

# Pennsylvania State System of Higher Education Facilities Manual

## Volume VII-C Real Estate

### I. Introduction

- A. **Governing Legislation, Policies and Directives.** The Pennsylvania State System of Higher Education's (PASSHE) enabling legislation, [Act 188 of 1982](#), and amendments, (24 P.S. §20-2001A et seq.) authorizes the System:

“to acquire, purchase, hold, lease as lessee and use any property, real, personal or mixed, tangible or intangible, or any interest therein, lease as lessor any property, real, personal or mixed, tangible or intangible, necessary or desirable for carrying out the purposes of the System, and to sell, transfer, and dispose of any property acquired by gift, grant, devise or bequest, whether the property is real, personal or mixed, tangible or intangible, or any interest therein; to take, demand, receive and possess all moneys, real property, and goods which shall be appropriated, given or granted to for the use of the System and to apply the same according to the will of the donors; to sell, transfer and dispose of real property acquired by and titled to the System upon approval by the General Assembly as provided in Section 2018-A ...”

The portion of the legislation controlling disposal of real property states:

“Section 20-2018-A. Method of Disposition; Consideration by the General Assembly.

- (a) Whenever the System deems that it is necessary or desirable to sell, transfer or dispose of real property acquired by and titled to it, it shall request authorization from the General Assembly to sell, transfer, or dispose of said real property; and from time to time, as necessary, the System shall submit to the Chief Clerk of the House of Representatives and the Secretary of the Senate requests to sell, transfer, or dispose of real property acquired by and titled to the System for consideration by the General Assembly.
- (b) Each request for authorization to sell, transfer, or dispose of real property transmitted to the General Assembly shall be proposed as a resolution, and shall be placed on the calendar of each House for the next legislative day following its receipt, and shall be considered by each House within thirty calendar days of continuous session of the General Assembly.
- (c) Each request for authorization to sell, transfer, or dispose of real property shall take effect if it is approved by a majority vote of the duly elected membership of each House during such thirty-day period or may be disapproved by either House during that period by a majority vote of the duly elected membership of each House.

- d) No resolution shall be effective:
  - (1) unless it designates the number of the request for authorization to sell, transfer, or dispose of real property and the date on which it was transmitted to the General Assembly; or
  - (2) if it specifies more than one request for authorization to sell, transfer, or dispose of real property except as otherwise provided by subsection (g) of this section.
- (e) The effective date of each request for authorization to sell, dispose, or transfer real property shall be the date of approval of the last of the two Houses to act. Upon the expiration of the thirty-day period after the delivery of the request for authorization to sell, dispose, or transfer real property to the two Houses of the General Assembly and the failure to act as provided in subsection (c) of this section, each request for authorization to sell, dispose, or transfer real property shall become effective.
- (f) For the purposes of subsection (b) of this section:
  - (1) continuity of session shall be considered as broken only by an adjournment of the General Assembly *sine die*; and
  - (2) in the computation of the thirty-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than ten days to a day certain.
- (g) Any provision of the request for authorization to sell, dispose, or transfer real property may, under provisions contained therein, be made operative at a time later than the date on which the request for authorization to sell, dispose, or transfer of real property otherwise takes effect.”

All System real property/real estate transactions must be conducted pursuant to this legislation, as well as other applicable policies, regulations, and statutes governing real property transactions within the Commonwealth of Pennsylvania. Board of Governors’ approval is required for all real property transactions involving additions to or deletions from the System’s facilities inventory (exceptions apply regarding demolition of real property structures; see details in section regarding property disposal).

Board of Governor’s policies that apply to real estate transactions include:

- [Policy 1991-01-A](#); Guidelines for Selection of Real Estate Appraisers
- [Policy 1991-05](#); Delegation of Authority for Leasing State System Real Property as Lessor and Granting Easements or Licenses for Use of State System Real Property
- [Policy 1997-02](#); Community Relations
- [Policy 1998-04-A](#); Procurement of Goods, Services, Supplies, and Construction
- [Policy 2000-02](#); Capital Facilities Planning, Programming, and Funding

[Pennsylvania Management Directives](#) that apply to PASSHE real estate transactions include:

- [625.2](#): Inventory of Real Property
- [625.5](#): Reporting Surplus Real Property

B. **Applicability.** This manual establishes procedures for acquiring, administering, leasing, and/or disposing of real property interests (land and/or capital improvements) within the

System's authority. Acquisition of real property includes purchase; acceptance of donations, gifts, and grants; acceptance of real property transferred from another state or federal agency; or reception of real property willed or bequeathed to the System. Administering real property, as used herein, is limited to insuring the real property assets and managing utilization of acquired real property, and does not address other aspects of physical plant management. Leasing of real property involves both leasing, as lessee, property not owned by the System; and leasing, as lessor, real property owned by the System or the Commonwealth. Acquiring and disposal of real property encompasses sale and/or transfer of title of land and improvements thereon, demolition or sale of the facilities on the land, easement of a real estate interest, and loss by destructive natural or catastrophic causes.

- C. **Process.** The processes used for acquiring, administering, leasing and/or disposing of real property are unique to the System as determined by its enabling legislation. The university acquires property by standard sales agreement after obtaining the required appraisals, Office of the Chancellor's support and Board of Governors' approval via the Capital Facilities Committee according to prescribed procedures.

Universities manage utilization of acquired property within the policies established by the Board of Governors, and insure the real property assets according to the insurance programs administrated by the Bureau of Risk Management of the Commonwealth. Leasing of real property is conducted in accordance with the procedures authorized in this manual. Disposal of real property is conducted according to established Commonwealth procedures for property titled solely to the Commonwealth, and within the statute cited above for real property purchased and titled by the System and the Commonwealth.

University Legal Counsel (ULC) should be involved at each stage of any real estate transaction. There are frequently numerous contracting documents requiring legal counsel review and signature during a transaction such as: a listing contract, sales agreements, and closing documentation.

The Assistant Vice Chancellor for Facilities is the point of contact for all real property program administrative matters.

- D. **Sensitivity.** System universities play a significant role in determining the social and economic stature of the communities in which they are located. Acquisition of private property by the university may reduce the community's property tax base. Purchases of numerous properties by the university could substantially affect the value of real estate, and the market could be influenced artificially by speculation or indiscriminate release of university acquisition plans. In planning real property acquisitions, the university must carefully evaluate its planning, and minimize or eliminate any adverse reactions as quickly as possible. An assessment of the anticipated reactions that are expected to result from any planned real property acquisition should be conducted before undertaken. The assessment should be shared with the Office of the Chancellor as early as possible during the acquisition process.
- E. **Real Property Planning.** Actions involving real property must be taken carefully and methodically, resulting in present and future value to the university, as opposed to present or future liability. Planning will enhance significantly the probability of success. Each transaction taken should be measured against the following guidelines as an initial test.
1. Does or will the action solve a university deficiency?
  2. Is the action financially feasible now and can it be supported adequately in the future?

