



**LAND BANKING AS METROPOLITAN POLICY**

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## TABLE OF CONTENTS

|  |    |
|--|----|
| Executive Summary  | 3  |
| I. Introduction  | 5  |
| II. Land banking is a relevant and flexible policy tool  | 6  |
| III. The need for land banking is acute as worsening trends in vacant and abandoned properties threaten neighborhoods nationwide | 9  |
| IV. Most places currently face barriers to implementing an effective land banking program  | 12 |
| V. Federal policy takes a first step toward land banking   | 16 |
| VI. Toward more focused federal engagement   | 19 |
| VII. States and localities are innovating in land banking  | 22 |
| VIII. Land banking provides a robust framework for a new, federalist approach to metropolitan land policy                        | 24 |
| IX. Conclusion   | 28 |

## **EXECUTIVE SUMMARY**

Stressed by the catastrophic mortgage foreclosure crisis and the long-run decline of older, industrial regions, communities around the country are becoming increasingly burdened with vacant and abandoned properties. In order to alleviate the pressures on national prosperity caused by these derelict properties, the federal government needs to advance policies that support regional and local land banking for the 21<sup>st</sup> century.

*Land banking* is the process or policy by which local governments acquire surplus properties and convert them to productive use or hold them for long term strategic public purposes. By turning vacant and abandoned properties into community assets such as affordable housing, land banking fosters greater metropolitan prosperity and strengthens broader national economic well-being.

### **America's Challenge**

During the mortgage crisis of the past two years, the nation has seen the number of foreclosures double, and almost 600,000 vacant, for-sale homes added to weak real estate markets. In older industrial regions, chronic economic and population losses have also led to vacancies and abandonment. When left unaddressed, these problem properties impose severe costs on neighborhoods, including reduced property values and tax revenues, increased arson and crime, and greater demands for police surveillance and response. Eight cities in Ohio, for example, were forced to bear \$15 million in direct annual costs and over \$49 million in cumulative lost property tax revenues due to the abandonment of approximately 25,000 properties. Such negative consequences drain community resources and prevent cities and towns—and the nation—from fully realizing productive, inclusive, and sustainable growth.

### **Limitations of Existing Federal Policy**

The Emergency Assistance Act in the Home and Economic Recovery Act of 2008 is the first to express recognition of land banking in federal legislation, but it has several weaknesses. The act lacks clarity regarding the scope and target for the allocated funding which may hinder effective policy implementation in the short term. Moreover, as an emergency response to the immediate mortgage crisis, it does not sufficiently address the concerns of land banking in the long run. In particular, the act's \$3.92 billion does not come close to meeting the costs associated with the two million foreclosures projected by the end of 2008 and the local revenues lost from vacant and abandoned properties.

## A New Federal Approach

Federal policy needs to support effective and efficient land banking. In the short term, the federal government should deploy the Emergency Assistance Act with local and regional flexibility for determining funding priorities. Over the long term, the federal government should implement a new, comprehensive federal land banking program that would:

- **Capitalize local and regional land banking** by providing sufficient funding to support the several million properties in the process of foreclosure or those that are already vacant and abandoned
- **Incentivize local and state code and tax reform** to ensure that land banking is not hampered by outdated rules and procedures
- **Advance regionalism** by encouraging new inter-jurisdictional entities to align the scale of land banking authorities with the scale of metropolitan land issues

## I. Introduction

The recent credit-related panic on Wall Street underscores the depth and far-reaching consequences of the mortgage crisis of the past two years. There have been record numbers of residential foreclosures throughout most of the United States, with some communities experiencing price declines of 25 percent and overwhelming concentrations of foreclosures in particular neighborhoods. The prevalence of subprime mortgage products and the irrational desire of the private secondary mortgage market to invest in mortgage securities regardless of the risk led to the collapse of much of the secondary mortgage market in 2008. The governmental restructuring of the two largest guarantors of residential mortgages, Fannie Mae and Freddie Mac, and the largest insurance company, AIG was the pinnacle consequence of the inability of the real estate market to function efficiently.

In the past 24 months residential mortgage foreclosures have reached levels not experienced in 75 years, and the number of vacant properties has reached record levels in the hundreds of thousands. In addition to the sudden and dramatic shift in economic conditions, excess supplies of real estate can occur for other reasons as well. It can happen gradually over a period of years as populations shift from urban centers to suburban and exurban rings or from one region in the county to another. It can also occur when there is a loss of dominant employment centers leading to residential and economic abandonment. This is the story of the urban cores in our major industrial cities over the past 30 years.

Together, the ongoing mortgage crisis and the economic decline of older, industrial areas have created increasing numbers of vacant and abandoned properties that are stressing more and more communities nationwide. Though the sudden collapse of mortgage markets and high foreclosure rates may be most intense in southern and southwestern communities and the gradual economic decline and abandonment may be more characteristic of cities in the Northeastern and Midwestern parts of the county, some communities—most notably Cleveland, Ohio and Detroit, Michigan—are burdened by both pressures. What characterizes all of these metropolitan areas, however, is that their neighborhoods, schools, and local governments must bear the greatest costs induced by these large inventories of foreclosed, vacant, and abandoned properties. When demand for housing and new development disappears, what may have once been a strong and vibrant neighborhood or community can become a declining wasteland. Most local governments lack efficient and effective tools for preventing or reversing such a serious consequence.

The prosperity of urban and suburban communities is the central concern of the *Blueprint for American Prosperity*. This multi-year initiative realized by the Brookings Institution's Metropolitan Policy Program advances an integrated federal policy agenda for helping metropolitan areas develop the innovation,

human capital, infrastructure, and quality places (all brought together by good governance) that drive prosperous—i.e., productive, inclusive, and sustainable—growth. As a part of the *Blueprint*, this paper asserts that stable neighborhoods are a prerequisite for true prosperity and rising numbers of vacant and abandoned properties have become a serious national concern. It calls for new federal efforts to support land banking as a means for helping state and local governments manage excess supplies of land and address its negative consequences on communities.

Land banking is a way for states, localities, and regions to literally remove properties from the market, thereby responding to the inability of the real estate market itself to function efficiently. By doing so, they mitigate the external costs of vacant and abandoned properties and stabilize neighborhoods and communities. Land banking can remove legal barriers to market-based land conversions thereby allowing for new productive land uses or reserving land during long term strategic planning processes. The role of land banking is not to supplant the open market; it steps in when there is a failure of market conditions. Nor, does land banking replace land use planning; rather, it acquires inventory that has been abandoned and makes it available for planning. Land banking can involve various activities, but one thing it does *not* involve is the involuntary transfer of property through eminent domain.

Effective federal engagement in land banking would build on the appropriate roles of federal, state, and local government policies. The federal role, in particular, should be to provide initial capital funding for local and regional land banking programs to acquire and manage surplus inventories, encourage land banking initiatives and entities, and create incentives for regional collaboration.

This paper initially examines the concept of land banking and identifies the dominant factors that have led to excess supplies of real estate across the country and the costs imposed by vacant and abandoned properties. The paper then discusses the barriers that currently stand in the way of minimizing such costs and returning properties to productive uses. Finally, the paper examines the limitations of existing federal policy for addressing these barriers and proposes a new federal approach, both in the short-term, in light of the recent Housing and Economic Recovery Act of 2008, and over the long run. The paper concludes by highlighting examples of the type of successful land banking programs that federal policy could promote and envisioning the potential that land banking could achieve as part of a new metropolitan land policy aligning federal, state, and local government efforts.

## **II. Land banking is a relevant and flexible policy tool**

Land banking is a recent concept in historical terms.<sup>1</sup> First proposed as a new form of urban land planning in the 1960s, it began to take root in a handful of

metropolitan communities over the last 25 years.<sup>2</sup> As with most new approaches to land use and planning, some of these recent efforts have been more successful than others, but they all share common characteristic: the ability to address real estate market inefficiencies and bring together federal, state and local policies to build inclusive and sustainable communities for the future.

### ***Land banking can be a valuable land use tool for current market conditions***

In strong economic contexts, housing and building codes, which first began to emerge in the late 19<sup>th</sup> century, and zoning laws, which evolved over the past 75 years, have been vitally important and effective tools for local government land use planning and management. However, when real estate markets are cool, as they are currently, neither housing codes nor zoning regulations can effectively handle the excess of supply over demand. During such times, and even more generally, confronting the ebb and flow of market demands for real estate has always been one of the toughest challenges for local governments.

Markets for land rarely, if ever, operate efficiency. By definition, a parcel of land is a unique commodity fixed in location and not interchangeable with competing products. Unlike the demand for discrete products that are fungible in nature, the inelasticity of the land market does not generally allow prices and consumption to adjust to relative demand and available supply. Furthermore, property titles consist of sets of separable but connected interests which, when held by parties disconnected from each other and from the land, leads to a variety of dysfunctional conditions. Land banking offers an approach to resolving these market inefficiencies.

