

Problem Properties: Land Banks and Land Banking

Thomas R. Babilon, Esq.

City of Syracuse

Michael J. Vatter, Esq., EFO

Newburgh Fire Department and Newburgh Community Land Bank

Moderator:

Kermit J. Lind, M.A., J.D.

Cleveland-Marshall College of Law, Cleveland State University

New York
Not-For-Profit Corporation Law
Chapter 35
Article 16 Land Banks

§ 1600. Short title.

This article shall be known and may be cited as the "land bank act".

§ 1601. Legislative intent.

The legislature finds and declares that New York'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.

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, Cornell Cooperative Extension Association of Erie county estimates that the city of Buffalo has thirteen thousand vacant parcels, four thousand vacant structures and an estimated twenty-two thousand two hundred ninety vacant residential units. This condition of vacant and abandoned property represents lost revenue to local governments and large costs ranging from demolition, effects of safety hazards and spreading deterioration of neighborhoods including resulting mortgage foreclosures.

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.

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 New York enabling them to turn vacant spaces into vibrant places.

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. The primary focus of land bank operations is the acquisition of real property that is tax delinquent, tax foreclosed, vacant, abandoned, and the use of tools authorized in this article to eliminate the harms and liabilities caused by such properties.

§ 1602. Definitions.

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

- (a) "board of directors" or "board" shall mean the board of directors of a land bank;
- (b) "land bank" shall mean a land bank established as a type C not-for-profit corporation under this chapter and in accordance with the provisions of this article and pursuant to this article;
- (c) "foreclosing governmental unit" shall mean "tax district" as defined in subdivision six of section eleven hundred two of the real property tax law;

(d) "municipality" shall mean a city, village, town or county other than a county located wholly within a city;

(e) "school district" shall mean a school district as defined under the education law; and

(f) "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.

§ 1603. Creation and existence.

(a) Any foreclosing governmental unit may create a land bank by the adoption of a local law, ordinance, 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; and

(5) the articles of incorporation for the land bank, which shall be filed with the secretary of state in accordance with the procedures set forth in this chapter.

(b) Two or more foreclosing governmental units may enter into an intergovernmental cooperation agreement which 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 paragraph (a) of this section. Such intergovernmental agreement shall include provisions for dissolution of such land bank.

(c) Any foreclosing governmental units and any municipality may enter into an intergovernmental cooperation agreement which 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 paragraph (a) of this section. Such intergovernmental agreement shall include provisions for dissolution of such land bank.

(d) Except when a land bank is created pursuant to paragraph (b) or (c) of this section, 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 which are subject to approval by the school district.

(f) Each land bank created pursuant to this act shall be a type C not-for-profit corporation, and shall have permanent and perpetual duration until terminated and dissolved in accordance with the provisions of section sixteen hundred thirteen of this

article.

(g) Nothing in this article shall be construed to authorize the existence of more than ten land banks located in the state at one time, provided further that each foreclosing governmental unit or units proposing to create a land bank shall submit such local law, ordinance or resolution as required by paragraph (a) of this section, to the urban development corporation, for its review and approval. The creation of a land bank shall be conditioned upon approval of the urban development corporation.

(h) The office of the state comptroller shall have the authority to audit any land bank pursuant to this article.

§ 1604. Applicability of New York law.

This article shall apply only to land banks created pursuant to this article.

§ 1605. Board of directors.

(a) (1) The initial size of the board shall be determined in accordance with section sixteen hundred three of this article. Unless restricted by the actions or agreements specified in section sixteen hundred three of this article, the provisions of this section shall apply.

(2) The size of the board may be adjusted in accordance with by-laws of the land bank.

(b) In the event that a land bank is created pursuant to an intergovernmental agreement in accordance with section sixteen hundred three of this article, such intergovernmental cooperation agreement shall specify matters identified in paragraph (a) of section sixteen hundred three of this article; provided, however, that each foreclosing governmental unit shall have at least one appointment to the board.

(c) 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 or appointed officer 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 paragraph 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.

(i) A majority of the members of the board, not including vacancies, shall constitute a quorum for the conduct of business. All actions of the board shall be approved by the affirmative vote of a majority of the members of that board present and voting; provided, 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 by-laws and other rules and regulations for conduct of the land bank's business;

(2) hiring or firing of any employee or contractor of the land bank. This function may, by majority vote of the total board membership, be delegated 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; and

(5) sale, lease, encumbrance, or alienation of real property, improvements, or personal property.

(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.

(l) Each director, officer and employee shall be a state officer or employee for the purposes of sections seventy-three and seventy-four of the public officers law.

§ 1606. 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.

§ 1607. Powers.

(a) A land bank shall constitute a type C not-for-profit corporation under New York law, which powers shall include all powers necessary to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to those herein otherwise granted:

(1) adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(2) 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;

(3) to adopt a seal and to alter the same at pleasure;

(4) to make contracts, give guarantees and incur liabilities, borrow money at such rates

of interest as the land bank may determine;

(5) to issue negotiable revenue bonds and notes according to the provisions of this article;

(6) to procure insurance or guarantees from the state of New York or federal government of the payments of any debts or parts thereof incurred by the land bank, and to pay premiums in connection therewith;

(7) to enter into contracts and other instruments necessary to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental agreements under section one hundred nineteen-o of the general municipal law for the joint exercise of powers under this article;

(8) to enter into contracts and other instruments necessary 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;

(9) to make and execute contracts and other instruments necessary to the exercise of the powers of the land bank; and any contract or instrument when signed by the chairman or vice-chairman of the land bank, or by an authorized use of their facsimile signatures, and by the secretary or assistant secretary, or, treasurer or assistant treasurer of the land bank, or by an authorized use of their facsimile signatures, shall be held to have been properly executed for and on its behalf;

(10) to procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(11) 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;

(12) to enter into contracts for the management of, the collection of rent from, or the sale of real property of the land bank;

(13) to design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property;

(14) 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;

(15) to grant or acquire a license, easement, lease (as lessor and as lessee), or option with respect to real property of the land bank;

(16) 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;

(17) to inventory vacant, abandoned and tax foreclosed properties;

(18) to develop a redevelopment plan to be approved by the foreclosing governmental unit or units;

(19) to be subject to municipal building codes and zoning laws;

(20) to enter in agreements with a foreclosing governmental unit for the distribution of revenues to the foreclosing governmental unit and school district; and

(21) to do all other things necessary to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibility of the land bank.

(b) A land bank shall neither possess nor exercise the power of eminent domain.

§ 1608. Acquisition of property.

(a) The real property of a land bank and its income and operations are exempt from all taxation by the state of New York and by any of its political subdivisions.

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

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

(d) The land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(e) The land bank shall not own or hold real property located outside the jurisdictional boundaries of the foreclosing governmental unit or units which 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, form and substance of consideration, and procedures, all as determined by the transferring municipality in its discretion.

(g) The acquisition of real property by a land bank pursuant to the provisions of this article, from entities other than political subdivisions, shall be limited to real property that is tax delinquent, tax foreclosed, vacant or abandoned; provided, however, that a land bank shall have authority to enter into agreements to purchase other real property consistent with an approved redevelopment plan.

(h) The land bank shall maintain and make available for public review and inspection a complete inventory of all property received by the land bank. Such inventory shall include: the location of the parcel; the purchase price, if any, for each parcel received; the current value assigned to the property for purposes of real property taxation; the amount, if any, owed to the locality for real property taxation; the identity of the transferor; and any conditions or restrictions applicable to the property.

(i) All parcels received by the land bank shall be listed on the received inventory established pursuant to paragraph (h) of this section within one week of acquisition and shall remain in such inventory for one week prior to disposition.

(j) Failure to comply with the requirements in paragraphs (h) and (i) of this section with regard to any particular parcel shall cause such acquisition by the land bank to be null and void.

§ 1609. 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 a complete inventory of all real property dispositions by the land bank. Such inventory shall

include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the land bank or any other party which is not included within the sale price.

(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 are consistent with state and local law.

(d) The land bank may convey, exchange, sell, transfer, lease as lessor, grant, release and demise, pledge any and all interests in, upon or to real property of the land bank.

(e) A foreclosing governmental unit may, in its local law, 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;
- (4) use as wildlife conservation areas; and

(5) 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 local law, 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.

(g) All property dispositions shall be listed on the property disposition inventory established pursuant to paragraph (b) of this section within one week of disposition. Such records shall remain available for public inspection in the property disposition inventory indefinitely.

(h) Failure to comply with the requirements in paragraph (g) of this section shall subject the land bank to a civil penalty of one hundred dollars per violation up to a maximum of ten thousand dollars for each parcel, recoverable in an action brought by the attorney general or district attorney. The attorney general or district attorney may also seek rescission of the real property transaction.

§ 1610. Financing of land bank operations.

(a) A land bank may receive funding through grants and loans from the foreclosing governmental unit or units which created the land bank, from other municipalities, from the state of New York, 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 article.

(c) Upon the adoption of a local law, ordinance, or resolution by municipality, school district or any taxing district, fifty percent of the real property taxes collected on any specific parcel of real property identified by such municipality, school district or any taxing jurisdiction may be remitted to the land bank, in accordance with procedures established by regulations promulgated by the department of taxation and finance. Such allocation of real property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years.

§ 1611. Borrowing and issuance of bonds.

(a) A land bank shall have 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 of New York, 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 New York state law.

(c) The bonds of a land bank created under the provisions of this article and the income therefrom shall at all times be free from taxation for the state of New York or local purposes under any provision of New York 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 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) 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.

(f) 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 of New York, and shall so state on their face, nor shall any municipality or the state of New York nor any revenues or any property of any municipality or of the state of New York be liable therefor.

§ 1612. Public records and public meetings.

(a) 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 the open meetings law and the freedom of information law.

(b) A land bank shall hold a public hearing prior to financing or issuance of bonds. The land bank shall schedule and hold a public hearing and solicit public comment. After the conclusion of the public hearing and comments, the land bank shall consider the results of the public hearing and comments with respect to the proposed actions. Such consideration by the land bank shall include the accommodation of the public interest with respect to such actions; if such accommodation is deemed in the best interest of the community proposed actions shall include such accommodation.

(c) In addition to any other report required by this chapter, the land bank, through its chairperson, shall annually deliver, in oral and written form, a report to the municipality. Such report shall be presented by March fifteenth of each year to the governing body or board of the municipality. The report shall describe in detail the projects undertaken by the land bank during the past year, the monies expended by the land bank during the past year, and the administrative activities of the land bank during the past year. At the conclusion of the report, the chairperson of the land bank shall be prepared to answer the questions of the municipality with respect to the projects undertaken by the authority during the past year, the monies expended by the municipality during the past year, and the administrative activities of the municipality during the past year.

§ 1613. Dissolution of land bank.

A land bank may be dissolved as a type C not-for-profit corporation sixty calendar days after an affirmative resolution 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 sixteen hundred three of this article, the withdrawal of one or more foreclosing governmental units 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.

§ 1614. 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.

§ 1615. Construction, intent and scope.

The provisions of this article 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 article, 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 article, in the exercise of its powers and duties under this article 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.

§ 1616. Delinquent property tax enforcement.

The municipality may enter into a contract to sell some or all of the delinquent tax liens held by it to a land bank, subject to the following conditions:

(a) The consideration to be paid may be more or less than the face amount of the tax liens sold.

(b) Property owners shall be given at least thirty days advance notice of such sale in the same form and manner as is provided by subdivision two of section eleven hundred ninety of the real property tax law. Failure to provide such notice or the failure of the addressee to receive the same shall not in any way affect the validity of any sale of a tax lien or tax liens or the validity of the taxes or interest prescribed by law with respect thereto.

(c) The municipality shall set the terms and conditions of the contract of sale.

(d) The land bank must thirty days prior to the commencement of any foreclosure action provide to the municipality a list of liens to be foreclosed. The municipality may, at its sole option and discretion, repurchase a lien or liens on the foreclosure list from the land bank. The repurchase price shall be the amount of the lien or liens plus any accrued interest and collection fees incurred by the land bank. The land bank shall provide the foreclosure list to the municipality, along with the applicable repurchase price of each lien, by certified mail, and the municipality shall have thirty days from receipt to notify the land bank of its option to purchase one or more of the liens. If the municipality opts to purchase the lien, it shall provide payment within thirty days of receipt of the

repurchase price of said lien or liens. If the municipality shall fail to opt to repurchase the lien or liens the land bank shall have the right to commence a foreclosure action immediately.

(e) The sale of a tax lien pursuant to this article shall not operate to shorten the otherwise applicable redemption period or change the otherwise applicable interest rate.

(f) Upon the expiration of the redemption period prescribed by law, the purchaser of a delinquent tax lien, or its successors or assigns, may foreclose the lien as in an action to foreclose a mortgage as provided in section eleven hundred ninety-four of the real property tax law. The procedure in such action shall be the procedure prescribed by article thirteen of the real property actions and proceedings law for the foreclosure of mortgages. At any time following the commencement of an action to foreclose a lien, the amount required to redeem the lien, or the amount received upon sale of a property, shall include reasonable and necessary collection costs, attorneys' fees, legal costs, allowances, and disbursements.

(g) The provisions of title five of article eleven of the real property tax law shall apply so far as is practicable to a contract for the sale of tax liens pursuant to this article.

(h) If the court orders a public sale pursuant to section eleven hundred thirty-six of the real property tax law, and the purchaser of the property is the land bank, then the form, substance, and timing of the land bank's payment of the sales price may be according to such agreement as is mutually acceptable to the plaintiff and the land bank. The obligation of the land bank to perform in accordance with such agreement shall be deemed to be in full satisfaction of the tax claim which was the basis for the judgment.

(i) Notwithstanding any other provision of law to the contrary, in the event that no municipality elects to tender a bid at a judicially ordered sale pursuant to the provisions of section eleven hundred thirty-six of the real property tax law, the land bank may tender a bid at such sale in an amount equal to the total amount of all municipal claims and liens which were the basis for the judgment. In the event of such tender by the land bank the property shall be deemed sold to the land bank regardless of any bids by any other third parties. The bid of the land bank shall be paid as to its form, substance, and timing according to such agreement as is mutually acceptable to the plaintiff and the land bank. The obligation of the land bank to perform in accordance with such agreement shall be deemed to be in full satisfaction of the municipal claim which was the basis for the judgment. The land bank, as purchaser at such sale shall take and forever thereafter have, an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, charges and estates of whatsoever kind. The deed to the land bank shall be executed, acknowledged and delivered within thirty days of the sale.

§ 1617. Contracts.

(a) The land bank may, in its discretion, assign contracts for supervision and coordination to the successful bidder for any subdivision of work for which the land bank receives bids. Any construction, demolition, renovation and reconstruction contract awarded by the land bank shall contain such other terms and conditions as the land bank may deem desirable. The land bank shall not award any construction, demolition, renovation and reconstruction contract greater than ten thousand dollars except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The land bank may, however, reject any or

all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The land bank may reject any bid, if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed.

(b) For the purposes of article fifteen-A of the executive law only, the land bank shall be deemed a state agency as that term is used in such article, and all contracts for procurement, design, construction, services and materials shall be deemed state contracts within the meaning of that term as set forth in such article.

LAND BANKS AND LAND BANKING

I. What is a Land Bank?

- A. **Not-for Profit Corporation-** Created pursuant to N-PCL § 1603 by one or more Foreclosing Governmental Units (FGU).
- B. **Public Authority (Local Authority)**– as defined by PAL § 2(2)(b) -not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government.
- C. **Public Corporation** – This definition is required if N-PCL § 1610 is to be read to be consistent with prohibition of lending and gifting to private corporations contained in Art VIII Sec. 1 of the New York Constitution.

II. What is Land Banking?

- A. **Purpose** – to efficiently and effectively acquire, hold, manage, develop, and dispose of tax delinquent, abandoned or vacant property.
- B. **Operational Powers of a New York Land Bank**
 - 1. Acquire Real Property – from a municipality, or privately.¹
 - 2. To be Tax Exempt – Real property, income, and operations are exempt from taxation².
 - 3. Dispose of Property conditionally – a Land Bank may impose conditions, restrictions, covenants, and reversions upon the disposition of real property.
 - 4. Acquire Property from a Municipality for little or no consideration.³
 - 5. Acquire and Service tax liens on real property.⁴
 - 6. Issue Bonds
 - 7. Accept Grants or Loans from the FGU(s).⁵

¹ Limited to the geographical are of the FGU.

² Land Banks are required to pay special assessments on real property.

³ N-PCL 1608(c)

⁴ N-PCL § 1616

⁵ N-PCL § 1610(a)

8. Enter into Agreements to share future Tax Revenue with the FGU(s)- 50% for five years. Must be approved property specific and by local law, resolution, or ordinance of the FGU or other taxing jurisdiction.⁶

III. How to get a Land Bank

A. Number of Land Banks under the Land Bank Act limited to ten.

B. Five have been awarded

1. Cities of Buffalo, Lackawanna, Tonawanda and Erie County
2. City of Syracuse and Onondaga County
3. City of Schenectady, County of Schenectady and City of Amsterdam
4. Chautauqua County
5. City of Newburgh

C. Five to be awarded in 2013

1. Applications are available now at:
<http://esd.ny.gov/BusinessPrograms/NYSLBP.html>
2. Deadline for submission of application is January 30, 2012.

IV. Other Mechanisms for Land Banking the Urban Renewal Agency approach

A. What is an Urban Renewal Agency?

1. Public Benefit Corporation created pursuant to General Municipal Law.
2. Public Authority (local authority) as defined by PAL § 2(2)(a) and subject to the PAL.

B. Many Urban Renewal Agencies Lie Dormant.

1. Over one hundred and nineteen Urban Renewal Agencies created pursuant to General Municipal Law since 1963.
2. Most have been abandoned or repurposed and do not perform the original functions of Urban Renewal.

⁶ N-PCL § 1610(c)

3. Authorities Budget Office has been seeking to dissolve non-functioning Public Authorities.

C. Powers of an Urban Renewal Agency. –similar to those of a land bank.

1. Acquire Real Property – from a municipality, or privately.⁷
2. To be Tax Exempt – Real property, is exempt from taxation⁸.
3. Dispose of Property conditionally –urban renewal agencies are required to put deed and lease restrictions requiring the project to be completed within a reasonable amount of time.⁹
4. Acquire Property from a Municipality for little or no consideration.¹⁰
5. Acquire and Service tax liens on real property.¹¹
6. Issue Bonds.
7. Accept Grants or Loans from the Municipality.
8. Eminent Domain.

D. Getting Started

1. URA must designate an area as appropriate for Urban Renewal (requires a finding of blight or threat of blight).¹² The area or a subsection of the area must then be approved by the Municipality.
2. URA Creates a Urban Renewal Plan - In contrast to historical urban renewal plans, Urban renewal plans for the purpose of land banking should be broad and flexible to allow for different types of development in the urban renewal area.
 - a) Plan Requirements:¹³
 - i) Proposed land uses.

⁷ Within an area designated appropriate for urban renewal in an urban renewal plan approved by both the municipality and the agency.

⁸ Urban Renewal Agencies are required to pay special assessments on real property, and the exemption expires upon the lease or rental of a parcel. GML § 555(1)(b)

⁹ GML § 556(3)

¹⁰ GML § 503-a(4)(a)

¹¹ Although I have not seen this in practice, the GML 554(6) allows an urban renewal agency to acquire real property or any interest therein.

¹² GML §§ 504; 502(3)

¹³ GML §502(7)

- ii) Proposed land acquisition
- iii) Demolition and removal of structures
- iv) Acquisition of air rights and easements
- v) Proposed methods or techniques of urban renewal
- vi) Proposed public, semi public, private, or community facilities
- vii) New or amended codes and ordinances necessary to effectuate the plan
- viii) Proposed program of code enforcement
- ix) Proposed time schedule for effectuation of the plan
- x) Any other appropriate statements or documentation as deemed appropriate by the URA

3. Approval of the plan General Municipal Law¹⁴

- a) Submission to Planning Commission to certify after a public hearing that the plan conforms to Gen Municipal Law § 502(7) and conforms to the findings made pursuant to General Municipal Law § 504. The Planning Commission within 10 weeks must, 1) give its unqualified approval, 2) disapprove, or, 3) give a qualified approval, with recommendations for modifications.
- b) After report is received by the governing body, and a public hearing is held, the Governing Body may approve or disapprove of the plan based on the recommendation of the planning commission § 505(3).
- c) Upon approval of the plan, the common council must make findings by resolution pursuant to § 505(4)

4. You are Ready to Start Land Banking with your Urban Renewal Agency

¹⁴ GML §§ 505(2), 505(3)

Powers of a Land Bank vs. Powers of an Urban Renewal Agency

	<u>Land Bank</u>	<u>Urban Renewal Agency</u>
Acquire, Manage and dispose of Property	yes ¹⁵	yes ¹⁶
Hold Real Property Tax Exempt	yes	yes ¹⁷
Power of Eminent Domain	no	yes
Dispose of Property at less than Market Value	yes	yes
Acquire property from municipality with little or no consideration	yes	yes
Acquire and Service Tax Liens	yes	yes ¹⁸
Share in future Tax Revenues	yes ¹⁹	no
Accept municipal grants and loans	yes	yes

¹⁵ Within the geographical limitations of the FGU(s)

¹⁶ Within the Urban Renewal Area

¹⁷ Only until such property is rented or leased.

¹⁸ Appears permissible under GML.

¹⁹ Upon approval by FGU(s) of specific parcels 50% for 5 years after conveyance.

Required Policies for New York New York Land Banks

- I. **CODE OF ETHICS** - Required to be adopted pursuant to PAL § 2824 (1)(d)
 - A. Minimum standards of section 74 of the public officer's law
 - B. Sample Code of Ethics available at ABO website
<http://www.abo.ny.gov/recommendedpractices/practices.html>

- II. **POLICIES REGARDING CHIEF EXECUTIVE AND MANAGEMENT** - required pursuant to by PAL § 2824 (1)(c).
 - A. Policy must concern payment of Salary, Compensation and reimbursements, and rules regarding time and attendance.

- III. **WHISTLEBLOWER POLICY** - required pursuant to PAL § 2824 (1)(e)
 - A. Sample Whistleblower policy available at ABO website.
<http://www.abo.ny.gov/recommendedpractices/practices.html>

- IV. **DEFENSE AND INDEMNIFICATION (BOARD)** required pursuant to PAL § 2824 (1)(f) requires that the Board adopt an indemnification and defense Policy with regards to the official actions of the Board and to disclose said policy to any and all prospective Board members. There are many examples available from different resources.

- V. **REAL PROPERTY ACQUISITION** - required pursuant to PAL § 2824 (1)(e)
 - A. **Power to Acquire**
 1. N-PCL 1608 (c) (land Bank act) may acquire real property by purchase, contracts, lease purchase agreements, installment sales contracts, land contracts, and from municipalities upon mutually agreed upon terms and conditions.
 2. N-PCL § 202 (a)(4). General and special powers not-for profit corporation, subject to any limitations provided in this chapter or any other statute of this state or its certificate of incorporation, shall have power in furtherance of its corporate purposes: To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and

otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

B. Limitations on Power to Acquire

1. N-PCL § 509 Acquisition by Purchase requires 2/3 vote of entire board unless there are 21 or more members then can be approved by simple majority.
2. N-PCL § 1608 (e) Land Bank shall not own property outside of the jurisdictional boundaries of the foreclosing governmental units (FGU(s)) that created the Land bank.
3. N-PCL § 1608(g) acquisitions of real property from other than **political subdivisions**, is limited to acquisition of real property that is tax delinquent, tax foreclosed, vacant or abandoned; except that may a land bank contract to purchase other properties consistent with an approved redevelopment plan approved by the FGU(s).

