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STRENGTHENING THE HOUSTON LAND BANK:

New Legislative Authority to Support Expanded Neighborhood Priorities and Resiliency in Houston



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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.

CONTENTS

| | |
|--|-----------|
| Introduction & Summary | 4 |
| Section I. Legislative Options to Strengthen the Houston Land Bank | 7 |
| Executive Summary | 7 |
| I. Introduction | 8 |
| II. The Evolution of LARA into the Houston Land Bank..... | 9 |
| III. The Central Powers for Land Banks and Land Banking..... | 17 |
| IV. Land Bank Funding..... | 22 |
| V. Conclusion and Next Steps | 23 |
| Stakeholders Interviewed | 28 |
| Section II. Draft Land Bank Enabling Legislation. | 29 |
| Section III. Land Banks and Community Land Trusts: A Primer for the Houston Land Bank | 46 |
| Introduction..... | 46 |
| Overview of Land Banks and CLTs..... | 47 |
| Snapshot: Albany County Land Bank and Albany Community Land Trust in New York..... | 48 |
| Key Considerations Moving Forward | 49 |
| Conclusion | 52 |

INTRODUCTION & SUMMARY

In late 2017, the Houston Land Assemblage Redevelopment Authority, now known as the Houston Land Bank, approached the Center for Community Progress (Community Progress) seeking guidance on how to better position the Houston Land Bank as an effective, efficient, and equitable partner in local efforts to stabilize and revitalize Houston neighborhoods. The focus was to help identify and develop new legislative and policy tools that would allow the Houston Land Bank to more flexibly address the needs and priorities for land throughout Houston, particularly in neighborhoods devastated by Hurricane Harvey as well as decades of disinvestment.

The opportunity to work with the Houston Land Bank, the City of Houston, and other local stakeholders to create more equitable neighborhoods is compelling for a variety of reasons, including:¹

- **Local Buy-In:** City leaders and other local stakeholders have demonstrated their willingness to devote substantial political and financial capital to creating a stronger, more resilient, equitable city in which no Houston neighborhood is left behind, as evidenced by Mayor Turner’s Complete Communities initiative.²
- **Need for Swift Intervention:** Given the scale of vacant, abandoned, and deteriorated or storm-damaged properties, the Houston Land Bank needs new and expanded legal powers to more quickly intervene and mitigate the harm such properties impose, and to work with residents and local stakeholders on reuse opportunities that meet community needs.
- **A Potential National Model:** The Houston Land Bank has an unprecedented opportunity to play a pivotal role in Houston’s efforts to recover in the wake of

¹ Local stakeholders refers to the numerous state, local government, nonprofit, and resident partners supporting efforts to address neighborhood stabilization and revitalization throughout Houston, and includes, for example, Harris County, the Harris County Flood Control District, and state and local elected officials.

² A description of the Complete Communities initiative can be found on the city of Houston’s website here: <https://www.houstontx.gov/completemunities/>.

Hurricane Harvey and other recent natural disasters, and to provide the national field of practice with a demonstration model for how a land bank can support local resiliency.

- **Prioritizing Equity and Affordability:** City leaders and other local stakeholders have publicly committed to prioritizing equitable community development, evidenced by the creation of a citywide Community Land Trust backed by a \$10 million City commitment. The Houston Land Bank is well positioned to, in part, provide a pipeline of properties for the development of long-term affordable housing and other community amenities in support of that priority.

By early 2018, Community Progress and the Houston Land Bank agreed to the framework of a multi-stage engagement that included:

1. Developing **legislative strategies** to equip the Houston Land Bank with sufficient legal authority to efficiently and equitably acquire and dispose of vacant, abandoned properties,
2. Providing technical assistance to improve land bank **policies, governance, and operations**, and
3. Brainstorming opportunities for the Land Bank to **partner with community land trusts**.

Throughout 2018, Community Progress engaged in extensive research of state and local laws, agreements, and policies related to land banking in Houston, and participated in numerous conference calls and site visits to Houston to meet with state and local elected officials and their staff, City and Harris County officials, members of the Houston Land Bank Board, and others.

The purpose of this report is to share the results of those efforts with Houston stakeholders as well as the national field of practice. In particular, this report is useful for communities seeking to identify and approach the development of new legislative tools to address vacancy and abandonment caused or exacerbated by disinvestment and natural disaster.

The three sections of this report contain the primary products Community Progress submitted to the Houston Land Bank over the course of our engagement.

Section 1: Strengthening the Houston Land Bank

Submitted to the Houston Land Bank's Board of Directors in July, 2018, this memorandum diagnoses the challenges the existing legal and regulatory framework impose upon the Houston Land Bank operations and makes the case for new, comprehensive land bank legislation. Informed by extensive legal research of the laws related to land banking in Texas and Houston, as well as stakeholder interviews, the memorandum traces the origins and evolution of the Houston Land Bank, examines the central powers currently available to the Houston Land Bank, and offers recommendations for new legislative authority to clarify and modernize the powers

needed for the Houston Land Bank to better address the inventory of tax delinquent, vacant, and abandoned properties in Houston.

Section 2: Draft Comprehensive Land Bank Enabling Legislation

Based on the recommendations provided in *Strengthening the Houston Land Bank*, and at the request of the Houston Land Bank, Community Progress drafted new, comprehensive land bank enabling legislation. The draft legislation was designed to replace existing state land banking law applicable to Houston, which is insufficient to meet the growing needs of the Houston Land Bank and the neighborhoods it serves. The proposed legislation expands the Houston Land Bank's ability to acquire properties that are tax delinquent, vacant, and deteriorated or otherwise damaged by natural disaster, to mitigate the negative impact of such properties on Houston neighborhoods, and to work with public and private partners to address the wide range of land use needs and priorities of Houston's neighborhoods including long-term affordable housing, community-based economic development, parks and recreation, flood reduction, and storm resiliency.

Section 3: Land Banks and Community Land Trusts: A Primer for the Houston Land Bank

Drafted for the Houston Land Bank and City leaders in charge of creating the newly formed Houston Community Land Trust, this policy report outlines opportunities for land banks and community land trusts to work together to support local efforts to stabilize and revitalize neighborhoods. The report initially provides a general overview of land banks and community land trusts, highlights the different yet complimentary roles of each entity in supporting equitable neighborhood development, and then offers lessons learned from a recent land bank and community land trust partnership in Albany, New York. Lastly, it highlights key considerations for the Houston Land Bank and City leaders to contemplate as they explore a land bank and community land trust partnership.

In the wake of Hurricane Harvey, the City and its partners across the region are commended for their willingness to reimagine and rebuild Houston into a stronger, more inclusive and resilient city in which no neighborhood or resident is left behind. Despite these efforts, the impact of decades of disinvestment continues to steadily erode the fabric of Houston neighborhoods, and the need to ensure an equitable and sustainable recovery is immediate and critical.

The contents of this report are intended to provide a robust series of observations, recommendations, and tools to help guide the Houston Land Bank as it seeks to position itself as a critical partner in local efforts to stabilize and revitalize those communities and neighborhoods affected by disinvestment and natural disaster. Community Progress looks forward to continuing to support the progress and evolution of the Houston Land Bank in the months and years to come.

SECTION I. LEGISLATIVE OPTIONS TO STRENGTHEN THE HOUSTON LAND BANK

[The following was submitted to the Houston Land Bank as a memorandum from Community Progress in July 2018.]

EXECUTIVE SUMMARY

The Houston Land Bank is well positioned to serve a critical role in local efforts to stabilize and revitalize Houston neighborhoods devastated by natural disaster, as well as those neighborhoods compromised by decades of disinvestment and lack of opportunity. To maximize its effectiveness, the Houston Land Bank must move beyond the complex maze of state statutes and periodic interlocal agreements that have governed the operations of the Land Assemblage Redevelopment Authority (“LARA”) from the late 1990s to the present, and seek new legislative authority granting the Houston Land Bank the powers and authority attributed to today’s more modern land banks.

Over the past four months, the Center for Community Progress (“Community Progress”) conducted research of the laws, agreements, and policies related to land banking in Houston, met with a variety of key stakeholders, and participated in several conference calls. A complete list of stakeholders interviewed, which included various state and local elected officials and their staff, City of Houston and Harris County officials, and members of the Houston Land Bank Board, is included at the end of this memorandum.

Our engagement revealed six key observations:

- 1) **Strong local political support exists for state legislative reform to expand the powers and authority of the Houston Land Bank.**
- 2) **The complex statutory authority under which the Houston Land Bank currently operates is sufficient only to accomplish the narrow purpose of acquiring a limited subset of tax delinquent properties to support affordable housing.**
- 3) **Existing state land bank legislation fails to provide the appropriate entities with the adequate powers and authority needed to acquire, maintain, and dispose of tax delinquent, vacant, and deteriorated properties in line with the goals and priorities of Houston residents and neighborhoods.**
- 4) **Existing authority for the Houston Land Bank to acquire one of the most significant sources of land bank inventory – tax delinquent, vacant, abandoned, and deteriorated land – is limited and insufficient.**

- 5) Existing authority for the Houston Land Bank to dispose of land bank inventory is insufficient to support the variety of needs and priorities that exist across Houston, like public service housing, community-based economic development, parks and recreation, flood reduction, and storm resiliency.
- 6) Funding to match the level of anticipated remediation, rehabilitation, and targeted reuse opportunities of the Houston Land Bank is insufficient.

Simple yet comprehensive new legislative authority can address many of these challenges. It can clarify the form and function of the Houston Land Bank. It can also expand the Houston Land Bank's ability to acquire properties that are tax delinquent, vacant, and deteriorated or otherwise damaged by natural disaster; mitigate the negative impact of such properties on Houston neighborhoods; and work with public and private partners to address the wide range of land use needs and priorities of one the most ethnically, racially, and culturally diverse populations in the country. Likewise, new legislative authority can establish new and diverse funding sources.

This memorandum makes the case for new legislative authority for the Houston Land Bank through a series of observations, first tracing the evolution of LARA into the Houston Land Bank, then examining the central powers available to the Houston Land Bank and other land banks from across the country, and finally exploring the challenge of adequate funding for land bank activities. The recommendations contained within each set of observations provide a guide for how new legislative authority might clarify and modernize the powers and authority needed for the Houston Land Bank to become one of the most efficient, effective, and equitable land banks in the country.

The observations and recommendations in this memorandum are solely those of the authors and should be considered as policy suggestions for the Houston Land Bank and its partners to consider. Any final decisions made by local stakeholders should reflect the input and guidance by local legal counsel.

I. INTRODUCTION

The Houston Land Bank is at a transition point. It was created in 1999 for the purpose of acquiring tax foreclosed properties and returning them to productive use. At the time of its creation as the Land Assemblage Redevelopment Authority ("LARA"), there was no express state statutory authority for land banks and land banking in Texas. The focus in the early years was on tax foreclosures in specific targeted neighborhoods in the City of Houston. As there was no statutory authorization for LARA to acquire tax sale properties it was necessary to construct an intricate series of multiparty interlocal agreements for such acquisitions and draw upon a maze of over a dozen different statutes to accomplish increasingly narrow objectives.

Over the course of the next decade four separate state statutes on land banking were enacted by the Texas legislature, with one of them being specifically applicable to the City of Houston. This explicit statute for land banking in Houston, however, was never aligned in form or in function with the activities being undertaken by LARA.

The origins of LARA in the 1990s were consistent with the pattern of initial forays into land banking across the United States, the “first generation” of land banks. Its experimentation with different statutes on interlocal cooperation and limited amendments to specific statutes and ordinances was also typical of the experience of municipalities from Flint, Michigan, to Macon, Georgia; from Cleveland, Ohio, to St. Louis, Missouri. The growth of land banks and land banking in the United States over the past fifteen years has revealed that reliance on limited, or even overly general, statutes and periodic interlocal agreements is not going to get the job done.

