

Land Banks and Land Banking

2ND EDITION | 2015



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About the Center for Community Progress

Founded in 2010, the Center for Community Progress is the only national nonprofit organization solely dedicated to building a future in which entrenched, systemic blight no longer exists in American communities. The mission of Community Progress is to ensure that communities have the vision, knowledge, and systems to transform blighted, vacant, and other problem properties into assets supporting neighborhood vitality. Community Progress serves as the leading resource for local, state, and federal policies and best practices that address the full cycle of property revitalization, from blight prevention, through the acquisition and maintenance of problem properties, to their productive reuse. Major support for Community Progress is provided by the Charles Stewart Mott Foundation and the Ford Foundation. More information is available at www.communityprogress.net.



About the Author

Frank S. Alexander is the Sam Nunn Professor of Law at Emory University School of Law and is Co-founder and Senior Advisor of the Center for Community Progress. He is the author or editor of eleven books and more than fifty articles in real estate finance, community development, and law and theology, including *Georgia Real Estate Finance and Foreclosure Law 2014-2015* (10th ed., 2014). Professor Alexander's work has focused on homelessness, affordable housing, and community development, serving as a Fellow of the Carter Center of Emory University (1993-96), and as a Commissioner of the State Housing Trust Fund for the Homeless (1994-98). He has served as Interim Dean of Emory University School of Law (2005-06), as Visiting Fellow at the Joint Center for Housing Studies, Harvard University (Fall Semester, 2007), and has testified before U.S. Congress concerning the mortgage foreclosure crisis. Professor Alexander received his JD from Harvard Law School, a Masters in Theological Studies from Harvard Divinity School, and his BA from the University of North Carolina.



Foreword

Land banks have existed in the U.S. for more than four decades, but as recently as 2010, they were still a relatively unexplored community development tool. That was the year the Center for Community Progress opened its doors with the purpose of advising communities on land banks and other critical tools to address vacancy, abandonment, and tax delinquency.

At that time, a handful of states, most notably Michigan and Ohio, already had land bank enabling legislation on the books, and a small number of well-established land banks had emerged as examples from which to learn. A national community of practice related to land banking, however, had not yet formed, leaving many questions about best practices unanswered.

This landscape began to change in the wake of the 2008 housing market collapse and subsequent foreclosure crisis, as an increasing number of community development practitioners around the country came to view land banks as a potential game changer in their efforts to combat problem properties.

In this context, Frank Alexander released the first edition of *Land Banks and Land Banking* in 2011. It was the most comprehensive publication on land banking developed to date, and it helped to usher in a new era of sophistication in land banking.

In the four years since, eight additional states have passed some form of land bank legislation—a number of them modelling their statutes on template language included in *Land Banks and Land Banking*. Thousands of copies of the book have been distributed nationally and it has been recognized internationally, as well, with a Mandarin edition authorized for publication in China.

Land Banks and Land Banking has provided the foundation for countless training workshops for would-be and current land banking practitioners and it is safe to say that the book has affected the work of most, if not all, of today's land bank practitioners.

In *Land Banks and Land Banking*, Frank not only coined the “generational” framework for land banks, identifying the characteristics of “first generation” and “second generation” land banks—his insight and recommendations in turn actually gave rise to the newest, third generation of land banks, which is described herein.

The first edition of *Land Banks and Land Banking* has remained unsurpassed as the authoritative resource on land banking until now, with the 2015 publication of this second edition.



This newest edition provides clear historic context about the development of land banking and elucidates the rapid evolution of land banking over the last four years. Practitioners will also find an expanded trove of practical resources, including extensive guidance on creating and operating a land bank in Part II and a detailed look at ensuring a strong future for land banks in Part IV.

Land banking is one of many tools that can be used to address vacant and abandoned properties. As its title suggests, this publication is focused squarely on land banks. But it also highlights the many important links between this tool and other systems that govern the use and reuse of land, including, perhaps most critically, property tax enforcement. In addition, it explores in what context a land bank is likely to be most impactful and when a community might be better served looking to other tools, entities, or strategies. Indeed, one of the most valuable lessons contained in this edition is the recognition that each community's challenge is a little different and that the first step in any community's fight against vacancy and blight must be to understand and diagnose the problem. Only then will it become clear which tools or strategies, including land banking, need to be part of the solution.

Communities that are considering the creation of a land bank and communities that are looking to improve the operations of an existing land bank would both do well to spend time studying these pages.

It is a privilege to work with, and learn from, Frank Alexander. His knowledge of community development, real estate finance, and land use law runs deep, surpassed only by his compassion and commitment to neighborhoods that have been, and continue to be, unfairly burdened by the impacts of problem properties and ineffective policy-making.

It is my hope, and expectation, that the second edition of *Land Banks and Land Banking* will reach even farther than the first, and that communities around the country will benefit from its guidance.

Tamar Shapiro

President and CEO

Center for Community Progress

May 2015

Introduction

Both people and land lie at the heart of community. It is the people who create the relationships, the dreams, the spirit, and the culture. It is the land that creates the place and the space. As human relationships are constantly evolving through times of nurture and growth and times of conflict and discord, so too are our uses of land. We are dependent on other people, yet we are also dependent on land. We are stewards of land, and it supports and protects us; we neglect and abuse land, and it soon mirrors our fractured community.

The story of land banks and land banking is essentially a parable of human frailty and hubris. Vacant, abandoned, and foreclosed properties that dot our neighborhoods and decimate our cities also define our core values. They are a reflection of the view that land is to be used and consumed, and then simply discarded, but they are also a refraction of the view that within each piece of property lies the possibility of renewal and renaissance. Vacant, abandoned, and foreclosed

properties are the discarded litter of a consumption society, but they are also the potential assets for building new relationships, new neighborhoods, and new communities.

Land banks are governmental entities that specialize in the conversion of vacant, abandoned, and foreclosed properties into productive use. The primary thrust of all land banks and land banking initiatives is to acquire and maintain properties that have been rejected by the open market and left as growing liabilities for neighborhoods and communities. The first task is the acquisition of title to such properties; the second task is the elimination of the liabilities; the third task is the transfer of the properties to new owners in a manner most supportive of local needs and priorities.

Land banks are relatively new additions to the toolbox of urban planning and community development. The first generation of land banks emerged as local government entities in the last quarter of the twentieth century in St. Louis, Cleveland, Louisville, and Atlanta. In each of these localities, the land banks were created in response to the growing inventories of properties stuck in the maze of nineteenth century property tax foreclosure laws. Out of sync with evolving federal constitutional due process requirements, these state foreclosure laws often created incentives for owners to simply walk away from the payment of taxes, and from the property itself. When accumulated taxes exceeded fair market value, no one could or would touch the property.

By the close of the twentieth century, public officials and urban planners realized that far more was at stake than simply the enforcement of delinquent property taxes. Each and every tract of vacant and abandoned property imposes costs on the

adjoining properties, on the fabric of the neighborhood, and on the vitality of the community. Bolder and more creative approaches were required, and these emerged in the second generation of land banks led by Michigan and then by Ohio in the time frame of 2002-2009.

At the beginning of the emergence of this second generation of approaches, I prepared what was at the time the seminal text on land banks and land banking, *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks* (2005). That publication was prompted by the insight and determination of Lisa Levy at the Local Initiatives Support Corporation (LISC) and Stephanie Jennings at the Fannie Mae Foundation. Both Lisa and Stephanie saw far more clearly than I did that vacant, abandoned, and foreclosed properties were at the heart of building and rebuilding our communities. LISC and the Fannie Mae Foundation made that first text possible, and made it accessible throughout the country.

The emergence of the second generation of land banks in Michigan is the story of the intentional restructuring of Michigan's public policies to redirect control of tax-foreclosed properties from out-of-state investors back to local government entities, and land banks provided the viable structure. The Michigan statutes are about land banks and land banking, but they are also about providing new sources of revenues to acquire, remediate, and maintain the properties. They are about creating catalytic opportunities for new development when the private market says it isn't possible. They are about creating hope in the face of despair. The second generation of land banks was next seen in Ohio, where the challenges faced by Cleveland and Cuyahoga County paralleled in many ways those of Flint and of Detroit. The Ohio land bank legislation was quite complex in its form and scope, and initially received a skeptical response in the state legislature, which limited its scope to Cuyahoga County. Within just one year, the legislature reversed course and expanded its scope to much of the state.

No one anticipated the mortgage crisis at the end of the first decade of the twenty-first century, but everyone felt its consequences. With the highest rates of mortgage foreclosures on record, the inventories of vacant and abandoned properties also reached levels never seen before. As specialists in these distressed assets, land banks quickly emerged as a key tool in the toolbox of urban planners in responding to this crisis. Land banks and land banking were recognized in federal law for the first time in 2008 as a targeted use for the Neighborhood Stabilization Program funding.

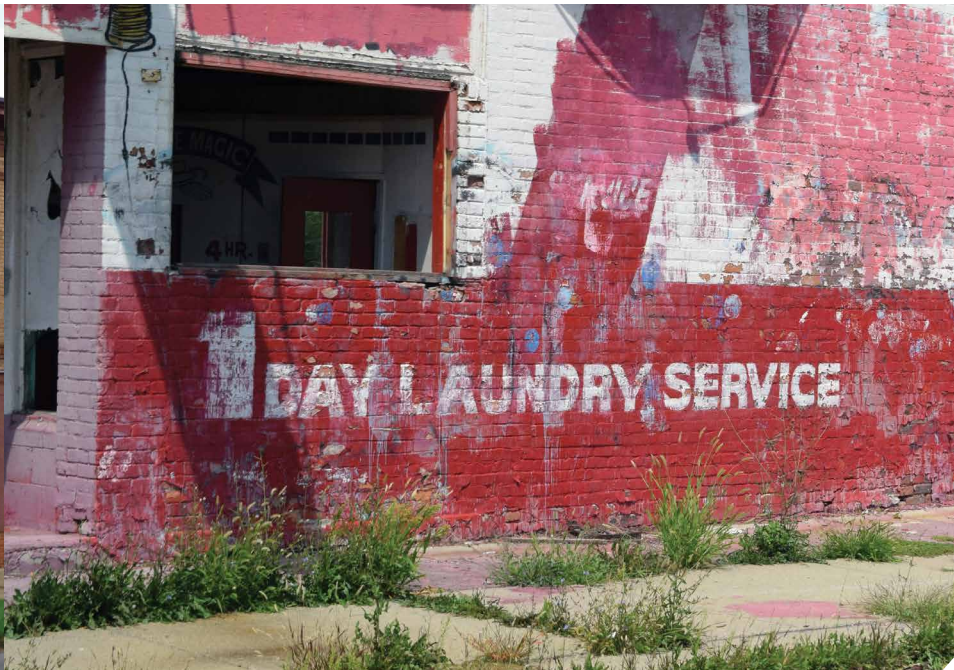
The prior edition of this volume was published in 2011 and marked the emergence of the third generation of land bank legislation. That edition included a template for state legislation together with a detailed analysis of key issues and powers. We were certainly hopeful it would make a difference, but we never dreamed that within less than three years eight new states would join Michigan and Ohio in enacting comprehensive land bank legislation – in many instances based largely on the template in the prior edition.

This new edition continues the thrust of the prior edition and once again includes a template for future state legislation. This new edition is far richer and deeper simply because it can now describe the experiences of these ten states, and over 125 separate land banks. Each and every land bank statute, local land bank entity, land banking policy, and procedure provides an opportunity to learn from successes and failures and constantly improve on this work. This edition, as with the prior one, is designed to provide context, to describe the wide range of approaches being taken, and to present the possibilities of dreams to be realized.

A work of this nature is never a solitary endeavor, though I bear full responsibility for all of the errors and omissions it may contain. My student research assistants at Emory Law School, my graduates who have dared to join me in this work, and most importantly my colleagues at the Center for Community Progress, have all been the true engines of these endeavors. Nothing would have been accomplished without them.

Frank S. Alexander

May 2015



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Understanding Abandonment

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CHAPTER 1

Understanding the Inventory

Vacant, Abandoned, Tax-Delinquent, and Foreclosed Properties

Over the past 40 years, a combination of conditions in many cities around the country has resulted in a growing incidence of vacant, abandoned, tax-delinquent, and foreclosed properties. There is extensive debate on what drives the “life cycle” of neighborhoods,¹ from periods of decline and deterioration to their renaissance and rejuvenation.² A much greater consensus exists as to the harms vacant and abandoned properties inflict on communities.³ As potential fire hazards and sites for drug trafficking,⁴ vacant and abandoned properties signal to the larger community that a neighborhood is on the decline, undermining the sense of community and discouraging any further investments.⁵ These disinvestments often spread across neighborhoods and affect the overall health of a city.

While both pose significant problems, vacancy and abandonment are not synonymous. Vacancy can be defined as property that is unoccupied. It is more common in commercial areas, and oftentimes a property is vacant simply because a property owner is holding onto it as a long-term investment. Abandonment, on the other hand, is a far stronger concept. An abandoned property suggests that the owner has ceased to invest any resources in the property, is foregoing all routine maintenance, and is making no further payments on related financial obligations such as mortgages or property taxes. Though abandoned by the owner, tenants may still occupy the property, or squatters may live there without permission.

Properties that are vacant and abandoned are often tax-delinquent as well. In fact, property tax delinquency is the most significant common denominator among vacant and abandoned properties. Tax-delinquent properties are problematic for local governments not only because of the likelihood that they are vacant and abandoned, but also because of their negative impact on tax revenues. While some property owners may fail to pay property taxes due to a lack of financial resources, others choose to “milk” the equity from the property and then abandon it. The lengthy periods of time required by antiquated property tax foreclosure systems only encourage a property owner’s decision to neglect further investments.⁶ In the vast majority of cases, the failure to pay property taxes signals the eventual fate of the property because it has long been recognized as a signal of eventual abandonment. However, tax delinquency is only an overlapping characteristic. Even occupied properties in excellent condition may be tax-delinquent, usually by inadvertence though occasionally by design.

The dramatic rise in the number of mortgage foreclosures from 2007-2013 as a result of the Great Recession presented yet another challenge in the increasing inventories of properties that are vacant, substandard, and possibly abandoned. In some jurisdictions, the mortgage foreclosure process is hampered by the lack of clarity on the identity of the mortgage lender and standing of the lender to conduct a foreclosure. In other jurisdictions, the very attempt to modify mortgage loans is constrained by conflicting incentives between loan servicers and the investors in the loans. In all jurisdictions, loan servicers and lenders are extremely reluctant to invest additional funds in vacant residential properties,

preferring to minimize holding costs in the face of declining markets. These ambiguities, tensions, and uncertainties have given rise to a new phenomenon plaguing our neighborhoods and communities—that of “zombie mortgages”. Though the term “zombie mortgages” has different meanings in different contexts, the common elements are the existence of a mortgage on real property which is in default but for which the mortgagee elects not to proceed with enforcement through the final stages of foreclosure and transfer to a new owner. The owner, or former owner, believes that he or she no longer has any interest in the property and the mortgagee has either elected to “walk away” from the security or is reluctant to proceed with a foreclosure sale in fear of its own potential liability, should it become the foreclosure sale purchaser. Title to the property remains encumbered and fractured, the property remains vacant and continues to deteriorate, and the community bears all of the costs and losses.

The prevalence of vacant and abandoned properties never occurs in a vacuum. It always occurs in a particular set of social and economic conditions heavily influenced by federal, state, and local policies and by social and cultural biases. Public policies may create stable neighborhoods but they also may create conditions which lock the poor into urban slums replete with deteriorating properties. Class and race are reflected in, if not embodied by, land use plans, and the neighborhoods in decline tragically receive the fewest resources. No attempt to confront growing inventories of vacancy and abandonment can succeed without acknowledging the social and cultural biases that shape our policies.

The housing and economic crises of the Great Recession have had deep and far-reaching consequences for America’s communities. Throughout most of the United States, residential mortgage foreclosures rose to levels not experienced in 75 years, while some communities simultaneously experienced declines in property values of 25% or more. With an overwhelming concentration of foreclosures in particular neighborhoods, the number of vacant properties reached record levels.

Together, the ongoing national mortgage crisis and the steady economic decline of older industrial areas have created increasing numbers of vacant and abandoned properties that are placing ever greater stress on communities across the country. The sudden collapse of the mortgage markets and the drastic increase in foreclosure rates may be most intense in Southern and Southwestern regions, while gradual economic decline and industrial property abandonment may be more characteristic of cities in the Northeastern and Midwestern parts of the country. Unfortunately, some communities—

most notably Cleveland, Ohio, and Detroit, Michigan—are burdened by both pressures. Despite differences in metropolitan areas, the neighborhoods, schools, and local governments in every metropolitan community must bear the costs these large inventories of foreclosed, vacant, and abandoned properties induce. When demand for housing and new development disappears, what may have once been a strong and vibrant neighborhood or community can become a declining wasteland. Further complicating recovery, most local governments lack efficient and effective tools for halting and reversing such a serious consequence.

Understanding the Costs of Neglect

The ripple effect that vacancy or foreclosure can have on the surrounding neighborhood is well-documented. These external costs are far reaching and occur across a number of categories:

- Decreased property values of adjacent properties
- Decreased property tax revenues from nonpayment of taxes
- Decreased property tax revenues from declining property values of adjacent properties
- Increased costs of police and public safety for surveillance and response
- Increased incidence of arson resulting in higher costs of fire prevention
- Increased costs of local government code enforcement activities
- Increased costs of judicial actions

Mortgage foreclosures alone, independent of subsequent abandonment, have been found to reduce property values within one-eighth of a mile of the foreclosure by 0.9% in value.⁷ Multiple foreclosures had even greater cumulative adverse effects. The Center for Responsible Lending estimates that foreclosures of subprime home loans originated in 2005 and 2006 decrease the value of nearby properties by an average of \$5,000.⁸ In aggregate, foreclosures on subprime loans are expected to cause a \$202 billion decline in home values and the corresponding tax base.

Abandonment further amplifies the problems brought on by foreclosure. For example, a detailed study of Chicago in 2005 revealed that each property abandoned prior to foreclosure imposes average costs of almost \$20,000 on the city, and


Chapter 1 Endnotes

when that property includes a building damaged by arson, the costs reach an average of \$34,000.⁹ In Flint, Michigan, an analysis revealed that property within 500 feet of a vacant and abandoned structure lost an average of 2.26% of its value.¹⁰ A study commissioned by Philadelphia in 2010 revealed that vacant and abandoned properties reduced the value of the city's homes by an average of \$8,000, incurred \$20 million in annual maintenance costs, and deprived the city of \$2 million a year in tax revenues.¹¹ Further, a study of eight cities in Ohio found that 25,000 vacant and abandoned properties imposed approximately \$15 million in direct *annual* costs to the cities and more than \$49 million in cumulative lost property tax revenues.¹²

The “broken windows” theory asserts that “the mere existence of abandoned housing detrimentally affects a neighborhood because it demonstrates to outsiders and residents that the neighborhood is of the type that supports crime and poverty, creating a vicious cycle that encourages additional abandonment.”¹³ While this cycle may not carry a price tag in dollars, its impact on communities is established. For example, one study found that a one-percentage point increase in single-family residential mortgage foreclosures correlated with an increase in the number of non-property related violent crimes by 2.33%.¹⁴ In Austin, Texas, “blocks with unsecured [vacant] buildings had 3.2 times as many drug calls to police, 1.8 times as many theft calls and twice the number of violent calls as blocks without vacant buildings.”¹⁵ A comprehensive study of all forms of blight, and blight related costs, in Dallas, Texas, identified 16% of the geographic area of the City as “high blight” areas, containing 41% of all tax delinquent properties, and 47% of all public expenditures for demolitions.¹⁶ A study of these costs by the Council of Governments in Southwestern Pennsylvania revealed 20,077 vacant lots and 7,158 lots with blighted structures leading to direct costs to municipal services of \$10,720,302, lost tax revenues of \$8,637,875, and indirect costs associated with declining property values between \$218 million and \$247 million.¹⁷

In response to the rise of vacant and abandoned properties, the fall of property tax revenues, and mortgage foreclosures forcing families out of their homes, some localities have created land banks. A land bank is a governmental entity that focuses on the conversion of vacant, abandoned, and foreclosed properties into productive use. As entities intended to help a local government achieve legal, institutional, and systemic changes facilitating the reuse of a community's problem properties, land banks take many forms. The next chapter details the origins and evolution of land banks across the country over the past 35 years and sets the course for what land banks can achieve in the future.

- 1 See, e.g., Anthony Downs, *Opening Up the Suburbs: An Urban Strategy for America* (1973).
- 2 See, e.g., John T. Metzger, *Planned Abandonment: The Neighborhood Life-Cycle Theory and National Urban Policy*, 11 HOUSING POLICY DEBATE 7 (2000); Anthony Downs, *Comment on John T. Metzger's "Planned Abandonment: The Neighborhood Life-Cycle Theory and National Urban Policy,"* 11 HOUSING POLICY DEBATE 41 (2000).
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- 15 Nat'l Vacant Properties Campaign, *Vacant Properties: The True Costs to Communities* 1 (2005).
- 16 Maghelal, Praveen, Simon A. Andrew, Sudha Arlikatti, Hee Soun Jang, *FROM BLIGHT TO LIGHT: ASSESSING BLIGHT IN THE CITY OF DALLAS* (2013).
- 17 Tri-COG Collaborative, *Fiscal Impact of Blight on the Tri-COG Communities* (September, 2013).

A photograph of a city street corner, overlaid with a semi-transparent blue filter. In the foreground, a black 'ONE WAY' street sign with a white arrow pointing left is mounted on a metal pole. To the right, a black street lamp stands on a concrete base. In the background, a building with a 'C-PAYMENT' sign is visible. The text on the right side of the image is white and reads: 'In response to the rise of vacant and abandoned properties, the fall of property tax revenues, and mortgage foreclosures forcing families out of their homes, some localities have created land banks. A land bank is a governmental entity that focuses on the conversion of vacant, abandoned, and foreclosed properties into productive use. As entities intended to help a local government achieve legal, institutional, and systemic changes facilitating the reuse of a community's problem properties, land banks take many forms. The next chapter details the origins and evolution of land banks across the country over the past 35 years and sets the course for what land banks can achieve in the future.'

CHAPTER 2

The Evolution of Land Banks

The concepts of “land banks” and “land banking” first emerged in the 1960s as proposals for new urban planning tools. Metropolitan areas throughout the United States were experiencing two directly related trends in planning and development. The first was urban sprawl—the unconstrained and unrestrained shift of new development to ever-expanding rings of first tier and second tier suburbs. The second was the decline and abandonment of inner-city neighborhoods, which became the focus of massive public initiatives in the various programs of the Great Society—urban renewal and model cities.¹ The urban renewal and model cities programs of the 1950s and 1960s were simply inadequate to deal with the social preferences for leaving behind the inner cities in favor of the promises of the suburbs.

It was in these dual trends of unregulated urban sprawl and inner-city abandonment that the idea of a land bank began to emerge. To militate against the largely unanticipated external costs of suburban and exurban development and its core value of exclusionary zoning, land banks were proposed as a form of a “land reserve” through which a public entity would engage in early acquisition of land to be held in reserve for future public uses.² To militate against the growing inventory of abandoned, tax-delinquent inner-city properties, land banks were proposed as a governmental entity to acquire and manage the properties no longer accessible to or desired by the market. The conceptual roots of land banks and land banking thus lie at both ends of the market spectrum. In a heated private market consuming all available real estate, a land bank could preserve public spaces for future public needs and priorities. In

a collapsed market, leaving abandoned real estate as the litter of a consumption society, a land bank could serve to convert the liabilities into assets.

Over the past 50 years, the nature and function of land banks and land banking have developed far more in response to the contagion of abandonment than as a proactive reserve of land for future uses. The dominant focus in land banking has been on delinquent property taxes, both as a symbol of abandonment and as a leverage point to gain control of the property. In selected communities where market abandonment is neighborhood- or site-specific, land banks have been utilized as proactive land reserves. The dramatic increase in abandoned properties as a result of the record-high foreclosure rates of the Great Recession has pushed this acquisition and retention function to the forefront of many land banking programs.

The story of land banks and land banking can be viewed in three relatively distinct phases. The first phase, or first generation, was characterized by the creation of land bank as entities designed to deal with properties “stuck” in complex property tax enforcement systems. The second generation learned from the first and focused on a series of legislative amendments that broadened land bank powers and created explicit ties to property tax enforcement systems and reforms. The third generation, again learning from its predecessors, was built upon a relatively standard template for land bank legislation and enhanced programs designed to respond to the consequences of the Great Recession. No two state or local programs are identical, and no existing state statute or local land bank should be viewed as a model to be implemented in other jurisdictions. The success of land banks, and land

banking, lies both in their targeted approach to complex issues of abandonment as well as their flexibility to be adapted to local conditions.

The First Generation: St. Louis, Cleveland, Louisville, Atlanta

The first generation of land bank programs is that of the last quarter of the twentieth century, and is exemplified by the land banks of St. Louis, Cleveland, Louisville, and Atlanta. The “lineage” of these four land bank authorities is relatively clear and direct. Following the formation and implementation of the St. Louis Land Bank between 1971 and 1973, state enabling legislation was approved in Ohio in 1976 that permitted the creation of the Cleveland Land Bank. A little more than a decade later, both Louisville (1989) and Atlanta (1991) created parallel land bank authorities with the approval of intergovernmental agreements.³ In each succeeding instance, the local governments examined the programs, priorities, structures, and policies of the preceding land bank authorities and then proceeded to adopt and to adapt a land banking program designed to fit the particular needs of each community.

This first generation of land banks had a common focus on addressing abandoned, tax-delinquent properties, and each served primarily to foster the conversion of tax-delinquent properties to productive use. No two of these early land banks were identical, however. Because of wide variances in state constitutional law, and state and local allocations of authority, each local land bank was based upon a differing legal structure. Each jurisdiction followed a different property tax foreclosure procedure, and each land bank adopted its own set of operating policies and priorities. While there was substantial overlap among the first generation of land banks, there were also substantial differences.

A common catalyst among the first generation of land banks was the lack of market access to tax-delinquent properties. Most property tax enforcement systems were designed in the late nineteenth century and have not been modified to reflect evolving federal constitutional due process requirements. Further, these systems did not anticipate the emergence of out-of-state investors in low-value speculative properties. In all four of the major first-generation land bank communities, there was a growing inventory of properties because (i) properties were never sold at tax sales, because tax liens exceeded fair market value and state law set minimum auction bids at the amount of delinquent taxes, (ii) property

tax foreclosures resulted in sales to investors, but these investors elected neither to invest in improvements to the property nor to pay subsequent years’ taxes, leaving the tax-delinquent inventory to be in a constant state of repetitive tax foreclosures, or (iii) by virtue of state law, the properties not sold to private investors automatically defaulted to the ownership of the local government, leaving the governmental departments with the most costly properties to maintain and the least resources and capacity to do so.

The state statutory authority that authorized this first generation of land banks bore similar characteristics across the four different states. In each instance, the primary inventory of the land bank was the residual inventory of the inefficient tax foreclosure process. In each instance, the creation and operation of a land bank was at the discretion of a local government, though some degree of intergovernmental collaboration was encouraged if not required by statute. Each local land bank was given express authority to transfer and dispose of its inventory in accordance with locally determined priorities, with an exemption from the classic requirement of sales at public auction to the highest bidder.

Each of the four major first-generation land banks was successful, but only when measured against the very limited range of powers and authority they were given and the very difficult nature of the real property inventory they were confronting. Each of these land banks did indeed facilitate the conversion of *some* of the inventory of vacant, abandoned, and tax-delinquent properties back into productive use. Throughout the 1980s and 1990s, these land banks were operating at maximum capacity if they managed and transferred up to 500 parcels of property each year (in the cases of St. Louis and Cleveland), or just 100 parcels per year (in the cases of Louisville and Atlanta). When this volume is measured against the annual volume of available inventory

THE 1ST GENERATION OF LAND BANKS

| | |
|---------------------|-------------|
| ▶ St. Louis | 1971 |
| ▶ Cleveland | 1976 |
| ▶ Louisville | 1989 |
| ▶ Atlanta | 1991 |

for land banking, which commonly was in the range of 1,000 to 2,000 parcels each year, the efficiency and effectiveness of these land bank initiatives fell short of reaching their potential.

In hindsight, the lack of capacity for the efficient and effective acquisition, management, and disposition of vacant, abandoned, and tax-delinquent properties can be attributed to several core features that were missing in each of these first-generation land banks. First, none of the land banks had any dedicated or internally generated source of funding for operations. Each of the four land banks had to rely upon direct or indirect general operating support from its local governments. Second, the property tax foreclosure laws themselves were rarely amended to any significant degree, leaving the properties targeted by the land banks tangled in a lengthy maze of archaic procedures and statutorily required waiting and redemption periods before the land bank could begin to control ownership of the property. Third, the lack of amendment of tax foreclosure laws meant that the inventory of tax-foreclosed properties, whether privately owned by investors or held by the land bank, lacked marketable and insurable title. This functionally prevented reuse by anyone in the absence of further legal proceedings. Fourth, a land bank's exercise of powers and authority was not adequately grounded in intergovernmental collaboration, whether mandatory or permissive. In two instances, the land banking operations functioned simply as another program of the city (as in the case of Cleveland), or as an embedded program of another public authority (as in the case of St. Louis), with the consequence of vulnerability to other political and institutional priorities.

The Second Generation: Genesee County & Michigan; Ohio

During the first generation of land banks and land banking, each successive program built upon the experiences of its predecessors. This learning curve continued in the emergence of the second generation. The second generation of land banks is best viewed as those land banks that have emerged on the platform of new legislative initiatives, and new socio-demographic conditions, in the period since the beginning of the twenty-first century. This second generation is marked by the emergence of the Genesee County (Flint, Michigan) Land Bank in 2002, major legislative reforms in Michigan in 1999 and 2003, and parallel legislative reforms in Ohio in 2008 and 2010.

THE 2ND GENERATION OF LAND BANKS

| | | |
|---|--------------------------------------|-------------|
|  | Genesee County & Michigan | 2002 |
|  | Cuyahoga County & Ohio | 2008 |

What distinguishes the second-generation Michigan initiatives from all prior work in this field is the direct and systemic reform of all property tax foreclosure laws in Michigan in 1999.⁴ This legislation halted the practice of the sale of tax liens, or tax certificates, to private third parties; it created a judicial tax foreclosure process with notice to all interested parties in a manner that meets or exceeds all state and federal constitutional requirements; it created a “bulk” process by which a county’s entire inventory of tax-delinquent properties could be joined in a single foreclosure proceeding, and resolved in a single hearing; and it created a mechanism for local governments to acquire the entire inventory of tax-delinquent properties not redeemed by owners and other interested parties.

Having created a twenty-first century tax foreclosure law applicable to the entire state, local governments in Michigan had to move quickly to explore structural options for the acquisition, management, and disposition of the inventory that could become available to land banks under the new foreclosure processes. The first land bank in Michigan was created in 2002 as the Genesee County Land Reutilization Council, Inc. by Genesee County, in collaboration with the city of Flint and Flint Township, based solely on the intergovernmental cooperation statutes of Michigan. While effective to create a multijurisdictional single-purpose entity with responsibility for the tax-foreclosed inventory, its powers and authority were little more than those found in the first generation of land banks—yet it faced quickly becoming the largest single landowner in the entire county. In January 2004, Michigan enacted the Land Bank Fast Track Authority Act, by far the most ambitious land bank authority statute in the country at that time.⁵ Shortly after the state land bank act was signed into law, the Genesee County Land Reutilization Council, Inc. was transformed into the Genesee County Land Bank Authority.

The 2003 Michigan legislation ushered in the second generation of land banks. Land banks that are created under this model possess a dramatically different range of powers and possibilities than are found in the first generation of land banks, with the new statutes expressly addressing each of the four systemic limitations found in the first generation of land banks. These second-generation land banks have multiple sources of financing for their operations, freeing them from dependency on local government general revenue funding. The second-generation land bank programs reflect much more extensive intervention in the property tax foreclosure process, and in the case of Michigan, the ability to acquire *all* tax-foreclosed properties, not just the ones for which there is no third-party investor ready to purchase it. The properties land banks acquire in Michigan have insurable and marketable title, and are ready for reuse and redevelopment as determined by local market conditions. Finally, land banks in Michigan must be created by intergovernmental collaboration between a county (which is the unit with legal authority for tax foreclosures) and the Michigan Land Bank Fast Track Authority, the state land bank also created by the 2004 enabling legislation. In a structure not found in most other jurisdictions, the Michigan statute created a state authority both to deal with tax-foreclosed properties the state owned as well as to exercise a limited degree of supervisory oversight of all locally created land banks.

The advantages of the second generation of land banks and land banking became the basis for major legislative reforms in Ohio in 2008. With some of the highest vacancy and foreclosure rates in the country, the city of Cleveland and Cuyahoga County pressed for a new range of structural reforms that would permit the transformation of its first-generation Cleveland Land Bank into a far more efficient and effective entity. In 2008, the Ohio General Assembly built upon the lessons learned from strengths and weaknesses of the Cleveland land reutilization program, and from the statutes and programs of more than 25 other land banks across the country. As in the case of Michigan, this Ohio legislation is closely tied to reforms in the tax foreclosure system that were enacted two years earlier.⁶ As passed, the legislation was limited in its application to Cuyahoga County, but it was sufficient to permit the creation of the new Cuyahoga County Land Reutilization Corporation as the successor to the first-generation Cleveland Land Bank. The success of the new Cuyahoga Land Bank led the Ohio General Assembly to expand the geographic scope of the land bank enabling statute statewide in early 2010.⁷

Parallel to the Michigan model of empowering land banks to deal more effectively with vacant, abandoned, and tax-foreclosed properties, the Ohio statute focuses on key systemic changes. It creates significant new points of intervention in the existing tax foreclosure laws, though unlike Michigan it does so through specific and limited ties between land banks and the tax foreclosure process rather than basing its work on a wholesale reform of Ohio's tax foreclosure laws. It permits the possibility of financing the operation of land banks by internalizing the significant interest and penalties on delinquent taxes rather than "exporting" these revenues to private tax lien investors. It authorizes land banks not merely to be the custodians of properties that the open market rejects, but to be proactive partners in the management, development, and overall transformation of liabilities into public assets.

The Third Generation of State Land Bank Statutes

A third generation of land banks has emerged over the past five years. It differs from the second-generation models found in Michigan and Ohio more in terms of form than in terms of substance.

The legislative reforms in both Michigan and in Ohio were extremely intricate in nature, very difficult to draft, and nearly impossible for a casual observer to decipher. The Michigan Land Bank Act was tied in its enactment to four separate acts, amending different provisions of Michigan law, all of which pertain in some manner to the operations of a land bank.⁸ The Ohio legislation was able to combine in a single act all of the various changes and amendments, but it necessitated amending over fifteen different sections of the Ohio Code. Without tracing and mastering the substance of these separate code sections, it is not easy to ascertain how the legislative surgery knits all of the pieces together.

The legislation of this third generation of land banks built upon the knowledge and experiences of the first two generations, seeking to present the possibilities of land bank creation in the clearest and most direct form possible. In the amazingly short period of time of less than three years, comprehensive land banking legislation was introduced and enacted in eight states: New York (2011), Georgia (2012), Missouri (2012), Pennsylvania (2012), Tennessee (2012), Nebraska (2013), Alabama (2013), and West Virginia (2014). When considered together, along with Michigan (2003) and Ohio (2008), these ten states would have few common historical or socioeconomic characteristics. What is clear is

THE 3RD GENERATION OF LAND BANKS

| | |
|------------------------|-------------|
| ▶ New York | 2011 |
| ▶ Georgia | 2012 |
| ▶ Missouri | 2012 |
| ▶ Pennsylvania | 2012 |
| ▶ Tennessee | 2012 |
| ▶ Nebraska | 2013 |
| ▶ Alabama | 2013 |
| ▶ West Virginia | 2014 |

that each of these jurisdictions shared a common commitment to the adoption of land banking as a new tool to be used to untangle the growing inventories of vacant, abandoned, and foreclosed properties.

The form of these third generation land bank statutes in large measure has been based on a legislative approach that is simpler to interpret and to apply. Instead of creating a legislative package of bills amending multiple different sections of existing state laws, the “template” legislation was often based on a single land bank bill set forth as an appendix to the prior edition of this volume. In each instance, however, the template legislation was modified to reflect the unique structures and characteristics of applicable state and local law, and to address the differing concerns of local constituencies. For some of these third generation land bank statutes, passage of the legislation was possible only by limiting its applicability to a small set of major metropolitan areas (such as the limit of Nebraska’s legislation to metropolitan Omaha, the limit of Missouri’s legislation to Kansas City, and the initial limit of Tennessee’s legislation to Oak Ridge). Such an approach can certainly still be very positive, at least for the jurisdictions affected; it can also end up being an interim step before the legislation is given wider geographic scope in subsequent years (as in the cases of Ohio and Tennessee). In rare instances, a land bank statute may be enacted in form, with little substantive impact on any locality, only to be

amended in a subsequent year to create the necessary and appropriate range of local government powers. An example of this is Alabama, which passed its original land bank act in 2009 and amended it in 2013 in a manner which made it possible for Birmingham to move forward with the creation of its land bank.

Land Banking under Local Home Rule Authority

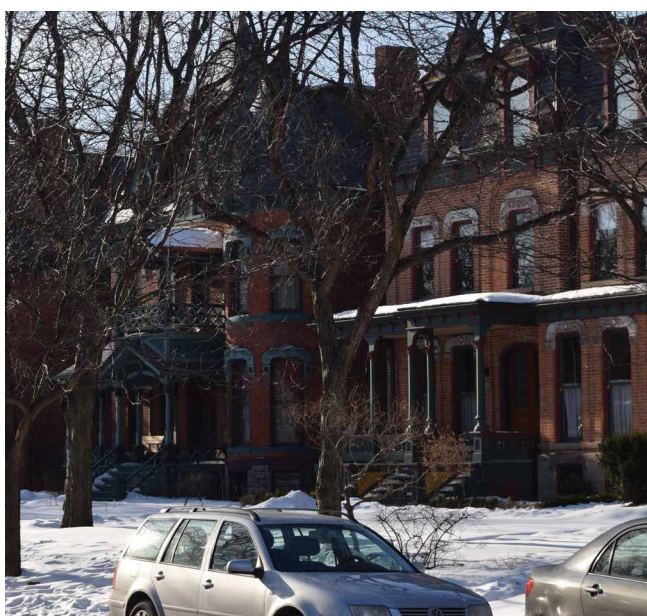
Land banking initiatives normally require state legislative attention not simply because of the multiple jurisdictions within a state that are experiencing significant inventories of vacant and abandoned properties. Most commonly, action at the state legislative level is necessary because legal and policy systems and structures created at the state level create the incentives for property abandonment. Local governments usually lack adequate legal authority to implement land banking programs. In rare instances, however, a local government will possess a strong range of home rule authority by virtue of state constitutional home rule provisions, or legislative home rule applicable to narrow bands of large population areas or historically dominant communities. Though the original Genesee County Land Reutilization Corporation was created solely upon existing general powers and specific intergovernmental cooperation agreement powers, it lacked the range of powers to be truly effective and this prompted the enactment of the Michigan Land Bank Fast Track Authority Act shortly thereafter.

Perhaps the best example of the creation of a local land bank with a broad range of powers, and yet the absence of any general state land bank enabling legislation, is the Cook County Land Bank Authority. Created in January 2013, the legal authority of the Cook County Board of Commissioners derives primarily from a specific grant of home rule authority found in the Illinois constitution and applicable to Cook County. It is then supplemented by general Illinois statutes applicable to local governments and by express authorization for a wide range of intergovernmental agreements. This relatively unique set of powers allows the Cook County Board of Commissioners, and the Cook County Land Bank, both to address many of the issues related to vacant and abandoned properties and to collaborate with the small municipalities located within the county that lack both the legal authority and the capacity to address these issues by themselves.

Land Banks and Land Banking – Variations on the Theme

Land banking is the process or policy by which local governments acquire surplus properties and convert them to productive use or hold them for long-term strategic public purposes. *Land banks* are governmental entities that specialize in land banking activities. Other public agencies can undertake land banking, and not all communities need to create a separate land bank. In some communities, redevelopment authorities can and should serve a modified land banking function, and in others, a housing and community development department could manage a land banking function. In recent decades, redevelopment authorities have tended to be narrowly focused in a specific geographic area or on a specific redevelopment project, and often lack the flexibility to acquire surplus properties wherever they may exist, or to convert individual properties into productive use as new single-family residences. Similarly, housing and community development departments commonly lack capacity for property management, and are constrained by state and local laws in the terms for disposition of property.

It is certainly possible for a redevelopment authority to “house” a land bank or a land bank program. This was done in the very first land bank in the country, in St. Louis, and more recently in the state enabling legislation for the creation of the East Baton Rouge Redevelopment Authority. Though there may be advantages to such combined operations in the form of shared staff and infrastructure, the clear disadvantage lies in the possibility of confusion about the distinctive missions of redevelopment authorities and land banking initiatives. If



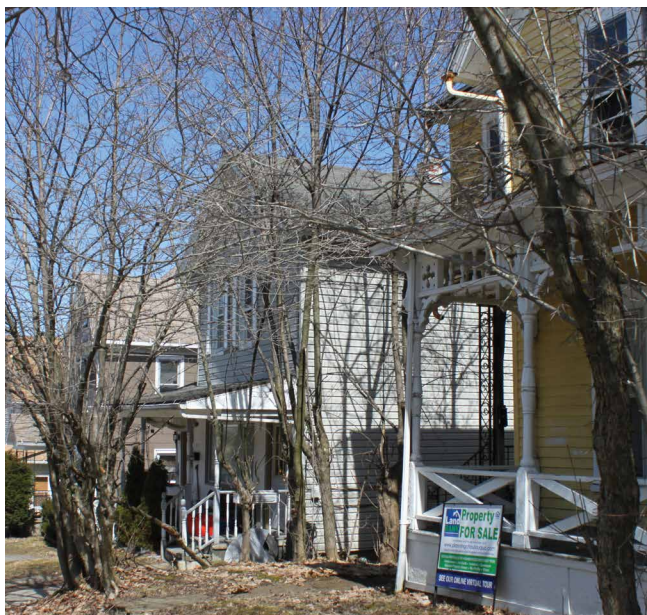
there is a consolidated legal or programmatic structure, careful attention must be placed on the importance of maintaining separate and autonomous operational responsibility for redevelopment goals and for land banking goals.

There is a dangerous tendency for local governments to look at land banks as the complete solution to the challenges they face. Such a dream, however, is often neither accurate with respect to the underlying facts nor realistic with respect to the necessary solutions. If a local government lacks the internal capacity to manage substandard properties, then creating a land bank whose staff will consist of the existing city agencies or departments will not change the outcome. Similarly, if a given local government is dominated by elected officials who insist on micromanaging each and every decision related to the real property of the government, then creating a land bank will accomplish little in terms of efficient operations unless the day-to-day governance authority of the land bank is separated from the elected public officials.

The Federal Role and Neighborhood Stabilization in the Great Recession

While land banking as a tool for converting vacant spaces into vibrant places is overwhelmingly a matter of state and local government policies, the advent of the Great Recession made it a national issue, as well. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 (HERA), marking the first time that land banking was expressly recognized in federal legislation.⁹ Congress’ statutory recognition of the severe costs borne by neighborhoods and local governments when properties are vacant or abandoned was significant. Section 2301 of HERA was titled “Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes,” and it appropriated \$4 billion “for the redevelopment of abandoned and foreclosed upon homes and residential properties.”¹⁰ This was the first federal legislation to recognize the economic toll that the increase in vacant and abandoned properties takes on local governments, and the first time that the federal government specifically allocated funding to address that problem.

HERA included parameters governing how its \$4 billion appropriation, which came to be known as the Neighborhood Stabilization Program (NSP), could be distributed. Specifically, Congress targeted low- and moderate-income persons by requiring that all of the funds be used “with respect to individuals and families whose income does not exceed



120% of area median income,” with at least 25% of the funds to be used to provide housing for “individuals or families whose incomes do not exceed 50% of area median income.”¹¹ The permitted uses that Congress prescribed were still broad enough to accommodate the diverse needs of communities across the country. Apart from authorizing amounts made available to be used to “establish land banks for homes that have been foreclosed upon,” funds could also be used to (i) establish financing mechanisms, such as soft-second, loan loss reserves, and shared-equity loans; (ii) purchase and rehabilitate abandoned and foreclosed-upon properties to then sell, rent, or redevelop them; (iii) demolish blighted structures; and (iv) redevelop demolished or vacant properties.

In 2009, Congress enacted the American Recovery and Reinvestment Act (ARRA),¹² which allocated an additional \$2 billion for a second round of NSP funding (NSP2). NSP2 funds were allocated in response to competitive applications. NSP2 grantees were in areas with the greatest number and percentage of foreclosures, with capacity to execute projects and leverage potential financing, and with a concentration of investment to achieve neighborhood stabilization.

The ARRA also made a subtle change to the HERA provision authorizing funds for land banking. HERA permitted the allocation of funds to “establish land banks for homes that have been foreclosed upon,”¹³ while ARRA amended that language to read “establish and operate land banks for homes and residential properties that have been foreclosed upon.”¹⁴ This expanded statutory language allowed land banks to use NSP funds for operating costs associated with the land bank, as well as allowed land banks to use NSP funds to purchase and maintain residential properties.

In the depths of the Great Recession, additional federal funding initiatives supplemented NSP and NSP2. These included the “Hardest Hit Fund,” which provided resources for eighteen states directed primarily toward the avoidance of residential mortgage foreclosures through principal reductions and other loan modifications. The federal “Strong Cities: Strong Communities” (SC2) initiative was launched in July 2011, and by July 2014 had provided targeted federal financial assistance and technical assistance to twenty communities most devastated by the Great Recession.

Subprime residential mortgage lending practices, and their correlation with the mortgage foreclosure crisis that played a central role in the Great Recession, have resulted in an unanticipated source of revenues—at least in some jurisdictions. In those states that were direct plaintiffs against major lending institutions in various lawsuits related to predatory lending practices or foreclosures, or both, negotiated settlements provided funds directly to the plaintiffs. These funds could be used and were used in some jurisdictions to address the growing inventory of vacant and abandoned properties. In New York, the Attorney General issued \$33 million in grants to land banks across the state for demolition or rehabilitation of blighted properties. In Michigan, the Attorney General designated \$25 million for a statewide blight elimination program. Ohio allocated \$75 million for the demolition of blighted structures and Illinois awarded \$70 million for community revitalization and housing counseling.

A Comparative International Approach to Land Banking: China

It is far beyond the focus and scope of this volume to undertake a comparative international law and social policy perspective on land banking. There are certainly historical and contemporary parallels in Europe, in Africa, and in Asia, and much work remains to be done to take advantage of lessons learned from different countries with differing legal systems at different stages of social and economic development. One key parallel stands out, however, for both its differences and its similarities.

In the last quarter of the twentieth century, the People’s Republic of China (PRC) began its transformation to market economies, and possession of land use rights became a critical component. By some estimations, over 2,000 “land reserve centers” were created in the PRC within the last twenty years—as compared to less than 200 in the United States. These land reserve centers are rough parallels to the land

banks in the United States. They are based on fundamentally different principles, yet they are faced with adopting parallel operating policies and procedures. They are subject to a fundamentally different legal system, yet they are faced with parallel inconsistent local government goals and objectives.

One of the first land reserve centers in the PRC—and in many ways today the strongest and largest—is the Shanghai Land Reserve Center, which was created in 1996. The national Ministry of Land and Resources of the PRC (MLR) issued a formal “Notice of the State Council on the Strengthening of the Administration of State-owned Land Resources” in 2001, and by the end of 2003 over 1,400 local land reserve centers had been created. The centerpiece of land administration, particularly insofar as pertains to the transition of land into new uses, was the issuance in 2007 by the MLR of a new regulation entitled “Measures on Land Reserve Administration”. These two policy declarations of the PRC are the foundations for the land reserve centers in China.

There are three fundamental differences in the cultures by which land banking has arisen in the United States and land reserve centers in China. These are (i) the nature of land ownership, (ii) the applicable stage of the life cycle of markets, and (iii) the nature of legal and political authority.

In the PRC, at least as of the last quarter of the twentieth century, private ownership of real property was rare, with virtually all land, waterways, and natural resources under the ownership and control of the national government. The lead national entity with responsibility for these resources became the MLR. Private development or development in cooperation with other state-owned enterprises was possible only through the creation of negotiated land use rights. In the United States, by stark contrast, the starting premise is the private ownership of real property, subject to varying degrees of land use regulation.

Because of this fundamentally different starting point of real property ownership, the role of land reserve centers in China stands at the opposite end of a market economy from that of land banks in the United States. In the PRC, the primary function of a land reserve center is to manage the transformation of government-owned real property into a market economy. The land is used to stimulate new construction and development, with the private transferee receiving a set of land use rights that are contractually negotiated. By contrast, land banking in the United States focuses on properties that have largely been abandoned by the private market, or are inaccessible to the private market due to a variety of legal and economic barriers.

The profound differences in the legal and political cultures between China and the United States by themselves present a challenge to any attempt at Western interpretation of the authorities, powers, and purposes of land reserve centers in China. While the United States system of a tripartite separation of powers into legislative, executive, and judicial function, grounded in a constitution, yet with a complex overlay of state and local powers, is certainly less than self-evident to foreign observers, the Chinese legal system is equally opaque. Grounded solely and almost exclusively in a centralized administrative state, laws take primarily the form of announcements, measures, decrees, and regulations. These are issued, in their most public form, by the national Ministries to their subordinate departments, units, and agencies. With twenty-two provinces, four municipalities, five autonomous regions, and two special administrative regions, the parallel with the hierarchy of state and local governments in the United States is a distant parallel at best.

Despite these significant differences, there are close and major points of similarities between the China land reserve centers and the United States land banks. One of the first of the common experiences is that both land reserve centers and land banks are created and operate not at the national level but at the “local” level. This is most evident in the creation of over 2,000 distinct land reserve centers within just a few years, each with some measure of authority and responsibility for land transactions. As is true in the United States, these local land reserve centers in China are given relatively broad discretion to direct the reuse, or new uses, of land in a manner that meets local socioeconomic conditions and goals. Emphasis is placed on local government adaptation and experimentation. The Shanghai Land Reserve Center functions as a pivotal market participant, using its land resources to generate and direct its priority new development and construction while at the same time retaining economic interests in the success of the development. By contrast, the Nanjing Land Reserve Center functions far more as a market regulator, emphasizing the permissible range of new uses of the land with minimal direct involvement and control.

The advantage of being adaptable and flexible to meet local conditions creates a set of tensions and challenges that are shared by both land reserve centers and land banks. Both entities are caught in the pressure to be financially self-sufficient, or to provide direct revenues to the local government, and at the same time to meet public goals of providing affordable housing with direct and indirect subsidy. Both land reserve centers and land banks are charged with moving land into an open market, yet at the same time have

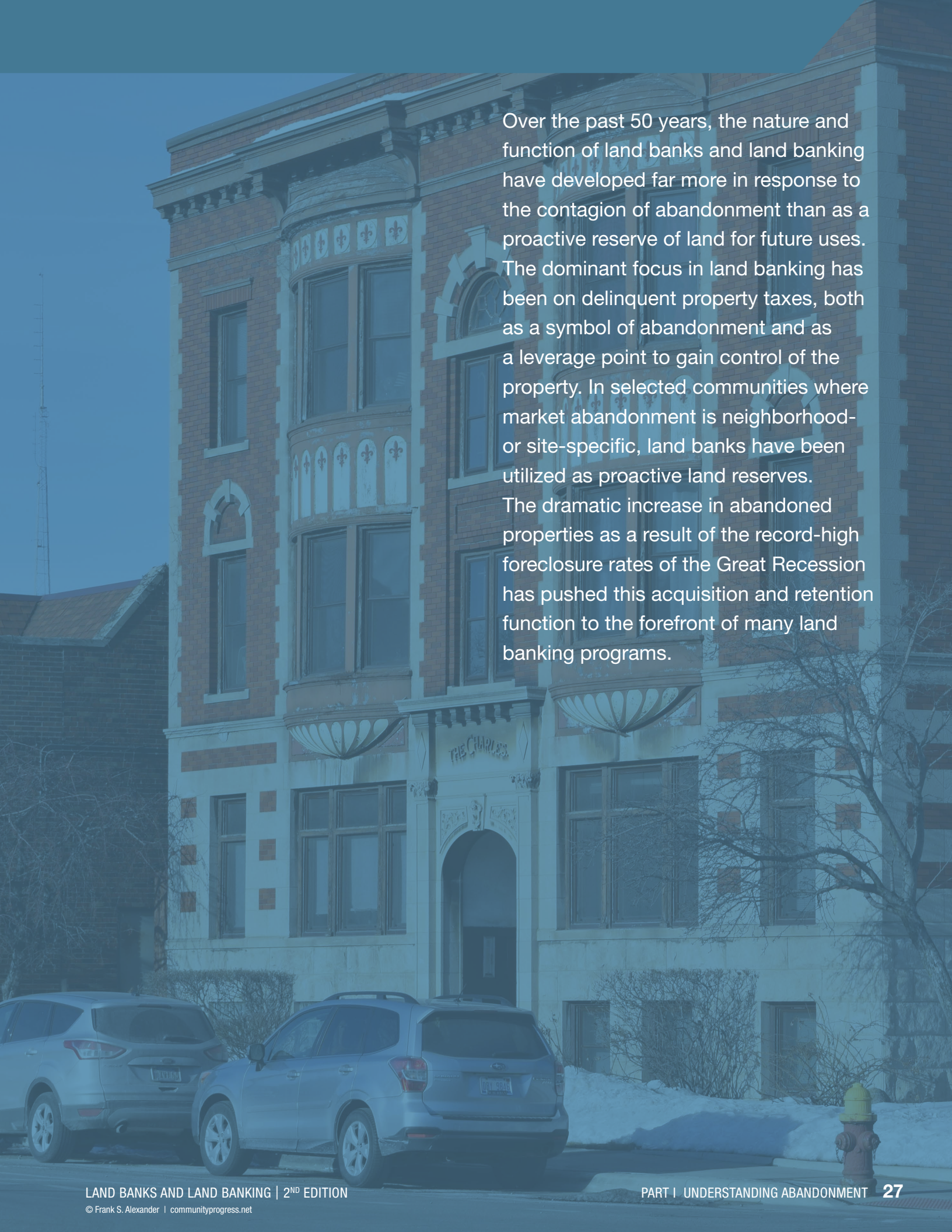
responsibility for creating or participating in comprehensive land use planning. Both forms of entities are challenged to move quickly and rapidly to use or reuse their inventories, but held responsible for the consequences of new use or reuse over the long term.

The division of the MLR with direct responsibility for land reserve centers in China is the Land Consolidation and Rehabilitation Center (LCRC). Beginning the fall of 2014, the LCRC initiated opportunities for international dialogue and education on the roles of its land reserve centers in comparison with land banks in the United States.

Land banks and land banking programs, as they have developed in the United States over the past twenty-five years, have their predominant focus on the elimination of the external costs of abandoned properties and the conversion of vacant spaces into vibrant places. Throughout the developed and the developing, world property abandonment is a shared concern. The underlying legal systems and the socioeconomic contexts vary greatly but common ground is to be found in the strategies and tools that are used to address abandonment. The opportunity for land banks in the United States to learn from the experiences of land reserves centers in China, and parallel entities in other countries, is invaluable and timely.

Chapter 2 Endnotes

- 1 U.S. President's Comm. on Urban Housing (1968); U.S. Nat'l Comm'n on Urban Problems (1969).
- 2 The most succinct proposal for the use of land banks as public land reserves was made by Professor Charles Harr, Professor of Law at Harvard Law School and formerly Assistant Secretary for Housing and Community Development. See CHARLES M. HAAR, U.S. CONG., HOUSE COMM. ON BANKING AND CURRENCY: PAPERS SUBMITTED TO SUBCOMM. ON HOUSING; PANELS ON HOUSING PRODUCTION, HOUSING DEMAND, AND DEVELOPING A SUITABLE LIVING ENVIRONMENT, WANTED: TWO FEDERAL LEVERS FOR URBAN LAND USE—LAND BANKS AND URBANK, 927-40 (June 1971).
- 3 For purposes of simplicity and clarity, the references to the cities that created the first generation of land banks are simply shorthand references. The formal identities of the programs are (i) the St. Louis Land Reutilization Authority (the "St. Louis Land Bank"); (ii) the Cleveland Land Reutilization Program (the "Cleveland Land Bank"), (iii) the Louisville and Jefferson County Landbank Authority, Inc. (the "Louisville Land Bank"), and (iv) the Fulton County/City of Atlanta Land Bank Authority, Inc (the "Atlanta Land Bank"). Of vital importance to note is that several of these first-generation models of land banks have undergone significant transformation in recent years. For example, the Louisville Land Bank was structurally reorganized following the merger of the city of Louisville and Jefferson County, and the Cleveland Land Bank largely replaced as to function by the Cuyahoga County Land Reutilization Corporation pursuant to the second-generation land bank statute enacted in 2008.
- 4 See 1893 Mich. Pub. Act 206, as amended by 1999 Mich. Pub. Act 123; MICH. COMP. LAWS §§ 211.1 *et seq.*
- 5 See 2003 Mich. Pub Act 258; MICH. COMP. LAWS § 124.751.
- 6 H.B. 294, 126th Leg. Gen. Assem., (Ohio June 28, 2006).
- 7 H.B. 313, 128th Leg. Gen. Assem., (approved by Governor, Ohio April 7, 2010).
- 8 The relationship between land bank authority activities and brownfield redevelopment is found in 2003 Mich. Pub. Act 259, MICH. COMP. LAWS §§ 125.2652 and 125.2663. The application of a five-year 50% tax recapture to properties conveyed by a land bank is found in 2003 Mich. Pub. Act 260 and 2003 Mich. Pub. Act 261, MICH. COMP. LAWS §§ 211.1021 and 211.7gg. The ability of the state to invest in loans to land bank authorities is found in 2003 Mich. Pub. Act 262, MICH. COMP. LAWS § 21.144(2)(f).
- 9 Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008).
- 10 Division B--Foreclosure Prevention, Title III, Pub. L. No. 110-289, §§ 2301-2305, 122 Stat. 2654 (2008) (hereinafter "Emergency Assistance Act").
- 11 Housing and Economic Recovery Act of 2008, § 2301(f)(3)(A).
- 12 American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 1201, 123 Stat. 115 (2009).
- 13 Housing and Economic Recovery Act of 2008, § 2301(c)(3)(C).
- 14 American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 1201, 123 Stat. 218 (2009).



