S T A T E O F N E W Y O R K

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2015-2016 Regular Sessions

I N S E N A T E

May 4, 2015

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to land banks

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

Section 1. Paragraphs 20 and 21 of subdivision (a) of section 1607 of the not-for-profit corporation law, as added by chapter 257 of the laws of 2011, are amended to read as follows:

(20) to enter in agreements with a foreclosing governmental unit for the distribution of revenues to the foreclosing governmental unit and school district; [and]

(21) to do all other things necessary to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibility of the land bank[.];

S 2. Subdivision (a) of section 1607 of the not-for-profit corporation law is amended by adding two new paragraphs 22 and 23 to read as follows:

(22) TO LEND MONEY, TO MAKE GRANTS AND TAKE AND HOLD REAL AND PERSONAL PROPERTY AS SECURITY FOR THE PAYMENT OF FUNDS SO LOANED OR FOR THE PERFORMANCE AND ENFORCEMENT OF GRANT AGREEMENTS; AND

(23) TO ORGANIZE A SUBSIDIARY FOR A PROJECT OR PROJECTS WHICH THE LAND BANK HAS THE POWER TO PURSUE HEREUNDER WHEN THE PRIMARY REASON FOR WHICH THE SUBSIDIARY SHALL BE ORGANIZED SHALL BE TO LIMIT THE POTENTIAL LIABILITY IMPACT OF THE SUBSIDIARY'S PROJECT OR PROJECTS ON THE LAND BANK OR BECAUSE STATE OR FEDERAL LAW REQUIRES THAT THE PURPOSE OF A SUBSIDIARY BE UNDERTAKEN THROUGH A SPECIFIC CORPORATE OR BUSINESS STRUCTURE AND AS LONG AS THE SUBSIDIARY CORPORATION SHALL MAKE THE REPORTS AND OTHER DISCLOSURES AS ARE REQUIRED OF LOCAL PUBLIC AUTHORITIES, UNLESS THE SUBSIDIARY'S OPERATIONS AND FINANCES ARE CONSOLIDATED WITH

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

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THOSE OF THE LAND BANK OF WHICH IT IS A SUBSIDIARY. SUBSIDIARIES SHALL NOT HAVE THE AUTHORITY TO ISSUE BONDS, NOTES OR OTHER DEBTS, PROVIDED, HOWEVER, THAT SUCH SUBSIDIARIES MAY ISSUE NOTES OR OTHER DEBT TO THE LAND BANK OF WHICH IT IS A SUBSIDIARY. THE ORGANIZATIONAL DOCUMENTS FILED TO ORGANIZE A SUBSIDIARY HEREUNDER SHALL STATE THAT THE LAND BANK IS ORGANIZING THE SUBSIDIARY.

S 3. Subdivision (a) of section 1608 of the not-for-profit corporation law, as added by chapter 257 of the laws of 2011, is amended to read as follows:

(a) The real property of a land bank and its income and operations are exempt from all taxation by the state of New York and by any of its political subdivisions. NOTWITHSTANDING ANY OTHER GENERAL, SPECIAL OR LOCAL LAW RELATING TO FEES OF CLERKS, NO CLERK SHALL CHARGE OR COLLECT A FEE FOR FILING, RECORDING OR INDEXING ANY PAPER, DOCUMENT, MAP OR PROCEEDING FILED, RECORDED OR INDEXED FOR A LAND BANK, OR AN OFFICER THEREOF ACTING IN AN OFFICIAL CAPACITY, NOR FOR FURNISHING A TRANSCRIPT, CERTIFICATION OR COPY OF ANY PAPER, DOCUMENT, MAP OR PROCEEDING TO BE USED FOR LAND BANK PURPOSES.

S 4. The not-for-profit corporation law is amended by adding two new sections 1608-a and 1608-b to read as follows:

S 1608-A. ACCESS TO REAL PROPERTY PRIOR TO ACQUISITION.

NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW OR ORDINANCE TO THE CONTRARY:

(A) TO CARRY OUT THE POWERS, DUTIES AND GOALS IDENTIFIED IN THIS ARTICLE, LAND BANKS SHALL BE AUTHORIZED, IN ACCORDANCE WITH THE PROCEDURE DESCRIBED IN THIS SECTION, TO ACCESS ANY TAX DELINQUENT PARCEL OF REAL PROPERTY THAT THE LAND BANK INTENDS TO ACQUIRE FROM ANY FORECLOSING GOVERNMENTAL UNIT, IN ORDER TO DETERMINE THE PHYSICAL CONDITION OF ANY BUILDINGS OR STRUCTURES ON SUCH PARCEL, OR TO ASSESS THE ENVIRONMENTAL CONDITION OF SUCH PARCEL. IF DEEMED APPROPRIATE, SUCH ACCESS SHALL INCLUDE THE ABILITY TO ENGAGE AN ENVIRONMENTAL PROFESSIONAL TO CONDUCT "ALL APPROPRIATE INQUIRIES" INTO THE FORMER USE AND OWNERSHIP OF SUCH PROPERTY, IN ORDER TO DETERMINE WHETHER HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES OR OTHER CONTAMINANTS WERE PREVIOUSLY RELEASED OR DISPOSED OF ON SUCH PARCEL, CONSISTENT WITH GOOD COMMERCIAL AND CUSTOMARY PRACTICE.

(B) FOLLOWING THE COMMENCEMENT OF A PROCEEDING TO FORECLOSE A TAX LIEN BY THE TAXING DISTRICT HAVING ANY RIGHT, TITLE OR INTEREST IN OR LIEN UPON ANY PARCEL, A LAND BANK MAY, UPON NOT LESS THAN TWENTY DAYS' NOTICE TO ALL PARTIES HAVING RIGHT, TITLE, OR INTEREST IN, OR LIEN UPON SUCH PARCEL, MOVE, AT A SPECIAL TERM IN THE COURT IN WHICH THE FORECLOSURE PROCEEDING WAS INITIATED, OR IF SUCH PROCEEDING IS AN ADMINISTRATIVE PROCEEDING PURSUANT TO THE PROVISIONS OF A COUNTY CHARTER, CITY CHARTER, ADMINISTRATIVE CODE, OR SPECIAL LAW WHEN APPLICABLE UNDER SECTION ELEVEN HUNDRED FOUR OF THE REAL PROPERTY TAX LAW, THEN SUCH MOTION SHALL BE AT A SPECIAL TERM OF THE STATE SUPREME COURT IN THE COUNTY IN WHICH SUCH PARCEL IS LOCATED, FOR AN ORDER GRANTING THE LAND BANK THE TEMPORARY INCIDENTS OF OWNERSHIP OF SUCH PARCEL FOR THE SOLE PURPOSE OF ENABLING IT AND ITS AGENTS TO ENTER THE PARCEL TO CONDUCT VISUAL INSPECTION AND SUCH FURTHER ENVIRONMENTAL INVESTIGATION OF THE PARCEL AS THE LAND BANK DEEMS NECESSARY IN ORDER TO DETERMINE WHETHER HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES OR OTHER CONTAMINANTS WERE PREVIOUSLY RELEASED OR DISPOSED OF ON SUCH PARCEL. SUCH INSPECTION MAY INCLUDE INVASIVE TESTING, INCLUDING BUT NOT LIMITED TO SAMPLING OF SURFACE AND SUBSURFACE SOIL AND/OR GROUNDWATER, AS IS CONSIDERED BY AN ENVIRONMENTAL PROFESSIONAL TO BE NECESSARY AND CONSISTENT WITH GOOD COMMERCIAL AND CUSTOMARY PRACTICE FOR CONDUCTING "ALL APPROPRIATE INQUIRIES" INTO THE FORMER USE

AND CONDITION OF SUCH PARCEL. FOLLOWING ANY SUCH INVASIVE TESTING, THE LAND BANK SHALL RETURN THE PARCEL, TO THE EXTENT PRACTICABLE, TO THE CONDITION IT WAS IN BEFORE THE INVESTIGATION.