### ***Land banking can help to achieve various goals***

Land banking is not employed to formulate the large scale acquisition of properties simply in order to hold a large public inventory of land. The most commonly held goal for land banking programs is to convey properties to not-for-profit entities for affordable housing, including both homeownership and rental programs. The second objective generally is to foster economic redevelopment by conveying properties to a not-for-profit entity or a for-profit entity for the creation of mixed use developments or mixed-income housing.

In both contexts, the land banking authority is well aware that simply holding ownership of vacant properties achieves little. Their goal is to have properties reoccupied and returned to the property tax rolls as soon as possible. There are only two programmatic exceptions to this goal. The first is in the rare situation where there is simply no market at all for development or reuse and the property needs to be removed from the market indefinitely, necessitating demolition and environmental clean-up as part of the holding process. The second exception is the instance when a land bank acquires titles to certain properties which it elects to hold for longer term strategic purposes, such as affordable housing in a market experiencing gentrification or future parks and green spaces.

### ***Land banking can be undertaken by different types of entities***

Land banking activities can be carried out by existing public entities or new, specially created institutions. In some communities, existing redevelopment authorities can and should serve a modified land banking function, and in others, these efforts could be managed by the local housing and community development department. In recent decades, however, redevelopment authorities have tended to be narrowly focused in a specific geographic area or on a specific redevelopment project, and they often lack the flexibility to acquire surplus properties wherever they may exist or convert individual properties into productive use as new single family residences. Similarly, housing and community development departments commonly lack capacity for property management and are constrained by state and local laws in the terms for disposition of property. When existing authorities and departments lack the legal or managerial capacity to specialize in a land banking program, it is necessary to shift leadership to a new, independent, specialized entity.

Land banks are public authorities that focus exclusively on land banking activities. Land banks were originally proposed as public entities that would engage in early and significant land acquisition in anticipation of urban growth and urban and suburban sprawl and as a flexible tool to mitigate the static nature of exclusionary zoning and to provide for an inventory of land to meet future strategic public needs. However, the early proposals for a federal-state partnership did not move forward.<sup>3</sup> Instead, during the last quarter of the twentieth century five metropolitan areas—St. Louis, Cleveland, Louisville, Atlanta and Flint—moved to create their own land banks. These five land banks share a common dominant focus on the acquisition and conversion of abandoned tax delinquent properties into new productive use. Each of these five land banks has also been able to learn from, and build upon, the experiences of its predecessors, with the result that each land bank has been successively broader, stronger, and more productive.<sup>4</sup> Following the creation of the first land bank in Michigan—the Genesee County Land Reutilization Authority—the state of Michigan enacted the broadest and strongest state land bank statute in the country.<sup>5</sup> As a result, numerous local land banks across Michigan are now acquiring surplus abandoned tax delinquent properties and converting them to productive use.

### ***Land banking has high potential to become an integral part of 21<sup>st</sup> century metropolitan land planning***

Land banking, either through an existing or restructured governmental entity or through the creation of a land bank, can, and should, be an integral part of metropolitan land policy. Land banking can fulfill the original vision of it as a new urban planning tool; it can specialize in managing the market distortions that create a sudden excess supply of properties and, it can serve true “bank” functions by moderating real estate liquidity and capitalization. Moreover, land banking is the best potential model for a new approach to metropolitan land

planning in which all three levels of government—local, state, and federal— can play vital roles.

The role of local governments would be to acquire, manage, and convey properties in accordance with public priorities and reach across jurisdictional lines to plan regionally for the use of surplus properties and address legal barriers that currently are beyond the powers of any given locality. For localities to have such power and flexibility, state governments need to reconstruct traditional home rule doctrines to provide cities and towns with the statutory authority to act regionally and create land banking programs either within existing agencies or as new, independent entities. The federal government—which has historically been absent from all local land use planning—must serve as a catalyst for local and regional land banking by deploying appropriate incentives and sufficient funding to initialize land banking programs in supportive policy environments with enough capital for the acquisition and maintenance of surplus properties.

### **III. The need for land banking is critical as worsening trends in vacant and abandoned properties threaten neighborhoods nationwide**

Many local governments, whether they are large industrial cities or smaller rural communities, face the abandonment of their urban neighborhoods and downtown areas. Other communities that quite recently were the paradigms of thriving economic investment and hot real estate markets suddenly find themselves confronting large inventories of vacant and foreclosed real estate. All of these American cities now are confronted with overlapping problems: vacant and abandoned properties and the economic and social costs they impose on the community at large, the difficulty of using traditional local government powers to address issues that are multi-jurisdictional in nature, and the lack of capital funds to acquire, manage, and control these surplus properties.

#### ***Chronic employment and population loss can lead to large excess real estate inventories in some communities***

The mismatch between the supply and demand of real estate may be due to a wide variety of contributing causes. In some communities, particularly older industrial cities, weak real estate conditions arise due to employment losses and population migration to suburbs and ex-urban areas. For example, the sharp declines in the domestic automobile industry in the 1980's and 1990's, led to the vacancy of over 12 percent of the housing stock (more than 5,000 housing units) in Flint, Michigan in 2000.<sup>6</sup> In 2007, there were over 15,000 vacant and abandoned residential buildings in just eight Ohio cities, together with an additional 10,000 vacant and abandoned lots.<sup>7</sup> And, the city of Detroit owns between 30,000 and 40,000 parcels of land, the overwhelming majority of which are tax-reverted, vacant, and abandoned.<sup>8</sup>

***The sudden collapse of real estate finance and housing prices has also led to large surpluses of available property***

With sharply different causes but similar effects, the residential mortgage foreclosure crisis of the past two years has resulted in a dramatic and sudden increase in the number of vacant homes. The number of mortgages nationwide entering foreclosure more than doubled from the end of 2005 to the end of 2007, and foreclosure rates are the highest ever recorded.<sup>9</sup> By the first quarter of 2008 almost 9 percent of all residential mortgages were delinquent or in foreclosure.<sup>10</sup> In just one month alone—August, 2008—one of every 416 households in the country received a foreclosure notice.<sup>11</sup>

The myriad of factors that contributed to this mortgage crisis have resulted in two clear consequences: a sharp decline in residential property values and a sharp increase in the number of vacant properties. Between June 2007 and June 2008, the average home price in 20 metropolitan areas fell 15.9 percent, the sharpest decline on record.<sup>12</sup> Jurisdictions with weak economies, a high incidence of sub-prime lending, or both are especially vulnerable to significant concentrations of foreclosures.<sup>13</sup> This foreclosure wave dramatically increased the number of vacant residential properties. The number of vacant homes for sale increased 46 percent in just two years, adding almost 600,000 vacant homes to weak real estate markets.<sup>14</sup>

***Regardless of cause, vacant and abandoned properties impose the same costs on communities***

Residential properties become vacant for a variety of reasons. Some are the result of the mortgage foreclosure crisis and some are left vacant due to population loss or the closing of a major employment center. Not all foreclosed homes are vacant, and not all vacant homes are abandoned. In most cases, foreclosed real estate that is owned by a bank (“REO”) continues to be marketed for sale. The length and extent of the current economic downturn already suggests, however, that the time required for the market to absorb this excess inventory of vacant, for-sale properties will be at least one to three years.<sup>15</sup> Within this time frame, properties that have been abandoned for different reasons still produce the same costs to the host communities.

When properties remain vacant for any significant length of time, the frequency of vandalism increases, and the decline in property values and neighborhood stability accelerates. Mortgage foreclosures in today’s market that result in long-standing vacant properties impose the same costs to communities and local governments as are experienced in older industrial cities from vacancies and abandonment caused by other economic issues.

***Vacant and abandoned properties bring about direct and indirect social and financial costs to communities***

Vacant and abandoned properties are not victimless crimes.<sup>16</sup> They quickly become liabilities to the surrounding community. When owners chose to ignore their responsibilities, the costs of these properties are imposed on everyone else. The external costs of vacant and abandoned properties occur across a number of categories:

- Decreased property values of adjacent properties
- Decreased property tax revenues from nonpayment of taxes
- Decreased property tax revenues from declining property values of adjacent properties
- Increased costs of police and public safety surveillance and response
- Increased incidence of arson and costs of fire prevention
- Increased costs of local government code enforcement activities
- Increased costs of judicial actions

In addition to these objective and empirical costs, vacant and abandoned properties result in a broad range of intangible costs to the community:

- Decline in neighborhood confidence and social cohesion
- Instability in school age populations and weakening of public school resources
- Loss of incentives to invest and maintain existing occupied properties
- Fear of social engagement

A detailed study of mortgage foreclosures in Chicago in 2005 revealed that a foreclosure resulting in a house or building that is boarded and secured may impose only \$430 in direct costs on the city.<sup>17</sup> A property that is abandoned prior to foreclosure imposes cost of an average of almost \$20,000 and when a property hosts a building damaged by arson the costs reach on average \$34,000.

