

Policy on Authority for Real Property Transactions

I. Pursuant to its authority under G.S. 116-3, 116-11(13), 116-12, 116-13, 116-31.12,⁺ and other North Carolina law, and consistent with Appendix 1 of *The Code* and Section 200.6 of the UNC Policy Manual, *Policy on Delegation of Authority to the President*, the Board of Governors adopts the following policy regarding authority to acquire and dispose of interests in real property.

II. Application.

- A. This policy applies to real property transactions of the constituent institutions, it does not govern transactions by the board of trustees of the endowment fund of the institution, organized pursuant to G.S. 116-36, or Associated Entities, organized pursuant to G.S. 116-30.20. Notwithstanding the foregoing, unless approved by the Board of Governors, any acquisition or disposition of real property undertaken by an endowment fund or Associated Entity shall not materially alter the value or functionality of any State property; further, any real property transaction undertaken by an endowment fund or Associated Entity that will require an increase of state funds, tuition revenue, or student fees must be approved in advance by the Board of Governors.
- B. This policy shall apply to Millennial Campus real property transactions, provided however, that acquisitions of real property on a Millennial Campus for a period of 10 years or less and dispositions of real property by easement, lease, or rental agreement on a Millennial Campus for a period of 99 years or less shall not require the approval of the governor and the North Carolina Council of State.
- C. All instruments involving acquisition or disposition of an interest in real property are entered into in the name of the constituent institution or UNC System by and on behalf of the state, regardless of whether executed by the governor, president, chancellor, or other official.
- D. In addition to the authorizations provided under this policy and supplemental regulation, all permanent acquisitions and dispositions of real property, including by Deed or demolition, must be approved by the governor and Council of State.
- E. Dispositions at less than fair market value are subject to the constraints of G.S. 146-29.1. Real property may not be sold, leased, or rented at less than Market Value to any private entity that operates, or is established to operate for profit.
1. Real property may be sold, leased, or rented at less than Market Value to a Public Entity.
2. Real property may be sold, leased, or rented at less than Market Value to a private, nonprofit corporation, association, organization or society (including an Associated

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Entity organized pursuant to G.S. 116-30.20) where the transaction is in consideration of public service rendered or to be rendered by the nonprofit consistent with the mission of the constituent institution or the University of North Carolina and the property will be used in connection with the nonprofit's tax-exempt purpose and not in connection with its unrelated trade or business.

- F. No permanent improvements, as defined by UNC Regulation 600.1.3[R], may be made on premises leased by the University that are not owned by the University without the prior approval of the Department of Administration and the Board of Governors.

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III. Definitions

- A. Annual Rental. Annual Rental shall mean the annual rental Value for the first year of the Lease, provided however, that such Value is not artificially lowered in the first year to circumvent authorizations as required by this policy and should not take into account rental concessions and other incentives that reduce the first-year rental Value.
- B. Deed. A Deed is a permanent conveyance of a real property interest. For the purposes of this policy, a demolition or permanent easement shall be considered an acquisition or disposition by Deed.
- C. Market Value. Market Value shall mean the true value of the real property, that is the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used. Market Value may be demonstrated through an appraisal or assessment, tax valuation, or other quantitative assessment of the value of the property.
- D. Lease. A Lease shall mean a lease, temporary easement, rental, or other time-limited rights to have exclusive possession and control of real property. A Lease shall not include (i) non-exclusive use agreements or other similar instruments, or (ii) freely revocable, non-transferrable licenses or agreements that have a term of one-year or less (including renewals).
- E. Millennial Campus. A Millennial Campus shall mean a property designated as a Millennial Campus property as defined in Section 600.1.6 of the UNC Policy Manual, *Policy on Millennial Campuses*.
- F. Public Entity. Public Entity means a constituent institution, endowment fund, county, municipal corporation, local board of education, community college, special district or other political subdivision of the State and the United States or any of its agencies.
- G. Value. Value for the purposes of acquisitions and dispositions of real property shall be the actual monetary value of the transaction. The Value of an asset to be demolished shall be defined as its actual insured replacement value, except that the Value of any asset that has been condemned by the Department of Administration shall be deemed to be \$0.

