

Saving Our Cities: Land Banking in Tennessee

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I. INTRODUCTION	928
II. WHAT IS LAND BANKING?.....	928
III. EVOLUTION OF TENNESSEE LOCAL LAND BANK ACT	931
A. <i>Brief History Behind Tennessee Land Banking</i>	931
B. <i>Passage of the Tennessee Local Land Bank Pilot Program</i>	933
C. <i>Amending Land Banking Legislation in Tennessee</i>	934
D. <i>Foreclosure and Delinquency in Tennessee</i>	937
IV. COMPARATIVE ANALYSIS OF TENNESSEE LOCAL LAND BANKING ACT	939
A. <i>Legislative Findings</i>	940
B. <i>Definitions</i>	940
C. <i>Creation</i>	942
D. <i>Board of Directors</i>	944
1. <i>Different Provisions</i>	944
2. <i>Identical Provisions</i>	947
E. <i>Applicability of State Law and Conflicts</i>	949
F. <i>Staffing</i>	950
G. <i>Powers</i>	950
1. <i>Identical Provisions</i>	951
2. <i>Different Provisions</i>	952
3. <i>Exclusive Provisions</i>	955
H. <i>Acquisition of Property</i>	956
I. <i>Disposition of Property</i>	958
J. <i>Open Meetings and Records</i>	960
K. <i>Dissolution</i>	961
L. <i>Conflicts of Interest</i>	961
M. <i>Construction of Legislation</i>	962
N. <i>Property Taxes</i>	962
O. <i>Action to Quiet Title</i>	963
P. <i>Appeals</i>	964
Q. <i>Comptroller Authority</i>	965
R. <i>Other Sections</i>	965

V. EXISTING LAND BANKS IN TENNESSEE.....	966
A. <i>Oak Ridge</i>	966
B. <i>Chattanooga</i>	968
C. <i>Memphis and Shelby County</i>	969
VI. CONCLUSION.....	971

I. INTRODUCTION

Vacant, abandoned, tax-delinquent, and foreclosed properties present one of the greatest impediments to growth and security for our cities and communities. Properties with any of these characteristics not only create a cycle of land waste and poverty but also contribute to declining investment and interest in the areas in which they are located. Governments all over the country, from the federal government, state governments, and local governments, have tried repeatedly to devise solutions to solve the problems posed by vacant, abandoned, tax-delinquent, and foreclosed properties, but for the most part the strategies they have used have been limited or temporary in their success. Land banks present a novel and assertive approach to solving this problem by efficiently changing the legal status of these properties and converting them into productive and attractive pieces of land. In this article, I explain land banking, break down the land bank statutory scheme in Tennessee, and explore how Tennessee can use land banking to solve the problems of vacant, abandoned, tax-delinquent, and foreclosed properties.

Part I discusses the history and structure of land banks. Part II explores the evolution of land banking in Tennessee and its eventual adoption by certain cities within the state. Part III compares Tennessee's land banking legislation with the template upon which it is based and with land banking legislation in other states. Part IV provides an analysis on the current status of land banking in Tennessee. Tennessee is new to the national land banking movement and a better understanding within the state of this mechanism will aid in a more emphatic embrace of land banking as a tool that will help save our cities.

II. WHAT IS LAND BANKING?

A land bank is many things, but, first and foremost, it is a practical solution to a problem that touches almost every aspect of

local government. The United States Department of Housing and Urban Development defines a land bank as “a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.”¹ A land bank, at its essence, converts “vacant, abandoned, [tax-delinquent,] and foreclosed properties into productive use.”²

What does it mean to label a property vacant, abandoned, tax-delinquent, and foreclosed? First, a vacant property is one that is unoccupied.³ Second, an abandoned property means that the owner has stopped investing any resources into the property, including ceasing routine maintenance and payments on related financial obligations.⁴ Abandonment presents a stronger sense of neglect to the property than mere vacancy.⁵ Third, a tax-delinquent property is one for which the owner has failed to pay the appropriate amount of property tax.⁶ Often, but not always, vacant and abandoned properties are tax-delinquent as well.⁷ Fourth, a foreclosed property means that the mortgagor has forfeited the property due to non-payment of the money due on the mortgage.⁸

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1. U.S. DEP’T OF HOUS. & URBAN DEV., NEIGHBORHOOD STABILIZATION PROGRAM LAND BANK FACT SHEET 1, <http://www.hud.gov/offices/cpd/about/conplan/foreclosure/doc/landbanksfactsheet.doc>.

2. FRANK S. ALEXANDER, *LAND BANKS AND LAND BANKING* 10 (2d ed. 2015).

3. *Id.* at 14.

4. *Id.*

5. *Id.*

6. *See id.*

7. *Id.*

8. *See Foreclosure*, BLACK’S LAW DICTIONARY (10th ed. 2014).

Properties possessing any, some, or all of these four characteristics present a large range of issues for the communities in which they are located. Vacant properties can fall into disrepair and become neglected.⁹ Abandoned properties attract vandalism and criminal activity and pose fire and safety hazards.¹⁰ Tax-delinquent properties burden local governments with an increase in service and maintenance costs as well as a result of lower tax revenues for governments.¹¹ The Great Recession, with its housing and economic crises, has led to record numbers of foreclosed properties.¹² The two crises have also led to population and job loss that have resulted in vast surpluses of vacant and abandoned properties not only in cities but also in surrounding suburbs.¹³

These types of properties have a wide range of effects on adjacent neighborhoods including a decrease in (1) “property values of [nearby] properties,” (2) “property tax revenues from non-payment of taxes,” and (3) “property tax revenues from declining property values of [nearby] properties.”¹⁴ They also lead to an increase in (1) costs of police and public safety, (2) incidences of arson resulting in higher fire prevention costs, (3) costs of local governments to enforce codes, and (4) costs of judicial actions.¹⁵

While local governments have a myriad of options to address these issues, land banking presents the most effective and comprehensive tool for local governments to address vacant, abandoned, tax-delinquent, and foreclosed properties. A land bank with wide discretionary power can convert these properties into productive real estate through three primary attributes.¹⁶ First, it has the ability to acquire title to vacant, abandoned, and foreclosed proper-

9. OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP'T OF HOUS. & URBAN DEV., REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS 1 (2009), <http://www.huduser.gov/portal/publications/landbanks.pdf>.

10. *Id.*

11. *Id.*

12. See Alan MALLACH & JENNIFER S. VEY, BROOKINGS-ROCKEFELLER, PROJECT ON STATE AND METRO. INNOVATION, RECAPTURING LAND FOR ECONOMIC AND FISCAL GROWTH 1 (2011), http://www.brookings.edu/~media/research/files/papers/2011/5/03-land-value-mallach-vey/0503_land_value_mallach_vey.pdf.

13. *Id.*

14. ALEXANDER, *supra* note 2, at 15.

15. *Id.*

16. See *id.* at 10.

ties.¹⁷ Second, it has the power to eliminate financial liabilities.¹⁸ Third, it can transfer properties to new owners so that the properties can add value to the local community through productive use.¹⁹ Examples of productive use include downtown redevelopment, housing new businesses, mixed-use development, “building housing to meet new demands for urban living,” and improving “quality of life through [new] parks, waterfronts, and other green spaces.”²⁰ I explain the specific powers a land bank can possess to achieve these goals in Part III below.

III. EVOLUTION OF TENNESSEE LOCAL LAND BANK ACT

In this part, I describe the history of the Tennessee Local Land Bank Act, discussing its history and its initial passage, which allowed only one city, Oak Ridge, to establish a land banking entity. I then look at the April 2014 amendment that expanded its applicability to certain other local governments in the state. I conclude the section by highlighting the foreclosure crisis across the state.

A. *Brief History Behind Tennessee Land Banking*

The impetus for introducing land banking in Tennessee derived from the large amount of vacant and abandoned property that existed in the City of Oak Ridge, located in the eastern part of the state near Knoxville.²¹ Oak Ridge was founded as a location to house a uranium enrichment facility and other scientific facilities as a part of the World War II Manhattan Project.²² In 1942, the United States Army Corps of Engineers bought approximately 60,000 acres of rural farm land to build a city and wartime facili-

17. *Id.*

18. *Id.*

19. *Id.*

20. MALLACH & VEY, *supra* note 12, at 2.

21. TENN. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, COMBATING BLIGHT IN TENNESSEE COMMUNITIES PRELIMINARY REPORT 1 (2011), https://tn.gov/assets/entities/tacir/attachments/Combating_Blight_in_Tennessee_Communities_-_Preliminary_Report_.pdf [hereinafter TENN. ADVISORY COMM’N].

22. *See Residents: About Oak Ridge*, CITY OF OAK RIDGE TENN., <http://www.oakridgetn.gov/content/RESIDENTS/About-Oak-Ridge> (last visited May 16, 2016).

ties.²³ Between 1942 and 1945, the federal government brought in tens of thousands of workers to staff the new facilities in Oak Ridge.²⁴ Due to an expectation that the city would only be used during the war, the government brought in or built a large number of temporary houses, intending to move them out when the war ended.²⁵

After the war, Oak Ridge became an independent city, and, in 1959, its residents voted to incorporate the city.²⁶ Following a referendum held on November 7, 1962, the City of Oak Ridge adopted home rule.²⁷ The houses were never moved—some remain occupied but others are vacant and abandoned.²⁸ A large number are in disrepair of various degrees, with absentee landlords owning many of them without performing proper maintenance.²⁹

To respond to this problem, State Senator Randy McNally, who represents Oak Ridge, introduced a resolution in the spring of 2011 to study blight in the state.³⁰ The Tennessee Senate adopted the resolution in May 2011, directing the Tennessee Advisory Commission on Intergovernmental Relations to perform the following functions: (1) to study the effects on local governments when owners abandon their blighted properties; (2) to recommend solutions for local governments to return these properties to some sort of positive use; and (3) to report its findings to the Chairmen of the Finance, Ways, and Means Committees of the Tennessee Senate and House of Representatives.³¹

In its preliminary report, released in 2011, the Commission summarily declared that blight was a widespread problem in the state and highlighted problems that local governments in the state

23. *Id.*

24. TENN. ADVISORY COMM'N, *supra* note 21, at 1.

25. *Id.*

26. CITY OF OAK RIDGE TENN., *supra* note 22.

27. OAK RIDGE CHARTER COMM'N, CHARTER OF THE CITY OF OAK RIDGE, TENNESSEE C-1 (2010), [http://www.mtas.tennessee.edu/public/CHARTERS.nsf/0/CD346A3BE98CF44185256E2F0058159B/\\$File/Oak%20Ridge.cht.pdf?OpenElement](http://www.mtas.tennessee.edu/public/CHARTERS.nsf/0/CD346A3BE98CF44185256E2F0058159B/$File/Oak%20Ridge.cht.pdf?OpenElement).

