



Martha's Vineyard Land Bank Commission

RULES AND REGULATIONS GOVERNING THE PROCESSING OF THE LAND BANK TRANSFER FEE

*approved by vote of the land bank commission: July 2, 1990
amended through: September 14, 2009*

SECTION 1 - GENERAL

1.01 PURPOSE

The Martha's Vineyard land bank commission, pursuant to section 3 of chapter 736 of the Acts of 1985 (Dukes County Land Bank Act), as amended, hereby adopts and establishes the following rules and regulations for the conduct of its proceedings and the application of its transfer fee to transfers of any real property interest within the member towns on Martha's Vineyard.

1.02 EFFECTIVE DATE

The rules and regulations of the Martha's Vineyard land bank commission shall take effect on July 9, 1990 and apply to transfers occurring on or after that date.

1.03 DEFINITIONS

For the purposes of these rules and regulations, the following words and phrases shall have the meanings set forth below. For convenience, the definitions from the Act are set forth herein, together with supplementary defined words.

"Act" shall refer to the Act Establishing the Dukes County Land Bank, Chapter 736 of the Acts of 1985, as amended.

"Commission" shall refer to the Martha's Vineyard Land Bank Commission, established and defined in section three of the Act.

"Control", "Controlling" and "Controlling Interest" shall have the meaning set forth in Securities and Exchange Commission Rule 405, promulgated under the Securities Exchange Act of 1933, as amended, stating the definition of these words as following: "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise."

"Fee" shall refer to the two percent real estate transfer fee established under section ten of the Act.

"Form LB1" shall refer to Martha's Vineyard Land Bank Commission Form LB1 Affidavit Attesting to the True and Complete Purchase Price.

"Form LB2" shall refer to Martha's Vineyard Land Bank Commission Form LB1 Affidavit Claiming Basis for Exemption from Transfer Fee.

"Forms" shall refer to land bank forms LB1 and LB2 as applicable.

"Institutional Lender" shall refer to "any bank defined in Section one of chapter 167 of the General Laws, any insurance company defined in section one of chapter 175 of the General Laws, and any mortgage company or investment company that made more than twenty mortgage loans in the calendar year preceding the year of the relevant mortgage for the purposes of subsection (m) of section twelve of the Act, and any national bank, federal savings and loan association, federal savings bank, bank holding company, or state or federally chartered credit union," as defined in section one of the Act.

"Internal Revenue Code" shall refer to the United States Internal Revenue Code of 1986, as amended. Any reference in any section of the Act or these rules and regulations to any provision of the Internal Revenue Code of 1954, as amended, shall refer to the corresponding provision of the 1986 Code.

"Land Bank" shall refer to the Martha's Vineyard Land Bank, established by section two of the Act, as defined in section one of the Act.

"Obligation of Law" refers to the determination of rights and obligations through the automatic effects of the law and not by any direct or voluntary act of the party affected.

"Purchaser" shall refer to "the transferee, grantee or recipient of any real property interest" as defined in section one of the Act.

"Purchase Price" shall refer to "all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred, all cash or

other property paid or transferred, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of the transfer; and the fair market value at the time of transfer of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest," as defined in section one of the Act. Deferred payments for which no value as of the time of transfer has been determined shall be valued at present value, discounting to the time of transfer using the interest rate agreed upon by the purchaser in the transfer documents, or if no interest rate has been so agreed upon, using the United States "prime rate" index as reported in the Wall Street Journal on the date of the time of transfer and compounded annually. The transfer fee shall not apply to the assumption of mortgages and like obligations to which the purchaser is already jointly and severally liable.

"Real Property Interest" shall refer to "any present or future legal equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, [including lease rights and renewal options for a term of thirty years or more; or those which provide for an automatic renewal at regular intervals;] but shall not include any interest which is limited to any or all of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance, and any estate for years having a term of less than thirty years; the reversionary right, condition, or right of entry for condition broken; the interest of a mortgagee or other secured party in any mortgage or security agreement; and the interest of a stockholder in a corporation, or a partner in a partnership, unless any real property interest has been transferred to such corporation or partnership for the purpose of evading the fee imposed by section ten.

"Seller" shall refer to "the transferor, grantor or immediate

former owner of any real property interest" as defined in section one of the Act.

"Supporting Documents" shall refer to all additional documents necessary to verify claims of exemption including, but limited to: schedules of beneficiaries, notarized gift letters, articles of organization, divorce decrees, and copies of deeds previously recorded.

"Time of Transfer" "of any real property interest shall mean, at the time that such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistance recorder of the appropriate registry district, not later than the time of such recording or filing" as defined in section one of the Act; or, with respect to transfer of interest in a corporation, or a transfer or a series of transfers of interest in a corporation, or a transfer or a series of transfers or partnership interests, or a change of interest in a trust where the transfer instrument is not a deed to be recorded in the registry of deeds of the county of Dukes County, within two business days of the conveyance.

"Transfer Documents" shall refer to the original deed or other transfer instrument including but not limited to: bills of sale, leases, and schedules of beneficiaries, one copy thereof, together with Martha's Vineyard Land Bank Commission Form LB1 completed and fully executed.

1.04 APPLICABILITY

The rules and regulations of the commission shall apply to the transfer of any real property interest within the member town or towns on Martha's Vineyard.

