

### **Regulation on Acquisition and Disposition of Real Property Authority**

- I. Authority. Pursuant to its authority under G.S. 116-3, 116-11(13), 116-12, 116-13, 116-31.12,<sup>1</sup> and other North Carolina law, the Board of Governors adopted Section 600.1.3 of the UNC Policy Manual regarding the authority of the president and boards of trustees to acquire and dispose of real property. The process by which real property transactions are to be entered into, authorized, and executed can be extensive and complicated. Some authorizations are established by state statute, others by state regulation, and still others by procedures of the Board of Governors. The tables in this regulation summarize the various authorizations and signature authority in a manner intended to make apparent the required process for undertaking each category of real property transaction. This regulation also provides requirements for transactions entered into using additional delegated authority provided for under Section 600.1.3 of the UNC Policy Manual. All delegations of authority in this section are subject to any necessary approvals from state officials and agencies as may be provided for in state law, regulation, or rule.
- II. General Requirements for All Real Property Transactions. In addition to the information set forth on the below charts, the following procedures apply:
- A. University of North Carolina System Office (UNC System Office) finance staff shall be copied on all requests for approval of real property transactions submitted to officials or agencies external to the University System.
  - B. All real property transactions that require approval beyond the campus level are to be initiated by submission of the Form PO-1 for acquisitions and the Form PO-2 for dispositions to the State Property Office.
  - C. Leases not exceeding \$12,000 annual rental or three years in term (including renewal) may be undertaken, subject to any required authorizations, without the necessity of advertising for the required premises.
  - D. 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.
  - E. Copies of all real property instruments 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 all leases. The procedure for this report is prescribed by the Department of Administration.
  - F. All instruments involving acquisition or disposition of an interest in real property are entered into on behalf of the state, regardless of whether executed by the governor, president, chancellor, or other official.

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

H. Dispositions at less than fair market value are subject to the constraints of G.S. 146-29.1.

I. 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.

III. Required Authorizations for Real Property Transactions

**Required Authorizations for Acquisition or Disposition of an Interest in Real Property Other than a Lease (e.g., fee simple, easement, license, demolition)**

Transactions Using General Authority							
Value	Chief Financial Officer	Chancellor	Board of Trustees	President or Designee	Board of Governors	State Property Office	Governor and Council of State
\$0 – 499,999 <sup>2</sup>	x	x	x			x	x
\$500,000 - \$749,999 <sup>3</sup>	x	x	x	x		x	x
\$750,000 or more	x	x	x	x	x	x	x

Transactions Using Additional Delegated Authority							
Value	Chief Financial Officer	Chancellor	Board of Trustees	President or Designee	Board of Governors	State Property Office	Governor and Council of State
\$0 - 999,999 <sup>4</sup>	x	x	x			x	x
\$1,000,000 - 1,249,999 <sup>5</sup>	x	x	x	x		x	x
\$1,250,000 or more	x	x	x	x	x	x	x

An instrument involving acquisition or disposition of a fee simple interest or easement shall be executed by the governor in accordance with G.S. 146-74, *et seq.* Instruments granting revocable, non-transferable, time-limited licenses to use real property for specific purposes may be executed by chancellors of constituent institutions, or their designees, pursuant to applicable constituent institution policies.

**Required Authorizations for Acquisition or Disposition of Real Property by Lease**

Transactions Using General Authority								
Annual Value	Term (Including Renewals)	Chief Financial Officer	Chancellor	Board of Trustees	President or Designee	Board of Governors	State Property Office	Governor and Council of State
\$0 – 499,999 <sup>6</sup>	≤ 10 years	x	x	x			x	x
\$500,000 – 749,999 <sup>7</sup>	≤ 10 years	x	x	x	x		x	x
\$750,000 or more	any term	x	x	x	x	x	x	x
\$0 or more	> 10 years	x	x	x	x	x	x	x

An instrument involving acquisition or disposition of real property by lease using general authority shall be executed by the governor. Acquisitions and dispositions of real property by lease by constituent institutions that have been granted additional delegated authority for lease transactions by the Board of Governors are addressed in the below table.

