

LOCAL INITIATIVES SUPPORT CORPORATION

# LAND BANK AUTHORITIES

A Guide for the Creation and  
Operation of Local Land Banks

Frank S. Alexander



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# LAND BANK AUTHORITIES

## A Guide for the Creation and Operation of Local Land Banks

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# FOREWORD

For decades, older cities have struggled with the problems posed by unoccupied, dilapidated houses, vacant buildings, and open, empty lots. Those abandoned properties depress tax revenues, strain public services, and demand constant and expensive attention from local governments. They are targets for arson, breeding grounds for crime, and present a dangerous and sometimes deadly playground for neighborhood children. In Flint, Mich., for example, seven out of 10 fires occur in abandoned houses. Ironically, the declining tax base and subsequent budget cuts resulting from those vacant properties have forced the city to close fire stations that would have responded to the infernos. Vacant and abandoned properties diminish the resources available to combat the contagious blight, crime, disease, and disinvestment associated with forgotten urban land. As many metropolitan areas continue to consume suburban and rural land much faster than their population grows, thousands of urban parcels sit idle, available but somehow out of reach.

There is hope, however. In a handful of American cities, progressive leaders are using new tools to combat blight and abandonment. Recently, the National Vacant Properties Campaign was formed to share these successful strategies and develop new approaches to abandonment - which is both a cause and effect of sprawl.

One such strategy is the development of land banks—public authorities created to efficiently acquire, hold, manage, and develop tax-foreclosed property. By using the legal tools a land bank provides, a community can ensure that tax-foreclosed property is sold or developed with the long-term interest of the community and surrounding property owners in mind. Land banks often provide marketable title to properties previously impossible to develop due to complicated liens and confused ownership histories. While land banks are generally associated with older urban communities that have significant abandonment, they are potentially just as useful to safeguard healthy communities from deterioration, and for smaller communities seeking to protect land from passing through the slow process of decline so often associated with tax-foreclosed properties. A land bank gives a community the opportunity to take a “deep breath” before deciding the fate of a tax-foreclosed property, rather than allowing each parcel of vacant land to fall into the hands of speculators who spread the infectious disease of blight.

In this guidebook, Emory Law Professor Frank Alexander explores the development of land banks in St. Louis, Cleveland, Louisville, Atlanta, and Genesee County, Mich., addressing the conditions, history, and legal structures of each. In comparing and contrasting the legal approaches and policies of these five examples, Professor Alexander offers public officials and community leaders important findings derived from the work and experiences of the nation's first land banks. This guide can serve as a roadmap for cities and counties across America that are attempting to rediscover the value of urban land.

As this guide illustrates, when aggressively applied, land bank tools are formidable. In Michigan, for example, the combined use of the tax foreclosure reforms of 1999 and the

adoption of the Michigan Land Bank Fast Track Act in 2004 provides the legal foundation for a tax foreclosure and land banking strategy with tremendous flexibility in the disposition of tax foreclosed property. Perhaps most critical to the early success of the Michigan model is that the law provides a funding mechanism to acquire, manage, clear, demolish, rehabilitate, and develop tax foreclosed land, which for decades was written off as used, useless, and valueless. New revenue that once went into the pockets of smart or fortunate tax lien buyers, now accrues to a restricted county fund which can only be used to acquire and care for tax-foreclosed property. In fact, these laws, together with recent amendments to the Brownfield Redevelopment Financing Act, have allowed the Genesee County Land Bank to acquire 3,400 parcels in just three years, clean thousands of empty lots, demolish hundreds of abandoned houses, and develop or maintain thousands of individual parcels of tax-foreclosed property.

Professor Alexander was an essential advisor in developing the Michigan law and serves as a legal and policy consultant to the Genesee County Land Bank. His experience in Michigan and many other states and cities uniquely qualifies him to offer this guide as an urban land redevelopment tool.

A coherent strategy for Smart Growth is impossible without a determined effort to more rationally present urban land to the marketplace. The salvation of our cities, as well as the preservation of America's farmland, open space, and natural beauty, requires that communities unlock the value of urban land. For many cities still struggling for answers to the problems of sprawl and the difficult task of managing vacant and abandoned property, the lessons in this guide may provide the key.

### **Daniel Kildee**

*Daniel Kildee is the treasurer of Genesee County Michigan, and chairman of the Genesee County Land Bank. He also serves as a member of the Michigan Land Bank Fast Track Authority, the nation's first state-wide land bank.*

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# ACKNOWLEDGMENTS

It is a rare spirit who looks at abandoned, burned out, debris-filled properties in our inner-city neighborhoods and dreams of a strong and vibrant residential, mixed-use and mixed-income community. It is an even rarer spirit who is willing to challenge inconsistent governmental policies, antiquated state statutes, and economic pressures, and insists that it does not have to be this way. Revitalization of impoverished and neglected urban neighborhoods is necessary not just for those who presently call them home, but for the long-term health of the greater community.

Over the past two decades, a small number of dedicated nonprofit community development corporations and public officials have demonstrated that fundamental change is possible. Their view of vacant, abandoned, and tax-delinquent properties not as liabilities but as assets has been the key to removing the institutional, structural, and economic barriers to revitalization. For these dedicated individuals, the creation of land banks has been a vital element of their plans. Land banks can be part of the formula in which hope is not just a dream, but a way of making dreams become reality.

This work is intended as a way of recognizing the path-breaking efforts of those in St. Louis, Cleveland, Louisville, Atlanta, Flint, and numerous smaller cities that have done so much in overcoming the barriers to building new communities in the wake of disinvestment. It is also designed to make it possible for other communities across the country to gain inspiration from the dreams and hopes of these urban pioneers, and to build upon their legal, structural, and social reforms. I am indebted to these advocates, both in the nonprofit communities and in the government service, for all that they have done. I am particularly indebted to each of them for spending time with me to teach me about their work, their strategic decisions, their successes and their failures, their hopes and their dreams. I cannot list each person by name, for

they are countless in number and I met with over one hundred of them in the preparation of this work. To each of them, personally and on behalf of our entire community, I give thanks.

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# INTRODUCTION

Vacant, abandoned, and tax-delinquent properties are found in virtually every community, but in many of our smaller towns and large urban areas they are not simply isolated phenomena—they begin to define the community itself. The reasons and solutions for abandonment are myriad and complex. This document examines land banks as one of the tools increasingly used with great effectiveness to address abandonment. It identifies the context for the creation of a land bank, the multiple functions land banks serve, and the decision-making process for local governments to implement a land bank program. Ultimately, this guide is designed to be a resource for local governments, neighborhood and community development associations, as well as urban planners seeking new approaches to overcome the barriers that restrain the revitalization and redevelopment of their cities.

Despite differing characteristics and reasons for abandonment in nearly every case, affected communities have faced significant challenges to exposing their vacant and abandoned properties to market forces and encouraging their reuse. Multiplicity of government policies, absence of effective regulations and enforcement procedures, lengthy or inadequate foreclosure proceedings, and lack of coordination have impeded rehabilitation and reuse. Communities consequently have created land banks to provide a streamlined, comprehensible, and uncomplicated legal and policy framework for property acquisition and disposition.

A land bank is a governmental entity that focuses on the conversion of vacant, abandoned, and tax-delinquent properties into productive use. The growing inventory of these properties could be precisely the community assets to proactively redevelop distressed urban areas. They can be pivotal in making property redevelopment more efficient and affordable in downward economic cycles as a stimulus for reinvestment, and in reserving land for targeted purposes in upward economic cycles.

In addition to dealing with private properties, land banks are one vehicle for management and disposition of public assets in a comprehensive manner that can maximize local policy goals. Public assets fall into two primary categories for these purposes: land actually owned by local governments, and public liens on privately owned lands. For a variety of historical, cultural and other reasons, information about these property resources tends to be bracketed in isolated departments of expertise (city and county attorneys, local government redevelopment agencies, tax collectors, community development corporations). Very little information tends to cross the boundaries of these groups to allow common practices and solutions to serve common problems and opportunities.

Land banks allow local governments to overcome the legal structures that restrain rather than foster conversion of public land and public liens on private land into performing assets. State and local enabling legislation allows local governments to create land banks. Given appropriate legal and administrative mechanisms, land banks can remove redevelopment barriers that hamper the creation of functioning private markets for conversion of abandoned land to better and higher uses. They can also facilitate the realization of public policy goals such as provision of affordable housing, stabilization of residential neighborhoods, development of green spaces, and revitalization of brownfields.

This guide provides direction for localities interested in creating a land bank as a mechanism to abate the rising number of vacant and abandoned properties to create better and more livable communities. The experiences of the five largest and most successful land banks in the United States today—St. Louis, Cleveland, Louisville, Atlanta, and Flint—provide the principles to build upon.

The first chapter provides a brief description of the creation of each land bank, depicting the

evolution of unique public programs to address cultural and economic dilemmas in novel and creative ways. Each land bank has played a key role in the conversion of vacant, abandoned, and tax-delinquent properties into productive use. This chapter identifies the common approaches among land banks and the differing functions that reflect their local laws and policies. It presents the key points to consider when deciding to create a land bank.

The second chapter identifies and evaluates the primary barriers to property reuse and the role of land banks in overcoming those barriers. The barriers include (i) the presence of a significant tax-delinquent property inventory within a jurisdiction, (ii) the relative ineffectiveness of existing property tax foreclosure laws, (iii) the presence of a significant inventory of properties acquired by local governments through lien enforcement procedures, (iv) the prevalence of vacant and abandoned properties, (v) the lack of clear and marketable title to abandoned properties, (vi) the need for affordable housing, and (vii) the presence of state and local laws restraining the transfer of public assets to catalytic community development purposes. Not all of these factors have to be present to create a land bank—most successful land bank models address only three or four of these variables.

As the legal and cultural barriers that give rise to property abandonment vary dramatically across the United States, there is no single, effective land bank model. All land banks share certain common elements supporting their revitalization goals. Focusing in detail on five prominent land banks in major urban areas, the third chapter identifies the core legal powers that are essential for effective operation of a land bank. These include the acquisition, management, and disposition of property; the financing of land bank operations; and the need for eminent domain power or the ability to waive delinquent taxes.

The fourth chapter shifts in focus to core public policies that can be served by a land bank. Other public policies inevitably are intertwined with a land bank's core function of acquisition

and disposition of tax foreclosed properties. Balancing priorities, such as affordable housing, economic development, the preservation of open land, or other goals has contributed to the integrity and success of land bank operations in the five key cities, providing clear guidance for future land banks.

Any city's legal authority and the allocation of power between the state and the city differ tremendously across the country. The five cities represented in this analysis epitomize five different forms of state and local government law, giving rise to a slightly different structure. Chapter Five presents these different models of governance structures to help other cities pick and choose the legal and organizational structure most consistent with and conducive to the creation of a land bank in their particular localities.

Chapter six presents a broad sample of key administrative policies in use by land banks. The range covered is intended, in part, to demonstrate that there is no single approach that must be uniform in all communities. They also demonstrate the critical decisions that have been confronted by land bank programs in recent years, and the solutions they have designed.

An extensive bibliography and four appendices make relevant data readily available to allow other cities and states to evaluate these programs for implementation in their own communities. The first appendix contains contact information for the existing land banks. The second and third appendices include applicable state statutes and inter-local agreements used to create land banks. The fourth appendix presents the full text of sample administrative policies of land banks.

The historical context for and a functional analysis of land banks provided in this document serve as one important tool for community development. The author hopes that this will be a resource to enable communities to build upon the experiences of others in designing and implementing the appropriate program to address their particular needs.

# CHAPTER 1: Models of Land Bank Authorities

**Land banking is the story of the recent development of local government programs designed to break the barriers that create, and are created by, vacant and abandoned properties.**

Over the past 40 years, a combination of conditions in many cities around the country has resulted in a growing incidence of vacant and abandoned properties. While these properties exhibit different characteristics and have been abandoned for a variety of reasons, in nearly every case, affected communities have faced significant challenges in exposing them to market forces and encouraging their reuse. The impediments to rehabilitation and reuse include:

- Presence of multiple taxing bodies that lack common policies and goals
- Absence of effective property inspection, code enforcement, and rehabilitation support to help prevent properties in poor conditions from descending into abandonment
- Lengthy and inadequate foreclosure proceedings, which may not result in clear, insurable title
- Lack of coordination among agencies and departments responsible for enforcement, acquisition, and disposition

Often the laws governing legal land use policies and practices are not well understood, even by those involved. Bureaucratic compartmentalization can further frustrate the property acquisition and disposition process.

Localities have created land banks to respond to the rise of vacant and abandoned properties, dwindling tax receipts, increase in blight, and the worsening conditions for families living close to deteriorating properties. Land banks are governmental entities intended to help cities achieve legal, institutional, and other changes that allow vacant and abandoned properties to be converted to productive use.

This chapter details the origins and evolution of five major land banks created in the past 30 years. Although there are also more modest examples of

land banks that have been successfully implemented, these five illustrate excellent approaches to addressing legal, institutional, and governmental barriers to blighted property reclamation.

## **1-1 LAND BANKS AND ABANDONED LAND**

### **Vacant, Abandoned, and Tax-Delinquent Land**

The “life-cycle” of neighborhoods,<sup>1</sup> from periods of decline and deterioration to their renaissance and rejuvenation, is the subject of extensive debate on the myriad of causes of decline and resurgence, and on whether either trend is inherent in the life of a neighborhood.<sup>2</sup> There is far greater consensus on the adverse effects of vacant and abandoned properties on neighborhood and citywide stability and vitality. In addition to the probable loss of positive use, they are active and powerful sources of harm.<sup>3</sup> As potential fire hazards and sites for drug trafficking,<sup>4</sup> 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.<sup>5</sup> These disinvestments often spread across neighborhoods and affect the overall health of a city.

Property tax delinquency is the most significant common denominator among vacant and abandoned properties. A property owner may fail to pay property taxes due to a lack of financial resources or an owner’s decision to “milk” the equity from the property and then abandon it. The lengthy periods of time required for property tax foreclosures further reinforce the property owner’s decision to neglect further investments.<sup>6</sup> Failure to pay property taxes signals the eventual fate of the property given “the widespread existence of delinquency as a precursor to residential abandonment.”<sup>7</sup>

Vacancy and abandonment are not synonymous. Abandonment is a far stronger concept, suggesting 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. At the same time, tenants may still occupy the property and pay rent or squatters may live there without permission. It also is possible that structures that are heavily deteriorated and in violation of local codes and ordinances may be neither vacant nor abandoned. Vacancy, on the other hand is often common in commercial areas, and property owners sometimes hold on to improved properties for long-term investment.

Although the highest correlation is between tax delinquency and abandonment, and nonpayment of property taxes is a strong sign of the owner's inability or unwillingness to invest further resources in the property, tax delinquency is only an overlapping characteristic. Even occupied properties in excellent condition may be tax delinquent, usually by inadvertence though occasionally by design.

### **Land Bank Authorities**

In the past 30 years, land banks have emerged to convert vacant and abandoned properties into assets for community redevelopment. Section 1-2 of this chapter illustrates the structures and functions of model land banks in five major urban areas. Other jurisdictions have created, or relied upon, land bank authorities to a much smaller extent.<sup>8</sup>

A land bank is a governmental entity that focuses on the conversion of vacant, abandoned, and tax-delinquent properties into productive use. This report applies the generic label of "land bank" to the five model programs despite the presence of fundamental differences such as:

- Form (legal, independent authorities or programs of municipal departments)
- Function (powers, policies, priorities and strategies for land use and reuse)

In general, forms and functions have developed as a result of the local social and economic characteristics, as well as the division of powers between state and local governments. Chapter 5 includes a description of the alternative structures for land banks.

Despite their common historical and doctrinal origins, land banks differ from redevelopment authorities. The dominant characteristics of industrial development and urban redevelopment authorities usually are 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 to develop or redevelop a particular location for a particular purpose. In contrast, land banks arose to address the increasing quantity of private or publicly owned urban land, not reclaimed or redeveloped by market forces. Structural, legal, and financial barriers inhibit the access of private markets and public entities to these stagnant properties. Vacant and abandoned tax-delinquent properties may be concentrated in certain areas, or scattered across neighborhoods and cities in random patterns.

The conceptual beauty of a land bank is that it can and should be pragmatically adapted to the particular needs of a specific city. The focus of this guide is not an evaluation of the effectiveness of a particular form or structure of an existing land bank in a given city. Nor is it an empirical evaluation of the efficiencies (or lack thereof) in the operation of a specific land bank. Instead, the focus is the range of powers and functions that could be adopted in any given jurisdiction to meet its own unique needs.

### **1-2 FIVE CONTEMPORARY LAND BANKS**

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Five metropolitan areas have created land banks to focus on a significant and rapidly increasing number of abandoned tax-delinquent properties in inner cities. St. Louis, Cleveland, Louisville, Atlanta, and Flint each have addressed a large inventory of privately owned tax-delinquent properties, or properties acquired as a result of tax foreclosures through a proactive mechanism to facilitate conversion of those properties from neighborhood and community liabilities to long-term assets. The main impetus was not so much a desire for long-term metropolitan planning through large-scale land assembly, but simply a response to a crisis in property tax delinquency and abandonment.

The earliest major land bank program, the St. Louis Land Reutilization Authority, was created in 1971. Ohio followed suit by adopting state enabling legislation in 1976 that permitted 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. After 15 years of economic decline triggered by industrial closings, the City of Flint and Genesee County, Michigan created their own land reutilization council in 2002. In each instance, local governments examined the programs, priorities, structures, and policies of preceding land bank authorities and then designed a program to fit their own community's needs.<sup>9</sup> Other cities across the United States have created variations of these land banks (such as Macon, Savannah, and Valdosta, Georgia; and Dallas, Texas) or other structures designed to address similar issues (such as Omaha, Nebraska; and Kansas City, Missouri).<sup>10</sup>

The common goal among all five land banks is conversion of abandoned tax-delinquent properties to productive use. Despite substantial overlap, there are differences among the land banks reflecting the important adaptation of the concept of a land bank authority to fit a particular jurisdiction's needs and priorities. Each local land bank is based on a different legal structure due to wide variances in state constitutional law and state and local allocations of authority. Each jurisdiction follows a different property tax foreclosure procedure, and each land bank has its own set of operating policies and priorities.

Like many metropolitan areas across the country, the city of St. Louis experienced a sharp population decline (27 percent) between 1950 and 1970.<sup>11</sup> By 1972, there were more than 2,600 abandoned buildings in the city, with approximately 9 percent (over 12,000) of all parcels being tax delinquent. The St. Louis Land Bank began with the enactment of the local enabling ordinance on December 20, 1971.<sup>12</sup> Over the past 30 years of operations, the St. Louis Land Bank's primary function has been to receive title to all properties that are not sold when a tax foreclosure is conducted and properties donat-

ed to the city. It is one of seven operating subsidiaries of the St. Louis Development Corporation, and works in tandem with its sister real estate agencies, the Land Clearance for Redevelopment Authority and the Planned Industrial Expansion Authority.<sup>13</sup> At the end of 2001, the St. Louis Land Bank held title to almost 10,000 parcels of land, or 3 percent of the entire land area of the city of St. Louis.<sup>14</sup>

By 1974, Cleveland found itself in a similar situation to that of St. Louis, having lost over 18 percent of its population during the preceding two decades: over 11,000 tax delinquent parcels governed by ineffective and inefficient tax foreclosure laws.<sup>15</sup> Cleveland experienced a 58 percent increase in vacant parcels between 1977 and 1987, and a 37 percent increase in residential tax delinquency.<sup>16</sup> The Cleveland Land Bank was established in 1976. Its authority was enhanced by subsequent state legislation in 1988 permitting the abatement of property taxes on land held by the land bank, the creation of a dedicated fund for prosecution of delinquent taxes, and the revision of notice requirements in tax foreclosure proceedings.<sup>17</sup>

In 1988, the Commonwealth of Kentucky enacted legislation authorizing local governments to create a land bank authority.<sup>18</sup> In contrast to Missouri and Ohio, the Kentucky legislation enabled creation of land banks not within the structure of an existing local government, but rather as independent public corporations created pursuant to interlocal agreements among key governmental entities. The primary reason for this approach is that in Kentucky, as in many jurisdictions throughout the United States, property taxes are levied by a series of separate entities—the city, the county, and the school board. The legal authority of a land bank in Kentucky thus derives from four sources: state land bank enabling legislation, the interlocal agreement, the land bank articles of incorporation, and the bylaws of the land bank authority. The Louisville Land Bank Intergovernmental Agreement was signed on February 14, 1989.<sup>19</sup>

Just two years after the Kentucky legislative initiative, the Georgia General Assembly in 1990

passed enabling legislation for local governmental land bank authorities.<sup>20</sup> Prompted by the growing inventory of abandoned tax-delinquent properties in inner-city Atlanta, the statute was based largely on the form and substance of the Kentucky legislation. With a structure of local governments and taxing authorities similar to Kentucky's, Georgia authorizes execution of an interlocal cooperation agreement and creation of an independent legal corporation. The initial Interlocal Cooperation Agreement was entered into between Fulton County, Georgia and the City of Atlanta on June 12, 1991.<sup>21</sup> One of the most significant features of the Atlanta Land Bank is that it possesses the power to waive all delinquent property taxes on parcels of land it acquires and conveys.<sup>22</sup> Initially, this power did not extend to property taxes levied by the school board, but in 1990 a statutory amendment gave it the authority to extinguish such taxes with the school board's consent. The local school districts were given "advisory" members on the land bank board of directors pursuant to a 1994 amendment to the Interlocal Agreement. In contrast to the St. Louis and Cleveland Land Banks, the Atlanta Land Bank does not automatically receive title to properties that are not successfully sold at a tax foreclosure sale. It has the option to bid at such foreclosures, but in practice it exercises that option only when it anticipates an immediate reconveyance of the property to a developer.<sup>23</sup>

In August 2002, Genesee County, Michigan and the Charter Township of Flint established the fifth and most recently created major urban land bank in the United States. The impetus behind creation of the Genesee Land Bank was the 1999 enactment of a comprehensive reform of the property tax foreclosure laws in Michigan. One immediate consequence of that reform is that a large number of tax-delinquent properties can be foreclosed in a single judicial proceeding following numerous and extensive steps of notification to all interested parties.<sup>24</sup> In the event that the property is not redeemed by an owner as part of the foreclosure proceedings, title to the property passes to the foreclosing governmental unit. At each of the first two such tax foreclosure proceedings in Genesee County in

February 2002 and February 2003, title to more than 1,200 parcels immediately vested in the Treasurer of Genesee County. The bulk of this inventory was subsequently transferred to the Genesee County Land Bank.

Unlike its four predecessor jurisdictions, Genesee County initially was not able to take advantage of any state legislation expressly authorizing the creation of a land bank authority. In the absence of such express statutory authority in 2002, the Michigan Urban Cooperation Act provided an adequate legal basis for creation of a new corporation, pursuant to an interlocal agreement, that would acquire, manage, and convey tax-delinquent properties.<sup>25</sup>

In January 2004 the most extensive land bank authority statute in the country became law in Michigan.<sup>26</sup> Unlike other states that have enacted statutes permitting local governments to create land banks, Michigan elected to create a "state land bank fast track authority" with broad-ranging powers. The primary motivation for the state authority was that, unlike other states, Michigan's tax foreclosure law provided that in many instances the properties would become owned by the state, leaving the state of Michigan with a significant inventory of such properties. Local governments in Michigan are now granted the option to enter into intergovernmental agreements with the state authority for the creation of land banks.<sup>27</sup> Following the enactment of the statewide land bank authority legislation, the Genesee County Land Reutilization Council, Inc. was transformed into the Genesee County Land Bank.

### 1-3 FUNCTIONS AND APPROACHES

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#### Common Functions

The five contemporary urban land banks were created in the context of a growing inventory of abandoned tax delinquent properties in the inner cities. For a variety of social, economic, legal, and political reasons, each of the five communities had seen a decline in population and a broad disinvestment of private market resources. Abandoned properties, whether concentrated in a few neighborhoods or spread

across wide areas, contributed to a downward spiral of further abandonment. It became common for the total amount of delinquent taxes on a given parcel to exceed its fair market value, rendering foreclosure sales quite difficult. Private and public efforts to acquire or redevelop such properties were further thwarted by inefficient and ineffective tax foreclosure laws and by local government barriers in the form of property disposition policies or intergovernmental disputes over jurisdiction and authority. These five contemporary urban land banks share common core functions in their approaches to these problems.

1. The creation of each of these land banks occurred in tandem with a significant reform of state property tax foreclosure procedures. In most instances, the state statute was amended to shorten the time period for completion of a foreclosure, to increase the notice given to owners and other interested parties, and to facilitate acquisition of properties by local governments when the amount of taxes due exceeded the property's value. While the initial focus was on tax-delinquent properties, code violations among properties not significantly tax delinquent became a second mission.

2. The land banks were created to focus on the inventory of tax-delinquent properties. In contrast to proposals in the 1960s for land banks to engage in aggressive land acquisition for urban planning purposes, these land banks were formed to address the significant inventory of land that became available, or could become available, through new property tax enforcement proceedings. Some of the land banks acquire title automatically to a substantial portion of the tax-delinquent properties, while others such as the Atlanta Land Bank primarily acquire properties only when reconveyance to a developer is imminent.

3. The land banks' programs are intimately and intricately tied to local governments' policies and priorities. Although their primary function is to facilitate the conversion of abandoned properties to productive use, few of them serve as the developer of the property. The Genesee

Land Bank is an exception. It is taking the lead as a developer of commercial office space for itself and related entities. Land banks do, however, play a critical role in determining the intended use of the property and its new public or private owner. These urban planning and redevelopment functions are not in isolation from the existing local governments, but instead are new tools to assist in the efficient implementation of plans. The sheer number of parcels of property that are conveyed by a land bank makes it essential that the disposition policies and plans be coordinated carefully with the planning departments of the local governments.

### **Differing Approaches**

One of the great strengths of a land bank as a tool for community redevelopment is the ability to adapt its form, structure, and function to meet a city's character, culture, and crises. The Cleveland Land Bank mirrors that of St. Louis; the Atlanta Land Bank mirrors that of Louisville; and the Genesee Land Bank builds upon all four. There are, however, significant differences in the approaches taken in each of the five jurisdictions.

- **Organization:** Two of the land banks, St. Louis and Cleveland, operate within city agencies and departments, although the St. Louis Land Bank is still a separate corporate entity.<sup>28</sup> Louisville, Atlanta, and Genesee are created by interlocal agreements and are legally separate corporations with independent boards of directors.
- **Staffing:** The Atlanta Land Bank and Genesee Land Bank have their own full-time staff members. In the other three cities, the staff are members of planning and development departments or agencies.
- **Function:** Largely because of procedures making the land bank the owner (directly or indirectly) of large volumes of tax-foreclosed properties, four of the five land banks have significant property management functions, including maintenance and security. This may also include demolition of existing structures. In at least one of the jurisdictions, Genesee County, the land bank is responsible for man-

aging occupied properties. In four of the jurisdictions the land bank serves a true “banking” function of holding a significant inventory of property for long-term public purposes. Though the Atlanta Land Bank has the legal authority to hold properties for long-term purposes, thus far it has chosen to function primarily as a conduit for the immediate transfer of foreclosed or donated properties to public and private developers.

- Pricing policy: Each of the five urban land banks also follows a different pricing policy for the disposition of properties.<sup>29</sup> None of the land banks yet cover all operational costs from payments for the property transfer, but several require more than nominal consideration be paid by the transferee. The Genesee Land Bank generates significant revenues from the rehabilitation and sale of properties. Most of the land banks transfer the property

at no cost or below market value as a form of subsidy or incentive for future development. Most have different pricing policies applicable to different forms of land.

- Future use: In some of the cities, the state statute sets priorities for the future use of property that is conveyed by a land bank, such as public use (parks, recreation areas) or housing.<sup>30</sup> In other cases, the interlocal agreement may specify priorities. In St. Louis, Louisville, and Cleveland, elected or administrative officials determine the ultimate use in a case-by-case manner.

With common functions and yet differing approaches, these five contemporary urban land banks present a creative and viable tool for replication in other jurisdictions across the country faced with similar issues. A land bank is not a necessary entity for all communities, but it

<b>The Range of Structures, Powers, and Activities of Land Banks</b>	Atlanta	Cleveland	Genesee	Louisville	St. Louis
<b>Governance</b>					
Separate board of directors	X		X		
Independent staff	X		X		
Shared staff with other departments		X			
Authority to make dispositions	X		X	X	X
Intergovernmental agreement	X		X	X	
<b>Funding</b>					
Funding from operations			X	X	X
Funding from local governments	X	X		X	X
Funding from future tax revenues			X		
<b>Sources of Properties</b>					
Acquires all tax-foreclosed properties			X	X	X
Limited acquisition at tax foreclosures	X	X			
Transfers from nonprofits	X		X		
Market purchases			X		
Any types of properties	X		X	X	X
Unimproved land only		X			
<b>Disposition Pricing</b>					
Transfers at fair market value		X			X
Set by the land bank authority	X		X	X	
<b>Disposition Priorities</b>					
Holds significant property inventory		X	X		X
Emphasis on immediate transfers	X	X			
Affordable housing	X		X		
Side-lot programs		X	X		X
<b>Power to Extinguish Property Taxes</b>	X				

can be a vital resource for many. Any jurisdiction contemplating the possibility of a land bank as an option should review the experiences and practices of these five cities and then tailor the creation of a land bank to fit its particular concerns. The following section highlights some of the decision factors for establishing a land bank.

#### **1-4 DECIDING TO ESTABLISH A LAND BANK**

In many communities, a combination of private market conditions and government policies can adequately handle the small numbers of properties that are acquired and transferred by the local government. In these circumstances, the only justification for the creation of an independent land bank would be to have a separate public entity to acquire and “bank” properties for long-term strategic planning purposes. However, communities with a significant inventory of vacant and abandoned properties can rarely address this inventory adequately with existing programs and policies.

In areas with where at least five to 10 percent of the privately owned properties are vacant, abandoned, and tax delinquent, the initial step is the amendment or reform of state and local laws to compel the transfers of such properties. The most common example of this is the reform of tax foreclosure laws, described in greater detail in Chapter 2, to address challenges such as long redemption periods and conveyance of clear title. The creation of a land bank without corresponding reform of enforcement procedures will accomplish few long-term objectives. A community should then consider creation of a land bank if either (i) there is a thin or weak private market for acquisition and development of the properties, or (ii) existing local government laws and policies create barriers to the transfer of properties by local governments. In either context, a land bank can be designed to address the community’s specific needs, such as strategic banking of properties for long-term planning or streamlining procedures for efficient transfer for new uses.

If a local government itself owns a large inventory of unutilized or underutilized properties, a

land bank may be the appropriate vehicle for management and disposition. A large inventory of excess properties in the hands of a local government is usually the result of tax foreclosure policies (which may have had statutory and constitutional defects), most likely in combination with barriers to the disposition of properties, a thin real estate market, and significant title concerns. A well-designed land bank can be the appropriate mechanism for resolving each of these obstacles to the conversion of such properties into productive assets.

The five major land banks—St. Louis, Cleveland, Louisville, Atlanta, Genesee—exist in very different legal and political climates. Because no two states have identical structures for the allocation of power between state and local governments, and each community has its own unique set of political and social pressures, a land bank is and should be a public entity crafted to meet a particular community’s needs and objectives. Each of these five land bank examples has built upon its predecessors’ work to create a stronger and broader set of powers, policies, and procedures. The Genesee Land Bank, created with the benefit of lessons learned in other jurisdictions and founded upon the strongest state land bank legislation in the country, has thus created the most comprehensive set of solutions and is the most productive land bank operation to date.

## NOTES TO CHAPTER 1

- 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).
- 3 John Accordino and Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 *JOURNAL OF URBAN AFFAIRS* 301 (2000); William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 *Journal of Criminal Justice* 481–495 (1993).
- 4 James R. Cohen, *Abandoned Housing: Exploring Lessons from Baltimore*, 12 *Housing Policy Debate* 415, 416 (2001); John A. Jakle and David Wilson, *Derelict Landscapes: The Wasting of America's Built Environment* 144–175 (1992).
- 5 James Goldstein et al., *Urban Vacant Land Redevelopment: Challenges and Progress*, Lincoln Institute of Land Policy (*working paper*) (2001); Edward G. Goetz, Kristin Cooper, Bret Thiele, Hin Kin Lam, *Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing* (1998).
- 6 See Frank S. Alexander, *Tax Liens, Tax Sales and Due Process*, 75 *INDIANA L. J.* 747–807 (2000).
- 7 George Sternlieb and Robert Burchell, *Residential Property Tax Delinquency: A Forerunner of Residential Abandonment*, 1 *REAL ESTATE L.J.* 256, 271 (1972–73).
- 8 Land banks in various forms have also been created in Macon, Georgia; Valdosta, Georgia; Dallas, Texas; Jackson County, Missouri; and Omaha, Nebraska. See Appendix A.
- 9 For purposes of clarity and simplicity this study refers to the land bank programs and activities of these five cities by shorthand references. The formal identities of the programs and the shorthand references 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;” (iv) the Fulton County/City of Atlanta Land Bank Authority, Inc.—the “Atlanta Land Bank;” and (v) the Genesee County Land Bank, Inc.—the “Genesee Land Bank.”
- 10 See Appendix A.
- 11 Kenneth R. Langsdorf, *Urban Decay, Property Tax Delinquency: A Solution in St. Louis*, 5 *THE URBAN LAWYER*, 729 (1973).
- 12 Langsdorf, *supra* note 11 at 745.
- 13 City of St. Louis, St. Louis Development Corporation. Additional information is available at <http://stlouis.missouri.org/development/realestate>.
- 14 City of St. Louis, St. Louis Development Corporation. Summary of 2001 Accomplishments, <http://stlouis.missouri.org/sldc/sldco1.pdf> (last visited October 1, 2003).
- 15 Susan Olson and M. Leanne Lachman, *TAX DELINQUENCY IN THE INNER CITY: THE PROBLEMS AND ITS POSSIBLE SOLUTIONS* 1 (1976).
- 16 Urban Center, *The Abandonment of Cleveland's Housing Stock and Potential for Redevelopment of Vacant Land*, iii, Maxine Goodman Levin College of Urban Affairs, Cleveland State University (1990).
- 17 Ohio Legislature, House Bill 603 (Amended Substitute), approved June 24, 1988.
- 18 Presently codified as KY. REV. STAT. ANN §§ 65.350 – 65.375. See Appendix B-2.
- 19 See Appendix C-2.
- 20 GA. LAWS 1990, p. 1875, codified as GA. CODE ANN. §§ 48-4-60 – 65. See Appendix B-1.
- 21 See Frank S. Alexander, *The Fulton County/City of Atlanta Land Bank Authority, Inc.: Problems and Promises*, (1994). See Appendix C-1.
- 22 GA. CODE ANN. § 48-4-64(c).
- 23 See Larry Keating and David Sjoquist, *Strengthening a Valuable Resource: The Fulton County/City of Atlanta Land Bank Authority* (2001).
- 24 1893 MICH. PUB. ACT 206, as amended by 1999 MICH. PUB. ACT 123, MICH. COMP. LAWS §211.1 et. seq.
- 25 MICH. CONST. Art. III, §5, and Art. VII. §§27, 28 and 34; 1951 MICH. PUB. ACT 35, MICH. COMP. LAWS §§ 124.1, 124.2, 1967 MICH. PUB. ACT. 7, MICH. COMP. LAWS §124.501 et. seq.
- 26 2003 MICH. PUB. ACT 258, MICH. COMP. LAWS §124.751. See Appendix B-3.
- 27 MICH. COMP. LAWS § 124.773(4).
- 28 See Chapter 5.
- 29 See Chapter 6-3.
- 30 See Chapter 4-2.

## CHAPTER 2: Barriers to Property Reuse and Land Bank Alternatives

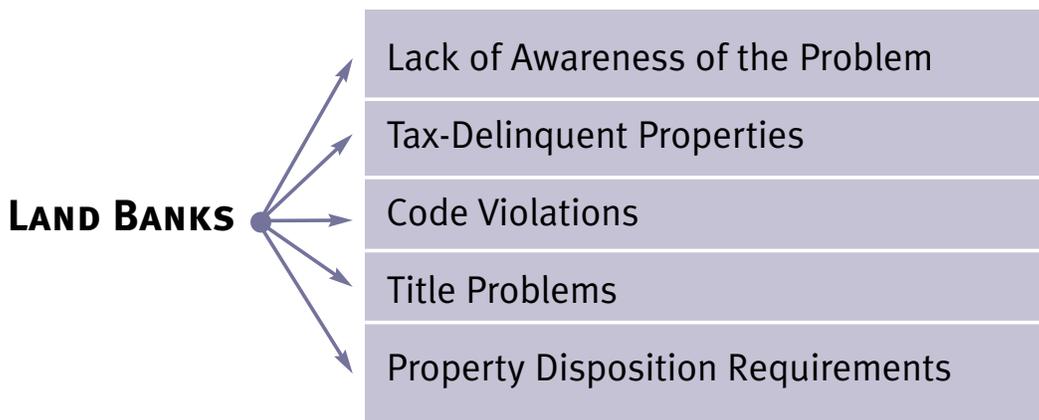
As governmental entities dedicated to the conversion of vacant, abandoned, and tax-delinquent properties into productive use, land banks serve a variety of roles. The very need for their creation reflects either the inability of conventional real estate markets to acquire and redevelop such properties 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 usually is characterized not by a single barrier but by a combination of obstacles. Barriers and obstacles are in some cases 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 addressed by the creation of a land bank. Others require extensive amendments to existing statutory procedures local ordinances. Some barriers require no 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 properties. One may have a declining economic base and fleeing population, while another struggles to preserve affordable housing in the face of gentrification. In any community, 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 are five common 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.



## 2-1 LACK OF AWARENESS OF THE PROBLEM

### The Barriers

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 certain neighborhoods are characterized by forms of “urban blight,” and 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 geographical location of the properties.<sup>1</sup> The initial barrier to conversion of these properties into productive use in many cases 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. The offices and records of the tax assessors and tax collectors commonly are entirely separate from the operations and records of the department with responsibility for housing and building code violations, and 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.

### Understanding the Inventory

Overcoming this initial 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 com-

plaints, 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.<sup>2</sup> 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.

The inventory of vacant 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 tax foreclosures in preceding years or other legal proceedings to enforce 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.<sup>3</sup> Publicly owned parcels, however, can and should be one of the greatest assets to a local government in transforming blighted areas into productive uses.

