

ADMINISTRATIVE PRACTICE LETTER

SUBJECT: SALE, LEASE, OR USE OF REAL PROPERTY TO OR BY THIRD PARTIES

Note: Refer to APL IV-C for signature authority designation.

From time to time, the Universities of the University of Maine System (UMS) may determine they that no longer need a portion of the real property which has been assigned to them. Real Property is defined as land and/or the buildings or other improvements located on the land. There are also times when a University may be requested or desires to sell or lease real property to a third party. Consummation of any such sale or lease may require approval of the Board of Trustees as stated in Section 802 of the Board of Trustees Policy Manual. Further, all documents must be approved by University Counsel and must be signed by the UMS Treasurer or his/her designee. All removal or demolition of structures from university property must be approved by the University of Maine System Treasurer or his/her designee.

The following checklists are provided as a guide when reviewing the possibility of selling or leasing real property owned by UMS.

SALE OF REAL PROPERTY

The Disposal of Real Property shall be administered by the University System Office under the following guidelines:

1. Considerations for Disposal of Property
 - a. Why is the property no longer needed by the University?
 - b. If the property is remote from the campus, would the property be of value to any other University?
 - b. What is the proposed use of the funds generated from the sale?
 - d. What is the appraised market value of the property? A formal appraisal by an outside "certified general" real estate appraiser is recommended.
 - e. Does the property contain any hazardous materials which must be removed or abated prior to the sale? (The University must provide to prospective new owners of the property copies of all known information regarding existing hazards.)
 - f. Should any restrictive covenants be included in the sale to protect adjacent University property?
 - g. Are there any existing restrictions on the property from earlier conveyance; i.e., easement, restrictive covenant, trusts, annuity, gift or bequest, stipulations as to use of proceeds or use of property?

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- h. Will the University be financing any portion of the sale; i.e., mortgage to buyer, etc.?
2. University Action. If real property, administered by a particular University, is no longer needed, the University shall notify the Treasurer of the surplus real property. The notification must include:
 - a. rationale for no longer needing the real property;
 - b. recommendation for use of funds generated from the sale of the real property.
3. System Office Action. Staff, in consultation with the Chancellor, shall review the campus recommendation and if deemed appropriate:
 - a. determine if the real property which has been declared surplus by one campus should be transferred to another campus; and
 - b. if transfer is not appropriate, prepare a recommendation from the Chancellor to the Board of Trustees authorizing disposal of the real property and for the use of the income resulting from the real property sales.
4. Disposal Process – Land or Land with Building(s). The disposal of real property (land or land with buildings) will normally be done through a competitive bid process with a minimum sale price established by considering the appraised market value. The property must be advertised locally. If the University wishes the disposal to be handled through a real estate agent, after advertising the property, at least three real estate agents should be contacted and offered the listing on a non-exclusive basis. Other requests from agents to list the property can be granted on a non-exclusive basis and contingent upon fair and normal arrangements with the agent.
5. Disposal/Removal of Building(s) from University Land.
 - a. If the removal of a building from University property is required as part of a project for review by the Board of Trustees, information regarding that removal must be included in the project approval presentation to the Board, including the method for removal.
 - b. The Treasurer has the sole authority to determine the need and method of a building removal/demolition in cases where no Board approval of a project is required or where changing conditions dictate a different approach than was originally presented for Board approval.

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LEASE OF REAL PROPERTY TO OTHERS

Issues for Consideration in Leasing University Property to Others:

- a. Does the anticipated use by the third party fit the education, research, and community service purpose of the University?
- b. Does the anticipated use comply or, at least, not conflict with any Board of Trustee policy?
- c. Will the lease benefit the University? How? Will the overall cost to the University be offset by lease payments?
- d. Will the anticipated use interfere with existing or potential uses of other University property. If so, how will they be impacted?
- e. Does the lessee have the financial capacity and professional expertise to make lease payments and successfully operate as anticipated?
- f. What will be the term of the lease and what will happen at the end of the term to the real property and any improvements?
- g. Will the anticipated use require any covenants or other restrictions on the land to fulfill its purpose? As a general rule, UMS does not subordinate its land to a mortgagee.
- h. Will the lessee require any services from the University to operate as anticipated? If yes, a UBIT assessment is required.
- i. If the property to be leased is financed from tax-exempt borrowing, no more than 5% of the square footage can be leased for commercial purposes.
- j. Will the lessee use the property for literary and scientific purposes (as does the University) and qualify as an organization exempt from local property tax? If not, the impact of a local property tax assessment must be considered.
- k. Will the University be involved in any capacity with relation to the financing of the anticipated use?

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- l. Does the property contain any hazardous materials which must be removed or abated prior to leasing? (The University must provide to prospective tenants copies of all known information regarding existing hazards.)
- m. Could the anticipated use create an environmental hazard and if so, what assurance is provided that these hazards will be avoided, if possible, or abated at the end of the lease?
- n. Has the lessee's ability to construct and operate as anticipated been assessed, including a review of any past violations of law or regulations?
- o. Has the lessee provided evidence of the ability to obtain all necessary financing, permits, licenses, or other certifications to operate in accordance with the anticipated use?
- p. Does lessee desire to use the name of the University at the location of the leased property? If yes, the specific use of the name must be approved by the Treasurer and the University name must be used in a manner that clearly indicates that the University is NOT an owner/operator of the function on the leased property.
- q. Does the intended lessee carry on a business or enterprise that could be construed as competing with local private firms? If yes, a UBIT assessment is required.
- r. Is the rental fee proposed at a level that is competitive with similar space in the area?
- s. Does the lessee agree to hold UMS harmless from all liabilities associated with the lessee's presence on UMS property? Does lessee have the financial ability to support "hold harmless" and will lessee provide evidence of all required liability insurances naming UMS as insured and certificate holder?
- t. Does the lease contain sufficient language for the University to act if the lessee fails to meet the obligations of the agreement?
- u. Is there a provision for the University to terminate the lease for any reason within a stated notification time?

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USE OF CAMPUS FACILITIES BY THIRD PARTIES

1. First priority use of campus facilities is the regular on-going program of the University. All other uses must recognize this priority and be compatible with it.
2. Second priority use of campus facilities is for University-sponsored programs or events, or those sponsored by approved faculty, staff or student groups.
3. Non-University groups contributing to the welfare of the community or requiring facilities unique to the institution may be permitted to use University facilities in accordance with an approved campus policy.
4. Each University of Maine System campus will develop its own policies and procedures for the use of campus facilities within the requirements enunciated above. A copy of the policies and procedures for each campus will be filed in the Chancellor's office.

Related Documents

APL Section IV-C: *Signature Authority*
Board Policy 802 – Disposition of Real Property

APPROVED

Chief Financial Officer and Treasurer