

Guidance for Submittal of Real Property Transactions for Review and Approval

The acquisition or disposition of real property, by gift, purchase, or sale, involves a certain amount of risk to the University of Colorado. These risks include financial and management risk, ownership liability risk, and reputational risk. Because of these risks, approval of any acquisition or disposition is required by the Board of Regents,¹ and additional legislative authorization through the Capital Development Committee (CDC) is required for acquisitions valued at more than \$2 million.² The Office of the State Architect, Real Estate Program (REP), also has certain approval authority³ and state fiscal rule requirements⁴ related to real property transactions.

It is important that each campus present sufficient information in its approval submission so that university leadership and the Board of Regents can make informed decisions about the merits of a proposed acquisition or disposition. This document is intended to provide guidance about the process for and content of approval submissions. These submission processes are not intended to be overly burdensome, and staff from the Office of the Vice President of Budget and Finance within System Administration, including the Assistant Vice President for Budget, Planning and Capital (“the AVP”) and the Senior Director of Real Estate Services, shall be available for guidance and assistance at any point in the process.

Each campus shall use its own processes, as established by the Chancellor, to prioritize, pursue, review, and propose real estate acquisitions and dispositions to the Board of Regents. Each campus is responsible for preparing materials for presentation to the Board of Regents and the CDC.

Prior to consideration by the Board of Regents, a campus must notify and/or seek feedback from the following groups:

1. University Counsel must be asked to review any agreements and contracts related to the proposed transaction. While University Counsel’s review is typically limited to legal sufficiency, counsel’s office may provide additional insight to enhance the review process. University Counsel may recommend the engagement of outside counsel for more complex transactions.
2. The University Treasurer must be informed of the proposed acquisition early in the process, regardless of the source of financing. Use of reserves for the transaction should be reported on the quarterly capital cash report sent to Treasury.
3. If the proposed acquisition is a charitable contribution, University Advancement must be consulted early in the process to ensure the donor understands the guidelines and review process. Generally, any gift or donation of real property is made to the university through the University of Colorado Foundation under its gift acceptance guidelines. If a real property gift is to be used by a campus, then that gift may be made directly to the university. Gifts of real property are subject to these guidelines regardless of how the property is gifted.

¹ Article 13.A.1 of the Laws of the Regents

² Section 23-1-106 (7)(c)(I)(B) and (7)(c)(II), C.R.S.

³ Section 24-30-1303 (1)(a), C.R.S.

⁴ State Fiscal Rule 5.1.2

Program Plan

A program plan is required for all acquisitions valued at more than \$2 million⁵, regardless of whether it is acquired by purchase or by gift, and, while not required, a program plan should be considered for complicated or high-profile transactions valued at less than \$2 million. (See APS 3002/Appendix B for program plan requirements.)

Approval Process and Submission Format

Each campus shall submit documents via email to the AVP for System review and inclusion in upcoming Board of Regent Finance Committee meetings based on the submission dates in the annual request budget calendar published by the AVP pursuant to APS 3002. Submissions are typically due about three weeks before a scheduled Finance Committee meeting.

There is no required format for a proposed real estate transaction approval submission beyond the information described in Appendix B. Each acquisition submission will include a program plan (if applicable), presentation slides, a statement of information for BoardDocs, and, if applicable, state submission forms.

After System review and comment, documents will be revised, if applicable, and uploaded to BoardDocs by campus staff or the AVP. If the proposed acquisition or disposition is to initially be presented during an executive session of the Board of Regents Finance Committee, these documents will not be made public. Documents should be uploaded to BoardDocs no later than the Friday before a scheduled meeting.

Finance Committee. The Board of Regents Finance Committee reviews all property transaction proposals. A campus should specify whether a proposal should be heard in executive session. The permissible reason for executive session related to real property acquisitions and dispositions under the Colorado Sunshine Law is excerpted below.⁶

The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

A proposal may be heard in executive session as an information item or as an upcoming action item. Unless directed otherwise by the Regents, upcoming action items heard by the Finance Committee will be referred to the full Board for consideration at the next available meeting.

⁵ APS 3002 (II)(A)(4)(c)

⁶ Section 24-6-402(3)(a)(I), C.R.S.

The AVP is responsible for adding agenda items to the committee calendar and coordinating all System reviews of a proposed transaction, including briefings with the Vice President of Budget and Finance and the President. The Vice President and the AVP will brief the Chair and the Vice-Chair of the Board of Regents Finance Committee about property transaction proposals one to two weeks ahead of the committee meeting.

