

6 FAM 740 REAL PROPERTY ACQUISITION ABROAD

(TL:GS-59; 10-01-1999)

6 FAM 741 AUTHORITY AND SCOPE

6 FAM 741.1 Authority

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

The Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292-302), and the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396).

6 FAM 741.2 Scope

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

This subchapter applies to the acquisition of real property abroad, in the name of the United States Government, by purchase, exchange, gift, and long-term lease (LTL), for use as office, functional, and/or residential space by the Department of State, the Foreign Affairs Agencies, and other U.S. Government agencies represented at post and their employees. LTLs are treated as acquisitions for purposes of programming, authorization, and funding; however, the leasing regulations of 6 FAM 730 govern the documentation required for LTL proposals and the lease contract. Procedures to implement these regulations are found at 6 FAM 745—6 FAM 748. Questions or comments on these regulations or procedures may be directed to A/FBO/AP/RE for State or USAID/W (M/AS/OMS) for USAID.

6 FAM 742 POLICY

6 FAM 742.1 General

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. U.S. Government-owned property allows the post stability, flexibility, and cost control. However, large initial outlays of funds are necessary when the U.S. Government purchases real property, and the benefits of leasing versus purchasing have to be weighed carefully.

b. Only the Department of State and the Agency for International Development (USAID) are authorized to buy real property abroad for diplomatic use. Posts shall not take independent action on real property acquisition matters. A/FBO or USAID/W (M/AS/OMS) must oversee all negotiations for the acquisition of real property.

6 FAM 742.2 Residences with Swimming Pools

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Except as noted herein, the Department of State neither constructs nor acquires residences with swimming pools:

(1) The Department may explicitly seek out for purchase, or cause to have constructed, residences with swimming pools for the use of the Ambassador, the DCM, the *consul general* (where PO), and the Marine *security guards*;

(2) The post may recommend purchase of a residential property with a swimming pool in cases where residential properties that would be considered appropriate for possible acquisition by the U.S. Government come equipped with swimming pools as a result of the country's climate, culture, or other factors.

b. Posts recommending purchase of a residential property with a pool must provide required justification (see 6 FAM 745.2). The decision to purchase will be based on a financial analysis which takes into consideration the appraised value, comparable prices for similar properties (with and without pools), and the present value of the property versus rental cost.

c. Posts may not require owners to install swimming pools as a condition of or prerequisite to purchase. Installation of a swimming pool by the post is considered a minor improvement, subject to the policy and procedures of 6 FAM 760.

6 FAM 742.3 USAID Acquisition of Property

(TL:GS-43; 4-27-96)

(USAID only)

USAID is authorized under Section 636(c) to purchase, construct, or long-term lease living quarters, office space, and necessary supporting facilities when a USAID Mission's basic requirements cannot be met by short-term leasing or by use of U.S. or cooperating-country government property available to USAID. (See 6 FAM 748 for conditions and limitations on USAID authority.)

6 FAM 742.4 Purchase Agreements

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

When authorized by A/FBO or USAID/W (M/AS/OMS) to purchase real property, the post shall prepare a written agreement that may consist of a contract of sale or, subject to local law, an option to purchase on stated terms. All such agreements must be reviewed and approved by A/FBO or USAID/W (M/AS/OMS) prior to execution.

6 FAM 742.4-1 Required Provisions for Purchase Agreements

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Whether arising out of a formal contract of sale or out of an option and exercise of the option, the purchase agreement must conform to the requirements listed in 6 FAM 746.2.

6 FAM 742.4-2 Special Rights

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. If a stream of water runs through the property, the post must investigate the water rights and obtain the legal right to the permanent flow of water. If necessary and useful in the local law, the post should obtain written confirmation from local authorities that the property will not be subject to the extension of any streets through, or encroachments upon, the property after its purchase.

b. Any other special rights should be conveyed by the deed or other instrument, simultaneously with the transfer of title.

6 FAM 742.4-3 Payment

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. The purchase price and the fees for any other incidental expenses, such as payment for water rights, shall be paid at the time of the transfer of title unless otherwise authorized by A/FBO or USAID/W (M/AS/OMS).

b. Offshore payments for the acquisition of real property require a waiver from A/FBO.

6 FAM 742.4-4 Acquisitions by Gift

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Real property, improvements to real property, furniture, furnishings, equipment, stocks, bonds, or other valuables offered to the U.S. Government for the purpose of supporting the U.S. Government's foreign buildings and properties program must be reported and may not be accepted by the post without approval as outlined in 6 FAM 746.3.

6 FAM 742.5 Documents and Records

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Documents and records relating to acquisitions of real property must be maintained and/or submitted to A/FBO by post as provided in the detailed procedures of 6 FAM 747.

6 FAM 743 PROFESSIONAL AND TECHNICAL SERVICES

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Posts may require the services of real estate experts for the preparation of acquisition proposals and other required documentation and for real property transactions. Posts must obtain prior A/FBO or USAID/W (M/AS/OMS) approval before making commitments to architects or other local experts and before incurring financial obligations. For A/FBO, no contract for professional or technical services may be signed by a post contracting officer until A/FBO has approved the services and allotted funds. For USAID, USAID/W (M/AS/OMS) must approve the services; however, prior allotment of funds is not required.

b. For purposes of this subchapter, "experts" includes real estate consultants, brokers, agents, and appraisers; architects, engineers, and surveyors; attorneys and notaries; and other persons with recognized knowledge and expertise in the real estate transactions and assessments involved.

