Senate Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 68

SENATE BILL 1228

AN ACT

AMENDING TITLE 37, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 37-287.01; AMENDING SECTIONS 37-288 AND 37-289, ARIZONA REVISED STATUTES; RELATING TO STATE TRUST LAND LEASES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 37, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 37-287.01, to read:

37-287.01. Default on long-term lease; forfeiture and cancellation of lease; extension of time for payments

A. IF A LESSEE OF A LEASE IN EXCESS OF TEN YEARS DEFAULTS IN A PAYMENT OF RENT, AS PROVIDED IN THE LEASE, OR FAILS TO COMPLY WITH A CONDITION, COVENANT OR REQUIREMENT OF THE LEASE, THE LEASE AND THE LESSEE'S RIGHTS UNDER THE LEASE ARE SUBJECT TO FORFEITURE AND CANCELLATION AS PROVIDED BY THIS SECTION AND SECTION 37-289. WITHIN SIXTY DAYS AFTER DEFAULT OR FAILURE THE DEPARTMENT SHALL NOTIFY THE LESSEE OF THE DEFAULT OR FAILURE BY CERTIFIED MAIL TO THE LESSEE'S LAST KNOWN ADDRESS OF RECORD WITH THE DEPARTMENT.

B. ON THE WRITTEN REQUEST OF A LESSEE OF A LEASE IN EXCESS OF TEN YEARS, THE COMMISSIONER MAY EXTEND THE TIME FOR PAYMENT OF THE DELINQUENT AMOUNT FOR A PERIOD OF NOT MORE THAN FIVE YEARS ON TERMS THAT THE COMMISSIONER CONSIDERS TO BE APPROPRIATE AS FOLLOWS:

1. THE COMMISSIONER MAY GRANT AN EXTENSION IN RESPONSE TO A REQUEST MADE WITHIN SIXTY DAYS BEFORE THE DUE DATE OF THE PAYMENT. AN EXTENSION UNDER THIS PARAGRAPH BEGINS ON THE DATE THE PAYMENT WAS DUE AND CONTINUES FOR THE PERIOD STATED IN A WRITTEN NOTICE TO THE LESSEE.

2. THE COMMISSIONER MAY GRANT AN EXTENSION IN RESPONSE TO A REQUEST MADE WITHIN SIXTY DAYS AFTER THE DATE OF THE DEFAULT OR FAILURE NOTICE PROVIDED IN SUBSECTION A OF THIS SECTION. AN EXTENSION UNDER THIS PARAGRAPH BEGINS ON THE DATE OF THE NOTICE AND CONTINUES FOR THE PERIOD STATED IN A WRITTEN NOTICE TO THE LESSEE.

3. IF THE DEPARTMENT DOES NOT ACT ON A REQUEST FOR EXTENSION WITHIN THIRTY DAYS AFTER RECEIVING THE REQUEST, THE REQUEST IS CONSIDERED TO BE DENIED. IF THE LESSEE FAILS DURING THE PERIOD OF THE EXTENSION TO COMPLETE ALL DELINQUENT PAYMENTS OF RENT, PENALTY AND INTEREST, THE LEASE IS SUBJECT TO DEFAULT AND CANCELLATION AS PROVIDED BY THIS SECTION AND SECTION 37-289, EXCEPT THAT IF THE LAST DAY OF THE LAST PERIOD OF EXTENSION EXPIRES ON THE LAST DAY OF THE FIVE-YEAR PERIOD AND ALL DELINQUENT PAYMENTS HAVE NOT BEEN PAID BY THE LAST DAY OF THE FIVE-YEAR PERIOD, THE LEASE IS AUTOMATICALLY CANCELED ON THE LAST DAY OF THE FIVE-YEAR PERIOD AND SHALL BE SO NOTED ON THE RECORDS OF THE DEPARTMENT.

4. IF A PAYMENT OF RENT IS MADE AFTER THE DUE DATE, PAYMENTS MUST BE MADE ACCORDING TO THE EXTENSION GRANTED BY THE COMMISSIONER UNDER THIS SUBSECTION.

C. THERE SHALL BE ADDED TO THE DELINQUENT RENTAL A PENALTY AND DELINQUENT INTEREST. THE RATE OF INTEREST ON DELINQUENT RENT SHALL BE SET BY THE STATE TREASURER. THE PENALTY SHALL BE THE GREATER OF A MINIMUM PROCESSING COST AS DETERMINED BY THE COMMISSIONER OR FIVE PER CENT. THE DELINQUENT RENT, PENALTY AND INTEREST SHALL BE A LIEN ON THE IMPROVEMENTS, CROPS AND PROPERTY ON THE LAND.

