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**IDAPA 26
TITLE 01
Chapter 21**

**26.01.21 - RULES GOVERNING LEASING PRACTICES AND PROCEDURES FOR
RECREATIONAL RESIDENCES WITHIN HEYBURN STATE PARK**

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho Parks and Recreation Board pursuant to Idaho Code Section 67-5201, et seq. and Idaho Code Section 67-4223 and are intended to further define and make specific Idaho Code Section 67-4223 as it pertains to the administration of recreational residence site leasing within Heyburn State Park. (7-1-93)

001. -- 009. (RESERVED).

010. DEFINITIONS.

When used in these rules, the terms set forth below have the following definitions: (7-1-93)

01. Assignee. A person who assumes a valid lease from a Lessee. (7-1-93)
02. Assignment. The Lessor approved transfer of a valid lease to another person. (7-1-93)
03. Assignor. A Lessee who transfers a valid lease to another person. (7-1-93)
04. Board. The Idaho Parks and Recreation Board or its authorized representative. The Board is a six (6) member, bipartisan Board which formulates the policies administered by the Department of Parks and Recreation as created by Chapter 42, Title 67, Idaho Code. (7-1-93)
05. Department. The Idaho Department of Parks and Recreation, Boise Office. Mailing address is Statehouse Mail, Boise, Idaho 83720. Location is 2177 Warm Springs Avenue, Boise, Idaho. (7-1-93)
06. Director. The chief administrator of the Idaho Department of Parks and Recreation or the Director's authorized representative. (7-1-93)
07. Discretion. Exercising authority to make a decision, choice or judgment without being arbitrary, capricious or illegal. (7-1-93)
08. Escrow Agreement. A contract between Assignor and Assignee where the sale is not a cash sale. (7-1-93)
09. Lease. The document defining the rights and duties of the parties to a recreational residence site designated as a cottage site or floathome lease site within these rules. Class I lot is designated by the Director as a waterfront lot or floathome site. Class II lot is designated by the Director as a second tier lot. Designations shall be at the discretion of the Director. (7-1-93)
10. Lessee. The person to whom a lease has been issued and his Lessor approved successor in interest or assignee(s). (7-1-93)
11. Lessor. The Board or it's authorized representative. (7-1-93)
12. Person. An unmarried person or husband and wife. (7-1-93)
13. Reassignment. Assignment of a lease that is held in escrow pending fulfillment of a contractual agreement for payment by assignee to assignor. (7-1-93)
14. Rental. The annual fee assessed for a lease. (7-1-93)
15. Sublease. The Lessee's verbal or written agreement to sublet or rent the recreational residence on a leased site to another party for monetary or other valuable consideration. (7-1-93)

011. -- 049. (RESERVED).

050. APPROVAL OF LEASES OR ASSIGNMENT OF LEASES.

Final Board approval of a lease or assignment of lease is deemed to occur after the lease is signed by the Director and properly recorded in Benewah County. All approved leases shall first be signed by the Lessee and then by the Director. (7-1-93)

051. -- 074. (RESERVED).

075. ANNUAL RENT.

01. Base Rate. Beginning January 1, 1990, The annual rental shall be as follows: Class I lots shall be seven hundred forty-six dollars (\$746) per year; Class II lots shall be five hundred eighteen dollars (\$518) per year. (7-1-93)

02. Rental Due. The annual rent shall be due and payable, in advance, on or before the first day of January of each year of the term of the lease. Notice of payment due shall be mailed by the Lessor to the Lessee at Lessee's last known address on or about thirty (30) days prior to the due date. Late payments shall accrue interest at the legal rate of interest as set by the State Treasurer for the accrual of interest on judgments. Payments not received on or before February 15 will subject the lease to cancellation. (7-1-93)

076. -- 099. (RESERVED).

100. FEES AND CHARGES.

The Board has established the following fees as they pertain to incidental charges connected with administration of recreational residence leases at Heyburn State Park: (7-1-93)

01. Water Access Fee. One hundred forty-four dollars (\$144) per year. (7-1-93)

02. Lighting and Garbage Collection Fee. Seventy-two dollars (\$72) per year. (7-1-95)

03. Assignment Fee. Fifty dollars (\$50). (7-1-95)

04. Sublease Fee. Fifty dollars (\$50). (7-1-95)

05. Lease Renewal Fee. Twenty dollars (\$20). (7-1-95)

06. Reinstatement Fee. Two hundred dollars (\$200). (7-1-95)

07. Service Fees. Work for which service fees will be charged include, but are not limited to: emergency repairs, (waterlines, storm damage, etc.); excavation (sewer, gray water, test holes, etc.); snow plowing including access to cabins (roads and driveways) which is not necessary for winter park operations; and firefighting. Rates for labor and equipment shall be the rates established by the Kootenai County Highway District for interdistrict accounting of equipment cost and loaded labor costs. (7-1-95)

08. Penalty for Late Payment. Interest on the unpaid balance accruing at the legal rate of interest set by the State Treasurer. (7-1-95)

101. -- 124. (RESERVED).

