



Department of Energy
Washington, DC 20585

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MEMORANDUM FOR DISTRIBUTION

FROM: SCOTT L. WHITEFORD
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AND HEAD OF CONTRACTING ACTIVITY FOR REAL ESTATE

SUBJECT: Supplemental Real Estate Guidance to Clarify Types of Agreements that
are Real Estate Actions, and Approval of Real Estate Provisions of
Multi-Subject Agreements

ISSUE: The purpose of this memorandum is to ensure that all agreements affecting interests in DOE-controlled real estate are reviewed and approved by a Certified Realty Specialist (CRS) or executed by a Real Estate Contracting Officer (RECO) in accordance with DOE Order 430.1C *Real Property Asset Management* (RPAM)

BACKGROUND: The RPAM Order provides that “All actions involving the planning, acquisition, management, and disposition of interests in real estate must be reviewed and approved by a Certified Realty Specialist (CRS), as appropriate, prior to execution. Real estate actions, subsequent to CRS review and approval, are executed at the appropriate level of delegated authority such as authority possessed by a Real Estate Contracting Officer (RECO).” (RPAM, sec. 4)

In many instances, real estate actions are easy to identify. Deeds, leases and easements are common examples of realty instruments, and their execution is clearly a real estate action. RPAM defines “real estate actions” more broadly as, “Activities related to acquisition, management, and disposal of real property interests. Acquisition of real property interest includes, but is not limited to: fee title; public domain land withdrawals; in-grants of easements, permits, licenses, and leases. Management of real property interests includes, but is not limited to: out-grants of easements, permits, licenses, and leases; resolution of encroachments, boundary disputes, and disputes regarding the nature and extent of real property interests. Disposal of real property interests includes, but is not limited to: disposal of fee title; release or termination of in-grant easements; and establishment of institutional controls by restrictive deed covenant or easement.” (RPAM, Attachment 1, Definitions)

RPAM uses the language “includes, but is not limited to” because documents and agreements with other titles may also fit the definition of a real estate action. “Use Agreement,” “Access Agreement” and other documents with titles not listed in the definition have been found to qualify as real estate actions. In determining whether a document is a real estate action, the substance matters more than the title. If a document provides for acquisition, termination or modification of rights of ownership, possession, entry or use of real property then it is a real estate action. Any such document is subject to RPAM, including the requirement for review and approval by a CRS.

A related issue concerns documents that include real estate actions as part of an agreement or transaction that contains additional requirements or obligations besides real estate interests. For purposes of this guidance, such documents will be referred to as “Multi-Subject Agreements.” A CRS may not be authorized to approve the non-real estate provisions of a Multi-Subject Agreement. It is appropriate for an official with broader authority, such as a Site Manager, to execute Multi-Subject Agreements, but a CRS must review and approve the real estate provisions to ensure compliance with RPAM. This review and concurrence needs to be documented in writing.

The Office of Asset Management will initiate changes to the RPAM Order to formalize this guidance. For further assistance or clarification, please contact the DOE Senior Realty Officer, David Steinau at 202-287-1503 or by email at david.steinau@hq.doe.gov.

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