C. Additional Policy Considerations

1. **Inventory List required-** N-PCL 1608(h) requires a land bank to maintain and make available to the public an inventory list of all real property received by the land bank, the inventory list must include the location of the parcel, the purchase price, assessed value, any amount of taxation owed to a locality, the identity of the transferor, and conditions or restrictions applicable to the property. N-PCL 1608(i) all acquired parcels must be listed on inventory list required by N-PCL 1608(h) within one week of acquisition and shall remain on the inventory list at least one week prior to disposition. See N-PCL 1608(j). Failure to comply with 1608(h) and 1608(i) nullifies the transfer.
2. **Building, Housing, and Fire Codes-** N-PCL 1608 (d) a Land Bank must maintain all real property owned by it in accordance with local jurisdictional law (codes).
3. **Property Acquired for Investment** – Real property acquired or held by a Land Bank for solely investment purposes is subject to N-PCL Article 5-a- Prudent Management of Institutional Funds Act.

VI. PROPERTY DISPOSITION GUIDELINES- Required by PAL §§ 2824 (e); 2896
for disposition of real and personal property

A. Property as defined by PAL § 2895(3) means personal property in excess of five thousand dollars (\$5,000.00) and real property and any interest therein that may be conveyed.

B. Contracting Officer must be appointed by resolution of the Board to be responsible for the disposition of property and compliance with the law and guidelines.

C. Basic Requirements of the Board under PAL § 2896 (2)

1. Maintain adequate inventory controls and accountability systems for all Property under the control of the Land Bank;

2. Periodically inventory such Property to determine which Property shall be disposed of;

3. Produce an annual written report listing all Land Bank owned real property, a list and full description of all real and personal property disposed of during the period of the report including the price received by the Land Bank and the name of the purchaser and to deliver copies of such report to the New York State Comptroller, Director of Budget, Commissioner of General Services, the authorities budget office, and the Legislature.; and

4. Dispose of Property as determined by the Land Bank as promptly as possible in accordance with the PAL.

D. Appraisals, when are they required?

1. **Real Property- (Always)** No disposal of real property, or **any interest therein** may be made unless an appraisal has been made of the value by an independent appraiser and kept in the record of the transaction PAL §2897(3).

2. **Personal Property (over \$5,000.00) (Sometimes)** – of unique nature or unique circumstances of the transaction it is not readily valued by reference to an active market for similar property.

F. Approval of Disposal (Real Property)– N-PCL § 509 requires any disposal of real property by sale, mortgage, or lease to be approved by two-thirds of the entire Board unless there are twenty-one or more directors then a simple majority suffices.

G. Allowable Procedures for Disposal of Real Property

1. Public Auction

- a. Pursuant to PAL § 2897(6)(c)(ii) when the fair market value does not exceed fifteen thousand dollars; or
- b. Pursuant to PAL § 2897(6)(c)(iii) when the bid prices after advertising therefor are not reasonable, either as to all or part of the property, or have not been independently arrived at in open competition; or
- c. Pursuant to PAL § 2897(6)(v) and § 2897(7)(ii) when the purpose of the transfer is within the Purpose, Mission or Governing Statute of the Land Bank.

2. Negotiation

- a. **The purchaser is a Government or other Public Entity:** the Land bank may dispose of real property and appurtenances thereto to a government or other public entity by negotiation:

Pursuant to PAL § 2897(6)(c)(iv) when the estimated fair market value of the Property and other satisfactory terms of disposal are obtained; or

Pursuant to PAL § 2897(6)(c)(v); and § 2897(7)(i), where the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or other public entity; or when,

- b. **The fair market value of the real property does not exceed fifteen thousand dollars:** a land Bank may dispose of any real property by negotiation pursuant to PAL § 2897(6)(c)(ii) subject to obtaining such competition as is feasible under the circumstances when the fair market value of the real property does not exceed fifteen thousand dollars; or when,

- c. **The disposal of the real property is within the Mission, Purpose or Governing Statute of the Land Bank:** a land Bank may dispose of any real property by negotiation pursuant to PAL § 2897(6)(c)(v) and PAL2897(7)(ii) when the purpose of the transfer is within the Purpose, Mission or Governing Statute of the Land Bank.¹

¹ But see PAL § 2897(6)(d)(i) if real property of of value in excess of \$15,000.00 is transferred by negotiation an explanatory statement must be transmitted 90 days prior to the disposal.

3. Sealed Bid (RFB)- a land bank may dispose of property by sealed bid to any purchaser at the highest marketable price or rental pursuant to PAL § 2897(6)(a) provided that:

a. The advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property; and

b. All bids shall be publically disclosed at the time and place stated in the advertisement; and

c. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid conforming to the invitation for bids, will be most advantageous to the state, price, and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so

H. Allowable Procedures for Disposal of Personal Property

1. Public Auction or Negotiation- a land bank may dispose of property by public auction when:

a. PAL § 2897(6)(c)(i) when the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value; or when,

b. PAL § 2897(6)(c)(ii) the Fair Market Value of the Property does not exceed fifteen thousand dollars; or when,

c. PAL § 2897(6)(c)(iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; or when

d. PAL § 2897(6)(c)(iv) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

e. PAL § 2897(6)(c)(v) the Disposal of the personal property for less than market value is authorized pursuant to Public Authorities Law § 2897(7).

2. **Sealed Bid-** a Land Bank may dispose of personal property by sealed bid subject to the same provisions as applicable under section g(iii) of this outline.

I. Disposal of Property for Less than Fair Market Value. A Land Bank may dispose of real property for less than fair market value:

1. Pursuant to PAL § 2897(7)(a)(i) when the disposal is to a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity; or ,

2. Pursuant to PAL § 2897(7)(a)(ii) the purpose of the disposal is within the Purpose, Mission, or Governing Statute of the Land Bank; or,

3. Pursuant to PAL § 2897(7)(a)(iii) when the Disposal is not to a governmental entity, and the Disposal is not consistent with the Land Bank's Mission, Purpose or Governing statute where the Land Bank has provided written notification of the Disposal to the New York Governor, Speaker of the Assembly, and the Temporary President of the Senate, and the proposed transfer is not denied by the Governor, the Senate, or the Assembly pursuant to the terms of Public Authorities Law § 2897(7)(a)(iii).

J. Information to be provided to the Board in Less than Fair Market Value

Transfers.- In the event that a below fair market value asset transfer is proposed, the following information must be provided to the Board and the public pursuant to PAL § 2897(7)(b) :

1. a full description of the asset; and

2. an appraisal of the fair market value of the asset, and any other information establishing the fair market value sought by the Board; and

3. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer; and

4. a statement of the value received compared to the fair market value; and

5. the names of any private parties participating in the transfer, and if different than the statement under subsection D of this section, a statement of the value to the private party; and,

6. the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

Prior to disposing of property for less than market value, the Board must consider the information described above and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

k. Required Reports and Transmissions

1. Filing of the Guidelines: On or before the 31st day of March each year, a Land Bank shall file with the New York State Comptroller the copy of the Disposition Guidelines most recently reviewed and approved by the Board.

2. Explanatory statements for negotiated disposals: Pursuant to PAL §2897(6)(d)(i) an explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

- a. 1. any personal property which has an estimated fair market value in excess of fifteen thousand dollar; or
- b. any real property (other than by lease) that has an estimated fair market value in excess of one-hundred thousand dollars; or
- c. any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars; or
- d. any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

An explanatory statement when required under this section shall be transmitted not less than ninety (90) days prior to the Disposal of the Property to the New York State Comptroller, Director of the Budget, Commissioner of General Services, the Authorities Budget Office, and the Legislature.

3. Proposed transfer for less than fair market value to a non-governmental entity where the disposal would not be consistent with the Land Bank's mission, purpose, or governing statutes: Whenever the Land Bank proposes to transfer an asset for less than fair market value to a non-governmental entity where the Disposal would **not be** consistent with the Land Bank's Mission, Purpose, or Governing Statutes, the Land Bank shall provide written notification thereof to the New York Governor, Speaker of the Assembly, and the Temporary President of the Senate, and such proposal shall be subject to denial by the governor, the senate, or the assembly pursuant to the terms of PAL § 2897(7)(iii).

4. Property Report: the Land Bank shall publish annually a report listing all Property of the Land Bank as required pursuant to PAL § 2896(3)(a). Such report

shall include a list and full description of all real and personal Property Disposed of during such period. The report shall contain the price received by the Land Bank and the name of the purchaser for all such Property sold by the Land Bank during such period.

The Land Bank shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the New York State Legislature, and the Authorities Budget Office as required pursuant to PAL § 2896(3)(b).

5. Disposition Inventory : the Land Bank shall maintain and make available for public review and inspection a complete inventory of real property dispositions by the Land Bank as required pursuant to NFPCL § 1609(b). Such inventory shall include a complete copy of the sales contract including all terms and conditions including but not limited to any form of compensation received by the Land bank or any other party which is not included in the sales price. All real property dispositions shall be listed on the Disposition Inventory within one week of disposition and such records shall remain available to the public indefinitely. Failure to strictly comply with this section could result in the imposition of severe civil penalties or an action to seek rescission of the sale pursuant to NFPCL § 1609(h).

6. Acquisition Inventory : the Land Bank shall maintain and make available for public review and inspection, a real property acquisition inventory as required pursuant to NFPCL § 1608(h) which shall include the location of the parcel; the purchase price if any; the current assessed value of the parcel; the amount owed to any locality for real property taxation; the identity of the transferor; and any conditions or restrictions applicable to the parcel. As required pursuant to NFPCL § 1608(i) all parcels received by the Land Bank shall be listed on the acquisition inventory within one week of acquisition, and shall remain on the acquisition inventory at least one week prior to disposition.

L. Real Property Disposition Contracts

- 1. Consideration: N-PCL § 1609(b) ; 1609(c)** All real property disposition contracts of the Land Bank shall contain any and all consideration received by the Land Bank, or any third party for the disposition of the real property subject of the contract. Consideration may take the form of monetary payments, secured financial obligation, restrictive covenants and conditions placed upon the real property, contractual commitments of the purchaser, rights of reacquisition, rights of reverter, rights of re-entry, and any other forms of consideration as are consistent with state and local law.
- 2. Records of Real Property Disposition Contracts to be Retained: N-PCL 1609(b)** Copies of all real property disposition contracts shall be retained by a Land Bank. Copies of contracts under this section shall be kept as a part of the

Land Bank's disposition file and must be incorporated into the Disposition Inventory.

VII. PROCUREMENT OF GOODS AND SERVICES-required pursuant to PAL § 2824

(1)(E)

- A. **PAL §2879-2880** Not Applicable – these provisions are required to be adopted only by State Authorities. PAL § 2879 does however provide a good reference when trying to develop a comprehensive policy.
- B. **Contracts for Construction, Demolition, Renovation and Reconstruction** greater than \$10,000.00 must be bid out and awarded to the lowest responsible and qualified bidder. N-PCL §1617(a)
- C. **State Contracts** -Contracts in Excess of \$25,000.00 for labor, services, supplies, equipment, materials, or any combination thereof; or Contracts for construction, demolition, replacement, major repair or renovation of real property and improvements (or leases providing for the same) in excess of \$100,000.00 are “State Contracts” for the purposes of Article 15-A of the Executive law and State MWBE procedures must be followed. N-PCL § 1617(b)
- D. **Statement of Non** –Collusion required in RFB or RFP- Pursuant to PAL § 2878

VIII. INVESTMENT GUIDELINES required pursuant to PAL 2824 (1)(E); PAL 2925. and N-PCL 552(f).

A. Required Elements for Investment Guidelines pursuant to PAL § 2925(3) :

1. Detailed list of Permitted investments. These Investments include instruments, obligations, securities, property, and name and use depositories.
2. Procedures and provisions to secure a Land bank's financial interest in investments and also describe what circumstances the Land bank's interests in investments may be less than full secured.
3. A requirement that the Land Bankl enter into written contracts for investments, unless the Board finds by resolution that a written contract is not practical or not a regular business practice with regards to the investment or transaction. PAL § 2925(3)(c)(i-iv) lists specific requirements for written contracts.
4. The Ability of the land bank to amend the guidelines.

5. The filing of quarterly (or other time period) reports with the Board.
6. The requirement to prepare an annual investment report, to submit that report to the Executive and CFO of each creating FGU, and to make that report available to the public.

B. Management of a Land Bank's Investments –it is currently unclear as to whether a Land Bank may delegate the authority to manage its investments.

1. N-PCL § 1607(a)(11) provides that:

A land bank which powers shall include all powers necessary to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to those herein otherwise granted:

(11) 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 monies.

This provision would appear to prohibit the delegation of management authority away from the board. This however relies on an interpretation of herein (above) as to include only those powers granted pursuant to Article 16 (the Land Bank Act) and not the Not For Profit Corporation Law.

2. N-PCL § 554 -- Allows for a Not For Profit Corporation to delegate an agent(s) to manage investments for the Corporation.

I intend to request an opinion regarding the proper interpretation of these conflicting provisions.

C. New York Prudent Management of Institutional Funds Act - investment funds (and property) are subject to the provisions of the New York Prudent Management of Institutional Funds Act Article 5-A of the N-PCL.

7.

IX. Travel Policy required pursuant to PAL 2824(1)(e)- requires the Board to establish a policy for reimbursement to Board members, officers, and employees for authorized and necessary travel expenses incurred in the pursuit of land bank business. Every public authority has these there are many examples available for review.

X. RULES AND REQUIRMENTS REGARDING ATTENDANCE AND PARTICIPATION OF ITS MEMBERS AT MEETINGS REGULAR OR SPECIAL. Required pursuant to N-PCL 1605(e)

Rules may prescribe removal of a Director for failure to comply with the rules by a majority vote of the remaining members of the Board. Any Director removed under such a provision is ineligible for reappointment to the Board unless such reappointment is unanimously confirmed by the Board.

XI. Must Adopt Schedule of regular meetings N-PCL § 1605(h)- Regular schedule of meetings must be adopted by the Board. Special meetings may be convened by the Chair, or upon a written notice signed by a majority of the members.

XII. Mission Statement and proposed measurements - PAL § 2824-a requires a Land bank to adopt a Mission Statement and explaining the purposes and goals of the Land Bank and measurements. Mission Statement and proposed measurements must be submitted to the Authorities Budget Office. The submission must have a brief mission statement, a description of the FGU's of the Land Bank and their reasonable expectations, and a list of measurements to be used to evaluate the performance and achievements of the land bank.

Land bank must reexamine and the mission statement and measurements annually and publish a self-evaluation based thereon unless waived by the Director of the ABO.

XIII. Required Committees to be Formed

A. Audit Committee PAL §2824(4)- at least three independent members who shall constitute a majority of the committee, to recommend to the Board the hiring of a certified independent accounting firm, establish compensation, and to provide direct oversight in performance of the Audit.

B. Governance Committee PAL §2824(7) at least three independent members who shall constitute a majority of the committee. Committee to keep the board informed of current best governance practices; to review corporate governance trends; to recommend updates to the ...[Corporation's]... corporate governance principals; to advise appointing authorities on the skills and experiences required of potential board members; to examine ethical and conflict of interest issues; to perform board self-evaluations; and to recommend by-laws which include rules and procedures for conduct of board business.

C. Finance Committee PAL 2824 (8) required if the Land bank issues Debt (Bonds). at least three independent members who shall constitute a majority of the committee. Must review proposals for the issuance of debt and make recommendations.

- **Please Note that this Outline is not exhaustive, and you are encouraged to perform your own research.**

Responding to the Mortgage Crisis: Three Cleveland Examples

W. Dennis Keating*
Kermit J. Lind**

I. Introduction

YEARS BEFORE THE MORTGAGE CRISIS fueled by subprime and predatory lending became a national crisis in 2008, this emerging disaster was ravaging neighborhoods in Cleveland, Ohio.¹ Unlike cities in fast-growing states like California, Florida, and Nevada that later suffered the highest rates of foreclosure and housing abandonment, Cleveland had never experienced a housing bubble. In a region with long term economic problems and in a city whose population has declined steadily since 1950 (from 914,818 to 397,000 in 2010),² housing prices and values were among the lowest among major cities in the United States.³ Despite a relatively stable housing market, beginning in 1995 the foreclosure filings increased sharply.⁴

Investigations that followed revealed that homeowners were being persuaded to refinance their mortgages and often to finance home repairs

*J.D., University of Pennsylvania, Ph.D., University of California at Berkeley. Professor of Urban Planning and Law, Colleges of Urban Affairs and Law, and Director, Master of Urban Planning, Design, and Development Program, Cleveland State University

**J.D., Cleveland-Marshall College of Law, Clinical Professor of Law Emeritus, Cleveland-Marshall College of Law.

1. See Kermit J. Lind, *The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods*, 17 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 237, 237-240 (Spring 2008) [hereinafter Lind, *Perfect Storm*]; see also W. Dennis Keating, *Preventing Foreclosures, Rebuilding Neighborhoods: Cleveland 3-5* (2010) (unpublished manuscript, on file with authors) [hereinafter Keating, *Preventing Foreclosures*].

2. See Rich Exner, *Where Did All Those Clevelanders Go?*, THE PLAIN DEALER, Mar. 27, 2011, at B1 (noting that Cleveland's population was 431,363 in 2009).

3. See Rich Exner, *Cuyahoga Home Sales and Home Prices Down Against This Year: Sunday's Numbers*, THE PLAIN DEALER (Nov. 27, 2011, 9:00 AM), http://www.cleveland.com/datacentral/index.ssf/2011/11/cuyahoga_home_sales_and_home_p.html; see also Michelle Jarboe McFee, *House Prices Take a Double Dip as Much-Watched Indices Show Declines Nationwide, In Cleveland*, THE PLAIN DEALER (May 31, 2001, 11:13 PM), http://www.cleveland.com/business/index.ssf/2011/05/house_prices_take_a_double_dip.html.

4. See ZACH SCHILLER & APRIL HIRSH, POLICY MATTERS OHIO, *FORECLOSURE GROWTH IN OHIO* 9 tbl.4 (2008), available at <http://www.policymattersohio.org/pdf/ForeclosureGrowthInOhio2008.pdf>

and amenities through predatory lending, including adjustable rate mortgages with initial low interest rates (“teaser loans”). These loans typically had onerous terms that disadvantaged consumers. Many borrowers, especially the elderly, had no understanding of these terms.⁵ Worse, in this initial period, speculators engaged in “flipping.”⁶ This typically meant that they purchased homes with housing code violations, doing minimal cosmetic or no repairs, and then resold these homes at much higher prices. This involved fraud with “straw” purchasers, inflated appraisals and falsified loan applications. Subsequently, several mortgage brokers and their accomplices were convicted of mortgage fraud.⁷ Unfortunately, criminal prosecutions came long after the damage to vulnerable homeowners and Cleveland neighborhoods had already occurred. By 2000, Slavic Village and other vulnerable Cleveland neighborhoods were fighting for their lives against the forces of a housing finance system running amok.⁸

The Cleveland neighborhood of Slavic Village was especially hard hit, with massive amounts of mortgage fraud followed by hundreds of foreclosures of borrowers resulting in housing abandonment and widespread blight.⁹ This working class neighborhood historically populated with European immigrants working in the adjacent industrial valley had seen its population decline with the loss of manufacturing jobs. However, several community organizations had led efforts in the 1980s and

5. While in Cleveland January 4, 2012 to announce the appointment of Richard Cordray to head the Consumer Finance Protection Bureau, President Obama made a highly publicized visit to the home of an elderly couple who ended up with an \$80,000 loan by contracting for a \$8,000 home repair job. See http://blog.cleveland.com/metro/2012/01/obamas_visit_wednesday_is_life.html

6. *A Boom in Houses of Cards: By Flipping Inner-City Properties Owners Inflate Prices and Snare Outside Buyers Who Pay Premium Prices*, THE PLAIN DEALER, Aug. 28, 2000, at A1; Olivera Perkins, *Teetering on a Shaky Foundation; Court Cracks Down on Landlord's Run-Down Houses*, THE PLAIN DEALER, Sept. 24, 2000, at A1; see Lind, *Perfect Storm*, *supra* note 1, at 239 n.7; Alex Kotlowitz, *All Boarded Up*, N.Y. TIMES, Mar. 6, 2009, available at <http://www.nytimes.com/2009/03/08/magazine/08Foreclosure-t.html>.

7. See, e.g., Mark Gillispie, Frank Viola, Uri Goffman sentenced to federal prison in mortgage fraud scheme, THE PLAIN DEALER, http://blog.cleveland.com/metro/2012/01/viola_goffman_sentenced_to_long.html. Mark Gillispie, *Mortgage Broker Sentenced in Slavic Village Fraud Case*, THE PLAIN DEALER, May 20, 2010, at B1; Karl Turner, *Cuyahoga County Investigators Bust \$44 Million Mortgage Fraud Scheme*, THE PLAIN DEALER (Aug. 27, 2009, 12:20 AM), http://blog.cleveland.com/metro/2009/08/cuyahoga_county_investigators.html;

8. See generally Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6; see also CLEVELAND VS. WALL STREET, *infra* note 67.

9. See generally Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6.

1990s to counteract decline. Most effective among these has been Slavic Village Development (SVD), which promoted affordable housing, commercial development, and recreation attractions to retain residents and attract newcomers.¹⁰ It had enjoyed considerable success in revitalizing the neighborhood.¹¹ By 1999 it was apparent that SVD's investments in revitalization were being undermined by destructive housing market practices and mortgage fraud.¹² Millions of dollars in housing rehabilitation and new construction supported by restored or new infrastructure was being undermined by a flood of abandoned blighted houses with mortgage loans in deep default. By 2005 it was clear that Cleveland was at a crossroads and even suburban mayors were alarmed by the surge of foreclosures in their jurisdictions.¹³

Just as SVD fought back against predatory lending, mortgage fraud, and speculator flipping, the City of Cleveland and Cuyahoga County also sought to prevent these practices and stem the rising tide of foreclosures. This included legislation, litigation, and homeowner counseling.¹⁴ This article will focus on three examples of the response to the mortgage crisis in Cleveland: the Cleveland Housing Court, the Cuyahoga County Land Reutilization Corporation (land bank), and community development corporations (CDCs) and local intermediaries (namely, the Cleveland Housing Network (CHN) and Neighborhood Progress, Inc. (NPI)). Each of these entities has developed initiatives aimed at the crisis, often in an innovative fashion. While many other cities have similar

10. See generally Emily K. Miller & Jennifer L. Scofield, *Slavic Village: Incorporating Active Living into Community Development Through Partnerships*, Robert Wood Johnson Foundation, available at <http://www.rwjf.org/files/research/4307.53036.slavicmiller.pdf>

11. See Norman Krumholz, W. Dennis Keating, Philip D. Star & Mark C. Chupp, *The Long-Term Impact of CDCs on Urban Neighborhoods: Case Studies of Cleveland's Broadway-Slavic Village and Tremont Neighborhoods*, 37 J. CMTY. DEV. SOC'Y 33, 52 (2006).

12. See generally Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6 (discussing background on the destruction that occurred in the Slavic Village neighborhood).

13. See generally ALAN MALLACH, LISA MUELLER LEVY, & JOSEPH SCHILLING, *CLEVELAND AT THE CROSSROADS: TURNING ABANDONMENT INTO OPPORTUNITY* (2005) (discussing the problems of vacant properties and abandoned buildings that had reached crisis proportions in Cleveland during the summer of 2004 and offering solutions to remove blight and revitalize the city through a partnership of local government, community organizations, and the private development community).

14. See generally CLAUDIA J. COULTON & KATHRYN W. HEXTER, *FACING THE FORECLOSURE CRISIS IN GREATER CLEVELAND: WHAT HAPPENED AND HOW COMMUNITIES ARE RESPONDING* (July 2010) (documenting the foreclosure crisis in northeast Ohio and discussing several multi-faceted responses implemented in the City of Cleveland).

organizations, these Cleveland examples have been cited as models which provide lessons to other cities facing similar problems.¹⁵

In the case of Cuyahoga County, residential mortgage loan foreclosures more than quadrupled between 1995 and 2007.¹⁶ Until 2009, a majority of these foreclosures were in the City of Cleveland. In 2010, the number foreclosures in suburban Cuyahoga County exceeded those in the City of Cleveland.¹⁷ Increasingly, foreclosures involve prime rather than subprime mortgage loans and the major cause is believed to be more the result of economic problems, primarily unemployment due to the recession and diminishing equity for owners needing to sell or refinance.¹⁸

Along with the soaring number of foreclosures, the number of vacant, abandoned housing units also rose. In the 2000 United States census, 25,218 housing units in Cleveland were counted as vacant.¹⁹ In the 2010 census that number rose to 40,046.²⁰ This was an increase

15. See Allen Mallach, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS, National Housing Institute (2006), pp. 29, 45-46, 136, 142.

