

Sample Land Bank Long-Term Housing Affordability Disposition Policy

A Resource for Land Banks and Their Community Land Trust Partners

In recent years, land banks have increasingly partnered with community land trusts and other organizations that develop and maintain safe, affordable housing and that seek to mitigate displacement of existing neighborhood residents.

In the face of rapidly heating real estate markets and affordable housing development and capacity challenges in nearly every corner of the country, programs and policies that seek to protect long-term affordability, for both homeowners and renters, are of primary concern. The *Sample Land Bank Long-Term Housing Affordability Disposition Policy* is a resource for land banks and their affordable housing partners. It is designed to offer a place to start—a framework that illuminates key questions for land banks to consider as they develop disposition policies that incentivize and support long-term affordable housing development, through both shared equity homeownership models and affordable rental developments.

Appropriate responses to these key questions are often dependent on hyperlocal considerations like land bank and partner capacity and focus areas, available resources, neighborhood level market dynamics, and local and state policy and regulatory environments. However, this sample policy assumes from the outset a commitment demonstrated by land banks around the country: the disposition of land in service of safe, quality, and long-term affordable housing.

This resource was developed by the Center for Community Progress in collaboration with Grounded Solutions Network. This sample document and the key questions contained herein do not constitute legal advice. Utilization of this sample to prepare a similar policy in a given jurisdiction will implicate various aspects of state and local law, and this and any corresponding policies are subject to the advice and guidance of local counsel.



This sample policy contains annotations to provide additional context and questions to consider. For more information about customizing this sample policy for your community, please contact [Community Progress](#) or [Grounded Solutions Network](#).



Sample Land Bank Long-Term Housing Affordability Disposition Policy

1.1 Long-Term Housing Affordability Disposition Policy.¹

This Long-Term Housing Affordability Disposition Policy sets forth guidelines for Land Bank Authority (“LBA”) conveyance and pricing of residential real property, and vacant lots zoned residential, to nonprofit entities for development and provision of affordable housing, and maintenance of that affordability for a long-term, in accordance with the mission and the purpose of the LBA and applicable law.

1.2 **Guiding Priorities.** The LBA seeks to work in partnership with nonprofit organizations providing long-term affordable housing options for residents of the LBA member jurisdictions. In so doing, the LBA seeks to balance and further a variety of guiding priorities including, but not limited to, the following

1.2.1 The LBA acknowledges current market conditions which typically require significant public and private subsidies in every housing development that provides safe and affordable housing for Income-Qualified residents. The LBA seeks to prioritize through this policy the deepest discount possible for qualified applicants, while also ensuring appropriate and limited revenues to support the operations of the LBA.

1.2.2 The LBA acknowledges the important need for safe and affordable housing that also generates and supports wealth-generation for historically marginalized communities and residents. The LBA seeks to prioritize through this policy the protection of affordability for multiple generations of homeowners or renters on a given property, over and above the highest possible wealth generation for an individual or family.

1.2.3 The LBA acknowledges the overwhelming demand for safe and affordable housing throughout its member jurisdictions for a wide diversity of residents at a wide diversity of income levels. The LBA seeks to prioritize through this policy qualified applications that protect affordability for the lowest income range of Income-Qualified homeowners or renters possible for the longest period of time on a given property.

¹ See definition of Long-Term Affordable Housing at section 1.4.

● **Section 1.1 summarizes the purpose and focus of the policy regarding long-term affordable housing.** Key questions to consider:

What is the property typology to which this policy will apply (e.g., residential, commercial, vacant lots)?

What transferees are eligible to seek property under this policy (nonprofit, for-profit, public)?

● **Section 1.2 outlines the various priorities a land bank must balance in making property disposition decisions under this policy.** Key questions to consider:

Does the land bank need to access at least some level of revenue on properties disposed under this policy? If so, consider naming that priority.

Long-term affordability through a community land trust or similar shared equity model necessarily prioritizes affordability for multiple generations of homeowners while balancing wealth generation for individuals. Land banks may seek to prioritize wealth generation through first-time homebuyer programs or otherwise that eliminate any resale restrictions upon transfer of a property to an individual or family. Which goal (long-term affordability for a particular property, or the highest wealth generation for an individual) will your land bank prioritize? (Note: A land bank might design separate programs around each of these two goals.) *This* template prioritizes generational affordability.

Prioritizing rental housing for the lowest-income level individuals/families within the range authorized by this policy may lead to accepting applications from developers who will be able to complete less units than developers accepting higher rents and thus able to develop more units. What range (e.g., 30% AMI or 80% AMI or otherwise) will be prioritized in this policy?

