

**Title 1: Secretary of State**

**Part 11: Public Lands**

**Part 11: Chapter 1: Tax Forfeited Lands**

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## **Title 1: Secretary of State**

### **Part 11: Public Lands**

#### **Part 11: Chapter 1: Tax Forfeited Lands**

*Introduction.* Mississippi Law provides that the ownership of real property be forfeited to the State after (1) default occurs in the payment of taxes and (2) the property is not redeemed during the subsequent two year period, referred to as "the period of redemption." The process by which real property is forfeited to the state, simply stated, is as follows.

Default in the annual payment of tax assessment results in the property being included on a list of properties advertised for sale by the County Tax Collector of the county wherein the land is situated. All such lands and improvements, if any, are thereafter sold at public sale to the highest bidder for payment of taxes due and unpaid, together with all fees, penalties and damages provided by law. These "tax sales" occur annually in each county, beginning on the last Monday of August, and, at the option of the tax collector (infrequently exercised), on the first Monday of April. If no buyer is found, the property is removed from the sale list and placed on a list of properties that will be forfeited or "matured" to the state if not redeemed by the payment of taxes due and other amounts due during the aforementioned two year redemption period. (If a property is not sold to a private buyer at the annual tax sale, it is described as "sold to the State for taxes" although the State does not pay out monies to the county tax assessor.) Within thirty days of the expiration of the period of redemption, each chancery clerk, on forms prescribed by the Secretary of State, certifies to the Secretary of State a list of all lands "struck off to the state for taxes, which have not been redeemed." Miss. Code Ann. § 27-45-21. These rules govern the procedures of the Secretary of State from the time he receives the certified lists through the patent of lands back into private ownership (and rescission of patent, if necessary), or to any other state agency, county, municipality or political subdivision of the state.

It is the duty of the Secretary of State to administer these and other public lands. It is the goal of the Secretary of State to return these lands to private ownership, at the same time to obtain optimal price for the lands, in order that they once again produce revenues to the respective taxing authorities. Secondary goals are to return lands to their previous owners in those instances where the forfeiture resulted from unintentional default in the payment of taxes, or to transfer lands to any other state agency, county, municipality or political subdivision of the state. The following rules govern the Secretary of State's administration and sale of these tax-forfeited lands.

#### *Rule 1.1      General Information.*

- A. The terms "land" or "lands" and "property" are used interchangeably throughout these rules. Each term refers to real estate which has matured to the state because of nonpayment of taxes. Each term also includes improvements which may be situated on the property.
- B. References to the "Secretary of State" shall be interpreted to mean the Public Lands Division of the Office of Secretary of State and the Assistant Secretary of State for public

lands or both of them, except where a specific reference to another division of the Office of Secretary of State is made.

- C. References to "chancery clerk" or "tax assessor" shall be interpreted to mean the chancery clerk or tax assessor of the county in which the land (for which patent application has been made) is situated.
- D. References to "original owner" shall be interpreted to mean the owner of the title on the date of sale of land for taxes.
- E. A "patent" or "land patent" is the instrument by which the state grants public lands. Subsequent conveyances are usually made by various types of "deed." A "special patent" is a patent granted to original owners or to those claiming through the original owners, who can satisfactorily prove that ownership passed into the state because of mistake, oversight, or unintentional default.
- F. References to "books" or "records" maintained by the Secretary of State, whether general or specific, include manual and/or automated formats of such records.
- G. Many of the procedures set forth in these rules are mandated by statute. If there should be a conflict between these rules and applicable statutes, the statute will govern.
- H. All patents are issued with the approval of the Governor.

Source: *Miss. Code Ann.* §§ 29-1-21, 23, 81 (Rev. 2007).

*Rule 1.2 Procedure Upon Receipt of Chancery Clerks' Certified Lists of Tax-Forfeited Lands.*

- A. Each property on the list is reviewed and, if reasons are apparent why the property is not eligible for public sale, the description is marked for the attention of the Attorney General. Such reasons include, but are not limited to the following:
  - 1. The property is situated in the 16th Section of a township.
  - 2. The legal description of the property is indefinite or defective.
  - 3. The property is tidelands or other publicly owned property.
  - 4. A sale error has occurred and the property should not have been listed.
- B. The certified list is forwarded to the Attorney General who shall provide written approval to the Secretary of State to strike from the certified lists those lands which he determines are not the property of the state.
- C. When the certified list is returned to the Secretary of State by the Attorney General, the list is filed by the Secretary of State in the appropriate County Certificate Book in the Secretary of State's Office.
  - 1. The descriptions of lands which were approved for public sale by the Attorney General shall be transcribed into the appropriate County Sales Book. The transcription into the Sales Book shall be made up in the regular order of townships, ranges and sections and shall show:
    - a. Date of the sale [forfeiture] to the State;
    - b. Amount of taxes due on the land;
    - c. Damages;
    - d. Costs; and
    - e. Special assessments.
  - 2. The descriptions of lands which were determined by the Attorney General not to

be the property of the State will be stamped in red ink: "Stricken Off: Approval of the Attorney General [reason therefor]," where they appear on the list in the County Certificate Book.

