

A RESOULTION ENACTING OFFICIAL POLICY AND GUIDELINES FOR
DISPOSITION OF REAL PROPERTY

WHEREAS, on February 14th, 2017 the Board of Directors of the Nassau County Land Bank Corporation duly convened a meeting and a quorum existed, and;

WHEREAS, the Board of Directors was requested to approve a resolution adopting official policies and guidelines towards disposition of real property, in accordance with New York State Public Authorities Law Section 2824(e) and the Not-For-Profit Corporation Law, and;

WHEREAS, the Board of Directors affirmatively and unanimously voted to adopt the aforementioned policies and guidelines; now, therefore, be it

RESOLVED, that effective immediately the Nassau County Land Bank Corporation has adopted the Real Property Disposition Policy attached hereto:



NASSAU COUNTY LAND BANK CORPORATION

REAL PROPERTY DISPOSITION POLICY & GUIDELINES

Section I. DEFINITIONS.

As used herein, the following terms shall have the meaning set forth below:

- a. "Board" shall mean the Board of the Nassau County Landbank Corporation.
- b. "Acquisition" or "Acquire" shall mean the transfer to The Nassau County Landbank Corporation of title, tax lien or any other beneficial interest in real property in accordance with this Policy, and the Laws of the State of New York.
- c. "Disposition of Real Property" or "Dispose of Real Property" shall mean the transfer from The Nassau County Landbank Corporation of title, tax lien or any beneficial interest in Real Property in accordance with this Policy, and the Laws of the State of New York to any individual or entity.
- d. "Policy" shall mean this Policy, as amended from time to time by resolution of the Board.
- e. "Land Bank" shall mean The Nassau County Landbank Corporation, a Land Bank Corporation organized under New York State Not-For-Profit Corporation Law.
- f. "N-PCL" shall mean the New York Not-For-Profit Corporation Law, as amended from time to time.
- g. "Land Bank Act" shall mean Article 16 of the New York Not-For-Profit Corporation Law, as amended from time to time.
- h. "PAL" shall mean the New York Public Authorities Law, as amended from time to time.
- i. "Property" other than Real Property, shall mean personal property in excess of five thousand dollars (\$5,000) in value.
- j. "Real Property" shall mean lands, lands under water, structures and any and all easements, air rights, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise, and

any and all fixtures and improvements located thereon, excluding an interest securing a loan or other financial obligation.

k. “Fair Market Value” shall mean the amount for which property would sell on the open market if put up for sale, taking into consideration comparable sales of similar property in the area to determine market value, adding or deducting amounts based on differences in quality and size of the property. Fair Market Value shall also include, but not be limited to the potential cost of rehabilitation and/or environmental remediation.

Section II. Purpose and Intent

Pursuant to New York State Public Authorities Law (“PAL”) Section 2824(e), the Land Bank is required to establish a written policy concerning the disposition of property. The Not-for-Profit Corporation Law (“N-CPL”) also governs disposition of property by the Land Bank. Accordingly, the disposition of property by the Land Bank shall be governed by the general guidelines set forth in this Policy. This Policy is intended to be consistent with, and shall be construed in accordance with, the PAL and N-PCL.

This Policy shall apply to any disposal, transfer or conveyance of real property of the Land Bank, including any real property interest, complete or inchoate, of the Land Bank, except for a property interest that secures a loan or other financial obligation of another party. Section VI of this Policy governs the disposition of personal property.

Properties shall be disposed of in a manner that supports the mission of the Land Bank and is consistent with the comprehensive plans of the jurisdictions in which they are located.

Section III. Authority

- a. Board Approval. The decision to sell or otherwise dispose of real property and the terms of any contract or agreement concerning the sale, lease, license, easement, encumbrance, or other alienation of any interest in real property of the Land Bank, shall be approved by the Board in accordance with the By-Laws, or by such duly appointed Real Property Committee in accordance with the By-Laws, prior to conveyance of title. The Land Bank will maintain an inventory of all real property dispositions and make it available for public inspection on its website.
- b. Ownership. Pursuant to § 1609(a) of the Land Bank Act, the Land Bank shall hold in its own name all real property acquired by the Land Bank irrespective of the identity of the transferor of the property.
- c. Contracting Officer. Except as otherwise provided herein, the “Contracting Officer” shall be responsible for the disposition of real property owned by the Land Bank and shall be responsible for the Land Bank’s compliance with, and enforcement of, this Policy. The Executive Director of the Land Bank is hereby designated as the Contracting Officer. As the Contracting Officer, the Executive Director has responsibility and authority for carrying out the directives of the Board with regard to disposition of property. All contracts shall be executed in the name of the Land Bank.