All land banks in the United States focus on converting vacant spaces into vibrant places. The specific targeted properties are those that are vacant, abandoned, and deteriorated. The goal is the elimination of the harms imposed by these properties on communities and the return of these properties to new productive uses as locally determined.

For a land bank to reach its maximum effectiveness comprehensive state enabling legislation which addresses the unique role that land banking serves is necessary. More than a dozen states have adopted such comprehensive legislation in the past fifteen years leading to the creation of more than 175 local land banks across the country.

The Houston Land Bank has the potential to become one of the most efficient, effective, and equitable land banks in the country, and indeed a model for the rest of the country as it addresses the ramifications of natural disasters and shifting uses of land. It is not going to be able to do this, however, unless and until simple yet comprehensive new legislative authority is granted so it has the powers and abilities to carry out this work similar to other modern land banks.

II. THE EVOLUTION OF LARA INTO THE HOUSTON LAND BANK

The Context

The origins of land banks and land banking in the modern era can be traced to the period between the early 1970s and the early 1990s in which St. Louis (1973), Cleveland (1976), Louisville (1989), and Atlanta (1991) all created land banks at the local government level.¹ The common element among each of these initial land banks was the focus on those properties characterized by multiple years of property tax delinquency, vacancy, and deteriorated structural conditions. As state laws typically provide that at a tax foreclosure sale the minimum bid is the amount of the tax delinquency, which for these properties often approaches or exceeds fair market value, there is no open market third party bidder and either the tax sale is cancelled or

the property is sold, or “struck off,” to the local government. Given the reluctance of local governments to become the owners of large inventories of such properties, land banks were created as special purpose entities to acquire these properties, maintain them, and put them back into productive use.

LARA was created at the end of the twentieth century for precisely this purpose. Its original Articles of Incorporation identified as its core function “the acquisition, assemblage, management, marketing, development and disposition of properties which have been acquired by taxing authorities through foreclosure of delinquent ad valorem taxes.”² Because LARA had no express statutory authority in its own name to acquire such properties, a series of interlocal agreements were necessary.

Consistent with the experiences of other jurisdictions, such as St. Louis and Atlanta, the priority for reuse of properties acquired by LARA was to facilitate affordable housing. LARA’s initial pilot project in 2000-01 identified 120 lots for tax foreclosure and ultimate acquisition by LARA. Unlike the other early land bank jurisdictions, however, the Houston City Council directed that LARA focus on acquisitions to support affordable housing in two target areas, the Third Ward and the Fifth Ward.

By 2003 the City of Houston and Harris County agreed to neighborhood goals for urban redevelopment projects and together with all other taxing units entered into the 2003 Urban Redevelopment Interlocal Agreement (the “2003 Interlocal Agreement”).³ This 2003 Interlocal Agreement broadened slightly the range of permitted activities for LARA to include “elimination of slums and blight and the stabilization and enhancement of property values in a neighborhood,” the “promotion of economic development in direct support of housing,” and the “return to productive use of properties perceived as brownfields.” Approximately 217 properties were identified in the 2003 Interlocal Agreement with narrow criteria for eligibility such as six or more years of tax delinquency and liens exceeding appraised value. In the 2005 First Amendment to the Interlocal Agreement an additional 1,478 properties were added to the potential tax foreclosure list.⁴

As it evolved over the first decade of its existence, LARA’s focus was on a narrow range of specifically identified properties it could acquire. It was to acquire tax foreclosed properties and repurpose them for affordable housing in specific neighborhoods. While that goal could be met and was met in many instances, the tight constraints and expectations necessarily would lead to underperformance. Many heavily tax delinquent deteriorated properties are not sufficiently large in size to be repurposed for affordable housing or are not located in a manner that makes such reuse feasible. If the land bank *does* acquire such tax delinquent properties but does not place them into affordable housing it fails to meet one of its purposes. If it *does not* acquire the heavily tax delinquent deteriorated properties, then the negative externalities remain unaddressed.

This challenge for LARA’s mission is reflected in its very name. It was identified at the beginning as a “land assemblage” entity but lacked any and all power to acquire inventory except through a narrow range of permitted tax foreclosures. It was identified as a “redevelopment authority” yet it lacked any meaningful ability to finance redevelopment activities. There seemed to be clarity on the proposition that LARA did not and would not possess the power of eminent domain, which is a critical power for redevelopment authorities, as well as clarity that LARA would not provide mortgage financing otherwise typical of housing finance corporations.

In recognition of the need for greater clarity on the purpose and function of LARA an Amended and Restated Certificate of Formation,⁵ as well as Amended and Restated By-laws, are presently pending before the Houston City Council.⁶ A symbolic yet important shift that would be made by these changes is to change the name from LARA to the “Houston Land Bank.”⁷ This name change, together with the amended articles of formation and by-laws, mark the first step in the transition of LARA into the Houston Land Bank, and its potential transformation into a model land bank for the country.

Recommendations:

1. Clarify in land bank legislation that a land bank is neither a redevelopment authority nor a housing finance corporation.⁸
2. Clarify in land bank legislation that a land bank may exist to serve a range of locally determined purposes and not just a single purpose. The inventory to be acquired by a land bank could include properties which are tax foreclosed, vacant, abandoned, deteriorated, or no longer capable of being developed. It could also acquire properties by purchase, by donation, or by exchange.
3. Clarify in land bank legislation that a land bank, or the local government that creates the land bank, may create a hierarchical range of intended uses of its inventory, including affordable housing, workforce housing, public service housing, community-based economic development, retail facilities (groceries, pharmacies) in neighborhoods where they are lacking, parks and recreation, beautification and public art, flood reduction, and storm resiliency.

The Legal Heritage

The statutory authority for the creation of LARA lies in the Texas Transportation Code, in a chapter that authorizes the creation of local government corporations “to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments.”⁹ The beauty of this statutory section is both its breadth and its simplicity. On its face it permits a local government corporation to do anything a local government could do, and it expressly authorizes contracts with political subdivisions of the state.¹⁰ It incorporates by

reference the provisions of Texas Non-Profit Corporation Act and makes them applicable to local government corporations.¹¹

The breadth of the Transportation Code authorization for LARA, coupled with the absence (at least until 2005) of any state land bank legislation applicable to Houston, has given rise over the years to a puzzling maze of state statutes that are cited as authority for the activities of LARA, or the local governments seeking to support LARA. In some instances, these make sense because of the nature of other sections of Texas law which require specific forms of authority. The leading example of this is the ability of one or more taxing units to acquire, and subsequently convey, properties at tax foreclosure sales. At present there is a requirement in the Texas Tax Code of specific interlocal cooperation agreements¹² and the statutory authority for such agreements is the Texas Interlocal Cooperation Act.¹³

The search for clarity and specificity in authorization for LARA's activities has also triggered references to both the Texas Community Development Act,¹⁴ and to the Texas Urban Renewal Law.¹⁵ Both of these statutes may be potentially relevant to the work of LARA, but it is not self-evident how and why they are relied upon to authorize LARA's activities. The Community Development Act, for example, expressly authorizes programs and plans that must be adopted in a specific manner; if used in connection with LARA activities it would mean that LARA's actions were constrained to follow the specified procedures of the Community Development Act. The Urban Renewal Law is a form of a classic urban renewal statute designed to permit the exercise of eminent domain for "blighted areas" or "slum clearance".¹⁶ As LARA does not possess the power of eminent domain it is puzzling to see references to the City's actions being "pursuant to the authority of Chapter 373 and/or Chapter 374 of the Texas Local Government Code" in approving the interlocal agreements for acquisitions (ultimately for LARA) of properties at tax foreclosure sales.¹⁷

The Transportation Code also includes a cross-reference¹⁸ to a chapter of the Local Government Code, the Texas Housing Finance Corporations Act, which contemplates and authorizes the creation of housing finance corporations to make or acquire home mortgages or to make loans to lending institutions in order to create residential mortgages.¹⁹ While there is no evidence that any party has construed LARA to be a housing finance corporation under this Chapter of the Local Government Code, there are numerous instances in the articles of incorporation²⁰ and City of Houston resolutions²¹ which suggest that LARA was created pursuant to both the Transportation Code and the Housing Finance Corporations Act. A less confusing and more accurate interpretation would be that LARA, now the Houston Land Bank, exists at the present time by virtue of the Transportation Code. The internal references to the Housing Finance Corporation Act are in the Transportation Code for purposes of delineating the procedures to be followed in the creation of the local government corporation, matters pertaining to its board, the execution, approval and amendment of articles of incorporation and by-laws, and the ability to hold property in a tax-exempt status.

Recommendations:

4. Clarify in land bank legislation that a land bank may be created pursuant to direct and explicit statutory authority.
5. Clarify in land bank legislation that a land bank may be a party to interlocal cooperation agreements.
6. Clarify in land bank legislation that a land bank is not created under the authority of the Housing Finance Corporation Act nor the Urban Renewal Law.
7. Clarify in land bank legislation that Houston's LARA, now the Houston Land Bank, is affirmed both in its original corporate formation, as amended, under the Transportation Code and as the Houston Land Bank authorized and existing under the new and revised land bank legislation.

Tax Sale Acquisitions

LARA was created in 1999 for the singular purpose of acquiring properties encumbered by delinquent property taxes. The immediate challenge, however, was that in the absence of specific statutory authority, LARA had no authority to acquire such properties directly.

The Texas Tax Code does permit a property to be sold, or "bid off," to a taxing unit at a tax foreclosure auction under certain conditions. First, the property may be sold to a taxing unit if and only if there is no third party bid for the minimum bid amount, which is defined as the lesser of the foreclosure judgment amount (the "judgment amount") or the market value of the property as set forth in the judgment.²² Second, any other taxing unit that is a party to the judgment may object to such a transfer, and there are eight separate overlapping taxing units within the geographic area of the City of Houston.²³ Third, the taxing unit receiving the property takes title to the property "for the use and benefit of itself and all other taxing units."²⁴ Fourth, payment of the judgment amount, and any costs and expenses, are not required from the taxing unit until redemption or resale by the taxing unit.²⁵

A taxing unit receiving title to property at a tax sale has six months to sell the property by *public* sale for any price.²⁶ If the property is not sold by the taxing unit within that period of time any of the other taxing units may insist that it be taken to a public sale.²⁷ If the taxing unit elects to sell the property by *private* sale it must be for an amount at least equal to the lesser of the judgment amount or the market value of the property as specified in the judgment.²⁸

This interplay of provisions related to the sale of tax delinquent properties to taxing units would, by themselves, functionally prohibit the transfer of tax foreclosed properties by the City of Houston to LARA for nominal value. There is, however, separate statutory authorization for a private sale for a nominal price but if and only if there is an interlocal agreement among all of

the taxing units.²⁹ That statute, in turn, sets forth requirements for urban redevelopment plans and affordable housing policies, and restricts its scope to properties that have a least six years of tax delinquency.³⁰

The cascading effect of these statutes related to sales to taxing units, and the restrictions on subsequent transfers by those taxing units, is precisely what triggered the requirement for the periodic interlocal agreements. These were the 2003 Interlocal Agreement,³¹ the 2005 Interlocal Agreement,³² the 2009 Interlocal Agreement,³³ and the 2014 Interlocal Agreement.³⁴ Each of these interlocal agreements required intensive and extensive collaboration among the eight separate taxing units as well as the direct involvement of LARA. They required agreement on the precise identification of all properties subject to the agreement as well as the re-transfer of some properties from LARA back to the City of Houston.

