MEMORANDUM

FROM: **Timothy P. Slottow**
Executive Vice President and Chief Financial Officer

TO: **Executive Officers**
Athletic Director

COPY TO: **Mary Sue Coleman**
President

RE: **Policy and Procedure on the Acceptance, Management and Disposition of Real Estate**

DATE: **April 11, 2005**

The Office of the Executive Vice President and Chief Financial Officer (EVPCFO) issues this Policy and Procedure on the Acceptance, Management and Disposition of Real Estate under the authority granted to the EVPCFO in the Regents Bylaws and Regental action of April 18, 2002. This policy replaces all prior policies on the subject and remains in effect until amended or revoked. This policy supplements SPG 601.23 on real estate transactions (attached) and, like SPG 601.23, should be distributed to all of your affected staff. In addition, Hank Baier, Associate Vice President for Facilities and Operations, and Sally Churchill, Assistant General Counsel, will make a brief presentation to the Academic Program Group, the Budget Administrators Group, the Facilities Users Network and the Development Office on this new policy and SPG. If you have any questions about either the policy or the SPG please contact me.

I. Overview

The University's Real Estate Office is located within Plant Extension at 326 E. Hoover Street, Ann Arbor, MI 48109-1002, 763-2302. The Real Estate Office reports to the EVPCFO through the Associate Vice President for Facilities and Operations (AVPF&O). The Real Estate Office, in close consultation with the AVPF&O and EVPCFO, handles all real estate matters at the University, including those involving the Hospitals and Health Centers, UM-Flint and UM-Dearborn. When a real estate transaction involves a gift, they also work closely with the Office of the Vice President for Development staff (OVPD) and unit development staff. The Real Estate Office also works in close collaboration with the Provost and Executive Vice President for Academic Affairs (Provost) to implement this policy.

This Policy and Procedure on the Acceptance, Management and Disposition of Real Estate describes the policies and procedures by which the University acquires (by gift or otherwise), manages and disposes of real estate.

II. Procedures for Accepting Gifts of Real Estate

This section describes the process for accepting gifts of real estate. The appropriate development staff from OVPD or units will be responsible for maintaining contact with the donor, while the Real Estate Office will handle all other aspects of the real estate transaction.

A. Due Diligence

The Real Estate Office first evaluates whether to accept a proposed gift of real estate from an academic perspective, which includes teaching, research and service. If the offered property is near campus, research or teaching facilities, or it has potential use by a unit, the Real Estate Office determines the interest of the appropriate unit. If the property is inappropriate for academic use, the Real Estate Office, in collaboration with development staff and the Provost's Office, considers whether to accept the property for the purpose of selling it, taking into account management responsibilities, risk, valuation and opportunities to dispose of the property. Factors the Real Estate Office considers are:

- Can the property be offered for exchange to a governmental entity for other real estate that better serves the University's purpose?
- What are the management responsibilities and risks, and how do they compare to potential sale proceeds?
- What are the transaction costs of a sale (such as legal fees and broker commission)?
- Is the unit that benefits from the gift willing to pay the transaction costs?
- If due diligence is otherwise favorable but valuation is minimal, donor stewardship and overall donor relationship may be considered.

The Real Estate Office will ask development staff to obtain a completed gift property questionnaire in consultation with the donor to establish basic information about the real estate. If based on this information and evaluation the Real Estate Office decides to further consider the gift, the potential donor will be asked to submit or permit the following:

1. For gifts of a single-family residence (i.e., single family homes, duplexes, condominium units, single family homes that have been made into apartments and vacant lots in a developed residential area) the Real Estate Office will require:

    a. An on-site inspection and transactional screen or comparable appropriate inquiry prepared for the Real Estate Office by the University's Occupational Safety and Environmental Health Department (OSEH) or its consultant, in cooperation with the donor. The University will cover the costs of this as part of the transaction costs.

        i. If this assessment reveals there is or may be environmental impairment, the Real Estate Office will decline the gift, accept the gift, or follow the procedure outlined in 2., below.

    b. An indemnity through which the donor indemnifies the University for liabilities arising from pre-existing environmental impairment. If the environmental assessment reveals there is or may be environmental impairment and the Real Estate Office accepts the gift, the indemnity may be limited to undisclosed risks.

    c. Appropriate warranties and representations regarding the environmental condition of the property and compliance with applicable laws.

d. Other documents that are appropriate based on applicable law.

