



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

Title	Agenda Item Type
Court Facilities: Delegation of Authority for Disposition of Equity Interests	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	September 15, 2017
Recommended by	Date of Report
Facilities Policies Working Group	July 24, 2017
Hon. Douglas P. Miller, Chair	Contact
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Executive Summary

Following the completion of construction of new courthouses, and at other times for operational reasons, courts vacate court facilities that are no longer suitable to the needs of the judicial branch. Often the vacated court facilities are located in buildings where the counties are the owner of record, but the Judicial Council remains liable for, and obligated to pay its share of the cost of operations and maintenance of its equity interest in the closed court facilities. To eliminate the continuing liability and cost associated with permanently closed court facilities in county-owned buildings, the Facilities Policies Working Group recommends delegating to the Administrative Director the authority to dispose of the Judicial Council's equity interest in such facilities where the counties are the owner of record.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective September 15, 2017, delegate to the Administrative Director or his designee the authority to:

1. Take all steps necessary to permanently dispose of, in fair market rate transactions, the Judicial Council's equity interests in court facilities in county-owned facilities that have been or will be permanently closed;
2. Sign equity disposition agreements and any other related documents needed to complete the transactions; and
3. Report back to the Judicial Council annually on such permanent equity dispositions.

Previous Council Action

In June 2015, the Judicial Council authorized and approved the permanent disposition of the Judicial Council's equity interest in a court facility in Inyo County as partial consideration for a ground lease for space on which a modular court facility is to be located.

In March 2017, the Judicial Council authorized and approved the permanent disposition of the Judicial Council's equity interests in two vacant court facilities in Imperial County in partial settlement of a dispute with Imperial County.

In July 2017, the Judicial Council authorized and approved the permanent disposition of the Judicial Council's equity interests in the Courthouse Annex in Tehama County and the former Falasco Justice Center in Merced County and delegated to the Administrative Director or his designee the authority to sign the equity disposition agreements for those two facilities and all other related documents needed to complete the transactions.

Rationale for Recommendation

Background

The Judicial Council acquired equity interests in, and responsibility for, but not title to, numerous shared court facilities throughout the state pursuant to the court facility transfer process under the Trial Court Facilities Act of 2002¹ (as amended, the Act). In some cases, these court facilities have been or will be permanently closed as a result of new court facilities being constructed or budget or operational changes prompting the courts to vacate the facilities.

Every closed court facility carries some liability and has operations and maintenance (O&M) costs associated with it until the Judicial Council disposes of that facility. Accelerating the disposition process reduces the branch's liability risk and will save on O&M costs; that savings can be used to fund the judicial branch's portfolio of active court facilities. Delegation of authority to the Administrative Director or his designee to permanently dispose of the Judicial Council's equity interests in permanently closed court facilities where a county holds title to the underlying real property will accelerate the disposition process.

¹ Stats. 2002, ch. 1082.

In addition to the reduction in O&M costs, the judicial branch further benefits through receipt of the fair market value of the equity interest that a county would be acquiring from the Judicial Council.

Legal Authority

Equity in the Trial Court Facilities Act

“Equity interest” in a court facility is a concept that is unique to the Act and that does not have a clear analogue in general real estate law. The Act does not include a definition for “equity interest” and the term “equity” is specifically mentioned in only four places in the Act:²

- The uncodified Legislative Findings and Declarations of the Act include a list of “guiding principles” for carrying out the transfer of responsibility of court facilities from the counties to the state, one of which is “the preservation of the respective equity interests of the county and the state in a joint-use or historic facility.”³
- Another guiding principle for the transfers in the Legislative Findings and Declarations is that “[c]ounties shall not be entitled to compensation for any equity value of court facilities transferred to the state.”⁴
- In section 70325, which addresses transfers of buildings subject to bonded indebtedness, the Act provides that “during the period and to the extent which bonded indebtedness is outstanding with respect to any court facility, the state shall not have any equity or ownership rights, in, to, or with respect to, the court facility” (section 70325(c)).
- Section 70344 addresses the narrow situation of a shared-use building where either the court or the county occupies 80 percent or more of the building. In that case, the majority occupant can require the other party to vacate the building upon reasonable notice and compensation “for its equity in the facility and for relocation costs at the fair market rate” (section 70344(b)).

The provisions of the Act addressing administration of shared-use buildings (sections 70341–70342) rely on the concept of equity without actually using that word:

- Section 70341(a) specifies that the user rights of the court and county in a shared-use building “are based on the proportional allocation of exclusive use facilities within the building for the court and for the county” as specified in the transfer agreement and in the agreement required under section 70343 (i.e., the Joint Occupancy Agreement), regardless of which entity holds title to the building.

