

06-01

The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to restate policies and procedures regarding the application of the Foreign Missions Act (Title II of Public Law 97-241, 22 United States Code 4301 et. seq.) to real property of foreign missions in the United States. The subject was last brought to the attention of the Chiefs of Mission in the Department's circular diplomatic note of June 1, 2002. The Department of State requests the continued cooperation of all missions in meeting the requirements of the Foreign Missions Act.

NOTIFICATION REQUIREMENT

Pursuant to section 4305 of the Foreign Missions Act (the Act), all foreign missions are obligated to notify the Department of State prior to a proposed lease, purchase, sale, or other acquisition or disposition of real property in the

United States by or on behalf of a foreign mission. Under Section 4305 all such transactions are subject to disapproval by the Department.

The notification requirement applies to properties acquired for office or residential use by the foreign government for its diplomatic mission in Washington and career consular posts around the United States. For some missions the requirement may also extend to acquisitions by individual members of the mission.

In addition to prior notification regarding the lease, purchase or sale of new property, proposals for the alteration, addition, or change in use, of existing properties are also considered acquisitions under the Act and must be submitted to the Department for review. "Alteration" is defined as any type of construction, repair, installation or other work on foreign mission premises that requires issuance of a permit from the relevant local governmental authority. In this regard, missions are reminded that, in nearly all cases, diplomatic and consular premises, whether office or residential, are not exempt from the requirement of obtaining zoning and/or building permits with respect to any property-related activity in which they may engage.

Missions are encouraged to notify the Department's Office of Foreign Missions of proposed acquisitions as early in the process as

possible. Missions that obtain the benefit of the Department's experience and advice in the early stages of an acquisition may avoid unnecessary financial or legal complications.

PROCEDURE

The review process is initiated by the delivery of a diplomatic note to the Property Section of the Office of Foreign Missions located in room 2238 of the main building of the Department of State. At a minimum the note should include:

1. The exact address of the property, including apartment or suite number.
2. The proposed use of the property, i.e., chancery, chancery annex, consulate, residence.
3. The method of acquisition, i.e., purchase, lease (including lease term), alteration, expansion.

After receipt of the diplomatic note, the Foreign Missions Act allows the Department up to sixty- (60) days to review the request. In most instances the Office of Foreign Missions will be able to provide a response well before the expiration of the sixty-day period, normally in two to three weeks. In some cases, however, the full review period may be required and

missions are therefore encouraged to submit notifications as far in advance as possible. Prior to receiving a response from the Department to the notification, or the expiration of the sixty day period, a mission may not enter into a contract or lease agreement unless the agreement expressly states that the execution of the agreement is subject to disapproval by the Department of State. The Chiefs of Mission are reminded that significant financial and legal complications could result if this requirement is overlooked.

Properties acquired by foreign missions for diplomatic or consular purposes are to be used in their entirety for the prescribed purposes. Property approved for diplomatic or consular purposes may not be used, even in part, for any other purpose, such as office space of other government organizations, state-owned or private commercial entities, or renting out to any other party not affiliated with the mission, without the express consent of the Department. Missions should be aware that, in some cases, United States law may preclude the granting of such consent.

PROPERTY FOR CHANCERY USE

Chanceries and chancery annexes are traditionally located in the District of Columbia. However, the Department will consider other locations in the Washington Metropolitan Area, on a case-by-case basis.

For chanceries or chancery annexes located in the District of Columbia, the determination as to whether a proposed site is acceptable, or whether the expansion or alteration of an existing chancery complies with local building codes and regulations, is subject to section 4306 of the Foreign Missions Act. The approval process outlined in that section of the Act is concerned solely with the location, expansion, or alteration of chanceries in the District of Columbia, and is separate from, and in addition to, the notification process outlined above and mandated by section 4305 of the Act.

The following information is provided to assist missions that intend to acquire new chancery space or expand existing chanceries in the District of Columbia:

1. Requirement for an Occupancy Permit: All foreign missions are required to obtain an occupancy permit from the Government of the District of Columbia before a building or office may be occupied as a chancery or chancery annex. Applications for an occupancy permit may be found at www.dkra.dc.gov. In addition to a contingency for Department of State disapproval as discussed above, the execution of a purchase contract or lease agreement for a chancery should also be subject to the issuance of a Certificate of Occupancy from the District of Columbia.

2. Zoning Approval Process: Depending on the location of the property, the occupancy permit may be issued as a matter of right or after the chancery use has been reviewed and approved by the Foreign Missions Board of Zoning Adjustment (FMBZA) of the District of Columbia. The FMBZA review process will take several months to complete and will include a public hearing. Should the acquisition be subject to FMBZA review, the mission will need private legal representation to complete the approval process.

3. Expansion or alteration of existing properties:

Depending on the scope of the project, the expansion or alteration of an existing chancery property may also be subject to review and approval by the Foreign Missions Board of Zoning Adjustment. Missions are required to obtain all appropriate building permits and to substantially comply with all local building codes and regulations.

