

**CHAPTER 495. LEASING OF REAL PROPERTY**

- Sec.  
495.1. Purpose and policy.  
495.2. Definitions.  
495.3. [Reserved].  
495.4. Application procedure.  
495.5. Review of application.  
495.6. Terms.  
495.7. Temporary use of right-of-way.  
495.8. Interim leases before construction.  
495.9. Payments in lieu of taxes.  
495.10. Waiver of compliance with regulations.

**Authority**

The provisions of this Chapter 495 issued under section 2002(c) and (d) of The Administrative Code of 1929 (71 P. S. § 512(c) and (d)), unless otherwise noted.

**Source**

The provisions of this Chapter 495 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230, unless otherwise noted.

**§ 495.1. Purpose and policy.**

The provisions of this chapter are promulgated for the purpose of effecting the fair and uniform administration of the provisions of section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)), which authorizes the Secretary to lease real property acquired for any State-designated highway or other transportation facility as is not required for the free movement of traffic, including area above, beneath, and outside the traveled way, as well as area required but not yet utilized for construction or reconstruction of a transportation facility.

**Source**

The provisions of this § 495.1 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial page (113705).

**§ 495.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Department*—The Department of Transportation of the Commonwealth.

*Private entity*—A person, including but not limited to, a corporation, partnership or an association, which is not a public agency.

*Public agency*—The Commonwealth and its Departments, Boards or Commissions; the Commonwealth's political subdivisions, instrumentalities, agencies, municipalities, nonprofit industrial development authorities and agencies,

and redevelopment authorities; and the Government of the United States and its instrumentalities or agencies.

*Real property*—Land and estates or interests therein, including, without limitation, estates, rights and interests in the air space above and in the space below the surface of the ground.

*Secretary*—The Secretary of the Department.

#### Source

The provisions of this § 495.2 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; amended September 23, 1983, effective September 24, 1983, 13 Pa.B. 2893; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial pages (113705) to (113706).

### § 495.3. [Reserved].

#### Source

The provisions of this § 495.3 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; reserved September 23, 1983, effective September 24, 1983, 13 Pa.B. 2893. Immediately preceding text appears at serial page (62174).

### § 495.4. Application procedure.

(a) *General rule.* At the time of the filing of its application for a lease, the applicant shall give notice by registered or certified mail to the municipality and the school district in which the real property is located of the fact that it has filed an application with the Department. The notice shall state the name of the proposed lessee and sublessees, the location of the real property for which a lease has been requested, and the proposed use of the real property to be leased. Within 30 days of receipt of the application, the Department will give the applicant written notice of additional public agencies, if any, which the applicant shall also be required to notify by registered or certified mail. In the absence of such notice, the applicant shall not be required to give further notice of the filing of the application. Copies of notices required to be given by the applicant under this subsection shall be filed with the Department.

(b) *Subleases.* If the applicant proposes to sublease the property, the application shall indicate the manner in which the sublessees have been or will be selected. The manner of selection shall be fair and equitable and satisfactory to the Department.

(c) *Content.* Applications shall be made in writing to the District Engineer of the Department's Engineering District in which the real property is located. The application shall describe the use intended to be made of the real property, including all improvements to be installed or affected by such proposed use, and shall have attached thereto as an exhibit a site plan describing the proposed use.

(d) *Notice.* Promptly upon receipt of an application, the Secretary will cause notice of the filing of the application to be published in the *Pennsylvania Bulle-*

*tin.* The notice will identify the applicant and the location and the uses proposed to be made of the real property. The notice will provide further that persons objecting on the grounds of public or private interest to the approval of the application may file, within 30 days from the date of the issue of the *Pennsylvania Bulletin* in which notice of application appears, a written protest with the Department in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based.

#### Source

The provisions of this § 495.4 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; amended September 23, 1983, effective September 24, 1983, 13 Pa.B. 2893; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial pages (113706) to (113707).

### § 495.5. Review of application.

(a) If, after review by the appropriate members of his staff, the application is approved by the District Engineer, it will be forwarded by the District Engineer to the Chief, Right-of-Way and Utilities Division, Bureau of Design, with copies to the Highway Quality Control Division and the Center for Program Development and Management, Bureau of Strategic Planning.

