

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

CHAPTER 3 - LEASING PROCEDURES

Leasing Program

The State of Colorado leases space for use by agencies and institutions throughout the State. It is the responsibility of the Real Estate Program to oversee all leases entered into by any of the agencies within the executive branch of State government and public institutions of higher education. The Real Estate Program must ensure that the leases in which the State engages not only serve the needs of the agencies or institutions occupying the space, but that they also fulfill requirements specified in the State Constitution and statutes regarding the State's leasehold obligations, and that such leases represent fair value to the State in the prevailing market conditions.

Leasing Process

BASIC STEPS	RESPONSIBILITY
REQUEST/ APPROVAL PHASE	
1. Prepare of a Space Request Form (SRF) . Submit to REP	Agency or Institution
2. Initial consultation with REP to review needs, confirm budget has been secured, discuss timing factors, review staffing and office space standards, evaluate collocation options, and determine Broker involvement.	REP/ Agency or Institution
3. If anticipated space requirements exceed 5,000 rentable square feet AND exceed 35% office use, complete a Space Needs Form (SNF) and submit to Statewide Planning Program (SPP). Planning's SNF contemplates employee head counts, seat counts, types of work stations, and remote or hybrid worker counts. This is to ensure agencies are adhering to the State's space standards for office space.	Agency or Institution
4. Secure funding source(s), organize funding stack. Submit to OSPB/JBC/CDC as appropriate for approvals.	Agency or Institution

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BASIC STEPS	RESPONSIBILITY
5. If appropriate, engage State Service Broker, complete Tenant Authorization Agreement	REP/ Agency or Institution
6. In locations not covered by State Contract Broker services, determine if an outside Broker should be engaged or if Agency or Institution will handle internally with REP oversight	REP/ Agency or Institution
ENGAGEMENT PHASE – BROKER ASSISTED ACQUISITIONS	
1. Consult with Broker to review needs (square footage, location, type, etc.) additional colocation or sublease options, and current market conditions	Broker/ Agency or Institution
2. Broker will conduct a search and prepare a market survey of available property options	Broker
3. Review and determine best options of potential properties to tour	Agency or Institution
4. Tour and evaluate potential properties	Broker/ Agency or Institution
5. Analyze properties and determine which to move forward with solicitations	Broker/ Agency or Institution
TRANSACTION PHASE	
1. Broker will solicit offers from all preferred location landlords.	Broker
2. Prepare and review comparative financial analysis of top choices.	Broker/ Agency or Institution
3. For leases that exceed \$75,000 annually, additional levels of review are necessary.	REP
4. Agency or Institution with input from REP, selects preferred location	Agency or Institution

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BASIC STEPS	RESPONSIBILITY
5. Notify Broker of final selection, authorize Broker to prepare initial lease draft or Letter of Intent (LOI).	Agency or Institution
6. Lease draft submitted to Landlord, Agency or Institution and REP for comments.	Broker
7. Lease negotiation process.	Broker/REP
8. Broker submits final lease draft to Landlord for execution, then to Agency or Institution for execution. Obtain final approval signatures.	Broker/REP
9. For transactions without Broker assistance, Agency or Institution and REP will do steps 1 thru 8.	REP/ Agency or Institution

First Steps

The first step in leasing property for State use is to notify Real Estate Programs of the intended acquisition of leased space. This notification also applies to renewals for existing leases. Agencies and Institutions should complete a Space Request Form and submit to Real Estate Programs to begin the process.

This form will prompt the agency or institution with initial questions to consider, including the anticipated budget need and funding sources. Real Estate Programs will review and schedule an initial consultation meeting to discuss property needs and budget, as well as colocation possibilities and broker involvement.

Initial Consultation

The Space Request Form will include the appropriate points of contact for the Program (ideally the Delegate), Budget, and Procurement liaisons.

The initial consultation will include an overview of considerations, including budget and timing factors, location and operations matters, expectations for projected program changes including

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increasing /decreasing staffing needs, the application of leased office space standards, immediate and potential collocation opportunities in state-owned and/or commercial leased buildings.

