

Subject: DHHS OWNED AND LEASED REAL PROPERTY

24-03-00 Purpose and Scope
10 Background
20 Definitions

24-03-00 PURPOSE AND SCOPE

- A. This chapter and the following three additional chapters in the General Administration Manual deal with policies regarding real property owned or leased by the United States of America and controlled by the Department of Health and Human Services (DHHS). These will relate to the background and legislative authorities of the Department and the policies controlling the acquisition, management, and disposal of DHHS-owned and -leased real property.
- B. It is also the intent of this and the succeeding Chapters of this manual to outline the nature of the problems that may be encountered in connection with real property actions and to elucidate the principles to be observed and followed in handling them. The Chapters are not intended to provide a duplication of all of the detailed instructions and operating procedures to be found in other documents. Particular reference should be made to the Federal Property Management Regulations issued by GSA and published in Title 41 CFR Chapter 101, in view of GSA's broad authority and responsibility in the field of real property actions. Note especially that GSA may delegate its authority in this area to DHHS or designate and authorize DHHS to carry out functions for itself under the Federal Property and Administrative Services Act of 1949. (See section 205 at 40 U.S.C. 486.) Moreover, under 31 U.S.C. 1535 (formerly 31 U.S.C. 686, section 601 of the Economy Act of 1932) GSA may by agreement perform certain functions for DHHS. In view of the foregoing, a ready access to the FPMR is a necessity, with the understanding that they are constantly being revised. If questions of legal interpretation arise, the advice of the Office of General Counsel should be obtained.
- C. Policies dealing with real property assigned for Department activities by the General Services Administration (GSA) are contained in GAM chapters 24-01 and 24-02.

24-03-10 BACKGROUND

- A. FEDERAL REAL PROPERTY--PUBLIC DOMAIN AND ACQUIRED LANDS
- o The Federal Government owns approximately one-third of the total land area within the 50 States. Aside from land held in trust for Indians or Indian tribes, such land is divided into public domain land and acquired land.

- o The term public domain, as it applies to land within a State, refers to those lands which were acquired by the United States prior to the creation of the State and which are still retained by the United States, such as lands acquired by the Federal Government by virtue of the Louisiana Purchase and the Alaska Purchase. The term has no application to any land in the original 13 States, or in Texas, which was independent prior to its admission to the Union, and in a few other States. Much of what was originally public domain is now in private ownership through operation of the homestead laws and other similar laws. Other portions of the public domain have been withdrawn or reserved for military or other public purposes.
- o The Federal Government has the inherent power to acquire land, but that power can be exercised only at the discretion of the Congress. Thus, section 3736 of the Revised Statutes (41 U.S.C. 14) provides that land may be purchased for the United States only under a law authorizing such a purchase.
- o The distinction between public domain and acquired land has in recent years become blunted. It is nevertheless important to know the source of a property because lands reserved from the public domain, but no longer needed for a federal use, are offered for return to the public domain.

B. TITLE TO FEDERAL REAL PROPERTY

- o With certain minor exceptions, title to all Federal real property is held in the name of the United States of America. The Department of Health and Human Services (DHHS) does not hold title to any real property in its own name. That is so because neither the Department nor any official thereof has the statutory authority to hold title to real property, such as do certain Government corporations and officials of certain agencies in connection with their lending authorities.
- o Title to real property acquired by DHHS is taken in the name of the United States of America, and the deed transferring such title is recorded in the appropriate local land records. Transfers of control and accountability to or from other Government agencies are not so recorded because title thereto continues to be vested in the United States of America. Such transfers are usually made administratively through the General Services Administration (GSA).
- o There is no general repository of Federal land records for lands owned by the United States, although GSA maintains an inventory based on data submitted by the agencies having control and accountability. This emphasizes the importance of each Federal agency, including DHHS, keeping accurate and complete records of its real properties.

C. DHHS-OWNED AND -LEASED REALTY

- o The term "DHHS-owned realty" refers to real property over which DHHS has independent control and accountability; it is used to distinguish such real property from "GSA-assigned realty," which refers to real property the use of which is administratively assigned to DHHS by GSA, and from "DHHS-leased realty," which refers to real property that is leased directly by DHHS.
- o There are a few statutes, such as section 321 of the Public Health Service Act (42 U.S.C. 248), authorizing DHHS to acquire sites and to construct facilities so that it may carry out its functions. Such space, wholly or predominantly used for the special purposes of an agency such as DHHS and not generally suitable for the use of other agencies, is referred to as "special purpose" space.
- o Other space, primarily space used for office or storage purposes, is called "general purpose" space. Generally, such space is acquired by GSA and administratively assigned to DHHS. In many instances, the Social Security Administration (SSA) is authorized by appropriations Acts to use its trust funds to pay for the acquisition or construction of general purpose space. Nonetheless, the Comptroller General has ruled that such general purpose property falls within those placed under GSA by the Public Buildings Act of 1959. Therefore, property acquired with SSA trust funds has the unique distinction of being both DHHS-owned and GSA-assigned realty.
- o The acquisition of leasehold interests generally or of leasehold interests in space is usually handled by GSA except in certain instances as under specific delegations of the Administrator's authority to the Secretary of DHHS or as permitted by delegations included in GSA's Federal Property Management Regulations (FPMR). One major exception is provided by section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437), wherein the Secretary of DHHS is authorized to enter into leases with Indian tribes for space to be used for serving Indian health needs. Such leases may be for up to 20 years and may provide for reconstruction or renovation of the leased property pursuant to an agreement with the Indian tribe involved.