This overall complexity is attributed to two important parallel public policies. The dominant policy is the role of the Harris County Assessor-Collector (the “Assessor-Collector”) in maximizing property tax revenues through collections and tax foreclosures. This unitary focus of the Assessor-Collector becomes extremely complex in representing eight different taxing units. The consequence is that every tax sale to a taxing unit is “for the use and benefit of itself and all other taxing units”.³⁵ Entirely accurate as matter of legal formalism, the practical reality is starkly different. The overwhelming majority of the aggregate ad valorem taxes are attributable to liens of just three taxing units: the Houston Independent School District (“HISD”), Harris County, and the City of Houston. An even more stark reality is that when property does not receive, at the initial sale, a bid from an open market third party bidder it is a strong indication that that the property in question has a value to the market that is even less than the judgment amount or the market value as set forth in the judgment. There are multiple reasons for this financial assessment by the open market which include the extended years of tax delinquency prior to the sale and the deterioration of any structures on the property.

The second important, and parallel, policy is the role of a land bank in acquiring the properties which are heavily tax delinquent, vacant, and deteriorated and finding ways to return them to productive uses. This policy rests on the premise that such properties are not yielding any property tax revenues to the taxing units and are imposing substantial external costs on the neighborhoods and communities.

The gap between the legal formalism of the tax code and the reality of the three dominant taxing units—and the relative inefficiency and ineffectiveness of the multiple Interlocal Agreements—may be reflected, in part, by the fact that the last Interlocal Agreement (the 2014 Interlocal Agreement) has been permitted to expire. It may also be reflected by the fact that Harris County, the City of Houston, and HISD have had in place a separate Interlocal Agreement allocating among themselves the tax code sale and resale provisions since 2000.³⁶ This Interlocal Agreement was supplemented by a City of Houston Resolution in 2014 which

reflects a more proactive process being undertaken by the City in identifying properties for acquisition and resale.³⁷

The net result of these statutes and agreements is to create a complex, time consuming, and inefficient method of transferring tax delinquent properties into a land bank – a process far more complex and convoluted than in any other state in the country that has enacted comprehensive land bank legislation. In its simplest form, the problem is that land banking, at least in Houston, has never been directly tied to the tax foreclosure process and the properties it was created to address.

Recommendations:

8. Clarify in land bank legislation that a land bank may be a direct transferee of property at a tax sale in the event that no taxing unit requests that it be the transferee of the property.
9. Clarify in land bank legislation that a land bank, as direct transferee of property at a tax sale, shall pay in cash the full amount of all costs, expenses, charges, and collection fees associated with the delinquent property tax foreclosure proceedings.
10. Clarify in land bank legislation that a tax sale deed to a land bank conveys to the land bank the right, title, and interest of each taxing unit that was a party to the judgment.
11. Clarify in land bank legislation that property acquired at a tax sale by a land bank may, subject to an owner's right of redemption, be managed by and subsequently transferred by the land bank in accordance with the land bank statute.

State Land Bank Legislation

Though there was no state land bank legislation in effect at the time that the City of Houston moved forward with the creation of LARA in 1999, four separate land bank statutes were subsequently enacted by Texas between 2003 and 2007.

The first Texas land bank statute, the Urban Land Bank Demonstration Program Act, was enacted in 2003.³⁸ By its terms the statute is applicable only to Dallas, Texas.³⁹ The second statute, the Homestead Land Bank Program Act, was added in 2005.⁴⁰ It is functionally a subset of the land bank program available to Dallas.⁴¹ A third statute, the Urban Land Bank Program Act,⁴² is available to municipalities to which the other three land bank statutes do not apply.

The key state statute on land banking that is applicable to the City of Houston was enacted in 2005,⁴³ six years after the creation of LARA. This statute permits the municipality to adopt an “Urban Land Bank Program,”⁴⁴ and “establish or approve a land bank for the purpose of

acquiring, holding, and transferring real property under this chapter.”⁴⁵ The statute makes no reference to LARA and it appears that neither the City of Houston nor LARA ever took the necessary actions to bring LARA within the scope of this statute. A review of the LARA Board minutes reveals various occasions on which LARA referenced this statute,⁴⁶ adopted language from the statute without mentioning the statute,⁴⁷ or adopted a program explicitly authorized by the land bank statute such as the First Right of Refusal program.⁴⁸

The state land bank statute applicable to the City of Houston requires that the City adopt annually an Urban Land Bank Plan following public hearings.⁴⁹ The overall thrust of this statute is to require that transfers of land bank inventory be made either to adjoining property owners under a right of first refusal,⁵⁰ to a “Qualified Participating Developer,”⁵¹ or to “qualified organizations under a right of second refusal.”⁵² All property transferred by the land bank, other than through the adjoining lot program, must be for the sale or rental to low income households,⁵³ enforceable by deed restrictions.⁵⁴ The statute provides very little information or guidance on the legal structure of the land bank other than defining it as an entity established under the statute.⁵⁵ It also fails to provide for land bank acquisition of property other than through tax foreclosures, and it fails to permit transfers of land bank inventory for any purposes other than affordable housing or acquisition by adjacent owners.

One of the most interesting provisions of this state land bank statute is that it contains an express correlation to the delinquent tax sale procedures of the Texas Tax Code. It provides that at a tax sale the property may be sold in a private sale to a land bank if a number of conditions are met.⁵⁶ These conditions substantially replicate the restrictions and limitations found in the Interlocal Agreements and in the Tax Code.⁵⁷

Recommendations:

12. Evaluate whether the City of Houston has ever undertaken actions under the state land bank statute to adopt an urban land bank program and to designate LARA, or now the Houston Land Bank, as the land bank pursuant to the state land bank statute.
13. Clarify in land bank legislation that the Houston Land Bank is the land bank contemplated by the amended land bank statute as applicable to Houston, in addition to being a local government corporation under the Transportation Code.
14. Clarify in land bank legislation the necessary process, form, and structure related to the legal form of the land bank.
15. Clarify in land bank legislation a broad range of methods by which a land bank may acquire real property.

16. Clarify in land bank legislation the broader range of permitted uses of land bank inventory, as reflected in the Amended and Restated Certificate of Formation pending before the Houston City Council.

III. THE CENTRAL POWERS FOR LAND BANKS AND LAND BANKING

The evolution and development of land banks and land banking statutes over the past twenty-five years has been a gradual process of growth and development. The first generation of land banks focused on the negative externalities of vacant and abandoned properties and sought ways to eliminate such harms and return the properties to productive use. The second generation realized that without clear and specific ties to the underlying property tax foreclosure laws the target inventory would not be transferred. The third generation learned from these experiences and moved towards comprehensive statewide land banking enabling legislation.

For a land banking statute to be effective, efficient, and equitable, there are four key elements: (i) a process for establishment of neighborhood and community priorities, (ii) broad authority for acquisition of key properties, with explicit and clear ties to acquisition of properties through tax foreclosure sales, (iii) sufficient authority to engage in remediation and rehabilitation of properties acquired, and (iv) flexibility in transferring its properties to appropriate transferees.

Neighborhood and Community Priorities

The ability of a land bank to respond to neighborhood and community priorities, and the process by which that is done, is critical for two reasons.

The first is that neighborhood residents and neighborhood-specific community associations (faith communities; community development corporations) are in the best position to identify those properties that are causing the greatest harms to the neighborhood. These residents and these associations are also the ones most directly affected by the transformation of the properties into new uses. They are the ones who are able to “own” the transformation socially and culturally. They are the ones who are able to determine whether the top priorities on reuse should be for new open and green spaces, for affordable housing, for new retail facilities, or for new community centers. Neighborhood revitalization through land banking should not be done *to* a neighborhood. It should not be done *for* a neighborhood. It should be done *with* a neighborhood.

At its formation LARA was tasked with using tax foreclosed properties to provide affordable housing in two specific areas, the Third Ward and the Fifth Ward. Over the subsequent fifteen years this remained a priority focus, and additional neighborhoods were added. The most recent public policy initiative on “Complete Communities” is a vital affirmation of the importance of community “ownership” of revitalization.

The second reason why neighborhood and community involvement is critical in land banking is that in any major urban area there is a wide diversity in neighborhood challenges and neighborhood priorities. The sheer breadth of the geographic area of the City of Houston makes neighborhood involvement necessary; the absence of comprehensive land use zoning makes neighborhood involvement essential. Neighborhood involvement makes land banking possible.

Recommendations:

17. Clarify in land bank legislation the processes through which neighborhood residents and community associations have an active voice in the identification of problem properties for acquisition by a land bank and the priorities for reuse of such properties.
18. Clarify in land bank legislation that land bank inventory acquisition and inventory disposition can and should respond to neighborhood priorities.

Inventory Acquisition

In its earlier years, LARA could acquire properties only through cumbersome tax sale foreclosures and interlocal agreements, and even then, only when other taxing units would permit such acquisition. An efficient and effective land bank needs broad authority to acquire properties through a full range of methods. It should have the authority to acquire properties through purchase and through exchange. It should be able to receive donations of property from both public entities and from private owners. It should be able to acquire through voluntary negotiated exchange all rights in a specific property, or any of the lesser included set of rights such as future interests following defeasible fees, statutory redemption rights, easements, leases, and permits. A land bank should not have the power of eminent domain.

Recommendations:

19. Clarify in land bank legislation that a land bank may acquire any interest in real property through voluntary negotiated acquisition, by purchase, by exchange, or by donation.
20. Clarify in land bank legislation that a land bank may enter into agreements providing for the transfer of real property, and interests in real property with the State of Texas, the federal government, any local government, or any local government corporation.
21. Clarify in land bank legislation that a land bank does not have the power of eminent domain.

Because property tax delinquency is one of the most significant early warning signs of vacancy and abandonment, and a delinquent property tax enforcement system can be an efficient manner of transferring ownership of the property to a land bank, it is critical that efficient and effective land bank legislation have direct ties to the property tax foreclosure system.

At the present time there are tax delinquent parcels which have relatively low fair market value in their current conditions but still require costs and expenses simply to take these properties through the complete foreclosure process. From a rational cost accounting basis, these properties are usually not taken to a foreclosure sale because the direct transaction costs are not recovered. Acquisition of such property by a land bank, however, could fit directly within the mission and strategy of the land bank and the neighborhoods it serves.

Recommendations:

22. Clarify in land bank legislation that a land bank may request the initiation of and completion of a tax sale on a parcel of property, with notice to all taxing units, and agree to be the transferee of the property.
23. Clarify in land bank legislation that a land bank is a direct permitted transferee of property at a tax sale.
24. Clarify in land bank legislation that if there is no third-party bid greater than the minimum amount of the bid at the tax sale, and no taxing unit has requested the transfer of the property to it, the property is transferred to the land bank if a land bank has submitted a written request to acquire the property.
25. Clarify in land bank legislation that when a land bank is the transferee at a tax sale the land bank shall pay in cash the full amounts of all costs, expenses, charges, and collection fees of such a sale.
26. Clarify in land bank legislation that property transferred at a tax sale to a land bank is unencumbered, except for rights of redemption, easements, and covenants, and that all public and private liens on the property are extinguished by the sale.
27. Clarify in land bank legislation that a land bank may participate in a tax sale auction by engaging in competitive bidding above the amount of the minimum bid, and in the event that the land bank is the successful high bidder it must pay in cash the full amount of the bid inclusive of costs, expenses, charges, and collection fees.

Inventory Management

The ability of a land bank to manage the inventory it acquires flows directly from the first part of its core mission – dealing with vacant, abandoned, and deteriorated properties. It should have

explicit authority to enter into contracts for professional services, construction, deconstruction, rehabilitation, and remediation. It needs to be able to procure insurance for its operations and its properties, and to manage (by lease, contract, and management agreements) its inventory pending ultimate disposition. To accomplish these functions a land bank must have the ability to engage in a full set of banking and financial relationships.

