

Pennsylvania State System of Higher Education Facilities Manual

Volume VII-C Real Estate

I. Introduction

- A. **Governing Legislation, Policies and Directives.** The Pennsylvania State System of Higher Education's (the System) enabling legislation, [Act 188 of 1982](#), and amendments, (24 P.S. §20-2001A et seq.) authorizes the System:

"To acquire, purchase, hold, lease as lessee and use any property, real, personal or mixed, tangible or intangible, or any interest therein, lease as lessor any property, real, personal or mixed, tangible or intangible, necessary or desirable for carrying out the purposes of the System, and to sell, transfer, and dispose of any property acquired by gift, grant, devise or bequest, whether the property is real, personal or mixed, tangible or intangible, or any interest therein; to take, demand, receive and possess all moneys, real property, and goods which shall be appropriated, given or granted to for the use of the System and to apply the same according to the will of the donors; to sell, transfer and dispose of real property acquired by and titled to the System upon approval by the General Assembly as provided in Section 2018-A ..."

The portion of the legislation controlling disposal of real property states:

"Section 20-2018-A. Method of Disposition; Consideration by the General Assembly.

- (a) Whenever the System deems that it is necessary or desirable to sell, transfer or dispose of real property acquired by and titled to it, it shall request authorization from the General Assembly to sell, transfer, or dispose of said real property; and from time to time, as necessary, the System shall submit to the Chief Clerk of the House of Representatives and the Secretary of the Senate requests to sell, transfer, or dispose of real property acquired by and titled to the System for consideration by the General Assembly.
- (b) Each request for authorization to sell, transfer, or dispose of real property transmitted to the General Assembly shall be proposed as a resolution, and shall be placed on the calendar of each House for the next legislative day following its receipt, and shall be considered by each House within thirty calendar days of continuous session of the General Assembly.
- (c) Each request for authorization to sell, transfer, or dispose of real property shall take effect if it is approved by a majority vote of the duly elected membership of each House during such thirty-day period or may be disapproved by either

House during that period by a majority vote of the duly elected membership of each House.

- d) No resolution shall be effective:
- (1) unless it designates the number of the request for authorization to sell, transfer, or dispose of real property and the date on which it was transmitted to the General Assembly; or
 - (2) if it specifies more than one request for authorization to sell, transfer, or dispose of real property except as otherwise provided by subsection (g) of this section.
- (e) The effective date of each request for authorization to sell, dispose, or transfer real property shall be the date of approval of the last of the two Houses to act. Upon the expiration of the thirty-day period after the delivery of the request for authorization to sell, dispose, or transfer real property to the two Houses of the General Assembly and the failure to act as provided in subsection (c) of this section, each request for authorization to sell, dispose, or transfer real property shall become effective.
- (f) For the purposes of subsection (b) of this section:
- (1) continuity of session shall be considered as broken only by an adjournment of the General Assembly *sine die*; and
 - (2) in the computation of the thirty-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than ten days to a day certain.
- (g) Any provision of the request for authorization to sell, dispose, or transfer real property may, under provisions contained therein, be made operative at a time later than the date on which the request for authorization to sell, dispose, or transfer of real property otherwise takes effect.”

All System real property/real estate transactions must be conducted pursuant to this legislation, as well as other applicable policies, regulations, and statutes governing real property transactions within the Commonwealth of Pennsylvania.

Board of Governor’s policies that apply to real estate transactions include:

- [Policy 1991-05-A](#): Delegation of Authority for State System Real Property
- [Policy 1998-04-A](#): Procurement of Goods, Services, Supplies, and Construction
- [Policy 2000-02-A](#): Capital Facilities Planning, Programming, and Funding

[Pennsylvania Management Directives](#) that apply to the System real estate transactions include:

- [625.2](#): Inventory of Real Property
- [625.5](#): Reporting Surplus Real Property

- B. **Applicability.** This manual establishes procedures for acquiring, administering, leasing, and/or disposing of real property interests (land and/or capital improvements) within the System's authority. Acquisition of real property includes purchase; acceptance of donations, gifts, and grants; acceptance of real property transferred from another state or federal agency; or reception of real property willed or bequeathed to the university or the System. Administering real property, as used herein, is limited to insuring the real property assets and managing utilization of acquired real property, and does not address other aspects of physical plant management. Leasing of real property involves both leasing as lessee, property not owned by the System; and leasing as lessor, real property owned by the System or the Commonwealth. Acquiring and disposal of real property encompasses sale and/or transfer of title of land and improvements thereon, demolition or sale of the facilities on the land, easement of a real estate interest, and loss by destructive natural or catastrophic causes.
- C. **Process.** The processes used for acquiring, administering, leasing and/or disposing of real property are unique to the System as determined by its enabling legislation. University acquire property by standard sales agreements after obtaining the required appraisals, Office of the Chancellor's support, and Board of Governors' approval according to prescribed procedures.

Universities manage utilization of acquired property within the policies established by the Board of Governors, and insure the real property under the insurance programs administrated by the Commonwealth's Department of General Services' Bureau of Finance and Risk Management. Leasing of real property is conducted in accordance with the procedures authorized in this manual. Disposal of real property is conducted according to established Commonwealth procedures for property titled solely to the Commonwealth, and within the statute cited above for real property acquired and titled by the System and the Commonwealth.

University Legal Counsel (ULC) should be involved at each stage of any real estate transaction. There are frequently numerous contracting documents requiring legal counsel review and signature during a transaction such as: a listing contract, sales agreements, and closing documentation.

The Assistant Vice Chancellor for Facilities (AVC) is the point of contact for all real property program administrative matters.

