

## Title

Real Estate Contracts

### Sec. 1 Purpose

This Policy complements and administers the requirements set out in Regents' Rule 70301. Capitalized terms used herein and not otherwise defined shall have the meaning attributed to them in Regents' Rule 70301. With respect to Real Estate Contracts, this Policy is subject to all Regents' *Rules and Regulations* and U.T. Systemwide Policy UTS138, Gift Acceptance Procedures, but controls over any conflicts with any other U. T. Systemwide Policy.

### Sec. 2 Principles

U.T. System Administration and U. T. institutions shall be guided by the following principles:

- a) The acquisition or disposition of real property or of the right to use real property by U. T. System shall be fair and transparent, obtain at least fair market value for U. T. System unless otherwise authorized by the Board of Regents, and provide the best value for U. T. System; and
- b) The processing of Real Estate Contracts, including legal and business review, shall comply with all applicable law, the Regents' *Rules and Regulations*, and this Policy.

### Sec. 3 Contract Selection

3.1 Methods of Contract Selection. Subject to Sections 3.2 through 3.5 below, interests in real property may be acquired from or granted to a person or an entity by U.T. System through:

- a) competitive bidding,
- b) competitive sealed proposals (requests for proposals),
- c) direct negotiation, or
- d) reasonable exposure to the market through real estate brokers or direct listing or publication by U.T. System Administration or U. T. institutions, or other commercially reasonable method of exposure sufficient to expose the property to the public.

3.2 Best Value. Each U.T. institution shall use the method that provides the best value for U.T. System, and all Real Estate Contracts, when taken as a whole, shall be on terms and conditions in the best interest of U.T. System. In making such determinations, an institution may avail itself of the resources of the Real Estate Office and the Office of General Counsel to identify available properties, negotiate terms of Real Estate Contracts, and determine best value or fair market consideration for the property in question. In determining what is the best value to the U.T. System, the institution and the Real Estate Office shall consider:

- a) the selling price, rental, or other consideration to be received or paid by the U.T. institution;
- b) the reputation and creditworthiness of the other parties to the contract and, if applicable, the business and real estate experience of such parties;
- c) the extent to which the transaction serves the needs and Institutional Purposes of the institution; and
- d) any other relevant factor that a reasonable person would consider in entering into a Real Estate Contract with another person.

3.3 Property Owned or Controlled by the Board. In selling, licensing or leasing real property owned or controlled by the Board of Regents, the real property should be made generally available to the public in the market place in order that all potentially interested parties may respond. Direct negotiations with a single party should be used only when the other party possesses unique consideration for offer in exchange for the property.

3.4 Approval of Requests for Proposals. Any request (i) for proposals issued for a proposed conveyance of any interest of real property owned or controlled by the Board of Regents or (ii) for proposals that will be signed by the Executive Director of Real Estate pursuant to Regents' Rule 70301 or this Policy for a proposed acquisition by the Board of Regents of any real property interest from another party must be approved in advance by the Office of General Counsel, the Executive Director of Real Estate, and the appropriate Executive Vice Chancellor who, in consultation with the Office of the Board of Regents, will determine if Board of Regents' approval will be required prior to issuance of the request for proposals.

3.5 Use of Brokers and Agents. The Real Estate Office and a U. T. institution may contract with one or more private brokers or real estate agents to assist with the purchasing, selling, leasing, or licensing of real property by or for the institution. All such contracts shall be subject to business review and approval of the Real Estate Office and legal review and approval by the Office of General Counsel.

## **Sec. 4 Fair Market Value Consideration**

4.1 Fair Market Value. 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 ([Texas Attorney General Opinion MW-373,1981](#)). Consequently, the sale, purchase, lease or use of real estate must be for a fair market value, as determined by a competitive process, an independent appraisal, a market study (by a qualified real estate broker or industry source), or other documentation of value. The basis of such fair market value determination shall be documented and preserved as part of the permanent record of the transaction.

