

10.01 Land Disposition Procedure

Procedure Number: 10.01
Procedure Title: Land Disposition Procedure
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Appendices: None
Forms: 10.01(a) Land Disposition Checklist
10.01(b) Buyer Affidavit
10.01(c) Template Certification
Statutory References: Wisconsin Statutes §§ 59.17(2)(b)3, 59.52(6)(d)(1), 73.36(2), 75.35(4),
75.106, 985.02
Ordinance References: Not Applicable
Department Responsible for Updates: DAS
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1. OBJECTIVE

To provide comprehensive procedures, processes, and guidelines for the disposition of property that is not zoned as parks and is owned by Milwaukee County. This procedure is intended to create a fair, transparent, uniform, and predictable process that furthers the best interests of the County. The sale and reuse of County properties shall be at all times guided by and consistent with the principles of blight elimination, neighborhood revitalization, strengthening the County's tax base and the maximization of the County's return on its investments to provide benefits to the community and continuity of core County services.

2. DEFINITIONS

- A. **"Appraised Value"** means a property's fair market value, as determined by an appraisal;
- B. **"Certification"** means a document signed by two out of three of the following pursuant to Wisconsin Statutes § 59.17(2)(b)3: (a) the county executive or the executive's designee; (b) the county comptroller or comptroller's designee; (c) and an individual who is a resident of the municipality where the property is located, who has been appointed, at least biennially, by the Intergovernmental Cooperation Council (ICC), who has demonstrable experience in real estate law or real estate sales or development, and who is not an elective official.
- C. **"Certifiers"** means the individuals listed in Section 2(b) above. When approval is required of Certifiers, it means that two of three certifiers have provided Certification.
- D. **"Director"** means the director of the Economic Development Division.
- E. **"Division"** means the Department of Administrative Services (DAS) – Economic Development Division.

- F. **“Foreclosure Property”** means property whose title is vested in Milwaukee County following an in rem foreclosure by the Milwaukee County Treasurer for nonpayment of taxes;
- G. **“Marketable Surplus Property”** means property that is Surplus Property obtained by the County by a means other than foreclosure that can be, or is already, improved with a structure.
- H. **“MLS”** means Multiple Listing Service;
- I. **“Remnant Parcel”** means property that can only be marketable if consolidated with adjacent land, often due to its size, location, shape or topography;
- J. **“Surplus Property”** means tangible property owned by Milwaukee County including buildings, vacant land, and real property not presently used for municipal purposes, nor projected in the foreseeable future to be used for municipal purposes. The County Executive shall determine whether property is Surplus Property that is not zoned parks pursuant to Wisconsin Statutes §§ 59.52(6)(d)(1) and 59.17(2)(b)(3).

3. PROCEDURE

A. Management of Milwaukee County Real Estate Assets

- i. The Division shall be solely responsible for managing, selling and acquiring real estate, that is not zoned parks, for the County pursuant to Wisconsin Statutes § 59.17(2)(b)3. The only party that may bring forward sales for Certification is the County Executive, or his designated department staff.
- ii. If the disposal of County real estate assets is in the form of a sale, all receipts from the sale, after deducting the necessary expenses of keeping the surplus property and conducting the sale, shall first be used to pay any debt payable by the County associated with the property pursuant to Wisconsin Statutes § 59.17(2)(b)3, and the balance be paid into the treasury of the County, and disbursed pursuant to the Milwaukee County Budget.
- iii. The Division should contact the Milwaukee County Comptroller prior to disposal of the property to determine what, if any, limitations exist on the disposal of surplus property that was procured with the proceeds of bonds and the use of any revenue derived from such disposal.
- iv. The Division shall comply with County Procurement and County Accounting Administrative Rules regarding disposal of capital assets, which establish minimum standards for the disposal of capital assets and subsequent reporting in the financial records.
- v. The Director, or his/her designee, shall prepare and maintain records that will be updated as soon as is practicable on the County website, and at least quarterly, that enumerate:
 - 1. All parcels of County-owned real estate under the jurisdiction of the Division, including Foreclosure Properties.

