Center for COMMUNITY PROGRESS
Vacant Spaces into Vibrant Places

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Land Banking in Albuquerque:

Feasibility, Efficacy, and Relationship to Existing Tools for Vacant, Abandoned, and Substandard Properties

Center for Community Progress Report to City of Albuquerque, New Mexico

A Center for Community Progress Technical Assistance Report

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ABOUT CENTER FOR COMMUNITY PROGRESS

The mission of Center for Community Progress is to foster strong, equitable communities where vacant, abandoned, and deteriorated properties are transformed into assets for neighbors and neighborhoods. Founded in 2010, Community Progress is the leading national, nonprofit resource for urban, suburban, and rural communities seeking to address the full cycle of property revitalization. The organization fulfills its mission by nurturing strong leadership and supporting systemic reforms. Community Progress works to ensure that public, private, and community leaders have the knowledge and capacity to create and sustain change. It also works to ensure that all communities have the policies, tools, and resources they need to support the effective, equitable reuse of vacant, abandoned, and deteriorated properties.

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I. INTRODUCTION AND SUMMARY

The Center for Community Progress (Community Progress) was retained by the City of Albuquerque (City), through the direct support of City Councilor Diane Gibson, to evaluate the feasibility of land banking[1] to address vacant, abandoned, and substandard properties[2] in Albuquerque.

The mere fact of vacancy does not necessarily mean a property is also harmful to the surrounding community—rather, vacancy coupled with abandonment and substandard conditions leads to neighborhood destabilization. Vacant, abandoned, and substandard properties undermine the economic, social, and environmental health of Albuquerque and its neighborhoods, and present some of the most pressing challenges to the City's ability to protect the health and safety of its residents and to attract investment. Though substandard *occupied* structures can present similar harm to communities, they require a different set of equitable strategies and tools to prevent displacement of residents, and are not the focus of this report.

This report is intended to provide City, Bernalillo County (County), and community stakeholders with the foundation necessary to understand (1) **whether land banking is a feasible or necessary tool to address vacant, abandoned, and substandard properties in Albuquerque**; and, if so, (2) **what steps need to be taken to ensure this tool is best deployed in an effective, efficient, and equitable manner**. The observations and recommendations contained in this report are informed by:

Uniform Housing Code Definitions

A **Vacant Building** is a residential building or other structure that has not been legally occupied for 90 days or longer, unless listed by a real estate agent.

An **Abandoned Property** is a vacant building or other building that is no longer used for its principal purpose and has no other function or use. It may be boarded up and the owners may be absent or unknown.

A **Substandard Dwelling** is any building or part of the property where there are conditions that endanger the life, limb, health, property safety, or public welfare of the occupants.

A **Nuisance Property** exists where a condition on the property may be harmful to the public. A vacant building may be considered a nuisance if it has been abandoned and the doors or windows are unsecured; if the building remains vacant and unsecured after being cited by the City; or if the City has previously secured the building.

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[1] Land banks and land banking programs are public entities and public programs that acquire, stabilize, maintain, and responsibly dispose of vacant, abandoned, and substandard properties, in accordance with community goals. See *Land Banks and Land Banking*, 2nd Ed. by Frank Alexander, available for download on the Community Progress website at https://www.communityprogress.net/filebin/LandBanksLandBankingVer2DigitalFinal.pdf.

[2] See City of Albuquerque's Code of Ordinances, Uniform Housing Code ("UHC") § 14-3-1-4 (AmLegal 2018).

1. A review of **available data** from the City to better understand the types of vacant, abandoned, and substandard properties that are causing the most harm to Albuquerque and its residents.

2. A preliminary review of relevant **state and local law** as well as research of **organizational structures, local initiatives, and other documents and reports** that provided relevant local context and historical perspective.

3. A **two-day site visit**, in which Community Progress met with an extensive set of stakeholders, a complete list of which is attached in **Appendix A**.

4. **Post-site visit research**, as well as phone interviews and email exchanges with various local leaders and stakeholders.

Our research and interviews revealed the following key insights:

Better Data is Needed

In order for land banking or any other tool to be most effective in Albuquerque, local stakeholders need to better coordinate and centralize various data sets. This will help identify and prioritize the targeted inventory of vacant, abandoned, and substandard properties, and then evaluate the progress and outcomes resulting from interventions. Comprehensive data access for different City and County agencies and departments and community stakeholders will improve coordination and leveraging of resources for better outcomes.

Current Toolbox is Strong

The City has both an impressive and progressive set of legal and policy tools in its current toolbox to address the inventory of vacant, abandoned, and substandard properties. The recent update of the Uniform Housing Code (UHC) and the new Abandoned and Dilapidated Abatement Properties Team (ADAPT), a team of City staff focused on the top 100 public nuisance properties, many of which are vacant, abandoned, and substandard, reflect a critical and tailored legal and policy focus on stabilizing properties causing harm to Albuquerque neighborhoods.

Land Banking Requires Land

There is a timely opportunity to leverage the City's code lien foreclosure process to create a potential pipeline of properties for land banking when those properties are not redeemed and do not sell to private market purchasers. The code lien foreclosure process is the only viable legal and policy system in Albuquerque

we identified that is currently capable of achieving a transfer of vacant, abandoned, and substandard property into public and responsible ownership—a land banking program or otherwise.

The Time is Now

The City is not starting from scratch. It has the good fortune to have strong and committed City, County, and community leadership and momentum from the hard work of the Vacant and Abandoned Houses Task Force (Task Force). Several recommendations from the Task Force report have been implemented. They build the necessary foundation to ensure a land banking program is a "steward of last resort" for vacant, abandoned, and substandard properties and that there are other measures taken to prevent vacancy and abandonment over the long term.[3]

Most land banks throughout the country are created pursuant to state-enabling statutes. These statutes provide special property acquisition and disposition powers, specify land bank governance and operational methods, and authorize land banks to acquire property through special links to the delinquent property tax enforcement system. **In the absence of a state-enabling statute, land banking in Albuquerque may be feasible as a City-created program or through a contract with an outside nonprofit community development organization (City Land Banking Program).** Further, land banking will only be impactful if founded upon a clear and shared identification of the targeted inventory of vacant, abandoned, and substandard properties in Albuquerque, coordination with other departments and agencies on the deployment of existing legal and policy tools to address those properties, and an appropriate pipeline of insurable and marketable title to properties that may be deposited in a City Land Banking Program.

In the short term, there is an opportunity to utilize the City's code lien foreclosure process to target vacant, abandoned, and substandard properties that are causing the most harm and create a pipeline of properties for a pilot land banking program. In the long term, larger scale land banking will necessitate consideration of several recommendations in this report, including state-enabling land bank legislation, to ensure there is a coordinated approach to efficiently, effectively, and equitably address vacant, abandoned, and substandard properties in Albuquerque.

This report provides observations and recommendations for data collection and analysis, the UHC administration and process, code lien administration and the code lien foreclosure pilot program, the creation of a land banking program, and delinquent tax enforcement. For ease of reference and to provide a framework for City, County, and community leaders to consider

[3] *The City of Albuquerque Vacant and Abandoned Houses Task Force: Findings and Recommendations Presented to the City Council*, dated 1/17/2018, available on the City's website at: https://www.cabq.gov/council/documents/vacant-abandoned-houses-task-force-final-final-report-1-17-18.pdf.

next steps, recommendations are organized into short- and long-term goals. A summary of these recommendations is provided at the end of this report as **Appendix B**.

The observations and recommendations contained in this report are offered from our outside perspective, based on our work throughout the country, and are subject to the review and guidance of local legal counsel. Decisions about implementation are left entirely to Albuquerque leadership. Community Progress looks forward to participating in the robust discussions we hope this report generates, and supporting City, County, and community leadership in working together to ensure Albuquerque is a safe, innovative, and equitable place for all to thrive.

II. DEFINING THE PROBLEM: DATA AND INFORMATION SYSTEMS

For land banking to be most effective, there must first be a clear understanding of the problem, consensus on targeted inventory, and efforts in place to prevent additional property decline. Nearly all parties interviewed during our research agreed that vacant, abandoned, and substandard properties are a problem but used a combination of anecdotal experience and varying sets of incomplete data to describe the location, scope, and negative impacts of these properties throughout Albuquerque. This lack of a cohesive data set with mapping capabilities limits the ability of City, County, and community leaders to fully comprehend the scope and impact of vacancy and abandonment in Albuquerque, target inventory that is causing the most harm, align resources, and track progress.

While the City and County support different software programs across departments, it is possible and preferred to import multiple data sets into a single platform (centralized database) for integration, mapping, and analysis. Given both the City Planning Department and the County Treasurer's Office are in the process of upgrading their software programs, there is an opportunity to build off these efforts and begin to develop the infrastructure for a centralized database. Aggregating the datasets included in Table 1 below and presenting this information in present time with easy to understand maps and charts to City, County, and community stakeholders will support substantive conversations about the scale and prioritization of vacant, abandoned, and substandard properties.

