

**SUBJECT (R\*)**

The Florida International University Foundation  
Policy and Procedures for Accepting Real Property

**EFFECTIVE DATE (R\*)**

June 9, 2012

**POLICY NUMBER (O\*)****POLICY STATEMENT (R\*)*****Introduction***

This policy governs all real estate transactions of the FIU Foundation, Inc., including the acceptance, management and/or liquidation of (1) gifts of real property; (2) acquisitions of real property for investment; or (3) acquisitions of real property for use by the University or Foundation.

In accepting real estate, the Foundation will determine as part of each transaction whether to hold the property for use by the University, for investment, or, most commonly with respect to gifts of real estate, for liquidation/sale. Under most circumstances, a donor will be entitled to a charitable deduction for the full gross market value of the property in accordance with federal tax law.

All net proceeds of any sale will be used for the charitable purposes specified by the donor pursuant to the terms of the donor's gift agreement.

The policy and guidelines outlined herein are intended to make the process work smoothly for all parties, and to permit the Foundation to make appropriate inquiries and take into account a variety of considerations regarding the condition of real property, including marketability, carrying costs, and environmental risks, prior to any acquisition. Ultimately, the decision to accept or liquidate property rests within the sole discretion of the Foundation Board, in coordination with the University and in furtherance of the University's mission.

The following process and factors must be considered prior to acceptance of any real property transaction:

***II. Review and Consultation with the University and Foundation "Real Estate Team"***

The Real Estate Sub-Committee shall coordinate all acquisitions of real property for the Foundation (whether by donation or otherwise). The Assistant Treasurer will work closely with the Committee to determine the viability of any real estate transaction. The Real Estate Team will be comprised of the CEO of the Foundation (or his or her designee), the Foundation Assistant Treasurer a representative of the University's Office of Finance and Administration, Office of the General Counsel, the initiating college or unit, and any other staff or outside professionals as may be needed on a case-by-case basis.

The Assistant Treasurer or designee will interview the current owner of the property, complete a checklist of basic information regarding the property, and conduct an initial inspection of the property along with, if appropriate, Facilities, Finance or other staff.

In order to minimize the costs of the initial evaluation, the Assistant Treasurer or designee will request from the owner copies of the most recent appraisals, surveys, title searches, tax documents, and other pertinent information, to permit the Foundation to analyze:

1. market conditions for resale or the ultimate disposability of the property;
2. the condition of any improvements located on the property;
3. current and potential zoning, land use, and concurrency issues;
4. any potential issues involving the property, such as environmental concerns or title defects;
5. any costs associated with holding the property for resale; and
6. other considerations specific to the acquisition of the property.

***III. Due Diligence Considerations***

In the event the CEO of the Foundation, with input from the Real Estate Team, determines that a proposed transaction merits full consideration for acceptance, the Assistant Treasurer will work in conjunction with the Real Estate Team as needed to conduct a thorough due diligence review, utilizing the due diligence criteria set forth below.

The Foundation recognizes that the specific due diligence that must be conducted to evaluate a property will vary depending on the circumstances of each transaction. Accordingly, the CEO of the Foundation, in consultation with the Real Estate Team and the Chair of the Real Estate Taskforce/Committee of the Foundation ("Committee"), shall have the flexibility to conduct whatever due diligence may be necessary to identify material risks and meaningfully evaluate each transaction.

**A. *Payment of Expenses by Donor***

For gifts of real property valued at less than \$25,000, or such other minimum amount as may be established by the Foundation CEO in consultation with the Real Estate Committee, the donor is required to pay the costs of transfer to the Foundation, including environmental assessments, title searches, and current taxes. Real property value may be estimated either by an appraisal, the ad valorem tax-assessed value, or a good-faith estimate provided by an independent, objective real estate professional.

For all other transactions, in an effort to minimize the Foundation's costs, the Foundation will request for each prospective donor/seller to commit to covering expenses incurred in the evaluation of the property.

If the Foundation declines to accept real property, there is no obligation to reimburse the donor/seller or any third party for any expenses incurred in the evaluation.

