



Idaho Department of Lands
Agency Guidance Document
Trust Land Management Division
Coeur d'Alene Staff Office
(208) 769-1525
comments@idl.idaho.gov

Default and Termination for Instruments Authorizing the Use of State Endowment Trust Lands

In accordance with [Executive Order 2020-02, Transparency in Agency Guidance Documents](#), guidance documents promulgated by the department are not new laws. They represent an interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

This document may reference other documents that are not currently available online. Copies of these reference documents may be obtained by filing a public records request at <https://www.idl.idaho.gov/public-records-request>.

Agency Contact

Division Administrator – Trust Land Management

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DEFAULT AND TERMINATION FOR INSTRUMENTS AUTHORIZING THE USE OF STATE ENDOWMENT TRUST LANDS

1. REFERENCES:

- A. Idaho Code 58-305. Payment of Rental in Advance -- Extension of Time -- Adjustment of Competitive Bid Rental Rates
- B. Idaho Code 58-312. Occupation of Land Without Lease -- Penalty -- Suit for Civil Damages
- C. Idaho Code 58-313. Sale of State Land
- D. Idaho Code 58-154. Sale and Lease of State Land -- Timber -- Minerals -- Other Interests -- Interference with Application, Auction or Bid Process -- Penalty
- E. 1971 Land Board Collection Policy
- F. 1988 Land Board Policy Regarding Interest and Late Charges
- G. IDAPA 20.02.14. Rules for Selling Forest Products on State-Owned Endowment Lands

2. PURPOSE:

To clearly communicate the steps and remedies the Department will pursue to protect the beneficiary when instruments authorizing the use of state endowment trust lands are in default and/or are subsequently terminated.

3. POLICY:

A. Default and Termination

Instruments are considered to be in default immediately upon the Instrument Holder failing to meet:

- payment deadlines (e.g. the payment deadline for annual rent due identified in the original billing);
- other financial obligations (e.g. gross receipts payment/reporting, bonding); or
- other non-financial terms or special provisions identified in the instrument.

The Department will provide a *Notice of Default* to Instrument Holders that have entered into a "default" status, together with a copy of the *Notice of Default* to any approved mortgagee, and indicate that the Instrument Holder will have a defined period of time (normally 30 days, but subject to the specific terms of the instrument) to cure the default. The *Notice of Default* shall clearly communicate that failure to cure the default by the timeframe specified may result in the termination of the instrument.

If the Instrument Holder does not comply, the Department will review the outstanding balance on the instrument account and will provide the following to the Office of the Attorney General when the outstanding balance is **\$30.00 or more***:

- all documents held by the Staff Office related to the instrument (i.e. instrument file);
- all documents held by the affected Supervisory Area's files related to the instrument; and
- a printed payment history related to the instrument's account.

The Department Program Manager will review the above information prior to sending the documents to the Office of the Attorney General to ensure completeness and accuracy.

The Office of the Attorney General, in consultation with the Department Program Manager, will recommend the necessary administrative or legal action to be taken. Unless a different action is in the best interest of the endowments, the Office of the Attorney General will generate and send a *Notice of Termination* to Instrument Holder. A copy of the *Notice of Termination* will be concurrently e-mailed to the Department Program Manager, with a hard copy placed in the instrument file provided to the Office of the Attorney General.

The *Notice of Termination* will typically include a final demand amount including any appropriate interest, late charges and legal/collection fees as determined and calculated by the Office of Attorney General.

The Department Program Manager will immediately forward a copy of the *Notice of Termination* to the L&W Processing Center (if affected), Fiscal, and the Area Staff office.

Fiscal will book the receivable based on the amounts identified by the Office of the Attorney General. All payments shall be applied first to accrued interest and late charges, and then to principal. Payment updates related to instruments in default or terminated will be distributed by Fiscal (as payments are received) to the Office of the Attorney General, the Department Program Managers and L&W Processing Center (if affected).

Once a *Notice of Termination* has been sent by the Office of the Attorney General, all correspondence and communications related to the issues identified in the *Notice of Termination* will be directed to the Office of the Attorney General.

The Office of the Attorney General will return resolved instrument files directly to the Department Program Manager. The Department Program Manager will review the file, confirm it is complete and return it to the appropriate location (e.g. L&W Processing Center) to be filed.

