

7848--A

2015-2016 Regular Sessions

I N A S S E M B L Y

May 28, 2015

Introduced by M. of A. LUPARDO, MAGNARELLI, McDONALD, SANTABARBARA --
read once and referred to the Committee on Local Governments --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee

AN ACT to amend the not-for-profit corporation law, in relation to
authorizing land banks to access real property prior to acquisition of
the property and to the liabilities and exemptions from liability of
land banks with relation to the acquisition and ownership of vacant,
abandoned or tax delinquent real property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The not-for-profit corporation law is amended by adding two
2 new sections 1608-a and 1608-b to read as follows:
3 S 1608-A. ACCESS TO REAL PROPERTY PRIOR TO ACQUISITION.
4 NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW OR ORDINANCE TO THE
5 CONTRARY:
6 (A) TO CARRY OUT THE POWERS, DUTIES AND GOALS IDENTIFIED IN THIS ARTI-
7 CLE, LAND BANKS SHALL BE AUTHORIZED, IN ACCORDANCE WITH THE PROCEDURE
8 DESCRIBED IN THIS SECTION, TO ACCESS ANY TAX DELINQUENT PARCEL OF REAL
9 PROPERTY THAT THE LAND BANK INTENDS TO ACQUIRE FROM ANY FORECLOSING
10 GOVERNMENTAL UNIT, IN ORDER TO DETERMINE THE PHYSICAL CONDITION OF ANY
11 BUILDINGS OR STRUCTURES ON SUCH PARCEL, OR TO ASSESS THE ENVIRONMENTAL
12 CONDITION OF SUCH PARCEL. IF DEEMED APPROPRIATE, SUCH ACCESS SHALL
13 INCLUDE THE ABILITY TO ENGAGE AN ENVIRONMENTAL PROFESSIONAL TO CONDUCT
14 ALL APPROPRIATE INQUIRIES INTO THE FORMER USE AND OWNERSHIP OF SUCH
15 PROPERTY, IN ORDER TO DETERMINE WHETHER HAZARDOUS MATERIALS, HAZARDOUS
16 SUBSTANCES OR OTHER CONTAMINANTS WERE PREVIOUSLY RELEASED OR DISPOSED OF
17 ON SUCH PARCEL, CONSISTENT WITH GOOD COMMERCIAL AND CUSTOMARY PRACTICE.
18 (B) FOLLOWING THE COMMENCEMENT OF A PROCEEDING TO FORECLOSE A TAX LIEN
19 BY THE TAXING DISTRICT HAVING ANY RIGHT, TITLE OR INTEREST IN OR LIEN
20 UPON ANY PARCEL, A LAND BANK MAY, UPON NOT LESS THAN TWENTY DAYS' NOTICE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 TO ALL PARTIES HAVING RIGHT, TITLE, OR INTEREST IN, OR LIEN UPON SUCH
2 PARCEL, MOVE, AT A SPECIAL TERM IN THE COURT IN WHICH THE FORECLOSURE
3 PROCEEDING WAS INITIATED, OR IF SUCH PROCEEDING IS AN ADMINISTRATIVE
4 PROCEEDING PURSUANT TO THE PROVISIONS OF A COUNTY CHARTER, CITY CHARTER,
5 ADMINISTRATIVE CODE, OR SPECIAL LAW WHEN APPLICABLE UNDER SECTION ELEVEN
6 HUNDRED FOUR OF THE REAL PROPERTY TAX LAW, THEN SUCH MOTION SHALL BE AT
7 A SPECIAL TERM OF THE SUPREME COURT IN THE COUNTY IN WHICH SUCH PARCEL
8 IS LOCATED, FOR AN ORDER GRANTING THE LAND BANK THE TEMPORARY INCIDENTS
9 OF OWNERSHIP OF SUCH PARCEL FOR THE SOLE PURPOSE OF ENABLING THE LAND
10 BANK AND ITS AGENTS TO ENTER THE PARCEL TO CONDUCT VISUAL INSPECTION AND
11 SUCH FURTHER ENVIRONMENTAL INVESTIGATION OF THE PARCEL AS THE LAND BANK
12 DEEMS NECESSARY IN ORDER TO DETERMINE WHETHER HAZARDOUS MATERIALS,
13 HAZARDOUS SUBSTANCES OR OTHER CONTAMINANTS WERE PREVIOUSLY RELEASED OR
14 DISPOSED OF ON SUCH PARCEL. SUCH INSPECTION MAY INCLUDE INVASIVE TEST-
15 ING, INCLUDING BUT NOT LIMITED TO SAMPLING OF SURFACE AND SUBSURFACE
16 SOIL AND/OR GROUNDWATER, AS IS CONSIDERED BY AN ENVIRONMENTAL PROFES-
17 SIONAL TO BE NECESSARY AND CONSISTENT WITH GOOD COMMERCIAL AND CUSTOMARY
18 PRACTICE FOR CONDUCTING ALL APPROPRIATE INQUIRIES INTO THE FORMER USE
19 AND CONDITION OF SUCH PARCEL. FOLLOWING ANY SUCH INVASIVE TESTING, THE
20 LAND BANK SHALL RETURN THE PARCEL, TO THE EXTENT PRACTICABLE, TO THE
21 CONDITION IT WAS IN BEFORE THE INVESTIGATION.

