

2017 AMENDMENTS TO REGENTS' RULE 70301 AND POLICY UTS126: *PURPOSES AND IMPACT ON U. T. SYSTEM REAL ESTATE TRANSACTIONS*

U. T. System Real Estate Conference
February 9, 2018

Kirk Tames, Executive Director of Real Estate
Ha Dao, Assistant General Counsel



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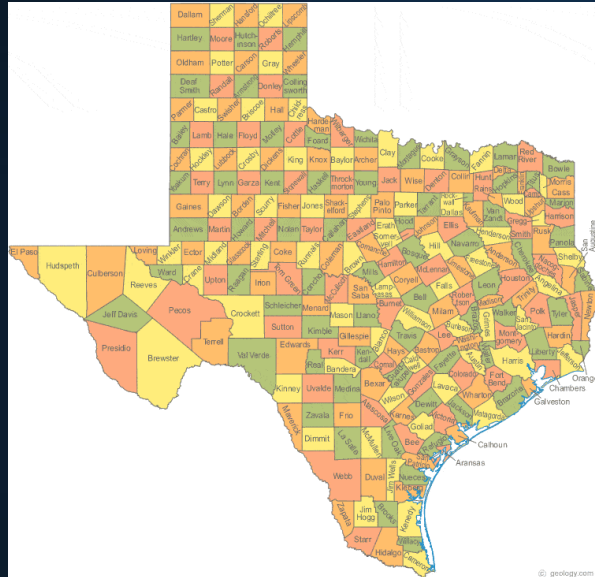
BACKGROUND

- Increased volume of real estate transactions
- U. T. institutions' desire for more autonomy
- Real Estate Office's effort on smaller short-term transactions added little value
- Multiple Regents' Rules and U. T. Systemwide Policies governed real estate transactions

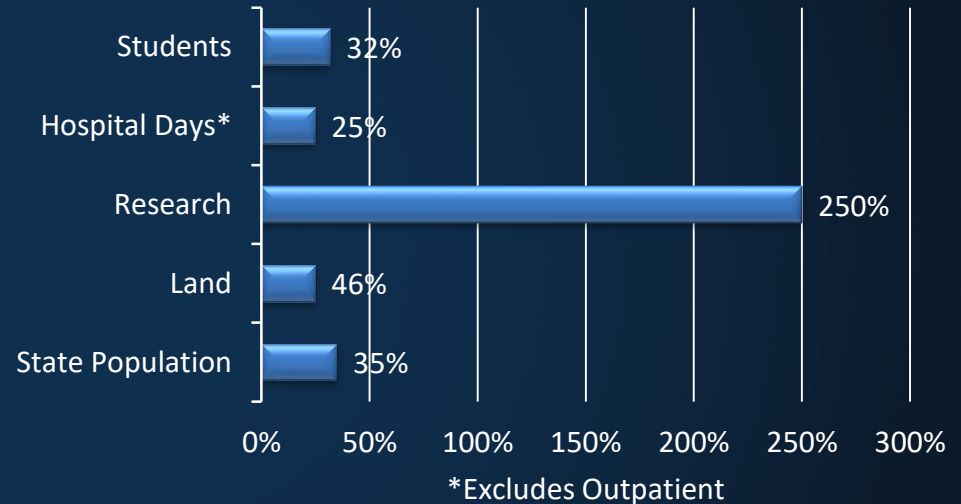


A Growing State & System

20 Year Growth



Approximately 1999-2017



MAIN PURPOSES OF AMENDMENTS

- Grant greater signature authority to the U. T. institutions with regard to leases and licenses.
- Reduce Real Estate Office business review of certain short-term, low-dollar leases and licenses.



(cont.)

- Consolidate real estate provisions into one Rule and one Policy:
 - Regents' Rules 70301 and 10501 and Policy UTS145
➔ Amended Rule 70301
 - Policies UTS126 and UTS147 ➔ Amended Policy UTS126



AMENDED RULE 70301 AND UTS126 HIGHLIGHTS

1. Memorialize the change from the previous \$1 million Board approval threshold applicable to all U. T. institutions to individual thresholds that match each institution's approval threshold for goods and services contracts.
 - Board approval thresholds or “Authority Levels” are established by Regents’ Rule 10501 and Policy UTS145.