6 FAM 743.1 Selection of Real Estate Experts

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

In selecting real estate experts, posts must follow competition procedures in Federal Acquisition Regulation (FAR) Parts 5 and 6 (with the exceptions noted in 6 FAM 743.3) and coordinate with A/FBO and L/BA on the selection process and requirements for services. Posts must ensure that the experts have demonstrated expertise in their field, are duly licensed, have a sound business reputation and knowledge of local laws and customs, and have no related interest in the project at hand. Posts' selection recommendations, including fee quotes and all pertinent details, must be submitted to A/FBO or USAID/W (M/AS/OMS) for approval and (for State only) funding prior to awarding a contract.

6 FAM 743.2 Selection of Architect, Engineer, and Related Technical Services

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Selection procedures for these professionals are included in the FAR Part 36 (see definition in FAR Part 36.102). Posts must coordinate in the selection and obtain prior approval and funding for such services from A/FBO or USAID/W (M/AS/OMS).

6 FAM 743.3 Fees for Expert Services

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Fees for professional real estate services must be for a fixed amount, i.e., either an hourly rate for a set number of hours or a flat price for a specifically defined task. Fees may not be based on a cost-plus percentage, as this establishes a conflict of interest. The only exception to this policy is the use of a percentage fee when utilizing the services of a real estate agent/broker for the sale of U.S. Government-owned property. Any fees paid cannot be higher than those established by local law, custom, or authority. (See 6 FAM 743.4 for attorneys' fees.)

6 FAM 743.4 Selection and Payment of Attorneys

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Posts must coordinate requests for real estate-related attorney services with A/FBO and L/BA for State and USAID/W (M/AS/OMS) for USAID. For State, prior funding is also required. Posts should identify a local attorney fluent in English and knowledgeable in real estate matters.

b. Requests to A/FBO and L/BA for approval and funding must include the attorney's hourly fee rate and an estimate of the number of hours needed for the task. The post must include a cap in the number of hours allowed in the service contract, or it will be in violation of the Anti-Deficiency Act. A contract that merely provides for services to be rendered at an hourly rate is not allowed. The post must obtain an estimate of the number of hours anticipated from the attorney for the job at hand and request the entire amount of funds from A/FBO in advance. If the limit to the dollar amount is being approached, the post must request authority to amend the contract to increase the number of hours and must request equivalent funds. Post must have funds on hand before it can task an attorney to perform services. In addition, the post must require a monthly bill from the attorney, no matter how small, to avoid the situation of the attorney running up a large bill without the awareness of the post or A/FBO, thereby putting the post and A/FBO at a disadvantage in reviewing the legitimacy of the hours charged.

6 FAM 744 POST RESPONSIBILITIES

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Posts are responsible for providing A/FBO or USAID/W (M/AS/OMS) with information and documentation on acquisition-related activities at various stages, including:

- (1) Acquisition Proposal;
- (2) Prepurchase Certification;
- (3) Purchase Agreement; and
- (4) Acceptance of Gifts.

b. Posts must follow required procedures in 6 FAM 745—6 FAM 748 and obtain A/FBO or USAID/W (M/AS/OMS) approval, as required, before proceeding.

6 FAM 745 REQUIRED PROCEDURES

6 FAM 745.1 General

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Because of the significant financial implications, A/FBO and USAID/W (M/AS/OMS) reserve the authority to acquire real property. Posts wishing to acquire property must consult with A/FBO or USAID/W (M/AS/OMS) to obtain specific authorization at each phase of an acquisition process. In seeking such authorization, posts must follow the procedures outlined below.

6 FAM 745.2 Documentation Required for Acquisition Proposals

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

A post interested in acquiring property first should consult with A/FBO or USAID/W (M/AS/OMS). When the post is advised of approval in principle of a proposal, a complete acquisition proposal must be sent to A/FBO or USAID/W (M/AS/OMS), including the following documentation, labeled according to the clauses below.

- (1) Narrative description of the property including:
 - (a) Lot number, block number, name of subdivision or tract, street, and house number;
 - (b) Total lot area, both in local measure and in the equivalent number of hectares or square meters;
 - (c) Number of buildings, gross and net space of each, their ages and condition, cost of initial repairs, and improvements needed (see 6 FAM 724.8 for instructions on measuring net and gross space);
 - (d) Type of surroundings (residential, commercial, industrial) and expected future development trends of the district;
 - (e) Building and zoning restrictions pertaining both to the proposed property and to neighboring properties;
 - (f) Sources and adequacy of heat, power, water, garbage, and sewage disposal facilities, and the rates for such municipal or private services.
- (2) Name and address of present owner.
- (3) Justification and cost including:

- (a) The purpose of and need for the property acquisition;
 - (b) Current rental costs for comparable properties;
 - (c) Rental cost trends for the past 10 years;
 - (d) Asking price;
 - (e) Post identification of required improvements, including those for security and fire and life safety;
 - (f) Written rationale and justification for any proposed acquisition price that exceeds appraised value;
 - (g) Disclosure of existence of swimming pool and justification of purchase. The justification for the purchase of a property with a swimming pool must state that the inherent additional maintenance costs and increased life or safety risks attributable to a pool were considered as a part of the decision making process.
- (4) Property Appraisal: Two independent appraisals of the current value of the land and structures thereon.
- (5) Facilities Assessment: Appraisal by professional architect or engineer of the present condition of the building(s), including architectural treatment, structural system, mechanical or electrical systems, presence of friable asbestos, quality of construction, and maintainability of building.
- (6) Plans and sketches including:
- (a) Map of the city, with the outlines of the site marked thereon, showing the location of the property in relation to other U.S. Government properties, to the diplomatic and consular establishments of other governments, and to the business district and prime residential areas, and showing available public transportation facilities;
 - (b) Copies of recorded survey plat or site plan sketch, showing boundary dimensions, land area of plot, names and widths of abutting streets, arrow indicating true north, and the location of any existing structures on the site in relation to the property boundaries;
 - (c) Floor plans to scale or dimensioned sketches showing the size of rooms, location of ingress or egress systems (including all windows, doors, stairways and corridors), and showing the proposed allocation of space by personnel and function (for non-residential space), with a statement of net space, location of any existing fire protection systems, and the coverage and current condition of the systems;

(d) Architectural drawings, if available, showing treatment of facades and elevations for all sides of buildings, as well as all available construction drawings relating to the building including architectural, electrical, mechanical, and structural drawings.

(7) Type of Ownership: Full legal details on the type of ownership offered and any and all information on existing encumbrances (easements, rights of way, host country restrictions on property ownership, etc.).

(8) Photographs: Photographs of grounds and buildings showing orientation of buildings on the site and interior views, including sufficient views of immediate vicinity to indicate the character of the neighborhood.

(9) Certifications including:

(a) Certification of the RSO/PSO that the property meets security standards or that DS/PSP/FPD will fund needed security upgrades. No funds will be allotted toward the purchase of real property without this statement;

(b) Certification of the COM that the property requirement cannot be satisfied by better use of existing property and that the proposed property is not larger than needed; and

(c) For USAID acquisitions, certification of the *USAID principal officer* that the property requirement cannot be satisfied by the better use of existing property and that the proposed property is not larger than needed.

6 FAM 745.3 Prepurchase Procedures

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

A/FBO or USAID/W (M/AS/OMS) will advise post on specific actions to take and on what assistance Washington will provide. Depending on the type, size, and location of the property, one or more of the following actions may be required. (Refer to 6 FAM 743 for selection and retention of expert services.)

(1) Post selects a legal expert (attorney and/or notary, depending on the circumstances) to investigate the title and draw up or approve and register the necessary documents in connection with the purchase;

(2) Post selects an engineer or surveyor to make a land survey showing existing field conditions and to compare these with the existing title records in accordance with the survey requirements found in 6 FAM 745 Exhibit 745.3; and/or

(3) Post submits to A/FBO or USAID/W (M/AS/OMS) an estimate of the fees for the services listed in (1) and (2) and provides a justification for the selection of these experts. Post shall also advise what legal liabilities the legal experts have under local law for errors they may make in their certifications.

6 FAM 745.4 Prepurchase Certification

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. After A/FBO or USAID/W (M/AS/OMS) has authorized the employment of local experts, the local expert in land titles shall search the title and formally report in English that the field verification survey and report by the engineer or land surveyor has been compared with the existing title record. The expert's report must contain the following certifications:

(1) That the description of the property in the agreement of purchase corresponds exactly with the description in valid deeds and prior land surveys in the offices where conveyances, survey plats, and other instruments that affect title are officially recorded;

(2) That the field verification of the existing title records reveals:

(a) That no discrepancies exist in measurement of boundaries or land areas;

(b) That there are conditions (if these exist) that might adversely affect the interests of the United States (conditions to be listed) that do not appear in the abstract of title; or

(c) That a comparison of the field survey and title search reveals certain exceptions (if these exist) to a clear and unencumbered title that do not appear in the present title record (exceptions to be listed), but the vendor, at his/her expense, has taken or is taking all steps necessary to clear any noted exceptions, and the proposed legal instrument of conveyance, as drawn by the local land title expert, will, under local law and custom, serve as a document of correction to the erroneous title record;

(3) That there are no mortgages, liens, charges, incidents of tenure, encroachments, reserved strips of land blocking access to public thoroughfares, street widening or public improvement projects proposed or pending, or any other encumbrances or defects of any kind recognized by the laws of the country as affecting the title, and

(4) The vendor has a perfect, exclusive, and unencumbered title to the property and full power to convey it to the United States of America.

b. If the description referred to in Section (a)(1) differs, the post must submit to A/FBO or USAID/W (M/AS/OMS) a report which details the variances as well as the points that correspond. The report should indicate the steps necessary to correct the variances, if such corrections are recommended. If encumbrances or defects exist, the post shall report to A/FBO or USAID/W (M/AS/OMS) their nature, duration, and plans to lift them.

c. A/FBO or USAID/W (M/AS/OMS) will fund fees for services of local land title experts upon post advice of the estimated charge.

