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A Proposal for Land Bank Legislation in North Carolina

Stuart Pratt

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A Proposal for Land Bank Legislation in North Carolina

INTRODUCTION	568
I. A DESCRIPTION AND HISTORY OF LAND BANKS.....	570
A. <i>Description of Land Banks</i>	571
B. <i>History of Land Banks and Land Banking</i>	574
II. COMPARATIVE ANALYSIS	579
A. <i>Existing State Legislation Analysis</i>	579
1. State Enabling Authority	580
2. Formation and Corporate Structure	581
3. Funding and Staffing.....	583
4. Operations and Powers Possessed.....	586
III. A PROPOSAL FOR LAND BANK LEGISLATION IN NORTH CAROLINA.....	592
A. <i>Drafting Legislation to Respond to North Carolina's Need for Land Banks</i>	592
B. <i>Land Banking as a Complement to Existing State Strategies</i>	594
C. <i>Recommendations for Key Land Bank Legislation Provisions</i>	596
1. State Enabling Authority	596
2. Formation and Corporate Structure	597
3. Funding and Staffing.....	598
4. Operations and Powers Possessed.....	600
5. Other Considerations.....	605
CONCLUSION	605

INTRODUCTION

North Carolina needs new ways to respond to the ongoing housing foreclosure crisis. Foreclosure filings in North Carolina hit a record high in August 2009.¹ Data from the North Carolina Administrative Office of the Courts show that North Carolina foreclosures were up seventeen percent in 2009.² In a recent report

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1. Stella M. Hopkins, *Foreclosure Activity Reaches Record*, CHARLOTTE OBSERVER, Sept. 4, 2009, at 1D.

2. See *News & Research*, N.C. FORECLOSURE HELP, <http://www.ncforeclosurehelp.org/Research.aspx> (follow hyperlink for NC Foreclosure Data) (last visited Jan. 3, 2011); see also Gary D. Robertson, *NC Foreclosure Filings Up by 17 Percent in 2009*, ABC NEWS (Jan. 5, 2010), <http://abcnews.go.com/Business/wireStory?id=9485373>. In addition,

that summarized the state's expected uses for federal stimulus money, the North Carolina Department of Commerce stated that "[w]hile the foreclosure problems may not rival levels experienced in other states, North Carolina still has significant needs and housing problems due to the housing crisis."³

The pain of the housing crisis is felt at a variety of geographic levels within North Carolina. At the regional level, the foreclosure crisis is not affecting all areas of the state uniformly. Urban and suburban real estate in the Piedmont and Inner Coastal Plain regions are at the highest risk for foreclosure, while real estate in the mountains and along the coast face the lowest risk of foreclosure.⁴ Viewed from the neighborhood and local government perspective, the impact of the housing crisis is seen in the rising numbers of vacant and abandoned houses that plague districts across the state.⁵ As a result, local governments struggle as property tax revenues decline due to increases in unsold inventory.⁶ At the block level, scholars studying the effects of foreclosure on property values have found that "each conventional foreclosure within an eighth of a mile (essentially a city block) of a single-family home results in a 0.9 percent decline in value."⁷

To address these problems, this Comment argues that North Carolina should adopt enabling legislation that would authorize local governments to create land banks. Land banks are "governmental or nonprofit entities that acquire, hold, and manage foreclosed or

between January 2005 and May 2009, there were 213,530 foreclosure starts. See N.C. DEP'T OF COMMERCE, NSP 2 DRAFT APPLICATION 5 (n.d.), available at <http://www.nccommerce.com/NR/rdonlyres/F584F7DB-5495-42FD-A0DE-F3759069C5B2/0/NSP2ApplicationDraft2.pdf>. These reports have prompted state regulators to seek new tools to help homeowners. See Hopkins, *supra* note 1.

3. See *Neighborhood Stabilization Program: Substantial Amendment Draft for Public Comment*, N.C. DEP'T OF COMMERCE, <http://www.nccommerce.com/NR/rdonlyres/2FCB7D5F-E668-4CB3-AC2E-30180A899398/0/NSPActionPlanFinal2.pdf> (last visited Jan. 3, 2011) [hereinafter N.C. DEPT. OF COMMERCE].

4. See *Greatest Needs Analysis*, N.C. DEP'T OF COMMERCE, <http://www.nccommerce.com/NR/rdonlyres/CC78A209-4960-49FB-8E1F-DE40B81272B3/0/GreatestNeedsMapLG.pdf> (last visited Jan. 3, 2011).

5. See Julia Oliver, *Grant to Tackle Home Vacancies*, CHARLOTTE OBSERVER, Nov. 16, 2008, at 1B; Matt Goad, *East Durham: A Neighborhood in Transition*, HERALD-SUN (Durham, NC), May 3, 2009, at A1.

6. N.C. DEP'T OF COMMERCE, *supra* note 3.

7. DAN IMMERGLUCK & GEOFF SMITH, THERE GOES THE NEIGHBORHOOD: THE EFFECT OF SINGLE-FAMILY MORTGAGE FORECLOSURES ON PROPERTY VALUES 2 (2005), available at http://www.nw.org/network/neighborworksprogs/foreclosuresolutions/reports/documents/TGTN_Report.pdf. This study was conducted in the late 1990s and analyzed more than 9,600 sales of single-family homes in Chicago. *Id.*

abandoned properties.”⁸ They are a flexible tool ideally suited to stabilize neighborhoods and spur economic development,⁹ and they have enjoyed success in a variety of communities.¹⁰ This Comment is divided into three parts. Part I discusses the history of land banks and describes the common functions and powers of land banks. Part II focuses on a comparative analysis of existing land bank enabling legislation. This examination is important to ensure that North Carolina’s legislation adopts best practices and avoids pitfalls that exist in other states with land bank statutes. In Part III, key components of a proposed North Carolina enabling statute will be discussed. This proposal will be informed by the results of the comparative analysis completed in Part II and by secondary research performed by land bank scholars. Lastly, this Comment will conclude that North Carolina should adopt enabling legislation for land banks that provides broad flexibility for local land banks to operate and prioritizes the redevelopment of abandoned and vacant property into affordable housing to stabilize neighborhoods.

I. A DESCRIPTION AND HISTORY OF LAND BANKS

Land banks are an increasingly popular tool used by states and local governments to combat the rising tide of abandoned and vacant housing exacerbated by the recent housing crisis.¹¹ Their popularity will likely only rise as the two federal stimulus bills provided funding

8. U.S. DEP’T OF HOUS. & URBAN DEV., *REVITALIZING FORECLOSED PROPERTIES WITH LAND BANKS* 1 (2009) [hereinafter *REVITALIZING*].

9. See FRANK S. ALEXANDER, *LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LAND BANKS* 5 (2005).

10. See Jeff Johnston, *Genesee County Land Bank Gets National Recognition*, FLINT J., Sept. 25, 2007, http://blog.mlive.com/flintjournal/newsnow/2007/09/genesee_county_land_bank_gets.html (noting the success of the Genesee County Land Bank in the Flint, Michigan area); Editorial, *Cuyahoga County Land Bank Piles Up Successes*, CLEVELAND PLAIN-DEALER, July 9, 2010, available at http://www.cleveland.com/opinion/index.ssf/2010/07/cuyahoga_county_land_bank_pile.html (noting the recent successes of the Cleveland-area Cuyahoga County Land Bank); see also Daniel Kildee, *Foreword* to FRANK S. ALEXANDER, *LAND BANK AUTHORITIES: A GUIDE FOR THE CREATION AND OPERATION OF LAND BANKS* (2005) (“While land banks are generally associated with older urban communities that have significant abandonment, they are potentially just as useful to safeguard healthy communities from deterioration, and for smaller communities seeking to protect land from passing through the slow process of decline so often associated with tax-foreclosed properties.”).

11. FRANK S. ALEXANDER, BROOKINGS INST., *LAND BANKING AS METROPOLITAN POLICY* 6 (2008), available at http://www.brookings.edu/~media/Files/rc/papers/2008/1028_mortgage_crisis_alexander/1028_mortgage_crisis_alexander.pdf; Kathleen Gray, *Land Banks Gain Popularity as Way to Fight Urban Blight*, USA TODAY, July 9, 2009, http://www.usatoday.com/news/nation/2009-07-09-landbanks_N.htm.

for the Neighborhood Stabilization Program (“NSP”).¹² In addition, the recent adoption of the Dodd-Frank Act authorized an additional one billion dollars in funding for the NSP.¹³ The NSP explicitly authorizes local jurisdictions to use this new federal stimulus funding for land bank activities.¹⁴ The following description of land banks and account of their development over the past forty years will set the stage for this Comment’s proposal that North Carolina adopt land bank legislation to give local governments an effective tool to reverse neighborhood destabilization and decrease property vacancies.

A. *Description of Land Banks*

Land banks have been defined several ways. In a recent U.S. Department of Housing and Urban Development (“HUD”) article, land banks were defined as “governmental or nonprofit entities that acquire, hold, and manage foreclosed or abandoned properties.”¹⁵ In an influential land bank guide published by the Local Initiatives Support Corporation, Professor Frank Alexander of the School of Law at Emory University defined a land bank as “a governmental entity that focuses on the conversion of vacant, abandoned, and tax-delinquent properties into productive use.”¹⁶

Most land banks are formed as a result of action at the state and local government levels. Land banks are generally first authorized by an enabling statute passed by a state legislature; local governments

12. *Neighborhood Stabilization Program Grants*, U.S. DEP’T OF HOUS. & URBAN DEV., <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg> (last updated Oct. 14, 2010). The NSP is part of the Community Development Block Group (“CDBG”) initiative of the U.S. Department for Housing and Urban Development (“HUD”). *Id.* Potential grantees such as non-profits, states, and local governments apply for funding from the NSP program for their individual programs and initiatives. *Id.* NSP grantees are then required to “use at least 25 percent of the funds appropriated for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of the area median income.” *Id.*

13. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1497(a), 124 Stat. 1367, 2209 (2010) (to be codified at 42 U.S.C. § 5301).

14. American Recovery and Reinvestment Act, Pub. L. No. 111-5, 123 Stat. 115, 217–18 (2009) (codified as amended at 42 U.S.C. § 5301 (Supp. 2009)); Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 2301(c)(3)(C), 122 Stat. 2654, 2850 (codified at 42 U.S.C. § 5301 (Supp. 2009)). “This is the first time that the federal government has provided funds explicitly for property acquisition and demolition and for the creation and operation of land banks.” ALAN MALLACH, FED. RESERVE BANK OF PHILA., HOW TO SPEND \$3.92 BILLION: STABILIZING NEIGHBORHOODS BY ADDRESSING FORECLOSED AND ABANDONED PROPERTIES 6 (2008).

15. See REVITALIZING, *supra* note 8, at 1.

16. See ALEXANDER, *supra* note 9, at 2.

then must act to establish a land bank.¹⁷ Once established, land banks can be set up as an independent entity or as a program within a city government.¹⁸ If operated as an independent entity, a board of directors usually governs the land bank in accordance with the land bank's articles of incorporation.¹⁹ This structure allows a land bank to adapt its goals and operations to meet the unique needs of the locality it serves.²⁰ Land banks operating as programs within city governments generally share staff and funding with the city²¹ and are sometimes viewed as less efficient than independent land banks.²² The differences between land bank structures will be discussed in further detail in Parts II and III.

The operation of most land banks generally follows a three-step cycle: (1) acquiring abandoned and/or vacant property; (2) temporarily managing the property; and (3) conveying it to third parties who return it to productive use.²³ Although varying by state, usually "[l]and banks acquire properties through tax foreclosure, intergovernmental transfers, nonprofit transfers, and open-market purchases."²⁴ The most common form of acquisition for land banks is a transfer of property due to tax foreclosure.²⁵ These transfers occur when a local government authority places a tax lien on a property to secure payment of back taxes.²⁶ If not repaid, a public auction is held

17. REVITALIZING, *supra* note 8, at 6; *see, e.g.*, GA. CODE ANN. § 48-4-61 (1999 & Supp. 2009). The Twin Cities Community Land Bank is an exception to this general rule. The Twin Cities Community Land Bank is set up as an independent non-profit organization and state and local government action did not provide for its creation. *See* TWIN CITIES COMMUNITY LAND BANK, <http://www.tcclandbank.org/> (last visited Jan. 3, 2011).

18. Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L., 140, 142 (2005). A state's authorizing statute usually delineates the authority for a land bank to operate as an independent authority as opposed to being part of an existing city department. *See, e.g.*, GA. CODE ANN. § 48-4-61(a).

19. REVITALIZING, *supra* note 8, at 1–2.

20. *Id.* Professor Alexander recognizes this quality of flexibility as one of the key advantages of land banks. *See* Alexander, *supra* note 18, at 142.

