


3-2015

Incorporating NY Land Banks into the Delinquent Property Tax Enforcement Processes

J. Justin Woods

Pace University School of Law, jwoods@law.pace.edu

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Recommended Citation

J. Justin Woods, Incorporating NY Land Banks into the Delinquent Property Tax Enforcement Processes, N.Y. Zoning L. & Prac. Rep., Mar./Apr. 2015, at 1, <http://digitalcommons.pace.edu/lawstudents/18/>.

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NEW YORK ZONING LAW AND PRACTICE REPORT



MARCH/APRIL | VOLUME 15 | ISSUE 5

INCORPORATING NY LAND BANKS INTO THE DELINQUENT PROPERTY TAX ENFORCEMENT PROCESSES

By J. Justin Woods*

I. INTRODUCTION

Communities across the country have struggled for decades with the impacts of deindustrialization, economic decline, suburban sprawl, white flight, population loss, and urban decay, resulting in vacant and blighted properties concentrated in formerly bustling urban cores.¹ Vacant and blighted properties are not mere nuisances for community residents, they also create costs and liabilities for local governments while simultaneously undermining a community's tax base.² For example, a recent study of a particular census tract in Rochester, New York concluded that "for every additional vacant building in the Census Block Group where a property is located, the house price is expected to decrease by about \$3,000."³ Sprouting from efforts associated with the National Vacant Properties Campaign⁴ and its successor, the Center for Community Progress,⁵ land banks

*J. Justin Woods is a J.D. candidate at Pace University School of Law and an M.P.A. candidate at Pace University's Dyson College of Arts and Sciences (both degrees expected January 2016). He is also a Land Use & Sustainable Development Scholar at the Pace Land Use Law Center and serves as a Research Assistant to Dr. Hillary Knepper, MPA in the Pace Department of Public Administration. Mr. Woods has over 15 years of experience as a municipal planner, public administrator, and municipal planning and management consultant, and he is principal of J. Justin Woods, LLC. The author would like to acknowledge contributions from the staff at the Center for Community Progress, Newburgh Community Land Bank, Greater Syracuse Land Bank, New York Land Bank Association, and New York Conference of Mayors and Municipal Officials, as well as the generous support and feedback received from the staff at the Pace Land Use Law Center.

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Editor-in-Chief
Patricia E. Salkin, Esq.

Managing Editor
Emily Howard, Esq.

Editorial Offices:
50 Broad Street East, Rochester, NY 14614
Tel: 585-546-5530 Fax: 585-258-3768



have evolved and emerged into an innovative tool for communities to address the problems of vacant and blighted properties.⁶

In 2011, the New York State Land Bank Act (LBA) created a statutory framework for land banks in New York.⁷ The most pressing concern shared by New York land bank representatives is how to secure recurring and stable funding. This article discusses land banking as critical tool for communities to address vacant properties and urban blight. It provides a brief history of how land banks have evolved and reviews the status of land banks in New York. Specifically, the article reviews the broad statutory authority granted in the enabling legislation and argues that municipalities should exercise these powers to incorporate land banks directly into the delinquent property tax enforcement processes.

II. RELEVANT BACKGROUND—THE EVOLUTION OF LAND BANKS

Land banks are public authorities or special purpose nonprofit organizations created to act as a legal and financial conduit to transform, hold, manage, repurpose, and develop vacant, abandoned, tax-foreclosed and other problem properties discarded or underutilized by the private market.⁸ Successful land bank programs

revitalize blighted neighborhoods and direct reinvestment back into these neighborhoods to support their long-term community revitalization.⁹

There are approximately 120 land banks and land banking programs throughout the nation.¹⁰ In *Land Banks and Land Banking*, Emory Law Professor Frank Alexander, outlines the evolution of land banks through three stages. The **first generation** of land banks were founded between 1971 and 1991 in St. Louis, Cleveland, Louisville, and Atlanta. They had a common focus on addressing abandoned and tax delinquent properties, but lacked the capacity to efficiently and effectively manage and dispose of properties. Most significantly, they lacked a dedicated source of funding, and were further hampered by property tax foreclosure laws that created several impediments to securing and disposing of properties with marketable title.¹¹

The **second generation** of land banks were established in Michigan and Ohio from 1999 through 2010. These efforts were accompanied by “much more extensive intervention in the property tax foreclosure process, and in the case of Michigan, the ability to acquire *all* tax foreclosed properties, not just properties for which there is no third-party investor ready to purchase it.”¹² The case studies in Genesee County, Michigan (Flint) and Cuyahoga County, Ohio (Cleveland) provide some of the most successful examples of land banking in the nation because they structurally created diverse, dedicated funding streams to fund land bank programs. However, the shortcoming of second generation land bank statutes was that they were intricately drafted to amend several discrete statutory provisions and therefore were not easily replicable in other states.¹³

