

Real Property Management Manual

Chapter 1: Acquisition by Lease



DEPARTMENT OF
GENERAL SERVICES

DIVISION OF REAL ESTATE SERVICES

Serving Government. Serving Virginians.

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Acquisition by Lease

Policy Name:	Acquisition by Lease
Effective Date:	July 1, 2008
Revision Date:	November 4, 2010
Authority:	§2.2-1149 of the Code of Virginia, 1950, as amended
Application:	Applies to all state agencies, departments and institutions, unless authority is otherwise delegated
Purpose:	When state-owned space is not available to house public programs and services, and it is determined that purchasing or construction of a building with state funds is not a feasible option, the Division of Real Estate Services will manage the leasing of space required to fulfill the requirement. Agencies shall not expend appropriated funds for leases of real property without the prior written approval of the lease by the Governor pursuant to §2.2-1149 of the Code of Virginia, 1950, as amended.
Replaces:	July 1, 2008 version of <i>DGS Real Property Management Manual, Chapter 1: Acquisition by Lease</i> ;

The Division of Real Estate Services (DRES) was created with the express purpose of managing the Commonwealth’s real estate portfolio. Centralized management of the portfolio enhances efficiency, improves performance, and reduces overall costs. DRES has been organized to support the missions of our agency customers by providing solutions to their real estate needs.

Virginia Code §2.2-1149 provides, in part, that “...no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means whatsoever without following guidelines promulgated by the Department of General Services... .” The leasing procedures provided herein by the Department of General Services (DGS) require the Division of Real Estate Services to secure leased facilities of a suitable size, quality, location and cost to enable each agency, department and institution to efficiently deliver their public services. DRES supports the mission of government and enables customers to succeed by allowing agencies to focus on their unique core missions and service delivery, rather than on real estate.

DGS will be the named Tenant on all leases for agencies within the Executive Branch* and will assign leased space to a single agency or any combination of agencies. DRES will provide lease administration services, including the payment of rents and other charges payable to the landlord to the Executive Branch agencies.

DRES will provide support to all other agencies, departments or institutions not subject to lease administration by DGS/DRES on a fee basis.

Different types of leases are listed in this manual. All lease types are subject to the General Provisions in Appendix B, as the provisions may apply to that lease type.

Refer to Appendix B, “General Provisions, Leases” for general information about the leasing process.

* *Selected agencies may be excluded during a transition period.*

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1.1 Office Lease/Warehouse/Parking Structure

1.1.1 Initiate Space Requirement

Objective:

The Transaction Manager and the agency work together to define a need to initiate a transaction.

- The Transaction Manager sets up a team meeting (in person or by conference call) to identify the scope and schedule of the transaction and to discuss team responsibilities.
- If the Commonwealth's contract broker is referred to work on the transaction, the Transaction Manager will initiate the representation letter.

Prior to any solicitation for leased space, the Transaction Manager will check all space requirements against any surplus leased or owned space that may be available.

Relocation from State Owned or Managed Space to Leased Space:

- Prior to any solicitation for leased space, relocations from state-owned or managed space should be referred to the DRES director for review to determine the best course of action. This activity may require the involvement of the DGS/DEB Bureau of Facilities Management, or other agency controlling the owned space.

1.1.2 Space Requirements Analysis (OSQ)

Certification Required:

- Section 4-5.07 of the Appropriation Act requires agencies to certify to DGS that the "volume of leased space conforms with the space planning procedures for leased facilities developed by the Department of General Services and approved by the Governor." Refer to the *DRES Space Planning Policies and Procedures for Leased Facilities*, contained in Appendix A.
- Certification that "funds are available within the agency's appropriations ... for the cost of the lease" is also required by Section 4-5.07 of the Appropriation Act. Certification is to be provided at the time an OSQ is finalized, as provided below.
- The required certification must be made by a person authorized by the agency, by their own process. DRES will rely on the certification as authority from the agency to proceed with securing leased space.

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Form/document or description	Action Required
<p>Agency space planning worksheet</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Prepares document and posts to IREMS, notifies transaction team by team mail in IREMS; • Provides complete detail on the form to assure that all space needs are communicated to deliver the program(s) in the leased space (including adjacency requirements, such as Administrative Assistants being located near staff served and work areas); • Assures accuracy of data since this documentation will be part of the certification from the agency that is required by the Appropriations Act; • For space uses other than “office” (such as warehouses, clinics, parking structures, etc.), agency fills out the worksheet to the extent it applies to the space need; • Updates form as necessary. <p><u>Transaction Manager:</u></p> <ul style="list-style-type: none"> • Assists agency as needed.
<p>Office space questionnaire</p>	<p><u>Agency:</u> Reviews final document, provides funding certification.</p> <p><u>Transaction Manager:</u></p> <ul style="list-style-type: none"> • Prepares OSQ based on the above information prepared by the agency; gathers additional data if needed and secures approval; • Posts in IREMS and notifies team; • Can approve any OSQ where the space need is 198 usable square feet per full-time equivalent (USF/FTE) or less; DRES director (or designee) approves all others.
<p>Space and funding certification</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Checks OSQ out of IREMS, enters the name of the authorized person who certifies the space need and availability of funding; uploads revised document to IREMS. Notifies team; OR • Prepares certification memorandum, obtains authorized signature, scans, uploads to IREMS (or

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emails to Transaction Manager for upload to IREMS)

Transaction Manager:

- Prints the document to pdf, stamps document with “approval” stamp in Adobe; OR otherwise affixes an approval stamp to the document, clearly indicating the approval and the date;
- Upload information on OSQ or upload a separate letter into IREMS.

Initial capital lease determination

Transaction Manager:

- Makes early estimate of potential for capital lease status, based on completion of a capital lease analysis worksheet based on instructions in this document;
- Notifies lease team of next action; may recommend the transaction be put on hold pending this authority, be scaled back in scope, or cancelled, if no authority for a capital lease exists.

NOTE: The tests for determining capital lease status can be found in the CAPP manual at:

http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Main.cfm

1.1.3 Market Search and Solicitation

Objective:

To receive as many viable responses as possible and to give all interested parties an opportunity to make a proposal. Agencies shall not seek or specify “Class A” space in solicitations for space without the prior written approval of the Director of the Division of Real Estate Services.

- ***# Responses:*** Normally, five (5) responses will be deemed an adequate and acceptable number of responses for consideration. If less than five (5) can be obtained, an explanation will be provided on the proposal summary form.
 - Efforts put forth to receive a number of viable responses may need to be adjusted in markets with limited inventory to assure adequate competition.
- ***Analysis:*** The analysis of the best economic option typically includes an analysis of all significant terms of the proposal, including rent, escalations, operating expenses, pass-through costs, the cost of tenant improvements, or any other charges, free rent or other incentives, and the suitability of the property to the mission of the agency.
- ***Selection:*** The property that is eventually selected will normally be the one with lowest cost that meets the operational requirements of the agency using the facility. If a different option is selected, the reasons will be documented.

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Description	Action Required
<p>Initial market search</p>	<p>Agency:</p> <ul style="list-style-type: none"> Provides known information to Transaction Manager/broker; current owner and/or new candidates. <p>Broker/Transaction Manager:</p> <ul style="list-style-type: none"> Identifies possible candidate locations. <p>Sources: current landlord, building owners/brokers in target area; local government/economic development offices, etc.</p>
<p>Solicitation (RFP) prepared by:</p>	<p>Broker/Transaction Manager:</p> <ul style="list-style-type: none"> Prepares market solicitation documents to seek available facilities; DRES determines the most suitable method of conducting the market solicitation to generate the most competition; The normal method to solicit proposals is the request for proposals (RFP); Will consult with the Dept. of Environmental Quality (DEQ) to determine if an Environmental Impact Report (EIR) will be needed for any of the potential properties, pursuant to Section 10.1-1188 of the Code of Virginia. A copy of the procedures manual can be found on the DEQ website at http://www.deq.virginia.gov/eir/stateimpact.html. <ul style="list-style-type: none"> If DGS will be the Tenant, DRES will ask the landlord to provide the EIR report and DRES will submit it to DEQ for review and approval.
<p>Special contents of the RFP document</p>	<p>In addition to the normal contents of the RFP document, all solicitation documents must contain information advising the potential proposer of the unique requirements of the Commonwealth of Virginia as a Tenant. This information includes:</p> <ul style="list-style-type: none"> Only DGS/DRES or its contract broker is authorized to negotiate the terms and conditions of a proposed lease; The Commonwealth reserves the right to negotiate separately with competing proposers and may reject any and all offers; Certain disclosures related to prohibited lease terms when leasing to the Commonwealth; Capital leases will require the approval of the General Assembly and/or the Governor; and Leases considered a “major state project” by DEQ require

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approval of an EIR, requiring approval by the Governor.

