

20-1830

The Secretary of State presents his 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 (22 U.S.C. §§ 4301-4316) (the Act) concerning the rules and procedures associated with the acquisition, alteration, construction, renovation, use, or disposition of real property by foreign missions in the United States. This note supersedes the Department's circular diplomatic note No. 11-189, dated September 6, 2011.

Pursuant to Section 205 of the Act (22 U.S.C. § 4305), all foreign missions are obligated to notify and obtain approval from the Department of State's Office of Foreign Missions (OFM) *before* finalizing a proposed lease, purchase, sale, or any other acquisition or disposition of real property in the United States, undertaken by or on behalf of a foreign mission. In accordance with Section 205, all such transactions are subject to disapproval by the Department.

This requirement applies to all property transactions, for office or residential use, by a foreign government for its diplomatic mission in Washington, DC, or career consular posts located throughout the United States and its territories, to

include a foreign government's miscellaneous foreign government offices (MFGO).

The Chiefs of Mission are further informed that this requirement extends to the acquisition of all residences of the Chiefs of Mission and heads of consular posts, irrespective of whether the acquisition is undertaken by the foreign government or in a personal transaction by the Chief of Mission or head of a consular post himself or herself.

Absent OFM's approval of a proposed acquisition, alteration, construction, renovation, use, or disposition of real property, foreign governments are advised that their properties would not enjoy any otherwise applicable privileges and immunities, including inviolability and exemption from real estate taxation. Accordingly, failure to duly notify and obtain OFM's approval will have implications for the personnel assigned to a foreign mission's diplomatic mission and its consular posts.

In addition to the prior notification and approval of all leases, purchases, sale, or other acquisition or disposition of properties, the alteration, construction, renovation, addition, and/or change in use of a property (including change in tenant if the property is being leased) are also considered "acquisitions" pursuant to the Act and must be approved by OFM. For this purpose, "alteration" includes any

type of construction, repair, installation or other work that would require the issuance of a permit from the relevant and authorized local governmental authority.

Missions should submit all such property related requests directly to OFM, which is located in the Harry S Truman Building (Main State) at 2201 C Street, NW, Room 2236, Washington, DC 20520. Such diplomatic notes may also be sent via e-mail to OFMProperty@state.gov.

At a minimum, the written request for approval should include:

1. The exact address of the property, including apartment, suite, floor number, square footage, etc.
2. The proposed or existing use of the property, i.e., chancery, chancery annex, consulate, consular annex, Chief of Mission residence, staff residence, MFGO, etc.
3. The proposed transaction, i.e., purchase, lease (including proposed lease start and end dates), sale, alteration, expansion, or use.
4. The inclusion of one of the following statements:
 - a. No part of this property is or will be used for commercial purposes; or
 - b. A portion or all of this property is or will be used for commercial purposes and by doing so the mission understands that such use deprives the area used for such purposes of both its inviolability status and eligibility for exemption from property taxation.

If a portion or all of a property is or will be used for commercial purposes, missions are required to provide OFM with information detailing the total square footage of the premises and the square footage of the premises that is or will be used for commercial purposes.

5. The inclusion of the following statements: This mission acknowledges that it must request and obtain the approval of the Department of State's Office of Foreign Missions prior to [acquiring/disposing of] this property. The mission further acknowledges that it must request and obtain the Department's approval prior to changing the use of this property from that which is described in this note.
6. *Alterations* – A description of the proposed alteration or expansion of an existing property, including a listing of the anticipated types of permits needed to complete the project.
7. *Residential* – The name(s) and position title of the intended tenant/resident.
8. *Point of Contact* – The name and contact information of the mission member authorized to discuss the proposed property acquisition with OFM.

After receiving a request, 22 U.S.C. § 4305(a)(1) allows the Department a period of up to sixty (60) calendar days for review. Although OFM is generally able to provide a response within a few weeks, the full review period may be required. Therefore, missions are encouraged to submit requests as far in advance as possible.

Missions are encouraged to discuss the proposed acquisition, alteration, construction, renovation, use, or disposition of real property with OFM as early as possible. Missions that obtain the benefit of OFM's experience and advice in the early stages of an acquisition, alteration, construction, renovation, use, or disposition may avoid unnecessary financial or legal complications.

Prior to receiving a response from OFM to the proposed acquisition, alteration, construction, renovation, use, or disposition a mission *may not* enter

into a contract or lease agreement, or make any acquisition, alteration, construction, renovation, use, or disposition unless the contract or lease agreement expressly states that the execution of the contract or lease agreement is subject to disapproval by the Department of State. The Chiefs of Mission are reminded that significant financial and legal complications may result if this requirement is overlooked.