28. TENN. ADVISORY COMM'N, *supra* note 21, at 1.

29. *Id.*

30. *Bill History: SJR0103*, TENN. GEN. ASSEMBLY, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SJR0103&ga=107> (last visited Oct. 25, 2014).

31. S.J. Res. 0103, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011).

faced when attempting to address blight.³² These problems included the difficulty in attempting to enforce basic property standards without the authority to do so and the loss of interest of potential developers in certain properties due to the length of time it took to complete tax foreclosure sales.³³ The report proposed various remedies for addressing blight, specifically concluding that Tennessee did not widely use or understand land banking, and highlighting the success of land banking in other states.³⁴

B. Passage of the Tennessee Local Land Bank Pilot Program

After the Commission's preliminary report was released, the Tennessee Local Land Bank Pilot Program Legislation ("Pilot Legislation") was introduced in both the Tennessee House of Representatives and the Tennessee Senate on January 30, 2012.³⁵ After various amendments and committee procedures, the House of Representatives and the Senate approved the bill in April of 2012 and the Governor signed the bill in May of 2012.³⁶ The bill went into effect on July 1, 2012.³⁷ The Pilot Legislation introduced a sweeping land banking program to the state, authorizing local governments to establish a land bank entity with a large number of powers, which is discussed in detail in Part III. Generally, the Pilot Legislation allowed a local government to create a corporation that is authorized to operate land bank within the jurisdictional boundaries of that government. One section of the law, though, limited its applicability to only one local government. The Pilot Legislation allowed for any municipality, county, or municipality county combination incorporated or existing under state law to establish a local land bank pilot program only if it satisfied the following three conditions:

- (1) The local government was chosen as a site for a nuclear research facility for the

32. TENN. ADVISORY COMM'N, *supra* note 21, at 1–3.

33. *Id.* at 2–3.

34. *Id.* at 3–5.

35. H.R. 3400, 107th Gen. Assemb., Reg. Sess. (Tenn. 2012); S. 3223, 107th Gen. Assemb., Reg. Sess. (Tenn. 2012).

36. *Bill History: SB 3223 (HB 3400)*, TENN. GEN. ASSEMBLY, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=%20SB3223&GA=107> (last visited May 15, 2016).

37. TENN. CODE ANN. § 13-30-101 to -119 (West 2012) (amended 2014).

United States government during the World War II era;

- (2) Prefabricated modular homes, apartments and dormitories, many made from cemesto panels, were quickly erected for those employed at the nuclear research facility; and
- (3) Many units of such housing, while intended to be only temporary structures, are in extremely deteriorated conditions and still serve as residential homes for municipal residents seventy (70) years after originally constructed.³⁸

As stated above, Oak Ridge was the only Tennessee site for nuclear research during World War II as a part of the Manhattan Project—no other site in the state meets these criteria. The language in the Pilot Legislation effectively limited the legislation's applicability to Oak Ridge. As a result of this legislation, Oak Ridge created a local land bank pilot program. I provide a summary of Oak Ridge's land banking entity in Part IV below.

C. Amending Land Banking Legislation in Tennessee

The Tennessee General Assembly amended the Pilot Legislation in 2014 to allow other local governments around the state to adopt land banking. In January 2014, a bill was introduced in both the Tennessee House of Representatives and the Tennessee Senate to amend the Pilot Legislation.³⁹ Representative Gerald McCormick of Chattanooga stated that the impetus for the change came from the request of Chattanooga and Knoxville to have the ability to create land banking entities in their cities.⁴⁰ In the spring of

38. TENN. CODE ANN. §§ 13-30-104(a)(1), -103(4) (West 2012) (amended 2014).

39. H.R. 2142, 108th Gen. Assemb., Reg. Sess. (Tenn. 2014); S. 2315, 108th Gen. Assemb., Reg. Sess. (Tenn. 2014).

40. *Hearing Before the H. Subcomm. on Local Gov't*, 2014 Leg., 108th Sess. (Tenn. 2014) (statement of Rep. Gerald McCormick), http://tnga.granicus.com/MediaPlayer.php?view_id=226&clip_id=8690 (statement beginning around the 13 min, 8 second mark).

2014 both chambers approved the bill, the Governor signed it, and it went into effect.⁴¹

The bill amended the Pilot Legislation by removing the previous limitation that allowed only Oak Ridge to create a land bank. Specifically it eliminated the previous definition of “local government” and replaced it with the following:

[A]ny home rule municipality; any county having a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100), according to the 2010 federal census or any subsequent federal census; any county having a population of not less than eighty-nine thousand eight hundred (89,800) nor more than eighty-nine thousand nine hundred (89,900), according to the 2010 federal census or any subsequent federal census; or any county having a metropolitan form of government.⁴²

The General Assembly expanded the definition further in 2015 by adding the following designation: “Any municipality having a population of not less than forty-eight thousand two hundred (48,200) nor more than forty-eight thousand two hundred nine (48,209), according to the 2010 federal census or any subsequent federal census.”⁴³

The following table translates these legislative designations to the actual local governments that now have the authority to develop land banks:

Legislative Designation	Geographic Equivalent
Any home rule municipality;	Chattanooga, Clinton, East Ridge, Etowah, Johnson City, Knoxville, Lenoir City, Memphis, Mt. Juliet,

41. *Bill History: HB 2142 (SB 2315)*, TENN. GEN. ASSEMBLY, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB2142&ga=108> (last visited May 15, 2016).

42. TENN. CODE ANN. § 13-30-103(4) (West 2014) (amended 2015).

43. H.R. 454, 109th Gen. Assemb., Reg. Sess. (Tenn. 2015); S. 1185, 109th Gen. Assemb., Reg. Sess. (Tenn. 2015).

	Oak Ridge, Red Bank, Sevierville, Sweetwater, and Whitwell ⁴⁴
Any county having a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100), according to the 2010 federal census or any subsequent federal census;	Blount County ⁴⁵
Any county having a population of not less than eighty-nine thousand eight hundred (89,800) nor more than eighty-nine thousand nine hundred (89,900), according to the 2010 federal census or any subsequent federal census;	Sevier County ⁴⁶
Any county having a metropolitan form of government;	Hartsville—Trousdale County, Lynchburg—Moore County, and Nashville—Davidson County ⁴⁷
Any municipality having a	Kingsport

44. *Cities by Charter Form: Home Rule*, MUN. TECH. ADVISORY SERV., <http://www.mtas.tennessee.edu/web2012.nsf/Web/Charter+Form+Codes?OpenDocument&Start=1&Count=1000&Expand=4> (last visited May 15, 2016).

45. *Community Facts*, U.S. CENSUS BUREAU (Mar. 2014), <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF> (type “Blount County, Tennessee” into State, County, City, Town or Zip Code form).

46. *Id.* (type “Sevier County, Tennessee” into State, County, City, Town or Zip Code form).

47. *Cities by Charter Form: Metropolitan Government*, MUN. TECH. ADVISORY SERV., <http://www.mtas.tennessee.edu/web2012.nsf/Web/Charter+Form+Codes?OpenDocument&Start=1&Count=1000&Expand=5> (last visited May 15, 2016).

population of not less than forty-eight thousand two hundred (48,200) nor more than forty-eight thousand two hundred nine (48,209), according to the 2010 federal census or any subsequent federal census	
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Currently, only Oak Ridge has an active land bank with properties under its control.⁴⁸ Other local governments such as Chattanooga and Memphis have taken the beginning steps by passing local resolutions for the creation of land banking authorities but these have yet to become operational. Local governments in the state should create land banks to deal with widespread vacant, abandoned, tax-delinquent, and foreclosed properties.

D. Foreclosure and Delinquency in Tennessee

Blight or masses of vacant, abandoned, tax-delinquent, and foreclosed property exist not only in Oak Ridge but also across the entirety of the state, and local governments that have the authorization to create land banking entities should take advantage of this power and move forward. No statewide database exists which measures numerically the number of vacant and abandoned properties, but some reports do give us a picture of foreclosures and delinquencies across the state. The percent of mortgages past due at the end of the second quarter of 2014 was 7.7%, compared to the national average of 6% for the same quarter.⁴⁹ While this figure is lower than the peak 10.8% that Tennessee saw in 2010 during the Great Recession, it still remains high compared to rates before the Great Recession.⁵⁰

Another study also looks at the combined foreclosure and delinquency rate, which it calculates as the percentage of loans that

48. See Oak Ridge, Tenn., Ordinance 08-2013 (Sept. 19, 2013), <http://oakridgetn.gov/images/uploads/Documents/Ordinances/2013/8-2013.PDF>.

49. DAVID PENN, MIDDLE TENN. STATE UNIV. BUS. & ECON. RESEARCH CTR., TENNESSEE HOUSING MARKET 2ND QUARTER 2014 6 (2014), <http://issuu.com/mtsuberc/docs/housingbrief2q14>.

