Land Banks and Land Banking

Frank S. Alexander

JUNE 2011

Center for
COMMUNITY PROGRESS
Turning Vacant Spaces into Vibrant Places

About the Author

Frank S. Alexander is the Sam Nunn Professor of Law at Emory University School of Law and a co-founder of the *Center for Community Progress*. He is the author or editor of eight books and more than forty articles in real estate finance and community redevelopment, including *Georgia Real Estate Finance and Foreclosure Law 2010-2011* (5th ed., 2010). Professor Alexander's work has focused on homelessness, affordable housing and community development, serving as a Fellow of the Carter Center of Emory University (1993-96), and as a Commissioner of the State Housing Trust Fund for the Homeless (1994-98). He has served as Interim Dean of Emory University School of Law (2005-06), as Visiting Fellow at the Joint Center for Housing Studies, Harvard University (Fall Semester, 2007), and has testified before U.S. Congress concerning the mortgage foreclosure crisis. Professor Alexander received his JD from Harvard Law School, a Masters in Theological Studies from Harvard Divinity School, and his BA from the University of North Carolina.

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The Center for Community Progress

The mission of the *Center for Community Progress* is to create vibrant communities primarily through the reuse of vacant, abandoned and problem properties in America's cities and towns. We accomplish this mission in the following ways:

- The Center is the national resource for policy, information, capacity building, and training regarding the redevelopment of vacant, abandoned and problem properties.
- The Center partners with federal, state and local officials and non-profit organizations that are charged with repositioning vacant, abandoned and problem properties.
- The Center collaborates with experts on relevant research needed to contribute to the growing body of appropriate public policy regarding the successful reuse of vacant, abandoned and problem properties.
- The Center is the national advocacy organization regarding the successful reuse of vacant, abandoned and problem properties.
- The Center uses its expertise to improve the overall economic and social well-being of American cities and towns impacted by large numbers of vacant, abandoned and problem properties.

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FOREWORD

If America's cities and towns are to realize their greatest potential as attractive and welcoming places—and as drivers of the new American economy—they must be able to repurpose their vacant, abandoned and foreclosed properties. Those properties—whether the product of the current foreclosure crisis or the remnants of the old economy—diminish the sense of community among neighbors, erase the value of lifelong investment in a home, and make it nearly impossible for cities and towns to attract and keep the creative, innovative, entrepreneurial citizens who will build the next economy.

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 and breeding grounds for crime, and they present a dangerous and sometimes deadly playground for neighborhood children. In my hometown of Flint, Michigan, for example, seven out of ten 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 growing number of American cities and counties, progressive leaders are implementing new approaches to combat blight and abandonment. By rethinking the value and potential of vacant and abandoned properties—seeing them as assets rather than as a disposable commodity—these communities are finding new ways to breathe life into once-forgotten neighborhoods.

With initial funding from the Ford Foundation and the Charles Stewart Mott Foundation, we formed a new national organization to support those local efforts and to carry this agenda of reform across the nation. In January 2010, we launched the *Center for Community Progress*. The mission of *Community Progress* is to create vibrant communities through the reuse of vacant property in America's cities and towns—to transform the systems that affect how the community development, government and private development fields repurpose these properties and communities.

One of the approaches we believe to be critical to this mission 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 the six years since the first edition of this publication was released, the field of land banks *and* land banking has advanced greatly. In 2005, there were just a handful of examples of successful land banks. Today, there are 79 land banks or land banking initiatives across the country—communities of all market types and with a wide array of needs and local capacity. This field has evolved, with land banks now playing an even greater role in the revitalization of communities in states in every region of the country.

In this volume, Emory Law Professor Frank S. Alexander explores the development of land banks in a variety of communities across the country, addressing the conditions, history and legal structures of each. In comparing and contrasting the legal approaches and policies used across the country, 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 that can be used only to acquire and care for tax-foreclosed property. In fact, these laws, together with amendments to the Brownfield Redevelopment Financing Act, have allowed the Genesee County Land Bank to acquire more than 10,000 parcels in the past nine years, redevelop abandoned historic buildings, clean thousands of empty lots, demolish hundreds of abandoned houses, and develop or maintain thousands of individual parcels of tax-foreclosed property.

The work of the Genesee County Land Bank has catalyzed more than $60 million in new private investment in Flint—during the "great recession"—a remarkable achievement. In Ohio, similar legislation has been enacted and has led to the development of the Cuyahoga County Land Reutilization Corporation, based in part on the Genesee County model. The Ohio approach represents an important advancement of the land bank concept.

Professor Alexander is one of the founders of *Community Progress*, and was an essential advisor in developing the Genesee County Land Bank. His experience across the country uniquely qualifies him to offer this guide as an urban land redevelopment tool—a tool that will continue to evolve as these approaches continue to produce relevant experience.

A coherent strategy for sustainable cities and towns 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.

Dan Kildee

Dan Kildee is Co-founder and President of the Center for Community Progress. He previously served as Genesee County (Michigan) Treasurer from 1997-2009, and in that role founded the Genesee County Land Bank. He also served as chair of the Michigan Land Bank Fast Track Authority.

INTRODUCTION

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

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

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

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

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

on the vitality of the community. Bolder and more creative approaches were required, and these emerged in the second generation of land banks led by Michigan and then by Ohio.

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

The emergence of the second generation of land banks in Michigan is the story of the intentional restructuring of Michigan's public policies to redirect control of tax-foreclosed properties from out-of-state investors back to local government entities, and land banks provided the viable structure. The Michigan statutes are about land banks and land banking, but they are also about providing new sources of revenues to acquire, remediate and maintain the properties. They are about creating catalytic opportunities for new development when the private market says it isn't possible. They are about creating hope in the face of despair.

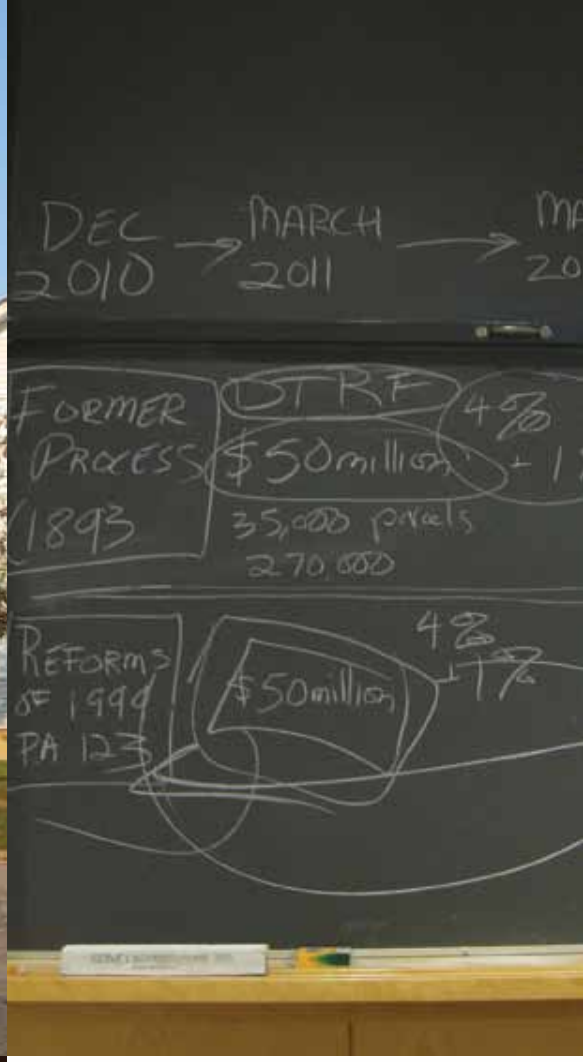
The pivotal figure in all of Michigan's property tax foreclosure reform and comprehensive land banking legislation was the Treasurer of Genesee County, Dan Kildee. Never one who is discouraged by barriers of the past or the challenges of the present, Dan always asked, and still asks, "Why not do it another way? Why not dream of the very best systems that can work together for the entire community?" And then Dan does precisely that.

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

As the first text was at the cusp of the transition from the first generation of land banks to the second, this volume marks the emergence of the third generation. Each month, more and more states are considering comprehensive land bank legislation, often coupled with parallel legislative reforms in property tax foreclosure, in code enforcement, in vacant property registration, and in mortgage foreclosure. The goal of this volume is simply to facilitate this new generation. It is designed to provide context, to describe the wide range of approaches being taken and to present the possibilities of dreams to be realized.

A work of this nature is never a solitary endeavor, though I bear full responsibility for all of the errors and omissions it may contain. Brian Moore, a 2004 graduate of Emory Law School, was instrumental in assisting me in the first volume. Leslie Powell, a 2009 graduate of Emory Law and now Assistant General Counsel at the *Center for Community Progress*, has been my true "wingman" in all of our land banking work across the country for the past two years. Sara Toering, Graham Lee and Matt Vivian have joined this team in creating, shaping and editing this volume. None of this could have been done without them.

Frank S. Alexander
April 2011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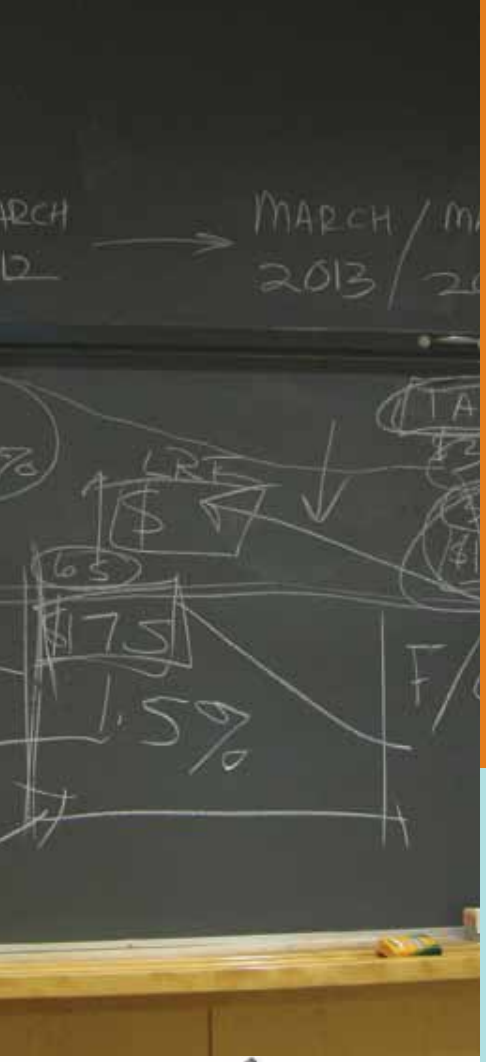

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CHAPTER 1

UNDERSTANDING THE INVENTORY

Vacant, Abandoned, Tax-Delinquent, and Foreclosed Properties

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

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

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

The dramatic rise in the number of mortgage foreclosures from 2007-11 has presented yet another challenge in the increasing inventories of properties that are vacant, substandard and possibly abandoned. In some jurisdictions, the mortgage foreclosure process is hampered by the lack of clarity on the identity of the mortgage lender and standing of the lender to conduct a foreclosure. In other

jurisdictions, the very attempt to modify mortgage loans is constrained by conflicting incentives between loan servicers and the investors in the loans. In all jurisdictions, loan servicers and lenders are extremely reluctant to invest additional funds in vacant residential properties, preferring to minimize holding costs in the face of declining markets.

The Significance of the Housing and Economic Crises

The housing and economic crises of the past five years have had deep and far-reaching consequences for America's communities. Throughout most of the United States, residential mortgage foreclosures have risen to levels not experienced in 75 years, while some communities simultaneously experienced declines in property values of 25% or more. With an overwhelming concentration of foreclosures in particular neighborhoods, the number of vacant properties has reached record levels. But perhaps nothing better underscores the real estate market's recent inability to function efficiently than the governmental restructuring of the two largest guarantors of residential mortgages, Fannie Mae and Freddie Mac, and the largest insurance company, AIG.

Together, the ongoing national mortgage crisis and the steady economic decline of older industrial areas have created increasing numbers of vacant and abandoned properties that are placing ever greater stress on communities across the country. The sudden collapse of the mortgage markets and the drastic increase in foreclosure rates may be most intense in Southern and Southwestern regions, while gradual economic decline and industrial property abandonment may be more characteristic of cities in the Northeastern and Midwestern parts of the country. Unfortunately, some communities—most notably Cleveland, Ohio, and Detroit, Michigan—are burdened by both pressures. Despite differences in metropolitan areas, the neighborhoods, schools and local governments in every metropolitan community must bear the costs induced by these large inventories of foreclosed, vacant and abandoned properties. When demand for housing and new development disappears, what may have once been a strong and vibrant neighborhood or community can become a declining wasteland. Further complicating recovery, most local governments lack efficient and effective tools for halting and reversing such a serious consequence.

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

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

Mortgage foreclosures alone, independent of subsequent abandonment, have been found to reduce property values within one-eighth of a mile of the foreclosure by 0.9% in value.[7] Multiple foreclosures had even greater cumulative adverse effects. The Center for Responsible Lending estimates that foreclosures of subprime home loans originated in 2005 and 2006 decrease the value of nearby properties by an average of $5,000.[8] In aggregate, foreclosures on subprime loans are expected to cause a $202 billion decline in home values and the corresponding tax base.

Abandonment further amplifies the problems brought on by foreclosure. For example, a detailed study of Chicago in 2005 revealed that each property abandoned prior to foreclosure imposes average costs of almost $20,000 on the city, and when that property includes a building damaged by arson, the costs reach an average of $34,000.[9] In Flint, Michigan, an analysis revealed that property within 500 feet of a vacant and abandoned structure lost an average of 2.26% of its value.[10] A study commissioned by Philadelphia in 2010 revealed that vacant and abandoned properties reduced the value of the city's homes by an average of $8,000, incurred $20 million in annual maintenance costs and deprived the city of $2 million a year in tax revenues.[11] Further, a study of eight cities in Ohio found that 25,000 vacant and abandoned properties imposed approximately $15 million in direct *annual* costs to the cities and more than $49 million in cumulative lost property tax revenues.[12]

The "Broken Windows" theory asserts that "the mere existence of abandoned housing detrimentally affects a neighborhood because it demonstrates to outsiders and residents that the neighborhood is of the type that supports crime and poverty, creating a vicious cycle that encourages additional abandonment."[13] While this cycle may not carry a price tag in dollars, its impact on communities is established. For example, one study found that a one-percentage point increase in single-family residential mortgage foreclosures increased the number of non-property related violent crimes by 2.33%.[14] In Austin, Texas, "'blocks with unsecured [vacant] buildings had 3.2 times as many drug calls to police, 1.8 times as many theft calls and twice the number of violent calls as blocks without vacant buildings."[15] And with record numbers of recent foreclosures and vacant properties concentrated in certain neighborhoods, the city of Atlanta formed a special task force to deal with copper theft—the dominant crime that drives break-ins of vacant homes in that city.[16]

In response to the rise of vacant and abandoned properties, the fall of property tax revenues, and mortgage foreclosures forcing families out of their homes, some localities have created land banks. A land bank is a governmental entity that focuses on the conversion of vacant, abandoned and foreclosed properties into productive use. As entities intended to help a local government achieve legal, institutional and systemic changes facilitating the reuse of a community's problem properties, land banks take many forms. The next chapter details the origins and evolution of land banks across the country over the past 30 years and sets the course for what land banks can achieve in the future.

Chapter 1 Endnotes

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 Pol'y Debate 7 (2000); Anthony Downs, *Comment on John T. Metzger's "Planned Abandonment: The Neighborhood Life-Cycle Theory and National Urban Policy,"* 11 Housing Pol'y Debate 41 (2000).

3 John Accordino & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 J. Urb. Aff. 301 (2000); William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. Crim. Just. 481–95 (1993).

4 John A. Jakle & David Wilson, Derelict Landscapes: The Wasting of America's Built Environment 144-75 (1992); James R. Cohen, *Abandoned Housing: Exploring Lessons from Baltimore*, 12 Housing Pol'y Debate 415, 416 (2001).

5 Edward G. Goetz, Kristin Cooper, Bret Thiele, & Hin Kin Lam, Center for Urban and Regional Affairs, *Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing* 12 (1998); James Goldstein et al., *Urban Vacant Land Redevelopment: Challenges and Progress* (Lincoln Inst. of Land Policy, *Working Paper*, 2001).

6 *See* Frank S. Alexander, *Tax Liens, Tax Sales and Due Process*, 75 Ind. L. J. 747 (2000).

7 Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 Housing Pol'y Debate 57 (2006).

8 Center for Responsible Lending, Subprime Spillover: Foreclosures Cost Neighbors $202 Billion; 40.6 Million Homes Lose $5,000 on Average 1 (2008).

9 *Id.*; William C. Apgar & Mark Duda, Minneapolis Homeownership Preservation Foundation, Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom (2005).

10 Patricia E. Norris & Nigel G. Griswold, Michigan State University Land Policy Institute, Economic Impacts of Residential Property Abandonment, Report #2007-05.

11 Catherine Lucey, *Abandoned Properties Have Reduced City Home Values by an Average of $8,000, Study Finds*, Phila. Daily News, Nov. 11, 2010.

12 Community Research Partners & Rebuild Ohio, $60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities (2008).

13 Matthew J. Samsa, Note, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 Clev. St. L. Rev. 189, 196 (2008). *See generally* George L. Kelling & Catherine M. Coles, Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities (1996).

14 Dan Immergluck & Geoff Smith, *The Impact of Single Family Mortgage Foreclosures on Crime*, 21(6) Housing Studies 851 (2006).

15 Nat'l Vacant Properties Campaign, Vacant Properties: The True Costs to Communities 1 (2005) (quoting Spelman, *supra* Chapter 1, note 3, at 489).

16 Tim Eberly, *Side Effect of Foreclosures: Empty Houses Filled with Crime*, Atlanta J.-Const., June 22, 2008, at D1.

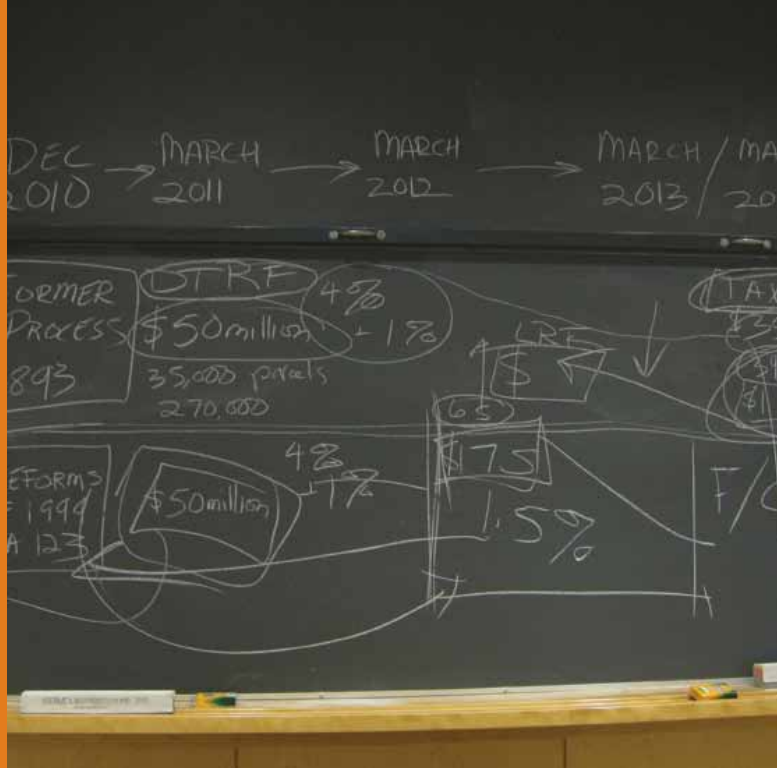
CASE STUDY: Fulton County/City of Atlanta Bank Authority

In fall 2007, many of Atlanta's CDCs were struggling to launch redevelopment projects in the face of a collapsing market. Purchasers were increasingly scarce, and long-term property holding costs, including taxes and maintenance, were negatively affecting the organizations' ability to acquire property and develop housing. In an attempt to address the changing circumstances and to alleviate some of this cost burden, the Atlanta Land Bank, in partnership with the CDCs, developed a depository agreement program that allowed the organizations to transfer properties from their inventories to the Land Bank, where they are held tax free. Additionally, maintenance costs incurred by the Land Bank are more cost effective thanks to the economies of scale for the entire Land Bank inventory. Although initially conceived of in order to reduce holding costs for CDCs, the depository program proved to be a perfect vehicle to assist local governments and other non-profits as they acquire and maintain the glut of foreclosed and other REO properties that flooded the market in the wake of the economic collapse of 2008. The program also allowed agile non-profits to utilize NSP funds to acquire properties well-suited to future redevelopment and neighborhood stabilization. By October 2010, approximately 165 properties had been placed in the Atlanta depository program.

The Pittsburgh Community Improvement Association (PCIA) became the first CDC in Atlanta to utilize the depository program. The Pittsburgh community was hard-hit by the economic collapse; nearly half of its properties were in foreclosure and becoming vacant. In partnership with Sustainable Neighborhood Development Strategies, Inc. (SNDSI), PCIA created the Partnership for the Preservation of Pittsburgh (PPOP), and in cooperation with community residents, is rebuilding Pittsburgh as a diverse, mixed-income, environmentally responsible neighborhood. PPOP's relationship with the Atlanta Land Bank has allowed them to "bank" REO and other properties it acquires while securing the resources necessary to redevelop them.

CHAPTER 2

THE EVOLUTION OF LAND BANKS



The concepts of "land banks" and "land banking" first emerged in the 1960s as proposals for new urban planning tools.[1] Metropolitan areas throughout the United States were experiencing two directly related trends in planning and development. The first was urban sprawl—the unconstrained and unrestrained shift of new development to ever-expanding rings of first tier and second tier suburbs. The second was the decline and abandonment of inner-city neighborhoods—which became the focus of massive public initiatives in the various programs of the Great Society—urban renewal and model cities.[2] The urban renewal and model cities programs of the 1950s and 1960s were simply inadequate to deal with the social preferences for leaving behind the inner cities in favor of the promises of the suburbs.

It was in these dual trends of unregulated urban sprawl and inner-city abandonment that the idea of a land bank began to emerge. To militate against the largely unanticipated external costs of suburban and ex-urban development and its core value of exclusionary zoning, land banks were proposed as a form of a "land reserve" through which a public entity would engage in early acquisition of land to be held in reserve for future public uses.[3] To militate against the growing inventory of abandoned tax-delinquent inner-city properties, land banks were proposed as a governmental entity to acquire and manage the properties no longer accessible to the market or desired by the market. The conceptual roots of land banks and land banking thus lie at both ends of the market spectrum. In a heated private market consuming all available real estate, a land bank could preserve public spaces for future public needs and priorities. In a collapsed market leaving abandoned real estate as the litter of a consumption society, a land bank could serve to convert the liabilities into assets.

Over the past 40 years, the nature and function of land banks and land banking have developed far more in response to the contagion of abandonment than as a proactive reserve of land for future uses. The dominant focus in land banking has been on delinquent property taxes, both as a symbol of abandonment and as a leverage point to gain control of the property. In selected communities where market abandonment is neighborhood or site-specific, land banks have been utilized as proactive land reserves, and this role will likely grow as land banking matures and the economy returns to strength from the great recession of 2007-10.

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

The first generation of land bank programs is that of the last quarter of the twentieth century, and is exemplified by the land banks of St. Louis, Cleveland, Louisville, and Atlanta. The "lineage" of these four land bank authorities is relatively clear and direct. Following the formation and implementation of the St. Louis Land Bank between 1971 and 1973, enabling state legislation was approved in Ohio in 1976 that permitted the creation of the Cleveland Land Bank. A little more than a decade later, both Louisville (1989) and Atlanta (1991) created parallel land bank authorities with the approval of intergovernmental agreements.[4] In each succeeding instance, the local

governments examined the programs, priorities, structures, and policies of the preceding land bank authorities and then proceeded to adopt and to adapt a land banking program designed to fit the particular needs of each community.

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

A common catalyst among the first generation of land banks was the lack of market access to tax-delinquent properties. Most property tax enforcement systems were designed in the late nineteenth century and have not been modified to reflect evolving federal constitutional due process requirements. Further, these systems did not anticipate the emergence of out-of-state investors in low-value speculative properties. In all four of the major first-generation land bank communities, there was a growing inventory of properties because (i) properties were never sold at tax sales because tax liens exceeded fair market value and state law set minimum auction bids at the amount of delinquent taxes, (ii) property tax foreclosures resulted in sales to investors, but these investors elected neither to invest in improvements to the property nor pay subsequent years' taxes, leaving the tax-delinquent inventory to be in a constant state of repetitive tax foreclosures, or (iii) by virtue of state law, the properties not sold to private investors automatically defaulted to the ownership of the local government, leaving the governmental departments with the most costly properties to maintain and the least resources and capacity to do so.

At least one jurisdiction, Atlanta, avoided the challenge (or blessing) of receiving large inventories of tax-delinquent properties by focusing on the key land bank power provided pursuant to statute of waiving delinquent taxes on properties it owned. This led the Atlanta Land Bank to emphasize a program of conduit transfers where a nonprofit corporation (such as Habitat for Humanity) would acquire title for a nominal sum to a heavily tax-delinquent parcel of property and convey it to the land bank, which would extinguish the back taxes and simultaneously reconvey it to the non-profit for development in accordance with requirements imposed by the land bank.

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

Each of the four major first-generation land banks was successful, but only when measured against the very limited range of powers and authority they were given and the very difficult nature of the real property inventory they were confronting. Each of these land banks did indeed facilitate the conversion of *some* of the inventory of vacant, abandoned and tax-delinquent properties back into productive use. Throughout the 1980s and 1990s, these land banks were operating at maximum capacity if they managed and transferred up to 500 parcels of property each year (in the cases of St. Louis and Cleveland), or just 100 parcels per year (in the cases of Louisville and Atlanta). When this volume is measured against the annual volume of available inventory for land banking, which commonly was in the range of 1,000 to 2,000 parcels each year, the efficiency and effectiveness of these land bank initiatives fell short of reaching their potential.

In hindsight, the lack of capacity for the efficient and effective acquisition, management and disposition of vacant, abandoned and tax-delinquent properties can be attributed to several core features that were missing in each of these first-generation land banks. First, none of the land banks had any dedicated or internally generated source of funding

for operations. Each of the four land banks had to rely upon direct or indirect general operating support from its local governments. Second, the property tax foreclosure laws themselves were rarely amended to any significant degree, leaving the properties targeted by the land banks tangled in a lengthy maze of archaic procedures and statutorily required waiting and redemption periods before the land bank could begin to control ownership of the property. Third, the lack of amendment of tax foreclosure laws meant that the inventory of tax-foreclosed properties, whether privately owned by investors or held by the land bank, lacked marketable and insurable title. This functionally prevented reuse by anyone in the absence of further legal proceedings. Fourth, a land bank's exercise of powers and authority was not adequately grounded in intergovernmental collaboration, whether mandatory or permissive. In two instances, the land banking operations functioned simply as another program of the city (as is the case of Cleveland), or as an imbedded program of another public authority (as in the case of St. Louis), with the consequence of vulnerability to other political and institutional priorities.

The Second Generation: Genesee County and Michigan; Ohio

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

What distinguishes the second-generation Michigan initiatives from all prior work in this field is the direct and systemic reform of all property tax foreclosure laws in Michigan in 1999.[5] This legislation halted the practice of the sale of tax liens, or tax certificates, to private third parties; it created a judicial tax foreclosure process with notice to all interested parties in a manner that meets or exceeds all state and federal constitutional requirements; it created a "bulk" process by which a county's entire inventory of tax-delinquent properties could be joined in a single foreclosure proceeding, and resolved in a single hearing; and it created a mechanism for local governments to acquire the entire inventory of tax-delinquent properties not redeemed by owners and other interested parties.