### Evaluating the Inventory

Each indicator needs to be evaluated separately, and then the combined database of indicators needs to be 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 already have been

abandoned. A geographic information system can depict easily the presence of one or more indicators across an entire community.<sup>4</sup> 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 abandonment of the neighborhood. If it is possible to correlate property ownership records in the database, it may also reveal instances in which a single owner of multiple tracts of land is electing to ignore its legal responsibilities.

Identifying vacant and abandoned properties by geographical location and physical characteristics quickly provides insights into neighborhood concentrations and immediately suggests a range of potential solutions. A study of vacant land in Philadelphia, for example, classified the properties as “corner lots,” “missing teeth,” “connectors,” “Swiss cheese,” “vacant blocks,” and “multiple contiguous blocks.”<sup>5</sup> Each form of vacant land had different negative impacts on the community and offered a different range of potential uses.

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 of the property is economically feasible, or whether demolition of existing structures 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. Several land banks are charged by law with maintaining as public records an inventory of properties that classifies them according to potential uses. For example, both the Louisville<sup>6</sup> and Atlanta<sup>7</sup> land banks are required to “inventory, appraise, and classify” the properties they hold and make such records publicly available. The St. Louis Land Bank is required to inventory and appraise its property,

and to classify the property as suitable for private use, for use by a public agency, or not usable in its present condition or situation.<sup>8</sup>

## 2-2 TAX-DELINQUENT PROPERTIES

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### The Barriers

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.<sup>9</sup> 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 become a spiral of deterioration. Third, in far too many jurisdictions, property tax delinquency simply marks the beginning of a complex and prolonged period for 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.<sup>10</sup> 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 in requiring a very lengthy process, up to four or 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.<sup>11</sup> When tax foreclosure laws are inadequate, property tax delinquency is but a sign of problems that will only grow in magnitude and complexity.

### **Reforming Tax Foreclosure Statutes**

Ineffective and inefficient property tax foreclosure laws compound the problems posed by the loss of revenues to the local governments. The reform of tax foreclosure laws in several jurisdictions occurred as part of the legislative authorization for creation of land bank authorities. The Missouri legislature created the 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.”<sup>12</sup> 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.”<sup>13</sup>

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

- 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. 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 does not require that the court obtain complete jurisdiction over the owners.<sup>14</sup>

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.

The lack of constitutionally adequate notice in foreclosure proceedings is the primary reason that tax foreclosed properties are considered to have title defects and serious limitations on marketability. A decision of the United States Supreme Court in 1983 held that notice of property tax foreclosure proceedings must be given to all parties holding legally protected property interests whose identities are reasonably ascertainable.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup>

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 provide either that the minimum bid can be reduced to a lower amount by the tax collector, or that the property is automatically sold to a public agency such as a land bank.<sup>19</sup>

### **Addressing the Sale of Tax Liens**

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.<sup>20</sup> 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 the lien has been transferred to a private investor, the local government does receive revenues in the form of cash payments for the tax liens, but it also loses

all ability to control the enforcement of tax foreclosure as a method to return the property to productive new uses. The sale of tax liens has been identified as a major impediment to the revitalization of abandoned properties and to the operation of land banks.<sup>21</sup>

### **Tax Abatement and Conduit Transfers**

Another approach to dealing with abandoned, tax-delinquent properties is to forgive or waive the delinquent taxes 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.<sup>22</sup> 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.<sup>23</sup> 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.

## **2-3 CODE VIOLATIONS**

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### **The Barriers**

A third common barrier that should be identified and evaluated in the face of vacant, abandoned, and tax-delinquent properties is the existence of manifold violations of housing and building codes. 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.<sup>24</sup> 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 appropriate notice to property owners as required by the evolving constitutional standards of due process in the late 20th century. 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 remedy of 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. This expense in many jurisdictions is secured by a nuisance abatement lien filed against the property, but which unfortunately is lowest in line of priority of claims against the property.

### **Reforming Code Enforcement Procedures**

For much of the 20th century, the standard approach to enforcement of housing and building codes has been an administrative or judi-

cial enforcement proceeding against the property owner, seeking to force the owner to remedy the violations. 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. The advantage of this approach is that the local government can act far more quickly in demolishing dangerous and harmful structures, but the distinct disadvantage is that the local government funds are required.

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. A judicially appointed receivership 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.

### **Enhancing the Priority of Code Enforcement Liens**

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 possibility 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, and 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 (along with property taxes), superior to all other claims against the property.<sup>25</sup> 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.

## 2-4 TITLE PROBLEMS

### The Barriers

One of the primary reasons that normal market forces do not reach vacant, abandoned, and tax-delinquent property is that there are numerous defects or clouds on the title to the property. 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 authority 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 also held by defunct or inactive corporations. Former industrial properties may have similar title defects, but also with possible 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 likely cannot convey it to any third party because of the inherent title defects.

### Creating 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 also can 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.<sup>26</sup> 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.

### Pursuing Quiet Title Actions

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 preexisting (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 preexisting 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 which seeks a judicial ruling on the claims of all parties. In a specially designed proceeding, constitutionally adequate notice is given to all interested parties of the opportunity to redeem the property from the tax lien. Failure of such redemption then vests clear title in the local government.<sup>27</sup>

One potential role for a land bank is to acquire this inventory of publicly owned (through previous foreclosures) properties 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.<sup>28</sup> 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 aspect of dealing with the defective title that characterizes so many problem properties 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.

## **2-5 PROPERTY DISPOSITION REQUIREMENTS**

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### **The Barriers**

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 procedures historically have three required components: (1) a determination that the property is "surplus" and not needed for public purposes, (2) a public auction of the property by open or sealed bids, and (3) 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 inner-city properties would become vacant and abandoned. Whether such properties are acquired by the local government or the land bank, property disposition requirements should be modified to reflect the nature of the property and the future intended uses of the property.

### **Land Bank Solutions**

One of the essential functions of a land bank is to eliminate barriers that inhibit the disposition of these properties by local governments. Properties acquired by a local government as a result of previous tax foreclosures, or nuisance abatement foreclosures, are involuntary, occurring only because of the prior owner's default and market 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 them to a land bank authority 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 bank.<sup>29</sup> Thus the local government retains the power to decide which properties are transferred to the land bank for disposition, but avoids having to conduct a separate hearing or finding as to each property that it is surplus property.

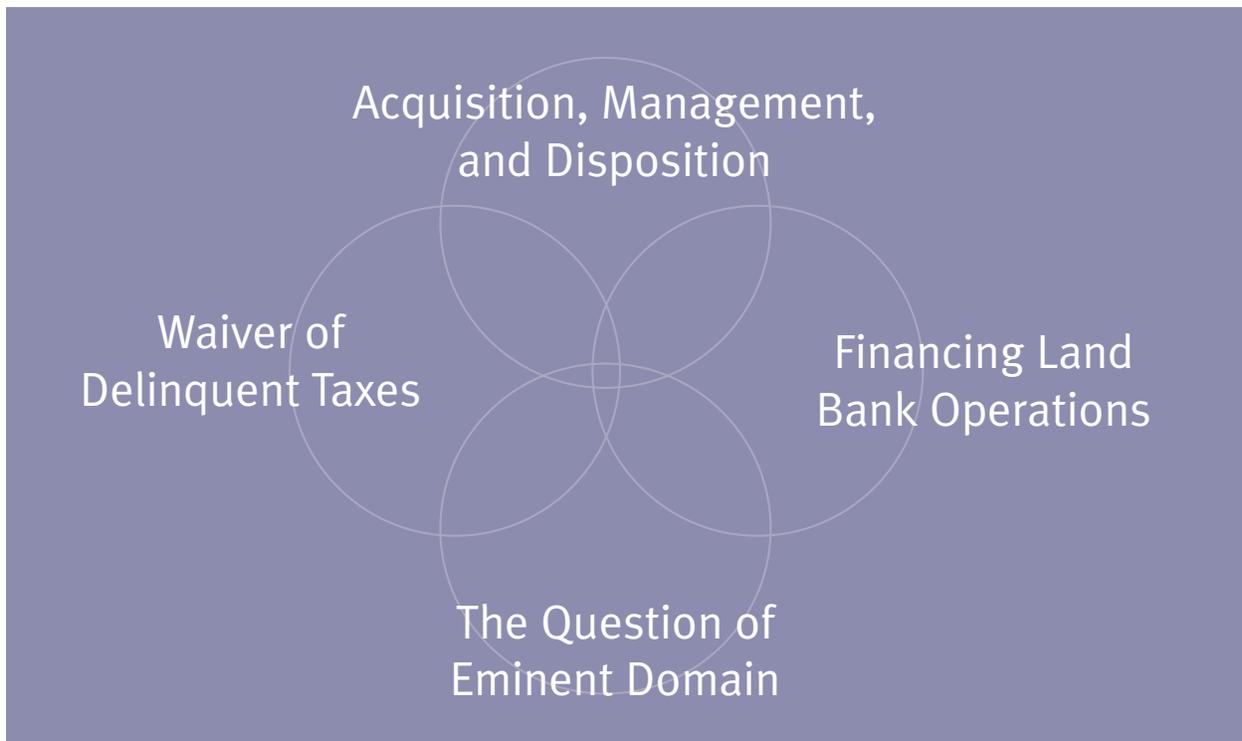
Laws requiring public auction or public bidding for local government property transfers usually do not apply to transfers of property between governmental entities. Thus the simplest and most direct way to remove the barrier of a required public auction for local government property is to provide that 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.<sup>30</sup>

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 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,<sup>31</sup> 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.

## NOTES TO CHAPTER 2

- 1 Michael R. Greenberg et al., *The TOADS: A New American Epidemic*, 25 URBAN AFFAIRS QUARTERLY 435, 442 (March 1990).
- 2 See, e.g., Philadelphia City Planning Commission, *Vacant Land in Philadelphia: A Report on Vacant Land Management and Neighborhood Restructuring* (1995).
- 3 See Frank P. Braconi, *In Re In Rem: Innovation and Expediency in New York's Housing Policy*, in HOUSING & COMMUNITY DEVELOPMENT IN NEW YORK CITY: FACING THE FUTURE (Michael H. Schill ed., 1999).
- 4 See Local Initiatives Support Corporation, MAPPING FOR CHANGE: USING GEOGRAPHIC INFORMATION SYSTEMS FOR COMMUNITY DEVELOPMENT (2002).
- 5 University of Pennsylvania, *Vacant Land: A Resource for Reshaping Urban Neighborhoods* (1997) (<http://www.upenn.edu/wplp/plan/fmvacant.htm>); See also Eastern Pennsylvania Organizing Project, BLIGHT FREE PHILADELPHIA: A PUBLIC PRIVATE STRATEGY TO CREATE AND ENHANCE NEIGHBORHOOD VALUE (2001).
- 6 KEN. REV. STAT. ANN. § 65.370(2).
- 7 GA. CODE ANN. § 48-4-63(b); See Appendix C-1, Atlanta Interlocal Agreement, IV.C.1-2.
- 8 MO. REV. STAT. § 92.900(2).
- 9 Susan M. Olson and M. Leanne Lachman, TAX DELINQUENCY IN THE INNER CITY: THE PROBLEMS AND ITS POSSIBLE SOLUTIONS 130–131 (1976).
- 10 Ana Baptista, *Redeveloping City-Owned Vacant Lots: Strategies for the Equitable Redevelopment of City-Owned Vacant Land in Providence, RI*, Brown University Center for Environmental Studies (2000) (<http://envstudies.brown.edu/thesis/2000/masters/abaptista/index.html>).
- 11 Frank S. Alexander, *Tax Liens, Tax Sales and Due Process*, 75 INDIANA L. J. 747-807 (2000).
- 12 MO. REV. STAT. § 92.875. Identical language appears in the Nebraska legislation, enacted in 1973, authorizing creation of local land reutilization commissions. NEB. REV. STAT. § 77-3201(1). The Kentucky legislation contains a similar provision: “The authority shall be established to acquire the tax delinquent properties of the parties in order to foster the public purposes of returning land that 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 the county.” KEN. REV. STAT. § 655-355(3).
- 13 GA. CODE ANN. § 48-4-75.
- 14 See Braconi, *supra* note 3; Patricia A. Hemann, *Land Banking Tax Delinquent Property: Reform and Revitalization*, 27 CLEVELAND ST. L.R. 517 (1978).
- 15 Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983).
- 16 Alexander, *supra* note 11.
- 17 See, e.g., GA. CODE ANN. § 48-4-75; 1999 MICH. PUB. ACT 123, MICH. COMP. LAWS §211.1 et.seq.
- 18 This is the case in Michigan, 1999 MICH. PUB. ACT 123, MICH. COMP. LAWS § 211.1 et.seq., in Ohio, OHIO REV. ANN. CODE § 5721.14, and in St. Louis, Missouri. see Kenneth R. Langsdorf, *Urban Decay, Property Tax Delinquency: A Solution in St. Louis*, 5 THE URBAN LAWYER, 729 (1973).
- 19 See Elise M. Bright, REVIVING AMERICA'S FORGOTTEN NEIGHBORHOODS 144–146 (2000); Frank S. Alexander, *Property Tax Foreclosure Reform: A Tale of Two Stories*, GEORGIA BAR JOURNAL (December 1995). See also Chapter 3-1 for a description of the transfers of tax-foreclosed properties to land banks.
- 20 Frank S. Alexander, *Constitutional Questions About Tax Lien Foreclosures*, 16 GOVERNMENT FINANCE REVIEW 27 (2000).
- 21 Larry Keating and David Sjoquist, *Strengthening a Valuable Resource: The Fulton County/City of Atlanta Land Bank Authority* (2001); Christina Rosan, *Cleveland's Land Bank: Catalyzing a Renaissance in Affordable Housing*, 3 HOUSING FACTS & FINDINGS Issue 1 (2001).
- 22 GA. CODE ANN. § 48-4-64(c). This applies to city and county property taxes. The extinguishment of school taxes requires the consent of the school board.
- 23 See Chapter 6-2; Appendix D-1.
- 24 David T. Kraut, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139 (1999).
- 25 See, e.g., GA. CODE ANN. § 41-2-9(b)(1).
- 26 See, e.g., 1999 MICH. PUB. ACTS 132, 133, MICH. COMP. LAWS §§ 211.79, 211.961. Other jurisdictions have expedited proceedings for abandoned properties. See Alexander, *supra* note 11 at 774, n. 151.
- 27 See, e.g., 1999 MICH. PUB. ACT 134, MICH. COMP. LAWS § 211.971 et.seq.
- 28 See, e.g., MICH. COMP. LAWS §§ 124.754(4), 124.759; GA. CODE ANN. § 48-4-61(b).
- 29 See Chapters 3-1, 4-2 and 6.
- 30 See, e.g., GA. CODE ANN. § 48-4-63(c); MICH. COMP. LAWS §124.755(3), (4).
- 31 See Chapter 6-3.

## CHAPTER 3: Creating Essential Powers for Land Banks



To accomplish its task of facilitating the transformation of vacant and abandoned properties, a land bank authority 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 for the land bank in its community. 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.<sup>1</sup> Unless there is considerable caution, however, such broad powers may reflect potentially inconsistent policy goals and risks creating 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. 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. A key issue related to such activities is how the land bank's activities are financed, including the extent to which it covers its operating costs by general budget allocations from the participating local governments or recovers its costs through its own operations or from prospective tax revenues. 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.

### 3-1 ACQUISITION, MANAGEMENT, AND DISPOSITION OF PROPERTY

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A land bank's primary functions are the acquisition, management, and disposition of vacant, abandoned, and tax-delinquent properties. The statutes and interlocal agreements that underlie a land bank's existence typically grant it a range of powers to enable its work.

#### Property Acquisition

Land banks use various approaches to acquire properties, which inevitably has a profound impact on the overall nature and extent of the operations of the five major land banks. The St. Louis Land Bank and the Louisville Land Bank automatically receive title to all properties that are not sold at tax foreclosures for the statutory minimum bid.<sup>2</sup> 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. The Cleveland Land Bank similarly receives title to all properties not sold at foreclosure for the minimum bid, but there is a prior stage at which the local government can preselect the properties to be conveyed to the Land Bank.<sup>3</sup> Each of these land banks receives between 100 and 1,000 parcels of property each year.

Michigan takes a different approach, authorizing land banks to receive, but not automatically be given, properties forfeited to the state as a result of tax foreclosure proceedings.<sup>4</sup> 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-forfeited properties that could otherwise be conveyed to a land bank.<sup>5</sup> The Genesee Land Bank receives 800 to 1,000 parcels of property each year.

In contrast to these other four 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.<sup>6</sup> The Atlanta Land Bank does have the authority to direct the tax commissioner to initiate tax foreclosure proceedings on specific parcels of property.<sup>7</sup>

Four of the five major land banks can receive title through tax foreclosures to any kind of property, whether vacant or improved, residential or commercial. The Cleveland Land Bank, however, is largely restricted to receiving title to land that either is unimproved or has structures against which the local government has commenced demolition proceedings.<sup>8</sup> It is 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."<sup>9</sup>

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 have 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.<sup>10</sup> The St. Louis Land Bank and Louisville Land Bank appear to have adequate authority to receive from the local governments title to properties other than as a result of tax foreclosures,<sup>11</sup> but they elect to focus on tax-foreclosed properties since they are required to receive them. The Atlanta Land Bank has authority to receive properties acquired by local governments as the result of drug law forfeitures.<sup>12</sup> In both Atlanta and Genesee County, land banks are expressly authorized to receive from the participating local governments any and all properties in addition to tax-foreclosed properties that the local governments may elect to convey.<sup>13</sup>

Second, a land bank should have the discretion to acquire properties through voluntary donations and transfers from private owners. For example, the Cleveland Land Bank 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 Land

Bank.<sup>14</sup> The Genesee 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 has 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 Authority.<sup>15</sup>

A third potential source of properties for a land bank, if it has the 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. The only major land bank at present that clearly possesses such a broad range of acquisition powers is the Genesee Land Bank,<sup>16</sup> although the Louisville Land Bank and Atlanta Land Bank have the power to exchange properties for purposes of land assembly by the land bank.<sup>17</sup>

### **Property Management**

Each of the five major land banks is required by law to maintain an inventory of their property holdings and classify them according to their potential uses.<sup>18</sup> Ownership of a large volume of properties poses significant challenges that reach

far beyond simply listing and classifying the property. The 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. The St. Louis Land Bank is given all powers “necessary and incidental to the effective management, sale, transfer or other disposition of real estate,”<sup>19</sup> and both the Louisville Land Bank and the Atlanta Land Bank are granted authority to “manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange or otherwise dispose of any property.”<sup>20</sup> The Michigan land bank legislation contains the most extensive enumeration of management powers and includes a provision that such powers are to be broadly construed to grant complete control to the land bank “as if it represented a private property owner.”<sup>21</sup>

Although it may be implicit in the governance authority for the land banks in St. Louis, Louisville, and Atlanta, Michigan law expressly confers upon the Genesee Land Bank the authority to establish fees and collect rents—a recognition that the Genesee Land Bank can acquire occupied properties or rehabilitate and lease its properties to third parties.<sup>22</sup> The Cleveland Land Bank is the only one of the five major land banks that does not exist as a separate legal entity. It is a program of the city of Cleveland; the city owns the property inventory and holds all local government powers with respect to the properties.

The evolution of land banks over the past 25 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. The Atlanta Land Bank can contract for “consulting services”<sup>23</sup> and the Genesee Land Bank has the power to enter into management contracts and professional service agreements as it deems necessary.<sup>24</sup>

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 clean-up costs when ownership of the property is considered to be an “involuntary acquisition.” To ensure that acquisitions by a land bank from local governments would fall within this safe harbor of protection, the Michigan land bank legislation affirmatively provides that governmental immunity for involuntary acquisitions extends to the properties of a land bank.<sup>25</sup>

### **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 in inner cities. 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.<sup>26</sup> Underlying the creation of pricing policies, however, is the threshold issue of whether preexisting 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 of the five major land banks has addressed this concern in a slightly different manner.

Both the St. Louis Land Bank and the Cleveland Land Bank have authority to determine the terms and conditions for the sale or other disposition of properties, but with the significant caveat that sales to private third parties must be at fair market value.<sup>27</sup> Created several years after the land banks

in St. Louis and Cleveland had been in operation, the Louisville Land Bank and the Atlanta Land Bank were given a far broader range of discretion. In both instances, the enabling state legislation expressly exempts the land banks from property disposition requirements otherwise applicable to local governments and delegates to the local governments the ability to establish disposition policies in the inter-local agreements.<sup>28</sup> The Genesee Land Bank has complete authority to establish the terms and conditions for transfers of its properties.<sup>29</sup>

## **3-2 FINANCING LAND BANK OPERATIONS**

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### **The Operating Budget**

The manner of financing the operations of a land bank varies tremendously, and the five major land banks demonstrate a broad range of options for meeting the costs associated with their work. For land banks that operate without their own employees and instead rely on the powers and staff of other local government agencies or departments—as in St. Louis, Cleveland, and Louisville—it is difficult to ascertain operating budgets solely for the staff and activities of the land bank because they are blended in the budgets of related departments, agencies, and authorities. The property, assets, and income of the land bank are considered in all jurisdictions to be publicly owned property, and thus exempt from property taxes.<sup>30</sup>

The Atlanta Land Bank initially was structured so as to be the responsibility of the agency staff of the participating local governments (the City of Atlanta and Fulton County), with responsibility alternating each year between the governments. A highly inefficient form of work sharing, the Atlanta Land Bank structure was amended in 1994 to provide for independent staff to be directly employed by the land bank. General operating budget support for the Atlanta Land Bank is provided through annual appropriations of the participating local governments (which draw upon Community Development Block Grant funding for the allocations),<sup>31</sup> and the Atlanta Land Bank derives little, if any, funding from its operational activities.

### **Revenues from Operations**

With the exception of the Atlanta Land Bank, the primary source of financing for the operations of land banks typically comes from either the

budgets of parallel local government agencies, or the management and disposition of properties. The land banks in St. Louis, Cleveland, and Louisville address questions of property maintenance and management in tandem with “sister” agencies in the participating local governments. In both St. Louis and Cleveland, housing trust funds are available to support activities related to the transformation of land bank properties into affordable housing.

When property is transferred by a land bank for more than nominal consideration, proceeds of the sale generally are available to the land bank to help recover its costs and support the land bank’s operations.<sup>32</sup> When a land bank is required to convey properties at fair market value, there can be a substantial flow of funds from the properties for sustaining the operational budget. The Atlanta Land Bank, in contrast, is required to distribute proceeds from sales back to the participating governments to cover the original tax delinquency, with any excess allocated for operational expenses.<sup>33</sup> The Atlanta Land Bank’s reliance on annual appropriations to cover its operating costs, together with its limited financial gain from property sales and transfers, reflects a policy decision that the activities of the Atlanta Land Bank should be focused on transferring property at nominal prices to facilitate development of properties in a manner most consistent with the land bank’s stated goals, such as the creation of affordable housing.

The Genesee Land Bank has the broadest discretion and authority with respect to its revenues. It is permitted to retain all income from all sources related to its property and operations, and is liable to its participating governments only in the event it receives funds as payments of property taxes.<sup>34</sup>

### **Special Funding**

There is debate as to whether the total operational costs of a land bank are consistent with the costs recovered by transforming properties.<sup>35</sup> Yet any cost-benefit analysis of a land bank needs to examine not just the hard costs of operations and taxes lost, but also the costs of leaving the land vacant and abandoned (the external costs imposed on surrounding properties as well as lost

taxes) and the long-term benefits from returning the land to productive tax-paying status. Recognizing the close connection between a land bank’s transformative work and future property tax revenues, the Michigan legislation provides that a land bank receives 50 percent of the property tax revenues for the first five years after transfer of property to a private party.<sup>36</sup> The Michigan land bank legislation also goes further than any prior parallel initiatives in permitting a land bank to borrow money and issue tax-exempt financing.<sup>37</sup>

### **3-3 THE QUESTION OF EMINENT DOMAIN**

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.<sup>38</sup> 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 United States Supreme Court in *Berman v. Parker*<sup>39</sup> 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*,<sup>40</sup> 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. As a consequence, the federal constitution would not be a barrier to a state grant of eminent domain power to a land bank. State constitutions, however, may be more limited than the federal constitution and may restrict the use of eminent domain to properties that are being acquired for “public use” in the more conventional forms of public facilities.<sup>41</sup>

Land banks as they have developed over the past 30 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,<sup>42</sup> 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. Although only one state statute—Michigan’s—expressly disclaims the power of eminent domain,<sup>43</sup> it is not in the enabling legislation of any other land bank, and 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.

### 3-4 WAIVER OF DELINQUENT TAXES

The Atlanta Land Bank has developed a unique approach among the five major land banks to facilitate the conversion of tax-delinquent properties to productive use. The core power utilized by the Atlanta Land Bank is its power “to extinguish all county and city or consolidated government

taxes” at the time the land bank sells or otherwise disposes of the property.<sup>44</sup> The Atlanta Land Bank uses this power to encourage private third parties to acquire tax-delinquent property from owners and then engage in a conduit transfer through which the property is conveyed to the Atlanta Land Bank, the taxes are extinguished, and the property is reconveyed back to the new owner.<sup>45</sup> The conduit transfer structure has several advantages. It allows the private market, whether nonprofit affordable housing developers or other entities, to identify and select specific properties that they are willing to redevelop. This provides some assurance that properties passing through the Land Bank will in fact be redeveloped within a specific period of time.<sup>46</sup>

The conduit transfer program of the Atlanta Land Bank has the advantage of not involving in any way the tax foreclosure process. It functionally uses the existence of the delinquent taxes as a subsidy to encourage private-market transfers.<sup>47</sup> Prospective owners of the vacant, abandoned, and tax-delinquent properties are in a position to acquire (by option agreement) the properties they seek without having to bid at foreclosure sales. Because the Atlanta Land Bank does not automatically receive title to all properties that are not sold at tax sales for minimum bids, it has a relatively small inventory of properties at any given time, and they consist primarily of other properties conveyed to it by the participating governments. Conduit transfers essentially are simultaneous transfers to the land bank, then from the land bank to the new owner, leaving the Atlanta Land Bank with no property management or maintenance responsibilities.

None of the other four major land banks has a conduit transfer program.<sup>48</sup> Both the Louisville Land Bank and the Cleveland Land Bank appear to have the authority to extinguish outstanding taxes on properties they acquire outside of the tax foreclosure process.<sup>49</sup> The Genesee Land Bank is not permitted to waive any existing taxes, but they can be waived by the applicable local governments.<sup>50</sup>

## NOTES TO CHAPTER 3

- 1 See Harvey L. Flechner, *LAND BANKING IN THE CONTROL OF URBAN DEVELOPMENT* 10 (1974) (identifies 12 separate functions for land banking); Charles M. Haar, *Wanted: Two Federal Levers for Urban Land Use – Land Banks and Urbank*, U. S. Congress, House Committee on Banking and Currency, Papers submitted to Subcommittee on Housing panels on Housing Production, Housing Demand, and Developing a Suitable Living Environment, 927, 934–936 (June 1971) (identifies five broad functions for a land bank).
- 2 MO. REV. ST. § 92.830; KEN. REV. STAT. ANN. § 65.375(1).
- 3 OHIO REV. CODE ANN. § 5722.04.
- 4 MICH. COMP. LAWS § 124.755(3)(b).
- 5 MICH. COMP. LAWS § 124.755(6).
- 6 GA. CODE ANN. § 48-4-64(a).
- 7 Atlanta Land Bank Interlocal Agreement, VII.B. See Appendix C-1.
- 8 OHIO REV. CODE ANN. § 5722.01(E).
- 9 OHIO REV. CODE ANN. § 5722.01(E)(2).
- 10 See generally, Frank S. Alexander, *Renewing Public Assets for Community Development* (2000).
- 11 MO. REV. ST. § 92.875(1); KEN. REV. STAT. ANN. § 65.370(1).
- 12 GA. CODE ANN. § 48-4-61(b), § 16-13-49(u)(2.1).
- 13 Atlanta Land Bank Interlocal Agreement IV.B., see Appendix C-1.; MICH. COMP. LAWS § 124.755(4).
- 14 OHIO REV. CODE ANN. § 5722.10; Atlanta Land Bank Interlocal Agreement IX.A.4., see Appendix C-1.; MICH. COMP. LAWS § 124.756(3).
- 15 Genesee Land Bank Policies and Procedures, see Appendix D-3.
- 16 MICH. COMP. LAWS § 124.755(1), (2).
- 17 Ken. Rev. Stat. Ann. § 65.370(2)(d); Ga. Code Ann. § 48-4-63(b)(4). Though the legislation is not entirely clear, the St. Louis Land Bank also may have the authority to acquire land on the open market. Mo. Rev. St. § 92.900(4).
- 18 See GA. CODE ANN. § 48-4-63(b); KEN. REV. STAT. ANN. § 65.370(2); MICH. COMP. LAWS § 124.757(2); MO. REV. ST. §§ 92.900(1), 92.910; OHIO REV. CODE ANN. § 5722.06(B), (C).
- 19 MO. REV. ST. § 92.875(1).
- 20 KEN. REV. STAT. ANN. § 65.370(2)(d); Atlanta Land Bank Interlocal Agreement VI.C.4., see Appendix C-1.
- 21 MICH. COMP. LAWS §§ 124.764(1).
- 22 MICH. COMP. LAWS § 124.756(1)(b).
- 23 Atlanta Land Bank Interlocal Agreement, VII.C. See Appendix C-1.
- 24 MICH. COMP. LAWS § 124.754(1).
- 25 MICH. COMP. LAWS § 124.765(4).
- 26 This issue is the focus of Chapter 6-3.
- 27 MO. REV. ST. § 92.900(1), (4); OHIO REV. CODE ANN. §§ 5772.06(D), 5722.07.
- 28 GA. CODE ANN. § 48-4-63(c); Atlanta Land Bank Interlocal Agreement VI.C.4., see Appendix C-1; KEN. REV. STAT. ANN. § 65.370(7); Louisville Land Bank Interlocal Agreement, V., see Appendix C-2.
- 29 MICH. COMP. LAWS § 124,757(1).
- 30 The basis for the exemption is usually found in the nature of the land bank as a public entity. See, e.g., GA. CODE ANN. § 48-4-61(b); KEN. REV. STAT. ANN. § 65.355(2); MICH. COMP. LAWS § 124.754(5); MO. REV. ST. § 92.875(1).
- 31 Atlanta Land Bank Interlocal Agreement, VIII.A. See Appendix C-1.
- 32 See Mo. Rev. St. § 92.915(2) (sales proceeds applied to payment of expenses); OHIO REV. CODE ANN. § 5722.08 (sales proceeds applied first to reimbursement of expenses).
- 33 Atlanta Land Bank Interlocal Agreement, IX.D. See Appendix C-1.
- 34 MICH. COMP. LAWS § 124.758.
- 35 Robert Simons and Dean Thomas Hall, *Strategies for More Efficient Utilization of Non-Productive Land* (1993).
- 36 2003 Public Acts 260, 261, MICH. COMP. LAWS § 211.7gg, § 211.1021.
- 37 MICH. COMP. LAWS § 124.774.
- 38 See William L. Letwin, *MUNICIPAL LAND BANKS: LAND-RESERVE POLICY FOR URBAN DEVELOPMENT* 207 (1969) (“It goes almost without saying that land banks require the power of eminent domain.”); Harvey L. Flechner, *LAND BANKING IN THE CONTROL OF URBAN DEVELOPMENT* 33 (1974) (“It is generally felt that the power of eminent domain is necessary for an effective land banking program.”). See also Fred P. Bosselman, *ALTERNATIVES TO URBAN SPRAWL: LEGAL GUIDELINES FOR GOVERNMENTAL ACTION* (1968) (summarizes the range of legal issues concerning eminent domain in land assemblage).
- 39 348 U.S. 26 (1954).
- 40 467 U.S. 229 (1984). The breadth of this position may be reexamined by the United State Supreme Court in *Kelo v. City of New London*, 843 A.2d 500 (Conn. 2004) cert. granted, 125 S. Ct. 27 (2004).
- 41 *Wayne v. Hathcock*, 471 Mich. 445, 684 N.W.2d 765 (2004).
- 42 See Chapter 4-2.
- 43 MICH. COMP. LAWS § 124.754(8).
- 44 GA. CODE ANN. § 48-4-64(c).
- 45 See Larry Keating and David Sjoquist, *The Fulton County/City of Atlanta Land Bank Authority: Program Overview and Application* (2001); Lisa Mueller, *Atlanta Case Study: Model Practices in Tax Foreclosure and Property Disposition* (2003).
- 46 The Atlanta Land Bank requires both advance consent by its Board of Directors, and execution of contractual commitments by the new owner. See Chapter 6-4. The Atlanta Land Bank also has a “Net Equity” policy that limits the purchase price to be paid by the new owner to the former owner of the tax-delinquent property to avoid subsidizing the former owner’s irresponsible behavior. See Appendix D-1.
- 47 Larry Keating and David Sjoquist, *Strengthening a Valuable Resource: The Fulton County/City of Atlanta Land Bank Authority* (2001).
- 48 The Dallas, Texas Land Transfer Program does contemplate a similar form of a conduit transfer program in which the city agrees to release all non-tax liens in exchange for a commitment to develop affordable housing. Dallas, TX, Ordinance No. 23713, §2-26.10(b)(3) (1998).
- 49 KEN. REV. STAT. ANN. § 65.375(2); OHIO REV. CODE ANN. § 5722.10.
- 50 MICH. COMP. LAWS § 124.756(4).

# CHAPTER 4: Identifying the 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 sociodemographic and economic conditions, and no two communities have the same culture of local government administrative efficiency. A land bank's operating policies need to be guided by the planning goals of the city or cities that create and utilize this tool for community development.

## 4-1 IDENTIFYING CRITICAL POLICY GOALS

### Balancing Multiple 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. "The Land Bank should first answer the basic questions of 'What are we?' and 'Whom are we attempting to serve?'"<sup>1</sup>

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 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 being caused by vacant, abandoned, and tax-delinquent 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, and 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.

Eliminating barriers to returning properties to productive use requires not just an awareness of the inventory in the community, and in the land bank itself, but also a thorough knowledge of the condition of the property and the status of its title. The land bank must have clear authority to convey the properties to third parties subject only to priorities for use established by the participating governments. When the property is acquired through constitutionally adequate tax foreclosure procedures, the title should be clear and insurable. If the property was acquired by the local government through other procedures, a quiet title action may be necessary.

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 (both the nonprofit and for-profit sectors) 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 greater the number of consents or levels of approval that

are required, the more cumbersome and counterproductive the process becomes.

One of the most important functions of a land bank, but also one that tends to be the least well conceptualized, is holding ownership of 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 substantial 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 for the land bank to withhold the property from transfer despite requests for conveyance to one or more prospective owners.

In establishing one or more of these 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.<sup>2</sup> 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 (parks, 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.<sup>3</sup> 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.<sup>4</sup> 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 with derelict structures is acquired by a land bank and converted into use

## BALANCING MULTIPLE GOALS

Provide Affordable Housing  
Eliminate Blight  
Create Homeownership

Maximize Revenues  
Create Green Space  
Enforce Housing Codes



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 (and their tax-generating status). The recently enacted Michigan legislation which provides for a land bank to recover fifty percent of all property tax revenues for the five year period following transfer of the property to a private owner is a legislative affirmation that the short-term costs of land bank operations are outweighed by the tax revenue stream that will be generated over the long term.<sup>5</sup>

The pressure on land banks to maximize revenues also is 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.<sup>6</sup> 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 for the property. The identical issue arises in determining whether a land bank's conveyances should recover some or a portion of its operational costs. Funding a land bank's operations by general revenues of a local government or future tax revenues generated by the transferred properties minimizes the pressure to establish high pricing thresholds and maximizes flexibility to use the property and its value as investment incentives or subsidies for particular uses.

Converting abandoned properties into productive use requires clarity of focus not only on what constitutes "productive use" but also on who makes this decision and how the determination is made. The most cost-efficient form of transfers involves 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. Participation by neighborhood organizations and the local government planning and development departments is a vital aspect of the public nature of a land bank, but excessive time periods for study, evaluation, planning, and approval can paralyze the acquisition and disposition process.

### **The Importance of Maintaining Flexibility**

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 could be transitional and on the edge of either further deterioration or transformation to stability. A land bank's goals and operational policies need to incorporate flexibility 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.<sup>7</sup> 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 powers of land banks. 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.

## **4-2 BUILDING UPON KEY PUBLIC POLICIES**

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### **Targeting Properties**

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 far 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.<sup>8</sup> 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:

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 (usually an abandoned structure), the greater is 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 (whether for the land bank, the occupants, or a future owner).

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.<sup>9</sup>

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 (whether by private profit entities or not-for-profit developments) will require far more intense efforts by the land bank to identify potential partners for future collaboration and development.

The last two categories address the range of potential future uses of the property.<sup>10</sup> 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 for any future development.<sup>11</sup> 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.<sup>12</sup>

### **Assemblage Priorities**

As a major urban 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 and contiguous 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. The Genesee Land Bank clearly possesses adequate authority to purchase additional properties for land assembly purposes,<sup>13</sup> and both the Louisville Land Bank and the Atlanta Land Bank have the power to exchange properties for such purposes.<sup>14</sup>

As contemporary land banks do not possess the power of eminent domain,<sup>15</sup> 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 specific function governmental entity that specializes in such activities.

### **Disposition Priorities**

Disposition policies are structured according to both the property’s future owners and future use. It is common practice for land banks to give priority to property dispositions to local governments or other public agencies seeking to acquire the property. Public agencies in Missouri have the right to acquire properties

classified by the land bank as “suitable for public use,”<sup>16</sup> and this is a permitted use, though not a priority use, for the Atlanta Land Bank.<sup>17</sup> The Louisville Land Bank is required to give advance notice to all public housing authorities of anticipated property transfers.<sup>18</sup> In Michigan, local governments have a right of first refusal to acquire tax-reverted property prior to conveyance to the land bank.<sup>19</sup>

Pursuant to its interlocal agreement, the Atlanta Land Bank gives first priority to “neighborhood non-profit 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.<sup>20</sup> On a regular basis the Atlanta Land Bank establishes applicable definitions of “low-income” and “moderate income” to guide its preference for affordable housing.<sup>21</sup> The top priority for the Louisville Land Bank is the transfer of properties for residential use,<sup>22</sup> and the Cleveland Land Bank gives priority “to those proposals which involve new construction or are necessary for an established development to be retained and expanded.”<sup>23</sup> The Genesee Land Bank has established the following priorities to govern its disposition of properties:<sup>24</sup>

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
6. Funding for the land bank’s operations

## **4-3 CREATING PARTNERSHIPS TO IMPLEMENT POLICY GOALS**

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### **Development Capacity**

Creating a land bank authority 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 non-profit organizations such as community development corporations (CDCs), neighborhood associations, environmental and conservation groups, or special-purpose governmental entities such as school districts, hospitals, and community centers. In neighborhoods with a marginal degree of economic strength, transferees may be partnerships of for-profit and nonprofit entities. The critical issue for a land bank authority is to assess and evaluate the strength of future development capacity in the not-for-profit and profit sectors for the properties that are held by, or will be acquired by the land bank authority. If development capacity is inadequate, the land bank authority must either hold and manage properties as its own inventory, or seek ways to enhance the development capacities of potential transferees.