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~~IV.~~ General Delegations of Authority to the President and Boards of Trustees

A. The Board of Governors delegates to the president the power to authorize acquisition or disposition of the following interests in real property without obtaining approval of the Board of Governors:

1. ~~Any interest. Any acquisition or disposition in real property by Deed, other than a leasehold,~~ with a Value less than ~~\$2,000,000~~\$750,000; and
2. ~~A leasehold interest. Lease in real property with Annual Rental Value value less than \$2,000,000~~750,000 and a term of not more than 10 years.
- 2.3. Authority to execute or authorize a constituent institution to execute a strategic lease with an annual rental less than \$2,000,000 and a term of not more than 10 years. The senior vice president for finance and administration, in consultation with the senior vice president and general counsel, shall establish the process by which a constituent institution may request approval to execute a strategic Lease.

The president's authority may be exercised on behalf of the University of North Carolina System Office, affiliated entities, or the constituent institutions in the president's discretion.

B. The Board of Governors delegates to the ~~boards of trustees. boards of trustees of the constituent institutions of the constituent institutions~~ the power to authorize the acquisition or disposition to authorize acquisition or disposition by the institutions of of the following interests in real property without obtaining approval of the Board of Governors:

1. ~~The acquisition or disposition by Deed. Any interest in real property, other than a leasehold,~~ with a Value less than ~~\$1,0500,000~~\$1,050,000; and
2. ~~The acquisition or disposition by Lease, on a Millennial Campus or otherwise, A leasehold interest in real property with where the annual value~~Annual Rental Value is less than \$1,050,000 and a term of is not more than 10 years.²
3. This delegation of authority may be delegated to a standing committee of the board of trustees but may not be further delegated.
2. _____

C. ~~The boards of trustees of the constituent institutions are authorized to delegate to the chancellors of their respective institutions the power to authorize for their institutions acquisition or disposition of an interest in real property valued at less than \$50,000;³ without obtaining the approval of the board of trustees of the pertinent institution or of the Board of Governors.~~

~~C. All delegations of authority in this section are subject to any necessary approvals from State officials and agencies. The Board of Governors delegates to the chancellors the power to authorize the acquisition or disposition of the following interests in real property without obtaining approval of the Board of Governors or the board of trustees:~~

1. The acquisition or disposition by Deed with a Value less than \$100,000.
2. The acquisition or disposition by Lease, on a Millennial Campus or otherwise, where the Annual Rental Value is less than \$100,000 and the term is not more than three years.

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3. All acquisitions or dispositions of real property made pursuant to this subsection shall be reported to the board of trustees.

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D. All delegations of authority in this section are subject to any necessary approvals from State officials and agencies, including any required approvals from the governor and Council of State as identified in the supplemental regulation.

III.V. Additional Delegations of Authority to the President and Boards of Trustees

~~A. The Board of Governors may delegate to the president of the University of North Carolina additional authority to acquire and dispose of an interest in real property other than a lease if valued at less than \$1,250,000, and/or, consistent with G.S. 116-31.12, to acquire and dispose of real property by lease if the lease is valued annually at less than \$1,000,000 and has a term of not more than 10 years. The president's authority may be exercised on behalf of the University of North Carolina System Office, its affiliates, or the constituent institutions in the president's discretion.~~

B. ~~Upon request by the board of trustees~~chancellor, of a constituent institution and with the recommendation of the president, the Board of Governors may delegate to the board of trustees of a constituent institution or the chancellor additional authority beyond the authorizations set forth in Sections IV.B and C to acquire and dispose of an interest in real property as provided in a supplemental regulation~~other than a lease if valued at less than \$1,000,000, and/or, consistent with G.S. 116-31.12, to acquire and dispose of real property by lease if the lease is valued annually at less than \$750,000 and has a term of not more than 10 years. Such additional delegated authority shall not exceed the delegation limits established under Section IV.A of this policy. The president may modify, revoke, or suspend the additional delegated authority of a constituent institution or take other remedial action as the president deems necessary and appropriate in his discretion. The minimum criteria a constituent institution must meet to receive and maintain additional delegated authority shall include, but not be limited to:~~

A.

1. The constituent institution has performed a written, comprehensive assessment that demonstrates it has the administrative, technical, and support resources necessary to properly carry out the delegated authority.
2. The chancellor has certified in writing that the constituent institution has the administrative, technical, and support resources necessary to properly carry out the delegated authority.
3. The constituent institution has a properly constituted and active campus property review committee comprised of individuals with sufficient technical expertise, strategic perspective, and executive authority to perform the duties required.
4. The constituent institution has appropriate and sufficient technical and professional staff with demonstrated capability in the development, evaluation and execution of commercial real property transactions.
5. An assessment team, assembled and led by the senior vice president for finance

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and administration, including the senior vice president for legal affairs (or designee), has reviewed the constituent institution's assessment, has performed an on-site or virtual review of the capabilities appraisal that confirms the institution's assessment, and has recommended delegation to the president.

