

**STATE OF COLORADO
STATE BUILDINGS AND REAL ESTATE PROGRAMS
REAL ESTATE PROGRAMS POLICIES AND PROCEDURES MANUAL**

CHAPTER 2 - LEASING PROCEDURES

Logistics of the State's Leasing Program*

The State of Colorado leases space for use by agencies and institutions throughout the State. It is Real Estate Programs' responsibility to oversee all the leases entered into by any of the agencies within the executive branch of State government as well as all public institutions of higher education. The Real Estate Program must assure that the leases in which the State engages will serve the needs of the agencies occupying the space and fulfill all of the specific requirements set out in the Colorado State Constitution and state statutes regarding what the State must do and what the State is forbidden to do in its leases, and that such leases represent fair value to the State in the prevailing market conditions. This oversight role is not applicable to certain functions within the Department of Transportation (highways, bridges and rights-of-way) or to certain functions within the Department of Natural Resources.

There are two main methods that an agency can employ to meet its leasing requirements. In either scenario the first step is to notify Real Estate Programs that the agency or institution intends to look for lease space.

Option A: The agency works with the pre-selected real estate brokers authorized to provide tenant services for the State. In those geographical areas where one of the real estate brokers is under contract to provide such services, executive branch State agencies and institutions **must** use a State real estate broker for any leasing activities (new lease, extension, expansions). The only exceptions to this requirement are those leases which the Real Estate Program elects to exempt, in advance, in a geographical area where the State has a real estate broker under contract. Such exemptions are rarely granted and usually only in those instances where the lease is either intergovernmental or interagency. (See Sample Brokerage Exemption Letter in Appendix.)

At the time of this writing, the overall contract is held by Jones Lang LaSalle "JLL", 1225 17th Street #1900, Denver, CO 80202, ph. (303) 390-5200. JLL services the entire contract area but the brokers are the main points of contact for the following counties: Denver, Boulder, Broomfield, Adams, Douglas, Arapahoe, and Jefferson.

JLL Broker Contacts are the following;

Patrick Bolick (303) 390-5222 Patrick.Bolick@am.jll.com
Eric Carlbom (303) 390-5236 Eric.Carlbom@am.jll.com
Kurt Liss (303) 390-5255 Kurt.Liss@am.jll.com

Under the Real Estate Services contract JLL has chosen to work with Quantum Commercial Group, located at 101 N Cascade Ave., 2d Fl., Colorado Springs, 80903, ph. (719) 590-1717. serving El Paso and Pueblo counties.

Mary Frances Cowan (719) 288-3606 mcowan@quantumcommercial.com
Russell Stroud (719) 228-3619 rstroud@quantumcommercial.com

* As a preliminary step, before embarking on the below listed procedures, any agency requiring space should first consult the periodically published Real Estate Programs Space Availability Report. In that report are listed those spaces already owned or leased by the State which for various reasons have been vacated by another agency and are therefore currently available. If the list contains suitable space, the agency searching for such can often expeditiously arrange to occupy that space under terms and conditions that are quite favorable. To obtain the Space Availability Report contact Real Estate Programs personnel at 303-866-2204.

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The Western Slope is serviced by Re/Max 4000 120 W. Park Dr., Ste 200, Grand Junction, CO 81505
ph. (970) 683-2530

Katherine Worrall (970) 216-7474 kworrall@remax.net

Northern Colorado is serviced by Commercial Real Estate Brokers 145 North College Ave., Fort Collins,
CO ph. (970) 407-9900

Patty Spencer (970) 420-1891 patty@cre-brokers.com

The current contract commenced on July 1st 2019 and has yearly options at the State's discretion that
can take the current contract through June 30th 2024.

Agencies may also choose to utilize the services of the State-contracted real estate brokers outside of
the two regions described even though they are not required to do so. All leasing procedures
referenced in this manual would then apply.

The preferred time for the first communication with the real estate broker regarding a lease requirement
is 12 to 15 months before the space is needed. For new leasing requirements, agencies rarely have
that much notice of the requirement, so they must contact the appropriate real estate broker as soon
as they are aware of the requirement. For existing leases, the real estate brokers will have lists
available showing when current leases expire and they will contact the agency approximately 12
months in advance.

