

ESD ISSUES APPROVAL GUIDELINES FOR ESTABLISHING LAND BANKS

FIRST ROUND APPLICATION DEADLINE APPROACHES

After years of debate and false starts, New York's much anticipated Land Bank Act was enacted in July 2011, and now Empire State Development ("ESD"), the public benefit corporation charged with responsibility for overseeing the creation of the State's land banks, has issued guidelines governing the application and approval process and set a deadline of March 30, 2012 for the first round of approvals. Because the Land Bank Act imposes a number of procedural hurdles to creating a land bank, and limits the number of total land banks in the State to ten, governmental entities interested in pursuing this potentially powerful economic development tool should begin the process as soon as possible.

New York's Land Bank Act authorizes one or more governmental entities that possess the power to foreclose on tax liens to create a Type C not-for-profit corporation whose purpose is to facilitate the return of vacant, abandoned and tax delinquent properties to productive use. Once established, a land bank will possess broad authority to acquire tax delinquent, vacant and/or abandoned properties within its jurisdictional boundaries and ultimately transfer such properties to third-parties for a variety of public and economic development purposes, including, but not limited to, the creation of public spaces; affordable housing; retail, commercial and industrial activities; and "such other uses ... as determined" by the foreclosing governmental entity (or entities) that create the land bank.

Land banks possess considerable flexibility in managing, holding and transferring title to their properties, and thus they have been used successfully in other states (most notably, Michigan) as a tool to combat blight associated with high rates of vacant and abandoned properties. Of course, many communities in Western New York have struggled with high inventories of such properties, and the Act specifically cites the estimated 17,000 vacant lots and structures within the City of Buffalo as evidence of an abandoned property "crisis" within New York State. The purpose of the Land Bank Act is to create a tool to aggregate many of these properties within a discrete geographic area in the hands of a single entity whose mission is to return those properties to productive use.

However, New York has tread somewhat cautiously into the land bank arena, and the Act limits the number of land banks that may exist in the State at any one time to ten. Because a land bank, once created, can enjoy perpetual duration, New York may reach its statutory limit quickly, and communities that delay in seeking to create a land bank may be permanently foreclosed from doing so.

In addition, the creation of a land bank under the Act is conditioned upon approval of ESD, which has recently issued guidelines setting forth the process and criteria for its approval. According to ESD, it expects to approve applications to create land banks in several rounds, with the first round to occur in "early 2012." ESD has announced that it will approve up to five land banks in the first round, and to be considered for approval, applications must be submitted to ESD by **March 30, 2012**.

The first step for any governmental entity interested in creating a land bank is to adopt a local law, ordinance or resolution specifying the name of the proposed land bank; the size and makeup of the proposed board of directors; and the articles of incorporation for the proposed land bank. If two or more governmental entities (including school districts) wish to jointly create a land bank, they must enter into and each adopt an intergovernmental cooperation agreement authorizing the creation and dissolution of the proposed land bank. With the first round deadline approaching, governmental entities interested in applying must take steps to comply with these legal requirements as soon as possible.

By the deadline, an applicant (or joint applicants) must submit to ESD a completed application form (which, as of this writing, are not yet available) and copies of the required local law, ordinance or resolution; any intergovernmental agreements; proposed certificate of incorporation and bylaws of the land bank; and a Non-Discrimination and Affirmative Action Policy.

According to the Guidelines, among the criteria ESD will use to assess land bank applications are the following:

- The nature and extent of intergovernmental cooperation evidenced in the application.
- The nature and extent of the aggregate inventory of vacant, abandoned, tax-delinquent and tax foreclosed properties within the jurisdiction of the proposed land bank.
- The capacity of the participating governmental entities to undertake acquisition, management and disposition of land bank properties.
- The priorities for use of real property upon disposition by the land bank.
- The nature and extent of proposed financial resources to be made available to the land bank.
- The nature and extent of authorization for sharing of future property tax revenues.
- The willingness of a municipality to sell to the land bank some or all of the delinquent tax liens within its boundaries.
- The projected inventory that may be transferred to or acquired by the land bank.
- A range of socio-economic diversity within the geographic area of the proposed land bank.
- A range of diversity in the stated mission of the proposed land banks (*i.e.* blight elimination, affordable housing development, market rationalization/stabilization, greening, etc.).
- The extent that the geographic area of a land bank includes or is part of a distressed community.

In addition to these criteria, ESD has stated that it will award land banks "in a proportional manner" across the State to ensure geographic diversity in the Land Bank Program.

ESD has announced that completed application will be reviewed by its staff to ensure compliance with the Act's requirements and ESD's guidelines, and it may request additional information and documentation from applicants. ESD has advised that it will likely require applicants to meet with ESD staff as part of the review process. The ultimate decision to award land banks will be made by ESD's board of directors.

If you have any questions, please contact Charles D. Grieco at 716.843.3844 or cgrieco@jaeckle.com.

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