The full text of these requirements can be found in DRES' standard RFP document and in Appendix C of this Manual (Prohibited Lease Terms).

Solicitation reviewed by:

Agency and Transaction Manager:

- Review posted document (in IREMS transaction module)
- Use team mail in IREMS transaction record for all communications.

Agency:

- Respond to specific questions within time limit requested by Transaction Manager
-

Solicitation issued by:

Broker/Transaction Manager:

- Issue to targeted candidates, current landlord, area brokers, etc., as appropriate, and on eVa;
- Document in IREMS transaction the candidates solicited;
- All documents must be uploaded or retained in IREMS transaction record.

Typical Response Time:

- 1-2 weeks; may be extended by DRES.
-

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1.1.4 Selection of Facility “Short List”

Objective:

- The best economic option typically includes an analysis of all significant terms of the proposal, including rent, escalations, operating expenses, pass-through costs, the cost of tenant improvements (agency cost not covered by the Landlord), or any other charges, free rent or other incentives, and the suitability and efficiency of the space. The analysis will also include the one time costs caused by relocation when appropriate.
- The space that is eventually selected will normally be the one with lowest cost that meets the operational requirements of the agency that will occupy the space. If a different option is selected, the reasons will be documented.

Description	Action Required
<p>Proposal Summary</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Reviews once notified of posting in IREMS. <p><u>Broker /Transaction Manager:</u></p> <ul style="list-style-type: none"> • Will review and evaluate all proposals for completeness, total cost, etc. and will make a determination, upon consultation with the agency, if any property is to be pursued further; • Will summarize all proposals within three (3) business days (of receiving all information) on the Proposal Summary Form and provide typical financial analyses; • If the proposer did not respond appropriately or completely, DRES may request the complete information be submitted within a certain time frame; • In order to promote consistency in our relationships with potential landlords, all proposers will have an opportunity to provide additional information; • Will recommend likely candidates; • If less than five (5) proposals are obtained, provide an explanation on the Proposal Summary Form.
<p>Tours</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Coordinates agency personnel attending <p><u>Broker/Transaction Manager:</u></p> <ul style="list-style-type: none"> • Coordinates with proposer and agency contact
<p>Capital Lease</p>	<p><u>Agency:</u></p>

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Determination	<ul style="list-style-type: none">• May need to seek separate approval <p><u>Broker/Transaction Manager:</u></p> <ul style="list-style-type: none">• Considers the potential of capital lease issues considering transfer of title, total term cost, and other factors that might influence this determination;• All build-to-suit leases will be evaluated as potential capital leases.
Environmental Impact Report (EIR)	<p><u>Agency:</u></p> <ul style="list-style-type: none">• May have to manage this process if DRES does not administer the agency's leases or negotiations. <p><u>Broker/Transaction Manager:</u></p> <ul style="list-style-type: none">• Consult with the Department of Environmental Quality (DEQ) to determine if an Environmental Impact Report (EIR) will be needed for any of the potential "short list" properties, pursuant to Section 10.1-1188 of the Code of Virginia;• If the lease is to be written with DGS as Tenant, DRES (or its contract broker) will ask the landlord to provide the EIR report and DRES will submit it to DEQ for review;• A copy of the procedures manual can be found on the DEQ website at www.deq.virginia.gov.
One time cost analysis	<p><u>Agency:</u> Reviews cost analysis</p> <p><u>Transaction Manager:</u></p> <ul style="list-style-type: none">• Prepares One-Time Cost worksheet;• As general guidance, real estate cost savings projects should be carried out if they will result in a "payback" of one-time costs from cumulative rent savings achieved during the first two-thirds of the initial lease term.
VITA involvement (if relocation is advisable)	<p><u>Transaction Manager (or other project manager designated for selected projects):</u></p> <ul style="list-style-type: none">• Will initiate coordination of the project with VITA, if relocation becomes the most viable option for the agency's program;• Sends the Agency Space Planning Worksheet and the OSQ to a central contact person at VITA;• Expects that VITA will already have information on the agency's current needs;• Will stay involved and assist, as necessary, to maintain timelines.

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1.1.5 Schematic Design and Space Layouts (e.g. “test fits”)

Objective:

A schematic design or space layout will show how the agency may fit into a proposed space, based on the OSQ and the information the agency has provided on its Space Planning Worksheet. The layout must address the room and cubicle counts, desired adjacencies, personnel, support and special use spaces outlined on these forms.

Description	Action Required
Space layout (test fits)	<p><u>Agency:</u></p> <ul style="list-style-type: none"> Review and comment on space layout; If the agency requires additional revisions beyond what has been negotiated with a prospective landlord (usually one layout and one revision), the agency will need to pay the contractor directly. <p><u>Broker /Transaction Manager:</u></p> <ul style="list-style-type: none"> Arranges for test fits to be completed on at least two properties (whenever appropriate), based on base building drawings received from the proposer. <p><u>Payment for space layout:</u></p> <ul style="list-style-type: none"> Potential landlord may pay for one space layout and one revision (which could become the floor plan) with the Commonwealth’s space planning contractor; The amount may come out of the tenant improvement allowance; If landlord will not pay, the cost will be paid by the agency directly; Payment can be part of the negotiation process with a landlord.

1.1.6 Capital Lease Determination

- A lease may be considered a “**capital lease**” if it meets certain requirements identified in the Commonwealth Accounting Policies and Procedures (CAPP) Manual which can be found at: http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Main.cfm

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1.1.7 Negotiations between Proposers

Objective:

Since leases require the approval of the Governor, pursuant to 2.2-1149 of the Code of Virginia, our objective is to forecast, with as much accuracy as possible, the entire cost of the lease so this information can be presented when the lease is recommended for approval.

Negotiations:

- Will be conducted by the individual Transaction Manager or by the contract broker under DRES supervision pursuant to processes established by DRES;
- Will be held with at least two of the proposers;
- Will be defensible and fair to all proposers;
- Will be conducted in a manner to provide the best program solution for the agency at the most competitive cost;
- May result, where appropriate, in a *One-Time Cost Analysis* being performed by DRES to evaluate the impact of one-time costs on the economics of the deal;
- Will be properly documented by the party conducting the negotiations on behalf of the Commonwealth;
- Will be documented on the form entitled *Proposal Summary/Documentation of Negotiations With Landlord* which will be available in the transaction record in IREMS (resulting in the required documentation of the negotiations and establishment of the final terms);
- If revisions to the deal are needed, they will be documented within the Transaction module of IREMS by the person conducting the negotiations.

Lease Negotiations Without Detailed Plans and Specifications

- DRES understands that on occasion landlords may not be willing to spend the money to prepare detailed plans and specifications until they know the lease is approved. The issue can be addressed in one of the following ways in the lease document:
 1. Use the test fit plan as a schematic floor plan to attach to the lease document and use as a basis for development of a tenant improvement allowance. The work letter, along with a list of performance specifications and finishes should adequately protect the Commonwealth if the improvements were not completed in a satisfactory manner. The work letter would contain at least a schedule of: construction plan preparation and approval, permission for the Commonwealth to terminate the lease if the parties can't agree, and a guaranteed maximum price, which price could not be exceeded without executing a lease amendment, which is subject to the prior approval of the Governor. A stipulated contingency amount would be stated in the document which could be applied to address minor discrepancies between the on site conditions and the plans, but could not be

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used for changes in the overall scope of the work.

2. If the landlord is unwilling to provide construction drawings, specifications and cost estimates prior to lease execution, the maximum guaranteed prices will be established.
3. The agency can have the detailed plans, specifications and cost estimates prepared which will be part of the lease and the agency can agree to reimburse the landlord for these costs in the event the lease is not approved.
4. Other structures may be acceptable but will be reviewed by DRES for their legal and business ramifications.
5. The Landlord can agree to a turnkey lease with adequate protections to the state against non-performance.

1.1.8 Lease Document Preparation and Processing

Form/Document or Description	Action Required
Lease document	<p><u>Agency:</u> Review and comment</p> <p><u>Broker/Transaction Manager:</u></p> <ul style="list-style-type: none"> • TM (or broker's designee) drafts document with negotiated lease terms • Broker reviews draft for compliance with negotiated terms • Posts document in IREMS transaction record, sends team mail • At appropriate time, send document to Landlord for review/signature, coordinate return of original document for processing

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Landlord's ownership and signature

DRES will need to verify how the Landlord owns the property in order to set up the lease signature blocks properly.

