

CHAPTER 2

Authority to Acquire Real Property

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## CHAPTER 2

### AUTHORITY TO ACQUIRE REAL PROPERTY

1. PURPOSE AND SCOPE.

This Chapter sets forth the authority for the acquisition of real property and interests therein applicable to the Department of the Navy. The scope is general in nature as specific authority for real estate actions are cited in the Chapter of this publication dealing with the specific action.

2. REFERENCES.

- (a) SECNAVINST 11011.47 of 20 June 1983
- (b) Federal Property Management Regulations (FPMR)
- (c) SECNAVINST 4001.2E of 18 Oct 1978

3. LEGISLATIVE AUTHORIZATION REQUIRED.

41 U.S.C. 14 provides that no land shall be purchased on account of the United States, except under a law authorizing such purchase.

4. EXPRESS AUTHORIZATION REQUIRED.

10 U.S.C. 2676 provides that no military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

5. LEGISLATIVE AUTHORIZATIONS FOR LAND ACQUISITIONS OVER \$200,000.

a. Military Construction Authorization Acts (MCON). Navy Department land acquisitions are usually provided for in an annual Military Construction Authorization Act. Specific projects are authorized on the basis of the justification and limitations contained in the DD Form 1391 submitted as a part of the Navy's MCON Program. There are some instances in which the authorization is a sum total for projects including land acquisition at "various locations" or where real estate acquisition is a part of a construction project. In those cases where the value of the land to be acquired is \$200,000 or less, it is generally not included in the MCON Program as Congress has granted general authority to acquire such land. Acquisitions by land exchange or involving no funds are often included in the General Provisions to the MCON Authorization Act. Funding for MCON projects is provided for by annual Military Construction Appropriation Acts.

b. 10 U.S.C. 2672a. The Secretary of the Navy may in accordance with provisions of 10 U.S.C. 2672a may acquire any interest in land that:

- (1) He or his designee determines is needed in the interest of national defense;
- (2) Is required to maintain the operational integrity of a military installation; and
- (3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

Appropriations available for military construction may be used for the purpose of this authorization. The authority to acquire an interest in land under this law includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise. The Secretary of the Navy when contemplating action under this legislation, will provide notice, in writing, to the Armed Services Committees of the Congress at least 30 days in advance of any action being taken. A reprogramming of funds is usually required and approval of the Appropriations Committees of the Congress must be obtained.

6. ACQUISITIONS NOT EXCEEDING \$200,000.

10 U.S.C. 2672 provides that the Secretary of the Navy may acquire any interest in land that he or his designee has determined is needed in the interest of national defense and does not cost more than \$200,000 exclusive of administrative costs and the amounts of any deficiency judgements. This authority may not be used to acquire, as part of the same project, two or more tracts of land that, if acquired together, would exceed a cost of \$200,000. It also includes authority to perform surveys and to acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise. By reference (a), this minor land acquisition authority has been delegated to the Commander, Naval Facilities Engineering Command who has been authorized to redelegate this authority with authority to further redelegate.

7. LEGISLATIVE AUTHORIZATION FOR ACQUISITION OF RESERVE FACILITIES.

Authority to acquire land for reserve facilities is vested in the Secretary of Defense by 10 U.S.C. 2233 and has been successively redelegated to the Secretary of the Navy and to the Assistant Secretary of the Navy (Shipbuilding and Logistics). The general authority of 10 U.S.C. 2233 is limited by 10 U.S.C. 2233a which provides that except for leased and replacement facilities, no expenditure of more than \$200,000 may be made thereunder within 30 days from the date upon which the Secretary of Defense or his designee notifies the Senate and House of Representatives of the location, nature, and estimated cost of such facilities. This requirement does not apply to the following:

- a. facilities acquired by lease,
- b. facilities acquired, constructed, expanded, rehabilitated, converted or equipped to restore or replace facilities damaged or destroyed, where the Senate and House of Representatives have been notified of that action.

Any project authorized pursuant to Section 2233(a) which does not cost more than \$50,000 may be accomplished from appropriations available for maintenance and operations (10 U.S.C. 2233a (2)).

8. TRANSFERS OF REAL PROPERTY FROM OTHER MILITARY SERVICE.

10 U.S.C. 2571a provides that real property may be transferred without compensation between military departments upon request of one military Secretary and the approval of the other. 10 U.S.C. 2571d further states that there can be no policy which precludes the military departments from exercising this authority. All other transfers shall be for fair market value of the property usually through the General Services Administration (see paragraph 9).