4.2 Board of Regents Findings. In accordance with the opinion of the Texas Attorney General cited in Section 4.1, if the consideration paid or received by the Board of Regents under a Real Estate Contract is at a below-market value, the Real Estate Contract must meet the following requirements:

- a) the consummation of the Real Estate Contract must serve an identifiable public purpose appropriate to the function of the U. T. institution;
- b) adequate consideration must flow to the U. T. institution; and
- c) the U.T. institution must maintain sufficient contractual controls in the Real Estate Contract to ensure that the public purpose is actually achieved.

The determination of whether a Real Estate Contract meets the requirements of this Section 4.2 is to be made solely by the Board of Regents and all requests for such a determination must be submitted to the Board of Regents for the necessary findings of fact. The U.T. institution is responsible for supplying sufficient documentation to the Board of Regents to enable it to make the required findings of fact.

## **Sec. 5 Review of Real Estate Contracts by Real Estate Office**

5.1 Contracts Requiring Real Estate Office Review. The following Real Estate Contracts must be reviewed and approved as to business terms by the Real Estate Office prior to execution:

- a) Real Estate Sales Contracts;
- b) any Campus Lease (defined in Section 8.1 below) to be executed by the Executive Director of Real Estate or a delegate in the Real Estate Office;
- c) any Space Lease (defined in Section 8.1 below):
  - 1) having a term (including the initial term and all extension or renewal terms not under the control of the Board of Regents) in excess of 10 years or requiring the Board of Regents to pay a penalty or fee for ending the lease at the expiration of a 10-year term or later,

- 2) having an initial term (or any extension or renewal term under the control of the Board of Regents) in excess of 10 years or requiring the Board of Regents to pay a penalty or fee for ending the lease at the expiration of the 10-year term or later,
  - 3) containing an option to purchase, a right of first refusal to purchase, or other right or option to purchase improvements or the land on which the improvements are located, or
  - 4) involving raw land, construction or substantial construction of a new building or facility, or the substantial replacement or reconstruction of an existing building or facility;
- d) any Real Estate Lease referred to the Real Estate Office by the U. T. System Administration's Office of Health Affairs or the U. T. System Administration's Office of Academic Affairs;
- e) Easements;
- f) any agreement in which a material part of the consideration paid or received by a U. T. institution under the agreement is nonmonetary in nature; and
- g) any agreement requiring the Board of Regents' approval.

#### 5.2 Contracts Not Requiring Real Estate Office Review.

- a) Real Estate Leases Within Institution's Authority Level. Real Estate Leases and all amendments and modifications thereof that cumulatively have a Total Cost or Monetary Value less than the contract value threshold for the institution established under U. T. Systemwide Policy UTS145, Processing of Contracts, pursuant to Regent's Rule 10501 ("Authority Level"), do not require the review and approval of the Real Estate Office as to business terms prior to execution unless the contract requires the review of the Real Estate Office as provided in Section 5.1 above. (By way of illustration, a Real Estate Contract within an institution's Authority Level would still require prior review and approval of the Real Estate Office if the contract contained an option to purchase the improvements or the land on which the improvements are located.)

- b) Use of U.T. System Promulgated Real Estate Contract Forms. Real Estate Contract forms and other template forms promulgated by the Real Estate Office and the Office of General Counsel that (i) are entered into by U. T. institutions without modifying the substance of that form in any material manner and pursuant to the terms and conditions issued in connection with the use of such form, (ii) are within the Authority Level of the institution, (iii) have a term of 10 years or less (including any extensions of term not under the sole control of the U.T. institution), and (iv) do not otherwise require Board of Regents' approval, may be executed without prior review and approval as to business terms by the Real Estate Office. Such Real Estate Contracts remain subject to all requirements of Regents' Rule 70301 and this Policy.
- c) Texas Facilities Commission Contracts. Space Leases handled by the Texas Facilities Commission ("TFC") pursuant to this Policy do not require Real Estate Office review and approval as to business terms, except as provided in Section 11.3 below.

