

BOARD OF REGENTS
BRIEFING PAPER

**1. Agenda Item Title: Real Property Transactions
Revisions to Title 4, Chapter 10, Section 1.9 of
the Handbook.**

Meeting Date: June 5-6, 2014

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

At the request of the institution business officers and the Vice Chancellor for Legal Affairs, staff has completed a comprehensive review of the provisions of the Handbook governing real property transactions; specifically Title 4, Chapter 10, Section 1.9. The existing provisions governing real property transactions fail to address many of the common types of transactions the institutions regularly encounter, are inefficient, and often unnecessarily delay or complicate campus development by requiring Board approval for routine or minor transactions.

As a result, staff recommends that the Board replace the existing provisions of Title 4, Chapter 10, Section 1.9 with new language and a table as reflected in the attached. These revisions were developed in consultation with the institution business officers, general counsel, real estate officers and many others.

The goals of these revisions are to (1) define and differentiate the various types of real property transactions the System and its institutions commonly encounter (2) maintain and strengthen Board oversight over key real property transactions such as purchases, sales, long term leases etc., (3) delegate authority to the Chancellor and Institution Presidents over routine real estate transactions where appropriate, and (4) modernize the System's real estate regulations in a chart-based format that is user friendly and easier to understand.

Significant differences between the current and proposed real property provisions include:

- The new provisions define and differentiate the various types of real property transactions commonly encountered by the System and its Institutions.
- The new provisions delegate authority to the Chancellor to approve and execute dedications, negative easements, utility easements, public easements, and short-term leases.
- The new provisions delegate authority to the Institution Presidents to approve and execute temporary easements, minor leases, certain student union retail leases, and licenses.
- The Board retains authority over the approval of purchase and sale agreements, affirmative easements, and long-term leases.
- The new provisions require that the Institutions provide a report to the Chancellor listing all transactions approved by the Institution President in the proceeding semiannual period.
- The new provisions strengthen and clarify the conflict of interest provisions applicable to real estate transactions.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

That the Board replace the existing provisions of Title 4, Chapter 10, Section 1.9 with new language and a table as forth in the attached.

4. IMPETUS (WHY NOW?):

At the System and institution level discussion has occurred regarding the existing real property provisions of the Handbook and the impediments they create to efficient campus development. This is especially true for certain transactions such as easements and short term leases. In addition, the existing real property provisions can be confusing especially as they relate to various routine transactions that are not adequately addressed by the existing regulations. Finally, the hiring of a new Director of Real Estate Planning in the fall of last year provided an opportune time to review the System's real property regulations with fresh eyes and perspective.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The existing real property regulations fail to address many of the routine types of transactions the System and its institutions regularly encounter – such as public and utility easements, right of way dedications, minor leases etc.
- Delegating additional authority to the Chancellor and Institution Presidents over routine real estate transactions will improve efficiency and effectiveness and eliminate long lead times for Board approval when time is often a critical factor.
- Board oversight of key transactions such as purchases, sales, and long-term leases is maintained and strengthened.
- There is confusion about the current rules governing real property transactions.
- The revisions modernize the real property regulations into a chart-based form that is user friendly and easier to understand.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- The current real property regulations function adequately and as intended.
- The current levels of authority delegated to the Chancellor and the Institutions over real property transactions are appropriate.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

- The Board does not adopt the proposed revisions and the System continues to utilize the existing provisions governing real property transactions.
- The Board provides specific direction to staff regarding the level of authority it is comfortable delegating to the Chancellor and the Institution Presidents over real property transactions.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #____ Chapter #____ Section #____
- Amends Current Board Policy: Title #_4_ Chapter #_10_ Section #_1.9____
- Amends Current Procedures & Guidelines Manual: Chapter #____ Section #____
- Other:_____
- Fiscal Impact: Yes____ No_X_
Explain: There is not direct fiscal impact to the System or the Institutions as a result of these revisions.

