

17 AAC 42.045(d) is amended to read:

(d) [THE DEPARTMENT MAY SEEK TO REQUIRE A] A person responsible for the contamination of airport property **is required** to remediate and return contaminated airport property to an environmentally acceptable condition to the satisfaction of any regulatory agency having jurisdiction. **All plans for cleanup and disposal activities shall be submitted in advance to the airport manager for review and approval and are subject to restrictions imposed by the airport.** [HOWEVER, ANY REGULATORY AGENCY APPROVAL OF A PROPOSED REMEDIATION PLAN THAT LIMITS THE FUTURE USE OF AIRPORT PROPERTY SHALL BE SUBJECT TO APPROVAL BY THE AIRPORT MANAGER BEFORE THE RESPONSIBLE PERSON MAY BEGIN REMEDIATION ACTIVITIES ON THE AIRPORT. A PERSON REMEDIATING CONTAMINATED AIRPORT PROPERTY MAY NOT UNREASONABLY INTERFERE WITH AIRPORT OPERATION OR DEVELOPMENT UNLESS THE MANAGER FIRST EXPRESSLY CONSENTS.]

(Eff. 1/14/2001, Register 157; am __/__/__, Register__)

Authority:	AS 02.15.020	AS 02.15.060	AS 02.15.090
	AS 02.15.220	AS 02.15.230	

17 AAC 42.225(b) is amended to read:

- (b) In setting or extending the term for a land lease, the airport manager shall consider
- (1) the applicant's actual or proposed development and use of the premises;
 - (2) sound airport planning and anticipated needs for security, safety, maintenance, and operation of the airport;
 - (3) future development needs of the airport;

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(4) applicable covenants running with the land and restrictions in the state's title to airport property;

(5) the amount of investment, purchase price, fair market value, useful life, or remaining useful life of permanent improvements documented in the application, as applicable;

(6) the applicant's plan for remediation of any environmental contamination if the applicant did not cause or materially contribute to the contamination; [AND]

(7) the proposed method and terms of financing the applicant's investment; **and**

(8) the best interest of the state.

(Eff. 1/14/2001, Register 157; am 2/10/2001, Register 157; am 1/17/2016, Register 217; am __/__/__, Register__)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090
AS 02.15.210

17 AAC 42.265(c)(3) is amended to read:

(c) A request for consent to an assignment for security purposes must be submitted to the airport manager in writing and must include

(1) the name, address, and telephone contact number for the proposed assignee;

(2) three originals of the executed assignment documents with notarized signatures of the assignor and proposed assignee; and

(3) [AT LEAST] one copy of any deed of trust, promissory note, or other document that is a part of the security assignment transaction.

17 AAC 42.265(d) is amended to read:

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(d) A security assignment document must include **provisions** [A PROVISION] stating that[,]

(1) if the security assignee takes possession or control of the [SUBJECT] lease, permit, or concession that is subject to the security assignment either directly or through a sub-tenant, by foreclosure or otherwise, under the security assignment, the security assignee accepts responsibility for all of the assignor's obligations under the lease, permit, or concession, including environmental liability and responsibility;

(2) the security assignee has an affirmative duty to notify the airport in writing upon the reconveyance or release of the security interest; and

(3) unless the security assignee participates in the management of the airport tenant as the term is defined in 42 U.S.C. 9601(20(F)) or as otherwise provided in the terms of the consent to assignment, the security assignee will have no environmental liability or responsibility for the period pre-dating the time when it took possession or control of the lease, permit or concession. The security assignee will also have no environmental liability or responsibility following a subsequent transfer of its entire interest in the lease, permit or concession unless, by its direct actions, negligence or failure to use due care, the security assignee either

(A) caused or contributed to a violation of any of the lease, permit or concession terms relating to the environment, environmental law or hazardous substances;

(B) violated either 17 AAC 42.045 or 17 AAC 42.050; or

(C) caused or contributed to actual or threatened financial damages to the airport relating to a security assignees breach of any environmental law. [, EXCEPT

THAT A SECURITY ASSIGNEE HAS NO AFFIRMATIVE DUTY OR OBLIGATION

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UNDER A LEASE UNLESS THE SECURITY ASSIGNEE TAKES POSSESSION OR
CONTROL OF THE LEASEHOLD.]