Over the past 50 years, the nature and function of land banks and land banking have developed far more in response to the contagion of abandonment than as a proactive reserve of land for future uses. The dominant focus in land banking has been on delinquent property taxes, both as a symbol of abandonment and as a leverage point to gain control of the property. In selected communities where market abandonment is neighborhood- or site-specific, land banks have been utilized as proactive land reserves. The dramatic increase in abandoned properties as a result of the record-high foreclosure rates of the Great Recession has pushed this acquisition and retention function to the forefront of many land banking programs.

Range of Challenges

As governmental entities dedicated to the conversion of vacant, abandoned, and foreclosed properties into productive use, land banks serve a variety of roles. The very need for their creation reflects either the inability of conventional real estate markets to acquire and redevelop such properties or the presence of legal and administrative barriers, or both. A land bank should be tailored to address the systemic problems and obstacles that characterize such properties in its jurisdiction. It also should have operational policies and procedures that place a premium on clarity while maintaining flexibility to adapt to changing conditions.

A land bank's effectiveness depends on an accurate assessment of the barriers to conversion of abandoned properties into alternative uses. The inventory of these properties in any major urban area is usually characterized not by a single barrier but by a combination of obstacles. In some cases, barriers and obstacles are simply functional, reflecting a lack of knowledge about the number and location of properties, or the lack of enforcement proceedings for delinquent taxes and housing code violations. In other cases, the barriers are structural problems with the legal enforcement proceedings or the legal authority of local governments to acquire and reconvey properties. Solutions to virtually all of the common barriers have been developed and implemented in one or more jurisdictions across the country. Some barriers are most easily and directly overcome by the creation of a land bank. Others require extensive amendments to existing statutory procedures or local ordinances. Some barriers do not require changes in laws but simply a new approach to the implementation of existing laws and policies.

A land bank is not a magic solution for all problems, or even a necessary entity in many cities. One city may have a large inventory of tax-delinquent properties that are still privately owned, while another may have a large inventory of properties that have already gone through a tax foreclosure process. One city may have extensive surplus properties from public projects, while another is faced with a prevalence of abandoned industrial sites. One city may have a declining economic base and fleeing population, while another struggles to preserve affordable housing in the face of gentrification. In any community, the creation of a land bank must be done in a manner that allows it to deal effectively with the properties in that community and the barriers that exist to their redevelopment.

There is a common tendency in all of us to seek a single solution to address a complex set of problems, but it is also a common mistake and one that is becoming ever more common as the number of local land banks in operation across the country increases. A land bank should never be the first answer, or even the most important answer, to a growing inventory of abandoned properties. The first step is gaining an understanding of the problem and diagnosing the constituent elements of the market forces, legal systems, and policy positions that contribute to the problem. The second step is evaluating whether a land bank is the appropriate tool to unravel the maze of legal, financial, and social aspects of the problem. The third step, if a land bank is selected as an optimum tool, is to craft the powers and functions of the land bank in a manner directly connected to the diagnosis and the prescription. Each of these three steps requires a careful

examination of existing policies and tools, and their strengths and weaknesses in addressing the specific characteristics of the targeted inventory of properties.

There are several typical barriers to the conversion of vacant and abandoned properties into productive uses. Depending on the applicable state and local laws, a land bank could play a role in the elimination, or at least mitigation, of each of them.

Barrier: Lack of Awareness of the Problem

One of the most common characteristics shared by communities with large numbers of vacant, abandoned, and tax-delinquent properties is simply the lack of clear data on the nature and magnitude of the problem. There may be an accurate perception that forms of “urban blight” characterize certain neighborhoods. There may be clear evidence of the decline in property tax revenues or the increase in housing code complaints. There is rarely, however, a centralized database that reveals the magnitude of the problem and the geographic location of the properties. In many cases, the initial barrier to conversion of these properties into productive use is simply the lack of awareness of the magnitude and nature of the problem.

One reason for the lack of accessible and assembled data on problem properties is the historic division of functions among separate local government agencies and departments. Often the offices and records of the tax assessors and tax collectors are entirely separate from the operations and records of the department responsible for monitoring housing and building code violations. Both tend to be distant from the agency or department charged with community planning and development. In contrast, community development corporations or neighborhood associations that know their communities can walk the streets and point to or plot on a map the vacant, abandoned, and tax-delinquent properties that are gradually destroying the community.

The inventory of vacant and abandoned properties within a community must not be limited to those that are privately owned. Many communities have large numbers of properties owned by the local government, most commonly as the result of foreclosures in preceding years for delinquent taxes or other public liens. A major problem with this publicly owned property is that it tends to become lost in the administrative maze of public departments—commonly, no single agency is responsible for maintaining and disposing

of such property. These properties can be one of the greatest sources of problems: they usually have serious title defects resulting from the enforcement proceedings, they generate no property tax revenues, they can become public nuisances if not maintained, and they can be difficult to sell or convey because of strict procedural requirements for transfer of public properties. Publicly owned parcels, however, can and should be one of the greatest assets to a local government in transforming neighborhoods.

Barrier: Tax-Delinquent Properties

Property tax delinquency is tied to community neglect and decline in three important respects. First, a property owner’s decision to stop paying property taxes is frequently, though not invariably, a sign that the owner plans no further investment in the property. This is most commonly the case with commercial, retail, industrial, or residential rental properties. It is less likely the case with respect to owner-occupied residential properties unless the data also indicate a correlation with mortgage foreclosures in a concentrated neighborhood. Second, growing tax delinquency results in a direct decline in government revenues, which further strains the resources available to address the consequences of property abandonment. Tragically, a cycle of nonpayment of property taxes can thus become a spiral of deterioration. Third, in

One of the most common characteristics shared by communities with large numbers of vacant, abandoned, and tax-delinquent properties is simply the lack of clear data on the nature and magnitude of the problem.

far too many jurisdictions, property tax delinquency simply marks the beginning of a complex and prolonged period of enforcement through tax foreclosures.

Property tax delinquency can be a barrier to conversion of vacant and abandoned properties for several reasons. If tax foreclosure enforcement proceedings are not initiated promptly upon occurrence of delinquency, multiple years of delinquency, combined with interest and penalties, can result in aggregate outstanding liens that are greater than the fair market value of the property. This is particularly true when the owner has allowed the property to deteriorate over the period of the delinquency. When tax liens exceed fair market value, the property simply will not be transferred on the open market.

The most significant problem posed by high volumes of tax-delinquent properties lies in the statutory procedures for tax foreclosures. In many jurisdictions, foreclosure laws fail to provide either an efficient or effective enforcement mechanism. They tend to be inefficient by requiring a very lengthy process—up to five years to complete. When property is abandoned and becomes tax delinquent, leaving it idle and deteriorating for four or more years only increases the magnitude of harm to the surrounding properties. Many tax foreclosure laws also fail to provide adequate notice required by current constitutional standards, with the result that title to the property following foreclosure is neither insurable nor marketable. When tax foreclosure laws are inadequate, property tax delinquency is but a sign of problems that will only grow in magnitude and complexity.

Property tax foreclosure laws and vacant and abandoned properties encounter one unique barrier in those jurisdictions that permit the sale of property tax liens to private investors. When private investors purchase tax liens as investments, their incentives are not necessarily the same as the policies of the local governments, and they may choose to speculate on future payments of interest and penalties that may accrue, or on acquiring property simply to hold for passive investment. When a tax lien is sold to a private investor, the local government receives revenues in the form of cash payments. However, the local government also loses the ability to control the enforcement of tax foreclosure as a method to return the property to productive new uses. The sale of tax liens is a major impediment to the revitalization of abandoned properties and to the operation of land banks.

While each jurisdiction that engages in the sale of tax liens to private investors does so according to widely varying policies, procedures, and practices, the adverse socioeconomic

consequences are common. In 2009, the City of Rochester, New York, entered into a contract for the bulk sale of its delinquent property tax digest to a private third party and continued this policy for four years. At the conclusion of 2012, the City commissioned an analysis and evaluation of this tax lien sale program. The final report was based on an analysis of delinquent property taxes on all parcels over a four-year period, underlying property values and property conditions, and “spillover” effects of the presence or absence of delinquent tax enforcement proceedings by the private investor. Its findings focused on two separate categories of policy implications: fiscal impacts and community development impacts. Among the key fiscal impacts, the report concluded that (i) the tax lien sale strategy resulted in a short term increase in aggregate revenues and reduced costs of City staffing, (ii) the pricing structure of the tax lien sale undercompensated the City for the net value of the delinquent tax digest and transferred to the investor high rates of return otherwise available to the City, and (iii) delinquent tax repayment plans implemented by the private investor maximized rates of return while ignoring other key social policies. Among the community development impact conclusions were findings that (i) the creation of a subcategory of “limbo” properties which had significant delinquent tax liens which were unenforced by the private investor because of low values and transactions costs, and (ii) properties with delinquent taxes had much higher rates of vacancy and code violations, and generated far higher numbers of police and fire calls.

Barrier: Title Problems

One of the primary reasons that normal market forces do not reach vacant, abandoned, and tax-delinquent properties is that there are numerous defects or clouds on the title to the properties. If title to property is not marketable, it usually is not insurable, and if not insurable, it has little if any value to prospective owners. The conversion of such properties into productive uses directly or indirectly through a land bank requires that the nature of the title problems be evaluated and appropriate strategies developed for each category of title problem.

Residential properties that were previously owned and occupied by low-income families often lack clear title as a result of the property being handed down from generation to generation without probate proceedings or recorded

instruments of conveyance by administrators of estates. Conveyance of such properties, known colloquially as “heir property,” requires involvement of all possible heirs.

Abandoned commercial and retail properties have different forms of title defects. Owned by single-asset corporations or by multiple layers of single-asset limited partnerships, these properties have been economically written off by the owner. The corporations become defunct or inactive with no viable addresses of record. Adding to the complexity, the properties may have multiple mortgages that remain open of record, and yet they are held by defunct or inactive corporations. Former industrial properties may have similar title defects, but they can also have state or federal environmental contamination liens.

Properties that have been through previous tax foreclosure proceedings present yet another form of title problems. If the tax foreclosure proceedings did not involve a final judicial decree, title insurance likely will be unavailable because of the possibility that notice to the owners was constitutionally inadequate. When a local government obtains property through a nonjudicial tax foreclosure, it can manage and maintain the property but probably cannot convey it to any third party because of the inherent title defects.

Barrier: Property Disposition Requirements

All local governments in the United States are subject to legal constraints on the sale and disposition of publicly owned properties. Whether set forth in the state constitution, state statutes, or local ordinances, the source of these requirements is the basic principle that property owned by a local government is held for the benefit of its residents and may not be conveyed to private third parties unless the government receives “full consideration” for the property. Property disposition requirements historically have three required components: (i) a determination that the property is “surplus” and not needed for public purposes, (ii) a public auction of the property by open or sealed bids, and (iii) a requirement that the government receive adequate consideration for the property, which is usually construed to mean fair market value.

Though sound in principle and in policy, these property disposition requirements were not designed with the expectation that large numbers of properties would become vacant and abandoned. Whether the local government or the land bank acquires such properties, property disposition requirements should be modified to reflect the nature of the property and the future intended uses of the property.

Barrier: Inadequacy of Code Enforcement

Vacant, abandoned, and tax-delinquent properties often produce manifold violations of housing and building codes. However, not all properties that contain derelict and deteriorating structures have tax delinquency, as the property owner may simply have elected to forgo further investment in the buildings pending future sale or use for other purposes. Efficient and effective tax foreclosure laws thus will not be adequate, when used alone, to address the problems posed by functionally abandoned structures. As is true of tax delinquency, the existence of significant numbers of commercial and residential structures or even vacant lots with violations of local and state codes may be the result of one or more different causes. The problem may lie with the codes themselves, which may have been last revised decades earlier based upon cultural and structural conditions indicative of the 1950s or 1960s. Alternatively, the problem may be the local government’s failure to allocate adequate professional resources to inspect properties and prosecute code violations.

Even with recently revised codes and extensive staff resources, enforcement of housing and building code violations commonly is difficult because of inadequate legal enforcement procedures. The dominant experience in most jurisdictions is that code enforcement proceedings are lengthy and protracted, extending many months or years. The laws establishing procedures to remedy code violations also may be inadequate because they fail to provide for constitutionally adequate notice to property owners. It may be costly to identify the owners and their addresses, and the provision of notice must be carefully done. A third common form of inadequacy with existing procedures for remedying code violations is that the owner may be a defunct corporation without assets to remedy the violation, leaving the local government to bear the remedial costs. While this expense in many jurisdictions is secured by a nuisance abatement lien filed against the property, unfortunately, it is last in the line of priority of claims against the property.

One of the classic, and still common, approaches to housing and building code enforcement by local governments across the United States is a primary reliance on criminal sanctions as a form of punishment for the existence of violations. In some jurisdictions the enforcement of housing and building codes is placed entirely within the purview of the police department, with enforcement the responsibility of the public prosecutor. While plausibly and rationally grounded in moral outrage over a property owner’s callous disregard of community standards, the use of criminal process tends to be both inefficient and

ineffective for many reasons. First, the sanctions consist primarily of criminal fines classified as misdemeanors, with very rarely enforced incarceration. Second, due process in the criminal context requires the highest levels of procedural requirements of judicial jurisdiction over the defendant, hearings, and trials. Third, the defendant owners of substandard properties are commonly out-of-state corporations, not subject to local criminal jurisdiction, and are single-asset corporations indifferent to fines and penalties. Fourth, criminal prosecution of a low-income owner occupant who lacks the resources to remedy the violation serves only to penalize by criminalizing, and achieves nothing other than further harming the owner occupant. Fifth, and in some ways most significantly, the imposition of a maximum criminal penalty does not force a transfer of the property to a new responsible owner.

Barrier: Unknown Owners

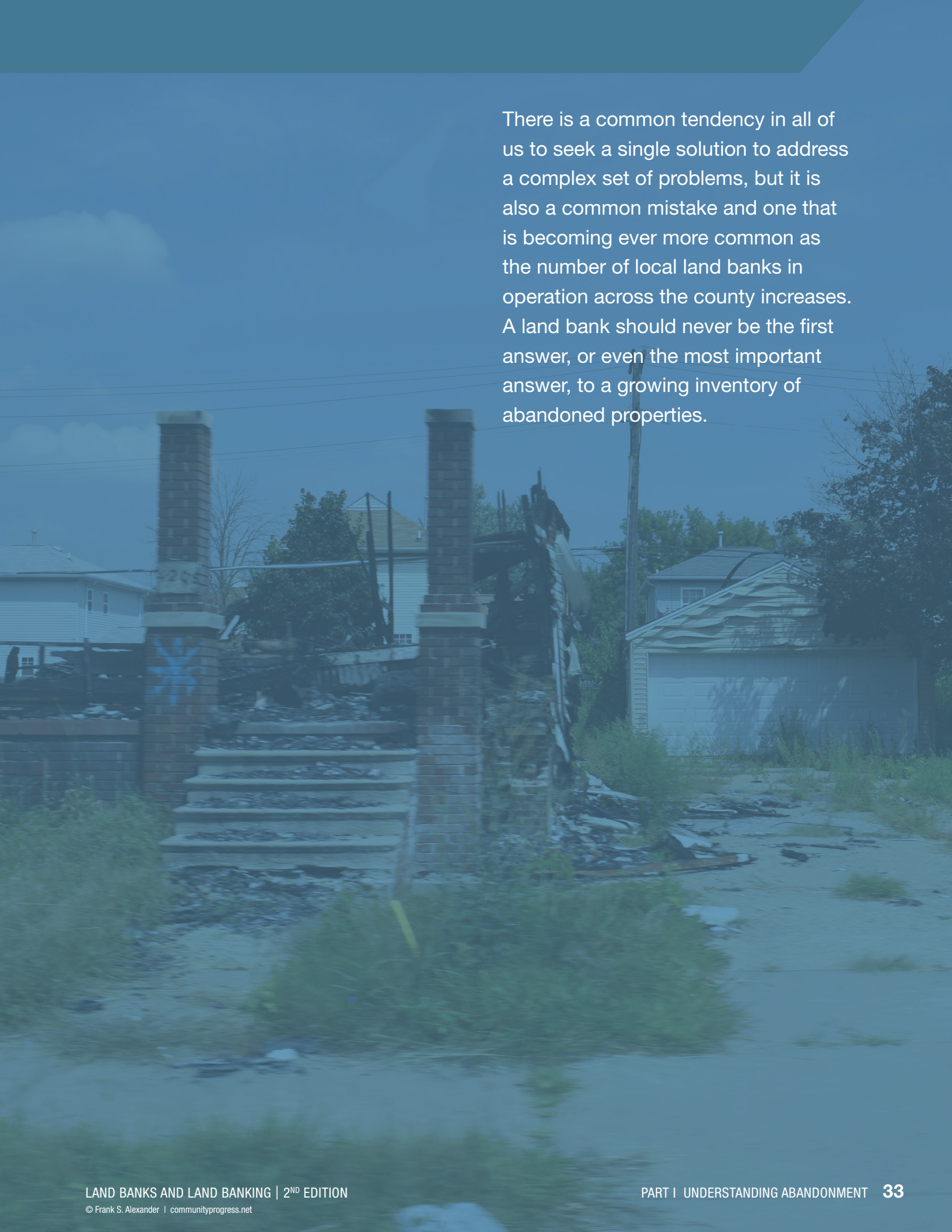
Faced with a rising tide of vacant, abandoned, and foreclosed properties, municipalities are increasingly forced to shoulder the costs of securing, maintaining and, in some cases, demolishing these buildings. Efforts to recover these costs, however, are often frustrated by difficulties identifying the responsible parties. For example, lenders who foreclose on a property often fail to record the foreclosure, or may walk away from the action, leaving the title status in limbo and making it difficult for the municipality to hold the responsible party liable for upkeep. Known colloquially as “zombie mortgages,” this unfortunate consequence of the Great Recession magnifies exponentially the complexity of identifying and holding accountable the parties responsible for properties in deteriorating conditions. The mortgage securitization market, in which the original lender often assigns the borrower’s note to a pool of multiple investors, creates a similar burden on municipalities attempting to identify the party responsible for an unoccupied building. Apart from cost recovery, other practical problems, such as prosecuting criminal activity of third parties in unoccupied buildings, becomes more difficult when the owner cannot be located.

Gaining better access to contact information for responsible parties would allow municipalities to recoup their cost outlays for maintenance or demolition of these unoccupied properties. In addition, the ability to impose fees upon and strictly enforce maintenance requirements against a party who will actually respond to such actions would likely discourage future vacancy and mismanagement of the properties.

Barrier: Lack of Control

Many vacant and abandoned properties have accumulated multiple years of citations for housing or building code violations, while the owners demonstrate no intent or capacity to remediate these violations. This group of problem properties may include severely substandard properties for which rehabilitation is not economically viable, as well as vacant unimproved lots that are in violation of local nuisance abatement ordinances. It may include buildings owned by individuals who do not have the capital to rehabilitate or demolish the structures but are unwilling to sell. It may include individuals or corporations who are absentee owners who refuse to conduct rehabilitation, and who intend to sell the property when values rise. There may also be a small subset of vacant buildings that are languishing in estate proceedings or strangled by cloudy title chains.

While local officials seeking to pressure owners to rehabilitate these problem properties may have some existing statutory powers available to them, such as code enforcement, tax liens, and nuisance actions, most of those tools have had limited effect in light of scarce resources, various procedural roadblocks and the inability of concerned individuals and organizations to legally and meaningfully enter the process. A receivership statute that allows municipalities to gain control over a property through a judicial petition grants the receiver the power to rehabilitate or demolish the property, and allows the receiver to sell the property at any time would empower the local government to address this broad range of problem properties. Without effective receivership legislation, municipalities’ attempts to alleviate the deleterious effects of vacant property may only go so far.



There is a common tendency in all of us to seek a single solution to address a complex set of problems, but it is also a common mistake and one that is becoming ever more common as the number of local land banks in operation across the county increases. A land bank should never be the first answer, or even the most important answer, to a growing inventory of abandoned properties.

CHAPTER 4

Potential Solutions

Understanding and Evaluating the Inventory

Overcoming the barrier of lack of awareness rarely requires significant legal reforms. What is necessary is simply the development of aggregate databases that identify properties according to key indicators of abandonment. The two most common indicators are (i) tax delinquency and (ii) housing and building code complaints. To the extent possible, additional property-based record information could be added for categories such as (iii) delinquent water and sewer bills, (iv) suspicious structure fires (arson), (v) property-based nuisance complaints, and (vi) mortgage foreclosures. Assembling and analyzing this data will reveal the extent to which one type of problem is a strong indicator of a growing trend toward neighborhood abandonment. Where more than one such indicator is present on a given parcel or property, or large numbers of properties with a single indicator are concentrated in one geographic location, signal alarms should be sounding that action needs to be taken.

Each indicator should be evaluated separately, and then the combined database of indicators examined for common trends. A higher-than-normal rate of tax delinquency in a community is not necessarily a sign that owners are abandoning their properties. Instead, the failure to pay taxes could be due to operational policies of the tax collector or to inadequate tax foreclosure laws that leave little incentive for owners to pay their taxes. When delinquent tax reports are correlated with delinquent water and sewer bills or complaints concerning housing and building code violations, there is a much stronger likelihood that the properties are also abandoned. A geographic information system can depict easily the presence of one or more indicators across an entire community. A concentration of tax-delinquent properties in one neighborhood but not the rest of the city is a strong indication that the underlying problem is less the policies of the tax collector than the economic decline of the neighborhood. Correlating property ownership records in the database may also reveal instances in which a single owner of multiple tracts of land is electing to ignore its legal responsibilities.

| COMPARISON OF LAND BANK STATUTES: Intent, Property, and Focus of Land Bank Operations | | | | | | | | | | (See Appendix C) |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Tax delinquent | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Vacant | - | Yes | Yes | - | Yes | - | Yes | Yes | - | Yes |
| Abandoned | - | Yes | Yes | Yes | Yes | - | Yes | Yes | - | Yes |
| Dilapidated | - | - | - | Yes | - | - | - | - | - | - |
| Facilitating property development | - | Yes | - | - | - | - | - | - | Yes | Yes |

The inventory also should be evaluated and classified according to the nature and condition of improvements on the property and the possibility of environmental contamination. Though more extensive parcel analysis likely is necessary, a well-structured database supports making preliminary determinations as to whether rehabilitation or demolition of the property is the most cost-efficient approach.

Mirroring the importance of a general community inventory of vacant, abandoned, and tax-delinquent properties is the importance to a land bank of a careful inventory and assessment of its own holdings. Virtually all of the third generation land banks are charged by law with maintaining as public records an inventory of properties with a classification of them according to potential uses. Two states (Ohio and New York) also require publicly available inventories of all properties conveyed out of the land banks.

Reforming Tax Foreclosure Statutes

Ineffective and inefficient property tax foreclosure laws compound the problems posed by the loss of revenues to local governments. The reform of tax foreclosure laws in several jurisdictions occurred as part of the legislative authorization for creation of land bank authorities. For example, the Missouri legislature created the original Land Reutilization Authority “to foster the public purpose of returning land which is in a non-revenue generating, non-tax producing status to effective utilization, in order to provide housing, new industry, and jobs for the citizens of any City operating under the provisions of (the law), and new tax revenues for such City.” Similarly, the Georgia legislature declared that “the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial tax foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General Assembly finds that tax delinquency in many instances results in properties which present health and safety hazards to the public.”

Reform of property tax foreclosure laws should focus on the following elements:

- Shift to *in rem* foreclosures
- Creation of judicial tax foreclosure proceedings
- Provision of constitutionally adequate notice
- Shorter time periods between delinquency and foreclosure
- Possibility of large-volume bulk foreclosures
- Provision for sales with no minimum bids

One of the initial steps in reforming property tax foreclosure procedures is to shift the focus of foreclosure from seeking a judgment of personal liability against the property owner to seeking to enforce a lien against the property. Proceedings against properties—commonly referred to as *in rem* foreclosures—have considerably different constitutional requirements to meet than proceedings against property owners personally. In contrast to a suit for personal liability, an *in rem* foreclosure action requires adequate notice to all owners of interests in the property, but it does not require that the court obtain complete jurisdiction over the owners themselves.

A second step in property tax foreclosure reform is to change from reliance on nonjudicial, or administrative, tax sales to judicial proceedings. A judicially supervised and approved tax foreclosure has the substantial advantage of a final judicial decision on the adequacy of notice to all parties. A judicial decision provides a strong likelihood that the property will have an insurable title—a fundamental prerequisite for future development of the property.

The lack of constitutionally adequate notice in foreclosure proceedings is the primary reason why tax-foreclosed properties are considered to have title defects and serious limitations on marketability. A decision of the U.S. Supreme Court in 1983 (*Memnonite Bd. Of Missions v. Adams*, 462 U.S. 791) held that notice of property tax foreclosure proceedings must be given to all parties holding legally protected property interests whose identities are reasonably ascertainable. This decision seriously undercut the adequacy of state laws that relied upon providing notice of a tax sale simply by publishing a notice in a local newspaper. Many tax foreclosure laws also require multiple steps over very extended periods of time, with the result that a foreclosure may require four to six years to be completed. Such a lengthy process creates yet another incentive for property owners to pay little attention to tax bills and severely limits the ability to take action against the clearly abandoned properties that are tax delinquent. States have been slow to revise their property tax foreclosure laws to accommodate the new constitutional standard and reduce the time required to complete foreclosures. In the 1990s,

however, several states substantially revised their laws to create a new judicial tax foreclosure procedure with constitutionally acceptable notice provisions.

A common misperception is that a judicial proceeding is necessarily lengthy and that separate proceedings are required for each tax enforcement action. Although procedures can require many months to complete, judicial *in rem* foreclosures can be constructed to permit a local government to process hundreds or even thousands of parcels in one short hearing.

Historically, most states' laws have provided that the minimum bid for a parcel of property at a tax sale is the total amount of all delinquent taxes, penalties, and interest. With vacant and abandoned properties, however, the amount of tax delinquency grows each year, and it is not uncommon for the total amount of the delinquency to exceed the property's fair market value. Unfortunately, in this situation there is no offer for the minimum bid, and the property is left unsold. The simple and direct solution to this barrier is amendment of the applicable state or local laws to permit either the minimum bid to be reduced to a lower amount, or the automatic transfer of the property to a public entity such as a land bank.

Another approach to dealing with abandoned, tax-delinquent properties is to forgive or waive the delinquent taxes in specific situations—for example, if the property is acquired by an approved party to be used for a specific purpose. This approach is the primary function of the Atlanta Land Bank, which has the legal authority to extinguish all delinquent taxes on properties it acquires. Any person or entity interested in acquiring a tax-delinquent tract of property from the current owner can enter into an agreement with the land bank providing that if the purchaser acquires the property subject to the outstanding taxes, it will convey the property to the land bank, which will extinguish the taxes and simultaneously reconvey the property to the purchaser. This “conduit transfer” structure has the distinct advantage of permitting nonprofit community development corporations and for-profit entities to identify and acquire tax-delinquent properties at relatively low cost—subject to outstanding taxes—knowing that the taxes will be extinguished. The land bank can facilitate transfers of properties without the need to own them for any period of time and with no costs for property maintenance. A land bank that engages in conduit transfers must have extensive policies and procedures in place to ensure that its legal powers are exercised consistent with its public purposes. When properties are processed as conduit transfers, no title questions arise about the adequacy of a tax foreclosure procedure because no tax foreclosure takes place.

Judicial Tax Foreclosures

A tax foreclosure process that provides both constitutionally adequate notice to all parties and a judicial decree on the validity of the foreclosure provides a unique opportunity to resolve all outstanding title defects. Because a lien for property taxes is the senior lien on the property, regardless of the date it arose, a valid foreclosure of this senior lien terminates the interests and claims of all other parties to the property. A properly conducted judicial tax foreclosure thus has the possibility of conveying clear and marketable title as a result of the foreclosure. If a jurisdiction grants senior priority status to nuisance abatement liens, and similar judicial foreclosure proceedings apply, enforcement of the nuisance abatement lien can also provide clear and marketable title.

Some jurisdictions, faced with numerous properties that are both tax delinquent and constitute a public nuisance, have adopted streamlined procedures to allow quick acquisition or transfer of the property. Such an “expedited” or “emergency” foreclosure proceeding requires a finding of both tax delinquency and code violations. An expedited judicial foreclosure process with constitutionally adequate notice is one of the most powerful tools for local governments to transfer vacant, abandoned, and tax-delinquent property to new responsible ownership.

Property tax foreclosure laws, unfortunately, are not directly designed to address title problems that may exist in the inventory of properties acquired by local governments under pre-existing (and usually legally defective) tax-enforcement procedures. In these instances, state and local governments find themselves with a substantial inventory of properties, title to which is clouded, defective, and not marketable. Because no taxes are due on publicly owned property, even revised tax foreclosure laws cannot provide a mechanism to gain clear title on this pre-existing inventory. The most effective way to remove this barrier is to provide by law for an expedited procedure applicable solely to publicly held inventories of previously tax-foreclosed properties. The essential structure of such a procedure is based on a quiet title action. A quiet title action is a legal proceeding that seeks a judicial ruling on the claims of all parties. In a specially designed proceeding, constitutionally adequate notice of the opportunity to redeem the property from the tax lien is given to all interested parties. Failure of such redemption then vests clear title in the local government.

One potential role for a land bank is to acquire this inventory of publicly owned properties (through previous foreclosures) and assume responsibility for legal actions necessary to quiet

title or otherwise resolve the title defects. The land bank's statutory authority to proceed with a quiet title action should be expressly set forth. Proceedings for properties held by local governments or land banks as a result of previous foreclosure actions should be structured so they can be completed quickly. As the prior owners have already lacked legal title to the properties for an extended period of time, there is little justification for the length of proceedings to extend beyond what is necessary to give adequate notice.

The single most important implication for addressing title issues is the availability of title insurance. Because of the numerous procedural obstacles and evolving constitutional requirements, title insurance companies historically have been reluctant to insure marketable title on properties acquired through tax foreclosures. To ensure that the title insurance industry is comfortable with the adequacy of new foreclosure procedures, industry representatives should participate in revising foreclosure laws for delinquent taxes and nuisance abatement liens.

Clarity and Flexibility in Disposition Criteria

One of the essential functions of a land bank is to eliminate barriers that inhibit the disposition of surplus properties by local governments. When the local government acquires properties through tax or nuisance abatement foreclosures, it does so involuntarily, resulting from the prior owner's default and the market's failure to transfer ownership to a private third party. Such properties were not acquired with public funds for public purposes, at least not in the conventional sense. It should be possible to convey some or all of this inventory to a land bank without a separate hearing and finding that each property is surplus and thus eligible for disposition. An advantage of land banks is that they are public entities subject to control by local government elected officials, so they can expedite disposition of properties without sacrificing political accountability. Policy guidelines for transfer of these publicly owned properties by land banks to private parties commonly are established in the governing documents of the land banks. Thus the local government retains the power to decide which properties are transferred to the land bank for disposition, while avoiding having to conduct a separate hearing or finding for each property that it is surplus property.

Laws requiring public auction or public bidding for local government property transfers usually do not apply to transfers of property between governmental entities. Thus

the simplest and most direct way to remove the barrier of a required public auction for local government property is to provide that conveyances by a city or county to a land bank are intergovernmental transfers. The enabling legislation for land banks should specify that transfers from local governments to their land banks are intergovernmental transfers exempt from disposition requirements that apply to transfers to private parties.

As an entity devoted to the transformation of vacant, abandoned, and tax-delinquent properties into productive use, a land bank is a special-purpose public corporation that needs flexibility in establishing the terms and conditions for the transfer of properties to new owners. Although there is wide variation among land banks on the specific pricing policies applicable to property transfers, they usually are established at the discretion of the local government rather than mandated by state statute. Rarely is a land bank required to receive full appraised value for a particular tract of property. Instead, a land bank is permitted to make transfers consistent with both the short-term and long-term benefits to the community of new ownership and revitalization of the property. This is an important policy that is often vital to the success of a land bank.

Enhancing Code Enforcement Procedures

Since the middle of the twentieth century, the standard approach to enforcement of housing and building codes has been an administrative or judicial enforcement proceeding against the property owner seeking to force the owner to remedy the violations. In some jurisdictions this is predominantly through criminal sanctions (misdemeanors). The logic of this approach is its goal to place responsibility on the party who is failing to meet public duties. The difficulty, however, is that the owner may be hard to locate, have insufficient assets, or simply drag out the proceedings for years. An alternative approach used in recent years is to authorize the local government to undertake repairs or demolition directly if the owner fails to do so within a specific period of time. While the advantage of this approach is that the local government can act far more quickly in demolishing dangerous and harmful structures, the distinct disadvantage is that local government funds are required up front.

Reliance on criminal enforcement proceedings and criminal sanctions as a method of housing and building code enforcement is largely ineffective and inefficient. While

When vacant and substandard properties are functionally abandoned it is far more likely to be true that title to the property is highly fractured.

such an approach may be justified when the owner is easily identifiable, subject to the jurisdiction of the local courts, and possesses assets for remediation, these assumptions are rarely true in the context of substandard vacant properties. When vacant and substandard properties are functionally abandoned it is far more likely to be true that title to the property is highly fractured among multiple owners and interested parties, with no single owner or entity having sufficient financial interest to respond to a complaint, and with many such owners either being beyond the jurisdiction of the criminal court or possessing insufficient assets for remediation. For minor housing and building code violations, such as overgrown grass, the possibility of a citation for a criminal misdemeanor may be effective but that is hardly the predominant characteristic of vacant and substandard properties.

The willingness of public officials to invest public resources to correct code violations on private property relates both to the magnitude of the harm caused to the community by the violations and to the likelihood of recovering part or all of the financial investment. All jurisdictions permit the local governments to file a lien against the property in the amount of the public expenditures, but if the lien has only chronological priority, it is likely to be subordinate to mortgages, judgments, or other encumbrances, rendering it of little functional value. The outcome is dramatically different, however, if the nuisance abatement lien is by law made a first priority lien, superior to all other claims against the property. Such a policy has two significant benefits. First, it is far more likely that the local government will recapture part or all of its financial investment in repairs or demolition. Second, the existence of a nuisance abatement lien with senior priority permits the local government to enforce it and proceed with foreclosure even if there are no delinquent property taxes that could be the basis for such an action.

Identifying Responsible Parties

In an effort to both recoup governmental outlays from responsible parties for vacant property upkeep, maintenance, and demolition, and to discourage future vacancy and mismanagement of property, hundreds of county and city governments have enacted vacant property registration (VPR) ordinances. While the specifics of each VPR ordinance vary based on the goals of each jurisdiction, most of these ordinances require registration either after a certain length of vacancy, or at the time of foreclosure. As summarized by Benton Martin, how a particular VPR ordinance is worded and subsequently enforced will generally turn on four key considerations: “(i) a local government’s VPR goals, (ii) specifics of the registration process, (iii) affirmative duties of potentially responsible parties, [and] (iv) enforcement mechanisms.”

The ordinance’s scope or purpose section, or its definition of “vacancy” will typically spell out the local government’s motivations for enacting such an ordinance. In terms of purpose, the government generally seeks to both recoup its costs and address ongoing ordinance violations and illegal activity that occur in vacant properties “which are detrimental to the health, safety, and welfare of local citizens.” Vacancy can be defined in various ways, depending on the problems facing the locality and the nature of the property stock. For example, in Wilmington, Delaware, a building or structure is deemed occupied “if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same.” If a question of vacancy arises, an owner can then prove the property is occupied by making a showing of such things as regular mail delivery, continual utility service, or a business license. In its determination of vacancy, Chicago considers “the percentage of the overall square footage of the building or floor to the occupied space, the condition and value of any items in the building and the presence of rental or for sale signs on the property.” The city also considers multi-family residential properties vacant when 90% or more of the units are unoccupied.

Registration under a VPR ordinance may be triggered by various factors, depending on how the ordinance is written. The “classic model” requires registration by the property owner after a certain length of vacancy (set by the ordinance) and payment of fees during the period of vacancy. These ordinances seek to collect contact information for responsible parties so that the municipality can charge for registration

and recoup other public outlays for property maintenance. Some of these classic model ordinances impose a flat fee, while others employ an escalating fee structure, which provides an incentive for owners to sell, lease, or demolish the property at their own cost. Evidence from Wilmington, Delaware, and Cincinnati, Ohio, suggests that an escalating fee structure can help increase compliance and fee recovery rates.

Some VPR ordinances require lenders to register their properties. Ordinances that use the filing of a notice of default or notice of foreclosure by a lender as their registration trigger have gained popularity, modeled after the ordinance adopted by Chula Vista, California. Such ordinances “require mortgage lenders and servicers foreclosing on residential buildings to maintain the buildings after the former owners vacate the property.” Specifically, Chula Vista’s ordinance requires that, within ten days of filing a notice of foreclosure, lenders inspect the property to determine if it is vacant or occupied. If vacant, the lender must then register with the city and is required to maintain the property to a specified community standard. The city can then collect fees and register liens against noncompliant properties, and these liens take priority over the mortgagees’ interests. In addition to the vacancy- or foreclosure-triggered models, hybrids of the two have been enacted.

Affirmative duties of responsible parties under VPR ordinances may range from the submission of a plan detailing how the property has been secured and how it will remain secured in the future, to the purchase of insurance coverage for the unoccupied building. Ordinances may also specify the level of exterior maintenance required, and require posting of contact information on the property, performance of weekly inspections, or even keeping an interior light on overnight. Fines can be imposed for noncompliance.

Local governments generally enforce their VPR ordinances by imposing criminal or municipal fees, the same mechanisms used for nuisance abatement. If the property owner does not pay these fees, the municipality can then place a lien on the property. Whether these liens take “super-priority” over other

liens on the property, or fall into line based on the order of recording, depends on state law. Courts addressing the subject have thus far upheld the authority of local governments to enact and enforce VPR ordinances.

Judicial Receiverships

A variation on direct action by local governments is to strengthen the legal procedures for the appointment of a receiver to control and manage the property. The central task of a court-appointed receiver is to step into the shoes of the owner of disputed or distressed property, to protect that property from waste or deterioration, to manage and return it to occupancy where possible, and to preserve it until the court makes a final determination as to its ultimate disposition. Statutory receivership programs that expressly provide for the appointment of a receiver over properties that are vacant, abandoned, or substandard, that expand standing to bring receivership actions to parties other than government officials, owners or lien-holders, that ensure a broad range of receiver powers, and that provide for super-priority status for receiver liens can increase the speed and efficacy of the receivership tool.

The most common objective statutory criteria for a property to be placed into a court-appointed receivership are the existence of citations for housing or building codes that are unremediated for a stated period of time. For example, pursuant to Pennsylvania’s Abandoned and Blighted Property Conservatorship Act, a receiver (or conservator) may be appointed over a building that (i) has been unoccupied for at least twelve months, (ii) has not been marketed in the sixty days before the receivership petition, (iii) has not been acquired by the owner in the previous six months, (iv) is not already in foreclosure proceedings, *and* (v) has at least three violations contained on the statute’s list of nuisances and code violations. Similarly, according to Baltimore, Maryland’s vacant building receivership ordinance, receivers may be appointed over vacant structures for which the owner has failed to comply with a notice or order to rehabilitate or demolish. Vacant structures that implicate the Baltimore ordinance are unoccupied structures that are unsafe for human habitation, and a determination of vacancy may be based on the fact that a structure is open to casual entry, has boarded-up windows and doors, or lacks intact window sashes, walls, or roof surfaces to repel weather entry.

In many jurisdictions, local governments do not have the resources or capacity to adequately abate housing or building code violations, let alone to petition the court for receivers



Chapter 4 Endnotes


- 1 Benton C. Martin, *Vacant Property Registration Ordinances*, 39 REAL ESTATE LAW JOURNAL. 6, 11 (2010).

over troubled properties. Receivership statutes that provide nonprofit housing corporations, community associations, tenants, or neighbors with standing to petition the court for a receiver over a troubled property may alleviate some of the burden on local governments. In addition, receivership statutes that expand the universe of those with standing to seek receivership over property provide a means by which individuals or organizations most adversely affected by a particular property are empowered to directly participate in the rehabilitation of that property and the neighborhood stabilization that follows.

Upon appointment, a receiver's powers should be broad and essentially mirror those of the owner, including the power to rehabilitate or demolish, and the power to sell the property at any time. Receivers should be appointed, in judicial discretion, based on their experience, ability, and resources to achieve remedial actions with respect to the objective criteria that form the basis for the receivership petition. A judicially appointed receiver has the advantages of being able to take control of any cash flow (such as rents) from the property and provide immunity from liability for such matters as environmental contamination and negligent decisions—two factors that frequently make public officials reluctant to take control of properties.

An effective receivership statute will provide for adequate receiver compensation and the super-priority status of receiver liens. If a receiver's lien is not granted such priority, there are two specific adverse results. First, the receiver will not be in a position to borrow against the value of the property in order to accomplish the maintenance and rehabilitation. Second, the lien will not permit a judicially authorized receiver's sale of the property to provide clear title. In contrast, a senior priority receiver's lien can be foreclosed and provide marketable and insurable title to the foreclosure sale purchaser.

Substandard buildings targeted by modern receivership programs, particularly those that are unoccupied and unable to draw rent, often do not retain enough value to render even a super-priority receiver lien sufficient to cover the cost of rehabilitating the property. Public or private funding sources in addition to any income from the rental or sale of receivership property may be necessary for vacant building receivership programs to make a significant impact. Therefore, receivership statutes should include, where possible, provisions for access to public funding, grant assistance or other alternative funding mechanisms.¹

A two-story house with a gabled roof, white siding, and a small front porch supported by columns. A concrete ramp with white railings leads to the porch. The house has several windows, including a large double window on the first floor and a smaller one on the second floor. The entire image is overlaid with a semi-transparent blue filter.

Substandard buildings targeted by modern receivership programs, particularly those that are unoccupied and unable to draw rent, often do not retain enough value to render even a super-priority receiver lien sufficient to cover the cost of rehabilitating the property. Public or private funding sources in addition to any income from the rental or sale of receivership property may be necessary for vacant building receivership programs to make a significant impact.

CHAPTER 5

Additional Tools and Alternatives

With a primary focus on vacant, abandoned, tax-delinquent, and foreclosed properties, the dominant thrust of a land bank's efforts is on acquiring and managing these properties in the most efficient manner, eliminating the liabilities imposed on the community at large. As the liabilities of these properties are removed, whether through demolition and cleaning or rehabilitating for occupancy, the second purpose of a land bank becomes dominant. This is the question of how to ensure that the property will be used in the manner most consistent with productive uses as locally determined. In this secondary stage, a land bank's function will be shaped by the specific socioeconomic factors in the particular community. Three examples of specialized roles are (i) serving as a depository "bank" holding title pending emergence of use and demand in the future, (ii) serving as an active catalytic partner in stimulating new development, and (iii) serving as a facilitator or bridge to the development of community land trusts.

Land Banks as Regional Approaches

The presence of a growing inventory of vacant and abandoned properties within the geographic limits of any given local government is rarely attributable solely to actions or inactions within the political boundaries of that particular government. One of the most common contributing causes to inner city neighborhood decline is simply urban sprawl manifested by shifts in population, residential development, and retail development to expanding rings of suburbs. Economic cycles reveal, however that urban sprawl itself is vulnerable

to pockets of decay and abandonment, as demonstrated by unfinished residential subdivisions and vacant shopping malls dotting the landscape as a residue of the Great Recession.

As economic stability and instability do not necessarily elect to honor the walls of political boundaries, an important variation on the theme of land banks and land banking occurs in the possibility that a land bank can be an example of regional collaboration. There are three different "drivers" that lead to the possibility of such intergovernmental cooperation and coordination: (i) the presence of key legal authority in one, but not all, local governments, (ii) the presence of shared interests, concerns, and plans that prompt multi-governmental formation of a single land bank, and (iii) the economic efficiencies resulting from one land bank providing infrastructure and operational support by contract to other land banks. The ten states that have adopted comprehensive land bank legislation in recent years reflect a broad range of approaches to regional collaboration, indicative of the unique formulations in the allocation of authority between the state and local governments, and among local governments.

It is not unusual for the authority and responsibility for the levy and collection of property taxes to reside at the level of county government rather than municipal government, or for the county to serve in such capacity at the request of the municipality. Because delinquent property taxes are a common characteristic of vacant and abandoned properties, in these jurisdictions some form of collaboration, usually by intergovernmental agreement, is a necessary prerequisite to the creation of a land bank. Nine of the ten states' comprehensive statutes contemplate some form of regional collaboration.

When statutory authority to create a land bank is vested at the county government level it commonly permits, if not requires, the participation of one or more municipalities located within the county to participate in the creation and operation of the county level land bank. Eight of the ten states permit the creation of a land bank by a municipality acting alone, but usually then only if the municipality has statutory authority to enforce the collection of property taxes.

Land Banks as Depositories

When the primary barriers to reuse of vacant and abandoned property by the open market are tax liens and foreclosure processes, it is entirely possible that a land bank can acquire these properties and quickly reconvey them to qualified transferees for reuse and redevelopment. When market demand for these properties has simply disappeared, however, a land bank can serve as a true “bank,” holding ownership pending the reemergence of demand and a productive use. The self-conscious and intentional design of a true depository program, where parties can literally deposit ownership of land into the land bank and withdraw it at a future date, has its origins in the Genesee County Land Bank in 2004, with substantial expansion and reformulation by the Atlanta Land Bank in early 2008.

During the housing and economic recession of 2007-2010, an increasing number of neighborhood-based nonprofit community development corporations (CDCs) in Atlanta found themselves owning parcels of property that were either unimproved or left only partially developed, for which all forms of market demand had evaporated. As these properties continued to be subject to property taxes, the holding costs for these CDCs increasingly became a barrier to achieving their mission. In response to this challenge, the Atlanta Land Bank created a Land Bank Depository Agreement Program. The goals of this program, as set forth by the Atlanta Land Bank, are fourfold:

- a. Permit advance acquisition of potential development sites in anticipation of rapidly rising land prices;
- b. Facilitate pre-development planning, financing and structuring;
- c. Minimize or eliminate violations of housing and building codes and public nuisances on properties to be developed for affordable housing; and
- d. Hold parcels of land for future strategic governmental purposes such as affordable housing and open spaces and greenways.

The Atlanta Land Bank has adopted policies and procedures to govern its depository program. A template for a Land Bank Depository Agreement set of policies and procedures is set forth as Appendix F. These policies and procedures define what sorts of transactions are permissible and limit who may participate. Generally, the depository program “consists of transactions in which a grantor transfers property to the land bank and the property is held by the land bank pending a transfer back to the original grantor, to a grantee identified in a banking agreement, or to a third party selected by the land bank.” Grantors and grantees of the depository program must be either a governmental entity, a nonprofit corporation, or a limited partnership in which a governmental entity or a nonprofit has a controlling interest. Properties eligible to be deposited with the land bank must either be unimproved real property or real property with newly constructed unoccupied single family residences, with the latter being restricted to 20% of the deposited property at any given time. Tracts that contain improvements may be eligible properties so long as sufficient funds are placed in escrow to ensure that all improvements are demolished and removed within 60 days of closing. The Depository Agreement Program specifically excludes all other forms of real property, occupied property, and property that has been identified by the government as containing hazardous substances and materials.

To effect a transfer of property to the land bank, an eligible party and the Atlanta Land Bank must enter into a written “Banking Agreement,” which identifies: the property, the length of the banking term, the potential grantee(s), the range of permissible uses of the property following transfer out of the bank, the permitted encumbrances, the rights and duties of the parties, the responsibility of the grantor for holding costs, the possible advance funding of holding costs, and the forms of the instruments of conveyance. The maximum banking term for transactions in which the grantor is a nonprofit entity is 36 months, and 60 months for transactions in which the grantor is a governmental entity.

The holding costs of a property are defined to include any and all costs, expenses, and expenditures incurred by the Atlanta Land Bank, whether direct, pro rata, or administrative, that are attributable to the ownership and maintenance of a tract of property. The Atlanta Land Bank incurs monthly maintenance costs on each of these properties, including lawn maintenance, debris removal, monitoring and inspection, and property insurance, and contracts with third-party property management companies to assist with the active management of deposited properties. Payment for these costs is made by the grantor on an ongoing basis and is not deferred until the end of the depository period. In the event that the land bank

is not timely reimbursed for these costs, it reserves the right to demand that the grantor or its designee accept a transfer of the property, accompanied by a full reimbursement of the holding costs. If the grantor or its designee is unwilling or unable to accept such a transfer, then the land bank has the right to terminate the Banking Agreement and the property becomes an asset of the Atlanta Land Bank.

By mandating that public purpose restrictions be placed on properties transferred out of its depository, the Atlanta Land Bank is able to ensure that the stated goals of its program are furthered with each transaction. Atlanta's policies and procedures state that any property transferred by the land bank pursuant to a Banking Agreement must be subject to covenants and conditions providing that the property will be used for one of the following goals: (a) production or rehabilitation of low-income housing; (b) production or rehabilitation of low- or moderate-income housing; (c) community improvements; or (d) other public purposes. Each Banking Agreement is required to specify the range of permissible uses and the manner in which the restriction will be secured, which could be in the form of contractual obligations, deed covenants, rights of reacquisition, or any combination thereof.

In practice, this program provides several tangible benefits to Atlanta's neighborhoods struggling with vacancy and abandonment. The tax burden associated with property ownership often prohibits owners or potential developers from engaging in redevelopment or assemblage. But while the land bank holds legal title to the property that is in the depository agreement program, the property is held tax-exempt. By allowing the land bank to inventory property, the depository program expands the ability of developers to attack a broader footprint within the community by phasing the development efforts over an extended period. Further, some neighborhoods may be held back by a smattering of substandard properties that are cost prohibitive to repair. The depository program allows stakeholders to acquire and demolish these structures, and then have the land bank manage the empty lots. This process can assist with improving the visual presentation of the neighborhood to current and potential residents.

The Land Bank Depository Agreement Program of the Atlanta Land Bank was created prior to the height of the mortgage foreclosure crisis, and before the federal government created and funded the national Neighborhood Stabilization Program. The timing, however, was fortuitous as the program fit perfectly into federally authorized use of funds for acquisition and banking of foreclosed properties. Atlanta's depository

program banked its first properties in 2010, and had entered into transactions with seven clients covering 160 properties as of October 2010.

Land Banks as Development Partners

With a goal of acquiring and managing those properties that are liabilities to the neighborhoods and the community, and transferring the properties to new owners for use in accordance with locally determined priorities, a land bank generally does not serve as a developer for the properties in its inventory. It will instead either hold onto legal title for the property for which there is no demand at all, or will convey the property to an eligible transferee for use in accordance with the land bank's policy priorities. When the land bank acquires property that can be rehabilitated and transferred in a relatively short period of time, it could more easily function as a contractor or developer.

Even though a land bank can act as a developer, land banks are not the same as redevelopment authorities. Industrial development authorities and urban redevelopment authorities usually have had as their dominant characteristics a specific and targeted geographic focus, the power to issue tax-exempt financing, and the power of eminent domain. They are designed to use these most significant of governmental powers in the development or redevelopment of a particular location for a particular purpose. In contrast, land banks arose from the recognition that an increasing number of parcels of land, whether privately owned or held by the local government as a result of tax foreclosure procedures, were not being reclaimed or redeveloped by market forces. Structural, legal, and financial barriers existed, and still exist, that inhibit the access of private markets and public entities to these stagnant properties. These vacant, abandoned, and tax-delinquent properties could be concentrated in certain areas, but they are also scattered across neighborhoods and cities in random patterns simply as isolated parcels.

When the economic conditions of a particular community have left one or more significant parcels of land in a vacant and abandoned status for years, and the local government lacks other policy tools to facilitate redevelopment, a land bank can step into this breach and serve as a catalyst for the productive reuse of the land. Most land banks do not possess, and are not expected to possess, significant in-house capacity in new construction, extensive rehabilitation, or adaptive reuse of properties. Such expertise, if it exists at all within the

public sectors of a given community, are more likely to be located with a downtown redevelopment authority, an urban redevelopment authority, or more specialized authorities in the fields of recreation or transportation facilities. When such authorities do exist, it is entirely possible for a land bank to transfer real property inventory to the specialized authority, or for all of the land banking functions to be consolidated with such an authority.

When a community lacks existing development or redevelopment capacity, it may indeed become possible and appropriate for a land bank to serve a catalytic role in stimulating the redevelopment of a specific tract of land. Precisely because of its ability to acquire and hold vacant land, the land bank possesses a key potential asset that it can contribute to a redevelopment joint venture or limited partnership. To the extent that the land bank possesses broad authority to borrow funds and secure its own interests by taking back subordinate construction financing or long term debt or equity positions, it possesses a strong set of partnership tools.

Land Banking and Community Land Trusts

A land bank is frequently confused with a land trust, and the confusion is understandable. Land trusts in the United States have a much longer history and are more widely recognized. With a solid foundation in the environmental movement's concern for the protection of open spaces, parks, forests, and wilderness areas, the land trust model over the course of the twentieth century functioned predominately as a land conservation program, a "land conservancy." To the extent that a particular land bank acquires vacant and abandoned property and either manages it as open green space or conveys it to a governmental or nonprofit entity as dedicated and protected public space, the land bank is functioning in a manner quite parallel to a land trust conservancy.

There are, however, vital points of difference between a land trust and a land bank. A land trust is usually a private nonprofit entity, while a land bank is a governmental authority. A land trust conservancy normally has a singular focus on protection of natural resources and permits very limited, if any, development activities; a land bank will acquire and manage properties and then transfer them to third parties for whatever priority uses are locally determined, including affordable housing, mixed-use development or green spaces. A land trust anticipates

holding legal title to the property indefinitely; a land bank holds legal title only until an eligible transferee can be identified. A land trust targets for acquisition specific tracts of land that it acquires by purchase or donation; a land bank acquires abandoned land wherever it happens to be located. A land trust possesses only such powers as are available under federal and state law to not-for-profit corporations; a land bank possesses a broad range of governmental powers authorized by state statute and intergovernmental agreements. A land trust is generally dependent on philanthropic contributions for its operating budget; a land bank may possess a range of internal financing sources derived from the source of its inventory and tax policies.

Within the broad context of land trusts generally has emerged a more specialized form known as the community land trust (CLT), or the community land trust for affordable housing. The clear focus of this form of CLT is the acquisition of land for the development of housing that remains affordable over multiple generations. One of the key structural components of the CLT operational model is that the CLT acquires and continues to hold legal title to a specific tract of land. It enters into long-term ground leases upon which the lessee develops residential homeownership or rental housing. The ground lease and policies of the board of directors of the CLT incorporate limits on resale prices so as to ensure multigenerational housing affordability. The CLT, as owner of the underlying land, is able to retain through the ground lease both a right to repurchase the property at specific prices, and to require property maintenance. The possibility of long-term fixed rate mortgages for owner-occupied homes, based on long-term ground leases, is beginning to emerge in the financial markets.

As with land trusts generally, there are points of overlap between land banks and CLTs. Land banks tend to focus on properties that are abandoned, and it is common that CLTs elect to emerge in neighborhoods where there is a predominance of substandard housing. Land banks may have as their top priority the transfer of properties for use as affordable housing, which is precisely the mission of CLTs. Points of difference still remain, however. Land banks thus far hold onto legal title only until a new transferee can be identified; CLTs anticipate holding legal title to the land at least for the duration of the long-term ground lease (normally 99 years). Land banks remain public entities accountable to the elected public leadership, and subject to shifting priorities; CLTs are private nonprofits governed by a locally selected board of directors.

There is a range of intriguing possibilities, for the most part yet to be explored, in the potential interface between land banks and CLTs. It is certainly possible in most jurisdictions for a land bank to convey its property to a CLT with requirements that the property be used for affordable housing. It is also possible for a CLT to utilize a land bank depository agreement program and “bank” properties it strategically acquires in advance of its ability to move forward with the development of long-term ground leases and residential units. A land bank could also elect to hold for longer-than-normal periods certain parcels of land it acquires through the tax foreclosure process in anticipation of the possible development of one or more scattered site CLT programs. If the applicable state enabling legislation addresses the interface between land banks and CLTs, it may be possible for a land bank to continue to hold legal title to land in a collaborative relationship with the CLT, thereby affording the benefits of ongoing tax-exempt status to the underlying land. The Georgia Land Bank Act (2012) contains express authorization for such collaboration between a land bank and a CLT.

