ORS 659A.250–659A.262), and other specified employment discrimination (ORS 659A.300–659A.362). "It is an unlawful employment practice under ORS chapter 659A for an employer to . . . discriminate between employees on the basis of a protected class in the payment of wages or other compensation for work of comparable character." ORS 652.220(1)(a).

Prohibited employment practices also include discriminating or retaliating against an employee who inquired about or discussed wages with another employee (ORS 659A.355(1)(a)); excluding a job applicant from an initial interview solely because of a past criminal conviction (ORS 659A.360(1)); denying family leave to an eligible employee (ORS 659A.183(1)); requiring "a former, current, or

prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits," to enter into an agreement that contains "a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct" that constitutes discrimination prohibited by ORS 659A.030, ORS 659A.082, or ORS 659A.112 (ORS 659A.370(1)); discriminating against an employee or prospective employee because they made a safety complaint (ORS 654.062(5)); requiring as a condition of employment that an employee or prospective employee have or present a valid driver license, "unless the ability to legally drive is an essential function of the job or is related to a legitimate business purpose" (ORS 659A.347(1)); or denying, interfering with, or failing to pay for sick time to which an employee is entitled under Oregon law (ORS 653.641(1)). Public employers are prohibited from requiring a former, current, or prospective employee to enter into an agreement that prevents the employee from discussing workplace harassment (ORS 243.323(1)).

It is also an unlawful employment practice for any person "to aid, abet, incite, compel or coerce the doing of any of the acts forbidden [in ORS chapter 659A] or to attempt to do so." ORS 659A.030(1)(h).

§ 8.1B(2) Time Limitations

A civil action alleging a violation of ORS 243.323 (prohibiting agreements that prevent employees from discussing workplace harassment), ORS 659A.030 (prohibiting discrimination based on a protected class), ORS 659A.082 (prohibiting discrimination against military servicemembers), ORS 659A.112 (prohibiting discrimination based on disability), or ORS 659A.370 (prohibiting agreements that prevent employees from discussing workplace discrimination) must be commenced not later than five years after the occurrence of the alleged violation. ORS 659A.875(1)(b). A civil action alleging any other unlawful employment practice "must be commenced within one year after the occurrence of the unlawful employment practice[,] unless a complaint has been timely filed under ORS 659A.820 [(BOLI complaints)]". ORS 659A.875(1)(a); *see* § 8.1A(1). The 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 Western Seed Co.*, 322 Or 457, 460, 909 P2d 858 (1996).

In claims of discriminatory wage rates based on protected class (ORS 652.220), each time compensation is paid under a discriminatory compensation decision is a separate unlawful practice for the purpose of time limitations. ORS 659A.875(7).

§ 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-Pacific Corp*., 103 Or App 563, 567, 798 P2d 697 (1990) (same).

§ 8.1B(4) Tort-Claims Notice

In most civil actions 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).

In civil actions alleging discriminatory wage rates based on a protected class (ORS 652.220) or discrimination based on wage inquiry or wage complaint (ORS 659A.355), notice must be given within 300 days of discovery of the alleged loss or injury. ORS 659A.875(8).

§ 8.1B(5) Rebuttable Presumption

In any action claiming discrimination on the basis of a safety complaint under ORS 654.062, there is a rebuttable presumption that the discrimination occurred "if a person bars or discharges an employee or prospective employee . . . or otherwise discriminates against an employee or prospective employee within 60 days after the employee or prospective employee" engaged in the protected activities described in the statute. ORS 654.062(7)(a). The person may rebut the presumption by a preponderance of the evidence. ORS 654.062(7)(a). When the alleged discriminatory action occurs more than 60 days after the protected activity, there is no statutory presumption one way or the other, and the existing rules and case law relating to the proximity of time between a protected activity and an adverse employment action apply. ORS 654.062(7)(b).

See § 8.2H(6) (retaliation claims).

§ 8.1B(6) 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, gender identity, 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 marijuana, and for 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).

It is unlawful for a healthcare facility or an individual licensed or certified by a health professional regulatory board to discriminate in the provision of care against any patient on the basis of the patient's race, color, national origin, sex, sexual orientation, gender identity, age, or disability. ORS 659A.142(6)(a).

§ 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 verified written complaint with BOLI, 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, gender

identity, 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 under ORS 659A.145 or ORS 659A.421, including discrimination in housing, may within one year after the unlawful practice, file a verified written complaint with BOLI. ORS 659A.820(2). These complaint processes are not available if the person has filed a civil action in state or federal court alleging the same matters. ORS 659A.820(1)–(4).

§ 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) Deadline for Civil Action

A person aggrieved by an unlawful practice of discrimination against a disabled person under ORS 659A.145 may file a verified written complaint with

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 (housing discrimination based on disability), ORS 659A.421 (housing discrimination based on other protected classes), or federal housing law. ORS 659A.820(4).

"A person who has filed a complaint [with BOLI] under ORS 659A.820 must commence a civil action under ORS 659A.885 within the applicable time period after a notice is mailed to the complainant under ORS 659A.880." ORS 659A.875(2); *see* § 8.1A(1) (BOLI filing). 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, unless it is a claim for disability discrimination against an employer under ORS 659A.112, in which case the statute of limitations is five years. ORS 659A.875(1).

CAVEAT: A person alleging discrimination under ORS 659A.145 or ORS 659A.421 must file a civil action within two years of the occurrence or the termination of the unlawful practice, or within two years after the breach of any settlement agreement entered into, whichever occurs last. ORS 659A.875(3); *see* § 8.1E(4) (deadline for unlawful housing discrimination).

§ 8.1E(2) Deadline for Unlawful Employment Discrimination

A civil action for unlawful employment discrimination against a disabled person under ORS 659A.112 must be filed within five years after the unlawful practice occurred, unless a complaint has been timely filed with BOLI under ORS 659A.820, in which case the civil action must be filed within the applicable time period after a notice is mailed to the complainant. ORS 659A.875(1)–(2); *see* § 8.1A(1) (BOLI filing). 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) Deadline for Unlawful Public-Accommodation Discrimination

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 under ORS 12.110(1). *T.L. ex rel. Lowry v. Sherwood Charter School*, No 03:13-CV-01562-HZ, 2014 US Dist LEXIS 28818 at *25–26, 2014 WL 897123 at *8–9 (D Or March 6, 2014), *aff'd*, 691 F App'x 310 (9th Cir 2017).

§ 8.1E(4) Deadline for Unlawful Housing Discrimination

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, except for claims under ORS 652.220 (prohibition of discriminatory wage rates based on protected class) or ORS 659A.355 (discrimination based on wage inquiry or wage complaint), for which the notice must be given within 300 days of discovery of the alleged loss or injury. ORS 659A.875(5), (8).

§ 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), § 8.1G(4) (housing discrimination), and § 8.1G(5) (education discrimination).

§ 8.1F Discrimination in Education

§ 8.1F(1) Tort-Claims 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, gender identity, national origin, immigration or citizenship status, marital status, age or disability." ORS 659.850(1)–(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) Deadline for Civil Action

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) (tort-claims notice). 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 Discrimination and Civil-Rights 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 limitation, 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 United States Supreme Court has held that state notice-of-claim requirements cannot be applied to claims such as 42 USC § 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 relieve 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. Immigration & Naturalization Service*, 272 F3d 1176, 1194–96 (9th Cir 2001)); *Lukovsky v. City & County 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 § 1981 (contracts), 42 USC § 1982 (property), 42 USC § 1983 (state action), and 42 USC §§ 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 University 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, 1333 (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 Board of Medicine*, 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 § 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." Judicial Improvements Act of 1990, Pub L 101-650, § 313(a), (c), 104 Stat 5089, 5114–15. 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 section 1658, Congress passed the Civil Rights Act of 1991, Pub L 102-166, 105 Stat 1071 (codified in scattered sections of 42 USC). Among its provisions was a clarification of the phrase "make

and enforce contracts" contained in 42 USC § 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 for violations of federal civil rights 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

Federal law prohibits discriminatory interference with private contracts, including purely private discrimination, as well as 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(a). Section 1981 provides a private right of action. *See Rivers v. Roadway Express, 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

A private right of action is provided by 42 USC § 1982 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) (Oregon's statute of limitations in federal civil-rights cases).

§ 8.1G(1)(c) State Action

A private right of action is provided by 42 USC § 1983 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) (Oregon's statute of limitations in federal civil-rights cases).

§ 8.1G(1)(d) Conspiracy

Federal law prohibits conspiracies to interfere with civil rights under 42 USC § 1985 and 42 USC § 1986, each providing 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) (Oregon's statute of limitations in federal civil-rights cases).

§ 8.1G(2) Federal Employment Discrimination Law

Federal employment discrimination claims often have administrative timelines 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, as amended, 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). 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) (BOLI filing). A civil action must be filed within the applicable time period of the mailing 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 applie[s] to actions in federal court, as well as state court." *Jensen v. Sweet Home Lodge No. 1972 of Benevolent & Protective Order of Elks of United States*, No CIV 06-6329-AA, 2007 US Dist LEXIS 77464 at *5–6, 2007 WL 3051657 at *2 (D Or Oct 16, 2007) (citing *Sharer v. Oregon*, 481 F Supp 2d 1156, 1164 (D Or 2007), *aff'd*, 581 F3d 1176 (9th Cir 2009)).

The following are examples of claims and applicable agency requirements:

Title VI of the Civil Rights Act of 1964 (codified at 42 USC §§ 2000d to 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 his designee." 28 CFR § 42.107(b).

Title VII of the Civil Rights Act of 1964 (codified at 42 USC §§ 2000e to 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 (e.g., 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 America, 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 § 8.1A(2) regarding the time limits for filing claims under the Oregon discrimination statutes.

The filing deadline under 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. *National Railroad 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, genetic information, or pregnancy, childbirth, or related medical conditions 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 having 15 or more employees, employment agency, labor organization, or joint labor-management committee). 42 USC § 12111(2), (5)(A); 42 USC § 12112(a). 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. Pacific Bell*, 202 F3d 1170, 1176 (9th Cir 2000), *overruled on other grounds by Socop-Gonzalez v. Immigration & Naturalization Service*, 272 F3d 1176, 1194–96 (9th Cir 2001); *O'Riley v. United States Bakery*, No CV-01-1705-ST, 2002 US Dist LEXIS 25538 at *20, 2002 WL 31974407 at *7 (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 complaint of discrimination in federal court. *See* 42 U.S.C. § 2000e-16(c). The same is true for claims under the ADA."). 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 employment discrimination 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 Hospital, No 94-35970, 1996 US App LEXIS 4670 at *5 (9th Cir Feb 20, 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 of 1967 (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, in "deferral" states such as Oregon, within 300 days after the alleged discrimination occurs or within 30 days after receiving notice that the state agency has terminated its proceedings, whichever is earlier. 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, unless the state proceedings end sooner. 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 & County 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); *EEOC v. First Citizens Bank of Billings*, 758 F2d 397, 401 (9th Cir 1985), *cert den*, 474 US 902. This time limit is more generous than that of Title VII. *County of Washington 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).

NOTE: Per the Lilly Ledbetter Fair Pay Act of 2009, Pub L 111-2, 123 Stat 5, for purposes of determining the accrual date of a cause of action for violation of the EPA, a separate violation occurs each time an employee "is

affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid." 42 USC § 2000e-5(e)(3)(A).

§ 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 timelines. 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) (federal employment discrimination law).

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 505 of the Rehabilitation Act of 1973 (29 USC § 794a). 42 USC § 12133.

CAVEAT: In *Zimmerman v. Oregon Department 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) (tort-claims notice).

§ 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 of 1968 (FHA) and the Fair Housing Amendments Act of 1988 (FHAA) (codified at 42 USC §§ 3601–3631). The FHA 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 BOLI. *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. 42 USC § 3613(a)(1)(B); *Fair Housing Council of Oregon v. Cross Water Development, LLC*, No C08-5755 FDB, 2009 US Dist LEXIS 24252 at *5, 2009 WL 799685 at *2 (WD Wash Mar 23, 2009) ("Pursuant to 42 U.S.C. § 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. American Express 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, 874 (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 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 § 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 University 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) (federal employment discrimination). The exhaustion of administrative remedies and timelines 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). IDEA provides a remedy for a disabled child who has been denied the right to "a free appropriate public education." 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 School District*, 254 F3d 877, 880–82 (9th Cir 2001). 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) (discrimination in education).

§ 8.1H References

See generally 6 *Federal Procedure, L.Ed.*, ch 11 (Civil Rights) (Thomson Reuters 2013); Robert G. Schwemm, *Housing Discrimination: Law and Litigation* (Thomson Reuters 2025); *Labor and Employment Law in Oregon: Private Sector* chs 5–9 (OSB Legal Pubs 2025); *Tort Law in Oregon* ch 27 (OSB Legal Pubs 2024) (discrimination claims in Oregon).

§ 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 their 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 must be commenced within 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. United States Bank National 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 of 1938 (FLSA) (codified as amended at 29 USC §§ 201–219) 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 (9th Cir 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. ORS 652.570(1)(a). The wage claimant must also file a court action within 30 days after the notice of claim is served. ORS 652.570(1)(b).

§ 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 void and unenforceable unless all of the following conditions 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 subsequent bona fide advancement of the employee;

(2) the employee is in one of the categories listed in ORS 653.020(3) (excluded employees);

(3) the employer has a protectable interest;

(4) within 30 days after the termination date of the employee's employment, the employer provides a signed, written copy of the terms of the noncompetition agreement to the employee; and

(5) the amount of the employee's annual gross salary and commissions at the time of termination exceeds $100,533 (in 2022), adjusted annually for inflation (except for certain on-air employees in the broadcasting business).

ORS 653.295(1). The term of a noncompetition agreement cannot exceed 12 months from the date of termination. Any period of time beyond 12 months is void and may not be enforced by an Oregon court. ORS 653.295(3).

§ 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); *Harmon v. Meyer*, 146 Or App 295, 297, 933 P2d 361 (1997).

§ 8.2G Other Employment Laws

For claims under ORS 659A.885 alleging discrimination or some other unlawful employment practice, see § 8.1B(2) and § 8.1E(2). For federal employment discrimination claims, see § 8.1G(2).

§ 8.2G(1) Personnel Records

Upon an employee's request, within 45 days an employer must

> provide reasonable opportunity for the employee to inspect, at the place of employment or place of work assignment, the personnel records of the employee that are used or have been used to determine the employee's qualification for employment, promotion, additional compensation, employment termination or other disciplinary action and time and pay records of the employee for the period required by the Fair Labor Standards Act, 29 U.S.C. 211(c).

ORS 652.750(2). If requested, the employer must produce a certified copy of the records. ORS 652.750(2).

Upon termination of employment, the employer must keep the terminated employee's personnel records for not less than 60 days. ORS 652.750(3)(a). Payroll records must be kept for at least three years. ORS 652.750(3)(b); 29 USC § 211(c); 29 CFR § 516.5(a).

§ 8.2G(2) Relating to False Employment Records

An employee whose employer knowingly compels, coerces, or otherwise induces or attempts to induce the employee to create or sign false documents relating to hours worked or compensation received by the employee has a private cause of action. ORS 652.100(1)–(2). Such claims must be brought within two years of the incident or discovery of the fraud and deceit. ORS 12.110(1).

§ 8.2G(3) Employment-Related Torts

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 their role as an employee. *See Delaney v. Taco Time International, 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) 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 the DCBS that implements the Act. Unless authorized by the DCBS, no one may give advance notice to the owner, employer, or agent of the employer. ORS 654.067(4).

§ 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. ORS 654.078(3); 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). The employer must post a copy of the extension request for 10 days or until the request has been granted or denied. OAR 437-001-0240(3)(h); OAR 437-001-0275(2)(j).

§ 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. The statutory timelines for such hearings are prescribed by the Oregon Administrative Procedures Act, ORS chapter 183. *See* ORS 654.290(2).

§ 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 OSHA, or testimony in a proceeding under the Oregon Safe Employment Act have two different statutes of limitations. First, an employee or prospective employee may, within one year after the employee or prospective employee has reasonable cause to believe that the violation has occurred, file a complaint with the commissioner of BOLI 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. The one-year time limit for a civil action does not apply if a timely BOLI complaint has been filed. ORS 654.062(6)(c).

In any action claiming discrimination on the basis of a safety complaint under ORS 654.062, there is a rebuttable presumption that the discrimination occurred if a person bars or discharges an employee or prospective employee or otherwise discriminates against an employee or prospective employee within 60 days after the employee or prospective employee engaged in the protected activities described in the statute. The presumption may be rebutted by a demonstration of the preponderance of the evidence. ORS 654.062(7)(a). If the alleged discriminatory action occurs more than 60 days after the protected activity, there is no statutory presumption, and the existing rules of case law relating to the proximity of time between a protected activity and an adverse employment action apply. ORS 654.062(7)(b).

§ 8.2I Unemployment Insurance

§ 8.2I(1) Eligibility

A person who worked at least 500 hours during the person's 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)(a). 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 ALJ's decision becomes final. ORS 657.270(6); *see* § 8.2I(5).

§ 8.2I(5) Employment Appeals Board

Upon an adverse decision from an ALJ, parties have 20 days from the date of delivery or mailing of the notice of decision 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 the 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 the purchase or sale of a security or the conduct of a 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 59.135; ORS 59.137(6).

§ 8.2J(1)(a) Administrative Actions Against Broker-Dealers

If the director of the DCBS 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 is not remedied within 60 days, the property, business, and assets will be liquidated according 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 DCBS, 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 procedures 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 consecutive 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 or the date on which the employee became aware 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 in Oregon: Private Sector (OSB Legal Pubs 2025); *Tort Law in Oregon* ch 29 (OSB Legal Pubs 2024) (claim arising from employment relationship). 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 DCBS 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. The 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 for a compensable injury by an employee of a noncomplying employer must be referred by the director of the DCBS 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 DCBS 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 DCBS. 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 of the DCBS. 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 insurer receives the cancellation notice, unless a later date is specified. ORS 656.423(2). Cancellation by notice and replacement coverage or by 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 DCBS 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 DCBS 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 the notice of closure is affirmed by order of the Hearings Division or subsequent order, 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 the notice of closure is affirmed by order of the Hearings Division or subsequent order, or until another order terminating benefits becomes final. ORS 656.206(6)(a).

§ 8.3B(4) Temporary Disability Benefits

No payment of temporary total- or 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).

§ 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) "[t]he attending physician advises the worker and documents in writing that the worker is released" to regular employment;

(3) "[t]he attending physician 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;
- is for a work site more than 50 miles from both the worker's residence and the site of injury, unless the parties' intent 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 or personal support 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." ORS 656.340(12).

The insurer or self-insured employer may voluntarily extend the payment up to 21 months. "The director [of the DCBS] may order the payment of temporary disability compensation for up to 21 months upon good cause shown by the injured worker." ORS 656.340(12). 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, and payments must continue at least once every two weeks thereafter unless the director of the DCBS 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) "[t]he date of any litigation order that orders payment of permanent total disability";

(3) the date of any Workers' Compensation Division order that orders payment for permanent disability;

(4) "[t]he date [that] any litigation order authorizing permanent partial disability becomes final";

(5) the date that the Workers' Compensation Board (WCB) or an ALJ 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(5)(a).

§ 8.3C Hearing

Generally, an insurer's or employer's request for a hearing, review, or appeal stays payment of compensation. ORS 656.313(1)(a).

§ 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)(a)–(b); 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 ALJ who mediated the agreement or by the WCB. Submission of a CDA to the ALJ or the WCB 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 WCB 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)(a).

Insurers and self-insured employers must report every claim for disabling injury to the director of the DCBS within 14 days of the insurer's or self-insured employer's initial decision to accept or deny the claim. ORS 656.264; OAR 436-060-0011(4)(A)(a). A number of other situations that also trigger a 14-day window for the insurer or self-insured employer to report the status of such a claim are listed in OAR 436-060-0011(4)(A).

§ 8.3G(2) Worker's Obligation

The worker or the worker's beneficiary 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)(a).

§ 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 "[t]he employer had knowledge of the injury or death," "[t]he 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). *But see* § 8.3G(4)(b) (longer notice period when independent medical examination is not in a reasonable location). 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(15).

§ 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 ALJ 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

"[I]f 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 the injured worker's 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 to 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 DCBS and 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 a written report that verifies the worker's inability to work resulting from a compensable worsening" and "that establishes by medical evidence supported by objective findings that the claimant has suffered a worsened condition attributable to the compensable injury." ORS 656.273(6); ORS 656.262(7)(a).

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. ORS 656.319(1)–(2); *see* § 8.3I(3)(a) (deadlines for denied claim).

§ 8.3G(9) Temporary Disability

If the attending physician 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 DCBS, 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. ORS 656.268(5)(d). The worker has 60 days from the date of notice of closure to request a hearing. ORS 656.268(5)(d)(B); *see* 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, a worker's beneficiary, 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. If the worker is deceased at the time the notice is issued, a beneficiary of the worker who was mailed a copy of the notice may request reconsideration within 60 days of the date of the notice of closure. A beneficiary to the estate of a deceased worker who was not mailed a copy of the notice may request reconsideration within one year of the date of the notice of closure was mailed to the estate. "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)(e). 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)(e).

§ 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 DCBS's receipt of the 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) (exceptions).

§ 8.3H(2)(b) Exceptions—Postponement

Reconsideration may be postponed by an additional 60 calendar days if, within the 18 working days, the DCBS mails notice of review by a medical arbiter, or if the director of the DCBS 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 WCB's receipt of the request for a hearing, and it may not be postponed for more than 120 days and "[e]xcept 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 DCBS 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 DCBS 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 DCBS 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 (SAIF) Corporation, contracted to provide the employer with workers' compensation coverage, the WCB 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) (appeal of denials).

§ 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).

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).

§ 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 presents its case-in-chief, 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 presentation 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 ALJ closes the hearing record. ORS 656.291(3)(b).

§ 8.3I(7) Final Order Disposition

§ 8.3I(7)(a) "Matter Concerning a Claim"

An 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 WCB 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 ALJ order is a final order of the director of the DCBS. ORS 656.740(5)(a). 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 WCB'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 WCB 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 WCB'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 ALJ 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 DCBS, 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 WCB for a hearing before an 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 accepted by the director. ORS 656.443(3)(a).

§ 8.3J(3) Claims Records

With the permission of the director of the DCBS, "a self-insured employer may process claims and make available claims records from a location outside of [Oregon]." ORS 656.455(2). If the director revokes permission, "the employer has 60 days after the order of revocation becomes final to comply" with the record-keeping provisions of ORS 656.455(1). 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 SAIF'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 SAIF 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

An employer's failure to send the signed payroll statement required by ORS 656.504 within 30 days after receipt of notice by the director of the DCBS or by SAIF is a misdemeanor. ORS 656.990(6).

§ 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, certified 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 DCBS within 10 days after the accident. ORS 656.583(2).

§ 8.3M Civil Penalty

§ 8.3M(1) Penalty for Noncompliance

The director of the DCBS 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 declared to be a noncomplying employer 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) (order declaring noncompliance).

§ 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). 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 denial becomes final. ORS 656.019(2)(b).

For more information regarding the time limitations for filing a negligence action, see chapter 7.

§ 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(6). 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. OAR 115-010-0100(1). The ERB, at its discretion, may set petitions for oral argument.

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). *See* ORS 243.766(3), (7).

§ 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," or on an alternative date that the parties agree to in writing. ORS 243.712(1). After the expiration of 150 days, either party may notify the ERB 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 jointly petition the ERB 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 and will serve the findings and recommendations on the parties

and the board. The parties then have five working 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 ERB 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 and the board 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, unless the parties agree to additional time, 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 calendar 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 because of prospective or actual reduction in staff, the teacher has "the right of recall for 27 months after the last date of release by the school district unless waived . . . by rejection of a specific position." ORS 342.934(7). Appeals from decisions on reduction in staff or recall are subject to the rules of the ERB "or by a procedure mutually agreed upon by the employee representatives and the employer." ORS 342.934(8).

§ 8.4C National Labor Relations Act

Employees and employers may bring claims to the National Labor Relations Board (NLRB) 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 the person's 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 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 Employee Retirement Income Security Act

The Employee Retirement Income Security Act of 1974 (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(b), (h). The Department of Labor has imposed different deadlines for different types of claims. *See* § 8.4E(1) to § 8.4E(2)(b).

§ 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 up to 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 up to 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 from receipt of notice of the plan's initial benefits determination to appeal the determination. 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 (1) is medically necessary, (2) is experimental or investigational, (3) is for the continuity of care, (4) is delivered in an appropriate setting at an appropriate level of care, or (5) requires an exception to the plan's prescription drug formulary. ORS 743B.252(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 743B.255(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 743B.256(3). Otherwise the IRO must issue a decision within 30 days of the request for independent review. ORS 743B.256(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. The extension cannot exceed 90 days from the end of the initial time 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 that immediately follows the request. 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 to the third meeting following receipt of the request. 29 CFR § 2560.503-1(i)(3)(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 [title 29 of the United States Code] 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 [title 29 of the United States Code] or the terms of the plan.

29 USC § 1132(a)(3). Such claims are subject to exhaustion of administrative remedies. 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.*, *Chuck v. Hewlett Packard Co.*, 455 F3d 1026, 1031 (9th Cir 2006); *Frances v. Gucci America*, *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) Claims Against the Plan Administrator for Breach of Fiduciary Duty

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 action 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 of 1952 (Pub L 82-414, 66 Stat 163) creates a five-year statute of limitations for rescinding a lawful permanent resident's (LPR's) status upon a finding that the resident was ineligible for LPR status at the time of adjustment and thus received the status erroneously. 8 USC § 1256(a).

Chapter 9

BUSINESS ORGANIZATIONS

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§ 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(1)(a)(E). 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." ORS 63.014(3). 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: (a) Knows of it; (b) Has received a notification of it; or (c) 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: (a) Comes to the person's attention; or (b) 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

An LLC's 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 63.479. The conversion takes effect at the later of the date and time determined under either ORS 63.011 (*see* § 9.1A(1)) or the statutes governing the business entity. ORS 63.476(2).

One or more business entities may merge into an LLC as provided by ORS 63.481 to 63.497. The merger takes effect at the later of the 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 an LLC's 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 LLC. 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 [an LLC] on the later of: (a) The date the initial articles of organization are filed; or (b) 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 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:
>
> (a) [a] claimant who did not receive written notice under ORS 63.641;
>
> (b) [a] claimant whose claim was sent in a timely manner to the dissolved [LLC] 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 63.644(3). However, claims will not be barred if they may be satisfied, in whole or in part, by insurance assets held by, on behalf of, or for the benefit of the dissolved LLC. ORS 63.644(4)(a).

§ 9.1A(8) Administrative Dissolution

After the Secretary of State gives an 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 ch 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 LLC who cannot be found or is not competent to receive them must be reduced to cash and deposited with the State Treasurer within six months after the final distribution is payable. ORS 63.674.

§ 9.1A(10) Foreign Limited Liability Companies

A foreign 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 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 ch 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." ORS 63.747(1). 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 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 debts 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 [LLC]." 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 (OSB Legal Pubs 2017) (limited liability companies).

§ 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 written 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 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]." ORS 70.075(2); *see In re Loverin Ranch*, 492 BR 545, 548 (Bankr D Or 2013) (a partnership that fails to file a certificate of limited partnership as required by ORS 70.075 will be treated as a general partnership).

§ 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: (a) The date the original certificate of limited partnership is filed; or (b) 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 under the following circumstances:

> (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) of this subsection is not vacated on or before the 90th day after expiration of the stay under paragraph (b) of this subsection.

ORS 70.180(5).

§ 9.1B(10) Withdrawal of Limited Partner

"A limited partner may withdraw from a limited partnership at the time or upon the . . . events specified in writing in the partnership agreement." ORS 70.255(2). 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).

If 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 [ORS chapter 70, 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 [ORS chapter 70, 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 time and date on which the articles of merger are filed;

(b) The time and date on which all documents required to be filed by the statute that governs any party to the merger that is a business entity other than a limited partnership are filed; 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." ORS 70.620(3). 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 (OSB Legal Pubs 2017) (limited partnerships).

§ 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 67.040(1).

> A person has notice of a fact if the person:
>
> (a) Knows of it;
>
> (b) Has received a notification of it; or
>
> (c) Has reason to know it exists from all the facts known to the person at the time in question.

ORS 67.040(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 67.040(3).

"A person receives a notification when the notification: (a) [c]omes to the person's attention; or (b) [i]s 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 67.040(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 67.040(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 67.040(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 the 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 a breach of the partnership agreement or for the 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:
>
> (A) The partner's rights under ORS 67.140, 67.150 or 67.155;
>
> (B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to ORS 67.250 or enforce any other right under ORS 67.220 to 67.265 [partner's dissociation]; or
>
> (C) The partner's right to compel a dissociation and winding up of the partnership business under ORS 67.290 or enforce any other right under ORS 67.290 to 67.315 [winding up 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:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(a) It is unlawful to carry on the partnership business with that partner;

(b) 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;

(c) Within 90 days after the partnership notifies a corporation that is a partner that it will be expelled because it has filed articles of dissolution or the equivalent, has been administratively dissolved or has had its right to conduct business suspended by the jurisdiction of its incorporation, there is no revocation of the articles of dissolution or the administrative dissolution or no reinstatement of its right to conduct business;

(d) Within 90 days after the partnership notifies [an LLC] that is a partner that it will be expelled because it has filed articles of dissolution or the equivalent, has been administratively dissolved or has had its right to conduct business suspended by the jurisdiction of its organization, there is no revocation of the articles of dissolution or the administrative dissolution or no reinstatement of its right to conduct business;

(e) Within 90 days after the partnership notifies a limited partnership that is a partner that it will be expelled because it has filed a certificate of cancellation or the equivalent, has been administratively inactivated or has had its right to conduct business suspended by the jurisdiction of its organization, there is no revocation of the certificate of cancellation or the administrative inactivation or no reinstatement of its right to conduct business; or

(f) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(a) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) 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

(c) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner is:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of that partner or of all or substantially all of that partner's property; or

(d) 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 a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(a) The partner's death;

(b) The appointment of a guardian or general conservator for the partner; or

(c) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of the existence of a partner who is not an individual, partnership, limited partnership, [LLC], corporation, trust or estate.

ORS 67.220.

§ 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 made 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 the 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 the following:

> (a) A statement of partnership assets and liabilities as of the date of dissociation;
>
> (b) The latest available partnership balance sheet and income statement, if any;
>
> (c) An explanation of how the estimated amount of the payment was calculated; and
>
> (d) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets [for wrongful dissociation] or other terms of the obligation to purchase.

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 in accordance with ORS 67.017 or the date and time determined under the statutes that govern" 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.

ORS 67.348(2)(a); ORS 67.365(2)(a). 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 67.011(1)(a)(E).

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 67.017(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 67.017(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 67.021(3). The limited liability partnership (LLP) or foreign LLP may appeal the refusal under the Oregon Administrative Procedures Act (ORS ch 183). ORS 67.024(1).

§ 9.1C(9) Registration and Cancellation of Limited Liability Partnerships

The status of a partnership as an LLP

> is effective upon filing of the application for registration or, if applicable, upon the delayed effective time and date set forth in the application for registration in accordance with ORS 67.017, and the payment of the required fee. The status remains effective, regardless of changes in the partnership, until the registration is voluntarily canceled pursuant to ORS 67.606 or the registration is revoked pursuant to ORS 67.660.

ORS 67.603(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 67.606(3).

§ 9.1C(10) Annual Report

An annual report must contain information that is current as of 30 days before the anniversary of the LLP. 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 an 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 ch 183). ORS 67.670(2).

§ 9.1C(12) Foreign Limited Liability Partnerships

A foreign 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 under the Oregon Administrative Procedures Act (ORS ch 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 (OSB Legal Pubs 2017) (general partnerships; limited liability partnerships).

§ 9.1D Professional Corporations

§ 9.1D(1) Application of General Corporation Law

The Oregon Business Corporation Act (ORS ch 60) applies to domestic and foreign professional corporations except when inconsistent with the Oregon Professional Corporation Act (ORS ch 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(1)(a)(E).

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 (OSB Legal Pubs 2017) (professional corporations).

§ 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(1)(a)(E).

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." ORS 62.040(3). 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 may vote in person, by electronic means[,] or by a proxy that the shareholder . . . executes in writing." ORS 62.195(1). 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(2).

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))
- 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." ORS 62.295(1). "The offices of secretary and treasurer may be combined in one person. At least one principal officer must be a director of the cooperative." ORS 62.295(1). 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 State Treasurer as set forth in ORS 98.352, and a copy filed with Oregon State University. ORS 62.720(1).

The State Treasurer must forward all funds received for unclaimed property of an agricultural cooperative to Oregon State University within 14 working days of receipt of the funds. ORS 62.720(3).

§ 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 the dissolution." ORS 62.704(1). 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 in [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)(e).

§ 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 (OSB Legal Pubs 2017) (cooperatives).

§ 9.3 CORPORATIONS—NONPROFIT

§ 9.3A Documents; Name

Except as provided in ORS 56.080, ORS 65.014, and ORS 65.275, a document filed with the Secretary of State is effective on the date that the Secretary of State files it, 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 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). "Electronic notice in writing is effective at the earlier of: (A) When the notice is received; or (B) Two days after the notice is sent, if the notice is correctly addressed." ORS 65.034(5)(a). Notice by mail or private carrier is effective at the earliest of the following:

- 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; or
- the date specified by the articles or bylaws with respect to notice to directors.

ORS 65.034(5)(b).

"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 corporation 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- or mutual-benefit corporation requires "a procedure that is fair and reasonable and is carried out in good faith." ORS 65.167(1). A procedure is fair and reasonable (1) if it "takes account of all relevant facts and circumstances," or (2) if the articles of incorporation or bylaws set forth 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, termination, or suspension. ORS 65.167(2). "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(3).

§ 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, or if the date is not set within 30 days after the date the notice is given, the person signing the demand may set the time and place of the meeting. ORS 65.204(3).

> A special meeting of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws or at a place the board of directors specifies . . . . If the board of directors does not determine that the special meeting will occur solely by means of remote communication and a place for the special meeting is not stated in or otherwise fixed in accordance with the bylaws, the special meeting must be held at the corporation's principal office.

ORS 65.204(4).

Notice of annual, regular, and special meetings is fair and reasonable if the corporation gives notice at least seven 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). "A determination of members must be made as of the time of close of transactions on the record date unless another time for doing so is specified at the time the record date is fixed." ORS 65.221(1). 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 the board 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, if the corporation is a public benefit corporation, the Attorney General, if the corporation did not hold an annual meeting within the earlier of six months after the end of the corporation's fiscal year or 15 months after the corporation's last annual meeting;
>
> (b) On application of any member or other person entitled to participate in a regular meeting or, if the corporation is a public benefit corporation, the Attorney General, if a regular meeting is not held within 40 days after the date the regular meeting 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, if the corporation is 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;
>
> (d) In accordance with ORS 65.281 for the purpose of approving a ratification of a defective corporate action, as defined in ORS 65.260.

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).

Unless the articles of incorporation or bylaws provide otherwise, the directors may, without a meeting, use email or other electronic means to take action that ORS chapter 65 requires or permits the board of directors to take at a meeting. ORS 65.343(1). Before taking action by electronic means, a corporation must send to the email address of each director an announcement that states the board of directors will take such action. The email announcement must include a description of the matter and must specify a deadline of not less than 48 hours after the time the corporation sends the announcement in which the director may record the director's vote. ORS 65.343(2)(a)–(b).

"A public benefit corporation or religious corporation 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" as part of a recruitment package unless the recruitment package does not exceed three years, and notice is given to the Attorney General 20 or more days before the loan, guarantee, or modification becomes binding on the corporation. ORS 65.364(1).

§ 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 the corporation files articles of merger. ORS 65.484(2).

A public-benefit or religious corporation must give 30 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 30 days after the notice. ORS 65.627(1)–(2). A corporation may revoke its dissolution within 120 days of the dissolution's effective date. ORS 65.634(1).

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. 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 timely sent to the corporation but not acted on; and
- claimants with claims that are contingent or based on postdissolution events.

ORS 65.644(4).

§ 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 all actions approved by the members for the past three years," "[w]ritten 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 the 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), by any director, or by the Attorney General if the corporation is a public-benefit corporation or a religious corporation. ORS 65.174(1). If the proceeding involves a public-benefit corporation, a religious 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(1)(a)(E).

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 reasonable in the circumstances in which the notice is given. ORS 60.034(1). Except in the following circumstances, "a notice or communication, including a notice of a meeting of a . . . corporation's board of directors or shareholders or a director's or shareholder's written consent, may be delivered by electronic transmission." ORS 60.034(4)(a).

(A) The articles of incorporation or bylaws . . . prohibit delivery by electronic consent;

(B) The intended recipient of the notice or communication delivers an electronic notice revocation at least 30 days before the notice or communication is sent; or

> (C) The notice or communication is related to a revocation of dissolution under ORS 60.634.

ORS 60.034(4)(b).

> (a) A person who delivered an electronic notice revocation may rescind the electronic notice revocation by notifying the recipient of the . . . revocation of the person's intent to rescind.
>
> (b) A person has constructively delivered an electronic notice revocation if an electronic transmission of a notice or communication intended for the person fails after two successive delivery attempts and an individual with responsibility for delivering notices or communications from the corporation has actual knowledge of the failure.
>
> . . . .
>
> (d) If an electronic transmission . . . fails as provided in paragraph (b) of this subsection, the corporation that sent the notice or communication shall promptly use a method other than electronic transmission to deliver the notice or communication. A corporation's failure to use a method of delivery other than electronic transmission does not by that failure invalidate a meeting or action.

ORS 60.034(5).

> Unless a domestic corporation's articles of incorporation or bylaws provide otherwise or unless a person who sends a notice or communication and the intended recipient of the notice or communication agree otherwise, the recipient receives the notice or communication by electronic transmission:
>
> (A) When the notice or communication enters an information processing system that the recipient uses to receive or has designated for receiving notices or communications from the person by electronic transmission;
>
> (B) If the recipient can retrieve the notice or communication;
>
> (C) If the notice or communication is in a form that the information processing system can process; and
>
> (D) Even if the recipient or an employee or agent of the recipient is not aware of the electronic transmission.

ORS 60.034(6)(a).

Unless provided otherwise in articles of incorporation or bylaws, or unless agreed otherwise by the sender and the intended recipient, the notice or communication is delivered and effective on the earliest of the following dates or times:

(1) when the recipient actually receives a tangible copy of the notice or communication, or when the person who sends the notice or communication leaves a tangible copy of the notice or communication at a shareholder's address, a director's residence or business address, or the corporation's principal place of business;

(2) if the notice or communication is postage prepaid and correctly addressed to a shareholder, then on the day the person who sends the notice or communication deposits the notice or communication in the United States mail;

(3) if the notice or communication is postage prepaid and correctly addressed to a nonshareholder, then five days after the person who sends the notice or communication deposits the notice or communication in the United States mail, except that if the communication is by registered or certified mail, return receipt requested, then on the date on which the recipient actually received the notice or communication or on the date shown on the return receipt signed by the recipient;

(4) if the notice or communication is by electronic transmission, then when the notice or communication enters an information processing system that the recipient uses to receive or has designated for receiving notices or communications from the person by electronic transmission; or

(5) if the notice or communication is oral, then on the date and time of delivery.