In some urban areas, local CDCs not only have been the primary transferees of land bank properties, but they also were the primary stimulus for the creation of the land banks. In Cleveland, six CDCs with a focus on housing created the Cleveland Housing Network (CHN), which has become one of the largest nonprofit producers of affordable housing in the country.<sup>25</sup> With vital support from the Enterprise Foundation and the Local Initiatives Support Corporation, CHN is the largest single recipient of properties from the Cleveland Land Bank, which transfers an average of 500 properties each year to new owners.<sup>26</sup> Partially because of its city's less extensive and less experienced network of CDCs, the Atlanta Land Bank transfers an average of 100 parcels per year for redevelopment.<sup>27</sup> In both Louisville and Atlanta, the Habitat for Humanity affiliates have been primary recipients of properties processed by the land banks.<sup>28</sup>

### **Public–Private Joint Ventures**

Serving as a developer of housing or mixed-used developments is not the only role performed by CDCs in conjunction with land banks.

To the extent that they are grounded by law, by leadership, or by vision in a specific geographical area, CDCs also reflect the residents' priorities and purposes for land transformation.<sup>29</sup> By and through CDCs, the existing residents identify the properties causing the most significant harms to the community, the vision for how the properties could be used in the future, and who will be served by the redevelopment.<sup>30</sup> CDCs and other forms of neighborhood organizations also play key roles in the formation of new entities willing to undertake redevelopment activities. A CDC may have solid grounding in the neighborhood but lack adequate expertise and experience for a complex real estate development; a private developer may possess the expertise but lack an understanding of the neighborhood's vision and priorities. A joint venture between a neighborhood-based CDC and a private developer provides the necessary combination of skills and expertise to take advantage of properties made available through a land bank.<sup>31</sup>

## **4-4 STRATEGIC BANKING OF PROPERTIES**

### **Lack of Demand**

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.<sup>32</sup> 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 cost 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 areas of both large and small communities that would become vacant and abandoned in the last quarter of the 20th century. Land banks created to facilitate the ownership transfer and redevelopment of these properties have become, though not necessarily by design, 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. In its first two years of operation (2002–2003), the Genesee Land Bank became the owner of 2,000 parcels of property. In 2002, the St. Louis Land Bank and its sister agencies had almost 10,000 parcels in their inventory, including 2,000 buildings, amounting to roughly 3 percent of the city’s total land area and 7 percent of all parcels of land in the city.<sup>33</sup> The Cleveland Land Bank’s inventory ranges from 4,000 to 6,000 parcels.<sup>34</sup> The St. Louis Land Bank transfers approximately 500 parcels each year,<sup>35</sup> and the Cleveland Land Bank transfers between 500 and 1,300 parcels per year.<sup>36</sup> Both the Atlanta Land Bank<sup>37</sup> and the Louisville Land Bank<sup>38</sup> average 100 to 150 dispositions each year.

If the primary function of a land bank is to facilitate the transformation of vacant, abandoned, and tax-delinquent 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 of a land bank. At least one jurisdiction, Cleveland, adopts this perspective as a matter of law, requiring that all properties be conveyed from the land bank program within 15 years.<sup>39</sup>

### **Anticipating Future Uses**

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, as is the case when municipal population has declined significantly, there simply 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 and the Genesee Land Bank necessarily become lead actors in community and land use planning. Their efforts and emphasis inevitably require 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 a demand emerges 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 and as 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 (educational, health care) or industry.<sup>40</sup> The Genesee Land Bank has adopted a policy expressly contemplating the transfer of ownership by nonprofit entities to the land bank to be held pending future development.<sup>41</sup>

### **4-5 THE UNINTENDED CONSEQUENCES OF SUCCESS**

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Although it is rarely part of a land bank’s day-to-day focus, its policies and priorities 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 (and assuming performance by the transferee of its commitments) 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. The initial success

itself 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. An original goal of creating new uses that generate new tax revenues is likely to come into direct conflict with a goal of providing affordable housing simply because higher value properties generate greater tax revenues.

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.<sup>42</sup> 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.<sup>43</sup>

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.

## NOTES TO CHAPTER 4

- 1 Carol Van Alstyne, ed., *LAND BANK HANDBOOK: ADVANCE ACQUISITION OF SITES FOR LOW AND MODERATE INCOME HOUSING*, A-5 (1972).
- 2 These points are developed in greater detail in Chapter 4-2.
- 3 See Harvey L. Flechner, *LAND BANKING IN THE CONTROL OF URBAN DEVELOPMENT* 15–17 (1974).
- 4 See Larry Keating and David Sjoquist, *Strengthening a Valuable Resource: The Fulton County/City of Atlanta Land Bank Authority* 33–35 (2001).
- 5 See Chapter 3-2.
- 6 See Chapter 6-3.
- 7 See Chapter 5.
- 8 An example of an “index” of neighborhood conditions that can guide a land banks priorities and policies is The Urban Center, *Abandonment of Cleveland’s Housing Stock and Potential for Redevelopment of Vacant Land*, 65–74, Maxine Goodman Levin College of Urban Affairs, Cleveland State University (1990).
- 9 The Atlanta Land Bank, shortly after its creation, identified 13 targeted neighborhoods as its priority projects, and from among them chose to focus first on “Olympic venue” neighborhoods. FULTON COUNTY/CITY OF ATLANTA LAND BANK AUTHORITY, INFORMATION BOOKLET 5 (March 29, 1994).
- 10 The Cleveland Land Bank classifies all properties according to whether they are buildable or nonbuildable. See Norman Krumholz, *Land Banking and Neighborhood Revitalization in Cleveland*, 3-4 PLANNER’S CASEBOOK, AMERICAN INSTITUTE OF CERTIFIED PLANNERS (2002).
- 11 The St. Louis Land Bank is required to classify all properties as “(a) suitable for private use, (b) suitable for use by a public agency, and (3) not usable in its present condition and held as a public land reserve.” Mo. REV. ST. § 92.900(2).
- 12 See Chapter 6-1.
- 13 MICH. COMP. LAWS § 124.755(1), (2).
- 14 KEN. REV. STAT. ANN. § 65.370(2)(d); GA. CODE ANN. § 48-4-63(b)(4). Though the legislation is not entirely clear, the St. Louis Land Bank also may possess the authority to acquire land on the open market. Mo. REV. ST. § 92.900(4).
- 15 See Chapter 3-3, *supra*.
- 16 Mo. REV. ST. § 92.900(3).
- 17 Appendix C-1, Atlanta Land Bank Interlocal Agreement, IX.B.2.
- 18 KEN. REV. STAT. ANN. § 65.365(1). The statute does not require, however, that the Louisville Land Bank convey the properties to housing authorities upon request.
- 19 MICH. COMP. LAWS § 124.755(6).
- 20 Appendix C-1, Atlanta Land Bank Interlocal Agreement, IX.B.1. The Dallas Land Transfer Program was similarly created to permit the “transfer of tax-foreclosed, seized and surplus properties to an entity or land bank for the purpose of creating or preserving affordable housing.” Resolution of the City Council, City of Dallas, Resolution 971504 (approved May 14, 1997).
- 21 Appendix C-1, Atlanta Land Bank Interlocal Agreement, VI.D.
- 22 Louisville and Jefferson County Landbank Authority, Inc., *Marketing and Sales Policies for Taxable Developments* (2002).
- 23 City of Cleveland Land Bank Disposition Policy, *Gift in Lieu of Foreclosure Procedure* (October 1992).
- 24 Appendix D-3, Genesee Land Bank, Inc., PRIORITIES, POLICIES AND PROCEDURES (September, 2002).
- 25 Norman Krumholz, *The Provision of Affordable Housing in Cleveland: Patterns of Organizational and Financial Support*, in DEVELOPING SUCCESS STORIES 56–72; Christina Rosan, *Cleveland’s Land Bank: Catalyzing a Renaissance in Affordable Housing*, 3 HOUSING FACTS & FINDINGS, Issue 1 (2001).
- 26 Krumholz, *supra* note 10.
- 27 Larry Keating and David Sjoquist, *Bottom Fishing: Emergent Policy Regarding Tax Delinquent Properties*, 3 HOUSING FACTS & FINDINGS, Issue 1 (2001).
- 28 See, e.g., City of Louisville, *City Development Newsletter* 1:3 (Winter 2000).
- 29 Peer W. Salsich, Jr., *Nonprofit Housing Organizations*, 4 NOTRE DAME J. OF LAW, ETHICS & PUB. POL’Y 227 (1989).
- 30 Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REF. 689 (1994); Peter W. Salsich, Jr., *Evolving Voices in Land Use Law: Neighborhoods: Grassroots Consensus Building and Collaborative Planning*, 3 WASH. U. J.L. & POL’Y 709 (2000).
- 31 The role of community development corporations, as a bridge between the public and private sectors, lies at the heart of the ongoing debate about the life cycle of neighborhoods. See 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); George C. Galster, *Comment on John T. Metzger’s “Planned Abandonment: The Neighborhood Life-Cycle Theory and National Urban Policy,”* 11 HOUSING POLICY DEBATE 61 (2000).
- 32 William L. Letwin, *MUNICIPAL LAND BANKS: LAND-RESERVE POLICY FOR URBAN DEVELOPMENT* (1969); Fred P. Bosselman, *ALTERNATIVES TO URBAN SPRAWL: LEGAL GUIDELINES FOR GOVERNMENTAL ACTION* 44–45 (1968).

- 33 St. Louis Development Corporation, *SLDC Real Estate Fact Sheet, LRA/LCRA/PIEA* (March 5, 2003).
- 34 *The Philadelphia Inquirer, Cleveland Revives Blighted Neighborhoods by Easing Bureaucracy on Vacant Land* (December 3, 2001); Keri Blackwell, *Cleveland Case Study: Model Practices in Tax Foreclosure and Property Disposition* (2003).
- 35 St. Louis Development Corporation, *SLDC Real Estate Fact Sheet, LRA/LCRA/PIEA* (March 5, 2003).
- 36 Krumholz, *supra* note 10; *The Philadelphia Inquirer, Cleveland Revives Blighted Neighborhoods by Easing Bureaucracy on Vacant Land* (December 3, 2001); Larry Keating and David Sjoquist, *Bottom Fishing: Emergent Policy Regarding Tax Delinquent Properties*, 3 HOUSING FACTS & FINDINGS, Issue 1 (2001).
- 37 Keating, *supra* note 27.
- 38 Darla Carter, *Abandoned Lots Get New Life: City Halts Sales to Catch its Breath*, *The Courier-Journal* (June 26, 2001).
- 39 OHIO REV. CODE ANN. § 5722.13.
- 40 See Keating, *supra* note 4 at 48-49.
- 41 Appendix D-3, *Genesee Land Bank Policies and Procedures*, 8.
- 42 Lynn E. Cunningham, *Islands of Affordability in a Sea of Gentrification: Lessons Learned from the D.C. Housing Authority's Hope VI Projects*, 10 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 353 (2001).
- 43 Frank S. Alexander and Larry Keating, *A City for All: Report of the Gentrification Task Force*, City Council, City of Atlanta (2001).

# CHAPTER 5: Forming the Governance of Land Banks

## 5-1 MODELS OF INTERGOVERNMENTAL COOPERATION

### The Variety of Approaches

The governance structure of a land bank reflects three important variables that are different for every city. First is the nature of the allocation of authority between the state government and the local governments. Second is the presence of multiple local governments with overlapping jurisdiction. Third is the set of socioeconomic conditions in the particular community.

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.<sup>1</sup> The Genesee Land Bank was actually created prior to the enactment of statewide land bank legislation and grounded upon preexisting statutes authorizing interlocal cooperation agreements.<sup>2</sup> Following the enactment of state land bank legislation,<sup>3</sup> a new intergovernmental agreement was entered into by Genesee County and the State, transforming the prior entity into the Genesee Land Bank.

In most jurisdictions, property tax assessment and collection are undertaken by one level of local government, usually the county, while municipalities have concurrent or exclusive jurisdiction over property within the municipal limits. Other governmental agencies, such as school boards, also may have the power to levy property taxes. Given the multiplicity of jurisdictions with some degree of control over, and responsibility for vacant, abandoned, and tax-delinquent properties, some form of intergovernmental agreement is necessary to confer upon a land bank the appropriate range of powers and identify its essential goals. Only if a single municipality is legally autonomous from

the county, such as St. Louis, is an intergovernmental agreement unnecessary.

Even within a given state, the structure of land banks may take different forms depending on existing municipal agencies and departments. In Georgia, for example, state law permits creation of land bank authorities pursuant to an interlocal agreement, but the legislation gives discretion to the local governments to determine the budgeting and staffing structure for the land bank. As a consequence, the Atlanta Land Bank has its own independent staff while a parallel land bank in Macon, Georgia has no independent staff, relying instead on the staff of the housing department for its services.

Local economic and cultural conditions also play a significant role in determining the structure of a land bank in a particular city. In a community with a strong base of community development corporations with capacity for residential or mixed-use development, the land bank's efforts can be focused on 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 contracted services.

### The Key Factors

The single most important factor in the governance structure of a land bank is clarity of its functions and goals.<sup>4</sup> The underlying authorization—whether state statute, local ordinance, or interlocal 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, the purpose of a land bank is largely undercut. Such approval requirements will either increase substantially the length of time required for a disposition, 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 the program.<sup>5</sup>

In 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 among these public officials, as is true for the Genesee Land Bank and the Cleveland Land Bank, facilitates both earlier identification of properties and more efficient mechanisms for property management and disposition. In the absence of collaboration and cooperation, characterized by the Atlanta Land Bank, the program's effectiveness can be impaired. If a local school board has independent authority to levy property taxes, it must participate in decisions about tax foreclosures and the tax-exempt nature of land bank properties. The presence of other parallel local government agencies, such as housing authorities and redevelopment agencies, is not necessarily inconsistent with the purpose and function of a land bank. Instead, as is the case with the St. Louis Development Corporation, a land bank can serve as 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 transforma-

tion of vacant, abandoned, and tax-delinquent properties to productive use, but each new use for the property necessarily involves major policy decisions and has a major 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. To the extent, however, that a land bank is an independent public legal corporation receiving ownership of large numbers of properties, a method and process must be created to provide for neighborhood and public participation in the proposed uses of the property. The Atlanta Land Bank accomplishes this by requiring comments from Neighborhood Planning Units, which are politically established planning units, on proposed dispositions of property.<sup>6</sup> 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 of the political accountability of the land bank and its decisions.<sup>7</sup>

## 5-2 FORMS OF LEGAL AND ORGANIZATIONAL STRUCTURE

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### **The Corporate Structure**

A land bank's formal legal structure is primarily determined by the allocation of powers and authority between the state and its local governments. Four of the five major land banks—St. Louis, Louisville, Atlanta, and Genesee—exist as independent public legal entities. The St. Louis Land Bank is an independent authority authorized by statute.<sup>8</sup> The Louisville Land Bank<sup>9</sup> and the Atlanta Land Bank<sup>10</sup> are authorities authorized by state statute but created pursuant to an interlocal agreement. In Michigan the land banks are created pursuant to an intergovernmental agreement between the local government and the state land bank authority.<sup>11</sup> The Atlanta, Louisville, and Genesee Land Banks each have their own articles of incorporation and bylaws.<sup>12</sup> The Cleveland Land Bank operates as a city program authorized by state statute, rather than a legal entity independent of the city.<sup>13</sup>

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. As a separate legal corporation, it must have its own board of commissioners or directors, but these may consist of or be appointed by local government officials. Unless it is a separate land reutilization program expressly authorized by state statute as in the case of Cleveland, 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. A land bank's essential powers<sup>14</sup> for property management and disposition, financing, and waiver of delinquent taxes need to be specifically authorized by law for the independent corporation or city program.

### **Staffing Land Bank Operations**

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. The interlocal agreement establishing the Louisville Land Bank provided that it would not have any employees and that all work would be done by the staff of other local government departments.<sup>15</sup> As the Cleveland Land Bank is a program and not a separate legal entity, its staff are employees of the city of Cleveland.

Upon its creation, the Atlanta Land Bank had no direct employees and instead relied on services being provided (in alternating years) by the City of Atlanta and by Fulton County. The arrangement's inefficiencies led to a decision within a few years to amend the interlocal agreement to provide for direct employment of staff.

The St. Louis Land Bank is expressly authorized to hire its own director and employees.<sup>16</sup> Because it is closely affiliated through the St. Louis Development Corporation, an umbrella organization, with six parallel development agencies, the collective staff members for the agencies are allocated by function rather than by corporate identity.<sup>17</sup>

The Genesee Land Bank is authorized by statute to "employ legal and technical experts, other officers, agents or employees, permanent or temporary, paid from funds of the authority."<sup>18</sup> Each of the five major land bank authorities also must adopt a code of ethics for directors, officers, and employees.<sup>19</sup>

### **5-3 CREATING A GOVERNING BOARD**

A land bank that is a separate legal entity is by law governed by its own board of directors or board of commissioners. For each of the four major land banks where this is the case, members of the governing board may be either private citizens or employees of one of the local governments, and in all cases they serve without compensation. The St. Louis Land Bank's board is composed of three commissioners, appointed by the mayor, the comptroller, and the superintendent of the public schools.<sup>20</sup> In Louisville, each participating local government appoints one member of the authority, the local school district appoints one member, and the governor has one appointment.<sup>21</sup> A similar approach is taken in Georgia, where participating local governments each appoint two members. Under the Georgia structure, a land bank authority may consist of two or more municipalities in a county, together with the county in which they are located, so the size of the board is limited only by the number of parties to the interlocal agreement.<sup>22</sup> For the Atlanta Land Bank, the city and county school districts may appoint a representative to the board to serve in an advisory capacity.<sup>23</sup> Local land banks in Michigan specify the size, composition, and method of appointment of board members in the intergovernmental agreement, with the statute requiring only that the board consist of an odd number of members and that the county treasurer be one of them.<sup>24</sup>

A common requirement is that board members be residents of the local jurisdictions served. The Atlanta Land Bank goes further, requiring that "[a]ll members appointed to the Board shall be persons who have demonstrated special interest, experience, or education in urban planning, real estate, community development, finance or related areas."<sup>25</sup> 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.

#### 5-4 SELECTING PUBLIC AND PRIVATE ROLES

Land banks are unusual entities in that they occupy a special role in the public sector but one that is 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 be able to obtain by contract) 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. If the land bank is operating as a component of public redevelopment agencies—the approach of the St. Louis Development Corporation—such a staff may be possible. Most land banks, however, operate with fewer 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 forms of local government departments have been inadequate to address these needs, land banks can be an invaluable tool for community redevelopment.

## NOTES TO CHAPTER 5

- 1 See Appendix B for applicable state legislation in Georgia, Kentucky, Michigan, Missouri, and Ohio.
- 2 MICH. COMP. LAWS § 124.501. An interlocal agreement was entered into as of August 29, 2002 between Genesee County, Michigan and the Charter Township of Flint, Michigan, creating the Genesee County Land Reutilization Council, Inc.
- 3 MICH. COMP. LAWS § 124.751.
- 4 See Chapter 4-1.
- 5 See Chapter 4-2.
- 6 See Appendix D-1.
- 7 See Sylvan Kamm, LAND BANKING: PUBLIC POLICY ALTERNATIVES AND DILEMMAS 25 (1970) (“The two basic purposes of land banking—the ordering of development and the control of prices—would appear to involve very significant determinations of public welfare which should be subject to a system of political responsibility.”).
- 8 MO. REV. ST. § 92.875.
- 9 KEN. REV. STAT. ANN. § 65.355(1). Louisville Land Bank Interlocal Agreement, I. See Appendix C-2.
- 10 GA. CODE ANN. § 48-4-61(a). Atlanta Land Bank Interlocal Agreement, I. See Appendix C-1.
- 11 MICH. COMP. LAWS § 124.773(4).
- 12 Atlanta Land Bank Interlocal Agreement, III.A., see Appendix C-1; Louisville Land Bank Interlocal Agreement, II, see Appendix C-2; Genesee Land Bank Interlocal Agreement, § 3.02, see Appendix C-3.
- 13 OHIO REV. CODE ANN. § 5722.02.
- 14 See Chapter 3.
- 15 Louisville Land Bank Interlocal Agreement, IV., see Appendix C-2.
- 16 MO. REV. ST. § 92.905.
- 17 See <http://stlouis.missouri.org/sldc>.
- 18 MICH. COMP. LAWS § 124.754(1)(h).
- 19 MICH. COMP. LAWS § 124.754(9).
- 20 MO. REV. ST. § 92.885.
- 21 KEN. REV. STAT. ANN. § 65.360(1).
- 22 GA. CODE ANN. § 48-4-62(a).
- 23 Atlanta Land Bank Interlocal Agreement, V.A.1.a., see Appendix C-1.
- 24 MICH. COMP. LAWS § 124.774(4), (5).
- 25 Atlanta Land Bank Interlocal Agreement, V.A.3., see Appendix C-1.

# CHAPTER 6: Determining Administrative Policies

## 6-1 ESTABLISHING PROPERTY ELIGIBILITY

### Setting Categories of Properties for Disposition

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.<sup>1</sup> Once a land bank has classified and evaluated its inventory,<sup>2</sup> the focus turns to property disposition.

For some land banks, the primary goal is simply to return the property to private ownership that will be responsible in future years for payment of property taxes and for maintaining 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. The Louisville Land Bank follows a broad standard of evaluating potential uses based on a determination of the highest and best use of property for the city.<sup>3</sup> Other jurisdictions, in contrast, have established preferred future uses of property that reflect the community's specific needs.

The Atlanta Land Bank is required to give first priority for use of its properties to the development of affordable housing.<sup>4</sup> It regularly adopts definitions for income eligibility as the operating guideline for what constitutes affordable housing.<sup>5</sup> A second priority is given to proposed use of the property for “community improvement or other public purposes.”<sup>6</sup> Such uses include community gardens, playgrounds, and parking for schools and cultural centers. To qualify for this second priority use, the transferee must demonstrate that no alternative tax generating use is available and that the proposed use is consistent with area redevelopment plans.<sup>7</sup>

Both because it is the most recent land bank created, and thus was able to build on the expe-

riences of the other cities, and because of the sheer magnitude of the number of its properties, the Genesee Land Bank has adopted three different categories for evaluating proposed dispositions of property: (1) priorities for the use of the property, (2) priorities as to the nature of the transferee, and (3) priorities concerning neighborhood and community development.<sup>8</sup> The highest priority ranking of use begins with homeownership and affordable housing, followed by neighborhood revitalization 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.

### Using Side-Lot Programs

Many properties acquired by land banks once contained a single-family residence that has been abandoned and demolished. The lot size of such parcels commonly is no longer adequate to comply with current zoning, and there is thus no ready market for future development. Recognizing the nonconforming lot size and in a desire to stabilize and strengthen the investment of property owners who continue to occupy the neighborhood, several land banks have created side-lot programs.

In Cleveland, the program applies to lots that have less than 40 feet of street frontage,<sup>9</sup> and in St. Louis, it applies to lots with up to 25 feet of street frontage.<sup>10</sup> Reflecting the absence of market demand for such properties, the land banks in Cleveland, Genesee, and St. Louis transfer them for nominal or reduced consideration. Cleveland charges \$1.00 for properties in its side-lot program, and the Genesee Land Bank charges “nominal” consideration. The St. Louis Land Bank sets the price for properties in its

side-lot program as one-quarter of the standard value per square foot.<sup>11</sup>

Both the Genesee Land Bank and the St. Louis Land Bank require that properties in their side-lot programs be vacant and unimproved and that they be conveyed only to an adjoining property owner who occupies residential property next door. The Genesee Land Bank requires that there be a significant (75 percent) common boundary line to qualify as an “adjoining” owner and further requires that the transferee of the parcel consolidate it with its existing land and not subdivide further for a five-year period. This provision ensures that the new owner has incentive to pay the property taxes on its newly acquired land and doesn’t acquire the parcel solely to speculate in resale in a short period of time.

## 6-2 IDENTIFYING ELIGIBLE PROPERTY OWNERS

### Considering Proposals from Developers

All five land banks require submission of a written proposal by an individual or entity seeking to obtain property from the land bank. The proposal 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. The Louisville Land Bank requires a letter stating the proposed use of the land, a building plan, and evidence of financial backing.<sup>12</sup> The Genesee Land Bank requires an extensive application for commercial land transfers containing the essential information that would normally be required for an application for development financing.<sup>13</sup> In light of the length of time that may be required to assemble all of the components for a complete development proposal, several land banks have express policies permitting a transferee to acquire an option on the property held by the land bank. The St. Louis Land Bank permits options for periods ranging from three to twelve months.<sup>14</sup> The Genesee Land Bank permits a transferee to obtain an option to acquire the property upon payment of 10 percent of the anticipated price. The option is valid for one year and subject to compliance with all other policies.<sup>15</sup>

In all jurisdictions, both corporations and individuals may apply to acquire property from the land bank. The Atlanta and Genesee Land Banks give preference to nonprofit corporations planning to use the properties for affordable housing, and the largest transferee of properties from the Cleveland Land Bank has been a nonprofit housing developer.<sup>16</sup> 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. The rationales for this preference are that 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, and to encourage joint ventures between community development corporations 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 St. Louis Land Bank implicitly follows this preference in establishing a sale price for land to nonprofit entities, or entities that will use the property for “a strong public purpose,” at 50 percent of the standard price.<sup>17</sup>

Out of concern that the very parties who contributed to the problem by nonpayment of taxes in the first place not end up as beneficiaries of the land bank program, every land bank prohibits transfers to parties that are delinquent in the payment of property taxes on their own properties. Both the Cleveland Land Bank and the Atlanta Land Bank 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.<sup>18</sup> The Genesee Land Bank goes one step further by ruling ineligible “individuals and entities that were the prior owners of property at the time of the tax foreclosure which transferred title” to the land bank.<sup>19</sup>

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 benefit on the former irresponsible property owner who sells the property to a nonprofit entity (which can get the taxes waived), the Atlanta Land Bank has adopted a “Reasonable Equity Policy.”<sup>20</sup> This policy essentially provides that the land bank will not participate in any transaction in which the owner of tax-delinquent property sells it for a price greater than 75 percent of its net equity in the property.

Although all five land banks seek to have properties returned to productive use and generate taxes again, most land banks are concerned about the possibility of transferees being 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 meet 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.<sup>21</sup> The Louisville Land Bank is expressly prohibited by statute from conveying property to any entity that plans to hold it “for investment purposes only and with no intent to use the property other than to transfer the property at a future date for monetary gain.”<sup>22</sup>

#### **Requirements for Owner-Occupant Properties**

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 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 with a specific period of

time. To avoid the potential problem of transferees acquiring property solely for purposes of resale, both the Atlanta Land Bank and the Genesee Land Bank require the transferee to occupy the property as his or her principal residence for at least five years following the transfer.<sup>23</sup> Breach of this contractual obligation renders the transferee liable to the land bank for the full value of subsidy provided by the land bank.

### **6-3 SETTING PRICING POLICIES**

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#### **Establishing the Price**

One advantage of possessing tax-foreclosed land, land acquired by local governments from other liens or sales, or other surplus lands is at least theoretically the flexibility of pricing policies. The most significant differences, however, among land banks occur in 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.

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 signifi-

cant one is that many properties end up in the land bank precisely because there is no clear private market for their sale, or no clear market value. 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. Equally significant is that a fair market value requirement often must be based on professional appraisals that create additional transaction costs for transfers. When the underlying property has little if any development potential, a requirement of an appraisal is counterproductive.

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 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.

Both the St. Louis Land Bank<sup>24</sup> and another Missouri land bank, the Jackson County Land Trust (Kansas City, Missouri),<sup>25</sup> presume that property suitable for private use must be conveyed at full fair market value. The St. Louis Land Bank publishes standard selling prices for properties as determined by its own analysis of the neighborhood conditions and specific property attributes. Properties in certain locations, and commercial, industrial, and riverfront property require appraisals, as do occupied residential buildings and buildings suitable for occupancy.<sup>26</sup> Every deed must indicate whether the property is being sold for an amount equal to or less than two-thirds of fair market value, and if less than that, separate approval from the local governments is required.<sup>27</sup> Property that is suitable for public use or not usable in its present condition can be transferred at no cost.

The Louisville Land Bank establishes a minimum price of \$300 per parcel for properties to be

used for development of new single-family homes, and in all other cases sets the minimum price as the property's tax-assessed value.<sup>28</sup> The Cleveland Land Bank is required to obtain fair market value, but takes the simple and perhaps most time-efficient approach by providing that nonproductive land be sold at its fair market value (which presumably is minimal), and all buildable lots are sold for \$100 each.<sup>29</sup>

### **Maintaining Flexibility to Meet Program Goals**

A land bank has maximum flexibility to meet a range of public goals and policies if it has discretion to either set the selling price for the property, or to agree that the value of the consideration can be provided through the development commitments of the transferee. The Atlanta Land Bank has complete discretion in establishing the sale price for its property,<sup>30</sup> and as a routine matter does not require any cash consideration be paid at the time of the property transfer. This discretion enables the Atlanta Land Bank to utilize the property's value as a subsidy to promote the development of affordable housing.

Among the five land banks, the Genesee Land Bank has the broadest range of property types in its inventory. It has adopted a multitiered structure for pricing and payment of consideration depending primarily on the property types involved and the nature of the intended uses.<sup>31</sup> Except with respect to its side-lot program, the minimum consideration is set at the lower of fair market value or the project costs. Project costs are defined as "the aggregate costs and expenses of the Land Bank 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 Land Bank allocable to the property."<sup>32</sup>

Key to the Genesee 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. The

consideration can be provided by annual performance of the commitment to provide affordable housing. Correspondingly, when the Genesee 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.

## 6-4 ENFORCEMENT OF COMMITMENTS

### **Possessing a Right to Reacquire Properties**

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 the rare 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.

The initial approach taken to ensure performance of commitments was the St. Louis Land Bank's requirement that it retain a right of re-entry for an 18-month period following closing.<sup>33</sup> This approach was adopted for the Louisville Land Bank,<sup>34</sup> and the Atlanta Land Bank requires all conveyances to provide that "title will revert" to the Land Bank if construction or rehabilitation is not commenced within three years of the conveyance.<sup>35</sup>

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. Lending institutions usually will not provide such financing on a defeasible fee.

### **Designing Alternative Methods to Ensure Performance**

Increasingly, land banks are using three approaches in lieu of or in addition to defeasible fees to enforce a transferee's commitments. These approaches are development agreements, real covenants, and secured real estate financing.

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 that can be the basis for legal action. 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 functionally 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 its 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.

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. The Genesee Land Bank, for example, expressly provides that both restrictive real covenants and secured financing may be used to enforce transferees’ obligations.<sup>36</sup>

## NOTES TO CHAPTER 6

- 1 See Chapters 4-1, 4-2.
- 2 See Chapter 3-1.
- 3 Louisville Land Bank Policies and Procedures, Par. 20, See Appendix D-4.
- 4 Atlanta Land Bank Interlocal Agreement, IX.B. See Appendix C-1.
- 5 Atlanta Land Bank Interlocal Agreement, VI.D.2. See Appendix C-1.
- 6 Atlanta Land Bank Interlocal Agreement, IX.B. See Appendix C-1.
- 7 Atlanta Land Bank Policies and Procedures. See Appendix D-1.
- 8 Genesee Land Bank Policies and Procedures, 2. See Appendix D-3.
- 9 Cleveland Land Bank Policies. See Appendix D-2.
- 10 St. Louis Land Bank Pricing Policy. See Appendix D-5.
- 11 The Jackson County Land Trust (Kansas City, Missouri) transfers side-lot properties for 50 percent of assessed value. See [www.jacksoncountylantrust.org](http://www.jacksoncountylantrust.org); Mo. REV. ST. § 141.750.2.
- 12 Louisville Land Bank Policies and Procedures, Par. 19. See Appendix D-4.
- 13 Genesee Land Bank Policies and Procedures, 6.B. See Appendix D-3. The Dallas Land Bank also has a detailed set of requirements for purchase proposals. See Dallas, Texas Ordinance 23713 (November 6, 1998); [www.dallascityhall.com/dallas/eng/html/land\\_bank\\_program.html](http://www.dallascityhall.com/dallas/eng/html/land_bank_program.html).
- 14 St. Louis Land Bank Purchase Approval Process. See Appendix D-5.
- 15 Genesee Land Bank Policies and Procedures 5.A.8, 6.A.8. See Appendix D-3.
- 16 The Dallas Land Bank also establishes a priority for transfers to nonprofit corporations for use for affordable housing. See Dallas, Texas Ordinance 23713 (November 6, 1998).
- 17 St. Louis Land Bank Pricing Policy, See Appendix D-5.
- 18 Atlanta Land Bank Policies and Procedures. See Appendix D-1; Cleveland Land Bank Policies. See Appendix D-2.
- 19 Genesee Land Bank Policies and Procedures, 2. See Appendix D-3.
- 20 Atlanta Land Bank Policies and Procedures. See Appendix D-1.
- 21 See Chapter 6-4. New development is not generally required with respect to the Side-Lot Program.
- 22 KEN. REV. STAT. ANN. § 65.370(5).
- 23 Atlanta Land Bank Policies and Procedures. See Appendix D-1; Genesee Land Bank Policies and Procedures, 5.A.17. See Appendix D-3.
- 24 Mo. REV. ST. § 92.900(3)
- 25 Jackson County Land Trust; [www.jacksoncountylantrust.org](http://www.jacksoncountylantrust.org).
- 26 St. Louis Land Bank Pricing Policy. See Appendix D-5.
- 27 Mo. REV. ST. § 92.895(2). This same approach is followed by the land reutilization commissions in Nebraska. See NEB. REV. STAT. § 77.3205.
- 28 Louisville Land Bank Policies and Procedures, Par. 23, See Appendix D-4.
- 29 OHIO REV. CODE ANN. § 5722.07; Cleveland Land Bank Policies, see Appendix D-2. The Dallas, Texas land transfer program is authorized by statute to transfer tax foreclosed land at a fixed price of \$1,000 for up to 7,500 square feet of land, and an additional \$.133 for each additional foot. Tex. Tax Code § 34.015.
- 30 GA. CODE ANN. § 48-4-64(e).
- 31 MICH. COMP. LAWS § 124.755(1), 124.757(1); Genesee Land Bank Policies and Procedures, 3. See Appendix D-3.
- 32 Genesee Land Bank Policies and Procedures, 3. See Appendix D-3.
- 33 St. Louis Land Bank Purchasing Policy. See Appendix D-5.
- 34 Louisville Land Bank Policies and Procedures, Par. 22, 25. See Appendix D-4.
- 35 Atlanta Land Bank Interlocal Agreement, XI.B. See Appendix C-2. The Dallas, Texas Land Transfer Program provides for a similar “possibility of reverter with right of reentry.” See Dallas, Texas Ordinance 23713 (November 6, 1998).
- 36 Genesee Land Bank Policies and Procedures, 5.A.10. See Appendix D-3.

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# APPENDIX A: Land Bank Contact Information

## PRIMARY LAND BANKS

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- 1. St. Louis Land Reutilization Authority**  
St. Louis Development Corporation  
St. Louis Land Reutilization Authority  
1015 Locust Street  
Suite 1200  
St. Louis, Missouri 63101  
[www.stlouis.missouri.org/sldc](http://www.stlouis.missouri.org/sldc)  
[www.stlouis.missouri.org/development/realstate/](http://www.stlouis.missouri.org/development/realstate/)  
314.622.3400, ext. 378
- 2. Cleveland Land Bank**  
Land Bank Program  
Department of Community Development  
Room 325, Cleveland City Hall  
601 Lakeside Avenue  
Cleveland, Ohio 44114-1070  
[www.city.cleveland.oh.us/government/departments/commdev/cdind.html](http://www.city.cleveland.oh.us/government/departments/commdev/cdind.html)
- 3. Louisville/Jefferson County Land Bank Authority**  
Louisville/Jefferson County Land Bank Authority  
Metro Housing  
Department of Housing  
745 West Main Street  
Louisville, Kentucky 40202  
[www.loukymetro.org/department/housing](http://www.loukymetro.org/department/housing)  
502.574.2322
- 4. Fulton County/City of Atlanta Land Bank Authority**  
Fulton County/City of Atlanta Land Bank Authority  
34 Peachtree Street  
Suite 600  
Atlanta, Georgia 30303  
404.535.9336
- 5. Genesee County Land Bank, Inc.**  
Genesee County Land Bank, Inc.  
Genesee County  
1101 Beach Street  
Suite 144  
Flint, Michigan 48502  
[www.thelandbank.org](http://www.thelandbank.org)

## ADDITIONAL LAND BANKS

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- 6. Valdosta, Georgia**  
Valdosta – Lowndes County Land Bank Authority  
City of Valdosta, Georgia  
P.O. Box 1125  
Valdosta, Georgia 31603  
229.259.3571
- 7. Macon/Bibb County (Georgia) Land Bank Authority**  
Macon/Bibb County Land Bank Authority  
Macon Housing Authority  
2015 Felton Ave.  
Macon, GA 31208  
912.752.5060
- 8. Jackson County, Missouri**  
Jackson County Land Trust  
Property and Relocation Services  
16th Floor, City Hall  
414 E. 12th Street  
Kansas City, Missouri 64106  
[www.jacksoncountylantrust.org](http://www.jacksoncountylantrust.org)
- 9. Dallas Texas**  
Housing Department  
Land Bank Program  
City of Dallas  
1500 Marilla Street, Room 6CN  
Dallas, Texas  
214.670.7312  
[www.dallascityhall.com/dallas/eng/html/land\\_bank\\_program.html](http://www.dallascityhall.com/dallas/eng/html/land_bank_program.html)
- 10. Omaha, Nebraska**  
Land Reutilization Commission  
1819 Farnam Street, Suite 910  
Omaha, Nebraska 68183  
[www.lrcnebraska.com](http://www.lrcnebraska.com)
- 11. Wyandotte County, Kansas**  
Land Bank Manager  
Wyandotte County Land Bank  
2nd Floor  
710 N. 7th Street  
Kansas City, Kansas 66101  
[www.wycokck.org/departments/land\\_bank/index.html](http://www.wycokck.org/departments/land_bank/index.html)  
913.573.8039

# APPENDIX B: State Land Bank Statutes

**B-1 Georgia:** Ga. Code Ann. § 48-4-60 et. seq.

**B-2 Kentucky:** Ken. Rev. Stat. Ann. § 65.350 et. seq.

**B-3 Michigan:** Mich. Comp. Laws § 124.751 et. seq.

**B-4 Missouri:** Mo. Rev. St. § 92.875 et. seq.

**B-5 Ohio:** Ohio Rev. Code Ann. § 5722.01 et. seq.

## APPENDIX B-1: Official Code of Georgia Annotated (through 2004)

### LAND BANK AUTHORITIES

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#### § 48-4-60. Definitions

As used in this article, the term:

- (1) "Agreement" means:
  - (A) An interlocal cooperation agreement entered into by the parties pursuant to this article; or
  - (B) A resolution of a consolidated government establishing an authority pursuant to this article.
- (2) "Authority" means the land bank authority established pursuant to this article.
- (3) "Parties" means the parties to the agreement, which shall include one or more cities and the county containing such cities, or a consolidated government which has adopted a resolution establishing an authority.
- (4) "Property" means real property, including any improvements thereon.
- (5) "Tax delinquent property" means any property on which the taxes levied and assessed by any party remain in whole or in part unpaid on the date due and payable.