21. ALEXANDER, *supra* note 9, at 25; Thomas J. Fitzpatrick IV, *Understanding Ohio's Land Bank Legislation*, POL'Y DISCUSSION PAPERS, Jan. 2009, at 3–4, *available at* <http://www.clevelandfed.org/Research/PolicyDis/pdp25.pdf>. The Franklin County Land Bank Program in Ohio is one example of a land bank operating within a local government. *See Land Bank Program*, FRANKLIN CNTY. TREASURER, <http://treasurer.franklincountyohio.gov/foreclosure/land-bank.cfm> (last visited Jan. 3, 2011).

22. *See* Fitzpatrick, *supra* note 21, at 3.

23. *See* Alexander, *supra* note 18, at 150. Note that these functions closely mirror the definitions of a land bank. *See supra* notes 15–16 and accompanying text.

24. REVITALIZING, *supra* note 8, at 2.

25. *See* Alexander, *supra* note 18, at 151.

26. REVITALIZING, *supra* note 8, at 2.

to sell the property pursuant to state foreclosure laws.²⁷ If a property is not sold at the auction, most state land bank statutes provide that title to the property can be transferred to a land bank.²⁸

Land banks are also responsible for performing routine maintenance and removing safety hazards for property they own.²⁹ This can be a challenging and risky task,³⁰ especially for land banks that own a significant number of properties that are unlikely to be sold quickly.³¹ Depending on state law, land banks can be liable for environmental remediation costs for properties they own,³² not to mention the costs of ensuring their properties conform with local building codes.³³ In some cases, abandoned and dilapidated land bank properties can threaten to destabilize a neighborhood or contain hazardous waste.³⁴ As part of a remedy to these problems, the land bank in Genesee County, Michigan, which includes the city of Flint, regularly demolishes between 100 and 200 abandoned houses a year.³⁵ In some state statutes land banks are given explicit authority to contract with third parties to perform these maintenance services.³⁶

Conveying property to third parties is the third major function of a land bank.³⁷ Among the enabling statutes, there is significant variation in the amount of discretion given to land banks when disposing of property. Some land banks must get the local government's consent to waive delinquent property taxes on property

27. *Id.*

28. *Id.* Most statutes provide that the land bank does not pay for the foreclosed property. Instead, the land bank is "deemed" to have bid for the property even though no money is transferred in these types of acquisitions. *See, e.g.,* KY. REV. STAT. ANN. § 65.375(1) (LexisNexis Supp. 2009).

29. REVITALIZING, *supra* note 8, at 3; *see, e.g.,* KY. REV. STAT. ANN. § 65.370(2)(c) (LexisNexis 2004) (requiring a land bank authority to "maintain all property held by it in accordance with applicable laws and codes").

30. MALLACH, *supra* note 14, at 19.

31. REVITALIZING, *supra* note 8, at 3. For instance, by 2005, the Genesee County Land Bank had acquired 4,400 properties and disposed of 200 properties. KEVIN E. O'BRIEN ET AL., BEST PRACTICES IN LAND BANK OPERATION 22 (2005), *available at* http://urban.csuohio.edu/glefc/publications/lead_remediation_06_08.pdf. In addition, the Cleveland Land Bank website listed 5,764 properties that were available for purchase. *City of Cleveland Land Bank Property Search Available Lots*, CITY OF CLEVELAND, <http://cd.city.cleveland.oh.us/scripts/cityport.php> (last visited Jan. 3, 2011).

32. ALEXANDER, *supra* note 9, at 25.

33. *See, e.g.,* KY. REV. STAT. ANN. § 65.370(2)(c) (requiring a land bank authority to "maintain all property held by it in accordance with applicable laws and codes").

34. *Programs*, GENESEE CNTY. LAND BANK, <http://www.thelandbank.org/programs.asp> (last visited Jan. 3, 2011).

35. REVITALIZING, *supra* note 8, at 3.

36. Alexander, *supra* note 18, at 152–53.

37. *Id.* at 150.

conveyed to third parties; other land banks can waive back taxes without prior consent.³⁸ Using these powers to waive back taxes, land banks can help redevelop property at much lower costs than otherwise available.³⁹ When selling property to third parties, some land banks can set the price and terms to assist in property redevelopment.⁴⁰ Other land banks have less discretion and must sell the property at a fair market value.⁴¹ In the end, most land banks strive to maximize the return of properties to productive use.⁴²

B. History of Land Banks and Land Banking

In 1971, the St. Louis Land Reutilization Authority was the first major contemporary land bank established in the United States.⁴³ At the time, roughly nine percent of the city's parcels were tax delinquent and 2,600 buildings were abandoned.⁴⁴ The purpose of this land bank was to "acquire tax-foreclosed properties that remained unsold at sheriff's sales."⁴⁵ In 1976, Ohio authorized the establishment of the Cleveland Land Bank⁴⁶ to address similar vacancy and tax delinquency issues.⁴⁷ In 1988, Kentucky adopted land bank enabling legislation of its own, providing authorization for the Louisville Land Bank.⁴⁸ "In contrast to Missouri and Ohio, the Kentucky legislation enabled creation of land banks not within the structure of an existing local government, but rather as independent public corporations created pursuant to interlocal agreements among key governmental entities."⁴⁹

38. ALEXANDER, *supra* note 9, at 27.

39. REVITALIZING, *supra* note 8, at 2. The waiver of delinquent taxes acts as a subsidy for the non-profit developers who buy property for a reduced price due to the tax liabilities. See ALEXANDER, *supra* note 9, at 27.

40. REVITALIZING, *supra* note 8, at 2. Transferring property at nominal or below market values also acts as a subsidy for non-profit developers. ALEXANDER, *supra* note 9, at 9.

41. ALEXANDER, *supra* note 9, at 25.

42. *Id.* at 6

43. *Id.*; see also Act of June 15, 1971, § 1, 1971 Mo. Laws 158, 159 (codified as amended at MO. ANN. STAT. § 92.700 (West 1998)) (authorizing the creation of the St. Louis Land Bank).

44. ALEXANDER, *supra* note 9, at 6.

45. REVITALIZING, *supra* note 8, at 2.

46. Act of June 28, 1976, §§ 5722.01–5722.14, 1975 Ohio Laws 3757, 3772–82 (codified as amended at OHIO REV. CODE ANN. §§ 5722.01–5722.22 (LexisNexis 2008 & Supp. 2010)); Alexander, *supra* note 18, at 146.

47. ALEXANDER, *supra* note 9, at 6.

48. See *id.*; see also Act of Mar. 24, 1988, ch. 92, 1988 Ky. Acts 263 (codified as amended at KY. REV. STAT. ANN. §§ 65.350–65.375 (LexisNexis 2004)) (providing for creation of land banks through interlocal agreements).

49. ALEXANDER, *supra* note 9, at 6.

Mirroring Kentucky's statute and independent land bank structure, Georgia passed enabling legislation in 1990.⁵⁰ One year later, the Atlanta Land Bank was established.⁵¹ One of the last major land banks to be established was the Genesee County Land Bank, encompassing the area around Flint, Michigan.⁵² Although created in 2002, the state did not expressly authorize the land bank until 2004.⁵³ Unlike previous land bank legislation, the 2004 Michigan statute created a state "land bank fast track authority"⁵⁴ since the state can take title to some tax foreclosed property.⁵⁵ The statute then allows local governments to create local land banks through intergovernmental agreements with the state authority.⁵⁶

With the success of the land banks described above, more states have recently studied, and in some cases passed, land bank legislation of their own.⁵⁷ Maryland,⁵⁸ Texas,⁵⁹ Kansas,⁶⁰ and Alabama⁶¹ have passed enabling legislation of their own. In 2008, the New York legislature passed enabling legislation allowing for the creation of up to three county land banks.⁶² Although vetoed by Governor Patterson because of a lack of funding, the governor did note that the land bank

50. *See id.* at 6-7; *see also* Act of Apr. 16, 1990, No. 1414, 1990 Ga. Laws 1875 (codified at GA. CODE ANN. §§ 48-4-60 to 48-4-65 (1999 & Supp. 2009)) (providing for creation of land banks).

51. ALEXANDER, *supra* note 9, at 7.

52. Alexander, *supra* note 18, at 149.

53. ALEXANDER, *supra* note 9, at 7; *see also* Act of Jan. 5, 2004, No. 258. §§ 124.751-124.774; 2003 Mich. Pub. Acts 1357, 1357-79 (codified at MICH. COMP. LAWS ANN. §§ 124.751-124.774 (West 2006)) (allowing for creation of land banks). "In the absence of such express statutory authority in 2002, the Michigan Urban Cooperation Act provided an adequate legal basis for creation of a new corporation, pursuant to an interlocal agreement, that would acquire, manage, and convey tax-delinquent properties." ALEXANDER, *supra* note 9, at 7.

54. ALEXANDER, *supra* note 9, at 7; *see also* § 15, 2003 Mich. Pub. Acts at 1371 (allowing for creation of land banks).

55. *See* MICH. COMP. LAWS ANN. § 124.764 (West 2006).

56. § 124.773.

57. *See, e.g.*, BALT., MD., CITY CHARTER art. 2, § 65 (2010).

58. *Id.*

59. Act of June 15, 2007, ch. 1034, § 12, 2007 Tex. Gen. Laws 3577, 3581 (codified as amended at TEX. LOC. GOV'T CODE ANN. §§ 379E.001-379E.013 (West Supp. 2010)).

60. Act of Apr. 23, 2009, ch. 120, 2009 Kan. Sess. Laws 878 (codified at KAN. STAT. ANN. §§ 12-5901-12-5911 (West Supp. 2009)).

61. Act of May 22, 2009, No. 2009-738, 2009 Ala. Acts 2203 (codified at ALA. CODE §§ 24-9-1 to 24-9-9 (LexisNexis Supp. 2009)).

62. Assemb. B. 8059, 2008 Gen. Assemb., 1st Sess. (N.Y. 2008); *see also* COMM. ON LOCAL GOV'TS, 2008 ANNUAL REPORT, Assemb. 231-2008, 1st Sess., at 11 (N.Y. 2008), available at <http://assembly.state.ny.us/comm/LocalGov/2008Annual/> (discussing the background and intent of the legislation).

program should be negotiated in the budget process.⁶³ The legislature then considered two different bills that would authorize the creation of land banks in New York.⁶⁴ Both bills were referred to committee in 2010.⁶⁵ Like New York, Illinois also came close to enacting land bank legislation recently. In 2009, a bill made its way through much of the legislative process only to come up short before the legislature's session ended.⁶⁶ In addition, Huntington, West Virginia passed a land bank ordinance in 2009, using authority given to the city as part of a five-year pilot program.⁶⁷ The land bank program commenced operations recently when the city bought tax liens on over 200 properties at public auction.⁶⁸ Finally, the Pennsylvania General Assembly considered legislation in 2010 that would authorize land bank authorities.⁶⁹ This bill passed the House and was re-referred to the Senate's Appropriations Committee in the fall of 2010.⁷⁰

1. Recent Trends in Land Banking

A new trend that may be emerging in land banks is the creation of non-profit land banks. The Twin Cities Community Land Bank was the first such non-profit land bank in the country.⁷¹ Its funding

63. Letter from David A. Patterson, Governor of N.Y., to the N.Y. Gen. Assembly (Sept. 25, 2008), available at <http://image.iarchives.nysed.gov/images/images/146903.pdf> (regarding Veto No. 145); see also COMM. ON LOCAL GOV'TS, *supra* note 62, at 11 (discussing the background and intent of the legislation).

64. Assemb. B. 700, 2009 Gen. Assemb., 1st Sess. (N.Y. 2009); Assemb. B. 6118, 2009 Gen. Assemb., 1st Sess. (N.Y. 2009).

65. Assemb. B. 700, 2009 Gen. Assemb., 1st Sess. (N.Y. 2009), available at <http://assembly.state.ny.us/leg> (select "Search by Bill Number;" enter "700;" follow "A0700" hyperlink; then select "Actions") (last visited Jan. 3, 2011); Assemb. B. 6118, 2009 Gen. Assemb., 1st Sess. (N.Y. 2009), available at <http://assembly.state.ny.us/leg> (select "Search by Bill Number;" enter "6118;" follow "A06118" hyperlink; then select "Actions") (last visited Jan. 3, 2011).

66. H.B. 1195, 96th Gen. Assemb., Reg. Sess. (Ill. 2009), available at <http://www.ilga.gov/legislation/> (follow "House – Bills 1101 – 1200" hyperlink; then follow "HB1195 Illinois Land Banking Act" hyperlink) (last visited Jan. 3, 2011).

67. Bryan Chambers, *Council Adopts Land Bank Ordinance*, HERALD-DISPATCH (Huntington, W. Va.), Aug. 24, 2009, available at America's Newspapers, Record No. hnt1-5ric4u79at01id2rm73e.

68. Bryan Chambers, *City's Land Bank Plan Moves Forward – Huntington Purchases Tax Liens on 229 Properties at Thursday's Auction*, HERALD-DISPATCH (Huntington, W. Va.), Nov. 13, 2009, available at America's Newspapers, Record No. hnt1-5s2xuj1ptvkbk6wc73e.