The Department Program Managers will cause notice to be sent to Instrument Holders with account balances of less than \$30 informing them that although the instrument will not be terminated; the outstanding balance will remain on the account and will continue to accrue late charges and interest until paid in full. All payments shall be applied first to accrued interest and late charges, and then to principal. No additional billing statements will be provided until the next regular billing statement. If, however, an outstanding balance exists on any instrument or obligation that the Instrument Holder has with the Department, the Instrument Holder will not be an eligible applicant for any new instrument with the Department until payment of any outstanding balance has been received. In addition, the Department will not process any instrument or agreement with Instrument Holder until all balances and obligations have been satisfied, including but not limited to instrument assignments, instrument modifications, sublease requests or consents to mortgage; allow participation in a conflict auction; or allow participation in a transaction of any state endowment trust lands.

* Grazing lease first billing notices with a May 1 deadline will include the IRRRC fee. Grazing lease accounts with outstanding account balances following May 1 will have the IRRRC fee removed from the account. IRRRC will be responsible for following up on payment. The Department will not charge late fees for outstanding IRRRC fees.

No instrument will be reinstated after the *Notice of Termination* has been issued by the Department. Lands associated with terminated lease instruments will be subject to the standard lease application and lease conflict auction process.

Cottage site lessees have historically been afforded an ability to pay the annual lease payment in two installments. The full amount of the annual obligation under the instrument is incurred, in advance, on the annual due date.

Failure to make a timely first half payment shall constitute a default under the instrument and will require payment in full, including interest and late fees, of the entire year's obligation to avoid termination. If there is any default on the second half payment, then interest and late charges shall accrue on any such default from after the first date payment was due (e.g., January 1).

B. Debt Collection

Upon termination of an instrument, the Office of the Attorney General will continue debt collection efforts for instrument balances of **\$500.00 or more**. Once resolved, the Office of the Attorney General will return instrument file directly to the Department Program Manager. The Department Program Manager will review the file, confirm it is complete and return to the appropriate location (e.g. L&W Processing Center) to be filed.

The Office of the Attorney General may return instrument files directly to the Department Program Manager for instrument balances **less than \$500.00**. The Department may then pursue collections through a Private Collection Agency or through small claims court.

C. Indebtedness to the State of Idaho

Instrument Holders in default of financial obligations and Instrument Holders with terminated instruments with financial obligations are considered indebted to the state. No person indebted to the State of Idaho shall be eligible for any business with the State or the Department and shall not be an eligible applicant for land sales (e.g. voluntary cottage site auctions, auctions of real property); timber sales; land exchanges; or leases or permits related to any state endowment trust land.

The appropriate Department Program Manager shall cause to be published on the Intranet a list of all Instrument Holders associated with terminated instruments that remain indebted to the State of Idaho.

Area Staff shall check this Intranet posting prior to offering any new instrument. All outstanding defaults, including payment of all balances owing, must be resolved prior to issuing a new instrument to any party identified on this posting. Area Staff shall contact the Department Program Manager regarding the status of an account that is in default or has been terminated.

D. Treatment of Personal Property upon Termination

The Department, prior to instrument termination, is not obligated to make a determination whether the Department will or will not require removal of any personal property. Such decisions will be made by the Department:

- in accordance with the instrument provisions; and
- on a case-by-case and site-specific basis considering the best interests of the endowment beneficiary.

When the Department determines that personal property may remain on the land following termination of an instrument, the Department will offer a Land Use Permit (with appropriate fees based on the specific circumstances) to the former Instrument Holder that addresses any concerns the Department may have, but that at a minimum addresses:

- Insurance requirements
- Bonding requirements
- Use and access for maintenance of the land
- Use and access to and maintenance of the personal property
- Removal of personal belongings
- Reimbursement of expenses incurred by the Department due to failure of the Instrument Holder to remove any personal property or personal belongings by a specified timeframe as required by the Department
- Removal of any personal property or personal belongings upon expiration of the Land Use Permit (including addressing abandonment)

The Department also reserves the right to determine the appropriate timing of any future land sale, land exchange or lease auction.

Any person occupying state endowment trust land for more than 30 days after termination of an instrument is considered to be in trespass and subject to fines and penalties in accordance with state law.

Department personnel shall consult with the Office of the Attorney General in cases of apparent abandonment of personal property. In cases of abandonment, the Department will pursue all available legal remedies in its discretion for the collection of all costs and expenses incurred by the Department associated with instrument default, breach, foreclosure, abandonment, removal and disposal of personal belongings and personal property etc., which shall constitute indebtedness to the state.

4. REVISIONS AND REVOCATION:

This is a new Department Policy.



THOMAS M. SCHULTZ, JR.
Director

10/23/13

Date