

Purpose

This policy governs the procurement of leased real property, to include leased offices, classrooms, and other space both inside and outside Virginia State University's primary campus, which may be categorized as capital or operating/income leases. Pursuant to § 23.1-1028 of the Code of Virginia (as amended) and the Board of Visitor's Bylaws mandate, the governing board of each covered institution shall adopt such policies relating to the leasing of real property, including capital or operating/income leases, that reasonably ensure that such leases are efficiently procured on appropriate terms and for appropriate purposes.

Authority, Responsibility, and Duties

- A. The Vice President for Finance and Chief Financial Officer or his designee shall administer any University leasing requirements by recommending policy, and developing, publishing and enforcing appropriate procedures.
- B. These regulations apply to all leasing of real property, capital or operating, on behalf of Virginia State University regardless of the sources of funds, including purchases charged to educational and general, auxiliary enterprise, grant and local fund accounts.
- C. Authority to sign leasing contracts for Virginia State University is delegated from the University President to the Vice President for Finance and Chief Financial Officer.
- D. All leases shall be reviewed and approved as to form by University Legal Counsel.

Definitions

None

Policy Statements

A. General Provisions:

1. In all leasing activities, all persons/entities having equal interest shall have equal opportunity. The University shall avoid arbitrary requirements and apply the same terms, conditions and selection criteria to all offerors qualified under the solicitation.
2. Virginia State University is committed to the establishment, preservation, and strengthening of small, women-owned and minority owned businesses. It is understood that sufficient pools of such vendors are not always available. However, vendors must promise, to the extent possible, to provide minority businesses, small businesses and female owned businesses opportunities in providing services associated with leases through partnerships, joint ventures, subcontracts and other contractual opportunities.
3. Leases will normally be for a period not to exceed five years.
4. Copies of final lease documents signed by all parties and showing recordation information, if applicable, shall be forwarded to the Department of General Services, Division of Real Estate Services, for retention in its central records.

Recognizing that the consolidation of real estate records into one database helps DGS better manage the Commonwealth's real estate portfolio, the General Assembly has mandated through the Code of Virginia and

the Appropriations Act chapters that agencies that possess, have under their control or lease, report certain information to DGS on an annual basis. DGS presents this information to the General Assembly as mandated by the Code of Virginia.

Section 2.2-1153 of the *Code of Virginia* requires each department, agency and institution to submit to DGS a land use plan for state-owned property it possesses or has under its control showing present and planned uses of such property. Such land use plan shall be approved by the Board of Visitors and must include *a recommendation on whether any property should be declared surplus* by the controlling department, agency or institution. This information is due to DGS each year by **September 1st**.

Section 4-8.01e.2 of the Appropriations Act requires each agency that controls leased property, where such leased property is not under the DGS lease administration program, to report to DGS on each leased facility. Specific data included in the report shall identify at a minimum, *the number of square feet occupied, the number of employees and contractors working in the leased space, if applicable, and the cost of the lease*. This information is due to DGS each year by **October 1st**.

5. Virginia State University shall endeavor to obtain the most economical space appropriate to program needs. In comparing costs of proposed leases, all costs shall be considered, including but not limited to the cost of any expense increases to be passed through to the agency (such as increases in taxes, insurance and operating expenses), the annual escalation, and, if not provided by the Landlord, the costs of utilities, janitorial services, refuse removal, security and other services necessary to the operation and maintenance of the facility.
6. Persons engaged in leasing real property to or on behalf of the University are subject to the provisions of the Comprehensive Conflict of Interests Act (Va. Code § 2.2-3100 *et seq.*).
7. The University shall ensure that leased facilities do not contain conditions that are adverse to the health, welfare or safety of employees and others entering the premises. The University may contact the Division of Real Estate Services to determine whether there is potential for co-locating or consolidating facilities. Upon a determination that the potential for co-location or consolidation exists, the Division will notify the eligible agencies.

B. Determining Space Needs:

Space standards shall be consistent with the Commonwealth of Virginia, State Council of Higher Education for Virginia, and University guidelines for institutions of higher education.

