

## **R850. School and Institutional Trust Lands, Administration.**

### **R850-80. Sale of Trust Lands.**

#### **R850-80-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii), ~~and~~ 53C-4-101(1), ~~and~~ 53C-4-104(3), which authorize the director to prescribe the terms and conditions for the sale of trust lands.

#### **R850-80-120. Definitions.**

The terms below, when used in Rule R850-80 are defined as follows:

- (1) "Eligible Property" means trust lands eligible for sale to the Utah Department of Natural Resources pursuant to Section 53C-4-104.
- (2) "Statutory Purchase Right" means the right of purchase granted to certain lessees or permittees pursuant to Subsection Section 53C-4-102(9).

#### **R850-80-150. Planning.**

- (1) In addition to those other planning responsibilities described herein, the ~~directoragency~~ shall:
  - (4a) Submit proposals for the sale of trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
  - (2b) Evaluate comments received through the RDCC process; and
  - (3c) Evaluate any comments received through the notice and advertising processes conducted pursuant to Sections R850-80-605 and R850-80-615.
- (2) The director is not required to submit proposals to the RDCC for the sale of trust lands to the Utah Department of Natural Resources made pursuant to Section R850-80-630.

#### **R850-80-200. Determination to Sell Trust Lands.**

- (1) The director may sell trust lands if the director determines that the sale would be in the best interest of the trust beneficiaries. The director may take into account any factor and circumstances deemed relevant in determining whether to sell trust lands.
- (2) In determining whether the sale of trust lands is in the best interest of the trust beneficiaries, the director may consider the following factors:
  - (a) whether the subject parcel is appreciating in value at a higher rate than the anticipated rate of return on the purchase price;
  - (b) whether there is evidence of competitive market interest, unless the purpose of the sale is to test the market in a particular area;
  - (c) whether the sale would create obstacles to future mineral development on trust lands; or
  - (d) whether, in the director's sole discretion, the sale would foreclose future development or management options that would likely result in greater long-term economic benefits.
- (3) The director may not sell trust lands for less than fair market value.

#### **R850-80-250. Evaluation of Temporary Easements, Rights-of-Entry, and Other Existing Rights of Record.**

Prior to the sale of trust lands, the ~~directoragency~~ shall determine, pursuant to Subsection R850-40-250(2), whether temporary easements or rights-of-entry exist on the subject parcel. The ~~directoragency~~ shall also evaluate the presence and impact of other valid existing rights of record on the subject parcel prior to sale.

#### **R850-80-300. Determination of Fair Market Value.**

- (1) If the director determines that the sale of a parcel of trust lands is in the best interest of the beneficiaries, the ~~directoragency~~ shall determine the fair market value of the parcel. In determining the fair market value of a parcel, the ~~directoragency~~ may consider:
  - (a) an valuation appraisal, as that term is defined in Section 61-2g-102(1)(a)(ii)(C);

(b) a market analysis, including evaluation of real estate trends, market demand, opportunity costs of the sale, and the management costs of retention; and/or

(c) other information that the agency considers relevant.

(2) The ~~directoragency~~ shall evaluate whether taking prudent and cost-effective actions would increase the fair market value of the parcel.

#### **R850-80-350. Statutory Purchase Right**

(1) Prior to initiating the advertising process for a public auction as directed by Section R850-80-605, or for a negotiated sale as directed by Section R850-80-615, the agency shall determine whether a Statutory Purchase Right exists on the trust lands intended for sale.

(2) At least 30 days prior to the sale of trust lands upon which a Statutory Purchase Right exists, the director shall give notice via certified mail to the holder of the right providing information on how the holder may exercise the right.

#### **R850-80-400. Deposits on Nominated Parcels.**

(1) If the director evaluates a parcel of trust lands for sale due to a nomination by an interested party, the ~~directoragency~~ may require the nominator to deposit funds to offset the costs incurred by the agency to prepare the ~~subject~~ parcel for sale.