Having created a twenty-first century tax foreclosure law applicable to the entire state, local governments in Michigan had to move quickly to explore structural options for the acquisition, management and disposition of the inventory that could become available to land banks under the new foreclosure processes. The first land bank in Michigan was created in 2002 as the Genesee County Land Reutilization Council, Inc. by Genesee County in collaboration with the city of Flint and Flint Township, based solely on the intergovernmental cooperation statutes of Michigan. While effective to create a multijurisdictional single-

Following the successful launch of the Genesee County Land Bank, in 2004 Michigan enacted legislation to allow Michigan counties and the City of Detroit to form land bank authorities. As of 2011, 35 counties and the City of Detroit had formed land banks—each created to deal with the unique challenges of their particular community. In Grand Traverse County in northern Michigan, the land bank acts to support affordable workforce housing in the high land cost resort community. In Ingham County, the land bank has acted to transform tax-foreclosed houses into owner-occupied properties in neighborhoods throughout Lansing. In Saginaw, the land bank has acquired tax-foreclosed houses for demolition, cleaning up blight and rationalizing the supply of housing in a weak-demand market. In smaller rural counties, land banks are managing and repurposing abandoned properties on a smaller scale, in ways that allow local values and priorities to govern the disposition of a small but still destructive number of blighted buildings. Michigan's land bank model is flexible, allowing communities of all types to use this tool consistent with their own needs and capacity.

purpose entity with responsibility for the tax-foreclosed inventory, its powers and authority were little more than those found in the first generation of land banks, yet it faced quickly becoming the largest single landowner in the entire county. In January 2004, Michigan enacted the Land Bank Fast Track Authority Act, by far the most ambitious land bank authority statute in the country.[6] Shortly after the state land bank act was signed into law, the Genesee County Land Reutilization Council, Inc. was transformed into the Genesee County Land Bank Authority.

The 2004 Michigan legislation ushered in the second generation of land banks. Land banks that are created under this model possess a dramatically different range of powers and possibilities than are found in the first generation of land banks, with the new statutes expressly addressing each of the four systemic limitations found in the first generation of land banks. These second-generation land banks have multiple sources of financing for their operations, freeing them from dependency on local government general revenue funding.[7] The second-generation land bank programs reflect much more extensive intervention in the property tax foreclosure process, and in the case of Michigan, the ability to acquire *all* tax foreclosed properties, not just the ones for which there is no third-party investor ready to purchase it. The properties acquired by the land banks in Michigan have insurable and marketable title, and are ready for reuse and redevelopment as determined by local market conditions. Finally, land banks in Michigan must be created by intergovernmental collaboration between a county (which is the unit with legal authority for tax foreclosures) and the Michigan Land Bank Fast Track Authority, the state land bank also created by the 2004 enabling legislation. In a structure not found in other jurisdictions, the Michigan statute created a state authority both to deal with tax-foreclosed properties owned by the state as well as to exercise a limited degree of supervisory oversight of all locally created land banks.

The advantages of the second generation of land banks and land banking became the basis for major legislative reforms in Ohio in 2008. With some of the highest vacancy and foreclosure rates in the country, the city of Cleveland and Cuyahoga County pressed for a new range of structural reforms that would permit the transformation of its first-generation Cleveland Land Bank into a far more efficient and effective entity. In 2008, the Ohio General Assembly built upon the lessons learned from strengths and weaknesses of the Cleveland land reutilization program, and from the statutes and programs of more than 25 other land banks across the country, in enacting Senate Bill 353. As in the case of Michigan, this Ohio legislation is closely tied to reforms in the tax foreclosure system that were enacted two years earlier.[8] As passed, Senate Bill 353 was limited in its application to Cuyahoga County, but it was sufficient to permit the creation of the new Cuyahoga County Land Reutilization Corporation as the successor to the first-generation Cleveland Land Bank. The success of the new Cuyahoga Land Bank led the Ohio General Assembly to expand the geographical scope of the land bank enabling statute statewide in early 2010.[9]

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

The Emerging Third Generation: Pennsylvania, New York, Georgia

The third generation of land banks will emerge over the course of the second decade of the twenty-first century. It will differ from the second-generation models found in Michigan and Ohio more in terms of form than in terms of substance.

The legislative reforms in both Michigan and in Ohio were extremely intricate in nature, very difficult to draft, and nearly impossible for a casual observer to decipher. The Michigan Land Bank Act was tied in its enactment to four separate acts, amending different provisions of Michigan law, all of which pertain in some manner to the operations of a land bank.[10] The Ohio legislation was able to combine in a single act all of the various changes and amendments, but it necessitated amending over fifteen different sections of the Ohio Code. Without tracing and mastering the substance of these separate code sections, it is not easy to ascertain how the legislative surgery knits all of the pieces together.

The legislation enabling this third generation of land banks will build upon the knowledge and experiences of the first two generations, seeking to present the possibilities of land bank creation in the clearest and most direct form possible.[11] In 2010, both Pennsylvania and New York introduced parallel land bank enabling legislation. The bills received extensive consideration, passing one of the legislative houses in each state. Both states reintroduced their land bank bills in early 2011, with Georgia also filing third-generation land bank enabling legislation in April 2011.

This new legislative form will be simpler to interpret and to apply. It will reflect a degree of sophistication and coherence that is possible only by virtue of what was learned from the first 40 years of experimentation in land banking. It will also embody the new demands and resources placed on land banks as a result of the mortgage foreclosure crisis and recession of 2007-10.

Land Banks and Land Banking

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

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

The Federal Role and the Neighborhood Stabilization Program

In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 (HERA), marking the first time that land banking was expressly recognized in federal legislation.[12] Congress' statutory recognition of the severe costs borne by neighborhoods and local governments when properties are vacant or abandoned was significant. Section 2301 of HERA was titled "Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes," and it appropriated $4 billion "for the redevelopment of abandoned and foreclosed upon homes and residential properties."[13] This was the first federal legislation to recognize the economic toll that the increase in vacant and abandoned properties takes on local governments, and the first time that the federal government specifically allocated funding to address that problem.

HERA included parameters governing how its $4 billion appropriation, which came to be known as the Neighborhood Stabilization Program (NSP), could be distributed. Specifically, Congress targeted low- and moderate-income persons by requiring that all of the funds be used "with respect to individuals and families whose income does not exceed 120% of area median income," with at least 25% of the funds to be used to provide housing for "individuals or families whose incomes do not exceed 50% of area median income."[14] The permitted uses that Congress prescribed were still broad enough to accommodate the diverse needs of communities across the country. Apart from authorizing amounts made available to be used to "establish land banks for homes that have been foreclosed upon," funds could also be used to (i) establish financing mechanisms, such as soft-seconds, loan loss reserves and shared-equity loans; (ii) purchase and rehabilitate abandoned and foreclosed upon properties to then sell, rent or redevelop them; (iii) demolish blighted structures; and (iv) redevelop demolished or vacant properties.

In 2009, Congress enacted the American Recovery and Reinvestment Act (ARRA),[15] which allocated an additional $2 billion for a second round of NSP funding (NSP2). NSP2 funds were allocated in response to competitive applications. NSP2 grantees were in areas with the greatest number and percentage of foreclosures, with capacity to execute projects and leverage potential financing, and a concentration of investment to achieve neighborhood stabilization.

The ARRA also made a subtle change to the HERA provision authorizing funds for land banking. HERA permitted the allocation of funds to "establish land banks for homes that have been foreclosed upon,"[16] while ARRA amended that language to read "establish and operate land banks for homes and residential properties that have been foreclosed upon."[17] This expanded statutory language allows land banks to use NSP funds for operating costs associated with the land bank, as well as allows land banks to use NSP funds to purchase and maintain residential properties.[18]

For purposes of the NSP funding, the U.S. Department of Housing and Urban Development (HUD) provided the following definition of a land bank:

A land bank is a governmental or nongovernmental entity established, at least in part, to assemble, temporarily manage and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging reuse or redevelopment of urban property. For purposes of the NSP program, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.[19]

Chapter 2 Endnotes

1 *See, e.g.*, SYLVAN KAMM, LAND BANKING: PUBLIC POLICY ALTERNATIVES AND DILEMMAS (1970); Letwin, *supra*, Chapter 2, note 1 at 207; *see generally* Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. Affordable Housing 140 (Winter, 2005).

2 U.S. PRESIDENT'S COMM. ON URBAN HOUSING (1968); U.S. NAT'L COMM'N ON URBAN PROBLEMS (1969).

3 The most succinct proposal for the use of land banks as public land reserves was made by Professor Charles Harr, Professor of Law at Harvard Law School and formerly Assistant Secretary for Housing and Community Development. *See* CHARLES M. HAAR, U.S. CONG., HOUSE COMM. ON BANKING AND CURRENCY: PAPERS SUBMITTED TO SUBCOMM. ON HOUSING; PANELS ON HOUSING PRODUCTION, HOUSING DEMAND, AND DEVELOPING A SUITABLE LIVING ENVIRONMENT, WANTED: TWO FEDERAL LEVERS FOR URBAN LAND USE—LAND BANKS AND URBANK, 927-40 (June 1971).

4 For purposes of simplicity and clarity, the references to the cities that created the first generation of land banks are simply shorthand references. The formal identities of the programs are (i) the St. Louis Land Reutilization Authority (the "St. Louis Land Bank"); (ii) the Cleveland Land Reutilization Program (the "Cleveland Land Bank"), (iii) the Louisville and Jefferson County Landbank Authority, Inc. (the "Louisville Land Bank"), and (iv) the Fulton County/City of Atlanta Land Bank Authority, Inc (the "Atlanta Land Bank"). Of vital importance to note is that several of these first-generation models of land banks have undergone significant transformation in recent years. For example, the Louisville Land Bank was structurally reorganized following the merger of the city of Louisville and Jefferson County, and the Cleveland Land Bank replaced entirely by the Cuyahoga County Land Reutilization Corporation pursuant to the second-generation land bank statute enacted in 2008.

5 *See* 1893 Mich. Pub. Act 206, as amended by 1999 Mich. Pub. Act 123; MICH. COMP. LAWS §§ 211.1 *et seq.*

6 *See* 2003 Mich. Pub. Act 258; MICH. COMP. LAWS § 124.751.

7 *See infra* Chapter 7.

8 H.B. 294, 126th Leg. Gen. Assem., (Ohio June 28, 2006).

9 H.B. 313, 128th Leg. Gen. Assem., (approved by Governor, Ohio April 7, 2010).

10 The relationship between land bank authority activities and brownfield redevelopment is found in 2003 Mich. Pub. Act 259, MICH. COMP. LAWS §§ 125.2652 and 125.2663. The application of a five-year 50% tax recapture to properties conveyed by a land bank is found in 2003 Mich. Pub. Act 260 and 2003 Mich. Pub. Act 261, MICH. COMP. LAWS §§ 211.1021 and 211.7gg. The ability of the state to invest in loans to land bank authorities is found in 2003 Mich. Pub. Act 262, MICH. COMP. LAWS § 21.144(2)(f).

11 *See* Chapter 12 and Appendix C, *infra* for a template land bank act.

12 Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008); *see* FRANK S. ALEXANDER, FED. RESERVE BANK OF BOSTON, NEIGHBORHOOD STABILIZATION & LAND BANKING 3 (2009).

13 Division B–Foreclosure Prevention, Title III, Pub. L. No. 110-289, §§ 2301-2305, 122 Stat. 2654 (2008) (hereinafter "Emergency Assistance Act").

14 Housing and Economic Recovery Act of 2008, § 2301(f)(3)(A).

15 American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 1201, 123 Stat. 115 (2009).

16 Housing and Economic Recovery Act of 2008, § 2301(c)(3)(C).

17 American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 1201, 123 Stat. 218 (2009).

18 ALEXANDER, *supra* note 12, at 4.

19 HUD Notice Implementing Neighborhood Stabilization Program Under the Housing and Economic Recovery Act, 73 Fed. Reg. 58,330, 58,332 (Oct. 6, 2008).

CHAPTER 3

THE RANGE OF CHALLENGES

As governmental entities dedicated to the conversion of vacant, abandoned and foreclosed 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. In some cases, barriers and obstacles are simply functional, reflecting a lack of knowledge about the number and location of properties or the lack of enforcement proceedings for delinquent taxes and housing code violations. In other cases, the barriers are structural problems with the legal enforcement proceedings or the legal authority of local governments to acquire and reconvey properties. Solutions to virtually all of the common barriers have been developed and implemented in one or more jurisdictions across the country. Some barriers are most easily and directly overcome by the creation of a land bank. Others require extensive amendments to existing statutory procedures or local ordinances. Some barriers do not require changes in laws but simply a new approach to the implementation of existing laws and policies.

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

There are several 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.

Barrier: Lack of Awareness of the Problem

One of the most common characteristics shared by communities with large numbers of vacant, abandoned and tax-delinquent properties is simply the lack of clear data on the nature and magnitude of the problem. There may be an accurate perception that certain neighborhoods are characterized by forms of "urban blight." 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. In many cases, the initial barrier to conversion of these properties into productive use is simply the lack of awareness of the magnitude and nature of the problem.

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

The inventory of vacant and abandoned properties within a community must not be limited to those that are privately owned. Many communities have large numbers of properties owned by the local government, most commonly as the result of foreclosures in preceding years for delinquent taxes or other public liens. A major problem with this publicly owned property is that it tends to become lost in the administrative maze of public departments—commonly, no single agency is responsible for maintaining and disposing of such property. These properties can be one of the greatest sources of problems: they usually have serious title defects resulting from the enforcement proceedings, they generate no property tax revenues, they can become public nuisances if not maintained, and they can be difficult to sell or convey because of strict procedural requirements for transfer of public properties.[1] Publicly owned parcels, however, can and should be one of the greatest assets to a local government in transforming neighborhoods.

Barrier: Tax-Delinquent Properties

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

Property tax delinquency can be a barrier to conversion of vacant and abandoned properties for several reasons. If tax foreclosure enforcement proceedings are not initiated promptly upon occurrence of delinquency, multiple years of delinquency combined with interest and penalties can result in aggregate outstanding liens that are greater than the fair market value of the property.[2] This is particularly true when the owner has allowed the property to deteriorate over the period of the delinquency. When tax liens exceed fair market value, the property simply will not be transferred on the open market.

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

Property tax foreclosure laws and vacant and abandoned properties encounter one unique barrier in those jurisdictions that permit the sale of property tax liens to private investors. When private investors purchase tax liens as investments, their incentives are not necessarily the same as the policies of the local governments, and they may choose to speculate on future payments of interest and penalties that may accrue, or on acquiring property simply to hold for passive investment. When a tax lien is sold to a private investor,

the local government receives revenues in the form of cash payments. However, the local government also loses the ability to control the enforcement of tax foreclosure as a method to return the property to productive new uses. The sale of tax liens is a major impediment to the revitalization of abandoned properties and to the operation of land banks.

Barrier: Title Problems

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

Residential properties that were previously owned and occupied by low-income families often lack clear title as a result of the property being handed down from generation to generation without probate proceedings or recorded instruments of conveyance by administrators of estates. Conveyance of such properties, known colloquially as "heir property," requires involvement of all possible heirs.

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

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

Barrier: Property Disposition Requirements

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

Though sound in principle and in policy, these property disposition requirements were not designed with the expectation that large numbers of 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.

Barrier: Inadequacy of Code Enforcement

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

local government's failure to allocate adequate professional resources to inspect properties and prosecute code violations.

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

Barrier: Unknown Owners

Faced with a rising tide of vacant, abandoned and foreclosed properties, municipalities are increasingly forced to shoulder the costs of securing, maintaining and in some cases demolishing these buildings. Efforts to recover these costs, however, are often frustrated by difficulties identifying the responsible parties. For example, lenders who foreclose on a property often fail to record the foreclosure, or may walk away from the action, leaving the title status in limbo and making it difficult for the municipality to hold the responsible party liable for upkeep.[3] Also, the mortgage securitization market, in which the original lender often assigns the borrower's note to a pool of multiple investors, creates a similar burden on municipalities attempting to identify the party responsible for an unoccupied building. Apart from cost recovery, other practical problems, such as prosecuting criminal activity by third parties in unoccupied buildings, becomes more difficult when the owner cannot be located. For example, in Cincinnati, prosecutors were unable to obtain a breaking and entering conviction against a suspect because of delays in finding an owner to testify that the defendant did not have permission to enter the house.[4]

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

Barrier: Lack of Control

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

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

Chapter 3 Endnotes

1 *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., SUNY 1999).

2 Ana Baptista, Brown Univ. Ctr. for Envtl. Studies, Redeveloping City-Owned Vacant Lots: Strategies for the Equitable Redevelopment of City-Owned Vacant Land in Providence, Ri (2000).

3 Benton C. Martin, *Vacant Property Registration Ordinances,* 39 Real Est. L.J. 6, 8 (2010).

4 Gregory Korte, *City Foots Bill on Foreclosures,* Cincinnati Enquirer, Nov. 25, 2007.

CHAPTER 4

POTENTIAL SOLUTIONS

Understanding and Evaluating the Inventory

Overcoming the barrier of lack of awareness rarely requires significant legal reforms. What is necessary is simply the development of aggregate databases that identify properties according to key indicators of abandonment. The two most common indicators are (i) tax delinquency and (ii) housing and building code complaints. To the extent possible, additional property-based record information could be added for categories such as (iii) delinquent water and sewer bills, (iv) suspicious structure fires (arson), (v) property-based nuisance complaints, and (vi) mortgage foreclosures. Assembling and analyzing this data will reveal the extent to which one type of problem is a strong indicator of a growing trend toward neighborhood abandonment.[1] Where more than one such indicator is present on a given parcel or property, or large numbers of properties with a single indicator are concentrated in one geographic location, signal alarms should be sounding that action needs to be taken.

Each indicator should be evaluated separately, and then the combined database of indicators examined for common trends. A higher-than-normal rate of tax delinquency in a community is not necessarily a sign that owners are abandoning their properties. Instead, the failure to pay taxes could be due to operational policies of the tax collector or to inadequate tax foreclosure laws that leave little incentive for owners to pay their taxes. When delinquent tax reports are correlated with delinquent water and sewer bills or complaints concerning housing and building code violations, there is a much stronger likelihood that the properties are also abandoned. A geographic information system can depict easily the presence of one or more indicators across an entire community.[2] A concentration of tax-delinquent properties in one neighborhood but not the rest of the city is a strong indication that the underlying problem is less the policies of the tax collector than the economic decline of the neighborhood. Correlating property ownership records in the database may also reveal instances in which a single owner of multiple tracts of land is electing to ignore its legal responsibilities.

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."[3] 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 or demolition of the property is the most cost-efficient approach.

Mirroring the importance of a general community inventory of vacant, abandoned and tax-delinquent properties is the importance to a land bank of a careful inventory and assessment of its own holdings. 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[4] and Atlanta[5] 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.[6]

Reforming Tax Foreclosure Statutes

Ineffective and inefficient property tax foreclosure laws compound the problems posed by the loss of revenues to local governments. The reform of tax foreclosure laws in several jurisdictions occurred as part of the legislative authorization for creation of land bank authorities.

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

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

One of the initial steps in reforming property tax foreclosure procedures is to shift the focus of foreclosure from seeking a judgment of personal liability against the property owner to seeking to enforce a lien against the property. Proceedings against properties—commonly referred to as *in rem* foreclosures—have considerably different constitutional requirements to meet than proceedings against property owners personally. In contrast to a suit for personal liability, an in rem foreclosure action requires adequate notice to all owners of interests in the property, but it does not require that the court obtain complete jurisdiction over the owners themselves.[9]

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

The Missouri legislature created the original Land Reutilization Authority "to foster the public purpose of returning land which is in a non-revenue generating, non-tax producing status to effective utilization, in order to provide housing, new industry, and jobs for the citizens of any City operating under the provisions of (the law), and new tax revenues for such City."[7] 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."[8]

The lack of constitutionally adequate notice in foreclosure proceedings is the primary reason why tax-foreclosed properties are considered to have title defects and serious limitations on marketability. A decision of the U.S. Supreme Court in 1983 held that notice of property tax foreclosure proceedings must be given to all parties holding legally protected property interests whose identities are reasonably ascertainable.[10] 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.[11] 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.[12]

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.[13]

Historically, most states' laws have provided that the minimum bid for a parcel of property at a tax sale is the total amount of all delinquent taxes, penalties and interest. With vacant and abandoned properties, however, the amount of tax delinquency grows each year, and it is not uncommon for the total amount of the delinquency to exceed the property's fair market value. Unfortunately, in this situation there is no offer for the minimum bid, and the property is left unsold. The simple and direct solution to this barrier is amendment of the applicable state or local laws to permit either the minimum bid to be reduced to a lower amount, or the automatic transfer of the property to a public entity such as a land bank.[14]

Another approach to dealing with abandoned, tax-delinquent properties is to forgive or waive the delinquent taxes in specific situations—for example, if the property is acquired by an approved party to be used for a specific purpose. This approach is the primary function of the Atlanta Land Bank, which has the legal authority to extinguish all delinquent taxes on properties it acquires.[15] 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 non-profit 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.[16] When properties are processed as conduit transfers, no title questions arise about the adequacy of a tax foreclosure procedure because no tax foreclosure takes place.

Judicial Tax Foreclosures

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

Some jurisdictions, faced with numerous properties that are both tax delinquent and constitute a public nuisance, have adopted streamlined procedures to allow quick acquisition or transfer of the property.[17] Such an "expedited" or "emergency" foreclosure proceeding requires a finding of both tax delinquency and code violations. An expedited judicial foreclosure process with constitutionally adequate notice is one of the most powerful tools for local governments to transfer vacant, abandoned and tax-delinquent property to new responsible ownership.

Property tax foreclosure laws, unfortunately, are not directly designed to address title problems that may exist in the inventory of properties acquired by local governments under pre-existing (and usually legally defective) tax-enforcement procedures. In these instances, state and local governments find themselves with a substantial inventory of properties, title to which is clouded, defective and not marketable. Because no taxes are due on publicly owned property, even revised tax foreclosure laws cannot provide a mechanism to gain clear title on this pre-existing inventory. The most effective way to remove this barrier is to provide by law for an expedited procedure applicable solely to publicly held inventories of previously tax-foreclosed properties. The essential structure of such a procedure is based on a quiet title action. A quiet title action is a legal proceeding that seeks a judicial ruling on the claims of all parties. In a specially designed proceeding, constitutionally adequate notice of the opportunity to redeem the property from the tax lien is given to all interested parties. Failure of such redemption then vests clear title in the local government.[18]

One potential role for a land bank is to acquire this inventory of publicly owned properties (through previous foreclosures) and assume responsibility for legal actions necessary to quiet title or otherwise resolve the title defects. The land bank's statutory authority to proceed with a quiet title action should be expressly set forth.[19] Proceedings for properties held by local governments or land banks as a result of previous foreclosure actions should be structured so they can be completed quickly. As the prior owners have already lacked legal title to the properties for an extended period of time, there is little justification for the length of proceedings to extend beyond what is necessary to give adequate notice.

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

Clarity and Flexibility in Disposition Criteria

One of the essential functions of a land bank is to eliminate barriers that inhibit the disposition of surplus properties by local governments. When the local government acquires properties through tax or nuisance abatement foreclosures, it does so involuntarily, resulting from the prior owner's default and the market's failure to transfer ownership to a private third party. Such properties were not acquired with public funds for public purposes, at least not in the conventional sense. It should be possible to convey some or all of this inventory to a land bank without a separate hearing and finding that each property is surplus and thus eligible for disposition. An advantage of land banks is that they are public entities subject to control by local government elected officials, so they can expedite disposition of properties without sacrificing political accountability. Policy guidelines for transfer of these publicly owned properties by land banks to private parties commonly are established in the governing documents governing the land banks.[20] Thus the local government retains the power to decide which properties are transferred to the land bank for disposition, while avoiding having to conduct a separate hearing or finding for each property that it is surplus property.

Laws requiring public auction or public bidding for local government property transfers usually do not apply to transfers of property between governmental entities. Thus the simplest and most direct way to remove the barrier of a required public auction for local government property is to provide that conveyances by a city or county to a land bank are intergovernmental transfers. The enabling legislation for land banks should specify that transfers from local governments to their land banks are intergovernmental transfers exempt from disposition requirements that apply to transfers to private parties.[21]

As an entity devoted to the transformation of vacant, abandoned and tax-delinquent properties into productive use, a land bank is a special-purpose public corporation that needs flexibility in establishing the terms and conditions for the transfer of properties to new owners. Although there is wide variation among land banks on the specific pricing policies applicable to property transfers,[22] they usually are established at the discretion of the local government rather than mandated by state statute. Rarely is a land bank required to receive full appraised value for a particular tract of property. Instead, a land bank is permitted to

make transfers consistent with both the short-term and long-term benefits to the community of new ownership and revitalization of the property. This is an important policy that is often vital to the success of a land bank.

Enhancing Code Enforcement Procedures

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

The willingness of public officials to invest public resources to correct code violations on private property relates both to the magnitude of the harm caused to the community by the violations and to the likelihood of recovering part or all of the financial investment. All jurisdictions permit the local governments to file a lien against the property in the amount of the public expenditures, but if the lien has only chronological priority, it is likely to be subordinate to mortgages, judgments or other encumbrances, rendering it of little functional value. The outcome is dramatically different, however, if the nuisance abatement lien is by law made a first priority lien, superior to all other claims against the property.[23] Such a policy has two significant benefits. First, it is far more likely that the local government will recapture part or all of its financial investment in repairs or demolition. Second, the existence of a nuisance abatement lien with senior priority permits the local government to enforce it and proceed with foreclosure even if there are no delinquent property taxes that could be the basis for such an action.

