



UT System Administration Policy Library – Policy UTS126 **Processing of Space Lease Agreements**

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POLICY STATEMENT

Lease contracts for space shall be entered into in accordance with applicable law and as provided in this policy.

RATIONALE

This policy provides requirements and guidelines for the leasing of space by The University of Texas System.

Texas Government Code § 2167.005 authorizes the Texas Facilities Commission (TFC) to delegate to a state agency, including an institution of higher education, the TFC's authority to enter into lease contracts for space, subject to the requirements imposed on the TFC in *Texas Government Code* Chapter 2167. Each UT institution has been delegated the authority to lease space by the General Services Commission, predecessor to the TFC.

Texas Government Code § 2167.0051 authorizes a UT institution to lease classroom and instructional space (but not space for other uses), but only if the portion of the building leased by the institution complies with the applicable standards and specifications under the architectural barriers law, *Texas Government Code* Chapter 469. Such leases are subject to the requirements in *Texas Government Code* §§ 2167.053, 2167.054, and 2167.055.

UT institutions may also choose to have the TFC handle the leasing of space for the institution pursuant to *Texas Government Code* § 2167.002. TFC may lease space for a UT institution in accordance with *Texas Government Code* Chapter 2167 and the institution's specifications if (i) state-owned space is not otherwise available to the institution; and (ii) the institution has verified it has money available to pay for the lease.

SCOPE

All institutions and UT System Administration

WEBSITE ADDRESS FOR THIS POLICY

<http://www.utsystem.edu/policy/policies/uts126.html>

RELATED STATUTES, POLICIES, REQUIREMENTS OR STANDARDS

UT System Administration Policies & Standards	Other Statutes, Policies & Standards
<ul style="list-style-type: none"> • <u>UTS135, Fire and Life Safety Reviews</u> • <u>Board of Regents' Rules and Regulations, Rule 70301</u> • <u>Board of Regents' Rules and Regulations, Rule 10501</u> 	<ul style="list-style-type: none"> • <u>Texas Government Code § 2167.005</u> • <u>Texas Government Code § 2167.003</u> • <u>Texas Government Code § 2167.006</u> • <u>Texas Government Code § 2167.103</u> • <u>Texas Government Code § 2167.054</u> • <u>Texas Government Code § 2167.101</u> • <u>Texas Government Code Chapter 469</u> • <u>Texas Government Code § 2167.0051</u> • <u>Texas Government Code § 2167.052</u> • <u>Texas Government Code § 2167.053</u> • <u>Texas Government Code § 2167.055</u> • <u>Texas Government Code § 2167.0021</u> • <u>Texas Administrative Code §§ 115.1-4, 6, 8, 10 and 13</u> • <u>Americans with Disabilities Act of 1990</u> • <u>Rehabilitation Act of 1993, Section 504</u>

CONTACTS

If you have any questions about UT System Administration Policy UTS 126, *Processing of Space Lease Agreements*, contact the following offices:

Subject	Office Name	Telephone Number	Email/URL
	Office of Business Affairs	512-499-4560	<u>http://www.utsystem.edu/bus/</u>

DEFINITIONS

OGC: UT System Office of General Counsel

TCLR: Texas Commission of Licensing and Regulation

TFC: Texas Facilities Commission

UT Institution's Authority Level: the dollar amount over which a UT institution must obtain Board of Regents approval before executing the lease, as determined pursuant to Board of Regents *Rules and Regulations*, Series 10501.

RESPONSIBILITIES

Lessee

- Complies with leasing regulations under the Texas Government Code.
- If leasing through the TFC, submits Requisition forms or lease renewal request to the TFC.
- Submits any required accessibility standards documentation to the Texas Commission of Licensing and Regulation.
- Obtains Board of Regents approval for leases, lease renewals or lease amendments with costs exceeding \$1,000,000 or such higher dollar amount as may have been authorized for the particular UT institution pursuant to Board of Regents *Rules and Regulations*, Series 10501. (The applicable dollar amount is hereafter called the "the UT Institution's Authority Level.")
- Provides TFC and Controller's Office an annual report of the amount and cost of space leased.
- Sends certification of availability of funds to pay for the lease to the TFC 60 days prior to each fiscal biennium.

Texas Facilities Commission

If the leasing UT Institution uses the TFC for the lease:

- Identifies available space for UT institution's requirements.
- Submits the information about proposed space to the UT institution for approval.

