

County Land Banks: Overview and Future Directions

Tyler Compton
Associate
Bricker & Eckler

Jeffry D. Harris
Of Counsel
Bricker & Eckler



Agenda



- COVID-19's impact on Real Estate Markets
- Federal legislation – *proposed*
- Ohio legislation – *proposed*
- History of land banking in the US
- Statutory model – Ohio
- Land bank as economic development tool
- SWOT Assessment

“Plan for the Worst”

Posit:

The real estate devastation from COVID-19 to be “20x worse than 2008 housing crisis”

- Jay Olshonsky, CEO, NAI Global

As of this presentation, we’re in *a delayed period before wave of foreclosures*

- COVID-19 not under control
- 2nd Round stimulus



“Plan for the Worst – *cont.*”



Hotels, Retail & Multi-family Sectors most at-risk:

- Hotels in dreadful condition
 - Clock ticking before hoteliers' debt called & properties repo'ed
- Retail was soft even w/out COVID-19's pernicious impact
- Multi-family housing hit by unpaid rents
 - Giant sucking sound from suburbs
 - New Urbanism? Walkable downtowns?
 - Why pay expensive rents in downtowns to be near office?
 - What office?
- *Think entire retail / restaurant / office / mixed-use districts*

“Can Land Banks Get Us Out of This Mess?”



CityLab: June 15, 2020

- COVID-19 recession may be broader than Great Recession
- Lawmakers looking at tools deployed to address 2008’s foreclosure crisis
 - Enter land banks
 - “We may start to see land banking pop up in places like Miami or Houston”
 - Center for Community Progress
- Land banks as social equity tools?

“It’s not just Dayton or Youngstown or Flint”



Congressional action: *Restoring Communities Left Behind Act Act*

- Introduced **February 2021** by Reps. Rashida Tlaib (D-MI) & Marcy Kaptur (D – OH)
- **\$5B HUD grant program**
 - Land banks deemed **cost-effective strategies** for revitalization
 - **Competitive grants** available during federal FY 2021 – 2031
 - Land banks as “eligible local partnership” applicants (Sec. 3(b)(1))
 - Funds to purchase & redevelop vacant, abandoned, distressed properties for **affordable rental housing, home ownership, or commercial use**
 - Incl. funding for **land bank operations** (up to 15% of grant award)

Ohio Legislation



House Bill 155

- Introduced February 2021 by Reps. Upchurch (D - Cleveland) & Smith (D – Fairview Park)
- Creates *Land Reutilization Nuisance Abatement Program* in R.C. Chapter 1724
- Targets **nuisance structures** for funding demolition, renovation, or remediation
- ODSA to administer **\$50MM grant program** to county land banks
- Scheduled today for **1st hearing** in House Economic & Workforce Development Committee

Ohio Legislation – *cont.*



Senate Bill 112

- Introduced March 2021 by Sen. Dolan (R – Chagrin Falls; Chair, Senate Finance Committee)
- Makes changes to county land banking law (R.C. Chapter 5722) and the law relating to tax foreclosures (R.C. Chapter 323)
- Re-introduction of county land bank law changes proposed August 2020 (HB 755 and SB 356, 133rd General Assembly)
- Measure written in coordination with Ohio's land bank leaders

Ohio Legislation – *cont.*



Senate Bill 112 – *cont.*

Changes of note:

- R.C. 323.28: Premises ordered to be sold but remaining unsold for want of bidders **only forfeited to the state**
 - No longer lists “political subdivision, school district, or county land reutilization corp”
- R.C. 323.65: Amends definitions of “abandoned land” & “delinquent lands” by removing any reference to *delinquent vacant lands*

Ohio Legislation – *cont.*



Senate Bill 112 – *cont.*

- R.C. 323.69
 - Adds that a **designated counsel hired by the prosecuting attorney** may file tax foreclosure complaints
 - Amends when BOR may transfer case to court to a more defined, “upon a preponderance of the evidence provided by the parties, that **the property is not abandoned**”
- R.C. 1724.02
 - Makes county land banks expressly **exempt from state or local taxes or assessments**, incl. sales taxes, in connection with any project
 - Makes county land banks exempt from R.C. Chapter 4115 (prevailing wage)

Ohio Legislation – *cont.*



Senate Bill 112 – *cont.*

- R.C. 1724.11
 - CICs' (incl. county land banks) electronic records in a proprietary database are **not public records** under R.C. Chapter 149
- R.C. 5722.02
 - Cities & townships no longer have priority right of acquisition of parcels acquired by county land banks

A Refresher: What do Land Banks do & how do they do it?