Broker/Transaction Manager:

- Will request the legal name of the entity holding title to the property along with a mailing address, phone and FAX #, email address, etc., if not received with the proposal or subsequent negotiations.
- Will require:
 - a copy of the deed;
 - if owned by a LLC, a copy of operating or management agreement;
 - corporate resolution and/or other documentation as evidence of the landlord's authority to execute a lease for this property;
 - If landlord is out of state, a Virginia registered agent must be identified for reference in the lease.

Process lease for approval

Transaction Manager:

- Prepares recommendation once all data received;
- Routes package through DRES director, DGS director and Secretary of Administration for approval;
- Keeps agency generally informed of progress and pending actions (approval and signature process normally takes between seven (7) and ten (10) business days to complete);
- Once the required signatures are received, (and using the internal DRES Final Document Processing form) the document is scanned, uploaded to IREMS, appropriate original(s) returned to the LL, and other scanned copies are sent to team members;
- Provides appropriate information to Lease Administration team if the lease is a DRES managed lease.

LAS Entry (Lease Accounting System)

The following information applies to the LAS process for the Department of Accounts:

- The DGS Fiscal Office will enter LAS information only for those capital leases that are administered by DRES.
 - DRES will provide the DGS Fiscal Office with operating lease data for executive agency leases that are administered by DRES.
 - Agencies are responsible for entering LAS for its operating leases if required by the Department of Accounts (DOA), and for any capital leases not administered by DRES.
-

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1.1.9 Tenant Improvements Construction and Occupancy

Objective:

To provide for adequate and safe facilities for the provision of public services. This includes preparing the space within the tenant improvement budget and according to the space standards issued by DRES.

Description	Action Required
<p>Landlord’s TI construction documents and cost estimates</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Review/Approve Landlord’s documents; suggest revisions as necessary. (NOTE: Any changes to the agency’s scope of the buildout must be approved by DRES.) • Make necessary adjustments to keep within budget. <p><u>Broker or Transaction Manager:</u></p> <ul style="list-style-type: none"> • Review/Approve Landlord’s documents; suggest revisions as necessary; • Recommend necessary adjustments to keep within budget.
<p>Landlord contracts for construction</p>	<p><u>Agency:</u> N/A</p> <p><u>Broker or Transaction Manager:</u> N/A</p> <p><u>NOTE:</u> In the event the agency is to pay for any part of the construction, the Landlord can be required to solicit three (3) competitive bids.</p>
<p>Construction management methodology</p>	<p>Depending upon the availability of resources, the transaction team will determine how the construction will be managed.</p> <p><u>Agency:</u></p> <p>May need to appoint a local representative.</p> <p><u>Broker or Transaction Manager:</u></p> <p>DRES may facilitate the procurement of a contract with a professional construction management service company to assist in the process. The agency would have to pay for such services.</p>
<p>Change orders</p>	<p>All change orders will be managed through DRES.</p>
<p>Communications Equipment, Furniture Installation, Moving</p>	<p><u>Agency:</u></p> <p>The agency will contract and pay for such installations and services if not provided for in the tenant improvement allowance (TIA).</p>

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Services

Broker or Transaction Manager:

On large collocation projects, DRES may provide assistance in the coordination of the installation of any cabling, telecommunications equipment and service, furniture installation, moving, etc.

Certificate of Lease Commencement

Agency:

- If the buildout is being managed by the agency, the agency must notify Transaction Manager, approximately three (3) weeks prior to completion of the improvements that acceptance of the construction is imminent so that lease commencement and lease term can be established in the document;
- Reviews document for accuracy once prepared by Transaction Manager;
- If lease not managed by DRES, provides for agency and landlord signature, uploads to IREMS.

Transaction Manager:

- If the buildout is being managed by the Transaction Manager, manages approval of the construction according to the lease;
 - Prepares and processes the Certificate of Lease Commencement, and coordinates the first rent payment (for DRES administered leases).
-

Move management

Agency:

- Provides for the physical relocation of its people and equipment, and the cost of clean-up associated with any vacated leased space;
- From currently occupied space, agency will document the condition of the premises upon vacancy (video, photographs, etc.), checklist provided in Appendix D.

Broker/Transaction Manager:

- DRES can assist agencies with move management to new space, particularly for large collocation projects;
 - May provide a list of vendors, notional timelines, packing and staging advice, and assist in the coordination of the space fit-up and provide advice on the timing of the cabling installation.
-

1.1 Office Lease/Warehouse/Parking Structure

1.1.10 Facility Management During the Lease Term

Agency Responsibility:

- The occupying agency manages the day to day and routine maintenance issues with their resources and will maintain a record of all communications with the landlord relative to the maintenance of the facility. The record must include the date of the communication, the contact information for the occupant and the landlord, the maintenance issue, and copies of all correspondence.
- For those agencies where DRES has taken over lease administration responsibilities, the agency should escalate any management or maintenance issues that are not addressed properly to DRES.

DRES Responsibility:

- DRES will manage the enforcement of lease provisions requiring formal notice between the parties or for issues that may result in recourse involving self-cure or curative clauses.
- For those agencies where DRES has taken over lease administration responsibilities, in addition to a) and b) above, DRES will pay all costs due to the landlord in the lease and will collect this cost plus any fees due to DGS by interagency transfer (IAT).

1.2 Land Lease/Surface Parking

This section is intended to be used in situations where land is needed for a state program, such as a farming operation, surface parking lot, etc. Where land needs to be leased for capital construction projects see Section 1.3 of this manual, Long Term Ground Leases. Land leases for communications equipment will be handled in accordance with Chapter 5, Tower Policy.

To the extent that an agency is authorized by statute to lease a residential facility to an employee, this section will apply if the agency needs to lease the facility from a third party. An income lease between the agency and the employee is not needed as long as the rental is made pursuant to DGS Directive No. 6, Employee Housing.

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1.2 Land Lease/Surface Parking

1.2.1 Initiate Lease Requirement

Objective: The Transaction Manager and the agency work in tandem to identify a need to initiate a transaction.

- The Transaction Manager sets up a team meeting (in person or by conference call) to identify the scope and schedule of the transaction and to discuss team responsibilities.
- If the Commonwealth’s contract broker is referred, the Transaction Manager will initiate the representation letter.
- Prior to any solicitation for property under this section, the Transaction Manager will check all lease requirements against any surplus leased or owned property that may be available.

1.2.2 Definition of Lease Requirement

Certification Required:

- Section 4-5.07 of the Appropriation Act requires agencies to certify to DGS that the “volume of leased space conforms with the space planning procedures for leased facilities developed by the Department of General Services and approved by the Governor.” Refer to the *DRES Space Planning Policies and Procedures for Leased Facilities*, contained in Appendix A.
- Certification that “funds are available within the agency’s appropriations ... for the cost of the lease” is also required by Section 4-5.07 of the Appropriation Act. Certification is to be provided at the time an OSQ is finalized, as provided below.

Form/Document or Description	Action Required
<p>Agency Space Planning Worksheet</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Provides information on its property requirements on the Space Planning Worksheet for Agencies to the extent it applies to the property need; • Provides level of detail necessary to assure that all space needs are provided for to deliver the program(s) at the property. <p><u>Transaction Manager:</u> Assists agency as needed.</p>

1.2 Land Lease/Surface Parking

Office Space Questionnaire

Agency:

- Reviews OSQ when posted;
- Checks OSQ out of IREMS, enters the name of the authorized person who certifies the space need and availability of funding; uploads revised document to IREMS. Notifies team; OR
- Prepares certification memorandum, obtains authorized signature, scans, uploads to IREMS (or emails to Transaction Manager for upload to IREMS).

Transaction Manager:

- Prepares an OSQ only if personnel are to be located at the leased property;
- Transaction Manager can approve any OSQ where the space need is 196 usable square feet per full-time equivalent (USF/FTE) or less;
- DRES director (or designee) approves all others

Space and Funding Certification

Agency:

- Checks OSQ out of IREMS, enters information requested (for certification) and uploads revised document to IREMS. Notifies team.

Transaction Manager:

- Prints the document to pdf, stamps document with “approval” stamp in Adobe.
- Upload information on OSQ or upload a separate letter into IREMS

1.2.3 Market Search and Solicitation

Objective:

To receive as many viable responses as possible and to give all interested parties an opportunity to make a proposal.

- **# Responses** Normally, three (3) responses will be deemed an adequate and acceptable number of responses for consideration. If less than three (3) can be obtained, an explanation will be provided on the proposal summary form.
 - Efforts put forth to receive a number of viable responses may need to be adjusted in markets with limited inventory to assure adequate competition.
- **Analysis:** The analysis of the best economic option typically includes an analysis of all significant terms of the proposal, including rent, escalations, operating expenses, pass-through costs, the cost of tenant improvements, or any other charges, free rent or other incentives, and

1.2 Land Lease/Surface Parking

the suitability of the property to the mission of the agency.