- D. **Sensitivity.** System universities play a significant role in determining the social and economic stature of the communities in which they are located. Acquisition of private property by the university may reduce the community's property tax base. Purchases of numerous properties by the university could substantially affect the value of real estate, and the market could be influenced artificially by speculation or indiscriminate release of university acquisition plans. In planning real property acquisitions, the university must carefully evaluate its planning, and minimize or eliminate any adverse reactions as quickly as possible. An assessment of the anticipated reactions that are expected to result from any planned real property acquisition should be conducted before undertaken. The assessment should be shared with the Office of the Chancellor as early as possible during the acquisition process.
- E. **Real Property Planning.** Actions involving real property must be taken carefully and methodically, resulting in present and future value to the university, as opposed to

present or future liability. Planning will enhance significantly the probability of success. Each transaction taken should be measured against the following guidelines as an initial test.

1. Does or will the action solve the university deficiency?
2. Is the action financially feasible now and can it be supported adequately in the future?
3. Is the action compatible with (or can it be made to be and at what cost) university planning objectives and the university facilities master plan?
4. What are the risks or consequences if the university does or does not proceed now with this action?
5. How will the acquisition affect the community and what is likely to be the community's reaction to the acquisition as it relates to economic impact, tax ramifications, zoning, ordinance variances, and land planning?

F. **Ownership.** Each transaction involving real estate must consider how the parcel is titled before an appropriate course of action can be determined. Some property acquired by universities is titled to the specific university of the State System of Higher Education of the Commonwealth. However, much of the real property in use at the universities is owned by and titled to the Commonwealth, the Department of General Services (DGS), or the General State Authority. In 2001, the System and DGS entered into a Memorandum of Understanding (MOU) giving the System rights and responsibilities for operating and maintaining these Commonwealth-owned properties; however, these properties continue to be titled to the Commonwealth. In essence, ultimate ownership rests with the Commonwealth, but the System has custody, control, financial responsibility and legal liability over these properties. An example of the DGS MOU is available in Appendix VII-C-1.

G. **Risk Assessment.** Prior to acquisition or disposal of System property, risk assessments must be made that consider the potential for environmental hazards, legal entanglements, and financial obligations. Purchase of a facility may appear to present little risk at the time of purchase. However, unless the history of the facility is well known, there is a possibility that hazardous materials may have been used in or disposed in and around the facility sometime during the life of the facility. Whenever there is any doubt or there is a reasonable chance that hazardous materials were used in and around the facility, the purchasing entity should perform a Phase I Environmental Site Assessment for due diligence prior to purchase of the property. The site assessment should follow [ASTM E1527-13](#) guidelines. The results of the study can guide future action regarding purchase of the property or may suggest proceeding with a Phase 2 Environmental Site Assessment.

The environmental site assessment should consider subsurface contamination from underground storage tanks and leaching from materials stored above or buried on the property. The property improvements assessment should address asbestos contamination or the presence of recognized hazardous materials used in the construction of improvements, previously stored on the property, or required as a component of the facility's operation based upon the historic use of the facility or land.

H. **Record Keeping.** Universities must retain copies of all deeds, easements, licenses, and any other documents related to significant property actions for the life of those agreements.

II. Acquisition of Real Property

Real Property Acquisition Check List:
Part I, Initial Planning Data: At least 90 days before BOG approval (if applicable) submit to the Assistant Vice Chancellor (AVC) for Facilities with a copy to University Legal Counsel (ULC).
<ul style="list-style-type: none"> • Property description and address • Justification for acquisition • Acquisition method and estimated property value • Initial risk assessment: environmental, legal, financial, or others.
Part II, Planning Data: At least 60 days before the next BOG meeting submit to the AVC for Facilities with a copy to ULC.
<ul style="list-style-type: none"> • Current appraisals: <ul style="list-style-type: none"> ○ For property with estimated purchase price less than \$100K: Appraisals are optional. ○ Property valued at \$100K or more: Two independent appraisals must be obtained by the purchaser ○ Property valued at \$500K or greater: In addition to two appraisals obtained by the purchaser, one independent appraisal will be obtained by the Office of the Chancellor for the BOG • Photographs of property and location map: (preferably in JPEG format) • Facility condition assessment and Phase 1 Environmental Site Assessment of the real estate. • Planned improvements: identify planned improvements to use property and their estimated cost. • Financial plan: Provide plan for purchasing the property, including operating costs. If finances are to be borrowed, complete a financial sources and uses statement or pro forma per Volume V of the Facility Manual. • Draft Sales Agreement: Provide a draft of the sales agreement, developed in conjunction with and approved by ULC, before final negotiations and execution by the seller. In most circumstances, use the System's standard agreement of sale. Use of a nonstandard form or additional or modified clauses to the System's standard agreement must be approved by the ULC for legality and form, and by the Office of the Chancellor for sound business practice, before final negotiations with the seller. A written justification should accompany the request for such modifications. • Title Search: Provide a copy of the title search conducted by an abstract or land title firm with a copy of the title insurance. The preliminary title search, called "commitment to insure title," should be forwarded with the draft sales agreement. The abstract company will do a full title search at time of settlement. The sales agreement must contain a provision for updating and insuring the title until settlement. • Inform university Council of Trustees of intent to acquire property. • Community Reaction: Provide an assessment of any anticipated community (or other governmental body) reaction to the planned acquisition.
Part III, Approvals and Recording: The following items must be accomplished to complete the process.
<ul style="list-style-type: none"> • Sales Agreement: Finalize and execute the sales agreement. Can be contingent to BOG's and Attorney General's approval if signed prior to their approvals. Like most contracts, the final sales agreement must be signed by authorized University personnel and ULC. • Current Deed: Provide a copy of the current deed and completed title search to ULC, with identification of any covenant or restriction contained in the property deed which would bind the university to future obligations.

