

41.01.01 Real Property

Revised [September 21, 2021](#)

Next Scheduled Review: September 21, 2026

Click to view [Revision History](#).



Regulation Summary

This regulation provides uniform guidance for the acquisition, disposition, lease and license 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, lease and license of a surface estate, except those activities and operations commonly associated with easements and right-of-ways, will be consolidated in the System Real Estate Office (SREO) and coordinated with the appropriate member or members.
- 1.2 System Energy Resource Office. Except as otherwise provided in this regulation, all activities involving the acquisition, disposition and lease of a mineral estate, and those activities commonly associated with easements and right-of-ways of a surface estate, will be consolidated in the System Energy Resource Office (SERO) and coordinated with the appropriate member or members.
- 1.3 Intrasystem 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.
- 1.4 Maintenance of Inventory and Records.

- 1.4.1 Surface Estate Records. SREO is responsible for maintaining an inventory of the surface estate owned or controlled by the Board of Regents (board) and all records relating to the assignment and reassignment of the surface estate.
- 1.4.2 Mineral Estate Records. SERO is responsible for maintaining an inventory of the mineral estate owned or controlled by the board and all records relating to the assignment and reassignment of the mineral estate.
- 1.5 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 be prepared by the benefiting or affected member with the assistance of SREO and the System Office of General Counsel (OGC) and submitted by the member to the chancellor. 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, the source of any required funding, and the Strategic Plan Imperative the agenda item advances. OGC must approve each agenda item briefing and proposed minute order for legal sufficiency. Agenda item briefings that do not contain, at a minimum, the information required by this Section 1.5 will not be approved for legal sufficiency and will not be considered by the board.
- 1.6 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 real property, 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 is 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 the case of surface estate, and/or SERO, in the case of mineral estate, in coordination with the appropriate member or members, will oversee all activities for the acquisition of 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. If the acquisition will require board approval, the member will submit to SREO and the vice chancellor for business affairs (VCBA) a business plan and a pro forma, along with an explanation of the member's proposed use of the property, how the use will advance the member's mission, and how the member will fund the acquisition, maintenance and operational costs for the property. If the acquisition will require financing with Revenue Financing System debt, the member will provide a pro forma that demonstrates the member's ability to make debt service payments to the chief investment officer and treasurer, along with an explanation of the source of debt service payments, for review and approval. If approved, SREO will then evaluate the real property and negotiate the acquisition terms in conjunction with the member. For all acquisitions requiring board approval, an agenda item seeking the board's approval of the acquisition will be submitted to the board pursuant to Section 1.5 of this regulation.
- 3.2.2 Gifts and Bequests. SREO, in the case of surface estate, and/or SERO, in the case of mineral estate, 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 Surface Estate. Unless waived by OGC, SREO will perform the following, or will cause the following to be performed, as a condition to the acquisition of a surface estate:
- 3.3.1 Environmental Assessment. An environmental assessment must be performed in coordination with the Office of Risk Management (RM). RM will determine the level of risk associated with the subject surface estate and will provide a written recommendation to SREO.
- 3.3.2 Surveys. A survey of the surface estate must be obtained prior to completing the acquisition.
- 3.3.3 Property Inspection/Condition. Prior to acquisition, the surface estate must be inspected by or on behalf of SREO. For improvements to the surface estate, 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 Real 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 real property and the qualifications of the appraiser or appraisers based upon the complexity of the real 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, in the case of surface estate, and/or SERO, in the case of mineral estate, 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 real property.

- 4.3 Process. Member CEOs may recommend the disposal of real property assigned to the member and must obtain the VCBA's preliminary approval before the real property may be marketed for sale. If the VCBA gives preliminary approval of the recommendation or if the VCBA, after consulting with the chancellor and the CEO of an affected member, otherwise identifies real property that is excess to the needs of the system, and disposition of such real property is not prohibited by donor or legal restrictions, the VCBA or member CEO will direct SREO to market the real property for sale. SREO, under the direction of the VCBA 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.

- 5.1.1 Surface Estates. SREO will negotiate the terms and conditions of all leases of system surface estates in consultation with the CEO or designee of the member to which the surface estate 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.
- 5.1.2 Mineral Estates. SERO will negotiate the terms and conditions of all oil, gas, sulphur and other mineral leases of system mineral estates in accordance with Section 10.1 herein, in accordance with Section 5 of System Policy 41.01, and in consultation with the CEO or designee of the member to which the surface estate (if any) and the mineral estate has been assigned.
- 5.1.3 Maintenance of Lease Records. Except as otherwise provided in this regulation, originals or fully executed copies of all leases of system real property will be maintained by SREO, in the case of surface estates, and/or SERO, in the case of mineral estates.