Table 1: Available and Potential Data Related to Vacant, Abandoned, and Substandard Properties

Defining the Problem	Data Set	Description	Source	Available?
Indicates Vacant or Vacant & Abandoned Property	Total Vacant Properties	All vacant structures and vacant lots	Parcel Survey (from windshield survey or other systematic observation)	Not Available
	Total Vacant Structures	All vacant buildings. Should not include "seasonal" vacancies	Vacant Building Registration / Parcel Survey	552[4] (VBR data only, FY18)
	Total Vacant Lots	Property where no structure or improvement exists	Tax Assessor Data / Parcel Survey	Unclear[5]
	Mailing Address Listed as Vacant	Addresses where postal service has indicated there is no occupant to receive mail	USPS Vacancy Data through U.S. HUD	Unclear
	Utility Shut-Offs	Property likely vacant if water or electric utilities are shut-off for 6 months or more	Water, sewer, gas, or electric companies	Unclear
	Tax Assessor Indicates Vacant	May keep vacancy status for tax purposes	County Tax Assessors / Office of the State Assessor	Unclear
	Tax Delinquency	Correlation exists between vacant property and tax delinquent property	County Treasurer / State Dept. of Rev. & Taxation	Unclear
	Mortgage Foreclosure Filings	The filing of a mortgage foreclosure may indicate vacancy	County Clerk's Office	Unclear
	Police Calls to Vacant Property	Indicate on standard police call forms if address is vacant	Police Department	Not Available
	Fire Calls to Vacant Property	Indicate on standard fire call forms if address is vacant	Fire Department	Not Available
		AND		
Indicates Substandard or Nuisance Property	Notices of Code Violation	Indicates the property may be substandard	Department of Planning	Unclear
	Open Orders to Repair or Demolish	Indicates property is open, unsecured, or substandard and unfit for occupancy	Department of Planning	Unclear
	All Code Liens	Lack of compliance with City's enforcement could indicate substandard	Department of Planning	Unclear
	Substandard Liens	Lack of compliance could indicate substandard	Department of Planning	762[6] (FY18)
	Nuisance Abatement Liens	Vacant Properties with Nuisance Abatement Liens	Task Force Report	Unclear

[4] Vacant Building Registration (VBR) data from the City's Department of Planning, dated 2/7/19. Data is for properties "Approved" to be on the registry. This data point is limited as it captures only vacant properties that are registered.

[5] Given the limited scope of this engagement, it remains unclear whether certain datasets are available.

[6] Substandard Properties data from City's Department of Planning dated 2/7/19.

A. Working Groups that Bridge Silos Across Governmental Agencies and Community Leaders Provide Accountability and Transparency

The establishment of a Working Group focused on addressing vacant, abandoned, and substandard properties with representatives across City and County departments and agencies, as well as community leaders, provides a transparent mechanism to obtain data, set goals, track action items, and maintain accountability. The most successful working groups are chaired by a high-level municipal executive with decision-making authority and include representation from departments such as the Mayor's Office, City Council, City Attorney, Planning, Housing and Building Code Enforcement, Fire, Police, and County Treasurer's Office. In addition to collecting and analyzing data across departments, many working groups also use this data to prioritize and align resources to target those properties causing the most harm. The Working Group should also be charged with monitoring the performance of new initiatives and policies that are implemented as part of a more comprehensive and coordinated approach to vacancy and abandonment.[7]

B. Calculating the Direct and Indirect Costs of Vacancy and Abandonment to Albuquerque Taxpayers May Increase Awareness and Resources

The strain that vacancy and abandonment can have on the budgets of local governments across the country can be seen in both direct and indirect costs. Direct costs stem from the increase in service calls and actions that vacant and abandoned properties demand, such as police and fire service calls, housing and building code enforcement service calls, and abating nuisances (mowing high grass, boarding windows and doors, and removing trash and debris). Indirect costs generally include lost property tax revenues associated with vacant, abandoned, and substandard properties, and the loss in values of adjacent properties—which can result in a significant loss of property tax revenue over time. Using data to calculate the direct and indirect costs of vacancy and abandonment to Albuquerque taxpayers can help make the case to boost or reallocate resources to support tools such as code enforcement and land banking.[8]

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[7] One example of a successful working group is the Vacant and Abandoned Properties Initiative in South Bend, Indiana. At the direction of Mayor Pete Buttigieg, the Initiative set a goal of addressing 1,000 abandoned properties in 1,000 days—by day 1,000, the Initiative had addressed 1,122. See more on the City of South Bend's website at: https://southbendin.gov/initiative/vacant-abandoned-properties/.

[8] Community Progress has coordinated multiple Cost of Blight studies for community partners, including Toledo, Ohio (https://www.communityprogress.net/filebin/160630_TASP_LCLRC_Toledo_Cost_of_Blight_Study_Final.pdf) and Atlanta, Georgia (https://www.communityprogress.net/blog/cost-blight-research-atlanta-tells).

RECOMMENDATIONS FOR IMPROVED DATA COLLECTION AND ANALYSIS

Short Term Recommendations (<12 months)

a) Create a Vacant, Abandoned, and Substandard Properties Working Group (Working Group) that meets on a routine basis and is chaired by a high-level municipal executive with authority to obtain data, set goals, track action items, and maintain accountability from all municipal departments and community leaders.

b) Task the Working Group with collating, mapping, and regularly updating a complete data set for all property in Albuquerque that is vacant, abandoned, and substandard.

c) Gather USPS vacancy data or partner with a local nonprofit or local college or university to conduct a parcel survey of all property in Albuquerque to assess vacancy and property conditions.[9] Overlay vacancy or property condition data with data related to utility shut-offs, vacant property registration, substandard property list, housing and building code citations and liens, police and fire calls, and property tax delinquency.

d) Use the initial data gathering process itself to begin ensuring that various City and County departments and agencies use the same identification number or numbers (typically, the parcel ID# or tax ID#) to track parcels to allow for ease of mapping and tracking over time.

e) Use data gathering process to ensure various City and County departments and agencies track vacancy itself in all standard form reports, such as fire, police, code enforcement, and property tax assessment reports.

f) In partnership with ADAPT, identify the top 100 highly visible **vacant**, abandoned, and substandard properties and commit publicly to moving these into outcome-driven categories within a designated time frame.

g) Publicly display progress and data where appropriate, noting potential sensitivity around publicly displaying all vacancy data (e.g., inspiring copper and other theft).

[9] The Lucas County Land Bank (Toledo, Ohio) developed and coordinated a full parcel survey of all 122,000 parcels of land in Toledo. The Toledo Survey project took place in 2014-15 using land bank staff and volunteers. The results of that work and the mapping tool that was based on the data collected can be found on the Lucas County Land Bank's website at: https://co.lucas.oh.us/2783/The-Toledo-Survey.

Long Term Recommendations (>12 months)

a) Integrate different software programs across relevant City and County departments and agencies to allow data sets related to vacancy and abandonment to be imported into a single platform (centralized database) for mapping and analysis. This platform should be managed by an individual or team with expertise in data mapping and management and with direct authority from the Mayor and City Council.

b) Appoint one central Data Manager or Chief Information Officer with the authority to coordinate and ensure success.

c) Track success and progress over time in the centralized database. Regularly reevaluate both the universe of vacant, abandoned, and substandard properties and movement of parcels from one category into another.

d) Brand and celebrate the achievements of the Working Group through a regularly updated public website and through various marketing and storytelling interfaces that both communicate progress and invite participation, support, and feedback from the larger community.

e) After one full year of comprehensive data gathering, collating, and updating, consider obtaining or conducting a Cost of Blight Study to measure the direct and indirect costs of vacancy and abandonment to Albuquerque taxpayers.

III. REPAIRING COMMUNITIES: HOUSING AND BUILDING CODE ENFORCEMENT SYSTEMS

The most successful municipalities across the country have mechanisms in place to prevent properties from going into decline and ultimately ending up in the inventory of a land bank or land banking program. One of the most critical preventative tools in a comprehensive effort to reduce vacant, abandoned, and substandard properties (and the harms they impose) is a highly functioning, efficient, and equitable housing and building code enforcement system.[10] Housing and building code enforcement systems should authorize early intervention in deteriorating

[10] To learn more about what constitutes an equitable, efficient, and effective approach to housing and building code enforcement, see *Alternative Strategies for an Equitable, Efficient, and Effective Code Enforcement System in Mobile, Alabama* (June 2016), available on the Community Progress website at: https://www.communityprogress.net/filebin/FINAL_Strategic_Options_for_Mobile_Alabama_Code_Enforcement_June_2016.pdf.

properties to stem decline, and should always be designed to first and foremost encourage compliance with local housing and building codes.

A. Effective Housing and Building Codes Seek Compliance and Authorize Enforcement Primarily Through Lien Assessment Rather than Criminal Sanctions

Appropriate and clear notices of violations, coupled with reasonable time frames to comply, are often sufficient to encourage property owners to comply with housing and building codes. However, every housing and building code enforcement system must also authorize and employ appropriate sanctions for non-compliance for the inevitable cases where property owners ignore violation notices and refuse to bring property into compliance, or—in the case of abandoned properties—where no owner can be found. Sanctions must be enforceable and just to be effective. For example, in systems that authorize primarily criminal sanctions, the most vulnerable property owners (often low-income owner occupants without the means to fix up their property) are threatened with the loss of liberty—an unjust result. Criminal sanctions levied against local or out-of-state corporate property owners, including LLCs and other corporate entities, are generally ineffectual as corporate structures cannot be placed in jail. Moreover, criminal sanctions—even if achieved—do not ameliorate property conditions.

When faced with non-compliance, or when addressing vacant, abandoned, and substandard properties, *effective* housing and building code enforcement systems authorize local governments to undertake necessary repairs or demolition on properties that pose a threat to the public welfare. In addition, effective systems authorize the filing of a lien against the property at issue, reflecting the full cost to the taxpayer for all of the code enforcement activity and associated fines. Finally, an effective system grants the local government powers to enforce this lien, ensuring either the costs covered by taxpayers are recouped or the local government can compel the transfer of the property to a responsible owner. This third attribute, which is key, will be discussed in more detail in the next section (IV).

