



ACQUISITION & DISPOSITION POLICIES AND PROCEDURES

May 2021

SECTION 1: ACQUISITION & DISPOSITION POLICY

- A. BAM'S PURPOSE:** Blight Authority of Memphis, Inc. ("BAM") is a public-benefit nonprofit corporation, which was established by the Memphis City Council, pursuant to the Tennessee Local Land Bank Program¹, to operate a land bank to support economic revitalization through returning vacant, abandoned, and tax-delinquent properties in Memphis to productive use.²
- B. POLICY PURPOSE:** BAM's Board of Directors (the "Board") has adopted the Acquisition and Disposition Policies and Procedures (the "Acquisition & Disposition Policy" or the "Policy") to provide a framework for a consistent process for acquisition and disposition of real property in the land bank to assist BAM in fulfilling its role equitably, effectively, and efficiently and to ensure that BAM is using its powers in a manner that aligns with BAM's mission, furthers BAM's goals, and supports the initiatives of the City of Memphis (the "City" or "Memphis") and its communities.
- C. INTENT FOR USE:** The Board intends to use this policy to guide BAM's acquisition and disposition of real property. The Board intends for this Policy to be a "living" document, which will be reviewed and updated regularly as BAM continues to develop and implement its programs and refine its policies and procedures for acquisition and disposition. BAM will follow this Policy to ensure the integrity and efficiency of its programs and processes. However, the Board reserves the right to exercise its discretion and allow exceptions to this Policy as it deems necessary or appropriate. This Policy should not be interpreted to limit the authority granted to BAM under the law or to impose new legal obligations or restrictions upon BAM.
- 1. POLICY, AGREEMENTS, & OTHER DOCUMENTS:** BAM will use this Policy in conjunction with BAM's agreements, forms, and other policies. BAM may enter into agreements with the City related to the use and transfer of properties within Memphis jurisdictional limits, and BAM may manage properties outside of Memphis limits only if granted such authority in an intergovernmental agreement.³ If a provision of an agreement between BAM and a governmental entity conflicts with a provision of this Policy, the provision of the agreement will control and the conflicting provision should be modified as necessary to resolve the conflict.

¹ See Tennessee Local Land Bank Program at T.C.A. §13-30-101, et seq.

² See Memphis, Tenn., Resolution Authorizing Establishment of the Blight Authority of Memphis, Inc. (Nov. 3, 2015), ("Resolution"); See also <https://www.memphistn.gov/government/boards-and-commissions>.

³ See T.C.A. § 13-30-110(d).



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2. **POLICY & APPLICABLE LAW:** BAM must abide by all applicable laws, whether or not the laws are specifically mentioned in this Policy. This Policy paraphrases, quotes⁴, and summarizes certain laws that are applicable to BAM and/or relevant to BAM's acquisition and disposition of real property. Citations to referenced laws are provided in footnotes for any reader interested in reviewing the full text of the law. If any provision of this Policy is found to be in conflict with any applicable law, the law shall control, and this Policy should be modified to the extent necessary to resolve any conflict.

D. APPLICABILITY: This Policy includes policies and procedures that are generally applicable to BAM's acquisitions and dispositions as well as policies and procedures that are only applicable under specific circumstances. Section titles and captions may be used as reference to provide context in interpreting the applicability of the provisions.

E. TERMS AND DEFINITIONS:

The following terms, as used in this Policy, have the meanings set forth in this section, unless the context clearly indicates otherwise. Additional terms are defined in the text of the Policy.

1. **ACQUISITION** means an act by BAM of receiving or obtaining title or any other beneficial interest in real property.
2. **BLIGHT (OR BLIGHTED)** refers to the physical conditions of vacant or derelict structures and vacant lots that have been abandoned, neglected, or unmaintained and are causing harm to the surrounding properties and the owners and occupants of those properties. Such conditions are typically characterized by structural damage, deterioration, and dilapidation, environmental hazards, abandoned personal property, uncollected litter, dumping, overgrown lawns, and excessive weed growth.
3. **BOARD** means BAM's Board of Directors, which is the governing body of BAM.
4. **CREDIT BID** refers to BAM's power to acquire property through tax sale auctions for no cash bids where there are no other bidders on a parcel.⁵
5. **DISPOSITION** means an act by BAM of transferring title or any other beneficial interest in real property from BAM to another party.
6. **LAND BANK** means the inventory of real property that is acquired and held by BAM for future disposition in furtherance of BAM's public purpose. This definition is used in this Policy because it mirrors the statutory definition used in the Land Bank Act.⁶ The term "land bank" is often used as a general term to describe an entity that holds and disposes of

⁴ Quotations are omitted here and may be omitted in other sections of the Policy for convenience and ease of review. BAM does not claim to be the author of any quoted text or claim that the full text of any law is stated exactly as written in this Policy.

⁵ T.C.A. §13-30-110(f)(2) provides BAM's power to acquire tax sale properties for no cash bid in the absence of other bidders.

⁶ "Land bank" is defined in the Legislation as "real property, however obtained or acquired and held by a corporation, created pursuant to this chapter, with the intent of acquiring and holding onto the real property so acquired until such a time as the corporation is able to find a willing and able buyer to acquire the real property from the corporation." See T.C.A. §13-30-103(3).



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- real property. However, referring to BAM itself as a “land bank”⁷ can create confusion because other entities or agencies with different powers, purposes, functions, and governing laws may also be referred to as land banks.⁸
7. **LAND BANK ACT (OR ACT)** means the Tennessee Local Land Bank Program, BAM’s enabling legislation, which is found at T.C.A. §13-30-101, et seq.
 8. **MAINTENANCE** means the ongoing upkeep of landscaping and structural conditions according to the specifications of local codes and ordinances.
 9. **NONPROFIT** means an organization that uses all of its funds for pursuing the organization’s objectives and keeping it running and does not earn any profits for its owners. “Nonprofit” as used in this Policy can include various types of organizations, including, but not limited to, nonprofit corporations, nonprofit LLCs, unincorporated entities operating as associations, trusts, or foundations pursuant to written articles of governance, and limited partnerships in which a nonprofit entity has a controlling interest.
 10. **PRIORITY NEIGHBORHOODS** means neighborhoods that BAM has identified as target areas for BAM’s services due to the neighborhoods possessing clear and substantial needs for heavy Blight investment, stabilization, and support. While BAM may acquire properties throughout the City of Memphis, BAM intends to focus its efforts in Priority Neighborhoods for several years in order to achieve measurable positive impacts. BAM may designate new Priority Neighborhoods at such time as the Board deems appropriate.
 11. **PROPERTY (OR PROPERTIES)** refers to Real Property unless otherwise indicated.
 12. **REAL ESTATE** means an identified parcel or tract of land, including improvements, if any.⁹
 13. **REAL PROPERTY** means one (1) or more defined parcels or tracts of land or interests, benefits, and rights inherent in the ownership of real estate.¹⁰
 14. **TRANSFeree** means a party which receives a property or properties from BAM.
 15. **TRANSFEROR** means a party which transfers Real Property to BAM.
 16. **TRUMP BID** refers to BAM’s power to acquire properties at a tax sale for the minimum bid regardless of higher bids.¹¹

⁷ While “Land Bank” is defined in this Policy as BAM’s inventory, BAM does commonly refer to itself (and is referred to by others) as the Local Land Bank, City Land Bank, and Memphis Land Bank because it is easier than explaining that BAM is a nonprofit corporation formed under the Land Bank Act to operate a land bank for the City.

⁸ For instance, the Shelby County Land Bank (“SCLB”) is the real estate arm of Shelby County Government, which receives properties obtained by Shelby County after a tax sale has been conducted and the redemption period has expired. However, SCLB is not a public benefit nonprofit corporation, was not created under the Land Bank Act, does not operate in the same manner or for the same purposes as BAM, and is not governed by the Local Land Bank Act.

⁹ This is the definition used in the Land Bank Act. See T.C.A. 13-30-103(5).

¹⁰ This is the definition used in the Land Bank Act. See TCA §13-30-103(6).

¹¹ T.C.A. § 13-30-110(f)(2) provides BAM with the statutory power to acquire tax sale properties for the minimum bid amount even if other bidders submit higher bids.



SECTION 2: LEGISLATION & LAND BANKS

A. ENABLING LEGISLATION: The Tennessee Local Land Bank Program (the “Land Bank Act”), T.C.A. §13-30-101, et seq., was enacted by the Tennessee General Assembly to address the “crisis in many cities and their metro areas caused by disinvestment in real property and resulting in a significant amount of vacant and abandoned property.”¹² The Land Bank Act allows any local government in Tennessee to create a corporation to operate a land bank within that local government’s jurisdiction¹³ and assigns such corporations with powers to make them uniquely equipped to assist local governments in addressing vacant and abandoned properties.