69. See H.B. 712, 2009–2010 Gen. Assemb., Reg. Sess. (Pa. 2009).

70. H.B. 712, 2009–2010 Gen. Assemb., Reg. Sess. (Pa. 2009), available at <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2009&sind=0&body=H&type=B&BN=0712> (last visited Jan. 3, 2011).

71. Telephone Interview with Frank S. Alexander, Professor of Law, Emory Univ. (Feb. 5, 2009).

“will be used for property acquisition, rehabilitation/redevelopment, and holding costs for properties that are banked for varying terms based on market absorption.”⁷² According to the land bank, “[a]s a nonprofit limited liability company, it is designed to be highly flexible and responsive and is able to leverage additional public and private dollars to accomplish the goals of neighborhood stabilization and recovery.”⁷³

Many communities are also starting to do “land banking” outside of a formal land bank authority structure.⁷⁴ The Housing and Economic Recovery Act (“HERA”)⁷⁵ and the American Recovery and Reinvestment Act (“ARRA”)⁷⁶ are currently providing much of the funding for this less formal land banking activity. These bills authorize funding for the creation and operation of land banks.⁷⁷ Charlotte, North Carolina is an example where land banking is occurring outside of a formal land bank structure. There, city officials plan to use federal stimulus money to buy foreclosed housing, rehabilitate the properties, and sell the properties in the private market.⁷⁸

Although land banks have grown more popular in state legislatures and with local governments, they have also faced some opposition. Some opponents argue that land banks are merely the latest incarnation of the urban renewal authorities used in the 1960s to raze entire neighborhoods.⁷⁹ Other opponents worry that land

72. *Summary Document*, TWIN CITIES CMTY. LAND BANK (Oct. 2009), http://www.tcclandbank.org/downloads/TCCLB_onepager.pdf.

73. *Id.*

74. Telephone Interview with Frank S. Alexander, *supra* note 71.

75. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (codified as amended in scattered sections of 12, 15, 26, 38 & 42 U.S.C.).

76. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified in scattered sections of 6, 19, 26, 42 & 47 U.S.C.). See generally *Neighborhood Stabilization Program Grants*, *supra* note 12 (providing resources and information on the Neighborhood Stabilization program and grants). For an example of the federal stimulus money being used for informal land banking activity, see N.C. DEP’T OF COMMERCE, *supra* note 2, at 5.

77. American Recovery and Reinvestment Act, 123 Stat. at 217–18. Thus, a formal land bank authorized under state legislation can access and use these same federal funding sources as a city employing informal land banking practices. See *id.*

78. See N.C. DEP’T OF COMMERCE, *supra* note 2, at 5. Notice that the actions proposed by Charlotte city officials mirror the major functions of a formal land bank. See Alexander, *supra* note 18, at 150.

79. See Jo Guldi, *The Anti-Development Crisis: Who’s Really to Blame for Lost Jobs This Christmas*, HUFFINGTON POST, Dec. 15, 2009, http://www.huffingtonpost.com/jo-guldi/the-anti-development-cris_b_392743.html (comparing the recent actions of land banks to the urban blight removal policies of past generations).

banks have too much power⁸⁰ or that local governments have too little control over their actions.⁸¹ Additional concerns with land banks include the high cost of running land banks⁸² and the potential for local government liability for land bank operations.⁸³ Keeping these concerns in mind will help North Carolina and other states considering land bank legislation create a broad base of support and improve their enabling statutes.

The success of land banks around the nation stands in contrast to the concerns some have raised about land banks. For instance, in Cleveland, the Cuyahoga County Land Bank expects to acquire 700 properties in its first year of operation; some of these acquisitions are due to agreements with HUD and Fannie Mae to take over some of their properties acquired by foreclosure.⁸⁴ In Flint, Michigan, the Genesee County Land Bank has renovated almost 100 houses and has transferred roughly 500 empty lots to neighboring homeowners.⁸⁵ A 2007 report by the Michigan State University Land Policy Institute estimated that property sales by the Genesee County Land Bank generated \$68,000 of property tax revenues in 2006.⁸⁶ Land banks have also been successful in spurring the construction of affordable

80. See, e.g., *Illinois REALTORS® Oppose Land Banking Authority Senate Bill 2101/House Bill 1195*, ILL. ASS'N OF REALTORS, <http://www.illinoisrealtor.org/member/landbanking> (last visited Jan. 3, 2011) (opposing a proposed Illinois land bank statute due, in part, to the wide range of powers delegated to land banks).

81. See Annie Linskey, *Land Bank Debated: Dixon's Plan for Agency to Sell City-Owned Lots Faces Opposition from Council President and Comptroller*, BALT. SUN, Mar. 4, 2009, at 3 (noting opposition to land bank proposal because of worries that land bank's operations would not be subject to "public scrutiny"); Mary Morgan, *Washtenaw Land Bank Debate Continues*, ANN ARBOR CHRON., July 6, 2010, <http://annarborchronicle.com/2010/07/06/washtenaw-land-bank-debate-continues/> (noting that some county commissioners in Michigan were concerned with the lack of governmental control over land bank authorities); Robbie Whelan, *Critics Call Baltimore's Proposed Land Bank a 'New Version of Shadow'*, DAILY REC. (Balt., Md.), June 19, 2009, http://findarticles.com/p/articles/mi_qn4183/is_20090619/ai_n32086670/ ("'[The land bank proposal is] an absolute abdication of the duty of City Council and the Board of Estimates to act as fiduciaries for the properties that would be transferred to the land bank This broad-reaching, unbridled authority is unprecedented.'").

82. See Whelan, *supra* note 81.

83. See Morgan, *supra* note 81.

84. Editorial, *Cuyahoga County Land Bank Piles Up Successes*, CLEVELAND PLAIN-DEALER, July 9, 2010, http://www.cleveland.com/opinion/index.ssf/2010/07/cuyahoga_county_land_bank_pile.html.

85. See Johnston, *supra* note 10.

86. NIGEL G. GRISWOLD & PATRICIA E. NORRIS, LAND POLICY INST., MICH. STATE UNIV., REP. NO. 2007-05, ECONOMIC IMPACTS OF RESIDENTIAL PROPERTY ABANDONMENT AND THE GENESSEE COUNTY LAND BANK IN FLINT, MICHIGAN 4 (2007), available at <http://www.geneseeinstitute.org> (follow "Reports & Publications" hyperlink; then follow article hyperlink).

housing. For instance, in Dallas, the local land bank has sold fifty-one properties to non-profit affordable housing developers.⁸⁷ These success stories show that land banks can have a significant positive impact on a variety of communities nationwide.

II. COMPARATIVE ANALYSIS

Even though there are examples of non-governmental land banks and land banking being done without formal authorities, this Comment argues that North Carolina would benefit most from an enabling statute that authorizes and provides a framework for local land banks. This approach would give land banks the stability and authority necessary for long-term success. To this end, Part II focuses on a comparison of various states' existing land bank legislation.

A. *Existing State Legislation Analysis*

This section will compare the enabling legislation passed by the nine states that have authorized land banks. Areas of confusion or gaps in the legislation will be identified that could cause problems when land banks are set up by local jurisdictions. The comparative analysis will be organized according to land bank topic rather than analyzing each state separately. The four land bank topics are: state enabling authority; formation and corporate structure; funding and staffing; and operations and powers possessed.⁸⁸ Within each of the four land bank topics, specific functions of land banks that fall under that topic will be compared and analyzed.⁸⁹ This organization will facilitate comparisons between the various land bank components and will assist in identifying "best practice" legislative provisions that could be used in North Carolina.

87. U.S. Dep't of Hous. & Urban Dev., *Land Banks and Affordable Housing, BREAKTHROUGHS* (Sept. 2008), <http://www.huduser.org/rbc/newsletter/vol7iss5more.html>; see also Lyn Haralson, *Land Banks Restore Neighborhoods ... Building by Building, Lot by Lot*, BRIDGES, Autumn 2005, at 1, 2, available at http://www.stlouisfed.org/publications/pub_assets/pdf/br/2005/br_aut_05.pdf (describing the unique advantages that land banks can offer affordable housing developers by giving them control of the proposed development site).

88. These land bank topics are partially adapted from ALEXANDER, *supra* note 9, at 9.

89. Some of the land bank functions this Comment analyzes are adapted from Professor Alexander's theories. See *id.*

1. State Enabling Authority

After analyzing the statutes of nine states with land bank legislation,⁹⁰ there appear to be three main approaches toward implementing land banks. The first method is for the state legislature to give only certain local governments the authority to create land banks.⁹¹ Maryland⁹² and Missouri⁹³ use this policy of limited authorization. The second approach is to authorize land banks in any local jurisdiction in a state. States which, from the beginning, did not limit the ability of local governments to create land banks are Georgia,⁹⁴ Alabama,⁹⁵ Michigan,⁹⁶ and Ohio.⁹⁷ In other states where land bank creation was once limited to certain local governments, the authority to establish land banks was later expanded statewide to all local governments. This third method was used in Kansas,⁹⁸ Kentucky,⁹⁹ and Texas¹⁰⁰ and effectively made the first authorized land banks pilot programs for the rest of the state.¹⁰¹

90. The nine states are Alabama, Georgia, Kansas, Kentucky, Maryland, Michigan, Missouri, Ohio, and Texas.

91. One reason for a state to use this procedure would be a lack of support for land banking in the other parts of the state. Telephone Interview with Frank S. Alexander, *supra* note 71.

92. See BALT., MD., CITY CHARTER art. 2, § 65(c)(1) (2010).

93. See MO. ANN. STAT. § 92.700 (West 1998) (authorizing only St. Louis to operate a land bank).

94. GA. CODE ANN. § 48-4-61(a) (1999 & Supp. 2009).

95. ALA. CODE § 24-9-6(a) (LexisNexis Supp. 2009).

96. MICH. COMP. LAWS ANN. § 124.773(4)–(5) (West 2006).

97. OHIO REV. CODE ANN. § 5722.02(A) (LexisNexis 2008 & Supp. 2010) (allowing any municipality to create a land bank program). These municipal land bank programs usually deal with unimproved property only and, since they are part of city departments rather than being separate corporate entities, lack the funding and staffing to have a significant impact. See Fitzpatrick, *supra* note 21, at 3–4. Ohio also modernized its county land banking structure in 2009 and initially authorized only one county (Cuyahoga County) to establish a land bank. Act of Apr. 7, 2009, No. 353, § 1724.04, 2009 Ohio Laws __, __ (codified as amended at OHIO REV. CODE ANN. § 1724.04 (LexisNexis Supp. 2010)); see also Fitzpatrick, *supra* note 21, at 4–5 (discussing Ohio's legislation). Recently, however, Ohio's legislature extended the authority to create these county land banks to forty-one counties. See Act of July 7, 2010, No. 313, sec. 1, § 1724.04, 2009 Ohio Laws __, __ (codified at OHIO REV. CODE ANN. § 1724.04); *Ohio Gov. Strickland Signs Land Bank Bill*, DAYTON BUS. J., Apr. 8, 2010, <http://dayton.bizjournals.com/dayton/stories/2010/04/05/daily28.html>.

98. In 1996, the Kansas legislature gave Wyandotte County (which has a unified government with Kansas City, Kansas) the sole power to create a land bank. Act of July 1, 1996, ch. 264, § 13, 1996 Kan. Sess. Laws 1868, 1888 (codified as amended at KAN. STAT. ANN. § 19-26.104(a) (West 2007)). Now all cities are authorized to create land banks. KAN. STAT. ANN. §§ 12-5901(a), 12-5902(a) (West Supp. 2009).

99. Similar to Kansas, Kentucky initially only authorized Louisville to have a land bank. Act of Mar. 24, 1988, ch. 93, § 2, 1988 Ky. Acts 263, 264; see *Land Bank Authority Inc.*, LOUISVILLEKY.GOV, <http://www.louisvilleky.gov/Housing/Landbank+Authority>

2. Formation and Corporate Structure

Land banks are commonly formed through one of two main mechanisms: ordinances adopted by a local government¹⁰² or interlocal agreements between local governments with overlapping taxing districts.¹⁰³ One mechanism is not preferable over the other since the method used largely depends on which governmental units are involved in creating the land bank and whether there are overlapping tax jurisdictions in the state.¹⁰⁴ Maryland,¹⁰⁵ Missouri,¹⁰⁶ Ohio,¹⁰⁷ and Kansas¹⁰⁸ all have legislation allowing for the creation of land banks by the adoption of an ordinance or resolution. Presumably, this is because all these states only allow a single municipality to create land banks.¹⁰⁹ Texas does not specify the method of land bank formation in its statutes.¹¹⁰ This ambiguity in the legislation could lead to litigation and confusion in the future.

On the other hand, intergovernmental agreements are the basis for the formation of land banks in Alabama, Kentucky, Georgia, and

+Inc.htm (last visited Jan. 3, 2011). Later, Kentucky expanded authorization to the whole state. Act of Mar. 31, 2003, ch. 171, § 2, 2003 Ky. Acts. 1958, 1958 (codified as amended at KY. REV. STAT. ANN. § 65.355(1) (LexisNexis 2004)).