Recommendations:

28. Clarify in land bank legislation that a land bank has power to enter into contracts necessary for the performance of its duties and the exercise of its powers.
29. Clarify in land bank legislation that a land bank has power to design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property.
30. Clarify in land bank legislation that a land bank has power to enter into interlocal agreements.
31. Clarify in land bank legislation that a land bank may borrow funds from private lenders, the State of Texas, or from federal government funds and pledge its own revenues and assets (but not the revenues and assets of any other governmental entity) to secure any such borrowing.
32. Clarify in land bank legislation that a land bank must maintain its inventory in accordance with the laws and ordinances of the local government.

Inventory Disposition

The acquisition of vacant, abandoned, and deteriorated properties and the remediation of the harmful conditions of the structures on these properties is the initial compelling mission of a land bank. Its corollary is returning the property to productive use as locally determined.

In contemplating and designing the disposition priorities, policies, and procedures there are three component elements. The first is the optimum new use of the property as locally determined. The second is the range of potential transferees of the property, and the third is the “pricing policy” for the transfers.

In most communities with a land bank, the highest priority for reuse of land bank inventory is given to local governments and governmental entities who seek to use the properties for public purposes, most commonly parks and recreation or other public facilities. A common second priority is that the property be used for affordable housing. The need for affordable housing, however, varies greatly between cities and between neighborhoods within a city. In some neighborhoods residents identify the need for retail and commercial properties (such as grocery

stores and pharmacies) as the highest priority, while in other neighborhoods the priority is for housing for senior citizens or for a day care center. What is essential is that a land bank be able to devote its inventory to priority uses as locally determined. Once an intended new use is established, the land bank must have available to it a range of mechanisms for the enforcement of the use requirements.

The eligible transferees of land bank inventory are determined in part by the range of permitted uses. When there is no potential for redevelopment of a particular property with new structures because of flood plain restrictions in Houston, for example, the transferees should presumptively be the Harris County Flood Control District or the City of Houston Parks and Recreation Department. When the use is for permanent sustainable affordable housing, the transferee could be a community land trust. When the use is for affordable homeownership opportunities, the transferee could be a nonprofit housing developer such as Habitat for Humanity or a community housing development organization. When the use is for multifamily rental housing, the transferee is most likely a real estate asset developer or manager.

The pricing policy applicable to transfers from a land bank flows from the determination of the required new use and from the identity of the transferee. When property is being conveyed to the Harris County Flood Control District or the City of Houston Parks and Recreation Department, it makes little sense to set consideration for the transfer at anything other than a nominal amount. Similarly, when the intended use is the creation of affordable housing, the level of financial consideration to be paid at the time of the transfer directly impacts the level of affordability. There are likely also to be situations when property in a land bank's inventory should be made available for sale on the open market at the strongest market price.

Recommendations:

33. Clarify in land bank legislation that a land bank must adopt policies and procedures to identify the permitted and required hierarchy of uses of its inventory upon disposition, and the opportunities for neighborhood and community engagement in the determination of uses.
34. Clarify in land bank legislation that a land bank must adopt policies and procedures identifying the range of potential transferees of its inventory.
35. Clarify in land bank legislation that a land bank must adopt policies and procedures for the amount of consideration to be received in the transfer of its inventory.
36. Clarify in land bank legislation a range of mechanisms through which a land bank can ensure both short-term and long-term compliance with the intended new uses of its inventory, including development agreements, deed covenants, mortgage financing, and defeasible fees.

IV. LAND BANK FUNDING

The most common source of funding across the United States for land bank operations derives from a direct allocation of general local government funds. Such funding is rarely, if ever, sufficient for all of the activities of a land bank but it is the source that is the easiest to explain and justify. A land bank's remediation of deteriorated structures is doing precisely what a local housing and building code department, or nuisance abatement department, is doing in using public resources. The difference is that when a land bank expends funds on remediation, the property is actually owned by the government whereas when code enforcement expends funds the property is privately owned, and the expenditures may never be repaid. The activities of a land bank are designed to reduce or eliminate the negative externalities – and public costs – of increased police and fire protection calls associated with vacant and abandoned structures. Properties located adjacent to or near a vacant and abandoned structure experience declines in market value, and a corresponding reduction in public property tax revenues. The vacant and abandoned property is usually yielding no property tax revenues but when property is transferred from a land bank to a new owner it is placed back on the tax rolls and yields new property tax revenues.

While every land bank receives direct financial operating support from the local government which creates it, additional funding streams are required to match the level of anticipated remediation, rehabilitation, and targeted reuse opportunities.⁵⁸

Dedicated Delinquent Tax Fees

As measured solely by the sheer amount of revenues generated to support land bank funding, the strongest example in the United States is the program authorized by 2009 legislation in Ohio to support the work of county land banks.⁵⁹ This legislation authorizes the creation of a special fund, into which a portion of the penalties and interest collected from delinquent property tax payments may be directed to support the local land bank. The full principal amount of delinquent taxes collected still goes to the taxing units and costs and expenses of enforcement are covered. This revenue source alone generates \$6 to \$7 million per year for just the Cuyahoga Land Bank (Cuyahoga County includes the City of Cleveland).

The strong correlation between tax delinquency and abandonment is the compelling public policy argument for this structure for funding land bank operations. This is buttressed by the fact that these penalty and interest payments are not made by the overwhelming majority of property owners who pay their property taxes on time. They are paid only by those owners who, for whatever reason, elect to pay their taxes late.

Limited Tax Recapture

A second approach authorized in a number of jurisdictions is based on the proposition that the land bank is acquiring property which is yielding no property tax revenues, is remediating the property, and is placing it back on the property tax rolls resulting in new property tax revenues.

First authorized by legislation in Michigan in 2002, this approach has also been adopted in New York, Georgia, Missouri, Pennsylvania and West Virginia.⁶⁰

These statutes provide local governments the authority to direct a portion of the future property tax revenues collected for a specific period of time, typically between three and ten years, measured from the date of the transfer from the land bank to a new taxable property owner. The percentage of the aggregate future tax revenues remitted to the land bank for this limited period of time can range from 50 percent to 100 percent.

The financial magnitude of funding generated by these tax recapture programs varies significantly among communities. In those communities where the bulk of the land bank inventory is transferred for use as open spaces there is little new revenue generated. In those communities where at least some of the inventory is repurposed for middle market or high value redevelopment then just a small number of such transactions may generate significant funding.

Recording and Transfer Fees

A third approach for land bank funding, which has been considered but not yet adopted in any jurisdiction, focuses on an increase in the existing fees associated with real estate transfers, with the recording of mortgages, or both. This method was first pioneered in 1992 by the Florida legislature with the enactment of the William E. Sadowski Act.⁶¹ It increased the excise tax on deeds and other instruments affecting real property and allocated approximately 30 percent of the funds to the State Housing Trust Fund, and 70 percent to the Local Government Housing Trust Fund. On a statewide level this generated over \$300 million dollars in 2018 for state and local housing trust fund activities.⁶²

It is beyond the scope of this memorandum to engage in a detailed evaluation of these three funding options under Texas law. All three of them, however, present legal and financial approaches deserving of an in-depth evaluation. The legal viability of each depends heavily on the history and structure of constitutional law, local government law, and property tax law in Texas. The financial feasibility depends heavily on the nature and extent of similar taxes, charges and fees that may be already in place and used to fund other public activities. The political and cultural viability depends heavily on the breadth of coalitions that can unite around a common vision, and yet serve multiple interests and constituencies.

V. CONCLUSION AND NEXT STEPS

A cutting-edge public policy innovation when it was first created in 1999, LARA demonstrated in its early years its capacity to make key transformational changes both with respect to specifically identified properties and for targeted neighborhoods. Using a highly complex maze of statutes and interlocal agreements over the following fifteen years, LARA continued to address a narrow range of properties with multiple years of tax delinquency and, with a limited

set of express statutory powers, it has managed to continue to demonstrate the key role of this special purpose public entity in addressing vacant and abandoned properties. The basic model for its operations, however, has not substantially changed in the past fifteen years.

What LARA, and the City of Houston, have not yet done is to build upon the lessons learned through its experiences by revisions to state laws and local practices designed to permit the land bank to operate more efficiently and effectively in serving Houston's neighborhoods and communities. Now is the time for the new Houston Land Bank to match the capabilities of hundreds of local land banks in over a dozen other states in the United States that have enacted comprehensive land bank legislation – the “third generation” of land bank jurisdictions. Because of the City of Houston's evolving and advancing practices in creating strong flood control and storm water retention, the City and the Houston Land Bank can serve as a strong demonstration model for the next generation of land banking statutes and programs.

¹ Frank S. Alexander, *LAND BANKS AND LAND BANKING* (2d ed. 2015, Center for Community Progress); *TAKE IT TO THE BANK: HOW LAND BANKS ARE STRENGTHENING AMERICA'S NEIGHBORHOODS* (Center for Community Progress, 2014).

² Article IV, Articles of Incorporation of the Land Assemblage Redevelopment Authority, filed Nov. 1, 1999.

³ City of Houston and Harris County Joint Neighborhood Goals for Urban Redevelopment Projects, Exhibit A, Urban Redevelopment Interlocal Agreement, dated December 12, 2003 between the City of Houston, Harris County, Harris County Flood Control District, Houston Community College System, Houston Independent School District, the Port Authority of Harris County, Texas, the Harris County Department of Education, the Harris County Hospital District, and the Land Assemblage Redevelopment Authority (the “2003 Interlocal Agreement”). The City of Houston and Harris County Joint Neighborhood Goals for Urban Redevelopment Projects is set forth as Exhibit A of the 2003 Interlocal Agreement.

⁴ First Amendment to the Urban Redevelopment Interlocal Agreement, approved by City of Houston Ordinance No. 2005-702, June 8, 2005 (the “2005 Interlocal Agreement”).

⁵ The original Articles of Incorporation of the Land Assemblage Redevelopment Authority, were filed Nov. 1, 1999 (and evidently approved by City of Houston Resolution No. 1999-59). A First Amendment to the Articles of Incorporation was effective March 8, 2004 and was incorporated as Exhibit B of the 2003 Interlocal Agreement.

⁶ The By-laws of LARA were initially approved at its creation in 1999 and subsequently amended by City of Houston Ordinance No. 2003-1018, and again by City of Houston Ordinance 2005-1073. Confirmation of the By-laws is reflected in the September 8, 2017, Minutes of the LARA Board of Directors.

⁷ The Board of Directors of LARA formally approved, at its January, 2018 meeting, authorization for LARA to filing a certificate of an assumed name doing business as the “Houston Land Bank”.

⁸ For purposes of this memorandum the term “land bank legislation” refers both to the existing four state land bank statutes, and to any future amendments to one or more of them. A decision on the precise form and location within the Texas statutes of prospective amendments is not addressed here.

⁹ Tex. Transp. Code § 431.101(a).

¹⁰ Tex. Transp. Code § 431.103.

¹¹ Tex. Transp. Code § 431.101(c).

¹² Tex. Tax. Code §§ 34.01(j), 34.05(j), 34.051.

¹³ Tex. Gov. Code § 791.011. Reference to this statutory authority is set forth in the Interlocal Agreement for the Sale of Seized and Tax Foreclosed Property, dated as of March 24, 2000. Reference to this statutory authority is also set forth in the 2003 Interlocal Agreement.

¹⁴ Tex. Loc. Gov. Code § 373.

¹⁵ Tex. Loc. Gov. Code § 374.

¹⁶ Tex. Loc. Gov. Code § 374.002.

¹⁷ See, e.g., City of Houston Ordinance No. 2005-702, June 8, 2005, approving First Amendment to the Interlocal Agreement; Restated Urban Redevelopment Interlocal Agreement dated December 3, 2014, approved by City of Houston Ordinance No. 2014-1057 (the “2014 Interlocal Agreement”).

¹⁸ Tex. Transp. Code § 431.102(a), citing to Chapter 394 of the Local Government Code.

¹⁹ Tex. Loc. Gov. Code § 394.001.

