

LAND BANKING AS A TOOL FOR THE ECONOMIC REDEVELOPMENT OF OLDER INDUSTRIAL CITIES

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INTRODUCTION

Urban communities of the Northeast and Midwest, so-called older industrial cities, continue to struggle with the economic redevelopment of their downtown areas, facing the challenges of a declining urban industrial base, suburban flight of businesses and residents, and blighted and abandoned properties.¹ The most recent shock-wave for many cities has been the foreclosure crisis, in which previously stable neighborhoods have seen sharp increases in foreclosures and vacancy rates as a result of sub-prime mortgages.² Policy makers have struggled to formulate innovative responses to ameliorate the current economic meltdown. Congress responded with the passage of omnibus economic stimulus legislation, including the American Reinvestment and Recovery Act of 2009 (ARRA)³ and the Housing and Economic Recovery Act of 2008 (HERA),⁴ which include provisions to boost economic productivity, create jobs, and

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1. JENNIFER S. VEY, THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, RESTORING PROSPERITY: THE STATE ROLE IN REVITALIZING AMERICA'S OLDER INDUSTRIAL CITIES 10 (2007), available at http://www.brookings.edu/~media/Files/rc/reports/2007/05metropolitanpolicy_vey/20070520_oic.pdf (defining "older industrial cities" as "communities that over the past several decades have experienced the steady loss of businesses and jobs, and whose role in the economy, and the economic stability of their residents, has diminished as a result.").

2. ALAN MALLACH, THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, TACKLING THE MORTGAGE CRISIS: 10 ACTION STEPS FOR STATE GOVERNMENT 1-3 (2008), available at http://www.brookings.edu/~media/Files/rc/papers/2008/0529_mortgage_crisis_vey/0529_mortgage_crisis_vey.pdf [hereinafter MALLACH, TACKLING THE MORTGAGE CRISIS].

3. American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 115 (2009); see also U.S. Gov't, *Track the Money*, RECOVERY.GOV, <http://www.recovery.gov/Pages/default.aspx> (last visited Apr. 16, 2011).

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

forestall the continuing decline in the housing market. Some states, counties, and cities faced with the challenges of being older industrial communities have pursued an additional and unique path for economic redevelopment with marked success: land banking.

Land banks are public entities that acquire and assemble vacant, tax foreclosed, and underutilized properties for short- or long-term strategic development purposes. This Note evaluates the current system of land banking in the United States and its success in revitalizing older urban areas. Part II provides a background on the major issues facing older industrial cities, focusing on the historical decline of the urban industrial base and population flight to suburban areas. Part III then assesses the current system of land banking in the United States, evaluating the five longest established and most successful metropolitan land banks in St. Louis, Cleveland, Flint, Louisville, and Atlanta.⁵ In particular, the Genesee County Land Bank (GCLB), currently operating with marked success in Flint, Michigan, will serve as a case model for the use of land banks to promote economic redevelopment of urban downtowns. Finally, an evaluation of the current federal and state legislative responses to the continuing decline of older industrial cities, and the most recent efforts in the wake of the current foreclosure crisis, will lead to the conclusion that federal, state, and local policy should shift towards creating and funding land banks with the predominant goal of the redevelopment of the urban downtown commercial core. Land banks' ability to provide marketable titles for problem properties, transfer property to developers for less than full value, and assemble fragmented parcels into marketable land provides a unique solution to the endemic stagnation of the real estate market in older industrial cities. Policy makers should continue to encourage and fund the establishment of land banks as an effective and efficient method to revitalize older industrial cities nationwide.

5. FRANK S. ALEXANDER, LOCAL INITIATIVES SUPPORT CORP., LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LOCAL LAND BANKS 2 (2005) [hereinafter ALEXANDER, LAND BANK AUTHORITIES], available at <http://www.lisc.org/content/publications/detail/793/>.

II. BACKGROUND

A. *The Decline of Older Industrial Cities*

The revitalization of older industrial cities remains a significant challenge for local, state, and federal policy makers. Due to the ongoing decline of the industrial and manufacturing sectors in the national economy, and the phenomenon of suburban flight, many of America's older cities have fallen into a downward spiral.⁶ Communities which historically were powerhouses of American industry and manufacturing, with vibrant and lively city centers, such as Detroit, Pittsburgh, and Baltimore, now face the challenge of overcoming a negative image of "empty downtowns, deteriorating neighborhoods, and struggling families."⁷

In 2007, the Brookings Institution's Metropolitan Policy Program completed a comprehensive review of the demographic and economic challenges facing older cities in the United States, entitled *Restoring Prosperity: The State Role in Revitalizing America's Older Industrial Cities*.⁸ The study focused primarily on the older industrial cities of the Northeast and Midwest, cities of the so-called American Rust Belt, which were historically centers of manufacturing and industry, and which consequentially were the most affected by economic decline.⁹ Not surprisingly, the economic decline of these cities has resulted in higher unemployment, steep population decline, a greater concentration of low- and moderate-income families in the urban core, and an increased incidence of poverty. From 1990 to 2000, older industrial cities fell behind other U.S. cities on almost every economic and demographic indicator, including having higher rates of unemployment and poverty, lower annual payroll increases, and lower median household incomes.¹⁰

6. See VEY, *supra* note 1, at 20-33; see also Mark Alan Hughes, *Dirt into Dollars: Converting Vacant Land into Valuable Development*, BROOKINGS REV., Summer 2000, at 36, 38, available at http://www.brookings.edu/articles/2000/summer_metropolitanpolicy_hughes.aspx (noting how depopulation and suburban flight has led to widespread blight, "growth at the suburban edge and over-depreciating assets at the urban core.").

7. VEY, *supra* note 1, at 8.

8. See *id.*

9. *Id.* at 14 (noting that over two-thirds of the sixty-five "weak" cities evaluated are in Rust Belt states).

10. Economic data show that unemployment in older industrial cities was 10% and in other cities was 6.5%; the poverty rate in older industrial cities was 23% and in other cities was 15.2%; annual payroll increases in older industrial cities was 14% and in other cities was

Another major similarity of many older industrial cities is the proliferation of abandoned, vacant, and underutilized properties and land parcels. The existence of vacant and abandoned properties is often considered “a symptom of central city decline . . . [which is now a] problem in its own right.”¹¹ Some adopt the acronym TOADS—temporarily obsolete, abandoned, derelict sites¹²—to describe these properties, which are more prevalent in the Northeastern and Midwestern cities facing problems in the wake of population flight and disinvestment.¹³ As an example, a 2001 survey found that the city of Philadelphia had more than 27,000 abandoned residential properties, over 2000 abandoned commercial buildings, and 32,000 vacant lots.¹⁴ In Detroit, another older industrial city, a similar composite was found: 45,000 abandoned residential and commercial buildings, despite the city demolishing over 28,000 derelict houses since 1989.¹⁵

The existence of such large numbers of abandoned properties has significant lasting effects on the city as a whole. For example, a study in Philadelphia discovered that properties located within 150 feet of a single abandoned property lost an average of \$7627 in value;¹⁶ properties on the same block lost an average of \$6500 in value.¹⁷ In Chicago, a similar effect was found—a single foreclosed property on a block reduced the property value of the 13 homes lo-

45.1%; and median household income in older industrial cities was \$29,138 and in other cities was \$38,510. *Id.* at 14–15.

11. ANN O'M. BOWMAN & MICHAEL A. PAGANO, *TERRA INCOGNITA: VACANT LAND AND URBAN STRATEGIES 2* (quoting John Accordino & Gary T. Johnson, *Addressing the Vacant and Abandoned Property Problem*, 22 J. URB. AFF. 225, 301–15 (2000)).

12. Elise Bright, *TOADS: Instruments of Urban Revitalization*, in *MANAGING CAPITAL RESOURCES FOR CENTRAL CITY REVITALIZATION* 45, 45 (Fritz W. Wagner et al. eds., 2000).

13. See BOWMAN & PAGANO, *supra* note 11, at 4, 10–13, 32–33. The Northeast has the highest average of abandoned structures—7.47 structures per 1000 inhabitants. *Id.* at 32. Philadelphia alone had approximately 36.5 abandoned structures per 1000 inhabitants. *Id.*

14. ALAN MALLACH, *BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS 4* (2006) [hereinafter MALLACH, *BRINGING BUILDINGS BACK*].

15. *Id.*

16. FRANK S. ALEXANDER, *THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, LAND BANKING AS METROPOLITAN POLICY 11* (2008) [hereinafter ALEXANDER, *LAND BANKING AS METROPOLITAN POLICY*], available at http://www.brookings.edu/~media/Files/rc/papers/2008/1028_mortgage_crisis_alexander/1028_mortgage_crisis_alexander.pdf. A more recent study in Philadelphia found that the presence of vacant and blighted properties reduces a neighboring home's average value by an average of \$8000. See Jennifer Lin, *New Study Puts a Hefty Price on Philadelphia Blight*, PHILA. INQUIRER (Nov. 11, 2010), http://articles.philly.com/2010-11-11/news/24953490_1_properties-city-agencies-blight.

17. MALLACH, *BRINGING BUILDINGS BACK*, *supra* note 14, at 8.

cated within 150 feet of the affected property.¹⁸ A similar trend arose in Flint, Michigan: property within 500 feet of a vacant and abandoned structure lost 2.26% of its total value.¹⁹ Not only do these problem properties decrease the value of their neighbors' homes, they also present significant costs to the city itself in lost taxes, code enforcement, and cleanup. For example, Detroit spends approximately \$800,000 per year on vacant lot cleanup;²⁰ Philadelphia spends over \$1.8 million per year.²¹ In Ohio, a 2008 study of eight cities found that vacant and abandoned properties cost local governments \$15 million annually in city service expenses and cost the cities over \$49 million in lost taxes.²²

Despite the new urbanism and smart growth movements that continue to gain force,²³ drawing increasing numbers of young professionals and empty-nesters back into city living, older industrial cities have generally not shared in this urban renaissance, and suburban sprawl remains a significant problem.²⁴ Unfortunately, the norm for both new residential and commercial development in the United States today continues to be movement out of the traditional urban core and into suburban subdivisions and office parks.²⁵ Furthermore, existing methods of land use regulation, most notably local zoning laws, have "encourage[d] such flight from the cities, as fresh development in previously open lands is cheaper and readily

18. OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 1 (2009), available at <http://www.huduser.org/Publications/PDF/landbanks.pdf>.

19. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 11.

20. OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18.

21. Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101, 111 (2009).

22. *Id.*

23. See Michael Lewyn, *You Can Have It All: Less Sprawl and Property Rights Too*, 80 TEMP. L. REV. 1093, 1097-1101 (2007) (discussing tension between "smart growth" advocates who call for increasing government subsidies for development in older, already existing cities—as opposed to new development in suburbs—and "property rights" advocates, who argue that consumer choice and liberty should trump government development regulations).

24. VEY, RESTORING PROSPERITY, *supra* note 1, at 25-26 (noting that older industrial cities continue to struggle to attract and retain residents, while their counterparts, including Austin, Texas, and Phoenix, Arizona, have seen significant urban population growth).

25. See Andrew Auchincloss Lundgren, *Beyond Zoning: Dynamic Land Use Planning in the Age of Sprawl*, 11 BUFF. ENVTL. L.J. 101, 135-37 (2004); see also ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 14-15 ("[U]rban sprawl and the corresponding abandonment of central cities is due . . . to the ability of residents and businesses to relocate to 'bedroom communities' and economic centers with the lowest tax rates and the smallest transaction costs.").

districted [for new development]. Conversely, the preexisting urban neighborhoods, already built and zoned, discourage redevelopment."²⁶

In addition, state laws, regulations, and subsidy programs have often actually discouraged reinvestment in older communities, through the use of overly complicated tax foreclosure proceedings, outdated building codes, and state investment practices that work to encourage suburban development projects at the expense of downtown infill reinvestment.²⁷

As Jennifer Vey, the author of the 2007 Brookings Institution's *Restoring Prosperity* study, notes:

[O]ver the past several decades state policies and practices towards cities and older areas have not been oriented toward market creation and revitalization. At best, these communities have been treated with benign neglect, with state programs and investments focused more on managing their decline than on restoring and sustaining their economic and fiscal health. At worst, state policies and investments have actually worked against them, encouraging growth in newer communities at the expense of cities and their residents.²⁸

The result is what many consider an anti-urban bias that pervades state and federal funding streams, land use strategies, and fiscal policies.²⁹ For example, large-scale public investment in highway systems have benefited more rural and suburban communities at the expense of developing public transportation infrastructure in the urban core; state housing policies have concentrated affordable housing projects in urban cities rather than promoting mixed-income neighborhoods in suburban areas.³⁰ In addition, although

26. Lungren, *supra* note 25, at 136.

27. See VEY, *supra* note 1, at 29–30. As Vey explains, “[A] host of laws and regulations act to discourage—or at the very least haven’t encouraged—the return of the private real estate market in cities, undermining their ability to promptly put contaminated and/or underutilized properties back into play.” *Id.* at 29. For example, a 2004 study of Michigan economic development incentives revealed that middle-class suburban communities received two or three times the amount of government subsidy in the form of business tax credits, road improvement dollars, and job training funds than older urban communities. *See id.* at 30.

28. *Id.* at 27.

29. *See id.* at 29.

30. *Id.*; *see also id.* at 26 (“[F]ederal, state and local governments have . . . facilitated the migration of people and jobs (and the tax base they provide) toward an expanding metropolitan fringe, while reinforcing the concentration of poverty and the deterioration of older estab-

many state and federal programs pay lip service to rehabilitating existing Brownfield properties and promoting creative reuse of former industrial sites, increasingly complex regulations and outdated building codes have stifled the redevelopment of these commercial properties by private developers in the market.³¹

Older industrial cities also face a significant information gap as a result of failing school systems. Education continues to be a struggle as decreased tax bases often cannot support the most qualified teachers or provide students with many of the amenities available in suburban school districts. In fact, many of the nation's worst-performing school districts are in older industrial communities, including Milwaukee, Detroit, Newark, and Philadelphia.³² Older industrial communities also face significant problems with high school dropouts—for example, in 2006, six of the ten large urban school districts with the lowest high school graduation rates were in older industrial cities, including Detroit, Baltimore, Milwaukee, and Cleveland.³³ A failing school district is often cited as the primary deterrent to middle class families moving into or remaining in a city, further exacerbating the problems of suburban flight and the resulting depression of the local tax base.³⁴

Despite the significant challenges which older urban areas face, cities remain key assets to the local and national economies. As Vey

lished areas.”). In terms of residential property policy, the infamous New Jersey *Mount Laurel* cases shed light on the problem of urban concentration of affordable housing and obligated richer suburban municipalities to revise their land use regulations to take on their fair share of the region's need for affordable housing development. See *S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I)*, 336 A.2d 713 (N.J. 1975); *S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II)*, 456 A.2d 390 (N.J. 1983). See also Cassandra N. Jones, *Public Land Banking and Mount Laurel II—Can There Be a Symbiotic Relationship?*, 15 RUTGERS L.J. 641, 647 (1984) (discussing how land banking can promote the doctrine established in the *Mount Laurel* decisions).

31. VEY, *supra* note 1, at 29–30 (noting how otherwise “market-ready” structures in older industrial areas are not redeveloped because of complex and outdated government regulations). HUD's Office of Policy Development and Research recently published a symposium that offers keen criticism of the current Brownfield program. See generally Symposium, *Brownfields*, 12 CITYSCAPE: J. PUB. POL'Y & RES. (2010), available at <http://www.huduser.org/periodicals/cityscape.html> (providing review and criticism of current Brownfield program, including evaluation of Brownfield efforts in Baltimore, Maryland).

32. See VEY, *supra* note 1, at 26 (“In 2004, seven of the 10 large urban school districts with the widest percentage point gap between their 7th grade and 8th grade reading and math test scores and that of their respective states were older industrial cities . . .”).

33. *Id.* High school graduation rates were 21.7% in Detroit, 38.5% in Baltimore, 43.1% in Milwaukee, and 43.8% in Cleveland. *Id.*

34. *Id.* at 45.

notes, "With over 16 million people and nearly 8.6 million jobs, older industrial cities remain a vital—if undervalued—part of our economy, particularly in states where they are heavily concentrated, such as Ohio and Pennsylvania."³⁵ One of the untapped assets of many declining industrial cities is their vacant land, which policy makers should view as a valuable resource to maximize, rather than as a negative problem to control.³⁶ What are needed are new and innovative methods of revitalizing these communities, building upon cities' assets while at the same time ameliorating the social ills that have become pervasive in older industrial cities. One such strategy is land banking.

B. The History of Land Banking in the United States

Land banking is the process through which local governments acquire and assemble properties to "bank" land for short- or long-term strategic public purposes.³⁷ The concept of land banks arose in the 1960s and 1970s when urban planners suggested that cities and towns acquire vacant green-field properties at the periphery of the urban edge for long-term use planning and control of urban sprawl.³⁸ Land banks were suggested as an alternative method of government land use planning through the artificial control and stabilization of the local market for land.³⁹

However, these entities, perhaps better defined as "land reserve[s],"⁴⁰ faced significant political opposition, as critics cited the unconstitutionality of a government taking private property and

35. *Id.* at 8.

36. BOWMAN & PAGANO, *supra* note 11, at 3–4 ("Instead of seeing a vacant lot as a problem to be managed, one can see it as an opportunity to be realized.").

37. Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 140, 143 (2004) [hereinafter Alexander, *Land Bank Strategies*]; see also ALEXANDER, *LAND BANKING AS METROPOLITAN POLICY*, *supra* note 16, at 3.

38. See William B. Stoebuck, *Suburban Land Banking*, 1986 U. ILL. L. REV. 581, 581, 584 (1986) ("Public land banking is a process by which a government authority assembles land, usually on the periphery of an urban center, with a view to selling it for development at some future date." (quoting Jack Carr & Lawrence B. Smith, *Public Land Banking and the Price of Land*, 51 LAND ECON. 316 (1975)); see also Jones, *supra* note 30, at 647 (defining land banking as "'a system in which a governmental entity acquires land in a region that is available for future development for the purpose of controlling the future growth of the region'" (quoting MODEL LAND DEV. CODE (Tentative Draft No. 6, 1974), at 254)).

39. Alexander, *Land Bank Strategies*, *supra* note 37, at 143–44.

40. *Id.* at 143.

holding it without an established redevelopment goal, potentially in perpetuity.⁴¹

In the urban redevelopment context, land banks were proposed as “a tool for expediting urban redevelopment in declining areas of the city,”⁴² particularly as a method for dealing with vacant, abandoned, and deteriorated properties, which cities were not adequately managing through either nuisance or zoning laws.⁴³ Today, most urban land banks are founded for these purposes and seek to foster redevelopment of struggling urban areas and combat the problems of vacant properties and urban blight, rather than for control of suburban sprawl or preservation of green spaces.⁴⁴ The ideological underpinning for a modern urban land bank is that “properties at the heart of ‘urban blight’ can and should be viewed as assets for community development and redevelopment.”⁴⁵ Land banks acquire a city’s worst problem properties—those that often are never recouped by the private real estate market—successfully manage them; remove title problems; and partner with developers, nonprofits, and neighbors to foster redevelopment on a large scale.⁴⁶ The U.S. Department of Housing and Urban Development (HUD) has recently included this concept in its definition of land banks: “A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.”⁴⁷

41. See Jones, *supra* note 30, at 652–53, 655 n.90 (“One of the chief concerns surrounding the legality of land banking has always been that the property is acquired for an unspecified use and time.”); see also ALAN W. EVANS, *ECONOMICS, REAL ESTATE AND THE SUPPLY OF LAND* 181–85 (2004) (noting the benefits of public land banking in urban outgrowth areas, but also the political objection to government intervention generally or in the land market which has made “land reserve” type land banks largely unpopular); Stoebuck, *supra* note 38, at 602–05.

42. Alexander, *Land Bank Strategies*, *supra* note 37, at 144 (quoting JOHN SPANGER, *LAND BANKS FOR PLANNING AND CONTROL* iv–10 (1967)).