- a. The Secretary of State shall transmit a list of lands thus stricken to the chancery clerk and give written notice to the county assessor that such lands have been stricken from the list of lands forfeited to the state for nonpayment of taxes.
- D. If, after completion of the procedures set forth in Sections A through C above, information is received which indicates that a property should be stricken from the County Certificate Book and the County Sales Book, the Secretary of State shall seek the approval to strike from the Attorney General and, if authorized by the Attorney General, strike the property and notify the chancery clerk and assessor that the property has been stricken.
- E. The Secretary of State may, with the approval of the Governor, dispose of any state forfeited tax land by sealed bids after three (3) weeks' advertisement in a newspaper in the county in which such land is located. Miss. Code Ann. § 29-1-37(2).
- F. The Secretary of State may, at his discretion, advertise any lands approved for public sale by the Attorney General and upon which applications to purchase have been received, in any other manner he deems suited to attract the optimal price for same. The application of the highest bidder in such instances shall have priority.
  - a. At any time properties are offered by the methods set forth in Rule II E. and II F. above, the Secretary of State shall reserve the right to reject any and all offers to buy.

Source: *Miss. Code Ann.* §§ 29-1-37, 21, 27, 31 (Rev. 2007).

*Rule 1.3 Requirements for Purchase of Tax-Forfeited Lands.*

- A. Eligibility of purchaser. The following are *ineligible* to purchase tax-forfeited lands:
  1. Corporations (except a banking corporation holding a mortgage or deed of trust on the tax-forfeited parcel at the time it matured to the state, which mortgage is still in force and effect).
  2. Nonresident aliens may not purchase more than three hundred twenty (320) acres for industrial purposes and five (5) acres for residential purposes.
  3. Associations composed in whole or in part of nonresident aliens.
  4. Persons who have purchased one hundred and sixty (160) acres of tax-forfeited lands in the year in which the current application is made. (See Rule IV B. 2 for exceptions to this restriction.)
- B. Application requirements.
  1. Application to purchase tax-forfeited lands shall be made on forms prescribed by the Secretary of State and available from his office, county tax assessors and chancery clerks. The application shall request the following information:
    - a. A description of the land to be purchased;
    - b. Name and address of record owner of land at the time of forfeiture to the state;
    - c. Name and address of person(s) to whom land was assessed at time

- d. of forfeiture to the state;  
Whether the land is occupied, and if so, by whom and for what purpose;
  - e. The value of the land and the nature and value of improvements to the land;
  - f. Approximate quantity and value of marketable timber on the land;
  - g. The price the applicant is willing to pay for the property;
  - h. Any other information required by the Secretary of State with the approval of the Governor; and
  - i. The name, address, and telephone number of the applicant.
2. The completed application must be signed by the applicant, notarized and returned to the Secretary of State with a two dollar and fifty cent (\$2.50) application fee.
  3. Applications will be accepted after the date the property certifies to the State. Applications received before that date will be returned.

Source: *Miss. Code Ann.* §§ 29-1-37, 73, 75 (Rev. 2007).

*Rule 1.4 Special Provisions for State Agencies, Counties, Municipalities or Political Subdivisions of the State.*

- A. The Secretary of State, with the approval of the Governor, may transfer lands to any other state agency, county, municipality or political subdivision of the state, which may then retain or dispose of said lands as provided by law. *Miss. Code Ann.* §29-1-21 and §29-1-51.
- B. State agencies, counties, municipalities or political subdivisions shall have priority over all other applicants except the original owners, his heirs or assigns. Completed applications to purchase or requests for transfer by state agencies, counties, municipalities or political subdivisions shall be given priority in the order in which they are received.

Source: *Miss. Code Ann.* §§ 29-1-21, 51 (Rev. 2007).

*Rule 1.5 The Application Process.*

- A. Review by the Secretary of State. Applications shall be reviewed by the Secretary of State to determine if they have been fully and accurately completed and are accompanied by proper payment. Applications determined to be incomplete, illegible or defective shall be returned to the applicant with written reasons for said return.
- B. Applications determined to be complete and accepted shall be stamped, marking the date of receipt and processed in the order in which they are received. *Miss. Code Ann.* § 29-1-37. (But note Rule IV, Rule V D. and Rule VII.)
  - a. The property described in the application shall be located in the County Sales Book to verify state ownership.
    - i. The applicant shall be notified if the property does not appear in the County Sales Book, if the property descriptions do not match precisely, or

- if the property has been sold.
- b. The Secretary of State shall verify that the applicant is eligible pursuant to Rule III A. However, the following persons are excepted from the 160-acre per year limitation set forth in Rule III A. 4. (Miss. Code Ann. § 29-1-73):
    - i. Original owner, his heirs, and executors or administrators;
    - ii. The mortgagee of the land at the time that the title matures in the State;
    - iii. Board of drainage commissioners of any drainage district in the purchase of lands situated in such drainage district; and
    - iv. The United States government under the provisions of laws authorizing the sale of such lands.

Source: *Miss. Code Ann.* §§ 29-1-37, 73 (Rev. 2007).