D. LEGISLATIVE JURISDICTION

- o Article I, section 8, clause 17, of the U.S. Constitution provides that, in certain cases, the Federal Government may acquire the power to exercise "exclusive Legislation" over certain areas within the territorial limits of the several States, principally places to which it has acquired title. In present-day terminology the power of "exclusive Legislation" is called exclusive jurisdiction, and the

areas are called Federal enclaves. Within such areas, the Federal Government exercises jurisdiction, or police powers, to the exclusion of all other authorities, State and local. This does not embrace Indian reservations, in which the Federal authority over the Indians is based on other Constitutional provisions, nor does it usually apply to public domain land. Limited forms of legislative jurisdiction are often employed. These forms include "concurrent jurisdiction," wherein both the Federal Government and the State exercise full authority concurrently, and "partial jurisdiction," wherein the jurisdiction is neither wholly concurrent nor wholly exclusive, but the State has reserved to itself certain limited authority, such as the right to tax private property. These forms of limited legislative jurisdiction are usually applied only to States, but have been applied elsewhere such as in the Commonwealth of Puerto Rico. If the Federal Government has acquired no special legislative authority over a property it is said to have only "a proprietorial interest" therein, but that still carries with it the right to impose criminal sanctions to protect its property and the right to be free of State interference over the exercise of its governmental functions therein.

- o Prior to February 1, 1940, the Federal Government is presumed to have accepted such legislative jurisdiction over particular areas as the States offered, and that presumption applies to the great bulk of all acquired lands. In a few cases such jurisdiction extends to public domain lands.
- o For acquisitions on or after February 1, 1940, no special jurisdiction may be acquired unless the head of the agency first accepts in writing such jurisdiction as the State offers. Once the Federal Government has accepted jurisdiction from the State, it cannot, as a rule, relinquish any portion of it without statutory authority to do so.
- o Legislative jurisdiction, like title, is vested in the United States of America. Consequently, properties transferred to DHHS from another agency, such as a military department, continue to be held under the same legislative jurisdiction as that previously made applicable to it unless the jurisdiction ceded is contingent upon the continued use of the property for a specified purpose that has ceased to prevail.
- o The decision to accept or not accept legislative jurisdiction rests with the Secretary. In recent times, jurisdiction has been accepted only in certain special cases. For example, jurisdiction may be accepted for an addition to an existing installation in order to secure as much uniformity as possible over the whole of the installation. Federal jurisdiction may be desirable because it

enables Federal officials to enforce as Federal crimes certain major offenses adopted for Federal enclaves by the Assimilative Crimes Act (18 U.S.C. 13) without reliance solely on State enforcement of State criminal laws, although concurrent jurisdiction is often more desirable because it provides alternative means of enforcement for criminal offenses. Federal jurisdiction may also be desirable because it enables the Federal Government, under 40 U.S.C. 318, to proscribe certain minor offenses, particularly traffic offenses, not made applicable by State law. On the other hand, exclusive jurisdiction would be undesirable if its exercise were to deprive residents of the area of certain civil rights and privileges provided by State Governments. That objection, however, has been largely surmounted over the years by State legislation and by judicial interpretation in matters like voting privileges and access to State courts, in particular divorce and probate proceedings, which are not usually provided for by Federal law.

- o All actions to acquire, modify, or relinquish legislative jurisdiction should be undertaken only in consultation with the Office of Special Programs Coordination/Office of Administrative and Management Services, (OSPC/QAMS.) In every case, OSPC/QAMS will secure the advice of the Office of General Counsel.

1-03-20 DEFINITIONS

For the purposes of these four General Administrative Manual Chapters the terms used herein shall have the following meanings:

Disposal Agency. The executive agency designated by the Administrator of General Services to dispose of surplus real property.

Easement. An interest in land granted for a specified purpose, such as highway, utility line, etc.

Executive Agency. Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

Federal Agency. Any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

Holding Agency. The executive agency which has accountability for the property involved.

License. The right to use Federal property for private purposes, revocable at the will of the grantor. It does not convey an interest in the property.

Operating Divisions (OPDIVs). Operating Divisions, i.e., the Public Health Service, Health Care Financing Administration, Office of Human Development Services, Social Security Administration, and Family Support Administration.

Permit. The right of one Government agency to use the property of another agency on a temporary basis. It does not transfer control of the property, but only its temporary use.

Real Property. Any interest in land, together with the improvements, structures, and fixtures located thereon, under control of any Federal agency, except the public domain, or lands reserved or dedicated for national forest or national park purposes.

Right of Entry. A right to enter the property of another for the purpose of making repairs, preparing the property for use pending acquisition, or other temporary purposes.

Right of Reentry. An action which occurs because of a condition broken which terminates the grantee's interest in the land.

OAMS. Office of Administrative and Management Services

OSPC. Office of Special Programs Coordination