

## **CHAPTER 47-16 LEASING OF REAL PROPERTY**

### **47-16-01. Leasing of real property - Definition.**

Leasing is a contract by which one gives to another the temporary possession and use of real property for reward and the latter agrees to return such possession to the former at a future time.

### **47-16-02. Limitations on leases.**

No lease or grant of agricultural land reserving any rent or service of any kind for a longer period than ten years shall be valid. No lease or grant of any city lot reserving any rent or service of any kind for a longer period than ninety-nine years shall be valid.

#### **47-16-02.1. Rent controls - Prohibited.**

A political subdivision may not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property. This section does not impair the right of a political subdivision to manage and control residential property in which the political subdivision has a fee title interest.

### **47-16-03. Filing farm lease containing reservation of title to crop - Waiver of rights on failure to file.**

1. When a lease of a farm contains a provision reserving title in the lessor to any part of the crops in excess of the rental share of the lessor until the stated conditions of the lease have been complied with by the lessee, such lease must be filed in the office of the recorder in the county in which the land described therein is located if notice by a real estate recording is sought, and must be filed electronically in the central indexing system if recording in the central notice system is sought, prior to July first in the year in which the crops are raised to render such reservation of title effective as to subsequent purchasers or encumbrancers of any part of the grain over and above the lessor's rental share produced upon the land.
2. The failure to file such lease or contract in accordance with this section constitutes a waiver by the lessor of all rights reserved by that person over and above that person's rental share in such crops as against any subsequent purchaser or encumbrancer of the lessee.
3. The secretary of state shall provide an electronic system that includes the pertinent information from the lease that may be filed in the central notice system. A lessor may file this electronic statement and obtain the same rights under this section as if the lessor had filed the lease.
4. The fee required to file and index this notice of lease is:
  - a. As provided in section 11-18-05, if the notice of lease is only a real estate recording;
  - b. As provided in section 41-09-96, if the notice of lease is filed only to gain protection under the central notice system; or
  - c. As provided in section 11-18-05, if a real estate recording is sought and according to section 41-09-96 if electronically filed to gain protection under the central notice system.

### **47-16-04. Products during lease belong to lessee - Exception.**

In the absence of any agreement to the contrary between the lessor and the lessee, the products received from real property during the term of a lease belong to the lessee.

### **47-16-05. Lease of realty presumed for one year.**

A lease of real property, other than lodgings, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the lease.

**47-16-06. When a lease is presumed renewed.**

If a lessee of real property remains in possession of the real property after the expiration of the lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease on the same terms and for the same time, not exceeding one year. Except in the case of a lease with an automatic renewal clause, if a lessee of real property for residential purposes remains in possession of the property after the expiration of the lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease as a month-to-month tenancy.

**47-16-06.1. Automatic renewal of leases of residential real property - When notice required.**

Notwithstanding the provisions of section 47-16-06, in any lease of a specified term of two months or more of real property used for residential purposes, the lessor may not enforce an automatic renewal clause of a lease unless the lessor has notified the lessee in writing, delivered personally or by first-class mail, of the automatic renewal provision, not less than thirty days prior to the expiration date of the current lease. If such notice has not been given, the lease expires, and the terms of the latest lease convert to a month-to-month tenancy.

**47-16-07. Leases - Notice by landlord to change terms - When effective.**

In all leases of land or tenements, or of any interest therein, from month to month, the landlord may change the terms of the lease to take effect at the expiration of the month upon giving notice in writing at least thirty days before the expiration of the month. The notice, when served upon the tenant, shall operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. For the purpose of this section, notice may be served in any reasonable manner which actually informs the tenant of the changes in the terms of the lease.

**47-16-07.1. Real property and dwelling security deposits - Limitations and requirements.**

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in a federally insured interest-bearing savings or checking account for the benefit of the tenant. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A lessor may not demand or receive security, however denominated, in an amount or value in excess of one month's rent.
2. A lessor may charge a lessee a pet security deposit for keeping an animal that is not a service animal or companion animal required by a tenant with a disability as a reasonable accommodation under fair housing laws. A pet security deposit may not exceed the greater of two thousand five hundred dollars or an amount equivalent to two months' rent.
3. A lessor may apply security deposit money and accrued interest upon termination of a lease towards:
  - a. Any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling by the lessee's pet or through the negligence of the lessee or the lessee's guest.
  - b. Any unpaid rent.
  - c. The costs of cleaning or other repairs which were the responsibility of the lessee, and which are necessary to return the dwelling unit to its original state when the lessee took possession, reasonable wear and tear excepted.