B. The City's 2018 Uniform Housing Code Reforms Clarify and Focus Enforcement Processes on Vacant, Abandoned, and Substandard Properties Through Various Civil Processes and Lien Assessment

In late 2018, as a direct result of the Task Force report, the City adopted a large-scale reform of its Uniform Housing Code (UHC) and achieved an excellent slate of thoughtful, progressive, and potentially impactful reforms.[11] Although the UHC applies to both occupied and vacant properties, the focus of this report remains on the City's enforcement mechanisms against

[11] See City of Albuquerque Council Bill No. C/S O-18-21, amending the Uniform Housing Code, §§ 14-3-1-1 through 14-3-5-99 (Am. Ord. 2018-025).

vacant, abandoned, or substandard properties that are in serious violation of the housing code.[12] Each of these categories of properties—vacant, abandoned, and substandard—are either vacant or are not legally occupied or occupiable. While some criminal and other personal sanctions remain in the toolbox, the primary focus of the UHC is now on an administrative hearing process and abatement actions that may result in the filing of a lien against the property at issue.[13] The value of the lien may include both the costs of any abatement activity incurred by the local government and any fines or penalties assessed against the property owner.[14] The updated UHC, as well as the new ADAPT program led by the Fire Department that will focus enforcement efforts on a list of the top 100 nuisance properties in Albuquerque, bear great promise for increased efficacy against vacant, abandoned, and substandard properties.

A "serious violation" of the UHC is a violation of New Mexico law (state law) or the City's code that poses an imminent threat to health and safety. As a general matter, upon discovering a serious violation in vacant, abandoned, or substandard properties, the City may utilize an administrative hearing process to issue a notice and order to the property owner to abate the condition, at which point the code enforcement action moves in one of four directions:[15]

1) The property owner may comply and abate the condition in response to the order in which case the code enforcement action will be closed.[16]
2) The property owner may appeal the order through the administrative hearing process.[17]
3) In cases where the City has determined that the structure must be demolished, the notice and order will require the demolition to be completed in a reasonable time frame and will seek a condemnation resolution from the City Council if the demolition has not been performed by the property owner.[18]
4) In cases where the City has determined that the property is a nuisance, the order will require abatement of the nuisance within a reasonable time, and upon non-compliance the City may seek a court order authorizing the City to abate the nuisance.[19]

Each of these four directions is capable of achieving the repair of the property—either through owner compliance, or through City action in the face of non-compliance.

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[12] UHC § 14-3-5-99.

[13] See, for example, UHC § 14-3-4-1(B)(3); § 14-3-5-7(A)(2); § 14-3-5-17; and § 14-3-5-99(C).

[14] See, for example, UHC § 14-3-5-6(A)(2)(c); § 14-3-5-8(B); and § 14-3-5-99.

[15] UHC § 14-3-5-3(2).

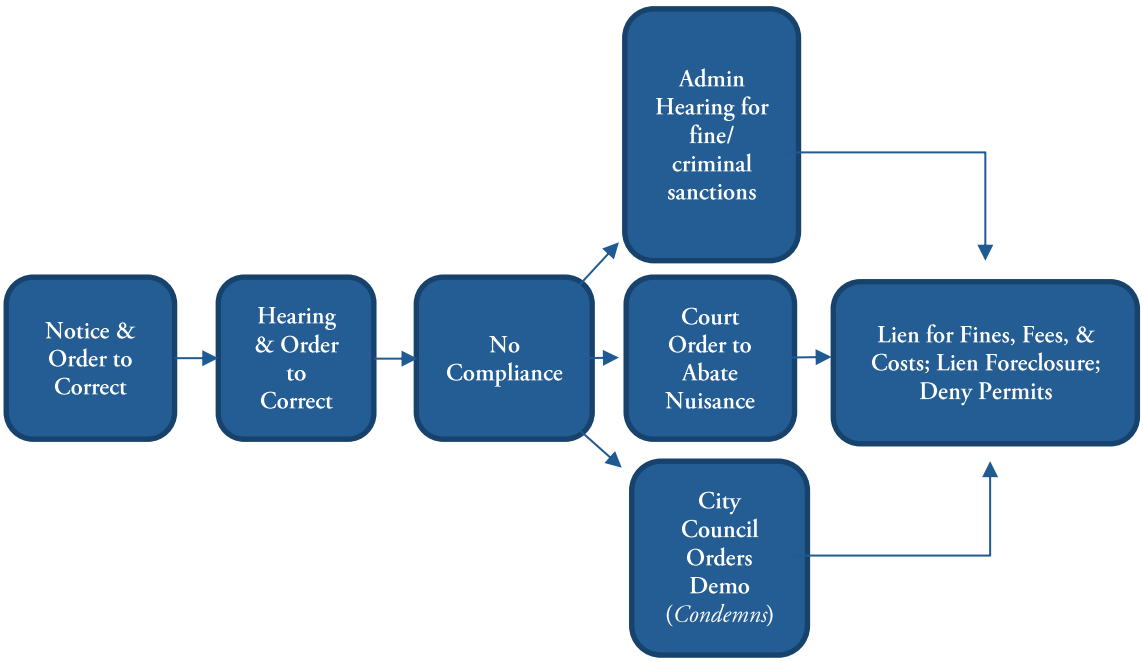
[16] UHC § 14-3-5-3(B)(2).

[17] UHC § 14-3-5-4.

[18] UHC § 14-3-5-3(c)3); see also NMSA § 3-18-5.

[19] UHC § 14-3-5-3(c)(4).

Table 2: UHC Enforcement Process for Vacant, Abandoned, and Substandard Properties (Serious Violations)



The updated UHC procedures have only been in place for a matter of months as of the writing of this report, but the increased clarity and enforcement powers reflect best practices of housing and building code enforcement systems around the country. Any time compliance is achieved by a property owner in response to a notice or order to correct, that compliance should be tracked and celebrated. For those vacant, abandoned, and substandard properties where property owners are non-responsive, unable to be located, or deceased, the fate of the property will rest in large part on whether the liens associated with code enforcement activity are enforced, and whether a responsible entity like a land bank or land banking program is available to take title to such properties, maintain them, and return them to productive use in accordance with local community goals.

RECOMMENDATIONS FOR IMPROVED UNIFORM HOUSING CODE ADMINISTRATION AND PROCESS

Short Term Recommendations (<12 months)

a) Create an informational brochure (easily posted on the City's website and social media platforms) that provides an overview of the responsibilities of property owners, enforcement processes, and methods for reporting vacant, abandoned, substandard, and other nuisance properties under the UHC.

b) Institutionalize substantive initial notices of code violations that are positive in tone, and thank you letters for voluntary compliance.[20]

c) Identify and begin tracking appropriate metrics to measure progress and impact of the amended UHC and new ADAPT program for vacant, abandoned, substandard, and other nuisance properties. Metrics may include voluntary compliance rate, time from initial notice of violation to completed City abatement action, time from City abatement action to lien enforcement, and time frames for any returns to substandard condition after initial compliance or City abatement action.

Long Term Recommendations (>12 months)

a) After one year of tracking progress and impact, begin to use metrics tracked in Short Term Recommendation "c", listed above, to draw conclusions and either celebrate and build on successes, or consider how to tweak or further amend the UHC and ADAPT program to improve outcomes. This is also a good point to assess whether the metrics currently tracked are the appropriate metrics to measure progress and impact.

b) Proactively and strategically target UHC enforcement actions in those areas where enforcement is likely to have maximum impact on the health and safety of the community or neighborhood revitalization efforts. Coordinate and target enforcement efforts in partnership with planned public investments, planned local public school interventions/activities, and with activities of local nonprofit community development partners.

c) Depending on success of the administrative hearing process and authority under state law, amend the nuisance abatement process to allow for enforcement through the Office of Administrative Hearings, subject to an appropriate appeals process.

[20] The City of New Orleans, Louisiana, found that redrafting initial notices of violation to be more courteous and provide additional time to comply increased voluntary compliance. See more about the New Orleans "Blight Courtesy Letters" at: https://datadriven.nola.gov/nolalytics/projects/.

IV. REPAYING TAXPAYERS: COLLECTION OF HOUSING AND BUILDING CODE ENFORCEMENT LIENS

Effective and equitable housing and building code enforcement requires first that the City direct vulnerable property owners who want to comply, but may lack the means to do so, to grant or loan programs to support repairs. If equitable solutions are not possible, or if the property is vacant, abandoned, or substandard, then effective enforcement requires that the City impose an appropriate penalty designed to provide property owners maximum incentive to fix their property. When the City must use taxpayer dollars to pursue enforcement action against non-compliant owners, which may include repairing private homes to protect the health and safety of residents, the City and taxpayers must have a mechanism to seek repayment. Generally, repayment of these taxpayer-funded expenses or repairs is sought through the filing and collection of liens. These liens attach to a property for a defined period of time, usually set in state or local law, and must be paid before the property can be sold or transferred. These liens may be enforced through foreclosure and are therefore a critical lever to transfer vacant, abandoned, or substandard property into more responsible hands, such as a land bank or land banking program.

At least some portion of these liens must be enforced as a matter of course through lien foreclosure or some enforcement mechanisms. If liens are never enforced, non-responsive or absentee property owners have little incentive to pay the lien unless they are seeking to sell or transfer the property, a likely outcome only if the property is located in a stable or high-performing neighborhood housing market. This renders the lien essentially meaningless and taxpayers have little hope of recouping their investment in the enforcement activity. Moreover, if liens are never foreclosed or otherwise enforced against vacant, abandoned, and substandard property, there is no means to achieve a transfer of the property into responsible hands, like a land bank or land banking program, or otherwise.