ORS 60.034(7)(b).

A notice is effective only if comprehensibly communicated. ORS 60.034(7)(a).

§ 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 a 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." ORS 60.174(3)(f). 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 earlier 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

> (a) On application of any shareholder . . . entitled to participate in an annual meeting 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 the corporation's last annual meeting;
>
> (b) 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 corporation's secretary or the special meeting was not held in accordance with the notice; or
>
> (c) In accordance with ORS 60.291 for the purpose of approving a ratification of a defective corporate action as defined in ORS 60.270.

ORS 60.207(1).

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 "[v]alid 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." ORS 60.265(3). 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) "[o]ne 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 stock subscribers 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 "[n]otify 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 merger plan 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 by written consent without a meeting in accordance with ORS 60.211(1)(b), "the corporation shall deliver a written dissenters' notice to all shareholders who are entitled to assert dissenters' rights." ORS 60.567(1). 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). Claims will not be barred under ORS 60.644 if a claim may be satisfied, in whole or in part, by insurance assets held by, on behalf of, or for the benefit of the dissolved corporation. ORS 60.644(4)(a).

§ 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 ch 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 State Treasurer 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)(b).

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 may inspect and copy corporate records by giving a signed written notice at least five business days prior to inspection. 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 receiving 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 the corporation receives 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 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, actions that are or will be illegal, oppressive, or fraudulent, or the misapplication or wasting of corporate assets (ORS 60.952(1)), and if the court orders a share purchase, the share purchase must be consummated 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* (OSB Legal Pubs 2017).

§ 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(1); *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 ch 78) governed the creation, perfection, and priority of security interests in securities or *investment property* (now defined by ORS 79A.1020(1)(yy)). Revised Article 9 (ORS ch 79A) now governs such security interests. *See* ORS 79A.1060; ORS 79A.3050; ORS 79A.3120; ORS 79A.3140.

§ 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 79A.1020(1)(yy)) in one of three ways:

(1) by filing a financing statement (ORS 79A.3120);

(2) by possession (delivering a security certificate to the secured party) (ORS 79A.3130); or

(3) by obtaining control (ORS 79A.3140).

If perfection depends on possession of the collateral by the secured party, "perfection occurs not earlier than the time the secured party takes possession and continues only while the secured party retains possession." ORS 79A.3130(4).

A secured party who perfects by control has priority over a secured party who perfects only by filing. ORS 79A.3280(1). Multiple secured parties who perfect by control rank on a first-to-obtain-control (by agreement) basis. ORS 79A.3280(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 a signed security agreement." ORS 79A.3120(5). After the 20-day period expires, perfection depends on compliance with ORS chapter 79A. ORS 79A.3120(8).

§ 9.5D(2) Priority

Priority disputes are governed by ORS 79A.3220, ORS 79A.3230, and ORS 79A.3280. ORS 79A.3280(7).

Chapter 10

BUSINESS LITIGATION

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§ 10.1 ANTITRUST LAW

§ 10.1A Investigative Demands

"When it appears to the [Oregon] Attorney General that a person has engaged in, is engaging in, or is about to engage in" an unlawful act or practice under ORS 646.725 or ORS 646.730, 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 recipient "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 return day 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 may 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 instituted by the United States" under federal antitrust laws (except 15 USC § 15a), "based in whole or in part on the same matter complained of, whichever is later." ORS 646.800(1).

§ 10.1B(2) Action to Recover Damages

An action by any person, the state, or any public body to recover damages under ORS 646.780 for a violation of the antitrust laws (ORS 646.725 or ORS 646.730) must "be commenced within four years after the cause of action accrued, or within one year after the conclusion of any proceeding" instituted 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); *see also* ORS 646.780(1)(a).

§ 10.1B(3) Accrual of Cause of Action

Although Oregon appellate courts have not directly addressed when a cause of action "accrues" under ORS 646.800, a federal district court has interpreted ORS 646.800 to include a discovery rule because the statute refers to the "accrual" of claims. *See Connecticut v. Sandoz, Inc.*, No 3:20-CV-00802-MPS, 2025 US Dist LEXIS 214944 at *172, 2025 WL 3043397 at *54 (D Conn Oct 31, 2025) (citing *In re Packaged Seafood Products Antitrust Litigation*, 242 F Supp 3d 1033, 1108 (SD Cal 2017)); *see also In re Packaged Seafood Products Antitrust Litigation*, 242 F Supp 3d at 1108 (citing *Rice v. Rabb*, 354 Or 721, 726–27, 320 P3d 554 (2014)).

§ 10.1C References

See generally chapter 12 (consumer law); 4 *Advising Oregon Businesses* ch 58 (OSB Legal Pubs 2018) (antitrust laws).

§ 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 when the damages actually accrue. ORS 12.110(1); *Butcher v. McClain*, 244 Or App 316, 321, 260 P3d 611

(2011) (economic relations); *Cramer v. Stonebridge Inn, Inc.*, 77 Or App 407, 411, 713 P2d 645 (1986) (contractual relations).

Oregon courts have found that the discovery rule in ORS 12.110(1), which applies to claims based on fraud or deceit, does not apply to an action for intentional interference with contractual or economic relations. *See Butcher*, 244 Or App at 321 (finding that the discovery rule did not apply to the plaintiff's economic relations claim); *see also Cramer*, 77 Or App at 411 (interference with contractual relations); § 10.2B (accrual of cause of action). *See generally Murphy v. Allstate Insurance Co.*, 251 Or App 316, 321–22, 284 P3d 524 (2012) (describing the discovery rule incorporated in ORS 12.110(1)).

> NOTE: ORS 12.110(1) generally applies to "any injury to the person or rights of another." The limitations period provided in ORS 12.110(1) applies to an action for intentional interference with economic relations because the action sounds in tort. *Butcher*, 244 Or App at 321 (citing *Allen v. Hall*, 328 Or 276, 281–82, 974 P2d 199 (1999)). The provision likewise applies to an action for intentional interference with a contractual relationship which is also a tort. *See Cramer*, 77 Or App at 410–11 (applying ORS 12.110(1) and referring to "the tort of interference with contractual relationships").

§ 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 Service Body Shop, Inc. v. Allstate Insurance Co.*, 283 Or 201, 209, 582 P2d 1365 (1978); *Ron Tonkin Gran Turismo, Inc. v. Wakehouse Motors, Inc.*, 46 Or App 199, 208, 611 P2d 658, *rev den*, 289 Or 373 (1980)); *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. In *Butcher*, the court held that the accrual of the plaintiff's claim for interference with economic relationship was "not subject to a rule of discovery" because it was not based on fraud or deceit. *Butcher*, 244 Or App at 321. *See also Cramer*, 77 Or App at 411 (similarly distinguishing when a cause of action accrues from the rule of discovery, explaining that the issue before the court was "not whether a 'discovery' date should be made applicable to the tort of interference with contractual relationships but, rather, when the cause of action accrued").

§ 10.2C References

See generally Damages in Oregon ch 15 (OSB Legal Pubs 2024) (interference with contractual and business relations); *Tort Law in Oregon* ch 26 (OSB Legal Pubs 2024) (intentional interference with economic relations).

§ 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 646.461–646.475) "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 Tort Law in Oregon § 26.5-1(a)(1) to § 26.5-1(a)(7) (OSB Legal Pubs 2024) (statutory cause of action for misappropriation of trade secrets).

§ 10.4 PRICE DISCRIMINATION

§ 10.4A Statute of Limitations Under the Anti-price Discrimination Law

An action "to prevent, restrain or enjoin [a] violation or threatened violation" of Oregon's Anti-price Discrimination Law (ORS 646.010–646.180) must be brought "within four years from the date of the injury." ORS 646.140(1), (3).

§ 10.4B References

See generally 4 *Advising Oregon Businesses* § 69.3-5(c) (OSB Legal Pubs 2018) (price discrimination).

§ 10.5 RACKETEERING STATUTES

§ 10.5A In General

Generally, a party may bring a civil action for a violation of the Oregon Racketeer Influenced and Corrupt Organization Act (ORICO) (ORS 166.715–166.735) for a "pattern of racketeering activity." *See generally Cruze v. Hudler*, 246 Or App 649, 667–71, 267 P3d 176 (2011), *adh'd to as modified on recons*, 248 Or App 180, 274 P3d 858 (2012) (describing civil actions under ORICO). See ORS 166.715(6) for a description of conduct that constitutes "racketeering activity" under ORICO.

§ 10.5B Statute of Limitations; Suspension of Limitations Period

A civil action for a violation of ORICO "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); *see also Htaike v. Sein*, 269 Or App 284, 301–02, 344 P3d 527 (2015), *rev den*, 357 Or 595 (2015) (analyzing whether the statute of limitations ran against the plaintiff's ORICO claim); *Stevens ex rel. Olson v. Stevens*, No 3:24-CV-411-SI, 2024 US Dist LEXIS 206855 at *12–13, 2024 WL 4785339 at *5 (D Or Nov 14, 2024) (analyzing statute of limitations and applying *Htaike*).

"If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of [ORICO]" and a "cause of action aris[es] under subsection (6) or (7) of [ORS 166.725,]" which is "based in whole or in part upon any matter complained of" in the prosecution, action, or proceeding, the five-year limitations period for the cause of action is "suspended during the pendency of such prosecution, action or proceeding and for two years" after it terminates. 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 limitations period provided in ORS 166.725(11)(a) is also "suspended during any appeal from the criminal conviction for the underlying activity." ORS 166.725(11)(b); *see also* § 10.5C (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). *See Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 US 143, 150–56, 107 S Ct 2759, 97 L Ed 2d 121 (1987).

§ 10.5C Accrual of Cause of Action

In general, a cause of action for a violation of ORICO accrues when the plaintiff "discovered or, in the exercise of reasonable diligence, should have discovered that they had been damaged and the cause of the damage." *Penuel v. Titan/Value Equities Group, Inc.*, 127 Or App 195, 200, 872 P2d 28, *rev den*, 319 Or 150 (1994); *see also Willms v. AmeriTitle, Inc.*, 314 Or App 687, 713, 499 P3d 79 (2021) (applying *Penuel*).

If the running of the statute of limitations has been suspended during the pendency of a criminal prosecution for the underlying activity (*see* § 10.5B), 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." ORS 166.725(11)(b). As discussed in § 10.5B, the limitations period is also suspended during any appeal from the criminal conviction for the underlying activity. ORS 166.725(11)(b).

§ 10.5D Proof of a Pattern of Racketeering Activity

To bring a civil action for racketeering against a party, the plaintiff must demonstrate a "pattern of racketeering activity" by showing at least two incidents of "racketeering activity." *See* ORS 166.715(4); *see also Cruze v. Hudler*, 246 Or App 649, 668, 267 P3d 176 (2011), *adh'd to as modified on recons*, 248 Or App 180, 274 P3d 858 (2012). The incidents cannot be isolated and must occur within five years of each other. ORS 166.715(4); *see also State v. Stout*, 362 Or 758, 763, 415 P3d 567 (2018); *Computer Concepts, Inc. Profit Sharing Plan v. Brandt*, 98 Or App 618, 631–32, 780 P2d 249 (1989), *aff'd*, 310 Or 706, 801 P2d 800 (1990) (referring to the plain meaning of the statute, holding that "the 'pattern of racketeering' element in an ORICO claim is satisfied by two incidents of 'racketeering

activity,' interrelated as defined in ORS 166.715(4), provided that the incidents were not isolated and occurred within five years of each other").

§ 10.5E References

See generally Tort Law in Oregon § 26.5-1(b) (OSB Legal Pubs 2024) (intentional interference with economic relations and related actions); *Legal Ethics in Oregon* § 16.6-11(a) (OSB Legal Pubs 2026) (securities violations).

§ 10.6 VIOLATIONS OF THE OREGON SECURITIES LAW

§ 10.6A Statute of Limitations for Actions Against Sellers of Securities Under ORS 59.115

Under ORS 59.115, a purchaser of a security may bring an action against the person who sold or successfully solicited the sale of the security in violation of ORS 59.115(1)(a) or (b) (which incorporates by reference violations of ORS 59.135(1) or (3)). ORS 59.115(1). A purchaser also may bring an action against every person who: (1) "directly or indirectly controls a seller liable under [ORS 59.115(1)]"; (2) is a "partner, limited liability company manager, including a member who is a manager, officer or director" of a seller liable under ORS 59.115(1); (3) "occup[ies] a similar status or perform[s] similar functions"; or (4) "participates or materially aids in the sale[.]" ORS 59.115(3). All such persons are "liable jointly and severally with and to the same extent as the seller." ORS 59.115(3). It is an affirmative defense to a claim under ORS 59.115(3) that the nonseller "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 also Prince v. Brydon*, 307 Or 146, 150, 764 P2d 1370 (1988).

An action brought under ORS 59.115 must be commenced within three years after the sale, except that a discovery rule applies to an action for a violation of ORS 59.115(1)(b) or ORS 59.135. *See* ORS 59.115(6). Such an action must be commenced within the later of (1) "three years after the sale" or (2) "two years after the person bringing the action discovered or should have discovered the facts on which the action is based." ORS 59.115(6).

The law is unsettled as to the extent to which the discovery rule set forth in ORS 59.115(6) applies to a claim against a nonseller under ORS 59.115(3). In *Anderson v. Carden*, 146 Or App 675, 687–88, 934 P2d 562, *rev den*, 326 Or 68 (1997), the Oregon Court of Appeals held that the discovery rule applies to a claim against a nonseller who allegedly is liable under ORS 59.115(3) for a seller's violation of ORS 59.135. *See also Ainslie v. First Interstate Bank of Oregon, N.A.*, 148 Or App 162, 186–87, 939 P2d 125 (1997), *rev dismissed*, 326 Or 627 (1998) (accord).

The Oregon Court of Appeals previously held in *Loewen v. Galligan*, 130 Or App 222, 234–35, 882 P2d 104, *rev den*, 320 Or 493 (1994), that a claim "alleging a violation of ORS 59.115(3)" must be commenced within three years of the sale,

regardless of when the facts on which the action is based were, or should have been, discovered. There, the plaintiffs alleged that one defendant seller was liable for violations of ORS 59.115(1)(b) and other defendants were liable as control persons under ORS 59.115(3). *Loewen*, 130 Or App at 234. The court determined that the plaintiffs had three years to bring their claim against nonseller-defendants because "[t]he text of ORS 59.115(6) plainly provides that the statute of limitations for a violation of any subsection of ORS 59.115, other than ORS 59.115(1)(b), is three years." *Loewen*, 130 Or App at 235.

The court in *Anderson*, however, noted that "the remedy against nonseller participants is not contingent on the nonsellers' violation of any law." *Anderson*, 146 Or App at 683. Rather, the court stated: "As we explained in *Computer Concepts, Inc. v. Brandt*, 137 Ore. App. 572, 905 P.2d 1177 (1995), *rev den*, 323 Ore. 153, 916 P.2d 312 (1996), the liability of the nonseller participant under ORS 59.115(3) is predicated on the violation of the seller." *Anderson*, 146 Or App at 683. This statement suggests that the court's prior decision in *Loewen* was based on the incorrect assumption that the claim at issue was for a *violation* of ORS 59.115(3). In fact, a nonseller does not violate ORS 59.115(3), but instead is liable under ORS 59.115(3) for another person's violation of ORS 59.115(1)(a) or (b). Accordingly, the discovery rule set forth in ORS 59.115(6) should apply to a claim under ORS 59.115(3) if the underlying violation is of ORS 59.115(1)(b) or ORS 59.135.

Nonetheless, the court in *Anderson* did not expressly reverse *Loewen*. Instead, it distinguished its decision in *Loewen* on the ground that *Loewen* "did not involve ORS 59.135." *Anderson*, 146 Or App at 685. The court further noted that plaintiffs in *Loewen* did not argue "the applicability of the two-year statute of limitations that applies to actions brought under ORS 59.135." *Anderson*, 146 Or App at 685–86. Instead, according to the *Anderson* court, the issue in *Loewen* was "whether the three-year statute of limitations [set forth in ORS 59.115(6)] may be tolled upon the certification of a class action." *Anderson*, 146 Or App at 686.

Neither the Oregon Court of Appeals nor the Oregon Supreme Court has addressed the apparent tension between *Anderson* and *Loewen*. *See Alcantar v. MML Investors Services, Inc.*, No CIV 08-041-MO, 2008 US Dist LEXIS 48700 at *6–8, 2008 WL 2570938 at *3 (D Or June 25, 2008) (recognizing the tension between *Anderson* and *Loewen* and that the Oregon Court of Appeals had "not resolved this discrepancy").

§ 10.6B Statute of Limitations for Actions Against Purchasers of Securities Under ORS 59.127

ORS 59.127 substantially mirrors ORS 59.115 (discussed in § 10.6A). A primary difference is that ORS 59.127 permits actions by sellers of securities, while ORS 59.115 permits actions by purchasers.

Like an action under ORS 59.115, an action under ORS 59.127 must be commenced within three years after the purchase, except that a discovery rule applies to

an action for a violation of ORS 59.127(1)(b) or ORS 59.135. *See* ORS 59.127(6); *see also* ORS 59.115(6). An action for a violation of ORS 59.127(1)(b) or ORS 59.135 must be commenced within the later of (1) "three years after the purchase" or (2) "two years after the person bringing the action discovered or should have discovered the facts on which the action is based." ORS 59.127(6).

Although there is no case law regarding how ORS 59.127(6) applies to a claim against a nonpurchaser under ORS 59.127(3), applying the rationale in *Anderson v. Carden*, 146 Or App 675, 934 P2d 562, *rev den*, 326 Or 68 (1997), the discovery rule likely applies to a claim against a nonpurchaser under ORS 59.127(3) when the purchaser is alleged to have violated ORS 59.127(1)(b) or ORS 59.135. *See Anderson*, 146 Or App at 684, 688 (holding that the discovery rule set forth in ORS 59.115(6) applies to a claim against a nonseller under ORS 59.115(3) when the seller is alleged to have violated ORS 59.135).

§ 10.6C Actions Under ORS 59.137

Under ORS 59.137(1), a purchaser or a seller of a security may bring an action against "[a]ny person who violates or materially aids in a violation of ORS 59.135(1), (2) or (3)" (fraud or deceit with respect to securities). An action under ORS 59.137 must be commenced within the later of: (1) "[t]hree years after the date of the purchase or sale of a security to which the action or suit relates" or (2) "[t]wo years after the [plaintiff] discovered or should have discovered the facts on which the action or suit is based." ORS 59.137(6). *See Lahn v. Vaisbort*, 276 Or App 468, 480–81, 369 P3d 85 (2016) (analyzing whether the limitations period in ORS 59.137(6) barred the plaintiff's claim).

§ 10.6D 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, if the customer makes a demand within six months after the purchase or sale, deliver to the customer a statement or memorandum of the purchase or sale within five days after written demand for a statement is made. ORS 59.810. The broker's failure to do so is subject to penalties. *See* ORS 59.995 (penalties for violations of, among other statutes, ORS 59.810).

§ 10.6E References

See generally 1 *Advising Oregon Businesses* chs 15, 17–18 (OSB Legal Pubs 2017) (definition of a security; private placement of securities; Oregon Securities Law); *Damages in Oregon* ch 16 (OSB Legal Pubs 2024) (securities laws).

§ 10.7 VIOLATIONS OF THE OREGON MORTGAGE LENDER LAW

§ 10.7A Actions Against Mortgage Bankers, Brokers, or Loan Originators

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 generally may not be commenced more than three years after the residential mortgage transaction. *See* ORS 86A.151(4); *see generally American Bankers Insurance Co. ex rel. Mortgage One, Inc. ex rel. Mortgage Broker Security Bond v. State*, 337 Or 151, 157–59, 92 P3d 117 (2004) (describing actions under *former* ORS 59.925, *renumbered as* ORS 86A.151 (2009)). However, a discovery rule applies to an action for a violation of ORS 86A.151(1)(b) (for material misstatements and omissions) or ORS 86A.154 (for fraud and deceit). ORS 86A.151(4). Such an action 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).

§ 10.7B Request for Hearing After Entry of Order; Review

Generally, after entry of an order under the Oregon Securities Law (ORS 59.005–59.505, ORS 59.991, and ORS 59.995) or the Oregon Mortgage Lender Law (ORS 86A.095–86A.198), the director of the Department of Consumer and Business Services (DCBS) must "promptly give appropriate notice of the order." ORS 59.295(1) (Oregon Securities Law); ORS 86A.139(1) (Oregon Mortgage Lender Law). The director will hold a hearing on the order only "if a written demand for hearing is filed with the director within 20 days after the date of service of the order." ORS 59.295(1)–(2); ORS 86A.139(1)–(2).

A 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(1); ORS 86A.142(1).

§ 10.7C Possession of Assets by the Director or a Receiver

Generally, the director of the DCBS or a receiver may take possession of the property, business, and assets of a broker-dealer, state investment adviser, mortgage banker, or mortgage broker because of a deficiency in the person's or entity's assets or capital or because the condition of the person's or entity's affairs is impaired or unsound. ORS 59.265(1); ORS 86A.133(1). If the deficiency or condition is not remedied within 60 days from the date that the director or receiver took possession, the director or receiver can liquidate the property, business, and assets of the person or entity. ORS 59.265(3); ORS 86A.133(3).

> NOTE: Generally, a receiver may take possession if the broker-dealer, state investment adviser, mortgage banker, or mortgage broker refuses to permit the director to take possession and the director applies for (and the applicable circuit court grants) an order appointing a receiver to take possession. ORS 59.265(2); ORS 86A.133(2).

§ 10.7D Licenses and Records

Every license of a broker-dealer, state investment adviser, mortgage banker, or mortgage broker expires one year after the date of issuance, unless the director of the DCBS establishes a different expiration date. ORS 59.185(1); ORS 86A.109(1). *See also* ORS 86A.100(2) (defining *license* under ORS 86A.109).

"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 date of issuance, 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 prescribes otherwise by rule or order. ORS 59.195(1).

§ 10.7E References

See generally Consumer Law in Oregon ch 12 (OSB Legal Pubs 2013) (home mortgages).

§ 10.8 UNLAWFUL TRADE PRACTICES

§ 10.8A Investigative Demands

Subject to an exception in ORS 646.633, when it appears to the Oregon Attorney General or district attorney of any county in which a violation is alleged to have occurred (the "prosecuting attorney") "that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by ORS 646.607 or 646.608," the prosecuting attorney may serve an investigative demand on any person who is believed to have information relevant to an alleged or suspected violation of ORS 646.607 or ORS 646.608. ORS 646.618(1); *see also* ORS 646.605(5) (defining "prosecuting attorney").

The demand will require the recipient "under oath or otherwise, to appear and testify, to answer written interrogatories, or to produce relevant documentary material or physical evidence for examination, . . . or to do any of the foregoing" regarding the conduct that is the subject matter of the investigation. ORS 646.618(1).

At any time before the return date specified in the investigative demand, or within 20 days after service of the demand, whichever period 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 646.618(2).

§ 10.8B Statute of Limitations; Tolling of Limitations Period

The Oregon Unlawful Trade Practices Act (UTPA) (ORS 646.605–646.656) has a short limitations period. An action by any person under ORS 646.638 to

recover damages for a violation of ORS 646.608 "must be commenced within one year after the discovery of the unlawful method, act or practice," or, if applicable, within one year after the conclusion of a proceeding by a prosecuting attorney to prevent, restrain, or punish the violation of ORS 646.608 on which the private right of action is based, in whole or in part. ORS 646.638(6).

NOTE: The UTPA limitations period is short relative to other states' consumer protection statutes. For example, the limitations period for consumer protection claims under Washington's and California's consumer protection statutes is four years. Wash Rev Code § 19.86.120 (1970) (Washington Consumer Protection Act); Cal Bus & Prof Code § 17208 (1977) (California Unfair Competition Law). *See generally Consumer Law in Oregon* § 4.5 (OSB Legal Pubs 2013).

If a prosecuting attorney files "a complaint to prevent, restrain or punish a violation of ORS 646.608," the complaint tolls the statute of limitations as to "every private right of action under [ORS 646.638] that is based in whole or in part on any matter set forth in the prosecuting attorney's complaint" during the period that the proceeding in which the prosecuting attorney filed the complaint is pending. ORS 646.638(6); *see also Myers v. MHI Investments, Inc.*, 44 Or App 467, 470–71, 606 P2d 652, *rev den*, 289 Or 107 (1980) (interpreting the tolling provision and holding that the consumer protection division's investigation and notice of an unlawful trade practices violation did not toll the statute of limitations for the plaintiff's UTPA claim because the department never filed a formal complaint).

NOTE: Oregon appellate courts have not yet addressed whether a "continuing violation" theory can toll the statute of limitations for a UTPA claim. *See Colquitt v. Manufacturers & Traders Trust Co.*, 144 F Supp 3d 1219, 1228 (D Or 2015) ("Plaintiff does not cite nor could this Court find a case in which an Oregon court applied the continuing-violation doctrine to toll the limitations period of the Oregon UTPA.").

§ 10.8C Accrual of Cause of Action

In general, a cause of action for a violation of the UTPA accrues when the plaintiff "knows or should have known of the allegedly unlawful conduct." *Morris v. Dental Care Today, P.C.*, 306 Or App 259, 261, 473 P3d 1137 (2020), *rev den*, 367 Or 668 (2021) (citing *Pearson v. Philip Morris, Inc.*, 358 Or 88, 137, 361 P3d 3 (2015)); *see also Pearson*, 358 Or at 137 (the statute of limitations began to run when "plaintiffs and the members of the class either actually knew or should have known that the representation that Marlboro Lights were lower in tar and nicotine was not true"). To determine whether a plaintiff should have known of a UTPA violation, Oregon courts apply an objective "two-step analysis." *McCulloch v. Price Waterhouse LLP*, 157 Or App 237, 248, 971 P2d 414 (1998), *rev den*, 328 Or 365 (1999). "First, it must appear that plaintiff had sufficient knowledge to 'excite attention and put a party upon his guard or call for an inquiry . . . .' [Second] if plaintiff

had such knowledge, it must also appear that 'a reasonably diligent inquiry would disclose' the [unlawful practice]." *McCulloch*, 157 Or App at 248 (last brackets added) (quoting *Mathies v. Hoeck*, 284 Or 539, 543, 588 P2d 1 (1978)).

§ 10.8D References

See generally Consumer Law in Oregon ch 4 (OSB Legal Pubs 2013) (unlawful trade practices).

Chapter 11

DEBTOR-CREDITOR ISSUES; UNCLAIMED PROPERTY; SECURED TRANSACTIONS; CREDITORS' RIGHTS IN BANKRUPTCY

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§ 11.1 INTRODUCTION

This chapter highlights updates and addresses many, but certainly not all, of the subjects involved in the debtor-creditor practice area. The sections include creditors' rights, claims, and pleading; provisional-process claims; receiverships; lost and abandoned property; garnishment and execution process; Uniform Commercial

Code (UCC) changes and secured-transaction claims; and selected bankruptcy time limitations. The discussion is general; a lawyer must fully research applicability to case facts and legal issues applicable in specific situations.

§ 11.2 ACCOUNT AND ACCOUNT STATED

§ 11.2A 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 Association 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"). An agreement to pay a fixed sum may be implied from the conduct or circumstances between the parties, such as a failure to object to a final billing within a reasonable time. *Tri-County Insurance, Inc. v. Marsh*, 45 Or App 219, 223, 608 P2d 190 (1980); *Citibank South Dakota N.A. v. Santoro*, 210 Or App 344, 348–49, 150 P3d 429 (2006), *rev den*, 342 Or 473 (2007); *Portfolio Recovery Associates, LLC v. Sanders*, 366 Or 355, 377–78, 462 P3d 263 (2020); *Nyberg v. Portfolio Recovery Associates, LLC*, No 17-35315, 2023 US App LEXIS 17023 (9th Cir July 6, 2023).

§ 11.2B Statute of Limitations; Accrual of Action

§ 11.2B(1) In General

Except as discussed in § 11.2B(2) to § 11.2C (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), (4).

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* ORS 12.240 ("Whenever any payment of principal or interest is made after it has become due, upon an existing contract, whether it is a bill of exchange, promissory note, bond, or other evidence of indebtedness, the limitation shall commence from the time the last payment was made.").

Partial payment on a balance due has "the effect of tolling the running of the statute of limitations" under ORS 12.080(1). *Northwest Foundry & Furnace Co. v. Willamette Manufacturing & 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 Northwest Foundry & Furnace Co.*, 268 Or at 356.

§ 11.2B(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 ORS 72.7250(1), not the general six-year statute of limitations for contracts (ORS 12.080). *Moorman Manufacturing Co. of California, Inc. v. Hall*, 113 Or App 30, 33, 830 P2d 606, *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 modifies the law on the accrual of causes of action on accounts (ORS 72.7250(2)). *See Moorman*, 113 Or App at 32–34. 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 (*see* § 11.2B(1)), 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. *Northwest Foundry & Furnace Co. v. Willamette Manufacturing & 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.

§ 11.2C Breach-of-Contract Claim Under UCC Article 2—Goods Sold and Delivered

Article 2 of the UCC (ORS chapter 72) 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 Uniform Commercial Code.

Under the Uniform Commercial Code, 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 Manufacturing Co. of California, Inc. v. Hall*, 113 Or App 30, 33, 830 P2d 606, *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 limitations 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 a "battle of the forms." *See* ORS 72.2070.

§ 11.2D Tolling for Out-of-State Defendants

ORS 12.150 provides for tolling of a statute of limitations for an action on an account if the defendant is out of state after the action accrued. In *Knappenberger v. Davis-Stanton*, 271 Or App 14, 351 P3d 54 (2015), the Oregon Court of Appeals applied the provisions of ORS 12.150 in the face of a challenge that it violated the dormant Commerce Clause of the United States Constitution. The court reversed the trial court and held that the provisions of ORS 12.150 did not violate the dormant Commerce Clause in that case; thus, the plaintiff was entitled to collect on his account despite that more than six years had elapsed between the accrual of the action and the date suit was filed. *Knappenberger*, 271 Or App at 37.

§ 11.2E References

See generally Contract Law in Oregon (Oregon CLE 2003 & Supp 2008).

§ 11.3 TENDER AND RECEIPT

§ 11.3A What Constitutes Tender

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 constitutes a tender. *Gordon v. Schumacher*, 83 Or App 544, 548, 733 P2d 35, *rev den*, 303 Or 370 (1987). *See Spiess v. White*, 172 Or App 36, 43, 17 P3d 568 (2001) (a time-essence provision is waived when "late payments are accepted or tolerated"); *Wiper v. Fawkes*, 198 Or App 331, 109 P3d 798 (2005).

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 County 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) ("To 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. (Citation and internal quotation marks omitted.)).

In *McDowell Welding & Pipefitting, Inc. v. United States Gypsum Co.*, 260 Or App 589, 320 P3d 579 (2014), after remand from the Oregon Supreme Court, the Oregon Court of Appeals reversed the trial court's determination that submission by a contractor of a contract modification was an adequate written tender, because the modification did not state or communicate that the contractor was presently offering to make payment. Thus, the tender was not adequate under ORS 81.010 and ORS 81.020, and it did not terminate the subcontractor's entitlement to prejudgment interest. *McDowell Welding & Pipefitting, Inc.*, 260 Or App at 597–99.

When a tenant delivered checks to cover the rent, but the landlord or agent did not cash or return the checks, the delivery of the checks constituted tender for payment of the rent. *Lilly Court LLC v. Lee*, 198 Or App 321, 326–27 & n 1, 108 P3d 642 (2005).

When a debtor deposited funds into his lawyer's trust account, the debtor's lawyer's letter to the creditor's attorney stating that he would make payment was an adequate offer of payment because it contained a present offer of timely payment in accordance with the terms of the underlying agreement, constituting tender under ORS 81.010. *Malan v. Tipton*, 349 Or 638, 647–48, 247 P3d 1223 (2011).

A person delivering money, an instrument, or property is entitled to a receipt upon demand. A proper receipt may be a condition to payment or delivery. ORS 81.030.

§ 11.3B Objection to Tender

An objection to a tender must be specified when the tender is made, or the objection is waived. ORS 81.020.

§ 11.3C References

See Contract Law in Oregon § 18.3 (Oregon CLE 2003 & Supp 2008) (method of payment).

§ 11.4 LIMITATIONS PERIOD AS TO SECURITY OR PROMISSORY NOTE

§ 11.4A 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 National Bank of Oregon v. Jack Mathis General Contractor, Inc.*, 274 Or 315, 324–25, 546 P2d 754 (1976). But see the discussion in *Brandrup v. ReconTrust Co., N.A.*, 353 Or 668, 303 P3d 301 (2013).

§ 11.4B Promissory Note Not Subject to UCC

A promissory note (other than a note that is subject to the 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 (1998), *rev den*, 328 Or 594 (1999) (quoting *In re Estate of Culver*, 26 Or App 809, 811, 554 P2d 541 (1976)).

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." *In re Estate of Culver*, 26 Or App at 811.

§ 11.4C References

See § 11.18A to § 11.18S (secured transactions), § 11.17A to § 11.17C(4) (secured transactions under the UCC).

§ 11.5 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 the 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(1) only if the payee gives the maker of the dishonored check a written demand for payment of the amount of the check "not less than 30 days before commencing [an] action" on the check. ORS 30.701(2); *Pro Car Care, Inc. v. Johnson*, 201 Or App 250, 256–58, 118 P3d 815 (2005) (quoting ORS 30.701(1)).

(3) *Attorney fees.* In addition, attorney fees are recoverable in an action against the maker of a dishonored check. 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.

§ 11.6 ASSIGNMENT

§ 11.6A 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 upon

execution or according to written terms without giving notice to the debtor, unless notice is required by statute. ORS 81.200.

§ 11.6B References

See generally Contract Law in Oregon § 19.10 (Oregon CLE 2003 & Supp 2008) (requisites for effective assignment); *Oregon Civil Pleading and Litigation* § 6.2-3(a) (OSB Legal Pubs 2025) (assignees of choses in action).

§ 11.7 PURCHASING DEBT

The 2017 Oregon Legislature adopted House Bill (HB) 2356 (Or Laws 2017, ch 625) (adding new provisions to ORS chapter 646A (ORS 646A.670) and amending ORS 646.639), which allows the Oregon Department of Consumer and Business Services (DCBS) to regulate the consumer debt-buying industry. The bill also prescribed certain predicates to the filing of a suit for debt collection against a consumer on purchased debt. Because purchased debt involves an assignment, the practice of purchasing consumer debt is now subject to regulation by the DCBS and requires a license before activity in the state of Oregon. ORS 646A.643(1); ORS 646A.673.

Under the act, a *debt buyer* is defined as a person or entity "that regularly engages in the business of purchasing charged-off [consumer] debt for the purpose of collecting the charged-off debt or hiring another person to collect or bring legal action to collect the charged-off debt." ORS 646.639(1)(g)(A). *See* ORS 646.639(1)(g)(L) (defining *person*). Excluded from the definition of *debt buyer* are persons who acquire "charged-off [consumer] debt as an incidental part of acquiring a portfolio of debt that is predominantly not charged-off [consumer] debt." ORS 646.639(1)(g)(B). *Charged-off debt* is defined as "a debt that a creditor treats as a loss or expense and not as an asset." ORS 646.639(1)(a). Violation of the provisions of HB 2356 may be an unlawful collection practice under ORS 646.639(4).

The initial pleading that begins a legal action to collect purchased consumer debt must include the following:

(1) the original creditor's name;

(2) the "name, address, and telephone number of the person that owns the debt" and a statement of whether the person is a debt buyer;

(3) the "last four digits of the original creditor's account number for the debt," if any;

(4) the amount and date of the debtor's last payment on the debt, if any;

(5) a detailed and itemized statement of the following:

(a) the amount that the debtors last paid on the debt, "if the debtor made a payment, and the date of the payment";

(b) the "amount and date of the debtor's last payment on the debt before the debtor defaulted or before the debt became charged-off debt";

(c) the "balance due on the debt on the date on which the debt became charged-off debt";

(d) the amount and rate of interest, and any fees or charges that the original creditor imposed, if known;

(e) the amount and rate of interest, and any fees or charges "that the debt buyer or any previous owner of the debt imposed," if known;

(f) the attorney fees that the debt buyer or debt collector seeks, if any; and

(g) any other fee, cost, or charge that the debt buyer seeks to recover; and

(6) the date on which the debt buyer purchased the debt.

ORS 646A.670(1).

PRACTICE TIP: A review of UTCR 5.180 and any applicable jurisdiction's Supplementary Local Rules is necessary to ensure compliance with any required forms or caption headings before filing.

A court may not enter judgment for a debt buyer or a debt collector that has not complied with these pleading requirements. If the debt buyer fails to comply and a judgment is entered, a debtor may seek relief from the judgment under ORCP 71, or the court may grant relief on its own motion. ORS 646A.670(2).

The 2018 Oregon Legislature amended ORS 646.639(2)(t) to clarify that when attempting to collect purchased consumer debt, a debt collector's failure to provide the information required in an initial pleading within 30 days of receiving a request from a debtor or alleged debtor could violate ORS 646.639(2), constituting an unlawful collection practice.

A debt buyer or debt collector acting on behalf of a debt buyer seeking to collect purchased consumer debt must provide all the information that must be included in an initial pleading (see above) and provide the following documents, if they exist in the debt collector's files, within 30 days of request:

(1) the debtor's name and address;

(2) evidence that the debt buyer and only the debt buyer owns the debt; and

(3) a copy of the agreement between the original creditor and the debtor that is either

(a) the contract or other writing the debtor signed that is evidence of the original debt; or

(b) a copy of the "most recent monthly statement that shows a purchase transaction or balance transfer or the debtor's last payment, if the debtor made a payment, if the debt is a credit card debt or other debt for which a contract or other writing that is evidence of the debt does not exist."

ORS 646.639(4)(b); ORS 646A.670(4).

A debt buyer or debt collector may commit an unlawful collection practice if the debt buyer or debt collector fails to give a receipt that shows the payment to the debt buyer or debt collector and that clearly states "whether the debt buyer or debt collector accepts the payment as payment in full" or as final compromise of the debt, and if not, the remaining balance on the debt. ORS 646.639(4)(c).

A debt buyer or debt collector acting on behalf of a debt buyer may be liable for an unlawful collection practice if the debt buyer or debt collector files suit (1) when the debt buyer or debt collector knows or after exercising reasonable diligence should know that the applicable statute of limitations bars action on the debt, or (2) without possessing business records that include the information that the debt buyer or debt collector must provide upon the debtor's request (see above). ORS 646.639(4)(a)–(b). *See Lyon v. Chase Bank USA, N.A.*, 656 F3d 877 (9th Cir 2011). *But see Daniel N. Gordon, PC v. Rosenblum*, 276 Or App 797, 370 P3d 850 (2016), *aff'd*, 361 Or 352, 393 P3d 1122 (2017).

The 2024 Legislature clarified that a debt collector may have defenses to liability under ORS 646.639(2) for an unlawful collection practice if the debt collector "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." ORS 646.639(2)(n). However, obtaining a judgment for less than the amount sought does not by itself constitute evidence of a violation. ORS 646.639(2)(s). *See* Or Laws 2024, ch 100, § 29.

