

# Virginia Port Authority

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## REAL ESTATE PROCEDURES MANUAL

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### I. Overview

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#### I.1 Purpose of the Manual

The Virginia Port Authority (the “Authority”) controls approximately 1,180 acres of real estate within the Commonwealth of Virginia. In order to effectively conduct the business of the Authority, the Authority is called upon from time to time to participate in transactions related to the ownership, acquisition, conveyance and leasing of real estate. This Real Estate Procedures Manual (this “Manual”) sets forth the guidelines and procedures necessary for conducting such real estate transactions.

#### I.2 Authorizing Power

Sections 62.1-132.18 and 62.1-132.19 of the Code of Virginia (the “Code”) grant to the Authority the power to own, acquire, lease, construct, operate and sell real estate. These real estate related powers were further subject to certain oversight and approvals from the Department of General Services (DGS) found in Title 2.2, Chapter 11, the Code (a list of the applicable Code sections is in the General Provisions Section 6 of this Manual, collectively, the “DGS Real Estate Code Sections”). In 2015, the General Assembly amended §62.1-132.6 of the Code and allowed for the Authority to be exempt from these DGS Real Estate Code Sections, as long as, the Authority adopted policies and procedures governing the acquisition, lease, or sale of real estate that are consistent with the DGS Real Estate Code Sections, and provided further that any acquisition, lease, or sale of real estate valued in excess of \$20 million be approved by the Governor. The Real Estate Procedures contained in this document, approved by the Authority’s Board of Commissioners (the “Board”), represents those policies.

#### I.3 Structure of the Manual

This Manual designates the Authority’s Department of Procurement & Real Estate (the “Department”) as the department that is tasked with the oversight of all of the Authority’s real estate related transactions (Section II). There are three (3) major real estate categories addressed in this Manual, including the: (i) Acquisition and Leasing of Real Estate (Section III), (ii) Conveyance and Leasing of Real Estate to Third Parties (Section IV), and (iii) Easements and Licenses (Section V). This Manual also addresses General Provisions (Section VI) that govern all aspects of the Authority’s real estate transactions.

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## **II. Department of Procurement & Real Estate**

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### **2.1 Role of the Department.**

The Authority's Department of Procurement & Real Estate (the "Department"), in consultation with the Authority's General Counsel (the "General Counsel"), shall be in charge of the use, application and interpretation of this Manual for the purposes of carrying out the Authority's real estate transactions in order to ensure such transactions are in compliance with the Code and the provisions of this Manual. In addition, the Department may coordinate with DGS in order to ensure efficient processes carried out in accordance with the Code. The Department shall provide quality, professional real estate services with a vision of operational excellence, fiscal responsibility and sustainable growth. The Department shall be dedicated to positive action, open communication, and productive solutions to fulfill the Authority's goals and objectives established by the Board and the CEO/Executive Director of the Authority (the "Executive Director").

### **2.2 Responsibilities of the Department.**

The General Counsel directs real estate activities through the Senior Director, Procurement & Real Estate, who conducts day-to-day real estate operations. The Department's responsibilities shall include:

- Represent and carry out the directives of the Board and the Executive Director in all real estate related matters, including overseeing all real estate acquisitions/conveyances, leases and easement matters.
- Evaluate the Authority's real estate needs and lease strategies.
- Transact with the Authority's landlords and/or tenants for any leased real estate.
- Identify underutilized and potential surplus real estate.
- Cooperate with DGS by maintaining and providing accurate data related to the records of Authority's real estate.
- Carry out any other real estate related matters deemed necessary by the Board and/or the Executive Director and generally provide real estate acquisition and conveyance services, including negotiating contracts for the acquisition or sale of real estate and coordinating all aspect of the due diligence investigations of real estate.

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## **III. Acquisition and Leasing of Real Estate**

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### **3.1 Procedures for the Acquisition of Real Property.**

- a) Identification of Acquisition Property. Once a property has been identified for acquisition, then a presentation of the acquisition proposal shall be provided to the Board or the Executive Director (dependent on the appraised value of the property in question) pursuant to the Authority's Bylaws. The Department shall provide support as needed in the preparation of all acquisitions proposals. All acquisition proposals shall include: (i) a description of the property, (ii) the purchase price (or estimated purchase price), (iii) a brief description of the proposed use or strategic value of the property, and (iii) any other relevant terms of the proposed acquisition.
- b) Negotiation of Purchase Contract. Once an acquisition proposal has been approved by the Board

or the Executive Director (as applicable), then the Department shall act diligently to negotiate a purchase contract with the seller of the property in a manner that will ensure fairness and competitiveness. All such purchase contracts shall be executed by the Executive Director.