C. Space Acquisition:

1. When acquiring real estate by lease, it is the policy of the University to seek competition in order to obtain the most economical and functionally efficient space available within the identified geographic area. This can be accomplished by describing the facility need in the most specific terms possible (without eliminating competition) and by promoting the broadest possible competition.
2. The geographic boundaries within which space is being sought shall be defined as broadly as possible for the specific program. In solicitations, define the area by preferred Zip Code numbers, or the area may be further defined by lineal landmarks such as roads, rivers, railroad tracks, etc., but such definitions must form a closed area. The geographic area must not be so restrictive as to limit competition or to favor or appear to favor a specific site.

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3. Leases over 2,500 sq. ft. will be advertised on the Virginia Business Opportunities (VBO) website. A minimum of 14 work-days is required from the date of the first advertisement in the VBO until the cut-off date for accepting offers.
4. Virginia State University shall solicit written proposals from at least five separate sources of rental property (where available) to determine the cost and availability of space in the particular market area. The University shall provide a reasonable time limit, but typically not less than thirty days, in which to respond. Faxed solicitations and proposals are acceptable.
5. Upon receipt of proposals, Virginia State University may select one or more responsive proposers for negotiation. The University shall document the reasons for its selection. In conducting negotiations, all proposers shall be provided the same information and opportunity for response. All proposers must certify that they are the owner of the property or the owner's agent and that the property does not contain adverse environmental conditions, including unmanaged asbestos.
6. Virginia State University will typically only negotiate with building owners or their agents and shall not use tenant brokers to represent the University in seeking space when the fee is based on the lease cost (in the form of commissions or any other manner) or when the broker or agent represents building owners in the area within which the University is seeking the space. Virginia State University may use the services of consultants when the University pays a fixed fee and the consultant does not represent building owners as agent or broker. Procurement of real estate consultants fall under the Virginia Public Procurement Act as non-professional services. The University may engage a tenant broker to represent the interest of the institution if such services are available under contract with the Department of General Services or other state agencies or institutions.
7. When it is deemed to be in the public interest, Virginia State University may negotiate directly with political subdivisions, public authorities or the federal government without following the solicitation requirements contained herein.

D. Lease Forms:

The following are general guidelines to be followed in preparing the lease form:

1. In most situations, the owner of the property ("the lessor") will be a corporation, partnership, individual, or trustee under a trust agreement.
2. If the lessor is a corporation, the full name of the corporation must be set forth, in the heading of the lease and on the signature page, together with the designation "a Virginia Corporation," if that is the case. If the corporation is domesticated in another state, it should be determined that the corporation has complied with the provisions of the Code of Virginia to permit the corporation to transact business in this state. The president or vice president of the corporation or such other person as may be authorized by the corporation's board of directors must sign the lease and his/her corporate title must be included. If other than the president or vice president of the corporation signs the lease, then a copy of the corporate resolution authorizing the person to execute the lease must be furnished.
3. If the lessor is a partnership, the full name of the partnership must be set forth, in the heading of the lease and on the signature page, together with the designation "a Virginia General Partnership," or "a Virginia Limited Partnership," if that is the case. If the partnership was formed in another state, that fact must be indicated.

Irrespective of whether the partnership is a Virginia partnership or a foreign partnership, it should be determined if the provisions of the Code of Virginia have been complied with regarding (1) the recordation of a Certificate of Fictitious Name in the clerk's office of the county or city where the real estate is located and (2) the filing of a copy of said certificate with the Virginia State Corporation Commission. A general partner must sign the lease and the fact that he/she is a general partner must be indicated.

If the lessor is an individual, his/her marital status must be indicated in the heading of the lease. If the lessor is married, the spouse must also sign the lease. The requirement of the joinder of the spouse may be handled in one of two ways: (1) add the full name of the spouse where the grantor is designated at the beginning of the document and state that the individual is the "husband/wife of _____"; also add a signature line and notary clause for the husband/wife at the end of the document, or (2) add a signature line and notary clause at the end of the document for the husband/wife; at the signature line place a notation that he/she is the "husband/wife of _____" and that he/she affixes his/her signature ["to release any interest he/she may have in the property conveyed by virtue of the provisions of the Virginia Code pertaining to an augmented estate"] or ["to evidence his/her consent to this conveyance"].

