

Memorandum

To: Martica Casias, Executive Director Public School Facilities Authority (PSFA)

From: Mona Martinez, PSFA Staff Attorney

Re: Questions Pertaining to Charter School Lease Purchase Arrangements (Lease Purchase Agreements)

Question No. 1: When a charter school is in a lease purchase arrangement and it completes the payment of the loan, who of the following becomes the owner: the charter school, the charter school foundation or the State?

Question No. 2: If the charter school or charter school foundation defaults on the loan, who becomes the owner?

Question No. 1: When a charter school is in a lease purchase arrangement and it completes the payment of the loan, who of the following becomes the owner: the charter school, the charter school foundation or the State?

Answer: A lease purchase arrangement is not a loan. Upon completion of payment of the balance of the lease purchase payments, the owner (the lessor) conveys the title of the property to the tenant (the lessee) and the lessee becomes the owner. In some instances, as it pertains to charter school lease purchase arrangements, the lessee can be either a charter school or a charter school foundation. Therefore, upon completion of the payments, of the lease, the owner can either be the charter school or the charter school foundation.

Discussion: In 2006, the New Mexico Constitution was amended to allow school districts and charter schools to enter into financing arrangements for the purpose of leasing a building or other real property. To implement Article 9, Section 11 of the New Mexico Constitution (Article 9, Sec. 11), the Public School Lease Purchase Act, Chapter 22, Article 26A NMSA 1978 (Lease Purchase Act), was established. The Lease Purchase Act allows a governing body to enter into a lease purchase arrangement if the governing body determines that the lease purchase arrangement is in the best interest of the school district or charter school.

Based on the Lease Purchase Act, the governing body of a charter school may enter into a lease purchase arrangement for the purposes of providing a facility for its school. Some charter school governing bodies form charter school foundations to provide for a charter school facility when a public building is not available for a charter school.¹ Therefore, a charter school foundation may

¹ The Charter Schools Act at Section 22-8B-4.2 NMSA provides that when a public building is not available for a charter school, a charter school may be housed in a building in which the owner of the facility is a nonprofit entity specifically organized for the purpose of providing a facility for the charter school.

also enter into a lease purchase arrangement for the purpose of providing a facility for a charter school. As a result, some charter school foundations enter into lease purchase arrangements with private owners for the purpose of providing a charter school with a facility. Other charter schools enter into lease purchase arrangements directly with the private owner of the facility. Who becomes the owner of the property in a lease purchase arrangement depends on who is leasing and/or purchasing the property. It can be either the charter school or the charter foundation.

All lease purchase arrangements must be reviewed and approved by the Public Education Department (PED), Section 22-26A-4(B) NMSA 1978. This review and approval process ensures compliance with the Lease Purchase Act and other statutory requirements.

Question No. 2: If the charter school or charter school foundation defaults on the loan, who becomes the owner?

Answer: A lease purchase arrangement is not a loan. A lease purchase arrangement is an option to purchase a building or other real property for a purchase price that is reduced according to the payments made by the charter school or charter school foundation pursuant to an agreement with the owner of the property. If a charter school or charter school foundation determines, for whatever reason, to terminate the lease purchase arrangement, the owner of the property continues to hold title to the property.

Discussion: Article 9, Sec. 11 prohibits a school district from borrowing money to build, purchase, remodel or furnish school buildings, or any combination thereof unless a proposition to create the debt has been submitted to the electors of its school district. However, Article 9, Sec.11 allows school districts and charter schools to enter into lease purchase arrangements as long as they do not create a debt. Therefore, the agreement must contain language in which the charter school and/ or the charter school foundation is not obligated to continue the lease from year-to-year or to purchase the real property.

Prior to entering into a lease purchase arrangement, a charter school or charter school foundation must have the lease purchase agreement reviewed and approved by PED. In part, PED reviews the lease purchase agreements to ensure that a debt will not be created by the agreement and to verify compliance with the Lease Purchase Act.

The Lease Purchase Act provides that a lease purchase arrangement shall be terminated if sufficient money is not available to meet any current lease payment. It also allows for a charter school or charter school foundation to seek the cost of improvements it has made to a building if the actual cost of the improvements were above those required for the lease payments. In addition, the Lease Purchase Act permits the assignment of the lease purchase arrangement without cost, to another school district or charter school, the state or one of the state's institutions, instrumentalities or other political subdivisions.