- Prepares lease documents and will also secure the necessary signatures, execute the lease, and transmit it to the UT institution.
- Notifies the UT institution of approval of the lease.

Office of Academic Affairs/Office of Health Affairs

- Approves any new programs or changes to currently approved program formats that require new or additional leased space.
- Approves leases that require Board of Regents approval.

Office of General Counsel (OGC)

- Reviews and approves leases that deviate in any way from the Standard UT Space Lease Form, that contain addenda or an option to purchase, a right of first refusal to purchase, or other right or option to purchase the improvements or the land on which the improvements are located, or for which Board of Regents approval is required.
- Requests assistance from the UT System Real Estate Office with respect to business issues.

UT System Real Estate Office

- Provides expertise in market knowledge and in negotiating lease terms to UT institutions, assists UT institutions in locating suitable space and securing the assistance of local real estate brokers and other resources, coordinates review and approval of leases as to legal form by OGC.
- Reviews and approves proposed leases that contain an option to purchase, a right of first refusal to purchase, or other right or option to purchase the improvements or the land on which the improvements are located.
- Provides assistance with and supervision of proposed leases that require Board of Regents approval or as requested by the Offices of Academic Affairs and Health Affairs.

Board of Regents

- Approves leases, lease renewals and amended leases with a total cost exceeding the UT Institution's Authority Level.

Executive Vice Chancellor or Vice Chancellor

- Approves Request for Proposals (RFPs) to provide space in a facility to be constructed according to RFP specifications.
- Determines whether the lease will be submitted to the Board of Regents for approval via the institutional docket or as an agenda item.

PROCEDURES

1. New Programs or Program Changes

Any new programs or changes to currently approved program formats that require new or additional leased space must be approved through the Office of Academic Affairs or Office of Health Affairs, as appropriate, prior to initiation of the leasing process.

2. Compliance with Fire and Life Safety Review Policy

A UT institution leasing space, either directly or with the assistance of the TFC, must comply with the requirements of the UT System Fire and Life Safety Review Policy.

3. Approval of Requests for Proposals

Any Request for Proposals (RFP) to provide space in a facility to be constructed to satisfy the requirements of the RFP must be approved in advance by the appropriate Executive Vice Chancellor or Vice Chancellor who, in consultation with the Office of the Board of Regents, will determine if Board approval will be required prior to issuance of the RFP.

4. Leasing by UT Institutions Under Delegated Authority

4.1 If the lease is for other than classroom or instructional space, then the UT institution's authority to lease is pursuant to delegation from the TFC, and the lease must comply with requirements applicable to the TFC under *Texas Government Code* Chapter 2167 (or its successor statute, as from time to time amended) as identified below:

- a) Space may be leased from a private source through competitive bidding (*Texas Government Code* § 2167.053); competitive sealed proposals (*Texas Government Code* § 2167.054); or direct negotiation (*Texas Government Code* § 2167.052), but the UT institution must use the method providing the best value for the state. (*Texas Government Code* § 2167.052) It is strongly encouraged that an institution avail itself of the resources in the UT System Real Estate Office to identify available space, negotiate lease terms, and determine best value.
- b) The original term of the lease may not exceed 10 years, and may include options to renew for as many terms not exceeding 10 years as the UT institution considers to be in the state's best interest. (*Texas Government Code* § 2167.055)
- c) Each lease contract must be contingent on the availability of funds to pay for the lease. (*Texas Government Code* § 2167.055)

- d) First consideration shall be given to a building designated as a historic structure under *Texas Government Code* § 442.001 or to a building designated as a landmark by a local governing authority, if such a building meets requirements and specifications and the costs are not substantially higher. (*Texas Government Code* § 2167.003)
- e) A UT institution may not enter a lease under authority delegated from the TFC unless the institution complies with the architectural barriers law, *Texas Government Code* Chapter 469, dealing with elimination of barriers to persons with disabilities. (*Texas Government Code* § 2167.006)
- f) A UT institution, assisted by the UT System Real Estate Office, may contract with one or more private brokers or real estate agents to assist with obtaining lease space for the institution. (*Texas Government Code* § 2167.0541)

4.2 UT institutions may pay for the costs of leases made pursuant to authority delegated by the TFC with funds appropriated from the General Revenue Fund or from other funds. (*Texas Government Code* § 2167.005(a) was amended effective September 1, 2001, to remove the former prohibition on using General Revenue funds to pay for a space lease.)