#### § 48-4-61. Establishment; purpose; dissolution

- (a) One or more cities and the county containing such cities may enter into an interlocal cooperation agreement, or a consolidated government may adopt a resolution, for the purpose of establishing a land bank authority pursuant to this article.
- (b) The authority shall be a public body corporate and politic with the power to sue and be sued, to accept and issue deeds in its name, including without limitation the acceptance of real property in accordance with the provisions of paragraph (2.1) of subsection (u) of Code Section 16-13-49, and to institute quia timet actions and shall have any other powers necessary and incidental to carry out the powers granted by this article.
- (c) The authority shall be established to acquire the tax delinquent properties of the parties and any property deeded to it pursuant to paragraph (2.1) of subsection (u) of Code Section 16-13-49 in order to foster the public purpose of returning land which is in a nonrevenue-generating, nontax-producing status to an effective utilization status or of returning real property forfeited pursuant to Code Section 16-13-49 to such status in order to provide housing, new industry, and jobs for the citizens of the county. The authority shall have the powers provided in this article and those necessary and incidental to the exercise of such powers.
- (d) Any authority established pursuant to this article may be dissolved by any party to the agreement or by resolution of a consolidated government or, where multiple cities are involved, any city may withdraw from the agreement which established the authority, or such authority may be dissolved by local Act of the General Assembly.
- (e) An authority whose parties form a consolidated government after entering into an interlocal cooperation agreement shall thereafter operate under and be governed by the provisions of this article applicable to authorities of consolidated governments as if created by resolution of a consolidated government. The board governing such an authority shall be reconstituted by resolution of the consolidated governments in conformity with the provisions of subsection (a) of Code Section 48-4-62 prior to the first meeting of such board subsequent to the effective date of consolidation of the party governments.

**§ 48-4-62. Membership; vacancies; meetings; quorum; chairman; staff**

- (a) The authority shall be governed by a board composed in such a manner as to provide two members to represent each party: two appointed by the mayor of each party city and two appointed by the county commission of the party county. An authority established by resolution of a consolidated government shall be governed by a board composed of four members to be appointed by the governing authority of the consolidated government. Each member shall serve at the pleasure of the respective appointing authority for a term of four years and shall serve without compensation. The members shall be residents of the county and may be employees of the parties. Any vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.
- (b) The board of the authority shall meet from time to time as required, and the presence of either (1) three members, if there are only two parties to the agreement or if the authority was created by a consolidated government or (2) 50 percent of the members then in office, if there are more than two parties to the agreement, shall constitute a quorum. Approval by a majority of the membership then in office shall be necessary for any action to be taken by the authority. All meetings shall be open to the public, except as otherwise provided by Chapter 14 of Title 50, and a written record shall be maintained of all meetings. A chairperson shall be elected from among the members, and he or she shall execute all deeds, leases, and contracts of the authority when authorized by the board.
- (c) The authority may employ its own staff or may utilize employees of the parties, as determined by the agreement.

**§ 48-4-63. Acquisition and disposal of property by authority**

- (a) The authority shall hold in its own name, for the benefit of the parties, all properties conveyed to it by the parties, all tax delinquent properties acquired by it pursuant to this article, and all properties otherwise acquired.
- (b) It shall be the duty of the authority to administer the properties acquired by it as follows:
  - (1) All property acquired by the authority shall be inventoried and appraised, and the inventory shall be maintained as a public record;
  - (2) The authority shall organize and classify the property on the basis of suitability for use;
  - (3) The authority shall maintain all property held by it in accordance with applicable laws and codes; and
  - (4) The authority shall have the power to manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any property on terms and conditions determined in the sole discretion of the authority. The authority may assemble tracts or parcels of property for public parks or other public purposes and to that end may exchange parcels and otherwise effectuate the purposes determined by agreement with any party.
- (c) The acquisition and disposal of property by the authority shall not be governed or controlled by any regulations or laws of the parties unless specifically provided in the agreement, and transfers of property by parties to the authority shall be treated as transfers to a body politic as contemplated by subparagraph (a)(2)(A) of Code Section 36-9-3.
- (d) Property held by the authority may be sold, traded, exchanged, or otherwise disposed of by the authority so long as the disposition is approved by a majority of the membership, as required in subsection (b) of Code Section 48-4-62 for any action by the authority, and approved as follows:
  - (1) If the property is located within a party city and the party county, approved by both authority members appointed by the mayor of such city and one of the authority members appointed by the county commission;
  - (2) If the property is located within the county party but outside all the party cities, approved by both authority members appointed by the county commission;
  - (3) If the property is located within a party city but outside the party county, approved by both authority members of such city; or
  - (4) If the property is located within the boundaries of a consolidated government, approved by a majority of the authority members.

**§ 48-4-64. Powers of authority with regard to its property**

- (a) If any party obtains a judgment for taxes against a tax delinquent property within the party county, any of the party cities, or the boundaries of the consolidated government and the property is ordered sold at a tax sale to satisfy the judgment, the authority may tender one bid at such sale, and such bid shall comprise the authority's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties, and, if there is no other bid, the tax commissioner shall accept the authority's bid and make a deed of the property to the authority.
- (b) In accordance with the provisions of Code Section 48-4-45, the authority shall have the right to foreclose the right to redeem property at any time after the 12 month redemption period has expired pursuant to Code Section 48-4-65. Notwithstanding the foregoing provisions of this subsection, the right of redemption shall automatically terminate and

expire upon failure to redeem in accordance with Code Section 48-4-81 where the tax sale was conducted pursuant to Article 5 of this chapter.

- (c) When a property is acquired by the authority, the authority shall have the power to extinguish all county and city or consolidated government taxes, including school district taxes, at the time it sells or otherwise disposes of property; provided, however, that, with respect to school district taxes, the authority shall first obtain the consent of the board of education governing the school district in which the property is located. In determining whether or not to extinguish taxes, the authority shall consider the public benefit to be gained by tax forgiveness with primary consideration given to purchasers who intend to build or rehabilitate low-income housing. The decision by the authority to extinguish taxes is subject to the vote requirements for dispositions of property under subsection (d) of Code Section 48-4-63.
- (d) At the time that the authority sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale, if any, shall be allocated as determined by the authority among the following priorities: (1) furtherance of authority operations; (2) recovery of authority expenses; and (3) distribution to the parties and the appropriate school district in proportion to and to the extent of their respective tax bills and costs. Any excess proceeds shall be distributed pursuant to the agreement of the parties or by resolution of the consolidated government in accordance with the public policy stated in this article.
- (e) The authority shall have full discretion in determining the sale price of the property. The agreement of the parties shall provide for a distribution of property that favors neighborhood nonprofit entities obtaining the land for low-income housing and, secondarily, other entities intending to produce low- income or moderate-income housing.

#### **§ 48-4-65. Procedure to foreclose right of redemption**

The authority may foreclose the right of redemption to the property conveyed to the authority pursuant to a tax sale conducted in accordance with Article 1 of this chapter in the following manner:

- (1) The record title to the property shall be examined and a certificate of title shall be prepared for the benefit of the authority;
- (2) The authority shall serve the prior owner whose interest was foreclosed upon and all persons having record title or interest in or lien upon the property with a notice of foreclosure of this right to redeem in conformance with Code Section 48-4-46;
- (3) In the event persons entitled to service are located outside the county, they may be served by certified mail or statutory overnight delivery; or
- (4) In the event the sheriff is unable to perfect service or certified mail or statutory overnight delivery attempts are returned unclaimed, the authority shall conduct a search for the person with an interest in the property conveyed to the authority, which search must, at a minimum, have included the following:
  - (A) An examination of the addresses given on the face of the instrument vesting interest or the addresses given to the clerk of the superior court by the transfer tax declaration form. The clerk of the superior court and the tax assessor of the county are required to share information contained in the transfer tax declaration form with one another in a timely manner;
  - (B) A search of the current telephone directory for the county in which the property is located;
  - (C) A letter of inquiry to the person who sold the property to the defendant in the tax sale at the address shown in the transfer tax declaration form or in the telephone directory;
  - (D) A letter of inquiry to the attorney handling the closing prior to the tax sale if provided on the deed forms;
  - (E) A sign being no less than four feet by six feet shall be erected on the property and maintained by the authority for a minimum of 30 days reading as follows:

"THIS PROPERTY HAS BEEN CONVEYED TO THE \_\_\_\_\_ LAND BANK AUTHORITY BY VIRTUE OF A SALE FOR UNPAID TAXES. PERSONS WITH INFORMATION REGARDING THE PRIOR OWNER OF THE PROPERTY ARE REQUESTED TO CALL \_\_\_\_\_."; and

- (F) If the authority has made the search as required by this paragraph and been unable to locate those persons required to be served under paragraph (2) of this Code section or, having located additional addresses of those persons through such search, attempted without success to serve those persons in either manner provided by paragraph (2) or (3) of this Code section, the authority shall make a written summary of the attempts made to serve the notice, in recordable form, and may authorize the foreclosure of the redemption rights of record.

#### **Additional References:**

Nonjudicial property tax foreclosure procedures are set forth in O.C.G.A. §§ 48-3-3 to 48-3-9, 48-4-1, and 9-13-140 to 9-1-141. Procedures for redemptions from nonjudicial tax sales are set forth in O.C.G.A. §§48-4-40 to 48-4-45. Procedures for judicial tax foreclosures are set forth in O.C.G.A. §§48-4-75 to 48-4-81.

# APPENDIX B-2: Kentucky Revised Statutes (through 2004)

## LAND BANK AUTHORITIES

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### § 65.350 Definitions

- (1) "Authority" means the land bank authority established pursuant to KRS 65.210 to 65.300 and KRS 65.350 to 65.375;
- (2) "Agreement" means the interlocal cooperation agreement entered into by the parties pursuant to KRS 65.210 to 65.300 and KRS 65.350 to 65.375;
- (3) "Local government" means every city, regardless of classification, every county, and every consolidated local government and urban-county government;
- (4) "Parties" means the parties to the agreement, that shall include any local government, the local school district, which may include county and independent school districts, within the county and the Commonwealth of Kentucky;
- (5) "Property" means real property, including any improvements thereon; and
- (6) "Tax delinquent property" means any property on which the taxes levied and assessed by any party remain in whole or in part unpaid on the date due and payable.

### § 65.355 Creation of authority

- (1) Any local government, the county or independent school district within the county, and the Commonwealth of Kentucky may enter into an interlocal cooperation agreement pursuant to KRS 65.210 to 65.300 for the purpose of establishing a land bank authority pursuant to KRS 65.350 to 65.375.
- (2) The authority shall be a public body corporate and politic with the power to sue and be sued, issue deeds in its name, and any other powers necessary and convenient to carry out these powers or that may be granted to the authority by the parties.
- (3) The authority shall be established to acquire the tax delinquent properties of the parties in order to foster the public purpose of returning land that 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 the county. The authority shall have the powers provided in KRS 65.370 and 65.375 and in the interlocal cooperation agreement.

### § 65.360 Board of authority

- (1) The authority shall be governed by a board composed of one (1) member appointed by each unit of local government that is a party to the agreement, one (1) member appointed by the superintendent of schools of the county school district or of the independent school district, and one (1) member appointed by the Governor. Each member shall serve at the pleasure of the respective appointing authority for a term of four (4) years and shall serve without compensation. The members shall be residents of the county and may be employees of the parties and shall serve without additional compensation. Any vacancy shall be filled in the same manner as the original appointment.
- (2) The board of the authority shall meet as required, and three (3) members shall constitute a quorum. Approval by a majority of the membership shall be necessary for any action to be taken by the authority. All meetings shall be open to the public, except as otherwise permitted by KRS 61.810, and a written record shall be maintained of all meetings. A chairman shall be elected from among the members, and he shall execute all deeds, leases, and contracts of the authority when authorized by the board.
- (3) The authority may employ its own staff or may utilize employees of the parties, as determined by the agreement.

### § 65.365 Mailing list of interested housing authorities

- (1) Upon the creation of a land bank authority, the authority shall maintain a mailing list of city, county, or regional housing authorities, and the Kentucky Housing Corporation, that have requested to be notified prior to any action by the authority to dispose of property in its inventory. It shall be the responsibility of an interested housing authority to provide the authority with the following information:
  - (a) Name of the organization;
  - (b) Mailing address for the organization; and
  - (c) The name and title of a contact person for the organization.

### **§ 65.370 Acquisition and disposal of property**

- (1) The authority shall hold in its own name, for the benefit of the parties, all properties conveyed to it by the parties, all tax delinquent properties acquired by it pursuant to this section, and all properties otherwise acquired.
- (2) It shall be the duty of the authority to administer the properties acquired by it, as follows:
  - (a) All property acquired by the authority shall be inventoried and appraised and the inventory shall be maintained as a public record;
  - (b) The authority shall organize and classify the property on the basis of suitability for use;
  - (c) The authority shall maintain all property held by it in accordance with applicable laws and codes; and
  - (d) The authority shall have the power to manage, maintain, protect, rent, lease, repair, insure, alter, sale, trade, exchange, or otherwise dispose of any property on terms and conditions as determined by KRS 65.350 to 65.375 and by the authority. The authority may assemble tracts or parcels of property for public parks or other public purposes, and to that end may exchange parcels, and otherwise effectuate the purposes by agreement with any party.
- (3) Before the authority may rent, lease, sell, trade, exchange, or otherwise dispose of any property it shall:
  - (a) Establish a price for rent or lease purposes;
  - (b) Establish a purchase price for sale purposes; or
  - (c) Establish the conditions for trade, exchange, or other disposal of the property.
- (4) The authority shall publish pursuant to KRS Chapter 424, the information required pursuant to subsection (3) of this section, at least thirty (30) days before any property may be disposed of from the inventory. Immediately following publication the authority shall notify by first class mail all housing authorities on the mailing list required pursuant to KRS 65.365 of the authority's intent to dispose of a specified property and the established price to rent, lease, or purchase the property, or the conditions for trade, exchange, or other disposal of the property.
- (5) No property shall be acquired pursuant to KRS 65.350 to 65.375 by any entity for investment purposes only and with no intent to use the property other than to transfer the property at a future date for monetary gain.
- (6) No property acquired by a housing authority pursuant to KRS 65.350 to 65.375 shall be transferred to a similar group without prior approval of the authority.
- (7) The acquisition and disposal of property by the authority shall not be governed or controlled by any regulations or laws of the parties, unless specifically provided in the agreement.
- (8) No property located within the boundaries of a local government may be sold, traded, exchanged, or otherwise disposed of, unless the transaction is approved by the member appointed by the affected local government.

### **§ 65.375 Conditions under which authority to take title to tax delinquent properties**

- (1) If any party obtains a judgment against a tax delinquent property within the county for the taxes and, to satisfy the judgment, the property is ordered sold at a tax sale pursuant to KRS 91.504, 134.190, or other provision of the Kentucky Revised Statutes, if no person bids an amount equal to the full amount of all tax bills, interest, and costs owing on the property at the sale, the authority shall be deemed to have bid the full amount of all tax bills, interest, and costs due to all parties of the authority regardless of whether or not they are all parties to the lawsuit. The authority shall not be required to make actual payment to the court for the amount deemed to have been bid. The court, notwithstanding any other provision of law, shall treat the amount deemed to have been bid as cash received. Upon proper motion by the authority, the court shall make a deed of the property to the "Land Bank Authority." The title to the property shall be an absolute estate in fee simple, free and clear of all tax bills, interests, and costs owing to the parties of the authority but shall be subject to rights of way of public utilities on which tax has otherwise been paid and subject to any right of redemption of the United States of America, if any.
- (2) When a property is acquired by the authority, all state, county, city, and school district taxes shall be extinguished.
- (3) At the time that the authority sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale shall be distributed as follows:
  - (a) The party or parties bringing the action that resulted in the acquisition of the property by the land bank authority shall be reimbursed, to the extent proceeds are available, for all costs incurred; and
  - (b) Any remaining proceeds shall be distributed to the parties in proportion to their respective tax bills. Conveyance of a property to a party shall not constitute disposal.

#### **Additional references:**

The Kentucky Interlocal Cooperation Act is set forth in KRS 65.210 to 65.300. Provisions of the property tax foreclosure statutes are set forth in KRS 91.481 to 91.530.

# APPENDIX B-3: Michigan Comp. Laws §§ 124.751 – 124.774

## Land Bank Fast Track Act, 2003 Public Act 258 (through 2004)

### CHAPTER 1

#### GENERAL PROVISIONS

**§ 124.751. Short Title.** This act shall be known and may be cited as the "land bank fast track act".

**§ 124.752. Legislative Findings.** The legislature finds that there exists in this state a continuing need to strengthen and revitalize the economy of this state and local units of government in this state and that it is in the best interests of this state and local units of government in this state to assemble or dispose of public property, including tax reverted property, in a coordinated manner to foster the development of that property and to promote economic growth in this state and local units of government in this state. It is declared to be a valid public purpose for a land bank fast track authority created under this act to acquire, assemble, dispose of, and quiet title to property under this act. It is further declared to be a valid public purpose for a land bank fast track authority created under this act to provide for the financing of the acquisition, assembly, disposition, and quieting of title to property, and for a land bank fast track authority to exercise other powers granted to a land bank fast track authority under this act. The legislature finds that a land bank fast track authority created under this act and powers conferred by this act constitute a necessary program and serve a necessary public purpose.

**§ 124.753. Definitions. As used in this act:**

- (a) "Authority" means a land bank fast track authority created under section 15, section 23(4), or section 23(5).
- (b) "Authority board" means the board of directors of the state authority appointed under section 16.
- (c) "Casino" means a casino regulated by this state under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226, or a casino at which gaming is conducted under the Indian gaming regulatory act, Public Law 100-497, 102 Stat. 2467, and all property associated or affiliated with the operation of the casino, including, but not limited to, a parking lot, hotel, motel, or retail store.
- (d) "County authority" means a county land bank fast track authority created by a county foreclosing governmental unit under section 23(4).
- (e) "Department" means the department of labor and economic growth, a principal department of state government created by section 225 of the executive organization act of 1965, 1965 PA 380, MCL 16.325, and renamed by Executive Order No. 1996-2, MCL 445.2001, and by Executive Order No. 2003-18.
- (f) "Foreclosing governmental unit" means that term as defined in section 78 of the general property tax act, 1893 PA 206, MCL 211.78.
- (g) "Fund" means the land bank fast track fund created in section 18.
- (h) "Intergovernmental agreement" means a contractual agreement between 1 or more governmental agencies, including, but not limited to, an interlocal agreement to jointly exercise any power, privilege, or authority that the agencies share in common and that each might exercise separately under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.
- (i) "Local authority" means a local land bank fast track authority created by a qualified city under section 23(5).
- (j) "Local unit of government" means a city, village, township, county, or any intergovernmental, metropolitan, or local department, agency, or authority, or other local political subdivision.
- (k) "Michigan economic development corporation" means the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, as amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund. If the Michigan economic development corporation is unable for any reason to perform its duties under this act, those duties may be exercised by the Michigan strategic fund.
- (l) "Michigan state housing development authority" means the authority created under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.
- (m) "Michigan strategic fund" means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2093.
- (n) "Qualified city" means a city that contains a first class school district and includes any department or agency of the city.
- (o) "State administrative board" means the board created under 1921 PA 2, MCL 17.1 to 17.3, that exercises general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of the state and of all state institutions.

- (p) "State authority" means the land bank fast track authority created under section 15.
- (q) "Tax reverted property" means property that meets 1 or more of the following criteria:
  - (i) The property was conveyed to this state under section 67a of the general property tax act, 1893 PA 206, MCL 211.67a, and subsequently was not sold at a public auction under section 131 of the general property tax act, 1893 PA 206, MCL 211.131, except property described in section 131 of the general property tax act, 1893 PA 206, MCL 211.131, that is withheld from sale by the director of the department of natural resources as authorized in that section.
  - (ii) The property was conveyed to this state under section 67a of the general property tax act, 1893 PA 206, MCL 211.67a, and subsequently was either redeemed by a local unit of government or transferred to a local unit of government under section 2101 or 2102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2101 and 324.2102, or under former section 461 of 1909 PA 223 except property transferred to a local unit of government that is subject to a reverter clause under which the property reverts to this state upon transfer by the local unit of government.
  - (iii) The property was subject to forfeiture, foreclosure, and sale for the collection of delinquent taxes as provided in sections 78 to 79a of the general property tax act, 1893 PA 206, MCL 211.78 to 211.79a, and both of the following apply:
    - (A) Title to the property vested in a foreclosing governmental unit under section 78k of the general property tax act, 1893 PA 206, MCL 211.78k.
    - (B) The property was offered for sale at an auction but not sold under section 78m of the general property tax act, 1893 PA 206, MCL 211.78m.
  - (iv) The property was obtained by or transferred to a local unit of government under section 78m of the general property tax act, 1893 PA 206, MCL 211.78m.
  - (v) Pursuant to the requirements of a city charter, the property was deeded to or foreclosed by the city or a department or agency of the city for unpaid delinquent real property taxes.

**§ 124.754. Powers.**

- (1) Except as otherwise provided in this act, an authority may do all things necessary or convenient to implement the purposes, objectives, and provisions of this act, and the purposes, objectives, and powers delegated to the board of directors of an authority by other laws or executive orders, including, but not limited to, all of the following:
  - (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, including, but not limited to, defending the authority in an action to clear title to property conveyed by the authority.
  - (c) Borrow money and issue bonds and notes according to the provisions of this act.
  - (d) 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, interlocal agreements under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, for the joint exercise of powers under this act.
  - (e) Solicit and accept gifts, grants, labor, loans, and other aid from any person, or the federal government, this state, or a political subdivision of this state or any agency of the federal government, this state, a political subdivision of this state, or an intergovernmental entity created under the laws of this state or participate in any other way in a program of the federal government, this state, a political subdivision of this state, or an intergovernmental entity created under the laws of this state.
  - (f) Procure insurance against loss in connection with the property, assets, or activities of the authority.
  - (g) Invest money of the authority, at the discretion of the board of directors of the authority, in instruments, obligations, securities, or property determined proper by the board of directors of the authority, and name and use depositories for its money.
  - (h) Employ legal and technical experts, other officers, agents, or employees, permanent or temporary, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs. The board of directors of an authority may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper. Members of the board of directors of an authority shall serve without compensation but shall be reimbursed for actual and necessary expenses subject to available appropriations.
  - (i) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, engineers, accountants, and auditors for rendering professional financial assistance and advice payable out of any money of the authority.
  - (j) Study, develop, and prepare the reports or plans the authority considers necessary to assist it in the exercise of its powers under this act and to monitor and evaluate progress under this act.
  - (k) Enter into contracts for the management of, the collection of rent from, or the sale of real property held by an authority.

- (1) Do all other things necessary or convenient to achieve the objectives and purposes of the authority or other laws that relate to the purposes and responsibility of the authority.
- (2) The enumeration of a power in this act shall not be construed as a limitation upon the general powers of an authority. The powers granted under this act are in addition to those powers granted by any other statute or charter.
- (3) An authority, in its discretion, may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the authority.
- (4) If an authority holds a tax deed to abandoned property, the authority may quiet title to the property under section 79a of the general property tax act, 1893 PA 206, MCL 211.79a.
- (5) The property of an authority and its income and operations are exempt from all taxation by this state or any of its political subdivisions.
- (6) An authority shall not assist or expend any funds for, or related to, the development of a casino.
- (7) An authority shall not levy any tax or special assessment.
- (8) An authority shall not exercise the power of eminent domain or condemn property.
- (9) An authority shall adopt a code of ethics for its directors, officers, and employees.
- (10) An authority shall establish policies and procedures requiring the disclosure of relationships that may give rise to a conflict of interest. The governing body of an authority shall require that any member of the governing body with a direct or indirect interest in any matter before the authority disclose the member's interest to the governing body before the board takes any action on the matter.

**§ 124.755 Acquisition of Property; Accepting Deed in Lieu of Foreclosure or sale; Release of Tax Lien.**

- (1) Except as provided in section 4(8), an authority may acquire by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the authority considers proper, real or personal property, or rights or interests in real or personal property.
- (2) Real property acquired by an authority by purchase may be by purchase contract, lease purchase agreement, installment sales contract, land contract, or otherwise, except as provided in section 4(8). The authority may acquire real property or rights or interests in real property for any purpose the authority considers necessary to carry out the purposes of this act, including, but not limited to, 1 or more of the following purposes:
  - (a) The use or development of property the authority has otherwise acquired.
  - (b) To facilitate the assembly of property for sale or lease to any other public or private person, including, but not limited to, a nonprofit or for profit corporation.
  - (c) To protect or prevent the extinguishing of any lien, including a tax lien, held by the authority or imposed upon property held by the authority.
- (3) An authority may also acquire by purchase, on terms and conditions and in a manner the authority considers proper, property or rights or interest in property from 1 or more of the following sources:
  - (a) The department of natural resources under section 2101 or 2102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2101 and 324.2102.
  - (b) A foreclosing governmental unit under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.
  - (c) The Michigan state housing development authority under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.
- (4) An authority may hold and own in its name any property acquired by it or conveyed to it by this state, a foreclosing governmental unit, a local unit of government, an intergovernmental entity created under the laws of this state, or any other public or private person, including, but not limited to, tax reverted property and property with or without clear title.
- (5) All deeds, mortgages, contracts, leases, purchases, or other agreements regarding property of an authority, including agreements to acquire or dispose of real property, may be approved by and executed in the name of the authority.
- (6) A foreclosing governmental unit may not transfer property subject to forfeiture, foreclosure, and sale under sections 78 to 78p of the general property tax act, 1893 PA 206, MCL 211.78 to 211.78p, until after the property has been offered for sale or other transfer under section 78m of the general property tax act, 1893 PA 206, MCL 211.78m, and the foreclosing governmental unit has retained possession of the property under section 78m(7) of the general property tax act, 1893 PA 206, MCL 211.78m.

**§ 124.756 Preservation of Property Value.**

- (1) An authority may, without the approval of a local unit of government in which property held by the authority is located, control, hold, manage, maintain, operate, repair, lease as lessor, secure, prevent the waste or deterioration of, demolish,

and take all other actions necessary to preserve the value of the property it holds or owns. An authority may take or perform the following with respect to property held or owned by the authority:

- (a) Grant or acquire a license, easement, or option with respect to property as the authority determines is reasonably necessary to achieve the purposes of this act.
  - (b) Fix, charge, and collect rents, fees, and charges for use of property under the control of the authority or for services provided by the authority.
  - (c) Pay any tax or special assessment due on property acquired or owned by the authority.
  - (d) Take any action, provide any notice, or institute any proceeding required to clear or quiet title to property held by the authority in order to establish ownership by and vest title to property in the authority, including, but not limited to, an expedited quiet title and foreclosure action under section 9.
  - (e) Remediate environmental contamination on any property held by the authority.
- (2) An authority shall be made a party to and shall defend any action or proceeding concerning title claims against property held by the authority.
  - (3) Subject to subsection (4), an authority may accept from a person with an interest in a parcel of tax delinquent property or tax reverted property a deed conveying that person's interest in the property in lieu of the foreclosure or sale of the property for delinquent taxes, penalties, and interest levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, or delinquent specific taxes levied under another law of this state against the property by a local unit of government or other taxing jurisdiction.
  - (4) An authority may not accept under subsection (3) a deed in lieu of foreclosure or sale of the tax lien attributable to taxes levied by a local unit of government or other taxing jurisdiction without the written approval of all taxing jurisdictions and the foreclosing governmental unit that would be affected. Upon approval of the affected taxing jurisdictions and the foreclosing governmental unit, all of the unpaid general ad valorem taxes and specific taxes levied on the property, whether recorded or not, shall be extinguished. The authority shall record proof of the acceptance by the affected taxing jurisdictions under this subsection and the deed in lieu of foreclosure with the register of deeds for the county in which the property is located.
  - (5) Except as provided in subsection (4), conveyance of property by deed in lieu of foreclosure under this section shall not affect or impair any other lien against that property or any existing recorded or unrecorded interest in that property, including, but not limited to, future installments of special assessments, liens recorded by this state, or restrictions imposed under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, easements or rights-of-way, private deed restrictions, security interests and mortgages, or tax liens of other taxing jurisdictions or a foreclosing governmental unit that does not consent to a release of their liens.
  - (6) A tax lien against property held by or under the control of an authority may be released at any time by 1 or more of the following:
    - (a) The governing body of a local unit of government with respect to a lien held by the local unit of government.
    - (b) The governing body of any other taxing jurisdiction other than this state with respect to a lien held by the taxing jurisdiction.
    - (c) A foreclosing governmental unit with respect to a tax lien or right to collect a tax held by the foreclosing governmental unit.
    - (d) The state treasurer with respect to a tax lien securing the state education tax under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

**§ 124.757 Disposition of property by authority; inventory and classification of property; title status and suitability for use; recording property transfer.**

- (1) Except as an authority otherwise agrees by intergovernmental agreement or otherwise, on terms and conditions, and in a manner and for an amount of consideration an authority considers proper, fair, and valuable, including for no monetary consideration, the authority may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of property or rights or interests in property in which the authority holds a legal interest to any public or private person for value determined by the authority. If the department of environmental quality determines that conditions on a property transferred to an authority under section 78m(15) of the general property tax act, 1893 PA 206, MCL 211.78m, represent an acute threat to public health, safety, and welfare, or to the environment, the authority shall not convey, sell, transfer, exchange, lease, or otherwise dispose of the property until after a determination by the department of environmental quality that the acute threat has been eliminated and that conveyance, sale, transfer, exchange, lease, or other disposal of the property by the authority will not interfere with any response activities by the department. The transfer and use of property under this section and the exercise by the authority of powers and duties under this act shall be considered a necessary public purpose and for the benefit of the public.
- (2) All property held by an authority shall be inventoried and classified by the authority according to title status and suitability for use.

- (3) A document, including, but not limited to, a deed, evidencing the transfer under this act of 1 or more parcels of property to an authority by this state or a political subdivision of this state may be recorded with the register of deeds office in the county in which the property is located without the payment of a fee.

**§ 124.758 Receipt of tax, penalty, or interest payments; return to local tax collecting unit; retention of proceeds.**

- (1) Money received by an authority as payment of taxes, penalties, or interest, or from the redemption or sale of property subject to a tax lien of any taxing unit shall be returned to the local tax collecting unit in which the property is located for distribution on a pro rata basis to the appropriate taxing units in an amount equal to delinquent taxes, penalties, and interest owed on the property, if any.
- (2) Except as otherwise provided in this act, as required by other law, as required under the provisions of a deed, or as an authority otherwise agrees, any proceeds received by the authority may be retained by the authority for the purposes of this act.

**§ 124.759 Expedited quiet title and foreclosure action; procedure.** [Omitted].

**§ 124.760 Property as site of environmental contamination; information to be provided to department of environmental quality; property subject to certain conditions; liability.**

- (1) If an authority has reason to believe that property held by the authority may be the site of environmental contamination, the authority shall provide the department of environmental quality with any information in the possession of the authority that suggests that the property may be the site of environmental contamination.
- (2) If property held by an authority is a facility as defined under section 20101(1)(o) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101, prior to the sale or transfer of the property under this section, the property is subject to all of the following:
- (a) Upon reasonable written notice from the department of environmental quality, the authority shall provide access to the department of environmental quality, its employees, its contractors, and any other person expressly authorized by the department of environmental quality to conduct response activities at the property. Reasonable written notice under this subdivision may include, but is not limited to, notice by electronic mail or facsimile, if the authority consents to notice by electronic mail or facsimile prior to provision of notice by the department of environmental quality.
- (b) If requested by the department of environmental quality to protect public health, safety, and welfare or the environment, the authority shall grant an easement for access to conduct response activities on the property as authorized under chapter 7 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20302.
- (c) If requested by the department of environmental quality to protect public health, safety, and welfare or the environment, the authority shall place and record deed restrictions on the property as authorized under chapter 7 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20302.
- (d) The department of environmental quality may place an environmental lien on the property as authorized under section 20138 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20138.
- (3) For purposes of part 201 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101 to 324.20142, an authority shall be considered a local unit of government. Except as provided under parts 111, 115, and 315 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11101 to 324.11153, 324.11501 to 324.11550, and 324.31501 to 324.31529, the acquisition or control of property through tax delinquent forfeiture, foreclosure, or sale, abandonment, court order, circumstances in which the authority has acquired title or control of the property under this act, or by a transfer of the property to the authority by this state, an agency or department of this state, or any local unit of government of this state shall not subject the authority to liability under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, unless the authority is responsible for an activity causing a release on the property or other activity giving rise to liability under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106. This subsection shall not be considered to restrict or diminish any protection from liability that is otherwise available to the authority under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

**§ 124.761 Waste of or unlawful removal of property; restraining order.**

- (1) An authority may institute a civil action to prevent, restrain, or enjoin the waste of or unlawful removal of any property from tax reverted property or other real property held by the authority.
- (2) A circuit court may, on application, order the purchaser of any real property sold by an authority under this act in possession of the property.

**§ 124.762 Authority as party to civil action.** An authority shall be made a party to any action or proceeding instituted for the purpose of setting aside title to property held by the authority, the sale of property by the authority, or an expedited foreclosure under section 9. A hearing in any such proceeding shall not be held until the authority is served with process and proper proof of service is filed.

**§ 124.763. Property of Authority as public property.** Property of an authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is considered to be for a public and governmental

purpose. The property of the authority and its income and operation are exempt from all taxes and special assessments of this state or a local unit of government of this state. Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of this state or a local unit of government.

**§ 124.764. Construction, intent and scope of act.**

- (1) 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. In the exercise of its powers and duties under this act and its powers relating to property held by the authority, the authority shall have complete control as fully and completely as if it represented a private property owner and shall not be subject to restrictions imposed on the authority by the charter, ordinances, or resolutions of a local unit of government.
- (2) Unless permitted by this act or approved by an authority, any restrictions, standards, conditions, or prerequisites of a city, village, township, or county otherwise applicable to an authority and enacted after the effective date of this act shall not apply to an authority. This subsection is intended to prohibit special local legislation or ordinances applicable exclusively or primarily to an authority and not to exempt an authority from laws generally applicable to other persons or entities.
- (3) The provisions of this act apply notwithstanding any resolution, ordinance, or charter provision to the contrary. This section is not intended to exempt an authority from local zoning or land use controls, including, but not limited to, those controls authorized under the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215, or 1945 PA 344, MCL 125.71 to 125.84.
- (4) The transfer to an authority of tax reverted property, the title to which involuntarily vested in this state under section 67a of the general property tax act, 1893 PA 206, MCL 211.67a, in a foreclosing governmental unit under section 78m(7) of the general property tax act, 1893 PA 206, MCL 211.78m, or in a qualified city pursuant to procedures established under the charter or ordinances of the qualified city, shall be construed as an involuntary transfer of property to the authority. After a transfer described in this subsection, the authority shall be deemed to have assumed any governmental immunity or other legal defenses of this state, the foreclosing governmental unit, or the local unit of government related to the property and the manner in which title to the property was held by this state or the local unit of government.

**§ 124.765 Land bank fast track authority; creation; powers and duties; staffing; cooperation with state departments and agencies.**

- (1) The land bank fast track authority is created as a public body corporate and politic within the department.
- (2) The state authority shall exercise its powers, duties, functions, and responsibilities independently of the director of the department. The budgeting, procurement, and related administrative or management functions of the state authority shall be performed under the direction and supervision of the director of the department. The state authority may contract with the department for the purpose of maintaining the rights and interests of the state authority.
- (3) Subject to available appropriations, if requested by the state authority, the department shall provide staff and other support to the state authority sufficient to carry out its duties, powers, and responsibilities.
- (4) All departments and agencies of state government shall provide full cooperation to the state authority in the performance of its duties, powers, and responsibilities.

**§ 124.766 Board of directors; membership; appointment; terms oath; removal; vacancy; election of chairperson and vice-chairperson; designation of representative; discharge of duties.**

- (1) The purposes, powers, and duties of the state authority are vested in and shall be exercised by a board of directors. The authority board shall consist of 7 members. The governor shall appoint 4 residents of this state as members of the authority board. The members of the authority board shall serve terms of 4 years. In appointing the initial members of the authority board, the governor shall designate 2 to serve for 4 years, 1 to serve for 3 years, and 1 to serve for 2 years. All of the following shall also serve as members of the authority board:
  - (a) The director of the department or his or her designee.
  - (b) The chief executive officer of the Michigan economic development corporation or his or her designee.
  - (c) The executive director of the Michigan state housing development authority or his or her designee.
- (2) Upon appointment to the authority board under subsection (1) and upon the taking and filing of the constitutional oath of office prescribed in section 1 of article XI of the state constitution of 1963, a member of the authority board shall enter the office and exercise the duties of the office. A member of the authority board may be removed by the governor as provided in section 10 of article V of the state constitution of 1963.
- (3) Regardless of the cause of a vacancy on the authority board, the governor shall fill a vacancy in the office by appointment in the same manner as an appointment under subsection (1). A vacancy shall be filled for the balance of the unexpired term of the office. A member of the authority board shall hold office until a successor has been appointed and qualified.

