

REAL PROPERTY SALE OR LEASE

Power to Sell or Lease Real Property

The Monterey County Board of Education (County Board) may sell any real property and any capital improvements contained thereon belonging to it, or may lease for a term not exceeding 99 years. The County Board may sell any real property, together with any personal property located thereon, which is not or will not be needed by the Monterey County Superintendent of Schools (County Superintendent) for school classrooms buildings at the time of delivery of title or possession.

Terms of Sale or Lease of Real Property

The sale may be made for cash, or for part cash. Terms of deferred payments as are determined by the action of the County Board and are secured by purchase money, mortgage, deed of trust, and irrevocable letter of credit issued by a state or federally-chartered financial institution, or any other form of security which is acceptable to the County Board. A lease may be made upon such consideration or for such rental, as is authorized by the action of the County Board.

Use of Funds from Sale or Lease with Option to Purchase

- a) The funds derived from the sale of surplus property shall be used as follows:
 - 1. For capital outlay; or
 - 2. For costs of maintenance of property owned by the County Board that the County Board determines will not recur within a five-year period.

- (b) Proceeds from a lease of property owned by the County Board with an option to purchase may be:
 - 1. Deposited into a restricted fund for the routine repair of facilities owned by the County Board, as defined by the State Allocation Board, for up to a five-year period; or
 - 2. Deposited in the County School Service Fund of the Monterey County Office of Education (MCOE) for any general purpose if the County Board and the State Allocation Board have determined that the County Board has no anticipated need for additional sites or building construction for the five-year period following such sale or lease, and the County Board has no major deferred maintenance requirements.

- (c) Notwithstanding subdivisions (a) and (b), until January 1, 2014, the funds derived from the sale of surplus property may be deposited into the general fund and used for any one-time general fund purpose, but only if the property was purchased entirely with local funds. For purposes of this provision, the proceeds of the transaction means either of the following, as appropriate:
1. The amount realized from the sale of property after reasonable expenses related to the sale; or
 2. For a transaction that does not result in a lump-sum payment of the proceeds of the transaction, the net present value of the future cash flow generated by the transaction.

Before the County Board takes action to expend the proceeds of the sale of surplus property for a one-time County School Service Fund purpose, it shall submit the information described in subdivision (d) of Education Code 17463.7 to the State Allocation Board and, at a regularly scheduled meeting, present a plan, as described in subdivision (e) of Education Code section 17463.7(d), for expending the one-time resources.

Priorities and Procedures for Sale or Lease with Purchase Option; Bids

Real property for sale or lease with an option to purchase shall be offered by the County Board in accordance with the following priorities and procedures:

- (a) First, may be used for park or recreational purposes pursuant to Education Code 17464, 17489, and 17491 and subdivision (b) of Government Code 54222, in any instance in which such sections are applicable.
- (b) Second, may be used for the following:
 1. Developing low- and moderate-income housing, to all local public entities within whose jurisdiction the land is located and housing sponsors which have submitted written requests for such offers, pursuant to subdivision (a) of Government Code s 54222;
 2. School facilities construction or open-space purposes, to the school district(s) within whose jurisdiction the land is located, pursuant to subdivision (c) of Government Code 54222;
 3. Enterprise zone purposes, to the nonprofit neighborhood enterprise association corporation, if any, in the enterprise zone in which the

property is located, pursuant to subdivision (d) of Government Code 54222; and

4. Development within an infill opportunity zone or transit village plan, to any county, city, city and county, public transportation agency, or housing authority within whose jurisdiction the property is located, pursuant to subdivision (e) of Government Code 54222;
- (c) Third, at fair market value, to the following:
1. In writing, to the California Director of General Services, the Regents of the University of California, the Trustees of the California State University and Colleges, the County, the city in which the property is situated, the County public housing authority, and any entity described in subsection (c)(ii), below, which has submitted a written request to be directly notified of such an offer. The written notice shall be mailed no later than the date of the second published notice.
 2. By public notice, to any public district, public authority, public agency, public corporation, or any other political subdivision in this State, to the federal government, and to any charitable corporation determined by the Secretary of State to be a public benefit corporation under Part 2 (commencing with Section 5110) of Division 2 of Title I of the Corporations Code. Public notice shall consist of at least publishing its intention to dispose of the real property in any newspaper of general circulation that is regularly circulated in the County, once each week for three successive weeks. Three publications in a newspaper regularly published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The notice shall specify that the property is being made available to all public districts, public authorities, public agencies, and other political subdivisions or public corporations in this state, and to nonprofit public benefit corporations.