- Quasi-gov't entities acquire, manage & dispose of properties
 - Targets: vacant, abandoned & foreclosed properties
 - Aim: active re-use & pay taxes
- Land banks have evolved since 1970s
 - Emerging as innovative tool for communities to address the problems of vacant & blighted properties
 - COVID-19 wave

What do Land Banks do & how do they do it – *cont.*?



Duties:

Take title to property, often at *little / no cost*

Owner of last resort

Clean-up cloudy title & back taxes

Hold property *tax free*

Secure property from “uninvited guests”

Dispose of property to new end users

Eye to community desire, not what market will bear

Forms:

Independent corporations

Bylaws, Charters & Boards

Enabling government retains power

(e.g., seats on Board of Directors)

A Brief History of Land Banking



- Land banks have “been around for a while”
- Movement started in the 1970s
 - Ohio’s municipal land banks (Ohio Revised Code Chapter 5722)
- Many states since authorized local land banks
 - Midwest states include:
 - Indiana
 - Kansas
 - Michigan
 - Nebraska
 - Ohio
- Useful to think of land banking evolution across 3 generations

A Brief History of Land Banking – The 1st Generation



- 1970s – 1990s
- St. Louis, Cleveland, Louisville & Atlanta
- Common focus: address abandoned & tax delinquent properties
- Lacked capacity to efficiently & effectively manage & dispose of properties once acquired
- Lacked dedicated sources of funding
- Hampered by archaic property tax foreclosure laws
 - Impediments to securing & disposing of properties with marketable title

A Brief History of Land Banking – The 2nd Generation



- 1990s – 2010
- Michigan & Ohio
- More active role in property tax foreclosure process
 - Ability to acquire *all* tax-foreclosed properties
 - Not just properties for which no 3rd party ready to buy
- Genesee County (Flint), Michigan & Cuyahoga County (Cleveland), Ohio
 - Most successful models of land banking in the nation
 - Structurally diverse, dedicated funding sources
- Shortcomings: statutes intricately drafted to amend discrete statutory frameworks
 - MI and OH models therefore not easily replicable in other states