3. Is the action compatible with (or can it be made to be and at what cost) university planning objectives and the university facilities master plan?
  4. What are the risks or consequences if the university does or does not proceed now with this action?
  5. How will the acquisition affect the community and what is likely to be the community's reaction to the acquisition as it relates to economic impact, tax ramifications, zoning, ordinance variances, and land planning? (See [BOG Policy 1997-02; Community Relations](#))
- F. **Ownership.** Some property acquired by Universities is titled to the specific university of the State System of Higher Education of the Commonwealth. However, much of the real property in use at the Universities is actually owned by and titled to the Commonwealth, the Department of General Services (DGS), or the General State Authority. In 2001, PASSHE and DGS entered into a Memorandum of Understanding (MOU) giving PASSHE rights and responsibilities for operating and maintaining the Commonwealth property; however, the property continues to be titled to the Commonwealth. Management decisions affecting the use and ownership are subject to the Commonwealth's regulatory statutes, policies, and the DGS MOU. In essence, ultimate ownership rests with the Commonwealth, but the System may use the property without full restriction of some provisions of the Commonwealth's regulatory statutes and policies applicable to property owned solely by the Commonwealth; some statutes do still apply such as with disposal of Commonwealth property. Each transaction involving real estate must consider how the parcel is titled before an appropriate course of action can be determined. An example of the DGS MOU is available in Appendix VII-C-1.
- G. **Risk Assessment.** Prior to acquisition or disposal of System property, a risk assessment must be made that considers the potential for environmental hazards, legal entanglements, and financial obligations. Purchase of a single-family dwelling may appear to present little risk at the time of purchase. However, unless the history of the facility is known, there is a possibility that hazardous materials may have been used in or disposed in and around the facility sometime during the life of the facility. Whenever there is any doubt or there is a reasonable chance that hazardous materials were used in and around the facility, the purchasing entity should perform a Phase I due diligence environmental study prior to purchase of the property. The results of the study can guide future action regarding purchase of the property.

## II. Acquisition of Real Property

- A. **Purchases.** From time to time, a university may be required or desire to purchase property to accomplish the university's mission or to control the use of land adjacent to or in proximity of university property. The procedures that follow should be used to effect orderly acquisition.

A flow chart for planning and programming real property acquisition is shown in Figure 1. After identification of the planned property acquisition, the university completes the information specified in Part I of the real property acquisition planning data form shown in Figure 2. The university's plan for acquiring the property and the financial impact of the acquisition should be established in Part I. Part I is then forwarded to the Office of the Chancellor for review and concurrence. A copy of Part I and the current and prior deed must be forwarded to the university's legal counsel. After Part I information is reviewed by the Office of the Chancellor, the university is advised by letter of the results of the review and recommendations for proceeding with the planned acquisition.

## Real Property Acquisitions\* General Planning and Programming Flow Chart

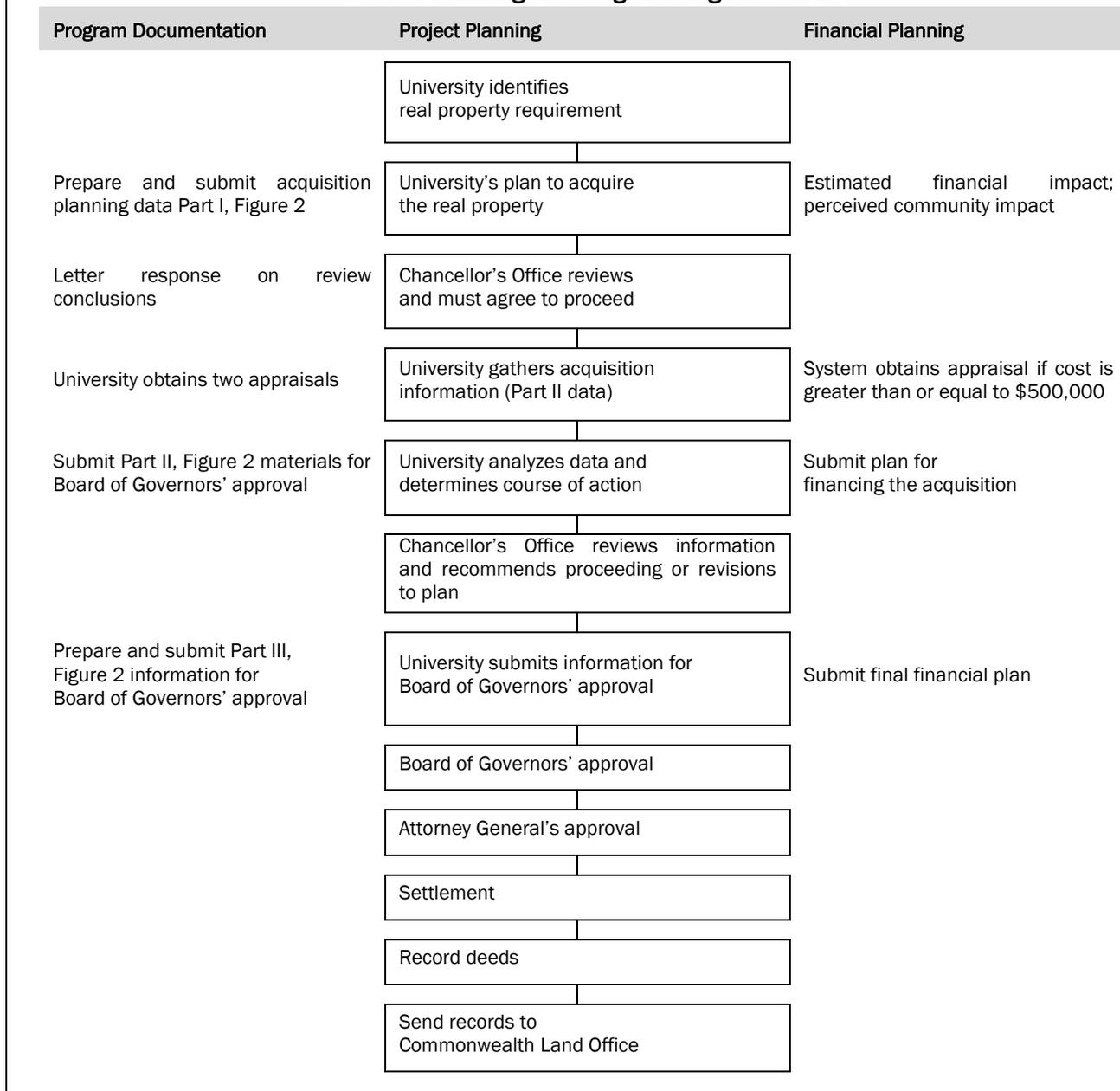


Figure 1

**\* This process only applies to property acquisitions. Disposal (sale) of Commonwealth property is covered in Paragraph V of this manual.**

## State System of Higher Education Real Property Acquisition Planning Data

**Part I, Pre-Planning Data (required at least 90 days before presentation to the Board of Governors if cost is greater than \$500,000) to be sent to the Assistant Vice Chancellor (AVC) for Facilities with a copy to University Legal Counsel (ULC).**

Property Location: Give address.

