

36.25.123 DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

assignment must be filed with the department. An assignment is effective for the lease term during which it is made and any subsequent renewal term as long as the assignor continuously holds the lease. Failure to execute the terms of this rule shall be cause for the department not to recognize the mortgage. (History: 77-1-209, MCA; IMP, 77-6-401 through 77-6-404, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; AMD, 1991 MAR p. 444, Eff. 4/12/91; TRANS, 1996 MAR p. 2384.)

36.25.123 ESTATES (1) In the event of a lessee's or licensee's death, the lease or license shall be transferred to the decedent lessee's or licensee's estate. The department shall consider the estate to be the lessee or licensee until such time as proof of different ownership is received by the department. In most cases the department shall require a copy of the decree of distribution or assignment by a court-appointed personal representative. Exceptions to this rule may be allowed when the department determines that an unusual situation exists.

(2) All provisions of these rules, including but not limited to: leasing, licensing, subleasing, reporting, assignments, and payments; also apply to leases or licenses held by a decedent's estate. (History: 77-1-209; IMP, 77-6-208, 77-6-401 and 77-6-402, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.124 SURRENDERS AND CONSOLIDATION OF LEASES OR LICENSES (1) A lessee or licensee who wishes to surrender his lease or license in whole or in part must submit a request to the department for approval. Also upon request, 2 or more leases or licenses may be combined when held by the same lessee or licensee. The request from the lessee or licensee must be in writing and if approved, the leases or licenses will be combined with the lease or license which expires first so that no lease or license shall run longer than its prescribed term. The department may combine leases or licenses at renewal when such action is in the best interest of the state. (History: 77-1-209, MCA; IMP, 77-1-202, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)

36.25.125 IMPROVEMENTS (1) A lessee or licensee may place improvements on state land which are necessary for the conservation or utilization of such state land with the approval of the department; however, only a single one-family residence will be permitted on each cabinsite lease. The lessee or licensee shall apply for permission prior to placing any improvements on state land on the form prescribed by the department and then in current use. Blank forms shall be available at no cost. A lessee or licensee will not be entitled to compensation by a subsequent lessee or licensee for improvements which are placed

on the land after May 10, 1979, and which are not approved by the department. Proof of the date of placement of improvements may be required by the department. Any improvements or fixtures paid for by state or federal monies shall not be compensable to the former lessee or licensee.

(2) It shall be the responsibility of the lessee or licensee to notify the new lessee or licensee of the improvements on the lease or licensed tract and the value of such improvements. Prior to the issuance of a new lease or license a new lessee or licensee shall prove that he has offered to pay or has paid the former lessee or licensee the value of the improvements and fixtures either as agreed upon with the former lessee or licensee or as fixed by arbitration or that the former lessee has decided to remove the improvements and fixtures from the lease or license. However, if the improvements and fixtures become the property of the state because the former lessee or licensee has failed to act within 60 days after expiration of the lease, then the new lessee or licensee shall not be required to prove that he (she) has offered to pay the former lessee or licensee for such improvements and fixtures. The department may require a written notice from the former lessee or licensee stating that he has been paid for or is removing the improvements and fixtures. If the former lessee or licensee does not agree on the value of the improvements and fixtures or begin arbitration procedures within 60 days after the expiration of the lease or license, then all improvements and fixtures remaining shall become the property of the state. This applies to permanent as well as movable improvements. The 60-day period for removal of improvements may be extended by the department upon proper written application.

(3) When the former lessee or licensee wishes to sell improvements and fixtures, and the new lessee or licensee wishes to purchase such improvements and fixtures, and the parties cannot agree upon a reasonable value, such value shall be determined by arbitration. When the new lessee or licensee does not wish to purchase the movable improvements and fixtures, then the former lessee or licensee shall remove such improvements immediately. Extensions for removing these improvements for good cause may be granted by the department.

(4) In case of arbitration, the lessee or licensee, or purchaser and the former lessee or licensee, shall each appoint an arbitrator with a third arbitrator appointed by the two arbitrators first appointed. No party may exert undue influence upon the arbitrators in an effort to affect the outcome of the arbitration decision. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the director, the director may appoint an arbitrator for that party. The value of the improvements and fixtures shall be fixed by the arbitrators in writing and submitted to the department and such

determination shall be binding on both parties; however, either party may appeal the decision to the department within 10 days of the receipt of the arbitration decision by the department. If any relevant portion of the arbitration decision is vague or unclear, then the department may ask for written clarification of the intent of the arbitration panel. Upon appeal by either party, the department may examine such improvements to determine the value of the improvements and fixtures and the department's determination shall be final. The determination of the value of improvements by the department shall be limited to those improvements involved in the arbitration. The department shall charge the cost of its examination to the party or parties in such proportion as justice may require. The compensation for the arbitrators shall be paid in equal shares by both parties. If the former lessee or licensee refuses to pay his share of the cost of arbitration, then those costs may be deducted from the value of the improvements and fixtures. If the new lessee or licensee refuses to pay the cost of arbitration, the lease or license shall not be issued and the bid deposit shall be forfeited to the department, and the lease or license shall be put up for bid to qualified bidders.

(5) The lessee or licensee shall pay the former lessee or licensee for the improvements and fixtures within 30 days after the value has been determined. Failure to pay the former lessee or licensee within 30 days shall result in rebidding of the lease or license in accordance with ARM 36.25.115 and the bid deposit shall be forfeited. The department may grant an extension in writing under special circumstances.

(6) Summer following, necessary cultivation done after the last crop grown, seeding and growing crops shall all be considered improvements. The value of seeded acreage and growing crops shall be limited to costs for seeding, seedbed preparation, fertilization and agricultural labor at the prevailing rate in the area. The former lessee's or licensee's anticipated profit shall not be included in such value. If the parties cannot agree on the value of seeded acreage or growing crops, the arbitration procedure set out in (4) shall be followed. The original breaking of the ground shall also be considered an improvement; however, if 1 year's crops have been raised on the land, the value shall not exceed \$2.50 per acre and if 2 year's crops have been raised, there shall be no compensation. (History: 77-1-209, MCA; IMP, 77-6-301 through 77-6-306, MCA; NEW, 1987 MAR p. 17, Eff. 1/16/87; TRANS, 1996 MAR p. 2384.)