- Board of Governors' Approval: The Chancellor or designee may provide approval for acquisitions valued at less than \$1 million in accordance with BOG Policy 1991-05-A. The Board of Governors must approve acquisitions valued at \$1 million or more.
- Attorney General's Approval: The original and two copies of the executed sales agreement must be submitted to the Office of University Legal Counsel for submission to the Office of Attorney General for form and legality review.
- Settlement: The parties complete property transaction at settlement.
- Recording of Deeds: The University records deed(s) with the county.
- Recording with Commonwealth Land Office: The property deed, title insurance, and other records are sent to the Commonwealth Land Office for recording purposes.

[1] In accordance with BOG Policy 1991-05-A, the Chancellor or designee may approve acquisitions valued at less than \$1 million.

Figure 1

- A. **Purchases.** From time to time, the university may be required or desire to acquire property to accomplish the university's mission. The procedures that follow should be used to effect orderly acquisition.

Part I. Initial planning data. After identification of the planned property acquisition, the university completes the information specified in Part I of the real property acquisition planning data form shown in Figure 1. The university's plan for acquiring the property and the financial impact of the acquisition should be established in Part I. Part I documentation is then forwarded to the Office of the Chancellor (AVC for Facilities) for review and concurrence. A copy of Part I and the current and prior deed must be forwarded to the university's ULC.

Part II. Planning Data. Upon approval to proceed with the purchase, the university obtains two professional appraisals of the property value and completes Part II of the real property acquisition planning data in Figure 1. The Office of the Chancellor will obtain an independent appraisal for properties valued at \$500,000 or above.

A typical property being acquired by the university needs appraisals by a Pennsylvania Certified General Appraiser. One source for locating a properly qualified appraiser is the [Appraisal Institute](#). A MAI Designated member of the Appraisal Institute generally possesses the license certification and experience needed for university acquisitions.

After gathering the data for Part II, the university carefully analyzes the information to determine if the acquisition is justified for the sales price. If the university determines that proceeding with the acquisition is still in its best interests, the university submits to the Office of the Chancellor the information outlined in Part II. The university must include the purchase price it intends to pay along with a copy of the appraisal. If the purchase price exceeds the appraisal, the university should indicate the rationale for paying more than the appraised value. A computer photograph or map showing the property's location in relation to the university (or the nearest university property) and several views of the property should be forwarded with the information in Part II. A condition survey of the property should be conducted, including an environmental audit (see section VI for environmental audit preparation). The condition survey should evaluate the structural condition or existing improvements, as well as any hazardous materials found that must be corrected prior to use by the university.

The university should also identify any improvements it plans to make to the facility, including estimated costs. Such improvements would include repairs, cosmetic improvements, modifications, reconfiguration or additions to existing space, demolition, and elimination of hazardous materials found.

An estimate of the annual operating costs (Figure 2) should be determined and submitted with the Part II planning data. In addition, maintenance costs (1.0 percent of replacement value), utility and additional staffing costs for operation of the facility, annual repairs (1.5 percent of replacement cost), and long-term life cycle renovation costs (2.25 percent of replacement cost) should be calculated and included with the annual estimated operating costs.

The university should prepare a financial plan for funding the acquisition. Financing of facilities acquired for auxiliary purposes may be submitted for Board of Governors' approval. If the System bond financing is required for the purchase, procedures in [Volume V](#) of the Facilities Manual must be followed. If prior approval is obtained to finance facilities acquired for educational purposes, the financial planning data shown in Figure 2 will be forwarded with the Part II planning data.

With the ULC's assistance, the university will prepare a draft sales agreement (Appendix VII-C-2) before final negotiations and execution by the seller. A copy of the title search conducted by an abstract or land title insurance company with the commitment to insure title should be provided with the draft sales agreement. The agreement should contain all title and deed restrictions, easements, covenants, and any restrictions affecting use of the property. The System's standard sales agreement, contained in Appendix VII-C-2, will be used for most acquisitions of real property. Use of a nonstandard form or use of additional or modified clauses to the System's standard sales agreement must be approved by the ULC for legality and form, and by the Office of the Chancellor for sound business practice, before final negotiations with the seller.

Part III. Approvals and Recording. The proposed acquisition will be presented to the Board of Governors after all the required information described above is received. To avoid unnecessary and time-consuming delays, the required data will be forwarded to reach the Office of the Chancellor at least 60 days prior to a regularly scheduled quarterly meeting of the Board.

Sales agreements will be forwarded to ULC for signature and subsequent Attorney General's approval. If necessary, the agreement can be executed prior to Board of

State System of Higher Education Real Property Acquisition Financial Plan	
Expenses:	
Purchase price:	
Settlement costs:	
Improvements:	
Furnishings:	
	SUBTOTAL:
Debt service:	
Annual operating expenses:	
Custodial:	
Utilities:	
Maintenance (1% of replacement cost):	
Repair (1.5% of replacement cost):	
Life cycle renovation (2.25% of replacement cost):	
Furniture and Equipment:	
	SUBTOTAL:
	TOTAL
EXPENSES:	
Income/Revenue:	
List sources to meet expenses:	

Figure 2

Governors approval; however, it must include a contingency clause making the agreement contingent on the approval of the Board of Governors, Attorney General, and, if applicable, Office of General Counsel. After proper closing, the new deed is recorded as required by Commonwealth statute.