When multiple foreclosures leave vacant properties concentrated in a single neighborhood, the costs and losses are dramatically higher because it destroys the housing wealth of the neighborhood. Mortgage foreclosures by themselves, independent of subsequent abandonment, were found to reduce property values within one-eighth of mile of the foreclosure by 0.9 percent in value, and multiple foreclosures had even greater cumulative adverse effects.<sup>18</sup> In Flint, Michigan an analysis revealed that property within 500 feet of a vacant and abandoned structure lost an average of 2.26 percent of its value.<sup>19</sup> In Philadelphia in 2000, properties lost an average of \$7,627 in value if they were located within 150 feet of an abandoned house.<sup>20</sup> A study of eight cities in Ohio found that 25,000

vacant and abandoned properties imposed approximately \$15 million in direct *annual* costs to the cities and over \$49 million in cumulative lost property tax revenues.<sup>21</sup>

The direct and indirect financial costs of mortgage foreclosures and vacant and abandoned properties are measures that can be quantified. Often, however, the greatest costs come with no price tag, despite being well known. For example, a one percentage point increase in single family residential mortgage foreclosures has been found to increase the number of non-property related violent crimes by 2.33 percent.<sup>22</sup> With record numbers of recent foreclosures and vacant properties concentrated in certain neighborhoods, the city of Atlanta has created a special police task force focused just on these properties.<sup>23</sup>

#### **IV. Most communities currently face barriers to implementing an effective land banking program**

Successfully confronting excess inventories of land is frequently beyond the resources, policies, and practices of states, cities, and towns. Acting alone, state and local governments cannot often deal with the social, economic, and institutional costs of vacant and abandoned properties. Most notably, they face particular barriers to funding, state and local code reform, and regionalism.

##### ***Lack of adequate funding can limit the reach of land banking programs***

States and localities have generally not focused much attention on capital funding for land banks to acquire vacant and abandoned properties, other than those that are tax foreclosed. Over the past twenty-five years, dealing with tax foreclosed properties was the dominant justification for creating independent land banks, and strategies to acquire land by other means, such as strict code enforcement or foreclosure on a nuisance abatement lien, were given little or no consideration. The initial land banks amassed inventory primarily as a result of properties that were “reverted” to or deemed “sold” to local governments after unsuccessful foreclosure sales. These land banks were responsible for receiving titles to these properties and were authorized to convert them to productive use. (Their land banking efforts, however, remained hampered by the constraints of inefficient tax foreclosure laws.)

Two of the land bank authorities—Atlanta and Genesee County—have taken a different approach to working with their respective inventories. With the power to waive or extinguish delinquent taxes, the Atlanta Land Bank Authority has elected to focus on a program of voluntary transfers of tax delinquent properties to the land bank. After the property transfer, the Atlanta land bank would forgive any taxes owed and immediately convey the property with requirements that it be developed for specific public purposes. This “conduit transfer” program relies primarily upon community development corporations and other not-for-profit

entities to acquire the properties with delinquent taxes, and allows the Atlanta Land Bank Authority to operate with minimal on-going real property inventory. The Genesee County Land Bank Authority, in contrast, relies on a revised state tax foreclosure law which transfers all tax delinquent property not redeemed by a final date to the county treasurer.

For operational funding, land banking programs to date have primarily relied on modest allocations from local governments' general revenue pools. Although recovery of operational costs may be possible through land disposition, land banks find that such financial considerations often compete with the stated public priorities for the use of the land. Land bank authorities in Michigan, however, are in a far stronger position to fund their transactions involving previously tax delinquent properties. The recent state statute permits land banks to receive 50 percent of all property taxes for a five-year period of time following the conveyance of the property to a third party for redevelopment.<sup>24</sup>

For land banking programs to successfully address rising numbers of vacant and abandoned properties—caused by both the sharp contraction of mortgage markets and long-drawn out economic decline—they must have the funding necessary to expand their reach beyond just tax foreclosed properties. Only then can land banking programs acquire and manage properties left vacant and abandoned from other causes. But funding for land banking activities can be hard to come by. Local governments are already stretched beyond existing resources and state governments, facing similar constraints, are not in a position to fund a land acquisition program.<sup>25</sup>

### ***Existing state and local laws often pose barriers to handling vacant and abandoned properties***

Existing laws too often create financial incentives for property owners to neglect and abandon their property. Owners may choose to defer maintenance and upkeep, withdrawing all income and equity from the property for use or investment in other locations. The result is deterioration in the quality of the homes and increased incidence of housing and building code violations. While these codes may set strong minimum standards for new development and construction, these state statutes and local ordinances are far less effective in dealing with older properties that are in violation of the codes. When a responsible owner can be found, a remedy may be available, but when the owner has chosen to walk away from the property, the legal remedies have been far less effective.

While, the enforcement of housing codes is (and should be) the responsibility of local governments, they can only act in an efficient and effective manner if state governments have granted them sufficient constitutional or statutory power. Furthermore, most places have not modified the internal substantive requirements of their housing codes in decades, and even when they have, local governments are reluctant to spend their general revenues to remedy the

problems left unaddressed by private owners. The burden is almost always exclusively on cities and towns to spend public funds to preserve, protect, clean, maintain, and if necessary, demolish those homes and buildings left vacant and abandoned.

If local governments cannot, or will not, take control of vacant and abandoned properties, they cannot begin to gain the advantages of a land banking program. Code reform could make local control more possible. For example, housing codes and nuisance abatement procedures could be reformed in a manner that permits all government expenditures on behalf of a vacant or abandoned property to become a first priority lien on the property. Such a “super-priority” lien must then be able to be enforced in an efficient procedure that results in a transfer of ownership either to a new private owner or to the local government. Other keys to effective local government control that could be included in code reforms include vacant property registration requirements and imposing vacant and abandoned property assessments.<sup>26</sup>

Existing property tax foreclosure laws and practices can also be roadblocks to bringing vacant and abandoned properties back into use. State laws typically provide that at property tax foreclosure sales, the minimum bid must equal the amount of delinquent taxes. But these tax sales “fail” when the aggregate amount of delinquent taxes exceeds the fair market value of the property. This situation is not uncommon in the urban cores of older metropolitan areas. As owners abandon properties in these places, they cease paying property taxes and no longer care about over-assessed property valuations in declining markets. The result is that delinquent taxes, accruing at high rates of interest, overwhelm the property’s fair value, leaving it unmarketable and abandoned.<sup>27</sup> In some other jurisdictions, tax liens may be sold to third party investors who have little interest in investing in property maintenance or in improvements.

First created in the late 19<sup>th</sup> century, the property tax foreclosure laws in most states have been, until recently, woefully inefficient for addressing present-day needs and largely out of compliance with federal constitutional due process mandates.<sup>28</sup> These outdated procedures could make completing a tax foreclosure a three to seven year process, which may only result in unmarketable property titles may encounter other barriers to returning foreclosed properties to productive uses. In some states, significant reforms to state tax foreclosure laws have begun to occur, often in a manner that ties tax foreclosures into transfers to local land banks.<sup>29</sup>

***Barriers to regional planning may prevent land banking programs from achieving their full potential***

The highly fragmented structure of local governance in the United States can confound cities and towns as they attempt to devise creative, new ways to deal with vacant and abandoned properties. It has become abundantly evident over the past 40 years that urban sprawl and the corresponding abandonment of

central cities is due, in significant part, to the ability of residents and businesses to relocate to “bedroom communities” and economic centers with the lowest tax rates and smallest transaction costs. As local governments compete with one another, the one that loses the critical mass of population is left with all of the economic and social costs, while the winner captures all of the benefits.

The historic allocation of power between state and local governments plays directly into this divide and unfortunately, only encourages inter-jurisdictional competition. Though local governments are, for the most part, creatures of state law, the trend for the past 75 years has been the creation of new and smaller municipalities, rather than the consolidation of local governments. Because land use planning and zoning, as well as housing and building codes, are largely a prerogative of local government power, such authority has been used to maximize internal benefits while transferring costs to others. However, an imbalance in the supply of land, or housing, relative to demand is not something that can be addressed solely within the limited legal authority of a given municipality. This sort of challenge demands that local governments find ways to bridge territorial boundaries and enter into the regional planning process together.<sup>30</sup>

“Home rule” is the legal doctrine that underlies the nature and extent of local government powers. It is the rallying cry for cities and counties that seek authority to act where none is given by the state constitution or the state legislature. The clear value of home rule authority is that it permits a local government to fashion policies, priorities and procedures most directly tailored to the needs and visions of its community. The clear trade-off, however, is that home rule tends to lead to the proliferation of small communities determined to maximize internal benefits while imposing maximum costs on others.

Land banking is most effective when it has the authority to reach across the jurisdictional lines of a single city or a single county. Most of the successful major land banks today possess some aspect of a multi-jurisdictional approach. Two efforts that exhibit the value of governmental collaboration are the enforcement of delinquent property taxes and the provision of affordable housing.