*Rule 1.6 The Patent Process.*

- A. Applications to purchase, once accepted by the Secretary of State as complete, shall remain on file at least thirty (30) days before same are finally approved or disapproved (Waiting Period). *Miss. Code Ann.* (1972) § 29-1-37.
- B. During the thirty (30) day waiting period, the Secretary of State shall ascertain the current fair market value of the Parcel, using one or both of the following methods:
  - a. the Secretary of State shall request the county tax assessor to certify in writing the current fair market value of the Parcel and any improvements thereon, to the best of his information and belief, and/or
  - b. the Secretary of State may obtain an appraisal report of the real estate from a real estate appraiser chosen by the Secretary of State. The Secretary of State, in selecting a real estate appraiser, shall give preference to residents of the county in which the property is situated.
- C. After a Parcel is certified to the State, the Secretary of State will send by first class U. S. Mail a notification to the original assessed owner at his address as shown on the List of Land Certified to the State by the Chancery Clerk. The notification will include the parcel number and property description as shown on said List of Land Certified to the State and will state in substance that (1) the Parcel has forfeited to the State of Mississippi, (2) the property can be purchase from the State, (3) the address, telephone number and e-mail for contacting the Office of the Secretary of State to arrange for purchase of the Parcel, and (4) the failure to contact the Office of the Secretary of State within fifteen (15) days may result in the property being sold to another applicant.
- D. If an application to purchase is received from the original assessed owner, his heirs, executors or administrators, or the mortgagee, and is found to be valid, that applicant takes priority subject to the provision of Rule 1.6 H.
- E. Subject to the right of a governmental entity requesting a transfer under Rule 1.4 and the right of the original assessed owner, his heirs, executors or administrators, or the mortgagee under Rule 1.6 D, the application of an owner of property adjoining a tax forfeited Parcel (Adjoining Owner) shall be given priority for the purchase of the tax forfeited Parcel subject to the provisions of Rule 1.6 H. If more than one Adjoining Owner applies for the purchase of a tax forfeited Parcel, then priority among Adjoining Owners shall be accorded to the Adjoining Owner offering the highest purchase price for

the Parcel. The priority of the Adjoining owner is contingent on his filing a completed application before the Secretary extends an offer to sell to another applicant. It is responsibility of any Adjoining owner to identify and apply for a Parcel to be accorded this priority. The Secretary of State is under no obligation to give notice to any Adjoining Owner prior to selling a Parcel.

- F. If no such application to purchase a Parcel as described in Sections D and E immediately preceding or a transfer request in Rule 1.4 is received by the Secretary of State, the priority for all other applicants will be determined by the order in which completed applications are received by the Secretary of State.
- G. The Parcel shall first be offered to the applicant having the highest priority under these Rules. The Sales Price of a Parcel purchased on application shall be determined, using the fair market value of the Parcel as established pursuant to Rule 1.6 B and the criteria set forth for TIERS I, II and III below. An applicant which is the original assessed owner, his heirs, executors, administrators, or the mortgagee shall be offered the Parcel at the Sales Price derived under TIER I, II and III, below. Any other applicant shall be offered the Parcel at the greater of the Sales Price derived under TIER I, II and III below, or at the highest price offered in any application for the Parcel on file at the time the offer is extended.
  - a. TIER I criteria shall be applied for all applications received within three (3) years from and after the expiration of the right of redemption from the county tax sale (date Matured to the State) and may be applied at any time thereafter in the sole discretion of the Secretary of State. The TIER I Sales Price is
    - i. for an applicant which is the original assessed owner, his heirs, executors or administrators, or holders of a mortgage interest in the Parcel—  
twenty-five percent (25%) of the fair market value as determined under Rule 1.6 B.
    - ii. for an applicant which is the Adjoining Owner—  
twenty-five percent (25%) of the fair market value as determined under Rule 1.6 B.
    - iii. for all other purchasers—  
fifty percent (50%) of the fair market value as determined under Rule 1.6 B.
    - iv. The following additional amounts may be added to the Sales Price derived under TIER I:
      - 1. any amounts allowed under Section 29-1-145<sup>1</sup> of the *Miss. Code Ann. (1972)* due or paid by the Secretary of State, and
      - 2. any special drainage district assessment or special municipal benefit assessment secured by a lien on the Parcel and which was not abated or cancelled by the tax sale. *Miss. Code Ann. (1972) §29-1-97*

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<sup>1</sup> § 29-1-145. **State reimbursement of county or municipality for maintenance costs of land to be sold for unpaid taxes.** The chancery clerk or municipal clerk shall report to the Secretary of State any reasonable costs incurred by the county or municipality in maintaining unredeemed lands sold for taxes while those lands remain unsold. \* \* \* In no event shall the maintenance costs allowed the county or municipality exceed the market value of the lands or the purchase money received from the sale of those lands.

- v. Where the Parcel is Blighted, the Secretary of State may allow credit (Credit Allowance) for all or a part of the cost, cleanup, repair or remediation against the Sales Price of the Parcel derived under TIER I. For purposes of this Rule, Blighted shall mean land, improvements or personal property situated thereon, which are in such derelict and dilapidated condition constituting a significant environmental, health or safety hazard such that the cost or cleanup, repair and remediation represent a significant percentage of the fair market value of the Parcel. By way of example, but not by limitation, credit may be given for demolition and disposal of dilapidated structures, removal of rubbish such as appliances and tires, and removal of regulated environmental hazards. Credit will not be allowed for mowing of grass, pruning of vegetation or removal of litter.
  - 1. No Credit Allowance shall be given against purchase price unless the purchaser and Secretary of State have entered an agreement in advance and in writing.
  - 2. The agreement for Credit Allowance shall, at a minimum, set forth a detailed scope of work, the time frame for completion of the work, the amount of the Credit Allowance, and the method for final approval and acceptance of the work by the Secretary of State.
  - 3. Said agreement shall provide that failure to complete the agreed scope of work within the time allowed shall result in the termination of the agreement and cancellation of the sale of the Parcel, and may contain such other terms and conditions as the Secretary of State deems advisable.
- vi. In no event, shall the Sales Price derived in TIER I be less than the Sales Price derived under TIER II.
- b. TIER II criteria will be applied for applications received more than three (3) years after the Parcel Matured to the State unless the Secretary of State in his sole discretion determines that TIER I criteria should be applied. The TIER II Sales Price is
  - For all purchasers—
    - ten percent (10%) of the fair market value as determined under Rule 1.6 B
    - plus—
      - i. all reimbursable taxes and fees pursuant to Section 29-1-93 and Section 29-1-95 of the *Miss. Code Ann. (1972)*, (Reimbursable taxes include four (4) years of back taxes. Reimbursable fees include Chancery Clerk and Sheriff fees. Fees are not reimbursed on any Parcel sold by the Secretary of State more than ten (10) years of after the date the Parcel Matured to the State.),
      - ii. any maintenance costs for the Parcel, paid under Section 29-1-145 of the *Miss. Code Ann. (1972)*, and



