

VIII-4.01 – PROCEDURES FOR THE ACQUISITION AND DISPOSITION OF REAL PROPERTY

(Approved by the Board of Regents on February 9, 2001; Amended on February 22, 2019).

I. GENERAL

These procedures are intended to implement portions of BOR Policy VIII-4.00 “Policy on Acquisition, Disposition, and Leasing of Real Property” (“the Policy”) and shall be interpreted consistent with the provisions of that Policy, including the definitions therein. In case of any inconsistency, the Policy shall govern.

II. ACQUISITIONS

A. Proposal

Subject to Section II.E. of these procedures, whenever an Institution or the Office seeks to acquire real property, its president or VCAF shall submit to the Chancellor for review a proposal that includes the following:

1. Description (including improvements) and location of the property;
2. Location map;
3. Anticipated cost based upon most recent appraisals, assessments, and other available information;
4. Source of funds and/or other consideration to be used for the acquisition;
5. If external financing or other form of borrowing is to be used, the expected terms and the source for paying the debt service;
6. If a contract containing an option to purchase or right of first refusal is involved, the terms of the option or right of first refusal;
7. Amount, source, and nature of consideration for Capital Leases;
8. The purpose of the Acquisition; and

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9. Confirmation that the property is included in the institution's Board-approved acquisition plan or facilities master plan, or an explanation of why it is not.

Review shall include as appropriate the VCAF, the Office of the Attorney General (OAG), and officials of the Institution that submitted the proposal.

B. Due Diligence

Appropriate due diligence shall be undertaken with respect to any Acquisition and shall be conducted collaboratively by staff of the System, the OAG, and the proposing Institution. All elements of due diligence need not be completed before submission of a proposal to the Chancellor, the Committee, or the Board. At the discretion of the VCAF, and with the agreement of the Board, the completion of due diligence may follow Board approval, but shall occur before closing of the Acquisition. The due diligence practices to be applied shall be consistent with those established by the Chancellor.

C. Approvals- USM

If the Chancellor approves the proposal and Board approval is required, it shall be submitted to the Finance Committee of the Board ("Committee") for its consideration. If the Committee's action is favorable, it shall recommend approval by the Board. Acquisitions shall be considered by the Committee and the Board in executive session, unless otherwise decided by the Board. If the Board approves the Acquisition, it may delegate to the Chancellor authority to negotiate and execute all required documents. However, if during the negotiations the terms of the Acquisition change materially to the detriment of the System or the Institution from those approved by the Board, the Chancellor shall return the matter to the Committee and the Board for further consideration. The OAG shall review and approve all documents for form and legal sufficiency prior to their execution.

D. Approvals- Board of Public Works

All Acquisitions must be approved by the Board of Public Works ("BPW") except:

1. Agreements granting the System or an Institution an option or right of first refusal;
2. Acquisitions by gift; and

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3. Easements, rights- of-way, and rights of entry, unless the VCAF, in collaboration both with the Institution receiving such easement, right-of-way, or right of entry and the OAG, determine that special circumstances dictate that the BPW approval should be sought.

BPW agenda items are prepared and submitted to BPW by VCAF staff.

E. Option/Right of First Refusal Contracts

An Institution president or the VCAF may, without other approval, enter into a contract giving the Institution an option to purchase or a right of first refusal to acquire real property, if it is determined that the option or right of first refusal is in the Institution's best interest, provided that the cost of such option or right of first refusal does not exceed the lesser of:

1. 10% of the most current appraised value (or the current assessed value if more recent appraisals are unavailable) of the property; or
2. \$100,000.

All such contracts shall be reviewed and approved for form and legal sufficiency by the OAG. No option or right of first refusal shall be exercised without prior approval of the Board and BPW in accordance with these Procedures.

III. DISPOSITIONS

A. Proposal

When an Institution or the Office seeks to dispose of real property, its president or the VCAF shall submit to the Chancellor for review a proposal that includes the following:

1. Description (including improvements) and location of the property;
2. Location map;
3. Value of the property based on most recent appraisals, assessments, and available information;
4. Consideration (cash, in-kind, other) to be received;

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5. If a contract containing an option to purchase or right of first refusal has been received with respect to the property, the terms of the proposed option or right of first refusal;
6. Purpose of the Disposition; and
7. Confirmation that the Disposition is consistent with the institution's Board-approved facilities master plan, and explanation of any departure from that plan.

Review shall include as appropriate VCAF, OAG, and officials of the institution that submitted the proposals.

B. Due Diligence

Appropriate due diligence shall be undertaken with respect to any Disposition and shall be conducted collaboratively by staff of the System, the OAG, and the proposing institution. All elements of due diligence need not be completed before submission of a proposal to the Chancellor, the Committee, or the Board. At the discretion of the VCAF, and with the agreement of the Board, the completion of due diligence may follow Board approval, but shall occur before closing of the Disposition. The due diligence practices to be applied shall be consistent with those established by the Chancellor.

C. Approvals

If the Chancellor approves the proposal and Board approval is required, it shall be submitted to the Committee for its consideration. If the Committee's action is favorable, it shall recommend approval by the Board. Dispositions shall be considered by the Committee and the Board in executive session unless otherwise decided by the Board. If the Board approves the Disposition, it may delegate to the Chancellor authority to negotiate and execute all required documents. However, if during the negotiations, the terms of the Disposition change materially to the detriment of the System or institution from those approved by the Board, the Chancellor shall return the matter to the Committee and the Board for further consideration. The OAG shall review and approve all documents for form and legal sufficiency prior to their execution.

D. State Clearinghouse

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Prior to seeking Board of Public Works approval, the VCAF shall notify the State Clearinghouse of the State Department of Planning of proposed Dispositions in accordance with applicable law.

E. Board of Public Works

All Dispositions must be approved by the BPW except easements, rights-of-way, and rights of entry. The VCAF, after consultation both with the Institution granting such easement, right-of-way, or right of entry, and the OAG, may determine that special circumstances dictate that BPW approval should be sought. BPW agenda items are prepared and submitted to BPW by VCAF staff.

IV. IMPLEMENTATION

These Procedures are effective upon their approval by the Board and replace any preceding policy under this Board policy number.