Application of any portion of a security deposit not paid to the lessee upon termination of the lease must be itemized by the lessor. Such itemization together with the amount due must be delivered or mailed to the lessee at the last address furnished lessor, along with a written notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice must contain a statement of any amount still

due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration. Any amounts not claimed from the lessor by the lessee within one year of the termination of the lease agreement are subject to the reporting requirements of section 47-30.1-08.

4. A lessor is liable for treble damages for any security deposit money withheld without reasonable justification.
5. Upon a transfer in ownership of the leased real property or dwelling, the security deposit and accrued interest shall be transferred to the grantee of the lessor's interest. The grantor shall not be relieved of liability under this section until transfer of the security deposit to the grantee. The holder of the lessor's interest in the real property or dwelling at the termination of a lease shall be bound by this section even though such holder was not the original lessor who received the security deposit.
6. This section applies to the state and to political subdivisions of the state that lease real property or dwellings and require money as a security deposit.

**47-16-07.2. Statement detailing condition of premises to accompany rental agreement.**

A landlord shall provide the tenant with a statement describing the condition of the facilities in and about the premises to be rented at the time of entering a rental agreement. The statement shall be agreed to and signed by the landlord and tenant. The statement shall constitute prima facie proof of the condition of the facilities and the premises at the beginning of the rental agreement.

**47-16-07.3. When landlord may enter apartment.**

A landlord may enter the dwelling unit:

1. At any time in case of emergency or if the landlord reasonably believes the tenant has abandoned the premises, or the landlord reasonably believes the tenant is in substantial violation of the provisions of the lease or rental agreement.
2. Only during reasonable hours, and in a reasonable manner, for the purpose of inspecting the premises; for making necessary or agreed repairs, decorations, alterations, or improvements; for supplying necessary or agreed services; or for exhibiting the residential dwelling unit to actual or potential purchasers, insurers, mortgagees, real estate agents, tenants, workmen, or contractors. Unless it is impractical to do so the landlord shall first notify and receive the consent of the tenant which shall not be unreasonably withheld, which consent shall identify a time certain. A landlord shall not abuse the right of access or use it to harass or intimidate the tenant.

For the purposes of this section, consent shall be presumed from failure to object to access after notice of intent to enter at a time certain has been given. Notice may be given by personal service, by posting the notice in a conspicuous place in or about the dwelling unit for a reasonable period of time, or by any other method which results in actual notice to the tenant.

**47-16-07.4. Fraudulent misrepresentations - Receipt of security deposit.**

A lease or rental agreement for real property or a dwelling unit which is entered into upon partial or total reliance of fraudulent misrepresentations may be terminated by the party fraudulently induced into the lease or rental agreement and that party shall receive any security deposit made pursuant to the lease or rental agreement together with any accrued interest on the deposit.

**47-16-07.5. Disability documentation for service or assistance animal in rental dwelling.**

A landlord may require reliable supporting documentation be provided by a tenant of a rental dwelling that is subject to a no pets policy, if the tenant asserts a disability requiring a service animal or assistance animal be allowed as an accommodation on the rented premises under any provision of law. Reliable supporting documentation may be provided by a physician

or medical professional. Reliable supporting documentation must confirm the tenant's disability and the relationship between the tenant's disability and the need for the requested accommodation. A landlord may not require supporting documentation from a tenant if the tenant's disability or disability-related need for a service animal or assistance animal is readily apparent or already known to the landlord.

**47-16-08. Quiet possession of leased property.**

An agreement to lease real property binds the lessor to secure to the lessee the quiet possession of such property during the term of the lease against all persons lawfully claiming the same.

**47-16-09. Ordinary care must be exercised by lessee.**

The lessee of real property must use ordinary care to preserve such property in safety and to keep it in good condition.

**47-16-10. Injuries to real property - Must be repaired by lessee.**

The lessee of real property must repair all deteriorations or injuries thereto occasioned by the lessee's ordinary negligence.