- c) Due Diligence. Prior to acquiring any real estate, the Department shall conduct a due diligence investigation of the property in an appropriate manner in order to (i) confirm the usefulness of the property for the Authority's proposed use, (ii) identify title and survey related matters, and (iii) ascertain possible risks and liabilities related to the property (if any), etc. The due diligence process shall include, but may not be limited to:
- i) *Appraisal* – Obtaining a current appraisal of the property, conducted by an independent state certified real estate appraiser, concerning the fair and reasonable market value of the property. A current appraisal is defined as an appraisal having an effective date of no more than twelve (12) months prior to the date of acquisition.
  - ii) *Survey* – Obtaining an ALTA/ACSM Land Title Survey of the property certified to the Authority.
  - iii) *Title Work* – Analyzing all title documents related to the property. In the event the Authority purchases a property then the Department shall ensure that an owner's title policy is obtained in connection with such acquisition. The title policy shall be issued by a nationally recognized title company insuring good, marketable title to the property and the amount of such title policy shall not be less than the amount of the purchase price.
  - iv) *Environmental* – an Environmental Site Assessment (ESA) shall be conducted prior to the acquisition of any real property, including real property acquired by donation or bequest. Acquisition of commercial and industrial sites shall, at a minimum, use the ASTM Standard Phase I ESA process E-1527, and shall include a review of any permits, licenses, notices of violation or consent agreements issued pursuant to environmental laws and regulations. Investigation of other environmental issues or conditions beyond the scope of the ASTM Standards, e.g. asbestos-containing materials, lead based-paint, lead in drinking water, wetlands, and biological or radiation contamination, may be required but shall be determined and performed on a property-by-property basis.
- The Department may conduct such additional due diligence investigations as it deems necessary from time to time on a property-by-property basis. Likewise, the Department may waive such due diligence investigations as it deems necessary or appropriate. The Department may engage third party consultants (i.e. outside counsel, surveyors, engineers, title agencies, etc.) in order to assist with and/or perform any or all due diligence investigations related to the acquisition of a property.
- e) Instrument of Conveyance / Deed. Upon completion of all applicable due diligence investigations, in the event the Authority desires to acquire a property (evidenced by approval from the Board or the Executive Director) then the instrument conveying title to the property shall be in recordable form pursuant to the locality in which the property is located and shall identify the Authority as "Virginia Port Authority, a political subdivision of the Commonwealth of Virginia." Such instrument shall also include a signature block for the Executive Director to sign in order to evidence the Authority's acceptance of the property. All real estate acquired by the Authority shall be the property of the Commonwealth.
- d) Eminent Domain, General Counsel. In the event any real property is proposed for acquisition

through exercise of the Authority's power of eminent domain, the General Counsel, shall have responsibility for compliance with statutory requirements for notice, hearing, good faith negotiations and, if necessary, commencement of eminent domain proceedings. The General Counsel shall be responsible for compliance with all laws and regulations relating to relocation assistance to persons to be displaced as result of eminent domain real property acquisition.

### **3.2 Procedures for the Leasing of Real Property**

- a) Identification of Lease Property. Once a property has been identified for lease, then a presentation of the lease proposal shall be provided to the Board or the Executive Director (dependent on the expected total rental value of the lease over the life of the proposed term, exclusive of any extension terms) pursuant to the Authority's Bylaws. The Department shall provide support as needed in the preparation of all lease proposals. All lease proposals shall include: (i) a description of the property, (ii) the rental rate (or estimated rental rate), (iii) a brief description of the proposed use or strategic value of the lease property, (iv) the contact information for the landlord, and (iii) any other relevant terms of the proposed lease.
- b) Due Diligence. The Department shall ensure that an appropriate level of due diligence is performed prior to the Authority entering into any lease. When considering the appropriate level of due diligence the Department shall consider the amount of the rent, the length of the term, the size and character of the property to be leased, and the Authority's proposed use for the property to be leased. Such due diligence process may include the investigative processes described in Section 3.1(c), however, the Department shall determine this on a property-by-property basis.
- c) Execution of the Lease. Once a lease proposal has been approved then the Department shall act diligently to negotiate a lease agreement with the landlord of the property in a manner that will ensure fairness and competitiveness. All such lease agreements shall be executed by the Executive Director.