1.05 AMENDMENTS

These rules and regulations or any portion thereof may be amended, supplemented or repealed from time to time by the commission after a public hearing. Such hearing may be held either by the commission on its own motion or by petition of the public.

SECTION 2 - SUBMISSION AND ACCEPTANCE OF REAL ESTATE TRANSFERS

2.01 FORMS AND DOCUMENTS REQUIRED

- (1) The land bank commission hereby adopts the forms attached hereto as the documents to be submitted to the commission in connection with the transfer of any real property interest within the member town or towns of Martha's Vineyard; these forms are to be used in accordance with these rules and regulations.
- (2) At the time of transfer of any real property interest, the purchaser shall submit to the land bank commission the transfer documents.
- (3) In the event that a claim of exemption from the land bank fee is made, in part or in whole, or the transaction involves a trust, corporation or partnership, additional documents are required at the time of filing. These are listed in section 4 of these rules and regulations.
- (4) Form LB1 shall be executed by the purchaser or by an attorney admitted to practice in the commonwealth acting on behalf of the purchaser. Form LB2 shall be executed by the purchaser or the purchaser's legal representative acting under a power of attorney.
- (5) Forms executed by a party acting under a power of attorney shall be accompanied by a power-of-attorney form.
- (6) Proof of receipt of documents by the land bank shall only be presumed when the documents bear a stamp reading "Received, Martha's Vineyard Land Bank Commission, [date]" .

2.02 SUBMISSION COMPLETENESS

- (1) Pursuant to section ten of the Act, the land bank commission or its designees shall review submissions for completeness on a preliminary basis, make preliminary determinations of compliance with the Act and the requirements set forth herein, and on a preliminary basis "issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption." If an exemption is claimed, all supporting documents must be submitted at this time. The land bank commission or its

designees shall affix the Commission's certificate only if the transfer clearly qualifies for the exemption. Otherwise, no certificate shall be issued until the fee is paid or the commission reviews the transaction and finds that the claimed exemption applies. Where staff cannot determine exemption qualifications, the fee shall be paid and may be reimbursed if necessary, in accordance with section 7.03. In no event shall a certificate be issued if the real property interest is subject to any existing lien in favor of the land bank until such time as said lien is satisfied.

- (2) After a certificate is issued by the land bank commission or its designees, in accordance with section 2.02(1), the commission shall review the action taken at one of its next regularly scheduled meetings and make a final determination of compliance. Should the commission disagree with the issuance of a certificate stating that the transfer is exempt, the commission may use the lien procedure set forth in section five of these rules and regulations.
- (3) No transfer of any real property interest shall be processed by the land bank unless accompanied by the required forms and documents set forth herein.
- (4) Each form required to be submitted shall be accurately and completely executed by the purchaser or his designee as applicable prior to acceptance by the land bank.
- (5) If no exemption is claimed, or if a partial exemption is claimed leaving part of the purchase price subject to the fee, a check made payable to the Martha's Vineyard Land Bank Commission is required pursuant to the definition set forth in section 5.01 of these rules and regulations in the amount equal to two percent of the purchase price of the transfer not exempt.
- (6) The purchaser shall be responsible for submission completeness.
- (7) The commission hereby adopts the form of the certificate attached hereto as Exhibit A, pursuant to section ten of the Act.

2.03 LAND BANK TRANSFER FEE

- (1) As set forth in section ten of the Act, a fee "equal to

two percent of the purchase price upon the transfer of any real property interest situated in a member town or towns" shall be paid by the purchaser at the time of transfer. The purchase price must include all sums paid or things given in exchange for any real property interest, whether or not paid or given to the named seller.

- (2) The fee shall be the responsibility of the purchaser. Any agreement between the purchaser and the seller or any other party with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser.
- (3) The fee shall be paid by fee as set forth in section 5.01 of these rules and regulations, payable to the Martha's Vineyard Land Bank at its administrative headquarters during its regular business hours.
- (4) There shall be a fee paid upon the transfer of beneficial interest in a trust holding any real property interest.
- (5) A tax-free exchange of any real property interest under the Internal Revenue Code, as amended, is subject to the land bank fee, unless otherwise exempted pursuant to section twelve of the Act. Each property shall be subject to the transfer fee as if sold separately, and the purchase price shall be computed on the basis of the property to be exchanged pursuant to the definition of "Purchase Price" set forth in section 1.03 of these rules and regulations. In the event that the exchange involves the transfer of three real property interests, only two of which are for value, then the fee is not due on the third transfer for which no value was received or transferred.
- (6) There shall be a fee paid on any lease having a term of thirty years or more or those that provide for automatic renewal at regular intervals, including those certain renewals set forth in section 2.05 of these rules and regulations.

2.04 CORPORATION, PARTNERSHIP AND TRUST INTEREST TRANSFERS

- (1) Pursuant to sections 2.03(5) and 2.03(6) of these rules and regulations, non-deed transfers of interests in a trust holding any real property interest in a member town or towns are subject to the land bank fee, unless

otherwise exempted pursuant to section 12 of the Act. Non-deed transfers in a corporation or partnership whose principal business is the ownership of real property on Martha's Vineyard are also subject to the land bank fee if the partnership or corporation has been made for the purpose of evading the fee.