43. *Id.*

44. Modern urban land banks can also be contrasted with “project land banks,” which are usually limited-scope ventures by a redevelopment authority that accumulates land parcels at a specific site to develop a city’s waterfront, housing project, new industrial plant, etc. See *id.* at 144–47.

45. *Id.* at 140.

46. See *infra* Parts II.B.2–3 & III.

47. Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment and Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008, 73 Fed. Reg. 58,330, 58,332 (Oct. 6, 2008), revised by 74 Fed. Reg. 29,223, 29,224 (June 19, 2009).

1. *Creation of land banks – the necessity of state tax foreclosure law reform*

The five major metropolitan land banks—St. Louis, Cleveland, Louisville, Atlanta, and Flint (the GCLB)—were all created to deal with vacant, abandoned, and tax delinquent properties that resulted from the economic and social decline of older industrial cities, including “sharp decline[s] in population and a broad divestment of private market resources.”⁴⁸ Each of these cities faced the significant challenge of dealing with vacant property, both residential and industrial, left fallow as a result of the decline of their cities in the prominence of the national economy.⁴⁹ These parcels quickly proved unmarketable, primarily because of the significant amount of delinquent taxes owed on the property, coupled with a general low market value as a result of the economic decline of the city as a whole.⁵⁰ In addition, inefficient and ineffective local tax foreclosure proceedings, which often took four or five years to complete, further inhibited private efforts to acquire and redevelop these properties.⁵¹ Local tax and code enforcement liens also encumbered the titles of many vacant properties, further decreasing the properties’ value, since private investors often require a clear and insurable title as a prerequisite for redevelopment.⁵² In addition, because tax delinquencies continue to grow each year that a given property is in default, often the amount of back taxes owed on the property would exceed the property’s fair market value, further inhibiting the parcel’s marketability.⁵³

48. ALEXANDER, *LAND BANK AUTHORITIES*, *supra* note 5, at 7; *see also* Alexander, *Land Bank Strategies*, *supra* note 37, at 146–49 (discussing loss of population and economic decline caused by industrial flight as endemic to all cities that created land banks); OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18, at 2 (“Contemporary urban land banks were created in response to a large number of tax-delinquent properties and widespread property abandonment in cities experiencing a loss of industrial jobs.”).

49. *See* ALEXANDER, *LAND BANKING AS METROPOLITAN POLICY*, *supra* note 16, at 5 (“[E]xcess supplies of real estate can occur . . . when there is a loss of dominant employment centers leading to residential and economic abandonment. This is the story of the urban cores in our major industrial cities over the past 30 years.”).

50. ALEXANDER, *LAND BANK AUTHORITIES*, *supra* note 5, at 8.

51. *Id.* at 14–15.

52. *Id.* at 15; *see also id.* at 18 (“One of the primary reasons that normal market forces do not reach vacant, abandoned, and tax delinquent property is that there are numerous defects or clouds on the title to the property. If title to property is not marketable, it usually is not insurable, and if not insurable it has little if any value to prospective owners.”).

53. *Id.* at 14, 16 (“When tax liens exceed fair market value, the property simply will not be transferred on the open market.”).

As a result of these encumbrances, the states which pursued urban land banking chose to reform their tax foreclosure proceedings to create a regulatory environment in which land banks could successfully operate.⁵⁴ Frank S. Alexander, the leading legal scholar on land banking, suggests that several reforms to a typical state foreclosure statute are necessary in order to foster the establishment of land banks: (1) shifting to *in rem* foreclosures – whereby courts seek judgment against the property itself rather than holding the owners personally liable – to solve jurisdictional problems often apparent with tax liens; (2) creating judicial tax foreclosure proceedings to provide a final judicial decision which will enable the property to have a clear title which is insurable; (3) shortening tax foreclosure time periods to decrease the length of time a property remains in limbo; and (4) creating no-bid transfers to the land bank so that if the minimum bid at foreclosure sale is not met, the property automatically gets transferred to the land bank authority.⁵⁵ In addition, Alexander recommends that states implement a “conduit transfer” program, first utilized by the Atlanta Land Bank, whereby delinquent taxes are extinguished or significantly reduced if the property is transferred to a non-profit or for-profit developer who will develop the properties for a specific agreed upon purpose.⁵⁶ Lastly, allowing urban land banks to pursue quiet title actions⁵⁷ would enable the speedy resolution of any title defects which may remain on a given parcel of property.

54. *See id.* at 8; *see also id.* at 12–20 (discussing the barriers to property reuse and the need for reforming local tax foreclosure proceedings).

55. *Id.* at 15–16. Alexander also recommends provisions for constitutionally adequate notice and large-volume bulk foreclosure. *Id.*

56. *Id.* at 16. Conduit transfer programs allow the land bank to extinguish all back taxes, which in turn allows the private market to identify which parcels they are willing to redevelop, functioning as a quasi-subsidy to encourage private-market transfers in a neighborhood for a specific end-use or policy goal. *See id.* at 27.

57. A quiet title action is a specially designed judicial proceeding which establishes constitutionally adequate notice to all parties who have an interest in the property and gives them the opportunity to redeem the property from the tax lien. Failure of the property owner to do so will result in the creation of a clear title in the local government’s name that can then be transferred at no cost to the land bank authority. *See id.* at 19.

2. Powers – acquisition, management, disposition, and financing

State enabling legislation created each of the five major land banks were created via state enabling legislation.⁵⁸ Such legislation establishes the land bank as either a regional or local entity and lists its essential powers, central policy goals, and funding sources. State authorization for municipalities to create land banks is one of the primary challenges a locality seeking to establish a land bank faces, as only a handful of states currently expressly grant this authority to local government sub-units.⁵⁹ Each of the five major metropolitan land banks listed above have various governing structures and policies, but each have the same essential legal authority: “the power to acquire, manage, and dispose of property.”⁶⁰

Some land banks, including St. Louis, Louisville, and Cleveland, receive all properties that are not sold at tax foreclosure proceedings for the required minimum bid, resulting in the conveyance of approximately 100 to 1000 properties to each land bank per year.⁶¹ Other land banks, including Genesee County and Atlanta, acquire property in much the same manner, but often have the option of receiving these properties, rather than an automatic acquisition. As a result, the GCLB receives approximately 800 to 1000 parcels per year.⁶² Some of the land banks, including Cleveland, Atlanta, and Genesee County, also encourage voluntary donations and transfer from private owners through deed conveyance as an alternative means of dealing with a property about to go into tax foreclosure proceedings.⁶³

Upon receipt of each property, the land bank becomes responsible for maintenance and upkeep, which poses a significant economic burden upon the land bank’s operations and finances. Often, land banks contract with third-party property management corporations to maintain the properties while the land bank works towards ultimate disposition of the property.⁶⁴ This in turn raises the primary is-

58. See *id.* at 58–80 for a compilation of the state land bank statutes through 2004 for Georgia (GA. CODE ANN. §§ 48-4-60 to -65), Kentucky (KY. REV. STAT. ANN. §§ 65.350–.375), Michigan (MICH. COMP. LAWS §§ 124.751–.774), Missouri (MO. REV. STAT. §§ 92.875–.920), and Ohio (OHIO REV. CODE ANN. §§ 5722.01–.15).

59. Schilling, *supra* note 21, at 118–19.

60. Alexander, *Land Bank Strategies*, *supra* note 37, at 22, 150.

61. ALEXANDER, *LAND BANK AUTHORITIES*, *supra* note 5, at 23.

62. *Id.*

63. *Id.* at 23–24.

64. *Id.* at 24.

sue of how to finance the ongoing operating budget of the land bank and the related revenue stream, a difficult hurdle for many older industrial cities which are already saddled with a depreciated tax base and low levels of private investment. Many of the existing successful land banks utilize funding from the budgets of local government agencies, such as the city's planning department or the county redevelopment authority.⁶⁵ Others use management expertise and staff from local government and nonprofit agencies, who dedicate a portion of their budget or a number of their staff hours to the operation of the land bank.⁶⁶ The source of operating capital for the land bank is often the most difficult challenge, and advocates have long called for federal funding to support land bank initiatives.⁶⁷

A land bank may also recoup some operating funds through the eventual sale of its properties on the private market. However, this raises a related concern—what is the proper price at which to sell these properties? Traditionally, constitutional parameters required that the sale price of publically owned property to a third party be at fair market value.⁶⁸ However, as previously discussed, land banks receive properties for the predominate reason that no private market exists for the properties to begin with⁶⁹—these properties were wallowing for years without redevelopment or absorption by the private market. If land banks' main goal is to transform vacant and underutilized property into productive uses, "any sales price other

65. *Id.* at 25.

66. *Id.* at 25–26.

67. See Schilling, *supra* note 21, at 119 ("[F]inancing the start of the land bank and its operations would also pose challenges to many cities, especially those Rust Belt cities with already weak fiscal capacity."). Recently, the federal government recognized the merits of land banking for the first time and established a funding stream in the Housing and Economic Recovery Act of 2008 through Neighborhood Stabilization Program grants, discussed in detail below. See *infra* Part IV.

68. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5, at 25. The traditional requirement for payment of fair market value in this context is derived from public takings law, which traditionally requires payment of fair market value for a property in order to satisfy the Fifth Amendment's mandate of "just compensation." U.S. CONST. amend. V ("[N]or shall private property be taken for public use, without just compensation."); see also, e.g., Kirby Forest Indus., Inc. v. United States, 467 U.S. 1, 10 (1984) ("'Just compensation,' we have held, means in most cases the fair market value of the property on the date it is appropriated . . . 'Under this standard, the owner is entitled to receive what a willing buyer would pay in cash to a willing seller at the time of the taking.'" (citation omitted) (quoting United States v. 564.54 Acres of Land, 441 U.S. 506, 511 (1979))).

69. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5, at 47 ("[M]any properties end up in the land bank precisely because there is no clear private market for their sale, or no clear market value.").

than a nominal price . . . reduces the return of properties to this status . . . [and] restricts the land bank's ability to transfer value [of the land] to an entity as a form of subsidy in order to accomplish other stated public goals"⁷⁰ Thus, the more successful land bank authorities often have far broader discretion at setting the prices for the disposition of their properties—either by exempting land banks from the state's public property disposition regulations or by establishing alternative price setting provisions in order to encourage private reclamation of these properties and eventual redevelopment.⁷¹

3. *Traditional policy focus – land banking for affordable housing*

Governments primarily create urban land banks to accumulate vacant and abandoned properties as a method of combating urban blight in declining older industrial urban areas of the Northeast and Midwest.⁷² The five major metropolitan land banks, discussed above, all share a primary focus of acquiring vacant, abandoned, tax-delinquent, and foreclosed properties and converting them for new uses.⁷³

The principal policy goal of most of these entities has been the creation of affordable housing—with a secondary goal of fostering economic redevelopment, usually through the use of mixed-use developments or mixed-income housing projects.⁷⁴ As a result, most land banks give public agencies and nonprofit community development corporations first grab at any property acquired through the land bank process. For example, when disposing of its properties, the St. Louis Land Bank gives priority to public agencies for public

70. *Id.*; see also *id.* at 31 (“To the extent that a local government requires land bank properties to be conveyed at or near full fair market value, the land bank loses flexibility and discretion to use the property as a stimulus for new investment”).

71. See *id.* at 47 (noting that the Louisville, Atlanta, and Genesee County land banks have broad authority to establish terms and conditions of property conveyance to private parties).

72. See *id.* at 7–10 (discussing how older industrial cities face challenges of weak real estate conditions and population flight to suburban areas).

73. Alexander, *Land Bank Strategies*, *supra* note 37, at 146–47.

74. ALEXANDER, *LAND BANKING AS METROPOLITAN POLICY*, *supra* note 16, at 7 (“The most commonly held goal for land banking programs is to convey property to not-for-profit entities for affordable housing, including both homeownership and rental programs. The second objective generally is to foster economic redevelopment by conveying properties to a not-for-profit entity or a for-profit entity for the creation of mixed use developments or mixed-income housing.”).

use projects.⁷⁵ Similarly, the Louisville Land Bank gives its highest priority to public housing authorities for residential use projects and the Atlanta Land Bank gives priority to neighborhood nonprofit entities which will create low-income housing.⁷⁶ Through conveyance to community development corporations and other nonprofit entities, a major result of land banking is that the majority of property acquisitions result in the development of new, or the rehabilitation of old, affordable housing units—either as owner-occupied or rental properties.

III. PROPOSED NEW FOCUS FOR LAND BANKS—ECONOMIC DEVELOPMENT AND REVITALIZATION OF THE URBAN DOWNTOWN

Revitalizing aging housing and related infrastructure and developing affordable housing units have been the primary goals for many of the existing urban land banks. Less common has been the use of land bank strategies as a long-term mode of accumulating valuable, but underproductive, urban plots for downtown infill development, including commercial, office, and retail space. However, limiting land banks to the development of affordable housing curtails their key potential—the power to create clear title to abandoned, tax-delinquent, or underutilized properties, as well as the ability to consolidate fragmented parcels greater flexibility in future development.⁷⁷ In order to achieve the goal of economic redevelopment, struggling cities need to capitalize on one of their primary assets, their land,⁷⁸ and land banks are an innovative tool by which to do so.

Often, in an older industrial city that does not have a land bank entity, the responsibility for control and management of vacant property is divided amongst a variety of government agencies and departments. For example, in Philadelphia, which does not

75. See Alexander, *Land Bank Strategies*, *supra* note 37, at 155–57; see also ALEXANDER, *LAND BANK AUTHORITIES*, *supra* note 5, at 33.

76. Alexander, *Land Bank Strategies*, *supra* note 37, at 155–57; see also ALEXANDER, *LAND BANK AUTHORITIES*, *supra* note 5, at 33.

77. Hughes, *supra* note 6 (discussing how the creation of land banks can help solve the problems created in older industrial cities, including Philadelphia, and streamline the private development process); OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18, at 3–4 (noting that land banks have the key ability to assemble adjoining parcels of land to create a larger, more marketable piece of property that is more attractive to private developers).

78. See BOWMAN & PAGANO, *supra* note 11, at 125.

currently have a land bank authority, as many as fifteen public agencies may have responsibility for a given piece of vacant land or have a lien against it.⁷⁹ In addition, current federal Brownfield grant programs, which are intended to foster reinvestment in older communities, are often criticized as having overly complicated and expensive site-remediation requirements, which work to thwart private re-investment rather than encourage it.⁸⁰ Land banks can help to solve these problems.

As Alexander notes, “[L]and banks can remove redevelopment barriers that hamper the creation of functioning private markets for conversion of abandoned land to better and higher uses.”⁸¹ In addition, “Land banking . . . may remedy size and shape problems, thus increasing the development potential of the assembled parcel. In high-demand land markets, land banking also offers cities a way to manage and market a resource” — their land.⁸² The ability to create a clear title to vacant and abandoned properties and to assemble and consolidate fragmented parcels of land are key benefits of land banking which encourage the private market to enter into extensive investment and redevelopment in an older industrial city.⁸³ The very existence of a land bank — along with its efforts to stabilize the local land market and maintain vacant property — can serve as a key impetus for new private development. For example, the creation of the Cleveland Land Bank served as the catalyst for redevelopment of its central city, despite facing a 40% poverty rate and significant population decline in the 1980s.⁸⁴ Reinvestment through land banking can create a “domino effect that attracts for-profit developers and businesses,” which is imperative for the long-term success of any city’s revitalization efforts.⁸⁵

Land banks not only serve a stabilizing function, working to stem the tide of increasing blighted and vacant properties, but can also

79. Hughes, *supra* note 6, at 39 (advocating a single “blight authority” to replace Philadelphia’s current fragmented administrative structure and calling for the creation of a Philadelphia land bank).

80. *E.g.*, VEY, *supra* note 1, at 32 (arguing that the procedural and legal steps required for Brownfield projects often “scare potential investors away”).

81. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5.

82. BOWMAN & PAGANO, *supra* note 11, at 143.

83. Hughes, *supra* note 6, at 39 (“What is valuable is the land, not the largely obsolete buildings. Demolition, maintenance, redevelopment — almost everything — is cheaper with assembly and consolidation.”).

84. Bright, *supra* note 12, at 55–56.

85. *Id.* at 56.

serve the unique purpose of being development risk takers. By providing clear title to vacant land and clearing the local red tape, land banks can be a creative way to fill the gap for private development of market rate housing and, more importantly, downtown infill commercial real estate projects. “By taking the initial risk of preparing land in weak real estate markets or controlling the surplus of foreclosed properties in strong real estate markets, land banks can encourage private investment and create momentum for neighborhood revitalization.”⁸⁶ As Alexander explains:

Land banks are unusual entities in that they occupy a special role in the public sector but one that is designed in large measure to support and facilitate activity in the private sector. They are necessary because of the collapse of general economic conditions in certain parts of communities and the presence of legal barriers and public policies that tend to keep properties locked into a state of deterioration and abandonment.⁸⁷

In addition, allowing land banks to convey property to developers for nominal fees, or at a rate lower than fair market value, provides a significant subsidy to make a development project in a less-than-desirable location a more favorable investment opportunity.

A land bank’s focus on affordable housing ignores other opportunities and creates a fatal flaw, perpetuating the already existing problems in older industrial cities and concentrating affordable housing in the neighborhoods that already have the greatest economic stagnation.⁸⁸ Planning, housing, and community development offices in many urban areas have long focused on rehabilitating housing stock as a means of revitalizing their cities. However, pouring massive amounts of government capital and investment into affordable housing through the land bank process will not achieve the goals of economic revitalization of the entire city. Older industrial cities’ challenges, including vast amounts of vacant and underutilized property, have arisen primarily because of the flight of capital and industry from their cities.⁸⁹ By revitalizing a city’s housing stock without fostering private investment—as many land

86. Schilling, *supra* note 21, at 117.

87. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5, at 42.

88. See VEY, *supra* note 1, at 32 (“While homeownership policies funnel wealth to the suburbs, affordable housing policies concentrate poverty in the cities.”).

89. See *infra* Part III.A.

banks are currently doing—cities may successfully create new affordable housing for lower- and moderate-income individuals, yet fail to provide adequate employment opportunities. Without the attraction of new employment bases, the older industrial cities of the Northeast and Midwest will mire in their current depressed economic conditions.

Therefore, a more successful model of utilizing land banks to revitalize an aging city is to develop a primary goal, or a parallel goal, to attract and retain new businesses and commercial entities. While creating affordable housing and reclaiming vacant, tax-delinquent, and derelict properties will most likely remain a primary goal of many land banks, without a parallel goal of fostering private investment in the local marketplace and creating new commercial and industrial entities to provide a source of jobs, land bank's efforts will be stunted. Large-scale changes to the physical environment of the urban downtown—predominately through commercial, office, industrial, and retail property—will create the lasting economic effects that older industrial cities seeking revitalization desperately need.⁹⁰ The more creative land banks, in particular the GCLB in Flint, Michigan, have followed this model and have utilized their ability to acquire vacant property as a financial tool for urban economic redevelopment,⁹¹ which can serve as a model for a land bank's success.

A. Genesee County Land Bank – A Model for Urban Revitalization

The GCLB,⁹² which operates primarily in the city of Flint, Michigan, is arguably the most successful of the existing urban land bank programs. Flint, Michigan, the hometown of famed documentarian

90. Fritz W. Wagner et al., *Conclusion: Summary and Future Research*, in *MANAGING CAPITAL RESOURCES FOR CENTRAL CITY REVITALIZATION* 147, 149 (Fritz W. Wagner et al. eds., 2000) (arguing that a commitment to physical revitalization will lead to the improvement of central city residents' quality of life).

91. See Kathleen Gray, *Land Banks Gain Popularity as Way To Fight Urban Blight*, USA TODAY, July 10, 2009, at 3A (discussing how the GCLB helped save the historic Durant Hotel in Flint, Michigan, to create a successful mixed-use redevelopment project including ninety-three apartments with a restaurant on the ground level); see also Gordon Young, *Faded Glory: Polishing Flint's Jewels*, N.Y. TIMES, Aug. 20, 2009, at D1 (discussing how the GCLB's \$6.2 million redevelopment of the Berridge Hotel into seventeen rental units was a catalyst for the broader upswing of the Carriage Town neighborhood of Flint, Michigan).

