

5776

2015-2016 Regular Sessions

I N S E N A T E

June 3, 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 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 ASSEMBLY, 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
21 TO ALL PARTIES HAVING RIGHT, TITLE, OR INTEREST IN, OR LIEN UPON SUCH

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

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

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

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

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

54 S 1608-B. LIABILITY EXEMPTION AND DEFENSES.

55 NOTWITHSTANDING ANY GENERAL, SPECIAL OR LOCAL LAW OR ORDINANCE TO THE
56 CONTRARY, IN CARRYING OUT THE POWERS, DUTIES AND GOALS IDENTIFIED IN

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

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

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

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

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

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

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

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

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

38 S 2. This act shall take effect immediately.