- d. Authorized Signatory. The Board delegates to the Executive Director of the Land Bank the authority to enter into and execute agreements, instruments of conveyance and all other related documents pertaining to the conveyance of real property by the Land Bank. In the event that the Executive Director is unavailable, unable, or unwilling to carry out this responsibility, any current member of the Board of Directors shall have authority to act in this capacity.
- e. Boundary Lines. The Land Bank may grant and accept easements to resolve boundary line title tissues, including building encroachments between adjoining parcels and fence encroachments. The Executive Director may authorize boundary line agreements and driveway agreements with the owners of parcels adjacent to Land-Bank owned parcels, without conveyance of ownership. Consideration for boundary line agreements may be set at \$1 (payment waived).

Section IV. Transfer or Disposition of Interests in Real Property

- a. Methods of Disposition. The Land Bank may convey, exchange, sell, transfer, lease as lessor, grant, release and demise, pledge any and all interests in, upon or to real property of the Land Bank. The Land Bank may dispose of real property, or any interest in real property, by the following methods:
 - i. Sealed Bid
 - ii. Public Auction;
 - iii. Negotiated sale;
 - iv. Request for Proposal;
 - v. Transfer to a government entity or other public entity; or
 - vi. Conveyance of a partial interest by lease, license, easement, or other agreement.
- b. Consideration. In each and every transfer of real property the Land Bank shall require good and valuable consideration in an amount determined by the Land Bank in its sole discretion. Such determination shall include the all of the following in determination of consideration for each property:
 - i. *Fair Market Value*. Except as otherwise permitted or required by this Policy or any other policy of the Land Bank or State law, prior to disposal, an appraisal or broker price opinion shall be made to determine the Fair Market Value of any interest in real property proposed for transfer or disposal by the Land Bank.
 - ii. *Property Costs*. Costs to the Land Bank, including but not limited to the aggregate costs and expenses attributable to the specific property being proposed for sale, including costs of acquisition, maintenance, repair, construction, demolition, marketing, legal expenses of the property and indirect costs of the operations of the Land Bank allocable to the property.
 - iii. *Expected costs of remediation for environmentally challenged properties*. The consideration to be provided to the Land Bank by the Transferee may take the form of monetary payments and secured financial obligations, deferred financing, performance of contractual obligations, imposition of restrictive covenants, or other obligations and responsibilities of the Transferee, or any combination thereof, and such other forms of consideration as are consistent with state and

local law. The Land Bank may consider alternative financing options (i.e., providing a mortgage and promissory note) as a method of disposition in any transactions.

- c. Disposal of Property for Less than Fair Market Value. The Land Bank may dispose of real property for less than fair market value subject to the review and approval of the Board. In considering a disposition of property for less than Fair Market Value, each Board member may assign their own weight to any factor listed herein, and may consider and weigh other factors not listed herein.
- d. Information to be provided to the Board. When a real property transfer or sale is proposed, the following information must be provided to the Board:
 - i. A full description of the asset including its location;
 - ii. A statement of improvements made by the Land Bank;
 - iii. Value of the asset, and any other information establishing the fair market value sought by the Board;
 - iv. A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits to the communities in which the asset is situated as required by the transfer;
 - v. A statement of the value received compared to the fair market value;
 - vi. A statement of the anticipated proceeds upon sale; and
 - vii. Identification of other parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used, if applicable.
- e. Available Procedures for Disposal of Real Property
 - i. *Sealed Bid:* The Land Bank may dispose of any real property and appurtenances, or interest therein, to any qualified purchaser by sealed bids provided that:
 - 1. The public advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property; and
 - 2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
 - 3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid conforms to the invitation for the bid and is most advantageous to the Land Bank, after considering price and other relevant factors; provided that all bids may be rejected when it is in the Land Bank's interest to do so.
 - ii. *Public Auction:* The Land Bank may dispose of real property and appurtenances thereto by auction:

1. By publicly advertising the auction, publicly disclosing all bids, and award of the property in accordance with the three procedures required for sealed bidding as set forth herein.
2. The Land Bank shall publish a notice of the auction, the terms of the auction, and the qualifications for bidders in a manner designed to obtain as much competition as feasible under the circumstances.
- iii. *Negotiated Sale*: The Land Bank may dispose of real property by negotiation and without publicly advertising for bids as is feasible.
- iv. *Sale by Request for Proposal*: The Land Bank may dispose of any real property and appurtenances, or interest therein, to any qualified purchaser via Sale by Request for Proposal (“RFP”) provided that:
 1. The public advertisement of the RFP shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property; and
 2. All proposals shall be publicly disclosed at the time and place stated in the advertisement; and
 3. The award shall be made with reasonable promptness by notice to the responsible proposer whose proposal is most advantageous to the Land Bank, after considering price, scope of services, development proposed, qualifications, and other relevant factors; provided that all proposals may be rejected when it is in the Land Bank’s interest to do so.
- v. *Transfers to Governmental or Public Entities*: The Land Bank may convey real property to governmental or public entities at satisfactory terms of disposal as determined by negotiation. Where the terms and conditions of the transfer require that the ownership and use of the asset will remain with the governmental or public entity, real property may be disposed of for less than fair market value.

Section V. Qualification of Transferees

- a. Individuals and entities seeking to acquire real property from the Land Bank, or to enter into transaction agreements with the Land Bank, will be required to provide such information as may be requested by the Land Bank, including but not limited to the legal status of the Transferee, its organizational and financial structure, and its prior experience in similar property development or management.
- b. The Land Bank deems it to be in the best interest of the County of Nassau to convey real property to individuals and entities who will be responsible property owners. Prior to transferring real property, the Land Bank may review Nassau County records, town code enforcement and other records to determine whether a potential Transferee is disqualified under this Policy. These provisions shall apply to all Transferees including purchasers and lessees.
- c. Individuals and entities shall be prohibited from acquiring ownership or property rights from the Land Bank if they:
 - i. have engaged in fraudulent activity in connection with the sale of County owned or Land Bank owned property;

- ii. have lost real property through County tax foreclosure proceedings within the previous seven (7) years;
 - iii. own property within Nassau County for which taxes are not current;
 - iv. have had a sale cancelled for cause by Nassau County within the previous three years;
 - v. have been held in contempt of a court order for failure to abate code violations within the previous five (5) years;
 - vi. have unsatisfied judgments as a result of code enforcement actions in any town;
 - vii. own property within Nassau County that is in violation of town codes
 - viii. currently hold or have held a position of Nassau County or Land Bank employment currently or within the preceding two (2) years
 - ix. are currently or were formerly an officer of a political party
- d. A material failure to perform in prior transactions with the Land Bank shall also render an individual or entity ineligible to purchase of real property from the Land Bank. Individuals and entities that were the prior owners of real property at the time of tax foreclosure which transferred title to the Land Bank shall be ineligible to be the Transferee of such property from the Land Bank, except that the Board of the Land Bank in its sole discretion may approve a short- term rental agreement with a prior owner. Parties that are not able to demonstrate sufficient experience and capacity to perform in accordance with the requirements of the Land Bank shall be ineligible to purchase real property from the Land Bank.
- e. The provisions cited in this section shall apply to individuals and/or any entities controlled by or in common control by the same individual(s).
- f. The Land Bank reserves the right to independently investigate and consider the Transferee's experience and business activities in other jurisdictions, as well as to consider references, both those that are submitted and others that may be solicited by the Land Bank. All determinations of the eligibility or qualification of any Transferor shall be at the sole and absolute discretion of the Land Bank.
- g. Planned Development. For a transfer to a Transferee pursuant to a planned development, all tax incentives and financing necessary for the development to be completed must be committed prior to actual disposition. All Transferees shall be required to comply with all terms of the approved development proposal, the purchase offer, local zoning ordinances and building codes, and the laws and/or ordinances of all other agencies having jurisdiction. A subsequent use that furthers the Land Bank mission, along with an estimated schedule for implementation, must be identified prior to disposition for a planned development. For conveyances that are subject to a development proposal, the Land Bank will require potential Transferees to submit a plan that includes, at a minimum, the following:
- i. Project description, including ultimate use of property
 - ii. Development schedule
 - iii. Investment plan including projected development costs and sources of funding