16. See ZACH SCHILLER & APRIL HIRSH, POLICY MATTERS OHIO, FORECLOSURE GROWTH IN OHIO 9 tbl.4 (2008), available at <http://www.policymattersohio.org/pdf/ForeclosureGrowthInOhio2008.pdf> (according to Schiller and Hirsh, there were 3,345 new foreclosure filings in Cuyahoga County in 1995, and by 2007, this figure had increased fourfold to 14,946, representing a 346.8% increase over the preceding twelve-year period. Not incidentally, Schiller and Hirsh also report the number of new foreclosure filings quadrupled in all but twelve Ohio counties and nearly quintupled state-wide).

17. See Sandra Livingston, *Cuyahoga's New Foreclosures up 13% for First Half of Year*, THE PLAIN DEALER, July 19, 2010, at B1; see also discussion *infra* note 91. This trend was also reported as occurring throughout the state of Ohio in 2009. See DAVID ROTHSTEIN & SAPNA MEHTA, POLICY MATTERS OHIO, FORECLOSURE GROWTH IN OHIO 2 (Mar. 2009), available at <http://www.policymattersohio.org/wp-content/uploads/2011/09/ForeclosureGrowth2009.pdf>.

18. Research is being conducted to find out if mortgagees are not filing foreclosures in neighborhoods mortgage servicers are now identifying as having low-value housing stock. Government Accountability Office, *Mortgage Foreclosures: Additional Mortgage Servicer Actions Could Help Reduce the Frequency and Impact of Abandoned Foreclosures*, GAO-11-93, November 2010; Michael Schramm, April Hirsh, Diwakar Vadapalli, Daniel J. Van Grol, Esq., Krista Moine Nelson, Esq., Claudia Coulton, Ph.D., *Stalling the Foreclosure Process: The Complexity Behind Bank Walkaways*, http://blog.case.edu/msass/2011/02/07/stalling_the_foreclosure_process_the_complexity_behind_bank_walkaways.html. Also, there is some question about the extent of strategic default in suburban neighborhoods where more upscale housing was purchased in the past five years in anticipation of resale or refinancing that is now impossible.

19. U.S. Census 2000, Summary File 1.

20. Though there is no consensus on the true number of vacant properties in the City of Cleveland, observers indicate there were over 11,000 vacant properties in 2010 and over 20,000 vacant properties in early 2011. See RE-IMAGINING CLEVELAND: IDEAS TO ACTION, RESOURCE BOOK, at 5 (2011); see also Presentation to the Fed. Reserve Bank of Phila. by Frank Ford, Senior Vice President, Neighborhood Progress, Inc., Trends—Abandonment, at 5 (May 12, 2010) [hereinafter Ford].

from 11.7% to 19.3%. A significant number of those structures in 2010 were abandoned, without prospective buyers (other than possibly speculative flippers), and blighted due to neglect and vandalism. This has required the City of Cleveland to greatly increase its spending on maintaining these abandoned structures in lieu of responsible absentee owners and in the case of thousands to eventually demolish them as nuisance properties. In 2010, the city's building department estimated that approximately 7,067 abandoned residential buildings constituted blighted nuisances.²¹

An additional problem associated with housing abandonment is the condition of the title. The term "toxic title"²² has been applied to describe a title to real property where no one with a legal interest can realize a benefit from the exercise of property rights sufficient to justify the transaction costs.²³ Titles cannot be conveyed because of liens and liabilities costing more than the property is worth. Bankrupt owners who have lost control of their property cannot sell it or even give it away because of the liabilities attached. At a sheriff's sale in a foreclosure proceeding, buyers will not pay the statutory minimum price nor will the judgment lien holder take ownership in exchange for the debt owed. In this limbo, the house may sit for years as a public nuisance bringing down the value and marketability of neighboring houses.

The number of demolitions by the city has risen steadily over the past several years.²⁴ But this has fallen far short of the number of nuisance properties. In 2010, the city spent approximately \$7.5 million on nuisance

21. Statement by Edward Rybka, Dir., Cleveland Dep't Bldg. & Hous. to the Cuyahoga Affordable Hous. Alliance (May 2, 2011) (on file with author).

22. The term "toxic title" was coined first by Kermit Lind and has been since referred to in national conversations on the foreclosure crisis. See generally Lind, *Perfect Storm*, *supra* note 1; Kermit J. Lind, *Can Public Nuisance Law Protect Your Neighborhood from Big Banks?*, 44 SUFFOLK U. L. REV. 89, 100 n.40 (2011) [hereinafter Lind, *Protect Your Neighborhood*]; see also Keating, Preventing Foreclosures, *supra* note 1, at 4; Michael Orey, *Dirty Deeds*, BUSINESS WEEK, Jan. 14, 2008, at 1, available at http://www.businessweek.com/magazine/content/08_02/b4066046083770.htm.

23. See Lind, *Perfect Storm*, *supra* note 1, at 249.

24. As part of Cuyahoga County's Foreclosure Prevention program, \$1 million was allocated to the City of Cleveland for demolition purposes. See ALAN C. WEINSTEIN, KATHRYN W. HEXTER & MOLLY SCHNOKE, RESPONDING TO FORECLOSURES IN CUYAHOGA COUNTY: A PILOT INITIATIVE—INTERIM REPORT 27 (May 12, 2008), available at http://urban.csuohio.edu/publications/center/center_for_community_wplanning_and_development/foreclosures_05_12_08.pdf [hereinafter Weinstein]; see also Ford, *supra* note 20 (indicating that over the immediately following three-year period, 300 closely-situated homes in the City of Cleveland are projected to be demolished pursuant to the City's Opportunity Homes program, together with Neighborhood Progress, Inc).

abatement but recovered only about \$2 million of these costs.²⁵ In a city with very limited financial resources, the growing need for demolitions vastly exceeds the funds available, even with the addition of the federal Neighborhood Stabilization Program (NSP) created in 2008. In three rounds of NSP funding, Cleveland has received approximately \$45 million, most of which has been targeted for the demolition of blighted, abandoned housing.²⁶ In a very depressed housing market, there is little immediate prospect of replacing most of this lost housing with new construction, in part because the city's reduced population has led to a surplus of vacant housing. Despite these discouraging data, the following three examples of responses give hope that the challenges caused by this crisis can be met and the city's neighborhoods can be rebuilt even with a reduced population and reconfigured land uses.

II. The Cleveland Municipal Court, Housing Division

The Cleveland Housing Court started with a 1974 college term paper written by Jim Rokakis, an Oberlin College undergraduate from Cleveland.²⁷ In the following term, Rokakis worked for a State Senator, Charles Butts, whose interest in a housing court for Cleveland resulted in a bill in the Ohio General Assembly to authorize the establishment of housing divisions in Ohio municipal courts.²⁸ Two years later, Rokakis was elected to Cleveland City Council and, with another councilman, Terence Copeland, spent much of his first year in council lobbying state legislators for the passage of the housing court bill.²⁹ After the bill was

25. Statement by Ed Rybka, Commissioner, City of Cleveland Department of Housing and Building, May 2, 2011.

26. Neighborhood Stabilization Program, Community Development Block Grant Action Program, Department of Community Development, City of Cleveland.

27. This early history of the Housing Court was recounted for this article in conversations with Rokakis, a friend of the authors. Rokakis reports that he got a B for the paper written for a political science course. In a similar fashion, Rokakis' proposal received mixed reviews outside of the classroom. *See, e.g., Housing Court is Proposed*, THE PLAIN DEALER, p. 19, Feb. 18, 1979 (“[A] housing court judge would have too much time to just twiddle his thumbs on the bench.”); Katherine Hatten, *The time for Cleveland Housing court is now*, THE PLAIN DEALER, Mar. 4, 1979, at 26; *Councilmen Get Help in Drive to Establish Housing Court for City*, THE PLAIN DEALER, Mar. 14, 1979 (“the only hope for the city lies in . . . a comprehensive code enforcement program. And a housing court is a prerequisite for any effective enforcement program.”).

28. A copy of SB 35, 113th General Assembly, 1979, is on file with the author. The provisions of the legislation are described in Frederic P. White, *The Cleveland Housing Court Act: New Answer to an Old Problem*, 30 CLEV. ST. L. REV. 41 (1981).

29. *See generally* Robert Jaquay, *Cleveland's Housing Court: A Grassroots Victory 25 Years Ago Paved the Way for a Reliable, Much Needed Institution*, SHELTERFORCE, May/June 2005, available at <http://www.nhi.org/online/issues/141/housingcourt.html>.

passed near the end of the legislative session in 1979, opponents of the measure in Cleveland urged Republican Governor James Rhodes to veto the bill. Rokakis relates he made an urgent appeal to newly elected Cleveland Mayor George Voinovich, who persuaded the Governor not to veto the bill and to let the legislation go into effect without his signature. Thus, in 1980, Cleveland's Housing Court, the first in Ohio, was established.³⁰ This new development was only one of several major housing initiatives of the 1970s. The decade of the 70s saw the establishment of fair housing advocacy and enforcement programs in Cleveland and its suburbs. A landlord-tenant act was enacted by the state legislature in 1974.³¹ Neighborhood organizations attacked banks over red-lining and disinvestment of inner-city minority and racially diverse neighborhoods. Neighborhood advocates also railed at the city about the lack of code enforcement in the face of neighborhood decline. Cleveland got legislative authorization in 1978 to operate a land bank program to get access to unproductive tax-dead properties and put them back into productive use.³² The Housing Court emerged in a period of concern and urgency about the decline of urban housing and neighborhoods. It was thus cast from the outset as a court to meet the needs of people who were demanding a means to stop decline.³³

Housing courts, like other special purpose courts, have several distinguishing features. They have a specific and limited original subject matter jurisdiction. Their judges and other personnel are intended to have a high degree of knowledge and expertise in the subject matter of the court. They manage cases and adjudicate them to get a remedial result, preferring compliance over punishment. Often they are equipped with special personnel and resources to assist the court in carrying out its remedial purpose and to solve problems informally as well as to

30. See *id.* (“[I]n 1980 the creation of [the] Cleveland Municipal Housing Court by Ohio’s General Assembly was viewed as both an important urban reform and a grass-roots advocacy victory.”)

31. See, e.g., *Landlord-Tenant Handbook: Rights and Responsibilities Under Ohio Law*, 4, <http://www.hapcap.org/documents/LANDLORD.pdf>.

32. See *infra* notes 95, 102-103, 113 and accompanying text.

33. Any consideration of the Cleveland Housing Court’s history, development and characteristics must rely, at least in part, on the publications of Frederic White, Dennis Keating, and Robert Jaquay. See White, *supra* note 28; W. Dennis Keating, *Judicial Approaches to Urban Housing Problems: A Study of the Cleveland Housing Court*, 19 URB. LAW. 345 (1987) [hereinafter Keating, *Judicial Approaches*]; Jaquay, *supra* note 29; Kermit Lind, *The People’s Court: Cleveland Housing Court Judge Raymond Pianka Uses Innovative Legal Tactics to Achieve Code Compliance, but is it Enough to Stabilize Neighborhoods?*, SHELTERFORCE, Mar. 23, 2012, http://www.shelterforce.org/article/2482/the-peoples_court.

issue orders and judgments. Ohio's enabling statute grants to statutory housing courts special tools and powers to be a problem solving and remedial court accessible by ordinary persons as well as those who are represented by legal counsel.³⁴ Thus, in housing courts people evicted from their home may be connected to social services to mitigate the disruption of their lives. Low-income housing code violators may get access to special community-based financial assistance or home repair services. Defendants whose housing problems are part of other and larger legal problems may obtain advice or access to legal assistance in dealing with those collateral issues. Those whose capacity to comply with court orders is limited can get advice and guidance from Housing Specialists on the Court's staff in executing an approved compliance plan. The criminal defendants in the courts are not charged with felonies and, unless they are defiant or chronic violators, are presumed to be persons who can be helped to solve a compliance deficiency problem.

Chapter 1901 of the Ohio Revised Code governs the Cleveland Municipal Housing Court.³⁵ Specifically, section 1901.01 establishes the Cleveland Municipal Court, and section 1901.02 provides that courts established by section 1901.01 have jurisdiction within the corporate limits of their respective municipal corporations and are courts of record.³⁶ Section 1901.011 establishes the housing division in the Cleveland Municipal Court.³⁷ The section was subsequently amended to establish a housing court in Toledo and an environmental court in Franklin County, which includes Columbus. This environmental division of the Franklin County Municipal Court lacks jurisdiction in landlord-tenant but is otherwise endowed with all the powers,³⁸ subject matter³⁹ and monetary⁴⁰ jurisdiction of housing divisions, plus some specifically designated jurisdiction granted pursuant to section 1901.183.

34. OHIO REV. CODE ANN. § 1901.01 (West 2011); see Jaquay, *supra* note 29 (“[A] torneys and [housing] court officials look[] for innovative solutions that benefit both the parties before the Court and the community at large.”); Keating, *Judicial Approaches*, *supra* note 33, at 348 (“One of the major features of a housing court [relative to traditional courts] is . . . a judge with a sufficiently long term and experience to better deal with housing problems. . . .”); White, *supra* note 28, at 46 (discussing the role of the Housing Court Specialist as a mechanism for “steering homeowners to various loan and grant programs to secure funds for necessary repairs.”).

35. OHIO REV. CODE ANN. § 1901.01 (West 2011).

36. In Ohio, the jurisdiction of a municipal court may encompass more than one municipality. For instance, the Cleveland Municipal Court jurisdiction includes the Village of Bratenahl.

37. OHIO REV. CODE ANN. § 1901.01 (West 2011).

38. See *id.* § 1901.131.

39. See *id.* § 1901.181.

40. See *id.* § 1901.17.

These special purpose housing divisions have specified subject matter jurisdiction but are allotted powers within their subject matter jurisdiction that are greater than those of general divisions of municipal courts. A statutory housing court has exclusive jurisdiction in eviction and other civil matters involving housing or land use regulation in addition to misdemeanor criminal actions for violations of local building, housing, air pollution, sanitation, health, fire, zoning or safety codes and for any regulation applicable to premises used or intended for the use as a place of human habitation, buildings, structures or any other real property subject to any such code or ordinance.⁴¹ Where a case is brought with claims within the exclusive jurisdiction of the housing division, the court can adjudicate all related claims in the case and exercise all the power of a common pleas court to make findings, render judgments or issue orders.⁴² This augmented authority prevents defendants from moving housing cases out of the housing division by raising counter-claims or cross-claims on matters not within the original jurisdiction of the housing division.

At the time of its initiation, it was not certain that the new court would be successful. Certainly, there were those who did not want it to be. However, Professor Frederic White was not one of them and supported his position in favor of the housing court in a 1981 law review article where he reported on the initial political and financial obstruction of the court's request for sufficient resources to employ the staff needed to carry out the plan designed for operational effectiveness.⁴³ The court had to make due with a staff of 5, including the judge and his bailiff, instead of the requested 14.⁴⁴ There was also bickering over the source of the funds for the court. By law, the city must pay the expenses of the court, but the law does not specify from which fund and how much the court shall be allocated. The lack of support from the city council meant that cases languished on the crowded docket. One method of speeding up the process that was then explored was allowing citizens to come to court with a sworn statement about an unlawful condition and file a criminal complaint directly without waiting for the city's inspectors and the Law Department to do this with time-consuming procedures that slowed the enforcement process.⁴⁵ In his 1987 article, Professor Dennis

41. *See id.* § 1901.181.

42. *See id.* § 1901.131.

43. *See White, supra* note 28, at 56.

44. *Id.* at 52.

45. *Id.* at 53 (discussing whether a Massachusetts decision allowing citizens to file criminal actions was a possible option in Ohio).

Keating reported on persistent resource deficiencies that limited the ability of the Housing Court to achieve its code enforcement potential.⁴⁶

In its first year of operation, the Housing Court handled 6,452 eviction cases and 599 criminal code compliance cases.⁴⁷ Clearly there was a demonstrated need for the services of a housing court both for civil eviction cases and for criminal prosecutions brought by the City of Cleveland's law department. Courts, after all, can only be available; cases are brought to them by litigants. After its first decade, the capacity and case load in the Cleveland Housing Court grew rapidly. By 2010, its 30th anniversary year, the court's case load and the costs and fines collected reached an all-time high. There were 11,555 civil cases, the vast majority of which were evictions.⁴⁸ There were 8,075 criminal cases.⁴⁹ Fees and fines collected that year totaled \$554,177.⁵⁰ No single judge in Ohio can match the current volume of cases heard by the Cleveland Housing Court judge.

Looking more specifically at the case load in the years of mortgage crisis, in 2000, there were 11,166 civil cases and 5,950 criminal cases filed.⁵¹ Over the ensuing decade the number of civil cases ranged from a low in 2003 of 10,565 to a high in 2008 of 12,385.⁵² Criminal cases brought by city prosecutors had a wider range of variation from a low in 2006 of 3,693 to the 2010 high of 8,075.⁵³ The steady volume of evictions and the recent rise in criminal cases are all the more remarkable in face of the decrease in Cleveland's population by some 81,000 people, 17%, during the decade.⁵⁴ It suggests that the decline in economic and

46. See Keating, *Judicial Approaches*, *supra* note 33, at 351-57.

47. See Jaquay, *supra* note 29.

48. 2010 Ohio Courts Statistical Report, The Supreme Court of Ohio, June 2011, p. 93, <http://www.sconet.state.oh.us/Publications/annrep/10OCS/default.asp>.

49. *Id.* at 202.

50. *Id.* It is important to note that the collection of fines is not a function of the Housing Court but a function of the Municipal Clerk of Court. There was controversy reported in the local news at the end of 2010 over the fact that millions of dollars in fines levied by the court on large or out-of-state absentee property owners went uncollected. See generally Sandra Livingston, *Cleveland Housing Court Issued \$20 Million in Fines for Contempt by No-Show Companies, But Collections are Sparse*, THE PLAIN DEALER, Nov. 22, 2010 (discussing the role of the Clerk of Courts in collecting fines imposed by the Housing Court and noting the disparity in the amount of fines imposed relative to those collected).

51. J. Raymond L. Pianka, *Cleveland Housing Court*, 7, <http://www.clevelandhousingcourt.org/clevelandmarshall.pdf> (last visited Dec. 14, 2011).

52. *Id.*

53. *Id.*

54. See Rich Exner, *2010 Census Population Numbers Show Cleveland Below 400,000; Northeast Ohio Down 2.2 Percent*, THE PLAIN DEALER, Mar. 9, 2011 (noting that Cleveland's population was 477,472 in 2000 and 396,815 in 2010).

demographic strength results in more housing and neighborhood instability reflected in evictions and especially in noncompliance with local residential codes. The data on fines and costs collected by the Municipal Clerk of Court⁵⁵ is even more dramatic. In 2008 and 2009, collections jumped to an average of more than \$650,000 and were \$554,177 in 2010.⁵⁶ Before that, collections topped \$400,000 only twice, in 1998 and 2005.⁵⁷ They slumped to \$268,000 and \$256,000 respectively for 2006 and 2007.⁵⁸ Data on the amount of fines ordered by the court was not kept before 2010 so that it is impossible to compare collections with fines levied. However, in widely heralded cases, some multi-million dollar fines were levied by the court against commercial dealers in foreclosed residential properties since 2009.⁵⁹

The current capacity of the Housing Court is greatly improved from what it was in the first half of the court's existence. In its 30th anniversary retrospective in 2010, Judge Raymond Pianka reported that the court's personnel numbered 45—9 Housing Court Specialists, 5 magistrates and 5 clerks, 12 bailiffs, plus administrative and part-time clerks and interns. The most important figure is, of course, the presiding judge. Raymond Pianka has been judge in the Housing Court for the past 16 years. There is no doubt that his influence and leadership brought this court to national and international recognition, especially for its response to the conditions wrought by the mortgage crisis. Pianka's resume is perfect for his office. He was born, raised and educated in Cleveland, was founding director of one of the city's most successful community development corporations, went on to serve on city council for ten years where he chaired the community development committee of the council, and was then elected in 1995 to serve as judge of the Housing Court. His knowledge of the city and its history is encyclopedic as is his familiarity with the city's ordinances on housing and land use. Those who come into his court room leave impressed by the fair

55. It must be noted that while fines are ordered by the Court, collections are done by the Clerk of Court, who in Cleveland is a separately elected office holder. This fragmentation of functions results in some loss of coordination and interesting electoral politics. See, e.g., *Memo to the Housing Court: The Judge Fines; The Clerk Collects: Editorial*, THE PLAIN DEALER, NOV. 26, 2010 (noting that large fines, while intended to force compliance, are ineffective unless they can be enforced).

56. The data reported here is from an internal document prepared by staff of the Housing Court a copy of which was provided to the author with whom it remains on file.

57. *Id.*

58. *Id.*

59. See discussion *infra* Section IIA: Defiant Corporations and Absentee Investors.

treatment he provides, even when they disagree about the judgment in their case. It is those who reject the Court's jurisdiction and refuse to accept its judgments who have portrayed his decisions as harsh.⁶⁰ Those critics are, for the most part, lawyers representing corporate slumlords and businesses whose practices presume that compliance with housing laws in Cleveland is optional.⁶¹

Evidence of the destabilization of the Cleveland housing market by neglectful or absentee owners showed up in the Housing Court by the mid-1990s. It appeared in the form of the frequent appearances by investor-owners for failure to comply with orders to correct code violations.⁶² Purchasers of houses at foreclosure sales were buying dilapidated dwellings as investments but failing to maintain them. The investment and flipping practices of investors included mortgaging the properties for as much or more than the purchase price. The court observed not only the unlawful failure to comply with housing codes but also the larger business practice of flipping the ownership of substandard dwellings from one speculator to another and to inexperienced homeowners who failed to realize the extent of the repairs needed or the faulty quality of cosmetic repairs made by those flipping properties.

In one civil nuisance abatement case brought on behalf of SVD by the co-author's law clinic at Cleveland State University, a bankrupt investor told the court that he was persuaded by television infomercials on buying and flipping houses was able to do so by getting individual mortgage loans for more than the purchase price of the houses he

60. See Kotlowitz, *supra* note 6, at 6 (reporting statement of a defendant's attorney that the court's judgment was unconstitutional and that Destiny Ventures would no longer do business in Cleveland); see also <http://cleveland.craigslist.org/reo/2727693875.html> (anonymous flipper of houses complains about "Judge Pianka's hanging court.").

61. Sterios Theologides, General Counsel senior vice president and general counsel for CoreLogic, a provider of consumer, financial, and property information, analytics, and services to business and government and a former general counsel to Morgan Stanley's residential mortgage business and to New Century Financial Corporation, an originator of subprime mortgage loans, made it clear that the general practice of servicers of bank-owned residential properties responsible for the maintenance low-value homes would refuse to repair or maintain them and get rid of them in their distressed condition instead of complying with local housing codes. *Servicing REO Properties: The Servicer's Role and Incentives*, REO & VACANT PROPERTIES: STRATEGIES FOR STABILIZATION, Federal Reserve Banks of Boston and Cleveland and the Federal Reserve Board 77—85 n.5 (2010); see also Kermit Lind, *Can Nuisance Law Protect Your Neighborhood From Big Banks?* 44 SUFFOLK U. L. REV. 89, 101-102; Frank Ford, *Cleaning Up After the Foreclosure Tsunami: Tackling Bank Walk-Aways and Vulture Investors*, SHELTERFORCE, Fall/Winter; Sandra Livingston, *Cleveland housing court judge fines 2 real estate firms about \$13 million for neglect*, http://blog.cleveland.com/metro/2010/06/cleveland_housing_court_judge_1.html#f2009

62. See *A Boom in Houses of Cards*, *supra* note 6; see also Perkins, *supra* note 6.

bought.⁶³ His financing was with “non-traditional” lenders and he was able to get loans even while in default on earlier loans. Led by his desire to make money in real estate without investing his own cash, this speculator ended up simultaneously in bankruptcy, foreclosures, and on both the criminal and civil docket of the Housing Court. This business practice was rampant in Cleveland at the turn of the century.