- (2) A series of transfers of interests in corporations, partnerships or trusts may be subject to the fee if it appears that the series of transfers occurred as a part of a single transaction or scheme yielding a non-exempt result, even though the individual transfers in the series are each exempt.
- (3) No land bank certificate shall be issued for a deed granted to a corporation, partnership or trust unless the purchaser supplies the required forms and transfer documents, pursuant to section 2.01(3) of these rules and regulations, and the purchaser establishes (either by substantial evidence or by delivering payment) that the fee has been paid in full, as applicable pursuant to section ten of the Act, on each and every transfer indicated on Form LB1.
- (4) Non-deed transfers of ownership in a corporation or partnership are subject to the land bank transfer fee if [a] real property on Martha's Vineyard makes up all or substantially all of the assets of such corporation or partnership; or [b] if such corporation or partnership does not transact business in the ordinary sense, but rather functions solely as a shell entity.

2.05 LEASES

- (1) Pursuant to the Act, the following leases are subject to the land bank fee: those leases of thirty years or more and those that provide for automatic renewal at option of tenant at regular intervals which, if exercised, will bring lease terms to 30 years or more.
- (2) Any lease may be presented to the land bank for issuance of a certificate.
- (3) The transfer fee shall be computed on the purchase price (at "present value" at the time of transfer of the lease payments over the term of the lease), as defined in these rules and regulations under the meaning of purchase price.

- (4) No certificate shall be issued for any instrument for recording in the registry of deeds unless the purchaser establishes, either by substantial evidence or by delivering payment, that the fee applicable on each and every lease disclosed on Form LB1 has been paid in full.
- (5) In determining "present value" where there is an automatic renewal of the lease, such payments shall be included in the computation of "present value." Where the renewal of the lease requires the execution of additional renewal papers by the parties, the computation of "present value" shall not include payments under any such renewal period.

2.06 TRANSFERS FOR LESS THAN FAIR MARKET VALUE

- (1) Fair market value will be determined by using the value assigned by the assessor's offices of the member towns for the period in which the transfer took place.
- (2) In situations where the purchase price stated on the LB1 form is more than twenty-five percent under the assessed value, it shall be assumed that additional consideration was paid. The transfer fee will be due based on two percent of the assessed value unless supporting documents in the form of the relevant provisions of a fully-executed purchase-and-sale agreement or like document can be submitted.
- (3) Assessed values for the transfer of partial real property interests shall be computed by applying the proportion of the interest being transferred to the total assessed value for the property as determined by the assessor's office of the member town(s).

2.07 TRANSFERS OF LAND SLIVERS

- (1) Sliver transfers resolving bona fide boundary line disputes shall be exempt from the transfer fee under exemption "b" or "c" unless such transfer confers to either landowner additional rights under zoning, subdivision, health or like codes. In such case, the fee due shall be calculated against the fair market value of the transferred property.

SECTION 3 - REQUIREMENT OF SUPPLEMENTAL DOCUMENTATION

3.01 REQUESTS FOR ADDITIONAL INFORMATION

- (1) The commission may request supplemental documentation or additional information at any time in order to make a determination of compliance with the Act. Such requests may be for, but shall not be limited to, tax returns, underlying agreements, stock powers, certificate of transfer agents and certificates of limited partnerships, or any other documents which provide evidence of the facts set forth in any forms submitted.
- (2) Such documents and/or information requested shall be provided by the purchaser within 15 days of the mailing date of the commission request, which date of mailing shall be clearly displayed on the request.
- (3) Such requests shall be mailed to the purchaser, with a copy of any representative (specifically including any attorneys at law) executing the forms, pursuant to section 2.01(6) of these rules and regulations.

3.02 FAILURE TO COMPLY

- (1) Failure to comply with a commission request for supplemental documentation and/or information may result in a determination by the commission of non-compliance with the Act.
- (2) Non-compliance with the Act may result in the placing of a lien against the property of the purchaser pursuant to section 5 of these rules and regulations.
- (3) All submissions to the commission shall be under the pains and penalties of perjury; it shall be unlawful to supply materially false information to the commission. The submission of materially false information shall be referred to the district attorney for the Cape and Islands district.

SECTION 4 - APPLICABILITY OF EXEMPTIONS FROM THE LAND BANK FEES

4.01 BURDEN OF PROOF

The purchaser shall have the burden of proof that any transfer is exempt under the Act. No exemption shall be deemed to apply without proof of the compliance with the claimed exemption submitted by the purchaser, and in a form satisfactory to the commission.

4.02 COMMISSION INTERPRETATION OF EXEMPTION APPLICABILITY

The commission shall have the responsibility to interpret and apply the exemption from the fee.

4.03 LAND BANK FEE EXEMPTIONS

Pursuant to section 12 of the Act, exemptions from the land bank fee and the commission's interpretation of applicability are as set forth in sections 4.04 through 4.17 of these rules and regulations.

4.04 THE "A" EXEMPTION

As stated in section 12(a) of the Act, the "a" exemption applies to "transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions.

4.05 THE "B" EXEMPTION

As stated in section 12(b) of the Act, the "b" exemption applies to "transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(1) Evidence of the transfer previously made shall be required to substantiate compliance with the Act. Such evidence shall include a photocopy of the deed previously recorded in the Dukes County registry of deeds and a letter explaining the nature of the transaction together with such additional information as fully explains the basis for the claimed exemption.

(2) This exemption shall not apply if the previous transfer is found to be in non-compliance with the Act.

4.06 THE "C" EXEMPTION

As stated in section 12(c) of the Act, the "c" exemption applies to "transfers made as gifts without consideration; in any proceedings to determine the amount of any fee due

hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer."