4. If the lessor is a trustee under a trust agreement, the name of the trustee should be followed by the statement "Trustee under Trust Agreement entitled _____, dated _____." It should be determined that the trust agreement is recorded among the land records of the city or county where the real estate is located.

E. Signing and recording Leases:

The signatures of all parties to the lease must be notarized, and in the case of the lessor being a corporation, the corporate seal must be affixed (if the lease is to be recorded). Leases shall be recorded in the local real estate records if the initial lease period is longer than five years or if the lease contains provisions for rent abatement or other incentives which are not at the beginning of the lease period (in which case the lessor's mortgagor, if any, must also sign to evidence their consent).

F. Changes to the Lease Forms:

Lease forms can be modified by striking through words and inserting words. The forms may not be modified by erasing or whiting-out words. Any modifications must be initialed by each party to the lease.

G. Emergency Leases:

Leases of an emergency nature are exempt from the foregoing procedures, although all statutory requirements must be met, including certification of funding and conformance with space planning procedures.

The need for space shall be deemed an emergency in the following events:

1. Catastrophic occurrence such as fire or other casualty which renders existing facilities (owned or leased) unusable, and failure to immediately occupy substitute space would prohibit the University from accomplishing its mission.
2. The Governor declares an emergency for which space is needed to handle the emergency condition.
3. Such other circumstances as the Secretary of Education deems to be an emergency.
4. Emergency leases should be for the shortest possible period, but in no event longer than one year. A short lease period will enable the University to reassess its needs after evaluating the impact of the emergency.

H. Temporary Leases:

Proposed leases having known and fixed terms of less than six months are exempt from the above process. When the need to extend an existing lease for a known period of less than six months, the extension may be executed as a Temporary Lease.

I. Lease Renewals:

In many instances, it is neither economical nor in the best interest of the University to move to a new location at the end of a lease period. It is, however, of utmost importance that all pertinent information is considered in determining whether new space should be sought. In addition, renewal of a lease must be economically justifiable. The following procedures shall be followed to renew leases:

1. Most leases provide for automatic renewal in the absence of written notice by a specified time by either the landlord or the tenant. Departments wishing to remain at the same location under the automatic renewal provision are therefore subject to termination of the lease by the Landlord if the Landlord provides notice. Consequently, the University shall follow the procedures set forth in Section "3" to locate alternative space in the event of such notice by the Landlord.
2. To exercise an automatic renewal provision, submit the request to the Vice President of Finance and Chief Financial Officer or his designee at least 60 days prior to the notification date provided in the lease.
3. If the University determines it should remain at the same location even though there are changes in the terms and/or conditions, the following documents shall be prepared:
 - A written justification for remaining at the same location demonstrating tangible benefits to the mission of the institution and/or cost savings.
 - A certification of space needs and funding.
 - A description of the changes in terms and/or conditions.
 - A lease amendment or new lease executed by the Landlord.
4. When developing lease agreements, Virginia State University may negotiate "options for renewal" which do not constitute a fixed obligation on the part of the institution. Exercise of each renewal option must be approved, prior to exercising the option, as a separate agreement, independent of the original lease, unless all terms and conditions, including cost, have been agreed upon and approved in the original lease.

J. Lease Amendments:

From time to time, there may be a need to change the terms of a lease during the lease period, most often to increase the area to accommodate new needs of the agency. Lease amendments must be approved in the same manner as new or renewal leases.

K. Exemptions:

1. Leasing transactions between the University and the Virginia State University Foundation and/or Virginia State University Real Estate Foundation are exempt from these procedures.
2. Other exemptions from any of the requirements contained in this policy will be issued by the Vice President for Finance and Chief Financial Officer or his designee only on an exceptional basis.

Reference

Code of Virginia § 2.2-1149
Code of Virginia § 2.2-1153
Appropriations Act 4-8.01e.2
Code of Virginia § 23.1-1002

State Council of Higher Education for Virginia, "Fixed Assets Guidelines for Educational and General Programs," July, 2001.

Approved By:



Harry Black, Rector



Thursa Crittenden, Secretary

11/27/17
Date

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Date