While the Housing Court saw much of this information about the corruption of the housing market in vulnerable neighborhoods, the issues before the court and the court’s prescribed authority to adjudicate prohibited it from holding perpetrators accountable. Although state and federal agencies ultimately prosecuted some speculators for their crimes, there was little recognition before 2008 by state or federal law enforcement or financial institution regulators of the magnitude of predatory lending and mortgage fraud schemes that resulted in widespread housing blight. In subsequent studies of predatory and subprime financing, it has been shown that the crisis took root first in predominantly minority and low-income neighborhoods, then moved into neighborhoods with higher priced housing financed with new subprime loan products introduced after 2004.⁶⁴ The Housing Court saw a growing number of investor-owners and corporate owners on its criminal docket during the most recent decade. It could easily see the correlation between abusive home financing and blighted houses, but it could only issue orders or judgments on cases brought to it and which were rigorously prosecuted. It lacked direct legal means to prevent the cause of blight or the persistent appearance of “frequent fliers” on its docket.

New features of the mortgage crisis created new problems for the Housing Court. The court found that foreclosed bank-owned houses, bank real estate owned (REO), were inspected but owners were very difficult to identify and to notify. City code enforcers were spending extra time trying to track ownership of blighted, vacant houses to perfect the service required by law. Owner-occupants and nonprofit community

63. For a discussion on the complexity of predatory business operations in Cleveland, including in the Slavic Village neighborhood, see Lind, *Protect Your Neighborhoods*, *supra* note 22, at 99-101; *see also* Jaquay, *supra* note 29; John Caniglia, *Feds Charge ‘Rehabber’ with Fraud*, THE PLAIN DEALER, Feb. 25, 2005 (discussing a 70-count federal indictment brought against real-estate rehabber, Raymond Delacruz, for engaging in widespread fraud in Slavic Village and other east-side neighborhoods).

64. *See, e.g., The CRA and Subprime Lending: Discerning the Difference*, BANKING AND COMMUNITY PERSPECTIVES 5 (Issue 1 2009) <http://dallasfed.org/ca/bcp/2009/bcp0901.pdf> (finding that of the higher-priced loans originated in 2005 and 2006, fifty-five percent were originated to middle and upper-income borrowers or borrowers in middle- and upper-income neighborhoods).

developers complained that the corporate owners of houses sold at sheriff sales were not filing deeds, that abandoned houses were growing in number and having a deterrent effect on the well-established and largely successful neighborhood recovery investments being made in challenged inner-city neighborhoods. In addition, there were many cases when corporations or absentee owners simply ignored summonses and complaints that were served. As was concluded in an important study called "Cleveland at the Crossroads," in 2005, it was too cheap and easy to speculate in blighted housing in the city.⁶⁵ The costs of holding defective housing could easily be dumped off to the public simply by ignoring the law and the weak law enforcement institutions, by paying fines or evading them by transferring property and, ultimately, by not paying property taxes for a few years. As a result, the city was spending more and more on nuisance abatement and demolition while the property tax collector, the county treasurer, saw tax collection and property values diminish.⁶⁶

After 2005, Cleveland emerged on the national scene as a poster child for the destructive force of predatory and subprime mortgage financing, and the Slavic Village neighborhood was pinpointed as the epicenter of the mortgage crisis.⁶⁷ As the national and international media came to take a closer look, the Housing Court attracted much of the attention for a variety of reasons. One very obvious reason is that the Court was in session every day of the week. The criminal docket was active no less

65. See MALLACH, LEVY & SCHILLING, *supra* note 13, at 14.

66. See generally Weinstein, *supra* note 24. In an attempt to address the rising tide of foreclosures and vacant and abandoned properties in Cuyahoga County, the County implemented a Foreclosure Prevention pilot program in 2006. As part of this program, Cuyahoga County authorized a total of \$3 million from the County's Delinquent Tax Administration and Collection funds to be directed at preventing foreclosures (\$1.5 million) and abating residential nuisances (\$1.5 million). *Id.* at 27. Similarly, during this pilot program, then Cuyahoga County Treasurer, James Rokakis, began supporting a proposal for what would become the Cuyahoga County Land Bank, arguing that a county wide land bank is a necessary mechanism to address the "growing problem posed by abandoned and vacant properties." *Id.* at 14.

67. See, e.g., Lind, *Perfect Storm*, *supra* note 1; Kotlowitz, *supra* note 6; see also CLEVELAND VS. WALL STREET (Saga-Productions et. al. 2010). *Cleveland vs. Wall Street*, by Swiss director Jean-Stephane Bron, was shot documentary-style during several trips to Cleveland and spotlights the impact of the mortgage crisis on residents of Cleveland's Slavic Village neighborhood. The film was entered in the Cannes International Film Festival in April 2010. See also *A Local Look at the National Foreclosure Crisis: Cleveland Families, Neighborhoods, Economy Under Siege from the Subprime Mortgage Fallout: Hearing Before the J. Econ. Comm.*, 110th Cong. (2007) (statements of James Rokakis, Treasurer Cuyahoga County, Ohio & Anthony Brancatelli, City Councilman, Slavic Village, Ohio), available at <http://jec.senate.gov> (search "Slavic Village"); Alyssa Katz, *Prime Suspect*, MOTHER JONES (Sept./Oct. 2006), <http://motherjones.com/politics/2006/09/prime-suspect>.

than three days each week and the civil docket had hearings every day. So, the Housing Court was a convenient place to get a story. Also, the Housing Court had acquired considerable experience with and information about the mortgage crisis. Many of the key actors in the problematic conduct were in its records. The court's reputation for rulings and programs designed to cope with emerging housing problems was growing so that many people engaged in community development and housing matters had strong opinions about the court and its work. Thus, the Cleveland Housing Court and its judge were the subject of a great deal of media coverage both in the U.S. and abroad.⁶⁸

As the volume of mortgage foreclosures reached new heights, the Housing Court became the first public institution to register alarm at the nature and dimension of the disaster being visited on the City of Cleveland. Although the court did not have mortgage foreclosures on its docket, it found many of its code violation defendants coming to court saying that even though the records showed the title to a blighted house to be in their names, they had lost the house in foreclosure. In addition, the Court was seeing national and global banks on its criminal docket with greater frequency than ever and they generally ignored local law enforcement efforts aimed at their houses with nuisance conditions. Perhaps worst of all were those absentee investors who bought low-value houses from banks after the banks purchased those houses at foreclosure sale. They invested in the worst of the housing stock and implemented business plans that contemplated no significant expenditure for code compliance. They engaged in manipulation of title records to evade liability for their illegally maintained houses.⁶⁹ They essentially thumbed their noses at the code enforcement by the city and the summonses to appear in Housing Court. To make matters worse, in the early years of the new century, the housing and building department of the City of Cleveland was notoriously lacking in capacity and competence.⁷⁰ In resources, equipment, personnel, training and dedicated

68. See, e.g., Mhari Saito, *Judge May Hold Investors Responsible for Blight*, NPR (Aug. 11, 2010), <http://www.npr.org/templates/story/story.php?storyId=129108026>.

69. See Lind, *The People's Court*, *supra* note 33, at 77. As this article was being prepared for publication the Cuyahoga County Prosecutor announced the indictment of a notorious flipper of houses who had used a false name to purchase, own and sell houses in northeastern Ohio and several other states. Some forty separate cases of housing code violations are pending and contempt fines in excess of \$9.5 million are waiting for this defendant in Cleveland's Housing Court. See Gabriel Baird, *Cuyahoga County Prosecutor Charges House Flipper From Florida*, THE PLAIN DEALER, Dec. 29, 2011.

70. Olivera Perkins, *City's Housing Office a Wreck*, THE PLAIN DEALER, Sept. 30, 2006; Christopher Evans, *Slackers & Shacks*, THE PLAIN DEALER, Sept. 14, 2008.

work ethic, it was no match for the mortgage crisis and the resulting blight that it spawned in the city's poorest neighborhoods.

In the face of this escalation of egregious destruction of neighborhood dwellings, the Housing Court fought back with an array of innovative measures. The Housing Court presided over by Judge Pianka became identified as Cleveland's primary institutional defender in the mortgage crisis in the first years of the new century.⁷¹ We now examine those programs and actions.⁷²

A. *Defiant Corporations and Absentee Investors*

Corporations and limited liability companies from out of state often neglect to respond to summonses or make appearances in Housing Court when prosecuted by the City of Cleveland for failure to comply with local ordinances. The Court publishes a list of persons subject to warrants and arrest for not answering criminal charges of failing to comply with housing and building code citations. The city typically names corporations as defendant-owners rather than specific corporate officers. Corporations and limited liability companies show up on the list of those wanted on criminal charges, but not individuals responsible for corporation conduct. This means no human person is subject to arrest on a warrant for failure to appear at court. So beginning in 2007, the court conducted special hearings for corporations which had been summoned to court and, when they failed to appear, a plea of not guilty was entered for them by the clerk.⁷³ Then the court scheduled a trial which was conducted without the corporate defendant present. The court heard forty-seven trials *in absentia* and sentenced the missing defendants to a total of \$1.37 million in criminal fines and costs.⁷⁴ Trials *in absentia* were discontinued when appeals from the sentences

71. See Kotlowitz, *supra* note 6, at 5-6 (describing the work of the court and its significance).

72. See Kotlowitz, *supra* note 6, at 8-14 (describing, in detail, the challenges facing Cleveland's code enforcement system. This description illuminates the lawlessness built into the business plans and practices of entrepreneurs and big banks in distressed housing markets.).

73. See, e.g., Sandra Livingston, *Stand Before this Judge or Face Contempt Charges Absentee Landlords on Notice that Hard Times Call for Tough Measures*, THE PLAIN DEALER (June 18, 2009) (discussing Judge Pianka's strategy of imposing fines against companies found to be in contempt for failing to appear).

74. Lind, *The People's Court*, *supra* note 33.

by corporations resulted in an adverse procedural ruling by the Ohio Supreme Court.⁷⁵

Presently, the court deals with absent and defiant corporations by sending notices of hearings requiring an appearance to corporate officers and to officers personally to show cause why the corporation should not be held in contempt of court for ignoring court-orders after the defendants received summonses and complaints. The court then holds hearings for contempt of court and issues substantial daily fines against non-responding corporations in accordance with Ohio statutes granting judges the authority to punish disobedience or resistance to “lawful writ[s], order[s], process[es], rule[s], judgment[s] or command[s] of a court or officer.”⁷⁶ As of July 2010, more than \$15 million in fines for contempt of court were levied and converted into civil judgments.⁷⁷ The Court reported that this measure is having good results.⁷⁸ On October 20, 2011 Ohio’s 8th District Court of Appeals heard an appeal by Paramount Land Holdings on the issue of whether the contempt hearings and sanctions are criminal or civil in character and whether the defendant had an opportunity to be heard.⁷⁹ The court of appeals affirmed the trial court’s decision that there was no due process violation as this was a matter of civil law and Paramount Land Holdings was given notice and an opportunity to be heard.⁸⁰

When owners who persistently defy orders to comply with housing codes are fined, the court responds with substantial punishment. The case of two related companies from South Carolina makes the point.⁸¹

75. See *Cleveland v. Washington Mut. Bank*, 125 Ohio St. 3d 541, 2010-Ohio-2219, 929 N.E.2d 1039 (limiting its holding to the trial of corporations *in absentia* in a criminal proceeding initiated in a municipal court).

76. See OHIO REV. CODE ANN. § 2705.02(A) (West 2011).

77. Lind, *The People’s Court*, *supra* note 33.

78. See HOUSING COURT INITIATIVES, CLEVELAND MUN. CT. HOUS. DIV. (Aug. 31, 2010) (on file with author) (report prepared and issued by the Housing Court).

79. On December 16, 2010, Paramount filed its appeal of four cases, which were subsequently consolidated on December 21, 2010. The four cases were *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96180 (Ohio Ct. App.); *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96181 (Ohio Ct. App.); *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96182 (Ohio Ct. App.); *City of Cleveland v. Paramount Land Holdings*, No. CA-10-96183 (Ohio Ct. App.). Note that these three cases are not the same cases as those involving Paramount referenced *infra* at notes 81 and 82. The four consolidated cases were decided by the court of appeals on October 20, 2011. *City of Cleveland v. Paramount Land Holdings*, 2011 Ohio 5382, 2011 Ohio App. LEXIS 4454.

80. *City of Cleveland v. Paramount Land Holdings*, 2011 Ohio 5382, 2011 Ohio App. LEXIS 4454.

81. In early 2010, Cleveland Municipal Housing Court Judge Raymond Pianka imposed criminal fines in an amount that exceeded \$13 million against three commercial homeowners for repeated violations of Cleveland’s residential building and housing

They were fined a total of \$13 million for neglecting compliance on 13 properties so dilapidated that the city had to demolish them to protect the public.⁸² The court's judgment included a detailed rationale for the fines which weighed the reasons for punishment and the aggravating facts against the mitigating facts.⁸³ Here, the defendant failed to appear in several instances and then pleaded "no contest" in all cases, failed to spend any money to make repairs, failed to pay property taxes and failed to make any other effort to take any action which the Court could consider in mitigation of a sentence.⁸⁴ The judgment concluded with the following statement:

Despite Defendant's complete and total disregard for the laws—and the citizens—of the City of Cleveland, the Court remains committed to its problem-solving mission. Should Defendant change its behavior and resolve the aforementioned violations, the Court may consider mitigation. Using the mitigating factors discussed in this entry as a guide, Defendant may formulate a plan and execute it. Should Defendant make real and demonstrable progress toward abating the nuisance posed by its properties, Defendant may file a motion to mitigate its sentence.⁸⁵

code. On May 20, 2010, Stonecrest Investments, LLC was fined \$5,000 for each violation, resulting in a total fine of \$190,000. *City of Cleveland v. Stonecrest Inv.*, No. 09-CRB-42705 (Ohio Cleveland Mun. Ct. Hous. Div. May 20, 2010) (*docket available at* http://clevelandmunicipalcourt.org/pa/prodpa.urd/pamw2000.docket_lst?3622715) (Judgment Entry, consolidating 38 cases). On June 18, 2010, South Carolina-based Paramount Land Holdings, LLC and Interstate Investment Group were each fined \$1 million and \$11.9 million respectively. *City of Cleveland v. Paramount Land Holdings*, No. 09-CRB-44396 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010), *available at* www.clevelandhousingcourt.org/pdf/Paramount_6-18-10.pdf (Judgment Entry, consolidating 8 cases); *City of Cleveland v. Interstate Inv. Grp.*, No. 09-CRB-44442 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010) (*docket available at* http://clevelandmunicipalcourt.org/pa/prodpa.urd/pamw2000.docket_lst?3631742) (Judgment Entry, consolidating 10 cases). As of this writing, none of the three commercial defendants have satisfied their judgments, either in whole or in part. While both Paramount and Interstate appealed their consolidated judgment entries, Stonecrest has expressed interest in working with the Cuyahoga County Land Bank so as to mitigate its fines and reduce the negative impact its properties have on the community. Notwithstanding, the gravity of these fines sends a clear message to banks and bulk purchasers of real property that local, municipal laws are not to be ignored in favor of maintaining a profitable business model.

82. See *City of Cleveland v. Interstate Inv. Grp.*, No. 09-CRB-44442 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010), *available at* www.supremecourt.ohio.gov/rod/docs/pdf/8/. . /2011-ohio-3384.pdf; *City of Cleveland v. Paramount Land Holdings*, No. 09-CRB-44396 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010), *available at* www.clevelandhousingcourt.org/pdf/Paramount_6-18-10.pdf; see also Sandra Livingston, *Cleveland Housing Court Judge Fines Two Real Estate Firms About \$13 Million for Neglect*, THE PLAIN DEALER (June 22, 2010, 10:06 AM), http://blog.cleveland.com/metro/2010/06/cleveland_housing_court_judge_1.html.

83. See *City of Cleveland v. Interstate Inv. Grp.*, No. 09-CRB-44442 (Ohio Cleveland Mun. Ct. Hous. Div. June 18, 2010) (*docket available at* http://clevelandmunicipalcourt.org/pa/prodpa.urd/pamw2000.docket_lst?3631742).

84. See *id.* at 7-10.

85. *Id.* at 13.

This conclusion to a severe sentence of a criminal defendant who ignored multiple opportunities over more than a year to mitigate the sentence show how determined the court is to trade sentences and fines for compliance, even for the most egregious of offenders.

B. *Comprehensive Plea Agreements*

The court uses plea bargains and the mitigation of sentences to obtain increased compliance by defendants. In an unstable housing market, buyers, many of whom have wildly unrealistic notions about home ownership as a result of get-rich-quick seminars or real estate infomercials on television, end up in court for violations on one or two properties while owning several more that are in bad condition. Whenever possible, the Housing Court prefers plea agreements and sentences that include solutions to all the problem properties of a defendant. In such cases, the court wants the owner to repair all its properties, not only the ones cited. By putting its other properties into compliance with housing codes, owners are able to get jail sentences and fines suspended. Similarly, the prosecutor can reduce the charges where defendants cooperate in the development of plans to get their houses into compliance before their trial date.

C. *Evictions With Clean Hands*

It came to the Court's attention that eviction actions⁸⁶ were being filed by corporate owners against residents in dwellings while those owners had outstanding warrants for failure to appear in the Housing Court to answer charges in criminal code enforcement cases. Thus, the Housing Court was being asked to authorize the dispossession of residents by owners who were refusing to appear before the court in housing code violation cases. The court then imposed the equitable doctrine of "clean hands."⁸⁷ Based on this principle, the court refused to proceed on an eviction where the plaintiff-owner of the dwelling was subject to an arrest warrant for failure to appear before the court to answer criminal charges. Thus, plaintiffs are required to deal with their pending criminal cases before they dispossess occupants of the houses the plaintiffs purchased at sheriff's sales.⁸⁸

86. An eviction case is a civil action invoking the equitable jurisdiction of a court.

87. This doctrine states that "he who comes into equity must come with clean hands."

88. Judge Pianka's approach to managing evictions served to complement the Protecting Tenants at Foreclosure Act, passed by Congress in 2009. See Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, Div. A, Title VII, § 701, 123 Stat.

D. *Public and Community Service Programs*

The Housing Court engages in a variety of programs to inform the public, specifically those directly affected by foreclosures, on both their rights and responsibilities. Its website⁸⁹ offers articles, bulletins, and videos to inform the public about preventing nuisance conditions. The court also sends a letter to defendants in mortgage foreclosure cases encouraging them to remain in their homes as long as possible and informing them that until the house is sold to a new owner, code compliance is their responsibility even if they abandon possession—neither bankruptcy nor a foreclosure alone will end their responsibility for the condition of their house. Each year since 2007, the court has sent as many as 7,500 such letters.⁹⁰ When letters are returned because of vacancy or with a reply from an occupant, the court collects the information. Postal records of vacancies are forwarded to the Court of Common Pleas where nearly all foreclosures are adjudicated.

Another initiative to mitigate the effects of abandonment is the use made of the Court Community Service (CCS) program. The Cleveland Municipal Court system may, when appropriate, sentence criminal defendants to supervised community service. The Housing Court may order the CCS staff to supply workers sentenced to community service to clean up vacant lots, perform yard work, secure vacant structures and make minor repairs at properties that are the subject of pending cases in the court.

When an abandoned vacant property is the subject of a case pending before the court, the court orders a bailiff to put up a notice on the premises forbidding trespassing and providing information about who is responsible for the condition of the property, along with contact information. This notice provides neighbors with information about who to contact regarding any problems with the property and where to get information about the status of the case in Housing Court.

1632, 1660, (2009) (codified at 12 U.S.C. § 5201 and amending 42 U.S.C. § 1347(o)(7)) (modified by Mortgage Reform and Anti-Predatory Lending Act, Pub. L. No. 111-203, Title XIV, Subtitle G, § 1484, 124 Stat. 2136, 2204 (2010)). Before Congress passed the federal legislation, tenants residing in a foreclosed residence had little protection against a subsequent owner-in-interest and were often evicted by the new owner without regard to the tenant's original lease terms. The federal legislation changed this practice with respect to foreclosure sales, by requiring subsequent owners-in-interest provide all tenants with a notice to vacate, 90-days in advance of any eviction. In this regard, Judge Pianka afforded more protection to tenants than did the federal legislation.

89. See CLEVELAND HOUSING COURT, <http://www.clevelandhousingcourt.org>.

90. See Livingston, *Cuyahoga's New Foreclosures up 13% for First Half of Year*, *supra* note 17.

III. Cuyahoga County Land Bank

In addition to the wave of foreclosures that engulfed Cleveland due to predatory subprime mortgage lending and outright fraud, foreclosures also began to increase in many cities in suburban Cuyahoga County. While the county government increased funding to the courts to accelerate the processing of foreclosures and funded several agencies beginning in 2005 to provide counseling to homeowners in danger of losing their homes through foreclosure, by 2009 the number of foreclosure filings in suburban Cuyahoga County exceeded those in the City of Cleveland.⁹¹ Cuyahoga County Treasurer Jim Rokakis was alarmed not only by this increase in the volume of foreclosures but also by the loss of property tax revenue due to abandoned foreclosed homes with “toxic titles” that could not be resold in an economy hit by a major recession and an increasing number of tax appeals by homeowners citing the declining market value of their homes.

A similar pattern of abandonment had occurred in the 1970s but was largely confined to the City of Cleveland itself. The combination of deindustrialization resulting in a massive loss of jobs, continued suburbanization, and “white flight” triggered by cross-town busing as part of the remedy in the Cleveland public school desegregation lawsuit caused an almost one-quarter loss of population.⁹² The City of Cleveland found itself with thousands of abandoned homes with unpaid taxes (as well as industrial and commercial buildings), many becoming nuisance properties eventually requiring condemnation and demolition.⁹³ Neighborhood-based organizations complained about the negative impact of these deteriorating structures on their neighborhoods.⁹⁴

In response to this crisis, the City of Cleveland persuaded the Ohio legislature to authorize in 1976 the creation of a land bank.⁹⁵ Under

91. See *id.*; see also ROTHSTEIN & MEHTA, *supra* note 17.

92. See CAROL POH MILLER & ROBERT WHEELER, CLEVELAND: A CONCISE HISTORY, 1796-1990 (1990); see also Exner, *supra* note 54 (discussing a declining trend in Cleveland’s population).

93. See Frank S. Alexander, Local Initiatives Support Corporation, *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks* 6 (April 2005) (citing SUSAN OLSON & M. LEANNE LACHMAN, TAX DELINQUENCY IN THE INNER CITY: THE PROBLEMS AND ITS POSSIBLE SOLUTIONS 1 (1976)), available at http://www.communityprogress.net/filebin/pdf/new_resrcs/alexander_land_bank_lisc.pdf.

94. See Les Christie, *Foreclosure’s Other Victims—Those Left Behind*, CNN MONEY, Nov. 28, 2007, available at http://money.cnn.com/2007/11/28/real_estate/Slavic_villages_othervictims/index.html.

95. See 1976 House Bill 1327, No. 4-415 (1976) (enacting OHIO REV. CODE § 5722.01 to .14).

this legislation, Cuyahoga County transferred tax-delinquent properties that had been foreclosed and were now vacant to the City of Cleveland at the city's request.⁹⁶ Cleveland established its land bank in the Real Estate section of its Community Development Department.⁹⁷ The city accepted only vacant lots and separated these lots into buildable and non-buildable parcels according to the size of the parcel and the applicable zoning.⁹⁸ The former were sold for a nominal sum (\$100) to developers.⁹⁹ Most went to the city's growing number of community development corporations (CDCs) for non-profit development of below market affordable housing.¹⁰⁰ Some of the strongest CDCs formed the Cleveland Housing Network in 1981 and later created a Homeward program to promote home ownership for eligible purchasers (usually moderate-income first time homeowners) of newly-constructed housing.¹⁰¹ The non-buildable lots were offered to adjacent property owners (for \$1 and the cost of recording title) who might use the vacant lot for yard expansion, gardening, or parking.¹⁰² Over its life, the City of Cleveland's land bank has contributed to the reclamation and re-use of thousands of vacant lots and, through the CDC network, the rebuilding of neighborhoods addressing blight and abandonment. The city's land bank held 7,399 parcels for future use as of December, 2011.¹⁰³

96. Frank S. Alexander, Center for Community Progress, *Land Banks and Land Banking* (June 2011), available at http://www.communityprogress.net/filebin/pdf/new_resrcs/LB_Book_2011_F.pdf.