Transactions Using Additional Delegated Authority								
Annual Value	Term (Including Renewals)	Chief Financial Officer	Chancellor or Designee	Board of Trustees	President or Designee	Board of Governors	State Property Office	Governor and Council of State
\$0 – 749,999 <sup>8</sup>	≤ 10 years	x	x	x				
\$750,000 – 999,999 <sup>9</sup>	≤ 10 years	x	x	x	x			
\$1,000,000 or more	≤ 10 years	x	x	x	x	x		
\$0 or more	>10 years			x		x	x	x <sup>10</sup>

An instrument involving acquisition or disposition of real property by lease using additional delegated authority authorized by a constituent institution’s board of trustees shall be executed by the chancellor or designee. An instrument involving acquisition or disposition of real property by lease using additional delegated authority authorized by the president or the Board of Governors shall be executed by the president or designee.

IV. Requirements for Lease Transactions Using Additional Delegated Authority. The requirements in this section IV apply to acquisitions and dispositions of real property by lease by constituent institutions that have been granted additional delegated authority for lease transactions by the Board of Governors.

A. General

1. A source of funds must be identified and secured for 100 percent of the required funding for the term of the proposed acquisition by lease. Funds must be used in strict compliance with state statute.
2. Model lease documents consistent with G.S. 116-31.12 shall be used for delegated transactions. Completed lease documents must be reviewed and approved by the constituent institution’s attorney.
3. The functional composition of the campus property review committee shall be proposed by the constituent institution, approved by the UNC System Office and appointed by the chancellor. Changes to the approved functional composition shall be approved by the UNC System Office.
4. The campus property review committee, the vice chancellor for business affairs, the chancellor or designee, the president or designee, and the Board of Governors shall approve all transactions according to the appropriate delegation as described in Section 600.1.3[R].
5. An acquisition lease shall be classified as routine or as strategic, with the prior approval of the UNC System Office.
6. All lease agreements shall be in the name of the constituent institution or the University of North Carolina.

7. The availability of funds clause is required in all acquisition leases. This clause shall not be invoked without the written permission of the president.

8. A lease produced under this delegation, whether acquisition or disposition, shall be reported by the campus property officer to the Secretary of Administration, with copy to the leasing and space planning manager in the State Property Office, and the UNC System Office within 30 calendar days of the lease being fully executed.

B. The Campus Property Review Committee shall have the following responsibilities:

1. Approve delegated transactions and set priorities, establish standards, and provide direction for delegated activities.

2. Review the space needs analysis and lease specifications for an additional delegated authority transaction.

3. Review lease proposals submitted to and/or negotiated by the campus property office.

4. Review lease transactions to ensure compliance with established procedures and protocols.

5. Review requests to enter strategic acquisition leases as defined herein. If the committee concurs with the request, the committee chairperson shall provide written rationale and request approval to classify the lease as strategic from the senior vice president for finance and administration at the UNC System Office.

6. Review requests to enter less than fair market value disposition leases as defined herein. If the committee concurs with the request, the committee chair shall provide written rationale and request approval to lease at less than fair market value from the senior vice president for finance and administration at the UNC System Office.

C. The Campus Property Officer and the Campus Property Office shall have the following responsibilities:

1. Establish and enforce procedures that ensure additional delegated authority transactions are approved and executed in accordance with the G.S. 116-31.12, with Section 600.1.3 of the UNC Policy Manual, and with these regulations.

2. Establish and enforce procedures that ensure transactions shall be approved and executed in accordance with space standards established by the institution and the UNC System Office.

3. Develop a comprehensive set of specifications to be used for additional delegated authority activities.

4. Secure, in accordance with applicable state law and regulation, the technical and professional services needed to assist with the additional delegated authority transaction.