(b) The Right-of-Way and Utilities Division will be responsible for obtaining approval from the Highway Quality Control Division and the Center for Program Development and Management, Bureau of Strategic Planning, and the Federal Highway Administration, if required.

(c) If the proposed lease is approved by the aforesaid Bureaus, and, if required, by the Federal Highway Administration, the Right-of-Way and Utilities Division, with the assistance of the Office of Chief Counsel, will prepare a lease and forward it to the District Right-of-Way and Utilities Administrator for execution by the lessee.

(d) Upon execution by the lessee, the lease will be returned by the District Right-of-Way and Utilities Administrator to the Chief, Right-of-Way and Utilities Division, Bureau of Design, for execution by a Deputy Secretary of Transportation.

#### Source

The provisions of this § 495.5 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; amended November 10, 1978, effective November 11, 1978, 8 Pa.B. 3095; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial page (113707).

### § 495.6. Terms.

(a) *Rental.* In determining the annual rental to be paid by the lessee, the Department will take into account all relevant factors, including the character and nature of the lessee and proposed sublessees, the rental customarily charged for

other rental properties in the vicinity used for similar purposes, and any public purpose to be served or advanced by the intended use of the real property.

(b) *Federal, State, and local statutes and regulations.* Leases will be subject to applicable Federal, State and local statutes, ordinances, regulations, comprehensive planning, and zoning; and the lessee and sublessees shall be responsible for compliance therewith and for payment of costs of compliance including but not limited to, preparation of required environmental statements and providing notice of opportunity for and holding of public hearings.

(c) *Exempt from claims.* The lessee and a sublessee will be required to hold the Department and its employees harmless from claims which may accrue on account of the use of the real property by the lessee or sublessee and shall be required to purchase insurance against injury to persons and damage to property in an amount as the Department deems reasonably necessary.

(d) *Improvements to property.* Upon termination of the lease, the lessee and sublessees shall, at the option of the Department, abandon improvements they may have made to the real property or restore the premises to their previous condition. The Department may require the posting of a bond, in an amount as the Department deems necessary, to insure compliance with this and other terms of the lease.

(e) *Termination.* Leases and subleases shall be subject to the Secretary's right of termination upon prior written notice to the lessee and sublessees when, in the opinion of the Secretary, the real property subject to the lease is required to improve safety or flow of traffic.

(1) Upon such termination the Department will pay damages to the lessee and sublessees as may be provided in the lease; or, absent a damages provision in the lease, the Department will pay damages as the Secretary determines to be reasonable under the circumstances, taking into account relevant factors, including the initial cost of the improvements located on the real property and repairs and replacements thereof, the age of improvements, the replacement cost thereof, and the cost of removal of improvements by the lessee or sublessees. Neither the lessee nor sublessees shall be entitled to damages on account of termination other than those provided in this paragraph.

(2) Upon termination by the Secretary under this subsection, the Department will use its best efforts to provide the lessee and sublessees with other leased premises on real property held by the Department in which they may relocate their improvements and upon which they may continue to conduct the activities or businesses which were carried on at the former site prior to termination.

(f) *Use of premises.* Use of premises shall be subject to the following conditions:

(1) If the Department has only an aerial easement, no lease may be entered into under this chapter.

(2) If the Department has an easement for highway purposes, only highway-related uses may be made of the leased premises, for example, public parking with or without charge, unless the lessee or sublessee is the owner of the underlying fee, in which case paragraph (3) applies.

(3) If the Department holds title in fee simple, any use may be made of the leased premises which the Department determines to be consistent with the public interest and not inconsistent with the Department's use of its facilities.

(g) *Repossession.* The Department will be entitled to repossess the premises upon violation by the lessee or sublessee of a term of the lease.

#### Source

The provisions of this § 495.6 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; amended November 10, 1978, effective November 11, 1978, 8 Pa.B. 3095; amended August 15, 1980, effective August 16, 1980, 10 Pa.B. 3392; amended September 23, 1983, effective September 24, 1983, 13 Pa.B. 2983; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial pages (113707) to (113709).