97. Great Lakes Environmental Finance Center & Maxine Goodman Levin College of Urban Affairs, Cleveland State University, *Best Practices in Land Bank Operation*, 13 (June 2005), available at http://urban.csuohio.edu/publications/center/great_lakes_environmental_finance_center/land_bank_best.pdf.

98. See Alexander, *supra* note 93.

99. *Id.* at 47.

100. See Great Lakes Environmental Finance Center, *supra* note 97, at 13.

101. See Christopher Warren, *Housing: New Lessons, New Models*, in CLEVELAND: A METROPOLITAN READER (W. Dennis Keating, Norman Krumholz & David C. Perry, eds., 1995).

102. See ELISE M. BRIGHT, REVIVING AMERICA'S FORGOTTEN NEIGHBORHOODS: AN INVESTIGATION OF INNER CITY REVITALIZATION EFFORTS, (2000); Norman Krumholz & Brian Lloyd, *Land Banking and Neighborhood Revitalization*, PLANNERS' CASEBOOK, AMERICAN INSTITUTE OF CERTIFIED PLANNERS (Summer 2002). See generally Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225 (2010) (describing the process of land banking in Cleveland).

103. Data obtained from the City of Cleveland's Department of Development. See The City of Cleveland Land Bank Property Search Available Lots, <http://cd.city.cleveland.oh.us/scripts/cityport.php> (last visited December 14, 2011). Through the City of Cleveland's Land Reutilization Program, the Cleveland land bank will transfer properties to individuals, developers, and not-for-profit organizations for redevelopment purposes.

In confronting the most recent crisis, however, this type of land bank is insufficient. It does not deal with blighted structures, their rehabilitation or demolition. It has no funding to develop housing. It has no authority to strategically assemble vacant land for development. Its authority and capacity to engage in collaboration with municipalities or with businesses is limited. Most importantly, it has no independent source of funding to acquire and maintain abandoned vacant properties.

In addressing the county-wide mortgage crisis, Rokakis and others looked toward a different model—the Genesee County Land Bank Authority (GCLBA).¹⁰⁴ In 2003, Michigan enacted the Land Bank Fast Track Act.¹⁰⁵ It authorized the creation by counties of city and county land bank authorities with powers to assemble, sell, or redevelop tax-foreclosed properties in an expedited process and also enabled counties to plan brownfield redevelopment.¹⁰⁶ The GCLBA was created under this legislation in 2004.¹⁰⁷ Its focus has been primarily on the City of Flint, hit hard for many years by the loss of jobs in the auto manufacturing industry.¹⁰⁸ It works closely with the County Treasurer, who is responsible for foreclosing on tax delinquent properties.¹⁰⁹ It also acquires properties from public and private entities and receives property transfers. A 2009 HUD report on land banks described its activities:

The GCLBA operates 10 different programs designed to ensure productive reuse of tax-foreclosed properties through foreclosure prevention, housing renovation, side lot transfer, clean and green (vacant lots are converted into gardens and green space), planning and outreach, demolition, property maintenance, sales, development, and brownfield redevelopment. Since most of the properties acquired by the land bank are either vacant or in severe disrepair, the GCLBA categorizes them for demolition,

104. Anne Trubek, *The Man Who Saw the Mortgage Crisis Coming*, MILLER-MCCUNE (Nov. 21, 2011), available at <http://www.miller-mccune.com/business-economics/the-man-who-saw-the-mortgage-crisis-coming-37756/>.

105. Land Bank Fast Track Act, H. 4483, 92d Leg., Reg. Sess., (Mich. 2003) (codified at MICH. COMP. LAWS §§ 124.751-124.774 (2004)).

106. *Id.*

107. *Id.* Though the Land Bank Fast Track Act authorized the formal establishment of land banks, Genesee County's land reutilization efforts began in 2002 with the creation of the Genesee County Land Reutilization Council. The Land Reutilization Council was Genesee County's response to the rising number of tax delinquent properties and was the predecessor to the county's land bank. See Alexander, *supra* note 93, at 7; see also Urban Cooperation Act, 1967 Ex. Sess. Act 7, §§ 124.501 to .512 (Mar. 1968) (codified at MICH. COMP. LAWS § 124.501-.512 (1967)) (authorizing the creation and operation of the Land Reutilization Council), available at www.legislature.mi.gov/%28S%28qtukdv45ddmigs55kngfp33d%29%29/mileg.aspx?page=GetObject&objectname=mcl-Act-7-of-1967-Ex-Sess-.

108. GENESSEE COUNTY LAND BANK, <http://thelandbank.org/aboutus.asp>.

109. *Id.*

rehabilitation, or for rent or sale to interested parties. Neighborhood revitalization, homeownership, and increasing housing opportunities for low-income families are top priorities at the GCLBA.¹¹⁰

During the period beginning in 2002 and ending in 2010, the GCLBA has sold 2,138 properties, demolished 1,181 structures, and in 2010, the GCLBA had an inventory of 6,235 residential properties, with 3,952 of those properties being vacant.¹¹¹ Inspired by this model, land bank proponents in Cleveland sought to develop a county-wide land bank with capacities and characteristics to deal with the rising and foreseeable volume of abandoned parcels of land.¹¹² Rokakis led a working group of experts in public finance, banking, local government and real estate law in the design of a land bank with the tools to work collaboratively with all public entities and with private financial and real estate businesses. Legislation was drafted and was introduced in the Ohio legislature in 2008 to create the state's first countywide land bank.¹¹³ It was approved and signed by the governor in early 2009, initially on a 2-year experimental basis.¹¹⁴

The Cuyahoga County Land Re-utilization Corporation (CCLRC) (hereinafter referred to as the "Cuyahoga County land bank" or the "land bank") is not part of the government of Cuyahoga County (which

110. U.S. Dep't of Hous. & Urb. Dev., Office of Policy Dev. & Research, *Revitalizing Foreclosed Properties with Land Banks* 10 (Aug. 2009), available at <http://www.huduser.org/portal/publications/landbanks.pdf> (citing Genesee County Land Bank Authority, *Genesee County Land Bank Programs*); see also Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. STATE L. REV. 189 (2008).

111. See Genesee County Land Bank, *Genesee County Land Bank 2002-2010 Annual Review*, at 2-3 (Winter 2011), available at <http://www.thelandbank.org/downloads/LBANewsletter-Annual-Report-Winter-2011.pdf>.

112. See Trubek, *supra* note 104.

113. See Creation of Land Reutilization Corporations—Reclamation—Abandoned or Unclaimed Property—Urban Renewal, S. Res. 353, 127th Gen. Assemb., Reg. Sess. (Ohio 2008). The legislation authorized the creation of a land reutilization corporation to facilitate the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property. Notably, although the 2008 legislation authorized Ohio's first county-wide land bank, the City of Cleveland had been operating a land bank since 1976. See 1976 House Bill 1327, No. 4-415 (enacting OHIO REV. CODE § 5722.01-.14). See generally OHIO REV. CODE § 5722.01 (Apr. 7, 2009); *id.* § 5722.02(A), (B) (Apr. 7, 2009) (authorizing a county to establish a land reutilization corporation). See also *id.* § 1724.01, (Apr. 7, 2009) (providing that a county land reutilization corporation shall be organized as a not-for-profit corporation under chapters 1724 and 1702 of the Ohio Revised Code).

114. See Creation of Land Reutilization Corporations—Reclamation—Abandoned or Unclaimed Property—Urban Renewal, S. Res. 353, 127th Gen. Assemb., Reg. Sess. (Ohio 2008). This two-year limitation was removed by an amendment less than a year later.

was re-organized as of January 1, 2011).¹¹⁵ Instead, it is a special purpose, non-profit corporation authorized under R.C. 1724. It is governed by a board of corporate directors established and authorized by Ohio's nonprofit corporation statute, R.C. 1702.¹¹⁶ In addition to the provisions governing nonprofit corporations, land reutilization corporations are subject to state open meetings and sunshine regulations plus the special scrutiny of Ohio's Secretary of State and Attorney General. The land bank's mission is to "strategically acquire properties, return them to productive use, reduce blight, increase property values, support community goals, and improve the quality of life for county residents."¹¹⁷ Its powers include:

1. purchasing, receiving, transferring, holding, managing, and leasing real property;
2. engaging in code enforcement and nuisance abatement (including demolition);
3. acquiring or managing unimproved (vacant) underutilized property and forfeited lands;
4. purchasing delinquent property tax lien certificates;
5. issuing bonds, applying for grants, making loans, and borrowing money.¹¹⁸

The CCLRC receives its funding from a variety of traditional and nontraditional sources.¹¹⁹ However, a primary source of the land bank's funding comes from interest and penalties on unpaid or delinquent real property taxes and assessments collected by the Cuyahoga County

115. Though organized as a private corporation with a business plan that includes governmental activities, the CCLRC was incorporated by the Cuyahoga County Treasurer with the authorization of the County Board of Commissioners. Consequently, the land bank is not entirely free from those provisions that govern public entities. *See, e.g.*, OHIO REV. CODE § 1724.11 (2011) (addressing Ohio's Public Records Law); *see also* Cuyahoga County Land Reutilization Corporation, *Public Records Policy*, CUYAHOGA LAND BANK (May 22, 2009) available at http://www.cuyahogalandbank.org/documents/policies/00496436_PUBLIC_RECORDS.pdf (acknowledging compliance with Ohio's Public Records Law).

116. *See* OHIO REV. CODE ANN. § 1702 (West 2011).

117. *See* Cuyahoga County Ohio Land Bank, About Us, <http://www.cuyahogalandbank.org/aboutUs.php> (last visited Dec. 26, 2011).

118. *See* OHIO REV. CODE ANN. §§ 1724.02, .10 (West 2011); OHIO REV. CODE ANN. § 5722 (West 2011); *see also* Agreement & Plan of Reclamation, Rehab., and Reutilization of Vacant, Abandoned, Tax-Foreclosed or Other Real Prop. in Cuyahoga County Ohio between the County of Cuyahoga, Ohio & the Cuyahoga County Land Reutilization Corp., Article II, *Actions in Furtherance of the Plan* (June 4, 2009), available at http://www.cuyahogalandbank.org/documents/organizational/Agreement_and_Plan.pdf.

119. *See* OHIO REV. CODE ANN. § 122.65 (West 2011); *see also* OHIO REV. CODE ANN. §§ 307.01, 307.07, 307.09-.10, 307.12, 307.64, 307.698, 307.78-.781, 321.261,

Auditor. The land bank also received funding through HUD's Neighborhood Stabilization funds. In the first round of NSP funding, the land bank received \$1 million for acquisition and demolition in thirty municipalities.¹²⁰ In the second round, it led a consortium which included the City of Cleveland, the Cuyahoga Metropolitan Housing Authority and the County government which received \$41 million.¹²¹ In December, 2010, the land bank successfully obtained \$9 million from its first bond sale.¹²² Finally, the land bank received a \$400,000 grant from the U.S. Environmental Protection Agency (EPA) to assist with assessment of environmental contamination in industrial and commercial sites.¹²³ These accomplishments in its first year demonstrate the nimble and flexible capacity of the land bank in collaborating

1724.02, 5705.19(EE), (UU), 5721.19, 5722.08 (West 2011). See generally LEGIS. SERV. COMM'N, BILL ANALYSIS—SB 353—FINAL, ACT SUMMARY & CONTENT AND OPERATION, *CLRC Sources of Funding and Asset Acquisition* (2009), available at http://www.legislature.state.oh.us/analyses.cfm?ID=127_SB_353&ACT=As%20Enrolled. For a discussion of how modern land banks, including the Cuyahoga County Land Bank, utilize innovating funding methods, see Thomas J. Fitzpatrick, *How Modern Land Banking Can Be Used to Solve REO Acquisition Problems*, REO & VACANT PROPERTIES: STRATEGIES FOR NEIGHBORHOOD STABILIZATION 145, 147-149 (Fed. Reserve Banks of Boston & Cleveland and the Fed. Reserve Bd. 2010).

120. Under the first round of NSP funding (NSP1), as authorized by The Housing and Economic Recovery Act, only states and units of local governments could apply for, and be awarded, NSP1 funds. See Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, Div. B, Title III, § 2301(a), (b), 122 Stat. 2850 (2008) (codified at 42 U.S.C. § 5301), amended by American Recovery and Reinvestment Act, H.R. 1-103 to 105, 111th Cong. (2009). Conversely, nonprofit land banks, whether governmental or nongovernmental entities, were precluded from applying for NSP1 funds directly. See 73 Fed. Reg. 58330, 58332 (Oct. 6, 2008). Rather, recipients of NSP1 awards could choose to allocate a portion of their total award to newly created, or pre-existing, land banks, provided the land bank would operate in a specific, defined geographic area and use the funds to purchase foreclosed properties and then maintain, assemble, facilitate the redevelopment of, market, and dispose of those properties. See 74 Fed. Reg. 29223, 29224 (June 19, 2009) (amending 73 Fed. Reg. 58330 (Oct. 6, 2008)). Accordingly, the CCLRC was allocated a portion of the NSP1 funds that were awarded to Cuyahoga County. See 73 Fed. Reg. at 58348 (Oct. 6, 2008) (providing a list of NSP1 recipients); see also NSP Quarterly Reports, Cuyahoga County Department of Development, NSP Quarterly Performance Report 2nd Quarter 2009 (2009) (allocating certain NSP1 awards to the CCLRC).

121. See Press Release, City of Cleveland, County Land Reutilization Corp. Cuyahoga County and CMHA Partnership Receives \$40.8 Million in NSP2 Funds (Jan. 14, 2010), available at http://www.cuyahogalandbank.org/clippings/20100114_pr_consortium_nsp2_award.pdf.

122. Dennis Keating, *Cuyahoga County Land Reutilization Corporation: The Beginning, The Present, and Beyond*, available at http://www.community-wealth.org/_pdfs/news/recent.../report-keating.pdf.

123. The CCLRC received its grant as part of a larger \$78.9 million initiative by the EPA to help communities in forty states clean up, revitalize, and sustainably reuse contaminated properties. See Press Release, FY10 Brownfields Assessment, Cleanup, and Revolving Loan Fund Grants, Region 5, at 8 (April 2010), available at http://www.epa.gov/brownfields/grant_announce/selectedgrants.pdf.

with different types and levels of public entities to obtain and manage resources.

The Cuyahoga County land bank began operations in the summer of 2009. Its primary operational focus has been on demolition of badly blighted nuisance structures. In 2010, it acquired 495 properties and demolished 147 abandoned housing units, with another 100 scheduled to be demolished.¹²⁴ It transferred 80 empty lots, mostly to the City of Cleveland's land bank.¹²⁵ In September, 2010, it sold its first renovated house.¹²⁶

Significant achievements in its initial period of operation included agreements with fifteen municipalities, initially with the City of Cleveland, detailing how the land bank would operate within their boundaries. Most importantly the land bank agreed that it would generally abide by their priorities in acquiring properties and then disposing of them for re-use. Land use regulation is done by separate municipalities within Cuyahoga County. While this results in fragmented planning and discordant development, until land use planning and regulation is more regional, the land bank must operate with multiple and varied voluntary agreements with individual municipal jurisdictions.

The land bank also negotiated the first agreement in the country with the Federal National Mortgage Association (FNMA) under its First Look program. This agreement not only gives the land bank the first right to acquire FNMA's foreclosed properties in Cuyahoga County but also has FNMA contributing \$3,500/property toward the demolition of badly blighted properties.¹²⁷ This is roughly half the cost of demolition of single-family houses. Later, the land bank negotiated an agreement with HUD whereby HUD agreed to give the land bank the first right to acquire low value properties (*i.e.*, those under \$20,000) for the nominal price of \$100.¹²⁸ In 2011 the land bank began negotiating agreements

124. Keating, *Cuyahoga County Land Reutilization Corporation*, *supra* note 122, at 16.

125. *Id.*

126. Mike Gaynier, *Home in the Heights Sells First Renovated Vacant House*, Heights Observer June 2, 2009, available at http://media.heightsobserver.org/issue_pdfs/TheHeightsObserver_Vol_02_Issue_06.pdf.

127. See Sandra Livingston, *Fannie Mae and the New Cuyahoga County Land Bank Forge Unique Agreement*, THE PLAIN DEALER, Dec. 16, 2009 (explaining that in addition to the \$3,500 contribution by FNMA, the initial agreement between FNMA and the CCLRC allowed the land bank to acquire properties owned by FNMA for \$1.00).

128. See Press Release, U.S. Dep't of Hous. & Urban Dev., HUD Expands Neighborhood Stabilization Program in Cuyahoga County: Deep Discounts on HUD Homes to Help Recovery Act Program Work More Effectively in Cleveland Metro Area, HUD No. 10-141 (July 2, 2010), available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-141.

with big banks for disposition of low value properties owned by the banks or bank trusts after mortgage foreclosures. These private agreements will provide for payment of demolition costs for bank-owned houses.¹²⁹ These agreements prevent these nuisance properties being bought at auction by speculators who then resell them without first bringing them into compliance with local housing codes. Of the more than 300 properties demolished by the land bank since it began operations most have been FNMA- and HUD-owned properties.¹³⁰ As this article was being written, the land bank was in negotiation with other mortgage and REO servicers for agreements on the disposition of houses mortgagees were abandoning. Orderly disposition of what is actually solid waste in cooperation with a land bank is a benefit to municipalities in terms of cost and its protection of the public health, safety and welfare.

While the land bank is still in the early stage of its operation, it is already viewed as a key agency in addressing the impact of the mortgage crisis in Cuyahoga County and in the rebuilding process of those cities and neighborhoods most heavily impacted by foreclosures and abandonment. It is a model for other Ohio urban counties interested in creating similar land banks.

IV. Rebuilding Neighborhoods: the Community Development Community

The Cleveland Housing Court and the Cuyahoga County land bank represent two of the most effective organizations responding to the mortgage crisis and the housing abandonment that it has caused. A third important responder is the combination of community development organizations (CDCs) and the two major local “intermediaries” that support networks of CDCs—the Cleveland Housing Network (CHN) and Neighborhood Progress, Inc. (NPI). They are in the forefront of the efforts to rebuild the neighborhoods in which they have worked for the past three decades or more and which have been damaged in this crisis. Moreover, the neighborhood-based organizations in Cleveland were, and remain, a critical force for the establishment and integrity of the Housing Court and the Cuyahoga County Land Reutilization Corporation.

129. E-mail from Gus Frangos, President, Cuyahoga County Land Reutilization Corporation, to authors (June 3, 2011) (on file with authors and reiterating what has been reported at public meetings).

130. *Id.*

CHN began in 1981 as an association of six CDCs and has grown to have seventeen CDC members. CHN has provided financing for CDC-sponsored affordable housing, much of which it manages. Its lease-purchase program modeled on one initiated by the Famicos Foundation following the 1966 Hough riot to renovate housing and promote low-income home ownership has gained acclaim as a way in which lower-income families can become responsible homeowners.¹³¹ It also began its Homeward program to produce more affordable new housing as part of the City of Cleveland's efforts to retain residents and attract new homeowners. Over its 30-year life, CHN and its member CDCs have produced several thousand affordable housing units and allowed several hundred participants in the lease-purchase program to become homeowners.¹³² NPI was formed in 1988 to channel funding from corporations and foundations in collaboration with the City of Cleveland to CDCs for neighborhood redevelopment. Its primary objective has been to recreate markets and support the development of housing and related facilities in selected neighborhoods.¹³³ It has provided access to capital to finance projects and organizational support to what has been considered the strongest of the CDCs.

The efforts of CHN and NPI have helped to revitalize many Cleveland neighborhoods, even as those neighborhoods continued to experience many serious challenges, including declining population, poverty and unemployment, crime, substandard housing, and troubled public schools. Two examples of the positive impact of the work of CDCs could be found in the Slavic Village and Tremont neighborhoods.¹³⁴ The progress that has been made was being significantly undermined

131. The CHN lease-purchase program has received national acclaim, in part, because it was the first of its kind to use federal Low Income Housing Tax Credits in connection with a lease-purchase strategy to facilitate home ownership. In 2006, former President Bill Clinton celebrated the program's success, and in 2010, the city of Urbana, Illinois proposed creating a rent-to-own development that was modeled in part on CHN's lease-purchase program, but would use state, rather than federal, tax credits. See generally Memorandum from Elizabeth H. Tylor, Dir. Cmty. Dev., to Laurel Lunt Prussing, Mayor of the City of Urbana (Oct. 13, 2010) (referenced within the Kerr Avenue Project Status Update). For a thorough synopsis of CHN's lease-purchase program, see *Innovations in Community Development: Lease Purchase Paves a Path to Homeownership*, ENTERPRISE FOUND. (2004), available at <http://www.practitionerresources.org/cache/documents/19725.pdf>.

132. Since 1981, the Cleveland Housing Network has made \$484 million in capital investments in the city of Cleveland and has developed 4,485 affordable homes for rent and ownership to over 1,700 Cleveland families. See CLEVELAND HOUSING NETWORK, 2009 COMMUNITY REPORT, at 18, available at http://www.chnnet.com/chn_report_09.pdf.

133. NEIGHBORHOOD PROGRESS, <http://neighborhoodprogress.org/home.php> (last visited Dec. 14, 2011).

134. See generally Krumholz, Keating, Star & Chupp, *supra* note 11.

by the impact of vacant and abandoned foreclosed housing. Slavic Village was a much-published example of the devastating impact of this phenomenon.¹³⁵

To counter this crisis, NPI, CHN and partner CDCs have combined to launch several initiatives to counter housing abandonment and begin to rebuild key neighborhoods. In 2004, NPI invited a team from the National Vacant Properties Campaign to conduct a strategic assessment of the existing system for returning vacant, abandoned, and blighted properties to productive use. It produced a report in 2005 with numerous recommendations.¹³⁶ Their recommendations addressed strengthening the city's code enforcement policies, restructuring and expanding the city's land bank, registering vacant properties, establishing an aggressive, targeted nuisance abatement program (including expanding the use of receivership), regulating mortgage companies and lending to prevent foreclosures, designing and creating a land assembly program in cooperation with CDCs, and developing a property information system to provide an early warning capability about properties in danger of foreclosure and identify vacant properties.¹³⁷ They also recommended creation of an ongoing vacant property committee to act as a catalyst for change.¹³⁸ This helped to spur the creation of the Vacant and Abandoned Properties Action Council (VAPAC) with representative membership from the City of Cleveland, a suburban municipal coalition and county agencies, community development corporations, and funders.¹³⁹ VAPAC's convener, NPI, provided special staff assistance from Cleveland State University and Case Western Reserve University.

Also in 2004, NPI announced a program called the "Strategic Investment Initiative" (SII). Supported by the City of Cleveland, the Cleveland Foundation, and the Gund Foundation, the SII strived for neighborhood stabilization by concentrating resources in six neighborhoods selected in a competitive process, and within these neighborhoods, 'model blocks' were chosen for initial investment.¹⁴⁰ By

135. See Lind, *Perfect Storm*, *supra* note 1, at 230 n.7; Kotlowitz, *supra* note 6; see also CLEVELAND VS. WALL STREET, *supra* note 67.

136. See MALLACH, LEVY & SCHILLING, *supra* note 13 (setting forth five steps that stakeholders should take to prevent, reclaim, and reuse Cleveland's vacant and abandoned property, and for each step, proposing several strategies and recommendations for effective implementation).

137. *Id.*

138. *Id.* at 26.