125. TERM.

01. Not to Exceed Ten (10) Years. Leases shall be issued for a term not to exceed ten (10) years commencing upon January 1 of the year the lease is entered into and ending upon December 31 of the final year of the term. (7-1-93)

02. Modification of Terms. Lessor reserves the right to modify the terms and conditions of the lease at

the end of the fifth and subsequent years of the lease. (7-1-93)

126. -- 149. (RESERVED).

150. APPLICATION FOR RENEWAL.

No right of renewal is implied or granted as a part of a lease. Renewals of a lease may or may not be granted at the discretion of Lessor. At least ninety (90) days before the expiration of the lease, the department shall mail to the Lessee, at the Lessee's last known address, notice of the date on which the lease expires together with an application for renewal of the lease. Any application for the renewal of a lease must be received at the central office of the department at least sixty (60) days prior to the expiration date of the lease. (7-1-93)

151. -- 174. (RESERVED).

175. LESSEE OF RECORD.

More than one (1) person may be entered as an applicant on the application form but only one (1) person shall be designated in the application for lease or assignment as the Lessee of Record with sole responsibility for the lease under these rules. (7-1-93)

176. -- 199. (RESERVED).

200. SALE AND ASSIGNMENT.

Lessee shall not assign the lease without first having obtained the written consent of Lessor or its authorized agent. Lessee shall provide to the Department the following documents concerning a recreational residence sale on a leased site prior to assignment of the lease: (7-1-93)

01. Application for Assignment. Application for assignment of a State Land Lease must be made on forms to be obtained from the Department. Full dollar consideration paid or to be paid by Buyer must be disclosed on the form. Full dollar consideration shall be specifically broken down into three (3) categories, as follows: (7-1-93)

- a. Value of Assignors improvements. (7-1-93)
- b. Value of Assignors personal property, if included in the sale. (7-1-93)
- c. Value of leasehold. (7-1-93)

02. Values may be established by a certified appraisal of all improvements including water and sewer facilities appurtenant to the subject recreational residence site performed by a member of the Society of Real Estate Appraisers or the American Institute of Real Estate Appraisers who holds the MAI or SRPA designations, or an appraisal performed by the County Assessor. Leasehold value may be determined by subtracting the value of the personal property and the value of improvements from the full dollar consideration paid by Assignee to Assignor, as determined under this rule. (7-1-93)

03. Purchase Agreement. One (1) copy of the Purchase Agreement, or contract of sale, acknowledged by the buyer and seller. (7-1-93)

04. Reassignment Forms. If the assignment of lease is not a cash sale, lessee must complete a Reassignment Form, which is available upon request from the department. (7-1-93)

05. Assignment Fee. The assignment fee shall accompany the application. (7-1-93)

06. Deficiencies. All rent and charges must be paid and all deficiencies noted by Lessor cured before Lessor will approve an assignment of lease. (7-1-93)

07. Recording. Assignments shall be recorded with Benewah County by Lessor. (7-1-93)

08. Action on Application. The Lessor shall approve or deny an application for assignment of lease within thirty (30) days of receipt of a completed application. (7-1-93)

201. -- 224. (RESERVED).

225. SUBLEASING AND/OR RENTAL.

01. Approval Required. Subleasing and/or rental of a recreational residence site is prohibited except as may be authorized by the Director in writing and upon such conditions as the Director may impose. Prior written approval is required. (7-1-93)

02. Application. A letter of application must be received at the Department at least thirty (30) days prior to the date of sublease and must include the following information: (7-1-93)

a. Name, address and telephone number of the sublessee. (7-1-93)

b. The number of persons with whom the sublessee will share occupancy of the residence. (7-1-93)

c. The exact dates and duration of the sublease. (7-1-93)

d. The monetary consideration or value of other consideration to be paid to Lessee by Sublessee. (7-1-93)

e. The value of Lessee's personal property to be included in the sublease (building, outbuildings, furnishings, if any). (7-1-93)

03. Conditions. Recreational residence sites are not commercial enterprises and subleasing or rental rates shall not reflect a profit to Lessee. Subleases and assignments are subject to the terms of the lease and such other conditions as the Director may impose as a condition of approving the assignment or sublease request. (7-1-93)

226. -- 249. (RESERVED).