A. The City's Housing and Building Code Enforcement Liens Have Not Been Enforced for Many Years

While liens have been assessed against property for some housing and building code violations over the years, the City has not foreclosed on any liens in recent times. One estimate provided by the City notes that between 2015 and 2017, 1,619 liens were filed reflecting a total of $1.08 million dollars in fines and abatement costs owed to the City.[21] In Fiscal Year 2018, the City

[21] Data provided by City of Albuquerque.

filed 735 liens reflecting a total of $640,693.70 in fines and abatement costs owed to the City.[22] None of those liens were foreclosed by the City. Because municipal liens are no longer enforceable after four years,[23] liens from 2015 are no longer valid. Liens from 2018 will cease to be enforceable by 2022.[24] This unwillingness to foreclose on liens diminishes the City's ability to recoup the taxpayer dollars expended in enforcement activity; activity rendered necessary by non-compliant property owners who refuse to respect the property rights of their neighbors and neighborhoods.

Perhaps even more critically, lien foreclosure appears to be the only local government method available to compel the transfer of vacant, abandoned, and substandard property to more responsible hands under current state law and City policy and practice. The importance of private property rights—both in Albuquerque and in New Mexico generally—is of paramount concern. City leaders and residents are suspicious when the government seeks the forced transfer of private property—a healthy suspicion that must be respected. That said, consider the vacant, abandoned, and substandard property where title rests with a deceased person with no heirs, or with a defunct or out-of-state corporate entity that fails to pay property taxes or respond to code enforcement notices. These properties draw outsized resources from all Albuquerque taxpayers in terms of enforcement costs and increased police and fire calls, can drain the equity adjacent neighbors may have in their homes, and can altogether disrupt the harmony, security, and economic attractiveness of a neighborhood—harming all residents nearby. These vacant, abandoned, and substandard properties will simply never stabilize and return to productive use unless they are transferred into responsible ownership. The Albuquerque community must grapple with whether it will continue to accept the status quo on vacant, abandoned, and substandard properties—or whether it will continue to utilize a process such as lien foreclosure in a targeted fashion to move those properties into responsible ownership. Such an initiative would also send a message to property owners about the consequences of non-compliance, thereby increasing the likelihood of voluntary compliance with housing and building codes throughout Albuquerque.

B. The City's New Pilot Code Lien Foreclosure Program Reflects a Critical Policy Shift Toward Vacant, Abandoned, and Substandard Properties

Current City leadership recognizes there are potentially millions of dollars in uncollected debt reflected in the years of outstanding housing code liens held by the City. This recognition is juxtaposed with the scarcity of resources to complete desperately needed housing code enforcement activity, including demolitions and nuisance abatement. In an effort to incentivize

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[22] Data provided by City of Albuquerque.

[23] See generally NMSA § 37-1-4; *Hurley v. Vill. of Ruidoso*, 139 N.M. 306, 131 P.3d 693 (N.M. Ct. App. 2006).

[24] Though standard practice in Albuquerque has been to refrain from enforcing liens beyond four years, there does not appear to be caselaw indicating definitively that such municipal liens are subject to a four year statute of limitations. Legal analysis of this point is beyond the scope of this memorandum and subject to the direction and interpretation of the Albuquerque City Attorney's office.

property owners to repay outstanding code liens or to repair their property, the administration of Mayor Tim Keller recently directed the City Attorney's Office to institute a pilot code lien foreclosure process on vacant, abandoned, and substandard properties subject to multiple years of code liens. If the owner fails to repay the outstanding liens before the foreclosure is complete, the property will be transferred to a new and more responsible owner.

State law authorizes a local government to enforce municipal liens through judicial foreclosure within four years of the date the lien was filed.[25] The local government must provide notice to all those with an interest in the property prior to filing a foreclosure action. In the event no interested parties contest the foreclosure or pay off the liens in advance of the court ordering the foreclosure of the property, the court may order the property transferred to the City or may order the sale of the property at public auction, depending on which type of foreclosure process is utilized.[26]

The City may use what is described in state law as a "special alternative procedure for the foreclosure of municipal liens by an action *in rem*," where the foreclosed property is transferred to the City. Title transferred to the City through the "special alternative procedure" is subject to a one-year right of redemption during which time the former owner may redeem the property by paying all the taxes, interest, and court and attorneys' fees associated with the foreclosure.[27] Alternatively, the City may utilize the procedure governing mortgage foreclosure in state law to foreclose municipal liens. Under the mortgage foreclosure procedure, the City is required to sell the property on the courthouse steps right after the judgment of foreclosure, and title to the property is sold subject to any existing property tax liens and a redemption period of nine months.[28]

The foreclosure of municipal liens offers a path by which the City may force a transfer of vacant, abandoned, and substandard property into more responsible hands (either public or private), and provides a method to clear the property title and extinguish any liens and junior debt with the exception of property taxes.[29] At the conclusion of the foreclosure process, either the liens and all interest, penalties, and enforcement costs will have been satisfied thus making the City whole, or the property will have been transferred to responsible public or private ownership, or both.

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[25] See generally NMSA §§3-36-(4)-(6) and § 37-1-4; see also *Hurley v. Vill. of Ruidoso*, 139 N.M. 306, 131 P.3d 693 (N.M. Ct. App. 2006).

[26] See generally, NMSA §3-36-6; NMSA §39-5-18.

[27] NMSA §3-36-6(K).

[28] NMSA §39-5-18 et seq.

[29] See e.g., NMSA §3-36-6(J) ("If a defendant fails to answer within the time period provided herein, the court shall find such defendant in default and shall thereupon make a final judgment foreclosing the liens and transferring title in fee simple to the municipality subject only to unpaid ad valorem taxes and other special assessments having a lien on the property which is coequal with the lien for ad valorem taxes, and the right of redemption as hereinafter provided.")

In February of 2019, the City chose an initial set of properties to bring through the pilot code lien foreclosure process. A number of thoughtful questions and an analysis of available data drove the selection process, such as:[30]

- Are there liens about to expire on the property and what is the amount of the soon-to-be expired lien?
- Are there other liens on the property?
- Is the property located near another property that is being foreclosed and/or will there be a positive impact on the street/neighborhood?
- Are there tax delinquencies and is the property under the threat of State tax auction?
- Has contact with the property owners indicated that they are unwilling or unable to pay the liens and bring the property up to code?

Some of the properties selected are owned by deceased persons with no heirs or no heirs with interest in the property. Some of the properties are subject to more than $30,000 in municipal liens that are at risk of expiring in the near term, and some have been deemed substandard for more than five years and the owner is unwilling to make repairs. All of the properties are vacant, abandoned, and substandard, as defined by the UHC.[31] If these pilot cases move forward uncontested, then upon completion of all required notices, hearings, and other due process and statutory requirements, the properties will be acquired by the City—at least for some portion of time—and the City will need to determine how to maintain and ultimately dispose of the properties in a responsible fashion. **It is at this point that land banking becomes a relevant possibility in the lifecycle of vacant, abandoned, and substandard properties in Albuquerque.**

RECOMMENDATIONS FOR CODE LIEN ADMINISTRATION AND CODE LIEN FORECLOSURE PILOT PROGRAM

Short Term Recommendations (<12 months)

a) Estimate and apply fully loaded costs to all liens filed moving forward, including not only direct costs of code enforcement activity such as board-ups and demolitions, but also overhead reflecting staff and administrative time and costs.

b) Systematically file all municipal liens as soon as the City is authorized by law (if not done so already) to ensure payment upon either a private sale of the property or if the owner is seeking to refinance a mortgage or secure other financing with the property.

[30] Data provided by City of Albuquerque.

[31] Data provided by City of Albuquerque.

c) Track any payment of municipal liens including any satisfactions made upon property transfers on the private market.

d) Review standard notices provided to property owners of outstanding liens, fines, penalties, and costs owed to ensure the amounts due, deadlines for lien enforcement, and consequences of non-payment are clear. Include in such notices a simple explanation of costs to taxpayers of UHC violations and substandard properties. Include information in all notices about the possibility of foreclosure in the event of non-payment.

e) Proceed with pilot code lien foreclosure program, and track program costs and outcomes. Develop initial metrics to measure success, such as properties where the owner redeemed the lien and repaired the property, or where the property was purchased at foreclosure sale and the new owner is making improvements to the property and paying taxes.

f) In the near term, and as a matter of policy, limit the code lien foreclosure program only to properties that are vacant, abandoned, and substandard according to the definitions in the UHC.

g) Do not pursue code lien foreclosure on occupied property unless and until appropriate resources and programming are in place to provide support to vulnerable owner-occupants who do not have the means to complete necessary repairs or to provide relocation assistance and counseling to vulnerable tenants who may face displacement.

h) Elicit recommendations from the Working Group, nonprofits, and affordable housing developers on how to identify and prioritize the properties for the next round of the code lien foreclosure pilot.

i) Expand pilot such that code lien foreclosure is utilized as a matter of course on other vacant, abandoned, and substandard properties.

Long Term Recommendations (>12 months)

a) Revisit criteria for properties selected for the code lien foreclosure process as data is collected and there is a better sense of the problem and opportunities for early intervention.

b) Depending on the success of the pilot code lien foreclosure program, amend state law that clarifies that a municipal lien may be enforced up to 10 years after the lien is filed.

c) Amend state law to eliminate the post-code lien foreclosure rights of redemption on properties foreclosed through the code lien foreclosure processes. Move any desired "redemption period" to the pre-foreclosure period (where the City does not yet hold title).

d) Amend state law to contemplate a single municipal code lien foreclosure proceeding in which property certified as vacant, abandoned, and substandard may be sold in a foreclosure sale in a manner that results in insurable and marketable title, with no post-sale redemption period or surviving junior liens.