139. See COULTON & HEXTER, *supra* note 14, at 6.

140. Lind, *Perfect Storm*, *supra* note 1, at 8.

2010, NPI had announced the expansion of SII to nine neighborhoods.¹⁴¹

Similarly, in October, 2008, NPI unveiled its related “Opportunity Homes” program. Like SII, the target areas for this 3-year program were located in six Cleveland neighborhoods and all but one of these neighborhoods were also participating in the SII.¹⁴² Despite the downturn of the housing market in Cleveland which had all but halted the CHN’s housing production programs, the Opportunity Homes program was designed to demolish blighted, abandoned houses, renovate those that can be saved, and identify and counsel homeowners in danger of foreclosure. This program has been implemented through partnerships developed with NPI and CHN, the City of Cleveland, the Ohio Housing Finance Agency, Living Cities, Enterprise Community Partners, the Federal National Mortgage Association (FNMA), and several lenders.¹⁴³ To facilitate neighborhood planning, NPI created a Neighborhood Stabilization Team to assist participating CDCs in assessing the condition of housing and the likelihood of additional foreclosures. As of spring, 2011, the SII and Opportunity Homes programs together had demolished 145 homes; acquired 50 homes, of which 45 were rehabbed and 36 sold; and avoided 33 foreclosures.¹⁴⁴

These modest results must be viewed in the context of the continuing housing crisis, credit crunch, and population decline affecting Cleveland and other U.S. cities. In 2011, NPI and the City of Cleveland using federal Neighborhood Stabilization Program (NSP) funding also sponsored revitalization planning by CDCs in fifteen targeted sites within the SII areas to further promote small scale redevelopment with the hope that, if successful, this would serve as a model for future larger scale revitalization.

Finally, in 2009, NPI initiated the “Re-Imagining a More Sustainable Cleveland” project to promote the re-use of vacant land resulting from abandonment and the demolition of thousands of foreclosed properties. The previous year, NPI commissioned a study of vacant land which was mapped by the Cleveland Urban Design Collaborative (CUDC). The

141. NEIGHBORHOOD PROGRESS, *NPI to Expand the Successful Strategic Investment Initiative*, http://neighborhoodprogress.org/uploaded_pics/NPI%20SII%20expansion_file_1290020774.pdf (last visited Dec. 26, 2011).

142. See COULTON & HEXTER, *supra* note 14, at 21.

143. See *id.* at 21.

144. E-mail from Frank Ford, Vice President Research & Dev., Neighborhood Progress, Inc., to authors (June 2, 2011) (confirming remarks from oral presentation on May 20, 2011) (on file with authors).

Re-Imagining project was funded by the City of Cleveland with NSP funds. In a competitive process fifty-six proposals were selected, with the hope that they would be completed in 2010 and would also serve as models. Many of the funded projects involved urban agriculture; Cleveland has over two hundred community gardens, and in 2007 the city legalized agricultural land uses.¹⁴⁵ While many of these projects have yet to be completed, they hold promise for re-use of much of the thousands of acres of vacant land with more land becoming vacant in the City of Cleveland due to future demolitions.¹⁴⁶

V. Lessons Learned

What can be learned from the responses of these public and non-profit actors to the mortgage and abandonment crisis in Cleveland? First, Cleveland benefitted from having experienced leaders who rallied against the emerging crisis, called for action, and implemented important reforms.¹⁴⁷ These leaders were able to gain public attention; help create new organizations like the Cuyahoga County Land Bank; and develop other innovative responses, including litigation strategies and the Re-Imagining Cleveland program. Unfortunately, their proposals for legislative reforms were too often ignored or blunted by unsympathetic conservative state legislators and some of their efforts were dismissed by state and federal courts. In addition, the amount of funding available to demolish or renovate blighted houses was insufficient to address the magnitude of the need. Counseling of borrowers threatened with foreclosure was not adequately funded and the record of servicers in making loan modifications continues to be erratic and insufficient. Nevertheless, the City of Cleveland and the non-profit sector have fought back against the impact of the mortgage crisis with increasing effectiveness with the limited funding available.

145. See generally Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225, 285 (2010) (discussing Cleveland's Urban Garden district as a mechanism to facilitate the productive use of land and evaluating the accompanying regulatory challenges).

146. See discussion on calculating vacancies, *supra* note 20. To combat this epidemic, the Re-Imagining Cleveland report identifies several redevelopment proposals to consider when planning community land-use projects.

147. Among these leaders were Cleveland Housing Court Judge, Raymond Pianka; Cuyahoga County Treasurer, Jim Rokakis; Slavic Village Development Director and then Cleveland City Council member, Tony Brancatelli; NPI's Vice-President for Research and Development, Frank Ford; NPI's Vice President for Programs, Bobbie Reichert; CHN Executive Director, Rob Curry; and CDC directors like Marie Kitredge, who serves as Tony Brancatelli's successor at Slavic Village Development.

Second, as the crisis unfolded and continued to devastate neighborhoods, particularly those located on the east side of Cleveland, the CDCs and intermediaries recognized the value of collaboration and knew that collectively pursuing a shared strategy, together with other CDCs, public agencies and local municipalities, would be the only way to salvage Cleveland's hardest hit neighborhoods. Together, they would attempt to counter abandonment by instituting targeted reinvestment projects, such as the Strategic Investment Initiative and Opportunity Homes. They built upon their experience through the previous two decades of building community development networks that served as a national model. They also served as a constant catalyst drawing various public agencies into new collaborations and programs. It is hoped that the Cuyahoga County Land Reutilization Corporation will continue its critical role in preparing for rebuilding Cleveland neighborhoods through clearing and assembling land for new uses. Its performance in just two years has demonstrated the benefits of its structure and the ability of its leadership to engage with municipalities on one hand and financial institutions on the other to establish game changing programs.

Third, in addition to these demonstration programs in targeted neighborhoods, the Re-Imagining Cleveland project is tied to Cleveland's efforts to promote sustainability, a process that began in 2010.¹⁴⁸ The Opportunity Homes program and CHN is promoting green and energy efficient housing that has become city policy.¹⁴⁹ These two examples give hope that out of the wreckage caused by the crisis, better housing and stable neighborhoods will emerge through the rebuilding process.

Fourth, the Cleveland Housing Court demonstrated that an active judiciary, which uses creative means to find solutions, is essential to the success of any shared community effort. In Cleveland, Judge Raymond Pianka is leading this effort. Judge Pianka is undertaking innovative actions and is developing compliance-oriented policies to prevent irresponsible ownership of blighted properties and to protect homeowners and tenants to the extent possible within the limits of the law.

Fifth, Cleveland has recognized the importance of having strategic and nimble code enforcement methods in place. Like many cities,

148. See, e.g., Catherine J. LaCroix, *Urban Green Uses: The New Renewal*, 63 PLAN. & ENVTL. L. 3 (May 2011) (observing how many rustbelt cities, including Cleveland, are coupling economic development with innovation for the purpose of revitalizing vacant land, and focusing particularly on the green renewal efforts used by Cleveland in its recovery from the mortgage crisis).

149. See Wendy A. Kellogg & W. Dennis Keating, *Cleveland's EcoVillage: Green and Affordable Housing Through a Network Alliance*, 21 HOUS. POL'Y DEBATE 69 (2011).

Cleveland has long had ineffective housing code enforcement, but with this recognition, a partnership between the City of Cleveland and several CDCs was developed to reform how the city views code enforcement.¹⁵⁰ Enhanced data systems and better use of data is a key feature of the new program. The aim is to deploy limited resources more effectively in two directions: (1) to help responsible owners comply with minor defects before code enforcement is required, and (2) to attack severely blighted properties before the impact of their nuisance conditions further destabilizes the neighborhood.¹⁵¹

Finally, the efforts of both the City of Cleveland and the CDCs to use public nuisance law in the court system to curtail destructive business practices by big banks and other absentee owners exemplifies the difficulty of a scaled-enforcement action, as the efforts in Cleveland have had mixed results. The lawsuit brought by Cleveland against twenty-one Wall Street financial institutions was hastily removed from state court to federal court where the case was finally dismissed.¹⁵² Comparatively, the suits brought by CDCs demonstrated the effectiveness of Ohio's residential nuisance abatement statute in the Cleveland Housing Court, but also demonstrated the reality that municipalities might find themselves unable to enforce their own statutes in their own courts against large corporations, simply because these corporations are so large, and because our federal judiciary seems increasingly willing to rule on their behalf. One observer put it this way: "Federal courts are governing bodies that seem less interested in the welfare of people and places as they do the welfare of corporations. The courts, in essence, are protecting financial institutions from having to face the realities of what the foreclosure crisis is doing to cities like Cleveland. There's no justice there."¹⁵³

150. See Lind, *Protect Your Neighborhood*, *supra* note 22, at 91-93.

151. MARK FRATER, COLLEEN M. GILSON, RONALD J.H. O'LEARY, *THE CITY OF CLEVELAND CODE ENFORCEMENT PARTNERSHIP* (2009), available at http://www.communityprogress.net/filebin/pdf/CLE_CE_Partnership.pdf; see also *Community Groups Teaming with Cleveland to Fight Neglect and Blight*, THE PLAIN DEALER, Feb. 27, 2011.

152. Though unsuccessful in holding Wall Street banks accountable, the lawsuit brought by the City of Cleveland did provide an unexpected benefit, in that the case was the basis for the movie, "Cleveland Versus Wall Street," which shed light on the struggle of consumer of housing against abusive financing that is destroying neighborhoods. See *CLEVELAND VS. WALL STREET*, *supra* note 67.

153. Willy Staley, *Federal Flip-Flop on Flippers in Cleveland*, NEXT AMERICAN CITY, Nov. 23, 2010, available at <http://americancity.org/columns/entry/2736/>.

VI. Conclusion

These lessons from Cleveland offer both encouragement and a warning. Fighting back against the mortgage disaster can be effective at the local level. It requires strong, collaborative and creative civic leadership able to make long-term commitments to stabilizing neighborhoods using multiple means to accomplish that goal. While elected officials tend to be distracted by electoral and political matters, their recognition of the long-term impact of the crisis and the need to engage in developing new institutional tools at the local level is critical. Neither Wall Street nor Washington has so far produced effective solutions for communities and neighborhoods.

However, the mortgage crisis is far from over. Predicted dates for the end of disaster and the beginning of recovery are history. Financial stability and housing market recovery are, for many weak market places like Cleveland, years away. Even though the financial industry is conceding to some realities about their flawed business models, there is no reason to expect them or the federal and state lawmaking institutions influenced by their lobbyists to repair the damage to urban neighborhoods hardest hit by the mortgage crisis.

It is, then, up to existing local institutions to respond and up to local government and civic leaders to provide new institutions like housing courts, land reutilization authorities and community public interest networks with the right tools for recovery and renewal. The mortgage crisis has produced a nationwide land use crisis with different versions in each locality. The use of land is truly a local matter and abuse of land by profiteers in the mortgage crisis will persist where solutions to land use problems are not locally effective.

FINAL DRAFT

Blueprint for American Prosperity
Unleashing the Potential of a Metropolitan Nation



LAND BANKING AS METROPOLITAN POLICY

By
Frank S. Alexander

October 2008

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EXECUTIVE SUMMARY

Stressed by the catastrophic mortgage foreclosure crisis and the long-run decline of older, industrial regions, more and more communities around the country are struggling with vacant and abandoned properties. To alleviate this drag on national prosperity, the federal government should advance policies that support regional and local **land banking for the 21st century**.

Land banking is a process by which public authorities manage excess inventories of real estate by removing properties from the market and strategically returning them to productive uses, like affordable housing. By turning vacant and abandoned properties into community assets, land banking fosters greater metropolitan prosperity and strengthens broader national economic well-being.

America's Challenge

During the mortgage crisis of the past two years, the nation has seen the number of foreclosures double, and almost 600,000 vacant, for-sale homes added to weak real estate markets. In older industrial regions, chronic economic and population losses have also led to vacancies and abandonment. When left unaddressed, these problem properties impose severe costs on neighborhoods, including reduced property values and tax revenues; increased arson and crime; and greater demands for police surveillance and response. Eight cities in Ohio, for example, had to bear \$15 million in direct annual costs and over \$49 million in cumulative lost property tax revenues from 25,000 vacant and abandoned properties. Such negative consequences drain community resources and keep cities and towns—and the nation—from fully realizing productive, inclusive, and sustainable growth.

Limitations of Existing Federal Policy

The Emergency Assistance Act in the Home and Economic Recovery Act of 2008 is the first express recognition of land banking in federal legislation, but it has weaknesses. In the short term, a lack of clarity regarding the scope and target for the allocated funding, may hinder effective policy implementation. Moreover, as an emergency response to the immediate mortgage crisis, it does not provide well for addressing the concerns of land banking over the longer term. In particular, the act's \$3.92 billion does not come close to meeting the costs associated with the two million foreclosures projected by the end of 2008 and the local revenues lost from vacant and abandoned properties.

A New Federal Approach

Federal policy should support effective and efficient land banking. In the short term, the federal government should deploy the Emergency Assistance Act with local and regional flexibility for determining funding priorities. Over the long term, a new, comprehensive federal land banking program would:

FINAL DRAFT

- **Capitalize local and regional land banking** with sufficient funding to address the several million properties that are being foreclosed upon or are already vacant
- **Incentivize local and state code and tax reform** to ensure that land banking is not hampered by outdated rules and procedures
- **Advance regionalism** by encouraging new inter-jurisdictional entities to align the scale of land banking authorities to the scale of metropolitan land issues

I. Introduction

The recent credit-related panic on Wall Street underscores the depth and far-reaching consequences of the mortgage crisis of the past two years. There have been record numbers of residential foreclosures throughout most of the United States, with some communities experiencing price declines of 25 percent and overwhelming concentrations of foreclosures in particular neighborhoods. The prevalence of subprime mortgage products and the irrational desire of the private secondary mortgage market to invest in mortgage securities regardless of the risk led to the collapse in 2008 of much of the secondary mortgage market. The governmental restructuring of the two largest guarantors of residential mortgages, Fannie Mae and Freddie Mac, and the largest insurance company, AIG were successive exclamation points on the inability of the real estate market to function efficiently.

In the past 24 months residential mortgage foreclosures have reached levels not experienced in 75 years, and the number of vacant properties has reached record levels in the hundreds of thousands. In addition to such a sudden and dramatic shift in economic conditions, when a real estate boom quickly turns to bust, excess supplies of real estate can occur for other reasons as well. It can happen gradually over a period of years as populations shift from urban centers to suburban and exurban rings or from one region in the county to another. It can also occur when there is a loss of dominant employment centers leading to residential and economic abandonment. This is the story of the urban cores in our major industrial cities over the past 30 years.

Together, the ongoing mortgage crisis and the economic decline of older, industrial areas have created increasing numbers of vacant and abandoned properties that are stressing more and more communities nationwide. Though the sudden collapse of mortgage markets and high foreclosure rates may be most intense in southern and southwestern communities and the gradual economic decline and abandonment may be more characteristic of cities in the Northeastern and Midwestern parts of the county, some communities—most notably Cleveland, Ohio and Detroit, Michigan—are burdened by both pressures. What characterizes all of these metropolitan areas, however, is that their neighborhoods, schools, and local governments must bear the greatest 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. Most local governments lack efficient and effective tools for preventing or reversing such a serious consequence.

The prosperity of urban and suburban communities is the central concern of the *Blueprint for American Prosperity*. This multi-year initiative of the Brookings Institution's Metropolitan Policy Program advances an integrated federal policy agenda for helping metropolitan areas develop the innovation, human capital,

infrastructure, and quality places (all brought together by good governance) that drive prosperous—i.e., productive, inclusive, and sustainable—growth. Given that stable neighborhoods are a prerequisite for true prosperity, this *Blueprint* paper asserts that rising numbers of vacant and abandoned properties have become a serious national concern and calls for new federal efforts to support *land banking* as way to help state and local governments manage excess supplies of land and address its negative consequences on communities.

Land banking is a way for states, localities, and regions to literally remove properties from the market, thereby responding to the inability of the real estate market itself to function efficiently. By doing so, they mitigate the external costs of vacancies and abandonment and stabilize neighborhoods and communities. Land banking can remove legal barriers to the market conversion of land into new productive uses or hold land in reserve for long term strategic planning. The role of land banking is not to replace or supplant the open market; it steps in when there is a failure of market conditions. Nor, does land banking replace or supplant land use planning; rather, it acquires inventory that has been abandoned and makes it available for planning. Land banking can involve various activities, but one thing it does *not* involve is the involuntary transfer of property through eminent domain.

Effective federal engagement in land banking would build on the appropriate roles of federal, state, and local government policies. The federal role, in particular, would be to provide initial capital funding for local and regional land banking programs to acquire and manage surplus inventories, encourage land banking initiatives and entities, and create incentives for regional collaboration.

In setting forth the federal role in land banking, this paper begins by discussing the concept of land banking and identifying the dominant factors that have led to excess supplies of real estate across the country and the costs imposed by vacant and abandoned properties. The paper then discusses the barriers that currently stand in the way of minimizing such costs and returning properties to productive uses. Finally, the paper examines the limitations of existing federal policy for addressing these barriers and proposes a new federal approach, both in the short-term, in light of the recent Housing and Economic Recovery Act of 2008, and over a longer time horizon. The paper concludes by highlighting examples of the type of successful land banking programs that federal policy could promote and envisioning the potential that land banking could achieve as part of a new metropolitan land policy aligning federal, state, and local government efforts.

II. Land banking is a relevant and flexible policy tool

Land banking is a recent concept in historical terms.¹ First proposed as a new form of urban land planning in the 1960s, it began to take root in the experience

of a handful of metropolitan communities in the last 25 years.² As with most new approaches to land use and land planning, some of these recent efforts have been more successful than others, but they all share common characteristic: the ability to address real estate market inefficiencies and the possibility of bringing together federal, state and local policies to build inclusive and sustainable communities for the future.

Land banking can be a valuable land use tool to have under current market conditions

In strong economic contexts, housing and building codes, which first began to emerge in the late 19th century, and zoning laws, which evolved over the past 75 years, have been vitally important and effective tools for local government land use planning and control. However, in downturns, when real estate markets are cool, as they are currently, neither housing codes nor zoning regulations can deal effectively with the excess of supply over demand. During such times, and even more generally, confronting the ebb and flow of market demands for real estate has always been one of the toughest challenges for local governments.

Markets for land rarely, if ever, operate with anything close to market efficiency. By definition, a parcel of land is a unique commodity fixed in location and not interchangeable with competing products. Unlike demand for discrete products that are fungible in nature, the supply and demand for land are often not sufficiently flexible for prices and consumption to adjust to relative demand and available supply. Furthermore, property titles consist of sets of separable but connected interests which, when held by parties disconnected from each other and from the land, leads to a variety of dysfunctional conditions. Land banking offers an approach to resolving these market inefficiencies.

Land banking can help achieve different goals and be undertaken by different types of entities

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 banking does not have as its goal the large scale acquisition of properties simply in order to hold a large public inventory of land. The most commonly held goal for land banking programs is to convey properties to not-for-profit entities for affordable housing, including both homeownership and rental programs. The second focus generally is to foster economic redevelopment by conveying properties to a not-for-profit entity, or a for-profit entity, for creation of mixed use developments or mixed-income housing.

In both contexts, the land banking authority is well aware that simply holding ownership of vacant properties achieves little. Their desire is to have properties reoccupied and returned to the property tax rolls as soon as possible. There are only two programmatic exceptions to these goals. The first is in those rare

situations where there is simply no market at all for development or reuse and the property simply needs to be removed from the market indefinitely (necessitating demolition and environmental clean-up as part of the holding process). The second is when a land bank acquires title to certain properties which it elects to hold for longer term strategic purposes, such as affordable housing in a market experiencing gentrification, or as locations for future parks and green spaces.

Land banking activities can be carried out by existing public entities or new, specially created institutions. In some communities, existing redevelopment authorities can and should serve a modified land banking function, and in others, these efforts could be managed by the local housing and community development department. In recent decades, however, redevelopment authorities have tended to be narrowly focused in a specific geographic area or on a specific redevelopment project, and they often lack the flexibility to acquire surplus properties wherever they may exist or 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. When existing authorities and departments lack the legal or managerial capacity to specialize in a program of land banking, it is appropriate to move to the creation of a new, independent, specialized entity.

Land banks are public authorities that focus exclusively on land banking activities. Land banks as originally proposed were intended to be public entities that would engage in early and significant land acquisition in anticipation of urban growth and urban and suburban sprawl. Conceived of as a flexible tool to mitigate the static nature of exclusionary zoning and to provide for an inventory of land to meet future strategic public needs, the early proposals for a federal-state partnership did not move forward.³ Instead, during the last quarter of the twentieth century five metropolitan areas—St. Louis, Cleveland, Louisville, Atlanta and Flint—moved to create their own land banks. These five land banks share a common dominant focus on the acquisition and conversion of abandoned tax delinquent properties into new productive use. Each of these five land banks has also been able to learn from, and build upon, the experiences of its predecessors, with the result that each land bank has been successively broader, stronger, and more productive.⁴ Following the creation of the first land bank in Michigan—the Genesee County Land Reutilization Authority—the state of Michigan enacted the broadest and strongest state land bank statute in the country.⁵ As a result, numerous local land banks across Michigan are now acquiring surplus abandoned tax delinquent properties and converting them to productive use.

Land banking has broad potential as a part of 21st century metropolitan land planning

Land banking, either through an existing or restructured governmental entity or through the creation of a land bank, can, and should, be an integral part of metropolitan land policy. Land banking can fulfill the original vision of being a new urban planning tool; it can specialize in managing the market distortions that create a sudden excess supply of properties; and, it can serve true “bank” functions by moderating real estate liquidity and capitalization. Moreover, land banking is the best potential model for a new approach to metropolitan land planning in which all three levels of government—local, state, and federal—play vital roles.

The role of local governments would be to acquire, manage, and convey properties in accordance with public priorities and reach across jurisdictional lines to plan regionally for the use of surplus properties and address legal barriers that currently are beyond the powers of any given locality. For localities to have such power and flexibility, state governments need to reconstruct traditional home rule doctrines to provide statutory authority to cities and towns to act regionally and create land banking programs either within existing agencies or as new, independent entities. The federal government—which has historically been absent from all local land use planning—must serve as a catalyst for local and regional land banking by deploying appropriate incentives and sufficient funding to initialize land banking programs in supportive policy environments with enough capital for the acquisition and maintenance of surplus properties.

III. The need for land banking is acute as worsening trends in vacant and abandoned properties threaten neighborhoods nationwide

Many local governments, whether they are large industrial cities or smaller rural communities, face abandonment of their urban neighborhoods and downtown areas. Other communities that quite recently were the paradigms of thriving economic investment and hot real estate markets suddenly find themselves confronting large inventories of vacant and foreclosed real estate. All of these American cities now confront overlapping problems: vacant and abandoned properties and the economic and social costs they impose on the community at large; the difficulty of using traditional local government powers to address issues that are multi-jurisdictional in nature; and the lack of capital funds to acquire, manage, and control these surplus properties.

Chronic employment and population loss can lead to large excess inventories of real estate in some communities

The mismatch between the supply and demand of real estate may be due to a wide variety of contributing causes. In some communities, particularly older

industrial cities, this condition arises because of employment losses and population migration to suburbs and ex-urban areas. For example, the sharp declines in the domestic automobile industry in the 1980's and 1990's, led to over 12 percent of the housing stock in Flint, Michigan being empty in 2000, resulting in over 5,000 housing units vacant or abandoned.⁶ In 2007, there were over 15,000 vacant and abandoned residential buildings in just eight Ohio cities, together with an additional 10,000 vacant and abandoned lots.⁷ And, the city of Detroit owns between 30,000 and 40,000 parcels of land, the overwhelming majority of which are tax-reverted, vacant and abandoned.⁸

The sudden collapse of real estate finance and housing prices has also led to large surpluses of available property

With sharply different causes but similar effects, the residential mortgage foreclosure crisis of the past two years has resulted in a dramatic and sudden increase in the number of vacant homes. The number of mortgages nationwide entering foreclosure more than doubled from the end of 2005 to the end of 2007, and foreclosure rates are the highest ever recorded.⁹ By the first quarter of 2008 almost 9 percent of all residential mortgages were delinquent or in foreclosure.¹⁰ In just one month alone—August, 2008—one of every 416 households in the country received a foreclosure notice.¹¹

The myriad influences that contributed to this mortgage crisis have resulted in two clear consequences: a sharp decline in residential property values and a sharp increase in the number of vacant properties. Between June 2007 and June 2008, the average home price in 20 metropolitan areas fell 15.9 percent, the sharpest decline on record.¹² Jurisdictions with weak economies, a high incidence of sub-prime lending, or both are especially vulnerable to significant concentrations of foreclosures.¹³ This foreclosure wave dramatically increased the number of vacant residential properties. The number of vacant homes that are for sale increased 46 percent in just two years, adding almost 600,000 vacant, for-sale homes to weak real estate markets.¹⁴

Regardless of cause, vacant and abandoned properties impose the same costs on communities

Residential properties that are vacant as a result of the mortgage foreclosure crisis are not necessarily the same as those left vacant due to population loss or the closing of a major employment center. Not all foreclosed homes are vacant, and not all vacant homes are abandoned. In most cases, foreclosed real estate that is owned by a bank (“REO”) continues to be marketed for sale. The length and depth of the current economic downturn already suggest, however, that the time required for the market to absorb this excess inventory of vacant, for-sale properties will be at least one to three years—once the bottom of the market is reached.¹⁵ With this time frame, there is little difference in the nature of the deteriorating property based upon why it became abandoned.

