University of Florida Foundation, Inc.
Interests in Real Property

Policy #: 3.07
Effective Date: February 24, 2012
Responsible Department: Real Estate/Legal

1. PURPOSE

To establish policies governing the acceptance, acquisition, management, and liquidation of any interest in real property.

2. APPLICABILITY

Any interest in real property to be acquired by UFF, in any capacity, whether by gift, purchase, or otherwise.

3. POLICY

The following requirements must be met for the acquisition of any interest in real property, in any capacity, *prior to* acceptance or recording of any documents:

<u>Real Estate Staff Site Visit and Analysis</u>

For all real property interests to be received by UFF, the Assistant Vice President– Real Estate, or his or her designee, will inspect (or have inspected) the real property. The real estate staff will review all required documentation. The real estate staff will analyze the following, among other things:

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 costs associated with holding the property for resale; and
5. other considerations specific to the acquisition of the property.

The real estate staff will consult with the Real Estate Team as appropriate. The Real Estate Team comprises the Associate Vice President, Assistant Vice President– Real Estate, Director of Legal Services, and Controller.

<u>Warranty Deed</u>

Title will be transferred to UFF by general warranty deed unless transfer is by a trustee, personal representative, or other fiduciary who will provide a deed with warranties appropriate to its capacity. In the alternative, conveyance may be made by special warranty deed if the grantor provides an acceptable title insurance commitment and policy to the Foundation. Legal staff will review all deeds prior to acceptance.

Appraisal / Book Value

The IRS requires the donor to obtain an appraisal if the value of the real property is over $5,000 and the donor wishes to claim a charitable contribution income tax deduction. For proper accounting, marketing, and donor recognition purposes, an appraisal is requested for all real property gifts. In the absence of an appraisal, the real property will initially be recorded at its ad valorem tax market or just value and will be reviewed annually. At such time, this valuation may be lowered based on the market or just value or other market indicators if supported by a memorandum from the Assistant Vice President – Real Estate. The book value may also be adjusted to appraised value (as of the date of the gift) if the donor provides an appraisal after the gift has been made.

Title Search and Title Insurance

A title search may be required for any real property transaction. A title search and title insurance will be required for gift acquisitions of mortgaged property and all non-gift acquisitions.

Owner's Affidavit

An owner's affidavit in a form approved by the Board is required for all real property acquisitions.

Survey

A survey may be required for any real property transaction. A survey will be required for gift acquisitions of mortgaged property and all non-gift acquisitions, unless the real estate and legal staff determine existing surveys or drawings are adequate.

Real Property Taxes and Other Carrying Costs (Gifts)

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 prorate the taxes and other carrying costs for the year of the donation.

Mortgaged Property

UFF rarely accepts mortgaged property and never accepts mortgaged property into a charitable remainder unitrust. Real property may be acquired subject to a mortgage, if the mortgage is current and assumable and only following Real Estate Team approval. Prior to acceptance:

a. a clearly established method for the payment of the debt must be determined;
b. an MAI appraisal will be required; and
c. the loan-to-value ratio must be not more than 50 percent.

Leases

When real property is acquired subject to a lease, leases must not be in default and must be assignable by the landlord. Commercial property acquired subject to a lease will only be accepted following Real Estate Team approval. Following approval, and upon transfer of the property, the leases must be assigned to UFF and all deposits, advance rents, and other monies transferred to UFF or otherwise accounted for as required by law.

Special Deed Clauses

The Real Estate Team must approve in advance any special deed clauses.

College or Unit Agreement

Each college or unit benefiting from a gift or other acquisition of real property must agree in writing, prior to acceptance or acquisition, to pay any taxes, insurance, mortgage payments, and all other holding and carrying costs incurred by UFF until the real property is liquidated. The written approval will authorize the Assistant Vice President– Real Estate to disburse monies for these expenses and will identify an appropriate UFF fund of the college or unit from which the monies are to be disbursed. Because of IRS requirements, this policy will not apply to charitable remainder unitrusts.