The New York State Land Bank Act is based on the **third generation** land bank model statute developed by the Center for Community Progress.¹⁴ The LBA includes broad powers for using and financing land banks, but like the first generation land banks, it does not provide dedicated sources of funding. However, the flexibility of options and broad powers provided for in the law create opportunities for municipalities to exercise these powers and replicate the success of second generation land banks. If municipalities fully utilize all the tools provided in the law to partner with

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New York Zoning Law & Practice Report (USPS 013-500), is published Bi-monthly, 6 times per year by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Periodical Postage is paid at Twin Cities, MN. POSTMASTER: Send address changes to New York Zoning Law & Practice Report, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

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land banks, they can create a financing stream that can help sustainably fund land bank operations. One strategy proven effective in other states is incorporating land banks directly into the delinquent property tax enforcement processes.

III. THE NEW YORK STATE LAND BANK ACT

Governor Cuomo signed the New York State Land Bank Act (LBA) into law on July 29, 2011.¹⁵ The LBA amended the Not-For-Profit Corporation Law and created Article 16, a statutory framework enabling a limited number of land banks throughout the state. The purpose of the LBA is to address the crisis caused by massive “disinvestment in real property and resulting in a significant amount of vacant and abandoned property” in many cities and metro areas.¹⁶

Under New York Law, a land bank is a type C not-for-profit corporation¹⁷ which are formed to pursue public or quasi-public objectives.¹⁸ While any foreclosing governmental unit may create a land bank, the New York State Empire State Development Corporation (ESD) must approve any new entity.¹⁹ Like local development corporations, the N.Y. Not-for-Profit Corp. Law permits great flexibility in how land banks can be structured, including in their degree of independence from the initiating governmental unit. For example, the City of Rochester Land Bank is staffed by municipal employees, whereas the Newburgh and Syracuse Land Banks are staffed by independent executive directors working collaboratively with the municipalities.²⁰ The composition of the Board of Directors is another area where the level of independence or interdependence with the establishing municipality or municipalities vary greatly.²¹

A common feature to all New York land banks is that they are subject to the public reporting requirements under the NYS Public Authorities Law.²² The Land Bank Act also requires Land Banks to comply with the Open Meetings Law and Freedom of Information Law.²³ However, other than these common reporting requirements, municipalities have great freedom and flexibility to structure land banks, including the ability to incorporate them into the delinquent tax enforcement

process or to otherwise contract with land banks to provide a variety of government services.

IV. ENABLING POWERS UNDER THE LBA

Section 1607 of the LBA outlines specific powers for land banks.²⁴ Land banks enumerated powers include: entering into contracts; borrowing money; issuing negotiable notes and tax-exempt bonds; renting and selling the land bank’s real property; designing, developing, constructing, demolishing, reconstructing, rehabilitating, renovating, relocating, and otherwise improving real property; entering into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property; inventorying vacant, abandoned, and tax foreclosed properties; developing redevelopment plans to be approved by the foreclosing governmental unit or units; and entering into agreements with a foreclosing governmental unit for the distribution of revenues to the foreclosing governmental unit and school district.²⁵

Land banks also have broad authority to acquire and dispose of real property,²⁶ including “transfers from municipalities upon such terms and conditions as agreed to by the land bank and the municipality.”²⁷ Notwithstanding any other law to the contrary, any municipality may transfer to the land bank real property and interests in real property of the municipality on such terms and conditions and according to such procedures as determined by the municipality.²⁸ Additionally, land banks may enter into agreements to purchase any real property “consistent with an approved redevelopment plan.”²⁹

V. FUNDING LAND BANKS IN NEW YORK

To date, there are 10 approved land banks spread geographically across New York State, and the act has been amended to authorize an additional 10.³⁰ Land banks in New York were off to a slow start, but NY Attorney General Eric Schneiderman catalyzed land banking in the state by appropriating \$33 million from the

First National Mortgage Settlement award through the Attorney General's Land Bank Community Revitalization Initiative.³¹ While the Initiative provides important seed funding and has enabled New York Land Banks to begin a number of projects, as noted previously, "the most pressing concerns shared by land representatives is how to secure recurring and stable funding."³² According to Madeline Fletcher, Executive Director of the Newburgh Land Bank, the biggest priority for New York land banks is financial sustainability: "How are all of these very different land banks going to figure out how they can each operate in a way that enables them to exist in the long term?"³³ This is especially critical as the state legislature has initiated discussions about using the mortgage settlement funds to address infrastructure, jobs, and a variety of other needs across the state.³⁴

Land banks can be funded in a number of ways. The LBA provides that land banks may receive grants and loans from public and private sources.³⁵ Land banks may also "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."³⁶ Additionally, any municipality, school district, or taxing district may authorize that 50% of the real property taxes collected on any specific parcel of real property "be remitted to the land bank, in accordance with procedures established by regulations promulgated by the NYS Department of Taxation and Finance. Such allocation of real property tax revenues commences with the first taxable year following the date of conveyance and may continue for a period of five years."³⁷ In practice, land banks in New York receive their funding through a combination of private foundation support, local governments' direct allocations, public grants, and proceeds from the management and disposition of tax-foreclosed properties.³⁸