²⁰ See, e.g., the preamble to the 1999 Articles of Incorporation of LARA cites the incorporators as acting under the provisions of Section of the Transportation Code, and Chapter 394 of the Local Government Code.

²¹ See, e.g., City of Houston Ordinance No. 2003-1018.

²² Tex. Tax Code § 34.01(j).

²³ These are the City of Houston, Harris County, Harris County Flood Control District, Houston Community College System, Houston Independent School District, the Port Authority of Harris County, Texas, the Harris County Department of Education, and the Harris County Hospital District.

²⁴ Tex. Tax Code § 34.01(k).

²⁵ Tex. Tax Code § 34.01(k).

²⁶ Tex. Tax Code § 34.05(a), (b), (c). The rights of the taxing unit receiving the property at the initial tax sale are subject to the owner's right of redemption.

²⁷ Tex. Tax Code § 34.05(c).

²⁸ Tex. Tax Code § 34.05(h).

²⁹ Tex. Tax Code § 34.051(a).

³⁰ Tex. Tax Code § 34.051(b).

³¹ 2003 Interlocal Agreement, *supra* note 3.

³² 2005 Interlocal Agreement, *supra* note 4.

³³ Second Amendment to the Urban Redevelopment Interlocal Agreement, approved by City of Houston Ordinance No. 2009-224, March 25, 2009 (the "2009 Interlocal Agreement").

³⁴ Restated Urban Redevelopment Interlocal Agreement, approved by City of Houston Ordinance No. 2014-1057, December 3, 2014 (the "2014 Interlocal Agreement").

³⁵ Tex. Tax Code § 34.01(k).

³⁶ Interlocal Agreement for the Sale of Seized and Tax Foreclosed Property, March 24, 2000, Approved by City of Houston Ordinance No. 2000-0060.

³⁷ City of Houston Resolution No. 2014-14, Approved April 23, 2014, implementing City of Houston Executive Order No. 1-12, effective April 15, 2014.

³⁸ Tex. Loc. Gov. Code Chap. 379C.

³⁹ Tex. Loc. Gov. Code § 379C.002. This section provides that "This Chapter applies only to home-rule municipalities that (1) have a population of 1.18 million or more; and (2) are located predominately in a county that has a total area of less than 1,300 square miles."

⁴⁰ Tex. Loc. Gov. Code § 373A.201.

⁴¹ Tex. Loc. Gov. Code § 373A.003 provides that the key sections are applicable only to a municipality that has adopted an urban land bank demonstration program under Chapter 379 C, Local Government Code.

⁴² Tex. Loc. Gov. Code Chap. 379E.

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- ⁴³ Tex. Loc. Gov. Code Chap. 379D. This Chapter is applicable only to a municipality with a population of 1.9 million or more. Tex. Loc. Gov. Code § 379D.002.
- ⁴⁴ Tex. Loc. Gov. Code § 379D.004(a).
- ⁴⁵ Tex. Loc. Gov. Code § 379D.004(b).
- ⁴⁶ See, e.g., Land Assemblage Redevelopment Authority, Minutes of the Board of Directors, February 17, 2006 (referencing the “new land bank legislation” and how the new process for tax sale acquisitions differs).
- ⁴⁷ See, e.g., Land Assemblage Redevelopment Authority, Minutes of the Board of Directors, February 22, 2008 (adopted a deed restriction policy).
- ⁴⁸ See, e.g., Land Assemblage Redevelopment Authority, Minutes of the Board of Directors, April 29, 2011 (application of Right of First Refusal policies).
- ⁴⁹ Tex. Loc. Gov. Code §§ 379D.006. 379D.007.
- ⁵⁰ Tex. Loc. Gov. Code § 379D.011.
- ⁵¹ Tex. Loc. Gov. Code § 379D.005.
- ⁵² Tex. Loc. Gov. Code § 379D.009.
- ⁵³ Tex. Loc. Gov. Code § 379D.010.
- ⁵⁴ Tex. Loc. Gov. Code § 379D.009(d).
- ⁵⁵ Tex. Loc. Gov. Code § 379D.003(1).
- ⁵⁶ Tex. Loc. Gov. Code § 379D.008.
- ⁵⁷ Tex. Loc. Gov. Code § 379D.008(a)(1) – (4). These limitations include requirements that the market value of the property is less than the judgment amount, the property is not improved with habitable structures, there are a least six years of tax delinquency, and there is an interlocal agreement among all of the taxing units. There is an additional puzzling, and circular, limitation that a property is *not* eligible if it does not have a habitable building but is nonetheless occupied. Tex. Loc. Gov. Code § 379D.008(b).
- ⁵⁸ See generally, *Financing of Land Bank Operations*, Chap. 7, Frank S. Alexander, LAND BANKS AND LAND BANKING (2d ed. 2015, Center for Community Progress).
- ⁵⁹ TAKE IT TO THE BANK: HOW LAND BANKS ARE STRENGTHENING AMERICA’S NEIGHBORHOODS, pp. 35-36 (Center for Community Progress, 2014).
- ⁶⁰ See generally, *Financing of Land Bank Operations*, Frank S. Alexander, LAND BANKS AND LAND BANKING (2d ed. 2015, Center for Community Progress), pp. 58-59.
- ⁶¹ William E. Sadowski Affordable Housing Act, 1992 Fl. H.B. 133H, amending multiple sections of the Florida statutes.
- ⁶² <http://www.sadowskicoalition.org/facts/> (last visited June 19, 2018).

Stakeholders Interviewed (Alphabetical by Last Name)

Carol Alvarado, Texas State Representative, District 145
David Benson, City of Houston, Assistant Director of Recovery Efforts
Christon Butler, Houston Permitting Center, Deputy Director
Garnet Coleman, Texas State Representative, District 147
Brandon Dudley, Harris County Commissioner Rodney Ellis's Office, Precinct 1, Chief of Staff
Amanda Edwards, Houston City Councilmember, At-Large Position 4
Rodney Ellis, Harris County Commissioner, Precinct 1
Anne Gatling Haynes, Houston Land Bank (LARA), Prospective Executive Director
Lance Gilliam, Harris County Commissioner Rodney Ellis's Office, Precinct 1, Senior Policy Development Advisor
Kim Hatter, City of Houston Mayor's Office, Program Manager
Jarvis Johnson, Texas State Representative, District 139
Nicholas Hall, Houston Land Bank (LARA), Board Chair
Jeremy Harris, Houston City Councilmember Michael Laster's Office, Chief of Staff
Bill Kelly, City of Houston Government Relations, Director
Michael Lactson, Houston Land Bank (LARA), Board Member
Curtis Lampley, Harris County Flood Control District, Director of Community Services Division
Michael Laster, Houston City Councilmember, District J
Tom McCasland, Director, City of Houston Housing and Community Development Department
Joshua Sanders, Hall and Associates, Director of Policy
Leah Stolar, Linebarger Goggan Blair & Sampson, LLP, Partner
Steve Tinnermon, City of Houston Land Assemblage Redevelopment Authority, Former Staff
James Wade, Harris County Flood Control District, Section Manager/Property Acquisition
Matt Zeis, Houston Land Bank (LARA), Board Member

SECTION II. DRAFT LAND BANK ENABLING LEGISLATION.

[Submitted to the Houston Land Bank on January 23, 2019, this draft legislation was created to address the unique priorities and needs for land banking in Houston, Texas. It is not appropriate to simply to copy the draft legislation provided here, or cut and paste portions of it, 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 draft legislation should be viewed as only an example of one approach that has been taken with respect to the topic in Houston, Texas.]

Draft Legislation for the Houston Land Bank

A BILL TO BE ENTITLED

AN ACT

relating to an urban land bank program in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 12, Local Government Code is amended by repealing in its entirety Chapter 379D and adding in its place a new Chapter 379D as follows:

379D.001. Short Title

This Chapter may be cited as the Urban Land Bank Program for a Municipality with a Population of 2 Million or more.

379D.002. Applicability

This Chapter applies only to a municipality with a population of 2 million or more.

379D.003. Definitions

In this Chapter the following words and phrases shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

- (1) “Board of Directors” or “Board” shall mean the Board of Directors of the Land Bank.
- (2) “Houston Land Bank” shall mean the Houston Land Bank, a public non-profit corporation evidenced by its Amended and Restated Certificate of Formation dated September 26, 2018, as filed with the Secretary of State of the State of Texas (under File No. 155688901), pursuant to Ordinance dated HCD 18-51, approved and adopted by the City Council of the City of Houston on July 25, 2018, as originally created as the

Land Assemblage Redevelopment Authority pursuant to Subchapter D, Chapter 431, Tex. Transp. Code, and such Certificate of Formation may be hereafter amended.

- (3) “Land Bank” shall mean an entity established or approved by the governing body of the Municipality in accordance with and pursuant to the provisions of this Chapter.
- (4) “Municipality” shall mean a municipality as described in Section 379D.002 of this Chapter.
- (5) “Non-qualifying Municipality” shall mean any municipality to which this Chapter does not apply, and which is located in the same county in which the Municipality in predominantly located.
- (6) “Real Property” shall mean lands, lands under water, structures and any and all easements, air rights, franchises and incorporeal hereditaments and every estate, interest, 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.

379D.004. Creation and Existence

- (a) The Land Bank shall exist for the purposes of acquisition, management, and disposition of vacant, abandoned, and deteriorated properties and returning them to productive uses such as affordable housing, workforce housing, public service housing, community-based economic development, food desert solutions, beautification and public art, parks and recreation, flood reduction and storm resiliency and other locally determined uses as necessary and appropriate to stabilize communities, improve living conditions, and protect against resident displacement.
- (b) The governing body of a Municipality may create a Land Bank by the adoption of an ordinance approving the Land Bank’s Certificate of Formation and bylaws.
- (c) A Non-qualifying Municipality may elect to enter into an interlocal cooperation agreement pursuant to Tex. Gov. Code Section 791.011 with the Land Bank created and existing in accordance with this Chapter for the purpose of the Land Bank providing land banking activities on behalf of and within the geographical scope of the Non-qualifying Municipality.
- (d) Except when acting pursuant to an interlocal cooperation agreement with a Non-qualified Municipality, the Land Bank shall have the power to acquire real property only within the geographical boundaries of the Municipality.
- (e) The Houston Land Bank shall be the Land Bank of the Municipality under this Chapter.

- (1) The Houston Land Bank shall continue to possess the statutory authorization by which it was originally created pursuant to Subchapter D, Chapter 431, Tex. Transp. Code.
- (2) All actions of the Board of Directors and employees of the Houston Land Bank, all contracts, agreements, services, and all real property acquisitions and dispositions taken prior to the effective date of Act shall remain unaffected by the adoption of such ordinance.

379D.005. Governmental Authority

- (a) The Land Bank created or designated pursuant to this Chapter shall be a public non-profit corporation.
 - (1) The Land Bank shall have and exercise all of the rights, powers, privileges, authority and functions given by the general laws of the State of Texas to non-profit corporations in the State of Texas. The provisions of the Texas Non-Profit Corporation Act relating to powers, standards of conduct, and interests in contracts apply to the directors and officers of the Land Bank. The Land Bank shall be a local government corporation and shall be a governmental unit within the meaning of Subdivision 2, Section 101.001, Tex. Civ. Prac. & Rem. Code.
 - (2) The Land Bank is not an authority or program created or operating pursuant to Tex. Loc. Gov. Code Chapters 373 and 374. The Land Bank may enter into interlocal cooperation agreements with the Municipality for programs created by the Municipality pursuant to Tex. Loc. Gov. Code Chapters 373 and 374.
 - (3) The Land Bank is not a housing finance corporation created pursuant to Tex. Loc. Gov. Code Chapter 394.
- (b) The Land Bank shall comply with the requirements of Chapters 551 and 552, Tex. Gov. Code.
- (c) No member of the Board of Directors or employee of the 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 of Directors or employee of the 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 the Land Bank. The Board of Directors may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for members of the Board of Directors and Land Bank employees.
- (d) The Land Bank shall keep accurate minutes of its meetings and shall keep accurate records and books of account that conform with generally accepted principles of

accounting and that clearly reflect the income and expenses of the Land Bank and all transactions in relation to its real property.