Environmental Requirements

No interest in real property, whether outright, in trust, by bequest, as a secured interest, or otherwise, will be accepted by or on behalf of UFF without first complying with the following procedures:

A Phase I environmental site assessment, in accordance with the standards set by ASTM International and the US EPA, shall be performed by a certified consultant on every potential real property asset prior to acceptance by UFF. Each environmental review will be reviewed and approved by the Assistant Vice President– Real Estate and legal staff.

If the environmental review indicates areas of significant concern, an additional investigation, including a Phase II or Phase III audit, as recommended, will be performed by a certified consultant prior to acceptance of the real property.

If the above procedures disclose risk of liability, the real property will only be accepted with the approval of the Board. All contracts for environmental audits will be prepared and reviewed by legal staff. The donor will be encouraged to pay for any assessments and audits.

Unsolicited Deeds

Unsolicited deeds will not be accepted. Upon the receipt of an unsolicited deed, the grantor will be notified immediately (in writing) that the real property has not been accepted and will not be accepted until the requirements of this policy are met, and the deed will be returned to the donor, along with a quitclaim deed from UFF if necessary.

Special Types of Acquisitions

The following types of real property require additional items *prior to* acquisition:

Properties Valued at Less than $30,000

For real property valued at less than $30,000, the donor must pay all costs of transfer to UFF, including those incurred for environmental assessments and title searches, and all real estate taxes. For purposes of complying with the $30,000 limit, real property value will be determined either by an appraisal, the ad valorem tax-assessed value, or determination by real estate staff.

Real Property Given to Fund Charitable Remainder Unitrusts

Real property will only be accepted to establish net income unitrusts or flip trusts. IRS rules prohibit the acceptance of mortgaged property to fund charitable remainder unitrusts.

Real Property Given to Fund Charitable Gift Annuities

Real property will not be accepted to fund charitable gift annuities.

Timeshare Units

Timeshare units will not be accepted by UFF.

Conservation Easements

The Foundation is authorized to accept, hold, and manage conservation easements. Prior to acceptance, the proposed conservation easement will be reviewed by the Real Estate Team to determine the appropriateness of the gift, based on such considerations as academic value, location, demands on staff time and other assets, and any special considerations presented by the property or the terms of the easement. All conservation easements held by the Foundation will be periodically monitored and inspected by the Assistant Vice President – Real Estate as is reasonably

necessary based on the requirements of the easement instrument or the nature of the property. In the event enforcement actions are required, the real estate staff will work with the legal staff to determine the best method for enforcing the terms of the easement.

Procedures for the Sale and Management of Real Property Gifts

The Assistant Vice President– Real Estate and legal staff are authorized to charge routine property carrying expenses such as taxes, insurance, maintenance, travel, surveying, engineering, title examination, and closing and other costs to the college or unit benefiting from the real property. These expenses will be reported regularly to the appropriate fund administrators.

The real estate staff will diligently work to obtain the best price and terms in the shortest amount of time for all real property. However, real property may be held for the production of income or appreciation after consultation with all interested parties and approval of the Real Estate Team.

The real estate staff will attempt to have all properties listed for sale at all times.

No referral fee will be paid to any broker for securing a gift of real property. Special consideration may be given to the procuring broker when listing the real property for sale, provided any such agreement to list is non-binding on UFF and the fees are not in excess of customary local fees.

Use of Brokers

The real estate staff is encouraged to provide all brokers equal access to its real property inventory. This will not preclude the use of exclusive listings.

Whenever possible, the real estate staff will solicit recommendations regarding local brokers and the general marketing effort from local Board members, friends of UF, and the donor.

The payment of fees to brokers when they are principals to the sale is discouraged, unless it is the local custom. In such an event, the fee will be reduced by the proportion of the broker's interest in the transaction.

Real Property Sold Without Signed Listing Agreements

The real estate staff will use all normal means of marketing – including signs, advertising, brochures, and open listings – in their efforts to market real property.

The real estate staff will attempt to negotiate reduced fees when the brokers present buyers arising from in-house marketing efforts.