A core function of successful land banks in other states has been integrating land banks into the tax lien process.³⁹ In this way, land banks serve to limit unhealthy tax lien speculation that is associated with traditional tax foreclosure proceedings. In a 2009 interview with the Democracy Collaborative, Congress-

man Dan Kildee (D-MI), former County Treasurer and CEO of the Land Bank in Genesee County, and Co-founder and President of the Center for Community Progress, explained that the initial success of the Genesee County Land Bank was based on reforming the tax foreclosure laws to eliminate the tax liens sale to speculators.⁴⁰ This change not only allowed the County and Land Bank to acquire and repurpose properties, but it also created a dedicated funding stream for land banks. The important lesson for New York land banks is that the broad powers included in the LBA authorizes integrating land banks into the tax foreclosure process, and the long-term success of land banks in New York likely depends on effectively utilizing all of the LBA provisions.

VI. THE DELINQUENT TAX LIEN OPPORTUNITY

Traditional tax foreclosure processes generally perpetuate the cycle of unhealthy property ownership, contributing to the degradation of nearby properties. Under the LBA, municipalities may sell some or all of the delinquent tax liens held by it to a land bank, subject to the following conditions:

- i. The consideration paid may be more or less than the face amount of the tax liens sold,⁴¹
- ii. Property owners must be given at least 30 days advance notice of the sale as provided by Real Property Tax Law § 1190(2),⁴²
- iii. The municipality may repurchase a lien or liens on the foreclosure list from a land bank,⁴³
- iv. The sale of a tax lien pursuant to the Act does not shorten the applicable redemption period or change the applicable interest rate,⁴⁴ and
- v. If a municipality does not tender a bid, the land bank may tender a bid at a judicially ordered sale conducted pursuant to Real Property Tax Law § 1136 in an amount equal to the total amount of all municipal claims and liens which were the basis for the judgment. Such a bid by a land bank trumps any bids by any other third parties.⁴⁵

Of particular significance are the enumerated powers

that authorize land banks to: 1) enter into intergovernmental agreements for the joint exercise of municipal functions;⁴⁶ 2) contract to perform functions by the land bank on behalf of the municipalities;⁴⁷ and 3) enter into partnership, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property.⁴⁸ These enumerated powers, when combined with financing mechanisms permitting land banks to: 1) receive payment for services;⁴⁹ 2) share new tax revenue on properties emerging from land banks;⁵⁰ and 3) contract to receive all tax liens from municipality,⁵¹ collectively create the statutory authority to structure and finance land banks in a number of creative ways. However the impetus is on municipalities to fully utilize all the LBA powers included in the enabling legislation to not only create land bank programs, but also to establish them with the necessary funding and authority to succeed. Such programs should include sharing municipal and school tax revenues from emerging properties for five years and integrating land banks into their delinquent property tax enforcement process. Other considerations may also include contracting with the Land Bank to handle the entire tax enforcement program on behalf of a municipality or managing the maintenance and upkeep of properties in various stages of the process.

VII. DELINQUENT PROPERTY TAX ENFORCEMENT IN NEW YORK

In order to understand how municipalities can effectively integrate land banks into the delinquent property tax enforcement process, it is helpful to review how the New York tax enforcement process works. In New York State, tax enforcement is the responsibility of local governments. Counties and cities generally enforce their own delinquent taxes, as well as the unpaid taxes of taxing districts such as school districts and towns. Villages are responsible for enforcing their own taxes unless the county has agreed to accept the responsibility, and towns generally refer their unpaid taxes to their counties. Most municipalities are subject to the tax enforcement system established by Article 11 of the Real Property Tax Law. However, there are approximately 20 New York municipalities that have either

“opted out” of Article 11 or otherwise received special legislation to operate outside of Article 11.⁵²

1. ARTICLE 11 OF THE REAL PROPERTY TAX LAW—IN REM FORECLOSURE⁵³

Article 11, which governs most of the municipal tax enforcement processes in the state, provides for a tax enforcement process in four phases: 1) collection, 2) redemption, 3) intermediate, and, if necessary, 4) foreclosure.⁵⁴ The **collection phase** begins when taxes are levied upon the assessment roll. A warrant is then issued and attached to the assessment roll, which becomes the tax roll. Then, the tax roll and warrant are delivered to the collecting officer, tax bills are issued, and the collecting officer accepts payments from taxpayers. Taxes become liens on the first day of the fiscal year when they are due based on the latest applicable lien dates.⁵⁵ When taxes for the current fiscal year remain unpaid, the collecting officer is required to issue a notice of unpaid taxes shortly before the warrant expires.⁵⁶ After the collecting officers’ warrants expire, each collecting officer prepares and submits to the Enforcing Officer a Return of Unpaid Taxes, which identifies the parcels on which taxes remain due, and the unpaid taxes are now considered delinquent.⁵⁷

