

CHAPTER 85-04-08
LAND SALES UNDER NORTH DAKOTA CENTURY CODE CHAPTER 15-07

Section

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85-04-08-01. Sale of acquired lands.

The board shall retain and manage acquired lands to produce revenue consistent with the long-term maintenance of the acquired lands' income producing potential and ecological health until sold. The commissioner may propose, or accept a letter of application for, the sale of acquired lands if the department has reviewed its potential for mineral development and the acquired lands have been evaluated by the commissioner for "highest and best use" as defined in North Dakota Century Code section 15-02-05.1 and the department considers the following criteria:

1. If a tract is acquired through foreclosure or deed in lieu of foreclosure from the board's loan pool account, established under North Dakota Century Code section 15-03-04.1, after January 1, 2020;
2. If the tract has been zoned or has high potential to be zoned residential, commercial, or industrial;
3. The tract's potential for mineral development, including sand, gravel, clay, and scoria;
4. If the tract has been a source of persistent management problems, resulting in the sale of the tract being prudent from a long-term financial point of view;
5. If the tract and adjacent trust land tracts total less than eighty acres [32.37 hectares] in size, more or less, for grassland and less than forty acres [16.19 hectares], more or less, for cropland or hayland, except those tracts which are severed by a highway, road, railroad, canal, river, or lake, which may be sold if the severed portion is less than these amounts; or
6. If the tract and adjacent trust land tracts exceed eighty acres [32.37 hectares] in size, more or less, for grassland or more than forty acres [16.19 hectares] in size, more or less, for cropland.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-02. Requirements of sale.

Any sale of acquired lands, with the exception of tracts provided in subsections 1 and 2 of section 85-04-08-01, is subject to the following:

1. The proposed sale would result in no net loss of leasable acquired lands; and
2. The applicant agrees to provide accessible and leasable land equal or greater in acres and value to the trust from which the acquired lands were sold, for which the department then shall consider the criteria listed below in subdivisions a through f in any no net loss sale. Land provided for a no net loss sale is not required to satisfy all six criteria outlined below.
 - a. Equal or greater value.

- (1) In connection with any no net loss sale the department may use information, provided by the applicant or the department's own knowledge, regarding lands and resources to estimate value for purposes of a preliminary evaluation, including completion of an environmental assessment. The commissioner shall procure appraisals, completed by a certified appraiser, to determine the value of the trust lands and the proposed no net loss sale land. The same appraiser shall conduct appraisals of the trust lands and the proposed no net loss sale land. In the event the commissioner is not satisfied with the appraisals, the commissioner may require additional appraisals by alternative certified appraisers.
 - (2) The department shall advise the appraiser regarding the scope of work to ensure the value of the trust lands is determined by the highest and best use of the land, not simply the present use. For example, if a no net loss sale is proposed in which the trust lands are currently leased for grassland but the land is in the path of residential, commercial, or industrial development, the trust lands must be appraised for the highest and best use for residential, commercial, or industrial development rather than its current use as grassland.
 - (3) The department shall consider features not reflected in the market price that are difficult to assign a monetary value, including location, proximity to public lands, recreational opportunities, scenery, other amenities, and results of cultural resources inventories in evaluating the relative value of trust lands.
- b. Equal or greater income to the trusts. A no net loss sale must result in the board receiving equal or greater income to the trusts. The projected income for the proposed no net loss sale land will be estimated using the board's minimum lease rate. The minimum lease rate for the proposed no net loss sale land will be compared to the present income received by the trusts from the trust lands, including all current and potential future revenue streams from surface leases, encumbrances, development of natural resources, and other sources, and any tax liability.
 - c. Acreage. A no net loss sale should result in the board receiving equal or greater acreage. The board may, however, consider receiving less acreage in return for one or more of the following:
 - (1) Improved dedicated access;
 - (2) Substantially higher value; or
 - (3) Substantially higher income.
 - d. Consolidation of trust lands. The proposed no net loss sale must not fragment trust land holdings by creating isolated parcels of trust land. In all no net loss sales, the board shall reserve all minerals underlying the trust lands pursuant to section 5 of article IX of the Constitution of North Dakota subject to applicable law.
 - e. Potential for long-term appreciation. The proposed no net loss sale land must have similar revenue potential as the trust lands.
 - f. Access. A no net loss sale must not diminish access to trust lands. The no net loss land should provide equal or improved access.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-03. Sale procedure.