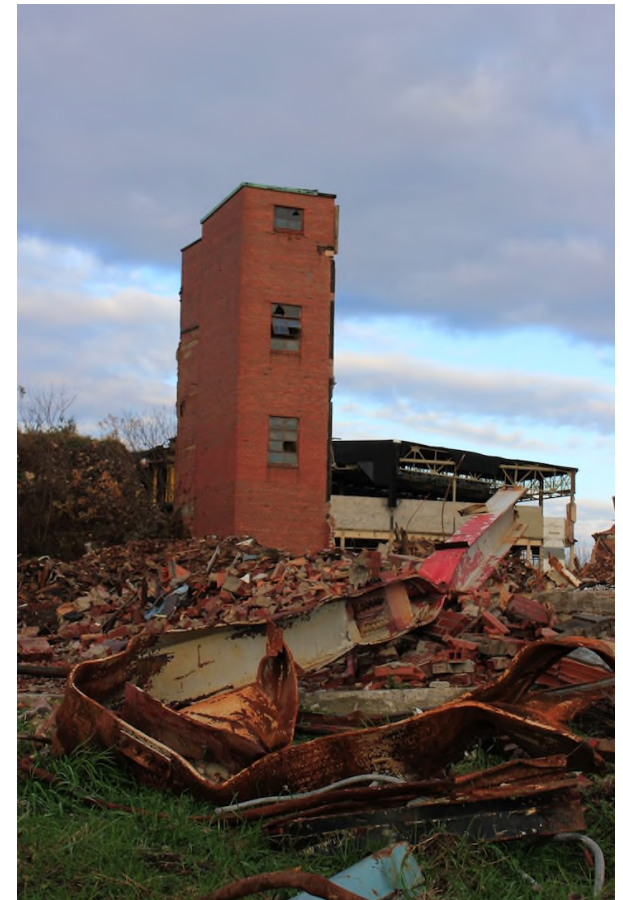
Example: Michigan Land Banks



- 1999: Michigan State Legislature adopted statutory framework
 - Genesee County Land Bank Authority (GCLBA)
 - County acquires abandoned land through tax foreclosure process
 - Objective: restore integrity of the community by removing dilapidated structures & redeveloping abandoned properties
- Michigan's statute vests in Governor the authority to appoint board members
 - Insulates land bank from disruption with changes in municipal leadership
- Statute considered one of the nation's strongest
 - Allows land banks to recapture 50% of the property tax revenue for first 5 years after transferring property to a private party
 - Permits land banks to borrow money & issue tax-exempt financing (TIF)
 - Reformed state's tax foreclosure laws by reducing period for foreclosing on vacant, tax delinquent properties
 - Allows land banks to acquire *all* tax delinquent properties

A Brief History of Land Banking – The 3rd Generation

- New York State's Land Bank Act (2011)
 - Land bank model statute
 - New Art. 16 of NY's not-for-profit corporation law
 - Developed by Center for Community Progress
- Broad powers for using & financing land banks
- Flexible options available to operate land banks
- Does not provide dedicated sources of funding
- As drafted, Land Bank Act better replicated across states to model success of 2nd generation
- Link: <https://legislation.nysenate.gov/pdf/bills/2011/A373A>



Statutory Model - Ohio



- Independent county land banks, specific to Ohio, as a new *super-breed* of land banks
 - 56 of Ohio's 88 counties now authorize land banks
- Ohio's land bank law – Ohio Revised Code Chapter 5722
 - Transactional flexibility
 - Extended statutory capabilities
 - Dedicated funding
 - Interact w/ county treasurers, prosecutors, auditors & boards of commissioners
 - Insert directly into tax foreclosure process
 - Alternative tax collection tool of last resort
- Ohio's non-profit corporation law – Ohio Revised Code Chapters 1702 & 1724
 - County land banks as new forms of Community Improvement Corporations

“Another office or bureau of local government”



Traditional Land Banking – Ohio’s “passive” land banks

- Ohio *municipal* land banks
- 1970s: enabled by R.C. Chapter 5722
- Afford cities to take control of abandoned, distressed, unproductive & tax-foreclosed properties
- Legacy cities like Cleveland
 - Properties as neighborhood nuisances
 - Property becomes tax delinquent, vacant & abandoned...
 - ... no one purchases at sheriff’s sale
 - At least municipality can acquire it, land bank it, and *hopefully* make future productive use of it
 - Worthwhile outcome: with public ownership, city can enter premises lawfully & cut high weeds
 - Otherwise, lengthy nuisance abatement procedures control

Traditional Land Banking – Ohio’s “passive” land banks – *cont.*



- To create municipal land bank: simply pass land bank ordinance
- Municipal land bank as another office or bureau of the local government
- Nothing “private enterprise” about traditional municipal land banks
- “Passive” in that land bank *offices* compete for funding w/ other government services such as police, EMS, parks and recreation
- In effect, municipalities rarely accepted abandoned structures
 - Exposure to liability & maintenance costs
 - Easier to own vacant lots
- Weakness: classified as municipally owned land
 - Can only be conveyed according to rigid public bidding standards

Ohio's Typical Process for Disposing of Tax-Foreclosed Properties



- If vacant & abandoned property is tax-foreclosed, property exposed to county sheriff's sale
 - At sheriff's sale, minimum bid consists only of taxes, assessments, penalties, interest, costs & any nuisance charges placed on the parcel

