

VIRGINIA COMMUNITY COLLEGE SYSTEM

**OPERATING AND INCOME
LEASE POLICY MANUAL**

**PURSUANT TO THE PROVISIONS OF THE
HIGHER EDUCATION RESTRUCTURING ACT
(Chapter 945 of the 2005 Session)**

March 16, 2006

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INTRODUCTION

1. Background

Chapter 945 of the 2005 Session of the General Assembly provided for a significant restructuring of operational authority for Virginia's institutions of higher education. Specifically, §2.2-1149(5) exempts institutions of higher education from the requirements of review and approval by the Department of General Services and the Governor when entering into an operating/income lease or a capital lease for real property to be used for academic purposes, or for real property owned by the institution or a foundation related to the institution to be used for non-academic purposes, in accordance with the institution's land use plan pursuant to § 2.2-1153 provided that:

- (i) the capital lease does not constitute tax-supported debt of the Commonwealth,
- (ii) the institution meets the conditions prescribed in subsection B of § 23-38.88, and
- (iii) for purposes of entering into a capital lease, the institution shall have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act.

An operating/income lease or a capital lease shall be determined using generally accepted accounting principles.

In order to qualify for this exemption, the institution must adopt written policies and procedures that incorporate:

- Designation by the BOV of the official responsible [Responsible Official] for approving any such operating/income leases or capital leases.
- Use of Standard Lease Forms "approved as to form" by the Attorney General's Office. Office of the Attorney General approval is required for material deviation from the Standard Form.
- For operating and capital leases, consideration of costs of occupancy and determination that use of leased space is necessary and efficiently planned.
- Compliance with all pertinent requirements of law unless specifically exempted, such as Environmental Impact Reviews, Virginia Public Procurement Act provisions, etc.
- Use of competitive solicitations to the maximum practicable degree in procurement of leases, including equal opportunity for all parties in leasing space under an income lease.
- Requirement that rental amounts for income leases be at fair rental value unless otherwise approved by the Responsible Official.
- For operating and capital leases, occupancy certificates certified by the building official of the county or municipality in which the property is located.
- For capital leases only, provision for review of a copy of the signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program and a determination by the State Treasurer that any such capital lease does not constitute tax-supported debt.

This document provides the approved Virginia Community College System (VCCS) policies and procedures for the review and approval of income and operating leases. Capital lease authority is not currently available to the VCCS.