- ***Selection*** The property that is eventually selected will normally be the one with lowest cost that meets the operational requirements of the agency using the property. If a different option is selected, the reasons will be documented.

Description	Action Required
<p>Initial market search</p>	<p>Agency:</p> <ul style="list-style-type: none"> • Provides known information to Transaction Manager/broker; current owner and/or new candidates. <p>Broker/Transaction Manager:</p> <ul style="list-style-type: none"> • Identifies possible candidate locations. <p>Sources: current landlord, building owners/brokers in target area; local government/economic development offices, etc.</p>
<p>Solicitation (RFP) prepared by:</p>	<p>Broker/Transaction Manager:</p> <ul style="list-style-type: none"> • Prepares market solicitation documents to seek available property; • DRES determines the most suitable method of conducting the market solicitation to generate the most competition, ;the normal method to solicit proposals is the request for proposals (RFP); • Will consult with the Dept. of Environmental Quality (DEQ) to determine if an Environmental Impact Report (EIR) will be needed for any of the potential properties, pursuant to Section 10.1-1188 of the Code of Virginia. A copy of the procedures manual can be found on the DEQ website at http://www.deq.virginia.gov/eir/stateimpact.html. <ul style="list-style-type: none"> ▪ If DGS will be the Tenant, DRES will ask the landlord to provide the EIR report and DRES will submit it to DEQ for review. • All solicitation documents must contain information advising the potential proposer of the unique requirements of the Commonwealth of Virginia as a Tenant. This information includes: <ul style="list-style-type: none"> • Only DGS/DRES or its contract broker is authorized to negotiate the terms and conditions of a proposed lease; • The Commonwealth reserves the right to negotiate separately with competing proposers and may reject any and all offers; • Certain disclosures related to prohibited lease terms when leasing to the Commonwealth;

1.2 Land Lease/Surface Parking

-
- Capital leases will require the approval of the General Assembly and/or the Governor; and
 - Leases considered a “major state project” by the Dept. of Environmental Quality require approval of an Environmental Impact Report (EIR), requiring approval by the Governor.

The full text of these requirements can be found in DRES’ standard RFP document and in Appendix C of this Manual (Prohibited Lease Terms).

Solicitation reviewed by:

Agency and Transaction Manager:

- Review posted document (in IREMS transaction module) within a requested timeframe;
- Use team mail in IREMS transaction record for all communications.

Agency:

- Respond to specific questions within time limit requested by Transaction Manager.
-

Solicitation issued by:

Broker/Transaction Manager:

- Issue to targeted candidates, current landlord, area brokers, etc., as appropriate, and on eVa
- All documents must be uploaded or retained in IREMS transaction record

Typical Response Time:

- 1-2 weeks; may be extended by DRES
-

Responses summarized by:

Broker /Transaction Manager:

- Reviews and evaluates all proposals for completeness, total cost, etc. and will make a determination, upon consultation with the agency, if any property is to be pursued further;
 - Summarizes all proposals within three (3) business days (of receiving all information) on Proposal Summary Form;
 - May request corrective or additional information if the proposer did not respond appropriately or completely, to be submitted within a certain time frame.
 - In order to promote consistency in our relationships with potential landlords, all proposers will have an opportunity to provide additional information.
 - Arranges tours of the preferred properties by the
-

1.2 Land Lease/Surface Parking

transaction team (agency, broker, Transaction Manager).

1.2.4 Negotiations

- Will be conducted by the individual Transaction Manager or by the contract broker under DRES supervision pursuant to processes established by DRES;
- Will be conducted between at least two of the proposers whenever possible;
- Will be defensible and fair to all proposers;
- Will be conducted in a manner to provide the best program solution for the agency at the most competitive cost;
- Will be documented on the form entitled *Proposal Summary/Documentation of Negotiations With Landlord* which will be available in the transaction record in IREMS (resulting in the required documentation of the negotiations and establishment of the final terms);
- If revisions to the deal are needed, they will be documented within the Transaction module of IREMS by the person conducting the negotiations;
- The transaction team will be notified via IREMS that the final terms have been posted to the transaction;
- If revisions to the deal are needed, they will be made in writing, reviewed by the Transaction Manager, documented and dated for the transaction record in IREMS.

1.2.5 Lease Document Preparation and Processing

Description	Action Required
Lease Document	<p>Agency: Review documents as requested</p> <p>Broker/Transaction Manager:</p> <ul style="list-style-type: none"> • Will draft the lease on the appropriate template, modified to reflect the negotiated lease terms. <ul style="list-style-type: none"> ▪ In the event the negotiated lease terms necessitate the drafting of language that is not provided for in the standard lease template, the Transaction Manager will draft the language and submit the document to the DRES Legal Specialist, who may revise the language and/or refer it to the Office of the Attorney General for approval “as to form.” This can happen at the initial drafting stage or after the Landlord has made comments. • Will send notice to the transaction team that the draft documents are posted for review in IREMS.

1.2 Land Lease/Surface Parking

Landlord Ownership and Signature

Agency: N/A

Broker/Transaction Manager:

- Will verify how the Landlord owns the property in order to set up the lease signature blocks properly, as follows:
 - Will require the legal name of the entity holding title to the property along with a mailing address, phone and FAX #, email address, etc.;
 - Will require:
 - a copy of the deed;
 - if owned by a LLC, a copy of operating or management agreement;
 - corporate resolution and/or other documentation as evidence of the landlord's authority to execute a lease for this property.
- Will verify the identity of the registered agent, if landlord is an out of state owner, for reference in the lease;

Process Lease for Approval

Transaction Manager:

- Prepares recommendation once all data received;
 - Routes package through DRES director, DGS director and Secretary of Administration for approval;
 - Will process the lease document (executed by the landlord) for approval and signature on behalf of the Governor, pursuant to Section 2.2-1149 of the Code of Virginia;
 - *NOTE: The approval and signature process within the Commonwealth normally takes between seven (7) and ten (10) business days to complete*
 - Will generally keep agency advised on know progress of the documents in the approval process;
 - Will coordinate the scanning of the signed document, upload to IREMS, return appropriate originals to the Landlord/agency.
-
-

1.2 Land Lease/Surface Parking

1.2.6 Construction and Maintenance of Improvements

- The lease will address the placement and maintenance of any improvements on the property, including the responsibility for the cost
- In the event of termination of a farm lease, the tenant may leave any annual crops on the property and harvest such crops when they reach maturity
- The transaction team manages approval of any construction or tenant improvements according to the lease and the payment of rent

Transaction Manager:

- Manages any notifications required, if the transaction involves relocation from an existing leased property.

Agency:

- Provides for the physical relocation of its own personal property, equipment, or trade fixtures
-

1.2.7 Facility/Property Management During Lease Term

- The occupying agency manages the day to day and routine maintenance issues with their resources and will maintain a record of all communications with the landlord relative to the maintenance of the property. The record should at least include the date of the communication, the contact information for both the occupant and the landlord, the maintenance issue, and copies of all correspondence
 - DRES will manage the enforcement of lease provisions requiring formal notice between the parties or for issues that may result in recourse involving self-cure or curative clauses.
 - For those agencies where DRES has (or will) take over lease administration responsibilities, in addition to a) and b) above, DRES will pay all costs due to the landlord in the lease and will collect this cost plus any fees due to DGS by interagency transfer (IAT).
-

1.3 Long Term Ground Leases

Transactions under this section will be highly customized given the circumstances of the specific case. Such transactions are contemplated to be for the purpose of capital construction that are inseparable from capital projects that have been (or need to be) approved by the General Assembly. These transactions will be evaluated individually with an understanding of the relationship of the facility to the community.

A ground lease is the equivalent of a fee acquisition and may require compliance with the provisions Chapter 2 (Fee Acquisition) of the Real Property Management Manual in addition to applicable provisions of this Manual.

1.4 Automatic Renewals, Exercising Options, and Lease Amendments

1.4.1 Update of Space Planning Worksheet/DRES Required

Objective:

The potential financial impact of an automatic renewal, option, or lease amendment is identical to that of a brand new lease. Prior to allowing an automatic renewal to occur, the exercise of an option, or processing of a lease amendment (particularly for expansions and extensions), the agency is required to submit an update of the space planning worksheet in order to maintain the then current space guidelines in all leases.