In many states, property taxes are commonly assessed and collected at the county level, with tax rates and tax expenditures primarily set at the municipal or city level. This difference leads to a disconnect between county policies on tax collection and localities’ needs to address neighborhoods with high concentrations of severely tax delinquent properties. An intergovernmental agreement authorizing regional land banking can serve as a regional (county-wide) catalyst of enhanced tax enforcement laws by creating one recipient of tax foreclosed properties. In this way, land banking can create a needed bridge between home rule and regional planning.<sup>31</sup> In the rare instances of local government consolidation, the need for regional planning is already partially met, and land banks in the merged governmental entities are recognized.<sup>32</sup>

The provision of affordable housing is one of the public purposes that can be served through land banking, and it can be done best with some intergovernmental collaboration.<sup>33</sup> As reflected in the federal policies that drive HOPE VI redevelopment of public housing facilities, the high concentration of large scale subsidized housing in particular neighborhoods rarely succeeds. Low-density, scattered-site facilities in economically integrated neighborhoods are far more likely to be sustained over time. Land banking can play a pivotal role in meeting this goal by facilitating land availability in regions that move from exclusionary zoning to inclusionary zoning. Pressures towards gentrification in one community can be mitigated by the strategic advance acquisition of land for future use as affordable housing, while pressures towards abandonment in a different community can be mitigated by the strategic advance acquisition of land for mixed income housing.

## **V. Federal policy takes a first step toward land banking**

Historically, the federal government has had no direct voice in the creation of land banking.<sup>34</sup> But the sheer scale of the most significant residential mortgage foreclosure crisis since the Depression has appropriately focused congressional attention on ways to avoid the adverse consequences of vacant and abandoned properties. With so many communities around the country simultaneously struggling with vacant and abandoned properties, the challenge is clearly a national issue that has national ramifications for maintaining economic well-being and strengthening real estate markets. States and localities each have different capacity levels, so it becomes incumbent on the federal government to help ensure that every affected region of the country has sufficient resources to contain and tackle the problems that come with vacancies and abandonment.

The bulk of the proposed federal legislation in 2008 pertained to the refinancing of vulnerable mortgages by the Federal Housing Administration and the restructuring of oversight for federally related mortgage entities. Several legislative proposals, however, expressly addressed the burdens imposed on local governments by vacant properties.<sup>35</sup>

Enacted in July 2008, the Housing and Economic Recovery Act of 2008 includes the first express recognition of land banking in federal legislation.<sup>36</sup> One of the most extensive forms of federal housing legislation in many decades, this expansive law has one brief section entitled “Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes.”<sup>37</sup> This Emergency Assistance Act is remarkable in several key respects. It is the first federal recognition of the severe costs burdening neighborhoods and local governments as a result of the rise in vacant and abandoned properties.<sup>38</sup> It is the first federal appropriation of funds (\$3.92 billion) for acquisition, management, and disposition of these properties.<sup>39</sup> It is also the first express recognition in federal law of the targeted role of land banking.<sup>40</sup>

Recognizing the wide diversity of economic and social conditions across the country, the Emergency Assistance Act does provide an appropriately broad range for the use of the funds. In addition to the express statutory authorization to “establish land banks for homes that have been foreclosed upon,” funds may be used for the acquisition and financing of properties as well as the rehabilitation or demolition of structures.<sup>41</sup> Congress did elect to target all of the emergency assistance funding to persons of low and moderate income. All of the funds must be used “with respect to” individuals and families at or below 120 percent of area median income and 25 percent of the funds must be targeted to those at or below 50 percent of area median income.

But for all its sound measures, the Emergency Assistance Act is only a first step for federal policy, and it faces certain short- and long-term weaknesses.

***In the short-term, several policy questions are outstanding***

In the short-term, the effectiveness of the Emergency Assistance Act in addressing the rising number of vacant and abandoned properties in older industrial areas and the sudden growth of foreclosed vacant properties nationwide will depend, at least in part, on how the statutory language is interpreted upon implementation. A lack of clarity in terms of program scope and the targeting of the appropriated funds may lead to some confusion about how best to achieve the statute’s objectives.

For instance, several descriptions in the statute make reference to “abandoned *and* foreclosed” homes, leaving it unclear as to whether these are two separate categories, or whether the funds are restricted to properties that are both foreclosed and abandoned.<sup>42</sup> One subsection of the statute explains that funds may be used to acquire “foreclosed upon homes and residential properties” and properties that have been “abandoned *or* foreclosed upon.”<sup>43</sup> In this way, this federal statute is ambiguous as to the permitted scope of use of these federal funds.

For targeting the funding, the act charges the Secretary of Housing and Urban Development (HUD) to allocate funds to “states and units of general local government with the greatest need” but provides limited statutory guidance for creating the mandated allocation formula.<sup>44</sup> The statute does, however, identify three categories of variables that should bear on the allocation formula:

- (A) the number and percentage of home foreclosures in each state or unit of general local government*
- (B) the number and percentage of homes financed by a subprime mortgage related loan in each state or unit of general local government*
- (C) the number and percentage of homes in default or delinquency in each state or unit of general local government*<sup>45</sup>

But these variables are not meant to be exclusive, and HUD is granted discretion in identifying other relevant factors for use in determining the allocation formula. Indeed, the statutory priority for the use of the funds, which also involves determining the areas of “greatest need”, is subtly yet significantly different. This part of the statute directs that the funds are to be used in those areas —

- (A) *with the greatest percentage of home foreclosures*
- (B) *with the highest percentage of homes financed by a subprime mortgage related loan*
- (C) *identified by the state or unit of general local government as likely to face a significant rise in the rate of home foreclosures*<sup>46</sup>

For neither of these sets of variables, does the Emergency Assistance Act specify the weight to be given to each of the identified factors, identify the aggregate pool, or denominator, to be applied in determining percentages, or differentiate between the commencement of foreclosures and the completion of foreclosure sales.<sup>47</sup> Furthermore, the terms “foreclosures” and “subprime mortgage related loan” are not defined in the statute.

The funding allocation formula released by HUD in late September 2008 provides more guidance on these statutory variables, but the exact, total amount available to local governments to deal with the problems they face on-the-ground from vacant and abandoned properties still remains uncertain.<sup>48</sup>

HUD’s allocation formula distributes the appropriated funds to both state and local governments. The grantee universe consists of the “1,201 state and local governments which were funded in FY 2008 under the regular Community Development Block Grant.”<sup>49</sup> Given the statutory emphasis to target foreclosed homes, the allocation formula gives significant weight to the number and percent of foreclosures: “70 percent of the funds are to be allocated based upon the number and percent of foreclosures, 15 percent for subprime loans, 10 percent for loans in default, and 5 percent for delinquent loans.”<sup>50</sup>

The appropriated funds are allocated in a two-step process, with roughly half going to states and the other half to the “entitlement” cities that directly receive funding from HUD.<sup>51</sup> The first step in the allocation determines the total state allocation.<sup>52</sup> The second step is a separate formula used to divide up the total state allocation based upon greatest proportional need.<sup>53</sup> Here, the minimum allowable statewide allocation is subtracted from the total state allocation determined in the first formula.<sup>54</sup> The remainder is divided up by jurisdictional need.<sup>55</sup> Where an individual jurisdictional amount is determined to be less than \$2 million, the amount is “rolled up” into the overall statewide allocation.<sup>56</sup>

States are responsible for distributing their allocated funding further to their local jurisdictions, based on their own understanding of areas of “greatest need.” States are given broad discretion for this process. For example, states may choose to direct the funding to those jurisdictions facing very high incidence of

foreclosure and abandonment. Or, states may decide that funding may be best targeted to those jurisdictions with more limited numbers of foreclosed, vacant, and abandoned properties, where the associated negative consequences are easier to contain, and the community has greater chances of returning quickly to relative stability.

### ***Over the long-term, policy impacts may be limited***

Over the long-term, the Emergency Assistance Act's short timeframe and funding appropriations limit its ability to serve the continuing (and growing) need for states and localities to effectively handle the costs of vacant and abandoned properties.

The act is clearly a short-term emergency measure in response to the recent mortgage foreclosure crisis. The funding made available under this act must be utilized by state or local governments within 18 months of receipt.<sup>57</sup> However, it is important to consider that the problems this funding is meant to address will continue well beyond this short window.

With the allocation formula in place, HUD has charged state and local governments with submitting plans detailing how the funds will be obligated by December 1, 2008. This is a phenomenally short timeframe for these jurisdictions to make the most informed and responsible decisions for ensuring that the funding goes to public entities that are capable of adequately negotiating the acquisition, rehabilitation, management, and, if needed, rental, of foreclosed, vacant, and abandoned properties.

