



Department Policy No. 9
Effective date: October 23, 2013

POLICY
Version: 2.0
Revised: January 31, 2022

Late Fees, Interest, Default and Termination for Leases and Permits

This guidance document is not a new law. This document is an agency interpretation of existing laws, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Division Administrator – Trust Land Management

Purpose

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

Scope

This policy applies to all instruments authorizing the use of state endowment trust lands, excluding instruments associated with Navigable Waters and the Right of Way program.

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I. Policy

A. Outstanding Account Balances

1. Late Fees and Interest

Payments not received by the due date will result in the following late charge and interest charge on the unpaid principal obligation:

- **Late Charge:** \$25.00 or 1% of the unpaid principal obligation, whichever is greater; and
- **Interest Charge:** 1% on the unpaid principal obligation.

Fiscal will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest until paid in full.

All payments will be applied first to accrued interest and late charges, and then to principal.

2. Instrument Holder Ineligible for New Instrument

If an outstanding balance exists on any instrument or obligation that the Instrument Holder has with IDL, the Instrument Holder will not be an eligible applicant for any new instrument with IDL until payment of any outstanding balance has been received. In addition, IDL 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. To check default status of any person or entity, a report for the default status should be run in Landfolio.

3. Cottage Site Leases

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 the first date payment was due (e.g., January 1).

4. Idaho Rangeland Resource Commission Fees

Grazing lease first billing notices with a May 1 deadline will include the Idaho Rangeland Resource Commission (IRRC) fee of \$0.10 per animal unit month (AUM). Grazing lease accounts with outstanding account balances following May 1 will have the IRRC fee included. IDL will not charge late fees for outstanding IRRC fees. Any subsequent demand letters from the Office of the Attorney General will include IRRC fees as well. The minimum IRRC fee is \$5.00 unless otherwise determined by IRRC.

B. Default and Termination

1. 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.
2. IDL will provide a *Notice of Default* billing statement and cover letter to Instrument Holders that have entered into a "default" status and indicate that the Instrument Holder will have until the 1st of the next month to cure the default. The *Notice of Default* billing statement and cover letter must clearly communicate that failure to cure the default by the timeframe specified may result in termination of the instrument. If the lease is subject to a consent to mortgage, IDL will send the *Notice of Default* to any approved mortgagee.
3. IDL will review the outstanding balance on the instrument account. An account with an outstanding balance of \$50 or more will be reviewed by the Office of the Attorney General, if deemed appropriate by IDL and once the account is at least 6 months past due.
4. The Office of the Attorney General, in consultation with the 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 the Instrument Holder. Alternatively, the department will send a termination letter using a template approved by the Office of the Attorney General.
5. The *Notice of Termination* will typically include a final demand amount including any interest, late charges, and legal/collection fees as determined and calculated by the Office of Attorney General.
 - a) A copy of the *Notice of Termination* will be emailed to the Program Manager, with a copy placed in the instrument file.
 - b) The Program Manager will forward a copy of the *Notice of Termination* to the Technical Records Specialist, Fiscal, and the Area Staff office.
 - c) Fiscal will book the receivable based on the amounts identified by the Office of the Attorney General. 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 Program Managers, and Technical Records Specialists (if affected).
6. 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.
7. No instrument will be reinstated after the *Notice of Termination* has been issued. Lands associated with terminated lease instruments will be subject to the standard lease application and lease conflict auction process.

C. Debt Collection

1. Upon termination of an instrument, the Office of the Attorney General will continue debt collection efforts for instrument balances of **\$500 or more**.
2. The Office of the Attorney General may opt to not pursue debt collection for instrument balances **less than \$500**. IDL may then pursue collections through a private collection agency or through small claims court.

D. Indebtedness to the State of Idaho

1. 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 IDL 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.
2. Area Staff and Technical Records Specialists must run the Default Report in Landfolio to check for existing default and termination statuses before offering any new instrument. All outstanding defaults, including payment of all balances owing, must be resolved before issuing a new instrument to any party identified on this posting. Area Staff must contact the Program Manager about the status of an account that is in default or has been terminated.

E. Treatment of Personal Property upon Termination

1. Before terminating an instrument, IDL is not obligated to determine whether the Instrument Holder will be required to remove any personal property. IDL may wait to make such decisions, which will be in accordance with the instrument provisions and on a case-by-case basis considering the best interests of the endowment beneficiary.
2. When IDL determines that personal property may remain on the land following termination of an instrument, IDL will offer a Land Use Permit (with appropriate fees based on the specific circumstances) to the former Instrument Holder. The Land Use Permit will address any concerns that IDL may have and must address the following:
 - 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 IDL due to failure of the Instrument Holder to remove any personal property or personal belongings by a specified timeframe as required by IDL
 - Removal of any personal property or personal belongings upon expiration of the Land Use Permit (including addressing abandonment)
3. IDL also reserves the right to determine the appropriate timing of any future land sale, land exchange, or lease auction.

4. 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.
5. IDL staff shall consult with the Office of the Attorney General in cases of apparent abandonment of personal property. In cases of abandonment, IDL will pursue all available legal remedies in its discretion for the collection of all costs and expenses incurred by IDL associated with instrument default, breach, foreclosure, abandonment, removal and disposal of personal belongings and personal property, etc., which shall constitute indebtedness to the State.

II. Definitions

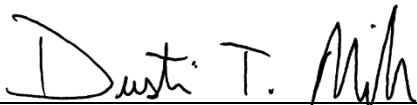
None

III. References

- A. Idaho Code § 58-154 – Sale and Lease of State Land – Timber – Minerals – Other Interests – Interference with Application, Auction or Bid Process – Penalty
- B. Idaho Code § 58-305 – Payment of Rental in Advance – Extension of Time – Adjustment of Competitive Bid Rental Rates
- C. Idaho Code § 58-312 – Occupation of Land Without Lease – Penalty – Suit for Civil Damages
- D. Idaho Code § 58-313 – Sale of State Land
- E. IDAPA 20.02.14 – Rules for Selling Forest Products on State-Owned Endowment Lands
- F. Land Board Policy 3/22/1971 – Lease Default
- G. Land Board Policy 10/11/1988 – Late Fee

IV. Implementation

This policy revision is effective immediately and will remain in effect for five years unless amended, replaced, or rescinded prior to expiration.



DUSTIN T. MILLER
Director

January 31, 2022
Date

V. Revision History

10-23-2013 Policy approved

01-31-2022 Version 2.0 – Revised and reformatted