County Treasurers Association of Ohio
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The Lay of the Land (Bank): A Practical Guide

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Presenters:
Gus Frangos, Esq.
President and General Counsel
Cuyahoga Land Bank

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Preface:

Land banks throughout the country, generically speaking, have been around for a while. Notably, the movement started in the 1970s in Ohio by virtue of R.C. 5722.01 et seq. With the fallout from the real estate and foreclosure crisis of the mid-2000s and beyond, independent county land banks, also originating in Ohio, have become the new breed of land banks. They come with transactional flexibility, extended statutory capabilities, funding and interconnections with the various county offices, particular as it pertains to tax foreclosure of vacant and abandoned properties.

This publication is intended to be an easy-to-read primer, without too much "legalese." There is much to delve into regarding these new land banks "on steroids" as they are often called. This publication will provide the reader with a broad exposure to the purposes, mechanisms and powers of county land banks.

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I. Storm Winds, History and Context Leading Up to County Land Bank Legislation

II. Statutory Construct of County Land Banks vs. Municipal Land Banks R.C. Chapters 1724 and R.C. 5722

A. History of R.C. 5722.01 *et seq.*

Ohio municipal land banks were enabled by state statute in the 1970s pursuant to R.C. Chapter 5722. The effort then, as now, was to afford cities, counties and townships the opportunity to take control of abandoned, distressed, unproductive and tax foreclosed properties. In legacy cities such as Cleveland, such properties can become neighborhood nuisances and need to be addressed in a managed way. In other words, if a property becomes delinquent, vacant and abandoned, and no one purchases the property at a tax foreclosure sheriff's sale, at least the municipality can acquire it, bank it, and hopefully make future productive use of it And, although municipal ownership carries with it the obligation and cost to maintain the lots and remove debris that occasionally is dumped thereon, at least the public controls the lot and is able to enter the premises without risking trespassing claims and having to go through the lengthy nuisance abatement procedures just to enter the property to cut high weeds. Land banking in this regard has been a useful tool for municipalities.

Obviously, cities try to code enforce and collect against derelict owners for nuisance abatement services performed by the municipality. But, the problem is that these derelict owners are often insolvent, uncollectible, can't be found, are deceased, out of reach of service of process in the case of out-of-state legatees or irresponsible owners. The public still demands a modicum of protection from these pesky overgrown and blighted lots, and hence, the advent of municipal land banking.

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The significance of these land banks is that they can acquire tax foreclosed properties at no cost and hold them tax free. All that is needed for a political subdivision to create the traditional land bank is to pass a land bank ordinance. This automatically creates a direct acquisition connection between these tax delinquent properties, and the traditional land bank through the tax foreclosure process. Although counties and townships can form traditional land banks, this paper will discuss the topic in the context of the more common municipal land banks.

A municipal land bank is in every respect another office or bureau of the local government. There is nothing "private enterprise" about these traditional municipal land banks of the 1970s. While very useful, these traditional land banks can be said to be more "passive" in that they compete for funding with other government services such as police, fire, recreation etc. For this reason, municipalities rarely accept abandoned structures due to the higher exposure to liability and maintenance that come with ownership of structures as opposed to vacant lots. When acquired by a traditional municipal land bank, a property is classified as municipally-owned land which can only be conveyed according to often-rigid standards imposed by various ordinances and charter requirements of the particular city.

B. Merging of R.C. Chapter 5722 onto R.C. Chapter 1724 Community Improvement Corporations

Enter county land bank corporations. In 2009, S.B. 353 was enacted which reformed many sections of the Ohio Revised Code relating to land use, land banking and tax foreclosure. This Act created a new breed of county land bank with new powers. S.B. 353 essentially merged R.C. Chapter 5722 governmental land bank powers with the powers of R.C. Chapter 1724 private, non-profit Community Improvement Corporations (CICs). Originally, R.C. Chapter 1724 existed to allow political subdivisions to create these private, non-profit government-

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purposed CICs to focus on a particular economic or industrial development activity or project on behalf of the creating subdivision. S.B. 353 amended R.C. Chapter 1724 to add another type of CIC activity known as county land banking. The purpose and effect of this was to put traditional R.C Chapter 5722 land banking on "steroids" by merging that chapter with the private, government purposed non-profit corporation powers in R.C. Chapter 1724. Indeed, these independent statutory powers very much mirror the powers of a for-profit corporation, and provide for independent governance outside of government.