The 2024 Legislature increased the statutory damages of ORS 646.641, from $200 to $1000, and provided for an award of reasonable attorney fees and costs to a prevailing plaintiff or defendant "if the court finds that the plaintiff had no objectively reasonable basis for bringing the action or asserting the ground for appeal." Or Laws 2024, ch 100, § 30.

The 2024 Legislature further increased the period for bringing an action under ORS 646.641 from one year to three years from the date of injury. Or Laws 2024, ch 100, § 30.

§ 11.8 ACTION FOR TAKING, INJURING, OR RECOVERING POSSESSION OF PERSONAL PROPERTY

§ 11.8A Time Limitations

§ 11.8A(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). But certain actions arising from nuclear incidents are excepted and instead have two-year limitations periods. ORS 12.080(4); ORS 12.137.

An action for conversion, with or without money damages, is subject to the six-year limitations period set forth in ORS 12.080(4). There is a discovery rule

incorporated in ORS 12.080(4) by application of the accrual of the action analysis under ORS 12.010. *Rice v. Rabb*, 354 Or 721, 728, 320 P3d 554 (2014).

See § 11.8A(2) (time limitations for common-law remedies).

§ 11.8A(2) Time Limitations 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 Electric Co. v. Pacific Intermountain Express 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 upon the dissolution of a corporation). *Cf. United States National 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).

§ 11.8B Wrongful Dispossession

§ 11.8B(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, 331–32, 918 P2d 413 (1996); *Gust v. Edwards Co.*, 129 Or 409, 412, 274 P 919 (1929).

§ 11.8B(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, 357–58, 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, 32–33, 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. Rabb*, 354 Or 721, 728, 320 P3d 554 (2014).

§ 11.8C Recovering Possession of Personal Property

§ 11.8C(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 UCC or a statutory lien is discussed in § 11.9B and chapter 18, respectively.

The entitlement to possession is normally resolved through a show-cause hearing and order. 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 the sheriff takes personal property through claim and delivery, a plaintiff may not voluntarily dismiss an action under ORCP 54 A(1) for at least 30 days after the personal property is taken. ORCP 85 E.

§ 11.8C(2) Procedure

§ 11.8C(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.

§ 11.8C(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. *See* ORCP 83. However, there is no legal basis for issuance of an order of replevin if there is no predicate action for claim and delivery under ORCP 85. *Vantz v. Abbett*, 81 Or App 418, 420, 725 P2d 941 (1986).

§ 11.8C(2)(c) Defendant's Right to a Hearing

To protect a defendant from being deprived of a hearing on the merits of the plaintiff's claimed right to possession of 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.

§ 11.8D References

See generally Creditors' Rights and Remedies ch 1 (OSB Legal Pubs 2016) (provisional process); *Oregon Civil Pleading and Litigation* ch 22 (OSB Legal Pubs 2025) (provisional process).

§ 11.9 PREJUDGMENT ATTACHMENT; CLAIM AND DELIVERY

§ 11.9A Attachment

§ 11.9A(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 § 11.9A(2) (actions in which attachment is allowed), § 11.9A(3) (motion for redelivery).

§ 11.9A(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, expressed 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";

(2) an "action against a defendant not residing in [Oregon] to recover a sum of money as damages for breach of any contract, expressed or implied, other than a contract of marriage"; and

(3) an "action against a defendant not residing in [Oregon] to recover a sum of money as damages for injury to property in [Oregon]."

ORCP 84 A(2).

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).

A receiver may be appointed in aid of an attaching creditor under ORCP 80 B(5).

§ 11.9A(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).

§ 11.9B 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* § 11.9A(1) to § 11.9A(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 Business Credit, Inc. v. Davis*, 291 Or 369, 372–73, 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 filed. ORCP 82 A(3)(a).

§ 11.9C References

See generally Creditors' Rights and Remedies chs 1, 7 (OSB Legal Pubs 2016) (provisional process; garnishment).

§ 11.10 LOST, UNCLAIMED, OR ABANDONED PROPERTY

§ 11.10A Finder's Duties and Liability

§ 11.10A(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 consecutive weeks. ORS 98.005(1).

The finder becomes the owner if no response is received within three months after the date of notice to the county clerk. ORS 98.005(2).

See § 11.10A(2) (finder's liability for failure to comply with the statute).

§ 11.10A(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* § 11.10A(1)), the finder will be liable, upon conviction, to the county for the full value of the money or goods. ORS 98.015. The county will then publish notice of finding the money or goods in the manner provided in ORS 98.005 (*see* § 11.10A(1)). ORS 98.015. 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.

§ 11.10B Abandoned Property Reports

§ 11.10B(1) In General

The 2019 Oregon Legislature changed the reporting duties of holders of abandoned property, requiring them to report to the State Treasurer instead of the Department of State Lands, effective September 29, 2019, operative July 1, 2021. Or Laws 2019, ch 678. Every person holding funds or other property presumed abandoned under ORS 98.302 to 98.436 and ORS 98.992 must report (as described in ORS 98.352(2)) and pay or deliver to the State Treasurer for deposit in the Unclaimed Property and Estates Fund 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 State Treasurer;

(2) funds in the possession of the Oregon Child Support Program described in ORS 180.345 must only be reported to the State Treasurer; and

(3) funds in lawyer trust accounts must only be reported to the Oregon State Bar (OSB).

ORS 98.352(1), (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: More information, including the reporting forms, is available on the State Treasurer's website at https://www.oregon.gov/treasury/unclaimed-property.

§ 11.10B(2) Lawyer Trust Accounts

Effective July 1, 2021, holders of abandoned funds in lawyer trust accounts are no longer required to deliver the funds to the State Treasurer. Instead, the unclaimed funds must only be reported to and delivered to the OSB along with a copy of the report. ORS 98.386(2).

PRACTICE TIP: More information, including the reporting forms, is available at https://www.oregon.gov/treasury/unclaimed-property. See the *Oregon Holder Reporting Handbook* at https://unclaimed.oregon.gov/docs/OR_Holder_Reporting_Handbook.pdf.

§ 11.10C Limitation of Actions and Presumption of Abandonment

The expiration of any statute of limitations or time period specified by a 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 (3) affect the requirement to pay or deliver abandoned property to the State Treasurer. ORS 98.376. *See* § 11.10B(1) (abandoned property reports).

§ 11.10D Claim for Unclaimed Property

A person claiming an interest in unclaimed property reported to the State Treasurer may file a claim to the property or proceeds from the sale of the property at any time after the person learns that the property has been reported to the State Treasurer. 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* § 11.10B(2)), the State Treasurer will forward the claim to the OSB for review and for payment by the OSB if the claim is allowed. ORS 98.392(2).

The State Treasurer 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(1).

A person who is aggrieved by the decision of the State Treasurer regarding their claim may request a hearing. ORS 98.402(1). The State Treasurer will conduct the hearing as a contested-case proceeding under the Oregon Administrative Procedures Act (ORS 183.411–183.471). ORS 98.402(1). If the State Treasurer 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 State Treasurer to act. ORS 98.402(2). *See* ORS 183.490 (the court may compel an agency to act).

§ 11.10E Bailment and Consignment

§ 11.10E(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. ORS 98.140. If the owner's name and address are not known, the person must publish a notice for "six weeks successively" in a newspaper in the county where the property was deposited, or, if no county newspaper is available, in the nearest newspaper thereto within Oregon. ORS 98.140. The last publication of the notice must occur at least 18 days before the time of sale. ORS 98.140.

§ 11.10E(2) Proof of Notice and Owner's Nonresponse

If the owner of the consigned or bailed property does not take it away and pay the charges after the 60-day notice has been given (*see* § 11.10E(1)), the person having possession of the property must draft 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. ORS 98.150. 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 the justice's 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 county. ORS 98.170.

§ 11.10E(3) Perishable Property

Perishable property left with a consignee or bailee may be sold if it is not reclaimed within 30 days after it was deposited by giving 10 days' notice of the sale. ORS 98.230.

§ 11.10F Banks and Instruments

§ 11.10F(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).

§ 11.10F(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 financial institution 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 electronically or in writing with the financial institution" within three years regarding the instrument. ORS 98.308(6).

"[A]ny 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 electronically or 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 with 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).

§ 11.10F(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(1), (3).

§ 11.10F(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.

§ 11.10F(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.

§ 11.10G Miscellaneous Property

§ 11.10G(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 three 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(1).

§ 11.10G(2) Unpaid Wages

Unpaid wages "owing in the ordinary course of the holder's business that remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned." ORS 98.334.

§ 11.10G(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.

§ 11.10G(4) Credit Memos

A credit memo issued in the ordinary course of the issuer's business that remains unclaimed by the owner for more than three years after becoming payable is presumed abandoned. ORS 98.338(1).

§ 11.10G(5) Property Held by Business

"All intangible personal property, not otherwise covered by ORS 98.302 to 98.436 and 98.992, . . . 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(1).

§ 11.11 RECEIVERSHIPS (PERSONAL PROPERTY AND REAL PROPERTY)

Effective January 1, 2018, the operation of a receivership is governed by the Oregon Receivership Code (ORS 37.020–37.410; *see* Or Laws 2017, ch 358). ORS 37.010. The Code applies to "receiverships in which the receiver is appointed on or after" January 1, 2018. Or Laws 2017, ch 358, § 42. For statutory time limitations under the Code, see § 11.11A to § 11.11I. *See generally Fitzgerald v. Rogue Agrisource LLC*, 333 Or App 555, 554 P3d 838, *rev den*, 373 Or 119 (2024).

§ 11.11A Property Owner's Duties

Upon the appointment of a receiver, all owners must cooperate with the receiver and provide applicable documents, including information about any known creditors, and deliver all property to the receiver's custody or control. ORS 37.150(1)(a)–(c). A receiver may require examination under oath of an owner "concerning the acts, conduct, property, liabilities and financial condition of the owner or any matter relating to the receiver's administration of the estate." ORS 37.150(1)(d).

§ 11.11B Notice of Receivership

Within 30 days after appointment, a receiver must send notice of the receivership to all known creditors by first-class mail, or by another method approved by the court, as well as publish notice of the receivership at least once per week for two consecutive weeks in a newspaper of general circulation in all counties where estate property is known to be located. ORS 37.330.

§ 11.11C General Time Limits Related to Notice

When the Oregon Receivership Code requires a person to give notice, but the relevant provision does not specify the time period for that notice, the person must give at least 14 days' notice. ORS 37.170(2). The court may alter notice periods for good cause. ORS 37.170(5).

§ 11.11D Creditor List and Inventory

Within 60 days after appointment or some other time period as the court may specify, a receiver must file (1) "a schedule of all known creditors of the owner, their last known mailing addresses, the amount and nature of their claims and whether their claims are disputed"; and (2) "a true inventory of all estate property of which the receiver has taken possession, custody or control." ORS 37.190(1), (3).

§ 11.11E Periodic Reports

A receiver must file with the court "a monthly report of the receiver's operations and financial affairs, unless the court orders a different reporting period." ORS 37.200(1). The initial report is due 60 days after the receiver's appointment, unless the court orders a different deadline, and each report after that is due 30 days after the end of the reporting period. ORS 37.200(1).

§ 11.11F Automatic Stay

Upon entry of an order appointing a receiver, a stay applies to all persons concerning

> (a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other action or proceeding against the owner that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the owner that arose before the entry of the order of appointment;
>
> (b) The enforcement, against the owner or any estate property, of a judgment entered before the entry of the order of appointment;
>
> (c) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;
>
> (d) Any act to create, perfect or enforce any lien or claim against estate property, to the extent that the lien secures a claim against the owner that arose before the entry of the order of appointment;
>
> (e) Any act to collect, assess or recover a claim against the owner that arose before the entry of the order of appointment; or
>
> (f) The exercise of a right of setoff against the owner.

ORS 37.220(1).

For a list of actions that are not stayed, see ORS 37.220(5).

The stay regarding the acts specified in ORS 37.220(1)(a) to (b) and (e) expires six months after entry of the receiver's order of appointment, unless extended by court order. ORS 37.220(2). "A person whose action or proceeding is

stayed may move the court for relief from the stay," which the court must grant for good cause shown. ORS 37.220(3). A motion for relief "is deemed granted if the court does not act on the motion within 60 days after the motion is filed." ORS 37.220(3).

§ 11.11G Utility Service

A utility that provides service to estate property must give the receiver 14 days' notice before altering, refusing, or discontinuing service. ORS 37.230(1).

§ 11.11H Claims

Claims must be submitted within 30 days after the receiver establishes the claims process, except that claims "arising from the rejection of an executory contract of the owner must be submitted within 30 days after the rejection." ORS 37.350(3). State agencies must submit claims within 180 days after the receiver establishes the claims process. The court may change any of these time periods. ORS 37.350(3).

§ 11.11I Disallowance of and Objection to Claims

Before "the entry of an order approving the receiver's final report, a receiver may, upon court order and after at least 21 days' notice, disallow a claim." ORS 37.360(1)(a). Before entry of an order approving the receiver's final report, any interested person may object to a claim by mailing a copy of the objection and a notice of hearing to the receiver and claimant at least 21 days before the hearing. ORS 37.360(1)(b).

§ 11.12 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 § 11.12A to § 11.12A(5) regarding execution sales of personal property in general. See chapter 13 regarding the foreclosure of residential trust deeds and mortgages.

§ 11.12A Execution Sales of Personal Property

NOTE: The discussion in § 11.12A(1) to § 11.12A(5) focuses on execution sales of personal property. See chapter 13 for 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 § 13.6D(9)).

With some exceptions, "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 18.190." ORS 18.252(1).

Any portion of a money award that the judgment states is to be paid on some date after the judgment's entry date may be enforced "by execution when payment becomes due under the terms of the money award and is not paid." ORS 18.252(2).

A writ of execution directed to a sheriff must include a statement of the amount of any money award of a judgment or a declaration of a debt that secures a lien in a foreclosure suit as provided in a money judgment. ORS 18.862(1).

If a judgment requires specific personal property of the judgment debtor to be sold, the writ must direct the sheriff to sell the property, and the sheriff must deliver the proceeds of the sale as provided in ORS 18.950. ORS 18.862(2).

> [I]f a judicial foreclosure of trust deed that is not a residential trust deed results in a judgment that includes a money award, the judgment must provide that execution may issue for the amount by which the unpaid balance of the money award exceeds the net sale proceeds that are payable to the judgment creditor from the sale of the property that is subject to foreclosure if:
>
> (a) The net sale proceeds are insufficient to satisfy the money award; and
>
> (b) The plaintiff requests the provision in the complaint.

ORS 86.797(3).

The judgment must include "a declaration of the amount of the debt that the lien secures" or "a money award against the lien debtor or other person for the amount of the debt." ORS 88.010(1)(a)–(b).

§ 11.12A(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. ORS 18.872(1). 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).

This statute does not make a distinction between real-property execution sales and personal-property execution sales; however, there appear to be no reported appellate cases involving a personal-property sale with excess proceeds.

An analogous fact situation involving real property faced the court in *Private Capital Group, LLC v. Harris*, 273 Or App 529, 363 P3d 502 (2015). In that case, after confirming a sale of real property on execution and sustaining an objection to claimed advances after the entry of a general judgment of foreclosure, without the entry of a supplemental judgment, the Court of Appeals held that a trial court was required to distribute excess proceeds to the trial court clerk for delivery under ORS 18.950(4).

§ 11.12A(2) Challenge to Writ

A person may challenge a writ of execution by completing a "challenge to execution form" provided in ORS 18.896 or ORS 18.897 (for a debt arising out of a child support or spousal support obligation or a money award judgment that includes restitution), as appropriate, 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).

The 2024 Legislature amended ORS 18.896(4) to reference the statutory form for Notice of Exempt Property and an alternate form found in Oregon Laws 2024, chapter 100, section 27. *See* § 11.13A to § 11.13E (exemptions from and challenges to execution and garnishment).

§ 11.12A(3) 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 the debtor's attorney. ORS 18.920(1)–(3). Not more than 20 days before the date of sale and not fewer 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,

> (a) The notices required by ORS 18.920(2) must be mailed by express mail not less than 48 hours before the execution sale is conducted; and
>
> (b) The sheriff shall 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 is conducted.

ORS 18.922(1).

§ 11.12A(4) 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 the judgment creditor's request, but the sheriff may not postpone the sale to a date later than the final date for return on the writ under ORS 18.872. ORS 18.932(2).

An execution sale may be postponed more than once, but it "may not be postponed beyond the date that a return on the writ is due." ORS 18.932(4). If the judgment creditor requests a postponement to a specified date that is more than 60 days after the sheriff received the writ, the request "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).

§ 11.12A(5) 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 execution sale that all cashier's checks delivered to the sheriff for a 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 three business days after the date" that the creditor specifies for verification. ORS 18.938(8).

(5) *Extension of time when return date for writ is fewer 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 fewer 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).

§ 11.12B References

See generally Creditors' Rights and Remedies ch 6 (OSB Legal Pubs 2016) (execution); *Oregon Civil Pleading and Litigation* chs 22, 40 (OSB Legal Pubs 2025) (provisional process; posttrial matters).

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 § 13.6D(9)).

§ 11.13 EXEMPTIONS FROM AND CHALLENGES TO EXECUTION AND GARNISHMENT

§ 11.13A List of Exemptions

Statutes governing exemptions from execution and garnishment were extensively revised in the 2024 Oregon Legislative session, reflecting a policy shift in statutory provisions and forms required. Property exempt from execution and garnishment is set forth in ORS 18.300 to 18.598 and various other statutes. Among the 2024 statutory changes was a revision to ORS 18.345, increasing the vehicle exemption of ORS 18.345(1)(d)(A) from $3,000 to a value of $10,000; however, the increased amount of the vehicle exemption does not apply if the debt arises out

of a child support or spousal support obligation or a money award judgment. ORS 18.345(1)(d)(B). The increased amount applies to execution or garnishment writs issued after January 1, 2025.

Additionally, the 2024 statutory changes revised ORS 18.385(2) to increase the disposable earnings (wages) exemption floor, and indexing the floor to yearly adjustments on July 1 of each year, rounded to the nearest dollar amount. The statutory changes provide, in pertinent part, for a one-week pay period as follows:

> (a) For any payment period of one week or less:
>
> (A) For wages payable before January 1, 2025, $254.
>
> (B) For wages payable on or after January 1, 2025, and before July 1, 2025, $305.
>
> (C) For wages payable on or after July 1, 2025, and before July 1, 2026, $338.
>
> (D) For wages payable on or after July 1, 2026, and before July 1, 2027, $400.
>
> (E) For wages payable on or after July 1, 2027, the minimum wage specified in ORS 653.025(1), multiplied by 30.ORS 18.385(2)(a).

Corresponding changes are set out in revised ORS 18.385(2) for a two-week period, a half-month period, and a one-month period, which are omitted here in the interest of brevity. Check the provisions of ORS 18.385(2) for the applicable amounts at the time of issuance of the writ, because the Notice of Exempt Property forms also change, depending on the date the writs are issued.

Wage exemption amounts are subject to adjustment when the minimum wage changes, July 1 annually. Such minimum wages are subject to adjustment by indexing to inflation under ORS 653.025(5).

The 2024 statutory revision also added a new provision, ORS 18.385(3), which provides:

> Beginning in 2027, the State Court Administrator shall calculate the exemption amount specified in subsection (2) of this section [ORS 18.385] each year on or before July 1 and shall publish the results of the calculations on the Judicial Department website. In making the calculations, the State Court Administrator shall round to the nearest dollar. The adjusted exemption amounts become effective on July 1 of the year in which the State Court Administrator makes the calculation.

Additionally, the 2024 statutory revision reflects policy changes in that a lesser exempt amount is allowed if the debt arises out of a child support or spousal support obligation or a money award judgment that includes restitution, if the writ of garnishment includes a notice from a state or federal child support agency, or an attestation that the debt arises out of a child support or spousal support obligation or a money award judgment that includes restitution. ORS 18.385(6). The lesser amounts provided by the change are not indexed by the provisions of ORS 18.385(3), and are:

- $254 for any period of one week or less
- $509 for any two-week period
- $545 for any half-month period
- $1,090 for any one-month period

When issuing, or seeking issuance of, a writ of garnishment or a writ of execution, a notice-of-exempt-property and either a challenge-to-garnishment form or a challenge-to-execution form must be delivered to the judgment debtor or debtors. ORS 18.658. *See* ORS 18.700–18.718; ORS 18.892–18.900.

PRACTICE TIP: A careful attorney should review and compare the provisions of the substantive exemption statutes with the statutory provisions of the notice-of-exempt-property forms, as they are different and they change depending on the date of issuance and the basis of the debt on which the writ is based. A careful attorney may want to use the text of the applicable substantive statutes instead of the shortened text of the notice-of-exempt-property statutory forms. A notice-of-exempt-property form complying with the substantive statutes to accompany a challenge-to-garnishment form or a challenge-to-execution form describes the property as exempt from both execution and garnishment and is set forth in ORS 18.840 and 18.845, and Oregon Laws 2024, chapter 100, section 27, omitted here for the sake of brevity.

NOTE: Effective July 1, 2013, ORS 18.300 gives Oregon debtors the opportunity to elect the federal exemptions provided in 11 USC § 522(d) or the Oregon exemptions when filing a bankruptcy petition. Or Laws 2013, ch 597, §§ 5–6. However, that opportunity is limited to bankruptcy petitions and does not apply to executions. ORS 18.300(3).

§ 11.13B Homestead Exemption Revision

The 2024 statutory revisions included an increase in the homestead exemption amounts of ORS 18.395, from $40,000 to $150,000, for an individual judgment debtor, and $300,000, for two or more members of the same household whose interests are subject to an execution sale. ORS 18.395(1)(a).

The 2024 changes to ORS 18.395 carried forward the policy of barring the increased amounts of the homestead exemption if the judgment arose from liability for child support, spousal support, or a money award judgment that includes restitution, in which case the exemption is $40,000 for an individual judgment debtor and $50,000 for two or more members of the same household whose interests are subject to an execution sale. ORS 18.395(1)(b).

In addition, the 2024 statutory changes included an indexing obligation on the State Court Administrator, effective July 1 of each year, to "reflect increases or decreases in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as

published by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency." ORS 18.395(1)(d). The State Court Administrator must publish the adjusted exemption limitations on the Judicial Department's website, rounded to the nearest $100, to become effective on July 1 of the year of calculation. The indexed limitation amounts do not apply to child support, spousal support, or restitution money award judgments.

> NOTE: The indexed amounts for July 1, 2026 through June 30, 2027, are $158,300 for an individual judgment debtor and $316,700 for two or more judgment debtors in the same household. *See* https://www.courts.oregon.gov/Documents/Homestead-Garnishment-Exemption-Adjustments-Table.pdf.

§ 11.13C 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(2) or ORS 18.897 (as appropriate) or a substantially similar form (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 to promptly 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 § 11.13E (hearing on challenge).

§ 11.13D Challenge to Garnishment

A debtor may challenge a garnishment by filling out the challenge-to-garnishment form provided by ORS 18.850, or a substantially similar form, 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 writ of garnishment is delivered to the debtor.

(2) If the challenge is made on any other basis, delivery must occur within 30 days after the writ of garnishment is delivered to the debtor.

ORS 18.700(2).

"[A] court administrator who has received a challenge to a garnishment under ORS 18.700 [must] provide written notice of the challenge." ORS 18.702(1).

For discussion of the garnishee's and garnishor's duties created by the debtor's filing of a challenge to garnishment, see § 11.14E(5) and § 11.14F(4), respectively. *See also* § 11.13E (hearing on challenge).

§ 11.13E 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(1) (challenge to execution); ORS 18.710(1) (challenge to garnishment).

The hearing may be heard by telecommunication. ORS 18.898(2); ORS 18.710(2). The judgment debtor has the burden of proof on the issue of the timely delivery of the challenge. ORS 18.898(3); ORS 18.710(3).

§ 11.14 GARNISHMENT

§ 11.14A Delivery and 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). *See* ORS 18.625 (duration of writ's effect); ORS 18.638 (writs issued by court administrators generally); ORS 18.650 (items to be delivered to the garnishee).

ORS 18.652(1) provides for two alternative delivery options: (1) personal delivery; and (2) delivery by certified mail, return receipt requested. It is not necessary, however, that the garnishee personally sign for the certified mail. *Guest v. Mannenbach*, 323 Or App 430, 524 P3d 548 (2022), *rev den*, 370 Or 827 (2023) (someone other than the garnishee signed for the delivery).

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).

§ 11.14B Duration of Writ

(1) *In general.* Except as provided in ORS 18.625(3), a writ of garnishment acts to garnish all 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 garnishes only 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. The writ must be accompanied by a $15 search fee. ORS 18.790(1)(b).

§ 11.14C Financial Institution as Garnishee

The 2024 Legislature made substantial changes to the obligations of a financial institution that receives a valid writ of garnishment under ORS 18.785.

If a financial institution receives a writ of garnishment, it must initially determine whether the writ of garnishment pertains to an account holder. If so, the financial institution must then determine whether the writ (1) "includes a Notice of Right to Garnish Federal Benefits from the United States Government or from a state child support enforcement agency" or (2) "is attached to an attestation that [the] debt arises out of a child support or spousal support obligation or a judgment that contains a money award of restitution." ORS 18.785(2)(a)(A).

If the writ of garnishment includes the notice described in item (1) in the preceding paragraph, then the financial institution must determine the amounts subject to garnishment and provide its response. *See* § 11.14D to § 11.14E(5) (garnishee's response and duties).

If the writ of garnishment includes an attestation that the debt arises out of a support obligation or a judgment that contains a money award of restitution, then the financial institution must conduct a "garnishment account review" to determine whether any payment listed below was made to any of the debtor's accounts during a "lookback period" (as described in ORS 18.785(2)(d)):

(1) federal benefit payments;

(2) payments from a public or private retirement plan as defined in ORS 18.358;

(3) public assistance payments or medical assistance from the State of Oregon or one of its agencies;

(4) unemployment compensation payment from the State of Oregon or a state agency;

(5) black lung benefits payment from the United States Department of Labor; and

(6) workers' compensation payment from a workers' compensation carrier.

ORS 18.785(2)(c)(B).

Such funds are not subject to garnishment. ORS 18.785(2)(e)(A). However, if the financial institution determines that funds from such sources were deposited during the lookback period, and funds exceed the base protected account amount of $2,500, then the financial institution must notify the debtor of the results of its analysis and provide the funds exceeding the base protected amount to the garnishor. ORS 18.785(2)(e)–(f).

The base protected funds amount is indexed by the State Court Administrator each year on or before July 1 to reflect "increases or decreases in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency." ORS 18.785(2)(j).

The debtor retains access to the funds during the financial institution lookback review, until completed, and retains all other exemption bases. ORS 18.785(2)(b), (c)(A), (i).

There is some question as to whether ORS 18.785(2)(j) constitutes an exemption from garnishment. In *In re Leavell*, 669 BR 886, 892–94 (Bankr D Or Apr 25, 2025) (*see* https://www.orb.uscourts.gov/sites/orb/files/documents/opinions/25-60160-thp.pdf), Bankruptcy Judge Teresa Pearson faced a claim of exemption of funds by a debtor under ORS 18.785(2)(j) and an objection by the case trustee. The court held that the text of ORS 18.785(2)(j) did not exempt funds claimed for bankruptcy purposes, but constituted a limitation of a garnishee's response to a writ of garnishment.

§ 11.14D 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* ORS 18.682 (listing 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).

§ 11.14E Garnishee's Duties

§ 11.14E(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).

A writ of garnishment reaches all property, including a member's liability to a debtor limited liability company for unlawful distributions. *Twigg v. Opsahl*, 316

Or App 775, 505 P3d 486, *adh'd to as modified on recons*, 317 Or App 815, 505 P3d 516, *rev den*, 370 Or 303 (2022).

A pawned watch that the owner had not forfeited was property subject to garnishment. *Hughes v. Ephrem*, 277 Or App 193, 371 P3d 501 (2016).

§ 11.14E(2) Garnishee's Duty to Deliver Property

If the garnishee holds property that is money or a debt that will become due within 45 days of delivery of the writ, the garnishee must deliver the money or so much as may satisfy the garnishment within five days after payment is due, with a garnishee response to the garnishor and a copy of the response to both the court and the debtor. ORS 18.732(1); ORS 18.680; ORS 18.685; ORS 18.690.

"[I]f the garnishee owes any money to the debtor other than wages that is not due as of the time the response is made and the money will not become due within 45 days after the time the writ is delivered, the garnishee must so note on the response" and deliver its garnishee response to the garnishor and await instructions. ORS 18.685(6). *See* ORS 18.750–18.760.

"If the sheriff contacts the garnishee during the 30-day period" after the garnishee delivers the garnishee response to the court (*see* § 11.14E(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 property sale within (1) "20 days after notice is sent to the garnishee under ORS 18.755(4), if the garnishee is directed to continue to hold the property pending sale by the sheriff; or (2) "20 days after the property is delivered to the sheriff, if the garnishee is directed to deliver the property to the sheriff." ORS 18.758(1).

§ 11.14E(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* § 11.14E(5) (garnishee's duties created by challenge to garnishment).

§ 11.14E(4) If Garnishee Is Debtor's Employer

Upon 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).

(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).

§ 11.14E(5) Garnishee's Duties Created by Challenge to Garnishment

Upon receiving notice of a challenge to a garnishment under ORS 18.702 (*see* § 11.13D), 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 that 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). ORS 18.708(2). 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).

§ 11.14F Garnishor's Duties

§ 11.14F(1) Refund of Amount Exceeding Debt

"Within 10 days after receiving a payment under a writ of garnishment," a garnishor must return to the debtor any funds exceeding the amount owing on the debt. ORS 18.745. 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.

§ 11.14F(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. ORS

18.730(2). The payment must be (1) held in Oregon, (2) "clearly identifiable," and (3) "held separate and apart" from other personal or business accounts, but a "payment under a writ may be commingled with other garnished money." ORS 18.730(2).

§ 11.14F(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(1).

§ 11.14F(4) Garnishor's Duties Created by Challenge to Garnishment

The garnishor's receipt of a challenge to a garnishment (*see* § 11.13D) "does not affect the requirement under ORS 18.755(1) that the garnishor mail or deliver a written request for sale of property" and pay the required fees within 20 days after the garnishee delivers the garnishee response to the court. ORS 18.705(5). The garnishor must also note on the request for sale that the debtor has challenged the garnishment. ORS 18.705(5).

§ 11.14G Release of Garnishment

If the sheriff receives a release of garnishment from the garnishor, proceedings for the sale of property under ORS 18.758 must be terminated immediately. ORS 18.770(3). Upon the garnishee's receipt of a copy of the release, the garnishee may "deal with the released property as though the writ of garnishment had not been issued." ORS 18.770(4).

§ 11.14H Exempt Payments on Challenge to Garnishment

See § 11.13D regarding the procedure for a debtor to file a challenge to garnishment.

See § 11.14E(5) regarding the duties of a garnishee created by a challenge to garnishment. The garnishor's duties created by a challenge are discussed in § 11.14F(4).

If the court allows a challenge to a garnishment, the court administrator must 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 must 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).

§ 11.14I Proceedings Against Garnishee

(1) *Court may order garnishee to appear for examination or hearing.* If the garnishee fails to provide a timely garnishee response or fails to 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 an examination or 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 a garnishee under ORS 18.775 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 a 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 fewer 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 the garnishee's failure to answer not fewer 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 fewer than 10 days before the hearing date, unless further time is allowed for good cause. ORS 18.780(2).

§ 11.14J Actions Relating to Garnishment

A one-year statute of limitations applies to causes of action based on writs of garnishment. *See* ORS 12.085.

§ 11.14K References

See generally Creditors' Rights and Remedies chs 1, 7 (OSB Legal Pubs 2016) (provisional process; garnishment); *Oregon Civil Pleading and Litigation* ch 22 (OSB Legal Pubs 2025) (provisional process).

§ 11.15 ATTORNEY FEES

See § 2.16A(1) to § 2.16B(2) regarding attorney fees.

§ 11.16 SERVICEMEMBERS CIVIL RELIEF ACT

§ 11.16A Suspension of Civil Proceedings Against Servicemembers

The Servicemembers Civil Relief Act (SCRA) (50 USC §§ 3901–4043) provides for the suspension of civil proceedings against persons in military service who could be affected adversely by the proceedings. *See* 50 USC § 3902(2). A servicemember has a private right of action to enforce rights and remedies available

under the SCRA, which may be asserted in either a court proceeding or an administrative proceeding. ORS 30.136.

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(1). The demand must be sent by certified mail, return receipt requested, and must include the information specified in ORS 30.138(3).

§ 11.16B References

See Veterans, Military Servicemembers, and the Law ch 9 (OSB Legal Pubs 2018) (servicemembers as civil litigants); *Creditors' Rights and Remedies* § 9.3-5 (OSB Legal Pubs 2016) (federal exemptions); *Oregon Civil Pleading and Litigation* § 7.5-6, § 30.3-2 (OSB Legal Pubs 2025) (servicemembers; motion for order of default).

§ 11.17 UNIFORM COMMERCIAL CODE

§ 11.17A In General

Many debtor-creditor issues arise under the Uniform Commercial Code. This chapter discusses UCC Article 7—Warehouse Receipts, Bills of Lading, and Other Documents of Title (ORS 77.1010–77.6030; *see* § 11.17B to § 11.17B(5)); UCC Article 8—Investment Securities (ORS 78.1010–78.5110; *see* § 11.17C to § 11.17C(4)); and UCC Article 9—Secured Transactions (ORS 79A.1053–79A.3263; *see* § 11.18A to § 11.18S).

Other UCC provisions are discussed in chapters 14 and 15. *See* § 14.3A(1) to § 14.3A(7) (Article 2—Sales); § 14.3B to § 14.3B(7) (Article 3—Negotiable Instruments); § 14.3C(1) to § 14.3C(6) (Article 4—Bank Deposits and Collections).

Among the major changes brought about by the 2025 Legislature to the Oregon codification of the Uniform Commercial Code were (1) the renumbering of Article 9, from ORS chapter 79 to a new ORS chapter 79A, and internal renumbering of the provisions; and (2) the splitting of the provisions of ORS chapter 79, as renumbered to a new ORS chapter 80, which codified UCC Article 12 for Controllable Electronic Records provisions from the other provisions of UCC Article 9, now found in ORS chapter 79A. These changes were effective January 1, 2026. Or Laws 2025, ch 33.

§ 11.17B Warehouse Receipts, Bills of Lading, and Other Documents of Title—UCC Article 7

The 2025 Legislature adopted the 2022 model amendments to the Uniform Commercial Code vetted by the American Law Institute, Uniform Laws Committee in SB 167, codified at Oregon Laws 2025, chapter 33, to address modern payment

systems, electronic developments, and digital assets as applied to warehouse receipts, bills of lading, and other documents of title.

§ 11.17B(1) Electronic Records; Authentication; Authoritative Copies and Control

The 2025 Legislative adoption of the 2022 UCC Amendments clarified the key concepts of electronic records; authentication of assent instead of signing a paper document; creation of the authoritative copy of the transaction; defining control of the authoritative copy of the transaction as applied to warehouse receipts, bills of lading, and documents of title in modern transactions pursuant to ORS 74.1020 to 74.1120; and using the revised definition of *signed* in ORS 71.2010(2)(LL), which states as follows: "'Sign' means, with present intent to authenticate or adopt a record, to: (i) Execute or adopt a tangible symbol; or (ii) Attach to or logically associate with the record an electronic symbol, sound or process."

The 2025 legislation amended ORS 77.1060 to define the aspects of electronic records and control of such records to electronically document a warehouse receipt, bill of lading, or other title documents by defining the characteristics of electronic records of title as:

> (1) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.
>
> . . .
>
> (3) . . . [A] person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy or a system in which the electronic copy is recorded:
>
> (a) Enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;
>
> (b) Enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office or account number, as the person to which each authoritative electronic copy was issued or transferred; and
>
> (c) Gives the person exclusive power, subject to [ORS 77.1060(4)], to:
>
> (A) Prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and
>
> (B) Transfer control of each authoritative electronic copy.

ORS 77.1060(1), (3).

§ 11.17B(2) Termination of Storage at Warehouse

§ 11.17B(2)(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 and any other person known to claim an interest in the goods" that the fixed storage period has terminated. ORS 77.2060(1). 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* § 11.17B(2)(b) (goods that may deteriorate or decline in value).

"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).

§ 11.17B(2)(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 in 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 a public sale held "not less than one week" after advertising or posting a notice of sale. ORS 77.2060(2).

§ 11.17B(2)(c) Public or Private Sale

If a warehouse does not have notice at the time of deposit that the goods are a hazard to the warehouse facilities, other property, or other 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 disposition." ORS 77.2060(3).

§ 11.17B(3) Enforcement of Warehouse Lien—Sale of Goods

§ 11.17B(3)(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 public or private 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* § 11.17B(3)(b) (notice of sale).

§ 11.17B(3)(b) Requirements Pertaining to Sale

A warehouse's lien on goods, other than goods stored by a merchant "in the course of its 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).

> 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 proposed 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 its business may be enforced in accordance with ORS 77.2100(1) to (2) if proper notification is given. ORS 77.2100(8).

§ 11.17B(3)(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* § 11.17B(3)(b)), and, for a willful violation, the warehouse is liable for conversion, including any liability for a carrier lien. ORS 77.2100(7), (9).

§ 11.17B(4) Carrier's Lien

"A carrier has a lien on the 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 notifying "all persons known to claim an interest in the goods." ORS 77.3080(1). "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 in accordance with either ORS 77.3080(1) or, as to a creditor claim, under the procedure set forth in ORS 77.2100(2) (*see* § 11.17B(3)(b)). ORS 77.3080(7).

§ 11.17B(5) 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 under a court order. ORS 77.6010(2). If the delivery is not in good faith, the bailee is liable for conversion. ORS 77.6010(2). 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).

§ 11.17C Investment Securities—UCC Article 8

The 2025 Legislative adoption of the 2022 UCC Amendments clarified the key concepts of electronic records: *signing* as defined in ORS 71.2010(2)(LL) as authentication of assent instead of signing a paper document, creation of the authoritative copy of the transaction, and defining control of the authoritative copy of the transaction as applied to investment securities in modern transactions to ORS 78.1020 to 78.1160.

The 2025 legislation amended ORS 78.1060 to add to and define the aspects of electronic records and control of such records to electronically document an investment security or investment security transaction by defining the characteristics of electronic records of investment securities and controls of investment securities.

§ 11.17C(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:
>
> (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).

§ 11.17C(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 does the following:

(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(1). *See* ORS 78.4060 (obligation to notify issuer).

§ 11.17C(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.

§ 11.17C(4) Perfection of Security Interest in Investment Property

> NOTE: Before July 1, 2001, Article 8 of the UCC (ORS chapter 78) governed the creation, perfection, and priority of security interests in securities or "investment property" (now defined by ORS 79A.1020(1)(yy)). *See* Or Laws 2001, ch 445, §§ 6, 25, 32, 34, 205. Revised Article 9 (ORS chapter 79A) now governs such security interests. *See* ORS 79A.1060; ORS 79A.3050; ORS 79A.3120; ORS 79A.3140. Article 9 is discussed in § 11.18A to § 11.18S.