92. See generally *GENESEE COUNTY LAND BANK*, <http://www.thelandbank.org/> (last visited Apr. 16, 2011) (offering general information about the GCLB and promoting its neighborhood stabilization program).

Michael Moore, like many of its Rust Belt counterparts, is faced with the significant challenges of vacant housing and the dire need for economic redevelopment in the wake of industrial flight caused by General Motors' significant downsizing in the 1980s.⁹³ Since 2003, the GCLB has successfully demolished roughly 1000 dilapidated and unsafe properties, rehabilitated 90 affordable rental units and 80 single-family homes, and sold over 700 side yard lots to adjacent property owners through the innovative "side lot transfer" program.⁹⁴ According to a study performed by Michigan State University's Land Policy Institute, from 2002 to 2005 the GCLB's expenditure of \$3.5 million resulted in over \$112 million in economic benefits for Flint.⁹⁵

Unlike other land banks that traditionally focus on the creation and maintenance of affordable housing, the GCLB's primary goal is to "reduce the city's overall housing supply to better match its smaller population, while increasing the supply and quality of housing in still-vital neighborhoods and the downtown core."⁹⁶ In addition, the GCLB has established an extensive list of priorities to govern property disposition, including: (1) homeownership and affordable housing; (2) neighborhood revitalization; (3) return of property to productive tax-paying status; (4) land assemblage for economic development; (5) long-term banking of properties for future strategic uses; and (6) funding of land bank's operations.⁹⁷ Thus, the GCLB has not only engaged in affordable housing related projects, but also has focused on large-scale downtown development. The GCLB has had a number of successful economic development

93. See *Film: Roger & Me*, MICHAELMOORE.COM, <http://www.michaelmoore.com/books-films/roger-and-me> (last visited Apr. 16, 2011).

94. See Schilling, *supra* note 21, at 118; see also Chris McCarus, *Banking on Flint: County Treasurer Collects National Attention for Land Bank Program*, DOME MAG. (July 16, 2008), http://domemagazine.com/features/july08/cover_july08.html (describing redevelopment projects in Flint, Michigan); *Side Lot Transfer Program*, GENESEE COUNTY LAND BANK, <http://www.thelandbank.org/programs.asp#six> (last visited Apr. 16, 2011) (discussing some of the positive effects of selling side lots).

95. Schilling, *supra* note 21, at 118; see also NIGEL G. GRISWOLD & PATRICIA E. NORRIS, ECONOMIC IMPACTS OF RESIDENTIAL PROPERTY ABANDONMENT AND THE GENESEE COUNTY LAND BANK IN FLINT, MICHIGAN 4 (2007), available at <http://www.landpolicy.msu.edu> (follow "Publications" tab, then select "LPI Report Series," PDF document can be found under "Market Solutions to Land Use Problems" subsection) (last visited Apr. 16, 2011) (discussing how land banking can mitigate economic harm from abandoned property); see also McCarus, *supra* note 94.

96. McCarus, *supra* note 94.

97. ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5, at 33.

projects, including the conversion of a vacant downtown department store into a mixed-use residential and commercial building,⁹⁸ and the transformation of the historic Durant Hotel into a mixed-use property with ninety-three apartments and a restaurant on the ground floor.⁹⁹

The success of the GCLB's redevelopment projects has also caused a substantial spill-over effect into the surrounding neighborhoods. For example, the redevelopment of the Berridge Hotel and its effect on the surrounding Carriage Town neighborhood is often cited as one of the most successful of the GCLB's projects. What is perhaps most remarkable is what the neighborhood *used* to look like. In the 1980s, Carriage Town had the highest crime rate in Flint and was ranked among the most unsafe places to live in the country. The Berridge Hotel was the bull's-eye of the problem—a ninety-nine room “hotel” that rented rooms for \$19 per night and was a haven for recent parolees, drugs addicts, and prostitutes.¹⁰⁰ The GCLB stepped in, investing \$6.2 million in the redevelopment and conversion of the Berridge Hotel into seventeen loft-style units, which proved to be the catalyst for the broader upswing of the Carriage Town neighborhood.¹⁰¹ Now, homebuyers can purchase the historic homes in this neighborhood from the GCLB for prices ranging from as little as \$25,000 to \$90,000 and—with a bit of sweat equity—renovate them to their former glory.¹⁰²

The GCLB's strategic redevelopment projects have continued to attract and to foster private development in the downtown area, including the construction of a new office building for a civil engineering firm, the conversion of a former men's clothing store into a new Irish pub, and the creation of new dormitories for the University of Michigan—all located in the same neighborhood as the GCLB's Durant Hotel redevelopment project.¹⁰³ The GCLB's large scale, publically funded redevelopment projects demonstrate how the use of land banking and creative reuse strategies can foster and encourage

98. McCarus, *supra* note 94 (discussing GCLB's \$4 million renovation of a vacant downtown department store into a home for its own offices as well as the creation of residential and commercial offices, sparking reinvestment in downtown Flint).

99. *See id.*; *see also* Gray, *supra* note 91.

100. *See* Young, *supra* note 91.

101. *Id.*

102. *See id.*

103. Dan Barry, *Amid Ruin of Flint, Seeing Hope in a Garden*, N.Y. TIMES, Oct. 19, 2009, at A12.

economic redevelopment, in both the downtown commercial core and residential neighborhoods.

IV. THE FORECLOSURE CRISIS—CREATING A SPOTLIGHT FOR THE CREATION OF LAND BANKS

Despite the marked success of existing programs, land banking has not gained widespread popularity as a method of long-term land use planning and economic redevelopment. Opponents of land bank programs often cite concerns of large-scale public ownership of property coupled with a fear of the use of eminent domain for private developers.¹⁰⁴ However, in the wake of the current economic crisis and the continued impact of subprime mortgages and increased foreclosures, state and federal policy has begun to shift towards favoring the creation and funding of land banks on a broader scale.¹⁰⁵

In 2008, approximately 1.2 million homes went into foreclosure; analysts predict an additional 8 million foreclosures will occur between 2009 and 2012.¹⁰⁶ According to the U.S. Census Bureau, in the first quarter of 2009 there were over 14 million vacant housing units in the United States, an increase of 1.4 million units from the previous survey completed in 2006.¹⁰⁷ In urban areas, the foreclosure crisis had an even greater impact due to the high concentration of subprime loans—a 2005 study revealed that in poorer urban communities nearly one-half of all new mortgages were subprime.¹⁰⁸ Of the top ten foreclosure states in 2007, five were states that had a high concentration of older industrial cities, including Pennsylvania, Ohio, and Michigan.¹⁰⁹

The mortgage foreclosure crisis has resulted in two significant things for the prospects of land banking: a significant decline in

104. See ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5, at 44–49 (describing administrative policies and how to address concerns of opponents to land banking).

105. See OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18, at 4–5; see also ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 3–4, 16–17 (summarizing the shift in federal policy).

106. OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18, at 1; Alan Berube & Alan Mallach, *Foreclosures and Stimulus: What's at Stake for America's Neighborhoods*, THE BROOKINGS INSTITUTION (Feb. 9, 2009), http://www.brookings.edu/opinions/2009/0209_stimulus_berube.aspx.

107. OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18.

108. MALLACH, TACKLING THE MORTGAGE CRISIS, *supra* note 2, at 3.

109. *Id.* at 5. In the states with the largest foreclosure inventory, Pennsylvania ranked tenth, Ohio ranked third, and Michigan ranked fourth. *Id.*

property values and a significant increase in the number of vacant properties in a given locality.¹¹⁰ Some commentators believe that the rise in foreclosures, coupled with the tightening of the mortgage market and continuing economic recession will cause an increase in the number of vacant and abandoned properties for the foreseeable future.¹¹¹ As Alexander recently stated, “With so many communities around the country simultaneously struggling with vacant and abandoned properties, the challenge is clearly a national issue that has national ramifications for maintaining economic well-being and strengthening real estate markets.”¹¹² Property abandonment, which was once seen as only a problem for older economically depressed urban cities, has become a crisis throughout more affluent communities and, thus, a more widespread problem.¹¹³

A. Federal Funding – The Key Step Towards the Proliferation of Land Banks

In the wake of the current economic crisis, the overwhelming impact of foreclosures on the American economy, and the continuing increase in the number of vacant and abandoned properties, federal policy has begun to shift towards supporting the creation of land bank programs. Besides enacting state enabling legislation and reforming tax foreclosure laws, the second major hurdle that impedes many cities from creating land banks is a lack of adequate funding. Funding remains a particularly difficult challenge for older industrial cities in the Rust Belt, which often do not have adequate revenues to begin a land bank program.¹¹⁴

Prior to 2008, HUD’s major grant revenue streams categorically excluded funding to create and implement land banks¹¹⁵ and the federal government never provided direct support for land bank

110. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 10.

111. Schilling, *supra* note 21, at 104.

112. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 16.

113. See Schilling, *supra* note 21, at 109-11 (noting that 55% of municipal housing directors surveyed held vacant/abandoned property as a major or moderate problem for their city, and that 28% of city mayors surveyed said their city’s efforts to solve problems associated with vacant properties got worse in the wake of the foreclosure crisis); see also ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 9.

114. See Schilling, *supra* note 21, at 119.

115. See 73 Fed. Reg. 58,330, *supra* note 47, at 58,335 (explaining that funding for land banks is not allowed in the regular HUD Community Development Block Grant Program, from which many cities receive an entitlement funding each year).

creation.¹¹⁶ However, in HERA's innovative Neighborhood Stabilization Program (NSP),¹¹⁷ Congress called for the use of land banking as a method to combat foreclosures and provide local governments and nonprofit entities an innovative tool to stabilize the marketplace for urban land.¹¹⁸ Through the NSP, the federal government has provided funding for land banks for the first time.¹¹⁹

1. HERA's Neighborhood Stabilization Program

With HERA's Neighborhood Stabilization Program funds (NSP1), HUD allocated \$3.92 billion in grant funds to 254 local jurisdictions, which represented the localities with the greatest number and percentage of foreclosures, subprime mortgages, delinquencies, and defaults.¹²⁰ All grant funds must benefit low- and moderate-income households—those that earned less than 120% of the area median income,¹²¹ a typical mandate for all HUD housing related grants.¹²² A grant recipient, typically a local county or city government, may utilize NSP funds to: (1) establish financing mechanisms for purchase and redevelopment of foreclosed homes; (2) purchase and rehabilitate abandoned or foreclosed properties for eventual sale, rental, or redevelopment; (3) *establish land banks for homes that have been foreclosed upon*; (4) demolish blighted structures; and (5) redevelop demolished vacant properties.¹²³ Entities receiving grant funding need not provide matching funds¹²⁴—a common requirement in other federal and state grant sources.

116. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 16.

117. See Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, § 2301(c)(3)(C), 122 Stat. 2654, 2851 (2008) (codified at 42 U.S.C. § 4501 (2008)); see also 73 Fed. Reg. 58,330, *supra* note 47, at 58,332.

118. See OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 18, at 1-7; see also ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 19.

119. See generally HERA, § 2301 (providing federal funding for land banking).

120. See *id.* §§ 2301(c)(2), (f)(3)(A)(i); see also OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18, at 5.

121. OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18, at 5; see also 73 Fed. Reg. 58,330, *supra* note 47, at 58,335.

122. See, e.g., Community Development Block Grants, Eligible Activities, 24 C.F.R. § 570.200(a)(3) (2010) (requiring minimum of 70% of grant funding be used to benefit low- and moderate-income persons); HOME Investment Partnerships Program, Income Targeting: Homeownership, 24 C.F.R. § 92.217 (2010) (requiring that 100% of HOME funds spent on homeownership assistance programs be allocated to low-income households).

123. See HERA § 2301(c)(3) (emphasis added).

124. See *id.* § 2301(e)(2).

NSP funds also carry further restrictions which may work to impede a land bank's flexibility in terms of its acquisition and eventual disposition priorities. Land banks acquiring properties with NSP funding must purchase them at a below-market value, and the land bank must rehabilitate the property to the extent necessary to bring the property into compliance with local applicable building codes.¹²⁵ Also, any eventual sale of an NSP-funded property must be sold for a minimum value equal to the price of acquisition, plus any associated redevelopment or rehabilitation costs.¹²⁶ While this is not necessarily fair market value, it may be a higher price than the local market can sustain, which may limit the ability of a land bank to transfer the property to a private entity as a subsidy-based incentive for redevelopment.¹²⁷ In addition, the grantee must deposit any profits realized from the sale, rental, or redevelopment of NSP-funded properties within the first five years of the program with the U.S. Treasury and must utilize them for NSP-eligible purposes.¹²⁸

Perhaps the most detrimental restriction is that grantees may not use NSP funding to fund any project requiring the use of eminent domain as a mode of acquisition, unless such acquisition is for "public use."¹²⁹ Furthermore, the term "public use" in this setting categorically excludes economic development projects that "primarily benefit[] private entities."¹³⁰ The language of this section of HERA reflects the anti-eminent domain bias which has resulted in the wake of the infamous *Kelo v. City of New London*¹³¹ decision, where the Supreme Court held that the city's taking of a local woman's property through eminent domain proceedings as part of a larger urban economic redevelopment scheme satisfied the mandates of the Fifth Amendment's public use requirement.¹³² Despite the ruling that economic development did qualify as a valid public purpose under the Fifth Amendment, the Supreme Court left the door open for states to enact their own restrictions for eminent domain

125. *See id.* § 2301(d)(1)-(2).

126. *See id.* § 2301(d)(3).

127. *See supra* notes 67-70 and accompanying text.

128. *See* HERA § 2301(d)(4).

129. *Id.* § 2303.

130. *Id.*

131. 545 U.S. 469 (2005).

132. *Id.* at 484.

proceedings.¹³³ The backlash to *Kelo* has been extreme, and much has been written regarding state-by-state legislative enactments to narrow the definition of public use under the Takings Clause of the Fifth Amendment and their state constitutions.¹³⁴ Many states passed new legislation, which categorically prohibited the use of eminent domain by local governments for economic redevelopment initiatives that would primarily benefit private entities.¹³⁵ The restriction of NSP funding for economic development projects is one of the greatest burdens on the use of such funding for innovative land banking in older industrial cities. Since land banks are limited in their use of NSP funds for economic development initiatives, they will be de facto encouraged by HUD to focus their land bank efforts primarily on affordable housing, rather than on large-scale, downtown revitalization efforts of the type the GCLB has been successful in accomplishing.¹³⁶

The ARRA provided an additional \$1.93 billion in NSP funding.¹³⁷ While the substantive provisions of the legislation and associated regulations were not substantially different for the second round of NSP funding (NSP2), the funds authorized under ARRA permit the use of grant funding for land bank operational costs and permit land banks to target not only foreclosed properties but residential property in general.¹³⁸ The majority of funding for both the HERA-funded NSP1 and the ARRA-funded NSP2 programs has been

133. *Id.* at 489 (“We emphasize that nothing in our opinion precludes any [s]tate from placing further restrictions on its exercise of the takings power. Indeed, many [s]tates already impose ‘public use’ requirements that are stricter than the federal baseline.”).

134. *See, e.g.*, Edward J. López et al., *Pass a Law, Any Law, Fast! State Legislative Responses to the Kelo Backlash*, 5 REV. L. & ECON. 101, 102 (2009) (noting that forty-one states have passed legislation in response to *Kelo*); *see also* Andrew P. Morriss, *Symbol or Substance?: An Empirical Assessment of State Responses to Kelo*, 17 SUP. CT. ECON. REV. 237, 240 (2009) (noting that forty-six states introduced legislation to restrict eminent domain powers following the *Kelo* decision); Lynn E. Blais, *Urban Revitalization in the Post-Kelo Era*, 34 FORDHAM URB. L.J. 657 (2007); Daniel H. Cole, *Why Kelo Is Not Good News for Local Planners and Developers*, 22 GA. ST. U. L. REV. 803 (2006).

135. *See, e.g.*, 26 PA. CONS. STAT. ANN. § 204(a) (2006) (codifying Pennsylvania’s legislative response to *Kelo*, which excludes the taking of private property for the use of private enterprise). However, the Pennsylvania statute permits certain enumerated exceptions, including if the property to be taken is abandoned, blighted, or will be developed into affordable housing. *See id.* § 204(b)(1)–(9).

136. *See supra* Part III.A (discussing the GCLB’s success in revitalizing parts of Flint, Michigan).

137. *See* American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 115 (2009).

138. OFFICE OF POLICY DEV. & RESEARCH, *supra* note 18, at 5.

allocated to older industrial communities. For example, Pennsylvania received a total of \$59,631,318 in NSP1 funding for statewide programs; of that, Philadelphia received \$16,832,873, and Pittsburgh received \$2,002,958.¹³⁹ The NSP2 allocations followed a similar vein—Philadelphia received \$43,942,532, and the city of Reading received \$5,000,000.¹⁴⁰

As a result of this newly created federal funding for land bank activities and the proven success of existing land banks, a number of new land banks are in the process of being created, including one in Baltimore, Maryland.¹⁴¹ The city of Baltimore received \$4,112,239 in NSP1 funding and two local community development nonprofits—Healthy Neighborhoods, Inc. and Chicanos Por La Causa, Inc.—received an additional \$31,382,096 in NSP2 funding.¹⁴² Baltimore is now acquiring vacant properties and razing them to make room for the East Baltimore Biotech Park development, \$200 million development which will include new office buildings for nearby Johns Hopkins University Hospital and create new jobs, job training, and housing.¹⁴³

2. *Effect of new federal funding on land banks*

While the funding provided through the NSP was a positive step towards the broader use and proliferation of land banks, the restrictions on funding included in the program will ultimately undermine the strength of land banks and their ability to be innovative leaders in urban redevelopment. In particular, the NSP's restrictions against the use of eminent domain for economic development¹⁴⁴ and the re-

139. OFFICE OF CMTY. PLANNING & DEV., U.S. DEP'T OF HOUS. & URBAN DEV., NEIGHBORHOOD STABILIZATION PROGRAM GRANTS, PENNSYLVANIA: NSP-1 STATE REPORT NOV 2010, <http://hudnsphelp.info/media/snapshots/11-30-2010/1st-PA-R03-11302010.pdf> [hereinafter OFFICE OF CMTY. PLANNING & DEV., NSP-1 STATE REPORT].

140. OFFICE OF CMTY. PLANNING & DEV., U.S. DEP'T OF HOUS. & URBAN DEV., NEIGHBORHOOD STABILIZATION PROGRAM GRANTS, NSP2 AWARDS BY STATE, <http://hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp2grantchart.pdf> [hereinafter OFFICE OF CMTY. PLANNING & DEV., NSP2 AWARDS BY STATE].

141. See Gray, *supra* note 91; see also OFFICE OF POL'Y DEV. & RESEARCH, *supra* note 18, at 12-15.

142. See OFFICE OF CMTY. PLANNING & DEV., NSP-1 STATE REPORT, *supra* note 139; OFFICE OF CMTY. PLANNING & DEV., NSP2 AWARDS BY STATE, *supra* note 140.

143. Jennifer Hlad, *Turning East Baltimore Neighborhood Around Isn't Easy*, BALT. SUN, Dec. 21, 2009, at 3A.

144. HERA, Pub. L. No. 110-289, § 2303, 200, 200-01 (2009).

quirements for mandatory low-moderate income set-asides¹⁴⁵ propagate the same antiquated methods of urban redevelopment that land banks seek to innovate. In addition, the NSP focuses too heavily on the creation of affordable housing, rather than on the broader goal of economic redevelopment of the community as a whole.