**47-16-11. Use of real property for purpose leased - Violation.**

When real property is leased for a particular purpose, the lessee must not use it for any other purpose. If the lessee violates the lease in this respect, the lessor may hold the lessee responsible for the safety of the property during such use in all events or may treat the contract as rescinded thereby.

**47-16-12. Obligations of lessor to repair dwelling.**

Repealed by S.L. 1977, ch. 429, § 7.

**47-16-13. When lessee may repair or vacate premises.**

If within a reasonable time after notice from the lessee of dilapidations which the lessor ought to repair the lessor neglects to do so, the lessee may:

1. Repair the premises and deduct the expense of such repair from the rent;
2. Recover it in any other lawful manner from the lessor; or
3. Vacate the premises, in which case the lessee shall be discharged from further payment of rent or performance of other conditions.

**47-16-13.1. Landlord obligations - Maintenance of premises.**

1. A landlord of a residential dwelling unit shall:
  - a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.
  - b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
  - c. Keep all common areas of the premises in a clean and safe condition.
  - d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.
  - e. Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
  - f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or if the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection or if the water or heat is unavailable due to supply failure by a public utility.

2. In case of noncompliance with the requirements of subdivisions b through f of subsection 1, a reasonable time shall be allowed to remedy such noncompliance.
3. If the duty imposed by subdivision a of subsection 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision a of subsection 1.
4. The landlord and tenant of a single-family residence may agree in writing that the tenant perform the landlord's duties specified in subdivisions e and f of subsection 1 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.
5. The landlord and tenant of any dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:
  - a. The agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration.
  - b. The work is not necessary to cure noncompliance with subdivision e of subsection 1.
  - c. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
6. The landlord may not treat performance of the separate agreement described in subsection 4 as a condition to any obligation or performance of any rental agreement.

**47-16-13.2. Tenant obligations - Maintenance of dwelling unit.**

A tenant of a residential dwelling unit shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.
3. Periodically remove all ashes, garbage, rubbish, and other waste from the tenant's dwelling unit, and dispose of them in a clean and safe manner.
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises.
6. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so.
7. Conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises.

**47-16-13.3. Unconscionability.**

1. If a court of competent jurisdiction, as a matter of law, finds:
  - a. A residential dwelling unit rental agreement or any provision thereof was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.
  - b. A settlement in which a party waives or agrees to forego a claim or right under sections 47-16-13.1 through 47-16-13.6 or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.
2. If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

**47-16-13.4. Remedy after termination.**

If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement.

**47-16-13.5. Mitigation of damages.**

Any party aggrieved under sections 47-16-13.1 through 47-16-13.6 may recover appropriate damages. However, the aggrieved party has a duty to mitigate damages.

**47-16-13.6. Enforcement of sections 47-16-13.1 through 47-16-13.6.**

Any right or action provided by sections 47-16-13.1 through 47-16-13.6 is enforceable by action and the court may award reasonable attorney's fees to the prevailing party.

**47-16-13.7. Eviction - Lessee liable for rent during term of lease.**

A lessee evicted according to law is liable for rent during the remainder of the term of the lease. However, this section does not relieve the landlord of the duty to mitigate damages.

**47-16-14. When a lease of real property terminates.**

The leasing of real property terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the lessee's acquiring title to the property leased superior to that of the lessor; or
4. By the destruction of the property leased.

**47-16-15. Notice of termination of lease.**

1. A lease of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of an intention to terminate the lease, at least as long before the expiration of the lease as the term of the hiring itself, not exceeding one calendar month.
2. In tenancies from month to month, and unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either party may terminate the tenancy by giving at least one calendar month's written notice at any time. The rent is due and payable to and including the date of termination.
3. If a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.
4. Any agreement that requires a lessee to give notice that exceeds one month from the end of a month to terminate a lease of real property for residential purposes must state the notice requirement and provide space for the lessee to initial next to the notice requirement. If the notice is not initialed by the lessee at the time of executing the lease, the lessee may terminate the lease on the last day of a month with at least one calendar month's notice.
5. If a lease converts to a month-to-month tenancy under section 47-16-06 or 47-16-06.1, either party may terminate the lease on the last day of a month with at least one calendar month's notice.