100. Texas initially allowed only Dallas and Houston to create land banks. See Act of Sept. 1, 2003, ch. 299, § 379C.002, 2003 Tex. Gen. Laws 1270, 1270 (codified at TEX. LOC. GOV'T CODE ANN. § 379C.002 (West 2005)); Act of Sept. 1, 2005, ch. 795, § 379D.002, 2005 Tex. Gen. Laws 2721, 2721 (codified at TEX. LOC. GOV'T CODE ANN. § 379D.002 (West 2005)). The program was later expanded to all municipalities. See Act of Sept. 1, 2007, ch. 1034, § 12, 2007 Tex. Gen. Laws 3577, 3581 (codified at TEX. LOC. GOV'T CODE ANN. § 379E.002 (West Supp. 2010)).

101. Ohio also used this pilot program structure in its county land bank structure. See *Ohio Gov. Strickland Signs Land Bank Bill*, *supra* note 97. The state legislature recently expanded authority to establish county land banks from one to forty-one counties. See *supra* note 97.

102. See, e.g., KAN. STAT. ANN. § 12-5902(a) (West Supp. 2009) (setting the framework for this scheme).

103. See, e.g., KY. REV. STAT. ANN. § 65.355(1) (LexisNexis 2004).

104. See ALEXANDER, *supra* note 9, at 6.

105. BALT., MD., CITY CHARTER art. 2, § 65(c)(1) (2010).

106. See MO. ANN. STAT. § 92.700 (West 1998) (stating that the city will adopt the land bank program by ordinance).

107. OHIO REV. CODE ANN. § 5722.02(A) (LexisNexis 2008 & Supp. 2010) (stating that a government's choice to create a land bank should be done by ordinance or resolution, where applicable).

108. KAN. STAT. ANN. § 12-5902(a) (West Supp. 2009) (allowing a city to adopt a land bank by ordinance).

109. If land banks could be jointly created in these states, it follows that an intergovernmental agreement would be necessary.

110. TEX. LOC. GOV'T CODE ANN. § 379E.004 (West Supp. 2010) (stating that a city may adopt an urban land bank program but failing to specify how a city is to adopt this program). Presumably the city would adopt the program by approving a land bank ordinance.

Michigan. For example, the Kentucky and Georgia statutes make explicit that land banks are formed by intergovernmental agreements.¹¹¹ This is necessary because in these states, “property taxes are levied by a series of separate entities—the city, the county, and the school board.”¹¹² Kentucky’s statute allows the local government, county, and any independent school district to form an intergovernmental cooperation agreement to create a land bank authority.¹¹³ Georgia’s statute mirrors this format closely but does not specify that school districts can be parties to the agreement.¹¹⁴ While land banks in Georgia and Kentucky are formed by intergovernmental agreements between local governments, in Michigan, a qualifying local government can create a land bank only by an intergovernmental agreement with the state land bank authority.¹¹⁵ This is because according to Michigan state law, the title for many tax foreclosed properties reverts to the state rather than the local government.¹¹⁶

Once formed, there are also major differences in the corporate structure of land banks in the various states.¹¹⁷ Missouri, Kentucky, Georgia, Michigan,¹¹⁸ and Maryland¹¹⁹ all clearly authorize land banks to be separate public corporate entities. Although not explicitly stated, the Kansas statute seems to implicitly delineate land banks as separate corporate entities.¹²⁰ The Alabama land bank legislation,

111. GA. CODE ANN. § 48-4-61(a) (1999 & Supp. 2009); KY. REV. STAT. ANN. § 65.355(1) (LexisNexis 2004). Alabama’s initial land bank legislation was silent on the issue of how a land bank was formed. *See* Act of May 22, 2009, No. 2009-738, § 6(a), 2009 Ala. Acts 2203, 2205. However, the state’s statute was recently amended to clarify that an intergovernmental agreement is required to form a local land bank. *See* Act of Apr. 30, 2010, No. 727, sec. 1, § 24-9-6(a) 2010 Ala. Acts __, __ (codified at ALA. CODE § 24-9-6(a) (LexisNexis Supp. 2009)).

112. ALEXANDER, *supra* note 9, at 6.

113. KY. REV. STAT. ANN. § 65.355(1) (LexisNexis 2004).

114. GA. CODE ANN. § 48-4-61(a) (1999 & Supp. 2009). Georgia’s land bank formation procedures are similar to Kentucky’s because the two states have similar local government structures. ALEXANDER, *supra* note 9, at 7. Georgia’s legislation also allows a consolidated government (a combined county and city government) to adopt a land bank by resolution, instead of by interlocal agreement. § 48-4-61(a).

115. MICH. COMP. LAWS ANN. § 124.773(4)–(5) (West 2006).

116. § 124.773(6)–(7); ALEXANDER, *supra* note 9, at 7.

117. For a discussion of the corporate structure of land banks in five different states, see ALEXANDER, *supra* note 9, at 40–41.

118. *Id.* at 40.

119. BALT., MD., CITY CHARTER art. 2, § 65(c)(3)(ii) (2010).

120. *See* KAN. STAT. ANN. § 12-5902 (West Supp. 2009). Provisions that support this conclusion include: “the [land] bank shall be governed by a board of trustees,” § 12-5902(b); “the board [of trustees of the land bank] may . . . enter into contracts,” § 12-

which authorizes a statewide land bank authority, provides that the state authority will be a separate corporate entity.¹²¹ In contrast, land banks operate as embedded programs within local governments in Ohio¹²² and Texas.¹²³

The literature suggests that land banks operate more effectively as separate corporate entities. As Professor Alexander argues: “The primary advantage of being an independent public legal corporation is that a land bank possesses a degree of autonomy and independence from the levels of agencies and departments and political considerations that may characterize a local government structure.”¹²⁴ Furthermore, land banks as separate corporate entities can be “independent of ordinances or other local anomalies that may slow down acquisition and/or distribution of land.”¹²⁵ This independence, however, does not mean that the land bank would be completely void of government influence. Professor Alexander notes: “As a separate legal corporation, [the land bank] must have its own board of commissioners or directors, but these may consist of or be appointed by local government officials.”¹²⁶ Structuring land banks as independent entities, but with boards appointed by government officials, may give land banks the independence needed to operate efficiently along with the accountability necessary for an influential entity.

3. Funding and Staffing

Land bank authorities can obtain operational funding from three main sources: proceeds from the sale of property, contributions from local governments, and future tax revenues.¹²⁷ Most land bank

5905(b); “the board [of trustees of the land bank] shall assume possession and control of any property acquired by it under this act . . .” § 12-5907.

121. See ALA. CODE § 24-9-4(i) (LexisNexis Supp. 2009).

122. OHIO REV. CODE ANN. § 5722.02(A) (LexisNexis 2008 & Supp. 2010).

123. TEX. LOC. GOV'T CODE ANN. § 379E.004 (West Supp. 2010). However, there are ambiguities in the Texas statute regarding whether the land bank is a separate entity or a city program. In one part of the state's code, a land bank is defined as an “entity established or approved by the governing body of a municipality.” § 379E.003(3). However, in another section, the statute provides that the “municipality that adopts an urban land bank program shall operate the program in conformance with an urban land bank plan.” § 379E.006(a).

124. ALEXANDER, *supra* note 9, at 41.

125. O'BRIEN ET AL., *supra* note 31, at 22; see also Fitzpatrick, *supra* note 21, at 3 (noting the inefficiencies and legal liability issues that hamper the effectiveness of land banks contained within city governments).

126. ALEXANDER, *supra* note 9, at 41. For an example of how a statute can set up this type of structure, see GA. CODE ANN. § 48-4-62(a) (1999).

127. ALEXANDER, *supra* note 9, at 9.

statutes expressly authorize the land bank authority to retain proceeds from the sale of property to recover expenses and continue operations.¹²⁸ A few enabling statutes allow the local governments to contribute funding for the land bank operations.¹²⁹ Other states authorize land banks to receive funding from local governments in the intergovernmental agreements executed to form the land bank.¹³⁰ Michigan's land bank legislation provides the widest range of funding options for local land banks. First, a local land bank retains fifty percent of the property tax revenues generated by property conveyed by the land bank to a third party.¹³¹ The state's legislation also permits land banks to issue tax-exempt bonds.¹³² This allows the Genesee Land Bank in Michigan to have "the broadest discretion and authority with respect to its revenues."¹³³ By contrast, Alabama is the only state that restricts the funding of its statewide land bank authority to money generated by the authority or received from grants, gifts, or donations.¹³⁴

To maximize a land bank's impact, provisions in state enabling legislation should, like Michigan's legislation, provide for a broad range of funding options for land banks. As Professor Alexander argues, "[f]unding a land bank's operations by general revenues of a local government or future tax revenues generated by the transferred properties," rather than solely funding operations from revenue of the land bank, "minimizes the pressure to establish high pricing thresholds and maximizes flexibility to use the property and its value as investment incentives or subsidies for particular uses."¹³⁵ In addition, this gives each local land bank the flexibility to adapt its finances to the local environment in which it operates. In cities where there is strong support for a land bank, the intergovernmental agreement can provide for multiple funding sources for the land bank.¹³⁶ For local governments that fear that a land bank would lose

128. See, e.g., GA. CODE ANN. § 48-4-64(d) (1999) (authorizing retention of proceeds from property sale for expenses and operation of land bank); KAN. STAT. ANN. § 12-5910 (West Supp. 2009) (same).

129. See KAN. STAT. ANN. § 12-5902(c) (West Supp. 2009); MO. ANN. STAT. § 92.905(1) (West 1998).

130. The Atlanta Land Bank and Louisville Land Bank intergovernmental agreements include examples of such provisions. ALEXANDER, *supra* note 9, at 86, 90.

131. See MICH. COMP. LAWS ANN. §§ 211.7gg(2), 211.1025(4) (West Supp. 2010); ALEXANDER, *supra* note 9, at 26.

132. MICH. COMP. LAWS ANN. §§ 124.754, 124.763 (West Supp. 2010).

133. ALEXANDER, *supra* note 9, at 26.

134. ALA. CODE § 24-9-7(e) (LexisNexis Supp. 2009).

135. ALEXANDER, *supra* note 9, at 31.

136. See *supra* notes 130–33 and accompanying text.

money and gain too much control,¹³⁷ the intergovernmental agreement could require a land bank to be self-supporting.¹³⁸ Although limiting funding sources in enabling legislation may be a way to curb the power and restrict expenditures of a land bank, legislators should realize that such provisions can also restrict a land bank's impact.¹³⁹

Two patterns emerge when examining provisions in land bank enabling legislation pertaining to the authority of land banks to hire their own staff. Most states, including Georgia¹⁴⁰ and Kentucky,¹⁴¹ expressly give broad discretion to individual land banks to make their own staffing decisions.¹⁴² This approach seems best since it allows larger land banks, with bigger budgets, to have independent staffs and smaller land banks to share staff with city departments.¹⁴³ Another benefit of this method is greater flexibility in drafting and amending the interlocal agreements that create local land banks.¹⁴⁴ For instance, "[t]he interlocal agreement establishing the Louisville Land Bank provided that it would not have any employees and that all work would be done by the staff of other local government departments."¹⁴⁵

On the other hand, the Ohio and Texas statutes do not have express provisions pertaining to staffing.¹⁴⁶ In Ohio, this makes sense because land banks, by statute, are not separate corporate entities

137. Some opponents to proposed land banks worry that they will require extensive funding from local governments. See Linskey, *supra* note 81. Others are "skittish" about giving municipal governments so much influence in the real estate market. See *Montgomery County Should Get a Land Bank, Too*, DAYTON DAILY NEWS, Jan. 5, 2009, available at <http://www.allbusiness.com/government/government-bodies-offices-regional-local/12066690-1.html>.

138. The Alabama legislation is one example where land banks are required to be self-supporting. See ALA. CODE § 24-9-7(e) (LexisNexis Supp. 2009).

139. See ALEXANDER, *supra* note 9, at 31.

140. GA. CODE ANN. § 48-4-62(c) (1999) ("The authority may employ its own staff or may utilize employees of the parties, as determined by the [interlocal] agreement.").

141. KY. REV. STAT. ANN. § 65.360(3) (LexisNexis 2004) ("The authority may employ its own staff or may utilize employees of the parties, as determined by the [intergovernmental] agreement.").

142. Other statutes which give land banks express discretion with regard to staffing are ALA. CODE § 24-9-5(e) (LexisNexis Supp. 2009); KAN. STAT. ANN. § 12-5904(b) (West Supp. 2009); BALT., MD., CITY CHARTER art. 2, § 65(g) (2010); MICH. COMP. LAWS ANN. § 124.754(h) (West 2006); MO. ANN. STAT. § 92.905(1) (West 1998).

143. See ALEXANDER, *supra* note 9, at 39 ("[T]he Atlanta Land Bank has its own independent staff while a parallel land bank in Macon, Georgia has no independent staff, relying instead on the staff of the housing department for its services.").