(2) If the nominator purchases the ~~subject~~ parcel, the ~~directoragency~~ shall credit the deposit against those costs and fees charged by the agency pursuant to Subsections R850-80-610(45) and R850-80-620(46).

(3) If the ~~directoragency~~ does not offer the ~~subject~~ parcel for sale or if a party other than the nominator ~~submits a credible bid on the subject parcel but is not~~ the successful purchaser bidder, the ~~directoragency may shall~~ refund the deposit to the nominator. If the subject parcel is offered for sale but no credible bids are received by the agency, the agency may retain the deposit. A bid less than a disclosed minimum acceptable purchase price is not a credible bid.

#### **R850-80-500. Agency Financing.**

(1) The ~~directoragency~~ may offer financing at a variable interest rate on any unpaid portion of the purchase price or other costs owed by the purchaser.

(2) Unless otherwise determined by the director, the interest rate shall be equal to the greater of:

(a) the prime rate plus 2.5%, or

(b) 7.5%.

(3) The ~~directoragency~~ shall establish the interest rate for each payment due by determining the prime rate as of the date of billing, except for interest due pursuant to Subsections R850-80-610(68) and R850-80-620(46).

(4) Interest is calculated on a 365-day basis, except for interest due pursuant to Subsections R850-80-610(68) and R850-80-620(46).

(5) The ~~directoragency~~ shall use the prime rate established as of a date determined by the director prior to the sale to determine the interest due pursuant to Subsections R850-80-610(68) and R850-80-620(46).

(6) A purchaser that finances through the agency shall make annual payments on the debt for no longer than 20 years. The ~~directoragency~~ may establish a shorter financing period.

(7) The purchaser shall make the first payment on or before one year from the first day of the month following the date of sale. The purchaser shall make all subsequent payments on or before the first day of the same month of each year thereafter until the balance is paid in full. The ~~directoragency~~ may require more frequent payments.

(8) The ~~directoragency~~ shall apply amounts paid in excess of the current obligation to principal. The purchaser may pre-pay the unpaid balance and accrued interest at any time without penalty.

(9) If the purchaser fails to pay an annual payment or accrued interest when due, the ~~directoragency~~ shall send the purchaser notice of default and allow the purchaser to cure the default, including paying any late fees, within 30 days of the notice. If the purchaser fails to cure the default within the 30-day cure period,

the directoragency may accelerate the debt, forfeit the purchaser's interest in the subject parcel, and pursue all other available contractual, legal, or equitable remedies, including specific performance.

(10) A purchaser that finances through the agency shall execute and acknowledge a quitclaim deed in favor of the agency for the subject parcel. The directoragency may not record the quitclaim deed unless the directoragency forfeits the purchaser's interest in the subject parcel pursuant to Subsection R850-80-500(59).

#### **R850-80-600. Methods of Sale.**

The director may sell trust lands using one of the methods described below:

- (1) A public auction pursuant to Section R850-80-610, ~~or~~
- (2) A negotiated sale pursuant to Section R850-80-620, ~~or~~

(3) A sale of an Eligible Property to the Utah Department of Natural Resources pursuant to Section R850-80-630.

#### **R850-80-605. Advertisement of Public Auction.**

(1) At least 45 days prior to a public auction, the directoragency shall give notice by certified mail to:

- (a) the legislative body of the county in which the subject parcel is located;
- (b) lessees/permittees of record on the subject parcel; and
- (c) adjoining landowners as shown on county records.

(2) The notice of sale must include:

- (a) the date and time of the auction;
- (b) whether the auction will be held in person or by electronic means;
- (c) if the auction is held in person, the location of the auction;
- (d) if the auction is held electronically, the ways in which a potential bidder may participate;
- (e) a general description of the subject parcel and a brief description of its location, including township, range, and section; ~~and~~

(f) disclosure of a Statutory Purchase Right if applicable; and

(g) the contact information of the agency office where interested parties can obtain more information.

(3) The directoragency may advertise public auctions using other methods determined by the agency to increase competition at the auction.