Description	Action Required
<p>Executive agencies (e.g., DRES administered leases)</p>	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Provides Space Planning Worksheet and information about agency’s preferences to Transaction Manager; • Provides additional funding and space certifications for automatic renewals, option terms, and lease amendments, where necessary; • Communicates its strategic vision for the facility to DRES. <p><u>Transaction Manager:</u></p> <ul style="list-style-type: none"> • Runs monthly lease expiration reports to evaluate expirations; • Manages all notifications to the Landlord regarding entering automatic renewal periods, the exercise of options, or lease amendments, according to specific language in the lease document, based on the rental market at the time; • Begins the process of evaluating the alternatives at least six months (or more, if needed) prior to the first notice date in the lease and will document any action in the file (including electronic files); <ul style="list-style-type: none"> ▪ This action will be based on information provided by the agency regarding its strategic plan for the particular program. • Consult with agencies and request update to the Space Planning Worksheet, as needed. <p><u>Broker:</u></p> <ul style="list-style-type: none"> • Assist, negotiate, etc., as needed and if referred to the transaction

1.4 Automatic Renewals, Exercising Options, and Lease Amendments

Non-Executive agencies (e.g., leases not administered by DRES)

Agency:

- Provide Space Planning Worksheet and information about agency's preferences to Transaction Manager;
- Provides additional funding and space certifications for automatic renewals, option terms, and lease amendments, where necessary;
- Provides all notifications to the Landlord regarding the exercise of options based on the decision made jointly by DRES and the agency;
- Provides any marketing information it has acquired.

Transaction Manager:

- Runs monthly lease expiration reports to evaluate expirations;
- Can recommend action based on the rental market at the time;
- Engages the agency in the process of evaluating the alternatives at least six months prior to the first notice date in the lease and documents any action in the IREMS record;
- Drafts any legal documents that need to be processed for approval

Broker:

- Assist, negotiate, etc., as needed and if referred to the transaction
-

1.4 Automatic Renewals, Exercising Options, and Lease Amendments

Lease amendments, general information

- During a current lease term, there may be a need to change lease terms and conditions to accommodate the needs of the agency. A lease amendment may be the preferred method to document the change;
 - Use of a lease amendment rather than a new lease document is subject to the discretion of the DRES director. DRES will evaluate the course of action based on the nature of the base lease, with criteria including (but not limited to) the following:
 - Evaluate if there are substantial differences in the base lease from the current template lease form;
 - Evaluate if there are terms in the base lease that are now considered unfavorable to the Commonwealth;
 - Determine if there are provisions in the base lease that are illegal (such as an estoppel provision) in the base lease;
 - Extensions of a lease term where new solicitation and/or negotiation have occurred will most likely require that a new lease document be approved in accordance with Sections 1.1 or 1.2 of this Manual.
 - A new lease form may need to be part of the negotiation process with the landlord.
 - Approval by the Governor is required for all lease amendments;
 - Because amendments are not drafted from a template document, all lease amendment documents require review by the DRES legal specialist prior to processing. The DRES legal specialist may refer the document to the Office of the Attorney General for approval “as to form.”
-

1.5 ***Short-Term Emergency Leases***

- Leases of an emergency nature are exempt from the procedures outlined in this manual, although all statutory requirements must be met, including certification of funding and conformance with space planning procedures pursuant to §4-5.07 of the Appropriation Act.
- Normally an emergency lease should not exceed a two (2) year term since it is intended to provide an immediate facility replacement that meets minimal operational needs until a longer term solution can be put in place pursuant to Sections 1.1 or 1.2 of this Manual. Because of the immediacy of this facility requirement, and the short-term nature of the lease, the emphasis will be on the timeliness of the implementation rather than optimizing the amount of space or cost of the space.
- **Executive Agencies:** When such leases are secured by executive agencies and when DRES administers the agencies' leases, administration of emergency leases may fall under DRES, subject to the discretion of the DRES director, upon evaluation of the emergency situation and the duration of the emergency lease.

Description	Action Required
<p>Determination of Emergency</p>	<p>The need for space shall be deemed an emergency in one or more of the following events:</p> <ul style="list-style-type: none"> • 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 agency from accomplishing its mission; • The Governor declares an emergency for which space is needed to handle the emergency condition; • Such other circumstances as the respective Cabinet Secretary deem to be an emergency.

1.5 ***Short-Term Emergency Leases***

Documentation**Agency:**

- Notifies the Transaction Manager in writing providing a description of the conditions causing the emergency and copies of the emergency declaration if the emergency is applicable;
- The written notification may be made by facsimile or email;
- Sends executed lease documents to Transaction Manager for IREMS documentation.

Transaction Manager:

- Assists the agency as necessary, providing information about available properties, negotiations, etc.;
 - Notifies the DRES director of the emergency situation;
 - Provides support to the agency for a permanent leasing solution, if necessary, and in compliance with other sections of this manual.
 - Enters lease into IREMS (with a “EL” at the end of the lease name to identify it as an emergency lease) to follow critical dates, etc.
-

1.6 Temporary Extension of Existing Lease

Description	Action Required
Determination of Need	<p>Various communications between an Agency and a Transaction Manager may indicate the need for a temporary extension of an existing lease as provided below:</p> <ul style="list-style-type: none"> • An unexpected delay occurs with a planned move to a new leased facility that will not be completed by the expiration date of the existing lease; • Will only be needed for less than 6 months; • Other circumstances that may be documented by the Transaction Manager.
Documentation	<p>Transaction Manager:</p> <ul style="list-style-type: none"> • Prepares any documentation necessary to extend the lease for a period of less than six months; • May direct that the extension be executed as a Temporary Lease and handled in the manner described in Section 1.7 of this Manual.

1.7 Temporary Lease

Leases that are exempt from the review and approval process

Pursuant to Section 2.1-1149 of the Code of Virginia, leases having known and fixed terms of less than six months are exempt from the review and approval process. However, certain requirements are outlined below:

Description	Action Required
Definition of “Temporary” Lease	<ul style="list-style-type: none"> • A space need has a known and fixed term of less than six (6) months; • The exemption is not to be used to enter a lease temporarily until a permanent lease is approved for the same space; • Other circumstances that may be documented and approved by DRES.
Documentation	<p><u>Agency:</u></p> <ul style="list-style-type: none"> • Manages all temporary leases, including payments to the Landlord, proper move out and documentation of the space condition, etc. • Assures that temporary lease documents do not contain renewal language that could be construed as allowing the lease to extend beyond a total of six (6) months; • Sends the Transaction Manager a copy of the executed lease document; • Sends the Transaction Manager the executed space and funding certification required by Section 4-5.07 of the Appropriation Act (or its successor), which certification must include the beginning and termination date of the temporary lease; • Rent payment documentation to the Dept. of Accounts carry the following notation: "Temporary Lease excluded from approval of the Governor pursuant to Section 2.2-1149 of the Code of Virginia. The beginning date is _____ and the termination date is _____." • Sends documentation to the Transaction Manager that the space has been vacated by the termination date. <p><u>Transaction Manager:</u></p> <ul style="list-style-type: none"> • Manages documentation provided by agency; • Provides follow up to assure timely termination and vacation of the temporary lease; • Enters minimal data into IREMS (with a “TL” at the end of the lease name to identify it as a temporary lease) to follow critical dates for vacating the space.

1.8 “Sublease” of Leased Premises to Another State Agency

This section provides for the occasions when an agency may have excess leased space that another agency can use, such as:

- During the course of any lease term an occupying agency may experience a staff reduction, or other event that could free up some leased space. In this event, the tenant agency should engage the Transaction Manager to see if there is another agency that could use the space.
- Agencies “leasing” to one another under a Temporary Transfer Agreement (TTA) in leased space should not profit off one another as if they were in the real estate business. Only the actual cost of operating the space should be charged.

IF	AND	THEN
DGS is Tenant, during a current lease term	Occupant in lease wants to release space to another executive agency	<ul style="list-style-type: none"> • DGS can decide to use a temporary transfer agreement (TTA); or • DGS can revise the Occupant’s footprint through a revised MOA and may assign the remaining space to another executive agency through their MOA*
DGS is Tenant, during a current lease term	Occupant in lease wants to sublet to a non-executive agency	<ul style="list-style-type: none"> • DGS can amend Occupant’s MOA and assign the space to the non-executive agency, with that agency’s agreement through a separate MOA
DGS is not the Tenant	Tenant wants to sublet to an executive agency	<ul style="list-style-type: none"> • Tenant can do a TTA with DGS, and DGS assigns the space to the executive agency under their MOA*
DGS is not the Tenant	Tenant wants to sublet to a non-executive agency	TTA between the agencies
* TTAs or space assignments under a TTA with executive agencies may be administered by DRES.		
<ul style="list-style-type: none"> • If one of the above situations does not suit the agency’s situation, contact the Transaction Manager with specific information so that a process can be defined. 		
<ul style="list-style-type: none"> • All TTAs must be processed through DRES for approval by the Governor. 		

