

301 CMR 51.00: LAND ACQUISITION

Section

- 51.01: Definitions
- 51.02: Applicability
- 51.03: General Provisions
- 51.04: Preparation for Real Property Acquisition
- 51.05: Central Register Publication Requirement
- 51.06: Determination of Terms of Acquisition
- 51.07: Public Notice of Commonwealth's Intention to Purchase or Lease Real Property
- 51.08: Real Property Acquisition Procedures
- 51.09: Record Keeping Requirements
- 51.10: Reimbursements to Non-profit Organizations

51.01: Definitions

Acquisition. Obtaining real property by gift, purchase, devise, grant, eminent domain, rental, rental-purchase, or otherwise.

Article 97 Purposes. The purposes set forth in Article 97 of the Amendments to the Massachusetts Constitution and/or conservation or open space purposes set forth in any other enabling legislation of any EEA Agency.

Central Register. The *Central Register* published by the Secretary of State of the Commonwealth pursuant to M.G.L. c. 9, § 20A.

DCAMM. The Division of Capital Asset Management and Maintenance of the Executive Office for Administration and Finance.

EEA. The Executive Office of Energy and Environmental Affairs of the Commonwealth.

EEA Agency. The relevant agency, department or division of EEA, including but not limited to the Department of Conservation and Recreation, Department of Fish and Game and its Division of Fisheries and Wildlife, and the Department of Agricultural Resources.

EEA Agency Head. The board or officer of an EEA Agency authorized to acquire real property on behalf of the Commonwealth of Massachusetts.

Public Officials. The city manager in the case of a city under Plan E form of government, the mayor and the city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency and the members of the general court.

Real Property. Any interest in real property, including but not limited to fee simple, leaseholds, easements, restrictions and reversions acquired for Article 97 purposes as defined in 301 CMR 51.00.

Secretary. The Secretary of the Executive Office of Energy and Environmental Affairs.

51.02: Applicability

301 CMR 51.00 shall apply to all acquisitions of real property for Article 97 purposes by any EEA Agency. 301 CMR 51.00 shall not apply to any acquisition of a capital facility, as defined in M.G.L. c. 7C, § 1, whether or not by an EEA Agency. Whether an acquisition of real property which includes an existing or subsequent structure is for Article 97 purposes or constitutes a capital facility shall be the sole determination of the EEA Agency Head. Any deed or other instrument of conveyance stating that real property is being acquired for Article 97 purposes shall create a conclusive presumption that the acquisition is for Article 97 purposes and does not constitute the acquisition of a capital facility.

51.02: continued

Any EEA Agency may acquire real property for the Commonwealth for Article 97 purposes if and to the extent authorized by statute to do so. Only an authorized EEA Agency shall determine what real property to acquire for Article 97 purposes.

51.03: General Provisions

Methods of Acquisition.

- (1) Real property may be acquired by the Commonwealth for the use of an EEA Agency by gift, purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.
- (2) All real property acquired for the use of an EEA Agency shall be acquired and held in the name of the Commonwealth of Massachusetts acting through that acquiring EEA Agency.
- (3) The granting or demising clause of any instrument granting or demising real property to the Commonwealth shall read as follows: "... to the Commonwealth of Massachusetts, acting by and through its (Department, Commission, Board or Division of the Executive Office of Energy and Environmental Affairs)....".

51.04: Preparation for Real Property Acquisition

Due Diligence. The following shall be obtained for each parcel of real property or interest therein to be acquired on behalf of the Commonwealth.

- (1) Appraisal. In accordance with policies and specifications established by the Secretary, and except as may otherwise be determined by the Secretary, two appraisals by real estate appraisers certified or licensed pursuant to M.G.L. c. 112, dated no earlier than a year prior to the date of execution of the acquisition agreement or conveyancing documents are required with respect to each acquisition of real property. Appraisals shall not be required for gifts or devises of real property.
- (2) Title. A title report, including an attorney's certification of title on a form prescribed by the Secretary after consultation with the Commissioner of DCAMM, performed in accordance with policies and specifications established by the Secretary, is required with respect to each acquisition of real property. The title certification shall have attached to it true copies of all documents relative to and evidencing the encumbrances and defects to title, if any, listed by the certifying attorney.
- (3) Environmental Site Assessment. A commercially reasonable environmental site assessment is required when determined by the EEA Agency Head to be appropriate, for the acquisition of a parcel of real property or interest therein. Any such assessment shall be sufficient to permit the EEA Agency Head to determine the environmental condition of the real property in accordance with policies and specifications established by the Secretary.
- (4) Survey. At the discretion of the EEA Agency Head and subject to the policies and specifications set by the Secretary a survey of the real property in conformance with 250 CMR 6.00: *Land Surveying Procedures and Standards* and in a form to be prescribed by the Secretary shall be required, together with a metes and bounds legal description of the real property.
- (5) Such other information as the EEA Agency Head shall deem necessary or appropriate.

