36.25.1006 IMPROVEMENTS UPON CANCELLATION OR ABANDONMENT

(1) The former lessee has a limited right to remove the improvements or be compensated for the improvements by a new lessee. Improvements that are not removed or sold in accordance with this section will result in trust assumption and ownership of all improvements.

(2) The ability to remove or seek compensation for improvements is only available if the former lessee has continued to pay all taxes and any other applicable assessments; and, is limited to a time period of up to three years after the date of cancellation or abandonment.

(a) If, after three years there is no new lessee and the improvements have not been removed, the department will provide written notice to the former lessee granting 60 days for removal of remaining improvements. After that time, the improvements will become the property of the trust.

(b) This condition and limitation applies to all improvements on the leased land, including movable and nonmovable improvements, as well as personal property.

(c) The beginning of the three-year time period shall be either:

(i) the effective date of an abandonment form executed by the lessee and accepted by the department;

(ii) the date rent is due, if the rent is not paid, as per ARM 36.25.1004; or

(iii) the effective date of cancellation provided in the cancellation notice from the department to the lessee, if the lease is cancelled for any reason other than failure to pay rent.

(3) A former lessee intending to remove the improvements must obtain a land use license from the department to remove the improvements. The license fee must be paid in advance.

(a) The department reserves the right to withhold authorization to remove the improvements during any time a lease is being actively offered for bid by the department.

(b) The land use license may be for a term of up to 60 days.

(c) The term may be extended by the department for good cause.

(d) The license fee will be calculated as the most recent year's lease fee, divided by 365, and multiplied by the number of days in the license.

(e) The minimum fee for a removal land use license is $50.

(4) A former lessee intending to be compensated for improvements by a new lessee must obtain a land use license from the department to access the cabin site for the limited purpose of

maintaining and marketing the improvements for a potential buyer and new lessee. The former lessee may not utilize the cabin site for recreational or residential purposes.

(a) The maximum asking price of the improvements shall be the most recent DOR assessment of the improvements; or, if requested by the improvements owner, an appraisal of the improvements conducted pursuant to Uniform Standards of Professional Appraisal Practice (USPAP) standards. In case of a conflict, a USPAP appraisal will control.

(i) Improvements placed on the land after May 10, 1979, which were not previously approved by the department in writing prior to their placement, are not eligible for compensation under this rule.

(ii) Proof of the date of placement of improvements may be required by the department.

(iii) Any improvements or fixtures paid for by state or federal monies will not be compensable to the former lessee.

(b) If an appraisal is requested by the former lessee, the appraisal must:

(i) be contracted by the department and paid for by the lessee; and

(ii) utilize standard appraisal procedures, giving full consideration to the improvement's condition, its contribution to the value of the property for residential purposes, and remaining economic life. Compensation shall be the estimated cost to construct, at current prices, a building with equivalent utility as of the date of the lease or license's expiration.

(c) The lessee or improvement owner will be afforded notice and opportunity for an informal administrative hearing before the department to contest the appraisal valuation, as follows:

(i) the lessee or improvements owner must file a request for a hearing with the department within ten days of the department's notification to the lessee or improvements owner of the appraised value of the improvements. The department shall notify the lessee or improvements owner of the time and place of the hearing before the department director, or the director's designee. The hearing will be informal, without adherence to strict rules of evidence as provided in 2-4-604, MCA. A hearing examiner may be appointed to conduct the hearing. The lessee or owner of improvements may present any evidence and/or arguments for the department to consider;

(ii) upon determination of the improvement value, the lessee or improvement owner is obligated to transfer its interest in the improvements according to the department's final determination of the value.

(d) The proposed buyer of a former lessee's improvements must still participate in, and be the successful bidder of, the cabin site lease, per ARM 36.25.1009.

(e) In no case will the department pay any realtor fees, commissions, or otherwise, for the marketing of improvements when such marketing services are contracted by the lessee or former lessee.

(5) When a former lessee intends to unconditionally abandon the lease and improvements, the abandonment shall be recorded on a form as prescribed by the department, and the following will apply:

(a) the department or other party is under no obligation to compensate the former lessee for any improvements on the leased land, including movable and nonmovable improvements, as well as personal property;

(b) the improvements may be sold to a new lessee at a price determined by the department. Any revenue generated from the sale of improvements that have been unconditionally abandoned shall be distributed by the department in the same manner as rentals for the applicable leased land; and

(c) the department reserves the right to refuse an unconditional abandonment.

Authorizing statute(s): 77-1-202, 77-1-208, 77-1-209, MCA

Implementing statute(s): 77-1-208, MCA

History: NEW, 2010 MAR p. 1293, Eff. 5/28/10; AMD, 2016 MAR p. 1020, Eff. 6/4/16.