**B. *General/Special Warranty Deed***

Title will be transferred to the Foundation by general warranty deed or by special warranty deed provided that a title policy is obtained. Legal staff will review all deeds.

**C. *Appraisal***

For gifts of real property, if a donor intends to obtain a charitable contribution deduction, the IRS requires that the donor obtain an appraisal if the value of the real property is over \$5,000. The appraiser must be independent of both the donor and the Foundation and meet any and all requirements set forth by the Internal Revenue Code and Treasury Regulations. For proper accounting, marketing, and donor recognition purposes, an appraisal that meets current IRS guidelines will be requested for all real property gifts. All other relevant provisions, such as the filing of Form 8282 for a disposition of property within three years of acquisition, must be discussed with the donor.

For all other acquisitions of real property, an appraisal should generally be obtained prior to closing. An appraisal *must* be obtained if the property is being acquired with University or Foundation funds (either as an investment or otherwise), or if the Foundation will obtain financing for the acquisition.

**D. *Title Search and Title Insurance***

A basic title search (to identify mortgages, liens of record, municipal tax liens and open permits, pending litigations or judgments, and zoning) will be obtained for all real property transactions. Any special deed clauses (i.e., use restrictions) or other potential conditions having a material impact on the marketability or sale ability of the property will be disclosed to the Real Estate Taskforce/Committee prior to its approval of the transaction.

A title insurance policy will be required for gifts of mortgaged property and for all non-gift acquisitions, or as the circumstances may otherwise require (i.e., if the conveyance involves significant carrying costs, or if obtaining a title policy would enhance the marketability of the property for resale, etc.).

**E. *Owner's Affidavit***

For gifts of real property, the Foundation will require donors to provide an owner's affidavit in substantially the form attached in Exhibit A hereto.

For all other acquisitions of real property, the seller disclosures appropriate to each transaction shall be required and set forth in the purchase and sale agreement.

**F. *Survey***

The Real Estate Team will consider whether to obtain a survey for any real property transaction. A survey should be obtained for gift acquisitions of mortgaged property and all non-gift acquisitions, or as the circumstances may otherwise require.

**G. *Property Inspection***

For all gifts of commercial property or property acquired or held for University use or investment, a baseline commercial property inspection will be conducted to evaluate the condition of the property, including roof, structural, electrical, plumbing, HVAC systems, life safety issues, or any other assessments that may be required as part of a quality inspection based on the age of the structure, type of construction or other relevant factors.

For gifts of residential property, a standard home inspection will be obtained.

**H. Environmental Requirements**

An environmental review will be performed on all real estate transactions by a qualified consultant or firm selected by the Foundation CEO, with input from the Real Estate Team and Chair of the Real Estate Committee, as necessary.

*Residential:* As a general matter, for residential or rural property, an Environmental Risk Assessment will be performed.

*Commercial/Industrial/High-Risk Operations:* For commercial property or any other property located in a developed area where manufacturing or any class of industrial or commercial activity involving the potential use of hazardous substances or petroleum products, a Phase I audit will be performed.

If the environmental review indicates areas of significant concern, an additional investigation (such as a Phase II, as recommended, will be performed prior to acceptance of the real property. All environmental liability risks must be disclosed to the Real Estate Taskforce/Committee.

**I. Real Property Taxes and Other Carrying Costs**

For gifts of real property, evidence must be provided by the donor that all real property taxes and other carrying costs are paid and current. Donors will be encouraged to pay all or pro-rate the taxes and other carrying costs for the year of the donation. IRS rules may reduce the value of the gift for tax purposes because of prorated property taxes.

For all other real estate acquisitions, the payment of any outstanding taxes shall be taken into account as part of the overall transaction.

**J. Mortgaged Property**

Although the Foundation will rarely accept mortgaged property, real property may be acquired subject to a mortgage if the mortgage is (1) current, (2) assumable, (3) a clearly established method for the payment of the debt is identified, (4) an appraisal is obtained; and (5) the loan-to-value ratio is acceptable to the Foundation, in its discretion. If the Foundation desires to accept mortgaged property, the Real Estate Team should also consider whether it would be more advantageous to obtain alternate financing and pay/off the underlying mortgage.