Current Authority Levels for U. T. Academic Institutions

<u>Academic Institutions</u>	<u>Authority Levels</u>
UT Arlington	\$1,000,000
UT Austin	\$2,500,000
UT Dallas	\$1,000,000
UT El Paso	\$1,000,000
UT Permian Basin	\$1,000,000
UT Rio Grande Valley	\$1,000,000
UT San Antonio	\$1,000,000
UT Tyler	\$1,000,000



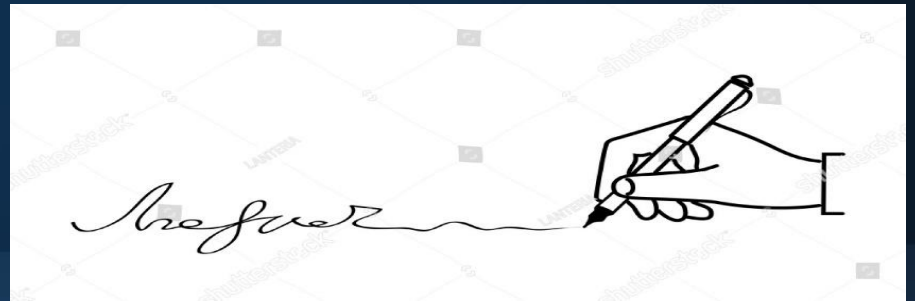
Current Authority Levels for U. T. Health Institutions and U. T. System Administration

<u>Health Institutions</u>	<u>Authority Levels</u>
UT Health Science Center - Houston	\$2,500,000
UT Health Science Center - San Antonio	\$2,500,000
UT Health Science Center - Tyler	\$2,500,000
UT MD Anderson Cancer Center	\$5,000,000
UT Medical Branch - Galveston	\$2,500,000
UT Southwestern Medical Center	\$2,500,000
UT System Administration	\$1,000,000



(cont.)

2. Retain direct delegation of signature authority by the Board to institution Presidents for certain space leases and broaden the signature authority to include certain space licenses.
3. Retain Executive Director of Real Estate's authority to sign all real estate contracts and to delegate such signature authority to other U. T. System officers.



(cont.)

4. Clarify Real Estate Office business review is required for long-term contracts, contracts related to the purchase or sale of real property, easements, ground leases, build-to-suit leases, and contracts requiring Board approval.
5. Clarify Office of General Counsel legal review is required for all contracts unless provided otherwise in Rule 70301 and UTS126.



(cont.)

6. Formalize the role of the Real Estate Office as the central repository for copies of all real estate contracts.
7. Provide that Rule 70301 prevails over other Regents' Rules, but is subject to Rules 60101 and 60103 (acceptance and administration of donated real property).
8. Provide that UTS126 prevails over other U. T. Systemwide Policies, but is subject to UTS138 (gift acceptance procedures).



IMPACT ON REAL ESTATE TRANSACTIONS

Overview of Impact

Signature Authority:

- Institution Presidents
- Executive Director of Real Estate

Approval Requirements:

- Board of Regents
- Real Estate Office
- Office of General Counsel

Records Retention:

- Real Estate Office
- U. T. Institutions



Impact on Signature Authority: Institution Presidents and Executive Director of Real Estate



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Direct Delegation by the Board to Institution Presidents:

Regents' Rule 70301, Part 2, § 6: Broadens the direct delegation of signature authority by the Board to the institution Presidents to sign space licenses as well as space leases for institutional purposes under certain conditions.

- Space leases: Board leasing space as tenant
- Space licenses: Board licensing facilities as licensee



TEN YEARS; Exceptions for complexity



Some of the conditions to the institution Presidents' signature authority:

- The maximum initial term of the space lease or space license (and any extension term under the control of the Board) must be 10 years or less.
- The space lease or space license contains no options to purchase.
- No ground lease



(cont.)

- The space lease or space license does not involve the construction or substantial completion of a new facility or the substantial replacement or reconstruction of an existing facility.



(cont.)

- If the space lease or space license has a Total Cost or Monetary Value that exceeds the institution's Authority Level, the President or his/her delegate may sign the contract prior to obtaining Board approval if the contract: **(a)** has been approved by the Real Estate Office and the Office of General Counsel; **(b)** is promptly submitted for Board approval; and **(c)** contains a legally-approved provision to the effect that the portion of the obligations that exceeds the institution's Authority Level is not binding until the contract is approved by the Board.





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Note On Total Cost or Monetary Value: The net cumulative sum of all costs and expenses to be paid or all monies to be received by a U. T. institution over the term of a real estate contract (Regents' Rule 70301, Part 3).

- All \$: Include rent, operating expenses, tenant improvements, taxes, etc. for life of transaction; include renewals
- Nonmonetary consideration - quantify: equal value





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Direct Delegation by the Board to Executive Director of Real Estate:

Regents' Rule 70301, Part 2, § 4.3 and § 4.4: Retains the Executive Director of Real Estate's authority to sign all real estate contracts.

Regents' Rule 10501, Part 2, § 1.3: Permits the Executive Director of Real Estate to delegate his/her signature authority from the Board to other U. T. System officers, including the institution Chief Business Officers (e.g., Campus Lease/License Delegation).