Identifying Responsible Parties

In an effort to both recoup governmental outlays from responsible parties for vacant property upkeep, maintenance and demolition, and to discourage future vacancy and mismanagement of property, hundreds of county and city governments have enacted vacant property registration (VPR) ordinances.[24] While the specifics of each VPR ordinance vary based on the goals of each jurisdiction, most of these ordinances require registration either after a certain length of vacancy, or at the time of foreclosure. How a particular VPR ordinance is worded and subsequently enforced will generally turn on four key considerations: "(i) a local government's VPR goals, (ii) specifics of the registration process, (iii) affirmative duties of potentially responsible parties, [and] (iv) enforcement mechanisms."[25]

The ordinance's scope or purpose section, or its definition of "vacancy", will typically spell out the local government's motivations for enacting such an ordinance. In terms of purpose, the government generally seeks to both recoup its costs and address ongoing ordinance violations and illegal activity that occur in vacant properties "which are detrimental to the health, safety, and welfare of local citizens."[26] Vacancy can be defined in various ways, depending on the problems facing the locality and the nature of the property stock. For example, in Wilmington, Delaware, a building or structure is deemed occupied "if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same."[27] If a question of vacancy arises, an owner can then prove the property is occupied by making a showing of such things as regular mail delivery, continual utility service or a business license.[28] In its determination of vacancy, Chicago considers "the percentage of the overall square footage of the building or floor to the occupied space, the condition and value of any items in the building and the presence of rental or for sale signs on the property."[29] The city also considers multi-family residential properties vacant when 90% or more of the units are unoccupied.[30]

Registration under a VPR ordinance may be triggered by various factors, depending on how the ordinance is written. The "classic model" requires registration by the property owner after a certain length of vacancy (set by the ordinance) and payment of fees during the period of vacancy.[31] These ordinances seek to collect contact information for responsible

parties so that the municipality can charge for registration and recoup other public outlays for property maintenance. Some of these classic model ordinances impose a flat fee,[32] while others employ an escalating fee structure, which provides "a strong incentive for owners to sell, lease, or demolish the property at their own cost, ideally relieving local governments of the burden of dealing with the property once it degenerates." Evidence from Wilmington, Delaware and Cincinnati, Ohio suggests that an escalating fee structure can help increase compliance and fee recovery rates.[33]

Some VPR ordinances require lenders to register their properties. Ordinances that use the filing of a notice of default or notice of foreclosure by a lender as their registration trigger have gained popularity, modeled after the ordinance adopted by Chula Vista, California.[34] Such ordinances "require mortgage lenders and servicers foreclosing on residential buildings to maintain the buildings after the former owners vacate the property."[35] Specifically, Chula Vista's ordinance requires that, within ten days of filing a notice of foreclosure, lenders inspect the property to determine if it is vacant or occupied.[36] If vacant, the lender must then register with the city and is required to maintain the property to a specified community standard.[37] The city can then collect fees and register liens against noncompliant properties, and these liens take priority over the mortgagees' interests. In addition to the vacancy- or foreclosure-triggered models, hybrids of the two have been enacted,[38] and some local governments are now permitting responsible parties to enter their contact information in the Mortgage Electronic Registration System (MERS).[39]

Affirmative duties of responsible parties under VPR ordinances may range from the submission of a plan detailing how the property has been secured and how it will remain secured in the future,[40] to the purchase of insurance coverage for the unoccupied building.[41] Ordinances may also specify the level of exterior maintenance required, and require posting of contact information on the property, performance of weekly inspections or even keeping an interior light on overnight. Fines can be imposed for noncompliance.

Local governments generally enforce their VPR ordinances by imposing criminal or municipal fees, the same mechanisms used for nuisance abatement. If the property owner does not pay these fees, the municipality can then place a lien on the property. Whether these liens take "super-priority" over other liens on the property, or fall into line based on the order of recording, depends on state law. Courts addressing

CASE STUDY: Valdosta-Lowndes County Land Bank Authority

Although the developers of affordable housing often find themselves at the back of the line when it comes to acquiring desirable properties on which to build housing, the Georgia state land bank statute allowed the city of Valdosta, the Valdosta-Lowndes County Land Bank and Habitat for Humanity to turn several parcels of land into the Fellowship Place subdivision. The city of Valdosta utilized the land bank to hold the properties tax free until they were transferred to Habitat for Humanity to help achieve its mission of creating affordable housing for low-income, first-time homebuyers. Since the project first took shape in 1999, the subdivision of 12 single-family homes has won the state's Magnolia Award for outstanding achievements in affordable housing, and even led to the development of a new community park that is now enjoyed by the residents of surrounding neighborhoods. The Fellowship Place subdivision project was the foundation for a continued vibrant and productive relationship between the city of Valdosta, the Valdosta-Lowndes County Land Bank and Habitat for Humanity.

the subject have thus far upheld the authority of local governments to enact and enforce VPR ordinances. [42]

Judicial Receiverships

A variation on direct action by local governments is to strengthen the legal procedures for the appointment of a receiver to control and manage the property.[43] The central task of a court-appointed receiver is to step into the shoes of the owner of disputed or distressed property, to protect that property from waste or deterioration, to manage and return it to occupancy where possible, and to preserve it until the court makes a final determination as to its ultimate disposition.[44] Statutory receivership programs that expressly provide for the appointment of a receiver over properties that are vacant, abandoned or substandard, that expand standing to bring receivership actions to parties other than government officials, owners or lien-holders, that ensure a broad range of receiver powers, and that provide for super-priority status for receiver liens can increase the speed and efficacy of the receivership tool.[45]

The most common objective statutory criteria for a property to be placed into a court-appointed receivership are the existence of citations for housing or building codes that are un-remediated for a stated period of time. For example, pursuant to Pennsylvania's Abandoned and Blighted Property Conservatorship Act, a receiver (or "conservator") may be appointed over a building that (i) has been unoccupied for at least twelve months, (ii) has not been marketed in the sixty days before the receivership petition, (iii) has not been acquired by the owner in the previous six months, (iv) is not already in foreclosure proceedings, *and* (v) has at least three violations contained on the statute's list of nuisances and code violations.[46] Similarly, according to Baltimore, Maryland's vacant building receivership ordinance, receivers may be appointed over vacant structures for which the owner has failed to comply with a notice or order to rehabilitate or demolish.[47] Vacant structures that implicate the Baltimore ordinance are unoccupied structures that are unsafe for human habitation, and a determination of vacancy may be based on the fact that a structure is open to casual entry, has boarded-up windows and doors, or lacks intact window sashes, walls or roof surfaces to repel weather entry. [48]

In many jurisdictions, local governments do not have the resources or capacity to adequately abate housing or building code violations, let alone to petition the court for receivers over troubled properties. Receivership statutes that provide non-profit housing corporations, community associations, tenants or neighbors with standing to petition the court for a receiver over a troubled property may alleviate some of the burden on local governments.[49] In addition, receivership statutes that expand the universe of those with standing to seek receivership over property provide a means by which individuals or organizations most adversely affected by a particular property are empowered to directly participate in the rehabilitation of that property and the neighborhood stabilization that follows.[50]

Upon appointment, a receiver's powers should be broad and essentially mirror those of the owner, including the power to rehabilitate or demolish, and the power to sell the property at any time. Receivers should be appointed, in judicial discretion, based on their experience, ability and resources to achieve remedial actions with respect to the objective criteria that form the basis for the receivership petition. A judicially appointed receiver has the advantages of being able to take control of any cash flow (such as rents) from the property and provide immunity from liability for such matters as environmental contamination[51] and negligent decisions[52]—two factors that frequently make public officials reluctant to take control of properties.

An effective receivership statute will provide for adequate receiver compensation and the super-priority status of receiver liens. If a receiver's lien is not granted such priority, there are two specific adverse results. First, the receiver will not be in a position to borrow against the value of the property in order to accomplish the maintenance and rehabilitation. Second, the lien will not permit a judicially authorized receiver's sale of the property to provide clear title. In contrast, a senior priority receiver's lien can be foreclosed and provide marketable and insurable title to the foreclosure sale purchaser.[53]

Substandard buildings targeted by modern receivership programs, particularly those that are unoccupied and unable to draw rent, often do not retain enough value to render even a super-priority receiver lien sufficient to cover the cost of rehabilitating the property. Public or private funding sources in addition to any income from the rental or sale of receivership property may be necessary for vacant building receivership programs to make a significant impact. Therefore, receivership statutes should include, where possible, provisions for access to public funding, grant assistance or other alternative funding mechanisms.[54]

Chapter 4 Endnotes

1 *See, e.g.*, PHILA. CITY PLANNING COMM'N, VACANT LAND IN PHILADELPHIA: A REPORT ON VACANT LAND MANAGEMENT AND NEIGHBORHOOD RESTRUCTURING (1995).

2 *See* LOCAL INITIATIVES SUPPORT CORP., MAPPING FOR CHANGE: USING GEOGRAPHIC INFORMATION SYSTEMS FOR COMMUNITY DEVELOPMENT (2002).

3 UNIV. OF PA., VACANT LAND: A RESOURCE FOR RESHAPING URBAN NEIGHBORHOODS (1991), *available at* http://web.mit.edu/spirn/www/newfront/book/pdf/vacant_land.pdf; *see also* E. PA. ORGANIZING PROJECT, BLIGHT FREE PHILADELPHIA: A PUBLIC PRIVATE STRATEGY TO CREATE AND ENHANCE NEIGHBORHOOD VALUE (2001).

4 KY. REV. STAT. ANN. § 65.370(2).

5 O.C.G.A. § 48-4-63(b).

6 MO. REV. STAT. § 92.900(2).

7 *Id.* § 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." KY. REV. STAT. § 65.355(3).

8 O.C.G.A. § 48-4-75.

9 *See* Braconi, *supra* Chapter 3, note 1; Patricia A. Hemann, *Land Banking Tax Delinquent Property: Reform and Revitalization*, 27 CLEV. ST. L. REV. 517 (1978).

10 Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983).

11 Alexander, *supra* Chapter 1, note 6 at 747-807 (2000).

12 *See, e.g.*, O.C.G.A. § 48-4-75; 1999 Mich. Pub. Act 123, MICH. COMP. LAWS § 211.1 *et seq.*

13 This is the case in Michigan, Ohio and St. Louis, Missouri. 1999 Mich. Pub. Act 123; MICH. COMP. LAWS § 211.1 *et seq.*; OHIO REV. CODE ANN. § 5721.14. *See* Kenneth R. Langsdorf, *Urban Decay, Property Tax Delinquency: A Solution in St. Louis*, 5 THE URB. LAW., 729 (1973).

14 *See* ELISE M. BRIGHT, REVIVING AMERICA'S FORGOTTEN NEIGHBORHOODS 144–46 (2000); Frank S. Alexander, *Property Tax Foreclosure Reform: A Tale of Two Stories*, GA. BAR J. (Dec. 1995).

15 O.C.G.A. § 48-4-64(c). This applies to city and county property taxes. The extinguishment of school taxes requires the consent of the school board.

16 *See infra* Chapter 10.

17 *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.

18 *See, e.g.*, 2003 Mich. Pub. Act 258; MICH. COMP. LAWS § 124.759.

19 *See, e.g.*, MICH. COMP. LAWS §§ 124.754(4), 124.759; O.C.G.A. § 48-4-61(b).

20 *See infra* Chapters 6, 9, and 10.

21 *See, e.g.*, O.C.G.A. § 48-4-63(c); MICH. COMP. LAWS §124.755(3-4).

22 *See infra* Chapter 10.

23 *See, e.g.*, O.C.G.A. § 41-2-9(b)(1).

24 *See* Safeguard Properties, 2011 Vacant Property Registration Ordinances Database, http://www.safeguardproperties.com/vpr/city.php (last visited January 20, 2011).

25 Martin, *supra* Chapter 3, note 3, at 11; Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101, 130-31 (2009).

26 Martin, *supra* Chapter 3, note 3, at 12-13; Arlington, Tex. Ordinance No. 08-053 (2008).

27 WILMINGTON, DEL., CODE ch. 4 § 27, 125.00 (2003).

28 *Id.*

29 CHI., ILL., CODE ch. 13-12, § 125(e) (2010).

30 *Id.*

31 Martin, *supra* Chapter 3, note 3, at 16; *see, e.g.*, CHI., ILL., CODE ch. 13-12 § 125 (2010).

32 *See* Safeguard Properties, *supra* note 24.

33 Schilling, *supra* note 25, at 139-41.

34 Chula Vista, Cal., Ordinance No. 3080 (2007).

35 Martin, *supra* Chapter 3, note 3, at 19.

36 Chula Vista, Cal., Ordinance No. 3080 (2007).

37 *Id.*

38 *See, e.g.*, Springfield, Mass., Ordinances ch. 7.50 (2009).

39 Martin, *supra* Chapter 3, note 3, at 23-24.

40 *See, e.g.*, S.F., CAL. BUILDING CODE ch. 1A § 103A.4.2 (2010).

41 *See, e.g.*, *id.* § 103A.4.6; CHI., ILL., CODE ch. 13-12 § 125(c) (2010).

42 Martin, *supra* Chapter 3, note 3, at 29-31.

43 *See generally* James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. AFFORDABLE HOUSING 210 (2004); DAVID LISTOKIN, HOUSING RECEIVERSHIP AND SELF-HELP NEIGHBORHOOD REVITALIZATION (1985); Judah Gribetz & Frank P. Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254 (1966).

44 *See generally* I-IV RALPH EWING CLARK, A TREATISE ON THE LAW AND PRACTICE OF RECEIVERS (3d ed. 1959 & Supp. 1968-69); I HENRY G. TARDY, A TREATISE ON THE LAW AND PROCEDURE OF RECEIVERS: SECOND EDITION OF SMITH ON RECEIVERS (1920); JAMES L. HIGH, A TREATISE ON THE LAW OF RECEIVERS (Shirley T. High ed., 4th ed. 1910).

45 *See, e.g.*, OHIO REV. CODE ANN. § 3767.41; 68 PA. STAT. ANN. § 1101 *et seq.*; BALT., MD. CODE § 121.1. *et seq.* (2011).

46 68 PA. STAT. ANN. § 1105.

47 BALT., MD. CODE § 121.1 (2011).

48 *See id.*,§§ 116.4.1-2.

49 *See e.g.*, OHIO REV. CODE ANN. § 3767.41(B); 68 PA. STAT. ANN. § 1104(a).

50 *See generally*, LISTOKIN, *supra* at 18-19.

51 *See, e.g.*, 68 PA. STAT. ANN. § 1107(c)(1).

52 *See generally*, CLARK, *supra* note 44, § 391; *Davis v. West*, 317 S.W.3d 301, 307 (Tex. Ct. App. 2009) ("[A] court-appointed receiver acts as an arm of the court and is immune from liability for actions grounded in his conduct as receiver.").

53 *See e.g.*, OHIO REV. CODE ANN. § 3767.41(H); 68 PA. STAT. ANN. §§ 1105(g) & 1108(b); BALT., MD. CODE §§ 121.9(4) & 121.13-14. (2011).

54 *See, e.g.*, MASS. GEN. LAWS ch. 111 § 127J (provides that receivers may petition the court for leave to apply for financial assistance from the Commonwealth in order to complete repairs and rehabilitation; that debt, plus interest, is then recoverable from the owner); N.J. STAT. ANN. § 2A:42-141 (provides for receivership funding from Department of Community Affairs in form of grants or loans). For a historical perspective on mid-twentieth century slum-housing receivership statutes that failed to include adequate funding mechanisms *see generally* Albert Rosen, Note, *Receivership: A Useful Tool for Helping to Meet the Housing Needs of Low Income People*, 3 HARV. C.R.-C.L. L. REV. 311 (1967-68); Nathan H. Mann, Note, *Receivership of Problem Buildings in New York City and its Potential for Decent Housing of the Poor*, 9 COLUM. J. L. & SOC. PROBS. 309 (1972-73).

CHAPTER 5

ADDITIONAL TOOLS AND ALTERNATIVES

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

Land Banks as Depositories

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

During the housing and economic recession of 2007-10, an increasing number of neighborhood-based non-profit community development corporations (CDCs) in Atlanta found themselves owning parcels of property that were either unimproved or left only partially developed, for which all forms of market demand had evaporated. As these properties continued to be subject to property taxes, the holding costs for these CDCs increasingly became a barrier to achieving their mission. In response to this challenge, the Atlanta Land Bank created a Land Bank Depository Agreement Program. The goals of this program, as set forth by the Atlanta Land Bank, are fourfold:

a. Permit advance acquisition of potential development sites in anticipation of rapidly rising land prices;

b. Facilitate pre-development planning, financing and structuring;

c. Minimize or eliminate violations of housing and building codes and public nuisances on properties to be developed for affordable housing; and

d. Hold parcels of land for future strategic governmental purposes such as affordable housing and open spaces and greenways.[1]

The Atlanta Land Bank has adopted policies and procedures to govern its depository program.[2] These policies and procedures define what sorts of transactions are permissible and limit who may participate. Generally, the depository program "consists of transactions in which a grantor transfers property to the land bank and the property is held by the land bank pending a transfer back to the original grantor, to a grantee identified in a banking agreement, or to a third party selected by the land bank." Grantors and grantees of the depository program must be either a governmental entity, a non-profit corporation or a limited partnership in which a governmental entity or a non-profit has a controlling interest. Properties eligible to be deposited with the land bank must either be unimproved real property or real property with newly constructed unoccupied single family residences, with the latter being restricted to 20% of the deposited property at any given time. Tracts that contain improvements may be eligible properties so long as sufficient funds are placed in escrow to ensure that all improvements are demolished and removed within 60 days of closing. The Depository Agreement Program specifically excludes all other forms of real property, occupied property and property that has been identified by the government as containing hazardous substances and materials.

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

The holding costs of a property are defined to include any and all costs, expenses and expenditures incurred by the Atlanta Land Bank, whether direct, pro rata or administrative, that are attributable to the ownership and maintenance of a tract of property. The Atlanta Land Bank incurs monthly maintenance costs on each of these properties, including lawn maintenance, debris removal, monitoring and inspection, and property insurance, and contracts with third-party property management companies to assist with the active management of deposited properties. Payment for these costs is made by the grantor on an ongoing basis and is not deferred until the end of the depository period. In the event that the land bank is not timely reimbursed for these costs, it reserves the right to demand that the grantor or its designee accept a transfer of the property, accompanied by a full reimbursement of the holding costs. If the grantor or its designee is unwilling or unable to accept such a transfer, then the land bank has the right to terminate the Banking Agreement and the property becomes an asset of the Atlanta Land Bank.

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

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

The Land Bank Depository Agreement Program of the Atlanta Land Bank was created prior to the height of the mortgage foreclosure crisis, and before the federal government created and funded the national Neighborhood

Stabilization Program. The timing, however, was fortuitous as the program fit perfectly into federally authorized use of funds for acquisition and banking of foreclosed properties. Atlanta's depository program banked its first properties in 2010, and had entered into transactions with seven clients covering 160 properties as of October 2010.

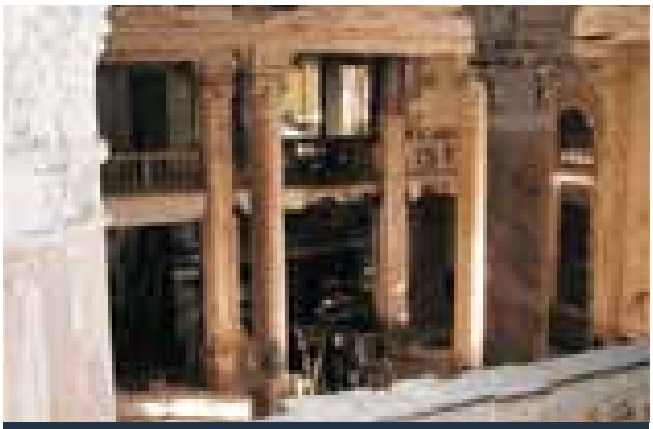
Land Banks as Development Partners

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

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

When the economic conditions of a particular community have left one or more significant parcels of land in a vacant and abandoned status for years, and the local government lacks other policy tools to facilitate redevelopment, a land bank can step into this breach and serve as a catalyst for the productive reuse of the land. Most land banks do not possess, and are not expected to possess, significant in-house capacity in new construction, extensive rehabilitation or adaptive reuse of properties. Such expertise, if it exists at all within the public sectors of a given community, are more likely to be located with a downtown redevelopment authority, an urban redevelopment authority or more specialized authorities in the fields of recreation or transportation facilities. When such authorities do exist, it is entirely possible for a land bank to transfer real property inventory to the specialized authority, or for all of the land banking functions to be consolidated with such an authority.

When a community lacks existing development or redevelopment capacity, it may indeed become possible and appropriate for a land bank to serve a catalytic role in stimulating the redevelopment of a specific tract of



The Durant, before

In 2005, the Genesee County Land Bank acquired the Durant, a former hotel in downtown Flint. The building, originally named in honor of William C. Durant, the principal founder of General Motors, had been vacant since 1973, sitting for almost four decades as a sore reminder of the failure of the local auto industry, and of Flint. The ambitious $30 million redevelopment project was funded in part by a $2 million grant to the Land Bank from the Charles Stewart Mott Foundation and a $1 million grant from the Ford Foundation, as well as federal and state tax breaks, brownfield financing and investments from developers.

land. Precisely because of its ability to acquire and hold vacant land, the land bank possesses a key potential asset that it can contribute to a redevelopment joint venture or limited partnership. To the extent that the land bank possesses broad authority to borrow funds and secure its own interests by taking back subordinate construction financing or long term debt or equity positions, it possesses a strong set of partnership tools.

Land Banking and Community Land Trusts

A land bank is frequently confused with a land trust, and the confusion is understandable. Land trusts in the United States have a much longer history and are more widely recognized. With a solid foundation in the environmental movement's concern for the protection of open spaces, parks, forests, and wilderness areas, the land trust model over the course of the twentieth century functioned predominately as a land conservation program, a "land conservancy."[3] To the extent that a particular land bank acquires vacant and abandoned property and either manages it as open green space or conveys it to a governmental or non-profit entity as dedicated and protected public space, the land bank is functioning in a manner quite parallel to a land trust conservancy.

The Durant, after

The Durant building's transformation into a mixed-use residential and commercial space began in 2008. The grand lobby was restored, and the ballroom's gray and white checkered floor was preserved. The renovated building has 93 apartments with high ceilings and modern amenities such as stainless steel appliances, with rents ranging from $475 to $960 a month. By early 2011, the apartments were 75% rented, and commercial space on the street level was being leased.

There are, however, vital points of difference between a land trust and a land bank. A land trust is usually a private non-profit entity, while a land bank is a governmental authority. A land trust conservancy normally has a singular focus on protection of natural resources and permits very limited, if any, development activities; a land bank will acquire and manage properties and then transfer them to third parties for whatever priority uses are locally determined, including affordable housing, mixed-use development or green spaces. A land trust anticipates holding legal title to the property indefinitely; a land bank holds legal title only until an eligible transferee can be identified. A land trust targets for acquisition specific tracts of land that it acquires by purchase or donation; a land bank acquires abandoned land wherever it happens to be located. A land trust possesses only such powers as are available under federal and state law to not-for-profit corporations; a land bank possesses a broad range of governmental powers authorized by state statute and intergovernmental agreements. A land trust is generally dependent on philanthropic contributions for its operating budget; a land bank may possess a range of internal financing sources derived from the source of its inventory and tax policies.

Within the broad context of land trusts generally has emerged a more specialized form known as the community land trust (CLT), or the community land trust for affordable housing.[4] The clear focus of this form of CLT is the acquisition of land for the development of housing that remains affordable over multiple generations.[5] One of the key structural components of the CLT operational model is that the CLT acquires and continues to hold legal title to a specific tract of land. It enters into long-term ground leases upon which the lessee develops residential homeownership or rental housing. The ground lease and policies of the board of directors of the CLT incorporate limits on resale prices so as to ensure multigenerational housing affordability. The CLT, as owner of the underlying land, is able to retain through the ground lease both a right

to repurchase the property at specific prices, and to require property maintenance. The possibility of long-term fixed rate mortgages for owner-occupied homes, based on long-term ground leases, is beginning to emerge in the financial markets.

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

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

Land Banks facilitate real estate development in many ways. They can play a leading role and act as a sole developer or as a general partner; other times they are simply a limited partner whose quiet role is pivotal to the success of a project. Often, land banks become a financial partner in a real estate project and bring subsidy to those developments that need an extra boost to become financially feasible. Most often land banks use their tools to assist communities in assembling properties for development projects that are part of a redevelopment plan. The power of land ownership allows the community to control the type and quality of development. This is likely the most important role a land bank plays in real estate development within communities.

Chapter 5 Endnotes

1 Fulton County/City of Atlanta Land Bank Auth., Land Banking Policies and Procedures § 12.1 (2007), *available at* http://www.fccalandbank.org/LBA_Land%20Banking%20Policy.pdf.

2 A template for a Land Bank Depository Agreement set of policies and procedures is set forth as Appendix E.

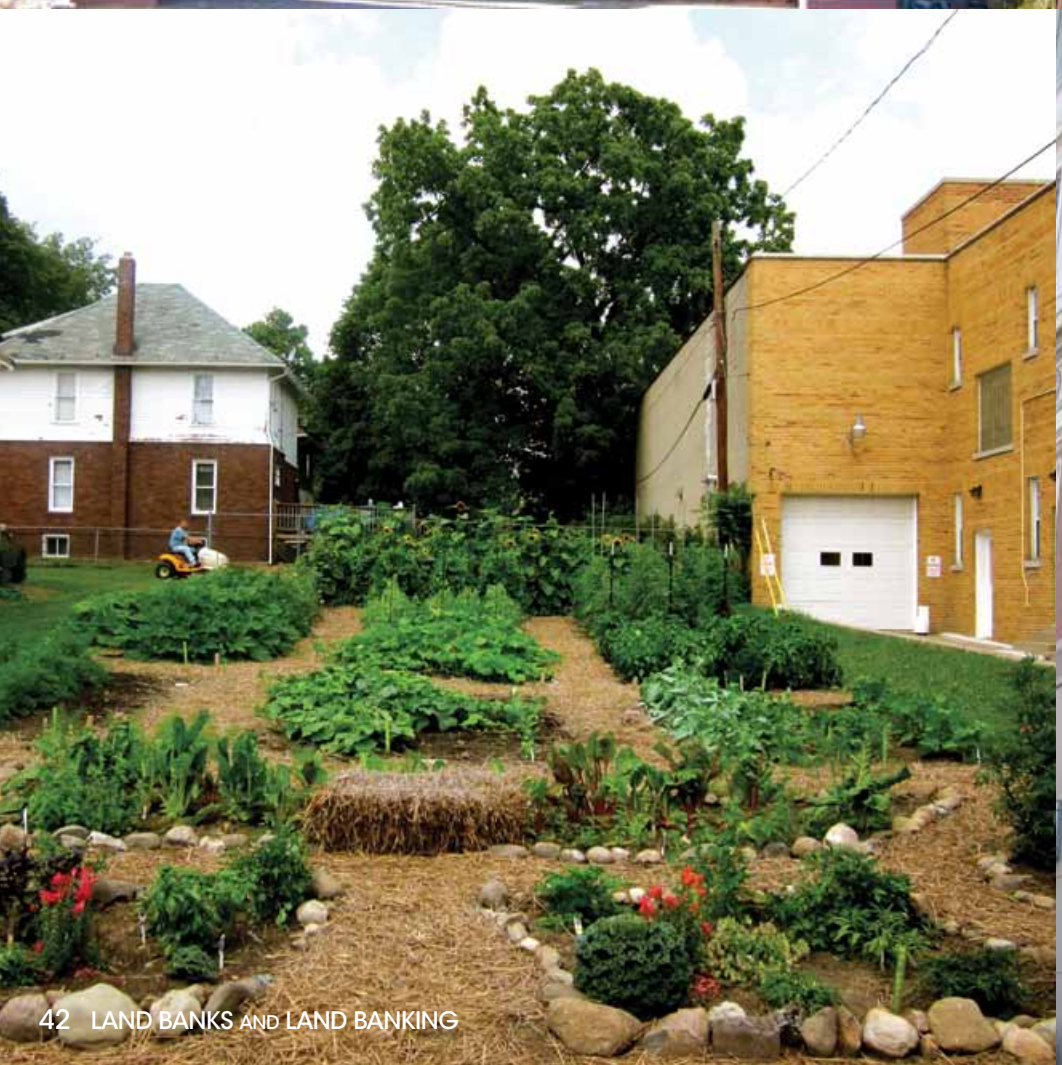
3 Richard Brewer, Conservancy: The Land Trust Movement in America 5 (2003).

4 *See generally* National Community Land Trust Network, http://www.cltnetwork.org (last visited Mar. 21, 2011).

5 John Emmeus Davis & Rick Jacobus, Lincoln Inst. of Land Pol'y, The City-CLT Partnership: Municipal Support for Community Land Trusts 4 (2008).