The entity desiring to purchase or lease the property shall, within 60 days after the third publication of notice, notify the County Board of its intent to purchase or lease the property.

If the entity desiring to purchase or lease the property and the County Board are unable to arrive at a mutually satisfactory price or lease payment during the 60-day period after the third publication of notice, the property may be disposed of as otherwise provided in this section. In the event the County Board receives offers from more than one entity pursuant to this subdivision, the County Board shall accept the highest

offer. If two or more entities make the same offer, which is also the highest offer, the County Board shall seek an additional higher offer, which is also the highest offer, the County Board shall call for oral bids from entities with a priority pursuant to this subdivision, or with a higher priority. If, upon the call for oral bidding, an entity offers to purchase the property or to lease the property for a price or rental exceeding by at least five percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the officer.

Declaration of Intention to Sell or Lease Real Property

Before ordering the sale or lease of any property, the County Board in a regular open meeting, by a two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the County Board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the County Board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.

Broker's Commission

No commission shall be paid unless there is contained in or with the sealed proposal or stated in or with the oral bid, which is finally accepted, the name of the licensed real estate broker to whom it is to be paid, the amount or rate thereof. In the event of a sale or higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified, the County Board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed. Any commission shall be paid only out of money received by the County Board from the sale or rental of the real property.

Notice of Resolution of Intention to Sell or Lease

Notice of the adoption of the resolution and the time and place of holding the meeting shall be given by posting copies of the resolution signed by the County Board or by a majority thereof in three public places in the County, not less than 15 days before the date of the meeting, and by publishing the notice not less than once a week for three

successive weeks before the meeting in a newspaper of general circulation published in the county.

Former Owners; Notice of Public Meeting; Right to Purchase or Receive Offer to Sell

The County Board shall take reasonable steps to ensure that the former owner from whom the County Board acquired the property receives notice of the public meeting in writing, by certified mail, at least 60 days prior to the meeting.

Opening and Accepting Bids at Public Meeting

At the time and place fixed in the resolution for the meeting of the County Board, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the County Board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting there from the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the County Board rejects all bids.

Call For and Acceptance of Oral Bids

Before accepting any written proposal, the County Board shall call for oral bids. If, upon the call for oral bidding, any responsible person offers to purchase the property or to lease the property, as the case may be, upon the terms and conditions specified in the resolution, for a price or rental exceeding by at least 5 percent, the highest written proposal, after deducting the commission, if any, to be paid a licensed real estate broker in connection therewith, then the oral bid which is the highest after deducting any commission to be paid a licensed real estate broker, in connection therewith, which is made by a responsible person, shall be finally accepted. Final acceptance shall not be made, however, until the oral bid is reduced to writing and signed by the offerer.

Delegation of Duties

The County Board may delegate to the Monterey County Superintendent of Schools, or to such other employees designated in writing by the County Superintendent, the authority to perform the duties required to be performed by the County Board. If such authority is delegated, the resolution shall specify, in lieu of the public meeting of the County Board to be held at its regular place of meeting, the place at which the County Superintendent or other designated employee will receive and open sealed proposals to purchase or lease and will call for oral bids. Final acceptance of a bid or rejection of all bids shall be made by the County Board at a public meeting.

Broker's Commission Upon Sale on Oral Bid

In the event of a sale or higher oral bid to a purchaser procured by a licensed real estate broker, other than the broker who submitted the highest written proposal, and who is qualified as provided in subsection 3030.15, the County Board shall allow a commission on the full amount for which the sale is confirmed. One-half of the commission on the amount of the highest written proposal shall be paid to the broker who submitted it, and the balance of the commission on the purchase price to the broker who procured the purchaser to whom the sale was confirmed.

Final Acceptance of Bids

The final acceptance by the County Board shall be made either at the same session or at a public meeting held within the 10 days next following.