**K. Leases**

When real property is acquired subject to a lease, leases should not be in default and

All deposits, advance rents, and other monies will be transferred to the Foundation or otherwise accounted for as required by law.

**L. Business Case Analysis for Real Property Held for Use or Investment**

For real property that may be held for investment or the University's use, a business case analysis must be conducted concurrently with the due diligence review. The Dean or administrative leader of the benefiting unit, in conjunction with a representative of University Finance and Administration, will prepare the following for review:

1. Academic purpose and relationship to the University's mission
2. Business Plan, to include
  - a. fiscal and operating analysis
  - b. revenue projections
  - c. proposed budget
  - d. staffing requirements
  - e. facilities requirements, including improvements

Before any business plan is presented to the Foundation, the benefiting unit must obtain the approval of the appropriate vice president for the benefiting unit, the Chief Financial Officer and Senior Vice President for Administration, and the Foundation CEO, in consultation with the University President.

**M. Carrying Costs to be Covered by the College or Unit Agreement**

For properties dedicated to a particular college/unit (for use or sale), each college or unit must identify a funding source or plan for covering taxes, insurance, mortgage payments, and all other holding and carrying costs incurred by the Foundation until the real property is liquidated.

**N. Management of Real Property**

The CEO of the Foundation, in consultation with the Real Estate Team and Real Estate Committee, will determine on a case-by-case basis whether to hold any real estate asset in the name of the Foundation or through another corporate entity, such as a wholly-owned limited liability company. All real property held by the Foundation in any capacity will be managed in a manner designed to comply with all applicable laws and to minimize potential liability to the Foundation.

**IV. Particular or Special Types of Real Estate Gifts**

**A. Estate Gifts Valued at Less than \$500,000**

For real property estate gifts valued at less than \$500,000, the CEO of the Foundation may authorize (in lieu of acceptance of real property) the liquidation of the property directly by the estate administrator.

**B. Charitable Remainder Unitrusts or Annuities**

Real property may be accepted to establish net income unitrusts or "flip trusts." IRS rules prohibit the acceptance of mortgaged property to fund charitable remainder unitrusts, unless certain exceptions are applicable. The donation of real property to fund charitable gift annuities will be considered on a case-by-case basis.

**C. Unsolicited Deeds or Time Shares**

Unsolicited deeds or the donation of time share units will not be accepted unless approved by the Real Estate Taskforce/Committee in accordance with this policy.

**V. Presentation to and Review by Foundation Committees**

Once the due diligence review and, if applicable, the business case analysis is completed, the Assistant Treasurer will notify the Chair of the Real Estate Committee and convene a meeting as soon as possible. As part of each transaction, the Committee should evaluate the available due diligence and to the extent possible, provide any recommendations with regard to the potential use or disposition of the property.

If, after review and discussion the Real Estate Committee recommends acceptance of the real property, the transaction must be approved by the Foundation's Executive Committee or Board of Directors in accordance with the Foundation's Bylaws.

Property that will be acquired as a Directed Investment pursuant the Foundation's Investment Policy must also be approved by the Foundation's Investment Committee before being presented to the Executive Committee or Board of Directors.

**VI. Guidelines for the Sale and Management of Real Property Gifts**

**A. Marketing/Listing of Properties for Sale**

For property identified for sale, the Assistant Treasurer will obtain input from the Real Estate Team and Real Estate Committee at the earliest possible time regarding the most advantageous strategy for listing any property for sale and obtaining the best sales price and terms, including, where possible, by identifying a buyer for a simultaneous closing with the Foundation. Whenever possible, the Assistant Treasurer will solicit recommendations regarding local brokers and the general marketing effort from local Board members, friends of the University, and the donor.