CASE STUDY: Ingham County Land Bank

In its six years the Ingham County Land Bank, based in Lansing, has been a strong tool that supports growth and investment in the county. The Ingham County Land Bank helps make homeownership in quality neighborhoods a reality by forging collaborative relationships with community groups and anchor institutions. Like other Michigan land banks, the ICLB offers programs like down payment assistance, land contract terms, and simple and competitive financing options through local lenders. Recently however the Ingham County Land Bank partnered with Lansing Community College and Allen Neighborhood Center to restore houses on Lansing's Eastside – saving the properties from demolition while giving the Environmental, Design and Building Technologies students the opportunity to build their skills through hands-on experience and connect with the community. The partners hope that these projects inspire others to restore their houses on the East Side.



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PART II

Creating and Operating a Land Bank

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CHAPTER 6

CREATING ESSENTIAL POWERS FOR LAND BANKS

To accomplish its task of facilitating the transformation of vacant and abandoned properties, a land bank must have specific legal powers. The range of possible legal authority is broad, but certainly not all forms of local government powers are necessary. A land bank's powers should correspond directly to the particular goals a community has for its land bank. Often there is temptation, at one end of a spectrum, to confer upon a newly created land bank the full set of powers commonly possessed by redevelopment authorities, including the power to issue tax-exempt financing or the power of eminent domain. The earliest proposals for land banking included a range of functions and powers that far exceeded the roles being performed by city and county governments themselves.[1] Unless there is considerable caution, however, such broad powers may reflect potentially inconsistent policy goals risking conflicts with other local government entities. At the other end of the spectrum is the position that a land bank should have only the minimum powers necessary to acquire title to a particular category of properties, such as those that are tax delinquent. The difficulty with this latter approach is that the land bank's effectiveness is likely to be hampered by its own legal limitations. Ultimately, a land bank should possess only the legal powers necessary to accomplish its intended tasks in cooperation with existing local government structures.

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

Property Acquisition

Land banks use various approaches to acquire properties, which inevitably has a profound impact on the overall nature and extent of their operations. For example, the St. Louis Land Bank and Louisville Land Bank automatically receive title to all properties that are not sold at tax foreclosures for the statutory minimum bid.[2] 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. Similarly, Ohio law provides that land banks in that state receive title to all properties not sold at foreclosure for the minimum bid, but there is a prior stage at which the local government can pre-select the properties to be conveyed to the land bank.[3]

Michigan takes a different approach, authorizing land banks to receive, but not automatically be given, properties forfeited as a result of tax foreclosure proceedings.[4] Part of the reason for this difference is that under Michigan law, the tax foreclosure proceedings culminate in forfeiture of the property to the foreclosing governmental unit, not a tax sale, as is the case in the other jurisdictions. Michigan law also gives local governments the right to acquire tax-foreclosed properties that could otherwise be conveyed to a land bank or offered at public auction.[5]

In contrast to these land banks, the Atlanta Land Bank does not automatically receive title to any properties as a result of tax foreclosures. It has the authority (but not the obligation) to tender the minimum bid at a tax foreclosure sale by agreeing to assume responsibility for the amount of taxes that it subsequently extinguishes, and

acquires the property only if there is no higher bid.[6] The Atlanta Land Bank's interlocal agreement also grants it the authority to direct the tax commissioner to initiate tax foreclosure proceedings on specific parcels of property.

Most land banks can receive title through tax foreclosures to any kind of property, whether vacant or improved, residential or commercial. In Ohio, however, land banks are largely restricted to receiving title to land that either is unimproved or has structures against which the local government has commenced demolition proceedings.[7] Ohio's land banks are authorized to acquire improved properties through the foreclosure process if the local government first determines that the property is "necessary for implementation of an effective land reutilization program."[8]

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.[9] 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,[10] 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.[11] 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.[12]

Second, a land bank should have the discretion to acquire properties through voluntary donations and transfers from private owners. For example, Ohio's land banks can receive properties through a deed in lieu of tax foreclosure, and donative transfers are expressly authorized for the Atlanta Land Bank and the Genesee County Land Bank.[13] The Genesee County Land Bank is not required to accept all properties proceeding through the tax foreclosure process, and can exercise some discretion in identifying the properties it seeks to acquire. It has identified the following factors to be considered in its acquisitions of properties:

1. Proposals and requests by non-profit 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.[14]

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. Michigan grants its land banks such a broad range of acquisition powers[15] and the Louisville Land Bank and Atlanta Land Bank have the power to exchange properties for purposes of land assembly by the land bank.[16]

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.[17] In the late 1960s and early 1970s, however, questions still existed about the scope of federal constitutional provisions that private property not be taken for public use without just compensation. Specifically, would the constitution permit a local government entity to exercise eminent domain to acquire a tract of property solely for the

purpose of conveying it to another private owner? The 1954 decision of the U.S. Supreme Court in *Berman v. Parker*[18] 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*,[19] the Supreme Court decided that the substantive scope of the constitutional "public use" clause is co-extensive with legislative determinations of what constitutes public use. Subsequently, in *Kelo v. City of New London*,[20] the Court held that it was permissible for the government to use eminent domain to transfer land to private hands where the asserted public purpose was economic development. In the aftermath of *Kelo*, however, a large number of jurisdictions enacted either state constitutional amendments or state statutes that severely circumscribed the use of eminent domain for purposes of economic development.

Land banks as they have developed over the past 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,[21] 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,[22] 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.

Property Management

Most land banks are required by law to maintain an inventory of their property holdings and classify them according to their potential uses.[23] Ownership of a large volume of properties poses significant challenges that reach far beyond simply listing and classifying the property. Land banks become responsible for all aspects of property management and maintenance, which is not a simple task when the properties contain dilapidated and deteriorating structures. The St. Louis Land Bank is given all powers "necessary and incidental to the effective management, sale, transfer or other disposition of real estate,"[24] 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."[25] 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."[26]

Although it may be implicit in the governance authority for the land banks in St. Louis, Louisville and Atlanta, Michigan law expressly confers upon its land banks the authority to establish fees and collect rents—a recognition that they can acquire occupied properties or rehabilitate and lease their properties to third parties.[27] 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",[28] and the Genesee Land Bank has the power to enter into management contracts and professional service agreements as it deems necessary.[29]

A concern that led some proponents of early land banks to be cautious about automatically accepting all tax-foreclosed properties or accepting properties with improvements on them is fear of potential liability under federal or state law for the costs of environmental remediation. Governmental entities are granted limited immunity for environmental cleanup costs when ownership of the property is considered to be an "involuntary acquisition." 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.[30]

Property Disposition

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

A crucial policy decision for local governments contemplating creation of a land bank and for the leadership of a land bank once it is created is the establishment of policies governing sales prices for property transfers.[31] Underlying the creation of pricing policies, however, is the threshold issue of whether pre-existing laws for disposition of public assets apply to the properties of a land bank. In a manner that is reflective of the unique structure of such laws in each jurisdiction, each land bank has addressed this concern in a slightly different manner.

The Louisville Land Bank and the Atlanta Land Bank were given a broad 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 interlocal agreements.[32] Michigan land banks have complete authority to establish the terms and conditions for transfers of their properties.[33]

Chapter 6 Endnotes

1 *See* Harvey L. Flechner, LAND BANKING IN THE CONTROL OF URBAN DEVELOPMENT 10 (1974) (identifies 12 separate functions for land banking); Haar, *supra* Chapter 2, note 3, at 934-36 (identifies five broad functions for a land bank).

2 MO. REV. STAT. § 92.830; KY. REV. STAT. ANN. § 65.375(1).

3 OHIO REV. CODE ANN. § 5722.04.

4 MICH. COMP. LAWS § 124.755(3)(b).

5 *Id.* § 124.755(6).

6 O.C.G.A. § 48-4-64(a).

7 OHIO REV. CODE ANN. § 5722.01(F), (F)(1).

8 *Id.* § 5722.01(F)(2).

9 *See generally* FRANK S. ALEXANDER, RENEWING PUBLIC ASSETS FOR COMMUNITY DEVELOPMENT (2000).

10 MO. REV. STAT. § 92.875(1); KY. REV. STAT. ANN. § 65.370(1).

11 O.C.G.A. § § 48-4-61(b), 16-13-49(u)(2.1).

12 Atlanta Land Bank Interlocal Agreement IV.B, http://www.fccalandbank.org/images/INTERLOCAL_Cooperation_Agreement%20FINAL.pdf (last visited Mar. 21, 2011); MICH. COMP. LAWS § 124.755(4).

13 OHIO REV. CODE ANN. § 5722.10; Atlanta Land Bank Interlocal Agreement, *supra* note 12 at IX.A.4; MICH. COMP. LAWS § 124.755(1).

14 Genesee Land Bank Policies and Procedures, http://www.thelandbank.org/policies.asp#one (last visited Mar. 21, 2011).

15 MICH. COMP. LAWS § 124.755(1), (2).

16 KY. REV. STAT. ANN. § 65.370(2)(d); O.C.G.A. § 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. STAT. § 92.900(4).

17 *See* Letwin, *supra*, Chapter 2, note 1 at 207 ("It goes almost without saying that land banks require the power of eminent domain."); Flechner, *supra* Chapter 6, note 1, at 33 ("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) (summarizing the range of legal issues concerning eminent domain in land assemblage).

18 Berman v. Parker, 348 U.S. 26 (1954).

19 Haw. Housing Auth. v. Midkiff, 467 U.S. 229 (1984).

20 Kelo v. City of New London, 545 U.S. 469 (2005).

21 *See infra* Chapter 9.

22 MICH. COMP. LAWS § 124.754(8).

23 *See, e.g.*, O.C.G.A. § 48-4-63(b); KY. REV. STAT. ANN. § 65.370(2); MICH. COMP. LAWS § 124.757(2); MO. REV. STAT. §§ 92.900(1), 92.910; OHIO REV. CODE ANN. § 5722.06(B), (C).

24 MO. REV. STAT. § 92.875(1).

25 KY. REV. STAT. ANN. § 65.370(2)(d); Atlanta Land Bank Interlocal Agreement, *supra* note 12 at VI.C.4.

26 MICH. COMP. LAWS § 124.764(1).

27 MICH. COMP. LAWS § 124.756(1)(b).

28 Atlanta Land Bank Interlocal Agreement, *supra* note 12 at VII.C.

29 MICH. COMP. LAWS § 124.754(1).

30 *Id.* § 124.760(3).

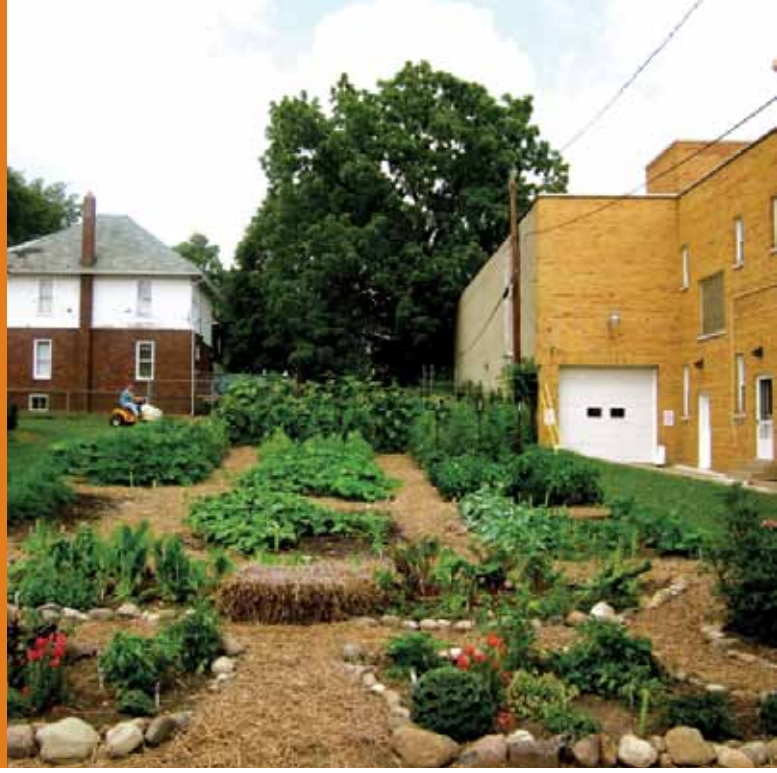
31 *See infra* Chapter 10.

32 O.C.G.A. § 48-4-63(c); KY. REV. STAT. ANN. § 65.370(7).

33 MICH. COMP. LAWS § 124.757(1).

CHAPTER 7

FINANCING OF LAND BANK OPERATIONS



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

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

General Revenue Funding

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

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

The second drawback to reliance on general revenue funding is that most land banks are—and should be—cooperative endeavors of multiple local governments. Whenever there are two or more participating governments, there is inevitably tension regarding whether each local government

is receiving a financial benefit that corresponds to its annual financial contribution. This leads, unfortunately, to a struggle when allocating staff resources, as sometimes political concerns receive priority over the properties themselves.

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

Inventory Cross-Subsidies

One of the most creative aspects of the second generation of land bank statutes, found in the Michigan approach, is the financing mechanism that is embedded in the relationship between Michigan's comprehensive property tax foreclosure reforms of 1999[1] and the comprehensive land bank statute of 2003.[2] In its property tax foreclosure reforms, Michigan completely revised the structure of its enforcement proceedings by eliminating the sale of tax liens or tax certificates to private third parties, and by dropping the requirement of a mandatory public auction of the properties. Instead, the new procedures provide extensive notice to the owners of property that is tax delinquent, and to all parties with interests in the property, a judicial hearing on notice and delinquency, and a transfer to the local government of all property for which the taxes are not redeemed shortly after the judicial hearing. Though the overwhelming majority of all delinquent taxes are redeemed, the result of this new approach is that the entire inventory of chronically tax-delinquent property is transferred to the control of the local government, which can then elect to transfer the inventory to the local land bank.

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

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

Tax Recapture

Returning a portion of the property taxes generated by the land bank's activities can provide direct long-term funding to the land bank. A tax recapture mechanism redirects some portion of the property taxes generated in the future by properties a land bank has returned to the tax rolls. The key premise of this approach is the acknowledgement that the land bank's primary focus is on properties that are tax delinquent—by definition those properties that are yielding no revenues to the local government. Once the

land bank transfers these properties to private owners, the properties are placed back on the tax rolls and once again yield a positive revenue stream for the local governments.

Michigan, once again, was the first to create this funding mechanism for its land banks. A series of statutory amendments provided in essence that 50% of all real property taxes are returned to the land bank for the five years following the conveyance of the property from the land bank to a private owner.[3] The idea of allocating, or dedicating, a portion of future property tax revenues to a particular agency, authority or program is usually, and appropriately, met with great skepticism by local governments, school districts and government finance officers. By keeping the focus on the fact that the property inventory in question is presently yielding no revenue—and actually imposing costs—with the goal of returning the properties to productive taxpaying status, the issue can be starkly phrased as "Would it be better to have 100% of nothing, or 50% of something?" The justification for this limited and targeted tax recapture to fund land bank operations is further strengthened by pointing out that the property management actions of the land bank also reduce public expenditures related to code enforcement activities and heightened fire and police protection. For example, the simple elimination of a severely deteriorated building immediately raises the values of surrounding properties, which themselves yield greater property tax revenues.

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

Creating an internal subsidy mechanism to finance activity on non-income generating properties has been an important tool in the Genesee County Land Bank's arsenal. The Genesee County TIF model is based upon the notion that valuable properties produce revenue to cover costs of improving properties for which the cost of cleanup cannot be recovered through the sale of the property. Under Michigan's Brownfield law, land bank properties are eligible for a scattered-site, cross-collateralized, multijurisdictional TIF plan. What makes this approach effective is that the TIF plan includes properties across 17 county communities, and the baseline land value is zero. By generating tax capture from properties more easily sold, surplus TIF "capacity" is directed into weak neighborhoods. Relying on tax capture from a few hundred marketable properties of the 3,600 in the plan, the land bank secured $12 million for demolition and redevelopment costs for abandoned buildings (See Durant Hotel, pages 38-39). Properties in the plan are not all typical "brownfields"—but Michigan law allows them to be included as such. Financing redevelopment this way does not force each property to justify the cost of cleanup alone, connecting the economics of a diverse portfolio, reaching into forgotten neighborhoods.

Michigan, however, elected to create a tax increment financing structure for land banks by statutorily defining all properties owned by a land bank as "brownfields".[4] When a land bank possesses brownfield properties with a zero tax basis, it becomes possible to include the land bank properties in an existing brownfield redevelopment plan and issue bonds backed by 100% of future tax revenue increases from the brownfields.

Delinquent Tax Revolving Funds

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

The second option is for the local government to sell the property tax liens to private investors. The advantage of this is that the local government receives revenues because the underlying delinquent taxes are paid by the private investor. The advantage to the private investor is that it receives the benefit of a "super-priority" first lien on the property, ahead of all mortgages, leases and other encumbrances. The private investor relies on high rates of interest and penalties associated with the lien, generally averaging 18% or more annually, and the possibility of an even higher rate of return. The practice of governmental sale of property tax liens to private investors has a history reaching back hundreds of years,[5] but it is not a history that yields long-term success for local governments. In the late twentieth century, the sale and securitization of tax liens grew rapidly but was accompanied by the growing realization by many communities that the short-term sale of tax liens yielded unanticipated long-term costs. The sale of tax liens to private investors divides the incentives and functions inherent in the core governmental power of taxation. The incentives of a private tax lien investor are simply to maximize its rate of return, most easily accomplished by undertaking the least possible efforts to allow the property owner to redeem the property from the tax lien. The private tax lien investor has no formal obligation to invest further in the property, and certainly little incentive to promote the general welfare or the common good. It is not uncommon for tax lien investors to allow subsequent years of taxes to go unpaid or to wait years before electing to enforce their liens.

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

Borrowing and Bond Financing

The ability of a land bank to engage in short-term borrowing, or larger-scale borrowing through the issuance of bonds backed by specific credit or security, is a relatively new and unexplored feature of a land bank's capacity. In the first generation of land banks, it was not a vital power given the relatively low level of operational capacity and the reliance on general revenues as a source of funding.

With the emergence of the second generation of land banks in Michigan and Ohio, it became an increasingly important power and source of operational financing.

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

At the other end of the financing spectrum is the ability of a land bank to engage in larger-scale public borrowing through the issuance of a bond secured either by a designated inventory of real property, or by a designated source of revenues, or both. Such borrowing capacity should be explicitly and expressly set forth in the state statutory enabling legislation, which is characteristic of the third generation of land bank statutes.[6]

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

Chapter 7 Endnotes

1 The General Property Tax Act is set forth as 1893 Mich. Pub. Acts 206, MICH. COMP. LAWS §§211.1-211.157, as amended by 1999 Mich. Pub. Acts 123, and by 2003 Mich. Pub. Acts 263.

2 Michigan Land Bank Fast Track Act, 2003 Mich. Pub. Acts 258; MICH. COMP. LAWS §§ 124.751–124.774.

3 2003 Mich. Pub. Acts 260; MICH. COMP. LAWS § 211.1021; 2003 Mich. Pub. Acts 261, MICH. COMP. LAWS § 211.7gg.

4 *See* 2003 Mich. Pub. Acts 259, MICH. COMP. LAWS §§ 125.2652, 125.2663.

5 Alexander, *supra* Chapter 1, note 6 at 747-807 (2000).

6 *See infra* Appendix C, Section 12.

CASE STUDY: Genesee County Land Bank Authority

The Genesee County Land Bank was formed in 2002 initially as the Genesee County Land Reutilization Council (LRC), Inc. At the time, Michigan had reformed the tax foreclosure process, allowing counties to gain control of tax-delinquent properties through judicial foreclosure. Genesee County Treasurer Dan Kildee saw the need for an alternative to the public auction block as a means of finding new owners for these foreclosed properties, so in the absence of land bank authorizing legislation, the county used Michigan's Urban Cooperation Act to form the LRC, the precursor to the Genesee County Land Bank Authority (GCLBA).

The GCLBA was formed in 2004 after passage of Michigan's Land Bank Act, which was based on the first two years experience of the LRC. Since that time, the GCLB has become the most active land bank in the country, taking responsibility for the more than 10,000 properties that have been foreclosed in Genesee County since 2002. The land bank operates an array of programs intended to mitigate the effects of large-scale abandonment in the county seat of Flint and surrounding communities. It has demolished over 1,000 abandoned houses, conveyed an equal number of "side-lots" to next-door homeowners, rehabilitated hundreds of homes—transforming the worst house on many city streets into the best. The land bank has also engaged in transformative development projects, including the redevelopment of historic buildings that had been idle for decades. The GCLBA has developed partnerships with for-profit and non-profit developers to support development in a manner that engages rather than competes with the private sector. This land bank has been a catalytic force in Flint, from large-scale development to its "clean and green" program —paying neighborhood organizations to maintain land bank properties, an important part of the land bank's mission of engaging the community in its efforts.

CHAPTER 8

FORMING THE GOVERNANCE OF LAND BANKS

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

Factors that Influence Land Bank Governance

The form and structure of a land bank is primarily determined by state statutes governing intergovernmental cooperation in general and by state land bank enabling statutes in particular. General home rule authority for local governments is usually adequate only to permit the exercise of a limited range of powers and functions, thus necessitating the passage of a state land bank statute. All land bank statutes are permissive, not mandatory, simply enabling local governments to create a land bank if they wish to do so. Whether a land bank is actually needed in, or created by, any given jurisdiction is also heavily influenced by the socioeconomic conditions of the community. In the absence of any significant inventory of vacant and abandoned property, it rarely makes sense to create a land bank. Even when a significant inventory is present, however, political tensions and cultural conflicts may make intergovernmental cooperation impossible.

Each state has its own constitutional structure that allocates legal authority between the state legislature and local governments. In some instances, statewide enabling legislation is not necessary to create a land bank. However, because a land bank is not a traditional form of local government and exercises only limited powers, some form of state enabling legislation is usually necessary.

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

Local economic and cultural conditions also play a significant role in determining the structure of a land bank in a particular jurisdiction. Where there is a strong base of community development corporations and the capacity for residential or mixed-use development, the land bank's efforts can be focused on the transfer of clear and marketable title to these entities. When there is minimal demand for properties,

whether from the private market or the non-profit sector, the land bank must have the capacity for extensive property management through its staff or through contracted services.

The single most important factor in the governance structure of a land bank is clarity of its functions and goals.[1] The underlying authorization—whether state statute, local ordinance or intergovernmental agreement—should identify the land bank's purpose and focus. By its nature, a land bank is a special-purpose entity. Too many goals, functions and expectations will decrease a land bank's ability to fulfill any of its responsibilities effectively.

A land bank must have adequate authority to target properties for transfer, and to complete transfers, without seeking additional approvals from other levels of local government. If the local government's governing body, such as the city council or county commission, insists on final review and approval of each property transfer, one of the purposes of a land bank is largely undercut. Such approval requirements will either increase substantially the length of time required for a disposition, undercut the coherence of disposition policies, or both. Instead, a land bank's controlling documents, as approved by the local government's governing body, should establish the core public policies and delegate to the land bank board and staff the authority to administer its activities.[2]

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

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

Legal Structures of Land Banks

A land bank's formal legal structure is primarily determined by the allocation of powers and authority between the state and its local governments and any limitations contained in a state enabling statute. Land banks can exist as independent public legal entities created at the local level pursuant to statewide enabling legislation,[3] as an independent authority authorized by statute,[4] or as a non-profit entity. Each state has a slightly different legal and political culture for the creation of governmental entities that are special purpose in nature. Some states have a very extensive range of special purpose authorities and boards, while others limit them considerably. Some states treat all such authorities as within and subordinate to general purpose units of local government, while others permit an indeterminate range of public corporations.

The primary advantage of being an independent public legal corporation is that a land bank possesses a degree of autonomy and independence from the levels of agencies and departments and political considerations that may characterize a local government structure. Unlike a private corporation, if permitted by law a public entity can still perform some government functions. As a separate legal corporation, it must have its own board of directors, but these board members may consist of or be appointed by

local government officials. Unless it is a separate land reutilization program expressly authorized by state statute, a separate legal corporation is necessary for the entity to have powers of property acquisition and disposition that are not subject to local governments' disposition procedures. To be most effective and avoid the typical limitations faced by local governments, a land bank's essential powers for property acquisition, management and disposition, financing, and waiver of delinquent taxes need to be specifically authorized by law for the independent corporation or city.[5]

Land banks that are not public corporations or public authorities could be formed as private non-profit corporations.[6] There are advantages and disadvantages to this structure. A purely private non-profit may be desirable because it permits private investment in redevelopment activities that otherwise could not be utilized if the land bank was a public entity. While politically it may be desirable to decrease the size of a local government and "privatize" some of the typical functions of a municipality's government, the normal public meetings and public records acts imposed on governmental entities do not apply to a private non-profit corporation. When determining whether a public or private entity is best, the creating parties should weigh the impact of the advantages and disadvantages accordingly.

Once the legal structure of a land bank is determined, either by state land bank enabling legislation or by municipal home rule and intergovernmental authority statutes, state statutes and local ordinances should provide guidance as to what is legally required for its creation. In most cases, some form of local resolution or intergovernmental agreement is required to create a land bank. The resolution or intergovernmental agreement should outline key characteristics of the land bank that are not dictated by the state enabling legislation. Additionally, articles of incorporation will most likely be required by state statute if creating a public corporation or a non-profit corporation. Once the initial members of the board of directors are identified, bylaws detailing the structure and governance of the land bank are adopted. Ultimately the documents that are required for creation will be dependent on the state and local laws of the creating jurisdiction.

Organizational Structures of Land Banks

As a separate legal entity, a land bank will be governed by its own board of directors or board of commissioners. Members of the governing board may be either private citizens, elected officials or employees of one of the local governments, unless otherwise limited by law or regulation. In all cases, board members serve without compensation. A board of directors should be large enough to represent the multiple local governments that are participating members in the land bank and the diverse interests of the communities, but small enough to be able to operate efficiently. Further, the entire board should consist of an odd number of members to help avoid tied votes. In order to preserve public accountability, board members should be appointed by the participating local governments.

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

Whether a land bank should be an independent corporate entity with its own powers is a separate question from whether it can or should have its own independent staff. An intergovernmental agreement establishing a land bank can provide that the land bank "staff" are actually the staff of other local government departments.[7] If utilizing the staff of a municipal department or agency, the collective staff members should be allocated by function rather than by corporate identity.

Conversely, an enabling statute or creating intergovernmental agreement can expressly authorize a land bank to hire its own executive director and employees.[8] For example, in Michigan, the Genesee County 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."[9] If hiring its own employees, a land bank should also adopt a code of ethics for directors, officers and employees.[10]

Selecting Public and Private Roles

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

As a public entity, a land bank's ultimate goal is to serve the community's common good in accordance with its foundational statutes, ordinances and agreements. The local governments that create land banks bear responsibility for establishing the broad operational goals and priorities that govern their key functions: targeting properties for acquisition, assemblage and disposition; identifying the most important new uses for the properties; and determining the methods of enforcing commitments made by transferees of the properties.[11] In all of these activities, the land bank must remain politically accountable to elected officials, and the local governments must retain the ability to withdraw from or dissolve the land bank without cause. As entities holding public properties and public assets, land banks are financially responsible to the local governments and the public.

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

To meet its goals, a land bank must have access to this broad range of technical skills, but it need not build a large staff of real estate managers, financial analysts, project managers, and marketing specialists. Most land banks operate with few agency resources available and find the necessary expertise in one of two ways. One approach is to enter into operating and management contracts with private entities for demolition activities, property maintenance or property management. Ownership by a land bank of occupied residential or commercial properties is particularly conducive to third-party management contracts. A second approach is to create joint ventures between non-profit community development corporations and for-profit real estate developers.