- (1) Any claim of the "c" exemption shall be routinely forwarded to the Internal Revenue Service, except for transfers between spouses and lineal descendants, to verify that Form 709 will be filed. The donor must submit his name and street address for verification. The purchaser may be required by the land bank to submit such evidence as is reasonably necessary to establish that the purchaser is the spouse or lineal descendant of the transferor. Such evidence may include certified copies of birth certificates, marriage licences and the like.
- (2) Purchasers who are not spouses or lineal descendants of the transferor may be required by the land bank to submit notarized evidence from all parties to the transaction at the time the exemption is claimed in order to clarify the details of the transaction and to rebut the presumption that the consideration equaled fair market value; however, the presumption shall not be rebutted except by a demonstration of clear and convincing evidence.
- (3) In the event that a gift is claimed and the recipient is a nominee, full notarized disclosure of the equitable ownership is required, including an executed schedule of beneficiaries, or if the beneficiary is a partnership, an executed schedule of the partners, or if the beneficiary is a corporation, an executed schedule of stockholders, as applicable, each schedule stating the interest received by the applicable parties. In the event that a gift is claimed and the recipient is a partnership or corporation, an executed schedule of the partners or stockholders, as applicable, and the interests received by the parties thereto must be provided.
- (4) The exemption shall be automatically denied if any document requested under this section is not provided.

- (5) Except in the case of transfers between spouses, each purchaser claiming a "c" exemption shall submit a signed and notarized affidavit certifying whether the transferred property is subject to any mortgage(s) or like obligation(s) and, if so, whether the purchaser is assuming responsibility for these obligations.
- (6) The "c" exemption shall also apply to "straw" deeds. Straw deeds shall include and be limited to a transfer to a third party simply for the purpose of conveying to the transferor or transferee where the straw realizes no loss or gain in the transaction. The straw shall have no powers or duties except to execute and deliver a deed for such reconveyance.

4.07 THE "D" EXEMPTION

As stated in section 12(d) of the Act, the "d" exemption applies to a "transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such a trust; distribution by the trustees of a trust to the beneficiaries of such trust."

- (1) Exemption "d" applies equally to trusts and limited liability companies, as the rationale for the exemption is the same in both cases.
- (2) Exemption "d" applies only when the following is true:
(i) with respect to a transfer into a trust or limited liability company, the beneficial or membership interest received by each transferor is in proportion to the interest transferred; or (ii) with respect to a transfer out of a trust or limited liability company, the distribution to each beneficiary or member, as the case may be, is in proportion to the beneficial or membership interest previously held.
- (3) A claim of exemption "d" shall require filing with the land bank a complete, accurate and notarized schedule of beneficiaries or, in the case of a limited liability company, a complete and accurate copy of the schedule or exhibit attached to the operating agreement which shows the percentage ownership of each member signed under the pains and penalties of perjury. The schedules and/or exhibits provided shall include a schedule and exhibit from before and after the transfer.
- (4) In the event that the transfer is both a gift and a transfer into or out of a trust or limited liability

company or a transfer between existing beneficiaries of the trust or existing members of the limited liability company, the purchaser must designate the "c" exemption on form LB2 and provide a complete, accurate and notarized schedule of beneficiaries of the trust or, in the case of a limited liability company, a complete and accurate copy of the schedule or exhibit attached to the operating agreement which shows the percentage interest of each member. The schedules and/or exhibits provided shall include a schedule and exhibit from before and after the transfer.

- (5) The "d" exemption shall not apply to transfers for consideration.
- (6) The "d" exemption, for transfers into a trust, shall apply only to that portion of the transaction upon which the grantor retains an interest through being a beneficiary of the trust.
- (7) Forms LB5 and LB6 shall be submitted with any claim for a "d" exemption.

4.08 THE "E" EXEMPTION

As stated in section 12(e) of the Act, the "e" exemption applies to "transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest."

- (1) In the case of a bankruptcy or death or other transfer by operation of law, sales of any other real property interest by a fiduciary (such as a trustee, receiver, executor or administrator) to disinterested third parties shall not be exempt.
- (2) Evidence documenting the event constituting the "operation of law" is required at the time of filing.

4.09 THE "F" EXEMPTION

As stated in section 12(f) of the Act, the "f" exemption applies to "transfers made in partition of the land and improvements thereto, under Chapter 241 of the General Laws."

- (1) A petition to partition shall not by itself be deemed a partition of land; instead, exemption "f" shall apply to a probate court decree requiring a physical division of real property into divided parcels of real property, the

size and configuration of which correspond to the pre-partition ownership interests in the undivided parcel.

- (2) No sale of real property shall be deemed a partition of land, except as provided in Section 4.09(3).
- (3) In the event of a court order to convey all or any part of the real property that is the subject of a petition to partition to an interested party, the "f" exemption shall apply only to that portion of any real property interest previously held by the purchaser. Any payment of cash shall be subject to the fee.
- (4) A claim of the "f" exemption shall require the purchaser to file with the land bank the court decree and all court documents pertaining to the petition to partition under chapter 241 of the General Laws.

4.10 THE "G" EXEMPTION

As stated in section 12(g) of the Act, the "g" exemption applies to "transfers to any charitable organization as defined in clause third of section five of chapter 59 of the General Laws, or any religious organization, provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes."