6 FAM 745.5 Postpurchase Certification

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Upon completion of purchase, the local expert in land titles shall certify in writing that:

(1) The deed is in the form approved and uniformly used in the country;

(2) The deed has been filed, recorded, and registered in accordance with local law and the United States of America is now the legal owner of record; and

(3) All steps necessary to ensure a perfect, unencumbered title on behalf of the United States have been taken. If A/FBO or USAID/W (M/AS/OMS) has approved acquisition of an interest in realty with less than a perfect unencumbered title, post must specify any way in which the title is less than perfect. In such instances, posts should also specify whether or not the imperfections may be remedied and, if so, how.

6 FAM 746 PURCHASE AGREEMENTS

6 FAM 746.1 Option Agreements

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

An option to purchase real property is a continuing offer. The period during which the option is in force gives the U.S. Government the opportunity to examine all aspects of the potential purchase. Posts should obtain an option that is valid for a specified period of time and that contains the proposed terms of the sale. Exercising an option to purchase is a unilateral action which does not require the agreement of the property owner.

6 FAM 746.1-1 Option Agreement Procedures

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Posts should follow these steps in the drafting, approval, and execution of option to purchase agreements:

(1) Post drafts an option agreement, using the model form in 6 FAM 746 Exhibit 746.1A;

(2) Post sends the option agreement to A/FBO or USAID/W (M/AS/OMS) for approval;

(3) Upon approval, post presents the option agreement along with an Affidavit of Title, using the model form in 6 FAM 746 Exhibit 746.1B, to the property owner;

(4) As the Affidavit is a sworn statement, the owner must execute it before a person authorized to administer oaths (notary or other public official);

(5) Post and owner must sign the option agreement before a notary or other public official to ensure it complies with local law;

(6) Post registers or records the option as provided by local law to ensure that it is officially validated and recognized in the locally accepted manner.

b. When the post, with A/FBO or USAID/W (M/AS/OMS) approval, exercises the option to purchase, the post sends the Notice of Exercise of Option Form in 6 FAM 746 Exhibit 746.1C. A notice of exercise of an option should be sent by registered mail or handcarried to the owner, who should acknowledge receipt in writing, dating and signing a copy that the post will retain.

c. The draft Affidavit of Title form (6 FAM 746 Exhibit 746.1B) serves as a useful checklist of necessary points.

6 FAM 746.2 Purchase Agreement Provisions

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Whether the agreement to purchase arises out of a formal contract of sale or out of an option and exercise of the option, the agreement must contain the following provisions, required by both A/FBO and USAID/W (M/AS/OMS):

(1) Provide for the conveyance of an unencumbered “fee simple” title, or the nearest equivalent, in the property to the United States of America, with the vendor’s warranty against any and all persons claiming title under the vendor’s name or in the name of the vendor’s heirs or assigns. Title will be acquired in the name of the United States of America, whether the purchasing agency is the Department of State or the Agency for International Development;

(2) Provide that payment of the purchase price is conditional upon the receipt of an opinion from a competent, disinterested expert to be selected by the post, certifying to all the points listed in 6 FAM 745.4 and 6 FAM 745.5;

(3) Include the most complete description of property possible under local law and custom, which shall correspond exactly to the description in the valid conveyance and other instruments affecting title to real property as they are officially recorded, including the land area, the nature of existing boundaries (e.g., walls, streams, streets), the lengths and direction of boundary lines, the measurement of angles between boundary corners, the names of abutting streets and owners of adjoining property, and, where local regulations permit, an attached plan of the property as a part of the contract. This description, subject to the findings revealed by the search of title and field verification survey, may need amplification or correction as provided in 6 FAM 745. It shall include description of any buildings, improvements, and fixtures on the property, and an inventory of any furniture, furnishings, or equipment included in the sale;

(4) Provide that the sale is subject to completion of a field verification survey and its acceptance by A/FBO or USAID/W (M/AS/OMS), which survey shall be made by a competent, disinterested engineer or surveyor selected by the post, who is duly authorized to practice in the locality and who shall show by certified plat the information required by 6 FAM 745 Exhibit 745.3; and

(5) Avoid, except as expressly authorized by A/FBO or USAID/W (M/AS/OMS) in each case, any provision requiring:

(a) Payment by the U.S. Government of insurance or indemnity charges;

(b) U.S. Government responsibility for damages to persons or property on adjoining properties not owned by the U.S. Government;

(c) The submission of disputes to boards or panels for arbitration, or to the jurisdiction of the local courts;

(d) The reversion of the property to the previous owner without full repayment to the United States, if the United States fails to improve the property within a specified period of time;

(e) The inspection of the property by any person(s) not in the employ of the U.S. Government;

(f) Any servitude or easement for public or private use that does not directly benefit the U.S. Government;

(g) The retention of rights, by the seller, to exploit any mineral or other resources on or under the property; or

(h) The inclusion of conveyance taxes in the purchase price.

