



BUSINESS LEASING

Business Leasing
How you can attain a
Business Lease
25 CFR 162



OBTAINING A BUSINESS LEASE ON INDIAN LANDS

The purpose of this pamphlet is to provide general guidance to a prospective lessee for business leasing of Indian lands. Business leases are negotiated and approved in accordance with 25 U.S.C. 415, as amended, Indian Land Consolidation Act of 2004 and AIPRA of 2004, and governed by 25 CFR Part 162, Subpart A "General Provisions" and Subpart D "Business Leases."

APPLYING FOR A BUSINESS LEASE

Who has authority to apply for a business Lease?

A prospective lessee, a landowner and/or a Tribe may negotiate and submit an application for a Business lease.

What are the consent requirements for a lease?

For fractionated tracts the following required percentage of consent for undivided trust or restricted interest is:

- One to five owners.....90 percent
- Six to ten owners.....80 percent
- Eleven to nineteen owners.....60 percent
- Twenty or more owners.....Over 50 percent

What should my application contain?

A complete application for a Business Lease must contain the following items:

- (1) The tract or parcel of land being leased.
- (2) The purpose of the lease and authorized use.
- (3) The parties to the lease.
- (4) The term of the lease.
- (5) The ownership of permanent improvements.
- (6) Payment requirements
- (7) Due Diligence requirements.
- (8) Insurance requirements.
- (9) Bonding requirements.



TERM OF A BUSINESS LEASE

How long may the term of a Business Lease run?

A business lease must provide for a definite term and must state if there is an option to renew. The maximum term of a lease approved under 25 USC 415(a) may not exceed 50 years.

What are the monetary compensation requirements?

A business lease of tribal land may allow for a payment amount negotiated by the tribe.

A business lease of individually owned Indian land must require payment of not less than fair market rental.

How is Fair Market Rental determined?

We will use a market analysis, appraisal or other appropriate valuation method, in accordance with USPAP or a valuation method developed by the Secretary under 25 USC 2214, to determine the fair market rental.

Must I provide a performance bond?

If required, a performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations of the lease.

Must I provide insurance?

Yes, a lessee must provide insurance necessary to protect the interests of the Indian landowners and all insurable permanent improvements on the premises. Insurance may be waived upon the request of the Indian landowner, if the waiver is in the best interest of the Indian landowner. For tribal land we will defer to the tribe's determination that a waiver is in its best interest.

What is the approval process for a business lease?

The potential lessee must submit a lease application package to the BIA for review and approval. If the package is incomplete we will request from the applicant all needed documentation. Before we approve a business lease, we must determine that the lease is in the best interest of the Indian Landowners.

When will I receive a decision from BIA on my application?

Once you submit a completed application, BIA will have 60 calendar days to act upon the completed application. BIA will notify you of its determination on the application.

When is a business lease effective?

A Business lease will be effective on the date that we approve the lease.

Is there a model business lease form?

There is no model business lease form because of the need for flexibility in negotiating and writing business leases; however BIA may provide other guidance such as checklists and sample lease provisions to assist in the lease negotiation process and assist the Indian landowners, upon their request, in developing appropriate lease provisions or in using tribal lease forms that conform to the requirements of 25 CFR 162.

May a business lease be amended, assigned, subleased, or become subject to a lease hold mortgage?

The parties may amend, assign, sublease or obtain a lease hold mortgage on a business lease by obtaining Indian landowners' consent, lessee signature and our approval.

Are the requirements for a lease for broad-band purposes different than other types of business leases?

The lease form may be different, but the application package, review process, consent requirements, approval and recording is the same as other business lease types.

If you have any questions about Business Lease applications or Business lease terms, please contact your local BIA.

Business Leasing

For more information, visit

www.bia.gov/bia/ots/dres

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