250. LANDSCAPING AND REMOVAL OF VEGETATION.

Lessee shall neither landscape the leased premises nor remove vegetation, including trees, therefrom without the prior written consent of Lessor or its authorized agent. Vegetation on a leased lot which constitutes a hazard to persons or property is the responsibility of Lessee, but remains subject to the provisions of these rules. Fences are not appropriate in a state park and will not be approved. (7-1-93)

251. -- 274. (RESERVED).

275. SEWAGE AND GRAY WATER DISPOSAL, FAILURE TO COMPLY.

When topography, location, soils, or other conditions prevent operation or installation of an approved septic and gray water system, and a recreational residence is uninhabitable as a result, the Director shall terminate the lease immediately. Any improvements on the lease site shall be handled pursuant to Section 450 of this chapter. (7-1-93)

276. -- 299. (RESERVED).

300. GARBAGE AND LITTER.

Disposal of domestic garbage in park dumpsters or cans is prohibited. The Lessor may, at its sole discretion, allow the removal of burnable plant material to a designated location within the park. Arrangements for such disposal must be made in advance with the park manager. (7-1-93)

301. -- 324. (RESERVED).

325. MAINTENANCE OF PREMISES.

Installation of satellite dishes at leased sites is prohibited. Satellite dishes existing as of January 1, 1990 will be allowed to remain so long as the owner is a lessee. In the event of any assignment of the lease, the dish must be removed. Lessees shall be required to confine their personal property, vehicles, and pets to their leased lot. No encroachment onto adjacent lots, leased or vacant, or park property, will be permitted. (7-1-93)

326. -- 349. (RESERVED).

350. MOTORIZED VEHICLES.

01. Number Limited. Each Lessee may keep no more than two (2) operational motor vehicles, registered in Lessee's name, upon the leased premises. Nonoperational vehicles must be removed within thirty (30) days. (7-1-93)

02. Use Limited. All motorized vehicles, including motorcycles and three (3) and four (4) wheeled ATV's, may be used for ingress and egress only and must stay on established park roadways or parking areas. The drivers of all vehicles operated within the park shall be licensed as required under state law. The drivers of all vehicles shall comply with the speed and traffic regulations of the park and all other local, state and federal regulations governing traffic on public roads. All roads within the park are public roadways under state law. All motorcycles and ATV's must be licensed to operate on public roadways and must meet state law requirements for motor vehicles. (7-1-93)

351. -- 374. (RESERVED).

375. CONSTRUCTION AND IMPROVEMENTS.

Improvements and repairs to existing structures will be allowed insofar as they may be necessary for health and safety, or to preserve the integrity of the structure, or improve its appearance. Additions or enlargements to existing living space may be approved at the discretion of the Director. However, total indoor living space, including addition, shall not exceed one thousand (1,000) square feet. Applications for approval of construction or improvements must be approved and on file with the park manager prior to the commencement of work. Forms may be obtained from the park manager. In the event an existing recreational residence is destroyed, the lease may be cancelled by the Director. (7-1-93)

376. -- 399. (RESERVED).

400. ESTABLISHING FAIR MARKET VALUE OF IMPROVEMENTS.

The fair market value of improvements (nonmovable personal property, including but not limited to cabins and outbuildings, but excluding furnishings and the value of the leasehold) shall be determined by one of the three (3) following methods: (7-1-93)

01. Assessor's Valuation. The appraised value for tax purposes as established by the Benewah County Assessor; or (7-1-93)

02. Single Appraisal. The value ascertained by an appraiser and appraisal process mutually agreed upon by Lessor and Lessee, costs to be shared equally between Lessor and Lessee; or (7-1-93)

03. Two (2) Appraisals. The value resulting from the average of values ascertained by MAI or SRPA certified appraisers, one (1) selected by Lessee and one selected by Lessor, each party to bear the cost of its appraiser. (7-1-93)

401. -- 424. (RESERVED).

425. TREATMENT OF APPROVED IMPROVEMENTS UPON NORMAL EXPIRATION WITH NO APPLICATION TO RENEW.

In the event a lease expires without Lessee having made application to renew, Lessor has the right to require Lessee to remove all approved improvements placed or caused to be placed upon the leased premises by the Lessee, and to require Lessee to restore the leased premises to as nearly as is reasonably practical to its natural condition, all at Lessee's sole cost and expense. Removal of improvements on the site shall be completed by Lessee within ninety (90) days of notification. Any improvements remaining on the site after the ninety (90) day period shall become the property of the Department. Former Lessees may request, in writing, an extension of the ninety (90) day period for removal of improvements which request may be granted by Lessor for good cause shown, upon whatever terms and conditions the Lessor may require. (7-1-93)

426. -- 449. (RESERVED).