B. MAXIMUM POWERS AUTHORIZED BY THE LAND BANK ACT: BAM’s powers are very broad. The City of Memphis granted BAM all of the general powers authorized by the Land Bank Act, including amendments, and all powers incidental or necessary to the performance of those powers.¹⁴ Pursuant to the Land Bank Act, BAM has the power to “do all things necessary or convenient to achieve the objectives and purposes of the corporation related to the real property held in the land bank.”¹⁵

C. PROBLEMS OF VACANT, ABANDONED, AND BLIGHTED PROPERTIES: Vacant, abandoned, and Blighted properties can cause long-term problems that wreak havoc on communities, such as decreased property values, increased crime, lost tax revenue, increased costs for code enforcement and nuisance abatement, sanitation and safety concerns, and reduction of market driven redevelopment.

1. DISCUSSED IN MEMPHIS 3.0: “Reduced blight and vacancy” is one of the major objectives that City included in the Memphis 3.0 Comprehensive Plan (“Memphis 3.0”).¹⁶ The City has recognized that “Blight in a community often leads to and can support other social ills, including increased crime, poor public health, and diminishing home values, [and] disproportionately affects people who live in poverty.”¹⁷ Memphis 3.0 provides that “[t]he City should focus efforts to address blight and vacancy that expend the appropriate type of resources and that use strategies sensitive to the market, growth goals, and community preference.”¹⁸

2. LEGISLATIVE FINDINGS OF THE TENNESSEE GENERAL ASSEMBLY

a. **PROBLEMS OF BLIGHT:** Vacant, abandoned, and tax-delinquent properties represent lost revenue to local governments, large costs associated with demolition, safety hazards, and spreading deterioration of neighborhoods, including resulting mortgage foreclosures.¹⁹

¹² T.C.A. §13-30-104.

¹³ *Id.*

¹⁴ See Resolution and BAM’s Charter, ¶15.

¹⁵ T.C.A. §13-30-109(11).

¹⁶ See City of Memphis, Memphis and Shelby County Division of Planning and Development, Memphis 3.0 The Comprehensive Plan of the City of Memphis, Tennessee, as adopted in 2019. (“Memphis 3.0”), p. 165.

¹⁷ *Id.* at p. 165

¹⁸ *Id.*

¹⁹ T.C.A. §13-30-102(2).



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- b. **RELATED PROBLEMS:** Other problems associated with vacant and abandoned properties may include multiple taxing jurisdictions lacking common policies, ineffective property inspection, code enforcement, and property rehabilitation support, lengthy and/or inadequate foreclosure proceedings, and lack of coordination and resources to support economic revitalization.²⁰
- c. **NEED FOR COORDINATED SOLUTIONS:** There is a need to strengthen and revitalize the economy of the state and its local units of government by confronting and solving the problems caused by vacant and abandoned properties in a coordinated manner, fostering the development of such properties, and promoting economic growth.²¹

3. **STUDIES ON THE IMPACT OF BLIGHT.**

Organizations around the country have studied the impacts of Blight and found it to be extremely costly and harmful to communities. For example, results of a study of 41 communities in Pennsylvania demonstrated that Blight poses serious health and safety threats, increases costs to local governments for enforcement and maintenance, reduces property values and tax revenue, and makes communities less attractive for investment.²² The report from the study stated that “Blighted and vacant properties damage the fabric of the community, cost significant dollars to maintain, and erode the local tax base because of the tax delinquency often associated with blighted properties,” that “blight prevents private reinvestment in the neighborhoods because it undermines the values of real estate making market driven redevelopment unlikely,” and that “the costs of blight on an annual basis are staggering.”²³

D. LOCAL LAND BANK AS A SOLUTION: The Tennessee General Assembly identified local land banks as one of the tools that can be used by communities to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use and convert vacant spaces into vibrant places.²⁴

SECTION 3: COORDINATED ACTION TO ADDRESS COMMUNITY NEEDS

While BAM is an independent legal entity,²⁵ BAM is an instrument of the City, which was created by and for the City to operate the Land Bank, and facilitate the return of vacant, abandoned, tax-delinquent, and Blighted properties to productive use. The objective of tackling such properties is one that is common among various departments and agencies of local government, as well as, many local community-based organizations. Through the Land Bank Act, the Tennessee General Assembly provided corporations, such as BAM, with a unique combination of statutory powers and independent discretion, specifically designed to maximize the ability of such corporations to operate land banks for their local governments in flexible, creative, and effective ways to address vacant, abandoned, tax-delinquent, and Blighted properties. However, BAM cannot address these properties alone. The Land

²⁰ See T.C.A. §13-30-102(3)

²¹ See *Id.*

²² Tri-COG Collaborative, FINANCIAL IMPACT ANALYSIS OF BLIGHT(2013)(available online here: <https://nkj.e1e.myftpupload.com/wp-content/uploads/Tri-COGCostofBlightexecutivesummary913.pdf>)

²³ *Id.*

²⁴ See T.C.A. §13-30-102(5).

²⁵ BAM is governed by its own Board, the Land Bank Act, the Resolution, and BAM’s organizational documents. BAM’s Board members all of whom shall be appointed by the Mayor of the City of Memphis and approved by the Memphis City Council. See BAM’s charter.



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Bank Act calls for coordinated solutions.²⁶ BAM’s operation of the City’s Land Bank is only one tool out of a large toolbox of other organizations and resources that are available for communities to address Blighted properties. Thus, BAM’s strategies for acquisition and disposition of properties in the Land Bank should be used in alignment with other available tools and public strategies, informed by community needs, and deployed in coordination with other systemic reforms in order to maximize BAM’s effectiveness in its efforts to address vacant, abandoned, tax-delinquent, and Blighted properties.²⁷

A. INTERACTION AND COORDINATION WITH LOCAL GOVERNMENT

1. INDEPENDENT AUTHORITY TO ASSIST WITH COMMON PURPOSE:

BAM is declared to be a public instrumentality, created to perform the public function on behalf of the City of operating a land bank to support economic revitalization through returning properties to productive use.²⁸ BAM depends on the City for adequate funding²⁹ to accomplish its purpose and has accountability obligations to the City in regards to performance of its public function. BAM must prepare an annual financial and activity report, along with an audit, which must be filed with the City and made available to the public.³⁰ In spite of these accountability requirements, BAM is a legally separate entity from the City (a public benefit nonprofit corporation), which is governed by its own Board and organizational documents.³¹ The Act repeatedly emphasizes the independence and breadth of authority of corporations created under the Act.

a. BAM HAS INDEPENDENT AUTHORITY TO EXERCISE ITS POWERS.

Pursuant to the Act, BAM has complete and independent authorization for performance of all of acts and powers granted to BAM under the Act.³²

b. BAM IS NOT SUBJECT TO RESTRICTIONS IMPOSED ON LOCAL GOVERNMENT.

Except as expressly set forth in the Land Bank Act³³, in the exercise of BAM’s powers and duties under the Act and its powers relating to property in the Land Bank, the Act provides BAM with “complete control as fully and completely as if it represented a private property owner” and provides that BAM “shall not be subject to restrictions imposed by the charter, ordinances or resolutions of a local unit of government.”³⁴

²⁶ See *Id.*

²⁷ See BAM’s Action Plan; See Section 1.E.8. of this Policy for definition of Priority Neighborhoods.

²⁸ See T.C.A. §13-30-104, Memphis, Tenn., Resolution Authorizing Establishment of the Blight Authority of Memphis, Inc. (Nov. 3, 2015), (“Resolution”); See also <https://www.memphistn.gov/government/boards-and-commissions/>, and BAM’s Charter.

²⁹ See *Id.* (provides that the City is financially accountable for BAM); T.C.A. §13-30-104(b)(2) (provides creating local governments are responsible for the initial funding for that BAM the City (1) The legislative body of each municipality may appropriate funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization in accordance with the guidelines required by subsection (b).

³⁰ T.C.A. § 13-30-112(a-e)

³¹ As acknowledged in the City of Memphis Comprehensive Annual Financial report for fiscal year 2020, and previous financial reports, at <https://www.memphistn.gov/government/finance/cafr-information/>, (stating that BAM is “a legally separate entity for which the City is financially accountable.”

³² T.C.A. §13-30-115.