Article 11 establishes a standard **redemption period** of two years after the lien date.⁵⁸ To redeem a parcel from a delinquent tax lien, the delinquent taxes must be paid, together with all “charges” which have been added to the amount due pursuant to law. The term “charges” includes such items as interest, penalties, and mailing and publication costs.⁵⁹ When there are delinquent tax liens from two or more years against the same parcel, the liens do not all have to be redeemed at the same time.⁶⁰ However, if the liens are redeemed individually, they must be redeemed in “reverse chronological order, so that the lien with the most recent lien date is redeemed first, and the lien with the earliest lien date is redeemed last.”⁶¹ A tax district may also adopt a local law allowing taxpayers to enter into agreements to make installment payments of delinquent taxes.⁶²

The **intermediate phase** begins when the requisite List of Delinquent Taxes is filed in the Office of the County Clerk.⁶³ The filing of the List creates a Notice

of Pendency against each parcel described on the List, so that anyone taking an interest thereafter will be charged with notice of the tax lien. The filing of the Notice of Pendency does not commence the foreclosure proceeding; the proceeding is commenced later, when a Petition of Foreclosure is filed. When a parcel is redeemed after the List of Delinquent Taxes has been filed, the taxpayer may ask the Enforcing Officer to issue a Certificate of Redemption.⁶⁴

The fourth phase, **foreclosure proceedings**, are commenced by filing a Petition of Foreclosure with the Supreme Court or County Court, three months before the end of the redemption period.⁶⁵ The relevant pages of the Petition must be served upon the owner and any other party with a substantial, legally protected interest of record,⁶⁶ and published in two newspapers in each of three nonconsecutive weeks in a two month period.⁶⁷ When the redemption period ends, the court will determine the rights of the parties in any parcels that have not been redeemed.⁶⁸ Generally, if no answer has been filed, judgment will be taken by default, and the court will issue an Order directing the Enforcing Officer to execute a deed conveying absolute title to the tax district.⁶⁹ Once a tax district has taken title to tax delinquent property pursuant to court order, it may sell the property either with or without advertising for bids, but the legislative body of the tax district must approve the sale, unless the sale was made to the highest bidder at a public auction.⁷⁰

2. TAX ENFORCEMENT IN OPT-OUT MUNICIPALITIES⁷¹

As noted above, there are approximately 20 New York municipalities that have either “opted out” of Article 11 or received special legislation to operate outside of Article 11. The Cities of Syracuse and Rochester are among the opt-out communities that also have approved land banks. Interestingly, the Greater Syracuse Land Bank is comprised of city and county taxing districts under which the County is governed by Article 11 and the City is opted out. Therefore, the integration of multijurisdictional land banks will necessarily involve agreements specific to each of the foreclosing governmental units.

The primary methods of delinquent property tax

enforcement utilized among the various opt-out municipalities in New York include: 1) Sales of real estate for taxes; 2) Individual sales of tax liens; 3) In rem foreclosures and sale of real estate; and 4) Bulk tax lien sales including securitizations.

First, a majority of municipalities that opted out of Article 11 use a yearly auction of individual parcels of tax delinquent real estate to enforce delinquent taxes. The common thread is that each municipality provides for the individual auction sale of an interest bearing instrument that represents an interest in a tax delinquent parcel. If that instrument is not paid in accordance with its terms (i.e. if the taxes are not redeemed by the end of the postsale redemption period), the holder of that instrument may request the issuance of a Treasurer’s Deed to the property. The potential advantage some opt-out municipalities like the Cities Canandaigua, Long Beach, and Syracuse, have is that they have a locally established a one year redemption period, cutting almost in half the time required to foreclose a property. Amending Article 11 to reduce the statutory redemption period to one year should be part of any package of reforms land bank advocates propose to the legislature.

Second, Yonkers sells individual tax liens at an annual auction in order to enforce delinquent taxes. Yonkers sends only one notice to taxpayers: the notice of tax due. That notice includes the amount due, when payable, interest accrual after payment date, and date of the tax lien sale if not redeemed prior to sale. The only other notice is intended to advertise the lien sale and is published in newspapers and on the Yonkers Web site. The lien purchaser may initiate foreclosure by judicial process, anytime commencing 21 months after the sale if no interest is paid at the bid interest rate, and after three years if the then accrued bid rate interest has been paid but full redemption has not been paid.

Third, Johnstown and Mount Vernon use a yearly in rem foreclosure proceeding as the primary method of delinquent tax enforcement. All tax delinquent properties that do not redeem are sold at foreclosure auction to the highest bidder.