- iii. any special drainage district assessment or special municipal benefit assessment secured by a lien on the Parcel and which was not abated or cancelled by the tax sale. *Miss. Code Ann. (1972) §29-1-97.*
  - c. TIER III criteria may in the sole discretion of the Secretary of State be applied for applications received more than Six (6) years after the Parcel Matured to the State.
    - i. In the event that the Secretary of State determines that the a Parcel cannot be sold for the price established in TIER II, then the Secretary of State may sell and dispose of such Parcel for any consideration he may deem reasonable, irrespective of the amount of taxes for which same was sold. However, in no event, shall the Sales Price of a Parcel be less than the amount that the Secretary of State has paid as maintenance costs in Section 29-1-145 of *Miss. Code Ann. (1972).*
- H. A written offer to sell at the price derived under Rule 1.6 G shall be forwarded to the applicant having the highest priority under these Rules, with instructions to remit payment in full within fifteen (15) calendar days of said offer. Unless an extension of time is granted under Rule 1.6 H a, failure to reply and remit payment within fifteen (15) calendar days shall result in the applicant's loss of priority under Rule 1.6 D E & F and his application will be accorded the lowest priority under Rule 1.6 F. Failure to reply or remit payment within thirty (30) calendar days shall result in the application being rejected and the Secretary of State will be under no obligation to the applicant.
  - a. An extension of time for payment of the Sales Price may be granted in the sole discretion of the Secretary of State.
  - b. Payment of the Sales Price shall be made in full by certified check or money order delivered within the time provided in Rule 1.6 H to the Office of the Secretary of State at 125 South Congress Street, Jackson, Mississippi 39201-3300 or by U. S. Mail to Post Office Box 136, Jackson, Mississippi 39205.
  - c. If an application is canceled for failure to reply or to remit the Sales Price, applicant may re-file, but no more than three (3) times. Subsequent applications shall not qualify for priority pursuant to Rule 1.6 D and E.
  - d. If for any reason, an applicant fails to reply or refuses to pay to the Secretary of State, within the time provided in Rule 1.6 H, or any extension thereof under Rule 1.6 H a, the Sales Price for a Parcel, his application will be canceled, and, the Parcel will be then be offered to other applicants based on established priorities and in the order in which applications were received.

Source: *Miss. Code Ann. (1972) §§29-1-5, -33, -35, -37, -51, -57, -93, 95, -97 and -145.*

*Rule 1.7 Issuing the Patent.*

- A. The property description contained in the application shall be compared with the description in the appropriate County Certificate Book and County Sales Book to verify they are precisely identical.

- B. The patent shall be prepared completely and accurately and then signed by the Secretary of State and forwarded to the Governor for his approval and signature.
- C. Special patents must also be signed by the Attorney General.
- D. The patent shall be recorded in the County Certificate Book and the County Sales Book.
- E. Notification of Tax Assessor and Chancery Clerk
  - a. The Secretary of State shall forward a letter to the chancery clerk which contains the following information:
    - i. The description of the property;
    - ii. The date of the patent;
    - iii. The name of the person or entity to whom the patent was issued; and
    - iv. The amount paid for the property, if any. Miss. Code Ann. § 29-1-83.
  - b. A copy of the aforementioned letter, together with a copy of the patent, shall be forwarded to the tax assessor within thirty (30) days of the date of the patent.
- F. The original patent shall be forwarded to the successful applicant (now the patentee) with the following instructions: Current law requires that you file this patent for recording with the chancery clerk of the county in which this land is located within six (6) months from the date of issuance or this patent will be null and void and of no effect. MISS. CODE ANN. § 29-1-81(1972). Purchase money will not be refunded to you if you fail to file this patent within six (6) months, and the property will be subject to re-sale by the State. [Final adoption of proposed Rule VII.F. pending.]
- G. Unsuccessful applicants for the property, if any, shall be notified of the cancellation of their respective applications, and those applications shall be withdrawn, canceled, and filed in the canceled applications file. Unsuccessful applications shall be retained three (3) years, after which they may be destroyed.
- H. The patent, together with the successful application, transfer request, or highest bid shall be filed numerically in the permanent patent file.

Source: *Miss. Code Ann.* §§ 29-1-25, 81 (Rev. 2007).

*Rule 1.8 Special Patents.*

- A. The Secretary of State shall make reasonable efforts to locate and notify persons eligible for a special patent to land for which an application for patent has been received.
- B. The Secretary shall notify the applicant if he appears to be eligible for a special patent.
- C. Persons eligible for a special patent include:
  - 1. The original owner, his heirs, executors, or administrators;
  - 2. Mortgagee at the time title matured in the state.
- D. An applicant eligible for a special patent shall be advised of the following required documentation and procedures:
  - 1. To qualify for issuance of a special patent, the applicant must show the nonpayment of taxes was due to a "mistake, oversight, or unintentional default." Miss. Code Ann. § 29-1-25.
  - 2. The applicant must submit to the Secretary of State an affidavit stating:
    - a. That the applicant is claiming the property, and
    - b. That the failure to pay taxes was due to some mistake, oversight or unintentional default, and stating with

specificity the nature of such mistake, oversight or unintentional default.