³³ The Land Bank Act provides that certain laws applicable to local government are applicable to BAM subject Tennessee open meetings, public records, ethics requirements and allows the creating local government to

³⁴ T.C.A. §13-30-11



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- c. **BROAD POWERS:** BAM’s powers must be interpreted broadly and not limited in order for BAM to operate effectively its purpose. The Act requires that all powers granted in the Act “shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.”³⁵
2. **COLLABORATION WITH LOCAL GOVERNMENT:**
BAM will collaborate with the City of Memphis and its departments and other local agencies, as necessary or beneficial to BAM’s administrations of its programs. When feasible, BAM will endeavor to acquire and dispose of properties in a manner that supports the existing goals, efforts, and initiatives of the City of Memphis, such as Memphis 3.0, and the City’s departments and agencies, and offices of other local governments when feasible, such as the Shelby County Land Bank³⁶ and other governmental offices, commissions, and authorities that deal with vacant, abandoned, and Blighted properties.
3. **CONTRACTS BETWEEN BAM AND LOCAL GOVERNMENT:**
BAM will seek to enter into agreements with local government entities as authorized by the Land Bank Act.
 - a. **BAM WILL SEEK TO ENTER INTO AGREEMENTS WITH LOCAL GOVERNMENT ENTITIES FOR THE FOLLOWING PURPOSES:**
 - (1) to ensure that BAM will be able to employ the powers granted under the Act and perform its duties efficiently with the support of local governments and the agencies and departments thereof;
 - (2) to reduce the likelihood of interference or delays related to BAM’s exercise of its powers and increase the likelihood of collaboration and coordination with other entities and public initiatives;
 - (3) to set forth the terms and procedures for transfers of properties between BAM and local government and their respective rights and obligations related to such transfers and the performance of their public functions;
 - (4) to ensure that BAM is supporting the initiatives of local government in the manner deemed appropriate; and
 - (5) to increase the likelihood that local government and community organizations will utilize BAM as a tool to facilitate the return of vacant, abandoned, tax delinquent, and Blighted properties to productive use.

³⁵ *Id.*

³⁶ BAM will seek to coordinate its acquisition and assembly efforts with Shelby County Land Bank as recommended in Memphis 3.0.



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b. THE LAND BANK ACT PROVIDES AUTHORITY FOR BAM TO ENTER INTO CONTRACTS WITH LOCAL GOVERNMENT.

- (1) BAM may make and execute contracts and other instruments necessary or convenient to the exercise of the powers to acquire, hold and dispose of real property held in the land bank;³⁷
- (2) BAM may enter into contracts and other instruments necessary, incidental or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental agreements under the existing Tennessee Code for the joint exercise of powers under the Land Bank Act.³⁸ BAM may also enter into contracts and agreements with the City for the City to provide staffing services to BAM.³⁹
- (3) Any municipality or county may convey to BAM,⁴⁰ and BAM may accept from the local government,⁴¹ transfers of real property and interests in real property on such terms and conditions, and according to such procedures, as upon such terms and conditions as agreed between BAM and the local government.⁴² BAM may also accept donations, contributions, revenues, capital grants or gifts from any municipality or county in Tennessee and enter into related agreements.⁴³

B. COORDINATION WITH NEIGHBORHOODS AND COMMUNITY PARTNERS

Tackling the problems of vacant, tax delinquent, and Blighted properties is not a one-entity job. In addition, to coordinating its strategic acquisition and disposition efforts with local government entities and initiatives, BAM will continue to build relationships and coordinate its efforts with leaders of Priority Neighborhoods, local community development corporations,⁴⁴ Nonprofits, community-based organizations, and other community partners. These partners can assist in maintaining properties, redeveloping properties for their highest missional end use, returning properties to productive uses that are beneficial to communities, and ensuring that the Properties will remain free of Blight for the long term. There are plenty of organizations and community leaders in Memphis that are seeking to reduce vacancy, abandonment, tax-delinquency, and Blight, which can provide valuable data and various resources to inform and support BAM's acquisition and disposition strategies and programs, work in partnership with BAM to maintain, develop, and rehabilitate properties in the Land Bank, return properties to productive uses, facilitate economic revitalization, improve Memphis neighborhoods, improve public health and safety, support local businesses, and improve quality of life for Memphis residents.

1. WORKING IN PRIORITY NEIGHBORHOODS: BAM will seek to strategically acquire and dispose of properties in Priority Neighborhoods in a manner that supports the existing

³⁷ T.C.A. §13-30-109(6)

³⁸ T.C.A. §13-30-109(5).

³⁹ T.C.A. §13-30-108.

⁴⁰ T.C.A. §13-30-110(e).

⁴¹ T.C.A. §13-30-110(b).

⁴² T.C.A. §13-30-110(e) and (b).

⁴³ T.C.A. § 13-30-109(8).

⁴⁴ A list of CDCs in Memphis is available from BLDG Memphis here: https://www.bldgmemphis.org/our_community.



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efforts and initiatives of neighborhood leaders, residents, nonprofit partners, community development stakeholders, other community partners in the neighborhood.

2. **COMMUNITY ENGAGEMENT:** BAM will seek to develop a community engagement process that results in authentic community input, which can inform BAM's acquisition and disposition strategies. Through community engagement efforts and partnership with Innovate Memphis and other community partners, BAM will seek to gain insight regarding the specific needs of the neighborhood in determining how BAM can best contribute to local efforts and use its acquisition and disposition powers to stabilize the neighborhoods. BAM will use Community Benefit Agreements when possible to ensure that its actions are consistent with community needs and goals.⁴⁵

SECTION 4: ACQUISITION OF REAL PROPERTY

A. AUTHORITY TO ACQUIRE PROPERTY: The Tennessee General Assembly and City of Memphis have granted BAM very broad discretion related to the acquisition of real property. BAM can acquire properties in Memphis in almost any manner that BAM deems appropriate to further its mission. The Land Bank Act specifically provides that BAM can:

1. **ACQUIRE REAL PROPERTY OR INTERESTS IN REAL PROPERTY FOR THE LAND BANK BY:**

- a. Gift;
- b. Devise;
- c. Transfer;
- d. Exchange;
- e. Foreclosure;
- f. Purchase; or
- g. Otherwise on terms and conditions and in a manner BAM considers proper.⁴⁶

2. **ACQUIRE REAL PROPERTY FOR THE LAND BANK BY:**

- a. Purchase contracts;
- b. Lease purchase agreements;
- c. Installment sales contracts or land contracts (sometimes called a contract for deed).⁴⁷

3. **ACCEPT TRANSFERS FROM MUNICIPALITIES OR COUNTIES** upon such terms and conditions as agreed to by BAM and the local government.⁴⁸

4. **ACQUIRE PROPERTIES AT TAX SALE BY EITHER:**

- (1) **TRUMP BID:** for the minimum bid amount regardless of higher bids; or

⁴⁵ According to a study by the University of Michigan, "successful land bank programs revitalize blighted neighborhoods and direct reinvestment back into these neighborhoods to support their long-term community vision." de Wit, Jessica *Revitalizing Blighted Communities with Land Banks* (available at <http://umich.edu/~econdev/landbank>).

⁴⁶ T.C.A. §13-30-110(a).

⁴⁷ T.C.A. §13-30-110(b).

⁴⁸ T.C.A. §13-30-110(b).



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- (2) **CREDIT BID:** for no cash bids if there are no other bidders for the selected properties.
5. **MAKE AND EXECUTE CONTRACTS AND OTHER INSTRUMENTS** necessary or convenient to the exercise of the powers to acquire, hold and dispose of real property held in the Land Bank.⁴⁹
6. **HOLD PROPERTY TAX EXEMPT:** BAM is a public instrumentality of the City of Memphis, and BAM's operation of the Land Bank is a public function. Thus, all of BAM's properties, including all properties held in BAM's name in the Land Bank, at any time owned by it, and all income and revenues from said properties shall be exempt from all taxation in the state of Tennessee.⁵⁰

B. LIMITS TO AUTHORITY TO ACQUIRE REAL PROPERTY

1. **BAM MUST:**

- a. **HOLD LAND BANK PROPERTIES IN BAM'S OWN NAME** irrespective of the identity of the transferor.⁵¹
- b. **ENSURE THAT LAND BANK PROPERTIES ARE MAINTAINED** in accordance with Tennessee law and local ordinances of the jurisdiction in which the property is located.⁵²
- c. **MAINTAIN A PUBLIC INVENTORY OF ALL PROPERTIES IN THE LAND BANK.**⁵³

2. **BAM MUST NOT...**

- a. **OWN OR HOLD PROPERTIES OUTSIDE OF MEMPHIS:** BAM may only own and hold properties that are located within the jurisdictional limits of the City of Memphis.
 - (1) BAM may enter into agreements with the City related to the use and transfer of properties within Memphis limits, and to the extent that a provision of such an agreement conflicts with a provision in this Policy, the provision of the agreement will control.
 - (2) BAM may manage properties outside Memphis boundaries if such authority is provided pursuant to an intergovernmental contract, but may not hold title to such properties.⁵⁴

⁴⁹ T.C.A. §13-30-109(6)

⁵⁰ T.C.A. §13-30-104.

