

41.01.01 Real Property

Revised [February 11, 2018](#)

Next Scheduled Review: February 11, 2023

Click to view [Revision History](#).



Regulation Summary

This regulation provides uniform guidance for the acquisition, disposition and lease of real property and delegates authority to the chief executive officers (CEO) or designees of The Texas A&M University System (system).

Definitions

Click to view [Definitions](#).

Regulation

1. GENERAL PROVISIONS

- 1.1 System Real Estate Office. Except as otherwise provided in this regulation, all activities involving the acquisition, disposition and lease of real property and real property interests shall be consolidated in the System Real Estate Office (SREO) and coordinated with the appropriate member or members.
- 1.2 Assignment of Real Property. Subject to any legal requirements or donor restrictions, real property used primarily for member purposes will be assigned to the using member for maintenance, operation and management purposes. Real property may be reassigned by the chancellor based on the primary use or proposed use of the property. The reassignment will be evidenced by a form prepared by SREO, signed by the chancellor and maintained by SREO.
- 1.3 Maintenance of Inventory and Records. SREO is responsible for maintaining an inventory of the land and mineral interests owned or controlled by the Board of Regents (board) and all records relating to the assignment and reassignment of real property.
- 1.4 Preparation of Agenda Items. Agenda item briefings and proposed minute orders seeking authority or approval from the board as required by System Policy *41.01, Real Property*, will first be submitted to the chancellor by the CEO of the benefiting or affected member. If the agenda item briefing and proposed minute order are acceptable to the chancellor, the chancellor may submit them to the board with or without a recommendation for approval. Agenda item briefings will, at a minimum, provide a sound rationale for

acquiring, disposing or leasing the real property, the purchase price, sales price, rent or other consideration, and the source of any required funding. The System Office of General Counsel (OGC) must approve each agenda item briefing and proposed minute order for legal sufficiency.

- 1.5 Review by OGC. Except as otherwise provided in this regulation, for each transaction, legal forms and documents must be reviewed and approved for legal form and sufficiency by OGC, provided that certain leases executed under Sections 5.2 and 6.2 and certain licenses executed under Sections 12.1 and 12.2 of this regulation do not require OGC review or approval if those agreements are on unaltered forms approved by OGC in the past three years.

2. MANAGEMENT OF REAL PROPERTY

- 2.1 Management of Assigned Real Property. Each member CEO is responsible for ensuring the care, maintenance and safekeeping of land, buildings and other improvements assigned to the member. The CEO may delegate management to an employee or department of the member.
- 2.2 Limitation of Use. Real property will be used only for authorized purposes. The CEO or designee of each member will manage the use and occupancy of real property assigned to that member.
- 2.3 Real Property Inventory. Buildings and other improvements must be accounted for in the facilities inventory of the respective member in accordance with rules and regulations of the Texas Higher Education Coordinating Board (THECB). SREO shall be responsible for maintaining and submitting an annual land inventory to the General Land Office.

3. ACQUISITION OF FEE TITLE IN REAL PROPERTY (OTHER THAN BY EMINENT DOMAIN)

- 3.1 Administration. SREO, in coordination with the appropriate member or members, will oversee all activities for the acquisition of fee title to real property.
- 3.2 Acquisition Process.
 - 3.2.1 Purchases and Exchanges. Member CEOs may recommend acquisitions of real property to the chancellor. The recommendation must be supported by a finding that sufficient financial resources are available to cover the cost of acquiring, operating and maintaining the property. SREO will evaluate the property and negotiate the terms in conjunction with the member and will submit a request for approval to the chancellor. If the acquisition is approved by the chancellor and also requires board approval, an agenda item seeking the board's approval of the acquisition will be submitted to the board pursuant to Section 1.4 of this regulation.
 - 3.2.2 Gifts and Bequests. SREO, in conjunction with the affected member, will evaluate all real property gifts and bequests in accordance with Section 3.3 of this regulation and submit its findings to the System Office of Budgets and

Accounting and OGC for review and approval. Once approved, the CEO may accept the gift or bequest on a form prepared and maintained by SREO. The CEO may execute any deed conveying the gift or bequest to the system as evidence of the CEO's acceptance. At the request of the CEO of the affected member, SREO will negotiate with the executor of an estate to accept cash in lieu of real property.

3.3 Evaluation of Real Property (other than mineral interests). Unless waived by OGC, SREO will perform the following, or will cause the following to be performed, as a condition to the acquisition of real property other than mineral interests:

3.3.1 Environmental Assessment. An environmental assessment must be performed in coordination with the Office of Risk Management (RM). The RM will determine the level of risk associated with the subject property and will provide a written recommendation to SREO.