In other words, traditional R.C. Chapter 5722 land banking by county government can be undertaken through the agency and instrumentality of a "super-charged" CIC. This new class of CIC – a county land bank –not only embraces economic and industrial development, but also community development, which is often necessary to jump start or "set the table" for economic development.

Accordingly, land banking today is no longer limited to political subdivisions. Land banking policy and powers can now be practiced in these private, government-purposed non-profit corporations. R.C. Chapter 1724 among other statutes enumerate the expansive transactional capabilities and powers of county land banks which are similar to the general powers of all Ohio non-profit corporations prescribed in R.C. 1702 and private corporations prescribed in R.C. 1701.

S.B. 353 was being heard and debated by the General Assembly in 2008, at the height of the foreclosure crisis. The state and its large cities were confronted with an aggressive problem which required an aggressive tool. R.C. Chapter 1724 county land banks were to become that tool.

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III. Nature of County Land Banks: Case Law and AG Opinions

A. "Agent" of Governmental Unit

There is not much relevant case law regarding the nature of CICs. There is no question, however, that a CIC is an unusual creation in that it is a private, non-profit corporation, but with several public features (e.g., "…a basic community improvement corporation is a hybrid entity that possesses certain features of both a public and private nature.") Op. Atty. Gen. 1979-061; ("…a CIC possesses certain characteristics that are suggestive of public status…[h]owever a CIC is created as a nonprofit corporation and not as a governmental entity;…it is a privately organized entity that performs a public purpose occupying a status no different from that of countless other non-profit corporations, the private nature of which is indisputable.") Op. Atty. Gen. 2000-37; ("The CIC may incur debt and issue obligations to carry out its purposes; such debt is solely that of the corporation and not secured by the pledge of moneys from a political subdivision." Op. Atty. Gen. 1991-071; ("…the debts incurred by the corporation are solely those of the corporation, not the political subdivision…") State, ex rel. Burton v. Greater Portsmouth Growth Corp., (1966) 7 Ohio St.2d 34. See also: Ohio Const. Art. VIII, Section 13;

Taken together, the above authorities would suggest that the "agency" relationship that is created by R.C. Chapter 1724 is akin to that of independent contractor as between the CIC and the government that created the corporation, because liabilities are isolated to the corporation and not visited upon the county in the conventional *respondeat superior* sense.

Additional features of a county land bank include:

1.) it is fully deemed an "electing subdivision" (a traditional land bank) under the Ohio land bank statute (R.C. Chapter 5722);

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2.) as of 2014, is clothed with sovereign immunity under R.C. Chapter 2744;

3.) CICs are subject to Sunshine Laws and open records requirements;

4.) being able to be rated on, and be a part of the county's health plan group which can reduce the CIC's health insurance charges. See: R.C. 9.833(A) and (B)(5);

6.) is subject to annual audit by the Ohio State Auditor;

7.) Not being a "constituent" part of the county's audit so long as the county is not directly funding the CIC nor supplying its employees.

B. Governance

The enumerated powers of a R.C. Chapter 1724 corporation are very much similar to private for-profit corporations. This makes CICs very nimble and capable of transacting very efficiently. In addition to the enumerated powers, the corporate governance consists of two county commissioners and the county treasurer who are board members by virtue of their elected offices. In this sense, they are *ex officio* members. There must be at least five board members. Board membership must also have a real estate professional and a representative selected by the mayor of the largest municipality within the county. In select Ohio counties, townships are entitled to representation on the board (depending on population). The mayor of the largest municipality is able to select a representative, and, of course, can serve him or herself. Aside from other statutorily prescribed board membership, the three *ex officio* members select the remaining board members, up to nine members. Their selection must be unanimous.

