

ADMINISTRATIVE MEMORANDUM

SUBJECT Procedures for real property transactions

NUMBER 298

DATE December 4, 1990

This office has received several inquiries concerning the procedures for acquiring or disposing of real property. This Administrative Memorandum responds to the need generating those inquiries.

The process by which real property transactions are to be approved for execution can be extensive and complicated, and various transactions are subject to widely differing clearances. Some clearances are established by state statute, others by state regulation, and still others by procedures of the Board of Governors. The attached chart combines the various clearances in a manner intended to make readily apparent the required process for undertaking each category of real property transaction in which an institution may be involved.

In addition to the information set forth on the chart, the following conditions, though perhaps generally known, are restated here for your convenience.

1. All real property transactions that require approval beyond the campus level are to be initiated by submission to the State Property Office of the Form PO-1 for acquisitions and the Form PO-2 for dispositions.
2. Leases not exceeding \$12,000 annual rental nor three years in term (including renewal) may be undertaken, subject to any required clearances, without the necessity of advertising for the required premises.
3. Institutions may not lease premises from a non-state agency without first determining that there are no state-owned or state-leased premises that would be suitable for the need; institutions may not lease premises to a non-state agency without first determining that no other state agency needs to lease those premises.
4. All real property instruments are to be entered into in the name of the State of North Carolina, not the pertinent constituent institution. This is true whether a transaction instrument must be signed by the Governor or whether the Chancellor or some other official is authorized to sign it.
5. Copies of all real property instruments (leases in the case of institutional action) must be filed with the Department of Administration. Every six months the institution is to make a report to the Department of Administration on the status of leases by or from the institution; the procedure for this reporting is prescribed by the Department of Administration.

6. No permanent improvements on leased premises may be made without the prior approval of the Department of Administration.

7. These procedures pertain to real property transactions of the constituent institutions, but they do not govern transactions with non-state agencies by the Board of Trustees of the Endowment Fund of the institution, organized pursuant to G.S. 116-36. (See Administrative Memorandum Number 93, dated October 28, 1977, amended by Administrative Memorandum Number 150, dated February 27, 1981.)

Please provide this Administrative Memorandum to appropriate personnel at your institution. Questions concerning this Administrative Memorandum may be addressed to Mr. David Edwards, Special Assistant to the President.

A handwritten signature in cursive script, reading "C. D. Spangler, Jr.", is positioned above a horizontal dashed line.

C. D. Spangler, Jr.

Attachments

§ 146-29.1. Lease or sale of real property for less than fair market value.

(a) Real property owned by the State or any State agency may not be sold, leased, or rented at less than fair market value to any private entity that operates, or is established to operate for profit.

(b) Real property owned by the State or by any State agency may be sold, leased, or rented at less than fair market value to a public entity. "Public entity" means a 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. Any such sale, lease, or rental shall be reported to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office, with the details of such transaction.

(c) Real property owned by the State or by any State agency may be sold, leased, or rented at less than market value to a private, nonprofit corporation, association, organization or society upon a determination by the Department of Administration that such transaction is in consideration of public service rendered or to be rendered. The transaction shall be reported in detail to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office. In the case of a private, nonprofit corporation, association, organization, or society that engages in some for-profit activities, the amount of the sale, lease, or rent shall be not less than the fair market value of the property times the percentage of the total activities of the corporation, association, organization, or society that are for profit.

(d) Any sale, lease, or rental of real property made in conformity with the provisions of this section is not a violation of G.S. 66-58(a).

(e) All sales, leases, or rentals, prior to July 15, 1986, of real property owned by the State or any State agency are not invalid because of a conflict with G.S. 66-58(a) or with a prior version of this section, but any renewal of any such lease or rental agreement on or after July 15, 1986, shall conform to the requirements of this section. (1985, c. 479, s. 172(a); 1985 (Reg. Sess., 1986), c. 1014, s. 188(a).)

REQUIRED CLEARANCES FOR REAL PROPERTY TRANSACTIONS OF THE CONSTITUENT INSTITUTIONS

Property interest (whether acquisition or disposition)	Consideration ¹	Term (including renewal)	Clearance needed ²
Any interest in land other than a lease (e.g., fee simple, easement, license)	not more than \$49,999	any term	1. Board of Trustees 2. Dept. of Admin. (State Property Office) ³ 3. Gov. and Council of State (Gov. execute instrument)
	\$50,000 or more	any term	1. Board of Trustees 2. Board of Governors ⁴ 3. Dept. of Admin. 4. Gov. and Council of State (Gov. execute)
Lease	not more than \$5,000 annual rental	not more than 3 years	Chancellor execute ⁵
		more than 3 years	1. Dept. of Admin. 2. Gov. and Council of State (Gov. execute)
	at least \$5,001 but not more than \$12,000 annual rental	not more than 3 years	Dept. of Admin. (State Property Officer execute)
		more than 3 years	1. Dept. of Admin. 2. Gov. and Council of State (Gov. execute)
	at least \$12,001 but not more than \$24,999 annual rental	any term	1. Dept. of Admin. 2. Gov. and Council of State (Gov. execute)
	at least \$25,000 but not more than \$49,999 annual rental	any term	1. Board of Trustees 2. Dept. of Admin. 3. Gov. and Council of State (Gov. execute)
	at least \$50,000 annual rental	any term	1. Board of Trustees 2. Board of Governors 3. Dept. of Admin. 4. Gov. and Council of State (Gov. execute)