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

Chapter 8 Endnotes

1 *See supra* Chapter 4.

2 *See infra* Chapter 9.

3 KY. REV. STAT. ANN. § 65.355(1); Louisville Land Bank Interlocal Agreement, I; O.C.G.A. § 48-4-61(a); Atlanta Land Bank Interlocal Agreement, *supra* Chapter 6, note 12 at I; MICH. COMP. LAWS § 124.773(4).

4 MO. REV. STAT. § 92.875.

5 *See supra* Chapter 6.

6 The Twin Cities Community Land Bank in Minneapolis, MN is an example of a private non-profit corporation performing some land bank functions. *See* Twin Cities Community Land Bank, http://www.tcclandbank.org/ (last visited Mar. 22, 2011).

7 Louisville Land Bank Interlocal Agreement, IV.

8 MO. REV. STAT. § 92.905.

9 MICH. COMP. LAWS § 124.754(1)(h).

10 *Id.* § 124.754(9).

11 *See infra* Chapter 9.

CHAPTER 9

IDENTIFYING CORE PUBLIC POLICIES FOR LAND BANKS

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

Identifying Critical Policy Goals

Just as there are multiple barriers to the transformation of vacant, abandoned and tax-delinquent land into productive uses, there is a strong tendency to look to land banks as a method of solving every possible problem related to these barriers. Every local government considering creation of a land bank should be very clear about the precise goals and functions to be accomplished by its creation. The larger the number of goals identified, the greater the expectations for the land bank. The greater the number of functions it is expected to perform, however, the greater the likelihood of failure. The success of a land bank depends upon the clarity of the specific goals it is created to achieve and the careful tailoring of policies and procedures to match those goals. "The Land Bank should first answer the basic questions of 'What are we?' and 'Whom are we attempting to serve?'"[1]

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

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

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

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

complete such transfers within broad policy parameters for setting the price for the transfer and for determining the future use. The less autonomy a land bank has when disposing of property, the more cumbersome and counterproductive the process becomes.

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

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

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

The most common goal of land banks is to return the property to "productive use." From the perspective of the local tax collector and local government finance officers, this goal recognizes the loss of revenues in the form of delinquent taxes and the desire to return the property to a tax-paying status as quickly as possible. The goal of revenue maximization, however, may lead revenue officials to oppose the land bank's waiver of delinquent taxes or other actions that do not provide an immediate stream of new tax revenues. The natural desire on the part of tax assessors and tax collectors to enhance the amount of collections needs to be acknowledged as divergent in some instances from a land bank's other goals. When a privately owned tract of land that is abandoned and tax delinquent is acquired by a land bank and converted into use as a neighborhood park owned by the city, no new tax revenues are generated because of the public ownership of the property. The presence of the park, however, could play a central role in both the creation of a sustainable neighborhood community and long-term stabilization of surrounding properties with their tax-generating status. The Michigan legislation that provides for a land bank to recover 50% 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.[2]

The pressure on land banks to maximize revenues is also evident in the policies that establish and guide the prices that must be received by a land bank in conveying the properties to new owners.[3] 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 parallel issue arises in determining whether a land bank must recover a portion of its operational costs upon conveyance of land bank properties to private third parties. Funding a land bank's operations with the general revenues of a local government or future tax revenues generated by the transferred properties minimizes the pressure to establish high pricing thresholds while maximizing flexibility to use the property and its value as investment incentives or subsidies for particular uses.

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

Properties and neighborhoods are not static and fixed in nature. They are inherently dynamic in the roles they play in the life of a community. Any given property or set of properties might be deteriorating or transitioning and on the edge of either further deterioration or transformation to stability. A land bank's goals and operational policies need to incorporate the ability to adapt to changing conditions. Governance of a land bank usually involves three to four different levels of authority and decision making: state statutes, local government agreements or ordinances, boards of directors or commissioners, and the land bank staff.[4] This spectrum of governance authority defines the place for discretion and flexibility. By their very nature, state statutes are general and inflexible and should be used only to establish the basic authority for and range of land bank powers. Greater discretion should lie with local governments to establish and direct a land bank's operations consistent with the jurisdiction's needs. The local government can and should establish the essential operating principles, such as pricing policies and land use priorities. The directors of a land bank need to have authority and discretion to adapt the efforts of a land bank on a monthly or quarterly basis as neighborhood conditions evolve and land uses change.

Building Upon Key Public Policies

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

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

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

The third and fourth categories reflect a policy judgment that must inevitably be made by a land bank in the face of scarce resources. In a city block that consists entirely of abandoned structures, land bank transformation actions are likely to require the longest period of time and the most complex forms of transactions. Unless the properties are an imminent threat to health, safety and welfare, such a neighborhood will likely not be highest on the list of overall land bank priorities. An exception would be when there is one structure that is occupied in the midst of vacant properties, and the existing owner is willing to convey the property to the land bank as part of a property exchange and in order to facilitate land assemblage. The justification for placing a high priority on vacant and abandoned properties in otherwise stable neighborhoods is due to the goal of preventing the spread of abandonment and the probable ease of transferring the property to a new owner. In transitional neighborhoods where it is not clear that further abandonment is probable, the land bank's efforts may play the greatest role. In these neighborhoods, a land bank can serve as a very visible demonstration to the community itself, and to potential new owners, of the commitment to strengthen and stabilize the community.[5]

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

The last two categories address the range of potential future uses of the property. A tract that is of sufficient size and condition to permit future development offers a greater range of potential uses and potential transferees. It is not uncommon, however, for a land bank to receive ownership of properties that are below the minimum size requirements for any future development.[6] This occurs primarily when an existing lot no longer conforms to minimum lot size, or is a small tract that remains after the widening of a street or some other public project. In these situations, which reflect both the absence of demand and the absence of future uses, one solution followed by several land banks has been to create a special program authorizing the conveyance of such "side lots" to the adjoining owners for nominal consideration.

As a major 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 land assembly to permit new development. More commonly, a land bank acquires a number of properties in one general area while one or more key properties remain in private ownership, preventing a development assemblage.

As contemporary land banks do not possess the power of eminent domain,[7] the acquisition of any missing or outstanding parcels of land by eminent domain must be done in conjunction with another state or local government agency that has such power. The justification for this result is that the dominant purposes for land banks do not include land assemblage—the powers the land banks do possess to assemble land are incidental to their primary functions. When land is being assembled in reliance on the significant authority to compel an involuntary transfer for the public good, the entity exercising such power and undertaking the assemblage should be a governmental entity that specializes in such activities.

Disposition policies are structured according to both the property's future owners and future use. It is common practice for land banks to give local governments or other public agencies a priority on the acquisition of land bank property. This is a permitted use, though not a priority use, for the Atlanta Land Bank.[8] The Louisville Land Bank is required to give advance notice to all public housing authorities of anticipated property transfers.[9] In Michigan, local governments have a right of first refusal to acquire tax-reverted property prior to conveyance to the land bank.[10]

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.[11] The Atlanta Land Bank regularly establishes applicable definitions of "low-income" and "moderate income" to guide its preference for affordable housing.[12] The top priority for the Louisville Land Bank is the transfer of properties for residential use.[13] The Genesee County Land Bank has established the following priorities to govern its disposition of properties:[14]

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

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

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

issue for a land bank 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. If development capacity is inadequate, the land bank must either hold and manage properties as its own inventory, or seek ways to enhance the development capacities of potential transferees.

Strategic Banking of Properties

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

Since its inception in 2002, the Genesee County Land Bank has acquired more than 8,100 residential, commercial and industrial parcels through the tax-foreclosure process. In Ohio, the Cuyahoga County Land Reutilization Corporation was on track to acquire more than 700 properties in 2010 alone, its first full year of operation. The Cuyahoga land bank received nearly $41 million in federal NSP funds, which significantly bolstered its acquisition capacity. In both cases, these two land banks are at the top of the range of authorities in terms of number of parcels acquired. It should also be noted that in cases where there is truly no present demand for a property, the land bank may utilize a depository program, such as Atlanta's, to hold the property for future use.

What was not contemplated by early land bank proposals was the sheer volume of properties in the inner-city areas of both large and small communities that would become vacant and abandoned over the next 40 years. Land banks created to facilitate the ownership transfer and redevelopment of these properties have become entities that in fact hold significant inventories of properties for future use. This is particularly true in those instances in which a land bank automatically receives title to all properties that pass through a tax foreclosure proceeding without redemption by the owner or purchase by a third party.

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

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

The second aspect of the original vision for land banks that stands as an exception to the successful demise of a land bank is the possibility of intentional decisions to hold tracts of land for future uses. A land bank should evaluate its inventory of properties with an eye toward public or private uses of the land for which demand may emerge in the future. The easiest example is the identification of properties that could be held for future use as public spaces—parks, open spaces, recreation

areas—when the surrounding neighborhoods stabilize and revitalize. Another example would be for a land bank to hold properties pending the development of adequate capacity in the non-profit community development sector, or pending the possible expansion of existing institutions or industries.

The Unintended Consequences of Success

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

Gentrification of a neighborhood or community is the transformation from relatively low-income residential or other uses to higher-income residential use. It carries with it an increase in both property values and in the occupants' average incomes. In the face of vacant, abandoned and tax-delinquent properties, gentrification is a hallmark of success and a blessing to the entire community. It is in many ways the strongest sign of revitalization. As with most blessings, however, gentrification carries with it certain negative consequences. The revitalization of public housing communities through the federal HOPE VI program in recent years had a major negative consequence of displacing low-income residents who once resided in the communities. In similar fashion, if a land bank elects to focus on stimulating residential development without regard for the income accessibility of the new homes, it is likely that affordable housing will diminish or disappear as a goal of the land bank.[15]

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.

Chapter 9 Endnotes

1 Land Bank Handbook: Advance Acquisition of Sites for Low and Moderate Income Housing, A-5 (Carol Van Alstyne, ed., 1972).

2 *See supra* Chapter 7.

3 *See infra* Chapter 10.

4 *See supra* Chapter 8.

5 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 the "Olympic venue" neighborhoods. Fulton County/City of Atlanta Land Bank Authority, Information Booklet 5 (March 29, 1994).

6 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. Stat. § 92.900(2).

7 *See supra* Chapter 6.

8 Atlanta Land Bank Interlocal Agreement, IX.B.2, http://www.fccalandbank.org/ (last visited Mar. 22, 2011).

9 Ky. 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.

10 Mich. Comp. Laws § 124.755(6).

11 Atlanta Land Bank Interlocal Agreement, *supra* note 12, at VI.D. 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).

12 Atlanta Land Bank Interlocal Agreement, *supra* note 12, at VI.D.

13 Louisville and Jefferson County Landbank Authority, Inc., Marketing and Sales Policies for Taxable Developments (2002).

14 Genesee County Land Bank, Inc., Priorities, Policies, and Procedures, Section 2, http://www.thelandbank.org/policies.asp (last visited Mar. 22, 2011).

15 Frank S. Alexander & Larry Keating, City of Atlanta City Council, A City for All: Report of the Gentrification Task Force, (2001).

CHAPTER 10

DETERMINING ADMINISTRATIVE POLICIES

Establishing Property Eligibility

With a goal of transforming vacant, abandoned and tax-delinquent properties into productive use, each land bank is faced with the challenge of establishing criteria for the future use of the property, and in many instances the identity of the future users of the property.[1] Once a land bank has classified and evaluated its inventory,[2] the focus turns to property management and disposition.

For some land banks, the primary goal is simply to return the property to private owners who will be responsible in future years for payment of property taxes and maintenance of the property in compliance with building and housing codes. With this overriding purpose, the land bank sets few, if any, preferences or priorities for future use of the land. Any use is permitted by any party so long as it is otherwise consistent with local zoning. 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.[3] 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.[4] The Land Bank regularly adopts definitions for income eligibility as the operating guideline for what constitutes affordable housing. A second priority is given to proposed use of the property for "community improvement or other public purposes." 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.

By building on the experiences of other land banks, and because of the sheer magnitude of the number of its properties, the Genesee County Land Bank has adopted three different categories for evaluating proposed dispositions of property: (i) priorities for the use of the property, (ii) priorities as to the nature of the transferee, and (iii) priorities concerning neighborhood and community development.[5] The ranking of priority as to use begins with neighborhood revitalization, followed by homeownership and affordable housing, and returning the property to tax-paying status, with a total of six potential uses identified. The priorities as to the nature of the transferee reflect a preference for non-profit corporations but include a range of five different forms of transferees. The priorities concerning neighborhood and community development essentially serve as guidelines for directing the land bank's efforts across neighborhoods throughout the entire community.

Side lot programs consolidate small adjacent abandoned lots to encourage development where individual lot sizes no longer comply with zoning requirements.[6] Side lot programs commonly require that the property be vacant and unimproved, that the property be conveyed only to an adjoining property owner who occupies contiguous

residential property, and that the transferee "consolidate" the transferred property into the contiguous property for property taxation purposes. Such consolidation creates a market for the land where currently there may be none, and stabilizes the neighborhood to protect the property values of existing resident owners.

Identifying Eligible Property Owners

Best practices require the submission of a written proposal by an individual or entity seeking to obtain property from the land bank. The proposal should be evaluated to determine whether the transferee and proposed use of the property meet the minimum criteria. There is a wide range in the extent of information that is required by land banks in the development proposal. These may range from a letter stating the proposed use of the land, a building plan, and evidence of financial backing, to an extensive application for commercial land transfers containing the essential information that would normally be required for an application for development financing. In light of the length of time that may be required to assemble all of the components for a complete development proposal, a land bank may have express policies permitting a transferee to acquire an option on the property held by the land bank. The land bank may offer options of varying periods, and it may require payment of a certain percent of the anticipated price to obtain the option. The option will generally be subject to compliance with all other policies.

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

Land banks should prohibit transfers to parties that are delinquent in the payment of property taxes on their own properties. The land bank could expressly provide that the proposed transferee may not have any existing tax delinquency or own any properties known to be in violation of housing and building codes. It could even go one step further and disqualify ineligible individuals and entities that were the prior owners of property at the time of the tax foreclosure that transferred title to the land bank.[7]

The problem of prior tax delinquencies requires special attention if the land bank uses a conduit transfer program through which a non-profit entity purchases property from a private owner subject to outstanding delinquent taxes and then conveys the property to the land bank for waiver or forgiveness of the taxes. To avoid conferring a windfall on the former irresponsible property owner who sells the property to a non-profit entity, the land bank may adopt a "Reasonable Equity Policy."[8] Such a 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 a certain percent of its net equity in the property.

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

In both form and function, a major result of land bank programs has been the creation of new homeownership opportunities. Land banks that deal only with vacant land accomplish this either by transfers to residential developers for sale to new homeowners, or occasionally directly to an individual who builds and occupies a new residence. Land banks that also deal with properties with residential structures transfer them to new owners who rehabilitate

them for occupancy. Properties in these single-family homeownership programs are subject to the same eligibility requirements applicable to other programs: no prior or existing tax delinquency, no existing code violations on other properties, and completion of proposed development within a specific period of time. To avoid the potential problem of transferees acquiring property solely for purposes of resale, the land bank can require the transferee to occupy the property as his or her principal residence for at least five years following the transfer. Breach of this contractual obligation renders the transferee liable to the land bank for the full value of the subsidy provided by the land bank.

Setting Pricing Policies

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

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

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

A fair market value requirement for transfers also undercuts the land bank's ability to achieve other public goals and public policies. To the extent that a land bank's goal is to return property to tax-generating status, any sales price other than a nominal price, or a price equal to the land bank's transaction costs, reduces the return of properties to this status. Mandating a particular dollar value to a transaction also restricts the land bank's ability to transfer value to an entity as a form of subsidy in order to accomplish other stated public goals, such as providing affordable housing.

A land bank may presume that property suitable for private use must be conveyed at full fair market value. For example, 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. In St. Louis, 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.[9] Property that is suitable for public use or not usable in its present condition can be transferred at no cost.

A land bank has maximum flexibility to meet its public goals and policies if it has discretion to either set the selling price for the property or agree that the value of the consideration can be provided through the development commitments of the transferee. The Atlanta Land Bank has complete discretion in establishing the sale price for its property,[10] and as a routine matter does not require any cash consideration be paid at the time the property is transferred. This discretion enables the Atlanta Land Bank to utilize the property's value as a subsidy to promote the development of affordable housing.

Key to a land bank's pricing policies is its authority to determine when and how the consideration is paid by the transferee. When properties are transferred to non-profit entities for affordable housing, the amount of consideration

is determined by both the value of the property and the level of indirect subsidy required for the housing to be affordable. In essence, the consideration can be provided by annual performance of the commitment to provide affordable housing. Correspondingly, when a land bank elects to transfer property, whether unimproved land, parcels with residential structures ready for occupancy, or commercial tracts without any restrictions or requirements that the property be used to achieve specific public goals, the consideration is set at fair market value and must be fully paid at the time of the transfer.

Enforcing Commitments

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

Some land banks ensure performance of commitments by retaining a right of re-entry for a set period following closing. Alternatively, the land bank may require all conveyances to provide that "title will revert" to the land bank if construction or rehabilitation is not commenced within a predetermined number of years of the conveyance.[11]

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

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

Increasingly, land banks are using 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 and a basis for legal action if necessary. One limitation on the effectiveness of relying solely upon a development agreement is that if the transferee is a single-asset corporation, a breach of contract action may not yield monetary damages. A second limitation is that a development agreement is unlikely to be binding on a third party who acquires the property from the original transferee.

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

The third method of ensuring that a transferee fulfills its commitments is the use of a mortgage to secure a promissory note of a stated amount. The transferee is obligated to

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

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

Chapter 10 Endnotes

1 *See supra* Chapter 9.

2 *See supra* Chapter 6.

3 *See* Landbank Authority, Inc., http://www.louisvilleky.gov/Housing/Landbank+Authority+Inc.htm (last visited Mar. 22, 2011).

4 Atlanta Land Bank Interlocal Agreement, *supra* note 12, at IX.B.1.

5 *See* GENESEE COUNTY LAND BANK, INC., PRIORITIES, POLICIES AND PROCEDURES, *supra* Chapter 9, note 18.

6 *See infra* Appendix D, Section 12.

7 *See infra* Appendix D, Section 3.

8 *See infra* Appendix D, Section 10.

9 MO. REV. STAT. § 92.895(2). This same approach is followed by the land reutilization commissions in Nebraska. *See* NEB. REV. STAT. § 77-3205.

10 O.C.G.A. § 48-4-64(e).

11 *See infra* Appendix D, Section 6.

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PART III

Building for the Future

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CHAPTER 11

THE CASE FOR LAND BANKING IN YOUR COMMUNITY

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

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

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

Building Constituencies

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

If a coalition is not formed naturally, advocates should expect to spend time determining who should be involved and convincing those identified stakeholders that the reform is needed. In communities across the country, the stakeholders tend to include non-profit community development corporations, state and local government planning officials, local property tax collectors, local government property management divisions, affordable housing advocacy groups, green space advocacy groups, local chambers of commerce, and state realtor associations.

While these various groups often represent divergent interests, land banking is one instance where they can sometimes find common ground and work together.

One of the most persuasive tools is education. As coalition members learn why reform is needed, the coalition will likely expand. Educating legislators about the current problems facing local communities is important. Effective education efforts should provide constituencies with a historical context for how past policies have contributed to the current conditions. Finally, helping constituencies recognize who is required politically and institutionally to create a land bank is necessary. Ultimately, if the stakeholders know what land banks can do to help address problems in their communities, the passage of meaningful enabling legislation is more likely.

The educational process can take a substantial amount of time, beginning with individual phone conversations to gauge interest, and proceeding to the assemblage of local or regional groups of interested stakeholders. Where in-person meetings are not possible, web-based sessions can be a useful alternative. However, if the goal is to address questions and facilitate a dialogue among group members, a meeting in person is more effective.

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

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

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

Anticipating Objections

One of the most important aspects of education is anticipating and pre-empting objections. Depending on the unique problems and political climate of a given jurisdiction, one can usually identify issues that are most likely to elicit objections. The concept of reform, especially when it targets an antiquated system such as the property tax system, is unappealing to different constituencies for different reasons. Local tax assessors and collectors may be opposed to a new system because they are resistant to change. Staff of redevelopment authorities may believe that their existing programs sufficiently address their communities' vacant property problems and fear a land bank would encroach on their work. Realtors may fear that a land bank would remove properties from the market that a realtor could otherwise sell. A successful strategy will anticipate these objections and take measures to educate these constituencies on why change is needed and how it is actually consistent with their own interests.

Under the pressures of economic recession, elected officials are often adverse to legislation that is not revenue neutral. When advocating for legislative support, a coalition should emphasize that land bank legislation does not necessarily require appropriations from the general revenue fund. Educating elected officials on the various financing mechanisms included in comprehensive land bank legislation is an important tactic for garnering support from both local elected officials and state legislators. Land bank financing mechanisms can be complicated and layered, and thus difficult to understand without understanding the system created by the legislation as a whole.[1] A coalition should expect to spend a significant amount of time explaining how the financing mechanisms interact with other powers granted in the legislation so that the effects

of any legislative amendments are recognized. Ultimately, legislation that is revenue neutral is politically attractive, so when advocating for legislative support, a coalition should emphasize that land bank legislation does not require appropriations from the general revenue fund.

Almost as important as anticipating the objections themselves is assessing the strength of the objectors as compared to the coalition. Advocates should take stock of the relative levels of support they have from key elected officials, community business leaders, non-profit organizations, and other interested stakeholders to anticipate whether certain objections and objectors have the political power to prevent passage. If it is anticipated that certain parties have the ability to derail a legislative effort, a political strategy must be devised to address these concerns and determine how best to address them.

Managing Expectations

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

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

Defining Success

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

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

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

Chapter 11 Endnotes

1 *See supra* Chapter 7.

CASE STUDY: Cuyahoga County Land Reutilization Corporation

Between 2005 and 2009, Cuyahoga County experienced a significant increase in home foreclosures, resulting in some of the highest foreclosure and vacancy rates in the country. Although the central city of Cleveland was operating a land bank, it didn't have the authority or tools necessary to address the challenge posed by tens of thousands of vacant or abandoned homes in the region. The dramatic change in the landscape demanded a dramatic change in tools. In 2009, the Cuyahoga County Land Reutilization Corporation (CCLRC) formed in order to protect the county tax base and restore real estate markets, while transforming blight into assets for the people who lived in the community.

CCLRC's self-funding mechanism, which is derived from delinquent tax collections, provides the sustainable funding that is necessary for a land bank with long-term goals. Because of the CCLRC's ability to acquire properties directly through the tax foreclosure process, the speculator-driven sheriff sales no longer hamper returning property to productive use. The land bank takes seriously its role in empowering cities, non-profit and for-profit developers, community organizations, and individuals in effectively reusing land in the county. To ensure the local governments are able to determine the future of land within their boundaries, the CCLRC has Memoranda of Understanding (MOU) with more than half of the jurisdictions in the county. These MOU frame the partnerships by spelling out things like priorities for property management and demolition, and notice to neighbors when actions are taken. If properties go through tax foreclosure process, the cities have the right to become the owner before the land bank does. If property enters the land bank through another process, the cities have the priority acquisition position for 30 days.

A critical contribution the CCLRC has made to the county is building an information system tool that allows stakeholders to make better decisions about property acquisition and investment. "The Eye" is a new property profile system that is virtually connected to multiple databases including those from the Auditor, the Treasurer, title companies, the Clerk of Courts, the Demolition and Building Code Departments, and city permit filings. It allows users to understand a property's characteristics, proximity to assets, properties that have construction permits, and more. Users can also contribute their own data filters so their acquisitions are deliberate efforts to better the community.

CHAPTER 12

STATE ENABLING LEGISLATION

The Need for State Enabling Legislation

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

In rare instances, statewide enabling legislation is not necessary to create a land bank. For example, the Genesee County Land Bank was created prior to the enactment of statewide land bank legislation and grounded upon pre-existing statutes authorizing interlocal cooperation agreements.[1] Following the enactment of state land bank legislation,[2] a new intergovernmental agreement was entered into by Genesee County and the State of Michigan, transforming the prior entity into the current Genesee County Land Bank. However, the situation in Genesee is not typical.

The Types of State Enabling Legislation

Over the past 40 years, land bank legislation has undergone several transformations. The first generation of land bank legislation bore similar characteristics across the different states, but no two of these early land banks were identical. Because of wide variances in state constitutional law and state and local allocations of authority, each local land bank was based upon a different legal structure. Each of these land banks did indeed facilitate the conversion of *some* of the inventory of vacant, abandoned and tax-delinquent properties back into productive use, but the efficiency and effectiveness of these first-generation land bank initiatives fell short of their potential. In hindsight, the lack of efficient and effective acquisition, management and disposition of vacant, abandoned and tax-delinquent properties can be attributed to several core features that were missing in each of these first-generation land banks. The shortcomings of the first-generation land banks led directly to the drafting of the second-generation land bank legislation.

The second generation of land bank legislation gave land banks a dramatically different range of powers and possibilities. The legislation provided for multiple sources of financing for land bank operations, a much more extensive intervention in the property tax foreclosure process, and a much bigger inventory of tax-foreclosed properties. Ultimately, the second-generation land bank legislation permitted land banks to be proactive partners in the management, development and overall transformation of

liabilities into public assets and not merely the custodians of properties that the open market rejects. However, these second-generation legislative reforms were extremely intricate in nature, difficult to draft and nearly impossible for a casual observer to decipher. And as a result, a third generation of land bank legislation is emerging.

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

Drafting State Enabling Legislation

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

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

Section 3 is the definition section, and must be very carefully drafted. Aside from Section 17, which contains the ties to property tax foreclosure, this is perhaps the section that is most dependent upon applicable state constitutional and statutory law. The definition section is also the section that will have the greatest impact on the meanings of subsequent sections, so particular focus on the effect of a given definition is required. For example, when defining the type of local government that can create a land bank, one should focus on the relationship among the key local government entities. Should a municipality be allowed to create a land bank without the participation of the county in which it is located? Should a county be required to have at least one participating city in order to form a land bank?[3] The definition of the type of local governments that can create land banks is important because it affects how the statute refers to all other local governments. The template refers to the creating jurisdiction as a "foreclosing governmental unit" because it provides a direct tie to those local governments that participate in the property tax foreclosure process. An alternative term suggested by the template is "land bank jurisdiction." This term could be used in conjunction with a cross-reference to a state's public authorities law limiting the creating jurisdictions to only those that can form public authorities.

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

Section 4 governs the creation and existence of land banks at the local level. One of the most important provisions of this template legislation is the maximum flexibility for local governments to work together in creating and operating land banks.[4] According to Section 4(a), a foreclosing governmental unit may elect to create a land bank on its own. However, it is permissible for two or more foreclosing governmental units to join together and create a land bank.[5] Further, it is also permissible for a municipality to join one or more foreclosing governmental units in the creation of a land bank.[6] The language in Section 4 is aimed at providing the maximum flexibility for local governments to work together and create regional land banks when they desire to do so.

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

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

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

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

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

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

Section 11 forms the basis for several of the financing mechanisms for land bank operations.[7] A land bank may receive direct grants and loans from all forms of governments—federal, state and local. A land bank may receive payments through the provision of services, through the collection of rent and through the sale of land bank property. Finally, for those properties that a land bank rehabilitates and successfully returns to the property tax digest, a land bank can recapture 50% of the real property taxes collected for the five years beginning with the first taxable year. This section includes land bank financing mechanisms that work together with the powers to contract, to borrow and to issue revenue bonds, along with the ties to the property tax foreclosure system that provide an inventory and assets to fund land bank operations. Because these various powers and provisions interact, land banks can be created in a relatively revenue neutral manner, which most elected officials find very appealing. Altering even one of the financing mechanisms can inadvertently affect another, so Chapter 7 should be very carefully considered when drafting the legislation sections covering land bank powers, financing mechanisms and the ties to property tax foreclosure.