- B. **Donations, Gifts, and Grants.** The procedures for acceptance of donations, gifts, or grants of real property closely parallel the procedures for purchase described in Section II-A above. While potentially beneficial to the System, gifts of real property can become more costly than the value of the gift, and can cause an inordinate amount of problems for the System. For this reason, gifts of real property must be considered carefully and reviewed in detail before acceptance.

1. Procedures for Real Estate and Constructed Facilities

Property identified for donation to the System must be clearly titled and indisputably owned by the donors. The records of deed should be researched and examined carefully to verify ownership of the property.

Disposal of gifted property must follow the property disposal procedures addressed in Section V of this manual. If the intent is to sell the property after acceptance of the gift, the disposal requirements should be carefully considered and alternate donation methods should be considered (such as donation of sale proceeds instead of the property).

Current appraisals and the draft sales agreement may not be applicable for gifted real property. However, an appraisal may be recommended and an agreement or letter of commitment is needed outlining the gift or bequest, including any covenant or re-verter clause required by the giver (include title search). If an endowment has been established for operation and/or maintenance of the property, the financial plan should include the amount and methodology established to manage the endowment.

2. Gifts of Design or Construction

When the university learns of a donor who wishes to build a facility on university property at no cost to the university to satisfy a facility deficiency, the university should complete applicable portions of Parts I and II of the real property acquisition planning data form in Figure 1 and submit it to the AVC for Facilities. At a minimum, the description and justification should include the planned location of the construction, a description of the

Guidelines for University Construction Projects	
1.	The construction must be compatible with the university master plan.
2.	The project must satisfy the university deficiency.
3.	Adequate infrastructure and utility services must be available to support the project.
4.	The facility must be architecturally and aesthetically compatible with the environment and/or surrounding university and community facilities.
5.	The construction must meet all System building standards and applicable local, state, and federal building codes, regulations, and statutes.
6.	The construction must be erected from plans and specifications stamped by a registered architect or engineer and accepted by the System.

Figure 3

facility to be constructed, and the deficiency that will be addressed. Only the planned improvements and estimated operating costs sections of Part II need to be completed. A draft sales agreement is not applicable, but a written agreement similar to Appendix VII-C-3 between the donor and the university must be drafted to outline the responsibilities of each party to assign risks and liabilities associated with construction of real property. Donations of construction must meet the guidelines contained in Figure 3. After review and receipt of the Office of the Chancellor's recommendations, the university may proceed as specified.

For Board of Governors' approval, the following must be provided: the signed agreement, computer photographs and map showing the site where the facility will be built, copies of any plans, and sketches or renderings of the planned facility, and when the council of trustees were informed.

- C. **Transfer of Commonwealth Property.** If university identifies excess Commonwealth-owned real property held by other universities or agencies that can be used effectively to satisfy the university deficiency or planned objective, it can be acquired through an agency transfer. That process will follow the property acquisition process similar to a property purchase. The assignment and transfer of Commonwealth owned property is managed by DGS.

III. Leasing of Real Property

- A. **Leasing as Lessee.** The System universities have been empowered to lease real property as lessee without specific Office of the Chancellor concurrence or Board of Governors' approval. However, Chancellor or designee approval is required if the property is intended to be added to the university property inventory and used in the calculations for the allocation formula.

The university must input the appropriate information into the PASSHE Facilities Database. Recording in the database is necessary for university contents to be insured with the excess insurance coverage provided by FARM.

Leases that include purchase options must be reviewed by the Office of the Chancellor before signature; approval in accordance with the acquisition procedures in Section II A above must be obtained before exercising the purchase option.

The provisions of the lease must be reviewed carefully to protect the university from unwanted and/or unwarranted liability. The university shall work with their ULC to ensure lease language is legally sufficient and acceptable. A sample lease agreement is shown in Appendix VII-C-4. If the owner chooses to use a different lease agreement, the clauses that protect the university as lessee should be incorporated or added to the agreement as a supplement. The essential provisions of the lease to protect the university adequately are summarized in Figure 4. Leases shall not be entered into without the essential provisions included in the agreement. Expenditures of System resources for maintenance, repair, alterations, and improvement of leased property should be kept to the minimum necessary to perform the functions for which the lease was authorized. The System will be subject to severe criticism if the public perceives that the System is "rebuilding" a leased facility for the owner.

**State System of Higher Education
Essential Provisions of Agreements for Leased Real Property**

1. The agreement should not exceed a five-year period without adequate justification and Chief Legal Counsel approval.
2. The owner is responsible for maintenance of adequate insurance coverage as specified by the lessee.
3. Provisions making the agreement null and void must be included if either party fails to deliver their responsibilities under the agreement.
4. The scope of the facilities leased and the rental amount must be included.
5. Provisions for modifications, changes, or reconfiguration of the space must be addressed and responsibilities assigned in the agreement.
6. The date the rental payment is due should be stated clearly in the agreement, and under what condition payment may be withheld or penalties assessed.
7. Provisions for assigning responsibilities for maintenance, custodial, and other services should be included in the agreement.
8. Responsibilities assigned for and conditions of the facility expected at the close of the lease should be expressly stated.
9. If applicable, the lease should address potential environmental issues such as asbestos.

Figure 4

- B. **Leasing as Lessor.** The Board of Governors' [Policy 1991-05](#); Delegation of Authority for State System Real Property delegates authority for leasing university property to the university president or designee. Generally, leases will not exceed five years without re-advertisement; unless approved by Chief Counsel.

System universities can use the Standard Lease Agreement as lessor (with modifications to satisfy specific requirements of each real property lease), contained in Appendix VII-C-5, when leasing System real property as lessor. Draft lease agreements will be forwarded to the ULC and AVC for review and comment prior to obtaining the lessee's signature.