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 uncertificated security in one of three ways: (1) by filing a financing statement (ORS 79A.3120(1)), (2) by "taking delivery of the certificated securities" (i.e., possession) (ORS 79A.3130(1)), or (3) by obtaining "control" of the collateral (ORS 79A.3140(1)). For further discussion on perfection, see § 11.18C to § 11.18C(4).

Priority disputes are governed by ORS 79A.3220 to 79A.3230. ORS 79A.3280(7).

§ 11.18 SECURED TRANSACTIONS—UCC ARTICLE 9

§ 11.18A In General

The 2025 Oregon Legislature's adoption of the 2022 UCC Amendments clarified the key concepts of electronic records; allows a person to "'sign"' by

authentication of assent instead of by signing a paper document; created the authoritative copy of the transaction; and defined control of the authoritative copy of the transaction as applied to secured transactions in modern transactions to ORS 79A.1020 to 79A.6280.

The 2025 legislation amended ORS 79A.1020 and other statutes. This 2025 legislation added to and defined the aspects of electronic records and control of such records to electronically document a secured transaction as applied to Revised Article 9 of the UCC.

Security interests and liens that were properly perfected under *former* Article 9 remain perfected for the remainder of their effective period under Article 9 and may be continued as required under Revised Article 9. Or Laws 2001, ch 445, §§ 188–195. However, under the 2025 legislation, the perfection and enforcement of a transaction are governed by the 2025 legislation's requirements as of the "adjustment date," one year after the effective date of the 2025 legislation, which appears to be January 1, 2027. Or Laws 2025, ch 33, § 111.

The major changes brought about by the 2025 Legislature to the Oregon codification of the Uniform Commercial Code were (1) the renumbering of Article 9 from ORS chapter 79 to ORS chapter 79A, and internal renumbering of the provisions; and (2) the splitting of the provisions of ORS chapter 79, as renumbered, to a new ORS chapter 80, which codified UCC Article 12 for Controllable Electronic Records provisions, from the other provisions of UCC Article 9, now found in ORS chapter 79A. These changes were effective January 1, 2026; however, the effective date for the application of new ORS chapter 80 is January 1, 2027. Or Laws 2025, ch 33, §§ 108–115.

NOTE: Transition provisions regarding the revised laws and renumbering are set forth in Oregon Laws 2025, chapter 33, sections 101 to 115. Secured transactions are now covered in ORS chapter 79A, for the most part.

§ 11.18B Secured Transaction—Definition and Exclusions

Among the 2025 legislative revisions included in new ORS 79A.1020 are revised definitions to clarify the definitions of *account*, *assignee*, *chattel paper*, *controllable account*, *controllable payment intangible*, *electronic money*, *general intangible*, *instrument*, and *tangible money*. A careful practitioner will pay particular attention to the new definitions and inclusions or exclusions from coverage.

The 2025 legislative revisions also included

(1) new provisions in ORS 79A.1040 clarifying that a secured party can maintain control of a deposit account through a third party other than the debtor, upon acknowledgment by the third party on behalf of the secured party (ORS 79A.1040(1)(d));

(2) new provisions dealing with control of electronic chattel paper upon transfer (ORS 79A.1050) and new provisions defining control of electronic money (ORS 79A.1053);

(3) new statutes: ORS 79A.1073 (dealing with control of a "controllable electronic record," a "controllable account," or a "controllable payment intangible" and records evidencing such accounts); and ORS 79A.1076, which provides that a person that has control under ORS 79A.1040, ORS 79A.1050, or ORS 79A.1073 is not required to acknowledge that it has control on behalf of another person.

Other than renumbering, the 2025 legislation did not revise the definition of *secured transaction*; however it is now codified at ORS 79A.1090 and provides, in pertinent part, that a *secured transaction* is any transaction that "creates a security interest in personal property or fixtures by contract." ORS 79A.1090(1)(a). The secured-transaction statutes also apply to

(1) agricultural liens;

(2) sales of accounts, chattel paper, payment intangibles, and 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 79A.1100; and

(5) security interests arising under ORS 74.2100 or ORS 75.1180.

ORS 79A.1090(1)(b)–(f).

Transactions excluded from the secured-transactions provisions are enumerated in ORS 79A.1090(4). Excluded transactions include a landlord's lien and statutory liens (other than agricultural liens); an assignment of wages; a sale of "accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business"; an assignment of "accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only"; a transfer of an interest in or an assignment of a claim under an insurance policy, except to a health-care provider; and an assignment of a judgment or right of recoupment or setoff, excepting that ORS 79A.3400 and ORS 79A.4040 apply, and except in questions of priority. ORS 79A.1090(4).

In *Grogan v. Harvest Capital Co.*, 476 BR 270 (Bankr D Or 2012), *aff'd*, No OR-12-1483-JuTaPa, 2013 Bankr LEXIS 4671 (BAP 9th Cir Oct 15, 2013), the court held that a description in a security instrument that granted a security interest in permanent plantings on the debtor's real property adequately described Christmas trees as part of the collateral, despite annual cutting of the trees.

§ 11.18C Perfection

Except as otherwise stated in ORS 79A.3090, a security interest is perfected when it has attached and all the requirements for perfection have been satisfied.

ORS 79A.3080(1). *See* § 11.18F(1) to § 11.18F(3) (attachment). Four methods of perfection are available under Article 9 of the UCC (ORS chapter 79A): (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* § 11.18C(1) to § 11.18C(4).

See also § 11.18D (a security interest in collateral automatically attaches to the proceeds of the collateral).

§ 11.18C(1) Perfection by Possession

Under Article 9 of the UCC (ORS chapter 79A), perfection by possession of certain types of collateral is no longer mandatory.

Security interests in "chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, instruments, investment property or negotiable documents may be perfected by filing." ORS 79A.3120(1).

Except as otherwise provided in ORS 79A.3130(2), "a secured party may perfect a security interest in goods, instruments, negotiable tangible documents or tangible money by taking possession of the collateral." ORS 79A.3130(1).

A security interest in tangible money, however, may be perfected only by possession. ORS 79A.3120(2)(c); ORS 79A.3130(1). A security interest in electronic money is perfected by control. ORS 79A.3120(2)(d).

If perfection depends on the secured party's possession of the collateral, "perfection occurs not earlier than the time the secured party takes possession and continues only while the secured party retains possession." ORS 79A.3130(4).

§ 11.18C(2) Perfection by Control

Perfection by control may be accomplished with respect to a security interest in "controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property or letter-of-credit rights." ORS 79A.3140(1). *See* ORS 79A.3100(2)(h) (filing a financing statement is not necessary).

A security interest in investment property and "controllable payment intangibles" may also be perfected by filing. ORS 79A.3120(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 79A.3120(2)(a)–(b).

The 2025 Legislature attempted to clarify the manner of perfection of a security interest in electronic chattel paper in new ORS 79A.3063, which provides that perfection of electronic chattel paper is governed by the "local law of the jurisdiction," which mandates perfection by possession under ORS 79A.3130, or control under ORS 79A.3143, or filing under ORS 79A.3120(1).

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 when the debtor's account is maintained at that bank. ORS 79A.1040(1)(a).

A secured party other than a bank has control of a deposit account only if an agreement by the debtor allows the depositary bank to pay the money to the creditor according to the creditor's instructions or the debtor directs the opening of an account in the creditor's name. ORS 79A.1040(1)(b)–(c). The control agreement among the bank, the debtor, and the secured party must be signed by the debtor. ORS 79A.1040(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 79A.1040(2). The 2025 Legislature attempted to clarify the manner of perfection of a security interest in controllable accounts, controllable electronic records, and controllable payment intangibles in new ORS 79A.3066. The statute provides that perfection of controllable accounts, controllable electronic records and controllable payment intangibles is governed by the "local law of the jurisdiction," which mandates perfection by possession under ORS 79A.3120, or control under ORS 79A.3140, or filing.

A secured party who perfects by having control of investment property has priority over a secured party who perfects only by filing. ORS 79A.3280(1). Multiple secured parties who perfect by control rank on a first-to-obtain-control (by agreement) basis. ORS 79A.3280(2)(a).

§ 11.18C(3) Automatic Perfection

ORS 79A.3090 lists 13 types of collateral for which security interests are automatically perfected when they attach. *See* § 11.18F(1) to § 11.18F(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 certificated 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 a signed security agreement." ORS 79A.3120(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 79A.3120(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: (a) [u]ltimate sale or exchange; or (b) [p]resentation, collection, enforcement, renewal or registration of transfer." ORS 79A.3120(7).

NOTE: After the 20-day period specified in subsections (5), (6), and (7) of ORS 79A.3120, perfection depends on compliance with ORS chapter 79A. ORS 79A.3120(8).

§ 11.18C(4) Perfection by Filing

Financing statements must be filed only in the jurisdiction in which the debtor is located. ORS 79A.3010(1); *see* ORS 79A.3070 (location of debtor).

Corporations, limited liability companies, limited liability partnerships, limited partnerships, and other businesses that are registered organizations under the law of a state are deemed located in the state where they are organized (sometimes referred to as the "birth certificate state"). ORS 79A.3070(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 79A.3070(2)(b)–(c).

Individuals are located at their principal residence. ORS 79A.3070(2)(a).

All the complex, multiple-state perfection rules in *former* UCC § 9-103 (ORS 79.1030) 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* § 11.18A).

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 79A.3160(1)(b)–(c).

The 2025 Legislature attempted to clarify the manner of perfection of a security interest in electronic chattel paper in new ORS 79A.3063, which provides that perfection of electronic chattel paper is governed by the "local law of the jurisdiction," which mandates perfection by possession under ORS 79A.3130, or control under ORS 79A.3143, or filing under ORS 79A.3120. However, with the 2025 Legislature's adoption of UCC chapter 12, codified at ORS 80.1010 to 80.1070, the manner of establishing control may be affected by ORS 79A.3160(6) and (7) in the interim.

The 2025 Legislature attempted to clarify the manner of perfection of a security interest in controllable accounts, controllable electronic records, and controllable payment intangibles in new ORS 79A.3066. The statute provides that perfection of controllable accounts, controllable electronic records, and controllable payment intangibles is governed by the "local law of the jurisdiction," which mandates perfection by possession under ORS 79A.3120, or control under ORS 79A.3140, or filing under ORS 79A.3120. However, with the 2025 Legislature's

creation of UCC chapter 12, codified at ORS 80.1010 to 80.1070, the manner of establishing control may be affected by ORS 79A.3160(6) and (7), in the interim.

The 2015 Oregon Legislature changed the requirements for naming the debtor on financing statements. Or Laws 2015, ch 538, § 2 (amending what is now ORS 79A.5030). For individuals with an unexpired Oregon driver license or identification card, the financing statement must provide the debtor's name as it appears on the license or identification card. ORS 79A.5030(1)(d). For other individuals, the financing statement must provide the individual name of the debtor or the debtor's surname and first personal name. ORS 79A.5030(1)(e).

If a debtor that is an entity changes its name and the debtor's new name renders the name on a filed financing statement insufficient so that the financing statement "becomes 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. ORS 79A.5070(3)(a). The financing statement is not effective to perfect the 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 79A.5070(3). *See* § 11.18J(6) (change of debtor's name).

§ 11.18D 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 79A.3150(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 79A.1020(1)(ooo).

> A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:
>
> (a) 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;
>
> (b) The proceeds are identifiable cash proceeds; or
>
> (c) The security interest in the proceeds is perfected other than under [ORS 79A.3150(3)] when the security interest attaches to the proceeds or within 20 days thereafter.

ORS 79A.3150(4).

"If a filed financing statement covers the original collateral, a security interest in proceeds" that remains perfected under ORS 79A.3150(4)(a) becomes unperfected at the later of (1) the date that "the effectiveness of the filed financing

statement lapses under ORS 79A.5150 or is terminated under ORS 79A.5130" or (2) the "21st day after the security interest attaches to the proceeds." ORS 79A.3150(5).

§ 11.18E Purchase-Money Security Interest

A security interest qualifies as a "purchase-money security interest" (PMSI) in certain cases. *See* ORS 79A.1030. 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 79A.1030(1)(b).

ORS 79A.3240 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. ORS 79A.3240(1). 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 79A.3240(2) to (4), giving notice to the holders of all conflicting security interests of record. *Credit Alliance Corp. v. Amhoist Credit Corp.*, 74 Or App 257, 702 P2d 1121 (1985).

§ 11.18F Attachment

§ 11.18F(1) In General

The 2025 Legislature added new provisions to ORS 79A.2030(2)(c)(D), which clarify when attachment occurs in relation to controllable accounts, controllable electronic records, controllable payment intangibles, electronic documents, and electronic money, or chattel paper when a secured party has possession and control under a security agreement.

The general rule of ORS 79A.2030 remains: "[U]nless an agreement expressly postpones the time of attachment," a security interest attaches to collateral when it "becomes enforceable against the debtor with respect to the collateral." ORS 79A.2030(1). A security interest is enforceable when the requirements of ORS 79A.2030(2) are met, except as otherwise provided in ORS 79A.2030(3) to (9).

§ 11.18F(2) After-Acquired Consumer Goods

The 2025 Legislature added new provisions that clarified ORS 79A.2040. The general provisions remain: 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 79A.2040(2)(a)(A)); however, attachment may occur to consumer goods as proceeds under ORS 79A.3150 (ORS 79A.2040(2)(b)(A)).

§ 11.18F(3) After-Acquired Commercial Tort Claim

A security interest in after-acquired collateral does not attach to an after-acquired commercial tort claim (ORS 79A.2040(2)(b)); however, attachment may occur to a commercial tort claim as proceeds (ORS 79A.2040(2)(b)(B)).

§ 11.18G Duties of Secured Party

§ 11.18G(1) Duty to Provide Accounting

If a debtor provides the secured party with a signed 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 of the request. ORS 79A.2100. A debtor may request such action every six months without charge. ORS 79A.2100(6).

In a consumer transaction, the failure to comply with such a request entitles the debtor to statutory damages of "$500 in each case," unless the secured party provides a reasonable excuse for noncompliance. ORS 79A.6250(6).

§ 11.18G(2) Duty Regarding Deposit Accounts

ORS 79A.2070 and ORS 79A.2080 govern the duties of a secured creditor having possession or control of collateral.

The 2025 legislation added provisions addressing a secured party's duties to transfer electronic chattel paper upon presentation of an "authoritative electronic copy" of a record, codified at ORS 79A.2080(2)(c) and (f) to (g).

"Within 10 days after receiving a signed demand by the debtor," a "secured party having control of a deposit account under ORS 79A.1040(1)(b)" must send the bank a "signed record that releases the bank from any further obligation to comply with instructions originated by the secured party." ORS 79A.2080(2)(a). This provision applies only if "there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations or otherwise give value." ORS 79A.2080(1).

§ 11.18G(3) Duty to Release Account Debtor After Notification of Assignment

"Within 10 days after receiving a signed demand by the debtor," a secured party must "send to an account debtor that has received notification under ORS 79A.4060(1) or [ORS] 80.1060 of an assignment to the secured party as assignee a signed record that releases the account debtor from any further obligation to the secured party." ORS 79A.2090(2).

This provision does not apply to an "assignment constituting the sale of an account, chattel paper or payment intangible." ORS 79A.2090(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 79A.2090(1).

§ 11.18H Priority Among Conflicting Security Interests

§ 11.18H(1) In General

Except as provided in ORS 79A.3220(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 79A.3220(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 ORS 79A.3220(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 79A.3220(2)(a).

See § 11.18H(2) regarding priority of PMSIs.

§ 11.18H(2) Priority of Purchase-Money Security Interests

Except as otherwise provided in ORS 79A.3240(7) (regarding priority when more than one security interest qualifies for priority in the same collateral), a perfected PMSI in goods (other than inventory or livestock) "has priority over a conflicting security interest in the same goods . . . if the [PMSI] is perfected when the debtor receives possession of the collateral or within 20 days thereafter." ORS 79A.3240(1). *See* ORS 79A.3170(5).

A secured party must file a PMSI within 20 days after the debtor receives possession of the collateral to have priority over an intervening lien creditor, a transferee in bulk, a buyer, or a lessee. ORS 79A.3240(1); ORS 79A.3170(5). *See Credit Alliance Corp. v. Amhoist Credit Corp.*, 74 Or App 257, 267–68, 702 P2d 1121 (1985).

§ 11.18H(3) Future Advances

§ 11.18H(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) "[w]ithout knowledge of the lien"; or

(2) "[p]ursuant to a commitment entered into without knowledge of the lien."

ORS 79A.3230(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 79A.3230(3).

§ 11.18H(3)(b) Buyer or Lessee of Goods

Except as discussed below, a buyer or lessee of goods "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 45 days after the lease becomes enforceable, as applicable. ORS 79A.3230(4), (6).

The foregoing provisions do not apply if the advance is made under a commitment entered into without knowledge of the purchase or lease and before expiration of the 45-day period. ORS 79A.3230(5), (7).

§ 11.18H(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, crops, and other situations is governed by ORS 79A.3250 to 79A.3350.

With the 2025 Legislature's attempted clarifications to the manner of perfection of a security interest in controllable accounts, controllable electronic records, and controllable payment intangibles, new ORS 79A.3066 provides that perfection of controllable accounts, controllable electronic records, and controllable payment intangibles is governed by the "local law of the jurisdiction," which mandates perfection by possession under ORS 79A.3120, or control under ORS 79A.3140, or filing under ORS 79A.3120.

The 2025 Legislature addressed this priority issue in new ORS 79A.3263, which provides that a security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control has priority over a secured party that does not have control.

However, with the 2025 Legislature's adoption of UCC chapter 12, codified at ORS 80.1010 to 80.1070, the manner of establishing control, and thus priority, may be affected by ORS 79A.3160(6) and (7) in the interim.

In ORS 79A.3270, the 2025 Legislature addressed deposit accounts and the rules of priority among conflicting security interests in the same deposit account.

§ 11.18H(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 UCC as enacted in Oregon. ORS 314.423(1)(b).

§ 11.18I Consignments

§ 11.18I(1) In General

The security interest of a consignor in consigned goods is treated as a PMSI in inventory under Article 9 of the UCC. ORS 79A.1030(4).

To defeat a conflicting security interest in the consignee's inventory, the consignor must follow the notification procedures in ORS 79A.3240(2).

But see § 11.18I(2) regarding consignments of fine art.

§ 11.18I(2) Consignments of Fine Art

Outside of Article 9 of the UCC, 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, the art-transactions laws have priority over any conflicting provision of the UCC, including Article 9. ORS 359.235(2).

§ 11.18J Filing, Duration, and Amendment of Financing Statement

§ 11.18J(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 79A.5020(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.

§ 11.18J(2) When Filing Occurs

Subject to several exceptions listed in ORS 79A.5160(2) (regarding the filing office's refusal to accept the filing, *see* § 11.18J(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 79A.5160(1).

§ 11.18J(3) Refusal of Filing Office to Accept Filing

If a filing office refuses to accept a record for filing under ORS 79A.5160(2), ORS 79A.5200(2) and (5)(a) provide 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.

§ 11.18J(4) Duration of Financing Statement

Except for minor exceptions found in subsections (2), (5), (6), and (7) of ORS 79A.5150, a filed financing statement is effective as filed for five years after the filing date. ORS 79A.5150(1).

See § 11.18K(1) (continuation statement).

§ 11.18J(5) Amendment of Financing Statement

A financing statement may be amended at any time. An amendment that adds collateral is effective "as to the added collateral only" from the amendment's filing date. ORS 79A.5120(3).

§ 11.18J(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 79A.5070(3).

§ 11.18J(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 79A.5020(3).

§ 11.18K Continuation Statement

§ 11.18K(1) Filing to Continue Perfection

A security interest becomes unperfected after five years unless it is perfected without filing. ORS 79A.5150(1). To continue the effectiveness of the filing, a continuation statement must be filed before the five-year period expires. ORS 79A.5150(1), (3). To be effective, a continuation statement must be filed within six months before the expiration of the earlier filing. ORS 79A.5100(3); ORS 79A.5150(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 79A.5150(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 79A.5150(5).

§ 11.18K(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) (2009). Under current law, the secretary will, on request only, email 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 79A.5150(8).

§ 11.18L 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 to make an advance [e.g., under a line of credit], incur an obligation or otherwise give value," or, if earlier, "within 20 days after the secured party receives a signed demand from a debtor." ORS 79A.5130(1)–(2).

In a nonconsumer transaction, the secured party must file a termination statement within 20 days after receiving a signed demand from a debtor. ORS 79A.5130(3).

In a nonconsumer transaction, the debtor is entitled to recover actual damages for noncompliance with ORS 79A.5130. ORS 79A.6250(2). In a consumer transaction, in addition to actual damages under ORS 79A.6250(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 79A.6250(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 79A.5090(4)(b).

§ 11.18M 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 79A.5150 with respect to all secured parties of record. ORS 79A.5190(7).

§ 11.18N Assignment

An assignee becomes a secured party of record only upon the filing of a statement of assignment and the payment of the filing fee for each financing statement. *See* ORS 79A.5140.

§ 11.18O 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 79A.5230(3).

The filing officer must 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 79A.5230(5).

§ 11.18P Secured Party's Remedies After Default

"After default, a secured party has the rights provided in ORS 79A.6010 to 79A.6280 and, except as otherwise provided in ORS 79A.6020, those provided by agreement of the parties." ORS 79A.6010(1). Some of these rights are discussed in § 11.18P(1) to § 11.18P(5).

§ 11.18P(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 79A.6010(5). *See generally Creditors' Rights and Remedies* ch 13 (OSB Legal Pubs 2016) (judicial foreclosure of security interests in personal property).

§ 11.18P(2) Collection from Account Debtors

Upon default or as agreed, the secured party may

(1) notify an account debtor or other obligor on collateral to make payment or render performance directly to the secured party; or

(2) take control of any proceeds to which the secured party is entitled.

ORS 79A.6070(1)(a)–(b).

§ 11.18P(3) Possession and Disposition of Collateral

Unless otherwise agreed, the secured party has the right to take possession of the collateral upon the debtor's default. ORS 79A.6090(1)(a). The secured party may then sell or otherwise dispose of the collateral in a "commercially reasonable" manner. ORS 79A.6100(1). *See* § 11.18P(3)(a) (notification before disposition).

> NOTE: See § 11.18P(4) regarding compulsory disposition of collateral under ORS 79A.6200(5) when the debtor has paid 60 percent of the cash price of a PMSI in consumer goods or repaid 60 percent of the loan when the loan is secured by a non-PMSI in consumer goods.

§ 11.18P(3)(a) Notification Before Disposition of Property

Before disposing of the collateral, the secured party must give reasonable signed notification of the intended disposition to the following persons:

(1) the debtor (ORS 79A.6110(3)(a));

(2) any secondary obligor (ORS 79A.6110(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,

a signed notification of a claim of an interest in the collateral" (ORS 79A.6110(3)(c)(A)); (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 79A.6110(3)(c)(B)); and (c) any other secured party who, "10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in ORS 79A.3110(1)" (ORS 79A.6110(3)(c)(C)).

NOTE: The secured party complies with ORS 79A.6110(3)(c)(B) if (1) "[n]ot 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 either did not receive a response or send the disposition notification to each secured party or lienholder identified in the response to the request. ORS 79A.6110(5).

In nonconsumer transactions, notice given after default, and at least 10 days before the sale, is sent within a reasonable time. ORS 79A.6120(2). In consumer transactions, notice given after default and at least 15 days before disposition is a reasonable time. ORS 79A.6120(1). *See* ORS 79A.6010.

PRACTICE TIP: For a statutory form of notice, see ORS 79A.6130(5) (other than consumer transactions) and ORS 79A.6140(3) (consumer transactions).

See § 11.18P(3)(b) (right to a surplus or liability for a deficiency).

§ 11.18P(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 79A.6150, the secured party" must

(a) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within 14 days after receipt of a request; or

(b) 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 79A.6160(2).

See § 11.18P(3)(c) (explanation of the calculation of the surplus or deficiency).

§ 11.18P(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

> [t]he aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
>
> (A) 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
>
> (B) 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 79A.6160(3)(a)(A)–(B).

§ 11.18P(4) Compulsory Disposition of Collateral

If the debtor has paid 60 percent of the cash price of a 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 the debtor and all secondary obligors have agreed to a longer period in an agreement signed after default). ORS 79A.6200(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 79A.6200), cmt 12. *See also* § 11.18Q(1) (conversion), § 11.18Q(3) (secured party's liability for failure to comply with ORS chapter 79A).

§ 11.18P(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

> (a) Any person from which the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;
>
> (b) 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 of a financing statement . . . ; and
>
> (c) 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 79A.3110(1).

ORS 79A.6210(1).

NOTE: "In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures" (the practice known as "partial strict foreclosure"). ORS 79A.6200(7).

If the secured party does not receive notification of objection to the secured party's proposal within 20 days after sending notice to persons, the secured party may then accept the collateral in full or partial satisfaction of the obligation. ORS 79A.6200(1)(b), (4).

§ 11.18Q Debtor's Remedies

§ 11.18Q(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 79A. *See* ORS 79A.6110; ORS 79A.6200–79A.6210 (discussed in § 11.18P(3) to § 11.18P(5)); *see also* ORS 79A.6250; UCC § 9-620 (ORS 79A.6200), cmt 12.

A debtor may, however, "waive the right to notification of disposition of collateral under ORS 79A.6110" (*see* § 11.18P(3)(a)) and "the right to require disposition of collateral under ORS 79A.6200(5)" (*see* § 11.18P(4)), but only by an agreement entered into after default. ORS 79A.6240(1)–(2).

The statute of limitations for conversion is six years. ORS 12.080(4).

§ 11.18Q(2) Redemption

The debtor, any secondary obligor, 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 79A.6150(1)(a)) at any time before the secured party disposes of or sells the collateral or discharges the obligation. ORS 79A.6230. A debtor may, however, waive the right to redeem collateral (except in a consumer-goods transaction) by an agreement entered into after default. ORS 79A.6240(3).

§ 11.18Q(3) Secured Party's Liability for Failure to Comply with ORS Chapter 79A

If the foreclosing secured party fails to comply with ORS chapter 79A, the debtor or any other secured party may bring an action against the secured party to recover any loss caused by the failure to comply. *See* ORS 79A.6250.

If the collateral is consumer goods, the debtor has a right to recover its loss or an amount not less than $1,000. ORS 79A.6250(3)(a)–(b). The court may award attorney fees to the prevailing party. ORS 79A.6250(3)(c).

When the secured transaction also involves a sale of goods governed by Article 2 of the 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 years (or less) as provided in ORS 72.7250(1). In *Chaney v. Fields Chevrolet Co.*, 264 Or 21, 22–23, 503 P2d 1239 (1972), the plaintiff auto dealer

(secured party), after a default in the debtor's car payments, repossessed the debtor's car and sold it for more than the debt owed to the secured party. The debtor sued more than four years (but fewer 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. *Chaney*, 264 Or at 25–26.

CAVEAT: The *Chaney* 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(1) clearly governs the transaction. The reasoning in *Chaney* was criticized by *DaimlerChrysler Services North America, LLC v. Ouimette*, 175 Vt 316, 830 A2d 38 (2003): "The question of which article applies to a suit for default on a motor vehicle retail installment sales contract has not previously been addressed in Vermont. Nearly every jurisdiction that has addressed the issue, however, has concluded that the four-year limitation period in Article 2 applies."

QUERY: Would the result have been the same if the creditor were suing the debtor for a deficiency judgment?

PRACTICE TIP: The secured party's disposition or sale of the collateral after default must occur in a commercially reasonable manner in accordance with part 6 of UCC Article 9 (ORS 79A.6010–79A.6280). For guidance on prescribed methods of judicial and nonjudicial foreclosure of security interests in personal property, see *Creditors' Rights and Remedies* chapters 13 to 14 (OSB Legal Pubs 2016) (judicial foreclosure of security interests in personal property; UCC Article 9).

§ 11.18R Farm Products

The central filing system for "farm products" is governed by ORS 81.200 to 81.263. *See* § 11.18R(1) to § 11.18R(3).

§ 11.18R(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 "refiling or filing a continuation statement within six months before the expiration of the five-year period." ORS 81.248(3).

§ 11.18R(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. ORS 81.248(4). "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 81.248(4).

§ 11.18R(3) Amendment of Financing Statement for Farm Products

An effective financing statement for farm products must be amended in writing within three months of material changes in the information contained in the effective financing statement. ORS 81.248(2).

§ 11.18S Protection by Registration

A buyer of farm goods in the ordinary course of business, a selling agent, and a commission merchant 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. *See* ORS 81.251(4). 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. *See* ORS 81.242; ORS 81.245.

Registration as a buyer of farm products, a commission merchant, or a selling agent is effective for one year, subject to annual renewals. ORS 81.263.

"On request, the Secretary of State [must] furnish to persons not registered under ORS 81.251 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 or commission merchant or selling agent selling for a seller covered by such statement." ORS 81.254(1), (4).

§ 11.18T References

See generally Creditors' Rights and Remedies ch 14 (OSB Legal Pubs 2016) (UCC Article 9).

§ 11.19 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.

§ 11.20 SURETIES

§ 11.20A 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 a surety bond. ORCP 82 A(1)(a). 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 a 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 fewer than five days before the date the application is to be made, unless the court is satisfied that "personal service cannot be had with due diligence" within Oregon. 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 fewer than 10 days before the date on which the application is to be made. ORS 33.520.

§ 11.20B Limitation of Action

§ 11.20B(1) Surety's Liability

The Ninth Circuit Court of Appeals 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 Pacific Insurance Co. v. Stanford*, 486 F2d 556, 557 (9th Cir 1973).

§ 11.20B(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).

§ 11.20B(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 Insurance Co. v. Nizdil*, 709 F Supp 975, 976–77 (D Or 1989).

§ 11.20B(4) Involuntary Suretyship

When an involuntary suretyship relationship was found to exist, the surety's claim accrued upon payment of the indebtedness for which the principal was primarily liable. *Twombley v. Wulf*, 258 Or 188, 192, 482 P2d 166 (1971).

§ 11.20C References

See generally Administering Oregon Estates ch 5 (OSB Legal Pubs 2023) (initiating probate and simple-estate proceedings); 3 *Advising Oregon Businesses* ch 48 (OSB Legal Pubs 2018) (business risk and insurance coverage); *Construction Law in Oregon* ch 10 (OSB Legal Pubs 2026) (the surety relationship and payment and performance bonds); *Contract Law in Oregon* ch 20 (Oregon CLE 2003 & Supp 2008) (third-party beneficiaries); *Creditors' Rights and Remedies* ch 1 (OSB Legal Pubs 2016) (provisional process); *Damages in Oregon* ch 25 (OSB Legal Pubs 2024) (construction contracts); *Federal Civil Litigation in Oregon* ch 13 (OSB Legal Pubs forthcoming 2026) (injunctions and other forms of relief); *Oregon Civil Pleading and Litigation* chs 22, 44 (OSB Legal Pubs 2025) (provisional process; bonds and undertakings).

§ 11.21 CREDITORS' RIGHTS IN BANKRUPTCY—SELECTED BANKRUPTCY TIME LIMITATIONS; PERIODS OF DURATION; NOTICE PERIODS

CAVEAT: The discussion in § 11.21A(1) to § 11.21E(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 (FRBPs). 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 the deadlines and time frames found in Title 11, the Federal Rules of Bankruptcy Procedure, the Federal Rules of Bankruptcy Procedure 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.

§ 11.21A Time Frames Affecting Creditors' Rights Before Bankruptcy Is Filed

§ 11.21A(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 7 case filed within the six-year period, unless 100 percent of the allowed unsecured claims or 70 percent or more of the debtor's unsecured debts were paid in the Chapter 13 proceeding and "the plan was proposed by the debtor in good faith, and was the debtor's best effort." 11 USC § 727(a)(9).

§ 11.21A(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 from the transferee any such property transferred or concealed in fraud of creditors. 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 § 544(b)(1) combined with the Uniform Voidable Transactions Act (*formerly* Uniform Fraudulent Transfer Act, ORS 95.200–95.310) as enacted in Oregon (in particular, ORS 95.280, which contains the four-year look-back provision).

§ 11.21A(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 was rendered insolvent by reason of the transfer. 11 USC § 548(a)(1)(B).

§ 11.21A(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). *See* 11 USC § 101(31) (*insider* defined); *see also* § 11.21A(5) (general preference).

A trustee or a debtor-in-possession is required to exercise "reasonable due diligence in the circumstances of the case" and must consider "a party's known or reasonably knowable affirmative defenses" before initiating an adversary proceeding to recover a preferential transfer. 11 USC § 547(b). Further, venue for an action seeking less than $35,425 may lie only in the district where the defendant resides. 28 USC § 1409(b), (d).

§ 11.21A(5) General Preference Within 90 Days Before Bankruptcy

The debtor's trustee in bankruptcy or a debtor-in-possession may recover preferential transfers to general creditors (both insiders and noninsiders) of the debtor made on or within 90 days before the entry of the order for relief (the date of 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)(A). As in an insider preference action, a trustee or debtor-in-possession is required to exercise

"reasonable due diligence in the circumstances of the case" and must take into account "a party's known or reasonably knowable affirmative defenses" before initiating an adversary proceeding to recover a preferential transfer. 11 USC § 547(b). Further, venue for an action seeking less than $31,425 may lie only in the district where the defendant resides. 28 USC § 1409(b), (d).

§ 11.21A(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 § 544 (trustee's strong-arm powers), 11 USC § 545 (avoidance of statutory liens), 11 USC § 547 (preferences), 11 USC § 548 (fraudulent transfers), and 11 USC § 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 a later date in involuntary cases). 11 USC § 546(a)(1)(A).

The limitations period may run longer than two years from the petition date if a trustee is first appointed more than one year into that two-year period. 11 USC § 546(a)(1)(B). The limitations period may also expire sooner (if the case is closed or dismissed before the running of the two-year period). 11 USC § 546(a)(2).

§ 11.21B 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-day period than in any other district. 28 USC § 1408(1).

§ 11.21C No Discharge for More Than $900 in Luxury Goods Purchased Within 90 Days Before Order for Relief; No Discharge for Cash Advances in Excess of $1,250 Taken 70 Days Before Order for Relief

The following debts are presumed to be nondischargeable if the creditor timely files an adversary proceeding (within 60 days after the date first set for the meeting of creditors):

> (I) consumer debts owed to a single creditor and aggregating more than $900 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief . . . ; and
>
> (II) cash advances aggregating more than $1,250 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 USC § 523(a)(2)(C)(i). *See also* 11 USC § 523(a)(3)(B); FRBP 4007(c). These dollar amounts are periodically adjusted for inflation. 11 USC § 104.

§ 11.21D Mandated Bankruptcy Counseling Before Filing Bankruptcy Case

Subject to certain exceptions, 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); *see* 11 USC § 521(b)(1) (requiring the debtor to file a certificate from the credit-counseling agency).

§ 11.21E Time Frames Affecting Creditor's Rights After Bankruptcy Case Is Filed

§ 11.21E(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." *See, e.g.*, 11 USC § 546(a)(1)(A) (the statute of limitations for avoidance actions is generally two years after entry 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. 11 USC § 301(b). In involuntary cases filed by creditors (*see* § 11.21E(2)), the order for relief is entered sometime 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* § 11.21E(2).

See § 11.21 (providing an overview of topics covered in this chapter and identifying issues that are beyond the scope of this chapter).

§ 11.21E(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 seven days after issuance of the summons. FRBP 1010(a); FRBP 7004(e). If service is made by an authorized form of mail, the summons and complaint must be deposited in the mail within seven days after issuance of the summons. FRBP 7004(e); FRBP 1010(a). If the summons is not timely served, another summons must be issued and served. 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 21 days after service of summons, the court will enter an order for relief. 11 USC § 303(h); FRBP 1013(b); FRBP 1011(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).

§ 11.21E(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 § 544 (trustee's strong-arm powers), 11 USC § 545 (avoidance of statutory liens), 11 USC § 547 (preferences), 11 USC § 548 (fraudulent transfers), and 11 USC § 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 a later date in involuntary cases). 11 USC § 546(a)(1)(A).

The limitations period may run longer than two years from the petition date if a trustee is first appointed more than one year into that two-year period. 11 USC § 546(a)(1)(B). The limitations period may also expire sooner (if the case is closed or dismissed before the running of the two-year period). 11 USC § 546(a)(2).

§ 11.21E(4) "Date First Set for the Meeting of Creditors" Is Critical Milestone Date in All Cases

Many critical deadlines run from the "first date 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. *See, e.g.*, FRBP 1007(c). This date is not necessarily the date of the actual meeting of creditors (if, for example, the meeting date is reset or adjourned).

§ 11.21E(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 generally have 30 days after the conclusion of the meeting of creditors or 30 days after an amendment to the list of exempt property or supplemental schedules, whichever is later, to file objections to any of the debtor's claimed exemptions. FRBP 4003(b)(1).

§ 11.21E(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 the debtor's 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)(1). 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. FRBP 4007(c)–(d). This deadline also applies to nondischargeability claims based on credit obtained for more than $900 worth of luxury goods within 90 days before the bankruptcy filing and cash advances aggregating more than $1,250 within 70 days before the bankruptcy filing. 11 USC § 523(a)(2)(C)(i). *See* § 11.20C (references). These dollar amounts are periodically adjusted for inflation. 11 USC § 104.

§ 11.21E(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 a disqualification specified in 11 USC § 727 must be filed within 60 days after the first date set for the meeting of creditors. FRBP 4004(a). The time may be extended on motion by a party in interest before the expiration of the 60-day period or, under certain circumstances, after the 60-day period. FRBP 4004(b).

§ 11.21E(8) Seventy- or Ninety-Day Deadline for Creditors to File Proof of Claim (Unless Case Is Designated a No-Asset Case)

In voluntary bankruptcy cases under Chapters 7, 12, or 13, most creditors other than governmental units must file their proofs of claim within 70 days after the order for relief or the date of the order of conversion to a Chapter 12 or a Chapter 13 case. FRBP 3002(c). In most involuntary Chapter 7 cases, all creditors other than governmental units must file their proofs of claim within 90 days after the order for relief. FRBP 3002(c). Governmental units generally must file their proofs of claim within 180 days after the order for relief. FRBP 3002(c)(1). 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 2002(e). If the trustee subsequently locates assets, the court will notify creditors, who then have at least 90 days from the notice date in which to file their proofs of claim. FRBP 3002(c)(5). 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. *See* § 11.21E(10) (notice of time to file claims).

PRACTICE TIP: It is always best to assume that the bar date for filing a proof of claim is 70 days (voluntary cases) or 90 days (involuntary cases)

from the order for relief, and filing a creditor's proof of claim within this time frame cannot hurt.

§ 11.21E(9) Enforcement of Individual Debtor's Section 521 Statement of Intent

"[I]f 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 setting forth the 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 that time, the automatic stay is terminated as to the collateral, and it is no longer property of the estate. 11 USC § 362(h)(1).

§ 11.21E(10) Notice of Time to File Claims

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. *See* FRBP 3002(c)(5). On the official notice for no-asset Chapter 7 cases, creditors are directed not to file claims unless they receive a notice to do so. *See* FRBP 2002(e). Also, special bar dates may be established in complex, larger reorganization cases in which the debtor-in-possession and the creditors' committee decide, for administrative reasons, 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.