Property Description: Provide a full description of the property including size of real estate parcel(s) and improvements. A copy of the current and prior deed should be shared with the university's legal counsel.

Justification for Acquisition: Provide an explanation of why the property is required, what deficiencies the property will satisfy, the anticipated benefit to the university, program served, and alternatives to purchasing the particular parcel or dwelling.

Type of Acquisition:  Donation  Title Transfer  Bequest  Purchase  
Estimated Value \$\_\_\_\_\_ or owner's asking price \$

Risk Assessment: Provide a brief statement of the initial risk assessment that is or may be associated with the acquisition. Prior to acquisition or disposal of System property, a risk assessment must be made that considers the potential for environmental hazards, legal entanglements, and financial obligations. Purchase of a single-family dwelling may appear to present little risk at the time of purchase. However, unless the facility's history is known, there is a possibility that hazardous materials may have been used or disposed in and around the facility sometime during the life of the facility. Whenever there is any doubt or there is a reasonable chance that hazardous materials were used in and around the facility, the purchasing entity should perform a "Phase I due diligence" environmental study prior to purchase of the property. The results of the study can guide future action regarding purchase of the property.

Historic Significance: Is the property in a historic district or eligible for historic designation (older than 50 years)? If so, special processing will be required. (See [Volume IX-B.](#))

**Part II, Planning Data (provided at least 60 days before the next Board of Governors meeting); again provided to AVC for Facilities and ULC.**

Current Appraisals: Two independent appraisals should be obtained. Usually, market value should be used. In some cases, economic value, replacement cost, or specialty value may reflect more accurately the value to the university. The appraisals most often should be dated within about six months of the anticipated purchase date. Reference BOG [Policy 1991-01-A.](#)

Computer Photographs and Map: Provide sufficient computer photographs to show the property and its environs, and a computer map showing the property location in relation to the university.

Condition Assessment: Provide an assessment of the condition of all improvements to the property and an environmental assessment of the real estate. The environmental assessment should consider subsurface contamination from underground storage tanks and leaching from materials stored above or buried on the property. The property improvements assessment should address asbestos contamination or the presence of recognized hazardous materials used in the construction of improvements, previously stored on the property, or required as a component of the building's operation based upon the historic use of the facility or land.)

Planned Improvements: Identify any planned improvements to prepare the property for university use and their estimated cost.

Figure 2

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Estimated Operating Costs: Identify the estimated costs of routine operation and annual maintenance. An estimated long-term (35-year) life cycle maintenance profile should be prepared.

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Financial Plan: Additional information will be required if the proposed property purchase is to be used for student housing. Provide a financial plan for purchasing the property, including the costs in the item above. If finances are to be borrowed, complete a real property acquisition planning data financial plan.

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Draft Sales Agreement: Provide a draft of the sales agreement, developed in conjunction with and approved by University Legal Counsel, **before** final negotiations and execution by the seller. In most circumstances, use the System's standard agreement of sale. Use of a nonstandard form or additional or modified clauses to the System's standard agreement must be approved by the regional legal office for legality and form, and by the Office of the Chancellor for sound business practice, before final negotiations with the seller. A written justification should accompany the request for such modifications.

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Title Search: Provide a copy of the title search conducted by an abstract or land title firm with a copy of the title insurance. The preliminary title search, called "commitment to insure title," should be forwarded with the draft sales agreement. The abstract company will do a full title search at time of settlement. The sales agreement must contain a provision for updating and insuring the title until settlement.

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Council of Trustees' Resolution: Provide a copy of the council of trustees' resolution recommending that the Board of Governors approve the university's acquisition of the property.

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Community Reaction: Provide an assessment of any anticipated community (or other governmental body) reaction to the planned acquisition.

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### Part III, Approval and Recording

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Signed Sales Agreement: Provide a **signed** sales agreement with statement of contingency regarding Board of Governors' and Attorney General's approval if signed prior to Board of Governors' approval. Sales agreement signed by authorized University personnel and University Legal Counsel like most contracts.

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Current Deed: Provide a copy of the current deed and **completed** title search with a copy of each to regional legal counsel, with identification of any covenant or restriction contained in the property deed which would bind the university to future obligations.

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Board of Governors' Approval: The Board of Governors must approve the acquisition formally and record such approval in the Board's minutes.

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Attorney General's Approval: The original and two copies of the signed sales agreement must be forwarded to the Attorney General for signature.

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Settlement: The parties complete property transaction at settlement.

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Recording of Deeds: The University records deed(s) with the county.

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Recording with Commonwealth Land Office: The property deed, title insurance, and other records are sent to the Commonwealth Land Office for recording purposes.

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Figure 2

Upon agreement to proceed with the purchase, the university obtains two professional appraisals of the property value and completes Part II of the real property acquisition planning data in Figure 2. The Office of the Chancellor, in accordance with the Board of Governors' policy [1991-01-A, "Guidelines for Selection of Real Estate Appraisers."](#) will obtain an independent appraisal for properties valued at \$500,000 or above.

After gathering the data for Part II, the university carefully analyzes the information to determine if the acquisition is justified for the sales price. If the university determines that proceeding with the acquisition is still in its best interests, the university submits to the Office of the Chancellor the information outlined in Part II. The university must include the purchase price it intends to pay along with a copy of the appraisal. If the purchase price exceeds the appraisal, the university should indicate the rationale for paying more than the appraised value. A computer photograph or map showing the property's location in relation to the university (or the nearest university property) and several views of the property should be forwarded with the information in Part II. A condition survey of the property should be conducted, including an environmental audit (see section VI for environmental audit preparation). The condition survey should evaluate the structural condition or existing improvements, as well as any hazardous materials found that must be corrected prior to use by the university.

The university should also identify any improvements it plans to make to the facility, including estimated costs. Such improvements would include repairs, cosmetic improvements, modifications, reconfiguration or additions to existing space, demolition, and elimination of hazardous materials found.

An estimate of the annual operating costs (Figure 3) should be determined and submitted with the Part II planning data. In addition, maintenance costs (1.0 percent of replacement value), utility and additional staffing costs for operation of the facility, annual repairs (1.5 percent of replacement cost), and long-term life cycle renovation costs (2.25 percent of replacement cost) should be calculated and included with the annual estimated operating costs.