The limits of capital improvements or construction, alterations, and/or modifications that can be made to the property must be specified.

Specific, careful attention must be taken to ensure that environmental safeguard provisions are included in all System leases, whether as lessee or lessor. The university must establish procedures to administer the provisions of leased property similar to those applicable to all contractual agreements.

- C. **Lease/Construction/Leaseback Projects.** Projects using the lease / construction / lease-back methodology for satisfying a facilities deficiency employ the concept of leasing owned real estate as lessor to an entrepreneur who constructs a facility that satisfies the owner's needs, and in turn leases the facility back to the owner as lessee. Usually, such projects have purchase options at the end of the lease period. Most contain annual lease credit over time toward the purchase, or use installment purchase provisions.

The financial viability of this methodology usually is determined by the cost of financing for the project and the applicable tax laws at the time the project is undertaken. In view of the complexity involved with such projects, policy statements and a contractual document for processing lease/construction/ leaseback transactions have not been developed. The required documents will be developed for each approved project, as needed. If after review of the planning and programming parameters and the information on project financing, the university desires to proceed with a lease/construction/lease-back project, the university should contact the Office of the Chancellor finance and administration and legal staff to help develop the required contractual documents and procedures for administering such projects. In addition to the typical planning and programming parameters, the essential provisions shown in Figure 5 must be addressed in the contractual documents used to undertake such projects.

IV. Easements or Licenses for Real Property

As specified in [Policy 1991-05: Delegation of Authority for State System Real Property](#), universities may enter into and grant easements, or licenses under certain circumstances. Universities should work closely with ULC and the AVC since requirements vary dramatically depending on the specific situation. After identification of a need for one of these agreements, the university will need a written statement explaining the specific use requiring the agreement and the duration of the limited use. A “draft” agreement, using a standard format should be forwarded for review by ULC prior to seeking signatures from all parties. Where applicable, the signed agreement will be recorded in the appropriate county courthouse by the university. A copy of the signed agreement will be provided to the System facilities management office for information, and the original or certified true copy forwarded to the land office as specified in Section X.

- A. **Licenses.** In most cases, the Commonwealth prefers using licenses to grant use of property over easements. A license is permission to use specific real property for a specific purpose for a fixed duration. System-issued licenses are used for multiple purposes and since these agreements are finite and not permanent, our authority to

Essential Provisions of Lease/Construction/Leaseback Agreements	
1.	Purpose of the agreement.
2.	Terms and conditions under which the agreement is to be undertaken.
3.	Restrictions on use of the real property.
4.	Essential provisions for standard leasing as lessor and lessee agreements.
5.	Applicable portions of System’s standard professional services and construction agreements.
6.	Environmental considerations applicable to both lease and construction agreements.
7.	Financial considerations.
8.	Construction and equipment requirements and criteria.
9.	Utility services connections and charges.
10.	Right-of-way access before, during, and after construction.
11.	Maintenance responsibilities.
12.	Zoning, land use, occupancy permits responsibilities.
13.	Reversion clause including bankrupt provisions.
14.	Insurance responsibilities.
15.	Recourse for failure of either party to satisfy terms and conditions of the agreement.
16.	Responsibilities for furniture and equipment.
17.	Responsibilities for safety and security services.
18.	Length and terms for ending the agreement.

Figure 5

enter into the agreements is much greater. Appendix VII-C-7 contains a standard license agreement for use of real property.

- B. **Easement Agreements.** Transfer or conveyance of System property to others for limited use for special purposes for an indefinite period is done through easement agreements. Except for certain circumstances listed below, easements must have General Assembly approval in accordance with 24 P.S. §20-2018-A (see disposal of real property in paragraph V below). Property used by system universities is typically a patchwork of deeds with parcels titled to various entities; most commonly the Department of General Services (DGS) or their predecessor agencies or the university. As such, easements and licenses that are issued should be coordinated with the DGS Bureau of Real Estate to ensure concurrence with actions planned.
- C. **Specific Easement or Licenses Situations and Approval:** Following are the typical situations and authority available for issuing easements or licenses. Easements that do not fit within the following categories will normally require General Assembly approval using the property disposition processes.
 - a. Easements or licenses necessitated by Board of Governors pre-authorized construction projects (in accordance with 24 P.S. §20-2003-A.1) can be approved by the university president or designee.
 - b. Easements or licenses necessitated by a General Assembly pre-authorized construction projects can be approved by the Governor (in accordance with 71 P.S. §631.1(14)).
 - c. A right of way or easement to a county, borough or township for the purpose of laying out and opening a public road for the benefit of the traveling public may be granted by the Department of General Services upon the approval of the university's Council of Trustees, pursuant to 71 P.S. §632(k).
 - d. Licenses or easements may be granted for public utility access upon approval of the Governor pursuant to 71 P.S. §194(a).

V. Disposal of Real Property

- A. **Commonwealth-Titled Property.** Disposal of property titled to the Department of General Services or the General State Authority or owned solely by the Commonwealth must be accomplished through the Department of General Services' real estate division. Disposition of excess real property can be accomplished by transfer of ownership to another government entity, through sale, or by demolition of improvements with retention of ownership of real property. There are separate processes for disposition of excess real property and for demolition of facilities.

Approval authority for **demolition of buildings** originally constructed with Commonwealth capital appropriations has been delegated from the Governor to the Secretary of the Department of General Services (DGS). Requests for demolition of Commonwealth buildings will be forwarded by the University to the Office of the Chancellor accompanied by the information specified in the transmittal form shown in Appendix VII-C-8 and the Pennsylvania Historic and Museum Commission (PHMC) building [ER Submission Form](#). Requests for demolition shall include digital photographs of the facility, a map showing the location of the building on the campus, the reasons for

the action, and any impact the demolition or continued use of the building may have on the university and the local community. Any adverse reaction anticipated by either university personnel or the local community should be highlighted in the request.

