

41.01.01 Real Property

Approved December 16, 2009
Revised May 8, 2012
Next Scheduled Review: May 8, 2014



Regulation Statement

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

Reason for Regulation

This regulation implements System Policy *41.01, Real Property*, and provides uniform guidance for the acquisition, disposition and lease of real property for the benefit of the system and its members.

Procedures and Responsibilities

1. GENERAL PROVISIONS

- 1.1 System Real Estate Office. 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 the SREO, signed by the chancellor and maintained by the SREO.
- 1.3 Maintenance of Inventory and Records. The 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 Office of General Counsel (OGC) must approve each agenda item briefing and proposed minute order for legal sufficiency.

- 1.5 Review by the OGC. For each transaction, legal forms and documents must be reviewed and approved for legal form and sufficiency by the OGC, provided that single-family residential leases and business incubator space leases executed under Section 5.2 of this regulation do not require OGC review or approval if the leases are on unaltered forms approved by the OGC in the past three (3) 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 (CB). The 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. The 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. The 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. The 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 Office of Budgets and Accounting and the OGC for review and approval. Once approved, the CEO may accept the gift or bequest on a form prepared and maintained by the 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, the SREO will negotiate with the executor of an estate to accept cash in lieu of real property. Unless exempt, all gifts and bequests of real property are subject to CB rules and regulations.
- 3.3 Evaluation of Real Property (other than mineral interests). Unless waived by the OGC, the 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 the 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 the SREO. For improved property, the SREO may require a property condition report in form and content acceptable to it 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 the SREO.
- 3.4 Valuation of Property to be Acquired. When acquiring title to real property through purchase or exchange, the SREO must obtain two independent sources of valuation. The 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 CB rules and regulations.
- Real property acquired by gift or bequest is exempt from the requirement for appraisals. The 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 the 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. The SREO and the 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 the OGC for legal sufficiency and is expressly subject to board approval and CB approval. The chancellor may enter into a contract to purchase real property having a purchase price of \$1,000,000 or less prior to CB approval, provided that the contract is approved by the OGC for legal sufficiency and is expressly subject to CB approval.

4. DISPOSITION OF REAL PROPERTY

- 4.1 Approval Required to Dispose of Real Property. Approval of the board to dispose of real property will be evidenced by a minute order adopted by the board.
- 4.2 Administration. The 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 the SREO to market the property. The 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, Real Property*, 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 the OGC for legal sufficiency and is expressly subject to board approval.

5. LEASE OF SYSTEM REAL PROPERTY

- 5.1 Lease Negotiation. The 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 the 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 the SREO. Except as otherwise provided in this regulation, originals of all leases of system real property shall be maintained by the 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 (2) 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. 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 (5) years, and (c) the member receives fair consideration as determined by the member CEO or designee and approved by the SREO. Fair consideration is generally going to be market rental rates, but the member CEO or designee and the 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 the OGC for legal sufficiency.

6. LEASE OF REAL PROPERTY FROM THIRD PARTIES

- 6.1 Lease Negotiation. The SREO will negotiate the terms and conditions of all leases of real property from third parties provided that the 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 the SREO. Prior to entering into any lease negotiations, the CEO or designee of the member requesting the lease must submit to the SREO a written statement in a form acceptable to the SREO describing in reasonable detail the proposed use of and need for the premises to be leased. The resulting lease agreement must be prepared or approved by the OGC for legal sufficiency.

Residential/Storage Property. Notwithstanding any other provision of this regulation, a member CEO or designee shall have the authority to negotiate, execute and deliver residential property leases, including apartment leases and storage space leases, for terms that do not exceed two (2) years and total rent that does not exceed \$50,000, without any requirement to submit the leases to the SREO for approval or filing.

- 6.2 Management. The member CEO or designee shall manage all real property leased for the benefit of the member from a third party.
- 6.3 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 (5) years and the total consideration (as defined in System Policy 41.01, *Real Property*) payable by the member over the term of the lease, including all renewals, does not exceed \$500,000.
- 6.4 Leasing Protocol
- 6.4.1 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, the SREO may require a written statement from the CEO or designee supporting the determination that direct negotiation provides the best value to the state.
- 6.4.2 Leases with Federal Agencies. Space may be leased to or from the federal government through a negotiated contract.
- 6.4.3 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.
- 6.4.4 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.
- 6.4.5 Statement of Necessity. The agenda item requesting board approval of any lease from a third party must include a statement that the CEO of the benefited member 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. The CEO must provide the SREO with a similar statement in those instances where authority to execute the lease agreement is delegated to the chancellor or the CEO.

7. EASEMENTS

- 7.1 Granting of Easements. 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 (10) years. The SREO will coordinate the granting of easements with the affected member. The 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 the 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 CB rules.
- 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 the 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. The 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 the SREO.
- 8.3 Reporting Standards.
- 8.3.1 Reporting Format. Appraisal reports must be submitted to the SREO for review and approval. Complete self-contained, narrative written reports will be required unless otherwise specified by the SREO.
- 8.3.2 Age of Report. Appraisal reports required to be submitted to the CB in connection with purchases must be current as defined by CB rules. Unless the 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 the 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 the 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 (2) 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. The 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 the SREO and the OGC.

10. MINERALS

10.1 Mineral Lease Process. The 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 the OGC. Intrasystem agreements must be approved by each member CEO or designee, but do not require review or approval of, or submission to, the 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 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 arenas, stadiums, classrooms and auditoriums, and must establish procedures for granting such agreements. The form of all licenses of system real property must be approved by the OGC for legal sufficiency, but does not require review or approval of, or submission to, the SREO.

12.2 Licenses from Third Parties. The member CEO or designee shall have the authority to execute and deliver licenses 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 the OGC for legal sufficiency, but does not require review or approval of, or submission to, the 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, Real Property*, a member must first attempt to identify a qualified

developer through a process acceptable to the chancellor that requires interested developers to (i) disclose the developer's plan to design, develop, construct and operate the student housing project on system land, (ii) 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 (iii) submit the developer's qualifications and experience in the design, development, construction and operation of privatized student housing.

Related Statutes, Policies, or Requirements

[Texas Education Code Chapter 85, Subchapter D](#)

[Texas Property Code Chapter 21](#)

[Texas Higher Education Coordinating Board Chapter 17 Resource Planning, Subchapter A. General Provisions](#)

[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*

Definitions

Assigned real property – Real property assigned to a member as reflected in the records of the SREO.

Best value – An analysis by which the system considers quantitative and qualitative factors, such as:

- (a) the total cost of the lease agreement;
- (b) the value to the educational mission and research initiatives of the system;
- (c) the location and size of lease space;
- (d) the condition of the lease space, including compliance with all applicable codes and regulations (e.g., architectural barriers law);
- (e) the utility costs;

- (f) the availability of parking and access to public transportation;
- (g) the relationship with the landlord and the value of such relationship to the system;
- (h) the reputation of the landlord and indicators of successful performance of the lease agreement (such as financial resources and the performance of other legal agreements);
- (i) security; and
- (j) any other relevant factor that a private business entity might consider.

Lease agreement or lease – A written agreement (which may also be in the form of an intrasystem, interagency or interlocal agreement) specifying the terms and conditions for the exclusive use and possession of real property for a specified period of time and consideration.

License agreement or license – A written agreement (which may also be in the form of an intrasystem, interagency or interlocal agreement) specifying the terms and conditions for the use of real property for a particular purpose that does not convey a real property interest, is generally revocable and not assignable. License agreements are usually short term and may be referred to as a permit, license, concession or other similar name.

Contact Office

System Real Estate Office
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