

Charter School Checklist
Before Entering Into a Lease, Agreement or Contract on Facilities

During the 2007 Session the Utah State Legislature created a new law that reads as follows:

“Beginning on July 1, 2007, a charter school *shall* submit any lease, lease-purchase agreement or other contract or agreement relating to the charter school’s facilities or financing the charter school facilities to its chartering entity for review and advice *prior* to the charter school entering into the lease, agreement, or contract.” (Utah Code § 53A-1a-507(9), emphasis added)

In accordance with this new law, the State Charter School Board now requires every charter school to submit both a copy of the relevant lease, agreement or contract and a completed checklist, with any required materials, before the school may enter the lease, agreement or contract. Upon submission of the relevant lease, agreement or contract, along with the completed checklist and any required supporting materials, the charter school may enter into the lease, agreement or contract.

Attached are two checklists – choose the one most applicable to your situation:

1. LEASE: Typically the only option for a new charter school, or a charter school without a sufficiently strong credit or operating history.
2. PURCHASE: Typically the best option for a charter school with a sufficiently strong credit or operating history that plans on staying in the same location.

If you believe any “ACTION REQUIRED” point on the checklist should not apply to your charter school, please attach a written explanation as to why the step or action should not apply. The points on the checklist that are “FOR YOUR CONSIDERATION” only require your charter school board, or their designated person, to carefully consider.

Once the checklist is complete and you have a copy of all required materials, please mail a copy of them along with the lease, agreement or contract to:

Danny Schoenfeld
Finance Manager-Utah Charter Schools
801-538-7958
250 East 500 South
PO Box 144200
Salt Lake City, UT 84114

While these checklists can help you make the right decision for your charter school, they cannot guarantee it. One of the many great things about charter schools is that you and your charter school’s board are largely responsible for the success of your school. Neither the State Charter School Board, nor any employee or affiliate of the State Charter School Board, accepts any responsibility or liability for any lease, agreement or contract entered into by a charter school, even if the charter school has successfully completed one of the attached checklists.

Checklist #1: LEASE

- 1. FOR YOUR CONSIDERATION: Do you have the credit or operating history to buy instead of lease?

If yes, carefully evaluate the benefits of purchasing over leasing, and use Checklist #2.

If no, proceed to question #2.

- 2. FOR YOUR CONSIDERATION: Do you need a new building, or can you use or renovate an existing building? (If you can lease an existing building for one or two years, you might then have the credit or operating history to borrow the money to build a new building at a relatively lower price.)
- 3. FOR YOUR CONSIDERATION: Is the location or building in a convenient location for the students you hope to serve? (Remember that the majority of your students will likely be driven to your school every day – too much traffic at peak times could cause problems for both you and the surrounding neighborhood.)
- 4. FOR YOUR CONSIDERATION: Are the facilities adequate? (Enough classrooms, bathrooms, gym space, cafeteria, offices, playground, parking space, room for expansion, etc.)
- 5. ACTION REQUIRED: Can you afford the rental payments?

REQUIRED MATERIAL: Attach a document showing the likely annual rent payment for the entire term of your lease, and the best estimate of what percent of your total budget such payment will be on an annual basis. Circulate a copy of this analysis to every board member of your school before they consider approving the lease in #12 below.

- 6. FOR YOUR CONSIDERATION: Is the term sufficiently long? Do you have a renewal option?
- 7. FOR YOUR CONSIDERATION: Do you have an option to buy your leased facilities at some point? If so, is the option reasonable and comprehensible? (Note that after one or two years of solid operating history, most charter schools can purchase their building and reap a number of financial benefits – see Checklist #2 for more information.)
- 8. FOR YOUR CONSIDERATION: What are you responsible for under the Lease, and what is your landlord responsible for? (These items can be substantial – insurance, property taxes and utilities can all be expensive.)
- 9. ACTION REQUIRED: Did an experienced real estate attorney review your lease and explain to your board each and every provision to their satisfaction?

□ 10. ACTION REQUIRED: Did your board issue an RFP requesting proposals for what you believe would best suit your needs? Did you consider proposals from at least two viable providers of a leased facility?

□ 11. FOR YOUR CONSIDERATION: Will the building be ready for you when school starts? Are there any penalties or back-up plans if it is not ready on time? (Note that your charter school can be swiftly destroyed by opening late. After a substantial delay many students will want to return to school, and could enroll at another school. In addition, the majority of your funding is calculated by the number of students *attending* your charter school on October 1. If your students are not attending school on October 1, the loss of funding will likely lead the State Charter School Board to consider revoking your charter.)

□ 12. ACTION REQUIRED: Your entire board must review and approve either: (a) the key terms of the Lease (i.e. price, term and option to purchase) or (b) the final copy of the Lease; and then approve a single board member to sign the Lease, or have a majority of the board members sign the Lease.

REQUIRED MATERIAL: Attach a copy of the Resolution your board passed in an open and noticed meeting approving the key terms of your lease (price, term and option to purchase) or the final version of your Lease.

Checklist #2: PURCHASE

□ 1. **ACTION REQUIRED:** Why is purchasing better than staying in your existing lease? (If you don't have a lease, skip to #2. If you do have a lease, consider the long term commitment you are making by purchasing your building against the benefits of eliminating property taxes, financing your purchase with tax-exempt debt, locking in a fixed payment and building equity in your building.)

REQUIRED MATERIAL: Attach a copy of a financial analysis comparing the likely cost on an annual basis of staying in your lease for the remainder of its term versus the likely annual cost of owning your building. Provide a copy of this financial analysis to all of your board members.

□ 2. **FOR YOUR CONSIDERATION:** Do you have your 501(c)(3) letter from the IRS? (You can still purchase it without one, but it is relatively more complicated. The sooner you get your 501(c)(3) letter, the better. Some of the benefits of having one include: (a) direct access to tax-exempt debt, (b) proof you don't have to pay property taxes if you own your building, and (c) proof to any potential donor that their donations to the charter school are tax exempt.)

□ 3. **ACTION REQUIRED:** Engage an experienced Financial Adviser and/or Underwriter. (They can help you perform the financial analysis in #1 above, and are typically only paid if your charter school decides to purchase your building. They will prepare you to access the debt markets and obtain the best financing possible to purchase your building.)

□ 4. **ACTION REQUIRED:** Engage an Attorney experienced in Finance and Real Estate. (This attorney will help you negotiate and understand the many agreements related to purchasing your building, review the necessary real estate documents so both you and the lenders know what you are purchasing, and provide an opinion to the lenders regarding your legal status and capacity.)

□ 5. **ACTION REQUIRED:** Negotiate a Purchase Agreement. (Your lease may dictate several terms in the Purchase Agreement, but typically does not dictate all of them. Consult with your attorney and Financial Adviser and/or Underwriter closely so you know and understand the obligations you are accepting under the Purchase Agreement.)

REQUIRED MATERIAL: Attach a copy of the Resolution your board passed in an open and noticed meeting approving the key terms of your Purchase Agreement (price and closing deadline) or the final version of your Purchase Agreement.