POLICY PROPOSAL
TITLE 4, CHAPTER 10, new SECTION 1.9
Real Property Transactions

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

New Section 1.9 Real Property Transactions:

[~~a. Approval to Negotiate the Acquisition or Sale of Real Property. Before the president of a NSHE institution can commence negotiations for the purchase or sale of real property on behalf of the Board of Regents, the Chancellor's approval must first be obtained. The Board's approval of a Campus Master Plan is deemed to constitute prior approval of the acquisition of property according to the terms of the master plan.~~

~~Before the chancellor can commence negotiations for the purchase or sale of real property on behalf of the Board of Regents, the chancellor shall first consult the Chair of the Board and the Chair of the Investment and Facilities Committee. Upon completion of negotiations any agreement shall then be subject to Board approval.~~

~~All real property acquired or sold by the Board of Regents of NSHE or any unit or subdivision thereof shall be acquired in the name of the Board of Regents of the NSHE. The granting of an easement is considered a 'sale' of an interest in real property except that the granting of a subsurface utility easement shall not be considered a "sale" subject to approval by the Board of Regents and may be approved by the chancellor if: (i) there is first a determination by the chancellor that the easement being granted is not inconsistent with the intent of an applicable campus master plan; (ii) form of the grant of easement has been reviewed and approved by the NSHE Vice chancellor for Legal Affairs; (iii) the chancellor finds that the grant of the easement is either in the best interest of the System or the grantee is paying consideration not less than the fair market value of the easement; and (iv) notice of intent to grant the easement is given to the members of the Investment and Facilities Committee of the Board of Regents at least 30 days prior to the granting of the easement.~~

~~b. Appraisal. A current appraisal by a licensed real estate appraiser concerning the fair and reasonable market value of property proposed for acquisition or sale shall be submitted to the Board with the request for approval of the transaction. The Board in its discretion may waive the requirement for an appraisal. The chief business officer of the institution acquiring or selling the real property, or the chief business officer's designee, shall coordinate the review process for the property appraisal. As used herein, a "current appraisal" is defined as an appraisal having an effective date of no more than twelve (12) months prior to the date of such appraisals consideration by the Board of Regents.~~

~~c. The purchase or sale must be an arm's length transaction and any transaction with a buyer or seller related to the NSHE must be revealed to the Board of Regents.~~

~~d. After the requisite approval has been obtained pursuant to subparagraph (a) above, the president or chancellor, as the case may be, shall be authorized to negotiate the real property transaction, including purchase or sale price, subject to the subsequent approval of the terms of~~

the transactions by the Board. Any contract, memorandum of understanding, letter of intent or similar document shall contain the following:

~~“This [purchase] [sale] offer is contingent upon the approval of the terms of the [purchase] [sale] by the Board of Regents of the NSHE. If the Board of Regents, in its sole and absolute discretion, does not approve the terms of the [purchase] [sale], the [purchase] [sale] offer made herein shall be deemed null and void without the necessity of further documentation and shall be deemed to be of no binding effect whatsoever.”~~

~~e. Approval of Instruments. The vice chancellor for legal affairs shall approve all contracts, deeds, and other instruments for the acquisition or sale of real property as to form and legality prior to execution of the same on behalf of the Board of Regents.~~

~~f. Real Estate Brokers and Agents. In the event the chancellor of NSHE or the Board of Regents grants approval to negotiate for the acquisition or sale of real property, the chancellor may, in the reasonable exercise of the chancellor’s discretion, authorize the retention of a licensed real estate broker to assist in the consummation of the acquisition or sale, as the case may be, upon such terms and conditions as the chancellor deems appropriate. Such authorization may also include the payment of a reasonable and customary real estate commission. The retention of a real estate broker shall be disclosed to the Board of Regents at the time of approval of the transaction.~~

~~g. Temporary Right of Entry. A temporary right of entry onto property owned by the Board of Regents of the NSHE, does not require the approval of the Board of Regents, if:~~

- ~~(i) the party requesting such entry guarantees that the property will be returned to the condition it was in at time of entry and agrees to indemnify the Board of Regents, its officers and employees for any and all damages arising from the temporary right of entry; and~~
- ~~(ii) if the temporary right of entry does not exceed 24 months.~~

~~h. Leases:~~

~~(i) Definition. As used herein, a lease shall be deemed “long term” if it provides for a demising period greater than four (4) years; or, alternatively, if it provides for a total consideration greater than four hundred thousand dollars (\$400,000). The term of any renewal period, if specifically set forth in any lease, shall be added to the initial fixed term of the lease to determine if such lease is a long-term lease. The foregoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.~~

~~(ii) Long term leases over real property must be approved by the Board of Regents and shall be executed by the chancellor or the chancellor’s designee.~~

~~(iii) The provisions of subparagraph (ii) of this paragraph (h) notwithstanding, if the term of any lease is other than long term, the approval of the Board of Regents shall not be required and the chancellor or the chancellor’s designee shall be authorized to execute such lease in the name of the Board of Regents of NSHE. The provision of this subparagraph (iii) shall apply to all leases, whether NSHE is landlord or tenant.~~

~~(iv) The exercise of any option: to (i) renew or right to extend the term of a lease or (ii) to purchase property for a specified price, when such option and price are contained in a lease previously approved by the Board of Regents pursuant to subparagraph (ii) of this paragraph (i) above shall not require the further approval of the Board of Regents. The document exercising~~

any such option or right shall be executed by the chancellor or the chancellor's designee in the name of the Board of Regents.