## **Sec. 6 Review of Real Estate Contracts by Office of General Counsel**

6.1 Review by Office of General Counsel. Except as expressly provided in this Policy, all Real Estate Contracts, regardless of the Total Cost or Monetary Value of the contract, shall be reviewed and approved as to legal form by the Office of General Counsel prior to execution.

6.2 Contracts Not Requiring Office of General Counsel Review.

- a) Space Leases Within Authority Level Using Promulgated Addendum. Space Leases and all amendments, renewals and extensions thereto having a cumulative Total Cost or Monetary Value to the U. T. institution of less than \$1 million and an annual average cost of less than \$500,000 do not require legal review and approval by the Office of General Counsel if the Space Lease (i) incorporates without change the "State Law Addendum" of the form then currently promulgated by the Office of General Counsel; (ii) does not require the approval of the Real Estate Office pursuant to Regents' Rule 70301 and this Policy; (iii) otherwise complies with applicable law, Regents' Rules and this Policy; and (iv) does not otherwise require the approval of the Board of Regents.
- b) Use of U.T. System Promulgated Real Estate Contract Forms. Real Estate Contracts that do not require the review of the Real Estate Office pursuant to Section 5.2(b) above, including compliance with all the conditions set forth in subsections (i) through (iv) of Section 5.2(b), do not require legal review and approval by the Office of General Counsel. Such Real Estate Contracts remain subject to all requirements of Regents' Rule 70301 and this Policy.

- c) Texas Facilities Commission Contracts. Space Leases handled by the TFC pursuant to this Policy do not require legal review and approval by the Office of General Counsel, except as provided in Section 11.3 below.

### **Sec. 7 Execution of Real Estate Contracts.**

7.1 Delegation Authority to Executive Director of Real Estate. Regents' Rule 70301 delegates to the Executive Director of Real Estate the authority to sign all Real Estate Contracts. The Executive Director of Real Estate may delegate in writing the authority to execute such contracts pursuant to Regents' Rule 10501.

7.2 Delegation of Authority to U. T. Institution Presidents. The President of each U. T. institution is authorized by Regents' Rule 70301 to sign certain Space Leases pursuant to Section 6 of said rule. The President may delegate in writing the authority to execute such contracts pursuant to Regents' Rule 10501.

### **Sec. 8 General Provisions Regarding Real Estate Leases**

8.1 Real Estate Leases. Subject to compliance with all applicable law, Regents' Rule 70301 and this Policy, U. T. institutions may enter into Real Estate Leases to (i) grant the right to a third party to occupy and use space in a building or grounds managed by the institutions ("Campus Lease"); or (ii) acquire the right to occupy and use for Institutional Purposes space that is owned or controlled by a third-party ("Space Lease").

8.2 No Subordination of State's Interest. With respect to lease or license of real property to a third party, under no circumstances whatsoever shall the Board of Regents' interest in the real property be subordinated to the lien of any mortgagee of the third party's interest.

8.3 Specified Term. Unless otherwise approved by the Board of Regents, a Space Lease to be executed by the President or his delegate pursuant to Section 7.2 above must provide for an initial term of a specified duration not exceeding ten years, but may include options to renew for as many terms (each renewal or extension term must be of specified duration not exceeding ten years) as the U. T. institution considers to be in its best interest. Any Space Lease described under Section 5.1(c)(1) or Section 5.1(c)(2) above must be reviewed and approved by the Real Estate Office and the Office of General Counsel and shall be signed by the Executive Director of Real Estate or his delegate, after obtaining approval of the institution's Chief Business Officer or delegate.

8.4 Restrictions on Use and Operations. Without the prior review and approval of both the Real Estate Office and the Office of General Counsel, no Real Estate Lease may restrict or otherwise limit the ability of the particular U.T. institution or any other institution or member of the U.T. System to operate from another location within a defined geographic area. (Such prohibited restrictions and limitations would include, by way of example, an agreement that a U.T. institution would not open another office or provide a particular service within a defined geographic area.)