Permits will not be issued by the Government of the District of Columbia without the written concurrence of the Office of Foreign Missions. Based on reciprocity, the Office of Foreign Missions may ask the District Government to issue the permit without fee. Private contractors should be informed that applications for building and construction permits in the District of Columbia, together with one copy of supporting plans, must first be submitted to the Office of Foreign Missions for review and transmittal to the appropriate local authority.

The information provided above is not exhaustive, and missions are cautioned to fully explore the zoning and land-use implications of a particular property acquisition or renovation project in the District of Columbia, including whether the property is considered historic and the

construction implications of such status, before concluding any contract or agreement.

For locations outside of the District of Columbia, a mission must comply with the zoning and land-use laws and regulations and permit requirements applicable in the local jurisdiction. Once a mission has complied with the notification and review process under section 205 of the Foreign Mission Act and the Department does not disapprove the location, the mission is encouraged to hire legal counsel to assist in its location efforts.

PROPERTY FOR RESIDENTIAL USE

All apartments or houses leased or purchased by foreign missions for residential use by members of the mission are subject to the Department notification requirements under section 4305 of the Act. Residential properties may be located outside the District of Columbia and are not subject to the provisions of section 4306 of the Act.

Although not subject to section 4306 of the Act, the purchase and use of residential properties is subject to compliance with the applicable

laws and regulations of the local jurisdiction and, as with properties for chancery use, the alteration or expansion of such properties is subject to the prior notification requirements of the Department and to compliance with local building codes and regulations.

PROPERTY FOR CONSULAR USE

The prior notification requirements of section 4305 of the Foreign Missions Act also apply to the purchase, sale, lease, alteration, expansion, or change of use of consular properties, office or residential, acquired by foreign missions in the United States.

Lack of compliance by missions and their career consular posts with the prior notification requirement is a concern. The Chiefs of Mission are requested to transmit a copy of this note to all their career consular posts and advise them that acquisitions, whether by construction, lease, or purchase, and sales of real property without prior notification to the Department is a violation of United States law.

The Chiefs of Mission are reminded that the Office of Foreign Missions has regional offices in New York, Chicago, Houston, Miami, San Francisco, and Los Angeles, to assist consulates in complying with requirements of the Foreign Missions Act and with the laws and regulations of the local jurisdiction. The Department has no objection to the consular posts providing written notification of proposed property transactions directly to the appropriate regional office.

In addition to the notification requirements, consular properties are subject to the building and land-use laws and regulations of the local jurisdiction, including permit requirements. It is the responsibility of the missions and their consular posts to be informed and in compliance with the regulations of the jurisdiction in which they are located. Inasmuch as failure to comply with local laws could result in legal or financial complications for a consular post, missions are encouraged to notify the Department, and consult with the Office of Foreign Missions, regarding a particular project at the earliest possible date.

TAXES ON PROPERTY TRANSACTIONS

Diplomatic Properties

Based on the Vienna Convention on Diplomatic Relations, customary international law, and bilateral agreements, foreign governments are entitled to exemption from real estate taxes on properties owned by the Government and used by its diplomatic mission. Such properties include chanceries and chancery annexes, and the residence of the Chief of Mission. Properties owned by foreign governments and used as residences of the members of the diplomatic mission accredited to the United States may also be granted exemption on the basis of the Vienna Convention on Diplomatic Relations, customary international law and reciprocity. Exemption is limited to those real estate taxes for which the mission is otherwise legally obligated to pay.

The Chiefs of Mission are reminded that any portion of property owned by foreign governments that is not used for diplomatic or consular purposes of that sending State will not benefit from tax exemption or inviolability.

Consular Properties

Based on the Vienna Convention on Consular Relations, foreign governments are entitled to exemption from real estate taxes on properties that are owned by the government and used as a consulate or as the residence of the career head of a consular post.

The procedure for obtaining exemption for such properties varies by jurisdiction. Unlike properties for its diplomatic mission in Washington, a foreign mission is not required to request exemption through the Office of Foreign Missions and may instead contact the appropriate taxing authority directly regarding tax exemption. The Office of Foreign Missions and its regional offices are prepared to assist the missions and their consulates, if necessary.

General Guidelines for Obtaining Property Tax Exemption in the Washington Metropolitan Area

Annual Property Taxes

Based on the value of a property, the owner of a property pays the tax annually.

Subsequent to the settlement of the contract between the foreign mission and the seller, and the recordation of the deed by the mission, a diplomatic note should be sent to the Office of Foreign Missions requesting exemption from property taxes. The note should include the address of the property, the date the deed was recorded, and should reference any earlier Department notes regarding the purchase.