V. RECLAIMING COMMUNITIES: LAND BANKS AND LAND BANKING

If Albuquerque continues to pursue code lien foreclosure, a strategy will be needed to assemble and hold title to the land acquired by the City. Then when productive uses or meaningful development opportunities arise, the land may be transferred to responsible owners in support of local community goals. Land banks and land banking programs are used throughout the country for just this purpose.

Land banks and land banking programs, including the vast majority of those in operation across the country, are public entities or public programs that **acquire** vacant, abandoned, and substandard properties, **stabilize** and **maintain** those properties, and then responsibly **dispose** of those properties in accordance with local community goals. While the land banking concept sounds invitingly simple, the precise powers and resources necessary for an entity or program to effectively 'land bank' property in a community like Albuquerque must be carefully and methodically considered before a new land bank entity or land banking program is formed. **Without the specific powers and authority to act on the properties causing harm in a community, an entity or program will be impotent in the face of the community's challenges no matter whether it has "land bank" in its title.**

A. In the Absence of State-Enabling Legislation, the City Will Only Be Able to Create a Land Banking Program with Powers Already Available to the Local Government

Most land banks throughout the country are created pursuant to state-enabling legislation that provides land banks with particular powers and authorities to address vacant, abandoned, and substandard properties that are also tax delinquent. New Mexico does not have an enabling land

bank statute, and thus any land banking program created by the City will have only those powers authorized by the local government.

As a general matter, there are several options to consider if the City determines that land banking is one of the right tools moving forward. In the short term, these options include the creation of a program within an existing City department or agency, or working through a third-party land steward, such as a local nonprofit organization, that holds title to and maintains any vacant, abandoned, and substandard properties obtained through the code lien foreclosure process (City Land Banking Program). Contingent on the outcome of the code lien foreclosure pilot and willingness to pursue statewide legislative reform, the City might also consider the creation of a separate public entity or agency.

City Land Banking could be…

- A **Land Banking Program** housed within an existing City department or agency
- A **Third-Party Land Steward** (**contracted with City**), such as a New Mexico nonprofit or other similar entity
- In the long term, a separate, public entity or agency created by the City to serve as a **Land Bank**

Community Progress discovered no pipeline of vacant, abandoned, and substandard properties, other than the code lien foreclosure pilot program, that would be ripe for land banking and that would also be subject to a mechanism that could result in transfer of the property to a City Land Banking Program. This point cannot be overstated: without a means to efficiently access a pipeline of vacant, abandoned, and substandard properties, creating a land banking program will be a waste of time and resources.

1. A City Land Banking Program Could Hold and Maintain Properties Acquired Through the Code Lien Foreclosure Program Utilizing Existing City Staff, or by Contracting with a Third-Party Entity for Land Banking Services

If and when title to properties acquired through the code lien foreclosure pilot vests in the City, the City could transfer those properties to the City Land Banking Program. Properties acquired through the code lien foreclosure process would be subject to ongoing redemption periods of up to one year, and would need to be maintained responsibly. In the initial year of the code lien foreclosure pilot, the City will likely acquire no more than 10-15 properties, though the City can easily control the ultimate number of properties in the pipeline by controlling the number of code lien foreclosure actions pursued. Assuming a small number of properties are available for land banking through this process, a City Land Banking Program could likely be staffed by allocating 50% of one full-time employee's (FTE) time, or by existing City staff with appropriate property management expertise. Alternatively, the City could explore contracting with an experienced nonprofit or for-profit community development organization to provide land banking stewardship, including ongoing maintenance, for properties acquired through the code lien foreclosure program.

2. A City Land Banking Program Should Prioritize Developing Disposition Policies for Properties Acquired Through the Code Lien Foreclosure Process

In the absence of flexible disposition powers provided by state law, a City Land Banking Program will be subject to limitations on its disposition authority—limits that derive from existing local government or local government agency limitations. In disposing of properties to end users, which may range from first time homebuyers, to affordable housing developers, to neighborhood organizations or otherwise, a City Land Banking Program will need disposition policies that satisfy existing state and local law and the New Mexico constitution.[32] Properties acquired by the City through the code lien foreclosure process and transferred to a City Land Banking Program will be subject to various rights of redemption, and will be subject to existing property tax liens. Furthermore, upon disposition, depending on the appraised value of the property and depending on the disposition authority of the City department supporting the City Land Banking Program, there may be limitations on transferees, and any funds received from a purchaser may need to be distributed in specific ways to specific parties including, for example, prior owners and lienholders. Based on interviews conducted with various City departments and the City Attorney's office, and a review of state and local law, there appears to be sufficient methods for a City program to sell or transfer properties to responsible end users, but the transactions will need to be thoughtfully and carefully undertaken with appropriate guidance from the City Attorney's Office.

ESSENTIAL ELEMENTS OF EFFECTIVE LAND BANKING

- Strategic link to property tax collection and lien foreclosure process
- Operations scaled in relation to local land use goals
- Policy-driven, transparent, and publicly accountable transactions
- Engagement with residents and other local stakeholders
- Alignment with local code enforcement strategy
- Recurring, reliable source of funding

In addition to compliance with state and local law, disposition polices for City Land Banking Program properties should include guidance on pricing and priorities for property transferees. A City Land Banking Program's disposition policies must also include clear guidance as to the process required for selling or otherwise transferring title to a new owner, including whether City Council must vote on every transaction, which may delay or compromise decisions, and whether and how the New Mexico Constitution impacts disposition authority.[33]

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[32] See e.g., NM Const. Art. IX, §14.

[33] See e.g., NM Const. Art. IX, §14. This "antidonation" clause of the New Mexico constitution contains certain limitations on some forms of transfer of municipal property to third parties that do not satisfy various conditions, and also contains a number of exceptions to the limitations. Land banking disposition policies, particularly to the extent they anticipate transferring to first time home-buyers or affordable housing developers or otherwise for less than fair market value must comply with this provision of the NM Constitution. Additional research will be required on this point upon creation of a land banking program or entity.

3. A City Land Banking Program Should Focus Initially on Properties Acquired Through Code Lien Foreclosure, and Develop Acquisition Policies in Advance of Acquiring Properties Through Other Methods

If a City Land Banking Program is successful at maintaining vacant, abandoned, and substandard properties acquired through the code lien foreclosure process, and then disposing of those properties to responsible owners, new pipelines for vacant, abandoned, and substandard properties may come to light. A City Land Banking Program may seek to explore acquisition of donated properties, or of surplus public properties already stored in the City's inventory. No matter the acquisition strategy, the City Land Banking Program should develop policies for new property acquisition programs to ensure both the resources and capacity to manage additional properties, and to ensure a responsible, transparent, and sustainable disposition strategy for those properties.

For example, if the City Land Banking Program is approached by property owners who wish to donate property, staff should, at a minimum and as a matter of course, understand the fair market value of the property, the existence and amount of any public or private debt associated with the property, and the condition of the property (and cost of stabilization) before accepting the donation. In another scenario, if the bulk of properties acquired by the City Land Banking Program through the code lien foreclosure pilot are vacant parcels of land, staff will likely develop expertise in caring for and disposing of those kinds of properties. If the City Land Banking Program were then asked to hold and transfer a vacant publicly-owned school building, it would be wise to proceed cautiously and work in partnership with other City departments or community partners that have experience maintaining and putting to new use large, non-residential structures.

RECOMMENDATIONS FOR CREATION OF A CITY LAND BANKING PROGRAM

Short Term Recommendations (<12 months)

a) Charge an existing city department or agency to serve as the City Land Banking Program to manage properties acquired through the code lien foreclosure process in 2019. Depending on the total number of parcels addressed in year one, this project might be staffed by one ½ time FTE in the near term.

b) Alternatively, hire a third-party nonprofit organization, with expertise in property management and neighborhood revitalization, to steward properties acquired by the City through the code lien foreclosure process.

c) Create a small committee, perhaps a sub-committee of the Vacant, Abandoned, and Substandard Properties Working Group, to develop disposition and other policies for City Land Banking Program properties. Critical membership in this committee would include a City Attorney running the code lien foreclosure program, and nonprofit community development organizations that operate in neighborhoods with high levels of vacant, abandoned, and substandard properties.

d) Depending on local law and preferences, appoint a Land Banking Board or Commission to govern the activities of the City Land Banking Program to ensure the governing body is educated about its responsibilities for land banking activity.

e) Aim to achieve concrete plans for disposition of City Land Banking Program properties to responsible end users in 2020 upon expiration of the redemption period that applies to properties acquired through code lien foreclosure.

f) Prioritize internal City and community education activities regarding the code lien foreclosure process and the narrow and specific mission and activities of the City Land Banking Program.

g) Create a City Land Banking Program website that lists, describes, and depicts available properties in the inventory. This website can also serve as a marketing tool for property disposition.

h) Develop a working and active list of partners inside and outside of local government, and celebrate partnership and success. For example, if the City Land Banking Program partners with the County Public Works office for property maintenance, celebrate the work of that partnership and the part that Public Works is playing in neighborhood stabilization. If a partnership is made with a neighborhood association to create a pop-up park on a vacant lot owned by the City Land Banking Program, take pictures and celebrate that partnership on the City Land Banking Program website and on social media.