<b>State System of Higher Education Real Property Acquisition Financial Plan</b>	
Expenses:	
Purchase price:	
Settlement costs:	
Improvements:	
Furnishings:	
	SUBTOTAL:
Debt service:	
Annual operating expenses:	
Custodial:	
Utilities:	
Maintenance (1% of replacement cost):	
Repair (1.5% of replacement cost):	
Life cycle renovation (2.25% of replacement cost):	
Furniture and Equipment:	
	SUBTOTAL:
	TOTAL
<b>EXPENSES:</b>	
Income/Revenue:	
List sources to meet expenses:	

Figure 3

The university should prepare a financial plan for funding the acquisition. Financing of facilities acquired for auxiliary purposes may be submitted for Board of Governors' approval. If PASSHE bond financing is required for the purchase,

procedures in [Volume V](#) of the Facilities Manual must be followed. If prior approval is obtained to finance facilities acquired for educational purposes, the financial planning data shown in Figure 3 will be forwarded with the Part II planning data.

With the ULC's assistance, the university will prepare a draft sales agreement (Appendix VII-C-2) before final negotiations and execution by the seller. A copy of the title search conducted by an abstract or land title insurance company with the commitment to insure title should be provided with the draft sales agreement. The agreement should contain all title and deed restrictions, easements, covenants, and any restrictions affecting use of the property. The System's standard sales agreement, contained in Appendix VII-C-2, will be used for most acquisitions of real property. Use of a nonstandard form or use of additional or modified clauses to the System's standard sales agreement must be approved by the ULC for legality and form, and by the Office of the Chancellor for sound business practice, before final negotiations with the seller.

The proposed acquisition will be presented to the Board after all the required information described above is received. To avoid unnecessary and time-consuming delays, the required data will be forwarded to reach the Office of the Chancellor at least 60 days prior to a regularly scheduled quarterly meeting of the Board of Governors.

Sales agreements will be forwarded to ULC for signature and subsequent Attorney General's approval. If necessary, the agreement can be executed prior to Board of Governors approval; however, it must include a contingency clause making the agreement contingent on the approval of the Board of Governors, Attorney General, and, if applicable, Office of General Counsel. After proper closing, the new deed is recorded as required by Commonwealth statute.

- B. ***Donations, Gifts, and Grants.*** The procedures for acceptance of donations, gifts, or grants of real property closely parallel the procedures for purchase described in Section II-A above. While potentially beneficial to the System, gifts of real property can become more costly than the value of the gift, and can cause an inordinate amount of problems for the System. For this reason, gifts of real property must be considered carefully and reviewed in detail before acceptance. Board of Governors' approval for acceptance of all gifts of real property must be obtained.

- 1. Procedures for Real Estate and Constructed Facilities

Property identified for donation to the System must be clearly titled and indisputably owned by the donors. The records of deed should be researched and examined carefully to verify ownership of the property. Upon notification that a donor is considering or intends to donate real property to the university, the university should complete Part I of Figure 2. Under the section entitled "Justification for Acquisition," the university should address how the real property will be used. If the property is to be sold after acceptance of the gift, the section should state so, and, if known, how the proceeds will be used. An estimated financial impact statement should be included with the Part I pre-planning data to address any additional operating costs the university would encounter with acceptance of the gift. Upon receipt of the pre-planning data,

the Office of the Chancellor will review the information and offer recommendations to proceed with acceptance of the gift.

After concurrence by the Office of the Chancellor, the university should gather the information specified in Part II of the real property acquisition planning data form. Current appraisals and the draft sales agreement are not applicable for gifted real property. However, an appraisal is recommended and an agreement or letter of commitment must be submitted outlining the gift or bequest, including any covenant or re-verter clause required by the giver (include title search). If an endowment has been established for operation and/or maintenance of the property, the financial plan should include the amount and methodology established to manage the endowment.

After review and concurrence by the Office of the Chancellor, the university will submit the applicable information in Part III of the planning data form. A signed sales agreement is not applicable, but a letter of intent to transfer title must be obtained. A Board action agenda item will be prepared from the data provided and presented for Board of Governors' approval.

With Board of Governors' approval, the University and University Legal Counsel will draft a new deed, the title to the property changed, and a new deed recorded as required by Commonwealth statute.

## 2. Gifts of Design or Construction

When the University learns of a donor who wishes to build a facility on University property at no cost to the University to satisfy a facility deficiency, the university should complete applicable portions of Parts I and II of the real property acquisition planning data form in Figure 2 and submit it to the Vice Chancellor for Administration and Finance with a copy to the Vice Chancellor for External Relations. The location on university property where the facility is to be constructed should be identified in the property location section, the description of the facility to be constructed should be provided in the property description

section of the form, and the facility deficiency that will be satisfied with the construction should be included in the justification for acquisition portion of the form. The type of acquisition and estimated value of the completed facility should be added in the type of acquisition section. Only the planned

### **Guidelines for University Construction Projects**

1. The construction must be compatible with the university master plan.
2. The project must satisfy a university deficiency.
3. Adequate infrastructure and utility services must be available to support the project.
4. The facility must be architecturally and aesthetically compatible with the environment and/or surrounding university and community facilities.
5. The construction must meet all System building standards and applicable local, state, and federal building codes, regulations, and statutes.
6. The construction must be erected from plans and specifications stamped by a registered architect or engineer and accepted by the System.

Figure 4

improvements and estimated operating costs sections of Part II need to be completed. A draft sales agreement is not applicable, but a written agreement similar to Appendix VII-C-3 between the donor and the university must be drafted to outline the responsibilities of each party to assign risks and liabilities associated with construction of real property. Donations of construction must meet the guidelines contained in Figure 4. After review and receipt of the Office of the Chancellor's recommendations, the university may proceed as specified.

The signed agreement, computer photographs and map showing the site where the facility will be built, copies of any plans, sketches, or renderings of the planned facility, and a council of trustees' resolution recommending approval of the property are required for Board of Governors' approval.

- C. **Title Transfer.** When the university identifies excess Commonwealth-owned real property that can be used effectively to satisfy a university deficiency or planned objective, Board of Governors' approval is required before the property can be transferred officially to the System. The information in Part I of Figure 2, Pre-planning Data, should be completed and forwarded for Office of the Chancellor review. The planning and programming process shown in Figure 1 will be followed similar to other real property acquisitions described above. Only applicable portions of Figure 1 must be completed for Parts II and III. The computer photographs, condition assessment, planned improvements, estimated operating costs, financial plan, and council of trustees' resolution data are required for approval of real property acquisitions obtained by title transfer. The required data for presentation for Board of Governors' approval should be submitted at least sixty days prior to a regularly scheduled Board meeting.
- D. **Bequests.** The university may actively seek, as part of the university's advancement program, or receive without notification, bequests of real property. The vice chancellors for advancement and finance and administration should be apprised of all active plans to seek bequests of real property as part of the university's advancement program as far in advance of the anticipated receipt of such property as possible.