Lastly, up until last year, Rochester was the only city apart from New York City that still sold its tax liens in bulk. However, the Rochester Mayor permitted the

contract with the bulk lien purchaser to expire following the completion of the Center for Community Progress Report.⁷² The bulk tax lien sale by New York City is to a special purpose entity that in turn sells investment certificates secured by the tax liens to third party investors. New York City retains the services of specialized collection agents to handle all taxpayer communications and payments and to manage and supervise the activity of foreclosure attorneys. The only legal enforcement method available to the special purpose entity is judicial foreclosure.

VIII. INTEGRATING LAND BANKS INTO DELINQUENT TAX ENFORCEMENT

Regardless of whether a taxing district is governed by Article 11 or locally adopted opt-out provisions, municipalities with Land Banks can use the LBA to internalize and capture all the penalties and interests from tax liens by contracting all the liens or tax sales to the land bank. The land bank can then use the proceeds to create a delinquent tax revolving loan fund. A delinquent tax RLF would consist of land bank borrowing or bonding the capital to pay for the delinquent taxes, preferably at a reduced rate. In exchange, the land bank would receive control of all the tax liens and delinquent properties, including any interest and penalties.⁷³ Under such a contract, the land bank, rather than tax lien speculators, would retain interest and penalties paid on properties whose taxes are redeemed. It would also retain the tax lien on any properties not reclaimed.

If a municipality contracts with a land bank to retain control of all the liens, municipalities can save maintenance and carrying costs associated with the properties. In return, land banks can use the equity and revenues from redeemed or valuable foreclosed properties to stabilize and prepare upside-down properties for redevelopment. A similar cross-subsidy approach was used in Michigan to create statutory ties between a land bank and a municipality's tax foreclosure process by eliminating the sale of tax liens to speculators through mandatory public auctions and replacing them with in rem judicial foreclosure. After foreclosure, all or substantially all of the properties are transferred to the land bank.⁷⁴ By utilizing the Land Bank Act, a municipality can now use the enumerated powers to transfer

all delinquent liens or properties to its land bank and can secure similar cross-subsidy benefits enabling New York Land banks to more effectively achieve their redevelopment goals. However, it is worth noting that this model only works when the land banks acquire the valuable properties in addition to properties with little or no value.

IX. BARRIERS TO INTEGRATING LAND BANKS INTO TAX ENFORCEMENT

Many municipalities receive unpaid property tax revenue from tax lien sales or auctions of delinquent properties. Some municipal finance officers, managers, and elected officials are understandably reluctant to turn over these revenues to land banks because it could impact municipal budgets.⁷⁵ Municipal finance officials are also wary of transferring properties to a land bank where the land may be held tax free instead of granted to a private party who would immediately have to pay taxes. Collectively the municipal obstacles to integrating land banks into delinquent property tax enforcement is shifting the timeframe of policy decisions to focus more on long-term outcomes over short-term budget impacts.

Additionally, vocal opposition to a municipality contracting all liens and transferring all foreclosed properties to land banks comes from private tax lien investors and real estate speculators. Tax lien investors reap significant revenues in the form of interests and penalties generated from acquiring liens and in exchange for their investments. Real estate speculators and private developers also often secure below market properties at auctions or tax sale foreclosures and thus make significant returns on their investments even if they do not rehabilitate or reinvest in the properties.⁷⁶ Given the significant profits at stake, often times, these investors exert political pressure on elected and appointed officials to maintain the status quo. Such moves may boost private profits in the short term, but too often at the expense of real innovation and community revitalization.

The history of government sale of tax liens does not produce successful results for communities.⁷⁷ While the private investors' concerns are valid as they relate to

their own economic interests, the policy question that municipalities should focus on is how to deal with concentrated blight exacerbated by a scarcity of transformational investment. Tax lien investors push private market solutions in order to maximize their returns. These investors are under no obligation to foreclose, stabilize, or reinvest in properties. Additionally, communities retain little or no control over how or when properties granted to private investors will or may be rehabilitated.⁷⁸ Even in instances where such guarantees and performances are secured by contract or deed restrictions, they are frequently ignored and rarely enforced.

The concerns of municipal financial officials, managers, and elected officials are understandable given the short-term financial troubles many communities face. However, communities find themselves faced with policy focuses that are increasingly demanding short-term results; innovation and community investment too often suffer as a result. In this context, political and long-term community and economic interests are decoupled. By transferring tax liens or foreclosed properties to a land bank, the community can embark on strategy that is consistent with both the short-term and long-term benefits to the community. In the short-term, delinquent taxes are covered or municipal costs may be reduced, and the land bank retains control of the property to redevelop or repurpose it for long term goals community goals, including returning it to productive uses consistent with community-based redevelopment plans. This is accomplished while retaining what would be the investment speculator's low risk profits and reinvesting tax lien proceeds back into community revitalization initiatives. Professor Alexander sums up the policy choice simply:

The most inefficient and ineffective tax foreclosure systems are those that transfer 100% of potential surplus to investors or speculators who have no obligations to the public or common good, leaving the local government to acquire and manage only those properties that truly have negative value. The contest here is not with owners who wish to pay their taxes and avoid losing their homes. It is between private investors and the neighborhoods and communities where the property is located. The policy choice is whether private investors are allowed to reap the profits from high rate of interest and penalties, and surplus value, leaving the neighbor-

*hoods and communities with the greatest liabilities, or whether the local government exercises its core power of taxation in a manner that serves the common good.*⁷⁹

Further, while other cities' land bank programs, like St. Louis (MO), have been used primarily as a fiscal tool to stimulate growth in their communities, Genesee County (MI)'s land bank program has been used as a planning tool to align with their communities' long-term redevelopment plans and property disposition to ensure foreclosed properties have the greatest benefit.⁸⁰ If New York municipalities use their LBA powers fully, local and regional land bank efforts can become a vital tools for planning and implementing community revitalization programs. Land banks should become city and regional planning partners advancing smart growth by countering sprawl and revitalizing the inner core of New York's cities and villages. Taken together, municipally contracting all tax liens to the land bank could generate an important funding source to cover the land bank's operations while simultaneously maximizing the land bank's ability to use foreclosed properties with equity to subsidize the redevelopment or demolition of properties with no effective value.

X. CONCLUSION

The New York State Land Bank Act created a flexible statutory framework for Land Banks in New York. Programs are off to a good start, but the most pressing concerns shared by land representatives involve securing consistent and stable funding. Communities should utilize the expansive Land Bank powers to transfer all tax liens and foreclosed properties to their local land bank. Doing so will generate an important funding source that will help cover the land bank's operations while simultaneously maximizing the land bank's ability to reinvest lien proceeds and any equity into redeveloping or demolishing properties with little or no value.

ENDNOTES:

¹Alan Mallach and Eric Scorsone, Long-Term Stress and Systemic Failure: Taking Seriously the Fiscal Crisis of America's Older Cities (Center for Community Progress) (2011), <http://community-wealth.org/content/long-term-stress-and-systemic-failure-taking-seriously-fiscal-crisis-america-s-older-cities>.

²Wade Beltramo, Public Nuisance Law: A Tool for

Local Government Officials, Vol. 14 No. 1 ZONING & PLAN. L.REP. 1 (2013); Keith H. Hirokawa & Ira Gonzalez, Regulating Vacant Property, 42 URB. LAW 627, 637 (2010).

³ City of Rochester, Analysis of Bulk Lien Sale 32 (Final Report by the Center for Community Progress) (February 25, 2013), <http://www.cityofrochester.gov/taxliens/>.

⁴ About 15 years ago, the Local Initiatives Support Coalition (LISC), Smart Growth America, the International City/County Management Association (ICMA), and the National Trust for Community Preservation initiated the National Vacant Properties Campaign with the dual purpose of developing new solutions to address vacant and abandoned properties, and helping communities build the capability to address these problems. Margaret Dewar, Selling Tax-Reverted Land, 72 J. Am. Plan. Ass'n 167 (2006); National Vacant Properties Campaign, Vacant Properties: The True Costs to Communities. (2005), <http://www.communityprogress.net/filebin/pdf/toolkit/vacant-properties—the-true-costs-to-communities-pages-409.php>.

⁵ The proliferation of land banks as a revitalization strategy has been driven in large part by the Center for Community Progress (CCP), a national nonprofit organization focused on developing solutions for vacant, abandoned, and problem properties. “The Center for Community Progress serves as the leading resource for local, state, and federal policies and best practices that address the full cycle of property revitalization, from blight prevention, through the acquisition and maintenance of problem properties, to their productive reuse.” What We Do, Center for Community Progress, <http://www.communityprogress.net/about-pages-4.php>.

⁶ Payton Heins and Tarik Abdelazim, Take it to the Bank: How Land Banks Are Strengthening America’s Neighborhoods (Center for Community Progress) (2014), http://action.communityprogress.net/p/salsa/web/common/public/signup?signup_page_KEY=8120.

⁷ N.Y. Not-for-Profit Corp. Law Article 16; Madeline Fletcher and Jessica Bacher, A Practical Guide to Policies for New York State Land Banks, Vol. 13 No. 5 ZONING & PLAN.L.REP. 1 (2013).

⁸ Land Banks, United States Department of Housing and Urban Development, <http://www.hud.gov/offices/cpd/about/conplan/foreclosure/landbanks.cfm>; Julie A. Tappendorf & Brent O. Denzin, Turning Vacant Properties into Community Assets Through Land Banking, 43 URB. LAW. 801 (2011); Jessica de Wit, Revitalizing Blighted Communities with Land Banks (University of Michigan) (2009), <http://www.umich.edu/~ecodev/landbank>

⁹ Payton Heins and Tarik Abdelazim, Take it to the Bank: How Land Banks Are Strengthening America’s Neighborhoods (Center for Community Progress)

(2014), http://action.communityprogress.net/p/salsa/web/common/public/signup?signup_page_KEY=8120; Frank Alexander, Land Banks and Land Banking 19 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

¹⁰ Center State CEO and the New York Land Bank Association, New York State Land Banks: Combatting Blight and Vacancy in New York Communities 4 (Center for Community Progress) (2014), <http://www.enterstateceo.com/NYLBA>.