⁵¹ T.C.A. §13-30-111(a).

⁵² T.C.A. §13-30-110(c).

⁵³ T.C.A. §13-30-111(b).

⁵⁴ See T.C.A. § 13-30-110(d).



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- b. **HOLD PROPERTY ACQUIRED BY EMINENT DOMAIN:** BAM is prohibited from owning, holding, maintaining, or managing any property acquired by any county or municipality through eminent domain.⁵⁵

SECTION 5: GUIDELINES FOR ACQUISITION OF REAL PROPERTY

A. PRE-ACQUISITION CONSIDERATIONS

In identifying properties for acquisition, BAM will target properties that meet one or more of the following criteria:

1. Acquisition of the property will align with goals and guidelines of Memphis 3.0;
2. Acquisition of the property will align with criteria or goals identified in agreement between BAM and the City of Memphis or with another governmental entity in an intergovernmental agreement;
3. Acquisition will support the efforts of City Code Enforcement;
4. Acquisition of the property was proposed by an applicant to one of BAM's programs, the proposal meets BAM's eligibility criteria for the program, and the Executive Director and Programs Committee have recommended that the Board proceed with acquisition;
5. A qualified end user has committed to purchasing the property and has submitted a proposed development plan and proof of adequate funds;
6. Acquisition of the property will support existing efforts of a local government entity or community group or organization;
7. BAM has received a request from a prospective end user, neighborhood resident, local governmental entity, community stakeholder, or other interested party to review the property for acquisition;
8. Redevelopment of the property will support strategic development efforts;
9. Redevelopment of the property is likely to act as catalyst for further development;
10. Redevelopment of the property is part of a comprehensive development plan;
11. Acquisition of the property will support public infrastructure or green space development;
12. Acquisition of the property will support neighborhood stabilization;
13. Acquisition of the property will improve neighborhood conditions by reducing blight;
14. Acquisition of the property will help to remediate harmful impacts or social ills caused by blight;

⁵⁵ T.C.A. §13-30-120.



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15. Acquisition of the property will help create or preserve homeownership or commercial opportunities;
16. Title issues prevent the property from being developed to its highest and best use, but there is an existing market for the property and BAM has a plan and necessary funds available to clear title;
17. Acquisition of the property will support an existing plan for historic preservation;
18. BAM has the resources to maintain and market the property or such services will be provided by another party pursuant to a written agreement;
19. Acquisition of the property will further BAM's mission.

B. DUE DILIGENCE PRIOR TO ACQUISITION

BAM should exercise due diligence prior to acquiring real property for the Land Bank. Due diligence will vary based on the circumstances under which the property is being acquired, but in most instances should include the following:

1. **ASSESS THE CONDITION AND MARKETABILITY OF THE PROPERTY.**
2. **DETERMINE IF THERE ARE ANY CURRENT VIOLATIONS** of applicable codes, ordinances, or environmental regulations, or any dangerous conditions or other liabilities associated with the property.
3. **IF A PROPERTY IS A BROWNFIELD OR CONTAMINATED PROPERTY**, additional due diligence will be required, which may include Environmental Assessments, when necessary to protect BAM from potential liability related to the property.
4. **CONDUCT A TITLE SEARCH.**
 - a. BAM may acquire property that has clear and marketable title.
 - b. As a general matter, BAM will not acquire properties subject to liens and encumbrances on title, other than governmental liens when the lien can be waived or BAM has made arrangements with the governmental entity that holds the lien to ensure that BAM is protected from liability.
 - c. On a case by case basis, BAM may consider acquisition of properties subject to mortgages and other liens designed by banking/finance partners and the anticipated parcel end-user or community partner in order to facilitate the equitable development of a parcel in concert with BAM's mission, policies, and procedures.
 - d. BAM may use its quiet title power to clear title if BAM has resources to pursue a quiet title action to obtain clear title to the property and acquisition of the property does not involve a substantial risk of harm or liability to BAM.



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- e. If there are any legal restrictions on use of the property, including easements and other covenants, conditions, or restrictions that run with the land, BAM should be aware of such restrictions prior to acquisition in order to avoid violations and to ensure that the restrictions will not interfere with any plans proposed for use or development of the property, or prevent BAM from disposing of the property within a reasonable time.
5. **CONFIRM VACANCY:** BAM will only acquire properties that are vacant lots or lots with vacant structures.
6. **EVALUATE POTENTIAL COSTS** related to holding and maintaining the property and ensure that BAM (or another designated party, if applicable) has adequate funds to cover such costs for an extended period (proof of funds may take various forms, such as a bank statement or letter from the bank).
7. **CONSIDER THE POSSIBLE END USERS** of the property prior to acquisition.
8. **FOR PROPERTIES WITH STRUCTURES,** conduct a condition assessment when possible.
9. **FOR PROPERTIES LOCATED IN A LOCAL HISTORIC DISTRICTS,** BAM will endeavor to communicate with the appropriate historic commission to determine potential disposition options prior to acquisition.
10. **CONSIDER NEIGHBORHOOD NEEDS** as determined based on direct input through community engagement with the neighborhood, review of available neighborhood data, and other relevant research.
11. **DEVELOP A MAINTENANCE PLAN AND DISPOSITION PLAN** for the property that is appropriate based on community needs (or, if applicable, review and approve a community partner's maintenance and disposition plan).

C. METHODS TO ACQUIRE REAL PROPERTY: The Land Bank Act authorizes BAM to acquire property by various methods, including, but not limited to, the following:

1. **DONATIONS:** BAM has the authority to accept donations, contributions, revenues, capital grants, or gifts from any individual association, public or private corporation, municipality or county in Tennessee, the United States government, or any TN or U.S. agency or instrumentality, for or in aid of any of the purposes of the Land Bank Act and enter into related agreements.⁵⁶
2. **PURCHASE:** BAM can purchase properties directly from property owners. BAM may acquire real property by purchase contracts, lease purchase agreements, and installment sales contracts or land contracts.⁵⁷

⁵⁶ T.C.A. §13-30-109(8).

⁵⁷ T.C.A. §13-30-110(b).



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3. **TRANSFERS FROM MUNICIPALITY OR COUNTY:**

The Land Bank Act authorizes local government to transfer properties to BAM and for BAM to accept such transfers.⁵⁸

a. **TERMS OF TRANSFER:**

- (1) BAM may accept transfers from municipalities or counties upon such terms and conditions as agreed to by BAM and the local government.⁵⁹
- (2) Except as provided in T.C.A. §13-30-120 (which prohibits BAM from acquiring properties acquired by local government by eminent domain),⁶⁰ notwithstanding any other law to the contrary, any municipality or county may convey to BAM real property and interests in real property on such terms and conditions, and according to such procedures, as determined by the legislative body of the local government conveying the real property to BAM.⁶¹
- (3) Commencing upon the date of transfer of any real property from BAM to a taxable person or entity, if approved by local government, BAM shall be entitled to receive payments from the local government equal to fifty percent (50%) of real property taxes collected by the local government for a period of five (5) years.⁶²

b. **TRANSFERS TO BAM AFTER TAX SALE:**

BAM can be of value to local government by accepting transfer of residual properties from the tax sale process, clearing title to the properties through bulk quiet title actions (*see* Section 6 below), and selling or otherwise disposing of the properties to Responsible Property Owners, which will pay property taxes (unless the new owner exemption) and return the properties to productive use. In a 2019 report titled “Improving Management of Government-Owned Real Property in Tennessee,” the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) specifically recommended the use of local land banks to make it easier for local governments to sell surplus properties.”⁶³

4. **PREEMPTIVE BID AT TAX SALE OR RECEIVER’S LIEN SALE:** The Act grants BAM the statutory authority to acquire properties advertised for tax sale by preemptive bid.⁶⁴

a. **PREEMPTIVE BIDDING PROCESS:** BAM may provide written notice to the clerk and master in advance of any delinquent property tax sale auction held pursuant to

⁵⁸T.C.A. §13-30-110(b) and (e).

⁵⁹ T.C.A. §13-30-110(b).