5. Leasing by UT Institutions for Classroom or Instructional Space

5.1 If the lease is for classroom or instructional space, the lease must comply with the requirements of *Texas Government Code* § 2167.0051 as identified below:

- a) Space may be leased through competitive bidding, competitive sealed proposals or direct negotiations if the institution determines that competition is not available. (*Texas Government Code* § 2167.0051(b)) The UT System Real Estate Office is available to serve as a resource to UT institutions in identifying space, negotiating lease terms, and determining best value.
- b) The original term of the lease may not exceed 10 years and may include options to renew for as many terms not exceeding 10 years as the institution considers to be in the state's best interest. (*Texas Government Code* § 2167.055.)
- c) The lease must be contingent on the availability of money appropriated by the legislature to pay for the lease. (*Texas Government Code* § 2167.055)
- d) A UT institution may not lease classroom or instructional space unless the portion of the building to be used by the institution complies with applicable standards and specifications under the architectural barriers law, *Texas Government Code, Chapter 469*. (*Texas Government Code* § 2167.0051(a))

5.2 UT institutions may pay for the costs of leases for classrooms and instructional space from appropriations from General Revenue funds or from other funds.

6. Leasing by the Texas Facilities Commission

6.1 If a UT institution wishes to use the TFC to (1) lease space not previously leased by the institution or (2) renew an existing TFC-handled lease having no option-to-renew clause, the institution should follow the following procedures:

- a) The president or chief business officer should submit the necessary requisition to the TFC, in accordance with the lead time requirements specified by the TFC, and using the forms available on the TFC's web page for Building and Space Leasing: <http://www.tTFC.state.tx.us/leasing/index.html>; and
- b) The TFC will identify the available space that provides best value for the state and best satisfies the UT institution's requirements, and will submit the information about that proposed space to the UT institution for approval. If the UT institution approves, the TFC will prepare lease documents and will also secure the necessary signatures, execute the lease, and transmit it to the UT institution.

6.2 If a UT institution wishes to renew a TFC-handled lease that includes an option-for-renewal, the institution should follow the following procedures:

- a) The UT institution and the landlord shall advise the TFC by letter that a renewal of the lease term is desired.
- b) The TFC will notify the UT institution of approval of the lease renewal by letter.

7. Texas Commission of Licensing and Regulation Inspection Requirements Applicable to Leasing by UT Institutions

7.1 If a UT institution plans to lease space having an annual lease expense in excess of \$12,000, then the Texas Commission of Licensing and Regulation (TCLR), an entity with whom TCLR contracts, or a person holding a certificate of registration issued by TCLR must perform an on-site inspection of the proposed space before it is occupied by the institution to ensure compliance with TCLR accessibility standards adopted under *Texas Government Code* Chapter 469. (*Texas Government Code* §§ 469.105 & 469.106) **Note** – even if inspection of the proposed space is not required under this \$12,000 annual lease expense test, the TCLR accessibility standards still apply.

7.2 The leasing UT institution will need to assemble for the inspection the following documentation for each space lease and must request an inspection before the institution occupies the leased premises:

- a) A copy of the lease (including the landlord's address);
- b) A copy of the lease specifications if the lease is a TFC-handled lease.

- c) The name and telephone number of a contact person on the lease site;
- d) A copy of any amendments concerning a delay in occupancy and/or resulting in a change of the effective date; and
- e) A copy of the floor plan showing the leasehold premises.

7.3 Correction of Non-Complying Conditions of Leased Premises

Texas Government Code Chapter 469 requires that if the inspection identifies conditions on the leased premises that do not conform to the required accessibility standards and the landlord fails to bring the premises into compliance within 60 days after notice (or a longer period authorized by TCLR), then the UT institution must cancel the lease. The Standard U. T. Space Lease contains provisions requiring the inspection and authorizing UT to cancel the lease if non-complying conditions are not timely corrected.

8. Approval by OGC

8.1 Leases by UT institutions entered into using the Standard UT Space Lease form, with no modifications, do not require OGC review as to legal form prior to execution.

Leases that deviate in any way from the Standard UT Space Lease form, that contain addenda or an option to purchase, a right of first refusal to purchase, or other right or option to purchase the improvements or the land on which the improvements are located, or for which Board of Regents approval is required must be reviewed and approved as to legal form by OGC prior to execution. **Note:** UT institutions are strongly encouraged to involve OGC in the early negotiations of non-standard space leases.

Leases handled by the TFC will be in the form approved by the TFC and do not require OGC approval.