If it is determined that the Agency could fit in a state-owned building, per collocation, the Agency is alerted of the requirement and discussion ensues. If the Agency can fit into Capital Complex properties, Capital Assets is alerted and discussion ensues. In the event of tenancy in a state-owned property, the Agency will provide an Interagency Lease Agreement with the assistance of Real Estate Programs.

If the Agency proceeds with the commercial lease process, the Agency engages the State Contract Broker via a Tenant Authorization Agreement and the commercial leasing effort ensues with oversight from Real Estate Programs until completion.

Office Space Standards

If the anticipated space requirement includes more than 5,000 rentable square feet AND exceeds 35% office space, then the Agency will engage the Statewide Planning Program (SPP) by completing a Space Needs Form (SNF). This form contemplates employee heat counts, seat counts, types of work stations, and remote or hybrid worker counts. This is to ensure agencies adhere to the State's space standards for office space. This requirement only applies to state agencies. REP is statutorily responsible for developing and administering office space standards for leased space and strategic real property.

Green Lease Policy

The Governor's Executive Order D 2022 016, signed by Governor Polis on April 22, 2022, is intended to identify a set of common procedures for agencies and institutions of higher education to follow for setting and achieving environmental performance objectives for new, existing, and renewing lease agreements.

For leased facilities that meet the following criteria, the goals and directives for energy, water, and greenhouse gas emissions apply:

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- i. The lease is for 75% or more of the building's rentable square feet;
- ii. The leased space's utilities are sub-metered; and
- iii. The rentable square feet of the leased area is 10,000 square feet or more.

Collocation Requirements

In accordance with the overall policy and directives of Colorado State Government, agencies should attempt to collocate their operations wherever possible, and therefore their leased premises, so as to reduce the number of their locations.

Additionally, the policies of Real Estate Programs will be applied to support the Colorado State Government's plans, whenever possible in the future, to buy or build State Office Buildings, and thereby reduce the requirements for leasing various agencies' locations.

Lease Procedure

There are two primary methods that an agency may employ to meet necessary leasing requirements. In either scenario the first step is to notify Real Estate Programs that the agency or institution intends to look for leased space.

Option A:

The agency works through one of the State's 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 **must** use the State real estate service broker for any leasing activities (new lease, extension, expansions). The only exceptions to this requirement are those leases which State Real Estate Programs 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.

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In rare exceptions, Agencies may apply for a waiver to utilize the services of a non-State contracted real estate broker. Such exceptions are reviewed on a case-by-case basis and require written approval by the Real Estate Program manager prior to any engagement of a broker. All other leasing procedures referenced in this manual would still apply.

The preferred time for the first communication with the real estate broker regarding a lease requirement is 15 to 18 months before the space is needed. For new leasing requirements, agencies rarely have that much notice of the requirement, so they must contact REP and 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 to 15 months in advance of expiration to evaluate.

Before the broker can begin working on a leasing requirement for any agency, the agency must engage the broker for the assignment by executing a Tenant Agent Authorization Letter. In doing so, the agency 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 most cases, the agency is not directly responsible for the brokerage fees to the State broker for leasing services. The State Broker will attempt to receive compensation for leasing services through a splitting of the commissions earned and payable by the landlord to that landlord's real estate broker. Payments for Consulting Services are the responsibility of the agency and must be detailed in writing.

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

In those areas where the State does not have any pre-selected real estate broker, agency personnel on the site, together with their personnel at agency headquarters, and with assistance from Real Estate Programs (as required) must accomplish suitable leases to meet the agency's requirements. All leasing procedures referenced in this manual still apply.

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State Service Broker

At the time of this writing, the State Service 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 primary points of contact for the following Counties: Denver, Boulder, Broomfield, Adams, Douglas, Arapahoe and Jefferson.

JLL Primary Broker Contact is Patrick Bolick (303) 390-5222 Patrick.Bolick@am.jll.com

Lease Review and Approval Process

The fewer the variations 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 forms 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, Real Estate Programs personnel work with the real estate broker and/or the relevant agency personnel and the landlord to arrive at agreeable lease language.