1.3 **Definition of Income-Qualified.** For purposes of this policy, Income-Qualified in reference to homeowners or renters means residents with incomes at or below 80% of the Area Median Income.

1.4 **Definition of Long-Term Affordable Housing.** For purposes of this policy, “long-term affordable housing” means:

1.4.1 Housing available for homeownership that is subject to a long-term ground lease or other legal mechanism to protect affordability for at least thirty (30) years from initial occupancy where such housing, if offered for sale, is sold to Income-Qualified buyers for price-points that meet appropriate affordability regulations in place by partnering lending institutions at the initial point of sale, and for each subsequent future sale of such property.

1.4.2 Housing available for rent that is subject to a long-term ground lease or other legal mechanism to protect affordability for at least thirty (30) years from initial occupancy where such housing is offered to Income-Qualified renters for an amount of rent plus utility costs that does not exceed 30% of Area-Median Income. Any additional fees to be paid by renters must be disclosed in the applicable programming and leasing agreements.

1.5 **Definition of Fair Market Value.** For purposes of this policy, the most recent County Tax Assessor Assessed Value of a property shall comprise Fair Market Value.

1.6 **Definition of Property Costs.** In accordance with LBA Policies and Procedures for Acquisition and Disposition of Real Property, Property Costs means the aggregate costs and expenses of the LBA attributable to the specific property in question, including costs of acquisition, title matters, maintenance, repair, demolition, marketing of the property, and indirect costs of the operations of the LBA allocable to the property.

● **Section 1.6 delineates how the land bank calculates its investment in a given parcel offered for disposition under this policy.** Key questions to consider:

Will property costs be added to any purchase price for properties under this policy, or will property costs simply be calculated and tracked for other operational purposes (e.g., fundraising, reporting and otherwise)?

● **Section 1.3 defines income levels of persons served by housing developed under this policy.** Key questions to consider:

How will AMI levels be calculated using which available tools (e.g., HUD annual guidelines, other local guidelines)?

What AMI levels and ranges should be targeted? While housing need is almost always greatest at the lowest-income levels, there may be good reason to extend eligible income levels up to 120% AMI or even higher, particularly for cross-subsidization purposes in anticipated developments.

● **Section 1.4 defines the affordability term in years for developments on properties conveyed under this policy and what constitutes “affordable.”** Key questions to consider include:

What timeframe of affordability (e.g, 30 years or more) should be required on developments for transferees to be eligible to obtain properties under this policy?

Should timeframes be the same or different if developments are made available for homeownership or rental?

Affordability can be construed in many ways. How will affordability be defined, and should it be the same or different for proposals that result in homeownership or rental? For example, perhaps for homebuyers, income eligibility (at or below 80% AMI) is sufficient. For rentals, perhaps the rent must be set so the income-qualified renters will not pay more than 30% of their monthly income toward housing costs.

1.7 Long-Term Affordability for Multi-Family Housing. Multi-Family Housing developed on property acquired through this policy may include mixed income developments that contain market-rate sales or rentals so long as the nonprofit demonstrates to the satisfaction of the LBA that a) the inclusion of market-rate sales or rentals will enable deeper affordability on the affordable units than would be available if 100% of the units were maintained as affordable, and b) the majority of units developed are available to Income Qualified buyers or renters for a period of at least 30 years.

1.8 Long-Term Affordability Maximum Purchase Price. Upon receipt of an application by a nonprofit for conveyance of LBA property, the Board of Directors, in its discretion, may authorize the conveyance of such property to the nonprofit for total consideration not to exceed [35% of Fair Market Value plus Property Costs] upon the following conditions:

1.8.1 The nonprofit must submit appropriate development or other plans for the property, including all required property acquisition application documents, demonstrating commitment and ability to utilize the property for Long-Term Affordable Housing to Income Qualified buyers or renters.

1.8.2 The nonprofit must agree to appropriate development requirements of the LBA in accordance with its policies to ensure the property is utilized for Long-Term Affordable Housing.

1.8.3 The nonprofit shall provide the LBA with a written report on the current status of the conveyed property, which report shall (i) be provided by December 1st of each effective year subsequent to the conveyance of the property from the LBA to the nonprofit until completion, and (ii) identify the potential date for completion of the development work relating to such property pursuant to the LBA long-term affordability development requirements and all other reporting information required by LBA.

1.9 Long-Term Affordability Purchase Price. Qualified applications submitted by nonprofits pursuant to this Long-Term Housing Affordability Disposition Policy may, in the discretion of the LBA, qualify for pricing linked to the depth of affordability committed on the property as follows:

1.9.1 Properties developed for homeownership to Income-Qualified homeowners with incomes up to 80% of Area Median Income may be transferred for up to 35% of Fair Market Value plus Property Costs.