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

Should a land bank dissolve, Section 14 governs the basic dissolution process. The creating documents, however, should include more specific requirements if the creating government, or governments, deem it necessary. Section 15 provides language that prohibits any employees or board members from engaging in activities on behalf of the land bank where there could be a conflict of interest. Section 16 covers the construction, intent and scope of the legislation. It states that the land bank legislation should be liberally construed, that powers should be broadly interpreted, and

that property restrictions imposed on other local governments shall not apply to land banks unless specifically recognized by the legislation or by the documents creating the land bank.

Section 17 is merely a placeholder for language that ties land banks to the property tax collection and foreclosure system. Because state property tax laws vary widely, it is impossible to provide template language for this section. While specific language cannot be suggested, the overarching goals of the section can be identified. First, a land bank should be given the ability to discharge and extinguish delinquent taxes on properties owned by the land bank. Without this core power, a land bank's effectiveness will drastically decline. Next, the legislation should give a land bank the authority to participate in tax foreclosures and tax lien sales. Having multiple points of intervention or participation in the tax foreclosure process will help prevent out-of-state speculators from dominating the market. Special considerations regarding the form, amount, substance, and timing of a land bank's obligations when participating in the tax foreclosure process should be made. Finally, bulk tax foreclosures by a land bank or the local government should be permitted as a method for expediting the tax foreclosure process and promoting efficiency.

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

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

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

Chapter 12 Endnotes

1 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.

2 MICH. COMP. LAWS § 124.751.

3 *See infra* Chapter 13.

4 *See infra* Appendix C, Sections 4(b), (c), (e).

5 *See infra* Appendix C, Section 4(b).

6 *See infra* Appendix C, Section 4(c).

7 *See supra* Chapter 7.

CHAPTER 13

INTERGOVERNMENTAL AGREEMENTS

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

Maximizing Intergovernmental Cooperation

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

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

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

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

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

Developing and Drafting Intergovernmental Agreements

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

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

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

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

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

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

DR. KING'S LEGACY APAR

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Ableidinger, Amanda, Target: *Problem Properties: A CDC Tackles Abandonment*, SHELTERFORCE (Jan./Feb. 2002), *available at* http://www.nhi.org/online/issues/121/Ableidinger.html.

Abromowitz, David M., *An Essay on Community Land Trusts: Towards Permanently Affordable Housing*, 61 MISS. L. J. 663 (1991).

Accordino, John & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 J. URB. AFF. 301 (2000).

Alexander, Frank S., *Legal Strategies for Vacant and Abandoned Properties and Neighborhood Stabilization and Land Banking, in* Neighborhood Stabilization Course Materials, Living Cities, Kennedy Sch., Harvard Univ. (Mar. 2010).

Alexander, Frank S., Fed. Reserve Bank of Boston, *Neighborhood Stabilization & Land Banking*, 20 COMMUNITIES & BANKING 3 (Summer 2009).

Alexander, Frank S., *Louisiana Land Reform in the Storms' Aftermath*, 53 LOY. L. REV. 727 (2008).

Alexander, Frank S., Brookings Inst., *Land Banking As Metropolitan Policy* (Oct. 2008).

Alexander, Frank S., Fed. Reserve Bank of Atlanta, *Don't Bet the House*, 17 PARTNERS COMMUNITY ECON. DEV. (2007).

Alexander, Frank S., *Tax Liens, Tax Sales and Due Process*, 75 IND. L.J. 747–807 (2000).

Alexander, Frank S., Local Initiatives Support Corp. and U.S. Dept. of Housing and Urban Dev., *Renewing Public Assets for Community Development* (Oct. 1, 2000).

Alexander, Frank S., *Constitutional Questions About Tax Lien Foreclosures*, 16 GOV'T FIN. REV. 27 (June 2000).

Alexander, Frank S., *Dealing with Delinquent Property Taxes*, GA. COUNTY GOV'T 27 (May–June 1998).

Alexander, Frank S., *Property Tax Foreclosure Reform: A Tale of Two Stories*, GA. BAR J. (Dec. 1995).

Allred, Christopher J., Pioneer Inst. - Better Gov't Competition No. 10, *Breaking the Cycle of Abandonment: Using a Tax Enforcement Tool to Return Distressed Properties to Sound Private Ownership* (2000), *available at* http://www.pioneerinstitute.org/pdf/bgc00_winner.pdf.

Apgar, William C. & Mark Duda, Minneapolis Homeownership Preservation Found., *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom* (2005).

Archibald, Robert A., Univ. of Mo.-St. Louis Pub. Policy Research Ctr., Occasional Paper 4, *Open Spaces, Good Places: The Future of Development for the St. Louis Region* (Apr. 2001).

Baptista, Ana, Brown Univ. Ctr. for Environmental Studies, *Redeveloping City-Owned Vacant Lots: Strategies for the Equitable Redevelopment of City-Owned Vacant Land in Providence, RI* (2000).

Bassett, Laura M., *Tax Increment Financing as a Tool for Redevelopment: Attracting Private Investment to Serve a Public Purpose--The Example of Michigan*, 41 Urb. Law. 755 (2009).

Bier, Thomas, & Charlie Post, Brookings Inst. Ctr. on Urban and Metropolitan Policy, *Vacating the City: An Analysis of New Homes vs. Household Growth* (Dec. 2003).

Black, Karen L., Pa. Low-Income Housing Coalition, *Reclaiming Abandoned Pennsylvania* (Mar. 2003).

Blackwell, Keri, Local Initiatives Support Corp., *Cleveland Case Study: Model Practices in Tax Foreclosure and Property Disposition* (Jan. 10, 2003).

Blight Elimination Subcomm. of the Neighborhood Revitalization Comm., *A Blight Elimination Plan for Philadelphia's Neighborhoods* (Feb. 8, 2000).

Bowman, Ann O'M., and Michael A. Pagano, *Transforming America's Cities: Policies and Conditions on Vacant Land*, 35 Urb. Aff. Rev. 559 (2000).

Braconi, Frank P., 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., SUNY 1999).

Brett, Deborah L., *Assessing the Feasibility of Infill Development*, 41 Urb. Land 3 (1982).

Bright, Elise M., Reviving America's Forgotten Neighborhoods (New York, 2000).

Buchsbaum, Peter A, *Old Wine in New Bottles: Redevelopment Tales of a City, Suburb, and a State*, 30 Urb. Law. 745 (1998).

Callies, David L., *Commonwealth of Puerto Rico v. Rosso: Land Banking and an Expanded Concept of Public Use*, 2 Land Use Controls: A Quarterly Rev. 17 (1968).

Cheever, Frederico, *Environmental Law: Public Good and Private Magic in the Law of Land Trusts and Conservation Easements: A Happy Present and a Troubled Future*, 73 Den. U. L. Rev. 1077 (1996).

Cisneros, Henry G., *Urban Land and the Urban Prospect*, Cityscape, Special Issue, 115 (Dec. 1996).

Cohen, James R., *Abandoned Housing: Exploring Lessons from Baltimore*, 12 Housing Pol'y Debate 415 (2001).

Cole, Rick, et al., *Building Livable Communities: New Strategies for Promoting Urban Landfill*, 55 Urb. Land 37 (1996).

Community Research Partners and ReBuild Ohio, *$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities* (2008).

Cunningham, Lynn E., *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).

Davis, John Emmeus, *More than Money: What is Shared in Shared Equity Homeownership*, 19 J. Affordable Housing & Community Dev. L. 250 (2010).

Davis, John Emmeus, Nat'l Housing Inst., *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing* (2006).

Downs, Anthony, *Comment on John T. Metzger's "Planned Abandonment: The Neighborhood Life-Cycle Theory and National Urban Policy"*, 11 Housing Pol'y Debate 41 (2000).

Downs, Anthony, Opening Up the Suburbs: An Urban Strategy for America (1973).

Eastern Pa. Organizing Project, Blight Free Philadelphia: A Public Private Strategy to Create and Enhance Neighborhood Value (2001).

Fannie Mae Found., *Vacant Land Presents Problems and Opportunities*, 3 Housing Facts & Findings, Issue 1 (2001).

Fishman, Richard P., & Robert D. Gross, *Public Land Banking: A New Praxis for Urban Growth*, 23 Case W. Res. L. Rev. 897 (1972).

Flechner, Harvey L., Land Banking in the Control of Urban Development (1974).

Furr, Jonathan, *The Impact of Cooperative Efforts on Community Development*, 10 J. Affordable Housing & Community Dev. L. 151 (2001).

Galster, George C., *Comment on John T. Metzger's "Planned Abandonment: The Neighborhood Life-Cycle Theory and National Urban Policy"*, 11 Housing Pol'y Debate 61 (2000).

Goetz, Edward G., Kristin Cooper, Bret Thiele, & Hin Kin Lam, Univ. of Minn., *Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing*, Ctr. for Urb & Regional Aff. Rep. (Apr. 1998).

Goldstein, James et al., Lincoln Inst. of Land Policy, *Urban Vacant Land Redevelopment: Challenges and Progress* (Working Paper, 2001).

Grogan, Paul S., & Tony Proscio, Comeback Cities: A Blueprint for Urban Neighborhood Revival (2000).

Gunton, Thomas, *Coping with the Spector of Urban Malaise in a Post Modern Landscape: The Need for a Detroit Land Bank Authority*, 84 U. Det. Mercy L. Rev. 521 (2007).

Haar, Charles M., U.S. Cong., House Comm. on Banking and Currency: Papers submitted to Subcomm. on Housing; Panels on Housing Production, Housing Demand, and Developing a Suitable Living Environment, *Wanted: Two Federal Levers for Urban Land Use – Land Banks and Urbank*, 927–40 (June 1971).

Hearn, Holly M., *Tax Sales: Create Judicial Tax Foreclosure Procedures to Aid Low Income Housing Development*, 12 Ga. St. U. L. Rev. 352 (1995).

Hemann, Patricia A., *Land Banking Tax Delinquent Property: Reform and Revitalization*, 27 Clev. St. L.Rev. 517 (1978).

Hirokawa, Keith H. & Ira Gonzales, *Regulating Vacant Property*, 42 Urb. Law. 627 (2010).

Hoag, Gifford W., The Farm Credit System: A History of Financial Self-Help (1976).

Hughes, Mark Alan, *Dirt into Dollars: Converting Vacant Land into Valuable Development*, 18 Brookings Rev. 34 (2000).

Hughes, Mark Alan & Rebekah Cook-Mack, Public/Private Ventures, *Vacancy Reassessed, Critical Issues Facing Philadelphia's Neighborhoods* (1999).

Immergluck, Dan & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 Housing Pol'y Debate 57 (2006).

Immergluck, Dan & Geoff Smith, *The Impact of Single Family Mortgage Foreclosures on Crime*, 21(6) Housing Stud. 851 (2006).

Jacobs, Rick & John Emmeus Davis, The Asset Building Potential of Shared Equity Homeownership (2010).

Kamm, Sylvan, Urban Inst., Land Banking: Public Policy Alternatives and Dilemmas (1970).

Keating, Larry & David Sjoquist, *Bottom Fishing: Emergent Policy Regarding Tax Delinquent Properties*, 3 Housing Facts & Findings, Issue 1 (2001).

Keating, Larry & David Sjoquist, Georgia Inst. of Tech., *Strengthening a Valuable Resource: The Fulton County/City of Atlanta Land Bank Authority* (2001).

Keating, W. Dennis, *The Dilemma of Old Urban Neighborhoods*, 3 Wash. U. J.L. & Pol'y 699 (2000).

Keating, W. Dennis & Norman Krumholz, *Neighborhood Planning*, J. Planning Educ. & Res. 111 (2000).

Keating, W. Dennis, *The CDC Model of Urban Development, a reply to Randy Stoecker*, 19 J. Urb. Aff. 29 (1997).

Keating, W. Dennis et al., eds., Revitalizing Urban Neighborhoods (1996).

Kelly, James J., Jr., *Maryland's Affordable Housing Land Trust Act*, 19 J. Affordable Housing & Community Dev. L. 313 (2010).

Kelly, James J., Jr., *Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 13 J. Affordable Housing & Community Dev. L. 210 (2004).

Kelling, George L. & Catherine M. Coles, Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities (1996).

Keuschnigg, Christian & Søren Bo Nielse, *On the Phenomenon of Vacant Land*, Can. J. Econ., Spec. Iss. 29, at 534 (Apr. 1996).

Kivell, P.T., *Vacant Urban Land*, 75 The Planner 8 (Aug. 25, 1989).

Kobie, Timothy F., *Residential Foreclosures' Impact on Nearby Single-Family Residential Properties: A New Approach to the Spatial and Temporal Dimensions* (July 28, 2009) (unpublished Ph.D. dissertation, Levin College of Urban Affairs, Cleveland State University), *available at* http://etd.ohiolink.edu/send-pdf.cgi/Kobie%20Timothy%20F.pdf?csu1268073662.

Kornfeld, Itzchak E., *Conserving Natural Resources and Open Spaces: A Primer on Individual Giving Options*, 23 Envtl. L. 185 (1993).

Kraut, David T., *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. Rev. 1139 (1999).

Kromer, John, City of Phil. Office of Housing and Community Dev., *Vacant Property Prescriptions: A Reinvestment Strategy* (Aug. 1996).

Krumholz, Norman, Am. Inst. of Certified Planners, Planner's Casebook, *Land Banking and Neighborhood Revitalization in Cleveland* (Summer 2002).

Krumholz, Norman, *The Provision of Affordable Housing in Cleveland: Patterns of Organizational and Financial Support, in* Affordable Housing and Urban Redevelopment in the United States: Learning from Failure and Success, Urb. Aff. Ann. Rev., no. 46 (Willem van Vliet, ed., 1996).

Langsdorf, Kenneth R., *Urban Decay, Property Tax Delinquency: A Solution in St. Louis*, 5 Urb. Law. 729 (1973).

Letwin, William L., Urban Land Research Analysts Corp., *Municipal Land Banks: Land-Reserve Policy for Urban Development* (Oct. 1969).

Leonard, Jennifer R. & Alan Mallach, Ctr. for Community Progress, Restoring Properties, Rebuilding Communities (2011).

Lieb, Roslyn Corenzwit et al., *Project: Abandonment of Residential Property in an Urban Context*, 23 De Paul L.R. 1186 (1974).

Lind, Kermit J., *Can Public Nuisance Law Protect Your Neighborhood from Big Banks?*, 44 Suffolk U. L. Rev. 89 (2011).

Lind, Kermit J., *The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods*, 17 J. Affordable Housing & Community Dev. L. 237 (2008).

Local Initiatives Support Corp., Mapping for Change: Using Geographic Information Systems for Community Development (2002).

Mallach, Alan, Brookings Inst., *Addressing Ohio's Foreclosure Crisis: Taking the Next Steps* (2009).

Mallach, Alan, A Decent Home: Planning, Building and Preserving Affordable Housing (2009).

Mallach, Alan, *The Case for Affordable Housing*, 75 Planning, no.3 (Mar. 2009).

Mallach, Alan, Brookings Inst., *Stabilizing Communities: A Federal Response to the Secondary Impacts of the Foreclosure Crisis* (2009).

Mallach, Alan, Brookings Inst., *Tackling the Mortgage Crisis: Ten Action Steps for State Government* (2008).

Mallach, Alan, Nat'l Housing Inst., Managing Neighborhood Change: A Framework for Sustainable and Equitable Revitalization (2008).

Mallach, Alan, Neighborhoods Now, *Building a Better Philadelphia: Strategies for Sustainable Revitalization* (2006).

Mallach, Alan, Bringing Buildings Back: From Abandoned Properties to Community Assets (2006).

Mallach, Alan, Housing & Community Dev. Network of N.J., Restoring Problem Properties: A Guide to New Jersey's Abandoned Property Tools (2005).

Mallach, Alan, Nat'l Housing Inst., Building a Better Urban Future: New Directions for Housing Policies in Weak Market Cities (2005).

Mallach, Alan with Diane Sterner, Housing & Community Dev. Network of N.J., *New Jersey and Its Cities: An Agenda for Urban Transformation* (2008).

Mallach, Alan with Diane Sterner & Amanda Frazier, Housing & Community Dev. Network of N.J., Cities in Transition: New Jersey's Urban Paradox (2006).

Martin, Benton C., *Vacant Property Registration Ordinances*, 39 Real Est. L.J. 6 (2010).

Medoff, Peter & Holly Sklar, Streets of Hope: The Fall and Rise of an Urban Neighborhood (1994).

Meligrana, John, Univ. of Mo.-St. Louis Pub. Policy Research Ctr., Research Paper 1, *Downtown Revitalization: Research Trends and Findings* (Jan. 2001).

Metzger, John T., Planned Abandonment: *The Neighborhood Life-Cycle Theory and National Urban Policy*, 11 Housing Pol. Debate 7 (2000).

Milwaukee Dep't of City Dev., Div. of Econ. Dev., *The Land Bank: Eight Years of Industrial Development Progress, 1964–1971* (1972).

Mueller, Lisa, Atlanta Case Study: Model Practices in Tax Foreclosure and Property Disposition (2003).

Nachbaur, William T., *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 How. L.J. 3 (1971).

Neighborhood Design Ctr., *Summary of the Vacant Land Management Forum* (Dec. 15, 2000).

Nicholson, David J., *The Public Ownership of Vacant Land*, 70(1) The Planner 18 (1984).

Norris, Patricia E. & Nigel G. Griswold, Mich. State Univ. Land Policy Inst., Report #2007-05, *Economic Impacts of Residential Property Abandonment*.

Northam, Ray M., *Vacant Urban Land in the American City*, 47 Land Econ. 345 (1971).

Olson, Susan & M. Leanne Lachman, Tax Delinquency in the Inner City: The Problems and its Possible Solutions (1976).

O'Neill, Cheryl A., *Lexington Terrace and Lafayette Courts: The Making of Inner-City Neighborhoods*, 55 Urb. Land 45 (1996).

Orr, Larry L., Urban Land Research Analysts Co., Measuring the Impact of Land Bank Policies on the Urban Land Market (1968).

Pagano, Michael A. & Ann O'M. Bowman, Brookings Inst. Ctr. on Urban and Metropolitan Policy, *Vacant Land in Cities: An Urban Resource* (Dec. 2000).

Pagano, Michael A. & Ann O'M. Bowman, Cityscapes and Capital: The Politics of Urban Development (1995).

Pagano, Michael A. & Richard T. Moore, Cities and Fiscal Choices: A New Model of Urban Political Investment (1985).

Pastel, Stacey Janeda, *Community Land Trusts: A Promising Alternative for Affordable Housing*, 6 J. Land Use & Envtl. L. 293 (1991).

Pa. Low-Income Housing Coal., *Beyond Blight: Vacant Properties, Redevelopment and the Commonwealth of Pennsylvania* (1997).

Phila. City Planning Comm'n, Pennsylvania Horticultural Society, *Vacant Land in Philadelphia: A Report on Vacant Land Management and Neighborhood Restructuring* (June 1995).

Phila. Inquirer, *Cleveland Revives Blighted Neighborhoods by Easing Bureaucracy on Vacant Land* (Dec. 3, 2001).

Pratt, Stuart, *A Proposal for Land Bank Legislation in North Carolina*, 89 N.C. L. Rev. 568 (2011).

Robertson, Kent, University of Mo.-St. Louis Pub. Policy Research Ctr., Policy Brief 8, *Downtown Development: Key Trends & Practices* (June 2001).

Rosan, Christina, Fannie Mae Found., *Cleveland's Land Bank: Catalyzing a Renaissance in Affordable Housing*, 3 Housing Facts & Findings, Issue 1 (2001).

Rusk, David, Inside Game/Outside Game: Winning Strategies for Saving Urban America (1999).

Rusk, David, Cities Without Suburbs (1995).

Salsich, Peter W., Jr., *Evolving Voices in Land Use Law: Neighborhoods: Grassroots Consensus Building and Collaborative Planning*, 3 Wash. U. J.L. & Pol'y 709 (2000).

Salsich, Peter W., Jr., *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 Stetson L. Rev. 577 (1999).

Salsich, Peter W., Jr. *Solutions to the Affordable Housing Crisis: Perspectives on Privatization*, 28 J. Marshall L. Rev. 263 (1995).

Salsich, Peter W., Jr., *Nonprofit Housing Organizations*, 4 Notre Dame J.L. Ethics & Pub. Pol'y 227 (1989).

Samsa, Matthew J., Note, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 Clev. St. L. Rev. 189, 196 (2008).

Sanger, John, Urban Land Research Analysts Corp., *Land Banks for Planning and Control: Some General Principles and a Specific Application* (Dec. 1967).

Schill, Michael H., *Assessing the Role of Community Development Corporations in Inner City Economic Development*, 22 Rev. L. & Soc. Change 753 (1996–1997).

Schilling, J. M., Int'l City/County Mgmt Ass'n, *The Revitalization of Vacant Properties: Where Broken Windows Meet Smart Growth* (2002).

Schilling, Joseph, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 Alb. Gov't L. Rev. 101 (2009).

Schilling, Joseph, Nuisance Abatement of Vacant Properties: Innovative Uses of Civil Receivership 1 (2006).

Schilling, Joseph, Fannie Mae Found., *Snapshots of Innovative Vacant Property Strategies* (2006).

Schilling, Joseph M. & James B. Hare, Code Enforcement: A Comprehensive Approach 20 (1994).

Schukoske, Jane E., *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. Legis. & Pub. Pol'y 351 (2000).

Scott, William R., *Marketability of Tax Titles in Missouri*, 20 U. of Kan. City L.R. 153 (1951–52).

Sherriff, Ryan, *Shared Equity Homeownership State Policy Review*, 19 J. Affordable Housing & Community Dev. L. 279 (2010).

Simons, Robert A., The Urban Ctr., Maxine Goodman Levin Coll. of Urban Affairs, Cleveland State Univ., *A National Case Study of the Economic and Fiscal Impacts of Housing Rehabilitation on the Local Economy* (Aug. 9, 2000).

Simons, Robert A. & David S. Sharkey, *Jump-Starting Cleveland's New Urban Housing Markets: Do the Potential Fiscal Benefits Justify the Public Subsidy Costs?*, 8 Housing Pol'y Debate 143 (1997).

Simons, Robert & Dean Thomas Hall, The Urban Ctr., Maxine Goodman Levin Coll. of Urban Affairs, Cleveland State Univ., *Strategies for More Efficient Utilization of Non-Productive Land* (1993).

Spelman, William, *Abandoned Buildings: Magnets for Crime?*, 21 J. Crim. Just. 481–495 (1993).

Sternlieb, George & Robert Burchell, *Residential Property Tax Delinquency: A Forerunner of Residential Abandonment,* 1 Real Est. L.J. 256 (1972–73).

Stevens, Sally L., *Low Income Co-Ops: A Solution to Abandonment*, 17 N.Y. L. Forum 148 (1971).

Suchman, Diane, *Homan Square: Rebuilding the Inner City*, 55 Urb. Land 41 (1996).

The Urban Center, Maxine Goodman Levin Coll. of Urban Affairs, Cleveland State Univ., *Abandonment of Cleveland's Housing Stock and Potential for Redevelopment of Vacant Land* (June 11, 1990).

Univ. of Pa., *Vacant Land: A Resource for Reshaping Urban Neighborhoods* (1997), *available at* http://web.mit.edu/spirn/www/newfront/book/pdf/vacant_land.pdf.

U.S. Dep't of Housing & Urban Dev., Revitalizing Foreclosed Properties with Land Banks (2009).

Van Alstyne, Carol, ed., Piedmont Triad Council of Gov'ts, Land Bank Handbook: Advance Acquisition of Sites for Low and Moderate Income Housing (Sept. 1972).

Weinstein, Alan C., *Current and Future Challenges to Local Government Posed by the Housing and Credit Crisis*, 2 Alb. Gov't L. Rev. 259 (2009).

Zielenbach, Sean, The Art of Revitalization: Improving Conditions in Distressed Inner-City Neighborhoods (2000).

APPENDIX A

LAND BANKS AROUND THE COUNTRY

State and Land Bank Contact Information

This appendix sets forth contact information for all known land banks and land banking programs in the United States as of March 2011.

ALABAMA

ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS

Alabama Land Bank Authority
P.O. Box 5690
Montgomery, AL 36103-5690

334-242-5100

ALASKA

ANCHORAGE/HERITAGE LAND BANK

MOA Permit Center Building
2nd Floor
4700 Elmore Rd.
Anchorage, AK 99507

907-343-7533

www.muni.org/departments/hlb/pages/default.aspx

ARKANSAS

CITY OF LITTLE ROCK LAND BANK COMMISSION

Housing and Neighborhood Programs Department
Little Rock City Hall
500 W. Markham St. Room 120W
Little Rock, AR 72201

501-371-4848

www.littlerock.org/citycommissions/Detail.aspx?ID=37

CALIFORNIA

CALIFORNIA STATE LANDS COMMISSION

100 Howe Ave.
Suite 100 S.
Sacramento, CA 95825-8202

916-574-1900

http://www.slc.ca.gov/Division_Pages/LMD/LMD_Home_Page.html

GEORGIA

ATHENS-CLARKE COUNTY LAND BANK AUTHORITY

P.O. Box 1868
301 College Ave.
Athens, GA 30603

706-613-3031

AUGUSTA, GEORGIA LAND BANK AUTHORITY

925 Laney Walker Blvd.
3rd Floor
Augusta, GA 30901

706-849-3737

www.augustaga.gov/index.aspx?nid=1338

CHATHAM COUNTY/CITY OF SAVANNAH LAND BANK AUTHORITY

6 E. Bay St.
Savannah, GA 31405

912-525-3100

www.savannahga.gov/cityweb/pubdev.nsf/122bc2983bf4b444852576400064861 0/5550004d16f7762385257640006572 08?OpenDocument

FULTON COUNTY/CITY OF ATLANTA LAND BANK AUTHORITY

34 Peachtree St.
Suite 1900
Atlanta, GA 30303-5013

404-535-9336

www.fccalandbank.org

GRIFFIN-SPALDING COUNTY LAND BANK AUTHORITY

406 N. Hill St.
Griffin, GA 30223

678-688-8124

MACON-BIBB COUNTY LAND BANK AUTHORITY, INC.

Macon Housing Authority
2015 Felton Ave.
P.O. Box 4928
Macon, GA 31208

912-752-5060

ROME-FLOYD LAND BANK AUTHORITY

Floyd County Government
12 E. 4th Ave.
Rome, GA 30161

706-236-4400

www.romefloyd.com/Infrastructure/LandBankAuthority/tabid/300/Default.aspx

STATESBORO-BULLOCH COUNTY LAND BANK AUTHORITY

City of Statesboro
P.O. Box. 348
50 E. Main St.
Statesboro, GA 30459

912-764-0683

VALDOSTA-LOWNDES COUNTY LAND BANK AUTHORITY

City of Valdosta
P.O. Box 1125
Valdosta, GA 31603

229-259-3571

INDIANA

ALLEN COUNTY LAND BANK

Allen County Office
417 S. Calhoun St.
Fort Wayne, IN 46802-1215

INDY LAND BANK

2042 City County Building
200 E. Washington St.
Indianapolis, IN 46204

317-327-5614

www.indylandbank.com/index.shtml

MUNCIE LAND BANK

City of Muncie
Office of Community Development
City Hall, 3rd Floor.
Muncie, IN 47305

765-747-4825

ELKHART LAND BANK

Community & Redevelopment Department
229 S. Second St.
Elkhart, IN 46516

574-294-5471

KANSAS

WYANDOTTE COUNTY – KANSAS CITY, KS LAND BANK

710 N. 7th St.
2nd Floor
Kansas City, KS 66101

913-573-8977

www.wycokck.org/Dept.aspx?id=7206&menu_id=1394&banner=15284

ARKANSAS CITY LAND BANK

Arkansas City City Office
118 W. Central Ave.
Arkansas City, KS 67005-2643

620-441-4400

www.arkcity.org/index.aspx?NID=1054

OLATHE LAND BANK

City of Olathe
P.O. 768
Olathe, KS 66051-0768

913-971-8732

OVERLAND PARK LAND BANK

8500 Santa Fe Dr.
Overland Park, KS 66212

913-895-6101

www.opkansas.org/Boards-and-Commissions/Detail/Boards-and-Commissions/Land-Bank-Board-of-Trustees

KENTUCKY

LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.