Ohio's Typical Process for Disposing of Tax-Foreclosed Properties – *cont.*



- Liens of subordinate lienholders (e.g., mortgagees, mechanics lienholders) are not included in sheriff's sale minimum bid
- Minimum bid is not as % of appraised value
 - In fact, a parcel's value has nothing to do w/ tax foreclosure sale
- Opportunities abound for real estate market bottom-dwellers, out-of-town speculators & other shenanigans
 - "Hey, I bought a house sight-unseen for \$700 in Cleveland on the Internet!"

Ohio's Typical Process for Disposing of Tax-Foreclosed Properties – *cont.*



- If no bidders at a tax foreclosure sale, property *escheats* to the State of Ohio
- County auditors serve as fiscal representative for the State of Ohio
- With this forfeiture status, tax delinquent owner still has redemption rights
 - Another window of opportunity for tomfoolery
- Each year, these properties exposed to a County Auditor's sale
 - No minimum bid requirement
 - Highest bidder wins
 - Neither reference to appraised value nor amount of delinquent taxes owed
- Highest bidder acquires fee simple title
 - Free and clear of all subordinate liens, utility charges, taxes & assessments

Ohio formula = Land Banking + Non-Profit Corporations



Ohio Senate Bill 353 (2009):

- County Land Reutilization Corporations
 - aka County Land Banks
- Statutory type of Community Improvement Corporation formed under Ohio's non-profit corporation law R.C. Chapter 1724
 - CICs have been around – and very active – in Ohio since 1960s
 - Special purpose entities assisting local government w/ economic development duties
 - Deployed heavily by during 1960's, 1970's & early 1980's
 - Common reason for existence: industrial park development
 - Common activity: issue industrial development bonds (IDBs) to finance economic development projects

Ohio's Non-Profit Community Improvement Corporations



- Non-profit corporation formation under R.C. Chapter 1724 formation:
 - File Articles of Incorporation with Ohio Secretary of State
 - Ohio Attorney General reviews & signs off
 - File with IRS for IRC 501(c)(3) [charitable] or (c)(4) [social welfare] status
 - Operate under IRC 115?
 - Open custodial account at local bank
 - Form a volunteer Board
 - Hire Executive Director and other staff
 - Select properties from County's Forfeited Lands List
 - Start disposing of title-cleansed properties

Ohio's Non-Profit Community Improvement Corporations – *cont.*

- R.C. Chapter 1724 powers:
 - Acquire & sell property (real, personal, stock, partnerships)
 - Borrow money for economic development projects
 - Issue un-voted IDBs or notes
 - Federally taxable debt
 - Operate Revolving Loan Funds
 - Charge fees-for-services to political subdivisions



Ohio's Non-Profit Community Improvement Corporations – *cont.*



- R.C. Chapter 1724 powers – *cont.*:
 - Enter into economic development strategic plan with county or municipality
 - Sell or lease political subdivision's (surplus) property without complying with public sale requirements and sell for less than FMV
 - Receive political subdivision's (surplus) property without complying with competitive bidding
 - Not required to comply with prevailing wage laws...
 - Can make loans to any person, firm, partnership or corporation

NEW! Added powers specific to County Land Banks



County Land Banks wield additional powers under Ohio law:

- Receive statutorily dedicated **tax revenue**
 - Up to 5% direct allocation from County Delinquent Tax and Assessment Collection (DTAC) funds
- Select property for **no-bid acquisition** from counties' delinquent & forfeited land lists
- **Keep sale proceeds** from property sold on the open market
- Take donations of land in lieu of tax foreclosures
- Hold property in **tax-exempt** status
 - Automatic - no application required to qualify for exempt status

NEW! Added powers specific to County Land Banks – *cont.*



County Land Banks wield additional powers under Ohio law – *cont.*:

- Exercise **sovereign immunity from civil lawsuits**
 - Exempt from Ohio's environmental liability laws during land bank's ownership
- Transfer property to private sector for-profit entities for productive re-use
 - Land banks have considerable flexibility to **encourage site assembly, economic development & renovating residences**
 - County Land Banks may **sell property at less than FMV**
 - Land assembly has great potential for economic development initiatives
 - Tie-in with TIF, PACE, Port Authorities & Opportunity Zones

NEW! Added powers specific to County Land Banks – *cont.*



County Land Banks wield additional powers under Ohio law – *cont.*:

- **File Tax Foreclosure Complaints**
 - Administrative procedure
 - County Boards of Revision
 - Property directly transferred through tax foreclosure process - either “expedited” or judicial, respectively
 - Judicial procedure
 - County Courts of Common Pleas
 - Adjudication
- Net effect: clear title in County Land Bank’s name & all future owners
 - Title completely cleansed of all blemishes
 - But for federal tax liens

Administrative Tax Foreclosures

- Tax foreclosures took ~ 2 - 3 years
- Ohio House Bill 294 (2005)
 - Amended by Ohio Senate Bill 353 (2009)
- **NEW R.C. 323.65 to R.C. 323.79**
- Administrative tax foreclosure process in county boards of revision
- Not governed by Civil Rules of Procedure
 - Stripped-down or outright removal of process elements:
 - Answer filings, time extensions, pre-trials, default motions, summary judgment
- Still require notice & service (Civ. R. 4)



Administrative Tax Foreclosures – *cont.*



- Expedites foreclosing on a tax delinquent vacant & abandoned property
 - H.B. 294 limits the scope of administrative proceedings to:
 - Whether the taxes or assessments are due and owing?
 - Whether all parties are served and given an opportunity to be heard?
 - Whether property is statutorily “unoccupied”
 - Land Bank completes Land Affidavit expressing interest in acquiring property & evidence of statutorily “abandoned” land

Administrative Tax Foreclosures – *cont.*



Administrative process limited solely to unoccupied properties:

- No buildings or other structures located on the property & otherwise unoccupied
- Buildings or other structures are not physically inhabited as a dwelling
- Buildings or other structures in which no trade or business is actively being conducted
- Property uninhabited & no signs undergoing a change in tenancy or improvements
- No person, trade, or business visibly present from an exterior inspection
- Utility connections are not serving the property or are not being actively being billed
- Property boarded up or otherwise sealed
- Property, upon visual inspection, is unsecured, vacant, or vandalized
- Dumping or noticeable accumulation of trash, rubbish or debris.
- Property condemned as a nuisance by the local political subdivision

Administrative Tax Foreclosures – *cont.*



If Land Bank's tax foreclosure successfully prosecuted, **property's title cleansed of all blemishes:**

- Land Bank asserts in its Complaint the ***alternative right of redemption***
 - Ohio is the only known jurisdiction in the country to deploy this mechanism
 - Compare: property is typically exposed to a sheriff sale
- Common law recognized right redemption
 - An arrow in the quiver of property rights available under Ohio law
 - Right of redemption clouds title until extinguished
- Ohio law amended to allow for an "alternative" extinguishing redemption not tied to a "sale"
- NEW R.C. 323.78 right of redemption extinguished as a function of time, not a function of sale
 - With foreclosure adjudication, redemption automatically extinguished after 28 days
 - Self-executing; sheriff's deed executed on 28th day
 - Delinquent taxes still can be paid up to 28th day

Available Means for Land Banks to Acquire Property



Property title cleansed of all blemishes:

- Selecting parcels from county's Delinquent Lands list (R.C. 5721.18)
- Selecting parcels from county's Forfeited Lands list (R.C. 5723.01)
- Tax foreclosure process (R.C. 323.65 to R.C. 323.79)
 - Either administrative (BOR) or judicial (common pleas court)

Property remains subject to title blemishes:

- Commercial & institutional lenders' foreclosed property inventories
- Donations in lieu of tax foreclosure (R.C. 5722.10)
- Arm's length purchases (R.C. 5722.06)