450. REMEDIES FOR BREACH.

01. Cancellation. Any material breach of the terms of the lease, including nonpayment of rental, or any breach by Lessee of any rule now in force or hereafter adopted by the Board, which is not cured to the satisfaction of the Lessor within thirty (30) days of receipt of notice of the breach, will subject the lease to cancellation at the discretion of the Lessor. Notification of cancellation shall be in writing and shall be provided to the Lessee no later than thirty (30) days prior to the effective date of such cancellation. Lessee shall vacate the premises no later than thirty (30) days after the date of cancellation. (7-1-93)

a. If the lease is cancelled because of a breach which would have been curable but which was not cured, the Lessor shall give the former Lessee the option of selling or removing all improvements placed or caused to be placed upon the leased premises by the Lessee. In the event the former Lessee chooses to sell the improvements, said sale must be completed within one hundred eighty (180) days of the date of cancellation. The sale of the improvements shall comply with all requirements set forth in these rules governing sales and assignments and the purchaser will undertake responsibility for curing the predecessor Lessee's breach before the Lessor will approve a new lease. (7-1-93)

b. In the event the Lessee chooses to remove the improvements or is unable to complete a sale within one hundred eighty (180) days, the Lessee shall restore the leased premises to as nearly as is reasonably practical to its natural condition at Lessee's sole cost and expense. Removal and restoration shall be complete no later than ninety (90) days following notification of cancellation in cases where Lessee chooses not to sell, and no later than ninety (90) days following the expiration of the one hundred eighty (180) days allowed for sale if a sale cannot be concluded. Any improvements remaining on the site after the ninety (90) day period shall become the property of the Lessor. (7-1-93)

c. In the event a breach is not curable to the satisfaction of the Lessor, or the breach has significantly impaired the value of the lease site as a recreational residence site, the Lessor may require the Lessee to remove all improvements placed or caused to be placed upon the leased premises by the Lessee, and to require Lessee to restore the leased premises to as nearly as is reasonably practicable to its natural condition, all at Lessee's sole cost and expense. Removal of improvements on the site shall be completed by Lessee within ninety (90) days of notification. Any improvements remaining on the site after the ninety (90) day period shall become the property of the Lessor. (7-1-93)

02. Monetary Penalties. In lieu of cancellation of a lease, the Lessor may, for uncorrected violations of the lease or rules which are deemed by the Director to be minor, impose a monetary penalty of twenty-five dollars (\$25). Each day that the violation remains uncorrected shall subject Lessee to imposition of the monetary penalty, up to a maximum of five hundred dollars (\$500). (7-1-93)

a. Penalties are due and payable at the time they are assessed. Uncollected assessments must be paid in full at the time the annual lease fees are paid. Lessees who fail to pay all lease fees due and payable according to the terms of these rules may be determined to have committed a material breach of the lease, and may have their leases cancelled. (7-1-93)

b. Monetary penalties may not be imposed until the Lessee has been given written notice of the violation including a reasonable opportunity to remedy the violation. What constitutes a reasonable opportunity to remedy a violation rests with the sole discretion of the Director or the Director's designee. (7-1-93)

c. Determination whether a violation constitutes a material breach which subjects a lease to cancellation, or a minor violation which may result in imposition of a monetary penalty rests in the sole discretion of the Director or the Director's designee. (7-1-93)

451. -- 474. (RESERVED).

475. TORT CLAIMS ACT.

These rules formally spell out a contractual obligation between Lessees and Lessor. No portion of these rules shall be deemed or construed in any way to conflict with the provisions of Chapter 9, Title 6, Idaho Code. (7-1-93)

476. -- 499. (RESERVED).

500. SERVICE OF NOTICES.

It is the responsibility of the Lessee to inform the Department at the address defined in these rules of any change of address. Any notice required of the department by these rules shall be deemed effective when mailed, postage paid, to Lessee at:

Heyburn State Park
Route 1, Box 139
Plummer, ID 83851

or

Idaho Department of Parks and Recreation
Statehouse Mail
Boise, ID 83720

to Lessee at:

Lessee's address of record.

(7-1-93)

501. -- 524. (RESERVED).

525. BINDING ON HEIRS.

All of the terms, covenants, and conditions in the lease shall be binding upon the heirs, executors and assigns of the Lessee. (7-1-93)

526. -- 999. (RESERVED).