Land Banks as Natural Disaster Responses

Though the earliest proposals in the United States for land banking programs contemplated that they would serve as tools for prospective land use planning, the experience of land banking in the United States over the past fifty years has been the reverse. Land banks and land banking initiatives emerge to deal with abandoned properties long after development has occurred, matured, and begun to deteriorate.

If land banks and land banking are specialized tools to deal with property that is inaccessible to the open market, or for which there is simply no market demand, then it would be prudent to anticipate land banks as one of the tools to be available to federal and state emergency management agencies when natural disasters occur. Within the past decade there are three examples of such disasters in which a land banking program, if it had been available, would have impacted the short term and long term recovery and remediation efforts.


The first of these examples were the devastation in August, 2005 in and around New Orleans, Louisiana, by Hurricanes Katrina, Wilma, and Rita. As the waters receded, tens of thousands of parcels of properties were unoccupied and heavily damaged. For many of these properties repair and reconstruction were not feasible because of the need for new housing and building code requirements, the inadequacy of

insurance coverage, or simply highly fractured and uncertain ownership as a matter of title. Payments of federal emergency relief funds added many owners, but contained little in the way of provisions to ensure reconstruction or transfers of ownership. Years after the storms have passed, the ownership of many of these properties devolved to the City of New Orleans, or to the New Orleans Redevelopment Authority. Neither entity, however, had a land bank at the time of the storms or the capacity to move quickly to create a land bank.

The series of tornados that ravaged Tuscaloosa, Alabama, Joplin, Missouri, and Minneapolis/St. Paul, Minnesota, in May 2011 similarly left wide swaths of completely destroyed neighborhoods. A major concern expressed by local and federal emergency management officials in the weeks and months following was the challenge posed by owners being unable to rebuild and electing to abandon the properties, or receiving insurance proceeds and still abandoning the properties, or even simply selling the properties at salvage prices to third party speculators who would not take responsibility for clean-up and reconstruction. Neither Tuscaloosa nor Joplin had existing public authorities that could adequately take ownership of these properties pending reuse and redevelopment. In Minneapolis, the Twin Cities Community Land Bank, a private nonprofit organization with limited land banking capacities was able to move rapidly to help stabilize and preserve the housing stock and neighborhood culture of a low-income community.

Eighteen months after the tornados, “Superstorm Sandy” devastated the eastern coast of the United States, causing intensive damage to coastal New Jersey and New York. As with the storms of 2005 and 2011, Sandy destroyed thousands of properties, frequently leaving an end result that improvements would not be or could not be repaired or reconstructed. In all three instances, the damage of storms left a long trail of vacant and abandoned properties.

As local governments and state legislatures continue to improve upon land banks and land banking as a specialized tool for neighborhood, city, and regional land use planning, there is little reason not to incorporate in comprehensive state land bank legislation a special section providing for the possible creation of a land bank by the Governor following a declaration of emergency from a natural disaster that results in extensive property damage and dislocation of residents. A recommended section for such an emergency provision has been included in the template legislation set forth in Appendix D.



As local governments and state legislatures continue to improve upon land banks and land banking as a specialized tool for neighborhood, city, and regional land use planning, there is little reason not to incorporate in comprehensive state land bank legislation a special section providing for the possible creation of a land bank by the Governor following a declaration of emergency from a natural disaster that results in extensive property damage and dislocation of residents.



Creating and Operating a Land Bank



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Creating Essential Powers for Land Banks



To accomplish its task of facilitating the transformation of vacant and abandoned properties, a land bank must have specific legal powers. The range of possible legal authority is broad, but certainly not all forms of local government powers are necessary. A land bank's powers should correspond directly to the particular goals a community has for its land bank. Often there is temptation, at one end of a spectrum, to confer upon a newly created land bank the full set of powers commonly possessed by redevelopment authorities, including the power to issue tax-exempt financing or the power of eminent domain. The earliest proposals for land banking included a range of functions and powers that far exceeded the roles being performed by city and county governments themselves. Unless there is considerable caution, however, such broad powers may reflect potentially inconsistent policy goals risking conflicts with other local government entities. At the other end of the spectrum is the position that a land bank should have only the minimum powers necessary to acquire title to a particular category of properties, such as those that are tax delinquent. The difficulty with this latter approach is that the land bank's effectiveness is likely to be hampered by its own legal limitations. Ultimately, a land bank should possess only the legal powers necessary to accomplish its intended tasks in cooperation with existing local government structures.

The core legal authority essential for land bank operations is the power to acquire, manage, and dispose of property. The power of eminent domain is often suggested for land bank authorities, but rarely given. Other powers, such as the ability to extinguish delinquent taxes, also may be granted.

Property Acquisition

Land banks use various approaches to acquire properties, which inevitably have a profound impact on the overall nature and extent of their operations. A few of the land banks automatically receive title to all properties that are not sold at tax foreclosures for the statutory minimum bid. In each case, the land bank is deemed to have submitted the minimum bid so that a foreclosure sale is completed and a deed executed. In other instances, such as Ohio, land banks receive title to all properties not sold at foreclosure for the minimum bid, but there is a prior stage at which the local government can pre-select the properties to be conveyed to the land bank.

Michigan takes a slightly different approach, authorizing land banks to receive, but not automatically be given, properties forfeited as a result of tax foreclosure proceedings. Part of the reason for this difference is that under Michigan law, the tax foreclosure proceedings culminate in forfeiture of the property to the foreclosing governmental unit, not a tax sale, as is the case in the other jurisdictions. Michigan law also gives local governments the right to acquire tax-foreclosed properties that could otherwise be conveyed to a land bank or offered at public auction.

In contrast to these land banks, the Atlanta Land Bank does not automatically receive title to any properties as a result of tax foreclosures. It has the authority (but not the obligation) to tender the minimum bid at a tax foreclosure sale by agreeing to assume responsibility for the amount of taxes that it subsequently extinguishes, and acquires the property only if there is no higher bid.

| COMPARISON OF LAND BANK STATUTES: Powers of Land Banks | | | | | | | | | | (See Appendix C) |
|--|-----|-----|----------------------|----------------------|----------------------|----------------------------|--------------------------------|----------------------|-----------------------|--------------------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| All powers necessary | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Adopt bylaws | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Articles of Incorpor. | Yes |
| Sue and be sued | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Intergovernmental agreements | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes, with State | Yes |
| Regional collaboration | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| Procure insurance | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Contract with third parties | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| Develop a redevelopment plan | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Ranking of priorities for property use | No | No | Yes, by Local Entity | Yes, by Local Entity | Yes, by Local Entity | Yes, by Local Entity | Yes, by Local Entity | Yes, by Local Entity | No | Yes, by Local Entity |
| Develop real property | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Demolish real property | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Charge fees for services | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Lease (as lessor and as lessee) real property | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Limitation on tax exempt status | No | No | No | No | No | Yes, when leased as lessor | Yes, after fifth year of lease | No | n/a | Yes, after fifth year of lease |
| Develop real property through partnership or joint venture | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| Discharge and extinguish public tax liens | No | Yes | No | Yes | No | No | Yes | Yes | No | No |
| Engage in Code Enforcement | No | Yes | No | No | No | No | No | No | No | No |
| Power of eminent domain | No | No | No | No | No | No | No | No | No | No |
| Bulk quiet title actions | Yes | No | No | No | Yes | Yes | Yes | No | Yes | Yes |

Most land banks can receive title through tax foreclosures to any kind of property, whether vacant or improved, residential or commercial. In Ohio, however, land banks are largely restricted to receiving title to land that either is unimproved or has structures against which the local government has commenced demolition proceedings. Ohio's land banks are authorized to acquire improved properties through the foreclosure process if the local government first determines that the property is "necessary for implementation of an effective land reutilization program."

Although land banks receive most of their properties as a result of tax foreclosures, it is key to a land bank's operations that it has the authority to acquire properties from three other possible sources.

First, a land bank should be able to acquire other publicly owned properties from local governments, whether acquired years earlier as a result of foreclosure proceedings or properties that have become surplus. All of the second and third generation comprehensive land bank statutes expressly provide broad authority for discretionary transfers from the participating local governments to the land banks.

| COMPARISON OF LAND BANK STATUTES: Real Property Acquisition and Inventory | | | | | | | | | | (See Appendix C) |
|---|----------------|------------------------|-----|-----|-----|-----|-----|-----|----------------------------------|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Municipal transfers | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Own property outside of geographic jurisdiction | Not prohibited | Yes, through IGA | No | No | No | No | No | No | Not prohibited | No |
| Acquire by gift, devise, transfer, exchange | Yes | Yes, subject to limits | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Acquire by purchase | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Property is subject to local building codes and zoning laws | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Accept deed in lieu of tax foreclosure | Yes | Yes | No | No | No | No | No | No | No | No |
| Maintain public inventory of all property held by LB | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes, for tax-delinquent property | Yes |
| Time limit on holding of property | No | Yes (16 yrs) | No | No | No | No | No | No | No | No |

Second, a land bank should have the discretion to acquire properties through voluntary donations and transfers from private owners. For example, Ohio's land banks can receive properties through a deed in lieu of tax foreclosure, and donative transfers are expressly authorized for the Atlanta Land Bank and the Genesee County Land Bank. The Genesee County Land Bank is not required to accept all properties proceeding through the tax foreclosure process, and can exercise some discretion in identifying the properties it seeks to acquire. It identified the following factors to be considered in its acquisitions of properties:

1. Proposals and requests by nonprofit corporations that identify specific properties for ultimate acquisition and redevelopment.
2. Proposals and requests by governmental entities that identify specific properties for ultimate use and redevelopment.
3. Residential properties that are occupied or are available for immediate occupancy without need for substantial rehabilitation.
4. Improved properties that are the subject of an existing order for demolition of the improvements and properties that meet the criteria for demolition of improvements.
5. Vacant properties that could be placed into the Side Lot Disposition Program.

6. Properties that would be in support of strategic neighborhood stabilization and revitalization plans.
7. Properties that would form a part of a land assemblage development plan.
8. Properties that will generate operating resources for the functions of the Land Bank.

A third potential source of properties for a land bank, if it has the necessary legal authority, is acquisition by purchase or lease on the open market. The rationale for such a power is that a land bank could negotiate the purchase of property from a private owner to complete an assemblage of property for redevelopment. All of the third generation of land bank statutes now expressly contain broad forms of acquisition powers.

The early proposals for land banks contemplated the acquisition of large amounts of land as a way of controlling urban sprawl, moderating land prices and achieving public land use planning. Achieving such a large-scale vision would not be possible unless a land bank had the ability to acquire parcels of land through eminent domain. Many of the early proponents thus argued in favor of eminent domain as a core power for land banks. In the late 1960s and early 1970s, however, questions still existed about the scope of federal constitutional provisions that private property not be taken for public use without just compensation. Specifically, would

the constitution permit a local government entity to exercise eminent domain to acquire a tract of property solely for the purpose of conveying it to another private owner? The 1954 decision of the U.S. Supreme Court in *Berman v. Parker* (348 U.S. 26 (1954)) permitted the use of eminent domain for redevelopment of slum areas, but the extent of the power to take the property of one owner to convey to another owner remained uncertain. Thirty years later in *Hawaii Housing Authority v. Midkiff* (467 U.S. 229 (1984)) the Supreme Court decided that the substantive scope of the constitutional “public use” clause is co-extensive with legislative determinations of what constitutes public use. Subsequently, in *Kelo v. City of New London* (545 U.S. 469 (2005)) the Court held that it was permissible for the government to use eminent domain to transfer land to private hands where the asserted public purpose was economic development. In the aftermath of *Kelo*, however, a large number of jurisdictions enacted either state constitutional amendments or state statutes that severely circumscribed the use of eminent domain for purposes of economic development.

Land banks as they have developed over the past 35 years have had a much narrower focus than originally proposed. Instead of serving as proactive “land reserve” entities—controlling the supply and demand of land for development purposes as an alternative strategy to zoning—these land banks are focused on returning vacant, abandoned, and tax-delinquent lands to productive use. The argument in favor of giving them eminent domain power directly relates to their potential role in assembling larger tracts of land for future development. As most of the land banks do have the power to assemble land, when a single lot or parcel is outstanding in private ownership and the owner will not voluntarily convey the property, the entire assemblage can be defeated and the proposed new development thwarted.

Thus far, there has been consensus at the state legislative level against giving the power of eminent domain to land banks.

Thus far, there has been consensus at the state legislative level against giving the power of eminent domain to land banks. The template comprehensive land bank legislation expressly disclaims the power of eminent domain, and the power of eminent domain is not in the enabling legislation of any land bank. Under state law the power of eminent domain will not be implied. Three arguments usually are presented against delegation of eminent domain to land banks. The first is that the applicable state constitutional law places substantive limits on using this power for redevelopment purposes. The second is that local governments themselves possess the power of eminent domain, and to the extent that it is or could be exercised, it should be done by a governmental entity that is directly accountable to the electorate. If the purpose of the acquisition is within state constitutional parameters, the local government can acquire the property and then convey it to the land bank. Third, the exercise of this form of eminent domain power is often referred to as “spot condemnation” and generates the strongest public and political opposition.

Property Management

Most land banks are required by law to maintain an inventory of their property holdings and classify them according to their potential uses. Ownership of a large volume of properties poses significant challenges that reach far beyond simply listing and classifying the property. Land banks become responsible for all aspects of property management and maintenance, which is not a simple task when the properties contain dilapidated and deteriorating structures. All of the second and third generation comprehensive land bank statutes expressly provide for broad powers relative to the management, rehabilitation, and demolition properties held in inventory.

Although it may be implicit in the governance authority for some land banks, a characteristic of most recent land bank legislation is that it confers upon land banks the authority to establish fees and collect rents—recognition that they can acquire occupied properties or rehabilitate and lease their properties to third parties. The evolution of land banks over the past 35 years has suggested the need to address two specific concerns related to the management of properties by a land bank: their ability to enter into property management contracts and the issue of liability for environmental problems. Given the number of properties acquired by a land bank as well as the range of types of properties, recently established

land banks have been expressly authorized to contract with private third parties for the management and operation of portions of the inventory.

A concern that led some proponents of early land banks to be cautious about automatically accepting all tax-foreclosed properties or accepting properties with improvements on them is fear of potential liability under federal or state law for the costs of environmental remediation. Governmental entities are granted limited immunity for environmental cleanup costs when ownership of the property is considered to be an “involuntary acquisition.”

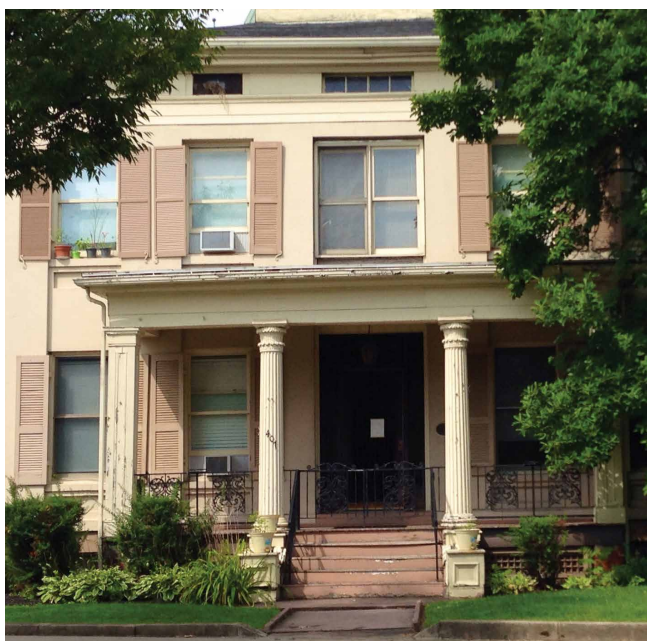
Property Disposition


State and local laws regulating the disposition of publicly owned properties often pose a barrier to the transfer and transformation of vacant and abandoned properties. With the majority of these properties being acquired as a result of tax foreclosure proceedings, local governments have found themselves with properties they did not want and could not transfer. One important function of a land bank is to recognize the special nature of these properties and create a far greater degree of flexibility in the terms and conditions under which the properties can be conveyed to third parties.

A crucial policy decision for local governments contemplating creation of a land bank and for the leadership of a land bank once it is created is the establishment of policies governing sales prices for property transfers. Underlying the creation of

pricing policies, however, is the threshold issue of whether pre-existing laws for disposition of public assets apply to the properties of a land bank. In a manner that is reflective of the unique structure of such laws in each jurisdiction, each land bank has addressed this concern in a slightly different manner.

A characteristic of the second and third generation land bank statutes is the specific authorization to establish, in the discretion of the land bank, specific pricing policies applicable to sales and other dispositions of inventory. Such discretion is in recognition of the fact that the public purposes of a land bank depend heavily upon local socioeconomic conditions and local government priorities. In communities experiencing the complete loss of market demand for property, the highest and best use for the land bank inventory may simply be the conversion of properties into parks, gardens, and public transportation corridors by conveyances at no cost to not-for-profit entities or local government agencies. In other communities, the land bank inventory may have optimum impact when used as a catalyst to spur new development, in which case the conveyances may be made at little or no cost but contingent upon development activities. In yet other communities facing a shortage of affordable housing, the inventory may be conveyed at no cost to a not-for-profit developer in order to achieve the lowest possible price points for the future occupants.





A crucial policy decision for local governments contemplating creation of a land bank and for the leadership of a land bank once it is created is the establishment of policies governing sales prices for property transfers. Underlying the creation of pricing policies, however, is the threshold issue of whether pre-existing laws for disposition of public assets apply to the properties of a land bank. In a manner that is reflective of the unique structure of such laws in each jurisdiction, each land bank has addressed this concern in a slightly different manner.

CHAPTER 7

Financing of Land Bank Operations

The financing of the operations of a land bank cannot be an afterthought. It must be contemplated in and anticipated by the state enabling legislation, the intergovernmental agreement, and the operational priorities as established by the land bank's board of directors. The starting point for any discussion of the funding of land bank operations must always be with the nature of the real property inventory that is the focus of the land bank's activities. Such inventory is the vacant, abandoned, and foreclosed properties that the open market has abandoned. By their very nature, these properties in their current condition are not providing tax revenues or community benefits. They are liabilities. They drag down neighboring property values, increase the costs of police and fire protection, and destabilize neighborhoods and communities.

In a period when local governments are facing significant fiscal stress, it is not easy to make the case that the local government should spend its limited funds to remove deteriorated structures, yet the facts clearly demonstrate that demolishing a single deteriorated, partially burned structure immediately yields far greater value to the community than the cost of demolition. A long-term view of converting these vacant spaces into vibrant places should be sufficient to make the case for direct governmental funding of land bank operations, but such a perspective does not always prevail. In light of this, creative new approaches have emerged in the second and third generation of land banks in which land banks can not only return vacant land to productive use, they can do so without requiring significant expenditures of limited existing governmental resources.

| COMPARISON OF LAND BANK STATUTES: Financing of Land Banks | | | | | | | | | | (See Appendix C) |
|--|-----------------|-----|-----------------|-----------------------|-----|----------------------------|-----------------|-----|-----|-----------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Grants & gifts | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Rental payments | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Payments from services rendered | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Payments from property sales | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Borrow money | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| Issue revenue bonds | Yes | Yes | Yes | No | No | Yes | Yes | Yes | No | No |
| Invest money | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| Procure insurance for payment of debt | Yes | Yes | Yes | Yes | No | Yes | Yes | Yes | No | Yes |
| Potential tax recapture on property disposed of by land bank | Yes (50%/5 yrs) | No | Yes (50%/5 yrs) | Yes (up to 75%/5 yrs) | No | Yes (100% minus fees/3 yr) | Yes (50%/5 yrs) | Yes | No | Yes (up to 50%/5 yrs) |

General Revenue Funding

It is certainly possible that the entire operating budget of a land bank can be provided through general budget allocations by the participating local governments. This was the approach taken by the first generation of land banks in St. Louis, Cleveland, Louisville, and Atlanta. This approach can still be viable, and is most efficient when the land bank operations are actually “embedded” within the functions of an existing department or agency of one of the local governments, such as a department of housing and community development or redevelopment authority. In such instances, the land bank is created as a legal entity with authority to exercise the statutorily conferred powers, yet the activities are performed by existing offices and employees of the local government.

One of the most important elements to the proposition for general revenue funding of land bank operations is the extent to which a land bank becomes responsible for functions otherwise performed by the local government itself. It is quite common that a local government is regularly spending substantial funds on the remediation, or demolition, of major housing and building code violations, all with respect to property that is privately owned, but in hopes of the possibility of repayment or reimbursement by the owners. As local governments tend to recover a very small percentage of code enforcement expenditures on heavily deteriorated, privately owned property, it makes greater financial sense to coordinate with the local land bank for acquisition of title to the property through tax enforcement proceedings and a transfer of the parallel budget amount for the remediation and demolition.

There are three primary drawbacks to relying solely on general revenue funding. The first is that it tends to be effective only when the incremental costs are low, which means that the size and nature of the inventory being acquired, managed, and conveyed is small and easy to address. If a particular community has only a small number of “problem” parcels, and an existing department or authority with adequate staff, this approach may work. It will not succeed, however, when the targeted inventory is large, or the nature of the property conditions is complex.

The second drawback to reliance on general revenue funding is that most land banks are—and should be—cooperative endeavors of multiple local governments. Whenever there are two or more participating governments, there is inevitably tension regarding whether each local government is receiving a financial benefit that corresponds to its annual financial contribution. This leads, unfortunately, to a struggle when allocating staff resources, as sometimes political concerns receive priority over the properties themselves.

The third drawback to general revenue funding is quite simply that the funding is not assured year to year. It requires the land bank leadership to reestablish each year the costs of neglecting the vacant properties and the value of converting such properties into assets. Annual accountability to the general public and its elected leadership is always essential, but the complete cycle of acquisition, management, and disposition of parcels of vacant and abandoned property is rarely just twelve months.

Inventory Cross-Subsidies

One of the most creative aspects of the second generation of land bank statutes, found in the Michigan approach, is the financing mechanism that is embedded in the relationship between Michigan’s comprehensive property tax foreclosure reforms of 1999 and the comprehensive land bank statute of 2003. In its property tax foreclosure reforms, Michigan completely revised the structure of its enforcement proceedings by eliminating the sale of tax liens or tax certificates to private third parties, and by dropping the requirement of a mandatory public auction of the properties. Instead, the new procedures provide extensive notice to the owners of property that is tax delinquent, and to all parties with interests in the property, a judicial hearing on notice and delinquency, and a transfer to the local government of all property for which the taxes are not redeemed shortly after the judicial hearing. Though the overwhelming majority of all delinquent taxes are redeemed, the result of this new approach is that the entire inventory of chronically tax-delinquent property is transferred to the control of the local government, which can then elect to transfer part or all of the inventory to the local land bank.

One consequence of this Michigan approach is that the land bank becomes the legal owner of large volumes of properties, particularly in jurisdictions most severely affected by abandonment. Some of these properties may have negative value, meaning that the cost of cleaning or remediating the property exceeds the market value after remediation. Some of the properties, however, will have a market value that exceeds the management and remediation expenses, and some portion of the overall inventory will have value that substantially exceeds the management and remediation expenses. For example, a parcel of property with a vacant, substandard home may have a market value of \$40,000 but is encumbered by a \$10,000 tax lien. In some instances, a land bank can acquire the property at no cost and extinguish the tax lien. If it then invests \$20,000 in management and rehabilitation, it is likely able to place the property on the market for a sales price of \$60,000, yielding \$40,000 in surplus cash proceeds. In turn, these surplus cash

proceeds support the operations of the land bank, especially with the management and remediation of properties for which there is no immediate end user or transferee.

The inventory cross-subsidy approach to the financing of land bank operations is viable only when there is a tax foreclosure system that results in a transfer of all, or substantially all, of the tax-delinquent properties directly to the land bank or to the local government that creates the land bank. To the extent that the tax foreclosure system continues to sell or auction to private third-party investors the ability to capture the potential surplus value of the tax-delinquent property, the cross-subsidy potential for a land bank disappears. From a macro policy perspective, the most inefficient and ineffective tax foreclosure systems are those that transfer 100% of potential surplus to investors or speculators who have no obligations to the public or common good, leaving the local government to acquire and manage only those properties that truly have negative value. The contest here is not with owners who wish to pay their taxes and avoid losing their homes. It is between private investors and the neighborhoods and communities where the property is located. The policy choice is whether private investors are allowed to reap the profits from high rate of interest and penalties, and surplus value, leaving the neighborhoods and communities with the greatest liabilities, or whether the local government exercises its core power of taxation in a manner that serves the common good.

Tax Recapture

Returning a portion of the property taxes generated by the land bank's activities can provide direct long-term funding to the land bank. A tax recapture mechanism redirects some portion of the property taxes generated in the future by properties a land bank has returned to the tax rolls. The key premise of this approach is the acknowledgement that the land bank's primary focus is on properties that are tax delinquent—by definition those properties that are yielding no revenues to the local government. Once the land bank transfers these properties to new private owners, the properties are placed back on the tax rolls and once again yield a positive revenue stream for the local governments.

Michigan, once again, was the first to create this funding mechanism for its land banks. A series of statutory amendments provided in essence that 50% of all real property taxes are returned to the land bank for the five years following the conveyance of the property from the land bank to a private owner. The idea of allocating, or dedicating, a

portion of future property tax revenues to a particular agency, authority, or program is usually, and appropriately, met with great skepticism by local governments, school districts, and government finance officers. By keeping the focus on the fact that the property inventory in question is presently yielding no revenue—and actually imposing costs—with the goal of returning the properties to productive taxpaying status, the issue can be starkly phrased as “Would it be better to have 100% of nothing, or 50% of something?” The justification for this limited and targeted tax recapture to fund land bank operations is further strengthened by pointing out that the property management actions of the land bank also reduce public expenditures related to code enforcement activities and heightened fire and police protection. For example, the simple elimination of a severely deteriorated building immediately raises the values of surrounding properties, which themselves yield greater property tax revenues.

The strategy of using a portion of future property tax revenues to support the operations of a land bank has spread from Michigan to other states that have adopted comprehensive land bank legislation in recent years. Five additional states—New York, Missouri, Pennsylvania, Nebraska, and West Virginia—permit up to 50% of property tax revenues to be allocated to the land bank. The Georgia Land Bank Act authorizes up to 75% of such revenues to be allocated for up to five years. Ohio, Tennessee, and Alabama do not include such authorization in their land bank statutes.

One critical component in assessing the political viability and financial efficacy of an allocation of future property tax revenues to a land bank rests on the nature of the governmental entities to a distribution of property taxes. When the tax revenues belong to a large number of disparate public entities such as police districts, fire districts, library districts, water districts, and others, it becomes exponentially more challenging to achieve agreement among all such entities that this subsidy should be provided to the land bank. In many jurisdictions the local public school district has a predominant role in the imposition and collection of property taxes and its participation in this land bank funding strategy can be pivotal.

Care must be taken not to overestimate the revenues likely to be produced by these tax recapture programs, and not to build a land bank's budget on unrealistic projections of these cash flows. One reason for caution here is that a portion of the land bank's inventory may be intentionally directed, as a matter of local government policy, to new transferees and new uses that yield little if any future property taxes, such as transfers for

public parks, public transportation, or even urban agriculture. Similarly, properties conveyed by a land bank for affordable housing may be subject to separate property tax exemptions, and properties conveyed by a land bank to new owners in a side lot program will likely have relatively low tax values in coming years. For those jurisdictions with low property tax millage rates relative to other states the tax recapture revenues will be correspondingly lower.

A variation on a tax recapture form of subsidy for land bank operations is a tax increment financing structure applicable to land bank properties. Most jurisdictions in the United States have begun to experiment to some extent with tax increment financing (TIF), or tax allocation districts (TADs), and there is a wide range of legal and financial structures being developed. At its core, a tax increment finance structure commits some portion of future property tax revenues generated by a particular development to the development area itself. The theory is that the development results in greater assessed valuation, thus yielding greater revenues. The increased revenues could be used in whole or in part to subsidize the development. Thus far, this occurs more commonly with respect to a single major development project, where the increase in future revenues is pledged to pay the costs of infrastructure or amenities related to the project. The pledge of revenues then becomes the basis for large-scale borrowing and issuance of tax increment financing bonds. The typical TIF is normally not available to land banks, as by definition land banks are not primarily focused on large-scale development of a single tract of assembled properties. As a general proposition, land banks do not seek out properties to acquire and develop; they become the owners of tax-delinquent properties that may be scattered throughout the community, and the goal is less to create large-scale assemblage and development than to eliminate the existing liabilities associated with the properties and place them back into productive use according to the needs of the community.

Michigan, however, elected to create a tax increment financing structure for land banks by statutorily defining all properties owned by a land bank as “brownfields”. When a land bank possesses brownfield properties with a zero tax basis, it becomes possible to include the land bank properties in an existing brownfield redevelopment plan and issue bonds backed by 100% of future tax revenue increases from the brownfields.

Delinquent Tax Revolving Funds

When property taxes go unpaid, a local government has three basic options. The first option is to do nothing, simply allowing the tax liens to increase over time as a result of penalties and interest. The consequence, however, is that the owner has less and less incentive to act responsibly in maintaining the property, the private market has decreasing incentive to acquire the property, the government loses revenues, and the neighborhood loses value and stability.

The second option is for the local government to sell the property tax liens to private investors. The advantage of this is that the local government receives revenues because the underlying delinquent taxes are paid by the private investor. The advantage to the private investor is that it receives the benefit of a “super-priority” first lien on the property, ahead of all mortgages, leases, and other encumbrances. The private investor relies on high rates of interest and penalties associated with the lien, generally averaging 18% or more annually, and the possibility of an even higher rate of return. The practice of governmental sale of property tax liens to private investors has a history reaching back hundreds of years, but it is not a history that yields long-term success for local governments. In the late twentieth century, the sale and securitization of tax liens grew rapidly but was accompanied by the growing realization by many communities that the short-term sale of tax liens yielded unanticipated long-term costs. The sale of tax liens to private investors divides the incentives and functions inherent in the core governmental power of taxation. The incentives of a private tax lien investor are simply to maximize its rate of return, most easily accomplished by undertaking the least possible efforts to allow the property owner to redeem the property from the tax lien. The private tax lien investor has no formal obligation to invest further in the property, and certainly little incentive to promote the general welfare or the common good. It is not uncommon for tax lien investors to allow subsequent years of taxes to go unpaid or to wait years before electing to enforce their liens.

The third option is for the government to “internalize” the penalties and interest on delinquent taxes by retaining control of the property tax enforcement system. At present, when a local government sells its delinquent tax digest to a private investor, it is simply transferring to the private market the profits generated by the high rates of penalties and interest, while simultaneously retaining all of the costs associated with deteriorating properties. A “delinquent tax revolving fund” is a program in which the local government, or a local

government authority such as a land bank, borrows sufficient funds to pay the entire amount of delinquent taxes to the local governments. In exchange, the authority or land bank receives control of all delinquent tax liens, the right to enforce such liens, and most significantly the interest and penalties on such liens. As the overwhelming majority of delinquent property taxes are paid prior to final foreclosure, the authority or land bank receives the interest and penalties, not the private market investor. Essentially a delinquent tax financing program allows the local government, or land bank, to internalize the cash flow from interest and penalties and apply such revenue to the tax enforcement process and the management of the tax-foreclosed properties that are never redeemed. This process is utilized in 82 of Michigan's 83 counties – where Dan Kildee pioneered the integration of the tax financing, collection, foreclosure, and land bank model during his tenure as the Genesee County (Michigan) Treasurer. This model has been emulated by the Cuyahoga County (Cleveland, Ohio) Land Bank, where the county treasurer has fully internalized this process by utilizing surplus cash of the county as the source of capital for the revolving fund, rather than capitalizing the fund through short-term borrowing.

Dedicated Funding from Delinquent Tax Charges

Every potential source of funding for the operations of a land bank has both political and economic advantages and disadvantages. Common to all of the arguments for funding to be provided to a land bank is the simple proposition that doing nothing about the inventory of vacant, abandoned, deteriorating properties is itself a very expensive decision. These properties impose dramatic costs on adjoining owners, on the neighborhood, and on the local government itself, and such costs only increase if no action is taken. The most expensive decision is a decision to do nothing.

Though not universal, one of the most common characteristics of vacant and abandoned properties is the presence of property tax delinquency. When an owner, or collection of owners, elects not to maintain the property, one of the first expenses they stop paying is the property tax bill. The majority of properties which become tax delinquent by nonpayment of taxes on the due date do have the taxes paid prior to the final date for enforcement and foreclosure. The owners, for whatever reasons, don't pay the taxes on time but do pay the taxes before the property is lost. It is the small percentage of the total number of taxable parcels in a jurisdiction for which taxes are never paid that creates the problem for the community.

One very powerful and reliable funding source for a land bank is to provide that an additional fee, or charge, is imposed on delinquent tax bills and that each year this additional fee or charge is paid directly to the local land bank. For those concerned with any potential tax increase, the point is that this charge is never paid by any property owner who pays the taxes when they are due. The charges are paid only by the owners who voluntarily elect not to pay their taxes when they are due.

In its simplest and most direct form, the fee or additional charge would either be a stated fixed amount, such as a fee of \$100 or \$500 per delinquent tax property, which amount is added to the tax bill as of the day after the date for final payment without penalties and interest accruing. A different approach could specify that this supplemental "land bank" charge would be calculated as a percentage of the aggregate original tax bill itself, such as two percent or five percent. A combination of the approaches would specify a flat amount, or a percentage, whichever is greater.

To the extent that the existing budget and revenue accounting of the local government includes all existing penalties and interest that are collected on delinquent tax payments, seeking to reallocate to a land bank a portion of such an existing revenue stream is likely to have a negative impact on existing local government resources. A delinquent tax fee or charge designed to support land bank operations will be politically and economically viable if and only if it is understood by all stakeholders to be a new, supplemental fee or charge to be paid only by those taxpayers who do not pay their taxes on time. If the local government is not presently authorized to impose penalties and interest on delinquent property taxes, then the new imposition of such fees and charges is a clear and obvious source of new revenues for a land bank.

If there is to be such a supplemental fee or charge it is critical that it is structured as a dedicated transfer of the supplemental revenue directly to the land bank on a periodic basis. If it is authorized, whether at the state legislative level or by local enabling ordinances, but left open to annual or periodic negotiations between the land bank and the local taxing authorities, there is a loss of predictability and funding assurance.

The Cuyahoga County Land Reutilization Corporation (CCLRC) was the first land bank in the United States to have this funding source. As a result of Ohio's comprehensive land bank legislation in 2009, the penalties and interest on delinquent property taxes are transferred directly to the CCLRC, providing \$6 to \$7 million per year in direct

operating support. Based on a variation of the delinquent tax revolving fund program which was designed in Michigan six years earlier, the transfer of these revenues is still subject to a periodic multiyear agreement between the CCLRC and the local governments.

Each state in the United States is following a different system for the imposition, collection, and enforcement of property taxes, so it is difficult to design a single approach that will work uniformly across the country to achieve this form of dedicated revenue for a land bank. The template comprehensive land bank legislation which is set forth in Appendix D contemplates the possibility of such state statutory authorization, but as it is designed for any particular state the appropriate statutory sections and cross-references will need to be researched and drafted carefully.


Borrowing and Bond Financing

The ability of a land bank to engage in short-term borrowing, or larger-scale borrowing through the issuance of bonds backed by specific credit or security, is a relatively new and unexplored feature of a land bank's capacity. In the first generation of land banks, it was not a vital power given the relatively low level of operational capacity and the reliance on general revenues as a source of funding. With the emergence of the second and third generations of land banks it becomes an increasingly important power and source of operational financing. Six of the ten recent comprehensive land bank statutes (Michigan, Ohio, New York, Missouri, Pennsylvania, and Nebraska) contain express authorization for land bank borrowing through the issuance of revenue bonds. These statutes make clear that any such borrowing does not constitute a debt of the local governments nor implicate their credit ratings.

The simplest and most immediate example of the need for a land bank to have express authority to borrow is the ability to obtain funds to undertake repair and rehabilitation activities on properties that can then be conveyed to private third parties. Short-term financing, if not available through revolving unsecured lines of credit, could be provided by secured financing in the form of a mortgage.

At the other end of the financing spectrum is the ability of a land bank to engage in larger-scale public borrowing through the issuance of a bond secured either by a designated inventory of real property, or by a designated source of revenues, or both. Such borrowing capacity should be explicitly and expressly set forth in the state statutory enabling legislation, which is characteristic of the third generation of land bank statutes.

If a land bank is to be granted authority as a public entity to engage in bonded indebtedness, care must be given to address the relationship of the land bank's bonds to the bonds and obligations of the participating local governments. As a general proposition, the debts and obligations of the land bank should not be the debts or obligations of the local governments, and should be restricted to the assets and revenues of the land bank. A land bank may be given the authority to pledge its cash flows, its real property inventory or the projected yield of tax recapture allocations. It should not be given the authority to obligate the assets of the participating governments, much less the full faith and credit of the participating governments.



The financing of the operations of a land bank cannot be an afterthought. It must be contemplated in and anticipated by the state enabling legislation, the intergovernmental agreement, and the operational priorities as established by the land bank's board of directors. The starting point for any discussion of the funding of land bank operations must always be with the nature of the real property inventory that is the focus of the land bank's activities.

CHAPTER 8

Forming the Governance of Land Banks

A land bank structure should reflect the needs and political realities of a given jurisdiction. Consequently, there are several approaches and factors that influence the form and governance of a land bank. The enabling legislation can determine the corporate structure of a land bank and its legal authority to acquire, develop, and dispose of real property. The level of intergovernmental cooperation can dictate the structure of the board of directors and the extent to which they will govern the operations of a land bank. The socioeconomic conditions in a community can determine both the targeted priorities for property redevelopment as well as the capacity needed in land bank staff to achieve the redevelopment goals.

Factors that Influence Land Bank Governance

The form and structure of a land bank is primarily determined by state statutes governing intergovernmental cooperation in general and by state land bank enabling statutes in particular. General home rule authority for local governments is usually adequate only to permit the exercise of a limited range of

powers and functions, thus necessitating the passage of a state land bank statute. All land bank statutes are permissive, not mandatory, simply enabling local governments to create a land bank if they wish to do so. Whether a land bank is actually needed in, or created by, any given jurisdiction is also heavily influenced by the socioeconomic conditions of the community. In the absence of any significant inventory of vacant and abandoned property, it rarely makes sense to create a land bank. Even when a significant inventory is present, however, political tensions and cultural conflicts may make intergovernmental cooperation impossible.

Of the ten states with recently enacted comprehensive state land bank legislation, in eight of them, the statutes are simply enabling statutes granting express authority to local governments to create a land bank in their discretion. In two states (Michigan and New York) the creation of a local land bank requires consent of a state agency or authority.

Each state has its own constitutional structure that allocates legal authority between the state legislature and local governments. In some instances, statewide enabling legislation is not necessary to create a land bank. However, because a

| COMPARISON OF LAND BANK STATUTES: What Entity is Created, and How it is Created | | | | | | | | | | (See Appendix C) |
|---|---------------------------|---------------------------------------|-----------|-----------|-----------------------|------------------|-----------|-----------|-----------------|-------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Nature of Entity | Local Land Bank Authority | County Land Reutilization Corporation | Land Bank | Land Bank | Land Bank Corporation | Land Bank Agency | Land Bank | Land Bank | Local Authority | Land Reuse Agency |
| State Approval Required | Yes | No | Yes | No | No | No | No | No | No | No |

land bank is not a traditional form of local government and exercises only limited powers, some form of state enabling legislation is usually necessary.

Even within a given state, the structure of land banks may take different forms depending on existing municipal agencies and departments. Ideally, enabling legislation gives wide discretion to local governments to determine the budgeting and staffing structure for the land bank. For example, one land bank may have its own independent staff while another could have no independent staff, relying instead on existing departments and agencies to provide the operating functions.

Local economic and cultural conditions also play a significant role in determining the structure of a land bank in a particular jurisdiction. Where there is a strong base of community development corporations and the capacity for residential or mixed-use development, the land bank's efforts can be focused on the transfer of clear and marketable title to these entities. When there is minimal demand for properties, whether from the private market or the nonprofit sector, the land bank must have the capacity for extensive property management through its staff or through contracted services.

The single most important factor in the governance structure of a land bank is clarity of its functions and goals. The underlying authorization—whether state statute, local ordinance, or intergovernmental agreement—should identify the land bank's purpose and focus. By its nature, a land bank is a special-purpose entity. Too many goals, functions and expectations will decrease a land bank's ability to fulfill any of its responsibilities effectively.

A land bank must have adequate authority to target properties for transfer, and to complete transfers, without seeking additional approvals from other levels of local government. If the local government's governing body, such as the city council or county commission, insists on final review and approval of each property transfer, one of the purposes of a land bank is largely undercut. Such approval requirements will either increase substantially the length of time required for a disposition or undercut the coherence of disposition policies, or both. Instead, a land bank's controlling documents, as approved by the local government's governing body, should establish the core public policies and delegate to the land bank board and staff the authority to administer its activities.

When establishing a land bank's specific purposes and level of autonomy and discretion in decision-making, it is important to consider the role of existing local government departments and agencies. Because it focuses in large measure

on tax-delinquent properties, a land bank must closely coordinate with both the local government law department responsible for tax foreclosures and with the tax collector or tax commissioner. Cooperation between these public offices results in both earlier identification of properties and more efficient mechanisms for property management and disposition. Without collaboration and cooperation, a land bank's effectiveness can be impaired. If a local school board has independent authority to levy property taxes, it should have some role, either formally or advisory, in the acquisition and disposition policies of the land bank. The presence of other parallel local government agencies, such as housing and redevelopment authorities, is not necessarily inconsistent with the purpose and function of a land bank. Instead, a land bank can provide one more tool for the agencies' work.

For any public agency, and particularly land banks, the most difficult balance to achieve is between fulfilling its responsibility to the larger community and responding to neighborhood participation, planning, and input. A land bank functions primarily to facilitate the transformation of vacant, abandoned, and tax-delinquent properties to productive use, but each new use for the property necessarily involves policy decisions and has an impact on the surrounding community. To the extent that a land bank acts as an arm of the local government planning department, prospective uses of property can and should be determined through that department's established processes. However, a land bank that is an independent public legal corporation receiving ownership of large numbers of properties must create a method and process to provide for neighborhood and public participation in the proposed uses of the property. Implicit in the tension between the autonomy and independence necessary for efficient operations and the responsibility as a public program or corporation is the underlying concept that a land bank bears political accountability for its decisions.

Legal Structures of Land Banks

A land bank's formal legal structure is primarily determined by the allocation of powers and authority between the state and its local governments and any limitations contained in a state enabling statute. Land banks can exist as independent public legal entities created at the local level pursuant to statewide enabling legislation, as an independent authority authorized by statute, or as a nonprofit entity. Each state has a slightly different legal and political culture for the creation of governmental entities that are special purpose in nature. Some states have a very extensive range of special purpose authorities

| COMPARISON OF LAND BANK STATUTES: Creating Entity | | | | | | | | | | (See Appendix C) |
|--|-----|-----|-----|-----|--------------------------------|-----|-----|-----|-----|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| County alone | Yes | Yes | Yes | No | Yes | No | Yes | No | Yes | Yes |
| City alone | Yes | No | Yes | No | Yes | Yes | Yes | Yes | Yes | Yes |
| County + one or more municipality | No | Yes | Yes | Yes | Yes | No | Yes | No | No | Yes |
| Consolidated government | n/a | No | n/a | Yes | Yes, if home rule municipality | n/a | n/a | n/a | n/a | n/a |
| One or more city/municipality | No | No | Yes | No | Yes | No | Yes | Yes | No | Yes |

and boards, while others limit them considerably. Some states treat all such authorities as within and subordinate to general purpose units of local government, while others permit an indeterminate range of public corporations.

The primary advantage of being an independent public legal corporation is that a land bank possesses a degree of autonomy and independence from the levels of agencies and departments and political considerations that may characterize a local government structure. Unlike a private corporation, if permitted by law, a public entity can still perform some government functions. As a separate legal corporation, it must have its own board of directors, but these board members may consist of or be appointed by local government officials. Unless it is a separate land reutilization program expressly authorized by state statute, a separate legal corporation is necessary for the entity to have powers of property acquisition and disposition that are not subject to local governments' disposition procedures. To be most effective and avoid the typical limitations faced by local governments, a land bank's essential powers for property acquisition, management, disposition, and financing, and waiver of delinquent taxes, need to be specifically authorized by law for the independent corporation or city.

Land banks that are not public corporations or public authorities could be formed as private nonprofit corporations. The Twin Cities Community Land Bank in Minneapolis, Minnesota is an example of a private nonprofit corporation performing some land bank functions. There are advantages and disadvantages to this structure. A purely private nonprofit may be desirable because it permits private investment in redevelopment activities that otherwise could not be utilized if the land bank was a public entity. While politically it may be desirable to decrease the size of a local government and "privatize" some of the typical functions of a municipality's government, the normal public meetings and public records acts imposed on governmental entities do not apply to a private nonprofit corporation. When determining whether a public or private entity is best, the creating parties should weigh the impact of the advantages and disadvantages accordingly.

Once the legal structure of a land bank is determined, either by state land bank enabling legislation or by municipal home rule and intergovernmental authority statutes, state statutes and local ordinances should provide guidance as to what is legally required for its creation. In most cases, some form of local resolution or intergovernmental agreement is required to create a land bank. The resolution or intergovernmental

| COMPARISON OF LAND BANK STATUTES: Creating Method | | | | | | | | | | (See Appendix C) |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Local government resolution/ordinance | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Intergovernmental Agreement | No | No | Yes | Yes | Yes | No | Yes | Yes | No | Yes |

| COMPARISON OF LAND BANK STATUTES: Creating Structure | | | | | | | | | | (See Appendix C) |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Public body corporate and politic | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Limit on number of land banks | No | No | Yes | No | No | No | No | No | No | No |

agreement should outline key characteristics of the land bank that are not dictated by the state enabling legislation. Additionally, articles of incorporation will most likely be required by state statute if creating a public corporation or a nonprofit corporation. Once the initial members of the board of directors are identified, bylaws detailing the structure and governance of the land bank are adopted. Ultimately the documents that are required for creation will be dependent on the state and local laws of the creating jurisdiction.

Board of Directors of Land Banks

As a separate legal entity, a land bank will be governed by its own board of directors or board of commissioners. Members of the governing board may be either private citizens, elected officials, or employees of one of the local governments, unless otherwise limited by law or regulation. In all cases, board members serve without compensation. A board of

directors should be large enough to represent the multiple local governments that are participating members in the land bank and the diverse interests of the communities, but small enough to be able to operate efficiently. Further, the entire board should consist of an odd number of members to help avoid tied votes. In order to preserve public accountability, board members should be appointed by the participating local governments.

A common requirement of land banks is that board members be residents of one of the local governments that created the land bank. The frequency of board meetings, the nature of advance public notice that may be required, and the possible application of public meeting and public records acts are determined by the provisions of state law applicable to public bodies.

| COMPARISON OF LAND BANK STATUTES: Board of Directors | | | | | | | | | | (See Appendix C) |
|---|-----------|-----------------------|--------|--------|-----|-----|--------|-----|-----------------------|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Size | No limit | 5, 7, or 9 | 5 - 15 | 5 - 11 | ≥ 5 | 5 | 5 - 11 | 7 | ≥ 5 | 5 - 11 |
| Public officer eligible to serve | State IGA | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Articles of Incorpor. | Yes |
| Residence Requirement for Board members | State IGA | No | No | No | Yes | No | No | Yes | Articles of Incorpor. | No |
| Public employee eligible to serve | State IGA | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Articles of Incorpor. | Yes |
| School district representation required | State IGA | No | No | No | No | Yes | No | No | No | No |
| Require at least one board member who is: (i) a resident; (ii) not a public official or employee; or (iii) a member of civic organization | State IGA | No | No | No | No | No | Yes | Yes | No | Yes |
| Special voting requirements for dispositions of land property | State IGA | Articles of Incorpor. | Yes | Yes | Yes | Yes | Yes | Yes | Articles of Incorpor. | Yes |
| State conflicts of interest policy / ethics policy | State IGA | No | Yes | Yes | Yes | Yes | Yes | Yes | Articles of Incorpor. | Yes |
| Supplemental conflicts of interest policy / ethics policy | Yes | Articles of Incorpor. | Yes | Yes | Yes | Yes | Yes | Yes | Articles of Incorpor. | Yes |
| Subject to open meetings and records laws | No | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |

| COMPARISON OF LAND BANK STATUTES: Staffing | | | | | | | | | | (See Appendix C) |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Permanent or temporary | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Contract with municipalities for staffing services provided to or by the land bank | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |

Staffing Possibilities and Opportunities

Whether a land bank should be an independent corporate entity with its own powers is a separate question from whether it can or should have its own independent staff. An intergovernmental agreement establishing a land bank can provide that the land bank “staff” are actually the staff of other local government departments. If utilizing the staff of a municipal department or agency, the collective staff members should be allocated by function rather than by corporate identity.

Conversely, an enabling statute or intergovernmental agreement can expressly authorize a land bank to hire its own executive director and employees. The template comprehensive land bank statute provides broad authority to employ legal and technical experts, other officers, agents, or employees, permanent or temporary. If hiring its own employees, a land bank should also adopt a code of ethics for directors, officers, and employees.

Selecting Public and Private Roles

Land banks are unusual entities in that they occupy a special role in the public sector designed in large measure to support and facilitate activity in the private sector. They are necessary because of the collapse of general economic conditions in certain parts of communities and the presence of legal barriers and public policies that tend to keep properties locked into a state of deterioration and abandonment. Because of their special status as a bridge between the public and private sectors, land banks must be attuned in all of their operations to the differences between these constituencies.

As a public entity, a land bank’s ultimate goal is to serve the community’s common good in accordance with its foundational statutes, ordinances, and agreements. The local

governments that create land banks bear responsibility for establishing the broad operational goals and priorities that govern their key functions: targeting properties for acquisition, assemblage, and disposition; identifying the most important new uses for the properties; and determining the methods of enforcing commitments made by transferees of the properties. In all of these activities, the land bank must remain politically accountable to elected officials, and the local governments must retain the ability to withdraw from or dissolve the land bank without cause. As entities holding public properties and public assets, land banks are financially responsible to the local governments and the public.

As a bridge to the private sector, a land bank must comprehend and anticipate the nature of private real estate development in a manner unlike other public agencies. The closest analogy in this respect is to a more narrowly focused public industrial development authority where questions of infrastructure, suitability for development, financial feasibility, and subsequent marketability are paramount in assessing the efficacy of a new project. Land banks, however, face even more difficult challenges because they normally do not get to select the properties placed into their inventories. They are the involuntary owners of large numbers of scattered parcels of property that appear—at least to the private market—to have virtually no value or productive use. For this inventory, they must have or obtain property management skills that equal or exceed the typical management skills found in the private sector. In anticipating and evaluating future uses of its properties, a land bank needs to be able to call upon as much pragmatic and technical skill for real estate development as is found with any major developer. In short, a land bank must be able to manage and develop properties in ways that equal if not exceed the private market itself. Such a range of responsibilities and skills is rarely, if ever, found in any other public agency at the local government level.

To meet its goals, a land bank must have access to this broad range of technical skills, but it need not build a large staff of real estate managers, financial analysts, project managers, and marketing specialists. Most land banks operate with few

agency resources available and find the necessary expertise in one of two ways. One approach is to enter into operating and management contracts with private entities for demolition activities, property maintenance, or property management. Ownership by a land bank of occupied residential or commercial properties is particularly conducive to third-party management contracts. A second approach is to create joint ventures between nonprofit community development corporations and for-profit real estate developers.

Faced with general economic market failures and public barriers to land transfers, land banks are required to serve as this unique bridge between public and private roles. Precisely because traditional departments of local government have been inadequate to address these needs, land banks can be an invaluable tool for community redevelopment.

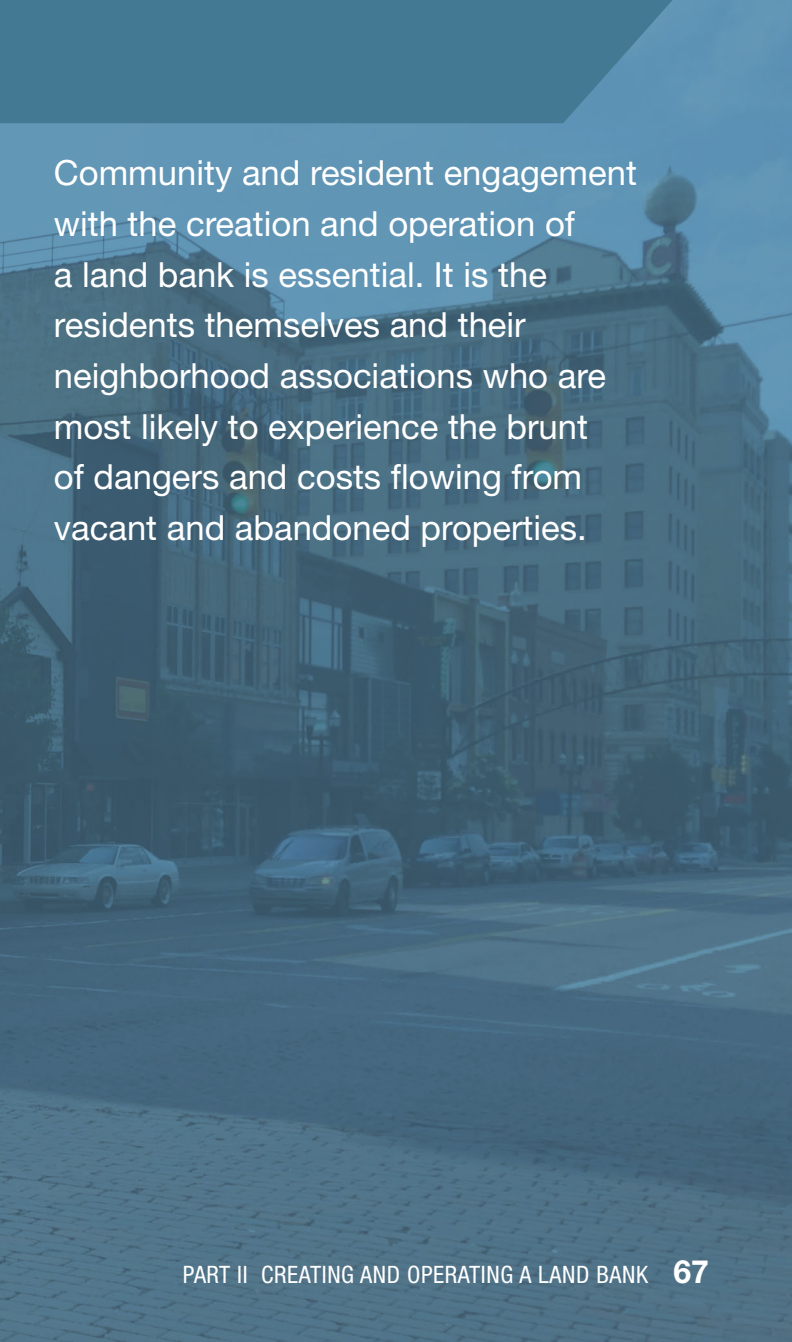
Community and Resident Engagement

Community and resident engagement with the creation and operation of a land bank is essential. It is the residents themselves and their neighborhood associations who are most likely to experience the brunt of dangers and costs flowing from vacant and abandoned properties. Existing residents have the greatest stake in the role of a land bank as a responsible owner of the property and as a publicly accountable entity responsible for the ultimate transfer of the property to a new owner. It is also the residents and the neighborhood associations who are likely to have the best vantage points for the potential new uses of land bank inventory.

There is a myriad of forms for potential engagement of residents and neighborhood associations. Either the state enabling statute itself, or the local government resolutions and agreements may require such engagement. The composition of the board of directors of the land bank may be structured to require members to be from particular neighborhoods or representative of particular neighborhood associations. By statute, by ordinance, or by a policy decision of the board of directors, a separate “advisory” board may be created which meets regularly with the staff or board of the land bank to discuss and review general policies and particular decisions. Some land banks have taken this a step further and created one or more dedicated staff positions with responsibility for community engagement.

In addition to these possibilities for structured roles for community and resident engagement, neighborhood and community participation in the processes of evaluating

decisions on specific parcel acquisition or disposition is possible. The Atlanta Land Bank, for example, requires community consultation in advance of every proposed disposition by the Land Bank to a third party, in which the identity of the third party and the proposed new uses of the property are publicly discussed.



Community and resident engagement with the creation and operation of a land bank is essential. It is the residents themselves and their neighborhood associations who are most likely to experience the brunt of dangers and costs flowing from vacant and abandoned properties.

Identifying Core Public Policies for Land Banks

Vacant, abandoned, and tax-delinquent properties are potential assets to a community only if their conversion to new ownership and new uses is consistent with the community's public policies. No two communities have the same socioeconomic and demographic conditions, and no two communities have the same culture of local government administrative efficiency. A land bank's operating policies should be guided by the planning goals of the city or cities that create and utilize land banks for community development.