§ 11.21E(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, and the debtor all have the duty to inspect all filed proofs of claim for accuracy and validity. *See* FRBP 3004. Typically, the trustee in liquidation cases, the debtor-in-possession 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 a writing filed with the court within 30 days after a date specified in the notice. FRBP 3007(a)(1). The claim objection must be served 30 days before any hearing on the objection. FRBP 3007(a)(1). 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 may be entered. FRBP 3007. *See* Official Form 20B (notice of objection to claim), *available at* https://www.uscourts.gov/forms/bankruptcy-forms/notice-objection-claim-0.

§ 11.21E(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 [11 USC § 365(d)(4)(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 [11 USC § 365(d)(4)(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).

§ 11.21E(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: (1) a claim for prepetition unpaid rent, (2) a claim for postpetition administrative rent since the bankruptcy petition date, and (3) 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). *See* 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. The debtor-in-possession or trustee must pay administrative rent (postpetition rent) as it comes due for as long as the premises are occupied by the debtor-in-possession 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(b)(7). *Compare* 11 USC § 502(b)(6) *with* 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 to the extent that it is the claim of a lessor for damages resulting from the termination of a lease of nonresidential real property, and it 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)).

§ 11.21E(14) Treatment of Reclamation Claims Held by Sellers of Goods to Debtor

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. Bankruptcy Reform Act of 1994, Pub L 103-394, § 209, 108 Stat 4106, 4125. The Bankruptcy Code was subsequently amended to give trade creditors extra time to exercise reclamation rights after the commencement of a bankruptcy case. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub L 109-8, § 1227(a), 119 Stat 23, 199. The relevant section of the Bankruptcy Code now provides as follows:

> (1) Except as provided in [11 USC § 546(d)] and in [11 USC § 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 [11 USC § 544(a), 11 USC § 545, 11 USC § 547, and 11 USC § 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 [11 USC § 546(1)], the seller still may assert the rights contained in [11 USC § 503(b)(9)].

11 USC § 546(c).

§ 11.21E(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 § 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 the debtor received those goods within 20 days before 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 USC § 503(b)(9).

§ 11.21E(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 if the creditor acquired its rights in the property before the act of perfection took 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 § 362. *See North Side Lumber Co. v. Industrial Indemnity Co.*, 59 BR 917, 922 (Bankr D Or 1986), *aff'd*, 83 BR 735 (BAP 9th Cir 1987), *aff'd*, 865 F2d 264 (9th Cir 1988), *reported in full sub nom Industrial Indemnity Co. v. Seattle-First National Bank*, CA No 87-4226, 1988 US App LEXIS 21341 (9th Cir Nov 29, 1988). In response, the 1987 Oregon 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. Or Laws 1987, ch 662, § 6. 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 in accordance with 40 USC §§ 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(b)), as well as service of bond claims under Oregon's Little Miller Act in accordance with 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 in connection with public contracts that were first advertised or, if not advertised, entered into on or after May 26, 2009, or 120 days for projects that were commenced before May 26, 2009, *see* ORS 279C.605(1); Or Laws 2009, ch 160, § 3).

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 before sending these notices. Aside from their main purpose of notifying 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. *See* 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 the claimant 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 should 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 § 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 the lien. 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 v. Gould*, 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 § 108(c). *See Construction Law in Oregon* ch 16 (OSB Legal Pubs 2026) (construction liens).

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 or delivered materials, *see* 40 USC § 3133(b)(4); Oregon's Little Miller Act—within two years after the claimant last performed work or delivered materials, *see* ORS 279C.610(3)).

§ 11.21E(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 under 11 USC § 362 upon the filing of the bankruptcy petition.

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, or the stay automatically terminates with respect to the party filing the motion. 11 USC § 362(e)(1). 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 or extended by the court for good cause, or the stay automatically terminates. 11 USC § 362(e)(2).

§ 11.21E(18) Single-Asset Real Estate Cases

The bankruptcy court must grant a creditor relief from stay with respect to single-asset real estate (as defined by 11 USC § 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 § 362(d)(3), whichever date is later, the debtor has

(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).

§ 11.21F Small-Business Reorganization

On February 19, 2020, a new subchapter of Chapter 11 of the Bankruptcy Code took effect with new statutes and rules for a "small-business case" involving a "small-business debtor." *See* 11 USC § 101(51C)–(51D). A small-business debtor is a person engaged in commercial or business activities, except if the business activity is owning or operating real property. 11 USC § 101(51D). *See* 11 USC § 1182 (defining *debtor* and *debtor in possession*). The Small Business Reorganization Act of 2019 (SBRA) enacted subchapter V of Chapter 11 of the Bankruptcy Code, codified at 11 USC §§ 1181–1195, and amended other statutes under Chapter 11.

A debtor could qualify as a small-business debtor if its debts (with some exceptions) did not exceed $3,424,000, and it elected application of subchapter V. Adjustment of Certain Dollar Amounts Applicable to Bankruptcy Cases, 90 Fed Reg 8941 (Feb 4, 2025). *See* 11 USC § 101(51D); *see also* 11 USC § 1182(1). The

purpose of the SBRA is to streamline the process by which small-business debtors reorganize and rehabilitate their financial affairs.

The SBRA streamlines the process by providing that

(1) no committee of unsecured creditors is appointed, unless the court so orders (11 USC § 1102(a)(3));

(2) a trustee with oversight, monitoring duties, and the right to be heard in certain matters is appointed, but the debtor remains in possession of its assets and control of the business (11 USC § 1183(a); 11 USC § 1186(b));

(3) not later than 60 days after the entry of the order for relief, the court must "hold a status conference to further the expeditious and economical resolution of a case" and not later than 14 days before a status conference, a debtor must file a report of its effort to achieve a consensual plan of reorganization (11 USC § 1188; *see* 11 USC § 1187);

(4) only the debtor may file a plan of reorganization, which must be filed within 90 days after the order for relief, unless the court extends the time frame (11 USC § 1189);

(5) a debtor is not required to file a disclosure statement, but is required to provide "adequate information" about the plan (11 USC § 1125); and

(6) if the court confirms a consensual plan, a subchapter V debtor receives a discharge upon confirmation, except for debts excepted from discharge under 11 USC § 523(a) (11 USC § 1141(d)(1)(A), (2)).

The automatic stay under 11 USC § 362(c)(2)(C) terminates upon confirmation of a plan. However, if the plan is one that "crams down" debt, the discharge does not occur on confirmation, but only if the debtor completes the plan payments for a period of at least three years. 11 USC § 1191; 11 USC § 1192.

The amendments to the Bankruptcy Code and the rules are 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. It is beyond the scope of this chapter to include an exhaustive listing and treatment of the SBRA. Contact with a knowledgeable Chapter 11 bankruptcy attorney is essential to ensure compliance with all the provisions, deadlines, and time frames found in Title 11, the Federal Rules of Bankruptcy Procedure, 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.

For additional resources, see the American Bankruptcy Institute (https://abi.org) and publications provided in conjunction with the OSB's annual NW Bankruptcy Institutes (*see* https://hello.osbar.org/Product).

Chapter 12

CONSUMER LAW

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§ 12.1 MOTOR VEHICLES

§ 12.1A Transfer of Title

§ 12.1A(1) Transferee Must Submit Application for Title

"Except as otherwise provided in [ORS 803.092(2)], upon 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 date of transfer of interest." ORS 803.092(1).

Application is not required, however, when

> (a) The change involves only a change in the security interest where the . . . holder or lessor is a financial institution, a financial holding company or a bank holding company, . . . a licensee under ORS chapter 725, or any subsidiary or affiliate of any of the foregoing and the transfer . . . :
>
> > (A) Results from the merger, conversion, reorganization, consolidation or acquisition of the security interest holder or lessor;

> (B) Is to an entity that is a member of the same affiliated group as the security holder or lessor; or
>
> (C) Is made in connection with a transfer in bulk.
>
> (b) The vehicle is transferred to a vehicle dealer and the vehicle will become part of the dealer's inventory for resale. . . .
>
> (c) The vehicle is to be titled in another jurisdiction.
>
> (d) The vehicle has been totaled, wrecked, dismantled, disassembled or destroyed, in which case the provisions of ORS 819.010, 819.012, 819.014 or 822.135 relating to notice and surrender of title documents shall be complied with . . . .
>
> (e) The transfer involves the creation or termination of a leasehold interest in [the] vehicle . . . .

ORS 803.092(2).

NOTE: ORS 803.092(2)(d) was amended in 2025 to remove the phrase "substantially altered." Or Laws 2025, ch 415, §§ 32, 33.

§ 12.1A(2) Failure to Deliver Documents upon Transfer of Interest in Vehicle

Except as provided in ORS 803.092 (*see* § 12.1A(1)), a person's failure to deliver vehicle documents upon the transfer of an interest in a vehicle is a Class D traffic violation. ORS 803.105(2). The following paragraphs provide examples of documents that must be delivered upon the transfer of a vehicle.

Upon 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 (fees for late presentation of title); OAR 735-020-0060 (good-faith effort to deliver documents; circumstances beyond the person's control).

Upon 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).

Upon 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).

Upon 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).

Upon 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).

§ 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 constitutes 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 DMV 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).

Upon 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 shall 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)–(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 also* § 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 DMV 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 DMV upon 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 first occurs." 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, 706–07, 116 P3d 909 (2005)).

§ 12.1E References

See generally Consumer Law in Oregon chs 10, 17 (OSB Legal Pubs 2013) (retail installment contracts; automobile warranties).

§ 12.2 SECURED TRANSACTIONS (UCC ARTICLE 9)

See § 11.18A to § 11.18T 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 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. Upon 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 time frame, "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 the 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 the person 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 an unlawful trade practice.* Any person who suffers an "ascertainable loss of money or property" caused by the willful use of any of the long list of unlawful practices under ORS 646.608(1) may bring an action to recover "actual damages or statutory damages of $200, whichever is greater." ORS 646.638(1). In a class action, for class members to recover the $200 statutory damages under ORS 646.638(1), the class members' ascertainable loss of money or property must be caused by the reckless or knowing use of a prohibited practice. ORS 646.638(8). A consumer plaintiff may also recover punitive damages and equitable relief, if appropriate. ORS 646.638(1).

(2) *Ascertainable loss.* "'Ascertainable loss' under the [Unlawful Trade Practices Act (UTPA)] is amorphous. Any loss will satisfy that requirement so long as it is 'capable of being discovered, observed, or established.'" *Feitler v. Animation Celection, Inc.*, 170 Or App 702, 712, 13 P3d 1044 (2000) (quoting *Scott v. Western International Surplus Sales, Inc.*, 267 Or 512, 515, 517 P2d 661 (1973)), *disapproved of on other grounds by Bohr v. Tillamook County Creamery Ass'n*, 373 Or 343, 567 P3d 413 (2025); *see also Clark v. Eddie Bauer LLC*, 371 Or 177, 188, 532 P3d 880 (2023) (reiterating that ascertainable loss is any "loss capable of being observed or determined, however small"). As to ascertainable loss causational theories, "the UTPA defines a host of unlawful trade practices, which may cause ascertainable losses in myriad ways. Ascertainable loss, in turn, can be established in various ways." *Clark*, 371 Or at 189. Reliance is only required to establish causation of a monetary loss where

> the defendant is alleged to have misrepresented a product as having a quality that it does not have, and the plaintiff alleges that she would not have

> purchased that product but for the defendant's misrepresentation and, thus, that she suffered an ascertainable loss in the form of the purchase price.

Bohr, 373 Or at 363.

(3) *Actual damages.* Although emotional harm alone likely does not suffice to establish the "ascertainable loss of money or property" requirement, as long as there is another qualifying loss, a plaintiff should still be able to recover for noneconomic injuries as "actual damages" caused by a defendant's violation because "ascertainable loss" and "actual damages" are structurally distinct elements according to the plain text of ORS 646.638(1). *See also Creditors Protective Ass'n, Inc. v. Britt*, 58 Or App 230, 233–34, 648 P2d 414 (1982) (holding emotional distress recoverable as "actual damages" under ORS 646.641(1) of the Unlawful Trade Practices Act's sister consumer protection statute, the Oregon Unlawful Debt Collection Practices Act).

(4) *Statute of limitations.* An unlawful trade practice action must be commenced within one year after the discovery of the allegedly unlawful practice. ORS 646.638(6). Discovery of an unlawful trade practice is analogous to the discovery of common-law fraud: the limitation period begins to run when, judged by an objective standard, (a) an ordinarily prudent person in the plaintiff's position has sufficient knowledge to excite their attention and call for a further inquiry and (b) a reasonably diligent inquiry reveals that the practice is unlawful. *See Bodin v. B. & L. Furniture Co.*, 42 Or App 731, 734, 601 P2d 848 (1979); *Mathies v. Hoeck*, 284 Or 539, 542–43, 588 P2d 1 (1978); *McCulloch v. Price Waterhouse LLP*, 157 Or App 237, 248, 971 P2d 414 (1998), *rev den*, 328 Or 365 (1999); *Gaston v. Parsons*, 318 Or 247, 255–56, 864 P2d 1319 (1994). "Whether or not the plaintiff should have known of the fraud at a particular point in time is normally a question for the jury except where only one conclusion can reasonably be drawn from the evidence." *Mathies*, 284 Or at 542; *see also Martell v. General Motors LLC*, 492 F Supp 3d 1131, 1145 (D Or 2020) ("[T]he Court does not find that the only conclusion that a reasonable jury could reach is that Plaintiff knew or should have known before August 31, 2016 about GM's alleged conduct under the UTPA.").

(5) *Counterclaim.* However, notwithstanding the one-year limitation 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 336.184 (Oregon Student Information Protection Act) and ORS 646.605 (definitions for ORS 336.184 and ORS 646.605 to 646.652) to ORS 646.652 (district attorney's reports to Attorney General). ORS 646.638(7).

(6) *Concealment by, or reliance on the expertise of, the defendant.* A defendant's fraudulent concealment of the prohibited practices may create material factual questions as to the discovery of the illegality of those practices. *See Martell*, 492 F Supp 3d at 1145; *Chaney v. Fields Chevrolet Co.*, 264 Or 21, 27, 503 P2d 1239 (1972) ("[F]raudulent concealment of a cause of action from the one in whom it resides by the one against whom it lies constitutes an implied exception to the

statute of limitations, postponing the commencement of the running of the statute until discovery or reasonable opportunity of discovery of the fact by the owner of the cause of action."). Relatedly, a relationship between a plaintiff and defendant, such as physician-patient, accountant-client, or fiduciary-client, justifying the plaintiff's reliance on the defendant's expertise, assurances, and representations, may create genuine issues of material fact regarding the discovery of the unlawful practice(s) at issue. *See McCulloch*, 157 Or App at 249; *Forest Grove Brick Works, Inc. v. Strickland*, 277 Or 81, 86, 559 P2d 502 (1977); *Cavan v. General Motors Corp.*, 280 Or 455, 458, 571 P2d 1249 (1977); *Gaston*, 318 Or at 257.

(7) *Statutory 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 generally Consumer Law in Oregon ch 4 (OSB Legal Pubs 2013) (unlawful trade practices).

§ 12.4 UNLAWFUL DEBT COLLECTION PRACTICES

§ 12.4A Action to Enjoin Practice or Recover Damages

(1) *Action relating to an unlawful collection practice.* "Any person injured as a result of willful use or employment by another person of an unlawful collection practice [set forth in ORS 646.639(2)] may bring an action . . . to enjoin the practice or to recover actual damages or $1,000, whichever is greater." ORS 646.641(1). "The court or the jury may award punitive damages, and the court may provide such equitable relief as it deems necessary or proper." ORS 646.641(1). Actual damages can include compensation for emotional harm. *Creditors Protective Ass'n, Inc. v. Britt*, 58 Or App 230, 233–34, 648 P2d 414 (1982). The court may award reasonable attorney fees to the prevailing plaintiff and, if the court "finds that the plaintiff had no objectively reasonable basis" for its suit or appeal, to the defendant. ORS 646.641(2).

(2) *SB 1595 (2024) Family Financial Protection Act amendments.* In the context of debt-collection attempts on or after April 4, 2024, Oregon's Unlawful Debt Collection Practices Act (ORS 646.639–646.656) was significantly amended, including increasing the statutory damages from $200 to $1,000; adopting fee-shifting allowing reasonable attorney fees to be awarded to the prevailing plaintiff rather than to the prevailing plaintiff or defendant (unless the court determines that the plaintiff had no "objectively reasonable basis" for the suit, in which case defendant may recover attorney fees); and increasing the statute of limitations from one to three years from the date of injury. ORS 646.641(1)–(3).

(3) *Statute of limitations.* An action brought under ORS 646.641 alleging an unlawful debt collection practice must commence within three years from the date of the injury. ORS 646.641(3). "For the purposes of the [Unlawful Debt

Collection Practices Act], an 'injury' occurs only when a debtor is subjected to an unlawful collection practice." *Bennett v. Reliable Credit Ass'n, Inc.*, 125 Or App 531, 535, 865 P2d 496 (1993).

(4) *Counterclaim.* However, notwithstanding the three-year limitation period, when an action is initiated by a seller or lessor, the defending purchaser or lessee may assert any counterclaim arising out of, *inter alia*, a violation of ORS 336.184 (Oregon Student Information Protection Act) and ORS 646.605 (definitions for ORS 336.184 and ORS 646.605 to 646.652) to ORS 646.652 (district attorney's reports to Attorney General). ORS 646.638(7).

(5) *Concealment by the defendant.* Although ORS 646.641(3) does not expressly include a discovery rule, facts evidencing a defendant's fraudulent concealment of a plaintiff's injury caused by unlawful collection practices could conceivably toll the increased three-year limitations period. *See Chaney v. Fields Chevrolet Co*., 264 Or 21, 27, 503 P2d 1239 (1972); *Hathaway v. B&J Property Investments, Inc*., 374 Or 212, 227 n 6, 577 P3d 737 (2025) ("We note that this case involves no allegation of fraudulent concealment of defendants' alleged violations, and thus presents no occasion to consider any possible tolling effect that such an allegation might have.").

(6) *Federal law*. An action under the federal Fair Debt Collection Practices Act (FDCPA) (15 USC §§ 1692–1692p) must be brought within one year of the date on which the violation occurred. 15 USC § 1692k(d). Although the weight of the caselaw, including Ninth Circuit precedent, had previously read an implied discovery rule into the text of 15 USC § 1692k(d), the United States Supreme Court has since held that "absent the application of an equitable doctrine, the statute of limitations in § 1692k(d) begins to run on the date on which the alleged FDCPA violation occurs, not the date on which the violation is discovered." *Rotkiske v. Klemm*, 589 US 8, 10, 140 S Ct 355, 358, 205 L Ed 2d 291 (2019).

§ 12.4B References

See generally Consumer Law in Oregon ch 23 (OSB Legal Pubs 2013) (Oregon Unlawful Debt Collection Practices Act).

§ 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 a public body) "may bring an action for an injury to the person's, the state's or the public body's business or property from a violation of" Oregon's antitrust laws and "shall recover three times the damages the person, the state or the public body sustained." ORS 646.780(1)(a). This action "may be brought regardless of whether the plaintiff dealt directly or indirectly with the adverse party." ORS 646.780(1)(a).

A private action to recover damages must be commenced within four years "after the cause of action accrued." ORS 646.800(2). However, a public action by the United States or the state must be brought 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).

§ 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 68–69 (OSB Legal Pubs 2018) (business aspects of franchising; government regulation of franchises).

§ 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 to § 14.3B(7) (Article 3—Negotiable Instruments), § 14.3C(1) to § 14.3C(6) (Article 4—Bank Deposits and Collections), § 11.17B(1) to § 11.17B(4) (Article 7—Warehouse Receipts, Bills of Lading, and Other Documents of Title), § 11.17C(1) to § 11.17C(4) (Article 8—Investment Securities), § 11.18A to § 11.18T (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.

The Ninth Circuit has acknowledged that under Oregon law, a lawsuit to recover a deficiency balance on a consumer retail installment contract for a vehicle more closely relates to the portion of the contract for the underlying sale of the car, and thus, Oregon's four-year statute of limitations applies. *Kaiser v. Cascade Capital, LLC*, 989 F3d 1127, 1132 (9th Cir 2021) (citing *Chaney v. Fields Chevrolet Co.*, 264 Or 21, 25, 503 P2d 1239 (1972)).

§ 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 limitation periods for products liability actions, not the four-year limitation under the Uniform Commercial Code, may apply to a breach-of-warranty action arising out of a defective product. *See* § 14.3A(6)(a), § 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 has requested fees. ORS 20.098(2).

§ 12.7B References

See generally Consumer Law in Oregon chs 10, 16 (OSB Legal Pubs 2013) (retail installment contracts; warranties).

§ 12.8 CREDIT REPAIR ORGANIZATIONS ACT

§ 12.8A Statute of Limitations

An action to enforce liability under the Credit Repair Organizations Act (15 USC §§ 1679–1679j) may be brought before the later of the following time periods:

(1) five years after the occurrence of the violation; 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; *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 generally Consumer Law in Oregon ch 27 (OSB Legal Pubs 2013) (Credit Repair Organizations Act).

Chapter 13

RESIDENTIAL TRUST DEEDS AND MORTGAGES; FORECLOSURE

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§ 13.1 MORTGAGE DISTINGUISHED FROM TRUST DEED

A mortgage of real property does not transfer title, but it creates a lien or an encumbrance on the property. ORS 86.010. A mortgage lien is enforced by a statutory foreclosure suit and subsequent sale conducted by the sheriff pursuant to a judgment of foreclosure. ORS 88.010(1)(a); *see* § 13.6A to § 13.6E. The judgment of foreclosure must include a "declaration of the amount of the debt that the lien secures." ORS 88.010(1)(a).

> Except as provided in ORS 86.797 or 88.103 or other applicable law, if the lien debtor or another person, as principal or otherwise, has given a promissory note or other personal obligation to pay the debt and if the plaintiff in the complaint asks the court for a money award in the judgment, the court shall include in the judgment a money award against the lien debtor or other person for the amount of the debt.

ORS 88.010(1)(b). In the judicial foreclosure of a non-residential mortgage or deed of trust, the foreclosure judgment must provide the judgment creditor the right to pursue any deficiency (right to execute on the portion of the money award remaining

after partial satisfaction from sheriff sale proceeds) only if the foreclosure complaint requests such a provision and the net sale foreclosure proceeds are insufficient to satisfy the money award. ORS 86.797(3).

A trust deed is like a mortgage, except that the security holder has additional remedies upon default, as the security holder may foreclose on the security interest by having the collateral that secures that interest—the real property described in the trust deed—sold, either through a nonjudicial trustee's sale or through a sheriff's sale pursuant to a judicial foreclosure judgment. *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 86.815 . . . .").

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

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.

The foreclosure of a trust deed, whether by advertisement and sale or by filing a complaint for 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: 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 limitation 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).

There are no reported decisions on whether the time periods during which there was a statutory prohibition on commencement of foreclosure actions pursuant to the COVID-related moratoria under Oregon Laws 2020, chapter 4 (1st Special Session) and Oregon Laws 2021, chapter 106 are excluded (pursuant to ORS 12.210) from the calculation of the 10-year period set forth in 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 and was enforceable at the time of the transfer to the State of Oregon, or when all the following facts exist at the time the foreclosure suit is commenced:

(a) Any portion of the mortgage debt, or any interest thereon, has been voluntarily paid within the 10 years immediately preceding commencement of the suit.

(b) The original mortgagor still owns the mortgaged property.

(c) 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.

§ 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 damages 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 in accordance with 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 upon the written request of the grantor; or

(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). In this context, the term *insurance producer* means "an authorized issuer of title insurance policies of a title insurance company who is licensed as an insurance producer for that purpose pursuant to ORS chapter 744." ORS 86.720(11).

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). The required statement does not apply to commercial loans; it applies only to loans that are "primarily for personal, family or household use." ORS 86.150(4).

§ 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 lienholder or trust deed beneficiary. ORS 86.155(4).

Within 20 days after receiving the notice, the lienholder 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). If the lienholder or trust deed beneficiary fails to record the notice within the 20-day period, the debtor may record

the notice, along with proof of receipt by or personal delivery to the lienholder or trust deed beneficiary, in the public record where the line-of-credit instrument was originally recorded. ORS 86.155(6). Notwithstanding the notice, the line-of-credit instrument continues to have priority as of the date of its recording over principal advances, interest, lawful charges, and certain other advances. ORS 86.155(7).

§ 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;

(2) in a dollar amount greater than 5 percent of the delinquent installment plus interest, or in the amount provided in the note or mortgage, whichever is less;

(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; or

(4) "[m]ore than once on any single installment."

ORS 86.165. These limitations on late charges apply only to loans secured by residential real property, and they might not apply to mortgage banking companies or mortgage servicing companies if the borrower is notified that the terms of the mortgage do not conform to the requirements of ORS 86.165 before execution of the mortgage. ORS 86.175; ORS 86.180.

§ 13.5 FORECLOSURE OF RESIDENTIAL TRUST DEEDS

§ 13.5A Mandatory Mediation—Resolution Conferences

§ 13.5A(1) Request for Resolution Conference

After the 2007–2010 mortgage crisis, the Oregon Legislature enacted several new statutes pertaining to the foreclosure of residential trust deeds.

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)(a); *see* § 13.5A(3) (scheduling the 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(3)(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 30 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 ORS 86.748. ORS 86.726(1)(c); *see* ORS 88.010(3)(a); *see also* § 13.5B(1) to § 13.5B(2) (notice regarding foreclosure avoidance).

NOTE: The maximum number of prior year residential foreclosure actions that a beneficiary may have commenced and still qualify for an exemption from preforeclosure mediation was substantially reduced (from 175 to 30) in 2021 under House Bill 2009; while many provisions of that act were automatically repealed after the COVID-19 emergency period expired, the reduction in maximum prior year foreclosures was not subject to the repeal provisions and so remains in place. Or Laws 2021, ch 106, § 4.

§ 13.5A(3) Scheduling the Resolution Conference

A beneficiary who wants to foreclose on a residential trust deed, and who is not otherwise exempt, 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(3)(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 (*see* § 13.5A(2));

(2) a notice of default has not been filed or a foreclosure action has not already been started; 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).

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 pay a fee to the service provider in an amount not to exceed $200. ORS 86.729(2)(a). The grantor must submit financial information to the service provider and a description of the financial hardship (if any). ORS 86.729(2)(c).

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. 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(3)(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) (*see* § 13.5A(1) to § 13.5A(3));

(2) submitted the required documentation (see ORS 86.729(4), discussed in § 13.5A(3));

(3) appeared in person or by remote audio or video communication at the resolution conference (or sent an agent with complete authority to negotiate, or sent an agent and an authorized person to negotiate); and

(4) signed a document memorializing any foreclosure-avoidance measures to which the beneficiary and the grantor agreed (*see* ORS 88.010).

ORS 86.736(1)(a).

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 the service provider will not issue a certificate of compliance, explaining in the notice why it will not issue the certificate. The service provider also must provide a copy of the notice to the grantor and the Attorney General. ORS 86.736(1)(c).

§ 13.5A(5) Attachment to Complaint for Judicial Foreclosure

A complaint for judicial foreclosure of a residential trust deed 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 submitted under ORS 86.726(1)(b) (*see* § 13.5A(2)), (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)), or (4) a signed affidavit of exemption from ORS 86.726 by the Director of Veterans' Affairs. ORS 88.010(3)(a).

§ 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. ORS 86.748(1)(a). A *foreclosure-avoidance measure* is "an agreement between a beneficiary and a grantor that uses one or more of [a number of enumerated methods] to modify an obligation that is secured by a residential trust deed." ORS 86.707(2).

"At least five days before the trustee sells the property that is subject to foreclosure" of a residential trust deed, 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). ORS 86.748(2).

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 or fails to record an affidavit of compliance (*see* § 13.5B(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 Notice Regarding Sale

§ 13.5C(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, "to all addresses on file with the sender for the grantor, including post office boxes." ORS 86.756(1). The notice must be in substantially the form provided by the statute and printed in at least 14-point type. ORS 86.756(1).

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, "to all addresses on file with the trustee for the occupant, including post office boxes." ORS 86.756(5); *see* § 13.5C(2)(b) to § 13.5C(2)(c).

PRACTICE TIP: This notice, commonly referred to as the "Danger Notice," is typically mailed to the grantor at the same time as the notice of sale. *See* § 13.5C(2)(a) to § 13.5C(2)(f) (notice of sale).

See § 13.5L(2) (failure to give notice to grantor).

§ 13.5C(2) Notice of Sale

§ 13.5C(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 sale must be served in accordance with ORCP 7 D(2) and D(3) or mailed by both first-class and certified mail with return receipt requested to all persons listed in ORS 86.764 at all addresses on file with the trustee, including post office boxes. ORS 86.764(1)–(2).

Persons entitled to notice under the statute include (1) the grantor; (2) any successor in interest to the grantor whose interest appears of record, or of whose interest the trustee or beneficiary has actual notice; (3) 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 (4) a person who has requested notice. ORS 86.764(2); *see* § 13.5L(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); *see also* § 13.5C(2)(b) (notice to tenants), § 13.5C(2)(c) (notice to occupant).

NOTE: A copy of the notice of sale must be published. ORS 86.774(2)(a). *See* § 13.5C(2)(d).

§ 13.5C(2)(b) Notice to Tenants Regarding Notice of Sale

If a property subject to foreclosure includes one or more dwelling units that are subject to ORS chapter 90, a notice of the sale that includes a notice to residential tenants 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(10).

The notice to residential tenants must be in substantially the form set forth in ORS 86.771(10)(d).

§ 13.5C(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 under ORCP 7 D(2) and 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 as described in ORS 86.774(1)(b)(A). ORS 86.774(1)(c).

§ 13.5C(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* § 13.5C(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(10) (discussed in § 13.5C(2)(b)). ORS 86.774(2)(b).

§ 13.5C(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 where the property is located the following documents with respect to the notice of sale:

(1) an affidavit of mailing, if any;

(2) an affidavit of service, if any;

(3) an affidavit of service attempts and posting, if any; and

(4) an affidavit of publication.

ORS 86.774(3). Also on or before the date of sale, the trustee must record, in the county where the property is located, an affidavit of mailing the notice to the grantor required by ORS 86.756 (the "Danger Notice"). ORS 86.774(4); *see* § 13.5C(1).

§ 13.5C(2)(f) Notice to IRS If Property Is Subject to Federal Tax Lien; Effect of Non-IRS Federal Liens on Foreclosure Process

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) (2022), *available at* https://www.irs.gov/forms-instructions. 26 USC § 7425(b); 26 CFR § 301.7425-3. The notice must be given not less than 25 days before the sale. 26 USC § 7425(c)(1).

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, or longer if "local law" allows. 26 USC § 7425(b)–(d).

The provision for nonjudicial foreclosure of IRS tax liens arises under the Internal Revenue Code (Title 26) and thus is inapplicable to other federal liens, including those commonly held by the Department of Housing and Urban Development (HUD). 28 USC § 2410(c) states that an action to foreclose a mortgage or other lien naming the United States or an agency thereof as a party to foreclose a federal lien (other than an IRS lien) must seek judicial sale. In July 2023, the Eighth Circuit Court of Appeals held that a subordinate lien held by the United States cannot be extinguished by a nonjudicial foreclosure sale (*Show Me State Premium Homes, LLC v. McDonnell*, 74 F4th 911, 913–14 (8th Cir 2023)). However, 28 USC § 2410(e) provides agencies with flexibility regarding releasing liens in specific circumstances. Under that authority, HUD has issued procedures for the release of subordinate HUD-held liens where a nonjudicial foreclosure sale resulted in no surplus funds where nonjudicial is the preferred method of foreclosure under the Federal Housing Administration's *Single Family Housing Policy Handbook 4000.1*, https://www.hud.gov/sites/default/files/Housing/documents/40001-hsgh-Update-18.pdf. Nonjudicial foreclosure is the preferred method of foreclosure in Oregon under the handbook. However, because the provisions only apply to nonjudicial foreclosures where no surplus funds arise (a fact that is not known and may not be ascertainable at the time the foreclosure is commenced), foreclosure counsel should carefully consider whether to bring a judicial or nonjudicial foreclosure when non-IRS subordinate federal liens are being foreclosed.

§ 13.5D 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 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 trustee may postpone the foreclosure sale of the property to provide the written statement of information at least seven days before the sale. ORS 86.789(3).

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 they 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).

§ 13.5E 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). For residential trust deeds, the total amount for both attorney fees and trustee fees cannot exceed $1,000. ORS 86.778(1)(a).

§ 13.5F 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 in one of the counties in which the property is located. ORS 86.782(1)(a); *see* § 13.5G (postponement of the sale), § 13.5H (amended notice of sale after release from stay).

§ 13.5G 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 served in the manner provided for service of notice of sale in ORS 86.764(1) (*see* § 13.5C(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* § 13.5C(2)(b)). The notice must be given at least 15 days before the new sale date. ORS 86.782(2)(b).

However, a person may postpone the sale once for not more than two calendar days without giving written notice. ORS 86.782(2)(b).

§ 13.5H Amended Notice of Sale After Release from Stay

Notwithstanding ORS 86.782(2)(a) (*see* § 13.5G (postponement)), 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 by registered or certified mail. ORS 86.782(12)(a); *see* § 13.5C(2)(a), § 13.5C(2)(c).

An amended notice of sale must

(1) "[b]e given at least 15 days before the amended date of sale";

(2) "[s]et 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;

(3) "[s]pecify the time and place for sale";

(4) conform to ORS 86.771; and

(5) "[s]tate that the original sale proceedings were stayed and the date the stay terminated."

ORS 86.782(12)(c).

If publication of the notice of sale was not completed before the stay, the trustee must complete publication by publishing an amended notice once a week for four successive weeks (or fewer if some publications were completed before the stay). The last publication must be more than 20 days before the sale. ORS 86.782(12)(d).

After release from a stay, the trustee, the trustee's attorney, or a designated agent may postpone a sale for one or more periods totaling not more than the greater of 60 days or the remaining portion of the 180-day postponement period allowed under ORS 86.782(2)(a) (*see* § 13.5G). ORS 86.782(12)(f).

§ 13.5I Payment at Time of Sale; Delivery of Trustee's Deed

At the time of the sale of property under 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).

§ 13.5J Rescission of Trustee's Sale

Within 10 calendar days after the date of the sale of foreclosed property, the trustee may rescind the sale only if

(A) The trustee asserts that during the trustee's sale a bona fide error occurred in:

(i) Setting, advertising or otherwise specifying the opening bid amount for the property that is the subject of the trustee's sale;

> (ii) Providing a correct legal description of the property that is the subject of the trustee's sale; or
>
> (iii) Complying with a requirement or procedure that is imposed by law;
>
> (B) The grantor and the beneficiary agreed to a foreclosure avoidance measure . . . that would postpone or discontinue the trustee's sale; or
>
> (C) 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).

"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 date displayed on the rescission notice, the trustee must refund to the purchaser the money paid for the purchase. ORS 86.782(4)(c).

§ 13.5K Possession of Property After Trustee's Sale

§ 13.5K(1) When Purchaser Is Entitled to Possession of Property

Except as provided in ORS 86.782(6)(b) or (c) (*see* § 13.5K(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 § 13.5K(2) regarding obtaining possession of property after the sale.

§ 13.5K(2) Obtaining Possession of Property

"The purchaser may obtain possession of the property from a tenant at sufferance [*see* § 13.5K(1)] by following the procedures set forth in ORS 105.100 to 105.168 or other applicable judicial procedure." ORS 86.782(6)(a).

The purchaser may follow the procedures set forth in ORS 105.100 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 includes a "dwelling unit" (*see* ORS 90.100(14)) 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 105.100 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), and uses the complaint form provided in ORS 105.124 or ORS 105.126. ORS 86.782(6)(c).

§ 13.5K(3) Federal Protections for Tenants in Foreclosure Under Unexpired Bona Fide Leases

The Protecting Tenants at Foreclosure Act of 2009 (PTFA) preempts state law to the extent that state law does not provide for residential tenants living in foreclosed properties the right to receive a minimum 90-day notice before an action to obtain possession after foreclosure, and to live on the leased property until the end of the tenant's pre-foreclosure lease term under a bona fide lease. Pub L 111-22, Div A, Title VII, 123 Stat 1660. The PTFA originally expired (after multiple extensions) under a sunset provision on December 31, 2014, but under the Economic Growth, Regulatory Relief, and Consumer Protection Act, the PTFA was reinstated and made permanent. Pub L 115-174, Title III, § 304(b), 132 Stat 1339 (2018).

A lease or tenancy is "bona fide" only if (1) the mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant; (2) the lease or tenancy was the product of an arm's-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy. PTFA § 702(b).

§ 13.5L Failure to Give Notice of Sale

§ 13.5L(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, including the Department of Revenue or another state agency, 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"; 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 ORS 86.767 or any other applicable law. ORS 86.767(6). *But see Portland Mortgage Co. v. Creditors Protective Ass'n*, 199 Or

432, 440, 262 P2d 918 (1953) (a strict foreclosure action by the purchaser against the omitted party may cut off the five-year redemption period).

In an action against the trustee or any other party under the statute, the omitted person must affirmatively plead that they 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).

§ 13.5L(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

> (a) The notice required by ORS 86.756 is not sent to the grantor [*see* § 13.5C(1)];
>
> (b) The grantor does not actually receive a copy of the notice at least 25 days before the date on which the trustee conducts the sale; and
>
> (c) The grantor informs the trustee, the purchaser, the beneficiary or any loan servicer in writing not later than 60 days after the purchaser takes possession 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).

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 notice of the sale on the website established under ORS 18.926 for at least 28 days;

(2) publish notice of the sale in a newspaper of general circulation, as defined in ORS 193.010, in the county where the real property is located for four successive weeks; and

(3) not less than 28 days before the sale, mail by first-class and certified mail, return receipt requested, a copy of the notice of sale to the judgment debtor; and by first-class mail only to the judgment debtor's attorney and any other person listed in the instructions in accordance with ORS 18.918.

ORS 18.924(1), (8)–(9).

"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(7).

Within seven days after mailing the notices, the sheriff must post notice of the sale on the property. ORS 18.924(10).

§ 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). A redemptioner is entitled to possession from the date payment is made until another redemption, if any. ORS 18.946(1)(b).

If a tenant possesses the property at the time of the sale under an unexpired lease that is inferior to the claim that was satisfied by the execution sale, the tenant may remain in possession "until the expiration of the redemption period if the tenant pays to the purchaser or redemptioner the greater of a monthly payment equal to the value of the use and occupancy of the property or the lease payments." ORS 18.946(2).

"A purchaser or redemptioner entitled to possession of real property under [ORS 18.946(1)] may obtain possession of the property from an occupant under ORS 105.100 to 105.168 or another applicable judicial procedure." ORS 18.946(1)(c). One available judicial procedure is to motion the court for a writ of assistance, which should be signed by a judge (rather than the court administrator), as a judicial authorization is required for an order authorizing the sheriff to use force in assisting the purchaser or redemptioner with obtaining possession.

§ 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 the court may establish timelines 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. If a mortgagor or judgment debtor, or successor in interest, redeems the property, the property may not be redeemed by any other person. ORS 18.952(2).