3.3.2 Surveys. A survey of all property must be obtained prior to acquiring the property.

3.3.3 Property Inspection/Condition. Prior to acquisition, all real property must be inspected by or on behalf of SREO. For improved property, SREO may require a property condition report in form and content acceptable to SREO to include, for example, an evaluation of the structural, mechanical, electrical and plumbing systems, the roof, and the foundation, in addition to compliance with all applicable state and federal laws.

3.3.4 Title. A title policy must be obtained. The board will be the named insured on the title policy and the insurable amount will be equal to the purchase price or such other amount as determined by SREO.

3.4 Valuation of Property to be Acquired. When acquiring title to real property through purchase or exchange, SREO must obtain two independent sources of valuation. SREO will determine the method of valuing the property and the qualifications of the appraiser or appraisers based upon the complexity of the property and in accordance with applicable THECB rules and regulations, if any.

Real property acquired by gift or bequest is exempt from the requirement for appraisals. SREO will develop a book value for accounting purposes from information available in the market place or through the local tax assessor. These values are not intended to be used by the donor for income tax purposes.

3.5 Evaluation of Risks and Benefits of Property Ownership. The evaluation conducted by SREO in accordance with Section 3.3 must include an assessment of the benefits of property ownership relative to the risks associated with the costs required to acquire, maintain, manage and dispose of the property. This benefit/risk analysis will include a review of restrictive covenants, deed restrictions, the ownership interest being acquired and liability for unrelated business income tax.

3.6 Designation of Gifts. The donor may designate the intended use and purpose of the gift or bequest in addition to naming the system beneficiary; however, unrestricted gifts or

bequests may be used at the discretion of the board. SREO and OGC must review and approve any restrictions prior to acceptance of any restricted gift or bequest.

- 3.7 Costs to Evaluate Real Property. Costs related to the acquisition of real property that are not paid by the grantor will be charged to the benefitting member, unless otherwise allocated by the board or the chancellor. Donors will be encouraged to pay all costs related to a gift of real property.
- 3.8 Contract Execution. The chancellor or designee may enter into a contract to purchase real property having a purchase price in excess of \$1,000,000 prior to board approval, provided that the contract is approved by OGC for legal sufficiency and is expressly subject to board approval and THECB review, if required. The chancellor may enter into a contract to purchase real property having a purchase price of \$1,000,000 or less, provided that the contract is approved by OGC for legal sufficiency.

4. DISPOSITION OF REAL PROPERTY

- 4.1 Approval Required to Dispose of Real Property. Approval of the board to dispose of real property, when required, will be evidenced by a minute order adopted by the board.
- 4.2 Administration. SREO, in coordination with the member to which the real property has been assigned, will oversee all activities required to dispose of the property.
- 4.3 Process. Member CEOs may recommend the disposal of real property assigned to the member. If the chancellor approves the recommendation or if the chancellor, after consulting with the CEO of an affected member, otherwise identifies real property that is excess to the needs of the system, and disposition of such property is not prohibited by donor or legal restrictions, the chancellor will direct SREO to market the property. SREO, under the direction of the chancellor and with the assistance of the affected member, will negotiate the terms of disposition. The member entitled to the net proceeds in accordance with System Policy 41.01 will bear all costs not paid by the grantee.
- 4.4 Contract Execution. The chancellor or designee may enter into a contract of sale prior to board approval, provided that the contract is approved by OGC for legal sufficiency and is expressly subject to board approval when board approval is required.

5. LEASE OF SYSTEM REAL PROPERTY TO THIRD PARTIES

- 5.1 Lease Negotiation. SREO will negotiate the terms and conditions of all leases of system real property in consultation with the CEO or designee of the member to which the property has been assigned, provided that SREO may, on a case-by-case basis, delegate the authority to negotiate lease terms and conditions to a member as long as the final terms and conditions are approved by SREO. Except as otherwise provided in this regulation, originals or fully executed copies of all leases of system real property shall be maintained by SREO.
- 5.2 Residential and Incubator Leases. Notwithstanding any other provision of this regulation, a member CEO or designee shall have the authority to negotiate, execute and deliver (a) leases of single family residential properties to employees in connection with their official duties for adequate consideration and terms that do not exceed the lesser of

two years or the employee's term of employment, and (b) business incubator leases in a recognized incubator facility for adequate consideration and terms that do not exceed three years, including renewals. Single-family residential and incubator leases are not required to be submitted to SREO for approval or filing.