Identifying Critical Policy Goals

Just as there are multiple barriers to the transformation of vacant, abandoned, and tax-delinquent land into productive uses, there is a strong tendency to look to land banks as a method of solving every possible problem related to these barriers. Every local government considering creation of a land bank should be very clear about the precise goals and functions to be accomplished by its creation. The larger the number of goals identified, the greater the expectations for the land bank. The greater the number of functions it is expected to perform, however, the greater the likelihood of failure. The success of a land bank depends upon the clarity of the specific goals it is created to achieve and the careful tailoring of policies and procedures to match those goals. Every land bank should first seek clarity and consensus on the basic questions of "What are we?" and "Whom are we attempting to serve?"

Among the multitude of goals and functions performed by land banks, four dominant goals emerge:

1. Eliminate the harms caused by vacant, abandoned, and tax-delinquent properties.
2. Eliminate the barriers to returning the properties to productive use.
3. Convey properties to new owners for productive use.
4. Hold properties for future use.

The initial goal of eliminating the harms caused by vacant, abandoned, and foreclosed properties encourages the land bank first to identify the particular properties posing the greatest threats to public health, safety, and welfare, or the greatest downward financial pressures on neighboring property values. The most direct and immediate way to eliminate such harms is to demolish existing structures, or clean and maintain vacant lots. Removal of structures in violation of local codes inevitably requires close coordination and collaboration with the local government's housing, building, and planning departments. To the extent it is permitted to do so, the land bank should identify top-priority problem properties and then move to the demolition stage, the tax foreclosure stage, or both.

The goal of conveying properties to new owners for productive use is best met by having clean, simple, and efficient procedures that permit the private market to identify and acquire the key properties. The land bank needs to have maximum authority to negotiate and complete such transfers within broad policy parameters for setting the price for the

transfer and for determining the future use. The less autonomy a land bank has when disposing of property, the more cumbersome and counterproductive the process becomes.

Although it is difficult to conceptualize, one of the most important functions of a land bank is holding properties in the land bank for long periods of time for future uses. Land banks that automatically acquire substantial inventories of 500 to 1,000 parcels of property each year are faced with extensive property management and maintenance responsibilities. What needs to be addressed in this function is first the identification of long-term possible uses for the properties, and second the power of the land bank to withhold the property from transfer despite requests for conveyance to one or more prospective owners.

When establishing public policy goals for a land bank, the local government should provide guidance in terms of its primary geographical focus. If such guidance is not provided by the local government, the land bank's board of directors should establish geographical emphasis criteria, such as particular neighborhoods that should be the focus of the land bank's efforts. Correspondingly, either the local government or the land bank should identify and establish priorities with respect to future use of the properties. Additional goals that could be considered and addressed in the formation and operation of a land bank include the short-term and long-term

maximization of property tax revenues, creation of new public spaces such as parks and green spaces, provision of affordable housing, or formation of new communities.

Identifying a land bank's priority goals at the earliest possible stage is essential because they will guide its operating functions and policies. It also is necessary because many of the goals bear within themselves the possibility of conflict, and the sooner such a conflict is acknowledged and addressed, the greater the likelihood of long-term success. For example, to the extent that the dominant function is harm prevention, efforts should be maximized toward control and reconveyance of the most harmful properties. If, however, the primary goal is to facilitate reinvestment by new owners, the efforts of the land bank should be directed toward working with potential developers of the property. Removal of a negative harm is itself a positive achievement, but not all positive achievements are equal.

The most common goal of land banks is to return the property to "productive use". From the perspective of the local tax collector and local government finance officers, this goal recognizes the loss of revenues in the form of delinquent taxes and the desire to return the property to a tax-paying status as quickly as possible. The goal of revenue maximization, however, may lead revenue officials to oppose the land bank's waiver of delinquent taxes or other actions that do not provide an immediate stream of new tax revenues. The natural desire on the part of tax assessors and tax collectors to enhance the amount of collections needs to be acknowledged as divergent in some instances from a land bank's other goals. When a privately owned tract of land that is abandoned and tax delinquent is acquired by a land bank and converted into use as a neighborhood park owned by the city, no new tax revenues are generated because of the public ownership of the property. The presence of the park, however, could play a central role in both the creation of a sustainable neighborhood community and long-term stabilization of surrounding properties with their tax-generating status.

The pressure on land banks to maximize revenues is also evident in the policies that establish and guide the prices that must be received by a land bank in conveying the properties to new owners. To the extent that a local government requires land bank properties to be conveyed at or near full fair market value, the land bank loses flexibility and discretion to use the property as a stimulus for new investment or a subsidy for other public goals such as affordable housing. The higher the minimum thresholds in a pricing policy, the narrower the range of possible future owners for the property and the more limited the range of potential uses

| GOAL | STRATEGY |
|--------------------------------|--|
| Eliminate blight | Demolitions, rehabilitation |
| Maximize short term revenue | Sale to highest bidder |
| Maximize long term revenue | Convey for sustainable development |
| Affordable housing/commercial? | Convey at lowest price |
| Finance Land Bank operations | Maximum inventory and maximum discretion |
| Neighborhood stabilization | Demolition, rehabilitation, side lot transfers |

for the property. The parallel issue arises in determining whether a land bank must recover a portion of its operational costs upon conveyance of land bank properties to private third parties. Funding a land bank's operations with the general revenues of a local government or future tax revenues generated by the transferred properties minimizes the pressure to establish high pricing thresholds while maximizing flexibility to use the property and its value as investment incentives or subsidies for particular uses.

Converting abandoned properties into productive use requires clarity about not only what constitutes "productive use" but also who makes this decision and how the determination is made. The most cost-efficient transfers involve the smallest numbers of participants and fewest levels of approval. Rebuilding neighborhoods and communities, however, directly affects the lives of existing residents as well as the character of the city in coming years. While participation by neighborhood organizations and the local government planning and development departments is a vital aspect of the public nature of a land bank, excessive time periods for study, evaluation, planning, and approval can paralyze the acquisition and disposition process.

Properties and neighborhoods are not static and fixed in nature. They are inherently dynamic in the roles they play in the life of a community. Any given property or set of properties might be deteriorating or transitioning and on the edge of either further deterioration or transformation to stability. A land bank's goals and operational policies need to incorporate the ability to adapt to changing conditions. Governance of a land bank usually involves three to four different levels of authority and decision making: state statutes, local government agreements or ordinances, boards of directors or commissioners, and the land bank staff. This spectrum of governance authority defines the place for discretion and flexibility. By their very nature, state statutes are general and inflexible and should be used only to establish the basic authority for and range of land bank powers. Greater discretion should lie with local governments to establish and direct a land bank's operations consistent with the jurisdiction's needs. The local government can and should establish the essential operating principles, such as pricing policies and land use priorities. The directors of a land bank need to have authority and discretion to adapt the efforts of a land bank on a monthly or quarterly basis as neighborhood conditions evolve and land uses change.

Building Upon Key Public Policies

In any community with a substantial inventory of vacant, abandoned, and tax-delinquent properties, the opportunities for the transformative work of a land bank will exceed its capacity at any given time. This is particularly true of those land banks that receive title automatically to all properties that proceed through a completed tax foreclosure process. The initial task is for the land bank to identify and evaluate its inventory, but the work only begins at that point. The land bank will need to allocate its financial and professional resources to address one or more of the following categorical priorities among targeted properties:

| Balancing Competing Public Policies | |
|---|---|
| 1. Properties that present significant harms and threats. | 2. Properties that can be easily secured and protected. |
| 3. Properties in otherwise stable neighborhoods. | 4. Properties in transitional neighborhoods. |
| 5. Properties for which there is current demand. | 6. Properties for which there is no current demand. |
| 7. Properties for which there is a range of potential uses. | 8. Properties for which there is little or no new use. |

The first two categories are characterized by harm and expense. The greater the harm being caused, such as by an abandoned structure, the greater the need for immediate action. Correspondingly, those properties on which the improvements can be secured and protected at the least expense are the easiest to justify in terms of land bank expenditures and the protection of future values.

The third and fourth categories reflect a policy judgment that must inevitably be made by a land bank in the face of scarce resources. In a city block that consists entirely of abandoned structures, land bank transformation actions are likely to require the longest period of time and the most complex forms of transactions. Unless the properties are an imminent threat to health, safety, and welfare, such a neighborhood will likely not be highest on the list of overall land bank priorities. An exception would be when there is one structure that is occupied in the midst of vacant properties, and the existing owner is willing to convey the property to the land bank as part of a property exchange and in order to facilitate land assemblage. The justification for placing a high priority

on vacant and abandoned properties in otherwise stable neighborhoods is due to the goal of preventing the spread of abandonment and the probable ease of transferring the property to a new owner. In transitional neighborhoods where it is not clear that further abandonment is probable, the land bank's efforts may play the greatest role. In these neighborhoods, a land bank can serve as a very visible demonstration to the community itself, and to potential new owners, of the commitment to strengthen and stabilize the community.

The presence or absence of market demand and the likely transaction costs are the crucial determinants in the fifth and sixth priority categories for the work of a land bank. Properties for which there is current demand are the easiest to return to productive use. Properties for which there is no existing market demand will require far more intense efforts by the land bank to identify potential partners for future collaboration and development.

The last two categories, the seventh and eighth categories, address the range of potential future uses of the property. A tract that is of sufficient size and condition to permit future development offers a greater range of potential uses and potential transferees. It is not uncommon, however, for a land bank to receive ownership of properties that are below the minimum size requirements for any future development. This occurs primarily when an existing lot no longer conforms to minimum lot size, or is a small tract that remains after the widening of a street or some other public project. In these situations, which reflect both the absence of demand and the absence of future uses, one solution followed by several land banks has been to create a special program authorizing the conveyance of such "side lots" to the adjoining owners for nominal consideration.

As a major land owner, a land bank must be sensitive to the possibility of facilitating the transformation of properties by the assemblage of sufficiently large tracts of land to attract new owners and to permit new uses. When a land bank acquires contiguous properties through foreclosure or other governmental conveyance, it may possess a sufficiently large land assembly to permit new development. More commonly, a land bank acquires a number of properties in one general area while one or more key properties remain in private ownership, preventing a development assemblage.

As contemporary land banks do not possess the power of eminent domain, the acquisition of any missing or outstanding parcels of land by eminent domain must be done in conjunction with another state or local government agency

that has such power. The justification for this result is that the dominant purposes for land banks do not include land assemblage—the powers the land banks do possess to assemble land are incidental to their primary functions. When land is being assembled in reliance on the significant authority to compel an involuntary transfer for the public good, the entity exercising such power and undertaking the assemblage should be a governmental entity that specializes in such activities.

Disposition policies are structured according to both the property's future owners and future use. It is common practice for land banks to give local governments or other public agencies a priority on the acquisition of land bank property. Pursuant to its interlocal agreement, the Atlanta Land Bank gives first priority to "neighborhood nonprofit entities obtaining the property for the production or rehabilitation of housing for persons with low-incomes," with a second priority given to all other entities seeking to use the property for low-income housing. The Atlanta Land Bank regularly establishes applicable definitions of "low-income" and "moderate-income" to guide its preference for affordable housing. The top priority for the Louisville Land Bank is the transfer of properties for residential use. The Genesee County Land Bank has established the following priorities to govern its disposition of properties:

1. Homeownership and affordable housing
2. Neighborhood revitalization
3. Return of the property to productive tax-paying status
4. Land assemblage for economic development
5. Long-term banking of properties for future strategic uses

Creating a land bank will solve only part of the problem of vacant, abandoned, and tax-delinquent properties. Though land banks may have as one of their functions the "banking" of land for long-term strategic plans of a community, land banks are not primarily designed to serve as developers. Because of this, the planning for, and implementation of, land bank activities must involve an assessment of the range of potential transferees of properties acquired by the land bank.

In economically distressed neighborhoods, the likely new owners for these properties are nonprofit organizations such as CDCs, neighborhood associations, environmental and conservation groups, or special-purpose governmental entities such as school districts, hospitals, and community centers. In neighborhoods with only a marginal degree of economic strength, transferees may be partnerships between for-profit and nonprofit entities. The critical issue for a land bank is to assess and evaluate the strength of future development capacity

If a land bank is able to eliminate abandoned buildings that are harmful to a neighborhood and attract new owners willing to invest new funds in development, the very process of abandonment is slowed and then halted.

in the not-for-profit and profit sectors for the properties that are held by, or will be acquired by, the land bank. If development capacity is inadequate, the land bank must either hold and manage properties as its own inventory, or seek ways to enhance the development capacities of potential transferees.

Strategic Banking of Properties

The earliest proposals for land banking, originating in the 1960s, envisioned land banks as public entities that would acquire and hold large amounts of land for extended periods of time. The rationale for these major “land reserve” initiatives was primarily that through public ownership of land, the local governments could control more effectively land use patterns and development trends. The financial costs of such programs, the multiplicity of local government structures that insisted on autonomy, and constitutional questions about the use of eminent domain for such purposes kept these ideas simply in the proposal stage.

What was not contemplated by early land bank proposals was the sheer volume of properties in the inner-city areas of both large and small communities that would become vacant and abandoned over the next 40 years. Land banks created to facilitate the ownership transfer and redevelopment of these properties have become entities that in fact hold significant inventories of properties for future use. This is particularly

true in those instances in which a land bank automatically receives title to all properties that pass through a tax foreclosure proceeding without redemption by the owner or purchase by a third party.

Since the primary function of a land bank is to facilitate the transformation of vacant, abandoned, and foreclosed properties into new productive uses, its ultimate success is best measured by its own demise. If a land bank is able to eliminate abandoned buildings that are harmful to a neighborhood and attract new owners willing to invest new funds in development, the very process of abandonment is slowed and then halted. Tax delinquency declines, and the private market is able to accomplish property rehabilitation and renovation. A community that has no vacant, abandoned, and tax-delinquent property has little need for a land bank.

The original vision for land banks as land reserve entities remains relevant, however, in two ways. First, when there is a continuing lack of demand in the private sector for inner-city properties, there will be an inadequate number of potential transferees for land bank properties. In this situation, the land bank becomes by default the owner of properties for long periods of time. As owners of significant portions of the land area in their municipalities, the St. Louis Land Bank, the Genesee County Land Bank, and the Detroit Land Bank necessarily become lead actors in community and land use planning. Their efforts inevitably influence major policy decisions that shape the community’s character and culture for decades to come. City and regional planning undertaken by the land bank staff alone or in conjunction with sister departments and agencies becomes a major focus in planning for the future uses of their properties.

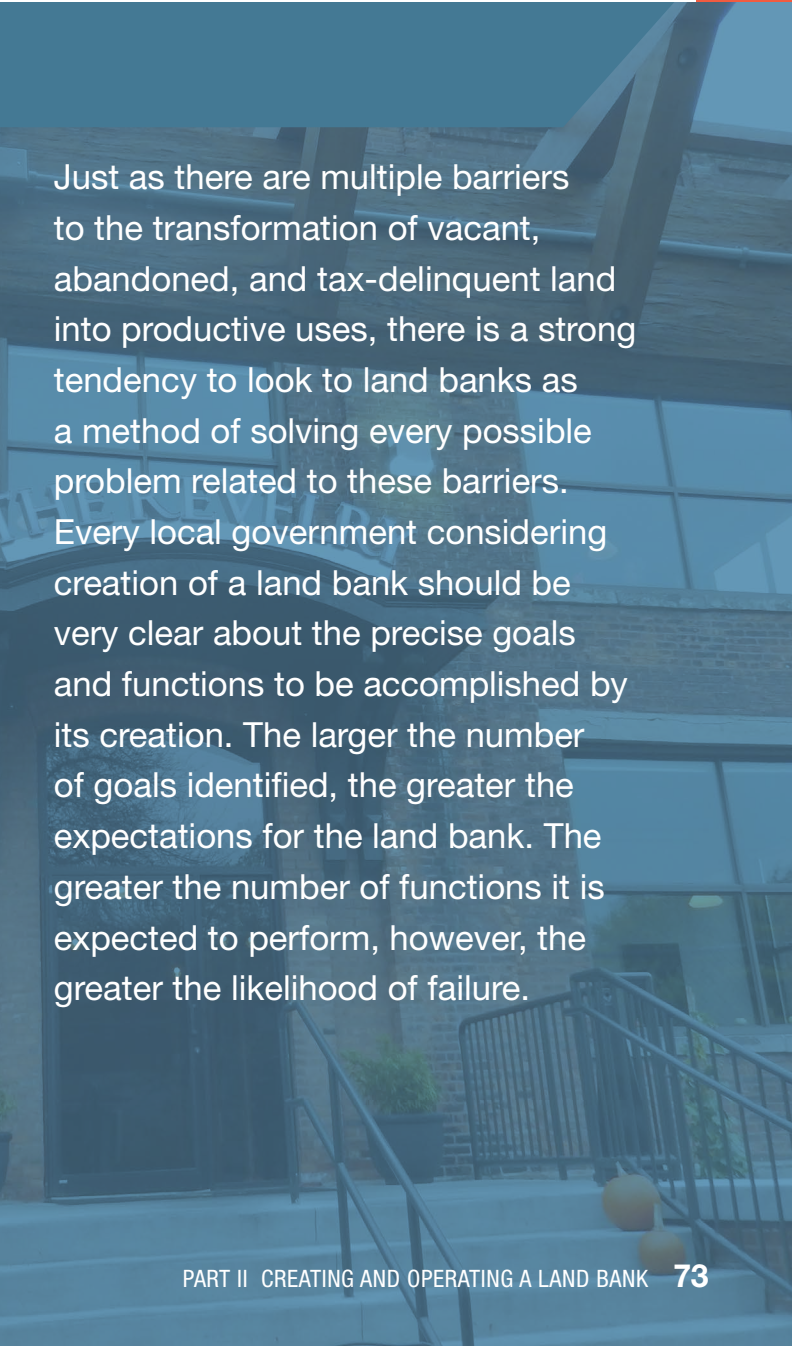
The second aspect of the original vision for land banks that stands as an exception to the successful demise of a land bank is the possibility of intentional decisions to hold tracts of land for future uses. A land bank should evaluate its inventory of properties with an eye toward public or private uses of the land for which demand may emerge in the future. The easiest example is the identification of properties that could be held for future use as public spaces—parks, open spaces, recreation areas—when the surrounding neighborhoods stabilize and revitalize. Another example would be for a land bank to hold properties pending the development of adequate capacity in the nonprofit community development sector, or pending the possible expansion of existing institutions or industries.

The Unintended Consequences of Success

Although it is rarely part of a land bank's day-to-day focus, the policies and priorities of a land bank should also anticipate the consequences of success. Once a land bank has acquired properties and successfully transferred them to new owners with clear title, it is likely that over time, redevelopment of the property will stabilize and increase the value of the surrounding properties. One consequence is an increase in the demand for and value of property remaining in the land bank inventory. This initial success triggers greater demand, which places more intense pressure on the land bank to have clarity about its goals and priorities. The removal of abandoned structures and the creation of new affordable housing may encourage market-rate housing, with the greatest demand emerging for middle- and upper-income housing. When higher-value properties generate market rates and greater tax revenues, providing affordable housing becomes economically less feasible.

Gentrification of a neighborhood or community is the transformation from relatively low-income residential or other uses to higher-income residential use. It carries with it an increase in both property values and in the occupants' average incomes. In the face of vacant, abandoned, and tax-delinquent properties, gentrification is a hallmark of success and a blessing to the entire community. It is in many ways the strongest sign of revitalization. As with most blessings, however, gentrification carries with it certain negative consequences. The revitalization of public housing communities through the federal HOPE VI program in recent years had a major negative consequence of displacing low-income residents who once resided in the communities. In similar fashion, if a land bank elects to focus on stimulating residential development without regard for the income accessibility of the new homes, it is likely that affordable housing will diminish or disappear as a goal of the land bank.

The challenge for a land bank is to juggle the community's short-term goals and priorities with its long-term needs. As the owner of a large inventory of property within the municipal core, the land bank should plan its transfers and property uses to stimulate new investment and stabilize existing communities. It should do so, however, with a view toward the new community that it is helping to create.



Just as there are multiple barriers to the transformation of vacant, abandoned, and tax-delinquent land into productive uses, there is a strong tendency to look to land banks as a method of solving every possible problem related to these barriers. Every local government considering creation of a land bank should be very clear about the precise goals and functions to be accomplished by its creation. The larger the number of goals identified, the greater the expectations for the land bank. The greater the number of functions it is expected to perform, however, the greater the likelihood of failure.

CHAPTER 10

Determining Administrative Policies for Dispositions

Establishing Property Eligibility

With a goal of transforming vacant, abandoned, and tax-delinquent properties into productive use, each land bank is faced with the challenge of establishing criteria for the future use of the property, and in many instances the identity of the future users of the property. Once a land bank has classified and evaluated its inventory, the focus turns to property management and disposition.

For some land banks, the primary goal is simply to return the property to new private owners who will be responsible in future years for payment of property taxes and maintenance of the property in compliance with building and housing codes. With this overriding purpose, the land bank sets few, if any, preferences or priorities for future use of the land. Any use is permitted by any party so long as it is otherwise consistent with local zoning. Some jurisdictions have a standard practice of evaluating potential uses based on a

| COMPARISON OF LAND BANK STATUTES: Disposition of Real Property | | | | | | | | | | (See Appendix C) |
|---|-----|-----------|-----|-----|-----|---|-----|-----|---|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Broad conveyance powers | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes, so long buyer is not a land speculator | Yes |
| Delegation of authority to staff | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Not prohibited | Yes |
| Contract with 3 rd party for property sales | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Not prohibited | Yes |
| Possibility of non-monetary consideration | Yes | Not clear | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Conveyances for less than FMV | Yes | Sometimes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Requirement to accept offers of FMV or greater | No | No | No | No | No | Yes | No | No | No | No |
| Public inventory of all property conveyed | No | Yes | Yes | No | No | No | No | No | No | No |
| Restriction on conveyances | No | No | No | No | No | Yes; not more than 5 contiguous parcels to one entity | No | No | No | No |

determination of the highest and best use of property for the city. Other jurisdictions, in contrast, have established preferred future uses of property that reflect the community's specific needs, such as the development of affordable housing or use of the property for community improvements. Such uses include community gardens, playgrounds, and parking for schools and cultural centers.

By building on the experiences of other land banks, and because of the sheer magnitude of the number of its properties, the Genesee County Land Bank adopted three different categories for evaluating proposed dispositions of property: (i) priorities for the use of the property, (ii) priorities as to the nature of the transferee, and (iii) priorities concerning neighborhood and community development. The ranking of priority as to use begins with neighborhood revitalization, followed by homeownership and affordable housing, and returning the property to tax-paying status, with a total of six potential uses identified. The priorities as to the nature of the transferee reflect a preference for nonprofit corporations but include a range of five different forms of transferees. The priorities concerning neighborhood and community development essentially serve as guidelines for directing the land bank's efforts across neighborhoods throughout the entire community.

Side lot programs consolidate small adjacent abandoned lots to encourage development where individual lot sizes no longer comply with zoning requirements. Side lot programs commonly require that the property be vacant and unimproved, that the property be conveyed only to an adjoining property owner who occupies contiguous residential property, and that the transferee "consolidate" the transferred property into the contiguous property for property taxation purposes. Such consolidation creates a market for the land where currently there may be none, and stabilizes the neighborhood to protect the property values of existing resident owners.

Identifying Eligible Property Owners

Best practices require the submission of a written proposal by an individual or entity seeking to obtain property from the land bank. The proposal should be evaluated to determine whether the transferee and proposed use of the property meet the minimum criteria. There is a wide range in the extent of information that is required by land banks in the development proposal. These may range from a letter stating the proposed

use of the land, a building plan, and evidence of financial backing, to an extensive application for commercial land transfers containing the essential information that would normally be required for an application for development financing. In light of the length of time that may be required to assemble all of the components for a complete development proposal, a land bank may have express policies permitting a transferee to acquire an option on the property held by the land bank. The land bank may offer options of varying periods, and it may require payment of a certain percent of the anticipated price to obtain the option. The option will generally be subject to compliance with all other policies.

In most jurisdictions, both corporations and individuals may apply to acquire property from the land bank. The land bank may give preference to nonprofit corporations planning to use the properties for affordable housing. If it appears that there is no nonprofit corporation interested in and capable of developing the property, it can be made available to any other private corporation. There are two main rationales for these preferences. First, the efforts of a public entity such as a land bank should not be used to subsidize private developers if nonprofit developers can fulfill the purpose. Second, when appropriate, a land bank can facilitate joint ventures between CDCs and for-profit real estate developments. Additionally, nonprofit corporations may have a greater stake in the long-term redevelopment of a particular neighborhood or community. The land bank may even reinforce its preference for nonprofit transferees by establishing a reduced sale price for land to nonprofit entities.

Land banks should prohibit transfers to parties that are delinquent in the payment of property taxes on their own properties. The land bank could expressly provide that the proposed transferee may not have any existing tax delinquency or own any properties known to be in violation of housing and building codes. It could even go one step further and disqualify ineligible individuals and entities that were the prior owners of property at the time of the tax foreclosure that transferred title to the land bank.

The problem of prior tax delinquencies requires special attention if the land bank uses a conduit transfer program through which a nonprofit entity purchases property from a private owner subject to outstanding delinquent taxes and then conveys the property to the land bank for waiver or forgiveness of the taxes. To avoid conferring a windfall on the former irresponsible property owner who sells the property to a nonprofit entity, the land bank may adopt a "Reasonable Equity Policy". Such a policy essentially provides that the

In both form and function, a major result of land bank programs has been the creation of new homeownership opportunities.

land bank will not participate in any transaction in which the owner of tax-delinquent property sells it for a price greater than a certain percent of its net equity in the property.

Although all land banks seek to have properties returned to productive use and generate taxes again, most land banks are concerned about the possibility of transfers to individuals or entities whose primary goal is to hold ownership of the land for future resale. The acquisition of land bank properties for long-term speculation may indeed accomplish the goal of placing ownership in a new entity that will pay property taxes. It will fail, however, to meet the parallel goals of revitalization and redevelopment. To address this concern, most land banks require not only that the requests for properties set forth specific development plans but also that the development occur within a specific period of time.

In both form and function, a major result of land bank programs has been the creation of new homeownership opportunities. Land banks that deal only with vacant land accomplish this either by transfers to residential developers for sale to new homeowners, or occasionally directly to an individual who builds and occupies a new residence. Land banks that also deal with properties with residential structures transfer them to new owners who rehabilitate them for occupancy. Properties in these single-family homeownership programs are subject to the same eligibility requirements applicable to other programs: no prior or existing tax delinquency, no existing code violations on other properties, and completion of proposed development within a specific period of time. To avoid the potential problem of transferees acquiring property solely for purposes of resale, the land bank can require the transferee to occupy the property as his or her principal residence for at least five years following the transfer. Breach of this contractual obligation renders the transferee liable to the land bank for the full value of the subsidy provided by the land bank.

Setting Pricing Policies

One advantage of possessing tax-foreclosed land, land acquired by local governments from other liens or sales, or other surplus lands is the flexibility of pricing policies. Land banks differ greatly as to the prices they charge for the properties they convey. These differences reflect profound differences in state laws, local policies, and the land bank functions. At one end of this spectrum is the classic position of local government law that publicly owned properties must be sold at fair market value. At the other end of this spectrum is the position that properties should be conveyed to transferees for little or no cash consideration as a way of subsidizing the land bank's long-term goals such as the development of affordable housing.

There are four primary justifications for requiring that property be transferred for fair market value. The first is that transfers can generate revenues to cover land bank operational costs and possibly to provide general revenues to the local government. The second is that transfer of property for less than fair market value confers a benefit on the transferee—a form of a gratuity or gift of public assets to private parties. The third justification arises from a concern that transfers for less than full value can result in inconsistent transactions with different parties and the appearance of favoritism. A fourth justification is that properties obtained by a land bank have very little fair market value, so requiring sale at market value is not an obstacle to conveyances.

A requirement that full fair market value be obtained for transfers by a land bank creates, however, a number of problems. The most significant is that many properties end up in the land bank precisely because there is no clear private market or market value for their sale. A fair market value test ironically can undercut one of the land bank's goals, leaving large inventories of properties remaining in public ownership and generating no tax revenues. A fair market value requirement often requires professional appraisals, leading to additional transaction costs. An appraisal requirement is particularly counterproductive when the underlying property has little if any development potential.

A fair market value requirement for transfers also undercuts the land bank's ability to achieve other public goals and public policies. To the extent that a land bank's goal is to return property to tax-generating status, any sales price other than a nominal price, or a price equal to the land bank's transaction costs, reduces the return of properties to this status. Mandating a particular dollar value to a transaction also

restricts the land bank's ability to transfer value to an entity as a form of subsidy in order to accomplish other stated public goals, such as providing affordable housing.

A land bank has maximum flexibility to meet its public goals and policies if it has discretion to either set the selling price for the property or agree that the value of the consideration can be provided through the development commitments of the transferee. Virtually all of the land banks created pursuant to recent comprehensive land bank legislation have complete discretion in establishing the sale price for property. This discretion enables allows a land bank to utilize the property's value, for example, as a subsidy to promote the development of affordable housing.

Key to a land bank's pricing policies is its authority to determine when and how the consideration is paid by the transferee. When properties are transferred to nonprofit entities for affordable housing, the amount of consideration is determined by both the value of the property and the level of indirect subsidy required for the housing to be affordable. In essence, the consideration can be provided by annual performance of the commitment to provide affordable housing. Correspondingly, when a land bank elects to transfer property, whether unimproved land, parcels with residential structures ready for occupancy, or commercial tracts without any restrictions or requirements that the property be used to achieve specific public goals, the consideration is set at fair market value and must be fully paid at the time of the transfer.



Enforcing Commitments

A land bank normally transfers properties in anticipation that the transferee will undertake certain commitments concerning development and future use of the property. Little is ultimately accomplished if clear title to the property is conveyed only to have it once again become vacant, abandoned, and tax delinquent. The development proposals approved as part of the transaction frequently are extensive, identifying specific forms of real estate investment that must be performed within a given period of time. Except in those instances when the land bank conveys already developed property at fair market value, the land bank must be in a position to enforce fulfillment of the transferee's commitments.

Some land banks ensure performance of commitments by retaining a right of re-entry for a set period following closing. Alternatively, the land bank may require all conveyances to provide that "title will revert" to the land bank if construction or rehabilitation is not commenced within a predetermined number of years of the conveyance.

The legal basis for such requirements lies in property doctrines known as common law estates. A deed containing a condition that results in the automatic termination of an interest in the land and its return to the original grantor creates a "fee simple determinable" with a "possibility of reverter" remaining with the grantor. A deed containing a condition allowing the original grantor the right to enter and regain the property is a "fee simple on a condition subsequent" with the grantor having a "right of re-entry".

While these forms of conveyances known as "defeasible fees" originated in the late Middle Ages and are still used in most jurisdictions, they can pose a number of problems for a transaction. First, a defeasible fee is usually an all-or-nothing approach—if the condition is broken, the property returns to the original owner. It makes little difference why the condition was broken, or what value the transferee may have added to the property. Because it is such a harsh remedy, land banks generally are reluctant to terminate all of the transferee's rights, and courts are not anxious to enforce a property forfeiture. Second, a deed limitation that permits forfeiture creates a major obstacle to obtaining construction or permanent financing for development of the property. Usually, lending institutions will not provide such financing on a defeasible fee.

Increasingly, land banks are using four approaches in lieu of, or in addition to, defeasible fees to enforce a transferee's commitments. These approaches are (i) development agreements, (ii) real covenants, (iii) secured real estate financing, and (iv) escrow closings.

A development agreement between the land bank and the transferee can specify the transferee's precise commitments regarding the nature of the expected investment or development and the time frame within which it must occur. The development agreement also can address issues such as the range of permitted uses for the property and any restrictions on its subsequent resale or transfer. So long as the development agreement expressly contemplates that it will be enforceable subsequent to the initial transfer by the land bank, it forms a contract between the parties and a basis for legal action if necessary. One limitation on the effectiveness of relying solely upon a development agreement is that if the transferee is a single-asset corporation, a breach of contract action may not yield monetary damages. A second limitation is that a development agreement is unlikely to be binding on a third party who acquires the property from the original transferee.


Covenants that are incorporated into the deed and recorded as part of the deed are effective enforcement mechanisms in that they are binding on both the initial transferee and subsequent owners of the property. When the transferee commits to use the property only for a specific set of purposes, or to limit subsequent transfers for a specific period of time, such "restrictive real covenants" are particularly helpful. Covenants, however, tend to be far less effective in enforcing affirmative obligations of the transferee, such as an obligation to make a specified financial investment in the property.

The third method of ensuring that a transferee fulfills its commitments is the use of a mortgage to secure a promissory note of a stated amount. The transferee is obligated to pay the land bank a specific amount in a specific period of time, and upon the transferee's failure to make such payments the land bank can foreclose on the property. The transferee's monetary obligation is deemed satisfied and the debt is cancelled by performance of its commitments. Secured financing thus does not increase the transferee's debt obligation but is an effective way of ensuring that the investment by the public, by and through the land bank, can be recovered if the transferee does not honor its promises.

The Cuyahoga County Land Reutilization Corporation has pioneered the creation of a fourth method of protecting the expectations of the land bank in transfers of its property.

When the land bank and a private transferee have agreed upon a specific property to be conveyed as well as the nature and extent of the improvements that must be made to the property, the land bank "closes" on the transfer of the property into escrow. This "Deed in Escrow" program provides that the release of the final transfer documents from escrow to the transferee is contingent upon performance of the specified construction activities. As additional assurance, the land bank undertakes its own construction cost estimates and inspects the property prior to its being released from escrow.

With the broad range of intended, and restricted, uses of property that may be conveyed by a land bank and a wide variety in the kind of commitments that a land bank will require from a transferee, it is likely that a combination of one or more of these methods will be used. Development agreements, restrictive real covenants and secured financing may be used to enforce transferees' obligations.



In most jurisdictions, both corporations and individuals may apply to acquire property from the land bank. The land bank may give preference to nonprofit corporations planning to use the properties for affordable housing. If it appears that there is no nonprofit corporation interested in and capable of developing the property, it can be made available to any other private corporation. There are two main rationales for these preferences. First, the efforts of a public entity such as a land bank should not be used to subsidize private developers if nonprofit developers can fulfill the purpose. Second, when appropriate, a land bank can facilitate joint ventures between CDCs and for-profit real estate developments.



PART III

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CHAPTER 11

The Atlanta Land Bank

The Impetus for the Atlanta Land Bank (1990)

Every program or initiative that combines cultural transformation and governmental initiatives is a story with many actors, stages, plots, and twists. The drama of land banks and land banking in Georgia is a play that is still being written, with origins that trace back a mere twenty-five years. From the creation of the first land bank by Fulton County and the City of Atlanta in 1991 through the enactment of the revised and comprehensive Georgia Land Bank Act in 2012, land banking in Georgia is a story of trial and error, of education and experimentation, of strategic successes and systemic reforms. Each successive land bank in Georgia learned from and built upon the work of sister land banks. Each neighborhood has confronted its own challenges of vacancy and abandonment informed by the work of other communities. Each city and county utilized the tool of land banking with greater creativity and success by statutory amendments and intergovernmental collaboration.

The trigger for the creation of land banks, both here in Georgia and throughout the United States is relatively simple and straightforward. Parcels of property lie dying in a state of vacancy, abandonment, and deterioration. In an otherwise stable or vibrant economy, these parcels become inaccessible to open market purchases because of systemic legal barriers. In a weak or declining economy there is simply insufficient demand or value to justify resolution of the barriers. The owners of these properties have made a strategic financial decision to abandon them or the

ownership has become so highly fractured among diverse entities that no one entity has sufficient interest to force a new use, or a transfer to a new owner.

By the late 1980s, inner city residential neighborhoods in the City of Atlanta had begun to emerge from two decades of relative economic stagnation. Neighborhoods began to have substantial rehabilitation of residential structures and their conversion from subdivided rental stock back to single family owner occupancy. New construction of single family and multifamily residences reemerged alongside the nascent conversion of commercial and industrial spaces into residential lofts. By 1992 the City's impossible dream of becoming an international Olympic city had become a firm reality.

In the midst of this reemergence, however, one could drive down residential streets less than one mile from the heart of downtown Atlanta and encounter abandoned residences, heavily deteriorated, with windows broken out, doors long gone, roofs partially collapsed, all largely hidden by a covering of kudzu. Potential private developers who might be interested in acquiring the property as well as nonprofit developers such as Habitat for Humanity Atlanta, found acquisition of the property to be impossible. Atlanta had a growing inventory of "dead" property even in the face of rising economic investments and pressures for gentrification.

This inventory of vacant, abandoned, and substandard property had one common characteristic, a single proposition of law, which erected an impenetrable barrier to marketability. Property taxes on these properties had become delinquent not just for one year, but for five years or ten years or more. For each year of delinquency the taxes compounded at 18%.

At the same time appraised values (for property tax purposes) remained artificially high when the market value declined because owners who abandoned the property abandoned all desire to contest appraised values. Property tax enforcement laws, with clear origins from a century earlier, lost all effectiveness in forcing a tax sale because the law stipulated a minimum bid at a tax sale of all delinquent taxes, penalties and interest. The minimum bid far exceeded fair market value and the disparity only grew greater with each passing year.

The 1990 Land Bank Statute and Creation of the Atlanta Land Bank

In late 1989 and early 1990, an informal coalition of affordable housing advocates and key elected leadership in the City of Atlanta and Fulton County began looking for creative solutions to this challenge of problem properties that were inaccessible to the market. Based principally upon the Louisville, Kentucky, statutory framework, the original land bank legislation in Georgia was passed by the General Assembly in 1990. This initial legislation had two dominant characteristics, one dealing with creation and governance, and the second with the core power of addressing delinquent property taxes.

The 1990 Georgia land bank statute permitted the creation of a land bank only by agreement between a municipality and the county in which it was located. Neither a municipality acting alone, nor a county acting alone, could create a land bank. Perhaps as a reflection of the reluctant dance in the sharing of powers by the City of Atlanta and Fulton County, the legislation mandated a board of directors of just four persons, two appointed by the City and two by the County. It further specified that no property located within the City could be transferred by the land bank without approval by the City's board appointees, and no property located in the County outside of the city limits could be transferred without the approval of the County's board appointees.

The core power for lands banks authorized in the 1990 Georgia land bank statute was the power to extinguish liens for delinquent property taxes on any property owned by a land bank. This power was aimed clearly and directly at the growing inventory of "dead" properties where the delinquent taxes exceeded fair market value and property tax foreclosures sales were never completed. The General Assembly authorized the creation of a land bank "to acquire...tax delinquent... properties in order to foster the public purpose of returning

land which is in a non-revenue-generating, non-tax-producing status to an effective utilization status in order to provide housing, new industry, and jobs for the citizens of the county."

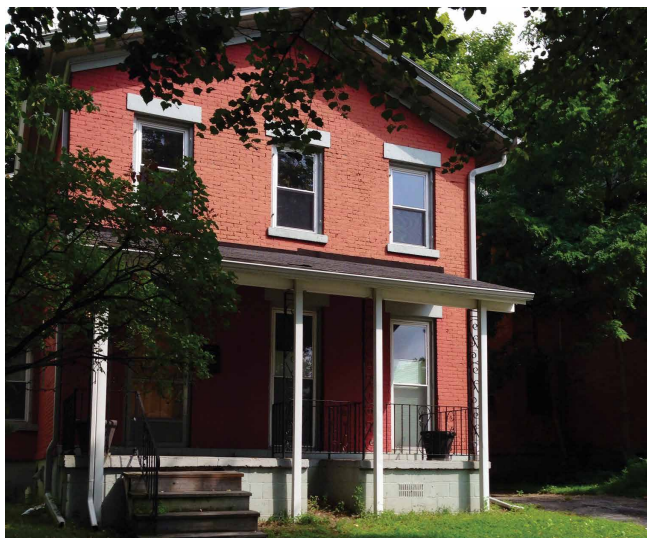
The First Decade of Work

The Atlanta Land Bank (formally known as the Fulton County/City of Atlanta Land Bank Authority) came into existence in 1991 following the approval of an intergovernmental contract by the City of Atlanta and Fulton County, the filing of articles of incorporation, and the appointment of its first board members. Once again suggestive of the hesitancy to venture far into intergovernmental collaboration, for the first three years of its existence, the Atlanta Land Bank had no staff of its own, and no budget, with its operational functions alternating each year between the land use and planning departments of the two distinct governments, in tandem with annually alternating Board chairmanship. It wasn't until Fiscal Year 1995 that the Atlanta Land Bank received its first direct budget appropriations from the two local governments, and hired its first full time executive director in May 1994.

For the next fifteen years of its existence the Atlanta Land Bank was remarkably consistent and single minded in its operational focus, with virtually no change in either the composition of the four member Board of Directors or the professional staff. The Board also made a pivotal affirmative policy decision in its very first year that the Land Bank would not retain ownership of property for any length of time and would focus instead only on the exercise of its power to extinguish delinquent property taxes. Functionally this resulted in the Atlanta Land Bank having a primary focus on a "conduit" transfer program in which a nonprofit affordable housing entity would identify and acquire a parcel of property heavily burdened with delinquent taxes by paying a nominal amount to the owner and taking the property, subject to the outstanding tax liens. Such entity would then convey the property to the land bank, which would extinguish the delinquent taxes and immediately reconvey the property to the entity, with restrictions and requirements that the property be redeveloped for affordable housing.

THE CHALLENGE OF SCHOOL TAXES

Between its original enactment in 1990, and the passage of the comprehensive new Georgia Land Bank Act in 2012, the land bank statute was amended in key aspects on three occasions. The first amendment occurred in 1992 and addressed directly the application of the power of tax extinguishment to public



school property taxes. Because school taxes comprised well over 50% of annual property taxes in the City of Atlanta and Fulton County, the effectiveness of the power to extinguish taxes was limited if it did not apply to the school board's portion of such taxes. The legislative amendment in 1992 made clear that such school taxes could be extinguished, but only with the consent of the board of education. As an operational matter, initially the Atlanta Land Bank sought such consent on each separate property. Upon becoming convinced that delinquent taxes—at least as to the target inventory of the land bank—yielded no revenue to the school district and that transfers from the land bank to a new owner would yield new tax revenues, the school district created a “default” position that the land bank could extinguish all delinquent property taxes unless the school district objected.

THE CHALLENGE OF TAX LIENS AND TAX SALES

The second major amendment to the original land bank statute occurred in 1995 and addressed the connections between land bank inventory acquisition and the tax foreclosure process. This amendment created express authority for the land bank to tender a bid at a property tax foreclosure sale in an amount equal to the “minimum bid,” which bid could be a “credit” bid consisting of the assumption of responsibility for the property tax lien. When coupled with the separate power of a land bank to extinguish property tax liens on property it owns, the effect of this amendment was to place land banks in a position to change the character of any and all property that had become “dead” to the market because taxes exceeded value and tax sales were not occurring. The timing of this amendment coincided with the enactment by the Georgia General Assembly of an entirely new system of property tax foreclosure (at local

option), a judicial in *rem* foreclosure proceeding, and a land bank became authorized to tender credit bids at both nonjudicial and judicial foreclosure proceedings.

During the twenty years between 1990 and 2010, the success of the Atlanta Land Bank with its “conduit transfer program” and its overall operational productivity encountered new forms of resistance. Despite the initial success, the Atlanta Land Bank began its second decade of work encountering growing policy differences with the Fulton County Tax Commissioner. Alone among the 159 tax commissioners in Georgia, the Fulton County Tax Commissioner elected to sell delinquent tax liens to private investors, essentially undercutting any possibility of a land bank being able to resolve the problems posed by key abandoned properties. When the tax lien is held by a private third party investor, it is no longer possible for a conduit transfer program, or donation program, to be viable as the core power in such programs lies in the ability to extinguish delinquent taxes on property owned by the land bank. Such power could not apply to privately held tax liens.

By the early 2000s the Atlanta Land Bank was also coming under increased criticism from its traditional allies in nonprofit community development corporations, affordable housing advocates, and elected officials (including the tax commissioner) for not taking action to resolve title questions, to ensure redevelopment in accordance with public priorities, or to have any clear strategic plan.

Transformation of the Atlanta Land Bank (2007-2009)

With the advent of the Great Recession in 2007, an entirely new Board of Directors was appointed by the City of Atlanta and Fulton County, and by 2008, new leadership and new programs began to emerge with clarity and focus. Chris Norman was initially appointed Chair of the new Board of Directors, but by 2009 was persuaded to step down as Board chair and become President and Chief Executive Officer of the Atlanta Land Bank.

In early 2008 the Atlanta Land Bank created the first “Land Bank Depository Agreement Program” in the entire country, an initiative designed directly to deal with growing inventories of properties for which there was simply no market demand. With the federal recognition of land banking for the very first time in the Housing and Economic Recovery Act of 2008,

the Atlanta Land Bank played a key role in the utilization of Neighborhood Stabilization Program (NSP) funding to acquire and manage inventories of foreclosed properties.

Demonstrating its effectiveness in the conversion of abandoned and heavily tax delinquent properties into new productive uses over the course of its first five years of work, the Atlanta Land Bank became a model for other local governments in Georgia. The Columbus-Muscogee County Land Bank (1992), the Macon-Bibb County Land Bank Authority (1996), the Savannah-Chatham County Land Bank Authority (1997), and the Valdosta-Lowndes County Land Bank (1999) followed suit, with the Augusta-Richmond County Land Bank (1998) and the Athens-Clarke County Land Bank (2009) created once the legislation had been amended to allow for consolidated governments.

The Atlanta Land Bank and the New Georgia Land Bank Statute

The experience of the five to ten active land banks in Georgia during the first decade of this century demonstrated the value of a flexible yet highly focused tool for local governments to address the broad range of problems caused by properties that lay dead to the market. Each of the land banks emphasized a slightly different approach, using different levels of staffing and budgets, and collaborating with different sets of local partners. What these Georgia land banks also realized, however, were the limitations in existing Georgia law on their ability to address effectively their statutory mission and local priorities.

Between 1999 and 2008, a new generation of land banks and land banking programs had emerged first in Michigan, and second in Ohio. This second generation of programs built upon the experiences of the first generation (St. Louis, Cleveland, Louisville, Atlanta), addressed their deficiencies, and expanded on their successes. In both Michigan and Ohio, new statutes were passed which created far more direct and efficient ties between land banking and property tax enforcement systems. The new statutes expressly acknowledged and facilitated more expansive options for regional and intergovernmental collaboration, allowing single land banks to be formed by multiple local governments or multiple local land banks to collaborate in achieving economies of scale in operations through intergovernmental agreements. This second generation of land banking also included a far broader range of internal financing mechanisms

such as a limited property tax recapture on properties conveyed from the land bank to a new private owner and placed back on the tax rolls.

COALITION BUILDING

Under the strong leadership of the Atlanta, Macon, Augusta, and Valdosta-Lowndes County Land Banks, a statewide association—the Georgia Association of Land Bank Authorities (GALBA)—was formed in 2011. Its mission is to facilitate education, collaboration, and cross-training among existing land banks in Georgia, and to provide assistance to other local governments in Georgia that are exploring the possibility of creating land banks. Most significantly, GALBA—with Chris Norman serving both as the leader of the Atlanta Land Bank and the President of the new statewide association—began to press the question of whether the existing Georgia land bank statute could be amended or replaced in a manner that incorporated the best thinking and best experiences drawn from land banks throughout the United States. Between 2011 and 2012, GALBA took the lead in the preparation of new comprehensive legislation for the State of Georgia, enacted in 2012 as the Georgia Land Bank Act.

In late 2010, two decades after passage of the first Georgia land bank statute and in the wake of a foreclosure crisis that was ripping through neighborhoods throughout the country, land bank directors from nearly all of the Georgia land banks joined community development, nonprofit housing advocates, and local government officials from all over the state for a gathering in Atlanta at Emory University. The purpose of this meeting, the first of its kind in Georgia, was to begin building and connecting a statewide network of land bank leaders to share resources and best-practices, and to brainstorm and develop the key ingredients of a legislative agenda for Georgia land banks moving forward. In that early meeting, three key themes emerged: Land bank leaders agreed that Georgia land banks could increase their efficacy and impact with new legislation that (a) authorized and encouraged regional collaboration in land banking, (b) provided land banks with self-financing mechanisms and increased access to funding sources, and (c) authorized and encouraged land banking responsive to locally determined priorities. Over the next eighteen months, building upon the network and collaboration formed at the initial meeting in 2010, this community of local government leaders, land banking professionals, and neighborhood stabilization and housing advocates drafted and refined proposed legislation which ultimately became the 2012 Georgia Land Bank Act.

Perhaps the most distinctive feature of the 2012 Georgia Land Bank Act is the authorization of a self-financing mechanism for Georgia land banks—the optional 5 year/75% tax recapture program.

REGIONAL COLLABORATION

The 1990 Georgia land bank statute provided for the creation of land banks by a single consolidated government, or by a single Georgia county and one more cities located within that county. All of the Georgia land bank authorities created prior to 2012, including for example, the Fulton County/City of Atlanta Land Bank, the Valdosta-Lowndes County Land Bank and the Augusta/Richmond Land Bank, reflected this legal structure. In response to the desire for increased regional collaboration expressed by Georgia land bank leaders, the 2012 Georgia Land Bank Act authorizes multiple counties and cities or consolidated governments to come together and form a single land bank. This regional option may provide a helpful tool for rural counties, cities, and local governments to collaborate in addressing the challenges of vacant, dilapidated, and tax delinquent properties across their region. Similarly, the regional option could provide increased access for land banks to address problem parcels in cities that lie in multiple counties, such as that portion of Atlanta that lies in DeKalb County.

The 2012 Georgia Land Bank Act also expressly permits land banks to contract with one another for services across jurisdictional boundaries. This key power may encourage regional collaboration in impacting neighborhoods that span multiple jurisdictions. In addition, multi-jurisdictional contracts for services could encourage the development of economies of scale or specific expertise in one land bank that may be offered and utilized by other land banks as a more efficient and effective alternative to developing similar economies of scale or expertise in every land bank in the state of Georgia.

FINANCING MECHANISMS

With the exception of providing that proceeds from the sale of land bank property could be used for land bank operations, the 1990 Georgia land bank statute offered relatively little guidance on funding resources available to Georgia land banks. Because land banks primarily acquire properties that are heavily tax delinquent and dilapidated, and because early land bank operations in Georgia emphasized disposition of property through donation or transfer for public and not-for-profit use, proceeds from the sale of land bank property provided little revenue for land bank operations. As a practical matter, most Georgia land banks have historically derived their funding from line items in local government annual budgets, from local and state grant funds, including Community Development Block Grants, and in recent years from federal grants including the Neighborhood Stabilization Program. Even as the need for funds to impact vacant, abandoned, dilapidated parcels through the state increased exponentially, federal, state, and local grant programs were diminished and extinguished in the aftermath of the Great Recession, and local government budgets throughout Georgia experienced drastic cuts. Georgia land bank leaders anticipated this economic shift in their early meetings in 2010 and structured the 2012 Georgia Land Bank Act to include increased funding options for Georgia land banks.

The 2012 Georgia Land Bank Act provides that land banks may receive funding from local, state, and federal government budgets and programs, and from any other public or private sources. In addition, the 2012 Act expressly provides that Georgia land banks may utilize revenue obtained through the sale or lease of land bank property, and through contracts for the provision of services to local governments, other land banks, and other public and private entities.

Perhaps the most distinctive feature of the 2012 Georgia Land Bank Act is the authorization of a self-financing mechanism for Georgia land banks—the optional 5 year/75% tax recapture program. Pursuant to the 2012 Georgia Land Bank Act, the local governments that create a land bank may authorize up to 75% of the newly generated tax revenue (excluding school district taxes) on properties disposed of by the land bank to be returned to the land bank for a period of five years. This is key feature of the “third generation” of land bank statutes including those in Michigan, New York, Pennsylvania, Missouri, Nebraska, and West Virginia.

Georgia land banks focus on the acquisition of tax delinquent and dilapidated properties that currently generate no tax revenue for the local government and indeed impose

significant public liabilities in the form of increased police and fire costs. The success of Georgia land banks in acquiring, cleaning, and responsibly conveying such properties to new owners directly benefits local governments and communities and results in newly generated tax revenues. Authorizing a land bank to recapture 75% of such newly generated tax revenue for a limited period of five years, and to utilize that revenue to acquire and return additional properties to a productive, tax-generating status, allows a land bank to self-finance at no cost to local government budgets. In addition, during the five years of the tax recapture program, the local government receives 25% or more of newly generated ad valorem taxes on parcels that previously provided no revenue—25% of something is preferable to 100% of nothing.

LOCALLY DETERMINED PRIORITIES

Pursuant to the focus on affordable housing in the 1990 Georgia land bank statute, and also in response to the economic realities of the 1990s and early part of the twenty-first century, Georgia land banks historically limited their mission to the creation of affordable housing. While the support and creation of affordable housing programs remains an essential policy in many communities, land bank leaders recognized many different pressing needs for real property in local communities throughout Georgia from the outset of the 2011-2012 legislative effort.

Some Georgia communities have an abundance of affordable housing but a dire need for green space, for affordable commercial or industrial spaces for local small businesses, or for space available for various public uses. Other communities experienced significant population loss or rapid changes in industry over the last two decades and must prioritize demolition over preservation of vacant and abandoned parcels. In light of this diversity of priorities for problem parcels in communities throughout Georgia, and in recognition of the fact that local communities are in the best position to define and direct local priorities, the 2012 Georgia Land Bank Act expressly provides that local land banks or their creating local governments may establish the priorities for the use of property conveyed by the land bank.

Every program or initiative that combines cultural transformation and governmental initiatives is a story with many actors, stages, plots, and twists. The drama of land banks and land banking in Georgia is a play that is still being written, with origins that trace back a mere twenty-five years. From the creation of the first land bank by Fulton County and the City of Atlanta in 1991 through the enactment of the revised and comprehensive Georgia Land Bank Act in 2012, land banking in Georgia is a story of trial and error, of education and experimentation, of strategic successes and systemic reforms.

The Genesee Land Bank

The Genesee Land Bank properly bears two mantles of distinction in the history and development of land banks and land banking in the United States. It is the first of the “new” generation of land banks and undertook the role of being the pathbreaker in assessing the landscape and designing the new approaches. Virtually all of the lands banks created in the past decade owe much of their structures, their policies, their procedures, and their vision to this work done in Genesee County and Flint, Michigan, between 1999 and 2004. The second mantle of distinction is that more than any other land bank in the county, Genesee Land Bank faced an overwhelming inventory of vacant, abandoned, and tax-foreclosed properties in a community devastated by employment and population loss and insolvent local government entities. Its challenges were—and in many ways still are—greater than those experienced by other land banks just emerging, but in both the discoveries and the missteps of the first pathbreaker lie the lessons for all who follow.

The Context (1999-2002)

DECLINING POPULATION AND LOCAL GOVERNMENT WEAKNESS

As the home of General Motors, the City of Flint became one of the larger industrial cities in the middle of the twentieth century, reaching a population of over 200,000 residents by 1960. The strength of the economy continued until the last quarter of the twentieth century when both employment and population loss entered precipitous decline. By the year 2000,

Flint had lost almost a third of its population; by 2010 it was only one-half the size it was forty years earlier. Both legacy pension debts and annual operating deficits far exceeded available revenues, resulting in declarations of fiscal emergency and the appointment of emergency fiscal managers in 2002, and again in 2011.

Against this backdrop of rapid decline, disinvestment, and decay is the pivotal microcosm of delinquent property taxes. Whenever a homeowner faces a loss of income, or a business experiences a loss of revenues, one of the first payments that is deferred is the payment of annual property taxes. A rise in the rate of property tax delinquency is an early warning sign of disinvestment and abandonment and by the 1990’s the delinquency rates in Flint, Michigan, were higher than at any point in the twentieth century.

TAX FORECLOSURE REFORM – P.A. 123

Property tax delinquency correlates with economic decline, but it also correlates with the relative efficiency and effectiveness of the state statutory system for enforcement of property tax payments. Throughout the twentieth century, Michigan had a system of property tax enforcement that was relatively common in the United States, and fashioned after basic principles that emerged in the early twentieth century. Tax bills were issued and property owner had date certain for the payment of the taxes. When taxes were not paid on the due date, they accrued interest and penalties. After several years of delinquency a tax auction would occur, at which time the property would be sold (a “tax certificate” or “tax deed”) to the highest bidder. The former owner would continue to have rights to the property until the tax certificate purchaser

initiated additional legal actions to terminate all such rights. This process would easily take four to seven years, during which time the annual delinquencies continued to grow. Compounding the uncertainty of ownership rights was the ease with which third party speculators would make the initial investment, a low minimum amount, at the tax auctions. The financial incentive of such speculative investors was primarily to reap the benefits of the relatively high rates of interest and penalties when owners elected to redeem the properties from the tax auction purchasers.

In the face of a tax enforcement system which yielded few financial benefits to local governments (already under financial stress), county treasurers and other local government officials in Michigan began a push in the late 1990s for a comprehensive reform of the state property tax enforcement system. The result, enacted in 1999 as Public Act 123, radically altered the entire culture of enforcing payment of delinquent taxes in three key respects. First, the new statute reduced the aggregate time frame from as much as six to seven years down to three years, and created fixed time periods for each step of the enforcement proceeding. Second, Public Act 123 created as the final enforcement step a judicial proceeding, ensuring constitutionally adequate due process notice to all interested parties and an opportunity to be heard. Third, in a novel approach, the statutory framework eliminated the automatic step of a public auction and instead provided for transfers of the foreclosed and forfeited properties to the local governments. The local governments, in turn, could elect to offer the properties at one or more public auctions or retain the properties themselves for public uses. This last feature of the new Michigan property tax enforcement statute was the direct catalyst for the creation of land banks in Michigan.