144. See *id.* at 41 (describing the land bank staffing practices in Atlanta and Louisville).

145. *Id.*

146. See OHIO REV. CODE ANN. § 5722 (LexisNexis 2008 & Supp. 2010); TEX. LOC. GOV'T CODE ANN. § 379E (West Supp. 2010).

and are instead created as land bank programs within the existing city government.¹⁴⁷ Thus, an Ohio land bank's staff members are employees of the city.¹⁴⁸ Although ambiguous, the Texas legislation appears to contemplate a similar approach to the Ohio legislation, in which land banks are a "program" within a local government.¹⁴⁹ Thus, where land banks are created as programs within existing city governments, there is presumably no need to provide authority in legislation for hiring independent land bank employees. Since this Comment argues that land banks should be independent entities,¹⁵⁰ it likewise endorses enabling legislation that gives land banks express authority to hire their own staff and not share employees with a local government.

4. Operations and Powers Possessed

The powers possessed by a land bank dictate its operations. For instance, a land bank's role as a catalyst for redevelopment through the disposition of property will be severely restricted without the authority to waive delinquent property taxes.¹⁵¹ Thus, this section will summarize the existing statutory provisions regarding the three main components of a land bank's operations: property acquisition, property management and retention, and property disposition.¹⁵² This section will conclude with a discussion of the major powers that land banks commonly have to facilitate their operations.

All existing statutes provide the authority for land banks to acquire property.¹⁵³ Land banks most often acquire property when a property remains unsold after a tax foreclosure auction¹⁵⁴ because the

147. See OHIO REV. CODE ANN. § 5722.01(D) (LexisNexis 2008 & Supp. 2010) (defining a land bank as a "[l]and reutilization *program*") (emphasis added).

148. See, e.g., ALEXANDER, *supra* note 9, at 41 ("As the Cleveland Land Bank is a program and not a separate legal entity, its staff are employees of the city of Cleveland.").

149. TEX. LOC. GOV'T CODE ANN. § 379E.004(a) (West Supp. 2010) (stating that "[t]he governing body of a municipality may adopt an urban land bank program"). *But see* § 379E.003(3) (defining a land bank as "an entity established or approved by the governing body of a municipality").

150. See *supra* Part II.A.2.

151. See ALEXANDER, *supra* note 9, at 16.

152. See *supra* note 23 and accompanying text.

153. ALA. CODE § 24-9-2 (LexisNexis Supp. 2009); GA. CODE ANN. § 48-4-63(a) (1999); KAN. STAT. ANN. § 12-5905(d) (West Supp. 2009); KY. REV. STAT. ANN. § 65.370 (LexisNexis 2004); BALT., MD., CITY CHARTER art. 2, § 65(f)(1)(i) (2010); MICH. COMP. LAWS ANN. § 124.755(1) (West 2006); MO. ANN. STAT. § 92.900(1) (West 1998); OHIO REV. CODE ANN. § 5722.06 (LexisNexis 2008 & Supp. 2010); TEX. LOC. GOV'T CODE ANN. § 379E.008(a) (West Supp. 2010).

154. See REVITALIZING, *supra* note 8, at 2; Thomas Gunton, Comment, *Coping with the Specter of Urban Malaise in a Postmodern Landscape: The Need for a Detroit Land*

tax liens and liabilities exceed the property's fair market value.¹⁵⁵ When this happens, most land bank statutes deem the land bank to have bid the amount for the property, and title to the property is transferred to the land bank.¹⁵⁶

Among the statutes, however, there are differences in the amount of discretion that land banks have in deciding which property to acquire.¹⁵⁷ These differences are exemplified in Kentucky's and Georgia's legislation. Kentucky's statute enacts an automatic acquisition method and provides that

if no person bids an amount equal to the full amount of all tax bills, interest, and costs owing on the property at the [tax] sale, the [land bank] authority shall be deemed to have bid the full amount of all tax bills, interest, and costs due . . . [and] the court shall make a deed of the property to the Land Bank Authority.¹⁵⁸

In contrast, Georgia's statute provides that if a property is sold at a tax sale "the [land bank] authority *may* tender one bid at such sale"¹⁵⁹

There are positives and negatives to both property acquisition schemes. If a land bank automatically acquires all properties that are not sold at tax sales, it will likely have high property management

Bank Authority, 84 U. DET. MERCY L. REV. 521, 556 (2007). Although not discussed at length in this Comment, three less common methods of property acquisition include "intergovernmental transfers of publicly-owned properties from local governments to the land bank, voluntary donative transfers from private owners to the land bank, and contractual purchases or leases of distressed properties by the land bank on the open market." *Id.* at 557 (internal citations omitted). Land bank enabling legislation should include authority to acquire property through these three mechanisms. This authority gives land banks maximum flexibility in acquiring property. See ALEXANDER, *supra* note 9, at 23–24.

155. See ALEXANDER, *supra* note 9, at 16.

156. See, e.g., KY. REV. STAT. ANN. § 65.375(1) (LexisNexis Supp. 2009). Although most statutes provide that the land bank has bid for the property, most statutes do not require any money to be transferred in exchange for the property in these types of acquisitions. See, e.g., *id.*

157. See ALEXANDER, *supra* note 9, at 23.

158. § 65.375(1). Other statutes that follow the automatic acquisition method include ALA. CODE § 24-9-6(a) (LexisNexis Supp. 2009) and MO. ANN. STAT. § 92.830(1) (West 1998).

159. GA. CODE ANN. § 48-4-64(a) (1999) (emphasis added). Other statutes that give land banks discretion in choosing which properties to acquire include: KAN. STAT. ANN. § 12-5906(a) (West Supp. 2009); BALT., MD., CITY CHARTER art. 2, § 65(f)(1)(i) (2010); MICH. COMP. LAWS ANN. § 124.773(8) (West 2006); OHIO REV. CODE ANN. § 5722.03(C) (LexisNexis 2008 & Supp. 2010); and TEX. LOC. GOV'T CODE ANN. § 379E.008(a) (West Supp. 2010).

costs¹⁶⁰ and lack the capacity to work with all of its properties.¹⁶¹ On the other hand, this acquisition scheme could be efficient in cities with high numbers of properties with tax liens that exceed the property's fair market value.¹⁶² Giving a land bank the ability, but not the obligation, to acquire property unsold at tax sales allows them to pre-select properties that suit the land bank's goals.¹⁶³ The non-automatic acquisition method, however, would require land bank staff members to spend more time and resources identifying which properties to acquire at tax sales.

A land bank is often responsible for maintaining the property it owns while it devises plans to dispose of the property.¹⁶⁴ While this duty of a land bank is important to eliminate safety hazards and reduce the continued degradation of property, managing large quantities of vacant property can be expensive and challenging.¹⁶⁵ The authority to perform these tasks is commonly provided for in a broadly worded provision in the enabling statute. An example of this type of provision is in the Maryland enabling statute, which provides that "[w]ith respect to property held or owned by the [Land Bank] Authority, the Authority may . . . hold, manage, maintain, operate, repair, lease as lessor, secure, prevent the waste or deterioration of, demolish, and take all other actions necessary to preserve the value of the property it holds or owns."¹⁶⁶ Due to the varieties of properties that land banks can own and the importance of maintaining properties to prevent further destabilization of at-risk neighborhoods, it is advisable for legislation to give a land bank broad authority to manage and retain its property.

The last major component of a land bank's operations is conveying its property to third parties. Like provisions dealing with

160. See ALEXANDER, *supra* note 9, at 30.

161. *Id.* at 31.

162. This acquisition scheme could be efficient because land banks do not expend resources selecting and acquiring certain properties.

163. ALEXANDER, *supra* note 9, at 23.

164. See *infra* note 166 and accompanying text.

165. See ALEXANDER, *supra* note 9, at 24; REVITALIZING, *supra* note 8, at 3. This responsibility is especially significant in states whose land banks automatically acquire all tax-foreclosed properties that do not sell at a tax auction.

166. BALT., MD., CITY CHARTER art. 2, § 65(k)(1) (2010). Other similar statutory provisions include: ALA. CODE § 24-9-6(d)(3) (LexisNexis Supp. 2009); GA. CODE ANN. § 48-4-63(b)(4) (1999); KAN. STAT. ANN. § 12-5907(a) (West Supp. 2009); KY. REV. STAT. ANN. § 65.370(2)(d) (LexisNexis 2004); MICH. COMP. LAWS ANN. § 124.756(1) (West 2006); MO. ANN. STAT. § 92.875(1) (West 1998); OHIO REV. CODE ANN. § 5722.06(A) (LexisNexis 2008 & Supp. 2010). Presumably, Texas does not have a maintenance authorization provision because its land bank program is restricted to unimproved property. TEX. LOC. GOV'T CODE ANN. § 379E.003(3) (West Supp. 2010).

the maintenance and managing of property, land bank enabling statutes usually give local land banks broad discretion when disposing of their property.¹⁶⁷ Some statutes, however, place restrictions on the sale prices and future uses of property disposed of by a land bank. For example, in Ohio, land banks cannot sell property for less than fair market value.¹⁶⁸ While Missouri's statute allows land banks to sell property below its appraised value, the statute also places some additional barriers in the way of such sales.¹⁶⁹ Lastly, some state statutes compel land banks to either give priority to non-profit affordable housing developers when selling property,¹⁷⁰ or to exclusively sell their property to such developers.¹⁷¹

It is in a land bank's interest not to have price restrictions on conveyances to third parties. This is because

[a] fair market value test ironically can undercut one of the land bank's goals, leaving large inventories of properties remaining in public ownership and generating no tax revenues. Equally significant is that a fair market value requirement often must be based on professional appraisals that create additional transaction costs for transfers. When the underlying property has little if any development potential, a requirement of an

167. For example, the Kentucky land bank statute provides that

[t]he [land bank] authority shall have the power to . . . rent, lease, . . . sale [sic], trade, exchange, or otherwise dispose of any property on terms and conditions as determined by [this statute] and by the [land bank] authority. The authority may assemble tracts or parcels of property for public parks or other public purposes, and to that end may exchange parcels, and otherwise effectuate the purposes by agreement with any party.

§ 65.370(2)(d) (emphasis added). Other statutes that give unbridled discretion to the state's land banks with regard to price and future use of the property the land banks sell are: KAN. STAT. ANN. § 12-5908(a) (West Supp. 2009); BALT., MD., CITY CHARTER art. 2, § 65(f)(1)(iii) (2010); and MICH. COMP. LAWS ANN. § 124.757(1) (West 2006). Missouri does give discretion to its land banks, MO. ANN. STAT. § 92.900(4) (West 1998), but has some provisions that show a preference for dispositions at close to fair market price. See MO. ANN. STAT. § 92.895(2) (West 1998); MO. ANN. STAT. § 92.900(3) (West 1998).

168. OHIO REV. CODE ANN. § 5722.07 (LexisNexis 2008 & Supp. 2010). However, an exception to this provision exists for county land banks. See *id.*

169. See MO. ANN. STAT. § 92.895(2) (West 1998). For instance, if the land bank authority wants to sell property at a price lower than two-thirds of the appraised price, it must get consent from two of the three authorities that appointed the land bank authority's commissioners. *Id.*

170. Examples include ALA. CODE § 24-9-7(d) (LexisNexis Supp. 2009) (retaining complete discretion in the land bank when determining sale prices) and GA. CODE ANN. § 48-4-64(e) (1999) (same).

171. See, e.g., TEX. LOC. GOV'T CODE ANN. § 379E.009(b) (West Supp. 2010) (requiring a land bank to sell property within three years of acquisition to a developer "for the purpose of construction of affordable housing").

appraisal is counterproductive. A fair market value requirement for transfers also undercuts the land bank's ability to achieve other public goals and public policies. To the extent that a goal is to return property to tax generating status, any sales price other than a nominal price, or a price equal to the land bank's transaction costs, reduces the return of properties to this status.¹⁷²

Repeating a theme of this Comment, requiring land banks to sell property at a certain value also limits land banks' flexibility to help redevelop abandoned properties by selling properties at reduced rates.¹⁷³

A significant power that most land bank statutes authorize is the authority to waive delinquent taxes. This power allows land banks to make tax delinquent property more attractive for redevelopment and fosters the goal of getting non-productive property back on tax rolls.¹⁷⁴ States have devised myriad ways for land banks to exercise this power. Kentucky's statute provides that all delinquent property taxes are extinguished when a land bank acquires the property.¹⁷⁵ States that allow land banks to extinguish delinquent taxes but require consent to waive school district taxes include Alabama¹⁷⁶ and Georgia.¹⁷⁷ While Kansas does not allow land banks to waive delinquent taxes, its statute does provide that upon a land bank's acquisition of property, the county treasurer "shall remove from the tax rolls all taxes, assessments, charges, penalties and interest that are due and payable on the property."¹⁷⁸ Michigan provides that delinquent taxes can only be waived upon consent by the applicable taxing jurisdictions.¹⁷⁹ Similar to Michigan, Maryland's legislation only allows extinguishing taxes on property acquired outside of tax foreclosure proceedings on the consent of the taxing jurisdiction.¹⁸⁰ Ohio's legislation allows delinquent taxes on property acquired through a deed in lieu of foreclosure process to be waived on the sale

172. ALEXANDER, *supra* note 9, at 47.

173. *Id.*

174. *Id.* at 27 (noting that conduit transfers "functionally use[] the existence of the delinquent taxes as a subsidy to encourage private-market transfers").