If exemption is appropriate, the Office of Foreign Missions will submit a request for property tax exemption directly to the taxing authority in the District of Columbia, Maryland, or Virginia. In the District of Columbia, in addition to a written request from the Office of Foreign Missions, a form must be completed entitled "Foreign Government Information Request Form", copies of which may be obtained from the Property Section of the Office of Foreign Missions. The taxing jurisdiction in the Washington Metropolitan Area will grant property tax exemption as of the deed recordation date. Although the jurisdiction may require several weeks or longer to complete the processing of an exemption request, the effective date of the exemption will be retroactive to the date the deed was recorded.

The Chiefs of Mission are reminded that exemption from taxation does not include exemption from fees separately stated on a property tax bill that relate to specific services to the property. Typical examples of such services include utilities, water, sewerage, and refuse collection. The property tax bill in Montgomery County, Maryland, for example, includes a charge for refuse collection, and a front foot benefit charge imposed by the Washington Suburban Sanitary Commission. Such charges are separately stated on the tax bill and must be paid.

Recordation and Transfer Taxes

Based on the purchase price of a property, the recordation tax is normally paid by the purchaser at the time the title is officially recorded by the local jurisdiction. After receiving written approval from the Office of Foreign Missions to purchase the property, the mission must submit a written request to the Property Office of the Office of Foreign Missions requesting exemption from the recordation tax and informing that office of the proposed property settlement date.

If the Department determines that the property is entitled to exemption, OFM will provide the Embassy with a letter addressed to the

appropriate taxing authority that the Embassy can present at settlement.

The request from the Office of Foreign Missions is normally sufficient to exempt the mission from paying the recordation tax.

Based on the sales price of a property, the transfer tax is normally paid by the seller at the time a property is sold. If a foreign mission is the seller the same procedure applicable to recordation taxes should be followed.

Procedures Unique to the State of Maryland

Many missions purchase residential properties in Montgomery County, Maryland. The procedures for obtaining exemptions from recordation and transfer taxes in that jurisdiction are more complicated than in Virginia and the District of Columbia. There are separate County and State taxes associated with the purchase or sale of real property and a foreign mission must obtain separate letters from the Office of Foreign Missions requesting exemption from each taxing authority before settlement.

Until 2005, a foreign government purchaser was granted, in most cases, one hundred percent (100%) exemption from the County Transfer

tax at the time of purchase and zero percent (0%) at the time of sale. This was in contrast to the Maryland State Transfer/Recordation tax that permitted a foreign government fifty percent (50%) exemption at the time of purchase and fifty percent (50%) at the time of sale.

In 2005 the County taxing authority decided to follow the practice of the State authorities and grant fifty percent (50%) at the time of purchase and (50%) at the time of sale. Therefore, regardless of the contract terms between the parties, foreign missions will be granted exemption from fifty percent (50%) of the State and fifty percent (50%) of the Country Transfer tax at the time of purchase and fifty percent (50%) at the time of sale.

Missions should prepare their purchase and sales contracts accordingly.

Missions should note that the Montgomery County change in policy applies **prospectively**. Therefore, missions that purchased property prior to 2005, and were granted one hundred (100%) transfer tax exemption at the time of purchase, will continue to be denied any exemption at the time of sale. Missions are encouraged to prepare their sales contracts accordingly. If additional information is required, missions may contact the Property Section of the Office of Foreign Missions.

The Chiefs of Mission should also be aware that a new law in Maryland requires that non-resident sellers of real property have 7 percent of their sales proceeds held back in escrow unless the seller obtains an exemption certificate at least 21 days prior to settlement.

In order to obtain exemption from the withholding requirement, missions must complete a Maryland State form MW506AE, which may be found at www.marylandtaxes.com, and attach documentation confirming the tax exempt status of the property. If there are any questions missions should contact the Property Section of the Office of Foreign Missions.

PROCEDURE TO ACQUIRE DIPLOMATIC PARKING
IN THE DISTRICT OF COLUMBIA

The review process for obtaining diplomatic parking is initiated by the delivery of a letter or diplomatic note to the Property Section of the Office of Foreign Missions (OFM) requesting reserved on-street diplomatic parking in front of a chancery or chancery annex. Foreign Missions are reminded that reserved parking is not available in front of residences.

OFM will transmit the request to the District of Columbia's Traffic Services Administration for review. The process takes approximately 180 days which allows the municipal authorities to comply with the legal requirements for public notice and a period for public comment.

If approved, diplomatic parking signs will be installed on the curb in front of or along side any chancery or chancery annex for a distance not to exceed 60 feet, depending on the frontage of the occupied building. The signs will include the name of the Embassy and normally reserve parking during working hours Monday-Friday.

If a chancery office consists of leased space in a commercial building, the Embassy must forward with its request written permission from the building's owner or management company providing approval for diplomatic parking to be designated in front of its building.

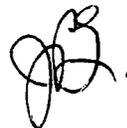
Inquiries

The Property Section of the Office of Foreign Missions may be contacted at (202) 647-4554.

Department of State,

Washington,

APR 12 2006

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