In Michigan, the County Treasurer occupies a relatively unusual role in local government finance. Rather than having primary responsibility for receipt of all property tax revenues, the County Treasurer has statutory responsibility for the enforcement of delinquent property taxes. With the enactment of Public Act 123, the Treasurer of Genesee County, Michigan, Dan Kildee, correctly understood that within just three years the new law would result in large numbers of properties being transferred to Genesee County or to the City of Flint. Such a volume would quickly outstrip the legal and fiscal capacity of the local governments to assume responsibility for the maintenance and ultimate disposition of the property.

The Genesee County Land Reutilization Corporation (2002-2004)

Lacking any statewide enabling legislation permitting or expressly recognizing the possibility of the creation of a public local land bank, Dan Kildee pushed for the creation of a parallel entity based upon the existing statutes authorizing intergovernmental agreements. Using specifically the Michigan Urban Cooperation Act, the Michigan Intergovernmental Contracts Act, and the Nonprofit Corporation Code, the Board of Commissioners of Genesee County, and the Charter Township of Flint, Michigan, entered into an Urban Cooperation Agreement for the creation of the Genesee County Land Reutilization Council, Inc. (the GCLRC) effective August 29, 2002. Within a few months, the City of Flint joined as a party to the Urban Cooperation Agreement. The Urban Cooperation Agreement identified as its key purposes to address “the need for (i) the creation of safe, decent and affordable housing for existing and future residents, (ii) the return of abandoned tax delinquent properties to productive use including the payment of tax revenues, (iii) opportunities for the revitalization of deteriorating residential, retail, and commercial neighborhoods, and (iv) properties to be available for use as public parks, greenspaces, and other public purposes.”

The GCLRC was created with as broad a range of corporate powers as could be invested in a public entity created by an urban cooperation agreement. Key among these powers was the authority to receive transfers from any property tax foreclosing governmental unit under the provisions of Public Act 123 amending the tax foreclosure laws. Within one month of the creation of the GCLRC, the Genesee County Board of Commissioners approved budget and line item authority for the Treasurer to increase his staff by the addition of key positions for foreclosures and for land reutilization. That same month Genesee County transferred to the GCLRC its power and authority under Public Act 123 to acquire properties at the tax foreclosure, and the GCLRC proceeded with the acquisition of over 200 parcels for the minimum bid in excess of \$800,000.

During the first twenty-four months of its existence, the GCLRC moved quickly to create, from whole cloth, governing documents including by-laws and a code of ethics as well as key operating documents setting forth the priorities, policies, and procedures governing the acquisition, management, and disposition of the inventory.



The Michigan Land Bank Fast Track Authority Act (2003)

With the growing inventories from the new tax foreclosure statute beginning to be transferred directly to local governments in Michigan, the pressures increased for the creation of a systemic option for acquiring and managing such inventories. With the precedent of the GCLRC already in place and following a year of intensive and extensive legislative efforts, the Michigan Land Bank Fast Track Act was passed in late 2003, effective January 4, 2004 (Public Act 258 of 2003).

There are several features that distinguish the Michigan legislation from its predecessors in the first generation of land bank statutes, and the nine other states that have followed it in the subsequent years. The first unique feature is the creation of a land bank authority as an entity of the state itself, and not simply an entity created in the discretion of a local government. Only Alabama has created a similar state land bank authority. In both instances such a state authority is largely attributable to the fact that the state itself, as opposed to local governments, is the “default” entity which receives title to tax-foreclosed properties that are neither purchased at tax sales nor redeemed by prior owners. A second feature of the Michigan legislation, with a parallel only in the subsequent New York Land Bank Act, is that a local land bank cannot be created except with the express authorization and approval of a state land bank agency, and in the case of Michigan the approval of the underlying intergovernmental agreement.

Because of the statutory placement of the Michigan Land Bank Fast Track Act, an understanding of the breadth of the powers of a Michigan land bank requires careful tracing and an analysis of internal statutory cross-references

and companion legislation enacted simultaneously with it. Michigan land banks do include the possibility that operations can be subsidized by a five-year, fifty-percent return of property taxes once the properties are conveyed out of the land bank and placed back on the tax rolls. The structure of such authority, however, required simultaneous legislation that reduced the general property tax levy and created a specific property tax levy in its place. In parallel fashion, companion legislation was enacted to modify the statutory definition of a “brownfield” to make all properties acquired by a land bank to be considered brownfields for purposes of state programs for environmental remediation, and tax increment financing programs.

Acknowledging the politics, policies, and challenges unique to the City of Detroit, the Michigan Land Fast Track Act contained qualifications and requirements applicable solely to the City of Detroit (identified as a “Qualified City” in the Act). Unlike all other land banks in Michigan, which must have some degree of intergovernmental collaboration between a county and a local government, Detroit was empowered to create a local land bank without formal collaboration with Wayne County.

The Genesee Land Bank (2004)

Under the terms of the Michigan Land Bank Fast Track Act, a local land bank could not be created except pursuant to an agreement between the proposed local land bank and the newly authorized Michigan Land Bank Fast Track Authority. This meant, functionally, that no new land bank could be created until the state authority had been duly constituted and its board members appointed. Over the course of 2004, the State Authority was created and work proceeded on the necessary agreement for the creation of the new Genesee County Land Bank Authority. The Intergovernmental Agreement between the State Authority and the Treasurer of Genesee County was approved by the State Authority on December 1, 2004, and by the Genesee County Board of Commissioners on December 7, 2004. That same day, the new Genesee County Land Bank Authority held its first organizational meeting and formally became the successor in interest to its predecessor, the GCLRC.

Building upon the brief yet intense experience of the GCLRC, the Genesee Land Bank moved immediately to adopt a comprehensive set of policies and procedures for its inventory. It adopted a Property Acquisition Policy which set forth eight factors, or criteria, to be considered in the potential

acquisition by the land bank of any parcel of property. These include factors such as requests by public and private entities for immediate transfer and reuse, properties capable of occupancy without need for substantial rehabilitation, properties that could easily be placed into the Side Lot Disposition Program, properties that could be a vital part of a neighborhood stabilization program, and properties that could be a source of revenues to support land bank operations. In all instances these factors were to be considered by the Treasurer in acquiring and transferring properties to the Land Bank as a result of the tax foreclosure process.

Similar policies were adopted by the Genesee Land Bank, applicable to transfers from the Land Bank to third parties. These policies addressed three key factors, and included within them hierarchical rankings of priorities: (i) the intended use of the property, (ii) the nature of the transferee of the property, and (iii) the impact on neighborhood and community development. These policies were further expanded to address the different issues posed in the residential context and the commercial context. The process and method to be used in establishing the nature and amount of the consideration to be required from the transferee for any given property was also set forth in detail.

Because of the initial work of the GCLRC, the Genesee Land Bank was poised to move rapidly in its operational development and operational capacity as the first local land bank in the State of Michigan. It immediately took advantage of the brownfield characterization of its inventory and, after securing an amendment to the Genesee County Brownfield Redevelopment Plan, undertook the issuance of tax increment bonds, which provided \$3 million. This, in turn, was used to launch the largest demolition program of abandoned heavily deteriorated properties in the City's history.

In its early days, the Genesee Land Bank made another key decision that has served as a valuable precedent for the land banks that followed throughout the country.

In its early days, the Genesee Land Bank made another key decision that has served as a valuable precedent for the land banks that followed throughout the country. The Genesee Land Bank moved immediately to create a formal Citizens Advisory Council, which is composed of 18 members representing each of the districts in Flint and in Genesee County. This Advisory Council serves a dual role of providing neighborhood and resident input into the decisions of the Land Bank, and providing information and outreach to the neighborhoods on the plans and strategies of the Land Bank.

Challenges and Opportunities

The twin mantles of being the first of the newest generation of land banks in the country, and being a land bank in one of the most economically depressed cities in the country, present far more than a fair share of opportunities and challenges. As Treasurer of Genesee County, Dan Kildee served as founder and chair of the board of directors of the original GCLRC and then as chair of the board of directors of the Genesee Land Bank. (He served in these multiple capacities until his resignation on January 1, 2010, to serve as the founder and first president of the Center for Community Progress. In January 2013, he became United States Congressman from the 5th District, Michigan.) The essential coordinating function served by these overlapping roles of county treasurer and land bank leader has been indispensable, and in the case of the Genesee Land Bank the insight, creativity, and vision of Dan Kildee started the movement for the entire country.

Within a few brief years the Genesee Land Bank moved from having no inventory of real property to being one of the largest single landowners in the entire country. Acquiring an average of 1,200 separate parcels of tax foreclosed property each year during its first twelve years, the Land Bank found itself the owner of fifty percent of all vacant, unimproved lots in the City of Flint, and twenty-five percent of all homes in Flint in need of demolition. It has been able to obtain over \$35 million in federal, state, and local funds to support the demolition of 3,300 heavily deteriorated structures over the past twelve years.


Confronting the need to own, and then to demolish the structures, on vast inventories of properties scattered across a city is a daunting task. Doing so without clear plans for potential reuse is an almost insurmountable task. What makes this challenge even more problematic is the functional inability of the City of Flint to engage in meaningful land use planning on its own. At the creation of the Genesee Land

Bank, the last comprehensive plan prepared by Flint was almost fifty years old, and based on the assumption of a city population of 200,000 and growing. By the beginning of this century, with the creation of the Genesee Land Bank, the population was at 100,000 and dropping. Of necessity one of the first functions of the new Land Bank was to facilitate the preparation of new land use plans for the city that could be used to guide both its demolition activities and its transfer and reuse policies, and in 2013 a new Master Plan for the City of Flint was adopted.

Being in the position of acquiring annually large volumes of inventory, and not knowing until the final day of foreclosure and forfeiture which properties it would actually acquire, forced the Genesee Land Bank to develop comprehensive and sophisticated sets of data analysis. The inventory would be immediately evaluated according to the condition of the improvements, with preliminary categorization into demolition candidates, properties requiring substantial rehabilitation, properties requiring minor rehabilitation, and properties ideally suited for the Side Lot Disposition Program. All properties are immediately entered into a comprehensive geographic information system and management responsibilities assigned to a wide range of third party property management contractors. As the Genesee Land Bank acquires virtually all tax-foreclosed properties in the county, more than any other land bank in the country it possesses the full range of formerly commercial, retail, and industrial properties in its inventories. As a corollary of this, the Genesee Land Bank has entered into a broader range of redevelopment partnerships than any other land bank.

Of particular concern to Treasurer Dan Kildee at the time of the dramatic reforms in the Michigan property tax foreclosure laws and then the subsequent creation of the GCLRC and the Genesee Land Bank, was the possibility of acquisition of properties through the tax foreclosure process that were occupied, either by owner occupants or by tenants. As Treasurer, Kildee could implement programs and policies to reach homeowners for potential hardship repayment plans prior to the completion of an involuntary transfer of the home. As leader of the Genesee Land Bank he would design programs for immediate identification of the tenant-occupied properties and create rental management programs and programs for tenant relocation into other properties of the Land Bank.



The background image is a photograph of a two-story house with a white porch and dark shutters. The house is partially obscured by a large blue overlay that contains white text. The text is a paragraph about the Genesee Land Bank. The house is set in a snowy environment, with snow visible in the foreground and around the base of the house. The blue overlay is a semi-transparent rectangle that covers the right side of the image, leaving the left side of the house visible.

The Genesee Land Bank properly bears two mantles of distinction in the history and development of land banks and land banking in the United States. It is the first of the “new” generation of land banks and undertook the role of being the pathbreaker in assessing the landscape and designing the new approaches. Virtually all of the lands banks created in the past decade owe much of their structures, their policies, their procedures, and their vision to this work done in Genesee County and Flint, Michigan, between 1999 and 2004. The second mantle of distinction is that more than any other land bank in the county, Genesee Land Bank faced an overwhelming inventory of vacant, abandoned, and tax-foreclosed properties in a community devastated by employment and population loss and insolvent local government entities. Its challenges were—and in many ways still are—greater than those experienced by other land banks just emerging, but in both the discoveries and the missteps of the first pathbreaker lie the lessons for all who follow.

CHAPTER 13

The Cuyahoga Land Bank

Of the three land banks selected for detailed presentation in this volume, the Cuyahoga Land Bank is both the one most recently created and the one which has in a remarkably short period of time emerged into the largest and most productive land bank in the country, as measured by staff capacity, budgetary resources, and productivity. The Atlanta Land Bank is the story of one of the earliest land banks that has adapted and transformed to changing conditions and strengthened land bank legislation. The Genesee Land Bank is the story of the pathbreaker that created new approaches in the face of the greatest needs and pressures. It is the Cuyahoga Land Bank that is the story of the dramatic changes that be accomplished with new tools in the hands of skilled visionaries.

The Cleveland Land Bank as the Initial Approach

More than twenty years before the emergence of the Cuyahoga Land Bank, the public and private leadership of Cleveland, Ohio, began to confront growing inventories of heavily tax-delinquent vacant properties. In the third quarter of the twentieth century, Cleveland experienced slow but steady population loss. In the 1960s, Flint, Michigan, was still reaching its high point in employment and population, but Cleveland had experienced an 18 percent population decline in two decades. By the mid-1970s, there were over 11,000 parcels in some stage of a lengthy inefficient and ineffective tax foreclosure process, and the number of vacant properties had increased by 58 percent between 1977 and 1987.

Cleveland turned to the novel approach undertaken but a few years earlier by St. Louis. With a rapidly growing inventory of tax delinquent properties stuck in a lengthy and ineffective tax enforcement system, the Missouri legislation had authorized St. Louis to create the first land bank in the country. That “model” was simple and direct in its approach. When the multiyear delinquent property tax enforcement process neared its conclusion, and no private third parties tendered the minimum bid for the properties, the properties were automatically conveyed into a local public entity—the St. Louis Land Bank. Cleveland elected to take a similar approach and on the basis of parallel state legislative amendments, the Cleveland Land Bank was created in 1976 as the second land bank in the country.

Both the St. Louis Bank and the Cleveland Land Bank were designed as “minimalist” approaches to dealing with tax-delinquent, vacant, and abandoned properties. Neither approach directly challenged or reformed the underlying system defects in the tax foreclosure system. Though time periods may have been shortened somewhat, the tax foreclosure process still failed to yield insurable and marketable title in the hands of the new governmental entity. Neither approach created an independent public entity whose primary function was the elimination of the liabilities imposed by these tax delinquent properties and their conversion into productive uses. The St. Louis Land Bank was created as a separate legal corporation, but at the time placed organizationally into the overarching St. Louis Development Corporation as one of its seven operating subsidiaries. Cleveland elected not to go even that far. Instead, the Cleveland Land Bank was created not with separate legal status but simply as a program placed within an existing city department.

The very modest structure and goals of the Cleveland Land Bank left it with very modest capacity and power. It did not hold legal title to any property as it lacked an independent corporate existence. Title to any and all real property in the land bank program necessarily vested in the City of Cleveland. Similarly, the Land Bank lacked any separate governance structure such as its own board of directors with power and authority to make decisions on acquisition, management, and disposition. Each and every decision on acquisition and disposition required the review and approval of the City Council, with heavy deference being given to the council member in whose district the property was located.

An amendment to the Ohio statutes in 1988 extended to the Cleveland Land Bank the authority to abate delinquent property taxes on parcels it acquired. This laid the foundation for a donative conduit transfer program which was subsequently picked by the Atlanta Land but otherwise the Cleveland Land Bank was expected to have minimal inventory. It was limited to the acquisition only of unimproved land; no parcels with existing improvements (unless slated for demolition) could be acquired. Emphasis was placed on acquiring only those properties for which there was an identified immediate transferee, and correspondingly little or no funding was provided for demolition, rehabilitation, or property management. All properties had to be transferred from the Land Bank at fair market value thus none of the properties could be conveyed to third parties as a form of subsidy to achieve other public goals such as affordable housing. This dilemma was mitigated somewhat by a policy decision that non-buildable lots had minimal value and were placed in a “side lot” program.

Rethinking the Possibilities and New Legislation (2007-2008)

Because of its modest design and its very low level of acquisition and transfer, the Cleveland Land Bank was simply unable to address the continuing increase each year in the inventories of tax-delinquent, vacant, and abandoned properties. Though blessed with some of the strongest and most proactive nonprofit community development corporations in the entire country, which focused on affordable housing and neighborhood stabilization, the persistent economic decline in Cleveland and the continuing systemic failures were simply no match for the Cleveland Land Bank.

With the precedent of the transformative experiment launched by the Genesee Land Bank and the passage of the Michigan Land Bank Fast Track Act between 2002 and 2004, the leadership of Cuyahoga County, including Cleveland, began to focus on a far more ambitious agenda. What was necessary was the realignment of the system of delinquent property tax enforcement with an understanding of the costs of vacancy and abandonment on neighborhood stabilization. As Dan Kildee, Treasurer of Genesee County, Michigan, was the pivotal catalyst for the Genesee Land Bank and the Michigan transformation, Jim Rokakis, Treasurer of Cuyahoga County, was the person who led the transformative work in Cleveland, in Cuyahoga County, and in the State of Ohio.

Throughout 2007 and 2008, Jim Rokakis and his key legal counsel, Gus Frangos, began crafting legislation that would permit the creation of a new land bank model with a broad range of powers carefully tied into existing tax foreclosure system. The basic bill, which passed in 2008, was basic only in the sense of creating the foundation for land banking in Ohio. In every other sense it was anything but “basic”. That one single piece of legislation, Senate Bill 353, was almost two hundred pages in length and amended or created over 100 separate provisions of the Ohio Code. In an incredibly complex and sophisticated masterpiece it wove intricate connections among tax foreclosure, tax penalties and revenues, municipal powers, not-for-profit corporation powers, property acquisition, management, and disposition authority, and intergovernmental collaboration.

At the core of the 2008 Ohio Land Bank legislation was the authority for the creation of the Cuyahoga County Land Reutilization Corporation (the Cuyahoga Land Bank), an independent corporation with a five person board of directors composed of public officials (subsequently expanded to nine members). The legislation reduced the length of time for the acquisition of vacant or abandoned property, and maximized the potential for direct transfers to the Cuyahoga Land Bank. Equally significant, the legislation authorized an increase in the penalties and interest on delinquent taxes and the allocation of such additional revenues to the Cuyahoga Land Bank as core operational funding. Unlike the Michigan land bank legislation, the Ohio Land Bank legislation included new sections carefully integrating into land banking powers and functions the authority to address liens resulting from housing and building code violations. Another unique aspect of this legislation was express authority for a land bank to undertake a broad range of redevelopment activities either on its own initiative or in combination with other public and private entities. Following the precedent of both the early Atlanta

By the end of its fourth year it had completed over 750 home renovations, over 2,000 demolitions, and created target workforce development programs.

Land Bank legislation, and the more recent comprehensive Michigan Land Bank legislation, this Ohio legislation grounded the creation of a local land bank at the county level as opposed to individual municipalities. This reflected the underlying premise of tax collection by the country treasurer but it also maximized the possibility of regional collaboration across the boundaries of smaller municipalities.

Though perhaps understood in all of its breadth and depth only by Jim Rokakis and Gus Frangos, the enactment of the Ohio Land Bank legislation was possible only by certain initial compromises. Key among these was the geographical limitation of its scope to Cuyahoga County, and a sunset provision providing for its termination in just two years. As soon as Senate Bill 353 had passed, work began yet again on legislation that would further amend its multiple provisions. This supplemental legislation (House Bill 313 and Senate Bill 188) expanded the geographical range of land banking in Ohio to all counties with a population over 100,000, covering the majority of the State, and was passed in late 2009. In April 2010, the statute was amended further to reach all counties over 60,000.

The Cuyahoga Land Bank

Though the magnitude and scope of the Great Recession which broke forth in 2008 was anticipated by very few, Cleveland in particular and Cuyahoga County more generally had already experienced a decade of the adverse consequences of predatory lending and mortgage foreclosures. Numerous initiatives in housing and building code enforcement activities against vacant properties—and foreclosed properties—were already well underway. The comprehensive and intricate Ohio land bank legislation in 2008 came at just the right time.

With an effective date for the 2008 land bank legislation of April 7, 2009, Jim Rokakis, as Treasurer of Cuyahoga County, together with Gus Frangos and Cuyahoga County Commissioners, moved quickly to create the new Cuyahoga Land Bank and filed its Articles of Incorporation on April 16, 2009. Within just six months the Land Bank had hired its initial staff, moved into offices, and established operating protocols with public and private entities at the local, state, and federal levels. With an initial budget of \$3.1 million, it had already acquired its first fourteen parcels of property and the fast pace was just beginning. By the end of 2010—just 18 months into its existence—the Cuyahoga Land Bank had acquired a total of 504 properties and conveyed 80 properties to new owners. It received over \$4 million in federal grant support and raised an additional \$9 million through the issuance of tax exempt bonds. By the end of its fourth year it had completed over 750 home renovations, over 2,000 demolitions, and created target workforce development programs.

Within just a few years of operations, the Cuyahoga Land Bank became the single largest land bank in the United States as measured by annual revenues, properties acquired and conveyed, and by staff capacity. The sheer magnitude of operations is built upon four key characteristics that distinguish the Cuyahoga Land Bank from all other land banks in the country.

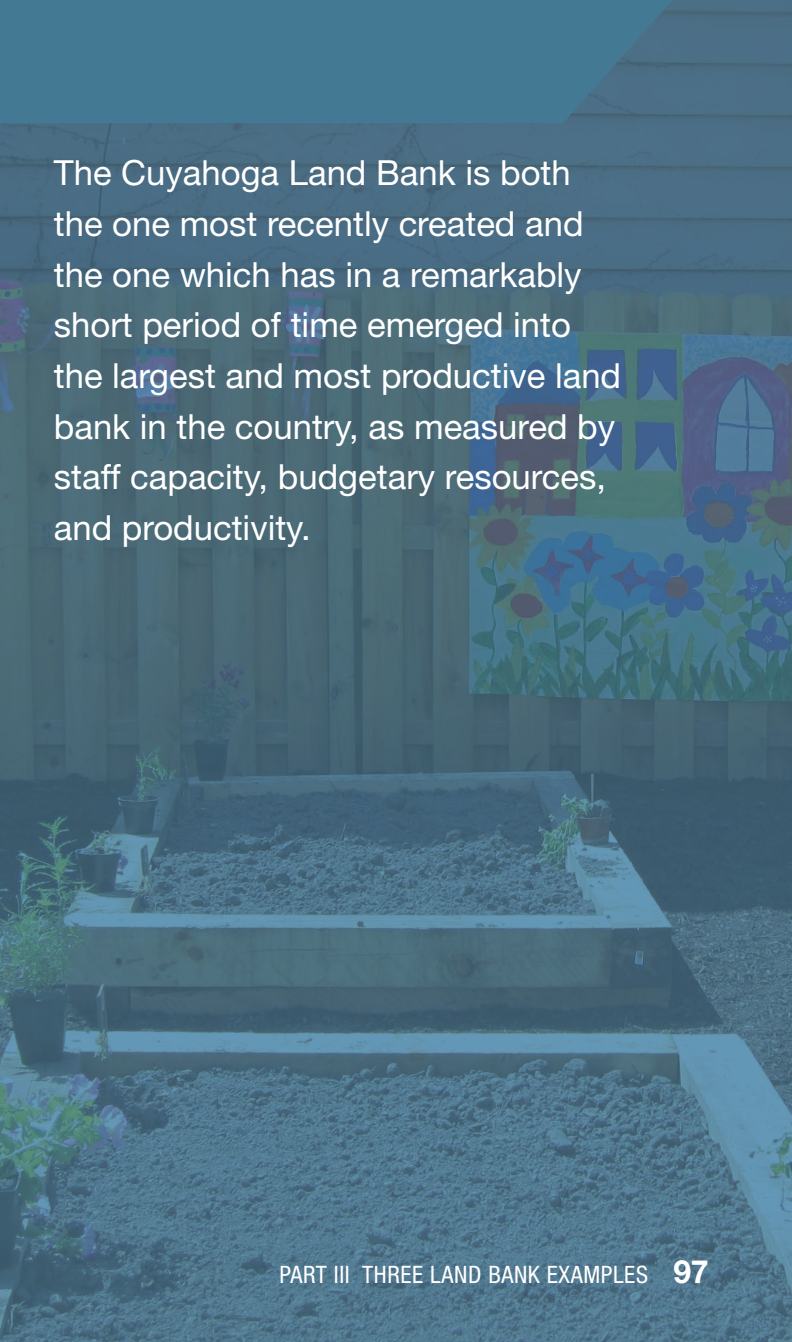
First, in a manner that is both more intricate and more comprehensive than any other land bank legislation in the country, the Ohio legislation creates not just the possibility of a special purpose governmentally related corporation, but also manifold connections between the key systems and tools that can be utilized to address vacant and abandoned properties. It is tied into the property tax enforcement system, allowing it to acquire properties, and it also has authority to trigger initiation of enforcement proceedings. It is tied into housing and building code enforcement and can maximize incentives for private owners to donate properties.

Second, the Cuyahoga Land Bank has the strongest range of dedicated and optional funding sources. It receives a portion of the statutory increase in delinquent tax penalties and interest, which provided \$7 million annually during the early years. Though other land banks have authority to borrow funds by the issuance of tax exempt bonds, the Cuyahoga Land Bank is the first and only land bank to have exercised this authority. The Land Bank has been able to secure federal, state, and local funds targeted for mortgage foreclosure-related remediation and demolition. It has also been a direct

and primary beneficiary of funds provided to the state, and through the state to the Land Bank, as a result of national mortgage litigation settlements agreements.

Third, immediately upon its creation, the Cuyahoga Land Bank placed tremendous emphasis on a comprehensive data system, far more comprehensive, in fact, than any single data system maintained by any local government within the county. Building upon the programs and experiences of NEOCANDO (Case Western Reserve University's "Northeast Ohio Community and Neighborhood Data for Organizing"), it created its own Property Profile System, which is a GIS platform that integrates all key public land information, property characteristics, and real time process information on management, rehabilitation, and disposition.

Fourth, the Cuyahoga Land Bank understood that if its mission is "to reduce blight, increase property values, support community goals, and improve the quality of life for county residents," it was going to need to do far more than simply acquire properties left unclaimed in a tax foreclosure process. The Land Bank does systematically identify and acquire properties through tax foreclosure but it also acquires donated properties that are economically underwater as a result of liens. The Land Bank pioneered direct property transfers from the federal mortgage entities and from private national mortgage lenders when they realized that projected returns on the post-foreclosure real estate they owned were at best minimal if not negative in value. It also pioneered a collaboration with law enforcement agencies for the properties forfeited as a result of criminal activities. With a broad yet always strategically focused acquisition program, the Cuyahoga Land Bank engaged in an equally proactive property disposition program. Not content with demolitions, though it has done more of these than virtually any other land bank, with the possible exception of the Genesee Land Bank, or simply holding vacant lots hoping to identify potential transferees, the Cuyahoga Land Bank created a program designed to maximize property rehabilitation and transfer simultaneously. In this "deed-in-escrow" program, the Land Bank prequalifies the transferee, quantifies the nature and costs of the necessary rehabilitation work to be done, and then closes the transaction into escrow pending the completion of the work. Upon completion the property is transferred to the new owner immediately, or through an installment land sale agreement relationship.



The Cuyahoga Land Bank is both the one most recently created and the one which has in a remarkably short period of time emerged into the largest and most productive land bank in the country, as measured by staff capacity, budgetary resources, and productivity.



PART IV

Building for the Future

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CHAPTER 14

The Case for Land Banking in Your Community

A land bank should be created only when its powers are necessary to solve a community's problems. The problems a community is trying to solve should be identified before a land bank is formed. Different problems may demand different characteristics, structure, and priorities. In fact, some problems can be addressed by changing just one law, by reorganizing an existing agency, or by expanding the programs of a local government. In those situations, a land bank may not be the best tool for a given community.

The needs of every community are different, and the structure of each community's land bank should reflect these differences. But before a land bank's structure can be negotiated and agreed upon, the legal authority for the creation of a land bank must be established. Some jurisdictions can engage in land banking activities without state enabling legislation simply by utilizing existing statutory powers. Although the authority to create land banks already exists in some communities around the country, advocates there may still seek to improve existing laws through legislative amendments. In most jurisdictions across the country, however, the existing legal authority to create land banks is insufficient. In those instances, it is likely that state legislation is required before a local government can start a land bank.

Just as a local government considers the needs of its community when determining the form and structure of its land bank, advocates for statewide land bank enabling legislation need to tailor their political strategy to their own state milieu. A successful strategy is one that has the following components: builds a strong coalition of many constituencies, anticipates and addresses crucial objections, manages the expectations of the various stakeholders, and realistically defines what constitutes success.

Building Constituencies

If key decision-makers do not already support statewide enabling legislation, building a coalition that can advocate for such legislation is crucial to its successful passage. A powerful coalition will consist of elected officials, community members, business leaders, and interested stakeholders. In some instances, a coalition forms naturally, with advocates coming together on their own. At other times, forming a coalition requires careful planning and strategizing to ensure that all politically necessary parties are involved. Regardless of how a coalition is assembled, it is helpful to identify the point person or leader of the coalition early in the process.

If a coalition is not formed naturally, advocates should expect to spend time determining who should be involved and convincing those identified stakeholders that the reform is needed. In communities across the country, the stakeholders tend to include nonprofit community development corporations, state and local government planning officials, local property tax collectors, local government property management divisions, affordable housing advocacy groups, green space advocacy groups, local chambers of commerce, and state realtor associations. While these various groups often represent divergent interests, land banking is one instance where they can sometimes find common ground and work together.

One of the most persuasive tools is education. As coalition members learn why reform is needed, the coalition will likely expand. Educating legislators about the current problems facing local communities is important. Effective education efforts should provide constituencies with a historical context for how

past policies have contributed to the current conditions. Finally, helping constituencies recognize who is required politically and institutionally to create a land bank is necessary. Ultimately, if the stakeholders know what land banks can do to help address problems in their communities, the passage of meaningful enabling legislation is more likely.

The educational process can take a substantial amount of time, beginning with individual phone conversations to gauge interest, and proceeding to the assemblage of local or regional groups of interested stakeholders. Where in-person meetings are not possible, web-based sessions can be a useful alternative. However, if the goal is to address questions and facilitate a dialogue among group members, a meeting in person is more effective. One of the most powerful and effective forms of education is a focus on the costs of doing nothing. A number of communities across the country have appropriately started their outreach and education efforts with analysis of the costs to the local governments of vacant and abandoned properties, such as lost property tax revenues, increased police and fire calls, and declining values of adjoining properties. Such studies in Philadelphia, in Cleveland, and in the Tri-COG communities in southwest Pennsylvania proved pivotal in galvanizing private and public leadership to search for solutions.

When assembling materials for educational sessions, it is helpful to have an understanding of multiple areas of state laws. The most relevant sections of state law will be those relating to: the authority of a local government to acquire and dispose of real property, and any limitations on that authority; all property tax assessment, collection, and foreclosure procedures; and the creation, management, and powers of redevelopment authorities. One single expert on all aspects of state law is not needed; in fact, it is more likely that the coalition will need to engage multiple experts in the different areas of law in order to draft comprehensive and effective legislation.

One final consideration is whether neutral third-party facilitators should be consulted. When advocates engage a community in the reform process, some constituencies will resist, especially when those advocating for change are community members who have a history of being adversaries. In such cases, utilizing a neutral third party can be beneficial. A neutral third party, like a national nonprofit organization with expertise in the field of land banking and tax foreclosure reform, could bring parties together who normally would not respond to each other simply because of past political differences. A third party that has expertise and prior success stories can garner respect and consideration for ideas that

would otherwise be dismissed as too radical. Further, having a neutral third party involved in the legislative strategy can insulate coalition members from political fallout if the reform is unsuccessful.

Ultimately, any successful legislative reform will involve a substantial amount of education. Significant educational efforts can and should take place at all points of the legislative process, whether attempting to build a coalition, draft legislation, or garner support for the bill passage.

Anticipating Objections

One of the most important aspects of education is anticipating and preempting objections. Depending on the unique problems and political climate of a given jurisdiction, one can usually identify issues that are most likely to elicit objections. The concept of reform, especially when it targets an antiquated system such as the property tax system, is unappealing to different constituencies for different reasons. Local tax assessors and collectors may be opposed to a new system because they are resistant to change. Staff of redevelopment authorities may believe

Following the successful enactment of the Nebraska Municipal Land Bank Act in 2013, the primary advocacy coalition prepared a succinct and powerful “case statement” for the creation of the Omaha Municipal Land Bank. The City Council of Omaha unanimously approved the creation of its Land Bank in July, 2014. This case statement is reproduced as Appendix A.

Coalitions should recognize their successes at each step in the process, not just by an end result centered on the passage of legislation.

that their existing programs sufficiently address their communities' vacant property problems and fear a land bank would encroach on their work. Realtors may fear that a land bank would remove properties from the market that a realtor could otherwise sell. A successful strategy will anticipate these objections and take measures to educate these constituencies on why change is needed and how it is actually consistent with their own interests.

Under the pressures of economic recession, elected officials are often adverse to legislation that is not revenue neutral. When advocating for legislative support, a coalition should emphasize that land bank legislation does not necessarily require appropriations from the general revenue fund. Educating elected officials on the various financing mechanisms included in comprehensive land bank legislation is an important tactic for garnering support from both local elected officials and state legislators. Land bank financing mechanisms can be complicated and layered, and thus difficult to understand without understanding the system created by the legislation as a whole. A coalition should expect to spend a significant amount of time explaining how the financing mechanisms interact with other powers granted in the legislation so that the effects of any legislative amendments are recognized. Ultimately, legislation that is revenue neutral is politically attractive, so when advocating for legislative support, a coalition should emphasize that land bank legislation does not require appropriations from the general revenue fund.

Almost as important as anticipating the objections themselves is assessing the strength of the objectors as compared to the coalition. Advocates should take stock of the relative levels of support they have from key elected officials, community business leaders, nonprofit organizations, and other interested stakeholders to anticipate whether certain objections and objectors have the political power to prevent passage. If it

is anticipated that certain parties have the ability to derail a legislative effort, a political strategy must be devised to address these concerns.

Managing Expectations

Even a strong coalition and comprehensive legislation cannot guarantee immediate passage of a bill. Gathering support and educating elected officials and community leaders can take substantial amounts of time, often over a year or two. When members recognize from the outset that achieving an overnight result is an unrealistic expectation, they will have a better chance of ensuring their coalition remains intact and optimistic without getting fatigued. As is true with any piece of legislation, the path to passage can be rocky and uncertain. A bill that seemed guaranteed to pass on Monday can die in committee on Tuesday. This uncertainty only increases toward the end of state legislative sessions.

Elected officials, for example, may optimistically but unrealistically look to land bank legislation to fix their communities' economic and vacant property woes. Also, strong objections, political gamesmanship and last-minute obstacles can leave a coalition disenchanted. Ultimately, then, the coalition's leader should be responsible for managing expectations of all participants throughout the legislative process.

Defining Success

One of the most important ways to manage expectations is to have the coalition define early in the process what will constitute success. A coalition should first identify what it is trying to accomplish. Is the goal to simply raise awareness of the issue, directly address an identified barrier to property redevelopment, or to actually pass enabling legislation and create a land bank? Identifying the end goal will help a coalition stay focused and recognize success.

Further, coalitions should recognize their successes at each step in the process, not just by an end result centered on the passage of legislation. For example, if a state strategy includes building a new coalition, the members should look at the very formation of a group and the facilitation of discussions as a step in the right direction. Once the coalition is formed and discussions begin, identifying common substantive points of reform and outlining a piece of legislation that the coalition can agree upon is another success in and of itself. Finally,

working together to gather the support of communities and elected officials, and appease those who voice objections, is a sign of success.

The pinnacle of a successful statewide legislative strategy is the passage of a comprehensive land bank bill. It may take more than one legislative session, however, to achieve this success. If legislation does not advance during one session and must begin anew in the following session, the coalition should recognize that the previous efforts were not a failure, but rather they helped to lay the necessary foundation for the eventual success of their renewed efforts.

State Land Bank Associations

Thirty years ago there were no statewide or regional associations of land banks. Only three of the earliest land banks had been formed. Fifteen years ago, fewer than ten land banks existed but there were an increasing number of governmental and nongovernmental actors and entities beginning to push for an intentional and concentrated focus on the overlap of property tax delinquency, vacant and abandoned properties, and neighborhood destabilization. Two national organizations, the Local Initiatives Support Corporation and Enterprise Community Partners, began to focus on underlying systemic failures which created the incentives for abandonment and undercut much of the efforts of local community development corporations.

Within the past 15 years, ten states have adopted comprehensive land bank enabling legislation and over 120 local land banks have been formed. None of this would have occurred with critical collection action by statewide associations. In some states the groundwork in educating public officials about the significant external costs of vacancy and abandonment, and the underlying broken systems, was done by statewide coalitions. Perhaps the best example of this is the Housing Alliance of Pennsylvania, which worked tirelessly for several years preparing the context for introduction and ultimately the enactment of the Pennsylvania Land Bank Act. In Michigan it was the statewide association of county treasurers who realized that they were at the center of the storm, and the solution, in the reform of tax foreclosure laws. In Ohio it was an advocacy coalition among the Cuyahoga County Treasurer, a strong local nonprofit community development organization—Neighborhood Progress Inc., and the Greater Ohio Policy Center that made all the difference in the enactment of the comprehensive Ohio land bank legislation.

As the number of local land banks continues to grow each year, there has emerged a sufficient center of gravity, and synergy, for the formation of collaboration associations of land banks within a given state. Michigan (the Michigan Association of Land Banks), Georgia (the Georgia Association of Land Bank Authorities), and New York (the New York Land Bank Association) all serve vital roles. In some instances they sponsor annual conferences for training, sharing, and coordination. In other instances they identify needed amendments to the existing state land bank statutes. In Georgia it was “GALBA” that took the lead in drafting and successfully advocating for the enactment of the 2012 comprehensive Georgia Land Bank Act.

A land bank should be created only when its powers are necessary to solve a community's problems. The problems a community is trying to solve should be identified before a land bank is formed. Different problems may demand different characteristics, structure, and priorities. In fact, some problems can be addressed by changing just one law, by reorganizing an existing agency, or by expanding the programs of a local government. In those situations, a land bank may not be the best tool for a given community.

CHAPTER 15

State Enabling Legislation

The Need for State Enabling Legislation

The powers of local governments are ultimately limited by state law. If state law prevents local governments from fully addressing the problems associated with vacant, abandoned, and tax-foreclosed properties, the state law itself must be amended. Each state has its own constitutional structure that allocates legal authority between the state legislature and local governments. The extent to which a local government has the authority to create a land bank is determined by the state's "home rule" doctrines and the range of powers granted to cities by the state constitution or by the state legislature. Because a land bank is not a traditional form of local government and exercises only limited powers, some form of state enabling legislation is usually necessary.

In rare instances, statewide enabling legislation is not necessary to create a land bank. For example, the Genesee County Land Bank was created prior to the enactment of statewide land bank legislation and grounded upon preexisting statutes authorizing interlocal cooperation agreements.

Following the enactment of state land bank legislation, a new intergovernmental agreement was entered into by Genesee County and the State of Michigan, transforming the prior entity into the current Genesee County Land Bank. A parallel approach was followed in the creation of the Cook County, Illinois, Land Bank. Without any statewide land bank legislation but with the blessing of unusually strong home rule powers, Cook County proceeded unilaterally with the creation of a land bank.

The Types of State Enabling Legislation

Over the past 40 years, land bank legislation has undergone several transformations. The first generation of land bank legislation bore similar characteristics across the different states, but no two of these early land banks were identical. Because of wide variances in state constitutional law, and state and local allocations of authority, each local land bank was based upon a different legal structure. Each of these

COMPARISON OF LAND BANK STATUTES: **State Land Bank Legislation**

(See Appendix C)

| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
|-----------------------------------|------|--|----------------|------|---|------------------------------------|------|-----------------------------|---|------|
| Date Enacted / (Date Amended) | 2004 | 2009 (2014) | 2011 (2014) | 2012 | 2012 (2014) | 2012 | 2012 | 2013 (2014) | 2013 | 2014 |
| Statewide enabling legislation | Yes | Yes, counties with population over 60,000 | Yes | Yes | Yes Metropolitan government or home rule municipality | Yes, Essentially Kansas City | Yes | Yes Essentially Omaha | Yes Municipalities with minimum of 1,000 tax-delinquent properties | Yes |

land banks did indeed facilitate the conversion of *some* of the inventory of vacant, abandoned, and tax-delinquent properties back into productive use, but the efficiency and effectiveness of these first-generation land bank initiatives fell short of their potential. In hindsight, the lack of efficient and effective acquisition, management, and disposition of vacant, abandoned, and tax-delinquent properties can be attributed to several core features that were missing in each of these first-generation land banks. The shortcomings of the first-generation land banks led directly to the drafting of the second-generation land bank legislation.

The second generation of land bank legislation gave land banks a dramatically different range of powers and possibilities. The legislation provided for multiple sources of financing for land bank operations, a much more extensive intervention in the property tax foreclosure process, and a much bigger inventory of tax-foreclosed properties. Ultimately, the second-generation land bank legislation permitted land banks to be proactive partners in the management, development and overall transformation of liabilities into public assets and not merely the custodians of properties that the open market rejects. However, these second-generation legislative reforms were extremely intricate in nature, difficult to draft and nearly impossible for a casual observer to decipher. And as a result, a third generation of land bank legislation is emerging.

The third generation of land bank legislation expands on the powers conceptualized by the second generation in one single piece of legislation. Having a broader range of powers and more flexibility for local governments in one comprehensive bill facilitates education, passage, and implementation.

Drafting State Enabling Legislation

Appendix D provides a template for a comprehensive land bank statute that most coalitions can adopt and then adapt according to the applicable state law. Taking the template legislation section by section is a good way to gauge the breadth of research required during the drafting process, as well as to understand how each section is related to the others. The sections that are straightforward will be dealt with superficially. Where more explanation is required as to what a section should do and how it works with other provisions of the legislation, it will be explained in more detail.

Sections 1 and 2 give the legislation its title and provide legislative findings and purpose. The title section can include a reference to where the legislation will be inserted into current state law, but it does not have to include this reference. The legislative findings and purpose section provides the context for the problems the legislation hopes to address. If there are particularly powerful statistics associated with vacant, abandoned, or tax-foreclosed properties in a state, those can be included here.

Section 3 is the definition section, and must be very carefully drafted. Aside from Section 18, which contains the ties to property tax foreclosure, this is perhaps the section that is most dependent upon applicable state constitutional and statutory law. The definition section is also the section that will have the greatest impact on the meanings of subsequent sections, so particular focus on the effect of a given definition is required. For example, when defining the type of local government that can create a land bank, one should focus on the relationship among the key local government entities. Should a municipality be allowed to create a land bank without the participation of the county in which it is located? Should a county be required to have at least one participating city in order to form a land bank? The definition of the type of local governments that can create land banks is important because it affects how the statute refers to all other local governments. The template refers to the creating jurisdiction as a “foreclosing governmental unit” because it provides a direct tie to those local governments that participate in the property tax foreclosure process. An alternative term suggested by the template is “land bank jurisdiction”. This term could be used in conjunction with a cross-reference to a state’s public authorities law limiting the creating jurisdictions to only those that can form public authorities.

Once it is determined which local governments are necessary to create a land bank, the legislation should provide a term to represent all other local governments that may wish to interact with land banks as partial participants, by selling or transferring property, or through contracts with a land bank for services. The template broadly defines the term “municipality” as any “city, village, town, or county other than a county located wholly within a city.” This broad definition provides almost all local governments with a wide range of possibilities for interaction with land banks. Finally, school districts are unique and are defined separately. In fact, the template legislation provides several references specific to school districts, which is especially important when drafting the property tax language.



Section 4 governs the creation and existence of land banks at the local level. One of the most important provisions of this template legislation is the maximum flexibility for local governments to work together in creating and operating land banks. According to Section 4(a), a foreclosing governmental unit may elect to create a land bank on its own. However, it is permissible for two or more foreclosing governmental units to join together and create a land bank. Further, it is also permissible for a municipality to join one or more foreclosing governmental units in the creation of a land bank. The language in Section 4 is aimed at providing the maximum flexibility for local governments to work together and create regional land banks when they desire to do so.

The purpose of Section 5 is to provide absolute clarity that the land bank legislation does not apply to entities created pursuant to other chapters of state law. Conversely, the applicability of a state statute that is contradictory to the provisions of the land bank legislation is expressly denied.

Section 6 governs the basic operations of a land bank's board of directors. According to the state legislation, the board will be responsible for determining the rules and requirements relative to the attendance and participation of board members. If the intergovernmental agreement or resolution creating the land bank permits, the board may also be responsible for determining the bylaws of the land bank and any policies regarding operating procedures.

As provided in Section 7, a land bank has the power to hire its own staff. An alternative contemplated by the template legislation is placing the land bank within an already existing municipal department and contracting for municipal employees to serve as land bank staff. In some cases, it may be more efficient for a land bank to function this way.

Section 8 enumerates a variety of general powers available to a land bank. These powers include: the right to sue and be sued; the ability to borrow money; the authority to issue revenue bonds; and the power to contract. A land bank can buy, rent, or sell property. It can also engage in all activities necessary to manage real property, including design, development, demolition, and rehabilitation. Despite a long list of powers, a land bank is expressly prohibited from engaging in eminent domain. This is usually a primary difference between land banks and redevelopment authorities.

A land bank's ability to acquire property is set forth in Section 9. The template legislation provides that a land bank can purchase property, accept property as gifts, or accept a transfer of property from a municipality. All property owned by a land bank is considered tax-exempt. A land bank cannot own property outside of the geographical jurisdiction of the governments that created it, but it can provide management services if an intergovernmental cooperation agreement permits.

A land bank's ability to dispose of property is described in Section 10. While a land bank has broad statutory powers to sell, rent, or otherwise transfer interests in real property, the legislation contemplates the desire of local governments to limit the disposition powers of a land bank through the creating documents. For example, a foreclosing governmental unit may determine that affordable housing is a priority for land bank properties, thus requiring that a land bank consider affordable housing uses above all others when disposing of the property. The template legislation does not prioritize property uses itself because the needs of one community may be different than the needs of another. Granting the creating governments the flexibility to establish a hierarchical ranking of priorities for property reuse is another way to ensure land banks are addressing the needs specific to their communities.

Section 11 forms the basis for several of the financing mechanisms for land bank operations. A land bank may receive direct grants and loans from all forms of governments—federal, state, and local. A land bank may receive payments through the provision of services, through the collection of rent, and through the sale of land bank property. Finally, for those properties that a land bank

rehabilitates and successfully returns to the property tax digest, a land bank can recapture 50% of the real property taxes collected for the five years beginning with the first taxable year. This section includes land bank financing mechanisms that work together with the powers to contract, to borrow, and to issue revenue bonds, along with the ties to the property tax foreclosure system that provide an inventory and assets to fund land bank operations. Because these various powers and provisions interact, land banks can be created in a relatively revenue neutral manner, which most elected officials find very appealing. Altering even one of the financing mechanisms can inadvertently affect another, so Chapter 7 should be very carefully considered when drafting the legislation sections covering land bank powers, financing mechanisms and the ties to property tax foreclosure.

Section 12 governs a land bank's ability to borrow and issue bonds. The bonding provisions found in a state's local authority laws are a good place to start when drafting the bonding language for a land bank. Section 13 requires that all land banks are subject to public records laws. Because in some communities there is a fear that land banks are susceptible to government corruption and self-dealing, including cross-references to open-meetings laws, sunshine laws, or freedom of information laws in this section can help ensure that all land bank operations and transactions will be subject to public scrutiny.

Should a land bank dissolve, Section 14 governs the basic dissolution process. The creating documents, however, should include more specific requirements if the creating government, or governments, deem it necessary. Section 15 provides language that prohibits any employees or board members from engaging in activities on behalf of the land bank where there could be a conflict of interest.

Section 16 of the template land bank legislation is a new provision, not contained in the earlier edition of this volume. It is designed to authorize the Governor to act immediately in the creation of a local land bank when a natural disaster has occurred and a declaration of emergency has been issued. The goal of this new section is simply to provide another tool for state and federal emergency management and response. It recognizes the possibility of widespread property damage and loss in the face of pending climate changes and the likelihood that it will not be feasible to reclaim and redevelop large inventories of property in the near term. It is designed simply as a temporary action in response to an emergency, with local governments assuming full responsibility for the land bank within twelve months following its creation.

Section 17 covers the construction, intent, and scope of the legislation. It states that the land bank legislation should be liberally construed, that powers should be broadly interpreted, and that property restrictions imposed on other local governments shall not apply to land banks unless specifically recognized by the legislation or by the documents creating the land bank.

| COMPARISON OF LAND BANK STATUTES: Correlation to Tax Foreclosure Process | | | | | | | | | | (See Appendix C) |
|--|-----|-----|-----|-----|-----|-----|-----------------------|-----|-----|------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Bid at tax sales | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | Yes |
| Issue credit bids in absence of 3 rd party bidders | No | No | Yes | Yes | No | Yes | Yes, in "upset sales" | No | No | No |
| Issue credit bids when there are 3 rd party bidders | No | No | Yes | No | n/a | Yes | Yes, in "upset sales" | No | No | No |
| Issue trump bids at tax sales | No | No | Yes | No | No | No | No | Yes | No | No |
| Purchase delinquent tax liens from municipality | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes | No | Yes |
| Purchase delinquent tax liens for less than face amount | No | Yes | Yes | Yes | No | Yes | No | No | No | No |
| Conduct bulk tax foreclosures | Yes | No | Yes | Yes | n/a | No | Yes | No | Yes | No |

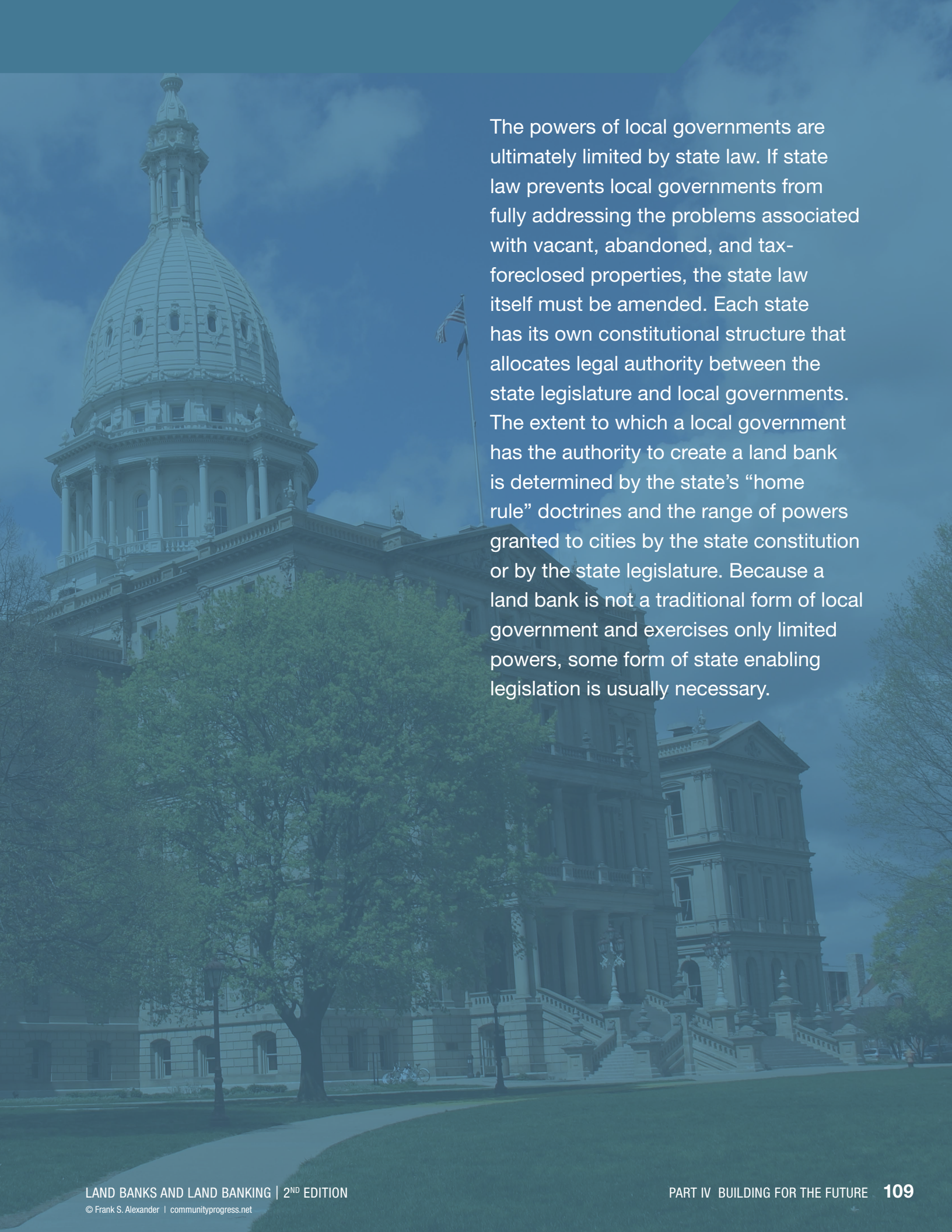
First, a land bank should be given the ability to discharge and extinguish delinquent taxes on properties owned by the land bank. Without this core power, a land bank's effectiveness will drastically decline.

Section 18 outlines a straightforward expedited quiet title proceeding for properties in which the land bank has a real property interest. The section also permits bulk quiet title proceedings for those properties held by a land bank as a way of promoting efficiency. Before this template language is adopted, though, a careful review of a state's judicial proceedings regarding real property and title disputes should occur. If a state already has a quiet title proceeding, alternative language will need to be drafted so as not to provide conflicting procedures.

Finally, the last section of the template legislation provides for an immediate effective date. Some states have default effective dates, but since this legislation requires the effective date to be immediate, the default effective dates would not apply.

Section 18 is merely a placeholder for language that ties land banks to the property tax collection and foreclosure system. Because state property tax laws vary widely, it is impossible to provide template language for this section. While specific language cannot be suggested, the overarching goals of the section can be identified. First, a land bank should be given the ability to discharge and extinguish delinquent taxes on properties owned by the land bank. Without this core power, a land bank's effectiveness will drastically decline. Next, the legislation should give a land bank the authority to participate in tax foreclosures and tax lien sales. Having multiple points of intervention or participation in the tax foreclosure process will help prevent out-of-state speculators from dominating the market. Special considerations regarding the form, amount, substance, and timing of a land bank's obligations when participating in the tax foreclosure process should be made. Finally, bulk tax foreclosures by a land bank or the local government should be permitted as a method for expediting the tax foreclosure process and promoting efficiency.

Ultimately, the section tying land banks to the tax foreclosure process will be among the sections that take the longest to research and draft, and then it will require the most education and advocacy. More than any other section, this section requires an expert who understands a state's property tax foreclosure law, and utilizing local practitioners during the drafting process who are familiar with the law's application should be a priority.



The powers of local governments are ultimately limited by state law. If state law prevents local governments from fully addressing the problems associated with vacant, abandoned, and tax-foreclosed properties, the state law itself must be amended. Each state has its own constitutional structure that allocates legal authority between the state legislature and local governments. The extent to which a local government has the authority to create a land bank is determined by the state's "home rule" doctrines and the range of powers granted to cities by the state constitution or by the state legislature. Because a land bank is not a traditional form of local government and exercises only limited powers, some form of state enabling legislation is usually necessary.

Intergovernmental Agreements

Once a local government determines that it wants to create a land bank, one decision it must make is whether to partner with other local governments in creating the land bank. Creating a regional land bank, which is one that involves more than one local government, often requires the participating local governments to negotiate and adopt an intergovernmental agreement. The intergovernmental agreement will not only create the land bank entity, but also can include governance requirements. This chapter explains the different types of intergovernmental agreements a community may need, describes why intergovernmental agreements are important, and suggests examples of negotiating points an intergovernmental agreement could contain.

Maximizing Intergovernmental Cooperation

It is common throughout the United States that the responsibility for collection of property taxes resides primarily if not exclusively at the county level. Exceptions do exist where large municipalities have been given authority to levy and collect all property taxes, but even then a large number of municipalities contract for the collection and enforcement with the county. When the county is the entity collecting delinquent property taxes and the municipality is the entity where the bulk of tax delinquent properties are located, a land bank can function effectively only by virtue of some degree of collaboration between the county and the municipality. It is for this reason that all of the first generation of land banks—

St. Louis, Cleveland, Louisville, and Atlanta—were permitted to form local land banks if and only if there was some form of intergovernmental agreement between the county and the city.

The premise of intergovernmental cooperation in the formation of a land bank continued into the second generation of land bank statutes—those of Michigan and Ohio. The rationale for this cooperation, however, was based on broader and deeper propositions. The Genesee County Land Reutilization Council, Inc. (GCLRC) was formed by Genesee County, the City of Flint, Michigan, and Flint Township, Michigan, in 2002 prior to the passage of the Michigan Land Bank Fast Track Authority Act on the basis of existing statutory authority for urban cooperation agreements. The early work of the GCLRC demonstrated that being able to address the tax-delinquent properties throughout the entire county, wherever they happened to be located, creates significant economies of scale that supported the work of the land bank in each of the participating local governments.