1. A letter of application for purchase of acquired lands meeting the criteria in section 85-04-08-01 may be accepted at any time. An application must include:
 - a. A nonrefundable application fee in an amount set by the board;
 - b. A legal description of the trust lands; and
 - c. A legal description of the lands to be provided to ensure no net loss.

Upon board approval, a sale of acquired lands must be conducted in conformance with North Dakota Century Code sections 15-06-25 and 15-07-04.

2. Upon receipt of a letter of application for sale of a tract, the potential sale must be presented to the commissioner for preliminary approval or rejection.
3. The commissioner may recommend to the board that a tract be sold even though no letter of application for sale has been received.
4. Upon a determination that the application covers a tract the board is willing to sell, the department shall post on the department's website a notice of the application for sale, any supporting documentation, and instructions for submitting public comments. The department also shall publish notice of a letter of application for sale in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. Notice must be published once each week for three consecutive weeks prior to the deadline for comments. The notice must contain the legal description of the proposed tract and the deadline for comments. If publication of any notice is omitted inadvertently by any newspaper or the notice contains typographical errors, the department may proceed with the scheduled comment period if it appears the omission or error is not prejudicial to the department's interest. All comments must be in writing and contain the following:
 - a. Name and address of the interested person;
 - b. Applicant's name and address;
 - c. The legal description of the proposed tract for sale as shown on the published notice; and
 - d. A detailed statement as to whether the interested person supports or opposes the sale.
5. The board shall review all appraisals, public comments received, and any other relevant information, and determine whether to proceed with the sale. If the board decides to proceed with the sale, the board shall use the appraisal to establish a sale price. The board reserves the right to increase the sale price if it deems the appraised value is inadequate.
6. If the land is leased, the commissioner shall notify the lessee of the intent to sell the property during the months of October through January.
7. The department shall notify the applicant, if any, of the price set by the board, which must be the minimum acceptable sale price.
8. The department may contract a legal metes and bounds survey for the tract to be sold at public auction under North Dakota Century Code chapter 15-07.
9. If the applicant desires to proceed, the applicant shall submit to the department a formal offer to purchase. The formal offer to purchase must serve as the opening bid at the public sale.

The applicant shall provide five percent of the minimum sale price as earnest money, as a condition of the formal offer to purchase.

10. The department shall determine if acquired lands will be advertised for sale at public auction or by sealed bids, with the sale price set by the board as the minimum bid. If no bids are received on property for which an application has been received, the acquired lands may be sold to the applicant at the minimum bid.
11. If no bids are received on property for which no formal application was received, the property may be sold for the board-established minimum acceptable sale price to the first interested party at a private sale during the six months following the date of the auction.
12. The sale of land may be by:
 - a. Contract under section 6 of article IX of the Constitution of North Dakota; or
 - b. A purchase agreement requiring twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.
13. Acquired lands acquired after January 1, 2020, may be sold to any mortgagor or a member of the mortgagor's immediate family under North Dakota Century Code section 15-07-10. The sale must be for cash only with twenty percent payment of the purchase price on the day of the sale, which may include earnest money paid, and the balance due within sixty calendar days. The balance due date may be extended at the commissioner's discretion, up to a maximum of one hundred eighty days from the date of the sale. Interest must be charged on any remaining balance, beginning sixty days after the date of sale, at the Bank of North Dakota base rate plus one percent.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-04. Payment of costs.

The purchaser is responsible for payment of all costs, including appraisals, title examinations, and other costs as may be necessary to complete the sale.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08

85-04-08-05. Board review.

Within thirty days of a decision under these rules, an aggrieved party may request the commissioner review the decision. The aggrieved party seeking review shall submit any information required by the commissioner as part of this request. Within thirty days of the commissioner's review, the aggrieved party may request board review and the commissioner shall recommend if board review is warranted.

History: Effective January 1, 2021.

General Authority: N.D. Constitution article IX, § 6; NDCC 28-32-02

Law Implemented: NDCC 15-07, 15-08