- (4) The authority board shall elect a chairperson and a vice-chairperson from among its members. Members of the authority board shall serve without compensation, but shall be reimbursed for actual and necessary expenses.
- (5) A state officer or director who is a member of the authority board may designate a representative from his or her department or agency as a voting member of the authority board for 1 or more meetings.
- (6) A member of the authority board, officer, employee, or agent of the state authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties of his or her position, a member of the authority board or an officer, employee, or agent, when acting in good faith, may rely upon the opinion of counsel for the state authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the authority board or officer, employee, or agent of the state authority to be correct by the president or the officer of the state authority having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the state authority.

**§ 124.767 Executive Director; appointment; eligibility; oath; duties.** The governor shall appoint a person to serve as the executive director of the state authority. A member of the authority board is not eligible to hold the position of executive director. Before entering upon the duties of his or her office, the executive director shall take and file the constitutional oath of office provided in section 1 of article XI of the state constitution of 1963. Subject to the approval of the authority board, the executive director shall supervise, and be responsible for, the performance of the functions of the state authority under this act. The executive director shall attend the meetings of the authority board and shall provide the authority board and the governing body of the state authority a regular report describing the activities and financial condition of the state authority. The executive director shall furnish the authority board with information or reports governing the operation of the state authority as the authority board requires.

**§ 124.768 Land bank fast track fund; creation; receipt of money or other assets; money remaining in fund; expenditures; disposition of proceeds.**

- (1) The land bank fast track fund is created under the jurisdiction and control of the state authority and may be administered to secure any notes and bonds of the state authority.
- (2) The state authority may receive money or other assets from any source for deposit into the fund. The state authority shall credit to the fund interest and earnings from fund investments.
- (3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to any other fund.
- (4) The state authority shall expend money from the fund only for 1 or more of the following:
  - (a) Costs to clear or quiet title to property held by the state authority.
  - (b) To repay a loan made to the state authority under section 2f of 1855 PA 105, MCL 21.142f.
  - (c) Any other purposes provided in this act.
- (5) The state authority shall deposit into the fund all money it receives from the sale or transfer of property under this act, subject to section 8. The state authority shall credit to the fund the proceeds of the sale of notes or bonds to the extent provided for in the authorizing resolution of the state authority, and any other money made available to the state authority for the purposes of the fund.

**§ 124.769 Borrowing money and issuing bonds or notes.** [Omitted].

**§ 124.770 Transfer of property from state administrative board.** [Omitted]

**§ 124.771 Dissolution of authority.** If the state authority has completed the purposes for which it was organized, the authority board, by vote of at least 5 directors and with the written consent of the governor, may provide for the dissolution of the state authority and may provide for the transfer of any property held by the state authority to another authority or state agency. Upon the dissolution of the state authority, any remaining balance in the fund shall be transferred to the general fund of this state.

**§ 124.772 Biennial report.** The state authority shall report biennially to the legislature on the activities of the state authority.

**§ 124.773. Intergovernmental Agreements.**

- (1) An authority may enter into an intergovernmental agreement with the Michigan economic development corporation for the joint exercise of powers and duties under this act, of the powers and duties of the authority and the Michigan economic development corporation, and for the provision of economic development services related to the activities of the authority.
- (2) An authority may enter into an intergovernmental agreement with the Michigan state housing development authority for the joint exercise of powers and duties under this act, of the powers and duties of the authority and the Michigan state housing development authority, and for the provision of redevelopment services related to the activities of the authority.

- (3) A county, city, qualified city, township, or village may enter into an intergovernmental agreement with the state authority providing for the transfer to the authority of tax reverted property held by the county, city, township, or village, for title clearance, for the disposition of the proceeds from the sale of the property, and for other activities authorized under this act, including the return or transfer of property under the control of the authority to the county, city, township, or village. An intergovernmental agreement under this subsection may not provide for a separate legal or administrative entity to administer or execute the agreement under section 7 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.507.
- (4) A county foreclosing governmental unit may, with the approval of the board of commissioners for that county and, if that county has an elected county executive, with the concurrence of the elected county executive, enter into an intergovernmental agreement with the state authority providing for the exercise of the powers, duties, functions, and responsibilities of an authority under this act and for the creation of a county authority to exercise those functions. If a county authority is created under this subsection, the treasurer of the county shall be a member of the authority board.
- (5) A qualified city may enter into an intergovernmental agreement with the state authority providing for the exercise of the powers, duties, functions, and responsibilities of an authority under this act and for the creation of a local authority to exercise those functions.
- (6) An intergovernmental agreement under subsection (4) or (5) shall provide for all of the following:
  - (a) The incorporation of a county or local authority as a public body corporate.
  - (b) The name of the authority.
  - (c) The size of the initial governing body of the county or local authority, which shall be composed of an odd number of members.
  - (d) The qualifications, method of selection, and terms of office of the initial board members.
  - (e) A method for the adoption of articles of incorporation by the governing body of the county or local authority.
  - (f) A method for the distribution of proceeds from the activities of the county or local authority.
  - (g) A method for the dissolution of the local or county authority and for the withdrawal from the authority of any governmental agencies involved.
  - (h) Any other matters considered advisable by the participating governmental agencies, consistent with this act.
- (7) If under the charter of a qualified city the qualified city collects delinquent city real property taxes and does not return the delinquent taxes to the treasurer of the county in which the qualified city is located under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, any of the following property held by the qualified city may be transferred to a local authority:
  - (a) Tax delinquent real property for which a lien has been deemed sold to a city department director under the charter or ordinances of the qualified city, except for property that was deeded to a department director less than 2 years before the proposed transfer to the local authority.
  - (b) Tax delinquent real property held by the city that has been foreclosed by the qualified city and for which title has vested in the city pursuant to procedures established under the charter or ordinances of the qualified city.
  - (c) Any tax reverted property owned or under the control of the qualified city.
- (8) A qualified city may authorize the transfer with or without consideration of any real property or interest in real property to a local authority including, but not limited to, tax reverted property or interests in tax reverted property held or acquired after the creation of the local authority by the qualified city, with the consent of the local authority.
- (9) A qualified city and any agency or department of a qualified city, or any other official public body, may do 1 or more of the following:
  - (a) Anything necessary or convenient to aid a local authority in fulfilling its purposes under this act.
  - (b) Lend, grant, transfer, appropriate, or contribute funds to a local authority in furtherance of its purposes.
  - (c) Lend, grant, transfer, or convey funds to a local authority that are received from the federal government or this state or from any nongovernmental entity in aid of the purposes of this act.
- (10) A local authority may reimburse advances made by a qualified city under subsection (9) or by any other person for costs eligible to be incurred by the local authority with any source of revenue available for use of the local authority under this act and enter into agreements related to these reimbursements. A reimbursement agreement under this subsection is not subject to section 305 of the revised municipal finance act, 2001 PA 34, MCL 141.2305.
- (11) A local authority may enter into agreements with the county treasurer of the county in which the qualified city is located for the collection of property taxes or the enforcement and consolidation of tax liens within that qualified city for any property or interest in property transferred to the local authority.

- (12) Unless specifically reserved or conditioned upon the approval of the governing body of a qualified city, all powers granted under this act to a local authority may be exercised by the local authority without the approval of the governing body of the qualified city, notwithstanding any charter, ordinance, or resolution to the contrary.
- (13) Prior to its effectiveness, an intergovernmental agreement under this section shall be filed with the county clerk of each county where a party to the agreement is located and with the secretary of state.

**§ 124.774 Authority created under § 124.773; borrowing money and issuing bonds or notes.**

- (1) By resolution of its board, an authority created under section 23 may borrow money and issue bonds and notes, subject to limitations set forth in this section, for the purpose of achieving the purposes of and objectives incident to and necessary or convenient to carry out the purposes and objectives of the authority, including, but not limited to, necessary administrative and operational costs. The bonds or notes shall mature in not more than 30 years and shall bear interest and be sold and be payable in the manner and upon the terms and conditions determined, or within the parameters specified, by the authority in the resolution authorizing issuance of the bonds or notes. The bonds or notes may include capitalized interest, an amount sufficient to fund costs of the issuance of the bonds or notes, and a sum to provide a reasonable reserve for payment of principal and interest on the bonds or notes. Bonds or notes issued under this section are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The resolution authorizing the obligations shall create a lien on revenues pledged by the resolution that shall be a statutory lien and shall be a first lien subject only to liens previously created. The resolution may provide the terms upon which additional bonds or notes may be issued of equal standing and parity of lien as to revenues pledged under the resolution.
- (2) The qualified city or county which authorized the formation of an authority under section 23 may by a majority vote of its governing body make a limited tax pledge to support the authority's bonds or notes, or if authorized by the voters of the qualified city or county, may pledge its unlimited tax full faith and credit for the payment of principal of and interest on the authority's bonds or notes.
- (3) The bonds or notes issued under this section shall be secured by 1 or more sources of revenue available to the authority, as provided by resolution of the authority, including revenues available to the authority under the tax reverted property clean title act.
- (4) The bonds and notes of the authority may be invested in by the state treasurer and all other public officers, state agencies, and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for 1 or more of the purposes for which the deposit of bonds or notes is authorized. The authorization granted by this section is supplemental and in addition to all other authority granted by law.
- (5) The net present value of the principal and interest to be paid on an obligation issued by or incurred by the authority to refund an obligation incurred under this section, including the cost of issuance, shall be less than the net present value of the principal and interest to be paid on the obligation being refunded as calculated using a method approved by the department of treasury.
- (6) An obligation issued by an authority under this section shall not appreciate in principal amount or be sold at a discount of more than 10% unless the obligation of the authority is issued to this state, an agency of this state, the county, or the qualifying city.
- (7) Bonds and notes issued by an authority under this section and the interest on and income from the bonds and notes are exempt from taxation by this state or a political subdivision of this state.
- (8) This section does not apply to a loan under section 2f of 1855 PA 105, MCL 21.142f.

**Additional References:**

The General Property Tax Act is set forth as 1893 P.A. 206, Mich. Comp. Laws § 211.1 to 211.157, as amended by 1999 P.A. 123 and by 2003 P.A. 263.

The relationship between Land Bank Authority activities and brownfield redevelopment is found in 2003 P.A. 259, Mich. Comp. Laws § 125.2652 and 125.2663.

The exemption from property taxes of property held by a land bank, and application of 50% of the general property taxes to a land bank for five years following the conveyance of the property by the land bank is found in 2003 P.A. 260 and 2003 P.A. 261, Mich. Comp. Laws § 211.1021 and Mich. Comp. Laws § 211.7gg.

The ability of the state to invest in loans to land bank authorities is found in 2003 P.A. 262, Mich. Comp. Laws § 21.144(2)(f).

# APPENDIX B-4: Missouri Revised Statutes (through 2004)

## LAND REUTILIZATION AUTHORITIES

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### § 92.875. Land reutilization authority created, purpose

1. There is hereby created an authority for the management, sale, transfer and other disposition of tax delinquent lands, which authority shall be known as "The Land Reutilization Authority of the city of \_\_\_\_\_, Missouri". It shall have authority to accept the grant of any interest in real property made to it, or to accept gifts and grant in aid assistance. Such authority shall have and exercise all the powers conferred by the provisions of sections 92.700 to 92.920 necessary and incidental to the effective management, sale, transfer or other disposition of real estate acquired under and by virtue of the foreclosure of the lien for delinquent real estate taxes, as provided in sections 92.700 to 92.920, and in the exercise of such powers, the land reutilization authority shall be deemed to be a public corporation acting in a governmental capacity.
2. The land reutilization authority is hereby created to foster the public purpose of returning land which is in a nonrevenue generating nontax 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 sections 92.700 to 92.920 and new tax revenues for said city.

### § 92.880. Beneficiaries of authority--interest, how determined

The beneficiaries of the land reutilization authority shall be the taxing authorities which held or owned tax bills against the respective parcel of real estate sold to the land reutilization authority at sheriff's foreclosure sale included in the judgment of the court, and their respective interests in each parcel of real estate shall be to the extent and in the proportion and according to the priorities determined by the court on the basis which the principal amount of their respective tax bills bore to the total principal amount of all of the tax bills described in the judgment.

### § 92.885. Members, appointment--vacancy, how filled

1. The land reutilization authority shall be composed of three members, one of whom shall be appointed by the comptroller of any city operating under the provisions of sections 92.700 to 92.920, one of whom shall be appointed by the board of education of such city, and one shall be appointed by the mayor of any such city. The members shall serve at the pleasure of their respective appointing authority and shall serve without compensation. The members so appointed may be employees of the appointing authority and shall serve without additional compensation.
2. Any vacancy in the office of land reutilization commissioner shall be filled by the same appointing authority which made the original appointment. If any appointing authority fails to make any appointment of a land reutilization commissioner within the time the first appointments are required, or within thirty days after any term expires, then the appointment shall be made by the mayor of the city.

### § 92.890. Commissioners, organization, bond, oath

1. Such land reutilization commissioners shall meet immediately after all three have been appointed and qualified and shall select a chairman, a vice chairman and a secretary.
2. Such commissioners shall each furnish a surety bond, if such bond is not already covered by governmental surety bond in a penal sum not to exceed twenty-five thousand dollars to be approved by the comptroller, the premium of such bond to be paid by the comptroller out of the city funds. Such bond must be issued by a surety company licensed to do business in the state of Missouri, and shall be conditioned to guarantee the faithful performance of their duties hereunder, and shall be written to cover all the commissioners.
3. Before entering upon the duties of his office, each commissioner shall take and subscribe to the following oath:

State of Missouri

ss.

City of \_\_\_\_\_

I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the state of Missouri; that I will faithfully and impartially discharge my duties as a member of the Land Reutilization Authority of \_\_\_\_\_,

Missouri; that I will, according to my best knowledge and judgment, administer such tax delinquent lands held by me in trust, according to the laws of this state and for the benefit of the public bodies and the tax bill owners which I represent, so help me God.

\_\_\_\_\_  
Subscribed and sworn to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

### **§ 92.895. Authority's seal, powers**

1. Such land reutilization authority shall be a continuing body and shall have and adopt an official seal which shall bear on its face the words "Land Reutilization Authority of ....., Missouri", "Seal", and shall have the power to sue and issue deeds in its name, which deed shall be signed by the chairman or vice chairman, and attested by the secretary or assistant secretary and the official seal of the land reutilization authority affixed thereon, and shall have the general power to administer its business as any other corporate body.
2. The land reutilization authority may convey title to any real estate sold or conveyed by it by general or special warranty deed, and may convey as absolute title in fee simple, without in any case procuring any consent, conveyance or other instrument from the beneficiaries for which it acts; provided, however, that each such deed shall recite whether the selling price represents a consideration equal to or in excess of two-thirds of the appraised value of such real estate so sold or conveyed, and if such selling price represents a consideration less than two-thirds of the appraised value of the real estate, then the land reutilization commissioners shall first procure the consent thereto of not less than two of the three appointing authorities, which consent shall be evidenced by a copy of the action of each such appointing authority duly certified to by its clerk or secretary attached to and made a part of land reutilization authority commission official minutes. However, the land reutilization authority may retain a reversionary interest in any real estate conveyed by it for up to two years from the date of conveyance.

### **§ 92.900. Duties of authority**

It shall be the duty of such land reutilization authority to administer the tax delinquent lands, as follows:

- (1) Such land reutilization authority shall immediately assume possession and control of all real estate acquired by it under the provisions of sections 92.700 to 92.920 and proceed to inventory and appraise such land, and thereafter keep and maintain a perpetual inventory of such real estate, except that individual parcels may be consolidated and grouped or regrouped for economy, utility or convenience.
- (2) It shall classify such land as to its use, into the following three classifications:
  - (a) Suitable for private use;
  - (b) Suitable for use by a public agency;
  - (c) Not usable in its present condition or situation and held as a public land reserve.

Any parcel of property may be reclassified by two-thirds vote of the land reutilization commissioners, and all properties classified as falling within paragraph (c) of this subdivision shall be reviewed annually to determine the appropriateness of such classification.

- (3) Such land reutilization authority shall administer all property in classification (a) of subdivision (2) in accordance with subdivision (4) of this section. Every effort shall be made to sell the property at a price as close to its appraised value as possible. Property in classifications (b) and (c) of subdivision (2) may be transferred at no cost, except any administrative expenses connected with the transfer, by the land reutilization authority upon request of and to those public agencies provided for in classification (b) of subdivision (2) upon submission of a plan of use for the property by the public agency to the land reutilization commissioners, except that no property shall be transferred at no cost unless there be a unanimous vote of the three land reutilization commissioners. If the property is transferred at no cost to any public agency and the public agency shall then sell or otherwise dispose of the property within ten years for any consideration, the proceeds of the sale or disposal shall be returned to the land reutilization commissioners who shall in turn distribute the proceeds in accordance with the provisions of section 92.840. If the land reutilization commissioners do not give an affirmative vote to the request for transfer, the land reutilization authority may dispose of the property in accordance with subdivision (4) of this section. Properties in paragraph (c) of subdivision (2) shall be studied and recommendations made to taxing authorities as to possible uses for real estate in the classification. In furtherance of this object the land reutilization authority shall have access to any and all city and county records at any time and

may call upon any and all city and county officers, departments, boards, planning commissions or other commissions for studies, statistics or recommendations. The land reutilization authority shall prepare a list of all buildings in paragraph (a) of subdivision (2), which list shall be corrected and amended on a quarterly basis. The commissioners may make a charge, not to exceed one dollar for each copy of the list, which money shall be used to help defray the costs of preparing the list. Any person may purchase a copy of the list. Any real estate agent or broker licensed to do business in the city may when authorized by the commissioners sell any property upon the terms and conditions imposed by the commissioners, and the commissioners are authorized and empowered to pay a reasonable real estate commission; and provided, that nothing herein shall prohibit the commissioners from selling or exchanging any real estate directly to or with any purchaser.

- (4) The land reutilization commissioners shall have power, and it shall be their duty, to manage, maintain, protect, rent, lease, repair, insure, alter, hold and return, assemble, sell, trade, acquire, exchange or otherwise dispose of any real estate, on terms and conditions as may be determined in the sole discretion of the commissioners. The land reutilization commissioners may assemble tracts or parcels of real estate for public parks or any other purposes and to such end may exchange or acquire parcels, and otherwise effectuate such purposes by agreement with any taxing authority.
- (5) The land reutilization authority shall adopt rules and regulations in harmony with the provisions of sections 92.700 to 92.920 and shall keep records of all its transactions, which records shall be open to inspection of any taxing authority in the city at any time. There shall be an annual audit of the affairs, accounts, expenses, and financial transactions of such land reutilization authority by certified public accountant as of December thirty-first of each year, which accountants shall be employed by the commissioners on or before November first of each year, and certified copies thereof shall be furnished to the appointing authorities described in section 92.885 and shall be available for public inspection at the office of the land reutilization authority.

#### **§ 92.905. Director and employees, appointment--funds, how obtained, deposit of, audits--expenditures, how made**

1. The land reutilization commissioners may appoint a director and such other employees who are deemed necessary to carry out the responsibilities and duties herein imposed and may incur such other reasonable and proper costs and expenses as are related thereto. If such costs and expenses exceed the amount of funds available to the land reutilization authority under provisions of sections 92.700 to 92.920, the land reutilization authority shall obtain approval of the board of estimate and apportionment and an appropriation by the governing body of the city for such additional or supplemental fund needs. Such appropriations by the city shall be considered advances to the land reutilization authority subject to repayment from funds supplementally accumulated by the land reutilization authority under provisions of law.
2. The comptroller of the city shall handle all such appropriated expense funds and disburse same under the same provisions for handling other city departmental expenditures.
3. The land reutilization authority shall deposit all funds received under provisions of sections 92.700 to 92.920 with the treasurer of the city, and the comptroller of the city shall maintain separate fund accounts for such deposits and make disbursements therefrom upon receipt of vouchers duly authorized by the land reutilization authority under provisions of sections 92.700 to 92.920 and in accordance with standard procedures adopted by and approved by the comptroller.
4. The fiscal year of the land reutilization authority shall commence on January first of each year. The land reutilization authority shall audit all claims for the expenditure of money, and shall, acting by the chairman or vice chairman thereof, draw warrants therefor from time to time.

#### **§ 92.910. Inventory of real estate required**

The land reutilization authority shall set up and maintain a perpetual inventory on each tract of its real estate, except that individual tracts may be consolidated and grouped or regrouped for economy or convenience.

#### **§ 92.915. Accounts, how kept--expenditures, priority of**

1. The land reutilization authority shall set up accounts on its books relating to the operation, management, or other expense of each individual parcel of real estate.
2. When any parcel of real estate is sold or otherwise disposed of by the land reutilization authority, the proceeds therefrom shall be applied and distributed in the following order, except as provided for in section 92.900:
  - (1) To the payment of the expenses of sale, the costs of the care, improvement, operation, acquisition, demolition, management, and administration of such parcels of real estate as determined by the land reutilization commissioners and apportioned to such parcel;
  - (2) The balance to be paid to the respective taxing authorities and tax bill owners, if any, in the proportion that the principal amounts of the tax bills of each such party bears to the total principal amount of all the tax bills included in the original judgment relating to such parcel of real estate and in the order of their respective priorities.

After deduction of all sums charged to each account for various expenses, distribution shall be made to the respective taxing authorities and to tax bill owners having an interest in such parcel of real estate, on January first and July first of each year, and at such other times as the land reutilization commissioners in their discretion may determine.

#### **§ 92.916. Duties of collector--compensation (St. Louis city)**

1. Before any distribution provided for in section 92.915 may be made, the collector shall review the books of the land reutilization authority for purposes of certifying the following:
  - (1) That the expenses and costs reflected on the books have been properly allocated to each property which has been sold and the expenses and costs provided for in subdivision (1) of subsection 2 of section 92.915 are reasonably related to the management and operation of the land reutilization authority;
  - (2) That the proposed distribution accurately reflects the amounts shown on the books of the collector for penalties, attorneys' fees or costs which were included in the judgment against such parcel of real estate, plus its proportional part of the costs of the sheriff's foreclosure sale.
2. After such certification, the land reutilization authority shall transfer to the collector that part of distributed proceeds provided for the payment of those costs described in subsection 2 of section 92.915, upon receipt of which he shall immediately pay thereon.
3. The balance of the proposed distribution shall also be paid to the collector, who in accord with the provisions of subdivision (3) of subsection 2 of section 92.915, shall determine the interests of the respective taxing authorities for the various tax years included in the original judgment for each parcel of real property and shall establish the proportionate share of each taxing authority based upon its tax rate for the various years. The collector shall thereupon submit in writing to each taxing authority his determination as to their respective interests in the proposed distribution. If no objection is made within ten days thereafter, the collector shall forthwith make such distribution.
4. As additional compensation for the duties herein prescribed, the collector shall receive annually the sum of five thousand dollars.

#### **§ 92.920. Members and employees prohibited from profiting from operations of authority, exception--penalty**

1. Neither said members nor any salaried employee of the land reutilization authority provided for herein shall receive any compensation, emolument or other profit directly or indirectly from the rental, management, purchase, sale or other disposition of any lands held by such land reutilization authority other than the salaries, expenses and emoluments provided for herein.
2. Any person convicted of violating this section shall be deemed guilty of a felony and upon conviction thereof shall be sentenced to serve not less than two nor more than five years in the state penitentiary.

#### **Additional References:**

Property tax foreclosure procedures are set forth in Missouri Revised Statutes 92.700 – 92.870.

## **APPENDIX B-5: Ohio Revised Code (through 2004)**

### **CHAPTER 5722**

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#### **Land Reutilization Program**

##### **§ 5722.01 Definitions**

As used in this chapter:

- (A) "Electing subdivision" means a municipal corporation that has enacted an ordinance or a township or county that has adopted a resolution pursuant to section 5722.02 of the Revised Code for purposes of adopting and implementing the procedures set forth in this chapter.
- (B) "Delinquent lands" has the same meanings as in section 5721.01 of the Revised Code, and "delinquent vacant lands" are delinquent lands that are unimproved by any dwelling.
- (C) "Land reutilization program" means the procedures and activities concerning the acquisition, management, and disposition of affected delinquent lands set forth in sections 5722.02 to 5722.15 of the Revised Code.

- (D) "Minimum bid," in the case of a sale of property foreclosed pursuant to section 323.25 or 5721.18 or foreclosed and forfeited pursuant to section 5721.14 of the Revised Code, means a bid in an amount equal to the sum of the taxes, assessments, charges, penalties, and interest due and payable on the parcel subsequent to the delivery to the county prosecuting attorney of the delinquent land or delinquent vacant land tax certificate or master list of delinquent or delinquent vacant tracts containing the parcel, and prior to the transfer of the deed of the parcel to the purchaser following confirmation of sale, plus the costs of foreclosure or foreclosure and forfeiture proceedings against the property.
- (E) "Nonproductive land" means any parcel of delinquent vacant land with respect to which a foreclosure proceeding pursuant to section 323.25, a foreclosure proceeding pursuant to division (A) or (B) of section 5721.18, or a foreclosure and forfeiture proceeding pursuant to section 5721.14 of the Revised Code has been instituted; and any parcel of delinquent land with respect to which a foreclosure proceeding pursuant to section 323.25 or division (A) or (B) of section 5721.18 of the Revised Code has been instituted, and upon which there are no buildings or other structures, or upon which there are either:
  - (1) Buildings or other structures that are not in the occupancy of any person and as to which the township or municipal corporation within whose boundaries the parcel is situated has instituted proceedings under section 505.86 or 715.26 of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution, for the removal or demolition of such buildings or other structures by the township or municipal corporation because of their insecure, unsafe, or structurally defective condition;
  - (2) Buildings or structures that are not in the occupancy of any person at the time the foreclosure proceeding is initiated and whose acquisition the municipal corporation, county, or township determines to be necessary for the implementation of an effective land reutilization program.
- (F) "Occupancy" means the actual, continuous, and exclusive use and possession of a parcel by a person having a lawful right to such use and possession.
- (G) "Land within an electing subdivision's boundaries" does not include land within the boundaries of a municipal corporation unless the electing subdivision is the municipal corporation.

**§ 5722.02 Electing subdivision may implement procedures for reutilization of nonproductive land**

Any municipal corporation, county, or township may elect to adopt and implement the procedures set forth in sections 5722.02 to 5722.15 of the Revised Code to facilitate the effective reutilization of nonproductive land situated within its boundaries. Such election shall be made by ordinance in the case of a municipal corporation, and by resolution in the case of a county or township. The ordinance or resolution shall state that the existence of nonproductive land within its boundaries is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.

An electing subdivision shall promptly deliver certified copies of such ordinance or resolution to the auditor, treasurer, and the prosecutor of each county in which the electing subdivision is situated. On and after the effective date of such ordinance or resolution, the foreclosure, sale, management, and disposition of all nonproductive land situated within the electing subdivision's boundaries shall be governed by the procedures set forth in sections 5722.02 to 5722.15 of the Revised Code.

**§ 5722.03 Sale of nonproductive tax-foreclosed lands to municipal corporation; procedures**

- (A) On and after the effective date of an ordinance or resolution adopted pursuant to section 5722.02 of the Revised Code, nonproductive land within an electing subdivision's boundaries that the subdivision wishes to acquire and that has been advertised and offered for sale pursuant to a foreclosure proceeding as provided in section 323.25 or 5721.18 of the Revised Code, but is not sold for want of a minimum bid, shall be sold to the electing subdivision in the manner set forth in this section.
- (B) Upon receipt of an ordinance or resolution under section 5722.02 of the Revised Code, the county prosecuting attorney shall compile and deliver to the electing subdivision a list of all delinquent land within the electing subdivision with respect to which a foreclosure proceeding pursuant to section 323.25 or 5721.18 of the Revised Code has been instituted and is pending. The prosecuting attorney shall notify the electing subdivision of the identity of all delinquent land within the subdivision whenever a foreclosure proceeding pursuant to section 323.25 or 5721.18 of the Revised Code is commenced with respect to that land.
- (C) The electing subdivision shall select from such lists the delinquent lands that constitute nonproductive lands that it wishes to acquire, and shall notify the prosecuting attorney of its selection prior to the advertisement and sale of the nonproductive lands pursuant to such a foreclosure proceeding. Notwithstanding the sales price provisions to the contrary in division (A) of section 323.28 or in divisions (A)(1) and (C) of section 5721.19 of the Revised Code, selected nonproductive lands subject to a foreclosure proceeding pursuant to section 323.25 or 5721.18 of the Revised Code shall be advertised for sale and be sold, without appraisal, for not less than the amount determined under division (A)(1) of section 323.28 of the Revised Code in the case of selected nonproductive lands subject to a foreclosure proceeding pursuant to section 323.25 of the Revised Code, or the amount determined under division (A)(2) of section 5721.19 in the case of selected nonproductive lands subject to a foreclosure proceeding pursuant to section 5721.18 of the Revised Code. All nonproductive lands so selected, when advertised for sale pursuant to a foreclosure proceeding, shall be advertised separately from the advertisement applicable to other

delinquent lands. Notwithstanding division (A) of section 5721.191 of the Revised Code, the minimum amount for which selected nonproductive lands subject to a foreclosure proceeding pursuant to section 5721.18 of the Revised Code will be sold, as specified in the advertisement for sale, shall equal the sum of the taxes, assessments, charges, penalties, interest, and costs due on the parcel as determined under division (A)(2) of section 5721.19 of the Revised Code. Notwithstanding provisions to the contrary in division (A) of section 323.28 of the Revised Code, the minimum amount for which selected nonproductive lands subject to a foreclosure proceeding pursuant to section 323.25 of the Revised Code will be sold, as specified in the advertisement for sale, shall equal the amount specified in division (A)(1) of section 323.28 of the Revised Code. The advertisement relating to the selected nonproductive lands also shall include a statement that the lands have been determined by the electing subdivision to be nonproductive lands and that, if at a foreclosure sale no bid for the appropriate amount specified in this division is received, such lands shall be sold to the electing subdivision.

- (D) If any nonproductive land selected by an electing subdivision is advertised and offered for sale at two sales pursuant to this section but is not sold for want of a minimum bid, the electing subdivision that selected the nonproductive land shall be deemed to have submitted the winning bid at the second sale for the land, and the land is deemed sold to the electing subdivision for no consideration other than the fee charged under division (F) of this section. If both a county and a township within that county have adopted a resolution pursuant to section 5722.02 of the Revised Code and both subdivisions select the same parcel or parcels of land, the subdivision that first notifies the prosecuting attorney of such selection shall be the electing subdivision deemed to have submitted the winning bid under this division. The officer conducting the sale shall announce the bid of the electing subdivision at the sale and shall report the proceedings to the court for confirmation of sale.
- (E) Upon the sale of any nonproductive land to an electing subdivision, the county auditor shall charge the costs, as determined by the court, incurred in the foreclosure proceeding instituted under section 323.25 or 5721.18 of the Revised Code and applicable to the nonproductive land to the taxing districts, including the electing subdivision, in direct proportion to their interest in the taxes, assessments, charges, penalties, and interest on the nonproductive land due and payable at the time the land was sold pursuant to the foreclosure proceeding. The interest of each taxing district in the taxes, assessments, charges, penalties, and interest on the nonproductive land shall bear the same proportion to the amount of those taxes, assessments, charges, penalties, and interest that the amount of taxes levied by each district against the nonproductive land in the preceding tax year bears to the taxes levied by all such districts against the nonproductive land in the preceding tax year. In making a semiannual apportionment of funds, the auditor shall retain at the next apportionment the amount charged to each such taxing district.
- (F) Unless the nonproductive land is redeemed pursuant to section 323.31 or 5721.25 of the Revised Code, upon the filing of the entry of confirmation of sale, the officer conducting the sale shall execute and file for recording a deed conveying title to the land and, once the deed has been recorded, deliver the deed to the electing subdivision; thereupon, title to the land is incontestable in the electing subdivision and free and clear of all liens and encumbrances, except those easements and covenants of record running with the land and created prior to the time at which the taxes or assessments, for the nonpayment of which the land is sold at foreclosure, became due and payable. At the time of the sale, the officer shall collect and the electing subdivision shall pay the fee required by law for transferring and recording of deeds.

The title is not invalid because of any irregularity, informality, or omission of any proceedings under section 323.25, this chapter, or Chapter 5721. of the Revised Code, or in any processes of taxation, if such irregularity, informality, or omission does not abrogate any provision of such chapters for notice to holders of title, lien, or mortgage to, or other interests in, the foreclosed lands.

#### **§ 5722.04 Forfeited lands**

- (A) Upon receipt of an ordinance or resolution adopted pursuant to section 5722.02 of the Revised Code, the county auditor shall deliver to the electing subdivision a list of all delinquent lands within an electing subdivision's boundaries that have been forfeited to the state pursuant to section 5723.01 of the Revised Code and thereafter shall notify the electing subdivision of any additions to or deletions from such list.

The electing subdivision shall select from such lists the forfeited lands that constitute nonproductive lands that the subdivision wishes to acquire, and shall notify the county auditor of its selection prior to the advertisement and sale of such lands. Notwithstanding the sales price provisions of division (A)(1) of section 5723.06 of the Revised Code, the selected nonproductive lands shall be advertised for sale and be sold to the highest bidder for an amount at least sufficient to pay the amount determined under division (A)(2) of section 5721.16 of the Revised Code. All nonproductive lands forfeited to the state and selected by an electing subdivision, when advertised for sale pursuant to the relevant procedures set forth in Chapter 5723. of the Revised Code, shall be advertised separately from the advertisement applicable to other forfeited lands. The advertisement relating to the selected nonproductive lands also shall include a statement that the lands have been selected by the electing subdivision as nonproductive lands that it wishes to acquire and that, if at the forfeiture sale no bid for the sum of the taxes, assessments, charges, penalties, interest, and costs due on the parcel as determined under division (A)(1)(a) of section 5723.06 of the Revised Code is received, the lands shall be sold to the electing subdivision.

- (B) If any nonproductive land that has been forfeited to the state and selected by an electing subdivision is advertised and offered for sale by the auditor pursuant to Chapter 5723. of the Revised Code, but no minimum bid is received, the electing subdivision shall be deemed to have submitted the winning bid, and the land is deemed sold to the electing subdivision for no consideration other than the fee charged under division (C) of this section. If both a county and a township in that county have adopted a resolution pursuant to section 5722.02 of the Revised Code and both subdivi-

sions select the same parcel or parcels of land, the subdivision that first notifies the county auditor of such selection shall be the electing subdivision deemed to have submitted the winning bid under this division.

The auditor shall announce the bid at the sale and shall declare the selected nonproductive land to be sold to the electing subdivision. The auditor shall deliver to the electing subdivision a certificate of sale.

- (C) On the returning of the certificate of sale to the auditor, the auditor shall execute and file for recording a deed conveying title to the selected nonproductive land and, once the deed has been recorded, deliver it to the electing subdivision. Thereupon, all previous title is extinguished, and the title in the electing subdivision is incontestable and free and clear from all liens and encumbrances, except taxes and special assessments that are not due at the time of the sale and any easements and covenants of record running with the land and created prior to the time at which the taxes or assessments, for the nonpayment of which the nonproductive land was forfeited, became due and payable. At the time of the sale, the auditor shall collect and the electing subdivision shall pay the fee required by law for transferring and recording of deeds.

Upon delivery of a deed conveying any nonproductive land to an electing subdivision, the county auditor shall charge all costs incurred in any proceeding instituted under section 5721.14 or 5721.18 of the Revised Code or incurred as a result of the forfeiture and sale of the nonproductive land to the taxing districts, including the electing subdivision, in direct proportion to their interest in the taxes, assessments, charges, interest, and penalties on the nonproductive land due and payable at the time the land was sold at the forfeiture sale. The interest of each taxing district in the taxes, assessments, charges, penalties, and interest on the nonproductive land shall bear the same proportion to the amount of those taxes, assessments, charges, penalties, and interest that the amount of taxes levied by each district against the nonproductive land in the preceding tax year bears to the taxes levied by all such districts against the nonproductive land in the preceding tax year. In making a semiannual apportionment of funds, the auditor shall retain at the next apportionment the amount charged to each such taxing district.

#### **§ 5722.05 Limitation of actions to challenge sales**

Whenever nonproductive land is sold under section 5722.03 or 5722.04 of the Revised Code to an electing subdivision, no action shall be commenced, nor shall any defense be asserted, after one year from the date the deed conveying such land to the electing subdivision is filed for record, to question the validity of the title vested in the electing subdivision by such sale for any irregularity, informality, or omission in the proceedings relative to the foreclosure, forfeiture, or sale of such nonproductive land to the electing subdivision.

#### **§ 5722.06 Duties of electing subdivision**

An electing subdivision shall assume possession and control of any nonproductive land acquired by it under section 5722.03, 5722.04, or 5722.10 of the Revised Code and any other land it acquires as a part of its land reutilization program. The electing subdivision shall hold and administer such property in a governmental capacity for the benefit of itself and of other taxing districts having an interest in the taxes, assessments, charges, interest, and penalties due and owing thereon at the time of the property's acquisition by the electing subdivision. In its administration of such nonproductive land as a part of a land reutilization program, the electing subdivision shall:

- (A) Manage, maintain, and protect, or temporarily use for a public purpose such land in such manner as it deems appropriate;
- (B) Compile and maintain a written inventory of all such land. The inventory shall be available for public inspection and distribution at all times.
- (C) Study, analyze, and evaluate potential, present, and future uses for such land which would provide for the effective reutilization of the nonproductive land;
- (D) Plan for, and use its best efforts to consummate, the sale or other disposition of such land at such times and upon such terms and conditions as it deems appropriate to the fulfillment of the purposes and objectives of its land reutilization program;
- (E) Establish and maintain records and accounts reflecting all transactions, expenditures, and revenues relating to its land reutilization program, including separate itemizations of all transactions, expenditures, and revenues concerning each individual parcel of real property acquired as a part of such program.

#### **§ 5722.07 Re-sale by electing subdivision**

As used in this section, "fair market value" means the appraised value of the nonproductive land made with reference to such redevelopment and reutilization restrictions as may be imposed by the electing subdivision as a condition of sale or as may be otherwise applicable to such land.

An electing subdivision may, without competitive bidding, sell any land acquired by it as a part of its land reutilization program at such times, to such persons, and upon such terms and conditions, and subject to such restrictions and covenants as it deems necessary or appropriate to assure the land's effective reutilization. Such land shall be sold at not less than its fair market value. However, upon the approval of the legislative authorities of those taxing districts entitled to share in the proceeds from the sale thereof, the electing subdivision may either retain such land for devotion by it to public use, or sell,

lease, or otherwise transfer any such land to another political subdivision for the devotion to public use by such political subdivision for a consideration less than fair market value.