(v) An amendment to any lease previously approved pursuant to subparagraph (ii) or (iii) of this paragraph (h) shall be subject to the same approval process required for the execution of the original lease.]

9. Real Property Transactions. All real property transactions are subject to the requirements of this section and Table 9.1.

- a. Except as otherwise provided in Table 9.1, the Vice Chancellor for Legal Affairs shall review all contracts, deeds, and other documents related to real property transactions and shall approve the same as to form prior to execution.**
- b. The Chancellor may authorize the retention of a licensed real estate broker to assist in any real estate transaction upon such terms and conditions as he or she deems appropriate. Such authorization may include the payment of a reasonable and customary real estate commission.**
- c. Every proposed real estate transaction shall be based on an arm's length transaction. Conflicts of interest or other reasons that could lead a reasonable person to question the independence of the transaction must be disclosed to the approving authority. All real estate transactions are subject to applicable laws and policies relating to conflicts of interest and ethical standards, including those related to affiliated foundations.**
- d. In June and December of each year, each Institution shall submit a report to the Chancellor listing all real property transactions approved by the Institution's President pursuant to the authority granted in Table 9.1 in the proceeding semiannual period. Information about the retention of any real estate agent or broker for a transaction shall be included in the report.**

Table 9.1 - NSHE Real Property Transactions:

Transaction:	Type:	Approving Authority	Conditions and Restrictions:
Purchase or Sale			
	Approval to negotiate	Chancellor	<p>* Before an Institution can commence negotiations for the purchase or sale of real property, the Chancellor's written approval must first be obtained. Once the Chancellor has approved the negotiation for the purchase or sale of real property he or she shall promptly inform the Chair of the Board of Regents and the Chair of the Investment and Facilities Committee of that fact.</p> <p>*No prior approval is necessary to negotiate the purchase or sale of real property identified for acquisition or sale pursuant to a campus master plan that has been approved by the Board of Regents.</p> <p>*Any contract, memorandum of understanding, letter of intent or similar document related to the proposed sale or acquisition of real property shall contain a provision similar to the following: "This [purchase or sale] offer is contingent upon the approval of the terms of the [purchase or sale] by the Board of Regents of the Nevada System of Higher</p>

			<i>Education. If the Board of Regents, in its sole and absolute discretion, does not approved the terms of this [purchase or sale] the offer make herein shall be deemed null and void with the necessity of further documentation and shall be deemed to be of no binding effect whatsoever.”</i>
	<i>Approval to purchase or sell</i>	<i>Board of Regents</i>	<p><i>*Any purchase or sale of real property must be approved by the Board of Regents and all property shall be acquired in the name of the Board of Regents of the Nevada System of Higher Education on behalf of the respective institution.</i></p> <p><i>*A current appraisal by a licensed real estate appraiser concerning the fair and reasonable market value of the property proposed for acquisition or sale shall be submitted to the Board of Regents at the time of the request for approval of the transactions. “Current appraisal” is defined as an appraisal having an effective date of not more than twelve (12) months prior to the Board of Regents consideration of the purchase or sale.</i></p> <p><i>*The Board in its discretion may waive the requirement for an appraisal.</i></p>
<i>Dedication</i>		<i>Chancellor</i>	<p><i>* “Dedication” means transfer of ownership of land to a governmental entity required by the governmental entity as a condition of approval of a development application. For example, a deed of dedication of property that will be used for a flood control project.</i></p> <p><i>* A Dedication may be approved by the Chancellor provided that the Chancellor determines that (i) there is an essential nexus between the dedication and a public burden created by the proposed development, (ii) the dedication is roughly proportional to the public burden created by the proposed development, and (iii) notice of intent to dedicate the property to the government entity is given to the members of the Investment and Facilities Committee of the Board of Regents at least fifteen (15) days prior to dedication.</i></p>
<i>Right of Way Vacation</i>		<i>Institution President</i>	<p><i>* “Right of Way Vacation” means the removal of public ownership or interest in property and the relinquishment of that interest to NSHE as abutting property owner. For example, a local government may vacate its interest in a bus turn-out located on or adjoining NSHE property.</i></p> <p><i>* A right of way vacation may be accepted by the Institution President provided he or she determines that (i) doing so is consistent with the applicable campus master plan, and (ii) doing so will not adversely impact the value and use the abutting NSHE property.</i></p> <p><i>* Right of way vacations shall be reviewed by the Institution’s general counsel, which shall approve the same as to form prior to execution.</i></p>