175. KY. REV. STAT. ANN. § 65.375(2) (LexisNexis Supp. 2009) ("When a property is acquired by the [land bank] authority, all state, county, city, and school district taxes shall be extinguished.").

176. ALA. CODE § 24-9-7(a) (LexisNexis Supp. 2009).

177. GA. CODE ANN. § 48-4-64(c) (1999).

178. KAN. STAT. ANN. § 12-5909(b) (West Supp. 2009).

179. MICH. COMP. LAWS ANN. § 124.756(4) (West 2006).

180. BALT., MD., CITY CHARTER art. 2, § 65(m)(2)(vi), (m)(3) (2010).

or other transfer of the property.¹⁸¹ In addition, Ohio permits land banks to purchase tax delinquent properties and obtain consent from the relevant taxing authorities to extinguish delinquent taxes.¹⁸² County land banks in Ohio operating under this statutory authority appear not to need consent to waive taxes after they have purchased tax delinquent property.¹⁸³ In Texas, land banks can effectively abate or waive taxes on delinquent property acquired in a private sale with the consent of the appropriate taxing units.¹⁸⁴ The Missouri statute waives certain delinquent taxes owed on property that a land bank has acquired but does not abate other taxes, such as special tax bills.¹⁸⁵

Statutes often give land banks the power to clear title to property they acquire.¹⁸⁶ This is important because many properties that land banks acquire have substantial defects on their title.¹⁸⁷ Properties acquired through previous tax foreclosures that are transferred from local governments to land banks often have clouded titles because of constitutionally inadequate notice proceedings.¹⁸⁸ “A clear title is necessary to effectively redevelop foreclosures—it guarantees that a property is clear of all liens and certifies that a previous title holder cannot claim the property at a later date.”¹⁸⁹ Furthermore, “[tax foreclosed property] without clear title is undesirable to private buyers, who cannot obtain title insurance without [it].”¹⁹⁰ To ensure clear title is transferred to third party redevelopers, land bank statutes commonly include authority for land banks to institute quiet title proceedings.¹⁹¹

Most states with existing land bank legislation have provisions allowing land banks to clear or quiet title for property it owns.¹⁹² As

181. OHIO REV. CODE ANN. § 5722.10 (LexisNexis 2008 & Supp. 2010).

182. OHIO REV. CODE ANN. § 5722.21(B), (D) (LexisNexis 2008 & Supp. 2010).

183. *See id.*

184. *See* TEX. LOC. GOV'T CODE ANN. § 379E.008(h) (West Supp. 2010) (allowing a land bank to acquire tax foreclosed property for less than the total taxes owed on the property).

185. MO. ANN. STAT. § 92.835(2) (West 1998).

186. *See* Fitzpatrick, *supra* note 21, at 2.

187. *See* ALEXANDER, *supra* note 9, at 18–19. Abandoned and vacant properties often have clouded titles because of a lack of probate proceedings or ownership by defunct corporations. *See id.* at 18.

188. *See id.*

189. REVITALIZING, *supra* note 8, at 6.

190. Fitzpatrick, *supra* note 21, at 2.

191. ALEXANDER, *supra* note 9, at 19.

192. *See* GA. CODE ANN. § 48-4-61(b) (1999 & Supp. 2009); KY. REV. STAT. ANN. § 65.375(1) (LexisNexis Supp. 2009); MICH. COMP. LAWS ANN. § 124.754(4) (West 2006); MO ANN. STAT. § 92.835(2) (West 1998); OHIO REV. CODE ANN. § 5722.04(C) (LexisNexis 2008 & Supp. 2010).

an example, Maryland's legislation gives the Baltimore Land Bank the power to institute any action to clear or quiet title of the land bank's property.¹⁹³ In accordance with Professor Frank Alexander's recommendation that quiet title proceedings be speedy,¹⁹⁴ Michigan's legislation includes a provision authorizing a land bank to institute an expedited quiet title proceeding.¹⁹⁵ Alabama, Kansas, and Texas do not have clear title provisions.¹⁹⁶

III. A PROPOSAL FOR LAND BANK LEGISLATION IN NORTH CAROLINA

As described in the introduction, North Carolina's cities and counties need new strategies to face the growing problem of tax foreclosures and abandoned and vacant housing.¹⁹⁷ In fact, the North Carolina Department of Commerce recently recognized that "[l]and banking is the fastest way to acquire foreclosed, abandoned, and blighted structures that plague hard hit communities."¹⁹⁸ Part III will begin by reviewing North Carolina's need for land bank legislation and discussing how the state's situation should influence the proposed legislation. Part III will then briefly review what the state is already doing to combat foreclosures and vacant property issues and explain why land banking should be added to the list of strategies that local governments can employ. Finally, this part will use the results of the comparative analysis in Part II to inform a proposal for North Carolina's own land bank enabling statute. This proposal for legislation will be organized using the same topics from the comparative analysis above: state enabling authority, formation and corporate structure, funding and staffing, and operations and powers possessed.

A. *Drafting Legislation to Respond to North Carolina's Need for Land Banks*

Based on current trends, North Carolina's priority for land bank legislation should focus on giving local land banks the flexibility to

193. BALT., MD., CITY CHARTER art. 2, § 65(k)(1)(iv) (2010).

194. See ALEXANDER, *supra* note 9, at 19.

195. MICH. COMP. LAWS ANN. § 124.759(1) (West 2006).

196. See ALA. CODE § 24-9-1. (LexisNexis Supp. 2009); KAN. STAT. ANN. § 12-5901. (West Supp. 2009); TEX. LOC. GOV'T CODE ANN. § 379E.001 (West Supp. 2010).

197. See *supra* notes 1–6 and accompanying text.

198. N.C. DEP'T OF COMMERCE, *supra* note 2, at 5. This quote implicitly refers to informal land banking by the city since North Carolina has not authorized formal land bank authorities.

remove barriers to the redevelopment of tax foreclosed or abandoned property.¹⁹⁹ This is because North Carolina's cities are not plagued by vast tracts of abandoned and vacant property found in cities such as Baltimore or Cleveland.²⁰⁰ In addition, with the state's population growing even in the midst of the current recession,²⁰¹ the real estate market in North Carolina's cities is stronger than in most other states.²⁰² As a result, there is less need for land banks to focus on holding and managing property.

The significant affordable housing shortage in North Carolina should also inform the state's land bank legislation. Despite the recent economic troubles that have depressed housing prices nationwide,²⁰³ the lack of affordable housing continues to be a problem in many North Carolina cities.²⁰⁴ The North Carolina Housing Coalition estimates that approximately 600,000 households pay more than thirty percent of their income for housing.²⁰⁵ In Charlotte, over 35,000 households spend more than fifty percent of their income on housing.²⁰⁶ As seen in Georgia's legislation, a land bank's ability to complete "conduit transfers"²⁰⁷ can be one strategy

199. This priority is in contrast to land banks which focus on maintaining and holding onto large quantities of properties. For examples of cities where these functions take higher priority, see *infra* note 200 and accompanying text.

200. *Rust Belt Fights Glut of Abandoned Houses*, CBS NEWS (Feb. 6, 2008), <http://www.cbsnews.com/stories/2008/02/06/business/main3800027.shtml>. In these types of cities, land banks are often used to hold thousands of properties while local governments plan out how to consolidate and revitalize entire districts of the cities. *Id.* This is not to say that North Carolina's cities do not have vacancy problems; certain neighborhoods in the state's cities do have abandoned and vacant housing issues. See, e.g., Kevin Cary, *Grant Could Ease Foreclosures*, CHARLOTTE OBSERVER, Jan. 11, 2009, at 1K; Matt Goad, *Activists, Residents Decry Vacancy Woes*, HERALD-SUN (Durham, N.C.), May 13, 2009, at C1; Kathryn Kennedy, *City Seeks Foreclosure Crisis Relief*, DAILY REFLECTOR (Greenville, N.C.), Jan. 7, 2009, at A1; Julia Oliver, *An Eyeful of Awful*, CHARLOTTE OBSERVER, Apr. 2, 2008, at 3B.

201. Kristin Collins, *State's Population Growth Slows*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 24, 2009, at A1.

202. See *House-Price Data by Metro Area*, MSN MONEY (May 27, 2009), <http://articles.moneycentral.msn.com/Banking/HomebuyingGuide/HomePricesByCity.aspx>. In spring 2009, the state's foreclosure rate was in the middle of the pack compared to other states. N.C. DEP'T OF COMMERCE, *supra* note 2, at 3.

203. See *Home Prices Sank Further in Most Parts of US in 3rd Quarter*, REUTERS (Nov. 10, 2009), <http://www.reuters.com/article/idUSTRE5A92XB20091110>.

204. *Housing Facts and Statistics in NC*, N.C. HOUS. COAL., http://www.nchousing.org/research_publications/facts_stats/index_html (last visited Jan. 3, 2011). See generally N.C. HOUS. COAL., CRITICAL INFORMATION ON THE ISSUE OF AFFORDABLE HOUSING (n.d.) (describing the affordable housing crisis in North Carolina).

205. See *Housing Facts and Statistics in NC*, *supra* note 204.

206. N.C. HOUS. COAL., *supra* note 204, at 12.

207. See ALEXANDER, *supra* note 9, at 16.

to encourage the redevelopment of tax foreclosed property into affordable housing.²⁰⁸ A conduit transfer is a conveyance from a third party to a land bank, which then agrees to waive delinquent taxes and immediately transfer the property back to the third party.²⁰⁹ This process makes it possible for affordable housing projects—which otherwise might not be financially viable—to be built.²¹⁰

Along with customizing enabling legislation to the needs of North Carolina, the flexibility of legislation must be considered when drafting an enabling statute. Professor Alexander argues:

A land bank's goals and operational policies need to incorporate flexibility to adapt to changing conditions. Governance of a land bank usually involves three to four different levels of authority and decision making: state statutes, local government agreements or ordinances, boards of directors or commissioners, and the land bank staff. This spectrum of governance authority defines the place for discretion and flexibility. By their very nature, state statutes are general and inflexible and should be used only to establish the basic authority for and range of powers of land banks. Greater discretion should lie with local governments to establish and direct a land bank's operations consistent with the jurisdiction's needs.²¹¹

North Carolina, like Georgia, has a wide range of urban landscapes with vast metropolises like Charlotte, the Triad, and the Triangle as well as smaller cities such as Asheville, Greenville, and Wilmington. Given the inflexible nature of state legislation described by Professor Alexander and since Georgia has had success establishing land banks in different size cities,²¹² the North Carolina enabling statute should provide enough flexibility for land banks to thrive in a variety of the state's communities.

B. Land Banking as a Complement to Existing State Strategies

North Carolina has already taken some steps to reduce foreclosures and fight vacancy problems in the state. For instance,

208. See *infra* notes 249–51 and accompanying text.

209. See ALEXANDER, *supra* note 9, at 27.

210. See, e.g., Miriam Hipchen, *Ridding Neighborhoods of Abandoned Housing*, NEW DEMOCRAT (Dec. 20, 2000), http://www.dlc.org/ndol_ci.cfm?kaid=114&subid=236&contentid=2831 (describing a development of sixty new houses in an Atlanta historic district that would not have been built without a conduit transfer which waived delinquent taxes on the property).

211. ALEXANDER, *supra* note 9, at 31.

212. See *id.* at 6.

state legislation created the State Home Foreclosure Prevention Project in 2008.²¹³ At the end of the 2009, the North Carolina Office of the Commissioner of Banks stated that the program helped prevent over 2,500 foreclosures in the state and that 5,000 other homeowners had met with non-profit financial counselors to get help with home mortgage problems.²¹⁴ In addition, the U.S. Department of the Treasury recently approved the North Carolina Housing Finance Agency's proposal to use \$159 million in federal funds to help unemployed workers make mortgage payments.²¹⁵ Lastly, Charlotte has proposed using federal stimulus money on informal land banking in several neighborhoods that have been plagued by foreclosure and vacancy problems.²¹⁶

While these programs are effective, land banks would complement these programs and provide added benefits to local governments. For instance, land banks would help local governments deal with the foreclosures and vacant properties that existing programs do not address. Helping prevent 2,500 foreclosures is a remarkable accomplishment for state government, but it pales in comparison to the 63,000 foreclosure cases that were filed in 2009 in North Carolina.²¹⁷ Land banks can also provide benefits to local governments by being the sole responsible agency that specializes in returning abandoned and vacant property to productive use.²¹⁸ Additionally, a land bank would be highly motivated to return property it acquires to productive use,²¹⁹ especially if the land bank is compensated by a percentage of future property tax revenues from properties it conveys.²²⁰ Lastly, while informal land banking within city governments is beneficial, having a specialized staff and independent agency devoted to vacancy and foreclosure issues in a city can provide additional benefits. For example, a single agency can coordinate "local nonprofit, government and private stakeholders" to advocate for beneficial housing policies and can serve as a community

213. Emergency Program to Reduce Home Foreclosures Act, ch. 226, § 1, 2008 N.C. Sess. Laws 988, 988 (codified at N.C. GEN. STAT. § 45-100 (2010)).