Regionalism can create a new tool for systemic change in fluctuating socioeconomic conditions. While political boundary lines and political leadership may well have an impact on property values and neighborhood conditions, problems often straddle multiple jurisdictions. Single localities may not be able to overcome systemic barriers to market access such as inefficient and ineffective tax foreclosure and code enforcement laws. The acquisition and management of abandoned structures can rarely be done when left to the entity with the least capacity to address the

problems. Intergovernmental collaboration in the formation of a land bank contains within it the strongest positive features of regionalism.

The third generation of land bank enabling statutes takes this proposition to an even more substantial level. It expressly recognizes that two or more municipalities may elect to become members of the land bank. It also permits the possibility of multijurisdictional land banking by multiple counties and multiple cities collaborating in the formation and operation of a single land bank entity. This third-generation statute adds yet another possibility not expressly stated in the earlier statutes: it permits one land bank to contract for services to be provided by a land bank operating in another jurisdiction. Though possibly authorized under existing intergovernmental cooperation statutes, this express authorization makes clear that economies of scale and specialization of expertise can maximize the potential benefits of land banking.

Developing and Drafting Intergovernmental Agreements

There are two basic contexts in which an intergovernmental agreement might be necessary. The first is when a land bank must be created in the absence of express enabling legislation. When a state lacks a specific land bank statute, the laws governing state and local government and municipal cooperation will guide the intergovernmental agreement process.

The second context is one where a state statute authorizes the creation of a land bank pursuant to language specific to land bank formation. Depending on the state, a land bank statute can control both the contents for the intergovernmental agreement and who can be party to an intergovernmental agreement. For example, a state statute may require that both a county and a city located within the county be parties to the intergovernmental agreement creating a land bank. However, other statutes can permit a city to create a land bank separate and independent from a land bank created by the county.

When negotiating the contents of an intergovernmental agreement, the statutory enabling legislation must be the primary guide. The statute may dictate who must be party to the intergovernmental agreement, what is required to be included in the agreement, and what can be delegated to the land bank board of directors and staff.

In addition to dictating the necessary parties to an intergovernmental agreement, a state land bank statute may require that an intergovernmental agreement cover certain topics. For example, the composition of the board of directors that governs the land bank can be left open by the state statute but would be necessary for the intergovernmental agreement to cover. Those appointed to serve initial terms as board members would also need to be included in the intergovernmental agreement, as well as the processes for how board members are appointed and replaced. If a school district is permitted to participate in the land bank, the intergovernmental agreement may be required to describe the extent of a school board's involvement.

A state land bank statute can also suggest a broad range of issues an intergovernmental agreement may, but does not have to, control. Terms not covered by statute or intergovernmental agreement may be delegated to the board of directors or to the staff responsible for the day-to-day operations of a land bank. For example, state legislation could provide that an intergovernmental agreement creating a land bank rank the priorities of disposition for land bank properties. However, an intergovernmental agreement does not necessarily have to rank the priorities of disposition.

Ultimately, the issues that an intergovernmental agreement must address are specific to the state enabling statute governing the creation of land banks. The issues that should be addressed by an intergovernmental agreement will depend upon the political and socioeconomic realities of the communities creating the land bank. The issues that could be addressed by an intergovernmental agreement will be determined by the negotiating parties and the capacity of the board of directors.



CHAPTER 17

The Future of Land Banking

The dream is that one day in the not too distant future we can realize that land banks and land banking are no longer necessary. When we as a people firmly embrace the proposition that we are stewards of land with responsibilities for the land itself then the day will have come. When we treat both people and land with equal respect we will no longer impose the costs of our activities on our neighbors and will no longer view land as a disposable commodity.

Our hope is that one day land banks and land banking – in all jurisdictions – will be in a position to declare victory and dissolve themselves as independent governmental entities. It is with that hope in mind that the third generation land bank statutes, and the template legislation in this volume, contain provisions for land bank dissolution.

The necessity for land banking comes from two primary forces: antiquated legal and policy systems and cultural myopia. Our experiences over the past two decades give hope that both of these can be acknowledged, confronted,

and transformed. The day can come when there are no vacant and abandoned properties in our neighborhoods and in our communities.

The dominant legal and policy systems which have been grounded in the late 19th century and are slowly but inevitably being reformed to be appropriate for the 21st century. These early systems, such as property tax foreclosure, housing and building code enforcement, and basic information on ownership interests and liens are today largely broken, inefficient, ineffective, and inequitable. The tools of land banks and land banking allow us to take apart these complex systems, determine where and why they are broken, and design new systemic approaches to the challenges of vacancy and abandonment.

Our legal and policy systems can be redesigned to make them efficient, effective, and equitable but that alone will not be enough to declare that land bank and land banking have become unnecessary tools. For that day to arrive our cultural myopia must be transformed into a much broader vision of the relationship of people to land. Our fields of vision must include keen peripheral vision of the costs of neglecting and abandoning land, the costs imposed on neighbors, on the larger community, and our future generations. Our cultural vision of land ownership must be broadened to encompass not just the rights of ownership but the responsibilities of ownership. Land is not a consumption commodity; it is a lasting resource that defines who we are as a people. Our treatment of land should be no less than our relationships between people.

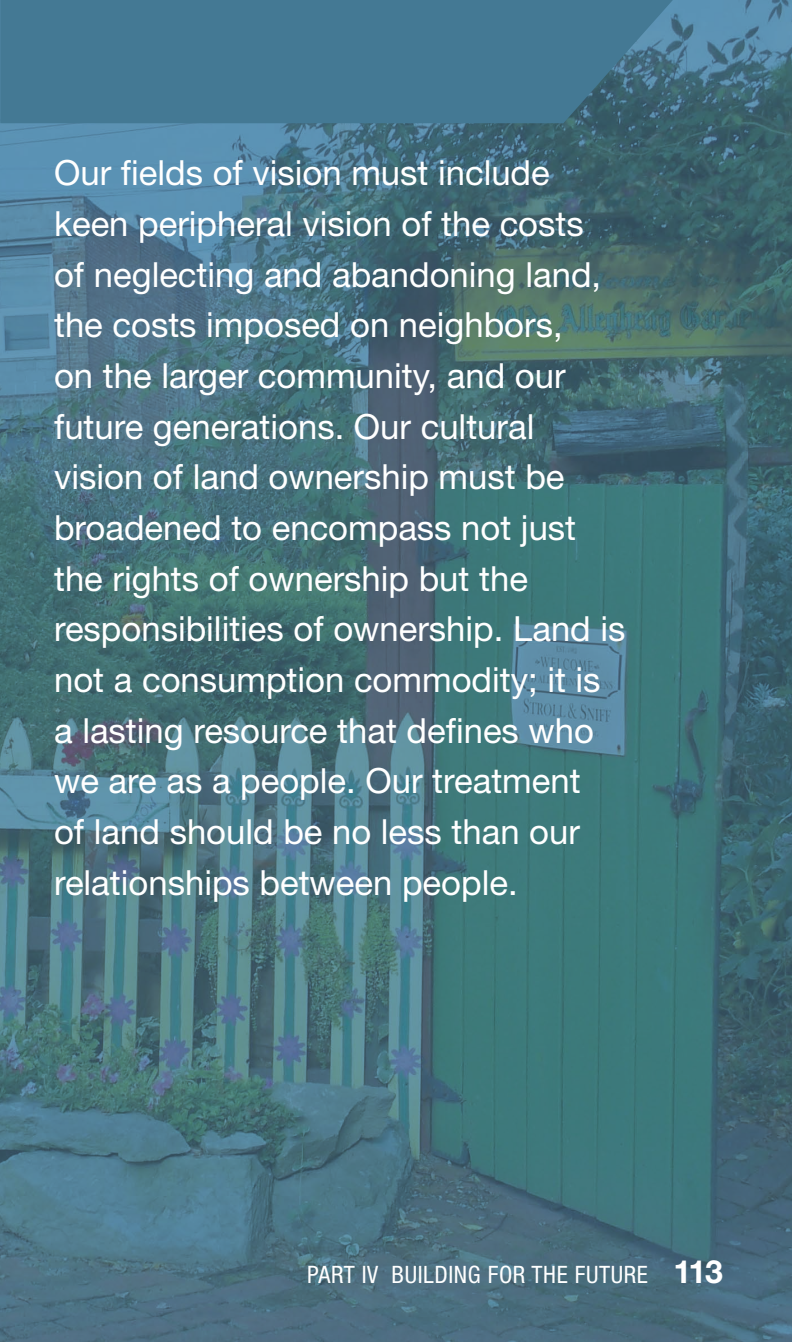
Many communities will experience swings in population and in employment, and all communities will experience swings in the financial costs of housing and development. Such swings mark the ebbs and flows of market demand and supply. It is not a necessary proposition, however, that changes in market conditions inevitably lead to abandonment. What is necessary is a change in the systems, and in our cultural vision.

Land banks and land banking have proven to be creative new tools for local communities at the close of the 20th century and the first part of the 21st century. They are nimble; they are flexible. As more land banks are created the greater is the opportunity to learn from one another, the greater is the crowd sourcing of new ideas and new opportunities.

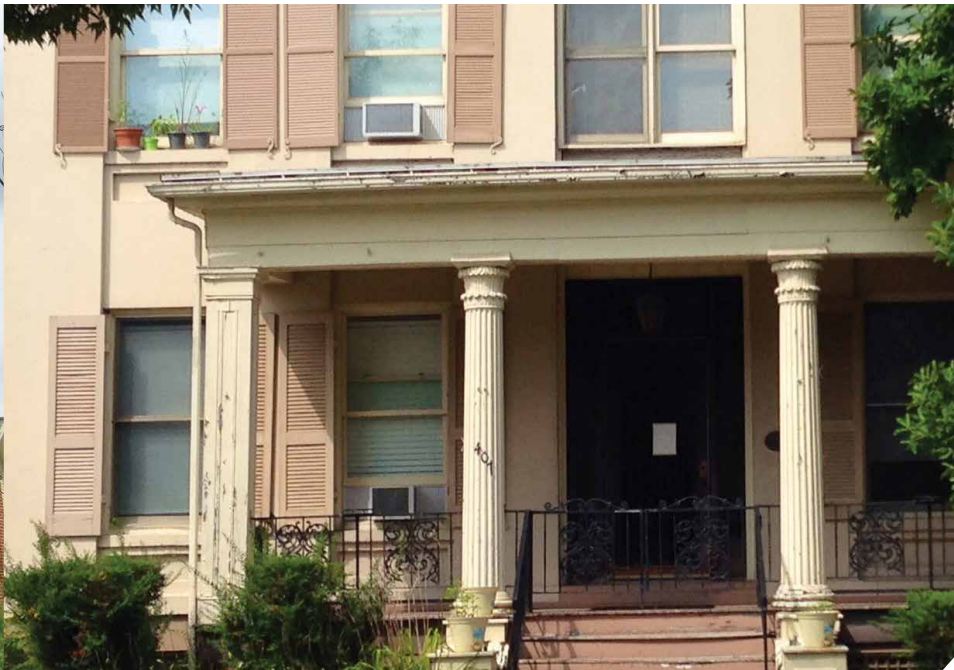
There are two frontiers in land banks and land banking which have yet to be explored and developed and likely will demand our attention in the coming decades. One is the possibility of using land banking as an adaptive response to natural disasters. With global warming and climate change now beginning to change our landscape, land banks can become a tool in the natural disaster response planning systems. As rising sea levels and climate conditions render large areas of land no longer suitable for current or modified uses, land banks can be the pivotal public entities to receive title to the land and to assume responsibility for management. When current owners leave land that is no longer financially viable, we as a community must assume responsibility for that land. That is precisely where land banks can serve a new role.

If migration patterns continue in coming decades we are likely to see a second new frontier for land banks and land banking. If there are further declines in populations in rural areas those small communities which lose or have already lost reasonable prospects of stable markets will need to have options that are more responsible than simply suggesting that the last person to leave cut off the lights. Land banks could be adapted and adopted in a manner which allows a constructive alternative to abandonment.

At its core, land banking is a tremendously fun and creative enterprise. It is tough, challenging diagnostic work at the front end; it is creative problem-solving in the middle; it is rewarding and rejuvenating at the end, when new blossoms emerge from devastation. It is an opportunity to renew and rethink our relationships one to another, and to the places and spaces in which our relationships occur.



Our fields of vision must include keen peripheral vision of the costs of neglecting and abandoning land, the costs imposed on neighbors, on the larger community, and our future generations. Our cultural vision of land ownership must be broadened to encompass not just the rights of ownership but the responsibilities of ownership. Land is not a consumption commodity; it is a lasting resource that defines who we are as a people. Our treatment of land should be no less than our relationships between people.



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Bibliography

This bibliography is provided as a resource for those seeking to delve deeper into the history and the scholarship related to land banks and land banking, the research related to the costs of vacant and abandoned properties, and the myriad of topics and issues that overlap with these primary areas of focus. Twenty years ago there was very little literature in this field and what did exist was primarily grounded in the urban renewal movements of the 1950s and 1960s. Thankfully, within the past decade there has been a tremendous resurgence of empirical research, public policy analysis, and legal analysis on these topics. The materials in this bibliography are the sources of the descriptive analysis in this volume, though we have intentionally elected to minimize citations and footnotes in the text. As this is a very dynamic field, it is not possible to present a comprehensive listing of all potential resources, and new resources appear each month. This is presented simply as a starting point, not an end point, for research.

The bibliography generally follows citation formats used in legal academic writing. Please refer to the following example for assistance in interpreting citations: “53 LOY. L. REV. 727” refers to page 727 of the 53rd volume of the Loyola Law Review.

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Appendix A

Omaha Municipal Land Bank Case Statement

This case statement was prepared by the public and private civic advocacy coalition that led the efforts for the drafting and enactment of the Nebraska Municipal Land Bank Act, which then prepared this document as it made its case for the creation of the Omaha Municipal Land Bank, which was approved by the Omaha City Council in July, 2014.

Omaha is facing a crisis. Vacant, abandoned and tax-delinquent lots and structures litter our city resulting in depressed property values and loss of property taxes. The perceived and real lack of investment compounds feelings of despair and poor self-image in many of the hardest hit neighborhoods. These conditions create havens for crime and present significant challenges to attaining a good quality of life.

Currently, more than 7,000 parcels in Omaha have some level of code violation, including more than 700 structures with demolition orders and nearly 4,000 parcels with an “unfit/unsafe” designation (meaning they are uninhabitable and in need of significant repair). More than half of these violations are concentrated in neighborhoods east of 42nd Street in North, South and Midtown Omaha. More than 25,000 parcels are vacant across Douglas County (including new lots). As of June 2013, delinquent property taxes and special assessments totaled \$1,377,109.61. According to the Center for Community Progress, different combinations of these conditions lower nearby property values anywhere from 2.1 to 9.4 percent.

Problem properties come in many forms and present a variety of challenges. This table explains some typical scenarios being experienced by our neighborhoods.

One way to address these challenges is to create a tool that will go after these properties that are dead to the marketplace and figure out a way to get them back online. **A municipal land bank is one of these tools.**

In spring 2013, the Nebraska Legislature passed the Nebraska Municipal Land Bank Act thus enabling the City of Omaha to create a local land bank. The **mission** of the Omaha Municipal Land Bank is to **facilitate** the return of vacant, abandoned, tax-delinquent property to productive use. Ultimately, through coordinating partnerships around specific projects, the OMLB will enable redevelopment. The OMLB is a public entity, with a public purpose, governed by a publicly appointed board of directors. The OMLB is **not** a developer, a public housing authority, a redevelopment authority, a planning department nor a private nonprofit organization. The OMLB, by its very nature, will be a collaborative entity – working with public, private and nonprofit organizations to accomplish its mission.

| Example | Description | Why It's a Challenge |
|---|--|---|
| Vacant lot in established neighborhood | <ul style="list-style-type: none"> - Vacant now due to past demolition - Absentee owners that most often live in the Omaha area - May or may not have various levels of code violations (weeds, litter, etc.) - May or may not be tax delinquent and if so, due to low property value, the delinquent tax value is also small - May be small or oddly configured | <ul style="list-style-type: none"> - Multiple property owners make assemblage difficult - Size or configuration make it difficult or impossible to reuse - Possibility of significant title problems due to the lack of probate proceedings |
| Substandard structure in need of demolition | <ul style="list-style-type: none"> - Vacant, but sometimes illegally occupied - Most often in such disrepair that rehab is not structurally or financially feasible - May have experienced a fire - City usually demolishes the structure - May or may not be tax delinquent | <ul style="list-style-type: none"> - City is unable to recover demolition costs - Ownership does not change after demolition - Demolition lien complicates the title - Insurance issues related to natural disaster or fire tie the property up in litigation |
| Substandard structure in need of rehabilitation | <ul style="list-style-type: none"> - May or may not have various levels of code violations - May or may not be tax delinquent - May or may not be vacant - May be in the process of being foreclosed upon by the mortgage company - May be functionally obsolescent and require structural/zoning changes to be marketable - Located in at least two types of neighborhoods – that which is heavily deteriorated and that which is relatively stable | <ul style="list-style-type: none"> - City is unable to recover code violation assessments through tax certificate sale process - Lack of clarity about whether a bank is pursuing foreclosure or walking away from the property - Further exacerbates already decaying neighborhoods and puts stable neighborhoods at risk |
| Troubled heir property | <ul style="list-style-type: none"> - Individual inherits a property with a troubled tax and title situation | <ul style="list-style-type: none"> - Numerous liens from City, County and tax certificate investor - May have multi-year tax delinquency - Possibility of significant title problems due to lack of probate proceedings |
| Illegal conversion | <ul style="list-style-type: none"> - Property that is illegally subdivided into additional units | <ul style="list-style-type: none"> - Exacerbates wear and tear on the structure - Poses congestion and parking issues |

The OMLB will **target** three categories of challenges – properties that:

1. impose, at the present time, the greatest harms to a community, but with repair or demolition could prevent greater abandonment of a neighborhood
2. impose the greatest likelihood of future harms to adjoining properties
3. have an immediate end-user

As a facilitator, the OMLB will use a two-part process of **assessment** and **acquisition** to identify and procure problem properties.

Assessment: The OMLB will first implement a geographic information system (GIS) that integrates and analyzes public data that is currently spread across numerous County and City repositories, including things like property conditions, ownership, tax history, utility information, police and fire calls, mortgage foreclosures and occupancy status. This system will also include a sophisticated accounting method that is able to track revenue and expenses for each property acquired by the OMLB. By holistically assessing properties, the OMLB will strategically select properties falling into one of the three aforementioned target categories.

Acquisition: Once the properties are identified, acquisition can occur through at least four avenues:

1. tax certificate sale eventually resulting in foreclosure
2. donative transfer
3. depository agreement
4. REO transfer from banks

The OMLB board of directors must create at least four sets of **policies**: (i) disposition priorities, (ii) pricing policies, (iii) policies on eligible transferees, and (iv) processes for community and neighborhood input. A disposition policy identifies the priorities for reuse of the property. This policy should provide a guiding philosophy that prioritizes public good, but allows flexibility based on the needs and goals of each neighborhood. The pricing policy determines how the price will be set for disposition of different property types. The transferee policy determines who is eligible to receive or purchase the property. The community input policy provides a structure and mechanism for comments about disposition.

Measuring impact on a consistent basis is critical. **Short-term outcomes** that should be monitored quarterly during the first three years of operation include:

- GIS/Accounting system is online and working effectively and efficiently to identify and assess target properties
- Board and staff are establishing quality relationships and partnerships
- Long-term funding is secured for ongoing operations expenses
- Acquisition and disposition of X# of properties
- Demolition of X# of properties
- OMLB-owned property is maintained at a high standard

Long-term community impact can be measured by:

- | | |
|--|-----------------------------------|
| • increase in property values | increase in capital investment |
| • increase in real estate development | decrease in vacant lots |
| • decrease in code violations | decrease in police and fire calls |
| • decrease in property tax delinquencies | decrease in crime |
| • increase in community engagement | |

Potential sources of revenue to fund the OMLB's operations include investment from the City of Omaha, from philanthropic sources, recapture of 50 percent of property taxes for five years from property conveyed by the OMLB and placed back on the tax rolls, property sales, and tax certificate redemptions. In addition, in-kind services from a variety of external sources (public, private and nonprofit) may be explored and secured as a way to subsidize operations costs. Uses of OMLB funds include salary and benefits for a highly-talented and qualified executive director, other staff members and the GIS/Accounting system. These expenses could total at least \$500,000 annually. Additional funds will be needed to acquire tax certificates and cover maintenance and demolition costs.

Appendix B

Land Banks Around the Country

Over the past twenty years the number of land banks and land banking programs in the United States has grown tenfold – from less than a dozen to an estimated 120. As the number and the nature of lands banks changes almost weekly, we have elected in this second edition not to attempt to present a listing of all active land banks in the United States.

The Center for Community Progress has created on its own website a Land Bank Information Headquarters: <http://bit.ly/LandBankHQ> This interactive website provides geographic-based access to all land banks with direct links to the website of the land banks when they are available. Far more than this single volume, even with periodic new editions, this Land Bank Information Headquarters is able to provide the most up to date information on and access to land banks and land banking programs in the United States. It is also identifies additional key resources related to not just to land banking but also to a broad range of tools and strategies for the conversion of vacant spaces into vibrant places.

National Map of Land Banks & Land Banking Programs (as of April 2015)



Appendix C

Comparison of State Land Bank Statutes

The information set forth in this Appendix presents a rough comparative analysis of the ten states that have adopted some form of comprehensive state land bank legislation in recent years. This summary is general in nature, with citations to applicable statutory provision. This information is effective as of February 2015 and applicable statutes should be reviewed for potential subsequent amendments. The information is presented in the following categories:

- I. State Land Bank Legislation
- II. Intent, Property, and Focus of Land Bank Operations
- III. What Entity is Created, and How it is Created
- IV. Board of Directors
- V. Staffing
- VI. Powers of Land Banks
- VII. Financing of Land Banks
- VIII. Real Property Acquisition and Inventory
- IX. Disposition of Real Property
- X. Correlation to Tax Foreclosure Process
- XI. Dissolution of Land Banks

| I: State Land Bank Legislation | | | | | | | | | | |
|--------------------------------|------------------|--|------------------|------------------|--|---|------------------|------------------------------------|--|-------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Date Enacted / (Date Amended) | 2004 | 2009 (2014) ¹ | 2011 (2014) | 2012 | 2012 (2014) | 2012 | 2012 | 2013 (2014) | 2013 | 2014 |
| Statewide enabling legislation | Yes ² | Yes, counties with population over 60,000 ³ | Yes ⁴ | Yes ⁵ | Yes Metropolitan government or home rule municipality ⁶ | Yes, Essentially Kansas City ⁷ | Yes ⁸ | Yes Essentially Omaha ⁹ | Yes Municipalities with minimum of 1,000 tax-delinquent properties | Yes ¹¹ |

| II: Intent, Property, and Focus of Land Bank Operations | | | | | | | | | | |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Tax delinquent | Yes ¹² | Yes ¹³ | Yes ¹⁴ | Yes ¹⁵ | Yes ¹⁶ | Yes ¹⁷ | Yes ¹⁸ | Yes ¹⁹ | Yes ²⁰ | Yes ²¹ |
| Vacant | - | Yes ²² | Yes ²³ | - | Yes ²⁴ | - | Yes ²⁵ | Yes ²⁶ | - | Yes ²⁷ |
| Abandoned | - | Yes ²⁸ | Yes ²⁹ | Yes ³⁰ | Yes ³¹ | - | Yes ³² | Yes ³³ | - | Yes ³⁴ |
| Dilapidated | - | - | - | Yes ³⁵ | - | - | - | - | - | - |
| Facilitating property development | - | Yes ³⁶ | - | - | - | - | - | - | Yes ³⁷ | Yes ³⁸ |

| III: What Entity is Created, and How it is Created | | | | | | | | | | |
|--|---|---|-------------------------|-------------------------|-----------------------|--------------------------------|-------------------------|-------------------------|-------------------------------|-------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Nature of Entity | Local Land Bank Authority ³⁹ | County Land Reutilization Corporation ⁴⁰ | Land Bank ⁴¹ | Land Bank ⁴² | Land Bank Corporation | Land Bank Agency ⁴³ | Land Bank ⁴⁴ | Land Bank ⁴⁵ | Local Authority ⁴⁶ | Land Reuse Agency |
| State Approval Required | Yes ⁴⁷ | No ⁴⁸ | Yes ⁴⁹ | No ⁵⁰ | No ⁵¹ | No ⁵² | No ⁵³ | No ⁵⁴ | No ⁵⁵ | No ⁵⁶ |

| III: Creating Entity | | | | | | | | | | |
|-----------------------------------|-------------------|-------------------|-------------------|-------------------|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| County alone | Yes ⁵⁷ | Yes ⁵⁸ | Yes ⁵⁹ | No ⁶⁰ | Yes ⁶¹ | No ⁶² | Yes ⁶³ | No ⁶⁴ | Yes ⁶⁵ | Yes ⁶⁶ |
| City alone | Yes ⁶⁷ | No | Yes ⁶⁸ | No ⁶⁹ | Yes ⁷⁰ | Yes ⁷¹ | Yes ⁷² | Yes ⁷³ | Yes ⁷⁴ | Yes ⁷⁵ |
| County + one or more municipality | No | Yes ⁷⁶ | Yes ⁷⁷ | Yes ⁷⁸ | Yes ⁷⁹ | No ⁸⁰ | Yes ⁸¹ | No ⁸² | No | Yes ⁸³ |
| Consolidated government | n/a | No | n/a ⁸⁴ | Yes ⁸⁵ | Yes, if home rule municipality ⁸⁶ | n/a | n/a ⁸⁷ | n/a | n/a | n/a |
| One or more city/municipality | No | No | Yes ⁸⁸ | No ⁸⁹ | Yes ⁹⁰ | No ⁹¹ | Yes ⁹² | Yes ⁹³ | No | Yes ⁹⁴ |

| III: Creating Method | | | | | | | | | | |
|---------------------------------------|-------------------|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Local government resolution/ordinance | Yes ⁹⁵ | Yes ⁹⁶ | Yes ⁹⁷ | Yes ⁹⁸ | Yes ⁹⁹ | Yes ¹⁰⁰ | Yes ¹⁰¹ | Yes ¹⁰² | Yes ¹⁰³ | Yes ¹⁰⁴ |
| Intergovernmental Agreement | No | No | Yes ¹⁰⁵ | Yes ¹⁰⁶ | Yes ¹⁰⁷ | No ¹⁰⁸ | Yes ¹⁰⁹ | Yes ¹¹⁰ | No | Yes ¹¹¹ |

| III: Creating Structure | | | | | | | | | | |
|-----------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Public body corporate and politic | Yes ¹¹² | Yes ¹¹³ | Yes ¹¹⁴ | Yes ¹¹⁵ | Yes ¹¹⁶ | Yes ¹¹⁷ | Yes ¹¹⁸ | Yes ¹¹⁹ | Yes ¹²⁰ | Yes ¹²¹ |
| Limit on number of land banks | No ¹²² | No | Yes ¹²³ | No ¹²⁴ | No ¹²⁵ | No ¹²⁶ | No ¹²⁷ | No ¹²⁸ | No | No ¹²⁹ |

| IV: Board of Directors | | | | | | | | | | |
|---|--------------------------|------------------------------------|-----------------------|-----------------------|--------------------|--------------------|-----------------------|--------------------|------------------------------------|-----------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Size | No limit ¹³⁰ | 5, 7, or 9 ¹³¹ | 5 - 15 ¹³² | 5 - 11 ¹³³ | ≥ 5 ¹³⁴ | 5 ¹³⁵ | 5 - 11 ¹³⁶ | 7 ¹³⁷ | ≥ 5 ¹³⁸ | 5 - 11 ¹³⁹ |
| Public officer eligible to serve | State IGA ¹⁴⁰ | Yes ¹⁴¹ | Yes ¹⁴² | Yes ¹⁴³ | Yes ¹⁴⁴ | Yes ¹⁴⁵ | Yes ¹⁴⁶ | Yes ¹⁴⁷ | Articles of Incorp. ¹⁴⁸ | Yes ¹⁴⁹ |
| Residence Requirement for Board members | State IGA | No ¹⁵⁰ | No ¹⁵¹ | No ¹⁵² | Yes ¹⁵³ | No ¹⁵⁴ | No ¹⁵⁵ | Yes ¹⁵⁶ | Articles of Incorp. ¹⁵⁷ | No ¹⁵⁸ |
| Public employee eligible to serve | State IGA ¹⁵⁹ | Yes ¹⁶⁰ | Yes ¹⁶¹ | Yes ¹⁶² | Yes ¹⁶³ | Yes ¹⁶⁴ | Yes ¹⁶⁵ | Yes ¹⁶⁶ | Articles of Incorp. ¹⁶⁷ | Yes ¹⁶⁸ |
| School district representation required | State IGA ¹⁶⁹ | No | No ¹⁷⁰ | No ¹⁷¹ | No ¹⁷² | Yes ¹⁷³ | No ¹⁷⁴ | No ¹⁷⁵ | No | No ¹⁷⁶ |
| Require at least one board member who is: (i) a resident; (ii) not a public official or employee; or (iii) a member of civic organization | State IGA ¹⁷⁷ | No | No ¹⁷⁸ | No ¹⁷⁹ | No ¹⁸⁰ | No ¹⁸¹ | Yes ¹⁸² | Yes ¹⁸³ | No | Yes ¹⁸⁴ |
| Special voting requirements for dispositions of land property | State IGA ¹⁸⁵ | Articles of Incorp. | Yes ¹⁸⁶ | Yes ¹⁸⁷ | Yes ¹⁸⁸ | Yes ¹⁸⁹ | Yes ¹⁹⁰ | Yes ¹⁹¹ | Articles of Incorp. | Yes ¹⁹² |
| State conflicts of interest policy / ethics policy | State IGA ¹⁹³ | No ¹⁹⁴ | Yes ¹⁹⁵ | Yes ¹⁹⁶ | Yes ¹⁹⁷ | Yes ¹⁹⁸ | Yes ¹⁹⁹ | Yes ²⁰⁰ | Articles of Incorp. | Yes ²⁰¹ |
| Supplemental conflicts of interest policy / ethics policy | Yes ²⁰² | Articles of Incorp. ²⁰³ | Yes ²⁰⁴ | Yes ²⁰⁵ | Yes ²⁰⁶ | Yes ²⁰⁷ | Yes ²⁰⁸ | Yes ²⁰⁹ | Articles of Incorp. | Yes ²¹⁰ |
| Subject to open meetings and records laws | No | No ²¹¹ | Yes ²¹² | Yes ²¹³ | Yes ²¹⁴ | Yes ²¹⁵ | Yes ²¹⁶ | Yes ²¹⁷ | Yes ²¹⁸ | Yes ²¹⁹ |

| V: Staffing | | | | | | | | | | |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Permanent or temporary | Yes ²²⁰ | Yes ²²¹ | Yes ²²² | Yes ²²³ | Yes ²²⁴ | Yes ²²⁵ | Yes ²²⁶ | Yes ²²⁷ | Yes ²²⁸ | Yes ²²⁹ |
| Contract with municipalities for staffing services provided to or by the land bank | Yes ²³⁰ | Yes ²³¹ | Yes ²³² | Yes ²³³ | Yes ²³⁴ | Yes ²³⁵ | Yes ²³⁶ | Yes ²³⁷ | No | Yes ²³⁸ |

| VI: Powers of Land Banks | | | | | | | | | | |
|--|--------------------|--------------------|-------------------------------------|-------------------------------------|-------------------------------------|---|---|-------------------------------------|------------------------------------|---|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| All powers necessary | Yes ²³⁹ | Yes ²⁴⁰ | Yes ²⁴¹ | Yes ²⁴² | Yes ²⁴³ | Yes ²⁴⁴ | Yes ²⁴⁵ | Yes ²⁴⁶ | Yes ²⁴⁷ | Yes ²⁴⁸ |
| Adopt bylaws | Yes ²⁴⁹ | Yes ²⁵⁰ | Yes ²⁵¹ | Yes ²⁵² | Yes ²⁵³ | Yes ²⁵⁴ | Yes ²⁵⁵ | Yes ²⁵⁶ | Articles of Incorp. ²⁵⁷ | Yes ²⁵⁸ |
| Sue and be sued | Yes ²⁵⁹ | Yes ²⁶⁰ | Yes ²⁶¹ | Yes ²⁶² | Yes ²⁶³ | Yes ²⁶⁴ | Yes ²⁶⁵ | Yes ²⁶⁶ | Yes ²⁶⁷ | Yes ²⁶⁸ |
| Intergovernmental agreements | Yes ²⁶⁹ | Yes ²⁷⁰ | Yes ²⁷¹ | Yes ²⁷² | Yes ²⁷³ | Yes ²⁷⁴ | Yes ²⁷⁵ | Yes ²⁷⁶ | Yes, with State ²⁷⁷ | Yes ²⁷⁸ |
| Regional collaboration | Yes ²⁷⁹ | Yes ²⁸⁰ | Yes ²⁸¹ | Yes ²⁸² | Yes ²⁸³ | Yes ²⁸⁴ | Yes ²⁸⁵ | Yes ²⁸⁶ | No | Yes ²⁸⁷ |
| Procure insurance | Yes ²⁸⁸ | Yes ²⁸⁹ | Yes ²⁹⁰ | Yes ²⁹¹ | Yes ²⁹² | Yes ²⁹³ | Yes ²⁹⁴ | Yes ²⁹⁵ | Yes ²⁹⁶ | Yes ²⁹⁷ |
| Contract with third parties | Yes ²⁹⁸ | Yes ²⁹⁹ | Yes ³⁰⁰ | Yes ³⁰¹ | Yes ³⁰² | Yes ³⁰³ | Yes ³⁰⁴ | Yes ³⁰⁵ | No | Yes ³⁰⁶ |
| Develop a redevelopment plan | Yes ³⁰⁷ | Yes ³⁰⁸ | Yes ³⁰⁹ | Yes ³¹⁰ | Yes ³¹¹ | Yes ³¹² | Yes ³¹³ | Yes ³¹⁴ | Yes ³¹⁵ | Yes ³¹⁶ |
| Ranking of priorities for property use | No ³¹⁷ | No ³¹⁸ | Yes, by Local Entity ³¹⁹ | Yes, by Local Entity ³²⁰ | Yes, by Local Entity ³²¹ | Yes, by Local Entity ³²² | Yes, by Local Entity ³²³ | Yes, by Local Entity ³²⁴ | No | Yes, by Local Entity ³²⁵ |
| Develop real property | Yes ³²⁶ | Yes ³²⁷ | Yes ³²⁸ | Yes ³²⁹ | Yes ³³⁰ | Yes ³³¹ | Yes ³³² | Yes ³³³ | Yes ³³⁴ | Yes ³³⁵ |
| Demolish real property | Yes ³³⁶ | Yes ³³⁷ | Yes ³³⁸ | Yes ³³⁹ | Yes ³⁴⁰ | Yes ³⁴¹ | Yes ³⁴² | Yes ³⁴³ | Yes ³⁴⁴ | Yes ³⁴⁵ |
| Charge fees for services | Yes ³⁴⁶ | Yes ³⁴⁷ | Yes ³⁴⁸ | Yes ³⁴⁹ | Yes ³⁵⁰ | Yes ³⁵¹ | Yes ³⁵² | Yes ³⁵³ | Yes ³⁵⁴ | Yes ³⁵⁵ |
| Lease (as lessor and as lessee) real property | Yes ³⁵⁶ | Yes ³⁵⁷ | Yes ³⁵⁸ | Yes ³⁵⁹ | Yes ³⁶⁰ | Yes ³⁶¹ | Yes ³⁶² | Yes ³⁶³ | Yes ³⁶⁴ | Yes ³⁶⁵ |
| Limitation on tax exempt status | No | No | No ³⁶⁶ | No ³⁶⁷ | No ³⁶⁸ | Yes, when leased as lessor ³⁶⁹ | Yes, after fifth year of lease ³⁷⁰ | No ³⁷¹ | n/a | Yes, after fifth year of lease ³⁷² |
| Develop real property through partnership or joint venture | Yes ³⁷³ | Yes ³⁷⁴ | Yes ³⁷⁵ | Yes ³⁷⁶ | Yes ³⁷⁷ | Yes ³⁷⁸ | Yes ³⁷⁹ | Yes ³⁸⁰ | No | Yes ³⁸¹ |
| Discharge and extinguish public tax liens | No ³⁸² | Yes ³⁸³ | No | Yes ³⁸⁴ | No | No | Yes ³⁸⁵ | Yes ³⁸⁶ | No | No |
| Engage in Code Enforcement | No | Yes ³⁸⁷ | No | No | No | No | No | No | No | No |
| Power of eminent domain | No ³⁸⁸ | No | No ³⁸⁹ | No ³⁹⁰ | No ³⁹¹ | No ³⁹² | No ³⁹³ | No ³⁹⁴ | No ³⁹⁵ | No ³⁹⁶ |
| Bulk quiet title actions | Yes ³⁹⁷ | No | No | No | Yes ³⁹⁸ | Yes ³⁹⁹ | Yes ⁴⁰⁰ | No | Yes ⁴⁰¹ | Yes ⁴⁰² |

| VII: Financing of Land Banks | | | | | | | | | | |
|--|--------------------------------|--------------------|--------------------------------|--------------------------------------|--------------------|---|--------------------------------|--------------------|--------------------|--------------------------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Grants & gifts | Yes ⁴⁰³ | Yes ⁴⁰⁴ | Yes ⁴⁰⁵ | Yes ⁴⁰⁶ | Yes ⁴⁰⁷ | Yes ⁴⁰⁸ | Yes ⁴⁰⁹ | Yes ⁴¹⁰ | Yes ⁴¹¹ | Yes ⁴¹² |
| Rental payments | Yes ⁴¹³ | Yes ⁴¹⁴ | Yes ⁴¹⁵ | Yes ⁴¹⁶ | Yes ⁴¹⁷ | Yes ⁴¹⁸ | Yes ⁴¹⁹ | Yes ⁴²⁰ | Yes ⁴²¹ | Yes ⁴²² |
| Payments from services rendered | Yes ⁴²³ | Yes ⁴²⁴ | Yes ⁴²⁵ | Yes ⁴²⁶ | Yes ⁴²⁷ | Yes ⁴²⁸ | Yes ⁴²⁹ | Yes ⁴³⁰ | Yes ⁴³¹ | Yes ⁴³² |
| Payments from property sales | Yes ⁴³³ | Yes ⁴³⁴ | Yes ⁴³⁵ | Yes ⁴³⁶ | Yes ⁴³⁷ | Yes ⁴³⁸ | Yes ⁴³⁹ | Yes ⁴⁴⁰ | Yes ⁴⁴¹ | Yes ⁴⁴² |
| Borrow money | Yes ⁴⁴³ | Yes ⁴⁴⁴ | Yes ⁴⁴⁵ | Yes ⁴⁴⁶ | Yes ⁴⁴⁷ | Yes ⁴⁴⁸ | Yes ⁴⁴⁹ | Yes ⁴⁵⁰ | No | Yes ⁴⁵¹ |
| Issue revenue bonds | Yes ⁴⁵² | Yes ⁴⁵³ | Yes ⁴⁵⁴ | No ⁴⁵⁵ | No ⁴⁵⁶ | Yes ⁴⁵⁷ | Yes ⁴⁵⁸ | Yes ⁴⁵⁹ | No | No ⁴⁶⁰ |
| Invest money | Yes ⁴⁶¹ | Yes ⁴⁶² | Yes ⁴⁶³ | Yes ⁴⁶⁴ | Yes ⁴⁶⁵ | Yes ⁴⁶⁶ | Yes ⁴⁶⁷ | Yes ⁴⁶⁸ | No | Yes ⁴⁶⁹ |
| Procure insurance for payment of debt | Yes ⁴⁷⁰ | Yes ⁴⁷¹ | Yes ⁴⁷² | Yes ⁴⁷³ | No ⁴⁷⁴ | Yes ⁴⁷⁵ | Yes ⁴⁷⁶ | Yes ⁴⁷⁷ | No | Yes ⁴⁷⁸ |
| Potential tax recapture on property disposed of by land bank | Yes (50%/5 yrs) ⁴⁷⁹ | No | Yes (50%/5 yrs) ⁴⁸⁰ | Yes (up to 75%/5 yrs) ⁴⁸¹ | No ⁴⁸² | Yes (100% minus fees/3 yr) ⁴⁸³ | Yes (50%/5 yrs) ⁴⁸⁴ | Yes ⁴⁸⁵ | No | Yes (up to 50%/5 yrs) ⁴⁸⁶ |

| VIII: Real Property Acquisition and Inventory | | | | | | | | | | |
|---|-------------------------------|---------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Municipal transfers | Yes ⁴⁸⁷ | Yes ⁴⁸⁸ | Yes ⁴⁸⁹ | Yes ⁴⁹⁰ | Yes ⁴⁹¹ | Yes ⁴⁹² | Yes ⁴⁹³ | Yes ⁴⁹⁴ | Yes ⁴⁹⁵ | Yes ⁴⁹⁶ |
| Own property outside of geographic jurisdiction | Not prohibited ⁴⁹⁷ | Yes, through IGA ⁴⁹⁸ | No ⁴⁹⁹ | No ⁵⁰⁰ | No ⁵⁰¹ | No ⁵⁰² | No ⁵⁰³ | No ⁵⁰⁴ | Not prohibited | No ⁵⁰⁵ |
| Acquire by gift, devise, transfer, exchange | Yes ⁵⁰⁶ | Yes, subject to limits ⁵⁰⁷ | Yes ⁵⁰⁸ | Yes ⁵⁰⁹ | Yes ⁵¹⁰ | Yes ⁵¹¹ | Yes ⁵¹² | Yes ⁵¹³ | Yes ⁵¹⁴ | Yes ⁵¹⁵ |
| Acquire by purchase | Yes ⁵¹⁶ | Yes ⁵¹⁷ | Yes ⁵¹⁸ | Yes ⁵¹⁹ | Yes ⁵²⁰ | Yes ⁵²¹ | Yes ⁵²² | Yes ⁵²³ | Yes ⁵²⁴ | Yes ⁵²⁵ |
| Property is subject to local building codes and zoning laws | Yes ⁵²⁶ | Yes ⁵²⁷ | Yes ⁵²⁸ | Yes ⁵²⁹ | Yes ⁵³⁰ | Yes ⁵³¹ | Yes ⁵³² | Yes ⁵³³ | Yes | Yes ⁵³⁴ |
| Accept deed in lieu of tax foreclosure | Yes ⁵³⁵ | Yes ⁵³⁶ | No | No | No | No | No | No | No | No |
| Maintain public inventory of all property held by LB | No ⁵³⁷ | Yes ⁵³⁸ | Yes ⁵³⁹ | Yes ⁵⁴⁰ | Yes ⁵⁴¹ | Yes ⁵⁴² | Yes ⁵⁴³ | Yes ⁵⁴⁴ | Yes, for tax-delinquent property ⁵⁴⁵ | Yes ⁵⁴⁶ |
| Time limit on holding of property | No | Yes (16 yrs) ⁵⁴⁷ | No | No | No | No | No | No | No | No |

| IX: Disposition of Real Property | | | | | | | | | | |
|--|--------------------|--------------------------|--------------------|--------------------|--------------------|--|--------------------|--------------------|--|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Broad conveyance powers | Yes ⁵⁴⁸ | Yes ⁵⁴⁹ | Yes ⁵⁵⁰ | Yes ⁵⁵¹ | Yes ⁵⁵² | Yes ⁵⁵³ | Yes ⁵⁵⁴ | Yes ⁵⁵⁵ | Yes, so long buyer is not a land speculator ⁵⁵⁶ | Yes ⁵⁵⁷ |
| Delegation of authority to staff | Yes ⁵⁵⁸ | Yes ⁵⁵⁹ | Yes ⁵⁶⁰ | Yes ⁵⁶¹ | Yes ⁵⁶² | Yes ⁵⁶³ | Yes ⁵⁶⁴ | Yes ⁵⁶⁵ | Not prohibited | Yes ⁵⁶⁶ |
| Contract with 3 rd party for property sales | Yes ⁵⁶⁷ | Yes | Yes ⁵⁶⁸ | Yes ⁵⁶⁹ | Yes ⁵⁷⁰ | Yes ⁵⁷¹ | Yes ⁵⁷² | Yes ⁵⁷³ | Not prohibited | Yes ⁵⁷⁴ |
| Possibility of non-monetary consideration | Yes ⁵⁷⁵ | Not clear ⁵⁷⁶ | Yes ⁵⁷⁷ | Yes ⁵⁷⁸ | Yes ⁵⁷⁹ | Yes ⁵⁸⁰ | Yes ⁵⁸¹ | Yes ⁵⁸² | Yes ⁵⁸³ | Yes ⁵⁸⁴ |
| Conveyances for less than FMV | Yes ⁵⁸⁵ | Sometimes ⁵⁸⁶ | Yes ⁵⁸⁷ | Yes ⁵⁸⁸ | Yes ⁵⁸⁹ | Yes ⁵⁹⁰ | Yes ⁵⁹¹ | Yes ⁵⁹² | Yes ⁵⁹³ | Yes ⁵⁹⁴ |
| Requirement to accept offers of FMV or greater | No ⁵⁹⁵ | No | No ⁵⁹⁶ | No ⁵⁹⁷ | No ⁵⁹⁸ | Yes ⁵⁹⁹ | No ⁶⁰⁰ | No ⁶⁰¹ | No | No ⁶⁰² |
| Public inventory of all property conveyed | No | Yes ⁶⁰³ | Yes ⁶⁰⁴ | No | No | No | No | No | No | No |
| Restriction on conveyances | No | No | No | No | No | Yes; not more than 5 contiguous parcels to one entity ⁶⁰⁵ | No | No | No | No |

| X: Correlation to Tax Foreclosure Process | | | | | | | | | | |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------------------------|--------------------|--------------------|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Bid at tax sales | Yes ⁶⁰⁶ | Yes ⁶⁰⁷ | Yes ⁶⁰⁸ | Yes ⁶⁰⁹ | Yes ⁶¹⁰ | Yes ⁶¹¹ | Yes ⁶¹² | Yes ⁶¹³ | No | Yes ⁶¹⁴ |
| Issue credit bids in absence of 3 rd party bidders | No | No ⁶¹⁵ | Yes ⁶¹⁶ | Yes ⁶¹⁷ | No ⁶¹⁸ | Yes ⁶¹⁹ | Yes, in "upset sales" ⁶²⁰ | No ⁶²¹ | No | No ⁶²² |
| Issue credit bids when there are 3 rd party bidders | No | No | Yes ⁶²³ | No | n/a | Yes ⁶²⁴ | Yes, in "upset sales" ⁶²⁵ | No ⁶²⁶ | No | No |
| Issue trump bids at tax sales | No | No | Yes ⁶²⁷ | No | No ⁶²⁸ | No ⁶²⁹ | No ⁶³⁰ | Yes ⁶³¹ | No | No ⁶³² |
| Purchase delinquent tax liens from municipality | Yes | Yes ⁶³³ | Yes ⁶³⁴ | Yes ⁶³⁵ | Yes | No ⁶³⁶ | Yes ⁶³⁷ | Yes ⁶³⁸ | No | Yes |
| Purchase delinquent tax liens for less than face amount | No | Yes ⁶³⁹ | Yes ⁶⁴⁰ | Yes ⁶⁴¹ | No | Yes ⁶⁴² | No | No ⁶⁴³ | No | No |
| Conduct bulk tax foreclosures | Yes ⁶⁴⁴ | No | Yes ⁶⁴⁵ | Yes ⁶⁴⁶ | n/a | No ⁶⁴⁷ | Yes ⁶⁴⁸ | No ⁶⁴⁹ | Yes ⁶⁵⁰ | No ⁶⁵¹ |

| XII: Dissolution of Land Banks | | | | | | | | | | |
|---|----------------------|---|--------------------|--------------------|--|--------------------|--------------------|--------------------|--------------------------------------|--------------------|
| | MI | OH | NY | GA | TN | MO | PA | NE | AL | WV |
| Permanent and perpetual duration until terminated and dissolved | Yes ⁶⁵² | Yes ⁶⁵³ | Yes ⁶⁵⁴ | Yes ⁶⁵⁵ | Yes ⁶⁵⁶ | Yes ⁶⁵⁷ | Yes ⁶⁵⁸ | Yes ⁶⁵⁹ | Yes | Yes ⁶⁶⁰ |
| Affirmative resolution approved by 2/3 of LB board required for dissolution | No ⁶⁶¹ | No ⁶⁶² | Yes ⁶⁶³ | Yes ⁶⁶⁴ | Determined by creating entity ⁶⁶⁵ | No ⁶⁶⁶ | No ⁶⁶⁷ | Yes ⁶⁶⁸ | Articles of Incorpor. ⁶⁶⁹ | Yes ⁶⁷⁰ |
| Ordinance/resolution of the creating entity required for dissolution | No ⁶⁷¹ | Yes, for LRP ⁶⁷² | No | No | Determined by creating entity ⁶⁷³ | Yes ⁶⁷⁴ | Yes ⁶⁷⁵ | Yes ⁶⁷⁶ | Articles of Incorpor. ⁶⁷⁷ | Yes ⁶⁷⁸ |
| Upon dissolution, all assets become assets of entities that created the LB | Maybe ⁶⁷⁹ | Depends on how property was acquired ⁶⁸⁰ | Yes ⁶⁸¹ | Yes ⁶⁸² | Determined by creating entity ⁶⁸³ | Yes ⁶⁸⁴ | Yes ⁶⁸⁵ | Yes ⁶⁸⁶ | Art. of Incorpor. ⁶⁸⁷ | Yes ⁶⁸⁸ |

CITATIONS

- 1 Most recently, OHIO REV. CODE ANN. § 1724.10 was amended to change all instances of “land” to “real property.” Otherwise, OHIO REV. CODE ANN. § 1724.02 was last amended June 5, 2014 to make small changes to §§ 1724.02 and 1724.10.
- 2 MICH. COMP. LAWS §§ 124.773(4), (5), (6).
- 3 A county with a population of more than 60,000 may create a County Land Reutilization Corporation (“CLRC”). OHIO REV. CODE ANN. § 1724.04.
- 4 N.Y. NOT-FOR-PROFIT CORP. § 1603(g).
- 5 GA. CODE ANN. § 48-4-101; GA. CODE ANN. § 48-4-103(a).
- 6 TENN. CODE ANN. § 13-30-103 defines “local government” as any home rule municipality or any county with a metropolitan form of government. TENN. CODE ANN. § 13-30-104 provides that a “local government” may operate a land bank.
- 7 MO. REV. STAT. § 141.980(1). The only municipalities permitted to create a land bank are those in which a land trust was operating on January 1, 2012.
- 8 68 PA. CONS. STAT. § 2102. *See also* 68 PA. CONS. STAT. § 2104.
- 9 NEB. REV. STAT. §§ 19-5204 and 19-5203. The Nebraska Municipal Land Bank Act defines “municipality” as those cities and villages located in counties in which (i) a “metropolitan class” city is also located or (ii) at least three first class cities are located.
- 10 ALA. CODE. § 24-9-10.
- 11 W. VA. CODE §§ 31-18E-3(5), 31-18E-4(a).
- 12 MICH. COMP. LAWS § 124.752.
- 13 OHIO REV. CODE ANN. § 1724.01(B)(2).
- 14 N.Y. NOT-FOR-PROFIT CORP. § 1601.
- 15 GA. CODE ANN. § 48-4-101.
- 16 TENN. CODE ANN. § 13-30-102(1).
- 17 MO. REV. STAT. § 141.980(1). Refers to “nontax-producing,” which are categorized here as “tax delinquent.”
- 18 68 PA. CONS. STAT. § 2102.
- 19 NEB. REV. STAT. §§ 19-5201, 19-5204(4).
- 20 ALA. CODE § 24-9-2.
- 21 W. VA. CODE § 31-18E-2(1).
- 22 OHIO REV. CODE ANN. § 1724.01(B)(2). *See also* OHIO REV. CODE ANN. § 5722.01(F), definition of “nonproductive land.”
- 23 N.Y. NOT-FOR-PROFIT CORP. § 1601.
- 24 TENN. CODE ANN. § 13-30-102(1).
- 25 68 PA. CONS. STAT. § 2102.
- 26 NEB. REV. STAT. §§ 19-5201, 19-5204(4).
- 27 W. VA. CODE § 31-18E-2(1).
- 28 OHIO REV. CODE ANN. § 1724.01(B)(2). *See also* OHIO REV. CODE ANN. § 5722.01(F), definition of “nonproductive land.”
- 29 N.Y. NOT-FOR-PROFIT CORP. § 1601.
- 30 GA. CODE ANN. § 48-4-101.
- 31 TENN. CODE ANN. § 13-30-102(1).
- 32 68 PA. CONS. STAT. § 2102.
- 33 NEB. REV. STAT. §§ 19-5201, 19-5204(4).
- 34 W. VA. CODE § 31-18E-2(1)
- 35 GA. CODE ANN. § 48-4-101.
- 36 OHIO REV. CODE ANN. § 1724.01(B)(2), (D).
- 37 ALA. CODE § 24-9-2.
- 38 W. VA. CODE § 31-18E-2(6).
- 39 The Michigan Land Bank Fast Track Act creates a State Land Bank Authority whose powers can be exercised on the local level by local land banks, pursuant to an IGA with the State authority. MICH. COMP. LAWS § 124.773.
- 40 OHIO REV. CODE ANN. § 1724.01(3).
- 41 N.Y. NOT-FOR-PROFIT CORP. § 1602(b).
- 42 GA. CODE ANN. § 48-4-102(4).
- 43 MO. REV. STAT. § 141.980(1).
- 44 68 PA. CONS. STAT. § 2103.
- 45 NEB. REV. STAT. § 19-5203.
- 46 ALA. CODE § 24-9-4(4).
- 47 MICH. COMP. LAWS § 124.773(4), (5).
- 48 OHIO REV. CODE ANN. § 1724.04.
- 49 N.Y. Not-for-Profit Corp. § 1603(g).
- 50 GA. CODE ANN. § 48-4-103.
- 51 TENN. CODE ANN. § 13-30-104(b).
- 52 MO. REV. STAT. § 141.980.1.
- 53 68 PA. CONS. STAT. § 2104(b).
- 54 NEB. REV. STAT. § 19-5204.
- 55 *See* ALA. CODE § 24-9-10.
- 56 *See* W. VA. CODE § 31-18E-4.
- 57 County Foreclosing Governmental Unit can enter agreement with State Land Bank to exercise State Land Bank’s powers. MICH. COMP. LAWS § 124.773(4).
- 58 OHIO REV. CODE ANN. §§ 1724.01(A)(3), 1724.04.
- 59 N.Y. NOT-FOR-PROFIT CORP. § 1603(d). *See also* N.Y. NOT-FOR-PROFIT CORP. § 1603(a). The New York Land Bank Act provides that a foreclosing governmental unit (FGU) may create a land bank. Whether a given county or municipality is an FGU is dependent on local law.
- 60 GA. CODE ANN. § 48-4-103(a).
- 61 TENN. CODE ANN. § 13-30-104.
- 62 MO. REV. STAT. § 141.980(1).
- 63 68 PA. CONS. STAT. § 2103 “Land bank jurisdiction” (1). A “land bank jurisdiction” is defined as “a county, a city, a borough, a township and an incorporated town with a population of more than 10,000.”