2. VCCS’ Organizational Structure

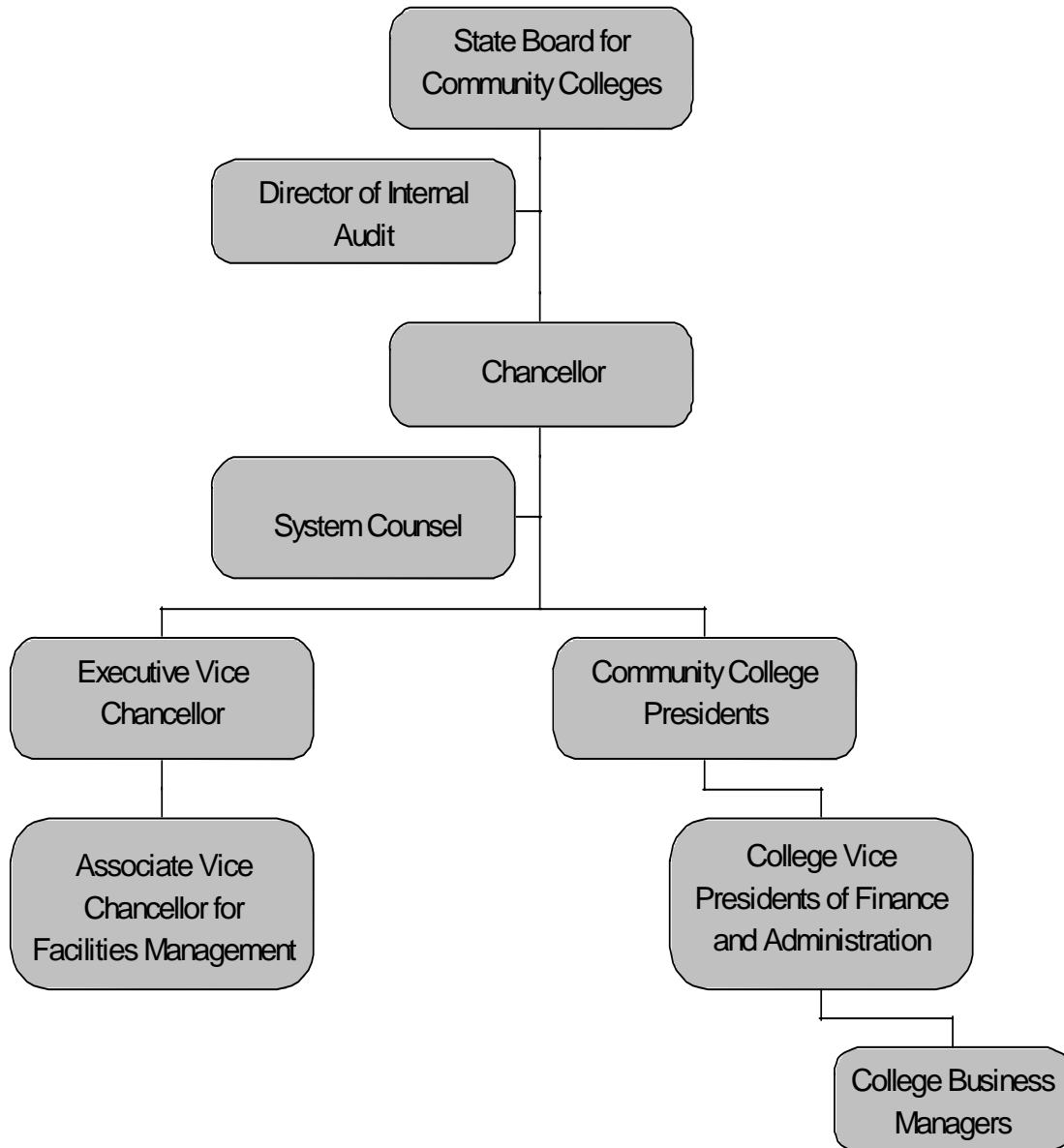
After a College has followed the VCCS Policy Manual requirements and gained approval to use an off-campus site, including the College’s submission of a lease justification, it shall adhere to the following structure for administering and performing each delegated function for actual approval of leases, unless otherwise approved by the VCCS’ Chancellor:

VIRGINIA COMMUNITY COLLEGE SYSTEM POSITION	FUNCTIONS
Community College President “Responsible Official”	Approve lease justifications, rent and solicitation waivers, and real estate transactions. Sign authorized leases.
College Vice President of Finance and Administration (Expense Leases)	Recommend approval of leases; recommend lease justifications; recommend solicitation waivers and document the reasons; approve space utilization; ensure compliance with approved guidelines and applicable law.
College Vice President of Finance and Administration (Income Leases)	Recommend approval of leases; recommend rent and solicitation waivers and document the reasons waiver is required; ensure compliance with approved guidelines and applicable law.
College Business Manager or Procurement Officer	Perform market surveys and prepare lease recommendations; conduct or provide guidance in the conduct of solicitations and negotiations as set forth in the approved guidelines. Recommend approval of deeds of lease; approve environmental surveys; ensure compliance with approved guidelines and applicable law.
System Counsel Paralegal	Review to ensure accuracy and compliance with law and guidelines for the following: Deed of Lease, site plans, VCCS Certification of Space Needs and Funding, VCCS Office Space Questionnaire, VCCS Lease Justification, Market Survey documents, VCCS Lease Analysis Chart, solicitation waiver, environmental documents, Cert. of Occupancy, etc. Ensure lease is signed and recorded, if necessary.
Assistant Attorney General Office of the Attorney General	Approve leases as to form

The State Board for Community Colleges is ultimately responsible for each transaction entered into by the VCCS under these delegated authorities.