17 AAC 42.265(e) is amended to read:

(e) Exercise by a security assignee of a power of sale or further assignment under a security assignment is subject to the consent of the airport manager under 17 AAC 42.275 with respect to any purchaser or assignee and shall be conditioned upon the purchaser or assignee accepting responsibility for all of the **lessee's, permittee's, or concessionaire's** [ASSIGNOR'S] obligations under the lease, permit, or concession, including environmental liability and responsibility.

17 AAC 42.265(f) is amended to read:

(f) If a lease, permit, or concession conflicts with an assignment **for security purposes** of an interest in the lease, permit, or concession [FOR SECURITY PURPOSES], the terms of the lease, permit, or concession control. A provision stating this priority must be included in each assignment for security purposes, but is implied in all assignments for security purposes whether stated or not.

17 AAC 42.265(h) is added:

(h) An assignment for security purposes under this section may be reassigned to another holder only upon consent of the airport under 17 AAC 42.275.

(Eff. 1/14/2001, Register 157; am 1/17/2016, Register 217; am __/__/__, Register__)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 42.275(b) is amended to read:

(b) The airport manager will [SHALL] consent to a request to assign or sublease all or a portion of a lease, permit, or concession if the manager determines that

(1) the proposed assignee has demonstrated acceptable financial responsibility;

(2) the proposed assignee or sublessee has demonstrated its ability to perform under the lease, permit, or concession;

(3) denial of the request [APPROVAL] is not required under 17 AAC 42.010(g) with respect to either party to the assignment or sublease;

17 AAC 42.275(c) is amended to read:

(c) The airport manager must approve or deny a request under this section in writing. If the manager denies the request, the manager will [SHALL] state the reasons for the denial in writing. The manager will [SHALL] make a determination on a request for consent to assignment, assignment for security purposes, or sublease within 60 days after the assignor or sublessor has submitted a complete request.

(Eff. 1/14/2001, Register 157; am 1/17/2016, Register 217; am __/__/__, Register__)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090

17 AAC 42.990 is amended to read:

(13) "assignment for security purposes" means an assignment that grants to a creditor an interest in a lease, permit, or concession, including improvements, as collateral to ensure

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[ASSURE] payment or performance of a debt, loan, or other obligation by the lessee, permittee, or concessionaire;

(Eff. 1/14/2001, Register 157; am 10/20/2002, Register 164; am 11/1/2003, Register 168; am 1/17/2016, Register 217; am __/__/__, Register__)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090
 AS 02.15.200 AS 37.15.500

17 AAC 45.045(d) is amended to read:

(d) [THE DEPARTMENT MAY SEEK TO REQUIRE A] A person responsible for the contamination of airport property **is required** to remediate and return contaminated airport property to an environmentally acceptable condition to the satisfaction of any regulatory agency having jurisdiction. **All plans for cleanup and disposal activities shall be submitted in advance to the department for review and approval and are subject to restrictions imposed by the department.** [HOWEVER, ANY REGULATORY AGENCY APPROVAL OF A PROPOSED REMEDIATION PLAN THAT LIMITS THE FUTURE USE OF AIRPORT PROPERTY SHALL BE SUBJECT TO APPROVAL BY THE DEPARTMENT BEFORE THE RESPONSIBLE PERSON MAY BEGIN REMEDIATION ACTIVITIES ON THE AIRPORT. A PERSON REMEDIATING CONTAMINATED AIRPORT PROPERTY MAY NOT UNREASONABLY INTERFERE WITH

(1) A LESSEE’S USE OF, OR ACCESS TO, THE LESSEE’S PREMISES,
UNLESS

(A) THE CONTAMINATION IS A DIRECT RESULT OF THE
LESSEE’S OPERATIONS; OR

(B) THE LESSEE FIRST EXPRESSLY CONSENTS; OR

(2) AIRPORT OPERATION OR DEVELOPMENT UNLESS THE
DEPARTMENT FIRST EXPRESSLY CONSENTS.]