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

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

(E) WITHIN THIRTY DAYS FOLLOWING THE COMPLETION OF THE INSPECTION, INCLUDING RECEIPT OF A FINAL REPORT RECEIVED FROM AN ENVIRONMENTAL PROFESSIONAL CONDUCTING THE INSPECTION, IF ANY, THE LAND BANK SHALL FILE ANY SUCH REPORT, OR A DESCRIPTION OF THE RESULTS OF THE INSPECTION IF NO FORMAL ENVIRONMENTAL INVESTIGATION OF THE PARCEL WAS UNDERTAKEN, WITH THE COURT ON NOTICE TO THE COURT AND ALL OTHER PARTIES OF RECORD, AND THE STAY OF THE FORECLOSURE SHALL BE LIFTED (UNLESS LIFTED EARLIER BY A PRIOR COURT ORDER), AND ALL INCIDENTS OF TEMPORARY OWNERSHIP OF THE LAND BANK THAT WAS AWARDED TO SUCH LAND BANK, SHALL CEASE TO EXIST, AND NOTHING IN THIS SUBDIVISION SHALL PRECLUDE THE LAND BANK THAT CONDUCTED THE INSPECTION FROM MAKING A DETERMINATION NOT TO ACQUIRE THE PARCEL, OR PRECLUDE THE TAXING JURISDICTION THAT COMMENCED THE FORECLOSURE ACTION, FROM WITHDRAWING THE PARCEL FROM FORECLOSURE PURSUANT TO SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THE REAL PROPERTY TAX LAW OR PURSUANT TO THE PROVISIONS OF A COUNTY CHARTER, CITY CHARTER, ADMINISTRATIVE CODE, OR SPECIAL LAW WHEN APPLICABLE UNDER SECTION ELEVEN HUNDRED FOUR OF THE REAL PROPERTY TAX LAW.

S 1608-B. LIABILITY EXEMPTION AND DEFENSES.

NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW OR ORDINANCE TO THE CONTRARY:

IN CARRYING OUT THE POWERS, DUTIES AND GOALS IDENTIFIED IN THIS ARTICLE WITH RESPECT TO THE ACQUISITION AND OWNERSHIP OF VACANT, ABANDONED OR TAX DELINQUENT REAL PROPERTY, NO LAND BANK ORGANIZED PURSUANT TO THIS TITLE SHALL INCUR LIABILITY FROM ANY STATUTORY CLAIMS OF THE STATE RELATING TO THE PRESENCE, RELEASE OR DISPOSAL OF HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, PETROLEUM OR OTHER CONTAMINANTS ON REAL PROPERTY, BY VIRTUE OF ITS ACQUISITION AND OWNERSHIP OF ANY PROPERTY CONTAMINATED BY SUCH HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, PETROLEUM OR OTHER CONTAMINANTS, PROVIDED THAT THE FOLLOWING CONDITIONS ARE MET:

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

(B) THE RELEASE OR DISPOSAL OF THE HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, PETROLEUM OR OTHER CONTAMINANTS OCCURRED BEFORE THE ACQUISITION OF THE PROPERTY BY THE LAND BANK;

(C) THE LAND BANK DID NOT CAUSE OR CONTRIBUTE TO THE RELEASE OR THREATENED RELEASE OF THE HAZARDOUS WASTE OR PETROLEUM FROM OR ONTO THE

PROPERTY, OR GENERATE, TRANSPORT, OR DISPOSE OF SUCH HAZARDOUS WASTE OR PETROLEUM, OR ARRANGE FOR, OR CAUSE THE GENERATION, TRANSPORTATION, OR DISPOSAL OF HAZARDOUS WASTE, FROM OR ONTO THE SITE; AND

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

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

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

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

(4) ACQUISITIONS BY A PUBLIC CORPORATION PURSUANT TO SEIZURE, INJUNCTION, CONDEMNATION, OR FORFEITURE AUTHORITY; PROVIDED THAT SUCH OWNERSHIP OR CONTROL IS NOT RETAINED PRIMARILY FOR INVESTMENT PURPOSES.

S 5. Section 1609 of the not-for-profit corporation law is amended by adding a new subdivision (a-1) to read as follows:

(A-1) THIS SECTION GOVERNING THE DISPOSITION OF PROPERTY BY LAND BANKS SHALL SUPERSEDE SECTION TWENTY-EIGHT HUNDRED NINETY-SEVEN OF THE PUBLIC AUTHORITIES LAW IN THE GOVERNANCE OF PROPERTY DISPOSITIONS BY LAND BANKS AND, AS SUCH, NOTWITHSTANDING ANY OTHER GENERAL, SPECIAL OR LOCAL LAW TO THE CONTRARY, SECTION TWENTY-EIGHT HUNDRED NINETY-SEVEN OF THE PUBLIC AUTHORITIES LAW SHALL NOT APPLY TO LAND BANKS.

S 6. Subdivision (a) of section 1609 of the not-for-profit corporation law, as added by chapter 257 of the laws of 2011, is amended to read as follows:

(a) The land bank shall hold in its own name, OR IN THE NAME OF A LAWFULLY ORGANIZED SUBSIDIARY, all real property acquired by the land bank irrespective of the identity of the transferor of such property.

S 7. This act shall take effect on the ninetieth day after it shall have become a law.