The planning and programming procedures for real property bequeathed to the System are somewhat similar to the procedures specified above for other real property acquisitions. Applicable portions of the real property acquisitions planning data shown in Figure 2, Parts I and II, should be completed and submitted for review and comment by the Office of the Chancellor for all real property bequest or sought for bequest. The planning data should be provided as soon as the university identifies real property that it desires to acquire by bequest. The acquisition plan must be presented to the Board of Governors for approval in advance of the university negotiating agreements for planned bequests of real property.

For all planned requests for bequests, the applicable pre-planning, planning, and submission data specified in Figure 2 must be submitted according to the process shown in Figure 1. The property location, description, justification for acquisition, type of acquisition, estimated value, computer photographs, condition assessment, planned improvements, estimated operating costs, financial plan, council of trustees' resolution, and community reaction data must be addressed. Discretion and confidentiality must be exercised in handling and revealing sensitive

information concerning all university real property acquisition plans, especially for bequests.

The planning information for property bequest without the university's active solicitation should be submitted as soon as possible after the bequest is known. The Board of Governors must be advised of any unsolicited bequest as soon as possible after the bequest is known by the university.

The planning and programming data for property bequest without university's active participation will be forwarded to the Board of Governors as an agenda information item. The university will include a statement of its intended disposition of such real property in the justification for acquisition section of Part I of the pre-planning data. The property location, description, justification for acquisition, type of acquisition, estimated value, computer photographs, condition assessment, planned improvements, estimated operating costs, draft council of trustees' resolution acknowledging the council's consent, and any community reaction to the bequest data should be included. If the university plans to sell the property, Board of Governors' approval is required according to the disposition procedures in Section V of this manual.

### III. Leasing of Real Property

- A. **Leasing as Lessee.** In this scenario, the University is the "tenant." The PASSHE Universities have been empowered to lease real property as lessee without specific Office of the Chancellor concurrence or Board of Governors' approval. However, Board of Governors' approval is required if the property is intended to be added to the University property inventory and used in the calculations for the allocation formula.

The type of space, size, and duration of the lease should be recorded with the facilities inventory data report to the Office of the Chancellor. Leased space is included in the facilities portion of the funding formula up to the amount satisfying space deficiencies by category.

Whenever feasible and practical, the university should advertise their requirements for seeking leased space in a newspaper which best serves the location desired. Leases that include purchase options must be reviewed by the Office of the Chancellor before signature; Board of Governors' approval in accordance with the acquisition procedures in Section II A above must be obtained before exercising the purchase option.

The provisions of the lease must be reviewed carefully to protect the university from unwanted and/or unwarranted liability. When possible, the standard lease agreement shown in **Appendix VII-C-4** should be used. If the owner chooses to use a different lease agreement, the clauses that protect the university as lessee should be incorporated or added to the agreement as a supplement. The essential provisions of the lease to protect the university adequately are summarized in Figure 5. Leases shall not be entered into without the essential provisions included in the agreement. Expenditures of System resources for maintenance, repair, alterations, and improvement of leased property should be kept to the minimum necessary to

perform the functions for which the lease was authorized. The System will be subject to severe criticism if the public perceives that the System is “rebuilding” a leased facility for the owner.

<b>State System of Higher Education Essential Provisions of Agreements for Leased Real Property</b>	
1.	The agreement should not exceed a five-year period.
2.	The owner is responsible for maintenance of adequate insurance coverage as specified by the lessor.
3.	Provisions making the agreement null and void must be included if either party fails to deliver their responsibilities under the agreement.
4.	The scope of the facilities leased and the rental amount must be included.
5.	Provisions for modifications, changes, or reconfiguration of the space must be addressed and responsibilities assigned in the agreement.
6.	The date the rental payment is due should be stated clearly in the agreement, and under what condition payment may be withheld or penalties assessed.
7.	Provisions for assigning responsibilities for maintenance, custodial, and other services should be included in the agreement.
8.	Responsibilities assigned for and conditions of the facility expected at the close of the lease should be expressly stated.

Figure 5

- B. **Leasing as Lessor.** In this scenario, the University is the “landlord.” The Board of Governors’ policy establishing parameters under which leasing as lessor may be undertaken is contained in [Policy 1991-05: Delegation of Authority for Leasing State System Real Property as Lessor and Granting Easements or Licenses for Use of State System Real Property](#). According to the policy, concurrence by the Chancellor is required prior to advertising any property for leasing as lessor. Further, after approval, the university must prepare a lease proposal, give public notice of all proposed leases, accept sealed proposals for the lease, and award the lease to the qualified party who conforms to the Request for Proposal (RFP) requirements and best satisfies the conditions of the lease proposal.

The lease RFP will be prepared using applicable portions of the format prescribed in Appendix E of the manual for Preparing and Processing Contracts for the Universities of the State System of Higher Education.

Public notice shall be made by advertising in or on any of the following: the Internet (such as the [PA eMarketplace](#)), *Pennsylvania Bulletin*, trade journals, and in local and statewide newspapers best serving the area in which the property is located.

Sealed bids in response to the RFP should be received, recorded, and protected according to standard procurement bidding procedures established for university procurements. The proposals will be evaluated for conformance with the RFP requirements and quality of response.

The lease will be given to the respondent who has conformed to the RFP requirements, has not been suspended or debarred from contracting with the Commonwealth, has satisfied all the specified requirements, and has provided the highest offer for leasing the property. If applicable, bid and performance bond requirements will be specified in the RFP. The limits of capital improvements or construction, alterations, and/or modifications that can be made to the property must be specified. Generally, leases will not exceed five years without re-advertisement.

System universities will use the Standard Lease Agreement as lessor (with modifications to satisfy specific requirements of each real property lease), contained in Appendix VII-C-5, when leasing System real property as lessor. Draft lease agreements will be forwarded to the University Legal Counsel and assistant vice chancellor for facilities management for review and comment prior to obtaining the lessee's signature. Specific, careful attention must be taken to ensure that environmental safeguard provisions are included in all System leases, whether as lessee or lessor. The university must establish procedures to administer the provisions of leased property similar to those applicable to all contractual agreements.

In cases where the university wishes to make a lease directly with an identified party on a sole-source basis, the university must receive approval for a sole-source procurement as per normal procedures. Such a lease must provide a benefit that equals or exceeds that expected from competitive procurement, or that would not be available by advertising. Generally, these circumstances are associated with advancement, mission, or development of an academic program.

- C. ***Lease/Construction/Leaseback Projects.*** Projects using the lease / construction / lease-back methodology for satisfying a facilities deficiency employ the concept of leasing owned real estate as lessor to an entrepreneur who constructs a facility that satisfies the owner's needs, and in turn leases the facility back to the owner as lessee. Usually, such projects have purchase options at the end of the lease period. Most contain annual lease credit over time toward the purchase, or use installment purchase provisions.