**47-16-16. When lessor may terminate lease.**

The lessor of real property may terminate the lease and reclaim such property before the end of the term agreed upon when the lessee:

1. Uses or permits a use of the property leased in a manner contrary to the agreement of the parties; or
2. Does not make such repairs as the lessee is bound to make within a reasonable time after a request is made.

#### **47-16-17. When lessee may terminate lease.**

The lessee of real property may terminate the lease before the end of the term agreed upon:

1. When the lessor does not fulfill the lessor's obligations, if any, within a reasonable time after request, as to placing and securing the lessee in the quiet possession of the property leased, or putting it into a good condition, or repairing it; or
2. When the greater part of the property leased, or that part which was, and which the lessor had reason to believe was, the material inducement to the lessee to enter into the contract, perishes from any cause other than the ordinary negligence of the lessee.

#### **47-16-17.1. Termination due to domestic abuse.**

1. A tenant to a residential lease who is a victim of domestic violence as defined in section 14-07.1-01 or fears imminent domestic violence against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement, as provided in this section, without penalty or liability.
2. The tenant must provide advance written notice to the landlord stating:
  - a. The tenant fears imminent domestic violence from a person named in a court order, protection order under section 14-07.1-02, ex parte temporary protection order, order prohibiting contact, restraining order, or other record filed with a court;
  - b. The tenant needs to terminate the tenancy; and
  - c. The specific date the tenancy will terminate.
3. The notice must be delivered by mail, facsimile communication, or in person before the termination of the tenancy.
4. A landlord may not disclose information provided to the landlord by a tenant documenting domestic violence under this section. The information may not be entered into any shared database or provided to any person, but may be used as evidence in an eviction proceeding, in a claim for unpaid rent or damages arising out of the tenancy, or as otherwise required by law.
5. A tenant terminating a lease under this section is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, subject to the landlord's duty to mitigate. The tenant is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section.
6. This section does not affect a tenant's liability for delinquent, unpaid rent, or other amounts owed to the landlord before the lease was terminated by the tenant under this section.
7. The tenancy terminates, including the right of possession of the premises, on the termination date stated in the notice under subsection 2. The amount equal to one month's rent must be paid on or before the termination of the tenancy for the tenant to be relieved of the contractual obligations for the remaining term of the lease as provided in this section.
8. For purposes of this section, timing for the payment of the lessee's security deposit under section 47-16-07.1 is triggered by either of the following:
  - a. If the only tenant, including the tenant's minor children, is the tenant who is the victim of domestic violence, upon the first day of the month following the date the tenant vacates the premises.
  - b. If there are additional tenants bound by the lease, upon the expiration of the lease.
9. Notwithstanding the release of a tenant from a lease agreement under this section, the tenancy continues for any remaining tenants.
10. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.

11. In an action for a violation of this section, the court may award statutory damages of one thousand dollars. The court also may award actual damages, reasonable attorney's fees, costs, and disbursements.

**47-16-18. When lease of real property is terminated by death.**

Only a lease of real property which is terminable at the pleasure of one of the parties to the contract is terminated by the notice to one party of the death or incapacity of the other party to contract. Upon the death of a lessee of real property for residential purposes, however, and at the option of any surviving lessee or of the estate of the decedent, the lease terminates on the last day of the month in the month following the death of the lessee unless the lease term expires before that time.

**47-16-19. Term of lease governed by manner of payment of rent.**

The renting of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus renting at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the leasing is presumed to be monthly.

**47-16-20. Rents - When payable.**

When there is no contract or usage to the contrary, the rent of agricultural and wild land shall be payable yearly at the end of each year. Rents of lodgings shall be payable monthly at the end of each month. Other rents shall be payable quarterly at the end of each quarter from the time the lease takes effect. The rent for a lease shorter than the periods herein specified shall be payable at the termination of the lease.

**47-16-21. When proportionate part of lease paid by lessee.**

When the leasing of real property is terminated before the time originally agreed upon, the lessee must pay the due proportion of the lease for such use as the lessee actually has made of the property unless such use is merely nominal and of no benefit to the lessee.

**47-16-22. Rent due upon lease for life - Recovery.**

Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

**47-16-23. Rent dependent on life of person - Collection after death.**

Rent dependent on the life of a person may be recovered after as well as before that person's death.

