

CHAPTER 85-04-04 ENCUMBRANCES OF TRUST LANDS

Section

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85-04-04-01. Application.

1. An applicant shall submit a request for an encumbrance, amendment, consent to assign, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. An application submitted on any other form may not be accepted.
2. An application must be submitted for the following:
 - a. Encumbrance.
 - b. Amendment to an encumbrance.
 - c. Consent to assignment of an encumbrance.
 - d. Extension or renewal of an encumbrance.
 - e. Full or partial release of an encumbrance.
3. An application must state a specific purpose for which it is being submitted.
4. An application is deemed filed and complete if the department receives an application form, the application fee, and any supplemental information requested by the department.
5. An application for a consent to assign an encumbrance must be received by the department before execution of an assignment between applicable parties.
6. An application fee may be charged as determined by the board.
7. Compensation may be requested by the department.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-02. Surveying and planning requirements.

1. Before accessing trust lands to conduct any surveys, including general surveys, metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and habitat or wetland delineations, the following criteria must be met:
 - a. An application for an encumbrance for which the survey is being conducted must be filed with the department; and
 - b. Any person or entity conducting survey work on behalf of the applicant shall obtain a surveying and planning permit from the department.

2. The person or entity conducting the survey shall provide notice to the surface tenant of the need for access to trust lands for survey purposes no later than seven calendar days before the scheduled access date.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-05-01

85-04-04-03. General standards for an encumbrance.

In reviewing an application for an encumbrance, the following may be considered:

1. Financial benefit to the trusts;
2. Availability of alternate encumbrance site or route;
3. The least environmentally damaging site or route regardless of property ownership;
4. Physical stability of the landscape;
5. Other potential future uses for the trust lands, including urban development;
6. Potential mineral and other material development, including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and waterflows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts;
13. Applicant's past encumbrances on trust lands;
14. Applicant's financial stability; and
15. Any other information relevant to the application which would assist in the determination.

History: Effective January 1, 2020.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-04. Issuance of an encumbrance.

1. The commissioner may approve and issue an encumbrance on the board's behalf in accordance with this chapter.
2. An encumbrance may not be approved or issued until all required payments and information are received by the department.
3. An encumbrance must be issued prior to site preparation or construction, except for surveying in accordance with a granted surveying and planning permit.

4. The commissioner may impose such terms to an encumbrance as the commissioner deems necessary.
5. If an application does not comply with this chapter, or if the commissioner determines board review is desirable, the commissioner may bring the application to the board for consideration.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-05. Right of entry and inspection.

The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-06. Expiration of an encumbrance.

1. Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed on trust lands in accordance with the terms of the encumbrance.
2. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction.
3. Before the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

History: Effective January 1, 2020; amended effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01

85-04-04-07. Assignment of an encumbrance.

1. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner.
2. If specifically authorized by the terms of the encumbrance:
 - a. The assignor is responsible for compliance with all terms of the encumbrance, this chapter, and applicable laws until the department is notified of the assignment.
 - b. Upon the department's notification, the assignee is responsible for compliance with all terms of the encumbrance, this chapter, and applicable law.
3.
 - a. A consent to assignment may not be deemed valid unless provided in writing by the commissioner.
 - b. The assignor remains responsible for compliance with all terms of the encumbrance and this chapter until consent to the assignment is provided by the commissioner. Upon approval, the assignee is responsible for compliance with all terms of the encumbrance, this chapter, and applicable law.

History: Effective April 1, 2026.

General Authority: NDCC 15-01-02, 28-32-02

Law Implemented: NDCC 15-01-02, 15-02-05, 15-05-01