- 5.2 Residential and Incubator Leases. Notwithstanding any other provision of this regulation, a member CEO or designee has the authority to negotiate, execute and deliver (a) leases of single family residential properties located in the state of Texas 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 when using an **unaltered**, fill-in-the-blank only form approved by OGC in the past three years, without any requirement to submit the leases to OGC or SREO for approval or filing, and (b) business incubator leases in a recognized incubator facility located in the state of Texas for adequate consideration and terms that do not exceed three years, including renewals, when using an **unaltered**, fill-in-the-blank only form approved by OGC in the past three years, without any requirement to submit the leases to OGC or SREO for approval or filing.

- 5.3 Delegation of Authority to Approve/Execute Certain Leases of Assigned Surface Estates. The member CEO or designee is granted authority to approve and execute, on behalf of the board, leases granting an interest in surface estates assigned to the member as long as (a) the lease has been negotiated in accordance with Section 5.1.1; (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.
- 5.5 Leasing Protocol. See Section 6.5.

6. LEASE OF SURFACE ESTATES **FROM** THIRD PARTIES

- 6.1 Lease Negotiation. SREO will negotiate the terms and conditions of all leases of surface estates 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 surface estate to be leased, as well as justification for choosing that particular surface estate 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 has the authority to negotiate, execute and deliver leases of a third party's surface estate located in the state of Texas for terms that do not exceed two years and total rent that does not exceed \$50,000 per year, when using an **unaltered**, fill-in-the-blank only form approved by OGC in the past three years, without any requirement to submit the leases to OGC or SREO for approval or filing.
- 6.3 Management. The member CEO or designee will manage all surface estates leased for the benefit of the member from a third party.
- 6.4 Delegation of Authority to Approve/Execute Leases of Third Party Surface Estates. The member CEO or designee is granted authority to execute and deliver on behalf of the board leases of surface estates 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 for Leases to and from Third Parties.
- 6.5.1 Leases with the Private Sector. Space may be leased to or 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.

- 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 or other negotiated contract.
- 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 surface estate and related improvements available to the member and the proposed use of the additional surface estate to be leased, and concluded that leasing the additional surface estate 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, under or through real property, other than easements for roadway purposes, provided that the term does not exceed ten years. SERO will coordinate the granting of easements with the affected member. SERO will periodically publish a schedule of fees approved by the chancellor which are to be charged for easements over, across, under or through real property. Easements over or 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, under or through 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 SERO.

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 real property or such use that results in the highest value of the real property.

- 8.1 Purchase of Real Property. Appraisal reports must be obtained as required by current THECB rules, if applicable.
- 8.2 Sale of Surface Estate. A surface estate 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 surface estate. A surface estate 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 submission to the board for 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 real property to be condemned, supported by two fair market appraisals. If the owner of the real 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 real 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. SERO may lease system mineral estates for oil, gas, sulphur, mineral ore and other mineral development by public auction, sealed bid, or direct negotiation.

10.2 Gifts of Working Interests. Gifts of working interests in mineral estates 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 documented as an intrasystem agreement and approved by OGC. Intrasystem agreements must be approved by each member CEO or designee, without any requirement to submit the agreement to OGC or SREO for approval or filing as long as an intrasystem agreement form **pre-approved** by OGC is used to document the agreement.

12. LICENSES AND PERMITS

12.1 Licenses and Permits of System Real Property to Third Parties.

12.1.1 Surface Use Not Related to Easements or the Mineral Estate. The member CEO or designee is granted authority to negotiate, execute and deliver agreements in the member's name granting licenses or permits to third parties for the temporary or periodic use of a surface estate assigned to the member for use by a third party that is not related to an easement or the mineral estate, 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; and (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. Unless the surface estate is located in the state of Texas and the member uses an **unaltered**, fill-in-the-blank only form approved by OGC in the past three years, all such agreements must be reviewed by SREO and approved by OGC for legal sufficiency.

12.1.2 Surface Use Related to Easements or the Mineral Estate. SERO, in consultation with the member CEO or designee, may negotiate and deliver to the chancellor or designee for execution agreements in the name of the board granting licenses or permits to third parties for the temporary use of a surface estate owned or controlled by the system for use by a third party that is related to an easement or the mineral estate. Such agreements may include, but are not limited to, access licenses or access permits related to construction, operations and/or maintenance activities associated with those rights granted to a third party by an easement or oil, gas and mineral lease in which the system is the current grantor or lessor of record. All such agreements must be approved by OGC for legal sufficiency.

12.2 Licenses and Permits of Real Property from Third Parties. The member CEO or designee has the authority to execute and deliver licenses or permits in the member's name for the temporary or periodic use by the member of a third party's surface estate. Unless the third party's surface estate is located in the state of Texas and the member uses an **unaltered**, fill-in-the-blank only form approved by OGC in the past three years, all such agreements must be reviewed by SREO and approved by OGC for legal sufficiency.

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](#)

[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*

Appendix

[Office of General Counsel Pre-approved Forms](#)

Member Rule Requirements

A rule is not required to supplement this regulation.

Contact Office

System Real Estate Office
(979) 458-6350