8.5 Sources of Funding. U. T. institutions may pay for the costs of Space Leases with funds appropriated from the General Revenue Fund or from other funds. If the U.T institution is dependent on a specific source of funds (such as, e.g., a specific state or federal grant program) to make the rental payments owing by the U.T. institution, the U.T. institution should attempt to obtain the right to terminate the Space Lease in the event of a loss of the source of funds.

8.6 Accessibility Inspection. In entering into a Real Estate Lease, the U. T. institution must comply with the architectural barriers law, *Texas Government Code*, Chapter 469, dealing with elimination of barriers to persons with disabilities. If a U. T. institution plans to obtain lease space having an annual lease expense to the U. T. institution in excess of \$12,000, then the Texas Department of Licensing and Regulation (“TDLR”), an entity with which the Texas Commission of Licensing and Regulation (“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* Sections 469.105 and 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 to the lease space and to the U. T. institution.

a) Inspection Documentation. The leasing U. T. institution will need to assemble for the inspection the following documentation for each Space Lease and must request an inspection before the U. T. institution occupies the leased premises:

- 1) a copy of the lease (including the landlord's address);
- 2) a copy of the lease specifications if the lease is a TFC-handled lease;
- 3) the name and telephone number of a contact person on the lease site;
- 4) a copy of any amendments or other agreement concerning a delay in occupancy and/or resulting in a change of the effective date or the commencement date; and
- 5) a copy of the floor plan showing the leasehold premises.

b) Correction of Noncomplying Conditions. *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 U. T. institution must cancel the lease. The Standard U. T. System Space Lease contains provisions requiring the inspection and authorizing U. T. System to cancel the lease if noncomplying conditions are not timely corrected.

- c) TDLR Registration Requirements. The leasing U. T. institution must register each lease having an annual lease expense in excess of \$12,000 with TDLR by submitting a completed "State Lease Registration" form to TDLR. This requirement applies to both initial lease agreements and lease renewals. (*Texas Administrative Code*, Title 16, Section 68.101(a)). If a lease has an estimated construction cost of \$50,000 or more, the U. T. leasing institution must ensure that the design professional with overall responsibility for the design of the building or facility (or the owner of the subject building or facility if there is no design professional with overall responsibility) timely submits a completed "TDLR Project Registration" form or an "Architectural Barriers Project Registration Confirmation Page," along with related construction documents for the project to TDLR (*Texas Administrative Code*, Title 16, Sections 68.50 and 68.101(a)). The forms mentioned in this subsection (c) are available on TDLR's web page for Architectural Barriers Forms: <http://www.license.state.tx.us/AB/abforms.htm>.

8.7 Accessibility standards for Federal Project Real Estate Leases. 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. Sections 12101 - 12213), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as they may be amended from time to time.

## **Sec. 9 Compliance with Other Policies**

9.1 Compliance with Fire and Life Safety Reviews Policy. Prior to acquiring real property with any building(s) or space within a building to be used for campus purposes, a fire and life safety review must be performed in accordance with U. T. Systemwide Policy UTS135, Fire and Life Safety Reviews. A U. T. System institution purchasing space or leasing or licensing space for use of the institution, either directly or with the assistance of the Texas Facilities Commission, must comply with the requirements of this Policy.

9.2 Compliance with Environmental Review Policy. Prior to the acquisition of any real property asset covered by U. T. Systemwide Policy UTS161, Environmental Review of Acquisition of Real Property, a UT institution must comply with the requirements of such Policy.

9.3 New Programs or Program Changes. Any new program or change to currently approved program formats that requires new or additional interests in real property must be approved through the Office of Academic Affairs or Office of Health Affairs, as appropriate, prior to initiation of the acquisition process.