1.9 Lease versus Buy or Build Scenarios

Full Policy Under Development

- Under certain circumstances, DRES may conduct a feasibility study to evaluate whether it is most economic to lease, buy or build a facility. DRES is developing recommendations to provide for this flexibility in the future.

Appendices

Appendix A

Space Planning Policies & Procedures for Leased Facilities

1. **PURPOSE:** This policy provides guidelines and procedures for analyzing occupant needs and determining building space requirements for state departments, agencies and institutions seeking leased facilities. This revision updates any previously published space planning guidelines in support of the portion of the real estate initiative designed to reduce the amount of space leased by state agencies. In the continuing effort to reduce costs the guideline has been reduced to 198 usable square feet per FTE (USF/FTE), excluding approved special needs space. See the following link for more information:
<http://www.dgs.virginia.gov/LinkClick.aspx?fileticket=zG7h7C9HBoM%3d&tabid=930>
2. **AUTHORITY:** Virginia Code §2.2-1149 and §4-5.07 of Chapter 781, 2009 Acts of the Virginia General Assembly (Appropriation Act) and subsequent Acts.
3. **RESCINDED POLICIES:** Section 5 and Appendices C and I of the *Real Property Management Manual, Chapter One: Acquisition by Lease* dated December 15, 1993.
4. **EFFECTIVE DATE:** January 1, 2007; rev. August 18, 2009
5. **POLICY ADMINISTRATION:** This Policy is administered by the Division of Real Estate Services of the Department of General Services (DRES). Required documents and materials should be submitted electronically to the DRES Transaction Manager (TM).
[first name.last name@dgs.virginia.gov].

Division of Real Estate Services
Patrick Henry Building
1111 East Broad Street, 2nd Floor
Richmond, Virginia 23219
Telephone: (804) 225-3874
FAX: (804) 225-4673

7. **APPLICABILITY:** Departments, agencies and institutions of the Commonwealth shall follow these guidelines in the acquisition of leased building space.
8. **DEFINITIONS:**

Agency: Any department, agency or institution of the Commonwealth of Virginia subject to Va. Code §2.2-1149.

DGS: The Department of General Services

DRES: The Division of Real Estate Services, a division of the Department of General Services.

Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-1996 – Standards adopted jointly by the American National Standards Institute and the Building and Owners Managers Association to provide a method of measuring building floor space that is commonly understood by landlords and tenants. The standards specify how space is to be measured (e.g., from the inside face of a wall, the outside face or the center) and it distinguishes between space under the control of tenants and other space the tenants require in common.

- Usable Space generally describes the space under the control of the tenant such as offices and circulation space among offices.

Appendix A

Space Planning Policies & Procedures for Leased Facilities

Restrooms that are under the control of the tenant may be included. Typically referred to as usable square feet or USF.

- **Rentable Space** generally describes the entire space enclosed within a building, less any vertical floor penetrations (such as elevator shafts and stairwells). Tenants generally pay a pro rata share of the common use spaces that include such areas as entryways and lobbies, hallways, elevator lobbies, mechanical rooms, and common use restrooms. Usually referred to as rentable square feet or RSF, this is typically the calculated space on which tenants pay rent.
- **Ratio of usable space to rentable space** - Landlords are responsible for providing the ratio of usable space to rentable space, expressed as a percentage and sometimes called a “core factor”. The area leased by a tenant is increased by the core factor to convert usable square feet to rentable square feet. Prior to receiving this information, DRES may use 12% for planning purposes.

9. POLICY:

Virginia Code §2.2-1149 provides that no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means without following the guidelines adopted by the Department of General Services and obtaining the prior approval of the Governor. Section 4-5.07 of the current Appropriation Act provides that Agencies shall not acquire property by lease until the Agency certifies to the Director of the Department of General Services that the volume of space conforms to space planning procedures developed by the Department of General Services and approved by the Governor. The space planning procedures are provided in the guidelines herein.

Determining Space Need:

The Space Guidelines set forth in Appendix A-1 are provided to determine floor space needs.

- The allowable usable square footage numbers set forth in the Space Guidelines are the **maximum** allowed and do not constitute an upward goal to be achieved. The number of hard-walled offices planned out in new or renovated space shall not exceed the maximum number determined by DRES, in an effort to provide for maximum flexibility.
- Agencies shall prepare the Agency Space Planning Worksheet in a manner that communicates its functional space requirements. DRES will use this information to prepare the Office Space Questionnaire (OSQ) which will determine the amount of space that will be sought for lease and issue an approved OSQ.
- Agencies are advised that the preparation of the OSQ and the space design process are not the same. The OSQ is a paper exercise that provides space requirements for rough planning. Design, however, is constrained by building walls, building systems, structural supports and such, so the end result is that the actual amount of space leased may be more or less than that approved in the OSQ. However, though the number of

Appendix A

Space Planning Policies & Procedures for Leased Facilities

square feet may be different, the space shall be planned and constructed substantially in accordance with the requirements on the approved OSQ.

- The aggregate usable square footage determined by the OSQ **shall not exceed 198 usable square feet (USF)** per authorized FTE without approval of the Division of Real Estate Services (DRES). This excludes the agencies' special needs space as approved by DRES.

DRES Assessment of Size of Existing Leased Space:

The Space Guidelines presented in Appendix A-1, establishing the amount of usable space allowed for particular functions, are incorporated into the DRES Space Planning Policies and Procedures. Agencies shall adhere to these procedures for all new leases, for renewal of existing leases and for adding space in existing leased facilities. In instances where an Agency occupies and requests to remain in non-conforming space, DRES will determine the feasibility and impact of remaining in the existing space, reconfiguring the space, or relocating.

Space Guidelines

The following guidelines are to be used when preparing the Agency Space Planning Worksheet and the Office Space Questionnaire (OSQ) for leased space.

Your DRES Transaction Manager can assist with questions concerning these guidelines.

OFFICE SPACE	MAXIMUM AREA (Usable Sq. Feet)	
1. PERSONNEL SPACE	Private	Open
Agency or Department Director (position requires confirmation by the General Assembly)	196	
Agency or Department Director	150	
Asst. Director and Confidential Management Staff ¹	120	
Professional Staff Supervisor		96
Professional Staff and Support Admin. Supervisor		64
Contractors/Auditors		48
Field Staff, Floating Staff, Receptionist and Support Admin., Volunteers and Interns		48
<p>¹ <i>“Confidential Management Staff” shall mean those staff members who conduct their confidential functions the majority of their time and a shared lockable area is not considered practical for occasional confidential functions (e.g., the tools needed for the confidential work are not available in any shared lockable area). Storage and maintenance of confidential files (such as personnel files) will NOT serve as justification for a private office. A position description (describing the features of the job that requires confidential work be done at the employee’s desk rather than in a shared confidential room and constitutes a majority of their time) is required as justification for a private office.</i></p> <ul style="list-style-type: none"> ▪ <i>Future Growth - If the Agency has specific instances where there is a reasonable assurance that a particular facility or program will grow and the lease procurement cycle has begun (or will soon begin), then Agencies may add a separate category to</i> 		

Appendix A-1

DRES Space Planning Guidelines

the personnel section of the Agency Space Planning Worksheet and provide justification for a growth area to DRES for review. This would include instances where the Agency has made specific funding requests for new FTE and/or new programs in a particular location. DRES will review the request and work with Agencies to resolve space issues in these instances.

