

AMENDED RULES AND REGULATIONS TO BE OBSERVED IN THE EXECUTION OF LEASES OF INDIAN ALLOTMENTS.

Section 3 of the act of Congress approved February 28, 1891 (chap. 383, 26 Stats., p. 794), provides: c

That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty, can not personally and with benefit to himself occupy or improve his allotment or any part thereof, the same may be leased, upon such terms, regulations, and conditions as shall be prescribed by such Secretary, for a term not exceeding three years for farming or grazing or ten years for mining purposes.

This provision of law is modified by the act of Congress approved August 15, 1894, making appropriations, etc., for the Indian Department (28 Stats., p. 305). Said section, as modified, provides as follows:

That whenever it shall be made to appear to the Secretary of the Interior that by reason of age, disability, or inability any allottee of Indian lands under this or former acts of Congress can not personally and with benefit to himself occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years for farming or grazing purposes, or ten years for mining or business purposes.

This is modified by the act of June 7, 1897 (30 Stats., p. 85), which provides:

That hereafter whenever it shall be made to appear to the Secretary of the Interior that by reason of age or disability any allottee of Indian lands under this or former acts of Congress can not personally and with benefit to himself occupy or improve his allotment or any part thereof, the same may be leased, in the discretion of the Secretary, upon such terms, regulations, and conditions as shall be prescribed by him, for a term not exceeding three years for farming or grazing purposes, or five years for mining or business purposes.

The act approved March 1, 1899 (30 Stats., p. 941), modifies the above in so far as it applies to the Indians of the Yakima Reservation, Wash., as follows:

That the Indians of the Yakima Indian Reservation to whom lands have been allotted under the laws of the United States may lease their lands so allotted for agricultural purposes for a term not exceeding five years, under such rules and regulations as are or may be prescribed by the Secretary of the Interior, anything in the law now limiting the term to a shorter term notwithstanding.

The act of May 31, 1900 (31 Stats., p. 229), extends the leasing term to five years for farming purposes only:

Provided, That whenever it shall be made to appear to the Secretary of the Interior that by reason of age, disability, or inability any allottee of Indian lands can not personally and with benefit to himself occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by the Secretary for a term not exceeding five years for farming purposes only.

A special provision permits the Yakima Indians to lease unimproved agricultural lands for ten years (p. 246):

Provided further, That the Indians to whom lands have been allotted on the Yakima Reservation, in the State of Washington, shall be permitted to lease unimproved allotted lands for agricultural purposes for any term not exceeding ten years upon such terms and conditions as may be prescribed by the Secretary of the Interior.

From the acts quoted above it will be seen that the term for which allotted lands may be leased is limited to three years for grazing and five years for farming, mining, or business purposes, except as to the Indians of the Yakima Reservation, who may lease their allotted lands for agricultural purposes for five years, or, when unimproved, for ten years.

The conditions necessary to the exercise of this privilege are, except as to the Yakima Indians, that it must be "made to appear to the Secretary of the Interior that by reason of *age, disability, or inability*" the Indian allottee "can not personally, and with benefit to himself, occupy or improve his allotment or any part thereof."

In order to give full force and effect to the above enactments, the following amended rules and regulations are hereby promulgated for the information and direction of United States Indian agents and all parties concerned.

WHO MAY LEASE.

1. The term "age" as used in said amended act is defined to apply to all persons under 18 and all persons disabled by reason of old age.
2. The term "disability" is defined to apply to—
 - (a) All unmarried women.
 - (b) All widows who have no sons of suitable age under their control to cultivate their lands with profit.
 - (c) All married women whose husbands or sons are not in condition to cultivate their lands with profit to the family.
 - (d) All allottees who are disabled by reason of chronic sickness or incurable physical defects.
 - (e) All allottees who are disabled by native defect of mind or permanent incurable mental disease such as to prevent them from cultivating their lands.
3. The term "inability" as used in said amended act can not be

specifically defined as the other terms have been. Any allottee not embraced in any of the foregoing classes who, for any reason other than those stated, is unable to cultivate his lands or a portion of them, and desires to lease the same, may make application therefor to the proper Indian agent. If his inability to cultivate his lands (or the portion thereof he desires to lease) is clearly shown in the reasons assigned, the allottee may be permitted to lease. In submitting such applications the agent must state in brief, concise terms the cause of such inability.