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County land banks under R.C. 1724 are started by county commissioner resolution which authorizes the treasurer of a county to file articles of incorporation. The articles are first reviewed by the State Attorney General, then sent to the Secretary of State for filing like any other corporation. Once incorporated, the county commissioners must pass a resolution which authorizes the county and the CIC to enter into an agreement between themselves pursuant to a county prescribed "plan" which is adopted by the county commissioners and passed by yet a third resolution. Once these resolutions are passed, the *ex officio* members select the remaining board members who in turn adopt by-laws for the common governance of the corporation (i.e. meeting times, authority of officers, quorums, etc.) Where the by-laws of the R.C. 1724 corporation are silent, the governance provisions of R.C. 1702 may be resorted to, which is the very broad governance scheme for Ohio non-profit corporations.

Because CICs are non-profit corporations, they may--and should--seek federal exempt status under one of the 501(c) non-profit classifications. Alternatively, they can operate as exempt government-purposed organizations under Section 115 of the Internal Revenue Code. At least two Ohio county land banks operate as "Section 115" exempt corporations--one through opinion of counsel, and the other through formally procured revenue ruling.

IV. Differences Between Municipal and County Land Banks

Municipal land banks are just that; they are created by simple ordinance whereby a city declares it wants to be a "land bank" city. These municipal land banks are, in all respects, offices within government, usually assigned to a community or economic development department. As a government office, it is subject to all of the rules and regulations having to do with transferring or receiving properties. In most cases, transfers in and out require ordinance authority, either

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individually or in some omnibus fashion; properties must be sold at fair market value unless deed restrictions are imposed, or the transfer is made subject to some governmentally approved project agreements; they are technically subject to advisory council review by neighborhood councils; and municipal properties must be offered for resale on the open market after fifteen years in the municipality's inventory. A major distinction is that when a municipal land bank sells a property, any sale price in excess of the municipality's holding cost, must go back to the applicable taxing districts which overlay the property location. This is not required with county land banks. Also, prior to passage of S.B. 172 in 2014, only tax delinquent properties could be held tax free automatically; non-delinquent acquisitions required municipalities to apply for real property exemption with the Ohio Department of Taxation. S.B. 172 eliminated that requirement.

County land bank sales and purchases do not have fair market value requirements, legislative authorization or reimbursement to any taxing district. A county land bank is not required to publicly bid properties and can make in-kind transfers or participate in the equity of a project whether as a seller, landlord, distributee of cash flow or capital proceeds, and can charge developer fees for projects in which it serves in the development role. In many respects, county land banks are real estate companies.

Despite the foregoing flexibilities, virtually every county land bank publicly bids its projects; maintains open records and open meetings, makes a strong commitment to diversity of staff and contracting with outside vendors. To do otherwise, would quickly diminish the county land bank's reputation and standing in the community, and subject the county land bank to criticism for not using best practices. By employing "best practices," county land banks are able

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to achieve private sector cost efficiencies while being a robust neighborhood partner in the non-profit world.

V. County Land Banks, Tax Foreclosure and Community Development

Amongst the many policy purposes embraced by S.B. 353 (Ohio's County Land Banking Statute), was the intentional placement of "community development" powers upon the treasurers, auditors, boards of revision and sheriffs of county government -- primarily though, the county treasurer.

A. H.B. 294 Expedited Administrative Tax Foreclosure

Until 2004, county treasurers served as effective collectors of real estate taxes. They typically foreclosed upon delinquent properties based on length of delinquency and/or amount of delinquency. Upon filing of the case, tax foreclosure typically took two and three years and was prosecuted only in the common pleas court. H.B. 294 passed in 2004 and later modified in S.B. 353 changed all that. H.B. 294 reforms are now situated as new sections R.C. 323.65 to R.C. 323.79. H.B. 294 created an administrative tax foreclosure process housed in the county boards of revision. For the most part, the prescribed new tax foreclosure procedures disposed of the Civil Rules which were themselves a structural delay to the tax foreclosure process (i.e. answers, time extensions, pre-trials, default motions, summary judgment proceedings, etc.) The reforms still require notice and service of process pursuant to Civil Rule 4, consistent with constitutional due process, followed by a notice of final hearing. However, no pre-trial practice exists under H.B. 294 tax foreclosures. This expedites dramatically the process of foreclosing on a tax delinquent vacant and abandoned property. H.B. 294 limits the scope of the proceeding to: 1) whether the taxes or assessments are due and owing; 2) whether all parties are served and

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given an opportunity to be heard; and 3) whether the property is unoccupied (as that term is defined in the statute). It is important to note that board of revision jurisdiction is limited solely to unoccupied properties.