**Sec. 10 Real Estate Leases for Privatized Construction Project**

10.1 Privatized Construction Contracts. If a Real Estate Lease is for a privatized construction project to serve an Institutional Purpose (for example, student housing, bookstore, etc.), the project must (i) serve a demonstrated institutional need, (ii) meet design and construction standards consistent with the approved master plan and architectural standards for the campus, and (iii) utilize the competitive sealed proposals process (request for proposals). A privatized construction project may be approved only when it is demonstrably more desirable than for the Board of Regents to own the project. In addition to the other requirements in this Policy, the following criteria for approval shall apply to privatized construction projects:

- a) the U. T. 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;
- b) the project must be reviewed by the U. T. System Administration's Office of Finance before issuance of a request for proposals to determine what effect the project may have on the U. T. institution's debt service capacity;
- c) the project must be reviewed by the Office of General Counsel before issuance of a request for proposals to determine what effect any tax issues may have on the project;
- d) the project must be approved by the appropriate Executive Vice Chancellor before issuance of the request for proposals;
- e) the request for proposals must be in a form reviewed and approved by the Office of General Counsel and the Real Estate Office;
- f) the Real Estate Lease must contain business and legal terms approved by the Real Estate Office and the Office of General Counsel;
- g) the project must meet construction standards approved by the U. T. System Administration's 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; and
- h) 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.

## Sec. 11 Texas Facilities Commission Leases

11.1 Texas Facilities Commission Leases. U. T. institutions may directly enter into Space Leases in accordance with the terms of Regents' Rule 70301 and this Policy, or by having the Texas Facilities Commission contract for the space for the U. T. institution pursuant to *Texas Government Code* Section 2167.002, which grants Texas Facilities Commission the authority to lease space for a U. T. institution if (i) State-owned space is not otherwise available to the institution; and (ii) the U. T. institution has verified it has money available to pay for the lease. If a U. T. institution wishes to use the Texas Facilities Commission to (1) acquire the right to occupy and use 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) Submission by U. T. institution. The President or Chief Business Officer of the U. T. institution should submit the necessary requisition to the Texas Facilities Commission, in accordance with the lead time requirements specified by the TFC, and use the forms available on the TFC's web page for Building and Space Leasing: <http://www.tfc.state.tx.us/divisions/facilities/prog/leasing/>.
- b) Identification of Space. The TFC will identify the available space that provides best value for the State of Texas and best satisfies the U. T. institution's requirements and will submit the information about that proposed space to the U. T. institution for approval. If the U. T. institution approves, the TFC will prepare lease documents and will also secure the necessary signatures, execute the lease, and transmit it to the U. T. institution.

11.2 Leases with Option to Renew. If a U. T. institution wishes to renew a TFC-handled lease that includes an option for renewal, the institution should follow the following procedures:

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

11.3 Review by UT System. Real Estate Leases and renewals and amendments to such contracts that are handled by the Texas Facilities Commission must be in the form approved by the Texas Facilities Commission and do not require the Real Estate Office approval and the Office of General Counsel approval, unless the Real Estate Lease also requires Board of Regents' approval or is a Space Lease described under Section 5.1(c)(1), Section 5.1(c)(2), Section 5.1(c)(3), or Section 5.1(c)(4) of this Policy.

11.4 Accessibility Standards. With respect to TFC-handled leases, the leasing U. T. institution should coordinate with the TFC to ensure TDLR's registration requirements are satisfied.

11.5 Compliance with Fire and Life Safety Reviews Policy. A U. T. institution entering into a Space Lease with the assistance of the Texas Facilities Commission must comply with the requirements of the U. T. Systemwide Policy UTS135, Fire and Life Safety Reviews.

## **Sec. 12 Tax Considerations in Real Estate Contracts**

12.1 Ad Valorem Taxes. Property owned by the Board and used for public purposes (including Institutional Purposes) is tax exempt; whereas such property used for private purposes is taxable. Private purposes means nonpublic purposes and would include (i) purposes not related to the duties or function of the U. T. System or its institutions, and (ii) providing residential housing to persons other than students and employees of the U. T. System or its institutions. If property owned by the Board is used for public and private purposes, then the private use is taxable. Provision must be made in the lease or license assigning the responsibility for payment of ad valorem taxes.