- (1) Exemption "g" shall apply, but shall not be limited to, transfers made to charitable or religious organizations, whether or not chartered in Massachusetts, so long as:
 - (a) the real property interest will be held, used and/or occupied by such organization or its officers solely for the public, charitable and/or religious purposes for which it is organized;
 - (b) the charitable or religious status of the organization remains in full force and effect and the Commission is so notified of same;
 - (c) the purchaser has been granted tax-exempt status under section 501(c)(3) of the internal revenue code of 1986, as amended, or any successor or corresponding provision of any United States internal revenue law; and
 - (d) no structure on the real property comprising the real property interest shall be occupied or used

wholly or principally as a residence by the officers or members of any such charitable institution or religious organization unless such structure is on real property which is part of or contiguous to real estate which is the principal location of such institution or organization.

- (2) The Commission may require that the purchaser submit:
 - (a) a letter from the internal revenue service indicating that the purchaser has been granted tax-exempt status under section 510(c)(3) of the internal revenue code of 1986, as amended, or any successor or corresponding provision of any future United States internal revenue law; and that such tax-exempt status remains in effect;
 - (b) a copy of the purchaser's charitable or religious charter and/or operating bylaws; and/or
 - (c) such other information as the Commission deems necessary to demonstrate that the purchaser is entitled, and continues to be entitled, to this exemption.
- (3) In the event that such real property interest ceases, at any time during the purchaser's ownership of the real property interest but within five years from the time of transfer, to qualify for the "g" exemption, the fee exempted shall become due, together with accumulated interest and penalties from the date on which such real property interest failed to so qualify. The Commission may attach to the deed or otherwise record in the registry of deeds or registry district office of the land court a certificate which shall recite that there is a lien running with the land equal to the amount of the fee exempted plus accumulated interest and penalties, until such time as all conditions of this subsection have been met. Upon a final determination by the Commission or its designee of compliance with the conditions of this subsection, the Commission shall provide to the purchaser a certificate of release of the lien, which the purchaser shall record at the purchaser's sole cost and expense. The fee shall not become due on a subsequent transfer in the event of a foreclosure of a mortgage on the real property interest by an institutional lender. The lien created under this subsection shall automatically be subordinated to any mortgage to an institutional lender.

4.11 THE "H" EXEMPTION

As stated in section 12(h) of the Act, the "h" exemption applies to "transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage."

- (1) Where there is a foreclosure of the mortgage, or where there is a transfer in forbearance of a foreclosure, the amount by which the consideration paid exceeds the amount of the mortgage shall be deemed additional consideration subject to the transfer fee. In computing the fee, the subject consideration shall have added to it the expenses associated with the transfer to the extent assessed against the mortgagor. An itemized list of related expenses must be submitted.
- (2) A claim of the "h" exemption shall require documented proof of the mortgage held by the mortgagee and the amount of the principal and interest outstanding at the time of transfer. A statement of such outstanding debt must be submitted for verification on the mortgagee's stationery. A copy of the mortgage shall also be submitted.
- (3) Sheriff's sales shall be eligible for the "h" exemption, provided that they meet, if applicable, the additional consideration standards in section 4.11(1) of these rules and regulations. No other transfer of any real property interest to a party other than the mortgagee shall qualify for exemption "h".

4.12 THE "I" EXEMPTION

As stated in section 12(i) of the Act, the "i" exemption applies to "transfers made to a corporation or partnership at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section 351 of the Internal Revenue Code of 1954, as amended."

- (1) A claim of the "i" exemption shall require filing with the land bank documented evidence of the formation of the corporation or partnership, the parties to the corporation or partnership, and the interests held by each party at the time of formation. A copy of the incorporation documents approved by the secretary of the commonwealth shall be submitted at the time of transfer.

- (2) The "i" exemption shall also be applicable to a transfer of any real property into a previously formed corporation or partnership, provided that such transfer results in the issuance to the transferor of the ownership interest in such corporation or partnership in a percentage equivalent to the percentage owned by such transferor in the real property interest prior to such transfer.
- (3) Forms LB5 and LB6 shall be submitted with any claim for an "i" exemption.

4.13 THE "J" EXEMPTION

As stated in section 12(j) of the Act, the "j" exemption applies to "transfers made to a stockholder or a corporation in liquidation of the corporation, and transfers made to the partner of a partnership in dissolution of the partnership."

- (1) A claim of the "j" exemption shall require the filing with the land bank of documents evidencing the liquidation of a corporation or the dissolution of a partnership, the parties to whom the assets of the corporation or partnership are being transferred, and the interests held by each transferee in the corporation or partnership prior to liquidation and/or dissolution.
- (2) The "j" exemption shall also be applicable to distributions in partial liquidation of a corporation or partnership holding any real property interest, whether or not the corporation or partnership continues to exist after the distribution, provided that the percentage of ownership interest in the corporation or partnership is equivalent to the percentage interest owned by the distributee in the real property interest after such distribution has been consummated.
- (3) Forms LB5 and LB6 shall be submitted with any claim for a "j" exemption.

4.14 THE "K" EXEMPTION

As stated in section 12(k) of the Act, the "k" exemption applies to "transfers consisting of the division of marital assets under the provisions of section 34 of chapter 208 of the General Laws or other provision of law."

- (1) The "k" exemption shall apply only to [a] divisions of marital assets ordered by a court decree or [b] separation agreements when the court decree is not yet available or [c] when the transfer instrument states "division

of marital assets" and such decree, separation agreement or transfer instrument is filed with the land bank.