² The term “equity” is also used in two sections of the Government Code generally addressing state-owned real property. These sections each authorize non-surplus dispositions of specific parcels of state-owned real property and related acquisitions of replacement property. In each case, if the director of the Department of General Services acquires such replacement properties through a lease, the Legislature expresses its intent that the state “obtain an equity interest” in any such replacement land or facility (Gov. Code, §§ 14673.10(g)(1), 14673.11(g)(1)).

³ Stats. 2002, ch. 1082, § 1(d)(4).

⁴ *Id.*, § 1(d)(6).

- Section 70341(b) makes clear that the court and county each have the exclusive use of its respective facilities in the building, together with the shared use of the common areas, indefinitely and at no cost (other than its proportionate share of the operations and maintenance).
- Under section 70342(a) through (c), if either the Judicial Council or county wishes to have additional space in a shared-use building, then the other party may charge reasonable rent for that use.
- Under section 70342(e), unless the Judicial Council or county otherwise agree, if either party desires to decrease the amount of space it occupies in a shared-use building, it may do so only after offering the other party its equity interest in that space on the same terms and conditions as to which it has proposed to transfer the space to a third party (i.e., a market rate transaction). Section 70342(e) further provides that the Judicial Council and the county are not relieved of their respective rights and responsibilities under the Joint Occupancy Agreement (JOA) to share ongoing operations and maintenance costs *unless* the JOA is superseded by a subsequent agreement.

Read together, these sections of the Act make clear that an equity interest is an ownership interest that is exclusive, permanent, and without payment of rent or other occupancy charges to the other party, regardless of how title is held. If the court or county vacates or otherwise fails to use its exclusive-use area, the rights and obligations of the parties under the JOA continue in full force and effect unless they agree to another arrangement memorialized in a subsequent agreement that supersedes the JOA. Any such arrangement must involve compensation for the vacated exclusive-use area and corresponding equity interest at its fair market value. The JOAs provide for either the Judicial Council or the county to purchase some or all of the other party's equity interest in the shared facility.

Disposition Authority

The Judicial Council has specific authority in section 70391(c) to dispose of surplus court facilities, including court facilities in both state-owned buildings and in county-owned buildings where the Judicial Council holds only an equity interest. Pursuant to that section, these equity sales proceeds are to be deposited into the State Court Facilities Construction Fund.⁵

Delegation of Authority for Equity Dispositions

Under article VI, section 6(c) of the California Constitution,⁶ the Judicial Council has broad authority to delegate functions to the Administrative Director:

⁵ Article III, section 9 of the California Constitution requires that proceeds from the sale of surplus state property be deposited in the Special Fund for Economic Uncertainties. While an equity interest in a court facility is permanent and exclusive, the Judicial Council does not have a proprietary interest in the underlying real property because the state does not have sufficient control over it to unilaterally decide to sell it. Lacking such a proprietary interest, disposition of a surplus court facility in which the Judicial Council has only an equity interest is not a "sale of surplus state property" subject to the constitutional provision cited above.

⁶ See Cal. Rules of Court, rule 10.80(a).

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

Disposition of equity interests in court facilities in county-owned buildings that have been or will be permanently closed is consistent with that authority.

Comments, Alternatives Considered, and Policy Implications

This proposal has not been circulated for comment. Before the disposition of Judicial Council equity in any court facility, agency staff confers with and receives written communication from the court stating that their court facility has been permanently closed and they do not have any objection to the permanent disposition of their facility.

The alternative to approving the proposal for the broader delegation of authority is to continue to require the Judicial Council to review and approve each permanent disposition of equity interests in court facilities that have been or will be permanently closed by the local court as a result of either (1) new court facilities being constructed or (2) budget or operational changes that prompted the court to close the facilities to the public.

Implementation Requirements, Costs, and Operational Impacts

Costs will be incurred in the disposition process, including the costs of appraisals and possibly title and escrow fees. Any such costs incurred by the Judicial Council will, however, be offset by the disposition proceeds.

Attachments and Links

1. Link A: Government Code section 70391 (superior court facilities),
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391
2. Link B: Trial Court Facilities Act of 2002,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200120020SB1732
3. Link C: Government Code sections 70341–70344 (administration of shared-use buildings),
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=&title=8.&part=&chapter=5.7.&article=4.
4. Link D: California Constitution, article VI, section 6,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS§ionNum=SEC.%206.&article=VI
5. Link E: Cal. Rules of Court, rule 10.80,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_80