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Before the broker can begin working on a leasing requirement for any agency or institution of higher education, the agency/institution must engage the broker for the assignment by executing a Tenant Agent Authorization Letter (located in Chapter 5 as document 5.2). In doing so, the agency/institution specifically affirms that it has available the funds to cover the estimated cost of the relevant lease for the then current fiscal year and also that the agency has a reasonable expectation of having funds available to cover the estimated cost for the lease term for subsequent years.

In some instances, an agency/institution may wish to engage one of the State's real estate brokers as a consultant for services such as needs assessment or market research prior to program approval or appropriation of funds for a specific lease ("Consulting Services"). Agreements between the agency/institution and the broker for Consulting Services must be set out in a written document that takes one of two forms:

1. Either such agreement must be a State Contract as defined in State of Colorado Fiscal Rule 3-1, or
2. Such agreement must be on a fully executed State of Colorado Purchase Order Form, which has attached to it a detailed proposal that describes the services to be provided at the respective applicable hourly rates (along with any "topset" figure applicable to the project) and bears the following language:

"Execution of this document by or on behalf of the stated buyer constitutes the affirmation of such Buyer that all funds required for payment of this Purchase Order during the current fiscal year are and will be available for such payment, and that Buyer will make every good faith effort to see to it that such funds are also available for any further payments required on this Purchase Order in subsequent fiscal years."

Once the real estate brokerage firm is engaged on the leasing project, the real estate broker's personnel will meet with designated agency or institution staff; determine their needs; calculate the square footage allowed under the State's leasing standards; explore leasing options in the area; assist in the selection of the site; and ultimately draw up the actual lease to be executed. The lease is then submitted first to the Real Estate Program for review and approval before it is routed for signatures. A final draft should be sent first to the landlord for signature, and then to the agency and then on through the State's required approval process.

No fees are due from the agency to the State's real estate broker for its leasing services except for agreements for Consulting Services as outlined above. The State's real estate broker earns its compensation for leasing property through a splitting of the commissions payable by the landlord to that landlord's real estate broker.

Option B: The agency works through its own personnel and finalizes its own leases with assistance as required from the Real Estate Program.

In those areas other than the seven-county Denver Metro area and El Paso and Pueblo counties, as well as the western slope and northern Colorado, the State does not have any pre-selected real estate broker. Therefore, agency personnel on the site, together with their personnel at agency headquarters, and with assistance from the Real Estate Program (as required) must accomplish suitable leases to meet the agency's requirements. Generally, the procedure is simpler in the smaller communities of the State because there are usually a very limited number of locations available that will serve the State's needs. Usually, the standard lease form provided by the REP is familiar to landlords because they have leased to the State on previous occasions, and the form is often employed with no significant

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variations. In those instances, the leasing process often comes down to agreeing on a square foot rental rate, plus the number of years of the term, and filling in the other blanks on the form.

Other times significant additional factors, such as a total renovation of the space, are involved. Agencies may also choose to work with a local broker of their choice in these areas. All leasing procedures referenced in this manual would then apply.

Basic Steps in the Execution and Approval of a Lease

1. Formalities of Lease Execution and Approval

The fewer variations there are from the State's lease form, the more expeditiously the lease will move through the approval process. This is because all of the wording in the standard form has been pre-approved by the Attorney General's office and the State Controller's office. However, it is also recognized that specific wording may be required by certain landlords. In those cases, the Real Estate Program's personnel work with the real estate broker and/or the relevant agency personnel and the landlord to arrive at agreeable lease language.

A detailed description of the steps in a typical leasing situation can be found in Chapter 5. Once the lease and its specifications and provisions are agreed upon, the lease is drafted either by the real estate broker, or if there is no real estate broker, by the agency personnel. If hard copies need to be routed for signatures then four copies are submitted, first to the landlord for signature, then to an authorized representative of the tenant agency. If the document will be routed electronically then the agency or institution will need to route the document using an approved software tool such as DocuSign or Adobe.

2. Signature Authority

The State's lease form contains a provision by which the person signing for the landlord asserts that she or he has the authority to bind the landlord to the lease. However, in some instances, where the chain of authority for such signature is quite lengthy (e.g., where the lessor is a partnership and the managing partner is a corporation, and the signature on the lease is not a corporate officer, but rather a member of a law firm that claims to hold the corporation's power of attorney), the State may require documentation of the asserted signatory authority, such as copies of corporate minutes or of the relevant power of attorney.

