

# Financing, Purchasing & Selling Real Property

---



**Micki R. Morris**  
Partner  
Rogers, Morris & Grover, L.L.P.

UT School Law Conference  
February 23, 2017

## General Legal Considerations

---

- The Board may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the Board's position in negotiations with a third person. *Gov't Code 551.072*
- If Board is taking action, agenda item must be sufficiently specific to give public adequate notice of transaction
- The District may employ, retain, contract with, or compensate a licensed real estate broker or salesperson for assistance in the acquisition or sale of real property. *Education Code 11.154*
- Exceptions exist under TPIA for documents related to the location of real property prior to announcement of a project; appraisals or price of real property prior to award of contracts. *Gov't Code 552.105*

## Purchasing: Legal Considerations

---

- The *acquisition* of real property interests are not “goods” or “services” and are not subject to procurement laws; however, competitive procedures may be required under certain federal programs
- A district may, by the exercise of the right of eminent domain, acquire title to real property on which to construct school buildings or for any other public use necessary for the district. *Education Code 11.155(a)*

## Purchasing: Practical Considerations

---

**“Location, location, location” may not be the most feasible or cost effective priority. Proper due diligence requires time - and often outside consultants - to determine:**

- Location of easements, utility lines and pipelines
- Source of utilities and available capacity; potential MUD connection fees
- Nearest drainage outfall; detention requirements; flood zone classification
- Environmental conditions (fault lines; wetlands; aquifers; geological areas)
- Access and traffic requirements
- Platting and zoning requirements
- Development and other title restrictions (property associations; deed restrictions; impervious cover limitations)

## Sales: Legal Considerations

---

- General rule: “[B]efore land owned by a political subdivision of the state may be **sold or exchanged** for other land, notice to the general public of the offer of the land for sale or exchange **must be published in a newspaper** of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must **include a description of the land, including its location**, and the **procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted**. The notice must be published on **two separate dates** and the sale or exchange may not be made until after the **14th day after the date of the second publication**.” *Loc. Gov’t Code 272.001(a)* (emphasis added)
- Exceptions to bidding include: Sales to other governmental entities with power of eminent domain; small strips, streets, alleys, ROW areas; such sales generally must be for at least fair market value, as determined by **Seller’s** appraisal. *Loc. Gov’t Code 272.001(b)*
- No statutory appraisal or FMV requirement under bidding process, but beware of violating Article III, Sec. 52 of Tex. Constitution (gift of public funds/property)

## Sales: Legal Considerations (cont’d)

---

- No FMV requirement for a sale to higher education institutions or for a sale to another political subdivision who will carry out school district’s public purpose (however property reverts back to school district if public purpose use ceases)
- “The board of trustees of an independent school district that intends to sell, lease, **or allow use for a purpose other than a district purpose** of an unused or underused district facility must give each open-enrollment charter school **located wholly or partly within the boundaries of the district** the opportunity to make an offer to purchase, lease, or use the facility, as applicable, in response to any terms established by the board of trustees, **before offering the facility for sale or lease or to any other specific entity**.” *Education Code 11.1542(a)* (emphasis added)

Find the full text of this and thousands of other resources from leading experts in over 30 legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Financing, Purchasing and Selling Real Property

First appeared as part of the conference materials for the  
32<sup>nd</sup> Annual School Law Conference session  
"Financing, Purchasing and Selling Property"