The financial viability of this methodology usually is determined by the cost of borrowing the financing for the project and the applicable tax laws at the time the project is undertaken. In view of the complexity involved with such projects, policy statements and a contractual document for processing lease/construction/leaseback transactions have not been developed. The required documents will be developed for each approved project, as needed.

If after review of the planning and programming parameters and the information on project financing, the university desires to proceed with a lease/construction/leaseback project, approval by the Chancellor before the project is initiated is required since a lease as lessor is the first transaction involved in the process. The planning and programming parameters for lease/construction/leaseback projects should be addressed in the request for approval. Upon approval, members of the Chancellor's finance and administration and legal staff will work with the university to develop the required contractual documents and procedures for administering such projects. In addition to the typical planning and programming parameters, the joint committee will consider the essential provisions shown in Figure 6 that must be addressed in the contractual documents used to undertake such projects.

<b>Essential Provisions of Lease/Construction/Leaseback Agreements</b>	
1.	Purpose of the agreement.
2.	Terms and conditions under which the agreement is to be undertaken.
3.	Restrictions on use of the real property.
4.	Essential provisions for standard leasing as lessor and lessee agreements.
5.	Applicable portions of System's standard professional services and construction agreements.
6.	Environmental considerations applicable to both lease and construction agreements.
7.	Financial considerations.
8.	Construction and equipment requirements and criteria.
9.	Utility services connections and charges.
10.	Right-of-way access before, during, and after construction.
11.	Maintenance responsibilities.
12.	Zoning, land use, occupancy permits responsibilities.
13.	Reversion clause including bankrupt provisions.
14.	Insurance responsibilities.
15.	Recourse for failure of either party to satisfy terms and conditions of the agreement.
16.	Responsibilities for furniture and equipment.
17.	Responsibilities for safety and security services.
18.	Length and terms for ending the agreement.

Figure 6

#### IV. Easements or Licenses for Real Property

As specified in [Policy 1991-05: Delegation of Authority for Leasing State System Real Property as Lessor and Granting Easements or Licenses for Use of State System Real Property.](#), approval by the Chancellor is required prior leasing as lessor, granting an easement, or license. After identification of a need for one of these agreements, the university will provide a written request explaining the specific use requiring the agreement, the duration of the limited use, and the Board-approved facilities project creating the requirement for such an agreement. A "draft" agreement, using a standard format will be forwarded for review and approval. The signed agreement will be recorded in the appropriate county courthouse by the university. A copy of the signed agreement will be provided to the System facilities management office for information, and the original or certified true copy forwarded to the land office as specified in Section X.

- A. **Easement Agreements.** Transfer or conveyance of System property to others for limited use for special purposes for an indefinite period is done through easement

agreements and is authorized only for needs created by facilities projects which have been authorized by the Board of Governors. Generally, easements are “necessitated” for locating utility transmission lines or for providing rights of access or egress to isolated properties. Appendix VII-C-6 contains a sample easement agreement.

Easements are generally viewed as a permanent transfer of interest in a property. For easements not related to a Board of Governors approved construction projects (ie. capital project), Department of General Services and legislative authorization may be required.

- B. **Licenses.** In most cases, the Commonwealth prefers using licenses to grant use of property over easements. A license is permission to use specific real property for a specific purpose for a fixed duration. System-issued licenses are used for multiple purposes and since these agreements are finite and not permanent, our authority to enter into the agreements is much greater. Appendix VII-C-7 contains a standard license agreement for use of real property.
- C. **Record Keeping.** Universities need to retain copies of all deeds, easements, licenses, and any other significant property actions for the life of those agreements.

## V. Disposal of Real Property

- A. **Commonwealth Titled Property.** Disposal of property titled to the Department of General Services or the General State Authority or owned solely by the Commonwealth must be accomplished through the Department of General Services’ real estate division. Disposition of real property involves either excess real property (see [Management Directive 625.5](#), as amended) and/or transfer of ownership of, or demolition of improvements with retention of ownership of real property under the System’s control. There are separate processes for disposition of excess real property and for demolition of facilities.

Approval authority for **demolition of buildings** originally constructed with Commonwealth capital appropriations has been delegated from the Governor to the Secretary of the Department of General Services (DGS). Requests for demolition of Commonwealth buildings will be forwarded to the Office of the Chancellor accompanied by the information specified in the transmittal form shown in Appendix VII-C-8 and the Pennsylvania Historic and Museum Commission (PHMC) building [ER Submission Form](#). Requests for demolition will be accompanied by a council of trustees’ resolution approving demolition of the building(s), digital photographs of the facility, and a map showing the location of the building on the campus. Requests for demolition will include the reasons for the action and the impact demolition or continued use of the building will have on the university and the local community. Any adverse reaction anticipated by either university personnel or the local community should be highlighted in the request.

Although BOG approval is not required for building demolitions, the BOG is typically notified of the intent to seek DGS approval. The Office of the Chancellor will forward approved requests to the PHMC and the DGS under separate correspondence. PHMC will evaluate buildings proposed for demolition for historical significance and potential

impact to historic zones or districts. At a minimum, facilities to be demolished having historical significance must be documented as prescribed by the PHMC (see the “[Historic Resource Survey Form](#)” and “[How to Complete the Pennsylvania Historic Resource Survey Form](#)”). PHMC may require additional site information in order to evaluate the University are for consideration as a historic district.

After DGS’s approval and submission of acceptable preservation documentation for historically significant facilities, as required, the facility may be demolished. A report of demolition will be forwarded to the Office of the Chancellor so the property may be removed from the insurance listing.

**Disposal or sale** of Commonwealth titled excess real property ultimately requires legislative approval. Generally, DGS requests agencies submission of excess property for disposal each spring following procedures in [Management Directive 625.5](#) (a Word version of their submission form is available at Appendix [VII-C-9](#)). DGS utilizes this input for their annual disposal planning actions. The information required from the Universities, and COT and BOG approval is similar to building demolition approval.

DGS compiles the information for legislative approval and executes the disposal. The process for disposal is lengthy and will vary based on the complexity of the property, but Universities should plan on at least two years. Universities should note that they will only be reimbursed for direct expenses associated with the property disposal (such as the cost of the appraisal). Any revenue remaining after covering the direct expenses is retained by the Commonwealth.

## B. ***System Titled Property***

As represented in Section I.A. of this manual, authority for disposal of property acquired by and titled to the State System of Higher Education of the Commonwealth of Pennsylvania are prescribed in the amendment to the System’s enabling legislation in Act 103 of 1990. This section will address disposal of real estate interests or property when titled to the System or University.