3. The affidavit must be accompanied by a certified letter from the chancery clerk attesting that all taxes have been paid for the ten (10) year period preceding the current year, excepting the one year in which default resulted in forfeit.
4. The application shall be forwarded to the Attorney General who shall determine whether the applicant is eligible for a special patent.
5. A successful applicant shall be notified in writing of the favorable decision and required to pay the special patent fee of \$25.00. The application procedure shall thereafter proceed as set forth at Rules VI and VII above.
6. An unsuccessful applicant shall be notified in writing of the Attorney General's decision and reasons for same. The application procedure shall thereafter proceed as set forth at Rules VI & VII above.

Source: *Miss. Code Ann.* § 29-1-25 (Rev. 2007).

*Rule 1.9 Rescission of Fraudulent or Erroneous Land Purchases and Cancellation of Related Patents.*

- A. A request for cancellation of patent shall be made in writing by the patentee and shall be forwarded to the Secretary of State together with the original patent and a cancellation fee of fifty (\$50.00) dollars, payable by certified check or money order.
- B. The Secretary of State shall investigate the case and report to the Attorney General.
- C. If the Attorney General verifies that the lands patented did not belong to the state, the Secretary of State shall cancel the patent and refund the amount paid to and retained by the state for the patent.
- D. The Secretary of State shall notify the chancery clerk, the tax assessor and the patentee of the cancellation of patent.
- E. The refund to the patentee shall be issued by the Secretary of State (Finance Office). (Refunds are barred after six (6) years.)

Source: *Miss. Code Ann.* §§ 29-1-85, 87 (Rev. 2007).

*Rule 1.10 Duplicate Patent.*

- A. When any patent made by the Secretary of State shall be lost or destroyed, upon the application of the person interested, the Secretary of State may make a duplicate patent to the same person to whom the original patent was made. A request for a duplicate patent shall be made in writing and shall be accompanied by a fee of twenty-five (\$25.00) dollars, payable in certified funds or by money order.
- B. The duplicate patent shall be marked "Duplicate," and shall have the same effect as the original patent. The date of the duplicate patent shall be the same as the date of the original patent.

- C. Any patent not filed for recording with the chancery clerk within six (6) months from the date of issuance shall be null and void and of no effect. MISS. CODE ANN. § 29-1-81(1972). The Secretary of State will not issue a duplicate patent unless the written request is received in his office less than six (6) months after the date of the original patent.

Source: *Miss. Code Ann.* §§ 29-1-81, 111 (Rev. 2007).

*Rule 1.11 Applications Made Prior to 1980.* All applications to purchase tax-forfeited lands dated December 31, 1979 or before, and still appearing on the record books of the division as outstanding and unprocessed, shall be canceled immediately without further notice to or correspondence with the applicant.

Should the applicant at a later date wish to purchase the tax-forfeited lands, he will be required to complete a new application and conform to all existing processing procedures. He will be given priority above all applicants except owner/heirs other state agencies, counties, municipalities or political subdivisions of the state.

Source: *Miss. Code Ann.* § 29-1-111 (Rev. 2007).

**Part 11: Chapter 2: Tidelands**

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*Rule 2.1 Intent.*

The intent and purpose of these rules is:

- A. To aid in fulfilling the public trust responsibilities of the State of Mississippi for the administration, control and leasing of public trust tidelands;
- B. To ensure maximum benefit of public trust tidelands for all citizens of the State of Mississippi;
- C. To ensure public access to public trust tidelands;
- D. To administer, manage, protect, enhance and restore public trust tidelands so that the public purposes to which they are devoted can be accomplished. These purposes include, but are not limited to, navigation; transportation; commerce; industry; fishing; bathing, swimming and other recreational activities; development of mineral resources; environmental protection and preservation; the enhancement of aquatic, avarian and marine life; and sea agriculture;
- E. To ensure that all public and private occupants of public trust tidelands who are not statutorily exempt provide adequate compensation for the privilege of such occupancy.

Source: *Miss. Code Ann. § 29-15-3 (Rev. 2007).*

*Rule 2.2 Definitions.*

As used in these rules, the following terms shall have the definitions indicated.

- A. Activity: (i) the dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any public trust tideland; (ii) the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind of garbage, either directly or indirectly, on or in any public trust tideland; (iii) killing or materially damaging any flora or fauna on or in any public trust tideland; (iv) the erection on public trust tideland of structures which materially affect the ebb and flow of the tide; (v) the erection of any structure or structures on suitable sites for water dependent industry; (vi) any exclusive use of the public trust tidelands by anyone for some benefit; (vii) any use that alters the character and, therefore, the value of the public trust tidelands; (viii) any commercial use of the public trust tidelands (excluding commercial fishery operations); (ix) any construction of buildings or wharves, docks, or permanent or semi-permanent structures; and any exclusive economic use of riparian/littoral public trust tidelands by the upland property owner not specifically defined or "granted" as riparian/littoral "rights" pursuant to M.C.A. § 49-27-7(e).
- B. Applicant: Any person making application for a lease of public trust tidelands.
- C. Aquaculture: The rearing of any plant or animal during all or any part of its life cycle in an aquatic environment.
- D. Assignee: A person to whom a transfer or assignment of some interest in property is made.
- E. BMR: Mississippi Department of Wildlife, Fisheries & Parks, Bureau of Marine Resources.