#### **R850-80-610. Public Auction Rules and Procedures.**

(1) The directoragency may conduct a public auction in person or electronically.

(2) The directoragency shall publish the bidding procedures at the agency's website, which procedures must include:

- (a) information required to register for the auction, if applicable;
- (b) payments required to be paid at the auction by the successful bidder, including the down payment and costs and fees assessed by the directoragency pursuant to Subsection R850-80-610(45); ~~and~~
- (c) whether the agency is willing to finance the unpaid portion of the purchase price; ~~and~~

(d) disclosure of a Statutory Purchase Right if applicable.

(3) The directoragency may disclose the minimum acceptable purchase price for the subject parcel.

(4) The holder of a Statutory Purchase Right must be registered for the auction to exercise the right.

(45) The directoragency may require that the successful bidder reimburse the agency for costs incurred by the agency in preparing the subject parcel for sale, including the costs of advertising, appraisal, cultural resource investigations, and environmental assessments. The directoragency may also charge a sale processing fee.

(56) A bid constitutes a valid offer to purchase.

(7) The holder of a Statutory Purchase Right may exercise the right by matching the highest bid within 24 hours of the conclusion of the auction. If the holder exercises its Statutory Purchase Right, it will be deemed the successful bidder. If the holder does not exercise its Statutory Purchase Right, the holder

waives the right with respect to the particular sale. To exercise a Statutory Purchase Right, the holder must give the agency written notice and pay all amounts required for a bidder to acquire the subject parcel property within the 24-hour period.

(68) At the conclusion of the auction, the successful bidder shall pay the agency the down payment, the costs and fees published pursuant to Subsection R850-80-610(45), and if the successful bidder elects to finance through the agency, the interest on the unpaid balance as calculated from the date of sale to the first day of the following month.

(79) If the successful bidder does not finance the remainder of the purchase price through the agency, the successful bidder shall pay the remainder of the purchase price at the conclusion of the auction. If the successful bidder fails to pay the purchase price at the auction, the directorageney is not required to finalize the transaction and the agency may retain all amounts paid by the successful bidder at the auction.

(80) If the successful bidder fails to pay the amounts required under Subsection R850-80-610(68) or fails to execute the certificate of sale within 30 days, pursuant to Subsection R850-80-700(2), the director may offer the subject parcel for sale to the person whose bid was second highest at the auction. The purchase price paid by the second highest bidder must meet or exceed the minimum acceptable purchase price. To accept the director'sageney's offer, the second highest bidder shall submit all amounts owing under Subsection R850-80-610(68) or R850-80-610(79) and execute the certificate of sale within 30 days after the director'sageney's offer.

(91) If a third party owns improvements on a parcel of trust lands sold at auction that were installed pursuant to a valid permit or other right granted by the directorageney and such valid right does not survive the sale of the parcel, the purchaser shall permit the owner of the improvements to remove them within 90 days after the date of the auction.

#### **R850-80-615. Advertisement of Negotiated Sale.**

(1) The directorageney shall give notice of a negotiated sale by certified mail to:

- (a) the legislative body of the county in which the subject parcel is located;
- (b) lessees/permittees of record on the subject parcel; and
- (c) adjoining landowners as shown on county records.

(2) The notice of sale must include:

(a) a general description of the subject parcel and a brief description of its location, including township, range, and section; and

(b) disclosure of a Statutory Purchase Right if applicable; and

(b) the contact information of the agency office where interested parties can obtain more information.

(3) Negotiated sales must be advertised using methods determined by the directorageney to be in the best interest of the beneficiaries.

#### **R850-80-620. Negotiated Sale Procedures.**

(1) If the agency receives an expression of competitive interest within the notice period, the directorageney shall evaluate the offer and determine what action is in the best interest of the beneficiaries.

(2) The directorageney shall provide the holder of a Statutory Purchase Right an opportunity to exercise the right within a time period determined by the director. To exercise a Statutory Purchase Right, the holder must give the agency written notice within the allotted time period and pay the higher of:

- (a) the fair market value of the subject parcel as determined pursuant to Section R850-80-300; or
- (b) the highest credible offer and associated terms of sale received for the subject parcel.