B. Limited Scope of Jurisdiction

Consistent with the limited scope of inquiry as indicated above, this necessarily precludes what could be argued as permissive or compulsory counterclaims. Any such unrelated claims are not waived, but they must be sued in a separate civil case.

C. Non-Applicability of the Civil Rules (For the Most Part)

The Civil Rules can apply to the BOR cases whenever their applicability would assist in the procedural aspects of the case. In the case of service of process, Civil Rule 4 expressly controls. A Rule 60(B) Motion to Vacate an Order or a Rule 45 issuance of subpoenas for example are all limited applications that are permitted but not required by the statute. The only rules that are referenced as being necessary are Civil Rule 4 (service of process) and Civil Rule 5 (serving of papers on all parties that are not in default of the proceeding). Boards of revision are free to make their own rules to implement the statutes. Board of revision cases look and smell like normal tax foreclosure cases to the extent that they are prepared and filed in the same manner as all other tax foreclosure cases. They are filed with the county clerk of courts, pursued by the county prosecutor on behalf of the county treasurer and sold at sheriff sales by the county sheriff. The only difference is that board of revision cases are prosecuted in a different administrative forum and are expedited once all parties are served.

In essence, board of revision cases should be viewed as Civil Rule 1 "statutory proceedings".

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D. Rebuttable Evidentiary Presumptions

H.B. 294 provides that if a number of factual predicates are proven, then the case can move very quickly – which is the purpose behind the foreclosure of vacant and abandoned property. These factual predicates include: 1) whether the property is tax delinquent; 2) whether a party failed to pay the taxes; 3) whether the property is "occupied;" 4.) whether the property can be deemed "abandoned." Most lawyers and jurists will rightly conclude that each one of these items requires a factual determination that can only be determined after a "hearing." But, if a party cannot be found, or if there is no affirmative ability to show these factual predicates, doesn't that end up delaying the case? The answer would be yes were it not for the deployment of rebuttable presumptions embedded in H.B. 294. Accordingly, the delinquency, non-payment of taxes and accuracy thereof, "occupancy," are all rebuttably presumed upon the filing of a H.B. 294 tax-foreclosure proceeding. Therefore, if a party is served that doesn't show up at the proceeding – as is usually the case with abandoned, vacant delinquent properties – the presumptions will not have been rebutted and the factual predicates are conclusively established. This evidentiary tool is essential to the efficient administration of tax foreclosure against absent owners of abandoned properties.

E. Redemption

The most dramatic reform to the tax foreclosure laws is what is referred to as the alternative right of redemption (ARR). Ohio is the only known jurisdiction in the country to deploy this mechanism. Conventionally, once a property goes through tax foreclosure and a decree of foreclosure is entered and journalized, a property is then exposed to sheriff sale. There are two traditional reasons for this. First, the intent is to try to collect the balance of taxes owed;

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and second, once sold, to "confirm" that sale by the forum that heard the case. Only upon a journalized confirmation of a sale by a court entry does the tax delinquent owner's final and last right to "redeem" get extinguished. This right is called the inchoate right of redemption, and it is deemed to be a property right which clouds title. Thus, to eliminate the "property right" and clear the title, 1) a sale; 2) that is confirmed must occur under the traditional system. In 2004 and later in 2009, and again in 2014, the applicable laws were amended to allow for an "alternative" method of extinguishing the right of redemption that is not tied to a "sale" followed necessarily by a "confirmation." Instead, R. C. 323.78 now provides that extinguishment of the right of redemption can occur as a function of time.