50. *Id.*

have been delinquent for 90 days or more.⁵¹ For the second quarter 2014, Tennessee's combined rate was 4.12%, only slightly better than the national rate of 4.8%.⁵² While Tennessee's rate for the second quarter of 2014 declined approximately .7% from the second quarter of 2013,⁵³ there is still cause for concern. The total number of properties with new foreclosure filings was 2,134 in the second quarter of 2014.⁵⁴ Shelby County had the highest number of properties with new foreclosure filings, with 531, and Davidson County came in second with 195 properties.⁵⁵ It should be noted that until around 2011, Shelby County had the highest number of foreclosure filings by far—today its numbers are more in line with the overall state.⁵⁶

Another report highlights the lingering problem of blight in the state as it compares nationally.⁵⁷ First, out of metropolitan areas with populations over one million, the Memphis metropolitan area is ninth in the country for percentage of houses with negative equity, with 27% of homes having underwater mortgages and 10% of homes having below peak home prices.⁵⁸ Second, when evaluating cities themselves (not the outer metropolitan area and also disregarding population) nationally, Memphis ranks 36th on the list of cities with the highest incidences of negative equity—33% of homes have underwater mortgages and 25% are below peak home prices.⁵⁹ For the calendar year 2013, Memphis had 3,242 homes in default or foreclosure.⁶⁰ Clarksville, the fifth-largest city in the state, ranks 85th on the list—25% of homes have underwater

51. HULYA ARIK, TENN. HOUS. DEV. AGENCY, TENNESSEE HOUSING MARKET AT A GLANCE 2014 14 (2014), http://www.tnmha.org/TMHA2/html.pages/Documents/TN%20Housing%20Market%20at%20a%20Glance_2014.pdf.

52. *Id.*

53. *Id.* at 15.

54. *Id.* at 17.

55. *Id.*

56. *Id.* at 19.

57. PETER DREIER ET AL., HAAS INST. FOR A FAIR & INCLUSIVE SOC'Y, UNDERWATER AMERICA (2014), http://diversity.berkeley.edu/sites/default/files/HaasInstitute_UnderwaterAmerica_PUBLISH_0.pdf.

58. *Id.* at 22.

59. *Id.* at 24.

60. *Id.*

mortgages while only 3% are below peak home prices.⁶¹ Third, moving to just zip codes with the highest incidence of negative equity, the 38115 zip code, which sits in the middle of Memphis, ranks 286 out of approximately 22,000 total zip codes for the United States.⁶² Forty-five percent of the homes in the zip code have underwater mortgages and 30% are below peak home prices.⁶³ The statistics can be endless, but the story is the same—Tennessee faces major hurdles in combatting its foreclosed and delinquent properties, and nowhere is that more evident than in Memphis.

IV. COMPARATIVE ANALYSIS OF TENNESSEE LOCAL LAND BANKING ACT

In this Part, I present an overview of the components of the Tennessee Legislation. Much of the current land banking legislation in the United States was enacted to solve the problem of the vast amounts of vacant, abandoned, tax-delinquent, and foreclosed properties left after the Great Recession, and derives from template legislation created by Professor Frank Alexander from Emory University School of Law, as a part of his work for the Center for Community Progress (the “Template Legislation”).⁶⁴ This Template Legislation creates a comprehensive legislative mechanism for setting up land banking in any state.⁶⁵ Rather than states enacting piece-meal legislation that addresses various issues such as reformation of tax foreclosure laws or authority to take possession of properties, states have used a single piece of legislation, often modeled after the Template Legislation, to authorize the creation of land banking authorities. This single piece of legislation allows legislators and local governments an easy way to understand the numerous powers being granted to local land banking authorities.⁶⁶

Numerous states, including, but not limited to New York, Georgia, Pennsylvania, and Missouri have used the Template Leg-

61. *Id.* at 25.

62. There are approximately 30,000 zip codes in the United States but data is only available for 22,000 of these zip codes. *Id.* at 37.

63. *Id.* at 33.

64. ALEXANDER, *supra* note 2, app. D, at 142 [hereinafter *TEMPLATE*].

65. *Id.*

66. ALEXANDER, *supra* note 2, ch. 2, at 21–22.

islation in its entirety or have used it as a basic framework.⁶⁷ I will explore the Tennessee Legislation, by comparing it to the Template Legislation, from which it has also derived, and point out major differences between it and legislation these other states have enacted.⁶⁸

A. Legislative Findings

The Tennessee Legislation begins with a section on legislative findings, explaining the reasoning behind the need for land banking and its purpose, something shared by states around the country. The Tennessee Legislation includes every legislative finding clause from the Template Legislation: (1) importance of social and economic vitality, (2) recognition of the vacant and abandoned property crisis, (3) need to strengthen and revitalize economy by solving the vacant and abandoned property problem, (4) need to create new tools to turn vacant spaces into vibrant places, and (5) identification of land banks as a tool of converting vacant, abandoned, and tax-delinquent properties to productive use.⁶⁹ The Tennessee Legislation contains an additional clause which states: “In the interest of self-governance on the part of Tennessee’s cities, this pilot program will be used in specific areas as a testing model of a self-governing, self-sustaining land bank that can revitalize Tennessee cities and counties.”⁷⁰

B. Definitions

As with its respective counterpart in any piece of legislation, the definitions section lays out basic terms and their meanings. Here, the definitions section of the Tennessee Legislation differs from the Template Legislation mainly in how the Tennessee Legislation organizes the land bank. As the sections below indi-

67. See GA. CODE ANN. §§ 48-4-100 to -112 (West, Westlaw through 2015 Legis. Sess.); MO. ANN. STAT. §§ 141.980–1015 (West Supp. 2014); N.Y. NOT-FOR-PROFIT CORP. LAW §§ 1600–1617 (McKinney Supp. 2014); 68 PA. STAT. AND CONS. STAT. ANN. §§ 2101–2120 (West Supp. 2013).

68. My aim is not to cover every difference among the New York, Georgia, Pennsylvania, and Missouri statutes but only major differences affecting policy, function, and mechanisms.

69. Compare TENN. CODE ANN. § 13-30-102 (Supp. 2015), with TEMPLATE, *supra* note 64, § 2, at 143.

70. TENN. CODE ANN. § 13-30-102(6) (Supp. 2015).

cate, the Tennessee Legislation authorizes the creation of a corporation to create a land bank, which is a collection of real property, while the Template Legislation authorizes the creation of a land bank, which is the governing entity itself, not real property.⁷¹

First, the Tennessee Legislation defines “corporation” as a corporate entity created to operate a land bank⁷² and “board of directors” or “board” as “the board of directors or other similar governing body of the corporation.”⁷³ It then defines “land bank” as:

[R]eal property, however obtained or acquired and held by a corporation . . . with the intent of acquiring and holding onto the real property so acquired until such a time as the corporation is able to find a willing and able buyer to acquire the real property from the corporation.⁷⁴

This differs from the Template Legislation, which defines “land bank” as the legal organizing entity itself.⁷⁵

Second, the Tennessee Legislation defines “real estate” as “an identified parcel or tract of land, including improvements,”⁷⁶ and “real property” as “one (1) or more defined parcels or tracts of land or interests, benefits, and rights inherent in the ownership of real estate.”⁷⁷ This definition of “real property” differs from the Template Legislation definition in specificity but appears to encompass the land and everything attached to it, similar to the breadth proposed in the Template Legislation.⁷⁸ There does not appear to be significant reason for these deviations, other than a preference by Tennessee state legislators for this formation procedure.

71. Compare TENN. CODE ANN. § 13-30-103(3) (Supp. 2015), with TEMPLATE, *supra* note 64, § 3(c), at 143.

72. TENN. CODE ANN. § 13-30-103(2) (Supp. 2015).

73. *Id.* § 13-30-103(1).

74. *Id.* § 13-30-103(3).

75. TEMPLATE, *supra* note 64, § 3(c), at 143.

76. TENN. CODE ANN. § 13-30-103(5) (Supp. 2015).

77. *Id.* § 13-30-103(6).

78. TEMPLATE, *supra* note 64, § 3(g), at 144 (“‘Real Property’ shall mean lands . . . and every estate and right therein . . . and any and all fixtures and improvements located thereon.”).

Third, the Tennessee Legislation and the Template Legislation differ in their definitions of which local governments can create land banking entities: the Template Legislation grants almost any local government the power to set up a land bank, while also acknowledging that states may need to limit the power to certain local governments only, and the Tennessee Legislation acknowledges such a limitation by maintaining applicability of the legislative authority to the local governments described above in Part II.⁷⁹ It is likely that Tennessee's limitation to home rule municipalities and the five additional counties reflects the concentration of population centers in the state such as Memphis and Nashville and a recognition of areas with measurable amounts of abandoned, tax-delinquent, and foreclosed properties. Other states, similar to Tennessee, have limited the power to certain local governments—Missouri's legislation states that only a municipality located “wholly or partially within a county in which a land trust created under”⁸⁰ another certain statutory section may establish a land bank agency (effectively Kansas City), and Pennsylvania's legislation defines a “land bank jurisdiction” as either:

(1) a county, a city, a borough, a township, and an incorporated town with a population greater than 10,000; or

(2) two or more municipalities with populations less than 10,000 that enter into an intergovernmental cooperation agreement to establish or maintain a land bank.⁸¹

C. Creation

The Tennessee Legislation pulls selectively from the Template Legislation for this section. Essentially, the Tennessee Legislation allows for any local government that is authorized to create a

79. Compare TENN. CODE ANN. § 13-30-103(4) (Supp. 2015), with TEMPLATE, *supra* note 64, § 3(e), at 144.

80. MO. ANN. STAT. § 141.980.1 (West Supp. 2014).

81. 68 PA. STAT AND CONS. STAT. ANN. § 2103 (West Supp. 2013).

corporation to operate land banks within that local government's jurisdictional boundaries.⁸²

The creation section then states that the corporation is performing a public function, is a public instrumentality of the creating local government, and, as a result, it and all properties held in the name of the corporation as well as the income and revenues received from the properties shall be tax-exempt.⁸³ It also states that a corporation shall come into existence when a qualified local government applies on its own behalf or in conjunction with another qualified local government to establish the corporation by majority vote of its legislative body.⁸⁴ The creating government's or governments' governing bodies, as a part of the authorization process, must indicate their willingness to appropriate funds to provide for the corporation's initial administration and can provide such funding or grants and appropriate money to the corporation.⁸⁵ This element ensures that any such corporation will have enough funds to operate and acquire, manage, and dispose of property.

