

Subject: Unit-Owned Real Property

From: Coast Guard Auxiliary Chief Counsel

To: All DSO-LP

Dated: December 2011

Ref: Auxiliary Manual, COMDTINST M16790.1 (series)

Real Property Management Manual, COMDTINST M11011.

ISSUE: Can an Auxiliary unit own real property.

ANSWER: No.

1. **BACKGROUND.** The Coast Guard Auxiliary is a component of Coast Guard Forces like the active duty, Reserve, and civilian components. Under the provisions of 14 U.S.C. sections 821, 831, the Commandant has plenary authority to regulate the Auxiliary in carrying out Coast Guard functions, consistent with applicable law. Auxiliarists are not vested with Coast Guard authority to purchase or otherwise own real property simply because of membership in, or affiliation with, the Auxiliary. In a 1993 legal memorandum, the Coast Guard Chief, General Law Division, determined that the Auxiliary has no authority to sign binding agreements for purchasing or otherwise obtaining possession and ownership of real property or for purchasing, leasing, and otherwise obtaining supplies and services from non-Federal sources. The memorandum referenced Federal Acquisition Regulations and then the General Services Administration regulations governing the acquisition of real property and the fact that: "...these regulations do not address license agreements because these agreements do not constitute an interest in real property". The final recommendation was for the Commandant to delegate authority to specific Auxiliary leaders pursuant to 14 U.S.C. sections 92(f), 821, 822, and C.F.R. section 1.46(b) to: "negotiate, execute, renew, modify, and terminate licenses and agreements of a similar nature from non-[F]ederal entities for the use of real property by the Coast Guard Auxiliary...". This resulted in the Commandant making the recommended delegation of authority which generated a legal memorandum from the Auxiliary Legal Department Chief asserting that: "...the Auxiliary has no legal authority to sign contracts that fall within the Federal Acquisition Regulations (FAR) 48 C.F.R. section 1.601, which requires that only officially designated contracting officers who hold specific warrants may sign contracts..."; however, "...an agreement that permits the Auxiliary to use classroom or other space without charge is properly classified as a license agreement involving the use of real property" and is now authorized. In May 2004 Auxiliary Manual, COMDTINST M16790.1F (Manual) became effective and resulted in clarification and amendment of certain administrative policies enumerated in ALCOAST 600/05 which referenced that Auxiliary units were authorized to accept free use of physical space for specific purposes following certain contracting parameters. The ALCOAST also addressed Auxiliary unit-owned property with reference to the statutory change to 14 U.S.C. sections 821 which permits the treatment of Auxiliary unit-owned property dedicated solely for

Auxiliary use to be construed as property of the U.S. for liability purposes. The same, which specifically did not reference real property, stated:

“Auxiliary units may own boats, mobile trailers, trailers, motor vehicles, personal watercraft, and administrative support equipment...”

2. PRESENT: The Commandant has not delegated to Auxiliary units the authority to own real property. The new Auxiliary Manual, COMDTINST M16790.1G, which prohibits flotillas and divisions from forming a corporation, however, does authorize the formation of district (and regional) corporations by delegating approval of such entities to the Chief Director upon recommendation of the DCO and Director. “In general, corporations are not encouraged and are to be approved only when necessary.” (Manual, chapter 5, section M.2.) Reasons for approving requests for corporations include:

“To hold title to real and personal property appropriate for use by the Auxiliary in the performance of its missions, which cannot be owned directly by Auxiliary units.”

And when there has been a gift or donation of real property, “[t]he district corporation shall be authorized to hold title to real property and, pursuant to the terms of a written exclusive use agreement, permit the exclusive use by the intended division or flotilla (see paragraph H.1 of this chapter).”

The specific requirements for District Corporations are set forth in Appendix E of the Manual.

The Coast Guard is specifically prohibited from transferring title to Federal real property to an Auxiliary element (Manual, chapter 6, section B.1.b.). However, an Auxiliary unit may be granted written permission for the long term use and occupancy of Federal real property for authorized Auxiliary activities. The Coast Guard must follow the requirements of the Real Property Management Manual, COMDTINST M11011.13 (series), when considering the same.

What property may be owned by an Auxiliary unit is set forth in the Manual in chapter 6, section C.7. (This incorporates the pertinent portions of ALCOAST 600/05)

3. SUMMARY.
  - The Commandant has not delegated authority for any Auxiliary unit to hold title to any real property.
  - No Auxiliary unit can own, or otherwise hold title to, real property.
  - If any unit does, it is in violation of the Commandant’s Instructions and federal law.

- The Commandant has delegated authority to the Chief Director to approve district corporations to hold title to real property for use by the Auxiliary in performance of its missions, to accept gifts and donations of real property and permit, by written agreement, the exclusive use of the property by a division or flotilla.
- Auxiliary units, that follow proscribed procedures, are authorized to accept offers (license) of free use of physical space and to contract, in accord with the provisions of the Manual, with public and private entities for the licensed use of a premise for authorized Auxiliary functions (such as unit annual meetings).
- Auxiliary units offered a donation or gift of real property must adhere to the requirements of chapter 5, section H of the Manual and may not hold title to such real property.
- Within the parameters of the Real Property Management Manual, COMDTINST M11011.13 (series), the Coast Guard may grant an Auxiliary unit written permission for long-term use and occupancy of Federal real property.

4. **ADVICE FOR DSO-LP.** Every effort must be made to assist Auxiliary units that hold title to real property to promptly and equitably divest themselves of that impermissible ownership. One possibility is for the district to create a separate corporation to hold title to the real property and, pursuant to the terms of a written exclusive use agreement, permit the exclusive use by the intended unit. Another possibility is for the unit to transfer title of the real estate to a totally separate legal entity which can provide for the unit use of the property by license in conformity with the Auxiliary Manual.

Each DSO-LP should be fully cognizant of the entire Auxiliary Manual and the pertinent portions of the Coast Guard Real Property Management Manual which states information applicable if the district corporation considers accepting a gift or donation of real property or otherwise holding title to real property. All matters which pertain to use or ownership of real property by the Auxiliary in the district must be reviewed by the DSO-LP to ensure full compliance with the Manual and all applicable laws. If the district desires to form a corporation, the DSO-LP must review proposed documents and advise the DCO and Director regarding the same before it is sent to the Chief Director. Before a district decides whether to form a district corporation to hold title to real property as authorized, the DSO-LP should ensure that the district leaders understand that owning real property is not a minor undertaking and it opens the Coast Guard and Auxiliary to significant liability, maintenance, and resource concerns that arguably have increased with current budgetary and economic circumstances. The DSO-LP should determine if any Auxiliary unit in the district, other than the district corporation, owns buildings or other real property, and, if so, immediately advise the DCO and Director of the same. It is incumbent upon the DCO to advise the appropriate area DNACO of the same and for the Director to advise the Chief Director.

To prevent district Auxiliary units and leaders from violating the Manual and other pertinent law regarding the use and ownership of real property by the Auxiliary, the DSO-LP should consider informing them of the applicable requirements and prohibitions.