

**STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
REAL ESTATE PROGRAMS - POLICIES AND PROCEDURES**

CHAPTER 3 - EASEMENTS AND LICENSE AGREEMENTS

In addition to purchasing or leasing property, state agencies and institutions of higher education may also find that entering into easement agreements or license agreements is appropriate. An easement may be defined as an interest in real property that conveys use, but not ownership, of a portion of an owner's property. A license in real property is the permission or authority to engage in a particular act or series of acts upon the land of another without possessing an interest. A license or an easement differs from a lease in that a lease conveys an interest in land and transfers possession.

Pursuant to C.R.S. § 24-30-1303 (as amended), the Real Estate Program (through the Department of Personnel & Administration) shall negotiate and approve easements and rights-of-way across non-state land on behalf of the State government and, as provided in C.R.S. § 24-82-202 (as amended), negotiate and approve easements, and rights-of-way across land owned by the State or its institutions, departments or agencies. Additional authority regarding the Real Estate Program's involvement in review and approval of easements and licenses may be found in the State's Fiscal Rules (Rule 3-1) that are promulgated by the State Controller:

A State Agency/Institution shall negotiate and process a State Contract when . . . entering into a license involving payment by the State for use of land, buildings, or other office or meeting space when the term is for more than thirty days.

All State leases and licenses of real property shall be in a form approved by the State Controller.

Real property contracts, including leases, easements, and rights-of-way contracts require the approval of the Manager of the Real Estate Program or a delegate.

There are certain exceptions to the Real Estate Program's review and approval of easements and rights-of-way which pertain to Colorado Parks and Wildlife.

Easements

Easements are generally divided into two broad classes: easements appurtenant and easements in gross. An appurtenant easement is a right in another's land that benefits and attaches to the owner's land. Common examples of appurtenant easements are the right to travel over another's property, party walls, and shared driveways. An appurtenant easement is incapable of existence separate and apart from the land to which it is attached and "runs with the land" (meaning that the easement passes with the land to a successive owner even if not specified in the deed).

An easement in gross is personal in nature and does not pass with the land. It is a right in favor of a person and not for the benefit of another tract of land. Common examples of this type of easement are utility easements, power line easements, and billboard-site easements.

A right-of-way is a privilege to pass over the land of another in some particular path. It is usually an easement, although the term right-of-way is also used to describe the right of the public to use the highways or streets, or to have safe access to public areas.

Basic Steps in the Execution and Approval of an Easement or Right-of-Way

1. Forms

Standard forms for easement agreements are as follows:

- 3.1 Easement Agreement for the State as Grantor
- 3.2 Easement Agreement for the State as Grantee

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2. Formalities of Easement Agreement Execution and Approval

The fewer the variations from the State's Easement Agreement forms, the more expeditiously the agreement will move through the approval process. This is because all of the wording in the standard forms has been pre-approved by the Attorney General's and the State Controller's offices. However, it is also recognized that specific wording may be required in some instances. In those cases, the Real Estate Program personnel will work with the relevant agency/institution personnel and the other party to arrive at agreeable language.

Once the Easement Agreement and its specifications and provisions are agreed upon, agency/institution personnel draft the Easement Agreement. If hard copies are used, four copies are submitted to the Real Estate Program after signature by both the grantor and the grantee. There the Easement Agreement is reviewed for sufficiency, accuracy, and general compliance with the State's requirements. If there are any problems with the Easement Agreement, it is sent back to the submitting agency/institution for correction.

3. Statutory Authority and Requirements

Pursuant to C.R.S. § 24-82-202 (as amended), all agencies/institutions have the power to give and grant easements or rights-of-way across land owned by them for construction and maintenance of public utilities, or of public streets and highways, or of public services, including but not limited to sanitary sewer lines, water lines, gas lines, telephone lines, electric power lines, or other services. However, such easements granted by the State of Colorado for the benefit of another across State-owned property must be approved by the chief executive officer and the commission or board, of any agency/institution across whose premises the easement is granted. The approved Easement Agreement that would be used to grant a public utilities easement contains a provision stating that signature by the executive director on behalf of the agency/institution is deemed to be verification of approval of the relevant board or commission, if any. Therefore, agencies and institutions should obtain such approvals, if appropriate, prior to execution by the executive director or his/her designee. Agencies and institutions should be assured that the relevant commission or board has indeed approved the easement before requesting signature by the executive director.

Easement Agreements granted by the State of Colorado for the benefit of another party do not require approval by the State Controller since no monetary disbursements are associated with this type of arrangement. However, after approval by the Real Estate Program, Easement Agreements are sent to the Attorney General for review.