51.05: Central Register Publication Requirement

- (1) The EEA Agency Head shall publish notice in a form approved by the Secretary after consultation with the Commissioner of DCAMM, of the intention of the Commonwealth to purchase real property in the *Central Register* at least 30 days prior to the date that any binding agreement or document(s) is executed to acquire such real property, together with the names of all parties having a beneficial interest as provided in M.G.L. c. 7C, § 38, the location and size of the property and the proposed purchase price or rental terms.

51.05: continued

- (2) No publication shall be required for acquisition by eminent domain, gift or devise.

51.06: Determination of Terms of Acquisition

(1) Price. Each acquisition of real property or an interest therein for monetary consideration shall be at a price generally not higher than the fair value of such real property, which fair value shall be determined by the EEA Agency Head based on a review of the appraisal(s) of such real property. Any purchase price exceeding 10% of the value established by appraisal(s) must be approved by the Secretary.

(2) Any agreement for purchase of real property by an EEA Agency shall be in the form set forth by the Secretary after consultation with the Commissioner of DCAMM, with such changes as deemed appropriate by the EEA Agency Head in connection with a particular acquisition project.

51.07: Public Notice of Commonwealth's Intention to Purchase or Lease Real Property

(1) To Public Officials.

(a) The EEA Agency Head shall provide written notice of any such planned purchase or lease, including a statement of the present use and proposed uses of the subject property and the reason for the proposed action, to the Public Officials of each city or town in which the real property proposed to be purchased or leased is located at least 120 days prior to the purchase or lease of the real property by the Commonwealth.

(b) The 120-day notice period can be reduced or waived by agreement of the Public Officials.

(2) To Members of the Public.

(a) EEA Agency Heads shall cause a public hearing to be held in the city or town in which such real property is located at least 60 days prior to the purchase of real property by the Commonwealth for the purposes of disclosing the conditions or reasons for the proposed purchase or lease.

(b) In the event the public hearing is conducted by the Commissioner of DCAMM, notice of such public hearing shall be published in the *Central Register* at least 30 days prior to such hearing, and at least once each week for two consecutive weeks preceding the hearing, in newspapers with sufficient circulation to inform the people of the affected locality. The hearing shall be held in the locality in which the real property to be purchased is located.

51.08: Real Property Acquisition Procedures

(1) The approval of the Commissioner of DCAMM shall be required prior to the recordation of the conveyancing document(s) for any real property to be acquired for Article 97 purposes. The EEA Agency Head shall certify compliance with 301 CMR 51.00 on a form developed by the Secretary in consultation with the Commissioner of DCAMM, and shall forward said certification form to said Commissioner, together with the following acquisition documentation:

- (a) the appraisal(s);
- (b) a copy of the attorney certification of title and copies of listed encumbrances and defects to title, if any;
- (c) the environmental site assessment, if any;
- (d) a copy of the survey, if any;
- (e) a copy of the notice published in the *Central Register*, if any;
- (f) a copy of the notice to public officials, if any, of the planned acquisition;
- (g) a copy of notice of public hearing, if any, of the planned acquisition; and
- (h) A copy of the disclosure statement required under 301 CMR 51.00; if any.

51.08: continued

(2) The Commissioner of DCAMM shall have ten business days to certify the receipt of acquisition documentation as described in 301 CMR 51.08. Concurrent with said certification of receipt, the Commissioner of DCAMM shall approve the recordation of the conveyancing document(s). If the Commissioner of DCAMM does not certify receipt, and approve the recordation within said ten-day period, the acquisition shall be deemed approved and the EEA Agency Head may record the conveyancing document(s). The ten-day period shall not begin until the Commissioner of DCAMM has received all the required acquisition documentation. No EEA Agency Head may submit for approval more than five proposed acquisitions in a calendar week nor more than 15 proposed acquisitions in a calendar month, without specific agreement with the Commissioner of DCAMM.

51.09: Record Keeping Requirements

Upon the completion of an acquisition, the EEA Agency Head shall cause to be kept in the permanent records of the EEA Agency those forms and documents necessary to evidence conformance with 301 CMR 51.00.

(1) Disclosure Requirement.