Rejection of Bid

The County Board may at the session, if it deems such action to be for public interest, reject any and all bids, either written or oral, and withdraw the property from sale or lease.

Sale or Lease in Absence of Proposals or After Rejection of Bids or Nonconforming Proposals

- (a)
 - (1) If the County Board has complied with the provisions of this policy, and no proposals are submitted or the proposals submitted do not conform with all terms and conditions specified in the resolution of intent to sell or lease, the County Board may within one year thereafter, or one year after the passage of 30 days from the rejection of a public entity's nonconforming proposal, as appropriate, sell or lease such real property, together with any personal property located thereon, to any purchaser or lessee, at a price not less than fair market value in accordance with any terms and conditions agreed upon by the County Board and the purchaser or lessee, except that the term of a lease shall not exceed three years.
 - (2) The County Board may delegate to the County Superintendent, or to such other employee designated in writing by the County Superintendent, the authority to secure a purchaser or lessee and to negotiate the terms and conditions of the sale or lease. However, the purchase agreement or lease shall not be executed unless the County Board by a majority vote at a public meeting approves such sale or lease.
 - (3) If a public entity has submitted a nonconforming proposal, the County Board shall not take any action pursuant to this subdivision until 30 days after the rejection of such proposal.

- (b) Subdivision (a) shall not apply if a public entity has submitted a proposal that does not conform with all the terms and conditions specified in the resolution of intent to sell or lease, and if such public entity requests, in writing, within 30 days from the rejection of its proposal, that the County Board sell or lease the real property, subject to the resolution of intent, in accordance with the provisions of this policy.

Execution and Delivery of Deed or Lease

Any resolution of acceptance of any bid by the County Board authorizes and directs the President of the County Board, or the members thereof, to execute a deed or lease and to deliver it upon performance and compliance by the purchaser or lessee of all the terms or conditions of this contract to be performed concurrently therewith.

Letting of Unnecessary Property for Not Exceeding Five Days

The County Board may, without complying with any other provisions of this policy, let any personal property located thereon, not needed for school classroom buildings upon such terms and conditions as may be agreed upon by it and the lessee thereof for a period not exceeding five separate or consecutive calendar days or portions thereof in each fiscal year.

Real Property the Monthly Rental Value of Which Does Not Exceed \$50.00

Whenever it is proposed to lease real property and the County Board unanimously determines in the resolution that in its opinion, the monthly rental value of the property does not exceed the sum of fifty dollars (\$50), the resolution need not be posted and may, before the date of the meeting, be published in two successive issues of a weekly newspaper or in five successive issues of a daily newspaper in a newspaper of general circulation published in the county.

Effect of Failure to Comply with this Policy

The failure to comply with the provisions of this policy shall not invalidate the transfer or conveyance of real property and capital improvements to a purchaser or encumbrance for value.

Legal Reference (see next page)

Legal Reference:

EDUCATION CODE

17219-17224	<i>Acquisition of property not utilized as school site; nonuse payments; exemptions</i>
17230-17234	<i>Surplus property</i>
17385	<i>Conveyances to and from school districts</i>
17387-17391	<i>Advisory committees for use of excess school facilities</i>
17400-17429	<i>Leasing property</i>
17430-17447	<i>Leasing facilities</i>
17453	<i>Lease of surplus district property</i>
17455-17484	<i>Sale or lease of real property, especially:</i>
17463.7	<i>Proceeds for general fund purposes</i>
17485-17500	<i>Surplus school playground (Naylor Act)</i>
17515-17526	<i>Joint occupancy</i>
17527-17535	<i>Joint use of district facilities</i>
33050	<i>Request for waiver</i>
38130-38139	<i>Civic Center Act</i>

GOVERNMENT CODE

54220-54232	<i>Surplus land, especially:</i>
54222	<i>Offer to sell or lease property</i>
54950-54963	<i>Brown Act, especially:</i>
54952	<i>Legislative body, definition</i>

PUBLIC RESOURCES CODE

21000-21177	<i>California Environmental Quality Act</i>
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CODE OF REGULATIONS, TITLE 2

1700	<i>Definitions related to surplus property</i>
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COURT DECISIONS

San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District, (2006) 139 Cal.App. 4th 1356

Adopted: 3/21/84

Revised: 03/20/02; 04/17/13