The Template Legislation, on the other hand, offers more avenues for creation of the land banking entity itself, allowing for the variety of partnerships that may want to create a land bank. It allows a local government to create a land bank entity where an ordinance, rule, or resolution, as appropriate, is adopted by that respective local government, two or more local governments that have entered into an intergovernmental cooperation agreement, any local government and municipality that have entered into an intergovernmental cooperation agreement, or a school district and any local government that have entered into an intergovernmental cooperation agreement.⁸⁶ It also indicates that each land bank created pursuant to the act shall have permanent and perpetual duration until terminated and dissolved under a later section of the act.⁸⁷ Other states mainly mimic the Template Legislation, containing minor differences related to which local governments have the power to create land banks, as indicated above. Pennsylvania's

82. TENN. CODE ANN. § 13-30-104(a)(1) (Supp. 2015).

83. *Id.* § 13-30-104(a)(2).

84. *Id.* § 13-30-104(b)(1).

85. *Id.* § 13-30-104(b)(2).

86. TEMPLATE, *supra* note 64, § 4, at 144.

87. *Id.* § 4(f), at 144.

statute shows additional deference to residents by indicating that any ordinance creating a land bank must contain (1) how residents will have an opportunity to provide “input into the land bank decision-making process,”⁸⁸ and (2) “[p]olicies regarding former owner-occupants who are occupying homes acquired by the land bank” that show a preference for keeping them in their homes, when possible.⁸⁹ Missouri limits the land bank agency to sell at most five contiguous parcels of land to the same entity in one year.⁹⁰

D. Board of Directors

Some of the Tennessee Legislation’s sections relating to the Board differ from relevant provisions in the Template Legislation but others are identical. I first outline the differences and then look at the similarities. I also note the major differences that other states have enacted.⁹¹

1. Different Provisions

The Tennessee Legislation differs from the Template Legislation as follows:

(1) Number of Directors

- a. The Template Legislation allows the local government to set the number of directors but the number must be odd and between five and eleven members.⁹²
- b. The Tennessee Legislation allows the corporation to have a board of directors that can consist of any number of directors, no fewer than five.⁹³

88. 68 PA. STAT. AND CONS. STAT. ANN. § 2104(a)(5) (West Supp. 2013).

89. *Id.* § 2104(a)(6).

90. MO. ANN. STAT. § 141.980.1 (West Supp. 2014).

91. For the purposes of this part, the words director and member are used interchangeably.

92. TEMPLATE, *supra* note 64, § 4(a)(2), at 144.

93. TENN. CODE ANN. § 13-30-105(a) (Supp. 2015).

(2) Directors' Requirements

a. The Template Legislation allows the local government to determine the qualifications, manner of selection or appointment, and terms of members.⁹⁴ It states, though, that vacancies shall be filled in the same manner as the original appointment.⁹⁵

b. The Tennessee Legislation states that all directors must be qualified electors of and taxpayers in the creating local government or governments,⁹⁶ but that the creating local government determines the qualifications, manner of selection or appointment, terms of office, the manner of filling vacancies, and whether and to what extent local legislators shall be appointed or elected to serve on the board.⁹⁷ Specifically, the Tennessee Legislation states that the creating local government, at the first organizational meeting of the corporation, shall establish the terms of the initial directors so that they serve staggered terms and an approximately equal number of directors have terms that expire in each year.⁹⁸

c. Remembering that the Missouri legislature effectively limited Kansas City as the only local government to establish a land banking entity, the legislation allows for only five directors—one appointed by Jackson County, one by the Kansas City Missouri School District, and three by the mayor of Kansas City.⁹⁹ This is the only state out of the states analyzed for this piece that

94. TEMPLATE, *supra* note 64, § 4(a)(4), at 144.

95. *Id.* § 6(f), at 145.

96. TENN. CODE ANN. § 13-30-105(a) (Supp. 2015).

97. *Id.* § 13-30-105(b).

98. *Id.* § 13-30-105(c).

99. *See* MO. ANN. STAT. § 141.981.1 (West Supp. 2014).

gives the school district power to appoint a director.

d. Pennsylvania requires at least one member who is a resident of the jurisdiction of the respective land bank, is not a public official or municipal employee, and is a continuing member of a recognized civic organization within the land bank's jurisdiction.¹⁰⁰

(3) Director Voting

a. The Tennessee Legislation mainly mimics the Template Legislation regarding voting procedures but provides for the following, which are not present in the Template Legislation: a "quorum" means a majority of the board present at a meeting, and a simple majority vote of the directors present at any meeting at which a quorum is present constitutes action.¹⁰¹ Additionally, a director may participate in meetings through any means of communication allowing for all directors who are participating to simultaneously hear each other during the meeting.¹⁰²

b. Additional provisions relating to voting are the same in both pieces of legislation and are listed in the Identical Provisions section that follows below.

(4) Director Removal

a. The Tennessee Legislation allows for a citizen petition having a clearly worded purpose and consisting of at least twenty signatures of qualified registered voters to seek the removal

100. 68 PA. STAT. AND CONS. STAT. ANN. § 2105(b)(3) (West Supp. 2013).

101. TENN. CODE ANN. § 13-30-106(a) (Supp. 2015).

102. *Id.*

of any board member.¹⁰³ The creating local government then can consider the petition and a response from the board before deciding whether to remove or retain the director by simple majority vote.¹⁰⁴ It also states the removal of a director shall not “impair the public official or municipal or county employee in that person’s other duties.”¹⁰⁵

b. This citizen removal procedure does not appear in the Template Legislation.

(5) Other Provisions

a. The Template Legislation contains provisions mandating the following that do not appear in the Tennessee Legislation: board members are not personally liable for bonds and other obligations of the land bank and rights of creditors are solely against the land bank;¹⁰⁶ and any public officer or municipal employee shall be eligible to serve as a board member and acceptance of the appointment does not terminate or impair that public officer’s position within the local government.¹⁰⁷

2. Identical Provisions

The Tennessee Legislation’s provisions relating to the following are identical to the same provisions in the Template Legislation:

103. *Id.* § 13-30-106(d).

104. *Id.*

105. *Id.*

106. TEMPLATE, *supra* note 64, § 6(j), at 145.

107. *Id.* § 6(c), at 145.

(1) The directors shall select officers from themselves and establish duties as may be regulated by rules adopted by the board.¹⁰⁸

(2) The board has discretion in establishing participation and attendance rules and requirements.¹⁰⁹

(3) If any director fails to comply with such rules and regulations, a minimum majority vote of the remaining members of the board is required to disqualify and remove that director from the board.¹¹⁰

(4) Directors shall serve without compensation.¹¹¹

(5) Directors have the power to organize executive, administrative, clerical, and other departments of the land bank or corporation and determine the duties, powers, and compensation of all the employees, agents, and consultants of the land bank or corporations.¹¹²

(6) The board can reimburse members for any land bank-related expenses they incur.¹¹³

(7) The board shall establish a schedule for meetings and meet in regular session, per that schedule, and, upon the chairman's request or a written notice

108. Compare TENN. CODE ANN. § 13-30-106(b) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(d), at 145.

109. Compare TENN. CODE ANN. § 13-30-106(c) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(e), at 145.

110. Compare TENN. CODE ANN. § 13-30-106(c) (Supp. 2015), with TEMPLATE, *supra* note 60, § 6(e), at 145.

111. Compare TENN. CODE ANN. § 13-30-106(e) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(g), at 145.

112. Compare TENN. CODE ANN. § 13-30-106(e) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(g), at 145.

113. Compare TENN. CODE ANN. § 13-30-106(e) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(g), at 145.

signed by a majority, the board shall meet in special session.¹¹⁴

(8) An affirmative vote by a majority vote of the members present and voting shall approve the board's actions unless the matter concerns one of the following categories, which requires a majority of the total board membership: bylaws and other rules and regulations, hiring and firing of employees or contractors, incurring of debt, adoption or amendment of the annual budget, or transactions dealing with property with a value of more than \$50,000.¹¹⁵

(9) Members cannot vote by proxy.¹¹⁶

(10) Members may request a recorded vote on any of the land bank or corporation's resolutions or actions.¹¹⁷

E. Applicability of State Law and Conflicts

The Tennessee Legislation states that none of the corporation's rules or bylaws may contravene state law, giving deference to pre-existing and future state laws.¹¹⁸ The Template Legislation,

114. Compare TENN. CODE ANN. § 13-30-106(f) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(h), at 145.

115. Compare TENN. CODE ANN. § 13-30-106(g) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(i), at 145. New York requires a majority vote of the total board membership to sell, lease, encumber, or alienate any real property, improvements, or personal property. N.Y. NOT-FOR-PROFIT CORP. LAW § 1605(i)(5) (McKinney Supp. 2014). Missouri requires a majority vote of the total board membership to sell real property for a selling price that represents "a consideration less than two-thirds of the appraised value of such property," and to lease, encumber, or alienate "real property, improvements, or personal property" valued more than \$50,000. MO. ANN. STAT. § 141.981.6(5) and (6) (West Supp. 2014).