17 AAC 45.045(f) is amended to read:

(f) For purposes of this section, interference with [(1)] a lessee's use of, or access to, the
lessee's premises is unreasonable if the interference

(1)[(A)] poses a safety hazard or a substantial disruption of the lessee's use
of, or access to, the lessee's premises; or

(2)[(B)] can be avoided without materially increasing the cost or
materially decreasing the effectiveness of the effort to achieve remediation satisfactory to all
agencies having jurisdiction, or a reasonable environmental assessment, as applicable [;

(2) AIRPORT OPERATION OR DEVELOPMENT IS UNREASONABLE IF
THE INTERFERENCE POSES A SAFETY HAZARD OR A MATERIAL DISRUPTION OF
AIRPORT OPERATION OR DEVELOPMENT].

(Eff. 3/28/2002, Register 161; am 11/23/2003, Register 168; am __/__/__, Register__)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090
AS 02.15.220 AS 02.15.230

17 AAC 45.225(b) is amended to read:

(b) In setting or extending the term for a land lease, the department will consider

(1) the applicant's actual or proposed development and use of the premises;

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- (2) sound airport planning and anticipated needs for security, safety, maintenance, and operation of the airport;
- (3) future development needs of the airport;
- (4) applicable covenants running with the land and restrictions in the state's title to airport property;
- (5) the amount of investment, purchase price, fair market value, or remaining useful life of permanent improvements documented in the application, as applicable;
- (6) the applicant's plan for remediation of any environmental contamination if the applicant did not cause or materially contribute to the contamination; [AND]
- (7) the proposed method and terms of financing the applicant's investment; **and**
- (8) the best interest of the state.**

(Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am __/__/__, Register__)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090
AS 02.15.210

17 AAC 45.265(d) is amended to read:

(d) A security assignment document must include **provisions** [A PROVISION] stating that

(1) if the security assignee takes possession or control of the lease or concession that is subject to the security assignment, either directly or through a sub-tenant, by foreclosure or otherwise, **under the security assignment**, the **security** assignee accepts responsibility for all of the assignor's obligations under the lease or concession, including environmental liability and responsibility;

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(2) [. THE SECURITY ASSIGNMENT MUST ALSO IMPOSE ON] the security assignee has an affirmative duty to notify the state in writing upon the reconveyance or release of the security interest; and

(3) unless the security assignee participates in the management of the airport tenant as the term is defined in 42 U.S.C. 9601(20(F)) or as otherwise provided in the terms of the consent to assignment, the security assignee will have no environmental liability or responsibility for the period pre-dating the time when it took possession or control of the lease or concession. The security assignee will also have no environmental liability or responsibility following a subsequent transfer of its entire interest in the lease or concession unless, by its direct actions, negligence or failure to use due care, the security assignee either

(A) caused or contributed to a violation of any of the lease or concession terms relating to the environment, environmental law or hazardous substances;

(B) violated either 17 AAC 45.045 or 17 AAC 45.050; or

(C) caused or contributed to actual or threatened financial damages to the airport relating to a security assignee's breach of any environmental law.

17 AAC 45.265(e) is amended to read:

(e) Exercise by a security assignee of a power of sale or further assignment under a security assignment is subject to the consent of the department under 17 AAC 45.275 with respect to any purchaser or assignee and shall be conditioned upon the purchaser or assignee accepting responsibility for all of the lessee's or concessionaire's obligations under

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the lease or concession, including environmental liability and responsibility.

[NOTWITHSTANDING ANY POWER OF SALE OR REASSIGNMENT IN THE SECURITY AGREEMENT, A SECURITY ASSIGNEE MAY NOT SELL OR ASSIGN ANY INTEREST IN A LEASE OR CONCESSION WITHOUT FIRST OBTAINING THE WRITTEN CONSENT OF THE DEPARTMENT UNDER 17 AAC 45.275, INCLUDING THE APPROVAL OF THE PURCHASER OR ASSIGNEE. CONSENT UNDER THIS SUBSECTION MUST BE CONDITIONED UPON THE PURCHASER OR ASSIGNEE ACCEPTING LIABILITY AND RESPONSIBILITY FOR ALL OF THE ASSIGNOR'S OBLIGATIONS UNDER THE LEASE OR CONCESSION, INCLUDING ENVIRONMENTAL LIABILITY AND RESPONSIBILITY.]

(Eff. 3/28/2002, Register 161; am 3/22/2008, Register 185; am 3/20/2016, Register 217; am __/__/__, Register __)

Authority: AS 02.15.020 AS 02.15.060 AS 02.15.090