Unless specifically approved otherwise, properties acquired by foreign missions for diplomatic or consular purposes are to be used in their entirety for such purposes. Without separately requesting and obtaining OFM approval, properties authorized for diplomatic or consular purposes may not be used, even in part, for any other purpose, such as office space for other governmental organizations, state-owned or private commercial entities, and may not be leased to any other party not affiliated with the mission.

CHANCERY PROPERTIES

The principal office of a foreign government used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and including the site and any building on such site which is used for such purposes, constitute a “chancery” for purposes of section 206 of the Act (22 U.S.C. § 4306).

Chanceries and chancery annexes are traditionally located in the District of Columbia. On a case-by-case basis, however, the Department will consider other locations in the Washington, DC, metropolitan area.

Chancery Properties in the District of Columbia

For chanceries or chancery annexes located in the District of Columbia, the determination as to whether a proposed location, expansion, or alteration is acceptable is based on the rules and criteria in section 206 of the Act. The guidelines outlined in that section are separate from, and in addition to, the notification process outlined above mandated by Section 205 of the Act.

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

- 1. *Permit Requirements:*** Foreign missions are required to request and obtain OFM's consent for the issuance of all property-related permits. This includes the issuance of an occupancy permit, which is generally required in the District of Columbia before a building or office may be occupied as a chancery or chancery annex. The Act requires missions to substantially comply with all District of Columbia building codes and regulations, including obtaining all appropriate building permits.

The District of Columbia's permit applications are available at

<https://dcra.dc.gov/>.

- 2. *Zoning Approval Process:*** Depending on the location of the property acquired, an occupancy permit may be issued by the District of Columbia as a “matter of right” only if the property is located in one of the following zoning districts: mixed use, commercial, industrial, or waterfront. If the property is not located in one of the aforementioned zoning districts, the Foreign Missions Board of Zoning Adjustment (FMBZA) of the District of Columbia must review and approve the request of the foreign mission to locate its chancery at its proposed location. The FMBZA review process will take several months to complete and will include a public hearing. If an acquisition or alteration is determined to be subject to FMBZA review, it is recommended that foreign missions seek private legal representation to complete the approval process.
- 3. *Expansion or Alteration of Existing Properties:*** Depending on the scope of the project, the expansion, alteration or change in use of a chancery property may also be subject to review and approval by the FMBZA. The Act requires missions to substantially comply with the

District of Columbia building and related codes, including obtaining all appropriate building permits.

The information provided above regarding local zoning requirements for chancery use is not exhaustive, and missions are cautioned to fully explore the zoning and land-use implications of a particular property acquisition or alteration 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.

Chancery Properties outside the District of Columbia

The zoning approval process described above does not apply to locations outside the District of Columbia. However, foreign missions are expected to substantially comply with all local building codes and regulations, including obtaining all appropriate building permits.

CONSULAR PROPERTIES

The prior notification and approval requirements of Section 205 of the Act apply equally to the acquisition, alteration, construction, renovation, use, or disposition of consular properties, whether office or residential, acquired by foreign missions throughout the United States. Therefore, the Chiefs of Mission are requested to transmit a copy of this note to all career consular posts advising

that such actions with regard to real property obtained without OFM's prior approval are contrary to United States law.

OFM has regional offices in Chicago, Houston, Los Angeles, Miami, New York, and San Francisco to assist consulates in complying with the requirements of the Act and with the laws and regulations of the local jurisdiction. The Department has no objection to consular posts submitting written requests for approval of proposed property transactions directly to the appropriate OFM Regional Office. Information concerning each OFM regional office can be found at <https://www.state.gov/contact-us-office-of-foreign-missions/>.

In addition to the notification and approval requirements, consular properties are subject to the building and land-use laws and regulations of the local jurisdiction, including permit requirements. The Chiefs of Missions are reminded that consular posts are also required to request and obtain OFM's consent for the issuance of all property-related permits.

It is the responsibility of the mission and its consular posts to be informed of, and be in compliance with, the regulations of the local jurisdiction in which they are located. Inasmuch as failure to comply with local laws could result in legal and financial complications for a consular post, missions are encouraged to notify the Department and consult with OFM regarding a particular project at the earliest possible date.

INQUIRIES

Foreign missions are encouraged to contact OFM's Property Section at OFMProperty@state.gov with any inquiries.

Department of State,

Washington, December 3, 2020.

A handwritten signature in blue ink, consisting of a stylized, cursive letter 'S' followed by a horizontal stroke.