116. Compare TENN. CODE ANN. § 13-30-106(h) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(k), at 145.

117. Compare TENN. CODE ANN. § 13-30-106(h) (Supp. 2015), with TEMPLATE, *supra* note 64, § 6(k), at 145.

118. TENN. CODE ANN. § 13-30-107(b) (Supp. 2015).

on the other hand, states that if any provisions of the act conflict with other state law, this act shall prevail, deferring instead to the land bank authority.¹¹⁹

The Tennessee Legislation also states that the board and directors are not exempt from the following state laws: ethical obligations for officials and employees, public meetings information, and public records access—these requirements allow for continuing transparency in land banking authorities.¹²⁰ These provisions do not appear in the Template Legislation.

The Template Legislation also states that the Act only applies to land banks created pursuant to the Act while the Tennessee Legislation does not contain a related provision, but this distinction has no bearing on Tennessee as its home rule municipalities derive their authority to create land banking statutes only from the Tennessee Legislation.¹²¹

F. Staffing

The Tennessee Legislation contains a clause allowing the corporation to enter into a contract with the creating local government for the corporation's staffing services.¹²² The Template Legislation contains the same clause, but goes further, allowing for a land bank to employ a wide array of staff and for the land bank to enter into a contract to provide staffing to a local government.¹²³

G. Powers

Both pieces of legislation contain many of the same powers but also differ regarding certain others. I have placed the powers into three categories: those that are the same in both pieces of legislation; those that exist in both pieces of legislation but contain differences; and those that are exclusive to each piece of legislation.

119. TEMPLATE, *supra* note 64, § 5, at 144.

120. TENN. CODE ANN. § 13-30-107(c)–(e) (Supp. 2015).

121. TEMPLATE, *supra* note 64, § 5, at 144.

122. TENN. CODE ANN. § 13-30-108 (Supp. 2015).

123. TEMPLATE, *supra* note 64, § 7, at 146.

1. Identical Provisions

The Tennessee Legislation and the Template Legislation both contain provisions giving the corporation or land bank the power to:

- (1) Adopt, amend, and repeal bylaws;¹²⁴
- (2) Sue and be sued in its own name in all civil actions including those related to clearing title;¹²⁵
- (3) Adopt and alter a seal;¹²⁶
- (4) Enter into contracts and other instruments incidental or convenient to performance of duties and exercise of powers;¹²⁷
- (5) Design, develop, or improve real property or interests in its real property;¹²⁸
- (6) Fix and collect rents for use of its real property and services provided;¹²⁹
- (7) Grant or acquire a license, easement, or lease with respect to its real property;¹³⁰
- (8) Enter into limited collaborative relationships with local governments and other entities for the

124. Compare TENN. CODE ANN. § 13-30-109(1) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(a), at 146.

125. Compare TENN. CODE ANN. § 13-30-109(2) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(b), at 146.

126. Compare TENN. CODE ANN. § 13-30-109(3) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(c), at 146.

127. Compare TENN. CODE ANN. § 13-30-109(5) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(g), at 146.

128. Compare TENN. CODE ANN. § 13-30-109(11)(A) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(m), at 146.

129. Compare TENN. CODE ANN. § 13-30-109(11)(B) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(n), at 146.

130. Compare TENN. CODE ANN. § 13-30-109(11)(C) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(o), at 146.

ownership, management, development, and disposition of its real property;¹³¹ and

(9) Do all other things necessary or convenient to achieve its objections and purposes related to its real property.¹³²

Both documents also charge that the land bank or corporation shall not “own, hold, maintain, or manage any real property acquired through eminent domain.”¹³³ These provisions allow for a broad range of powers for the local land banking authority to ensure that it is not limited in its ability to manage properties it has in its possession and ultimately help transform vacant, abandoned, tax-delinquent, and foreclosed properties into productive pieces of land. It is also important to note that the lack of eminent domain power reflects the fact that this power rests with other local government bodies and giving this power to the land banking authority could create conflict with these bodies.

2. Different Provisions

The pieces of legislation differ in the following respects:

(1) Borrowing

a. The Template Legislation allows the land bank to borrow on its own from private lenders, municipalities, the state, or federal government funds.¹³⁴

b. The Tennessee Legislation allows the corporation to borrow funds as may be necessary only with the creating local government’s con-

131. Compare TENN. CODE ANN. § 13-30-109(11)(D) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(p), at 146.

132. Compare TENN. CODE ANN. § 13-30-109(12) (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(q), at 146.

133. Compare TENN. CODE ANN. § 13-30-120 (Supp. 2015), with TEMPLATE, *supra* note 64, § 8(r), at 146.

134. TEMPLATE, *supra* note 64, § 8(d), at 146.

currence.¹³⁵ It is likely that this provision was qualified to allow for additional local government oversight for the corporation.

(2) Contracts

a. Both pieces of legislation allow for the corporation or land bank to enter into contracts incidental or convenient to performance of its duties and exercise of its powers but differ in their general contract clauses.

b. The Template Legislation gives the land bank the power to make and execute contracts and other instruments necessary or convenient for it to exercise its powers.¹³⁶

c. The Tennessee Legislation gives the corporation the same power, but limits it to those necessary or convenient to the exercise of powers to acquire, hold, and dispose of its real property.¹³⁷

(3) Insurance and Liabilities

a. The Template Legislation grants the land bank the power to procure insurance against losses in connection with the land bank's real property, assets, or activities.¹³⁸

b. The Tennessee Legislation grants the corporation the power to procure insurance and enter into contracts for indemnity, including but not limited to the following: loss of use and occupancy, death or injury of any person, employer's liability, any act of any member, officer, or

135. TENN. CODE ANN. § 13-30-109(4) (Supp. 2015).

136. TEMPLATE, *supra* note 64, § 8(i), at 146.

137. TENN. CODE ANN. § 13-30-109(6) (Supp. 2015).

138. TEMPLATE, *supra* note 64, § 8(j), at 146.

employee in the performance of his or her duties, or any other insurance risk as the board of directors may deem necessary.¹³⁹

(4) Investments

a. The Template Legislation allows for the land bank to invest its money in instruments, obligations, securities, or property with the approval of the Board of Directors, and name and use depositories for its money.¹⁴⁰

b. The Tennessee Legislation gives the corporation the same power, but limits the investing of money only to investments that are eligible for a municipality or county in the state and limits depositories to a bank or trust company that is a member of the Federal Deposit Insurance Corporation.¹⁴¹

(5) Management and Sale of Real Property

a. The Template Legislation grants the land bank the power to enter into contracts for the management of, collection of rent from, or sale of its real property.¹⁴²

b. The Tennessee Legislation allows the corporation to enter into contracts for the management of or sale of its real property as long as they do not violate the definitions clause of the state eminent domain statute.¹⁴³

139. TENN. CODE ANN. § 13-30-109(7) (Supp. 2015).

140. TEMPLATE, *supra* note 64, § 8(k), at 146.

141. TENN. CODE ANN. § 13-30-109(9) (Supp. 2015).

142. TEMPLATE, *supra* note 64, § 8(l), at 146.

143. TENN. CODE ANN. § 13-30-109(11) (Supp. 2015).

3. Exclusive Provisions

The Template Legislation contains provisions granting power to the land bank for the following: to issue negotiable revenue bonds and notes,¹⁴⁴ to procure insurance or guarantees from the state or federal government for debt or premium payments,¹⁴⁵ and to enter into contracts and other instruments necessary, incidental, or convenient to the performance of functions by the land bank on behalf of municipalities and their respective agencies or departments and vice versa.¹⁴⁶ The Tennessee Legislation omits these provisions, which allow for the authority to raise money and create a stream of revenue, however, supplants them with a blanket provision. The clause gives the corporation the power to accept donations, contributions, revenues, and capital grants or gifts from an almost unlimited list of entities to carry out its powers and to enter into agreements in connection with the donations, contributions, revenues, and capital grants or gifts.¹⁴⁷ This provision can allow the corporation to accept funding from non-profits or similar entities to ensure its continuing financing and operation.

New York gives the land bank the following additional powers: to inventory vacant, abandoned, and tax foreclosed properties;¹⁴⁸ to subject itself to municipal building codes and zoning laws;¹⁴⁹ and, if acquiring property from a foreclosing governmental unit, to create a redevelopment plan with the approval of that unit¹⁵⁰ and to enter into an agreement with that unit to determine revenue distribution to that unit.¹⁵¹

Georgia also gives the land bank additional powers, including the ability: “to acquire, accept, or retain equitable interests, security interest, and other interests in real property, personal property, or fixtures” by financial instruments to secure credit;¹⁵²

144. TEMPLATE, *supra* note 64, § 8(e), at 146.

145. *Id.* § 8(f), at 146.

146. *Id.* § 8(h), at 146.

147. TENN. CODE ANN. § 13-30-109(8) (Supp. 2015).

148. N.Y. NOT-FOR-PROFIT CORP. LAW § 1607(a)(17) (West Supp. 2014).

149. *Id.* § 1607(a)(19).

150. *Id.* § 1607(a)(18).

151. *Id.* § 1607(a)(20).

152. GA. CODE ANN. § 48-4-106(a)(5) (West, Westlaw through 2015 Legis. Sess.).

and “to hold title to real property for purposes of establishing contracts with nonprofit community land trusts, including, but not limited to long-term lease contracts.”¹⁵³ The Georgia legislation also adds much more detail to the financial powers of the land bank, giving the land bank more robust power in these areas.

H. Acquisition of Property

The acquisition of property is the single greatest power a land banking authority can possess, and in order to be effective, it needs the ability to acquire property from a wide variety of sources, including private landowners and other governmental entities.