Whenever an electing subdivision sells any land acquired as part of its land reutilization program for an amount equal to or greater than fair market value, it shall execute and deliver all agreements and instruments incident thereto. The electing subdivision may execute and deliver all agreements and instruments without procuring any approval, consent, conveyance, or other instrument from any other person or entity, including the other taxing districts entitled to share in the proceeds from the sale thereof.

An electing subdivision may, for purposes of land disposition, consolidate, assemble, or subdivide individual parcels of land acquired as part of its land reutilization program.

#### **§ 5722.08 Distribution of proceeds**

When an electing subdivision sells any land acquired as a part of its land reutilization program, the proceeds from such sale shall be applied and distributed in the following order:

- (A) To the electing subdivision in reimbursement of its expenses incurred on account of the acquisition, administration, management, maintenance, and disposition of such land, and such other expenses of the land reutilization program as the electing subdivision may apportion to such land;
- (B) To the county treasurer to reimburse those taxing districts to which the county auditor charged the costs of foreclosure pursuant to section 5722.03 of the Revised Code, or costs of forfeiture pursuant to section 5722.04 of the Revised Code. If the proceeds of the sale of the nonproductive lands, after making the payment required under this division, are not sufficient to reimburse the full amounts charged to taxing districts as costs under section 5722.03 or 5722.04 of the Revised Code, the balance of the proceeds shall be used to reimburse the taxing districts in the same proportion as the costs were charged.
- (C) To the county treasurer for distribution to the taxing districts charged costs under section 5722.03 or 5722.04 of the Revised Code, in the same proportion as they were charged costs by the county auditor, an amount representing both of the following:
  - (1) The taxes, assessments, charges, penalties, and interest due and owing on such land as of the date of acquisition by the electing subdivision;
  - (2) The taxes, assessments, charges, penalties, and interest that would have been due and payable with respect to such land from such date of acquisition were such land not exempt from taxation pursuant to section 5722.11 of the Revised Code.
- (D) The balance, if any, to be retained by the electing subdivision for application to the payment of costs and expenses of its land reutilization program.

#### **§ 5722.09 Rights of other interested taxing districts; neighborhood advisory committees**

- (A) An electing subdivision shall keep all taxing districts having an interest in the taxes, assessments, charges, interest, and penalties on the real property acquired as part of the land reutilization program informed concerning the administration of its land reutilization program and shall establish a committee comprised of a representative of each such taxing district. Each member of the committee shall be appointed by, and serve at the pleasure of, the taxing district he represents. A representative may be an employee of the taxing district. All members shall serve without compensation. The committee shall meet at least quarterly to review the operations of the land reutilization program and to advise the electing subdivision concerning any matter relating to such program which comes before the committee.
- (B) An electing subdivision, as a part of its land reutilization program, shall establish separate neighborhood advisory committees consisting of persons living or owning property within each neighborhood affected by the program. The electing subdivision shall determine the boundaries of each neighborhood and which neighborhoods are affected by the program. Each neighborhood advisory committee shall consist of not less than five nor more than nine persons, to be appointed by the chief executive officer of the electing subdivision for two-year overlapping terms. The electing subdivision shall consult with each neighborhood advisory committee at least quarterly to review the operations of the land reutilization program and to receive the advice of the members of the neighborhood advisory committee concerning any matter relating to the program which comes before the committees, including a specific interim use plan for the land.

#### **§ 5722.10 Acceptance of conveyance in lieu of foreclosure**

An electing subdivision may accept a conveyance in lieu of foreclosure of any delinquent land from the proper owners thereof. Such conveyance may only be accepted with the consent of the county auditor acting as the agent of the state pursuant to section 5721.09 of the Revised Code. The owners or the electing municipal corporation or township shall pay all expenses incurred by the county in connection with any foreclosure or foreclosure and forfeiture proceeding filed pursuant to section 5721.18 or 5721.14 of the Revised Code relative to such land. When the electing subdivision is the county, it may require the owner to pay the expenses. The owner shall present the electing subdivision with evidence satisfactory to the

subdivision that it will obtain by such conveyance fee simple title to such delinquent land. The title shall be free and clear of all liens and encumbrances, except such easements and covenants of record running with the land as were created prior to the time of the conveyance and delinquent taxes, assessments, penalties, interest, and charges, and taxes and special assessments that are a lien on the real property at the time of the conveyance.

Real property acquired under this section shall not be subject to foreclosure or forfeiture under Chapter 5721. or 5723. of the Revised Code. The sale or other transfer, as authorized by section 5722.07 of the Revised Code, of real property acquired under this section shall extinguish the lien on the title for all taxes, assessments, penalties, interest, and charges delinquent at the time of the conveyance of the delinquent land to the electing subdivision.

#### **§ 5722.11 Tax exemption**

All lands acquired and held by an electing subdivision pursuant to this chapter shall be deemed real property used for a public purpose and, notwithstanding section 5709.08 of the Revised Code, shall be exempt from taxation until sold.

#### **§ 5722.12 Discontinuance of program**

An electing subdivision may discontinue its land reutilization program at any time by repealing the ordinance or resolution enacted under section 5722.02 of the Revised Code, but it shall continue to be governed by the procedures set forth in this chapter concerning the administration and disposition of real property acquired as a part of its land reutilization program until all such lands have been sold or otherwise transferred and the proceeds thereof distributed in compliance with this chapter.

#### **§ 5722.13 Disposition within sixteen years required**

Real property acquired and held by an electing subdivision pursuant to this chapter that is not sold or otherwise transferred within fifteen years after such acquisition shall be offered for sale at public auction during the sixteenth year after acquisition. If the real property is not sold at that time, it shall be offered every three years thereafter until it is sold.

Notice of the sale shall contain a description of each parcel, the permanent parcel number, and the full street address when available. The notice shall be published once a week for three consecutive weeks prior to the sale in a newspaper of general circulation within the electing subdivision.

Each parcel subsequent to the fifteenth year after its acquisition as part of a land reutilization program shall be sold for an amount equal to not less than the greater of:

- (A) Two-thirds of its fair market value;
- (B) The total amount of accrued taxes, assessments, penalties, interest, charges, and costs incurred by the electing subdivision in the acquisition, maintenance, and disposal of each parcel and the parcel's share of the costs and expenses of the land reutilization program.

#### **§ 5722.14 Relation to impacted cities project**

If nonproductive land is subsequently included within an impacted cities project, as defined in section 1728.01 of the Revised Code, taxes on the land in the base period of the year immediately preceding the initial acquisition, as provided in section 1728.111 of the Revised Code, shall be determined by applying the land valuation as it existed in either the year preceding such initial acquisition, or in the next succeeding year after such nonproductive land is sold pursuant to section 5722.07 or 5722.13 of the Revised Code, whichever valuation is greater.

#### **§ 5722.15 Removal of taxes on land conveyed to electing subdivision**

- (A) When an electing subdivision purchases nonproductive land under section 5722.03 or 5722.04 of the Revised Code, the county auditor shall remove from his tax lists and duplicates all taxes, assessments, charges, penalties, and interest that are due and payable on the land at the time of the sale in the same manner as if the property had been sold to any other buyer at the foreclosure or forfeiture sale.
- (B) The county auditor shall certify to an electing subdivision that purchases nonproductive land under section 5722.03 or 5722.04 of the Revised Code a record of all of the taxes, assessments, charges, interest, and penalties that were due on the parcel at the time of the sale; the taxing districts to which they were owed; and the proportion of that amount that was owed to each taxing district. The certification shall be used in distributing the proceeds of any sale of the land in accordance with division (C)(1) of section 5722.08 of the Revised Code.

#### **Additional References:**

Property tax foreclosure procedures, Ohio Revised Code §§ 5721.01 – 5721.42.

Sale of Forfeited Land, Ohio Revised Code §§ 5723.01 – 5723.19.

# APPENDIX C: Interlocal Agreements

## C-1: ATLANTA LAND BANK

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### Interlocal Cooperation Agreement Establishing the Fulton County/City of Atlanta Land Bank Authority, Inc.

## C-2: LOUISVILLE LAND BANK

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### Interlocal Cooperation Agreement Authorizing the Establishment of the Louisville and Jefferson County Landbank Authority, Inc.

## C-3: GENESEE LAND BANK

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### Intergovernmental Agreement Between the Michigan Land Bank Fast Track Authority and the Treasurer, Genesee County, Michigan

# APPENDIX C-1: Interlocal Cooperation Agreement Establishing the Fulton County/City of Atlanta Land Bank Authority, Inc.

## PREAMBLE

This AGREEMENT made and entered into this 9th day of Jan 1994, by and between the CITY OF ATLANTA (hereinafter the "City") and FULTON COUNTY (hereinafter the "County"), hereinafter referred to as the "Parties."

WHEREAS, there exists in the City of Atlanta and Fulton County a substantial number of tax delinquent properties which are nonrevenue generating, vacant and dilapidated: and

WHEREAS, these properties contribute to the blight and deterioration of the community and constitute an economic burden to the community: and

WHEREAS, the 1990 General Assembly, recognizing the magnitude of the problem, enacted the O.C.G.A. § 48-4-60 et seq (hereinafter the "Act") to permit any city and the county containing such a city to enter into an interlocal cooperation agreement for the purpose of establishing a land bank authority, the purpose of which would be to acquire tax delinquent properties of the Parties in order to foster the public purpose of returning property 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: and

WHEREAS, the Parties herein agree that the establishment of such an authority would be beneficial to the people and government of the City of Atlanta and Fulton County:

NOW THEREFORE, the Parties agree to the following terms:

## I. PURPOSE

- A. The parties shall participate jointly in the incorporation of a non-profit corporation named Fulton County/City of Atlanta Land Bank Authority, Inc. (hereinafter referred to as "the Authority") the establishment of which will be to foster the public purpose of returning property 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 citizen of the county.
- B. In carrying out this purpose the Authority shall, in accordance with applicable laws and codes, acquire title to certain tax delinquent properties which it will in turn inventory, classify, manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange or otherwise dispose of under such terms and conditions as determined in the sole discretion of the Authority.
- C. In further carrying out this purpose the Authority may, in its discretion, and in conjunction with the Parties' respective School Districts, extinguish past due tax liens from property foreclosed upon by the Parties in their tax collection capacities, in accordance with the guidelines contained herein.

## II. DEFINITIONS

The following terms use or referred to in this Agreement shall have the respective meanings:

"ADMINISTRATIVE ACTION" shall refer to decisions made by the Board that are not related to properties, including but not restricted to staffing, budgeting, and consultant retention.

"APPRAISAL" shall mean a valuation or an estimation of value of property by two disinterested persons or suitable qualifications.

"ASSETS" shall mean everything which can be made available for the payment of the Authority's debt: for the purposes of this Agreement, assets shall include any monetary contributions made by each Party, all personal and real property owned by the Authority, and all property sales proceeds that have been distributed to the account of the Authority.

"CITY PROPERTY" shall refer to any property located within the corporate boundaries of the City of Atlanta.

"CONSTRUCTION COMMENCED" shall refer to the start of construction as evidenced by the issuance of a land disturbance permit.

"COST" shall mean any authorized expenditure more specifically described in Section VIII, Paragraph D of this Agreement.

"COUNTY PROPERTY" shall refer to any property located within the jurisdictional boundaries of Fulton County outside the City of Atlanta or any other incorporated area within Fulton County.

"EXCESS PROCEEDS" shall mean the difference between the amount received by the Authority through the sale of a property and pro rata disbursement to the Parties and the School Districts in proportion to and to the extent of their respective tax bills and costs.

"EXPENDITURE" shall mean any authorized expenditure more specifically described in Section VIII, Paragraph D of this agreement.

"GOOD TITLE" shall refer to a title that shows the absolute right of possession of property and that is marketable and insurable.

"INVENTORY" shall mean a detailed listing of properties owned by the Authority that shall include, but not be limited to, the address of the property, its appraised value, and the requisite information to determine suitability of use.

"LOW INCOME" shall refer to the City and County definitions approved by the Board during its first meeting of each year.

"Moderate Income" shall refer to the City and County definitions approved by the Board during its first meeting each year.

"PERSON" shall mean an individual, partnership, joint venture, association, corporation, or any other legal entity recognized by the laws of the State of Georgia.

"PERSONAL PROPERTY" shall mean everything that is the subject of ownership by the Authority, not coming under the denomination of real property; personal property shall include but not be limited to office equipment, mobile homes, and other property of a personal or movable nature.

"PROPERTY" shall mean buildings, dwellings, land and whatever is erected or growing upon or affixed thereto; the term is used in this Agreement synonymously with real property.

"PUBLIC PURPOSE" shall mean a public purpose or public business that has for its objective the promotion of the public health, safety, and general welfare; the essential requisite being that a public service or use shall affect the residents within Fulton County and/or the City of Atlanta as a community and not merely as individuals.

"REHABILITATION COMMENCED" shall refer to the start of rehabilitation as evidenced by the issuance of the appropriate building permit or permits.

"RESIDENT" shall mean a person who lives, dwells, or lodges within the jurisdictional boundaries of Fulton County.

"SPECIAL ASSESSMENT" shall mean any fees assessed against and levied upon property by the City for sanitary purposes; the clearance of weeds or vegetative overgrowth; the removal and disposal of solid wastes; curb, street, road and sidewalk construction and maintenance and the vacating and closing and demolition of buildings.

"SUITABILITY FOR USE" shall refer to the determination made by the Authority on the appropriate use for each property that it administers; said determination shall be based upon factors such as existing zoning, not configuration as it relates to the development regulations of the appropriate jurisdiction, access to transportation, utility, and water sewer facilities, surrounding and uses and the intensity of those uses, and other accepted planning and development principals.

"TAX DEED" shall refer to the deed made by the Tax Commissioner, Ex-Officio Sheriff or Fulton County, to the County and the City by offering real property for sale by virtue of tax executions at a tax sale.

"TAX DELINQUENT" shall refer to real property on which taxes are due and unpaid at the time appointed by the Fulton County Tax Commissioner. For the purposes of this Agreement, a property shall be considered tax delinquent if taxes remain unpaid as of January 1st of the year following the last outstanding tax bill.

"TAX SALE CYCLE" shall mean the process prescribed by the laws of the State of Georgia to bring tax delinquent properties

to sale by the County Tax Commissioner; the process includes a title search, recording of fi. fa.s. a levy, notification of owner and tenant, advertising of the sale, and concludes with the sale of the tax lien.

### **III. CORPORATE ORGANIZATION**

- A. The Parties shall incorporate the Authority pursuant to the Georgia Non-Profit Code, and in the form described in the Articles of Incorporation and By-Laws attached hereto as Exhibit "A" and Exhibit "B" and made a part hereof as if fully set out herein.
- B. The Authority shall operate as a non-profit public body corporate and politic with the powers to sue and to be sued, to accept and issue deeds in its name, to institute quia timet actions or whatever legal proceedings necessary to procure and transfer good title to said properties, and shall have any other powers necessary and incidental to carry out the powers granted by the Act.

### **IV. POWERS OF THE AUTHORITY**

- A. The Authority shall hold in its name, for the benefit of the Parties, all properties conveyed to it by the Parties, all tax delinquent properties acquired by it pursuant to this Agreement and the Act and all properties otherwise acquired.
- B. The Authority shall have the power to obtain the title to any property previously acquired by the Parties. The Parties do hereby agree that each shall reserve unto itself the sole discretion to determine which properties will be offered to the Authority. Further, the Parties agree upon acceptance by the Authority of such property, to cause appropriate deeds to be executed vesting title in the Authority.
- C. In accordance with the guidelines contained herein, the Authority shall have the right to extinguish liens against property for past due taxes prior to conveying the Property in accordance with the guidelines contained herein. Refer to Section X of this Agreement for provisions for the waiver of the City's Special Assessments.

### **V. FORMATION OF THE AUTHORITY BOARD OF DIRECTORS**

#### **A. Membership of the Board of Directors**

##### **1. Composition and Appointment of Members**

a. Composition - The Authority shall be governed by a four (4) person board of directors, hereinafter the "Board". The Board shall consist of two (2) representatives from each Party, hereinafter "Members." In addition to the Members, there shall be one (1) person appointed by the City of Atlanta School District, and one (1) person appointed by the Fulton County School District, hereinafter "Advisers," who shall serve in an advisory capacity and shall also serve as a liaison between the membership of the Authority and their respective School Districts. The Advisers shall not have any voting power nor shall their presence be considered in determining whether a quorum is present.

b. Appointment - The members shall be appointed as follows:

- (1) two (2) Members appointed by the Mayor of the City of Atlanta
- (2) two (2) Members appointed by the Fulton County Board of Commissioners

##### **2. Terms and Compensation of Members**

Each member shall serve at the pleasure of the respective appointing authority for a term of four (4) years and shall serve without compensation. The first Board is term and the first term of all Advisers shall commence on the date of the first Board meeting and expire four years after this date. Each member at the election of his or her accounting authority may serve an unlimited number of terms.

##### **3. Qualifications of Members**

The members shall be residents of the County and may be employees of the Parties. In addition to being residents of the County, all members appointed to the Board shall be persons who have demonstrated special interest, experience, or education in urban planning, real estate, community development, finance or related areas.

##### **4. Vacancies**

Any vacancy on the Board created by death, resignation, disqualification, expiration of term, or through termination at the pleasure of the appointing authority, shall be filled as soon as practicable but not to exceed 30 days following its occurrence. Further, the vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

#### **B. Election and Duties of Chairperson, Vice-Chairperson, and Secretary**

A chairperson, vice-chairperson, and secretary shall be elected by majority vote of the Members of the Board. The chairperson's duties shall include the execution of all deeds, leases, and contracts of the Authority when authorized by

the Board. In the absence of the chairperson, the vice-chairperson shall assume the duties of the chairperson. The secretary shall attest to the signature of the chairperson and shall be responsible for taking, keeping, and filing the Minutes in accordance with the provisions of Paragraph V Section E of this Agreement.

C. Scheduling and Notice of Meetings

1. Scheduling and Notice

The Board shall meet from time to time as necessary. The frequency and scheduling to be determined in the discretion of the Board pursuant to the following minimum guidelines:

- a. The Board shall meet a minimum of six (6) times per year.
- b. Members and Advisers shall receive a minimum of ten (10) days written notice.
- c. Public Notice shall be given in accordance with the applicable provisions of the Georgia Open Meetings Act.

2. Conduct

The conduct of meetings shall be held open to the public, except as otherwise provided by Chapter 14 of Title 50.

D. Quorum and Voting Requirements

1. Administrative Action

The presence of three (3) Members shall constitute a quorum for action concerning administrative issues. Approval by a majority of the Board attending a meeting shall be necessary for any administrative action to be taken by the Authority. The presence of Advisers is not required for quorum.

2. Action Concerning County Properties

The presence of three (3) Members, two (2) Members representing the County and one (1) representing the City, shall constitute a quorum. No action may be taken by the Authority concerning a property located within Fulton County but outside the City of Atlanta unless the action is approved by the two (2) Members appointed by the Fulton County Board of Commissioners. The presence of Advisers is not required for quorum; however, the Fulton County School District's consent must be obtained in order to extinguish school district taxes associated with a property within its jurisdiction.

3. Action Concerning City Properties

The presence of three (3) Members, two (2) Members representing the City and one (1) representing the County, shall constitute a quorum. No action may be taken by the Authority concerning a property located within the City of Atlanta unless the action is sponsored by the two (2) Members appointed by the Mayor of the City of Atlanta. The presence of Advisers is not required for quorum; however, the City of Atlanta School District's consent must be obtained in order to extinguish school district taxes associated with a property within their jurisdiction.

E. Records of Meetings

A written record (hereinafter "Minutes") shall be maintained of all meetings by the Chairperson and shall be filed 15 days following any meeting of the Authority in the Office of the Clerk of the Board of Commissioners of Fulton County, the Clerk of City Council of the City of Atlanta, the Office of the Superintendent of the Fulton County Schools, and the Office of the Superintendent of the City of Atlanta Schools. The Minutes of all meetings shall be transcribed by the Secretary and ratified by the Members at the next meeting. Minutes shall be kept in accordance with the Georgia Corporations Code.

F. Notice

All notices and other communications hereunder shall be in writing and shall be deemed to have been given within the number of days required, under the applicable sections of this Agreement, after the day on which mailed by first class, registered or certified mail, postage prepaid, or personally delivered, or whenever received, whichever is sooner.

## VI. DUTIES AND RESPONSIBILITIES OF THE BOARD

A. Inventory and Analysis of Properties

The Board shall collect and receive data from public, private, professional and volunteer sources to compile an inventory and analysis of desirable properties for acquisition.

B. Acquisition by Authority of Properties

The Authority may acquire property to be held in its own name by instigating the actions detailed in Section IX of this Agreement.

### C. Administration by Authority of Properties

The Authority shall administer the properties acquired by it as follows:

1. All property acquired by the Authority shall be inventoried and appraised: the inventory shall be maintained as a public record and shall be filed in the Office or the office of the Fulton County/City of Atlanta Land Bank Authority.
2. The Authority shall organize and classify the property on the basis of suitability for use.
3. The Authority shall provide for the maintenance of all property held by it in accordance with applicable laws and codes; and
4. The Authority shall have the power to manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any property on terms and conditions determined in the sole discretion of the Authority and in accordance with applicable law.
5. The Authority may assemble tracts or parcels of property for community improvement or other public purposes, and to that end may exchange parcels and otherwise effectuate with any person the purpose determined by the Board.
6. The acquisition and disposal of property by the Authority shall not be governed or controlled by any regulations or laws of the Parties unless specifically provided herein.

### D. Review of Standards, Priorities, and Procedures

1. During its first meeting each year, the Board shall set priorities for the processing of properties based on factors such as staff availability, the number of outstanding properties being monitored by the Authority, and potential need or demand for Authority properties.
2. During its first meeting each year, the Board shall set the definitions of "low income" and "moderate income" that are to be used in the execution of Section IX, Paragraph 2 of this Agreement. The County and the City shall submit definitions for their respective jurisdictions on the first day of each year for approval by the Board. The vote required for approval of the County's definitions shall conform to the quorum and voting requirements set forth in Section V, Paragraph D (2) of this Agreement: the vote required for approval of the City's definitions shall conform to the quorum and voting requirements set forth in Section V, Paragraph D (3) of this Agreement.

The definitions of each Party shall include the following data:

- a. median income according to the most recent decennial Census for the geographical area that is determined to be appropriate for the specific jurisdiction. Geographic area may be defined in terms of, but not restricted to, census tracts, jurisdictional boundaries of designated sub-areas, or Metropolitan Statistical Area (MSA);
- b. the calculation of 50% of said median for the definition of "low income" and the calculation of 80% of said median for the definition of "moderate income," and
- c. a description of the methodology used to adjust said median income for the current year: preference shall be given to updates based on the Census biennial update of per capita income.

## VII. PROVISIONS FOR STAFFING AND RETENTION OF OUTSIDE SERVICES

### A. Employment and Compensation of Staff

The Authority shall directly employ, through contract or otherwise, any staff, deemed necessary to carry out the duties and responsibilities of the Authority. Such staff shall be paid directly from the funds of the Authority. In the event that the Authority employs any individual, by contract or otherwise, the Board shall have the authority to set the terms and conditions, including benefits and compensation, of any person so employed.

### B. Requirements for Contribution of Support Personnel

Fulton County and the City of Atlanta personnel will be used to provide additional staff resources to the Authority consistent with the terms and conditions of this Agreement, for the purpose of assisting the Board in the execution of its duties and responsibilities. Any staff assigned to the Authority from the city of Atlanta shall be selected by the Mayor of the City of Atlanta. Any staff assigned by Fulton County shall be selected by the County Manager of Fulton County. Any staff so assigned shall be subject to the review and approval of the Authority's Board.

The Fulton County Tax Commissioner shall process tax delinquent properties located in either the County or the City and bring these properties to tax sale, as soon as practical but not to exceed 180 days, following the written request of the Authority, assigned two (2) staff attorneys (one County staff attorney and one City staff attorney) to serve as Legal Counsel to the Authority.

In addition, the City and the County shall provide support services from the following departments:

#### **- Fulton County Tax Commissioners Office & Atlanta Municipal Revenue Collection Administrator**

Identify tax delinquent properties

Provide statistical annual summary of revenues brought in directly through efforts of LBA.

Coordinate access to their data bases

**- Fulton County Tax Accessors Office**

Provide access and coordinate access to their CAMA data base.

**- Fulton County Land Department**

Assessment and evaluation consultation

**- Fulton County's Department of Planning & Economic Development & City of Atlanta's Department of Housing**

Provide review of properties in unincorporated areas of the County and in the City of Atlanta.

Plan, develop and coordinate activities of the LBA to ensure compliance with overall County Development Plans and City Plans.

Provide review of Boards actions.

**- Fulton County Department of Buildings & Grounds & City of Atlanta's Department of Public Works**

Maintenance of land banked properties in unincorporated Fulton County and in the City.

**- Atlanta Bureau of Code Enforcement**

Monitor conveyed properties to ensure their rehabilitation in conformance with LBA objectives

Monitor and enforce code violations.

Access, track and monitor liens placed on properties.

C. Retention of Outside Consultants

The Board, in its discretion and within the budgetary guidelines set forth in Section VIII of this Agreement, shall be authorized to expend the necessary funds to obtain consulting services as needed to carry out its duties and responsibilities and to implement its priorities.

D. Expertise of the Staff

The staff of the Authority shall be persons who have demonstrated special interest, experience, or education in urban planning, community development, real estate, finance or related areas.

**VIII. FUNDING AND EXPENDITURES**

A. Budget Contributions

1. The total County contribution is subject to the annual approval of the Board of Commissioners; said approval shall include a schedule of payment and shall be received in writing by the Authority no later than the first day of March of each year.
2. The total City contribution is subject to the annual approval of the City Council; said approval shall include a schedule of payment and shall be received in writing by the Authority no later than the first day of March of each year.
3. The payment of costs associated with the tax sale cycle shall be governed by the existing agreements between the County and the City related to the sale of tax delinquent properties, the assessment of properties, and/or the collection of taxes. Costs incurred by the Authority in barring the right of redemption on behalf of the City or the County shall be paid by the Authority in total in the event the costs are not collected through the sale of the property to a non-profit organization or other eligible entity. The remaining costs related to "Conveyance of Property to Authority," "Maintenance of Property," "Preparation for Authority Sale," "Closing on Authority Properties," and "Post-Sale Follow-up & Monitoring" shall be fulfilled through staff contributions or use of funds held in the Authority's account.

B. Establishment of Budget

1. The Board shall establish the Authority's budget annually and submit this budget to the County and the City no later than the last day of June each year. The budget document submitted to the City and the County shall list and describe total requests made to both the County and the City and shall state the proportion requested of each Party.
2. Any funds held in the Authority's account shall be applied to the fulfillment of the monetary obligations identified as a part of the Board's annual budget and shall be identified as such in the budget document submitted to the County and the City. Budget requests to the County and the City shall include only costs that are not covered by funds of the Authority.

C. Management of Funds

1. The chief administrative officer, or other person designated by the Authority, shall be designated the fiscal agent of the Authority's account established for the management of sales proceeds, monetary contributions made by the Parties donations, and other Authority funds. Standard accounting procedures shall be used in the management of

the accounts required to accomplish this responsibility. The Authority shall provide quarterly reports to the Parties that detail account activity during the period.

2. The Authority shall receive the proceeds from the sale of Authority property and disburse these proceeds according to the provisions set forth in Section IX, Paragraph D of this Agreement.

#### D. Authorized Expenditures

The Authority shall, in its sole discretion and within the budgetary guidelines set forth in Section VIII of this Agreement, expend such funds as necessary in payment of legal fees, advertising fees, notification of lien holders, title searches, appraisals, and other equipment and/or services that are required to fulfill the intent of the state enabling legislation and the purposes of this Agreement.

## **IX. ACQUISITION AND CONVEYANCE OF PROPERTY BY THE AUTHORITY**

### A. Criteria for AcquisitionA. Criteria for Acquisition"

The Authority may acquire property to be held in its own name by instigating the following actions:

1. As to property already acquired by a Party by virtue of a tax deed pursuant to a tax sale, the Authority shall notify the appropriate Party officer of its intent to acquire the property; the affected Party's officer shall either accept or reject the Authority's request. In the event that the affected Party agrees to the Authority's request, said officer shall execute a deed to the Authority within 30 days of receipt of written notice of the Authority's intent to acquire the property.

For the purposes of this Agreement, the Land Agent shall serve as the appropriate Party officer for Fulton County and Municipal Revenue Collections Administrator shall serve as the appropriate Party officer for the City of Atlanta.

2. As to the property which is tax delinquent but not yet foreclosed upon, the Authority shall notify the Fulton County Tax Commissioner of its intent to acquire the property. The Parties, together with the Authority, shall assist the Tax Commissioner in the foreclosure of the tax liens against these properties.
3. In accordance with O.C.G.A. § 48-4-64(a), if either Party obtains a judgment against a tax delinquent property within the party county for the taxes and to satisfy the judgment, the property is ordered sold at a tax sale and if no person bids an amount equal to the full amount of all tax bills, interest, and costs owing on the property for sale, the Authority shall have the option at any time after the tax sale to cause the Tax Commissioner to make a deed of the property to the Authority.
4. The Authority shall have full discretion to accept donations of property and to enter into negotiations with persons offering to sell property. Such procedures may include the imposition of "processing fees" to cover the costs of title examinations or other related expenses.

### B. Criteria for Conveyance

1. Requests for property shall be awarded according to criteria determined in the discretion of the Authority subject to the following priority considerations:
  - a. First, to neighborhood non-profit entities obtaining the property for the production or rehabilitation of housing for persons with low incomes.
  - b. Second, to other entities submitting proposals to produce or rehabilitate housing for persons with low or moderate incomes.
  - c. These priorities shall not preclude the Authority from assembling tracts or parcels of property for community improvement or other public purposes.
2. Proposed projects that meet income eligibility guidelines will be further evaluated on the basis of experience and qualifications including financial strength and proven ability to construct or rehabilitate quality units at moderate cost.

### C. Establishing Sales Price

Pursuant to O.C.G.A. §48-4-64(e), the Authority shall have full discretion in determining the sales price of the property.

### D. Disbursement of Sales Proceeds

1. The proceeds, if any, from any sale of Authority property, shall be distributed to the Parties and the School Districts in proportion to and to the extent of their respective tax bills and costs.
2. Excess proceeds shall be distributed to the operating account of the Authority.

## **X. WAIVER OF CITY'S SPECIAL ASSESSMENTS**

Upon the request of the Authority and for the purposes of fostering the goals and objectives of the Authority, the City, at its option and from time to time may exempt the Authority and its successors in interest from the payment of Special Assessments levied by the City against properties owned by the Authority.

## **XI. DEVELOPMENT OF PROPERTIES CONVEYED BY THE AUTHORITY**

### **A. Creation of Development Regulations**

The Authority may create and revise regulations for development of property based on the property's current condition, zoning status, location and dimensions.

### **B. Time Limits for Development**

To protect against long term speculation by grantees of Authority Property any conveyance of property by the Authority shall contain a condition of automatic reversion of title to the Authority. All titles of property conveyed from the Authority to any individual or entity shall contain language to the effect title will revert to the Authority in the event that construction or rehabilitation of the property has not commenced within three (3) years of conveyance. In the event construction or rehabilitation of the property has not commenced within three (3) years of conveyance of the property from the Authority, the Authority may take any necessary action to establish the forfeiture of the property so conveyed.

### **C. Extensions of Time Limits for Development**

The Authority, in its discretion, may upon a majority vote of the Board grant in writing extensions or exceptions to this right of reversion. The criteria for the granting of any extension of two (2) years or exceptions to the right of reversion shall be delineated by the Board and applied on a case-by-case basis by the Authority and may be exercised at any time prior to or following the expiration of the three (3) year period. In the event the grantee elects to sell the property within the three (3) period or any two (2) year extension due to their inability to develop the proposed project the Authority must approve such sale.

### **D. Upon ten (10) days written notice by a grantee, the Authority shall issue confirmation of the grantee's compliance with these development criteria in recordable form so as to confirm extinguishment of this reversion in cases of compliance.**

## **XII. COOPERATION AND INTERACTION WITH OTHER FULTON COUNTY/LOCAL MUNICIPALITY LAND BANK AUTHORITIES, INC.**

- A. In the event other municipalities within Fulton County create additional land bank authority corporations, Fulton County shall require that their interlocal cooperation agreements shall provide that at least one Member representing Fulton County be appointed from the Board of the Fulton County/City of Atlanta Land Bank Authority, Inc. to serve as a Member on their authority's board.
- B. The Authority may enter into any agreements or contracts with any other land bank authority which it deems necessary, reasonable and prudent to further the purposes of this Agreement.

## **XIII. AMENDMENTS TO AGREEMENT**

Any amendments to this Agreement shall be in writing and shall be approved and executed by the original Parties to this agreement.

## **XIV. DURATION AND TERMINATION OF AGREEMENT**

### **A. Duration**

The effective date of this Agreement shall be the \_\_\_\_ day of \_\_\_\_\_, 1994, and it shall remain in full force and effect for a period of one year thereafter. At the anniversary date and each anniversary date thereafter the Agreement shall be renewed automatically unless terminated in accordance with the provisions of this Agreement.

### **B. Termination**

Any Party to this Agreement may withdraw at the expiration of any one-year term by giving 90 days written notice to the other Party. Upon the effective withdrawal of any Party to this Agreement, the Party so withdrawing will forfeit any and all rights to whatever funds or other assets the Party has contributed to the Authority, excluding real property within the jurisdictional boundaries of the Party withdrawing from the Agreement.

### **C. Dissolution and Distribution of Assets**

In the event this agreement is terminated by agreement by both Parties, the Authority shall dissolve and conclude its affairs in a manner provided in the Act and the Georgia Non-Profit Code. All assets of the Authority shall be used to sat-

isfy the then existing legal obligations of the Authority. After satisfaction of said legal obligations, any personal property remaining shall be distributed pro rata according to the appraised value to the Parties. All real property held by the Authority at the time of termination which was acquired by the Authority through donation from a party shall be distributed to the donating party. Any other remaining real property shall revert to the governmental entity having jurisdiction over the property.

#### **XV. GOVERNING LAW**

This Agreement shall be governed in all aspects, as to validity, construction, capacity, performance or otherwise, by the laws of the State of Georgia.

#### **XVI. RULES OF CONSTRUCTION**

For the purposes of administration and enforcement of this Agreement, unless otherwise stated in this Agreement, the following rules of construction shall apply:

- A. The paragraph headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.
- B. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- C. Words used in the present tense shall include the future and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

#### **XVII. ENTIRE AGREEMENT**

This Agreement, including the exhibits and documents attached hereto and which are incorporated herein constitute the entire understanding and agreement between the Parties hereto and supersedes any and all agreement, whether written or oral, that may exist between the Parties regarding the same. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing and signed by both Parties and complies with the provisions of Section XII, Paragraph A of this Agreement.

#### **XVIII. SEVERABILITY**

In the event that any portion of this Agreement shall be declared null or void, the remaining portions of the Agreement shall remain in full force and effect.

#### **XIX. REPEAL OF PREVIOUS INTERLOCAL AGREEMENT**

Upon approval by the Board of Commissioners and the City Council, the prior interlocal Agreement, first entered into on June 12, 1991, is hereby terminated.

WITNESS the signature of the Parties to this Agreement, dated the \_\_\_\_\_ day of \_\_\_\_\_, 1994.

#### **Exhibit A: Articles of Incorporation**

#### **Exhibit B: By-Laws**

# APPENDIX C-2: Interlocal Cooperation Agreement Authorizing the Establishment of the Louisville and Jefferson County Land Bank Authority, Inc.

THIS AGREEMENT made and entered into this 14th day of February 1989 by and between the COMMONWEALTH OF KENTUCKY, THE CITY OF LOUISVILLE, JEFFERSON COUNTY AND THE BOARD OF EDUCATION OF JEFFERSON COUNTY, hereinafter referred to as "Parties".

WHEREAS, there exists in Louisville and Jefferson County a great number of vacant or dilapidated properties, the owners of which fail to pay the property taxes levied by the parties thereon and to adequately maintain and repair; and

WHEREAS, such properties contribute to the blight and deterioration of neighborhoods; and

WHEREAS, even if a party acquires the property through legal action, such properties are often unmarketable and difficult to return to a useful status; and

WHEREAS, the 1988 General Assembly recognized the magnitude of this problem and enacted KRS 91.800 – 91.820 to permit the major taxing entities within Jefferson County to join together to establish an entity, the purpose of which will be, to acquire such properties and to return the properties to effective utilization in order to provide housing, new industry and jobs for the citizens of the county; and

NOW THEREFORE, the parties agree as follows:

## I. PURPOSE

The parties shall participate jointly in the incorporation of a non-profit corporation named the Louisville and Jefferson County Landbank Authority, Inc. (hereinafter referred to as "the Authority") the purpose of which will be to acquire, manage, maintain, protect, rent, lease, repair, insure, alter, sale, trade, exchange or otherwise dispose of property acquired through tax foreclosure or other method as provided in KRS 91.800 – 91.820 for the public purpose of returning such properties to a useful and contributing status.

## II. ORGANIZATION

That the parties shall incorporate the Authority, Inc. pursuant to KRS 91.800 – 91.820 and KRS Chapter 273 through the filing of the Articles of Incorporation and By-Laws attached hereto and made a part hereof as if set out fully herein.

## III. FINANCING

That the parties may provide funding for the Authority for the purposes and in the amounts determined by said parties.

## IV. STAFFING RESPONSIBILITIES

That the authority shall have no employees, and the administration and conduct of the Authority's affairs shall be carried out and accomplished by the staffs of the appropriate departments or agencies of the City of Louisville, Jefferson County and the Board of Education of Jefferson County.

## V. ACQUISITION AND DISPOSAL OF REAL PROPERTY

That the authority may acquire and dispose of real property as provided in KRS 91.800 – 91.820 and shall do so as authorized by the Board of Directors of the Authority in accordance with said statute, the Articles of Incorporation and the By-Laws of the Authority. Such acquisitions and disposal of real property shall not be subject to the provisions of the Louisville Code of Ordinance Chapter 37 or any other ordinances or regulations relating to the procurement or disposition of real property which are adopted by the City, the County or the Board of Education.

## VI. DURATION AND TERMINATION

- A. That the effective date of this Agreement shall be the \_\_\_\_\_ day of \_\_\_\_\_, 1988, and it shall remain in effect for a period of one year thereafter. At the anniversary date, and each anniversary date thereafter, the Agreement shall be renewed automatically unless terminated in accordance with the provisions of this Agreement.