Accordingly, R.C. 323.78 provides that after a journalized decree of tax foreclosure, the right of redemption automatically is extinguished in twenty-eight (28) days if the taxes are not finally paid within that time. The expiration of the twenty-eight (280 days acts as a self-executing "confirmation." This process promotes land banking by avoiding sheriff sales altogether and the incidental time and cost associated with advertising an abandoned property for sale. Once the twenty-eight (28) day period expires, the sheriff can execute a deed directly to a county or municipal land bank.

F. How do Tax Foreclosed Properties Get to a Land Bank: The Process

Once the county treasurer (the Client) refers a case to the county prosecutor (the attorney for the Client) for tax foreclosure, the prosecuting attorneys begin the research of the case which includes title work, identifying the correct parties in interest, whether there are *lis pendens* cases (such as bankruptcies, probate cases, private foreclosure stays), whether the owner is currently serving in the military and whether the title work and deed description are accurate.

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As part of the process, the county prosecutor will send a "land affidavit" form to those cities that have established a land bank asking them to complete and return the land affidavit to the prosecutor. The affidavit reply from the municipality or the county land bank tells the county prosecutor: 1) whether the property is "unproductive," meaning it is unoccupied and tax delinquent; and 2) whether the municipality wants the property conveyed to the municipality by direct transfer (using the ARR). The land affidavit gets filed on the traditional clerk of courts' docket (as is the entire board of revision case) and tells the court or board of revision whether a land bank is interested in acquiring the property. The land affidavit also informs the prosecutor in which forum to file the case. If a property is occupied, the case gets filed judicially. If vacant, the case typically gets filed with the board of revision.

Of course, land banks can acquire property through donations or purchases on the open market or by agreement with FNMA, HUD and by deed-in-lieu of foreclosures. Tax foreclosure by far is the largest acquisition pipeline for land banks.

VI. Super Title Clearance

A. Taxes.

The purpose of R.C. 5722 land banking is to allow land banks to acquire properties with long-accumulated uncollected taxes and to extinguish these taxes which will not otherwise ever likely be collected. These are phantom receivables to the county. If these properties are ever to be repurposed and placed back onto the duplicate, the first thing that a new property owner will ask before investing in that property is whether the property title is clear, meaning no more subordinate liens and old taxes. The tax foreclosure accomplishes this task, and makes it easy for land banks to acquire properties with these fresh titles. Whether it is for a simple side lot

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owner or a large commercial redevelopment, marketable and clear title are paramount to any efforts to repurpose the land and put it back onto the tax rolls.

B. Other Liens and Encumbrances

Because a tax foreclosure decree wipes out all subordinate liens, parties which do not appear and defend their mortgage or other subordinate liens, lose all further right, title and interest into these liens. Moreover, subordinate lienholders must be aware that unlike a private tax foreclosure, the minimum bid at a tax foreclosure sheriff's sale is the tax delinquency itself. Regardless of the true value of a property, no appraisals are required and the property sells for the delinquent taxes. If someone pays the taxes at the sheriff's sale, that purchaser can acquire the property. If no one pays the taxes prior to the extinguishment of the redemption right, then a land bank can acquire the property free and clear of all taxes and assessments and liens of any kind.

C. Municipal Nuisance and Assessment Liens

Up to 2014, there was some ambiguity amongst practitioners about municipal assessments such as sewer, water or other nuisance abatement liens attributed or attached to the property. Unpaid sewer and water bills and nuisance abatement charges such as grass cutting, board up and demolition charges can be certified to the tax duplicate as liens on the property. Uncertainty whether these liens were extinguished in a tax foreclosure was cleared up in 2014 by virtue of S.B. 172. By law, these charges and liens are now extinguished once a property transfers to a land bank. This extinguishment applies to a land bank's subsequent transferees as well thereby assuring clean and marketable title. In effect, the land bank and its transferees are deemed, as a matter of law to be "bona fide purchasers for value." This was necessary in order

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to make certain that titles coming to a land bank from tax foreclosure were truly marketable. This is critical to repurposing properties. By cleaning title, economic and productive re-use of a property is made possible. Of course, municipalities and utility service providers can preserve their right to pursue money damage claims for the services provided.

