



FIU Foundation Inc., Accepting Real Property # 710.034

INITIAL EFFECTIVE DATE:	LAST REVISION DATE:	RESPONSIBLE UNIVERSITY DIVISION/DEPARTMENT
January 28, 2017	April 16, 2020	FIU Foundation, Inc.

POLICY STATEMENT

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

Review and Consultation with the University and Foundation “Real Estate Team”

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

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

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

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

Due Diligence Considerations

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

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

A. Payment of Expenses by Donor

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

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

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

B. General/Special Warranty Deed

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

C. Appraisal

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

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

D. Title Search and Title Insurance

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

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

E. Owner's Affidavit

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

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

F. Survey

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

G. Property Inspection

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

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

H. Environmental Requirements

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

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

Commercial/Industrial/High-Risk Operations: For commercial property or any other property located in a developed area where manufacturing or any class of industrial or

commercial activity involving the potential use of hazardous substances or petroleum products, a Phase I audit will be performed.

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

I. Real Property Taxes and Other Carrying Costs

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

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

J. Mortgaged Property

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

K. Leases

When real property is acquired subject to a lease, leases should not be in default and All deposits, advance rents, and other monies will be transferred to the Foundation or otherwise accounted for as required by law.

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

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

1. Academic purpose and relationship to the University's mission
2. Business Plan, to include
 - a) fiscal and operating analysis
 - b) revenue projections

- c) proposed budget
- d) staffing requirements
- e) facilities requirements, including improvements

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

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

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

N. Management of Real Property

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

Particular or Special Types of Real Estate Gifts

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

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

B. Charitable Remainder Unitrusts or Annuities

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

C. Unsolicited Deeds or Time Shares

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

Presentation to and Review by Foundation Committees

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

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

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

Guidelines for the Sale and Management of Real Property Gifts

A. Marketing/Listing of Properties for Sale

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

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

B. Agreements of Purchase and Sale

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

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



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

Real Estate Checklist

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

SCOPE

In accepting real estate, the Foundation will determine as part of each transaction whether to hold the property for use by the University, for investment, or, most commonly with respect to gifts of real estate, for liquidation/sale. Under most circumstances, a donor will be entitled to a charitable deduction for the full gross market value of the property in accordance with federal tax law. All net proceeds of any sale will be used for the charitable purposes specified by the donor pursuant to the terms of the donor’s gift agreement.

REASON FOR POLICY

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

DEFINITIONS

TERM	DEFINITIONS
Carrying Cost	any price or expense incurred to hold or own inventory or land. Costs can include storage fees, insurance, maintenance and even opportunity costs
Due Diligence	a systemic process used to evaluate and value a piece of real property prior to signing a contract
Real Property	land and the buildings or improvements constructed on land or an interest in the land or improvements
Title	rights to a piece of real property; evidence of ownership in a property
Warranty Deed	A deed is a written instrument that conveys rights. A warranty deed is a type of deed where the seller warrants that they have



clear title to the property being sold and they have the right to sell the property to the buyer

ROLES AND RESPONSIBILITIES
N/A

RELATED RESOURCES
FIU Foundation Real Estate Checklist
Intake and Preliminary Review Form
<https://give.fiu.edu/assets/docs/download/9692/real-estate-policy-10-20-18.pdf>

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HISTORY
Initial Effective Date: January 28, 2017
Review Dates (*review performed, no updates*): N/A
Revision Dates (*updates made to document*): April 16, 2020