8.2 Renewals by UT institutions of standard or nonstandard leases that (1) do not modify in any way the form of the original lease and (2) are documented by using the Standard U. T. Amendment and Extension form, without modifying the substance of that form, do not require the approval of the OGC.

Renewals that either modify the form of the original lease or are documented by an instrument other than the Standard U. T. Amendment and Extension form require the prior approval of the OGC.

Renewals of TFC-handled leases should be in accordance with Section 6.2 above and do not require OGC approval.

8.3 If the lease amendment is not being handled by TFC, lease amendments by UT Institutions require the prior approval of OGC. UT institutions requesting amendments to any lease must submit to OGC a copy of the original lease and any previous amendments.

The UT institution should contact the TFC if it desires amendments to a TFC-handled lease. Amendments to TFC-handled leases do not require OGC approval.

9. Approval by the Board of Regents

Regental approval is required for all leases, lease renewals and lease amendments with a total cost exceeding the UT Institution's Authority Level. This requirement applies to lease documents entered into directly by the institution and to lease documents entered into by the TFC on behalf of the institution.

The appropriate Executive Vice Chancellor or Vice Chancellor, in consultation with the Office of the Board of Regents, will determine whether the lease will be submitted to the Board of Regents for approval via the institutional docket or as an agenda item.

If a lease document must be signed before Regental approval is granted, the document must contain an acceptable limitation such as the following statement:

“This [Lease] is not effective until approved by the Board of Regents of The University of Texas System.”

10 Approval of Real Estate Office

10.1 If the proposed lease contains an option to purchase, a right of first refusal to purchase, or other right or option to purchase the improvements or the land on which the improvements are located, or if approval by the Board of Regents is required, then the lease must be reviewed and approved by the UT System Real Estate Office prior to execution.

10.2 If the proposed lease requires Board of Regents approval or if the proposed lease is referred to the Real Estate Office by the Office of Health Affairs or the Office of Academic Affairs, then the Real Estate Office will provide assistance with and supervision of the lease.

10.3 UT institutions are strongly encouraged to involve the Real Estate Office in the early negotiations of such space leases. In addition, the Real Estate Office will consult with the institution, at the institution's request, on any space lease. Leases can be complex and difficult to negotiate. The Real Estate Office has staff with expertise in negotiating leases and can provide lease checklists to use as planning tools before beginning negotiations.

11. Execution of Lease Documents

11.1 The president of each institution is authorized in the Board of Regents' *Rules and Regulations*, Series 10501 and 70301, to sign space leases, renewals and amendments on behalf of the institution. The president may delegate in writing the authority to execute lease documents.

11.2 If approval of OGC is required (see Section 8 above), the president may not sign the lease document until the OGC has notified the institution that the office has approved the lease document as to legal form.

11.3 If a lease, lease renewal or amended lease has a total cost exceeding the UT's Institution's Authority Level, the UT institution should obtain the approval of the Board of Regents via the institutional docket before the lease document is executed. If a lease document must be signed before Regental approval is granted, the document must contain an acceptable limitation such as the following statement:

“This [Lease] is not effective until approved by the Board of Regents of The University of Texas System.”

12. Leases for Federal Projects

All space to be leased for federal projects and for which payment will be made from federal funds should meet the federal requirements for individuals with physical disabilities, in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 - 12213) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

13. Reports to the Texas Facilities Commission

13.1 Each UT institution must provide to the TFC an annual report of the amount and cost of space leased directly by the institution. (*Texas Government Code* §§ 2167.005 & 2167.103) The institution should also include, in a separate section of the same report, a listing of TFC-handled leases (see Annual Report of Space Leases in Appendix). This composite report will thereby document the total amount of space being leased, as well as help reconcile the institution's records with those kept by the TFC. The annual report should be sent directly to the TFC with a copy to the Office of the Controller at UT System. This report must be submitted even if no space is being leased.

13.2 If the lease was entered into by the TFC on behalf of the institution, the institution must certify to the TFC at least 60 days before the beginning of each fiscal biennium during the lease term that money is available to pay for the lease. The TFC provides to the institution the form for the certification. (*Texas Government Code* § 2167.101).

FORMS AND TOOLS/ONLINE PROCESSES

[Standard UT Space Lease Agreement](#)

[Standard UT Amendment and Extension Form](#)

[Annual Report of Space Leases](#)

APPENDIX

None

Keywords: leases, contracts, lease, facilities, leasing, real estate