- (e) The Land Bank shall file with the Municipality not later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. The financial transactions of the Land Bank are subject to audit by the Municipality.
- (f) For purposes of evaluating the effectiveness of the program, the Land Bank shall submit an annual performance report to the Municipality not later than November 1 of each year in which the Land Bank acquires or sells real property under this Chapter. The Land Bank and the Municipality shall maintain copies of the performance report available for public review.
- (g) The Land Bank shall maintain in its records for inspection a copy of the sale settlement statement for each real property sold or transferred to a third party.

379D.006. Board of Directors

- (a) The size of the Board of Directors, its membership, composition, officers, and methods of appointment shall be determined in accordance with the Certificate of Formation and the bylaws of the Land Bank.
- (b) Notwithstanding any law to the contrary, any public officer shall be eligible to serve as a member of the Board of Directors 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 member of the Board of Directors.
- (c) The Board of Directors 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 of Directors, 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 of Directors, unless such reappointment is confirmed unanimously by the Board of Directors.
- (d) Members of the Board of Directors shall serve without compensation, shall have the power to organize and reorganize, in accordance with the Certificate of Formation and the bylaws, 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 of Directors may reimburse any member for expenses actually incurred in the performance of duties on behalf of the Land Bank.

- (e) The Board of Directors shall meet in regular session according to a schedule adopted by the Board, and also shall meet in special session as convened in accordance with the bylaws by the chairman or upon written notice signed by a majority of the members. The presence of a majority of the Board of Directors total membership shall constitute a quorum for any regular or special session.
- (f) All actions of the Board of Directors shall be approved by the affirmative vote of a majority of the members of the Board present and voting. However, no action of the Board of Directors shall be authorized on the following matters unless approved by a majority of the total membership of the Board of Directors:
 - (1) Adoption of bylaws and other rules and regulations for conduct of the Land Bank's business;
 - (2) Hiring or firing of any employee or contractor of the Land Bank. This function may, by majority vote, 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 of Directors may specify;
 - (3) The incurring of debt;
 - (4) Adoption or amendment of the annual budget; and
- (g) Sale, lease, encumbrance, or alienation of real property, improvements or personal property with a value of more than \$50,000.
- (h) Members of a Board of Directors shall not be liable personally on the bonds or other obligations of the Land Bank, and the rights of creditors shall be solely against the Land Bank.
- (i) Vote by proxy shall not be permitted. Any member of the Board of Directors may request a recorded vote on any resolution or action of the Land Bank.

379D.007. Staff

The Land Bank may employ an executive director, its own counsel and legal staff, and such technical experts and 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. The 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 the Land Bank to provide such staffing services to municipalities or agencies or departments thereof.

379D.008. Powers

The Land Bank shall have all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Chapter, including the following powers:

- (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 real 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 of Texas, or from the federal government, funds as may be necessary for the operation and work of the Land Bank.
- (e) To adopt a policy for procurement and to utilize any and all procurement methods recognized by state law and permitted for governmental entities, including but not limited to chapter 252 and Chapter 271 of the Texas Local Government Code, Chapter 431 of the Texas Transportation Code, and Section 2254 and Section 2269 of the Texas Government Code.
- (f) To issue negotiable revenue bonds and notes according to the provisions of this Chapter.
- (g) To procure insurance or guarantees from the State of Texas or the federal government of the payments of any debts or parts thereof incurred by the Land Bank, and to pay premiums in connection therewith.
- (h) 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, governmental agreements under Tex. Transp. Code Chapter 431, Subchapter D, and interlocal cooperation agreements under Tex. Gov. Code Section 791.011 for the joint exercise of powers under this Chapter.
- (i) To enter into contracts, agreements, and other instruments with the Municipality for the performance of services in accordance with Tex. Tax Code Chapter 311.
- (j) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Land Bank.
- (k) To procure insurance against losses in connection with the real property, assets or activities of the Land Bank.

- (l) 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.
- (m) To enter into contracts for the management of, the collection of rent from or the sale of real property of the Land Bank.
- (n) To design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property.
- (o) 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.
- (p) To finance by loan, grant, lease or otherwise, refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage real property, and to pay the costs of any such activities from the proceeds of loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the Land Bank is authorized to use.
- (q) To grant or acquire a license, easement, lease (as lessor and as lessee), or option with respect to real property of the Land Bank.
- (r) To enter into partnership, joint ventures and other collaborative relationships with the Municipality and other public and private entities for the ownership, management, development, and disposition of real property.
- (s) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the Land Bank's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source.
- (t) As security for the repayment of any notes or other obligations of the Land Bank, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the Land Bank, including but not limited to real property, fixtures, personal property, and revenue or other funds, and to execute any lease, trust indenture, trust agreement, agreement for the sale of the Land Bank's notes or other obligation, loan agreement, mortgage, security agreement or other agreement or instrument as may be necessary or desirable, in the judgment of the Land Bank,

- (u) To hold title to real property for purposes of establishing contracts with public and private non-profit community land trusts, including but not limited to, long-term lease contracts.
- (v) 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.
- (w) The Land Bank shall neither possess nor exercise the power of eminent domain.

379D.009. Advisory Committees and Neighborhood Consultation

- (a) The Land Bank shall create one or more advisory committees to consult with and advise the Land Bank on the identity of the properties which are imposing greatest harms on the neighborhood and community, on the neighborhood priorities for the new uses of the property, and on the range of potential transferees of the real property.
- (b) As appropriate to the location of the real property of the Land Bank, advisory committee membership and neighborhood consultations shall include formal and informal neighbor-specific community associations, residents' associations, faith communities, community development corporations, and anchor institutions.

379D.010. Acquisition of Property

- (a) The real property of the Land Bank and its income and operations are exempt as public property used for public purposes from all license fees, recording fees, and all other taxes imposed by this State and by any of its political subdivisions, including but not limited to real property held by a Land Bank pursuant to a long-term lease contracts with community land trusts.
- (b) The Land Bank may acquire real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the Land Bank considers proper.
- (c) The Land Bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, land contracts, and may accept transfers from municipalities upon such terms and conditions as agreed to by the Land Bank and the municipality. Notwithstanding any other law to the contrary, the Municipality, and any Non-qualifying Municipality, may transfer to the Land Bank real property of the Municipality or Non-qualifying Municipality on such terms and conditions and according to such procedures as determined by the Municipality or Non-qualifying Municipality.

- (d) The Land Bank may acquire real property from the State of Texas, the Municipality, the county in which the Municipality is located, any governmental entity within the geographical boundaries of the Municipality, the federal government or any agency or department of the federal government.
- (e) 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.
- (f) The Land Bank shall not own or hold real property located outside the jurisdictional boundaries of the Municipality, or the jurisdictional boundary of a Non-Qualifying Municipality with which it has entered into an interlocal cooperation agreement in accordance with Section 379D.004(c) of this Chapter.

379D.011. 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 may convey, exchange, sell, transfer, lease as lessor, grant, release and demise, pledge and hypothecate any and all interests in, upon or to real property of the Land Bank.
- (d) A Municipality may, in its ordinance creating the Land Bank, 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.
- (e) The Land Bank shall determine the terms, conditions, form, and substance of consideration necessary and appropriate to convey, exchange, sell, transfer, lease as lessor, grant and mortgage as mortgagor any interests in, upon, or to real property.
 - (1) 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, deed covenants and limitations, contractual commitments of the transferee, mortgage financing, defeasible fees, and such other forms of consideration as determined by the Board of Directors to be in the best interests of the Land Bank.

- (2) The Board of Directors shall determine and state in Land Bank policies and procedures the general terms and conditions for consideration to be received by the Land Bank for the transfer of real property.
- (f) The Board of Directors may authorize in its real property disposition policies and procedures a disposition program of its real property to owners of contiguous properties.
- (g) The Municipality may recommend to the Land Bank, and the Land Bank may in its own policies and procedures establish, a hierarchical ranking of priorities for the use of real property conveyed by the Land Bank, including but not limited to:
 - (1) Use for purely public spaces and places;
 - (2) Use for flood reduction, storm water retention and drainage, and storm resiliency;
 - (3) Use for affordable housing, workforce housing, public service housing;
 - (4) Use for community-based economic development, including retail, commercial and industrial activities;
 - (5) Use for food desert solutions;
 - (6) Use for beautification and public art, parks and recreation;
 - (7) Use for conservation areas; and
 - (8) Use for community land trusts or for other public entities.

379D.012 Flood Control; Storm Water Drainage and Planning

- (a) When the highest and best use of real property owned by the Land Bank, or able to be acquired by the Land Bank, is not for new development, redevelopment, construction, or rehabilitation such real property may be conveyed by the Land Bank to a public entity such as, but not limited to, the Harris County Flood Control District or the City of Houston Parks and Recreation Department.
- (b) The real properties contemplated by this Section include, without limitation:
 - (1) real property for which the highest and best use is flood control, storm water retention and drainage; and
 - (2) real property which, as a result of housing and building code restrictions, flood plain elevations, other local, state, or federal laws, or public or private agreements, conditions, and limitations, is no longer capable of being developed or redeveloped.
- (c) The transfer of real property by the Land Bank under this Section may be by grant, deed lease, or other conveyance and may include such additional limitations, restrictions, and conditions as determined by the Land Bank.

- (d) The transfer of real property by the Land Bank under this Section may be for nominal consideration, for consideration consisting of contractual commitments, for an exchange of real properties, or such other consideration as determined by the Land Bank.

379D.013. Delinquent Tax and Code Lien Enforcement

- (a) The Land Bank shall have the authority to submit a written bid to acquire real property at an auction conducted in accordance with Tex. Tax Code Section 34.01.
 - (1) The bid by the Land Bank shall be in an amount not less than the amount calculated under Tex. Tax Code Section 34.01(b).
 - (2) The bid may be submitted in writing in advance of the auction or tendered in person at the auction.
 - (3) The bid by the Land Bank shall be the total amount due under the judgment for foreclosure as calculated by the selling officer under Tex. Tax Code Section 34.01(b) and shall consist of two components:
 - (A) The amount of the taxes, penalties, other than penalties described in Tex. Tax Code Sections 33.07 and 33.08, interest, plus any other amount awarded by the judgment, and
 - (B) The amount of the costs and expenses as described in Tex. Tax Code Section 33.48 and any penalties described in Tex. Tax Code Section 33.07 and 33.08.
 - (4) A bid by the Land Bank in accordance with this section shall be deemed to be a bid for the amount calculated under Tex. Tax Code Section 34.01(b) and shall be a bid received under the provisions of Tex. Tax Code Section 34.01(j).
 - (5) A taxing unit that is a party to a judgment of foreclosure for property sold at auction may request that the selling officer bid off the property to the taxing unit in accordance with Tex. Tax Code Section 34.01(j) and in such event the transfer to the taxing unit shall prevail over a bid by the Land Bank if the bid of the Land Bank is the only bid sufficient to satisfy the minimum bid described in Tex. Tax Code Section 34.01(j).
 - (6) In the event that the bid by the Land Bank is the highest bid received at the auction, the bid amount shall be paid by the Land Bank as follows:
 - (A) The Land Bank shall pay in cash the amount of the costs and expenses as described in Tex. Tax Code Section 33.48 and any penalties described in Tex. Tax Code Sections 33.07 and 33.08;