**Demolition of real property** improvements purchased by and titled to the System are not subject to approval by the legislature, but must be approved by the Office of the Chancellor on behalf of the Board of Governors. The Office of the Chancellor generally notifies the Board of Governors of planned demolitions as an information item.

Requests to demolish System or University owned property should contain similar information as requests to demolish Department of General Services property and include a digital campus map, digital photographs of the property, estimated cost of demolition, a brief history, a description of the property, and any environmental impact. The information should be submitted by email to the Assistant Vice Chancellor for Facilities 45 days prior to the Board meeting.

If the property is over fifty years old or has historical value, the Bureau of Historic Preservation must also review the demolition plans prior to actual demolition. If an adverse historical impact is found by the Bureau, the System must prepare historical preservation documentation that is acceptable by the Bureau before the facility can be demolished. See Section IX for detailed procedures.

After approval is received, the facility may be demolished. If demolition is to be accomplished by contract, standard System competitive contracting procedures must be used. A demolition permit is also required to be approved by the Department of Labor and Industry. A report of demolition should be made to remove the property from the insurance coverage listing when the demolition is complete.

**Any permanent sale, transfer or disposal of System or University interest in real property (real estate)** requires General Assembly consideration in accordance with Section 20-2018-A of Act 188. This permanent transfer of interests in real estate includes easements except those that are necessitated by any construction project which has been previously authorized by the Board (Act 188, Section 20-2003-A.1).

The basic process and information required is similar to that required for disposal of Commonwealth DGS title real estate. After submission from the university to the Assistant Vice Chancellor for Facilities, information will be submitted for Board of Governors approval/endorsement and ultimately consideration of the General Assembly.

The Office of the Chancellor will submit acceptable requests to the Board for authorization to submit a resolution for the legislature's approval to sell the property, as specified in Act 103. Upon receipt of the resolution, the legislature has thirty calendar days of continuous session to consider the request. Failure to act within the thirty days is considered automatic authorization. The 30 calendar days of continuous session time can take three to six months to complete depending on the session schedule.

After authorization by the legislature (considered effective upon the date of approval of the last of the two Houses), the System may proceed with the sale of the property. The sale of System property will be advertised with normal procedures for public notice including any of the following: the Internet (such as the [PA eMarketplace](#)), *Pennsylvania Bulletin*, trade journals, and in local and statewide newspapers best serving the area in which the property is located. A minimum acceptable fair market value must be established for each property to be sold. Award will be made to the qualified buyer who offers the highest price above the minimum acceptable fair market value, or who can demonstrate that the System will receive a return not less than the equivalent plus CPI index, or greater, within three years, as a result of the proposed use of the property by an entity receiving the conveyance.

The System's Standard Agreement of Sale in Appendix VII-C-2 can be used to affect the sale. Change in the standard wording and all covenants or restrictions must be approved by the Office of the Chancellor prior to forwarding the agreement to the buyer for signature.

## VI. Real Property Environmental Liabilities

- A. ***Environmental Laws Affecting Real Estate Transactions.*** Under both Commonwealth and Federal environmental statutes, property owners are responsible for what lies on, in, or under the real estate they own, regardless who placed or places it there. Additionally, the owner is responsible for what is transported, released, or relocated from the property, regardless of who removes or transports it from the property. At the time of acquisition, the buyer becomes liable for acquired real estate, including what was placed in, on, or under

the property prior to the date of acquisition. Under current statutes, responsible parties are (1) the owner or operator of the property at the time of release, (2) the owner or operator of the property at the time hazardous substances were disposed, (3) generators of hazardous substances, and (4) transporters of hazardous substances who selected the disposal sites. Liability includes responsibility. Many hazardous materials have been used and discarded routinely without care, concern, or knowledge for many years. Burial has been one of the primary means of discarding used, unwanted materials, many of which were thought to be safe or harmless. Currently, principal environmental concerns include proper containment, use, and disposal of asbestos, PCBs, petroleum products, all hazardous chemicals, and any other substance that pollutes or renders the soil and groundwater unusable, or that endangers human, animal, or plant life.

In addition to hazardous waste management, other environmental concerns include the clean streams statutes, Solid Waste Management Act, Storage Tank and Spill Prevention Act, and Commonwealth and Federal wetlands statutes.

- B. ***Environmental Site Assessment.*** Under the law, there is virtually no defense to violations of environmental statutes if you are the owner. In order to plead an innocent landowner defense, purchasers of a property without knowledge of contamination or violation of environmental laws must show that “due diligence” was exercised before the property was purchased. Generally, “due diligence” is considered to have been exercised when the purchaser has “undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.” In addition, the court will consider “the relationship of the purchase price to the value of the property if uncontaminated, commonly known as reasonable ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection. Failure to conduct an on-site investigation will most probably defeat the defense.”<sup>1</sup>

“Due diligence in the form of a thorough environmental assessment offers some protection by reducing the risk, but if the property, despite due diligence, is found to contain hazardous substances, the landowner or occupier, or any person holding title to or having a proprietary interest in either surface or subsurface rights’ may be held liable for the cleanup.”<sup>1</sup>

“Accordingly, a thorough and reliably performed environmental assessment should be a prerequisite to any purchase of commercial real estate.”<sup>2</sup> Environmental Site Assessments (ESAs) are conducted to fulfill the “due diligence” requirements of the innocent landowner defense.

Environmental Site Assessments include:

1. a review of agency files to see if there is any history of environmental problems;
2. employee interviews, if there are employees or former employees available;
3. interviews with neighbors and former owners and occupiers of the property;

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<sup>1</sup>Avoiding Environmental Liability in Pennsylvania, National Business Institute 08I17013.

<sup>2</sup>Avoiding Environmental Liability in Pennsylvania, National Business Institute 08I17013.

4. a review of any available aerial photography;
5. a thorough and intelligently designed environmental assessment by a well-qualified environmental consulting firm; and
6. any other steps suggested by the circumstances.

C. ***Environmental Provisions for Real Property Agreements.*** ESAs generally are conducted in two steps. A Phase I ESA is conducted initially to determine whether the potential exists that the site is or may be contaminated. The Phase I ESA typically does not include sampling and analysis and is performed in a relatively short period of time (e.g., two or three weeks). Costs generally range from \$2,000 to \$4,000<sup>3</sup> depending on the property size, history, and location. If evidence is found that the site may be contaminated, a full-scale Phase II assessment is conducted to determine the extent of contamination. A Phase III assessment is used for site remediation activities.

The scope of work for Phase I ESA generally includes a historical review, review of environmental agency records, and a site walkover. A historical review typically includes:

1. a study of historical aerial photographs of the site;
2. interviews with long-time residents who may be familiar with the site;
3. a review of a chain-of-title, which indicates past owners of the property;
4. a review of historical maps; and, possibly,
5. a review of tax records, newspaper indexes, building department directories, and similar sources of information.