In terms of funding, \$3.92 billion is a critically needed infusion of capital for land banking activities and will strengthen the resources for those communities receiving funding, but it does not come close to the dollar value of the roughly two million residential foreclosures projected for 2008 or lost property tax revenues of local government.

## **VI. Toward more focused federal engagement**

The needed federal policy intervention to alleviate the negative consequences of the mortgage crisis precipitated the federal government's initial move to support land banking. To ensure that federal efforts succeed with the most short-term impact and to begin crafting longer term structures to support this vital metropolitan activity, Washington should take a series of short- and long-term steps.

### ***Short-term policy implementation measures***

In the short-term, the federal government—specifically the Secretary of Housing and Urban Development (HUD)—should implement the Emergency Assistance Act in a manner that has the greatest possible impact in those communities struggling most with the costs of vacant and abandoned properties.

First, HUD should interpret the statutory language to provide states and localities as much flexibility as possible within the law to determine their own priorities for using the federal funds. HUD's allocation formula does an admirable job granting states flexibility in determining their own ways for distributing their allocated funding to localities.<sup>58</sup> But, HUD should take one step further and revisit the allocation formula guidelines to allow the appropriated funds to be used to acquire vacant and abandoned properties that are not just the result of foreclosures. This would be especially beneficial to those communities where lenders elect to simply follow the owner's steps and abandon the property without a foreclosure action. Also, funds should be allowed to be used for acquiring vacant foreclosed homes for which there is no likely subsequent purchaser and for resolving complex title questions that limit the marketability of properties. Indeed, over the coming months, as states and localities labor to put their allocated funding to the best uses, HUD may likely receive multiple requests for waivers based on these concerns.

Second, in targeting the appropriated funds, there must be a deep understanding of the "greatest need." Completed foreclosures do not, by themselves, necessarily correlate with the destabilization of existing neighborhoods as a result of being vacant and abandoned properties. If the federal funds are to be targeted to the areas of "greatest need," there must be an understanding of the underlying nature of the problems posed by vacant and abandoned properties. It must be understood that not all foreclosed homes become vacant and not all vacancies are an indication of abandonment. Residential mortgage foreclosures become a major economic and social burden for communities primarily when they result in abandonment and secondarily when there are high vacancies.

The nature of the "greatest need" will certainly vary according to the different economic and social trends in widely disparate communities. A metropolitan area confronting long term economic decline in addition to record high residential foreclosures faces a different set of challenges than an area with record high residential foreclosures which follow upon superheated residential price appreciation. In both instances, however, the common variable is not the number or the percentage of foreclosures but the relative concentration of foreclosures and abandoned within a single neighborhood. Five residential foreclosures in an otherwise stable geographically large residential community may not have significant adverse impact whereas five residential foreclosures on a single street have a dramatically larger effect.

With an understanding of these principles, the federal government needs to base funds deployed through the Emergency Assistance Act not just on the relative rates for residential foreclosures but also on the degree of concentration of such

foreclosures within a single geographic area. For these purposes, the concentration of increased foreclosures within each census tract, or within each postal zip code (either 5 digit or 9 digit), would be a far more accurate indicator of the likelihood of significant external costs being imposed on neighborhoods, communities and cities.<sup>59</sup> The aggregate grants can still be made to the states, but the state share would be based on a combination of concentrated foreclosures and subprime delinquencies.

### ***Long-term efforts should include a new metropolitan land policy***

Over the long term, the federal government should engage in a supportive role in metropolitan land policy by establishing a federal land banking policy. It should do so in a manner that strengthens the opportunity to address the complex costs of vacant and abandoned properties and not in a way that undermines the strengths of a flexible program. It should draw upon a new collaboration of federal, state, and local roles in addressing those barriers currently faced by communities interested in land banking: insufficient capitalization, inadequate code and tax reform, and lack of regionalism.

- *Capitalization.* The federal land banking program would help to capitalize local and regional land banking. The amount of funding made available for land banking activities should be enough to empower local governments to address the several million properties that are being foreclosed upon or are already vacant. Bills proposed in the House of Representatives, before the recent Housing and Economic Recovery Act was passed, would have provided \$15 billion in loan and grant funds.
- *Code and tax reform.* Grants provided through the federal land banking program should incentivize the reform of local code enforcement procedures and state tax foreclosure procedures to better address the costs of vacant and abandoned properties. While property acquisition and land banking are crucial first steps to respond to the problems from abandonment and vacancy, these state and local laws are also important subsidiary elements for effectively resolving the issues involved. Accordingly, the local and state jurisdictions that undertake the development or redevelopment of effective procedures would receive preferences in land banking capitalization. Those localities or states needing help with such reforms would receive technical assistance from the federal government, who could share lessons from other jurisdictions that have successfully tackled such laws.
- *Regionalism.* Federal funding for land banking capitalization should also incentivize the development of inter-jurisdictional entities (e.g., new urban cooperative agreements and intergovernmental authorities) that address vacant and abandoned properties across city and county

boundary lines. Facilitating and supporting regionalism in this capacity could help align the scale of authority to the range of issues involved in land banking. In encouraging intergovernmental cooperation, the federal government should be clear about the range of permitted uses for federal funding, but it should be careful not to supplant the ability of localities and regions to determine their own on-the-ground needs and priorities. Flexibility to make final decisions concerning the priority use of the funds is best left at the local or regional level, where an understanding of economic trends can be most accurate and particularized.

## **VII. States and localities are innovating in land banking**

Even with informed federal policies, land banking programs, as with other innovations in government, are likely to face obstacles to their implementation. There may be reluctance on the part of existing local government departments or agencies to support the restructuring or reallocation of land acquisition, management, and disposition functions. There may also be concern on the part of private investors that land banking programs will remove investment opportunities, and private developers may fear competition. Given the strength of and pride involved in home rule authority in many cities and towns, there may likely be some hesitancy in turning toward regional and inter-jurisdictional programs.

Rarely, however, are these obstacles insurmountable. Indeed, over the past few years, a broad and growing number of communities across the country have moved to create land banks with flexible acquisition, management, and disposition authorities. They have done so largely as part of state and local legislative reforms involving amendments to tax foreclosure laws, housing and building code enforcement procedures, and, recently, to residential mortgage foreclosure laws.

In Michigan, land banks have been created in ten separate counties, since the enactment of strong statewide land bank legislation conceived in 2003.<sup>60</sup> In Georgia, five land banks have been created or are under active consideration.<sup>61</sup> In Texas, both Houston and Dallas have begun implementing local land bank programs.<sup>62</sup> And Maryland has recently enacted legislation that authorizes the creation of a land banking program in Baltimore.<sup>63</sup> Abandoned property legislation is under consideration in Ohio that directly ties to the strengths of the local land banks.<sup>64</sup> Similar legislation has been proposed in such diverse communities as Birmingham, Alabama, San Diego, California, Huntington, West Virginia, Fort Collins, Colorado, and Buffalo, New York.<sup>65</sup>

One of the newest land banks in the country, and the most successful, is the Genesee County Land Bank Authority in Flint, Michigan.<sup>66</sup> After its inception, the Genesee Land Bank moved quickly to become the owner of 8,000 separate

parcels of land, almost five percent of the entire property inventory in the county. Due to the sheer volume of properties and the weakness of city agencies, the land bank emerged with a lead role in land use planning, neighborhood and community stabilization and revitalization, and affordable housing. It has become a major developer—or redeveloper—of abandoned properties and has made possible regional collaboration in addressing common problems.

With its inventory derived overwhelmingly from tax foreclosed properties, the Genesee Land Bank has required minimal capitalization for direct market purchases. By using statutory authority to classify tax foreclosed properties as “brownfields”, the Genesee Land Bank is able to use brownfield redevelopment financing to demolish abandoned structures. One study has estimated that a demolition expenditure of \$3.5 million increased neighboring property values by more than \$109 million.<sup>67</sup>

### **Best in class: the Genesee County Land Bank**

The Genesee County Land Bank, was initially created in 2002 under Michigan state laws permitting urban cooperation agreements. It expanded following the enactment of the Michigan Land Bank Act in 2004. The land bank acquires an average of 1,000 abandoned properties each year and has been the catalyst for increasing property values by more than \$100 million. It has developed hundreds of units of affordable housing, renovated major commercial buildings in downtown Flint, and remediated over 1,000 “brownfield” properties. Its efforts have received national recognition. The land bank earned the 2007 Innovations in Government Award from the Ash Institute at the Kennedy School of Government, Harvard University.

*For more information see [www.thelandbank.org](http://www.thelandbank.org).*

All of the recent land banking initiatives share common features. They are motivated by the conviction that vacant and abandoned properties are imposing significant costs and losses on the fiscal and cultural health of the surrounding communities. They are shaped by the realization that existing state laws and local ordinances are insufficient to stop private market speculation and abandonment of properties. They are grounded in the determination to acquire control of properties and convert them to productive uses consistent with local government policies. And, their chances of success can be bolstered by supportive federal engagement.