Louisville Metro Housing and Community Development Division
745 W. Main St.
Suite 300
Louisville, KY 40202

502-574-3107

www.louisvilleky.gov/Housing/Landbank+Authority+Inc.htm

LOUISIANA

EAST BATON ROUGE REDEVELOPMENT AUTHORITY

801 North Blvd.
Suite 200
Baton Rouge, LA 70802

225-387-5606

www.ebrra.org

LAFAYETTE LAND REVITALIZATION AUTHORITY

P.O. Box 51308
Lafayette, LA 70508

337-257-2689

www.llra.org

MAINE

PORTLAND, MAINE LAND BANK

Department of Public Services
55 Portland St.
Portland, ME 04101

207-874-8793

www.portlandmaine.gov/landbank/landbank.asp

MARYLAND

HOUSING AUTHORITY OF BALTIMORE CITY

Land Resources Division
417 E. Fayette St.
Suite 1339
Baltimore, MD 21202

401-396-3237

www.baltimorehousing.org/land_resources

MICHIGAN

For links to all Michigan county land banks, see list at: http://michigan.gov/dleg/0,1607,7-154-34176_44777—,00.html

ARENAC COUNTY LAND BANK

120 N. Grove St.
Suite 102
P.O. Box 637
Standish, MI 48658

989-846-4106

BENZIE COUNTY LAND BANK

448 Court Pl.
Beulah, MI 49617-0377

231-882-9671

BAY COUNTY LAND BANK

515 Center Ave.
Suite 103
Bay City, MI 48708

BERRIEN COUNTY LAND BANK

701 Main St.
St. Joseph, MI 49085

269-982-8645

CALHOUN COUNTY LAND BANK

315 W. Green St.
Marshall, MI 49068

269-781-0809

CASS COUNTY LAND BANK

120 N. Broadway St.
Cassopolis, MI 49031

269-445-4421

CHARLEVOIX COUNTY LAND BANK

301 State St., #3
Charlevoix, MI 49720

CLARE COUNTY LAND BANK

226 W. Main St.
P.O. Box 564
Harrison, MI 48625

DELTA COUNTY LAND BANK

Delta County Complex
310 Ludington St.
Escanaba, MI 49829

DETROIT LAND BANK AUTHORITY

65 Cadillac Square
Suite 3200
Detroit, MI 48219

EMMET COUNTY LAND BANK

200 Division St.
Suite 170
Petoskey, MI 49770

GENESEE COUNTY LAND BANK

452 S. Saginaw St.
2nd Floor
Flint, MI 48502

810-257-3088 x521

www.thelandbank.org

GLADWIN COUNTY LAND BANK

Gladwin County Building
401 W. Cedar Ave.
Gladwin, MI 48624

989-426-7251

GOGEBIC COUNTY LAND BANK

Gogebic County Building
200 N. Moore St.
Bessemer, MI 49911

GRAND TRAVERSE COUNTY LAND BANK

400 Boardman Ave.
Traverse City, MI 49684

231-922-4740

HOUGHTON COUNTY LAND BANK

401 E. Houghton Ave.
Houghton, MI 49931

INGHAM COUNTY LAND BANK

County of Ingham Building
422 Adams St.
Lansing, MI 48906

517-267-5221

www.inghamlandbank.org

IONIA COUNTY LAND BANK

100 Main St.
Suite 121
Ionia, MI 48846

JACKSON COUNTY LAND BANK

Jackson County Building
120 W. Michigan Ave.
Jackson, MI 49201

517-768-6728

KALAMAZOO COUNTY LAND BANK

Kalamazoo County Treasurer's Department
201 W. Kalamazoo Ave.
Room 104
Kalamazoo, MI 49007

KENT COUNTY LAND BANK

Kent County Administrative Building
300 Monroe Ave. NW
Grand Rapids, MI 49503

LAKE COUNTY LAND BANK

Lake County Building
800 10th St., #210
Baldwin, MI 49304

LAPEER COUNTY LAND BANK

255 Clay St.
Suite 303
Lapeer, MI 48446

810-667-0239

LEELANAU COUNTY LAND BANK

8527 E. Government Center Dr.
Suite 104
Suttons Bay, MI 49682

231-256-9838

LENAWEE COUNTY LAND BANK

5285 W. US-223
Suite A
Adrian, MI 49221

MARQUETTE COUNTY LAND BANK

Marquette County Building
234 W. Baraga Ave.
Marquette, MI 49855

MUSKEGON COUNTY LAND BANK

173 E. Apple Ave.
Suite 104
Muskegon, MI 49442

231-724-6217

www.muskegonlandbank.org

OCEANA COUNTY LAND BANK

Attn: Ocean County Treasurer
P.O. Box 227
Hart, MI 49420

OGEMAW COUNTY LAND BANK

806 W. Houghton Ave.
West Branch, MI 48661

989-345-0084

OTTAWA COUNTY LAND BANK

County Treasurer
12220 Fillmore
P.O. Box 310
West Olive, MI 49460

SAGINAW COUNTY LAND BANK

111 S. Michigan Av.
Saginaw, MI 48602

989-980-1336

SANILAC COUNTY LAND BANK

60 W. Sanilac Ave.
Sandusky, MI 48471

810-648-2127

ST. CLAIR LAND BANK

County Treasurer
200 Grand River Ave.
Suite 101
Port Huron, MI 48060

VAN BUREN COUNTY LAND BANK

County Treasurer
219 E. Paw Paw
Suite 101
Paw Paw, MI 49079

WASHTENAW COUNTY LAND BANK

200 N. Main St.
Suite 200
P.O. Box 8645
Ann Arbor, MI 48107

WAYNE COUNTY LAND BANK CORPORATION

International Center Building
400 Monroe St.
Detroit, MI 48226

313-224-6673

MINNESOTA

TWIN CITIES COMMUNITY LAND BANK

615 1st Ave. NE
Suite 410
Minneapolis, MN 55413

612-238-8210

www.tcclandbank.org

MISSISSIPPI

CITY OF JACKSON LAND BANK PROPERTY PROGRAM

Office of Housing and Community Development
200 S. President St.
Room 331
Jackson, MS 39201

601-960-2155

www.jacksonms.gov/government/planning/landbank

MISSOURI

ST. LOUIS LAND REUTILIZATION AUTHORITY

St. Louis Development Corporation
1015 Locust St.
Suite 1200
St. Louis, MO 63101

314-622-3400

http://stlouis.missouri.org/sldc/lra.html

LAND TRUST OF JACKSON COUNTY

16th Floor, City Hall
414 E. 12th St.
Kansas City, MO 64106

816-513-2894

www.jacksoncountylandtrust.org

MONTANA

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Trust Land Management Division
1625 Eleventh Ave.
Helena, MT 59620

http://dnrc.mt.gov/trust/land_banking/about.asp

NEBRASKA

LAND REUTILIZATION COMMISSION

1819 Farnam St.
Suite 910
Omaha, NE 68183

402-444-7913

www.lrcnebraska.com

OHIO

CLEVELAND LAND BANK PROGRAM

Department of Community Development
Room 325, Cleveland City Hall
601 Lakeside Ave.
Cleveland, OH 44114-1070

216-664-4127

www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/CommunityDevelopment/LandBank

CUYAHOGA COUNTY LAND REUTILIZATION CORPORATION

Suite 160
323 W. Lakeside
Cleveland, OH 44113

216-698-8853

www.cuyahogalandbank.org

CITY OF WARREN LAND BANK PROGRAM

Warren Community Development Department
418 Main Ave. SW
Suite 201
Warren, OH 44481

330-841-2595

www.warren.org/CD_LandBank.htm

LUCAS COUNTY LAND REUTILIZATION CORPORATION

One Government Center
Suite 500
Toledo, OH 43604

http://LucasCountyLandBank.org

COLUMBUS LAND BANK PROGRAM

Land Redevelopment Office
Department of Development
109 N. Front St.
Columbus, OH 43215

614-645-5263

http://development.columbus.gov/landredevelopment/content.aspx?id=16560

LIMA LAND ACQUISITION & NEIGHBORHOOD DEVELOPMENT BANK

Department of Community Development
50 Town Square
Lima, OH 45801

419-221-5146

OREGON

CITY OF EUGENE

Community Development Division
777 Pearl St.
Eugene, OR 97401

541-682-5529

RHODE ISLAND

RHODE ISLAND HOUSING LAND BANK

44 Washington St.
Providence, RI 02903

401-457-1288

www.rhodeislandhousing.org/sp.cfm?pageid=551

TENNESSEE

SHELBY COUNTY LAND BANK

Attn: Manager of County Land Bank
584 Adams Ave.
Memphis, TN 38103

901-545-4900

www.shelbycountytn.gov/index.aspx?nid=407

TEXAS

CITY OF DALLAS URBAN LAND BANK DEMONSTRATION PROGRAM

Housing Department
1500 Marilla St.
Room 6DN
Dallas, TX 75201

214-670-7315

www.dallascityhall.com/housing/land_acquisition.html

WEST VIRGINIA

HUNTINGTON LAND BANK FAST TRACK AUTHORITY

Huntington Urban Renewal Authority
800 5th Ave.
Huntington, WV 25701

www.cityofhuntington.com/pages/gov-boards-URA.html

APPENDIX B

STATUTORY REFERENCES

State and Statutory Citation

This appendix sets forth citations to all known state statutes pertaining to land banks as of March 2011.

ALABAMA
Ala. Code §§ 24-9-1 to 24-9-9

ALASKA
Alaska Stat. §§ 29.65.010-29.65.130; Anchorage, Alaska, Mun. Code §§ 25.40.010-25.40.045

CALIFORNIA
Cal. Pub. Res. Code §§ 8601-8633

GEORGIA
Ga. Code Ann. §§ 48-4-60 to 48-4-65

INDIANA
Ind. Code §§ 36-7-15.1-1 to 36-7-15.1-58

KANSAS
Kan. Stat. Ann. §§ 12-5901 to 12-5911

KENTUCKY
Ky. Rev. Stat. Ann. §§ 65.350-65.375

LOUISIANA
La. Rev. Stat. Ann. §§ 19:1-19:355

MARYLAND
Md. Ann. Code art. 23A, §§ 52-82

MICHIGAN
Mich. Comp. Laws §§ 124.751-124.774

MISSOURI
Mo. Rev. Stat. §§ 92.700-92.920

MONTANA
Mont. Code. Ann. §§ 77-2-361 to 77-2-367

NEBRASKA
Neb. Rev. Stat. §§ 77-3201 to 77-3213

OHIO
Ohio Rev. Code Ann. §§ 5722.01-5722.22

TEXAS
Tex. Loc. Gov't Code Ann. §§ 379C.001-379C.013, 379D.001-379D.015, 379E.001-379E.013

APPENDIX C

TEMPLATE FOR LAND BANK LEGISLATION

This template for state land bank legislation forms the basis for the "third generation" of land bank statutes. The basic conceptual points in this legislation are drawn from the practices and experiences of the first and second generations of land bank statutes. Virtually every conceptual or doctrinal point can be found in the Michigan Land Bank Fast Track Authority statute, and related legislation, or the Ohio land banking legislation of 2008 and 2010. The goal of this template, as third-generation legislation, is to bring together in a single legislative act all of the core land bank concepts and doctrines in a manner that can be most easily adapted for other states. As with any generic set of legal documents, it is not appropriate simply to copy them, or cut and paste portions of them, for adoption in any given jurisdiction. Designing the appropriate policies and procedures for a particular jurisdiction must be done in light of the precise language of the applicable state constitution, all other existing state statutes and the appropriate form for legislative initiatives. This template should be viewed as only an example of one approach that has been taken with respect to the topic.

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

Section 1. Short Title

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

Section 2. Legislative Findings and Purpose

The legislature finds and declares as follows:

a. *State's* communities are important to the social and economic vitality of the state. Whether urban, suburban or rural, many communities are struggling to cope with vacant, abandoned and tax-delinquent properties.

b. There exists a crisis in many cities and their metro areas caused by disinvestment in real property and resulting in a significant amount of vacant and abandoned property. For example, *[can include state-specific statistics regarding vacant properties and the costs these properties impose on state and local governments]*. This condition of vacant and abandoned property represents lost revenue to local governments and large costs associated with demolition, safety hazards and spreading deterioration of neighborhoods including resulting mortgage foreclosures.

c. The need exists to strengthen and revitalize the economy of the state and its local units of government by solving the problems of vacant and abandoned property in a coordinated manner and to foster the development of such property and promote economic growth. Such problems may include multiple taxing jurisdictions lacking common policies, ineffective property inspection, code enforcement and property rehabilitation support, lengthy and/or inadequate foreclosure proceedings, and lack of coordination and resources to support economic revitalization.

d. There is an overriding public need to confront the problems caused by vacant, abandoned and tax-delinquent properties through the creation of new tools to be available to communities throughout *State* enabling them to turn vacant spaces into vibrant places.

e. Land banks are one of the tools that can be utilized by communities to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use.

Section 3. Definitions

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

a. "Act" shall mean this Land Bank Act.

b. "Board of Directors" or "Board" shall mean the Board of Directors of a Land Bank.

c. "Land Bank" shall mean a land bank established as *[insert type of legal entity the land bank will be]* under this chapter and in accordance with the provisions of this Act and pursuant to this Act.

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

e. "Municipality" shall mean a city, village, town, or county other than a county located wholly within a city. *[This broad definition for "municipality" can be used unless state law defines municipality differently. In that instance, the state definition should be carefully compared with the definition of the land bank specific term defined in Section 3(d) for all possible permutations given the use of the terms throughout the legislation.]*

f. "School District" shall mean a school district as defined under State law. *[The inclusion of this definition presumes that the legislative language regarding a school district's ability to participate remains. If the subsequent sections are altered, this definition may not be necessary.]*

g. "Real Property" shall mean lands, lands under water, structures and any and all easements, air rights, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise, and any and all fixtures and improvements located thereon.

Section 4. Creation and Existence

a. Any foreclosing governmental unit may elect to create a Land Bank by the adoption of an ordinance, rule or resolution as appropriate to such foreclosing governmental unit which action specifies the following:

   1. The name of the Land Bank.

   2. The number of members of the Board of Directors, which shall consist of an odd number of members, and shall be not less than five members nor more than eleven members.

   3. The initial individuals to serve as members of the Board of Directors, and the length of terms for which they are to serve.

   4. The qualifications, manner of selection or appointment, and terms of office of members of the Board.

b. Two or more foreclosing governmental units may elect to enter into an intergovernmental cooperation agreement that creates a single Land Bank to act on behalf of such foreclosing governmental units, which agreement shall be authorized by and be in accordance with the provisions of Section 4(a) of this Act.

c. Any foreclosing governmental units and any municipality may elect to enter into an intergovernmental cooperation agreement that creates a single Land Bank to act on behalf of such foreclosing governmental unit or units and municipality, which agreement shall be authorized by and be in accordance with the provisions of Section 4(a) of this Act.

d. Except when a Land Bank is created pursuant to Section 4(b) or (c) of this Act, in the event a county creates a Land Bank, such Land Bank shall have the power to acquire real property only in those portions of such county located outside of the geographical boundaries of any other Land Bank created by any other foreclosing governmental unit located partially or entirely within such county.

e. A school district may participate in a Land Bank pursuant to an intergovernmental cooperation agreement with the foreclosing governmental unit or units that create the Land Bank, which agreement shall specify the membership, if any, of such school district on the Board of Directors of the Land Bank, or the actions of the Land Bank that are subject to approval by the school district.

f. Each Land Bank created pursuant to this Act shall be *[insert type of legal entity the land bank will be]* in accordance with State law, and shall have permanent and perpetual duration until terminated and dissolved in accordance with the provisions of Section 14 of this Act.

Section 5. Applicability of State Law

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

Section 6. Board of Directors

a. The initial size of the Board shall be determined in accordance with Section 4 of this Act. Unless restricted by the actions or agreements specified in Section 4 of this Act, and subject to the limits set forth in this Section, the size of the Board may be adjusted in accordance with bylaws of the Land Bank.

b. In the event that a Land Bank is created pursuant to an intergovernmental agreement in accordance with Section 4 of this Act, such intergovernmental cooperation agreement shall specify matters identified in Section 4(a) of this Act.

c. Notwithstanding any law to the contrary, any public officer shall be eligible to serve as a Board member and the acceptance of the appointment shall neither terminate nor impair such public office. For purposes of this section, "public officer" shall mean a person who is elected to a municipal office. Any municipal employee shall be eligible to serve as a Board member.

d. The members of the Board of Directors shall select annually from among themselves a chairman, a vice chairman, a treasurer, and such other officers as the Board may determine, and shall establish their duties as may be regulated by rules adopted by the Board.

e. The Board shall establish rules and requirements relative to the attendance and participation of members in its meetings, regular or special. Such rules and regulations may prescribe a procedure whereby, should any member fail to comply with such rules and regulations, such member may be disqualified and removed automatically from office by no less than a majority vote of the remaining members of the Board, and that member's position shall be vacant as of the first day of the next calendar month. Any person removed under the provisions of this subsection shall be ineligible for reappointment to the Board, unless such reappointment is confirmed unanimously by the Board.

f. A vacancy on the Board shall be filled in the same manner as the original appointment.

g. Board members shall serve without compensation, shall have the power to organize and reorganize the executive, administrative, clerical, and other departments of the Land Bank and to fix the duties, powers and compensation of all employees, agents and consultants of the Land Bank. The Board may reimburse any member for expenses actually incurred in the performance of duties on behalf of the Land Bank.

h. The Board shall meet in regular session according to a schedule adopted by the Board, and also shall meet in special session as convened by the chairman or upon written notice signed by a majority of the members. The presence of a majority of the Board total membership shall constitute a quorum.

i. All actions of the Board shall be approved by the affirmative vote of a majority of the members of that Board present and voting. However, no action of the Board shall be authorized on the following matters unless approved by a majority of the total Board membership:

   1. Adoption of bylaws and other rules and regulations for conduct of the Land Bank's business. A majority of the members of the Board, not including vacancies, shall constitute a quorum for the conduct of business.

   2. Hiring or firing of any employee or contractor of the Land Bank. This function may, by majority vote, be delegated by the Board to a specified officer or committee of the Land Bank, under such terms and conditions, and to the extent, that the Board may specify.

   3. The incurring of debt.

   4. Adoption or amendment of the annual budget.

   5. Sale, lease, encumbrance, or alienation of real property, improvements or personal property with a value of more than $50,000.

j. Members of a Board shall not be liable personally on the bonds or other obligations of the Land Bank, and the rights of creditors shall be solely against such Land Bank.

k. Vote by proxy shall not be permitted. Any member may request a recorded vote on any resolution or action of the Land Bank.

Section 7. Staff

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

Section 8. Powers

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

a. Adopt, amend and repeal bylaws for the regulation of its affairs and the conduct of its business.

b. Sue and be sued in its own name and plead and be impleaded in all civil actions, including, but not limited to, actions to clear title to property of the Land Bank.

c. To adopt a seal and to alter the same at pleasure.

d. To borrow from private lenders, from municipalities, from the *State*, or from federal government funds, as may be necessary, for the operation and work of the Land Bank.

e. To issue negotiable revenue bonds and notes according to the provisions of this Act.

f. To procure insurance or guarantees from the *State* or federal government of the payments of any debts or parts thereof incurred by the Land Bank, and to pay premiums in connection therewith.

g. To enter into contracts and other instruments necessary, incidental or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental agreements under *[reference the section of State law that permits intergovernmental cooperation agreements]* for the joint exercise of powers under this Act.

h. To enter into contracts and other instruments necessary, incidental or convenient to the performance of functions by the Land Bank on behalf of municipalities or agencies or departments of municipalities, or the performance by municipalities or agencies or departments of municipalities of functions on behalf of the Land Bank.

i. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Land Bank.

j. To procure insurance against losses in connection with the real property, assets or activities of the Land Bank.

k. To invest money of the Land Bank, at the discretion of the Board of Directors, in instruments, obligations, securities, or property determined proper by the Board of Directors, and name and use depositories for its money.

l. To enter into contracts for the management of, the collection of rent from or the sale of real property of the Land Bank.

m. To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property.

n. To fix, charge and collect rents, fees and charges for the use of real property of the Land Bank and for services provided by the Land Bank.

o. To grant or acquire a license, easement, lease (as lessor and as lessee), or option with respect to real property of the Land Bank.

p. To enter into partnership, joint ventures and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property.

q. To do all other things necessary or convenient to achieve the objectives and purposes of the Land Bank or other laws that relate to the purposes and responsibility of the Land Bank.

r. A Land Bank shall neither possess nor exercise the power of eminent domain.

Section 9. Acquisition of Property

a. The real property of a Land Bank and its income and operations are exempt from all taxation by the State and by any of its political subdivisions.

b. The Land Bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the Land Bank considers proper.

c. The Land Bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, land contacts, and may accept transfers from municipalities upon such terms and conditions as agreed to by the Land Bank and the municipality. Notwithstanding any other law to the contrary, any municipality may transfer to the Land Bank real property and interests in real property of the municipality on such terms and conditions and according to such procedures as determined by the municipality.

d. The Land Bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

e. The Land Bank shall not own or hold real property located outside the jurisdictional boundaries of the foreclosing governmental unit or units that created the Land Bank; provided, however, that a Land Bank may be granted authority pursuant to an intergovernmental cooperation agreement with another municipality to manage and maintain real property located within the jurisdiction of such other municipality.

f. Notwithstanding any other provision of law to the contrary, any municipality may convey to a Land Bank real property and interests in real property on such terms and conditions, and according to such procedures, as determined by the transferring municipality.

Section 10. Disposition of Property

a. The Land Bank shall hold in its own name all real property acquired by the Land Bank irrespective of the identity of the transferor of such property.

b. The Land Bank shall maintain and make available for public review and inspection an inventory of all real property held by the Land Bank.

c. The Land Bank shall determine and set forth in policies and procedures of the Board of Directors the general terms and conditions for consideration to be received by the Land Bank for the transfer of real property and interests in real property, which consideration may take the form of monetary payments and secured financial obligations, covenants and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the Board of Directors to be in the best interest of the Land Bank.

d. The Land Bank may convey, exchange, sell, transfer, lease as lessee, grant, release and demise, pledge and hypothecate any and all interests in, upon or to real property of the Land Bank.

e. A foreclosing governmental unit may, in its resolution or ordinance creating a Land Bank, or, in the case of multiple foreclosing governmental units creating a single Land Bank in the applicable intergovernmental cooperation agreement, establish a hierarchical ranking of priorities for the use of real property conveyed by a Land Bank including but not limited to (1) use for purely public spaces and places, (2) use for affordable housing, (3) use for retail, commercial and industrial activities, or (4) use as wildlife conservation areas, and such other uses and in such hierarchical order as determined by the foreclosing governmental unit or units.

f. A foreclosing governmental unit may, in its resolution or ordinance creating a Land Bank, or, in the case of multiple foreclosing governmental units creating a single Land Bank in the applicable intergovernmental cooperation agreement, require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the Board of Directors. Except and unless restricted or constrained in this manner, the Board of Directors may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of real property by the Land Bank.

Section 11. Financing of Land Bank Operations

a. A Land Bank may receive funding through grants and loans from the foreclosing governmental unit or units that created the Land Bank, from other municipalities, from *State*, from the federal government, and from other public and private sources.

b. A Land Bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a Land Bank under this Act.

c. Fifty percent of the real property taxes collected on real property conveyed by a Land Bank pursuant to the laws of State shall be remitted to the Land Bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. *[In order to make this subsection permissive, rather than mandatory, the language must be changed from "shall" to "may". For a discussion on why this change may be necessary, but is not entirely desirable, see Chapter 7-C.]*

Section 12. Borrowing and Issuance of Bonds

a. A Land Bank shall have the power to issue bonds for any of its corporate purposes, the principal and interest of which are payable from its revenues generally. Any of such bonds may be secured by a pledge of any revenues, including grants or contributions from the *State,* the federal government or any agency, and instrumentality thereof, or by a mortgage of any property of the Land Bank.

b. The bonds issued by a Land Bank are hereby declared to have all the qualities of negotiable instruments under the law merchant and the negotiable instruments law of the State.

c. The bonds of a Land Bank created under the provisions of this Act and the income therefrom shall at all times be free from taxation for the State or local purposes under any provision of State law.

d. Bonds issued by the Land Bank shall be authorized by resolution of the Board and shall be limited obligations of the Land Bank; the principal and interest, costs of issuance and other costs incidental thereto shall be payable solely from the income and revenue derived from the sale, lease or other disposition of the assets of the Land Bank. In the discretion of the Land Bank, the bonds may be additionally secured by mortgage or other security device covering all or part of the project from which the revenues so pledged may be derived. Any refunding bonds issued shall be payable from any source described above or from the investment of any of the proceeds of the refunding bonds, and shall not constitute an indebtedness or pledge of the general credit of any foreclosing governmental unit or municipality within the meaning of any constitutional or statutory limitation of indebtedness and shall contain a recital to that effect. Bonds of the Land Bank shall be issued in such form, shall be in such denominations, shall bear interest, shall mature in such manner, and shall be executed by one or more members of the Board as provided in the resolution authorizing the issuance thereof. Such bonds may be subject to redemption at the option of and in the manner determined by the Board in the resolution authorizing the issuance thereof.

e. Any municipality may elect to guarantee, insure or otherwise become primarily or secondarily obligated on the indebtedness of the Land Bank subject, however, to all other provisions of *State* law applicable to municipal indebtedness.

f. Bonds issued by the Land Bank shall be issued, sold and delivered in accordance with the terms and provisions of a resolution adopted by the Board. The Board may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be in the best interests of the Land Bank. The resolution issuing bonds shall be published in a newspaper of general circulation within the jurisdiction of the Land Bank.

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

Section 13. Public Records and Public Meetings

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

Section 14. Dissolution of Land Bank

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

Section 15. Conflicts of Interest

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

Section 16. Construction, Intent and Scope of Act

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

Section 17. Delinquent Property Tax Enforcement

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

Section 18. Expedited Quiet Title Proceedings

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

a. A Land Bank shall be authorized to file an action to quiet title as to any real property in which the Land Bank has an interest. For purposes of any and all such actions, the Land Bank shall be deemed to be the holder of sufficient legal and equitable interests, and possessory rights, so as to qualify the Land Bank as adequate complainant in such action.

b. Prior to the filing of an action to quiet title, the Land Bank shall conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to all such interested parties by the following methods:

   1. Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records;

   2. In the case of occupied real property by registered or certified mail, addressed to "Occupant";

   3. By posting a copy of the notice on the real property;

   4. By publication in a newspaper of general circulation in the municipality in which the property is located; and

   5. Such other methods as the Court may order.

c. As part of the complaint to quiet title, the Land Bank shall file an affidavit identifying all parties potentially having an interest in the real property, and the form of notice provided.

d. The Court shall schedule a hearing on the complaint within ninety (90) days following filing of the complaint, and as to all matters upon which an answer was not filed by an interested party, the court shall issue its final judgment within one hundred twenty (120) days of the filing of the complaint.

e. A Land Bank shall be authorized to join in a single complaint to quiet title one or more parcels of real property.