The Tennessee Legislation contains most of the related clauses from the Template Legislation, including the authorization to “acquire real property or interests in real property for the land bank by gift, devise, transfer, exchange, foreclosure, purchase” or other appropriate terms;¹⁵⁴ and to acquire real property by contracts and agreements and accept transfers from municipalities in mutually agreed upon terms.¹⁵⁵ Both pieces of legislation require the corporation or land bank to maintain its property according to the laws of the jurisdiction in which the real property is located,¹⁵⁶ and mandate that the corporation or land bank not own or hold real property outside the jurisdictional boundaries of the local government(s) that created it unless under an intergovernmental agreement.¹⁵⁷ Additionally, both allow a transferring municipality to convey to the corporation or land bank real property and interests in real property according to its own terms, conditions, and procedures.¹⁵⁸ The Tennessee Legislation omits the following clause provided in the Template Legislation: “The real property of a

153. *Id.* at (a)(23).

154. *Compare* TENN. CODE ANN. § 13-30-110(a) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 9(b), at 147.

155. *Compare* TENN. CODE ANN. § 13-30-110(b) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 9(c), at 147.

156. *Compare* TENN. CODE ANN. § 13-30-110(c) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 9(d), at 147.

157. *Compare* TENN. CODE ANN. § 13-30-110(d) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 9(e), at 147.

158. *Compare* TENN. CODE ANN. § 13-30-110(b)–(c) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 9(c), (f), at 147.

Land Bank and its income and operations are exempt from all taxation by the State and by any of its political subdivisions.”¹⁵⁹ Regardless, the broad grant of power to a corporation to acquire and accept property ensures that a corporation can effectively take possession of vacant, abandoned, tax-delinquent, and foreclosed properties in almost any manner.

The New York legislation allows the land bank to enter into agreements to purchase real property that is not vacant, abandoned, and tax-delinquent, as long as it is consistent with an approved redevelopment plan.¹⁶⁰ It also requires the land bank to maintain a complete inventory of all property the land bank receives and make that inventory available for public review.¹⁶¹ If it does not comply with the detailed requirements, that property acquisition becomes null and void.¹⁶²

Pennsylvania also imposes additional requirements and options. First, if the land bank leases real property to a private third party, the property becomes subject to state and local taxes after five years.¹⁶³ Additionally, if the land bank leases real property to a nonprofit or governmental agency at less than fair market value, then the property remains exempt from state and local taxes.¹⁶⁴ Second, the legislation allows a tax claims bureau under the states Real Estate Tax Sale Law to transfer real property to the land bank.¹⁶⁵ Third, it gives the land bank the ability, if authorized by the local government that created the land bank, to accept donations of real property and extinguish delinquent taxes for that property under the states Municipal Claim and Tax Lien Law and Real Estate Tax Sale Law.¹⁶⁶

Missouri adds certain provisions allowing the land bank power at a foreclosure sale. In combination with a different provision of state law, if no bid equal to the total amount of all tax bills, interest, penalties, and attorneys’ fees and costs is received after a

159. TEMPLATE, *supra* note 64, § 9(a), at 147.

160. N.Y. NOT-FOR-PROFIT CORP. LAW § 1608(g) (West Supp. 2014).

161. *Id.* § 1608(h).

162. *Id.* § 1608(h)–(j).

163. 68 PA. STAT. AND CONS. STAT. ANN. § 2109(b)(2) (West Supp. 2013).

164. *Id.*

165. *Id.* § 2109 (g).

166. *Id.* § 2109 (h).

property has been offered for sale at a sheriff's foreclosure sale on three different days, a land bank shall have been deemed to have bid that full amount, and its bid accepted.¹⁶⁷ The legislation also explicitly gives a land bank the power to bid on real estate at a sheriff's foreclosure sale notwithstanding the preceding provision if the real property is located in a low- to- moderate-income area that the land bank has targeted for redevelopment.¹⁶⁸ If a land bank wins the bid at the sale, it only has to pay the amount that its bid exceeds the total amount of all tax bills, principal amount, interest, penalties, and attorneys' fees and costs of the piece of property—the tax collector takes a credit for the remaining amount.¹⁶⁹

I. Disposition of Property

Related to the acquisition of property, a land banking authority also needs a wide swath of power to dispose of property, including making it available on the open market or converting it to public use by transferring it to a local government. The Tennessee Legislation includes all the disposition provisions from the Template Legislation but makes changes for some of them.

The clauses relating to the following powers of the corporation or land bank are identical in both pieces of legislation: (1) the land bank holds real property in its own name,¹⁷⁰ (2) the land bank “shall determine and set forth in policies and procedures of the board of directors, the general terms and conditions for consideration to be received for transfer of real property and interests,”¹⁷¹ (3) the local ordinance or resolution establishing the land bank can set a hierarchical ranking of real property use priorities,¹⁷² (4) the local government creating the land bank may subject certain forms of

167. MO. ANN. STAT. §§ 141.984.4, 141.560.3 (West Supp. 2014).

168. MO. ANN. STAT. § 141.984.4 (West Supp. 2014).

169. *Id.* § 141.984.6.

170. *Compare* TENN. CODE ANN. § 13-30-111(a) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 10(a), at 147. Pennsylvania includes this provision in the acquisition section of its legislation. 68 PA. STAT. AND CONS. STAT. ANN. § 2109(a) (West Supp. 2013).

171. *Compare* TENN. CODE ANN. § 13-30-111(c) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 10(c), at 147.

172. *Compare* TENN. CODE ANN. § 13-30-111(e) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 10(e), at 147. Missouri also adds hierarchical priorities for application of proceeds from sales or dispositions for certain types of properties. MO. ANN. STAT. § 141.985.8 to .9 (West Supp. 2014).

disposition of real property to particular board voting and approval requirements,¹⁷³ and (5) the board may delegate authority to officers and employees to enter into and execute agreements and other documents related to conveyance of real property held by the land bank.¹⁷⁴ Most notable among these powers is the local government's ability to maintain a higher threshold for the disposition of certain properties, such as school buildings or property surrounding areas with robust development.

The Tennessee Legislation includes a clause from the Template Legislation allowing the corporation to maintain and make available for public review and inspection its real property inventory.¹⁷⁵ It expands this authority to allow the corporation to create an independent, publically available, electronic inventory and make sure that information in the inventory is accurate.¹⁷⁶ The Tennessee Legislation also includes the Template Legislation clause allowing the corporation to convey, exchange, sell, transfer, and do other things with its real property,¹⁷⁷ but it limits this power by stating that it must not violate the definitions clause of the state eminent domain statute.¹⁷⁸ Creating an inventory of the properties a land banking authority holds is vital to ensure that the authority properly indexes the various features of the properties including tax liabilities, title, liens, and other liabilities that the authority must address, and allowing public access to it ensures continuing transparency throughout the perpetuity of the authority.

Missouri adds two interesting provisions in an effort to stimulate disposition. First, a land bank must accept a written offer for purchase that is equal to or greater than the fair market value of

173. Compare TENN. CODE ANN. § 13-30-111(f) (Supp. 2015), with TEMPLATE, *supra* note 64, § 10(f), at 147.

174. Compare TENN. CODE ANN. § 13-30-111(f) (Supp. 2015), with TEMPLATE, *supra* note 64, § 10(f), at 147.

175. Compare TENN. CODE ANN. § 13-30-111(b) (Supp. 2015), with TEMPLATE, *supra* note 64, § 10(b), at 147. It is important to note that New York breaks this requirement into two separate categories. The first category is for all property the land bank receives. N.Y. NOT-FOR-PROFIT CORP. LAW § 1608(h)–(j) (West Supp. 2014). The second category is for all property of which the land bank disposes. *Id.* § 1609(b), (g), (h).

176. TENN. CODE ANN. § 13-30-111(b) (Supp. 2015).

177. Compare TENN. CODE ANN. § 13-30-111(d) (Supp. 2015), with TEMPLATE, *supra* note 64, § 10(d), at 147.

178. TENN. CODE ANN. § 13-30-111(d) (Supp. 2015).

the real property.¹⁷⁹ If it rejects such an offer, or does not respond to it within sixty days, its action or inaction is subject to judicial review unless the reason for its rejection is that it has accepted another offer that is equal to or greater than the property's fair market value.¹⁸⁰ Second, if the land bank owns more than five pieces of real property that are in a single city block and has not received a written purchase offer for any of them within the past twelve months, it must reduce the requested price for them and publicly advertise the new price.¹⁸¹

J. Open Meetings and Records

The Tennessee Legislation contains the public records clause from the Template Legislation, that the board shall keep minutes and a record of all of its proceedings.¹⁸² It expands this to allow for timely public inspection of all of the board's minutes and records.¹⁸³

The Tennessee Legislation adds four clauses not found in the Template Legislation relating to its public access to its records. First, the board must publish an annual report of the corporation's activities for the creating local government and make it available to public inspection.¹⁸⁴ Second, the board must have an annual audit of the corporation's books and records performed.¹⁸⁵ The corporation must pay for the audit, and the state comptroller of the treasury must assure audit compliance with its own and other government standards.¹⁸⁶ Third, if the board fails to have an audit prepared, the comptroller can direct that an audit be performed.¹⁸⁷

179. MO. ANN. STAT. § 141.985.7 (West Supp. 2014).

180. *Id.*

181. *Id.* § 141.985.10.

182. Compare TENN. CODE ANN. § 13-30-112(a) (Supp. 2015), with TEMPLATE, *supra* note 64, § 13, at 149. The other states in our survey have similar provisions, and reference public meetings laws in their respective states. See generally GA. CODE ANN. § 48-4-111(a) (West, Westlaw through 2015 Legis. Sess.); MO. ANN. STAT. § 141.997 (West Supp. 2014); N.Y. NOT-FOR-PROFIT CORP. LAW § 1612(a) (McKinney Supp. 2014); 68 PA. STAT. AND CONS. STAT. ANN. § 2113(b) (West Supp. 2013).