22 (C) UNLESS PRIOR TO THE RETURN DATE OF THE MOTION BROUGHT PURSUANT TO
23 THIS SECTION THE PROPERTY HAS BEEN REDEEMED BY THE PARTY HAVING THE
24 RIGHT OF REDEMPTION, THE COURT SHALL ENTER AN ORDER GRANTING SUCH RELIEF
25 TO THE LAND BANK. SUCH ORDER SHALL BE GRANTED UPON SUCH TERMS AND CONDI-
26 TIONS AS THE COURT SHALL DEEM JUST AND PROPER TO PERMIT THE INSPECTION
27 TO OCCUR UNHINDERED AS WELL AS TO PROTECT THE INTERESTS OF ALL OTHER
28 PARTIES HAVING AN OWNERSHIP INTEREST IN THE PARCEL. SUCH ORDER SHALL ACT
29 AS A STAY TO THE FORECLOSURE ACTION ON SUCH PARCEL OF PROPERTY UNTIL THE
30 INSPECTION HAS BEEN COMPLETED AND A REPORT OF THE INVESTIGATION HAS BEEN
31 FILED WITH THE COURT.

32 (D) SUCH TEMPORARY INCIDENTS OF OWNERSHIP IN THE PARCEL BY THE LAND
33 BANK SHALL NOT BE SUFFICIENT OR CONSTRUED TO CONSTITUTE ACTUAL OWNERSHIP
34 OF THE PARCEL FOR PURPOSES OF ANY APPLICABLE ENVIRONMENTAL LAW WHICH
35 CONFERS LIABILITY FOR DAMAGES CAUSED BY THE RELEASE OF ANY HAZARDOUS
36 MATERIAL, SUBSTANCE OR CONTAMINANT, UNLESS SUCH RELEASE WAS ACTUALLY
37 CAUSED BY THE LAND BANK.

38 (E) WITHIN THIRTY DAYS FOLLOWING THE COMPLETION OF THE INSPECTION,
39 INCLUDING RECEIPT OF A FINAL REPORT RECEIVED FROM AN ENVIRONMENTAL
40 PROFESSIONAL CONDUCTING THE INSPECTION, IF ANY, THE LAND BANK SHALL FILE
41 ANY SUCH REPORT, OR A DESCRIPTION OF THE RESULTS OF THE INSPECTION IF NO
42 FORMAL ENVIRONMENTAL INVESTIGATION OF THE PARCEL WAS UNDERTAKEN, WITH
43 THE COURT ON NOTICE TO THE COURT AND ALL OTHER PARTIES OF RECORD, AND
44 THE STAY OF THE FORECLOSURE SHALL BE LIFTED (UNLESS LIFTED EARLIER BY A
45 PRIOR COURT ORDER), AND ALL INCIDENTS OF TEMPORARY OWNERSHIP OF THE LAND
46 BANK THAT WAS AWARDED TO SUCH LAND BANK, SHALL CEASE TO EXIST, AND NOTH-
47 ING IN THIS SUBDIVISION SHALL PRECLUDE THE LAND BANK THAT CONDUCTED THE
48 INSPECTION FROM MAKING A DETERMINATION NOT TO ACQUIRE THE PARCEL, OR
49 PRECLUDE THE TAXING JURISDICTION THAT COMMENCED THE FORECLOSURE ACTION,
50 FROM WITHDRAWING THE PARCEL FROM FORECLOSURE PURSUANT TO SECTION ELEVEN
51 HUNDRED THIRTY-EIGHT OF THE REAL PROPERTY TAX LAW OR PURSUANT TO THE
52 PROVISIONS OF A COUNTY CHARTER, CITY CHARTER, ADMINISTRATIVE CODE, OR
53 SPECIAL LAW WHEN APPLICABLE UNDER SECTION ELEVEN HUNDRED FOUR OF THE
54 REAL PROPERTY TAX LAW.