**47-16-24. Lessee must give written notice before removal of property from premises.**

Repealed by S.L. 1975, ch. 106, § 673.

**47-16-25. Notice of adverse proceedings to landlord.**

Every tenant who receives notice of any proceeding to recover the real property occupied by the tenant, or the possession thereof, must:

1. Inform the tenant's landlord immediately of the notice; and
2. Deliver the notice to the landlord.

The tenant shall be responsible to the landlord for all damages which the landlord may sustain by reason of any omission by the tenant to inform the landlord of the notice or to deliver it to the landlord, if such notice is in writing. The attornment to a stranger is void unless made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

**47-16-26. Double letting of room prohibited.**

One who rents part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary. If a landlord rents a room as a dwelling for more than one family, the person to whom the landlord first rents any part of it is entitled to the



possession of the whole room for the term agreed upon. Every tenant in the building under the same landlord is relieved from all obligation to pay rent to the landlord while such double letting of any room continues.

**47-16-27. Right of tenant.**

A tenant for years or at will, unless the tenant is a wrongdoer by holding over, may:

1. Occupy the buildings.
2. Take the annual products of the soil.
3. Work mines and quarries open at the commencement of the tenant's tenancy.
4. Cultivate and harvest the crops growing at the end of the tenant's tenancy.

The tenant has no rights to the property other than such as are given the tenant by the agreement or instrument by which the tenant's tenancy is acquired or by the provisions of this section.

**47-16-28. Succession to rights in real property or rent transfers.**

A person to whom any real property is transferred or devised upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease or for any waste or cause of forfeiture as that person's grantor or deviser might have had.

**47-16-29. Remedies against assignees of lessor.**

Whatever remedies the lessee of any real property may have against the lessee's immediate lessor for the breach of any agreement in the lease, the lessee may have against the assigns of the lessor. The assigns of the lessee may have remedies against the lessor and the lessor's assigns except upon covenants against encumbrances or relating to the title or possession of the premises.

**47-16-30. Remedies against assignees of lessee.**

Whatever remedies the lessor of any real property has against the lessor's immediate lessee for the breach of an agreement in the lease or for recovery of the possession, the lessor also has against the assignees of the lessee for any claim for relief accruing while they are such assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

**47-16-30.1. Abandoned property - Disposal by lessor.**

Property with a total estimated value of not more than two thousand five hundred dollars which is left on the premises of a leased dwelling may be retained by the lessor and disposed of without legal process twenty-eight or more days after the lessor received actual notice that the lessee has vacated the premises or twenty-eight or more days after it reasonably appears to the lessor that the lessee has vacated the premises. The lessor is entitled to the proceeds from the sale of the property. The lessor may recover, from the lessee's security deposit, any storage and moving expenses in excess of the proceeds from the sale incurred in disposing of the property. If the lessor removes the abandoned property from the dwelling unit after a judgment of eviction has been obtained and the special execution has been served, the lessor has a lien upon the property for the reasonable amount of any storage and moving expenses and may retain possession of the property until the charges have been paid. The lien does not have priority over a prior perfected security interest in the property.

**47-16-31. Gas and oil lease cancellation - When owner makes application.**

Repealed by S.L. 1953, ch. 277, § 4.

**47-16-32. Application for cancellation of gas and oil lease - Contents.**

Repealed by S.L. 1953, ch. 277, § 4.

**47-16-33. Notice of cancellation issued by recorder upon filing application.**

Repealed by S.L. 1953, ch. 277, § 4.

**47-16-34. Appearance in district court - Lessee or assignee.**

Repealed by S.L. 1953, ch. 277, § 4.

**47-16-35. No appearance in district court - Lessee or assignee.**

Repealed by S.L. 1953, ch. 277, § 4.

