

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 nonsufficient 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 is deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year plus three additional calendar years.
3. If a surface land lease payment made at auction is, for any reason, not paid by the bank on which it is drawn, the commissioner shall notify the bidder by mail addressed to the bidder's post office 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.

General Authority: NDCC 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 succeeding years of a surface land lease must be received by the department no later than five p.m. central standard

time 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, is not paid by the bank on which it is drawn after five p.m. central standard time on the last business day of January of the surface land lease year, 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 plus three additional calendar 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

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

1. A surface land lease or any part thereof may not be assigned, nor may the lessee allow the surface land leased premises or any part thereof 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 of less than the full surface land lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the surface land leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day-to-day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. 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.
 - c. 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.

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

85-04-01-04. 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 and policies, and applicable laws may result in surface land lease termination by the commissioner. Before a surface land lease is terminated, the department personally shall serve the lessee with the notice of intent to terminate the surface land lease specifying the reason for termination.
2. A lessee may file with the department a written request for waiver of the notice of intent to terminate the surface land lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on the lessee of the notice of intent to terminate the surface land lease. A request for a waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except those terms required under applicable laws, or the commissioner may allow the lessee time to cure the breach.
3. Not less than ten business days after the notice of intent to terminate the surface land lease is served on the lessee, the commissioner may terminate the surface land lease. Surface land lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the surface land lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service. Termination of the surface land lease does not release the lessee from liability for any sum due the board or from any damages due.

4. When a surface land lease is terminated, the former lessee is ineligible to bid at a surface land lease auction administered by the department for a minimum of the remainder of the current calendar year plus three additional calendar years.

History: Effective January 1, 2020.

General Authority: NDCC 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 recommend if board review is warranted.

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

85-04-01-10. 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 cost-share reimbursement, as follows:

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.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-11. Cost-share application.

A lessee shall submit a request for cost-share 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.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-12. Cost-share on cropland.

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

History: Effective January 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-04-24

85-04-01-13. Cost-share payments.

Cost-share payments may be made upon receipt of an invoice for allowable expenses.

History: Effective January 1, 2020.
General Authority: NDCC 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