

Department of
Veterans Affairs

Memorandum

Date:

SEP 30 2019

From: Acting Executive Director, Office of Construction and Facilities Management
(003C)

Subj: Updated Outlease Guidance for Use, Management and Rate Development

To: Under Secretaries for Health, Benefits, and Memorial Affairs

1. The purpose of this memorandum is to issue revised, interim guidance for execution of real property Outleases and appropriate methods for rate development. This memorandum does not apply to Leases for real property in non-federal space; refer to the Real Property Policy Memorandum 2018-06, Adoption of General Services Administration (GSA) Leasing Desk Guide (LDG) for guidance related to leases for real property. This memorandum also does not apply to space agreements authorized under 38 U.S.C. § 8153; refer to VHA Directive 1820 for guidance related to such agreements.

2. DEFINITIONS:

a. **Outlease.** An Outlease is the leasing of lands or buildings, or parts or parcels thereof, belonging to the United States and under the Secretary's control. In such cases, VA is the Lessor and the entity leasing the property from the VA is the Lessee.

b. **Lease.** A conveyance to the lessee of the right of exclusive possession of real property for a definite period of time by a landlord or lessor. It may include operational services provided by the landlord or lessor.

1.) **Lessee.** One who has the right to use or occupy a property under a lease agreement; the leaseholder or tenant.

2.) **Lessor.** One who holds property title and conveys the right to use and occupy the property under a lease agreement; the leased fee owner or landlord.

c. **Revocable License.** A license is permission to enter upon and do a specific act or series of acts upon the land and/or improvements of the licensor without possession and without acquiring any estate or real property interest therein. A license is revocable if the permission may be revoked by the licensor at any time. Revocable licenses may provide for a certain amount of notice prior to

revocation. A license is generally personal and non-assignable.

1.) **Licensee.** A Licensee is the party or entity to whom a license is granted.

2.) **Licensor.** A Licensor is the party or entity granting a license to someone else.

3. OUTLEASE RATE DEVELOPMENT:

a. **Local Market Rates.** Outlease rental rates are based on local market rates for commercial customers in similar properties. That is rents are negotiated with prospective tenants, using market data based on comparable real estate for commercial tenants in the surrounding area. Market research plays a critical role by helping identify ranges of fair and reasonable rental rates in the local real estate market.

When local market rate information is difficult to obtain, confer with an appraiser on what commercial market rates are currently in place in the area of your outlease opportunity. Appraisers have many resources for providing current market data for space to be marketed to the private sector, regardless of space type. Use the market information provided by the regional appraiser to document contract files and support rent rate negotiations with prospective tenants.

b. **Advertising.** Advertising outlease opportunities can be useful not only for attracting potential tenants, but also to gauge the market. The responses to your advertisement can provide information on what the market perceives to be acceptable rental rates, which you can then use as support for negotiations and contract administration.

c. **Required Documentation.** Detailed documentation of the outlease process and market rate research must be kept in the lease file.

d. **Retail and Communication Equipment on Rooftops.** Outleasing space to private sector retail businesses for retail activities and outleasing rooftop space to commercial telecommunication companies for antenna sites are also outlease activities in which the rent rate is negotiated based upon the current commercial market. Both industries are highly competitive; therefore, rates favorable to the Federal Government usually can be negotiated.

Other sources of information for antenna rates include municipalities, which may tax these agreements or have antennas on water towers or their own buildings. The antenna rent rates charged by municipalities may be available to the public. Another resource may be shopping malls, as many rent rooftop communications space. In remote areas where market data is not readily available, a resource to

consider is the Department of the Interior's BLM website, which lists rates they have negotiated for BLM antennas and towers. Refer to VHA Directive 1820 for guidance related to such agreements.

e. **Utilities.** Utility use during normal business hours may be included in the rent payment; however, the amount of rent payment and utility payment must be separately stated in the terms and conditions of the outlease. Estimated utility expense can be obtained from the Facility Manager.

4. **AUTHORITIES:** Statutory authorities to outlease property belonging to the United States and under the Secretary's control include:

a. 38 U.S.C. § 8122 provides the Secretary of Veterans Affairs the authority to execute outleases for lands or buildings, or parts or parcels thereof, belonging to the United States and under the Secretary's control for a term not exceeding three years. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall go to the Treasury of the United States as miscellaneous receipts.

b. 38 U.S.C. § 2412 provides the Secretary of Veterans Affairs the authority to execute Outleases for undeveloped land and unused or underused buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration (NCA), for a term not exceeding ten years. The proceeds from such leases shall go into the National Cemetery Administration Facilities Operation Fund.

c. **Upkeep.** Regardless of authority utilized, an outlease to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease. Additionally, before entering into an outlease under either authority, appropriate public notice shall be provided regarding the intention to enter into an outlease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

5. This new guidance is effective immediately and will remain in effect until otherwise changed or rescinded. When there is a need for use of an Outlease for the non-federal use of VA's land or space, VA employees must comply with this guidance. Statutory and regulatory obligations, along with agency- and administration-specific requirements for pre-execution reviews, are not changed by this policy. VA must ensure potential space is compliant with all National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) requirements before granting or receiving a revocable license.

6. Additional questions related to this policy should be directed to Matthew Leddy, Acting Director, Real Property Policy and Programs, ORP, at (202) 382-2715 or by email at matthew.leddy@va.gov.



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