While the funding provided through HERA and ARRA for NSP-related projects is significant, analysts agree that it is not sufficient given the continued magnitude of the problem.¹⁴⁶ Furthermore, the NSP funding is designed to be a short-term, specialized funding stream, as funding provided through the program must be expended within eighteen months of receipt.¹⁴⁷ Some also argue that the NSP funding formula may have actually benefited “newer” cities where foreclosure-related vacancies occurred later, rather than benefiting older industrial cities that had struggled with similar problems for decades.¹⁴⁸ HUD guidelines also do not allow grant recipients to use NSP funding to cover the costs of maintaining a property “in a static condition” (mainly holding costs) or to pay for any costs associated with eventual sale of the property – two significant costs associated with land bank activities.¹⁴⁹ Lastly, critics of the ARRA relate that the funding reflects the same anti-urban bias which has continued to exist in many federal funding programs.¹⁵⁰

B. State Enabling Legislation – An Innovative Response from Pennsylvania

The first major obstacle for older industrial cities in creating a land bank is each respective state enacting comprehensive land

145. *Id.* § 2301(f)(3).

146. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 19; *see also* *Neighborhood Stabilization Program*, THE REINVESTMENT FUND, Winter 2009, http://www.trfund.com/about/newsletters/Winter_2009/NSP_web.pdf.

147. ALEXANDER, LAND BANKING AS METROPOLITAN POLICY, *supra* note 16, at 19.

148. *See* Schilling, *supra* note 21, at 162.

149. ALLAN MALLACH, BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, STABILIZING COMMUNITIES: A FEDERAL RESPONSE TO THE SECONDARY IMPACTS OF THE FORECLOSURE CRISIS 29 (2009), *available at* http://www.brookings.edu/reports/2009/02_foreclosure_crisis_mallach.aspx.

150. *See* MARK MURO, ET AL., THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, IMPLEMENTING ARRA: INNOVATIONS IN DESIGN IN METRO AMERICA 5 (2009), *available at* http://www.brookings.edu/reports/2009/0723_american_recovery_reinvestment_act.aspx.

bank enabling legislation.¹⁵¹ Pennsylvania, which was identified as having the highest number of struggling older industrial cities in the Brookings Institution's *Restoring Prosperity* study,¹⁵² has recently followed the example of its sister states and proposed land bank enabling legislation. In 2009, the Municipal Land Bank and Affordable Housing Act¹⁵³ and the Land Bank Act¹⁵⁴ were presented in the Pennsylvania General Assembly. The Municipal Land Bank and Affordable Housing Act keeps with the tradition of the majority of existing state land bank legislation, with a policy priority of creating affordable housing.¹⁵⁵ However, the Land Bank Act, proposed by Pennsylvania State Representative John Taylor of Philadelphia, is a more expansive statute, and incorporates the priorities of economic redevelopment of downtown urban areas.¹⁵⁶

1. *Pennsylvania Senate Bill 177 – Municipal Land Bank and Affordable Housing Act*

In February 2009, the Pennsylvania Senate enacted the Municipal Land Bank and Affordable Housing Act,¹⁵⁷ which authorizes the es-

151. Schilling, *supra* note 21, at 118–19 (noting that as of 2009, only five states had existing land bank enabling statutes (Georgia, Kentucky, Michigan, Missouri, and Ohio) and that an additional three states (Indiana, Texas, and Maryland) had proposed state legislation).

152. See VEY, *supra* note 1, at 12, 14 (noting that nine out of the ten Pennsylvania cities included in the data set were designated as “weak”). Of all fifty states, Pennsylvania had the highest proportion of cities designated as “weak,” including Philadelphia, Pittsburgh, Erie, Allentown, Harrisburg, Altoona, Lancaster, Scranton, and Reading. *Id.* at 14, 69–76. In fact, the only Pennsylvania city that was not determined to be “weak” was Bethlehem, which still ranked 265 out of 302 cities in City Economic Condition, and 187 out of 302 cities for City Residential Well-Being. *See id.* at 69. When the study was expanded to add an additional seventy-four cities to the dataset, three more Pennsylvania cities (Wilkes-Barre, Williamsport, and York) were also determined to be “weak.” *See* JENNIFER S. VEY, THE BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM, *State Profile: Pennsylvania*, in RESTORING PROSPERITY: THE STATE ROLE IN REVITALIZING AMERICA’S OLDER INDUSTRIAL CITIES 1 (2007), available at http://www.brookings.edu/reports/2007/05metropolitanpolicy_vey.aspx.

153. S. 177, 193d Gen. Assemb., Reg. Sess. (Pa. Feb. 2, 2009).

154. H.R. 712, 194th Gen. Assemb., Reg. Sess. (Pa. June 28, 2010). House Bill 712 received overwhelming support in the Pennsylvania House of Representatives, passing by a 190-8 margin on June 29, 2010. *See House Roll Calls, House Bill 712 PN 4003*, PENNSYLVANIA HOUSE OF REPRESENTATIVES, http://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action1.cfm?sess_yr=2009&sess_ind=0&rc_body=H&bill_body=H&bill_type=B&bill_nbr=712&rc_date=06/29/2010.

155. *See supra* note 74 and accompanying text.

156. *See* H.R. 712, 194th Gen. Assemb., Reg. Sess. § 10(f)(3) (Pa. June 28, 2010) (noting that land bank priorities include “retail, commercial and industrial activities”).

157. *See* S. 177, 193d Gen. Assemb., Reg. Sess. §§ 2–7 (Pa. Feb. 2, 2009).

establishment of land banks with the approval of the local electorate through a referendum, for the purposes of open-space preservation and affordable housing programs.¹⁵⁸ The Act permits localities to establish local land banks and to dedicate all or a portion of municipal property transfer taxes to create a land bank fund for land bank programs and operations.¹⁵⁹ Yet, the scope of the Act remains limited to only open-space and affordable housing uses, and any land acquired by the land bank must be held and used for public purposes.¹⁶⁰ Under the Act, acquirers of open space and undeveloped land must use it for conservation, preservation of agricultural land, public parks, preserves, or recreational spaces.¹⁶¹ For an affordable housing-focused land bank, use of land bank funding is limited to establishing grants to nonprofit organizations, housing authorities, and redevelopment authorities for the creation of affordable housing.¹⁶²

2. *Pennsylvania House Bill 712 – Land Bank Act*

In March 2009, Pennsylvania state representative John Taylor introduced the Land Bank Act, which would enable localities to create land bank authorities with a broader, urban redevelopment focus.¹⁶³ The Land Bank Act recognizes the struggles that many older urban Pennsylvania communities face in dealing with vacant, tax-delinquent, and underutilized property and that land banks are a mechanism to transform these properties into productive reuses, fostering revitalization and improving the quality of life for local residents.¹⁶⁴ The original version of the Land Bank Act also notes that local developers wishing to acquire and redevelop these properties

158. *Id.* (permitting the inclusion of a ballot question to create land banks for open-space conservation, agricultural land preservation, augmentation of public recreation spaces, and affordable housing programs).

159. *Id.* §§ 2, 9 (empowering municipalities to establish a land bank fund to be used exclusively for land bank purposes).

160. *Id.* §§ 12, 15.

161. *Id.* § 12(g).

162. *Id.* § 15(a)(1).

163. *See* H.R. 712, 194th Gen. Assemb., Reg. Sess. (Pa. June 28, 2010).

164. *Id.* § 2(5); *see also* H.R. 712, 193d Gen. Assemb., Reg. Sess. § 2(7) (Pa. Mar. 4, 2009), the original version of the Bill, which notes that “[l]and banks provide for acquisition, management and transferral of ownership of tax-foreclosed properties not reclaimed or redeveloped by market forces, and land banks facilitate the properties’ productive reuse through sales and transfers to local government agencies, community development corporations, private developers and adjacent property owners.”

often face the daunting task of navigating multiple agencies and layers of red tape which further impedes the redevelopment process.¹⁶⁵

Unlike the Municipal Land Bank and Affordable Housing Act, the Land Bank Act defines the goal of a land bank as “acquir[ing] vacant or tax-delinquent properties within the jurisdiction . . . in order to foster the public purpose of returning property that is nontax producing to effective reuse in the provision of housing, business, industry or public purposes.”¹⁶⁶ Land banks created under the Act can develop their own priorities for the eventual use of the land-banked properties, including use for “retail, commercial and industrial activities.”¹⁶⁷

Under the Act, Pennsylvania land banks will have the power to acquire properties “by gift, devise, transfer, exchange, foreclosure, purchase or otherwise on terms and conditions and in a manner the land bank considers proper.”¹⁶⁸ Land banks may also acquire properties directly from municipalities under any terms “so long as the real property is located within the jurisdiction of the land bank.”¹⁶⁹ Like the St. Louis, Louisville, and Cleveland land banks, a Pennsylvania land bank established under the Land Bank Act can receive properties that do not receive a bid at a public auction sufficient to satisfy the outstanding liens on the property.¹⁷⁰ The process for acquisition, and the amount the land bank must pay the municipality selling the property at public auction, depends upon whether the municipality in question is subject to the Pennsylvania Real Estate Tax Sale Law, the Pennsylvania Municipal Claim and Tax Lien Law, or the Second Class City Treasurer’s Sale and Collection Act.¹⁷¹ Land banks acquiring property from municipalities subject to either the Pennsylvania Real Estate Tax Sale Law or the Pennsylvania Municipal Claim and Tax Lien Law must pay the upset sale price—the lowest price for which a property can be sold at a public auction or sheriff’s sale.¹⁷² While this does present some initial costs to the land

165. H.R. 712, 193d Gen. Assemb., Reg. Sess. § 2(6) (Pa. Mar. 4, 2009).

166. *Id.* § 4(b)(4).

167. H.R. 712, 194th Gen. Assemb., Reg. Sess. § 10(f)(3) (Pa. June 28, 2010).

168. *Id.* § 9(b).

169. *Id.* § 9(c)(2).

170. *Id.* § 17(c)(2)(ii).

171. *See id.* § 17(c) (procedure under the Real Estate Tax Sale Law); *id.* § 17(d) (procedure under the Municipal Claim and Tax Lien Law); *id.* § 17(e) (procedure under the Second Class City Treasurer’s Sale and Collection Act).

