



# Property Dispositions- Getting It Right The First Time

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# Property Disposition-

## Is the Property Suitable for Future District Plans?

- Due Diligence- do you really want to dispose?

# Beware of funding restrictions that will affect the disposition

- Bond Funds
  - restrictions on later disposition or disposition of excess land
  - use restrictions



# Grant Funds

- use restrictions
- restrictions on transfers or sale
- federal lien restrictions

# So, You Want To Dispose?

- The District must obtain approval from one of the organizations below on any and all Dispositions of Property (Lease, Sale, Donation, Exchange, or other Disposition), depending on the Value of the Sale or the terms of the Lease:
  - Office of the State Auditor (OSA) or
  - Public Education Department (PED), or
  - State Board of Finance (SBOF)

# OSA Approval

- If the real or personal property is valued at less than \$5,000 and obsolete or unusable, or the district is wanting to demolish a building under \$5,000 in value, approval is only needed from the OSA.
- Disposition may be made by:
  - Negotiated sale to any Indian nation, tribe or pueblo in NM
  - Negotiated sale or donation to other state agencies, local public bodies (counties, irrigation districts, registered land grants), school districts, state educational institutions (but not municipalities)
  - Sale at Public Auction
  - Destruction
    - Disposal of hazardous materials must be in compliance with Environmental Regulations and
    - Sale through solicitation of written bids through the state purchasing division.
  - Contact the OSA for specific procedures at (505) 476-3800.

# PED Approval- Section 13-6-2

- Approval is needed from PED for all personal property or demolition with a value of more than \$5,000 or
- Any sale, trade or lease of real property for a period of less than five years and when consideration is between \$5,000 and \$25,000.
- PED Checklist, Forms & Flow Chart on CD

<http://www.ped.state.nm.us/CapitalOutlay/disposition.html>

# Requirements for Sale or Trade

1. Form of quitclaim deed (not warranty deed or special warranty deed).
2. Copy of a current (12 Months) unrestricted appraisal and a report of review by the Property Tax Division of the Tax and Revenue Department. (Not required if buyer is a governmental entity.)
3. Description of the reason for the sale or trade.



# Disposition Sale, Lease or Gift

- Determination by BOE to dispose of property
- Charter Schools 22-8B-4(F) NMSA 1978
- Method of Sale or Lease (competitive sealed bid; public auction; negotiation)
- Donations
  - Indian Nation, Tribe or Pueblo in NM with authority to acquire land
  - State agencies, local public bodies, school districts, state educational institutions
  - Land Grants operating as a political subdivision of the state § 49-1-1 *et seq.* NMSA

# PED Approval Section 13-6-2.1

- Approval is needed from PED for all personal property or demolition with a value of more than \$5,000 or
- Any sale, trade or lease of real property for a period of less than five years and when consideration is between \$5,000 and \$25,000.
- PED Checklist, Forms & Flow Chart on CD

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## Sale or Trade, cont'd.

4. Description of the selection process used to determine the purchaser (competitive sealed bid, public auction, negotiation).
5. Purchase price and, if applicable, the cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade).

# Sale or Trade, cont'd.

6. Purchase and Sale Agreement.
7. Resolution or minutes of the governing body authorizing the sale or trade and containing a provision making the sale or trade subject to approval of the State Board of Finance.
8. Approval by the State Engineer of the transfer of water rights. (SBOF frowns on sale of water rights - need separate justification and valuation)

## Sale or Trade, cont'd.

9. If the property includes a building, the school district must show some evidence that:
  - a) the building does not meet public school outlay council occupancy standards; or
  - b) that all charter schools located in the district have declined use of the building in writing.

# Requirements for Leases

SBOF approval is required if the school district wishes to lease (or sublease) properties it owns (or leases) if:

- a) the term of the lease or sublease is for a period of 5 years or more (including options); or
- b) the consideration over the lease term (including options) is more than \$25,000.

# SBOF Requirements

1. Current (12 months) unrestricted appraisal or other evidence of fair market value (rental value) (rarely accepted), and a Report of Review by the Property Tax Division of the Tax and Revenue Department. (Not required if tenant is a governmental entity.)
2. Copy of the lease.
3. Resolution from the governing body specifically approving the lease and containing a provision making the lease subject to Board of Finance approval.

# SBOF Requirements

4. Reason for leasing.
5. Description of the selection process used to determine tenant (competitive sealed bid, public auction or negotiation).
6. If the consideration being given is something other than money, evidence that the selection of the tenant complies with the procurement code and the lease complies with applicable laws.



# SBOF Requirements

7. If the property includes a building, the school district must show some evidence that:
  - a) the building does not meet public school outlay council occupancy standards; or
  - b) that all charter schools located in the district have declined use of the building in writing.

# SBOF Submission Requirements

- Hard copy and electronic copy/CD must be submitted on or before the meeting deadline. Electronic copy/CD must be bookmarked.
- Failure to submit a complete application in the proper format can result in having to resubmit the request.

# Practice Tips

- The sale agreement or lease should contain a provision stating that it is contingent upon State Board of Finance approval.
- Include a third-party opinion letter or other credible evidence stating that the property does not meet public school outlay council occupancy standards.