- (a) No agreement by the Commonwealth to purchase or lease real property, and no extension or renewal of any such agreement shall be valid, and no payment shall be made by the Commonwealth to any person in connection with such purchase or lease by the Commonwealth, unless and until the party disposing of such real property shall have filed a disclosure statement with the EEA Agency Head setting forth the following information:
1. the true names and addresses of all persons and entities, including, without limitation, corporations, limited liability companies, limited liability partnerships, trusts, and limited and general partnerships, who have a direct or indirect beneficial interest, in the real property to be acquired by the Commonwealth and the extent of such interest; and
 2. which, if any, of the persons listed on such disclosure statement have been elected to public office in the Commonwealth or are employees of the Commonwealth.
- (b) Notwithstanding the foregoing, if the stockholder of a corporation, the stock of which is listed for sale to the general public with the United States Securities and Exchange Commission, holds less than 10% of the outstanding stock entitled to vote at the annual meeting of such corporation, such interest need not be disclosed.
- (c) In the event of any change of the ownership interests in real property leased to the Commonwealth during the term of the lease, such change shall be disclosed to the EEA Agency Head in a disclosure statement filed as set forth in 301 CMR 51.09(1)(a) within 30 days of such change.
- (d) All such disclosure statements shall be signed under penalties of perjury by:
1. an individual lessor or seller;
 2. a duly authorized officer of a corporate lessor or seller;
 3. the number of general partners of a general or limited partnership and the number of trustees of a trust as executed the agreement agreeing to lease or sell such real property to the Commonwealth
 4. a manager or a person with respect to a limited liability company, or a partner with respect to a limited liability partnership, who is authorized in the certificate of registration or organization thereof, as amended, filed in the Office of the Massachusetts Secretary of State to execute, acknowledge, deliver and record recordable instruments affecting real property of that limited liability company or a limited liability partnership; or
 5. such other authorized persons as the EEA Agency Head may require.
- (e) Such statement after consultation with the Commissioner of DCAMM shall be filed on a form prescribed by the Secretary.

51.10: Reimbursements to Non-profit Organizations

301 CMR 51.10 applies to payments made by EEA or an EEA Agency to non-profit land conservation organizations and land trusts seeking reimbursement of reasonable costs and expenses borne by the organization or trust for activities directly associated with the planned acquisition of land or interests in land by the Commonwealth for Article 97 purposes.

51.10: continued

(1) Definitions applicable to 301 CMR 51.10.

Non-profit Organization. a charitable conservation organization or trust whose Articles of Organization and/or By-laws indicate its dedication to land or natural resource protection and conservation and which is qualified or eligible for qualification under Section 501(c)(3) or (4) of the Internal Revenue Code.

Reasonable Expenses. Actual out-of-pocket expenses for the following costs:

- (a) Interest on loans from a bank or from sources other than banks and interest foregone on organizational funds used to purchase the property.
- (b) Costs of appraisal, survey, title search, title insurance, fire, casualty and liability insurance, necessary repairs, property taxes and recording fees, site specific plans, maps, site restoration, soil testing, soil studies and environmental assessments, resource planning, and engineering.
- (c) Costs of legal services approved in advance by the reimbursing EEA Agency as a lump sum amount.
- (d) Cost of performing an audit if required by the reimbursing EEA Agency.
- (e) Other costs or expenses associated with the acquisition of land or interests therein which are approved in advance by the reimbursing EEA Agency.

(2) Eligibility and Requirements.

(a) To be eligible for reimbursement, all costs and expenses must be directly associated with the acquisition of land or interests therein for Article 97 purposes. In addition, all of the following requirements must be met:

1. the entity seeking reimbursement is a Non-Profit Organization as defined in 301 CMR 51.10(1).
2. the expenses or costs to be reimbursed are Reasonable Expenses as defined in 301 CMR 51.10(1), and are determined to be necessary and reasonable by the reimbursing EEA Agency.
3. the reimbursing EEA Agency has agreed, in advance of any expenditure by the Non-profit Organization, to reimburse the Non-profit Organization in accordance with a proposal submitted to the reimbursing EEA Agency by the Non-profit Organization. The proposal must calculate the estimated costs and expenses for the services to be rendered as well as actual rates to be used in calculating said costs and expenses. Any deviation from the proposal must be pre-approved by the reimbursing EEA Agency.
4. in the event the Non-profit Organization takes title to the land prior to conveyance to the Commonwealth, the sale price to the Commonwealth may not exceed the purchase price paid by the Non-profit Organization or the fair value of the land as established by an appraisal, whichever is less.
5. in the event the Non-profit Organization does not take title to the property prior to conveyance to the Commonwealth, acquisition by the Commonwealth of the land or interest(s) therein for which expenses were incurred by the Non-profit Organization must occur within two years from the date the initial proposal is submitted to the EEA Agency, unless this deadline is extended by the reimbursing EEA Agency in its discretion; provided further that if neither the Non-profit Organization nor the Commonwealth takes title to the land due to no fault of the Non-profit organization, the EEA Agency may reimburse the Non-profit Organization in its discretion in accordance with the requirements of 301 CMR 51.10(2).
6. in the case of an acquisition which results in subsequent conveyance of only a portion of the property to an EEA Agency, reimbursement shall be limited to reasonable expenses proportionate to the value of the land subsequently acquired by the EEA Agency.
7. all costs and expenses which are eligible for reimbursement must be fully documented and supported by the Non-profit Organization seeking reimbursement.
8. reimbursement procedures shall be made in accordance with generally accepted state operating practices as established by the Executive Office for Administration and Finance.

51.10: continued

9. projects which were initiated under 801 CMR 28.00: *Reimbursements to Non-profit Organizations* or prior to November 4, 2016 may be reimbursed as long as they meet the current standards established in 301 CMR 51.10.
- (b) Reimbursement may be subject to review and approval by EEA.

REGULATORY AUTHORITY

301 CMR 51.00: M.G.L. c. 21A; St. 2014, c. 286, § 41.