Organizational Chart

Real Property Administration and Approval



CHAPTER 1: EXPENSE LEASES

1. SPACE CATEGORIES: For the purposes of this Manual, rental space is classified in the categories described below. For leases of land on which either the landlord or the college will construct improvements, follow the procedures established for the type of planned improvements:

TYPE I: 2,500 and less usable square feet of office, service, retail, classroom, or laboratory space; all warehouse/storage space; sponsored research space; single family residential and land leases (including parking facilities).

TYPE II: 2,501 - 10,000 usable square feet of office, service, retail, classroom, or laboratory space and multi-family residential containing 2 to 5 units.

TYPE III: Over 10,000 usable square feet of office, service, retail, classroom, or laboratory space and multi-family residential containing over 5 units.

OTHER: For lease of space which does not conform with one of the above categories, contact the VCCS' Executive Vice Chancellor.

1.1. MULTIPLE USES: In leasing space for multiple purposes, the requirements for the highest category space shall be followed. For example, if the proposed lease is for 2000 square feet of warehouse space plus 4000 square feet of office space, the requirements for TYPE II space shall be followed.

1.2. CHANGES DURING THE LEASE TERM: If space needs change during the term of a lease to a higher category, or, in the case of sponsored research space, the sponsored funds are no longer available, the college shall follow the requirements for the higher space category at the end of the then current lease term. For example, if an institution leases 5,000 square feet of space for sponsored research (under the requirements for TYPE I space), and all or part of the sponsored funds become unavailable, at the end of the lease term the requirements for TYPE II space must be followed to continue the program in leased space.

2. GENERAL PROVISIONS: The following provisions apply to all leasing activities:

2.1. LEASE EXPENDITURES: The Community Colleges shall not expend appropriated funds for leases of real property without the prior written approval of the lease by their respective Community College Presidents (the "Responsible Official").

2.2. FRAGMENTATION: Space needs shall not be fragmented in order to utilize less restrictive requirements of this Manual.

2.3. EQUAL OPPORTUNITY: In all leasing activities, all persons/entities having equal interest shall have equal opportunity. Solicitations shall not provide arbitrary

requirements and the Community Colleges shall apply the same terms, conditions and selection criteria to all offerers qualified under the solicitation.

2.4. MINORITY PARTICIPATION: The Community Colleges shall endeavor to contribute to opportunities for minority businesses, small businesses and female owned or controlled businesses as required by § 2.2-4310 of the *Code of Virginia*. It is understood that sufficient pools of such vendors are not always available. However, proposers must promise, to the extent possible, to provide minority businesses, small businesses and female owned businesses opportunities in providing services associated with leases through partnerships, joint ventures, subcontracts and other contractual opportunities. Solicitations for leased space shall require that proposers submit a plan for utilizing the goods and services of minority-, small- and female-owned businesses.

2.5. ACCESSIBILITY: The Americans with Disabilities Act (ADA) requires public entities to provide equal program accessibility to the disabled. Moreover, public entities may not discriminate in employment on the basis of lack of accessibility. The College will in all respects comply with the applicable requirements of the ADA and, where full accessibility is not required, will favor leasing those facilities that are fully (or most fully) accessible to the disabled.

2.6. SPACE CLASSIFICATION: The Community Colleges will not specify "Class A" space in solicitations without the written approval of the VCCS' Executive Vice Chancellor.

2.7. LEASE PERIODS: Leases should normally be for a period of three to five years. Longer or shorter lease periods will be considered where adequate justification supports the longer or shorter period.

2.8. DOWNTOWN COMMERCIAL DISTRICTS: House Joint Resolution 185, passed by the 1992 session of the Virginia General Assembly, encourages agencies to investigate the possibility of rehabilitating existing space in downtown commercial districts throughout the Commonwealth, and to give preference in such instances to such downtown locations. When facility locations can include existing space in downtown commercial districts, the Community Colleges will give preference to such locations if they are economical and suit their needs.