2. All County-owned real estate that another County official reports to the Director, or his/her designee, as no longer needed for municipal or public purposes.
3. Information pertinent to any transaction including but not limited to the property's appraised value, name of purchaser, and purchase price.

B. Foreclosure property

- i. While the tax foreclosure properties are under its jurisdiction, the Division has a fiduciary duty to receive fair value for the property and is responsible for managing the properties or hiring a contractor to manage the properties, which includes, but is not limited to:
 1. Controlling access to and physically inspecting the properties.
 2. Arranging for cleaning, general maintenance or other repairs, as necessary to prepare the properties for resale.
 3. The Division shall authorize emergency repairs not exceeding five thousand dollars (\$5,000.00).
 4. For nonemergency repairs, the procurement provisions of MCGO CH. 32, subchapter II shall apply.
 5. Unless otherwise specified in this procedure, Department shall obtain appraisals for the marketable tax deed foreclosure properties. An appraisal would be made by anyone properly qualified to do appraisals of real property.
 6. Negotiating temporary leases or licenses with occupants, if mutually agreeable.
 7. Rental rates shall be determined on the basis of fair market value.
 8. Leases or licenses shall be in writing on a month-to-month basis.
 9. All rents shall be paid directly to the Division.
 10. Paying special charges levied against the properties.
Notwithstanding the foregoing, the County is not required to pay any special assessment until the time of sale, pursuant to Wisconsin Statutes § 73.36(2).
 11. If feasible and determined to be in the best interests of the county, combining or dividing the tax foreclosure properties with other properties to improve salability, as contemplated by Wisconsin Statutes § 75.35(4).
- ii. Upon receiving ownership of a foreclosure property, the Division shall:
 1. Offer such real estate to other County department heads to be used for public purposes. County department heads shall have 30

days from the date of inquiry, which shall be the first business day of every month, to respond in writing, of its interest in the property.

- a. Should a County department head express timely interest in the real estate, it may be transferred to that department via a jurisdictional transfer agreement, whereby the interested department agrees to incur the holding costs of the parcel. If possible, the price offered should at a minimum, be the accumulated unpaid taxes on the property. Unless otherwise approved by Certifiers, the property will continue to be titled to Milwaukee County.
 - b. Whether such jurisdictional transfer will be subject to cross charges or another form of compensation shall be determined on a case-by-case basis by the department head and the director, or his/her designee.
 - c. Acceptable community benefits, as used in this paragraph, include without limitation, direct use by a county department or purchase by a vendor that provides contractual services for the Department of Health and Human Services.
 - d. No further approval or Certification shall be necessary for interdepartmental transfers of real estate. Transfer to a vendor of DHHS shall require a Certification.
2. In the absence of interest from other County departments, offer to sell such real estate to the municipality in which it is located, or another governmental unit of interest to be used for a community benefit or public purpose. The governmental unit shall have 30 days from the date of inquiry, which shall be the first business day of every month, to respond in writing.
- a. If possible, the price of the real estate should be its Appraised Value or the accumulated sum of unpaid property taxes less interest and fees, whichever amount is higher.
 - b. Notwithstanding subsection (a) above, if selling the property would provide a community benefit or serve a community benefit or public purpose, the Division may attach provisions to the agreement with the governmental

unit evidencing a mutually beneficial agreement for the real estate of the property between the parties for consideration other than fair market value. Acceptable community benefits, as used in this paragraph, include without limitation, direct use by a municipality or purchase by a municipality for future sale to a third party for economic development or community redevelopment purposes.

