



# Acquisition and Disposition of Real Property

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# Acquisitions



# Title and Survey Review and Issues

- Ownership of property – How many owners?
- Unpaid taxes – risk of State sale
- Mortgages and unpaid liens
- Easements that could interfere with improvement and use
- Access to public right of way
- Flood plain

# Title and Survey Review and Issues continued

- Restrictions of record that could affect intended use; Covenants, Setbacks, etc.
- Legal Description matches survey (and closes)
- Other survey issues
  - Encroachments or other indications of adverse claims (easements or ownership)



# Property Investigations – Is the Property Suitable for Current and Future Plans

- Due Diligence

# Phase I ESA

- Is it really necessary? It's only old farm land.
- What if a Phase II is recommended or a recognized environmental condition is revealed?

# Beware of funding restrictions that will affect the acquisition

- Bond Funds
  - restrictions on later disposition or disposition of excess land
  - use restrictions

# Grant Funds

- use restrictions
- restrictions on transfers or sale
- federal lien restrictions



# Lease Purchase

- Existing Building
- Build to Suit
- Improvements to existing facilities or district-owned land
- Leveraged Lease Purchase/financing by certificates of participation

# Acquisition Due Diligence Checklist

- Meets District's needs
- Phase I ESA – It's more than just an innocent landowner defense
- Survey and title review
  - Seller owns the property; no tax or other liens not satisfied by purchase price
  - No restrictions, easements or encroachments that could interfere with development
  - Access to public right of way or insured easement to ROW that may be used for school traffic (over burdening of easement can be an issue)
  - Parcel is a legal lot (no land division approvals required to convey)

# Acquisition Due Diligence Checklist, cont.

- Compatibility with surrounding development existing, in the approval process or permitted under applicable land use regulations, if they apply
- Factors that may affect construction costs
  - Off-site traffic improvements
  - Drainage improvements
  - Soils
  - Topography
- Availability of Utilities
  - Service conditions
    - Line extensions
    - Easements

# Lease-Purchase Overview

- School Lease Purchase Act, §22-26A-1 et seq.
  - Exception to constitutional prohibition on debt
  - Allows for “lease purchase arrangement”, an agreement for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the principal payments made (periodic lease payments composed of principal and interest components) paid to the holder of the agreement and may provide for nominal consideration after payment of the final periodic lease payment
  - Not a lease with an option to purchase; risk of loss is on district, which must insure and maintain the property

# Lease-Purchase Overview

## Continued

- May be an existing building meeting adequacy standards (or to be improved to meet adequacy standards), or build to suit or the renovation of district-owned facilities to be leased to the developer and lease-purchased by the District as renovated.
- Agreement must provide that there is no legal obligation for the school district or charter school to continue the lease from year to year or ultimately to purchase the real property.

# Lease-Purchase Overview

## Continued

- Agreement must also provide that lease is terminated if sufficient funds (appropriations) are not available to meet the current lease payments
- If the district provides funds in excess of lease payments, or additional improvements the district has a lien on the project
- Agreement must be assignable to a charter school, or to the state or its political subdivisions
- Requires NMPSA and PED approval. May require SBOF approval.

# Lease-Purchase Overview

## Continued

- Financing Lease-Purchase Arrangements
  - Developer/landlord financing via certificates of participation (exempt from NM income tax)
  - Voter-Approved Lease Purchase Tax (§ 22-26A-8 through 13 NMSA)
  - Outstanding lease purchase arrangements may be refinanced with a second lease purchase arrangement (§ 22-26A-14)

# Condemnation

- Determination of Necessity
- Need appraisal from NM licensed appraiser and survey for each lot or parcel
- Must attempt to negotiate
- If condemnation lawsuit filed, district can obtain an order of entry with the required deposit with the court
- With order of entry, improvement of the property may commence



# Condemnation continued

- Property owner whose property is condemned is entitled to just compensation and costs (not attorneys' fees)
- Involve counsel at the outset to avoid missteps

# Dispositions



# Disposition Sale, Lease or Gift

- **Determination by BOE to dispose of property**
- **Charter Schools 22-8B-4(F) NMSA 1978**
- **Method of Sale or Lease (competitive sealed bid; public auction; negotiation)**
- **Donations**
  - **Indian Nation, Tribe or Pueblo in NM with authority to acquire land**
  - **State agencies, local public bodies, school districts, state educational institutions**
  - **Land Grants operating as a political subdivision of the state § 49-1-1 et seq. NMSA**