The Foundation will use all normal means of marketing—including signs, advertising, brochures and open listings—in its efforts to market real property for sale. In accordance with applicable Foundation policies, the Foundation will engage experienced, qualified brokers, with due consideration given to brokers willing to provide reduced fees to the Foundation. In consultation with the broker, property will be listed as such prices as may be reasonably supported via a competitive market analysis.

**B. Agreements of Purchase and Sale**

1. The Assistant Treasurer and the Real Estate Team will review and comment upon each offer or proposed Purchase/Sale agreement prior to its presentation to either the Real Estate Committee for review, or to the appropriate Foundation officer for execution. Contracts will be subject to the following:

a. On all contracts with sales prices of less than \$100,000, the CEO of the Foundation or the Treasurer of the Foundation are authorized to execute sales contracts without Real Estate Committee approval, provided that (1) the sales price is at least the appraised value or is supported by a competitive market analysis conducted in connection with the listing and (2) the sales contract contains standard terms approved by legal staff.

b. Contracts with sales prices equal to or exceeding \$100,000 require the advance approval of the Real Estate Committee and the Executive Committee.

**VII. Real Estate Checklist**

Consistent with the various considerations outlined in Exhibit A hereto, the attached checklist is designed to assist staff in its management of the due diligence process and evaluation of each transaction.

**REASON FOR POLICY (O\*)**

**RELATED INFORMATION (O\*)**

**DEFINITIONS (R\*)**

Carrying Costs-any price or expense incurred to hold or own inventory or land. Costs can include storage fees, insurance, maintenance and even opportunity costs

Due Diligence- a systemic process used to evaluate and value a piece of real property prior to signing a contract.

Real Property – land and the buildings or improvements constructed on land or an interest in the land or improvements

Title - rights to a piece of real property; evidence of ownership in a property

Warranty Deed – A deed is a written instrument that conveys rights. A warranty deed is a type of deed where the seller warrants that they have clear title to the property being sold and they have the right to sell the property to the buyer

**PROCEDURES (O\*) - Exhibit A**

**FIU FOUNDATION REAL ESTATE CHECKLIST**

Date: \_\_\_\_\_

**INTAKE AND PRELIMINARY REVIEW**

Item	Received		Notes
Basic information from County Property Appraiser website, contact info for current owner, property description			
Interview current Owner and obtain copies from Owner of property documents, such as deed, title policy, appraisal (if recent), surveys, and the like  If property is commercial, obtain additional property and financial info referenced in Section III below			
Conduct initial facilities inspection with appropriate staff (unit, facilities, finance, etc.)			
Request Owner to submit Owners Affidavit attached hereto and/or obtain sellers disclosures re: known conditions of the property			

Real estate team to conduct initial evaluation, taking into account market conditions, nature of property/improvements, zoning, carrying costs, other considerations specific to acquisition			
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**II. REAL ESTATE DUE DILIGENCE**

<b>Item</b>	<b>Received</b>	<b>Approved</b>	<b>Notes</b>
Discuss payment of transaction costs with Owner and confirm what closing costs current Owner will pay. If value of property is less than \$25,000, Donor to pay all costs unless approved by Foundation CEO/Real Estate Committee			
Conduct appropriate Environmental Review (either an environmental assessment for residential property, or a Phase I for commercial or high-risk)			
Conduct appropriate property inspection, i.e. either standard residential home inspection or baseline commercial property inspection if property will be held for University use or investment			
Conduct Title Search and identify any mortgages, liens, tax liens, special deed restrictions, open permits, pending litigations/judgments, and zoning)			
Obtain appraisal. If property is being gifted, notify donor that it is donor's obligation to obtain appraisal			
Determine whether Title Policy is appropriate			
Determine whether survey is appropriate			
Draft gift agreement and/or purchase agreement			

<b>Item</b>	<b>Received</b>	<b>Approved</b>	<b>Notes</b>
Obtain and review any leases being assigned with the property			
Consider whether any mortgagee or tenant estoppels will be required			
Review transaction with Real Estate Team to determine any other considerations that may need to be addressed			
If property is vacant/unimproved, consider approvals or requirements that may also be necessary, such as subdivision approvals, site approvals, plan approvals, permits (building, storm water, curb cuts, median cuts, fire marshal, etc.), location of utility main, utility connection costs			