Land Banks as Another Economic Development Tool

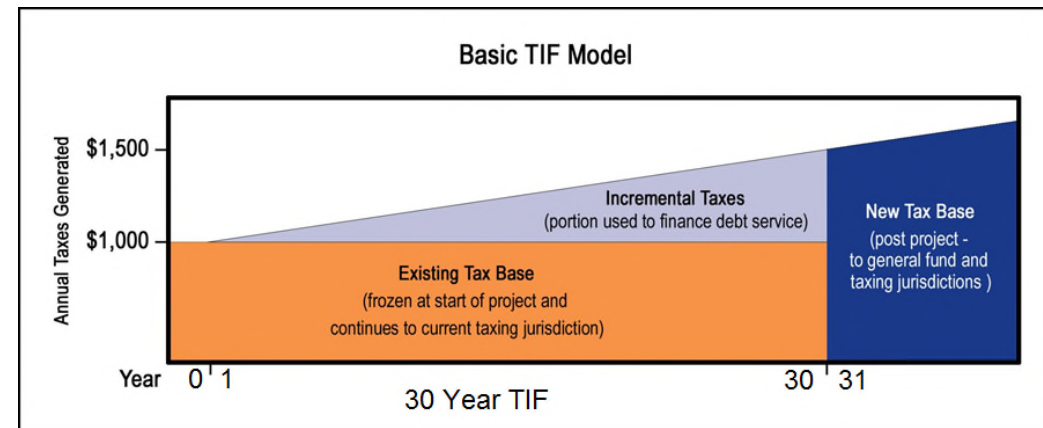


- Overlay community & economic development & neighborhood stabilization onto the tax collection process
- County Treasurers act as tax-base “expanders” and community development agents
 - **Tax collection & tax foreclosure as an economic development strategy & community development catalyst**
- Land Banks as **public-private partner** in blight clearance projects, land development & park assemblages, housing & economic development projects
- Land Banks as transactional facilitators

Land Banks as Another Economic Development Tool – *cont.*



- Tax Increment Financing
- Community Reinvestment Areas
- Enterprise Zones
- New Community Authorities
- Port Authorities
- New Markets Tax Credits



Source: "Tax Increment Finance Best Practices Reference Guide" (CDFA and ICSC), page 2.

Strengths, Weaknesses, Opportunities & Threats



County Land Bank Strengths:

- Specifically excluded from aspects of Ohio's Sunshine and Public Records Laws
- Statutorily dedicated funding
- Broad powers
- Freedom from public bidding & procurement processes
- Single / laser-focused mission
 - Land banks acquire, hold & dispose of property

SWOT Analysis – *cont.*



County Land Bank Weaknesses:

- Can't levy taxes
- Can't issue tax-exempt bonds
- Can't appropriate or condemn property
- Can't grant tax abatements
- Can't directly receive County CDBG
- Required to follow Ohio's Sunshine and Public Records laws
- Any contested element of tax foreclosure complaint?
 - Kicks Land Bank's foreclosure to County Court of Common Pleas
- Even with adjudication order of foreclosure, Land Bank must wait 28 days to allow owner to redeem owed taxes

SWOT Analysis – *cont.*

County Land Bank

Opportunities:

- COVID-19's economic & real estate market aftermath
- Ohio Senate Bill 112
- Proposed federal legislation:
- Growth across US as more states see value of land banks



SWOT Analysis – *cont.*



County Land Bank Threats:

- Current era's lack of trust in institutions
 - "Why are you taking peoples' properties?"
- Depending on local politics, personalities & dynamics:
 - Local elected officials deciding against use of statutorily authorized tax revenues
 - Ideological differences
 - Could become just another staffing responsibility for local economic development practitioners...
 - ... without a clear payoff for the effort
- Ohio Supreme Court's plural opinions in *Feltner Case* & pending federal litigation

Questions?

Tyler Compton



tcompton@bricker.com



614.227.4875

Jeffry Harris



jharris@bricker.com



614.227.4860