5. Perform a space analysis consistent with the *University of North Carolina Space Planning Standards*, which were prepared in October 1998 and using an updated organizational chart for those to be housed in the space.
6. Develop a detailed set of specifications that addresses all lease requirements including detailed lessor and lessee responsibilities and report the specifications to the campus property review committee prior to obtaining proposals.
7. Negotiate leases.
8. Conduct an internal review of acquisition and disposition by lease practices to ensure compliance with these regulations and to incorporate best practices.
9. Schedule and coordinate a building code/occupancy inspection by the Department of Insurance or other code enforcement official certified by the North Carolina Code Officials Qualification Board to ensure that the proposed lease shall provide space that is in compliance with applicable local, state, and federal codes.
10. Coordinate with North Carolina Department of Insurance to ensure that property acquired or disposed of under the constituent institution's delegated authority is properly insured.
11. Coordinate with the campus attorney's office to ensure complete legal review of all agreements, leases or contracts related to the delegated transaction.
12. Report the transaction to the Secretary of Administration and the UNC System Office within 30 calendar days of the lease being fully executed.

D. The Acquisition by Lease Process

1. Routine Lease. The constituent institution shall acquire space by lease for routine administrative, office, laboratory and/or storage space utilizing a formal, advertised, sealed proposal process if the annual cost of the lease is greater than \$50,000. An informal proposal process may be used if the annual cost of the lease is \$50,000 or less.
  - a. For leases that have an annual cost of no more than \$50,000 per year, informal, written proposals may be obtained using a process that details the terms and conditions of the proposed lease.
    - (1) Once the proposal is selected, approved by the property review committee, and approved by the chancellor or designee, a lease shall be prepared.
    - (2) The prepared lease shall be reviewed and approved by the campus attorney.
    - (3) The chancellor or designee shall execute the lease, and the original fully executed lease shall be retained by the campus property office.

(4) The transaction shall be reported to the UNC System Office and the Secretary of Administration within 30 calendar days of the lease being fully executed.

b. For leases that have an annual cost of more than \$50,000 per year, formal, advertised, written proposals shall be obtained.

(1) The campus property office shall place a public advertisement in the legal notice section of a newspaper of general circulation in the county where the lease shall be located and in other public electronic media available to the campus or the UNC System Office.

(2) The advertisement shall run for at least five (5) consecutive days and shall provide that proposals shall be received in the campus property office at a specified time and on a date that is no less than five (5) days beyond the last day the lease is publicly advertised.

(3) In the event that no acceptable proposals are received, the campus property office may negotiate in the open market for the needed lease. Once negotiated, the proposal and detailed justification is submitted to the campus property review committee and the UNC System Office property officer for approval.

(4) Once approved, a lease shall be prepared.

(5) The prepared lease shall be reviewed and approved by the campus or a UNC System Office attorney.

(6) The campus property office shall seek the approval of the chancellor or designee.

(7) If the lease cost and term are not within the delegation set by the board of trustees of the constituent institution, the campus property office shall seek approval of the proposed lease by the board of trustees via a request by the vice chancellor for business affairs.

(8) The chancellor or designee shall execute the lease and the fully executed lease shall be retained by the campus property office.

(9) The transaction shall be reported to the UNC System Office and the Secretary of Administration within 30 calendar days of the lease being fully executed.

2. Strategic Lease. The constituent institution may acquire space by lease for strategic, unique or site-specific space that is necessary and appropriate to take full advantage of opportunities of strategic importance to the constituent institution or the university. The strategic lease process may commence only with the prior approval of the campus property review committee and the UNC System Office.

a. The requesting entity shall provide a detailed written justification that shall include the specific reasons for seeking to acquire by lease strategic, unique or site-specific space. The justification shall be submitted to and approval shall be obtained from the campus property review committee, the chancellor, and the senior vice president for finance and administration, and the UNC System Office. At a minimum, the justification shall include the following:

(1) The specific reason that needed space cannot be obtained utilizing the routine competitive lease process.

(2) A description of the methodology used and the analysis performed to determine that acquiring the required space outside of the routine lease process is in the best interest of the university.

(3) Evidence that the constituent institution has sought consultation with the Department of Administration (State Property Office) together with any other available resources to gather information that may be relevant to making an informed decision on the special nature of the proposed acquisition.

b. The campus property office shall obtain written proposals that detail the terms and conditions of the proposed lease.

(1) Once the proposal is selected, approved by the campus property review committee, the chancellor and the board of trustees, a lease shall be prepared.