- 5.3 Delegation of Authority to Approve/Execute Certain Leases of Assigned Real Property. The member CEO or designee is granted authority to approve and execute on behalf of the board leases granting an interest in real property assigned to the member as long as (a) the lease has been negotiated in accordance with Section 5.1; (b) the term of the lease, including all renewals, does not exceed five years; and (c) the member receives fair consideration as determined by the member CEO or designee and approved by SREO. Fair consideration is generally going to be market rental rates, but the member CEO or designee and SREO may consider other benefits to the system or member.
- 5.4 Approval of Lease Forms. Except as otherwise provided in this regulation, all lease agreements covering system real property must be prepared or approved by OGC for legal sufficiency.

6. LEASE OF REAL PROPERTY FROM THIRD PARTIES

- 6.1 Lease Negotiation. SREO will negotiate the terms and conditions of all leases of real property from third parties provided that SREO may, on a case-by-case basis, delegate the authority to negotiate such leases to a member as long as the final terms and conditions are acceptable to SREO. Prior to entering into any lease negotiations, the CEO or designee of the member requesting the lease must submit to SREO a written statement in a form acceptable to SREO describing in reasonable detail the proposed use of and need for the premises to be leased, as well as justification for choosing those particular premises to lease. The resulting lease agreement must be prepared or approved by OGC for legal sufficiency.
- 6.2 Certain Leases. Notwithstanding any other provision of this regulation, a member CEO or designee shall have the authority to negotiate, execute and deliver leases of a third party's property for terms that do not exceed two years and total rent that does not exceed \$50,000 per year, without any requirement to submit the leases to SREO for approval or filing.
- 6.3 Management. The member CEO or designee shall manage all real property leased for the benefit of the member from a third party.
- 6.4 Delegation of Authority to Approve/Execute Leases of Third Party Real Property. The member CEO or designee is granted authority to execute and deliver on behalf of the board leases of real property from third parties for the use and benefit of the member, provided that the term of the lease, including all renewals, does not exceed five years **and** the total consideration (as defined in System Policy 41.01) payable by the member over the term of the lease, including all renewals, does not exceed \$500,000.
- 6.5 Leasing Protocol
- 6.5.1 Lease with the Private Sector. The system may lease space from a private third party through competitive bidding, competitive sealed proposals, direct

negotiation or any other method permitted by law. The method used must provide the best value to the state. If the direct negotiation method is used, SREO may require a written statement from the CEO or designee supporting the determination that direct negotiation provides the best value to the state.

- 6.5.2 Leases with Federal Agencies. Space may be leased to or from the federal government through a negotiated contract.
- 6.5.3 Leases with other State Agencies. Space may be leased to or from another state agency through an interagency contract between the system and the state agency.
- 6.5.4 Leases with a Political Subdivision of the State. Space may be leased to or from a political subdivision of the state, including a county, municipality, school district, water or irrigation district, hospital district, council of governments or regional planning commission, through a negotiated contract.
- 6.5.5 Statement of Necessity. Prior to submitting an agenda item requesting board approval of any lease from a third party, the CEO or designee of the benefited member must provide SREO with a statement that the CEO or designee has reviewed the current real property available to the member and the proposed use of the additional real property to be leased, and concluded that leasing the additional real property is necessary.

7. EASEMENTS

- 7.1 Granting of Easements to Third Parties. The chancellor or designee has the authority to negotiate, execute and deliver easements over, across or under real property, other than easements for roadway purposes, provided that the term does not exceed ten years. SREO will coordinate the granting of easements with the affected member. SREO will periodically publish a schedule of fees approved by the chancellor to be charged for easements over, across or under real property. Easements across real property for public roadway purposes may be for an indefinite term and must be approved by the board.
- 7.2 Easements from Third Parties. The chancellor or designee has the authority to negotiate and accept on behalf of the board easements (other than conservation easements) over, across or under property owned by third parties and benefiting the system or a member as long as the consideration paid does not exceed \$300,000.
- 7.3 Administration of Easements. Easements executed under this regulation must be coordinated with SREO.

8. APPRAISALS

The purchase and sale of real property must be supported by market value appraisals. The appraisals must determine the "Highest and Best Use" of the property or such use that will result in the highest value of the property.

- 8.1 Purchase of Property. Appraisal reports must be obtained as required by current THECB rules, if applicable.

