

**ARTICLE 85-04**  
**SURFACE LAND MANAGEMENT**

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**CHAPTER 85-04-01**  
**LEASING TRUST LANDS FOR AGRICULTURAL USE**

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**85-04-01-01. Failure to pay or insufficient funds at auction.**

1. The commissioner may not issue a surface land lease for agricultural use until payment in full is received by the department.
2. A successful bidder who fails to pay for a surface land lease may be deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year and a minimum of three additional calendar years after the current calendar year.
3. If a surface land lease payment made at auction fails to clear for any reason, the commissioner shall notify the bidder by mail addressed to the bidder's address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-07-20, 54-30-17.1

#### **85-04-01-02. Annual surface land lease rental payment.**

1. The annual surface land lease rental payment for the second and each succeeding year of a surface land lease must be received by the department by the close of business on the last business day of January of the surface land lease year. If payment is not received, the surface land lease automatically terminates without notice.
2. If the annual surface land lease rental payment, for any reason, fails to clear after the close of business on the last business day of January of the surface land lease year in which it is due, the surface land lease automatically terminates and the commissioner may designate the lessee ineligible to bid at subsequent surface land lease auctions for the remainder of the current calendar year and a minimum of three full calendar years after the current calendar year.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-03. Assignment and use by a third party.**

1. A surface land lease or any part of the lease may not be assigned. The lessee may not allow the surface land leased premises or any part of the premises to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.
2. A lessee may request an assignment of a surface land lease from the department. The commissioner shall approve or deny an assignment based on the best interests of the trusts. The following assignments may be approved:
  - a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original surface land lease.
  - b. An assignment to a third party with the surface land lease expiring at the end of the current surface land lease year. The rent payable by the assignee must be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.
3. A lessee may request to add one or more additional lessees to a surface land lease. All such additional lessees must be bound by the full terms and conditions of the surface land lease.
4. A lessee may request to remove one or more lessees from a surface land lease. The removal of any lessee must be approved in writing by all current lessees named on the lease.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

#### **85-04-01-04. Sale of surface land lease for agricultural use prohibited.**

A lessee is prohibited from selling a board-issued surface land lease for agricultural use and any attempt to do so may result in surface land lease termination in accordance with this chapter.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-05. Inspection by prospective lessee or purchaser.**

The surface land leased premises must be made available for inspection to a prospective lessee or purchaser. If the surface land leased premises contains an occupied farmstead, a prospective lessee or purchaser must provide the current resident with at least two days advance notice of the intended time and date to inspect the property.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-06. Custodial agreement.**

A custodial agreement may be permitted if a lessee does not own livestock or is understocked. The custodial agreement must be in writing and a copy furnished to the department or the arrangement will be treated as third-party use. Unless approval is given by the commissioner, a custodial agreement is not permitted for more than three years.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-07. Right of entry.**

The department may enter the land subject to the surface land lease at any time without notice for the purpose of inspecting the land and improvements.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-08. Surface land lease termination.**

1. Failure to comply with the surface land lease terms, board rules, board policies, or applicable laws, except as otherwise stated in this chapter, may result in surface land lease termination by the commissioner.
2. The commissioner may:
  - a. Waive any breach except those terms required under applicable laws;
  - b. Allow the lessee time to cure the breach; or
  - c. Terminate the surface land lease.
3. The procedure to terminate a surface land lease is as follows:
  - a. The department shall provide notice of intent to terminate the surface land lease with specific reasons for termination by certified mail to the lessee's last-known address on file with the department.
  - b. A lessee may file with the department a written request for review of the intent to terminate the surface land lease. The request for review must:
    - (1) Be received by the department within fifteen business days after service of notice to the lessee: and
    - (2) Include a statement for reason of review.

- c. The commissioner may terminate a surface land lease no earlier than fifteen business days after the date of notice of intent to terminate the surface land lease.
  - d. A notice of termination of a surface land lease must be sent by certified mail requiring a signed receipt or by overnight courier or delivery service requiring a signed receipt.
  - e. Termination of a construction aggregate lease is effective upon the date of notice of termination.
4. Termination of the surface land lease does not release the lessee from liability for any amounts or damages owed to the board.
  5. If a surface land lease is terminated, the commissioner may deem the the former lessee is ineligible to bid at a surface land lease auction administered by the department for the remainder of the current calendar year and a minimum of three full calendar years after the current calendar year.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

**85-04-01-09. Board review.**

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall determine if board review is warranted.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-10. Weed and pest cost-share on surface land leased premises.**

The lessee is responsible for noxious weed and invasive species and pest control on the surface land leased premises. The department may participate in weed and pest cost-share reimbursement for:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or
3. Payments for other invasive species and pests as allowed by the department.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-11. Weed and pest cost-share application.**

A lessee may submit a request for weed and pest cost-share. The request must be submitted using the electronic cost-share application available on the department's website or a paper application provided upon request. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The amount of the cost-share must be determined by the department consistent with the department's cost-share policy.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-12. Weed and pest cost-share on cropland.**

Noxious weeds and invasive species on cropland are not eligible for cost-share.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-13. Weed and pest cost-share payments.**

Cost-share payments may be made for allowable expenses related to weed and pest control.

**History:** Effective January 1, 2020; amended effective April 1, 2026.

**General Authority:** NDCC 15-01-02, 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-14. Biological control agents.**

Use of biological control agents to control noxious weeds is authorized in addition to the chemical control.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-15. Record maintenance.**

A lessee shall furnish complete and accurate information concerning cultivated acres, hayland acres, noxious weed control, grazing, improvements, or any other information concerning the surface land leased premises when requested by the department.

**History:** Effective January 1, 2020.

**General Authority:** NDCC 15-07-20, 28-32-02

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1