A typical scope of work for obtaining a Phase I ESA prior to acquisition (or disposal of a parcel of property) is contained in Appendix VII-C-10.

**While it is prudent to obtain a Phase I ESA before acquiring any real estate, a Phase I ESA must be conducted prior to requesting Board of Governors' approval of a commercial property acquisition or before acknowledging receipt or acceptance of a gift or bequest involving commercial real estate.**

Caution must be exercised to ensure that the results of the Phase I ESA are properly interpreted. The Phase I ESA provides a "first look" cursory examination of the site and its history to determine the potential or probability that the site is contaminated. It does not support a conclusion that the "site is not contaminated." In most instances, if performed carefully, it is acceptable as meeting the "due diligence" requirements to support an innocent landowner defense. The Phase I ESA forms the basis for determining if a Phase II ESA is required, if the purchaser desires to continue to pursue acquisition of the site.

A Phase II ESA will include subsurface soil and water sampling, testing, modeling, and an analysis. The cost of the Phase II will likely be in the range of \$5,000 to \$20,000 (or more) depending on the size, complexity, contamination, and site constraints.

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<sup>3</sup>Cost data as of 2012.

## VII. Building Insurance

- A. **Coverage of System Facilities.** The System is afforded insurance for its facilities and their contents in a variety of ways. The Commonwealth State Insurance Fund provides coverage for loss or damage from all hazards, including flood and theft, up to \$3 million. The System purchases supplemental insurance to provide coverage for losses over \$3 million. When the federal government declares a flood zone a natural disaster area, the federal government will fund all flood losses exceeding \$350,000. The following matrix summarizes the coverage applicable to System facilities and their contents from various risks. Since leased facilities are not covered by either the State Insurance Fund or supplemental insurance, hazard insurance on leased structures should be provided by the owner and so stipulated in any lease agreement negotiated. A review of the lease and the building owner's insurance should be made to ensure coverage is available at prescribed levels.

Risk Covered	Provider	Limits
All hazards, except flood and theft	State Insurance Fund	\$1,000 to \$3 million
All hazards	Purchased supplemental insurance	\$3 million and over
Flood (natural disaster declared)	State Insurance Fund	\$0 to \$350,000
	Federal government	\$350,000 and over
Theft	State Insurance Fund	\$5,000 to \$3 million

- B. **Inventory Reporting.** The System insurance coverage provided under both the State Insurance Fund and the purchased supplemental insurance is based on the reported inventory of facilities titled to the Commonwealth. In accordance with Management Directive 625.2, as amended, monthly, the System reports changes to the inventory of System property using the report forms shown in Appendix VII-C-11. It is essential that changes in the System's inventory are reported accurately and timely to ensure full continuous coverage at the most beneficial cost to the System. System universities must review the inventory periodically to ensure accuracy of the inventory and recorded building replacement costs.
- C. **Reports of Facility Damages and Claims Filing.** Reports of all fire, flooding, or major damages should be made to the facilities office or the public relations office of the Office of the Chancellor. Any occurrence that necessitates filing a claim under the System's insurance coverage is considered a serious incident.

Claims for losses which are covered under the State Insurance Fund or the supplemental insurance should be filed directly with the Bureau of Insurance and Risk Management, 5th floor, P.O. Box 1365, City Towers, Harrisburg, PA 17105. Copies of all claims should be submitted to the vice chancellor for finance and administration.

## VIII. Boundary Protection and Dispute Resolution

Even though Commonwealth owned property cannot be taken by adverse possession, lengthy disputes over boundaries can encumber the use or transfer of the property. Accurate identification of property boundaries is especially important during acquisition or disposal of property.

For privately owned properties, Commonwealth law recognizes that uncontested possession, including adverse takeover, acquiescence, estoppel, parol agreements, cultivation, or enclosure by someone other than the true owner for a period of twenty-one years could result in actual transfer of ownership and title to the encroaching party. Such adverse possession is recognized under Commonwealth law as an unwritten title transfer. In essence, if a party uses, as his own, lands belonging to another for a period of twenty-one years without the true owner objecting or disputing that use, actual ownership of that property could be taken by the using party.

Property boundaries are established by property surveys to identify the limits of ownership of specific parcels of real estate. Surveyors in the Commonwealth of Pennsylvania must be registered as licensed surveyors to practice and to have their survey records legally recognized in Commonwealth courts. Surveyors employed by the System must also possess professional liability insurance to protect the System from liabilities caused by errors or omissions that may be made by surveyors. Surveyors are obtained using the procedures specified in Professional Services Agreements for facilities projects.

## IX. Historic Properties

- A. **System Policy.** Properties exceeding fifty years of age, properties where historic events have occurred, and/or properties with unique, era representative, or significant architectural or engineering features may be eligible for designation on the National Register of Historic Places. The System Board of Governors' policy for nominating System facilities for placement on the National Historic Register is contained in Volume II of the *Facilities Manual*.
- B. **Acquisition or Sale of Historic Properties.** Prior to acquisition or disposal of property on or eligible for the National Register of Historic Places, Board of Governors' approval must be obtained as specified in Volume IX of the System *Facilities Manual*. Once acquired, such facilities must be administered according to the agreements made with the Bureau of Historic Preservation.

## X. Property Deeds and Records

- A. **General.** The Commonwealth maintains the Land Office Section of the Pennsylvania State Archives (hereinafter referred to as the Land Office) to act as the central repository for preserving all original Commonwealth real estate deeds and records. These records consist of all deeds, contracts, maps, surveys, policies on title insurance, abstracts of titles, and other documents relating to real estate owned by the Commonwealth. The Office of the Chancellor reports all System real estate acquisitions to the Bureau of Space and Facilities Management to record and ensure insurance coverage under the Commonwealth's insurance program. The Bureau includes the property data on the Commonwealth's land and building monthly report. The Land Office uses this report to verify and match land

records. Therefore, a report of evidence of land acquisition or disposition and submission of the specified records must be made to the Land Office to ensure that records agree.

- B. **Commonwealth Deeds.** The original or, at a minimum, a certified true copy of the deeds of all real estate acquired by the System will be forwarded to the Land Office using the transmittal form in Appendix VII-C-12. A copy of the transmittal report will be submitted to the System facilities coordinator.
- C. **Title Insurance.** At the time of acquisition, the university will obtain title insurance with each parcel of real estate acquired. A sample title insurance report is shown in Appendix VII-C-13. The original or a certified true copy will be transmitted to the Land Office using the transmittal form in Appendix VII-C-14. A copy of the transmittal report will be forwarded to the System facilities coordinator.
- D. **Other Records.** The original or copies of other records obtained to acquire real estate should be forwarded to the Land Office using the transmittal form in Appendix VII-C-14. All documents, including the deed and title insurance, may be forwarded on one transmittal form.