1.9.2 Properties developed for homeownership to Income-Qualified homeowners up to 60% of Area Median Income may be transferred for up to 25% of Fair Market Value plus Property Costs.

● **Section 1.7 and this sample policy as a whole specifically allow multifamily mixed-income housing as an eligible development on property conveyed.** Key questions to consider:

Is the eligibility of multifamily mixed-income housing under this policy dependent on whether the multifamily aspect allows for cross-subsidization leading to deeper affordability on some units than would be available if 100% of the units were required to be affordable?

● **Section 1.8 defines the maximum purchase price for properties conveyed under this policy, ensuring the land bank may always transfer for less including for no monetary consideration as authorized in most land bank statutes and board policies.** Key questions to consider:

In a given community, what is an appropriate maximum purchase price for properties conveyed under this policy (e.g., 5, 25, 50, or 75% of fair market value)?

Does the maximum purchase price bear a reasonable relationship to the financing and capital available to purchasers that are able to deliver the kind of long-term affordable development anticipated?

In order to access property under this policy for less than fair market value, what broad requirements does the land bank seek from the developer applicant/transferee?

● **Section 1.9 gives an example for incentivizing deeper affordability in developments through lower purchase prices linked to the depth of affordability.** Key questions to consider include:

In a given community—based on fair market value of parcels in inventory, land bank operating costs, and subsidies qualified applicants need under this policy—what percentages of AMI level of homeowners/renters and of fair market value are needed for successful transfers and developments?

1.9.3 Properties developed for rent to Income-Qualified renters with incomes up to 80% of Area Media Income may be transferred for up to 35% of Fair Market Value plus Property Costs.

1.9.4 Properties developed for rent to Income-Qualified qualified renters with incomes up to 60% of Area Media Income may be transferred for up to 25% of Fair Market Value plus Property Costs.

1.10 Long-Term Affordability Accountability Mechanisms.

The LBA acknowledges the critical importance of accountability mechanisms under this policy, whereby the LBA and nonprofit partner applicants ensure the long-term affordability this policy is designed to protect. The LBA seeks to balance through this policy a maximum level of due diligence in pre-closing negotiations and partnership development with qualified nonprofit applicants, with appropriate and reasonable flexibility with post-closing accountability mechanisms.

1.10.1 Pre-closing accountability mechanisms may include, but are not limited to, the provision of preliminary development plans and budgets that include the income levels of target homeowner(s) or renter(s), demonstration of available financing and subsidy to complete the proposed long-term affordable housing development, summary and provision of template documents demonstrating the mechanisms by which the nonprofit applicant will ensure long-term affordability (e.g., holding of long-term ground leases, deed restrictions, recorded option agreements and otherwise) and by which the nonprofit application will locate and contract with Income-Qualified homebuyers or renters, letters of support for the proposed development from an existing community development partner or other support organization in the neighborhood in which each property (or group of properties) is located, demonstration of analogous and successful Long-Term Affordable Housing projects managed by the nonprofit applicant, and such additional due-diligence and documentation as requested by the LBA.

1.10.2 Post-closing accountability mechanisms may include, but are not limited to, deed restrictions, reversion provisions, and recorded option agreements providing the LBA with the option to “buy-back” the property or properties for a nominal price within a specified period if development or affordability commitments are not satisfied.

1.11 **Long-Term Affordability Option Agreements.** On a case-by-case basis and to support appropriate fundraising and pre-development activities of qualified nonprofit applicants, the LBA will enter option agreements to hold a particular property or group of properties for a nonprofit applicant for a maximum period of six (6) months. Such option agreements will require a \$1500 holding fee per property, which fee shall be deducted from the purchase price at such time as a Purchase and Sale Agreement for the property in question is executed.

● **Section 1.10 lays out broad expectations that the land bank has for partner developers who obtain property under this policy for purposes of long-term affordable housing development.** Key questions to consider:

What is the land bank’s capacity and expertise to manage affordability requirements for time frames that extend beyond conveyance?

When contemplating how to legally enforce affordability commitments—such as deed restrictions, option agreements with buy-back provisions or otherwise—what legal mechanisms are allowable under state and local law and policy, and what mechanisms are achievable with the land banks’ capacity?

● **Section 1.11 provides a method for a nonprofit development partner to ask the land bank to hold a property while that nonprofit works to build its capital stack or otherwise for a proposed development, perhaps even utilizing its site control through this kind of option agreement to secure funding.** Key questions to consider:

What is a reasonable timeframe for this kind of option agreement in a given community and market?

What is a reasonable holding fee that will minimally cover land bank costs, and perhaps provide limited revenue?