12.2 Unrelated Business Taxable Income. A lease, license, or other right to real or personal property may generate unrelated business taxable income and must be submitted for review in accordance with U. T. Systemwide Policy UTS103, Unrelated Business Income Tax. The Office of General Counsel may be consulted before the lease, license or other property transaction is finalized to structure the transaction to minimize or avoid unrelated business taxable income.

12.3 Bond Considerations. As a general rule, interest on bonds issued by the U. T. System is tax exempt only if the proceeds are used for U. T. System purposes. There is the potential for numerous federal tax issues to arise if the facilities financed by the bonds are sold or are used for non-mission purposes, such as a lease or license to a third party. A potential sale of a facility or lease or license involving bond-financed real 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 U. T. System Administration's Office of Finance before the sale, lease or license transaction structure is finalized.

## **Sec. 13 Special Use Facilities Agreements**

13.1 Special Use Facilities. Special Use Facilities shall be managed by the U. T. institutions and if desired by the institutions, licensed for short-term use to third parties in accordance with Regents' Rule 80106 using forms approved by the Real Estate Office and the Office of General Counsel; provided, however, that in the event of long-term use or other situation where the standard use agreement for the facility is not reasonably adequate for the proposed transaction, the Real Estate Office and the Office of General Counsel must review and approve the proposed contract prior to execution by the Executive Director of Real Estate.

## **Definitions**

Authority Level – as defined in Section 5.2(a) of this Policy.

Campus Lease – as defined in Section 8.1 of this Policy.

Easements – as defined in Part 3 (Definitions) of Regents' Rule 70301.

Institutional Purposes – as defined in Section 4.2(ii) of Regents' Rule 70301.

Real Estate Contracts, Real Estate Leases, and Real Estate Sales Contracts – each as defined in Part 3 (Definitions) of Regents' Rule 70301.

Space Lease – as defined in Section 8.1 of this Policy.

TFC – Texas Facilities Commission.

Total Cost or Monetary Value – as defined in Part 3 (Definitions) of Regents' Rule 70301.

## **Resources**

[Standard U. T. System Space Lease Agreement](#)

[Standard U. T. System Amendment and Extension Form](#)

## **Applicable Law and Regulation**

[Board of Regents' Rules and Regulations, Rule 10501, Delegation to Act on Behalf of the Board](#)

[Board of Regents' Rules and Regulations, Rule 70301, Matters Relating to Real Property](#)

[Board of Regents' Rules and Regulations, Rule 80106, Special Use Facilities](#)

[UTS103, Unrelated Business Income Tax \(UBIT\)](#)

[UTS135, Fire and Life Safety Reviews](#)

[UTS161, Environmental Review for Acquisition of Real Property](#)

[Texas Constitution Article III, Section 51, Grants of Public Money Prohibited; Exceptions](#)

[Texas Education Code Section 55.11, Financing Permanent Improvements, General Authority](#)

[Texas Education Code Section 65.31, Administration of The University of Texas](#)

System, General Powers and Duties

*Texas Education Code* Section 65.39, Administration of The University of Texas System, Management of Lands Other than Permanent University Fund Lands

*Texas Government Code*, Chapter 2167, Lease of Space for State Agencies

*Texas Administrative Code*, Title 1, Chapter 115, Facilities Leasing Program

*Texas Administrative Code*, Title 16, Chapter 68, Elimination of Architectural Barrier

Americans with Disabilities Act of 1990, as amended

Rehabilitation Act of 1993, Section 504, as amended

*Internal Revenue Code*, Sections 511-515, as amended

*Texas Tax Code* Section 11.11, Taxable Property and Exemptions, Public Property

### **Responsible System Administration Office**

U. T. System Office of General Counsel – Real Estate Office

### **Contact Information**

Questions or concerns should be directed to the [Office of General Counsel – Real Estate Office](#)

### **Dates Approved, Amended, or Reviewed**

December 31, 2002

September 24, 2009

September 27, 2011

December 11, 2017