

§ 162.609

lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 162.609 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

§ 162.610 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of

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the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

§ 162.611 Payment of fees and drainage and irrigation charges.

(a) Any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.

(c) Except as provided in paragraph (d) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage or cropshare rent that can be reasonably estimated.

(d) The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00, and any administrative fees that have been paid will be non-refundable. However, we may

waive all or part of these administrative fees, in our discretion.

(e) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

§ 162.612 Can a lease provide for negotiated remedies in the event of a violation?

(a) A lease of tribal land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. A lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.619(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) A lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.619 of this subpart.

§ 162.613 Will BIA notify a tenant when a rent payment is due under a lease?

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under a lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

§ 162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?

A lease must specify the rate at which interest will accrue on any rent

payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.618 of this subpart.

§ 162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?

(a) A tenant's failure to pay rent in the time and manner required by a lease will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.618(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.619 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

(c) Partial payments and underpayments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any