



# **Directive on the Sale or Transfer of Surplus Real Property**

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# Directive on the Sale or Transfer of Surplus Real Property

## 1. Effective date

This directive is effective as of November 1, 2006.

## 2. Application

This directive applies to all departments within the meaning of section 2 of the [Financial Administration Act](#), unless specific acts or regulations override it.

## 3. Context

The Treasury Board [Policy on Management of Real Property](#) defines the performance expectations for the management of real property throughout its life cycle, including obligations associated with the disposal phase. The policy requires deputy heads to ensure a disposal by sale or transfer is completed in conformance with this directive.

Of particular importance to the sale or transfer of real property are the policy requirements to: undertake a performance assessment of the functionality and utilization of real property and to develop disposal strategies. These strategies, which are partly based on the findings of the performance assessment, will include plans for the disposal or relinquishment of real property that is no longer required for program purposes and therefore will not be retained by the custodian or occupied by the tenant.

This directive only addresses the obligations of custodians to dispose of surplus real property by sale or transfer. Other disposals, such as easements, leases and licences, are addressed in the Guide to Management of Real Property, as are the relinquishment of real property by tenants, demolitions and other activities of the disposal phase.

Surplus real property is sold or transferred following an established process tailored to the characteristics of the surplus property, i.e., whether it is routine or strategic. In general, routine surplus real properties are properties, or a portfolio of properties with lesser value that can be sold easily without any substantial investment. These properties are normally sold in their "as is" state on the open market by the custodian, its agent (Public Works and Government Services Canada), or a private sector firm.

Strategic surplus real properties are properties or portfolios of properties with potential for significantly enhanced value, those that are highly sensitive, or a combination of these factors. Because of the complexity associated with these properties, they may require innovative efforts and a comprehensive management approach to move them into the market. Canada Lands Company CLC Limited, as the government's disposal agent, disposes of these selected surplus properties through a strategic disposal process.

## 4. Definitions

### **Agreement** (*Entente*)

An instrument, such as a memorandum of understanding, a memorandum of agreement or an occupancy instrument, that while not legally binding, creates a custodian-tenant relationship by conferring certain real property rights of use or benefits and obligations on the part of the two parties as if it were a truly enforceable instrument.

### **Custodian** (*Gardien*)

A department whose minister has administration of real property for the purposes of that department.

### **Disposal** (*Aliénation*)

A transaction that alienates real property from a department's inventory by sale, lease, licence, exchange, gift, easement, transfer of administration to another department or an agent Crown corporation, or transfer of administration and control to the provincial Crown.

### **Market Value** (*Valeur marchande*)

The price that a property would likely bring in a competitive and open market on a specified date under all conditions required for a fair sale, with the buyer and seller each acting prudently and knowledgeably, and where the price is not affected by undue stimulus.

### **Public purpose** (*Fins publiques*)

For federal departments and agent Crown corporations, "public purpose" means program need; for provinces and municipalities, "public purpose" generally refers to roads, utilities and parks, but could include other public purposes if they were non-commercial and for the "common good" of all citizens.

### **Surplus real property** (*Biens immobiliers excédentaires*)

Real property that is no longer required in support of a department's programs.

### **Tenant** (*locataire*)

A department occupying real property that is under the administration of the minister of another department.

## 5. Purpose

The sale or transfer of surplus real property has potentially higher risk than activities during other life cycle phases of the management of real property because of the sensitivity or value associated with many of the properties, the numerous diverse stakeholder interests and the importance of horizontal cooperation. This directive is intended to address the issues and ensure that sales or transfers of

surplus real property provide for:

- a whole of government perspective;
- efficiency, equity and transparency in transactions;
- best value to the Canadian taxpayer;
- consideration of the interests of communities, including official language minority communities, and other levels of government; and
- the fulfillment of any legal obligations with respect to Aboriginal groups.

This directive is issued pursuant to the [Financial Administration Act](#), subsections 7(1), 9(1.1), 9(2) and the [Federal Real Property and Federal Immovables Act](#), subsection 16(4).

## 6. Directive requirements

6.1 Custodians shall conclude the sale or transfer of properties within three years of formal notification of the property being surplus to program requirements. The consideration received for the property must be justified in relation to market value, determined in accordance with the Treasury Board [Appraisal and Estimates Standard for Real Property](#).

6.2 Custodians shall categorize surplus properties as either routine or strategic. All surplus properties are considered routine unless they meet at least one of the following criteria, which qualifies them as strategic:

- a. the size or value of the property, or of a portfolio of properties, is significant enough to affect local markets negatively if its integration into the market is not managed;
- b. the value of the property, or properties within a portfolio, can be increased significantly (e.g., through subdivision, rezoning, investment or pre-sale development);
- c. a partnership with another level of government, the private sector or other party may offer the best mechanism to realize either the inherent value of a particular property or portfolio of properties or the greatest benefits to the government beyond the financial return; or
- d. sensitive policy issues exist, including the potential for a substantial gain by a party other than the federal government.

6.3 Custodians shall involve the Treasury Board Secretariat in the final identification of surplus strategic properties in Canada that qualify for sale to the Canada Lands Company CLC Limited (CLC). They shall establish and communicate a process for the effective management of horizontal issues related to their disposal.