- B. That any party to this Agreement may withdraw at the expiration of any one-year term by giving 90 days written notice to each of the other parties. Upon the effective withdrawal of any party to this Agreement, the Authority shall be dissolved in accordance with paragraph C.
- C. That in the event this agreement is terminated as stated in paragraph B, or by agreement by all the parties, the Authority shall dissolve and wind up its affairs in a manner provided by KRS 273.300 et seq. All assets of the Authority shall be used to satisfy the then existing legal obligations; after satisfaction of said legal obligations, any personal property remaining shall be distributed pro rata to the parties which then remain a part of this Agreement. All real property held by the Authority at the time of termination which was acquired by the Authority through tax foreclosure or donation from a party shall be distributed to the donating party or to the party which had instituted the foreclosure action against the property.

WITNESS the signatures of the parties to this Agreement, dated the 14th day of February, 1989.

## APPENDIX C-3: Intergovernmental Agreement Between the Michigan Land Bank Fast Track Authority and the Treasurer of the county of Genesee, Michigan Creating the Genesee County Land Bank Authority

This Agreement is entered into under Section 5 of Article 3 and Section 28 of Article 7 of the Michigan Constitution of 1963 and the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 to 124.774, between the Michigan Land Bank Fast Track authority, a Michigan public body corporate and politic, and the Treasurer of the County of Genesee, Michigan, for the purpose of establishing and creating the Genesee county Land Bank Authority, a separate legal entity and public body corporate to administer and execute the purposes and objectives of this Agreement.

### RECITALS

- A. In enacting the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 to 124.774, the 92nd Michigan Legislature found that there exists in the State of Michigan a continuing need to strengthen and revitalize the economy of the State of Michigan and local units of government in this state and that it is in the best interests of the State of Michigan and local units of government in this state to assemble or dispose of public property, including tax reverted property, in a coordinated manner to foster the development of that property and to promote economic growth in the State of Michigan and local units of government in this state.
- B. The Michigan Land Bank Fast Track Authority is created as a public body corporate and politic within the Michigan Department of Labor and Economic Growth, a principal department of the executive branch of state government, under the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 to 124.774, and is authorized to enter into an intergovernmental agreement with a county foreclosing governmental unit providing for the creation of a county authority to exercise the powers, duties, functions, and responsibilities of an authority under that act.
- C. The Treasurer of the County of Genesee, Michigan is a foreclosing governmental unit under the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 to 124.774, and Section 78 of The General Property Tax Act, 1893 PA 206, MCL 211.78.
- D. It is the intent of the Michigan Land Bank Fast Track Authority and the Treasurer of the County of Genesee, Michigan to establish a county authority as a separate legal entity and as a public body corporate under the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 to 124.774, to exercise within Genesee County, Michigan the powers, duties, functions, and responsibilities of an authority under the Land Bank Fast Track Act, consistent with this agreement.

Accordingly, the Michigan Land Bank Fast Track Authority and the Treasurer of the County of Genesee, Michigan agree to the following:

### ARTICLE I

#### DEFINITIONS

As used in this Agreement:

**Section 1.01. "Act 7"** means the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

**Section 1.02. "Agreement"** means this intergovernmental agreement between the Michigan Land Bank Fast Track Authority, a Michigan public body corporate and politic, and the Treasurer of the County of Genesee, Michigan.

**Section 1.03. "Budget Act"** means the Uniform Budgeting and Accounting Act, 1968 PA 2, MCL 141.421 to 141.440a.

**Section 1.04. “City of Flint”** means the City of Flint, County of Genesee, Michigan, a Michigan municipal corporation.

**Section 1.05. “County Authority”** means the Genesee County Land Bank Authority, the public body corporate created under this Agreement pursuant to the Land Bank Act.

**Section 1.06. “County Authority Board”** means the board of directors of the county authority created under Article IV.

**Section 1.07. “County Board”** means the Board of Commissioners for the County of Genesee, Michigan.

**Section 1.08. “Executive Director”** means an executive director of the County Authority selected under Section 4.12.

**Section 1.09. “Effective Date”** means the date upon which all of the following are satisfied, as provided under Section 23 of the Land Bank Act:

- (a). The Agreement is filed with the County Clerk for the County of Genesee, Michigan.
- (b). The Agreement is filed with the County Clerk for the County of Ingham.
- (c). The Agreement is filed with the Secretary of State.

**Section 1.10. “Fiscal Year”** means the fiscal year of the County Authority, which shall begin on October 1 of each year and end on the following September 30.

**Section 1.11. “FOIA”** means the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

**Section 1.12. “Foreclosing Governmental Unit”** means that term as defined under Section 3(f) of the Land Bank Act, and Section 78 of The General Property Tax Act, 1893 PA 206, MCL 211.78.

**Section 1.13. “GCLRC”** means the Genesee County Land Reutilization Council, a Michigan public body corporate created under Act 7 by an interlocal agreement dated August 29, 2002, and entered into between Genesee County and the Charter Township of Flint, Michigan.

**Section 1.14. “Genesee County”** means the County of Genesee, Michigan.

**Section 1.15. “Land Bank Act”** means the Land Bank Fast Track Act, 2003 PA 258, MCL 124.751 to 124.774.

**Section 1.16. “OMA”** means the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275.

**Section 1.17. “Party” or “Parties”** means either individually or collectively as applicable, the State Authority or the Treasurer as each is a signatory to this Agreement.

**Section 1.18. “Person”** means an individual, authority, limited liability company, partnership, firm, corporation, organization, association, joint venture, trust, governmental entity, or other legal entity.

**Section 1.19. “State”** means the State of Michigan.

**Section 1.20. “State Authority”** means the Michigan Land Bank Fast Track Authority, a Michigan public body corporate and politic created under the Land Bank Act.

**Section 1.21. “Tax Reverted Property”** means that term as defined under Section 3(q) of the Land Bank Fast Track Act, 2003 PA 258, MCL 124.753(3)(q).

## ARTICLE II

### PURPOSE

**Section 2.01. Purpose.** The purpose of this Agreement is to create and empower the County Authority to exercise the powers, duties, functions and responsibilities of an authority under the Land Bank Act.

**Section 2.02. Programs and Functions.** The County Authority shall endeavor to carry out the powers, duties, and functions, and responsibilities of an authority under the Land Bank Act consistent with this Agreement, including, but not limited to, the power, privilege, and authority to acquire, manage, and dispose of interests in property, and doing all other things necessary or convenient to implement the purposes, objectives, and provisions of the Land Bank Act and the purposes, objectives, and powers delegated to a County Authority under other laws or executive orders.

## ARTICLE III

### CREATION OF COUNTY AUTHORITY

**Section 3.01. Creation and Legal Status of County Authority.** The County Authority is established as a separate legal entity and public body corporate to be known as the “Genesee County Land Bank Authority” for the purposes of acting as an authority under the Land Bank Act and administering and executing this Agreement.

**Section 3.02. Articles of Incorporation.** The County Authority Board shall adopt articles of incorporation consistent with the provisions of this Agreement and the Land Bank Act at its initial meeting.

**Section 3.03. Principal Office.** The principal office of the County Authority is at the location or locations within the City of Flint, as determined by the County Authority Board.

**Section 3.04. Title to County Authority Assets.** Except as otherwise provided in this Agreement, the County Authority shall have exclusive title to all of its property and no Party shall have an ownership interest in County Authority property.

**Section 3.05. Tax-exempt Status.** The Parties intend the activities of the County Authority to be governmental functions carried out by an instrumentality or political subdivision of government as described in Section 115 of Internal Revenue Code of 1986, 26 USC 115, or any corresponding provisions of any future tax code. The Parties also intend the activities of the County Authority to be governmental functions carried out by a political subdivision of this State, exempt to the extent provided under Michigan law from taxation by this State, including, but not limited to, the single business tax under the Single Business Tax Act, 1975 PA 228, MCL 208.1 to 208.145, and property taxes under the General Property Tax Act, 1893 PA 206, MCL 211.1 to 211.157 or corresponding provisions of future State tax laws. The property of the County Authority and its income and operations are exempt from all taxation by the State or its political subdivisions under Section 4(5) of the Land Bank Act.

**Section 3.06. Compliance with Law.** The County Authority shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

**Section 3.07. Relationship of Parties.** The Parties agree that no Party shall be responsible, in whole or in part, for the acts of the employees, agents, and servants of any other Party, whether acting separately or in conjunction with the implementation of this Agreement. The Parties shall only be bound and obligated under this Agreement as expressly agreed to by each Party. No Party may obligate any other Party. No employee, agent, or servant of the County Authority shall be or shall be deemed to be an employee, agent, or servant of the State for any reason.

**Section 3.08. Successor to GCLRC.** The Parties acknowledge and agree that the County Authority may accept property held by GCLRC and that the County Authority may become the successor in interest of all rights, duties, powers, functions, and obligations of the GCLRC pursuant to an agreement between the County Authority and the GCLRC, to the extent permitted by applicable law.

**Section 3.09. No Third-Party Beneficiaries.** Except as otherwise specifically provided, this Agreement does not create in any Person, other than a Party, and is not intended to create by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit.

## ARTICLE IV

### COUNTY AUTHORITY BOARD AND EXECUTIVE DIRECTOR

**Section 4.01. County Authority Board Composition.** The County Authority shall be governed by the County Authority Board, a board of directors that shall be appointed within thirty (30) calendar days of the Effective Date. Elected officials and other public officers are eligible to serve as members of the County Authority Board to the extent permitted under Michigan law. The County Authority Board shall consist of the following members, except as provided in Section 4.02:

- (a). The Treasurer.
- (b). One (1) resident of the City of Flint, appointed by the County Board.
- (c). One (1) resident of Genesee County not a resident of the City of Flint, appointed by the County Board.
- (d). Four (4) residents of Genesee County, irrespective of municipality of residence, appointed by the County Board.

**Section 4.02. Appointments by Elected County Executive.** If Genesee County adopts a unified form of county government providing for an elected county executive under 1973 PA 139, MCL 45.551 to 45.573, or if Genesee County adopts a county charter providing for an elected county executive under 1966 PA 293, MCL 45.501 to 45.521, the appointments under Sections 4.01(b) to 4.01(d) shall be made by the elected county executive.

**Section 4.03. Term of Office.** Except as otherwise provided under this section, the members of the County Authority Board appointed under Sections 4.01(b) to 4.01(d) shall be appointed for a term of four (4) years. To provide for staggered terms, of the members initially appointed under Sections 4.01(b) to 4.01(d), one (1) member shall be appointed for a term of four (4) years, one (1) member shall be appointed for a term of three (3) years, one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for a term of one (1) year, and the remaining two (2) members shall be appointed for a term of up to four (4) years, as determined by the County Board. After the expiration of the initial terms, members appointed under Sections 4.01(b) to 4.01(d) shall be appointed for terms of four (4) years.

**Section 4.04. Removal.** A member of the County Authority Board appointed under Sections 4.01(b) to 4.01(d) may be removed for cause by the County Board.

**Section 4.05. Vacancies.** A vacancy among the appointed members of the County Authority Board appointed under Sections 4.01(b) to 4.01(d), caused by the death, resignation, or removal of a County Authority Board member shall be filled in the same manner as the original appointment for the balance of the unexpired term.

**Section 4.06. Meetings.** The County Authority Board shall conduct its first meeting no later than forty-five (45) calendar days after the Effective Date, provided that a quorum of the County Authority Board has been appointed. The County Authority Board shall meet at least annually and hold such other meetings at the place, date, and time as the County Authority Board shall determine. All meetings of the County Authority Board shall comply with the OMA. Public notice of the time, date, and place of the meetings shall be given in the manner required by the OMA.

**Section 4.07. Quorum and Voting.** A majority of the County Authority Board shall be required to constitute a quorum for the transaction of business. The County Authority Board shall act by a majority vote at a meeting at which a quorum is present. A quorum shall be necessary for the transaction of business by the County Authority Board. Presence in person for both quorum and voting at a meeting may include electronic communication by which such member of the County Authority Board is both seen and heard by the members of the County Authority Board and any members of the public at the meeting.

**Section 4.08. County Authority Board Responsibilities.** The County Authority Board shall do all of the following by a majority vote of its members appointed and serving:

- (a). Consistent with this Agreement and the Land Bank Act, adopt amendments to the initial articles of incorporation adopted under Section 3.02 and adopt subsequent amendments to the articles of incorporation as deemed necessary by the County Authority Board.
- (b). Adopt bylaws, rules, and procedures governing the County Authority Board and its actions and meetings. Initial bylaws shall be adopted within six (6) months of the first meeting of the County Authority Board.
- (c). Elect officers. Initial officers shall be elected within thirty (30) days of the first meeting of the County Authority Board.
- (d). Approve policies to implement day-to-day operation of the County Authority, including policies governing any staff of the County Authority.
- (e). Provide for a system of accounts to conform to a uniform system required by law, and review and approve the County Authority's budget to assure that the budgets are approved and administered in accordance with the Budget Act.
- (f). Provide for an annual audit in accordance with the Budget Act.
- (g). Adopt personnel policies and procedures.
- (h). Adopt policies and procedures for contracting and procurement.
- (i). Adopt an investment policy in accordance with 1943 PA 20, MCL 129.91 to 129.96, and establish banking arrangements for the County Authority.
- (j). Take such other actions and steps as shall be necessary or advisable to accomplish the purposes of this Agreement.

**Section 4.09. Fiduciary Duty.** The members of the County Authority Board are under a fiduciary duty to conduct the activities and affairs of the County Authority in the best interests of the County Authority, including the safekeeping and use of all County Authority monies and assets. The members of the County Authority Board shall discharge their duties in good faith, with the care an ordinarily prudent individual in a like position would exercise under similar circumstances.

**Section 4.10. Chairman.** The Treasurer shall be the Chairman of the County Authority Board.

**Section 4.11. Compensation.** The members of the County Authority Board shall receive no compensation for the performance of their duties. A County Authority Board member may engage in private or public employment, or in a profession or business, except to the extent prohibited by law. The County Authority may reimburse members of the County Authority Board for actual and necessary expenses incurred in the discharge of their official duties as provided by the County Authority Board.

**Section 4.12. Executive Director.** The County Authority Board may select and retain an Executive Director. An Executive Director selected and retained by the County Authority Board shall administer the County Authority in accordance with the operating budget adopted by the County Authority Board, general policy guidelines established by the County Authority Board, other applicable governmental procedures and policies, and this Agreement. The Executive Director shall be responsible for the day-to-day operations of the County Authority, the control, management, and oversight of the County Authority's functions, and supervision of all County Authority employees. All terms and conditions of the Executive Director's length of service shall be specified in a written contract between the Executive Director and the County Authority Board, provided that the Executive Director shall serve at the pleasure of the County Authority Board.

**Section 4.13. Ethics.** The County Authority Board shall adopt ethics policies governing the conduct of County Authority Board members, officers, appointees, and employees as required under Section 4(9) of the Land Bank Act. The policies shall be no less stringent than those provided for public officers and employees under 1973 PA 196, MCL 15.341 to 15.348.

**Section 4.14. Conflicts of Interest.** Members of the County Authority Board and officers, appointees, and employees of the County Authority shall be deemed to be public servants for the purposes of 1968 PA 317, MCL 15.321 to 15.330, and are subject to any other applicable law with respect to conflicts of interest. As required under Section 4(10) of the Land Bank Act, the County Authority shall establish policies and procedures requiring the disclosure of relationships that may give

rise to a conflict of interest. The County Authority Board shall require that any member of the County Authority Board with a direct or indirect interest in any matter before the County Authority Board disclose the member's interest to the governing body before the board takes any action on the matter.

## ARTICLE V

### GENERAL POWERS OF COUNTY AUTHORITY

Section 5.01. General Powers Under Land Bank Act. The County Authority may exercise all of the powers, duties, functions, and responsibilities of an authority under the Land Bank Act, including, but not limited to, each of the following:

- (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, including, but not limited to, defending the County Authority in an action to clear title to property conveyed by the County Authority.
- (c). Borrow money and issue bonds and notes according to the provisions of the Land Bank Act.
- (d). 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, interlocal agreements under Act 7, for the joint exercise of powers under the Land Bank Act.
- (e). Solicit and accept gifts, grants, labor, loans, and other aid from any person, or the federal government, the State, or a political subdivision of the State or any agency of the federal government, the State, a political subdivision of the State, or an intergovernmental entity created under the laws of the State or participate in any other way in a program of the federal government, the State, a political subdivision of the State, or an intergovernmental entity created under the laws of the State.
- (f). Procure insurance against loss in connection with the property, assets, or activities of the County Authority.
- (g). Invest money of the County Authority, at the discretion of the County Authority Board, in instruments, obligations, securities, or property determined proper by the County Authority Board and name and use depositories for County Authority money.
- (h). Employ legal and technical experts, other officers, agents, or employees, permanent or temporary, paid from the funds of the County Authority. The County Authority shall determine the qualifications, duties, and compensation of those it employs. The County Authority Board may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper. Members of the County Authority Board shall serve without compensation but shall be reimbursed for actual and necessary expenses, subject to available appropriations.
- (i). Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, engineers, accountants, and auditors for rendering professional financial assistance and advice payable out of any money of the County Authority.
- (j). Study, develop, and prepare the reports or plans the County Authority considers necessary to assist it in the exercise of its powers under the Land Bank Act and to monitor and evaluate progress under the Land Bank Act.
- (k). Enter into contracts for the management of, the collection of rent from, or the sale of real property held by an authority.
- (l). Do all other things necessary or convenient to achieve the objectives and purposes of the County Authority under the Land Bank Act or other laws that relate to the purposes and responsibility of the County Authority.

**Section 5.02. Bonds or Notes.** The County Authority shall not issue any type of bond in its own name except as authorized by the Land Bank Act. The County Authority shall not possess the power to in any way indebted a Party. Bonds or notes issued by the County Authority are the debt of the County Authority and not of the Parties. Bonds or notes issued by the County Authority are for an essential public and governmental purpose. Pursuant to Section 24(7) of the Land Bank Act, bonds or notes, together with the interest on the bonds or notes and income from the bonds or notes, are exempt from all taxes by the State or any political subdivision of the State.

**Section 5.03. Casino Development Prohibited.** Pursuant to Section 4(6) of the Land Bank Act, the County Authority shall not assist or expend any funds for, or related to, the development of a casino.

**Section 5.04. Tax Limitation.** Pursuant to Section 4(7) of the Land Bank Act, the County Authority shall not levy any type of tax or special assessment.

**Section 5.05. Condemnation Prohibited.** The County Authority is prohibited from exercising the power of eminent domain or condemning property under Section 4(8) of the Land Bank Act.

**Section 5.06. Limitation on Political Activities.** The County Authority shall not spend any public funds on political activities. Subject to the foregoing, this section is not intended to prohibit the County Authority from engaging in activities authorized by applicable law.

**Section 5.07. No Waiver of Governmental Immunity.** The Parties agree that no provision of the Agreement is intended, nor shall it be construed, as a waiver by any Party of any governmental immunity provided under any applicable law.

**Section 5.08. Non-Discrimination.** The County Authority shall comply with all applicable law prohibiting discrimination. The County Authority shall not fail or refuse to hire recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The County Authority shall not limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. The County Authority shall not provide services in a manner that discriminates against a person with respect to employment, compensation, or a term, condition, or privilege of employment because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to receive services from the County Authority.

## ARTICLE VI

### SPECIFIC POWERS OF THE COUNTY AUTHORITY

**Section 6.01. Acquisition of Property.** Except as otherwise provided in this Agreement or under the Land Bank Act, the County Authority may acquire by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise real or personal property, or rights or interests in real or personal property, on terms and conditions and in a manner the County Authority considers proper. Real property acquired by the County Authority by purchase may be by purchase contract, lease purchase agreement, installment sales contract, land contract, or otherwise. The County Authority may acquire real property or rights or interests in real property for any purpose the County Authority considers necessary to carry out the purposes of the Land Bank Act.

**Section 6.02. Deeds In Lieu of Foreclosure.** The County Authority may accept from a Person with an interest in a tax delinquent property or Tax Reverted Property a deed conveying that Person's interest in the property in lieu of the foreclosure or sale of the property as provided under Section 6 of the Land Bank Act.

**Section 6.03. Expedited Quiet Title and Foreclosure Actions.** The County Authority may initiate an expedited quiet title and foreclosure action to quiet title to interests in real property held by the County Authority as provided under Section 9 of the Land Bank Act.

**Section 6.04. Execution of Legal Documents Relating to Property.** All deeds, mortgages, contracts, leases, purchases, or other agreements regarding property of the County Authority, including agreements to acquire or dispose of real property, shall be approved by and executed in the name of the County Authority.

**Section 6.05. Holding and Managing Property.** The County Authority may hold and own in its name any property acquired by the County Authority or conveyed to the County Authority by the State, a Foreclosing Governmental Unit, a local unit of government, an intergovernmental entity created under the laws of the State, or any other public or private person, including, but not limited to, Tax Reverted Property and property with or without clear title. The County Authority may, without the approval of a local unit of government in which property held by the County Authority is located, control, hold, manage, maintain, operate, repair, lease as lessor, secure, prevent the waste or deterioration of, demolish, and take all other actions necessary to preserve the value of the property it holds or owns. All real property held by the County Authority shall be inventoried and classified by the County Authority according to title status of the property and suitability for use. The County Authority may take or perform the following with respect to property held or owned by the County Authority:

- (a). Grant or acquire a license, easement, or option with respect to property as the County Authority determines is reasonably necessary to achieve the purposes of this Agreement and the Land Bank Act.
- (b). Fix, charge, and collect rents, fees, and charges for use of property under the control of the County Authority or for services provided by the County Authority.
- (c). Pay any tax or special assessment due on property acquired or owned by the County Authority.
- (d). Take any action, provide any notice, or institute any proceeding required to clear or quiet title to property held by the County Authority in order to establish ownership by and vest title to property in the County Authority, including, but not limited to, an expedited quiet title and foreclosure action under Section 9 of the Land Bank Act.
- (e). Remediate environmental contamination on any property held by the County Authority.

**Section 6.06. Civil Action to Protect County Authority Property.** The County Authority may institute a civil action to prevent, restrain, or enjoin the waste of or unlawful removal of any property from Tax Reverted Property or other real property held by the County Authority, as provided under Section 11 of the Land Bank Act.

**Section 6.07. Environmental Contamination.** If the County Authority has reason to believe that property held by the County Authority may be the site of environmental contamination, the County Authority shall provide the Michigan Department of Environmental Quality with any information in the possession of the County Authority that suggests that the property may be the site of environmental contamination, as required under Section 10 of the Land Bank Act. The County Authority shall cooperate with the Michigan Department of Environmental Quality with regard to any request made or action taken by the Department under Section 10 of the Land Bank Act.

**Section 6.08. Transfer of Interests in Property by County Authority.** Pursuant to Section 7 of the Land Bank Act, on terms and conditions, and in a manner and for an amount of consideration the County Authority considers proper, fair, and valuable, including for no monetary consideration, the County Authority may convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of property or rights or interests in property in which the County Authority holds a legal interest to any public or private person for value determined by the County Authority.

**Section 6.09. Disposition of Proceeds.** Any proceeds from the sale or transfer of property by the County Authority shall be retained by the County Authority, or expended or transferred by the County Authority consistent with the provisions of the Land Bank Act and pursuant to a plan adopted by the County Authority Board.

**Section 6.10. Collective Bargaining.** The County Authority shall have the right to bargain collectively and enter into agreements with labor organizations. The County Authority shall fulfill its responsibilities as a public employer subject to 1947 PA 336, MCL 423.201 to 423.217 with respect to all its employees.

**Section 6.11. Municipal Employee Retirement System.** To the extent permitted under Michigan law, the County Authority Board may elect to become a participating municipality on behalf of County Authority employees but only pursuant to Section 2c(2) of the Municipal Employees Retirement Act of 1984, 1984 PA 427, MCL 38.1501 to 38.1558.

## ARTICLE VII

### BOOKS, RECORDS, AND FINANCES

**Section 7.01. County Authority Records.** The County Authority shall keep and maintain at the principal office of the County Authority, all documents and records of the County Authority. The records of the County Authority, which shall be available to the Parties, shall include, but not be limited to, a copy of this Agreement along with any amendments to the Agreement. The records and documents shall be maintained until the termination of this Agreement and shall be delivered to any successor entity or, if none, to the Treasurer or any successor agency of the Treasurer.

**Section 7.02. Financial Statements and Reports.** The County Authority shall cause to be prepared, at County Authority expense, audited financial statements (balance sheet, statement of revenue and expense, statement of cash flows, and changes in fund balance) on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm. A copy of the annual financial statement and report shall be filed with the Michigan Department of Treasury, or any successor agency, and shall be made available to each of the Parties.

**Section 7.03. Audits.** The County Authority shall provide for the conduct of audits in accordance with Sections 6 to 13 of the Budget Act, which shall be made available at the request of any Party. The County Authority Board shall establish a dedicated audit committee of the County Authority Board for the purpose of overseeing the accounting and financial reporting processes of the County Authority and audits of its financial statements. The County Authority shall establish specific duties and obligations of the audit committee and standards and qualifications for membership on the audit committee. The County Authority may require at least one member to be specifically knowledgeable about financial reports.

**Section 7.04. Freedom of Information Act.** The County Authority shall be subject to and comply with the FOIA.

**Section 7.05. Uniform Budgeting and Accounting Act.** The County Authority shall be subject to and comply with the Budget Act. The Executive Director annually shall prepare and the County Authority Board shall approve a budget for the County Authority for each Fiscal Year. Each budget shall be approved by the September 1st immediately preceding the beginning of the Fiscal Year of the County Authority.

**Section 7.06. Deposits and Investments.** The County Authority shall deposit and invest funds of the County Authority, not otherwise employed in carrying out the purposes of the County Authority, in accordance with an investment policy established by the County Authority Board consistent with laws and regulations regarding investment of public funds.

**Section 7.07. Disbursements.** Disbursements of funds shall be in accordance with guidelines established by the County Authority Board.

**Section 7.08. Performance Objectives.** Each Fiscal Year, the Executive Director shall prepare objectives for the County Authority's performance for review and approval by the County Authority Board.

**Section 7.09. Annual Reports.** Not less than annually, the County Authority shall file with the Treasurer, the County Board, and with the State Authority a report detailing the activities of the County Authority, and any additional information as requested by the Treasurer, the County Board, or the State Authority.

## ARTICLE VIII

### DURATION OF AGREEMENT

**Section 8.01. Duration.** This Agreement and the County Authority shall commence on the Effective Date and shall continue in effect for an initial term of 5 years and after that until terminated by joint action of the Parties and the County Board or withdrawal by a Party under Section 8.02.

**Section 8.02. Withdrawal by Either Party.** Either Party may withdraw from this Agreement after the initial term, upon six (6) months notice in writing to the County Authority as provided under Section 9.01. The Treasurer shall withdraw from this Agreement under this section if required to withdraw under the terms a resolution adopted by the County Board.

**Section 8.03. Disposition upon Termination.** As soon as possible after termination of this Agreement, the County Authority shall finish its affairs as follows:

- (a) All of the County Authority's debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the County Authority and distribution of its assets shall be paid first.
- (a) The remaining assets, if any, shall be distributed to any successor entity, subject to approval by the Parties. In the event that no successor entity exists, the remaining assets shall be distributed to Genesee County or as otherwise agreed by the Parties.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01. Notices.** Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by first-class mail. All such written notices, including any notice of withdrawal under Article VIII, shall be sent to each other Party's signatory to this Agreement, or that signatory's successor. All correspondence shall be considered delivered to a Party as of the date that such notice is deposited with sufficient postage with the United States Postal Service. Any notice of withdrawal shall be sent via certified mail.

**Section 9.02. Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

**Section 9.03. Interpretation of Agreement.** The Parties intend that this Agreement shall be construed liberally to effectuate the intent and purposes of this Agreement and the legislative intent and purposes of the Land Bank Act as complete and independent authorization for the performance of each and every act and thing authorized by this Agreement and the Land Bank Act. All powers granted to the County Authority under this Agreement and the Land Bank Act shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

**Section 9.04. Severability of Provisions.** If any provision of this Agreement, or its application to any Person, Party, or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons, Party, or circumstances is not affected but will be enforced to the extent permitted by law.

**Section 9.05. Governing Law.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its plain and fair meaning, and not construed strictly for or against any Party.

**Section 9.06. Captions and Headings.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning and or to be interpreted as part of this Agreement.

**Section 9.07. Terminology.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

**Section 9.08. Cross-References.** References in this Agreement to any Article include all sections, subsections, and paragraphs in the Article, unless specifically noted otherwise. References in this Agreement to any Section include all subsections and paragraphs in the Section.

**Section 9.09. Jurisdiction and Venue.** In the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved between the Parties, shall be submitted to the courts of the State of Michigan. Subject to Sections 6419 and 6419a of the Revised Judicature Act of 1961, 1961 PA 236, MCL 600.6419 and 600.6419a, any and all claims against the State Authority must be brought and maintained in the Court of Claims in Ingham County notwithstanding Section 6421 of the Revised Judicature Act of 1961, MCL 600.6421.

**Section 9.10. Amendment.** This Agreement may be amended or an alternative form of this Agreement adopted only upon written agreement of all Parties.

**Section 9.11. Effective Date.** This Agreement shall become effective as of the Effective Date.

# APPENDIX D: Sample Administrative Policies

## D-1 ATLANTA LAND BANK

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**Transfer of Property**  
**Community Improvements**  
**Reasonable Equity Policy**  
**Owner Occupant Policy**

## D-2 CLEVELAND LAND BANK

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**Types of Lots**  
**Steps in Acquiring Property**

## D-3 GENESEE LAND BANK

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- 1. Policies Governing the Acquisition of Properties**
- 2. Priorities Concerning the Disposition of Properties**
- 3. Factors in Determining Consideration Due Upon Transfers**
- 4. Side Lot Disposition Program**
- 5. Residential Land Transfers**
- 6. Commercial Land Transfers**
- 7. Approval of Land Transfers**
- 8. Land Banking Policies**

## D-4 LOUISVILLE LAND BANK

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**Acquisition of Property – Mass Foreclosures**  
**Donations**  
**Administration of Property**  
**Disposition of Property**  
**City Surplus Real Property**

## D-5 ST. LOUIS LAND BANK

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**Pricing Policy**  
**Purchasing Property: Purchase Approval Process**  
**Purchasing Property: 18 Month Right of Re-entry**

# APPENDIX D-1: Fulton County/City of Atlanta Land Bank Authority

Transfer of Property (6/23/92)

## FOR-PROFITS

**Option:** For-profits secure donations of or purchase 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.

### Benefits:

#### 1. Eliminates Major Legal Costs

Eliminates the expense of taking a tax delinquent property to a tax sale (~ \$1,000) and the cost of a quiet title action to clear the title (~ \$2,000).

#### 2. Results in an "Easier-to-Insure" Title

Since the tax delinquent property will not go through a tax sale, the title will not become "clouded." Title insurance companies should find these properties easier to insure than most other LBA properties.

#### 3. Reduces Processing Time & LBA Staff Requirements

Reduces the number of LBA staff hours that are required to process a tax delinquent property. Rather than soliciting donations from many individual property owners, LBA staff would deal with only one non-profit possessing an assemblage of tax delinquent properties.

#### 4. Simplifies Land Assemblance

Provides non-profits the flexibility to assemble properties as these become available. Non-profits would not be dependent upon LBA staff availability for direct solicitation of donations and as a result would not experience delays in or missed opportunities for land acquisition.

**Process:** As with non-profits eligibility for this option will be based on certain criteria. These shall include:

### Notification of Non-Profits

During the for-profits' initial contact with the LBA, LBA staff shall provide the for-profit with a list of neighborhood based non-profits that are active in the development of low-to-moderate income housing within the for-profit's area of interest. The for-profit should then contact the active non-profit's to determine if they have any interest in the property to be developed by the for-profit. If an interest exists, the non-profit and for-profit must forge an agreement for joint development.

### Documentation of Lot Purchase

The for-profit must document the purchase process extensively. This documentation should include minimally per parcel:

1. Total Amount Paid to the Owner in Exchange for the Land.
2. Total Amount Spent by the For-Profit to Acquire the Property (e.g., legal counsel, administrative costs, etc.),
3. Lot Development Costs Impacting the Final Lot Price, and
4. Total Amount of Back Taxes (County, City, School District), Special Assessments, and Other Liens Against the Property and the Length of Delinquency for Each.

The total of the aforementioned 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. In accordance with the state enabling legislation, OCGA § 48-4-64(c), the LBA shall consider the public benefit to be gained by tax forgiveness.

Some properties may present unusual or extenuating circumstances to the for-profit 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.

### Dialogue between For-Profits & LBA

An early and continued dialogue should occur between for-profits and the LBA to assure the LBA's interest in processing and re-conveying properties to the for-profit. Therefore, a for-profit should contact the LBA as soon as it decides that it may benefit from LBA services.

## NON-PROFITS

**Option:** Non-profits secure donations of or purchase 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.

### Benefits:

#### 1. Eliminates Major Legal Costs

Eliminates the expense of taking a tax delinquent property to a tax sale (~ \$1,000) and the cost of a quiet title action to clear the title (~ \$2,000).

#### 2. Results in an "Easier-to-Insure" Title

Since the tax delinquent property will not go through a tax sale, the title will not become "clouded." Title insurance companies should find these properties easier to insure than most other LBA properties.

#### 3. Reduces Processing Time & LBA Staff Requirements

Reduces the number of LBA staff hours that are required to process a tax delinquent property. Rather than soliciting donations from many individual property owners, LBA staff would deal with only one non-profit possessing an assemblage of tax delinquent properties.

#### 4. Simplifies Land Assemblage

Provides non-profits the flexibility to assemble properties as these become available. Non-profits would not be dependent upon LBA staff availability for direct solicitation of donations and as a result would not experience delays in or missed opportunities for land acquisition.

**Process:** To be eligible for this option, the non-profit must document the purchase process extensively. This documentation should include minimally per parcel:

1. Total Amount Paid to the Owner in Exchange for the Land,
2. Total Amount Spent by the Non-Profit to Acquire the Property (e.g., legal counsel, administrative costs. etc.),
3. Lot Development Costs Impacting the Final Lot Price, and
4. Total Amount of Back Taxes (County, City, School District), Special Assessments, and Other Liens Against the Property and the Length of Delinquency for Each.

The total of the aforementioned 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. In accordance with the state enabling legislation, OCGA § 48-4-64(c), the LBA shall consider the public benefit to be gained by tax forgiveness.

Some properties may present unusual or extenuating circumstances to the non-profit 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.

### Dialogue between Non-Profits & LBA

An early and continued dialogue should occur between non-profits and the LBA to assure the LBA's interest in processing and re-conveying properties to the non-profit. Therefore, a non-profit should contact the LBA as soon as it decides that it may benefit from LBA services.

## COMMUNITY IMPROVEMENTS

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**Option:** Land Bank Authority accepts donation from property owner or transfer request from non-profit organization to be transferred for nonrevenue-generating, nontax-producing use that is for community improvement or other public purposes.

### Benefits:

#### 1. Establishes Use for Public Purposes

Under Article 4, j48-4-61(c) of Title 48 OCGA, the LBA is "established to acquire the tax delinquent properties...for the purpose of returning land...to an effective utilization status..." Further, the Interlocal Agreement, Article IX,IB(1)(c) provides that "these priorities shall not preclude the Authority from assembling tracts or parcels of property for community improvement or other public purposes."

#### 2. Reduces Processing Time & LBA Staff Time

Reduces the number of LBA Staff hours that are required to process a tax delinquent property. Only those properties that are of interest to a non-profit for the public good would be acted upon.

#### 3. Eliminates Major Legal Costs

#### 4. Results in an "Easier-to-Insure" Title

**Process:** The same process will be used in this option that is currently used under the Request or Donation of Property or the Transfer of Property option. The difference in this option is in the ultimate use of the property. A non-profit can, under this policy, use the acquired property for nontax-producing activities that are for the purpose of providing community improvements or other public purposes. Such uses could include, but are not limited to, community gardens, parking for a non-profit function such as a school or cultural center, playground for after-school or day care. The staff will be required to ascertain and document the following:

- (a) that no alternative tax generating use is available for the property, and;
- (b) that the proposed community improvements are consistent with the area redevelopment plans and/or community revitalization.

NOTE: Underlined text reflect the changes in the proposed policy over the policy presented to the Board on March 30, 1993.

## REASONABLE EQUITY POLICY

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### THE PROBLEM

As the Land Bank Authority's effectiveness, work load and visibility have grown, it has become increasingly important to have a clear guide to ensure that the public interest is protected and that tax delinquent land owners are not unreasonably rewarded.

### BACKGROUND

The mission of the Land Bank Authority from its inception has been to free land bound by cloudy title for transfer to those who are bringing new life to struggling communities. To be consistent with this mission, this policy seeks to ensure that as much land as possible be converted to productive community use and to long term tax benefit while ensuring that the Authority remains in a politically defensible position.

### POLICY BASIS

This policy must address the most important issue. "protecting public interest and preventing unreasonable benefit to tax delinquent land owners." It is further imperative that this policy be based on the "reasonable equity" criterion so that the Staff and Board can deal effectively with the handful of potential abusers without penalizing the majority who are well within the intent of the Authority's legislation.

### DEFINITION

This policy is based on the value of the property and the equity of the its owners. While any valuation of equity is subjective, it can be reasonably estimated. First, "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. Community Development Corporations (CDC) are often the primary purchasers of property in a community and will maintain "records of comparable transactions. Such records will provide a basis for evaluating the fair market value of a given property. In instances where the two valuations unreasonably differ, the Staff or the Board shall have full authority to require a professional appraisal. This appraisal shall only be required for proposals that have significant variances in valuation and entail transactions in which the owner received in excess of \$20,000.

Second, "net equity" shall mean the current fair market value, as determined by the Staff, less the total amount of all liens and encumbrances (tax liens, special assessments, mortgages, judgments, etc.). The amount of the existing tax lien includes all interest, penalties and costs associated with the tax lien. .

### POLICY

#### 1. When an owner has less than \$2,000 Net Equity

To ensure that an owner does not receive an unwarranted benefit, the Land Bank Authority 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. A nominal amount is defined as no more than \$2,000.

#### 2. When an owner has some equity

To ensure that the owner does not receive an unwarranted benefit, the Land Bank Authority will not participate in transactions in which the owner receives an amount greater than 75% of net equity.

#### 3. When it appears that the owner has speculated on the property.

To ensure that speculators do not seek to take advantage of the Land Bank Authority, Staff shall review closely instances in which the owner is receiving money far in excess of his investment while consistently ignoring his tax responsibility. Particular attention should be given to properties purchased in the last three years.