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## **IV. Conveyance and Leasing of Real Estate to Third Parties**

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### **4.1 Procedures for the Conveyance of Real Property**

- a) Identification of Property to be Conveyed. Any real estate owned by the Authority that is not required for the business of the Authority and does not have any strategic, long-term value to the Authority may be disposed or conveyed of in a manner prescribed by this section. Not less than once every two (2) calendar years, the Department shall conduct an internal review of all of the Authority's real estate in order to evaluate whether any property is no longer applicable to Authority's business. Such a determination will be made based on an evaluation of the utility of the property factoring its cost to maintain and the benefit derived from it, the anticipated sale price of the property, and shall also take into account any long term strategic value the property may have to the Authority.
- b) Property Conveyance Report. Upon completion of its analysis the Department shall prepare a "Property Conveyance Report" for any property it has identified as being no longer applicable to the Authority's business. In addition, at any time the Executive Director may request the Department to prepare a Property Conveyance Report for any property controlled by the Authority. All Property Conveyance Reports shall include:

- i) A summary of the need for disposal and explanation of any sale conditions that would be involved as a result of the type of disposal;
  - ii) The description of the property, including a general description of any buildings and other improvements located on the property;
  - iii) A summary of the past and present use of the property;
  - iv) A current appraisal, conducted by an independent State certified real estate appraiser, concerning the fair and reasonable market value of the property. A current appraisal is defined as an appraisal having an effective date of no more than twelve (12) months prior to the sale
  - v) The property's impact, if any, on the Authority's long term strategic plan; and
  - vi) A summary of any communications with DGS regarding the potential utility of the property to other agencies of the Commonwealth.
- c) Approval to Convey Property. All final determinations on whether a property shall be conveyed shall be made by either the Board or the Executive Director (dependent on the appraised value of the property) pursuant to the Authority's Bylaws. Once a conveyance proposal has been approved then the Department shall act diligently to coordinate the marketing of the property and negotiate a sale contract in a manner that will ensure fairness and competitiveness. All such sale contracts shall be executed by the Executive Director. Alternatively, the property may sold by public auction in which case the Department and the General Counsel shall ensure that the public auction is to be held in compliance with the Code and rules and regulations stipulated by the DGS governing public auctions of real property owned by the Commonwealth.
- d) Instrument of Conveyance / Deed. All instruments conveying property to third parties shall be in recordable form pursuant to the locality in which the property is located and be executed by the Executive Director.

#### **4.2 Procedures for the Leasing of Real Property to a Third-Party Tenant**

- a) Leasing to Third Parties. The authority may wish to lease or sublet property under its control to third parties from time to time. In such an event, the Department shall be tasked with preparing a Property Conveyance Report with the appropriate level of information necessary to allow the Board or Executive Director (as applicable depending on the total rental value to be charged to the third party tenant, exclusive of any extension options) to make an informed decision. The Property Conveyance Report may be scaled down or up dependent on the amount of the rent to be charged, the length of the term, the size and character of the property to be leased to the third party, and the third party's proposed use for the property to be leased.
- b) Execution of the Lease to Third Party. Once a lease proposal has been approved then the Department shall act diligently to negotiate a lease agreement with the third party tenant in a manner that will ensure fairness and competitiveness. All such lease agreements shall be executed by the Executive Director.

### 4.3 Procedures for Vacating Property

- a) Vacation of Property General Counsel. From time to time the Authority may be required or desire to vacate property to localities or other state agencies (i.e., for curb cuts, public-right-of-ways, etc.). In the event any real property is proposed to be vacated then the Department and the General Counsel shall ensure such vacation is to be done in compliance with the Code and rules and regulations stipulated by the DGS governing the vacation of real property owned by the Commonwealth.