- c. The thirty-day review period set forth in this section may run concurrently for county departments and other municipalities.
 - d. If the real estate is to be sold to another governmental unit, a Certification is required.
3. Sale of tax foreclosure properties via sealed bidding. In the event no public purpose for a tax foreclosure property is identified, the Division shall attempt to sell the tax foreclosure properties property via sealed bidding. Each solicitation shall remain open for a period of thirty (30) days. The highest priced offer from a responsible and responsive bidder shall be the winning bid. Acceptance of the winning bid shall require a Certification.
- a. Elements of sealed bidding - The following steps will be involved with the sealed bidding disposition process of all tax foreclosure properties:
 - i. Preparation of invitations for bids. Invitations must include the appraised value of the property as well as a description of all requested bid documents clearly, accurately, and completely.
 - ii. Notification of neighboring properties. The Division shall make a reasonable effort to notify adjacent property owners to the status of the tax foreclosed property and the opportunity to purchase.
 - iii. Publicizing the invitation for bids. Properties available for sale will be listed at their appraised values on the MLS with a link on the economic Division's website. Invitations for bids must be posted as a Class 1 notice pursuant to the Public Notice requirements of Wisconsin Statutes §

985.02 and on the Division website and distributed electronically via the accepted method of the County Procurement Division.

- iv. Submission of bids. Bidders must submit sealed bids, conforming to the requirements in the invitation for bids, to be opened at the time and place stated in the solicitation for the public opening of bids.
 - v. Evaluation of bids. Bids shall be evaluated by the director within one (1) week of the public openings of the sealed bids.
 - vi. Selection of Bid. After bids are opened and evaluated an award will be made to that responsible and responsive bidder whose bid, conforming to the invitation for bids, will be most advantageous to the county, considering only price and the price-related factors included in the invitation.
- b. The bid documents shall include at least the following terms and conditions to determine responsibility and responsiveness, specifically as they relate to the sale of tax foreclosure properties:
- i. Requirement that a valid pre-approval letter from a financial institution acceptable to the department be included in the bid in the event of a financing contingency;
 - ii. Requirement that the transaction close within 30 days of binding acceptance;
 - iii. No more than the greater of a 2.4 percent brokerage fee or \$250 for buyer brokers;
 - iv. Written acknowledgment by buyer that the sale is AS-IS with respect to property condition;
 - v. Property transfer shall occur via quit claim deed;
 - vi. Notwithstanding the foregoing, if a transaction with the winning bidder is ultimately unsuccessful, the director, or his/her designee, shall have the authority to negotiate a transaction with any remaining responsible and responsive bidder, under terms submitted by that bidder, if doing so

would be in the best interests of the county, which shall require Certification.

- vii. In the event no responsible and responsive bidder is identified during the sealed bid process, the Division shall dispose of the tax foreclosure property in accordance with the terms set forth in sub (4) below. Notwithstanding the foregoing, properties that have been posted on the Multiple Listing Service (MLS), prior to July 21, 2015 may utilize the process of subsection 4, without a sealed bid.
 - viii. A procedure that in the event of a tie of high bidders, the tying bidders shall have the opportunity to submit a new bid within 10 business days of notification of the tie.
4. Sale of tax foreclosure properties on the open market. In the event that no responsible and responsive buyer closes on a property via sealed bidding, the Division shall list tax foreclosure properties for sale on the MLS with a link on the economic Division's website at their appraised values, offering the greater of a 2.4 percent brokerage fee or \$250 for buyer brokers. Acceptance of the winning bid shall require a certification.
- a. The Division shall list marketable tax foreclosure properties for sale on the MLS (multiple listing service) at their appraised values.
 - b. The Division shall list the tax foreclosure property for sale for a thirty (30) day period. After the extended offer period closes, the Division shall evaluate all received offers to determine a winning bidder.
 - c. If the extended offer period lapses without a sale, the property shall remain on MLS. Upon receipt of an offer acceptable to the Division, the Director shall submit the offer for Certification.
 - d. As an alternative to subs. (a)—(c) above, the Division may at any time request separate Certification of an offer to purchase.
 - e. The Director, or his/her designee, shall have the authority to negotiate additional terms with any potential buyer if

doing so would be in the best interests of the county, which shall require Certification.