2.9. LOCATION IN URBAN CENTERS: [§ 2.2-1154\(B\)](#) of the *Code of Virginia* provides, in part: "The Department of General Services shall require every state department, agency or institution responsible for the construction, operation or maintenance of public facilities within the Commonwealth, when siting state facilities and programs, to evaluate the feasibility of siting such facilities and programs in the Commonwealth's urban centers."

2.9.1. Guidelines: The following guidelines must be followed for every acquisition of real property:

- (i) Definition of Urban Center: The definition of an urban center is a city or incorporated town.

- (ii) Evaluation: Prior to acquiring real property for facilities and programs, each Community College shall evaluate the feasibility of siting the facilities and programs in the Commonwealth's urban centers:
- (iii) Documentation: Prior to approval of acquisition of property that is not in an urban center, each Community College shall document its analyses and findings regarding the requirements of [§ 2.2-1154\(B\)](#) of the *Code of Virginia*.
- (iv) Exceptions: State facilities and programs under the purview of this policy do not include land acquired for parks, forests, natural areas, wildlife management areas or other similar uses.

2.10. ENVIRONMENTAL IMPACT REPORTS: Section 10.1-1188 of the *Code of Virginia* requires an Environmental Impact Report (EIR) for acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility costing \$100,000 or more.

2.10.1. Environmental Impact Reports will generally be required for leases of build-to-suit facilities or facilities otherwise constructed due to the College's needs or where the College is to become the major tenant in a facility, and the financial commitment of the College causes the proposer to construct the facility that would not have occurred otherwise. The guidelines for an EIR are contained in the 1992 (or later edition) *EIR Procedure Manual* published by the Department of Environmental Quality (DEQ). Any questions regarding the need for an EIR will be directed to DEQ.

2.11. CENTRAL RECORDS: Copies of all supporting documentation and the executed agreement will be maintained by each respective Community College Vice President of Finance and Administration. Copies of final lease documents, amendments or other legal instruments shall be forwarded to the VCCS Facilities Management Department within ten (10) days following the date of full execution of the instrument.

2.12. COMPARING LEASE COSTS: The Community Colleges shall endeavor to obtain the most economical space appropriate to program needs. In comparing costs of proposed leases, all costs shall be considered, including but not limited to the cost of any expense increases to be passed through to the Colleges (such as increases in taxes, insurance and operating expenses), the annual escalation, and, if not provided by the Landlord, the costs of utilities, janitorial services, refuse removal, security and other services necessary to operation and maintenance of the facility.

2.13. RENT CONCESSIONS: Rent concessions and/or rebates, if any, should be at the beginning of the lease term. Any lease that contains concessions or rebates must be analyzed as having a term of at least 10 years regardless of the actual term (if less than 10 years). The analysis will be in present values which often show future off-sets to be less competitive than they initially appear.

2.14. CONFLICTS OF INTEREST: Persons engaged in leasing real property to or on behalf of the Commonwealth are subject to the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq.* of the *Code of Virginia*).

2.15. ENVIRONMENTAL CONDITIONS: The Community Colleges will endeavor to ensure that leased facilities do not contain conditions that are adverse to the health, welfare or safety of employees and others entering the premises. Friable asbestos in any facility within which a College leases space (not just the portion leased by the College) must be managed under a management plan prepared by a licensed Asbestos Management Planner. If it is found that any facility within which a College leases space contains unmanaged friable asbestos, the College must (1) determine whether there has been a release of fibers, in which case the space should be immediately vacated, and (2) if the space is to be occupied, ensure that the air is monitored to detect any release of fibers.

3. CONSOLIDATION AND CO-LOCATION: Consolidation and co-location of offices and other facilities can have potential for improved service delivery, cost savings and improved visibility to clients. It is therefore the policy of the Commonwealth to seek opportunities to co-locate and consolidate space needs of agencies to the greatest practical extent. Consolidation and co-location shall be given priority consideration in seeking new space or renewal of existing rental space.

4. SPACE NEEDS: The Community Colleges must certify that the amount of space for each lease conforms to the applicable space guidelines and that funding is available within the College's appropriation. A certification by a Community College Vice President for Finance and Administration will complete the lease file and be maintained by the respective Community College.