#### Notes of Decisions

Acquisition of fee underlying previously acquired easement for purposes of leasing to public authority for construction of a parking garage was an acquisition of land for a "transportation purpose," where said action was integral part of highway project. *Miller v. Department of Transportation*, 498 A.2d 1370 (Pa. Cmwlth. 1985).

The fact that 67 Pa. Code § 495.6(f) characterizes "public parking" as a "highway related use" supports the conclusion that for purposes of section 2003(e)(i) of The Administrative Code of 1929 (71 P. S. § 513), "transportation purposes" includes transportation related activities such as construction and operation of a parking garage. *Miller v. Department of Transportation*, 498 A.2d 1370 (Pa. Cmwlth. 1985).

Lease of property to a third party for use as a surface parking lot is a use specifically permitted by 67 Pa. Code § 495.6(f) and does not constitute abandonment of the easement which had been acquired by the Department. *Miller v. Department of Transportation*, 498 A.2d 1370 (Pa. Cmwlth. 1985).

Department of Transportation was not required to offer property for public sale under section 2003(e) of The Administrative Code of 1929 (71 P. S. § 513) (where Secretary determines land not needed for transportation purposes), since proposed lease to Philadelphia Parking Authority for construction of parking garage is characterized as a "highway related use" under 67 Pa. Code § 495.6(f) and such characterization would be inconsistent with a determination under section 2003(e) that the land was not needed for transportation purposes. *E-Z Parks, Inc. v. Larson*, 498 A.2d 1364 (Pa. Cmwlth. 1985); affirmed 503 A.2d 931 (Pa. 1986).

### § 495.7. Temporary use of right-of-way.

(a) *General rule.* The district engineer shall be authorized to permit temporary use by public agencies and charitable organizations of right-of-way not required for free movement of traffic.

(b) *Duration.* A permit for temporary use of right-of-way may not exceed 90 days' duration.

**Source**

The provisions of this § 495.7 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial page (113709).

**§ 495.8. Interim leases before construction.**

(a) *Responsibility of Right-of-Way Division.* The Right-of-Way Division is responsible for the leasing of property during the interim period between property acquisition and construction, under procedures outlined in the Department of Transportation *Right-of-Way Manual*.

(b) *Terms.* Interim leases shall ordinarily be on a month-to-month basis, and rentals shall be based on fair market value, as determined by the Right-of-Way Division. Other terms shall be as prescribed in the *Right-of-Way Manual*.

(c) *Execution of interim leases.* The Chief, Right-of-Way Division, Bureau of Highway Services, is authorized to execute interim leases on behalf of the Department.

**Source**

The provisions of this § 495.8 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; amended September 23, 1983, effective September 24, 1983, 13 Pa.B. 9283; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial page (113710).

**§ 495.9. Payments in lieu of taxes.**

(a) *General rule.* Lessees other than public agencies shall be required to make payments in lieu of taxes to the political subdivision in which the property is located if the political subdivision bills each lessee directly and if the billing is based upon a reassessment of the property reflecting change in value caused by construction of the highway or other transportation facility.

(b) *Failure to pay.* Failure of a lessee to make payments in lieu of taxes may be considered a breach of the lease.

**Source**

The provisions of this § 495.9 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; amended September 23, 1983, effective September 24, 1983, 13 Pa.B. 2893; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial page (113710).

**§ 495.10. Waiver of compliance with regulations.**

Upon a showing of good cause by an applicant, lessee or sublessee, the Secretary may waive compliance with the provisions of this chapter as in his opinion shall be appropriate under the circumstances; provided, however, that his intention to waive the compliance and the reasons therefor shall be published in the *Pennsylvania Bulletin* at least 30 days in advance of the waiver.

**Source**

The provisions of this § 495.10 adopted May 9, 1975, effective May 10, 1975, 5 Pa.B. 1230; readopted August 5, 1988, effective August 6, 1988, 18 Pa.B. 3434. Immediately preceding text appears at serial page (113710).

[Next page is 601-1.]

495-8

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