If the landlord is a for profit or not for profit corporation, a corporate secretary's attestation is required.

Following the signature of the landlord and the tenant agency, all originals of the executed lease, along with the appropriate CMS documentation are sent to the Real Estate Program. The lease is reviewed by the REP for sufficiency, accuracy and general compliance with the State's requirements. If there are any problems with the lease, it is sent back to the submitting agency for correction. The Real Estate Program should then finally approve the lease. For leases initiated by an agency or institution that has its own Assistant Attorney General or legal counsel and delegated controller who handles leases, the lease is returned to such agency/institution for action by those persons.

All other leases approved by Real Estate Programs are sent to the State Controller or controller delegate. This is done because **no lease is valid, nor will any rents be paid on any lease, until the State Controller approves it.** The Controller may require a review by legal counsel first and approve any document submitted to the Controller for approval.

If the Assistant Attorney General or authorized legal counsel reviews the lease and finds it needs certain modifications, the lease is returned to the relevant agency/institution to be modified. Following approval by the Assistant Attorney General, the lease is sent to the Controller or controller delegate for approval. The controller is the final approval necessary before any rent monies can be paid.

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After approving the lease, if hard copies were signed then the Controller retains one fully executed copy, returns one copy to the Real Estate Program, and returns the other copies to the agency/institution. It is the agency's responsibility to retain an executed original in its files, supply an original to the lessor and provide any additional executed copies that were known to be needed (and therefore added to the first four originals sent through the approval process) to those agencies and/or individuals who require the additional copies. The agency should also send a copy to the county assessor's office in the county where the property is leased.

3. Forms

The following are the standard forms for various leasing situations are located on the REP website:

- 2.1 Lease Checklist
- 2.2 The Gross Lease Form
- 2.3 Interagency Lease
- 2.4 Amendment to Lease
- 2.5 Easement Agreement
- 2.6 State-Owned Property Lease

Note: For budgetary and accounting reasons, starting July 1, 2020, the State of Colorado will no longer enter into Base Year or NNN Lease forms. The only lease form the State will enter into is a true Gross lease without any additional expenses paid by the tenant.

Note: The Lease Extension Agreement form formerly included in this Manual has been deleted. Beginning July 1, 2002, agencies and institutions should use the Amendment to Lease form for all lease amendments, including extension of the lease term. Both forms will still be accepted until July 1st 2021; however, agencies may begin using the Amendment to Lease for lease extensions immediately.

It should be noted that language that addresses specific laws or other state requirements **must** be in every lease. Presently the following seven paragraphs from our short form standard lease contain such language:

- 8. Eminent Domain
- 9. Damage and Destruction
- 11. Fiscal Funding
- 15. Tenant's Tax Exempt Status
- 23. No Beneficial Interest
- 16. No Violation of Law
- 17. Controller's Approval
- 28. Lessor/Vendor Offsets Notice

If the landlord refuses to accept this language then barring unusual circumstances, the State **cannot** lease the premises.

4. Lease Review

- a) The State's standard lease form should be used whenever possible. Leases must be signed by lessor and lessee before submission to Real Estate Programs for approval. Lessor should sign at least four originals of the lease when signing hard copies; otherwise, the electronically signed document should be distributed to all of the signatories.

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- b) Any departure from the State's standard lease form tends to slow the approval process and greatly increases the chance that the lease will not be approved.
- c) If there is to be a memo requiring changes in the lease before approval, it can come from the Real Estate Program or, if the AG disapproves the lease after the Real Estate Program has approved it, from the Attorney General.
- d) If changes must be made to the standard lease form, avoid having to re-do the lease by submitting any changes to the Real Estate Program **before** finalizing negotiations with the lessor. The Real Estate Program's personnel can provide a preliminary opinion on the likelihood of approval of the changes.
- e) If a lease has no apparent problems, it is approved by the Real Estate Program and routed to the SCO delegate or if no delegate to the SCO.

5. Collocation Requirements

In accordance with the overall policy and directives of Colorado State Government, agencies should attempt to collocate their operations and their leased premises wherever possible, so as to have a fewer rather than a greater number of locations.