When properties remain vacant any significant length of time, the frequency of vandalism increases, and the decline in property values and neighborhood stability accelerates. To the extent that mortgage foreclosures in today's market result in long-standing vacant properties, they impose the same costs on communities and local governments that are felt in older industrial cities from vacancies and abandonment caused by other economic issues.

Vacant and abandoned properties bring severely negative spiraling consequences on neighborhoods

Vacant and abandoned properties are not victimless crimes.¹⁶ They quickly become liabilities to the surrounding community. When owners chose to ignore their responsibilities, the costs of these properties are imposed on everyone else. The external costs of vacant and abandoned properties occur across a number of categories:

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

In addition to these objective and empirical costs, vacant and abandoned properties result in a broad range of intangible costs to the community:

- Decline in neighborhood confidence and social cohesion
- Instability in school age populations and weakening of public school resources
- Loss of incentives to invest and maintain existing occupied properties
- Fear of social engagement

A detailed study of mortgage foreclosures in Chicago in 2005 revealed that a foreclosure resulting in a house or building that is boarded and secured may impose only \$430 in direct costs on the city.¹⁷ Properties that are abandoned prior to foreclosure impose costs of almost \$20,000, and when the property has a building damaged by arson the costs reach \$34,000.

When multiple foreclosures leave vacant properties concentrated in a single neighborhood, the costs and losses are dramatically higher because it destroys the housing wealth of the neighborhood. Mortgage foreclosures by themselves, independent of subsequent abandonment, were found to reduce property values within one-eighth of mile of the foreclosure by 0.9 percent in value, and multiple foreclosures had even greater cumulative adverse effects.¹⁸ In Flint, Michigan an analysis revealed that property within 500 feet of a vacant and abandoned structure lost 2.26 percent of its value.¹⁹ In Philadelphia in 2000, properties lost \$7627 in value if they were located within 150 feet of an abandoned house.²⁰ A study of eight cities in Ohio found that 25,000 vacant and abandoned properties imposed \$15 million in direct *annual* costs to the cities and over \$49 million in cumulative lost property tax revenues.²¹

The direct and indirect financial costs of mortgage foreclosures and vacant and abandoned properties are measures that can be quantified. Often, however, the greatest costs come with no price tag, despite being well known. For example, a one percentage point increase in single family residential mortgage foreclosures has been found to increase the number of violent crimes (not property related crimes) by 2.33 percent.²² With record numbers of recent foreclosures and vacant properties concentrated in certain neighborhoods, the city of Atlanta has created a special police task force focused just on these properties.²³

IV. Most places currently face barriers to implementing an effective land banking program

Successfully confronting excess inventories of land is frequently beyond the resources, policies, and practices of states, cities, and towns. Acting alone, state and local governments cannot often deal with the social, economic, and institutional costs of vacant and abandoned properties. Most notably, they face particular barriers on these fronts: funding, state and local code reform, and regionalism.

Lack of adequate funding can limit the reach of land banking programs

States and localities have generally not focused much attention on capital funding for land banks to acquire vacant and abandoned properties, other than those that are tax foreclosed. Over the past twenty-five years, dealing with tax foreclosed properties was the dominant justification for creating independent land banks, and strategies to acquire land by other means, such as strict code enforcement or foreclosure on a nuisance abatement lien, were given little or no consideration. The initial land banks amassed inventory primarily as a result of properties that “reverted” to local governments or were deemed “sold to” local governments after unsuccessful foreclosure sales. These land banks were responsible for receiving title to these properties and were authorized to convert

them to productive use. (Their land banking efforts, however, remained hampered by the constraints of inefficient tax foreclosure laws.)

Two of the land bank authorities—Atlanta and Genesee County—have taken a different approach to working with their respective inventories. With the power to waive or extinguish delinquent taxes, the Atlanta Land Bank Authority has elected to focus on a program of voluntary transfers of tax delinquent properties to the land bank. After the property transfer, the Atlanta land bank would forgive any taxes owed and immediately convey the property with requirements that it be developed for specific public purposes. This “conduit transfer” program relies primarily upon community development corporations and other not-for-profit entities to acquire the properties with delinquent taxes, and allows the Atlanta Land Bank Authority to operate with minimal on-going real property inventory. The Genesee County Land Bank Authority, in contrast, relies on a revised state tax foreclosure law which transfers to the county treasurer all tax delinquent property not redeemed by a final date.

For operational funding, land banking programs to date have primarily relied on modest allocations from local government general revenue. Although recovery of operational costs may be possible through land disposition, land banks find that such financial considerations often compete with the stated public priorities for the use of the land. Land bank authorities in Michigan, however, are in a far stronger position to fund their transactions involving previously tax delinquent properties. The recent state statute permits land banks to receive 50 percent of all property taxes for a five-year period of time following the conveyance of the property to a third party for redevelopment.²⁴

For land banking programs to successfully address rising numbers of vacant and abandoned properties—caused by both the sharp contraction of mortgage markets and long-drawn out economic decline—they must have the funding necessary to expand their reach beyond just tax foreclosed properties. Only then can land banking programs acquire and manage properties left vacant and abandoned from other causes. But funding for land banking activities can be hard to come by. Local governments are already stretched beyond existing resources in responding to the costs imposed by vacant and abandoned properties and the declining tax base. State governments, facing similar constraints, are not in a position to fund a land acquisition program.²⁵

Existing state and local laws often pose barriers to handling problem properties

Existing laws too often create financial incentives for property owners to neglect and abandon their property. Owners may choose to defer maintenance and upkeep, withdrawing all income and equity from the property for use or investment in other locations. The result is deterioration in the quality of the homes and increased incidence of housing and building code violations. While these codes may set strong minimum standards for new development and

construction, these state statutes and local ordinances are far less effective in dealing with older properties that are in violation of the codes. When a responsible owner can be found, a remedy may be available, but when the owner has chosen to walk away from the property, the legal remedies have been far less effective.

While, the enforcement of housing codes is (and should be) the responsibility of local governments, they can only act in an efficient and effective manner if state governments have granted them sufficient constitutional or statutory power. Furthermore, most places have not modified the internal substantive requirements of their housing codes in decades, and even when they have, local governments are reluctant to spend their general revenues to remedy the problems left unaddressed by private owners. The burden is almost always exclusively on cities and towns to spend public funds to preserve, protect, clean, maintain, and if necessary, demolish those homes and buildings left vacant and abandoned.

If local governments cannot, or will not, take control of vacant and abandoned properties, they cannot begin to achieve the advantages of a land banking program. Code reform could make local control more possible. For example, housing codes and nuisance abatement procedures could be reformed in a manner that permits all government expenditures on behalf of a vacant or abandoned property to become a first priority lien on the property. Such a “super-priority” lien must then be able to be enforced in an efficient procedure that results in a transfer of ownership either to a new private owner or to the local government. Other keys to effective local government control that could be included in code reforms include vacant property registration requirements and imposing vacant and abandoned property assessments.²⁶

Existing property tax foreclosure laws and practices can also be roadblocks to bringing vacant and abandoned properties back into use. State laws typically provide that at property tax foreclosure sales, the minimum bid must equal the amount of delinquent taxes. But these tax sales “fail” when the aggregate amount of delinquent taxes exceeds the fair market value of the property. This situation is not uncommon in the urban cores of older metropolitan areas. As owners abandon properties in these places, they cease paying property taxes and no longer care about over-assessed property valuations in declining markets. The result is that delinquent taxes, accruing at high rates of interest, overwhelm the property’s fair value, leaving it unmarketable and abandoned.²⁷ In some other jurisdictions, tax liens may be sold to third party investors who have little interest in investing in property maintenance or in improvements.

First created in the late 19th century, the property tax foreclosure laws in most states have been, until recently, woefully inefficient for addressing present-day needs and largely out of compliance with federal constitutional due process mandates.²⁸ These outdated procedures could take as long as three to seven years to complete a tax foreclosure, and even then may only result in creating

unmarketable titles to the property—real barriers to returning foreclosed properties to productive uses. In some states, significant reform of state tax foreclosure laws have begun to occur, often in a manner that ties tax foreclosures into transfers to local land banks.²⁹

Barriers to regional planning may prevent land banking programs from achieving their full potential

The highly fragmented structure of local governance in the United States can confound cities and towns as they attempt to devise creative, new ways to deal with vacant and abandoned properties. It has become abundantly evident over the past 40 years that urban sprawl and the corresponding abandonment of central cities is due, in significant part, to the ability of residents and businesses to relocate to “bedroom communities” and economic centers with the lowest tax rates and smallest transaction costs. As local governments compete with one another, the one that loses the critical mass of population is left with all of the economic and social costs, while the winner captures all of the benefits.

The historic allocation of power between state and local governments plays directly into this divide and unfortunately, only encourages inter-jurisdictional competition. Though local governments are, for the most part, creatures of state law, the trend for the past 75 years has been the creation of new and smaller municipalities, rather than the consolidation of local governments. Because land use planning and zoning, as well as housing and building codes, are largely a prerogative of local government power, such authority has been used to maximize internal benefits while transferring costs to others. However, an imbalance in the supply of land, or housing, relative to demand is not something that can be addressed solely within the limited legal authority of a given municipality. This sort of challenge demands that local governments find ways to bridge territorial boundaries and enter into regional planning.³⁰

“Home rule” is the legal doctrine that underlies the nature and extent of local government powers. It is the rallying cry for cities and counties that seek authority to act where none is given by the state constitution or the state legislature. The clear value of home rule authority is that it permits a local government to fashion policies, priorities and procedures most directly tailored to the needs and visions of that community. The clear trade-off, however, is that home rule tends to lead to the proliferation of small communities determined to maximize internal benefits while imposing maximum costs on others.

Land banking is most effective when it has the authority to reach across the jurisdictional lines of a single city or a single county. Most—but not all—of the major land banks today possess some aspect of a multi-jurisdictional approach. Two examples of the value of governmental collaboration are the enforcement of delinquent property taxes and the provision of affordable housing.

In many states, property taxes are commonly assessed and collected at the county level, with tax rates and tax expenditures primarily set at the municipal or city level. This difference leads to a disconnect between county policies on tax collection and localities' needs to address neighborhoods with high concentrations of severely tax delinquent properties. An intergovernmental agreement authorizing regional land banking can serve as a regional (county-wide) catalyst of enhanced tax enforcement laws by creating one recipient of tax foreclosed properties. In this way, land banking can create a needed bridge between home rule and regional planning.³¹ In the rare instances of local government consolidation, the need for regional planning is already partially met, and land banks in the merged governmental entities are recognized.³²

The provision of affordable housing is one of the public purposes that can be served through land banking, and it can be done best with some intergovernmental collaboration.³³ As reflected in the federal policies that drive HOPE VI redevelopment of public housing facilities, the high concentration of large scale subsidized housing in particular neighborhoods rarely succeeds. Low-density, scattered-site facilities in economically integrated neighborhoods are far more likely to be sustained over time. Land banking can play a pivotal role in meeting this goal by facilitating land availability in regions that move from exclusionary zoning to inclusionary zoning. Pressures towards gentrification in one community can be mitigated by the strategic advance acquisition of land for future use as affordable housing, while pressures towards abandonment in another community can be mitigated by the strategic advance acquisition of land for mixed income housing.

V. Federal policy takes a first step toward land banking

Historically, the federal government has had no direct voice in the creation of land banking.³⁴ But the sheer scale of the most significant residential mortgage foreclosure crisis since the Depression has focused congressional attention appropriately on ways to solve the adverse consequences of vacant and abandoned properties. With so many communities around the country simultaneously struggling with vacant and abandoned properties, the challenge is clearly a national issue with national ramifications on maintaining economic well-being and strengthening real estate markets. States and localities each have different levels of capacity, so it becomes incumbent on the federal government to help ensure that every affected region of the country has sufficient resources to contain and tackle the problems that come with vacancies and abandonment.

The bulk of the proposed federal legislation in 2008 pertained to the refinancing of vulnerable mortgages by the Federal Housing Administration and the restructuring of oversight of federally related mortgage entities, but several legislative proposals expressly addressed the burdens imposed on local governments by vacant properties.³⁵

Enacted in July 2008, the Housing and Economic Recovery Act of 2008 includes the first express recognition of land banking in federal legislation.³⁶ One of the most extensive forms of federal housing legislation in many decades, this expansive law has one brief section entitled “Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes.”³⁷ This Emergency Assistance Act is striking in several key respects. It is the first federal recognition of the severe costs being borne by neighborhoods and local governments as a result of the rise in vacant and abandoned properties.³⁸ It is the first federal appropriation of funds (\$3.92 billion) for acquisition, management, and disposition of these properties.³⁹ It is also the first express recognition in federal law of the targeted role of land banking.⁴⁰

Recognizing the wide diversity of economic and social conditions across the country, the Emergency Assistance Act does provide an appropriately broad range for the use of the funds. In addition to the express statutory authorization to “establish land banks for homes that have been foreclosed upon,” funds may be used for the acquisition and financing of properties as well as the rehabilitation or demolition of structures.⁴¹ Congress did elect to target all of the emergency assistance funding to persons of low and moderate income. All of the funds must be used “with respect to” individuals and families at or below 120 percent of area median income and 25 percent of the funds must be targeted to those at or below 50 percent of area median income.

But for all its sound measures, the Emergency Assistance Act is only a first step for federal policy, and it faces certain short- and long-term weaknesses.

In the short-term, several policy questions are outstanding

In the short-term, the effectiveness of the Emergency Assistance Act in addressing the rising number of vacant and abandoned properties in older industrial areas and the sudden growth of foreclosed vacant properties nationwide will depend, at least in part, on how the statutory language is interpreted in implementation. A lack of clarity around the scope of the act and the targeting of the appropriated funds leaves this an open question.

On scope, several mentions in the statute make reference to “abandoned *and* foreclosed” homes, leaving it unclear as to whether these are two separate categories, or whether the funds are restricted to properties that are both foreclosed and abandoned.⁴² One subsection of the statute provides that funds may be used to acquire “foreclosed upon homes and residential properties” and properties that have been “abandoned *or* foreclosed upon.”⁴³ In this way, this federal statute is ambiguous as to the permitted scope of use of these federal funds.

For targeting the funding, the act charges the Secretary of Housing and Urban Development (HUD) to allocate funds to “states and units of general local government with the greatest need” but provides limited statutory guidance for

creating the mandated allocation formula.⁴⁴ The statute does identify three categories of variables that should bear on the allocation formula:

- (A) the number and percentage of home foreclosures in each State or unit of general local government*
- (B) the number and percentage of homes financed by a subprime mortgage related loan in each state or unit of general local government*
- (C) the number and percentage of homes in default or delinquency in each state or unit of general local government*⁴⁵

But these variables are not meant to be exclusive, and HUD is granted discretion in identifying other relevant factors for use in determining the allocation formula. Indeed, the statutory priority for the use of the funds, which also involves determining the areas of “greatest need”, is subtly yet significantly different. This part of the statute directs that the funds are to be use in those areas —

- (A) with the greatest percentage of home foreclosures*
- (B) with the highest percentage of homes financed by a subprime mortgage related loan*
- (C) identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures*⁴⁶

Across neither of these sets of variables does the Emergency Assistance Act specify the weight to be given to each of the identified factors; identify the aggregate pool, or denominator, to be applied in determining percentages; or differentiate between the commencement of foreclosures and the completion of foreclosure sales.⁴⁷ Furthermore, neither “foreclosures” nor “subprime mortgage related loan” are defined in the statute.

The funding allocation formula released by HUD in late September 2008 provides more guidance on these statutory variables, but the exact, total amount available to local governments to deal with the problems they face on-the-ground from vacant and abandoned properties still remains uncertain.⁴⁸

HUD’s allocation formula distributes the appropriated funds to both state and local governments. The grantee universe consists of the “1,201 state and local governments which were funded in FY 2008 under the regular Community Development Block Grant.”⁴⁹ Given the statutory emphasis to target foreclosed homes, the allocation formula gives significant weight to the number and percent of foreclosures: “70 percent of the funds are to be allocated based upon the number and percent of foreclosures, 15 percent for subprime loans, 10 percent for loans in default, and 5 percent for delinquent loans.”⁵⁰

The appropriated funds are allocated in a two-step process, with roughly half going to states and the other half to the “entitlement” cities that directly receive funding from HUD.⁵¹ The first step in the allocation determines the total state

allocation.⁵² The second step is a separate formula used to divide up the total state allocation based upon greatest proportional need.⁵³ Here, the minimum allowable statewide allocation is subtracted from the total state allocation determined in the first formula.⁵⁴ The remainder is divided up by jurisdictional need.⁵⁵ Where an individual jurisdictional amount is determined to be less than \$2 million, the amount is “rolled up” into the overall statewide allocation.⁵⁶

States are responsible for distributing their allocated funding further to their local jurisdictions, based on their own understanding of areas of “greatest need”. States are given broad discretion for this process. For example, states may choose to direct the funding to those jurisdictions facing very high incidence of foreclosure and abandonment. Or, states may decide that funding may be best targeted to those jurisdictions with more limited numbers of foreclosed, vacant, and abandoned properties, where the associated negative consequences are easier to contain, and the community has greater chances of returning quickly to relative stability.

Over the long-term, policy impact may be limited

For the long-term, the Emergency Assistance Act’s short timeframe and funding appropriations limit its ability to serve the continuing (and growing) need of states and localities to effectively handle the costs of vacant and abandoned properties.

On timing, the act is clearly an emergency and short-term measure in response to the recent mortgage foreclosure crisis. The funding made available under this Act must be utilized by state or local governments within 18 months of receipt.⁵⁷ Of course, the problems this funding is meant to address—those of vacant and abandoned properties—will continue well beyond this short window.

With the allocation formula in place, HUD has charged state and local governments with submitting plans detailing how the funds will be obligated by December 1, 2008. This is a phenomenally short timeframe for these jurisdictions to make the most informed and responsible decisions for ensuring that the funding goes to public entities that are capable of adequately negotiating the acquisition, rehabilitation, management, and, if needed, rental, of foreclosed, vacant, and abandoned properties.

On funding levels, \$3.92 billion is a critically needed infusion of capital for land banking activities and may strengthen the resources of those communities receiving fund, but it does not come close to the dollar value of the roughly two million residential foreclosures projected for 2008 or lost property tax revenues of local government.

VI. Toward more focused federal engagement

The needed federal policy intervention to alleviate the negative consequences of the mortgage crisis precipitated the federal government's initial move to support land banking. To ensure that federal efforts succeed with the most short-term impact and to begin crafting longer term structures to support this vital metropolitan activity, Washington should take a series of short- and long-term steps.

Short-term policy implementation matters

In the short-term, the federal government—specifically the Secretary of Housing and Urban Development—should implement the Emergency Assistance Act to have the greatest possible impact in those communities struggling most with the costs of vacant and abandoned properties.

First, HUD should interpret the statutory language to provide states and localities as much flexibility as possible within the law to determine their own priorities for using the federal funds. HUD's allocation formula does an admirable job granting states flexibility in determining their own ways for distributing their allocated funding to localities.⁵⁸ But, HUD should take one step further and revisit the allocation formula guidelines to allow that the appropriated funds be used to acquire vacant and abandoned properties that are not just the result of foreclosures. This would be especially beneficial to those communities where lenders elect to simply follow the owners and abandon the property without a foreclosure action. Also, funds should be allowed to be used for acquiring vacant foreclosed homes for which there is no likely subsequent purchaser and for resolving complex title questions that limit marketability of properties. Indeed, over the coming months, as states and localities labor to put their allocated funding to the best uses, HUD may likely receive multiple requests for waivers based on these concerns.

Second, in targeting the appropriated funds, there must be a deep understanding of "greatest need." Completed foreclosures do not, by themselves, necessarily correlate with destabilization of existing neighborhoods as a result of being vacant and abandoned properties. If the federal funds are to be targeted to the areas of "greatest need", there must be a realization of the underlying nature of the problems posed by vacant and abandoned properties. Not all foreclosed homes become vacant. Not all vacancies are an indication of abandonment. Residential mortgage foreclosures become a major economic and social burden for communities primarily when they result in abandonment and secondarily when there are high vacancies.

The nature of "greatest need" will certainly vary according to the different economic and social trends in widely disparate communities. A metropolitan area confronting long term economic decline *and* record high residential

foreclosures faces a different set of challenges than an area with record high residential foreclosures which follow upon superheated residential price appreciation. In both instances, however, the common variable is not the number or the percentage of foreclosures but the relative concentration of foreclosures and abandoned within a single neighborhood. Five residential foreclosures in an otherwise stable geographically large residential community may not have significant adverse impact; five residential foreclosures on a single street have a dramatically larger effect.

In light of this understanding, the federal funds deployed through the Emergency Assistance Act should be based not just on the relative rates for residential foreclosures but also on the degree of concentration of such foreclosures within a single geographic area. For these purposes, the concentration of increased foreclosures within each census tract, or within each postal zip code (either 5 digit or 9 digit), would be a far more accurate indicator of the likelihood of significant external costs being imposed on neighborhoods, communities and cities.⁵⁹ The aggregate grants can still be made to the states, but the state share would be based on a combination of concentrated foreclosures and subprime delinquencies.

Long-term efforts should motivate a new metropolitan land policy

Over the long term, the federal government should establish a federal land banking policy to have a supportive role in metropolitan land policy. It should do so in a manner that strengthens the opportunity to address the complex costs of vacant and abandoned properties but not in a way that undermines the strengths of a flexible program. It should draw upon a new collaboration of federal, state, and local roles in addressing those barriers currently faced by communities interested in land banking: insufficient capitalization, inadequate code and tax reform, and lack of regionalism.

- *Capitalization.* The federal land banking program would help to capitalize local and regional land banking. The amount of funding made available for land banking activities should be enough to empower local governments to address the several million properties that are being foreclosed upon or are already vacant. Bills circulating in the House of Representatives, before the recent Housing and Economic Recovery Act was passed, would have provided \$15 billion in loan and grant funds.
- *Code and tax reform.* Grants provided through the federal land banking program should incentivize the reform of local code enforcement procedures and state tax foreclosure procedures to better address the costs of vacant and abandoned properties. While property acquisition and land banking are crucial first steps to respond to the problems from abandonment and vacancy, these state and local laws are also

important subsidiary elements for effectively resolving the issues involved. Accordingly, the local and state jurisdictions that undertake the development or redevelopment of effective procedures would receive preferences in land banking capitalization. Those localities or states needing help with such reforms would receive technical assistance from the federal government, who could share lessons from other jurisdictions that have successfully tackled such laws.

- *Regionalism.* Federal funding for land banking capitalization should also incentivize the development of inter-jurisdictional entities (e.g., new urban cooperative agreements and intergovernmental authorities) that address vacant and abandoned properties across city and county boundary lines. Facilitating and supporting regionalism in this capacity could help align the scale of the authority to the scale of the issues involved in land banking. In encouraging intergovernmental cooperation, the federal government should be clear about the range of permitted uses for federal funding, but it should be careful not to supplant the ability of localities and regions to determine their own on-the-ground needs and priorities. Flexibility to make final decisions concerning the priority use of the funds is best left at the local or regional level, where an understanding of economic trends can be most accurate and particularized.