183. TENN. CODE ANN. § 13-30-112(a) (Supp. 2015).

184. *Id.* § 13-30-112(b).

185. *Id.* § 13-30-112(c).

186. *Id.*

187. *Id.* § 13-30-112(d).

Fourth, a copy of the annual audit must be filed with the creating local government.¹⁸⁸

K. Dissolution

The Tennessee Legislation does not contain the extensive dissolution provision from the Template Legislation.¹⁸⁹ Rather it states that the creating local government can establish the procedure for dissolution, or that the corporation can be dissolved per the general law for public corporation dissolution.¹⁹⁰ The Template Legislation's section states the following: (1) once two-thirds of the board membership approves dissolution, the land bank can be dissolved after sixty days;¹⁹¹ (2) the land bank must give sixty calendar days advance written notice of consideration of the resolution for dissolution to the local government that created the land bank, publish it in a local newspaper of general circulation, and send it by certified mail to the trustee of any outstanding bonds of the land bank;¹⁹² (3) upon dissolution, all assets will become assets of the local government that created the land bank;¹⁹³ (4) if two or more local governments created the land bank, the withdrawal of one does not dissolve the land bank unless the intergovernmental agreement provides for such and no local government wants to continue the land bank's existence.¹⁹⁴ Tennessee's deferential provision here reflects the fact Tennessee and other states have various procedures for dissolving or terminating public corporations and related entities.

L. Conflicts of Interest

The Tennessee Legislation's conflict of interest provision mimics the one from the Template Legislation, prohibiting (1) a board member or employee of the land bank from acquiring any

188. *Id.* § 13-30-112(e).

189. TEMPLATE, *supra* note 64, § 14, at 149.

190. TENN. CODE ANN. § 13-30-113 (Supp. 2015).

191. TEMPLATE, *supra* note 64, § 14, at 149.

192. *Id.*

193. *Id.* In Georgia and Pennsylvania, these assets become the property of the local government unit in which they are located. GA. CODE ANN. § 48-4-111(c)(3) (West, Westlaw through 2015 Legis. Sess.); 68. PA. STAT. AND CONS. STAT. ANN. § 2114(c) (West Supp. 2013).

194. TEMPLATE, *supra* note 64, § 14, at 149.

direct or indirect interest in real property acquired or held by the land bank, and (2) a board member or employee of the land bank from having any direct or indirect interest in any contract or proposed contract for services or materials for the land bank.¹⁹⁵ They both also allow the board to adopt additional rules and regulations regarding conflicts of interest and ethics.¹⁹⁶

M. Construction of Legislation

The construction clause of the Tennessee Legislation is identical to that in the Template Legislation; they both hold that the land banking act shall be construed liberally so as to allow for legislative intent to be broad and so that powers of the land bank shall not be limited.¹⁹⁷ Again, this is important to allow the corporation to utilize effectively its broad range of powers.

N. Property Taxes

The Template Legislation discusses property taxes in two sections. First, a clause under the Financing section states, “[f]ifty percent of the real property taxes collected on real property conveyed by a Land Bank pursuant to the laws of the State shall be remitted to the Land Bank.”¹⁹⁸ It goes on to state that this allocation shall commence with the first taxable year after conveyance and continue for five years.¹⁹⁹ The Tennessee Legislation does not contain this clause.

Second, in its Delinquent Property Tax Enforcement Section, the Template Legislation contemplates allowing the land bank to discharge and extinguish delinquent taxes on properties it owns, participate in tax foreclosures and tax lien sales, and allow for bulk tax foreclosures.²⁰⁰ The Tennessee Legislation does not include

195. Compare TENN. CODE ANN. § 13-30-114 (Supp. 2015), with TEMPLATE, *supra* note 64, § 15, at 149.

196. Compare TENN. CODE ANN. § 13-30-114 (Supp. 2015), with TEMPLATE, *supra* note 64, § 15, at 149.

197. Compare TENN. CODE ANN. § 13-30-115 (Supp. 2015), with TEMPLATE, *supra* note 64, § 17, at 150.

198. TEMPLATE, *supra* note 64, § 11(c), at 148.

199. *Id.*

200. *Id.* § 18, at 150. It is important to note that a review of the other states in our survey has not been included for the property taxes and title sections as the powers vary widely and an analysis of the differences would require

any provisions allowing for these powers; instead, it adds other provisions. First, it states that the corporation is exempt from state taxation.²⁰¹ Second, it gives the corporation the power to pay unpaid taxes due and owing and make government mandated improvements to the property in exchange for the real property deed.²⁰² Third, it states that the corporation shall receive all proceeds from the sale of the corporation's real property.²⁰³ Fourth, it mandates that the board should hold all corporate revenue and that proceeds shall go only to helping with the acquisition or resale of real property by the corporation.²⁰⁴ While the Template Legislation contemplated this power to remedy the tax-delinquency of properties, the Tennessee Legislation presents a different approach to achieving the same goal.

O. Action to Quiet Title

The Tennessee Legislation provisions on actions to quiet title are mostly similar to the ones in the Template Legislation.²⁰⁵ First, both allow for the land bank to file an action to quiet title for any real property in which the land bank has an interest.²⁰⁶ Second, both also require that prior to filing such an action, the land bank must examine the title to determine if there are any other entities that have a claim or interest in or to the real property.²⁰⁷ Third, they outline various methods for service of the complaint to quiet title,²⁰⁸ with the Tennessee Legislation only adding the following method: electronically published notices with addresses and descriptions on the municipality's website.²⁰⁹ Fourth, they both re-

an entirely separate piece evaluating both the respective land bank statutes and the other states' property taxes and title sections.

201. TENN. CODE ANN. § 13-30-116(a) (Supp. 2015).

202. *Id.* § 13-30-116(b).

203. *Id.* § 13-30-116(c).

204. *Id.* § 13-30-116(d).

205. *Compare* TENN. CODE ANN. § 13-30-117 (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 19, at 150.

206. *Compare* TENN. CODE ANN. § 13-30-117(a) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 19(a), at 150.

207. *Compare* TENN. CODE ANN. § 13-30-117(b) (Supp. 2015), *with* TEMPLATE, *supra* note 64, § 19(b), at 150.

208. *Compare* TENN. CODE ANN. § 13-30-117(b)(1)–(6) (Supp. 2015), *with* TEMPLATE, *supra* note 60, § 19(b)(1)–(5), at 150.

209. TENN. CODE ANN. § 13-30-117(b)(5) (Supp. 2015).

quire that the land bank file an affidavit identifying all parties that might have an interest in the real property.²¹⁰ Fifth, they state that the court must schedule a hearing within 90 days after the complaint's filing and must issue a judgment within 120 days of the filing.²¹¹ This ability to clear any cloud on the title is essential to making the property an attractive target once placed back onto the open market and ensuring its future vitality.

P. Appeals

The Tennessee Legislation adds a section on appeals that is not present in the Template Legislation. The provisions allow for the following and appear to create a public grievance hearing mechanism:

(1) The creating local government must establish an appeal procedure for any person who is aggrieved by the corporation's decisions with respect to real property.²¹²

(2) The creating local government's legislative body can create an appeals committee.²¹³

(3) The aggrieved person can obtain review of an official's decision by submitting a written form to the appeals committee within ten days of the official's decision.²¹⁴

(4) The appeals committee must hear the appeal within thirty days of the written request.²¹⁵

(5) The appeals committee must render a decision on the appeal within thirty days of the hearing, un-

210. Compare TENN. CODE ANN. § 13-30-117(c) (Supp. 2015), with TEMPLATE, *supra* note 64, § 19(c), at 150.

211. Compare TENN. CODE ANN. § 13-30-117(d) (Supp. 2015), with TEMPLATE, *supra* note 64, § 19(d), at 150.

212. TENN. CODE ANN. § 13-30-118(a) (Supp. 2015).

213. *Id.* § 13-30-118(b).

214. *Id.*

215. *Id.* § 13-30-118(c).

less the committee, by majority vote, continues the hearing for further information.²¹⁶

(6) The appeals committee must act as a quasi-judicial body and is not bound by the formal rules of evidence.²¹⁷

(7) The appeals committee must follow a detailed trial-like procedure when considering appeals and the committee's decision on the appeal is final.²¹⁸

Q. Comptroller Authority

The Tennessee Legislation contains two additional provisions relating to monitoring of the corporation by the comptroller of the treasury that are not present in the Template Legislation. First, the comptroller must monitor the corporation for three years after its creation.²¹⁹ Second, after the three years, the comptroller must file a report with the government and other state officials with recommendations on whether the land bank pilot project should be continued, expanded, discontinued, or whether some related potential legislative actions should be taken.²²⁰ The comptroller's oversight maintains a semblance of state level monitoring of the financial stability of the local corporations that will be created under the legislation.

R. Other Sections

The Tennessee Legislation does not contain the following sections from the Template Legislation: Financing of Land Bank Operations,²²¹ Borrowing and Issuance of Bonds²²² (likely because under the Tennessee Legislation, the corporation does not have the power to issue bonds), Land Bank Creation in a Natural Disaster,²²³ and Effective Date.²²⁴ These are not of serious concern,

216. *Id.* § 13-30-118(d).

217. *Id.* § 13-30-118(e).

218. *Id.* § 13-30-118(f).

219. *Id.* § 13-30-119(a).

220. *Id.* § 13-30-119(b).

221. TEMPLATE, *supra* note 64, § 11, at 148.

222. *Id.* § 12, at 148–49.