4.1. SPACE GUIDELINES: The applicable space guidelines are contained in the State Council of Higher Education for Virginia (SCHEV) Space Guidelines.

5. SPACE ACQUISITION: When acquiring real estate by lease, it is the policy of the VCCS that each Community College must seek competition in order to obtain the most economical and functionally efficient space available within the identified geographic area. The Colleges can accomplish this objective by describing the facility need in the most specific terms possible (without eliminating competition) and by promoting the broadest possible competition.

5.1. TIMEFRAME: The solicitation process should begin at least 6 months and no less than 4 months prior to the desired occupancy date to allow sufficient time for selection, negotiation, administrative approvals, and office area build-out. For complex leases such as build-to-suit facilities or large facilities with extensive build-out requirements, up to one year or more may be needed.

5.2. GEOGRAPHIC BOUNDARIES: The geographic boundaries within which space is being sought shall be defined as broadly as possible for the specific program. It is desirable to define the area by preferred Zip Code numbers. The area may be further defined by lineal landmarks such as roads, rivers, railroad tracks, etc. but such definitions must form a closed area. The geographic area must not be so restrictive as to limit competition or to favor or appear to favor a specific site.

5.3. SOLICITATIONS: The following are the minimum solicitation requirements for each space Type. In addition to any other requirements, the eVA web site is the official state web site for posting all solicitation, addenda and award actions over \$30,000. The web site can be accessed at: <http://eva.virginia.gov>

5.3.1. TYPE I: 2,500 and less usable square feet of office, service, retail, classroom, or laboratory space; all warehouse/storage space; sponsored research space (institutions of higher education); single family residential; and land leases (including parking facilities).

5.3.1.A. The Community Colleges shall solicit quotations from at least five separate sources of lease property (where available) to determine the cost and availability of space in the particular market area. In the event five sources of lease property are not available, a College will obtain information from as many sources as are available and document the actions taken to locate available rental property. Emailed and faxed communications are acceptable. Telephone communications are acceptable, provided pertinent information shared in the communication is documented in writing by the College.

5.3.2. TYPE II 2,501 - 10,000 usable square feet of office, service, retail, classroom, or laboratory space and multi-family residential containing 2 to 5 units. The Community Colleges shall solicit written proposals from at least five separate sources of rental property (where available) to determine the cost and availability of space in the particular market area. The Community Colleges shall provide prospective proposers with the proposal form on which to respond and provide a reasonable time limit, but not less than thirty days, in which to respond. Emailed or telefaxed solicitations and proposals, including pertinent forms, are acceptable, provided original documents with signatures are delivered by a cut-off date predetermined by the respective College and communicated to all proposers in the solicitation. The Request for proposals (RFP) and proposal form are provided at: <http://forms.dgs.virginia.gov>

5.3.2.A. Upon receipt of proposals, the College will select one or more responsive proposers for negotiation and document the reasons for its selection. In conducting negotiations, all proposers shall be provided the same information and opportunity for response.

5.3.3. TYPE III Over 10,000 usable square feet of office, service, retail, classroom, or laboratory space and multi-family residential containing over 5 units: The Community Colleges shall (1) advertise in a newspaper having general circulation in the area within which property is being sought and (2) solicit formal written proposals from at least five separate sources of rental property (where possible). The Request for Proposals, Proposal Form and sample Advertisement are provided at: <http://forms.dgs.virginia.gov>. Emailed or telefaxed solicitations and proposals are acceptable, provided original proposal documents with signatures are delivered by a cut-off date and time predetermined by a College and communicated to all proposers in the solicitation.

5.3.3.A. The advertisement, in the form of a Request for Proposals, will be placed 6 months but no less than 4 months prior to the desired occupancy date to allow sufficient time for selection, negotiation and tenant build-out. A minimum of 30 days shall be allowed from the date of the first newspaper advertisement to the proposal receipt date.

5.3.3.B. Upon receipt of proposals, the Community Colleges will select one or more responsive proposers for negotiation and document the reasons for the selection(s).