4. Every adult male able-bodied Indian not engaged in some permanent business or occupation by which he is gaining a livelihood for himself and family will be required to reserve not less than 40 acres of cultivable land from his own allotment for occupancy and cultivation by himself, which shall always be exempt from leasing.

Adult male Indians not wholly disqualified by physical or mental infirmities from working a portion of their allotments, but who may be less able than those not so disqualified, will be required to work or manage a part of their allotments, to be regulated and determined by the actual conditions in each case, to be fully and conclusively shown in the applications for permission to lease.

In both of the last-mentioned cases the allottees will be permitted to receive a portion or percentage of their lease money from that portion of their allotments that may be leased, the remainder to be retained until the expiration of the lease period, whenever, in the discretion of the agent, such action will not work a hardship to the allottee.

These requirements are not applicable to the several classes named in section 2.

All leases covering unfenced allotments should have provision therein for fencing the lands, and with further provision that the same shall be kept in good order and repair and become the property of the Indian owner of the land at the termination of the lease.

5. Indian agents, however, are hereby expressly directed that it is not intended by the terms "disability" and "inability" to authorize the making of any lease by an allottee who has the necessary physical and mental qualifications to enable him to cultivate his own land, either personally, through the aid of his minor children, or by hired help, unless for exceptional reasons, which must be clearly shown, he falls within the provisions of rule 3.

All leases submitted for Department action should show clearly the nature and extent of the disability or inability of the Indian owner of the land; if from old age, the exact or approximate age and physical condition and capacity for work should be given. In cases where lessors are minors, their ages should be stated, and when heirs of deceased allottees are lessors it should be shown whether or not they

have allotments of their own, and if so, the extent thereof and whether they are occupying and improving the same. In cases where lessees agree to break up and prepare a certain number of acres each year the agent's certificate as to the character of the land should show how much of it has already been cultivated, if any, and whether all or any part of that agreed to be broken is new and previously unbroken.

Every individual case submitted for consideration should be accompanied by full and complete information as to its merits. Any lease which does not contain all information necessary to form an intelligent judgment of the case or present especially good reasons why it is thought desirable to lease the land will not be approved.

Leases should provide for some specific improvements of a permanent nature in addition to money, such as buildings, fences, wells, breaking new land, etc., and with further provision that the same shall be kept in good order and repair, and become the property of the lessor after the termination of the lease.

No leases of Indian allotments for mining purposes will be granted.

LENGTH OF TERM.

Leases for a money consideration alone will be made for a period of one year for grazing purposes, and two years for grazing and farming, or farming; but where there is other consideration in addition to money, such as placing substantial improvements on the land, they may be made for two and three years, respectively, and in cases of an exceptional character, upon a full statement of facts, leases may be made for three years for grazing and five years for farming, and in the case of the Yakima Indians farming leases may, as to unimproved land, be extended to ten years. But Puyallup allotments in Washington must not be leased for a term in excess of two years.

The lands of minor heirs or allottees may be leased by their natural or legal guardians. Such leases, however, must not extend beyond the time such minors attain their majority, after which they must act for themselves.

The word "majority" must govern the age at which Indians will be permitted to take charge of their own business in connection with leasing their allotments as fixed by the laws of the States or Territories in which the allotments are located.

The Department will assume the age of 21 as the majority for males and 18 for females, unless specific information is furnished to the contrary.

HOW EXECUTED.

1. The indenture of lease must be executed in conformity with the terms and conditions expressed in the printed blanks issued by the

Indian Office and approved by the Department. Leases executed on other forms will not be recognized. Agents in charge of reservations where there are allotted lands will be furnished a supply of these blank forms on application.

2. The lease must be executed in triplicate, in the presence of two subscribing witnesses, and acknowledged before the Indian agent within the limits of whose agency the allottee resides.

