

5128

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:

1 Section 1. Paragraphs 20 and 21 of subdivision (a) of section 1607 of
2 the not-for-profit corporation law, as added by chapter 257 of the laws
3 of 2011, are amended to read as follows:
4 (20) to enter in agreements with a foreclosing governmental unit for
5 the distribution of revenues to the foreclosing governmental unit and
6 school district; [and]
7 (21) to do all other things necessary to achieve the objectives and
8 purposes of the land bank or other laws that relate to the purposes and
9 responsibility of the land bank[.];
10 S 2. Subdivision (a) of section 1607 of the not-for-profit corporation
11 law is amended by adding two new paragraphs 22 and 23 to read as
12 follows:
13 (22) TO LEND MONEY, TO MAKE GRANTS AND TAKE AND HOLD REAL AND PERSONAL
14 PROPERTY AS SECURITY FOR THE PAYMENT OF FUNDS SO LOANED OR FOR THE
15 PERFORMANCE AND ENFORCEMENT OF GRANT AGREEMENTS; AND
16 (23) TO ORGANIZE A SUBSIDIARY FOR A PROJECT OR PROJECTS WHICH THE LAND
17 BANK HAS THE POWER TO PURSUE HEREUNDER WHEN THE PRIMARY REASON FOR WHICH
18 THE SUBSIDIARY SHALL BE ORGANIZED SHALL BE TO LIMIT THE POTENTIAL
19 LIABILITY IMPACT OF THE SUBSIDIARY'S PROJECT OR PROJECTS ON THE LAND
20 BANK OR BECAUSE STATE OR FEDERAL LAW REQUIRES THAT THE PURPOSE OF A
21 SUBSIDIARY BE UNDERTAKEN THROUGH A SPECIFIC CORPORATE OR BUSINESS STRUC-
22 TURE AND AS LONG AS THE SUBSIDIARY CORPORATION SHALL MAKE THE REPORTS
23 AND OTHER DISCLOSURES AS ARE REQUIRED OF LOCAL PUBLIC AUTHORITIES,
24 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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1 THOSE OF THE LAND BANK OF WHICH IT IS A SUBSIDIARY. SUBSIDIARIES SHALL
2 NOT HAVE THE AUTHORITY TO ISSUE BONDS, NOTES OR OTHER DEBTS, PROVIDED,
3 HOWEVER, THAT SUCH SUBSIDIARIES MAY ISSUE NOTES OR OTHER DEBT TO THE
4 LAND BANK OF WHICH IT IS A SUBSIDIARY. THE ORGANIZATIONAL DOCUMENTS
5 FILED TO ORGANIZE A SUBSIDIARY HEREUNDER SHALL STATE THAT THE LAND BANK
6 IS ORGANIZING THE SUBSIDIARY.

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

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

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

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

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

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

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

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

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

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

20 (E) WITHIN THIRTY DAYS FOLLOWING THE COMPLETION OF THE INSPECTION,
21 INCLUDING RECEIPT OF A FINAL REPORT RECEIVED FROM AN ENVIRONMENTAL
22 PROFESSIONAL CONDUCTING THE INSPECTION, IF ANY, THE LAND BANK SHALL FILE
23 ANY SUCH REPORT, OR A DESCRIPTION OF THE RESULTS OF THE INSPECTION IF NO
24 FORMAL ENVIRONMENTAL INVESTIGATION OF THE PARCEL WAS UNDERTAKEN, WITH
25 THE COURT ON NOTICE TO THE COURT AND ALL OTHER PARTIES OF RECORD, AND
26 THE STAY OF THE FORECLOSURE SHALL BE LIFTED (UNLESS LIFTED EARLIER BY A
27 PRIOR COURT ORDER), AND ALL INCIDENTS OF TEMPORARY OWNERSHIP OF THE LAND
28 BANK THAT WAS AWARDED TO SUCH LAND BANK, SHALL CEASE TO EXIST, AND NOTH-
29 ING IN THIS SUBDIVISION SHALL PRECLUDE THE LAND BANK THAT CONDUCTED THE
30 INSPECTION FROM MAKING A DETERMINATION NOT TO ACQUIRE THE PARCEL, OR
31 PRECLUDE THE TAXING JURISDICTION THAT COMMENCED THE FORECLOSURE ACTION,
32 FROM WITHDRAWING THE PARCEL FROM FORECLOSURE PURSUANT TO SECTION ELEVEN
33 HUNDRED THIRTY-EIGHT OF THE REAL PROPERTY TAX LAW OR PURSUANT TO THE
34 PROVISIONS OF A COUNTY CHARTER, CITY CHARTER, ADMINISTRATIVE CODE, OR
35 SPECIAL LAW WHEN APPLICABLE UNDER SECTION ELEVEN HUNDRED FOUR OF THE
36 REAL PROPERTY TAX LAW.

37 S 1608-B. LIABILITY EXEMPTION AND DEFENSES.

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

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

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

52 (B) THE RELEASE OR DISPOSAL OF THE HAZARDOUS WASTE, HAZARDOUS
53 SUBSTANCES, PETROLEUM OR OTHER CONTAMINANTS OCCURRED BEFORE THE ACQUI-
54 SITION OF THE PROPERTY BY THE LAND BANK;

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

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

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

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

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

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

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

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

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

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

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

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