55 S 1608-B. LIABILITY EXEMPTION AND DEFENSES.

1 NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW OR ORDINANCE TO THE
2 CONTRARY, IN CARRYING OUT THE POWERS, DUTIES AND GOALS IDENTIFIED IN
3 THIS ARTICLE WITH RESPECT TO THE ACQUISITION AND OWNERSHIP OF VACANT,
4 ABANDONED OR TAX DELINQUENT REAL PROPERTY, NO LAND BANK ORGANIZED PURSU-
5 ANT TO THIS TITLE SHALL INCUR LIABILITY FROM ANY STATUTORY CLAIMS OF THE
6 STATE RELATING TO THE PRESENCE, RELEASE OR DISPOSAL OF HAZARDOUS WASTE,
7 HAZARDOUS SUBSTANCES, PETROLEUM OR OTHER CONTAMINANTS ON REAL PROPERTY,
8 BY VIRTUE OF ITS ACQUISITION AND OWNERSHIP OF ANY PROPERTY CONTAMINATED
9 BY SUCH HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, PETROLEUM OR OTHER
10 CONTAMINANTS, PROVIDED THAT THE FOLLOWING CONDITIONS ARE MET:

11 (A) SUCH PROPERTY CONSTITUTED VACANT, ABANDONED OR TAX DELINQUENT
12 PROPERTY AND WAS ACQUIRED BY THE LAND BANK TO EFFECT THE PURPOSES
13 DESCRIBED IN SECTION SIXTEEN HUNDRED ONE OF THIS ARTICLE;

14 (B) THE RELEASE OR DISPOSAL OF THE HAZARDOUS WASTE, HAZARDOUS
15 SUBSTANCES, PETROLEUM OR OTHER CONTAMINANTS OCCURRED BEFORE THE ACQUI-
16 TION OF THE PROPERTY BY THE LAND BANK;

17 (C) THE LAND BANK DID NOT CAUSE OR CONTRIBUTE TO THE RELEASE OR
18 THREATENED RELEASE OF THE HAZARDOUS WASTE OR PETROLEUM FROM OR ONTO THE
19 PROPERTY, OR GENERATE, TRANSPORT, OR DISPOSE OF SUCH HAZARDOUS WASTE OR
20 PETROLEUM, OR ARRANGE FOR, OR CAUSE THE GENERATION, TRANSPORTATION, OR
21 DISPOSAL OF HAZARDOUS WASTE, FROM OR ONTO THE SITE; AND

22 (D) SUCH PROPERTY WAS ACQUIRED BY THE LAND BANK EITHER DIRECTLY,
23 THROUGH FORECLOSURE OF A TAX LIEN, OR, WAS ACQUIRED FROM ANY PUBLIC
24 CORPORATION, AS DEFINED IN SECTION SIXTY-FIVE OF THE GENERAL
25 CONSTRUCTION LAW, FOLLOWING THE INVOLUNTARY ACQUISITION OF OWNERSHIP AND
26 CONTROL BY SUCH PUBLIC CORPORATION, INCLUDING BUT NOT LIMITED TO:

27 (1) ACQUISITIONS BY A PUBLIC CORPORATION IN ITS SOVEREIGN CAPACITY,
28 INCLUDING BUT NOT LIMITED TO ACQUISITIONS PURSUANT TO ABANDONMENT
29 PROCEEDINGS OR BEQUEST;

30 (2) ACQUISITIONS BY A PUBLIC CORPORATION, OR ITS AGENT, ACTING AS A
31 CONSERVATOR OR RECEIVER PURSUANT TO A CLEAR AND DIRECT STATUTORY MANDATE
32 OR REGULATORY AUTHORITY;

33 (3) ACQUISITIONS OF ASSETS THROUGH FORECLOSURE AND ITS EQUIVALENTS, OR
34 OTHERWISE, BY A PUBLIC CORPORATION IN THE COURSE OF ADMINISTERING A
35 LOAN, LOAN GUARANTEE, TAX LIEN, OR TAX FORBEARANCE AGREEMENT, OR LOAN
36 INSURANCE PROGRAM; OR

37 (4) ACQUISITIONS BY A PUBLIC CORPORATION PURSUANT TO SEIZURE, INJUNC-
38 TION, CONDEMNATION, OR FORFEITURE AUTHORITY; PROVIDED THAT SUCH OWNER-
39 SHIP OR CONTROL IS NOT RETAINED PRIMARILY FOR INVESTMENT PURPOSES.

40 S 2. This act shall take effect immediately.