BOG approval is not required for building demolitions; however, the Office of the Chancellor may notify the BOG of the intent to seek DGS approval. The Office of the Chancellor will forward approved requests to PHMC and DGS under separate correspondence. PHMC is responsible for evaluating buildings proposed for demolition for historical significance and potential impact to historic zones or districts. At a minimum, facilities to be demolished having historical significance must be documented as prescribed by PHMC (see the "[Historic Resource Survey Form](#)" and "[How to Complete the Pennsylvania Historic Resource Survey Form](#)"). PHMC may require additional site information for consideration as a historic district. When their review is complete, PHMC will forward their endorsement to DGS for further processing.

After DGS's approval, and university completion of any necessary preservation requirements for historically significant facilities, the facility may be demolished. The university must report the demolition to the Office of the Chancellor and edit the building information in the Facilities Database so the property is removed from the insurance listing.

Disposal or sale of Commonwealth-titled excess real property ultimately requires legislative approval. DGS is responsible for obtaining legislative approval for Commonwealth-titled real property. Universities shall work with the AVC for Facilities to obtain Office of the Chancellor endorsement for the disposal and assist with coordinating with DGS. Agencies seeking to dispose of or sell Commonwealth-titled excess property must follow the procedures in [Management Directive 625.5](#). Universities must submit documentation specified in the management directive to the AVC for Facilities (a Word version of their submission form is available at Appendix VII-C-9). DGS utilizes this information for their annual disposal planning actions. The information required from the universities includes:

- Current appraisal
- Phase 1 Environmental Site Assessment
- Site plan, as-built drawings, floor plans, etc.
- Photographs of the buildings
- Copies of deeds, memorandums of understanding, leases, etc.

If the property is significant, it may warrant notification of the university COT and BOG. DGS compiles the information for legislative approval and executes the disposal. The process for disposal is lengthy and will vary based on the complexity of the property, but universities should plan on at least two years. Universities should note that they will only be reimbursed for direct expenses associated with the property disposal (such as the cost of the appraisal). Any revenue remaining after covering the direct expenses is retained by the Commonwealth.

B. University- or System-Titled Property

As represented in Section I.A. of this manual, authority for disposal of property acquired by and titled to the System is prescribed in the amendment to the System's enabling legislation in Act 103 of 1990. This section will address disposal of real estate interests or property when titled to the System or university.

Demolition of real property improvements purchased by and titled to the university or the System must be approved by the chancellor or designee.

Requests to demolish System- or university-owned property should be submitted by the university to the AVC for Facilities and contain similar information as requests to demolish DGS property and include a digital campus map, digital photographs of the property, estimated cost of demolition, a brief history, a description of the property, and any environmental impact (see Section V.A., above).

If the improvement on the property is more than fifty years old or has historical significance, the Pennsylvania Historical and Museum Commission, Bureau of Historic Preservation (PHMC) must also review the demolition plans prior to actual demolition. If an adverse historical impact is found by PHMC, the System must prepare historical preservation documentation that is acceptable by PHMC before the facility can be demolished. See Section IX of this manual for information on historic structures.

After approval by the Office of the Chancellor and, if applicable, PHMC is received, the facility may be demolished. Generally, the university must obtain a demolition permit from the Department of Labor and Industry. After demolition is complete, the university must update the Facilities Database inventory to ensure the building is removed from the insurance coverage listing used by the Department of General Services, Bureau of Finance & Risk Management (FARM).

Any permanent sale, transfer or disposal of System or University interest in real property (real estate) requires General Assembly authorization in accordance with Section 20-2018-A of Act 188. This permanent transfer of interests in real estate includes easements except the limited circumstances listed in paragraph IV of this manual.

The process and information required is similar to that required for disposal of Commonwealth DGS-titled real estate. The university shall submit the same required documentation to the AVC for Facilities. Depending on the significance of the real estate disposal, concurrence from the Board of Governors may be requested. The Office of the Chancellor will submit acceptable requests to the General Assembly for their authorization. Upon receipt of the resolution, the General Assembly has thirty calendar days of continuous session to consider the request. Failure to act within the thirty session days is considered automatic authorization. The 30 calendar days of continuous session time can take three to six months to complete depending on the session schedule.

After authorization by the General Assembly (considered effective upon the date of approval of the last of the two Houses), the System may proceed with the sale of the property.

The System's Standard Agreement of Sale in Appendix VII-C-2 can be used to affect the sale. Change in the standard wording and all covenants or restrictions must be approved by the Office of the Chancellor and ULC prior to forwarding the agreement to the buyer for signature.

VI. Real Property Environmental Liabilities

- A. ***Environmental Laws Affecting Real Estate Transactions.*** Under both Commonwealth and Federal environmental statutes, property owners are responsible for what lies on, in, or under the real estate they own, regardless of who placed or places it there. Additionally, the owner is responsible for what is transported, released, or relocated from the property, regardless of who removes or transports it from the property. At the time of acquisition, the buyer becomes liable for acquired real estate, including what was placed in, on, or under the property prior to the date of acquisition. Under current statutes, responsible parties are (1) the owner or operator of the property at the time of release, (2) the owner or operator of the property at the time hazardous substances were disposed, (3) generators of hazardous substances, and (4) transporters of hazardous substances who selected the disposal sites. Liability includes responsibility. Many hazardous materials have been used and discarded routinely without care, concern, or knowledge for many years. Burial has been one of the primary means of discarding used, unwanted materials, many of which were thought to be safe or harmless. Currently, principal environmental concerns include proper containment, use, and disposal of asbestos, PCBs, petroleum products, all hazardous chemicals, and any other substance that pollutes or renders the soil and groundwater unusable, or that endangers human, animal, or plant life.