172. *See id.* § 17(c)(2)(ii) (Real Estate Tax Sale Law); *id.* § 17(d)(2)(ii) (Municipal Claim and Tax Lien Law).

bank, all outstanding liens, claims, and encumbrances would automatically be discharged upon transfer.¹⁷³ Therefore, the property would pass in fee simple to the land bank authority and a new deed would be executed that is free and clear of all liens, claims, and encumbrances, enabling the land bank to solve the substantial problem of acquiring a clear title to the otherwise problem-child properties.¹⁷⁴ In contrast, land banks that acquire property under the Second Class City Treasurer's Sale and Collection Act can negotiate with the city for a mutually agreed upon upset sale price, providing the land bank greater flexibility and a potential cost savings.¹⁷⁵

Despite these apparent fiscal limitations, one of the key features of Pennsylvania land banks under the Land Bank Act is their ability to receive tax delinquent properties and *extinguish all* delinquent tax claims on the property.¹⁷⁶ The only limitation on this ability regards liens imposed by a school district, in which case the district must first designate the land bank as its agent for all property donations made in lieu of payment of back taxes, in accordance with the Pennsylvania Municipal Claim and Tax Lien Law and the Pennsylvania Real Estate Tax Sale Law.¹⁷⁷ Pennsylvania land banks may also pursue expedited quiet title actions for any property and join multiple parcels of property in a single quiet title action.¹⁷⁸ The Land Bank Act requires the court to schedule a hearing for a land bank quiet title complaint within 90 days of filing and to provide final judgment within 120 days of filing the complaint.¹⁷⁹

In regards to disposition of land bank property, a key provision of the Pennsylvania Land Bank Act is that land banks may independently "determine the amount and form of consideration necessary to

173. *See id.* §§ 17(c)(2)(ii), (d)(2)(ii).

174. Title problems, primarily tax delinquencies, are one of the key problems which land banks have the power to address. *See* ALEXANDER, LAND BANK AUTHORITIES, *supra* note 5, at 14–16. Philadelphia has been plagued with property tax delinquency. According to the deputy executive director of Philadelphia's Redevelopment Authority, it currently takes ten to twenty-five years for a tax-delinquent property in Philadelphia to be put up for auction at a sheriff sale, while the process only takes three years in Genesee County, where the GCLB operates. *See* Lin, *supra* note 16.

175. H.R. 712, 194th Gen. Assemb., Reg. Sess. § 17(e) (Pa. June 28, 2010). In Pennsylvania, there are only two cities are categorized as "Second Class" based on population size—Pittsburgh and Scranton. *See* 119 THE PENNSYLVANIA MANUAL, 6-5 (2009), available at http://www.dgs.state.pa.us/portal/server.pt/community/pa_manual/1294.

176. H.R. 712, 194th Gen. Assemb., Reg. Sess. § 9(f)–(g) (Pa. June 28, 2010); *see also id.* § 17.

177. *Id.* § 9(g)(2).

178. *Id.* § 18(a), (e).

179. *Id.* § 18(d).

convey, exchange, sell, transfer, lease[,] . . . [or] grant” the property that they acquire.¹⁸⁰ Pennsylvania land banks are not limited to the rules and requirements of property disposition that other units of local government are subject to, such as the requirement for sale of public property at market value.¹⁸¹ The land bank can choose to convey property for traditional consideration—such as monetary payment and secured financial obligations—or impose covenants and conditions regarding the present and future use of the property it sells.¹⁸² Thus, conveyances to purchasers, developers, and the general public may be for *less than market value* or even *no consideration* if doing so would be in the best interest of the land bank.¹⁸³ As previously discussed, the ability for land bank authorities to convey properties to third parties for less than fair market value is critical to the future success of land bank operations and revitalization of struggling older industrial communities as a whole.¹⁸⁴ Since a ready market for these properties does not exist, the conveyance of land bank properties at less than fair market value acts as a subsidy to encourage private redevelopment of an area where the private real estate market has failed or lacks the incentive for investment.

Despite this provision, which critics might deem dangerous, the Act includes other safeguards related to the sale and management of land bank property. The Act will require a land bank to maintain and publish a public inventory of all real property it owns and acquires.¹⁸⁵ In addition, Pennsylvania land banks *will not* have the power to exercise eminent domain.¹⁸⁶ The Act also requires that each land bank’s board of directors includes, at minimum, one voting member who is a resident of the land bank jurisdiction, who is *not* a public official or municipal employee, and who is a member of a recognized civic organization within the land bank jurisdiction.¹⁸⁷ The Senate-amended version of the Land Bank Act also requires additional safeguards when the land bank acquires any owner-occupied properties.¹⁸⁸

180. *Id.* § 10(d)(1).

181. *Id.* § 10(e)(2).

182. *Id.* § 10(d)(2).

183. *See id.* § 10(d)(2), (e).

184. *See supra* Part II.B.

185. H.R. 712, 194th Gen. Assemb., Reg. Sess. § 10(b) (Pa. June 28, 2010).

186. *Id.* § 8.

187. *Id.* § 5(b)(2).

188. *See id.* §17(h).

During a May 2009 Philadelphia public hearing on the Land Bank Act, Representative Taylor noted the success of the existing land banks and commented that the Land Bank Act would allow the state to control the increasing problem of vacant and tax-delinquent properties, particularly in Philadelphia.¹⁸⁹ Much of the commentary focused on the need for older Pennsylvania communities to utilize vacant property as an asset, and that land bank authorities provided the unique vehicle by which to accomplish economic redevelopment.¹⁹⁰ Discussions are already underway to utilize land banking in Port Richmond, a neighborhood of northeastern Philadelphia that has faced ongoing problems of large scale vacancies, deterioration, blight, and continued neglect by local slumlords.¹⁹¹ Land banking in Philadelphia could not only solve these problems but also work to streamline the overly complex process for purchasing publically owned properties in Philadelphia.¹⁹² The creation of land banks under the Pennsylvania Land Bank Act would work not only to rid neighborhoods of blight and dilapidated structures but also provide a cohesive mechanism to amass property, designate strategic reuse goals and standards, and market it to third party private developers.

189. *Hearing on H.R. 712 Before the H. Urban Affairs Comm.*, 193d Gen. Assemb., Reg. Sess., 7:14-18 (Pa. May 28, 2009) (statement of Rep. John Taylor), available at http://www.house.state.pa.us/cfdocs/legis/tr/transcripts/2009_0139T.pdf ("We just want to repeat what eight other states have done in terms of enacting this legislation so we have it here as a tool in Pennsylvania for every municipality that wants to use it."); see also Catherine Lucey, *40,000 City Properties. Abandoned. Now What?*, PHILA. DAILY NEWS, July 28, 2010, at 6. Philadelphia Redevelopment Authority Executive Director Terry Gillen pointed to the GCLB as a model for success in Philadelphia. *Id.*

190. See *Hearing on H.R. 712 Before the H. Urban Affairs Comm.*, 193d Gen. Assemb., Reg. Sess., 8-18 (Pa. May 28, 2009) (statement of John Kromer, Senior Consultant, Fels Institute of Government, University of Pennsylvania); *id.* at 8 ("[T]o view vacant property not as a nuisance, but as a potential asset, as something of value."); *id.* at 16 ("[I]n Pennsylvania, we've got a lot of places that are available for development, and if we're strategic in figuring out how to organize those places, promote them and market them to the right developers, we really can move ahead.").

191. See Wendy Ruderman & Barbara Laker, *L&I Shackled in Efforts to Reclaim Homes, but Plan for a Land Bank Offers Hope*, PHILA. DAILY NEWS, Nov. 18, 2009, at 4; see also Karen Heller, *Vacant Homes Are Opportunity*, PHILA. INQUIRER, Oct. 20, 2009, at B1 (discussing vacant lots in Philadelphia and Pennsylvania's proposed land bank legislation and noting that "[o]ut of all these vacancies can come great opportunities for jobs, revenue, growth, and, perhaps most of all, neighborhoods"); Lucey, *supra* note 189, at 6 (discussing Representative Taylor's efforts to enact the Land Bank Act so that land banks could acquire land for new development).

192. See *supra* note 77 and accompanying text; see also Miriam Hill, *City Tries to Streamline Sales of Vacant Parcels*, PHILA. INQUIRER, Sept. 21, 2010, at B6 (describing the "alphabet soup" of agencies responsible for vacant properties in Philadelphia).

CONCLUSION

Land banks should be encouraged as an innovative method for fostering economic redevelopment in older industrial urban areas. Federal, state, and local policy should continue to create and fund land bank entities, and land banks should shift from their predominant goal of the creation of affordable housing to the goal of economic redevelopment of the urban downtown. A focus on economic redevelopment builds upon a land bank's key abilities—creating clear title to otherwise encumbered parcels and assembling land for large-scale redevelopment projects. Furthermore, in an older industrial city a land bank can assume the role of a one-stop clearing house for urban redevelopment projects, providing economic incentives for private development, and encouraging investment in otherwise unfavorable neighborhoods. By partnering with private entities and maintaining a focus on economic redevelopment, the more innovative land banks, including the GCLB, have been able to leverage their vacant land as a public asset and foster large-scale private investment in their cities.

The first steps toward land banking are already underway in many older industrial communities, with states enacting enabling legislation and significantly reforming their tax foreclosure proceedings. Pennsylvania's Land Bank Act is an example of a step in the right direction, providing for flexible acquisition, management, development, and disposition of vacant, tax-delinquent, and foreclosed properties. The Act vested in Pennsylvania land banks the right to extinguish tax liens and convey property for less than fair market value, two key facets for the success of any economic redevelopment project using land bank property.

Lastly, federal policy should continue to liberalize the rules for grant funding to allow for the creation, operation, and maintenance of land banks, including those whose focus is the economic redevelopment of commercial properties in downtown urban areas. Absent broader support in the form of an ongoing federal funding stream, funding for land bank activities will remain a particular challenge for land bank authorities. The Neighborhood Stabilization Program is one potential source of federal funding, which has already encouraged states and cities to establish new land bank entities. However, the longevity of the NSP and other federal funding streams remains questionable. Without continuing federal support, land banking is unlikely to be implemented as a widespread method of dealing with vacant, derelict, and underproductive land. As Frank

Alexander notes, "Forty years ago, land banking was encouraged to be a part of federal housing and urban development policy. It is time for it to be implemented. The need is greater than ever; the time is now; and the opportunity is here."¹⁹³

193. ALEXANDER, *LAND BANKING AS METROPOLITAN POLICY*, *supra* note 16, at 29.