**47-16-36. Duty of lessee to have terminated or forfeited lease released - Publication notice - Satisfaction of lease to be recorded - Notice to real property owner - Remedies.**

When any oil, gas, or other mineral lease given on real property situated in any county of North Dakota and recorded therein terminates or is forfeited it is the duty of the lessee, the lessee's successors or assigns, within fifteen days after the date of the termination or forfeiture of any lease, to have the lease surrendered in writing, the surrender to be signed by the party making the same, acknowledged, and placed on record in the county where the leased real property is situated without cost to the owner thereof. If the lessee, the lessee's successors or assigns, fails or neglects to execute and record the surrender within the time provided for, then the owner of the real property may serve upon the lessee, the lessee's successors or assigns of record, in person or by registered or certified mail, at the lessee's last-known address, or if the post-office address is not shown of record then by publication once a week for three consecutive weeks in a newspaper of general circulation in the county where the real property is situated, a notice in writing in substantially the following form:

To \_\_\_\_\_: I, the undersigned, owner of the following described land situated in \_\_\_\_\_ County, North Dakota: (description of land) upon which a lease dated \_\_\_\_\_, \_\_\_\_\_, was given to \_\_\_\_\_ notify you that the lease has terminated or become forfeited by breach of the terms thereof, that I elect to declare and do declare the lease forfeited and void and that, unless you do, within twenty days from this date, notify the recorder of the county as provided by law that the lease has not been forfeited, I will file with the recorder a satisfaction of lease as provided by law, and I demand that you execute or have executed a proper surrender of the lease and that you put the same of record in the office of the recorder of the county within twenty days from this date.

Dated \_\_\_\_\_, \_\_\_\_\_.

The owner of the real property may after twenty days from the date of service, registration, or first publication of the notice, file with the recorder of the county where the real property is situated a satisfaction of lease setting forth that the affiant is the owner of the real property, that the lease has terminated or that the lessee, or the lessee's successors or assigns, has failed or neglected to comply with the terms of the lease, reciting the facts constituting the failure and that the same has been forfeited and is void, and setting out in satisfaction of lease a copy of the notice served, as above provided and the manner and time of the service thereof. If the lessee, the lessee's successors or assigns, gives notice in writing within twenty days after service to the recorder of the county where the real property is located that the lease has not been forfeited and that the lessee, the lessee's successors or assigns, still claim that the lease is in full force and effect, then the satisfaction of lease may not be recorded but the recorders shall notify the owner of the real property of the action of the lessee, the lessee's successors or assigns, and the owner of the real property is entitled to the remedies now provided by law for the cancellation of the disputed lease. If the lessee, the lessee's successors or assigns, fails to notify the recorder, as above provided, then the recorder shall record the satisfaction of lease and thereafter the record of the lease is not notice to the public of the existence of the lease or of any interest therein, or rights thereunder, and the record may not be received in evidence in any court of the state on behalf of the lessee, the lessee's successors or assigns, against the lessor, the lessor's successors or assigns.

**47-16-37. Action to obtain release - Damages, costs, and attorney's fees - Attachment.**

Should the owner of such lease neglect or refuse to execute a release, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and may also recover in such action of the lessee, the lessee's successors or assigns, the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases.

**47-16-38. Surrender of lease by lessee.**

Any oil and gas or mining lease that has been or may hereafter be recorded in the office of the recorder of any county may be discharged and canceled of record by the recording of a certificate of cancellation signed by the lessee or the lessee's assigns of record, or the lessee's duly authorized attorney in fact or personal representative, including a foreign executor or administrator, or a corporation or limited liability company by its duly authorized officers or managers surrendering all of the lessee's right, title, and interest in and to said lease, which certificate shall be acknowledged as prescribed by law.

**47-16-39. Record of surrender.**

The certificate of cancellation mentioned in section 47-16-38 shall be recorded at length and shall be noted on the margin of the record of the lease.