#### 4. When an owner refuses to negotiate reasonably with the CDC and refuses to pay taxes.

In communities that are experiencing internal and surrounding development, 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 instances, 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.

**5. When a non-conforming situation merits consideration by the Board.**

To ensure the flexibility of the Board, the Land Bank Authority 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 Land Bank Authority as well as those of the public.

To preserve the integrity of the Land Bank Authority's mission and, all properties petitioned to the Board must pass the test of strategic importance. The Land Bank Authority 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 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.

**Case Study**

The fair market value of a property is estimated to be \$10,000 with \$3,000 in tax liens. Assuming that there are no additional liens against the property, the owner's net equity would be \$7,000. Since the owner maintains some equity in his property, the Land Bank Authority would consider a transaction in which the owner received 75% of his equity, or \$5,250.

Fair Market Value	\$10,000
Taxes and Liens	-\$3,000
<u>Less 75% Cap</u>	<u>-\$1,750</u>
<u>Maximum Purchase Price</u>	<u>\$5,250</u>

**OWNER OCCUPANT POLICY**

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Revised (11/23/98)

**THE PROBLEM**

The Land Bank Authority has been requested to respond to individuals that petition the Authority for tax abatement, but operate independent of a non-profit or for-profit development entity. These individuals seek to reside in the subject property upon the construction of new housing or rehabilitation of existing housing.

**BACKGROUND**

The Fulton County/City of Atlanta Land Bank Authority was "...established to acquire tax delinquent properties ... in order to foster the public purpose of returning land which is in a non revenue generating, nontax-producing status to an effective utilization status in order to provide housing..." (O.C.G.A. 48-4-61(c)). To be consistent with this statutory mandate, this policy seeks to ensure that as much land as possible be converted to a productive use and to maximize the long term tax revenue benefit to the governmental jurisdictions for which the Authority was established to serve.

**POLICY BASIS**

As the Land Bank Authority's effectiveness and visibility have increased, the mission of returning nonrevenue generating parcels to a productive use has become more strategically defined in its' programmatic goals and practical applications. This policy must address the important issue of converting dormant, nonproductive parcels into a tax revenue generating status. It is imperative that this policy be based on the "... effective utilization of land to provide housing..." consistent within the intent of the Authority's legislation.

**DEFINITIONS**

This policy is based on the opportunity for an individual to participate in the benefits derived from the authorization of tax extinguishment by the Authority, 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 primary residence.

First, these individuals shall be recognized as "owner-occupant" developers. 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) NPU Presentation (City of Atlanta only), (e) Development Cost Estimate, (f) Site Control, (g) Title Report.

Second, "primary residence" shall mean that upon completion of the construction or rehabilitation, the owner-occupant must reside in the property for a minimum of five (5) years and shall pay all tax obligations which 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.

## **ADDITIONAL REQUIREMENTS AND CONDITIONS**

- 1) The applicant must either rehabilitate existing housing or create new housing where housing does not exist.
- 2) 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.
- 3) 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 (3) year time limit, as prescribed in the covenants of the Contract.
- 4) The Land Bank Authority will extinguish no delinquent taxes which were the responsibility of the applicant. This would include any taxes which 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.
- 5) 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.
- 6) During the term of the occupancy, the owner-occupant shall pay all ad valorem taxes which accrue and shall maintain the property in compliance with the required code enforcement ordinances of the governing jurisdiction.
- 7) The owner-occupant must meet the applicable household income standards established by the Authority in conjunction with the provisions of O.C.G.A. 48-4-64 (e) which allows "...other entities intending to produce low-income or moderate-income housing" to participate in the disposition of land by the Authority.
- 8) 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.

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

## **APPENDIX D-2: Cleveland Land Bank Policies**

([www.city.cleveland.oh.us/government/departments/commdev/cdneigdev/cdndlandbank.html](http://www.city.cleveland.oh.us/government/departments/commdev/cdneigdev/cdndlandbank.html))

### **Three Types of Land Bank lots:**

1. Non-buildable lots. Land Bank lots with less than 40-ft. frontages are offered to adjacent property owners at a cost of \$1.
2. \$100 Buildable lots. Land Bank residential lots are sold by the City for \$1 00 for new home construction.
3. Land Banking for future development. When a number of City-owned lots and tax-delinquent properties in the foreclosure process are located in close proximity, the City will bank lots until the foreclosed lots come into the Land Bank. The lots are then consolidated to allow for new development.

No land is sold to delinquent taxpayers or homeowners/landlords charged with housing code violations.

If you are an adjacent property owner or interested in constructing a new home or commercial structure, you must submit a proposal in writing to the Department of Community Development. To buy land from the City of Cleveland, follow these steps:

1. Identify the property you wish to buy from the inventory-of parcels available in the Land Bank.
2. Present a written request (proposal) to the Land Bank Staff.
3. Your councilperson will be contacted and informed of your request.
4. You will be informed of the fair market value of the property. If you are purchasing the parcel to build a home, the price will be \$100.
5. You must be able to afford the new development, be up to date in your property taxes and not have any outstanding housing code violations.
6. Your proposal will be evaluated to determine if the development is suitable for the neighborhood.
7. Proposal from adjacent owners will be submitted to a neighborhood advisory committee. Members, who are residents, will review it before any other action is taken.
8. Legislation must be introduced and passed by City Council.
9. Upon approval, a purchase agreement and deed will be drawn up and signed.
10. The property will become yours!!!

# APPENDIX D-3: Genesee County land Reutilization Council, Inc. (2003)

## PRIORITIES, POLICIES AND PROCEDURES

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- 1. Policies Governing the Acquisition of Properties**
- 2. Priorities Concerning the Disposition of Properties**
- 3. Factors in Determining Consideration Due Upon Transfers**
- 4. Side Lot Disposition Program**
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- 6. Commercial Land Transfers**
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- 7. Approval of Land Transfers**
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The acquisition and disposition of properties acquired by the Treasurer of Genesee County through tax foreclosure procedures in accordance with 1893 P.A. 206, as amended by 1999 P.A. 123, MCL §211.1 et. seq., and properties that are owned by the Genesee County Land Reutilization Council, Inc. (the “LRC”), shall be governed by the following basic priorities and policies.

The acquisition, use, and disposition of such properties shall at all times be consistent with the authority granted by the Constitution of Michigan, the laws of the state of Michigan, the Interlocal Agreement by and between Genesee County, Michigan and Flint Township, Michigan dated August \_\_, 2002, the articles of incorporation and bylaws of the Land Reutilization Council, Inc., and the public purposes set forth therein.

#### **1. Policies Governing the Acquisition of Properties**

In determining which, if any, properties shall be acquired that become available through the tax foreclosure processes for acquisition by Genesee County or by the Land Bank Authority, the Treasurer shall give consideration to the following factors:

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 Authority.

The Treasurer may combine properties from one or more of the foregoing categories in structuring the terms and conditions of the statutorily required auctions of the tax foreclosure properties, and may acquire any such properties prior to auctions, at such auctions, or subsequent to auctions as authorized by law. In determining the nature and extent of the properties to be acquired the Treasurer shall also give consideration to underlying values of the subject properties, the financial resources available for acquisitions, the operational capacity of the LRC, and the projected length of time for transfer of such properties to the ultimate transferees.

## **2. Priorities Concerning the Disposition of Properties**

The disposition of properties shall be based upon a combination of three different factors. The first factor involves the intended or planned use of the property. The second factor considers the nature and identity of the transferee of the property. The third factor addresses the impact of the property transfer on the short and long term neighborhood and community development plans. Within each factor is a ranking of priorities. The disposition of any given parcel will be based upon an assessment of the most efficient and effective way to maximize the aggregate policies and priorities. The Board and Staff of the LRC shall at all times retain flexibility in evaluating the appropriate balancing of the priorities for the use of property, priorities as to the nature of the transferee of properties, and priorities concerning neighborhood and community development.

### **Priorities for Use of Property**

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.
6. Provision of financial resources for operating functions of the LRC.

### **Priorities as to the Nature of the Transferee**

1. Qualified nonprofits corporations that will hold title to the property on a long-term basis (primarily rental properties) or hold title to the property for purposes of subsequent reconveyance to private third parties for homeownership.
2. Governmental entities.
3. Nonprofit institutions such as academic institutions.
4. Entities that are a partnership, limited liability corporation, or joint venture comprised of a private nonprofit corporations and a private for-profit entity.
5. Individuals who own and occupy residential property for purposes of the Side-Lot Disposition Program.

Individuals and entities that were the prior owners of property at the time of the tax foreclosure which transferred titled to the Treasurer shall be ineligible to be the transferee of such property from the Treasurer.

### **Priorities Concerning Neighborhood and Community Development**

1. The preservation of existing stable and viable neighborhoods.
2. Neighborhoods in which a proposed disposition will assist in halting a slowly occurring decline or deterioration.
3. Neighborhoods which have recently experienced or are continuing to experience a rapid decline or deterioration.
4. Geographic areas which are predominantly non-viable for purposes of residential or commercial development.
5. Within and among each of the first four priorities shall be a concurrent priority for targeted geographic areas for which a qualified strategic development plan has been approved.

## **3. Factors in Determining Consideration Due Upon Transfers**

The following factors shall constitute general guidelines for determination of the consideration to be received by the LRC for the transfer of properties. In each and every transfer of real property the LRC 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.

The amount of consideration shall be determined by the LRC in its sole discretion. The consideration to be provided by the transferee to the LRC 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.

### **1. Transfers to Nonprofit entities for affordable housing.**

- (a) Transfers of property to nonprofit entities for the development, operation or maintenance of affordable housing shall require consideration not less than the Project Costs.
- (b) 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.

### **2. 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.

### **3. 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.

### **4. 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.

## **4. Side-Lot Disposition Program**

Individual parcels of property may be acquired by the Treasurer, the County, or the Land Bank Authority, 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 LRC.

### **A. Side-Lot Disposition Policies**

- 1. 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 or rear;
  - (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.
  - (d) No more than one lot may be transferred per contiguous.
- 2. Transferees.
  - (a) Transferees are limited to owners owner-occupied adjacent property.
  - (b) The transferee must not own any real property (including both the contiguous lot and all other property in Genesee 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 Genesee County) that is tax delinquent.
  - (d) The transferee must not have been the prior owner of any real property in Genesee County that was transferred to the Treasurer or to a local government as a result of tax foreclosure proceedings.
- 3. Pricing
  - (a) Parcels of property that are not capable of independent development may be transferred for nominal consideration.

- (a) 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.

#### 4. 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.

### **B. Side-Lot Disposition Procedures**

1. The prospective buyer must submit the following documents to the LRC Transaction Specialist:
  - (1) List of property address(es)
  - (2) Project Description – property use must be consistent with current zoning requirements
  - (3) Project Financing
  - (4) Development Budget
  - (5) Most Recent Tax Return
  - (6) A Picture Identification
  - (7) Proof of Social Security Number
  - (8) Evidence of compliance with all LRC Side-Lot Disposition Policies
2. Within a 30-day period of receiving a complete request packet, the Transaction Specialist will complete a basic analysis and present it to the LRC Executive Director or to the LRC Board for approval.
3. Once the project has been approved, the Transaction Specialist will compile the closing documents for property transfer and complete the transaction with the buyer.

## **5. Residential Land Transfers**

### **A. Residential Land Transfer Policies**

These policies pertain to transfers whose future use is residential. At time of transfer the property may be vacant, improved or ready to occupy.

1. The transferee must not own any real property that has any unremediated citation of violation of the state and local codes and ordinances.
2. The transferee must not own any real property that is tax delinquent.
3. The subject property must not 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).
4. The transferee must not have been the prior owner of any real property in Genesee County that was transferred to the Treasurer or to a local government as a result of tax foreclosure proceedings.
5. The use of transferred property must give consideration to the Community/Neighborhood Plan (if one is in place) and received a letter of comment from the appropriate planning groups.
6. Parcels of property shall be transferred for consideration in an amount not less than the lower of the fair market value or the amount of the costs incurred in acquisition, demolition and maintenance of the lot/building.
7. All development projects should be started and completed within a time frame negotiated with LRC.
8. Options are available for 10% of the parcel price for up to a 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 LRC pertaining to property transfers.
9. A precise narrative description of future use of the property is required.
10. Transactions shall be structured in a manner that permits the LRC to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, through reliance on subordinate financing held by the LRC.

11. The transferee must agree to pay future property taxes from time of transfer.
12. If code or ordinance violations exist with respect to the property at the time of the transfer, the transfer agreements shall specify a maximum period of time for elimination or correction of such violations, with the period of time be established as appropriate to the nature of the violation of the anticipated redevelopment or reuse of the property.
13. The proposed use must be consistent with current zoning requirements or a waiver for non-conforming use is a condition precedent to the transfer.
14. Where appropriate, affordability requirements will be set forth in the transfer agreement and enforceable through recorded covenants, conditions or limitations upon title.

The following additional policies shall apply to properties to be transferred to individual transferees as part of a homeownership program.

15. The owner-occupant must complete renovations and move into the structure within a time frame negotiated by the LBA.
16. The property may not be used as rental property.
17. For properties transferred for cash consideration below full fair market value of the property, the owner-occupant must reside in the property as his or her primary residence for at least a 5-year period. If the property is sold prior to the 5-year period the transferee must sell the property for no more than the purchase price from the LRC plus all cost of property improvements plus a 5% annual inflation rate.
18. Parcels of property shall be transferred for consideration in an amount not less than the lower of fair market value or the amount of the costs incurred in acquisition, demolition and maintenance of the lot/building.

#### **B. Residential Land Transfer Procedures – Individual Transferees**

1. The prospective transferee must submit the following documents to the LRC Transaction Specialist:
  - (1) List of property address
  - (2) Rehabilitation / Improvement Specifications
  - (3) Time Line for Rehabilitation / Improvement Completion (if applicable)
  - (4) Project Financing (Pre-Qualification Letter for Lender)
  - (5) Development Budget (if applicable)
  - (6) Most Recent Tax Return
  - (7) A Picture Identification
  - (8) Proof of Social Security Number
2. Within a 30-day period of receiving a complete request packet, the Transaction Specialist will complete a basic analysis and present it to the LRC Executive Director for approval.
3. Once the project has been approved, the Transaction Specialist will compile the closing documents for property transfer and complete the transaction with the transferee.

#### **C. Residential Land Transfer Procedures – Corporate Transferees**

1. Required Application Documentation. The prospective buyer must submit the following documents to the LRC Transaction Specialist.
  - (1) List of property address(es)
  - (2) Project Description
  - (3) Development Team Description, including complete information on the following parties:
    - (a) Developer:
    - (b) Co-developer/Partner:
    - (c) Owner:
    - (d) General Contractor:
    - (e) Consultants:
    - (f) Architect:
    - (g) Project Manager (during construction):
    - (h) Lead Construction Lender:

- (i) Marketing Agent:
  - (j) Project Management (post-construction):
  - (4) Market Information / Plan
  - (5) Project Financing
  - (6) Development Budget
  - (7) All Rental Transactions Must Attach an Operating Budget
  - (8) Most Recent Audited Financial Statement
  - (9) Evidence of compliance with all applicable LRC policies
2. Following receipt of a completed application, the Transaction Specialist will complete a basic analysis and present it the LRC Executive Director or to the LRC Board for approval.
  3. Once the project has been approved the Transaction Specialist will compile the closing documents for property transfer, and complete the transaction with the buyer.

## **6. Commercial Land Transfers**

### **A. Commercial Land Transfer Policies**

These policies pertain to transfers of real property for which the intended future use is non-residential. At time of transfer the property may be vacant, improved or ready to occupy.

1. The transferee must not own any real property that has any unremediated citation of violation of the state and local codes and ordinances.
2. The transferee must not own any real property that is tax delinquent.
3. The transferee must not have been the prior owner of any real property in Genesee County that was transferred to the Treasurer or to a local government as a result of tax foreclosure proceedings.
4. The use of transferred property must give consideration to the Community/Neighborhood Plan (if one is in place) and received a letter of comment from the appropriate planning groups.
5. Potential tenants must give consideration to the Community/Neighborhood Plan (if one is in place) and received a letter of comment from the appropriate planning groups.
6. Parcels of property shall be transferred for consideration in an amount not less than the lesser of the fair market value or the amount of the costs incurred in acquisition, demolition and maintenance of the lot/building.
7. All development projects should be started and completed within a time frame negotiated with the LRC.
8. Options are available for 10% of the parcel price for up to a 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 LRC pertaining to property transfers.
9. A precise narrative description of future use of the property is required.
10. Transactions shall be structured in a manner that permits the LRC to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced, in certain cases, through reliance on subordinate financing held by the LRC.
11. The transferee must agree to pay future property taxes from time of transfer.
12. If code or ordinance violations exist with respect to the property at the time of the transfer, the transfer agreements shall specify a maximum period of time for elimination or correction of such violations, with the period of time be established as appropriate to the nature of the violation of the anticipated redevelopment or reuse of the property.
13. The proposed use must be consistent with current zoning requirements, or a waiver for non-conforming use is a condition precedent to the transfer.

### **B. Commercial Land Transfer Procedures**

1. **Required Application Documentation.** The prospective buyer must submit the following documents to the LRC Transaction Specialist.

- (1) List of property address(es)
  - (2) Project Description
  - (3) Development Team Description, including complete information on the following parties:
    - (a) Developer:
    - (b) Co-developer/Partner:
    - (c) Owner:
    - (d) General Contractor:
    - (e) Consultants:
    - (f) Architect:
    - (g) Project Manager (during construction):
    - (h) Lead Construction Lender:
    - (i) Marketing Agent:
    - (j) Project Management (post-construction):
  - (4) Market Information / Plan
  - (5) Project Financing
  - (6) Development Budget
  - (7) Operating Budget
  - (8) Most Recent Audited Financial Statement
  - (9) List of Potential Tenants and pre-lease agreements
  - (10) Evidence of compliance with all applicable LRC policies
2. Following receipt of a completed application, the Transaction Specialist will complete a basic analysis and present it to the LRC Executive Director or to the LRC Board for approval.
  3. Once the project has been approved the Transaction Specialist will compile the closing documents for property transfer, and complete the transaction with the buyer.

## **7. Approvals of Land Transfers**

### **A. Transfers Requiring Board Approval**

1. The Board of Directors must approve all transfers that require any exceptions to policies and procedures adopted by the Board of Directors.
2. The Board of Directors must approve all transfers in which the property in the hands of the transferee will be exempt from property taxes.
3. The Board of Directors must approve all transfers that involve more than one interested party.
4. The Board of Directors must approve all transfers for non-residential projects.
5. The Board of Directors must approve all transfers to governmental entities.

### **B. Transfers Requiring Executive Director Approval**

1. The Executive Director may approve all transfers in the Side-Lot Disposition Program.
2. The Executive Director may approve all transfers to individuals as part of the homeownership program.
3. The Executive Director may approve all single parcel land transfers (single-family) to nonprofit corporations for residential use. If a prospective transferee seeks to acquire more than three (3) properties within a twelve month period, the request must go to the LRC Board for approval.
4. All transfers authorized by the Executive Director must be reported in writing to the Board of Directors at the immediately following Board meeting.

## **8. Land Banking Policies**

The LRC is willing to receive title to properties from community development corporations and other entities, and hold title to such properties pending future use by the LRC, by the transferor of the property, or by other third parties. The receipt by the LRC of any and all conveyances of real property shall at all times be solely within the discretion of the LRC, and nothing

in this policy shall be deemed to require the LRC to take title to any properties nor to limit the discretion of the LRC in negotiating the terms of its acquisition of any property, whether as donative transfers or otherwise.

All conveyances received by the LRC in its land banking capacity must comply with the requirements set forth below in Part A, and will be reviewed and considered by the LRC in accordance with the procedures set forth in Part B. If the transfer is approved by the LRC, the LRC shall hold the subject property, and may use or convey the subject property or any interest in the subject project, subject only to the right of repurchase set forth in Part C.

Following the transfer of any properties to the LRC in accordance with this policy, the LRC shall have the right, but not the obligation, to maintain, repair, demolish, clean, and grade the subject property and perform any and all other tasks and services with respect to the subject property as the LRC may deem necessary and appropriate in its sole discretion.

#### **A. Requirements for Conveyances to the LRC in its Land Banking Capacity**

1. Property that is intended to be conveyed to the LRC and to be held by the LRC in its land banking capacity shall be clearly designated as such in the proposal for the transfer, and in the records of the LRC.
2. No property shall be transferred to the LRC pursuant to this land banking policy unless the transferor is either a private nonprofit entity or a governmental entity.
3. The subject property must be located in Genesee County, Michigan.
4. The subject property must not be occupied by any party or parties as of the date of transfer to the LRC.
5. The subject property must, as of the date of the transfer to the LRC, be free of any and all liens for ad valorem taxes, special assessments, and other liens or encumbrances in favor of local, state or federal government entities.
6. The subject property must, as of the date of the transfer to the LRC, be free of all outstanding mortgages and security instruments.
7. The LRC shall not receive and hold, at any given time, in excess of fifty (50) separate parcels of property from any given transferor.

#### **B. Procedures for Conveyances to the LRC in its Land Banking Capacity**

1. The transferor of any proposed conveyance to the LRC in its land banking capacity shall prepare a written proposal containing the following information:
  - (a) A legal description of the property.
  - (b) A title report, or other similar evidence, indicating that the property is free of all liens and encumbrances specified in Part A.
  - (c) A description of the transferor's intended uses of the property and the time frame for use and development of the property by the transferor.
2. Following receipt of the proposal, the LRC shall review the proposal and notify of the transferor of its approval or disapproval, and of any changes or additions that may be necessary as determined by the LRC in its sole discretion.

#### **C. Right of Repurchase by the Transferor**

1. The transferor shall have a right to repurchase the subject property from the LRC at any time within a period of three (3) years from the date of transfer to the LRC by giving notice to the LRC.
2. The right of repurchase may be exercised by the transferor upon payment to the LRC of the Purchase Price. The Purchase Price shall be an amount equal to (i) all expenditures of the LRC (whether made directly by the LRC or through payments to a third party contractor) in connection with the subject property incurred subsequent to the date of conveyance to the LRC, and (ii) an amount determined by the LRC as its average indirect costs, on a per parcel basis, of holding its portfolio of properties.
3. The LRC shall have the right, at any time within the three year period following the date of the original transfer, to require the transferor to exercise its right of repurchase by giving written notice to the transferor of the requirement that it exercise its right of repurchase and the amount of the Purchase Price. The transferor must exercise its right of repurchase, and close the reconveyance of the property within sixty (60) days of receipt of such notice. Failure of the transferor to exercise and close upon its right of repurchase within such period of time shall result in a termination of all rights of repurchase with respect to the subject property.

# APPENDIX D-4: Louisville Land Bank

(These procedures are an edited text of a policy and procedures manual dated January, 2002)

## Procedures Narrative

### I. Landbank

Before the Landbank can acquire ownership of any property the title must be clear. The Mass Foreclosure unit of the Department of Housing verifies clear title. The Mass Foreclosures unit operates independently of the Landbank but initiates the acquisition of land obtained by the Landbank. Through the foreclosure process, the titles to properties obtained by the Landbank are cleared of all City and County taxes, liens, penalties, and any other outstanding fees. Once the Landbank has title to the property, it may be reserved for a special project, or it may be sold "as is" to the public at large for the purpose of stimulating development while returning the property back onto the City's tax roll. Properties sold by the Landbank are done so at the best interest of the City and the Landbank may use discretionary measures when selling those properties.

### A. Acquisition of Property

#### Mass Foreclosures

The unit oversees the mass foreclosure process that serves two major functions - collecting delinquent taxes and clearing title to abandoned property. Mass Foreclosure was established by statute KRS 91.487-.527 and authorizes the City to file a lawsuit against tax delinquent properties through the Mass Foreclosure process. The internal policy and procedures manual was reviewed and noted to be maintained in the Mass Foreclosure Department but due to the excessive size only the necessary sections addressing title analysis (see Exhibit A) and tile search (see Exhibit D) procedures are included as exhibits.

All measures are exhausted in making certain that the property is vacant as it is the City's policy not to foreclose on occupied property.

#### Donations

The City of Louisville will receive donations of property in the name of the Landbank from parties wishing to relieve themselves of the responsibility of property. Both CityCall and Inspections, Permits and Licenses (IPL) refer persons to the Administrative Assistant for donations of property. IPL inspectors review vacant properties and maintain a listing of all known vacant structures. IPL will notify property owners from this listing, especially those with excessive back taxes, penalties and derelict dwellings, that all City tax liability and penalties will be excused for the donation of that property.

13d. The Landbank will not accept county property as a donation. The title report is checked to verify that title is clear of Jefferson County taxes and other liens except those filed by the City because all City tax liability and penalties will be excused for the donation of that property.

13e. If there is an outstanding lien on the title held by an outside agency the City will request that the owner contact the lien holder and request a release of the lien. Only under unusual circumstances will the City contact the lien holder. Unless the lien is released, the City cannot accept the property as a donation and the donation process will be terminated. If the donation process is terminated and the property is several years tax delinquent, then the property will be referred to Mass Foreclosure for possible inclusion in a suit.

**Note 7:** The following criteria must be met for accepting property as donations:

1. Property must be within Louisville/Jefferson County Metro Area
2. Must be able to build a structure upon property.
3. Property must not be a "brownfield" property - contaminated by any toxic or hazardous material (i.e. fuel, fertilizer, drycleaner fluid, etc.)
4. Billboards must not be located on property due to possible long-term lease agreements with outside parties.

### B. Administration of Property

#### Land Inventory Management

14. Following the sale, the Administrative Assistant will put a file together listing each parcel of land obtained by the Landbank. The property information includes the original deed and is entered into the Landbank's database (i.e. address, block/lot, parcel size, vacant lot or vacant structure, deed book, page number, amount of judgment, etc.).

14a. The Administrative Assistant sends a memorandum to IPL, Revenue Commission, Public Works and City Finance requesting the release of any delinquent taxes liens and civil penalties and the routine continuing maintenance by Public Works as part of the regular City lot clean-up program. The County is notified that the Landbank now owns the property and requests the release of any delinquent taxes; however, the County is not required to release any taxes but may do so upon request. Whether they remove the taxes or not, the County usually will not proceed against the delinquent taxpayer and the delinquent taxes gradually are removed from their tax rolls due to the statute of limitations (7

years). Although the City State County School Board all work in a coordinated effort as the Landbank the County is not required to release taxes due to statute restricting tax forgiveness.

### **Physical Land Management**

The Vacant Lots Section, Open Spaces Division, Department of Public Works does the debris removal, grass cutting, herbicide spraying and other specified maintenance requests for the Landbank, Urban Renewal and the private vacant lot properties for the City of Louisville.

### **C. Disposition of Property**

#### **Neighborhood Development**

18. The Property Analyst will screen all calls and use discretionary measures to ensure that the potential sale of property will be in the best interest of the City.
19. The Landbank will request that the inquirer submit a letter stating the purpose for purchase of a particular parcel of land. This letter is used to determine the highest and best use of the city. The inquirer is also required to provide proof of financial backing of a financial institution and also provide a building plan.
20. If a determination is made to sale the property to the inquirer then the name of the potential property owner is taken to the Landbank Board in the form of a Resolution. There is no documented criteria used to determine who would be the best candidate for property ownership when two or more request the same lot or property. Although the determination is solely based on the property analyst discretion and evaluating the "Highest and Best Use of Property for the City" the current practice was explained that if a citizen and a known developer both wanted a lot the decision would lean toward the developer's favor as there is more confidence that they will be able to complete building in a more timely manner to return property to taxable status.
- 20a. The Resolution states what will be done to property and what will be built on the property.
22. The City's Law Department will prepare a Deed of Conveyance which is accompanied by a Development Agreement which will clearly detail restrictions for building specifications, zoning laws if applicable, adherence to design guidelines and building within an agreed amount of time.
23. The Landbank will sale residential property for a minimum of \$300 per lot when property is sold for the purpose of construction of a new single-family house. Landbank property intended for commercial purposes is sold for not less than the minimum tax assessed value (PVA value). The PVA value is also used as the basis for the sale of property to tax exempt or charitable organizations. The sale of property can be referenced to the Marketing and Sales information contained in background.
24. Payment is made to the Landbank at closing. A deposit memo is completed by the Landbank Property Analysts. The check and deposit memo are forwarded to the Department of Housing Business Office for processing and deposit. A copy of the completed deposit memo and check copy is retained in the property file.
- 24c. The Landbank pays the cost of recording and ensures the recording of the Deed of Conveyance with the County Clerks Office. When the Deed is recorded this will alert the PVA that property is no longer tax exempt, thereby returning property back onto tax rolls. Landbank retains a copy of the deed in the property file and the original is sent to the owner.
25. The new owner of the property must comply with the Deed of Conveyance agreed upon when building. While in the process of building the Landbank Property Analyst will see that the conditions of the Deed of Conveyance are being met through follow up contacts and site examinations during construction. There is no specific inspection form to document the examination and not every property is inspected. Visual inspection through drive by examination is the only methods used and follow up examinations only result if the property analysts receive inquiries on sold property that is still vacant.
- 25a. If the property is held and there is a lapse in the agreed upon time in which to build then the owner is notified to be in violation of the conditions agreed upon in the Development Agreement. There are no form letters so the letters that are sent to the owners are composed to address specific circumstances.
- 25b. The Property Analyst will inquire to the reason for the lapse and will negotiate to make allowances for the owner/developer for non-compliance according to the circumstance.
- 25c. If negotiations are ineffective then the Landbank will call developer and request that land to be returned to the Landbank. A letter will follow the call stating the return of property to the Landbank. Developer has option of voluntarily returning lots or being sued for the property. The Landbank will request that the City Law Department prepare a Deed of Conveyance on the property to transfer ownership back to the Landbank.
26. Upon completion of building a structure on newly purchased Landbank property, the owner/developer must provide the Landbank with a Certificate of Occupancy. The Certificate of Occupancy is completed by IPL only after an IPL official physically inspects the structure to verify that it meets building code requirements.
- 26a. The Landbank Property Analyst will perform a site examination of the finished building or house to ensure that specifications are met according to the Development Agreement between the Landbank and the owner/developer.

- 26b. An examination will confirm that design guidelines have been met and the Development Agreement was adhered to.
- 26c. A Deed Restriction Release is prepared by the City Law Department and signed by the Chairman of the Landbank board.

## II. City Surplus Real Property

The City of Louisville Surplus of Real Property is made up of those properties acquired and managed by the City in accordance to City Codified Ordinance and prior to the advent of the Landbank Authority. Surplus Real Properties usually are left over from before the Landbank was established. Therefore, upon the development of the Landbank all acquisitions, management, and disposition of City Surplus Real Property are performed in behalf and in the name of the Landbank Authority of Louisville and Jefferson County.

City of Louisville Real Property is deeded property in which the City holds title. These properties are declared Surplus and are available for sale by the Board of Alderman as a result of being determined no longer needed.

### A. Acquisition of Property

The City of Louisville Surplus of Real Property is purchased in accordance with the City Codified Ordinance 37.56. The Landbank Authority assumes full responsibility for all real property acquisitions for the City of Louisville and will follow the prescribed steps outlined.

### B. Administration of Property

The Landbank Authority is fully responsible for all real property management for the City of Louisville and all Surplus Property is handled in like manner to Landbank Property. The physical management of City Surplus property is also handled in the same manner as Landbank Property.

### C. Disposition of Property

The procedures documented for City Surplus Real Property are the same procedures for Landbank property with the exception of steps 20 thru 21. A Resolution is required by the Board of Alderman instead of the Landbank Board.

20. If a determination is made to sale the property then the name of the potential property owner is taken to the Alderman of the respective ward that the available property belongs.
- 20a. The Alderman is notified of the particulars of the sale such as to whom the sale is made to and the purpose of the sale (residential/commercial). If the Alderman is in favor of allowing the sale then the Alderman, along with the Landbank Property Analyst, will present the potential sale to the Board of Alderman for the Board's approval at the Committee Meeting designated for the Sale of City Surplus Real Property.
21. The Board of Alderman will approve the resolution by parliamentary procedures and the resolution is signed as prepared by the City Law Department Attorney. The Law Department Secretary will route the Resolution to the Mayor to also sign. The new property owner is notified of the decision.

# APPENDIX D-5: St. Louis Land Bank Policies

(<http://stlouis.missouri.org/development/realestate>)  
(last visited 1/26/04)

## LAND REUTILIZATION AUTHORITY (LRA)

### PRICING POLICY

Effective July 31, 2003.

The following is intended to be used as a guide for the sale price of LRA-owned property.

Prices may vary, up or down, depending upon condition and location of the property or an end use of a strong public purpose.

### Side Lots

The definition of a Side Lot is vacant land up to 25 front feet, except in special circumstances. The Side Lot price will be per front foot as stated on the attached neighborhood list (PDF document). This price represents one-quarter of the standard price formulated by neighborhood.

Vacant land considered to be a Side Lot will be sold at side lot pricing only to residential owner occupants adjacent to the property.

### **Small Parcels of Vacant Land**

The definition of a small parcel is vacant land consisting of less than an acre.

The attached list of St. Louis City Neighborhoods provides the Standard price per square foot for Vacant Land for each neighborhood.

Due to the unique circumstances involving commercial, industrial, and riverfront property, parcels east of Broadway will require an appraisal, except for typical residential property.

Small Parcels of Vacant Land that will be used to build single family homes will be sold for the new construction front footage prices stated on the attached neighborhood list.

### **Large Parcels of Vacant Land**

The definition of a large parcel is vacant land consisting of one acre or more

The attached list of St. Louis City Neighborhoods provides the Standard price per square foot for Vacant Land for each neighborhood.

Due to the unique circumstances involving commercial, industrial, and riverfront property, parcels east of Broadway will require an appraisal, except for typical residential property.

When the Real Estate staff believes that the price per square foot is inconsistent with the true market value of the property, LRA may elect to base the price on an appraisal performed specifically for the site.

Large Parcels of Vacant Land that will be used to build single family homes will be sold for the new construction front footage price as stated on the attached neighborhood list.

### **Vacant and Vandalized Residential Buildings**

The attached list of St. Louis City Neighborhoods provides the Standard price per unit for Vacant and Vandalized Residential Buildings.

Occupied residential buildings, or buildings suitable for occupancy, will be priced based on appraisals.

### **Large Buildings**

Large Buildings will be individually priced.

LRA may elect to base the price on an appraisal performed specifically for the site.

### **Non-Profit Organization**

Property being acquired by a non-profit organization, that is to have a non-profit end use or a strong public purpose end use, may be sold for one-half the Standard price of that neighborhood.

### **Standard Price List**

Minimum suggested prices for buildings and land are figured by Neighborhood (listed under the property address in property list).

Also see the map of minimum suggested prices by neighborhood

The Vacant and Vandalized Residential Building per-unit rate (VVRB) is used to price buildings;

Land is priced at a square foot value.

## **PURCHASING PROPERTY: PURCHASE APPROVAL PROCESS**

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### **Option to Purchase, option periods and option fees:**

An option to purchase is a contract that removes the property from the active list and gives you site control (not ownership).

The lengths of option periods vary and generally range from 3-12 months. the amount of the option fee is 10% of the purchase price. This fee is credited to your price at closing. If you do not close, the fee is forfeited.

If you want more than one building, we may provide an option that allows one building at a time be transferred upon completion of the previous acquisition, to ensure that buildings are completed in a timely manner.

### **Closing:**

After the Commission meeting, you will be notified, in writing, of their decision on the sale of the property. If your offer is accepted, we will order title insurance. This may take several weeks to receive. Upon notification of its receipt, you will be given up to 15 days to close.

In addition to the cost of the property, you will be responsible for paying for title insurance and recording fees.

These costs normally do not exceed \$200. The Building Division is notified of all sales, and they may require you to apply for a building permit.

## **FAST TRACK APPROVAL POLICY**

Offers to purchase LRA property may be reviewed and accepted or rejected by staff within 10 days, if the following criteria are met when the offer is made:

1. An Aldermanic letter is provided.
2. The property is classified "A". All properties listed on our vacant lot and building list are classified "A". If you are not sure, ask our receptionist.
3. The offer is for two parcels, or less, of property. At the staff's discretion, large single parcels, large two-parcel offers or high profile parcels may be directed to our normal process and schedule.
4. The minimum suggested price is met or exceeded.
5. Evidence that the buyer has sufficient resources to complete the plan.

**PLEASE NOTE:** For Fast Track, the staff must determine that the proposed use is appropriate and would not interfere with any other redevelopment plan for the area.

The signature of the Director of SLDC will be required to accept or reject an offer recommended by staff within ten days of the offer.

**Such acceptance or rejection shall be expressly contingent upon ratification by the LRA Board of Commissioners at their next regular meeting.**

## **ADDITIONAL INFORMATION**

If the LRA Commission rejects your offer, you must wait 90 days before another offer may be submitted, unless new information is presented.

LRA Board meetings are open to the public. You are encouraged to attend the meeting if you would like to address the Commission about your offer.

Larger structures are marketed to developers and users that have the resources which will benefit the adjacent community. Many of the structures have nominal prices, and the sale is based on the use and financial ability of the users/developers to complete the project.

The agency considers a vacant and vandalized, a building that is vacant, and, at a minimum, will need new plumbing, electric heating and cooling, a new roof and tuckpointing.

## **PURCHASING PROPERTY: 18 MONTH RIGHT OF RE-ENTRY**

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### **18 Month Right of Reentry:**

The agency USES AND WILL ENFORCE AN 18 MONTH RIGHT OF REENTRY to encumber property.

This prevents speculation and encourages completion of the renovation.

At the time of sale, we will require you to sign a deed returning the property to the Agency in 18 months, unless the property is completed.

Follow-up inspections by staff, 16 months after closing, will determine if the property has been completed.

# BIOGRAPHY

**Frank S. Alexander** is Professor of Law at Emory University School of Law, where he also serves as Director of the Project on Affordable Housing and Community Development and Co-Director of the Law and Religion Program. At Emory his courses include Property, Real Estate Sales and Finance, State and Local Government Law, Law and Theology, and Federal Housing Policies and Homelessness. He is the author or editor of four books and over thirty articles in real estate finance, law and theology, and community redevelopment. Founder of Emory University's Law and Religion Program in 1982, Professor Alexander's work in recent years has focused on homelessness and affordable housing, serving as a Fellow of the Carter Center of Emory University from 1993-96, and as a Commissioner of the State Housing Trust Fund for the Homeless from 1994-1998. Professor Alexander received both a J.D. from Harvard Law School and a Masters in Theological Studies from Harvard Divinity School in 1978, and holds a B.A. from the University of North Carolina.

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