- (B) Payment by the Land Bank of the amounts described in Section 379D.013(6)(A) shall be remitted to the selling officer by check or electronic funds transfers within seven calendar days of the date of the auction; and
 - (C) The Land Bank shall be entitled to credit bid that portion of the bid amount consisting of the amount of the taxes, penalties, and interest set forth in the judgment. The aggregate amount of all credit bids in a calendar year shall be deemed satisfied by the aggregate expenditure in such calendar year of an amount equal to or greater than such credit bid amount, which expenditures are attributable directly and indirectly to maintenance, rehabilitation, construction, demolition, and remediation activities. As to any specific tract of property acquired by the credit bid and transferred by the Land Bank to a public entity described in Section 379D.012(a) of this Chapter the credit bid shall be deemed satisfied by such transfer.
- (7) The Land Bank may submit a written request to a taxing unit at any time for the commencement of tax foreclosure proceedings for delinquent taxes on real property, which request shall include a commitment to tender a bid in the amount specified in this Subsection (a), and upon receipt of such written request the taxing unit, or the governmental office acting on behalf of the taxing unit, shall commence enforcement proceedings in accordance with Tex. Tax Code Section 33.41.
- (b) In the event that there is no private third party bid in an amount in excess of the bid of the Land Bank, the real property shall be sold to the Land Bank.
 - (c) A sale to the Land Bank under this Section shall not be a sale to a taxing unit under Tex. Tax Code Sections 34.01(j), 34.01(p), or 34.21.
 - (d) The Land Bank shall have the authority to bid an amount higher than the amount calculated under Tex. Tax Code Section 34.01(b), and in the event that such higher bid amount is the highest successful bid, the Land Bank shall pay the full amount of the bid in cash.
 - (e) The deed to the Land Bank vests good and perfect title in the Land Bank to the right, title, and interest owned by the defendants included in the foreclosure judgment, including the defendants' right to the use and possession of the property, subject only to the defendants' right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished by in the judgment foreclosing the tax lien, and each valid easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose.

- (f) A sale of real property to the Land Bank under this Chapter:
 - (1) extinguishes each lien securing payment of the delinquent taxes, penalties, and interest against the property and included in the judgment; and
 - (2) does not affect the personal liability of any person for those taxes, penalties, and interest included in the judgment that are not satisfied from the proceeds of the sale.
- (g) The Municipality, and any taxing unit levying property taxes within the geographical jurisdiction of the Municipality, may convey tax foreclosed real property owned by the Municipality or the taxing unit to the Land Bank on such terms and conditions, and for an amount of consideration, as are determined by the transferor and the Land Bank.

379D.014. Redemption

- (a) The owner of real property sold to the Land Bank under this Section may redeem the property in the manner prescribed for owners of real property sold at a tax sale to a purchaser other than a taxing unit in Tex. Tax Code Section 34.21.
- (b) The price to be paid by the owner of real property sold to the Land Bank under this Section to redeem the property shall be the amounts set forth in Tex. Tax Code Sections 34.21(a) and (e). For the purposes of calculating such price, the bid paid by the Land Bank shall be the aggregate amount of the Land Bank's bid as described in Subsection 379D.013(a)(3) of this Chapter.
- (c) If the owner of real property sold to the Land Bank under Section 379D.013 of this Chapter redeems the property by paying to the Land Bank the full amount required to redeem as set forth in Tex. Tax Code Sections 34.21(a) and (e), the Land Bank shall allocate the proceeds as follows:
 - (1) The Land Bank shall retain an amount equal to the amount paid in cash by the Land Bank in accordance with Section 379D.013 of this Chapter;
 - (2) The Land Bank shall retain any redemption premium and any reasonable costs it may have expended on upkeep, maintenance, or environmental remediation of the property being redeemed; and
 - (3) The Land Bank shall remit to the Assessor-Collector any remaining amounts to be distributed among the taxing units that were parties to the judgment of foreclosure in an amount equal to the proportion of each taxing unit's taxes, penalties, and interest due as described in the judgment of foreclosure.

379D.015. Financing of Land Bank Operations

- (a) The Land Bank may receive funding through grants and loans from the Municipality, from other municipalities, from the State of Texas, from the federal government, and from other public and private sources.
- (b) The 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 the Land Bank under this Chapter.
- (c) The governing authority of the Municipality, and any taxing unit within the geographical boundaries of the Municipality, shall have the authority to increase the amount of the penalty imposed upon the nonpayment of real property taxes of the Municipality levied within such jurisdiction pursuant to Tex. Tax Code Sections 33.01 by increasing the **penalty** amount described in the second sentence of Tex. Tax Code Section 33.01(a) from twelve percent to fourteen percent or such higher amount as determined by such Municipality or such taxing unit. Such supplemental penalty authorized by this subsection shall apply only to properties not owned and occupied as a residence homestead as defined in subsection (j)(1) of Tex. Tax Code Section 11.13. In the event that such supplemental penalty is authorized and collected, all such supplemental revenues shall be transferred to the Land Bank.
- (c) Up to seventy-five percent of the real property taxes of the Municipality collected on real property, exclusive of any school district or county ad valorem tax, conveyed by the Land Bank pursuant to the laws of the state shall be remitted to the Land Bank. The real property taxes of any other taxing unit, as to real property of the Land Bank, may also be allocated to the Land Bank in a similar manner so long as pursuant to an interlocal agreement between such other taxing unit and the Land Bank. The specific percentage of such taxes to be remitted shall be set forth in ordinance, or resolution, or interlocal cooperation agreement of 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. Such funds shall be remitted to the Land Bank in accordance with the administrative procedures established by the assessor-collector of the county which the Land Bank is located. Such allocation of property tax revenues shall not occur if such taxes have been previously allocated to a tax increment reinvestment zone, or to secure a debt of the Municipality or other taxing unit, unless the Municipality or other taxing unit enters into an agreement with the Land Bank for the remittance of such funds to the Land Bank. Any property tax revenue allocated to

the Land Bank under this subsection shall be excluded from the calculation of ad valorem tax revenue under Article III, Section 1(a) of the City of Houston Charter.

- (d) At the time that the Land Bank sells or otherwise disposes of real property the proceeds from the sale, if any, shall be allocated to operations and expenses of the Land Bank.

379D.016. Borrowing and Issuance of Bonds

- (a) The 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 of Texas, the federal government or any agency, and instrumentality thereof, or by a mortgage of any real property of the Land Bank.
- (b) The bonds issued by the 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 of Texas.
- (c) The bonds of the Land Bank created under the provisions of this Chapter and the income therefrom shall at all times be free from taxation for the state or local purposes under any provision of Texas 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 the Municipality or any other governmental entity 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) The 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 Texas 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 the 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 the Land Bank shall not be a debt of the Municipality or of the State of Texas, and shall so state on their face, nor shall any municipality or the State of Texas nor any revenues or any property of any municipality or of the State of Texas be liable therefor.

379D.017. Dissolution of Land Bank

The Land Bank may be dissolved sixty calendar days after an affirmative resolution to dissolve the Land Bank is approved by two-thirds of the membership of the Board of Directors and confirmed by resolution of the Municipality. Sixty calendar days advance written notice of consideration of a resolution of dissolution shall be given to the Municipality, 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 Municipality.

379D.018. Construction, Intent, and Scope

This Chapter 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 Chapter, 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 Chapter, in the exercise of its powers and duties under this Chapter and its powers relating to real 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.

379D.019. Resolution of Complex Title Questions

- (a) The Land Bank shall be authorized to provide assistance and guidance to owners of real property for which there are complex highly divided fractional interests in the real property by virtue of multigenerational intestate distributions, unknown heirs, and other interested parties for whom accurate information cannot be ascertained.

- (b) The 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 an adequate complainant in such action.
- (c) 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) First class 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.
- (d) 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.
- (e) 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.
- (f) The Land Bank shall be authorized to join in a single complaint to quiet title one or more parcels of real property.

Section 2. This Act takes effect _____.

SECTION III. LAND BANKS AND COMMUNITY LAND TRUSTS: A PRIMER FOR THE HOUSTON LAND BANK

[The following report was provided to the Houston Land Bank by Community Progress in May, 2018.]

“In the midst of every crisis, lies great opportunity.” – Albert Einstein

INTRODUCTION

Under the leadership of Mayor Turner, the City of Houston is recovering, reimagining, and rebuilding in the wake of Hurricane Harvey. As disaster recovery efforts continue, there is a steadfast desire to make Houston a stronger, more resilient city in which no neighborhood is left behind. Historic and unprecedented efforts are being made to reform building and zoning guidelines of floodplains to reduce flood damage in the future. Just as the focus was on New Orleans following the devastation wrought by Hurricane Katrina, the entire nation is now looking to Houston with hope and optimism as a model of resiliency. City leaders are meeting the challenge with a clear commitment to invest both in neighborhoods that have been devastated by the hurricane, as well as those neighborhoods that have been compromised by decades of disinvestment and lack of opportunity.

The very nature of rebuilding demands an understanding of the past, respect for the present, and hope for the future. It is the art and science of preserving historical and culturally rich neighborhoods, addressing immediate needs in the wake of disaster, and reimagining places in which all current and future residents have access to quality affordable housing choices, safe neighborhoods, and quality amenities. It is about removing harmful structures, wrecked from the storm or neglected from disinvestment, with an eye toward ensuring every child in Houston can walk to school inspired—not threatened—by their surroundings. These assurances are at the core of Mayor Turner’s *Complete Communities* initiative, and with additional resources that can be brought to the table by local stakeholders such as the Houston Land Bank, more neighborhoods could transform vacant, abandoned, and damaged properties into housing opportunities, and ensure there is a sufficient inventory of quality and affordable housing for generations to come.

OVERVIEW OF LAND BANKS AND CLTS

Over the past 40 years, the majority of land banks have been created across the country as public entities, usually public nonprofit corporations or governmental entities, that are solely focused on converting problem properties into productive use.¹ There are over 170 land banks in operation across the country, many of which were developed in the last 10 years as a direct response to the Great Recession and the resulting increase in vacancy and abandonment. Land banks are one of several tools in a larger system that impacts the life cycle of vacancy and abandonment in any given community. Most land banks focus on a subset of vacant problem properties that are causing the most harm to a community by creating public safety hazards, driving down property values, and draining local tax dollars. The targeted inventory of land banks are those properties the private market has altogether rejected given various legal and financial barriers.

Six Essential Elements of Effective Land Banks

- Strategic links to the property tax collection and foreclosure process
- Operations scaled in response to local land use goals
- Policy-driven, transparent, and publicly accountable transactions
- Engagement with residents and other community stakeholders
- Alignment with other local and regional blight strategies
- Recurring, reliable source of funding

Many of the most effective land banks around the country have special powers granted by state-enabling legislation that allow them to undertake their work more effectively, efficiently, and equitably than other governmental or nonprofit entities. State-enabling legislation can allow a land bank to use the tax and lien enforcement process to acquire tax delinquent property for substantially less than the amounts due on the property, extinguish past liens, and hold property in a tax-exempt status until it is sold. These laws allow land banks to market and convey properties more flexibly than local governments, prioritizing best outcome over highest offer. State-enabling legislation also identifies sources of dedicated funding to help pay for land bank operations.

Land banks and CLTs serve different yet complimentary roles in supporting equitable neighborhood development.² The Houston Land Bank operates as a public entity, a local government corporation, that focuses its efforts on acquiring and assembling tax-delinquent properties for redevelopment. The emerging Houston CLT will be a private nonprofit that

¹ For more information on the history of land banks and land banking, please review the Community Progress publication of *Land Banks and Land Banking, 2nd Ed.* written by Frank Alexander: http://action.communityprogress.net/p/salsa/web/common/public/signup?signup_page_KEY=8679.