- (2) The "k" exemption does not apply to sales of any real property interest to third parties, even if ordered by a court as part of a division of marital assets or if stipulated in a separation agreement.
- (3) The "k" exemption shall apply equally to out-of-state court decrees and separation agreements as to those issued in Massachusetts.

4.15 THE "L" EXEMPTION

As stated in section 12(l) of the Act, the "l" exemption applies to "transfers of property consisting in part of real property interests situated within a town that is a member of the land bank commission and in part of other property interests, to the extent that the property transferred consists of property other than real property situated within a town that is a member of the land bank commission provided that the purchaser shall furnish the land bank commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers."

- (1) A qualified appraisal shall be submitted at the time of exemption.
- (2) The purchaser shall provide a copy of the bill of sale for personal property at the time of filing with the land bank.

4.16 THE "M" EXEMPTION

As stated in section 12(m) of the Act, the "m" exemption applies to "an amount [viz., \$400,000 per October 19, 2009 vote of the land bank commission], determined on or before January 1 of each year by the land bank commission after due analysis of the range of real estate prices in the member towns and in no event less than three hundred thousand dollars, of the purchase price of a transfer made to a natural person who, or whose spouse, at the time of such transfer has at no time owned or possessed any real property interest as defined in section one either within or without any member town, provided that such person makes the real property interest which is the subject of the transfer his or her actual domicile within two years of the time of transfer; provided, further, that in the event of a subsequent transfer within five years of the transfer exempted from the fee under this

subsection, other than the transfer of a mortgage to an institutional lender, the fee exempted shall become due, together with accumulated interest and penalties, and in addition to any fee otherwise due as a result of the subsequent transfer. The purchaser shall certify as to the foregoing, and the land bank commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of this subsection have been met."

- (1) The purchaser shall provide to the land bank such supporting documents that may be requested by the commission from time to time to confirm compliance with the requirement of the "m" exemption.
- (2) Upon a final determination by the commission of compliance with all the requirements of the "m", the commission shall provide to the purchaser a certificate of waiver or release of the lien which the purchaser shall record at the purchaser's sole expense.
- (3) Any purchaser claiming eligibility for the "m" exemption must be a named purchaser on the deed. With respect to a nominee form of ownership, refer to sections 4.16(4) - 4.16(6).
- (4) The "m" exemption applies to purchasing real property interest in their individual names and also to purchasing real property interest through a nominee, a corporation, a partnership or a trust.
- (5) In the event of a nominee form of ownership, the exemption shall apply only to nominees which are established for the sole purpose of holding real property and which execute a recordable affidavit relinquishing any future eligibility to claim the "m" exemption by the nominee and the individuals who are the equitable owners. The "m" exemption applies to nominee forms of ownership only to the extent that it would if the nominee form of ownership were not being used for the transfer. This exemption shall not be applied to situations where a nominee holds real property interests for more than four unrelated individuals.
- (6) In the event the "m" exemption is claimed by a trust, a corporation or a partnership on behalf of its beneficiaries, stockholders or partners, then the following must

be provided: (i) a notarized schedule of beneficiaries, in the case of a trust; (ii) a list of stockholders, in the case of a corporation or (iii) a list of partners, in the case of a partnership. The "m" exemption shall be applied as if the beneficiaries, stockholders or partners were directly purchasing the real property interest in their individual names. The exemption shall be granted only if a recordable affidavit relinquishing any future eligibility to claim the "m" exemption is executed by the beneficiaries, stockholders or partners, as applicable.

- (7) In the event of multiple purchasers, the "m" exemption shall apply proportionately to that portion of the purchase price which is paid by the individual or individuals claiming the exemption, however in no event shall the amount of the purchase price exempted in any transaction or series or related transactions exceed \$400,000.
- (8) Domicile shall be determined on a case-by-case basis using the standards and tests applied by Massachusetts courts in determining domicile.
- (9) In order to qualify for the exemption, either spouse but not both can have owned or possessed any real property interest prior to the time of transfer.
- (10) The fee shall not become due on a subsequent transfer within five years of the transfer exempted in the event of the foreclosure of the mortgage on the real property interest by an institutional lender. Upon proof of said foreclosure within said five year period, said lien shall be released by the land bank. Such release will in no way affect the land bank's entitlement to a fee upon the purchase price of the real property interest by a third party at a mortgage foreclosure sale or by the institutional lender to the extent of the difference of the amount of the mortgage and the purchase price.
- (11) Where prior interest in real property was held, the purchaser must be able to prove that it was a non-equitable form of ownership in order to be granted a waiver of the fee under the "m" exemption. The purchaser must show that title was held only as a straw and that the purchaser did not participate in the expenses of ownership. Such proof should include, but not be limited to: (i) copies of the individual's income tax returns and depreciation schedules for that period of time in which he had a legal interest in the property, (ii) any state-

ment or form on which the petitioner has listed his assets for that period of time during which he held a legal interest in the property: loan/mortgage applications, etc., and (iii) other documentation showing financial participation of the true owner and lack of financial participation of the purchaser.