# New Law Regarding Charter Schools– 22-8B-4

- District with land or facilities “not currently used for other educational purposes,” shall make facilities (that meet adequacy standards) and may make land available for lease, lease-purchase, or purchase to charter schools located in the district.
- Districts required to notify all charter schools of such availability by May 1 each year; PSFA required to ensure districts give this notice

# New Law Regarding Charter Schools– 22-8B-4

- District may develop a facility prioritization plan that identifies which charter schools may lease, lease-purchase, or purchase facilities.
- District land is considered not available to a charter school if the district justifies use of land in 5-year facilities master plan.
- For leases, cannot charge more than lease-reimbursement rate in NMSA 1978, Section 24-24-4(i)(b)(I) (plus actual direct costs of district)

# New Law Regarding Charter Schools– 22-8B-4

- “other educational purposes” includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.
- Still a requirement of approval to sell or lease land that includes facilities that meet adequacy standards to have first offered it to charter schools. NMAC 1.5.23.9(B)(9).

# Overview of State Approval process

- PED: Sale, trade (exchange) or donation/gift of real property with a value of \$25,000 or less; lease for 5 years or less for lease value of \$25,000 or less
- SBOF: Sale, trade (exchange) or donation/gift of real property with a value of more than \$25,000; lease for more than 5 years or for a value of more than \$25,000. Leases to state or local Charter Schools exempt, § 13-6-2.1(B)(5) NMSA 1978.
- SBOF approval process— NMAC 1.5.23.

# Lease

- School Buildings - Charter Schools First
- Governmental Entity (negotiated or donation)
- Private For-Profit (bid or negotiation)
- Non-profit (market value rent can be paid by services in lieu of cash)



# Disposition – Sale or Gift

- Restrictions on Transfer
  - Deed restrictions/covenants of record
  - Funding Sources
- Charter Schools First 22-8B-4(F) NMSA 1978
- Appraisal (offered for sale vs. gift to one of the named governmental entities)
- Sale – action; solicitation/acceptance of bids; negotiation

# Disposition – Sale or Gift, cont.

- Quitclaim Deed
- Sale of real property with known “issues”
- Purchase and Sale Agreement
  - Buyer inspections (inspections by potential bidders; in agreement condition of sale).
    - Access Agreement – bidders
    - Buyer/Bidder insurance
    - Scope of inspections/destructive inspections
- Required conditions to closing – State approvals

# Flow Chart for State Approvals

# Required Approval of Property Dispositions

Sale or Trade of Personal Property less than \$5,000

Approval from the Office of the State Auditor (OSA)

- ◆ The school board or governing council must pass a "Resolution" explaining why it is disposing of the items.
- ◆ The district or charter school must send the resolution to the OSA with a letter explaining the district's or the school's intentions (must be done at least 30 days prior to the actual disposition).
- ◆ Contact OSA at (505) 476-3800 for additional requirements.
- ◆ Provide a copy of the OSA's approval letter to the PED.

Sale, Lease, or Trade of **Personal Property** above \$5,000 and any **Real Property** valued at \$25,000 or less. Or, lease less than 5 years for lease payments/value of \$25,000 or less.

Approval from the Public Education Department (PED)

- ◆ One copy of the PED form 947.
- ◆ Provide board or governing council minutes or resolution indicating it has approved of the proposed disposition and reason.
- ◆ Provide an appraisal indicating market value.
- ◆ Provide a copy of the quitclaim deed. Do not use warranty deeds.
- ◆ Provide a copy of the legal advertisement (for auction or RFB).
- ◆ Provide selection process used, purchase price, and sale, exchange or lease agreement, if applicable.
- ◆ Upon receipt of approval, provide the approval letter to OSA.

Sale, Lease, or Trade of only **Real Property** value of greater than \$25,000 or lease more than 5 years

Approval from the State Board of Finance (SBF)

- ◆ The SBF, requires the same information as PED, a cover letter explaining the transaction and additional information relevant to the specific transaction
- ◆ SBF requires 1 hard copy of the submittal package and a .pdf copy with bookmarks.
- ◆ Complete packages must be submitted to the SBF on or before its submittal deadline.
- ◆ Districts and charter schools should contact the SBF at (505) 827-4980 for assistance and additional information.

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