⁶⁰ Pursuant to T.C.A. §13-30-120, BAM shall not own, hold, maintain, or manage any real property acquired through eminent domain by any county or municipality of Tennessee.

⁶¹ T.C.A. §13-30-110(e).

⁶² T.C.A. § 13-30-110.

⁶³See Report of Tennessee Advisory Commission on Intergovernmental Relations, *Improving Management of Government-Owned Real Property in Tennessee* (January 2019)(available online at <https://www.tn.gov/content/dam/tn/tacir/2019publications/2019ImprovingMgmtGovtOwnedRealProperty.pdf>).

⁶⁴



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T.C.A. §67-5-2005(b) that BAM wishes to enter the minimum bid for cash for any specified parcel(s) advertised for sale in such auction.

- (1) **TRUMP BID:** BAM’s minimum bid shall preempt all other bids for said parcel(s), and BAM shall be the prevailing bidder.⁶⁵
- (2) **CREDIT BID:** If there are no other bidders on the parcel(s), BAM’s minimum bid shall be accepted for no cash, and BAM shall be the prevailing bidder and take title to said parcel in the same manner as a municipality bidding the minimum bid.⁶⁶
- (3) **APPROVAL OF BID:** Preemptive bids must be approved by BAM’s Programs Committee or the Board prior to submission of the required notice. Once approved, the Executive Director will submit the written notice to the clerk.
- (4) **REDEMPTION:** As supported by Tennessee law and as specified in the Civic Source Terms of Use that Shelby County Government uses for its Tax Sale Auction platform, in the event of such a preemption, bidders will be notified that their bids may be preempted pursuant to T.C.A. § 13-30-110. The delinquent taxpayer has a specified time within which to redeem the property. At any time within the specified redemption period from the date of the order confirming sale, any person with a legal or equitable interest in the property sold at tax sale may "redeem" that property by paying all charges which have accrued on it (delinquent taxes, interest and penalties, court costs and court ordered charges), as well as interest on the entire purchase price paid by the purchaser of the parcel at tax sale. The interest shall be at the rate of twelve percent (12%) per annum, which begins to accrue on the date the purchaser pays the purchase price to the clerk and continuing until a motion to redeem is filed.⁶⁷

5. **NPA RECEIVER’S LIEN AUCTION:**

The Neighborhood Preservation Act (“NPA”), T.C.A. §13-6-101 et seq., is another tool used by the City to address the problem of vacant and abandoned properties. Civil actions to enforce compliance under the NPA are brought under T.C.A §13-6-106. Such actions allege that a specified property constitutes a public nuisance and seeks abatement of the nuisance. BAM can take on various roles in such actions: BAM is qualified to be a petitioner⁶⁸, a receiver⁶⁹, or a purchaser at a receiver’s lien sale.⁷⁰ If BAM acts as receiver, BAM can rehabilitate a property and either recover its expenses from the property owner or acquire the property by a receiver’s deed through the enforcement of the receiver’s lien. When BAM is not the receiver, BAM has the statutory power to acquire properties advertised for NPA receiver’s lien auction by preemptive bid.⁷¹ The minimum bid at a

⁶⁵ T.C.A. §13-30-110(f)(1).

⁶⁶ T.C.A. §13-30-110(f)(2).

⁶⁷ See T.C.A. §67-5-2701 for redemption procedures.

⁶⁸ See T.C.A. §13-6-102(2) includes nonprofit corporations are included in the NPA definition of “acceptable petitioner.”

⁶⁹ See T.C.A. §13-6-106(8) & T.C.A. §13-6-102(3). (BAM is a “Certified Person” to receive or purchase properties.)

⁷⁰ See *Id.*

⁷¹ See T.C.A. §13-6-106 (j)(3).



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receiver's lien sale is the full amount of the receiver's lien.⁷² For more information about the process and procedures for NPA actions, see **Appendix I** of this Policy, which explains the NPA process in detail.

SECTION 6: QUIET TITLE

Tennessee law authorizes BAM to file bulk quiet title actions for properties in which BAM has an interest.⁷³ Quiet title actions are suits to remove a cloud in title. A cloud in title means any claim or potential claim to ownership of the property. BAM's ability to file "bulk" quiet title actions means that BAM can file one complaint to quiet title for multiple parcels of real property.⁷⁴ The Land Bank Act also provides an expedited process for quiet title actions filed by BAM.⁷⁵

A. IMPORTANCE OF BAM'S BULK QUIET TITLE POWER:

BAM must be able to sell the properties held in the Land Bank to ensure that the properties are returned to productive use. BAM's marketing and selling of properties benefits the City by (1) reducing the quantity of blighted properties; (2) reducing costs to the City for maintenance of the properties; (3) increasing property tax revenue by returning the properties to the tax rolls; (4) increasing tax revenue by improving the value of surrounding properties; (5) stabilizing neighborhoods; and (6) improving quality of life for neighborhood residents. BAM must be able to sell properties so that the properties will be returned to productive use. Bulk quiet title actions promote efficiency by allowing BAM to acquire clear title to multiple properties at the same time. See **Appendix II** of this Policy for information regarding Quiet Title procedures.

SECTION 7: MAINTENANCE OF PROPERTIES IN THE LAND BANK

A. PROPERTY MAINTENANCE: When BAM acquires a property for the Land Bank, BAM assumes the responsibility, as property owner, to ensure that the property is maintained in accordance with City of Memphis Code of Ordinances, the Shelby County Code of Ordinances, and the Tennessee Code (collectively, the "Codes").⁷⁶

B. BURDENS RELATED TO MAINTENANCE: Property maintenance requires resources. It requires time and labor to determine maintenance needs, identify and hire qualified staff or contractors to perform property maintenance and inspections, prepare or review maintenance contracts, assess and address liability concerns, ensure that maintenance is performed regularly, and conduct inspections to ensure that maintenance is performed in accordance with the Codes and BAM's specifications. It also requires financial resources to pay for maintenance and inspection services and related expenses. Financial burdens related to any particular property are correlated to the amount of time the property remains in the Land Bank. The amount of time required for a final disposition of a BAM-owned property will depend on various factors, such as the property's condition, marketability, and potential uses, and the availability of partners and end users. Expedient disposition of Land Bank properties supports BAM's mission and reduces financial burdens related to property maintenance.

⁷² See T.C.A. §13-6-106 (j)(2).

⁷³ See T.C.A. §13-30-117 and §13-30-109(2).

⁷⁴ T.C.A. §13-30-117(e).

⁷⁵ Pursuant to T.C.A. §13-30-117(d), if no answer to the quiet title action is filed, the Court must hold a hearing within 90 days of the filing of the complaint and enter a final judgment within 120 days of the filing date.

⁷⁶ See T.C.A. §13-30-110(c)(providing that "[t]he corporation shall maintain all of its real property and real property held in the land bank in accordance with state law and the laws and ordinances of the jurisdiction in which the real property is located.")



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C. MAINTENANCE PLAN: The appropriate level of maintenance may vary from property to property. BAM-owned properties should have a maintenance plan in place that, at a minimum, ensures that as soon as practical after acquisition, the property will be maintained in a clean, safe, secure, and sanitary condition in compliance with the Codes so as not to continue or cause Blight or nuisance or adversely affect the health and safety of the public and/or adjoining properties.⁷⁷ The maintenance plan shall include estimated maintenance costs. In order to plan for maintenance of its properties, BAM can enter into contracts with vendors or partners.

D. MAINTENANCE OF PROPERTIES THROUGH BAM'S PROGRAMS: BAM can alleviate some of its burdens related to property maintenance by entering into agreements with partners through its programs, which require the partner to maintain the property during the program term and define the partner's obligations related to maintenance. Ordinarily, if BAM is holding a property on behalf of a program participant, the participant will be required to maintain the property at its own expense or to reimburse BAM for property maintenance during the holding period.

E. MAINTENANCE CONTRACTS: BAM will seek qualified vendors as needed for all necessary property maintenance for Land Bank properties. BAM may use Requests for Quote (RFQs) to select qualified vendors. Maintenance resources will be coordinated in such a way to most efficiently return the property to a productive use.