5.3.4. All proposers must be given the same information. No proposer shall be given information, either in writing or verbally, regarding the terms, conditions or costs proposed by others.

5.4 NEGOTIATION: Irrespective of the procedures used to solicit for space, negotiations must be defensible and fair to each proposer. The terms of negotiations must be documented.

5.4.1. The Community Colleges will not negotiate higher costs than originally offered.

5.4.2. All proposers must certify that they are the owner of the property or the owner's agent and that the property does not contain adverse environmental conditions, including unmanaged asbestos.

5.5. TENANT BROKERS: The Community Colleges may only negotiate with building owners or their agents. The Community Colleges may not use tenant brokers in seeking space when the fee is based on the lease cost (in the form of commissions or any other manner) or when the broker or agent represents building owners in the area within which the College is seeking the space. Procurement of real estate brokers and consultants fall under the Virginia Public Procurement Act. Colleges may, however, engage the services of the Division of Real Estate Services (DRES) to assist them in any phase of the lease process, and are encouraged to do so in highly competitive markets.

5.6. RELATED CORPORATIONS: College-related corporations (Foundations) may provide rental space to their respective Colleges without solicitation provided rates do not exceed market rates as evidenced by a survey of similar space in the area. In exceptional circumstances, waiver of solicitation may be granted for such leases at greater than market rates, provided the reasons for the exception, as well as the actual cost to the Foundation in providing the space, are fully documented.

5.7 INTERNATIONAL LEASES: Occasionally, it may be necessary for the Community Colleges to lease space outside of the United States. Because business practices in other countries are inconsistent with domestic practices, the competitive process may not fully apply. However, a College shall make every effort to identify the most economical space available that meets the program need, and the results of such efforts shall be documented in writing.

6. STANDARD LEASE FORMS: The Community Colleges shall utilize standard lease forms approved by the VCCS Counsel. Any proposed revisions will be approved by the Attorney General's Office and coordinated with the Division of Risk Management [Risk Management is part of Treasury].

6.1. CHANGES TO THE LEASE FORMS: Lease forms can be modified by striking through words and inserting words. The forms may not be modified by erasing or whiting-out words. Any modifications must be initialed by each party to the lease.

6.1.1 The standard lease form provides a format for attachments. Attachments are developed at the time of entering the lease and are a part of the original lease. They may modify terms of the standard lease or provide additional information or provisions. Attachments cannot be used to modify an existing lease.

7. EMERGENCY LEASES: Leases of an emergency nature are exempt from the foregoing procedures, although all statutory requirements must be met, including certification of funding and conformance with space planning procedures pursuant to § 4-5.07, Chapter 4 of the 2004 Appropriation Act. The need for space may be deemed an emergency (1) in the event of fire or other casualty which renders existing facilities (owned or leased) unusable, or (2) when the Vice President for Finance and Administration declares an emergency for which space is needed to handle the emergency condition.

7.1.1. Emergency leases should be for the shortest possible period, but in no event longer than one year. A short lease period will enable the Community College to reassess its needs after evaluating the impact of the emergency.

8. LEASE RENEWALS: Options to renew leases may be exercised without further solicitation. In the absence of an option to renew, a Community College may determine that it should negotiate to remain at the same location. In such cases, the file shall be documented with the following:

1. A written justification for remaining at the same location demonstrating tangible benefits to the mission of the Community College and/or cost savings
2. A certification that the rental rate is within the market
3. A Certification of Space Needs and Funding
4. A description of any changes in terms and/or conditions
5. A lease amendment or a new lease.

9. LEASE AMENDMENTS: Modifications during the term of the lease shall be accomplished through a lease amendment. If an amendment increases space or costs, a new space needs certification must be submitted. If an amendment decreases space or costs, an e-mail or other written correspondence from the Vice-President of Finance and Administration is required as certification that the college remains in compliance with the SCHEV space guidelines.

10. EXEMPTIONS: Exemptions from any of the requirements contained in this Policy will be issued by the VCCS' Executive Vice Chancellor only on an exceptional basis. A College cannot be exempted from legal requirements.