(2) The prepared lease shall be reviewed and approved by the campus or a UNC System Office attorney.

(3) The chancellor or designee shall execute the lease, and the original fully executed lease shall be retained by the campus property office.

(4) The transaction shall be reported to the UNC System Office and the Secretary of Administration within 30 calendar days of the lease being fully executed.

#### E. The Disposition by Lease Process

1. General. The constituent institution may dispose of real property by lease contingent upon full compliance with applicable procedures and required approvals described herein as well as other relevant processes not inconsistent with these regulations.

## 2. Procedures

a. Any proposed disposition of real property by lease shall be identified by the campus property officer and reviewed by the campus property review committee. At a minimum, any proposal for disposition by lease shall contain the following:

(1) A written justification that details the reason(s) for leasing the space to an external lessee.

(2) A description of any improvements or alterations (if any) to be made to the leased space at the request of the potential lessee.

b. The proposed disposition of real property by lease must be endorsed by the chancellor or designee and the board of trustees of the constituent institution.

c. Any disposition of real property by lease shall be at or above fair market values (FMV) supported by a comparable market analysis of lease rates. Any disposition of real property by lease at less than FMV shall require at a minimum:

(1) Written justification that contains a description of the methodology used and the analysis performed to determine that disposition of the specific space or property by lease at less than FMV is in the best interest of the university;

(a) It is permissible to lease campus real property to a public entity for less than FMV.

(b) It is permissible to lease campus real property to a private not-for-profit entity for less than FMV.

(c) It is **not** permissible to lease campus real property to a private for-profit entity for less than FMV.

(2) Preapproval by campus property review committee;

(3) Preapproval by the chancellor or designee; and

(4) Preapproval by the UNC System Office's senior vice president for finance and administration or designee.

d. Once required approvals and authorizations have been obtained from the campus property review committee, the chancellor, the board of trustees, the president, and the Board of Governors, as appropriate, a lease shall be prepared.

e. The prepared lease shall be reviewed and approved by the campus or a UNC System Office attorney.

f. The transaction shall be reported to the UNC System Office and the Secretary of Administration, with copy to the leasing and space planning manager in the State Property Office, within 30 calendar days of the lease being fully executed.

V. Other

A. Effective Date. The requirements of this regulation shall be effective on July 1, 2019.

B. Relation to Federal and State Laws and Policies. The foregoing regulation as adopted by the president is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern or relate to the subject matter of this regulation.

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<sup>1</sup> G.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 UNC System Office to acquire and dispose of real property by lease if the lease is for a term of not more than 10 years. Further, 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.

<sup>2</sup> Acquisitions and dispositions of real property with value less than \$50,000 may be authorized by a chancellor, if so authorized by the board of trustees, without further approval by the Board of Governors or the president.

<sup>3</sup> The president may authorize transactions valued below this range on behalf of a constituent institution, affiliated entity, or the UNC System Office in the president's discretion.

<sup>4</sup> Acquisitions and dispositions of real property with value less than \$50,000 may be authorized by a chancellor, if so authorized by the board of trustees, without further approval by the Board of Governors or the president.

<sup>5</sup> The president may authorize transactions valued below this range on behalf of a constituent institution, affiliated entity, or the UNC System Office in the president's discretion.

<sup>6</sup> Acquisitions and dispositions of real property by lease with annual value less than \$50,000 and a term of less than 10 years may be authorized by a chancellor, if so authorized by the board of trustees, without further approval by the Board of Governors or the president.

<sup>7</sup> The president may authorize transactions valued below this range on behalf of a constituent institution, affiliated entity, or the UNC System Office in the president's discretion.

<sup>8</sup> Acquisitions and dispositions of real property by lease using additional delegated authority with an annual value less than or equal to \$150,000 and a term of not more than 10 years may be authorized by the chancellor or the chancellor's designee.

<sup>9</sup> The president may authorize instruments for transactions valued below this range on behalf of a constituent institution, affiliated entity, or the UNC System Office in the president's discretion.

<sup>10</sup> An instrument involving acquisition or disposition of real property by lease for a term of greater than 10 years shall be executed by the governor.