- (12) If a property which is the subject of an "m" lien is transferred, the fee shall immediately become due. Transfer of even a portion of the property or interest in the property, unless to a spouse who qualifies for the "m" exemption, shall trigger payment of the entire fee.
- (13) The land bank commission may, at public hearing, extend the two-year period by which all claimants of the "m" exemption must make the property their permanent domicile. This shall only occur when circumstances outside of the purchasers' control have interfered with their ability to domicile there permanently. An extension of one year may be permitted, and the requirement to reside on the property in order to avoid payment of the fee, penalties and interest will likewise be extended. If, after this one year, a purchaser still has not permanently domiciled on the property, a second one-year extension may also be permitted, with the residency requirement again likewise extended. No further extensions are permitted.

If either extension causes the residency requirement to continue beyond six years from the date of transfer (at which time the lien expires as a matter of law), the "m" claimant shall execute a covenant with the commission extending the terms and conditions of the "m" exemption to this new date.

- (14) Upon written request, payment of the fee, as well as any penalties and interest, will be waived in the event that a property subject to an "m" lien is transferred to an institutional lender as part of foreclosure proceedings.
- (15) The land bank transfer fee shall not be due on the purchase of any partial interest in property if the purchaser already owns a partial interest in the same property and acquired that interest using a valid "m" exemption.
- (16) "M" claimants may elect to pay at the time of transfer the exempted portion of the fee rather than subject their

property to a lien. This fee shall be refunded, without interest, upon request at the end of the domicile period, if the claimants have submitted on the third, fourth and fifth anniversaries of the date of transfer documentation satisfactory to the land bank establishing that the law's domicile requirements are being met.

- (17) "M" liens shall automatically be subordinated to any subsequent re-financing of the "m" mortgage.

4.17 ADVANCE RULINGS

A purchaser may request a formal ruling or determination by the commission with respect to an application for an exemption or non-applicability of the fee, prior to the time of transfer, as follows:

- (1) Any request for a ruling or determination is to be submitted in writing 45 days prior to the proposed time of transfer, and shall be accompanied by all proposed transfer documents.
- (2) Such request shall be accompanied by a deposit of \$750 payable to the land bank in order to cover expenses associated with legal research. Any unexpended funds will be reimbursed to the purchaser and any accumulated legal fees will be charged to the purchasers.
- (3) The commission shall hold a hearing and issue a ruling or determination prior to ten (10) days before the time of transfer.
- (4) Each purchaser shall be entitled to only one such request.
- (5) In the event of such a ruling or determination, The commission shall process the transfer in accordance with its ruling, unless actual circumstances of the transfer are different from the circumstances presented in the request for ruling or determination.
- (6) Purchasers are free to consult with land bank staff at any time regarding a potential exemption claim.

SECTION 5 - TYPES OF PAYMENT, LIENS AND PENALTY AND INTEREST ASSESSED

5.01 TYPES OF PAYMENT

- (1) Land bank fees will be accepted in the following ways: an attorney's client's escrow account, or a certified or cashier's bank check.

5.02 LAND BANK LIENS

- (1) Pursuant to section 14(c) of the Act, in the event that the commission determines that there has been a failure to pay all or any portion of a fee assessed, the commission is authorized to file a lien against the property of a purchaser for the delinquent fee, together with penalty and interest running to the time of payment in full.

5.03 LIEN RELEASES

- (1) No lien shall be waived or released until requirements of the Act have been met, except said lien shall terminate not later than six years following the time of transfer. The commission may initiate proceedings at any time prior to the expiration of such six-year period to foreclose such lien.
- (2) After a commission determination of compliance with the Act, the commission shall execute either a waiver or release of lien.
- (3) Fees and recording of a waiver or a release of lien shall be sole responsibility of the purchaser. Pursuant to section 14(c) of the Act, "Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished."

5.04 CALCULATING PENALTY AND INTEREST

- (1) Pursuant to section 13 of the Act, "A purchaser who fails to pay all or any portion of the fee established by section ten on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:" [a] penalty and [b] interest.
- (2) Pursuant to section 13 of the Act, penalty without fraud

begins to accrue at the time of transfer at a rate of five percent per month or portion thereof, not to exceed 25 percent of the fee due. Penalty with fraud accrues at the time of transfer in an amount equal to the original fee due.

- (3) Pursuant to section 13 of the Act, interest accrues from the time of transfer at a rate of 14 percent per annum.

SECTION 6 - REFUNDS

6.01 PURCHASER REQUEST FOR REFUND

- (1) Any challenge, protest or objection to any payment required pursuant to section 2.03 and paid pursuant to section 2.02(1) of these rules and regulations shall be made in writing at the time the certificate is affixed, except [a] as is provided for in section 11 of the Act or [b] when, in the case of a good-faith mistake, a purchaser requests a refund within seven days of the time of transfer or within a time period deemed acceptable by a two-thirds vote of the commission.
- (2) Upon receipt of a hearing request, the commission shall hold a hearing and make a determination as to whether any overpayment has occurred and as to any amount refundable.
- (3) In the event of a commission determination of overpayment, the commission shall notify the purchaser in writing by registered or certified mail within 15 days after said hearing of its determination and shall issue a refund to the purchaser within 45 days of such determination.
- (4) Only sums overpaid are refundable. No interest shall accrue to the purchaser on sums overpaid.
- (5) No request for a refund shall be reviewed by the commission after a determination has been rendered pursuant to section 6.01(2) of these rules and regulations.
- (6) Any party aggrieved by a determination of the commission concerning a refund may appeal to the district or superior court within three months of a determination of the commission.

- (7) Similar to section 14(a) of the Act, "upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the land bank commission."

