

## **CHAPTER 38-09**

### **EXPLORATION AND PRODUCTION ON PUBLICLY OWNED LANDS**

**38-09-01. Interest in oil, gas, and mineral rights to be reserved on transfer of state lands.** In every transfer of land, whether by deed, contract, lease, or otherwise, by the state of North Dakota, or by any department thereof, fifty percent of all oil, natural gas, or minerals which may be found on or underlying such land shall be reserved to the state of North Dakota. Any deed, contract, lease, or other transfer of any such land made after February 20, 1941, which does not contain such reservation must be construed as if such reservation were contained therein. The provisions of this section apply to all lands owned by this state or by any department thereof regardless of how title thereto was acquired.

**38-09-01.1. State lands may be conveyed to United States free of reservations.** Whenever the United States of America or any of its agencies or agents shall desire or be required to acquire or approve title to lands owned by the state of North Dakota, or any of its agencies, the officers, boards, or commissions having power to convey such lands have power to convey the same free from any reservation of oil, gas, and minerals and rights thereto, and free of reservations of archaeological materials.

**38-09-01.2. Reservations may be released to United States.** Whenever the state of North Dakota, or any of its agencies, has conveyed lands to any person and has reserved oil, gas, or minerals or rights therein or archaeological materials and the United States of America or any of its agencies or agents shall desire or be required to acquire or approve title to such lands, the officers, boards, or commissions which have originally conveyed such lands, or the successors in power to such officers, boards, or commissions are authorized to release to the United States of America or its agency or agent everything so reserved. The officer, board, or commission having power so to release has full power to fix and determine the consideration, if any, and terms upon which such release shall be given and any moneys or other consideration received for such releases must be covered into the fund for the benefit of which such reservations were made.

**38-09-01.3. Sale of state lands to former owner, spouse, or lineal descendants free of reservations.** Whenever the state or any of its departments sell lands to any person, from whom the state derived the title to such lands, or to the person's spouse or lineal descendants in the first degree, the lands must be sold free of any reservation of minerals provided for in section 38-09-01.

**38-09-01.4. Release of reservations in case of prior sale.** Repealed by omission from this code.

**38-09-01.5. Instrument evidencing release to be furnished - Fees.** When the purchase price of such lands has been fully paid to the state or its departments, an instrument evidencing such release must be furnished on application and payment of fees under rules to be prescribed by the state and its departments, but in no case may the fee therefor exceed ten cents an acre [.40 hectare].

**38-09-01.6. State may continue to lease reserved minerals - Assignment of unexpired leases upon release.** Pending application and payment of fee under section 38-09-01.5, the state and its departments may continue to lease reserved minerals and to collect rentals and other income from such leases, and where lands have been sold on contract for deed, such rentals and other income must be applied as payment on the contract for deed. On release of minerals reserved, any unexpired mineral leases and rentals and income thereafter becoming due must be assigned to the person entitled to the release as prescribed in section 38-09-01.5.

**38-09-02. Township, city, school district, or park district may lease land for oil and gas development.** The governing body of any township, city, school district, or park district in this state may lease the grounds or lands of such political subdivision, or any part thereof, for oil

and gas development for a primary term of not more than ten years, and may renew or extend any such lease from time to time for as long thereafter as oil or gas is or can be produced on the land described therein.

**38-09-03. Provisions may be inserted in lease for consolidation of adjoining lands - Royalty - How shared.** Any oil or gas lease made by any of the political subdivisions mentioned in section 38-09-02 may provide that the lessee may consolidate the land covered by such lease with other adjoining lands for the purpose of joint development and operation of the entire consolidated premises as a unit. In such a case, the lessor shall share in the royalty on oil and gas produced from the consolidated tract in the proportion that the area of the land covered by such lease bears to the total area of such consolidated tract.

**38-09-04. Leases and occupancy not to interfere with use of land by subdivision - Drilling wells - Limitation.** A lease made by a political subdivision under the provisions of section 38-09-02 and the occupancy of the lands under such lease may not interfere materially with the purposes for which such lands are used and occupied by the political subdivision. No oil or gas well may be drilled or located within one hundred feet [30.48 meters] of any public building upon any such land.