In addition to hazardous waste management, other environmental concerns include the clean streams statutes, Solid Waste Management Act, Storage Tank and Spill Prevention Act, and Commonwealth and Federal wetlands statutes.

- B. ***Environmental Site Assessment.*** Under the law, there is virtually no defense to violations of environmental statutes if you are the owner of real property. In order to plead an innocent landowner defense, purchasers of a property without knowledge of contamination or violation of environmental laws must show that "due diligence" was exercised before the property was purchased. Generally, "due diligence" is considered to have been exercised when the purchaser has "undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability." In addition, the court will consider "the relationship of the purchase price to the value of the property if uncontaminated, commonly known as reasonable ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection. Failure to conduct an on-site investigation will most probably defect the defense."¹

¹Avoiding Environmental Liability in Pennsylvania, National Business Institute 08I17013.

“Due diligence in the form of a thorough environmental assessment offers some protection by reducing the risk, but if the property, despite due diligence, is found to contain hazardous substances, the landowner or occupier, or any person holding title to or having a proprietary interest in either surface or subsurface rights’ may be held liable for the cleanup.”¹

“Accordingly, a thorough and reliably performed environmental assessment should be a prerequisite to any purchase of commercial real estate.”¹ Environmental Site Assessments (ESAs) are conducted to fulfill the “due diligence” requirements of the innocent landowner defense.

Environmental Site Assessments include:

1. a review of agency files to see if there is any history of environmental problems;
2. employee interviews, if there are employees or former employees available;
3. interviews with neighbors and former owners and occupiers of the property;
4. a review of any available aerial photography;
5. a thorough and intelligently designed environmental assessment by a well-qualified environmental consulting firm; and
6. any other steps suggested by the circumstances.

- C. ***Environmental Provisions for Real Property Agreements.*** A Phase I ESA is conducted initially to determine whether the potential exists that the site is or may be contaminated. The Phase I ESA should be done in accordance with [ASTM E1527-13](#) guidelines and typically does not include site sampling. The investigation is generally performed in a relatively short period of time (e.g., four or eight weeks) and costs may range from \$5,000 to \$10,000 depending on the property size, history, and location. If evidence is found that the site may be contaminated, a full-scale Phase II assessment is conducted to determine the extent of contamination. A Phase III assessment is used for site remediation activities.

The scope of work for Phase I ESA generally includes: records reviews, site reconnaissance, and interviews. The assessment is done or supervised by qualified environmental professional. These are used in concert to identify recognized environmental conditions connected with the property. This work may include, but not be limited to:

- study of historical maps and aerial photographs of the site;
- interviews with long-time residents, former employees, owners, etc. who may be familiar with the site;
- review of a chain-of-title, which indicates past owners of the property;
- review of tax records, newspaper indexes, building department directories, and similar sources of information; and
- review of records from various environmental and regulatory agencies.

¹Avoiding Environmental Liability in Pennsylvania, National Business Institute 08I17013.

A typical scope of work for obtaining a Phase I ESA prior to acquisition (or disposal of a parcel of property) is contained in Appendix VII-C-10.

While it is prudent to obtain a Phase I ESA before acquiring any real estate, a Phase I ESA must be conducted prior to requesting approval of a commercial property acquisition or before acknowledging receipt or acceptance of a gift or bequest involving commercial real estate.

Caution must be exercised to ensure that the results of the Phase I ESA are properly interpreted. The Phase I ESA provides a “first look” cursory examination of the site and its history to determine the potential or probability that the site is contaminated. It does not support a conclusion that the “site is not contaminated.” In most instances, if performed carefully, it is acceptable as meeting the “due diligence” requirements to support an innocent landowner defense. The Phase I ESA forms the basis for determining if a Phase II ESA is required, if the purchaser desires to continue to pursue acquisition of the site.

A Phase II ESA will include subsurface soil and water sampling, testing, modeling, and an analysis. The cost of the Phase II will likely be in the range of \$10,000 to \$40,000 (or more) depending on the size, complexity, contamination, and site constraints.

VII. Building Insurance

- A. **Bureau of Finance & Risk Management (FARM).** FARM manages the Commonwealth’s self-insurance programs and contracts for any additional third-party insurance as may be required by state agencies and System universities. FARM also reviews, investigates, adjudicates and, as appropriate, pays tort claims and lawsuits against the Commonwealth and employees in accordance with Act 152 of 1978, which defines instances when the Commonwealth waives its right to sovereign immunity under the Constitution of Pennsylvania.
- B. **Inventory Reporting.** The insurance coverage provided under both the State Insurance Fund and the purchased supplemental insurance is based on the reported inventory of facilities titled to the Commonwealth and universities. In accordance with [Management Directive 625.2](#), the System reports changes to the inventory of System property to DGS. It is essential that changes in the System’s inventory are reported accurately and timely to ensure full continuous coverage at the most beneficial cost to the System. System universities must review the inventory periodically to ensure accuracy of the inventory and recorded building replacement costs.
- C. **Insurance Coverages.** All Commonwealth-owned property, when damaged or destroyed by fire, flood or other casualty, is the subject to claims from the State Insurance Fund. The term “property” includes all buildings, equipment, furniture, or supplies purchased with Commonwealth funds. Property does not include leased items. Agencies leasing items should consider including insurance as part of the contracted lease cost or purchasing third-party insurance through FARM. Agencies are liable for the repair and replacement costs for damaged or lost leased property not covered by insurance.

