

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

**CHAPTER 8. WORKING WITH STATE AGENCIES ON THE ACQUISITION AND DISPOSITION OF
FEE INTERESTS IN REAL ESTATE**

BACKGROUND AND AUTHORITY

Chapter 11 of this manual contains a summary of excerpts from Colorado statutes that govern the purchase and sale of real estate interests by State agencies. The substance of these governing statutes requires that Real Estate Programs be actively involved in, and sign off on, the acquisition of real estate. This requirement arises from DPA's responsibilities regarding expenditures of capital construction funds. Capital construction includes, by statutory definition, "*Purchase of land... buildings...*"

As to disposition of real estate, there is no statutory requirement that Real Estate Programs become involved. There are requirements that such transactions be reported to Real Estate Programs so that Real Estate Programs may maintain an updated inventory of the State's real estate holdings. However, as a part of its goal to provide service to State agencies, Real Estate Programs often does assist in carrying out the decision of such agency to dispose of certain real estate owned by the agency. This is because Real Estate Programs brings to the table a wealth of experience and expertise in real estate matters not characteristic of any other agency.

Additional authority regarding Real Estate Programs' involvement in real estate matters may be found in the State's Fiscal Rules (Rule 3-1) that are promulgated by the State Controller:

"Real Property Contracts, including Leases, Easements, and Rights of Way Contracts require the approval of the Director of Real Estate Program, or a delegate, unless otherwise exempted by statute. Excluded from this requirement are those real properties administered by the State Board of Land Commissioners and the Department of Transportation."

While the above quote may seem, at first, to be all encompassing, and therefore include dispositions as well as acquisitions of real estate, we must keep in mind that the Fiscal Rules apply only to transactions where the State is expending funds, such as acquisitions, and not to those transactions where the State is receiving funds, such as dispositions.

GENERAL PROCEDURES TO BE FOLLOWED WHEN AN AGENCY REQUESTS REAL ESTATE PROGRAMS'S ASSISTANCE IN THE DISPOSITION OF REAL ESTATE.

1. Verify the agency's authority to sell the relevant property. Such authority will arise either from the general powers granted to the agency to deal with its real estate, or from a specific statute authorizing the sale of this particular real estate. Confirm the agency's Executive Director has been advised and has approved the disposition. If no such authority exists, assist the agency in the drafting of the bill, which would grant such authority. (Title insurance may not be available if the agency's authority to sell is not clearly established by statute.)
2. Notify OSPB regarding the agency's intention upon Real Estate Programs' initial communication with the agency. OSPB will be kept informed as the transaction progresses.
3. Work with the agency in obtaining all appropriate documentation relative to the pending sale. These documents will generally include:
 - a. ALTA land survey;
 - b. Title insurance commitment;
 - c. Phase I environmental study;
 - d. Appraisal;
 - e. Engineering assessment of mechanical systems and of structural integrity, if necessary;
 - f. ADA assessment, if necessary.
4. Establish a target price based on appraisal and agency considerations.

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5. Establish an appropriate earnest money amount based on anticipated sales price.
6. Establish a target date for the sale.
7. Work with title company.
8. Decide on the method of sale, e.g., sealed bid, (with or without contingencies); listing with a broker, or other process, and assist in implementation of the selected method.
9. Ensure each step in the process complies with any specific statutory requirements, i.e. a statute may require that the property not be sold for less than appraised value.
10. Prepare the Purchase and Sale Contract with assistance from AG as necessary.
11. Assist in the execution of Purchase and Contract of Sale.
12. Assemble all internal approval documents necessary for satisfaction of all required contract approvers.
13. Assist agency with Purchase and Sale contract seller and buyer covenants.
14. Document the authority of the individual who will attend the closing on behalf of the selling agency to execute the closing documents on behalf of such agency and supply such information to the title company.
15. Attend and/or assist the agency at the closing.
16. Complete memorandum of the closing and ensure distribution of memo and settlement sheets to all appropriate parties, such as OSPB.

GENERAL PROCEDURES TO BE FOLLOWED IN PERFORMING REAL ESTATE PROGRAMS' RESPONSIBILITIES (AS ESTABLISHED BY STATUTES AND STATE FISCAL POLICIES), AND TO PROVIDE EFFECTIVE ASSISTANCE REGARDING STATE AGENCIES' ACQUISITIONS OF REAL ESTATE.

1. Commence assistance with the agency in its decision-making plans as early as possible in the process.
2. If the planned purchase is within a geographical area covered by a State broker contract, the agency will be required to use such broker, and the broker must then become involved as early as possible.
3. Determine agency payment method such as paying cash for the purchase or if a lease-purchase arrangement, if involving an intermediary such as Colorado Capital Finance Corporation.
4. In those instances where all or part of an agency's expenses are federally funded, determine if the contemplated purchase or lease purchase may jeopardize the availability of those funds.
5. Verify the status of the necessary approvals, which may be required from entities such as OSPB, CDC, and/or the legislature, and assist, where appropriate, in obtaining those that are not yet finalized.
6. Confer with the responsible parties at the AG's office, and/or the Colorado Capital Finance Corporation to coordinate any necessary financing requirements.
7. Assist the agency, through financial analysis and other appropriate means, in selecting the appropriate or particular property to be purchased.
8. Assist in negotiations, with the agency's advice and consent, of the real estate Purchase and Sale Contract.
9. Include within the contract a due diligence period during which the State may obtain and review the following documents, and specify that the State's approval thereof is a contingency to proceeding with the sale:
 - a. Title insurance commitment and property tax certificate;
 - b. Phase I environmental assessment;
 - c. Engineering assessment of mechanical systems and structural integrity;
 - d. ADA assessment;
 - e. Appraisal, if necessary;

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- f. Past maintenance and operational expenses;
 - g. Situs, zoning and planning information;
 - h. ALTA land survey.
15. Assist in preparation and review of closing documents.
 16. Attend and/or assist the agency at the closing.
 17. Follow up on the closing by monitoring distribution of closing documents.

All of the above is, of course, a statement of the procedures that are generally applicable. It must be recognized that every real estate transaction is always somewhat different from every other, so that different considerations, not mentioned above, will nearly always have to be handled in each transaction.

It should also be noted that Controlled Maintenance funds are not available for new property acquisitions until 15 years after the property is purchased. For further information on this topic contact State Buildings at 303-866-6141.

PHASE I ENVIRONMENTAL ASSESSMENT POLICY: (effective 12/1/97)

No contract for the acquisition of a fee simple estate in real property shall be approved by Real Estate Programs unless it contains an explicit requirement that the purchasing entity shall first obtain a Phase I environmental assessment of the property to be purchased and that such contract must explicitly indicate that acceptance of such environmental condition is a contingency to fulfilling the contract.

END OF CHAPTER 8 POLICY/SBREP/STATE AGENCIES ACQUISITION/DISPOSITION OF FEE INTERESTS