¹¹ Frank Alexander, Land Banks and Land Banking 19 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

¹² Frank Alexander, Land Banks and Land Banking 21 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

¹³ Frank Alexander, Land Banks and Land Banking 21 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

¹⁴ Frank Alexander, Land Banks and Land Banking 22 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

¹⁵ Cuomo Signs Law Allowing New York Cities, Counties to Create Land Banks, 39 HDR CURRENT DEVS.23 (2011); Madeline Fletcher and Jessica Bacher, A Practical Guide to Policies for New York State Land Banks, Vol. 13 No. 5 ZONING & PLAN.L.REP. 1 and Note 2 (2013).

¹⁶ N.Y. Not-for-Profit Corp. Law § 1601.

¹⁷ N.Y. Not-for-Profit Corp. Law § 1607(a).

¹⁸ N.Y. Not-for-Profit Corp. Law § 201.

¹⁹ N.Y. Not-for-Profit Corp. Law § 1603.

²⁰ Center State CEO and the New York Land Bank Association, New York State Land Banks: Combatting Blight and Vacancy in New York Communities 7 (Center for Community Progress) (2014), <http://www.enterstateceo.com/NYLBA>.

²¹ Madeline Fletcher and Jessica Bacher, A Practical Guide to Policies for New York State Land Banks, Vol. 13 No. 5 ZONING & PLAN.L.REP. 4 (2013).

²² N.Y. Pub. Auth. Law § 2.

²³ N.Y. Not-for-Profit Corp. Law § 1612.

²⁴ N.Y. Not-For-Profit Corp. Law § 1607.

²⁵ N.Y. Not-For-Profit Corp. Law §§ 1607(a)-21(b).

²⁶ N.Y. Not-For-Profit Corp. Law §§ 1608-09.

²⁷ N.Y. Not-For-Profit Corp. Law § 1608(c).

²⁸N.Y. Not-For-Profit Corp. Law §§ 1608(c), (f).

²⁹N.Y. Not-For-Profit Corp. § 1608(g).

³⁰N.Y. Not-for-Profit Corp. Law § 1603(g).

³¹Luke Telander, Two and half years in, land banking takes shape in New York State (Center for Community Progress) (February 27, 2014), <http://www.communityprogress.net/blog/years-land-banking-takes-shape-york-state>.

³²Center State CEO and the New York Land Bank Association, New York State Land Banks: Combatting Blight and Vacancy in New York Communities 4 (Center for Community Progress) (2014), <http://www.enterstateceo.com/NYLBA>.

³³Center State CEO and the New York Land Bank Association, New York State Land Banks: Combatting Blight and Vacancy in New York Communities 7, 10 (Center for Community Progress) (2014), <http://www.enterstateceo.com/NYLBA>; Luke Telander, Two and half years in, land banking takes shape in New York State (Center for Community Progress) (February 27, 2014), <http://www.communityprogress.net/blog/years-land-banking-takes-shape-york-state>.

³⁴Jeffery D. Klein, N.Y. Senator (Op. Ed), A New Deal for New York, City & State (December 7, 2014), <http://www.cityandstateny.com/2/83/infrastructure/a-new-deal-for-new-york.html#%2EVIXswTGjO-1>.

³⁵N.Y. Not-for-Profit Corp. Law § 1610(a)

³⁶N.Y. Not-for-Profit Corp. Law § 1610(b)

³⁷N.Y. Not-for-Profit Corp. Law § 1610(c)

³⁸Center State CEO and the New York Land Bank Association, New York State Land Banks: Combatting Blight and Vacancy in New York Communities 7, 10 (Center for Community Progress) (2014), <http://www.enterstateceo.com/NYLBA>.

³⁹Frank Alexander, Land Banks and Land Banking 49 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

⁴⁰Interview with Congressman Dan Kildee, by Steve Dubb, Democracy Collaborative (June 2009), <http://community-wealth.org/content/interview-dan-kildee-ceo-land-bank-genesee-county-michigan>.

⁴¹N.Y. Not-For-Profit Corp. Law § 1610(a).

⁴² N.Y. Not-For-Profit Corp. Law § 1610(b).

⁴³ N.Y. Not-For-Profit Corp. Law § 1610(d).

