

40-6-9 Proceeds from sale of production -- Payment of proceeds -- Requirements -- Proceeding on petition to determine cause of nonpayment -- Remedies -- Penalties.

- (1)
 - (a) The oil and gas proceeds derived from the sale of production from any well producing oil or gas in the state shall be paid to any person legally entitled to the payment of the proceeds not later than 180 days after the first day of the month following the date of the first sale and thereafter not later than 30 days after the end of the calendar month within which payment is received by the payor for production, unless other periods or arrangements are provided for in a valid contract with the person entitled to the proceeds.
 - (b) The payment shall be made directly to the person entitled to the payment by the payor.
 - (c) The payment is considered to have been made upon deposit in the United States mail.
- (2) Payments shall be remitted to any person entitled to oil and gas proceeds annually for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is \$100 or less.
- (3)
 - (a) Any delay in determining whether a person is legally entitled to an interest in the oil and gas proceeds does not affect payments to other persons entitled to payment.
 - (b)
 - (i) If accrued payments cannot be made within the time limits specified in Subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual oil and gas proceeds owner to an escrow account in a federally insured bank or savings and loan institution using a standard escrow document form.
 - (ii) The deposit shall earn interest at the highest rate being offered by that institution for the amount and term of similar demand deposits.
 - (iii) The escrow agent may commingle money received into escrow from any one lessee or operator, purchaser, or other person legally responsible for payment.
 - (iv) Payment of principal and accrued interest from the escrow account shall be made by the escrow agent to the person legally entitled to them within 30 days from the date of receipt by the escrow agent of final legal determination of entitlement to the payment.
 - (v) Applicable escrow fees shall be deducted from the payments.
- (4) Any person entitled to oil and gas proceeds may file a petition with the board to conduct a hearing to determine why the proceeds have not been paid.
- (5) Upon receipt of the petition, the board shall set the matter for investigation and negotiation by the division within 60 days.
- (6)
 - (a) If the matter cannot be resolved by negotiation as of that date, the board may set a hearing within 30 days.
 - (b) If the board does not set a hearing, any information gathered during the investigation and negotiation shall be given to the petitioner who may then seek a remedy in a court of competent jurisdiction.
- (7)
 - (a) If, after a hearing, the board finds the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), the board may order that:
 - (i) a complete accounting be made; and
 - (ii) the proceeds be subject to an interest rate of 1-1/2% per month, as a substitute for an escrow account interest rate, accruing from the date the payment should have been suspended in accordance with Subsection (3).

- (b) If, after a hearing, the board finds the delay of payment is without reasonable justification, the board may:
 - (i) if the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3):
 - (A) order a complete accounting;
 - (B) require the proceeds and accruing interest to remain in the escrow account; and
 - (C) assess a penalty of up to 25% of the total proceeds and interest in the escrow account; or
 - (ii) if the proceeds have not been deposited in an interest bearing escrow account in accordance with Subsection (3), assess a penalty of up to 25% of the total proceeds and interest as determined under Subsection (7)(a).
 - (c)
 - (i) Upon finding that the delay of payment is without reasonable justification, the board shall set a date not later than 90 days from the hearing for final distribution of the total sum.
 - (ii) If payment is not made by the required date, the total proceeds, interest, and any penalty as provided in Subsection (7)(b) shall be subject to interest at a rate of 1-1/2% per month until paid.
 - (d) If, after a hearing, the board finds the delay of payment is with reasonable justification and the proceeds have been deposited in an interest bearing escrow account in accordance with Subsection (3), the payor may not be required to make an accounting or payment of appropriately suspended proceeds until the condition which justified suspension has been satisfied.
- (8) The circumstances under which the board may find the suspension of payment of proceeds is made with reasonable justification, such that the penalty provisions of Subsections (7)(b) and (7)(c)(ii) do not apply, include, but are not limited to, the following:
- (a) the payor:
 - (i) fails to make the payment in good faith reliance upon a title opinion by a licensed Utah attorney objecting to the lack of good and marketable title of record of the person claiming entitlement to payment; and
 - (ii) furnishes a copy of the relevant portions of the opinion to the person for necessary curative action;
 - (b) the payor receives information which:
 - (i) in the payor's good faith judgment, brings into question the entitlement of the person claiming the right to the payment to receive that payment;
 - (ii) has rendered the title unmarketable; or
 - (iii) may expose the payor to the risk of liability to third parties if the payment is made;
 - (c) the total amount of oil and gas proceeds in possession of the payor owed to the person making claim to payment is less than \$100 at the end of any month; or
 - (d) the person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.
- (9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:
- (a) suspend and escrow the payments in accordance with Subsection (3); or
 - (b) at the request and expense of the person claiming entitlement to the payment, make the payment into court on an interpleader action to resolve the claim and avoid liability under this chapter.