Additionally, the policies of the Real Estate Program will be applied so as to support the Colorado State Government's plans, whenever possible in the future, to buy or build State office buildings, and to thereby reduce the requirements for leasing various agencies' locations. Therefore, whenever it is economically feasible to do so, new or renewed State leases should be limited to a maximum term of five years. However, leases that exceed five years, provided they contain the collocation language in the State's standard lease form, will still be approved. In those instances, where a lease exceeds five years, and has no collocation clause, a letter of justification for such must be signed by the agency's executive director and submitted, along with the lease, for Real Estate Programs' review.

6. Early Termination of a Lease

Typically, a State lease allows the State, at its option, to terminate the lease based on any one of three possible occurrences:

- Lease Paragraph #11, Fiscal Funding.
- Lease Paragraph #14, Federal Funding.
- Lease Paragraph #24, Collocation.

Whenever an agency concludes that its circumstances allow and call for the exercise of one of these early termination "outs" from a lease, such agency must **first request and obtain approval from Real Estate Programs to do so**. Use of one of these early termination clauses may cause significant animosity among the landlord community, with whom other agencies/institutions, the Real Estate Program and the State's brokers must deal every day. Even though the occupying agency is going to vacate the space based on an early termination provision, it is often possible and preferable to "backfill" the space with another State agency, and thereby leave the lease in place, rather than actually terminate the lease and risk landlord antagonism.

7. Vacation of Space Leased or Subleased from Another State Agency

There are several instances whereby a State agency/institution occupies space owned by, or subleased from, another State agency or institution. In Grand Junction, for instance, Department of Personnel and Administration is actually the Lessor of the office space in the Grand Junction State office building. In

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Denver, many agencies occupy space in various State-owned office buildings, such as within the Capitol Complex Buildings Group and/or North Campus.

Whenever any agency occupying any State-owned office space is considering vacating such space, regardless of the reasons for vacating, the Real Estate Program **must be made aware of those plans as early as possible**. Only through this means may proper planning be put in place to fully utilize the space, through occupancy by another agency, and thereby make the best possible use of the State's real estate assets.

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2.1 Lease Checklist

COMMENTS:

This Lease Checklist is used by the Real Estate Program's personnel when reviewing a lease for approval and forwarding to the Attorney General's office. It also is helpful for agencies/institutions to use this checklist prior to sending lease documents to Real Estate Programs for processing.

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LEASE CHECKLIST

Lessor: _____

Lessee: _____

Routing: _____ Date: _____

Type: _____

- | | | | | |
|----------|--|-----|----|----|
| _____ 1 | Appropriate standard form utilized? | | | |
| _____ 2 | Full agency Routing Number on front page/each page? | | | |
| _____ 3 | Four originals? | | | |
| _____ 4 | Intro correct? BF ? | | | |
| _____ 5 | DOHE Leases CCHE Leasing Policy Approval indicated? | Yes | No | NA |
| _____ 6 | Inked changes initialed by Lessor & Lessee: | | | |
| _____ 7 | Par. 2/ar. 3, " NONE " or provided services inserted? BF ? | | | |
| _____ 8 | Vendor offset provision? Yes | No | | |
| _____ 9 | All Lessor signatures obtained? BF ? | | | |
| _____ 10 | Lessor FEIN? Yes | No | | |
| _____ 11 | If lessor is a corporation, was signature attested? | | | |
| _____ 12 | Lessee signature block completed? Signed? | | | |
| _____ 13 | Central approvers signature blocks: GSS, AG, Controller? | | | |
| _____ 14 | Exhibit A floor plan or line out language on; pg 1? | | | |
| _____ 15 | Lessor on extensions/amendments same as original lease? BF ? | | | |
| _____ 16 | Lessee is a current statutory dept.? | | | |
| _____ 17 | Suite #, street address, SqFt, Begin/End Date? BF ? | | | |
| _____ 18 | Required rent info in Par. 1(B)? BF ? | | | |
| _____ 19 | Is rent exhibited in FY format? BF ? | | | |
| _____ 20 | Is rent math correct? | | | |
| _____ 21 | Extension not for lease greater than 5 years old? | | | |
| _____ 22 | Par 27 struck if not Broker deal? Yes | No | | |
| _____ 23 | Commencement date after "made" date? | | | |
| _____ 24 | Made date left open? Yes | No | | |
| _____ 25 | "None" in BF after additional provisions? | | | |
| _____ 26 | Late justification letter needed? Attached? | | | |
| _____ 27 | Lessor's tenancy indicated? | | | |
| _____ 28 | COFRS routing; printout attached? Filled in recitals? | | | |
| _____ 29 | COFRS PO/SC Input Form attached? | | | |
| _____ 30 | General Review OK | | | |
| _____ 31 | Changes BF lined out or BF added? | | | |
| _____ 32 | Rent Rate Reasonable? | | | |
| _____ 33 | Sublease acknowledge Master Lease? Attached? | | | |
| _____ 34 | Notice addresses complete? BF ? | | | |
| _____ 35 | Address to mail rent to complete? BF ? | | | |