2. For gifts of non-residential property the Real Estate Office will require:

a. A Phase I environmental assessment or comparable appropriate inquiry prepared for the Real Estate Office by the University's consultant in cooperation with the donor. The donor will be expected to pay this cost.

i. If this environmental assessment reveals that there is or may be environmental impairment, the Real Estate Office will decline the gift, accept the gift, or follow the procedure outlined in 3., below.

b. An indemnity through which the donor indemnifies the University for liabilities arising from pre-existing environmental impairment. If the environmental assessment reveals there is or may be environmental impairment and the Real Estate Office accepts the gift, the indemnity may be limited to undisclosed risks.

c. Appropriate warranties and representations regarding the environmental condition of the real estate and compliance with applicable laws.

d. Other documents that are appropriate based on applicable law.

3. For all properties where the Phase I or comparable appropriate inquiry reveals that there is or may be environmental impairment, the Real Estate Office may require:

a. A Phase II or comparable appropriate inquiry prepared for the Real Estate Office by the University's consultant in cooperation with the donor. The donor will be expected to pay this cost.

b. A baseline environmental assessment authorized by Part 201 of the Natural Resources and Environmental Protection Act (MCL 324.20101 *et seq*.) for real estate located in Michigan, or the assessment authorized by the jurisdiction where the real estate is located, if applicable, in cooperation with the donor. The University will pay this cost.

c. An indemnity through which the donor indemnifies the University for liabilities arising from pre-existing contamination. If the additional environmental assessment reveals there is or may be environmental impairment and the Real Estate Office accepts the gift, the indemnity may be limited to undisclosed risks.

d. Appropriate warranties and representations regarding the environmental condition of the property and compliance with environmental laws.

e. Other documents that are appropriate based on applicable law.

4. For all gifts of real estate (residential and non-residential), the Real Estate Office will require (at donor's expense), as appropriate,

a. a survey if the University concludes it is necessary for use or sale

b. a title commitment of nominal value showing donor's interest in the property and the condition of title

c. a qualified appraisal or other market analysis such as comparables

5. If the University decides to accept the gift under B., below, the parties will execute a gift agreement prepared by the University's Development Legal Office of the Office of the General Counsel. The following will also be expected of the donor:

- A draft deed and a signed original warranty deed in recordable form at closing
- A title policy at closing
- A commitment to pay property taxes, assessments and other expenses on the real estate to the date of the gift
- A trust agreement acceptable to the University if the real estate is used to fund a charitable remainder trust
- For life estate arrangements, a commitment to pay all expenses, including maintenance costs and property taxes, until the University assumes full ownership.

B. Acceptance of the Gift

If due diligence is favorable the EVPCFO will accept the gift or ask the Regents to accept the gift pursuant to Bylaw 3.05, which requires Regental approval if maintenance of the gift will add to the ordinary operating budget of the University. If the gift is accepted, the property will be (a) used for an academic or administrative purpose or (b) added to the University's inventory of real estate available for sale. If the property is sold, the department benefiting from the gift will receive the net sale proceeds after accounting for transaction costs. When the EVPCFO accepts the gift without Regental approval pursuant Bylaw 3.05, the gift acceptance will be reported to the Regents in the OVPD's monthly Report on Voluntary Support.

C. Modifications of Procedures for Gifts

The EVPCFO may modify these real estate procedures, except those in the Bylaws, when the offered property has strategic value because it is adjacent to University property or will be used for a University purpose, or when otherwise merited by special circumstances.

III. Acquisition of University Real Estate

This section describes explains how the University acquires real estate other than through donations.

A. Due Diligence

When the Real Estate Office learns of the potential availability of strategically located property that office notifies the AVPF&O, determines valuation, and undertakes due diligence. Valuation is determined through an appraisal or market analysis such as review of comparables. Due diligence includes an inspection by the Real Estate Office and OSEH, a review of title work, a survey if needed, and other activities appropriate to the circumstances. The Real Estate Office negotiates an acceptable purchase agreement with the property owner before undertaking due diligence. This agreement addresses the terms and conditions of a sale (e.g. price, earnest money, closing date, title company and the required contingency that the purchase will not occur without Regental approval).

The Real Estate Office works closely with the Office of the Vice President and General Counsel throughout the process.