VII. Practical Benefits and Application

A. Community Development and Stabilization

The significant accomplishment achieved by the tax foreclosure reforms was to overlay community development and neighborhood stabilization onto the tax collection process. No longer must the county treasurer be a tax collector only; now treasurers and intra-county agencies can serve as tax-base "expanders" and community development agents. This means that the county treasurer can perform tax collection and tax foreclosure in a far more strategic and catalytic way. In collaboration with city code enforcement officials and development departments, CDCs and other stakeholders who do the hard work of neighborhood stabilization, the county treasurer, in effect, can now assist in blight clearance projects, land and park assemblages, housing and economic development projects. This is all done through the vehicle of a highly nimble, transactional county land bank.

B. Economic Development

Today, long-delinquent and abandoned properties can be researched and tracked through the board of revision expedited foreclosure process and directly transferred to county land banks using the ARR to acquire properties and make them productive once again. Examples include parcel transfers in the Village of North Randall which led to the Amazon development at the former Randall Park Mall; the Heinen's Supermarket in Warrensville Heights which

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developed a new distribution facility which allowed it to remain headquartered in Warrensville Heights; the Greater Cleveland Fisher House extended-stay project for the families of Cleveland VA hospital patients, and dozens of smaller and larger developments have resulted in transformational neighborhood projects. This not only results in stability but converts long abandoned phantom tax receivables into solid, long-term tax paying projects, thereby expanding the tax base. As of April 2018, the Cuyahoga Land Bank has facilitated the renovation of just over 1,600 homes; has demolished over 6,500 blighted houses and provided facilities for over 100 for-profit and non-profit organizations throughout the County.

C. Social Service and Faith-Based Engagement

Not all properties can meet a profit threshold sufficient to justify private enterprise development and rehabilitation of a property. This is due either to the excessive renovation costs, depressed market and/or both. However, demolition can still sometimes be averted. Because the tax foreclosure reforms permit more expedited acquisition of title-cleansed properties, social service and faith-based groups often can acquire properties from a county land bank in order to house the various programs of the organizations. This is possible because for these groups, meeting a certain profit threshold is not as relevant as securing an affordable home or facility to renovate which will meet the facilities needs of that organization. As such, many special population groups such as veterans, children aging out of foster care, re-entry, transitional housing, resettled refugees, etc. have acquired homes for as little as a dollar to house their programs. Most of these groups complete the renovations through their traditional philanthropic network. This would not be possible and the buildings would remain blighted and tax delinquent unless they could be acquired for a very low cost/no cost price. The Cuyahoga Land Bank, for

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example, has completed projects with small groups and churches, as well as well-known non-profit organizations such as the Cleveland City Mission, Lutheran Metro Ministries, Purple Heart Veterans and Habitat for Humanity.

D. Limited Transactional Bureaucracy

By design, county land banks provide the benefit of minimal transactional bureaucracy. Once end-users and buyers are screened and approved, the transactional process is prompt, and decisions are made at the staff leadership level without the necessity of multiple layers of government review. Of course, all projects, by whomever performed, must abide by local building, housing and zoning laws.

VIII. Enhanced Nuisance Abatement Enforcement for Municipalities: R.C. 715.261

A. Timing and Effectiveness of Nuisance Abatement Liens

If a municipality spends resources abating nuisance conditions on a property (grass cutting, board-up, demolition), Ohio law provides a means for the municipality to try to recover those charges against the owner of the property.

Accordingly, R.C. 715.261 provides in pertinent part, that a municipality may certify nuisance abatement costs to the county auditor who then places such charge onto the tax duplicate for that property. The statute states that the costs so certified will relate back in priority of time to the date the costs were incurred if certified within one year of the services. The one-year period only relates to the ability to relate back and not the validity of the liens and charges themselves. If filed after one year, they will simply be considered filed as of the date of filing. These are treated as added assessments and may be foreclosed upon by the county treasurer along with any primary delinquent taxes.