Sec. 2. Section 37-288, Arizona Revised Statutes, is amended to read:

37-288. Default on short-term lease; forfeiture and cancellation of lease; extension of time for payment; penalty and interest on delinquent rental; automatic termination for arrearage

~~A. A lessee of state lands violating any condition of the lease shall be in default and shall forfeit the lease and the lessee's rights under the lease after cancellation pursuant to section 37-289.~~

A. IF A LESSEE OF A LEASE OF TEN YEARS OR LESS DEFAULTS IN A PAYMENT OF RENT, AS PROVIDED IN THE LEASE, OR FAILS TO COMPLY WITH A CONDITION, COVENANT OR REQUIREMENT OF THE LEASE, THE LEASE AND THE LESSEE'S RIGHTS UNDER THE LEASE ARE SUBJECT TO FORFEITURE AND CANCELLATION AS PROVIDED BY THIS SECTION AND SECTION 37-289.

B. If the lessee OF A LEASE OF TEN YEARS OR LESS fails to pay the rent when due, the department may extend the time for payment an additional period not to exceed ninety days. The department shall not extend the period for payment of rental more than three times in one lease year and in no event for more than two hundred seventy days.

C. There shall be added to the delinquent rental a penalty and delinquent interest. The ~~delinquent~~ RATE OF interest ON DELINQUENT RENT shall be set by the state treasurer ~~under section 37-247, subsection D~~. The penalty shall be the greater of a minimum processing cost as determined by the commissioner or five per cent. The delinquent rent, penalty and interest shall be a lien on the improvements, crops and property on the land.

D. If, on a lease of ten years or less, the annual rental at any time is one calendar year in arrears from the date the rental payment was due, the lease shall automatically terminate and the department shall proceed to cancel it on the records of the department.

Sec. 3. Section 37-289, Arizona Revised Statutes, is amended to read:

37-289. Procedure on cancellation of lease; notice, default, hearing and appeal

A. Before any lease is canceled, the commissioner shall take the following steps:

1. ~~Immediate~~ Notice of default shall be sent by certified mail to the lessee and to any parties who have registered with the department as mortgagees or other lienholders of the lessee's interest. The notice shall inform the lessee and ~~his~~ registered mortgagees and lienholders of the specific nature of any default and their right to cure any curable default.

2. FOR LEASES OF TEN YEARS OR LESS, the lessee and ~~his~~ registered mortgagees and lienholders have thirty days from receipt of notice of default in which to cure any default involving failure to pay rent, taxes or other assessments, and forty-five days from the receipt of notice to cure any other curable default.

3. FOR LEASES OF MORE THAN TEN YEARS, THE LESSEE AND REGISTERED MORTGAGEES AND LIENHOLDERS HAVE SIXTY DAYS FROM RECEIPT OF NOTICE OF DEFAULT IN WHICH TO CURE ANY CURABLE DEFAULT.

~~3.~~ 4. As a condition of curing a default, the commissioner may require the lessee and ~~his~~ registered mortgagees and lienholders to waive any right to cure future defaults of the same type. A waiver of the right to cure is valid only until the expiration of the current lease.

B. If the default is not cured within the applicable time period, the commissioner may make an order canceling the lease, and if it appears that the lease was procured through fraud, deceit or wilful misrepresentation, the improvements on the land shall be forfeited to the state. If the lease is canceled for any other reason, the lessee shall be permitted to remove ~~his~~ THE LESSEE'S improvements at any time within sixty days after the date of cancellation.

C. In the event of cancellation the commissioner shall make a formal order canceling the lease, and a copy of the order shall be mailed to the last known post office address of the lessee and ~~his~~ registered mortgagees and lienholders.

D. The lessee and ~~his~~ registered mortgagees or other lienholders may appeal a cancellation order pursuant to title 41, chapter 6, article 10. If no appeal is made within the prescribed time or if no notice is filed with the department pursuant to section 37-255, subsection C, the order shall become final and the lease shall be canceled on the records of the department.

APPROVED BY THE GOVERNOR APRIL 12, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2011.

Passed the House April 5, 2011,

by the following vote: 58 Ayes,

1 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 10, 2011,

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of April, 2011,

at 3:30 o'clock P. M.

Nicole Bendle

Secretary to the Governor

Approved this 12th day of

April, 2011,

at 9:38 o'clock P. M.

Jan K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12th day of April, 2011,

at 4:01 o'clock P M.

Ken Bennett

Secretary of State

S.B. 1228