



UT System Administration Policy Library -- Policy # UTS147

Processing of Sales and Leases of Real Property (UT as Seller or Landlord)

Responsible Officer: Executive Vice Chancellor for Business Affairs

Sponsoring Office: Office of Business Affairs

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Errors or changes to: policyoffice@utsystem.edu

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POLICY STATEMENT

It is the policy of The University of Texas System to permit the sale or leasing of improved or unimproved real property of the Board of Regents of The University of Texas System in a manner that provides the best value for The University of Texas System. All sales or leases to other parties of improved or unimproved real property of the Board of Regents shall be entered into in accordance with applicable law and as provided in this policy.

RATIONALE

This policy provides requirements and guidelines for sales or leases to other parties of improved or unimproved real property of the Board of Regents.

SCOPE

All institutions and UT System Administration

WEBSITE ADDRESS FOR THIS POLICY

<http://www.utsystem.edu/policy/ov/uts147.html>

RELATED POLICIES, REQUIREMENTS OR STANDARDS

UT System Administration Policies & Standards	Other Statutes, Policies & Standards
<ul style="list-style-type: none">• Regents' Rules and Regulations, Series 70301	<ul style="list-style-type: none">• <i>Texas Constitution</i> Article III, Section 51• <i>Texas Education Code</i> § 65.31• <i>Texas Education Code</i> § 65.39

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| | <ul style="list-style-type: none">• <i>Texas Tax Code</i> § 11.11 |
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CONTACTS

If you have any questions about UT System Administration Policy UTS147 Processing of Sales and Leases of Real Property (UT as Seller or Landlord), contact the following offices:

Subject	Office Name	Telephone Number	Email/URL
	Business Affairs	(512) 499-4560	ogcemail@utsystem.edu http://www.utsystem.edu/ogc/

DEFINITIONS

None

RESPONSIBILITIES

UT Institution

- Uses the method of selling or leasing that provides the best value.
- Has a market analysis prepared by an independent firm to determine the demand for the proposed privatized construction project before soliciting proposals from interested providers.

UT System Office of Finance

- Reviews privatized construction projects before issuance of a request for proposals.

Office of General Counsel

- Reviews privatized construction projects before issuance of a request for proposals.
- Reviews and approves request for proposals for privatized construction projects.
- Reviews and approves terms and form of lease.

- Approves sales and leases of improved or unimproved real property of the Board of Regents as to legal form prior to execution.

Executive Vice Chancellor

- Reviews privatized construction projects before issuance of a request for proposals.

UT System Real Estate Office

- Reviews and approves request for proposals for privatized construction projects.
- Reviews and approves terms and form of lease.

Responsible Institutional Representative

- Contacts the Real Estate Office to identify business terms and issues that should be addressed in the lease.

UT System Office of Facilities Planning

- Approves construction standards.

Facilities Planning and Construction Committee of the Board of Regents

- Reviews and approves preliminary plans with fully developed elevations and perspective renderings.

Board of Regents

- Approves sales or leases with a total value exceeding \$1,000,000.

Executive Vice Chancellor for Business Affairs, or His or Her Delegate

- Signs documents pertaining to improved or unimproved real property of the Board of Regents.
- Interprets this policy and is responsible for revising it as necessary.

PROCEDURES

1 Sale or Leasing Methods and General Terms

1.1 Improved or unimproved real property of the Board of Regents of The University of Texas System may be sold or leased to an individual or an entity through:

1. competitive bidding;
2. competitive sealed proposals (request for proposals); or
3. direct negotiation.

The institution shall use the method that provides the best value for The University of Texas System. In determining what is the best value to The University of Texas System, the institution shall consider:

1. the selling price, rental, or other consideration to be received;
2. the reputation and creditworthiness of the purchaser or tenant, and, if applicable, the experience of the tenant;
3. the extent to which occupancy by the tenant serves the needs of the institution, if applicable; and
4. any other relevant factor that a private seller or landlord would consider in selecting a purchaser or a tenant.

1.2 The real estate contract or lease shall contain business terms that are in the best interest of the UT System. With respect to a lease transaction, under no circumstances shall the Board of Regents' interest in the real property be subordinated to the lien of any mortgagee of the tenant's leasehold interest.

2 Selling Price or Rental Rate

2.1 The Texas Attorney General has construed Texas Constitution Article III, Section 51 to prohibit the grant of state property and contract rights as well as money. Op. Tex. Att'y Gen. MW-373 at 1255 (1981). Consequently, the sale or lease must be for a fair market value, as determined either by a competitive process, an independent appraisal, a market study, or other documentation of value, or the sale or lease must comply with the requirements for a below-market price as specified in Section 2.2.

2.2 In accordance with opinion of the Texas Attorney General cited in 2.1, if the lease or sale is at a below-market value, it must meet the following requirements:

1. the sale or lease must serve an identifiable public purpose appropriate to the function of the institution;
2. adequate consideration must flow to the institution; and
3. the institution must maintain sufficient contractual controls to ensure that the public purpose is actually achieved.

The determination of whether the public purpose exists is to be made by the Board of Regents in the first instance. *Id.* Consequently, a proposed sale or lease below market must be submitted to the Board of Regents for a finding of fact that the transaction serves the public purpose. The institution must supply sufficient documentation to the Board of Regents to enable it to make the finding of fact.

3 Lease for Privatized Construction Project for Institutional Purpose

3.1 If the lease is for a privatized construction project to serve an institutional purpose (for example, student housing, bookstore, etc.), the project must (1) serve a demonstrated institutional need, (2) meet design and construction standards consistent with the approved master plan and architectural standards for the campus, and (3) utilize the competitive sealed proposals process (request for proposals).