- *Field office personnel who are routinely out of the office 50% or more of the normal work week shall be restricted to open workstation space and may be considered as ½ of an FTE position for the purposes of determining office space requirements. Exceptions may be considered by DRES with appropriate justification of the nature of the position.*
- *Personnel who “float” between locations shall not be considered more than ½ of an FTE at any location where they occupy space.*

Appendix A-1 DRES Space Planning Guidelines

2. SUPPORT SPACE	MAXIMUM AREA (Usable Sq. Feet)
A. RECEPTION AREAS (excluding receptionist) - 1-5 visitors (peak*)	144
Over 5 Visitors add (per additional visitor, peak*)	10
B. CONFERENCE ROOMS (per chair, peak*) – First 10	25
Plus sq. feet for each person over 10	15
<i>* Peak is defined as the highest number of users at any one time on a frequent (typically 4 to 5 times per week) basis during a weekly period</i>	
C. FURNITURE/EQUIPMENT (Except in personal offices)	
Copier (freestanding)	25
Copy Room (including copier)	80
Plan/Flat File	25
Lateral File (typically 30", 36", or 42" wide, 13 3/4", 16 3/4" or 19 1/4" deep)	10
Vertical File (letter) (typically 15" wide by 25", 26 1/2", or 28 1/2" deep)	7
Vertical File (legal) (typically 18 1/4" wide by 25", 26 1/2", or 28 1/2" deep)	8
Fax Machine, Network Printer, Shredder	10
Scanning Station (w/ chair)	24
<ul style="list-style-type: none"> ▪ <i>In planning for file rooms, all agencies are required to comply with records retention requirements established by the Library of Virginia.</i> ▪ <i>For filing needs not listed above (such as high density systems or use of shelving for file rooms), indicate the appropriate information on the OSQ for review by DRES.</i> 	
D. LOUNGE/BREAKROOMS	
Standard kitchen equipment	60
Seating (Per chair, as determined below)	15
<p><i>Lounge/Breakrooms should be requested when there is a demonstrated need, such as a location where no building facilities or local facilities are available.</i></p> <ul style="list-style-type: none"> ▪ <i>To determine seating space, use 20% of the FTE, times 15 SF, plus 60 SF for equipment (example: 24.5 FTE * 20% = 4.9 * 15 SF = 73.5 SF + 60 SF = 134 SF rounded).</i> 	
E. OTHER SUPPORT SPACE NOT LISTED ABOVE	
<ul style="list-style-type: none"> ▪ <i>This includes general storage areas, computer/server room, data closets, restroom facilities (if exclusive to the Agency's space requirement), or other unique spaces.</i> ▪ <i>Submit detailed information on the space requirement and how the size was determined.</i> 	
	As approved by DRES

Appendix A-1
DRES Space Planning Guidelines

3. "SPECIAL" SPACE REQUIREMENTS	MAXIMUM AREA (Usable Sq. Feet)
A. INTERVIEW AREAS	80
B. TESTING, TRAINING OR HEARING ROOMS (per chair, peak) Seminar Seating	15
Auditorium Seating	10
C. EXAMINING/MEDICAL ROOMS	120
D. OTHER "SPECIAL" SPACE TYPES NOT LISTED ABOVE <ul style="list-style-type: none"> ▪ <i>This includes specific client service areas, laboratories, urinalysis or blood screening areas, courtrooms, client "holding rooms," or other spaces that are considered unique to the Agency's program.</i> ▪ <i>Submit detailed information on the space requirement and how the size was determined.</i> ▪ <i>DRES has identified certain agencies and institutions having special space requirements that may cause the overall USF to exceed the 205 USF/FTE standards. DRES recognizes that additional special space requirements may be identified and considered as programs grow and change over time. We encourage agencies and institutions to work with DRES to identify and justify any new special space needs so that the appropriate course of action can be determined.</i> 	As approved by DRES
<p>4. CIRCULATION (to compute total Usable Square Feet) <u>Unless otherwise directed by DRES:</u></p> <ul style="list-style-type: none"> • <i>If the # of private offices is > the # of open/modular workstation spaces, add 30% to the total of all Personnel, Support and Special space for circulation. OR</i> • <i>If the # of private offices is < the # of open/modular workstation spaces, add 35% the total of all Personnel, Support and Special space for circulation.</i> <p>NOTE: THE AGGREGATE USABLE SQUARE FEET (USF) SHALL NOT EXCEED 205 USF PER FTE (excluding approved special needs) WITHOUT THE PRIOR APPROVAL OF DRES.</p>	
<p>5. WAREHOUSE/STORAGE, RETAIL, SERVICE (E.G., DMV BRANCHES, RESIDENTIAL, LAND AND OTHER TYPES OF SPACE NOT LISTED</p>	
<p><i>An OSQ may not be required if the Agency submits appropriate documentation of the space need, including a detailed description of the space required and its contemplated use.</i></p>	As approved by DRES

Appendix B

General Provisions, Leases

1. Accessibility

The objective is that all leased state facilities will be accessible to all persons needing access to a facility, including customers, staff, visitors, etc. The Americans with Disabilities Act (ADA) of 1990 requires that a public entity provide equal program accessibility to the disabled and that it may not discriminate in employment on the basis of lack of accessibility. State law provides that while public entities may not be required to lease accessible space, if non-accessible space is occupied, that the public entity must provide access to all of the programs conducted in that space and it must provide reasonable accommodations for employees who may need them.

Variations from the standard lease language will necessitate review by the Office of the Attorney General for compliance with current law.

2. Attorney General Approval of Lease Documents “As to Form”

Expense leases do not require approval “as to form” by the Office of the Attorney General and standard templates are available that do not require separate approval. However, DRES will request legal review of leases when substantive changes made to the standard lease form may increase the risk of the Commonwealth leasing the space. DRES’ Legal Specialist or the Office of the Attorney General will determine if specialized review and/or approval is necessary.

3. Condominium

A lease of space within a structure with condominium ownership will initiate the need for a review of the condominium documents. The broker or the Transaction Manager will request these documents early in the process. Legal review of these documents is required.

4. Conflicts of Interest

Persons engaged in leasing real property to or on behalf of the Commonwealth are subject to the provisions of the State and Local Government Conflict of Interests Act (Section 2-2-3100 et seq of the Code of Virginia).

5. Consolidation and Co-location

Consolidation and co-location of state facilities can have the potential for improved service delivery, shared resources, and cost savings. DRES will seek opportunities to consolidate or co-locate state agencies to the greatest practical extent in order to arrive at the most cost efficient alternative. The Commonwealth’s contract broker and the Transaction Manager will assess this issue on an ongoing basis as transactions are contemplated.

6. DGS as Tenant

Leases for agencies within the Executive Branch will normally be in the name of DGS as tenant, with occupancy by the agency, department or institution. DGS assigns leased space to agencies by an agency to agency memorandum of agreement (MOA) between DGS and each executive branch agency. The MOA spells out the responsibilities of the parties.

DGS will be responsible for payments to landlords and agencies will reimburse DGS for the cost plus any fees associated with the transaction. Lease administration by DRES includes sending legally required notices and the process of managing the contract terms.

Leases for non-executive branch agencies will be in the name of the agency, department or institution.

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7. DRES Record Keeping Requirements

Pursuant to §2.2-1136 of the Code of Virginia, DRES is “responsible for the maintenance of real property records of all state institutions and agencies, except records of real property acquired by the Department of Transportation for the construction of highways,” To meet this requirement, DRES may request information from agencies and institutions from time to time.

The information collected is available to agencies for reporting purposes in IREMS.

9. Environmental Impact Reports (EIR)

Pursuant to Section 10.1-1188 of the Code of Virginia an EIR may be required for leases considered “major state projects.” The requirements may apply to new construction or an expansion where the footprint of the building is being altered. Information on the EIR procedures can be found on the DEQ website, at www.deq.virginia.gov/eir/stateimpact.html.

If the lease is to be taken in DGS’ name, DRES will initiate the process to determine if an EIR is needed, procure the EIR and submit it to DEQ for processing. If DGS is not to be the Tenant, the agency will manage this process.

Lease negotiations will incorporate who will pay for the EIR.

10. Executive Order 48 (*Energy Efficiency in State Government*)

Executive Order 48 sets forth certain instances where DRES will consider certain energy efficient preferences in recommending approval of new or renewal leased facilities. Below is a partial list to be considered:

- In a metropolitan area within ¼ mile of a bus, trolley, Metro, or commuter rail stop;
- When leased facilities meet the U.S. Green Building council’s LEED rating system or the U.S. EPA/Department of Energy’s “Energy Star” rating’
- Facilities that are pedestrian and bicycle accessible

11. Exceptions

Exceptions from any of the requirements contained in these procedures will be issued only under extraordinary circumstances. Agencies cannot be exempted from legal requirements. Requests for exceptions must be d

ocumented and submitted in a timely manner to DRES for consideration.

12. Lease Amendments

Lease amendment documents will be drafted by the DRES Transaction Manager and submitted for review and signature as provided in this policy. All lease amendment documents must be reviewed by the DRES Legal Specialist and may require approval “as to form” by the Office of the Attorney General.

If the base lease is determined not to comply with current policies and procedures, a new lease may be required.

13. Lease Periods

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Leases should normally be for a period of five (5) years. DRES will assess other situations as transactions arise. Shorter term leases may be justified when agencies' needs are unpredictable and longer term leases may be justified in certain circumstances, such as the need to cover the cost of extraordinary tenant improvements over a longer term.

14. Letters of Intent

Letters of intent are not to be used in real estate transactions.