B. Regental Approval of the Acquisition

If an acceptable purchase agreement is negotiated and due diligence favorable, the EVPCFO will ask the Regents to approve the purchase. If the transaction is consummated, the property becomes part of the University's real estate inventory and is then used for its intended academic or administrative purpose.

IV. Disposition of Real Estate

This section describes how the University disposes of real estate, whether it came to the University as a gift or in some other manner.

A. Approval Process

Bylaw 3.07 says the Regents must approve the sale of any University real estate. The only exception is gifted property that is not located near one of the campuses, which pursuant to Bylaw 3.07 may be sold by the EVPCFO and reported to the Regents. Such properties must be sold for the appraised value or more except when the University is not the sole owner of all property interests, in which instance the University cooperates with the owners of the remaining property interests to accomplish the sale.

B. Sales Procedures

Whenever the University considers selling real estate (except gifted property referenced in A, above), the Real Estate Office first consults the appropriate University units to determine whether a sale is appropriate. A sale is generally considered only when the property has no immediate or foreseeable use and market conditions are considered. If based upon these inquiries the EVPCFO concludes a sale is appropriate, the Real Estate Office obtains an appraisal or reviews comparables to establish price. The University then offers the property for sale using, to the fullest extent possible, competitive practices and one or more of the following methods:

- Use of a Realtor/Broker: The University may retain a realtor or broker, whose commission is negotiated based on local market conditions. The University requires the realtor or broker to use appropriate strategies to obtain the most favorable terms and conditions for the University. The Real Estate Office will establish acceptable terms but the realtor/broker negotiates with potential buyers.

- The Bid Process: The Real Estate Office may contact adjacent owners and advertise in local newspapers, describing the bid process, estimated value or price, and deadline. In this situation, the Real Estate Office handles the transaction without a realtor, seeking the most favorable terms and conditions for the University.

- Posting signs: The Real Estate Office may post "for sale" signs on the property and advertise in local newspapers. The Real Estate Office also handles this transaction without a realtor, seeking the most favorable terms and conditions for the University.

These last two methods are used together when feasible.

The Real Estate Office evaluates all offers, taking into consideration price, timing, contingencies, proposed use and any other University priorities. That office selects the best offer and negotiates terms (price, due diligence, and contingencies), which are incorporated into a purchase agreement. Unless the real estate is gifted real estate located away from the three campuses (which can be sold by the EVPCFO), the purchase agreement will require Regental approval of the sale. There is a presumption in favor of retaining the mineral interests on properties sold by the University but the EVPCFO may make an exception under appropriate circumstances.

If the buyer is satisfied with due diligence, the EVPCFO asks the Regents to approve the sale. If the sale is consummated, the EVPCFO decides upon the appropriate distribution of sale proceeds within the University.

C. Other Disposition

On rare occasions the University disposes of relatively small, incidental parcels of real estate without invoking the sales procedures described in B., above. These transfers arise from property management concerns such as right-of-way or boundary issues, and often involve a unit of government such as a state agency (Michigan Department of Transportation or Michigan Department of Natural Resources) or the local municipality. In such circumstances, the EVPCFO may ask the Regents to authorize transfer of ownership through a quit claim of nominal value or based on appraised value rather than follow the competitive practices described in B., above.

IV. Real Estate Management

SPG 601.23 provides details on the University's standard practices for all real estate transactions. This SPG makes clear that, with the exception of certain authority given to the Hospitals and Health Centers and the Chancellors at U-M Flint and U-M Dearborn, the Real Estate Office is responsible for the management of all leases on and off campus (including build to suit arrangements, contracts for renovation of non-University space, capital leases and lease-to-buy arrangements), and all other types of real estate transactions such as purchases and sales, new real estate developments and access to University property. The EVPCFO will seek Regental approval for all leases (on and off campus) when (a) the square footage being leased through a single lease exceeds 50,000 square feet; (b) there are existing leases with the University in a particular building or a related complex of buildings and the square footage being leased through any new or revised lease would cause the total amount of leased square footage in the building or related complex of buildings to exceed 50,000 square feet; or (c) the lease duration to which the University is committed at any given time exceeds ten (10) years. The EVPCFO will annually report to Regents in an information item all situations where the total square footage being leased in a particular building or in a related complex of buildings exceeds 50,000 square feet.

Annually, the EVPCFO will provide the Finance, Audit and Investment Committee of the Regents a detailed report on the current commercial leasing portfolio.