(3) If the holder of a Statutory Purchase Right does not exercise the right within the allotted time period, the holder waives the right with respect to the particular sale.

(24) The directorageney shall give the board and affected beneficiary prior notice of the proposed negotiated sale, which notice must describe the terms, reasons, and other pertinent facts of the proposed negotiated sale.

(35) Board approval of a negotiated sale is required if:

- (a) the fair market value of the subject parcel exceeds \$250,000.00;
- (b) the subject parcelproperty exceeds 320 acres; or
- (c) the agency receives a competitive offer on the subject parcel.

(46) The directorageney may require the purchaser to pay a down payment and the costs and fees described in Subsection R850-80-610(45)

#### **R850-80-630. Sale of an Eligible Property to the Utah Department of Natural Resources.**

- (1) When evaluating the sale of an Eligible Property to the Utah Department of Natural Resources pursuant to Section 53C-4-104, the director shall consider the following factors:
  - (a) whether leasing the Eligible Property to the Utah Department of Natural Resources pursuant to Section R850-30-700 is in the best interest of the affected beneficiaries; and
  - (b) whether waiving the advertising requirements described in Subsection 53C-4-102(3) and Title R850 pursuant to Subsection 53C-4-104(1)(c) is in the best interest of the affected beneficiaries.
- (2) The director shall require payment of ~~free~~ at least fair market value as determined pursuant to Section R850-80-635 for the sale of an Eligible Property to the Utah Department of Natural Resources.
- (3) The director shall make a written finding that upon consideration of the factors listed in Subsections R850-80-200(2)(a), R850-80-200(2)(c), R850-80-200(2)(d), and R850-80-630(1) the sale of an Eligible Property to the Utah Department of Natural Resources is in the best interest of the affected beneficiaries. The director shall provide the written finding to the board.
- (4) The board must consider the sale of an Eligible Property at an open meeting and take public comment on:
  - (a) the terms of the proposed sale, and
  - (b) the director's finding that waiving the advertising requirements pursuant to Subsection 53C-4-104(1)(c) is in the best interest of the beneficiaries.
- (5) At least 30 days prior to the board's consideration of the sale at an open meeting, the director shall give notice of the proposed sale to:
  - (a) the legislative body of each county in which a portion of the Eligible Property is located,
  - (b) lessees/permittees of record on the Eligible Property ~~sale~~ ~~parcel~~,
  - (c) adjoining landowners as shown on county records, ~~and~~
  - (d) the affected beneficiary institution, ~~and~~,
  - (e) the Lands Trusts Protection and Advocacy Office.
- (6) The notice of sale must include:
  - (a) a general description of the Eligible Property and a brief description of its location, including township, range, and section, and
  - (b) the date, time, and location of the meeting where the board will consider the sale.
- (7) The sale of an Eligible Property under Section 53C-4-104 must be approved by the board before the director may execute the transaction.
- (8) The directorageney may require the Utah Department of Natural Resources to deposit funds in advance to offset the anticipated costs to prepare the Eligible Property for sale.
  - (a) If the director terminates the sale prior to finalization of a certificate of sale, the director shall refund the deposit to the department.
  - (b) If the department terminates the sale prior to finalization of a certificate of sale, the agency may retain the deposit.
- (9) The director may offer financing to the Utah Department of Natural Resources pursuant to Section R850-80-500. If the department finances through the agency, the directorageney may require the department to pay a down payment in an amount determined by the director.
- (10) A Statutory Purchase Right does not apply to any portion of an Eligible Property offered for sale to the Utah Department of Natural Resources.

#### **R850-80-635. Determination of Fair Market Value for an Eligible Property.**

(1) The director~~ageney~~ shall obtain two valuation appraisals for the Eligible Property with the same date of value.

(a) If the difference between the two appraisal valuations is less than or equal to 10% of the higher valuation, the fair market value is the average of the two appraisal valuations.