5. Redemption. If it is in the best interest of the County, anytime prior to the acceptance of a bid or offer from a third party, Milwaukee County may sell the property to the owner that was foreclosed on provided that the buyer pay the entire balance of principal, interest and penalties; plus \$5,000 in administrative fees. Such a transaction shall require an offer and a certification. An appraisal is not required for a Redemption.

C. Marketable Surplus Real Property

- i. Except as set forth in subsections (ii) and (iii) below, all County-owned Marketable Surplus Real Property, shall be listed for sale on the MLS at its fair market value, as determined by an appraisal ("Appraised Value") pursuant to the process outlined in Sub (b) above.
- ii. Notwithstanding the foregoing, the Director may determine it is in the best interests of the County to issue a Request for Proposal (RFP) for the sale of a particular parcel of Marketable Surplus Property.
 1. Whether an RFP is the appropriate land disposition tool will depend on a number of factors, including, but not limited to, the size of the parcel, its location, its appraised value and the applicable zoning. No one factor shall be determinative.
 2. The RFP process contains the following steps:
 - a. Publication and advertisement of the RFP as a Class 1 notice pursuant to the Public Notice requirements of Wisconsin Statutes § 985.02 and on the Milwaukee County website. The RFP should remain open for a minimum of four (4) weeks;
 - b. Selection of the most responsible and responsive bidder by a group of industry professionals in consideration of such factors which may include, but is not limited to, price, experience, plan design, financial feasibility, future tax base, job creation, green elements, zoning readiness, and other community benefits appropriate to the scale of the potential project;
 - c. Recommendation from the Director of Economic Development of the selected project, with a request for permission to enter into an option to purchase with the successful bidder, shall require Certification.

- d. Execution of a development agreement for the completion of the project in accordance with the terms of the RFP.
3. If the RFP process is utilized, Certification is required. Division staff will prepare a report summarizing RFP responses for those involved in the Certification.
4. Monitoring adherence to negotiated development agreements. The Division shall serve to monitor and enforce compliance of requirements included in development agreements related to RFP awards. The Division shall work with the Community Business Development Partners Division and the Audit Services Division to monitor compliance with such negotiated requirements that may include Disadvantaged Business Enterprise (DBE) participation, Residential Preference hiring, workforce training goals, and payment of wages.
- iii. Notwithstanding the foregoing, if the Director of Economic Development or his/her designee determines it is in the best interests of the County to dispose of a particular parcel(s) of real estate by a method not previously described herein, DAS-Economic Development shall seek a Certification outlining the proposed disposition process ("Alternative Process"). Any final agreement reached through an Alternative Process shall require a Certification.

D. Remnant Parcels

- i. The Division is not required to have an appraisal conducted on a Remnant Parcel.
- ii. If the County-owned real estate declared surplus is a Remnant Parcel, the Division may offer it to adjacent property owners for a fee determined by the Division or at no fee, except that the adjacent property owner shall be responsible for the costs associated with transferring title. The transfer shall require a Certification.
- iii. If more than one adjacent property owner is interested in the Remnant Parcel, the Division may accept an agreement between all interested parties for the Division of the property among them as agreed upon by the parties. The transfer shall require a Certification.

E. Unsolicited Offers

- i. If the Division receives an unsolicited offer to purchase a parcel of County-owned real estate, the Division can proceed pursuant to any of the following options, as appropriate under the circumstances:
 1. Reject the offer outright.
 2. Present a negotiated offer for Certification.

3. If the unsolicited offer is for a Remnant Parcel, the Division may accept a fee but is not required to, as long as the potential buyer agrees to pay all costs associated with transferring title from the County to the potential buyer, as indicated in section (e) above. The transfer would require certification.
- ii. Notwithstanding the foregoing, the director, or his/her designee shall have the authority to negotiate any additional terms with the potential buyer if doing so would be in the best interests of the County.