- 64 NEB. REV. STAT. § 19-5204. "Municipality" is limited to cities and villages of a certain nature.
- 65 ALA. CODE § 24-9-10(a).
- 66 W. VA. CODE § 31-18E-4(a).
- 67 MICH. COMP. LAWS § 124.773(5).
- 68 N.Y. NOT-FOR-PROFIT CORP. § 1603(a).
- 69 GA. CODE ANN. § 48-4-103(a).
- 70 TENN. CODE ANN. § 13-30-104.
- 71 MO. REV. STAT. § 141.980(1).
- 72 68 PA. CONS. STAT. § 2103(1).
- 73 NEB. REV. STAT. § 19-5204.
- 74 ALA. CODE § 24-9-10(b).
- 75 W. VA. CODE §§ 31-18E-3(5), 31-18E-4(a).
- 76 OHIO REV. CODE ANN. § 1724.10(A)(3).
- 77 N.Y. NOT-FOR-PROFIT CORP. § 1603(c).
- 78 GA. CODE ANN. § 48-4-103(b)(1). In Georgia, a county and a municipality located within that county may create a land bank. A county and a city located outside the county may not create a land bank.
- 79 TENN. CODE ANN. § 13-30-104(b)(1).
- 80 MO. REV. STAT. § 141.980(1).
- 81 68 PA. CONS. STAT. § 2104(c)(1).
- 82 NEB. REV. STAT. § 19-5204 and 5203. Counties may not create land banks because they are not included in the definition of "municipality."
- 83 W. VA. CODE §§ 31-18E-5(c).
- 84 As the term "consolidated government" is generally understood, it applies to New York City and its five boroughs. However, the term "consolidated government" does not readily appear in New York law. If the concept of "consolidated government," as generally understood, can be appropriately and meaningfully applied to the City of New York, then the response in the above chart may be changed from "n/a" to "Yes" since New York City is a "foreclosing governmental unit" as defined in N.Y. NOT-FOR-PROFIT CORP. § 1602(c).
- 85 GA. CODE ANN. § 48-4-103(a).
- 86 The statutory definition of "local government" does include "home rule municipalities." TENN. CODE ANN. § 13-30-103. It seems that, if a consolidated government was also a home rule municipality, it would fall within the definition and be permitted to create a land bank, so long as it meets the other statutory conditions. Nashville-Davidson County is a home rule consolidated municipality according to the Tennessee Courts of Appeals. See *Bailey v. County of Shelby*, No. W2005-01508-COA-R3-CV, 2005 WL 3115915 (Tenn. Ct. App. Nov. 22, 2005), rev'd on other grounds, 188 S.W.3d 539.
- 87 While some resources refer to Philadelphia as a "consolidated government," meaning that the city and county have been consolidated, the term "consolidated government" does not readily appear in Pennsylvania law. If the concept of "consolidated government," as understood and defined by other states such as Georgia, can be appropriately applied to the City of Philadelphia, then the response in the above chart may be changed from "n/a" to "Yes" because Philadelphia may create a land bank pursuant to the definition of "Land bank jurisdiction" in 68 PA. CONS. STAT. § 2103.
- 88 N.Y. NOT-FOR-PROFIT CORP. § 1603(b).
- 89 GA. CODE ANN. § 48-4-103(a).
- 90 TENN. CODE ANN. § 13-30-104(b)(1).
- 91 MO. REV. STAT. § 141.980(1).
- 92 68 PA. CONS. STAT. § 2104(a).
- 93 NEB. REV. STAT. § 19-5204(2).
- 94 W. VA. CODE §§ 31-18E-4(c).
- 95 MICH. COMP. LAWS § 124.773(4), (5), (12). County Foreclosing Governmental Units must have the approval of the board of commissioners to enter into a land banking IGA. Cities and other municipalities only require approval by the governing authority.
- 96 OHIO REV. CODE ANN. §§ 1724.04, 1724.10(B). The county's Board of Commissioners must approve of the articles of incorporation. See also OHIO REV. CODE ANN. § 5722.02(B), permitting a county to direct that a CLRC may be created to exercise the powers of the county with respect to a land reutilization program.
- 97 N.Y. NOT-FOR-PROFIT CORP. § 1603(a).
- 98 GA. CODE ANN. § 48-4-103(a).
- 99 TENN. CODE ANN. § 13-30-104(b)(1).
- 100 MO. REV. STAT. § 141.980(1).
- 101 68 PA. CONS. STAT. § 2104(a).
- 102 NEB. REV. STAT. § 19-5204(1).
- 103 ALA. CODE § 24-9-10(a), (b).
- 104 W. VA. CODE § 31-18E-4(a).
- 105 N.Y. NOT-FOR-PROFIT CORP. § 1603(b), (c), (e). An IGA is only required if multiple local governments join to create one land bank.
- 106 GA. CODE ANN. § 48-4-103(b). If a consolidated government creates a land bank alone, no IGA is required.
- 107 TENN. CODE ANN. § 13-30-104(b)(1).
- 108 MO. REV. STAT. § 141.980(1).
- 109 68 PA. CONS. STAT. § 2104(c)(1). An IGA is only required if multiple local governments join to create one land bank.
- 110 NEB. REV. STAT. § 19-5204(2). An IGA is only required if multiple municipalities join to create one land bank.
- 111 W. VA. CODE §§ 31-18E-4(c).
- 112 MICH. COMP. LAWS § 124.773(6)(a).
- 113 A CLRC designated as an agent of the county for "reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property in the county" is a public body. See OHIO REV. CODE ANN. §§ 1724.10(A)(2), 5722.02(B).
- 114 N.Y. NOT-FOR-PROFIT CORP. § 1603(f). New York's not-for-profit Land Bank structure (type C) is a governmental entity.
- 115 GA. CODE ANN. § 48-4-102(4).
- 116 TENN. CODE ANN. § 13-30-104(a)(2).
- 117 MO. REV. STAT. § 141.980(3).
- 118 68 PA. CONS. STAT. § 2104(f)(1).
- 119 NEB. REV. STAT. § 19-5204(3).
- 120 A state authority is a public body corporate and politic expressly, presumably this also applies to a local authority. ALA. CODE § 25-9-5(i).
- 121 W. VA. CODE § 31-18E-4(e)(1).
- 122 MICH. COMP. LAWS § 124.773.
- 123 N.Y. NOT-FOR-PROFIT CORP. § 1603(g).
- 124 GA. CODE ANN. § 48-4-103.
- 125 TENN. CODE ANN. § 13-30-104(a)(1). There is no stated limitation on the number of land banks in the state. The language of the statute is broad and allows "any local government" to create a land bank.
- 126 MO. REV. STAT. § 141.980(1). While there is no express limitation in place in Missouri, the statute effectively limits the creation of a land bank to those portions of Kansas City, MO located in Jackson County, MO.
- 127 68 PA. CONS. STAT. § 2103. There is no stated limitation on the number of land banks in the state. The language of the statute is broad and defines "land bank jurisdiction" to include county, city, borough, township, and incorporated towns with a population of more than 10,000 or more than two municipalities with populations less than 10,000 who enter into an IGA to establish and maintain a land bank.
- 128 NEB. REV. STAT. § 19-5204. While there is no express limitation in place in Nebraska, the statute effectively limits the creation of a land bank to those municipalities located in counties with a metropolitan class city or at least three first class cities.
- 129 W. VA. CODE § 31-18E-4(e).
- 130 A local Land Bank board size is determined by the IGA creating it, with the requirement that a county land bank must have the county treasurer on the board. MICH. COMP. LAWS § 124.773(6)(c).
- 131 OHIO REV. CODE ANN. § 1725.03(B).
- 132 N.Y. NOT-FOR-PROFIT CORP. § 1603(a)(2).
- 133 GA. CODE ANN. § 48-4-103(a)(2).
- 134 TENN. CODE ANN. § 13-30-105(a). The Board must have at least five members, who are also "duly qualified electors of and taxpayers in the creating local government."
- 135 MO. REV. STAT. § 141.981(1).
- 136 68 PA. CONS. STAT. § 2105(a).
- 137 NEB. REV. STAT. § 19-5205. If the land bank is created by a single municipality, the board shall have 7 voting members with at least one other nonvoting member. If the land bank is created by multiple municipalities, the board shall be composed of at least seven members, but can be larger if mutually agreed upon by the mayors of the creating municipalities and confirmed by a two-thirds vote of the governing bodies of the municipalities. Regardless, the board must be composed of an odd number of members.
- 138 ALA. CODE § 24-9-10(c)(3).

- 139 W. VA. CODE § 31-18E-5(a).
- 140 MICH. COMP. LAWS § 124.766(1) does not prohibit this. For local Land Banks, the IGA set forth the requirements. MICH. COMP. LAWS § 124.773(6).
- 141 OHIO REV. CODE ANN. § 1724.10(B) (1). Generally, where not inconsistent with the provisions of OHIO REV. CODE ANN. § 1724.01 *et seq.* ("County Land Reutilization Corporation Act"), the board of a CLRC is subject to specification under the provisions of OHIO REV. CODE ANN. § 1702.01 *et seq.*, ("Nonprofit Corporation Law"). OHIO REV. CODE ANN. § 1724.08.
- 142 N.Y. NOT-FOR-PROFIT CORP. § 1605(c).
- 143 GA. CODE ANN. § 48-4-104(c).
- 144 TENN. CODE ANN. § 13-30-105(a). Subject to creating local government's determination of qualifications. TENN. CODE ANN. § 13-30-105(b).
- 145 MO. REV. STAT. § 141.981.2.
- 146 68 PA. CONS. STAT. § 2105(b)(1).
- 147 NEB. REV. STAT. § 19-5205(4).
- 148 ALA. CODE § 24-9-10(c)(4).
- 149 W. VA. CODE § 31-18E-5(b)(1).
- 150 No general residency requirement, OHIO REV. CODE ANN. § 1724.03(B)(1), but the board members must include: the county treasurer, two members of the board of commissioners, one representative of the largest municipal corporation, one representative from a township with at least 10,000 residents (if there are at least two such townships in the county), one board member with private sector or nonprofit experience in real estate acquisition or rehabilitation. OHIO REV. CODE ANN. § 1725.03(B).
- 151 N.Y. NOT-FOR-PROFIT CORP. §§ 1605; 1603(a)(4).
- 152 See GA. CODE ANN. § 48-4-104.
- 153 Board members must be "duly qualified electors and taxpayers" in creating jurisdiction. TENN. CODE ANN. § 13-30-105(a).
- 154 MO. REV. STAT. § 141.981.
- 155 68 PA. CONS. STAT. § 2105(b).
- 156 NEB. REV. STAT. § 19-5205(1)(b).
- 157 ALA. CODE § 24-9-10(c)(4).
- 158 W. VA. CODE § 31-18E-5.
- 159 MICH. COMP. LAWS § 124.766(1) does not prohibit this. For local Land Banks the applicable IGA set forth the requirements. MICH. COMP. LAWS § 124.773(6).
- 160 OHIO REV. CODE ANN. § 1724.10(B)(1).
- 161 N.Y. NOT-FOR-PROFIT CORP. § 1605(c).
- 162 GA. CODE ANN. § 48-4-104(c).
- 163 TENN. CODE ANN. § 13-30-105(a). This is subject to creating local government's determination of qualifications. TENN. CODE ANN. § 13-30-105(b).
- 164 MO. REV. STAT. § 141.981(1).
- 165 68 PA. CONS. STAT. § 2105(b)(2).
- 166 NEB. REV. STAT. § 19-5205(4).
- 167 ALA. CODE § 24-9-10(c)(4).
- 168 W. VA. CODE § 31-18E-5(b)(2).
- 169 MICH. COMP. LAWS § 124.773(6).
- 170 N.Y. NOT-FOR-PROFIT CORP. § 1603(e). This section states that a school district *may* participate in a land bank, but is not required to do so.
- 171 GA. CODE ANN. § 48-4-103(f). This section states that a school district *may* participate in a land bank, but is not required to do so.
- 172 TENN. CODE ANN. § 13-30-105(a). This is subject to the creating local government's determination of qualifications. TENN. CODE ANN. § 13-30-105(b).
- 173 MO. REV. STAT. § 141.981(1). "One board member ... shall be appointed by the school district that is wholly or partially located within such municipality and county and then has the largest population according to the last preceding federal decennial census."
- 174 68 PA. CONS. STAT. § 2104(e). This section provides that a school district *may* participate in a land bank, but is not required to do so.
- 175 NEB. REV. STAT. § 19-5205.
- 176 See W. VA. CODE § 31-18E-5(b).
- 177 MICH. COMP. LAWS § 124.773(6).
- 178 N.Y. NOT-FOR-PROFIT CORP. § 1603. No such requirement exists in the statute, particularly within the relevant section addressing the creation of the land bank board.
- 179 GA. CODE ANN. § 48-4-103(a). No such requirement exists in the statute, particularly within the relevant section addressing the creation of the land bank board.
- 180 TENN. CODE ANN. § 13-30-105(a). Every board member must be a taxpayer and elector in the creating local government.
- 181 MO. REV. STAT. § 141.981(1).
- 182 68 PA. CONS. STAT. § 2105(b)(3).
- 183 NEB. REV. STAT. § 19-5205.
- 184 W. VA. CODE § 31-18E-5(b)(3).
- 185 MICH. COMP. LAWS § 124.773(6).
- 186 N.Y. NOT-FOR-PROFIT CORP. § 1605(i)(5).
- 187 GA. CODE ANN. § 48-4-104(i)(5).
- 188 TENN. CODE ANN. § 13-30-106(g)(5). Majority of total board required to sell, lease, encumber, or alienate property valued at more than \$50,000.
- 189 MO. REV. STAT. § 141.981(6)(5), (6)(6). Subsection (6)(5) addresses the sale of real property and requires a majority vote of the total board when consideration is less than two-thirds of the appraised value. Subsection (6)(6) addresses the lease, encumbrance, or alienation of real property and requires a majority vote of the total board for the lease, encumbrance, or alienation of real property with a value of more than \$50,000.
- 190 18 PA. CONS. STAT. § 2105(h)(2)(vi). Approval by a majority of total board members is required to sell, lease, or encumber property valued at more than \$50,000.
- 191 NEB. REV. STAT. § 19-5205(9)(e). Approval by a majority of voting board members required to sell, lease, encumber or alienate property valued at more than \$50,000. *See also* NEB. REV. STAT. § 19-5210(a). This section allows the creating municipalities to require specific approval requirements for certain dispositions.
- 192 W. VA. CODE § 31-18E-5(h)(2). Approval by a majority of total board members is required to sell, lease, or encumber property valued at more than \$50,000.
- 193 MICH. COMP. LAWS § 124.773(6).
- 194 See OHIO REV. CODE ANN. § 1724.03.
- 195 N.Y. NOT-FOR-PROFIT CORP. § 1614.
- 196 GA. CODE ANN. § 48-4-111(b).
- 197 TENN. CODE ANN. § 13-30-107(c).
- 198 MO. REV. STAT. § 141.1000.
- 199 68 PA. CONS. STAT. § 2115.
- 200 NEB. REV. STAT. § 19-5215(1).
- 201 W. VA. CODE § 31-18E-15(a).
- 202 MICH. COMP. LAWS § 124.754(9), (10).
- 203 Subject to determination under OHIO REV. CODE ANN. § 1702.11. OHIO REV. CODE ANN. § 1724.03.
- 204 N.Y. NOT-FOR-PROFIT CORP. § 1614.
- 205 GA. CODE ANN. § 48-4-111(b).
- 206 TENN. CODE ANN. § 13-30-114.
- 207 MO. REV. STAT. § 141.1000.
- 208 68 PA. CONS. STAT. § 2115.
- 209 NEB. REV. STAT. § 19-5215(2). The board is required to adopt additional conflict-of-interest and ethics rules and guidelines.
- 210 W. VA. CODE § 31-18E-15(b).
- 211 Generally, where not inconsistent with the provisions of OHIO REV. CODE ANN. § 1724.01 *et seq.* ("County Land Reutilization Corporation Act"), the board of a CLRC is subject to specification under the provisions of OHIO REV. CODE ANN. § 1702.01 *et seq.* ("Nonprofit Corporation Law"). OHIO REV. CODE ANN. § 1724.08.
- 212 N.Y. NOT-FOR-PROFIT CORP. § 1612.
- 213 GA. CODE ANN. § 48-4-111(a).
- 214 TENN. CODE ANN. §§ 13-30-107(d), (e).
- 215 MO. REV. STAT. § 141.997.
- 216 68 PA. CONS. STAT. § 2113.
- 217 NEB. REV. STAT. § 19-5213.
- 218 ALA. CODE § 24-9-5(f).
- 219 W. VA. CODE § 31-18E-13.
- 220 MICH. COMP. LAWS § 124.754(h). The Land Bank may also "contract" for the same services, rather than employing the professionals itself. MICH. COMP. LAWS § 124.754(i).
- 221 OHIO REV. CODE ANN. § 1724.02(L).
- 222 N.Y. NOT-FOR-PROFIT CORP. § 1606.
- 223 GA. CODE ANN. § 48-4-105.
- 224 TENN. CODE ANN. § 13-30-106(e).
- 225 MO. REV. STAT. § 141.982.
- 226 68 PA. CONS. STAT. § 2106(a).

- 227 NEB. REV. STAT. § 19-5206.
- 228 ALA. CODE § 24-9-5(e).
- 229 W. VA. CODE § 31-18E-6(a).
- 230 Such staffing may be provided for through the IGA with the State authority. MICH. COMP. LAWS § 124.773(6) and is expressly permitted by § 124.754(3) and (1)(d).
- 231 OHIO REV. CODE ANN. § 1724.02(O).
- 232 N.Y. NOT-FOR-PROFIT CORP. § 1606.
- 233 GA. CODE ANN. § 48-4-105.
- 234 TENN. CODE ANN. § 13-30-108.
- 235 MO. REV. STAT. § 141.982.
- 236 68 PA. CONS. STAT. § 2106(b).
- 237 NEB. REV. STAT. § 19-5207(1)(g).
- 238 W. VA. CODE § 31-18E-6(b).
- 239 MICH. COMP. LAWS § 124.754(1), (1)(l).
- 240 OHIO REV. CODE ANN. § 1724.02(O). Generally, CLRCs may also exercise the powers enumerated in OHIO REV. CODE ANN. §§ 5722.01 - 5722.13, the Land Reutilization Program. OHIO REV. CODE ANN. § 1724.02(l).
- 241 N.Y. NOT-FOR-PROFIT CORP. § 1607(a).
- 242 GA. CODE ANN. § 48-4-106(a).
- 243 TENN. CODE ANN. § 13-30-109(12).
- 244 MO. REV. STAT. § 141.983.
- 245 68 PA. CONS. STAT. § 2107.
- 246 NEB. REV. STAT. § 19-5207(1)(r).
- 247 ALA. CODE § 24-9-10(f)(1).
- 248 W. VA. CODE § 31-18E-7.
- 249 MICH. COMP. LAWS § 124.754(1)(a).
- 250 OHIO REV. CODE ANN. §§ 1724.03(A), § 1702.11.
- 251 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(1).
- 252 GA. CODE ANN. § 48-4-106(a)(1).
- 253 TENN. CODE ANN. § 13-30-109(1).
- 254 MO. REV. STAT. § 141.983(1).
- 255 68 PA. CONS. STAT. § 2107(1).
- 256 NEB. REV. STAT. § 19-5207(1)(a).
- 257 ALA. CODE § 24-9-10(c)(5).
- 258 W. VA. CODE § 31-18E-7(1).
- 259 MICH. COMP. LAWS § 124.754(1)(b).
- 260 OHIO REV. CODE ANN. § 1724.04.
- 261 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(2).
- 262 GA. CODE ANN. § 48-4-106(a)(2).
- 263 TENN. CODE ANN. § 13-30-109(2).
- 264 MO. REV. STAT. § 141.983(2).
- 265 68 PA. CONS. STAT. § 2107(2).
- 266 NEB. REV. STAT. § 19-5207(1)(b).
- 267 ALA. CODE § 24-9-5(i).
- 268 W. VA. CODE § 31-18E-7(2).
- 269 MICH. COMP. LAWS § 124.754(1)(d).
- 270 A municipality, a county or a CLRC, if each elects to create a Land Reutilization Program (OHIO REV. CODE ANN. § 5722.01 *et seq.*), may enter into agreements with each other to implement the program. OHIO REV. CODE ANN. § 5722.02(D). Moreover, OHIO REV. CODE ANN. § 1724.10(A)(3) permits municipalities that are not counties to be designated as community improvement organizations capable of exercising the powers of a CLRC, if such municipality enters into an IGA with the CLRC designated by the county.
- 271 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(7).
- 272 GA. CODE ANN. § 48-4-106(a)(16).
- 273 TENN. CODE ANN. § 13-30-109(5).
- 274 MO. REV. STAT. § 141.983(7), (8).
- 275 68 PA. CONS. STAT. § 2107(7).
- 276 NEB. REV. STAT. § 19-5207(1)(f).
- 277 ALA. CODE § 24-9-10(d).
- 278 W. VA. CODE § 31-18E-7(8).
- 279 MICH. COMP. LAWS § 124.754(d).
- 280 A municipality, a county or a CLRC, if each elects to create a Land Reutilization Program (OHIO REV. CODE ANN. § 5722.01 *et seq.*), may enter into agreements with each other to implement the program. OHIO REV. CODE ANN. § 5722.02(D). Moreover, OHIO REV. CODE ANN. § 1724.10(A)(3) permits municipalities that are not counties to be designated as community improvement organizations capable of exercising the powers of a CLRC, if such municipality enters into an IGA with the CLRC designated by the county.
- 281 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(7).
- 282 GA. CODE ANN. § 48-4-106(a)(16).
- 283 TENN. CODE ANN. § 13-30-109(5).
- 284 MO. REV. STAT. § 141.983(7).
- 285 68 PA. CONS. STAT. § 2107(7).
- 286 NEB. REV. STAT. § 19-5207(1)(f).
- 287 W. VA. CODE § 31-18E-7(7).
- 288 MICH. COMP. LAWS § 124.754(1)(f).
- 289 OHIO REV. CODE ANN. § 1724.02(O).
- 290 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(10).
- 291 GA. CODE ANN. § 48-4-106(a)(17).
- 292 TENN. CODE ANN. § 13-30-109(7).
- 293 MO. REV. STAT. § 141.983(10).
- 294 68 PA. CONS. STAT. § 2107(10).
- 295 NEB. REV. STAT. § 19-5207(1)(j).
- 296 ALA. CODE § 24-9-6(c)(2).
- 297 W. VA. CODE § 31-18E-7(10).
- 298 MICH. COMP. LAWS § 124.754(1)(k), (3).
- 299 OHIO REV. CODE ANN. § 1724.02(D).
- 300 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(12).
- 301 GA. CODE ANN. § 48-4-106(a)(22).
- 302 TENN. CODE ANN. § 13-30-109(11).
- 303 MO. REV. STAT. § 141.983(12).
- 304 68 PA. CONS. STAT. § 2107(12).
- 305 NEB. REV. STAT. § 19-5207(1)(q), (l).
- 306 W. VA. CODE § 31-18E-7(16).
- 307 MICH. COMP. LAWS § 124.754(1)(j).
- 308 OHIO REV. CODE ANN. §§ 1724.10(B)(1), 5722.06(C).
- 309 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(18).
- 310 GA. CODE ANN. § 48-4-106(a)(19).
- 311 TENN. CODE ANN. § 13-30-109(11)(A).
- 312 MO. REV. STAT. § 141.983(13).
- 313 68 PA. CONS. STAT. § 2107(13).
- 314 NEB. REV. STAT. § 19-5207(1)(m).
- 315 ALA. CODE § 24-9-5(j).
- 316 W. VA. CODE § 31-18E-7(13).
- 317 MICH. COMP. LAWS § 124.754(l).
- 318 The CLRC is authorized to “study, analyze, and evaluate potential, present, and future uses” for land it has acquired. OHIO REV. CODE ANN. § 5722.06(C).
- 319 N.Y. NOT-FOR-PROFIT CORP. § 1609(e). The Foreclosing Governmental Unit may create a hierarchical ranking of priorities in its local, resolution or ordinance creating the land bank.
- 320 GA. CODE ANN. § 48-4-109(f). The land bank members may establish the hierarchical ranking of priorities in the resolution or IGA creating the land bank. If the resolution or IGA creating the land bank is silent, the land bank board may establish a hierarchical ranking of priorities.
- 321 TENN. CODE ANN. § 13-30-111(e). This section allows the creating local government(s) to establish a hierarchical ranking of priorities for property use.
- 322 MO. REV. STAT. § 141.985(5). The municipality may create a hierarchical ranking of priorities.
- 323 68 PA. CONS. STAT. § 2110(e)(1). The land bank jurisdiction may create a hierarchical ranking of priorities.
- 324 NEB. REV. STAT. § 19-5210(5). This section allows the creating municipalities to establish a hierarchical ranking of priorities for property use.
- 325 W. VA. CODE § 31-18E-10(e).
- 326 MICH. COMP. LAWS § 124.756(1).
- 327 OHIO REV. CODE ANN. § 1724.02(A)(2)(b).
- 328 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(13).
- 329 GA. CODE ANN. § 48-4-106(a)(19).
- 330 TENN. CODE ANN. § 13-30-109(11)(A).
- 331 MO. REV. STAT. § 141.983(13).
- 332 68 PA. CONS. STAT. § 2107(13).
- 333 NEB. REV. STAT. § 19-5207(1)(m).
- 334 ALA. CODE § 24-9-7(b).
- 335 W. VA. CODE § 31-18E-7(13).
- 336 MICH. COMP. LAWS § 124.756(1).
- 337 OHIO REV. CODE ANN. § 1724.02(O).
- 338 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(13).
- 339 GA. CODE ANN. § 48-4-106(a)(19). The statute does not expressly reference demolition, but the power to demolish is necessarily included in the express powers to construct, erect, modify, and develop property.
- 340 TENN. CODE ANN. § 13-30-109(11)(A).

- 341 MO. REV. STAT. § 141.983(13).
 342 68 PA. CONS. STAT. § 2107(13).
 343 NEB. REV. STAT. § 19-5207(1)(m).
 344 ALA. CODE § 24-9-7(b).
 345 W. VA. CODE § 31-18E-7(13).
 346 MICH. COMP. LAWS § 124.756(b).
 347 Ohio Rev. Code Ann. § 1724.02(K).
 348 N.Y. Not-for-Profit Corp. § 1607(a)(14).
 349 GA. CODE ANN. § 48-4-106(a)(20).
 350 TENN. CODE ANN. § 13-30-109(11)(B).
 351 MO. REV. STAT. § 141.983(14).
 352 68 PA. CONS. STAT. § 2107(14).
 353 NEB. REV. STAT. § 19-5207(1)(n).
 354 ALA. CODE § 24-9-7(b), (c).
 355 W. VA. CODE § 31-18E-7(14).
 356 MICH. COMP. LAWS § 124.756(1).
 357 OHIO REV. CODE ANN. § 1724.02(C).
 358 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(15).
 359 GA. CODE ANN. § 48-4-106(a)(21).
 360 TENN. CODE ANN. §§ 13-30-109(11)(C), 13-30-111(d).
 361 MO. REV. STAT. § 141.983(15).
 362 68 PA. CONS. STAT. §§ 2107(15), 2110(b).
 363 NEB. REV. STAT. § 19-5207(1)(p).
 364 ALA. CODE § 24-9-7(b).
 365 W. VA. CODE § 31-18E-10(b).
 366 N.Y. NOT-FOR-PROFIT CORP. § 1608(a).
 367 GA. CODE ANN. §§ 48-4-108(a), 48-4-109(c).
 368 TENN. CODE ANN. §§ 13-30-104(a)(2); 13-30-116(a).
 369 MO. REV. STAT. § 141.984.2. There is a limitation on the tax exemption when the land bank is lessor. Tax exemption for improved and occupied real property held by such land bank agency as lessor pursuant to a ground lease shall terminate upon the first such occupancy, and such land bank agency shall immediately notify the county assessor and the collector of such occupancy.
 370 68 PA. CONS. STAT. § 2109(b)(2). Tax exempt status does not apply to real property of a land bank after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property shall continue to be exempt from state and local taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.
 371 NEB. REV. STAT. § 19-5207(1)(o). The land bank cannot lease, as lessor, property for periods in excess of twelve months (unless the property is subject to a lease with a remaining term of more than twelve months at the time the property is acquired by the land bank). In addition, leases on property valued at more than \$50,000 are subject to special board approval. NEB. REV. STAT. § 19-5205(9)(e).
 372 W. VA. CODE § 31-18E-9(b)(2). If the land bank leases property to a private third party continuously for more than five consecutive years, the property is no longer exempt from taxes after the fifth year.
 373 MICH. COMP. LAWS § 124.754(1)(d), (l). MICH. COMP. LAWS § 124.754(3) permits joint management, but not joint ownership.
 374 OHIO REV. CODE ANN. § 1724.02(D).
 375 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(16).
 376 GA. CODE ANN. § 48-4-106(a)(22).
 377 TENN. CODE ANN. § 13-30-109(11)(D).
 378 MO. REV. STAT. § 141.983(16).
 379 68 PA. CONS. STAT. § 2107(16).
 380 NEB. REV. STAT. § 19-5207(1)(q).
 381 W. VA. CODE § 31-18E-7(16).
 382 Tax liens on the property can be released by particular governing entities, depending on who holds the lien. MICH. COMP. LAWS § 124.756(6).
 383 If the local legislative authority declares that it is in the public interest for a Land Reutilization Program to acquire tax delinquent properties, any acquisition (except by "appropriation") causes title to pass free and clear of tax liens. Consent of the taxing authority is required, unless the acquiring entity is a CLRC. OHIO REV. CODE ANN. § 5722.21. If a CLRC, county, or city accepts deed in lieu of foreclosure, tax liens are extinguished. OHIO REV. CODE ANN. § 5722.10. When the entity acquires forfeited or nonproductive, delinquent properties, the taxes are extinguished. OHIO REV. CODE ANN. § 5722.15(A).
 384 GA. CODE ANN. § 48-4-112(a).
 385 68 PA. CONS. STAT. §§ 2109(h), 2117(a).
 386 NEB. REV. STAT. § 19-5216(1). Land banks do not have the ability to discharge and extinguish tax liens when the liens have been sold to a third party as evidenced by a tax sale certificate.
 387 OHIO REV. CODE ANN. § 1724.02(J).
 388 MICH. COMP. LAWS § 124.754(8).
 389 N.Y. NOT-FOR-PROFIT CORP. § 1607(b).
 390 GA. CODE ANN. § 48-4-107.
 391 TENN. CODE ANN. § 13-30-120.
 392 MO. REV. STAT. § 141.1015.
 393 68 PA. CONS. STAT. § 2108.
 394 NEB. REV. STAT. § 19-5207(2).
 395 ALA. CODE §§ 24-9-3, 24-9-6(d).
 396 W. VA. CODE § 31-18E-8.
 397 MICH. COMP. LAWS § 124.759.
 398 TENN. CODE ANN. § 13-30-117(e).
 399 MO. REV. STAT. § 141.1009(5).
 400 68 PA. STAT. ANN. § 2118(a)(2).
 401 ALA. CODE §§ 24-9-8(c), 25-9-10(e).
 402 W. VA. CODE § 31-18E-16(a)(2).
 403 MICH. COMP. LAWS §§ 124.754(e), 124.768(1), (2). For local Land Banks, permission is granted to receive funds from a qualified city. MICH. COMP. LAWS § 124.773(9).
 404 The CLRC may receive contributions from the County Board of Commissioners. OHIO REV. CODE ANN. § 1724.02(A)(2)(a), (H).
 405 N.Y. NOT-FOR-PROFIT CORP. § 1610(a).
 406 GA. CODE ANN. § 48-4-106(a)(9).
 407 TENN. CODE ANN. § 13-30-109(8).
 408 MO. REV. STAT. § 141.983(4). *See also* MO. REV. STAT. § 141.988.1.
 409 68 PA. CONS. STAT. § 2111(a).
 410 NEB. REV. STAT. § 19-5211(1).
 411 ALA. CODE § 24-9-10(f).
 412 W. VA. CODE § 31-18E-11(a).
 413 MICH. COMP. LAWS § 124.756(1)(b).
 414 OHIO REV. CODE ANN. § 1724.02(C).
 415 N.Y. NOT-FOR-PROFIT CORP. § 1610(b).
 416 GA. CODE ANN. § 48-4-110(b).
 417 TENN. CODE ANN. § 13-30-109(11).
 418 MO. REV. STAT. § 141.983(14). *See also* MO. REV. STAT. § 141.988(2).
 419 68 PA. CONS. STAT. § 2111(b).
 420 NEB. REV. STAT. § 19-5211(2).
 421 ALA. CODE §§ 24-9-7(b), 24-9-10(c)(6).
 422 W. VA. CODE § 31-18E-11(b).
 423 MICH. COMP. LAWS § 124.754(b). Proceeds from the payment of tax liens and redemption or sale of property must be distributed *pro rata* to taxing authorities. MICH. COMP. LAWS § 124.758(1).
 424 OHIO REV. CODE ANN. § 1724.02(K).
 425 N.Y. NOT-FOR-PROFIT CORP. § 1610(b).
 426 GA. CODE ANN. § 48-4-110(b).
 427 TENN. CODE ANN. § 13-30-109(11).
 428 MO. REV. STAT. § 141.983(14). *See also* MO. REV. STAT. § 141.988(2).
 429 68 PA. CONS. STAT. § 2111(b).
 430 NEB. REV. STAT. § 19-5211(2).
 431 ALA. CODE § 24-9-7(b), (c).
 432 W. VA. CODE § 31-18E-11(b).
 433 MICH. COMP. LAWS § 124.758(2).
 434 OHIO REV. CODE ANN. § 5722.08.
 435 N.Y. NOT-FOR-PROFIT CORP. § 1610(b).
 436 GA. CODE ANN. § 48-4-110(b).
 437 TENN. CODE ANN. § 13-30-116(c).
 438 MO. REV. STAT. § 141.985.8(3).
 439 68 PA. CONS. STAT. § 2111(b).
 440 NEB. REV. STAT. § 19-5211(2).
 441 ALA. CODE §§ 24-9-7(b), 24-9-10(c)(6).
 442 W. VA. CODE § 31-18E-11(b).
 443 MICH. COMP. LAWS §§ 124.754(c), 124.769(1). Local Land Banks can receive loans from and pay back advances to qualified cities. MICH. COMP. LAWS § 124.773(9)(b), (10).
 444 OHIO REV. CODE ANN. §§ 1724.02(A)(1), (A)(2)(b)(i), 17214.10(B)(1).
 445 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(4).
 446 GA. CODE ANN. § 48-4-106(a)(6)-(8).

- 447 TENN. CODE ANN. § 13-30-109(4)
- 448 MO. REV. STAT. § 141.983(4).
- 449 68 PA. CONS. STAT. § 2107(4).
- 450 NEB. REV. STAT. § 19-5207(1)(c).
- 451 W. VA. CODE § 31-18E-11(a).
- 452 MICH. COMP. LAWS § 124.769(1), (5).
- 453 OHIO REV. CODE ANN. § 1724.02(A)(1) (a), (b).
- 454 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(5).
- 455 GA. CODE ANN. §§ 48-4-106, 48-4-110.
- 456 TENN. CODE ANN. § 13-30-109.
- 457 MO. REV. STAT. § 141.994.1.
- 458 68 PA. CONS. STAT. § 2107(5).
- 459 NEB. REV. STAT. §§ 19-5207(d), 5212.
- 460 W. VA. CODE § 31-18E-11.
- 461 MICH. COMP. LAWS § 124.754(g).
- 462 OHIO REV. CODE ANN. § 1724.02(E).
- 463 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(11).
- 464 GA. CODE ANN. § 48-4-110(b).
- 465 TENN. CODE ANN. § 13-30-109(9)
- 466 MO. REV. STAT. § 141.983(11).
- 467 68 PA. CONS. STAT. § 2107(11).
- 468 NEB. REV. STAT. § 19-5207(1)(k).
- 469 W. VA. CODE § 31-18E-11(b).
- 470 MICH. COMP. LAWS § 124.754(f).
- 471 OHIO REV. CODE ANN. § 1724.10(B)(1).
- 472 N.Y. NOT-FOR-PROFIT CORP. § 1607(a)(6).
- 473 GA. CODE ANN. § 48-4-106(a)(15).
- 474 TENN. CODE ANN. § 13-30-109.
- 475 MO. REV. STAT. § 141.983(6).
- 476 68 PA. CONS. STAT. § 2107(6).
- 477 NEB. REV. STAT. § 19-5207(1)(e).
- 478 W. VA. CODE § 31-18E-11(b).
- 479 MICH. COMP. LAWS §§ 211.1021, 211.1025(4)(b), 211.79g.
- 480 N.Y. NOT-FOR-PROFIT CORP. § 1610(c).
- 481 GA. CODE ANN. § 48-4-110(c).
- 482 TENN. CODE ANN. §§ 13-30-109, 13-30-116.
- 483 MO. REV. STAT. § 141.988(3).
- 484 68 PA. CONS. STAT. § 2111(c)(2).
- 485 NEB. REV. STAT. § 19-5211(3)(a). Properties conveyed by a land bank are subject to a 50% / 5 yr. tax recapture unless (i) the land bank opts not to recapture taxes on a specific property or (ii) the property taxes are already subject to division as part of a redevelopment project under the Community Redevelopment Law.
- 486 W. VA. CODE § 31-18E-11(c). Recapture for up to five years, not to exceed 50% of aggregate property tax revenues from property. Remittance of portion of property taxes owed to county board of education is subject to agreement with county board of education.
- 487 Governmental entities are limited to the Department of Natural Resources, a “foreclosing governmental unit,” or the Michigan State Housing Development Authority. MICH. COMP. LAWS § 124.755(3). The foreclosing governmental unit transfer is subject to a right of first refusal by the State. MICH. COMP. LAWS § 211.78m(1). For city transfers to city Land Banks, see MICH. COMP. LAWS § 124.773(7), permitting the transfer of property delinquent on taxes for 2 years prior to transfer, of tax-foreclosed property, tax-reverted property.
- 488 OHIO REV. CODE ANN. § 1724.02(C).
- 489 N.Y. NOT-FOR-PROFIT CORP. § 1608(c).
- 490 GA. CODE ANN. § 48-4-108(c)(1).
- 491 TENN. CODE ANN. § 13-30-110(b), (e)
- 492 MO. REV. STAT. § 141.984(4).
- 493 68 PA. CONS. STAT. § 2109(d).
- 494 NEB. REV. STAT. § 19-5208(2).
- 495 ALA. CODE § 24-9-5(j).
- 496 W. VA. CODE § 31-18E-9(d).
- 497 See MICH. COMP. LAWS § 124.755. For a local land bank, it may depend on the IGA. MICH. COMP. LAWS § 124.773(6).
- 498 If a CLRC is created by an eligible county and has been delegated the powers of the county under OHIO REV. CODE ANN. § 5722.01 *et seq.*, then the CLRC cannot exercise the powers granted under that chapter with respect to land inside the geographic boundaries of a municipal corporation, unless the municipal corporation and CLRC have an agreement to implement a Land Reutilization Program together. See OHIO REV. CODE ANN. §§ 5722.01(H), 5722.02(D).
- 499 N.Y. NOT-FOR-PROFIT CORP. § 1608(e).
- 500 GA. CODE ANN. § 48-4-108(c)(2). A land bank may enter into an agreement with a local government to manage and maintain real property within the geographical boundaries of that local government, but outside the geographical boundaries of land bank members. GA. CODE ANN. § 48-4-108(e).
- 501 TENN. CODE ANN. § 13-30-110(d). A land bank may enter into an agreement with a local government to manage and maintain real property within the geographical boundaries of that local government, but outside the geographical boundaries of land bank members.
- 502 MO. REV. STAT. § 141.980(1).
- 503 68 PA. CONS. STAT. § 2109(f)(1).
- 504 NEB. REV. STAT. § 19-5208(4).
- 505 W. VA. CODE § 31-18E-9(f). A land bank may enter into an agreement with a local government to manage and maintain real property within the geographical boundaries of that local government, but outside the geographical boundaries of land bank members.
- 506 MICH. COMP. LAWS § 124.755(1).
- 507 OHIO REV. CODE ANN. § 1724.02(C). The CLRC can do so unless acquisition causes the percentage of unoccupied real property held by the CLRC to become less than 75% of all real property held by the CLRC.
- 508 N.Y. NOT-FOR-PROFIT CORP. § 1608(b).
- 509 GA. CODE ANN. § 48-4-108(b).
- 510 TENN. CODE ANN. § 13-30-110(a).
- 511 MO. REV. STAT. § 141.983(15). *See also* MO. REV. STAT. § 141.984(3).
- 512 68 PA. CONS. STAT. § 2109(c).
- 513 NEB. REV. STAT. § 19-5208(1).
- 514 ALA. CODE § 24-9-5(j).
- 515 W. VA. CODE § 31-18E-9(c).
- 516 MICH. COMP. LAWS § 124.754(2).
- 517 OHIO REV. CODE ANN. § 1724.02(C).
- 518 N.Y. NOT-FOR-PROFIT CORP. § 1608(c).
- 519 GA. CODE ANN. § 48-4-108(c)(1).
- 520 TENN. CODE ANN. § 13-30-110(b).
- 521 MO. REV. STAT. § 141.984(4).
- 522 68 PA. CONS. STAT. § 2109(c).
- 523 NEB. REV. STAT. § 19-5208(2).
- 524 ALA. CODE § 24-9-5(j).
- 525 W. VA. CODE § 31-18E-9(c).
- 526 MICH. COMP. LAWS § 124.764(2), (3).
- 527 OHIO REV. CODE ANN. § 1724.10(B)(1).
- 528 N.Y. NOT-FOR-PROFIT CORP. § 1608(d).
- 529 GA. CODE ANN. § 48-4-108(d).
- 530 TENN. CODE ANN. § 13-30-110(c)
- 531 MO. REV. STAT. § 141.984(5).
- 532 68 PA. CONS. STAT. § 2109(e).
- 533 NEB. REV. STAT. § 19-5208(3).
- 534 W. VA. CODE § 31-18E-9(e).
- 535 MICH. COMP. LAWS § 124.755(3). A property owner may convey tax-delinquent property to the Land Bank with a deed in lieu of tax foreclosure, if the property owner has permission of the affected taxing jurisdictions and the foreclosing governmental unity. MICH. COMP. LAWS § 124.756(3), (4). *See also* MICH. COMP. LAWS § 124.770. For local LBs, see MICH. COMP. LAWS § 124.773(8).
- 536 OHIO REV. CODE ANN. §§ 5722.03, 5722.10. A CLRC is permitted to acquire delinquent property, unimproved by a dwelling and permitted to accept a deed in lieu of foreclosure.
- 537 The statute only provides for maintenance of inventory; it does not specifically provide that the inventory list should be made public. MICH. COMP. LAWS § 124.757(2).
- 538 OHIO REV. CODE ANN. § 5722.06(B).
- 539 N.Y. NOT-FOR-PROFIT CORP. § 1608(h).
- 540 GA. CODE ANN. § 48-4-109(b).
- 541 TENN. CODE ANN. § 13-30-110(b).
- 542 MO. REV. STAT. § 141.985.2.
- 543 68 PA. CONS. STAT. § 2110(a).
- 544 NEB. REV. STAT. § 19-5210(2).
- 545 ALA. CODE § 24-9-6(c)(1).
- 546 W. VA. CODE § 31-18E-10(a).
- 547 Property acquired under OHIO REV. CODE ANN. § 5722.01 *et seq.* must be disposed of within 16 years, or it will be sold at public auction. OHIO REV. CODE ANN. § 5722.13.

- 548 MICH. COMP. LAWS §§ 124.756(1), 124.757(1).
- 549 OHIO REV. CODE ANN. §§ 1724.02(C), 5722.06(D), 5722.07.
- 550 N.Y. NOT-FOR-PROFIT CORP. § 1609(d).
- 551 GA. CODE ANN. § 48-4-109(c).
- 552 TENN. CODE ANN. § 13-30-109(11)(C), 13-30-111(d).
- 553 MO. REV. STAT. § 141.983(15). *See also* MO. REV. STAT. § 141.985.4.
- 554 68 PA. CONS. STAT. § 2110(b).
- 555 NEB. REV. STAT. § 19-5210(4).
- 556 ALA. CODE § 24-9-7(b), (d).
- 557 W. VA. CODE § 31-18E-10(a).
- 558 MICH. COMP. LAWS § 124.754(1)(h).
- 559 CLRC may dispose of land “as provided in its plan and pursuant to its purposes under Chapter 1724.” OHIO REV. CODE ANN. § 5722.06. *Cf.* OHIO REV. CODE ANN. § 1724.02(I), (O), permitting CLRC to exercise powers under chapter 5722 and to “do all things necessary and convenient to carry out the purposes of section 1724.01”
- 560 N.Y. NOT-FOR-PROFIT CORP. § 1609(f).
- 561 GA. CODE ANN. § 48-4-109(g)(2).
- 562 TENN. CODE ANN. § 13-30-111(f). Note, however, that a creating municipality has express authority to restrict this delegation of disposition authority.
- 563 MO. REV. STAT. § 141.985.6.
- 564 68 PA. CONS. STAT. § 2110(g)(2).
- 565 NEB. REV. STAT. § 19-5210(6). Note, however, that a creating municipality has the express authority to restrict this delegation of disposition authority.
- 566 W. VA. CODE § 31-18E-10(g)(2).
- 567 MICH. COMP. LAWS § 124.754(1)(h), (1)(i).
- 568 N.Y. NOT-FOR-PROFIT CORP. § 1609(f).
- 569 GA. CODE ANN. § 48-4-106(a)(22).
- 570 TENN. CODE ANN. § 13-30-109(11).
- 571 MO. REV. STAT. § 141.983(12).
- 572 68 PA. CONS. STAT. § 2107(12).
- 573 NEB. REV. STAT. § 19-5207(1)(I).
- 574 W. VA. CODE § 31-18E-7(16).
- 575 MICH. COMP. LAWS § 124.757(1).
- 576 Because OHIO REV. CODE ANN. §§ 5722.07 and 5722.08 contemplates a distribution of proceeds to the taxing authorities with liens, it appears that non-monetary consideration is not acceptable in certain contexts.
- 577 N.Y. NOT-FOR-PROFIT CORP. § 1609(c).
- 578 GA. CODE ANN. § 48-4-109(d)(2).
- 579 TENN. CODE ANN. § 13-30-111(c).
- 580 MO. REV. STAT. § 141.985(3).
- 581 68 PA. CONS. STAT. § 2110(c)(2).
- 582 NEB. REV. STAT. § 19-5210(3).
- 583 ALA. CODE § 24-9-7(b), (c).
- 584 W. VA. CODE § 31-18E-10(c)(2).
- 585 MICH. COMP. LAWS § 124.757(1).
- 586 OHIO REV. CODE ANN. § 5722.07.
- 587 N.Y. NOT-FOR-PROFIT CORP. § 1609(c).
- 588 GA. CODE ANN. § 48-4-109(d)(2).
- 589 TENN. CODE ANN. § 13-30-111(c).
- 590 MO. REV. STAT. § 141.985(3). Non-monetary consideration could arguably be employed to overcome a sales price less than fair market value. This arrangement may not succeed, however, if directly in conflict with a competing bid at or above fair market value, per the requirement of MO. REV. STAT. § 141.985(7). Selling a property for less than fair market value will trigger the additional board voting requirements in MO. REV. STAT. § 141.981(6)(5).
- 591 68 PA. CONS. STAT. § 2110(c)(1).
- 592 NEB. REV. STAT. § 19-5210(3).
- 593 ALA. CODE § 24-9-7(c).
- 594 W. VA. CODE § 31-18E-10(b).
- 595 MICH. COMP. LAWS § 124.757(1).
- 596 N.Y. NOT-FOR-PROFIT CORP. § 1609(c).
- 597 GA. CODE ANN. § 48-4-109(d)(2).
- 598 TENN. CODE ANN. § 13-30-111(c).
- 599 MO. REV. STAT. § 141.985(7).
- 600 68 PA. CONS. STAT. § 2110(c)(1).
- 601 NEB. REV. STAT. § 19-5210(3).
- 602 W. VA. CODE § 31-18E-10(b).
- 603 OHIO REV. CODE ANN. § 5722.06(B).
- 604 N.Y. NOT-FOR-PROFIT CORP. § 1609(g).
- 605 MO. REV. STAT. § 141.980(1). A land bank agency is not authorized to sell more than five contiguous parcels to the same entity in the course of a year.
- 606 MICH. COMP. LAWS § 124.754(1).
- 607 OHIO REV. CODE ANN. § 1724.02(D). *See* OHIO REV. CODE ANN. §§ 323.77, 5722.03(A). If no one bids the minimum bid (equaling delinquent taxes and fees) at a foreclosure sale of “nonproductive land” (meaning, tax delinquent land unimproved by a dwelling, OHIO REV. CODE ANN. § 5722.01(C), (F)), the property may be transferred to the CLRC within which the parcel is located. Once a CLRC or other land reutilization program is formed, the county prosecutor must assemble a list of all delinquent parcels within the geographic area of the newly formed entity. At this point, the CLRC, city, or county may select the parcels it wants to acquire. These parcels can be foreclosed on with a minimum bid as the amount of the delinquency. If the parcel is not sold for the minimum bid, the CLRC, city, or county is deemed to have made the winning bid at the second sale. OHIO REV. CODE ANN. § 5722.03(D).
- 608 N.Y. NOT-FOR-PROFIT CORP. § 1616(h).
- 609 GA. CODE ANN. § 48-4-112(d), (e).
- 610 TENN. CODE ANN. § 13-30-110(a).
- 611 MO. REV. STAT. § 141.550.2(2). *See also* MO. REV. STAT. § 141.984.4.
- 612 68 PA. CONS. STAT. § 2117. There are three different tax foreclosure options in Pennsylvania: the Real Estate Tax Sale Law, the Municipal Claim and Tax Lien Law, and Second Class City Treasurer’s Sale and Collection Act. A land bank is authorized to bid competitively in each system.
- 613 NEB. REV. STAT. § 19-5217(1). This section permits land banks to enter a minimum bid at a tax sale, however it does not expressly permit a land bank to bid more than the minimum bid. Land banks are permitted to bid up to the amount it would be willing to pay if bidding pursuant to NEB. REV. STAT. § 19-5218.
- 614 W. VA. CODE § 31-18E-9(g).
- 615 Depending on whether a sale has already occurred, the CLRC can be given forfeited or delinquent, unimproved property where there were no bidders at the sale, or can be deemed to have made the minimum bid in a second sale, if no bidder makes the minimum bid paying off the taxes and fees encumbering the property. The entity is not actually bidding at the sale; rather, the minimum bid is set at the amount of delinquency such that if that bid is not made, the entity has been deemed to have bid that amount after the second sale attempt.
- 616 N.Y. NOT-FOR-PROFIT CORP. § 1616(h), (i).
- 617 GA. CODE ANN. § 48-4-112(d)(1).
- 618 TENN. CODE ANN. § 13-30-109.
- 619 MO. REV. STAT. § 141.560.3.
- 620 68 PA. CONS. STAT. § 2117(c)(2).
- 621 NEB. REV. STAT. § 19-5217(1)(b).
- 622 W. VA. CODE § 31-18E-9(g).
- 623 N.Y. NOT-FOR-PROFIT CORP. § 1616(h), (i).
- 624 MO. REV. STAT. § 141.560.3. If a parcel has been offered for sale and failed to sell on three different days, the land bank shall be deemed to have bid the full amount of all tax bills as a credit bid. There is no mention made regarding third party purchasers in this context of the fourth attempt to sell when the credit bid is deemed to have been made.
- 625 68 PA. CONS. STAT. § 2117(c)(2).
- 626 NEB. REV. STAT. § 19-5217(1)(b).
- 627 N.Y. NOT-FOR-PROFIT CORP. § 1616(i). This is permissible in those jurisdictions that follow the New York Real Property Tax Law, N.Y. REAL PROP. TAX § 1100 *et seq.*; other jurisdictions are subject to local law. *See* N.Y. REAL PROP. TAX § 1104(2).
- 628 TENN. CODE ANN. § 13-30-109.
- 629 MO. REV. STAT. § 141.560.3.
- 630 68 PA. CONS. STAT. § 2117(c).
- 631 NEB. REV. STAT. § 19-5217(1)(a)(ii). Note, however, that land banks may only enter automatic bids under this section if mortgagees and lienholders have consented.
- 632 W. VA. CODE § 31-18E-9(g). If the bidder at a tax sale does not bid the full amount of taxes, interest, and charges, the land bank has the option of purchasing the property by tendering the full amount.
- 633 So long as the purchase was made at auction, negotiated sale, or from a third party. OHIO REV. CODE ANN. § 1724.02(M).

- 634 N.Y. NOT-FOR-PROFIT CORP. § 1616.
- 635 GA. CODE ANN. § 48-4-112(c), (d), (e).
- 636 MO. REV. STAT. § 141.560(3).
- 637 68 PA. CONS. STAT. § 2117(c), (d), (e).
- 638 NEB. REV. STAT. § 19-5217(2).
- 639 So long as the purchase was made at auction, negotiated sale, or from a third party. OHIO REV. CODE ANN. § 1724.02(M).
- 640 N.Y. NOT-FOR-PROFIT CORP. § 1616(a).
- 641 GA. CODE ANN. § 48-4-112(c)(1).
- 642 MO. REV. STAT. § 141.560.3. If a parcel has been offered for sale and failed to sell on three different days, the land bank shall be deemed to have bid the full amount of all tax bills. This is a credit bid and would allow the land bank to purchase delinquent tax liens for less than the face amount of the tax liens sold.
- 643 NEB. REV. STAT. § 19-5217(2).
- 644 MICH. COMP. LAWS § 124.759(3).
- 645 N.Y. NOT-FOR-PROFIT CORP. § 1616(f), permitting the Land Bank as holder of a tax lien to foreclose multiple liens in a single action under N.Y. REAL PROP. TAX § 1194(5).
- 646 GA. CODE ANN. § 48-4-112(e)(5).
- 647 See MO. REV. STAT. § 141.984.
- 648 68 PA. CONS. STAT. § 117(c)(6).
- 649 See NEB. REV. STAT. § 19-5217. Under NEB. REV. STAT. § 77-1806, nonetheless, the county treasurer commences the sale of all delinquent properties, continuing from day to day until all are sold. At this proceeding, the Land Bank could bid on one or all of the properties.
- 650 ALA. CODE § 24-9-8.
- 651 See W. VA. CODE § 31-18E-9.
- 652 MICH. COMP. LAWS § 124.765. This is most likely subject to State IGA terms. MICH. COMP. LAWS § 124.773(6), (6)(g).
- 653 OHIO REV. CODE ANN. §§ 1702.04, 1724.08.
- 654 N.Y. NOT-FOR-PROFIT CORP. § 1603(f).
- 655 GA. CODE ANN. § 48-4-103(g).
- 656 TENN. CODE ANN. §§ 13-30-104, 13-30-113.
- 657 MO. REV. STAT. § 141.980(3).
- 658 68 PA. STAT. ANN. § 2104(f)(2).
- 659 NEB. REV. STAT. §§ 19-5214, 19-5204(3).
- 660 W. VA. CODE § 31-18E-4(e)(2).
- 661 Depends on IGA. MICH. COMP. LAWS § 124.773(6)(g).
- 662 OHIO REV. CODE ANN. §§ 1702.47 - 1702.52.
- 663 N.Y. NOT-FOR-PROFIT CORP. § 1613.
- 664 GA. CODE ANN. § 48-4-111(c)(1).
- 665 TENN. CODE ANN. § 13-30-113. Creating local government establishes the manner of dissolution; otherwise, the Land Bank can be dissolved in the same manner as any other public corporations.
- 666 MO. REV. STAT. § 141.1012.
- 667 68 PA. STAT. ANN. § 2114(b).
- 668 NEB. REV. STAT. § 19-5214
- 669 ALA. CODE § 24-9-10(c)(7).
- 670 W. VA. CODE § 31-18E-5(h)(3).
- 671 Depends on IGA. MICH. COMP. LAWS § 124.773(6)(g).
- 672 OHIO REV. CODE ANN. § 5722.12. For CLRC, it appears that this entity could be dissolved in any manner described in Ohio's Nonprofit Corporation Law statute, OHIO REV. CODE ANN. §§ 1702.47 - 1702.52.
- 673 TENN. CODE ANN. § 13-30-113.
- 674 MO. REV. STAT. § 141.1012.
- 675 68 PA. STAT. ANN. § 2114(b).
- 676 NEB. REV. STAT. § 19-5214. This section requires that two-thirds of the governing body of the creating municipality must approve dissolution.
- 677 ALA. CODE § 24-9-10(c)(7).
- 678 W. VA. CODE § 31-18E-14(b).
- 679 Depends on IGA. MICH. COMP. LAWS § 124.773(6)(g).
- 680 The transfer of Land Bank assets back to the county is subject to an alternative determination by the board of commissioners and the county treasurer. OHIO REV. CODE ANN. § 1724.07(B). If the property was acquired as part of a Land Reutilization Program under OHIO REV. CODE ANN. § 5722.12, at dissolution the assets of a Land Reutilization Program must be distributed in accordance with § 5722.08, permitting retention of land sale funds for use consistent with the purposes of the CLRC.
- 681 N.Y. NOT-FOR-PROFIT CORP. § 1613.
- 682 GA. CODE ANN. § 48-4-111(c)(3).
- 683 TENN. CODE ANN. § 13-30-113.
- 684 MO. REV. STAT. § 141.1012.
- 685 68 PA. STAT. ANN. § 2114(c).
- 686 NEB. REV. STAT. § 19-5214.
- 687 ALA. CODE § 24-9-10(c)(7).
- 688 Land is transferred back to the municipality or county where it is located. W. VA. CODE § 31-18E-14(c)(2).

Appendix D

Template for Land Bank Legislation

This template for state land bank legislation has formed the basis for the “third generation” of land bank statutes. The basic conceptual points in this legislation are drawn from the practices and experiences of the first and second generations of land bank statutes. Virtually every conceptual or doctrinal point can be found in the Michigan Land Bank Fast Track Authority statute, and related legislation, or the Ohio land banking legislation of 2008 and 2010. The goal of this template, as third-generation legislation, is to bring together in a single legislative act all of the core land bank concepts and doctrines in a manner that can be most easily adapted for other states.

As with any generic set of legal documents, it is not appropriate simply to copy them, or cut and paste portions of them, for adoption in any given jurisdiction. Designing the appropriate policies and procedures for a particular jurisdiction must be done in light of the precise language of the applicable state constitution, all other existing state statutes, and the appropriate form for legislative initiatives. This template should be viewed as only an example of one approach that has been taken with respect to the topic.

All references to “State” should be interpreted as placeholders for the name of the state where this language is being used as a template for land bank legislation.

Section 1. Short Title

This act shall be known and may be cited as the State Land Bank Act. *[A reference to the Act's placement within a state's statutory framework can be included here.]*

Section 2. Legislative Findings and Purpose

The legislature finds and declares as follows:

- a. *State's* communities are important to the social and economic vitality of the state. Whether urban, suburban or rural, many communities are struggling to cope with vacant, abandoned, and tax-delinquent properties.
- b. There exists a crisis in many cities and their metro areas caused by disinvestment in real property and resulting in a significant amount of vacant and abandoned property. For example, *[can include state-specific statistics regarding vacant properties and the costs these properties impose on state and local governments]*. This condition of vacant and abandoned property represents lost revenue to local governments and large costs associated with demolition, safety hazards and spreading deterioration of neighborhoods including resulting mortgage foreclosures.
- c. The need exists to strengthen and revitalize the economy of the state and its local units of government by solving the problems of vacant and abandoned property in a coordinated manner and to foster the development of such property and promote economic growth. Such problems may include multiple taxing jurisdictions lacking common policies, ineffective property inspection, code enforcement and property rehabilitation support, lengthy and/or inadequate foreclosure proceedings, and lack of coordination and resources to support economic revitalization.
- d. There is an overriding public need to confront the problems caused by vacant, abandoned, and tax-delinquent properties through the creation of new tools to be available to communities throughout *State* enabling them to turn vacant spaces into vibrant places.
- e. Land banks are one of the tools that can be utilized by communities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use.
- f. Land banks should be available as a tool to assist in the provision of emergency management services following a natural disaster and a declaration of emergency by the Governor.