# More Practice Tips

- Consult with legal counsel **early** in the process to avoid unnecessary delays.
- Make sure the application for approval complies with all requirements or the application will be rejected.

# SBOF Expectations for Documents and Exhibits

- Non-Appropriation Clause for Bateman Act and Article IX, Section II Contingent Liabilities/District Indebtedness
- Future Lease Amendments must have prior SBOF Approval
- Appraisals must be “unrestricted” and for Leases must contain market rent analysis
- Be prepared for Background Questions
- No indemnification of opposing parties
- No contingent liabilities or obligations

# SBOF Expectations for Documents and Exhibits

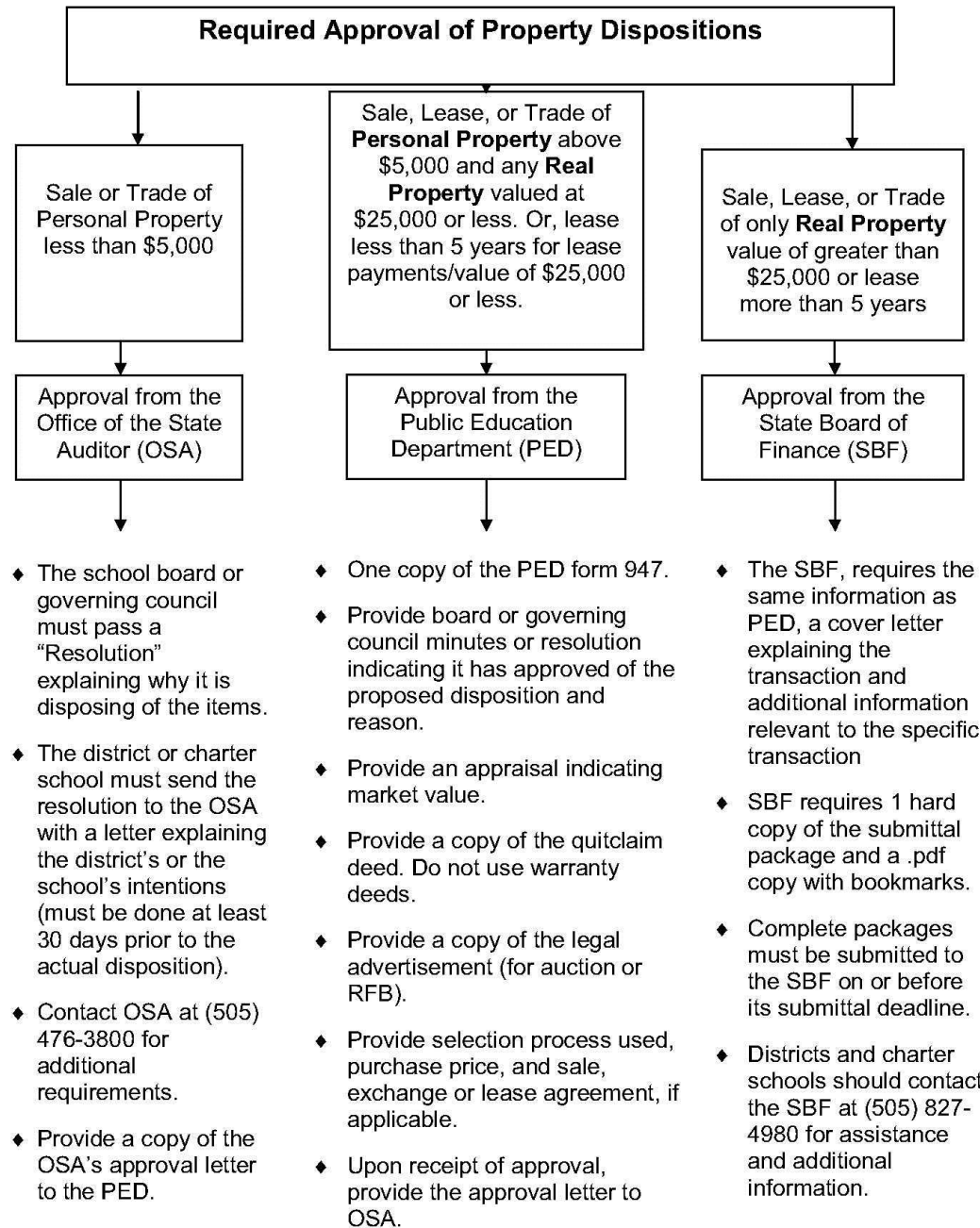
- Deeds establishing good title in the local school board
  - No reversionary clause
  - Use restrictions?
- Sound Purchase Agreement/Lease (protect the interests of the district)
- Title commitment with no standard exceptions, conditions or qualifications
- Closing costs and title policy: who pays?
- Selecting Closing Agent
- Current Survey (within 12 months) of the Property and Improvements
- Current Appraisal
- Inspection Reports
  - Environmental, engineering, mechanical, archeological
- Handling requests for repairs, corrective action

# Final Words

- Contract carefully!

# Flow Chart for State Approvals





# PED Form 947

(included in handouts)

# Questions?

Thank you.

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