Listing Price Determination

Real property will be listed at not less than the approved price. The approved price will be determined by either of the following:

a. If a qualified appraisal, dated within two years, is available, the approved price will be set at not less than the value contained in the appraisal.

b. If no appraisal is available, or the appraisal is more than two years old, the real estate staff will attempt to determine market value via market inquiry, competitive market analysis, or updated or new appraisals and will recommend an approved price at that value. The Real Estate Team will review and approve the approved price for all real property holdings by September 1 of each year.

Acceptance and Execution of Contracts

The Assistant Vice President– Real Estate and legal staff will review and comment upon each contract prior to its presentation to either the Real Estate Team for review or to the appropriate UFF officer for execution. Contracts will be subject to the following:

a. On all contracts with sales prices of less than $1,000,000, the Executive Vice President, or his or her designee, or the Associate Vice President are authorized to execute sales contracts without further approval if (1) the sales price is at least the approved price, and (2) the sales contract contains standard terms. Contracts for less than the approved price or containing non-standard terms require approval by the Real Estate Team.

b. Contracts with sales prices equal to or exceeding $1,000,000 require the approval of the Real Estate Team and the Finance Committee or the Executive Committee prior to execution.

If sales are financed, they will be subject to the approval of the Real Estate Team.

Mortgage Modification

Requests for modifications to mortgages held by UFF will be considered by the real estate staff upon:

a. written request submitted by the borrower, which describes the terms to be modified; and
b. evidence that real estate taxes are current.

Real Estate Team approval will be required.

The borrower will pay for all costs associated with the modification, including:

a. $150.00 document modification fee (which includes recording fees and preparation of renewal promissory note and mortgage modification); and
b. title update and endorsement to title policy (or new title policy if none exists) acceptable to legal staff.

All mortgages will contain or be modified to include the then standard loan document terms, including:

a. 5 percent late fee after 10 days;
b. payment due date of the first of the month; and
c. environmental indemnity.

Leasing/Conveyances to UF

Leases and Conveyances to UF

The real estate staff may negotiate leases with UF at nominal or below-market rents, provided the use of the real property (1) is non-profit and in furtherance of UF's objectives and UFF's mission and (2) does not result in any cost to UFF. The leases may not result in a negative cash flow to UFF unless the college so benefiting agrees in writing, in advance, to underwrite the losses. Any real property meeting these conditions may, in the alternative, be conveyed to UF for nominal consideration.

Other Leases

Upon approval of the lease by the legal staff, the Assistant Vice President - Real Estate is authorized to execute leases that are within the following guidelines:

a. a base lease term of no more than 5 years;
b. renewal options which, together with the base term, do not exceed 10 years;
c. appropriate rent escalator clauses for all renewal options; and
d. total rent for the base term of no more than $100,000.

Any lease that does not meet all of the above guidelines will require Real Estate Team approval prior to execution by the Assistant Vice President – Real Estate.

Leasing and management functions may be delegated to outside professional management firms when deemed appropriate.

Management and Transfer of Real Property

All real property held by UFF in any capacity will be managed in a manner designed to comply with all federal and state regulations and to minimize or eliminate any liability resulting from hazardous materials. The sale or transfer of real property by UFF will be handled in a manner designed to eliminate any future liability by UFF for hazardous substance remediation. UFF will fully disclose to a prospective transferee any and all information concerning the condition of any hazardous substances existing on the real property. UFF may convey title to real property only by means of a special warranty deed or (where appropriate) a trustee's deed without warranties or quitclaim deed.

Non-discrimination

UFF will not discriminate or condone discrimination in its real property activities. UFF will conduct all affairs in compliance with all applicable state and federal Equal Opportunity, Fair Housing, Equal Credit Opportunity, and other anti-discrimination laws.

4. CLARIFICATION

Requests for clarification of this policy should be sent to the Director, Legal Services (sgoffman@uff.ufl.edu).

Certified as approved by the Executive Committee of the UFF Board of Directors on February 24, 2012.

_____

Susan G. Goffman, Secretary

Revision history: Original version
Revised August 5, 2008
Revised February 24, 2012