- F. Claimant: Any person who asserts an ownership interest in public trust tidelands adverse to the State of Mississippi as Trustee.
- G. Coastal Wetlands Law: Mississippi Coastal Wetlands Protection Law, M.C.A. § 49-27-1 et seq., effective from and after July 1, 1973.
- H. Dry land: Land which is above the mean or ordinary high tide line; fast lands or uplands.
- I. Easement: A nonpossessory interest in public trust tidelands created by a grant or agreement which confers the limited right, liberty and privilege to use said public trust tidelands for a specific purpose and during a specific time.
- J. Ecology: Living things in relation to each other and to their environment.
- K. Lease: An interest in public trust tidelands designated by a contract creating a landlord-tenant relationship between the State of Mississippi as landlord or lessor and the applicant as tenant or lessee whereby the Secretary of State, with the approval of the Governor, grants and transfers to the applicant the use, possession and control of specified public trust tidelands, for a determinate number of years, with conditions attached, at a specified rental.
- L. Leaseholder: Person who has an estate in public trust tidelands from the State of Mississippi through an instrument of lease executed with the Secretary of State; lessee.
- M. Leasehold interest: The interest which the leaseholder has in the value of the lease itself.
- N. Leasehold value: The value of the leasehold interest.
- O. Littoral: Pertaining to property abutting an ocean, sea or lake rather than a river or stream (see riparian).
- P. Market value: The most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.
- Q. Mean High Water: The arithmetic mean of all the high waters occurring in a particular nineteen-year tidal epoch period or for a shorter period of time after corrections are applied to the short term observations to reduce these values to the equivalent nineteen-year value.
- R. Net adverse impact: Any degree of overall reduction or loss of public trust tidelands and/or tidelands functions after mitigation is completed.
- S. Occupancy: Any act of possession.
- T. Person: A natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality, or political subdivision, or any other corporation of any character whatsoever.
- U. Public access: Direct and free access by members of the general public to the lands and waters and their waterbottoms which constitute the public trust tidelands, or the portion thereof which is the subject of a lease.
- V. Reclamation: The process of restoring land which has become submerged or artificially altered fast land to its original botanic and/or geological condition.
- W. Riparian: Pertaining to property abutting a river or stream rather than the ocean or sea (see littoral).

- X. Submerged land or submerged waterbottoms: Lands which remain covered by waters, where the tides ebb and flow, at ordinary low tides.
- Y. Tidelands: Those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides.
- Z. Upland: Land which is above the mean high tide line; dry land or fast land.
- AA. Use: To serve for any purpose of an occupant or lessee.

Source: *Miss. Code Ann.* §§ 29-15-1 (Rev. 2007).

*Rule 2.3 Scope and Effective Date.*

- A. These rules apply only to the administrative control and leasing responsibilities of the Secretary of State regarding public trust tidelands. They do not apply to activities under the respective jurisdictions of the Department of Environmental Quality and/or the Department of Wildlife, Fisheries & Parks. These rules are considered cumulative; a person desiring a lease or affected by an administrative decision pursuant to these rules should consult other applicable federal, state and local laws and/or rules and regulations.
- B. These rules are prospective in their application and shall not affect previously issued easements or leases concerning public trust tidelands. Fees and lease fees required under existing leases are not subject to the lease fee calculations set forth in these rules until the expiration(s), termination(s) and/or cancellation(s) of those leases, unless otherwise set forth in the existing lease contract.

Source: *Miss. Code Ann.* §§ 29-1-107 (Rev. 2007).

*Rule 2.4 Management Policies and Evaluation Criteria.*  
(Amended effective October 5, 2007)

Evaluations of proposed activities on public trust tidelands, and applications to approve, approve with modifications or conditions, or deny applications to lease public trust tidelands will be based on the provisions of the Public Trust Tidelands Act (MCA §29-15-1 through 23, MCA §29-1-107), and the following management policies and evaluation criteria.

- A. Management
  - (1) All activities must comply with the public policy of this state which favors the preservation of the natural state of the public trust tidelands and their ecosystems and prevents the despoliation and destruction of them, except where a specific alteration of specific public trust tidelands would serve a higher public interest in compliance with the public purposes of the public trust in which such tidelands are held.
  - (2) In deciding whether to lease for a proposed commercial or industrial project, the Secretary of State will favor the location of such projects in existing, developed commercial or industrial sites in urban settings over their location in rural, residential and/or environmentally sensitive sites.
  - (3) In order to protect public beaches and public access to public beaches and adjoining tidelands, the Secretary of State will not grant a lease for any

commercial or industrial activity adjacent to (south or waterward of) public beach areas or areas used by the public for swimming, bathing or fishing, where there exists a public seawall but no beach. Public Access to Public Trust Tidelands will be a high priority in the consideration of any new lease request.

- (4) The ability of Keesler Air Force Base to conduct its mission is a vital public interest to the State of Mississippi and the Mississippi Gulf Coast. It is the policy of the Secretary of State to protect the base from any action that could diminish its ability to conduct its mission. No lease will be granted if associated structures and/or activities would encroach on the designated air space or threaten the viability of the base. The Secretary of State may consult with military, federal, state and local officials, as appropriate, to make that determination.
- (5) In order to protect the integrity of the ecosystems of the Mississippi Coastal Preserves, the Secretary of State will not favor a lease for any commercial or industrial activity in any of the Mississippi Coastal Preserves areas as depicted by that certain map of estuarine preserves delineated by the Department of Marine Resources in cooperation with the Mississippi Natural Heritage Program in August, 1994 as found at [http://www.dmr.state.ms.us/Coastal-Ecology/GEMS/Gems-Images/Gems\\_map1.gif](http://www.dmr.state.ms.us/Coastal-Ecology/GEMS/Gems-Images/Gems_map1.gif).
- (6) Upon a showing of extraordinary circumstances or extraordinary benefit to the public in accordance with MCA § 29-15-1, et seq., the Secretary of State, as trustee of the public trust tidelands, may determine that a lease of specific public trust tidelands serves a higher public interest in compliance with the public purposes of the public trust than would the application of the policies set forth in Rule 4.A.1 or 5.
- (7) Existing structures or activities which, if proposed as new activities, would require a tidelands lease shall be brought under lease in accordance with these rules.