SECTION 7 - HEARINGS

7.01 DEFICIENCY HEARING

- (1) A request for hearing, pursuant to section 14 of the Act, to contest the assessment of a deficiency fee, together with penalty and interest, shall be granted by the commission upon receipt of a written request for a hearing received within 30 days of the mailing date of a commission notice of deficiency, pursuant to section 14 of the Act, which date shall be clearly displayed on the notice.

7.02 REFUND HEARING

- (1) After a request for a hearing has been made, pursuant to section 7.01 of these rules and regulations, the purchaser may make a refundable payment of all or any part of the fee, penalty or interest assessed, without waiving its right to the requested hearing. In the event such payment is made, the hearing shall proceed in the same manner as if the deficiency had not been paid, except no interest or penalty shall accrue after the date of payment against that portion of the deficiency found to be due and previously paid.

7.03 HEARING DETERMINATION

- (1) The commission alone shall render decisions on the amount due or refundable; town advisory board(s) are not authorized in the Act to render decisions on these matters. The commission shall receive testimony and documentation from purchasers during the hearing, and shall close the hearing when it is satisfied that sufficient information to render a decision has been received. Written documentation alone shall be accepted in support of a claim that the fee is not due. Verbal testimony shall not be acceptable, nor shall a written

affidavit declaring that written documentation existed at one time but is no longer available. The commission may choose to delay a determination on the matter until its next regularly scheduled meeting, at which time commission staff may be asked to make a recommendation. The commission shall make a determination and render a decision on the matter of amount due or refundable within 15 days after the close of the hearing.

- (2) In the event that the commission determines that the amount of a deficiency is less than the amount paid pursuant to section 7.01(1) of these rules and regulations, the commission shall follow the refund procedures set forth in sections 6.01(2) through 6.01(4).

7.04 SUBPOENAS

- (1) Should the interest of justice require the issuance of a subpoena in order to access information held by a party other than the purchaser with respect to any hearing by the commission pursuant to either section 6 or 7 of these rules and regulations, the purchaser or the director may request the commission to seek the assistance of an appropriate subpoena-issuing authority.

SECTION 8 - PAYMENT OF OUTSTANDING FEES, INTEREST OR PENALTIES

8.01 STANDARDS GOVERNING PAYMENT OF THE TRANSFER FEE

- (1) Once the land bank commission has determined, at a hearing held pursuant to section 7.03 of these regulations, that the transfer fee is due on a particular property, it shall under no circumstances issue a waiver of this fee.

Purchasers of commercial property shall in pay in full at the time of transfer. Residential purchasers may request at this hearing that they be permitted to defer payment of a portion of the transfer fee or pay a portion of the transfer fee in increments rather than in a single sum. Either such plan must be approved by both the land bank commission and the appropriate town advisory board(s) at a hearing, and either such plan shall be permitted only in extraordinary circumstances. The land bank commission need not call another hearing to consider any such payment plan and may incorporate the matter into the existing hearing, but a separate hearing shall be called

by the appropriate town advisory board(s).

Purchasers must pay at the time of transfer at least the larger of either of the following: (a) fifty percent of the total transfer fee due; or (b) \$2000. An interest rate shall be fixed at the time of transfer and shall be applied thereafter to the purchaser's declining balance; it shall be computed by adding 5.0 to the prevailing Bank of Boston prime rate at the time of transfer (except in an "m" purchase, in which case the interest rate shall be equal to the prevailing prime rate).

- (2) In no event shall the complete payment of the transfer fee be deferred beyond the earlier of either of the following: (1) twelve months from the time of transfer or (2) the date of the subsequent transfer of the property, other than the transfer of a mortgage to an institutional lender. A lien shall be recorded against the property in the Dukes County registry of deeds until the fee is paid in full. Purchasers shall also sign a promissory note with the land bank outlining the terms and conditions of the repayment; this note appears as Exhibit B.

8.02 STANDARDS GOVERNING THE PAYMENT OF PENALTIES AND INTEREST

Accumulated interest and/or penalties may be waived by vote of the land bank commission and the appropriate town advisory board(s) at a hearing. This shall only occur in the event of a purchaser's financial hardship; or a purchaser's good-faith mistake, provided that such mistake was based upon advice of counsel or land bank commission staff; or when other extraordinary circumstances exist justifying relief. Purchasers shall be deemed to be suffering financial hardship [a] when the property which is the subject of the transfer fee is in default under an existing mortgage or [b] when other liens have been recorded against the property. Extraordinary circumstances shall be deemed to have occurred if any of the following have occurred to the purchaser or to the purchaser's spouse, child or parent, which list shall be considered illuminative rather than exhaustive: [a] death; [b] catastrophic illness or permanent disability or any condition requiring custodial or semi-custodial care; [c] in the case of a purchaser or a purchaser's spouse, loss of employment or a transfer of employment which if refused would have resulted in loss of employment.

8.03 STANDARDS GOVERNING THE INITIATION OF LAWSUITS

- (1) The land bank shall file in district or superior court

the recover any fees, interest and penalties due from purchasers who have failed to discharge their obligations under the land bank law. Such filing shall occur as soon as possible after the date of a purchaser's failure either [a] to request, in a timely manner, a hearing as stipulated in section 14(a) of the Act or [b] to, in the event that a hearing has been held and a commission determination has been issued, pay the full amount due within the time period set by the commission.