§ 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; or (2) not less than seven days before the specified payment date, if the notice is served by personal service. ORS 18.970(3).

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)) or (2) the "certificate holder objects to the redemption amount specified in the notice." ORS 18.972(1)(a)–(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;

(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;

(3) "[a]n objection to a response is delivered to the sheriff with the payment"; or

(4) "[t]he calculations or other documentation provided to the sheriff appear irregular to the sheriff."

ORS 18.975(2).

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; or

(2) the claimant pays the additional amounts claimed in the response, plus interest.

ORS 18.975(5).

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)(a) 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. ORS 18.978(4).

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 under ORS 18.975. If the additional amounts and interest are not paid within the time allowed, the redemption is void and the sheriff shall 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; 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(2)–(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 with 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, and he has the same rights, no more and no less, which he had before the foreclosure suit was commenced." *Portland Mortgage Co. v. Creditors Protective Ass'n*, 199 Or 432, 439–40, 262 P2d 918 (1953).

§ 13.6E References

See generally 2 *Oregon Real Estate Deskbook* chs 23–24 (OSB Legal Pubs 2015) (nonjudicial foreclosure of trust deeds; mortgage foreclosure); *Consumer Law in Oregon* ch 12 (OSB Legal Pubs 2013) (home mortgages).

Chapter 14

ISSUES ARISING UNDER CONTRACTS AND ARTICLES 2, 3, AND 4 OF THE UNIFORM COMMERCIAL CODE

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§ 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 Association 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 § 11.2B(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 (UCC) (ORS 72.7250(1)), not the general six-year statute of limitations for contracts (ORS

12.080). *Moorman Manufacturing 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)–§ 14.3A(3)(c), § 11.2B(2)–§ 11.2C.

§ 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 limitations period is prescribed by statute. ORS 12.010.

An action on a contract or liability, express or implied, must be commenced within six years of the date of accrual, excepting those contracts or liabilities mentioned in the following sections:

(1) ORS 12.070 (action on a judgment, decree, or sealed instrument);

(2) ORS 12.110 (action for injuries to person or rights not arising on contract);

(3) ORS 12.135 (action arising from the construction, alteration, or repair of an improvement to real property);

(4) ORS 72.7250 (contract for sale under Article 2 of the UCC).

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(1)–§ 14.2I(10); *see also* § 14.2N(1)–§ 14.2N(2)(b) (regarding whether the tort or the contract limitations period applies in a given case).

See § 2.6B(1)(a) 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. Mutual of Enumclaw Insurance 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, an action is generally deemed to have been commenced as to a defendant when the complaint is filed. ORCP 3. For purposes of the statute of limitations, ORS 12.020 provides:

> (1) Except as provided in subsection (2) of this section, for the purpose of determining whether an action has been commenced within the time limited, an action shall be deemed commenced as to each defendant, when the complaint is filed, and the summons served on the defendant, or on a

> codefendant who is a joint contractor, or otherwise united in interest with the defendant.
>
> (2) If the first publication of summons or other service of summons in an action occurs before the expiration of 60 days after the date on which the complaint in the action was filed, the action against each person of whom the court by such service has acquired jurisdiction shall be deemed to have been commenced upon the date on which the complaint in the action was filed.

§ 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); *but see Eclectic Investment, LLC v. Patterson*, 357 Or 25, 346 P3d 468, *adh'd to as modified on recons*, 357 Or 327, 354 P3d 678 (2015) (limiting availability of common-law indemnity for negligence); *see* § 14.2J(1)–§ 14.2J(2) (indemnity).

A separate 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."

§ 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); *see Vega v. Farmers Insurance 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 84, 165 P 1173 (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 (*see* § 14.2D(1)) applies in cases of fraudulent concealment. ORS 12.150; *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.

The purpose of this "discovery rule" is to prohibit "one who wrongfully conceals material facts and thereby prevents discovery of his wrong or of the fact that a cause of action has accrued against him" from asserting the statute of limitations, "thus taking advantage of his own wrong." *Chaney*, 264 Or at 27 (quoting L. S. Tellier, Annotation, *What Constitutes Concealment Which Will Prevent Running of Statute of Limitations*, 173 ALR 576, 578 (1948)).

§ 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 Road 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 simultaneous with the new promise, and in six years thereafter bars the remedy thereon"); *Buell v. Deschutes County Municipal Improvement District*, 208 Or 56, 298 P2d 1000 (1956) (an acknowledgment tolls the statute of limitations). However, ORS 12.230, by its terms, does "not alter the effect of any payment of principal or interest," which is governed by ORS 12.240 (the time limitation commences from the time the last payment was made).

§ 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).

§ 14.2G Damages as an Element of Breach-of-Contract Claim

The majority of Oregon cases hold that a party may maintain a breach-of-contract action without evidence of actual damages. *See, e.g.*, *Western 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); *Smith v. Abel*, 211 Or 571, 589, 316 P2d 793 (1957); *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). *But see Moini v. Hewes*, 93 Or App 598, 602–03, 763 P2d 414, *rev den*, 307 Or 245 (1988) (stating that damages are an "essential element" of a breach-of-contract claim (citing *Wm. Brown & Co. v. Duda*, 91 Or 402, 406, 179 P 253 (1919))).

§ 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) ("A discovery rule cannot be assumed, but must be found in the statute of limitations itself." (Quoting *Gladhart v. Oregon Vineyard Supply Co.*, 332 Or 226, 230, 26 P3d 817 (2001), *superseded by* Or Laws 2003, ch 768, § 1 *as noted in Fox v. Collins*, 213 Or App 451, 453, 162 P3d 998, *rev den*, 343 Or 223 (2007))). The "applicable statute of limitations for . . . contract claims is, without a discovery rule, six years from the date of breach." *Waxman,* 224 Or App at 512; *see also Abraham v. T. Henry Construction, 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)–§ 14.2I(10); *see also* § 14.2N(1)–§ 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 limitations period provided in ORS 12.080(1) for "[a]n action upon a contract" is not "*exclusive* but is, instead, effectively a 'default' provision." *Reedsport School District No. 105 v. Gulf Insurance Co.*, 210 Or App 679, 687, 152 P3d 988 (2007) (emphasis added). If the parties specify a different limitations period within a contract, the contract provision generally controls. *Reedsport School District 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 Indemnity Co.*, 47 Or 10, 22, 81 P 577 (1905); *e.g.*, *Biomass One, L.P. v. S-P Construction*, 103 Or App 521, 524–26, 799 P2d 152, *aff'd*, 103 Or App 535, 797 P2d 158 (1990) (an action for the breach of a construction contract was governed by the one-year limitations period specified in the contract); *see Fink v. Guardsmark, LLC*, No CV 03-1480-BR, 2004 US Dist LEXIS 16970 at *9–10, 2004 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) (statute of limitations) does not apply to every claim merely because a contractual relationship exists between the parties, such as "an action for damages against one 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 of the contract, and the alleged breach would also be a breach of this noncontractual duty, then [the two-year limitation provided in] ORS 12.110 applies." *Securities-Intermountain*, 289 Or at 259. Thus, 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 Insurance Co.*, 313 Or 97, 106, 110–11, 831 P2d 7 (1992); *see also Metropolitan Property & Casualty 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 Metropolitan Property & Casualty*, 168 Or App at 369 (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

ORS 12.135(2) and (3) generally apply 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 either 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(1)(d)). ORS 12.135(2)–(3).

The definition of *substantial completion* in ORS 12.135(1)(e) was amended effective January 1, 2020. The amendment applies only to causes of actions arising after that date. For claims arising before January 1, 2020, see the prior version of the statute. *See* Or Laws 2019, ch 327, § 1.

§ 14.2I(3)(b) Action by a Homeowners Association or Association of Unit Owners

Effective January 1, 2026, homeowners associations and associations of unit owners must commence a tort action for "defective construction, alteration or repair of a structure or unit" within either seven years from substantial completion or abandonment of the work, or one year after discovery of the construction defect if the defect is discovered more than six years, but less than seven years, after substantial completion or abandonment of the work. ORS 12.135(4); *see* ORS 12.135(1)(b), ORS 94.550 (defining "homeowners association"); *and* ORS 12.135(1)(a), ORS 100.005 (defining "association of unit owners").

§ 14.2I(3)(c) 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(5)(a). Such an action must be commenced before the earliest of the following periods:

> (A) Two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered;
>
> (B) Ten years after substantial completion or abandonment of the construction, alteration or repair of a small commercial structure or residential structure; or
>
> (C) Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure.

ORS 12.135(5)(a).

NOTE: Each "structure" type is precisely defined and may require significant factual investigation to determine. For example, a *small commercial structure* is defined to include, in part, "[a] nonresidential structure of any size for which 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: Effective July 1, 2027, ORS 701.005(17)(c) will be redesignated as ORS 701.005(19)(c). Or Laws 2025, ch 78, § 17.

NOTE: ORS 12.135(5) was amended effective January 1, 2014 and applies only to causes of action arising after that date. Or Laws 2013, ch 469, §§ 1–2. The definition of *substantial completion* in ORS 12.135(1)(e) was amended effective January 1, 2020 in a manner that expanded the definition of the event that commences accrual of a cause of action. Or Laws 2019, ch 327, § 1. The amendment applies only to causes of actions arising after

that date. Or Laws 2019, ch 327, § 2. For claims arising before January 1, 2020, see the prior version of the statute for the applicable definition of *substantial completion*.

§ 14.2I(3)(d) 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.

§ 14.2I(3)(e) Action Against Property Owners and Prime Contractors by Unrepresented Subcontractor Employees for Unpaid Wages

Effective January 1, 2026, nonunion employees performing construction or maintenance work may hold private property owners and prime contractors jointly and severally liable for wages or benefit contributions that are not paid, or are not fully paid for the category of labor performed, by their employing subcontractor. Owners are also subject to these claims asserted by the prime contractor's employees. Damages may include the unpaid wages and "fringe benefit contributions, interest and penalty wages, damages, attorney fees and costs incurred in connection with the action." ORS 652.197(3)(a); Or Laws 2025, ch 287, § 4. Claims may be asserted by the laborer or by "[a]n authorized third party representative." ORS 652.197(3)(a)(B). These claims may not be asserted for construction or maintenance projects in which the owner is a public agency as defined in ORS 279C.800(5). ORS 652.197(1)(g)(B).

A plaintiff must first provide notice of the alleged violations via first-class certified mail to the owner and prime contractor. ORS 652.197(3)(c)(A). Owners and prime contractors have a 21-calendar-day cure period to correct the alleged violation, and the party alleging the violation may not bring a civil action unless this notice and cure period have expired without the alleged violation being corrected. ORS 652.197(3)(c)(A), (3)(c)(B). A civil action to recover the unpaid wages or fringe benefit contributions must be commenced within "two years from the date on which the wages and fringe benefit contributions became due." ORS 652.197(3)(d). This statute applies to "labor performed by workers on a project" on or after January 1, 2026. Or Laws 2025, ch 287, § 4.

§ 14.2I(3)(f) Claim Against Licensed Contractor Before the Construction Contractors Board

Licensed construction contractors are subject to complaints filed with the Oregon Construction Contractors Board (CCB), by the owner of a structure or other real property, another licensed contractor or subcontractor, or construction laborers for negligent or improper work, breach of a construction contract, or unpaid wages. ORS 701.139; ORS 701.140. For claims on residential projects, the CCB may issue an award against the respondent contractor that may be filed with the circuit court. ORS 701.145; ORS 701.153. For claims arising from residential or commercial projects, prevailing claimants may recover from the licensure surety bonds required to be posted by contractors to respond to such claims. ORS 701.150; ORS 701.153.

Claims arising from commercial projects and some other claims may need to be resolved by litigation or arbitration. But the right to eventually recover from a contractor's licensure surety bond depends upon filing a claim with the CCB within prescribed time limits. To be considered by the CCB—and thereby establish priority to a claim against the contractor's licensure bond—claims must be filed with the CCB (or the Bureau of Labor and Industries for unpaid wage claims) within

(1) one year after a new structure is first occupied or two years after the contractor building the new structure achieves its substantial completion;

(2) one year after the contractor achieves substantial completion of construction to an existing structure;

(3) one year after the effective date of the construction contract if the contractor never commences work;

(4) one year after the contractor ceases work before its substantial completion;

(5) for claims against a subcontractor on a new structure, 14 months after the date the new structure was first occupied or two years after the project's substantial completion;

(6) for claims against a subcontractor on an existing structure, 14 months after the work was substantially completed;

(7) for claims against a subcontractor who fails to complete its work, 14 months after the subcontractor ceased work; or

(8) for claims of employees, subcontractors, or suppliers of material or equipment, one year after the date the contractor incurred the indebtedness.

ORS 701.143.

See § 17.1 for further discussion of the CCB complaint process.

§ 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 (1981), *renumbered as* ORS 742.240 (1989), was not a statute of limitations but created a contractual limitation. *Ben Rybke Co. v. Royal Globe Insurance Co.*, 293 Or 513, 517–18, 651 P2d 138 (1982). For further discussion, see *Insurance Law in Oregon* § 40.1 (OSB Legal Pubs 2020).

§ 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–§ 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); *Massey v. Oregon-Washington Plywood Co.*, 223 Or 139, 143–44, 353 P2d 1039 (1960) (holding that "the term 'premium pay' as used in [ORS 12.110(3)] does not describe vacation pay"; therefore, the statute did not bar the action); *see* § 8.2B (state-law claims for unpaid wages or overtime).

§ 14.2I(9) Actions Relating to Real or Personal Property

§ 14.2I(9)(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) (adverse possession), § 15.3G (right, claim, or interest in real property).

An action to recover personal property must be commenced within six years. ORS 12.080(4); *see* § 11.8A(1)–§ 11.8C(2)(c).

§ 14.2I(9)(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) 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.*, *Woodriff v. Ashcraft*, 263 Or 547, 553, 503 P2d 472 (1972) (reformation). *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. *Owings v. Rosé*, 262 Or 247, 261–63, 497 P2d 1183 (1972); *Huff v. Shiomi*, 73 Or App 605, 607, 699 P2d 1178 (1985). *But see PIH Beaverton, LLC v. Super One, Inc.*, 254 Or App 486, 501–04, 294 P3d 536 (2013), *aff'd*, 355 Or 267, 323 P3d 961 (2014) (the limitations periods set forth in ORS 12.135(5) applicable to improvements to real property were applied to a general contractor's contractual indemnity claim against subcontractors). *See also Eclectic Investment, LLC v. Patterson*, 357 Or 25, 346 P3d 468, *adh'd to as modified on recons*, 357 Or 327, 354 P3d 678 (2015) (limiting availability of common-law indemnity for negligence); *see generally Annie & the Octopus: Common-Law Indemnity* chs 5 and 6 (OSB Legal Pubs 2018).

§ 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. *Southern Pacific Co. v. Morrison-Knudsen Co.*, 216 Or 398, 408, 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. *Southwest Forest Industries, Inc. v. Vanply, Inc.*, 43 Or App 347, 357–58, 602 P2d 1113 (1979); *see Contract Law in Oregon* § 17.41 to § 17.42, § 20.11 (Oregon CLE 2003 & Supp 2008). *See generally Insurance Law in Oregon* ch 16 (OSB Legal Pubs 2020) (duty to defend, settle, and indemnify).

§ 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 Board*, 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 (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 of action 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 Board*, 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 (*see* § 14.2K(2)), 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. *Oregon State Bar v. Wright*, 309 Or 37, 43, 785 P2d 340, *cert den*, 498 US 829 (1990); *Albino v. Albino*, 279 Or 537, 552, 568 P2d 1344 (1977). *See generally Contract Law in Oregon* ch 5 (Oregon CLE 2003 & Supp 2008) (reformation as remedy for mistaken written expression).

§ 14.2L Mistake

In an action on a contract because of mistake or fraud, the statute of limitations begins to run from the discovery of the mistake or fraud. ORS 12.040(4).

A party seeking rescission (cancellation) of a contract based on mistake "must act promptly to disaffirm the contract." *First Western 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 v. Wilcoxen*, 278 Or 91, 95, 562 P2d 1207 (1977) (quoting *Ross v. Carlyle*, 216 Or 576, 578, 339 P2d 1114 (1959)). *See generally Insurance Law in Oregon* § 4.2-2 (OSB Legal Pubs 2020) (rescission of policies); 5 *Oregon Real Estate Deskbook* ch 66 (OSB Legal Pubs 2015) (rescission, reformation, and specific performance); *Contract Law in Oregon* ch 5 (Oregon CLE 2003 & Supp 2008) (reformation as remedy for mistaken written expression).

§ 14.2M Reformation of Contracts and Instruments

An action 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. 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); *see also* § 14.2K(1)–§ 14.2K(4) (laches), § 14.2L (mistake). *See generally Contract Law in Oregon* ch 5 (Oregon CLE 2003 & Supp 2008) (reformation as remedy for mistaken written expression); *Insurance Law in Oregon* § 4.2-2 (OSB Legal Pubs 2020) (rescission of insurance policies); 5 *Oregon Real Estate Deskbook* ch 66 (OSB Legal Pubs 2015) (rescission, reformation, and specific performance).

§ 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.'" *Metropolitan Property & Casualty 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*, 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

Securities-Intermountain, Inc. v. Sunset Fuel Co., 289 Or 243, 611 P2d 1158 (1980), is one of the leading Oregon decisions on the issue of whether an action is governed by the six-year limitations period for contracts set forth in ORS 12.080, or by the general two-year statute of limitations governing torts 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. *Securities-Intermountain*, 289 Or at 245–46, 253–58. 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, *Securities–Intermountain*, 289 Or at 246–52, the court turned to the task of distinguishing contractual and noncontractual obligations, noting that the two may overlap, *Securities-Intermountain*, 289 Or at 258–59.

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 the defendant was negligent, and regardless of facts that might excuse the defendant from tort liability. *Securities-Intermountain*, 289 Or at 259–60; *see also Metropolitan Property & Casualty 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 architect's obligations in considerable detail, and the court found that it was "exactly the kind of contract that is designed not to leave the scope of the 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.

§ 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 Construction, 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 a breach of a standard of care that is independent of the contract, and without reference to the contract's specific terms. 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 the investor sustained 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 duty allegedly breached in most of the plaintiff's allegations—the agent's 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. *Boyer*, 344 Or at 591–94.

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 Insurance 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, as an intended third-party beneficiary, 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 288–89. 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. *Hale*, 304 Or at 289.

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 *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.

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 367–69.

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), the homeowners brought an action asserting negligence and breach-of-contract claims against a home inspector. On the day of trial, the defendant moved to dismiss the plaintiffs' negligence claim on the ground that it really alleged a breach-of-contract claim, which

motion the court granted. The plaintiffs then dismissed their breach-of-contract claim. The trial court dismissed both the negligence and breach-of-contract claims, with prejudice, and plaintiffs appealed the dismissal of their claim for negligence. *Fessler*, 143 Or App at 399. The Court of Appeals reversed. 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*, 137 Or App at 185, 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 (viz., to have the client's case reinstated).

In *Dauven v. St. Vincent Hospital & Medical Center*, 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 *South Lake Center Partnership 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), *overruled in part on other grounds by Larisa's Home Care, LLC v. Nichols-Shields*, 362 Or 115, 404 P3d 912 (2017), 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.

§ 14.2O 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.

§ 14.2P Tolling of Statute of Limitations

Certain situations may result in the tolling, or suspension, of the statute of limitations. These situations include the absence or concealment of the person against whom an action is brought, the death of the plaintiff or the defendant, or causes accruing against minors or other persons with a disabling mental condition. *See* ORS 12.150–12.210; § 2.6B(1)(a) to § 2.6D(3).

The statute of limitations may also be tolled (or a case otherwise time-barred may be revived) by a party who makes a new promise to pay a debt. ORS 12.230. There must be an unconditional agreement that discloses a clear intention to admit liability. *Buell v. Deschutes County Municipal Improvement District*, 208 Or 56, 60, 298 P2d 1000 (1956); *Clostermann v. Rode*, 183 Or 412, 193 P2d 532 (1948).

§ 14.2Q Preemption of Statute of Limitations

Where state laws regarding the applicable statute of limitations are inconsistent with the Constitution and laws of the United States, federal law will preempt the state statute of limitations. *See Warren v. Ruffcorn*, No 00-0721-HA, 2001 US Dist LEXIS 26631, 2001 WL 34043449 (D Or Sept 18, 2001) (Oregon's two-year statute of limitations was preempted by federal law because under federal law a plaintiff had 120 days to effect service, compared to only 60 days under Oregon law).

§ 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—Negotiable Instruments (*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* § 11.17B–§ 11.17B(5) (Article 7—Warehouse Receipts, Bills of Lading, and Other Documents of Title); § 11.17C(1)–§ 11.17C(4) (Article 8—Investment Securities); § 11.18A–§ 11.18S (Article 9—Secured Transactions).

§ 14.3A Sales—UCC Article 2

§ 14.3A(1) Statute of Frauds; Time Limit for 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. ORS 72.2010(1).

There must be "a record 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 record 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 record confirmation objects to the contents of the contract within 10 days after it is received. ORS 72.2010(2).

§ 14.3A(2) Time Limit of 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 (disclaimer of implied warranties); ORS 72.8070 (effect of express warranty upon disclaimer).

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). *See* § 12.1A(1)–§ 12.1E (motor vehicles).

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)–§ 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 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)–§ 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 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. Pursuant to a provision in the contract, the plaintiff later returned the car to the defendant so it could be resold and the proceeds used to pay off the balance, with any surplus to be given to the plaintiff. *Chaney*, 264 Or at 22. The defendant sold the car 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. *Chaney*, 264 Or at 22–23. 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 "[a]n action upon a liability created by statute"), "both of which allow six years within which to bring an action." *Chaney*, 264 Or at 25–26.

§ 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, 706–07, 116 P3d 909 (2005) ("[A]n implied warranty of fitness for a particular use is not a warranty that explicitly extends to future performance."); *see also* § 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(2)(e)(A), (C). 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) Time Limit for 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. ORS 72.7020(2). 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* § 11.21E(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, 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. See, however, 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 of 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, or 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 & Building 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 allowed*, 342 Or 665 (2007). See generally § 7.16 to § 7.16F(7) regarding products liability.

In *Weston*, 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 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 implied or express warranties regarding goods is governed by the UCC. ORS 12.010; ORS 72.3140; ORS 72.3150; ORS 72.7250; ORS 72.7140; *see Gladhart v. Oregon Vineyard Supply Co.*, 164 Or App 438, 459–60, 994 P2d 134 (1999), *rev'd on other grounds*, 332 Or 226, 26 P3d 817 (2001), *superseded by* Or Laws 2003, ch 768, § 1 *as noted in Fox v. Collins*, 213 Or App 451, 453, 162 P3d 998, *rev den*, 343 Or 223 (2007).

§ 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); *Permapost Products Co. v. Osmose, Inc.*, 200 Or App 699, 706–07, 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) Time Limit for 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 Melms v. Mitchell*, 266 Or 208, 512 P2d 1336 (1973) (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 Negotiable Instruments—UCC Article 3

The time within which various actions to enforce an obligation, duty, or right arising under Article 3 of the UCC must be commenced is set forth at ORS 73.0118. However, as noted in the commentary to the UCC, the statute does not "state all rules with respect to a statute of limitations." UCC § 3-118 cmt 1 (1990). For example, the limitations period may be tolled as determined by other law. ORS 73.0118(8). Thus, "[u]nless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity . . . supplement its provisions." ORS 71.1030(2); *see* § 14.2A (contract statute of limitations).

§ 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." ORS 73.0118(1). 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

"[I]f 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:
>
> (a) Conversion of an instrument, for money had and received, or like action based on conversion;
>
> (b) Breach of warranty; or
>
> (c) Enforcement of an obligation, duty or right arising under [ORS chapter 73] and not governed by [ORS 73.0118].

ORS 73.0118(7).

§ 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.

> NOTE: The statute does not specify when a claim for relief accrues, and thus the general principle that an action accrues when a breach occurs is applicable. *See* § 14.2D(1). Thus, the claim for relief accrues when the instrument is dishonored or upon notice of dishonor if such notice is required and not excused. Dishonor *may* require presentment. *See* § 14.3C(2).

§ 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 generally 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 cutoff hour not earlier than 2 p.m." and presentment is made after the cutoff 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:

> (a) 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.
>
> (b) 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.
>
> (c) If the note is not payable on demand and paragraph (b) of this subsection does not apply, the note is dishonored if it is not paid on the day it becomes payable.

ORS 73.0502(1).

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 also waives 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) Time Limits Relevant to Stop Payment Orders

A customer "may stop payment of any item drawn on the customer's account or close the 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 given 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) Time Limits Relevant to 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) Time Limits Relevant to Unauthorized Signature or Indorsement, Forgery, or Alteration

The time rules governing an action 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

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§ 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. *See* ORS 87.152. Possessory liens on motor vehicles are subject to prerequisites and consumer protections that are described in ORS 87.152(2)–(4). 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. ORS 87.172(3). Any appraisal must be conducted by an appraiser certified under ORS 819.480.

§ 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. ORS 87.176(1). If a lien claimant fails to comply with the notice requirements, the lien claimant is limited to recovering the reasonable fees for storage up to 20 days 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).

A possessory lien for the storage of a motor vehicle is subject to additional prerequisites and consumer protections. *See* ORS 87.152(2)–(4).

§ 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)(a).

§ 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 front door of the courthouse of the county in which the sale is to be held 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)(a).

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 before 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)(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)(a)(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)(a)(C).

If a lien claimant does not give proper foreclosure notice to a secured party or lien holder, the lien claimant is 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(3).

§ 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 or children's clothing or accessories after the guest or boarder requests return of the property." ORS 87.156(2)(a). 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 chapter 90). 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, or by sending electronic mail to the occupant's last known address. ORS 87.689(2). The notice must demand payment no earlier than 30 days after default and provide other required information to the occupant. ORS 87.689(3).

§ 15.1D(3) Public Notice

If foreclosing personal property with a fair market value of over $1,000, 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. ORS 87.691(2). The property can be sold no earlier than 15 days after the first publication. ORS 87.691(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 State Treasurer as provided in ORS 98.352. ORS 87.691(8).

§ 15.1E References

See generally Creditors' Rights and Remedies ch 3 (OSB Legal Pubs 2016) (statutory and possessory liens).

§ 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 RLTA 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 12.125. 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 only, a minimum of three additional days must be added to the deadlines discussed below. ORS 90.150(3); ORS 90.155(2). In calculating the total time for compliance when notices are mailed, the date of mailing is not counted. ORS 90.160(1). All written notices are deemed to run to the end of the last day at 11:59 p.m. ORS 90.160(1). When stating time or deadlines for compliance, notices should not use the language "midnight, end of day," as this is invalid. *See Johnson Mobile Park, Inc. v. Schoffstall*, 341 Or App 264, 273–74, 571 P3d 230, *rev den*, 374 Or 379 (2025). Mailed notices must be sent first-class regular mail. ORS 90.150(3); ORS 90.155(1). Certified mail, or use of a commercial mailing service, such as overnight delivery, will not satisfy the RLTA's notice requirement. *See* ORS 90.100(18) ("'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.").

§ 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 RLTA, 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 caused by 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, 44, 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) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

ORS 90.425(2). The phrase "dispose of the personal property" means that, "if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a nonprofit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit." ORS

90.425(1)(b). If the property valuation is less than $1,000.00, then a landlord may dispose of the property after the expiration of appropriate notice. If the property valuation is greater than $1,000.00, then a landlord must conduct a commercially reasonable sale consistent with ORS 90.425.

§ 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 be given by personal delivery or via first-class mail, except that for any lienholder, mail service must be both by first-class mail and by certified mail with return receipt requested. ORS 90.425(4)(b). The notice must also contain all the required statements contained in ORS 90.425(5).

With respect to notice timelines, the notice must specify a date by which the tenant must contact the landlord to arrange for disposition of the tenant's property. ORS 90.425(5)(b). For most personal property, including recreational vehicles, the date is five days after personal delivery of the notice or eight days after first-class mailing of the notice. ORS 90.425(6)(b). If the tenant contacts the landlord during this period of time, the landlord must store the property for an additional 15 days before the sale or disposal of the property. ORS 90.425(8). If the abandoned property is a manufactured dwelling or floating home, the tenant has at least 45 days to contact the landlord. ORS 90.425(6)(a). If the tenant contacts the landlord during this period of time, the landlord must make the manufactured dwelling or floating home available for the tenant's removal for 30 days. ORS 90.425(8).

§ 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). The landlord must send or deliver the abandoned-property notice to

(1) the deceased tenant at the premises;

(2) any heir, devisee, personal representative, or designated person, if actually known to the landlord;

(3) an estate administrator of the State Treasurer.

ORS 90.425(21)(b).

§ 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 manufactured dwelling or floating home), the landlord may sell or dispose of the property as detailed in the abandoned property notice. 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 the personal property, then the landlord must make the property available for removal during the next 15 days (30 days for a 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, Sexual Assault, Stalking, or Bias Crime

A tenant who has been a victim of domestic violence, sexual assault, stalking, or a bias crime 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 (previously titled a forcible entry and unlawful detainer or "FED") for possession of a residential rental premises covered by the RLTA requires effective service of a valid written termination notice. *See* ORS 105.115(2); ORS 105.120(3). The calculation of the notice periods is set forth in the applicable statutes related to each particular notice.

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)(a)(A); *see* § 15.2A(9)–§ 15.2A(9)(b). Some other notices include the following:

- *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). If the tenant commits substantially the same act or omission within six months for which a valid notice was given, the landlord may terminate the tenancy with 10 days' notice. ORS 90.392(5)(a). For a week-to-week tenancy, the for-cause notice period is seven days rather than 30, and the cure period is four days. ORS 90.392(6)(a)–(b). 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)(c).

- *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 10 days' notice given no sooner than the eighth day of the rental period, or 13 days' 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 an unauthorized 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). If substantially the same act that constituted a prior noncompliance for which notice was given recurs within six months, the landlord may terminate the rental agreement upon 10 days' written notice specifying the breach and the date of termination. ORS 90.405(3).
- *Fixed-Term and Subsidized Tenancies:* Residential tenancies for a fixed term and certain subsidized tenancies may be terminated early only for cause. *See* ORS 90.427; *see also* ORS 90.392–90.405 (various examples of "cause").
- *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).

NOTE: Landlords should pay additional attention to specific documents required by local rules, such as Portland's Fair Access in Renting (FAIR) Ordinances and Eugene Renter Protection Ordinances, if the property is located within those jurisdictions. *See generally* Portland City Code chapter 30.01 (Affordable Housing Preservation and Portland Renter Protections), https://www.portland.gov/code/30/01. Forms required by the Portland City Code are available on the Portland Housing Bureau Rental Services Office webpage: https://www.portland.gov/phb/rental-services (scroll down to the "Featured content" section; clicking on any of the links labeled "Mandatory Renter Relocation Assistance," "Application and Screening," or "Security Deposits" will take the user to a page that, at the bottom, contains "Additional Documents"). Termination of tenancies without "cause" in Portland, even within the first year of occupancy

otherwise allowed under state law, can trigger relocation payment requirements. *See* Portland City Code 30.01.085; *cf.* Eugene Renter Protection Ordinance 20694 (Phase II Renter Protections), *available at* https://www.eugene-or.gov/4885/Renter-Protections-Process.

§ 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).

NOTE: Landlords should pay additional attention to specific documents required to be served along with the final accounting by Portland's FAIR Ordinances and Eugene Renter Protection, if the property is located within the jurisdiction. *See generally* Portland City Code chapter 30.01 (Affordable Housing Preservation and Portland Renter Protections), https://www.portland.gov/code/30/01; *see* Eugene Renter Protection Ordinance 20694 (Phase II Renter Protections), *available at* https://www.eugene-or.gov/4885/Renter-Protections-Process.

§ 15.2A(8) Notice Requirements to Terminate Tenancy

§ 15.2A(8)(a) Periodic Tenancy

A landlord may terminate a month-to-month tenancy that is in its first year of occupancy as defined by ORS 90.427(1)(a) upon 30 days' notice, ORS 90.427(3)(a), and upon 10 days' notice in a week-to-week tenancy, ORS 90.427(2).

CAVEAT: Certain jurisdictions such as Portland and Milwaukie have 90-day notice requirements, even within the first year, which override this timeline. Portland City Code 30.01.085 B, *available at* https://www.portland.gov/code/30/01; Milwaukie Municipal Code 5.60.030 A, *available at* https://www.qcode.us/codes/milwaukie. Attorneys should also be aware that Portland and Eugene require relocation payments, even within the first year, unless an exemption is properly pursued. *See* Portland City Code 30.01.085; *see also* Eugene Renter Protection Ordinance 20694 (Phase II Renter Protections), *available at* https://www.eugene-or.gov/4885/Renter-Protections-Process.

§ 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 for a specified cause (as set out in ORS 90.427(3)(c)(A)), or for a "qualifying landlord reason" (as set out in ORS 90.427(5)–(6)). ORS 90.427(3)(c); *see* § 15.2A(8)(d) (sale of rental dwelling unit). For tenancies terminating as a result of a qualifying landlord reason, the landlord must give notice at least 90 days before

the date designated in the notice for the end of the tenancy. ORS 90.427(5)–(6). The notice must specify the reason for the termination and include supporting facts. ORS 90.427(6)(a). Unless the landlord owns four or fewer residential dwelling units subject to ORS chapter 90, payment of one month's periodic rent must be included with service of the notice. ORS 90.427(6). For properties in Portland, additional relocation assistance may be required, but can be offset by any requirements of relocation assistance under state law. *See* Portland City Code 30.01.085, *available at* https://www.portland.gov/code/30/01. For properties in Eugene, landlords are required to pay two months' current rent for relocation assistance unless an exemption applies. *See* Eugene Renter Protection Ordinance 20694 (Phase II Renter Protections), *available at* https://www.eugene-or.gov/4885/Renter-Protections-Process.

§ 15.2A(8)(c) Fixed-Term Tenancy

If a lease is for a fixed term, the landlord may terminate the tenancy during the fixed term only for cause (as set out in ORS 90.427(4)(a)). If the specified ending date of the fixed term is within the first year of occupancy, then the landlord may terminate the tenancy without cause by giving the tenant notice in writing at least 30 days before the specified ending date of the lease or at least 30 days before the date designated in the notice for termination of the tenancy, whichever is later. ORS 90.427(4)(b).

If the specified ending date for the fixed term falls after the first year of occupancy, the fixed term tenancy becomes a month-to-month tenancy once the fixed term expires unless: (1) the landlord and tenant agree to a new fixed term tenancy, (2) the tenant gives written notice at least 30 days before the fixed term's ending date or the dated designated in the notice for termination of the tenancy, whichever is later, or (3) the landlord has a qualifying reason for termination and gives notice as set out in ORS 90.427(5) to (7). ORS 90.427(4)(c).

> CAVEAT: Certain jurisdictions such as Portland and Milwaukie have 90-day notice requirements, even within the first year. Portland City Code 30.01.085 B, *available at* https://www.portland.gov/code/30/01; Milwaukie Municipal Code 5.60.030 A, *available at* https://www.qcode.us/codes/milwaukie. Attorneys should also be aware that Portland and Eugene require relocation payments, even within the first year, unless an exemption is properly pursued. *See* Portland City Code 30.01.085, *available at* https://www.portland.gov/code/30/01; *see also* Eugene Renter Protection Ordinance 20694 (Phase II Renter Protections), *available at* https://www.eugene-or.gov/4885/Renter-Protections-Process.

§ 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 90 days before the date designated in the notice for the termination of the tenancy if

(i) The dwelling unit is purchased separately from any other dwelling unit;

> (ii) 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
>
> (iii) The landlord has provided the notice, and written evidence of the offer to purchase the dwelling unit, to the tenant.

ORS 90.427(5)(a)(D).

At the time the landlord delivers the tenant the notice to terminate the tenancy, the landlord must also pay the tenant an amount equal to one month's periodic rent, unless the landlord has an ownership interest in four or fewer dwelling units subject to ORS chapter 90. *See* ORS 90.427(6)(b). A landlord may reduce the notice requirement from 90 days to 60 days with the payment of an additional one month's periodic rent in addition to the amount, if any, required to be paid. *See* ORS 90.427(5)(b).

> CAVEAT: Certain jurisdictions such as Portland and Milwaukie have 90-day notice requirements, even within the first year. Portland City Code 30.01.085 B, *available at* https://www.portland.gov/code/30/01; Milwaukie Municipal Code 5.60.030 A, *available at* https://www.qcode.us/codes/milwaukie. Attorneys should also be aware that Portland and Eugene require relocation payments, even within the first year, unless an exemption is properly pursued. *See* Portland City Code 30.01.085; *see also* Eugene Renter Protection Ordinance 20694 (Phase II Renter Protections), *available at* https://www.eugene-or.gov/4885/Renter-Protections-Process.

§ 15.2A(8)(e) Tenant's Notice Requirement

If a tenancy is a month-to-month tenancy, a tenant may terminate the tenancy by giving the landlord at least 30 days' notice before the date designated in the notice for the termination of the tenancy. ORS 90.427(3)(a). If the tenancy is a week-to-week tenancy, the notice requirement is 10 days. ORS 90.427(2).

§ 15.2A(9) Manufactured Dwellings and Floating Homes

Manufactured-dwelling and floating-home tenancies in a facility (as defined in ORS 90.100(16)) 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. ORS 90.645(1)(a)(A). The landlord must pay the tenant a

certain amount, recalculated annually to reflect inflation, depending on the size of the dwelling. ORS 90.645(1)(a)(B), (1)(b). *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. ORS 90.645(2)(a). The landlord is not required to make a payment under ORS 90.645(1) (*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)(b).

§ 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 90.566.

§ 15.2A(9)(d) Utilities

The landlord of a manufactured dwelling or floating home must give the tenant not less than one month's written notice before converting a tenant's existing utility or service billing method for water or wastewater to a submeter billing method. ORS 90.574(1)–(2).

§ 15.2A(9)(e) Registration

Every landlord of a manufactured-dwelling park or floating-home marina 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 or floating-home marina must complete four hours of continuing education relating to the management of manufactured-dwelling parks or floating-home marinas. 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, gender identity, 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–§ 8.1D(4) (housing discrimination).

§ 15.2C(1) Consumer Bureau of Labor and Industries Complaint

A person aggrieved by an unlawful practice, including discrimination in housing, may file a verified written 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* § 13.5C(2)(b)–§ 13.5C(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).

The tenancy of a bona fide tenant renting the property as a residential dwelling can be terminated upon at least 60 days' notice if the tenancy is a fixed-term tenancy, or upon at least 30 days' notice if the new owner intends to use the property as a primary residence (even if the tenant has a fixed-term tenancy). ORS 86.782(6)(c).

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).

§ 15.2E References

See generally 3 *Oregon Real Estate Deskbook* ch 31 (OSB Legal Pubs 2015) (residential leasing).

§ 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. Unless an action is commenced within the limitations period, the contract thereafter ceases to be a lien, encumbrance, or cloud on the title. 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, for claims ripening during the statutory period (and not being made under common law before ORS 105.620 was enacted), 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 Resources, Inc. v. Engelson*, 170 Or App 255, 259 & n 2, 13 P3d 118 (2000), *rev den*, 332 Or 137 (2001); *Powers v. Dague*, 342 Or App 569, 575, 577 P3d 1161 (2025); *Warren v. Burnham*, 341 Or App 226, 231, 573 P3d 421 (2025).