223. *Id.* § 16, at 149.

however, because the Tennessee Legislation addresses financing for the corporation, the most significant of these omissions, in other sections.²²⁵

V. EXISTING LAND BANKS IN TENNESSEE

What is the current status of land banking in Tennessee? I now discuss various land banking efforts in the state, of which there are only a few. Oak Ridge, the beneficiary of the Pilot Legislation, has one active land bank entity. Chattanooga has set up the framework for a land bank but it is still in its nascent stage, and the Memphis City Council recently passed a resolution for the creation of a land banking authority. No other local governments are using land banking, and, as Part II illustrates above, this is problematic.

A. *Oak Ridge*

The Oak Ridge City Council passed an ordinance on September 19, 2013 to create the Oak Ridge Land Bank Corporation.²²⁶ Specifically, the ordinance states that the Oak Ridge Land Bank Corporation is created “pursuant to the authority of the Tennessee Local Land Bank Pilot Program set forth in Tennessee Code Annotated § 13-30-101 et seq.”²²⁷ The ordinance, for the most part, mimics the Tennessee Legislation—it acknowledges the findings of the Tennessee Legislation as the basis of establishing the Corporation;²²⁸ it gives the Corporation many of the powers allowed for in the Tennessee Legislation including the ability to acquire land, file actions to quiet title, and to dispose of land; it maintains the tax-exempt status of the Corporation and its properties;²²⁹ and it provides an organizational structure including a board of directors, meeting and voting requirements, and annual reporting that are similar to those laid out in the Tennessee Legislation.²³⁰

224. *Id.* § 20, at 150.

225. *See supra* text accompanying note 144.

226. Oak Ridge, Tenn., Ordinance 08-2013 (Sept. 19, 2013), <http://oakridgetn.gov/images/uploads/Documents/Ordinances/2013/8-2013.PDF>.

227. OAK RIDGE, TENN., CODE OF ORDINANCES tit. 13, ch. 6, § 13-603.

228. *Id.* § 13-602.

229. *Id.* § 13-606 to -607.

230. *Id.* § 13-604 to -605.

The ordinance allowed for the automatic transfer of twelve city-owned properties to the Corporation by quitclaim deed without further city council action.²³¹ The Corporation received \$25,000 in funding from the city in 2013, and \$20,000 in 2014.²³² It used these funds to start a bank account, create a 501(c)(3) non-profit organizational structure, and pay administrative costs associated with establishing a nonprofit organization.²³³ Before the initial transfer of twelve properties from the City to the Corporation in January of 2014, the City demolished the structures on all but one of these pieces of property.²³⁴ Throughout 2014 and 2015, the City continued to demolish structures on additional properties, and then transferred those properties to the Corporation.²³⁵

The Corporation has used various approaches for these properties. It renovated the structure on one of the properties in partnership with a private contractor, and after placing the property back on the market, sold it within five days.²³⁶ The Corporation also donated two properties to the Aid to Distressed Families of Appalachian Counties organization, a local non-profit that provides assistance to low-income individuals, for it to build moderate to low-income housing.²³⁷ It also sold two properties to a private citizen on the open market for owner-occupied dwelling.²³⁸ As of January 1, 2016, the Corporation holds twenty properties and is partnering with a real estate agent to sell certain properties.²³⁹ It is also looking for a private contractor/investor interested in developing a number of the properties together, including some which are about to be transferred to the Corporation.²⁴⁰

Matt Widner, the Oak Ridge Housing Specialist, who also acts as the city government staff liaison to the Land Bank Corpora-

231. Oak Ridge, Tenn., Ordinance 08-2013 § 4 (Sept. 19, 2013), <http://oakridgetn.gov/images/uploads/Documents/Ordinances/2013/8-2013.PDF>.

232. Telephone Interviews with Matt Widner, Oak Ridge Housing Specialist, City of Oak Ridge, Tenn. (Aug. 10, 2015 and Jan. 19, 2016).

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

tion, has indicated that when the Corporation began its operations, it did not have the money to purchase properties. As the Corporation grows, it will be seeking out new partnerships with local financial institutions for lines of credit and developers for development of the properties it possesses. He has also stated that the Corporation could acquire more properties if the tax foreclosure system were modified to allow the Corporation the first right of refusal for foreclosed properties and other allowances before they are put on the open auction market. This way the Corporation can become more robust and closer to fulfilling its ultimate purpose of ridding the city of vacant, abandoned, tax-delinquent, and foreclosed properties.²⁴¹

B. Chattanooga

Chattanooga, a city in the eastern part of the state on the state's southern border, has established the legal authority for a land bank. The Chattanooga City Council adopted a resolution on February 17, 2015 to create the Chattanooga Land Bank Authority.²⁴² The council created the Land Bank Authority "to provide a tool to support economic revitalization through returning vacant, abandoned and tax-delinquent properties to productive use."²⁴³ The resolution cites to the Tennessee Legislation for the legal authority to establish the Land Bank Authority and then states that "land bank" means the following: "real property, however obtained or acquired and held by the Chattanooga Land Bank Authority, with the intent of acquiring and holding onto the real property so acquired until such time as the Corporation is able to find a willing and able buyer to acquire the real property from the Corporation."²⁴⁴ It grants the Land Bank Authority to have all the powers stated under the Tennessee Legislation and a proposed Land Bank Authority charter.²⁴⁵ It also, under the purview of Tennessee Legislation, holds that because the Land Bank Authority is performing

241. *Id.*

242. Chattanooga, Tenn., Res. 28152 (Feb. 17, 2015), <http://www.chattanooga.gov/city-council-files/OrdinancesAndResolutions/Resolutions/Resolutions%202015/28152%20Approving%20Land%20Bank%20Authority%20Charter-FINAL.pdf>.

243. *Id.*

244. *Id.*

245. *Id.*

a public function for the city, it and all of the properties it owns or holds in its name and the income and revenues from the those properties are tax-exempt.²⁴⁶

Development on the land banking authority is continuing. The resolution calls for the authority to apply to the Secretary of State for a certificate of incorporation.²⁴⁷ The Authority filed for incorporation on March 26, 2015, and was granted a perpetual charter.²⁴⁸ The Authority though has not yet established a board and has not acquired or received any property. The City appears to be simply taking the steps necessary to establish the land banking authority, but it is too early to tell how the Land Banking Authority will operate—it first needs a leadership structure in place and then properties.

C. Memphis and Shelby County

Shelby County is Tennessee's largest county and encompasses and surrounds Memphis, Tennessee's largest city. Under the Tennessee Legislation, only the City of Memphis has the authority to create a land banking authority, not Shelby County. As the figures above in Part II demonstrated, however, Memphis and its surrounding metropolitan area, which includes all of Shelby County, are in dire need of a land bank.

Shelby County currently has a land bank, but for our purposes it is a local government entity with extremely limited power that the county government has labeled a "land bank"—it does not fit the traditional definition of a land bank and the label is a misnomer.²⁴⁹ Rather, the Shelby County Land Bank acts simply as a repository for tax-delinquent property by taking possession of it and selling it. It does not remove redemption rights, does not quiet title, and does not take any other action with regards to the property it is selling. The entity really only publishes a monthly list of

246. *Id.*

247. *Id.*

248. *Business Entity Detail: Chattanooga Land Bank Authority*, TENN. SEC'Y OF STATE, <https://tnbear.tn.gov/ecommerce/FilingDetail.aspx?CN=115127067121067100086060115253158172184169057002> (last visited Aug. 1, 2015).

249. *Land Bank*, SHELBY CTY, TENN., <https://landbank.shelbycountyttn.gov/aboutus> (last visited May 16, 2016).

available properties and interested buyers can contact it directly to purchase the property at a reasonable purchase price.²⁵⁰

Memphis recently took the first steps to establish a corporation of the type contemplated under the Tennessee Legislation. On November 3, 2015, the Memphis City Council approved a resolution to establish the Blight Authority of Memphis, Inc.²⁵¹ Similar to the Chattanooga resolution, this resolution derives the authority to create a local corporation from the Tennessee Legislation.²⁵² It defines “land bank” as “real property, however obtained or acquired and held by the Blight Authority of Memphis, Inc., with the intent of acquiring and holding onto the real property so acquired until such time as the corporation is able to find a willing and able buyer to acquire the real property from the corporation, pursuant to the Tennessee Local Land Bank Program.”²⁵³ It also grants the corporation all of the powers provided in the Tennessee Legislation, and makes tax-exempt the corporation and all of its properties as well as any income and revenue from its properties.²⁵⁴

The resolution also authorized the corporation to apply for a certificate of incorporation.²⁵⁵ The corporation applied for such on November 23, 2015, and the state granted it a perpetual charter.²⁵⁶ This development is a positive step for Memphis, and for the entire state. A land banking entity in the largest city in the state not only has wide and positive implications for the entire area, but also, assuming it continues its progression and is successful, presents an opportunity to illustrate the importance of such a tool for other local governments throughout the state.

250. *Id.*

251. Memphis, Tenn., Resolution Authorizing Establishment of the Blight Authority of Memphis, Inc. (“BAM”) (Nov. 3, 2015), http://www.memphistn.gov/Portals/0/pdf_forms/Memphis_City_Council_resolution_102815.pdf.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Business Entity Detail: Blight Authority of Memphis, Inc.*, TENN. SEC’Y OF STATE, <https://tnbear.tn.gov/ecommerce/FilingDetail.aspx?CN=043103072235254112086243139185138013047232175054> (last visited May 16, 2016).

VI. CONCLUSION

Land banks present an innovative approach to combatting and solving the problem of vacant, abandoned, tax-delinquent, and foreclosed properties across the state including, but not limited to, smaller cities in the eastern portion of the state and the biggest in the west. Local governments who have the state authority to develop land bank authorities should adopt the necessary measures to create their land banking authorities. They also should devote the appropriate monetary and non-financial resources to make them robust entities with real power to face this problem. Only if local land banking authorities are given the essential powers to affect change in their communities can they “return” these properties to their cities and make them integral parts of their communities once again.