Easements granted to the State of Colorado for the use of the State require approval by the State Controller after review by the Attorney General who advises the State Controller. This is in compliance with the State Fiscal Rules that require that the State Controller must approve state contracts that ultimately involve the disbursement of funds.

After the appropriate approvals, the State Controller retains one copy of the Easement Agreement if funds are to be disbursed, one copy is retained by the Real Estate Program, and the other copies are returned to the agency/institution. It is the agency/institution's responsibility to retain an executed original in its files, supply an original to the other party and provide any additional copies needed.

Special Note: Since Easement Agreements should be recorded with the Clerk and Recorder of the County in which the real property involved is located, the standard form Easement Agreements provide that the Grantee under either agreement is responsible for recordation.

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Licenses

As the term is used with reference to real property, a license is defined as a personal, revocable, and unassignable privilege, conferred either orally or in writing, to do certain acts on land without possessing any interest therein. Typical uses for licenses include parking, hunting on someone's land, or use of a conference facility.

Basic Steps in the Execution and Approval of a License

4. Forms

The REP currently uses one standard form for license agreements for parking licenses.

5. Formalities of License Agreement Execution and Approval

The fewer the variations from the State's License Agreement, the more expeditiously the agreement 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 and State Controller's offices. However, it is also recognized that specific wording may be required in some instances. In those cases, the Real Estate Program personnel work with the relevant agency/institution personnel and the other party to arrive at agreeable language.

Once the License Agreement and its specifications and provisions are agreed upon, agency/institution personnel draft the License Agreement. If hard copies are used, four copies are submitted to the Real Estate Program after signature by both the licensor and the licensee. If an electronic/digital copy is used, the agency/institution should use an approved software tool such as DocuSign to route the contract for signatures. There the License Agreement is reviewed for sufficiency, accuracy and general compliance with the State's requirements. If there are any problems with the License Agreement, it is sent back to the submitting agency/institution for correction.

6. Statutory Authority and Requirements

Pursuant to the State Fiscal Rules, License Agreements pertaining to real property require the approval of a delegate of the Executive Director of Personnel which in this instance is the Real Estate Program. License Agreements granted by the State for the benefit of another party do not require approval by the State Controller since monetary disbursements are not associated with this type of arrangement. However, after approval by the Real Estate Program, License Agreements are sent to the Attorney General for review.

Licenses granted to the State of Colorado for the use of the State require approval by the State Controller after review by the Attorney General who advises the State Controller. This is in compliance with the State Fiscal Rules that require the State Controller to approve state contracts that ultimately involve the disbursement of funds.

After the appropriate approvals, if hard copies are signed then the State Controller retains one copy of the License Agreement if funds are to be disbursed, one copy is retained by the Real Estate Program, and the other copies are returned to the agency/institution. It is the agency/institution's responsibility to retain an executed original in its files and to supply an original to the other party and provide any additional copies as needed.

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3.1 Easement Agreement for the State as Grantor

COMMENTS: Refer to REP website at www.colorado.gov/pacific/osa/reforms to access the form.

The Easement Agreement is suitable for use when the State is granting an interest in an easement. The form has been reviewed and approved by the Attorney General and State Controller's offices.

Any variations to the standard form must be kept to a minimum since much of the language is required by the State of Colorado Constitution, State statutes or policies and therefore cannot be changed at all. 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. That way a later reviewer of the lease can immediately determine if and where the document 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.**

When the wording of the standard Easement Agreement 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.

3.2 Easement Agreement for the State as Grantee

COMMENTS: Refer to REP website at www.colorado.gov/pacific/osa/reforms to access the form.

The Easement Agreement is suitable for use when the State is receiving an interest in an easement. The form has been reviewed and approved by the Attorney General and State Controller's offices.

Any variations to the standard form must be kept to a minimum since much of the language is required by the State of Colorado Constitution, State statutes or policies and therefore cannot be changed at all. 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. That way a later reviewer of the lease can immediately determine if and where the document 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.**

When the wording of the standard Easement Agreement 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.

3.2 Parking License Agreement.

COMMENTS: Refer to REP website at www.colorado.gov/pacific/osa/reforms to access the form.

The Parking License Agreement is suitable for use in many parking situations. A short form lease may also be used for parking. The form has been reviewed and approved by the Attorney General and State Controller's offices.

Any variations to the standard form must be kept to a minimum since much of the language is required by the State of Colorado Constitution, State statutes or policies and therefore cannot be changed at all. 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. That way a later reviewer of the lease can immediately determine if and where the document differs from the standard form, and subsequent

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paragraphs need not be renumbered to preserve sequential numbering. **Any additions to the standard form language must be in bold type.**

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