### **VIII. Land banking methods provide a robust framework for a new, federalist approach to metropolitan land policy**

Land banking is a process that draws appropriately on the strengths of local, state, and federal roles. It is a policy that the federal government can promote and guide, but whose implementation can be tailored specifically to meet state and local circumstances. At its fullest potential, land banking can serve the broad responsibilities of metropolitan planning and development through asset banking, market stabilization, capital reserve formation, and regulation of targeted land use activities.

#### ***Land banking will succeed best when it draws upon a collaboration between local, state, and federal actors***

While federal policy may promote the general concept of land banking, strategic implementation of land banking programs will vary across the country, as it should, to be most responsive to local and regional situations. For example, the legal authority that communities need to undertake land banking will usually require a state enabling statute, but it will also depend on the local determinants of home rule and regional planning. Further, the precise organizational structure of land banking programs, whether through fully independent public corporations, or within existing agencies and authorities, will depend on local traditions and allocations of power. And the priorities and purposes for land banking will be determined by local governments in coordination with state statutes.

Local governments are in the best position to create and operate land banking programs, to target them to specific geographic areas of greatest need, and to determine the priorities for short- and long-term reuse of properties. Specifically, local governments need to first assess the volume, location, and condition of vacant and abandoned properties. Second, they need to assess the barriers to bringing these properties to market, such as tax foreclosure status, fractured or divided forms of title, or public nuisance abatement liens. Third, local governments must evaluate the extent of their legal discretion in acquisition and—most importantly—the disposition of property. Fourth, and finally, local governments need to determine the extent of their property management capacities relative to vacant residential units, vacant properties, and structures requiring rehabilitation.

The role of state governments is to authorize localities to engage in flexible land banking programs and to encourage regional and inter-jurisdiction land banking initiatives. At the state level, the first step towards implementing land banking programs is a careful reevaluation of existing property tax foreclosure laws and the title problems they may inadvertently create regarding the subsequent marketability of foreclosed properties. In parallel fashion, states should also examine their mortgage foreclosure laws to ensure that there is full transparency

at the time of a foreclosure sale as to the identity of the party conducting the foreclosure and the identity of the purchaser. The second step for states is an assessment of the degree of state control over the terms and conditions for local government transfers of property. The third step is the creation, to the extent necessary, of the authority and incentives required for regional collaboration in land banking programs.

The federal government can be a valuable partner in land banking by providing initial capital funding for land acquisition and creating incentives for the type of state and local practices, such as regional or inter-jurisdictional collaboration, that can efficiently and effectively convert vacant and abandoned properties into productive use. Through the Emergency Assistance Act, the federal government has taken a small, but essential, step in driving land banking to be a part of metropolitan land policy. By providing initial capital resources to areas hardest hit by vacant, abandoned, and foreclosed properties, it is providing the seed funding for inventory control and acquisition. By affirming that the funding is available for the establishment of land banks, it is laying the foundation for future efforts. However, as federal statutory language is interpreted in implementation during the coming months and years, communication between the federal and local governments needs to improve to provide clarity and to ensure that localities are given the discretion necessary to use federal funds in a manner consistent with local conditions and priorities.

***Land banking can be an integral part of a new approach to metropolitan land policy***

Given a supportive partnership between local, state, and federal governments, land banking can chart new territory for metropolitan land policy in the 21<sup>st</sup> century. Land banking programs can serve four functions that are directly analogous to the role of the federal banking regulatory institutions: (1) asset banking; (2) secondary market stabilization; (3) capital reserves; and (4) banking regulation. Instead of focusing on cash and cash equivalents, however, land banking programs specialize specifically in land use. Instead of focusing on national and international markets, land banking specializes in neighborhood and community stability and planning. Instead of focusing on private market institutions, land banking specializes in bridging access from private markets to land.

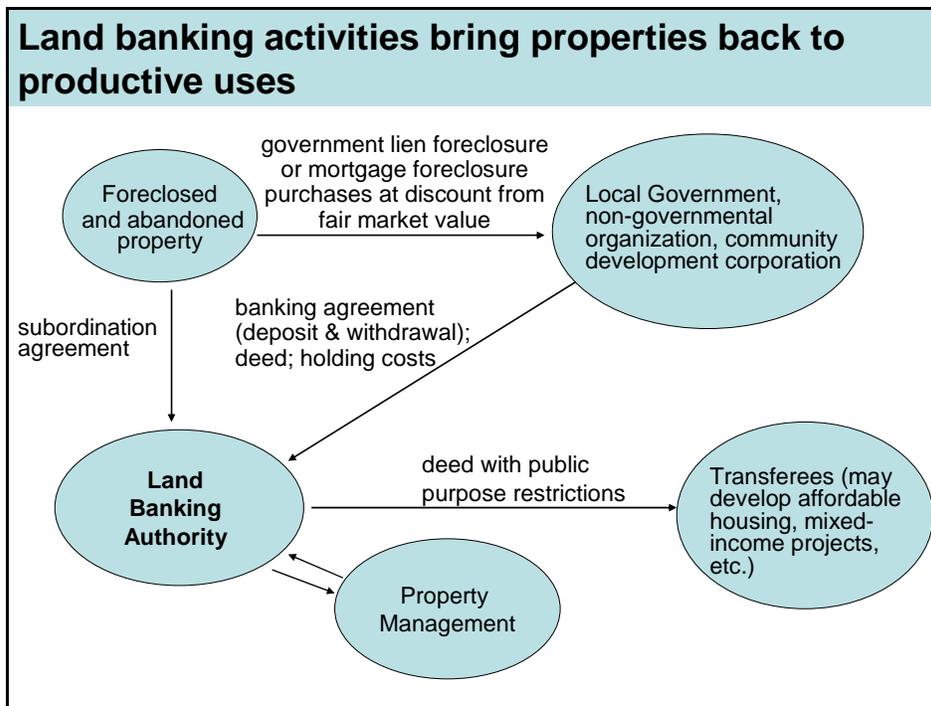
***1. Land banking can engage in asset banking***

Land banking engages in “asset banking” by acquiring inventories of real property from five primary sources: (i) tax delinquencies and tax foreclosures; (ii) excess residential real estate foreclosures; (iii) nuisance abatement lien enforcement; (iv) direct market purchases; and (v) “deposits” by third parties of properties to be held pending redevelopment. Properties acquired by local governments through tax foreclosures and nuisance abatement lien foreclosures are the primary inventory of land banks thus far. Federal capitalization of a land

banking program could make possible the acquisition of vacant foreclosed residential properties and possibly direct strategic market purchases of other properties.

The fifth potential inventory source has not been explored to any significant degree but holds potential for having a dramatic impact on metropolitan land policy. This potential category of inventory includes properties that have been identified by governmental entities or not-for-profit entities for future development (over a two to five year time horizon) for which there is no present market capacity or market demand that will drive the development. A “deposit” based land banking program would permit a governmental entity or not-for-profit entity to transfer ownership of property to a land banking entity, reserving the right to “withdraw” the property at any time upon the reimbursement of all holding costs attributable to the property. The land banking entity would also have a right to compel a withdrawal at any time, and if the depositor declines to accept a re-conveyance of the property, it becomes an unrestricted asset of the land banking program. Upon withdrawal or another transfer, property from the land banking entity is subject to the established public priority development or use restrictions. During the period of time in which the land banking program holds the property as a deposit, it also manages and maintains the property. The Atlanta Land Bank approved a new policy authorizing such a formal land banking program in December 2007.<sup>68</sup>

A key feature of an asset banking function of a land banking program is the capacity to design the program in a manner that accommodates “deposits” of real property that is encumbered by a mortgage held by the depositor or a third party.<sup>69</sup> This asset banking program directly offers the possibility of a negotiated acquisition of the existing excess inventory of foreclosed residential real estate owned by lenders.



## 2. Land banking can carry out market stabilization

Land banking engages in property market stabilization by creating the functional equivalent of a publicly controlled secondary market for the property. The role of land banking is to intervene in property transactions in order to address the contraction and expansion of property “liquidity” relative to demand. The potential sources of inventory are limited to surplus or excess land for which there is no readily available private market. Land banking does not incorporate land for which there is private market demand, leaving any appropriate private development regulation to the more traditional forms of local zoning and land use planning. Correspondingly, land banking does not engage in involuntary acquisitions or transfers, except insofar as properties acquired as a result of public lien foreclosures (property taxes and nuisance abatement liens). No existing land bank has the power of eminent domain, and the use of potential federal funding in eminent domain proceedings would be severely limited.<sup>70</sup>

## 3. Land banking can maintain capital reserves

Land banking can also serve the functional equivalent of maintaining “capital reserves” with respect to the supply of land. Land banking programs maintain real property reserves to respond to future strategic needs of the community such as affordable housing, green spaces, or particularized community needs.