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B. Choice of Remedy

A municipality may not only direct its nuisance abatement charges to the tax duplicate which may be foreclosed upon by the county treasurer, the municipality may also pursue its own foreclosure action for its portion of the charges so certified. And if it does so, the property will be exposed to sheriff sale with the taxes and the municipal liens in that priority. If there is no bid on the property, the property would default to the municipal or county land bank with the taxes extinguished, or, if no one bid on the property, the property would escheat to the State of Ohio and be placed on the "State Forfeiture list." Municipalities in all cases may pursue a common civil "money damage" claim for the cost of the nuisance abatement expenses without reference to certifications, foreclosures or lien filings.

C. "Agency" Relationship with Municipalities

Some smaller municipalities lack the capacity or resources to perform nuisance abatement activity, or pursue foreclosure or collection litigation to recover their charges. R.C. 715.261 authorizes municipalities and county land banks to enter into agency arrangements whereby county land banks are authorized to step into the shoes of the municipality and act as its agent both for nuisance abatement activities and collection.

Because county land banks do not possess direct police powers of government, cities must first exercise such police powers by declaring a nuisance according to their respective nuisance abatement ordinances. Once so declared a nuisance, the municipality and county land bank can agree to utilize the services of a county land bank as the municipality's "agent" to abate the nuisance and collect the nuisance charges against the properties or the owners thereof.

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IX. Expedited Repurposing of Tax-Forfeited Properties

A. Current Process for Unsold Tax Foreclosed Properties

Once a decree of tax foreclosure is journalized, if the property is not directly transferred to a land bank pursuant to R.C. 323.78, the property will be exposed to sheriff sale. At a sheriff sale, the minimum bid consists of the taxes, assessments, penalties, interest, costs and any nuisance charges placed on the duplicate. In other words, the liens of subordinate lienholders do not get marshalled as in a private foreclosure. Nor is the minimum bid a percentage of appraised value. Value has nothing to do with a tax foreclosure sale. Attorneys representing private financial institutions should be wary of this distinction. Simply filing an answer and even appearing at a final hearing will not protect the liens of subordinate lien holders or mortgagees.

If there are no bidders at a tax foreclosure sale, and no land bank elects to acquire the property, the property will escheat to the State of Ohio pursuant to the provisions of R.C. Chapter 5723. Each county's auditor or fiscal officer serves as the fiscal representative for the State of Ohio. While on forfeiture, the tax delinquent owner's right to redeem still technically exists. Approximately once or twice a year, these properties will be exposed to an auditor's sale where there is legally no minimum bid requirement. If the taxes continue to remain unpaid, the highest bidder wins without reference to appraised value or what the amount of taxes were.

In the case of tax foreclosed properties and State of Ohio forfeiture sales, the purchaser in all cases acquires fee simple title free and clear of all subordinate liens, utility charges, taxes and assessments.

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B. Tax-Forfeited Properties and County Land Banks

Once a property escheats to the State of Ohio following a decree of foreclosure, followed by exposure to sale with no bidders, county land banks are given special statutory rights to access the property for purpose of inspecting the physical and environmental condition of the property. This allows the county land bank to quickly assess the property and to garner interest from the private sector to acquire, repurpose and renovate a property. It is easier to solicit private development interest if the redevelopers are given an opportunity to inspect the property for redevelopment purposes. Ultimately, if a property is on the State Tax Forfeiture list, county land banks are permitted to request in writing to the auditor or fiscal officer to deed the property outright to a county land bank. See: R.C. 5723.04(A). State law only affords this opportunity to county land banks. The theory behind this provision is that once a property has been delinquent, often for many years, is foreclosed upon, and is exposed to sale with no bidders, then it becomes incumbent upon the county government to try to facilitate whatever efficient means are legally available for making the property productive once again. Once so acquired by a county land bank, the property transfers in fee simple free of all taxes, assessments, subordinate liens utility and nuisance abatement charges. All redemption rights are thereupon immediately terminated. See: R.C. 5723.04.