6.4 Prior to seeking an indication of interest in the surplus property, custodians shall ensure they can provide interested parties with sufficient information, in the following minimum areas, to allow them to make an informed decision within the timeframes allowed:

- a. legal risk analysis on title, including whether a duty to consult with Aboriginal groups exists;
- b. the property's environmental and physical condition;
- c. archaeological and heritage findings;
- d. risk to wildlife habitat; and
- e. market value of the property.

6.5 Custodians shall formally determine the degree of interest in surplus properties in Canada by simultaneously providing federal departments, agent Crown corporations, provincial and municipal governments an opportunity to:

- a. acquire surplus routine properties for a public purpose, in the priority order noted above, before the property is offered for sale on the open market; or
- b. identify their public purpose interest in surplus strategic properties for equal consideration by the custodian during the development of the disposal strategy.

6.6 Custodians shall provide priority organizations or interested parties 30 days to identify their interest and an additional 90 days to confirm in writing the nature and scope of their interest, supported by a financial commitment. Custodians shall give an additional 120 days to Indian and Northern Affairs Canada to provide written confirmation if the real property is to be acquired to settle a comprehensive land claim.

6.7 In the case of a sale or transfer for public purpose:

- a. Custodians shall ensure their deputy head is satisfied that the acquiring party has demonstrated that the surplus property is required for public purpose consistent with its long-term plans and that the sale or transfer is the best real property decision from a whole-of-government perspective, taking into account the market value of the surplus property based on highest and best use.
- b. Consideration received for property shall be based on market value for continued public purpose use, in accordance with the Treasury Board [Appraisal and Estimates Standard for Real Property](#). The variance between the values should inform the conditions of sale, when appropriate.
- c. If surplus property sold or transferred for public purpose can or could potentially be rezoned and resold for profit, custodians shall include appropriate covenants in the conveyance documents to ensure that the original intent of the sale or transfer is respected.

6.8 Custodians shall develop a balanced disposal strategy for strategic surplus properties that is supported by a comprehensive assessment of federal and other stakeholder interests (including those of official language minority communities), the legal risk analysis, and policy and financial considerations. They shall also develop a business case that is further supported by the valuation, determined in accordance with the Treasury Board [Appraisal and Estimates Standard for Real Property](#), and by a business plan

from Canada Lands Company CLC Limited.

6.9 When the real property is contaminated and the acquiring party is undertaking the required remediation, custodians shall take steps to ensure that it is carried out within a reasonable length of time.

6.10 To share in the net proceeds from the sale or transfer of surplus real property custodians must:

- a. have an approved **investment plan**;
- b. reinvest the proceeds in real property, consistent with their approved investment plan; and
- c. satisfy the reporting requirements of the Treasury Board [Reporting Standard on Real Property](#).

**Note:** Access to net proceeds is done through the [expenditure management](#) process.

## 7. Responsibilities of other organizations

7.1 Canada Lands Company CLC Limited (CLC) is a federal, non-agent Crown corporation mandated with the commercially oriented, orderly disposal of selected surplus federal properties in Canada. A sale to CLC follows the *strategic disposal process* established by the Treasury Board Secretariat.

7.2 The Department of Justice Canada (DOJ), under the authority of the [Department of Justice Act](#) and the [Federal Real Property and Federal Immovables Act](#), acts as solicitor to departments for real property transactions of all types to ensure that all legal aspects of the transaction have been addressed; provides property-specific legal title search and an assessment as to whether potential or established Aboriginal or treaty rights could be adversely impacted by the disposal of the land and whether a duty to consult is triggered; provides information on any relevant litigation; prepares instruments, contracts and other documents, including approval of their form and legal content; provides legal advice and opinions on real property matters and transactions; countersigns conveyance instruments; and operates a document depository.

7.3 Indian and Northern Affairs Canada (INAC) provides available information about surplus federal properties such as: whether the property is in an area subject to a land cession treaty or completed comprehensive land claim; whether there are ongoing claims negotiations or out-of-court settlement discussions; if the property is subject to any asserted claims; or if there is evidence of use or occupation or history of use and occupation by an Aboriginal group or groups

## 8. References

### Principal legislation

- [Canadian Environmental Assessment Act](#)
- [Canadian Environmental Protection Act 1999](#)
- [Federal Real Property and Federal Immovables Act](#)
- [Federal Real Property Regulations](#)
- [Historic Sites and Monuments Act](#)
- [Official Languages Act](#)
- [Species at Risk Act](#)

### Treasury Board policies

- [Policy on Long-term Capital Plans](#)
- [Policy on the Management of Real Property](#)
- [Project Management Policy](#)
- [Common Services Policy](#)

### Treasury Board directives and standards

- [Accessibility Standard for Real Property](#)
- [Accounting standards](#)
- [Appraisals and Estimates Standard for Real Property](#)
- [Federal Identity Program Manual](#)
- [Reporting Standard for Real Property](#)
- [Security standards](#)

### Guidance and tools

- [Best Practices Advisory on Environmental Considerations in Real Property Transactions](#)
- [E-Learning Tool for the Disposal of Surplus Federal Real Property](#)
- [Environmental Guide for Federal Real Property Managers](#)
- [Guide to the management of Real Property](#)
- [Security Assessment Guidelines](#)

## 9. Enquiries

Please direct enquiries about this policy instrument to the organizational unit in your department responsible for this subject matter. For interpretation of this policy instrument, the responsible organizational unit should contact: [TBS Public Enquiries](#).