

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

CHAPTER 4: ESTOPPEL CERTIFICATIONS AND OTHER DOCUMENTS AFFECTING A LEASEHOLD INTEREST

The following polices have been adopted in an effort to protect the State of Colorado when Estoppel Certificates and Subordination and/or Attornment Agreements (SNDA) are requested by the lessor or lender of a property in which the State of Colorado has a leasehold interest:

- The Real Estate Program must review all Estoppel Certifications and Subordination and Attornment Agreements prior to execution by the state agency or institution of higher education.
- Estoppel Certifications and Subordination and Attornment Agreements may only be executed by individuals authorized to execute leases or such individuals as delegated by the agency/institution.
- All leases should expressly require that any copy of any notice required or permitted by the lease be delivered to the executive director's or president's office or their direct delegate.

REASON FOR POLICY

The State lease form specifically does not contain a covenant for the lessee to execute these types of documents. However, a lessor may successfully negotiate to have such language inserted in the lease or may request that State agencies/institutions sign these types of documents. Estoppel Certificates and SNDA are complex and very often contain language that significantly modifies the original lease contract, which is a violation of Fiscal Rules, as they are contract amendments that are not approved by the State Controller or controller delegate. Real estate knowledge and expertise is needed to review and modify such language to ensure it is consistent with, and not a change to, the lease contract.

If the lease does contain a covenant requiring the lessee to execute Estoppel Certificates or SNDA documents, the covenant routinely has a strict time limit for execution of the documents. If they are only delivered to the leased premises and not to the executive director's or president's office, they will most likely not be reviewed and/or modified as needed and executed in a timely manner. State agencies and institutions should also take great care to eliminate any provisions allowing the lessor to execute such documents for the State if the State fails to timely respond.

POLICY IMPLEMENTATION STEPS

Upon receipt of an Estoppel or SNDA, the document with its receipt date acknowledged, and a copy of the lease, should immediately be sent to the Real Estate Program in writing by fax, e-mail or postal service mail.

Should the lessor, its agent, a lender, a buyer or a buyer's agent attempt to communicate with the local office, direct those individuals to contact the Real Estate Program by telephone, e-mail, or postal service mail.

Upon receipt of the referenced documents, the Real Estate Program personnel will confer with the agency/institution and advise and assist regarding the execution of those documents.

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4.1 Novation Agreement

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

A Novation Agreement substitutes a new party for a former party in a contract. This document is required when a property is sold and a new owner is assuming obligations of the former owner in a Lease Agreement. This form has been reviewed and approved by the Attorney General and the State Controller's offices.