**47-16-39.1. Obligation to pay royalties - Breach.**

The obligation arising under an oil and gas lease to pay oil or gas royalties to the mineral owner or the mineral owner's assignee, or to deliver oil or gas to a purchaser to the credit of the mineral owner or the mineral owner's assignee, or to pay the market value thereof is of the essence in the lease contract, and breach of the obligation may constitute grounds for the cancellation of the lease in cases where it is determined by the court that the equities of the case require cancellation. If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed and cancellation of the lease is not sought or if the operator fails to pay oil or gas royalties to an unleased mineral interest owner within one hundred fifty days after oil or gas production is marketed from the unleased mineral interest owner's mineral interest, the operator thereafter shall pay interest on the unpaid royalties, without the requirement that the mineral owner or the mineral owner's assignee request the payment of interest, at the rate of eighteen percent per annum until paid, except that the commissioner of university and school lands may negotiate a rate to be no less than the prime rate as established by the Bank of North Dakota plus four percent per annum with a maximum of eighteen percent per annum, for unpaid royalties on minerals owned or managed by the board of university and school lands. Provided, that the operator may remit semiannually to a person entitled to royalties the aggregate of six months' monthly royalties where the aggregate amount is less than fifty dollars. The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. The prevailing party in any proceeding brought pursuant to this section is entitled to recover any court costs and reasonable attorney's fees. This section does not apply when mineral owners or their assignees elect to take their proportionate share of production in kind, in the event of a dispute of title existing that would affect distribution of royalty payments, or when a mineral owner cannot be located after reasonable inquiry by the operator; however, the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute.

**47-16-39.2. Inspection of production and royalty payment records.**

A royalty owner, a royalty owner's assignee, or a designated representative, upon written notice, is entitled to inspect and copy the oil and gas production and royalty payment records for the lease of the person obligated to pay royalties under the lease or division order. The person obligated to pay royalties under the lease shall make that person's oil and gas royalty payment

and production records available for inspection and copying at that person's usual and customary place of business within the United States. A royalty owner may bring an action to compel the person obligated to pay royalties to allow inspection and copying of oil and gas production royalty payment records. In order for the royalty owner to prevail in such an action, the royalty owner must establish that:

1. The royalty owner or the royalty owner's assignee complied with notice requirements of this section;
2. The notice specified the lease involved, the time period under review and the records requested;
3. The royalty owner notified the person obligated to pay royalties at the address printed on the information statement as prescribed by rules adopted by the industrial commission pursuant to section 38-08-06.3; and
4. The person obligated to pay royalties denied inspection of the records or failed to respond within thirty days of service of notice.

The district court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the royalty owner or the royalty owner's assignee is successful in any proceeding brought pursuant to this section, the district court shall allow the royalty owner or the royalty owner's assignee to recover court costs; reasonable costs, fees, disbursements, and expenses incurred by the royalty owner or the royalty owner's assignee or a designated representative in inspecting and copying the oil and gas production and royalty payment records of the person obligated to pay royalties under the lease; and reasonable attorney's fees.

#### **47-16-39.3. Division orders - Definition, function, and operation.**

A division order is an instrument executed by the operator, the royalty owners, and any other person having an interest in the production directing the purchaser of oil or gas to pay for the products taken in the proportions set out in the instrument. Royalty payments may not be withheld because an interest owner has not executed a division order. A division order may not alter or amend the terms of the oil and gas lease. A division order that varies the terms of the oil and gas lease is invalid to the extent of the variance and the terms of the oil and gas lease take precedence.

#### **47-16-39.4. Resolution of spacing unit ownership interest disputes.**

If the mineral owner and mineral developer disagree over the mineral owner's ownership interest in a spacing unit, the mineral developer shall furnish the mineral owner with a description of the conflict and the proposed resolution or with that portion of the title opinion that concerns the disputed interest.

#### **47-16-40. Record of lease as notice for definite term - Extension upon contingency - Affidavit.**

When an oil, gas, or mineral lease is hereafter given on land situated within the state of North Dakota, the recording thereof in the office of the recorder of the county in which the land is located shall impart notice to the public of the validity and continuance of said lease for the definite term therein expressed, but no longer. If such lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, such as, and as much longer as oil and gas or either are produced in paying quantities, the owner of said lease may at any time before the expiration of the definite term of said lease file with said recorder an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened. This affidavit shall be recorded in full by the recorder, and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of said lease, until the same shall be forfeited, canceled, set aside, or surrendered according to law.

**47-16-41. Demand for release before bringing action - Evidence.**

At least twenty days before bringing the action provided for in section 47-16-37, the owner of the leased land, either personally or by the owner's agent or attorney, shall demand of the holder of the lease, if such demand by ordinary diligence can be made in this state, that said lease be released of record. Such demand may be either written or oral. When written, a carbon or written copy thereof, when shown to be such, may be used as evidence in any court with the same force and effect as the original.

**47-16-42. Wind energy leases - Termination.**

Redesignated as section 17-04-05 under S.L. 2007, ch. 204, § 5.