F. Certification Process.

- i. When Certification is required, the Director shall prepare a memorandum containing all aforementioned pertinent information and submit to the DAS-Director. Upon approval from the DAS-Director, the memorandum and attachments shall be distributed to the Comptroller and the ICC appointee for the municipality that the property is located in. The signature on the Certification shall indicate approval by the appropriate certifier.
- ii. Any amendment to an agreement, including an Offer to Purchase, Option to Purchase, or Development Agreement, that is certified will require an additional Certification.

G. Master Property List

- i. The Division shall maintain a database of properties that are available for sale and the status of each (Master Property List). The Master Property List shall be updated as soon as is practicable, posted on the Division's website at least quarterly, and distributed to the Certifiers quarterly.

H. County's Deliveries

Unless otherwise approved by the Certifiers through the Certification process, the following shall apply to each transaction.

- i. Title Commitment. After the date of Certification, the County shall diligently seek to obtain a title insurance commitment showing title to the Property as of a date that is no more than fifteen (15) days before the delivery of such title commitment (the "Title Commitment"). The Title Commitment shall be subject only to those liens which will be paid out of the proceeds of Closing (as defined herein). The Title Commitment shall be issued by an insurer licensed to write title insurance in Wisconsin.
- ii. As-Is. At Closing, County shall deliver a Quit Claim Deed in recordable form. If a Warranty Deed or Limited Warranty Deed is approved by Certifiers, the deed shall only warrant that title to the Property is free and clear of all liens and encumbrances except any of the items identified in the Title Commitment to which buyer or winning bidder has not objected to, any municipal and zoning ordinances and recorded

agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants and the general taxes levied in the year of closing.

- iii. Closing Deliveries. At Closing, County shall (a) complete and execute the documents necessary to record the conveyance at County's cost, including the payment of the Wisconsin Real Estate Transfer fee, if any; and (b) deliver an owner's policy of title insurance (from the same insurer issuing the Title Commitment) in the amount of the purchase price on a current ALTA form (the "Title Policy"). The Title Policy shall be the evidence of County's title. The Title Policy shall contain a "gap" endorsement or other equivalent gap coverage (at County's sole cost) to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the Title Commitment and before the deed is recorded. All other endorsements to the Title Policy shall be issued at buyer's or winning bidder's sole cost. County shall provide any affidavits or other documents required by the title company to issue the GAP endorsement (or equivalent coverage), to remove the applicable standard exceptions to title and/or to issue any endorsements reasonably requested by winning bidder.

I. Economic Development Buyer's Criteria.

The Division shall require a signed Affidavit from each buyer of compliance of the Economic Development Buyer's Criteria. If Buyer is found to violate any condition of the Economic Development Buyer Criteria, the County shall give buyer notice to correct this condition prior to closing. If the condition is not corrected prior to closing, the agreement with Buyer shall be terminated. Unless otherwise approved by the Certifiers, the County shall not sell a property to a buyer if as an individual or as a member of a company, shareholder of a corporation or partner in a partnership, any of the following conditions apply:

1. Owe delinquent real estate or personal property taxes to any municipality within Milwaukee County;
2. Any open building or health code violations on property owned within Milwaukee County which are not being actively abated;
3. Been convicted of violating an order of a Department of Neighborhood Services, building inspection department or health department of any municipality within Milwaukee County in the last twelve (12) months;
4. Been convicted of a felony crime that affects property or neighborhood stability or safety;
5. Any outstanding judgment owed to Milwaukee County or any municipality within Milwaukee County;
6. Been, an employee of Milwaukee County, except as disclosed; and
7. Has a relationship, whether familial, personal or professional, with anyone presently employed by Milwaukee County, except as disclosed.

4. FORMS

The following attached forms are to be used in compliance with this procedure:

Form #	Form Title
10.01(a)	Land Disposition Checklist
10.01(b)	Buyer Affidavit
10.01(c)	Certification Template

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