Section 19. Effective Date

This Act shall take effect immediately.

APPENDIX D

SAMPLE ADMINISTRATIVE POLICIES

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

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

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

Section 1. Role as a Public Authority

1.1 **Public Authority.** The LBA is a public entity authorized by state law and created pursuant to an agreement between _____ and the _____. It is governed by a Board of Directors appointed by _____ and by _____. Advisory Board members are appointed by _____ and by _____.

1.2 **Governing Authority.** The core governing documents of the LBA are the applicable state law, the _____, the Articles of Incorporation, and the Bylaws.

1.3 **Purposes.** The LBA is established to acquire the tax-delinquent properties, surplus properties of the local governments, and other properties in order to foster the public purpose of returning land which is in a nonrevenue-generating, nontax-producing status to an effective utilization status in order to provide housing, new industry, and jobs for the citizens of the county.

Section 2. Priorities for Property Use

2.1 **Governmental Use.** As a governmental entity created by _____ and _____, the first priority use of real property of the LBA is to make available its properties to the local governments for public use and ownership as determined by the local governments.

2.2 **Affordable Housing.** The first use of real property of the LBA for nongovernmental purposes is the production or rehabilitation of housing for persons with low or moderate incomes. On an annual basis the Board of Directors establishes the applicable definitions of "low income" and "moderate income."

2.3 **Other Purposes.** When there is no governmental purpose or use for a property, and there is no feasible use of the property for affordable housing, the LBA may consider permitting the property to be used for other community improvement purposes. These uses should be consistent with the following priorities: neighborhood revitalization; return of the property to productive tax-paying status; land assemblage for economic development; long-term "banking" of properties for future strategic uses; and provision of financial resources for operating functions of the LBA.

2.4 **Neighborhood Consultation.** The LBA expects every applicant seeking to acquire property from the LBA to demonstrate prior consultation with neighborhood associations and non-profit entities in the geographical location of the property.

Section 3. Priorities for Identity of Transferees

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

3.2 **Transferee Qualifications.** All applicants seeking to acquire property from the LBA, or to enter into transaction agreements with the LBA, will be required to provide as part of the application such information as may be requested by the LBA, including but not limited to (a) the legal status of the applicant, its organizational and financial structure, and (b) its prior experience in developing and managing affordable housing.

3.3 **Reserved Discretion.** The LBA reserves full and complete discretion to decline applications and proposed transaction agreements from individuals and entities that meet any of the following criteria:

a. Failure to perform in prior transactions with the LBA,

b. Ownership of properties that became delinquent in ad valorem tax payments and remain delinquent in ad valorem tax payments during their ownership,

c. Parties that are barred from transactions with local government entities,

d. Parties not able to demonstrate sufficient experience and capacity to perform in accordance with the requirements of the LBA,

e. Ownership of properties that have any unremediated citation for violation of the state and local codes and ordinances,

f. Properties that have been used by the transferee or a family member of the transferee as his or her personal residence at any time during the twelve (12) months immediately preceding the submission of application (except in rental cases).

Section 4. Priorities Concerning Neighborhood and Community Development

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

Section 5. Conveyances to the LBA

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

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

a. Proposals and requests by non-profit corporations that identify specific properties for ultimate acquisition and redevelopment.

b. Proposals and requests by governmental entities that identify specific properties for ultimate use and redevelopment.

c. Residential properties that are occupied or are available for immediate occupancy without need for substantial rehabilitation.

d. Improved properties that are the subject of an existing order for demolition of the improvements and properties that meet the criteria for demolition of improvements.

e. Vacant properties that could be placed into the Side Lot Disposition Program.

f. Properties that would be in support of strategic neighborhood stabilization and revitalization plans.

g. Properties that would form a part of a land assemblage development plan.

h. Properties that will generate operating resources for the functions of the LBA.

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

5.4 **Transaction Agreements.** In all cases involving conduit transfers and land banking agreements, a transaction agreement must be approved in advance and executed by the LBA and the grantor of the property. In the case of conduit transfers, such a transaction agreement will generally be in the form of an Acquisition and Disposition Agreement prepared in accordance with these Policies. In the case of a land banking relationship, such a transaction agreement will generally be in the form of a land banking agreement prepared in accordance with these Policies. These transaction agreements shall be in form and content as deemed by the LBA to be in the best interest of the LBA, and shall include to the extent feasible specification of all documents and instruments contemplated by the transaction as well as the rights, duties and obligations of the parties.

5.5 **Title Assurance.** In all acquisitions of property by the LBA through transaction agreements, the LBA generally requires a certificate of title based upon a full title examination and, in the case of Land Banking Agreements, a policy of title insurance insuring the LBA subject to such outstanding title exceptions as are acceptable to the LBA in its sole discretion.

5.6 **Environmental Concerns.** The LBA reserves full and complete discretion to require in all transaction agreements that satisfactory evidence be provided to the LBA that the property is not subject to environmental contamination as defined by federal or state law.

Section 6. Conveyances from the LBA

6.1 **Covenants, Conditions and Restrictions.** All conveyances by the LBA to third parties shall include such covenants, conditions and restrictions as the LBA deems necessary and appropriate in its sole discretion to ensure the use, rehabilitation and redevelopment of the property in a manner consistent with the public purposes of the LBA. Such requirements may take the form of a deed creating a defeasible fee, recorded restrictive covenants, subordinate financing being held by the LBA, contractual development agreements, or any combination thereof.

6.2 **Options.** Options are available for 10% of the parcel price for up to a twelve (12)-month period. This fee will be credited to the parcel price at closing. If closing does not occur, the fee is forfeited. All option agreements are subject to all policies and procedures of the LBA pertaining to property transfers.

6.3 **Deed Without Warranty.** All conveyances from the LBA to third parties shall be by Quitclaim Deed.

Section 7. Collaboration with Not-for-Profit Entities

7.1 **Transactions with Not-for-Profit Entities.** The LBA is willing to enter into conduit transfers with not-for-profit corporate entities as outlined in this section. These not-for-profit corporate entities would secure donations of or purchase tax delinquent properties from owners, transfer these properties to the LBA for waiver of taxes, and "buy back" these properties for use in affordable housing development.

7.2 **Documentation of Lot Purchase.** The applicant must document the purchase process extensively. This documentation should include, but is not limited to, the following information per parcel:

a. The total purchase price for the property, including the net proceeds paid or payable to the seller;

b. The total amount spent to acquire the property (e.g., legal counsel, administrative costs);

c. The development costs impacting the final sale price; and

d. The total amount of delinquent ad valorem taxes (County, City, School District), special assessments, and other liens and encumbrances against the property and the length of delinquency for each.

7.3 **Maximum Costs.** The total of these costs should exceed the maximum allowable lot cost (i.e., the cost that will permit the production of low- to moderate-income housing) before the LBA may consider the waiver of back taxes in total or in part.

7.4 **LBA Discretion.** Some properties may present unusual or extenuating circumstances to the developer due to lack of funding for housing production or related costs. The LBA reserves the right to evaluate and consider these properties case-by-case.

Section 8. Collaboration with For-Profit Entities

8.1 **Transactions with For-Profit Entities.** The LBA is willing to enter into conduit transfers with for-profit corporate entities as outlined in this section. The corporate entities would secure donations of or purchase tax delinquent properties from owners, transfer these properties to the LBA for waiver of taxes, and "buy back" these properties for use in affordable housing development.

8.2 **Eligibility.** Eligibility for this option will be based on certain criteria. These shall include the geographical location of the property. The corporate entity must first identify and consult with any active non-profit entities that may have an interest in developing the property. If an interest exists, the non-profit and for-profit must forge an agreement for joint development.

8.3 **Documentation of Lot Purchase.** The applicant must document the purchase process extensively. This documentation should include, but is not limited to, the following information per parcel:

a. The total purchase price for the property, including the net proceeds paid or payable to the seller;

b. The total amount spent to acquire the property (e.g., legal counsel, administrative costs, etc.);

c. The development costs impacting the final sale price; and

d. The total amount of delinquent ad valorem taxes (County, City, School District), special assessments, and other liens and encumbrances against the property and the length of delinquency for each.

8.4 **Maximum Costs.** The total of these costs should exceed the maximum allowable lot cost (i.e., the cost that will permit the production of low- to moderate-income housing) before the LBA may consider the waiver of back taxes in total or in part.

8.5 **LBA Discretion.** Some properties may present unusual or extenuating circumstances to the developer due to lack of funding for housing production or related costs. The LBA reserves the right to evaluate and consider these properties case-by-case.

Section 9. Property for Community Improvements

9.1 **Community Improvement Property.** The LBA is willing to accept donations of property to be transferred into a non revenue-generating, non tax-producing use that is for community improvement or other public purposes. Under the provisions of the governing documents of the LBA, the LBA is permitted to assemble tracts or parcels of property for community improvement or other public purposes.

9.2 **Eligibility.** Properties can be conveyed to the LBA for waiver of delinquent taxes and then reconveyed by the LBA to be utilized for community improvement purposes including but not limited to community gardens, parking for non-profit functions such as a school or cultural center, or playground for after-school or day care. The application must demonstrate that no alternative tax-generating use is available for the property, and that the proposed community improvements are consistent with the area redevelopment plans and community revitalization.

9.3 **Transferee.** The application must identify and be signed by the ultimate transferee of the property from the LBA. The transferee should be a governmental entity, a not-for-profit property entity, or in rare cases a for-profit entity that is capable of holding and maintaining the property in the anticipated conditions and for the anticipated purposes.

9.4 **Restrictive Covenants.** The LBA, in the conveyance of the property to the transferee, will impose covenants, conditions and restrictions as necessary to ensure that the property is used for community improvement or other public purposes.

Section 10. Conduit Transfers - Reasonable Equity Policy

10.1 **Purpose.** In order to prevent benefits accruing to owners of property that is tax delinquent by virtue of the exercise of the tax waiver power of the LBA, the LBA establishes this reasonable equity policy.

10.2 **Definitions.** The reasonable equity policy is based on the value of the property and the equity of its owner. While any valuation of equity is subjective, it can be reasonably estimated.

a. "Fair Market Value" shall be determined by staff according to the tax assessor's valuation, in conjunction with the average sale price in a given community. In instances where multiple valuations unreasonably differ, the staff or Board shall have full authority to require a professional appraisal. This appraisal shall be required only for proposals that have significant variances in valuation and entail transactions in which the owner received in excess of $20,000.

b. "Net Equity" shall mean the current fair market value, as determined by LBA staff, less the total amount of all liens and encumbrances (tax liens, associated interest and penalties; special assessments; mortgages; judgments, etc.).

10.3 **Less than $2,000 Net Equity.** To ensure that an owner does not receive unwarranted benefit, the LBA will not consider transactions in which the owner's net equity is less than $2,000 and the owner receives more than nominal compensation for the sale of his property. Nominal compensation is hereby defined as $2,000.

10.4 **Equity in Excess of $2,000.** To ensure that the owner does not receive an unwarranted benefit, the LBA will not participate in transactions in which the owner receives an amount greater than 75% of net equity.

10.5 **Speculation.** To ensure that speculators do not seek to take advantage of the LBA, staff shall closely review instances in which the owner is receiving money far in excess of his investment while consistently ignoring his tax responsibility. Particular attention shall be given to properties purchased in the past three years.

10.6 **Excessive Sales Price.** In communities that are experiencing internal and surrounding redevelopment, it is unacceptable for an owner to seek a profit in excess of 75% of his net equity. Such an owner may believe that the market will bear more than is offered and would therefore be unwilling to sell the property for a reasonable amount. In such an instance, it would fall to the Tax Commissioner's Office to bring the property to the courthouse steps, where the actual fair market value will be determined.

10.7 **Non-Conforming Situations.** To ensure the flexibility of the Board, the LBA will reserve the right to modify or change this policy if a situation clearly warrants a change in an effort to protect the interests of the LBA and the public.

10.8 **Strategic Importance.** To preserve the integrity of the LBA's mission, all properties petitioned to the LBA Board of Directors must pass the test of strategic importance. The LBA may receive proposals that may pass other criteria but which may not be crucial to the redevelopment of a neighborhood. Staff must be able to assure the LBA Board that the transaction is not simply allowable but a necessary component of the comprehensive redevelopment of a neighborhood. Such a transaction must be evaluated in terms of neighborhood redevelopment and ensure a long-term tax benefit to the City and County.

Section 11. Owner Occupant Policy

11.1 **Scope.** This section is applicable to those situations in which an individual (as opposed to a corporate not-for-profit or for-profit entity) contemplates conveying to the LBA real property that is encumbered by delinquent property taxes, having the taxes abated by the LBA, and the property reconveyed by the LBA to the individual for occupancy by that individual following construction of new housing or rehabilitation of existing housing.

11.2 **Purpose.** This policy is based on the opportunity for an individual to participate in the benefits derived from the authorization of tax extinguishment by the LBA where the individual applicant did not amass the tax delinquency, but desires to construct or rehabilitate housing in order to use the subject property as his or her own primary residence. Owner-occupant developers shall be required to meet the established LBA Board Petitioning Requirements which include the following: (a) Developer Profile, (b) Development Proposal, (c) Funding Commitment Letter, (d) Development Cost Estimate, (e) Site Control, and (f) Title Report.

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

11.4 **Requirements and Conditions.**

a. The applicant must either rehabilitate unoccupied substandard existing housing or create new housing where housing does not exist.

b. The subject property must not have been used by the applicant as his or her personal residence at any time during the twelve (12) months immediately preceding the submission of the application.

c. The owner-occupant shall enter into a Sale and Disposition Contract with the Authority and shall be responsible for the completion of the construction or rehabilitation within the three-year time limit as prescribed in the covenants of the Contract.

d. The LBA will extinguish no delinquent taxes that were the responsibility of the applicant. This would include any taxes that the applicant was responsible for either as owner of the subject property or as a result of any contractual obligation. Such taxes, if any, must be paid prior to the LBA extinguishing any other taxes.

e. The owner-occupant shall provide evidence of clear title and the financial ability to perform said Contract with the expressed obligation to reside in the property for a minimum of five (5) years or the delinquent taxes will be reinstated.

f. During the term of the occupancy, the owner-occupant shall pay all ad valorem taxes that accrue and shall maintain the property in compliance with the required code enforcement ordinances of the governing jurisdiction.

g. The owner-occupant must meet the applicable household income standards established by the LBA.

h. If the applicant fails to honor any portion of his or her Contract with the LBA to provide new or rehabilitated housing, the applicant must make a payment of funds to the LBA in an amount equal to the amount of all taxes extinguished by the LBA pursuant to the Contract. These funds shall then be paid by the LBA to the respective taxing authorities in the same proportion as the taxes were levied prior to the extinguishment.

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

Section 12. Side Lot Disposition Program

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

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

a. The property shall be vacant unimproved real property;

b. The property shall be physically contiguous to adjacent owner-occupied residential property, with not less than a 75% common boundary line at the side;

c. The property shall consist of no more than one lot capable of development. Initial priority shall be given to the disposition of properties of insufficient size to permit independent development; and

d. No more than one lot may be transferred per contiguous lot.

12.3 **Side Lot Transferees.**

a. All transferees must own the contiguous property, and priority is given to transferees who personally occupy the contiguous property.

b. The transferee must not own any real property (including both the contiguous lot and all other property in the County) that is subject to any unremediated citation of violation of the state and local codes and ordinances.

c. The transferee must not own any real property (including both the contiguous lot and all other property in the County) that is tax delinquent.

d. The transferee must not have been the prior owner of any real property in the County that was transferred to a local government as a result of tax foreclosure proceedings unless the LBA approves the anticipated disposition prior to the effective date of completion of such tax foreclosure proceedings.

12.4 **Pricing.**

a. Parcels of property that are not capable of independent development may be transferred for nominal consideration.

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

12.5 **Additional Requirements.**

a. As a condition of transfer of a lot, the transfer must enter into an agreement that the lot transferred will be consolidated with the legal description of the contiguous lot, and not subject to subdivision or partition within a five-year period following the date of the transfer.

b. In the event that multiple adjacent property owners desire to acquire the same side lot, the lot shall either be transferred to the highest bidder for the property, or divided and transferred among the interested contiguous property owners.

APPENDIX E

LAND BANK DEPOSITORY AGREEMENTS

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

_____ Land Bank Authority
Land Bank Depository Agreement Program

Section 1. Scope

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

1.1 As set forth in these policies and procedures, the land banking program consists of transactions in which a grantor transfers real property to the LBA and the property is held by the LBA pending a transfer back to the original grantor, to a grantee identified in a banking agreement, or to a third party selected by the LBA.

1.2 The goals of this land banking program include but are not limited to the acquisition of real property for or on behalf of a governmental entity or a not-for-profit corporation in order to:

a. Permit advance acquisition of potential development sites in anticipation of rapidly rising land prices;

b. Facilitate pre-development planning, financing and structuring;

c. Minimize or eliminate violations of housing and building codes and public nuisances on properties to be developed for affordable housing; and

d. Hold parcels of land for future strategic governmental purposes such as affordable housing and open spaces and greenways.

1.3 The LBA is not required to enter into a Banking Agreement with any person or entity, and at all times retains full discretion and authority to decline to enter into a Banking Agreement. These policies and procedures are applicable only to real property of the LBA which is acquired by the LBA in accordance with an executed Banking Agreement and are not otherwise applicable to real property acquired by the LBA pursuant to any other agreements or procedures.

Section 2. Definitions

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

a. "Banking Agreement" shall mean a written agreement between a Grantor and the LBA that identifies the property, the length of the banking term, the potential Grantee or Grantees, the range of permissible uses of the Property following transfer by the LBA, the permitted encumbrances on the Property, the rights and duties of the parties, the responsibility of the Grantor for the Holding Costs, the possible advance funding of Holding Costs, the forms of the instruments of conveyance, and such other matters as appropriate.

b. "Grantor" shall mean the party that transfers or causes to be transferred to the LBA a tract of Property pursuant to a Banking Agreement. An eligible Grantor shall be an entity described in Section 4.

c. "Grantee" shall mean the party or parties identified in a Banking Agreement as the party to whom the property is to be transferred from the LBA. An eligible "Grantee" shall be an entity described in Section 4.

d. "Holding Costs" shall mean any and all costs, expenses and expenditures incurred by the LBA, whether as direct disbursements, as pro rata costs or as administrative costs that are attributable to the ownership and maintenance of a tract of Property. The LBA shall maintain records of the monthly Holding Costs for each Property.

e. "Property" shall mean the real property and improvements (if any) located thereon identified in a Banking Agreement and transferred to the LBA pursuant to a Banking Agreement, together with all right, title and interest in appurtenances, benefits and easements related thereto.

Section 3. Eligible Property

Property that is eligible for Banking Agreement must either be (a) unimproved real property or (b) real property with newly constructed unoccupied single-family residences. At any given point in time, no more than twenty (20) percent of the parcels of Property being held by the LBA pursuant to Banking Agreements can be newly constructed unoccupied single-family residences.

a. In the event that a tract of Property contains improvements that are to be demolished or removed, such Property may qualify as eligible Property for a Banking Agreement so long as adequate and sufficient funds are placed in escrow at the time of the Banking Agreement closing so as to assure that all improvements will be demolished and removed within sixty (60) days of closing.

b. Property that is ineligible for a Banking Agreement includes all other forms of improved real property, all real property that is occupied and all real property that has been identified by the United States Environmental Protection Agency or the Environmental Protection Division of the State of _____ as containing hazardous substances and materials.

Section 4. Eligible Grantors and Grantees

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

Section 5. Title

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

a. Governmental liens for water and sewer, and governmental liens for nuisance abatement activities or code enforcement activities may exist as a matter of record title at the time of such closing if and only if such liens are expressly acceptable to the LBA and are subject to waiver or discharge by the governmental entity holding such liens without cost to the LBA.

b. A deed to secure debt or security deed may encumber Property at the time of the transfer to the LBA provided that the obligations secured by such security instrument do not require monthly or periodic payment of sums by the LBA to the mortgagee. Under no circumstances will the LBA have direct liability to a mortgage pursuant to a security instrument. It is anticipated that each Banking Agreement that contemplates the transfer of Property to the LBA encumbered by a security instrument will require a separate written agreement between the mortgagee and the LBA that provides, among other things, that (1) the mortgagee expressly consents to the transfer to the LBA, (2) the mortgagee expressly subordinates its interests to covenants, conditions and restrictions as may be required by the LBA, and (3) prior to the exercise of mortgagee rights under the security instrument, the mortgagee will request on behalf of the Grantor the reconveyance of the Property to the Grantor and pay to the LBA the Holding Costs attributable to the Property.

c. At the time of closing pursuant to a Banking Agreement, all ad valorem taxes that are due and payable on the Property must be paid in full. An exception to this requirement of no outstanding ad valorem tax liens may be granted (1) when the Grantor is acquiring the Property from a third party and immediately conveying the Property to the LBA pursuant to a Banking Agreement and (2) the acquisition of the Property by the Grantor from the third party otherwise complies with the Reasonable Equity Policy of the LBA.

Section 6. Length of Banking Term

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

Section 7. Transfer at Request of Grantor

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

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

b. As a condition precedent to the transfer by the LBA, the full amount of Holding Costs incurred by the LBA attributable to the Property shall be paid to the LBA. The LBA shall provide to the Grantor in accordance with Section 10 a statement of the Holding Costs attributable to the Property.

c. At the time of the transfer by the LBA to the Grantee, the LBA shall impose such restrictions and conditions on the use and development of the property in accordance with Section 11 hereof and the applicable Banking Agreement.

d. Conveyance by the LBA to a Grantee shall be by quitclaim deed.

Section 8. Transfer at Request of LBA

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

a. A transfer by the LBA pursuant to this Section 8 shall be subject to the same terms and conditions as set forth in Section 7.

b. In the event that the Grantor (or its designee) is unwilling or unable to accept a transfer of the Property from the LBA, and reimburse the LBA in full for the Holding Costs, then and in that event the LBA shall have the right to terminate in writing the Banking Agreement, and the Property shall become an asset of the LBA and subject to use, control and disposition by the LBA in its sole discretion subject only to the provisions of the LBA Statute and the Intergovernmental Agreement.

Section 9. Banking Agreement Closing

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

Section 10. Holding Costs

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

Section 11. Public Purpose Restrictions

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

Section 12. Delegation of Authority to Executive Director

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

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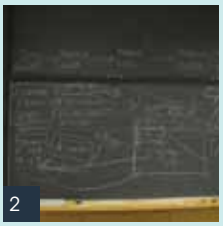
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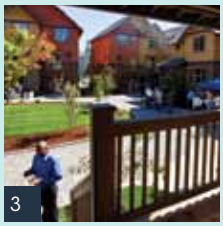
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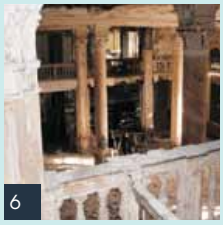
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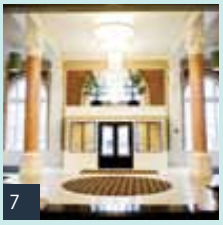
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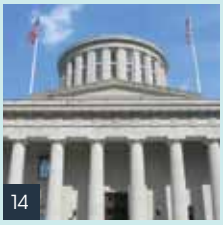
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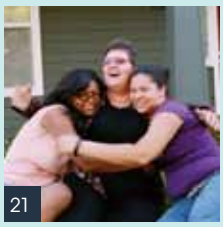
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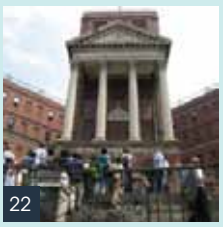
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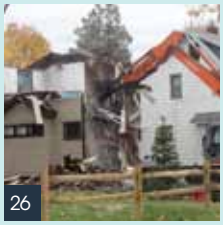
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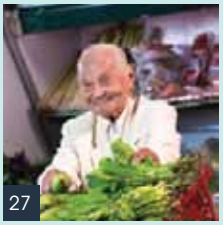
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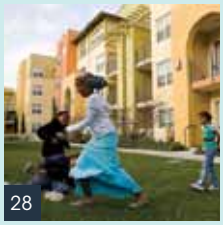
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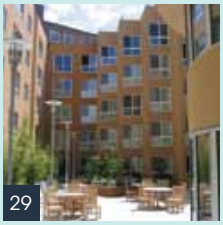
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2. **JR Leonard** Illustration of the differences between Genesee County, MI's old and new tax foreclosure process
3. **Rebecca Maxwell for Proud Ground** View of Pardee Commons, an affordable housing development in the Lents neighborhood of Portland, OR
4. **JR Leonard** Abandoned home in Flint, MI
5. **Rural LISC** Corralitos Creek Townhomes in Freedom, CA
6. **Dan Kildee** The Durant Hotel in downtown Flint, MI, prior to renovation
7. **Dan Kildee** The Durant Hotel in downtown Flint, MI, after renovation
8. **Michigan LISC** Supportive housing for the formerly homeless in Kalamazoo, MI
9. **Proud Ground** The Romero-Diaz family in front of their new home in Portland, OR
10. **Genesee County Land Bank** A community garden on the site previously occupied by abandoned property in Flint, MI
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12. **Houston LISC** Brays Crossing, affordable housing development in Houston, TX
13. **Proud Ground** A new resident of an affordable housing community in Portland, OR
14. **Flickr user jimmywayne** Ohio state capital building in Columbus, OH
15. **JR Leonard** Affordable homes built after Hurricane Katrina in New Orleans, LA
16. **Gordon Walek for Chicago LISC** Opening of the Dr. King Legacy Apartments, an affordable housing development in the North Lawndale neighborhood of Chicago, IL
17. **Brian Lincoln for Proud Ground** A multi-generational family in front of their new home in Portland, OR
18. **JR Leonard** Hoop house in Flint, MI providing a community benefit from what was previously abandoned property
19. **Milwaukee LISC** Renovated painted lady in the Lindsay Heights neighborhood in Milwaukee, WI
20. **Gordon Walek for Chicago LISC** Smiling resident in front of Dr. King Legacy Apartments, an affordable housing development in the North Lawndale neighborhood of Chicago, IL
21. **Carol Yarrow for Proud Ground** Anita and her family and their new home in Portland, OR
22. **New York City LISC** Findlay Plaza senior apartments in the Bronx, NY
23. **Milwaukee LISC** Mural in the Lindsay Heights neighborhood in Milwaukee, WI
24. **Gordon Walek for Chicago LISC** Crowd studying the site for the future Dr. King Legacy Apartments in the North Lawndale neighborhood of Chicago, IL
25. **JR Leonard** A historic downtown area presents challenges and opportunities for redevelopment in Gary, IN
26. **Youngstown Neighborhood Development Corporation** Demolition of a house in Youngstown, OH
27. **Jackson Hill** A New Orleanian shops for fresh produce
28. **San Diego LISC** Children playing in front of Metro Villa Home Apartments in San Diego, CA
29. **Bay Area LISC** Oxford Plaza, a green mixed-use project with affordable housing in Berkeley, CA
30. **Los Angeles LISC** Sierra Bonita, 42 affordable green apartments for people with special needs in Los Angeles, CA

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