**38-09-05. Board of county commissioners may adopt oil and gas leases on lands subject to delinquent taxes.** Any oil and gas lease on lands which are subject to delinquent tax charges may be confirmed, approved, and adopted by the board of county commissioners on behalf of the county if such lease is executed by the owner or owners of:

1. The right of redemption to the land described in the lease;
2. The title to such lands; or
3. Any interest therein.

The power conferred under the provisions of this section applies to lands against which tax charges have been adjusted by contract and to lands which have been forfeited to the county under tax proceedings and held by the county under tax deeds sufficient to constitute color of title in the county.

**38-09-06. Oil and gas leases adopted by resolution of board of county commissioners - Addition of new provisions to leases.** The confirmation, approval, and adoption of an oil and gas lease under the provisions of section 38-09-05 must be by a proper resolution duly and regularly passed by the board of county commissioners at a regular or special meeting thereof. The board may insert in such resolution such provisions other than or in addition to those contained in the original lease as the board may consider for the best interests of the county. If new terms or provisions are added to the lease, the resolution must provide that such terms and provisions are binding upon the county and upon the lessee and the lessee's assigns upon the execution of a written acceptance endorsed upon a certified copy of such resolution by the lessee, the lessee's assigns, or successors in interest.

**38-09-07. Certified copies of resolutions adopting oil or gas leases may be recorded - Constructive notice.** A copy of a resolution of the board of county commissioners confirming, approving, or adopting oil and gas leases, when certified by the county auditor of the county, may be recorded in the office of the recorder of such county. Upon the recording of a certified copy of any such resolution, the same is constructive notice to all subsequent purchasers, encumbrancers, lessees, and other persons dealing with oil and gas leases or with rights in and to the properties referred to in such resolution, of all of the terms, conditions, and provisions that are set out in the resolution.

**38-09-08. Land forfeited to county - Lease binding upon county and lessee.** If any land which is affected by a resolution adopted by the board of county commissioners pursuant to the provisions of section 38-09-07 and subject to delinquent tax charges or tax charges which have been adjusted by contract is forfeited to the county under tax proceedings by a tax deed

sufficient to constitute color of title in the county to such lands, the oil and gas lease affected by the resolution becomes and remains binding upon the county and its grantees and upon the lessee and the lessee's assigns and successors in interest with like force and effect as though the county had become a party to such lease as of the date of the tax deed to the county.

**38-09-09. Payment of bonuses, rents, royalties on lands subject to taxes - Crediting amount paid to county.** The lessee, or the lessee's assigns and successors in interest, may pay all bonuses, rentals, and royalties due under any oil and gas lease on lands subject to delinquent taxes or to taxes adjusted by contract, to the lessor, or the lessor's assigns or successors in interest, until such time as a tax deed describing such land is executed and delivered to the county. Upon the execution and delivery of a tax deed sufficient to constitute color of title in the county and upon the confirmation, approval, and adoption of the oil and gas lease by the county either with or without additional provisions, the lessee shall pay all rentals and royalties to the county as long as the county continues to hold the land. The amounts received by the county as bonuses, rentals, or royalties must be credited upon the tax charges against the property.

**38-09-10. Payment of bonuses, rents, and royalties after termination of county's interest in lands.** All bonuses, rents, and royalties becoming due and payable to any county under any provision of this chapter under an oil and gas lease must be paid to the lessor, or to the lessor's assigns or successors in interest, in accordance with and pursuant to the terms of the original lease, if:

1. The land described in the lease is redeemed or the title of the county is obtained by the lessor or the lessor's assigns from the county and such redemption or transfer from the county is made a matter of record in the office of the recorder of the county in which the land is situated;
2. The title or color of title of the county in and to the lands described in the lease is set aside or declared void by the final decree of a court having jurisdiction of such matter; and
3. Notice in either event is given to the lessee or to the lessee's assigns or successors in interest by registered or certified mail directed to such lessee, or to the lessee's assigns or successors in interest, at the address appearing in the office of the recorder of the county in which the land is situated.

**38-09-11. Board of county commissioners may demise or let lands for drilling or mining purposes.** Real and personal property which a county may have acquired through purchase or forfeiture or by operation of law may be demised, leased, or let by the board of county commissioners for the purpose of:

1. Mining thereon;
2. Operating thereon for gas and oil;
3. Laying pipelines thereon; or
4. Establishing and maintaining thereon tanks, power stations, and structures for the production, saving, sale, or caring for the mine product, gas, or oil.