Board of Regents. Following review by the Regents Finance Committee, a property transaction proposal will be scheduled for consideration by the full Board. If the item was not heard or acted upon during the public portion of the Finance Committee meeting, a campus can specify whether a proposal should be heard in executive session. If an item is heard in executive session, it can be added to the public portion of the same meeting for action following the executive session.

Following the Board of Regents Finance Committee meeting and ahead of a full Board of Regents meeting, Board staff and the AVP will coordinate to add property items to the meeting calendar and to upload relevant documents. No campus action is required. The Vice President of Budget and Finance will brief the Regents about property transaction proposals ahead of the Board meeting.

Capital Development Committee. The AVP will coordinate the submission and scheduling of legislative review of property acquisitions valued at more than \$2 million. Typically, campus staff is responsible for presenting its request to the Capital Development Committee.

Office of the State Architect, Real Estate Program (REP). The REP is involved in advising and reporting real estate transactions for state agencies and institutions of higher education, and REP approval is required for any real estate transaction involving state funds (state Capital Construction Fund). ⁷ The role of the REP in each type of University of Colorado real estate transaction is summarized below. Other university requirements are also listed.

- Acquisition of Real Property
 - Campuses should consult REP prior to initiating an acquisition of real property.
 - Use of the state-contracted real estate brokerage firm is required for all acquisitions, regardless of funding source, with very limited exceptions.
- Disposition of Real Property
 - REP can offer assistance.
 - A campus must indicate its intended use of the net sales proceeds from the disposition of property in its submission of information to the Office of the Vice President of Budget and Finance pursuant to APS 4005/Permanent Land Fund.
 - Ground leases of university property to outside parties are considered dispositions.
- Easements and Rights-of-Way
 - REP approves all easements and rights-of-way transactions, pursuant to contracting approval authority delegated by the State Controller through State Fiscal Rules.
 - Board of Regents and Presidential approval of easements and rights-of-way is explicitly required in statute.⁸
- License Agreements (University as licensee)
 - REP can assist in reviewing draft license agreements to ensure that statutory requirements are met.

⁷ Section 24-75-302, C.R.S.

⁸ Section 24-82-202, C.R.S.

- License agreements do not require approval by the Board of Regents but should be reviewed by university counsel and REP or the appropriate delegate.
 - When using the REP-issued license agreements, approval authority is currently delegated to an individual at each CU campus and the System Office within REP guidelines.
- Leasing of Space⁹ (University as tenant)
 - REP approves all leasing transactions where the University is the tenant, pursuant to contracting approval authority delegated by the State Controller through State Fiscal Rules.
 - When using the REP-issued lease agreements, this authority is currently delegated to an individual at each CU campus and the System Office within REP guidelines.
 - If a campus is considering entering into a new lease as a tenant, it should complete a space request form in consultation with the campus REP delegate.
 - Use of the state-contracted real estate brokerage firm is required for all leasing transactions where the University is a tenant, with very limited exceptions, and the firm cannot be engaged until the space request form is completed.

Additional information and guidance from REP can be found at: <https://osa.colorado.gov/real-estate/>.

Public/Private Partnerships. From time-to-time a campus may consider engaging a private partner to develop or operate a project for the benefit of the University or for another agreed-upon-use through a public/private partnership (P3). Such an agreement may result in a ground lease of university property to a private developer, which ground lease triggers automatic Regent review.

Additionally, the Vice President, the AVP, and the University Treasurer must be informed by the campus of potential P3 transactions early in the evaluation phase in order to discuss the source of funding and financing for the arrangement.

Acquisitions by Affiliates

There are several university-affiliated entities that may be able to facilitate acquisitions when a required purchase commitment and timing for the university approval process cannot be aligned. The University of Colorado Property Corporation (CUPCO) was formed to receive, hold, invest, maintain, operate and administer real property and personal property, borrow money and make expenditures to or for the benefit of the university. CUPCO has access to a credit facility to permit timely acquisition of real estate critical to the university's mission. CU Boulder and UCCS also have affiliates that may be able to offer similar facilitation. Use of an affiliate does not, however, eliminate the approval requirements included in this guidance and there is a risk that university approval of an acquisition from the affiliate will be denied.

⁹ Entering into any type of lease incurs a financial obligation. This may trigger disclosure filing on the Electronic Market Municipal Access (EMMA) website as a "Material Event Notice".