3.2 A privatized construction project will be approved only when it is demonstrably more desirable than for the institution to own the project. In addition to the other requirements in this Business Procedures Memorandum, the following criteria for approval shall apply to privatized construction projects:

- 1.** The institution shall have a market analysis prepared by an independent firm to determine the demand for the proposed project before soliciting proposals from interested providers.
- 2.** The project must be reviewed by the UT System Office of Finance before issuance of a request for proposals to determine what effect the project may have on the institution's debt service capacity.
- 3.** The project must be reviewed by the UT System Office of General Counsel before issuance of a request for proposals to determine what effect any tax issues may have on the project.
- 4.** The project must be approved by the appropriate Executive Vice Chancellor before issuance of the request for proposals.
- 5.** The request for proposals must be in a form reviewed and approved by the UT System Real Estate Office and the Office of General Counsel.
- 6.** The lease must contain terms approved by the UT System Real Estate Office and be in a form reviewed and approved by the UT System Real Estate Office and the Office of General Counsel.

The responsible institutional representative should contact the Real Estate Office to identify business terms and issues that should be addressed in the lease.

- 7.** The project must meet construction standards approved by the UT System Office of Facilities Planning and Construction (OFPC). If OFPC will not be inspecting the project for code compliance, then construction permits and appropriate inspections must be obtained from the local municipality for all construction associated with the project.

8. Preliminary plans with fully developed elevations and perspective renderings must be submitted to the Facilities Planning and Construction Committee of the Board of Regents for review and approval.

4 Tax Considerations in Leasing

4.1 Section 11.11 of the Texas Tax Code governs when UT property is exempt from real property taxes. UT property used for public purposes is tax exempt; UT property used for non-public purposes is taxable. Non-public purposes are (i) purposes that are not related to the performance of the duties or function of the institution, and (ii) residential housing that serves the public other than students and employees of the institution. If property is leased partially to private tenants for non-public purposes and is used partially by the institution for public purposes, then the portion leased to private parties is taxable. Provision must be made in the lease with respect to who will bear the responsibility for payment of real property taxes.

4.2 Sections 511 and 512 of the Internal Revenue Code impose a tax on the income of exempt organizations that is derived from any unrelated trade or business regularly carried on. A proposed lease must be evaluated to determine whether it may trigger unrelated business taxable income. Consult the UT System Office of General Counsel and UTS103, Unrelated Business Income Tax, before the lease transaction structure is finalized.

4.3 As a general rule, interest on bonds issued by the UT System is tax exempt only if the proceeds are used for UT System purposes. There is the potential for numerous federal tax issues to arise if the facilities financed by the bonds are used for private purposes, such as a lease to a private party. A lease involving bond-financed property that occurs after the bonds have been issued but before the bonds have been retired must also be evaluated to confirm that it does not jeopardize the tax exempt status of the interest paid on the bonds. Consult the UT System Office of Finance before the lease transaction structure is finalized.

5 Approval by the UT System Real Estate Office

5.1 Each sale of real property and, except with respect to campus office leases as provided in Section 5.2, each lease to a tenant of improved or unimproved real property of the Board of Regents of The University of Texas System must be approved by the Real Estate Office. Consult with the Real Estate Office before the transaction structure is finalized.

5.2 A campus office lease must be approved by the institution's chief business officer or his or her delegate. A "campus office lease" is a lease of space to another party for general office uses in a building (1) owned or leased (as tenant) by the UT System Board of Regents and (2) used for institutional purposes. "General office uses" are uses of space that are typical to business operations; such uses include medical and dental offices and

other professional offices, but do not include other commercial retail or wholesale operations involving the sale or rental of products or services on the premises.

6 Approval by the UT System Office of General Counsel

Each sale and each lease of improved or unimproved real property of the Board of Regents must be approved by the Office of General Counsel as to legal form prior to execution. Note: UT institutions are strongly encouraged to involve the Office of General Counsel in the early stages of the proposed transaction.

7 Approval by the UT System Board of Regents

7.1 Regental approval is required for each sale or lease with a total value exceeding \$1,000,000. With respect to leases, the total value includes all rental payments and all tenant finish out paid by UT or allowance granted by UT for finish out; these amounts are to be calculated over the entire term of the lease, including any renewal terms. If a real estate sale contract or a lease must be signed before Regental approval is granted, the document must contain an acceptable limitation such as the following statement:

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

7.2 The request for approval of the Board of Regents shall comply with the Regents' *Rules and Regulations*, Series 70301, which require that the following information be provided to the Board of Regents:

- 1.** a description of the process used to select the other party and the rationale for using the process described;
- 2.** a description of the process used to set the consideration to be received; and
- 3.** a statement of the appraised value as determined by an independent appraisal conducted no earlier than 12 months prior to the Board of Regents' meeting date at which the transaction is to be presented for approval.

7.3 As provided in Section 2.2 above, if the proposed transaction is for less than fair market value, sufficient documentation must be provided by the institution to enable the Board of Regents to make a finding of fact that a public purpose, appropriate to the institution, is served.

8 Execution of Documents

Regents' *Rules and Regulations*, Series 70301, delegates to the Executive Vice Chancellor for Business Affairs, or his or her delegate, the authority to sign documents pertaining to improved or unimproved real property of the Board of Regents.

FORMS AND TOOLS/ONLINE PROCESSES

None

APPENDIX

None