CHAPTER 2: INCOME LEASES

1. AVAILABLE SPACE: All space in facilities under the control of a Community College, owned or leased, may be leased to outside entities, provided the space is currently underutilized, and (1) there is an anticipated future use, but for which there is no immediate use, or (2) leasing is necessary or tangibly beneficial to a program of the College, including public/private partnerships.

2. SOLICITATION: In all cases, the Community College will conduct a solicitation and ensure that all parties having equal interest in leasing the space have equal opportunity. Whenever feasible, space will be offered under a Request for Proposals (RFP) and advertised. The solicitation requirement for a given lease may be waived or modified with approval of the respective Community College President.

3. CONFLICTS OF INTEREST: Persons engaged in leasing real property to or on behalf of the Commonwealth are subject to the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq.* of the *Code of Virginia*).

4. RENT: Rent will be the fair rental value unless a different rent or waiver of rent is approved by the respective College President.

4.1. DETERMINING FAIR RENTAL VALUE: For significantly valuable space, fair rental value will be determined by an appraisal that meets the requirements of the Uniform Standards of Professional Appraisal Practices (USPAP) promulgated by the Appraisal Foundation. The appraisal may be a Restricted Appraisal reported in a Summary Report, all as defined in USPAP. For space that is not significantly valuable, the rent may be established by a survey of rents paid for comparable space in the area (at least five sources, if available).

5. STANDARD LEASE FORMS: Each College shall utilize a standard lease form approved by the Attorney General's Office. Any revisions will be approved by the Attorney General's Office and coordinated with the Division of Risk Management.

5.1. CONSTRUCTION: Any construction or renovation of improvements on land leased to another party must nevertheless follow all of the requirements for capital improvement and construction imposed on the VCCS. Such requirements must be cited in the lease. In addition, the improvements may be subject to local ordinances, such as zoning.

5.2. LEASE AMENDMENTS: Modifications during the term of the lease shall be accomplished through a lease amendment.

6. CENTRAL RECORDS: Copies of all supporting documentation and the executed agreement will be maintained by the respective Community College Vice President for Finance and Administration. Copies of final lease documents, amendments or other legal instruments shall be forwarded to the VCCS Facilities Management Department and the Bureau of Real Property Management within ten (10) days following the date of full execution of the instrument.

CHAPTER 3: COMPLIANCE

1. GUIDANCE: Delegated restructuring authority is subject to revocation if an institution does not adhere to relevant state and State Board policies and procedures. In order to ensure such compliance, the following guidelines will be enforced.

1.1. APPROVAL: The College will follow the State Board Policy Manual requirements and gain approval to use an off-campus site as required, including the College's submission of a lease justification

1.2. ADMINISTRATION: The College will adhere to the established structure for administering and performing each delegated function for actual approval of leases, unless otherwise approved by the VCCS' Executive Vice Chancellor

1.3. RECORD-KEEPING: The College will maintain and file all records and documentation in an accessible manner and make them available for review at any time. A copy of the final lease document, amendments, or other legal instruments shall be forwarded to the VCCS Facilities management Department within ten (10) days following the date of full execution of the instrument.

1.4. ANNUAL CERTIFICATION: Each college president will annually certify agreement to adhere to all of the policies and procedures delegated to the college pursuant to the State Board's approval of Delegated Lease Authority.

1.5. AUDIT: The VCCS' Internal Auditor shall periodically audit the Colleges' leases entered into pursuant to the Delegated Lease Authority.

1.6. REVOCATION OF AUTHORITY: If the VCCS determines that a college lease does not conform to approved guidelines, policies and procedures, then because of its non-compliance the VCCS may require the college to gain lease approval through the VCCS' Chancellor for at least one year in order for the college to demonstrate compliance. If the college cannot demonstrate compliance after one year, then the VCCS may remove it from participation under the Delegated Lease Authority.

1.7. FRAUD: Cases of apparent fraud will be referred to the Auditor of Public Accounts and/or other appropriate authority as may be required by law.