(6) **Authority to execute agreements:** A/FBO, pursuant to the Foreign Buildings Act, provides authority to sign the relevant agreement for real property purchases and sales. A contracting officer appointment is not required. Posts must obtain prior A/FBO authority to execute purchase and sales agreements.

6 FAM 746.3 Acquisition by Gift

6 FAM 746.3-1 Gifts Covered by this Section

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

These procedures apply to all offers of real property, improvements to real property, furniture, furnishings, equipment, stocks, bonds, or other valuables to the U.S. Government for purposes of supporting the U.S. Government's foreign buildings and properties program. Proposed gifts may also take the form of personal services or materials.

6 FAM 746.3-2 Reporting and Approval of Gifts

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Only A/FBO and USAID/W (M/AS/OMS) are authorized to accept gifts of real property. Posts must report all offers of such gifts to A/FBO or USAID/W, including the information required by 6 FAM 745.2 or similar information. Posts may not accept such property until approved by A/FBO or USAID/W. (See also 2 FAM 964 Exhibit 964.2-2.)

b. Offers of personal services or materials must be reported to and approved by A/FBO, USAID/W, or US&FCS, as appropriate. Posts should forward cost invoices or other documents evidencing the stated value, the name and nationality of the donor, and proof of ownership of the proposed gift. Other information may be required.

c. Posts must submit reports of offers or bequests and requests for approval to accept these as follows:

(1) Real property offered to USAID:

USAID/W,
Attention: M/AS/OMS;

(2) Personal property offered to US&FCS:

US&FCS/OPM 31-2;

(3) All other offers of real or personal property:

A/FBO/AP/RE/AQD.

d. Any conditions pertaining to a gift should be reported fully, since a prohibitive condition, or a requirement to pay additional sums before acceptance, will preclude acceptance.

6 FAM 747 REQUIRED DOCUMENTATION

(TL:GS-59; 10-01-1999)

(Uniform State/USAID/Commerce/Agriculture/DIA)

a. Where local law does not require that the originals be retained by the foreign country, the post will send to A/FBO or USAID/W (M/AS/OMS) the original title deeds with associated title surveys or plot plans (or the original crown leasehold titles with associated title surveys) plus one signed copy of each. Signed copies of these documents must be certified by the local recorder or registrar of land records. The post will send to A/FBO or USAID/W (M/AS/OMS) copies of the following acquisition documents: contracts of sale (purchase agreements), exercised options to purchase real property (documentation with payment schedules included), and affidavits of title (title searches).

b. Where local law does require that the originals be retained by the foreign country, the post will send to A/FBO or USAID/W (M/AS/OMS) two signed, certified copies of the title documents or title document equivalency that is recognized by the host country's government and courts as having equal validity as to proof of U.S. Government ownership as would the original deed.

c. Wherever possible, contracts and deeds shall be in the English language. If the local law requires these documents to be executed in the language of the country where the property is located, an accurate translation shall accompany each original and copy, signed by the translator with the translator's name typed below the signature.

d. The post will attach one certified copy of the expert's certificate required by 6 FAM 745.5 to the voucher for payment for the property and will retain one copy.

e. The post will send to A/FBO or USAID/W (M/AS/OMS) for review one copy of the signed written Boundary and Building Location Survey Report, (see 6 FAM 745 Exhibit 745.3) two prints of the survey drawings, and one copy of the engineer's survey certification. The post retains one copy of the report, the original tracing of the survey drawings, and the original of the engineer's survey certification.

f. Mailing addresses are listed in 6 FAM 719; distribution of LTL documents is covered in 6 FAM 738.

6 FAM 748 USAID ACQUISITION OF PROPERTY

6 FAM 748.1 Basic Policies and Limitations

(TL:GS-43; 4-27-96)
(USAID only)

a. **Applicability:** Section 636(c) of the Foreign Assistance Act of 1961, as amended, applies to all construction, purchase, and long-term leasing that has as its primary purpose the provision of housing, office, or other facilities for the use of USAID employees.

b. **Conditions for authorization:**

(1) Under the basic policy as stated in 6 FAM 742.3, living quarters, office space, warehouses, and maintenance and utility facilities will have first priority. Use of 636(c) authority for schools and hospitals will be confined to facilities primarily necessary to meet USAID requirements;

(2) Personnel and dependents of other U.S. agencies are provided for to the extent that such usage will not substantially increase the size and cost of the facility required to meet USAID's needs. Facilities constructed or purchased under this authority will be of a modest functional type that will meet minimum basic requirements; and

(3) When facilities are constructed on land provided by the government of the cooperating country, every effort must be made to obtain written agreement with the government that the facilities will be available for use to the U.S. Government free of charge as long as the U.S. has need of them.

c. **Construction not chargeable to 636(c):** Facilities and housing that will ultimately become permanent quarters for the cooperating-country government staff, even though they may be temporarily occupied by USAID employees, will NOT be charged to Section 636(c) if they meet all of the following conditions:

(1) They are an integral and necessary part of a project facility;

(2) They are included in the project or other agreement under which USAID is furnishing the assistance to which the housing relates;