(b) If the difference between the two appraisal valuations is greater than 10% of the higher valuation, the director shall obtain a third appraisal having the same date of value as the initial appraisals. The fair market value of the Eligible Property is the average of the two closest appraisal valuations, provided that if the middle appraisal valuation is the average of the highest and lowest appraisal valuations, the fair market value is the middle appraisal valuation.

(2) Appraisals conducted under this Section must comply with the current Uniform Standards of Professional Appraisal Practice and be conducted by a qualified independent third-party appraiser. The agency may require that appraisals comply with the Uniform Standards for Federal Land Acquisitions.

(3) A qualified appraiser under this Section must:

- (a) be a state-certified general appraiser, as that term is defined in Section 61-2G-102, and
- (b) have demonstrated experience in appraising large rural properties.

#### **R850-80-700. Certificates of Sale.**

(1) Following a public auction, ~~or~~ on concurrence of the parties in a negotiated sale, ~~or after the board approves sale of an Eligible Property to the Utah Department of Natural Resources, the director~~~~ageney~~ shall prepare and deliver a certificate of sale to the purchaser. The certificate must contain:

- (a) a legal description of the subject parcel;
- (b) the purchase price and any pre-paid amounts;
- (c) costs assessed by the ~~director~~~~ageney~~;
- (d) financing terms, if applicable;
- (e) the dates on which obligations must be met;
- (f) the beneficiary of the subject parcel;
- (g) remedies available to the agency on default by the purchaser, including forfeiture; and
- (h) any other terms, covenants, deed restrictions, or conditions that the ~~director~~~~ageney~~ considers appropriate.

(2) For trust lands purchased at an auction, the successful bidder must execute the certificate of sale within 30 days of receipt from the ~~director~~~~ageney~~. If the successful bidder fails to execute the certificate of sale within the 30-day period, the ~~director~~~~ageney~~ is not required to finalize the transaction and may retain the down payment and costs paid by the successful bidder at the auction.

(3) The ~~director~~~~ageney~~ may terminate a negotiated sale ~~or sale of an Eligible Property to the Utah Department of Natural Resources~~ for any reason prior to finalization of the certificate of sale. If a negotiated sale is terminated by the proposed purchaser, the agency may retain the costs and fees paid pursuant to Subsection R850-80-620(46).

(4) A certificate of sale is not final until the purchaser and the director or other authorized agency representative executes the certificate.

(5) Except for sales to the Utah Department of Natural Resources made under Section R850-80-630, ~~T~~he purchaser under a certificate of sale may assign the certificate of sale to any person qualified to purchase trust lands. If the purchaser desires to assign the certificate prior to payment in full of the purchase price and all accrued interest, the purchaser must have the ~~director's~~ ~~ageney's~~ prior written consent to the assignment. The ~~director~~~~ageney~~ may require the assignee to execute a quitclaim deed, as required under Subsection R850-80-500(610), as a condition to consent to the assignment. An assignment of a certificate of sale must clearly identify the subject parcel, the certificate of sale number, the name and address of the assignee, and be executed by both the assignor and assignee.

(6) Assignment of a certificate of sale does not relieve the assignor from any obligations arising prior to the date of assignment.

| (7) Within a reasonable time after payment in full of the amounts owing under a certificate of sale, the directorageney shall seek issuance of a patent from the governor or the governor's designee to the purchaser of the property.

**R850-80-750. Partial Releases.**

(1) The director may authorize a partial release of trust lands sold under a certificate of sale if in the director's sole determination it is in the best interest of the trust beneficiaries. In considering whether a partial release is in the best interest of the trust beneficiaries, the director may consider the following:

- (a) whether access to the remainder of the parcel is preserved without restriction;
- (b) whether utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on trust lands covered by the certificate have the capacity and capability to service the whole of the parcel;
- (c) whether the value of the remaining portion of the parcel is less than the remaining principal balance of the certificate; and
- (d) any other factor the director deems reasonable to preserve the value of the remainder of the parcel.

**KEY: administrative procedures, sales**

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