VII. States and localities are innovating in land banking

Even with informed federal policies, land banking programs, as with other innovations in government, are likely to face obstacles to their implementation. There may be reluctance on the part of existing local government departments or agencies to support the restructuring or reallocation of land acquisition, management, and disposition functions. There may be concern on the part of private investors that land banking programs will remove investment opportunities, and private developers may fear competition. Given the strength and pride of home rule authority in many cities and towns, there may likely be some hesitancy in turning toward regional and inter-jurisdictional programs.

Rarely, however, are these obstacles insurmountable. Indeed, over the past few years, a broad and growing number of communities across the country have moved to create land banks with flexible acquisition, management, and disposition authorities. They have done so largely as part of state and local legislative reforms involving amendments to tax foreclosure laws, housing and building code enforcement procedures, and, recently, to residential mortgage foreclosure laws.

In Michigan, land banks have been created in ten separate counties, since the enactment of the strong statewide land bank legislation in 2003.⁶⁰ In Georgia, five land banks have been created or are under active consideration.⁶¹ In Texas,

both Houston and Dallas have begun implementing local land bank programs.⁶² And Maryland has recently enacted legislation that authorizes the creation of a land banking program in Baltimore.⁶³ Abandoned property legislation is under consideration in Ohio that directly ties to the strengths of the local land banks.⁶⁴ Similar legislation has been proposed in such diverse communities as Birmingham, AL, San Diego, CA, Huntington, WV, Fort Collins CO, and Buffalo, NY.⁶⁵

One of the newest land banks in the country, and the most successful, is the Genesee County Land Bank Authority in Flint, Michigan.⁶⁶ After its inception, the Genesee Land Bank moved quickly to become the owner of 8000 separate parcels of land, almost 5 percent of the entire property inventory in the county. Because of the sheer volume of properties and the weakness of city agencies, the land bank emerged with a lead role in land use planning, neighborhood and community stabilization and revitalization, and affordable housing. It has become a major developer—or redeveloper—of abandoned properties and has made possible regional collaboration in addressing common problems.

With its inventory derived overwhelmingly from tax foreclosed properties, the Genesee Land Bank has required minimal capitalization for direct market purchases. By using statutory authority to classify tax foreclosed properties as “brownfields”, the Genesee Land Bank is able to use brownfield redevelopment financing to demolish abandoned structures. One study has estimated that a demolition expenditure of \$3.5 million increased neighboring property values by more than \$109 million.⁶⁷

Best in class: the Genesee County Land Bank

The Genesee County Land Bank, was initially created in 2002 under Michigan state laws permitting urban cooperation agreements. It expanded following the enactment of the Michigan Land Bank Act in 2004. The land bank acquires an average of 1000 abandoned properties each year and has been the catalyst for increasing property values by more than \$100 million. It has developed hundreds of units of affordable housing, renovated major commercial buildings in downtown Flint, and remediated over 1000 “brownfield” properties. Its efforts have received national recognition. The land bank earned the 2007 Innovations in Government Award from the Ash Institute at the Kennedy School of Government, Harvard University.

For more information see www.thelandbank.org.

All of the recent land banking initiatives share common features. They are motivated by the conviction that vacant and abandoned properties are imposing significant costs and losses on the fiscal and cultural health of the surrounding communities. They are shaped by the realization that existing state laws and local ordinances are insufficient to stop private market speculation and abandonment of properties. They are grounded in the determination to acquire control of properties and convert them to productive uses consistent with local government policies. And, their chances of success can be bolstered by supportive federal engagement.

VIII. Land banking provides a robust framework for a new, federalist approach to metropolitan land policy

Land banking is a process that draws appropriately on the strengths of local, state, and federal roles. It is a policy that the federal government can promote and guide, but whose implementation can be tailored specifically to meet state and local circumstances. At its fullest potential, land banking can serve the broad responsibilities of metropolitan planning and development through asset banking, market stabilization, capital reserve formation, and regulation of targeted land use activities.

Land banking will succeed best when it draws upon a collaboration of local, state, and federal roles

While federal policy may promote the general concept of land banking, strategic implementation of land banking programs will vary across the country, as it should, to be most responsive to local and regional situations. For example, the legal authority that communities need to undertake land banking will usually require a state enabling statute, but it will also depend on the local determinants of home rule and regional planning. Further, the precise organizational structure of land banking programs, whether through fully independent public corporations, or within existing agencies and authorities, will depend on local traditions and allocations of power. And the priorities and purposes for land banking will be determined by local governments in coordination with state statutes.

Local governments are in the best position to create and operate land banking programs, target them to specific geographic areas of greatest need, and determine the priorities for short- and long-term reuse of properties. Specifically, local governments need to first assess the volume, location, and condition of vacant and abandoned properties. Second, they need to assess the barriers to bringing these properties to market, such as tax foreclosure status, fractured or divided forms of title, or public nuisance abatement liens. Third, local governments must evaluate the extent of their legal discretion in acquisition and—most importantly—the disposition of property. Fourth, and finally, local governments need to determine the extent of their property management

capacities relative to vacant residential units, vacant properties, and structures requiring rehabilitation.

The role of state governments is to authorize localities to engage in flexible land banking programs and to encourage regional and inter-jurisdiction land banking initiatives. At the state level, the first step towards implementing land banking programs is a careful reevaluation of existing property tax foreclosure laws and the title problems they may inadvertently create regarding the subsequent marketability of foreclosed properties. In parallel fashion, states should also examine their mortgage foreclosure laws to ensure that there is full transparency at the time of a foreclosure sale as to the identity of the party conducting the foreclosure and the identity of the purchaser. The second step for states is an assessment of the degree of state control over the terms and conditions for local government transfers of property. The third step is the creation, to the extent necessary, of the authority and incentives required for regional collaboration in land banking programs.

The federal government can be a valuable partner in land banking by providing initial capital funding for land acquisition and creating incentives for the type of state and local practices, such as regional or inter-jurisdictional collaboration, that can efficiently and effectively convert vacant and abandoned properties into productive use. Through the Emergency Assistance Act, the federal government has taken a small, but essential, step in driving land banking to be a part of metropolitan land policy. By providing initial capital resources to areas hardest hit by vacant, abandoned, and foreclosed properties, it is providing the seed funding for inventory control and acquisition. By affirming that the funding is available for the establishment of land banks, it is laying the foundation for future efforts. However, as federal statutory language is interpreted in implementation during the coming months and years, attention needs to be given to ensure that localities are given the discretion necessary to use federal funds in a manner consistent with local conditions and priorities.

Land banking can be an integral part of a new approach to metropolitan land policy

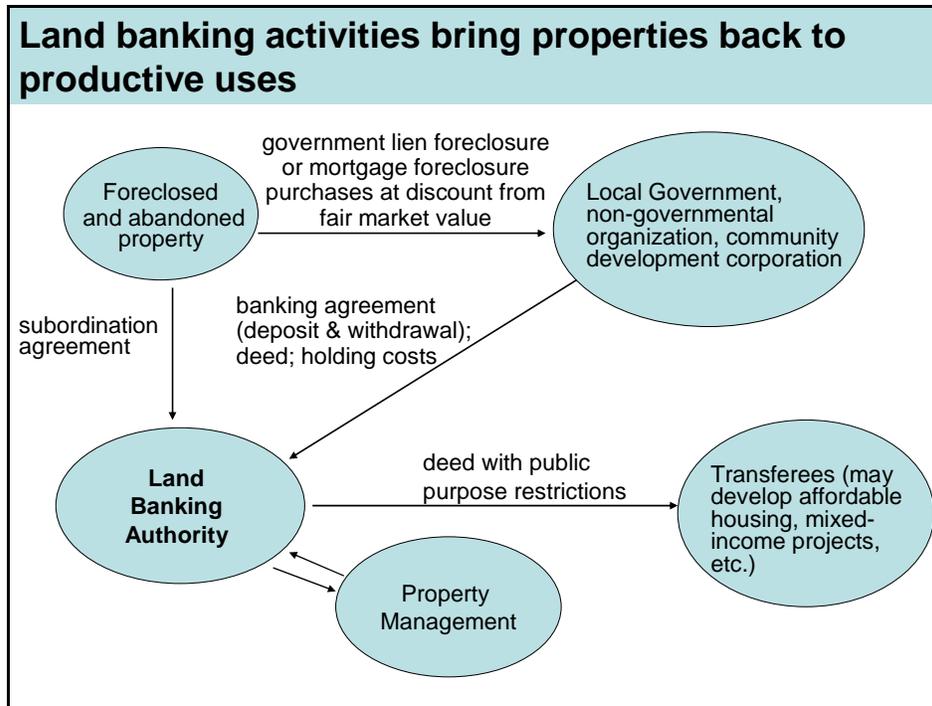
Given a supportive partnership between local, state, and federal governments, land banking can chart new territory for metropolitan land policy in the 21st century. Land banking programs can serve four functions that are directly analogous to the role of the federal banking regulatory institutions: (1) asset banking; (2) secondary market stabilization; (3) capital reserves; and (4) banking regulation. Instead of focusing on cash and cash equivalents, however, land banking programs specialize in land. Instead of focusing on national and international markets, land banking specializes in neighborhood and community stability and planning. Instead of focusing on private market institutions, land banking specializes in bridging access from private markets to land.

1. Land banking can engage in asset banking

Land banking engages in “asset banking” by acquiring inventories of real property from five primary sources: (i) tax delinquencies and tax foreclosures; (ii) excess residential real estate foreclosures; (iii) nuisance abatement lien enforcement; (iv) direct market purchases; and (v) “deposits” by third parties of properties to be held pending redevelopment. Properties acquired by local governments through tax foreclosures and nuisance abatement lien foreclosures are the primary inventory of land banks thus far. Federal capitalization of a land banking program could make possible the acquisition of vacant foreclosed residential properties and possibly direct strategic market purchases of other properties.

The fifth potential inventory source is one that has not been explored to any significant degree but is one that holds potential for a dramatic impact on metropolitan land policy. This potential category of inventory is those properties that have been identified by governmental entities or not-for-profit entities for future development (over a two to five year time horizon), yet for which there is no present market capacity or market demand that will drive the development. A “deposit” based land banking program would permit a governmental entity or not-for-profit entity to transfer ownership of property to a land banking entity, reserving the right to “withdraw” the property at any time upon reimbursement of all holding costs attributable to the property. The land banking entity would also have a right to compel a withdrawal at any time, and if the depositor declines to accept a re-conveyance of the property, it becomes an unrestricted asset of the land banking program. Upon withdrawal or other transfer, property from the land banking entity is subject to the established public priority development or use restrictions. During the period of time in which the land banking program holds the property as a deposit, it also manages and maintains the property. The Atlanta Land Bank approved a new policy authorizing such a formal land banking program in December 2007.⁶⁸

A key feature of an asset banking function of a land banking program is the capacity to design the program in a manner that accommodates “deposits” of real property that is encumbered by a mortgage held by the depositor or a third party.⁶⁹ This asset banking program opens up directly the possibility of negotiated acquisition of the existing excess inventory of foreclosed residential real estate owned by lenders.



2. Land banking can carry out market stabilization

Land banking engages in the equivalent of property market stabilization by creating the functional equivalent of a publicly controlled secondary market for the property. The role of land banking would be to intervene in property transactions in order to address the contraction and expansion of property “liquidity” relative to demand. The potential sources of inventory are limited to surplus or excess land for which there is no readily available private market. Land banking would not focus on land for which there is private market demand, leaving any appropriate private development regulation to the more traditional forms of local zoning and land use planning. Correspondingly, land banking would not engage in involuntary acquisitions or transfers, except insofar as properties acquired as a result of public lien foreclosures (property taxes and nuisance abatement liens). No existing land bank has the power of eminent domain, and use of potential federal funding in eminent domain proceedings would be severely limited.⁷⁰

3. Land banking can maintain capital reserves

Land banking can also serve the functional equivalent of maintaining “capital reserves” with respect to the supply of land. Land banking programs would maintain real property reserves to respond to future strategic needs of the community such as affordable housing, green spaces, or particularized community needs.

When there is strong private market demand for available property, rapid price escalation is the normal market response. While few communities resist strong

market conditions, the price effects frequently make it simply too costly to undertake broader public goals. The most common example of this is in communities with strong demand for upper income residential properties, making it cost prohibitive to develop and operate affordable housing programs. In these communities, a land banking program could acquire and hold available surplus parcels of property for long term strategic planning for affordable housing.⁷¹

4. Land banking can serve a “bank regulatory” function

As part of a public agency, or as a separate public authority, a land banking program is, and should be, required to exercise its authority consistent with the common good. In serving a “bank regulatory” function, all the real property transactions of land banking programs should fall within clearly stated purposes and priorities on land use. These purposes and priorities may be established at the state legislative level, by intergovernmental contracts, or by the local government that creates the land banking program. The goals should be clearly and objectively set forth, such as the promotion of affordable housing (with specific definitions of affordability), or the removal of vacant structures in neighborhoods (with specific definitions of vacant). The goals and priorities must also be flexible and capable of adjustment by the appropriate governmental entities as market conditions change. Though present economic conditions reflect widespread weak markets, the day will surely return when strong markets are dominant. All dispositions by land banking programs must contain mechanisms by which the stated purposes and goals can be legally enforced upon the transferee. Contractual obligations, restrictive covenants, subordinate financing, and rights of first refusal are all available strategies for enforcement.

IX. Conclusion

The available 20th century tools for metropolitan land use are not sufficient to plan and manage the growth and redevelopment of metropolitan areas in the 21st century. Land use regulations in the form of zoning ordinances and housing and building codes play a vital role in new development and certainly shape the character of our communities in strong economic markets. What is missing from the current inventory of tools is an efficient and effective method for addressing vacant and abandoned properties. As our metropolitan areas redesign and restructure their visions for this century it will be essential to have a tool to deal with surplus properties.

Because of the unique nature of each parcel of land and its static location, general supply and demand markets do not reach efficient results when the supply of properties exceeds the demand. Whether as a result of long term economic trends or shorter and more sudden declines in the housing market, an excess supply of land leaves no positive market for unused properties. Instead,

vacant properties become the targets of vandalism, simply accelerating their liabilities. Direct and indirect costs are imposed on the neighborhood, the community, and the city.

Local and regional land banking programs are governmental initiatives that specialize in surplus properties resulting from market distortions. Their overriding fundamental goal is to convert surplus properties from liabilities into productive assets. Land banking programs fill the gap existing in metropolitan land policy.

More broadly, land banking programs can become depository institutions for surplus lands. They can engage in asset banking and eliminate the danger of municipal land becoming abandoned and a community-wide liability. Land banking programs can engage in real estate market stabilization when supply suddenly exceeds demand by temporarily reducing the supply and returning it to the market only when private demand returns. They can serve as capital reserves of property pending future development capacity or future public needs. These programs can also regulate the short- and long-term use of the surplus properties they acquire, ensuring that they become assets for the community and not liabilities.

Federal policy can facilitate the creation of local and regional land banking programs in a way that would bring together local, state, and federal government roles in a constructive approach not witnessed in decades. The local government's role is to establish land banking programs with sufficient autonomy to act expeditiously, yet with sufficient guidance to achieve clear policy objectives. The state's primary role is to authorize local governments to create land banks with flexible powers to acquire, manage, and convey surplus properties consistent with public goals. The state's grant of authority must resolve questions of home rule and encourage multi-jurisdictional collaboration. The federal government's role is to provide the initial capitalization for acquisition, maintenance, and rehabilitation of vacant properties; to target these resources to the communities most adversely affected; and to create incentives for regional planning. The federal government has taken a step toward capitalization through the Emergency Assistance Act of the Housing and Economic Recovery Act of 2008, but Washington needs to do more to ensure sufficient funding, state and local code reform, and regionalism for land banking to succeed long-term.

Land banking's ultimate objective is to provide a multi-jurisdictional response to inefficient markets in land and the reallocation of land for inclusionary, sustainable purposes. Forty years ago, land banking was encouraged to be a part of federal housing and urban development policy. It is time for it to be implemented. The need is greater than ever; the time is now; and the opportunity is here.

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- ⁵ Michigan Land Bank Fast Track Act, 2003 Pub. Act 258, Michigan Comp. Laws §§ 124.751–124.774.
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³¹ See, e.g., the land bank statutes of Georgia and Michigan, both of which require intergovernmental agreements for the exercise of powers. Georgia Code Annotated § 48-4-60; Michigan Comp. Laws § 124.751. Alexander, “Land Bank Authorities,” App. B.

³² The consolidation of Louisville, KY and Jefferson County, KY included the restructuring of the Louisville Land Bank Authority. Alexander, *Land Bank Authorities*, App. C-2. The Georgia statute expressly acknowledges the possibility of local government consolidation. Georgia Code Annotated § 48-4-61(e).

³³ Existing state statutes on land banking permit local governments a broad range of discretion in establishing priorities for the use of properties held by a land bank so long as those uses are consistent with the state’s own conceptions of public purposes and public functions. These purposes, as determined by the local land banking program, include but are not limited to homeownership and affordable housing, economic development, and parks and open green spaces.

³⁴ Though one of the earliest references to land banking came in the form of a recommendation (in 1971) for the creation of federal support for urban land banks, no action was taken and there has been no direct federal government role in providing support for local land banking. Federal government support, whether through community development block grants, environmental remediation assistance or other revenue sharing with local governments has indirectly supported land bank programs in the discretion of the local governments. For more information, see Charles M. Haar, *Wanted: Two Federal Levers for Urban Land Use – Land Banks and Urbank*, U.S. Congress, House Committee on Banking and Currency; Papers submitted to Subcommittee on Housing; Panels on Housing Production, Housing Demand, and Developing a Suitable Living Environment 927-940 (June 1971).

Recent developments in land banking and this policy analysis urging the expanded use of land banking as metropolitan policy, is not to be confused with the early twentieth century federal role in the creation of “federal land banks”. At that time Congress created a system of federal land banks for the purpose of providing long term agricultural loans. Federal Farm Loan Act, Pub. L. No. 64-158, §245, 39 Stat. 360 (1916). In many ways a forerunner to the creation of the federal home loan banks in the 1930s and the gradual emergence of the secondary mortgage market for residential loans, the Federal Land Banks and their sister agencies the Federal Intermediate Credit Banks were reorganized and renamed “Farm Credit Banks” by Congress in 1987. The Agricultural Credit Act of 1987, Pub. L. 100-233, 101 Stat. 568-1718 (1988). These federal land banks did not acquire, convey or hold property for assemblage or for long term development. They were (and are) banks in the conventional sense of providing liquidity.

³⁵ These included both the Neighborhood Stabilization Act of 2008, H.R. 5818, as passed the House of Representatives on May 8, 2008, and “Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes,” Title III of the Foreclosure Prevention Act of 2008, which is Division B of the omnibus Housing and Economic Recovery Act of 2008 (H.R. 3221), approved by the Senate on April 10, 2008.

³⁶ Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008).

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- ³⁷ Division B, Foreclosure Prevention, Title III, §§ 2301-2305, Pub. L. No. 110-289, 122 Stat. 2654 (hereinafter referred to as the “Emergency Assistance Act”).
- ³⁸ Emergency Assistance Act, § 2301(a).
- ³⁹ Emergency Assistance Act, § 2301(a), (c).
- ⁴⁰ Emergency Assistance Act, § 2301(c)(3)(C).
- ⁴¹ Emergency Assistance Act, § 2301(c)(3)(C), § 2301(c)(3).
- ⁴² Emergency Assistance Act, § 2301(a), §2301(c)(1) (emphasis added).
- ⁴³ Emergency Assistance Act, § 2301(c)(3)(A), §2301(c)(3)(B) (emphasis added).
- ⁴⁴ Emergency Assistance Act, § 2301(b)(3).
- ⁴⁵ Emergency Assistance Act, § 2301(b)(3).
- ⁴⁶ Emergency Assistance Act, § 2301(c)(2).
- ⁴⁷ See, letter from Rep. Dennis J. Kucinich, Chairman, Domestic Policy Subcommittee, to Secretary Steve Preston, Housing & Urban Development, July 30, 2008.
- ⁴⁸ “Methodology for Allocation of \$3.92 billion of Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes,” available at www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspfa_methodology.pdf (Sept. 2008).
- ⁴⁹ Ibid.
- ⁵⁰ Ibid.
- ⁵¹ Ibid.
- ⁵² Ibid.
- ⁵³ Ibid.
- ⁵⁴ Ibid.
- ⁵⁵ Ibid.
- ⁵⁶ Ibid.
- ⁵⁷ Emergency Assistance Act, § 2301(c)(1).
- ⁵⁸ “Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees under the Housing and Economic Recovery Act, 2008” available at www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspnotice.pdf (Oct. 2008).
- ⁵⁹ The foreclosure rates (or alternatively the target area priority) should also be adjusted to focus on previously occupied single-family foreclosed properties. To include within the calculations partially built single family construction – particularly when it is in large scale subdivisions or condominium structures – distorts both the purpose and the effect of the legislation.

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- ⁶⁰ These are Berrien, Calhoun, Genesee, Grand Traverse, Ingham, Jackson, Muskegon, Ogemaw, Saginaw, and Wayne counties. See www.michigan.gov/dleg/0,1607,7-154-34176_44777---,00.html (Sept. 2008).
- ⁶¹ These presently exist in Atlanta, Savannah, Macon and Valdosta, and are under consideration in Rome and Columbus.
- ⁶² For more information, see Land Assemblage and Redevelopment Authority, Houston, TX at www.houstontx.gov/lara/ (Sept. 2008); City of Dallas Urban Land Bank Demonstration Program at www.dallascityhall.com/html/land_bank_program.html (Sept. 2008).
- ⁶³ Senate Bill 911, enacting Chapter 468, Maryland Annotated Code, article 24 §22-101 (2008). Senate Bill 911, 423rd General Assembly Regular Session (Maryland 2008).
- ⁶⁴ Senate Bill 277, approved by the Senate on May 29, 2008, would enact §1901.185 and §3767.50 of the Ohio Revised Code pertaining to foreclosures involving abandoned properties. Senate Bill 277, 127th General Assembly Regular Session (Ohio 2007).
- ⁶⁵ “Taking Blight out of Birmingham,” *The Birmingham News*, June 15, 2008, p.2B; Emmet Pierce, “A land bank for foreclosed properties?” *San Diego Union Tribune*, February 17, 2008, p. A1; Bryan Chambers, “Occupation tax, local land bank authority are main components,” *The Herald-Dispatch*, June 17, 2008, available at www.herald-dispatch.com/news/x1627429535/Occupation-tax-local-bank-authority-are-main-components (Sept. 2008); City of Fort Collins website at www.fcgov.com/affordablehousing/land-bank.php. Bill A08059, New York State Assembly, as passed the New York State Senate on June 18, 2008.
- ⁶⁶ The Genesee County Land Bank received the 2007 Innovations in Government Award from the Ash Institute for Democratic Governance and Innovation at Harvard University. For more information, see www.thelandbank.org (Sept. 2008).
- ⁶⁷ Norris and Griswold, *Economic Impacts of Residential Property Abandonment*.
- ⁶⁸ “Policies and Procedures for Land Banking,” Fulton County/City of Atlanta Land Bank Authority,” (as approved December 4, 2007).
- ⁶⁹ An appropriate consent and subordination agreement would be required that would provide that the security interest is non-recourse as to the land bank, with no cash flow requirements from the land bank, and is subject to the public purpose restrictions of the land bank upon reacquisition by the mortgagee.
- ⁷⁰ Alexander, *Land Bank Authorities*, 33; Sec. 303, H.R. 3221 (EAS).
- ⁷¹ The proposals for a land bank in San Diego, CA rest primarily on this rationale. See Emmet Pierce, “A land bank for foreclosed properties?” *San Diego Union Tribune*, February 17, 2008, p.A1.

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For More Information

Frank S. Alexander
Professor of Law
Director, Project on Affordable Housing and Community Development
Emory University School of Law
frank.alexander@emory.edu

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