15. License versus Lease; Use Agreements

Documents that define a premise for which an occupant is responsible will be treated as a lease, regardless of the title of the document. Such documents will be handled as a lease under §2-2.1149 of the Code of Virginia. Such documents that are found to be in existence but have not been properly approved pursuant to the Code of Virginia will be treated as new transactions and are subject to the requirements of this Chapter.

16. Locating Facilities in Urban Centers

Section 2.2-1154 B of the Code of Virginia shall be considered when locations of leased facilities (not including institutions of higher education) are being evaluated. This section is reprinted below:

B. The Department shall require every state department, agency or institution responsible for the construction, operation or maintenance of public facilities within the Commonwealth, when siting state facilities and programs, to evaluate the feasibility of siting such facilities and programs in the Commonwealth's urban centers. In making such evaluation, the agency shall consider (i) the fiscal advantages of utilizing the existing infrastructure available in urban centers as compared to the construction of new infrastructure in less developed areas, (ii) the potential savings associated with leasing facilities from the private sector in urban centers as compared to purchasing or constructing new facilities in other areas, (iii) the convenience to employees and citizen users of state facilities and programs of placing such facilities and programs in close proximity to the road and transportation systems and other amenities found in the Commonwealth's urban centers, and (iv) whether the local governing body is supportive of the location as a desirable use of available land resources. This subsection shall not be construed to limit the ability of a state department, agency or institution to locate facilities based on other factors such as a rural locality's desire to stimulate economic development or the need to have regionally dispersed services.

17. Minority Participation

The Commonwealth encourages the use of qualified Small, Women and Minority-Owned (SWAM) Businesses, certified through the Department of Minority Business Enterprises (www.dmbe.virginia.gov). Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the landlords are encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the landlord will need to report the use of SWAM subcontractors by providing, at a minimum, the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.

18. Move Management (See Appendix D)

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General Provisions, Leases

DRES will assist with move management for agencies on an as needed basis to limit double occupancy. For executive agencies where DRES administers the leases, DRES will manage any notifications to the Landlord and the agency will manage the relocation of its own personal property, equipment and trade fixtures.

19. No Cost Leases or Free Space

Any occupancy or use of space or land by a state agency, department or institution (unless separately delegated), regardless of its cost, is subject to §2-2.1149 of the Code of Virginia, requiring approval of the Governor. It must also comply with the Section 4.5-07 (or subsequent edition) of the Appropriation Act, and DGS' space guidelines. The Commonwealth's use of any property, even at no cost, creates certain liabilities that must be addressed via all cited statutes.

20. Occupancy/Tenant Improvement Standards

Agencies shall not seek or specify "Class A" space in solicitations for space without the prior written approval of the Director of the Division of Real Estate Services. Agencies will, at all times during any lease term, abide by the occupancy standards and guidelines set forth by DRES contained in this manual (as attached to the standard RFP template). These standards promote good quality, safe environments for staff and clients of state agencies' public programs. Where these standards may conflict with a landlord's building standard finishes, the differences will be evaluated by DRES and a decision made as to the final choice.

Agency specific standards will be reviewed by DRES and used on a case by case basis.

21. Parking

- Agency parking needs in leased space will be initially determined on the basis of 4 spaces per 1,000 rentable square foot, not on the number of employees.
- Parking for fleet vehicles will be assessed based on the agency's demonstrated need.
- Parking for customers will be assessed based on the agency's demonstrated need (such as visitor logs, etc.).
- Lease of private parking spaces separate from an effective lease (such as when additional spaces are needed for staff or customers) must follow the requirements outlined in Section 1.2 of this Manual.
- Refer to Section 1.1 of this Manual for leases of parking structures of a commercial nature;
- Pursuant to DGS Directive 14, agencies may be required to charge their employees for parking spaces that are included as part of a leased facility.

22. Payment of Rent in Arrears

It is the policy of the Commonwealth to pay rent in arrears. This is addressed in the request for proposals (RFP) as notice for the landlord.

23. Processing of Transactions for Approval

Transactions are generally handled on a "first come, first served" basis. DRES will, to the extent possible, honor requests for expeditious handling on a case by case basis, subject to

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the availability of resources. Seven (7) to ten (10) business days should be allowed for the processing of documents for the Governor's approval.

24. Signing and Recording of Leases

In general, signatures to a lease should be notarized when the term of the lease exceeds five (5) years.

It is recommended that leases be recorded in the following instances:

- a lease of greater than ten (10) years;
- a lease with a shorter term if the Landlord has substantial obligations to the Tenant during the latter portion of the term (such as free rent, tenant improvement allowances, and the like);
- all capital leases; and/or
- a lease where the agency invests money for substantial tenant improvements up front.

If a Landlord asks that a lease not be recorded, the lease may provide for us to record a Memorandum of Lease.

For executive agencies where DRES administers the leases, DRES will take care of having the leases recorded, assuring that no taxes or fees are charged by the local clerk of the court. For all other agencies, DRES can provide information to the agencies to assist in having the leases recorded.

25. Standard State Lease

It is a requirement that a standard Commonwealth of Virginia Deed of Lease form be utilized for all Commonwealth lease transactions. DRES will prepare the lease on the standard form for landlord's review and signature, followed by Tenant's approval process and signatures through the Governor's Office. Substantive revisions to this form by the landlord may require additional legal review at the state level and can result in a delay of the lease approval process.

26. Virginia Public Procurement Act (VPPA)

Real estate transactions are not included in the Virginia Public Procurement Act (VPPA). However, goods and services that may be required to finalize real estate transactions may require compliance with the VPPA.

Appendix C

Prohibited Lease Terms

Because of a variety of specific laws and/or the doctrine of sovereign immunity, departments, agencies and institutions cannot agree to certain terms commonly found in real estate leases, agreements and contracts. The prohibited terms include:

1. Any express or implied waiver of the sovereign immunity of the Commonwealth of Virginia, any department, agency or institution, or any of its or their officers, agents or employees
2. Any agreement or promise to indemnify, defend or hold harmless any person or entity.
3. Any agreement to provide or maintain insurance or insurance coverage to or for the benefit of any person or entity.
4. Any agreement that provides for binding arbitration or other binding dispute resolution.
5. Any estoppel against the Commonwealth or a department, agency or institution, or any agreement which requires the execution of an estoppel certificate, any provision that would prevent the Commonwealth from making claims or establishing any defense against claims, or waiver of trial by jury.
6. Any agreement that constitutes a waiver of subrogation or waiver of subrogation rights.
7. Any agreement requiring or providing for the payment of any attorney's fees, collection costs, penalties or liquidated damages. *We can consent to paying attorney fees, but only if it is a mutual obligation in which the loser pays the attorney fees of the winner.*
8. Any agreement purporting to grant security interests in property of the Commonwealth of Virginia; and, any agreement providing default provisions which provide for or authorize (1) landlord to use any self-help remedies, (2) the distress or seizure of property of the Tenant, or (3) the blocking of the right of Tenant's access to and removal of property and records of the Tenant from the Leased Premises.
9. Any provision prohibiting collection of debt by the Commonwealth of Virginia or any of its agencies under Virginia Code §58.1-520 et seq. (Setoff Debt Collection Act). *E.g., a provision that says "Tenant shall pay Rent without setoff or deduction" is a violation of this prohibition.*
10. Any provision that seeks to over-ride, constrain, alter or amend the requirement for appropriation of funds to be paid by the Commonwealth of Virginia or any its agencies, departments or institutions.
11. Any provision that requires paying rent in advance.

These issues are non-negotiable, and any contrary provisions in a lease, contract or agreement are unenforceable against the Commonwealth or its agencies.

Appendix D
Tenant/Occupant Relocation Checklist

Old Location			New Location		
Moving From (address):			Moving To (address):		
Former LL Contact Name:			New LL Contact Name:		
Email:			Email:		
Phone:			Phone:		
Choose Mover:					
Lease expiration:			Lease commencement:		
			Arrange with building office for exclusive use of elevators during move-in.		
			Arrange for security, and telephones at building for use during move-in		
			Order furniture, if needed, for areas not in current space		
			Order replacement office equipment for new space		
Utility/Service Notifications:			Begin Utility/Service:		
Company	Phone #	Date Svc. Ends	Company	Phone #	Date Svc. Begins
Power co.			Power co.		
Water/sewer			Water/sewer		
Telephone			Telephone		
Natural gas			Natural gas		
Oil			Oil		
Landscaping			Landscaping		
Cleaning Svc.			Cleaning Svc.		
Trash Pick Up			Trash Pick Up		
Other			Other		
Rent and/or additional costs to be paid after termination:			Send change of address notifications		
Document condition of premises after vacating with photos/video			Document any damage from movers		