- 8.2 Sale of Property. A property with a sales price of less than \$300,000 requires at least one appraisal prepared by an appraiser having qualifications acceptable to SREO and one other form of supporting documentation, such as a valuation from the local appraisal district or a broker's opinion of value letter. SREO may order a second appraisal from a qualified appraiser when deemed necessary to support the sale of a property. A property with a sales price of \$300,000 or more requires at least two appraisal reports prepared by appraisers acceptable to SREO.
- 8.3 Reporting Standards.
- 8.3.1 Reporting Format. Appraisal reports must be submitted to SREO for review and approval. Complete self-contained, narrative written reports will be required unless otherwise specified by SREO.
- 8.3.2 Age of Report. Appraisal reports required to be submitted to the THECB in connection with purchases must be current as defined by THECB rules. Unless SREO specifies otherwise, appraisal reports submitted to support sales prices must be dated no more than one year prior to the date of board approval.
- 8.4 Reconciliation of Two Opinions of Value. If SREO determines that the difference between two appraisal reports is too great, a third appraiser may be required to evaluate the appraisal reports to form an opinion of value based on those appraisal reports or SREO may require a third independent appraisal.

9. CONDEMNATION

- 9.1 Process. Eminent domain proceedings will be commenced and conducted in accordance with Chapter 21 of the *Texas Property Code*. The chancellor or designee has the authority to make a final written offer to the owner of the property to be condemned, supported by two fair market appraisals. If the owner of the property rejects the final written offer or fails to respond within a reasonable time, the chancellor may submit an agenda item to the board seeking authority to acquire the property through eminent domain.
- 9.2 Coordination. OGC will coordinate all eminent domain proceedings with the Office of the Attorney General.
- 9.3 Due Diligence. The system will conduct such due diligence of real property being acquired through eminent domain as required by SREO and OGC.

10. MINERALS

- 10.1 Mineral Lease Process. SREO may lease system lands for oil, gas, sulphur, mineral ore and other mineral development by public auction, sealed bid or, if authorized by the chancellor or designee, direct negotiation.
- 10.2 Gifts of Working Interests. Gifts of working interests in minerals will not be accepted without prior written approval of the chancellor or designee. However, the chancellor or designee may refer proposed gifts of this nature to one of the appropriate external foundations associated with the system.

11. INTRASYSTEM AGREEMENTS

Agreements between the system and a member or between members for the use of system real property will be on an intrasystem form approved by OGC. Intrasystem agreements must be approved by each member CEO or designee, but do not require review or approval of, or submission to, SREO.

12. LICENSES AND PERMITS

12.1 Licenses of System Real Property. The member CEO or designee is granted authority to negotiate, execute and deliver agreements in the member's name granting licenses to third parties for the temporary or periodic use of real property assigned to the member, such as agreements for the use of facilities, arenas, stadiums, classrooms and auditoriums, and must establish guidelines for granting such agreements. The granting of such agreements must (a) be for adequate consideration; (b) serve an identifiable public purpose appropriate to the function of the member, and the member must maintain sufficient contractual controls to ensure that the public purpose is actually achieved; and (c) have a term no longer than one year. The form of all licenses of system real property must be approved by OGC for legal sufficiency, but does not require review or approval of SREO.

12.2 Licenses from Third Parties. The member CEO or designee shall have the authority to execute and deliver licenses in the member's name for the temporary or periodic use by the member of a third party's real property. The form of all licenses of a third party's real property must be approved by OGC for legal sufficiency when the total consideration exceeds \$50,000 or the term exceeds one year, but does not require review or approval of SREO.

13. PRIVATIZED HOUSING

In order to determine the feasibility of a privatized housing project as required by Section 9 of System Policy *41.01*, a member must first attempt to identify a qualified developer through a process acceptable to the chancellor that requires interested developers to (a) disclose the developer's plan to design, develop, construct and operate the student housing project on system land; (b) evaluate available financing options and the advantages of the proposed financing over a state-funded project, including the developer's ability to finance the project with equity or other off-balance sheet financing; and (c) submit the developer's qualifications and experience in the design, development, construction and operation of privatized student housing.

Related Statutes, Policies, or Requirements

[Tex. Educ. Code Ch. 85, Subch. D](#)

[Texas Prop. Code Ch. 21](#)

System Policy 41.01, Real Property

The December 2009 version of this system regulation supersedes:

System Regulation 41.05.01, *Assignment of Real Property Holdings*

System Regulation 41.05.02, *Management of Buildings and Other Improvements*

System Regulation 41.05.03, *Acquisition and Disposition of Real Property Through Leasing and Rental Agreements*

System Regulation 41.99.99, *Appraisals of Real Property*

Member Rule Requirements

A rule is not required to supplement this regulation.

Contact Office

System Real Estate Office