(3) They are of a type and character consistent with the project facility and other housing in the locality; and

(4) They are consistent with the reasonable requirements of non-U.S. personnel who will ultimately occupy it in furtherance of the project's objectives.

d. **Recreation and *community-type facilities*:** The construction or purchase of recreational and community-type facilities will normally be accomplished through employee efforts, including group financial contributions. The use of Section 636(c) authority for such purposes will be approved by the Assistant to the Administrator for Management (AA/M) only in extraordinary situations when it is demonstrated that maximum efforts have been made by the community itself.

e. **School *construction*:** The provision or improvement of school facilities for education of dependent children will normally be accomplished by assistance under Section 636(c) to institutions already established or to be established. Schools will not be constructed under the authority of Section 636(c) except in those places where educational requirements cannot reasonably be met by any means other than through the construction or purchase of a U.S. Government facility.

f. **Definitions:**

(1) "Otherwise acquire" applies only to purchase and long-term lease of real property. Section 636(c) authority does not apply to short-term leased facilities.

(2) "Personnel carrying out activities" applies to direct-hire, participating agency, and contractor personnel hereinafter referred to as "employees." Use of facilities by contractor personnel will be determined by the terms of the contract.

(3) "Necessary supporting facilities" applies to land and structures that are essential to mission or program activities, such as warehouse or garage facilities.

6 FAM 748.2 Requests For Acquisitions

(TL:GS-43; 4-27-96)
(USAID only)

a. USAID missions will include their requirements for programs under 636(c) in funding requests which must be fully justified and prepared in accordance with 6 FAM 745.2.

b. **Final approval:** Following individual approval by AA/M, USAID/W and allocation of authority in the out-year-budget program, USAID missions will submit, upon request, detailed professional plans, specifications, and estimated cost figures to M/AS/OMS for approval prior to contracting for purchase. When a proposal to acquire property has been approved by USAID/W, the USAID mission will proceed with the acquisition in accordance with 6 FAM 745—6 FAM 747.

6 FAM 749 UNASSIGNED

6 FAM 745 Exhibit 745.3

REQUIREMENTS FOR BOUNDARY AND BUILDING LOCATION SURVEYS

(TL:GS-59; 10-01-1999)

1. GENERAL REQUIREMENTS

a. Provide an accurate transit and tape boundary and building location survey transmitted by means of finished drawings in metric measure by a locally authorized and licensed civil engineer or land surveyor.

b. Field work shall be of such accuracy that the unadjusted mathematical closure (accuracy ratio) of the field transverse is not less than one unit in five thousand units (1:5000). Such accuracy may be attained by measuring all angles to the nearest 30 seconds of arc, or equivalent, and by measuring all distances horizontally to the nearest three millimeters.

c. Areas shall be shown in square meters.

d. The civil engineer or land surveyor will prepare a written engineering report. One-fourth of the survey contract price shall be retained by the post until final acceptance of the survey drawings by A/FBO. The original tracing shall be retained at the post and two prints submitted to A/FBO along with the signed report and survey certification.

2. BOUNDARY REQUIREMENTS

a. Permanent monuments (boundary markers) shall be accurately set at all corners, angle points, and curve points and shall be one of the following, in order of preference:

(1) Concrete or stone monuments not less than 100 mm at the top and of such length that the base extends well below the frost line, but in no case less than 600 mm, carefully tamped in place, the top set flush with the ground and the actual property corner point marked by a metal plug, drill hole or chiseled cross;

(2) A 25 mm iron pipe or bar at least 750 mm long, driven flush with the ground with a 150 mm cement collar place around the tops;

(3) Chiseled cross or drill holes placed in cement sidewalks, permanent walls, boulders, etc.

b. All buildings and structures on and adjacent to the site shall be located by measurements from property corners along and at right angles to property lines.

Continuation—6 FAM 745 Exhibit 745.3

3. DRAWINGS

a. Drawings shall be made with waterproof black ink on 0.08 mm (minimum) mylar sheets or other acceptable media especially prepared for ink drawings. Because they are so brittle and easily creased or torn, drawings made on tracing paper or vellum **WILL NOT BE ACCEPTED**.

(1) Drawings may not be larger than ISO “AO”—841 mm x 1189 mm, or 36” x 48” in English units. ISO “A1”—549 mm x 841 mm is preferred.

(2) Any appropriate scale may be used, provided all information is accurately indicated and can be reproduced clearly.

(3) The exact limits of U.S. Government ownership shall be shown by a distinctive symbol or heavy line. If walls are located along the property line, the exact location of the property line with relation to the wall shall be shown using an enlarged detail sketch, if necessary.

(4) All building location measurements and building dimensions shall be shown, as well as type of construction materials and number of floors and use of building, e.g., “two-story brick residence,” “one-story frame garage,” “one-story concrete block servants’ quarters.”