F. REQUIRED PROPERTY MAINTENANCE

BAM will require in maintenance agreements that its properties be maintained in a manner that reduces or eliminates nuisance and blighting conditions, improves the property values of adjacent and nearby properties, and ensures the future marketability of the property. Required maintenance of Land Bank properties includes, but is not limited to, the following:

1. **REGULAR MOWING:** Lawns shall be mowed frequently during the growing season and as required during winter months.
2. **NO WEEDS:** All areas shall be kept free of weeds. Weeds shall not be allowed to grow in paved areas such as driveways, sidewalks, curbs, gutters, etc. Lawns shall be graded to provide positive drainage away from foundations and shall have no low areas subject to ponding.
3. **NO DANGEROUS CONDITIONS:** Properties shall be free of trip hazards, dangerous conditions, or other risks to health or safety shall be permitted to exist on the property.
4. **TRIMMED GROWTH:** Trim shrubs and vines and other vegetation as needed to permit unobstructed passage to residents or vehicles. Trimmed near vehicle entry or exits shall be carried out to prevent sight restrictions. Trim or remove any dead trees or overgrown shrubs/trees.

⁷⁷ See generally, The International Property Maintenance Code of the City of Memphis, Tennessee, [Memphis Ordinance Code § 5708](#) (the "IMPC"), regarding maintenance requirements and [TCA §13-6-101](#) and [TCA § 29-3-101](#) regarding nuisances.



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5. **NO TRASH OR DEBRIS:** Properties must be free of all litter and trash, including leaves, rubbish, paper, bottles, cans, rocks, gravel, and other debris from all areas on the property. Hardscape (i.e., sidewalks, patios, driveways) shall be swept or blown free of debris.
6. **SECURED STRUCTURES:** For properties with structures, all entries shall be bolted and boarded.
7. **VACANT STRUCTURES AND VACANT PREMISES:** Vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition so as not to cause a blighting problem or adversely affect the public health or safety.⁷⁸

SECTION 8: DISPOSITION OF REAL PROPERTY

A. **AUTHORITY TO DISPOSE OF PROPERTY:** The Tennessee General Assembly and the Memphis City Council have provided BAM with broad discretion and flexibility in regards to the disposition of properties in the Land Bank. BAM's flexible disposition powers include disposition for highest missional end-use in accordance with local community goals and priorities.⁷⁹ There is no secret formula that will work for every vacant, abandoned, or tax delinquent property. Having flexibility in disposition allows BAM to tailor solutions to specific situations. BAM may dispose of its properties by any method authorized by the Land Bank Act, including any method necessary or convenient to achieve the objectives and purposes of BAM in relation to properties in the Land Bank.

1. **BAM HAS THE POWER TO....**

- a. **CONVEY, EXCHANGE, SELL, TRANSFER, LEASE AS LESSEE, GRANT, RELEASE AND DEMISE, PLEDGE AND HYPOTHECATE ANY AND ALL INTERESTS IN, UPON OR TO PROPERTIES IN THE LAND BANK**⁸⁰
- b. **MAKE AND EXECUTE CONTRACTS** and other instruments necessary or convenient to BAM's exercise of the powers to acquire, hold, and dispose of properties in the Land Bank.⁸¹
- c. **ENTER INTO CONTRACTS FOR MANAGEMENT OR SALE OF LANK BANK PROPERTIES**⁸²
- d. **DETERMINE CONSIDERATION FOR TRANSFER OF REAL PROPERTY**

⁷⁸ Regarding vacant structures, IMPC 301.3 provides that "Vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety."

⁷⁹ See T.C.A. § 13-30-111(c) and BAM's Action Plan.

⁸⁰ T.C.A. §13-30-111(d). This provision continues two limitations: (1) "to the extent authorized by the legislative body of the creating local government or local governments" and (2) "in a manner which does not violate T.C.A. §29-17-102." City of Memphis has extended full authority permitted under the Act to BAM. T.C.A. §29-17-102 is the definitions clause of the state eminent domain statute. BAM does not have eminent domain power.

⁸¹ T.C.A. §13-30-111(d)

⁸² T.C.A. §13-30-109(6)



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e. **PRESERVE THE VALUE OR PREVENT DIMINUTION OF THE VALUE OF LAND BANK PROPERTIES UNTIL DISPOSED OF BY BAM, INCLUDING THE FOLLOWING ACTIONS:**⁸³

- (1) Design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, and otherwise improve real property or rights or interests in real property;
- (2) Fix, charge and collect rents, fees and charges for the use of real property of the land bank and for services provided by the corporation;
- (3) Grant or acquire a license, easement, lease, as lessor and as lessee, or option with respect to real property in the land bank; and
- (4) Enter into limited partnerships, limited joint ventures and other limited collaborative relationships with local governments and other public and private entities within the designated boundary for the ownership, management, development, and disposition of real property.

SECTION 9: GUIDELINES FOR DISPOSITION OF REAL PROPERTY

A. **DISPOSITION GENERALLY:** BAM will dispose of property in the Land Bank in manner that furthers BAM's mission and purpose and complies with applicable laws.

1. **FLEXIBILITY:** The Board and BAM's staff shall at all times retain flexibility in evaluating the appropriate consideration for transfers and balancing of priorities for the use of property, priorities for the nature of the transferees of properties, priorities concerning neighborhood and community development, priorities concerning use of resources, and other factors. There is no one size fits all solution that can be applied to every vacant, abandoned or Blighted property. The disposition of any given parcel will be based upon an assessment of the most efficient and effective way to maximize the aggregate policies and priorities of the Land Bank. The Tennessee General Assembly and Memphis City Council have granted BAM broad authority in regards to disposition of property, and BAM needs to retain its discretion to determine the best means to achieve BAM's objectives and purposes and have various acquisition and disposition programs and strategies available to apply as appropriate based on the circumstances.

2. **CONSIDERATION FOR DISPOSITION**

a. **BAM MAY ACCEPT THE FOLLOWING FORMS OF CONSIDERATION FOR ITS DISPOSITION OF REAL PROPERTY:**

- (1) Monetary payments and secured financial obligations;
- (2) Covenants and conditions related to present and future use of the property;
- (3) Contractual commitments of the transferee;

⁸³ See T.C.A. 13-30-109



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- (4) Such other forms of consideration as determined by the Board to be in the best interest of BAM related to real property in and for the Land Bank.⁸⁴

b. **BAM WILL SELECT THE FORM OF CONSIDERATION BASED ON THE METHOD OF DISPOSITION OF REAL PROPERTY AND ANY PROGRAM POLICIES APPLICABLE TO THE TRANSACTION.**

3. **RESPONSIBLE PROPERTY OWNERS:**

BAM will only convey properties to vetted and approved “Responsible Property Owners.” When BAM conveys title or possession of a property in the Land Bank to another party, it is important to determine that the party receiving title or possession to the property is a Responsible Property Owner and is committed to returning the property to productive use. Otherwise, the property could remain in, or revert to, a vacant, abandoned, tax-delinquent, and Blighted condition. BAM will vet potential transferees to determine whether they are Responsible Property Owners for the uses proposes. BAM’s program policies and forms may provide additional criteria for evaluating potential transferees.

a. **IDENTIFYING RESPONSIBLE PROPERTY OWNERS:**

- (1) **DISCLOSURES:** All parties seeking to purchase a property from BAM’s inventory will be required to make certain disclosures to assist BAM in determining whether the party is a “Responsible Property Owner”.
- (2) **QUALIFICATION FOR “RESPONSIBLE” PROPERTY OWNERS MAY VARY BASED ON THE PROPERTY INVOLVED AND INTENDED USE OF THE PROPERTY:** In order to own, develop, or rehabilitate properties that require a significant amount of work or that present other challenges, a certain level of experience in dealing with similar properties or projects may be necessary for responsible ownership.
- (3) **TRACK RECORD:** Responsible Property Owners do not have track records of irresponsible property ownership. In order to identify a responsible owner, it helpful to first eliminate parties that are have already demonstrated that they are not responsible property owners. A responsible property owner (“RPO”):
 - (a) Does not own any properties that are tax delinquent or have a history of property tax delinquency within the past five (5) years.
 - (b) Does not own any properties that constitute public or private nuisances under applicable laws.
 - (c) Does not own any properties that have any un-remediated

⁸⁴T.C.A. §13-30-11(c).



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citation for violation of federal, state, and local codes, ordinances, and regulations, unless the violation began prior to RPO's ownership, the property was acquired with the intention of resolving such to resolve such issues, and the RPO has a viable development plan.

(d) Has not had any of RPO's properties sold in foreclosure proceedings or had a history of foreclosure filings instituted against any of RPO's properties during RPO's ownership.

(e) Is not barred from transactions with local government entities.

B. PRIORITIES GUIDING DISPOSITION OF PROPERTY

1. FACTORS TO BE CONSIDERED

BAM's disposition of properties shall be based upon a combination of the following factors:

- a. The intended or planned use of the property;
- b. The nature and identity of the transferee of the property;
- c. The impact of the property transfer on the neighborhood well-being and impact on any existing neighborhood and community development plans; and
- d. Other priorities as identified in an agreement between BAM and a governmental entity, in another policy adopted by BAM, or identified by BAM's Board.