**III. FINANCIAL CONSIDERATIONS FOR COMMERCIAL PROPERTY  
OR PROPERTY HELD FOR INVESTMENT OR UNIVERSITY USE**

Item	Received	Approved	Notes
Obtain financial documents necessary to prepare a financial analysis/business plan, including the Owner's financial statements for the building and tax returns (3 years, if possible), monthly P&Ls for 1 year, copies of leases, rent rolls, service or other agreements affecting the property, loan documents (if any), warranties, permits/licenses required to operate the property, insurance policies, physical inventory of furniture, fixtures or other equipment, (if applicable)			
Sales and leasing comparables market data			
Consider whether financing will be required and/or sources of funds available for acquisition			
Develop business plan for operation of the property, to include all costs for operating and maintaining the facility, insurance, taxes (if applicable) staffing requirements, facility requirements, and the like			
Verify proposed use is consistent with zoning designations for the property			

Item	Received	Approved	Notes
Sale Agreement, Escrow Agreement, Deposit			
Consider corporate structure that would be required for holding the property (either through LLC or other vehicle)			
Review transaction with Real Estate Team to determine any other considerations that may need to be addressed			

**IV. APPROVALS**

Item	Notes
Real Estate Committee to approve all real estate transactions (gifts as well as acquisitions for investment or University use)	
For commercial property or property held for investment or university use, the business plan must be approved by University senior executive team (Provost, CFO, SVP Advancement) before being presented to Real Estate Committee and Foundation Board	
If property will be acquired as a Directed Investment consistent with the Foundation's Investment Policy and asset allocation targets, the Foundation's Investment Committee must approve transaction on the recommendation of Investment Consultant	
Executive Committee (or full BOD) to approve all transactions	

**OWNER'S AFFIDAVIT**

(Individual)

Before me, a notary public, personally appeared \_\_\_\_\_ (Affiant), who says that:

1. Affiant is the owner of the property (Property) described as: \_\_\_\_\_  
\_\_\_\_\_
2. Affiant knows of no adverse interest, claim in and to the Property, or persons in possession of the Property other than the owner.
3. No work has been done on or about the Property that would constitute a mechanics' or materialmen's lien against the Property and there are no mechanic's or materialmen's liens either recorded or unrecorded.
4. Affiant has (a) no knowledge as to any hazardous substances (as defined by federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree) present on the Property, nor of any production, placement, disposal, storage, release, or discharge on or from the Property of any hazardous substances; (b) no knowledge as to any buried, partially buried, or above-ground tanks, storage vessels, drums, or containers located on the Property; and (c) received no warning notices, notices of violation, administrative complaints, judicial complaints, or other formal or informal notices from any governmental agency alleging that conditions on the Property are in violation of environmental laws, regulations, ordinances or rules.

Print Name: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The above instrument was sworn to, executed, and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 2012, by \_\_\_\_\_. He/she [ ] is personally known to me or [ ] produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State and County aforesaid  
(Notary Seal)

**RESPONSIBILITIES (O\*)**

**HISTORY (R\*)**

Approved and enacted by the FIU Foundation Board of Directors on June 9, 2013.  
January 28<sup>th</sup>, 2017 - Policy Amended; October 20, 2018 – Policy Amended

**RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT (R\*)**

FIU Foundation Inc.  
11200 SW 8<sup>th</sup> Street, MARC 530  
Miami, FL 33199

**RESPONSIBLE ADMINISTRATIVE OVERSIGHT (R\*)**

(305) 348-3758

The University Policies and Procedures Library is updated regularly. In order to ensure a printed copy of this document is current, please access it online at [www.policies.fiu.edu](http://www.policies.fiu.edu).

For any questions or comments, the "Document Details" view for this policy online provides complete contact information.



**FORMS/ONLINE PROCESSES (O\*)**

Link to the above referenced Form(s) available in the "Document Details" Section of the online version of this policy document.

**\*R = Required \*O = Optional**