214. See Press Release, N.C. Office of the Comm'r of Banks, 2,500 Foreclosures Prevented Through State Home Foreclosure Prevention Program (Dec. 21, 2009), available at <http://www.nccob.org/NR/rdonlyres/E7EFB2F6-5B4D-4C3E-8867-7E10953DBC19/0/foreclosureprevention122109.pdf>.

215. *Foreclosure Help*, N.C. HOUS. FIN. AGENCY, <http://www.nchfa.com/Homebuyers/HOfacingforeclosure.aspx#> (last visited Jan. 3, 2011).

216. See *supra* note 78 and accompanying text.

217. See *News & Research*, *supra* note 2.

218. See Hipchin, *supra* note 210.

219. See *id.*

220. See *infra* note 241 and accompanying text.

development think tank.²²¹ In addition, an independent entity can usually act faster and with more flexibility than a government entity.²²² Thus, while North Carolina has taken significant steps to reduce foreclosure and vacancy problems, land banking can be an effective and complementary strategy for local governments.

C. *Recommendations for Key Land Bank Legislation Provisions*

As discussed above, every state that adopts land bank legislation should study and tailor its statute to the unique needs and legal structure of that state. States whose cities face thousands of vacant and abandoned properties and declining populations will obviously want to emphasize and authorize different land bank functions than states where these problems are not as widespread. In short, states such as Ohio and Michigan will and should have different land bank legislation than states such as Georgia and North Carolina. This should not, however, prevent states from deriving important lessons from the experiences of differently situated states to better inform their own legislation. Part III.C uses the comparative analysis completed in Part II to inform a proposal for key provisions for North Carolina land bank legislation.

1. State Enabling Authority

North Carolina can take one of three stances when authorizing local governments to create land banks. The enabling statute could (1) allow any local government to create a land bank; (2) authorize only a few local governments to create land banks; or (3) create a de facto pilot program, allowing the creation of a few land banks with the idea that additional legislation would grant full authorization in the future.²²³ Of these three choices, North Carolina should choose the latter option and create a de facto pilot program similar to the ones adopted in Texas, Ohio, and Kansas.²²⁴ This policy would allow a few local governments to start their land banks earlier than local governments in the rest of the state.

221. LISA MUELLER LEVY, LOCAL INITIATIVES SUPPORT CORP., ATLANTA CASE STUDY SUMMARY MODEL PRACTICES IN TAX FORECLOSURE AND PROPERTY DISPOSITION 2 (2003), *available at* <http://www.lisc.org/content/publications/detail/796> (follow "Download" hyperlink).

222. *See supra* notes 124–25 and accompanying text.

223. *See supra* Part II.A.1.

224. *See supra* notes 98–101 and accompanying text; *see also* Fitzpatrick, *supra* note 21, at 5 ("The [Ohio land bank] bill effectively establishe[d] a pilot land-bank program that [was] limited to Cuyahoga County . . .").

There are two primary benefits of a pilot program scheme. These initial land banks could provide assistance to and act as an “incubator [of] . . . ideas” for future land banks authorized after the pilot program ends.²²⁵ Additionally, state senators and representatives from districts not affected by the pilot program could vote for legislation knowing it would not involve their constituents, making the initial enabling legislation easier to pass.

To do this, the General Assembly would have to gauge cities’ interest in starting a land bank prior to enacting the legislation. Ideally, pilot cities would include some larger cities such as Durham, Winston-Salem, or Charlotte and some smaller cities, such as Greenville or Rocky Mount, to establish best practices for a variety of city sizes. The legislature would initially include land bank authorization in the statute for only those cities participating in the pilot program.²²⁶ After land banks have been operating in the selected pilot cities and if there is ample political support, authorization to create land banks could be expanded statewide for all local governments.²²⁷

2. Formation and Corporate Structure

Due to the overlapping local jurisdictions that have taxing authority in North Carolina,²²⁸ the state’s land bank statute should require an intergovernmental agreement between the local government parties (one or more cities and a county) to set up a local land bank. As discussed in Part II, Georgia and Kentucky utilize similar approaches for land bank formation due to overlapping jurisdictions.²²⁹ As Professor Alexander notes, “[g]iven the multiplicity of jurisdictions with some degree of control over, and responsibility for vacant, abandoned, and tax-delinquent properties, some form of intergovernmental agreement is necessary to confer

225. See Sandra Livingston, *Cuyahoga County Land Bank Marks First Year with Series of Accomplishments*, CLEVELAND PLAIN-DEALER (July 4, 2010, 9:01 PM), http://www.cleveland.com/open/index.ssf/2010/07/cuyahoga_county_land_bank_mark.html (quoting Jim Rokakis, County Treasurer).

226. The use of population brackets similar to Ohio’s statute would successfully accomplish this goal. See *supra* note 97 and accompanying text.

227. Of course, one downside to this approach is the risk that the pilot land bank programs are unsuccessful, causing political support for land bank legislation to erode. In this case, it would be difficult to expand authorization statewide.

228. See, e.g., *Cleveland County Finance & Purchasing Department, Property Taxes*, CLEVELAND CNTY., N.C., <http://www.clevelandcounty.com/FinanceD/taxes.html> (last visited Jan. 3, 2011) (noting that property taxes in the county are levied by “multiple taxing districts” including county and town taxing districts).

229. See *supra* notes 111–14 and accompanying text.

upon a land bank the appropriate range of powers and identify its essential goals.”²³⁰ Since North Carolina school boards do not have taxing authority,²³¹ it would be unnecessary to include school districts as a possible party in an intergovernmental agreement as Kentucky does.²³²

An added benefit of requiring an intergovernmental agreement is that it would clearly let local governments know how to create a land bank. While many of the existing statutes include clear provisions that tell local governments how to form a land bank,²³³ Texas’s statute does not.²³⁴ Explicitly describing how a land bank will be formed, whether it is by ordinance, resolution, or by an intergovernmental agreement among local governments, would reduce the chance of costly litigation and confusion in the future.

North Carolina should also include express language in the legislation designating land banks as separate corporate public entities.²³⁵ As discussed above, the literature on land banking suggests that land banks are more effective as separate entities rather than as part of the city or county government.²³⁶ Land banks housed within city governments lack dedicated funding and staffing and do not have the ability to acquire property.²³⁷ Independent land banks are also free from complying with onerous city ordinances and can be more efficient.²³⁸

3. Funding and Staffing

The General Assembly should avoid restricting the funding for land bank authorities in the enabling statute. Alabama’s statute expressly limits its statewide authority funding to proceeds it derives

230. ALEXANDER, *supra* note 9, at 39.

231. See N.C. GEN. STAT. § 115C-511 (2009) (noting that the Board of County Commissioners, not the local school board, is authorized to collect any approved supplemental school tax); see also Renee Chou, *Calls Grow to Give School Boards Taxing Authority*, WRAL (Mar. 21, 2008), <http://www.wral.com/news/local/story/2614055/> (noting the increasing popularity of such a measure). Although school boards do not have independent taxing authority in North Carolina, the county can levy supplemental property taxes on behalf of a school district. § 115C-511(a). These supplemental taxes must be approved by a majority of those voting in the supplemental tax election. N.C. GEN. STAT. § 115C-508(b) (2009).

232. See KY. REV. STAT. ANN. § 65.355(1) (LexisNexis 2004).

233. See, e.g., *id.*

234. TEX. LOC. GOV’T CODE ANN. § 379E.004 (West Supp. 2010).

235. For an example of such a provision, see GA. CODE ANN. § 48-4-61(b) (1999 & Supp. 2009).

236. See *supra* notes 124–25 and accompanying text.

237. Fitzpatrick, *supra* note 21, at 3.

238. See *supra* note 125 and accompanying text.

from operations and any gifts or grants it receives.²³⁹ While this may be seen as an appropriate check on the land bank to keep it from growing too powerful, it could also severely hamper a land bank's flexibility and impact.²⁴⁰ Instead, state legislation should give land banks broad authority and flexibility to derive funding from local government revenues, operations of the land bank, and any grants it receives. This way, the intergovernmental agreements creating individual land banks can fashion funding arrangements as they see fit.

North Carolina should also consider adopting Michigan's novel funding provision which gives land banks a percentage of the property tax revenues generated over the first five years by property conveyed to a third party.²⁴¹ This funding scheme could provide a significant, dedicated revenue stream for land banks and incentivize the rehabilitation of non-productive property. Finally, this revenue source could reduce the need for cities to provide operational funding for land banks.

In its enabling legislation, North Carolina should also expressly give local governments the discretion to customize staffing arrangements for their land banks. Georgia²⁴² and Kentucky²⁴³ expressly provide for staffing discretion. This flexibility will allow smaller cities with smaller budgets to share employees with their land bank and larger cities to operate with an independent staff.²⁴⁴ By emulating Georgia's and Kentucky's provisions on staffing, North Carolina's legislation will allow "a land bank's operations [to be] consistent with the jurisdiction's needs."²⁴⁵

239. ALA. CODE § 24-9-7(e) (LexisNexis Supp. 2009).

240. See ALEXANDER, *supra* note 9, at 31; *supra* note 135–39 and accompanying text. For instance, land banks that are not solely reliant on operational revenues can offer greater subsidies to non-profit developers. ALEXANDER, *supra* note 9, at 3.

241. See *supra* notes 131 and accompanying text. Michigan gives land banks fifty percent of the tax revenues that a property generates within the first five years after a land bank conveys it. See MICH. COMP. LAWS ANN. §§ 211.7gg(2), (4), 211.1025(4)(b) (West 2006); ALEXANDER, *supra* note 9, at 26.

242. GA. CODE ANN. § 48-4-62(c) (1999) ("The authority may employ its own staff or may utilize employees of the parties, as determined by the agreement.").

243. KY. REV. STAT. ANN. § 65.360(3) (LexisNexis 2004).

244. See ALEXANDER, *supra* note 9, at 39. In fact, Georgia is a state where this statutory discretion is already benefitting its land banks. *Id.* ("[T]he Atlanta Land Bank has its own independent staff while a parallel land bank in Macon, Georgia has no independent staff, relying instead on the staff of the housing department for its services.").

245. *Id.* at 31.

4. Operations and Powers Possessed

North Carolina's legislation should allow local land banks the flexibility to decide which tax foreclosed property to acquire through the tax foreclosure process.²⁴⁶ Whereas a bigger North Carolina city like Durham or Charlotte may prefer to have its land bank acquire most, if not all, tax foreclosed properties, a smaller city, such as Wilson or Rocky Mount, may want more discretion in choosing properties to acquire, in order to limit maintenance and operational costs.²⁴⁷ With this in mind, Georgia's acquisition structure would be preferable since it would provide the flexibility for different sized land banks to operate effectively under the authority of the land bank enabling legislation.²⁴⁸

For North Carolina's legislation to allow "conduit transfers" to further redevelopment and affordable housing goals,²⁴⁹ a provision authorizing a land bank to acquire property through voluntary gift will also be necessary. For example, Georgia's enabling legislation provides that "the [land bank] authority shall . . . [have] the power . . . to accept and issue deeds in its name"²⁵⁰ This provision allows a land bank to acquire property outside of the tax foreclosure process and reduce its property management costs.²⁵¹

North Carolina should also authorize land banks to acquire or lease property on the open market.²⁵² This power would allow land banks to purchase vacant mortgage foreclosed properties which can have a deleterious effect on neighborhoods²⁵³ and property values.²⁵⁴ Mortgage foreclosures in North Carolina in 2009 increased approximately seventeen percent from 2008²⁵⁵ and are particularly

246. See *supra* note 163 and accompanying text.

247. Examples of smaller cities operating land banks are Valdosta, Georgia, and Macon, Georgia. ALEXANDER, *supra* note 9, at 6.

248. See GA. CODE ANN. § 48-4-64(a) (1999) (noting that a land bank *may* tender a bid at a tax foreclosure sale).

249. See *infra* notes 270–77 and accompanying text.

250. GA. CODE ANN. § 48-4-61(b) (1999 & Supp. 2009).

251. See ALEXANDER, *supra* note 9, at 27.

252. See *id.* at 24. Currently, Michigan is the only state that allows land banks to purchase property on the open market. See MICH. COMP. LAWS ANN § 124.755(1), (2) (West 2006).

253. IMMERGLUCK & SMITH, *supra* note 7, at 2; ADAM RUST ET AL., EMPTY HOUSES AND BROKEN DREAMS 9 (2008), available at http://www.nchousing.org/research_publications/statewide-research/CRA-NC%20Foreclosure%20Report.pdf.