- iv. Experience of Transferee in undertaking similar projects
- v. References

- h. Structure of Transactions. Transactions shall be structured in a manner that permits the Land Bank to enforce recorded covenants or conditions upon title pertaining to development and use of the property for a specified period of time. Such restrictions may be enforced in certain cases where good cause for enforcement exists in the discretion of the Executive Director or the Board, by means of a reverter clause in the deed conveying title to a Transferee, and/or reliance on subordinate financing held by the Land Bank.
- i. Conveyance to Tax-Exempt Entity. The Land Bank may give preference to proposals to transfer real property into private ownership for taxable uses. However, given the unique nature of some properties, the Land Bank may consider a tax-exempt use that supports the mission of the Land Bank and is in congruence with the goals and objectives of the communities and municipalities where the property is located. Except in the discretion of the Board for overriding charitable, educational and other public interests, in a conveyance to a non-governmental tax-exempt organization, the Transferee shall waive its tax-exempt status for five years and agree to pay property taxes for that period of time, unless the Transferee currently owns a tax-exempt property within 500 feet of the real property acquired from the Land Bank. The Transferee shall further agree not to transfer, re-sell or convey the subject premises to a tax-exempt organization for a period of five (5) years from the date of the recording of the deed from the Land Bank. This covenant shall be contained in the deed from the Land Bank to the Transferee.
- j. Environmental Considerations. Unless otherwise approved by the Board, the Transferee shall be solely responsible for performing and conducting its own due diligence as to the physical and environmental condition of the real property being conveyed. The Land Bank shall supply the Transferee with copies of all environmental reports (the “Environmental Reports”) it has in its possession regarding the real property conveyed. Transferee shall accept the real property in “as is” condition, and shall agree to assume and undertake any and all liability and expense resulting from the presence of hazardous substances or pollutants of any kind in, on, or beneath the real property, and/or removal or other remediation of any such hazardous substances or pollutants, except to the extent that the presence or release of any such hazardous substances or pollutants has resulted from or arisen out of actions of the Land Bank, its agents, employees or contractors.
- k. Access Insurance. The Land Bank may grant an access or license agreement to permit a Transferee to conduct due diligence activities or take occupancy prior to conveyance of title, or for such other purposes as deemed necessary to carry out the purpose of the planned disposition. The Land Bank may also enter into a lease agreement. During a license period and/or lease term, the Transferee shall agree to defend, indemnify and hold the Land Bank and Nassau County harmless from any and all claims for bodily injury or property damage occurring or alleged to have occurred at the subject property. Any such transferee shall insure the property with liability insurance with such minimum coverage limits at the discretion of the Executive Director in compliance with all Land Bank policies, State or local law or relevant agreements regarding such property. All such

insurance policies shall be issued in the name of the Transferee, naming the Land Bank and Nassau County as additional insured, and a copy of a bona fide certificate of insurance evidencing the coverage provided in the policy shall be delivered by the Transferee to the Land Bank on or before the date of commencement of the license period.

Section VI. Disposition of Property other than Real Property

The Land Bank may dispose of Property by Negotiated Sale, Auction, Request for Proposals and Noncompetitive Sale under similar terms and conditions as set forth for the disposition of real property, as well as by donation when the donee is a charitable organization, the State of New York or any political subdivision thereof. When determining the method of disposition, the Land Bank shall utilize the method which shall permit obtaining such competition as is feasible under the circumstances and which is consistent with the value and nature of the personal property proposed for disposition (including whether the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to impact the value thereof), and which will be most advantageous to the Land Bank, price and other factors considered, and which shall further the interests of and be consistent with the mission and purpose of the Land Bank.

Section VII. Exceptions to Policy

Any transaction that requires an exception to this Policy governing real property disposition shall require the approval of the Land Bank Board in accordance with the By-Laws, with a description of the exception, the reasons therefor which further the interests of the Land Bank.

Section VIII. General Requirements

- a. Disposition of Proceeds of Sale. Any proceeds from the sale or transfer of real property by the Land Bank shall be retained, expended, or transferred by the Land Bank as determined by the Board in the best interests of the Land Bank and in accordance with the New York State Land Bank Act, any lawful and binding agreements as are relevant regarding such property sale, and this Policy.
- b. Inventory of Real Property Dispositions. Pursuant to N-PCL §§ 1609(b) and 1609(g), the Land Bank shall maintain and make available for public review and inspection a complete inventory of all real property dispositions within one week. The inventory shall include a complete copy of the sales contract including all terms and conditions including, but not limited to, any form of compensation received by the Land Bank or any other party which is not included within the sale price. Copies of all real property disposition contracts shall be retained indefinitely by the Land Bank. Copies may be kept in original form, electronically, or in both forms.
- c. Annual Reports. The Land Bank shall publish annually a report listing all disposed property of the Land Bank, as required pursuant to PAL §2896(3)(a). Such report shall

include a list and full description of all Real Property and all other Property disposed of during such period. The Land Bank shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the Director of the Authorities Budget Office and the New York State Legislature (via distribution to the majority leader of the Senate and the speaker of the Assembly).

- d. Annual Review and Amendment. The Policy shall be reviewed and approved annually by the Land Bank Board. This Policy is subject to modification and amendment at the discretion of the Board at any time.