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## V. Easements and Licenses

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### 5.1 Policy for Granting Easements and Licenses to Third Parties

- a) Requests for Easements. The Department shall coordinate all third-party requests for easements and/or licenses that seek to encumber any property controlled by the Authority. Upon receiving notice of a request for an easement, the Department shall require the third-party requestor to provide a report to the Department containing the information listed below. In the event the proposed easement is being issued to a third party in order to provide a benefit to the Authority (i.e., a utility easement to service one of the Authority's facilities) then the Department shall compile such information. Easement reports shall include:
  - i) The specific use for which an easement or license is required;
  - ii) A brief description of the property to be encumbered by the easement, along with a legal description for the exact easement area.
  - iii) A summary of the need for the easement and the proposed duration of the easement; and
  - iv) Any additional information relevant to the proposed easement.
- b) Grant of Easement. All easement reports shall be submitted to the Executive Director for approval. In the event the terms of the proposed easement include a financial component that exceeds any monetary threshold requiring Board approval pursuant to the terms of the Bylaws then the easement request shall be submitted to the Board for approval. Upon approval of the easement request, the Department shall coordinate with the General Counsel to prepare an easement agreement in recordable form pursuant to the locality in which the encumbered property lies and shall be executed by the Executive Director.

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## VI. General Provisions

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### 6.1 General Provisions.

The following general provisions shall apply to all real estate transactions carried out the Authority unless expressly stated otherwise in this Manual or in the Code.

- a) Approval of the Governor. Notwithstanding any other provision contained in this Manual, and

pursuant to §62.1-132.6 of the Code, any acquisition, lease, or sale of real property valued in excess of \$20 million shall be approved by the Governor.

- b) General Counsel Approval of Instruments. The General Counsel shall approve the form of all contracts, deeds, leases, easements and real estate related instruments prior to execution on behalf of the Executive Director.
- c) Third Party Consultants, Outside Counsel and Brokers. In order to carry out the policies and procedures provided in this Manual, the Department may retain the services of third party consultants including surveyors, title companies, real estate brokers, engineers, outside counsel and related parties. Such third parties shall be engaged pursuant to the Authority's applicable procedures for the engagement of such third parties.
- d) Executive Director. This Manual may be amended, supplemented and/or modified from time to time with approval from the Executive Director. The Executive Director may assign any power or responsibility designated to the Department in this Manual to any other employee, agent, or department of the Authority. The Executive Director may oversee, coordinate and review all actions of the Department related to real estate transaction. Subject to the terms of the Authority's Bylaws, the Executive Director may designate any other officer of the Authority to execute documents on his behalf.
- e) Recording, Storage and Release of Real Property Instruments. All deeds, and other instruments as appropriate, will be recorded in the appropriate county or city as soon as practical after receipt. Original deeds, leases and other real property instruments will be filed and stored under the custody and control of the Department's Senior Director.
- f) Bylaws. This Manual and the provisions herein shall at all times be subject to the Authority's Amended and Restated Bylaws dated November 18, 2014 (as amended from time to time, the "Bylaws"). In the event of any conflict between this Manual and the Bylaws, the Bylaws shall prevail.
- g) DGS Real Estate Code Sections. The DGS Real Estate Code Sections referenced in Section 1.2 above include:
  - §2.2-1124 – Disposition of Surplus Materials
  - §2.2-1131.1 – Establishment of Performance Standards for the Use of Property
  - §2.2-1136 – Review of Easements; Maintenance of Real Property Records
  - §2.2-1149 – Department to Review Proposed Acquisitions of Real Property; Approval by the Governor; Exceptions
  - §2.2-1150 – Conveyance and Transfers of Real Property by State Agencies; Approval of Governor and Attorney General; Notice to Members of General Assembly
  - §2.2-1153 – State Agencies and Institutions to Notify the Department of Property Not Used or Required; Criteria
  - §2.2-1154 – State Agencies, Institutions, to Inquire of Department before Acquiring Land for Capital Improvements
  - §2.2-1155 – Temporary Transfer of Use of Property between State Agencies and Institutions; Lease to Private Entities
  - §2.2-1156 – Sale or Lease of Surplus Property and Excess Building Space