Long Term Recommendations (>12 months)

a) Depending on the success of the City Land Banking Program in Year 1, expand the number of properties acquired through the code lien foreclosure process, and staff the City Land Banking Program (either through City staff or through contract with an outside entity) appropriately to manage increased inventory.

b) Recruit high-quality leadership for an expanded City Land Banking Program with expertise to acquire, maintain, and dispose of real property in a mission-driven fashion.

c) Ensure the City Land Banking Program has resources to operate responsibly in the near term on targeted inventories, and resources scaled over time to allow activity in relation to need on the ground.

d) Explore new and additional property acquisition methods and develop accompanying policies for the City Land Banking Program. New acquisition methods might include acquisitions of existing surplus public inventory, donations, market purchases, and otherwise.

e) Revise disposition policies as necessary to account for expanded inventory of the City Land Banking Program properties acquired outside the code lien foreclosure process.

f) Revise and reform the governance structure (board, commission, or otherwise) of the City Land Banking Program as desired to ensure transparency, efficiency, and efficacy of larger-scale land banking operations.

g) Explore pursuing state-enabling land bank legislation authorizing the creation of local land banks (as separate public entities) with special powers tailored to specific property stabilization needs, and vacant, abandoned, and substandard property characteristics, in a given community. Refer to **Appendix C** for a Land Bank Legislation Template that anticipates the creation of a new public entity at local option with special acquisition, maintenance, and disposition powers, authorized by state statute, that is appropriately funded and governed.

VI. A NOTE ON DELINQUENT TAX ENFORCEMENT

Land bank statutes adopted around the country, and land banks generally, are typically created in part out of the observation that property tax delinquency and property vacancy and abandonment tend to correlate.[34] More often than not, a vacant, abandoned, and substandard home that is a destructive force in a given community is also property tax delinquent. This observation is why most land banks (and land bank statutes) are designed with special powers to acquire property through the property tax enforcement system, and then to return those properties to tax-paying status.

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[34] See *The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Prices of Neighboring Homes* Whitaker, Stephan, and Thomas J. Fitzpatrick, Federal Reserve Bank of Cleveland (2011); *Assessment of Baltimore City's Tax Sale System: Impacts on City Finances, Vacant Properties, and Vulnerable Owner Occupants*, Center for Community Progress (October 2016) available at: (http://www.communityprogress.net/filebin/CCP_BaltimoreTASP_Final_Report_102616.pdf).

A. New Mexico Delinquent Property Tax Enforcement Process

The delinquent property tax enforcement system is simply the set of laws and policies that ensure property taxes are paid. Every state has a unique property tax enforcement system set out in statute. In New Mexico, counties are generally charged with the assessment and collection of property taxes, and the authority to enforce the payment of delinquent property taxes lies with the State of New Mexico Office of Taxation and Revenue (the "State").

Every year, county assessors across New Mexico work with various state and county agencies to assess the value of all real property in the county and calculate the property tax due for each property.[35] If a property owner fails to pay the tax bill, which is sent in the fall and is generally due in two installments, the tax is considered delinquent. Delinquent taxes, including any current and future interest (1% of the unpaid amount per month until paid),[36] penalties (up to 5% of the unpaid amount),[37] and costs that may accrue, are secured by a priority tax lien against the property in favor of the State.[38]

If a property is tax delinquent for two or more years, the State may pursue personal collection of the delinquent taxes against the property owner. If the State's efforts to personally collect the delinquent taxes are unsuccessful, or if the taxes are more than three years delinquent, the State can offer the property for sale at public auction or a "tax sale."[39] The minimum bid at the tax sale starts at the total amount of any delinquent taxes due on the property, plus interest, penalties, and any costs related to the sale.[40] Property that does not receive a bid of at least the minimum sales price may be offered at a future sale for less than the minimum sales price,[41] though such "second sales" do not appear to occur with any frequency in New Mexico. The former property owner may bring an action to challenge the conveyance at any point up to two years after the date of sale.[42] The winning bidder at a tax sale auction receives a deed to the property that conveys all of the former owner's interest in the property.[43] Although the tax debt is extinguished upon the sale,[44] unlike tax sales in most other states, the State tax sale does not appear to extinguish any of the other debts that may be associated with the property.[45] The State cannot enforce property taxes through public auction or personal collection that have been delinquent for ten or more years.[46]

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[35] NMSA § 7-38-7. Note that many municipalities, including Albuquerque, have adopted a July 1 to June 30 fiscal year.

[36] NMSA § 7-38-49.

[37] NMSA § 7-38-50.

[38] NMSA § 7-38-48.

[39] NMSA § 7-38-67. See also the State's website at: http://www.tax.newmexico.gov/Businesses/delinquent-property-tax-upcoming-auctions.aspx.

[40] NMSA § 7-38-67(E).

[41] NMSA § 7-38-67(E).

[42] NMSA § 7-38-70(C).

[43] NMSA § 7-38-70(B).

[44] NMSA § 7-38-67(E).

[45] NMSA § 7-38-70(B).

[46] NMSA § 7-38-81. Note that the New Mexico property tax enforcement statute was recently amended to authorize the sale of certain tax delinquent "abandoned" property, defined very specifically to implicate large unfinished subdivisions that have a minimum of 5000 tax delinquent lots. See NMSA § 7-38-67.1.

B. Albuquerque Tax Delinquency and Substandard Properties

Although limited data is available, it appears that at least some significant portion of substandard (and thus not legally occupied) properties in Albuquerque are also property tax delinquent. As of February 2019, at least 350 substandard properties with active code enforcement cases in Albuquerque were also property tax delinquent, and 43 of those properties were subject to between 3 and 10 years of unpaid property tax debts, or a total of $369,065 in unpaid taxes.[47] In light of this correlation, to the extent Albuquerque explores state-enabling land bank legislation in the months and years to come, that effort should be coupled with tailored reforms to the New Mexico delinquent tax enforcement system, summarized below.

The New Mexico delinquent tax enforcement system does not offer a reliable means for a land bank or any other entity to acquire insurable and marketable title to vacant, abandoned, and substandard properties. Any land bank statute should simultaneously reform the New Mexico tax enforcement system in whole or in part, to allow land bank acquisition of insurable and marketable title to vacant, abandoned, and substandard property. Because reforms to the delinquent tax enforcement system will all likely entail state legislation, the recommendations below are all described as long-term recommendations.

RECOMMENDATIONS FOR DELINQUENT TAX ENFORCEMENT REFORM

Long Term Recommendations (>12 months)

a) Amend state law to eliminate delinquent tax enforcement post-sale rights of redemption; move any appropriate redemption period to the pre-tax foreclosure period.

b) Amend state law to clarify that properly conducted tax foreclosure sales eliminate any and all junior debts/liens associated with the property upon completion of the sale (or transfer to the local government in the absence of bids).

c) Amend state law to expedite the delinquent tax enforcement process for vacant, abandoned, and substandard properties; or for vacant, abandoned, and substandard properties subject to outstanding municipal liens.

[47] Data provided by City of Albuquerque, noting we were not able to receive tax delinquency data that also included vacancy and abandonment data.

d) Amend state law to contemplate a single legal proceeding in which vacant, abandoned, substandard, and tax delinquent property is sold at tax sale in a manner that results in insurable and marketable title, with no post-sale redemption period or surviving junior liens.

e) Amend state law to authorize qualified municipal land banks to acquire properties at tax sale for credit bids, and to acquire such properties at tax sale in front of the speculative market by submitting priority bids.

VII. CONCLUSION

It is an exciting time in Albuquerque given the momentum of interest and actions taken toward the prevention and elimination of vacant, abandoned, and substandard properties. Although the City has a strong toolbox of legal and policy tools, the Task Force report brought additional improvements to these tools to ensure they are used in a more effective, efficient, and equitable manner.

The concept of land banking may sound invitingly simple, but the precise powers and resources necessary to effectively acquire, maintain, and responsibly dispose of property in a community like Albuquerque must be carefully and methodically considered before a new program or entity is formed. It is our hope that this report provides actionable recommendations for how land banking and other tools may be coordinated to support a land banking program in Albuquerque. With additional clarity on the universe of properties that are causing the most harm, and improvements to the administration and enforcement of the UHC and code liens, a land banking program has the potential of acting as a necessary steward to ensure vacant, abandoned, and substandard properties are transitioned from liabilities into assets to support local community goals in Albuquerque.

APPENDIX A: SITE VISIT PARTICIPANTS

1. City Councilor Diane Gibson, City of Albuquerque
2. Nicole Taylor, Policy Analyst II, Council Services, City of Albuquerque
3. David Campbell, Director of Planning, City of Albuquerque
4. Charlotte Chinana, Policy Analyst, City Councilor Diane Gibson, City of Albuquerque
5. Michelle Gricius, GIS Manager, Planning, City of Albuquerque
6. Nick Bullock, Assistant City Attorney, ADAPT, City of Albuquerque
7. Jacobo Martinez, Code Enforcement, Planning Department, City of Albuquerque
8. Brennon Williams, Deputy Director, Planning Department, City of Albuquerque
9. Nancy Bearce, County Treasurer, Bernalillo County
10. Brian Eagan, Attorney, Albuquerque Housing Authority
11. Linda Bridge, Director, Albuquerque Housing Authority
12. Cilia Aglialoro, City Treasurer, City of Albuquerque
13. Carol Pierce, Director, Family and Community Services, City of Albuquerque
14. Lisa Huval, Deputy Director, Family and Community Services, City of Albuquerque
15. Rick Giron, Community Services Project Manager and CDBG Coordinator, Family and Community Services, City of Albuquerque
16. Angelo Metzgar, Manager, Office of Neighborhood Coordination, City of Albuquerque
17. Alex Ochoa, GIS Coordinator, Planning Department, City of Albuquerque
18. Petra Morris, City Council, City of Albuquerque
19. Karen Iverson, Manager, Metro Development Agency, Planning Department, City of Albuquerque
20. Tim Skelton, Senior Data Administrator, Planning Department, City of Albuquerque
21. Charley Salas-Ramos, Assistant Property Manager, Real Property Division, Planning Department, City of Albuquerque
22. Kathy Ahgar, Assistant City Attorney, Real Property Division, Planning Department, City of Albuquerque
23. Monica Montoya, Community Services Division Manager, Family and Community Services, City of Albuquerque
24. Alan Armijo, Director of Public Affairs, Mayor's Office, City of Albuquerque
25. Sean Elks, Deputy Chief of Operations, Fire and Rescue, City of Albuquerque
26. Donovan Olvera, Commander of NW Area, Police Department, City of Albuquerque
27. Elena Gonzales, Director of Albuquerque Operations, Homewise
28. Mike Loftin, Chief Executive Officer, Homewise
29. Johanna Gilligan, Director of Community Development, Homewise
30. Darcy Bushnell, Community Representative
31. Deirdre Firth, Deputy Director, Economic Development, City of Albuquerque
32. Diane Nolan, Policy Analyst, City Councilor Isaac Benton, City of Albuquerque