- 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.
- All leases should have a CMS routing number, if required, attached and be routed to the State Controller's Office (SCO) or Controller Delegate before proceeding through the approval process.
- 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.
- If changes must be made to the standard lease form, avoid having to re-do the lease by submitting any changes to Real Estate Programs **before** finalizing negotiations with the lessor. Real Estate Programs personnel can provide a preliminary opinion on the likelihood of approval of the changes.

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Legal review

Since a lease agreement is a legally binding document that carries with it rights and responsibilities of the parties, it is important to involve your agency or institution legal counsel in the lease document review process. This can be completed through the agency's assistant attorney general, their delegate, or through the agency's independent counsel. In some cases, legal review will require additional time and subsequent negotiations. Some leases will require an additional layer of review and approval by the Office of Risk Management.

Signature Authority

The State's form leases contain a provision by which the person signing for the landlord asserts that she or he, in fact, 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, or the signature on the lease is a corporate officer), the State may require documentation of the asserted signatory authority, such as a signature authority or a power of attorney document. 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, the executed lease is sent to Real Estate Programs. There the lease is reviewed for sufficiency, accuracy and general compliance with the State's requirements.

From here, most leases are sent for legal approval and signature, usually to the agency's assistant attorney general, their delegate, or through the agency's independent counsel. Some leases also require signature of approval by the State Risk Manager.

All leases are sent to the State Controller for approval. The controller is the final approval necessary before any rent monies can be paid. 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 that their legal counsel first review and approve any document submitted to the Controller for approval.

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Pursuant to industry standard and § 24-71.3-107, C.R.S., referred to as the Uniform Electronic Transactions Act, electronic signatures are legally recognized and accepted by the Real Estate Program on most lease agreements and amendments. Exceptions are for those agreements that, due to the nature of their terms, require notarized signatures by some or all parties.

After obtaining all required signatures on an agreement, the agency is responsible for sending a fully executed copy to the Real Estate Specialist to maintain accurate inventories. It is also the agency's responsibility to retain copies in its files, supply copies to the lessor and provide any additional copies to those agencies and/or individuals who require them.

Signature Order

- 1) Tenant
- 2) Landlord
- 3) Real Estate Programs
- 4) Legal
- 5) Risk (if necessary)
- 6) Controller

Early Lease Termination

Decisions related to the early termination of a lease should be discussed with the Real Estate program manager prior to taking action. The State's current Gross lease form includes termination for the following reasons:

- Lease Paragraph #11, Fiscal Funding
- Lease Paragraph #12, Federal Funding
- Lease Paragraph #20, Colocation

If an agency concludes that circumstances call for the exercise of an early termination provision, such agency shall **first request and obtain approval from Real Estate Programs**. Early

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termination may result in increased difficulty for the tenant Agency or other State agencies seeking to fulfill ongoing and prospective lease requirements.

If an agency is interested in early termination of a lease using the colocation provision, such agency **must first discuss the intent with the Attorney General's office** as well as Real Estate Programs **before** communicating such or providing any notice of such to the landlord. Utilizing this provision can have broader implications to the State that must be considered.

Vacating Leased Space

C.R.S. § 17-24-101, or the Correctional Industries Act, states that before proceeding with the bid or purchase of any type of office furnishings, State agencies are required to have a waiver from Colorado Correctional Industries. However, in 2022, challenging market conditions and unprecedented financial difficulties led to the closure of the entire office furniture division. With this closure, the program has issued a blanket waiver for all agencies to purchase office furniture from other vendors. There is no requirement to use a state program for the decommissioning of fixtures, furnishings and equipment when vacating a leased space. More information can be found on the Colorado Correctional Industries website- <http://www.coloradoci.com/>

Agencies should engage their IT Director or Agency IT Portfolio Manager early in the relocation and planning process. It is also suggested that a Project Manager is assigned to oversee the physical relocation of the space.

Vacating Interagency Leased Space or Commercial Space Subleased from another State Agency

Should an agency occupying space located in a State owned building or subleasing commercial space from another agency consider vacating the space before the agreed upon term expiration, that agency shall inform Real Estate Programs as early as possible.