_____ APPROVE

_____ DISAPPROVE

Comments:

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2.2 The Gross lease form.

COMMENTS:

NOTE: YOU MUST ADJUST THE PAGINATION WHEN YOU PRINT THIS DOCUMENT TO BE USED FOR A LEASE.

The Gross Lease Agreement is suitable for most leasing situations. The form has been reviewed and approved by the Attorney General and State Controller's offices. It does not contain Additional Rent provisions.

Any variations to the standard lease form must be kept to a minimum since much of the language is required by the State of Colorado Constitution and State statutes and policies, and therefore it cannot be changed at all. If at any time a user of this form determines that a certain paragraph should not be included, (such as Paragraph #27, Broker Representation, when no broker is involved in the transaction), simply strike through the entire paragraph following such paragraph's number and title. By doing so, a later reviewer of the lease can immediately determine if and where the lease differs from the standard form, and subsequent paragraphs need not be renumbered to preserve sequential numbering. **Any additions to the standard form language must be in bold type.**

Any terms and conditions unique to a particular lease may be succinctly stated under Paragraph #27, Additional Provisions in bold type.

When the wording of the standard lease is expected to be significantly changed to accommodate the agreement reached between the parties, the proposed language must be sent to the Real Estate Program for review and pre-approval before signature.

If a State Broker is utilized in negotiations, the broker will prepare the Lease Agreement.

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2.3 Interagency lease.

COMMENTS:

NOTE: YOU MUST ADJUST THE PAGINATION WHEN YOU PRINT THIS DOCUMENT TO BE USED FOR A LEASE.

The Interagency Lease Agreement is used for leasing space where both the lessor and lessee are State agencies. The form has been reviewed and approved by the Attorney General's and the State Controller's offices.

If at any time a user of this form determines that a certain paragraph should not be included, simply strike through the entire paragraph following such paragraph's number and title. By doing so, a later reviewer of the lease can immediately determine if and where the lease differs from the standard form, and subsequent paragraphs need not be renumbered to preserve sequential numbering. **Any additions to the standard form language must be in bold type.**

Unlike the State's other standard lease forms, this Interagency Lease Agreement provides a greatly simplified paragraph on fiscal funding contingency, (#15). Another paragraph provides for arbitration by the State Controller in the event of any dispute between the parties, (#14). Additionally, this form does not require an approval by (nor signature block for) the Attorney General.

Few modifications are used on this form, however, some may occasionally be appropriate. It is a good idea to have those pre-approved by the Real Estate Program.

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2.4 Amendment to Lease.

COMMENTS:

NOTE: YOU MUST ADJUST THE PAGINATION WHEN YOU PRINT THIS DOCUMENT TO BE USED FOR A LEASE.

The Amendment to Lease form is used for changes to existing leases, such as addition or reduction of space utilized, change of rental rate, or extension of the lease term. If several changes to the Lease Agreement are required, the Lease Amendment form is appropriately used for all of the changes on one form at one time. This form has been reviewed and approved by the Attorney General's and the State Controller's offices.

Within the seven-county metro area and in Pueblo or El Paso counties, the State's contracted real estate services provider should be utilized for negotiation and preparation of an Amendment to Lease. Each of these forms must be cleared through the entire approval process, as it would be for a new lease.

[NOTE: This form should be used for lease extensions since the former Lease Extension Agreement is no longer being used.]