(5) All measurements and dimensions shall be in metric units, unless English units are the standard of the host country. All notations shall have English translations.

b. Finished drawings shall show the following items:

(1) A drawing title, showing identification of the property, city, country, name of surveyor or engineer, date of survey, and drawing number, if any;

(2) A small-scale vicinity map, showing the general location of the property and its relation to other diplomatic establishments, commercial establishments, host-country government offices and buildings, universities and schools, major streets and roads, airports, and bus stops;

(3) A graphic-bar scale and a numerical scale in words;

(4) A complete legend showing all symbols and abbreviations used;

(5) Location and description of each boundary corner monument or marker;

(6) North arrow or meridian, showing whether true or magnetic. Direction and length of each property line. Direction may be shown by azimuths clockwise from north or by compass bearings in the four quadrants, referred to either magnetic or true north;

Continuation—6 FAM 745 Exhibit 745.3

(7) Distances to the nearest three mm. If measured distances differ from the deed (recorded) distances, both shall be shown and marked “meas.” and “deed”;

(8) All interior angles of the boundary, with the total geometrically correct. Using the sexadecimal system, the interior angles should total n (number of angles) minus two, multiplied by 180 degrees; or, if the centesimal system is used, the interior angles should total n (number of angles) minus two, multiplied by 200 grads;

(9) The adjusted final boundary data shall show mathematical closure (accuracy ratio) of no less than one unit in ten thousand units (1:10,000);

(10) Boundary lines following a circular curve shall be defined by the radius, central angle, arc length, long chord length, tangent length, and chord bearing. If the boundary line follows an irregular (noncircular) curve, the boundary may be defined by evenly spaced and dimensioned right angle offsets from the long chord to the arc of the curve;

(11) Total land area and deed (recorded) area, computed to the nearest square meter;

(12) Building restriction or setback lines, easements, right-of-way, reservation lines, etc., and all encroachments of walls, fences, balconies, eaves, electric and telephone lines, water lines, sewers, etc., described and located by measurements;

(13) Names of all adjacent streets and widths between right-of-way lines, as well as names of owners of all adjacent properties;

(14) If a local coordinate grid or other official survey control system is in use, coordinates of all property corners;

(15) Final boundary data and properly identified coordinates set up in tabular form, if so desired;

(16) A certification, signed and dated by surveyor or engineer, that he or she has made a careful and accurate transit and tape survey, that all data shown on the drawings are correct, that all property corner markers or monuments have been found or set as shown and described on the drawing, and that all local requirements for land surveys have been met.

4. ENGINEERING REPORT

The engineer or surveyor shall submit a signed and dated written narrative report in English, with the name of the engineer or surveyor typed below the signature, covering any of the foregoing items that cannot be shown clearly on the drawing or that might require explanation or clarification.

6 FAM 746 Exhibit 746.1A

OPTION TO PURCHASE REAL PROPERTY

(TL:GS-59; 10-01-1999)

(Amend as appropriate for use with USAID options.)

For and in consideration of the sum of _____ dollars (or a local currency equivalent), receipt whereof is hereby acknowledged, _____ [name(s) of owner(s) and address(es)] _____, hereinafter called the Vendor, for (his, her, its, their) heirs, executors, administrators, successors, and assignees, grants on this _____ day of ___[Month]___, ___[Year]___, to the United States of America, acting by _____, of the American Embassy (Consulate) _____[Location]_____, hereinafter called the Vendee, the sole right and option for the period of ___[fill in dates or specific time period]___, to purchase the real estate herein described on the terms and conditions herein set forth.

1. The premises to be sold by the exercise of this option are situated in the city of _____, county (etc.) of _____ and state (province, etc.) of _____ and described as follows, to wit: _____[here carefully fill in exact legal description of premises]_____ together with the appurtenances and easements thereunto, including the buildings and improvements thereon. The premises to be sold shall be sold to the Vendee in fee simple (complete, absolute and perpetual ownership)* with covenant of warranty, covenant for peaceful possession, and covenant against encumbrances. In this latter connection, the Vendor shall execute an affidavit of title when called upon to do so by the Vendee (See 6 FAM 746 Exhibit 746.1B). The option price for said property is ___[fill in sum of currency authorized]___, and on election to purchase shall be due and payable by the Vendee to the Vendor at the American Embassy (Consulate) at _____, in full, on the date the deed is delivered and accepted by the Vendee and vacant possession is given.

2. Notice of election to purchase hereunder by the Vendee or its assigns shall be in writing and shall be given to the Vendor at _____ before the expiration of this option as provided above.

3. Within fifteen days after notice of election to purchase shall be given to the Vendor by the Vendee or its assigns, the Vendor agrees to furnish, at his/her own cost and expense, and deliver to the Vendee at the American Embassy (Consulate) at _____ an unlimited certificate or abstract of title (as the case may be), made by a reputable firm or company, and the title documents. The Vendee shall have ninety days from and after delivery of said certificate (or abstract) of title and title documents within which to examine the same. If the title to said property, as then found by the Vendee, is well vested in the Vendor, permitting the Vendor to convey fee simple absolute title (complete, absolute and perpetual ownership) to the Vendee,

Continuation—6 FAM 746 Exhibit 746.1A

with covenant of warranty and covenant against encumbrances; and is free and clear of and from all defects, clouds on title, liens, incidents of tenure, encumbrances, charges, taxes and assessments; and the aforesaid description of the property corresponds exactly with the description in valid deeds as officially recorded in the land record office, which description, however, contingent on the findings of a local expert in land titles and a field verification survey made by an engineer or land surveyor, shall be subject to correction at the expense of the Vendor (See 6 FAM 745.3 and 6 FAM 746 Exhibit 746.1C); and if it is found that the Vendor has full power to convey to the Vendee, then the Vendee shall, within the time aforesaid, perform the provisions of paragraph 2 of this option; and if said title shall be otherwise than as above stated, then this option shall, at the Vendee's election, be at an end, and the Vendor agrees to pay the Vendee the sum of _____ dollars paid by it as consideration for this option.