2. PRIORITIES FOR USE OF PROPERTY

- a. Priority uses for the particular district or neighborhood in which the property is located, as determined by BAM in partnership with Innovate Memphis, and/or other community partners based on direct input from neighborhood residents, organizations and reliable neighborhood data, and other research;
- b. Priority uses for the particular district or neighborhood in which the property is located, as provided by Memphis 3.0 or other local government initiatives;
- c. Affordable housing and homeownership opportunities;
- d. Land assemblage for economic development;
- e. Public spaces and places;
- f. Use for retail, commercial and industrial activities; and
- g. Other uses and in such hierarchical order as determined.



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3. PRIORITIES FOR NATURE OF TRANSFEREE

- a. All Transferees must be identified as Responsible Property Owners for the plan or use contemplated;
- b. Qualified Nonprofits with approved development plans;
- c. Qualified Nonprofits assembling land for future use;
- d. Governmental entities;
- e. Individuals who own and occupy nearby residential property or will occupy the subject property once conveyed from BAM;
- f. Local developers, which will develop the property for their own use or have identified a Responsible Property Owner to accept transfer of the property for a productive end-use;
- g. Individuals or organizations that live, work, or are otherwise involved with the community in which the property is located or have a plan for the property that will be beneficial for the community in which the property is located;
- h. Other individuals or organizations, who will pay taxes on the properties.

4. PRIORITIES RELATED TO USE OF DISPOSITION RESOURCES

BAM will prioritize its disposition resources, including any dollars allocated for demolition, maintenance, and renovation, based on the following general criteria:

- a. In Priority Neighborhoods with an active neighborhood plan or plans, developed with direct input from neighborhood residents, organizations, and institutions;
- b. In other neighborhoods with an active neighborhood plan or plans, developed with direct input from neighborhood residents, organizations, and institutions;
- c. Where the targeted elimination of blight will make an impact on the overall stability of the neighborhood;
- d. Where unrestricted use of resources can bridge funding gaps to stabilize neighborhoods and preserve property values;
- e. Where an investment will support mixed-income development; and
- f. Where an investment will leverage funds from existing federal, state, or local programs.

5. OTHER CONSIDERATIONS

- a. Suitability for one of BAM's programs;



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- b. Extent of Blight elimination that will be achieved;
- c. Extent of neighborhood revitalization and stabilization that will be achieved;
- d. Extent of economic revitalization that will be achieved;
- e. Impact on financial resources for BAM's operating functions..

C. PRICING OF PROPERTIES:

Laws that restrict how municipalities may dispose of real property do not apply to local land bank corporations, such as BAM, that are created under the Tennessee Local Land Bank Act. BAM is not required sell its real property to the highest bidder or with no regard for the property's future use.⁸⁵

1. PRICING FOR SALE OF INVENTORY PROPERTIES –FAIR MARKET VALUE

Qualified buyers (Responsible Property Owners) can purchase inventory properties from BAM at fair market value after application and approval by BAM. The end use of properties proposed for the property will be held in consideration for the sale transaction.

- a. **FAIR MARKET VALUE** ("FMV") is determined by an independent third party using a Brokers Price Opinion ("BPO") process. The FMV is non-negotiable.

2. PRICING FOR DISPOSITION THROUGH PROGRAMS. For properties disposed of through BAM's programs, BAM will determine pricing based on program policies and agreements.

- a. **DISCOUNTED PRICING AND DONATIONS** are based on available philanthropic subsidies associated with properties unless otherwise approved by BAM Board. Discounted pricing and donations are only available in limited circumstances and the terms of transfer must satisfy requirements of the policies and procedures for the applicable program.

2. PRICING BASED OTHER SPECIAL CONSIDERATIONS DETERMINED BY THE BOARD.

BAM reserves its discretion to determine pricing of properties when circumstances warrant variation from ordinary procedures. Exceptions must be documented in meeting minutes.

SECTION 10: MISCELLANEOUS

A. MODIFICATION AND AMENDMENT: This Policy is subject to modification and amendment at BAM's discretion. Policies will be available online or by request. Once approved this Policy may be modified at any time by BAM's Board or Program's Committee.

B. POSTING ON WEBSITE: BAM will post this policy on BAM's website.

C. ANNUAL REVIEW: This Policy shall be reviewed by the Board at least annually.

⁸⁵ T.C.A. §13-30-11



APPENDICES TO ACQUISITION & DISPOSITION POLICY

CONTENTS:

- **APPENDIX I: NEIGHBORHOOD PRESERVATION ACT**
- **APPENDIX II: QUIET TITLE**

APPENDIX I

NEIGHBORHOOD PRESERVATION ACT

Note: Appendix I is a supplement to Section 5.C.5 of BAM’s Acquisition & Disposition Policy, which discusses the Neighborhood Preservation Act as a method that BAM can use to acquire property. Appendix I provides background regarding NPA actions and explains the processes and procedures for NPA actions and receiver’s lien sales to BAM’s potential roles in these processes.

1. NPA RECEIVER’S LIEN AUCTION:

The Neighborhood Preservation Act (“NPA”) T.C.A. §13-6-101 et seq., is another tool used by the City to address the problem of vacant and abandoned properties. Civil actions to enforce compliance under the NPA are brought under T.C.A. §13-6-106. Such actions allege that a specified property constitutes a public nuisance and seek abatement of the nuisance. BAM can take on various roles in such actions: BAM is qualified to be a petitioner¹, a receiver², or a purchaser at a receiver’s lien sale.³ BAM is eligible to act as a receiver if appointed, and, like any other receiver, BAM can rehabilitate a property and either recover its expenses or acquire the property by a receiver’s deed through the enforcement of a receiver’s lien against the property. If BAM is not the receiver, BAM can use its statutory power to acquire properties advertised for NPA receiver’s lien auction by preemptive bid.⁴ The minimum bid at a receiver’s lien sale is the full amount of the receiver’s lien.⁵

- a. NEIGHBORHOOD PRESERVATION ACT: The NPA, as amended, allows for “acceptable petitioners”⁶ to file a petition for a judgment in rem against a blighted property, naming the property itself as the defendant, and seeking an order that the property is a public nuisance and for the abatement of said nuisance.⁷ NPA actions against properties in Shelby County, Tennessee are heard in the Shelby County Environmental Court (the “Court”).

- (1) ABATEMENT OF NUISANCE: If the subject property is found to be a public nuisance, the Court enters an Order of Compliance, requiring the owner to abate the nuisance.⁸ The property owner must submit a development plan, meeting certain criteria, and provide periodic updates to the Court regarding work progress until the nuisance is abated.⁹

¹T.C.A. §13-6-102(2)(A)(nonprofit corporations are included in the NPA definition of “acceptable petitioner”).

² T.C.A. §13-6-106(8) & T.C.A. §13-6-102(4). (BAM is a “Certified Person” to receive or purchase properties).

³ *Id.* and T.C.A. §13-6-106 (j)(3).

⁴ T.C.A. §13-6-106 (j)(3).

⁵ T.C.A. §13-6-106 (j)(2).

⁶ T.C.A. 13-6-102(2) defines an “acceptable petitioner” as (A) Any nonprofit corporation; (B) The municipal corporation within which such subject parcel is located; (C) The owner or legal occupant of a parcel of real property that is adversely impacted by the condition of the subject parcel; or (D) Any interested person.

⁷ T.C.A. §13-6-106(a).

⁸ T.C.A. §13-6-106(e).

⁹ T.C.A. §13-6-106(h) and (e).



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(2) **FAILURE TO ABATE NUISANCE:** If the owner fails to abate the nuisance, the Court may allow another interested party that submits a satisfactory development plan to do so.¹⁰ If no owner or interested parties abates the nuisance, the Court may appoint a receiver to take over the property and abate the nuisance.¹¹

b. **EFFECT OF NPA PETITION:** The filing of a petition for a judgment in rem under T.C.A. §13-6-106 of the NPA (“NPA Petition”), which satisfies the statutory requirements¹², has several effects. The filing of the NPA Petition (1) creates a receiver’s lien; (2) acts as a bar on transfer of the property; and (3) authorizes the City to access the property if the owner fails to secure or maintain the property.¹³

(1) **RECEIVER’S LIEN:** The filing of the NPA Petition creates a receiver’s lien that secures an undetermined amount (until the Court establishes the amount),¹⁴ to secure all costs and expenses incurred by the receiver (including attorney’s fees), costs incurred by the City, any delinquent property taxes, and a receiver’s fee.¹⁵

(a) **PRIORITY OF LIEN:** The receiver's lien is a first-priority lien, which is superior to all prior and subsequent liens or other encumbrances associated with the property.¹⁶ This means that if the receiver’s lien is enforced by judicial sale, all prior recorded mortgages on the property are stripped away and are null and void.