<i>Easement</i>			
	<i>Affirmative Easement</i>	<i>Board of Regents</i>	<p><i>* “Affirmative Easement” means an easement that allows another to use or access NSHE property for a specific purpose. For example, an easement that allows a company to erect and maintain a cellular phone tower.</i></p> <p><i>* The Chancellor may, in his or her discretion, require a current appraisal as part of any request to approve an affirmative easement. “Current appraisal” is defined as an appraisal having an effective date of not more than twelve (12) months prior to the Board of Regents consideration of the Affirmative Easement.</i></p>
	<i>Negative Easement</i>	<i>Chancellor</i>	<p><i>* “Negative Easement” means an easement that prevents or limits NSHE from using its property in a manner it would otherwise be entitled. A negative easement does not grant the holder any right to possession of the property. For example, a conservation easement is a negative easement.</i></p> <p><i>* A negative easement may be approved by the Chancellor provided that (i) the Chancellor determines that the easement is consistent with the applicable campus master plan and that the granting of the easement is in the best interest of the System, (ii) the easement will not adversely impact the value and use of the property, and (iii) notice of intent to grant the easement is given to the members of the Investment and Facilities Committee of the Board of Regents at least fifteen (15) days prior to the granting of the easement.</i></p>
	<i>Utility Easement</i>	<i>Chancellor</i>	<p><i>* “Utility Easement” means an easement that allows a utility company to use or access NSHE property. Notwithstanding the foregoing, a Utility Easement that relates to a utility surface structure that occupies more than 10,000 square feet shall constitute an Affirmative Easement.</i></p> <p><i>*A Utility Easement may be approved by the Chancellor provided that (i) the Chancellor determines that easement is consistent with the applicable campus master plan and that the granting of the easement in the best interest of the System, (ii) the easement will not adversely impact the value and use of the property, and (iii) notice of intent to grant the easement is given to the members of the Investment and Facilities Committee of the Board of Regents at least fifteen (15) days prior to the granting of the easement.</i></p>
	<i>Public Easement</i>	<i>Chancellor</i>	<p><i>* “Public Easement” means an easement granted to a governmental entity allowing use or access to NSHE property for a public purpose. For example, an easement that allows the construction and maintenance of a bus stop.</i></p> <p><i>Notwithstanding the foregoing, a Public Easement that encompasses more than 10,000 square feet shall constitute</i></p>

			<p><i>an Affirmative Easement.</i></p> <p><i>* A public easement may be approved by the Chancellor provided that (i) the Chancellor determines that the easement is consistent with the applicable campus master plan and that the granting of the easement in the best interest of the System, and (ii) notice of intent to grant the easement is given to the members of the Investment and Facilities Committee of the Board of Regents at least fifteen (15) days prior to the granting of the easement.</i></p>
	<i>Temporary Easement</i>	<i>Institution President</i>	<p><i>* “Temporary Easement” means an easement that allows another to use or access NSHE property for a period of no longer than twenty four (24) months. For example, a temporary construction easement.</i></p> <p><i>*A Temporary Easement may be approved by an Institution President provided that (i) the Institution President determines that the temporary easement is consistent with the applicable campus master plan and that the granting of the temporary easement is in the best interest of the Institution.</i></p> <p><i>*The party requesting the Temporary Easement must agree to return the property to the condition it was in at the time of entry.</i></p> <p><i>*The party requesting the Temporary Easement must agree to indemnify the Board of Regents, its officers and employee for any and all damages arising from the Temporary Easement.</i></p> <p><i>* Temporary Easements shall be reviewed by the Institution’s general counsel, which shall approve the same as to form prior to execution.</i></p>
<i>Lease</i>			
	<i>Minor Lease</i>	<i>Institution President</i>	<p><i>* “Minor Lease” means a lease with a demising period of two (2) years or less and total consideration of \$50,000 or less. For purposes of this definition, any renewal or option period(s) shall be added to the fixed term to determine the demising period. The forgoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.</i></p> <p><i>* Any amendment or modification to a previously approved Minor Lease that would extend the demising period or increase the total consideration such that the lease becomes a Short Term Lease or Long Term Lease shall be approved as required by this chart.</i></p> <p><i>* Minor Leases shall be reviewed by the Institution’s general counsel, which shall approve the same as to form prior to execution.</i></p>
	<i>Short Term Lease</i>	<i>Chancellor</i>	<p><i>* “Short Term Lease” means a lease with a demising period of greater than two (2) years and up to five (5) years, or alternatively, where the total consideration is greater than</i></p>