6. Constituent institutions will be reviewed for re-authorization pursuant to this section at least every five years.

~~C. Should the Board of Governors delegate additional authority to one or more boards of trustees consistent with paragraph B., above, the president shall automatically receive authority at a level equal to the highest level of authority delegated to a board of trustees. The president's authority may be exercised on behalf of the UNC System Office, affiliated entities, or the constituent institutions in the president's discretion.~~

~~D. The senior vice president for finance and administration, in consultation with the senior vice president and general counsel, shall establish the process by which a constituent institution may request and maintain delegated authority consistent with G.S. 116-31.12 and other relevant law. The minimum criteria a constituent institution must meet to receive and maintain authorization from the Board of Governors shall include, but not be limited to, performance of a written, comprehensive self-assessment that demonstrates:~~

~~1. The constituent institution has performed a written, comprehensive self-assessment that demonstrates it has the administrative, technical, and support resources necessary to properly carry out the delegated authority.~~

~~2. The chancellor has certified in writing that the constituent institution has the administrative, technical, and support resources necessary to properly carry out the delegated authority.~~

~~3. The constituent institution has a properly constituted and active campus property review committee comprised of individuals with sufficient technical expertise, strategic perspective and executive authority to perform the duties required herein.~~

~~4. The constituent institution has an individual on staff with substantial experience in managing commercial real estate transactions and the chancellor has designated that individual as the campus property officer.~~

~~5. The constituent institution has appropriate and sufficient technical and professional staff with demonstrated capability in the development, evaluation and execution of commercial leasing transactions.~~

~~6. An assessment team, assembled and led by the senior vice president for finance and administration, has reviewed the constituent institution's self-assessment, has performed an on-site capabilities appraisal that confirms the institution's self-assessment, and has recommended delegation to the president.~~

~~Constituent institutions will be reviewed for re-authorization under this section on a~~

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~~periodic basis, to be established by the senior vice president for finance and administration.~~

~~E. Upon review in response to a request for re-authorization or in response to a report of noncompliance with this policy or its associated regulations, for good cause, and consistent with G.S. 116-31.12 and other relevant state law, the president may revoke or suspend the authority of a constituent institution or take other remedial action as the president deems necessary and appropriate. Once authority has been revoked or suspended pursuant to this policy, all future real property transactions for the institution involved shall be completed in accordance with Chapter 146 of the General Statutes of North Carolina and the general delegations provided for in section II of this policy.~~

VI. Procedures and Reporting Requirements.

A. The senior vice president for finance and administration shall have general authority to establish such procedures and reporting requirements for constituent institutions and affiliated entities as may be prudent to enable implementation of this policy and associated regulations.

B. Constituent institutions without additional delegated authority shall report all real property transactions to the senior vice president for finance and administration at least quarterly.

W.C. Copies of all real property instruments must be filed with the Department of Administration, including an annual report submitted to the UNC System Office and Department of Administration documenting all real property transactions made pursuant to this policy.

VII. Other Matters.

A. Effective Date. The requirements of this policy shall be effective on July 1, 2019[DATE].

B. Relation to Other Laws. This policy is designed to supplement, and does not purport in any way to supplant or modify, those statutory enactments and rights which may govern the acquisition and disposition of real property in the State of North Carolina.

C. Regulations ~~and Guidelines~~. This policy shall be implemented and applied in accordance with such regulations ~~and guidelines~~ as may be adopted by the president.

³G.S. 116-31.12 delegates to the Board of Governors of the University of North Carolina the authority to authorize the constituent institutions and the University of North Carolina System Office to acquire and dispose of real property by lease if the lease is for a term of not more than 10 years. The statute directs the Board of Governors to establish a policy by which this leasing authorization may be further delegated to the boards of trustees of the constituent institutions or to the president of the University of North Carolina.

²Pursuant to G.S. 116-11(13), and notwithstanding *The Code* or any other Board of Governors policy, the Board of Governors delegates certain authorities to the president of the University. See Section 200.6 of the UNC Policy Manual.

³The value of an interest in real property shall, with respect to a leasehold interest, be deemed the annual rental value thereof.

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