3. If the allottee or lessor does not reside within the limits of an Indian agency the instrument of lease may be acknowledged before a justice of the peace or other officer having legal jurisdiction, whose official character must be certified by the clerk of a court of record under the seal of such court.

4. If only a portion of the allotment is leased a definite description by subdivisions or by metes and bounds of said portion should be incorporated in said lease, accompanied by a diagram indicating the portion to be leased, whenever said metes and bounds do not conform to the public survey.

5. The lease must be accompanied by the certificate of the Indian agent for the tribe to which the allottee belongs that the contents, purport, and effect of the lease were explained to and fully understood by the allottee or legal representative of said allottee; that said allottee being — years old, can not personally and with benefit to —self occupy or improve — allotment or the part thereof described and covered by said lease, giving the specific reasons therefor as indicated in rules 2 and 3; that the lessor is competent to manage his affairs and thus lease said allotment; that he has examined the said land and the character thereof, which he shall describe by legal subdivisions or by natural metes and bounds, and give a general description of its surface, wood and water supply, improvements, present use, nearness to market, use for which best adapted, and any other details which will enable the Commissioner of Indian Affairs and the Secretary of the Interior to form a just estimate as to the desirability of the lease.

He shall state clearly and in detail the specific reasons why authority to make the lease is asked, and make recommendation in the premises, stating expressly whether, in his judgment, it would be to the manifest advantage of the allottee to authorize the lease, and that he is satisfied that the land can be occupied, used, and improved more advantageously and profitably for the purposes named in the lease than for the other purposes referred to in said act; that he believes the rent or consideration agreed upon to be a full, fair, just, and reasonable rental for the premises, and the most desirable obtainable; and that the said lease is, in every respect, free from fraud or deception, and that he is in no respect interested in said lease.

He will set forth the character and habits of the allottee as to industry, thrift, and general conduct; also the character, uprightness, and intelligence of the proposed lessee, and shall indicate whether, in his judgment, the presence of said lessee will be beneficial to the Indians.

6. If the instrument is acknowledged before a justice of the peace or any officer other than the Indian agent he must furnish the certificate required of the Indian agent in rule 5. If, however, the facts shall not be known to the Indian agent or other officer they must be verified by affidavits of not less than two disinterested credible persons, who are cognizant of the facts and of the value of said land for the purposes named in said lease, whose veracity must be certified to by such officer.

7. All the testimony and all the papers pertaining to said indenture or lease must be properly authenticated under seal.

8. Where the allottee is dead the affidavits of two or more disinterested credible persons must be furnished, setting forth from their personal knowledge the identification of the lessor as the heir or legal representative of the allottee, his age, and state specifically the reason why such lessor should be given the benefits of the said act.

EXECUTION OF THE BONDS.

1. The bond must be signed by two or more sufficient sureties, guaranteeing the payment of all the rents and royalties at the time specified, and the performance of all covenants and agreements named in the indenture to be paid and performed by the lessee.

2. Below the bond is a blank "Verification of sureties." This verification must be subscribed and sworn to before some officer who is authorized to administer oaths. If subscribed to before a justice of the peace or a notary public the official character of such officer must be certified to before some officer of a court of record, under seal, having jurisdiction in the county where the acknowledgment was taken. The sureties must write their own names in the verification. They must not be written by the officer taking the acknowledgment.

3. Each surety must justify under oath to an amount equal to the value of the entire rent to be paid.

4. The sureties must sign the bond in the presence of two subscribing witnesses.

5. All names, both in the lease and bond, must be written in full, as initial letters will not be recognized as a Christian name.

THE AGENT'S CERTIFICATE.

This must be filled out by the agent in person or by a trusted employee, and all the requirements of the blank form must be strictly complied with.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS, *February 11, 1902.*

The foregoing amended rules and regulations designed for the government of the respective parties in the execution of leases of allotted lands under section 3 of the act of Congress approved February 28, 1891 (26 Stats., 794), and acts amendatory thereof, are respectfully submitted to the Secretary of the Interior with the recommendation that the same be approved.

A. C. TONNER,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR, *March 21, 1902.*

The foregoing rules and regulations are hereby approved, to take effect on and after July 1, 1902.

THOS. RYAN,
Acting Secretary.

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