4. Upon performance by the Vendee hereunder, the Vendor agrees to execute and deliver to the United States of America, a deed of conveyance conveying fee simple title (complete, absolute and perpetual ownership) with covenant of warranty and covenant against encumbrances.

5. Vacant possession of said property shall be delivered to the Vendee, who shall be entitled to the same on execution and delivery and acceptance of the deed of conveyance as aforesaid.

6. All insurance premiums, and/or taxes or assessments levied or assessed on the said property and accruing before conveyance hereunder shall be paid by the Vendor.

7. Gas and electric fixtures, gas stoves, hot water heaters, chandeliers, carpets, linoleums, mats and matting in halls, screens, shades, awnings, ashcans, refrigerators, and heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises are represented to be owned by the Vendor and are included in this sale as per the attached inventory.

8. The risk of loss or damage to the premises by force majeure until conveyance of title hereunder is assumed by the Vendor.

IN WITNESS WHEREOF, the Vendor has hereunto subscribed (his, her, its, their) name(s) and set (his, her, its, their) seal(s) as of the date first written above.

_____[Name, Title and Address]_____ VENDOR

Continuation—6 FAM 746 Exhibit 746.1A

The United States of America, Acting By:

_____[Name, Title and Address]_____ VENDEE

* If the Vendor has a title other than fee simple (or its equivalent), clearly identify his or her title rights.

6 FAM 746 Exhibit 746.1B
AFFIDAVIT OF TITLE

(TL:GS-59; 10-01-1999)

(Amend as appropriate for use with USAID options.)

[Fill in name(s) and address(es) of owner(s) who is (are) granting the option to which this affidavit is an attachment.]

being (all) duly sworn, does (do) depose and state:

That (he, she, it, they) is (are) the absolute owner(s) of the premises known as _____ and more particularly described in the option, dated ____, to which this affidavit of title is an attachment;

That said premises have been held by the deponent(s) and preceding owners from whom title is derived for the period of _____ years last past and upwards and that the possession thereof has been peaceable and undisturbed and that the title thereto has never been disputed or questioned to the knowledge of the deponent(s);

That the deponent(s) does (do) not know of anything that might tend to bring said title into question or by reason of which any claim to any part of said premises or to any undivided interest therein, adverse to deponent(s), might be set up or made;

That said premises are free and clear of any and all liens, encumbrances or clouds of every name, nature or kind, either recorded or unrecorded, EXCEPT:

[Here describe any claims or clouds on title.]

Deponent(s) does (do) further state that there is no judgment, order or decree against deponent(s) unpaid or unsatisfied of record;

That no proceedings in bankruptcy have ever been instituted by or against deponent(s) nor has (have) deponent(s) ever made any assignment for the benefit of creditors;

That at this time there are no unpaid taxes or assessments, ordinary or extraordinary, now due or levied against said premises or any part thereof, EXCEPT:

[Here describe any unpaid taxes or assessments.]

Continuation—6 FAM 746 Exhibit 746.1B

That deponent(s) is (are) citizen(s) of _____ and of the age of 21 years and upwards;

That deponent(s) is (are) married to _____, who is (are) over the age of 21 years and competent to convey real estate;

(or)

That deponent(s) has (have) never been married to any one else now living;

That deponent(s) is (are) now in possession of said premises above described;

That each and all of the foregoing statements and representations are in each and all respects true and are made for the purpose of inducing the United States of America, acting by _____, of the American Embassy (Consulate) at _____, to purchase the said property for the sum of _____.

_____ *[Name, Title and Address]* DEPONENT(S)

The United States of America, Acting By:

_____ *[Signature]*

_____ *[Name and Title]*

Subscribed and sworn to before me this _____ day of _____ *[Month]*, _____ *[Year]*, after the contents thereof had been fully explained to me by deponent(s).

[Seal of Notary Public, Commissioner of Deeds, or other person authorized to administer oaths.]

6 FAM 746 Exhibit 746.1C
NOTICE OF EXERCISE OF OPTION

(TL:GS-59; 10-01-1999)

(Amend as appropriate for use with USAID options.)

To: _____

The United States of America, acting by the undersigned, hereby gives notice to you that the United States Government elects to exercise its option to purchase the property at _____ on the terms stated in an option agreement executed by you on the _____ day of _____ [Month]____, [Year]_. Will you please comply with paragraph number 4 of that agreement within the next 15 days.

The United States of America, Acting By:

_____ [Signature] _____

_____ [Name and Title] _____

_____ [Place and Date] _____