

Proposed revisions to Title 4, Chapter 10, Section 1

Title 4 – Codification of Board Policy Statements

Chapter 10. General Business Management

Section 1. Purchasing Policy

Deletions in brackets; additions in bold and underlined: due to the number of proposed revisions, the current policy is bracketed and the proposed policy is in bold and underlined.

[9. Acquisition or Sale of Real Property

- a. Acquisition of Real Property. Before the Chancellor or 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 Board's approval must first be obtained. The Board's approval of a campus master plan is deemed to constitute the Board's prior approval of the acquisition of property according to the terms of the master plan.
- b. After the Board of Regents gives its approval for the acquisition or sale of real property, the Chancellor or the President of a NSHE institution, as the case may be, shall be authorized to negotiate the real property acquisition or sale, including the purchase or sale price, subject to the subsequent approval of the terms of the purchase or sale by the Board.
- 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. All offers for the acquisition or sale of real property under this subsection must be in writing and must contain the following statement:

This [purchase] [sale] offer is contingent upon the approval of the terms of the [purchase] [sale] by the Board of Regents. If the Board of Regents does not approve the terms of the [purchase] [sale], the [purchase] [sale] offer made herein is void and is of no binding effect whatever.]

9. Acquisition or Sale of Real Property

- 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, Board approval must first be obtained.

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.

- 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 his 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 appraisal's 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 NSHE Office of the Vice Chancellor for Legal Affairs and Administration 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 his 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: 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 if the temporary right of entry does not exceed twenty-four 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 his 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 his 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 his 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.