**38-09-12. County may not engage in mining or oil business.** The provisions of section 38-09-11 authorize the board of county commissioners to include in the lease and to carry out any provision which any individual owner could include or carry out except that the board of county commissioners may not:

1. Enter into any of the lines of business mentioned in such section.

2. Expend or bind the county to the expenditure, by contract or otherwise, of any moneys or property.

**38-09-13. Disposition of moneys collected by counties and political subdivisions on mining, oil, and gas leases.** All moneys received by any county from mining, oil, or gas lease and from royalties on any such lease must be paid to the county treasurer. Such amounts must be allocated to the state and county, and to any city, township, school district, or other taxing subdivision which has levied any tax thereon, in the proportions which the tax interests of the state, county, and other taxing subdivisions respectively bear to the tax charges to which the moneys are applicable. Moneys derived by the county from lands which are not subject to any tax charge must be paid into the general fund of the county. Moneys received by any township, city, school district, or park district under the provisions of this chapter other than for credit upon taxes must be placed in the general fund of the taxing subdivision receiving the same.

**38-09-14. Public lands - Leasing for exploration and for production of oil and gas - Method.** No lands, owned in whole or in part, or on which a reservation of oil and gas rights has been made in a conveyance thereof, by the state of North Dakota or by any department or agency thereof or by any county or other political subdivision of this state, may be leased for oil and gas exploration or production except as provided for in sections 38-09-14 through 38-09-20.

**38-09-15. Public offering of leases - State.** Before leasing any land or interest therein or any mineral rights reserved therein, the state of North Dakota or any of its departments or agencies shall first give notice in accordance with the rules of the board of university and school lands. The leasing must be held at the time and place specified in the notice, and the notice must contain the information required by the rules of the board of university and school lands and such other information as may be deemed by the state or department or agency thereof to be applicable. Should publication of any notice of the leasing of mineral rights be inadvertently omitted by any newspaper or should the notice contain typographical errors, the state or department or agency may, in its discretion, proceed with the scheduled leasing if it appears that the omission or error is not prejudicial to the state's interest.

**38-09-15.1. Sale of private mineral interests at public offerings for state mineral leases.** The state or any of its departments and agencies when making a public offering for lease of state-owned mineral interests may allow private owners of mineral interests common to the state's mineral interests to offer their mineral interests at the public offering to be conducted by the state. The state-owned and privately owned mineral interests must be offered separately at the public offering. Privately owned mineral interests may only be offered when the common state-owned mineral interest is being offered. The private mineral owners shall submit a signed and notarized lease form to the state at the time they submit their minerals for inclusion in a public offering together with a current title opinion for the mineral interests certified by an attorney licensed to practice law in the state of North Dakota. The lease to be used by the private mineral owners must be on a form prescribed by the board of university and school lands in which the lease term, royalty rate, and rental rate are consistent with the state-owned mineral lease term and rates. The executed lease must be submitted to the leasing agency prior to the cutoff date for the public offering as established by the leasing agency. The private mineral interests must be advertised in the same manner as provided for in section 38-09-15. No bid may be accepted unless the bidder, at the time of the leasing, tenders or pays to the leasing official an amount equal to the bonus offered for the lease. The payment must be in the form of a thirty-day sight draft payable upon approval of title. The leasing official, in exchange for tender of the bonus, shall deliver to the successful bidder the executed lease. The leasing agency shall, as soon as practical after the sale, forward the thirty-day draft to the private mineral owners. The person must agree to warrant and defend title to the mineral interest being offered for lease before being allowed to offer the mineral interest for sale under this section. When a person agrees to offer a mineral interest at a public offering that interest may not be withdrawn from the offering. A person offering a mineral interest at a public offering under this section shall agree to pay prior to sale an equitable share of the costs incurred by the state in making that public offering. Nothing in this section may be construed or interpreted to impose any liability or obligation upon the state or any of its departments, agencies, agents, or employees by reason of any acts or omissions done under this section.