Section 3. Definitions

The following words and phrases when used in this Act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

- a. "Act" shall mean this Land Bank Act.
- b. "Board of Directors" or "Board" shall mean the Board of Directors of a Land Bank.
- c. "Land Bank" shall mean a land bank established as *[insert type of legal entity the land bank will be]* under this chapter and in accordance with the provisions of this Act and pursuant to this Act.
- d. *[For the purposes of consistency, this template legislation uses the term "Foreclosing Governmental Unit" throughout in reference to a local government capable of creating a land bank. Because the local governments that fall within this definition will be capable of creating land banks, and because land banks ideally have direct ties to the property tax foreclosure system, it is advisable to tie the term, via cross-reference, to those local governments that collect property taxes. Thus, if the property tax statute defines those local governments that can participate in the property tax foreclosure system as "tax districts," a cross-reference will provide a simple and immediate definition for which local governments can create land banks—those that are also "tax districts." However, drafters may determine that a different term, such as "Land Bank Jurisdiction," is better suited because of a preference to cross-reference a section of law that controls the creation of other government authorities, like redevelopment authorities. If a state redevelopment statute provides that only certain local governments can create redevelopment authorities, the drafters may prefer to adopt the same limitation by cross-referencing that statutory provision.]*

- e. “Municipality” shall mean a city, village, town, or county other than a county located wholly within a city. *[This broad definition for “municipality” can be used unless state law defines municipality differently. In that instance, the state definition should be carefully compared with the definition of the land bank specific term defined in Section 3(d) for all possible permutations given the use of the terms throughout the legislation.]*
- f. “School District” shall mean a school district as defined under State law. *[The inclusion of this definition presumes that the legislative language regarding a school district’s ability to participate remains. If the subsequent sections are altered, this definition may not be necessary.]*
- g. “Real Property” shall mean lands, lands under water, structures and any and all easements, air rights, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise, and any and all fixtures and improvements located thereon.

Section 4. Creation and Existence

- a. Any foreclosing governmental unit may elect to create a Land Bank by the adoption of an ordinance, rule or resolution as appropriate to such foreclosing governmental unit which action specifies the following:
 - 1. The name of the Land Bank.
 - 2. The number of members of the Board of Directors, which shall consist of an odd number of members, and shall be not less than five members nor more than eleven members.
 - 3. The initial individuals to serve as members of the Board of Directors, and the length of terms for which they are to serve.
 - 4. The qualifications, manner of selection or appointment, and terms of office of members of the Board.
- b. Two or more foreclosing governmental units may elect to enter into an intergovernmental cooperation agreement that creates a single Land Bank to act on behalf of such foreclosing governmental units, which agreement shall be authorized by and be in accordance with the provisions of Section 4(a) of this Act.
- c. Any foreclosing governmental units and any municipality may elect to enter into an intergovernmental cooperation agreement that creates a single Land Bank to act on behalf of such foreclosing governmental unit or units and municipality, which agreement shall be authorized by and be in accordance with the provisions of Section 4(a) of this Act.
- d. Except when a Land Bank is created pursuant to Section 4(b) or (c) of this Act, in the event a county creates a Land Bank, such Land Bank shall have the power to acquire real property only in those portions of such county located outside of the geographical boundaries of any other Land Bank created by any other foreclosing governmental unit located partially or entirely within such county.
- e. A school district may participate in a Land Bank pursuant to an intergovernmental cooperation agreement with the foreclosing governmental unit or units that create the Land Bank, which agreement shall specify the membership, if any, of such school district on the Board of Directors of the Land Bank, or the actions of the Land Bank that are subject to approval by the school district.
- f. Each Land Bank created pursuant to this Act shall be *[insert type of legal entity the land bank will be]* in accordance with State law, and shall have permanent and perpetual duration until terminated and dissolved in accordance with the provisions of Section 14 of this Act.

Section 5. Applicability of State Law

This Act shall apply only to Land Banks created pursuant to this Act. If any provisions of this Act conflict with other sections of State law, the provisions of this Act shall prevail. *[When referring to state law, can be more specific if there are sections that the drafters do not want land banks to be limited by.]*

Section 6. Board of Directors

- a. The initial size of the Board shall be determined in accordance with Section 4 of this Act. Unless restricted by the actions or agreements specified in Section 4 of this Act, and subject to the limits set forth in this Section, the size of the Board may be adjusted in accordance with bylaws of the Land Bank.
- b. In the event that a Land Bank is created pursuant to an intergovernmental agreement in accordance with Section 4 of this Act, such intergovernmental cooperation agreement shall specify matters identified in Section 4(a) of this Act.
- c. Notwithstanding any law to the contrary, any public officer shall be eligible to serve as a Board member and the acceptance of the appointment shall neither terminate nor impair such public office. For purposes of this section, “public officer” shall mean a person who is elected to a municipal office. Any municipal employee shall be eligible to serve as a Board member.
- d. The members of the Board of Directors shall select annually from among themselves a chairman, a vice chairman, a treasurer, and such other officers as the Board may determine, and shall establish their duties as may be regulated by rules adopted by the Board.
- e. The Board shall establish rules and requirements relative to the attendance and participation of members in its meetings, regular or special. Such rules and regulations may prescribe a procedure whereby, should any member fail to comply with such rules and regulations, such member may be disqualified and removed automatically from office by no less than a majority vote of the remaining members of the Board, and that member’s position shall be vacant as of the first day of the next calendar month. Any person removed under the provisions of this subsection shall be ineligible for reappointment to the Board, unless such reappointment is confirmed unanimously by the Board.
- f. A vacancy on the Board shall be filled in the same manner as the original appointment.
- g. Board members shall serve without compensation, shall have the power to organize and reorganize the executive, administrative, clerical, and other departments of the Land Bank and to fix the duties, powers and compensation of all employees, agents and consultants of the Land Bank. The Board may reimburse any member for expenses actually incurred in the performance of duties on behalf of the Land Bank.
- h. The Board shall meet in regular session according to a schedule adopted by the Board, and also shall meet in special session as convened by the chairman or upon written notice signed by a majority of the members. The presence of a majority of the Board total membership shall constitute a quorum.
- i. All actions of the Board shall be approved by the affirmative vote of a majority of the members of that Board present and voting. However, no action of the Board shall be authorized on the following matters unless approved by a majority of the total Board membership:
 1. Adoption of bylaws and other rules and regulations for conduct of the Land Bank’s business. A majority of the members of the Board, not including vacancies, shall constitute a quorum for the conduct of business.
 2. Hiring or firing of any employee or contractor of the Land Bank. This function may, by majority vote, be delegated by the Board to a specified officer or committee of the Land Bank, under such terms and conditions, and to the extent, that the Board may specify.
 3. The incurring of debt.
 4. Adoption or amendment of the annual budget.
 5. Sale, lease, encumbrance, or alienation of real property, improvements or personal property with a value of more than \$50,000.
- j. Members of a Board shall not be liable personally on the bonds or other obligations of the Land Bank, and the rights of creditors shall be solely against such Land Bank.
- k. Vote by proxy shall not be permitted. Any member may request a recorded vote on any resolution or action of the Land Bank.

Section 7. Staff

A Land Bank may employ a secretary, an executive director, its own counsel and legal staff, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation and benefits of such persons. A Land Bank may also enter into contracts and agreements with municipalities for staffing services to be provided to the Land Bank by municipalities or agencies or departments thereof, or for a Land Bank to provide such staffing services to municipalities or agencies or departments thereof.

Section 8. Powers

A Land Bank shall constitute a *[insert type of legal entity the land bank will be]* under *State* law, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to those herein otherwise granted:

- a. Adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business.
- b. Sue and be sued in its own name and plead and be impleaded in all civil actions, including, but not limited to, actions to clear title to property of the Land Bank.
- c. To adopt a seal and to alter the same at pleasure.
- d. To borrow from private lenders, from municipalities, from the *State*, or from federal government funds, as may be necessary, for the operation and work of the Land Bank.
- e. To issue negotiable revenue bonds and notes according to the provisions of this Act.
- f. To procure insurance or guarantees from the *State* or federal government of the payments of any debts or parts thereof incurred by the Land Bank, and to pay premiums in connection therewith.
- g. To enter into contracts and other instruments necessary, incidental or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental agreements under *[reference the section of State law that permits intergovernmental cooperation agreements]* for the joint exercise of powers under this Act.
- h. To enter into contracts and other instruments necessary, incidental or convenient to the performance of functions by the Land Bank on behalf of municipalities or agencies or departments of municipalities, or the performance by municipalities or agencies or departments of municipalities of functions on behalf of the Land Bank.
- i. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Land Bank.
- j. To procure insurance against losses in connection with the real property, assets or activities of the Land Bank.
- k. To invest money of the Land Bank, at the discretion of the Board of Directors, in instruments, obligations, securities, or property determined proper by the Board of Directors, and name and use depositories for its money.
- l. To enter into contracts for the management of, the collection of rent from or the sale of real property of the Land Bank.
- m. To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property.
- n. To fix, charge and collect rents, fees and charges for the use of real property of the Land Bank and for services provided by the Land Bank.
- o. To grant or acquire a license, easement, lease (as lessor and as lessee), or option with respect to real property of the Land Bank.
- p. To enter into partnership, joint ventures and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property.
- q. To do all other things necessary or convenient to achieve the objectives and purposes of the Land Bank or other laws that relate to the purposes and responsibility of the Land Bank.
- r. A Land Bank shall neither possess nor exercise the power of eminent domain.

Section 9. Acquisition of Property

- a. The real property of a Land Bank and its income and operations are exempt from all taxation by the State and by any of its political subdivisions.
- b. The Land Bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the Land Bank considers proper.
- c. The Land Bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, land contracts, and may accept transfers from municipalities upon such terms and conditions as agreed to by the Land Bank and the municipality. Notwithstanding any other law to the contrary, any municipality may transfer to the Land Bank real property and interests in real property of the municipality on such terms and conditions and according to such procedures as determined by the municipality.
- d. The Land Bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.
- e. The Land Bank shall not own or hold real property located outside the jurisdictional boundaries of the foreclosing governmental unit or units that created the Land Bank; provided, however, that a Land Bank may be granted authority pursuant to an intergovernmental cooperation agreement with another municipality to manage and maintain real property located within the jurisdiction of such other municipality.
- f. Notwithstanding any other provision of law to the contrary, any municipality may convey to a Land Bank real property and interests in real property on such terms and conditions, and according to such procedures, as determined by the transferring municipality.

Section 10. Disposition of Property

- a. The Land Bank shall hold in its own name all real property acquired by the Land Bank irrespective of the identity of the transferor of such property.
- b. The Land Bank shall maintain and make available for public review and inspection an inventory of all real property held by the Land Bank.
- c. The Land Bank shall determine and set forth in policies and procedures of the Board of Directors the general terms and conditions for consideration to be received by the Land Bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the Board of Directors to be in the best interest of the Land Bank.
- d. The Land Bank may convey, exchange, sell, transfer, lease as lessee, grant, release and demise, pledge and hypothecate any and all interests in, upon or to real property of the Land Bank.
- e. A foreclosing governmental unit may, in its resolution or ordinance creating a Land Bank, or, in the case of multiple foreclosing governmental units creating a single Land Bank in the applicable intergovernmental cooperation agreement, establish a hierarchical ranking of priorities for the use of real property conveyed by a Land Bank including but not limited to (1) use for purely public spaces and places, (2) use for affordable housing, (3) use for retail, commercial and industrial activities, or (4) use as wildlife conservation areas, and such other uses and in such hierarchical order as determined by the foreclosing governmental unit or units.
- f. A foreclosing governmental unit may, in its resolution or ordinance creating a Land Bank, or, in the case of multiple foreclosing governmental units creating a single Land Bank in the applicable intergovernmental cooperation agreement, require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the Board of Directors. Except and unless restricted or constrained in this manner, the Board of Directors may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of real property by the Land Bank.

Section 11. Financing of Land Bank Operations

- a. A Land Bank may receive funding through grants and loans from the foreclosing governmental unit or units that created the Land Bank, from other municipalities, from *State*, from the federal government, and from other public and private sources.
- b. A Land Bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a Land Bank under this Act.
- c. Fifty percent of the real property taxes collected on real property conveyed by a Land Bank pursuant to the laws of State shall be remitted to the Land Bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. *[In order to make this subsection permissive, rather than mandatory, the language must be changed from "shall" to "may".]*
- d. The governing authority of the jurisdiction which creates a Land Bank shall have the authority to increase the amount of fee, penalty, or charge imposed upon the nonpayment of property taxes levied within such jurisdiction pursuant to *[State Code Sections _____]*. The amount of such additional fee, penalty or charge shall be *[the amount of \$XXX] [YYY percent of the aggregate tax bill as of the date delinquency first occurs]*. In the event that such supplemental fee, penalty or charge is authorized and collected, all such supplemental revenues shall be transferred to the Land Bank.

Section 12. Borrowing and Issuance of Bonds

- a. A Land Bank shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenues generally. Any of such bonds may be secured by a pledge of any revenues, including grants or contributions from the *State*, the federal government or any agency, and instrumentality thereof, or by a mortgage of any property of the Land Bank.
- b. The bonds issued by a Land Bank are hereby declared to have all the qualities of negotiable instruments under the law merchant and the negotiable instruments law of the State.
- c. The bonds of a Land Bank created under the provisions of this Act and the income therefrom shall at all times be free from taxation for the State or local purposes under any provision of State law.
- d. Bonds issued by the Land Bank shall be authorized by resolution of the Board and shall be limited obligations of the Land Bank; the principal and interest, costs of issuance and other costs incidental thereto shall be payable solely from the income and revenue derived from the sale, lease or other disposition of the assets of the Land Bank. In the discretion of the Land Bank, the bonds may be additionally secured by mortgage or other security device covering all or part of the project from which the revenues so pledged may be derived. Any refunding bonds issued shall be payable from any source described above or from the investment of any of the proceeds of the refunding bonds, and shall not constitute an indebtedness or pledge of the general credit of any foreclosing governmental unit or municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the Land Bank shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the Board as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the Board in the resolution authorizing the issuance thereof.
- e. Any municipality may elect to guarantee, insure or otherwise become primarily or secondarily obligated on the indebtedness of the Land Bank subject, however, to all other provisions of *State* law applicable to municipal indebtedness.
- f. Bonds issued by the Land Bank shall be issued, sold and delivered in accordance with the terms and provisions of a resolution adopted by the Board. The Board may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be in the best interests of the Land Bank. The resolution issuing bonds shall be published in a newspaper of general circulation within the jurisdiction of the Land Bank.

- g. Neither the members of a Land Bank nor any person executing the bonds shall be liable personally on any such bonds by reason of the issuance thereof. Such bonds or other obligations of a Land Bank shall not be a debt of any municipality or of the *State*, and shall so state on their face, nor shall any municipality or the *State* nor any revenues or any property of any municipality or of the *State* be liable therefor.

Section 13. Public Records and Public Meetings

The Board shall cause minutes and a record to be kept of all its proceedings. Except as otherwise provided in this section, the Land Bank shall be subject to *[insert desired cross-references to any state laws governing ethics and fair dealing, such as sunshine laws, open meetings laws or freedom of information laws]*.

Section 14. Dissolution of Land Bank

A Land Bank may be dissolved as a *[type of legal entity the land bank is under this legislation]* sixty calendar days after by an affirmative resolution is approved by two-thirds of the membership of the Board of Directors. Sixty calendar days advance written notice of consideration of a resolution of dissolution shall be given to the foreclosing governmental unit or units that created the Land Bank, shall be published in a local newspaper of general circulation, and shall be sent certified mail to the trustee of any outstanding bonds of the Land Bank. Upon dissolution of the Land Bank, all real property, personal property and other assets of the Land Bank shall become the assets of the foreclosing governmental unit or units that created the Land Bank. In the event that two or more foreclosing governmental units create a Land Bank in accordance with Section 4 of this Act, the withdrawal of one or more foreclosing governmental unit shall not result in the dissolution of the Land Bank unless the intergovernmental agreement so provides and there is no foreclosing governmental unit that desires to continue the existence of the Land Bank.

Section 15. Conflicts of Interest

No member of the Board or employee of a Land Bank shall acquire any interest, direct or indirect, in real property of the Land Bank, in any real property to be acquired by the Land Bank, or in any real property to be acquired from the Land Bank. No member of the Board or employee of a Land Bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a Land Bank. The Board may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for members of the Board and Land Bank employees.

Section 16. Land Bank Creation in a Natural Disaster

In the event of a natural disaster which causes widespread damage to and destruction of real property and improvements and dislocation of residents, the Governor shall have the authority, following issuance of a declaration of emergency, to create a Land Bank in accordance with the provisions of this Section 16.

- a. The Governor shall have the authority, following consultation with the elected governing officials of the geographic area subject to the Governor's declaration of emergency, to issue an executive order providing for the immediate creation of a Land Bank of and for such local governments.
- b. The executive order shall provide for the matters identified in Section 4 of this Act.
- c. The Land Bank created pursuant to this Section 16 shall have all powers of a Land Bank created pursuant to this Act.
- d. Any Land Bank created pursuant to this Section 16 may be converted into a Land Bank created pursuant to Section 4 of this Act by necessary and appropriate action of the local governments containing the geographic areas subject to the declaration of emergency, at which time such Section 4 Land Bank shall be the successor in interest and at law to the Land Bank created pursuant to this Section 16.
- e. In the event that an applicable Section 4 Land Bank is not created in accordance with Section 16(d), at the end of twelve (12) months following the date of the Governor's executive order the Land Bank created in accordance with this Section 16 shall be dissolved in accordance with Section 14 of this Act.

Section 17. Construction, Intent and Scope of Act

This Act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authorization for the performance of each and every act and thing authorized by this Act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers. Except as otherwise expressly set forth in this Act, in the exercise of its powers and duties under this Act and its powers relating to property held by the Land Bank, the Land Bank shall have complete control as fully and completely as if it represented a private property owner and shall not be subject to restrictions imposed by the charter, ordinances or resolutions of a local unit of government.

Section 18. Delinquent Property Tax Enforcement

Because state property tax laws vary widely, it is impossible to provide template language for a section that ties land banks to property tax foreclosure. Language should be drafted so that land banks can be used to help communities address vacant and abandoned properties. For example, one subsection should permit a land bank the ability to discharge and extinguish delinquent taxes on properties owned by the land bank. The legislation should give a land bank the authority to participate in tax foreclosures and tax lien sales to prevent out-of-state speculators from dominating the market. Special considerations regarding the form, amount, substance, and timing of a land bank's obligations when participating in the tax foreclosure process should be made. Finally, bulk tax foreclosures by a land bank or the local government should be permitted to promote efficiency.

Section 19. Expedited Quiet Title Proceedings

[Because state law regarding judicial proceedings varies between states, it is advisable to first determine whether any statutory provisions regarding quiet title actions exist.]

- a. A Land Bank shall be authorized to file an action to quiet title as to any real property in which the Land Bank has an interest. For purposes of any and all such actions, the Land Bank shall be deemed to be the holder of sufficient legal and equitable interests, and possessory rights, so as to qualify the Land Bank as adequate complainant in such action.
- b. Prior to the filing of an action to quiet title, the Land Bank shall conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to all such interested parties by the following methods:
 1. Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records;
 2. In the case of occupied real property by registered or certified mail, addressed to "Occupant";
 3. By posting a copy of the notice on the real property;
 4. By publication in a newspaper of general circulation in the municipality in which the property is located; and
 5. Such other methods as the Court may order.
- c. As part of the complaint to quiet title, the Land Bank shall file an affidavit identifying all parties potentially having an interest in the real property, and the form of notice provided.
- d. The Court shall schedule a hearing on the complaint within ninety (90) days following filing of the complaint, and as to all matters upon which an answer was not filed by an interested party, the court shall issue its final judgment within one hundred twenty (120) days of the filing of the complaint.
- e. A Land Bank shall be authorized to join in a single complaint to quiet title one or more parcels of real property.

Section 20. Effective Date

This Act shall take effect immediately.

Appendix E

Sample Administrative Policies

These sample administrative policies are drawn primarily from administrative policies prepared for the Genesee County Land Bank and the Atlanta Land Bank. As with any generic set of legal documents, it is not advisable simply to copy them, or to cut and paste portions of them, for adoption in any given jurisdiction. Designing the appropriate policies and procedures for a particular jurisdiction must be done in light of the precise language of the state enabling statute, the provisions in the local government ordinance or agreement creating the land bank, and the strategic and tactical priorities as established by the local land bank's board of directors. These sample policies and procedures should be viewed only as a "checklist" of topics to be considered.

_____ Land Bank Authority
Administrative Policies and Procedures
As approved and adopted by the Board of Directors
on _____, 20__

These policies and procedures are a consolidation of and codification of all prior policies and procedures of the Land Bank Authority and supersede all such prior policies and procedures.

Section 1. Role as a Public Authority

- 1.1 **Public Authority.** The LBA is a public entity authorized by state law and created pursuant to an agreement between _____ and the _____. It is governed by a Board of Directors appointed by _____ and by _____. Advisory Board members are appointed by _____ and by _____.
- 1.2 **Governing Authority.** The core governing documents of the LBA are the applicable state law, the _____, the Articles of Incorporation, and the Bylaws.
- 1.3 **Purposes.** The LBA is established to acquire the tax-delinquent properties, surplus properties of the local governments, and other properties in order to foster the public purpose of returning land which is in a nonrevenue-generating, nontax-producing status to an effective utilization status in order to provide housing, new industry, and jobs for the citizens of the county.

Section 2. Priorities for Property Use

- 2.1 **Governmental Use.** As a governmental entity created by _____ and _____, the first priority use of real property of the LBA is to make available its properties to the local governments for public use and ownership as determined by the local governments.
- 2.2 **Affordable Housing.** The first use of real property of the LBA for nongovernmental purposes is the production or rehabilitation of housing for persons with low or moderate incomes. On an annual basis the Board of Directors establishes the applicable definitions of “low income” and “moderate income”.
- 2.3 **Other Purposes.** When there is no governmental purpose or use for a property, and there is no feasible use of the property for affordable housing, the LBA may consider permitting the property to be used for other community improvement purposes. These uses should be consistent with the following priorities: neighborhood revitalization; return of the property to productive tax-paying status; land assemblage for economic development; long-term “banking” of properties for future strategic uses; and provision of financial resources for operating functions of the LBA.
- 2.4 **Neighborhood Consultation.** The LBA expects every applicant seeking to acquire property from the LBA to demonstrate prior consultation with neighborhood associations and nonprofit entities in the geographical location of the property.

Section 3. Priorities for Identity of Transferees

- 3.1 **Priority Transferees.** Except where limited by the terms of its acquisition, the first priority for use of real property held by the LBA shall be for conveyance to local government entities for public use. The second priority shall be neighborhood nonprofit entities seeking to obtain the land for low-income housing. The third priority shall be other individuals and entities intending to produce low-income or moderate-income housing. The LBA may also, at its discretion, give priority to: nonprofit institutions such as academic institutions and religious institutions; entities that are a partnership, limited liability corporation or joint venture comprised of a private nonprofit corporation and a private for-profit entity; and individuals who own and occupy residential property for purposes of the Side Lot Disposition Program.

- 3.2 **Transferee Qualifications.** All applicants seeking to acquire property from the LBA, or to enter into transaction agreements with the LBA, will be required to provide as part of the application such information as may be requested by the LBA, including but not limited to (a) the legal status of the applicant, its organizational and financial structure, and (b) its prior experience in developing and managing affordable housing.
- 3.3 **Reserved Discretion.** The LBA reserves full and complete discretion to decline applications and proposed transaction agreements from individuals and entities that meet any of the following criteria:
- Failure to perform in prior transactions with the LBA,
 - Ownership of properties that became delinquent in ad valorem tax payments and remain delinquent in ad valorem tax payments during their ownership,
 - Parties that are barred from transactions with local government entities,
 - Parties not able to demonstrate sufficient experience and capacity to perform in accordance with the requirements of the LBA,
 - Ownership of properties that have any unremediated citation for violation of the state and local codes and ordinances,
 - Properties that have been used by the transferee or a family member of the transferee as his or her personal residence at any time during the twelve (12) months immediately preceding the submission of application (except in rental cases).

Section 4. Priorities Concerning Neighborhood and Community Development

The LBA reserves the right to consider the impact of a property transfer on short- and long-term neighborhood and community development plans. In doing so, the LBA may prioritize the following in any order in which it deems appropriate: the preservation of existing stable and viable neighborhoods; neighborhoods in which a proposed disposition will assist in halting a slowly occurring decline or deterioration; neighborhoods that have recently experienced or are continuing to experience a rapid decline or deterioration; geographic areas that are predominantly non-viable for purposes of residential or commercial development.

Section 5. Pricing Policies and Factors in Determining Consideration Due Upon Transfers

- 5.1 **Relevant Factors.** The following factors shall constitute general guidelines for determination of the consideration to be received by the LBA for the transfer of properties. In each and every transfer of real property the LBA shall require good and valuable consideration in an amount not less than the lower of the fair market value of the property or the Property Costs. “Property Costs” shall mean the aggregate costs and expenses of the LRC attributable to the specific property in question, including costs of acquisition, maintenance, repair, demolition, marketing of the property and indirect costs of the operations of the LRC allocable to the property.
- 5.2 **Retained Discretion.** The amount of consideration shall be determined by the LBA in its sole discretion. The consideration to be provided by the transferee to the LBA may take the form of cash, deferred financing, performance of contractual obligations, imposition of restrictive covenants, or other obligations and responsibilities of the transferee, or any combination thereof.
- 5.3 **Transfers to Nonprofit entities for affordable housing.**
- Transfers of property to nonprofit entities for the development, operation or maintenance of affordable housing shall require consideration not less than the Project Costs.
 - Consideration shall be established at a level between the Property Costs and fair market value of the property. To the extent that the consideration exceeds the Property Costs, such amount shall be reflected by a combination of contractual obligations to develop, maintain, or preserve the property for specified affordable

housing purposes. Such amount may be secured by subordinate financing in which amortization of the obligation occurs by virtue of annual performance of the required conditions.

- c. The dominant priority in determining the amount of and method of payment of the consideration shall be to facilitate the development of affordable housing and simultaneously to ensure that the property is dedicated over an appropriate period of time for affordable housing.

5.4 **Transfers to Governmental Entities.**

- a. To the extent that transfers of property to governmental entities are designed to be held by such governmental entities in perpetuity for governmental purposes, the aggregate consideration for the transfer shall be based upon deed restrictions upon the use of the property.
- b. To the extent that transfers of property to governmental entities are anticipated as conduit transfers by such governmental entities to third parties, the consideration shall consist of not less than then Property Costs, to be paid in cash. The difference between the Property Costs and the fair market value may be included in consideration depending upon the relationship between the anticipated uses and the governing priorities of the LRC.

5.5 **Side Lot Disposition Program.** The pricing policies applicable to the Side Lot Disposition Program shall be as set for in the policies and procedures applicable to the Side Lot Disposition Program.

5.6 **Transfers of Property at Open Market Conditions.**

- a. Property that is transferred on the open real estate market, whether through auction or negotiated transfers, without restrictions as to future use shall be based upon consideration equal to the fair market value of the property. Such consideration shall be paid in full at the time of the transfer.

Section 6. Conveyances to the LBA

6.1 **Sources of Property Inventory.** Sources of real property inventory of the LBA include but are not limited to the following: (a) transfers from local governments, (b) acquisitions by the LBA at tax foreclosures, (c) donations from private entities, (d) market purchases, (e) conduit transfers contemplating the simultaneous acquisition and disposition of property, and (f) other transactions such as land banking agreements.

6.2 **Policies Governing the Acquisition of Properties.** In determining which, if any, properties shall be acquired by the LBA, the LBA shall give consideration to the following factors:

- a. Proposals and requests by nonprofit corporations that identify specific properties for ultimate acquisition and redevelopment.
- b. Proposals and requests by governmental entities that identify specific properties for ultimate use and redevelopment.
- c. Residential properties that are occupied or are available for immediate occupancy without need for substantial rehabilitation.
- d. Improved properties that are the subject of an existing order for demolition of the improvements and properties that meet the criteria for demolition of improvements.
- e. Vacant properties that could be placed into the Side Lot Disposition Program.
- f. Properties that would be in support of strategic neighborhood stabilization and revitalization plans.
- g. Properties that would form a part of a land assemblage development plan.
- h. Properties that will generate operating resources for the functions of the LBA.

6.3 **Acquisitions through Delinquent Tax Enforcement Proceedings.** The Tax Commissioner may combine properties from one or more of the foregoing categories in structuring the terms and conditions of the tax foreclosure procedures, and the LBA may acquire any such properties prior to sales, at such sales, or subsequent to sales as authorized by law. In determining the nature and extent of the properties to be acquired, the Tax Commissioner shall also give consideration to underlying values of the subject properties, the financial resources

available for acquisitions, the operational capacity of the LBA, and the projected length of time for transfer of such properties to the ultimate transferees.

- 6.4 **Transaction Agreements.** In all cases involving conduit transfers and land banking agreements, a transaction agreement must be approved in advance and executed by the LBA and the grantor of the property. In the case of conduit transfers, such a transaction agreement will generally be in the form of an Acquisition and Disposition Agreement prepared in accordance with these Policies. In the case of a land banking relationship, such a transaction agreement will generally be in the form of a land banking agreement prepared in accordance with these Policies. These transaction agreements shall be in form and content as deemed by the LBA to be in the best interest of the LBA, and shall include to the extent feasible specification of all documents and instruments contemplated by the transaction as well as the rights, duties and obligations of the parties.
- 6.5 **Title Assurance.** In all acquisitions of property by the LBA through transaction agreements, the LBA generally requires a certificate of title based upon a full title examination and, in the case of Land Banking Agreements, a policy of title insurance insuring the LBA subject to such outstanding title exceptions as are acceptable to the LBA in its sole discretion.
- 6.6 **Environmental Concerns.** The LBA reserves full and complete discretion to require in all transaction agreements that satisfactory evidence be provided to the LBA that the property is not subject to environmental contamination as defined by federal or state law.

Section 7. Conveyances from the LBA

- 7.1 **Covenants, Conditions and Restrictions.** All conveyances by the LBA to third parties shall include such covenants, conditions and restrictions as the LBA deems necessary and appropriate in its sole discretion to ensure the use, rehabilitation and redevelopment of the property in a manner consistent with the public purposes of the LBA. Such requirements may take the form of a deed creating a defeasible fee, recorded restrictive covenants, subordinate financing being held by the LBA, contractual development agreements, or any combination thereof.
- 7.2 **Options.** Options are available for 10% of the parcel price for up to a twelve (12)-month period. This fee will be credited to the parcel price at closing. If closing does not occur, the fee is forfeited. All option agreements are subject to all policies and procedures of the LBA pertaining to property transfers.
- 7.3 **Deed Without Warranty.** All conveyances from the LBA to third parties shall be by Quitclaim Deed.

Section 8. Collaboration with Not-for-Profit Entities

- 8.1 **Transactions with Not-for-Profit Entities.** The LBA is willing to enter into conduit transfers with not-for-profit corporate entities as outlined in this section. These not-for-profit corporate entities would secure donations of or purchase tax delinquent properties from owners, transfer these properties to the LBA for waiver of taxes, and “buy back” these properties for use in affordable housing development.
- 8.2 **Documentation of Lot Purchase.** The applicant must document the purchase process extensively. This documentation should include, but is not limited to, the following information per parcel:
 - a. The total purchase price for the property, including the net proceeds paid or payable to the seller;
 - b. The total amount spent to acquire the property (e.g., legal counsel, administrative costs);
 - c. The development costs impacting the final sale price; and
 - d. The total amount of delinquent ad valorem taxes (County, City, School District), special assessments, and other liens and encumbrances against the property and the length of delinquency for each.
- 8.3 **Maximum Costs.** The total of these costs should exceed the maximum allowable lot cost (i.e., the cost that will permit the production of low- to moderate-income housing) before the LBA may consider the waiver of back taxes in total or in part.
- 8.4 **LBA Discretion.** Some properties may present unusual or extenuating circumstances to the developer due to lack of funding for housing production or related costs. The LBA reserves the right to evaluate and consider these properties case-by-case.

Section 9. Collaboration with For-Profit Entities

- 9.1 **Transactions with For-Profit Entities.** The LBA is willing to enter into conduit transfers with for-profit corporate entities as outlined in this section. The corporate entities would secure donations of or purchase tax delinquent properties from owners, transfer these properties to the LBA for waiver of taxes, and “buy back” these properties for use in affordable housing development.
- 9.2 **Eligibility.** Eligibility for this option will be based on certain criteria. These shall include the geographical location of the property. The corporate entity must first identify and consult with any active nonprofit entities that may have an interest in developing the property. If an interest exists, the nonprofit and for-profit must forge an agreement for joint development.
- 9.3 **Documentation of Lot Purchase.** The applicant must document the purchase process extensively. This documentation should include, but is not limited to, the following information per parcel:
 - a. The total purchase price for the property, including the net proceeds paid or payable to the seller;
 - b. The total amount spent to acquire the property (e.g., legal counsel, administrative costs, etc.);
 - c. The development costs impacting the final sale price; and
 - d. The total amount of delinquent ad valorem taxes (County, City, School District), special assessments, and other liens and encumbrances against the property and the length of delinquency for each.
- 9.4 **Maximum Costs.** The total of these costs should exceed the maximum allowable lot cost (i.e., the cost that will permit the production of low- to moderate-income housing) before the LBA may consider the waiver of back taxes in total or in part.
- 9.5 **LBA Discretion.** Some properties may present unusual or extenuating circumstances to the developer due to lack of funding for housing production or related costs. The LBA reserves the right to evaluate and consider these properties case-by-case.

Section 10. Property for Community Improvements

- 10.1 **Community Improvement Property.** The LBA is willing to accept donations of property to be transferred into a non revenue-generating, non tax-producing use that is for community improvement or other public purposes. Under the provisions of the governing documents of the LBA, the LBA is permitted to assemble tracts or parcels of property for community improvement or other public purposes.
- 10.2 **Eligibility.** Properties can be conveyed to the LBA for waiver of delinquent taxes and then reconveyed by the LBA to be utilized for community improvement purposes including but not limited to community gardens, parking for nonprofit functions such as a school or cultural center, or playground for after-school or day care. The application must demonstrate that no alternative tax-generating use is available for the property, and that the proposed community improvements are consistent with the area redevelopment plans and community revitalization.
- 10.3 **Transferee.** The application must identify and be signed by the ultimate transferee of the property from the LBA. The transferee should be a governmental entity, a not-for-profit property entity, or in rare cases a for-profit entity that is capable of holding and maintaining the property in the anticipated conditions and for the anticipated purposes.
- 10.4 **Restrictive Covenants.** The LBA, in the conveyance of the property to the transferee, will impose covenants, conditions and restrictions as necessary to ensure that the property is used for community improvement or other public purposes.

Section 11. Conduit Transfers - Reasonable Equity Policy

(This section is applicable only to those land banks which possess the power to extinguish delinquent property taxes and are willing to receive donations of tax delinquent properties and immediately reconvey them to a new transferee. This section is designed to guard against the situation where the owner of a tax delinquent property receive payment in excess of his “net equity” in the underlying property from the proposed ultimate transferee of the property.)

- 11.1 **Purpose.** In order to prevent benefits accruing to owners of property that is tax delinquent by virtue of the exercise of the tax waiver power of the LBA, the LBA establishes this reasonable equity policy.
- 11.2 **Definitions.** The reasonable equity policy is based on the value of the property and the equity of its owner. While any valuation of equity is subjective, it can be reasonably estimated.
- “Fair Market Value” shall be determined by staff according to the tax assessor’s valuation, in conjunction with the average sale price in a given community. In instances where multiple valuations unreasonably differ, the staff or Board shall have full authority to require a professional appraisal. This appraisal shall be required only for proposals that have significant variances in valuation and entail transactions in which the owner received in excess of \$20,000.
 - “Net Equity” shall mean the current fair market value, as determined by LBA staff, less the total amount of all liens and encumbrances (tax liens, associated interest and penalties; special assessments; mortgages; judgments, etc.).
- 11.3 **Less than \$2,000 Net Equity.** To ensure that an owner does not receive unwarranted benefit, the LBA will not consider transactions in which the owner’s net equity is less than \$2,000 and the owner receives more than nominal compensation for the sale of his property. Nominal compensation is hereby defined as \$2,000.
- 11.4 **Equity in Excess of \$2,000.** To ensure that the owner does not receive an unwarranted benefit, the LBA will not participate in transactions in which the owner receives an amount greater than 75% of net equity.
- 11.5 **Speculation.** To ensure that speculators do not seek to take advantage of the LBA, staff shall closely review instances in which the owner is receiving money far in excess of his investment while consistently ignoring his tax responsibility. Particular attention shall be given to properties purchased in the past three years.
- 11.6 **Excessive Sales Price.** In communities that are experiencing internal and surrounding redevelopment, it is unacceptable for an owner to seek a profit in excess of 75% of his net equity. Such an owner may believe that the market will bear more than is offered and would therefore be unwilling to sell the property for a reasonable amount. In such an instance, it would fall to the Tax Commissioner’s Office to bring the property to the courthouse steps, where the actual fair market value will be determined.
- 11.7 **Non-Conforming Situations.** To ensure the flexibility of the Board, the LBA will reserve the right to modify or change this policy if a situation clearly warrants a change in an effort to protect the interests of the LBA and the public.
- 11.8 **Strategic Importance.** To preserve the integrity of the LBA’s mission, all properties petitioned to the LBA Board of Directors must pass the test of strategic importance. The LBA may receive proposals that may pass other criteria but which may not be crucial to the redevelopment of a neighborhood. Staff must be able to assure the LBA Board that the transaction is not simply allowable but a necessary component of the comprehensive redevelopment of a neighborhood. Such a transaction must be evaluated in terms of neighborhood redevelopment and ensure a long-term tax benefit to the City and County.

Section 12. Owner Occupant Policy

- 12.1 **Scope.** This section is applicable to those situations in which an individual (as opposed to a corporate not-for-profit or for-profit entity) contemplates conveying to the LBA real property that is encumbered by delinquent property taxes, having the taxes abated by the LBA, and the property reconveyed by the LBA to the individual for occupancy by that individual following construction of new housing or rehabilitation of existing housing.
- 12.2 **Purpose.** This policy is based on the opportunity for an individual to participate in the benefits derived from the authorization of tax extinguishment by the LBA where the individual applicant did not amass the tax delinquency, but desires to construct or rehabilitate housing in order to use the subject property as his or her own primary residence. Owner-occupant developers shall be required to meet the established LBA Board Petitioning Requirements which include the following: (a) Developer Profile, (b) Development Proposal, (c) Funding Commitment Letter, (d) Development Cost Estimate, (e) Site Control, and (f) Title Report.

12.3 Primary Residence. “Primary Residence” shall mean that upon completion of the construction or rehabilitation, the owner-occupant must reside in the property for a minimum active five (5) years and shall pay all tax obligations that become due and payable after the execution of the Sale and Disposition Contract. At the expiration of the five-year term, where an owner-occupant may seek to sell the property, the owner must offer the property for a sale price not to exceed the current fair market value.

12.4 Requirements and Conditions.

- a. The applicant must either rehabilitate unoccupied substandard existing housing or create new housing where housing does not exist.
- b. The subject property must not have been used by the applicant as his or her personal residence at any time during the twelve (12) months immediately preceding the submission of the application.
- c. The owner-occupant shall enter into a Sale and Disposition Contract with the Authority and shall be responsible for the completion of the construction or rehabilitation within the three-year time limit as prescribed in the covenants of the Contract.
- d. The LBA will extinguish no delinquent taxes that were the responsibility of the applicant. This would include any taxes that the applicant was responsible for either as owner of the subject property or as a result of any contractual obligation. Such taxes, if any, must be paid prior to the LBA extinguishing any other taxes.
- e. The owner-occupant shall provide evidence of clear title and the financial ability to perform said Contract with the expressed obligation to reside in the property for a minimum of five (5) years or the delinquent taxes will be reinstated.
- f. During the term of the occupancy, the owner-occupant shall pay all ad valorem taxes that accrue and shall maintain the property in compliance with the required code enforcement ordinances of the governing jurisdiction.
- g. The owner-occupant must meet the applicable household income standards established by the LBA.
- h. If the applicant fails to honor any portion of his or her Contract with the LBA to provide new or rehabilitated housing, the applicant must make a payment of funds to the LBA in an amount equal to the amount of all taxes extinguished by the LBA pursuant to the Contract. These funds shall then be paid by the LBA to the respective taxing authorities in the same proportion as the taxes were levied prior to the extinguishment.

12.5 LBA Discretion. Applications shall be evaluated based on the long-term benefit to be derived from achieving the basic mandate of the LBA which seeks to return non-revenue generating parcels to a productive and effective use that will put the property back into an active tax revenue status.

Section 13. Side Lot Disposition Program

13.1 Side Lot Transfers. Individual parcels of property may be acquired by the Treasurer/Tax Commissioner, the County or the LBA and transferred to individuals in accordance with the following policies. The transfer of any given parcel of property in the Side Lot Disposition Program is subject to override by higher priorities as established by the LBA.

13.2 Qualified Properties. Parcels of property eligible for inclusion in the Side Lot Disposition Program shall meet the following minimum criteria:

- a. The property shall be vacant unimproved real property;
- b. The property shall be physically contiguous to adjacent owner-occupied residential property, with not less than a 75% common boundary line at the side;
- c. The property shall consist of no more than one lot capable of development. Initial priority shall be given to the disposition of properties of insufficient size to permit independent development; and
- d. No more than one lot may be transferred per contiguous lot.

13.3 Side Lot Transferees.

- a. All transferees must own the contiguous property, and priority is given to transferees who personally occupy the contiguous property.
- b. The transferee must not own any real property (including both the contiguous lot and all other property in the County) that is subject to any unremediated citation of violation of the state and local codes and ordinances.
- c. The transferee must not own any real property (including both the contiguous lot and all other property in the County) that is tax delinquent.
- d. The transferee must not have been the prior owner of any real property in the County that was transferred to a local government as a result of tax foreclosure proceedings unless the LBA approves the anticipated disposition prior to the effective date of completion of such tax foreclosure proceedings.

13.4 Pricing.

- a. Parcels of property that are not capable of independent development may be transferred for nominal consideration.
- b. Parcels of property that are capable of independent development shall be transferred for consideration in an amount not less than the amount of the costs incurred in acquisition, demolition and maintenance of the lot.

13.5 Additional Requirements.

- a. As a condition of transfer of a lot, the transfer must enter into an agreement that the lot transferred will be consolidated with the legal description of the contiguous lot, and not subject to subdivision or partition within a five-year period following the date of the transfer.
- b. In the event that multiple adjacent property owners desire to acquire the same side lot, the lot shall either be transferred to the highest bidder for the property, or divided and transferred among the interested contiguous property owners.

Appendix F

Land Bank Depository Agreements

This sample Land Bank Depository Agreement Program is drawn primarily from the administrative policies of the Fulton County/City of Atlanta Land Bank Authority (www.fccalandbank.org). As with any generic set of legal documents, it is not advisable simply to copy them, or to cut and paste portions of them, for adoption in any given jurisdiction. Designing the appropriate policies and procedures for a particular jurisdiction must be done in light of the precise language of the state enabling statute, the precise wording of the local government ordinance or agreement creating the land bank, and the strategic and tactical priorities as established by the local land bank's board of directors. This sample policy should be viewed only as an example of one approach that has been taken with respect to the topic.

Land Bank Authority Land Bank Depository Agreement Program

Section 1. Scope

These policies and procedures for a land banking program of the _____ Land Bank Authority have been adopted by the Board of Directors of the LBA in accordance with and pursuant to the laws of the State of _____ (the “LBA Statute”) and the _____ Intergovernmental Agreement dated as of _____.

- 1.1 As set forth in these policies and procedures, the land banking program consists of transactions in which a grantor transfers real property to the LBA and the property is held by the LBA pending a transfer back to the original grantor, to a grantee identified in a banking agreement, or to a third party selected by the LBA.
- 1.2 The goals of this land banking program include but are not limited to the acquisition of real property for or on behalf of a governmental entity or a not-for-profit corporation in order to:
 - a. Permit advance acquisition of potential development sites in anticipation of rapidly rising land prices;
 - b. Facilitate pre-development planning, financing and structuring;
 - c. Minimize or eliminate violations of housing and building codes and public nuisances on properties to be developed for affordable housing; and
 - d. Hold parcels of land for future strategic governmental purposes such as affordable housing and open spaces and greenways.
- 1.3 The LBA is not required to enter into a Banking Agreement with any person or entity, and at all times retains full discretion and authority to decline to enter into a Banking Agreement. These policies and procedures are applicable only to real property of the LBA which is acquired by the LBA in accordance with an executed Banking Agreement and are not otherwise applicable to real property acquired by the LBA pursuant to any other agreements or procedures.

Section 2. Definitions

As used in these policies and procedures, the following terms shall have the definitions set forth:

- a. “Banking Agreement” shall mean a written agreement between a Grantor and the LBA that identifies the property, the length of the banking term, the potential Grantee or Grantees, the range of permissible uses of the Property following transfer by the LBA, the permitted encumbrances on the Property, the rights and duties of the parties, the responsibility of the Grantor for the Holding Costs, the possible advance funding of Holding Costs, the forms of the instruments of conveyance, and such other matters as appropriate.
- b. “Grantor” shall mean the party that transfers or causes to be transferred to the LBA a tract of Property pursuant to a Banking Agreement. An eligible Grantor shall be an entity described in Section 4.
- c. “Grantee” shall mean the party or parties identified in a Banking Agreement as the party to whom the property is to be transferred from the LBA. An eligible “Grantee” shall be an entity described in Section 4.
- d. (d) “Holding Costs” shall mean any and all costs, expenses and expenditures incurred by the LBA, whether as direct disbursements, as pro rata costs or as administrative costs that are attributable to the ownership and maintenance of a tract of Property. The LBA shall maintain records of the monthly Holding Costs for each Property.
- e. “Property” shall mean the real property and improvements (if any) located thereon identified in a Banking Agreement and transferred to the LBA pursuant to a Banking Agreement, together with all right, title and interest in appurtenances, benefits and easements related thereto.

Section 3. Eligible Property

Property that is eligible for Banking Agreement must either be (a) unimproved real property or (b) real property with newly constructed unoccupied single-family residences. At any given point in time, no more than twenty (20) percent

of the parcels of Property being held by the LBA pursuant to Banking Agreements can be newly constructed unoccupied single-family residences.

- a. In the event that a tract of Property contains improvements that are to be demolished or removed, such Property may qualify as eligible Property for a Banking Agreement so long as adequate and sufficient funds are placed in escrow at the time of the Banking Agreement closing so as to assure that all improvements will be demolished and removed within sixty (60) days of closing.
- b. Property that is ineligible for a Banking Agreement includes all other forms of improved real property, all real property that is occupied and all real property that has been identified by the United States Environmental Protection Agency or the Environmental Protection Division of the State of _____ as containing hazardous substances and materials.

Section 4. Eligible Grantors and Grantees

Parties eligible to be a Grantor or a Grantee are governmental entities and not-for-profit corporations defined as tax-exempt entities under Section 501(c)(3) of the Internal Revenue Code. A limited partnership entity is eligible to be a Grantor or a Grantee so long as a governmental entity or not-for-profit corporation has a controlling interest in such entity.

Section 5. Title

Unless and except to the extent expressly authorized in a Banking Agreement, Property transferred to the LBA pursuant to a Banking Agreement shall be fee simple title free and clear of all liens and encumbrances. A policy of title insurance must be issued in favor of the LBA as the insured party at the closing pursuant to the Banking Agreement containing such exceptions on Schedule B-1 as are approved by the LBA.

- a. Governmental liens for water and sewer, and governmental liens for nuisance abatement activities or code enforcement activities may exist as a matter of record title at the time of such closing if and only if such liens are expressly acceptable to the LBA and are subject to waiver or discharge by the governmental entity holding such liens without cost to the LBA.
- b. A deed to secure debt or security deed may encumber Property at the time of the transfer to the LBA provided that the obligations secured by such security instrument do not require monthly or periodic payment of sums by the LBA to the mortgagee. Under no circumstances will the LBA have direct liability to a mortgage pursuant to a security instrument. It is anticipated that each Banking Agreement that contemplates the transfer of Property to the LBA encumbered by a security instrument will require a separate written agreement between the mortgagee and the LBA that provides, among other things, that (1) the mortgagee expressly consents to the transfer to the LBA, (2) the mortgagee expressly subordinates its interests to covenants, conditions and restrictions as may be required by the LBA, and (3) prior to the exercise of mortgagee rights under the security instrument, the mortgagee will request on behalf of the Grantor the reconveyance of the Property to the Grantor and pay to the LBA the Holding Costs attributable to the Property.
- c. At the time of closing pursuant to a Banking Agreement, all ad valorem taxes that are due and payable on the Property must be paid in full. An exception to this requirement of no outstanding ad valorem tax liens may be granted (1) when the Grantor is acquiring the Property from a third party and immediately conveying the Property to the LBA pursuant to a Banking Agreement and (2) the acquisition of the Property by the Grantor from the third party otherwise complies with the Reasonable Equity Policy of the LBA.

Section 6. Length of Banking Term

A Banking Agreement may permit a maximum banking term of thirty-six (36) months for transactions in which the Grantor is a not-for-profit entity, and sixty (60) months for transactions in which the Grantor is a governmental entity.

Section 7. Transfer at Request of Grantor

A Banking Agreement shall authorize a Grantor to request a transfer of the Property by the LBA to a Grantee at any time within the banking term.

- a. A conveyance by the LBA to the Grantee identified pursuant to a Banking Agreement shall occur within thirty (30) days of receipt of a written request for a transfer.

- b. As a condition precedent to the transfer by the LBA, the full amount of Holding Costs incurred by the LBA attributable to the Property shall be paid to the LBA. The LBA shall provide to the Grantor in accordance with Section 10 a statement of the Holding Costs attributable to the Property.
- c. At the time of the transfer by the LBA to the Grantee, the LBA shall impose such restrictions and conditions on the use and development of the property in accordance with Section 11 hereof and the applicable Banking Agreement.
- d. Conveyance by the LBA to a Grantee shall be by quitclaim deed.

Section 8. Transfer at Request of LBA

At any time and at all times during the term of a Banking Agreement, the LBA shall have the right, in its sole discretion, to request in writing that the Grantor or its designee accept a transfer of the Property from the LBA.

- a. A transfer by the LBA pursuant to this Section 8 shall be subject to the same terms and conditions as set forth in Section 7.
- b. In the event that the Grantor (or its designee) is unwilling or unable to accept a transfer of the Property from the LBA, and reimburse the LBA in full for the Holding Costs, then and in that event the LBA shall have the right to terminate in writing the Banking Agreement, and the Property shall become an asset of the LBA and subject to use, control and disposition by the LBA in its sole discretion subject only to the provisions of the LBA Statute and the Intergovernmental Agreement.

Section 9. Banking Agreement Closing

Within a time period specified in a fully executed Banking Agreement, a closing of the transfer of the Property to the LBA shall occur. At such closing, the fully executed instrument of conveyance and other closing documents shall be delivered by the appropriate party to the appropriate parties. The appropriate documents shall be immediately recorded, and a title insurance policy shall be issued. All costs of closing shall be borne by the Grantor.

Section 10. Holding Costs

Holding Costs shall be paid as a condition precedent to a transfer of Property from the LBA. Either the Grantor or the Grantee can request in writing at any time a statement of the Holding Costs, which statement will be provided by the LBA within fifteen (15) business days of receipt of the request. The LBA shall also have the right to request in writing that the Grantor or Grantee reimburse on written demand the LBA for Holding Costs. In the event that the LBA is not timely reimbursed for its Holding Costs in response to its written request for reimbursement, the LBA may request a transfer pursuant to Section 8.

Section 11. Public Purpose Restrictions

All Property held by the LBA and transferred by the LBA pursuant to a Banking Agreement shall be subject to covenants and conditions providing that the Property is to be used for the following goals: (a) the production or rehabilitation of housing for persons with low incomes, (b) the production or rehabilitation of housing for persons with low or moderate incomes, (c) community improvements, or (d) other public purposes. Each Banking Agreement will specify the range of permissible uses and the manner in which such use restriction is secured. Such restrictions and conditions may be imposed either in the form of contractual obligations, deed covenants, rights of reacquisition, or any combination thereof.

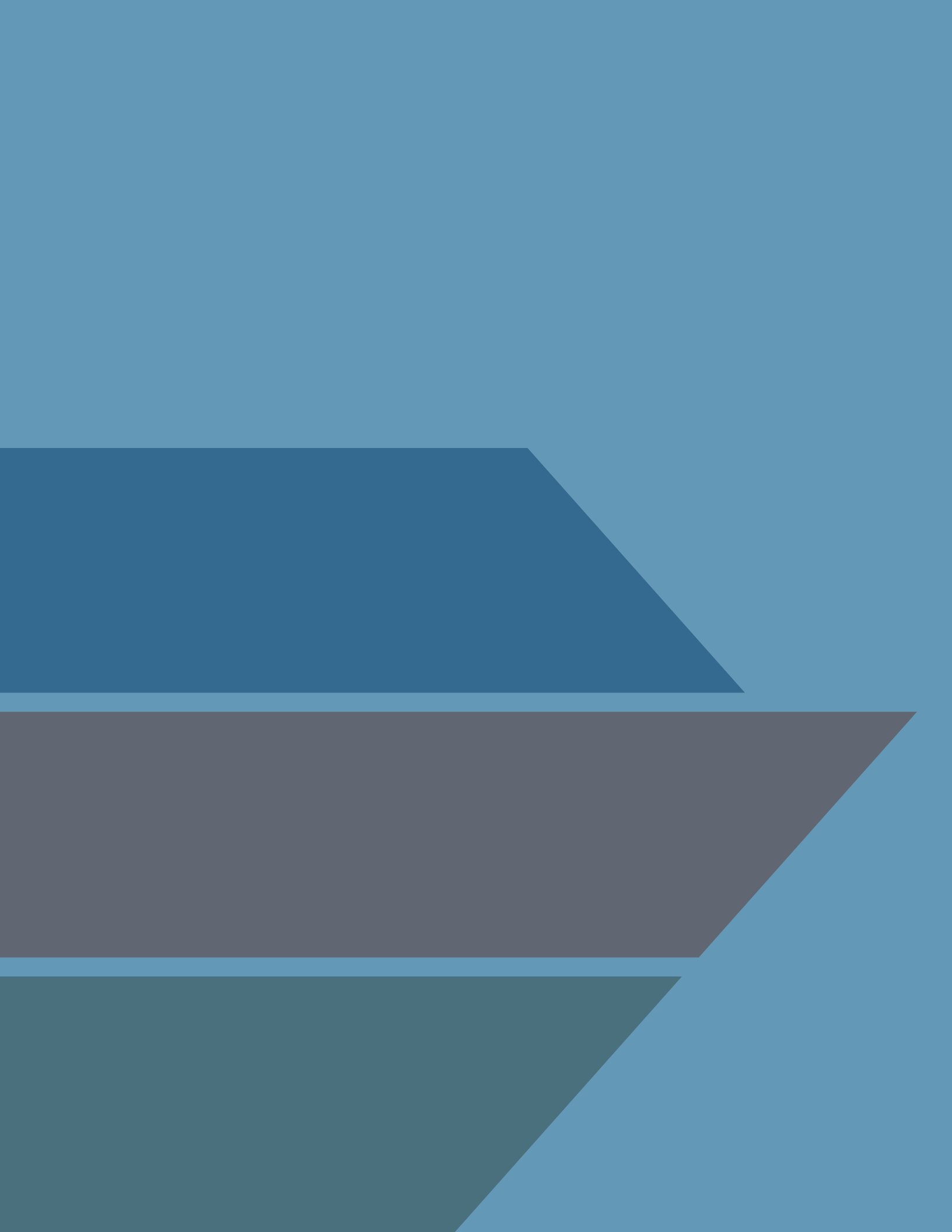
Section 12. Delegation of Authority to Executive Director

The Executive Director, in conjunction with an officer of the Board of Directors, shall have full power and authority to enter into and execute Banking Agreements having form and content consistent with the LBA Statute, the Interlocal Agreement, and these policies and procedures. The Executive Director shall summarize for the Board of Directors on a regular basis the nature and number of Banking Agreements, the aggregate Holding Costs, and all transfers to and from the LBA pursuant to Banking Agreements. Any provision of any Banking Agreement not consistent with these policies and procedures shall require the express approval of the Board of Directors.

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Milwaukee LISC Mural in the Lindsay Heights neighborhood - Milwaukee, WI
Gordon Walek for Chicago LISC Site of the future Dr. King Legacy Apartments - Chicago, IL
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