254. IMMERGLUCK & SMITH, *supra* note 7, at 2 (estimating conservatively that "each conventional foreclosure within an eighth of a mile (essentially a city block) of a single-family home results in a 0.9 percent decline in value").

255. See *News & Research*, *supra* note 2; Robertson, *supra* note 2.

prevalent in the state's urban centers.²⁵⁶ A recent report by the Community Re-Investment Association of North Carolina focusing on Durham recognized that to combat this problem “[n]on-profits can land bank both lots and homes to develop long-term plans that guarantee a mix of affordability in communities that are otherwise facing gentrification or high percentage of non-owner occupancy/investor ownership.”²⁵⁷ Moreover, NSP funding in North Carolina is already slated to be used for mortgage foreclosure acquisitions in selected neighborhoods in Charlotte.²⁵⁸ Thus, North Carolina should explicitly support this practice by including authority for property acquisitions on the open market in its land bank legislation.

A key element of a land bank statute is a provision allowing for the management and retention of property.²⁵⁹ Ideally, North Carolina's enabling legislation should mimic existing statutes giving land banks broad authority to manage, repair, and maintain property.²⁶⁰ This will allow for land banks that want to follow the Atlanta Land Bank model and focus on conduit transfers.²⁶¹ At the same time, land banks that are faced with higher levels of tax foreclosure properties, a weaker real estate market, and a need to hold onto properties before selling will have the power to manage and retain the property. Texas places limits on the amount of time a land bank can retain property before reverting to the original taxing authority that acquired the property.²⁶² While this may assuage some fears of a land bank becoming too powerful or controlling, the legislature should not include time limits in North Carolina's statute in the interest of flexibility and local land bank discretion.²⁶³

Once a land bank begins acquiring property, it will eventually need to sell property to third parties for redevelopment and to get the

256. See, e.g., RUST ET AL., *supra* note 253, at 13–14.

257. *Id.* at 16.

258. N.C. DEP'T OF COMMERCE, *supra* note 2, at 5 (noting that Charlotte will be in charge of acquiring these mortgage foreclosed properties). Giving land banks the power to purchase properties on the open market would mean that land banks would not be reliant on local governments to make these purchases. See *id.*

259. See *supra* notes 164–66 and accompanying text.

260. See, e.g., KY. REV. STAT. ANN. § 65.370(2)(d) (LexisNexis 2004); see also *supra* notes 165–66 and accompanying text (discussing the risks land banks take when owning and managing property and the broad statutory authority usually given to land banks to manage and maintain their property).

261. See ALEXANDER, *supra* note 9, at 16.

262. See TEX. LOC. GOV'T CODE ANN. § 379E.009(b) (West Supp. 2010).

263. See GA. CODE ANN. §§ 48-4-61, 48-4-63, 48-4-64 (1999 & Supp. 2009) (not providing a time constraint on sale of acquired property).

properties back on the tax rolls.²⁶⁴ Some land bank statutes include provisions that require land banks to sell property at fair market value.²⁶⁵ Other states' legislation expressly provides that land banks have full discretion to determine a property's sale price.²⁶⁶

North Carolina should adopt enabling legislation to follow the less restrictive model and allow land banks broad discretion in choosing a sale price for its property. This policy will provide the land bank with the flexibility to adapt development agreements to fit a variety of real estate scenarios.²⁶⁷ For instance, the discretion to set sale prices would benefit local land banks when they are selling property to non-profit developers who hope to build affordable housing and are trying to keep their costs low.²⁶⁸ In addition, it will reduce transaction costs for land banks and promote the return of properties to tax-generating status.²⁶⁹

North Carolina's enabling statute should authorize land banks to perform "conduit transfers."²⁷⁰ Conduit transfers occur when private third parties "acquire tax-delinquent property from owners and then engage in a conduit transfer through which the property is conveyed to the . . . [l]and [b]ank, the taxes are extinguished, and the property is re-conveyed back to the new owner."²⁷¹ Conduit transfers benefit land banks by encouraging private non-profit developers, such as Habitat for Humanity, to select properties that they believe can be redeveloped successfully and by reducing the number of properties a land bank has to manage and maintain.²⁷² In effect, conduit transfers "functionally use[] the existence of the delinquent taxes as a subsidy to encourage private-market transfers."²⁷³ This type of conduit transfer system has worked successfully for the Atlanta Land Bank,

264. See *supra* notes 167–73 and accompanying text.

265. See MO. ANN. STAT. §§ 92.895.2, 92.900(3) (West 1998) (placing restrictions on a land bank's ability to sell property suitable for private use for less than appraised value); OHIO REV. CODE ANN. § 5722.07 (LexisNexis 2008 & Supp. 2010) (stating that property must not be sold less than its fair market value).

266. See, e.g., GA. CODE ANN. § 48-4-64(e) (1999) ("The [land bank] authority shall have full discretion in determining the sale price of the property.").

267. See ALEXANDER, *supra* note 9, at 46–48; O'BRIEN ET AL., *supra* note 31, at 22–23.

268. See ALEXANDER, *supra* note 9, at 47.

269. *Id.*

270. See *id.* at 16, 27.

271. *Id.* at 27.

272. See *id.* Reducing the number of properties that a land bank has to manage would reduce maintenance costs and allow more funding for expanded operations.

273. *Id.*

where non-profit affordable housing developers are given priority in distributions of property by statute.²⁷⁴

The downside of conduit transfers could be a public perception of the land bank having too much power and control.²⁷⁵ In addition, a windfall benefit could be conferred on a property owner when he sells to the non-profit developer.²⁷⁶ To avoid this windfall benefit, the Atlanta Land Bank has instituted a “Reasonable Equity Policy” which states that the land bank will not participate in a conduit transfer if the selling land owner is set to gain more than a certain percentage of his net equity in the land.²⁷⁷ Based on the success of conduit transfers in Georgia and the benefits of reducing property management costs, North Carolina should allow conduit transfers in its enabling statute.

Lastly, North Carolina should include in its statute a requirement that land banks favor non-profit affordable housing developers. Many states already include such provisions in their respective enabling statutes.²⁷⁸ Such a stipulation in the statute would force all local land banks to prioritize the development of affordable housing by non-profit entities.²⁷⁹ It would also provide support for the notion that the statute’s purpose is to serve the public good by redeveloping abandoned property into affordable housing.²⁸⁰ Including such a priority provision could play a significant role in meeting the state’s need for affordable housing.²⁸¹

274. GA. CODE ANN. § 48-4-64(c) (1999). “[Community development corporations (CDCs)] in many Atlanta neighborhoods have been able to acquire lien-encumbered property directly from the owner by using the [land bank authority (LBA)] to clear titles. Because of its efficiency, direct acquisition is the most frequently utilized tool by Atlanta CDCs, and most of what the LBA does involves direct acquisitions.” LEVY, *supra* note 221, at 2.

275. This public perception could arise if people view the land bank as being able to completely erase liabilities for back taxes owed to the government without any benefit accruing to the public for this abatement.

276. ALEXANDER, *supra* note 9, at 45–46.

277. *Id.* at 46.

278. See, e.g., ALA. CODE § 24-9-7(a), (d) (LexisNexis Supp. 2009); GA. CODE ANN. § 48-4-64(c), (e); TEX. LOC. GOV’T CODE ANN. § 379E.004(a) (West Supp. 2010).

279. For example, the Georgia land bank statute requires intergovernmental agreements establishing land banks to “provide for a distribution of property that favors neighborhood nonprofit entities obtaining the land for low-income housing and, secondarily, other entities intending to produce low-income or moderate-income housing.” § 48-4-64(e).

280. Assuring the prioritization of affordable housing uses in the redevelopment of land bank property could also boost the chances of a land bank statute passing the General Assembly.

281. For a discussion of affordable housing in North Carolina, see *supra* notes 203–06 and accompanying text.

One effective tool a land bank can have is the authority to abate or eliminate taxes.²⁸² Since this is a significant authority to accomplish a land bank's goals, most states have expressly addressed this issue in their enabling statute.²⁸³ North Carolina will have several options to address this issue. North Carolina could follow Georgia's model and give all land banks the power to extinguish property taxes.²⁸⁴ Or North Carolina could follow Michigan's model²⁸⁵ and only allow a land bank to waive delinquent taxes with the consent of the taxing jurisdiction. Finally, North Carolina could provide express authority for each land bank to make this decision while drafting its intergovernmental agreement. The latter option might best allow those jurisdictions that are more wary of land banks to retain more control of the land bank's tax waiving powers. Other jurisdictions, which could include North Carolina's larger cities, might want to follow a model similar to Georgia and allow full tax waiving powers.²⁸⁶ As discussed above, this policy would encourage conduit transfers²⁸⁷ and the development of affordable housing.²⁸⁸

North Carolina land bank enabling legislation should also give land banks the power to clear title to its property.²⁸⁹ This is because "[o]ne of the primary reasons that normal market forces do not reach vacant, abandoned, and tax-delinquent property is that there are numerous defects or clouds on the title to the property."²⁹⁰ A property incapable of qualifying for title insurance is unattractive to redevelopers.²⁹¹ Therefore, North Carolina's legislation should follow the model of many other states with land bank legislation and explicitly give land banks the power to clear title to property through quiet title proceedings.²⁹² In addition, the enabling statute should also

282. ALEXANDER, *supra* note 9, at 27.

283. *See supra* Part II.A.4.

284. § 48-4-64(c). Only in the case of extinguishing school district taxes must the local "board of education" give its permission to the Georgia land bank to exercise this authority. *Id.*

285. MICH. COMP. LAWS ANN. § 124.756(4) (West 2006).

286. *See supra* note 177 and accompanying text.

287. *See supra* notes 274-77 and accompanying text.

288. *See supra* notes 278-81 and accompanying text.

289. The power to clear title to property is an important function of land banks. *See* ALEXANDER, *supra* note 9, at 19; Fitzpatrick, *supra* note 21, at 2; *see also supra* notes 186-88 and accompanying text (explaining why so many abandoned and vacant properties have clouded titles).

290. ALEXANDER, *supra* note 9, at 18.

291. *Id.* at 19.

292. *See supra* note 192 and accompanying text (listing the states with provisions that allow a land bank to clear or quiet title); *see also* ALEXANDER, *supra* note 9, at 19 ("The

include authority similar to Michigan's statute that provides for an expedited quiet title proceeding.²⁹³ This will boost the marketability of land bank properties and hasten the transfer of these parcels to redevelopers.²⁹⁴

5. Other Considerations

The discussion above of important components that should be included in a proposal for North Carolina land bank legislation cannot cover all the decisions required when drafting enabling legislation for land banks. Land banks are by nature local entities and each will face varying levels of need and political support. Therefore, to allow local land banks to adapt to their different situations, other provisions included in the enabling statute should incorporate enough flexibility to let each land bank draft its own land bank agreement, articles of incorporation, and bylaws in a way that best fits its community's circumstances.²⁹⁵

CONCLUSION

Land banks are a rapidly spreading tool used by cities small and large to combat the prevalence of abandoned and vacant property. The popularity of land banks has grown because of their ability to stabilize declining neighborhoods, increase tax revenues, and spur the redevelopment and reuse of urban land. Land banks are also effective because their purposes can be adapted to the unique challenges and needs of a city. Land banks can be authorized to own and manage vast tracts of urban land or can have a more limited role, serving as a conduit through which tax delinquent property is returned to the market for redevelopment or rehabilitated as affordable housing. North Carolina is not immune to the wave of property tax delinquency and property abandonment. Smaller cities in the eastern part of the state and the state's large urban cities face these problems.²⁹⁶ While the state is fortunate to not have experienced the severity of property vacancy and population decline seen in the

land bank's statutory authority to proceed with a quiet title action should be expressly set forth.").

293. MICH. COMP. LAWS ANN. § 124.759(1) (West 2006); ALEXANDER, *supra* note 9, at 19.

294. ALEXANDER, *supra* note 9, at 18. Speedy transfers can also cut a land bank's operational costs. Logically it follows that the shorter a land bank owns property, the smaller its costs of maintaining its property will be.

295. See ALEXANDER, *supra* note 9, at 31.

296. See *Greatest Needs Analysis*, *supra* note 4.

Midwest, this Comment argues that land banks can still serve a useful, limited purpose in North Carolina, similar to land banks operating in Georgia.

This comparative analysis of major land bank provisions in existing land bank legislation has provided a way to update the current literature on land bank development. This analysis focused on four major topics within the legislation: state enabling authority; formation and corporate structure; funding and staffing; and operations and powers possessed. Results from the analysis show an overarching theme of providing flexibility in legislation to allow local land banks room to devise and adapt policies that fit their local city's needs and focus on prioritizing affordable housing development with land bank property. North Carolina should use this analysis to borrow and adapt provisions of its own while drafting its enabling legislation. By providing wide discretion for local land bank operations and prioritizing the redevelopment of abandoned and vacant property for affordable housing, North Carolina will ensure a long and successful future for land banks in the state.

STUART PRATT