

This is an amendment to 1.5.23 NMAC, Sections 7, 8, 9, 10.

1.5.23.7 DEFINITIONS:

- A. "Acquisition" means, unless usage indicates otherwise, obtaining title in fee simple absolute to real estate by purchase, trade, gift or donation.
- B. "Board" means state board of finance.
- C. "Consideration" means something which is of value, including but not limited to cash, another piece of real estate, or other form of compensation.
- D. "Current" means; ~~[dated within six months of the date of submission of the proposed transaction to the Board for approval]~~
 - (1) In the context of an appraisal, dated within one year of the date of submission of the proposed transaction to the Board for approval, and
 - (2) In the context of a title binder, dated within six months of the date of the transaction's submission to the Board.
- E. "Local public body" means all political subdivisions, except municipalities and school districts, of the state and their agencies, instrumentalities and institutions.
- F. "Private entity" means any non-public entity, including but not limited to persons, associations, and both for-profit and non-profit corporations. It does not include Indian nations, tribes and pueblos.
- G. "Public body" means a local public body, a state agency, a school district or state educational institution.
- H. "Real property" means any interest in real estate, including but not limited to estates in fee simple, leaseholds, water rights and permanent easements.
- I. "State agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions.
- J. "School districts" means those political subdivisions of the state established for the administration of public schools.
- K. "State educational institution" means Article XII, Section 11 educational institutions.
- L. "Term" means the period of time during which a lease is in effect, and includes all renewal options or extensions.

[1.5.23.7 NMAC – N, 2-14-2001; A, 6-28-2002]

1.5.23.8 ACQUISITION OF REAL PROPERTY:

- A. Public bodies requiring Board approval before acquiring real property include, but are not limited to, the following:
 - (1) General services department.
 - (2) Department of game and fish for expenditures from the game and fish capital outlay fund.
- B. In order to attain approval for acquisition of real property, the Board requires that the following information be provided:
 - (1) The form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants. Reversions or other forfeiture provisions in the deed are prohibited. Special warranty deeds will be accepted only under extraordinary circumstances. When the seller is a public body, transfer of title shall be by quitclaim deed.
 - (2) A copy of a current appraisal and a review from the property tax division of the taxation and revenue department if appraisal was not done by the division. When the seller is another public body, neither an appraisal nor department review is required.
 - (3) Site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable.
 - (4) A description of the proposed use.
 - (5) Sources of funds used for the purchase.
 - (6) Current title binder evidencing clear title, and agreement by the title company that it will delete General Exceptions 1 through 6, and the first two-thirds of 7.
 - (7) Purchase agreement, if applicable.
 - (8) Phase 1 environmental assessment.
 - (9) Resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision making the acquisition subject to approval by the Board.

[1.5.23.8 NMAC – N, 2-14-2001; A, 6-28-2002]

1.5.23.9 SALE OR TRADE OF ~~[PUBLIC]~~ REAL PROPERTY:

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior Board approval is necessary for:

(1) State agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);

(2) School districts [~~except when the consideration is one hundred thousand dollars (\$100,000) or more, in which case approval by the state department of education~~]; and

(3) Local public bodies, include, but not limited to:

(a) counties;

(b) technical vocational institutes;

(c) conservancy districts;

(d) flood control authorities; and

(e) municipalities, when Board approval is required pursuant to Section 3-46-34, NMSA.

B. In order to obtain approval for the sale or trade of real property, the Board requires that the following information be provided:

(1) The form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;

(2) A copy of a current appraisal and review by the property tax division of the taxation and revenue department if the appraisal was not done by the division (for both properties if trade). When the buyer is another public body, neither an appraisal nor department review is required;

(3) A description of the reason for the sale or trade;

(4) Selection process used to determine purchaser; ~~[e.g., bid, advertisement, word of mouth, etc.];~~ competitive sealed bid or public auction, unless purchaser is a Public body;

(5) Purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);

(6) Sale agreements, if applicable;

(7) Resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the Board; and

(8) Approval by the State engineer of any transfer of water rights.

C. Transfer for less than fair market value of real property owned by a public entity to any private entity is not permitted.

[1.5.23.9 NMAC – N, 2-14-2001; A, 6-28-2002]

1.5.23.10 LEASE OF REAL PROPERTY:

A. Board approval is required whenever certain public bodies wish to lease properties they own if the lease is: (1) for a period of more than five years, *or* (2) for a consideration of twenty-five thousand dollars (\$25,000) or more. Prior Board approval is necessary for:

(1) State agencies (unless consideration is one hundred thousand dollars (\$100,000) or more *and* the term is for a period of more than twenty-five years, in which case approval by the legislature is required).

(2) Counties.

(3) School districts [~~unless consideration is one hundred thousand dollars (\$100,000) or more *and* the term is for a period of twenty-five years or more, in which case approval by the state department of education is required~~]; and

(4) Local public bodies, which include, but are not limited to, the following:

(a) technical vocational institutes;

(b) conservancy districts; and

(c) flood control authorities.

B. In order to obtain approval for leases of real property, the Board requires that the following information be provided:

(1) Current appraisal or other evidence of fair market value and a review from the property tax division of the taxation and revenue department if appraisal was not done by the division. When the lessee/tenant is another public body, neither an appraisal nor department review is required.

(2) Copy of the lease.

(3) Resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to Board approval.

(4) The reason for leasing.

(5) Description of the selection process used to determine lessee: competitive sealed bid or public auction, unless lessee is a Public body.

C. Rent or other consideration at less than fair market value to a private entity is not permitted.
[1.5.23.10 NMAC – N, 2-14-2001; A, 6-28-2002]