(b) **ABSTRACT OF LIEN LIS PENDENS:** The petitioner must also file an abstract of lien lis pendens, which is certified by the clerk, in the Shelby County Register’s Office within one day of certification.¹⁷ The outstanding principal amount of the receiver's lien carries interest at a standard statutory rate applicable to judgment liens, as provided in T.C.A. §67-5-2010.¹⁸

(2) **BAR ON TRANSFER:** The filing of the NPA Petition acts as a bar of any transfer of title of the property or interests related to the property, including, but not limited to, transfers by tax sale or other foreclosure, transfers or creation of lien interests in the property, or otherwise, from the date of the filing until the petition is dismissed or until specific orders of the Court authorizing a transfer of title, if the petition has attached a certificate of public nuisance issued in accordance with T.C.A. §13-6-106(a).

¹⁰ T.C.A. §13-6-106 (f) and (h).

¹¹ T.C.A. §13-6-106 (g).

¹² See T.C.A. §13-6-106(a)-(d) for requirements.

¹³ T.C.A. §13-6-106(c).

¹⁴ T.C.A. §13-6-106 (c)(1).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*



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- (3) **CITY ACCESS:** The filing of a NPA Petition authorizes the City, in its discretion, to access the subject property for boarding, securing, and maintaining the property at any time if the Court determines that the owner has failed to do so. If the City incurs costs in taking such action, the costs incurred are charged to the property owner.
- c. **RECEIVER'S LIEN AUCTION:** If the receiver's lien is not satisfied by the owner, the court directs the receiver to offer the property for sale, following the procedures provided in T.C.A. §§35-5-101 — 35-5-109¹⁹.
- (1) **MINIMUM BID:** The minimum bid at a receiver's lien sale is the full amount of the receiver's lien.²⁰
- (2) **PREEMPTIVE BID BY BAM– BAM ACQUIRES PROPERTY:** If the receiver's lien is not satisfied by the owner, BAM can notify the receiver in writing advance of the receiver's lien sale that it wishes to enter the minimum bid for cash for the property. If BAM provides such notice, BAM's minimum bid shall preempt all other bids, and BAM shall be the prevailing bidder.²¹
- (3) **NO BIDDER– RECEIVER ACQUIRES PROPERTY:** If there is no bidder at the receiver's lien auction for greater than the minimum bid, the property shall be transferred by receiver's deed to the receiver, and there shall be no requirement of cash payment of the minimum bid by the receiver.²² Thus, if BAM acts as the receiver in the action and no one bids greater than the minimum bid at the lien auction, the property would be transferred to BAM.
- (4) **DISTRIBUTION OF SUCCESSFUL BID PAYMENT:** When the successful bid is paid in cash, the amount of the minimum bid is paid to satisfy the receiver's lien, including payment to the appropriate property tax officials, of that portion of the receiver's lien that constituted delinquent property taxes. Any surplus shall be distributed, as approved by the Court, to the owner and interested persons in the priority in which their interests encumbered the property before the auction.²³
- (5) **REPORT OF PREVAILING BID AND RECORDING OF RECEIVER'S DEED:** The receiver shall report the prevailing bid at the sale to the Court, and upon approval by the Court, a receiver's deed shall be issued to the successful bidder and promptly recorded in the Office of the Shelby County Register of Deeds.²⁴

¹⁹ See T.C.A. §13-6-106 (j).

²⁰ See T.C.A. §13-6-106 (j)(2).

²¹ See T.C.A. §13-6-106 (j)(3).

²² See T.C.A. §13-6-106 (j)(4).

²³ See T.C.A. §13-6-106 (j)(5).

²⁴ See T.C.A. §13-6-106 (j)(6).



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- (6) **TRUSTEE CREDIT:** The Shelby County Trustee shall be allowed a credit pursuant to §67-5-1903(b)(1) for any local taxes and assessments that are not collected as a result of the failure of the receiver's lien sale to receive a cash payment for the minimum bid.²⁵

- (7) **TITLE:** Title is absolute in the purchaser, and the interests of any interested persons prior to the auction are terminated as of the date of the sale. The receivership is terminated after the sale by order of the court after a hearing on receiver's motion for termination of the receivership.²⁶

²⁵ T.C.A. §13-6-106 (j)(6).

²⁶ T.C.A. §13-6-106 (j)(6) and BAM's Charter, ¶15.

APPENDIX II

Note: Appendix II is a supplement to expound upon Section 6 of BAM’s Acquisition & Disposition Policy, which discusses BAM’s power to acquire properties through expedited bulk quiet title proceedings, and explain the procedures for such proceedings.

QUIET TITLE

SECTION 5: QUIET TITLE

Tennessee law authorizes BAM to file bulk quiet title actions for properties in which BAM has an interest.²⁷ Quiet title actions are suits to remove a cloud in title. A cloud in title means any claim or potential claim to ownership of the property. BAM’s ability to file “bulk” quiet title actions means that BAM can file one complaint to quiet title for multiple parcels of real property. The Land Bank Act also provides for an expedited process for these actions.

A. IMPORTANCE OF BAM’S BULK QUIET TITLE POWER:

BAM must be able to sell the properties held in the Land Bank to ensure that the properties are returned to productive use. BAM’s marketing and selling of properties benefits the City by (1) reducing the quantity of blighted properties; (2) reducing costs to the City for maintenance of the properties; (3) increasing property tax revenue by returning the properties to the tax rolls; (4) increasing tax revenue by improving the value of surrounding properties; (5) stabilizes neighborhoods and improves quality of life for neighborhood residents. BAM must be able to sell properties so that the properties will be returned to productive use. Bulk quiet title actions promote efficiency by allowing BAM to acquire clear title to multiple properties at the same time. See **Appendix II** of this Policy for information regarding Quiet Title procedures.

B. QUIET TITLE PROCEDURE: BAM will file any actions for quiet title in the Chancery Court for Shelby County, Tennessee.²⁸

1. **AUTHORITY AND STANDING TO FILE:** Pursuant to T.C.A. §13-30-117, BAM has the authority to file actions to quiet title as to any properties in which BAM has an interest. BAM shall be deemed to be the holder of sufficient legal and equitable interests, and possessory rights, so as to qualify BAM as an adequate complainant in such action.²⁹
2. **TITLE EXAMINATION REQUIREMENT:** Prior to filing a quiet title action, BAM is required to conduct an examination of title to determine the identity of any and all persons and entities possessing a claim or interest in or to each of the properties (“Interested Parties”).³⁰

²⁷ T.C.A. §13-30-117 and §13-30-109(2).

²⁸ See T.C.A. §16-11-101, and <https://www.shelbycountyn.gov/2100/Which-Court>

²⁹ T.C.A. §13-30-117(a) .

³⁰ T.C.A. §13-30-117(b).



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3. **SERVICE OF COMPLAINT:** Service of the complaint to quiet title shall be provided to all Interested Parties by the following methods:³¹
 - a. Registered or certified mail to such identity and address as reasonably ascertainable by an inspection of public records;³²
 - b. In the case of occupied real property by registered or certified mail, addressed to “occupant”;³³
 - c. By posting a copy of the notice on the real property;³⁴
 - d. By publication in a newspaper of general circulation in the municipality in which the property is located;³⁵
 - e. By electronically publishing notices with addresses and descriptions via the municipality's website;³⁶ and
 - f. Such other methods as the court may order.³⁷
4. **AFFIDAVIT REQUIREMENT:** BAM must file an affidavit with any complaint for quiet tile, identifying all parties potentially having an interest in the properties, and the form of notice provided.³⁸
5. **EXPEDITED PROCESS:** The Court must schedule a hearing within 90 days after BAM files the compliant. For all matters upon which no interested party files an answer, the court must issue a judgment within 120 days of BAM’s filing.³⁹

³¹ T.C.A. §13-30-117(b).

³² T.C.A. §13-30-117 (b)(1).

³³ T.C.A. §13-30-117 (b)(2).

³⁴ T.C.A. §13-30-117 (b)(3).

³⁵ T.C.A. §13-30-117 (b)(4).

³⁶ T.C.A. §13-30-117 (b)(5).

³⁷ T.C.A. §13-30-117 (b)(6).

³⁸ T.C.A. §13-30-117 (c).

³⁹ T.C.A. §13-30-117 (d).