B. Littoral/Riparian Rights

- (1) The state's responsibilities to manage the public trust tidelands extend to littoral and riparian property owners who have common law and statutory rights, chiefly the right of access, as well as to the other members of the public. The Secretary of State recognizes the special position of the upland owner and, except as set forth in part (2) below, will not lease in the littoral or riparian area to parties other than the riparian or littoral owner without the riparian or littoral owner's permission. Evidence of permission may take the form of a lease, assignment, or other written form satisfactory to the Secretary of State.
- (2) Pursuant to MCA §29-1-107(4)(b)(ii), in the event the holder of a lease of public trust tidelands who is a person possessing a license under the Mississippi Gaming Control Act does not elect to either remain bound by the original term of the lease or to convert the lease to a thirty-year term, the Secretary of State may lease the state public trust tidelands that are subject of the lease to any other person or entity.



- C. Leasing in Littoral and Riparian Areas
- (1) A public trust tidelands lease shall not be required for structures built in the riparian or littoral area pursuant to General Permits MS-GP-02 or MS-GP-04 provided that the combined area of structures (excluding access piers) and berthing areas does not exceed 1,000 square feet and so long as said structures are not used for, or in association with, commercial purposes. (See Mississippi General Permits for Minor Structures and Activities within the Coastal Counties of the State of Mississippi, Located within the Regulatory Boundaries of the Mobile District of the U.S. Army Corps of Engineers, issued Jan.5 2007 and found at [http://www.sam.usace.army.mil/RD/reg/ms\\_gen.pdf](http://www.sam.usace.army.mil/RD/reg/ms_gen.pdf).)
  - (2) Leases are required of commercial and industrial applicants and for commercial and industrial use of littoral and riparian rights.
  - (3) Nothing in these rules, however, shall be interpreted to preclude the State from imposing an additional public use on a littoral/riparian area provided such use serves a higher public purpose and has been approved by the Legislature.

Source: *Miss. Code Ann.* §§ 29-1-107; 29-15-1, 5; 49-27-3, 59 (Rev. 2007).

*Rule 2.5 Lease Procedure.*

(Sections A. and C. amended effective March 12, 2001)

- A. Any person who occupies public trust tidelands and whose activities thereon are not eligible for a lease exemption pursuant to Rule 4.C.(1), or statutorily exempt, must obtain a lease from the State of Mississippi.
- B. Leases are divided into two categories: Standard leases and Aquaculture leases. Submerged lands, tidelands and fast lands ("reclaimed" or filled tidelands) are leased under a Standard Lease. Aquaculture activities require an Aquaculture Lease.
- C. Standard Lease
  - (1) Applications for standard leases shall include the following information:
    - a. Name, address, telephone number and social security number of applicant and applicant's authorized agent, if applicable.
    - b. Location of property to be leased including county, section, township and range; affected waterbody; vicinity map, preferably a reproduction of the appropriate portion of the current United States Geological Survey quadrangle map.
    - c. Satisfactory evidence of title in applicant's upland riparian property or assignment to applicant from owner of upland riparian property of riparian rights together with satisfactory evidence of title of assignor's upland riparian property, if parcel sought to be leased abuts on property which is outside the public trust.
    - d. (1) Two prints of a survey prepared, signed and sealed by a person properly registered as a land surveyor by the Mississippi State

Board of Registration for Professional Engineers and Land Surveyors with the following requirements:

- (i) Utilizing an appropriate scale on paper of a size adequate to provide sufficient clarity and detail;
  - (ii) Showing the line of mean high tide, if any;
  - (iii) Showing water depths;
  - (iv) Showing the location of shoreline and submerged vegetation, if any;
  - (v) Showing the location of any proposed structures and all existing structures, if any;
  - (vi) Showing the applicant's or assignor's upland parcel property lines, if property to be leased abuts on property which is outside the public trust;
  - (vii) Showing the primary navigation channels or direction to the center of the affected waterbody; and
  - (viii) Including a legal description for area to be leased.
- e. A non-refundable application processing fee in the amount of \$150.00.
- (2) Terms and conditions of a standard lease in addition to those set forth above, shall include, but not be limited to:
- a. Except as provided in Rule 5.C.(2)c.(iii)(c) of these rules, the term of the lease, which shall not exceed the statutory maximum (currently 40 years). An option to renew for an additional period not to exceed 25 years may be granted.
  - b. A provision granting the lessee a prior right, exclusive of all other persons, to re-lease as may be agreed upon between the lessee and the Secretary.
  - c. The amount of the annual rent which shall be based on the following:
    - (i) Leases to pre-1973 occupants of public trust tidelands (Category 1 Standard Lease) will require an annual rental payment which is equal to the ad valorem taxes on the value of the land, excluding the value of any privately owned improvements thereon, at the time the lease is executed.
      - (a) If the lessee expands his use by more than 50%, then he will automatically and immediately become a Category 2 Standard Lease lessee and will be required to make annual rental payments according to Category 2 Standard Lease computation.
      - (b) Category 1 Standard Leases are freely transferable for a period of 15 years or until July 1, 2003, whichever period is less. After the expiration of said lesser period, the lease