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9. TRANSFER OF EXCESS REAL PROPERTY BY AUTHORITY OF THE ADMINISTRATOR OF GENERAL SERVICES.

Section 202(a) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 384), as amended, authorizes the Administrator of General Services to provide for transfer of excess real property among Government agencies. This authority has been implemented by Subpart 101-47.203.7 of reference (b) which prescribes policies and procedures relative to transfer of excess real property including circumstances under which reimbursement is and is not required.

10. WITHDRAWALS OF LAND FROM THE PUBLIC DOMAIN

Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) authorizes the Secretary of the Interior to withdraw public domain lands for use by the military departments. This authority is limited by the Eagle Act of 1958 (43 U.S.C. 156) which provides that any DOD withdrawal which results in the withdrawal of more than 5,000 acres in the aggregate for any one defense project or facility must be by an Act of Congress.

11. OTHER LEGISLATIVE AUTHORIZATION.

The authorities cited hereinabove are those ordinarily used for the acquisition of lands required by the Department of the Navy. Other authorities do exist and are occasionally used. As an example, the Secretary of the Navy may accept gifts and bequests of real property for other purposes (10 U.S.C. 2601). This authority has been implemented by reference (c).

12. AUTHORITY TO LEASE.

Except as noted in paragraph 13 below, no single Act of Congress constitutes the overall authority for leasing of real property for Naval use. The leasing or renting of real property for Naval purposes is customarily provided for in annual Department of Defense Appropriation Acts. This authorization does not include family housing leases which are specifically authorized under 10 U.S.C. 2828.

13. AUTHORITY TO LEASE GENERAL PURPOSE SPACE.

Presidential Reorganization Plan No. 18 of 1950 transferred all functions in connection with the leasing of general purpose space to the Administrator of General Services. By reference (b), the Administrator of General Services delegated this authority back to the Secretary of the Department of Defense, except for general purpose space located in urban centers. A list of urban centers is contained in Subpart 101-18.102(a) of reference (b). Accordingly, the exercise of the authority to lease is limited to the leasing of special purpose space and to the leasing of general purpose space outside of the listed urban centers except in certain specific instances as listed in Subpart 101-18.104(a), (b), (c) and (d).

14. FOREIGN LEASING.

10 U.S.C. 2675, as amended through 1975, provides that notwithstanding any other provision of law, the Secretary of a military department may acquire by lease, in any foreign country, structures and real property relating thereto that are needed for military purposes. A lease under this authority may be for a period of 5 years. Further, a lease under this authority may not be entered into if the average estimated annual rental during the term of the lease is more than \$250,000 until after the

expiration of 30 days from the date upon which a report of the facts concerning the proposed lease is submitted to the Armed Services Committees of the Congress. Pursuant to authority contained in Section 602 of the Act of 13 July 1955 (69 Stat. 301; 31 U.S.C. 529; as amended through 1973), rentals may be paid in advance in foreign countries for such periods as may be necessary to conform with local custom.

10 U.S.C. 2828 authorizes leases of housing units in foreign countries for assignment as family housing. Such leases may be for any period not in excess of ten years. A lease under this authority may not be entered into if the average estimated annual rental during the lease term is more than \$250,000 until a period of 21 days elapses from the date of written notification of the facts concerning the proposed lease to the appropriate committees of Congress.

15. AUTHORITY TO ACCEPT PERMITS.

No specific authority to acquire the use of real property exists, but such authority is implied in certain instances where the required use is necessitated by an authorized construction project or function.

16. REPORTS TO THE ARMED SERVICES COMMITTEES OF CONGRESS.

10 U.S.C. 2662, as amended, provides, in part, that with respect to the acquisition of real estate in the United States and Puerto Rico, Guam, Virgin Islands, American Samoa and the U. S. Trust Territories of the Pacific Islands, the Secretary of the Navy, or his designee, may not enter into any of the following listed transactions by or for the use of the Department of the Navy until 30 days have expired from the date on which a report of the facts concerning the proposed transaction is submitted to the Armed Services Committees of Congress:

a. An acquisition of fee title to any real property, if the estimated price is more than \$100,000.

b. A lease of any real property to the United States, if the estimated annual rental is more than \$100,000.

c. Real estate is to be acquired by transfer from the Departments of the Army or Air Force with an estimated value in excess of \$100,000. Clearance action required for transfer of real estate between military departments normally will be initiated by the department acquiring the real estate.