When there is strong private market demand for available property, rapid price escalation is the normal market response. While few communities resist strong market conditions, the price increases frequently make it simply too costly to undertake broader public goals. The most common example of this is in

communities with strong demand for upper income residential properties, making it cost prohibitive to develop and operate affordable housing programs. In these communities, a land banking program could acquire and hold available surplus parcels of property for long term strategic planning for affordable housing.<sup>71</sup>

#### *4. Land banking can serve a “bank regulatory” function*

As part of a public agency, or as a separate public authority, a land banking program is, and should be, required to exercise its authority consistent with the common good. In serving a “bank regulatory” function, all the real property transactions of land banking programs should fall within clearly stated purposes and priorities on land use. These purposes and priorities may be established at the state legislative level, by intergovernmental contracts, or by the local government that creates the land banking program. The goals should be clearly and objectively set forth, such as the promotion of affordable housing (with specific definitions of affordability), or the removal of vacant structures in neighborhoods (with specific definitions of vacant). The goals and priorities must also be flexible and capable of adjustment by the appropriate governmental entities as market conditions change. Though present economic conditions reflect widespread weak markets, the day will surely return when strong markets are dominant. All dispositions by land banking programs must contain mechanisms by which the stated purposes and goals can be legally enforced upon the transferee. Contractual obligations, restrictive covenants, subordinate financing, and rights of first refusal are all available strategies for enforcement.

## **IX. Conclusion**

The available 20<sup>th</sup> century tools for metropolitan land use are not sufficient to plan and manage the growth and redevelopment of metropolitan areas in the 21<sup>st</sup> century. Land use regulations in the form of zoning ordinances and housing and building codes play a vital role in new development and certainly shape the character of our communities in strong economic markets. What is missing from the current inventory of tools is an efficient and effective method for addressing vacant and abandoned properties. As our metropolitan areas redesign and restructure their visions for this century it is essential that they have the appropriate tools to deal with surplus properties.

Due to the unique characteristics of each parcel of land and its static location, general supply and demand markets do not reach efficient results when the supply of properties exceeds the demand. Whether as a result of long term economic trends or shorter and more sudden declines in the housing market, an excess supply of land leaves no positive market for unused properties. Instead, vacant properties become the targets of vandalism, simply accelerating their

liabilities and imposing direct and indirect costs on the neighborhood, the community, and the city.

Local and regional land banking programs are governmental initiatives that specialize in surplus properties resulting from market distortions. Their overriding fundamental goal is to convert surplus properties from liabilities into productive assets. Land banking programs fill the gap existing in metropolitan land policy.

More broadly, land banking programs become depository institutions for surplus lands. They engage in asset banking and eliminate the danger of municipal land becoming abandoned and a community-wide liability. Land banking programs also engage in real estate market stabilization when supply suddenly exceeds demand by temporarily reducing the supply and returning it to the market only when private demand returns. Another of their functions is to serve as capital reserves of property pending future development capacity or future public needs. These programs can also be designed to regulate the short- and long-term use of the surplus properties they acquire, ensuring that they become assets for the community and not liabilities.

Federal policy can and should facilitate the creation of local and regional land banking programs in a way that would bring together local, state, and federal government roles in a constructive approach not witnessed in decades. The local government's role should be to establish land banking programs with sufficient autonomy to act expeditiously, yet with sufficient guidance on how to clearly achieve the policy objectives in their specific region. The state's primary role should be to authorize local governments to create land banks with flexible powers to acquire, manage, and convey surplus properties consistent with public goals. With its level of authority, the state must resolve questions of home rule and encourage multi-jurisdictional collaboration. The federal government's role should be to provide the initial capitalization for acquisition, maintenance, and rehabilitation of vacant properties to target these resources to the communities most adversely affected, and to create incentives for regional planning. The federal government has taken a step toward capitalization through the Emergency Assistance Act of the Housing and Economic Recovery Act of 2008, but Washington needs to do more to ensure sufficient funding, state and local code reform, and regionalism for land banking to succeed long-term.

Land banking's ultimate objective is to provide a multi-jurisdictional response to inefficient markets in land and the reallocation of land for inclusionary, sustainable purposes. Forty years ago, land banking was encouraged to be a part of federal housing and urban development policy. It is time for it to be implemented. The need is greater than ever; the time is now; and the opportunity is here.

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## NOTES

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- <sup>2</sup> Land banking was first proposed as part of urban land policy in the late 1960s. It was urged as an element of federal policy for housing and urban development by Charles M. Haar, Professor of Law, Harvard Law School and former Assistant Secretary for Housing and Urban Development in 1971. See, Frank S. Alexander, "Land Bank Strategies for Renewing Urban Land." *Journal of Affordable Housing and Community Development Law* 14 (2005):140, 143.
- <sup>3</sup> Frank S. Alexander, "Land Bank Strategies for Renewing Urban Land." *Journal of Affordable Housing and Community Development Law* 14 (2005):140-169.
- <sup>4</sup> Alexander, *Land Bank Authorities*.
- <sup>5</sup> Michigan Land Bank Fast Track Act, 2003 Pub. Act 258, Michigan Comp. Laws §§ 124.751–124.774.
- <sup>6</sup> Patricia E. Norris and Nigel G. Griswold, "Economic Impacts of Residential Property Abandonment and the Genesee County Land Bank in Flint, Michigan" (East Lansing: Michigan State University Land Policy Institute, 2007).
- <sup>7</sup> Community Research Partners and ReBuild Ohio, "\$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities" (Columbus: 2008).
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- <sup>14</sup> Joint Center for Housing Studies. *The State of the Nation's Housing*.
- <sup>15</sup> *Ibid.*
- <sup>16</sup> This wonderfully powerful and concise statement was made by Alan Mallach, Senior Fellow of the National Housing Institute, at an address at the National Vacant Properties Campaign Conference in Pittsburg, PA on September 24, 2007.

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- <sup>17</sup> William C. Apgar and Mark Duda, "Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom" (Minneapolis: Homeownership Preservation Foundation, 2005).
- <sup>18</sup> Dan Immergluck and Geoff Smith, "The External Costs of Foreclosure: The Impact of Single-family Mortgage Foreclosures on Property Values," *Housing Policy Debate*, Volume 17(1) (2006):57-80.
- <sup>19</sup> Patricia E. Norris and Nigel G. Griswold, "Economic Impacts of Residential Property Abandonment" (East Lansing, MI: Michigan State University Land Policy Institute Report #2007-05).
- <sup>20</sup> Research for Democracy, *Blight Free Philadelphia: A Public Private Strategy to Create and Enhance Neighborhood Value*. (Philadelphia: Temple University Center for Public Policy, 2001). Available at [www.temple.edu/rfd/content/BlightFreePhiladelphia.pdf](http://www.temple.edu/rfd/content/BlightFreePhiladelphia.pdf)
- <sup>21</sup> Community Research Partners and ReBuild Ohio, *\$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities*. (Columbus: 2008).
- <sup>22</sup> Dan Immergluck and Geoff Smith, "The Impact of Single Family Mortgage Foreclosures on Crime." *Housing Studies* 21 (6) (2006): 851-866.
- <sup>23</sup> Tim Eberly, "Side Effect of Foreclosures: Empty Houses Filled with Crime," *Atlanta Journal-Constitution*, June 22, 2008 p. D1.
- <sup>24</sup> Michigan Comp. Laws § 211.7gg, § 211.1021; 2003 Michigan Public Acts 260.
- <sup>25</sup> State and local government housing trust funds are an important exception to the lack of state and local funding for property acquisitions. See generally, The Housing Trust Fund Project, Center for Community Change at [www.communitychange.org/our-projects/htf](http://www.communitychange.org/our-projects/htf). The Connecticut Land Bank & Land Trust Program is an example of state trust fund financing for land acquisition. See Conn. Gen. Stat. Ann. Chapt. 133, § 8-214c.
- <sup>26</sup> Gina Radice, "Abandoned Property in Indiana: Legal, Practical, and Policy Effect of 2006 Statutory Amendments" (City of Indianapolis, 2006). The City of Chula Vista, California has enacted an ordinance imposing responsibility (and possible fines) on mortgagees. See [www.chulavistaca.gov/City\\_Services/Development\\_Services/Planning\\_Building/Building/Code\\_Enforcement/AbanResPropertyProg.asp](http://www.chulavistaca.gov/City_Services/Development_Services/Planning_Building/Building/Code_Enforcement/AbanResPropertyProg.asp) (Sept. 2008).
- <sup>27</sup> The National Vacant Properties Campaign was created in 2002 by Smart Growth America, the Local Initiatives Support Corporation, and others to develop strategies for addressing the problems posed by vacant, abandoned, and tax delinquent properties. Available at [www.vacantproperties.org](http://www.vacantproperties.org) (Sept. 2008).
- <sup>28</sup> Frank S. Alexander, "Tax Liens, Tax Sales and Due Process," *Indiana Law Journal*. 75(3) (2000):747-807.
- <sup>29</sup> See, e.g., 1999 Pub. Act 123, Michigan Comp. Laws §§ 211.78–211.79; Georgia Code Annotated § 48-4-75.
- <sup>30</sup> Frank S. Alexander, "Inherent Tensions Between Home Rule and Regional Planning," *Wake Forest Law Review*. 35 (2000):539-561.