Campus Lease/License Delegation by Executive Director of Real Estate to institution Chief Business Officers: Under the recently-issued campus lease/license delegation by the Executive Director of Real Estate to each U. T. institution, the Chief Business Officer of the institution may sign campus leases and campus licenses subject to certain conditions.



- Campus leases: Board leasing space as landlord
- Campus licenses: Board licensing space as licensor



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Some of the conditions to the Chief Business Officer's signature authority:

- The aggregate term of the campus lease or campus license, *including extensions*, must be 10 years or less.
- The campus lease or campus license contains no options to sell the property that is the subject of the contract.
- Not a ground lease



(cont.)

- The campus lease or campus license does not cover donated real property administered or managed by the Office of Development and Gift Planning Services or the Real Estate Office.



(cont.)

- The campus lease or campus license does not involve the construction of a new building or the substantial replacement or reconstruction of an existing building.
- The campus lease or campus license does not involve any transfer of rights in favor of the general public, including any dedication of space for use as a park or a public street or roadway.





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(cont.)

- The campus lease or campus license has a Total Cost or Monetary Value that is within the institution's Authority Level.



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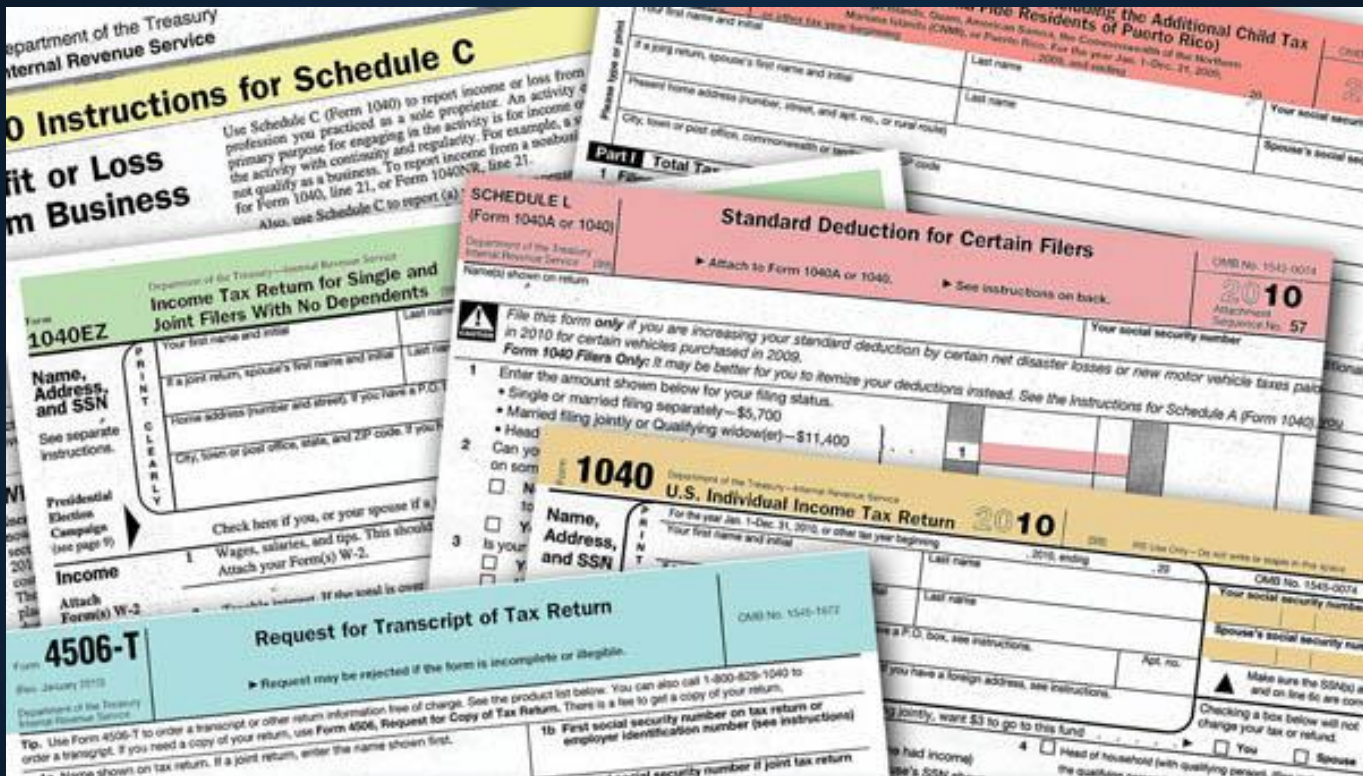
- If the contract has a Total Cost or Monetary Value that exceeds the institution's Authority Level, the Chief Business Officer may sign the contract prior to obtaining the Board approval if the contract: **(a)** has been approved by the Real Estate Office and the Office of General Counsel, **(b)** is promptly submitted for approval by the Board, and **(c)** contains a legally-approved provision to the effect that the portion of the obligations that is in excess of the institution's Authority Level is not binding until the contract is approved by the Board.



