



# What Happens if You Forget to Pay the Rent? Unique Features of Mineral Title in Alaska

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# Unique Features of Mineral Title

- 1. Changing it up - this presentation is mostly about locatable minerals, with information on oil and gas leases for contrast.**
- 2. Locatable minerals can be developed on federal lands and state lands.**
- 3. Under both federal law and state law for locatable minerals, there are yearly monetary obligations, which if missed are fatal to the right to the minerals, unless one fits into an exception.**
- 4. In some circumstances, federal law requires labor to be performed on a mining claim and setout in an affidavit that has to be recorded. State law requires labor to be performed on all mining claims and minerals leases and set out in an affidavit that has to be recorded.**

# Unique Features of Mineral Title

- 4. Federal law first. Under the federal mining law 30 U.S.C. sec. 22-54, the owner of a mining claim has the obligation to pay a yearly maintenance fee (currently \$155 per 20 acres, or each portion of 20 acres of a placer mining claim, and \$155 per lode claim). The fee is due on September 1. 43 CFR parts 3834, 3835, and 3836**
- 5. If one owns ten or fewer mining claims (nationwide), one can submit a Maintenance Fee Waiver Application a/k/a the “small miner exemption”. That exemption allows the small miner to perform and record an affidavit of labor and submit the affidavit to BLM by December 30 (not December 31), and not pay the maintenance fee. The Application must be filed with BLM by September 1.**
- 6. With the enactment of Federal Land Policy and Management Act of 1976, if an owner fails to pay on time, the claims are invalidated. If a small miner fails to perform labor, or fails to file with BLM and record an affidavit of labor, the claims are invalidated. 43 USC sec. 1744(c) (affidavit)**

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- 7. However, there is a difference between the failure to meet a statutory deadline and the failure to meet a regulatory deadline, even though BLM may not recognize the difference.**
- 8. FLPMA did not address the situation in which mining claims are transferred during a labor year (Sept. 1 to Sept. 1) from a small miner to an entity or person who could not qualify for a small miner. There were a number of ways that BLM could have handled this situation by regulation. It chose to enact a regulation that if there was a transfer, the transfer generated an obligation to pay a maintenance fee for the year of the transfer. The regulation continues that if the maintenance fee is not paid, the claims are invalid.**

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9. **In 1998, IBLA ruled that the BLM requirement was a regulatory requirement, which carries with it the requirement of notice and a period to cure by the agency. Tom L. Lee, 145 IBLA 272 (1998) However, under the Obama administration, when faced with the same fact pattern, BLM refused the opportunity to cure. The owner appealed the decision to the IBLA, which held that the owner was entitled to the opportunity to cure. Valdez Creek Mining, LLC IBLA 2014-148 (September 29, 2015).**
10. **“Whether a requirement to pay maintenance fees in the year of purchase is provided by statute or solely by regulation is significant. This is because the Board has long held that failure to comply with a statutory requirement cannot be fixed, or cured, whereas failure to comply with a regulatory requirement is curable.” Valdez Creek, at p. 4.**
11. **BLM, now having two adverse decisions, on the same fact pattern, provided the administrative opportunity to cure.**

# Unique Features of Mineral Title

1. **Federal oil & gas leases.** Require payment of annual rent during the primary term and before discovery in paying quantifies.
2. **If lessee fails to make timely rental payments, lease will automatically terminate.**
3. **But lease can be reinstated in certain circumstances.**
4. **Class I Reinstatement.** (i) Pay full rental within 20 days after due date, (ii) failure justified and not due to lack of reasonable diligence, (iii) file petition for reinstatement within 60 days after notice of termination, and (iv) lands can't be subject to newly issued lease/otherwise unavailable for leasing.
5. **Class II Reinstatement.** Unlike Class I reinstatement, does not require lessee to justify when it failed to make payment. Similar qualifications to Class I and may show failure inadvertent and did not deliberately fail to make payment. Subject to increased rental & royalty.

# Unique Features of Mineral Title

- 1. Moving to Alaska state law. For mining claims, Alaska state law has three obligations: a rental fee, annual labor, and production royalty. Failure to meet these obligations can be fatal to a state mining claim. AS 38.05.265.**
- 2. The rental fee comes out of the statehood act which requires that the state earn an income from its mineral interests. AS 38.05.211. Prior to the rental fee, claim owners did not pay the State for the rights to explore and develop minerals. The rental fee increases based on the age of the mining claim. Payment is due by November 30. Annual rental ranges from \$35 to \$680 per mining claim.**

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- 3. The requirement of annual labor in the State of Alaska is from the federal law concept that if one holds a mining claims, the owner should be putting effort into the ground each year to advance the development of the minerals. It is ironic that this requirement is now missing in federal law, except for the small miner exemption. Under State law, annual labor has to be performed between September 1 and September 1, and then an affidavit documenting that annual labor must be recorded by November 30. AS 38.05.210**

# Unique Features of Mineral Title

- 4. Under State law, if an owner anticipates that no labor will be performed, the owner has the right to make a payment in lieu of labor by September 1 for no more than five years in a row.**
- 5. Production royalty: AS38.05.212. 3% of net income as defined in AS 43.65.**
- 6. In contrast to federal law, State law allows for a cure under certain circumstances and assesses a fee for the cure. AS 38.05.265.**
- 7. Under State law, any cure has to be completed before there is a competing mining claim. This means that the owner waits for 45 days after the completion of the cure to find out if there is a competing mining claim.**

# Unique Features of Mineral Title

- 7. If the owner misses the deadline of November 30 for annual rental, to complete the cure, the owner must pay the annual rental and a cure fee equal to the annual rental.**
- 8. If the owner fails to record an affidavit of annual labor by November 30, or there is an error in the affidavit, to complete the cure the owner must record a correct affidavit of annual labor and pay a cure fee equal to the annual rental.**
- 9. What if the owner fails to make the payment in lieu of annual labor by Sept. 1? We found out this year that the State allowed that to failure to be cured by making the payment in lieu of labor, and the cure fee.**

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- 10. Certificate of substantial compliance option. AS 38.05.185(b): Failure on the part of a mining lessee or locator to comply strictly with AS 38.05.185-38.05.275 and regulations adopted under those sections does not invalidate the rights of mining lessee or a locator if it appears to the satisfaction of the commissioner that the mining lessee or locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person. This statute is the basis of obtaining a “certificate of substantial compliance.” Reasons needed for the action have varied among administrations. Maybe the tool for pre 1989 filings.**
- 11. Mineral leases provide for notice and cure.**

# Unique Features of Mineral Title

- 1. State oil and gas leases. Lessee shall pay annual rent in advance before annual anniversary.**
- 2. If annual rent is not timely paid, and no well capable of producing oil & gas in paying quantities, lease automatically terminates. (11 AAC 83.170)**
- 3. Lease can be reinstated if failure to pay rent was (i) justifiable and not due to lack of reasonable diligence, (ii) pay rent within 15 days of notice of termination, and (iii) provide statement and supporting evidence of reasons for failure to pay. Can also cure deficient payment if justifiable. (11 AAC 83.175)**
- 4. Payment prevented/delayed by unforeseen circumstances beyond lessee's control – not ignorance of law, inability to pay, error or oversight, forgetfulness, failure to receive bill. Illness, accidents, death, acts of God, error by third party (department, USPS, courier) may be grounds.**

# THANK YOU!

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