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<sup>31</sup> See, e.g., the land bank statutes of Georgia and Michigan, both of which require intergovernmental agreements for the exercise of powers. Georgia Code Annotated § 48-4-60; Michigan Comp. Laws § 124.751. Alexander, “Land Bank Authorities,” App. B.

<sup>32</sup> The consolidation of Louisville, KY and Jefferson County, KY included the restructuring of the Louisville Land Bank Authority. Alexander, *Land Bank Authorities*, App. C-2. The Georgia statute expressly acknowledges the possibility of local government consolidation. Georgia Code Annotated § 48-4-61(e).

<sup>33</sup> Existing state statutes on land banking permit local governments a broad range of discretion in establishing priorities for the use of properties held by a land bank so long as those uses are consistent with the state’s own conceptions of public purposes and public functions. These purposes, as determined by the local land banking program, include but are not limited to homeownership and affordable housing, economic development, and parks and open green spaces.

<sup>34</sup> Though one of the earliest references to land banking came in the form of a recommendation (in 1971) for the creation of federal support for urban land banks, no action was taken and there has been no direct federal government role in providing support for local land banking. Federal government support, whether through community development block grants, environmental remediation assistance or other revenue sharing with local governments has indirectly supported land bank programs in the discretion of the local governments. For more information, see Charles M. Haar, *Wanted: Two Federal Levers for Urban Land Use – Land Banks and Urbank*, U.S. Congress, House Committee on Banking and Currency; Papers submitted to Subcommittee on Housing; Panels on Housing Production, Housing Demand, and Developing a Suitable Living Environment 927-940 (June 1971).

Recent developments in land banking and this policy analysis urging the expanded use of land banking as metropolitan policy, is not to be confused with the early twentieth century federal role in the creation of “federal land banks”. At that time Congress created a system of federal land banks for the purpose of providing long term agricultural loans. Federal Farm Loan Act, Pub. L. No. 64-158, §245, 39 Stat. 360 (1916). In many ways a forerunner to the creation of the federal home loan banks in the 1930s and the gradual emergence of the secondary mortgage market for residential loans, the Federal Land Banks and their sister agencies the Federal Intermediate Credit Banks were reorganized and renamed “Farm Credit Banks” by Congress in 1987. The Agricultural Credit Act of 1987, Pub. L. 100-233, 101 Stat. 568-1718 (1988). These federal land banks did not acquire, convey or hold property for assemblage or for long term development. They were (and are) banks in the conventional sense of providing liquidity.

<sup>35</sup> These included both the Neighborhood Stabilization Act of 2008, H.R. 5818, as passed the House of Representatives on May 8, 2008, and “Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes,” Title III of the Foreclosure Prevention Act of 2008, which is Division B of the omnibus Housing and Economic Recovery Act of 2008 (H.R. 3221), approved by the Senate on April 10, 2008.

<sup>36</sup> Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008).

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- <sup>37</sup> Division B, Foreclosure Prevention, Title III, §§ 2301-2305, Pub. L. No. 110-289, 122 Stat. 2654 (hereinafter referred to as the “Emergency Assistance Act”).
- <sup>38</sup> Emergency Assistance Act, § 2301(a).
- <sup>39</sup> Emergency Assistance Act, § 2301(a), (c).
- <sup>40</sup> Emergency Assistance Act, § 2301(c)(3)(C).
- <sup>41</sup> Emergency Assistance Act, § 2301(c)(3)(C), § 2301(c)(3).
- <sup>42</sup> Emergency Assistance Act, § 2301(a), §2301(c)(1) (emphasis added).
- <sup>43</sup> Emergency Assistance Act, § 2301(c)(3)(A), §2301(c)(3)(B) (emphasis added).
- <sup>44</sup> Emergency Assistance Act, § 2301(b)(3).
- <sup>45</sup> Emergency Assistance Act, § 2301(b)(3).
- <sup>46</sup> Emergency Assistance Act, § 2301(c)(2).
- <sup>47</sup> See, letter from Rep. Dennis J. Kucinich, Chairman, Domestic Policy Subcommittee, to Secretary Steve Preston, Housing & Urban Development, July 30, 2008.
- <sup>48</sup> “Methodology for Allocation of \$3.92 billion of Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes,” available at [www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspfa\\_methodology.pdf](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspfa_methodology.pdf) (Sept. 2008).
- <sup>49</sup> Ibid.
- <sup>50</sup> Ibid.
- <sup>51</sup> Ibid.
- <sup>52</sup> Ibid.
- <sup>53</sup> Ibid.
- <sup>54</sup> Ibid.
- <sup>55</sup> Ibid.
- <sup>56</sup> Ibid.
- <sup>57</sup> Emergency Assistance Act, § 2301(c)(1).
- <sup>58</sup> “Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees under the Housing and Economic Recovery Act, 2008” available at [www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspnotice.pdf](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspnotice.pdf) (Oct. 2008).
- <sup>59</sup> The foreclosure rates (or alternatively the target area priority) should also be adjusted to focus on previously occupied single-family foreclosed properties. To include within the calculations partially built single family construction – particularly when it is in large scale subdivisions or condominium structures – distorts both the purpose and the effect of the legislation.

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- <sup>60</sup> These are Berrien, Calhoun, Genesee, Grand Traverse, Ingham, Jackson, Muskegon, Ogemaw, Saginaw, and Wayne counties. See [www.michigan.gov/dleg/0,1607,7-154-34176\\_44777---,00.html](http://www.michigan.gov/dleg/0,1607,7-154-34176_44777---,00.html) (Sept. 2008).
- <sup>61</sup> These presently exist in Atlanta, Savannah, Macon and Valdosta, and are under consideration in Rome and Columbus.
- <sup>62</sup> For more information, see Land Assemblage and Redevelopment Authority, Houston, TX at [www.houstontx.gov/lara/](http://www.houstontx.gov/lara/) (Sept. 2008); City of Dallas Urban Land Bank Demonstration Program at [www.dallascityhall.com/html/land\\_bank\\_program.html](http://www.dallascityhall.com/html/land_bank_program.html) (Sept. 2008).
- <sup>63</sup> Senate Bill 911, enacting Chapter 468, Maryland Annotated Code, article 24 §22-101 (2008). Senate Bill 911, 423<sup>rd</sup> General Assembly Regular Session (Maryland 2008).
- <sup>64</sup> Senate Bill 277, approved by the Senate on May 29, 2008, would enact §1901.185 and §3767.50 of the Ohio Revised Code pertaining to foreclosures involving abandoned properties. Senate Bill 277, 127<sup>th</sup> General Assembly Regular Session (Ohio 2007).
- <sup>65</sup> “Taking Blight out of Birmingham,” *The Birmingham News*, June 15, 2008, p.2B; Emmet Pierce, “A land bank for foreclosed properties?” *San Diego Union Tribune*, February 17, 2008, p. A1; Bryan Chambers, “Occupation tax, local land bank authority are main components,” *The Herald-Dispatch*, June 17, 2008, available at [www.herald-dispatch.com/news/x1627429535/Occupation-tax-local-bank-authority-are-main-components](http://www.herald-dispatch.com/news/x1627429535/Occupation-tax-local-bank-authority-are-main-components) (Sept. 2008); City of Fort Collins website at [www.fcgov.com/affordablehousing/land-bank.php](http://www.fcgov.com/affordablehousing/land-bank.php). Bill A08059, New York State Assembly, as passed the New York State Senate on June 18, 2008.
- <sup>66</sup> The Genesee County Land Bank received the 2007 Innovations in Government Award from the Ash Institute for Democratic Governance and Innovation at Harvard University. For more information, see [www.thelandbank.org](http://www.thelandbank.org) (Sept. 2008).
- <sup>67</sup> Norris and Griswold, *Economic Impacts of Residential Property Abandonment*.
- <sup>68</sup> “Policies and Procedures for Land Banking,” Fulton County/City of Atlanta Land Bank Authority,” (as approved December 4, 2007).
- <sup>69</sup> An appropriate consent and subordination agreement would be required that would provide that the security interest is non-recourse as to the land bank, with no cash flow requirements from the land bank, and is subject to the public purpose restrictions of the land bank upon reacquisition by the mortgagee.
- <sup>70</sup> Alexander, *Land Bank Authorities*, 33; Sec. 303, H.R. 3221 (EAS).
- <sup>71</sup> The proposals for a land bank in San Diego, CA rest primarily on this rationale. See Emmet Pierce, “A land bank for foreclosed properties?” *San Diego Union Tribune*, February 17, 2008, p.A1.

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