APPENDIX B: COLLATED LIST OF REPORT RECOMMENDATIONS

RECOMMENDATIONS FOR IMPROVED DATA COLLECTION AND ANALYSIS (SECTION II)

Short Term Recommendations (<12 months)

a) Create a Vacant, Abandoned, and Substandard Properties Working Group (Working Group) that meets on a routine basis and is chaired by a high-level municipal executive with authority to obtain data, set goals, track action items, and maintain accountability from all municipal departments and community leaders.

b) Task the Working Group with collating, mapping, and regularly updating a complete data set for all property in Albuquerque that is vacant, abandoned, and substandard.

c) Gather USPS vacancy data or partner with a local nonprofit or local college or university to conduct a parcel survey of all property in Albuquerque to assess vacancy and property conditions.[48] Overlay vacancy or property condition data with data related to utility shut-offs, vacant property registration, substandard property list, housing and building code citations and liens, police and fire calls, and property tax delinquency.

d) Use the initial data gathering process itself to begin ensuring that various City and County departments and agencies use the same identification number or numbers (typically, the parcel ID# or tax ID#) to track parcels to allow for ease of mapping and tracking over time.

e) Use data gathering process to ensure various City and County departments and agencies track vacancy itself in all standard form reports, such as fire, police, code enforcement, and property tax assessment reports.

f) In partnership with ADAPT, identify the top 100 highly visible vacant, abandoned, and substandard properties and commit publicly to moving these into outcome-driven categories within a designated time frame.

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[48] The Lucas County Land Bank (Toledo, Ohio) developed and coordinated a full parcel survey of all 122,000 parcels of land in Toledo. The Toledo Survey project took place in 2014-15 using land bank staff and volunteers. The results of that work and the mapping tool that was based on the data collected can be found on the Lucas County Land Bank's website at: https://co.lucas.oh.us/2783/The-Toledo-Survey.

g) Publicly display progress and data where appropriate, noting potential sensitivity around publicly displaying all vacancy data (e.g., inspiring copper and other theft).

Long Term Recommendations (>12 months)

a) Integrate different software programs across relevant City and County departments and agencies to allow data sets related to vacancy and abandonment to be imported into a single platform (centralized database) for mapping and analysis. This platform should be managed by an individual or team with expertise in data mapping and management and with direct authority from the Mayor and City Council.

b) Appoint one central Data Manager or Chief Information Officer with the authority to coordinate and ensure success.

c) Track success and progress over time in the centralized database. Regularly reevaluate both the universe of vacant, abandoned, and substandard properties and movement of parcels from one category into another.

d) Brand and celebrate the achievements of the Working Group through a regularly updated public website and through various marketing and storytelling interfaces that both communicate progress and invite participation, support, and feedback from the larger community.

e) After one full year of comprehensive data gathering, collating, and updating, consider obtaining or conducting a Cost of Blight Study to measure the direct and indirect costs of vacancy and abandonment to Albuquerque taxpayers.

RECOMMENDATIONS FOR IMPROVED UNIFORM HOUSING CODE ADMINISTRATION AND PROCESS (SECTION III)

Short Term Recommendations (<12 months)

a) Create an informational brochure (easily posted on social media) that provides an overview of the responsibilities of property owners, enforcement processes, and methods for reporting vacant, abandoned, substandard, and other nuisance properties under the UHC.

b) Institutionalize substantive initial notices of code violations that are positive in tone, and thank you letters for voluntary compliance.[49]

c) Identify and begin tracking appropriate metrics to measure progress and impact of the amended UHC and new ADAPT program for vacant, abandoned, substandard, and other nuisance properties. Metrics may include voluntary compliance rate, time from initial notice of violation to completed City abatement action, time from City abatement action to lien enforcement, and time frames for any returns to substandard condition after initial compliance or City abatement action.

Long Term Recommendations (>12 months)

a) After one year of tracking progress and impact, begin to use metrics tracked in Short Term Recommendation "c", listed above, to draw conclusions and either celebrate and build on successes, or consider how to tweak or further amend the UHC and ADAPT program to improve outcomes. This is also a good point to assess whether the metrics currently tracked are the appropriate metrics to measure progress and impact.

b) Proactively and strategically target UHC enforcement actions in those areas where enforcement is likely to have maximum impact on the health and safety of the community or neighborhood revitalization efforts. Coordinate and target enforcement efforts in partnership with planned public investments, planned local public school interventions/activities, and with activities of local nonprofit community development partners.

c) Depending on success of the administrative hearing process and authority under state law, amend the nuisance abatement process to allow for enforcement through the Office of Administrative Hearings, subject to an appropriate appeals process.

RECOMMENDATIONS FOR CODE LIEN ADMINISTRATION AND CODE LIEN FORECLOSURE PILOT PROGRAM (SECTION IV)

Short Term Recommendations (<12 months)

a) Estimate and apply fully loaded costs to all liens filed moving forward, including not only direct costs of code enforcement activity such as board-ups and demolitions, but also overhead reflecting staff and administrative time and costs.

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[49] The City of New Orleans, Louisiana, found that redrafting initial notices of violation to be more courteous and provide additional time to comply increased voluntary compliance by 5-7 percent. See more about the New Orleans "Blight Courtesy Letters" at: https://datadriven.nola.gov/nolalytics/projects/.

b) Systematically file all municipal liens as soon as the City is authorized by law (if not done so already) to ensure payment upon either a private sale of the property or if the owner is seeking to refinance a mortgage or secure other financing with the property.

c) Track any payment of municipal liens including any satisfactions made upon property transfers on the private market.

d) Review standard notices provided to property owners of outstanding liens, fines, penalties, and costs owed to ensure the amounts due, deadlines for lien enforcement, and consequences of non-payment are clear. Include in such notices a simple explanation of costs to taxpayers of UHC violations and substandard properties. Include information in all notices about the possibility of foreclosure in the event of non-payment.

e) Proceed with pilot code lien foreclosure program, and track program costs and outcomes. Develop initial metrics to measure success, such as properties where the owner redeemed the lien and repaired the property, or where the property was purchased at foreclosure sale and the new owner is making improvements to the property and paying taxes.

f) In the near term, and as a matter of policy, limit the code lien foreclosure program only to properties that are vacant, abandoned, and substandard according to the definitions in the UHC.

g) Do not pursue code lien foreclosure on occupied property unless and until appropriate resources and programming are in place to provide support to vulnerable owner-occupants who do not have the means to complete necessary repairs or to provide relocation assistance and counseling to vulnerable tenants who may face displacement.

h) Elicit recommendations from the Working Group, nonprofits, and affordable housing developers on how to identify and prioritize the properties for the next round of the code lien foreclosure pilot.

i) Expand pilot such that code lien foreclosure is utilized as a matter of course on other vacant, abandoned, and substandard properties.

Long Term Recommendations (>12 months)

a) Revisit criteria for properties selected for the code lien foreclosure process as data is collected and there is a better sense of the problem and opportunities for early intervention.

b) Depending on the success of the pilot code lien foreclosure program, amend state law to clarify that a municipal lien may be enforced up to 10 years after the lien is filed.

c) Amend state law to eliminate the post-code lien foreclosure rights of redemption on properties foreclosed through the code lien foreclosure processes. Move any desired "redemption period" to the pre-foreclosure period (where the City does not yet hold title).

d) Amend state law to contemplate a single municipal code lien foreclosure proceeding in which property certified as vacant, abandoned, and substandard may be sold in a foreclosure sale in a manner that results in insurable and marketable title, with no post-sale redemption period or surviving junior liens.

RECOMMENDATIONS FOR CREATION OF A CITY LAND BANKING PROGRAM (SECTION V)

Short Term Recommendations (<12 months)

a) Charge an existing city department or agency to serve as the City Land Banking Program to manage properties acquired through the code lien foreclosure process in 2019. Depending on the total number of parcels addressed in year one, this project might be staffed by one ½ time FTE in the near term.

b) Alternatively, hire a third-party nonprofit organization, with expertise in property management and neighborhood revitalization, to steward properties acquired by the City through the code lien foreclosure process.

c) Create a small committee, perhaps a sub-committee of the Vacant, Abandoned, and Substandard Properties Working Group, to develop disposition and other policies for City Land Banking Program properties. Critical membership in this committee would include a City Attorney running the code lien foreclosure program, and nonprofit community development organizations that operate in neighborhoods with high levels of vacant, abandoned, and substandard properties.

d) Depending on local law and preferences, appoint a Land Banking Board or Commission to govern the activities of the City Land Banking Program to ensure the governing body is educated about its responsibilities for land banking activity.

e) Aim to achieve concrete plans for disposition of City Land Banking Program properties to responsible end users in 2020 upon expiration of the redemption period that applies to properties acquired through code lien foreclosure.

f) Prioritize internal City and community education activities regarding the code lien foreclosure process and the narrow and specific mission and activities of the City Land Banking Program.

g) Create a City Land Banking Program website that lists, describes, and depicts available properties in the inventory. This website can also serve as a marketing tool for property disposition.

h) Develop a working and active list of partners inside and outside of local government, and celebrate partnership and success. For example, if the City Land Banking Program partners with the County Public Works office for property maintenance, celebrate the work of that partnership and the part that Public Works is playing in neighborhood stabilization. If a partnership is made with a neighborhood association to create a pop-up park on a vacant lot, take pictures and celebrate that partnership on the City Land Banking Program website and on social media.