² For more information on land banks and CLTs, please review the Shelterforce blog entitled *Land Banks and CLTs: Not Synonyms or Antonyms*. Complements written by Emily Thaden, Kim Graziani, and Annie Stup: <https://shelterforce.org/2016/11/09/land-banks-community-land-trusts-not-synonyms-or-antonyms-complements/>.

holds land in trust to provide affordable housing and other community assets in perpetuity. Regardless of the market shifts, homes in a CLT are forever a stock of affordable housing, while properties sold by the Houston Land Bank may stay affordable for a limited time.

While both land banks and CLTs acquire and hold land, they do so for varying periods of time and for different purposes, acting at different times in the development process. Most land banks, including the Houston Land Bank, exercise available special powers to efficiently and cost-effectively acquire tax-foreclosed properties. Using these special powers, land banks can streamline blight removal and create a nimble, accountable, and community-driven approach to returning problem properties to productive use. Disposition decisions, therefore, are locally determined, and driven by strong input from community stakeholders, including those residents most impacted by vacancy and abandonment. Priority end uses can range from affordable housing and first-time homeownership opportunities to community gardens and green storm water infrastructure. CLTs, on the other hand, acquire properties with the intention to retain and steward the assets in perpetuity, with a primary goal of ensuring permanent affordable housing choices through the use of shared equity homeownership models or other enforcement tools.

One common misconception is that land banks and CLTs operate exclusively at opposite ends of the housing market spectrum: land banks in weak markets where demand has dried up, and CLTs in strong markets where escalating property values threaten affordability. However, just like Houston, many cities are home to “dual markets,” with neighborhoods that are characterized by both disinvestment and revitalization, often separated merely by blocks. Dual markets can be seen in areas such as Houston’s Third Ward which has pockets of dilapidated homes, yet rapid development is leading to increased rents and property values.

Dual markets present an opportunity for land banks and CLTs to operate within the same service area, and often together. While a land bank may focus primarily on driving investment in disinvested neighborhoods, it could also ensure that vacant, abandoned, or tax-delinquent properties acquired in strong market neighborhoods are directed towards end uses that meet critical community needs, such as affordable housing. Similarly, in weak markets where there remains promise of unlocked potential, particularly where large-scale public and private investments are being proposed, CLTs could be involved to support permanent affordable housing choices before the market heats up, preventing the all too familiar pattern of displacement, socioeconomic segregation, and unequal access to quality amenities. Finally, for those cities whose neighborhood markets are temporarily damaged by disaster but can reasonably expect investment activity to return and property values to rise, an active partnership between a land bank and a CLT could be key to ensuring the recovery yields equitable development and inclusive neighborhoods.

As local discussions continue about the role of the Houston CLT, and as the Houston Land Bank continues to think through how to adapt to changing markets with limited special

powers, it is important for local stakeholders to consider the general challenges and opportunities each entity brings to the table. Many land banks are challenged with finding responsible transferees that have capacity and commitment to returning properties to productive use in a manner consistent with local priorities and goals. CLTs generally have difficulty acquiring properties, particularly in strong housing markets. Recently, more communities are recognizing the value of a strategic partnership between these two entities, and that one is a solution to the other’s challenge. There is an opportunity for the Houston Land Bank to serve *in part* as the acquisition pipeline for the Houston CLT, particularly as potential legal and policy changes are explored to create a more cost-effective and efficient process of accessing properties through the property tax foreclosure process. Moreover, Houston has the *unique* opportunity to deploy this partnership as part of a comprehensive approach to disaster recovery with a focus on resiliency, equity and inclusion—serving as a pioneer and innovator for the national field of practice to learn from and emulate.

As City leadership contemplates how the Houston CLT will complement the work of the Houston Land Bank and support Mayor Turner’s vision and goals for a strong and resilient city with *Complete Communities*, the below information provides an example of a land bank and CLT partnership in Albany, New York, as well as key considerations for discussions moving forward.

SNAPSHOT: ALBANY COUNTY LAND BANK AND ALBANY COMMUNITY LAND TRUST IN NEW YORK

Community Progress and Grounded Solutions Network partnered together in 2017 to provide technical assistance to the Albany County Land Bank (ACLB) and Albany Community Land Trust (ACLT) in piloting new partnership opportunities between the two entities.³ A number of local factors made this a compelling project: (1) there was strong leadership in City and County government in

| | Albany Community Land Trust | Albany County Land Bank |
|---------------------------------|---|--|
| YEAR FOUNDED | 1987 | 2014 |
| CURRENT INVENTORY | 35 owner occupied homes 47 rental units in 32 buildings 6 homes under development | 80 buildings for sale 174 Lots for sale 86 contiguous properties assembled as “development clusters” 67 banked for further evaluation 75 pending sales |
| # STAFF | 2 part time | 7 full time, 1 part time |
| 2017 ANNUAL BUDGET (EST) | \$427,000 | \$2,475,000 |

Snapshot of the Albany County Land Bank and the Albany Community Land Trust (October 2017).

³ For more information on this project, please review the Center for Community Progress report entitled *Piloting New Partnership Opportunities Between a Land Bank and a Community Land Trust in Albany*. http://www.communityprogress.net/filebin/TASP_Albany_Final_Report.pdf.

support of ACLB interventions; (2) ACLB is a high capacity land bank, with a Board committed to equity; and (3) ACLT had helped build consensus across sectors, including City government, on the need for more quality affordable housing to realize a shared goal by all for an *Inclusive Albany*.

While there was a strong consensus on the need for affordable housing in Albany, just as there is in Houston, the goal of permanent affordable housing was not initially shared by all Albany stakeholders. Some anti-poverty advocates argued permanent affordable housing denied families the chance to build wealth. Some City officials pointed to excessive vacant properties as an indication that Albany was not in danger of “pricing out” residents any time soon. However, after a series of thoughtfully planned and well attended stakeholder meetings, local partners in Albany determined that any effort to intentionally drive investments into distressed neighborhoods should also aim to preserve some amount of permanent housing affordability from the onset of planned investments. Intentional preservation of permanently affordable housing stock early in public or public/private neighborhood investments may:

1. **Prevent Displacement.** Neighborhood investments are made for many number of reasons that benefit the common good, but one of the primary desired outcomes is an increase in property values. Whenever using public investments to revitalize communities, public policy should be concerned with the potential displacement of low-income families even if that possibility is decades in the future. The CLT model can be an insurance policy against future displacement and exclusion.
2. **Close the Affordability Gap Early, when it’s Minimal.** While Albany is not a strong market, there are neighborhoods where property values are rising, with homes in those neighborhoods already out of the reach for low-income households. Because property values typically rise faster than incomes, it is better to solve the affordability gap once, at the lowest cost, and create a stock of permanently affordable homes that will serve the community for generations.
3. **Strike Balance between Individual Wealth Creation and Multi-Generational Community Benefit.** The CLT model is designed to strike a balance between wealth creation for existing homeowners and ongoing affordability for future homebuyers. According to data compiled by Grounded Solutions Network, CLT homeowners that sell their home can still earn a profit, but smaller than what they would have earned on the open market. However, CLT homeowners do build transformational wealth compared to the opportunities available to them as renters (their most viable alternative to CLT homeownership). And, perhaps more importantly, CLT homeowners have greater access to quality housing, security of tenure, and control over their home environment when compared to renters.

With a deeper appreciation for how scattered, permanent affordable housing would be key to achieving an inclusive community, ACLB and ACLT explored and successfully launched the

Inclusive Neighborhoods Program. For background, Albany County transfers virtually every tax-foreclosed property to ACLB, and about 90% of the tax-foreclosed properties in the City of Albany are located within its five most disinvested neighborhoods, which correspond with ACLB's Target Areas. Now, thanks to the **Inclusive Neighborhood Program**, any tax-foreclosed property acquired by ACLB that is located outside the target area (in stronger neighborhoods with more stable housing markets), ACLT will have first right of refusal for 45 days and can purchase the property at a discounted rate. The ACLB Board approved this Program in September 2017 and amended their disposition policy accordingly. While the actual number of homes added each year may be minimal, over a 20 or 30-year period, this program could make significant contributions in seeding permanently affordable housing choices throughout Albany, consistent with the community's and political leadership's long-term goal of building an *Inclusive Albany*.

KEY CONSIDERATIONS MOVING FORWARD

Across the country there are few examples of land banks and CLTs coordinating *effectively and in a sustained manner*, which provides the City of Houston a prime opportunity to become a model of how a land bank and CLT can partner to support disaster recovery *and* neighborhood stabilization and revitalization efforts. Of those communities that have developed partnerships, the land bank and CLT have remained as two separate legal entities with distinct yet complimentary missions and objectives.

Below are a few considerations that have been identified by land bank and CLT leaders across the country as vital to creating and maintaining a partnership between both entities. As the Houston CLT emerges, these considerations may help ensure a cooperative partnership with the Houston Land Bank as both entities work to ensure more communities have access to safe and affordable housing, quality amenities, and economic opportunities.⁴

1. **Understand Both Tools and Engage a Broader Audience.** Many land banks and CLTs across the country do not communicate with each other, nor do they understand the mission and goals of the other entity. There may be land bank staff that doubt the utility of CLTs in weak markets. Meanwhile, CLT staff may become frustrated with land banks minimizing the need for permanent affordability because a weak market might have a surplus of low-cost housing. Explicit discussions and trainings describing the relevant applications and limitations of both tools would benefit practitioners to shape and support collaborations. In addition, and equally important, is engaging residents and community stakeholders (particularly in disinvested neighborhoods) in understanding the differences between and opportunities offered by both entities.

⁴ These considerations are based on 2016 interviews with several land banks and CLTs from across the country by the Center for Community Progress, Grounded Solutions Network, and Annie Stup, who was a graduate student at the time at the New School.

2. **Acknowledge Different Objectives and Focus on Overlapping Priorities.** Land banks have been understandably focused on addressing large inventories of vacant, abandoned, and tax-delinquent properties, which usually relegates land banks to weaker housing markets and disinvested neighborhoods. CLTs, with a primary focus on preserving affordability, are typically found in moderate or strong housing markets. But as mentioned above, while the primary objectives may differ, there is clear overlap of priorities and opportunities to advance mutual goals. For example, land banks and CLTs should consistently review and analyze tax-delinquent properties that are scheduled for a public auction, and determine which of these properties may be of strategic relevance to a CLT. As in the case of Albany, land banks can modify their disposition policies and prioritize the transfer of properties to a CLT for a discounted price through a negotiated sale. Acknowledging each entity’s objectives and priorities and proactively identifying opportunities can result in shared wins.
3. **Tend to the Constraints of Both Parties.** Undoubtedly, land banks and CLTs both tend to lack adequate capacity or resources. Due to resource limitations, land banks may have to work more with for-profit or nonprofit developers rather than hold properties for use by a CLT. Meanwhile, CLTs may be limited in their ability to cobble together in a timely manner the resources for acquisition, rehabilitation, and financing of land banked properties in order to convert them to quality, affordable properties for community use. If land banks and CLTs collaborate, they have the potential to more efficiently leverage the existing resources and strengths of each—and attract new funding—to overcome these barriers.

CONCLUSION

The leadership of the City of Houston should be commended on their willingness to act boldly and use this opportunity to invest in neighborhoods that have been devastated by the hurricane, as well as those neighborhoods that have been compromised by decades of disinvestment and lack of opportunity. The Houston Land Bank is in a prime position to support these recovery efforts, and as the Houston CLT emerges, serve *in part* as a pipeline of properties for permanent affordable housing and other community amenities. It will take this type of leadership and the utilization of every available tool and resource for Houston to be a model of inclusive and equitable rebuilding and recovery.

Community Progress is honored to offer these observations on land banks and CLTs based on our experience of working across the country, and in partnership with Grounded Solutions Network. The information offered is based on our national and “outsider” experience, and is meant to inspire consideration and robust discussion as local leadership launches the Houston CLT and considers how this new tool can work in partnership with the Houston Land Bank, and complement existing resources and tools to build a stronger and more resilient city.



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