Note on Tax Implications for Campus Leases/Licenses:

- A campus lease or campus license may raise unrelated business tax income (UBIT) and other federal tax issues.
- Before the contract is finalized, the U. T. institution should consult with the Office of General Counsel tax attorney for any UBIT issues, and, if the contract involves bond-financed property, with the U. T. System Administration's Office of Finance to ensure the contract will not affect the tax-exempt status of the interest paid on the bonds.





Signature Authority for Other Contracts

- The Executive Director Real Estate continues to sign: (i) contracts related to purchase or sale of real property, (ii) easements, (iii) ground leases, and (iv) build-to-suit leases. The institutions do not have the authority to sign these contracts.





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Impact on Approval Requirements

Board of Regents Approval	
Real Estate Office Review	
Office of General Counsel Review	



Impact on Board Approval

- Regents' Rule 70301, Part 2, § 4.4.2 and § 8, and Part 3, and Policy UTS 126, §4
- Board approval is required for the following:
 - (i) any real estate transaction with a Total Cost or Monetary Value that exceeds the U. T. institution's Authority Level;



(cont.)

- (ii) any below-market real estate transaction;
- (iii) any acquisition of fee interests in real property by U. T. System, unless the property is within a Campus Master Plan approved by the Board; and
- (iv) any acquisition of easement or similar interest by U. T. System, unless the acquired interest is necessary to implement an institutional project or to serve real property owned or controlled by the Board.



Note on Board Approval for Contract Amendments:

- Board approval is required if:
 - the amendment increases the Total Cost or Monetary Value of the contract ***not previously approved by the Board*** above the institution's Authority Level; or
 - the amendment increases the Total Cost or Monetary Value of the contract ***previously approved by the Board*** by more than 125% of the Total Cost or Monetary Value approved by the Board, unless the cumulative increases in the Total Cost or Monetary Value are less than the institution's Authority Level.



(cont.)

- A new contract covering substantially the same real property covered by a prior contract between the same parties is deemed as an amendment of the prior contract, unless the property has been vacated under the prior contract for a period of at least 3 months after termination of the prior contract.



Note on Below-Market Transactions:

Texas Constitution Article III, § 51 prohibits the grant of State property. The acquisition, disposition, or use of real estate must be for a fair market value. If the transaction is below market, the contract must be submitted to the Board to determine whether the transaction meets the public purpose test.



Impact on Real Estate Office Review

- Policy UTS126, § 5.1
- Business review by the Real Estate Office is required for the following real estate contracts handled by U. T. System:
 - (i) any contract for the purchase, sale, or other transfer of any fee interests in real property;



(cont.)

- (ii) any campus lease or campus license to be executed by the Executive Director of Real Estate or his or her delegate in the Real Estate Office;
- (iii) any space lease or space license not within the institution Presidents' signature authority under Regents' Rule 70301, Part 2, § 6;
- (iv) any lease or license referred to the Real Estate Office by the U. T. System Administration's Office of Health Affairs or Office of Academic Affairs;



(cont.)

- (v) any easement;
- (vi) any contract in which a material part of the consideration paid or received by a U. T. institution under the agreement is nonmonetary in nature; and
- (vii) any contract requiring Board approval.



Impact on Office of General Counsel Review

- Regents' Rule 70301, Part 2, § 4.1, and Policy UTS126, § 6
- Legal review by the Office of General Counsel is required for all real estate contracts handled by U. T. System, unless:
 - (i) contract forms promulgated by the Real Estate Office and Office of General Counsel are used with no material changes and in accordance with all the terms and conditions accompanying the use of such forms; or



(cont.)

- (ii) the contracts are space leases or space licenses that: (a) have a Total Cost or Monetary Value of less than \$1 million and an annual average cost of less than \$500,000, (b) incorporate without change the State Law Addendum promulgated by the Office of General Counsel, and (c) satisfy all the terms and conditions accompanying the use of such addendum.



Impact on Records Retention: Real Estate Office and U. T. Institutions

- Regents' Rule 70301, Part 2, § 10: The Board designates the Real Estate Office as the central repository for all real estate contracts. U. T. institutions are required to deliver to the Real Estate Office an electronic copy of all contracts signed by the institutions.
- Regents' Rule 10501, Part 2, § 1.4: U. T. institutions must maintain records related to real estate contracts executed by the institutions under delegated authority pursuant to applicable records retention schedule or policy.





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FACILITY USE AGREEMENTS

Regents' Rule 80106 continues without changes:

- Facility Use Agreements are for short-term use by third parties of UT facilities; must be made on forms approved by OGC.
- Only apply for the license by U. T. of spaces or facilities designated as Special Use Facilities by institutional Presidents.





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QUESTIONS?

THANK YOU



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