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); *Kramer v. Conatser*, 341 Or App 568, 573–74, 576 P3d 507 (2025).

§ 15.3B(3) Tenant in Common

Unless otherwise agreed or provided in a granting document, a tenant in common may acquire fee-simple 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(3) (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 term 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 an undertaking to the plaintiff in a sufficient amount . . . .

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. ORS 12.137(1). In no event may an action be commenced more than 30 years after the incident. ORS 12.137(3).

§ 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)–

§ 15.3E(3). *Substantial completion* is defined as the earliest of (1) 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, or if there is no written acceptance, the date the contractee accepts the work; (2) the date when "a public body issues a certificate of occupancy for the improvement;" or (3) the date when "the owner occupies the improvement or uses it for its intended purpose." ORS 12.135(1)(e).

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 limitations 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).

The statutes of limitations in ORS chapter 12 generally refer to the time within which an action must be commenced. *See, e.g.*, ORS 12.010. So the question is whether a party that files in arbitration has commenced an action. It may be a weak argument to say that filing an arbitration claim, as required by the parties' contract, does not constitute commencing an action. Nonetheless, if lawyers have a concern about relying on this tolling provision, they should consider first filing their claim in court and seek 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 & Associates, 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); *Goodwin v. Kingsmen Plastering, Inc.*, 359 Or 694, 714, 375 P3d 463 (2016); *Abraham v. T. Henry Construction, 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) 10 years after substantial completion or abandonment of work on a small commercial structure or residential structure; or

(3) six years after substantial completion or abandonment of work on a large commercial structure.

ORS 12.135(2).

NOTE: The 10-year period described in ORS 12.135(2) is a statute of ultimate repose, not a statute of limitations. *Waxman v. Waxman & Associates, 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(3).

§ 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(5)(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(5)(a)(B)–(C).

§ 15.3F Mining, Land Preparation, Nursery Work, 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).

Except for mining work, 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) (adverse possession); *Kramer v. Conatser*, 341 Or App 568, 574, 576 P3d 507 (2025).

§ 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(2)(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 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. ORS 12.280. 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; *Hathaway v. B&J Property Investments, Inc.*, 374 Or 212, 577 P3d 737 (2025).

§ 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 upon 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 a 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 the 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, no discovery rule applies to actions brought under ORS 95.230(1)(b) or ORS 95.240(1), which must be commenced within the four-year limitation period. ORS 95.280(2). These are cases in which the debtor did not receive a "reasonably equivalent value in exchange for the transfer or obligation" and

(1) was engaged or was 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 (ORS 95.230(1)(b)(A));

(2) 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)(B)); or

(3) was insolvent at the time or became insolvent as a result of the transfer or obligation, and the creditor's claim arose before the transfer or obligation (ORS 95.240(1)).

Lastly, an action alleging a transfer in which a creditor's "claim arose before the transfer was made[,] if the transfer was made to an insider for an antecedent debt, 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 or the obligation was incurred. ORS 95.280(3); ORS 95.240(2).

§ 15.3L Extinguishment of Future Interests; Rule Against Perpetuities

A special limitation or a condition subsequent, which restricts a fee simple estate in land, and the possibility of reverter or right of entry for condition

> broken thereby created, shall, if the specified contingency does not occur within 30 years after the possibility of reverter or right of entry was created, be extinguished and cease to be valid.

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 generally* chapter 6.

Chapter 16

INSURANCE

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§ 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, not later than 30 days after the first advance payment was made, of the expiration date of the applicable statute of limitations, that statute continues to run. ORS 12.155(1). 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) ("[T]he 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 limitation 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 for a claim and to encourage such payments by eliminating any apprehension on the part of the insurer that evidence of advance payments could be admissible in court to prove liability." *Hamilton v. Paynter*, 342 Or 48, 54, 149 P3d 131 (2006) (quoting *Duncan v. Dubin*, 276 Or 631, 636, 556 P2d 105 (1976)). 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*, 342 Or at 54 (quoting *Duncan*, 276 Or at 636).

§ 16.1D Commencement of Legal Action

"Statutes of limitation refer to *commencement* of legal actions." *Shasta View Irrigation District v. Amoco Chemicals Corp.*, 329 Or 151, 161, 986 P2d 536 (1999) (quoting *Baker v. Kennedy*, 317 Or 372, 376, 856 P2d 314 (1993) (emphasis in original)); *see also* 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*, 317 Or at 376. 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 138 (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

Generally, a lawsuit seeking uninsured/underinsured motorist (UM/UIM) benefits is subject to the six-year statute of limitations for breach of contract (ORS

12.080), measured from the date that benefits are denied. *See Vega v. Farmers Insurance Co. of Oregon*, 323 Or 291, 295, 918 P2d 95 (1996), *superseded in part on other grounds by* ORS 742.542 (1997), Or Laws 1997, ch 808, § 10. However, ORS 742.504(12)(a) allows insurers to include a provision in the policy stating that "no cause of action shall accrue to the insured under [the UM/UIM] coverage unless within two years from the date of the accident" one of the following four events has occurred:

> (A) Agreement as to the amount due under the policy has been concluded;
>
> (B) The insured or the insurer has formally instituted arbitration proceedings;
>
> (C) The insured has filed an action against the insurer; or
>
> (D) Suit for bodily injury 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.

The terms *date of settlement* and *final judgment* are defined in ORS 742.504(12)(b).

In the absence of the ORS 742.504(12) policy provision, the six-year statute of limitations will apply. The insurance policy may provide a different time limitation than the two years, as long as it is no less favorable to an insured than the statutory limitation. ORS 742.504 ("Every policy required to provide the coverage specified in ORS 742.502 shall provide uninsured motorist coverage that in each instance is no less favorable in any respect to the insured or the beneficiary than if the following provisions were set forth in the policy. However, nothing contained in this section requires the insurer to reproduce in the policy the particular language of any of the following provisions."). 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*, 323 Or at 302. When the policy does not contain the two-year limitation term in ORS 742.504(12)(a), the six-year general statute of limitations for contracts (ORS 12.080(1)) applies to actions on a UM/UIM policy. *North River Insurance 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.

The two-year limitation provision has been held to be enforceable independent of any statute of limitations or tolling provisions applicable to statutes of limitations. *See Wright v. State Farm Mutual Automobile Insurance Co.*, 223 Or App 357, 359, 196 P3d 1000 (2008) (the two-year contractual limitation is enforceable if not waived). *See also Bonds v. Farmers Insurance Co. of Oregon*, 349 Or 152,

240 P3d 1086 (2010); *State Farm Mutual Automobile Insurance Co. v. Sieger*, 285 Or App 727, 397 P3d 74 (2017).

Under ORS 742.504(12)(a)(D), an insured only needs to file the action against the uninsured tortfeasor; service on the defendant tortfeasor and perfecting suit are not required. In *Lindsey v. Farmers Insurance Co. of Oregon*, 170 Or App 458, 12 P3d 571 (2000), the plaintiff was injured in an accident and filed suit against the uninsured driver. Her claim was dismissed below because she failed to complete timely service of process. When she subsequently filed suit seeking UM benefits, the insurer obtained summary judgment based on the plaintiff's failure to comply with the two-year requirement set forth in ORS 742.504(12). On appeal, the Court of Appeals looked to the actual language of ORS 742.504(12)(a)(D), requiring that suit be "*filed* against the uninsured motorist" (emphasis added). It also compared that provision with a fire insurance counterpart in ORS 742.240, requiring that a suit be "commenced." The court concluded that the terms *filed* and *commenced* are terms of art that have different meanings. Because the legislature chose only to require filing in UM/UIM claims, it must have intended something less than commencing an action, which requires both filing and service. Accordingly, the court found that the mere filing of suit against an uninsured motorist, without service, was sufficient to satisfy the prerequisites of ORS 742.504(12)(a)(D). *Lindsey*, 170 Or App at 466–67.

Conversely, because the two-year limitation in ORS 742.504(12) is not a true statute of limitations, it is not tolled by minority, disability, or other provisions. The court has held that such tolling provisions do not apply to the contractual time limitation in ORS 742.504(12). *See Wright*, 223 Or App at 363–64. Likewise, it also is not affected by a longer statute of limitations for tort claims when the accident occurs in another state, such as Washington. In *Sieger*, the accident occurred in Washington, but involved an Oregon policy. The court applied the two-year limitation rather than the Washington three-year statute of limitations against the tortfeasor. *Sieger*, 285 Or App at 729–31. Thus, while an accident occurring in another state might provide a longer statute of limitations for filing an action against the tortfeasor, a UM/UIM claim based on an Oregon policy that includes the two-year limitation provision may still require formal initiation of arbitration, or suit to be filed against the tortfeasor or UM/UIM insurer within two years after the accident.

Formal institution of arbitration proceedings may be accomplished unilaterally by the insured or insurer, but it requires express consent to arbitration. "[T]o meet the requirements of [the statute], a party need not have obtained the other party's agreement to arbitrate." *Bonds*, 349 Or at 160 (second brackets in original). To satisfy ORS 742.504(12)(a)(B), "an insured or an insurer must expressly communicate to the other party that the initiating party offers to arbitrate or otherwise commits to the arbitration process." *Bonds*, 349 Or at 162.

In *Bonds*, the insurer's claims representative sent two letters to the insured's lawyer. The first letter acknowledged the insured's UIM claim and stated that "[s]hould we disagree on the liability/damages owed by the underinsured motorist,

[defendant] consents to submit this matter to binding arbitration." *Bonds*, 349 Or at 154. The second letter stated the insurer's "view that plaintiff already had been compensated for his injuries through other insurance, but specifically noted that defendant was willing to consider additional information." *Bonds*, 349 Or at 162. Although the claims representative "testified that she intended her letters to convey consent to arbitration to obtain for defendant the protection in ORS 742.061 against an award of attorney fees to plaintiff," the Oregon Supreme Court held that the letters did not formally institute arbitration. The court concluded that the first letter "indicated a willingness to arbitrate, depending on whether a future event—disagreement—occurred," but it did not "obviously and expressly state that it was offering to arbitrate." *Bonds*, 349 Or at 163. Furthermore, the second letter "did not definitively state that a disagreement existed, nor did it mention arbitration." *Bonds*, 349 Or at 163.

In a subsequent case, *Luka v. Tri-County Metropolitan Transportation District of Oregon*, 244 Or App 565, 568, 261 P3d 44 (2011), the insured sent a fax to the insurer stating, "[P]lease let this correspondence serve as written notice of our request to have this matter submitted to binding arbitration in accordance with ORS 742.061." (Brackets in original). The Court of Appeals held that the statement was sufficient to qualify as formal institution of arbitration, because it was "an express communication of plaintiff's willingness to commit to the arbitration process." *Luka*, 244 Or App at 569. *See also Paton v. American Family Mutual Insurance Co.*, 256 Or App 607, 613, 302 P3d 1204, *rev den*, 354 Or 386 (2013) ("[A] party's express 'consent' to arbitration suffices to 'formally institute' arbitration proceedings under ORS 742.504(12)(a)(B) in circumstances where that consent is not made explicitly contingent on a future event.").

For more information on UM/UIM insurance, see generally *Insurance Law in Oregon* chapter 21 (OSB Legal Pubs 2020).

§ 16.3 LIFE INSURANCE

While a life insurance policy may limit the time for commencing an action on the policy, it 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).

See generally Insurance Law in Oregon ch 33 (OSB Legal Pubs 2020) (health, disability, life, and accident insurance).

§ 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," and "such proof is furnished as soon as reasonably possible." ORS 743.429. *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.

See generally Insurance Law in Oregon ch 33 (OSB Legal Pubs 2020) (health, disability, life, and accident insurance).

§ 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 in writing to extend the time, the insured must submit the completed forms, signed and sworn, to the insurer providing details of the loss. See ORS 742.230 for the exact details to be included in the proof of loss.

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 requires compliance with the terms of the policy and must be "commenced within 24 months next after inception of the loss." ORS 742.240. "Oregon courts, focused on the phrase 'inception of the loss,' have concluded that this statutory language does not provide for a 'discovery rule'—that is, regardless of when the damage is discovered, suits must be brought within two years of the date the damage actually occurred." *Great American Alliance Insurance Co. v. Sir Columbia Knoll Associates Ltd. Partnership*, 484 F Supp 3d 946, 962 (D Or 2020) (citing *Moore v. Mutual of Enumclaw Insurance Co.*, 317 Or 235, 250, 855 P2d 626 (1993)). The Oregon District Court, however, recently held in three different cases that policies that did not incorporate the statutory language in ORS 742.240 and instead provided that any legal action must be "brought within 2 years after the date on which the direct physical loss or damage occurred" were ambiguous and thus the statute of limitations was not triggered until the insured discovered the hidden damage. *Great American Alliance Insurance Co.*, 484 F Supp 3d at 962–63 ("There is a meaningful difference between the statutory language and the policy language. Accordingly, the Court finds that the two-year suit limitation provision was not triggered until Columbia Knoll discovered the hidden damage."); *Housing Northwest Inc. v. American Insurance Co.*, No 3:19-cv-00253-SB, 2019 US Dist LEXIS 219168, 2019 WL 7040922 (D Or Dec 20, 2019); *Silver Ridge Homeowners' Ass'n, Inc. v. State Farm Fire & Casualty Co.*, No 3:19-CV-01218-YY, 2020 US Dist LEXIS 184205, 2020 WL 5893317 (D Or Oct 5, 2020) (holding same).

Although ORS 742.240 applies by its terms only to fire policies, it has been interpreted to apply to homeowners' insurance policies as well. *Herman v. Valley Insurance 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 Insurance Co.*, 293 Or 513, 517, 651 P2d 138 (1982); *cf. Herman*, 145 Or App at 130.

For more information on homeowners' insurance, see *Insurance Law in Oregon* chapter 31 (OSB Legal Pubs 2020).

§ 16.6 ATTORNEY FEES

For all insurance policies delivered or issued in Oregon (other than reinsurance, wet marine and transportation insurance policies, and surplus lines insurance policies, ORS 742.001), if 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 to the insured if the insured's recovery exceeds the amount of any tender made by the insurer. ORS 742.061(1).

The insurer can take steps to avoid the risk of attorney fees in actions to recover PIP benefits or to recover UM or UIM benefits. *See* ORS 742.061(2)–(3) (discussed below). In cases in which ORS 742.061(1) applies, the tender by the insurer must be timely—"within six months from the date proof of loss is filed with an insurer"—in order for the insurer to avoid liability for attorney fees under the statute.

What constitutes proof of loss for purposes of starting the six-month period running is discussed in some detail in *Dockins v. State Farm Insurance Co.*, 329 Or 20, 26–29, 985 P2d 796 (1999). *See also Scott v. State Farm Mutual Automobile Insurance Co.*, 345 Or 146, 155–56, 190 P3d 372 (2008) (relying on definition in *Dockins*); *Precision Seed Cleaners v. Country Mutual Insurance Co.*, 976 F Supp 2d 1228, 1237–38 (D Or 2013) ("For the purposes of ORS 742.061, 'proof of loss' is 'any event or submission that would permit an insurer to estimate its obligations' [taking into account the insurer's obligation to investigate and clarify uncertain claims]." (Quoting *Dockins*, 329 Or at 29.)); *Scott*, 345 Or at 155 (same, quoting *Dockins*, 329 Or at 29); *Beck v. Metropolitan Property & Casualty Insurance Co.*, No 3:13-cv-00879-AC, 2016 US Dist LEXIS 126335 at *34–35, 2016 WL 4978411 at *10–11 (D Or Sept 16, 2016), *aff'd*, 727 F App'x 330 (9th Cir 2018) (holding insurance adjuster's initial estimates demonstrated insurer "clearly had information sufficient to 'permit an insurer to estimate its obligations'" (quoting *Precision Seed Cleaners*, 975 F Supp 2d at 1237)). The court in *Dockins* held that the six-month requirement applied to the insurer, not the insured, adopted a liberal standard for the term *proof of loss*, notwithstanding more formal proof-of-loss requirements in the policy itself, and held that 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. *Dockins*, 329 Or at 28–29, 32–33. The sufficiency of the proof of loss depends on the nature of the insurance coverage at issue. *Zimmerman v. Allstate Property & Casualty Insurance Co.*, 354 Or 271, 285–86, 311 P3d 497 (2013) (discussing proof of loss in a UIM case). In *Parks v. Farmers Insurance Co. of Oregon*, 347 Or 374, 384, 227 P3d 1127 (2009), the court held that a proof of loss does not need to be in writing for the purposes of ORS 742.061. In the context of a homeowner's claim, the court held that an insured's telephone call to the insurer's agent qualified as a proof of loss. In *Hall v. Speer*, 244 Or App 392, 399, 261 P3d 1259, *rev den*, 351 Or 507 (2011), *vac'd*, 354 Or 699, 319 P3d 696 (2014), the Court of Appeals held that notice of an accident, a PIP application for benefits, a PIP insurance medical examination, and representation letters from legal counsel, combined to create a sufficient proof of loss for a plaintiff's UIM claim. Although review of the decision was originally denied by the Oregon Supreme Court in 2011, the Oregon Supreme Court subsequently vacated the decision in January 2014, and remanded it to the Court of Appeals for reconsideration in light of *Zimmerman*. Thereafter, on remand, the Court of Appeals concluded that there was insufficient information to constitute a proof of loss in light of *Zimmerman*, and affirmed the denial of attorney fees. *Hall v. Speer*, 267 Or App 639, 343 P3d 640 (2014).

Attorney fees are not awardable in actions by insureds against insurers to recover PIP benefits or 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. American Family Mutual Insurance Co.*, 256 Or App 607, 613–14, 302 P3d 1204, *rev den*, 354 Or 386 (2013); *see also* § 16.2 (uninsured motorist coverage).

§ 16.7 REFERENCES

See generally Insurance Law in Oregon (OSB Legal Pubs 2020).

Chapter 17

CONSTRUCTION LAW

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§ 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 (also referred to herein as "bond" or "bonds") (license surety bonds are different than payment and performance bonds, which are generally project specific and are often required on larger commercial projects; and bonds required for public works projects—*e.g., see* § 17.2). The CCB generally processes these complaints in conjunction with a lawsuit or an arbitration. To successfully utilize the CCB complaint process, counsel should carefully review the various CCB complaint forms, instructions, and other information found on the CCB's website (https://www.oregon.gov/ccb/Pages/Consumer-Tools.aspx#HowToFileComplaint), as well as the applicable provisions of ORS chapter 701 and OAR chapter 812. This chapter does not describe the CCB disciplinary process for penalties or sanctions imposed under ORS 701.990 to 701.995.

§ 17.1B Complaints Within CCB Jurisdiction

A CCB complaint "must arise from the performance, or a contract for the performance," of work that requires a CCB license, and must be one or more of the following types, per ORS 701.140:

- 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 the owner 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 to said contractor (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; or
- a complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

A number of "jurisdictional" requirements apply, such as the respondent contractor must have been licensed with the CCB during certain periods, the contractor complainant must have been "properly licensed" for the work for which compensation is sought, and privity must exist between the complainant and respondent (with a limited exception), as well as geographic limitations and minimum complaint amounts. See generally OAR 812-004-1320 (jurisdictional requirements) and the instructions on the CCB complaint forms, *available at* https://www.oregon.gov/ccb/Pages/Consumer-Tools.aspx#HowToFileComplaint. *See also* ORS 701.131(1)–(2) (contractor license required for remedies). Some CCB complaints based on the same facts and issues may be processed together. *See* OAR 812-004-1420 (processing owner and primary contractor complaints).

§ 17.1C Time Limitation for Filing CCB Complaint

A CCB complaint must be filed within the applicable limitations period set forth in ORS 701.143. The applicable limitations 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 "[o]ne year after the date the structure was first occupied" or "[t]wo 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 "[t]wo years after substantial completion of the structure." ORS 701.143(5).
Existing structure; work substantially completed	"[N]o later than one year after the date the work was substantially completed by the contractor filed against." ORS 701.143(2).	"[N]o 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	"[N]o 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	"[N]o later than one year after the date the contractor ceased to work on the structure." ORS 701.143(4).	"[N]o later than 14 months after the date the subcontractor ceased to work on the structure." ORS 701.143(7).

NOTE: "Substantial completion," for purposes of filing CCB complaints, "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). In addition, see OAR 812-002-0740(2) for examples of specific evidence that may constitute substantial completion. Warranty work or repairs to previously completed work does not extend substantial completion, except perhaps in relation to work wholly removed and replaced. OAR 812-002-0740(3). There is also a definition of *substantial completion* in ORS 12.135(1)(e) (redesignated from ORS 12.135(4)(b), effective January 1, 2026. Or Laws 2025, ch 578, § 1). However, this definition is for purposes of actions (but not CCB complaints)

for damages from construction, alteration, or repair of improvements to real property.

CAVEAT: These time limitations may be extended depending on the date that the precomplaint notice is mailed. ORS 701.133(2); *see* § 17.1D (precomplaint notice).

CAVEAT: The surety of the license surety 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	"[N]o later than one year after the date the contractor incurred the indebtedness." ORS 701.143(8).

NOTE: The statutory phrase *date the contractor incurred the indebtedness* is further defined in the CCB Administrative Rules 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 CCB complaint, the complainant must send notice to the contractor that the complainant intends to file the complaint. This requirement applies to all CCB complaints. The primary method of compliance is to mail the notice by certified mail to the contractor's last-known address 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 is filed with the CCB, or a letter signed by the respondent acknowledging receipt of the notice more than 30 days before the complaint was filed with the CCB. OAR 812-004-1340(9)(b). If no formal precomplaint 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 [CCB] 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 because the complainant omitted proof of compliance with the precomplaint notice requirement, the complainant may resubmit the complaint with proof of timely compliance and retain the original submission date of the complaint as the filing date of their complaint. OAR 812-004-1300(3). See also OAR 812-004-1350 (procedure if information on complaint form is incomplete).

NOTE: Residential-owner complainants should also consider complying with the notice-of-defect requirements under ORS 701.560 to 701.595 (relating to notices of defect in residential structures). Although said notice of defect requirements do not apply to "claims or complaints filed pursuant to ORS 671.695 [certain claims against landscape contractors] or 701.139 [certain complaints against contractors]," ORS 701.600(2), filing a complaint in court or in arbitration is generally required as part of the CCB complaint process discussed in § 17.1E to § 17.1J.

§ 17.1E Overview of CCB Complaint Processes

The CCB has two basic processes for dispute resolution: the residential complaint process against a residential contractor's license surety bond (ORS 701.145) and the commercial complaint process against a commercial contractor's license surety bond (ORS 701.146). It is important to note that the complaint processes for residential and commercial complaints differ in several ways. *See* § 17.1F(1) to § 17.1F(5) (residential) and § 17.1G to § 17.1G(2) (commercial).

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; *see* ORS 701.005(15) (ORS 701.005(15) was redesignated as ORS 701.005(17) in 2025, with an operative date of July 1, 2027. Or Laws 2025, ch 78, § 17); OAR 812-002-0660	Residential complaint process (ORS 701.145; ORS 701.139(1))	N/A	Residential complaint process (ORS 701.145; ORS 701.139(3)(a))

Type of Structure	Endorsements Held		
	Residential only	**Commercial only**	**Both residential and commercial**
Small commercial structure; *see* ORS 701.005(17) (ORS 701.005(17) was redesignated as ORS 701.005(19) in 2025, with an operative date of July 1, 2027. Or Laws 2025, ch 78, § 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; *see* ORS 701.005(11); OAR 812-002-0430	N/A	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 contractor's license surety bond, and a commercial complaint may not be asserted against a residential contractor's license surety bond. A complaint involving a small commercial structure may be asserted against either a residential or commercial license surety 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 complaint 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 considered a residential structure (ORS 701.005(15)(a)(B)), while a five-story condominium building may not be (ORS 701.005(15)(a)(C)). Also, for example, a 100,000 square-foot building may be considered 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 2025 legislature renumbered subsections of ORS 701.005, which become operative on July 1, 2027. The citations in the prior paragraph will be renumbered as follows: Subsection (15)(a)(B) will be renumbered

(17)(a)(B); subsection (15)(a)(C) will be renumbered (17)(a)(C); and subsection (17)(c) will be renumbered (19)(c). *See* Or Laws 2025, ch 78, § 17.

NOTE: The definitions of *residential structure* and *small commercial structure* also both include the appurtenances to each structure. The lawyer should consult the CCB Administrative Rules (OAR ch 812), 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)—Including Certain Small Commercial Structures

§ 17.1F(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 requirements.

If the residential complaint process applies (*see* § 17.1E), a complainant must file the complaint on the appropriate CCB complaint form—which can be found on the CCB's website at https://www.oregon.gov/ccb/Pages/Consumer-Tools.aspx#HowToFileComplaint. Complainants must pay a $50 fee for an accepted complaint against a residential bond. OAR 812-004-1110(1). If the complainant does not pay the fee within 14 days of written notification from the CCB that the fee is due, the CCB may close the complaint. OAR 812-004-1400(3). That fee may be recoverable as part of the final award. OAR 812-004-1250(1)(a). Failure to timely respond to a request from the CCB or otherwise act as directed or required by the CCB may result in closure of the complaint. *See* ORS 701.145(3).

How the CCB processes an accepted residential complaint depends on the dispute-resolution terms in the underlying contract between the complainant and respondent, whether and when litigation or arbitration is commenced by the complainant or respondent, and potentially in which forum litigation is commenced. *See* § 17.1F(2) to § 17.1F(5).

§ 17.1F(2) No Mediation or Arbitration Clause in Contract

Upon acceptance of a residential complaint in which the underlying contract does not contain a mediation or arbitration clause, the CCB generally will attempt to conduct one or more telephone conferences or site meetings to mediate a resolution. Counsel should be aware that the confidentiality of communications made during such telephone conferences or site meetings conducted by the CCB are subject to various exceptions. *See* ORS 36.224(1); OAR 137-005-0052. For example, at the conclusion of an unsuccessful on-site mediation, the CCB may issue a written recommendation for a proposed resolution if it appears the respondent breached the contract or performed negligent or improper work. OAR 812-004-1460; OAR 137-

005-0052. If the complaint is settled (via CCB mediation or otherwise), 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 against the contractor-respondent in a court of competent jurisdiction (or arbitration award that has been reduced to a final judgment) to obtain possible payment from the contractor's license surety bond. ORS 701.145(5); OAR 812-004-1505; (see also § 17.1F(5) regarding potential application of notice-of-defect statutes (ORS 701.560–701.600)). A complainant who files a complaint for labor or employee benefits under ORS 701.140(4) may also obtain a final order from the Bureau of Labor and Industries (BOLI) that states the amount of unpaid wages or benefits rather than a final court judgment. ORS 701.145(6); *see* OAR 812-002-0140(2)–(3) (employee and employee trust complaints).

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 the time provided by the CCB's written direction after the last on-site meeting or telephone mediation. OAR 812-004-1260(1)(i)–(j) (bases for closing complaint include not providing documents or evidence of action required by OAR 812-004-1520 or OAR 812-004-1530); OAR 812-004-1520(1)–(3) (requirements for providing documentation, including commencement and periodic reports pertaining to court action or arbitration); OAR 812-004-1530(2)–(3) (60 days from last meeting or mediation to file action or join respondent in lien foreclosure).

§ 17.1F(3) Mediation or Arbitration Clause in Contract

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 CCB, or else the contractor waives their contractual right to mediation or arbitration in lieu of a CCB on-site or telephone mediation. ORS 701.180. However, if the parties do not resolve the dispute through CCB mediation, the complainant still must comply with any contractual mediation or arbitration provision as a condition of obtaining judgment required for access to the contractor's license surety bond, unless otherwise provided by certain wage-and-hour statutes. 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 the dispute 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(4) 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 as the complaint filed with the CCB, the 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). Failure to do so could cause the CCB to close the complaint. OAR 812-004-1520(5).

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). The CCB may also suspend processing if an owner-complainant "submits copies of a notice of defect required under ORS 701.565" or submits a complaint to a court, an arbitrator, or BOLI if the notice or complaint is based on the same facts and issues as the CCB complaint. OAR 812-004-1520(1).

If the CCB suspends processing of the complaint, it will determine the complainant's potential access to the contractor's license surety bond based on the final judgment (or arbitration award reduced to final judgment) or final BOLI order relative to any other complaints filed within the same 90-day period. *See* § 17.1H(1). 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). Failure to do so could cause the CCB to close the complaint. OAR 812-004-1520(5).

Pending the complainant's receipt of a final judgment or BOLI final order while the CCB has suspended the processing of the complaint, the CCB will require the complainant to provide them with written 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).

§ 17.1F(5) Applicability of Oregon's Residential Notice-of-Defect Procedure (ORS 701.560–701.600)

The notice-of-defect statutes, ORS 701.560 to 701.595, generally provide a procedure that an owner of a residence must satisfy before the owner may "compel arbitration or commence a court action against a contractor, subcontractor or supplier to assert a claim arising out of or related to any defect in the construction, alteration or repair of a residence or in any system, component or material incorporated into a residence." ORS 701.565(1); *see Construction Law in Oregon* § 9.4-2(b) (OSB Legal Pubs 2026) (statutorily required notices). The term *residence* means a residential structure as defined in ORS 701.005(15) (ORS 701.005(15) was

redesignated as ORS 701.005(17) in 2025, with an operative date of July 1, 2027. Or Laws 2025, ch 78, § 17), *common property* as defined in ORS 94.550 (planned unit developments), or a *common element* as defined in ORS 100.005 (condominiums). ORS 701.560(5).

The notice-of-defect statutes do not apply to certain actions, including actions filed in the small claims department of a circuit court or justice court and "claims or complaints filed pursuant to ORS 671.695 or 701.139." ORS 701.600(2), (4); *see* ORS 701.139 (generally describing the CCB complaint process); ORS 671.695 (generally describing claims against a licensed landscape contracting business). Notwithstanding the exclusion of complaints filed pursuant to ORS 701.139 (*i.e.*, CCB complaints), and for lack of reported case law interpreting ORS 701.600 and the potential for discovering more defects after any on-site meeting for which a claim should be made, counsel should also consider complying with the notice-of-defect procedure if filing suit or commencing arbitration for "defects." *See* OAR 812-004-1520 (the CCB may suspend processing the complaint if it receives "copies of a notice of defect required under ORS 701.565 and the registered mail receipt . . . and the notice of defect relates to the same facts and issues contained in the [CCB] complaint"); *see* § 17.1D (precomplaint notice requirement).

§ 17.1G Commercial Complaint Process (ORS 701.146)

If the CCB commercial complaint process applies (*see* § 17.1E (overview of CCB's complaint processes)), the complainant must take the steps set forth in § 17.1G(1) to § 17.1G(2) within the limitations period set forth in ORS 701.143 (*see* § 17.1C) and any additional time that may be provided by ORS 701.133 (*see* § 17.1D). Note that even if the contract between the parties includes a mediation or arbitration clause, for purposes of commercial complaints, the CCB generally will not attempt to conduct telephone or on-site conferences to mediate the dispute as they do with residential complaints.

§ 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 CCB should not be named as a party. The surety of the contractor's license surety bond (the "surety") 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 found on the CCB's website at https://www.oregon.gov/ccb/Pages/Consumer-Tools.aspx#HowToFileComplaint. The CCB complaint form and court pleading or arbitration documents must be delivered to both the CCB and the surety by certified mail, return receipt requested, per ORS 701.146(2), 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.

Because of the timeliness requirements of ORS 701.146 and the priority regulations in ORS 701.157 (*see* § 17.1H(1) and § 17.1H(2)), it would be prudent to submit the appropriate CCB complaint form and other required documentation as soon as possible after filing a court action or arbitration.

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 written 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 and the loss of possible access to the contractor's license surety bond. 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). A complainant who obtains a successful arbitration award must reduce the award to a judgment and then submit a certified copy of that judgment to the CCB and the surety no later than 30 days after the judgment is entered. ORS 701.146(6); *see* ORS 36.700; ORS 36.715. A "certified copy" of the judgment means a copy issued by the court clerk or administrator for a fee. ORS 7.130.

§ 17.1H Payment from Surety

Once the CCB receives a final judgment or BOLI order from the complainant, the CCB will determine what sums are to be paid by the contractor's license surety 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(8).

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). Depending on the number of complaints filed within the same 90-day period, it could take a while for all such complaints to be resolved. Until then, the CCB will not be able to determine the amounts to be paid from the bond and to whom they should be paid.

A surety "may not condition payment of a complaint on the execution of a release by the complainant." OAR 812-004-1600(11).

§ 17.1H(1) Bond Payment Limitations and Priority Rules: 90-Day Period

Certain complaints have priority over others in payment from a contractor's license surety bond. Certain complaints are limited in the amount recoverable against the 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. The required bond amounts for residential contractors generally range from $15,000 to $25,000, depending on the residential license category. ORS 701.081. The required bond amounts for commercial contractors generally range from $25,000 to $80,000, depending on the commercial license category. ORS 701.084.

Payment limitations 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). The CCB website provides information with regard to open complaints against contractors and when the complaint was filed. *See* https://www.oregon.gov/ccb. However, that information may not be enough to determine the priority that a certain complaint has to a particular bond. The CCB should be able to help complainants determine the priority and status of their complaint relative to any other open complaints.

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 on file with the CCB at the time the contract underlying the subject complaint was entered into 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 Payment Rules

A surety of a residential bond is liable only for residential complaints (which may include small commercial structures). ORS 701.150(1)(a); *see* § 17.1E (overview of CCB complaint processes). 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	Full extent of bond
Nonowner complaint ORS 701.153(3)(a)(B)	Only paid if bond is not exhausted by owner complaints	$5,000 total maximum for *all* nonowner complainants
Costs and interest ORS 701.153(6)	None	$5,000 total maximum for all complainants

If more than one residential complaint that is filed within the same 90-day period is ordered by the CCB to be paid, and the total amount due pursuant to all such complaints exceeds the amount available from the residential bond (subject to the priorities of ORS 701.153), then payment "must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid" as determined by the CCB. OAR 812-004-1600(8); ORS 701.153(4).

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 Payment Rules

A surety on a commercial bond is liable only for commercial complaints (which may include small commercial structures). ORS 701.150(1)(b); *see* § 17.1E (overview of CCB complaint processes). 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	Full extent of bond

Commercial Complaint Determinations against Commercial Bond		
Type	**Priority**	**Payment Limitation**
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	Full extent of bond
Costs, interest, and attorney fees ORS 701.157(1)(a)(C)	Only paid if bond not exhausted by all other complaints	Full extent of bond

If more than one commercial complaint that is filed within the same 90-day period is ordered by the CCB to be paid, and the total amount due pursuant to said complaints exceeds the full extent 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 CCB final order within 30 days after receipt of notice from the 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, plus 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 limitations purposes. Use of the CCB's current complaint form, identification of the parties, and evidence of compliance with the precomplaint notice requirement is sufficient for the complaint to be deemed filed. In that event, the CCB can require the complainant to provide additional information; if the complainant fails to do so within 14 days after the request for additional information, the CCB can close the complaint. OAR 812-004-1350; OAR 812-004-1260(3).

If the CCB 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), they 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 CCB's closure of a complaint 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 petition or becomes subject to an involuntary bankruptcy petition, the automatic stay triggered by the petition prevents filing or continuing a CCB complaint. *See* 11 USC § 362(a)(1). Yet, because the contractor's bond is not an asset of the bankruptcy estate, a complainant may proceed to seek payment from the surety of the bond after 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 CCB precomplaint notice. In addition, a request for relief from stay is 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.

§ 17.2 PUBLIC PROJECTS

Public-contracting statutes generally require a contractor awarded a public-works contract to provide a bond for payment of certain protected parties, such as subcontractors and suppliers. Not every public-works project is required to have a payment or performance bond. For example, Oregon public-improvement contracts with an estimated value of $100,000 or less ($50,000 or less, in the case of contracts for highways, bridges, and other transportation projects) do not require a payment bond. *See* ORS 279C.380(5). Also, 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 statutory 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. For obtaining a copy of a Miller Act bond, also see 40 USC § 3133(a).

If a Little Miller Act bond does not comply with the requirements of ORS 279C.600 to 279C.625, the lawyer should consider the application of ORS 742.370:

> Whenever any person is required by the provisions of any statute to give a bond to this state or any of its political subdivisions and the statute requires to be included therein any specific provisions, the bond shall have the same legal effect as though such provisions were included therein, although such provisions were omitted.

Bonds that are not required by a public-works statute, but instead are only required by the terms of a contract, are generally referred to as "common law" bonds. Claims against such bonds are governed by general state contract and surety law. *See, e.g.*, *Mai Steel Service, Inc. v. Blake Construction Co.*, 981 F2d 414, 420 (9th Cir 1992) (applying California state law to claim against subcontractor bond). The terms of such bonds must be reviewed for claim-notice requirements and limitations periods. *See, e.g.*, *State ex rel. Robert Warren Trucking, LLC v. Smith & Smith Excavation, Inc.*, 280 Or App 766, 781–83, 386 P3d 112 (2015).

§ 17.2A Oregon's Little Miller Act

Persons furnishing labor or materials to a project for Oregon state or local government may be able to perfect a claim against a contractor's statutory payment bond under Oregon's Little Miller Act (ORS 279C.600–279C.625).

Under the Act, a "person claiming to have supplied labor or materials for the performance of the work provided for in a public contract" has "a right of action on the contractor's payment bond," if the person or assignee has not been paid in full and the person gives statutory written notice of the claim to the contractor and the contracting agency. ORS 279C.600(1).

To perfect a claim, the person must give written notice within 180 days after last providing labor or furnishing materials to the project. ORS 279C.605(1)–(2). Replacement or corrective materials may be sufficient to calculate the notice-timing requirements under the Oregon Little Miller Act. *City of The Dalles, Oregon ex rel. Taylor Electric Supply, Inc. v. D'Lectric Co.*, 105 Or App 46, 52, 803 P2d 771 (1990), *rev den*, 311 Or 261 (1991) (construing *former* ORS 279.526 (1985), *repealed by* Or Laws 2003, ch 794, § 332); *see also State ex rel. Robert Warren Trucking, LLC v. Smith & Smith Excavation, Inc.*, 280 Or App 766, 778–79 & n 8, 386 P3d 112 (2015) (noting statute construed is similar to *former* ORS 279.526 (1985)).

> NOTE: The above rule differs 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(1).

A general form of notice of claim is provided in the statutes. ORS 279C.605(3). A notice of claim in "substantially" the form required by statute "must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials." ORS 279C.605(1). A claimant must give written notice of a claim to the contractor and the contracting agency. ORS 279C.600(1)(b). The notice may be given to the contractor "at any place the contractor . . . maintains an office or conducts business or at the residence

of the contractor." ORS 279C.605(1). Although not required, the claimant should also consider giving written notice to the surety of the payment bond for a potential recovery of attorney fees under ORS 742.061(1) (discussed below).

"The person making the claim or giving the notice [must] sign the notice." ORS 279C.605(5).