Long Term Recommendations (>12 months)

a) Depending on the success of the City Land Banking Program in Year 1, expand the number of properties acquired through the code lien foreclosure process, and staff the City Land Banking Program (either through City staff or through contract with an outside entity) appropriately to manage increased inventory.

b) Recruit high-quality leadership for an expanded City Land Banking Program with expertise to acquire, maintain, and dispose of real property in a mission-driven fashion.

c) Ensure the City Land Banking Program has resources to operate responsibly in the near term on targeted inventories, and resources scaled over time to allow activity in relation to need on the ground.

d) Explore new and additional property acquisition methods and develop accompanying policies for City Land Bank Program. New acquisition methods might include acquisitions of existing surplus public inventory, donations, market purchases, and otherwise.

e) Revise disposition policies as necessary to account for expanded inventory of the City Land Banking Program properties acquired outside the code lien foreclosure process.

f) Revise and reform the governance structure (board, commission, or otherwise) of the City Land Banking Program as desired to ensure transparency, efficiency, and efficacy of larger-scale land banking operations.

g) Explore pursuing state-enabling land bank legislation authorizing the creation of local land banks (as separate public entities) with special powers tailored to specific property stabilization needs, and vacant, abandoned, and substandard property characteristics, in a given community. Refer to **Appendix C** for a Land Bank Legislation Template that anticipates the creation of a new public entity at local option with special acquisition, maintenance, and disposition powers, authorized by state statute, that is appropriately funded and governed.

RECOMMENDATIONS FOR DELINQUENT TAX ENFORCEMENT REFORM (SECTION VI)

Long Term Recommendations (>12 months)

a) Amend state law to eliminate delinquent tax enforcement post-sale rights of redemption; move any appropriate redemption period to the pre-tax foreclosure period.

b) Amend state law to clarify that properly conducted tax foreclosure sales eliminate any and all junior debts/liens associated with the property upon completion of the sale (or transfer to the local government in the absence of bids).

c) Amend state law to expedite the delinquent tax enforcement process for vacant, abandoned, and substandard properties; or for vacant, abandoned, and substandard properties subject to outstanding municipal liens.

d) Amend state law to contemplate a single legal proceeding in which vacant, abandoned, substandard, and tax delinquent property is sold at tax sale in a manner that results in insurable and marketable title, with no post-sale redemption period or surviving junior liens.

e) Amend state law to authorize qualified municipal land banks to acquire properties at tax sale for credit bids, and to acquire such properties at tax sale in front of the speculative market by submitting priority bids.

APPENDIX C: TEMPLATE LAND BANK ENABLING LEGISLATION

If the City of Albuquerque chooses to explore partnering with other local and state entities to pursue state-enabling land bank legislation, it will need to decide on the policies and priorities for a land bank that are appropriate and unique to Albuquerque. For example, it will likely be important for legislation to specifically reference or make a connection to the City's code lien foreclosure process as a key acquisition tool available to land banks. State-enabling land bank legislation must also be mindful of how or if such legislation should be tailored to ensure it is compliant with relevant state constitutional provisions or other state laws.

The following template is included to provide stakeholders with an example of one way the City might approach state-enabling land bank legislation, noting the disclaimer provided in italics below. The template can be found in "Appendix D" of *LAND BANKS AND LAND BANKING* (2nd ed. 2015), by Frank S. Alexander, available for download on the Community Progress website at: http://action.communityprogress.net/p/salsa/web/common/public/signup?signup_page_KEY=8679.

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

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

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

Section 1. Short Title.

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

Section 2. Legislative Findings and Purpose.

The legislature finds and declares as follows:

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

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

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

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

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

(f) Land banks should be available as a tool to assist in the provision of emergency management services following a natural disaster and a declaration of emergency by the Governor.

Section 3. Definitions.

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

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

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

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

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

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

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

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

Section 4. Creation and Existence.

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

(1) The name of the Land Bank.

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

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

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

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

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

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

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

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

Section 5. Applicability of State Law.

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

Section 6. Board of Directors.

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

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

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

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

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

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

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

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

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

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

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

(2) The incurring of debt.

(3) Adoption or amendment of the annual budget.

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

(k) 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.

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

Section 7. Staff.

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

Section 8. Powers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Acquisition of Property.

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

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

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

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

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

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

Section 10. Disposition of Property.

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

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

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

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

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

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

Section 11. Financing of Land Bank Operations.

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

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

(c) Fifty percent of the real property taxes collected on real property conveyed by a Land Bank pursuant to the laws of *State* shall be remitted to the Land Bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. *[In order to make this subsection permissive, rather than mandatory, the language must be changed from "shall" to "may."]*

(d) The governing authority of the jurisdiction which creates a Land Bank shall have the authority to increase the amount of fee, penalty, or charge imposed upon the nonpayment of property taxes levied within such jurisdiction pursuant to [*State Code Sections _____*]. The amount of such additional fee, penalty or charge shall be *[the amount of $XXX] [YYY percent of the aggregate tax bill as of the date delinquency first occurs]*. In the event that such supplemental fee, penalty or charge is authorized and collected, all such supplemental revenues shall be transferred to the Land Bank.

Section 12. Borrowing and Issuance of Bonds.

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

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

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

(d) Bonds issued by the Land Bank shall be authorized by resolution of the Board and shall be limited obligations of the Land Bank; the principal and interest, costs of issuance and other costs incidental thereto shall be payable solely from the income and revenue derived

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

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

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

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

Section 13. Public Records and Public Meetings.

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

Section 14. Dissolution of Land Bank.

A Land Bank may be dissolved as a *[type of legal entity the land bank is under this legislation]* sixty calendar days after by an affirmative resolution is approved by two-thirds of the membership of

the Board of Directors. Sixty calendar days advance written notice of consideration of a resolution of dissolution shall be given to the foreclosing governmental unit or units that created the Land Bank, shall be published in a local newspaper of general circulation, and shall be sent certified mail to the trustee of any outstanding bonds of the Land Bank. Upon dissolution of the Land Bank, all real property, personal property and other assets of the Land Bank shall become the assets of the foreclosing governmental unit or units that created the Land Bank. In the event that two or more foreclosing governmental units create a Land Bank in accordance with Section 4 of this Act, the withdrawal of one or more foreclosing governmental unit shall not result in the dissolution of the Land Bank unless the intergovernmental agreement so provides and there is no foreclosing governmental unit that desires to continue the existence of the Land Bank.

Section 15: Conflicts of Interest.

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

Section 16. Land Bank Creation in a Natural Disaster.

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

(a) The Governor shall have the authority, following consultation with the elected governing officials of the geographic area subject to the Governor's declaration of emergency, to issue an executive order providing for the immediate creation of a Land Bank of and for such local governments.
(b) The executive order shall provide for the matters identified in Section 4 of this Act.
(c) The Land Bank created pursuant to this Section 16 shall have all powers of a Land Bank created pursuant to this Act.
(d) Any Land Bank created pursuant to this Section 16 may be converted into a Land Bank created pursuant to Section 4 of this Act by necessary and appropriate action of the local governments containing the geographic areas subject to the declaration of emergency, at

which time such Section 4 Land Bank shall be the successor in interest and at law to the Land Bank created pursuant to this Section 16.

(e) In the event that an applicable Section 4 Land Bank is not created in accordance with Section 16(d), at the end of twelve (12) months following the date of the Governor's executive order the Land Bank created in accordance with this Section 16 shall be dissolved in accordance with Section 14 of this Act.

Section 17. Construction, Intent and Scope of Act.

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

Section 18. Delinquent Property Tax Enforcement.

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

Section 19. Expedited Quiet Title Proceedings.

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

(a) A Land Bank shall be authorized to file an action to quiet title as to any real property in which the Land Bank has an interest. For purposes of any and all such actions, the Land Bank shall be deemed to be the holder of sufficient legal and equitable interests, and possessory rights, so as to qualify the Land Bank as adequate complainant in such action.

(b) Prior to the filing of an action to quiet title, the Land Bank shall conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to all such interested parties by the following methods:

(1) Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records;

(2) In the case of occupied real property by registered or certified mail, addressed to "Occupant";

(3) By posting a copy of the notice on the real property;

(4) By publication in a newspaper of general circulation in the municipality in which the property is located; and

(5) Such other methods as the Court may order.

(c) As part of the complaint to quiet title, the Land Bank shall file an affidavit identifying all parties potentially having an interest in the real property, and the form of notice provided.

(d) The Court shall schedule a hearing on the complaint within ninety (90) days following filing of the complaint, and as to all matters upon which an answer was not filed by an interested party, the court shall issue its final judgment within one hundred twenty (120) days of the filing of the complaint.

(e) A Land Bank shall be authorized to join in a single complaint to quiet title one or more parcels of real property.

Section 20. Effective Date.

This Act shall take effect immediately.

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