**38-09-16. Public offering of leases - Counties and political subdivisions.** Before leasing any lands or interest therein or any mineral rights reserved in any conveyance thereof, any county or other political subdivisions thereof shall advertise the same in like manner as provided in section 38-09-15 and with like content of such notice and the leasing must be held at the office of the county auditor if owned by the county or if by any other political subdivision, at the office of the clerk or auditor thereof.

**38-09-17. Bidding or offers.** Offers for leasing may be made in writing and such bids must be opened at the time of the leasing and bids may be offered orally at the time of the leasing. Such bids must be made upon the basis of acceptance of a lease upon the rental basis herein provided, plus such bonus as the bidder may offer. The leasing agency may reject all bids and no bid may be accepted unless the bidder shall, at the time of the leasing, tender or pay to the leasing official an amount equal to the first year's rental for such oil and gas rights, plus any bonus offered for such lease.

**38-09-18. Terms of lease - Unit operation.** All leases for the purposes as hereinbefore provided shall be made by the state of North Dakota and all agencies and departments and political subdivisions thereof for not less than twenty-five cents per acre [.40 hectare] per year for deferred drilling and shall be made with a royalty reservation of not less than one-eighth of all oil and gas produced from said land as long as oil and gas may be produced from said land. The term one-eighth as used herein must be construed to mean one-eighth of such interest as may be owned by the lessor. All leases hereunder must be made for a period of not less than five years and must continue in effect under the terms thereof as long as oil or gas may be produced thereon in commercial quantities. The state of North Dakota and all agencies, departments, and political subdivisions thereof, are specifically authorized to enter into agreements for the consolidation of land covered by leases on lands under the jurisdiction of such bodies with other adjoining or neighboring lands for the purpose of joint development and operation of the entire consolidated premises as a unit. In such a case, such agreement must provide that the lessor shall share in the royalty on oil and gas produced from a consolidated tract in the proportion that the area of the land covered by such lease bears to the total area of such consolidated tract, or upon such other royalty sharing basis as may appear equitable to the governing body controlling or administering such lands; and operations or production on such consolidated tract shall have the same effect as operations or production under the terms of each such lease included therein.

**38-09-19. Lease void if not let as provided herein - Exceptions.** No lease of public land for exploration or development of oil and gas production is valid unless advertised and let as hereinbefore provided, except:

1. Where the acreage or mineral rights owned by the state or its departments and agencies or political subdivisions is less than the minimum drilling unit under well spacing regulations, nonoperative oil and gas leases may be executed through private negotiation upon the same terms as provided in section 38-09-18, except that the state, or its departments and agencies or political subdivisions may prescribe any period or term of such lease it deems advisable, plus a reasonable bonus payment and a sum sufficient to pay all costs involved.
2. The state or its departments and agencies or its political subdivisions shall have power to ratify all oil and gas leases executed by the purchaser of state lands under a contract for deed or other land purchase contract. In such instances, if all taxes upon the property and contract payments are current, all bonus, delayed rental or other lease payments under such leases must be paid to the purchaser under the land purchase contract. Where such purchaser has delinquent payments upon the land purchase contract or where there are delinquent taxes upon the property, all delinquent payments and taxes must be paid prior to the ratification of the oil and gas lease upon the premises.
3. All unexpired nonoperative oil and gas leases heretofore executed by the state, or its departments or agencies or political subdivisions are hereby ratified.

**38-09-20. Rules and regulations.** The state of North Dakota and its departments and agencies, the board of county commissioners of each county, and the governing body of any political subdivisions are hereby authorized to establish rules and regulations for the leasing of lands for the purposes set forth in sections 38-09-14 through 38-09-20, not inconsistent herewith. Such rules may require the deposit by any applicant for a lease of an amount sufficient to cover the publication costs.

**38-09-21. Approval of oil and gas leases.** All oil and gas mining leases made and executed prior to March 13, 1951, by the Bank of North Dakota, through its president, as agent for the state treasurer, as trustee for the state of North Dakota on lands or mineral interests acquired by the state treasurer, as trustee for the state of North Dakota, except such leases as have been released or have expired or have been forfeited, are hereby validated, and said leases are hereby confirmed and declared to be fully effective and operative to vest in the lessees of said leases, their successors or assigns, all of the estates, rights, titles, privileges, and interest therein set forth.