

CHAPTER 38-17 COAL LEASING PRACTICES ACT

38-17-01. Short title.

This chapter must be known as the North Dakota Coal Leasing Practices Act.

38-17-02. Legislative intent.

It is the intent of the legislative assembly of the state of North Dakota to exercise the legitimate police power of the state in order to protect the economic welfare of the citizens who rely for their livelihood on agricultural production and thereby protect the agricultural economic base of the state. It is in the public interest that certain of the terms and conditions of the leases of coal in place be regulated. The provisions of this chapter apply to all leases for the mining of coal entered into after April 9, 1975.

38-17-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Advance royalty" means the offset contemplated which would allow payments for rent, bonuses, and damages under the terms of the lease to be deducted from the amount of the royalty due to the lessor when the mining operation actually begins.
2. "Mineral agreement" means the agreement between either the surface estate owner and the mineral developer or between the mineral estate owner and the mineral developer which gives the mineral developer the right to conduct mining operations. The mineral agreement may consist of the mineral lease and any other document or documents used to express the entire agreement between the parties.
3. "Mining operation" means any type of activity, the aim of which is to discover the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.

38-17-04. Use of sight draft - Cancellation of lease authorized.

1. Any trust or escrow document relating to a coal lease, or any sight draft or other negotiable or non-negotiable instrument given as full or partial consideration for a coal lease, may authorize the first party to the document or instrument to reject the lease or refuse to honor the draft or other instrument at the time it is due and payable because of a bona fide failure of title.
2. Either party to a coal lease may cancel the coal lease until midnight of the fifteenth business day after the day on which the lessor executed the coal lease. Cancellation occurs and is effective when the party desiring to cancel sends written notice of the cancellation of the lease to the other party by registered mail, return receipt requested, if mailed within the specified amount of time. Notice of cancellation given by either party is effective if it indicates that party's intention not to be bound by the lease.

38-17-05. Maximum term of years.

No coal lease executed after April 9, 1975, is valid for a primary term of more than twenty years, unless operations for mining are taking place on the leased land within the primary term, or the land is subject to a valid mining permit, and for so long thereafter as coal is regularly mined therefrom, or the land is subject to permit. This limitation does not prohibit agreements for extensions or renewals of the primary term.

38-17-06. Acknowledgment of advance royalty provision required.

All advance royalty provisions contained in coal leases executed after April 9, 1975, must be specially explained to the lessor before the lessor executes the lease. The lessor shall execute an acknowledgment indicating the lessor's knowledge of the presence of the advance royalty provision or the advance royalty provision is void. The acknowledgment must be printed on the lease document in print which is larger than any other print on the document, and it must refer the lessor to the exact provision of the lease which permits advance royalty.

An example of the type of acknowledgment required by this section is as follows: THE LESSOR HEREBY ACKNOWLEDGES THAT THE LESSOR IS AWARE OF SECTION _____ OF THIS LEASE RELATING TO ADVANCE ROYALTIES.

38-17-07. Waiver.

The terms of a coal lease regulated by this chapter are hereby declared to be absolute and unwaivable by either party to the coal lease or to the mineral agreement, regardless of lease terms to the contrary. Any instrument which purports to waive the terms specified in this chapter is null and void and of no legal effect.