For agencies suffering a property loss, the following guidelines govern what will be

covered and how it is reimbursed:

- A loss must be \$1,000, or greater to be eligible.
- The cause of the loss must be a covered peril, such as fire, flood, vandalism, theft, lightning, wind, earthquake, etc.
- The State Insurance Fund will pay for damages to Commonwealth-owned property and contents from \$1 to \$1 million.
- There are no deductibles under the State Insurance Fund with the exception of theft, which has a \$5,000 deductible.
- Claims over \$1 million are covered through the Commonwealth's excess property insurance policy, which has a \$1 million deductible, payable from the State Insurance Fund.
- The excess property insurance policy is limited to losses not to exceed \$1 billion.
- Claims paid from the State Insurance Fund or the excess property insurance policy are made under the premise of repair, replace or restore to like-condition at the time of the loss. Improvements or betterments are not covered.
- Losses should be reported to FARM within 24 hours of the incident. Claims not reported within one year of the loss incident date are not eligible for reimbursement.

Losses not covered:

- Leased buildings
- Leased equipment such as copiers, computers, printers, etc. owned by others
- Damage as a result of environmental issues
- Commonwealth-owned vehicles or privately-owned vehicles
- Certain damage as a result of a maintenance issues (Example: If a pipe breaks due to age, and water leaks on office equipment, the State Insurance Fund will not pay for the repairs to the pipe, but will cover the contents that were damaged due to water damage.)
- Regular time pay or salary for Commonwealth employees performing related remediation work is not covered. If overtime is required, the State Insurance Fund will reimburse for overtime expenses.
- If an outside contractor is used for remediation, labor and overtime incurred by that contractor are recoverable.

- D. **Reports of Facility Damages and Claims Filing.** In the event of a loss, agencies are required to submit to FARM a statement of the event and outlining the extent of the property damage. Copies of all related purchase orders, receipts, quotes, overtime expenses, etc. will be required as documentation. If deemed a covered loss, FARM will work with the Governor's Office of the Budget and the Board of Commissioners of Public Grounds and Buildings to obtain requisite approvals for reimbursement. The process generally takes 45-60 days from the date the claim is received. For additional information, please contact FARM at (717) 787-2492.

VIII. Boundary Protection and Dispute Resolution

Even though Commonwealth owned property cannot be taken by adverse possession, lengthy disputes over boundaries can encumber the use or transfer of the property. Accurate identification of property boundaries is especially important during acquisition or disposal of property.

For privately owned properties, Commonwealth law recognizes that uncontested possession, including adverse takeover, acquiescence, estoppel, parol agreements,

cultivation, or enclosure by someone other than the true owner for a period of twenty-one years could result in actual transfer of ownership and title to the encroaching party. Such adverse possession is recognized under Commonwealth law as an unwritten title transfer. In essence, if a party uses, as his own, lands belonging to another for a period of twenty-one years without the true owner objecting or disputing that use, actual ownership of that property could be taken by the using party.

Property boundaries are established by property surveys to identify the limits of ownership of specific parcels of real estate. Surveyors in the Commonwealth of Pennsylvania must be registered as licensed surveyors to practice and to have their survey records legally recognized in Commonwealth courts. Surveyors employed by the System must also possess professional liability insurance to protect the System from liabilities caused by errors or omissions that may be made by surveyors. Surveyors are obtained using the procedures specified in Professional Services Agreements for facilities projects.

IX. Historic Properties

- A. **System Policy.** Properties exceeding fifty years of age, properties where historic events have occurred, and/or properties with unique, era representative, or significant architectural or engineering features may be eligible for designation on the National Register of Historic Places. The System Board of Governors' policy for nominating System facilities for placement on the National Historic Register is contained in Volume II of the *Facilities Manual*.
- B. **Acquisition or Sale of Historic Properties.** Prior to acquisition or disposal of property on or eligible for the National Register of Historic Places, approval must be obtained as specified in the System *Facilities Manual*. Once acquired, such facilities must be administered according to the agreements made with PHMC.

X. Property Deeds and Records

- A. **General.** The Commonwealth maintains the Land Office Section of the Pennsylvania State Archives (hereinafter referred to as the Land Office) to act as the central repository for preserving all original Commonwealth real estate deeds and records. These records consist of all deeds, contracts, maps, surveys, policies on title insurance, abstracts of titles, and other documents relating to real estate owned by the Commonwealth. The Office of the Chancellor reports all System real estate acquisitions to the Bureau of Space and Facilities Management to record and ensure insurance coverage under the Commonwealth's insurance program. The Bureau includes the property data on the Commonwealth's land and building monthly report. The Land Office uses this report to verify and match land records. Therefore, a report of evidence of land acquisition or disposition and submission of the specified records must be made to the Land Office to ensure that records agree.
- B. **Commonwealth Deeds.** The original or, at a minimum, a certified true copy of the deeds of all real estate acquired by the System will be forwarded to the Land Office with a copy to the System facilities coordinator.
- C. **Title Insurance.** At the time of acquisition, the university will obtain title insurance with each parcel of real estate acquired. A sample title insurance report is shown in Appendix

VII-C-12. The original or a certified true copy will be transmitted to the Land Office using the transmittal form in Appendix VII-C-13. A copy of the transmittal report will be forwarded to the System facilities coordinator.

- D. **Other Records.** The original or copies of other records obtained to acquire real estate should be forwarded to the Land Office using the transmittal form in Appendix VII-C-13. All documents, including the deed and title insurance, may be forwarded on one transmittal form.