			<p><i>\$50,000 but not more than \$500,000. For purposes of this definition, any renewal or option period(s) shall be added to the fixed term to determine the demising period. The foregoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.</i></p> <p><i>* The exercise of any renewal or option period(s) as part of a Short Term Lease may be approved and executed by the Institution President.</i></p> <p><i>*Any amendment or modification to a previously approved Short Term Lease that would extend the demising period to greater than five (5) years, or increase the total consideration to greater than \$500,000 must be approved by the Board of Regents. All other amendments or modification to a previously approved Short Term Lease may be approved by the Chancellor.</i></p>
	<i>Long Term Lease</i>	<i>Board of Regents</i>	<p><i>* “Long Term Lease” means a lease with a demising period of greater than five (5) years, or alternatively, where the total consideration is greater than \$500,000. For purposes of this definition, any renewal or option period(s) shall be added to the fixed term to determine the demising period. The foregoing definition shall apply to all leases, whether NSHE is the landlord or the tenant.</i></p> <p><i>*The exercise of any renewal or option period(s) as part of a Long Term Lease may be approved and executed by the Institution President.</i></p> <p><i>*Except as otherwise provided in the lease itself, any amendment or modification to a previously approved Long Term Lease must be approved by the Board of Regents.</i></p>
	<i>Student Union Retail Lease</i>	<i>Institution President</i>	<p><i>* “Student Union Retail Lease” means a lease of 5,000 square feet or less of retail space within a student union or similar facility with a demising period of fifteen (15) years or less. For purposes of this definition any renewal or option period(s) shall be added to the fixed term to determine the demising period.</i></p> <p><i>* Student Union Retail Leases may be approved by the Institution President provided that the general form of the lease used for the facility has previously been approved by the Board of Regents.</i></p> <p><i>* Student Union Retail Leases shall be reviewed by the Institution’s general counsel, which shall approve the same as to form prior to execution.</i></p>
<i>License</i>		<i>Institution President</i>	<p><i>* “License” means written permission to use NSHE property for a limited purpose for a limited time. A license is revocable at the will of the grantor and the grantee obtains no interest in the property. For example, permission to</i></p>

			<p><i>operate a concession stand at a sporting event may be made via a license.</i></p> <p><i>* Licenses shall be reviewed by the Institution's general counsel, which shall approve the same as to form prior to execution.</i></p>
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Proposed revisions to the NSHE real property regulations: The Who, Why, and What?



Nicholas Vaskov
System Counsel and
Director of Real Estate
Planning

Who?

- Institution business officers, general counsel, real estate officers, and others involved in campus development.
- All provided input on issues and concerns with the existing real property regulations.
- Revisions were vetted through the business officers council with input from other campus officials and System officers.

Why?

- The existing regulations don't address many of the common types of real estate transactions the institutions encounter.
- The current regulations can be inefficient – requiring Board approval for routine or minor transactions.
- The real estate market and campus development process often requires authority to act quickly.

What?

- Table based format for ease of understanding.
- The substance of the current regulations have largely been translated into the table.
- The table specifies the approving authority (Board, Chancellor or Institution President) and general requirements/conditions of approval.
- The goal is to provide for the efficient delegation of authority while maintaining appropriate Board oversight.

What?

- Purchase and Sale: largely unchanged – final approval rests with the Board.
- Easements: creates 5 classes of easements. Chancellor has authority to approval “routine” easements – utility easements, public easements, certain negative easements. Institution Presidents can approval temporary easements. Affirmative easements must be approved by the Board.
- Dedications and right of way vacations: can be approved by the Chancellor.
- Licenses: can be approved by the Institution President.

What?

Leases:

- Minor Leases: 2 years or less and less than \$50K. Can be approved by the Institution President.
- Short Term Leases: Greater than 2 years and up to five years, or greater than \$50K but not more than \$500K. Can be approved by the Chancellor.
- Long Term Leases: Greater than 5 years or greater than \$500K. Require Board approval.
- Student Union Retail Leases: 5K square feet or less; can be approved by the Institution President provide the general form of the lease has been approved by the Board.

Thresholds were based on the business needs of the institutions.

Questions?