- becomes a Category 2 Standard Lease and the lessee must make annual rental payments according to that calculation.
- (c) In the event that the public trust tidelands to be leased, or any portion of them, are not on the tax rolls, the lessee must make annual rental payments for such portion according to Category 2 Standard Lease rental calculation.
  - (d) Category 1 Standard Leases shall be effective December 31 of the year in which they are negotiated; ad valorem property taxes must be paid for that year to the appropriate taxing authority.
- (ii) Leases to post-1973 occupants of public trust tidelands will require an annual rental payment which shall be negotiated but which in no event shall be less than 3.3% of market value for fast lands and 7¢ per square foot for submerged lands or tidelands.
- (a) The market value of fast lands is the appraised value of the property as shown on the tax rolls of the county or other taxing authority. Tidelands which are fast lands and which do not appear on the tax rolls will be appraised and added to the county's tax roll by the county tax assessor.
  - (b) If the tax roll shows the parcel as a combination of public trust tidelands and privately owned land, market value of the public trust tidelands is that percentage of the appraised value of the parcel as a whole that equals the ratio of public trust acreage to the acreage of the parcel as a whole.
- (iii) Leases for structures built prior to March 31, 1989, by residential condominium associations shall be exempt from the payment of annual rent provided the following conditions are met.
- (a) The structure or facility shall be used only for non-commercial or residential boating, bathing or fishing in association with the condominium's non-commercial or residential activities, and shall be limited to uses for which the structures or facility was originally built.
  - (b) If repaired, rebuilt or improved, the structures or facility may be no larger than that which existed prior to March 31, 1989.
  - (c) Notwithstanding the provisions of Rule 5.C (2) a., the term of the lease shall not exceed 15 years, and

an option to renew for an additional period not to exceed 10 years may be granted.

- (d) Notwithstanding the provisions of Rule 5.C (2) h., sublease and assignment shall be prohibited.
  - d. A provision for review and rent adjustments at each five year anniversary, based upon updated county or municipal tax rolls for Category 1 Standard Leases, and based upon the All Urban Consumer Price Index - All Items (CPI), or an appraisal paid for by the lessee, whichever would indicate the greater increase for Category 2 Standard Leases. Said appraisal must deduct the value of any improvements belonging to the lessee which substantially enhance the value of the property.
  - e. A casualty clause providing that in the event of destruction by natural causes of improvements on the leased premises, the lessee may opt to terminate the lease agreement, provided he leaves the property in a condition equal to or better than its condition at the inception of the lease.
  - f. A provision requiring the lessee to maintain a policy of liability insurance and to indemnify and hold harmless the lessor from and against all claims for damages or injuries, no matter how caused.
  - g. A provision that in the event of the death of the lessee, the lease shall descend to his heirs at law who may assume the lease, its rights, duties and obligations.
  - h. Except as provided in Rule 5.C.(2)c.(iii)(d) of these rules, the right to assignment or sublease, upon written approval of the Secretary of State, which approval shall not arbitrarily be withheld. (Cf. Rule 5.C.(2)c.(i)(b).
  - i. A provision guaranteeing public access during the term of the lease if public access is afforded at the time the lease is contracted or if the lease is for a new activity, unless the lessee is a qualified industrial applicant. Industrial applicants who are unable to afford meaningful public access to the premises may seek a waiver of this requirement. However, leases which fail to provide such public access are to be discouraged.
- D. Aquaculture Lease
- (1) Applications for aquaculture leases shall include the following:
    - a. Name, address, telephone number and social security number of applicant;
    - b. Legal description and acreage of parcel sought to be leased;
    - c. Two prints of a survey of the parcel sought to be leased prepared, signed and sealed by a person properly registered by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors or an agent of the federal government acceptable to the Secretary of State;
    - d. Description of the aquaculture activities to be conducted, including whether such activities are to be experimental or

- commercial, and an assessment of the current capability of the applicant to conduct such activities;
  - e. Statement setting forth the reasons such a lease would be in the public interest;
  - f. A list of the names and addresses of all claimants of littoral or riparian rights in or adjacent to the parcel to be leased, and all lessees of adjacent or contiguous properties;
  - g. Statement of the impact of the proposed use of the public trust tidelands sought to be leased on the ecology of the area;
  - h. A \$150.00 non-refundable application processing fee.
- (2) Each aquaculture lease shall include the following terms and provisions, but not in limitation thereof:
- a. The term of the lease which shall not exceed the statutory term, with an option to renew.
  - b. The amount of the annual rent which shall be negotiated but which in no event shall be less than \$25.00 per acre to be paid at the time of the execution of the lease and on each successive anniversary date thereof.
  - c. A provision for payment of the variable portion of lease fee, if any, at the end of lessee's fiscal year.
  - d. The disposition to be made of all improvements and animal and plant life upon the termination or cancellation of the lease.
  - e. The right to assignment or sublease, upon approval of the Secretary of State.
  - f. Casualty clause providing that in the event of destruction by natural causes of the aquaculture venture on the leased premises, the lessee may opt to terminate the lease agreement, provided he leaves the property in a condition acceptable to the lessor, or in its natural state.
  - g. A clause assuring that lessee will maintain adequate casualty insurance, the proceeds of which will be used for salvage operations in the event of catastrophic destruction.
- (3) The parcel leased shall be identified, well marked and shall have, except when it will interfere with the development of the animal and plant life being cultivated by the lessee, reasonable public access for boating, swimming and fishing. All limitations on the public use of the parcel leased as set forth in the lease shall be clearly posted in conspicuous places by the lessee. Each parcel leased shall be marked in compliance with the rules and regulations of the U.S. Coast Guard and the U.S. Army Corps of Engineers.

Source: *Miss. Code Ann.* §§ 29-1-107, 29-15-7, 11, 49-27-57, 59 (Rev. 2007).