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). Such an action may be filed in Oregon circuit court or (if there is a basis for federal jurisdiction, such as diversity) in federal district court. ORS 279C.610(1). The action must be on the relation of the claimant (or that person's assignee if applicable) and "in the name of the contracting agency that let the contract or, when applicable, the public agency or agencies for whose benefit the contract was let." ORS 279C.610(2). If the person giving written notice of claim on the Little Miller Act payment bond (which is required by ORS 279C.380) satisfies the "proof of loss" requirement of ORS 742.061, and if settlement is not made within six months from the date proof of loss is filed, the claimant may be entitled to recover attorney fees in an action if the claimant obtains a "recovery" that exceeds the amount of any tender made by the defendant in such action. *See* ORS 742.061(1) (basis for recovering attorney fees); ORS 731.186 (definition of *surety insurance*); ORS 742.350 (surety insurers' authority to issue bonds); *Zimmerman v. Allstate Property & Casualty Insurance Co.*, 354 Or 271, 281–82, 311 P3d 497 (2013) (describing what constitutes a "proof of loss"); *Long v. Farmers Insurance Co. of Oregon*, 360 Or 791, 805–06, 388 P3d 312 (2017) (*recovery* means a monetary recovery after filing an action, the recovery need not be memorialized in a judgment).

> CAVEAT: ORS 742.061 is a reciprocal attorney fee statute as applied to a payment bond posted under ORS 279C.380(1)(b) to satisfy the Oregon Little Miller Act. *See* ORS 742.061(1) (allowing attorney fees for defendant if claimant's recovery does not exceed the amount of any tender made by the defendant in such action).

§ 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).

The Miller Act imposes limits on the classes of claimants entitled to pursue claims against the prime contractor's bond that are more restrictive than those found in the Oregon Little Miller Act (*see* § 17.2A). See 40 USC § 3133(b)(1) and (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) and (B).

A suit under the Miller Act must be brought in the United States District Court in the district where the contract was to be performed and executed and in the name of the United States on behalf of the claimant. 40 USC § 3133(b)(3); *see Construction Law in Oregon* § 10.5-5(a)(5) (OSB Legal Pubs 2026). 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)(4).

§ 17.2C Notice Received or Sent

According to the Fourth Circuit Court of Appeals, "giving" a written claim notice under the federal Miller Act (*former* 40 USC § 270b(a)) means it 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); *but see Ramona Equipment Rental, Inc. ex rel. United States v. Carolina Casualty Insurance Co.*, 755 F3d 1063, 1066–67 (9th Cir 2014), *cert dismissed*, 574 US 1069 (2015) (referring to "service of the notice" and the date written notice was "sent" under the Miller Act); *Apache Powder Co. v. Ashton Co.*, 264 F2d 417, 423 (9th Cir 1959) (discussing date letter was sent by registered mail as giving notice to prime contractor under former 40 USC § 270b(a)). *See also Fleisher Engineering & Construction Co. v. United States ex rel. Hallenbeck*, 311 US 15, 18–19, 61 S Ct 81, 85 L Ed 12 (1940) (claim sent by regular mail that resulted in actual notice of claim was sufficient under Miller Act notwithstanding registered mail requirement in light of statute's remedial purpose).

Oregon appellate 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), so careful consideration of ORS 279C.605 is necessary. *See State ex rel. Robert Warren Trucking, LLC v. Smith & Smith Excavation, Inc.*, 280 Or App 766, 778, 386 P3d 112 (2015) (discussing relationship between case law under federal Miller Act and the Oregon statutes).

§ 17.2D References

See generally Construction Law in Oregon § 10.5 to § 10.5-7(e) (The Miller Act) and § 10.6-1 to § 10.6-6 (Oregon's Little Miller Act) (OSB Legal Pubs 2026).

§ 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. *See, e.g.*, *Evergreen Pacific, 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 (*dictum*)); *Redmond Electric Co. v. Gonzales*, 63 Or App 606, 608 n 1, 665 P2d 373 (1983) (plaintiff's reliance on an agreement to a 30-day extension beyond the foreclosure deadline was not a valid excuse for the untimely commencement of the lien claim (*dictum*)); but see ORS 87.055 regarding extended payment terms "stated in" the recorded claim of lien.

A person must comply with the statutory requirements of the Construction Lien Law to benefit from the law's 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."). *See generally Construction Law in Oregon* ch 16 (OSB Legal Pubs 2026) (construction liens).

§ 17.3B Persons Who May File a Construction Lien

Persons who may perfect a construction lien are set forth in ORS 87.010. Nevertheless, those persons may lose the right to perfect a valid 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 to § 17.4D; 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 posting 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:

- *Did the claimant contract 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) (defining commercial improvement); ORS 87.093(8)(a) (defining residential construction or improvement); ORS 87.037 (referring to ORS 701.305 and thereby incorporating the definition in ORS 701.005(15) and (20)) (ORS 701.005(15) and (20) were redesignated as ORS 701.005(17) and (21), respectively, in 2025, with an operative date of July 1, 2027. Or Laws 2025, ch 78, § 17).
- *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 CCB. 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). The terms *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, condominium 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) (ORS 701.005(15) and (20) were redesignated as ORS 701.005(17) and (21), respectively, in 2025, with an operative date of July 1, 2027. Or Laws 2025, ch 78, § 17).

ORS 701.305(2) provides that the "Construction Contractors Board shall adopt rules that require a contractor to use standard contractual terms" when a contract is required by subsection (1). The CCB has adopted such terms at OAR 812-012-0110. The CCB website provides sample contract documents and a checklist. *See* https://www.oregon.gov/ccb.

At the time of publication, there was no reported case regarding whether the specific contract terms required by OAR 812-012-0110 are essential to preserve the right to perfect a lien under ORS 87.037, or whether a written contract (i.e., any writing regardless of content) is all that is required to maintain the ability to record a valid claim of lien.

§ 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 under ORS 87.021(1) and (3). *See* ORS 87.005(8), (10) (defining the terms *owner* and *site*).

Person Claiming Lien (Not in Privity with Owner*)	**Type of Improvement on Site**	
	Commercial Improvement (*see* ORS 87.021(3)(b)(A) (defining the term))	**Residential Improvement** (*see* ORS 87.021(3)(b)(B) (defining *residential building*))
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, regardless of privity, may adversely affect the priority of the lien. *See* ORS 87.025(3) (discussed at § 17.3D).		

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 a business entity for resale may arguably be a commercial improvement and not a residential improvement. *See* ORS 87.021(3)(b) (a residential building 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").

For special situations regarding the delivery of the Notice of Right to a Lien to an owner, see *State ex rel. Nilsen v. Hoff*, 3 Or App 398, 400, 474 P2d 11 (1970) (owner refused to accept certified mail under predecessor ORS 87.020) and *H.D. Fowler Co. v. Medical Research Foundation*, 238 Or 316, 320, 393 P2d 657 (1964) (misnomer of owner in notice *under former* ORS 87.020).

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 else 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 or trust deed that secures a loan or debt against the land or improvement. *See* ORS 87.005(6) (defining *mortgagee*); ORS 87.025 (priority of perfected liens); *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 or with whom they contract (including parties in privity with an owner)—must provide a timely notice of right to a lien to any mortgagee of the project to maintain priority rights for those materials. 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 Federal Savings & 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 caused 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) (defining *mortgagee*); 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 else the person waives the priority of ORS 87.025(1) and (2). ORS 87.025(4).

§ 17.3E Deadline to Perfect a Construction Lien

A lien created by ORS 87.010 is perfected by filing a claim of lien containing the elements required by ORS 87.035(3) to (4) with the county recording officer 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 has 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 ensure the county recording office is open before the deadline to perfect a lien 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 (*see* § 17.3E). For example, a person cannot postpone the statutory deadline for filing a lien claim by the performance of "every trifling omission" or by repairing their own substandard work. *Fox & Co. v. Roman Catholic Bishop of the Diocese of Baker City*, 107 Or 557, 559, 215 P 178 (1923); *see Construction Law in Oregon* § 16.7-2(b) (OSB Legal Pubs 2026) (determining when work ceases).

§ 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

(1) the "improvement is substantially complete";

(2) a "completion notice is posted and recorded as provided by [ORS 87.045(2)–(3)]"; or

(3) the "improvement is abandoned as provided by [ORS 87.045(5)]."

ORS 87.045(1); *see Construction Law in Oregon* § 16.7-2(c) (OSB Legal Pubs 2026) (determining when completion of construction occurs). For purposes of determining the timeliness of a construction lien, a court may look at the circumstances behind the posting of a completion notice. *See, e.g.*, *Dallas Lumber & Supply Co. v. Phillips*, 249 Or 58, 60, 436 P2d 739 (1968).

§ 17.3F Post-Lien Notices

Proper and timely service of post-lien notices and responses to information requests are 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. ORS 87.039(1). 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 a foreclosure action under ORS 87.055, a lien claimant must deliver written notice of the intent to commence an action to foreclose the construction lien to the owners and mortgagees of the property against which the lien is claimed. 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 post-lien 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 with 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) Post-Lien Notices Involving Consumer Debts

If debt secured by a construction lien arises out of a consumer transaction (see definition of *debt* under 15 USC § 1692a(5)), an attorney should comply with

the Fair Debt Collection Practices Act, 15 USC §§ 1692–1692p, and 12 CFR § 1006 (Regulation F). For example, post-lien notices may need to include a statutory "validation notice" for initial communications.

IMPORTANT NOTE: See 12 CFR § 1006.34 and Appendix B for sample validation notice.

§ 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. ORS 87.055. This deadline may not be tolled by agreement or otherwise: "No lien created under ORS 87.010 shall bind any improvement for a longer period than 120 days after the claim of lien is filed unless suit is brought in a proper court within that time to enforce the lien[.]" ORS 87.055. However, 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.

CAVEAT: A title insurance policy (typically a judicial foreclosure guaranty) should be obtained, preferably at least 30 days prior to a foreclosure deadline (*see* § 17.3F(2)), to ensure the lien claimant has enough time to identify and serve all previously unknown owners and mortgagees with a notice of intent to foreclose, and to include all interested parties as defendants in the action. A lien claimant's failure to timely identify owners, mortgagees, and other interested parties (such as other lien claimants) may result in the failure to bind omitted parties (see ORS 87.060(7) regarding parties to a lien foreclosure) and potentially the loss of the lien claimant's ability to recover attorney fees (see § 17.3F(2) regarding service of notice of intent to foreclose above).

ORS 12.020 provides that "for the purpose of determining whether an action has been commenced within the time limited," the action must be filed and the summons and complaint must be served (with exceptions described in ORS 12.020(2)) before the expiration of 60 days after the date on which the action was filed. ORS 12.020(1)–(2). ORS 87.055(2) provides that, notwithstanding ORS 12.020, a foreclosure is deemed commenced as to other construction-lien claimants when the action is filed.

Therefore, each lien claimant must take care to be sure the court in which the action was filed has acquired jurisdiction over a particular defendant within the 120-day period to foreclose its lien as determined by ORS 12.020 before assuming ORCP 9 service of pleadings is adequate.

Lien claimants must also consider certain pleading and proof requirements regarding the right to recover attorney fees (*see* § 17.3F(2) to § 17.3F(3)) and certain licensure or registration statutes. *See* § 17.4D.

An arbitration or mediation clause in a construction contract 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 contractual dispute-resolution procedures. *See Construction Law in Oregon* § 16.9-5(e) (OSB Legal Pubs 2026) (discussing issues concerning arbitration and its relationship with a lien-foreclosure action).

PRACTICE TIP: 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). Review the local rules and customs of the county in which a lien-foreclosure action is filed to ensure the action will not be dismissed before completion of contractual dispute-resolution procedures. *See also* UTCR 7.030(4) (complex-case designation provides case will be set for trial as soon as practicable, "but in any event, within two years from the date of filing" unless good cause is shown).

The proceedings upon the foreclosure of a construction lien "shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property." ORS 87.060(7).

§ 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)) and providing proper and timely notice of the filing to the lien claimant (ORS 87.078) is that the lien attaches to the bond or money, and the property described in the lien is "entirely free of the lien and is 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 unless the lien claimant intends to forego the lien-claim remedy (such as in response to a demand for release of lien under ORS 87.076(4)). 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 and ORS 87.078. *See* ORS 87.083(1); *Valencich v. TMT Homes of Oregon, Inc.*, 193 Or App 47, 88 P3d 300 (2004) (lien-release bond); *Beaver State Scaffolding-Equipment Co. v. Taylor*, 70 Or App 113, 688 P2d 417 (1984) (cash deposit).

§ 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 shall 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 as required by ORS 87.078(1), "the person shall 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. ORS 87.086. 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 entitled to post a bond or make a cash deposit under ORS 87.076(1) or (2) may make a written demand that the lien claimant release the lien and give notice that such person may recover the greater of actual costs incurred complying with ORS 87.076 to 87.081 or $500 if the lien is not released. 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 87.076 to 87.081. ORS 87.076(4)(a). To recover attorney fees, the person seeking recovery under ORS 87.076(4)(a) must make an additional written demand on the lien claimant who did not foreclose, at least 20 days before commencing action for payment of the damages described by ORS 87.076(4)(a). 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 Files and 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 negligence per se action (such as in a claim against the county treasurer). ORS 87.089.

§ 17.3I References

See generally Construction Law in Oregon ch 16 (OSB Legal Pubs 2026) (construction liens).

§ 17.4 LICENSURE OR REGISTRATION

§ 17.4A Licensure or Registration Required for Remedy

The State of Oregon licenses contractors and certain other 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 in court or an arbitration, or file a complaint with the CCB. 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 from CCB licensure under ORS 701.010, must be licensed and properly endorsed by the Oregon 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). CCB 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 the CCB endorsements and the various types of structures recognized by the CCB) (ORS 701.005(13), (15), and (17) were redesignated as ORS 701.005(15), (17) and (19), respectively, in 2025, with an operative date of July 1, 2027. Or Laws 2025, ch 78, § 17); ORS 701.021 (endorsement requirements).

Failure to comply with these license and endorsement requirements generally results in a complete defense to a contractor's claim for payment (*i.e.*, a court action, arbitration, or construction lien) 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 Construction & Design, Inc. v. Neuman*, 166 Or App 172, 179–81, 999 P2d 1169 (2000) (decided under *former* ORS 701.065 (1995), *renumbered* ORS 701.131 (2007)).

> NOTE: ORS 701.131(1) bars a contractor from seeking collection of the entire claim, not merely the portions of unlicensed work. *Hooker Creek Companies, LLC v. Remington Ranch, LLC*, No CV 11-090-MO, 2011 US Dist LEXIS 64104 at *2–8, 2011 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); *Parthenon Construction & Design*, 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).

A lien claimant not aware of a lapse in their CCB license or the requirement to be licensed may be able to revive their 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 license requirement. ORS 701.131(2). In the case of a claimant who was never licensed with the CCB, the claimant must become properly licensed and endorsed for the entire time required before the lien is recorded. ORS 701.131(2)(a). Remedies to recover for construction defects are generally excluded from the remedy bar of ORS 701.131(1). *See* ORS 701.131(2)(c); *Stellar J Corp. v. Smith & Loveless Inc.*, 749 F Supp 2d 1137 (D Or 2010) (construing construction defect exclusion then known as ORS 701.131(2)(d)).

> NOTE: ORS 701.131(2) is intended to ameliorate the potentially harsh effect of the subsection (1) defense to contractor-payment remedies. The Oregon Legislature has amended ORS 701.131 (formerly ORS 701.065) 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. For example, Oregon Laws 2013, chapter 251, section 5 amended ORS 701.131(1) to supersede dictum in *Pincetich v. Nolan*, 252 Or App 42, 47–49 & n 3, 285 P3d 759 (2012), that

suggested licensure was not required for a contractor to file a counterclaim in an action.

§ 17.4C Other Construction Trades and Design Professionals

In addition to the CCB license requirements, certain construction trades or professionals must hold an additional license or a registration at certain times as a condition of maintaining the right to pursue remedies for nonpayment, including the following:

- electrical contractors—ORS 479.670
- plumbing contractors—ORS 447.070
- boiler and pressure vessel contractors—ORS 480.640
- architects—ORS 671.220(2)
- landscape contractors—ORS 671.575(1)

§ 17.4D Plead-and-Prove Requirements

Certain statutes, including those applying to electrical contractors (ORS 479.670), plumbing contractors (ORS 447.070), boiler and pressure vessel contractors (ORS 480.640), and architects (ORS 671.220(2)) require the licensee or registrant 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.

§ 17.5 CONSTRUCTION, ALTERATION, OR REPAIR OF IMPROVEMENT TO REAL PROPERTY

§ 17.5A Arising in Contract

See § 14.2I(3) for discussion of limitations periods arising in the contract context.

§ 17.5B Arising in Tort

See § 15.3E(1) for discussion of limitations periods arising in the tort context.

§ 17.5C Residential Notice of Defect Statutes

See *Construction Law in Oregon* § 9.4-2(b) (OSB Legal Pubs 2026) for discussion of limitations periods arising in contract in the context of residential notice of defect statutes.

§ 17.5D Statute of Ultimate Repose

See § 15.3E(2)–§ 15.3E(3) for discussion of the relevant statute of ultimate repose.

Chapter 18

JUDGMENTS AND LIENS

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§ 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 trust deeds and mortgages, see chapter 13.

> NOTE: The Servicemembers Civil Relief Act (SCRA) (50 USC §§ 3901–4043) provides for the suspension of civil proceedings against persons in military service who could be detrimentally affected by the proceedings. 50 USC § 3902(2). Relief under the SCRA is available for a wide range of matters and proceedings. *See generally Veterans, Military Servicemembers, and the Law* ch 9 (OSB Legal Pubs 2018).

§ 18.2 JUDGMENTS

§ 18.2A Default Judgment

See § 2.14A(1) to § 2.14B(5) 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* § 2.14B(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 § 2.14B(2) for further discussion of relief from judgment because of excusable neglect.

(2) "newly 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) "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party," ORCP 71 B(1)(c);

(4) "the judgment is void," ORCP 71 B(1)(d) (*see* § 2.14B(3)); or

(5) "the 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).

NOTE: If the Court of Appeals determines on appeal that the party moving for relief from judgment has not asserted a valid basis for relief, the court's inquiry ends there. *Parker v. Burnes*, 331 Or App 58, 61, 545 P3d 753, *rev den*, 372 Or 787 (2024), *cert den*, 145 S Ct 2752 (2025). If a party has asserted a valid basis for relief from judgment, the Court of Appeals will review for abuse of discretion by the trial court. *Parker*, 331 Or App at 61.

See § 2.14B(1) to § 2.14B(5) for further discussion regarding a motion for relief from judgment, including the effect of the motion on the judgment. *See also Oregon Civil Pleading and Litigation* § 40.6-1(b) to § 40.6-1(b)(5) (OSB Legal Pubs 2025).

§ 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 entered, except judgments for child support or spousal 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 in the court that entered the judgment before the first 10-year limit expires. The renewed judgment and lien expire 10 years after the certificate of extension is filed. 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(5).

§ 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 Judgment

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 entered until the lien expires. ORS 18.150(1)–(2). The lien applies to real property then held by the judgment debtor and real property acquired after entry of the judgment. ORS 18.150(1)–(2).

(2) *Perfection of lien.* After a judgment that creates a judgment lien is entered under ORS 18.150, a judgment creditor may create a judgment lien on the judgment debtor's property in any other Oregon county by recording a certified copy of the judgment or a lien record abstract. ORS 18.152; *see* ORS 18.170 (form of lien record abstract).

(3) *Lien for child or spousal support.* Upon entry of a judgment for unpaid child or spousal support, a lien arises by operation of law encumbering all personal property of the debtor in Oregon (ORS 25.670(1)), as well as any real property then owned or after-acquired in the county in which the judgment is entered (ORS 18.150(3)). For liens arising under ORS 25.670(1), the judgment creditor must file a written notice of claim of lien that includes the information set forth in 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).* A lien arising by operation of law against real property for overdue payments under an out-of-state support order (defined in ORS 110.503 to include a judgment) becomes a lien on real property the obligor owns once the notice of claim of lien is recorded in the proper county and served as required by the statute. ORS 18.158(5). An action to enforce a lien described in ORS 18.158(5) may not be filed "until the underlying judgment has been filed in Oregon as provided in ORS chapter 110."

§ 18.3B Judgment Lien on 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 18.412(1)(d); 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. ORS 18.235(4). If the motion is filed within one year after entry of the judgment, service may be made under ORCP 9. ORS 18.235(4). 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

Statutory liens require performing certain actions within applicable deadlines. Unless otherwise explicit in the applicable statute, all references to the days or months in which some action or notice is required should be considered calendar days or months. *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).

§ 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. ORS 87.705(1). If the agricultural produce "consists of meat animals, the lien also attaches to all accounts receivable by the purchaser from the sale of any 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. ORS 87.710(5)(a). 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)(b).

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). If a notice of lien is filed, the notice must be supported by an affidavit containing the information described in ORS 87.710(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 79A that perfects a security interest in all or part of the same inventory, proceeds or accounts receivable." ORS 87.710(3)–(4). Alternatively, to extend the lien under ORS 87.242, the lien claimant must send a copy of the notice of claim filed "to the owner of the chattel to be charged with the lien by registered or certified mail sent to the owner at the owner's last-known address." ORS 87.252(1). The lien claimant must also send a copy of the notice of claim "to all holders of security interests in the chattel to be charged with the lien who duly perfected such security interests by filing notice thereof with the Secretary of State. The notice shall be mailed to holders of perfected security interests within 30 days after the date of filing." ORS 87.252(2).

(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). *See also* § 18.4G (construction liens).

§ 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. ORS 87.860(1). 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).

> COMMENT: This statute is unusual in at least two ways. First, it counts time in "months," which is ambiguous; second, it requires the plaintiff's counsel to timely "issue" a summons (*see* ORCP 7 B) in addition to timely filing the complaint to foreclose the lien. A careful lawyer will likely want to file the foreclosure and issue the summons well in advance of the six-month deadline to avoid any procedural challenges.

§ 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 79A 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). Also, the lien claimant must send a copy of the notice of claim filed "to the owner of the chattel to be charged with the lien by registered or certified mail sent to the owner at the owner's last-known address." ORS 87.252(1). No costs or statutory attorney fees under ORS 87.336 are allowed to any party failing to comply. ORS 87.252(3).

> NOTE: In *Northwest Bank v. McKee Family Farms, Inc.*, No 3:15-CV-01576-MO, 2016 US Dist LEXIS 63302 at *4–5, 2016 WL 2841205 at *1–2 (D Or May 12, 2016), *aff'd on other grounds*, 732 F App'x 620 (9th Cir 2018), the court interpreted ORS 87.762(3) to require that the producer need only notify persons who had filed a financing statement with the Oregon Secretary of State. As a result, the plaintiff bank, which had filed a financing statement in Pennsylvania but not in Oregon, was not entitled to notice of the lien extension, and the grain-producer liens did not lose priority over the security interest.

(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).

(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 ORS 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 by registered or certified mail upon 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 healthcare-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." ORS 87.627(1). 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 healthcare-service contractor pays for ambulance services in response to a claim received earlier than the notice of lien was received, it "is not liable for the amount claimed in the notice of lien." ORS 87.627(2).

§ 18.4D(2) Hospital, Physician, Physician Associate, and Nurse Practitioner Liens

(1) *Lien on amount injured person receives in court case.* A hospital, licensed physician, licensed physician associate, or licensed nurse practitioner 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).

(2) *Lien on amount payable under insurance policy*. A hospital, physician, physician associate, or nurse practitioner has a lien on the amount payable under the insurance policy for a person receiving hospitalization or medical care (including a policy that provides personal injury protection coverage or similar no-fault medical insurance but excluding a health insurance policy). ORS 87.555(2). If the hospital, physician, physician associate, or nurse practitioner has properly perfected the lien under ORS 87.565(2), the insurer must make the payments due under the policy directly to the hospital, physician, physician associate, or nurse practitioner in the amounts due for services rendered. ORS 87.555(2).

(3) *Perfection of liens.* The lien permitted under ORS 87.555(1) is perfected by filing a notice of lien with the recording officer of the county wherein such hospital is located within 30 days after the injured person is discharged and by serving a "certified copy of the notice of lien by registered or certified mail" upon the required parties "[p]rior to the date of judgment, award, settlement or compromise." ORS 87.565(1).

NOTE: In *Rogue Valley Memorial Hospital v. Salem Insurance 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 Memorial Hospital*, 265 Or at 615.

The lien permitted under ORS 87.555(2) is perfected by filing a notice of lien with the recording officer of the county wherein such hospital is located within 30 days after the injured person is discharged and by serving "a certified copy of the

notice of lien by certified mail upon the insurance company that is obligated to make payment for hospitalization and medical services." ORS 87.565(2)(b).

(4) *Limitations on liens.* No lien under ORS 87.555(1) is allowed (a) "[f]or hospitalization and treatment from a physician, physician associate 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 and 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).

(5) *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).

> PRACTICE TIP: Lawyers should treat any services provided by a "physician assistant" prior to and within 91 days after the end of the 2024 regular session the same as those provided by a "physician associate" for the period beginning more than 91 days after the end of the 2024 regular session. During the 2024 regular session, the Legislature passed HB 4010 (enrolled), adopted as Or Laws 2024, ch 73, § 22. The amendments replaced all occurrences of "physician assistant" with "physician associate." "For the purposes of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the term 'physician assistant,' wherever they occur in statutory law, other words designating the term 'physician associate.'" Or Laws 2024, ch 73, § 172a(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." ORS 87.503(1). 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 the person's

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).

(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." ORS 87.537(2). 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. ORS 87.872(1). "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)(a).

§ 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 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; (3) expenses "necessarily incurred in preserving the personal property"; and (4) 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 personal property until the rent and other 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). The owner of the facility may foreclose the lien on the occupant's default. ORS 87.689(1); *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). The notice must be sent 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 include the information enumerated in ORS 87.689(3).

(3) *Disposition of property; public 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 $1,000 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 $1,000, 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).

NOTE: Effective January 1, 2026, the ceiling for the fair market value of personal property subject to a lien was increased from $300 to $1,000. Or Laws 2025, ch 222, § 1.

(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. ORS 87.691(5)(a). 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 to the State Treasurer as provided in ORS 98.352." 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); *see also* ORS 87.010(2). Trustees of an employee benefit plan and certain professionals (architects, landscape architects, land surveyors, registered engineers, or other persons) may also be entitled to claim a lien. ORS 87.010(4)–(6). 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 federal lien" is effective for 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) "[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 (OSB Legal Pubs 2016) (statutory and possessory liens).

§ 18.5 ATTORNEY LIENS AND FEES

§ 18.5A In General

Oregon law recognizes two types of attorney liens for services: retaining liens and charging liens.

> NOTE: Amendments from the 2023 and 2025 legislative sessions include both attorneys and limited licensee attorneys in the definition of persons who may assert both retaining and charging attorney liens. Or Laws 2023, ch 72, § 37; Or Laws 2025, ch 32, § 79 (retaining liens); Or Laws 2023, ch 72, § 40; Or Laws 2025, ch 32, § 82 (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 or licensee's hands during the course of employment, giving the attorney or licensee the right to retain that property until the attorney's or licensee'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 § 2.16A(1) regarding pleading the right to attorney fees.

§ 18.5B Retaining Lien

§ 18.5B(1) In General

"An attorney or other licensee of the Oregon State Bar licensed to practice law 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 or licensee for services rendered to the client." ORS 87.430. "The attorney or licensee may retain the papers, personal property and money until the lien created by this section, and the claim based thereon, is satisfied, and the attorney or licensee may apply the money retained to the satisfaction of the lien and 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 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 ORS 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 2005-90 (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, the United States Bankruptcy Court for the District of Oregon construed Oregon law in holding that

> a retaining lien is effective upon the attorney's possession of the client's money or other property. Because 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 Services, Inc., 202 BR 149, 152–53 (Bankr D Or 1996) (internal citation omitted), *aff'd sub nom United States Trustee v. Garvey, Schubert & Barer*, 215 BR 18 (BAP 9th Cir 1997), *rev'd on other grounds*, 195 F3d 1053 (9th Cir 1999), *abrogated by Lamie v. United States Trustee*, 540 US 526, 124 S Ct 1023, 157 L Ed 2d 1024 (2004).

§ 18.5B(3) Discharge of Retaining Lien

To discharge an attorney or licensee'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 or licensee." 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 or licensee by registered or certified mail. ORS 87.435(4).

If the attorney or licensee considers the bond or letter of credit inadequate to protect the attorney or licensee's claim (for a reason other than the amount), the attorney or licensee 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 or licensee 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 or licensee's services.

To perfect a lien on a judgment, the attorney or licensee must give notice of the lien; the type of notice depends on the type of judgment. *See* ORS 87.450–87.460; *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 or licensee 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, 107.105, 108.120, 109.155 or 419B.400." ORS 87.450(4).

After filing a notice of claim of lien, the attorney or licensee 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 18.190." ORS 87.450(3).

§ 18.5C(3) Claim of Lien on Judgment for Possession of Personal Property

When an attorney or licensee 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 or licensee 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 or licensee'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 generally* 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." ORS 87.455(3). 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 or licensee claims a lien under ORS 87.445, "if the judgment is for the possession, award or conveyance of real property, the attorney or

licensee 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 generally* ORS ch 88 (foreclosure of liens).

The attorney or licensee and the 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." ORS 87.460(3). 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 Legal Ethics in Oregon ch 3 (OSB Legal Pubs 2026) (attorney fees and fee agreements).

§ 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 (fish worker's lien) must file "a written notice of claim of lien with the recording officer of 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(1).

> NOTE: "Persons claiming liens created by ORS 87.216 to 87.232 are only entitled to liens for labor, services or materials performed or furnished during the six months immediately preceding the filing of the notice of claim 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 (claim of lien). 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. ORS 87.316(2). 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(2).

§ 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).

> NOTE: See ORS 475C.489 for marijuana as a crop subject to exceptions, ORS 475C.880 for the rights of secured parties, and OAR 845-025-1260 regarding standards for receiving temporary authority to operate a licensed business to allow for orderly disposition.

§ 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).

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). No costs or statutory attorney fees under ORS 87.336 are allowed to any party failing to comply with post-lien notice requirements of ORS 87.252(1) to (2). ORS 87.252(3).

§ 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 generally Creditors' Rights and Remedies chs 3, 13 (OSB Legal Pubs 2016) (statutory and possessory liens; judicial foreclosure of security interests in personal property).

§ 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 should reasonably 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 at least 30 days after the lien attaches" before foreclosing the lien. ORS 87.172(3)(a).

(2) If the vehicle is appraised for $500 or less, the lien claimant must "retain the vehicle 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 the 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." ORS 87.176(1). 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. ORS 87.176(1). 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 Is Claimed 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. ORS 87.176(2). 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. ORS 87.176(2). 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).

A possessory lien for the storage of a motor vehicle is subject to prerequisites and consumer protections in compliance with ORS 646A.480 to 646A.495. ORS 87.152.

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 "by first class mail with certificate of mailing, registered mail or certified mail sent to the lien debtor at the lien debtor's last-known address." ORS 87.192(1)(a). The notice of foreclosure sale "must contain a particular description of the property to be sold, the name of the owner or reputed owner of the property, the amount due on the lien, the time and the place of the sale and the name of the person foreclosing the lien." ORS 87.192(4).

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 cost 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)(a)(B). For a vehicle appraised at more than $1,000, the 30-day notice

provision applies. ORS 87.192(1)(a)(A). 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 provided 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 "chattel for which the Department of Transportation has issued a certificate of title under ORS 803.045, for which the State Marine Board requires a certificate of title under ORS 830.810 or for which the Oregon Department of Aviation requires a certificate of registration under ORS 837.040." ORS 87.192(2)(b).

Furthermore, if the chattel to be sold is either "something other than an abandoned vehicle and has a fair market value of $1,000 or more" or "an abandoned vehicle and 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

Before foreclosing a lien by sale, the lien claimant must send notice via first-class, registered, or certified mail to all persons who "have filed a financing statement in the office of the Secretary of State, or in the office of the appropriate county officer of the county in which the sale is held, to perfect a security interest in the chattel to be sold." 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."

(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).

Any person entitled to notice of the foreclosure sale under ORS 87.196(1) (a security-interest holder) may avoid foreclosure of the person's security interest in the chattel "by paying the lien claimant the amount of the lien claim and reasonable expenses the lien claimant actually incurs in foreclosing the lien claim." ORS 87.196(2). If the lien claimant fails to provide notice of the foreclosure sale to a person who claims a security interest or lien on the chattel sold, 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 and Statement of Account

"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).

If the chattel sold "has a fair market value of $1,000 or more," or is an animal with a brand or mark "recorded with the State Department of Agriculture under ORS chapter 604," the lien claimant must file a statement of account that verifies by oath the information required by the statute "with the recording officer of the county in which the sale took place." ORS 87.202(1). The lien claimant must also mail a copy of the statement of account "by registered or certified mail to the last-known address of the owner of the chattel sold," and if the chattel sold "is an animal that bears a brand or other mark recorded with the State Department of Agriculture under ORS chapter 604," the lien claimant must also "send a copy of the statement to the State Department of Agriculture." ORS 87.202(3).

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 the 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), *rev den*, 290 Or 449 (1981).

This lien applies only to property "owned by a tenant or occupant legally responsible for rent" that is brought onto 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 Equipment 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, 618–21, 575 P2d 1389 (1978) (rejecting application of the RLTA to hotel occupancy and enforcing an innkeeper's lien).

§ 18.7F References

See generally Creditors' Rights and Remedies chs 3, 13 (OSB Legal Pubs 2016) (statutory and possessory liens; judicial foreclosure of security interests in personal property).

§ 18.8 TAX LIENS

§ 18.8A Statute of Limitations for Collection

Once a timely assessment of a federal tax has been made, the Internal Revenue Code (IRC) authorizes collection "by levy or by a proceeding in court, but only if the levy is made or the proceeding begun" within the following applicable time periods:

(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 IRC § 6343 "after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release."

IRC § 6502(a).

Otherwise, the lien lapses and the assessed tax liability becomes uncollectible. IRC § 6502(a); *see* IRC § 6331 (levy and distraint).

The running of the period of limitations may be suspended on the happening of certain events or circumstances described in IRC § 6503 and other sections of the IRC, including specified court proceedings. 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 liens on real property) and with the Secretary of State (for liens on personal property)] in accordance with ORS 87.806 to 87.855." 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) "[t]hat 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." IRC § 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. IRC § 2502(c); IRC § 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. IRC § 6324; Treas Reg § 301.6324-1(a)(1). 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 IRC § 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. IRC § 6324(a)(2); *see Chevron, U.S.A., Inc. v. United States*, 705 F2d 1487, 83-1 US Tax Cas (CCH) ¶ 13,523 (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 IRC § 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 IRC § 6166 (extension of the time for payment of the estate tax when the estate consists largely of an interest in a closely held business). IRC § 6324A. If the executor "makes an election" under IRC § 6324A(a) and "files" a lien agreement referred to in IRC § 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. IRC § 6324A(a), (c); *see* Treas Reg § 301.6324A-1(a)–(b).

Unlike the special estate-tax lien of section 6324, the lien created by 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. IRC § 6324A; Treas Reg § 301.6324A-1. Also, the lien under section 6324A arises when the executor is discharged from liability under IRC § 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." IRC § 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. IRC § 6323(c). *See generally* § 11.18A to § 11.18T (UCC Article 9).

§ 18.8E References

See generally Creditors' Rights and Remedies ch 13 (OSB Legal Pubs 2016) (judicial foreclosure of security interests in personal property).

§ 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 314.430(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 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 or transferee found within that county, and to levy upon any currency of the taxpayer or transferee 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 314.430(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 314.430(2). The sheriff's fees are "added to and collected as a part of the warrant liability." ORS 314.430(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 recovered judgment against the taxpayer for the amount of the tax." ORS 314.430(4). See § 11.12A(1) to § 11.12A(5) 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." ORS 324.190(2). The warrant then has the effect described in ORS 205.125 (county clerk lien record). ORS 324.190(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 as if the state had a recorded judgment against the taxpayer for the amount of the tax." ORS 324.190(4). See § 11.12A(1) to § 11.12A(5) 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 delivery 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 312.060(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).

New legislation effective September 26, 2025 requires that "[n]ot less than one year prior to the expiration of the [redemption period for] any real property ordered sold," the tax collector must provide notice to any person or entity entitled to redeem under ORS 312.120(2) and whose interest appears in the records of the county as of the date the foreclosure proceedings were instituted. ORS 312.125(1)(a).

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 collector'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 any 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 (2) the "taxable property belonging to or in the possession or control of the person assessed." ORS 311.644(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) "[a]dvertise 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 311.644(3)(a).

TABLE OF ABBREVIATIONS

ADA	Americans with Disabilities Act of 1990 (42 USC §§ 12101–12117)
ADEA	Age Discrimination in Employment Act of 1967 (29 USC §§ 621–634)
ALJ	administrative law judge
BOLI	Bureau of Labor and Industries
CCB	Construction Contractors Board
CDA	claim disposition agreement
CHI	confidential health information
DCBS	Department of Consumer and Business Services
DMV	Oregon Driver and Motor Vehicle Services Division
DOC	Department of Corrections
DUII	driving under the influence of intoxicants
ECOA	Equal Credit Opportunity Act (15 USC §§ 1691–1691f)
EEOA	Equal Education Opportunities Act of 1974 (20 USC §§ 1701–1721)
EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act of 1963 (codified in part at 29 USC § 206(d))
ERB	Employment Relations Board
ERISA	Employee Retirement Income Security Act of 1974, Pub L 93-406, 88 Stat 829 (codified as amended at 29 USC §§ 1001–1461)
FHA	Fair Housing Act of 1968 (42 USC §§ 3601–3631)
FHAA	Fair Housing Amendments Act (42 USC §§ 3601–3631)
FLSA	Fair Labor Standards Act of 1938 (29 USC §§ 201–219)
HUD	US Department of Housing and Urban Development
IDEA	Individuals with Disabilities Education Act (20 USC §§ 1400–1482)
IRO	independent review organization
LLC	limited liability company
LLP	limited liability partnership
NLRB	National Labor Relations Board
ODHS	Oregon Department of Human Services
ODOJ	Oregon Department of Justice
OPSC	Oregon Patient Safety Commission

ORICO	Oregon Racketeer Influenced and Corrupt Organization Act (ORS 166.715–166.735)
Oregon OSHA	Oregon Occupational Safety and Health Division
OSB	Oregon State Bar
OSHA	Occupational Safety and Health Administration (federal)
OTCA	Oregon Tort Claims Act (ORS 30.260–30.300)
OYA	Oregon Youth Authority
PIP	person injury protection
PMSI	purchase-money security interest
RLTA	Residential Landlord and Tenant Act (ORS ch 90)
SAIF	State Accident Insurance Fund
TRO	temporary restraining order
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act (ORS 109.701–109.834)
UCLLA	Uniform Conflict of Laws-Limitations Act (ORS 12.410–12.480)
UDJA	Uniform Declaratory Judgments Act (ORS 28.010–28.160)
UDPIA	Uniform Disclaimer of Property Interests Act (ORS 105.623–105.649)
ULP	unfair labor practice
UM/UIM	uninsured/underinsured motorist
USPS	United States Postal Service
UTCR	Uniform Trial Court Rules
UTPA	Oregon Unlawful Trade Practices Act (ORS 646.605–646.656)
WCB	Workers' Compensation Board

TABLE OF STATUTES AND RULES

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