⁴⁴N.Y. Not-For-Profit Corp. Law § 1610(e)

⁴⁵N.Y. Not-For-Profit Corp. Law § 1610(i)

⁴⁶N.Y. Not-For-Profit Corp. Law § 1607(7)

⁴⁷N.Y. Not-For-Profit Corp. Law § 1607(8)

⁴⁸N.Y. Not-For-Profit Corp. Law § 1607(16)

⁴⁹N.Y. Not-For-Profit Corp. Law § 1610(b)

⁵⁰N.Y. Not-For-Profit Corp. Law § 1610(c)

⁵¹N.Y. Not-For-Profit Corp. Law § 1616

⁵²City of Rochester, Analysis of Bulk Lien Sale 33 (Final Report by the Center for Community Progress) (February 25, 2013), <http://www.cityofrochester.gov/taxliens/>.

⁵³This subsection is supplemented with citations to state statutes, but unless otherwise noted, the source of all information is the tax enforcement instructions prepared by Joseph K Gerbeg, Tax enforcement instructions and forms, (Office of General Counsel, State Board of Real Property Services) (October 1995). The document is #659 on the CHECKLIST of Official Publications of the State of New York 1995, <http://www.nysl.nysed.gov/edocs/education/check95.htm>.

⁵⁴Excerpt of NYCOM’s Handbook for Village Officials, Enforcement of Collection of Delinquent Village Property Taxes (New York Conference of Mayors and Municipal Officials) (2013), received from General Counsel.

⁵⁵N.Y. Real Prop. Tax Law § 1102(4).

⁵⁶N.Y. Real Prop. Tax Law § 987.

⁵⁷N.Y. Real Prop. Tax Law § 1102(2).

⁵⁸N.Y. Real Prop. Tax Law § 1110.

⁵⁹N.Y. Real Prop. Tax Law § 1102(1).

⁶⁰N.Y. Real Prop. Tax Law § 1112.

⁶¹The reverse chronological order rule was designed to prevent property owners from redeeming old taxes while simultaneously defaulting on new tax obligations. To this end, reverse chronological order rule has been relatively successful, though some municipalities and land banks report the rule has been a barrier to developing payment plans and working to keep upside homeowners from being foreclosed. J. Justin Woods, Personal Notes from discussions on Land Banks with Madeline Fletcher and Jessica Bacher, November 25, 2014 and December 2, 2014.

⁶²N.Y. Real Prop. Tax Law § 1184.

⁶³N.Y. Real Prop. Tax Law § 1122.

⁶⁴N.Y. Real Prop. Tax Law § 1110.

⁶⁵N.Y. Real Prop. Tax Law § 1123.

⁶⁶N.Y. Real Prop. Tax Law §§ 1123(6), 1125.

⁶⁷N.Y. Real Prop. Tax Law § 1124.

⁶⁸N.Y. Real Prop. Tax Law § 1136.

⁶⁹ N.Y. Real Prop. Tax Law § 1136.

⁷⁰N.Y. Real Prop. Tax Law § 1166; N.Y. County Law, § 215(8).

⁷¹Unless otherwise noted, the source of all informa-

tion about opt-out communities comes from Chapter 3 of the City of Rochester, Analysis of Bulk Lien Sale 33-35 (Final Report by the Center for Community Progress) (February 25, 2013), <http://www.cityofrochester.gov/taxliens/>.

⁷²City of Rochester Press Release, Statement by Mayor Thomas S. Richards on Consultant Report on “Analysis of Bulk Tax Lien Sale” (March 22, 2013), <http://www.cityofrochester.gov/article.aspx?id=8589956558>.

⁷³Frank Alexander, Land Banks and Land Banking 48-51 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

⁷⁴Frank Alexander, Land Banks and Land Banking 48-51 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

⁷⁵J. Justin Woods, Personal Notes from discussions on Land Banks with Katelyn Wright and Jessica Bacher on October 2, 2014, and with Madeline Fletcher and Jessica Bacher, November 25, 2014 and December 2, 2014.

⁷⁶Frank Alexander, Land Banks and Land Banking 73 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

⁷⁷Frank Alexander, Land Banks and Land Banking 73 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

⁷⁸Dan Immergluck Distressed and Dumped: Market Dynamics of Low-Value, Foreclosed Properties during the Advent of the Federal Neighborhood Stabilization Program, J. Plan. Educ. & Res. 4-5 (October 10, 2011); <http://jpe.sagepub.com/content/early/2011/10/06/0739456X11423263>.

⁷⁹Frank Alexander, Land Banks and Land Banking 49 (Center for Community Progress) (2011), http://www.communityprogress.net/filebin/Land_Banks_and_Land_Banking_Book.pdf.

⁸⁰Interview with Congressman Dan Kildee, by Steve Dubb, Democracy Collaborative (June 2009), <http://community-wealth.org/content/interview-dan-kildee-ceo-land-bank-genesee-county-michigan>; Center State CEO and the New York Land Bank Association, New York State Land Banks: Combatting Blight and Vacancy in New York Communities 8 (Center for Community Progress) (2014), <http://www.centerstateceo.com/NYLBA>.