¹Dispositions at less than fair market value are subject to the constraints of G.S. 146-29.1. (See attached law.)

²After all necessary clearances are obtained, the appropriate property instrument is prepared by or under the supervision of the Attorney General.

³This clearance includes review of the proposed transaction by the Attorney General.

⁴With respect to any interest in real property, whatever its value or nature, which relates to or affects a constituent institution, the Board of Governors may take action or recommend action, as the case may be, without having received a recommendation therefor from the Board of Trustees of the respective institution.

⁵Where no clearance by the Board of Trustees is shown to be required for a particular property transaction, it is assumed that execution of the appropriate instrument by the Chancellor or submission of the transaction for clearance by other agencies through the Chancellor's initiative, as the case may be, has been authorized by appropriate delegation from the Board of Trustees to the Chancellor, conferring a standing authority therefor pursuant to a Resolution of the Board of Governors dated 11/13/81. (See attached Memorandum to the Chancellors from William Friday, President, dated 11/24/81.)

THE UNIVERSITY OF NORTH CAROLINA

General Administration

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CHAPEL HILL 27514

WILLIAM FRIDAY
President

November 24, 1981

TELEPHONE: (919) 933-6981

MEMORANDUM

TO: The Chancellors
FROM: William Friday 
RE: Delegation of leasing authority

At its meeting on November 13 the Board of Governors adopted a resolution concerning leasing authority within The University. This resolution, a copy of which is attached, accomplished two basic things:

- (1) authorized each Board of Trustees to delegate to its Chancellor the authority to proceed to acquire or dispose of real property by lease valued at less than \$25,000 without needing to seek prior approval from the institution's Board of Trustees or from the Board of Governors provided that any other necessary clearances are obtained;
- (2) defined the value of a lease to be its annual rental, for purposes of determining the \$25,000 limit of the delegation of November 13, 1981, and the \$50,000 limit of the delegation of July 7, 1972.

in light of this action by the Board of Governors you may wish to bring the availability of further delegation of leasing authority to the attention of your Board of Trustees for its consideration at an early opportunity.

cc: Vice President L. Felix Joyner

Attachment

RESOLUTION CONCERNING LEASING AUTHORITY

WHEREAS the Board of Governors, pursuant to its authority under G.S. 116-3, 116-11(13), 116-12, and 116-13, delegated on July 7, 1972, to the Boards of Trustees of the constituent institutions the power to authorize acquisition or disposition by the institutions of any interest in real property valued at less than \$50,000 by obtaining the "necessary approvals from State officials and agencies, without first obtaining the approval of the Board of Governors"; and

WHEREAS the said delegation of July 7, 1972, was meant to include and has been implemented so as to include the power to authorize acquisition or disposition of real property by lease, subject to the established limitations; and

WHEREAS there has not heretofore been delegated to the President any standing power to authorize in behalf of General Administration acquisition or disposition of real property by lease or otherwise; and

WHEREAS the Department of Administration upon instructions of the Council of State, in order to promote greater efficiency within State government, has made certain recommendations with respect to further delegation of leasing authority within The University of North Carolina,

NOW, THEREFORE, the Board of Governors hereby:

1. Reaffirms its delegation of July 7, 1972, to the Boards of Trustees of the constituent institutions, of the power to authorize acquisition or disposition by the institutions of any interest in real property, including a leasehold, valued at less than \$50,000, subject to any necessary approvals from State officials and agencies but without first obtaining the approval of the Board of Governors.

2. Authorizes the Boards of Trustees of the constituent institutions to delegate to the Chancellor of their respective institutions the power to authorize for their institutions acquisition or disposition by lease

of an interest in real property valued at less than \$25,000, subject to any necessary approvals from State officials and agencies but without first obtaining the approval of the Board of Trustees of the pertinent institution or of the Board of Governors.

3. Empowers the President to authorize for General Administration acquisition or disposition by lease of an interest in real property valued at less than \$25,000, subject to any necessary approvals from State officials and agencies but without first obtaining the approval of the Board of Governors.

4. Declares that for purposes of this Resolution the value of an interest in real property with respect to a lease shall mean the annual rental thereof.