

**STATE OF COLORADO
STATE BUILDINGS AND REAL ESTATE PROGRAMS
REAL ESTATE PROGRAMS POLICIES AND PROCEDURES**

CHAPTER 4: ESTOPPEL CERTIFICATIONS AND SUBORDINATION NON-DISTURBANCE AND ATTORNMENMENT AGREEMENTS (SNDA agreements)

The following polices have been adopted in an effort to protect the State of Colorado when Estoppel Certificates, Subordination and/or Attornment Agreements are requested by the lessor or lender of a property in which the State of Colorado has a leasehold interest:

- Real Estate Programs must review all Estoppel Certifications and Subordination and Attornment Agreements prior to execution by the agency or institution.
- Estoppel Certifications and Subordination and Attornment Agreements may only be executed by individuals authorized to execute leases or such individuals as delegated by the agency/institution.
- All leases should expressly require that any copy of any notice required or permitted by the lease be delivered to the executive director's or president's office or their direct delegee.

REASON FOR POLICY

The State lease form specifically does not contain a covenant for the Lessee to execute these types of documents. However, a lessor may successfully negotiate to have such language inserted in the lease or may request that State agencies sign these types of documents. Estoppel Certificates and SNDA Agreements are complex and very often contain language that significantly modifies the original lease contract, which is a violation of Fiscal Rules, as contract amendments not approved by the State Controller or his delegate. Real estate knowledge and expertise is needed to review and modify such language to ensure it is consistent with, and not a change to, the lease contract.

If the lease does contain a covenant requiring the lessee to execute Estoppel Certificates or SNDA documents, the covenant routinely has a strict time limit for execution of the documents. If they are only delivered to the leased premises and not to the executive director's or president's office, they will most likely not be reviewed and/or modified as needed and executed in a timely manner. State agencies and institutions should also take great care to eliminate any provisions allowing the lessor to execute such documents for the State if the State fails to timely respond.

POLICY IMPLEMENTATION STEPS

Upon receipt of an Estoppel or SNDA, the documents with its receipt date acknowledged, and a copy of the lease, should immediately be sent to Real Estate Programs in writing by fax, e-mail or postal service mail.

Should the lessor, its agent, a lender, a buyer or a buyer's agent attempt to communicate with the local office, direct those individuals to contact Real Estate Programs by telephone, e-mail, fax or postal service mail.

Upon receipt of the referenced documents, Real Estate Programs personnel will confer with the agency and advise and assist regarding the execution of those documents.

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IMPORTANT NOTE: With approval from the Attorney General and the State Controller, Real Estate Programs is phasing in a new policy concerning conveyance or transfer of the leasehold property from the current lessor to a new lessor. Formerly the agency was required to get a Novation Agreement signed by both the former owner (the lessor) and the new owner (the new lessor) along with signature by the agency and all central approvers. The standard lease forms have now been revised to include a section dealing with this circumstance (see below). By inclusion of this language, Novation Agreements will no longer be required for agencies operating under a new lease agreement or when a lease has been amended to add this language.

For situations where the current lease does not include the new language, a Novation Agreement will still be required if the property is transferred to a new owner. A Novation Agreement can be found at the end of this section as Document 4.1.

19. CONVEYANCE OF THE PREMISES; ATTORNMEN AND NON-DISTURBANCE. If the Premises are sold, transferred or conveyed, or if Lessor assigns this Lease, Lessor shall provide notice pursuant to section 18 of this Lease within ten (10) days of such conveyance or assignment. Said notice shall include the name and address of New Lessor, Social Security or Federal Employer's Identification Number of New Lessor and a copy of the deed, assignment agreement, or other evidence of the conveyance or assignment.

Lessee agrees to attorn to any assignee of this Lease, or to any purchaser of the Premises, or any other successor owner or assignee of Lessor through foreclosure or deed in lieu of foreclosure (the "New Lessor"), provided the New Lessor grants to Lessee a non-disturbance agreement which provides that Lessee, notwithstanding any default of Lessor hereunder, shall have the right to remain in possession of the Premises in accordance with the terms and provisions of the Lease for so long as Lessee shall not be in default under the Lease. The non-disturbance agreement shall be executed by the New Lessor and shall indicate that: (1) nothing in the non-disturbance agreement shall be construed as a waiver of any rights of the Lessee against the Lessor; and (2) all payments previously made by the Lessee to the Lessor and all other previous actions taken by the Lessee under the Lease, shall be considered to have discharged those obligations of Lessee under the Lease.