X. Funding of County Land Banks

A. "DTAC"

When county land banks were established in 2009, in addition to the many transactional enablements and powers, there was an obvious need to identify reliable and recurrent funding in order to allow these enablements and powers to be exercised. Because political subdivisions

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have their own priorities and budget constraints, funding much-needed county land banks was a challenge. In order to accommodate this concern, S.B. 353 provided that county land banks could be funded through the use of delinquent tax assessments collection funds known as D-TAC which, in simplistic terms, consists of a percentage of the penalty and interest on collected delinquent taxes. In other words, no direct and primary taxes are used to fund county land banks unless a taxing district chooses to do so. Counties may authorize up to five percent (5%) of this collected delinquent tax to be placed into what is known as the county land reutilization fund to support the activities and operations of county land banks. Inasmuch as collected delinquent taxes carry a ten percent (10%) penalty on the amount of the late and delinquent taxes due, this sufficiently provides funding to county land banks but without utilizing budgeted taxes from the various taxing districts. In Cuyahoga County for example, this amount results in Seven Million Dollars ($7,000,000) annually. This reliable funding stream in turn has allowed the Cuyahoga Land Bank to building its programming, its operational infra-structure and hire the necessary professionals to execute the complex mission and real estate transactions of the Cuyahoga Land Bank.

B. Property Sales Revenue

The core D-TAC funding to the Cuyahoga Land Bank has allowed it to build sufficient operational infrastructure. This has resulted in nationally recognized "pooling" relationships with FNMA and HUD to acquire their low value assets for a nominal amount, rather than having these large agencies unwittingly traffic in these properties like junk bonds in the speculation market. Once acquired by county land banks, these properties are triaged, inspected, and either demolished or transacted to qualified renovators. The Cuyahoga Land Bank in particular utilizes

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what is called its deed-in-escrow program which allows qualified renovators to acquire a property for renovation, but the deed does not transfer until all the renovation is completed. "Completed" means completion of a code-compliant renovation specification prepared by the county land bank. In this way, these properties are transacted to responsible owners and are responsibly renovated. In each case, the Cuyahoga Land Bank negotiates a highly incentivized price in order to promote the renovation of these distressed properties. Because of the volume of transactions of this nature, this provides a significant source of revenue for many county land banks.

C. Related Services

Several county land banks, and in particular the Cuyahoga Land Bank, provide property management software systems and other transactional technical assistance for which fees for services are collected to help support the mission of the county land bank. These services can range from inspections to title examinations, transactional documents, presentations and property management systems.

D. State Forfeiture Sales

As indicated above, county land banks have a unique ability to pull properties from the State Forfeiture list when suitable redevelopers are identified and matched with these abandoned and tax forfeited properties. County land banks typically have their ears to the ground in trying to find suitable and qualified redevelopers. Often times these redevelopers are referred by other public policy makers, code enforcement officials, housing courts, and development departments of cities and counties. When these referrals occur, county land banks are able to conduct research

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and ultimately acquire properties from the forfeiture list for subsequent resale to qualified redevelopers.

XI. Conclusion

County land banks have become one of the most potent tools for promoting community development. Ohio's land bank statute is the only statute in the country that has integrated community development policy, tax foreclosure reform, land banking, transactional capability and funding all into one cohesive statutory construct. County treasurers are no longer simply collectors but are an integral part in advancing the community development priorities of the community and ultimately upholding their first and primary duty which is to protect and expand the county tax base on behalf of its citizens. For more information on county land banking, feel free to contact Mr. Gus Frangos at 216-698-8772 or James Rokakis at 216-515-8300.

XI. Questions, Answers, Discussion

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APPENDIX

1. Op. Atty. Gen. 1979-061
2. Op. Atty. Gen. 1991-071
3. Op. Atty. Gen. 2000-037
4. Ohio Const. Art. VIII, Section 13
5. State, ex rel Burton v. Greater Portsmouth Growth Corp., (1966) 7 Ohio St. 2d 34
6. (H.B. 294) R.C. 323.65 to R.C. 323.79
7. R.C. 715.261
8. R.C. 1724.01 et seq
9. R.C. 5722.01 et seq.
10. R.C. 5723.04
11. R.C. 9.833

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